

AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE

THIS AGREEMENT for the sale and purchase of real property (“this Agreement”) is made and entered into this ____ day of _____, 2020, by and between **891 College Drive, LLC**, a Georgia limited liability company (hereinafter called “Purchaser”) and the **City of Dalton Georgia**, a municipal corporation of the State of Georgia (hereinafter called “Seller”).

W I T N E S S E T H:

WHEREAS, Seller is the owner of certain real property, which real property is more particularly described in Exhibit “A” attached hereto and made a part hereof, together with the improvements located thereon, all easements, appurtenances, hereditaments and rights appurtenant thereto or otherwise arising in connection therewith, herein referred to as the “Property”; and

WHEREAS, Purchaser desires to purchase, and Seller to sell, the Property, in accordance with the terms and conditions hereinafter set forth;

NOW, THEREFORE, for and in consideration of the above-recited premises, the mutual covenants and agreements hereinafter set forth, the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto do hereby covenant and agree as follows:

1. **Sale.** Seller, in consideration of the mutual covenants herein contained, agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, upon the terms and conditions hereinafter set forth, the Property.

2. **Consideration.** The consideration to be paid by Purchaser to Seller for the Property shall be **\$1,823.53** subject to prorations and adjustments hereinafter described, and shall be payable as on the date of the Closing (as hereinafter defined) of this transaction payable by cashier’s check or by wired Federal Funds.

3. **Closing.**

3.1 **Time, Date and Place of Closing.** Subject to the provisions of this Agreement, the payments and deliveries contemplated hereby to be made at Closing shall be made at the law offices of the City Attorney, City Hall, 300 West Waugh Street, Dalton, GA within 60 days of the date of execution of this Agreement or on such other date as may be mutually agreeable. The date on which the last of such payments and deliveries occurs is hereinafter referred to as the “Closing Date”, and the events comprising such payments and deliveries are herein referred to as the “Closing”.

3.2 **Events comprising closing:** The following events shall constitute the Closing.

(A) Seller shall execute and deliver to Purchaser a general warranty deed conveying good and marketable fee simple title to the Property. As used in this Agreement, the phrase “good and marketable fee simple title” shall mean such title as is insurable by a title insurance company approved by Purchaser which is licensed to do business in Georgia (the “Title Insurer”), under its standard form of owner’s policy of title insurance, A.L.T.A. Form 2006, as amended at its standard rates, subject only to the following (the “Permitted Exceptions”): (1) the standard

exclusions set forth therein (other than the survey exception); (2) the lien of taxes not yet due and payable; and (3) zoning ordinances affecting the Property.

(B) Seller shall surrender possession of the Property to the Purchaser subject only to those matters described or referenced in this Agreement.

(C) Seller shall deliver to Purchaser an Affidavit, concerning the absence of boundary line disputes on the Property, the possession of the Property by Seller, improvements or repairs made on the Property within three months of the Closing Date, the absence of legal proceedings against Seller, and such other documents as the Title Insurer may reasonably require.

(D) Purchaser shall pay the Purchase Price to Seller in accordance with Section 2 of this Agreement.

(E) All state and county ad valorem taxes levied or imposed upon or assessed against the Property for the calendar year during which the Closing Date occurs shall be prorated as of the Closing Date. If the actual taxes for said calendar year are not known on the Closing Date, the proration shall be based upon the actual taxes for the immediately preceding calendar year, and Purchaser and Seller shall adjust the proration at such time as the actual taxes for the calendar year during which the Closing Date occurs are billed.

(F) Any and all other assessments levied against the Property shall be prorated between the parties as of the Closing Date according to the most reliable information concerning the amount of said costs, with such proration to be adjusted according to the actual assessment as and when made.

(G) Seller shall pay for the Seller's attorney's fees. Purchaser shall pay for Purchaser's attorney's fees, recording fees, the survey, title examination and insurance if elected.

(H) Seller shall terminate any leases on the Property and take any and all necessary actions to remove any existing tenants or other occupants of the Property prior to Closing.

4. Seller's Representations and Warranties. As an inducement to Purchaser to enter into this Agreement, and to the purchase of the Property by Purchaser, Seller warrants and represents to Purchaser as follows:

4.1 Title to Property. Seller is the sole owner in fee simple of the Property.

4.2 Absence of Liens. The Property is not subject to any mortgage, pledge or lien, except liens for ad valorem taxes not yet payable and unperfected purchase money security interests existing in the ordinary course of business without the execution of a security agreement.

4.3 Authority; No Consents. Seller has the right, power and authority to enter into this Agreement and the right, power, and authority to convey the Property in accordance with the terms and conditions of this Agreement. No consent of any Federal, State or local authority is required to be obtained by Seller in connection with the consummation by Seller of the transactions contemplated hereby.

4.4 Absence of Notice of Eminent Domain. Seller has received no notice of, nor is Seller aware of, any pending, threatened, or contemplated actions by any governmental authority or agency

having the power of eminent domain other than the City of Dalton, which might result in part of the Property being taken by condemnation or conveyed in lieu thereof. Seller shall, promptly upon receiving any such notice or learning of any such contemplated or threatened action, give Purchaser written notice thereof.

4.5 No Assessments. 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 Purchaser upon learning of any such assessments.

4.6 No Foreign Person. Seller is not a foreign person as defined in Section 1445 of the Internal Revenue Code and the applicable regulations thereunder.

4.7 No Litigation. There is no litigation or proceeding pending, or to Seller's knowledge threatened, against or relating to or affecting all or any part of the Property, nor does Seller know or have reasonable grounds to know of any basis for any such action.

4.8 Leases. There is no tenant, lessee, or other occupant of the Property (including any improvements thereon) having any right or claim to possession or use of the Property (or any such improvements) after the Closing Date hereof other than the Occupant and possession of the Property shall be delivered by Seller to Purchaser at the Closing free of the rights or claims of any tenants, occupants, or other parties in possession of, or having or claiming any right to possession or use of the Property.

4.9 Condition of Improvements. When the transactions contemplated hereby are consummated, the improvements on the Property will be in the same condition as they are on the date of the execution of this Agreement, except for: ordinary wear and tear; any damage caused by an insured event for which full insurance proceeds have been paid to Purchaser; and any change in the condition of the improvements for which proper adjustment has been made between the parties hereto.

4.10 No Notice RE Zoning. Seller has received no notice of any violation of zoning and/or building laws, statutes, ordinances, orders, or requirements affecting the Property from the State of Georgia or any subdivision, agency, or department thereof.

4.11 Survey. Seller agrees to cooperate and take all reasonable actions necessary to resolve any boundary line disputes with adjacent land owners, including execution of any boundary line agreement or quit-claim deed, that may be disclosed by a survey by a Georgia Registered Land Surveyor obtained by Purchaser.

5. Right to Examinations:

5.1 Title. Purchaser shall have thirty (30) days after execution of this Agreement in which to examine title to the Property and furnish to Seller a written statement of objections affecting the marketability of the title. Seller, upon receipt of such written statement from Purchaser, shall have ten (10) days after such receipt in which to satisfy all valid objections. If Seller is unable to satisfy such valid objections within said period, Purchaser may either:

(A) Accept the Property with such remaining objections after deducting from the Purchase Price the cost of curing such objections; or

(B) Terminate this Agreement.

Purchaser may elect (A) or (B) above by written notice to Seller within ten (10) days following the end of the period set forth above for the curing by Seller of such objections.

6. Risk of Loss; Damage to Property.

6.1 Risk of Loss. Seller shall bear all risk of loss or damage from any casualty suffered by any and all improvements located on the Property until such time as legal title has passed to Purchaser.

6.2 Damage to Property. Should the improvements on the Property be destroyed or substantially damaged before the transactions contemplated hereby are consummated, then at the election of Purchaser:

- (A) This Agreement may be cancelled, and the earnest money refunded to Purchaser;
- (B) Purchaser may consummate the contract and receive any insurance as is paid on the claim of loss; or
- (C) Purchaser and Seller may reach agreement between themselves with respect to any adjustment in the consideration to be paid as a consequence of such loss or damage.

This election is to be exercised within ten days after Purchaser has been notified in writing by Seller of the amount of the insurance proceeds, if any, Seller will receive on the claim of loss. If Purchaser has not been notified within five days subsequent to the occurrence of such damage or destruction, Purchaser shall have the option to cancel the contract.

7. Contingency. This Agreement is made conditioned upon the approval of this Agreement by the Mayor and Council of the City of Dalton, Georgia.

8. Termination and Abandonment.

8.1 Right to Terminate. This Agreement may be terminated and the purchase and sale of the Property, if any, abandoned at any time prior to the Closing:

- (A) By mutual agreement of Seller and Purchaser; or
- (B) By Purchaser, if:
 - (1) The warranties and representations of Seller set forth in Section 4 hereof are found to be untrue;
 - (2) The title to the Property is found to be defective and is not cured as required by Section 5.1;
 - (3) The improvements on the Property are destroyed or substantially damaged and Purchaser does not elect to receive the insurance proceeds or adjust the consideration as allowed by Section 6.2; or
 - (4) Seller breaches this Agreement in any material manner; or
- (C) By Seller, if Purchaser breaches this Agreement in any material manner.

8.2 Specific Performance. Notwithstanding any provisions to the contrary contained herein, Seller acknowledges that the rights of Purchaser under this Agreement are special, unique and of extraordinary character, and that, in the event Seller violates or fails and refuses to perform this Agreement or any covenant made by Seller herein, Purchaser may be without adequate remedy at law.

Seller agrees, therefore, that in the event Seller violates or fails and refuses to perform any covenant made by Seller herein, Purchaser may, in addition to any remedies at law for damages or other relief, institute and prosecute an action in any court of competent jurisdiction to enforce specific performance by Seller.

9. Indemnification. Seller shall indemnify and hold harmless Purchaser from and against all claims, damages, expenses, liabilities, actions, or causes of action of any kind or nature arising from breaches of Seller's representations, warranties or covenants hereunder or from acts or failures to act occurring, or conditions existing, during Seller's ownership of the Property.

10. Broker's Commission. The parties hereby warrant and represent for the benefit of the other parties that no person, firm, corporation or other entity is entitled to any brokerage commission or finder's fee in connection with any of the transactions contemplated by this Agreement. Seller shall indemnify and hold the Purchaser harmless from and against all claims, demands, and actions of all brokers, agents and other intermediaries alleging any dealings, negotiations or communications with the indemnifying party in connection with this Agreement.

11. Miscellaneous.

11.1 Counterparts. This Agreement may be executed in multiple counterparts each of which may be deemed an original.

11.2 Assignment; Successors in Interest. This Agreement and all rights, remedies, obligations and liabilities arising hereunder or by reason hereof may be assigned by either party hereto. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, legal representatives, successors and assigns. Except as expressly provided in this Agreement, nothing herein is intended to imply nor shall confer on any person other than the parties hereto, and their respective heirs, legal representatives, successors or assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement, or constitute the parties hereto, partners or participants in a joint venture.

11.3 Controlling Law/Venue. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Georgia. The parties agree that in the event that any suit or proceeding is brought in connection with this Agreement, such suit or proceeding shall be brought in the Superior Court of Whitfield County, Georgia and the parties shall submit to the exclusive jurisdiction of such Court and waive any and all jurisdiction, venue, and inconvenient forum objections to such Court.

11.4 Amendment; Waiver. The terms of this Agreement may be amended, modified or eliminated, and the observance or performance of any term, covenant, condition or provision herein may be omitted or waived (either generally or in a particular instance and either prospectively or retroactively) only by the written consents of all parties hereto. No omission or waiver shall be deemed to excuse any future observance or performance or to constitute an amendment, modification or elimination unless it expressly so states. The waiver by any party hereto of a breach of any term or provision of this Agreement shall not be construed as a waiver of any subsequent breach.

11.5 Severability. Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

11.6 Notices. All notices, demands, and requests which may be given or which are required to be given by either party to the other shall be in writing and may be: hand delivered; sent by United States certified mail, postage prepaid and return receipt requested; or sent by a nationally recognized overnight delivery service such as Federal Express Corporation, Emery, or United Parcel Service. All notices, demands, and requests shall be deemed effective either: (A) upon delivery if hand delivered, as evidenced by written receipt therefor, whether or not actually received by the person to whom addressed; (B) upon deposit in the United States mail if by certified mail, return receipt requested, addressed to the intended recipient at the address indicated herein; (C) on the day deposited into the custody of a nationally recognized overnight delivery service such as Federal Express Corporation, Emery or United Parcel Service, for overnight next day delivery, addressed to such party at the address indicated herein. Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant to this Agreement shall be as follows:

If to Purchaser, to:

891 College Drive, LLC
C/O Tom Minor, Esq.

If to Seller, to:

City of Dalton
City Administrator
300 W. Waugh ST
Dalton, GA 30720

11.7 Time of the Essence. Time is of the essence of each and every provision of this Agreement.

11.8 Captions. The sections and other headings contained in this Agreement are for reference purposes only and shall not be deemed to be part of this Agreement, or to affect the meaning or interpretation of this Agreement.

11.9 Gender. Wherever any words are used herein in the masculine gender they shall be construed as though they were also used in the feminine and neuter gender in all cases where they would so apply, and wherever any words are used herein in the singular form they shall be construed as though they were also used in the plural form in all cases where they would so apply.

11.10 Integration. This Agreement and any other agreement contemplated hereby supersede all prior negotiations, agreements, and understandings between the parties with respect to the subject matter hereof and thereof, constitute the entire agreement between the parties with respect to the subject matter hereof and thereof.

11.11 Survival. The agreements, indemnities, representations and warranties set forth in this Agreement shall survive the consummation of the purchase and sale of the Property on the Closing Date.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year above written.

891 COLLEGE DRIVE, LLC

By: _____ (Seal)
Member

City of Dalton Georgia

By: _____ (Seal)
City Administrator

EXHIBIT "A"

All that tract or parcel of land lying and being in Land Lot No. 234 in the 12th District and 3rd Section of Whitfield County, Georgia, and being more particularly described according to a plat of survey prepared by Max Randall Compton, Georgia Registered Land Surveyor No. 2584, dated October 27, 2017, revised October 15, 2020, and being more particularly described according to said survey as follows:

TO FIND THE TRUE POINT OF BEGINNING of the tract of land herein described, commence at a concrete monument located at the point of intersection of the south line of said Land Lot No. 234 and the west right of way line of Interstate Highway No. 75; thence south 88 degrees 06 minute 56 seconds west, as measured along the south line of said Land Lot No. 234, a distance of 14.01 feet; thence north 84 degrees 32 minutes 32 seconds west a distance of 110.79 feet; thence north 01 degrees 41 minutes 24 seconds east a distance of 33.17 feet; thence running in a northerly direction along an arc to the left (Radius 220.99 feet), arc distance of 70.45 feet, said arc being subtended by a chord with a bearing of north 06 degree 57 minutes 18 seconds west and a chord distance of 70.15 feet; thence north 07 degrees 06 minutes 51 seconds west a distance of 72.78 feet to the TRUE POINT OF BEGINNING of the tract of land herein described; FROM THE TRUE POINT OF BEGINNING thus established thence south 82 degrees 03 minutes 42 seconds west a distance of 6.94 feet; thence north 07 degrees 06 minutes 58 seconds west, as measured along the east right of way line of College Drive as relocated, a distance of 85.45 feet; thence north 11 degrees 03 minutes 02 seconds west, as measured along the east right of way line of College Drive as relocated, a distance of 208.63 feet; thence north 78 degrees 56 minutes 58 seconds east a distance of 7.0 feet; thence south 11 degrees 03 minutes 02 seconds east a distance of 208.08 feet; thence south 07 degrees 06 minutes 51 seconds east a distance of 86.37 feet to the POINT OF BEGINNING.

SUBJECT TO THE RIGHTS of Five Star Hospitality, LLC and Dalton Hospitality Hotel Services, LLC, and their successors, licensees, tenants and assigns to the use of the above described property as a means of ingress and egress to College Drive.