

NORTH CAROLINA OPTION TO PURCHASE

This Option to Purchase is made the 14th day of December, 2017, between **JACK1, LLC**, a North Carolina limited liability company, hereinafter referred to as Seller, to **TOWN OF APEX**, hereinafter referred to as Buyer.

WHEREAS, Seller and Buyer entered into that certain Development Agreement, dated December 14th 2017, which is attached hereto as **Exhibit A** and incorporated by reference, concerning the development of the Property (as defined below) (the "Development Agreement").

WHEREAS, Seller and Buyer entered into that certain Ground Lease, dated December 14th, 2017, which is attached hereto as **Exhibit B** and incorporated by reference, concerning the lease of the Property (as defined below) by Buyer from Seller (the "Lease").

WITNESSETH, that Seller, for and in consideration of the sum of One Hundred Dollars (\$100.00) to him in hand paid by Buyer, receipt of which is hereby acknowledged, does hereby give and grant unto Buyer, his heirs, assigns, or representatives, the exclusive right and option to purchase all or a portion of that certain plot, piece, or parcel of land together with all improvements located thereon in the Town of Apex, County of Wake, State of North Carolina, being known as and more particularly described as shown on **Exhibit C**.

The terms and conditions of this option are as follows:

1. Term. The term of this Option shall commence on the date hereof and shall expire three (3) years after the Rent Commencement Date (as set forth in the Lease) (the "Term"). Landlord further hereby grants Tenant three (3) successive options to extend the Term, each for an additional period of three (3) years, as follows: Provided it is not then in default under the Lease or the Development Agreement beyond any applicable cure period, Tenant shall have the option to extend the Term for each successive three (3) year period ("Extended Term") by giving notice to Landlord of its exercise of the option at least ninety (90) days prior to the expiration of the Term or the then-expiring Extended Term, as the case may be. Notwithstanding anything contained in this Option to the contrary, this Option shall immediately terminate upon the expiration or earlier termination of the Lease or termination of the Development Agreement.

2. Exercise. At any time during the option period, Buyer may exercise this option by hand-delivery or deposit of written notice by certified or registered mail, return receipt requested, to Seller at the following address:

Jack1, LLC
Gray Cash
738 Cash St.
Apex, NC 27502

3. Contract Upon Exercise. Upon exercise, the terms of the purchase and sale shall be as set forth on **Exhibit D** attached hereto and incorporated herein by reference.

4. Application of Option Money. The consideration paid for this option, above set forth, shall not be applied to the purchase price at closing, if this option is exercised. If this option is not exercised, the option money will be retained by Seller.

5. Controlling Document. Notwithstanding anything contained in this Lease to the contrary, all terms in this Lease are subject to the terms of the Development Agreement, dated December ~~14th~~^{15th}, 2017, by and between the Tenant and the Landlord, and in the event of any ambiguity or conflict between this Lease and the Development Agreement, the terms of the Development Agreement shall control.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, Seller has hereunto set his hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

JACK1, LLC

By: Paula Perkins
Paula Perkins, Member-Manager

By: Fred Gray Cash III By: Judy Cash
Fred Gray Cash III, and Judy Cash, jointly, as Member-Manager

NORTH CAROLINA, WAKE COUNTY


I, a Notary Public for the County and State aforesaid, certify that Paula Perkins, Member-Manager of Jack1, LLC personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 29 day of December, 2017.



Stephen Paris Candola
Notary Public
Print Name: Stephen Paris Candola
My Commission Expires: 07/01/19

NORTH CAROLINA, WAKE COUNTY

I, a Notary Public for the County and State aforesaid, certify that Fred Gray Cash, III and Judy Cash, jointly as Member-Manager of Jack1, LLC personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 29 day of December, 2017.



Notary Public
Print Name: Stephen Parascandola
My Commission Expires: 07/01/19

(SEAL)



TOWN OF APEX

By: [Signature]
Name: Lance Olive
Title: Mayor

ATTEST:
[Signature]
Name: Bonnie J. Brock

[Signature]
Deputy Town Clerk

This instrument has been preaudited
in the manner required by The Local
Government Budget and Fiscal Control Act

[Signature]
Name: Vance Holloman
Finance Officer, Town of Apex, North Carolina

NORTH CAROLINA, Wake COUNTY

I, a Notary Public for the County and State aforesaid, certify that
Lance Olive, Bonnie Brock and Vance Holloman personally appeared before me this day and
acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or
seal, this 15th day of December, 2017.

[Signature]
Notary Public
Print Name: Kanika Brown

My Commission Expires: July 4, 2022

(SEAL)

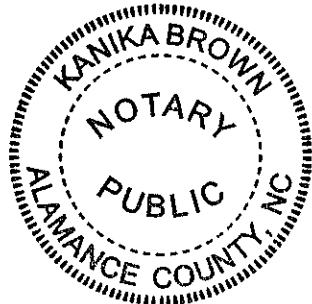


EXHIBIT A

DEVELOPMENT AGREEMENT
BETWEEN
TOWN OF APEX, NORTH CAROLINA
AND
JACK1, LLC

ENTERED INTO ON THE 14th DAY OF DECEMBER, 2017

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into this ___ day of December, 2017, between **THE TOWN OF APEX, NORTH CAROLINA**, a political subdivision of the State of North Carolina and municipal corporation (alternatively the "Town" or "Apex"), and **JACK1, LLC**, a North Carolina limited liability company (referred to as "Jack 1"). The Town and Jack 1 are referred to herein individually as a "Party" and collectively as the "Parties."

WHEREAS, Jack 1 owns land as described in Exhibit A, which is located within Wake County (the "Property");

WHEREAS, the Town desires to acquire and develop the Property for purposes of promoting economic development within the Town, and thereby creating an increase in employment and an improved and diversified property tax base;

WHEREAS, the Parties desire to structure the acquisition in such a way as to allow for the Town's funds to go to infrastructure to serve the Property, improvements to the Property, and marketing of the Property, which will be for the mutual benefit of both of the Parties; and

WHEREAS, the Parties desire to enter into the equity participation arrangement described herein.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. **Ground Lease**. Jack 1, contemporaneously with the execution of this Agreement, has entered into a ground lease (the "Lease") of the Property to the Town. The Lease is in the form as shown at Exhibit B. The initial term of the Lease is three (3) years from the Effective Date, as defined in Section 33 below. If Apex is in compliance with the Development and Marketing Milestones as set forth in Section 10 of this Agreement, at each time that Apex has an opportunity for an extension of the Lease, Apex shall have the option, in its sole discretion, to extend the term of the Lease for up to three (3) additional three (3) year lease terms, resulting in a total lease term of twelve (12) years. Provided however, if Apex fails to meet one (1) or more of the Development and Marketing Milestones as set forth in this Agreement, in the initial term or any additional optional term of this Lease, then the Town may only extend the Term of this Lease for the next three (3) year Lease term with the written consent of Jack 1. At the end of the initial Lease term or any extended optional three (3) year Lease term, if the Town has failed to meet a Development or Marketing Milestone required to be completed prior to the expiration of that Lease term, Jack 1 shall have the right to terminate this Lease.

2. **Lease Payments.** As more fully set forth in the Lease, the Lease payments pursuant to the terms of the Lease will be equivalent to the amount by which the personalty and real estate property taxes due and attributable to the Property each year exceed the amount of the annual property taxes actually paid by Jack 1 for the Property as of the date of the execution of the Lease, which increases in any such taxes are attributable to the Town's development efforts, the passage of time, and/or a result of being annexed into the Town, pursuant to Section 7 below. Provided however that the Town will not be responsible for paying any late fees or interest on property taxes due on the Property. Lease payments shall be paid by the Town annually to Jack 1 no later than thirty (30) days following the date on which Jack 1 gives its annual property tax bill and proof of payment of that bill to the Town. It is understood and agreed that the Town will not assess any impact fees on Jack 1 by virtue of this lease and option arrangement. But, provided however, that if Jack 1 chooses to reacquire full title to any portions of the Property, pursuant to Section 13, and to build a facility to lease to an end user, impact fees may be imposed by the Town as a result of that new facility and the company to occupy the facility, and that those impact fees will be due and payable by Jack 1 or the company to occupy the new facility.

3. **Insurance and Indemnification.** As more fully set forth in the Lease, during the initial term or any extended term of the Lease, the Town will maintain property, casualty and environmental impairment insurance on the Property to cover any damages or liabilities which might arise as a result of the Town's development activities, and the Town will provide copies of all such insurance policies to Jack 1 upon request. Such insurance policies shall name Jack 1 as additional insured parties. Also, as more fully set forth in the Lease, during the initial term or any extended term of the Lease, the Town will defend, indemnify and hold Jack 1 harmless from any damages or losses whatsoever which are the result of any actions, inactions, or neglect on the part of the Town or its contractors, agents or invitees. Provided however that the Town shall not have the responsibility of providing insurance coverage for or indemnifying Jack 1 for any property, casualty or environmental losses, claims or damages arising before or attributable to conditions of the Property prior to the Effective Date of this Agreement.

4. **Option to Purchase.** The Town and Jack 1, contemporaneously with the execution of the Lease, have entered into an option to purchase (the "Option"), pursuant to which the Town will have the option [in its sole discretion] to purchase all or portions of the Property, pursuant to the terms, conditions, and limitations set forth herein and in the Option. The Option shall be in the form as shown at Exhibit C. The Town shall pay Jack 1 an option fee of one hundred dollars (\$100.00) in consideration for the Option.

5. **Term of Option.** The Option shall have an initial term of three (3) years which shall run contemporaneously with the initial term of the Lease as set forth in Section 1 above. The Option may be extended, [in the sole discretion] of Apex, for up to three (3) additional three (3) year terms, if the Town also exercises its corresponding options to enter into extended three (3) year terms under the Lease. If Apex does not exercise its option to enter into a three (3) year extension of the Lease, or if this Agreement or the

Lease is terminated for any reason whatsoever, then the Option shall be terminated as of the date the Lease is terminated.

6. **Exercise of Option.** The Town may acquire all or portions of the Property, pursuant to the terms and price as set forth in Sections 8 and 9 below, respectively.

7. **Annexation.** Within fifteen (15) business days following the execution of this Agreement, Jack 1 will file applications for the Property to be annexed into the Town's territorial jurisdiction and to rezone the Property to LI-CZ, and will fully cooperate in and continue to pursue the annexation and zoning processes until their conclusion. The Town will dedicate a staff member to assist Jack 1 in the entire annexation and rezoning processes and will waive any applicable fees, such that Jack 1 will incur no costs related to these processes. Should the Cash Family fail to comply with this term or if the annexation or zoning is not finally approved for any reason whatsoever, this Agreement and the Lease and Option shall be terminated and the Parties will have no further obligations from one to the other; provided, however, that the Town's indemnity obligations as set forth in Section 3 above shall survive any termination of the Lease or this Agreement.

8. **Property Conveyance.** When the Town chooses to exercise its rights under the Option from time to time to acquire all or portions of the Property, those purchases shall be pursuant to a Contract to Purchase in the form as set forth at Exhibit D. Jack 1 will donate to the Town any rights of way necessary for the installation of water lines, waste water treatment lines, electrical lines and roads into and to serve the Property, and for the placement of signage and plantings at the entrance to the Property. The portions of the Property donated by Jack 1 to the Town shall not be subject to the minimum acreage requirements referred to herein.

9. **Purchase Price.** The purchase price of the Property (as defined below) is to be paid on an acreage release basis as all or portions of the Property are purchased by the Town. As used herein, the term "Purchase Price" shall mean the sum of the following:

- a. The price of the Property, per acre, as of the date hereof (the "Base Price"). The Base Price has been determined by an appraisal of the Property in its current state, prior to the execution of this Agreement, with such appraisal having been completed by an appraiser agreed to by the Parties. Such appraisal of the Property is attached hereto as Exhibit H and made a part hereof. The Base Price is fifty four thousand nine hundred eighty five dollars (\$54,985.00) per acre.
- b. Plus, twenty-five percent (25%) of the "equity" created in the Property by virtue of the Town's development and marketing efforts, the construction of new company facilities on the Property, and/or the passage of time (the "Equity Participation Portion"). The equity in the Property is defined as the difference between the cumulative total of the Base Price per acre or portion thereof, plus reimbursement to Apex of a per acre or portion of an acre pro rata amount of all Development Costs expended by the Town in the

development of the Property, and the per acre fair market value of the Property as determined by a mutually satisfactory appraisal completed by an appraiser agreed to by the Parties at the time the Town notifies Jack 1 of its desire to purchase all or portions of the Property.

At such time as the Town notifies Jack 1 of its desire to purchase all or portions of the Property, a survey will be completed to determine the acreage to be acquired by the Town. All such surveys shall be paid for by the Town, and the costs of such surveys will be included in the Town's Development Costs. The Town will pay to Jack 1 the Purchase Price for each acre or portion of an acre on a pro rata basis of the Purchase Price for an acre which will be equal to the percentage rounded to the nearest hundredth of a percent of an acre being purchased.

NOTWITHSTANDING THE ABOVE DEFINITION OF THE "PURCHASE PRICE," OR ANYTHING ELSE TO THE CONTRARY AS SET FORTH HEREIN, IN NO EVENT WILL THE PURCHASE PRICE TO BE PAID TO JACK 1 EVER BE LESS THAN THE BASE PRICE, AS DEFINED ABOVE.

10. **Development and Marketing Milestones.** It is understood and agreed that a portion of the value to be realized by Jack 1 is based upon the Town undertaking development efforts and aggressively marketing the Property which is expected to increase the fair market value of the Property and thereby increase Jack 1's Equity Participation Portion. Consequently, the Town's adherence to the following milestones in its development efforts and marketing of the Property (the "Development and Marketing Milestones") are an essential part of this Agreement and are a material inducement to Jack 1's execution hereof. To this end, the Town will achieve the following Development and Marketing Milestones no later than the timeframes shown below following the effective date of this Agreement:

a. Application for rezoning of the Property to LI-CZ	No Later Than Sixty (60) days following the Effective Date
b. Development of marketing materials	No Later Than Ninety Days (90) following the Effective Date
c. Extension of wastewater treatment service to the Property	No Later Than One (1) Year following the Effective Date
d. Construction of short road into the Property	No Later Than One Hundred and Eighty Days (180) following the Effective Date
e. Extension of electric service to the Property	No Later Than One Hundred and Eighty Days (180) following the Effective Date

f. Development of entrance and signage to the Property	No Later Than One Hundred and Eighty Days (180) following the Effective Date
g. Site Certification	No Later Than One Hundred and Eighty Days (180) following the Effective Date
h. Extension of water service to the Property	No Later Than One Hundred and Eighty (180) days following the Effective Date
i. Purchase of percentages of the Property:	
i. Ten percent (10%)	No Later Than Three Years following the Effective Date of this Agreement
ii. Additional fifteen percent (15%)	No Later Than Five Years following the Effective Date of this Agreement
iii. Additional twenty-five percent (25%)	No Later Than Six (6) Years following the Effective Date of this Agreement
iv. Additional twenty-five percent (25%)	No Later Than Seven (7) Years following the Effective Date of this Agreement
v. Additional twenty-five percent (25%)	No Later Than Eight (8) Years following the Effective Date of this Agreement

11. **Liens and Encumbrances.** The Town shall not place any liens on or encumber the Property without the prior written consent of Jack 1, which consent shall not be unreasonably conditioned, delayed, or withheld. The prior sentence notwithstanding, the Town shall have the right to acquire by donation of Jack 1 rights of way for any utility infrastructure or roads to be placed on the Property. Development Costs incurred by the Town shall be evidenced by a promissory note securing future advances in the form as shown at Exhibit E and will be secured by a deed of trust in the form as shown at Exhibit F.

The promissory note at Exhibit E will not require any interest. Payments of the amounts evidenced by this promissory note will be payable on a pro rata basis as property is sold by Jack 1, as set forth in Section 12 below, or offset against the compensation due to Jack 1 for parcels purchased by the Town, pursuant to Sections 6, 8 and 9 above.

12. **Satisfaction of Deed of Trust.** As portions of the Property are sold by Jack 1 to the Town or a business and thereby released from the Lease and the Option as described in Section 13 below, or are sold by Jack 1 following the termination of the Lease and the Option, and after the payment of the Development Costs and the Town's equity share as described in Section 13 below, the Town will provide to Jack 1 an executed Satisfaction of Promissory Note and Deed of Trust which shall be in the form as shown at Exhibit G. These documents will be executed by the Town and delivered to Jack 1 contemporaneously with the payment of the amounts as described in Section 13 below.

13. **Jack 1 Reacquisition of Property.** Jack 1 shall have the option to release portions of the Property from the Lease and Option if they have an agreement to sell all or portions of the Property to a business which meets the criteria set forth in Section 14 below. In the event that Jack 1 does exercise its option to so release certain portions of the Property, it shall pay to the Town an amount which is the sum of the following amounts on a per acre, or pro rata per acre, basis:

- a. A pro rata portion or a per acre basis of the Development Costs incurred by the Town on the Property; and
- b. Seventy-five percent (75%) of the "equity" in the Property, as defined in Section 9.b. above, attributable to the portion of the Property which is released from the Lease and Option.

14. **Acceptable Businesses.** It is understood and agreed by the Parties that neither the Town nor Jack 1 will recruit a business to the Property or sell Property to a business unless it meets the following criteria:

- a. The business will provide new jobs and/or capital investments sufficient to meet the economic development goals of the Town.
- b. The zoning required for that particular business will be consistent with the zoning applicable to the Property as set forth in Section 10.a. above.
- c. The type of business being recruited will not be detrimental to the future development of the Property as a whole.
- d. The business will require the utilization of at least ten (10) acres for its facility; or if agreed to by Jack 1, less than ten (10) acres.

- e. To the knowledge of the Town and Jack 1, the business will not be planning to conduct any testing of its products on animals within the facility to be located on the Property.

The obligation of Jack 1 to only sell portions of the Property to companies which will meet the above criteria shall remain in effect for seven (7) years following the date on which the Lease and Option are terminated; provided, however, that no restrictions on the future lease or sale of the Property (or any portions thereof) shall apply in the event this Agreement, or the Lease or Option, are terminated due to any breach thereof by the Town or the Town's failure to perform thereunder. Such requirements will be set forth in deed restrictions.

15. **Deferred Taxes.** Jack 1 may have to pay up to three (3) years of deferred taxes as a result of a change in the zoning of the Property. The Town will provide funds to Jack 1 to pay for any and all deferred taxes that Jack 1 might be required to pay. Any of the amounts advanced to Jack 1 by the Town shall be credited against the Purchase Price of the first portion(s) of the Property purchased by the Town. If this transaction is terminated as a result of Jack 1 reacquiring a portion or all of the Property pursuant to Section 13, then the amount of such funds advanced to Jack 1 by the Town shall be added to the promissory note and secured by the deed of trust as set forth in Section 11; provided, however, that Jack 1 will not be under any obligation to return any such funds in the event this Agreement, or the Lease or Option, are terminated due to any breach thereof by the Town or the Town's failure to perform thereunder.

16. **Jack 1 Leases.** It is understood by the Parties that Jack 1 has an interest in any opportunity to lease Property and improvements to companies that might be recruited to or located on the Property. Consequently, the Town will allow Jack 1 the earliest opportunity possible to talk with companies being recruited, to the extent that the company is interested in a lease arrangement and is willing to discuss this with Jack 1. Also, prior to contact with the company, Jack 1 and its representatives will sign a confidentiality agreement, in a form reasonably acceptable to the Town and company being recruited, protecting the interests of the company being referred to them.

17. **Warranties.** Except as set forth in the Contract to Purchase at Exhibit D or any of the other documents attached hereto, there are no other warranties from one Party to the other.

18. **Temporary Extensions of Development and Marketing Milestones.** Notwithstanding anything herein to the contrary, if the Town shall be prevented or delayed from fulfilling, or continuing to fulfill, any of the Development and Marketing Milestones set forth herein by direct reason of a:

- a. Government moratorium affecting Town operations beyond the scope of this Agreement and the activities contemplated hereunder;
- b. Delay in obtaining any governmental or quasi-governmental approvals, permits or certificates, despite timely and reasonable efforts by the Town to obtain same;

- c. Enemy or hostile governmental action;
- d. Act of God, including but not limited to hurricane, tornado, snowstorm, windstorm, earthquake or flood, fire or other extreme weather conditions or other casualty;
- e. Strike, lockout or a labor dispute involving entities other than the Town which causes the Town an inability to obtain labor or materials;
- f. Any failure or neglect of Jack 1 to undertake a necessary act despite written notice and a reasonable opportunity to cure same; or
- g. Any other event, other than normal business exigencies, which is beyond the reasonable control of the Town,

then the time allowed to achieve Development and Marketing Milestones shall be equitably expanded to reflect the effect of such event, with there being one day of extension of time in all of the Development and Marketing Milestones for each day of delay caused by a force majeure.

19. **Assignments.** Notwithstanding anything contained in this Agreement or any document related to this Agreement the contrary, this Agreement and any rights and/or obligations related to this Agreement, may be assigned by Jack 1 without the prior written consent of the Town or any other third party. This Agreement shall not be assigned by Jack 1 to any entity created or organized outside of the United States without prior written consent of the Town. Any assignee of Jack 1 shall be subject to and bound by the terms of this Agreement to the same extent as Jack 1. This Agreement may only be assigned by the Town, upon prior written notice to Jack 1, to a nonprofit economic development entity established by the Town to assist in this project, provided that the Town shall guarantee the performance by any assignee of all obligations due under this Agreement and any documents related to this Agreement.

20. **LIMITED OBLIGATION OF TOWN.** NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE FAITH AND CREDIT OF THE TOWN WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS DELEGATING GOVERNMENTAL POWERS NOR AS A DONATION OR A LENDING OF THE CREDIT OF THE TOWN WITHIN THE MEANING OF THE STATE CONSTITUTION. THIS AGREEMENT SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE TOWN TO MAKE ANY PAYMENTS BEYOND THOSE APPROPRIATED IN THE TOWN'S SOLE DISCRETION FOR ANY FISCAL YEAR IN WHICH THIS AGREEMENT SHALL BE IN EFFECT. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED TO PLEDGE OR TO CREATE A LIEN ON ANY CLASS OR SOURCE OF THE TOWN'S MONEYS, NOR SHALL ANY PROVISION OF THE AGREEMENT RESTRICT TO ANY EXTENT PROHIBITED BY LAW, ANY ACTION OR RIGHT OF ACTION ON THE PART OF ANY FUTURE TOWN GOVERNING BODY. TO THE EXTENT OF ANY CONFLICT

BETWEEN THIS ARTICLE AND ANY OTHER PROVISION OF THIS AGREEMENT, THIS ARTICLE SHALL TAKE PRIORITY.

21. **Governing Law.** The Parties intend that this Agreement shall be governed by the law of the State of North Carolina.

22. **Notices.**

- a. Any communication required or permitted by this Agreement must be in writing except as expressly provided otherwise in this Agreement.
- b. Any communication shall be sufficiently given and deemed given when delivered by hand or five days after being mailed by first class mail, postage prepaid, by overnight delivery, or by email, and addressed as follows:
 - i. If to Jack 1 LLC, to Gray Cash, 738 Cash St. Apex, NC 27502.
 - ii. If to the Town, to Town Manager, 73 Hunter Street, Post Office Box 250, Apex, North Carolina 27502 drew.havens@apexnc.org.
- c. Any addressee may designate additional or different addresses for communications by notice given under this Section to each of the others.

23. **Non-Business Days.** If the date for making any payment or the last day for performance of any act or the exercising of any right shall not be a Business Day, such payment shall be made or act performed or right exercised on or before the next preceding Business Day.

24. **Severability.** If any provision of this Agreement shall be determined to be unenforceable, that shall not affect any other provision of this Agreement.

25. **Entire Agreement: Amendments.** This Agreement, including Exhibits A through G attached, which are incorporated herein and made a part hereof, constitutes the entire contract between the Parties, and this Agreement shall not be changed except in writing signed by all the Parties.

26. **Binding Effect.** Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by Parties and their respective successors and assigns.

27. **Time.** Time is of the essence in this Agreement and each and all of its provisions.

28. **Liability of Officers and Agents.** No officer, agent, or employee of the Town shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such

officers, agents, or employees shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve any such officer, agent or employee from the performance of any official duty provided by law.

29. **Presumptions as to Drafter.** The Parties agree that each of them have been represented by legal counsel in the negotiation and drafting of this Agreement. Consequently, in the interpretation of this Agreement, no inference or presumption will be attributed to either Party as to such interpretation.

30. **E-Verify Compliance.** Jack 1 shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). Jack 1 shall require all of Jack 1's subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).

31. **Iran Divestment Act Certification Required by N.C.G.S. 147-86.60.** N.C.G.S. 147-86.60 prohibits the State of North Carolina, a North Carolina local government, or any other political subdivision of the State of North Carolina from contracting with any entity that is listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.58. N.C.G.S. 147-86.59 further requires that contractors with the State, a North Carolina local government, or any other political subdivision of the State of North Carolina must not utilize any subcontractor found on the State Treasurer's Final Divestment List. As of the date of execution of this Agreement, Jack 1 hereby certifies that Jack 1 is not listed on the Final Divestment List created by the North Carolina State Treasurer and that Jack 1 will not utilize any subcontractors found on the Final Divestment List.

32. **Counterparts.** This Agreement may be executed in several counterparts, including separate counterparts. Each shall be an original, but all of them together constitute the same instrument.

33. **Effective Date.** As used herein, the term "Effective Date" shall mean the date first shown above.

34. **Development Costs.** As used herein, the term "Development Costs" shall be defined as reasonable, and necessary costs actually paid by the Town, in its sole discretion, to third parties in direct connection with the Town's efforts to meet the Development and Marketing Milestones set forth in Section 10 above. Development Costs shall include, but not be limited to, all costs of materials, fees, contractor's labor, expenses and profits, mitigation costs, construction management, testing and certifications related to or necessary for the extensions of water and waste water treatment lines to and into the Property, electrical lines to and into the Property, roadways into the Property, signage and entrance improvements for the Property, certification of the Property, surveys of the Property as described herein, and appraisals of the Property as described herein. If the Town sells timber from any portions of the Property, the proceeds from that timber sales will be applied to and deducted from the current amount of the accrued Development Costs. The Town shall be under no obligation to sell timber of any kind under this

Agreement. But if timber from any portions of the Property is harvested by any other party, and the Town does not receive the proceeds from such timber sales, then this provision will not apply. Development Costs shall not include the Town's expenses for time spent or activities of Town employees. Jack 1 or its representatives shall have the right to examine the Town's records and receipts relating to any such Development Costs within twenty (20) days following the furnishing of any statement of same to Jack 1. Unless Jack 1 takes written exception to any item within fifteen (15) days following the furnishing of the statement to Jack 1, such statement shall be considered as final and accepted by Jack 1. If such examination reveals that the Town has overcharged Jack 1, the parties shall endeavor in good faith to agree upon a mutually acceptable amount of such costs. Additionally, in the event such examination reveals that the Town has overcharged Jack 1 by five percent (5%) or more, the Town shall also pay to the reasonable costs of such examination.

35. **Revisions to Attached Documents.** The documents attached as Exhibits to this Agreement are intended to be sufficient to effectuate and carry out the intent as expressed in this Agreement. If any of the documents at the attached Exhibits needs to be amended in one or more transactions between the Parties to close on the purchase of portions or all of the Property, the Parties will work together cooperatively and negotiate in good faith as to any needed amendments.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their corporate names by their duly authorized officers, all as of the date first above written.

JACK1, LLC

By: _____ Date: _____
Paula Perkins, Member-Manager

By: _____ By: _____
Fred Gray Cash III, and Judy Cash, jointly, as Member-Manager
Date: _____

TOWN OF APEX, NORTH CAROLINA

By: _____
Name: Lance Olive, Mayor Date: _____

ATTEST:

Name: _____
Date: _____

Donna Hosch, Town Clerk

This instrument has been preaudited
in the manner required by The Local
Government Budget and Fiscal Control Act

Name: Vance Holloman
Finance Officer, Town of Apex, North Carolina
Date: _____

EXHIBIT B

GROUND LEASE

THIS GROUND LEASE, dated this ____ day of December, 2017 (the "Effective Date"), by and between **JACK1, LLC**, a North Carolina limited liability company ("Landlord"), and **THE TOWN OF APEX NORTH CAROLINA**, a political subdivision of the State of North Carolina and municipal corporation ("Tenant") (the "Lease").

RECITALS:

A. Landlord is the owner of that certain tract of land located in the City of Apex, White Oak Township, Wake County, North Carolina, as recorded in Book 2013 Page 1625 in the Wake County Registry.

B. Landlord and Tenant are parties to a Development Agreement, dated December __, 2017, which is attached hereto as **Exhibit A** and incorporated by reference (the "Development Agreement").

C. Landlord and Tenant desire for Landlord to lease to Tenant the Premises, as hereinafter defined, to permit Tenant to construct improvements thereon, (the "Improvements") and to market all or portions of the Premises.

NOW, THEREFORE, in consideration of the rent to be paid, the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by the parties hereto, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises. Tenant hereby accepts this Lease and the Premises upon the covenants and conditions set forth herein and subject to any encumbrances, covenants, conditions, restrictions and other matters of record as of the date hereof (the "Permitted Encumbrances") and all applicable zoning, municipal, county, state and federal laws, ordinances and regulations governing and regulating the use of the Premises.

TO HAVE AND TO HOLD THE SAME subject to the terms and conditions set forth herein.

ARTICLE 1 - PREMISES

For and in consideration of the rents, taxes and insurance and other charges and expenses to be paid by Tenant, and in consideration of the performance by Tenant of the covenants set forth herein, Landlord does hereby demise and lease to Tenant all that certain real property consisting of 121.305 acres of land, located within Wake County, North Carolina, more

particularly described on Exhibit B attached hereto, together with the Improvements thereon (the "Premises").

ARTICLE 2 -TERM

2.1 Term. The term of this Lease shall commence on the date hereof and shall expire three (3) years after the Effective Date (the "Term").

2.2 Options to Extend Term. Landlord further hereby grants Tenant three (3) successive options to extend the Term, each for an additional period of three (3) years, as follows: Provided it is not then in default under this Lease beyond any applicable cure period, Tenant shall have the option to extend the Term for each successive three (3) year period ("Extended Term") by giving notice to Landlord of its exercise of the option at least ninety (90) days prior to the expiration of the Term or the then-expiring Extended Term, as the case may be. All of the terms and conditions of this Lease shall apply during each Extended Term. Notwithstanding the foregoing, in the event that Tenant fails to meet one (1) or more of the Development and Marketing Milestones set forth in the Development Agreement, Tenant's right to extend the Term or Extended Term, as the case may be, shall be subject to the prior written consent of Landlord.

ARTICLE 3 -RENT

3.1 Rent. In consideration of leasing the Premises, Tenant agrees to pay Landlord, or Landlord's designated agent, at the address set forth herein or such other address as Landlord from time to time may designate in writing, the Annual Rent (as defined below), due and payable annually within thirty (30) days after Landlord delivers to Tenant a written notice specifying the amount of the Rent, its annual tax bill(s) evidencing same, and evidence that the tax bill has been paid. The annual rent shall be equal to the amount by which all personalty and real property taxes due and attributable to the Premises each tax year (including, without limitation, the taxes listed in Section 4.1) exceed the amount of the annual property taxes actually paid by the Landlord for the Premises as of the date of the execution of the Lease (as determined by the most recent tax bills received by Landlord prior to the Effective Date) (the "Annual Rent"). Tenant shall not be responsible for paying any late fees or interest on past due amounts for the payment of taxes due and payable by Landlord on the Premises. All other amounts to be paid by Tenant under this Lease shall constitute "Additional Rent" hereunder, due and payable within thirty (30) days after Tenant's receipt of Landlord's written request therefor.

The term "Lease Year" as used herein shall mean each consecutive twelve (12) month period from and after the Effective Date until the expiration of the Term; provided, however, if the Effective Date falls on a day other than the first day of a calendar month, then the first Lease Year shall be longer than one calendar year and shall end on the last day of the twelfth (12th) full

calendar month after the Effective Date. Each subsequent Lease Year shall end on the last day of that same calendar month.

3.2 Late Charge. If Tenant fails to pay any installment of Rent, or any other charge that Tenant is obligated to pay hereunder within thirty (30) days after the same is due and payable, then, without limiting Landlord in the exercise of any other right or remedy of Landlord with respect to such failure, Tenant shall pay Landlord a late charge equal to five percent (5.00%) of the amount of the late payment to compensate Landlord for any inconvenience or damage resulting therefrom; provided, however, such late charge shall not be imposed more than once for any particular late payment and shall not be applicable to any payment which becomes due on or after the date on which Landlord elects to pursue any remedy available hereunder. In addition to the late fee provided herein, Tenant shall pay interest on any amount not paid within thirty (30) days after the same is due and payable at the rate of the lower of eighteen percent (18%) per annum or the maximum amount per annum permitted under North Carolina law. Interest shall begin to accrue on any unpaid amount on the day that such amount is due and payable.

3.3 Rent Independent. Tenant's covenants to pay Minimum Rent, Additional Rent (as defined in Section 4.1) and any other sums payable to Landlord under this Lease are independent of any other covenant, condition, provision, or agreement contained herein. Nothing herein contained shall be deemed to suspend or delay the payment of any amount of money or charge at the time that the same becomes due and payable hereunder, or limit any other remedy of Landlord. Annual Rent and Additional Rent are sometimes collectively referred to as "Rent." Rent shall be payable without deduction, offset, or prior notice or demand in lawful money of the United States.

ARTICLE 4 - TAXES AND UTILITIES

4.1 Real Property Taxes and Assessments. Landlord shall be responsible for the payment taxes to the applicable taxing authority; provided, however, from and after the Effective Date, Tenant shall be responsible for all increases in all personalty, real property and other taxes and assessments attributable to the Property, or installments thereof, whether general or special, or ordinary or extraordinary, every nature, name and kind whatever, including all governmental charges of whatever nature or kind, which are levied, assessed, charged or imposed against the Premises or any part of the Premises, the Improvements, the leasehold of Tenant under this Lease or against Tenant by reason of ownership of the Improvements and become due in accordance with Section 3.1.

4.2 Utilities. Tenant shall make all arrangements for obtaining, and during the Term shall pay for, all utilities and services furnished to, or to be used on, the Premises, including, without limitation, electricity, water, gas, sewer, telephone service and trash collection, and for all service commencement charges and meter reading fees. Such charges and expenses shall be paid directly to the utility companies or other entities to which such charges and fees are payable.

4.3 Personal Property Taxes. During the Term, Tenant shall pay all personal property taxes levied upon the personal property on the Premises, before the date on which such taxes would be delinquent.

4.4 Impact Fees. Notwithstanding anything contained in this Lease to the contrary, Tenant shall not assess any impact fees on Landlord by virtue of this ground lease and the option arrangement pursuant to the Development Agreement; provided, however, in the event that Landlord elects to reacquire full title to any portions of the Premises pursuant to Section 13 of the Development Agreement to build a facility to lease to an end user, impact fees may be imposed by the town as a result of that new facility and the end user to occupy such new facility ("Permitted Impact Fees").

ARTICLE 5 -USE OF PREMISES

5.1 Permitted Use. The Premises shall be used only for purposes of marketing the Premises to recruit companies to the Town of Apex, provided that the companies being recruited are "Acceptable Businesses" as defined in Section 14 of the Development Agreement, or for any other lawful purpose approved in writing by the Landlord, which approval shall not be unreasonably withheld or delayed. The Premises shall not be used in such manner as to knowingly violate any applicable law, rule, ordinance, or regulation of any governmental body. In addition, the Premises shall not be used for a purpose which would result in a breach or violation of any recorded document.

5.2 Enforcement of Use Restrictions. Landlord may enforce the restrictions on Tenant's use of the Premises by cancellation of this Lease or by injunctive or other equitable relief in addition to any other legal remedies available to Landlord and in the event of any such legal or equitable action, Landlord shall, among other things, be entitled to recover attorney's fees and costs.

ARTICLE 6 - CONSTRUCTION OF IMPROVEMENTS; REPAIRS AND MAINTENANCE; ALTERATIONS AND IMPROVEMENTS

6.1 Repairs and Maintenance. Tenant agrees that, subject to the provisions of Article 8 below, during the Term it will, at its expense and without any expense to Landlord, make all necessary repairs to or replacements of the Improvements, including all parking areas, sidewalks, curbs, lawns and landscaping on the Premises, and maintain the Premises in good, sanitary and neat order, condition and repair, including repairs and replacement of the electrical, plumbing, heating, air conditioning and other equipment of all types on or in the Premises. Tenant shall, at its sole expense, keep any sidewalks and parking areas on the Premises free from snow, ice, rubbish and other obstructions. Tenant shall, at all times following said construction, assure that the Premises and all improvements constructed thereon are in compliance with all applicable laws and so as not to create a nuisance. Tenant shall not commit waste with respect to the Premises.

6.2 Alterations and Improvements. Tenant shall have the right, at any time and from time to time, during the Term, at its expense, to (a) make changes or alterations, structural or otherwise, to the Improvements, (b) erect, construct or install upon the Premises buildings and improvements in addition to or in substitution for those now or hereafter located thereon, and (c) demolish and remove the Improvements or any other structures hereafter located on the Premises for the purpose of replacing the same; provided, however, that the fair market value of all improvements on the Premises following each such change, alteration, construction or installation shall be at least equal to the fair market value of all improvements on the Premises immediately prior to such change, alteration, construction or installation.

6.3 Title to Improvements. At all times while this Lease is in force and effect, title to the Improvements shall belong solely to Tenant. Upon the termination or expiration of this Lease, title to the Improvements shall pass to Landlord, without payment therefor to Tenant, and Tenant shall have no further rights therein. Provided however, that land dedicated and donated to the Town of Apex pursuant to Section 8 of the Development Agreement to provide rights of ways for the installation of water lines, waste water treatment lines, electrical lines, and roads into and to serve the Premises, shall not pass to the Landlord at the termination or expiration of this Lease, if such improvements have been constructed and placed on the property. If such improvements have not been constructed, the unused rights of ways shall be conveyed back to the Landlord.

ARTICLE 7 - LIENS

Tenant shall keep the Premises free from any liens arising out of any work performed, materials furnished or obligations incurred by Tenant, and shall indemnify, protect and hold harmless Landlord from any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of Tenant. Provided however, that the Landlord consents to, and the provisions of this section of the Lease are not applicable to a lien on the Premises to secure repayment to the Town of Apex for expenditures for Development Costs as defined and set forth in Sections 11 and 34 of the Development Agreement.

If, at any time during the Term, any interest of Landlord in the Premises becomes subject to a lien for labor or materials furnished to Tenant in the repair or improvement of the Premises, within thirty (30) days after Tenant's receipt of written notice informing Tenant of the recording of such lien, Tenant shall cause the lien to be bonded or discharged, and shall otherwise save Landlord harmless on account thereof, provided, however, that if Tenant desires in good faith to contest the validity or correctness of any such lien, it may do so, and Landlord shall cooperate to whatever extent may be necessary, provided only that Tenant shall indemnify Landlord against any costs, loss, liability or damage on account thereof, including reasonable attorneys' fees, which amounts shall constitute Additional Rent and shall be payable on demand with interest at the rate set forth in Section 3.3 accruing from the date paid or incurred by Landlord until reimbursed to Landlord by Tenant.

ARTICLE 8 - LIABILITY INSURANCE

8.1 Tenant's Insurance. Tenant covenants and agrees that from and after the delivery of the Premises from Landlord to Tenant, Tenant shall carry and maintain, at Tenant's sole cost and expense, the following types of insurance, in the amounts specified and in the form hereinafter provided:

A. Public Liability and Property Damage. Commercial general public liability and property damage insurance with a combined single limit of Three Million Dollars (\$3,000,000.00) insuring against any and all liability of the insured with respect to the Premises or arising out of the maintenance, use, or occupancy thereof. All such personal injury liability insurance and property damage liability insurance shall specifically insure the performance by Tenant of the indemnity provisions set forth herein as to liability for injury to or death of persons and injury or damage to property.

B. Casualty Insurance – An “all risk” policy against all loss or damage by casualty (including, but not limited to, fire, vandalism, malicious mischief and all other hazards, risks and periods usually covered in the State of North Carolina by extended coverage) in an amount equal to the then current full replacement cost of the buildings and improvements located at the Premises. Landlord shall be named as additional insured and Tenant shall be named as insured under the casualty policies of insurance required to be carried by Tenant. If Tenant has heretofore or shall hereafter mortgage or pledge its leasehold estate to a leasehold mortgagee/or lessor, insurance proceeds payable under the policies may be paid solely to such mortgagee/or lessor only if such mortgagee or lessor agrees that the same shall be made available to pay restoration or rebuilding costs.

C. Workers' Compensation Coverage. Tenant shall provide to Landlord a certificate of insurance evidencing proof of coverage within the statutory limits providing a Waiver of Subrogation to Landlord.

D. Pollution and Environmental Insurance. Pollution and environmental insurance with a combined single limit of One Million Dollars (\$1,000,000.00) insuring against any and all liability of the insured with respect to the Premises or arising out of Tenant's activities at the Premises.

E. Policy Form. All policies of insurance provided for herein shall be issued by insurance companies satisfactory to Landlord with general policyholders' rating of not less than A and a financial rating of AAA as rated in the most current available "Best's Insurance Reports", and qualified to do business in the State of North Carolina, and shall be issued in the names of Landlord, Tenant, and such other person or firms as Landlord specifies from time to time, including mortgagees of Landlord. Such policies shall contain a waiver of the right of subrogation against Landlord. Such policies shall be for the mutual and joint benefit and protection of Landlord, Tenant, and others hereinabove mentioned, and executed copies of such policies of insurance or certificates thereof shall be delivered to Landlord within five (5) days after Tenant's receipt of written request therefor. All public liability and property damage policies shall contain a provision that Landlord, although named as an insured, shall nevertheless be entitled to recovery under said policies for any loss occasioned to Landlord and Landlord's servants, agents, and employees by reason of the negligence or misconduct of Tenant. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Tenant in like manner and to like extent. Tenant shall provide written notice to Landlord at least fifteen (15) days prior to the expiration of the term of each such insurance policy, of any cancellation or lapse, or the effective date of any reduction in the amounts of insurance. All public liability, property damage, and other casualty policies shall be written as primary policies, not contributing with and not in excess of coverage which Landlord may carry. If Tenant fails to keep any such insurance in force, Landlord may, but shall not be required to, obtain such insurance, and the expense thereof shall constitute and be collectible as Additional Rent, payable to Landlord on Landlord's demand.

8.2 Exculpation of Landlord. It is expressly understood and agreed by and between Landlord and Tenant that Landlord shall have no liability for damage or injury to any person or property in, on or about the Premises caused by or resulting from acts or omissions of any tenant, occupant, licensee or invitee of the Premises, electricity, gas, rain, ice, snow, or leakage or flow of water from or into any part of the Improvements, or from any other cause or occurrence, unless such damage or injury is caused by or results from the gross negligence or willful misconduct of Landlord or Landlord's agents, employees, representatives, or contractors.

8.3 Tenant's Indemnification of Landlord. Tenant agrees to indemnify, protect, defend and hold Landlord and Landlord's partners, shareholders, employees, lender and managing agent harmless from and against any and all claims, losses, costs, liabilities, actions and damages, including, without limitation, attorneys' fees and costs by or on behalf of any person or persons, firm or firms, corporation or corporations, arising from any breach or default on the part of Tenant in the performance of any representation, warranty, covenant or other agreement on the part of Tenant to be performed, pursuant to the terms of this Lease, or arising from any action, inaction or negligence on the part of Tenant or its agents, contractors, servants, employees, licensees or invitees, or arising from any accident, injury or damage to the extent caused by Tenant or its agents or employees to any person, firm or corporation occurring during the Term of this Lease or any renewal thereof, in or about the Premises, and from and against all costs, reasonable attorneys' fees, expenses and liabilities actually incurred in or about any such claim or action or proceeding brought thereon; and in case any action or proceeding be brought against Landlord or its managing agent by reason of any such claim, Tenant, upon notice from

Landlord, covenants to resist or defend such action or proceeding by counsel reasonably satisfactory to Landlord.

8.4 Tenant's Property. All property on the Premises belonging to Tenant or its agents, employees, invitees or otherwise located at the Premises, shall be at the risk of Tenant only, and Landlord shall not be liable for damage thereto or theft, misappropriation or loss thereof and Tenant agrees to defend and hold Landlord and Landlord's agents, employees and servants harmless and indemnify them against claims and liability for injuries to such property; provided, however, the foregoing shall not apply to any intentional or grossly negligent act or omission of Landlord, its employees, agents or independent contractors or to a breach of this Lease by Landlord.

ARTICLE 9 – [INTENTIONALLY DELETED]

ARTICLE 10 - DAMAGE AND DESTRUCTION

10.1 No Abatement of Rent. Notwithstanding any statute or rule of law of the state in which the Premises are located to the contrary, if the Improvements or any part thereof are damaged or destroyed by fire or other casualty, this Lease shall continue in full force and effect and such damage or destruction shall not affect, abate or mitigate Tenant's obligation to pay rental or other sums due hereunder.

10.2 Restoration of Improvements. In the event of damage to or destruction of the Improvements, then, within a reasonable period of time after the date of the damage or destruction, Tenant shall proceed to repair, restore, and replace the Improvements to their prior condition and shall have available to it all proceeds from Tenant's property insurance; provided, however, in the event more than fifty percent (50%) of the square footage of the Improvements are damaged or destroyed, Tenant may elect not to restore the Improvements to their prior condition, in which case Tenant shall promptly tear down and remove all remaining parts of the Improvements and restore the Premises to their original condition. Tenant's determination not to restore the Improvements shall not affect any of Tenant's obligations under this Lease. In the event the Improvements are to be restored, the proceeds of Tenant's property insurance shall be placed in an escrow account and shall be applied exclusively to the costs of repairs and replacements. The escrow account shall be maintained by Landlord or by Tenant's leasehold mortgagee, if required, and shall be disbursed during the course of the repairs. If the insurance proceeds are insufficient to pay the costs of the repair work, Tenant shall pay any and all deficiency. Under no circumstances shall Landlord be obligated to make any payment, disbursement or contribution towards the cost of the repairs or replacements. If the proceeds exceed the cost of such work, Tenant may retain the excess, except that, where any leasehold mortgage contains a contrary provision regarding the excess, such provision shall govern the application of the excess insurance proceeds.

ARTICLE 11 - CONDEMNATION

11.1 Complete Taking. If, at anytime during the Term, the whole of the Premises is taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain, including any such taking by "inverse condemnation," then this Lease shall terminate as of the earlier of the date that title vests in the condemnor or the date that the condemnor takes possession of the property so taken ("Date of Taking"). In such event, Minimum Monthly Rent, all Additional Rent, and all other charges payable hereunder shall be prorated and paid to the date of termination.

11.2 Partial Taking. If, at anytime during the Term, more than fifty percent (50%) of the acreage of the Premises or any part of a driveway or other access way which is reasonably necessary for access to the business on the Premises is taken for the purposes set forth in Section 11.1 and Landlord cannot provide an alternative driveway or access, and such taking materially, adversely affects the operation of the business on the Premises, Tenant shall have the right to terminate this Lease as of the Date of Taking, by giving written notice of such termination to Landlord within ninety (90) days after the date of Tenant's receipt of notice of such taking. In such event, Minimum Monthly Rent, all Additional Rent, and all other charges payable hereunder shall be prorated and paid to the date of termination.

11.3 Allocation of Condemnation Award. Landlord shall be entitled to the entire condemnation award for any taking of the Premises or any part thereof. Tenant's right to receive any amounts separately awarded to Tenant directly from the condemning authority for the taking of its merchandise, personal property, relocation expenses and/or interests in other than the real property taken shall not be affected in any manner by the provisions of this Section 11.3, provided Tenant's award does not reduce or affect Landlord's award and provided further, Tenant shall have no claim for the loss of its leasehold estate.

ARTICLE 12 - BANKRUPTCY

If, at any time during the Term, bankruptcy, insolvency or other similar proceedings shall be instituted by or against Tenant, whether or not such proceedings result in an adjudication against Tenant, or should a receiver of the business or assets of Tenant be appointed, such proceedings or adjudication shall not affect the validity of this Lease so long as the Rent and additional rent reserved hereunder continues to be paid to Landlord when due, and the other terms, covenants and conditions of this Lease on the part of Tenant to be performed are performed, and in such event this Lease shall remain in full force and effect in accordance with its terms.

ARTICLE 13 - ASSIGNMENT AND SUBLETTING

This Lease may be assigned pursuant to the terms set forth in Section 19 of the Development Agreement. The Premises may not be sublet by the Tenant to any other party.

ARTICLE 14 - EVENTS OF DEFAULT; REMEDIES

14.1 Events of Default. The occurrence of any one or more of the following events (in this Article sometimes called an "Event of Default") shall constitute a default and breach of this Lease by Tenant:

a. If Tenant fails to pay any Rent or Additional Rent payable under this Lease or fails to pay any obligation required to be paid by Tenant and such failure shall continue for a period of ten (10) days after written notice from Landlord to Tenant that the same is due and payable.

b. If Tenant fails to perform any of Tenant's non-monetary obligations or breaches any covenant or representation or warranty under this Lease for a period of thirty (30) days after written notice from Landlord; provided that if more time is required to complete such performance, Tenant shall not be in default if Tenant commences such performance within the thirty (30) day period and thereafter diligently pursues its completion without interruptions. The notice required by this subsection is intended to satisfy any and all notice requirements imposed by law on Landlord and is not in addition to any such requirement.

c. If Landlord discovers that any financial statement, warranty, representation or other information given to Landlord by Tenant, any assignee of Tenant, any subtenant of Tenant, any successor in interest of Tenant or any guarantor of Tenant's obligation hereunder, and any of them, in connection with this Lease, was materially false or misleading when made or furnished.

d. Abandonment of the Premises, Improvements or the leasehold estate.

14.2 Remedies. Upon the occurrence of an Event of Default by Tenant, and at any time thereafter, at Landlord's option, and without limiting Landlord in the exercise of any other rights or remedies which Landlord may have at law or in equity by reason of such breach, with or without notice or demand, Landlord may:

a. Without terminating this Lease, re-enter the Premises with or without service of notice or resort to process of law, take possession of the same, and expel or remove Tenant and all other parties, occupying the Premises and remove all property of Tenant and store such property in a public warehouse or elsewhere at the costs of and for the account of Tenant without being deemed guilty of trespass, or becoming liable for any loss or damage which may be occasioned thereby, and Landlord may, at its option, at any time and from time to time repair, alter, remodel and/or change the character of the Premises as it may deem fit and/or relet the Premises or any part thereof for the account of Tenant, for such term, upon such conditions, and at such rental as Landlord may deem proper. In such event, Landlord may receive and collect the rent from such reletting and shall apply it against any amounts due from Tenant hereunder, including, without limitation, such expenses as Landlord may have incurred in recovering possession of the Premises, placing the same in good order and condition, altering or repairing the same for

reletting, and all other expenses, commissions and charges, including attorneys' fees, which Landlord may have paid or incurred in connection with such repossession and reletting. Landlord may execute any Lease made pursuant hereto in Landlord's name or in the name of Tenant, as Landlord may see fit, and the Tenant thereunder shall be under no obligation to see to the application by Landlord of any rent collected by Landlord, nor shall Tenant have any right to collect any rent thereunder. Whether or not the Premises are relet, Tenant shall pay to Landlord all amounts required to be paid by Tenant up to the date of Landlord's reentry, and thereafter Tenant shall pay to Landlord, until the end of the Term, the amount of all rent and other charges required to be paid by Tenant hereunder, less the proceeds of such reletting as provided above. Such payments by Tenant shall be due at such times as are provided elsewhere in this Lease, and Landlord need not wait until the termination of this Lease to recover them by legal action or otherwise. Landlord shall not be deemed to have terminated this Lease or the liability of Tenant for the total rent hereunder by any reentry or other act, unless Landlord shall give Tenant written notice of Landlord's election to terminate this Lease.

b. Terminate this Lease by giving written notice to Tenant of Landlord's election to so terminate, re-enter the Premises with or without process of law and take possession of the same, and expel or remove Tenant and all other parties occupying the Premises, and remove all property of Tenant and store such property in a public warehouse or elsewhere at the costs of and for the account of Tenant without being deemed guilty of trespass, or becoming liable for any loss or damage which may be occasioned thereby.

14.3 Limitation on Landlord's Liability. In the event of a default or breach by Landlord in the performance of Landlord's obligations hereunder or a violation by Landlord of any of the provisions of this Lease, there shall be no personal liability of Landlord and Tenant shall look solely to the equity of Landlord in the Premises for satisfaction of Tenant's remedies.

ARTICLE 15 - SURRENDER OF THE PREMISES

At the expiration or earlier termination of this Lease pursuant to the provisions hereof, Tenant shall quit and surrender the Premises to Landlord without delay, and in good order, condition and repair, ordinary wear and tear (and damage and destruction or condemnation if this Lease is terminated pursuant to either Article 10 or 11 excepted). Such surrender of the Premises shall be accomplished without the necessity for any payment therefor by Landlord. Upon such event, title to the Improvements shall automatically vest in Landlord without the execution of any further instrument; provided, however, Tenant covenants and agrees, upon either such event, to execute (at no cost or expense to Tenant) such appropriate documentation as may be reasonably requested by Landlord to transfer title to the Improvements to Landlord.

ARTICLE 16 - QUIET ENJOYMENT AND TITLE

16.1 Covenant of Quiet Enjoyment. Subject to the terms of this Lease, upon paying the Rent and Additional Rent and performing the other terms, covenants and conditions of this Lease on Tenant's part to be performed, Tenant shall and may peaceably and quietly have, hold, occupy, possess and enjoy the Premises during the Term, subject to the rights, if any, of the parties under easements or encumbrances of record or pursuant to the Declaration.

16.2 Right to Possession. Landlord covenants, warrants and represents that: (a) Landlord alone has the full right to lease the Premises for the Term and as set forth in this Lease, (b) the Premises are now unoccupied and tenant-free, and (c) absolute, tenant-free possession of the Premises will be delivered to Tenant on the Effective Date.

ARTICLE 17 - TRADE FIXTURES

Anything contained in this Lease to the contrary notwithstanding, Landlord acknowledges, consents and agrees that all furniture, fixtures and equipment which are installed or placed in, on or about the Improvements or other parts of the Premises by Tenant or its affiliate ("Trade Fixtures"), whether affixed to the Premises or otherwise (excluding heating, ventilating, and air conditioning system, and all electrical, mechanical, and plumbing systems and components thereof that constitute an integral part of the Building), shall be and at all times remain the property of Tenant or its affiliate and provided that Tenant is not in default under the terms of this Lease, may be removed at any time during the Term or upon the expiration or earlier termination of this Lease, whether or not such Trade Fixtures may be regarded as property of Landlord by operation of law or otherwise. Tenant shall cause any damage to the Improvements caused by such removal to be repaired at no cost to Landlord, including performing any work that may be required to restore the Improvements to a complete architectural unit, such as, by way of example only, restoring an exterior wall section left open after removal of equipment that theretofore served to complete the wall section. Provided that Tenant is not at such time in default under the terms of this Lease, Landlord further agrees that, upon expiration or earlier termination of this Lease, Tenant shall have the right to remove from the Premises all signs and other distinctive features of the business on the Premises. Tenant shall, at its expense, repair any damage caused by such removal.

ARTICLE 18 - SUBORDINATION

18.1 Subordination. This Lease and all of Tenant's rights hereunder are and shall be subordinate to any mortgages or deeds of trust which Landlord may place on the the Premises. Upon Landlord's request, Tenant shall promptly execute and deliver to Landlord such instrument as may be reasonably necessary to effect such subordination, in form and content reasonably

acceptable to Landlord, provided that Landlord delivers to Tenant an agreement in writing and in recordable form from the mortgagee or holder of the deed of trust requesting such subordination to the effect that:

a. Such person shall not for any reason disturb the possession, use or enjoyment of the Premises by Tenant, its successors and assigns, so long as all of the obligations of Tenant are fully performed in accordance with the terms of this Lease; and

b. Such person shall permit application of the insurance proceeds and condemnation proceeds in accordance with Articles 10 and 11 above, respectively, in the event of damage to or destruction of the Improvements, or condemnation of the Improvements or any part of the Premises.

ARTICLE 19 - HAZARDOUS SUBSTANCE OR WASTE

19.1 Landlord's Liability. Landlord hereby represents and warrants that, to the best of its actual knowledge without investigation, there does not exist on, in or under the Premises any "hazardous substance" or "hazardous waste" as those terms are used under the various applicable federal and state environmental laws, including, without limitation, petroleum, petroleum products and asbestos-containing materials ("Hazardous Material").

19.2 Tenant's Liability. Tenant shall not (either with or without negligence) cause or permit the escape, disposal or release of any biologically or chemically active or other hazardous substances or materials on or from the Premises. Tenant shall not allow the storage or use of such substances or materials in or on the Premises in any manner not sanctioned by law and by the highest standards prevailing in the industry for the storage and use of such substances or materials, nor allow to be brought into or on the Premises, any such materials or substances except to use in the ordinary course of business. If any such Hazardous Material is discovered at any time during the Term or any time thereafter, Tenant shall indemnify, defend with counsel reasonably satisfactory to Landlord, and hold and save Landlord harmless from and against all claims, liabilities, actions, judgments, responsibilities and damages of every kind and nature arising from or related to the presence of such Hazardous Material during said period, including investigation costs, engineering fees, remediation costs and reasonable attorney's fees.

19.3 Hazardous Material. Without limitation, "hazardous substances and material" shall include those described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq.; any applicable state or local laws and the regulations which have been or may be enacted for the purpose of regulating or governing the environment or any aspect thereof, If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials in violation of Tenant's obligations under this Section 19.3, then the reasonable costs thereof shall be reimbursed by Tenant to Landlord upon demand as Additional Rent if such requirement

applies to the Premises. In addition, Tenant shall execute affidavits, representations and the like from time to time at Landlord's request concerning Tenant's best knowledge and belief regarding the presence of hazardous substances or materials on the Premises. In all events, Tenant shall indemnify Landlord in the manner elsewhere provided in this Lease from any release of hazardous materials on the Premises occurring while Lessee is in possession, or elsewhere if caused by Tenant or persons acting under Tenant. The covenants in this Section 19.3 shall survive the expiration or earlier termination of the term of this Lease.

ARTICLE 20 - NOTICES AND DEMANDS

Any notice, demand or other communication required or permitted by law or any provision of this Lease to be given or served on either party shall be in writing, addressed to the party at the address set forth below, or such other address as the party may designate from time to time by notice, and (a) deposited in the United States mail, registered or certified, return receipt requested, postage prepaid or (b) delivered by an overnight private mail service which provides delivery confirmation such as, without limitation, Federal Express, Airborne or UPS,. All communications delivered as set forth herein shall be deemed received at the earlier of actual delivery, forty-eight (48) hours after deposit in registered or certified United States mail, postage prepaid or twenty-four (24) hours after deposit with an institutional overnight delivery service, and addressed to the parties as follows:

To Landlord:

Gray Cash
738 Cash St.
Apex, NC 27502

To Tenant:

Town Manager
73 Hunter St. PO Box 250
Apex, NC 27502

ARTICLE 21 - ATTORNEY'S FEES

If any action or proceeding, whether judicial or non-judicial, is commenced with respect to any claim or controversy arising from a breach of this Lease or seeking the interpretation or enforcement of this Lease, including any exhibits attached hereto, in addition to any and all other relief, the prevailing party or parties in such action or proceeding shall receive and be entitled to recover all costs and expenses, including reasonable attorney's fees and costs, incurred by it on account of or related to such action or proceeding.

ARTICLE 22 - GENERAL PROVISIONS

22.1 Binding on Successors. All of the covenants, agreements, provisions and conditions of this Lease shall inure to the benefit of and be binding upon the parties hereto, their successors, legal representatives and assigns.

22.2 Severability. If any term or provision of this Lease or the application thereof to any person or circumstance shall be invalid or unenforceable, to any extent, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the maximum extent permitted by law.

22.3 Entire Agreement. This Lease and the exhibits attached hereto contain the entire agreement between the parties and shall not be modified in any manner except by a document executed by the parties hereto or their respective successors in interest.

22.4 Captions. The captions used in this Lease are inserted as a matter of convenience only, and in no way define, limit or describe the scope of this Lease or the intentions of the parties hereto, and shall not in any way affect the interpretation or construction of this Lease.

22.5 No Waiver. A waiver by Landlord or Tenant of any breach of any provision of this Lease shall not be deemed a waiver of any breach of any other provision hereof or of any subsequent breach by Tenant or Landlord of the same or any other provision.

22.6 Time of Essence. Time is of the essence with regard to every provision of this Lease and the exhibits attached hereto.

22.7 Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of North Carolina.

22.8 Counterparts. This Lease may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same document.

22.9 No Third Party Rights. The terms and provisions of this Lease shall not be deemed to confer any rights upon, nor obligate any party hereto to, any person or entity other than the parties hereto.

22.10 Landlord's Right of Entry. Landlord reserves the right to enter upon the Premises at any time during construction or repair of Improvements or regular business hours to inspect the same or for the purpose of exhibiting the same to prospective purchasers or mortgagees or, during the last six (6) months of the Term or Extended Term, to prospective lessees. Landlord may post any customary sign stating "for lease" or "for sale" during the last six (6) months of the Term or Extended Term.

22.11 Estoppel Certificates. Landlord and Tenant agree that within fifteen (15) days after receipt of a written request from either to the other, the party receiving the request will execute and deliver to the other a certificate certifying (a) that this Lease is unmodified and in full force and effect, or, if modified, stating the nature of the modifications and that, as so modified, this Lease is in full force and effect, (b) the date to which the rent and other charges hereunder are paid in advance, if any, (c) the then-scheduled expiration date of the Term and the number and duration of any unexercised, unexpired options to extend the Term, (d) that to the certifying party's knowledge, as of the date of the certificate, there are no uncured defaults hereunder on the part of the requesting party or specifying such defaults as are claimed by the certifying party, and (e) as to such other matter as may be reasonably requested by the certifying party.

22.12 Due Authorization. Each person executing this Lease on behalf of Landlord and Tenant, respectively, warrants and represents that the party for whom he or she is acting has been duly formed, is in good standing, and has duly authorized the transactions contemplated herein and the execution of this Lease by him or her and that, when so executed, this Lease shall constitute a valid and binding obligation of the party on whose behalf it is so executed.

22.13 Relationship of Parties. Nothing contained in this Lease shall be deemed to create a partnership or joint venture between Landlord and Tenant, and Landlord and Tenant's relationship in this Lease shall be deemed to be one of landlord and tenant only.

22.14 Incorporation of Exhibits. All exhibits attached to this Lease are hereby incorporated herein as though set forth in full in this Lease itself.

22.15 Controlling Document. Notwithstanding anything contained in this Lease to the contrary, all terms in this Lease are subject to the terms of the Development Agreement, dated December __, 2017, by and between the Tenant and the Landlord, and in the event of any ambiguity or conflict between this Lease and the Development Agreement, the terms of the Development Agreement shall control.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first above written.

LANDLORD:

By: _____ Date: _____
Paula Perkins, Member-Manager

By: _____ By: _____
Fred Gray Cash III, and Judy Cash, jointly, as Member-Manager

Date: _____

TENANT:

TOWN OF APEX, NORTH CAROLINA

By: _____
Name: _____
Title: _____

ATTEST:

Name: _____

Town Clerk

This instrument has been preaudited
in the manner required by The Local
Government Budget and Fiscal Control Act

Name: _____
Finance Officer, Town of Apex, North Carolina

EXHIBIT C

Property Description

Being those certain parcels or tracts of land located in White Oak Township, Wake County, North Carolina and more particularly described as follows:

Being all of Lot 1R, containing 60.6525 acres, and all of Lot 2R, containing 60.6525 acres, as shown on that survey entitled "Recombination Plat for Fred Gray Cash, III and Paula Perkins Trust," prepared by Smith and Smith Surveyors, dated October 8, 2013, and recorded in Book of Maps 2013, Page 1625, Wake County Registry.

Said parcels having Wake County PIN numbers of: 0751130961 and 0751234512.

EXHIBIT D



AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT, including any and all addenda attached hereto ("Agreement"), is by and between
TOWN OF APEX, NORTH CAROLINA, a(n)
____ ("Buyer"), and
(individual or State of formation and type of entity)
Jack1, LLC, a North Carolina limited liability company

FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH HEREIN AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. Terms and Definitions: The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

(a) "**Property**": (Address) _____

Plat Reference: Lot(s) _____, Block or Section _____, as shown on Plat Book or Slide _____ at Page(s) _____, _____ County, consisting of _____ acres.

If this box is checked, "Property" shall mean that property described on **Exhibit A** attached hereto and incorporated herewith by reference,

(For information purposes: (i) the tax parcel number of the Property is: _____; and, (ii) some or all of the Property, consisting of approximately _____ acres, is described in Deed Book _____, Page No. _____, _____ County.)

together with all buildings and improvements thereon and all fixtures and appurtenances thereto and all personal property, if any, itemized on **Exhibit A**.

\$ _____ (b) "**Purchase Price**" shall mean the sum of _____ Dollars,

an amount equal to FIFTY-FOUR THOUSAND NINE HUNDRED EIGHTY-FIVE DOLLARS (\$54,985) PER AN ACRE,

payable on the following terms:

\$ _____-0- _____ (i) "**Earnest Money**" shall mean _____ Not applicable _____ Dollars

or _____ terms as follows: _____ Not applicable _____

Upon this Agreement becoming a contract in accordance with Section 14, the Earnest Money shall be promptly deposited in escrow with _____ Not

applicable _____ (name of person/entity with whom deposited- "Escrow Agent"), to be applied as part payment of the Purchase Price of the Property at Closing, or disbursed as agreed upon under the provisions of Section 10 herein. **ANY EARNEST MONEY DEPOSITED BY BUYER IN A TRUST ACCOUNT MAY BE PLACED IN AN INTEREST BEARING TRUST ACCOUNT, AND:** *(check only ONE box)*

ANY INTEREST EARNED THEREON SHALL BE APPLIED AS PART PAYMENT OF THE PURCHASE PRICE OF THE PROPERTY AT CLOSING, OR DISBURSED AS AGREED UPON UNDER THE PROVISIONS OF SECTION 10 HEREIN. (Buyer's Taxpayer Identification Number is: _____)

ANY INTEREST EARNED THEREON SHALL BELONG TO THE ACCOUNT HOLDER IN CONSIDERATION OF THE EXPENSES INCURRED BY MAINTAINING SUCH ACCOUNT AND RECORDS ASSOCIATED THEREWITH.

\$ _____ (ii) Proceeds of a new loan in the amount of _____

_____ Dollars for a term of _____ years, with an amortization period not to exceed _____ years, at an interest rate not to exceed _____ % per annum with mortgage loan discount points not to exceed _____ % of the loan amount, or such other terms as may be set forth on **Exhibit B**. Buyer shall pay all costs associated with any such loan.

\$ _____ -0- (iii) Delivery of a promissory note secured by a deed of trust, said promissory note in the amount of _____ of _____ Not applicable _____ Dollars

being payable over a term of _____ years, with an amortization period of _____ years, payable in monthly installments of principal, together with accrued interest on the outstanding principal balance at the rate of _____ percent (_____ %) per annum in the amount of \$ _____, with the first principal payment beginning on the first day of the month next succeeding the date of Closing, or such other terms as may be set forth on **Exhibit B**. At any time, the promissory note may be prepaid in whole or in part without penalty and without further interest on the amounts prepaid from the date of such prepayment. (NOTE: In the event of Buyer's subsequent default upon a promissory note and deed of trust given hereunder, Seller's remedies may be limited to foreclosure of the Property. If the deed of trust given hereunder is subordinated to senior financing, the material terms of such financing must be set forth on Exhibit B. If such senior financing is subsequently foreclosed, the Seller may have no remedy to recover under the note.)

\$ _____ -0- (iv) Assumption of that unpaid obligation of Seller secured by a deed of trust on the Property, such obligation having an outstanding principal balance of \$ _____ Not applicable

and evidenced by a note bearing interest at the rate of _____ percent (_____ %) per annum, and a current payment amount of \$ _____.

\$ _____ (v) Cash, balance of Purchase Price, at Closing in the amount of _____

_____ Dollars.

(c) "**Closing**" shall mean the date of completion of the process detailed in Section 11 of this Agreement. Closing shall occur on or before _____ or _____

_____.

(d) **“Contract Date”** means the date this Agreement has been fully executed by both Buyer and Seller.

(e) **“Examination Period”** shall mean the period beginning on the first day after the Contract Date and extending through 5:00pm (based upon time at the locale of the Property) on

_____. ***TIME IS OF THE ESSENCE AS TO THE EXAMINATION PERIOD.***

(f) **“Broker(s)”** shall mean:

Agency”),

 (“Listing Agent” – License # _____

Acting as: Seller’s Agent; Dual Agent

and _____

(“Selling Agency”),

 (“Selling Agent”- License # _____

Acting as: Buyer’s Agent; Seller’s (Sub)Agent; Dual Agent

(g) **“Seller’s Notice Address”** shall be as follows:

Gray Cash, 738 Cash St., Apex, NC 27502.

e-mail address: _____ fax number: _____

_____ except as same may be changed pursuant to Section 12.

(h) **“Buyer’s Notice Address”** shall be as follows:

Town Manager, 73 Hunter Street, PO Box 250, Apex, North Carolina 27502

Buyer Initials _____ Seller Initials _____

e-mail address: drew.havens@apexnc.org fax number: Not

applicable

except as same may be changed pursuant to Section 12.

- (i) If this block is marked, additional terms of this Agreement are set forth on **Exhibit B** attached hereto and incorporated herein by reference. **(Note: Under North Carolina law, real estate agents are not permitted to draft conditions or contingencies to this Agreement.)**
- (j) If this block is marked, additional terms of this Agreement are set forth on the Additional Provisions Addendum (Form 581-T) attached hereto and incorporated herein by reference.

Section 2. Sale of Property and Payment of Purchase Price: Seller agrees to sell and Buyer agrees to buy the Property for the Purchase Price.

Section 3. Proration of Expenses and Payment of Costs: Seller and Buyer agree that all property taxes (on a calendar year basis), leases, rents, mortgage payments and utilities or any other assumed liabilities as detailed on attached **Exhibit B**, if any, shall be prorated as of the date of Closing. Seller shall pay for preparation of a deed and all other documents necessary to perform Seller's obligations under this Agreement, excise tax (revenue stamps), any deferred or rollback taxes, and other conveyance fees or taxes required by law, and the following:

None

Buyer shall pay recording costs, costs of any title search, title insurance, survey, the cost of any inspections or investigations undertaken by Buyer under this Agreement and the following:

None

Each party shall pay its own attorney's fees.

Section 4. Deliveries: Seller agrees to use best efforts to deliver to Buyer as soon as reasonably possible after the Contract Date copies of all material information relevant to the Property in the possession of Seller, including but not limited to: title insurance policies (and copies of any documents referenced therein), surveys, soil test reports, environmental surveys or reports, site plans, civil drawings, building plans, maintenance records and copies of all presently effective warranties or service contracts related to the Property. Seller authorizes (1) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney's file to Buyer and both Buyer's and Seller's agents and attorneys; and (2) the Property's title insurer or its agent to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to Buyer and both Buyer's and Seller's agents and attorneys. If Buyer does not consummate the Closing for any reason other than Seller default, then Buyer shall return to Seller all materials delivered by Seller to Buyer pursuant to this Section 4 (or Section 7, if applicable), if any, and shall, upon Seller's request, provide to Seller copies of (subject to the ownership and copyright interests of the preparer thereof) any and all studies, reports, surveys and other information relating directly to the Property prepared by or at the request of Buyer, its employees and agents, and shall deliver to Seller, upon the release of the Earnest Money, copies of all of the foregoing without any warranty or representation by Buyer as to the contents, accuracy or correctness thereof.

Buyer Initials _____ Seller Initials _____

Section 5. Evidence of Title: Seller agrees to convey fee simple insurable title to the Property without exception for mechanics' liens, free and clear of all liens, encumbrances and defects of title other than: (a) zoning ordinances affecting the Property, (b) Leases (as defined in Section 7, if applicable) and (c) specific instruments on the public record at the Contract Date agreed to by Buyer (not objected to by Buyer prior to the end of the Examination Period), which specific instruments shall be enumerated in the deed referenced in Section 11 (items 5(a), 5(b) and 5(c) being collectively "Permitted Exceptions"); provided that Seller shall be required to satisfy, at or prior to Closing, any encumbrances that may be satisfied by the payment of a fixed sum of money, such as deeds of trust, mortgages or statutory liens. Seller shall not enter into or record any instrument that affects the Property (or any personal property listed on **Exhibit A**) after the Contract Date without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed.

Section 6. Conditions: This Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon fulfillment (or waiver by Buyer, whether explicit or implied) of the following conditions:

(a) **New Loan:** The Buyer must be able to obtain the loan, if any, referenced in Section 1(b)(ii). Notwithstanding, after _____, Seller may request in writing from Buyer a copy of the commitment letter. If Buyer fails to provide Seller a copy of the commitment letter within five (5) days of receipt of Seller's request, then Seller may terminate this Agreement by written notice to Buyer at any time thereafter, provided Seller has not then received a copy of the commitment letter, and Buyer shall receive a return of Earnest Money.

(b) **Title Examination:** After the Contract Date, Buyer shall, at Buyer's expense, cause a title examination to be made of the Property before the end of the Examination Period. In the event that such title examination shall show that Seller's title is not fee simple insurable, subject only to Permitted Exceptions, then Buyer shall promptly notify Seller in writing of all such title defects and exceptions, in no case later than the end of the Examination Period, and Seller shall have thirty (30) days to cure said noticed defects. If Seller does not cure the defects or objections within thirty (30) days of notice thereof, then Buyer may terminate this Agreement and receive a return of Earnest Money (notwithstanding that the Examination Period may have expired). If Buyer is to purchase title insurance, the insuring company must be licensed to do business in the state in which the Property is located. Title to the Property must be insurable at regular rates, subject only to standard exceptions and Permitted Exceptions.

(c) **Same Condition:** If the Property is not in substantially the same condition at Closing as of the date of the offer, reasonable wear and tear excepted, then the Buyer may (i) terminate this Agreement and receive a return of the Earnest Money or (ii) proceed to Closing whereupon Buyer shall be entitled to receive, in addition to the Property, any of the Seller's insurance proceeds payable on account of the damage or destruction applicable to the Property.

(d) **Inspections:** Buyer, its agents or representatives, at Buyer's expense and at reasonable times during normal business hours, shall have the right to enter upon the Property for the purpose of inspecting, examining, conducting timber cruises, and surveying the Property; provided, however, that Buyer shall not conduct any invasive testing of any nature without the prior express written approval of Seller as to each specific invasive test intended to be conducted by Buyer. Buyer shall conduct all such on-site inspections, examinations, testing, timber cruises and surveying of the Property in a good and workmanlike manner, at Buyer's expense, shall repair any damage to the Property caused by Buyer's entry and on-site inspections and shall conduct same in a manner that does not unreasonably interfere with Seller's or any tenant's use and enjoyment of the Property. In that respect, Buyer shall make reasonable efforts to undertake on-site inspections outside of the hours Seller's or any tenant's business is open to the public. Buyer shall provide Seller or any tenant (as applicable) reasonable advance notice of and Buyer shall

Buyer Initials _____ Seller Initials _____

cause its agents or representatives and third party service providers (e.g. inspectors, surveyors, etc.) to give reasonable advance notice of any entry onto the Property. Buyer shall be obligated to observe and comply with any terms of any tenant lease which conditions access to such tenant's space at the Property. Upon Seller's request, Buyer shall provide to Seller evidence of general liability insurance. Buyer shall also have a right to review and inspect all contracts or other agreements affecting or related directly to the Property and shall be entitled to review such books and records of Seller that relate directly to the operation and maintenance of the Property, provided, however, that Buyer shall not disclose any information regarding this Property (or any tenant therein) unless required by law and the same shall be regarded as confidential, to any person, except to its attorneys, accountants, lenders and other professional advisors, in which case Buyer shall obtain their agreement to maintain such confidentiality. Buyer assumes all responsibility for the acts of itself, its agents or representatives in exercising its rights under this Section 6(e) and agrees to indemnify and hold Seller harmless from any damages resulting therefrom. This indemnification obligation of Buyer shall survive the Closing or earlier termination of this Agreement. Except as provided in Section 6(c) above, Buyer shall have from the Contract Date through the end of the Examination Period to perform the above inspections, examinations and testing. **IF BUYER CHOOSES NOT TO PURCHASE THE PROPERTY, FOR ANY REASON OR NO REASON, AND PROVIDES WRITTEN NOTICE TO SELLER THEREOF PRIOR TO THE EXPIRATION OF THE EXAMINATION PERIOD, THEN THIS AGREEMENT SHALL TERMINATE, AND BUYER SHALL RECEIVE A RETURN OF THE EARNEST MONEY.**

Section 7. Leases (Check one of the following, as applicable):

If this box is checked, Seller affirmatively represents and warrants that there are no Leases (as hereinafter defined) affecting the Property.

If this box is checked, Seller discloses that there are one or more leases affecting the Property ("Leases") and the following provisions are hereby made a part of this Agreement.

(a) A list of all Leases shall be set forth on **Exhibit B**. Seller represents and warrants that as of the Contract Date, there are no other Leases, oral or written, recorded or not, nor any subleases affecting the Property, except as set forth on **Exhibit B**;

(b) Seller shall deliver copies of any Leases to Buyer pursuant to Section 4 as if the Leases were listed therein;

(c) Seller represents and warrants that as of the Contract Date there are no current defaults (or any existing situation which, with the passage of time, or the giving of notice, or both, or at the election of either landlord or tenant could constitute a default) either by Seller, as landlord, or by any tenant under any Lease ("Lease Default"). In the event there is any Lease Default as of the Contract Date, Seller agrees to provide Buyer with a detailed description of the situation in accordance with Section 4. Seller agrees not to commit a Lease Default as Landlord after the Contract Date, and agrees further to notify Buyer immediately in the event a Lease Default arises or is claimed, asserted or threatened to be asserted by either Seller or a tenant under the Lease.

(d) In addition to the conditions provided in Section 6 of this Agreement, this Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon the assignment of Seller's interest in any Lease to Buyer in form and content acceptable to Buyer (with tenant's written consent and acknowledgement, if required under the Lease). Seller agrees to deliver an assignment of any Lease at or before Closing, with any security deposits held by Seller under any Leases to be transferred or credited to Buyer at or before Closing. The assignment shall provide: (i) that Seller shall defend, indemnify and hold Buyer harmless from claims, losses, damages and liabilities (including, without limitation, court costs and attorneys' fees) asserted against

Buyer Initials _____ Seller Initials _____

or incurred by Buyer which are caused by or the result of any default by Seller under any Lease prior to the date of Closing, and (ii) that Buyer shall defend, indemnify and hold Seller harmless from claims, losses, damages and liabilities (including, without limitation, court costs and attorneys' fees) asserted against or incurred by Seller which are caused by or the result of any default by Buyer under any Lease after the date of Closing.

(e) Seller also agrees to execute and deliver (and work diligently to obtain any tenant signatures necessary for same) any estoppel certificates and subordination, nondisturbance and attornment agreements in such form as Buyer may reasonably request.

Section 8. Environmental: Seller represents and warrants that it has no actual knowledge of the presence or disposal, except as in accordance with applicable law, within the buildings or on the Property of hazardous or toxic waste or substances, which are defined as those substances, materials, and wastes, including, but not limited to, those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR Part 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302.4) and amendments thereto, or such substances, materials and wastes, which are or become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a Hazardous Substance pursuant to Section 311 of the Clean Water Act of 1977 (33 U.S.C. §1321) or listed pursuant to Section 307 of the Clean Water Act of 1977 (33 U.S.C. §1317), (v) defined as a hazardous waste pursuant to Section 1004 of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6903) or (vi) defined as a hazardous substance pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601). Seller has no actual knowledge of any contamination of the Property from such substances as may have been disposed of or stored on neighboring tracts.

Section 9. Risk of Loss/Damage/Repair: Until Closing, the risk of loss or damage to the Property, except as otherwise provided herein, shall be borne by Seller. Except as to maintaining the Property in its same condition, Seller shall have no responsibility for the repair of the Property, including any improvements, unless the parties hereto agree in writing.

Section 10. Closing: At or before Closing, Seller shall deliver to Buyer a special warranty deed unless otherwise specified on Exhibit B and other documents customarily executed or delivered by a seller in similar transactions, including without limitation, a bill of sale for any personalty listed on Exhibit A, an owner's affidavit, lien waiver forms (and such other lien related documentation as shall permit the Property to be conveyed free and clear of any claim for mechanics' liens) and a non-foreign status affidavit (pursuant to the Foreign Investment in Real Property Tax Act), and Buyer shall cause to be delivered the funds necessary to pay to Seller the Purchase Price. The Closing shall be conducted by Buyer's attorney or handled in such other manner as the parties hereto may mutually agree in writing. Possession shall be delivered at Closing, unless otherwise agreed herein. The Purchase Price and other funds to be disbursed pursuant to this Agreement shall not be disbursed until the Buyer's attorney's (or other designated settlement agent's) receipt of authorization to disburse all necessary funds.

Section 11. Notices: Unless otherwise provided herein, all notices and other communications which may be or are required to be given or made by any party to the other in connection herewith shall be in writing (which shall include electronic mail) and shall be deemed to have been properly given and received (i) on the date delivered in person or (ii) the date deposited in the United States mail, registered or certified, return receipt requested, to the addresses set out in Section 1(g) as to Seller and in Section 1(h) as to Buyer, or at such other addresses as specified by written notice delivered in accordance herewith, (iii) upon the sender's receipt of evidence of complete and successful transmission of electronic mail or facsimile to the electronic mail address or facsimile number, if any, provided in Section 1(g) as to Seller and in Section 1(h) as to Buyer or (iv) on the date deposited with a recognized

Buyer Initials _____ Seller Initials _____

overnight delivery service, addressed to the addresses set out in Section 1(g) as to Seller and in Section 1(h) as to Buyer, or at such other addresses as specified by written notice delivered in accordance herewith. If a notice is sent by more than one method, it will be deemed received upon the earlier of the dates of receipt pursuant to this Section.

Section 12. Counterparts; Entire Agreement: This Agreement may be executed in one or more counterparts, which taken together, shall constitute one and the same original document. Copies of original signature pages of this Agreement may be exchanged via facsimile or e-mail, and any such copies shall constitute originals. This Agreement constitutes the sole and entire agreement among the parties hereto and no modification of this Agreement shall be binding unless in writing and signed by all parties hereto. The invalidity of one or more provisions of this Agreement shall not affect the validity of any other provisions hereof and this Agreement shall be construed and enforced as if such invalid provisions were not included.

Section 13. Enforceability: This Agreement shall become a contract when signed by both Buyer and Seller and such signing is communicated to both parties; it being expressly agreed that the notice described in Section 12 is not required for effective communication for the purposes of this Section 14. The parties acknowledge and agree that: (i) the initials lines at the bottom of each page of this Agreement are merely evidence of their having reviewed the terms of each page, and (ii) the complete execution of such initials lines shall not be a condition of the effectiveness of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns and their personal representatives.

Section 14. Adverse Information and Compliance with Laws:

(a) **Seller Knowledge:** Seller has no actual knowledge of (i) condemnation(s) affecting or contemplated with respect to the Property; (ii) actions, suits or proceedings pending or threatened against the Property; (iii) changes contemplated in any applicable laws, ordinances or restrictions affecting the Property; or (iv) governmental special assessments, either pending or confirmed, for sidewalk, paving, water, sewer, or other improvements on or adjoining the Property, and no pending or confirmed owners' association special assessments, except as follows (Insert "None" or the identification of any matters relating to (i) through (iv) above, if any):

Note: For purposes of this Agreement, a "confirmed" special assessment is defined as an assessment that has been approved by a governmental agency or an owners' association for the purpose(s) stated, whether or not it is fully payable at time of closing. A "pending" special assessment is defined as an assessment that is under formal consideration by a governing body. Seller shall pay all owners' association assessments and all governmental assessments confirmed as of the date of Closing, if any, and Buyer shall take title subject to all pending assessments disclosed by Seller herein, if any.

Seller represents that the regular owners' association dues, if any, are \$ _____ per _____.

(b) **Compliance:** To Seller's actual knowledge, (i) Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions pertaining to or affecting the Property; (ii) performance of the Agreement will not result in the breach of, constitute any default under or result in the imposition of any lien or encumbrance upon the Property under any agreement or other instrument to which Seller is a party or by which Seller or the Property is bound; and (iii) there are no legal actions, suits or other legal or administrative proceedings pending or threatened against the Property, and Seller is not aware of any facts which might result in any such action, suit or other proceeding.

Buyer Initials _____ Seller Initials _____

Section 15. Survival of Representations and Warranties: All representations, warranties, covenants and agreements made by the parties hereto shall survive the Closing and delivery of the deed. Seller shall, at or within six (6) months after the Closing, and without further consideration, execute, acknowledge and deliver to Buyer such other documents and instruments, and take such other action as Buyer may reasonably request or as may be necessary to more effectively transfer to Buyer the Property described herein in accordance with this Agreement.

Section 16. Applicable Law: This Agreement shall be construed under the laws of the state in which the Property is located. This form has only been approved for use in North Carolina.

Section 17. Assignment: This Agreement is freely assignable unless otherwise expressly provided on Exhibit B.

Section 18. Tax-Deferred Exchange: In the event Buyer or Seller desires to effect a tax-deferred exchange in connection with the conveyance of the Property, Buyer and Seller agree to cooperate in effecting such exchange; provided, however, that the exchanging party shall be responsible for all additional costs associated with such exchange, and provided further, that a non-exchanging party shall not assume any additional liability with respect to such tax-deferred exchange. Seller and Buyer shall execute such additional documents, at no cost to the non-exchanging party, as shall be required to give effect to this provision.

Section 19. Memorandum of Contract: Upon request by either party, the parties hereto shall execute a memorandum of contract in recordable form setting forth such provisions hereof (other than the Purchase Price and other sums due) as either party may wish to incorporate. Such memorandum of contract shall contain a statement that it automatically terminates and the Property is released from any effect thereby as of a specific date to be stated in the memorandum (which specific date shall be no later than the date of Closing). The cost of recording such memorandum of contract shall be borne by the party requesting execution of same.

Section 20. Authority: Each signatory to this Agreement represents and warrants that he or she has full authority to sign this Agreement and such instruments as may be necessary to effectuate any transaction contemplated by this Agreement on behalf of the party for whom he or she signs and that his or her signature binds such party.

Section 21. Brokers: Except as expressly provided herein, Buyer and Seller agree to indemnify and hold each other harmless from any and all claims of brokers, consultants or real estate agents by, through or under the indemnifying party for fees or commissions arising out of the sale of the Property to Buyer. Buyer and Seller represent and warrant to each other that: (i) except as to the Brokers designated under Section 1(f) of this Agreement, they have not employed nor engaged any brokers, consultants or real estate agents to be involved in this transaction and (ii) that the compensation of the Brokers is established by and shall be governed by separate agreements entered into as amongst the Brokers, the Buyer and/or the Seller.

Section 22. Attorneys Fees: If legal proceedings are instituted to enforce any provision of this Agreement, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorneys fees and court costs incurred in connection with the proceeding.

Section 23. Controlling Document. Notwithstanding anything contained in this Lease to the contrary, all terms in this Lease are subject to the terms of the Development Agreement, dated December __, 2017, by and between the Tenant and the Landlord, and in the event of any ambiguity or conflict between this Lease and the Development Agreement, the terms of the Development Agreement shall control.

EIFS/SYNTHETIC STUCCO: If the adjacent box is checked, Seller discloses that the Property has been clad previously (either in whole or in part) with an "exterior insulating and finishing system" commonly known as "EIFS" or "synthetic stucco". Seller makes no representations or warranties regarding such system and Buyer is

Buyer Initials _____ Seller Initials _____

advised to make its own independent determinations with respect to conditions related to or occasioned by the existence of such materials at the Property.

THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. AND THE NORTH CAROLINA BAR ASSOCIATION MAKE NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION. IF YOU DO NOT UNDERSTAND THIS FORM OR FEEL THAT IT DOES NOT PROVIDE FOR YOUR LEGAL NEEDS, YOU SHOULD CONSULT A NORTH CAROLINA REAL ESTATE ATTORNEY BEFORE YOU SIGN IT.

BUYER:

SELLER:

Business Entity

Business Entity

TOWN OF APEX, NORTH CAROLINA _____

JACK1, LLC

By: _____
By: _____

By: _____
Paula Perkins, Member-Manager

Name: _____

By: _____
Fred Gray Cash, III, and

Title: _____
Title: _____

By: _____
Judy Cash, jointly, as Member-Manager

Date: _____

Date: _____

The undersigned hereby acknowledges receipt of the Earnest Money set forth herein and agrees to hold said Earnest Money in accordance with the terms hereof.

(Name of Escrow Agent)

Date: _____

By:

Buyer Initials _____ Seller Initials _____