

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT is made and entered into as of the _____ day of _____, 2020 (the “Effective Date”), by and between the **CITY OF DURHAM**, a North Carolina municipal corporation (“City”), and **WEST CHAPEL HILL DEVELOPMENT LLC**, a Delaware limited liability company (“Purchaser”).

STATEMENT OF PURPOSE

City is the owner of an approximately four-acre site located at 505 West Chapel Hill Street. Such real property and the improvements constructed thereon are more particularly described below. Purchaser desires to purchase from City, and City desires to sell and convey to Purchaser such real property and improvements pursuant and subject to the terms and provisions of this Agreement.

In consideration of the mutual promises hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1. **DEFINITIONS AND MEANINGS**

In addition to any other terms whose definitions are fixed and defined by this Agreement, each of the following defined terms, when used in this Agreement with an initial capital letter or initial capital letters, shall have the meaning ascribed thereto by this Article 1:

“A&R Restrictive Covenants” has the meaning set forth in Section 8.2(a)(vii).

“Agreement” means this Purchase and Sale Agreement, together with all exhibits attached hereto.

“Brownfields Program Agreement” or “BPA” has the meaning set forth in North Carolina General Statutes § 130A-310.31(b)(2).

“Brownfields Program Application” means the pending application (including any other related documentation, investigations, reports and materials) to include the Property in the Brownfields Program with the North Carolina Department of Environmental Quality.

“Business Day” means any day of the week other than (i) Saturday and Sunday, (ii) New Year’s Day, Martin Luther King Jr. Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Eve and Christmas Day, or (iii) a day on which banking institutions in Boston, Massachusetts or Durham, North Carolina are closed.

“City Knowledge Party” has the meaning set forth in Section 10.1.

“City’s Response Notice” has the meaning set forth in Section 6.2(b).

“Closing” means the consummation of the purchase and sale contemplated by and pursuant

to this Agreement, including without limitation by the deliveries required under Article 8.

“Closing Date” means [_____] [*Insert date which is thirty (30) days following expiration of the Due Diligence Period*], as such date may be extended in accordance with the express extension provisions of this Agreement.

“Closing Payment” has the meaning set forth in Section 4.1.

“Commitment” has the meaning set forth in Section 6.2(a).

“Confidential Information” shall mean any proprietary or confidential information designated in writing as such by the City concerning the Property, provided to Purchaser by the City or the City’s agents, or otherwise gained through Purchaser’s access to the Property and City’s books and records, excluding information that is available to or obtainable by the general public or from sources other than the City or the City’s agents.

“Contracts” means all (i) development, construction, service, management, leasing, operation, maintenance, repair and other contracts and (ii) leases, licenses and other agreements, in each case affecting the Land or Improvements or any portion thereof, and all amendments and modifications thereto.

“Deed” has the meaning set forth in Section 8.3(a).

“DEQ” has the meaning set forth in Section 13.1.

“Due Diligence Period” means the period commencing on the Effective Date and expiring on [_____] [*Insert date which is 45 days after Effective Date*], as such date may be extended in accordance with the express extension provisions of this Agreement.

“Earnest Money” shall have the meaning set forth in Section 3.1.

“Effective Date” has the meaning set forth in the first paragraph of this Agreement.

“Environmental Law” shall mean any federal, state, local or administrative agency ordinance, law, rule, regulation, order or requirement relating to environmental conditions, human health or Hazardous Substances, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9601 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), the Clean Air Act (42 U.S.C. §7401 et seq.), the Emergency Planning and Community Right-To-Know Act (42 U.S.C. §1101 et seq.), the Endangered Species Act (16 U.S.C. §1531 et seq.), the Toxic Substances Control Act (15 U.S.C. §2601 et seq.), the Occupational Safety and Health Act (29 U.S.C. §651 et seq.) and the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.), and the regulations promulgated pursuant to such laws, all as amended from time to time.

“Environmental Report” has the meaning set forth in Section 10.1(d).

“EPA” means Environmental Protection Agency.

“Escrow Agent” shall mean the Title Company.

“FIRPTA Certificate” has the meaning set forth in Section 8.3(d).

“Hazardous Substances” means any substance which is or contains petroleum (including gasoline, crude oil or any crude oil fraction), waste, trash, garbage, industrial by-product, and chemical or hazardous substances of any nature, including, without limitation, radioactive materials, PCBs, asbestos and asbestos containing materials, in any form, whether friable or nonfriable, pesticides, herbicides, pesticide or herbicide containers, untreated sewage, radon gas, mold, mildew or other biological or carcinogenic agents, industrial process sludge, and any other substance, waste or material now or hereafter identified as a hazardous substance, material or waste in and/or regulated under any Environmental Law.

“Intangible Property” shall mean all of the City’s right, title and interest in all intangible assets relating to the Land or the Improvements, including all of City’s right, title and interest, if any, in all (a) warranties and guaranties relating to the Land or the Improvements, and general contractor warranties issued to the City in connection with the Land or the Improvements, (b) licenses, permits and approvals relating to the Land or the Improvements, (c) contract rights relating to the Land or the Improvements that will be an obligation affecting the Property subsequent to the Closing, and (d) plans and specifications relating to the Land or the Improvements, in each case to the extent that the City may legally transfer the same.

“Improvements” means all improvements and personal property located on the Land.

“Land” means that tract or parcel of land more particularly described on Exhibit A attached hereto, together with all privileges, rights, appurtenances and easements belonging to such land and all right, title and interest (if any) of the City in all mineral rights appurtenant to such land.

“Master Development Plan” has the meaning set forth in the MDA (defined below).

“MDA” means the form of Master Development Agreement attached hereto as Exhibit C.

“Milton Small Building” means the existing building on the Land.

“Monetary Liens” has the meaning set forth Section 6.2(c).

“New Commercial Building” shall have the meaning set forth in the MDA.

“Objection Period” has the meaning set forth in Section 6.2(a).

“Person” shall mean any individual, estate, trust, partnership, limited liability company, limited liability partnership, corporation, governmental agency or other legal entity.

“Permitted Assignee” has the meaning set forth in Section 14.1.

“Permitted Encumbrances” has the meaning set forth in Section 6.1.

“Personal Property” means furniture, equipment, furnishings, supplies, and other tangible personal property owned by City and located in the Milton Small Building on the Effective Date,

but does not include obsolete equipment, debris or other items of no material value.

“Post-Closing Payment” has the meaning set forth in Section 4.1.

“Property” means, collectively, the Real Property and the Intangible Property.

“Purchase Price” has the meaning set forth in Section 4.1.

“Purchaser’s Consultants” has the meaning set forth in Section 5.2.

“Purchaser Parties” has the meaning set forth in Section 5.1.

“Proceeding” has the meaning set forth in Section 10.1.

“Real Property” means, collectively, the Land and the Improvements.

“Reports” has the meaning set forth in Section 10.1(d).

“Restrictive Covenants” means those certain Restrictive Covenants recorded in Book 8988, Page 775, Durham County Registry.

“Survey” has the meaning set forth in Section 6.2(a).

“Taxes” has the meaning set forth in Section 9.2.

“Title Company” means First American Title Insurance Company, Prudential Center, 800 Boylston St., Suite 2820, Boston, Massachusetts 02199, Attention: Jill Sharif.

“Title Objections” has the meaning set forth in Section 6.2(a).

“Termination Notice” has the meaning set forth in Section 5.3.

ARTICLE 2. **GENERAL PROVISION**

2.1 Property to be Purchased. Subject to and in accordance with the terms of this Agreement, City agrees to sell the Property to Purchaser, and Purchaser agrees to purchase the Property from City.

ARTICLE 3. **EARNEST MONEY**

3.1 Deposit of Earnest Money. Within three (3) Business Days following the Effective Date, Purchaser shall deposit Four Hundred Thirty-Seven Thousand Five Hundred Dollars (\$437,500.00) (together with all interest and earnings thereon, the “Earnest Money”) with the Escrow Agent by wire transfer of immediately available funds. The Earnest Money shall be held by the Escrow Agent in a segregated “money market” interest bearing account pursuant to the terms of Article 12 hereof. Any and all interest earned on the Earnest Money shall become part of the Earnest Money. The Earnest Money shall be applied to the Closing Payment portion of the

Purchase Price if the Closing occurs. If the Closing does not occur or if this Agreement otherwise terminates, the Earnest Money shall be disbursed as provided herein.

3.2 Independent Consideration. Notwithstanding anything in this Agreement to the contrary, One Hundred and 00/100 Dollars (\$100.00) of the Earnest Money is delivered to the Title Company as “Independent Contract Consideration”, and the Earnest Money is reduced by the amount of the Independent Contract Consideration so delivered to the City, which amount has been bargained for and agreed to as consideration for the City’s execution and delivery of this Agreement, including Purchaser’s absolute rights to terminate this Agreement as provided herein. The Independent Contract Consideration is independent of any other consideration or payment provided in this Agreement, is nonrefundable, and is fully earned and shall be retained by City notwithstanding any other provision of this Agreement.

ARTICLE 4. **PURCHASE PRICE**

4.1 Amount of Purchase Price. The total purchase price to be paid by Purchaser for the Property is Nine Million Two Hundred Fifty Thousand and No/100 Dollars (\$9,250,000.00) (“Purchase Price”), comprised of (i) a closing installment of Eight Million Seven Hundred Fifty Thousand and No/100 Dollars (\$8,750,000.00) to be paid (a) by application of the Earnest Money as provided in Section 3.1 and (b) the balance at Closing in immediately available funds, subject to prorations and adjustments as provided in this Agreement (the “Closing Payment”), and (ii) a contingent purchase price of Five Hundred Thousand and No/100 Dollars (\$500,000.00) (the “Post-Closing Payment”) which shall be due and payable within five (5) Business Days after Purchaser’s receipt of any building permit for shell construction of the New Commercial Building.

ARTICLE 5. **INSPECTIONS**

5.1 Confidentiality. All Confidential Information will be treated by Purchaser and its affiliates as confidential in accordance with this Section 5.1. Notwithstanding the confidential nature of the Confidential Information, Purchaser shall be permitted to disclose the Confidential Information to Purchaser’s affiliates, employees, attorneys, accountants, lenders, potential lenders, investors, potential investors, and other professionals or agents involved with Purchaser’s investigations of the Property hereunder and/or Purchaser’s determination of the suitability of the Property for Purchaser’s intended use (collectively “Purchaser Parties”), in which event Purchaser will inform any such Purchaser Parties of the confidential nature of the Confidential Information. Subject to the terms of this Section 5.1, except as required by law, Purchaser will not disclose the Confidential Information to anyone other than the Purchaser Parties or on a need-to-know basis. The confidentiality provisions of this Section 5.1 shall not apply to any disclosures made by Purchaser as required by law, by court order, in connection with any subpoena served upon Purchaser, or in connection with Purchaser enforcing its rights under this Agreement. The confidentiality provisions of this Section 5.1 shall survive any termination of this Agreement.

5.2 Inspections in General.

(a) City shall make available to Purchaser copies of property records, plans and specifications, operating and repair records, and such other documents regarding the Property which Purchaser reasonably requests. Purchaser acknowledges and understands that City makes no representation or warranty whatsoever, express or implied, regarding the Property or the accuracy or completeness of any information or documents provided to Purchaser regarding the Property, including, without limitation, regarding any hazards or dangers found at the Property. Purchaser understands and acknowledges that it enters the Property at its own risk.

(b) Purchaser and Purchaser's agents, employees, consultants, inspectors, appraisers, engineers, and contractors (collectively, "Purchaser's Consultants") may enter upon the Property solely for the purpose of performing such investigations, inspections, analyses, surveys, tests, examinations, and studies as Purchaser deems necessary or desirable in connection with Purchaser's acquisition of the Property contemplated hereby. Purchaser's access to the Property under this Section 5.2 shall be subject to the following terms and conditions:

(i) neither Purchaser nor Purchaser's Consultants shall unreasonably disturb or interfere with the use and occupancy of the Property by City. City may from time to time establish reasonable rules of conduct for Purchaser and Purchaser's Consultants in furtherance of the foregoing;

(ii) Purchaser's entry shall only be permitted at a time pre-arranged between Purchaser and City. Purchaser shall not be permitted on the Property without prior written approval from City, which approval shall not be unreasonably withheld; and

(iii) City or its agent reserves the right to be present at the Property during any entry by Purchaser and/or Purchaser's Consultants. Purchaser shall provide Stacey Poston and Jina Propst with no less than 24 hours' notice prior to entry via e-mail transmission to stacey.poston@durhamnc.gov and jina.propst@durhamnc.gov.

(c) Except as otherwise provided herein, Purchaser and Purchaser's Consultants shall not perform any invasive testing on the Property without the prior approval of City, which consent may be granted or withheld in City's sole discretion. City hereby consents to Purchaser conducting Hazardous Substances testing in accordance with the terms of this Section 5.2 within and surrounding the existing Milton Small Building, including without limitation (i) sampling of flooring, pipe insulation, roofing, caulking, and any other suspect materials, and (ii) selective demolition/testing to ensure code compliance and inspect the Milton Small Building's structural, roofing, elevator, and MEP components.

(d) Purchaser shall promptly repair any damage to the Property resulting from the performance of any inspections by Purchaser or Purchaser's Consultants. Any restoration work remaining to be completed after thirty (30) days following any termination of this Agreement prior to Closing may, at the option and in the sole discretion of City, be completed by City after giving Purchaser written notice with a minimum of ten (10) days within which to cure. Purchaser will reimburse City for any reasonable out-of-pocket costs associated with any such restoration work within ten (10) days after written demand from City for such costs, together with supporting invoices. This Section 5.2(d) shall survive the termination of this Agreement.

(e) Purchaser and Purchaser's Consultants shall comply with any federal, state, or local law, regulation, or ordinance applicable to any activity in which they engage while on the Property. Purchaser shall not knowingly employ anyone or any company that may cause any jurisdictional or other dispute at the Property. All work at the Property shall be performed in a good and workmanlike manner in accordance with applicable laws. Purchaser's Consultants shall be reputable consultancy firms duly licensed under applicable state laws, if required.

(f) Each entity that enters the Property pursuant to this Agreement shall maintain, or cause to be maintained, the following insurance: (a) a policy of commercial general liability insurance, with a combined single limit of not less than \$1,000,000 and \$2,000,000 in the aggregate; (b) workers' compensation insurance in statutory limits where the Property is located; (c) employer's liability insurance in an amount not less than \$1,000,000; and (d) automobile liability insurance in an amount not less than \$1,000,000 for each accident. All liability policies shall name City and its agents and contractors as additional insureds, insuring against any injury or damage to persons or property that may result from or be related to such entry and testing, all in such forms as are acceptable to City and underwritten by an insurance company reasonably satisfactory to City. City hereby acknowledges receipt of a certificate or other evidence of such insurance from Purchaser.

(g) All activities performed by Purchaser and Purchaser's Consultants on the Property shall be at Purchaser's sole cost and expense. Purchaser shall not allow such entry or testing to result in liens, judgments, or other encumbrances being recorded against the Property. Nothing contained in this Section 5.2 shall be construed in any way as consenting to allow or authorizing Purchaser to subject the Property or the interest or estate of City to any lien or charge in respect of the work contemplated by this Section 5.2. Purchaser shall immediately discharge of record any such lien, judgment, or other encumbrance at Purchaser's sole cost and expense. This Section 5.2(g) shall survive the termination of this Agreement.

(h) Purchaser shall indemnify, defend, and hold harmless City and City's elected or appointed officials, independent contractors, agents, employees, representatives, consultants, accountants, contractors, and attorneys or other advisors, and any successors or assigns of the foregoing, from and against any and all losses, costs, damages, liens, claims, liabilities, or expenses (including, without limitation, costs and reasonable attorneys' fees), suffered or incurred by City or any indemnified party arising out of or in connection with any violation of, or failure to comply with, the provisions of this Section 5.2 by Purchaser, any activity conducted at the Property by Purchaser or Purchaser's Consultants in connection with this Section 5.2, or the exercise of Purchaser's rights under this Section 5.2, except to the extent such losses, costs, damages, liens, claims, liabilities, are caused by (a) the gross negligence or willful misconduct of any indemnified party or (b) the mere discovery of any pre-existing conditions, including without limitation, hazardous materials, on, at, under or about the Property. In no event shall Purchaser be liable for any consequential, special, or exemplary damages to the extent not covered by Purchaser's insurance. This Section 5.2(h) shall survive the termination of this Agreement.

5.3 Termination During Due Diligence Period. This Agreement shall terminate unless, before the end of the Due Diligence Period, Purchaser gives City written notice (the "Notice to Proceed") that Purchaser, in its absolute and unreviewable discretion, elects to proceed with the

purchase of the Property subject to and in accordance with the terms of this Agreement. Notwithstanding the foregoing, if Purchaser determines, prior to expiration of the Due Diligence Period, not to proceed with the purchase of the Property for any reason or no reason in its sole discretion, then Purchaser shall have the right to terminate this Agreement by delivering to City written notice of termination before the expiration of the Due Diligence Period (such notice, a “Termination Notice”). In the event that either (a) Purchaser gives a Termination Notice before the end of the Due Diligence Period or (b) Purchaser does not give a Termination Notice but fails to deliver a Notice to Proceed before the end of the Due Diligence Period, this Agreement shall automatically terminate, the Earnest Money promptly shall be returned to Purchaser, and City and Purchaser shall have no further obligations or liabilities to each other hereunder other than those which expressly survive termination of this Agreement. If Purchaser delivers a Notice to Proceed before the end of the Due Diligence Period, then, upon expiration of the Due Diligence Period, (i) Purchaser shall be deemed to have waived its rights to terminate this Agreement under the provisions of this Section 5.3, and (ii) the Earnest Money shall be deemed nonrefundable except for the following (in which case the Earnest Money would be refundable to Purchaser): (A) in the event Purchaser elects to terminate this Agreement pursuant to Section 7.3 hereof; (B) City default under this Agreement, or (C) as expressly provided in this Agreement.

5.4 Due Diligence Materials. If Purchaser elects not to proceed with the purchase of the Property for any reason whatsoever, at the written request of City, Purchaser shall deliver to City, without representation or warranty by Purchaser or any right to rely thereon by City, copies of any and all due diligence documentation gathered or created by Purchaser or Purchaser’s Consultants that are in Purchaser’s possession or control that City specified in such written notice. This Section 5.4 shall survive the termination of this Agreement.

ARTICLE 6. **TITLE AND SURVEY**

6.1 Status of the Title. Subject to the terms and provisions of this Agreement, at Closing, City shall deliver fee simple title to the Property free and clear of all liens and encumbrances except for the following (collectively, the “Permitted Encumbrances”):

- (a) Subject to Section 6.2(c), any liens, encumbrances or other title exceptions approved or waived by Purchaser as provided in this Article;
- (b) real property ad valorem taxes, which are a lien but not yet due and payable, if any;
- (c) the MDA (and any recorded notice thereof);
- (d) the Brownfields Program Agreement (if entered into prior to Closing in accordance with Article 13); and
- (e) the A&R Restrictive Covenants.

Notwithstanding anything to the contrary set forth in this Agreement, in no event shall any Monetary Lien constitute a Permitted Encumbrance, and all Monetary Liens shall be paid in full at or before the Closing or out of the proceeds otherwise due to the City.

6.2 Title Review and Cure.

(a) Within five (5) days of the Effective Date, Purchaser shall order a title commitment for an owner's policy of title insurance (the "Commitment") from the Title Company. Purchaser may obtain, at Purchaser's sole cost and expense, a survey of the Property ("Survey"). Promptly after receipt of the Commitment, Purchaser shall furnish (or direct the Title Company to furnish) (without representation or warranty, express or implied) the Commitment, together with copies of all underlying exception documents, to City. Promptly after receipt of any Survey, Purchaser shall furnish a copy (without representation or warranty, express or implied) to City. On or prior to expiration of the Due Diligence Period (the "Objection Period"), Purchaser or Purchaser's attorneys shall deliver to City and/or City's attorneys, written notice of Purchaser's objections (the "Title Objections") to any survey matters, and to any liens, encumbrances, or other title exceptions revealed by the Commitment that do not constitute Permitted Encumbrances. Subject to Section 6.2(c), if Purchaser or Purchaser's attorneys do not deliver any such notice of Title Objections within the Objection Period, Purchaser shall be deemed to have waived its right to object to any liens, encumbrances, or other title exceptions appearing on such Commitment or any and all matters that would be disclosed by a survey of the Property (and the same shall not constitute Title Objections and shall be deemed Permitted Encumbrances); provided, however, Purchaser shall have the right to object by delivery of written notice to City and City's attorneys on or prior to five (5) Business Days after receipt of notice of a new exception or encumbrance (which is not a Permitted Encumbrance, and which was not revealed by the initial Commitment or Survey).

(b) Except for City's obligations with respect to Monetary Liens set forth in Section 6.2(c) below, it is expressly understood that in no event shall City be required to bring any action or institute any proceeding, or to otherwise incur any costs or expenses in order to attempt to eliminate any Title Objections or to otherwise cause title in the Property to be in accordance with the terms of this Agreement on the Closing Date. Within five (5) days of City's receipt of Purchaser's notice of Title Objections, City shall deliver written notice ("City's Response Notice") indicating which, if any, Title Objections City agrees to use commercially reasonable efforts to cure prior to Closing. In the event City's Response Notice indicates that City is unable or unwilling to cure any of the Title Objections, then Purchaser shall have five (5) days to notify City of its intention to either terminate this Agreement or proceed to Closing and accept title to the Property subject to such Title Objections City is unwilling or unable to cure, without any reduction of the Purchase Price or any liability or obligation on the part of City by reason of such Title Objections. In the event Purchaser fails to notify City of its intention to either terminate or close over such Title Objections within five (5) days of receipt of City's Response Notice, then Purchaser shall be deemed to have elected to terminate this Agreement, the Earnest Money promptly shall be returned to Purchaser, and City and Purchaser shall have no further obligations or liabilities to each other hereunder other than those which expressly survive termination of this Agreement. In the event that City elects to cure any Title Objections prior to Closing, City shall use commercially reasonable efforts to cure any such Title Objections. If, at Closing, any Title Objections which City has elected to cure remain uncured and if City failed to use commercially reasonable efforts to cure the same, Purchaser shall have the option to either close over such uncured Title Objections or terminate this Agreement, in which case, the Earnest Money promptly shall be returned to Purchaser, and City and Purchaser shall have no further obligations or liabilities to each other hereunder other than those which expressly survive termination of this Agreement.

(c) Notwithstanding the foregoing, City shall be obligated to remove (a) all security deeds, security interests or mortgages granted or assumed by City, (b) mechanics' liens or material suppliers' liens, and all judgment liens affecting the Property, which were not caused or created by Purchaser or its affiliates or agents, (c) any lien for unpaid taxes, assessments, utility, water, sewer or other governmental charges, and (d) any other lien or encumbrance granted, assumed or suffered by City as security for the repayment of money or other claims made against City (collectively, "Monetary Liens");

(d) In no event shall any lien, encumbrance or other exception to the extent arising as a result of any act or omission of Purchaser, or anyone acting on behalf of Purchaser, be deemed a Title Objection.

ARTICLE 7. **OPERATIONS AND RISK OF LOSS**

7.1 Ongoing Operations. So long as this Agreement remains in force, City shall carry on its business and activities relating to the Property, including management and normal maintenance and repair and capital repairs of the Property, substantially in the same manner as it did before the Effective Date.

7.2 Contracts. After the Effective Date, City will not enter into any Contract that will be an obligation affecting the Property subsequent to the Closing without the Purchaser's prior written consent.

7.3 Damage or Condemnation. Risk of any loss resulting from any condemnation or eminent domain proceeding which is commenced before the Closing, and risk of material loss to the Property due to fire, flood or any other cause before the Closing, shall remain with City. If before the Closing, the Property or any portion thereof shall be materially damaged or destroyed, or if the Property or any material portion thereof shall become the subject of any proceedings, judicial, administrative, or otherwise, with respect to the taking by eminent domain or condemnation, then Purchaser may terminate this Agreement by written notice to City given within ten (10) Business Days after Purchaser's receipt of written notice of the damage or taking, and, subject to the provisions of Section 14.5 of this Agreement, all further rights and obligations of the parties under this Agreement shall terminate and the Purchaser shall promptly receive a refund of the Earnest Money. If the Closing Date is within the aforesaid ten (10) Business Day period, then Closing shall be extended to the next Business Day following the end of said ten (10) Business Day period. If no such election is made by Purchaser, or in the event of a casualty that is not material in nature, this Agreement shall remain in full force and effect and the purchase contemplated herein, less any interest taken by eminent domain or condemnation, shall be effected with no further adjustment, and upon the Closing, City shall assign, transfer and set over to Purchaser all of the right, title and interest of City in and to any awards that have been or that may thereafter be made for such taking, and City shall assign, transfer and set over to Purchaser any insurance proceeds that may have been or thereafter may be made for such damage or destruction except for City's out of pocket cost for pursuing the insurance claim, if any, giving Purchaser a credit at Closing for any deductible under such policies, and City shall provide its insurance company with written notice that City has assigned such proceeds to Purchaser pursuant to this Section 7.3 and cause said insurance company to acknowledge such assignment. For the purposes

of this Section, the phrases “material damage” and “materially damaged” mean damage or impacts either (a) exceeding \$250,000.00 as reasonably determined by City and Purchaser acting in good faith or (b) which causes access to or egress from the Property or parking at the Property to be materially impaired.

7.4 Personal Property. City is not required to remove any debris from the Property, and will not remove any property from the Property without the prior written consent of Purchaser.

7.5 Keys. Prior to or at Closing, City will deliver to Purchaser all keys and lock combinations in City’s possession or control to all locks on the Improvements.

7.6 No Conveyances. During the term of this Agreement, City shall not transfer, convey, assign or encumber all or any portion of the Property.

7.7 Insurance. Throughout the term of this Agreement, City shall maintain all insurance policies relating to the Property as in effect as of the Effective Date.

7.8 Cooperation. During the term of this Agreement, the City shall cooperate with the reasonable requests of the Purchaser, and shall direct its employees to cooperate with the reasonable requests of the Purchaser, to obtain information concerning the Property, provided the City shall have no obligation to incur any expense related thereto. The City shall, at no cost or expense to the City, execute letters of authorization, as needed, to governmental or quasi-governmental authorities permitting the release of information and records relating to the Property to Purchaser.

7.9 No Business Sale; No Assumption of Certain Liabilities. The only transactions contemplated by this Agreement are the sale and purchase of the Property. The City is not selling a business. City agrees that Purchaser has no obligation to assume any obligations to (or regarding the employment of) any individuals previously or currently employed by City or its agents in the management, ownership or operation of the Improvements. Purchaser shall not assume, shall not take subject to nor shall be liable for any liabilities or obligations of any kind or nature, whether absolute, contingent, accrued, known or unknown, (i) to former or current employees of City or its agents, including, without limitation, any liabilities or obligations of City or its agents in connection with any employee benefit plans or collective bargaining agreements, employment agreements or other similar arrangement, any liabilities or obligations with respect to employment arising under any federal, state or municipal statute or common law, or any liabilities or obligations in respect of retiree health benefits or with respect to severance payments or other termination payments owing by City to any of City’s former or current employees or (ii) otherwise with respect to any of the City’s liabilities or obligations to third parties arising before the Closing Date, except to the extent constituting Permitted Encumbrances. The provisions of this Section 7.9 shall survive the Closing.

ARTICLE 8. CLOSING

8.1 Closing. Closing shall take place on or before the Closing Date, or such other date on which City and Purchaser may mutually agree, via escrow funds and fully executed documents. The Closing shall occur through an escrow with the Escrow Agent on terms acceptable to the

parties and customary for similar closings in the State of North Carolina, it being understood that neither Purchaser nor City nor their respective counsel need be physically present at the Closing so long as (i) all documents described in Article 8 or elsewhere herein that are required to be delivered at Closing are fully executed, delivered in escrow, and available on the date of Closing, (ii) any authorized signatory of the affected party is available either in person or by telephone and email at Closing, and (iii) all necessary Closing funds have been wire transferred to the Escrow Agent on or prior to Closing.

8.2 Conditions to the Parties' Obligations to Close. Notwithstanding any other provision of this Agreement to the contrary, the obligation of City, on the one hand, and Purchaser, on the other hand, to consummate the transaction contemplated hereunder is contingent upon the following:

(a) Purchaser's obligation to close the transaction hereunder shall be subject to the timely satisfaction of the following conditions precedent, provided that Purchaser, at its election in its sole discretion, upon written notice delivered to City, may waive all or any of such conditions:

(i) City shall have executed and delivered to Purchaser all of the documents required of City under this Agreement.

(ii) City shall have performed and complied with all of its material covenants, agreements, and obligations under this Agreement.

(iii) All of City's representations and warranties set forth in Article 10 of this Agreement shall be true and correct in all material respects on the Closing Date.

(iv) The Property shall be vacant and not subject to any leases, licenses or other occupancy agreements or Contracts (other than the Permitted Encumbrances) which will be binding on Purchaser or the Property after Closing.

(v) The City and Purchaser shall have entered into the MDA.

(vi) The City and Purchaser shall have agreed upon the Master Development Plan, as defined in the MDA, and Restrictive Covenants.

(vii) The City shall have executed and validly recorded an amendment and restatement of the Restrictive Covenants in the form attached hereto as Exhibit F (the "A&R Restrictive Covenants").

(viii) On the Closing Date, fee simple title to the Property shall be conveyed to Purchaser subject only to the Permitted Encumbrances.

(ix) Provided that Purchaser obtains a title commitment prior to expiration of the Due Diligence Period for an extended coverage owner's title insurance policy on the Property in the amount of the Purchase Price (the "Approved Commitment"), and that Purchaser causes all of Purchaser's

requirements for issuance set forth in the Approved Commitment to be satisfied prior to the Closing Date (but only to the extent within Purchaser's reasonable control), the Title Company shall be irrevocably committed to issuing to Purchaser a Title Policy as contemplated by the Approved Commitment, including the endorsements listed below to the extent required by Purchaser, insuring good and indefeasible fee simple title to the Real Property in Purchaser, subject only to the Permitted Encumbrances (collectively, the "Title Policy"):

- (A) ALTA Endorsement 9.8-06 (Covenants, Conditions, and Restrictions –Land Under Development– Owner's Policy)
- (B) ALTA 25-06 (Same as Survey)
- (C) ALTA 3.2-06 (Zoning – Land Under Development)
- (D) ALTA 8.2-06 (Commercial Environmental Protection Lien)
- (E) ALTA 17-06 (Access and Entry, including indirect access)
- (F) ALTA 18-06 (Single Tax Parcel)
- (G) ALTA 26-06 (Subdivision)
- (H) ALTA 17.2-06 (Utility Access)
- (I) ALTA 9.9-06 (Private Rights),
- (J) ALTA 28.3-06 (Encroachments – Boundaries and Easements Described Improvements and Land Under Development).
- (K) ALTA 39.0-06 (Policy Authentication)
- (L) ALTA 35.3-06 (Mineral Rights Land Under Development)

(x) On the Closing Date, (i) except with respect to a casualty (which shall be addressed as provided in Section 7.3), the Property shall be in substantially the same condition that it was on the Effective Date, reasonable wear and tear excepted; (ii) there shall be no judicial or administrative proceeding pending or threatened concerning the Property that was not disclosed in writing to Purchaser before the expiration of the Due Diligence Period; and (iii) the Property and the use and operation thereof shall comply in all material respects with all applicable legal requirements, except for any noncompliance that existed as of the expiration of the Due Diligence Period. Notwithstanding the foregoing, in the event that (A) the condition set forth in this Section 8.2(a)(x) has not been met by the date which is three (3) Business Days prior to the then scheduled Closing Date and (B) such condition has not been waived by Purchaser in accordance with Section 8.2(a), then City shall have the option, to be exercised (i) no more than one time and (ii) by written notice delivered to Purchaser at least two (2) Business Days prior to the then scheduled Closing, to extend the Closing by up to thirty (30) days to a date set forth in such notice to allow the City, at its sole cost and liability, to cause this condition to be satisfied.

(xi) Between the Effective Date and the Closing Date, there shall not have occurred any spill or release of Hazardous Substances at the Property that has not been fully remediated in accordance with all applicable laws to Purchaser's reasonable satisfaction.

(b) City's obligation to close the transaction hereunder shall be subject to the timely satisfaction of the following conditions precedent, provided that City, at its election in its sole discretion, upon written notice delivered to Purchaser, may waive all or any of such conditions:

(i) Purchaser shall have executed and delivered to City all of the documents required of Purchaser under this Agreement.

(ii) Purchaser shall have performed and complied with all of its material covenants, agreements, and obligations under this Agreement.

(iii) All of Purchaser's representations and warranties set forth in Article 10 of this Agreement shall be true and correct in all material respects on the Closing Date.

(iv) Purchaser shall have delivered to Escrow Agent the balance of the Closing Payment in accordance with this Agreement.

8.3 City's Deliveries in Escrow. On or before the Closing Date, City shall deliver in escrow to the Escrow Agent the following:

(a) Deed. A special warranty deed (the "Deed") in the form of Exhibit B attached hereto, executed and acknowledged by City, conveying fee simple title to the Real Property, subject only to the Permitted Encumbrances.

(b) MDA. The City-executed MDA.

(c) Warranties. A reaffirmation of City's representations and warranties set forth in Section 10.1 herein in the form of Exhibit D attached hereto executed by City.

(d) FIRPTA. A Foreign Investment in Real Property Tax Act affidavit ("FIRPTA Certificate") in the form of Exhibit E attached hereto executed by City.

(e) Assignment and Assumption Agreement. An Assignment and Assumption Agreement in the form of Exhibit G attached hereto executed by City.

(f) Authority. Evidence of the authority of City reasonably acceptable to the Title Company.

(g) A&R Restrictive Covenants. The executed and recorded A&R Restrictive Covenants.

(h) Additional Documents. Any additional documents and affidavits that Escrow Agent or the Title Company may reasonably and customarily require, and in a form reasonably acceptable to City and its counsel, for the proper consummation of the transaction contemplated by this Agreement, including without limitation, the appropriate North Carolina Land Title Association forms of lien waiver affidavits (it being acknowledged that North Carolina Land Title Association forms of lien waiver affidavits

shall be deemed to be reasonably acceptable to City and its counsel) required by the Title Company to issue the Title Policy, and a written confirmation that there are no parties in possession of the Property under unrecorded leases or otherwise.

8.4 Purchaser's Deliveries in Escrow. On or before the Closing Date, Purchaser shall deliver in escrow to the Escrow Agent the following:

(a) Purchase Price. The Purchase Price (payable as set forth in Article 4 hereof), less the Earnest Money that is applied to the Purchase Price, plus or minus applicable prorations, deposited by Purchaser with the Escrow Agent in accordance with Section 9.1 hereof.

(b) MDA. The Purchaser-executed MDA.

(c) Warranties. A reaffirmation of Purchaser's representations and warranties set forth in Section 10.2 herein.

(d) Assignment and Assumption Agreement. An Assignment and Assumption Agreement in the form of Exhibit G attached hereto executed by Purchaser.

(e) Additional Documents. Any additional documents that Escrow Agent or the Title Company may reasonably and customarily require for the proper consummation of the transaction contemplated by this Agreement.

8.5 Closing Statements. At the Closing, City and Purchaser shall deposit with the Escrow Agent executed closing statements consistent with this Agreement.

8.6 Possession. City shall deliver possession of the Property to Purchaser at the Closing, subject only to the Permitted Encumbrances.

8.7 Costs. Each party shall pay the following costs:

(a) Purchaser shall pay the following: (i) its Survey costs, (ii) its search fees and premiums for the Title Policy, (iii) any costs associated with Purchaser's financing, (iv) appraisals, engineering, and other due diligence charges incurred by Purchaser, (v) Escrow Agent's closing fee, (vi) the costs to record the Deed, and (vii) Purchaser's attorneys' fees.

(b) City shall pay the following: (i) recording charges for removing all Monetary Liens, if any, (ii) transfer tax, if any, and (iii) City's attorneys' fees.

(c) Other - All other costs shall be borne as set forth herein, and if not so set forth, then according to local custom.

ARTICLE 9.
PRORATIONS, CONTRACTS, DEPOSITS, COMMISSIONS, AND REPAIRS

9.1 Prorations. The day of Closing shall belong to Purchaser and all prorations hereinafter provided to be made as of the Closing shall each be made as of the end of the day before the Closing Date. In each such proration set forth below, the portion thereof applicable to periods beginning as of Closing shall be credited or charged to Purchaser and the portion thereof applicable to periods ending as of Closing shall be credited or charged to City.

(a) Utilities. Utilities, including water, sewer, electric, and gas, based upon the last reading of meters prior to the Closing, shall be prorated as of the Closing Date. City shall use best efforts to obtain meter readings on the day before the Closing Date, and if such readings are obtained, there shall be no proration of such items. City shall pay the bills therefore for the period to the day preceding the Closing, and Purchaser shall pay the bills therefore for the period subsequent thereto. If the utility company will not issue separate bills, Purchaser will receive a credit against the Purchase Price at Closing for City's portion and will pay the entire bill prior to delinquency after Closing. If City has paid any utilities more than thirty (30) days in advance in the ordinary course of business which cover any period occurring on or after the Closing Date, then Purchaser shall be responsible for the amounts attributable to such post-closing period at Closing.

9.2 Taxes and Assessments. The Property is currently exempt from all ad valorem real property taxes, business improvement district assessments, special/fire district assessments and other governmental fees and assessments (collectively, "Taxes"). All Taxes shall be Purchaser's responsibility from and after Closing.

9.3 Final Adjustment After Closing. In the event that final bills are not available or cannot be issued prior to Closing for any item being prorated under Section 9.1, then Purchaser and City agree to allocate such items as soon as invoices or bills are available, with final adjustment to be made as soon as reasonably possible after the Closing. Payments in connection with the final adjustment shall be due within thirty (30) days of written notice of such final adjustments. This Section 9.3 shall survive the Closing for nine (9) months.

9.4 Utility Deposits. Purchaser shall be responsible for making any deposits required with utility companies in connection with the Closing. City shall be entitled to a return by the utility companies to City of all deposits held by the utility companies in connection with City's period of ownership.

9.5 Brokerage Commissions. City and Purchaser represent and warrant each to the other that it has not described this Agreement or the subject matter hereof and has not otherwise dealt with any real estate broker, sales person, or finder in connection with this transaction. Each party shall indemnify and hold the other party harmless from any damages suffered by such party as a result of a breach of the foregoing representation by the other party. The provisions of this Section 9.5 shall survive Closing.

ARTICLE 10.
REPRESENTATIONS AND WARRANTIES

10.1 City's Representations and Warranties regarding City and Property. As a material inducement to Purchaser to execute this Agreement and consummate this transaction, City represents and warrants to Purchaser that:

(a) Authority. City has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by City at the Closing will be, authorized and properly executed and constitutes, or will constitute, as appropriate, the valid and binding obligation of City, enforceable in accordance with their terms subject to rules of law and principals of equity generally applicable to the enforceability of legal obligations, including without limitation, bankruptcy, reorganization and other debtor relief laws.

(b) Pending Action. There is no action or proceeding pending or, to City's knowledge, threatened against the Property, including condemnation proceedings, or against City which challenges or impairs City's ability to execute or perform its obligations under this Agreement or relating to the Property. City has not (a) made a general assignment for the benefit of creditors, (b) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition of City's creditors, (c) suffered the appointment of a receiver to take possession of all, or substantially all, of City's assets, (d) suffered the attachment or other judicial seizure of all, or substantially all, of City's assets, (e) admitted in writing its inability to pay its debts as they come due or (f) made an offer of settlement, extension or composition to its creditors generally.

(c) Books and Records. All books, records, and other information prepared by City or its property manager and provided to Purchaser by City were prepared by or for City in the ordinary course of its business and are the same books, records, and other information used and relied upon by City in its operation of the Property.

(d) Reports. City has delivered to Purchaser (without representation or warranty, express or implied) true and complete copies of all engineering, geotechnical, environmental, and other similar studies or reports in the possession or control of the City relating to the Property ("Reports"). City has not received any written notice that the Property is in violation of any Environmental Law, except as set forth in that certain Phase I Environmental Site Assessment prepared by Mid-Atlantic Associates, Inc., dated January 10, 2017 and that certain Limited Phase II Site Assessment Report prepared by Mid-Atlantic Associates, Inc., dated June 22, 2017 (collectively, the "Environmental Report").

(e) Violations. To City's knowledge, except as set forth in the Reports, the Property and its use are not in violation of any applicable law, rule, or regulation affecting the Property, including any applicable environmental law or regulation, building or zoning code or ordinance, except for any such matters which have been previously cured by City. Except as set forth in the Environmental Report, to the City's knowledge (1) there are no Hazardous Substances at the Property in violation of any Environmental Law or that

require any remediation or investigation; and (2) there are no underground storage tanks on any portion of the Property.

(f) Conflicts. Neither the execution, delivery or performance of this Agreement (a) conflicts or will conflict with or results or will result in a breach of or constitutes or will constitute a default under (1) any law or any order, writ, injunction or decree of any court or governmental authority or (2) any agreement or instrument to which City is a party or by which it is bound or (b) results in the creation or imposition of any lien, charge or encumbrance upon the Property pursuant to any such agreement or instrument.

(g) Compliance with Law. (1) City has not entered into any commitments or agreements with any governmental authorities or agencies or with any other Person affecting the Property that are not a matter of public record at the registry of deeds for the Property; and (2) except as set forth in the Environmental Report, City has no knowledge of, and has received no written notice requiring the correction of, any condition with respect to the Property, or any part thereof, by reason of any alleged violation of any applicable federal, state, county or municipal law, code, rule or regulation, or stating that any investigation has been commenced or is contemplated regarding any of the same;

(h) Permits. There are not any permits, licenses or entitlements relating to the ownership and operation of the Property except those that have been delivered to Purchaser;

(i) Labor and Materials. All sums payable by reason of any labor or materials furnished with respect to the Property have been, or in the ordinary course of business prior to Closing will be, paid in full, and City has no knowledge of any material disputes in connection therewith;

(j) Contracts. There are no Contracts with respect to the Property that will remain in effect after Closing. Notwithstanding the foregoing, in the event that the Brownfields Program Agreement is entered into prior to Closing, the Brownfields Program Agreement will remain in effect after Closing;

(k) Personal and Intangible Property. To City's knowledge, there is no Personal Property and no Intangible Property;

(l) Warranties. The City is not in possession of any warranties or guaranties issued in connection with the development, construction, operation, maintenance or repair of the Property;

(m) Taxes. The Property is currently exempt from Taxes. No portion of the Property comprises part of a tax parcel which includes property other than property comprising all or a portion of the Property. No application or proceeding is pending with respect to a reduction or an increase of such taxes. There are no tax refund proceedings relating to the Property which are currently pending. Except for taxation as part of the Durham Business Improvement District, there are no special taxes or assessments to be levied against the Property. Except for the potential exclusion related to the potential Brownfields Program Agreement for the Property, and the loss of exemption from Taxes

when the City sells the Property, the City is not aware of any change in the tax assessment of the Property;

(n) Property Rights. City has not granted any option or right of first refusal or first opportunity to any party to acquire any interest in any of the Property. City has not restricted, transferred or conveyed to third parties any development rights and/or air rights affecting the Property;

(o) Required Alterations. City has not received any written notice from any insurance company, insurance rating organization or Board of Fire Underwriters requiring any alterations, improvements or changes at or of the Improvements;

(p) Knowledge. The City Knowledge Party is an employee, agent or representative of City familiar with the ownership and operation of the Property; and

(q) Delivery of Documents. To the City's knowledge, the City has not failed to deliver to Purchaser a true and complete copy of any written report or document in City's possession or control that materially affects the development, ownership, value or use of the Property.

All of the representations and warranties contained in Section 10.1 shall be true and correct in all material respects as of the Closing and shall survive the Closing for one (1) year following the Closing Date. Each such representation and/or warranty shall automatically be null and void and of no further force and effect after the date which is one (1) year following the Closing Date unless, prior to the end of such one (1) year period, Purchaser shall have notified the City in writing of a claim within such one (1) year period and a legal proceeding against City alleging that City was in breach of such representation or warranty when made is commenced within thirty (30) days after such one (1) year period or, to the extent the filing of the same is not reasonably possible as a result of court closures or other restrictions on court activity, within thirty (30) days after such closures or restrictions have been lifted (a "Proceeding").

For the purposes of this Agreement the term "to City's knowledge", and similar terms, shall be limited to the current actual knowledge of the Director of the General Services Department of City (the "City Knowledge Party"), without investigation other than a duty to review City's files and make reasonable inquiry of City's agents (including City's property manager, if any), officers and employees who are familiar with the ownership, and operation of the Property. The knowledge of others shall not be imputed to the City Knowledge Party. No other investigation, review or inquiry of any persons, or other action shall be required of the City Knowledge Party. The parties hereby agree that recourse under this Agreement is limited to City and no claim will be made against the Director of the General Services Department individually or in his/her capacity as the City Knowledge Party.

PURCHASER UNDERSTANDS AND AGREES THAT EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT AND THE CLOSING DOCUMENTS TO BE DELIVERED AT CLOSING, THE PROPERTY (INCLUDING ANY LAND, BUILDINGS, FIXTURES, AND IMPROVEMENTS) IS BEING SOLD AND CONVEYED "AS IS," "WHERE IS," "WITH ALL FAULTS" THAT MAY EXIST AS OF THE DATE HEREOF, AND WITH ANY AND ALL LATENT AND PATENT DEFECTS, WITHOUT ANY EXPRESS OR IMPLIED REPRESENTATION OR

WARRANTY BY CITY EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT; AND PURCHASER IS HEREBY WAIVING ANY IMPLIED COVENANTS. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, AND THE CLOSING DOCUMENTS TO BE DELIVERED AT CLOSING, CITY SPECIFICALLY DISCLAIMS ANY WARRANTIES, WHETHER WRITTEN OR ORAL, INCLUDING WITHOUT LIMITATION, THE WARRANTIES OF HABITABILITY, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, AND ANY OTHER WARRANTIES THAT MIGHT OTHERWISE BE IMPLIED. EXCEPT AS EXPRESSLY STATED HEREIN AND THE CLOSING DOCUMENTS TO BE DELIVERED AT CLOSING, CITY HAS NOT MADE AND DOES NOT HEREBY MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, ITS CONDITION, ITS COMPLIANCE WITH ENVIRONMENTAL LAWS OR OTHER LAWS, INCOME TO BE DERIVED THEREFROM OR EXPENSES TO BE INCURRED WITH RESPECT THERETO, THE OBLIGATIONS, RESPONSIBILITIES, OR LIABILITIES OF THE OWNER THEREOF OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE PROPERTY, AND CITY HEREBY DISCLAIMS AND RENOUNCES ANY OTHER REPRESENTATION OR WARRANTY.

10.2 Purchaser's Representations and Warranties. As a material inducement to City to execute this Agreement and consummate this transaction, Purchaser represents and warrants to City that:

(a) Organization and Authority. Purchaser has been duly organized and validly exists as a limited liability company, in good standing in the State of Delaware, and is (or shall be at Closing) qualified to do business in the state in which the Property is located. Purchaser has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by Purchaser at the Closing will be, authorized and properly executed and constitutes, or will constitute, as appropriate, the valid and binding obligation of Purchaser, enforceable in accordance with their terms.

(b) Conflicts and Pending Action. There is no agreement to which Purchaser is a party or to Purchaser's knowledge binding on Purchaser which is in conflict with this Agreement. There is no action or proceeding pending or, to Purchaser's knowledge, threatened against Purchaser which challenges or impairs Purchaser's ability to execute or perform its obligations under this Agreement.

ARTICLE 11. **DEFAULT AND DAMAGES**

11.1 Default by Purchaser. If the conditions precedent to Purchaser's obligation to close as set forth in this Agreement have been met and Purchaser defaults in the payment of the Purchase Price and such default shall continue for five (5) Business Days after receipt of written notice from the City by Purchaser, City's sole remedy, at law or in equity, by reason thereof shall be to terminate this Agreement and, upon such termination, City shall be entitled to retain the Earnest Money (and any interest earned thereon) as liquidated damages for Purchaser's Closing default hereunder, it being agreed that the damages by reason of Purchaser's default are difficult, if not impossible, to ascertain, and thereafter Purchaser and City shall have no further rights or

obligations under this Agreement except for those that are expressly provided in this Agreement to survive the termination hereof.

11.2 Default by City. If City defaults in any of its obligations to be performed on or before the Closing Date, Purchaser as its sole remedy by reason thereof shall have the right, subject to the other provisions of this Section 11.2, (i) to seek specific performance of City's obligations hereunder (it being expressly acknowledged by Purchaser and City that the remedy of specific performance is an appropriate remedy in the event of a default by City under this Agreement), provided that any action for specific performance must be commenced within ninety (90) days after the Closing Date, or (ii) terminate this Agreement, in which event (A) the Earnest Money shall promptly be returned to Purchaser and (B) in addition, if the default was the result of an intentional act or omission of the City, and the Purchaser has delivered the Notice to Proceed at the time of the default, the City shall additionally promptly reimburse Purchaser's actual third-party out of pocket expenses that Purchaser has incurred in connection with this Agreement, the MDA and the transaction contemplated hereby, up to a total of \$50,000.00, or (iii) in the event City conveys the Property to any person or entity other than Purchaser or its assignee in breach of this Agreement and during the term of this Agreement, then in such event (and only in such event) Purchaser may seek its remedies against City at law or in equity. Upon Purchaser's termination contemplated in clause (ii) above and return and delivery of the Earnest Money, this Agreement shall terminate, and neither party hereto shall have any further obligations hereunder except for those that are expressly provided in this Agreement to survive the termination hereof. If Purchaser brings an action for specific performance, the Earnest Money shall be returned to Purchaser pending the outcome of such action. The provisions of this Section 11.2 shall survive the termination hereof.

ARTICLE 12. **EARNEST MONEY PROVISIONS**

12.1 Investment and Use of Funds. The Escrow Agent shall invest the Earnest Money in segregated government insured interest-bearing accounts reasonably selected by Purchaser, shall not commingle the Earnest Money with any funds of the Escrow Agent or others, and shall promptly provide Purchaser and City with confirmation of the investments made. If the Closing under this Agreement occurs, the Escrow Agent shall apply the Earnest Money against the Purchase Price due City at Closing. Interest earned on the Earnest Money shall become part of the Earnest Money. If requested by Escrow Agent, Purchaser shall furnish the Escrow Agent a W-9 within five (5) Business Days after posting the initial Earnest Money, and interest earned on the Earnest Money if Closing occurs shall be reported by the Escrow Agent to the Internal Revenue Service as earned for the Purchaser's account.

12.2 Disposition of Earnest Money. Escrow Agent shall hold, deal with and dispose of the Earnest Money in accordance with the following terms and conditions:

(a) Escrow Agent shall hold the Earnest Money until: (a) Escrow Agent is in receipt of joint instructions by the City and Purchaser as to the disposition of the Earnest Money or (b) Escrow Agent is in receipt of a written demand (the "Demand") from either the City or Purchaser for the payment of the Earnest Money or any portion thereof.

(i) Upon Escrow Agent's receipt of joint instructions by the City and Purchaser, Escrow Agent shall immediately pay all or such portion of the Earnest Money as is specified in such joint instructions in accordance with such joint instructions.

(ii) Upon receipt of a Demand by Purchaser for the Earnest Money delivered prior to the expiration of the Due Diligence Period, Escrow Agent shall promptly disburse the Earnest Money to Purchaser in accordance with the instructions included with such Demand.

(iii) Upon receipt of any other Demand, Escrow Agent shall within three (3) days notify the other party, enclosing a copy of such Demand. If within ten (10) Business Days after the non-demanding party has received or is deemed to have received such notice of Escrow Agent's receipt of such Demand, Escrow Agent has not received from the non-demanding party its notice of objection to the Demand, then Escrow Agent shall disburse the Earnest Money as requested by the Demand. If within said ten day period Escrow Agent receives from the non-demanding party its notice of objection to the Demand, then Escrow Agent is to continue to hold the Earnest Money until Escrow Agent is in receipt of joint instructions as aforesaid, but after sixty (60) days Escrow Agent may deposit the Earnest Money with a court of competent jurisdiction.

Notwithstanding the foregoing, as escrowee, Escrow Agent is hereby expressly authorized to regard and to comply with and obey any and all orders, judgments or decrees entered or issued by any court, and in case Escrow Agent obeys or complies with any such order, judgment or decree of any court, Escrow Agent shall not be liable to any of the parties hereto or any other person or entity by reason of such compliance, notwithstanding any such order, judgment or decree be entered without jurisdiction or be subsequently reversed, modified, annulled, set aside or vacated.

12.3 Liability of Escrow Agent. The parties acknowledge that the Escrow Agent is acting solely as a stakeholder at their request and for their convenience, that the Escrow Agent shall not be deemed to be the agent of either of the parties, and that the Escrow Agent shall not be liable to either of the parties for any action or omission on its part taken or made in good faith, and not in disregard of this Agreement, but shall be liable for its gross negligence and willful misconduct and for any loss, cost, or expense incurred by City or Purchaser resulting from the Escrow Agent's mistake of law respecting the Escrow Agent's scope or nature of its duties, and with respect to actions or omissions taken or made by the Escrow Agent in bad faith, in disregard of this Agreement, or involving negligence on the part of the Escrow Agent.

ARTICLE 13. **BROWNFIELDS**

13.1 In May 2019, to expedite and facilitate redevelopment of the Property, the City, as the "Prospective Developer" as that term is used under applicable law, applied with the North Carolina Department of Environmental Quality ("DEQ") for the Property to be deemed eligible for the North Carolina Brownfields Program. In August 2019, the Brownfields Program branch at DEQ issued a letter indicating the Property is eligible for the North Carolina Brownfields Program, with the City as the Prospective Developer. Since then, the City has begun negotiating a Brownfields Program Agreement with DEQ and conducted additional environmental

investigations at the Property as required by the Brownfields Program branch at DEQ. The City has also paid to DEQ the initial \$2,000 fee for enrollment of the Property into the Brownfields Program.

13.2 While Purchaser could submit its own eligibility determination as a Prospective Developer for the Brownfields Program to DEQ for the Property, the parties have determined it would be most expedient for the City to: (i) remain the Prospective Developer and complete the requirements necessary through execution of a BPA, with coordination and approval from Purchaser as to all provisions of the BPA (including specifically but without limitation any provisions relating to land use restrictions or ongoing assessment or remediation requirements), and then (ii) promptly assign its rights and obligations under the BPA to Purchaser, pursuant to the remaining provisions of this Section.

13.3 As the Prospective Developer, the City shall in good faith continue negotiating a BPA, preparation of the necessary plat and notice, and meeting any additional requirements of the Brownfields Program branch of DEQ, all subject to (i) availability of funds from, and any limitations with respect to, the City's EPA Brownfields Program grant and (ii) coordination and prior written approval from Purchaser as to all provisions of the BPA (including specifically but without limitation any provisions relating to land use restrictions or ongoing assessment or remediation requirements) and related matters, all in Purchaser's sole discretion. The City will apprise the Brownfields Program branch at DEQ of the pending sale of the Property, and the intention for the City to assign its rights and obligations under a BPA to Purchaser. The City will also keep Purchaser regularly and fully apprised of negotiations over the BPA, providing Purchaser with each draft of such an agreement exchanged with DEQ and arranging for Purchaser's and/or its counsel's or other agent's participation in all meetings with the Brownfields Program branch at DEQ with respect to the BPA.

13.4 The City will not execute a BPA with DEQ without Purchaser's review of the agreement and its prior written consent. Purchaser acknowledges what final remediation or mitigation measures DEQ will require of the Prospective Developer in a BPA are unknown at this point. The City makes no representations regarding what those requirements may be, and whether they will be to Purchaser's satisfaction.

13.5 It is not a condition of Closing that a BPA be entered into.

13.6 If the BPA is executed after Closing, (i) City and Purchaser will promptly execute all documents necessary to make that agreement binding, including any acknowledgement, plat or notice that must be recorded and (ii) City and Purchaser will promptly enter into an Assignment and Assumption Agreement in the form of Exhibit G attached hereto with respect to the BPA only.

13.7 All application fees, consultant's fees payable to Mid-Atlantic Associates, and recording and other administrative costs incurred in completing the process of enrollment of the Property into the Brownfields Program, through execution of a final BPA with DEQ and recording any necessary plat and notice, shall be borne by the City, subject to availability of funds from, and any limitations with respect to, the City's EPA Brownfields Program grant. If Purchaser chooses to retain counsel to review and comment on any drafts of a BPA, that will be at Purchaser's

expense. Also, any environmental investigation or mitigation efforts undertaken at Purchaser's initiative before Closing or execution of a BPA, whichever occurs later, shall be at Purchaser's expense.

13.8 The provisions of this Article 13 will survive Closing.

ARTICLE 14. **MISCELLANEOUS**

14.1 **Parties Bound.** Neither party may assign this Agreement without the prior written consent of the other, and any such prohibited assignment shall be void. No assignment shall relieve the assigning party from any liability hereunder, whether arising before or after such assignment. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the respective legal representatives, successors, assigns, heirs, and devisees of the parties. Notwithstanding the foregoing, Purchaser shall have the right at the Closing, without City's prior written consent but with no less than five (5) Business Days prior written notice to City, to assign its rights and obligations under this Agreement to an affiliate directly or indirectly controlled by or under common control with Purchaser (each, a "Permitted Assignee"), provided that (a) the Permitted Assignee shall assume in writing all of Purchaser's obligations hereunder, and agree to be bound by all of the terms and conditions of this Agreement, pursuant to a customary assignment and assumption agreement, (b) City shall receive at Closing a true and correct copy of such assignment and assumption agreement signed by Purchaser and the Permitted Assignee, and (c) Purchaser shall remain liable jointly and severally with Permitted Assignee for all obligations and indemnifications hereunder notwithstanding such assignment.

14.2 **Headings.** The article and section headings of this Agreement are for convenience only and in no way limit or enlarge the scope or meaning of the language hereof.

14.3 **Invalidity and Waiver.** If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible, the remainder of this Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall not be deemed to be a waiver of such party's right to enforce against the other party the same or any other such term or provision in the future.

14.4 **Governing Law.** This Agreement shall be deemed made in Durham County, North Carolina and shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice in Durham County or a federal district court of competent jurisdiction in North Carolina. This Section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this Section.

14.5 **Survival.** Subject to the terms of Section 10.1, unless otherwise expressly stated in this Agreement, none of the covenants, obligations, representations, and agreements contained in this Agreement shall survive the Closing and the execution and delivery of the Deed required hereunder.

14.6 No Third Party Beneficiary. Except as otherwise expressly provided herein, this Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions, or remedies to any person or entity as a third party beneficiary or otherwise.

14.7 Entirety and Amendments. This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings relating to the purchase and sale of the Property. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

14.8 Time. Time is of the essence of this Agreement.

14.9 Attorneys' Fees. Should either party employ attorneys to enforce any of the provisions hereof, the party against whom any final judgment is entered agrees to pay the prevailing party all reasonable costs, charges, and expenses, including actual attorneys' fees, expended or incurred in connection therewith. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments or position prevailed.

14.10 Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth below. Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) Business Day after deposit with such courier, (b) sent by email, with written confirmation by a nationally recognized overnight courier sent the same day as the email, in which case notice shall be deemed delivered upon transmission of such email, or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. Any notice sent by email or personal delivery and delivered after 6:00 p.m. eastern standard time shall be deemed received on the next Business Day. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of such notice. Any notice to be given by any party hereto may be given by the counsel for such party. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

To City:

City of Durham, General Services Department
101 City Hall Plaza (mailing address)
2011 Fay Street (physical address)
Durham, North Carolina 27701
Attention: Director
Email: jina.propst@durhamnc.gov
Email: stacey.poston@durhamnc.gov

with a copy to:

Poyner Spruill LLP
301 Fayetteville Street, Suite 1900
Raleigh, North Carolina 27601

Attention: Stephanie L. Sanders
Email: ssanders@poynerspruill.com

To Purchaser:
West Chapel Hill Development LLC
c/o The Fallon Company
327 Hillsborough Street
Raleigh, North Carolina 27603
Attention: Zac Vuncannon
Email: zvuncannon@falloncompany.com

with a copy to:
c/o The Fallon Company
One Marina Park Drive
Boston, Massachusetts 02210
Attention: Michael J. Fallon
Email: mfallon@falloncompany.com

with a copy to:
DLA Piper LLP (US)
33 Arch Street, 26th Floor
Boston, Massachusetts 02110-1447
Attention: Brian M. Awe
Email: brian.awe@dlapiper.com

To Escrow
Agent:
First American Title Insurance Company
Prudential Center
800 Boylston St., Suite 2820
Boston, Massachusetts 02199
Attention: Jill Sharif
Email: jsharif@firstam.com

14.11 Construction. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

14.12 Date of Performance. The expiration of any period of time prescribed in this Agreement shall occur at 5:00 p.m. EST of the last day of the period. Should any period of time specified herein end on a Saturday, Sunday, or legal holiday, the period of time shall automatically be extended to 5:00 p.m. EST of the next full Business Day.

14.13 Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. To facilitate execution of this Agreement, the parties may execute and exchange by email counterparts of the signature pages in electronic version or PDF.

14.14 1031 Exchange. City and/or Purchaser may effect a tax-free exchange (each, an “Exchange”) in accordance with Section 1031 of the Internal Revenue Code of 1986, as amended, which Exchange will involve an exchange of another property or properties, and the Property so long as same does not postpone the Closing Date. City and Purchaser agree to accommodate the other party by participating in the Exchange provided that (a) neither Purchaser nor City shall incur any cost, expense, or liability in connection with the other party’s Exchange, (b) City shall hold Purchaser harmless from and against any and all cost, loss, liability, and expenses arising out of or in connection with City’s Exchange, (c) Purchaser shall hold City harmless from and against any and all cost, loss, liability, and expenses arising out of or in connection with Purchaser’s Exchange, and (d) every Exchange is carried out in accordance with all applicable laws, and all documentation concerning the Exchange shall be reasonably satisfactory in all respects to the other party and its respective attorneys, (e) the Exchange does not adversely affect the other party in any material respect, regarding the terms and conditions of the transaction, and (f) the Exchange does not have an adverse effect on title set forth in this Agreement.

14.15 Exclusivity. In consideration for the significant time and expense devoted by Purchaser to its acquisition of the Property, City agrees that, during the term of this Agreement, (a) it will negotiate exclusively with Purchaser or an affiliate thereof, concerning the sale and development of the Property, (b) it will not market the Property for sale or allow any other potential purchaser to inspect or tour the Property, (c) and it has not and will not enter into any agreement to sell the Property to any party other than Purchaser. Notwithstanding anything to the contrary in this Agreement, and in addition to the other rights and remedies of Purchaser set forth in this Agreement, if City breaches its obligations under this Section, Purchaser shall have the right to damages and, at Purchaser’s election, injunctive or other equitable relief. This Section 14.15 shall survive the termination of the Agreement.

14.16 Notice of City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

CITY SIGNATURE PAGE TO
PURCHASE AND SALE AGREEMENT
BY AND BETWEEN
CITY OF DURHAM
AND
WEST CHAPEL HILL DEVELOPMENT LLC

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written below.

CITY:

CITY OF DURHAM, a North Carolina municipal corporation

By: _____

Name: _____

Title: _____

Date: _____

Attest:

_____, City Clerk

preaudit certificate, if applicable _____

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

PURCHASER SIGNATURE PAGE TO
PURCHASE AND SALE AGREEMENT
BY AND BETWEEN
CITY OF DURHAM
AND
WEST CHAPEL HILL DEVELOPMENT LLC

PURCHASER:

WEST CHAPEL HILL DEVELOPMENT LLC, a
Delaware limited liability company

By: Fallon Management Company LLC

By: _____

Name: _____

Title: Manager

Date: _____

[ESCROW AGENT SIGNATURE PAGE FOLLOWS]

Escrow Agent has executed this Agreement in order to confirm that the Escrow Agent shall hold the Earnest Money and the interest earned thereon, in escrow, and shall disburse the Earnest Money, and the interest earned thereon, pursuant to the provisions of Article 12.

ESCROW AGENT:

FIRST AMERICAN TITLE INSURANCE COMPANY

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

Legal Description of Land

Being all that parcel of land situated in the City of Durham, County of Durham, North Carolina, and more particularly described as follows:

BEGINNING at a monument located in the northwest intersection of the boundary lines of Jackson Street and South Duke Street, and running thence North $00^{\circ} 26' 00''$ East a distance of 476.87 feet to a point, which is the southwest intersection of the boundary lines of West Chapel Hill Street and South Duke Street; thence South $89^{\circ} 44' 59''$ West a distance of 365.01 feet to a stake, which is the southeast intersection of the boundary lines of South Gregson Street and West Chapel Hill Street; thence South $03^{\circ} 21' 23''$ West a distance of 199.70 feet to a point; thence South $03^{\circ} 53' 19''$ West a distance of 134.03 feet to a point; thence North $89^{\circ} 39' 55''$ East a distance of 8.89 feet to a point; thence South $03^{\circ} 03' 15''$ West a distance of 131.49 feet to a stake; thence in a southeasterly direction along a curve to the left having a radius of 12 feet and a length of 19.54 feet to a stake; thence North $89^{\circ} 45' 28''$ East a distance of 368.36 feet to a monument, being the point and place of BEGINNING and being approximately 4.10 acres, as shown on that plat and survey entitled "Title Survey for Webb-Wittenberg Ventures" by Ballentine Associates, P.A. and recorded in Plat Book 124, Page 60, Durham County Registry, to which plat reference is made for a more particular description.

The parcel is further identified as 505 W. Chapel Hill Street, Durham, NC 27701, parcel #114577.

This is the same property acquired by the City of Durham in the deed recorded in Book 2273, Page 350, Durham County Registry.

EXHIBIT B

Form of Deed

DEED

Prepared by:
Stephanie L. Sanders
Poyner Spruill LLP (Box 160)
Post Office Box 1801
Raleigh, North Carolina 27602

Revenue Stamps:
Tax PIN:

After Recording, Return to Grantee.

NORTH CAROLINA SPECIAL WARRANTY DEED

Grantor states that the Property does not include the primary residence of Grantor.

**NORTH CAROLINA
DURHAM COUNTY**

THIS SPECIAL WARRANTY DEED is made this ___ day of _____, 20___ by the CITY OF DURHAM, a North Carolina municipal corporation (“**Grantor**”), with a mailing address of 101 City Hall Plaza, Durham, North Carolina 27701, to [_____], a [STATE] [type of company] (“**Grantee**”), with a mailing address of [_____].

WITNESSETH

For and in consideration of \$10.00 cash in hand paid by Grantee to Grantor, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor has and by these presents does grant, bargain, sell, and convey unto Grantee in fee simple, all that certain lot or parcel of land situated in Durham County, North Carolina, which lot or parcel of land is more particularly described as follows (the “**Property**”):

See Exhibit A attached.

TO HAVE AND TO HOLD the Property and all privileges and appurtenances thereto belonging to Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor has done nothing to impair such title as Grantor received, and Grantor will warrant and defend the title as received by Grantor against the lawful claims of all persons claiming by, under, or through Grantor, other than the exceptions described on **Exhibit B** attached hereto and incorporated by reference.

The designation “Grantor”, and “Grantee” as used herein shall include said named parties and their respective heirs, personal representatives, successors, and assigns, and shall include the singular, plural, masculine, feminine, or neuter as required by context.

IN TESTIMONY WHEREOF, the City has caused this Deed to be signed in its name by its City Manager, and attested by its _____ City Clerk and its corporate seal to be affixed, all by order of its City Council.

ATTEST:

CITY OF DURHAM

_____, City Clerk

_____, City Manager

NORTH CAROLINA - DURHAM COUNTY

I, a notary public in and for said county and state, certify that _____ personally appeared before me this day, and acknowledged that she is _____ City Clerk of the City of Durham, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing Deed was signed in its corporate name by its City Manager, _____, sealed with its corporate seal, and attested by herself as its said City Clerk or Deputy City Clerk. This the _____ day of _____, 20__.

My commission expires: _____

Notary Public

**EXHIBIT A
ATTACHED TO DEED
FROM**

[_____]

TO

[_____]

LEGAL DESCRIPTION

**EXHIBIT B
ATTACHED TO DEED
FROM**

[_____]

TO

[_____]

1. Taxes and assessments for the year 20__ and subsequent years, not yet due and payable.

[Insert other Permitted Encumbrances]

EXHIBIT C
MASTER DEVELOPMENT AGREEMENT

[See attached]

EXHIBIT D

Form of Updated Representation Certificate

UPDATED REPRESENTATION CERTIFICATE

Dated as of _____, 20__

The undersigned, as City/Purchaser under that certain Purchase and Sale Agreement (“Purchase Agreement”) dated as of _____, 2020 by and between **CITY OF DURHAM**, a North Carolina municipal corporation (“City”), and **WEST CHAPEL HILL DEVELOPMENT LLC**, a Delaware limited liability company (“Purchaser”), does hereby certify to Purchaser/City as follows:

- (a) The representations and warranties set forth in Section 10.1/Section 10.2 of the Purchase Agreement are hereby reaffirmed and restated as of the date hereof as if set forth herein in their entirety; and

City/Purchaser’s liability hereunder shall be subject to the limitations set forth in the Purchase Agreement.

[The balance of this page is intentionally left blank]

Executed as of the dated first set forth above.

CITY/PURCHASER

By: _____

By: _____

Name: _____

Title: _____

EXHIBIT E

Form of FIRPTA Certificate

CERTIFICATION OF NON-FOREIGN STATUS

To inform [_____, a _____] (“**Transferee**”), that withholding of tax under Section 1445 of the Internal Revenue Code of 1986, as amended (“**Code**”) will not be required upon the transfer of certain real property to the Transferee by [_____] (“**Transferor**”), the undersigned hereby certifies the following on behalf of the Transferor:

1. The Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Code and the Income Tax Regulations promulgated thereunder);
2. The Transferor’s U.S. employer identification number is _____;
and
3. The Transferor’s office address is _____.

The Transferor understands that this Certification may be disclosed to the Internal Revenue Service by the Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

The Transferor understands that the Transferee is relying on this Certification in determining whether withholding is required upon said transfer.

The Transferor hereby agrees to indemnify, defend and hold the Transferee harmless from and against any and all obligations, liabilities, claims, losses, actions, causes of action, rights, demands, damages, costs and expenses of every kind, nature or character whatsoever (including, without limitation, actual attorneys’ fees and costs) incurred by the Transferee as a result of: (i) the Transferor’s failure to pay U.S. Federal income tax which the Transferor is required to pay under applicable U.S. law; or (ii) any false or misleading statement contained herein.

[The balance of this page is intentionally left blank. Signature page follows.]

Under penalty of perjury I declare that I have examined this Certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of the Transferor.

Dated: _____, 20__

TRANSFEROR:

[_____]

By: _____

Name: _____

Its: _____

EXHIBIT F

A&R Restrictive Covenants

[See attached]

EXHIBIT G

Form of Assignment and Assumption Agreement

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Assignment") is executed as of _____, 20____ by and between _____ ("Assignor"), and _____ ("Assignee").

Background

WHEREAS, concurrently herewith Assignor is conveying to Assignee by Special Warranty Deed of even date herewith that certain real property (the "Property") more particularly described on Exhibit A attached hereto and incorporated herein for all purposes; and

WHEREAS, in connection with the conveyance of the Property, Assignor intends to sell, assign and convey unto Assignee the Assigned Properties (defined below).

NOW, THEREFORE, in consideration of the foregoing and Ten and No/100 Dollars (\$10.00) and other good and valuable consideration in hand paid by Assignee to Assignor, the receipt and sufficiency of which are hereby acknowledged and confessed by Assignor, Assignor and Assignee hereby act and agree as follows:

1. **Conveyance**. Assignor does hereby **ASSIGN, TRANSFER, CONVEY, SET OVER** and **DELIVER** to Assignee, its successors and assigns, and Assignee does hereby assume, the following properties (collectively, the "Assigned Properties"):

- (a) All of the Assignor's right, title and interest in all personal property and intangible property relating to the Property or any portion thereof, including all of Assignor's right, title and interest, if any, in all (a) warranties and guaranties relating to the Property or any portion thereof, and general contractor warranties issued to the Assignor in connection with the Property or any portion thereof, (b) licenses, permits and approvals relating to the Property or any portion thereof, (c) contract rights relating to the Property or any portion thereof that will be an obligation affecting the Property subsequent to the Closing, and (d) plans and specifications relating to the Property or any portion thereof, in each case to the extent that the Assignor may legally transfer the same.
- (b) [All of the Assignor's right, title and interest in the Brownfields Program Agreement, as more specifically defined or described in the Purchase and Sale Agreement dated as of [_____] by and between Assignor and Assignee (the "PSA"), and all related materials.]

2. **Counterparts; Governing Law; Successors and Assigns; Authority**. This Assignment may be executed in any number of counterparts, and each counterpart hereof shall be deemed to be an original instrument, but all such counterparts shall constitute but one instrument. This Assignment shall be construed and enforced in accordance with and governed by the internal laws of the State of North Carolina. This Assignment shall bind and inure to the benefit of Assignor and Assignee and their respective successors and assigns. Each of Assignor and Assignee represents and warrants to the other that it is fully empowered and

authorized to execute and deliver this Assignment, and the individuals signing this Assignment each represent and warrant that he or she is fully empowered and authorized to do so.

3. **Further Assurances.** The parties agree to take all such further actions and execute, acknowledge and deliver all such further documents that are reasonably necessary or useful in carrying out the purposes of this Assignment and/or Article 13 of the PSA.

4. **Mutual Indemnification.** Assignor shall indemnify and hold Assignee, its successors and assigns, harmless from and against any and all unpaid balances owed by Assignor and arising and accruing prior to the date hereof with respect to any and all of the Assigned Properties other than the Brownfields Program Agreement, and from and against any and all damages, claims, costs (including reasonable attorney's fees), expenses and causes of action which may arise and accrue from or under the Assigned Properties or any of them other than the Brownfields Program Agreement and that are attributable to periods of time prior to the date hereof, regardless of when same are discovered or asserted. Assignee shall indemnify and hold Assignor harmless from and against any and all unpaid balances owed by Assignee and arising and accruing on or after the date hereof with respect to any and all of the Assigned Properties, and from and against any and all damages, claims, costs (including reasonable attorney's fees), expenses and causes of action which may arise and accrue from or under the Assigned Properties or any of them and that are attributable to periods of time on or after the date hereof (including, without limitation, any claim of violation of the BPA by Purchaser and any claim by DEQ that any further environmental assessment or corrective action is necessary on the Property, regardless of when any condition on or around the property first occurred), regardless of when same are discovered or asserted; provided, however, that the foregoing provisions of this sentence shall not apply to any damages, claims, costs (including reasonable attorney's fees), expenses and causes of action arising from or relating to (i) any material information about the Property that was undisclosed to the North Carolina Department of Environmental Quality Brownfields Program branch in the course of applying for and negotiating the Brownfields Program Agreement (as more specifically defined or described in the PSA) or (ii) failure of Assignor's representations and warranties set forth in the PSA to be true and correct.

[The balance of this page is intentionally left blank]

IN WITNESS WHEREOF, this Assignment is executed as of this ____ day of _____, 20__.

ASSIGNOR:

By: _____
Name: _____
Title: _____

ASSIGNEE:

By: _____
Name: _____
Title: _____

EXHIBIT A

(TO ASSIGNMENT AND ASSUMPTION AGREEMENT)

Property Description