

REAL ESTATE PURCHASE AGREEMENT

178 W MAIN STREET
CARTERSVILLE, GEORGIA

CITY OF CARTERSVILLE
as "Seller"

and

J A MCWHORTER HOLDINGS, LLC
a Georgia limited liability company,
as "Buyer"

This Commercial Real Estate Purchase Agreement ("Agreement") is entered into as of this 15th day of March, 2022 ("Agreement Date"), by and between:

A business entity known as **J A MCWHORTER HOLDINGS, LLC** ("Buyer") with a mailing address of 162 W Main Street, Suite 303, Cartersville, Georgia, 30120.

AND

An entity known as **CITY OF CARTERSVILLE**, a municipal corporation of the State of Georgia ("Seller") with a mailing address of 1 N. Erwin Street, PO Box 1390, Cartersville, Georgia, 30120.

RECITALS

WHEREAS, Seller owns real property and improvements located at 178 West Main Street, Cartersville, Georgia 30120, altogether as more particularly described on **Exhibit "A"** (the "Property"); and

WHEREAS, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Property on the terms and conditions contained in this Agreement;

AGREEMENT

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

I. PROPERTY TO BE SOLD. Subject to the terms and provisions hereof, Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, upon the terms and conditions of this Agreement:

a.) Legal Description. All of the land described in **Exhibit "A"** attached hereto, together with all privileges, rights, easements and appurtenances belonging to such land, including without limitation, all right, title and interest (if any) of Seller in and to any streets, alleys, passages, and other rights-of-way or appurtenances included in, adjacent to or used in connection with such land and all right, title and interest (if any) of Seller in all mineral and development rights appurtenant to such land (collectively, the "Land");

b.) Improvements. All buildings, structures and other improvements and all of Seller's right, title and interest, if any, in all fixtures, systems and facilities located on the Land (the "Improvements");

c.) Leases. All of Seller's rights in the leases of the Land and Improvements listed on **Exhibit "B"** hereto (collectively, as same may be amended, the "Leases," and each a "Lease," and each tenant under a Lease, a "Tenant"), and including Seller's rights to any Tenant deposit held by Seller (collectively, the "Tenant Deposits") pursuant to the Leases; and

d.) Intangible Property. All of Seller's right, title and interest, if any, in all intangible assets of any nature relating to the Land or the Improvements, including, without limitation, all of Seller's right, title, and interest in all (i) warranties and guaranties relating to the Improvements in the possession or control of Seller, (ii) all use, occupancy, building and operating licenses, permits, approvals, and development rights and (iii) all plans and specifications related to the Land and Improvements, in each case to the extent that Seller may legally transfer the same (the "Intangible Property").

e.) Property. The Land and Improvements are hereinafter sometimes referred to collectively as the "Real Property," and the Real Property, Leases, Tenant Deposits and Intangible Property are hereinafter sometimes referred to collectively as the "Property."

II. PURCHASE PRICE. The Buyer agrees to purchase the Property by payment of **\$650,000.00** as follows:

All Cash Offer. No loan or financing of any kind is required in order to purchase the Property. Buyer shall provide Seller written third (3rd) party documentation verifying sufficient funds to close no later than April 29, 2022, at 03:00 PM. Seller shall have five (5) Calendar Days after the receipt of such documentation to notify Buyer, in writing, if the verification of funds is not acceptable. If Buyer fails to provide such documentation, or if Seller finds such verification of funds is not acceptable, Seller may terminate this Agreement. Failure of Seller to provide Buyer written notice of objection to such verification shall be considered acceptance of verification of funds.

III. EARNEST MONEY. After acceptance by all Parties, the Buyer agrees to make a payment in the amount of \$10,000.00 as consideration by April 29, 2022 at 03:00 PM ("Earnest Money"). The Earnest Money shall be applied to the Purchase Price at Closing and subject to the Buyer's ability to perform under the terms of this Agreement. Any Earnest Money accepted shall be required to be placed in a separate trust or escrow account in accordance with State law. The Earnest Money shall be held by John T. Mroczko, P.C. ("Escrow Agent").

a.) Return of Deposit. Unless otherwise specified in this Agreement, in the event any condition of this Agreement is not met and the Buyer has fulfilled any required notice obligation in a timely manner regarding the condition having not been met, the Escrow Money shall be returned in accordance with State law.

IV. DUE DILIGENCE PERIOD. Buyer shall be under no obligation to purchase the Property or otherwise perform under this Agreement unless Buyer determines the Property to be, in all respects, suitable for its intended purposes. The decision as to whether the Property is suitable for its intended purposes shall be the sole decision of Buyer, determined in the absolute discretion of Buyer, with Buyer's decision being final and binding upon both Parties. Buyer shall have a period (the "**Due Diligence Period**") of one hundred twenty (120) days from the date hereof in which to conduct due diligence with respect to the Purchased Assets and to enter upon and make such studies, appraisals, tests and/or inspections of the Purchased Assets, including environmental inspections, at Buyer's sole cost and expense, as Buyer deems necessary or appropriate. In the event Buyer elects to terminate this Agreement, Buyer shall provide written notice of termination to Seller prior to the expiration of the Due Diligence Period. In the event the Buyer provides said notice of termination, Seller and any Escrow Agent shall be obligated to return the Escrow Money to the Buyer as provided in Section V hereof, and neither party shall have any further rights or obligations under this Agreement. In the event Buyer does not submit written notice of termination prior to the expiration of the Due Diligence Period, the Buyer shall be deemed to be satisfied with its inspections of the Property and this contingency shall be deemed to be fulfilled. The Seller, at no expense, shall fully cooperate with Buyer in obtaining any and all approvals required from any federal, state, or local government ("Governmental Approvals") necessary for Buyer to satisfy their needs during the Due Diligence Period for the suitability of the Property. Said Governmental Approvals shall be obtained during the Due Diligence Period unless the Parties agree otherwise. Any additional agreements related to this Section must be

done in writing and attached to this Agreement. It is understood between the parties, that Seller may in some cases be the governmental entity that approvals are sought from. In no way does this agreement bind Seller to grant said approvals.

a.) Extension of Due Diligence Period. If Buyer determines, in its sole discretion, before the expiration of the Due Diligence Period, that Buyer requires more time to complete its inspection, Buyer shall have the right to extend the Due Diligence Period for a period of sixty (60) days (the “Extended Due Diligence Period”), SUBJECT TO Buyer’s delivery of a written notice of extension (“Extension Notice”) to Seller and which Extension Notice shall be deposited with Escrow Agent prior to the expiration of the Due Diligence Period. All references in this Agreement to the “Due Diligence Period” shall mean and include the Extended Due Diligence Period and any such other extensions as may be agreed to by the parties.

V. SELLER’S DISCLOSURES. In order to meet the Buyer’s obligations during the Due Diligence Period, the Seller shall be required to provide the following documents and records, to the extent they are within the possession or control of the Seller, at the Seller’s sole cost and expense:

a.) Disclosure Statement. A disclosure statement of the Property signed and dated by the Seller;

b.) Other Agreements. A true and correct copy of all management agreements and contracts affecting the Property;

c.) Studies and Reports. All copies in the Seller’s possession of studies and/or reports which have previously been performed in connection with or for the Property, including without limitation, environmental reports, soils studies, seismic studies, physical inspection reports, site plans and surveys, and identification of such studies of which the Seller is aware but that are not in their possession;

d.) Written Notices. All copies of written notices relating to a violation of a Local, State, or Federal law including, without limitation, environmental laws relating to land use, zoning compliance, or building codes;

e.) Water Rights. Water rights and/or water shares used in connection with the Property;

f.) Copies of Leases. Copies of all current leases together with any ongoing evictions or legal matters related to the Property; and

g.) Other Documents. Any other documents related to the Property that could serve as evidence to adversely affect its value.

Seller shall be required to provide the aforementioned disclosures within 30 Calendar Days after the Effective Date of this Agreement.

VI. TITLE. Merchantable title shall be conveyed by Warranty Deed, subject to conditions, zoning, restrictions, and easements of record, if any, which do not interfere with or restrict the existing use of the Property.

a.) Title Commitment. Buyer shall pay for a title commitment (“Title Commitment”) from a title company selected by the Buyer (“Title Company”), together with a copy of each instrument, agreement or document listed as an exception to title in such Title Commitment;

b.) Title Insurance. At the Buyer’s expense, the Seller shall provide the Buyer with a standard owner’s policy insuring marketable in the amount of the Purchase Price, as defined in Section IV. If any matter disclosed by the Title Commitment adversely and materially affects the value of the Premises or Buyer's intended use of the Property, the Buyer shall have the right to terminate this Agreement by giving the Seller written notice within 60 Calendar Days after copies of the Title Commitment, in accordance with Section VII, are delivered to the Buyer; otherwise, the Buyer's right to terminate this

Agreement pursuant to this Section shall be deemed to have been waived. A matter disclosed on the Title Commitment that is in the form of a lien that is liquidated in amount, and that can be readily discharged, shall not be grounds for termination of this Agreement by Buyer under this Section so long as the Seller discharges such lien(s) at Closing.

VII. SURVEY. The Parties agree that the Buyer will, at the Buyer's expense and within a timeframe allowed to deliver and examine title evidence, obtain a certified survey of the Property from a certified and registered surveyor within the State. If the survey reveals encroachments on the Property or that the improvements encroach on the lands of another, such encroachments will constitute a title defect. The Buyer shall have the right to terminate this Agreement with written notice to the Seller within 60 Calendar Days of being notified of said title defect.

VIII. CURE PERIOD. Prior to any claim for default being made, either the Buyer or Seller will have an opportunity to cure any alleged default. If either Buyer or Seller fails to comply with any provision of this Agreement, the other party will deliver written notice to the non-complying party specifying such non-compliance. The non-complying party shall have 60 Calendar Days after delivery of such notice to cure the non-compliance.

IX. CLOSING. The purchase of the Property shall be closed on or before September 1, 2022, at 05:00 PM at the offices of John T. Mroczko, P.C. ("Closing"). Any extension of the Closing must be agreed upon, in writing, by Buyer and Seller. Real estate taxes, rents, dues, fees, and expenses relating to the Property for the year in which the sale is closed shall be paid by the Buyer and prorated as of the Closing.

a.) **Closing Costs.** Buyer and Seller shall each pay their own legal fees related to the preparation of this Agreement and all documents required to settle the transaction contemplated hereby. Buyer shall pay (i) all costs associated with its investigation of the Property, including the cost of appraisals, architectural, engineering, credit and environmental reports, (ii) fifty percent (50%) of all escrow charges, and (iii) all Survey costs. Buyer shall pay (i) all title insurance premiums and title examination costs required for or related to Title Company's issuance of a standard CTLA owner's title policy in Buyer's favor (and Buyer shall be responsible for any additional premiums related to the issuance of an extended owner's title policy and the Survey costs and the cost of any special endorsements requested by Buyer), (ii) all transfer taxes, documentary stamp charges of any jurisdiction and recording fees and (iii) fifty percent (50%) of all escrow charges. All other customary purchase and sale closing costs shall be borne equally between the parties.

X. SALE OF BUYER'S PROPERTY. Buyer's performance under this Agreement shall not be contingent upon selling another property.

XI. ASSIGNABILITY. The Buyer may not assign this Agreement to another party without the prior written consent of the Seller. Notwithstanding the general prohibition in the immediately preceding sentence, Buyer shall be entitled, without seeking Seller's consent, to assign all of Buyer's right, title and interest in and to this Agreement to any Affiliate of Buyer.

XII. NOTICES. All notices shall be in writing and may be delivered by the following acceptable method(s):

Certified Mail with Return Receipt (Buyer's Address): Use the Mailing Address mentioned in Section I

Certified Mail with Return Receipt (Seller's Address): Use the Mailing Address mentioned in Section I

XIII. CONVEYANCE. Upon performance by the Buyer of the closing obligations specified herein, the Seller shall convey marketable title of the Property to the Buyer by the deed mentioned in Section VIII, including, but not limited to, oil, gas, and other mineral rights, subject only to building and use restrictions, easements, and restrictions of record, if any.

XIV. ENVIRONMENTAL WARRANTY, AND DISCLOSURES. To the best of Seller's knowledge, there are no areas of the Property where hazardous substances or hazardous wastes, as such terms are defined by applicable Federal, State, and Local statutes and regulations, have been disposed of, released, or found. No claim has been made against Seller with regard to hazardous substances or wastes as set forth herein, and Seller is not aware that any such claim is current or ever has been

threatened. Seller shall inform Buyer, to the best of Seller's knowledge, of any hazardous materials or release of any such materials into the environment, and of the existence of any underground structures or utilities which are or may be present on the Property.

XV. SELLER'S WARRANTIES, REPRESENTATIONS AND COVENANTS. As an inducement to Buyer to enter into this Agreement and to purchase the Property, Seller warrants, represents, and covenants to Buyer, as follows:

a.) **Authority.** Seller: (i) if an entity, is a lawfully constituted entity, duly organized, validly existing, and in good standing under the laws of the State of Governing Law or another State; (ii) has the authority and power to enter into this Agreement and to consummate the transactions contemplated herein; and (iii) upon execution hereof will be legally obligated to Buyer in accordance with the terms and provisions of this Agreement.

b.) **Title and Characteristics of Property.** Seller, as of the date of execution of this Agreement, owns the Property in fee simple and has marketable and good title of public record and, in fact, the Property at Closing shall have the title status as described in Section VI of this Agreement.

c.) **Conflicts.** The execution and entry into this Agreement, the execution and delivery of the documents and instruments to be executed and delivered by Seller at the Closing, and the performance by Seller of Seller's duties and obligations under this Agreement and of all other acts necessary and appropriate for the full consummation of the purchase and sale of the Property as contemplated herein, are consistent with and not in violation of, and will not create any adverse condition under any contract, agreement or other instrument to which Seller is a party, or any judicial order or judgment of any nature by which Seller is bound. At Closing, all necessary and appropriate action will have been taken by Seller authorizing and approving the execution of and entry into this Agreement, the execution and delivery by Seller of the documents and instruments to be executed by Seller at Closing, and the performance by Seller of Seller's duties and obligations under this Agreement and of all other acts necessary and appropriate for the consummation of the purchase and sale of the Property as contemplated herein.

d.) **Condemnation.** The Seller has received no notice of, nor is Seller aware of, any pending, threatened, or contemplated action by any governmental authority or agency having the power of eminent domain, which might result in any part of the Property being taken by condemnation or conveyed in lieu thereof.

e.) **Litigation.** There is no action, suit or proceeding pending or, to Seller's knowledge, threatened by or against or affecting Seller or the Property, which does or will involve or affect the Property or title thereto. Seller will defend, indemnify, and otherwise hold Buyer harmless from any and all claims of any person due to, arising out of or relating to the Property, including any and all costs, expenses, and attorneys' fees which Buyer may incur as a result of Seller's breach of its warranty hereunder. Seller will, promptly upon receiving any such notice or learning of any such contemplated or threatened action, give Buyer written notice thereof.

f.) **Assessments and Taxes.** No assessments have been made against any portion of the Property which are unpaid (except ad valorem taxes for the current year), whether or not they have become liens, and Seller shall notify Buyer of any such assessments which are brought to Seller's attention after the execution of this Agreement. The Seller will pay or cause to be paid promptly all city, state, and county ad valorem taxes and similar taxes and assessments, all sewer and water charges, and all other governmental charges levied or imposed upon or assessed against the Property which are due on or prior to the Closing.

g.) **Boundaries.** (i) There is no dispute involving or concerning the location of the lines and corners of the Property; (ii) to Seller's knowledge there are no encroachments on the Property and no portion of the Property is located within any "Special Flood Hazard Area" designated by the United States Department of Housing and Urban Development and/or Federal Emergency Management Agency, or in any area similarly designated by any agency or other governmental authority; and (iii) no portion of the Property is located within a watershed area imposing restrictions upon the use of the Property or any part thereof.

h.) **No Violations.** The Seller has received no notice there are any violations of state or federal laws, municipal or county ordinances, or other legal regulations or requirements with respect to the Property, including those violations referenced in Paragraph 7 above. The Seller has received no notice (oral or written) that any municipality or governmental or quasi-governmental authority has determined that there are such violations. In the event Seller receives notice of any such violations affecting the Property prior to the Closing, Seller shall promptly notify Buyer thereof, and shall promptly and diligently defend any prosecution thereof and take any and all necessary actions to eliminate said violations.

i.) **Foreign Ownership.** Seller is not a “foreign person” as that term is defined in the U.S. Internal Revenue Code of 1986, as amended, and the regulations promulgated pursuant thereto, and Buyer has no obligation under Section 1445 of the U.S. Internal Revenue Code of 1986, as amended, to withhold and pay over to the U.S. Internal Revenue Service any part of the “amount realized” by Seller in the transaction contemplated hereby (as such term is defined in the regulations issued under said Section 1445).

j.) **Prior Options.** No prior options or rights of first refusal have been granted by Seller to any third parties to purchase or lease any interest in the Property, or any part thereof, which are effective as of the execution date.

k.) **Mechanics and Materialmen.** At Closing, Seller will not be indebted to any contractor, laborer, mechanic, materialmen, architect, or engineer for work, labor, or services performed or rendered, or for materials supplied or furnished, in connection with the Property for which any person could claim a lien against the Property and shall not have done any work on the Property within one-hundred twenty (120) days prior to Closing.

l) **As Is Where Is.** This Property will be conveyed “As is, where is” with all faults, latent or patent, and without warranty, express or implied.

XVI. BUYER’S WARRANTIES, REPRESENTATIONS AND COVENANTS. Buyer: (i) if an entity, is a lawfully constituted entity, duly organized, validly existing, and in good standing under the laws of the State of Governing Law or another state; (ii) has the authority and power to enter into this Agreement and to consummate the transactions contemplated herein; and (iii) upon execution hereof will be legally obligated to Seller in accordance with the terms and provisions of this Agreement.

a.) **Conflicts.** The execution and entry into this Agreement, the execution and delivery of the documents and instruments to be executed and delivered by Buyer at the Closing, and the performance by Buyer of Buyer’s duties and obligations under this Agreement and of all other acts necessary and appropriate for the full consummation of the purchase and sale of the Property as contemplated herein, are consistent with and not in violation of, and will not create any adverse condition under any contract, agreement or other instrument to which Buyer is a party, or any judicial order or judgment of any nature by which Buyer is bound. At Closing, all necessary and appropriate action will have been taken by Buyer authorizing and approving the execution of and entry into this Agreement, the execution and delivery by Buyer of the documents and instruments to be executed by Buyer at Closing, and the performance by Buyer of Buyer’s duties and obligations under this Agreement and of all other acts necessary and appropriate for the consummation of the purchase and sale of the Property as contemplated herein.

b) **Project Scope.** Buyer shall agree to build the Project consistent with the following goals and/or provide the following:

1. An innovative development which builds upon Downtown Cartersville’s character, contributes to the sense of place, and serves as a model for future (re)development in Cartersville’s downtown.
2. If a market-rate rental apartment community, it should include ground floor retail (office okay on 2nd floor but we want retail on ground floor).
3. A proposed parking plan that incorporates into the project design a combination of on-site parking and street parking. Please note the amount of parking provided for the Project must adhere to the standards outlined in Article XVII of the City’s Zoning Ordinance.
4. Project design must be approved by the City of Cartersville Historic Preservation Commission.

5. Pedestrian-friendly design of all street frontages in keeping with the existing street frontage design and should be consistent with that of public investments on adjacent properties in that area.
6. A project design and use of the site to help activate the area and contribute to Downtown's residential and mixed-use trend.
7. The use of quality materials and finishings in the construction.
8. Commitment to job creation and local hiring where applicable.
9. Maximized connectivity to adjacent developments/uses.
10. A quarterly report of progress being made, key timeline dates, and estimated completion of the Project shall be provided and updated as required herein and referenced as Exhibit "B."

c) **Project Design.** The Project shall be completed and be compatible with the drawings made a part of this Agreement and attached hereto as Exhibit "C."

d) **Reversion Clause.** In the deed to the Buyer, a reversion clause must be included giving Seller the option to repurchase the Property at that same cost as the Property was sold, if building permits and certificate of occupancies are not issued as provided for in Exhibit "B". Seller may, upon request by Buyer, provide up to a six (6) month extension for either occurrence upon being provided a written request and detailed explanation of why, with a revised detailed schedule at least sixty (60) days before said dates. Seller is under no obligation to approve said extension. Seller has ninety (90) days from notification by Buyer of failure to complete to repurchase the Property or scheduled event as required herein.

XVII. ESCROW AGENT. The Parties authorize the Escrow Agent to receive, deposit, and hold funds and other property in escrow, including Earnest Money, that is subject to collection and disburse them in accordance with the terms of this Agreement. The Parties agree that the Escrow Agent will not be liable to any person for misdelivery of Escrow Money to the Buyer and the Seller, unless the misdelivery is due to the Escrow Agent's willful breach of this Agreement or gross negligence. If the Escrow Agent has doubt as to their duties or obligations under this Agreement, Escrow Agent may, at their sole decision:

a.) **Hold the Escrow Money.** Hold any Escrow Money until the Parties mutually agree to its disbursement or until a court of competent jurisdiction or arbitrator determines the rights of the Parties; or

b.) **Deposit.** Deposit the Escrow Money with the clerk of the court having jurisdiction over the matter and file an action in interpleader. Upon notifying the Parties of such action, Escrow Agent will be released from all liability except for the duty to account for items previously delivered out of escrow. If Escrow Agent is a licensed real estate broker, Escrow Agent will comply with State laws. In any suit in which Escrow Agent interpleads the escrowed items or is made a party because of acting as Escrow Agent hereunder, Escrow Agent will recover reasonable attorneys' fees and costs incurred, with these amounts to be paid from and out of the Escrow Money and charged and awarded as court costs in favor of the prevailing party.

XVIII. SELLER'S DEFAULT. If the sale and purchase of the Property contemplated by this Agreement is not consummated on account of Seller's default or failure to perform hereunder, Buyer may, at Buyer's option and as its sole remedy, elect to either: (i) specifically enforce the terms hereof; or (ii) demand and be entitled to an immediate refund of the Escrow Money, in which case this Agreement shall terminate in full.

XIX. BUYER'S DEFAULT. If the sale and purchase of the Property contemplated by this Agreement is not consummated on account of Buyer's default hereunder, Seller shall be entitled, as its sole and exclusive remedy hereunder, to receipt of the Escrow Money amount as full and complete liquidated damages for such default of Buyer. The Parties hereby acknowledge that it is impossible to estimate more precisely the damages which might be suffered by Seller upon Buyer's default of this Agreement or any duty arising in connection or relating herewith. Seller's entitlement to and receipt of the Escrow Money is intended not as a penalty, but as full and complete liquidated damages. The right to retain such sums as full liquidated damages is Seller's sole and exclusive remedy in the event of default or failure to perform hereunder by Buyer, and Seller hereby waives and releases any right to (and hereby covenants that it shall not) sue Buyer for any claims, injury, or loss arising from or in

connection with this Agreement, including without limitation: (i) for specific performance of this Agreement; or (ii) to recover any damages in excess of such liquidated damages.

XX. ATTORNEYS' FEES. In any claim or controversy arising out of or relating to this Agreement, the prevailing party, which for purposes of this provision shall include the Buyer, Seller, and any real estate agent, will be awarded reasonable attorneys' fees, costs, and expenses.

XXI. DAMAGE TO THE PROPERTY. If the property is damaged, by fire or other casualty, after the Effective Date and before the Closing, the Seller will bear the risk of loss and the Buyer may cancel this Agreement without liability and the Escrow Money shall be returned to the Buyer. Alternatively, the Buyer will have the option of purchasing the Property at the agreed-upon Purchase Price and the Seller will credit the deductible, if any, and transfer to the Buyer at Closing any insurance proceeds or Seller's claim to any insurance proceeds payable for the damage. The Seller will cooperate with and assist the Buyer in collecting any such proceeds. The Seller shall not settle any insurance claim for damage caused by casualty without the consent of the Buyer.

Furthermore, if any part of the Property, after the Effective Date and before the Closing, is taken in condemnation or under the right of eminent domain, or proceedings for such taking are pending or threatened, the Buyer may cancel this Agreement without liability and the Escrow Money will be returned to the Buyer. Alternatively, the Buyer will have the option of purchasing what is left of the Property at the agreed-upon Purchase Price and the Seller will transfer to the Buyer at Closing the proceeds of any award or the Seller's claim to any award payable for the taking. The Seller will cooperate with and assist the Buyer in collecting such an award.

XXII. OPERATION OF PROPERTY DURING AGREEMENT PERIOD. The Seller will continue to operate the Property and any business conducted on the Property in the manner operated prior to the Agreement and will take no action that would adversely impact the Property, tenants, lender, or business, if any. Any changes, such as renting vacant space, that materially affects the Property or the Buyer's intended use will be permitted only with the Buyer's consent.

XXIII. CLOSING PROCEDURE. Unless otherwise agreed or stated herein, the Closing shall be in accordance with the Governing Law where the Property is located.

a.) **Possession and Occupancy.** The Seller will deliver possession and occupancy of the Property to the Buyer at Closing. The Seller shall provide access to all locks, including keys, remote controls, and any security/access codes, necessary to operate all locks, mailboxes, and security systems.

b.) **Costs.** Buyer and Seller shall each pay their own legal fees related to the preparation of this Agreement and all documents required to settle the transaction contemplated hereby. Buyer shall pay (i) all costs associated with its investigation of the Property, including the cost of appraisals, architectural, engineering, credit and environmental reports, (ii) fifty percent (50%) of all escrow charges, (iii) all Survey costs, and (iv) all title insurance premiums and title examination costs required for or related to Title Company's issuance of a standard CTLA owner's title policy in Buyer's favor (and Buyer shall be responsible for any additional premiums related to the issuance of an extended owner's title policy and the Survey costs and the cost of any special endorsements requested by Buyer). , Buyer shall pay (i) all transfer taxes, documentary stamp charges of any jurisdiction and recording fees, and (ii) fifty percent (50%) of all escrow charges. All other customary purchase and sale closing costs shall be borne equally between the parties.

c.) **Documents.** The Seller will provide: the deed, the bill of sale, mechanic's lien affidavit, originals of those assignable service and maintenance contracts that will be assumed by the Buyer after the Closing, letters to each service contractor from the Seller advising each of them of the sale of the Property, and if applicable, the transfer of its contract, and any assignable warranties or guarantees received or held by the Seller from any manufacturer, contractor, subcontractor, or material supplier in connection with the Property; current copies of the condominium documents, if applicable; assignments of leases and updated rent roll; tenant and lender estoppel letters; tenant subordination, non-disturbance and

attornment agreements (SNDA's) required by the Buyer or the Buyer's lender; assignments of permits and licenses; corrective instruments; and letters notifying tenants of the change in ownership/rental agent. If any tenant refuses to execute an estoppel letter, the Seller will certify to the buyer that the lease is correct. If the Seller is an entity, the Seller will deliver a resolution of its Board of Directors authorizing the sale and delivery of the deed and certification by the appropriate party certifying the resolution and setting forth facts showing the conveyance conforms to the requirements of local law. The Seller will transfer security deposits to the Buyer. The Buyer will provide the closing statement, mortgages and notes, security agreements, and financing statements.

d.) **Taxes and Prorations.** It is understood between the parties that Seller is a governmental entity and as such does not owe real or personal property taxes. Buyer is responsible for all ad valorem and personal property taxes, if any. Any tax proration based on an estimate will, at the request of either party, be readjusted upon receipt of the current year's tax bill; this provision will survive the Closing.

e.) **Special Assessment Liens.** Certified, confirmed, and ratified special assessment liens as of the Closing will be paid by the Seller. If a certified, confirmed, and ratified special assessment is payable in installments, the Seller will pay all installments due and payable on or before the Closing, with any installment for any period extending beyond the Closing prorated, and the Buyer will assume all installments that become due and payable after the Closing. The Buyer shall be responsible for all assessments of any kind which become due and owing after the Closing, unless an improvement is substantially completed as of the Closing. If an improvement is substantially completed as of the Closing but has not resulted in a lien before Closing, the Seller will pay an amount of the last estimate of the assessment. This subsection applies to special assessment liens imposed by a public body and does not apply to condominium association special assessments.

XXIV. RECORDING. Buyer and Seller agree that before the recording of the deed can take place, funds provided shall be in one (1) of the following forms: cash, interbank electronic transfer, money order, certified check or cashier's check drawn on a financial institution located in the State of Governing Law, or any above combination that permits the Seller to convert the deposit to cash no later than the next business day.

XXV. ACCEPTANCE. Seller warrants that Seller is the owner of the Property or has the authority to execute this Agreement. Therefore, by the Seller's authorization below, he/she/they accept the above offer and agrees to sell the Property on the above terms and conditions and agrees to the agency relationships in accordance with any agreement(s) made with a licensed real estate agent(s). The Seller has read and acknowledges receipt of a copy of this Agreement and authorizes any licensed real estate agent(s) to deliver a signed copy to the Buyer.

Delivery may be in any of the following: (i) hand delivery; (ii) email under the condition that the party transmitting the email receives electronic confirmation that the email was received to the intended recipient; and (iii) by facsimile to the other party or the other party's licensee, but only if the transmitting fax machine prints a confirmation that the transmission was successful.

a.) **Real Estate Agent(s).** If Buyer has hired the services of the licensed real estate agent(s) to perform representation on their behalf, he/she/they shall be entitled to payment for their services as outlined in their separate written agreement. Seller is not responsible for payment of fees to any real estate agents

XXVI. BINDING EFFECT. This Agreement shall be for the benefit of, and be binding upon, the Parties, their heirs, successors, legal representatives, and assigns, which, therefore, constitutes the entire agreement between the Parties. No modification of this Agreement shall be binding unless signed by both Buyer and Seller.

XXVII. SEVERABILITY. In the event any provision or part of this Agreement is found to be invalid or unenforceable, only that particular provision or part so found, and not the entire Agreement, will be inoperative.

XXVIII. DISCLOSURES. The following disclosures are attached to this Agreement and required to be read and signed by the Parties: None

XXIX. DISPUTE RESOLUTION. Buyer and Seller agree to mediate any dispute or claim arising out of this Agreement, or in any resulting transaction, before resorting to arbitration or court action.

a.) **Mediation.** If a dispute arises between or among the Parties, and it is not resolved prior to or after recording, the Parties shall first proceed in good faith to submit the matter to mediation. Costs related to mediation shall be mutually shared between or among the Parties. Unless otherwise agreed in mediation, the Parties retain their rights to proceed to arbitration or litigation.

b.) **Arbitration.** The Parties agree that any dispute or claim in law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The arbitrator is required to be a retired judge or justice, or an attorney with at least five (5) years of residential real estate law experience, unless the Parties mutually agree to a different arbitrator. Under arbitration, the Parties shall have the right to discovery in accordance with State law. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction. Enforcement of this Agreement to arbitrate shall be governed by the Federal Arbitration Act.

c.) **Exclusions.** The following matters shall be excluded from the mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed, mortgage or installment land sale contract as defined in accordance with State law; (ii) an unlawful detainer action, forcible entry detainer, eviction action, or equivalent; (iii) the filing or enforcement of a mechanic's lien; and (iv) any matter that is within the jurisdiction of probate, small claims, or bankruptcy court. The filing of court action to enable the recording of a notice of pending action, for an order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver or violation of the mediation and arbitration provisions of this Section.

XXX. TERMS AND CONDITIONS OF OFFER. This is an offer to purchase the Property in accordance with the above-stated terms and conditions of this Agreement. If at least one, but not all, of the Parties initial such pages, a counteroffer is required until an agreement is reached. The Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of acceptance. If this offer is accepted and the Buyer subsequently defaults, the Buyer may be responsible for payment of licensed real estate agent(s) compensation. This Agreement and any supplement, addendum, or modification, including any copy, may be signed in two or more counterparts, all of which shall constitute one and the same writing.

XXXI. GOVERNING LAW. This Agreement shall be interpreted in accordance with the laws in the State of Georgia ("Governing Law").

XXXII. OFFER EXPIRATION. This offer to purchase the Property as outlined in this Agreement shall be deemed revoked, and the Earnest Money shall be returned, unless this Agreement is signed by Seller and a copy of this Agreement is personally given to the Buyer by April 29, 2022, at 03:00 PM.

a.) **Effective Date.** The "Effective Date" of this Agreement is the date on which the last one of the Parties has signed or initialed and delivered this offer or the final counteroffer. Calendar Days will be computed without including Saturday, Sunday, or national legal holidays. Any time period ending on a Saturday, Sunday, or national legal holiday will extend until 5:00 p.m. local time of the next business day ("Calendar Days"). Time is of the essence in this Agreement.

XXXIII. SURVIVAL. The terms and conditions of Section XVI. Shall survive closing.

XXXIV. ENTIRE AGREEMENT. This Agreement, together with any attached addendums or disclosures, shall supersede any and all other prior understandings and agreements, either oral or in writing, between the Parties with respect to the subject matter hereof and shall constitute the sole and only agreements between the Parties with respect to the said Property. All prior negotiations and agreements between the Parties with respect to the Property hereof are merged into this Agreement. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have

been made by any party or by anyone acting on behalf of any party which are not embodied in this Agreement, and that any agreement, statement, or promise that is not contained in this Agreement shall not be valid or binding or of any force or effect.

IN WITNESS WHEREOF, the Parties have indicated their acceptance of the terms of this Agreement by their signatures below on the dates indicated.

SELLER:

CITY OF CARTERSVILLE, GEORGIA,
a municipal corporation

_____[Seal]
By: Matthew J. Santini, Mayor

PURCHASER:

J A MCWHORTER HOLDINGS, LLC

_____[Seal]
By: Joshua A. McWhorter
Its: Managing Member

Attest: _____
Julia Drake, City Clerk

EXHIBIT A:

Tax Parcel Information: ALL that tract or parcel of land lying and being in the City of Cartersville, In Land Lot 483 of the 4th District, 3rd Section, Bartow County, Georgia and more particularly described as follows:

BEGINNING at an iron pin at the intersection of the bank of sidewalks at the southeast corner of the intersection of West Main Street (old 65' right-of-way) and South Bartow Street (old 40' right-of-way):

THENCE North 69 degrees 56 minutes 45 seconds East for a distance of 10.00 feet along the back of the Main Street sidewalk to THE TRUE POINT OF BEGINNING;

THENCE North 69 degrees 56 minutes 45 seconds East for a distance of 186.25 feet along the bank of Main Street sidewalk to an iron pin;

THENCE South 19 degrees 01 minutes 45 seconds East for a distance of 296.3 feet to a 21/2 steel fence post;

THENCE South 20 degrees 19 minutes 00 seconds East for a distance of 162.24 feet to an iron pin on the north right-of-way of Leake Street;

THENCE South 71 degrees 08 minutes 00 seconds West for a distance of 89.29 feet along the north right-of-way (back of sidewalk) of Leake Street to an iron pin;

THENCE North 19 degrees 47 minutes 00 seconds West a distance of 156.97 feet to an iron pin;

THENCE South 67 degrees 26 minutes 00 seconds West for a distance of 104.35 feet to an iron pin at the back of the sidewalk on the east side of South Bartow Street;

THENCE North 19 degrees 51 minutes 00 seconds West for a distance of 300.25 feet along the bank of the sidewalk on Bartow Street to a point;

THENCE North 69 degrees 59 minutes 45 seconds East for a distance of 10.00 feet to a point;

THENCE North 19 degrees 51 minutes 00 seconds West for a distance of 4.00 feet to the TRUE POINT OF BEGINNING.

Said property containing 1.661 acres.

EXHIBIT “B”

PROJECT SCHEDULE:

FIRST TWO UNITS FACING MAIN STREET

Anticipated Closing Date:	July 2022
Design/Approval of Design Period	October 2022
Construction to Begin/Building Permits issued	January 2023
Estimated Completion Time for Construction	May 2024 – Two Units Facing Main Street
Issuance of Certificate of Occupancy	June 2024

THIRD UNIT

Construction to Begin/Building Permits	June 2024
Estimated Completion Time for Construction	June 2025
Issuance of Certificate of Occupancy	August 2025

A quarterly update and revised schedule must be provided by Buyer. The completion date is not subject to modification unless agreed upon by the Mayor and City Council of the City of Cartersville.

EXHIBIT “C”
(Conceptual Site Plan and Design Plans)

ACKNOWLEDGMENT OF NOTARY PUBLIC

State of _____

County of _____, ss.

On this ____ day of _____, 20____, before me appeared _____, as the **BUYER(S)** of this Commercial Real Estate Purchase Agreement who proved to me through government issued photo identification to be the above-named person, in my presence executed foregoing instrument and acknowledged that they executed the same as their free act and deed.

Notary Public Signature: _____

Print Name: _____

My commission expires: _____

(Seal)

ACKNOWLEDGMENT OF NOTARY PUBLIC

State of _____

County of _____, ss.

On this ____ day of _____, 20____, before me appeared _____, as the **SELLER(S)** of this Commercial Real Estate Purchase Agreement who proved to me through government issued photo identification to be the above-named person, in my presence executed foregoing instrument and acknowledged that they executed the same as their free act and deed.

Notary Public Signature: _____

Print Name: _____

My commission expires: _____

(Seal)