

## PURCHASE AND SALE AGREEMENT

**THIS PURCHASE AND SALE AGREEMENT** (this "Agreement") is executed and delivered as of the latest date of execution by the Buyer and Seller ("Effective Date") by and between **THE TOWN OF PINEVILLE**, a North Carolina municipality ("Seller") and **US DEVELOPMENTS, LLC**, a North Carolina limited liability company ("Buyer"). "Parties" shall mean, together, Seller and Buyer.

Seller has agreed to sell, and Buyer has agreed to purchase, the Property (as defined below), subject to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the premises, the mutual covenants set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller hereby agrees to sell, and Buyer hereby agrees to purchase, the Property, subject to the following terms and conditions:

1. **Property.**

(a) The Property which is subject to this Agreement shall mean the following:

(i) that parcel of land described on **Exhibit A** (attached hereto and made a part hereof) totaling approximately one (1) acre, having a street address of 307 College Street, Pineville, North Carolina 28134 and bearing Mecklenburg County Tax Parcel Number 20501311 (which is located in the Community Development Project Area (defined hereinafter)), with the acreage to be confirmed and further described on the Survey (defined below) (the "Land"), together with all right, title and interest of Seller in and to (x) any improvements on the Land, any land lying in the bed of any street, road or avenue, open or proposed, in front of or adjoining the Land to the center line thereof, (y) all easements and rights-of-way appurtenant to the Land, including, but not limited to, privileges and rights of way over adjoining premises inuring to the benefit of the Land, or the fee owner thereof, and (z) all rights of use, air, mineral and subsurface rights, servitudes, licenses, tenements, rights, privileges, hereditaments and appurtenances now or hereafter belonging to the Land (collectively, the "Appurtenant Rights") (the Land and the Appurtenant Rights may be collectively referred to herein as the "Real Property"); and

(ii) only to the extent actually existing and readily available (i.e., within Seller's possession) at no additional expense to Seller (other than *de minimis* expenses incurred in connection with making copies), Seller's right, title and interest in any (x) licenses, permits, entitlements, certificates, inspections, and other governmental approvals held by Seller for the Real Property which may be necessary or desirable, in Buyer's opinion, to develop the Property and operate Buyer's business on the Real Property; and (y) surveys, title policies or abstracts, architectural drawings, site plans, engineering drawings, and other plans and specifications and other documents relating to the ownership, construction, development, or operation of the Land; and (z) maintenance records, reports, notices and other information concerning the Real Property (collectively, the "Intangible Property"); provided, however, any Intangible Property provided hereunder shall be provided to Buyer AS-IS WHERE-IS with all faults and with no representation or warranty of any kind and shall be returned to Seller upon any termination of this Agreement.

(b) The Land, Appurtenant Rights, and Intangible Property may be collectively referred to herein as the "Property."

(c) The Land may be shown on one or more surveys (collectively, "Survey") to be obtained by Buyer at Buyer's sole cost and expense, and if Buyer in its sole and absolute discretion determines to obtain a Survey, such Survey shall be prepared by a Surveyor licensed in the State of North Carolina. Notwithstanding anything to the contrary herein, the Purchase Price shall remain unchanged even if the Survey reveals that the Land is less than one (1) acre.

2. **Purchase Price; Earnest Money.**

(a) Seller agrees to sell the Property to Buyer in consideration for the purchase price set forth on **Exhibit A-1** (attached hereto and made a part hereof) and in consideration for some or all of the following, which are expected to result from the development of the Property as described herein: prospective tax revenues (including real estate taxes and sales taxes), economic stimulus, business promotion and job creation (the "Purchase Price").

(b) No later than five (5) business days after the Effective Date, Buyer shall pay to First American Title Insurance Company ("Escrow Agent"): (i) **Twenty Thousand and No/100 Dollars (\$20,000.00)**, as earnest money applicable to the Property; and (ii) **Five Thousand and No/100 Dollars (\$25,000.00)**, as earnest money applicable to the Option, as defined hereinafter (together, items (i) and (ii), the "Initial Earnest Money").

(c) No later than five (5) business days after expiration of the Due Diligence Period (as defined below), Buyer shall pay an additional **Forty-five Thousand and No/100 Dollars (\$45,000.00)** ("Supplemental Earnest Money") to Escrow Agent. The Initial Earnest Money and Supplemental Earnest Money shall be collectively referred to herein as the ("Earnest Money").

(d) At Closing, the Earnest Money shall be applied against the Purchase Price and the remaining balance of the Purchase Price shall be paid by Buyer to Seller by wire transfer in cash or other immediately available funds.

(e) Escrow Agent shall hold and disburse the Earnest Money in accordance with the terms and conditions of Escrow Agent's form escrow agreement, a copy of which is attached hereto as **Exhibit B** and incorporated herein by this reference.

(f) The Initial Earnest Money will be fully refundable to Buyer, at Buyer's sole and absolute discretion, during the Due Diligence Period; provided, however, Buyer sends Seller and Escrow Agent written notice of termination prior to the expiration of the Due Diligence Period (as set forth more specifically in Section 3(d)), and as otherwise specifically set forth in Section 9 and Section 11(a) of this Agreement.

(g) If Buyer terminates this Agreement after expiration of the Due Diligence Period, the Earnest Money shall be paid to Seller unless any of the following exceptions occur: (i) Buyer does not, after using good faith diligent efforts to obtain the same, obtain the Entitlements prior to expiration of the Entitlements Period (as each are defined herein); (ii) the occurrence of a Seller default as set forth in Section 11(a) of this Agreement; (iii) termination of the Agreement due to casualty or condemnation of the Property as set forth in Section 9 of this Agreement. In the event of such exceptions described above are applicable, then the Earnest Money shall be fully refundable to Buyer.

### 3. **Due Diligence Period; Title and Survey Review.**

(a) For a period beginning on the later of the Effective Date or the Hearing Approval Date (defined hereinafter) and expiring sixty (60) days thereafter (this period of time, the "Due Diligence Period"), and continuing until Closing, Buyer and its agents shall have the right to enter the Property for purposes of investigating the Property to determine if the Property is acceptable to Buyer in its sole discretion. Those investigations may include, without limitation, environmental, architectural, topographical, structural, and engineering studies, surveys, appraisals, soils studies, and any other investigations Buyer deems necessary in its sole discretion (collectively, the "Investigations"); provided, however, Buyer shall not perform any invasive environmental testing (i.e. beyond a Phase I assessment and geotechnical analysis) absent Seller's prior written consent. Buyer shall restore the Property to a reasonably neat and presentable condition free from any damage to the Property caused by Buyer's access and/or Inspections. Buyer shall not permit any liens to attach to the Property by reason of the exercise of the rights set forth herein, or to interfere with the rights of Seller in its possession and use of the Property.

(b) Buyer shall indemnify and hold harmless Seller from and against any loss, damage or injury directly caused from Buyer's access (and/or access by any agents or employees of Buyer) to the Property. This indemnity shall not include any loss, damage or injury from the results of the Investigations such as environmental contamination unless Buyer's actions exacerbated any existing environmental condition. Prior to such access, Buyer

shall obtain and maintain commercial general liability insurance with a limits of not less than One Million Dollars (\$1,000,000.00) combined single limit, bodily injury, death and property damage insurance per occurrence covering Buyer and Buyer's activities on the Property and naming Seller as an additional insured. Evidence of such insurance shall be provided to Seller as a condition to Buyer's access to the Property. Notwithstanding anything to the contrary, Buyer's obligations under this section shall survive termination or Closing for a period of three (3) years.

(c) Subject to the rights of any tenants at the Real Property set forth on **Exhibit C** (attached hereto and made a part hereof), Seller agrees to provide access, and to reasonably cooperate with and assist Buyer and its agents in Buyer's Investigations, provided, however, such cooperation and assistance shall be during normal and reasonable business hours and at no cost to Seller.

(d) Buyer shall have the right, in its sole discretion, to terminate this Agreement for any reason or no reason by delivering written notice to Seller on or before expiration of the Due Diligence Period, upon which the Earnest Money shall be returned to Buyer and neither Party shall have any other rights or obligations under this Agreement.

(e) Within five business (5) days after the Effective Date, Seller shall deliver to Buyer copies (or originals, if available) of any existing reports, inspections, studies, documents, agreements, leases, permits, licenses, certificates, warranties and records related to the Property that are in Seller's possession or reasonably available to Seller at no additional cost (other than *de minimis* costs incurred in connection with obtaining copies), including, but not limited to, the following: (i) all title abstracts, title commitments, and title policies for the Property, together copies of all plats, deeds, easements, restrictions, and other title documents; (ii) all plats and surveys of the Property; (iii) all current executed contracts related to the Property; (iv) all wetlands studies, engineering reports, soils reports, geotechnical reports, environmental reports and market studies for the Property; (v) all licenses, permits, certificates of occupancy, approvals, zoning and entitlements and proffers for the Property; (vi) all documentation constituting the Intangible Property; (vii) appraisals; (viii) [intentionally deleted]; (ix) copies of any declaration of covenants on all or a portion of the Property; and (x) any other studies, manuals, guaranties, warranties, agreements, contracts or plans relevant to the Property. If any such documents are not in Seller's possession but are readily available at no cost to Seller (other than *de minimis* costs incurred in connection with obtaining copies), Seller shall take reasonable steps to promptly obtain them and deliver them to Buyer. Any information provided hereunder shall be provided to Buyer AS-IS WHERE-IS with all faults and with no representation or warranty of any kind and shall be returned to Seller upon any termination of this Agreement.

(f) During the Due Diligence Period, Buyer shall have the right to have title to the Property examined, which shall be pursuant to the terms and conditions of this Section 3(f).

(i) Buyer shall develop the Property as a mixed used commercial (consisting of a minimum of 5,000 and a maximum of 20,000 commercial square feet) and multifamily development (consisting of a maximum of (73) residential units) and related improvements pursuant to the terms of this Agreement (the "Intended Use"). If Buyer's title search or Survey reveals any matters that, in Buyer's sole discretion, may interfere with Buyer's development and use of the Property for the Intended Use, Buyer shall have the right to deliver a title and survey objections letter to Seller ("Buyer's Title Objection Notice"). Buyer's Title Objection Notice shall be submitted to Seller prior to the expiration of the Due Diligence Period.

(ii) No later than ten (10) days after delivery of Buyer's Title Objection Notice, Seller may notify Buyer in writing which objections Seller intends to cure; provided, however, if Seller does not respond within such ten (10) day period to the objections listed in Buyer's Title Objection Notice, then Seller shall be deemed to have elected to cure none of the objections listed in Buyer's Title Objection Notice. In the event Seller responds to Buyer in writing ("Seller's Title Response Letter") and specifically elects therein to cure any one or more of the objections, then Seller, at Seller's sole cost and expense, shall do so on or before Closing; provided, however, if Seller requires additional time to cure any one or more objections it has elected to cure, Seller shall have the right to extend the Closing date for a period of time sufficient to allow for such cure; provided further, however, and notwithstanding anything to the contrary herein, such period of time shall not exceed thirty (30) days.

(iii) In the event Seller elects not to cure any of the objections in Seller's Title Response Letter (or is deemed to have elected not to cure any of the objections), then Buyer shall have the right (exercisable within fifteen (15) days of receipt of Seller's Title Response Letter or within fifteen (15) days after the deadline for such response in the event Seller does not respond to Buyer's Objection Notice) to either (y) terminate this Agreement and receive a full refund of the Earnest Money; or (z) waive the uncured objections and close under the terms of this Agreement. If Buyer does not terminate this Agreement pursuant to the terms of this section, then Buyer shall be deemed to have elected to waive any objections that Seller has elected not to cure (or is deemed to have elected not to cure).

(iv) All matters of title, survey or otherwise of record in addition to those objections to which (x) Buyer has not objected; (y) Buyer waives or Buyer is deemed to have waived; and/or (z) Seller elects not to cure in Seller's Title Response Letter (or is deemed to have elected not to cure), shall herein collectively be referred to as the "Permitted Exceptions." Notwithstanding the foregoing, any judgment, mechanic's lien, materialman's lien, mortgage or deed of trust lien arising by or through Seller shall not be deemed a Permitted Exception and Seller shall be obligated to convey title free and clear of such matters.

(v) At Closing, Seller shall convey marketable and insurable fee simple title to the Property to Buyer via North Carolina deed(s) (as more specifically set forth in Section 5(b)(i)), subject only to the Permitted Exceptions and free and clear of any judgment, mechanic's lien, materialman's lien, mortgage or deed of trust lien arising by or through Seller. If, as of Closing, Seller does not cure any objections which it has specifically elected to cure in Seller's Title Response Letter (subject, however, to Seller right to extend as set forth in Section 3(g)(ii)), then Buyer shall have the right to (x) terminate this Agreement and receive a full refund of the Earnest Money; or (y) elect to accept title to the Property subject to such objections and close under the terms of this Agreement, provided, however, the Purchase Price shall not be decreased by any amount. If Buyer does not terminate this Agreement pursuant to the terms of this section, then Buyer shall be deemed to have elected to waive any objections that Seller does not cure.

#### **4. Entitlements Period; Site Plans.**

(a) For a period beginning at the expiration of the Due Diligence Period, Buyer shall have a period of three hundred sixty-five 365 days (this period, the "Entitlements Period"), and continuing until Closing, to obtain approvals of final plans (i.e., the Approved Plans, defined hereinafter), permits and zoning and accommodations for parking, road access, water and sewer that are necessary for development the Property for its Intended Use (the "Entitlements"). Notwithstanding the foregoing, upon receipt of each of the Entitlements on such terms reasonably acceptable to Buyer (the "Entitlements Receipt Date"), any portion of the Entitlements Period remaining shall terminate and expire with Closing to occur within sixty (60) days of the Entitlements Receipt Date (such sixty (60) day period, however, shall not extend beyond the thirty (30) day period set forth in Section 5(a)). Buyer acknowledges that the requirements for the DOWNTOWN OVERLAY DISTRICT – A Component of the Pineville Comprehensive Plan, adopted March 11, 2008, as amended (a copy set forth on Exhibit D, attached hereto and made a part hereof) (the "Overlay Requirements") shall apply to the Entitlements; unless, however, Buyer seeks, and obtains a variance from, the applicable government authority, or a modification of the Overlay Requirements, which may be necessary to allow for the Intended Use. If any government authority is delayed in its review, and such delay is not the result of any action or inaction by Buyer, then the Entitlements Period will be extended by the number of days as the delay in government review; provided, however, Buyer provides Seller with written notice of the delay and the total additional days being required by any such government authority, which such notice shall be submitted upon the earlier of (i) ten (10) days following Buyer's discovery of the delay; or (ii) the expiration of the Entitlements Period. Any extension for a delay will only apply if specifically disclosed to Buyer by any such applicable government authority, and notice thereof provided by Buyer to Seller.

(b) Buyer shall have the right, in its sole discretion, to terminate this Agreement in the event the Entitlements are not approved on such terms reasonably acceptable to Buyer during the Entitlements Period by delivering written notice to Seller on or before expiration of the Entitlements Period; provided, however, this termination shall be automatically vitiated if (i) Buyer does not use good faith diligent efforts to obtain such Entitlements, or (ii) Seller, within thirty (30) days following receipt of this termination notice, approves or obtains any

outstanding Entitlements on behalf of Buyer. Notwithstanding the foregoing or anything to the contrary herein, if, at any time during the Entitlements Period, Buyer obtains any definitive disapproval with respect to the Entitlements from any government authority that will not allow for the Intended Use and Buyer has exhausted all efforts to obtain any variance thereto or appeals therefrom (a “Definitive Adverse Response”), Buyer shall be obligated, within a period of thirty (30) days following receipt of any Definitive Adverse Response, to terminate this Agreement pursuant to the right set forth in this section and any failure to do so within this thirty (30) day period will result in Buyer being deemed to have waived the right to terminate this Agreement with respect to any such Definitive Adverse Response. Upon any termination occurring pursuant to the terms of this Section 4(b), the Earnest Money as set forth in Section 2 shall be returned to Buyer, and neither Party shall have any other rights or obligations under this Agreement. If Buyer does not terminate as set forth herein, the Earnest Money shall be deemed nonrefundable (but applicable to the Purchase Price if Closing occurs) except as otherwise specifically set forth in Section 9 and Section 11(a) of this Agreement.

(c) Before sixty (60) days from the Effective Date, Buyer shall submit to Seller for approval a site plan, landscaping plan and elevations for the Property (the “Preliminary Plans”). Seller shall approve or otherwise respond to the Preliminary Plans within sixty (60) days of submittal by Buyer. Seller shall not unreasonably withhold approval of the Preliminary Plans, which will include a five-story building envelope. Buyer shall make changes to the Preliminary Plans (or any revised Preliminary Plans) requested by Seller provided such requests are reasonably requested and economically feasible, as determined in Buyer’s sole, but commercially reasonable, discretion. The “Approved Preliminary Plans” shall mean the Preliminary Plans (or any revised Preliminary Plans) once approved by Seller in writing; and following receipt of the Approved Preliminary Plans, Buyer shall thereafter diligently pursue obtaining the Approved Plans (defined hereinafter).

(d) Before two-hundred forty (240) days from the Effective Date, Buyer shall submit to Seller for approval architectural and engineering plans and drawings, including sanitary sewer plans, stormwater drainage plans and other utility and related plans, all as set forth on Exhibit D-1, attached hereto and made a part hereof (together, the “Plans”). The building elevations and materials requirements set forth on Exhibit D-1 shall apply to Buyer’s plans; unless, however, Buyer seeks, and obtains a variance, from the applicable government authority. Seller shall approve or otherwise respond to the Plans within sixty (60) days of submittal by Buyer. Seller shall not unreasonably withhold approval of the Plans. Buyer shall make changes to the Plans (or any revised Plans) requested by Seller provided such requests are reasonably requested and economically feasible, as determined in Buyer’s sole, but commercially reasonable, discretion. The “Approved Plans” shall mean the Plans (or any revised Plans) once approved by Seller in writing. Seller shall not withhold approval of the Plans to the extent they are substantially based on the Approved Preliminary Plans.

## 5. Closing; Closing Documents; Option Agreement; Parking Easement Agreements.

(a) Seller and Buyer shall close the purchase and sale of the Property (the “Closing”) no later than thirty (30) days after the expiration of the Entitlements Period at a time mutually agreeable to the Parties (the “Closing Date”), at the offices of Buyer’s attorney or such other location as may be mutually agreeable to the Parties. Notwithstanding the foregoing, the Closing shall be completed through escrow whereby the Parties and their attorneys need not be physically present at the Closing and may deliver documents by overnight courier or other means. Buyer shall have the right, in its sole discretion, to accelerate the Closing Date to an earlier date, which earlier date may be at any time after the Effective Date.

(b) At Closing, Seller shall execute and/or deliver the following (collectively, “Closing Documents”):

(i) a special warranty deed in the standard form promulgated by the North Carolina State Bar Association (the “Deed”), describing the Seller’s Real Property with reference to the deed vesting title in Seller (recorded in the Mecklenburg Country Office of the Register of Deeds on March 31, 1994 in Book 07723, at Page 805), conveying title as set forth in Section 3(f)(v); together with a North Carolina quitclaim deed using the legal description prepared in connection with the Survey; provided, however, Buyer provides Seller with a copy of this legal description prior to Closing;

the Intangible Property;

- (ii) a general assignment conveying to Buyer all of Seller's right, title and interest to

- (iii) a FIRPTA certificate;

- (iv) a duly executed owner and lien affidavit on the applicable NCLTA form warranting and holding Buyer's title insurance company harmless against unpaid laborers' and materialmen's liens and confirming there are not leases for or tenants on the Real Property;

- (v) the Town Clerk's Certificate of Resolutions or other documentation confirming that Seller has approved the sale of the Property pursuant to this Agreement;

- (vi) if a Survey is obtained by Buyer, then, at Closing, at Buyer's request, in addition to the Deed to be delivered, Seller will also deliver a non-warranty deed or quitclaim deed (which shall be in the standard form promulgated by the North Carolina State Bar Association) to Buyer conveying the Real Property pursuant to the legal description of the Real Property derived from the Survey.

- (vii) a certification that Seller's representations and warranties set forth herein are true and correct in all material respects as of the Closing Date;

- (ix) a closing statement;

- (x) the Option Agreement (defined hereinafter);

- (xi) the Parking Easement Agreement (defined hereinafter) and the Temporary Parking Easement Agreement (defined hereinafter);

- (xii) any other affidavits, certifications, or documents customarily signed by sellers in real estate closings in North Carolina, or reasonably requested by Buyer, Buyer's attorneys or Buyer's title insurance company; and

- (xiii) all other documents required by this Agreement to be delivered by Seller hereunder and such other documents and papers that are necessary to the consummation of the transaction described in this Agreement.

(c) At Closing, Buyer shall execute and/or deliver the following:

- (i) any outstanding balance of the Purchase Price due at Closing;

- (ii) a closing statement;

- (iii) the Option Agreement (defined hereinafter);

- (iv) the Parking Easement Agreement (defined hereinafter) and the Temporary Parking Easement Agreement (defined hereinafter); and;

- (v) a certification that Buyer's representations and warranties set forth herein are true and correct in all material respects as of the Closing Date; and

- (vi) all other documents required by this Agreement to be delivered by Buyer hereunder and such other documents and papers that may be necessary to the consummation of the transaction described in this Agreement or may be reasonably requested by Seller or Seller's counsel.

(d) Subject to Closing on the Property, Seller shall grant Buyer an option (“Option”). The Option is granted in consideration for the Option Deposit (defined hereinafter), the Option Purchase Price (defined hereinafter) and in consideration for some or all of the following, which are expected to result from the development of the Option Property (defined hereinafter) for industrial or commercial use as has been proposed (or will be proposed) by Buyer to Seller at (or before) the Hearing (the “Proposed Option Property Development”): prospective tax revenues (including real estate taxes and sales taxes), economic stimulus, business promotion and job creation. The “Option Deposit” shall be the amount set forth on Exhibit A-1. The Option Deposit shall be paid by Buyer to Seller on the Closing Date and shall, notwithstanding anything to the contrary, be nonrefundable for any reason, including it being nonrefundable to Buyer even if (x) Buyer elects not to exercise the Option, (y) the Option is revoked (as set forth in Section 5(d)(viii), and/or (z) Seller exercises the Repurchase Right (as set forth in Section 5(d)(ix)). Seller shall prepare an option agreement, which it shall submit to Buyer twenty-five (25) days before the expiration of the Due Diligence Period (the “Option Agreement”). The Option Agreement shall contain the following terms and conditions, which must be approved by Buyer in writing before expiration of Due Diligence and it shall be recorded at Closing:

(i) the Option shall be valid for a period of five (5) years (the “Option Period”) and shall apply to approximately 5.5 acres of land with the following Mecklenburg County Tax Parcel Numbers (which are located in the Community Development Project Area): (1) 20501202; (2) 20501203; (3) 20501215 (4) 20501204; (5) 20501205; (6) 20501417; (7) 20501416; (8) 20501206; and (9) 20501207 (collectively, the “Option Property”); provided, however, and as also set forth in Section 5(k), if construction on the Parking Deck (defined hereinafter) commences before the expiration of the Option Period, the Option Period shall automatically be extended for a period of thirty-six (36) months following the date that the Parking Deck is open to the public as further described in Section 5(k); provided, further, however, if construction does not commence before the expiration of the Option Period, no extension of the Option Period shall occur;

(ii) the purchase price for the Option Property will be as set forth on Exhibit A-1, which shall take into account the Option Deposit (the “Option Property Purchase Price”); provided, however, the Option Property Purchase Price shall increase by one percent (1%) of the Option Property Purchase Price on each anniversary of the date of Closing but shall not increase by any pro rata amount prior to such anniversary (for example, if the initial Option Property Purchase Price is \$2,495,000.00, upon the first anniversary it will automatically increase to \$2,519,950.00, and on the second anniversary, increasing to \$2,545,149.50, etc.); subject, however, to the terms set forth in Section 5(d)(xi);

(iii) Buyer shall purchase ALL the Option Property (i.e., once Buyer elects to purchase one parcel of Option Property, it is thereafter obligated to exercise the Option with respect to all other parcels of the Option Property in accordance with the deadlines set forth herein unless Buyer demonstrates economics have changed causing the diminishing value of the site), but may do so in multiple closings, with each parcel of the Option Property having the Individual Option Property Purchase Price as set forth on Exhibit A-1 (the intent of the foregoing being to ensure that the total amount paid by Buyer for the Option Property is no less than the Option Property Purchase Price);

(iv) Buyer shall take title to the Option Property subject to any existing lease applicable to any portion of the Option Property, or schedule closing to occur following the expiration of any such lease, which such leases are set forth on Exhibit E (attached hereto and made a part hereof);

(v) the plan approval requirement and procedure set forth in Section 4(c) and Section 4(d) shall apply to the development of the Option Property provided that the Effective Date for such plan approval requirement and procedure shall mean and refer to the date that Buyer exercises the Option with respect to the applicable parcel of the Option Property;

(vi) all development of the Option Property shall be suitable for industrial or commercial use, or mixed use with industrial and/or commercial use(s) being a component of any such mixed use, and shall commence within eighteen (18) months following the closing on the Option Property, or any portion thereof; and upon commencement, Buyer shall thereafter diligently pursue to completion the construction of the improvements on the Option Property, or any portion thereof, pursuant to the Approved Plans (the “Option Property Construction”

Requirements”) (for clarification, in the event of multiple closings on the Option Property, the deadlines set forth herein shall be triggered for each respective option parcel on the date of closing on that specific parcel) (these provisions are subject to potential (i) use of Parking Parcel G for parking described in Section 5(g); and (ii) extension of the time related to the Parking Deck as described in Section 5(k));

(vii) Buyer cannot exercise the Option (x) until Buyer has completed the construction of the new retail and related improvements on the Real Property (which shall be deemed to occur when a certificate of occupancy is issued with respect to the construction); and (y) unless construction of the new retail and related improvements on the Real Property is completed in compliance with the Approved Plans and all Entitlements and applicable permits, approvals, laws and requirements;

(viii) the Option shall be revocable by Seller if Buyer fails to commence construction of the new retail and related improvements on the Real Property within eighteen (18) months following Closing and in compliance the requirements hereinabove set forth in Section 5(d)(vii);

(ix) if Buyer fails to comply with the Option Property Construction Requirements as to any specific parcel of Option Property, Seller shall have the right to repurchase the applicable parcel of Option Property (the “Repurchase Right”), which shall be repurchased for a purchase price equal to the greater of (y) the fair market value of the applicable parcel of Option Property on the date Seller exercises the Repurchase Right (to be determined by an independent commercial real estate appraiser selected by Seller and having at least ten (10) years of experience appraising commercial real estate in the Charlotte, North Carolina, area, which appraisal shall include the fair market value of any improvements thereon constructed by Buyer); or (z) the Option Property Purchase Price paid by Buyer to Seller upon the closing of the applicable parcel of Option Property;

(x) general due diligence inspections (i.e., as more specifically described (and to the extent applicable) in Section 3 together with Buyer’s indemnification obligation more specifically set forth in Section 3(b)) and closing obligations (i.e., those obligations set forth in Section 5, to the extent applicable) shall be similar to those set forth for the Property; and

(xi) the Option Property Purchase Price shall not be subject to change unless there is a material adverse change by Buyer to the Proposed Option Property Development that will result in a material reduction in the projected tax revenues, economic stimulus, business promotion and/or job creation; and if such a material adverse change shall occur, at the time Buyer exercises the Option, Seller will have the right to adjust the Option Purchase Price.

(e) Subject to Closing on the Real Property, Seller shall grant Buyer a perpetual easement for parking necessary for the Intended Use of the Property on that adjacent parcel bearing Mecklenburg County Tax Parcel Number 20501317 (“Parking Parcel A”), which is located in the Community Development Project Area. Seller shall prepare a parking easement agreement, which it shall submit to Buyer within twenty-five (25) days before the expiration of the Due Diligence Period (the “Parking Easement Agreement”). Buyer’s rights under the Parking Easement Agreement shall be subject to the right of certain other third-parties to access, use and maintain dumpster(s) on Parking Parcel A. The Parking Easement Agreement shall contain the following terms and conditions, which must be approved by Buyer before expiration of Due Diligence and it shall be recorded at Closing:

(i) Parking Parcel A shall be provided to Buyer in its “AS-IS WHERE-IS” condition with Buyer being obligated to make any improvements and satisfy any requirements necessary for Parking Parcel A to be used for parking as set forth herein;

(ii) Buyer shall be responsible for grading, improving and paving Parking Parcel A (pursuant to all applicable permits, approvals, laws and requirements) for Buyer use, as agreed to with Seller but shall not otherwise be obligated to pay Seller any other fee, payment or amount for the rights set forth in the Parking Easement Agreement;



(iii) the Parking Easement Agreement shall grant Buyer, effective upon Closing, the exclusive right to use, for the Property, one (1) parking space on Parking Parcel A for every residential unit on the Real Property, and the non-exclusive right to use additional parking spaces located on Parking Parcel A, which parking spaces shall count toward parking requirements for the Property; and

(iv) the rights granted under the Parking Easement Agreement may be temporarily interrupted (a "Parking Interruption"), from time to time, in connection with the construction on Parking Parcel A of a multi-story parking structure (the "Parking Deck") by (x) Buyer (subject and pursuant to the terms set forth more specifically in Section 5(k)), (y) a third-party (subject and pursuant to the terms set forth more specifically in Section 5(l)), or (z) Seller, and upon commencement of construction the constructing party shall, to the extent controllable, thereafter diligently pursue to completion the construction of the Parking Deck; and following completion of the Parking Deck Buyer shall have the right to use the Parking Deck pursuant to the terms of the Parking Easement Agreement (with the exclusive right to use, for the Property, no less than one (1) parking space for every residential unit on the Real Property and the non-exclusive right to use additional parking spaces located within the Parking Deck; subject, however, to a minimum of eighty (80) parking spaces being reserved for the exclusive use by the public, as more specifically set forth in Section 5(k)(i) and any other rules, requirements and fees generally applicable to all users of the Parking Deck and further subject to the provisions of Section 5(k)(i)).

(f) Subject to Closing on the Real Property, Seller shall grant Buyer (or otherwise declare and establish for the nonexclusive benefit of Buyer) a temporary easement for parking necessary for the Intended Use of the Property and for the development and use of the Option Property on that (y) parcel bearing Mecklenburg County Tax Parcel Number 20501202 ("Parking Parcel G"); and (z) parcel bearing Mecklenburg County Tax Parcel Number 20501315 ("Parking Parcel F") and together with Parking Parcel G, the "Parking Parcels"). Seller shall prepare a temporary parking easement agreement which it shall submit to Buyer within twenty-five (25) days before the expiration of the Due Diligence Period (the "Temporary Parking Easement Agreement"). The Temporary Parking Easement Agreement shall contain the following terms and conditions, which must be approved by Buyer before expiration of Due Diligence and it shall be recorded at Closing:

(i) the Parking Parcels shall be provided to Buyer in its "AS-IS WHERE-IS" condition with Buyer being obligated to make any improvements and satisfy any requirements necessary for the Parking Parcels to be used for parking as set forth herein;

(ii) Buyer shall be responsible for grading, improving and paving the Parking Parcels in order to create at least one hundred thirty-five (135) parking spaces, pursuant to all applicable permits, approvals, laws and requirements (the "Nonexclusive Parking Spaces"), as agreed to with Seller but shall not otherwise be obligated to pay Seller any other fee, payment or amount for the rights set forth in the Temporary Parking Easement Agreement;

(iii) Buyer's obligations for grading, improving and paving the Parking Parcels shall be performed in a manner that will preserve the access driveway located on Parking Parcel F, which will remain, at all times, available for Seller's unobstructed use for access to and from Mecklenburg County Tax Parcel Number 20501201;

(iv) the Temporary Parking Easement Agreement shall grant (or declare for the benefit of) Buyer, effective upon Closing, the nonexclusive right to use, for the Property and the Option Property, the Parking Parcels, which such use shall be together with use by Seller and use by the public, on a first-come first-serve basis, which parking spaces shall count toward parking requirements for the Property and the Option Property;

(v) Buyer agrees that the right for Seller and the public to use the Nonexclusive Parking Spaces shall continue notwithstanding Buyer exercising its right to acquire Parking Parcel G pursuant to the Option; and

(vi) Buyer's agrees that it shall develop Parking Parcel G in a manner that will allow it to comply with all applicable parking permits, approvals, laws and requirements without the use or benefit of the

Parking Easement Agreement or the Temporary Parking Easement Agreement (i.e., Parking Parcel G will be self-parked); and upon completion of the development of Parking Parcel G, Buyer shall provide, at all times, at least eighty-five (85) parking spaces for the shared use, on a first-come first-serve basis, by Buyer, Seller and the public, which such spaces (y) can be located on Parking Parcel G, Parking Parcel F, and/or Mecklenburg County Tax Parcel Number 20501203 (“Parking Parcel H”), and (z) the parking required for Parcel G shall be, to the maximum extent possible, located immediately adjacent to the building constructed on Parcel G. These requirements in this subsection (vi) shall not apply if the Parking Deck is constructed.

(g) The Option Property Construction Requirements (as set forth in Sections 5(d)(vi) and 5(k)), with respect to Parking Parcel G shall be stayed until completion of the development (to be evidenced by the availability of a certificate of occupancy) of the last of the Option Property.

(h) Buyer’s rights under the Temporary Parking Easement Agreement shall automatically terminate upon the expiration of the Option Period.

(i) Notwithstanding anything to the contrary herein or otherwise, Seller shall have no obligation to provide Buyer (or the Real Property or the Option Property) with any additional or alternative parking except as specifically set forth in this Agreement.

(j) At Closing, Seller shall deliver to Buyer full, complete and exclusive possession of the Property, subject only to the Permitted Exceptions.

(k) Seller shall endeavor to construct the Parking Deck within the Option Period; provided, however, and notwithstanding anything to the contrary in this Agreement, if construction on the Parking Deck commences before the expiration of the Option Period, the Option Period shall automatically be extended for a period of thirty-six (36) months following the date that the Parking Deck is open to the public; provided, further, however, if construction on the Parking Deck does not commence before the expiration of the Option Period, no extension of the Option Period shall occur but Buyer shall have the following options: (1) construct a parking deck subject to the terms hereinafter set forth in Section 5(k)(i); or (2) proceed with the development of the Option Property subject to the terms hereinafter set forth in Section 5(k)(ii).

(i) With respect to the foregoing item 5(k)(1), Buyer may elect to construct and operate the Parking Deck on Parking Parcel A, which, at Seller’s election, may be pursuant to a joint development project (as authorized by N.C.G.S. §160D-1315) (the “Parking Deck Construction and Operating Agreement”). The Parking Deck Construction and Operating Agreement shall (1) be consistent with the terms of this Agreement; (2) be subject to the Parking Easement Agreement; (3) specifically grant Seller the exclusive right to use for the public at least eighty (80) parking spaces within the Parking Deck; (4) be subject to the plan approval requirements and procedures set forth in Section 4(c) and Section 4(d) (which approval shall specifically require a four (4) story parking structure); (5) allow Buyer to charge for parking in the Parking Deck, Monday through Friday, from 8:00 AM through 6:00 PM (which shall be at market and commercially reasonable hourly rates); (6) require that construction of the Parking Deck commence within twelve (12) months following the date of the conveyance, and thereafter be diligently pursued to completion; and (7) be subject to other terms and conditions to be reasonably agreed upon by the parties; provided, however, the parties agree that Buyer’s election to construct a parking deck on the Option Property will not be subject to these terms and conditions or require the payment of additional fees to Seller (other than those that may be normally assessed against the Option Property (e.g., real property taxes)). If Buyer fails to complete the Parking Deck pursuant to the requirements set forth in the foregoing item (6), Seller shall have the right to terminate the Parking Deck Construction and Operating Agreement. The parties agree to work together diligently and in good faith to negotiate and agree to determine the final terms and conditions of the Parking Deck Construction and Operating Agreement. If the Parking Deck is constructed by Buyer on Parking Parcel A pursuant to the terms of the Parking Deck Construction and Operating Agreement, Buyer shall (to the extent consistent with the foregoing items (1) through 7) be authorized to (i) charge and receive parking fees from the public at market rates, Monday through Friday, from 8:00 AM through 6:00 PM; (ii) charge, credit or waive parking fees for users of the Real Property or Option Property; (iii) reserve exclusive parking rights for one (1) parking space on Parking Parcel A for every residential unit on the Real Property; and (iv) have both exclusive and non-exclusive parking spaces in the Parking Deck counting

toward parking requirements for the Property and Option Property. Notwithstanding anything to the contrary herein, if Buyer and Seller cannot agree on the final terms and conditions of the Parking Deck Construction and Operating Agreement during a period of ninety (90) days following Seller's delivery of a first draft of the Parking Deck Construction and Operating Agreement to Buyer, Seller, upon written notice to Buyer, shall have the right set forth in Section 5(l) to grant a mutually agreeable third-party the right to construct and/or operate the Parking Deck on Parking Parcel A, and the users of the Property having the right to utilize the appropriate number of spaces in the Parking Deck, at fair market rental value.

(ii) With respect to the foregoing item 5(k)(2), Seller agrees that the density requirements applicable to Buyer's development of the Option Property shall be reasonably increased (i.e., thereby reducing the parking and open space requirements that shall apply to Buyer's development of the Option Property). The parties agree to work together diligently and in good faith to determine the actual increase to the density requirements with Seller agreeing to support Buyer's request for any variance or modification that may be required by the applicable government authority to the then current ordinances and/or zoning and overlay requirements in order for the reasonably agreed upon density to apply.

(iii) If construction on the Parking Deck does not commence before the expiration of the Option Period (as described hereinabove in Section 5(k)), with respect to the development of any Option Property that has not commenced on or before the expiration of the Option Period (specifically excluding, however, any Option Property that, pursuant to Section 5(d)(vi) should have commenced development, but failed) the eighteen (18) month period applicable to the Option Property Construction Requirements (as set forth in Section 5(d)(vi)), shall be deemed to be a thirty-six (36) month period (i.e., Buyer having to commence development within thirty-six (36) months following the closing of any applicable Option Property).

(l) If Seller does not construct the Parking Deck on Parking Parcel A, and Buyer elects not to construct the Parking Deck (which Buyer shall be deemed to have elected not to do so if it fails to respond to Seller within ten (10) days following any written request by Seller regarding Buyer's election), Seller shall have the right, notwithstanding anything to the contrary herein, to grant a third-party the right to construct and/or operate the Parking Deck on Parking Parcel A, which Seller may do pursuant to any method permitted under North Carolina law (including by sale or lease and/or a development and operation agreement); provided, however, any rights granted to a third-party as described in this section shall be subject to the Parking Easement Agreement.

## **6. Closing Costs and Adjustments.**

(a) Buyer shall pay the costs of the Survey, title examination, title insurance, the investigations conducted by Buyer, the fees of Buyer's attorney and the costs for recording the Deed(s), the Option Agreement, and the Parking Easement Agreement (and other instruments to be recorded under the terms of this Agreement).

(b) Seller shall pay the cost of preparation of the Deed(s) and other Closing Documents to be delivered by Seller, an amount sufficient to pay in full and satisfy any liens and encumbrances affecting the Property to the extent required pursuant to the terms of Section 3(f) or which arise by or through Seller after expiration of the Due Diligence Period, transfer / excise tax stamps, delinquent taxes and public or private assessments (if any), rollback taxes (if any) and the fees of its own attorney.

(c) Ad valorem real property taxes, public assessments, and any assessments under any applicable restrictive covenants for the current year (if any) shall be prorated at Closing between Seller and Buyer. Buyer and Seller shall share equally the cost of any escrow/closing fees charged by the Escrow Agent at Closing. Except as otherwise provided herein, each party shall bear its own costs and expenses, including its own attorneys' fees.

## **7. Conditions Precedent.**

(a) Buyer's obligations under this Agreement are conditioned upon satisfaction of each of the following conditions and any other conditions set forth in this Agreement (collectively, "Conditions Precedent") on or before Closing:

(i) To the extent any material and adverse change has occurred following the expiration of the Due Diligence Period regarding title to the Property, the results of the Investigations, and the Survey, such change must be reasonably satisfactory to Buyer;

(ii) To the extent any material and adverse change has occurred following the expiration of the Due Diligence Period regarding the physical condition of the Property, such change must be reasonably satisfactory to Buyer; and, Buyer shall have verified, that no material or adverse developments have occurred with respect to the Property since the expiration of the Due Diligence Period;

(iii) To the extent any material and adverse change has occurred following the expiration of the Entitlements Period regarding the Property being zoned for a classification that allows use of the Property for the Intended Use, such change must be reasonably satisfactory to Buyer;

(iv) The Property must not be the subject of any pending, threatened or contemplated action or proceeding to rezone or condemn all or any material part of the Property that would prevent use of the Property for the Intended Use as determined by Buyer in Buyer's commercially reasonable discretion, which was unknown to Buyer during the Due Diligence Period;

(v) Seller must have performed and satisfied each of the covenants and obligations of Seller under this Agreement in all material respects;

(vi) All of Seller's representations and warranties in this Agreement must be true and correct as of Closing in all material respects;

(vii) [Intentionally Deleted];

(viii) [Intentionally Deleted]; and

(ix) Seller shall execute and deliver the Closing Documents, including but not limited to the Option Agreement and the Parking Easement Agreement and the Temporary Parking Easement Agreement, in accordance with Section 5 and the other terms and provisions of this Agreement.

(b) If all Conditions Precedent are not satisfied by Closing, Buyer shall have the right to either (i) waive any outstanding Conditions Precedent and proceed to Closing, (ii) extend the date of Closing up to thirty (30) days to satisfy any outstanding Conditions Precedent, or (iii) terminate this Agreement by delivering written notice to Seller. If Buyer terminates this Agreement, the Earnest Money shall be refunded to Buyer if any Condition Precedent not being satisfied constitutes a Seller default under Section 11(a) of this Agreement, and upon any such termination, this Agreement shall be void, and neither Buyer nor Seller will have any further rights or obligations under this Agreement, except those obligations which expressly survive termination.

## 8. Representations and Warranties.

(a) Seller represents and warrants the following to Buyer, each of which shall be deemed material:

(i) Seller is the sole owner of fee simple title to the Property; subject, however, to all matters of set forth in the public record.

(ii) Seller has not entered into any agreement to lease, sell, mortgage or otherwise encumber or dispose of its interest in the Property or any part thereof, except for this Agreement.

(iii) Except as may be set forth in the public record, Seller has entered into no licenses, leases, permits, contracts, or other agreements, written or oral, granting to any party the right to the use or occupancy of the Property, or any part thereof, and other than Seller, there are no parties in possession of or entitled to possession of the Property, or any part thereof.

(iv) The Property is not subject to any proceeding or litigation of any kind, pending or outstanding, and, to Seller's actual knowledge, the Property is not subject to any claim, demand, suit, unfiled lien, or threatened litigation.

(v) This Agreement is valid and enforceable against Seller in accordance with its terms and each instrument to be executed by Seller pursuant to this Agreement or in connection herewith (including the Option Agreement, Parking Easement Agreement and the Temporary Parking Easement Agreement) will, when executed and delivered, be valid and enforceable against Seller in accordance with its terms.

(vi) The execution, delivery and performance of this Agreement has been (and all documents contemplated hereby by Seller will be (including the Option Agreement, Parking Easement Agreement and the Temporary Parking Easement Agreement)) duly and validly authorized by all necessary action on the part of Seller and all required consents and approvals have been duly obtained: subject, however, to the terms set forth in Section 28.

(b) Buyer represents and warrants the following to Seller, each of which shall be deemed material:

(i) Buyer is a North Carolina limited liability company duly organized, and is validly existing under the laws of the State of North Carolina.

(ii) Neither the execution and delivery of this Agreement nor its performance by Buyer, will conflict with or result in the breach of any contract or agreement to which Buyer is bound, or to Buyer's actual knowledge, any law, rule or regulation to which Buyer is a party or by which Buyer is bound.

(iii) This Agreement is valid and enforceable against Buyer in accordance with its terms and each instrument to be executed by Buyer pursuant to this Agreement or in connection herewith will, when executed and delivered, be valid and enforceable against Buyer in accordance with its terms.

(iv) The execution, delivery and performance of this Agreement has been (and all documents contemplated hereby by Buyer will be) duly and validly authorized by all necessary action on the part of Buyer and all required consents and approvals have been duly obtained.

9. **Risk of Loss; Casualty; Condemnation.**

(a) Risk of loss or damage by fire or other casualty to the Real Property shall remain with Seller through Closing; provided, however, Seller will have no obligation to repair or restore all or any portion of the Real Property as a result thereof. If all or any portion of the Real Property is damaged by fire or other casualty prior to Closing, this Agreement shall continue in full force and effect with the Purchase Price being reduced at Closing by all insurance proceeds and all insurance deductible amounts, if any, awarded to Seller. In the event any casualty insurance proceeds have not been awarded to Seller by Closing, Seller shall assign Seller's unencumbered right, title and interest in any such proceeds to Buyer at Closing.

(b) Prior to any Closing, if all or any material part of the Property is taken by eminent domain, which makes the Real Property no longer useable for the Intended Use in accordance with Buyer's plans as determined by Buyer in Buyer's sole, but commercially reasonable, discretion, or if condemnation proceedings are commenced and such taking or commencement affects or is anticipated to affect Buyer's development or use of the Property in Buyer's sole, but commercially reasonable, discretion, Buyer may elect by written notice to Seller to terminate this

Agreement or to continue this Agreement in full force and effect, whereupon no change in the Purchase Price shall be effected but Seller shall assign, transfer, and set over to Buyer at Closing all of Seller's right, title and interest in awards that may be made for such taking. Seller shall notify Buyer of any eminent domain proceedings within five (5) days after Seller learns thereof and allow Buyer to participate in the same and to exercise this termination right, Buyer must give such written notice to Seller with ten (10) days following the date of such notice.

(c) If Buyer terminates this Agreement for any such reason set forth in this Section 9, the Earnest Money shall be refunded to Buyer, this Agreement shall be void, and neither Buyer nor Seller will have any further rights or obligations under this Agreement, except those obligations which expressly survive termination.

10. **Brokerage.** Buyer and Seller represent and warrant to the other that each has not dealt with any broker in connection with this transaction and each party whose actions or alleged actions or commitments form the basis of any such claim, will indemnify, defend, and hold the other harmless from any claims for other brokerage/advisory fees or commissions arising from the transaction contemplated by this Agreement.

11. **Defaults; Remedies.**

(a) If the purchase and sale of the Property is not consummated in accordance with the terms and conditions of this Agreement due to circumstances or conditions which constitute a default by Seller under this Agreement, Seller breaches and representation or warranty under this Agreement or Seller otherwise fails to comply with any other term or condition of this Agreement, and Seller does not cure such default within ten (10) days after Buyer's delivery of written notice to Seller, Buyer shall have (i) the right to terminate this Agreement by delivering written notice to Seller and to receive a refund of the Earnest Money, and (ii) all rights and remedies available at law or in equity, including, without limitation, the right to sue Seller for specific performance and/or damages; provided, however, if an action for specific performance is not an available remedy, Seller shall, as an obligation that shall survive termination of this Agreement, reimburse Buyer for all of Buyer's actual, out of pocket, third-party professional fees related to this Agreement and/or the Property, as well as all actual, out of pocket, third-party fees and costs related to Buyer's Investigations, such claim, however, shall not exceed **\$25,000.00**.

(b) If the purchase and sale of the Property is not consummated in accordance with the terms and conditions of this Agreement due to circumstances or conditions which constitute a default by Buyer under this Agreement and Buyer does not cure such default within ten (10) days after Seller's delivery of written notice to Buyer, Seller shall be entitled to terminate this Agreement and receive the Earnest Money as its liquidated damages, and not as a penalty, and as Seller's sole and exclusive remedy. Seller acknowledges and agrees that (1) the Earnest Money is a reasonable estimate of and bears a reasonable relationship to the damages that would be suffered and costs incurred by Seller as a result of having withdrawn the Property from sale and the failure of the Closing to occur due to a default of Buyer under this Agreement; (2) the actual damages suffered and costs incurred by Seller as a result of such withdrawal and failure to close due to a default of Buyer under this Agreement would be extremely difficult and impractical to determine; (3) Buyer's liability under this Agreement is limited to the amount of the Earnest Money in the event this Agreement is terminated and the transaction contemplated by this Agreement does not close due to a default of Buyer under this Agreement; and (4) the Earnest Money shall be and constitute valid liquidated damages.

(c) The Parties agree that this is a business Agreement as defined under N.C.G.S. § 6-21.6. In connection with any litigation arising out of this transaction, or the interpretation or enforcement of this Agreement, the prevailing party shall be entitled to recover from the party not prevailing its reasonable costs and reasonable attorney, paralegal and experts' fees and expenses in connection with all proceedings and all levels of proceedings. Venue for any litigation arising out of this Agreement shall lie only in Mecklenburg County, North Carolina.

12. **Notices.** Any notice required or permitted to be given under this Agreement shall be in writing, addressed to the Parties at their respective addresses set forth below in this Section, and shall be deemed to have been given at the earlier (i) if by hand, when received, (ii) if sent by an overnight delivery or courier service, e.g., Federal Express or UPS, on the day of deposit with such overnight delivery service, (iii) if by first-class United States mail, registered or certified, postage prepaid, return receipt requested, on the date mailed, or (iv) if sent by e-mail, on the date of confirmation of transmission or receipt. Either Party may, from time to time by notice as herein provided,

designate a different address to which notice to it shall be sent. Notices may be given to or on behalf of the Parties by their respective attorneys.

If to Seller:

The Town of Pineville  
200 Dover Street  
Pineville, NC 28134  
Attn: Town Manager  
Email:rspitzer@pinvillenc.gov

If to Buyer:

US Developments, LLC  
5925 Carnegie Blvd, Suite 200  
Charlotte, NC 28209  
Attn: Stephen Rosenberg  
Email: srosenburg@usdevelopments.com

With a copy to:

Johnston, Allison & Hord, P.A.  
Attn: John Buben  
1065 East Morehead Street  
Charlotte, NC 28204  
Email: jbuben@jahlaw.com

With a copy to:

Spencer & Spencer, P.A.  
Attn: Chaplin Spencer  
P.O. Box 790  
226 East Main Street, Suite 200  
Rock Hill, SC 29731  
Email: chaplinspencer@spencerfirm.com

13. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be considered to be an original. All those counterparts together will constitute the same instrument, which may be sufficiently evidenced by one counterpart. The signing of this Agreement at different times and places by the Parties will not affect the validity of this Agreement. Counterparts to this Agreement may be executed and delivered by electronic transmission, and for purposes of this Agreement, signatures transmitted by electronic transmission shall be deemed to be original signatures.

14. **Severability.** If a court determines that any portion of this Agreement is invalid or unenforceable to any extent by law, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby, and shall be enforced to the greatest extent permitted by law.

15. **Deadlines; Business Days.** Notwithstanding anything herein to the contrary, in the event the final date of performance by either party to this Agreement of any condition or obligation hereunder falls upon a non-business day (i.e., Saturday, Sunday, national holiday or local holiday recognized by banks in the locality of the Property), the final date for performance of such condition or obligation shall be extended automatically and without notice until the next succeeding business day.

16. **Sealed Instrument.** Buyer and Seller agree that by signing below they intend to place their hands and seals upon this Agreement and that this Agreement shall be considered in every respect to be a sealed instrument.

17. **Further Acts.** As a covenant that will survive Closing for a period of six (6) months, Buyer and Seller agree that, upon request of the other party, the non-requesting party will perform, execute and deliver all such further reasonable, documents, acts and assurances, as applicable, as may be reasonably required for the full consummation of the transaction contemplated herein.

18. **Entire Agreement.** This Agreement contains the entire understanding and agreement by and between the Parties. All prior or contemporaneous oral or written agreements or instruments are merged herein. No amendment to this Agreement shall be effective unless it is in writing and signed by Seller and Buyer.

19. **Binding Effect; Assignment; 1031 Exchange.** This Agreement shall be binding upon and shall inure to the benefit of Seller and Buyer and their respective heirs, successors and assigns. Buyer shall have the right to assign its rights and obligations under this Agreement with the approval by the Seller (which consent shall not be unreasonably withheld); provided, however, following any such assignment Buyer shall remain liable for all obligations set forth herein unless Seller expressly releases Buyer in writing and any such assignee expressly assumes

in writing all rights and obligations of Buyer set forth herein. In addition, without limiting the foregoing, Buyer and Seller shall have the right to assign its rights and/or obligations under this Agreement for any assignment necessary or desired to effect an exchange of real property pursuant to Section 1031 of the Internal Revenue Code. Buyer and Seller each agree to cooperate in implementing any such exchange; provided, however, that (a) the exchanging party shall be responsible for any additional costs associated with the exchange and (b) a non-exchanging party shall not assume any additional liability with respect to the exchange. Seller and Buyer shall execute any additional documents required to implement the exchange.

20. **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. Buyer and Seller hereby consent to exclusive jurisdiction of the courts of North Carolina for the resolution of any dispute under this Agreement.

21. **Time is of the Essence.** Time is of the essence as to all of the terms of this Agreement.

22. **Survival.** Except as otherwise provided in this Agreement, all indemnities, representations, warranties, covenants, agreements and obligations of a party hereunder may be relied upon by the other party, and all such indemnities, representations, warranties, covenants, agreements and obligations shall survive the Closing and shall not be deemed to merge with or into the documents delivered at the Closing for a period of nine (9) months from the Closing Date, and any claim for indemnity brought in connection with a purported violation of a representation, warranty, covenant, agreement or obligation shall be commenced within such nine (9) month period.

23. **Non-Solicitation.** To induce Buyer to enter into this Agreement and conduct the Investigations, neither Seller nor its representatives, agents or brokers will directly or indirectly negotiate or execute any agreement with, solicit inquiries from, or disclose information to, others in connection with any transaction related to purchase and sale of the Property; except, however, as specifically set forth in Section 26. This prohibition shall terminate upon the earlier to occur of Closing or termination of this Agreement.

24. **AS-IS, WHERE-IS.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN ANY DOCUMENTS DELIVERED BY SELLER PURSUANT TO SECTION 5(B) TO THE CONTRARY, BUYER IS EXPRESSLY PURCHASING THE PROPERTY IN ITS EXISTING CONDITION "AS IS, WHERE IS, AND WITH ALL FAULTS" AND, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN ANY DOCUMENTS DELIVERED BY SELLER PURSUANT TO SECTION 5(B), BASED UPON THE CONDITION (PHYSICAL OR OTHERWISE) OF THE PROPERTY AS OF THE EFFECTIVE DATE. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT BEING GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, BUYER IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY SELLER AND AGREES TO ACCEPT THE PROPERTY AT THE CLOSING. IT IS UNDERSTOOD AND AGREED THAT THE PURCHASE PRICE HAS BEEN ADJUSTED BY PRIOR NEGOTIATION TO REFLECT THAT ALL OF THE PROPERTY IS SOLD BY SELLER AND PURCHASED BY BUYER SUBJECT TO THE FOREGOING PROVISIONS. THE PROVISIONS OF THIS SECTION SHALL SURVIVE INDEFINITELY THE CLOSING OR ANY TERMINATION HEREOF.

25 **Assumption/Release.** UPON CLOSING, EXCEPT FOR ANY LIABILITY OR OBLIGATION ON THE PART OF SELLER FOR WHICH THIS AGREEMENT EXPRESSLY PROVIDES SHALL SURVIVE CLOSING, BUYER ASSUMES THE RISK OF ADVERSE MATTERS, INCLUDING ADVERSE PHYSICAL CONDITIONS, DEFECTS, CONSTRUCTION DEFECTS, HEALTH, SAFETY AND WELFARE MATTERS WHICH MAY OR MAY NOT HAVE BEEN REVEALED BY BUYER'S INSPECTIONS. AS OF THE CLOSING DATE, BUYER, FOR ITSELF AND ITS AGENTS, AFFILIATES, SUCCESSORS AND ASSIGNS, HEREBY WAIVES, RELEASES AND FOREVER DISCHARGES SELLER, SELLER'S AGENTS, EMPLOYEES, DIRECTORS, OFFICERS, AFFILIATES, INTEREST HOLDERS, SUCCESSORS AND ASSIGNS FROM ANY AND ALL RIGHTS, CLAIMS AND DEMANDS AT LAW OR IN EQUITY, WHETHER KNOWN OR UNKNOWN AT THE TIME OF THIS AGREEMENT, WHICH BUYER HAS OR MAY HAVE IN THE FUTURE, ARISING OUT OF THE PHYSICAL, ECONOMIC OR LEGAL CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, ALL CLAIMS IN TORT OR CONTRACT AND ALL OTHER TITLE OR DUE DILIGENCE MATTERS DESCRIBED IN THIS AGREEMENT. THE PROVISIONS OF THIS SECTION



SHALL SURVIVE INDEFINITELY THE CLOSING OR TERMINATION OF THIS AGREEMENT AND SHALL NOT BE MERGED INTO THE CLOSING DOCUMENTS. NOTHING CONTAINED IN THIS PARAGRAPH SHALL BE CONSTRUED AS A WAIVER OF ANY CLAIM, INDEMNIFICATION OR CONTRIBUTION ARISING UNDER ANY FEDERAL, STATE OR LOCAL STATUTE, RULE OR REGULATION PERTAINING TO ANY ENVIRONMENTAL CONTAMINATION RELATING TO HAZARDOUS SUBSTANCES OR HAZARDOUS WASTE.

26. **Release of Information.** The Parties acknowledge that this Agreement and related documents provided to or by Seller are subject to disclosure under the North Carolina Public Records Act, N.C.G.S. § 132-1 et seq. (the “Act”), except for information that is excluded from the disclosure requirements of the Act pursuant to N.C.G.S. § 132-1.2. Buyer acknowledges that this disclosure of the Seller’s public records requirements is given pursuant to N.C.G.S. § 132-1.11(b) and agrees that such disclosure is full and sufficient to the satisfaction of Buyer. Both Parties agree that this section will survive the termination of the Agreement. Nothing in this Agreement precludes either party from discussing the terms of this Agreement or its work product with its attorneys, accountants, consultants, contractors, or potential lenders or investors, or prevents the holding of public council meetings in compliance with applicable laws.

27. **No Waiver of Governmental Authority or Discretion.** Nothing in this Agreement shall be construed to bind, estop, direct, limit, or impair the future regulatory, legislative, or governmental discretion of the Town Council in a manner not permitted by law. Seller shall incur no liability to Buyer for any losses or damages it may incur as a result of or in connection with the Seller’s exercise or performance of its regulatory, legislative, or governmental powers or functions, or any judicial determination regarding such exercise or performance, provided the Seller shall be contractually bound by the terms of this Agreement.

28. **Background; Hearing and Approval.**

(a) The Property and the Option Property (together, the “Properties”) are located in central business districts within the Town of Pineville and in areas designated by Seller for community and economic development and as downtown development districts (these areas, together, the “Community Development Project Area”). The intent of the transactions described herein, together, is to facilitate the economic development of the Community Development Project Area and to create a joint development project between Seller and Buyer, which has (i) been determined by Seller to likely have a significant effect on the revitalization of the Community Development Project Area; and/or (ii) been designed to include both public and private facilities (including parking facilities that will benefit the public).

(b) The parties acknowledge that the (i) letter of intent between the parties with respect to this transaction was approved by the Town Council for Pineville, following a public hearing, on March 10, 2020, with notice of such hearing published on February 28, 2020; and (ii) a notice of public hearing was published on November 27, 2020 with respect to the granting of the interest in the Property and the interest in the Option Property, as such interests are described herein. Notwithstanding anything to the contrary, Buyer acknowledges and agrees that the terms of this Agreement, the Purchase Option, the Parking Easement Agreement, the Temporary Parking Easement Agreement and, if applicable, the Parking Deck Construction and Operating Agreement, and other agreements reference herein (together, the “Transaction Documents”) may be subject to certain requirements set forth in the North Carolina General Statutes, which may require the holding of additional public hearings (and publishing notice thereof in advance); and/or obtaining additional approvals by the Town Council for Pineville. If such approvals have not been obtained prior to the Effective Date, Seller shall obtain such approvals at the next meeting of the Town Council following the Effective Date. The “Hearing Approval Date” shall mean the date that the approvals are obtained.

(c) Notwithstanding anything to the contrary herein, if (i) the terms of any approval require any changes to the Transaction Documents; and/or (ii) the North Carolina General Statutes and/or any rule or regulation requires any changes be made to Transaction Documents, the parties agree to enter into an amendment to thereto, within fifteen (15) days; provided, however, any such changes do not materially increase any obligation of Buyer or Seller.

29. **Requirements and Restrictions.** Buyer agrees that the retail/commercial component of the Intended Use shall be subject to the requirements and restrictions set forth on **Exhibit F** (attached hereto and made a part hereof), which shall be set forth in an instrument and recorded at Closing.

**[SIGNATURES BEGIN ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed, sealed and delivered as of the Effective Date.

**BUYER:**

**US DEVELOPMENTS, LLC** [SEAL]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2020

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed, sealed and delivered as of the Effective Date.

**SELLER:**

**TOWN OF PINEVILLE, NC** [SEAL]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2020

ATTEST

\_\_\_\_\_  
Town Clerk

[SEAL]

**EXHIBIT A**

[Description of Land]

**BEGINNING** at a point located in the southeasterly intersection of Main and Church Streets in the Town of Pineville, North Carolina, and running in a westerly direction 133 feet with the northerly margin of Main Street to a point; thence in a northerly direction 306 feet to a point located in the southerly edge or margin of College Street; thence in easterly direction 133 feet with the southerly edge or margin of College Street to a point located in the northeasterly intersection of College Street and Church Street; thence in a southerly direction 306 feet with the westerly edge or margin of Church Street to the point or place of the **BEGINNING**.

**EXHIBIT A-1**

**[Property Purchase Price; Option Deposit; Option Property Purchase Price  
and Individual Option Property Purchase Price]**

**Property:**

<b>Parcel ID</b>	<b>Acreage</b>	<b>Property Purchase Price</b>	<b>Option Deposit</b>	<b>Amount Due at Closing</b>
20501311	.959	\$505,000.00	\$495,000.00	<b>\$1,000,000.00</b>

**Option Property:**

<b>Parcel ID</b>	<b>Acreage</b>	<b>Percent of 5.216-Acres</b>	<b>Option Deposit Credit*</b>	<b>Option Property Purchase Price Due at Option Property Closing**</b>
20501202	1.050	.2013	\$99,643.50	\$402,600.00
20501203	.479	.0918	\$45,441.00	\$183,600.00
20501215	.678	.1299	\$64,300.50	\$259,800.00
20501204	.551	.1056	\$52,272.00	\$211,200.00
20501205	1.0	.1917	\$94,891.50	\$383,400.00
20501417	.393	.0753	\$37,273.50	\$150,600.00
20501416	.249	.0477	\$23,611.50	\$95,400.00
20501206	.495	.0949	\$46,975.50	\$189,800.00
20501207	.321	.0618	\$30,591.00	\$123,600.00
	5.216	100%	\$495,000.00	<b>\$2,000,000.00</b>

The total Option Property Purchase Price shall equal **\$2,495,000.00** (which is comprised of the Option Deposit (i.e., \$495,000.00) plus \$2,000,000.00).

The Option Property Purchase Price for any single parcel of Option Property shall equal the Option Deposit Credit plus the Option Property Purchase Price Due at Option Property Closing (each an “Individual Option Property Purchase Price”). For example, if Buyer exercises the Option to purchase that parcel of Option Property identified by Parcel ID 20501202, the Individual Option Property Purchase Price for Parcel ID 20501202 is \$502,243.50 (i.e., the Option Deposit Credit in the amount of \$99,643.50 plus the Option Property Purchase Price Due at Option Property Closing in the amount of \$402,600.00).

\*The Option Deposit Credit is calculated by multiplying the Option Deposit (i.e., \$495,000.00) x the Percent of 5.216-Acres. For example, if Buyer exercises the Option to purchase that parcel of Option Property identified by Parcel ID 20501202, the Option Deposit Credit is \$99,643.50 (i.e., .2013 x \$495,000.00).

\*\*The Option Property Purchase Price Due at Option Property Closing is calculated by multiplying \$2,000,000.00 x Percent of 5.216-Acres. For example, if Buyer exercises the Option to purchase that parcel of Option Property identified by Parcel ID 20501202, the Option Property Purchase Price Due at Option Property Closing is \$402,600.00 (i.e., .2013 x \$2,000,000.00).

**EXHIBIT B**

**[Escrow Agreement from Title Company]**

*(attached hereto)*

**EXHIBIT C**

**[Existing Tenants with Rights to the Real Property]**

None.



**EXHIBIT D**

**[Downtown Overlay District Requirements]**

*(attached hereto)*

**EXHIBIT D-1**

**[Required Plans]**

Site plan

- 1) General building placement and site layout
- 2) Number of housing units (total) and number per each type (studio/1,2,3? bedrooms)
- 3) Square footage detail totals of office or retail on first floor
- 4) Parking plan, number of spaces, 12' min one way isle 24' for two way.
- 5) Standard parking space is 9'x18'
- 6) Loading/unloading area
- 7) Location of dumpsters
- 8) Sidewalk widths
- 9) Square footage detail totals of office or retail on first floor

Landscape Plan

- 1) Street tree locations
- 2) Street light locations
- 3) Parking lot screening (if applicable) and tree islands per code
- 4) Other landscaping as desired

Building elevations and materials

- 1) Architecture material and details on street facing facades as required by applicable requirements
- 2) Design to match overlay and main street, water table, cornice, storefronts, window grids, etc. to the extent commercially practicable
- 3) Any special sign considerations

**EXHIBIT E**

**[Leases Applicable to the Option Property]**

**TO BE CONFIRMED BY SELLER.**

1. Lease Agreement between the Town of Pineville and the United States Post Office, dated \_\_\_\_\_, \_\_, 20\_\_ and relating to Mecklenburg County Tax Parcel Identification Number: \_\_\_\_\_.
  
2. \_\_\_\_\_.

**EXHIBIT F**

**[Requirements and Restrictions]**

**Requirements:**

The retail/commercial component of the Intended Use shall, for a period of ten (10) years following Closing, include at least one (1) restaurant occupying at least 5,000 square feet.

**Restrictions:**

The retail/commercial component of the Intended Use shall not include (or be used for) (i) a barber shop, beauty salon, hair salon (or similar); (ii) store that acquires, sells, trades and/or otherwise deals with antiques and/or vintage items as a material part of its business; and/or (iii) the following uses commonly prohibited in retail centers: pawn shops, adult/sexually explicit businesses, betting/gambling, drug or alcohol counseling or rehabilitation facilities, tattoo and/or piercing shops).