

STATE OF GEORGIA
COUNTY OF FULTON

**RESOLUTION TO APPROVE REAL ESTATE ACQUISITION AGREEMENT
BETWEEN THE CITY OF SANDY SPRINGS, GEORGIA AND SANDY SPRINGS
CITY CENTER, LLC CONCERNING PROPERTY COMMONLY KNOWN AS
SANDY SPRINGS CITY CENTER DEVELOPMENT PROPERTY IN SANDY
SPRINGS, GEORGIA**

WHEREAS, in June 2014, City Council selected a team consisting of Carter & Associates, LLC and Selig Enterprises, Inc. (“Carter/Selig”) to work with the City to develop the residential and retail components of the City Center project (“Project”); and

WHEREAS, to develop the residential and retail components of the Project, Carter/Selig formed Sandy Springs City Center, LLC, a limited liability Company (“Developer”); and

WHEREAS, City Council authorized the City Manager to negotiate an agreement with the Developer to outline the basic terms of the Developer’s interest in and use and operation of the Project; and

WHEREAS, pursuant to City Council’s authorization, the Developer, the City Manager, City consultants and the City Attorney negotiated the basic terms of the Developer’s interest in and use and operation of the Project in the form of a letter of intent/term sheet (“LOI”); and

WHEREAS, the negotiated LOI was approved by City Council on March 3, 2015; and

WHEREAS, the LOI forms the basis for the Real Estate Acquisition Agreement (“Acquisition Agreement”) between the City and the Developer, a copy of which is attached hereto; and

WHEREAS, other agreements described in the LOI and the Acquisition Agreement will be entered into between the City and the Developer subsequent to the adoption of the Acquisition Agreement, including, but not limited to, Parking Agreement, Master Declaration, Master Lease, and Contingent Payment Agreement (collectively the “Additional Agreements”); and

WHEREAS, while the City Manager, City Attorney, and the Developer believe the attached Acquisition Agreement resolves all core issues between the parties, including compensation and transfer of property, and is in substantially final form, some revisions are anticipated as may be agreed by the parties; and

WHEREAS, the City Manager and City Attorney request Council to approve the Acquisition Agreement, subject to such revisions as may be agreed by the parties and approved by the City Manager and City Attorney, enabling the parties to finalize and execute the Acquisition Agreement and move forward with negotiations of the Additional Agreements.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Sandy Springs, Georgia, while in regular session on August 18, 2015, at 6:00 p.m. as follows:

1. The Acquisition Agreement is hereby approved in the form attached to this resolution, subject to such revisions as may be agreed by the parties and approved by the City Manager and City Attorney; and
2. The City Manager is hereby authorized to execute the attached Acquisition Agreement, as may be revised by agreement of the parties and approved by the City Manager and City Attorney; and

**ATTACHMENT TO
RESOLUTION TO APPROVE REAL ESTATE ACQUISITION AGREEMENT
BETWEEN THE CITY OF SANDY SPRINGS, GEORGIA AND SANDY SPRINGS
CITY CENTER, LLC CONCERNING PROPERTY COMMONLY KNOWN AS
SANDY SPRINGS CITY CENTER DEVELOPMENT PROPERTY IN SANDY
SPRINGS, GEORGIA**

ACQUISITION AGREEMENT

RESOLUTION NO. 2015-08-99

3. Following execution of the Acquisition Agreement pursuant to authority given in resolution 2 above, the City Manager and the City Attorney shall report back to Council any changes, additions, or deletions made to the Acquisition Agreement subsequent to adoption of this resolution; and

4. The City Manager and the City Attorney are hereby authorized to enter into negotiations with respect to any and all of the Additional Agreements described in the LOI and the Acquisition Agreement; and

5. The City Manager and the City Attorney shall present such Additional Agreements to City Council, as negotiated, for approval; and

6. The City Manager and the City Attorney are hereby authorized to take any and all other steps which may be necessary to effectuate the intent of this resolution.

RESOLVED this the 18th day of August, 2015.

Approved:


Russell K. Paul, Mayor

Attest:


Michael D. Casey, City Clerk

(Seal)



REAL ESTATE ACQUISITION AGREEMENT

BETWEEN

THE CITY OF SANDY SPRINGS, GEORGIA

AND

SANDY SPRINGS CITY CENTER, LLC

**CONCERNING PROPERTY COMMONLY
KNOWN AS SANDY SPRINGS CITY CENTER
DEVELOPMENT PROPERTY
IN SANDY SPRINGS, GEORGIA**

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REAL ESTATE ACQUISITION AGREEMENT

THIS REAL ESTATE ACQUISITION AGREEMENT (this "Agreement") is entered into as of the Effective Date (defined below) by and between THE CITY OF SANDY SPRINGS, GEORGIA, a public body politic and corporate of the State of Georgia ("City"), and SANDY SPRINGS CITY CENTER, LLC, a Georgia limited liability company ("Developer").

RECITALS

WHEREAS, City is the owner of those tracts of real property located in the City of Sandy Springs, Fulton County, Georgia referred to as the "North Parcel" (as more particularly described herein) and the "South Developer Parcel" (as more particularly described herein), which North Parcel and South Developer Parcel are a part of a mixed-use project to be generally bounded on the north by Johnson Ferry Road, on the east by Roswell Road, on the south by Mount Vernon Highway, and on the west by Sandy Springs Circle, which project shall consist of various retail, entertainment, office, residential, municipal and other uses (collectively referred to as the "City Center Project");

WHEREAS, City intends to sell and Developer intends to purchase the North Parcel and the South Developer Parcel as more particularly set forth herein;

WHEREAS, In addition, Developer wishes to lease from City and City intends to lease to Developer, the Master Lease Property (as more particularly described herein) for further leasing to retail tenants; and

WHEREAS, In connection with the foregoing, the parties wish to set forth their general agreement regarding certain additional documents to be entered into by Developer and City in connection with (i) the construction, maintenance and operation of certain parking facilities to be located within the City Center Project; (ii) certain covenants, conditions, restrictions and easements to be applicable to the City Center Project; and (iii) certain other aspects of the City Center Project.

NOW, THEREFORE, 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

Section 1.1 Definitions. For purposes of this Agreement, capitalized terms not otherwise defined herein have the meanings set forth below:

"Additional Earnest Money Deposit" shall have the meaning set forth in Section 3.2.

"Affiliate" shall mean, with respect to any Person, any other Person directly or indirectly Controlling or Controlled by, or under direct or indirect common Control with, such Person.

"Agreement" shall have the meaning set forth above in the introductory paragraph of this Real Estate Acquisition Agreement.

"Anti-Money Laundering and Anti-Terrorism Laws" shall mean any laws relating to terrorism, money laundering or the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Action of 2001, Public Law 107-56 and Executive Order No. 13224

(Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism).

“Approved Building Plans” shall mean all final plans in connection with Developer’s Project as approved by City and Developer and by any and all applicable governmental agencies or authorities.

“Approved City Improvements Plans” shall mean all final plans for the City Improvements as approved by City and Developer and by any and all applicable governmental agencies or authorities.

“Approved Parking Plans” shall mean all final drawings, plans and specifications in connection with the construction of the Parking Improvements as approved by City and Developer and by any and all applicable governmental agencies or authorities.

“Authority” shall mean the Sandy Springs Public Facilities Authority, a political subdivision of the State of Georgia.

“Business Day” shall mean any day of the week other than (i) Saturday and Sunday, (ii) a day on which banking institutions in Atlanta, Georgia are obligated or authorized by law or executive action to be closed to the transaction of normal banking business, or (iii) a day on which governmental functions in Atlanta, Georgia are interrupted because of extraordinary events such as hurricanes, blizzards, power outages or acts of terrorism.

“Cash Flow” shall mean: (a) net operating income (after expenses) derived from the Property; (b) proceeds of the sale or refinancing of the Property; and (c) other proceeds derived from the Property including, without limitation, proceeds from business interruption, rental interruption and use and occupancy insurance, and income and proceeds from judgments, settlements or other resolutions of disputes with respect to the ownership, management and use of the Property (after deducting therefrom all costs incurred in the adjustment or collection of such amounts and in connection with restoration of any portion of the Property following a loss or casualty thereto).

“City” shall have the meaning set forth above in the introductory paragraph of this Agreement.

“City Center Project” shall have the meaning set forth above in the introductory paragraph of this Agreement.

“City Center Project Property” shall mean the real property upon which the City Center Project is to be located.

“City Improvements” shall mean, collectively, the North Parcel City Improvements and the South Parcel City Improvements.

“City Improvements Completion Bond” shall mean one or more payment and performance bonds covering the City Improvements Construction Contract in form and substance reasonably satisfactory to Developer, with Developer to be named as an obligee thereunder.

“City Improvements Completion Escrow” shall mean that certain escrow into which the City Improvements Escrow Deposit is to be deposited, to be evidenced by the City Improvements Completion Escrow Agreement.

“City Improvements Completion Escrow Agreement” shall mean that certain City Improvements Completion Escrow Agreement to be entered into by Developer and City as a condition precedent to

Closing, governing the development of the City Improvements and the disbursement of funds from the City Improvements Completion Escrow to ensure the full and timely completion of the City Improvements as more particularly described in Section 6.5 below.

“City Improvements Construction Contract” shall mean that certain Contract for Construction of City of Sandy Springs, GA City Center Project dated as of June 30, 2015 by and between City and the City Improvements General Contractor in connection with the completion of the City Improvements as such agreement may be modified from time to time in accordance with this Agreement.

“City Improvements Escrow Deposit” shall mean an amount equal to one hundred ten percent (110%) of that portion of the guaranteed maximum price or lump sum amount under the City Improvements Construction Contract that, as of the Closing Date, is allocated to cause the City Improvements to be Substantially Completed in accordance with the City Improvements Construction Contract, as evidenced by a written statement signed by the City Improvements General Contractor.

“City Improvements General Contractor” shall mean Holder Construction Company, the general contractor retained by City to complete the City Improvements pursuant to the City Improvements Construction Contract, or such other General Contractor as may be retained by the City and approved by the Developer, which approval shall not be unreasonably withheld, delayed or conditioned.

“City Letter of Credit” shall mean a Letter of Credit in an amount equal to one hundred ten percent (110%) of that portion of the guaranteed maximum price or lump sum amount under the City Improvements Construction Contract that, as of the Closing Date, is allocated to cause the City Improvements to be Substantially Completed in accordance with the City Improvements Construction Contract, as evidenced by a written statement signed by the City Improvements General Contractor.

“City Parking Improvements” shall mean, collectively, the parking facilities and related improvements to be located within the City Parking Parcel, which are to be constructed by the City Improvements General Contractor for City, at City’s sole expense, in accordance with the Approved Parking Plans, and which shall be operated by City for public parking in connection with the City Center Project to support Developer’s proposed overbuild of residential and retail development.

“City Parking Parcel” shall mean that rectangular subsurface parcel extending in an easterly to westerly direction across the City Center Project site to be owned by City, upon which the City Parking Improvements are to be constructed.

“City Parties” shall mean the City and its Council Members, officers, employees, contract employees retained for City operations services, agents, representatives, counsel, consultants and managers.

“City Substantial Completion Deadlines” shall mean the various deadlines for City’s Substantial Completion of the various elements of the City Improvements, to be agreed upon by City and Developer as a condition precedent to Closing.

“City’s Surviving Obligations” shall mean, collectively, City’s obligations surviving Closing, which shall include, without limitation those obligations specifically referenced in Sections 5.3, 8.4, 8.5(a), 9.1, 11.5, 11.8 and 11.9 hereof.

“Claim” or Claims” shall have the meaning set forth in Section 5.1(e).

“Claim Cap” shall have the meaning set forth in Section 10.4.

“Closing” shall mean the consummation of the purchase and sale of the Property pursuant to the terms of this Agreement.

“Closing Date” shall mean the earlier of (i) the date ten (10) Business Days after the satisfaction of all of the conditions precedent to Closing set forth herein, and (ii) April 30, 2016.

“Closing Statement” shall have the meaning set forth in Section 8.4(g).

“Code” shall mean the Internal Revenue Code of 1986, and all amendments thereto and all regulations issued thereunder.

“Confidential Information” shall mean (i) any documents, studies, reports, test results, surveys, legal documents, financial information, and other materials and information relating to City, Developer or the Property that constitutes proprietary confidential information and is expressly identified (i.e., marked or logged as confidential) as such by the party delivering the same at the time of delivery, and (ii) any and all offering materials and/or proposals made in connection with a potential sale of the Property (including any proposals involving a price for the Property), whether any of the foregoing are in electronic, pictorial, written or other form. Notwithstanding the foregoing, the following shall not constitute Confidential Information for the purposes of this Agreement: (i) any information known to City or Developer, or which was already in City’s or Developer’s possession, prior to March 28, 2014 (said date being the date of Developer’s RFP response); (ii) any information which is obtained by City or Developer from an outside source that is not a party to this Agreement, provided that such source is not known by City or Developer to be prohibited from so providing the information to City or Developer by a contractual or legal obligation to the other party; (iii) any information which is in the public domain or comes into the public domain other than as a result of any unauthorized disclosure by City or Developer; (iv) any information which is or has been independently developed by City or Developer without violation of this Agreement; and (v) any information which is lawfully required to be disclosed to any governmental authority or pursuant to legal compulsion (including by interrogatories or similar process) or is otherwise required by law to be disclosed (provided that the party being required to disclose shall provide the other party with prompt notice so that it may seek to contest any such required disclosure). In any event, for purposes of this Agreement no information shall be considered Confidential Information as of the date which is two (2) years following the termination of this Agreement.

“Contingent Payment Agreement” shall mean that certain agreement setting forth the calculation and payment terms and conditions relating to the Contingent Payments to be agreed upon by City and Developer as a condition precedent to Closing, as more particularly described in Section 6.8 below.

“Contingent Payments” shall have the meaning set forth in Section 2.3.

“Contracts” shall mean those certain contracts affecting the Land or the Improvements (but specifically excluding copies of any contracts in connection with the City Center Project) listed on Exhibit F attached hereto and by this reference made a part hereof, including in each case all amendments, extensions, modifications and supplements thereto.

“Control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or general partnership, manager, or managing member interests, by contract or otherwise. “Controlling” and “Controlled” shall have correlative meanings. Without limiting the generality of the foregoing, a manager or managing member of a limited liability company shall be deemed to Control such limited liability company, and a general partner of a limited partnership shall be deemed to Control such limited partnership.

“Deed” shall mean a limited warranty deed from City to Developer for the North Parcel and South Developer Parcel to be delivered at Closing substantially in the form attached hereto as Schedule 1.

“Designated City Representative” shall mean John McDonough, City Manager.

“Designated Developer Representatives” shall mean Jerome Hagley, Conor McNally and Jo Ann Chitty.

“Developer” shall have the meaning set forth above in the introductory paragraph of this Agreement.

“Developer Letter of Credit” shall mean a Letter of Credit in an amount equal to one hundred ten percent (110%) of the estimated cost to complete Developer’s financial obligations in connection with the City Improvements Construction Contract as determined pursuant to the South Parking Deck Cost Allocation.

“Developer Parties” shall mean Developer and its officers, employees, agents, representatives, counsel, consultants and managers.

“Developer’s Project” shall mean the residential and commercial project to be developed by Developer on the Land.

“Developer’s Surviving Obligations” shall mean, collectively, Developer’s obligations surviving Closing, which shall include, without limitation those obligations specifically referenced in Sections 2.3, 5.1(e), 5.3, 8.4, 8.5(a), 9.1, 11.5, 11.8, 11.9, 11.16, 11.21 and 11.22 hereof.

“Dollars” and the sign “\$” shall mean the lawful money of the United States of America.

“Due Diligence Materials” shall mean all documents, studies, reports and other information applicable to the Property or any portion thereof and obtained by or made available to Developer or its agents prior to Closing, including, without limitation: title policies, pro-formas or Title Commitments, Title Documents, Surveys, environmental, engineering and soils reports, Plans, building site covenants, contracts, inspection or maintenance reports, permits and approvals.

“Due Diligence Period” shall mean the period commencing on the Effective Date and ending at 5:00 p.m. eastern time on the date that is ninety (90) days from the Effective Date, unless otherwise extended as set forth herein.

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

“Effective Date” shall mean the date underneath the signature of City and Developer on the signature page of this Agreement; provided, however, that if such dates are different, the latest of such dates shall be the Effective Date.

“Entitlements” shall mean Project Zoning, subdivision approvals, site-specific permits and other approvals, permits and consents from applicable federal, state and local governing and regulatory bodies.

“Environmental Laws” shall mean, collectively, any laws, ordinances, statutes, codes, rules, regulations, agreements, judgments, orders, decrees and requirements now or hereafter enacted, promulgated or amended relating to pollution, the protection or regulation of human health, natural resources or the environment, or the emission, discharge, release or threatened release of pollutants,

contaminants, chemicals or industrial, toxic or hazardous substances or waste into the environment (including ambient air, surface water, ground water, land or soil), including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act; the Clean Water Act; the Solid Waste Disposal Act; the Federal Water Pollution Control Act; the Oil Pollution Act; the Federal Clean Air Act; and the Federal Insecticide, Fungicide and Rodenticide Act, each as may be amended from time to time, and including any and all regulations, rules or policies promulgated thereunder.

“Escrow Agent” shall mean Calloway Title and Escrow.

“Existing Exceptions” shall mean: (a) applicable zoning, subdivision, building and other land use laws and regulations; (b) all matters, whether or not of record, that arise by, through or under Developer or its agents, representatives or contractors; (c) the lien of real estate taxes and assessments not yet due and payable, subject to adjustment as provided herein; and (d) all other matters shown on or referenced in the Title Commitment or the Survey as of the date hereof or during the Due Diligence Period.

“Hazardous Materials” shall mean any substance which is or contains: (i) any “hazardous substance” as now or hereafter defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Section 9601 “et seq.”) or any regulations promulgated thereunder; (ii) any “hazardous waste” as now or hereafter defined in the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.) or regulations promulgated thereunder; (iii) any substance regulated by the Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.); (iv) gasoline, diesel fuel or other petroleum hydrocarbons; (v) asbestos and asbestos-containing materials, in any form, whether friable or nonfriable; (vi) polychlorinated biphenyls; (vii) radon gas; (viii) mold, mildew, fungus or other potentially dangerous organisms; (ix) any putrescible or nonputrescible solid, semisolid, liquid or gaseous waste of any type; and (x) any additional substances or materials which are now or hereafter classified or considered to be hazardous or toxic under any Environmental Laws.

“Improvements” shall mean all buildings, structures and other improvements situated upon the Land and any fixtures, systems and facilities located therein.

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

“Intangible Property” shall mean all of City’s right, title and interest, if any, in all intangible assets relating to the Land or Improvements, including all of City’s right, title and interest, if any, in all (a) warranties and guaranties relating to the Property or Improvements, (b) all Permits, and (c) all Intellectual Property.

“Intellectual Property” shall mean all trademarks, service marks, patents, and other similar properties owned or licensed by City.

“Intellectual Property Licensing Agreement” shall mean a non-exclusive license agreement in favor of Developer for the use and enjoyment of the trademarks, service marks, patents and other similar properties owned or licensed by City and used in connection with the City Center Project subject to certain terms and conditions as provided therein.

“Internal Rate of Return” or “IRR” shall mean, as of any given day, the monthly compounded rate at which (a) the present value of all distributions of Cash Flow made by any Person on or before such day, equals (b) the present value of all cash investment made in such Person on or before such day, in each case calculated in accordance with this definition. For all relevant purposes, Internal Rate of Return shall be calculated using the Microsoft Excel XIRR function; provided, however, if such calculation is not

available, City and Developer shall agree in writing upon a mutually acceptable substitute method for making such calculation.

“Land” shall mean the North Parcel and the South Developer Parcel, together with all privileges, rights, easements and appurtenances included in, adjacent to or used in connection therewith.

“Land Price” shall mean an amount payable at closing equal to Twenty Five Thousand Dollars (\$25,000.00) for each residential unit to be developed (with the total number of units not to exceed two hundred ninety five (295)) on the North Parcel and South Developer Parcel based on the Approved Building Plans and for which all Entitlements have been obtained, which amount shall be confirmed by City and Developer pursuant to a written confirmation modifying this Agreement to be executed within three (3) Business Days following the issuance of the Approved Building Plans and receipt of all applicable Entitlements.

“Letter of Credit” shall mean an irrevocable standby letter of credit, in form and substance reasonably satisfactory to the recipient, and issued by a commercial bank organized under the laws of the United States of America which has a Standard & Poors Rating of “A”.

“Master Declaration” shall mean that certain Master Declaration of Covenants, Conditions and Restrictions in governing, among other things, the development, construction, maintenance, use and operation of Sandy Springs City Center, and which shall be agreed upon by City and Developer as a condition precedent to Closing, as more particularly described in Section 6.7 below, and recorded in the Public Records at Closing.

“Master Lease” shall mean that certain master lease between City as lessor and Developer as lessee in connection with the Master Lease Property, to be agreed upon by City and Developer as a condition precedent to Closing, as more particularly described in Section 6.3 below.

“Master Lease Property” shall mean certain space containing approximately 9,460 rentable square feet within the municipal building component of the City Center Project located east of the proposed extension of Blue Stone Road, to be leased to Developer pursuant to the Master Lease and subdivided into retail spaces for further leases to third party tenants. The Master Lease Property shall be improved, at City’s sole cost and expense, to incorporate the Master Lease Property Required Conditions.

“Master Lease Property Required Conditions” shall mean that certain schedule of minimum required Improvements to be made by City to the Master Lease Property as described as Exhibit H1 of the City Improvements Contract. The final construction documents and costs to cause the Master Lease Property Required Conditions to be completed shall be agreed upon by City and Developer as a condition precedent to Closing.

“Material Casualty” shall have the meaning set forth in Section 6.10.

“Memorandum of Restrictions” shall mean that certain Memorandum of Restrictions on Leasing to be dated as of the Closing Date and recorded in the Public Records.

“North Parcel” shall mean the surface and subsurface elevations of the property generally described on Exhibit B and generally depicted on Exhibit A, each attached hereto and incorporated by reference. Within the portions, if any, that the North Parcel is located above the City Parking Parcel, the North Parcel will be an air rights parcel with a lower horizontal boundary located above the City Parking Improvements. The North Parcel shall specifically exclude any portion of the real property owned by Fidelity Bank as of the Effective Date.

“North Parcel City Improvements” shall mean certain improvements to be constructed by the City Improvements General Contractor, as more particularly described at Exhibit H3 of the City Improvements Construction Contract, at City’s sole cost and expense and utilized on or in connection with the North Parcel, which shall include the following: (i) the City Parking Improvements, as and to the extent required to support Developer’s proposed overbuild of residential and retail development on the North Parcel and (ii) certain public right-of-way, public utility and other on-site and off-site improvements, all in accordance with a scope of work and schedule to be agreed upon by City and Developer as a condition precedent to Closing. In addition to the foregoing, the North Parcel City Improvements shall specifically include the cost to construct the stairwell and install the elevator utilized to connect all levels of the cast in place parking deck to street level (which will be for public use), but Developer shall be solely responsible for the cost to extend the stairwell and install the elevator utilized to connect the street level to Developer’s residential Improvements.

“Outparcel” shall mean the property generally described on Exhibit E attached hereto and incorporated by reference and generally depicted on Exhibit A, to be initially owned and developed by City.

“Parking Agreement” shall mean that certain Declaration of Parking and Garage Facilities Easements relating to the construction, maintenance, governance and use of the Parking Improvements to be agreed upon by City and Developer as a condition precedent to Closing, as more particularly described in Section 6.9 below.

“Parking Improvements” shall mean, collectively, the City Parking Improvements, the Shared Parking Improvements and the Private Parking Improvements, each of which shall be governed by the Parking Agreement.

“Parking Price” shall mean an amount payable at closing equal to Nine Thousand Two Hundred Fifty Dollars (\$9,250.00) for each shared residential parking space to be developed within the Shared Parking Improvements based on the Approved Parking Plans and for which all Entitlements have been obtained, which amount shall be confirmed by City and Developer pursuant to a written confirmation modifying this Agreement to be executed within three (3) Business Days following the issuance of the Approved Parking Plans and receipt of all applicable Entitlements.

“Performing Arts Center” shall mean that certain multi-use performing arts facility to be developed as a component of the City Center Project.

“Permits” shall mean all certificates, permits, licenses, variances, rezonings, authorizations and approvals belonging to the Land or pertaining to the ownership or operation thereof.

“Permitted Exceptions” shall have the meaning set forth in Section 4.1(b).

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

“Plans” shall mean, collectively, all infrastructure and building plans, including, but not limited to, the Approved Parking Plans and the Approved Building Plans.

“Private Parking Improvements” shall mean, collectively, the uppermost four (4) levels of the South Parking Deck and related Improvements to be located within the South Parking Parcel and which are to be constructed by the City Improvements General Contractor for Developer at Developer’s sole

expense pursuant to the South Parking Deck Cost Allocation and in accordance with the Approved Parking Plans.

“Project Zoning” shall mean zoning classification MIX (Mixed Use District).

“Property” shall have the meaning set forth in Section 2.1.

“Public Records” shall mean the official real estate records of the Clerk of Superior Court of Fulton County, Georgia.

“Purchase Price” shall mean the sum of the Land Price and the Parking Price.

“Restrictions on Leasing Agreement” shall mean that certain Restrictions on Leasing Agreement in connection with the Outparcel, which agreement shall be agreed upon by City and Developer as a condition precedent to Closing, and which shall grant Developer, among other things, the following commencing on the Effective Date of this Agreement and expiring two (2) years following the issuance of a building permit for the Performing Arts Center: (i) the exclusive right to market the Outparcel for lease on behalf of City for retail development and use; and (ii) the exclusive right to enter into a transaction with City for the sale or lease of any portion of the Outparcel by City for retail development and use, if City elects to enter into any such transaction in its sole and absolute discretion. Such agreement shall further provide that during such two (2) year period, City shall not market the Outparcel or enter into a sale or lease transaction with respect to the Outparcel, for residential use.

“Right of Entry Agreement” shall mean a right of entry agreement, which shall grant Developer and its contractors, subcontractors, and/or agents certain rights to enter portions of other real property owned by City or its Affiliates, for the purpose of locating and storing in certain designated areas, construction materials and items to be utilized by Developer during Developer’s construction of Developer’s Project following Closing.

“Self-Help Remedy” shall mean the right of Developer or Developer’s designees to complete portions of the City Improvements to the extent that such City did not cause such work to be timely completed as more particularly described in Section 6.5(b)(iv) below and to be more particularly described in the City Improvements Completion Escrow Agreement.

“Shared Parking Improvements” shall mean, collectively, the bottom two (2) levels of the South Parking Deck and related Improvements to be located within the South Parking Parcel and which are to be constructed by the City Improvements General Contractor for City, at City’s sole expense, in accordance with the Approved Parking Plans.

“Shared Residential Parking Spaces” shall have the meaning set forth in Section 6.9.

“South City Parcel” shall mean the surface and subsurface elevations of the property generally described on Exhibit C attached hereto and incorporated by reference and generally depicted on Exhibit A, on which a portion of the Parking Improvements is to be constructed.

“South Developer Parcel” shall mean a parcel consisting of land and an air rights parcel above portions of the South City Parcel, which parcel is generally described on Exhibit D attached hereto and incorporated by reference and generally depicted on Exhibit A. The South Developer Parcel will include the portion of the South Parking Parcel within which the Private Parking Improvements are to be constructed, and in such area will be an air rights parcel with a lower horizontal boundary located between the Shared Parking Improvements and the Private Parking Improvement, and, in the areas that

the South Developer Parcel is located above the City Parking Parcel, the South Developer Parcel will be an air rights parcel with a lower horizontal boundary located above the City Parking Improvements.

“South Parcel City Improvements” shall mean certain Improvements to be constructed by the City Improvements General Contractor, as more particularly described at Exhibit H2 of the City Improvements Construction Contract, at City’s sole cost and expense and utilized on or in connection with the South Developer Parcel, which shall include the following: (i) the structural “envelope” to be constructed within the South Parking Parcel and within which the South Parking Deck is to be constructed; (ii) the Shared Parking Improvements; (iii) the City Parking Improvements, as and to the extent required to support Developer’s proposed overbuild of residential development on the South Developer Parcel; (iv) a partial podium above a portion of the City Parking Improvements to support Developer’s proposed overbuild of residential development on the South Developer Parcel; and (v) certain public right-of-way, public utility and other onsite and offsite infrastructure, all in accordance with a scope of work and schedule to be agreed upon by City and Developer as a condition precedent to Closing. In addition to the foregoing, the South Parcel City Improvements shall specifically include the cost to construct one (1) stairwell and install one (1) elevator with a total of three (3) stops utilized to connect the lower levels of the South Parking Deck to street level (which will be for public use), but Developer shall be solely responsible for the cost to construct the stairwells and install the elevators utilized to connect the upper levels of the South Parking Deck to street level. If Developer decides to extend any additional elevator to the subterranean levels other than that described above, this work shall be at Developer’s cost.

“South Parking Deck” shall mean that certain proposed below-ground and above-ground parking facility to be located on the South Parking Parcel upon which the Shared Parking Improvements and Private Parking Improvements are to be constructed. Said South Parking Deck is to be constructed by the City Improvements General Contractor in accordance with the City Improvements General Contract and designed by Developer’s architect, with the cost of such design and construction to be shared by Developer and the City pursuant to the South Deck Parking Deck Cost Allocation.

“South Parking Deck Cost Allocation” shall mean the allocation of the South Parking Deck design and construction costs between City and Developer as set forth herein. City shall be responsible for forty two percent (41.5%) of the total design and construction costs, and Developer shall be responsible for fifty eight percent (58.5%) of the total design and construction costs. Notwithstanding the foregoing, City shall be solely responsible for the payment of the following costs of the design and construction of the South Parking Deck, which shall be deducted from the total costs before making the foregoing cost allocation: (i) the costs to install fire doors to separate the cast in place deck and precast deck; (ii) the increase in cost resulting from an increase in the size of the precast structure to accommodate greater floor height in the cast in place concrete deck; and (iii) the cost to construct the stairwell and install the elevator utilized to connect the lower levels of the South Parking Deck to street level (which will be for public use).

“South Parking Parcel” shall mean that portion of the South City Parcel and the South Developer Parcel upon which the South Parking Deck is to be constructed.

“Substantial Completion” and derivations thereof (e.g., “Substantially Complete” or “Substantially Completed”) shall have the meaning as set forth in the City Improvements Construction Contract.

“Survey” shall mean an ALTA survey of the Land by a licensed surveyor or registered professional engineer mutually acceptable to Developer and City and which shall include, without

limitation, separate legal descriptions for (i) the North Parcel; (ii) the South City Parcel; (iii) the South Developer Parcel and (iv) the Outparcel.

“Title Commitment” shall mean a commitment for title insurance issued by the Title Company to Developer.

“Title Company” shall mean Calloway Title and Escrow.

“Title Documents” shall mean all documents referred to in the Title Commitment.

“Title Objections” shall mean any objections of Developer to any Existing Objections, as set forth in a written notice to City in reasonable detail.

“Utility Deposits” shall mean all deposits made by or on behalf of City with the Persons providing water, sewer, gas, electricity, telephone and other utilities to the Property.

ARTICLE 2 AGREEMENT TO SELL AND PURCHASE; PURCHASE PRICE

Section 2.1 **Agreement to Sell and Purchase.** Subject to the terms and provisions hereof, City agrees to sell and Developer agrees to purchase, upon the terms and conditions hereinafter set forth, the following (collectively, the “Property”):

- (a) the Land;
- (b) the Improvements;
- (c) a non-exclusive right with City, to use and enjoy all assignable Intangible Property in accordance with the terms of this Agreement; and
- (d) a non-exclusive right for purposes of developing the Land, subject to all easements, rights, privileges and appurtenances to the Land.

Section 2.2 **Purchase Price.**

(a) The purchase price for the Property shall be the sum of the Land Price and the Parking Price (the “Purchase Price”) plus the aggregate amount of the Contingent Payments (as defined below).

(b) Subject to the adjustments and apportionments as hereinafter set forth and the payment of the Contingent Payments as set forth in Section 2.3 below, the Purchase Price, net of the Earnest Money Deposit as set forth at Article 3 below, shall be payable in full on the Closing Date in cash by wire transfer of immediately available federal funds to a bank account of Escrow Agent designated by Escrow Agent in writing to Developer prior to the Closing Date, and, as adjusted by prorations and adjustments as herein provided, shall be subsequently payable in full at Closing in cash by wire transfer of immediately available federal funds prior to 2:00 pm (Atlanta, Georgia local time) to a bank account designated by City in writing to Escrow Agent prior to the Closing.

Section 2.3 **Contingent Payments.** In addition to the Purchase Price, after Closing, Developer, or its successor-in-interest, shall be obligated to make additional payments to City upon the occurrence of certain conditions, as more particularly set forth in Section 6.8 below (collectively, the

“Contingent Payments”), which obligation will be more particularly set forth in the Contingent Payment Agreement. The obligation to pay the Contingent Payments shall survive Closing.

ARTICLE 3 EARNEST MONEY DEPOSIT

Section 3.1 **Initial Earnest Money Deposit.** No later than three (3) Business Days following the Effective Date, Developer shall deposit Fifty Thousand Dollars (\$50,000.00) with Escrow Agent (the “Initial Earnest Money Deposit”). The Initial Earnest Money Deposit together with the Additional Earnest Money Deposit and any other additional deposits provided for herein, together with all interest and earnings on all such amounts, shall be referred to herein as the “Earnest Money Deposit”. The Earnest Money Deposit shall be held in a segregated “money market” account pursuant to an escrow agreement consistent with the terms hereof and otherwise reasonably acceptable to City and Developer. The Earnest Money Deposit shall be applied to the Purchase Price if the Closing occurs. In the event that the Closing does not occur by the Closing Date, the Earnest Money Deposit shall be disbursed as provided herein. If Developer fails to timely deliver the Initial Earnest Money Deposit to the Escrow Agent, this Agreement shall, at City’s election, terminate, in which case, except for City’s Surviving Obligations and Developer’s Surviving Obligations, City and Developer shall have no further obligations or liabilities to each other hereunder.

Section 3.2 **Additional Earnest Money Deposit.** No later than two (2) Business Days immediately following the end of the Due Diligence Period, unless this Agreement terminates in accordance with Section 5.2 below, Developer shall deposit an additional One Hundred Thousand Dollars (\$100,000.00) by certified or cashier’s check or immediately available federal funds with the Escrow Agent (the “Additional Earnest Money Deposit”). If Developer fails to timely deliver the Additional Earnest Money Deposit to the Escrow Agent, Developer shall be deemed to have elected to terminate this Agreement at the end of the Due Diligence Period as set forth in Section 5.2(e) below and, except for City’s Surviving Obligations and Developer’s Surviving Obligations, City and Developer shall have no further obligations or liabilities to each other hereunder.

Section 3.3 **Non-Refundability of Earnest Money Deposit.** Following (i) the expiration of the Due Diligence Period; (ii) at such time as all Entitlements, except for and excluding a final building permit, are in place in connection with Developer’s Project; and (iii) at such time as the conditions more particularly described in Article 6 hereof have been satisfied, the Earnest Money Deposit shall be immediately deemed to be non-refundable except in the event of a default by City or as otherwise expressly provided in this Agreement. If Developer is entitled to have the Earnest Money returned to Developer pursuant to any provision of this Agreement, then One Hundred Dollars (\$100.00) of the Earnest Money Deposit shall nevertheless be paid to City as good and sufficient consideration for entering into this Agreement. In addition, City acknowledges that Developer, in evaluating the Property and performing its due diligence investigation of the Property, will devote internal resources and incur expenses, and that such efforts and expenses of Developer also constitute good, valuable and sufficient consideration for this Agreement.

ARTICLE 4 SURVEY AND TITLE COMMITMENT

Section 4.1 **Title and Survey.**

(a) During the first thirty (30) days of the Due Diligence Period: (i) Developer shall cause the Title Company to prepare and furnish the Title Commitment to Developer and City, together with copies of all instruments referred to thereon as exceptions to title; and (ii) the City shall cause a

licensed surveyor or registered professional engineer mutually acceptable to Developer and City to prepare and furnish the Survey to Developer and City, which Survey (and all related Survey certifications) shall be addressed to both Developer and City. City shall deliver two (2) originals of the Survey to Developer promptly upon receipt thereof by City.

(b) Developer shall have the right to examine the Title Commitment and Survey during the Due Diligence Period and determine whether the Existing Exceptions are acceptable to Developer, in its sole and absolute discretion, and to deliver Title Objections to the extent that any Existing Exceptions are not acceptable to Developer. If Developer does not elect to exercise its right to terminate this Agreement at the end of the Due Diligence Period as set forth in Section 5.2(c) below, all of the Existing Exceptions shall become “Permitted Exceptions” and shall be deemed approved and accepted by Developer; provided, however, that City is required to pay and cure any and all monetary matters affecting the Property and any such monetary matters shall not become Permitted Exceptions.

(c) City shall have ten (10) Business Days from its receipt of a notice of the Title Objections to give Developer notice that (i) City elects to use reasonable efforts to cure the Title Objections by the Closing Date, or (ii) City elects not to cause such Title Objections to be removed. If City fails to give Developer written notice of such election before the end of said time, City shall be deemed to have elected not to attempt to cure the Title Objections.

(d) If City elects to use commercially reasonable efforts to cure any one or more of the Title Objections, City shall have until the Closing Date to cause the same to be cured, failing which Developer shall have the option of either accepting the title as it then is or demanding a refund of the Earnest Money Deposit, which shall be promptly returned to Developer and, except for City’s Surviving Obligations and Developer’s Surviving Obligations, Developer and City shall have no further obligations or liabilities under this Agreement. If City elects to use reasonable efforts to cure any one or more Title Objections, City shall use such efforts to cure such Title Objections on or before the Closing Date.

(e) If, after the end of the Due Diligence Period but before the Closing Date, Developer first receives an update of the initial Title Commitment or Survey that discloses matters that were not disclosed in the initial Title Commitment or Survey, Developer shall have the right to notify City of such further Title Objections in reasonable detail; provided, however, that any such notice (together with copies of the applicable updated Title Commitment or title report or Survey) must be provided to City within five (5) Business Days after Developer receives the same (but in no event later than the Closing Date). City shall have until the Closing Date (which will be extended as set forth below) to cause any such further Title Objections to be cured, failing which Developer shall have the option of either accepting the title as it then is or terminating this Agreement and demanding a refund of the Earnest Money Deposit, which shall be promptly returned to Developer; and thereupon, except for those City’s Surviving Obligations and Developer’s Surviving Obligations that survive termination of this Agreement, Developer and City shall have no further obligations or liabilities under this Agreement. If City elects to attempt to cure any such further Title Objections, the Closing Date shall be automatically extended by a reasonable additional time to effect such a cure, but in no event shall the extension exceed thirty (30) days after the previously scheduled Closing Date.

(f) To enable City to make conveyance as herein provided, City may, at the time of Closing, use the Earnest Money Deposit or any portion thereof to clear the title of any or all encumbrances or interests.

(g) Developer shall be entitled to request that the Title Company provide such endorsements to the Developer’s title insurance policy as Developer may reasonably require, provided that (i) such endorsements or amendments shall be at no cost to, and shall impose no additional liability

on, City, (ii) Developer's obligations under this Agreement shall not be conditioned upon its ability to obtain such endorsements and, if Developer is unable to obtain such endorsements, Developer shall nevertheless be obligated to proceed to close the transactions contemplated hereby without reduction of or set off against the Purchase Price, and (iii) the Closing shall not be delayed as a result of Developer's request.

ARTICLE 5 INSPECTION AND DUE DILIGENCE

Section 5.1 Investigations. During the pendency of this Agreement, Developer, personally or through its authorized agent or representative, shall be entitled upon reasonable advance notice to City to enter upon the City Center Project Property during normal business hours and shall have the right to make such investigations, including appraisals, engineering studies, soil tests, environmental studies and underwriting analyses, as Developer deems necessary or advisable, subject to the following limitations:

(a) Developer shall promptly repair any material damage to the City Center Project Property caused by Developer or Developer's agents, employees or representatives in the conduct of its inspections and restore any portion of such property damaged by its inspections to substantially the same condition as existed prior to Developer's first entry on the property pursuant to this Agreement; provided however, Developer shall have no liability or responsibility for any pre-existing conditions affecting the City Center Project Property, except to the extent that the same are exacerbated by the negligent actions of Developer or its representatives.

(b) Developer shall provide and maintain at its expense, and require its contractors and subcontractors to maintain, general commercial liability insurance in accordance with the insurance certificate attached hereto as Schedule 2.

(c) Developer shall promptly pay and discharge on or before the due date any claim or obligation for labor or materials furnished at the direction of Developer, which if not paid or discharged would result in a lien on all or any portion of the City Center Project Property. Specifically, and without limiting the foregoing, if Developer shall cause labor or materials to be furnished to the City Center Project Property, and if a lien arises out of such work or material furnished, then Developer shall promptly cause such lien to be satisfied or bonded over and shall indemnify, defend, and hold harmless City therefor.

(d) Developer shall use reasonable efforts to perform all on-site inspections of the City Center Project Property in an expeditious and efficient manner.

(e) Without City's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned, Developer shall not conduct any Phase II site assessments, soil borings, testing or sampling of any surface or subsurface soils, water or other materials, or other invasive tests on or around the Property.

(f) Developer shall indemnify, hold harmless and defend City from and against any and all claims, causes of action, liabilities, losses, costs, damages and expenses (including reasonable attorneys' fees and expenses and court costs incurred in defending any such claim or in enforcing this indemnity) of whatsoever nature (individually, a "Claim," and collectively, "Claims") that may be incurred by City and arise out of or in connection with the acts or omissions of Developer or any Developer Parties for personal injury or death of persons, loss, destruction or damage to property, or liens or Claims of lien filed against the City Center Project Property. Such Claims shall exclude, however: (i) any Claims to the extent such Claims arise out of the discovery of, or the non-negligent, accidental or

inadvertent actual or threatened release or movement of, any Hazardous Materials resulting from Developer's inspections and other activities (unless the Hazardous Materials are brought onto the City Center Project Property by Developer or Developer's authorized agents, employees, consultants or contractors); or (ii) any Claims to the extent such Claims arise out of or in connection with the acts or omissions of City or any City Parties. The indemnification obligations described in this Section 5.1(e) shall survive the Closing or termination of this Agreement.

Section 5.2 **Due Diligence Period.**

(a) Subject to the provisions of Section 5.1 above, Developer shall have the Due Diligence Period to physically inspect the Property, review the economic data, conduct appraisals, perform examinations of the physical condition of the Property, examine the Property for the presence of Hazardous Materials, and to otherwise conduct such due diligence review of the Property and all records and other materials related thereto as Developer, in its sole and absolute discretion, deems appropriate.

(b) Within three (3) Business Days following the Effective Date, City shall deliver or release to Developer the following items related to the Property from within the past three (3) years, to the extent within City's actual possession and to the extent not previously delivered to Developer:

- (i) All tax bills;
- (ii) Any Plans that have been developed to date regarding public components and infrastructure;
- (iii) All surveys, plats, engineering studies and reports, environmental studies and reports and similar information;
- (iv) All zoning information;
- (v) All utility documents; and
- (vi) Existing title insurance commitments, policies and reports, together with the exception documents relating thereto.

(c) If, between the Effective Date and the end of the Due Diligence Period (as may be extended), Developer shall, for any reason or no reason at all in Developer's sole discretion, determine that it does not wish to purchase the Property, Developer shall be entitled to terminate this Agreement by giving written notice thereof to City prior to the expiration of the Due Diligence Period, and thereupon the Initial Earnest Money Deposit shall be promptly returned to Developer and, except for City's Surviving Obligations and Developer's Surviving Obligations, City and Developer shall have no further obligations or liabilities to each other hereunder. If Developer fails to give such notice prior to the expiration of the Due Diligence Period, it shall conclusively be deemed to have elected to waive its right to terminate this Agreement under this Section 5.2 and Developer shall be obligated to purchase the Property in accordance with the terms hereof.

(d) If Developer does not elect to terminate this Agreement pursuant to this Section 5.2, then, on or before the expiration of the Due Diligence Period, Developer shall deliver to City reasonable evidence of Developer's ability to finance Developer's development of the Property.

Section 5.3 **Confidentiality.**

(a) Developer and City shall hold all Confidential Information in confidence and, prior to the Closing, shall not disclose or permit the disclosure of the Confidential Information to any Person without the other party's prior written consent. Prior to the Closing, Developer and City shall not disclose the Confidential Information to any Person, other than to such of its employees, officers, directors, attorneys, accountants, lenders, investors and clients who have a need to review the Confidential Information on behalf of City or Developer. City and Developer shall use reasonable care to ensure that all Persons to whom they disclose the Confidential Information shall keep the same confidential in accordance with the terms of this Agreement.

(b) If this Agreement is terminated, (i) City and Developer shall promptly return all Confidential Information (or portions thereof requested by the other party) which is in tangible form, including any copies and other embodiments thereof, and (ii) City and Developer shall use reasonable care to destroy all extracts, summaries and compilations thereof and references thereto which are in their notes, databases or other records (regardless of who prepared them) or in the Due Diligence Materials.

(c) City and Developer acknowledge and agree that money damages would not be a sufficient remedy for any breach of this Section 5.3 of this Agreement and that, in addition to all other remedies available at law or in equity, City and Developer shall be entitled to specific performance or injunctive or other equitable relief as a remedy for any breach or potential breach by the other party of this Section 5.3 of this Agreement. Notwithstanding the foregoing, City and Developer will not be in breach of this Section 5.3 if they accidentally disclose Confidential Information which exercising reasonable care, provided that, upon discovery of such disclosure, they attempt to retrieve the Confidential Information and review their practices to attempt to prevent any further accidental disclosures.

(d) The provisions of this Section 5.3 shall survive the termination of this Agreement.

ARTICLE 6 CONDITIONS PRECEDENT; CASUALTY DAMAGE OR CONDEMNATION

Section 6.1 Conditions Precedent to Developer's Obligations.

(a) In addition to any other condition precedent in favor of Developer as may be expressly set forth elsewhere in this Agreement, Developer's obligations under this Agreement are expressly subject to the timely fulfillment of the conditions set forth in this Section 6.1 on or before the Closing Date, or such earlier date as is set forth below. Each condition may be waived in whole or in part only by written notice of such waiver from Developer to City.

(i) City shall have performed and complied in all material respects with all of the terms of this Agreement to be performed and complied with by City prior to or at Closing.

(ii) Subject to Section 7.4(a), on the Closing Date, the representations made by the City, as set forth in Section 7.2, shall be true, complete and accurate, subject to: (1) changes that (y) are caused by the acts or omissions of Developer or its agents or Affiliates; or (z) cannot reasonably be expected, in the aggregate, to have an adverse effect on Developer; and (2) casualty or condemnation (which shall be governed by Section 6.10 and Section 6.11, respectively).

(iii) On the Closing Date, title to the Property shall be conveyed to Developer subject only to the Permitted Exceptions.

(b) Subject to Developer's right to terminate this Agreement prior to the expiration of the Due Diligence Period in accordance with the terms of Section 5.2(c), Developer acknowledges and agrees that its obligation to perform under this Agreement is not contingent upon Developer's ability to obtain consents to assignments of any service contracts or other Contracts or agreements which Developer requests, endorsements to any title insurance to be obtained by Developer or its lender, or financing for acquisition of the Property.

(c) City shall provide reasonable cooperation to Developer as it seeks planning approval from the Sandy Springs City Council, including requested zoning variances in order to obtain Project Zoning. Nothing contained herein shall be deemed to be "contract zoning", nor shall the City (or any officer, agent, department, commission or similar component of the City) be obligated: (a) to approve any rezoning or to grant any other land use approval or any other municipal approval; or (b) to approve any development plan or to issue any building or construction permits for any plan or construction that is not in conformity with applicable law.

(d) City shall use commercially reasonable efforts to conform to any "Master Development Schedule" to be approved by the parties.

(e) The various easements set forth on Exhibit "A" to that certain Limited Warranty Deed from Federated Department Stores, Inc. to Fidelity National Bank dated January 14, 1981, recorded in the Fulton County, Georgia real estate records in Book 790 at Page 18, shall be modified and amended or otherwise addressed to the satisfaction of Developer, and at no cost to Developer, in order to make them consistent with Developer's and City's plans for the development of the Property and the City Center Project.

(f) In addition to any and all other conditions precedent to Closing set forth in this Agreement, Developer's obligations hereunder are expressly contingent on the following additional documents required for Closing being finalized and agreed upon by Developer and City and approved by any and all applicable governmental agencies or authorities: (i) the Parking Agreement; (ii) the Master Declaration; (iii) the Contingent Payment Agreement; (iv) the Master Lease; (v) the City Improvements Completion Escrow Agreement; (vi) the City Improvements Completion Bond; (vii) the Approved Building Plans; (viii) the Approved Parking Plans; (ix) the Approved City Improvements Plans; and (x) the City Improvements Construction Contract, to the extent that it relates to or affects the City Improvements or Developer's Project. Further, Developer and City must have agreed upon the City Substantial Completion Deadlines. Developer and City agree to work together in good faith from and after the Effective Date of this Agreement to negotiate, finalize and agree upon the form of the foregoing additional documents required for Closing.

Section 6.2 **Conditions Precedent to City's Obligations.** In addition to any other condition precedent in favor of City as may be expressly set forth elsewhere in this Agreement, City's obligations under this Agreement are expressly subject to the timely fulfillment of the conditions set forth in this Section 6.2 on or before the Closing Date, or such earlier date as is set forth below. Each condition may be waived in whole or in part only by written notice of such waiver from City to Developer.

(a) Developer shall have performed and complied in all material respects with all of the terms of this Agreement to be performed and complied with by Developer prior to or at Closing.

(b) On the Closing Date, the representations concerning the Developer set forth in Section 7.2 shall be true, complete and accurate subject to changes that: (y) are caused by the acts or omissions of City or its agents or Affiliates; or (z) cannot reasonably be expected, in the aggregate, to have an adverse effect on City.

(c) Developer shall use commercially reasonable efforts to conform to any "Master Development Schedule" to be approved by the parties.

(d) In addition to any and all other conditions precedent to Closing set forth in this Agreement, City's obligations hereunder are expressly contingent on the following additional documents required for Closing being finalized and agreed upon by Developer and City and approved by any and all applicable governmental agencies or authorities: (i) the Parking Agreement; (ii) the Master Declaration; (iii) the Contingent Payment Agreement; (iv) the Master Lease; (v) the City Improvements Completion Escrow Agreement; (vi) the City Improvements Completion Bond; (vii) the Approved Building Plans; (viii) the Approved Parking Plans; and (ix) the Approved City Improvements Plans. Further, Developer and City must have agreed upon the City Substantial Completion Deadlines. Developer and City agree to work together in good faith from and after the Effective Date of this Agreement to negotiate, finalize and agree upon the form of the foregoing additional documents required for Closing.

Section 6.3 Provisions Regarding Master Lease. The Master Lease shall include, without limitation, the following provisions:

(a) The Master Lease shall be for a term of fifty (50) years unless limited by Georgia law.

(b) Initial annual rent for the Master Lease Property will be \$11.38 per rentable square foot.

(c) Rent for the Master Lease will be payable in equal quarterly payments, payable on the first day of each calendar quarter, with the initial payment of rent thereunder to be due and payable upon the earlier to occur of (i) ninety (90) days after the date on which City delivers the Master Lease Property to Developer with the Master Lease Property Required Conditions Substantially Completed, at City's sole cost and expense, (with Developer to be responsible for any remaining build-out at its sole expense), or (ii) the first date upon which any subtenant of the Master Lease Property opens its premises for business.

(d) Rent for the Master Lease Property shall be fixed for a period of five (5) years and shall be re-set at the beginning of the sixth (6th) year of the term of the Master Lease and every fifth (5th) year thereafter, at an amount equal to the rent for the immediately preceding five (5) year term plus ten percent (10%).

(e) City and Developer will negotiate extensions to the Master Lease in accordance with all applicable laws.

(f) City and Developer agree to work together and in good faith to negotiate and continue a financeable long-term Master Lease.

Section 6.4 Additional Conditions Regarding City Improvements. Neither City nor Developer shall be required to complete the Closing unless and until each of the following conditions have been satisfied:

(a) City and Developer shall have entered into the City Improvement Completion Escrow Agreement;

(b) City shall have entered into the City Improvements Construction Contract, a written notice to proceed shall have been issued to the City Improvements General Contractor in

connection with the City Improvements, and said City Improvements General Contractor shall have mobilized onto the South Developer Parcel and North Parcel and shall have commenced construction of the City Improvements, and the City Improvements shall have been completed to a stage that Developer has full access to the North Parcel to commence construction thereon and the remaining construction of the City Improvements will not delay Developer's construction;

(c) Building permits shall have been issued in connection with the proposed development by Developer of the North Parcel and the South Developer Parcel; and

(d) City shall have funded the City Improvements Escrow Deposit and shall deliver the City Improvements Completion Bonds, each in accordance with the City Improvements Completion Escrow Agreement.

(e) Developer shall have delivered the Developer Letter of Credit to City.

Section 6.5 Provisions Regarding Construction of City Improvements and Self-Help.

(a) Developer and City acknowledge that construction of the City Improvements may not be Substantially Completed as of the Closing Date. Between the Effective Date and Closing, City shall, in accordance with the terms of this Agreement, cause the City Improvements General Contractor to diligently prosecute the construction of the City Improvements. City agrees to provide Developer, in electronic format, to the extent available, such construction related plans, drawings, specifications and other information and materials as Developer may reasonably request in connection with the City Improvements.

(b) The City Improvements Completion Escrow Agreement shall include, without limitation the following provisions:

(i) An agreed upon scope of work and schedule for the construction, installation and completion of the City Improvements;

(ii) A provision whereby City shall not initiate or authorize any material changes or change orders to the City Improvements under the City Improvements General Contract that will have an impact on Developer's Project, including, without limitation, parking, civil and retail improvements, without Developer's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned, as well as a provision setting forth the process for obtaining such consent (which shall include, without limitation, a mediation mechanism for resolution of disputes relating thereto in no longer than ten (10) Business Days);

(iii) At Closing, City shall, at its election, either: (A) deposit the City Improvements Escrow Deposit into the City Improvements Completion Escrow; or (B) deliver the City Letter of Credit to Developer. If City deposits the City Improvements Escrow Deposit, such funds shall be available to be drawn upon by City to pay the costs and expenses of the construction and installation of the North Parcel City Improvements and/or the South Parcel City Improvements, or by Developer, in connection with Developer's exercise of the Self-Help Remedy, to pay the costs and expenses of the construction and installation of the North Parcel City Improvements and/or the South Parcel City Improvements, and other costs and expenses incurred (including, without limitation, reasonable attorneys' fees actually incurred) pursuant to a requisition process to be more particularly described in the City Improvements Completion Escrow Agreement. If City delivers the City Letter of Credit, Developer shall be entitled to draw thereon in connection with Developer's exercise of the Self-Help Remedy, to pay the costs and expenses of the construction and installation of the North Parcel City Improvements and/or the

South Parcel City Improvements, and other costs and expenses incurred (including, without limitation, reasonable attorneys' fees actually incurred).

(iv) The Self-Help Remedy, which shall be subject to the following:

1. The work for the North Parcel City Improvements and the South Parcel City Improvements and the payments relating thereto shall be separate and severable, so that the Self-Help Remedy may be exercised independently with respect to either the North Parcel City Improvements or the South Parcel City Improvements.

2. If City fails to cause either the North Parcel City Improvements or the South Parcel City Improvements to be Substantially Completed by the applicable City Substantial Completion Deadline, then Developer shall have the right, but not the obligation, to deliver a written notice to City that it intends to exercise the Self-Help Remedy to perform such work upon not less than fifteen (15) Business Days' notice to City. Such notice shall contain the following heading in bold, full-capitalized, and conspicuous font: "**SANDY SPRINGS CITY CENTER, LLC NOTICE OF INTENTION TO EXERCISE SELF-HELP**" and shall include an explicit statement that such notice is being delivered pursuant to the applicable section of the City Improvements Completion Escrow Agreement.

3. Developer shall utilize the City Improvements General Contractor to the fullest extent possible in connection with its exercise of the Self-Help Remedy and, to the extent that it does not, shall use only such contractors, suppliers, and others to effect such City Improvements as are duly licensed in the State of Georgia and insured and who construct similar improvements in first class projects comparable to the City Improvements to be constructed in the City Center Project.

4. City shall reserve all rights and remedies in the event it objects to Developer's exercise of the Self-Help Remedy.

5. City shall pay any and all costs actually incurred by Developer in good faith in connection with Developer's exercise of said Self-Help Remedy with respect to City's failure to cause either the North Parcel City Improvements or the South Parcel City Improvements, or any of the various elements thereof, to be Substantially Completed by the applicable City Substantial Completion Deadline.

6. Notwithstanding the foregoing, City shall be entitled to an extension of time to Substantially Complete the North Parcel City Improvements and South Parcel City Improvements to coincide with any extension of time to which the City Improvements General Contractor is entitled under the City Improvements General Contract if any of the following events occur: (i) Georgia Power distribution work causes delay to the City Improvements General Contractor's completion of the City Improvements; (ii) governmental authorities (including the fire marshal) fail to approve the City Improvements, or any work therein, due to events not caused by City Parties, the City Improvements General Contractor or its subcontractors; (iii) Developer or its contractor fail to give the City Improvements General Contractor sixty (60) days' access to the City Improvements, without material interference, to complete hardscape, landscape, and roadwork; or (iv) Developer or its contractor causes any other delay to the work of the City Improvements General Contractor or its subcontractors.

(c) City agrees to make Developer an express, intended third-party beneficiary of the City Improvements Construction Contract as it pertains to the City Improvements General Contractor's

obligations and warranties and City's rights pursuant to Section 3.3 of the General Conditions to the City Improvements Construction Contract. However, Developer may only enforce its third-party beneficiary rights with respect to the North Parcel City Improvements and the South Parcel City Improvements. Developer has reviewed and approved the language in (i) Section 16.12 of the City Improvements Construction Contract granting it such third party beneficiary rights and (ii) Section 3.3 of the General Conditions to the City Improvements Construction Contract.

Section 6.6 Provisions Regarding Construction of Private Parking Improvements

(a) Developer shall timely pay to the City Improvements General Contractor, within fifteen (15) days following receipt of a written invoice from City or the City Improvements General Contractor, Developer's allocated share of costs incurred pursuant to the City Improvements Construction Contract, calculated in accordance with the South Parking Deck Cost Allocation.

(b) If Developer fails to timely make any such payment, then City shall have the right, but not the obligation, to deliver a written notice to Developer that it intends to draw upon the Developer Letter of Credit to fund such amount upon not less than five (5) Business Days' notice to Developer. Such notice shall contain the following heading in bold, full-capitalized, and conspicuous font: "**SANDY SPRINGS NOTICE OF INTENTION TO DRAW UPON DEVELOPER LETTER OF CREDIT**" and shall include detailed information regarding the amount of Developer's payment obligations owing to the City Improvements General Contractor.

(c) If, following the expiration of such five (5) Business Day period, Developer has not funded the amount owing to the City Improvements General Contractor, City may draw upon the Developer's Letter of Credit in such amount.

(d) Developer shall pay any and all reasonable costs actually incurred by City in connection with any draw upon the Developer Letter of Credit.

(e) In the event of a change order or other event which modifies the South Parking Deck Cost Allocation or otherwise result in an increase in payments owing to the City Improvements General Contractor, the City may, in its sole discretion, require Developer to deliver an amendment to the Developer Letter of Credit or a replacement Developer Letter of Credit so that the amount of the Developer Letter of Credit equals Developer's remaining obligations under the City Improvements Construction Contract.

(f) Developer shall have the right, from time to time, to reduce the face amount of the Developer Letter of Credit by one hundred ten percent (110%) of the amounts actually paid by Developer on account of Developer's allocated share of costs incurred pursuant to the City Improvements Construction Contract, calculated in accordance with the South Parking Deck Cost Allocation. The Developer Letter of Credit shall be returned to Developer upon the satisfaction of all financial obligations owing by Developer to the City Improvements General Contractor as evidenced by an unconditional written statement from the City Improvements General Contractor satisfactory to City evidencing such satisfaction of financial obligations.

(g) During the Due Diligence Period, the parties will undertake to agree upon a mechanism to address, to the mutual satisfaction of City and Developer, the risk to City of the commencement of construction of the South Parking Deck prior to Closing and Developer's requirement that it be assured of Closing before it becomes obligated for the payment of its allocated share of costs in accordance with the South Parking Deck Cost Allocation.

Section 6.7 Provisions Regarding Master Declaration. The Master Declaration shall be recorded in the Public Records on or before the Closing Date. The terms of the Master Declaration shall be in form and substance satisfactory to Developer in its reasonable business judgment and will provide, among other things, for certain required restrictions and easements necessary for the development, construction, use, operation and maintenance of the City Center Project as follows:

(a) A service access drive easement through the City Parking Improvements to service the Master Lease Property. City will construct and perpetually maintain said service access drive through contributions by retail lessees through a common area maintenance charge, and will retain the ongoing right to utilize said service access drive.

(b) Easements between the North Parcel, South Developer Parcel, South City Parcel, City Parking Parcel and/or other parcels located within the City Center Project including, without limitation, easements for the construction, maintenance and use of the elevator, stairs, ramps, sidewalks, paths and roadways to be utilized for ingress and egress purposes.

(c) Maintenance, utility, slope control and drainage cross-easements.

(d) Temporary construction and storage easements.

(e) Sign/pylon easements.

(f) Use restrictions for the City Center Project, with Developer to deliver to City written notice, not less than ten (10) days prior to the execution of any lease, identifying the proposed tenant .

(g) Protections for exclusive retail uses.

(h) Approval rights, in favor of both City and Developer, over material changes in building designs.

(i) Crane easements to allow for construction cranes erected by or for the benefit of Developer to swing their booms over adjacent portions of the City Center Project. The crane locations shall be carefully selected by Developer in order to mitigate the impact on surrounding property. Such easements shall additionally provide for an indemnity by Developer for any claims arising in connection therewith, and Developer shall provide or shall cause to be provided a certificate of liability insurance with terms, conditions and deductibles reasonably satisfactory to City.

Section 6.8 Provisions Regarding Contingent Payment Agreement. The Contingent Payment Agreement shall be entered into by the City and Developer at Closing, shall be in form and substance mutually satisfactory to City and Developer, and shall govern the payment of any Contingent Payments owing to City. Said Contingent Payment Agreement shall provide, in part, for the payment by Developer, or its successor-in-interest, of certain distributions of Cash Flow to City based upon the achievement by Developer of certain Developer IRR as follows:

(a) When Developer IRR exceeds twenty percent (20%) but does not exceed twenty five percent (25%), the City will receive ten percent (10%) of all distributed Cash Flow.

(b) When Developer IRR exceeds twenty five percent (25%), the City will receive fifteen percent (15%) of all distributed Cash Flow.

Any such Contingent Payments to the City shall be made not later than March 31 of each calendar year for the immediately preceding calendar year.

Section 6.9 Provisions Regarding Parking Agreement. The Parking Agreement will govern both the residential and retail parking spaces located within the City Parking Improvements, the Shared Parking Improvements, the Private Parking Improvements and the various valet parking drop offs. It shall be in form and substance satisfactory to City and Developer and will include, among other things, the following provisions:

(a) Term: The rights and easements under the Parking Agreement appurtenant to the Property will be perpetual. The rights and easements under the Parking Agreement appurtenant to the Master Lease Property will continue for the term of the Master Lease.

(b) Residential Parking Spaces:

(i) The Parking Agreement will grant to Developer a non-exclusive easement for the use of up to two hundred nine (209) parking spaces in the Shared Parking Improvements, in the locations depicted on Exhibit G attached hereto and incorporated by reference (collectively, the “Shared Residential Parking Spaces”). No fee or charge shall be payable for the use and occupancy of the Shared Residential Parking Spaces other than the amount payable by Developer to the City therefor as set forth above.

(ii) Developer acknowledges that other users will also be utilizing the Shared Parking Improvements. The Parking Agreement will include a provision whereby the portion of the Shared Parking Improvements in which the Shared Residential Parking Spaces are located will be secured by access control equipment for residential tenants at all times other than regular office hours (Monday through Thursday from 5:30 pm until 7:00 am the next morning and from 5:30 pm on Friday until 7:00 am on Monday). The City may, in its discretion, secure the portion of the Shared Parking Improvements in which the Shared Residential Parking Spaces are located at other times. Any person already parked in the Shared Residential Parking Spaces who does not have an access card will be permitted to leave the Shared Residential Parking Spaces at any time (e.g., retail patrons or park goers). The City shall have the right to require all residential tenants to park in the Shared Residential Parking Spaces at all times. The City will manage parking of non-resident vehicles in order to ensure that residents with access cards are accommodated in the Shared Residential Parking Spaces overnight. Additionally, the City shall be permitted to open the access control facilities for a reasonable period of time following a major event at or within the City Center Project in order to facilitate the orderly egress of vehicles from the Shared Residential Parking Spaces. The cost of the installation of the access control equipment for the Shared Residential Parking Spaces will be borne by Developer.

(c) Transient Retail Parking:

(i) The Parking Agreement will grant to Developer a non-exclusive easement for the use of parking spaces in the City Parking Improvements by employees and patrons of the retail component of the City Center Project. Subject to the parking concessions for the retail component of the City Center Project described below, the City may, at its election, establish and maintain hourly rates for transient parking for visitors of the public components of the City Center Project; provided, however, that in no event shall the parking charges for employees and patrons of the retail component of the City Center Project be greater or otherwise less favorably imposed than those applicable to any other public users of the City Parking Improvements

(ii) The City commits to maintaining transient parking for at least one hundred eighty (180) vehicles in the City Parking Improvements (on a non-reserved basis) which will be publicly offered and available for employees and patrons of the retail component of the City Center Project. Notwithstanding that the City may elect to establish and maintain hourly rates for transient parking for visitors of the public components of the City Center Project: (i) all parking charges for employees and patrons of the retail component of the City Center Project shall be waived for five (5) years; and (ii) thereafter, patrons of the retail component of the City Center Project shall be entitled to two (2) hours of free parking, provided that, if at any time an appropriate study of the parking arrangements for comparable retail projects within a one-half (1/2) mile radius of the City Center Project discloses that a substantial majority of such projects provide to retail patrons less than two hours free parking, the City will have the option to reduce or eliminate the two (2) hours of free parking for patrons of the retail component of the City Center Project consistent with the parking arrangements provided by such comparable projects.

(iii) Developer and the City shall work together in good faith to incorporate a validation system to implement the provisions of the immediately preceding sentence.

(d) Valet Parking. The Parking Agreement will provide for the operation by Developer of valet parking facilities for the retail component of the City Center Project.

Section 6.10 Casualty; Risk of Loss. In the event that, after the end of the Due Diligence Period, all or a material portion of the Property should be damaged or destroyed by fire or other casualty prior to Closing (any such casualty, a "Material Casualty"), Developer may, at Developer's sole option, by written notice to City delivered within ten (10) Business Days of receiving written notice from City of such event, elect either to:

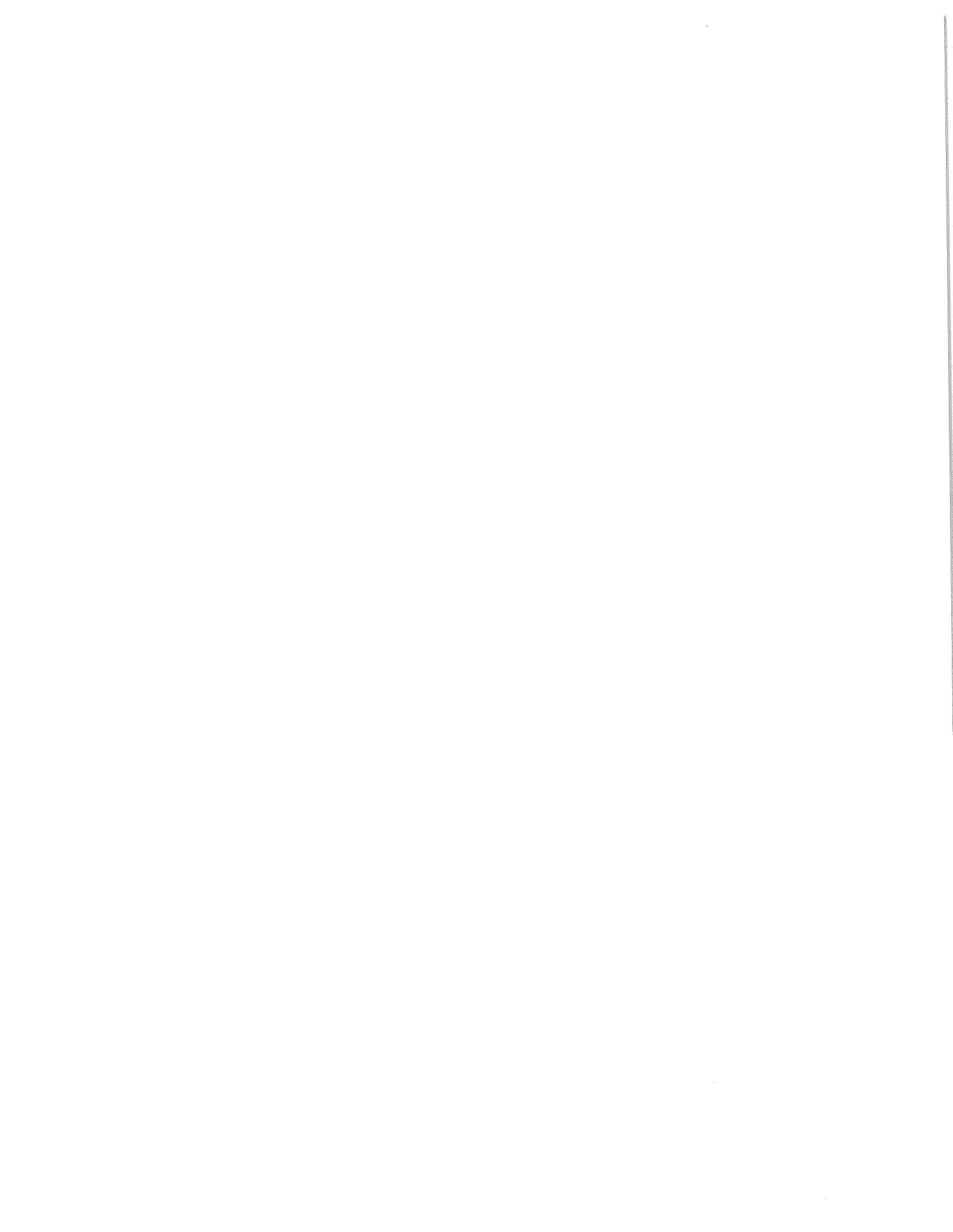
(a) terminate this Agreement and promptly receive a refund of the Earnest Money Deposit, whereupon, except for those City's Surviving Obligations and Developer's Surviving Obligations that survive termination of this Agreement, Developer and City shall have no further obligations or liabilities under this Agreement; or

(b) close the transaction contemplated by this Agreement.

In the event of a fire or other casualty that is not a Material Casualty, or if there is a Material Casualty and Developer elects to proceed pursuant to Section 6.10(b) above, (i) Developer shall purchase the Property in accordance with the terms hereof without a reduction in the Purchase Price, and (ii) City shall transfer and assign to Developer at Closing, in a manner reasonably satisfactory to Developer, all insurance proceeds payable on account of such damage. With respect to any Material Casualty, Developer shall be deemed to have elected to proceed under Section 6.10(a) unless, within ten (10) Business Days from written notice of such Material Casualty, Developer provides City with written notice that Developer elects to close the transaction pursuant to Section 6.10(b).

Section 6.11 Condemnation. In the event of any taking or threat of taking by condemnation (or any conveyance in lieu thereof) of any material portion of the Property by anyone having the power of eminent domain, Developer may, at Developer's sole option, by written notice to City delivered within ten (10) Business Days of receiving written notice from City of such event, elect either to:

(a) terminate this Agreement and promptly receive a refund of the Earnest Money Deposit, whereupon, except for those City's Surviving Obligations and Developer's Surviving Obligations that survive termination of this Agreement, Developer and City shall have no further obligations or liabilities under this Agreement; or



- (b) close the transaction contemplated by this Agreement.

If Developer does not elect to terminate this Agreement pursuant to Section 6.11(a) above, then (i) Developer shall purchase the Property in accordance with the terms hereof (without a reduction in the Purchase Price), (ii) City shall pay to Developer all condemnation awards and other compensation then received by City, and (ii) City shall transfer and assign to Developer at Closing, in form reasonably satisfactory to Developer, all rights and claims of City with respect to the payment of any condemnation awards and other compensation on account of such taking not yet received by City. For purposes of this Section 6.11, a “material” portion of the Property means a portion of the Property that, if taken, would limit access to the Property or prevent or materially increase the cost of Developer’s developing the Property substantially in accordance with its intended use, as determined by Developer. Developer shall be deemed to have elected to proceed under Section 6.11(a) unless, within ten (10) Business Days from written notice of such event, Developer provides City with written notice that Developer elects to close the transaction pursuant to Section 6.11(b).

ARTICLE 7 REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 7.1 AS-IS SALE. DEVELOPER HEREBY ACKNOWLEDGES TO CITY, AS OF THE EFFECTIVE DATE AND AS OF THE CLOSING DATE, AS FOLLOWS:

(a) DEVELOPER ACKNOWLEDGES AND AGREES THAT (OTHER THAN AS EXPRESSLY SET FORTH HEREIN) CITY HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES (OTHER THAN ANY WARRANTY OF TITLE SET OUT IN THE DEED), PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT, OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO THE PROPERTY.

(b) DEVELOPER FURTHER ACKNOWLEDGES AND AGREES THAT (OTHER THAN AS EXPRESSLY SET FORTH HEREIN) ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE VALUATION OF THE PROPERTY OR PROJECTIONS OR ESTIMATES REGARDING INCOME AND EXPENSES WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT CITY HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION.

(c) DEVELOPER FURTHER ACKNOWLEDGES AND AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXCEPT AS EXPRESSLY STATED HEREIN, THE SALE OF THE PROPERTY AS PROVIDED FOR HEREIN IS MADE ON AN “AS IS” CONDITION AND BASIS WITH ALL FAULTS. IT IS UNDERSTOOD AND AGREED THAT THE PURCHASE PRICE HAS BEEN NEGOTIATED BASED ON THE FACT THAT THE PROPERTY IS SOLD BY CITY AND PURCHASED BY DEVELOPER SUBJECT TO THE FOREGOING.

(d) WITHOUT IN ANY WAY LIMITING THE GENERALITY OF THE FOREGOING THE SALE OF THE PROPERTY CONTEMPLATED HEREBY IS WITHOUT ANY WARRANTY OTHER THAN CITY’S EXPRESS WARRANTIES IN THIS AGREEMENT AND IN THE CLOSING DOCUMENTS; AND CITY AND THE CITY PARTIES HAVE MADE NO, AND EXPRESSLY AND SPECIFICALLY DISCLAIM, AND DEVELOPER ACCEPT THAT CITY AND THE CITY PARTIES HAVE DISCLAIMED, ANY AND ALL REPRESENTATIONS, GUARANTIES OR WARRANTIES, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW (EXCEPT

CITY'S EXPRESS WARRANTIES CONTAINED HEREIN), OF OR RELATING TO: (I) THE USE, INCOME POTENTIAL, EXPENSES, OPERATION, CHARACTERISTICS OR CONDITION OF THE PROPERTY OR ANY PORTION THEREOF, INCLUDING WITHOUT LIMITATION, WARRANTIES OF SUITABILITY, HABITABILITY, MERCHANTABILITY, DESIGN OR FITNESS FOR ANY SPECIFIC PURPOSE OR A PARTICULAR PURPOSE, OR GOOD AND WORKMANLIKE CONSTRUCTION; (II) THE NATURE, MANNER, CONSTRUCTION, CONDITION, STATE OF REPAIR OR LACK OF REPAIR OF ANY IMPROVEMENTS LOCATED ON THE PROPERTY, ON THE SURFACE OR SUBSURFACE THEREOF, WHETHER OR NOT LATENT, OBVIOUS, VISIBLE OR APPARENT; (III) THE NATURE OR QUALITY OF CONSTRUCTION, STRUCTURAL DESIGN OR ENGINEERING OF THE PROPERTY; (IV) THE ENVIRONMENTAL CONDITION OF THE PROPERTY OR CONTAMINATION BY HAZARDOUS MATERIALS, OR THE COMPLIANCE OF THE PROPERTY WITH ALL ENVIRONMENTAL LAWS; (V) THE QUALITY OF THE LABOR AND MATERIALS INCLUDED IN THE PROPERTY; AND (VI) THE SOIL CONDITIONS, DRAINAGE, FLOODING CHARACTERISTICS, UTILITIES OR OTHER CONDITIONS EXISTING IN, ON, OR UNDER THE PROPERTY. DEVELOPER HEREBY EXPRESSLY AGREES TO ACCEPT THE PROPERTY SUBJECT TO ALL RISKS, LIABILITIES, CLAIMS, DAMAGES AND COSTS, INCLUDING ANY LIABILITY WITH RESPECT TO ENVIRONMENTAL LAWS (AND AGREES CITY SHALL NOT BE LIABLE TO DEVELOPER FOR ANY SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL OR OTHER DAMAGES RESULTING OR ARISING FROM OR RELATED TO THE CONDITION OF THE PROPERTY). IN CONSUMMATING THE PURCHASE OF THE PROPERTY, DEVELOPER IS NOT RELYING ON ANY REPRESENTATIONS OR STATEMENTS (ORAL OR WRITTEN) WHICH MAY HAVE BEEN MADE OR MAY BE MADE BY CITY OR THE CITY PARTIES (OTHER THAN CITY'S EXPRESS WARRANTIES CONTAINED HEREIN), AND IS RELYING SOLELY UPON DEVELOPER'S OR DEVELOPER'S REPRESENTATIVES' OWN PHYSICAL INSPECTION OF THE PROPERTY AND OTHER INVESTIGATIONS. DEVELOPER ACKNOWLEDGES THAT ANY CONDITION OF THE PROPERTY, WHETHER APPARENT OR LATENT, WHICH DEVELOPER DISCOVERS OR DESIRES TO CORRECT OR IMPROVE PRIOR TO OR AFTER THE CLOSING OF THE SUBJECT SALE SHALL BE AT DEVELOPER'S SOLE EXPENSE. DEVELOPER EXPRESSLY WAIVES (TO THE EXTENT ALLOWED BY APPLICABLE LAW) ANY CLAIMS UNDER FEDERAL, STATE OR OTHER LAW (INCLUDING, BUT NOT LIMITED TO, COMMON LAW, WHETHER SOUNDING IN CONTRACT OR TORT, AND ANY AND ALL ENVIRONMENTAL LAWS) THAT DEVELOPER MIGHT OTHERWISE HAVE AGAINST CITY RELATING TO THE USE, CHARACTERISTIC OR CONDITION OF THE PROPERTY. DEVELOPER FURTHER ACKNOWLEDGES THAT IT IS NOT IN A DISPARATE BARGAINING POSITION TO CITY AND THAT THE PURCHASE PRICE REFLECTS THE POSSIBLE OR ACTUAL EXISTENCE OF HAZARDOUS MATERIALS ON THE PROPERTY. THIS PROVISION IS A MATERIAL INDUCEMENT TO CITY TO CONSUMMATE THE PURCHASE AND SALE OF THE PROPERTY AND BUT FOR THIS PROVISION, CITY WOULD NOT HAVE ENTERED INTO THIS CONTRACT.

Section 7.2 Representations and Warranties. Except as set forth in this Agreement or any other Document, City warrants and represents to Developer as set forth in (a) and (b) of this Section 7.2:

(a) Representations Concerning City.

(i) City is a political subdivision of the State of Georgia duly formed, validly existing and in good standing under the laws of Georgia. This Agreement constitutes the valid and legally binding obligation of City, enforceable against City in accordance with its terms;

(ii) There are no actions, suits or proceedings pending or, to the knowledge of City, threatened, against or affecting City which, if determined adversely to City, would adversely affect its ability to perform its obligations hereunder;

(iii) City has full right, power and authority and is duly authorized to enter into this Agreement, to perform each of the covenants on its part to be performed hereunder and to execute and deliver, and to perform its obligations under, all documents required to be executed and delivered by it pursuant to this Agreement;

(iv) Neither the execution, delivery or performance of this Agreement nor compliance herewith (a) conflicts or will conflict with or results or will result in a breach of or constitutes or will constitute a default under (1) the charter or ordinances of City, (2) to the best of City's knowledge, any law or any order, writ, injunction or decree of any court or governmental authority, or (3) any agreement or instrument to which City is a party or by which it is bound or (b) will result in the creation or imposition of any lien, charge or encumbrance upon the City's property (other than any rights in favor of Developer with respect to the Property as expressly set forth herein) pursuant to any such agreement or instrument;

(v) No authorization, consent, or approval of any governmental authority (including, but not limited to, City Council) is required for the execution and delivery by City of this Agreement or the performance of its obligations hereunder; and

(vi) City is not a "foreign person" as defined in Section 1445 of the Code.

(b) Representations Concerning the Property. To the best of City's knowledge:

(i) As of the date of this Agreement, there are no leases in effect with respect to the Property;

(ii) As of the Effective Date, City has not received any written notice of any current or pending litigation against City that would, if determined adversely to City, materially and adversely affect Developer or the Property following Closing; and

(iii) City has delivered or made available to Developer copies that are complete in all material respects of all Contracts that are in City's possession or control and materially affect the ownership, use and operation of the Property.

(c) Representations Concerning Developer.

(i) Developer is a limited liability company duly formed, validly existing and in good standing under the laws of Georgia. This Agreement constitutes the valid and legally binding obligation of Developer, enforceable against Developer in accordance with its terms;

(ii) There are no actions, suits or proceedings pending or, to the knowledge of Developer, threatened, against or affecting Developer which, if determined adversely to Developer, would adversely affect its ability to perform its obligations hereunder;

(iii) Developer has full right, power and authority and is duly authorized to enter into this Agreement, to perform each of the covenants on its part to be performed hereunder and to execute and deliver, and to perform its obligations under, all documents required to be executed and delivered by it pursuant to this Agreement;

(iv) Neither the execution, delivery or performance of this Agreement nor compliance herewith (a) conflicts or will conflict with or results or will result in a breach of or constitutes or will constitute a default under (1) the articles of organization or operating agreement of Developer, (2) to the best of Developer's knowledge, any law or any order, writ, injunction or decree of any court or governmental authority, or (3) any agreement or instrument to which Developer is a party or by which it is bound or (b) will result in the creation or imposition of any lien, charge or encumbrance upon its property (other than the Property) pursuant to any such agreement or instrument;

(v) No authorization, consent, or approval of any governmental authority (including courts) is required for the execution and delivery by Developer of this Agreement or the performance of its obligations hereunder;

(vi) Developer is not a "foreign person" as defined in Section 1445 of the Code;

(vii) As of the Closing Date, Developer will have adequate financial resources to purchase the Property. As of the Closing Date, Developer will be solvent (and the purchase of the Property will not render Developer insolvent), will not have made any general assignment for the benefit of its creditors, and will not have admitted in writing its inability to pay its debts as they become due. As of the Closing Date, Developer will not have filed any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or any other proceeding for the relief of debtors in general, nor will any such proceeding have been instituted by or against Developer, nor, to Developer's knowledge, will any such proceeding have been threatened or contemplated; and

(viii) Developer is not a "party in interest" (as defined in Section 3(14) of ERISA) standard employee benefit plan subject to ERISA, and Developer's acquisition of the Property shall not constitute or result in a prohibited transaction under Section 406 of ERISA or Section 4975 of the Internal Revenue Code of 1986, as amended, for which no exemption is applicable.

Section 7.3 **Knowledge.** Whenever a representation is qualified by the phrase "to the best of City's knowledge", or by words of similar import, the accuracy of such representation shall be based solely on the actual (as opposed to constructive or imputed) knowledge of the Designated City Representative, without independent investigation or inquiry. Developer acknowledges that the Designated City Representative is named solely for the purpose of defining the scope of City's knowledge and not for the purpose of imposing any liability on or creating any duties running from the Designated City Representative to Developer and Developer agrees that the Designated City Representative shall not have any liability under this Agreement or in connection with the transactions contemplated hereby. Whenever a representation is qualified by the phrase "to the best of Developer's knowledge", or by words of similar import, the accuracy of such representation shall be based solely on the actual (as opposed to constructive or imputed) knowledge of the Designated Developer Representatives, without independent investigation or inquiry. City acknowledges that the Designated Developer Representatives are named solely for the purpose of defining the scope of Developer's knowledge and not for the purpose of imposing any liability on or creating any duties running from the Designated Developer Representatives to City and City agrees that the Designated Developer Representatives shall not have any liability under this Agreement or in connection with the transactions contemplated hereby.

Section 7.4 **Notice of Breach.**

(a) To the extent that, before the expiration of the Due Diligence Period, Developer obtains actual knowledge that City's representations and warranties are inaccurate, untrue or incorrect in

any way, such representations and warranties shall be deemed modified to reflect such actual or deemed knowledge as of the end of the Due Diligence Period.

(b) If after the expiration of the Due Diligence Period, but prior to the Closing, Developer first obtains actual knowledge that any of the representations or warranties made herein by City are untrue, inaccurate or incorrect in any material respect, Developer shall give City prompt written notice thereof (but, in any event, prior to the Closing). In such event, City shall have the right (but not the obligation) to attempt to cure such misrepresentation or breach and shall, at its option, be entitled to a reasonable adjournment of the Closing (not to exceed thirty (30) days) for the purpose of such cure. If City elects to attempt to so cure but is unable to so cure any misrepresentation or breach of warranty, then Developer, as its sole remedy for any and all such materially untrue, inaccurate or incorrect representations or warranties, shall elect either (i) to waive such misrepresentations or breaches of representations and warranties and consummate the transaction contemplated hereby without any reduction of or credit against the Purchase Price, or (ii) provided that Developer first obtained actual knowledge of such material misrepresentation or breach of warranty after the end of the Due Diligence Period, to terminate this Agreement in its entirety by written notice given to City on the Closing Date, in which event this Agreement shall be terminated, the Earnest Money Deposit shall be promptly returned to Developer and, thereafter, neither party shall have any further rights or obligations hereunder, except for City's Surviving Obligations and Developer's Surviving Obligations.

ARTICLE 8 CLOSING

Section 8.1 Closing Date. Subject to City's right to extend the Closing Date as provided in this Agreement, and subject to the satisfaction of all conditions precedent set forth herein, the Closing shall take place on the Closing Date. Unless the parties otherwise agree in writing, the Closing shall be conducted through a customary escrow arrangement with the Title Company. In the event that the Title Company is not unconditionally released by Developer to pay to City the full amount of the Purchase Price, as increased or decreased by prorations provided for herein, in immediately available wire transfer funds by 1:00 p.m. eastern time on the Closing Date, at the City's election the Closing shall be deemed to have occurred on the following Business Day and the credits and prorations shall be recalculated accordingly.

Section 8.2 City's Deliveries. At the Closing, City shall deliver or cause to be delivered, at City's sole expense, each of the following items (to the extent not already delivered), each executed and acknowledged to the extent appropriate:

- (a) The Deed, in recordable form, conveying the applicable Property subject only to the Permitted Exceptions;
- (b) A title affidavit in the form and substance as may be reasonably required by the Title Company;
- (c) A duly-executed Closing Statement;
- (d) A transfer tax declaration signed by City for the Deed;
- (e) A non-foreign person affidavit sworn to by City as required by Section 1445 of the Code;
- (f) An affidavit sufficient to satisfy the requirements of O.C.G.A. §48-7-128;

(g) An affidavit regarding commercial real estate brokers sufficient to satisfy the requirements of O.C.G.A. §44-14-600 *et seq.*;

(h) An assignment to Developer (with City continuing as an additional beneficiary) of the benefits of all assignable Intangible Property;

(i) Confirmation that the Project Zoning and all other required Entitlements have been obtained and that there will be no impact fees or similar charges payable in connection with Developer's development of Developer's Project;

(j) The Parking Agreement;

(k) The Master Declaration;

(l) The Contingent Payment Agreement;

(m) The Master Lease;

(n) The City Improvements Completion Escrow Agreement;

(o) The City Improvements Completion Bond;

(p) Either the City Improvements Escrow Deposit or the City Letter of Credit;

(q) The Intellectual Property Licensing Agreement;

(r) The Restrictions on Leasing Agreement and Memorandum of Restrictions;

(s) The Right of Entry Agreement;

(t) If the legal description of the Property attached hereto differs from the legal description of the Property drawn from the Survey, City shall at Closing deliver (in addition to the Deed) a quitclaim deed conveying the Real Property pursuant to the legal description drawn from the Survey, which legal description shall be subject to City's approval, which approval shall not be unreasonably withheld; and

(u) All other documents necessary or appropriate to complete the transaction contemplated by this Agreement.

Section 8.3 **Developer's Deliveries.** At the Closing, Developer shall deliver to City the following items:

(a) Immediately available federal funds sufficient to pay the Purchase Price or the applicable portion thereof (less the Earnest Money Deposit, and subject to apportionments and adjustments as set forth herein) and Developer's share of all escrow costs and closing expenses;

(b) Duly executed and acknowledged original of the Closing Statement;

(c) A Georgia transfer tax declaration signed by Developer;

(d) An affidavit regarding commercial real estate brokers sufficient to satisfy the requirements of O.C.G.A. §44-14-600 *et seq.*;

- (e) The Parking Agreement;
- (f) The Master Declaration;
- (g) The Contingent Payment Agreement;
- (h) The Master Lease;
- (i) The City Improvements Completion Escrow Agreement;
- (j) The Developer Letter of Credit;
- (k) The Intellectual Property Licensing Agreement;
- (l) The Restrictions on Leasing Agreement and Memorandum of Restrictions;
- (m) The Right of Entry Agreement;

(n) Such evidence or documents as may reasonably be required by the Title Company evidencing the status and capacity of Developer and the authority of the Person or Persons who are executing the various documents on behalf of Developer in connection with the purchase of the Property; and

(o) All other documents necessary or appropriate to complete the transaction contemplated by this Agreement.

Section 8.4 Costs and Prorations.

(a) General. Real estate taxes and assessments allocable to the payment period that includes the Closing Date, personal property taxes, if any, and all other items of income and expense with respect to the Property shall be prorated between City and Developer as of the Closing Date in accordance with this Section 8.4. Except as otherwise provided in this Section 8.4, income and expenses shall be prorated on an accrual basis. All apportionments and prorations made hereunder shall be made based on the number of days of ownership of the Property in the period applicable to the apportionment, with Developer entitled to income and responsible for expenses for the Closing Date. Prorations of annual payments will be made based on the number of days of ownership in the applicable annual period.

(b) Taxes.

(i) All real estate taxes assessed against the Property shall be prorated between City and Developer on an accrual basis based upon the actual current tax bill. If the most recent tax bill received by City before the Closing Date is not the actual current tax bill, then City and Developer shall initially prorate the taxes at the Closing by applying one hundred percent (100%) of the tax rate for the period covered by the most current available tax bill to the latest assessed valuation, and shall reprorate the taxes retroactively when the actual current tax bill is then available; provided, however, that in no event shall City be charged with or responsible for any increase in real estate taxes resulting from the sale of the Property to Developer or from any improvements made on or after the Closing. All real estate taxes accruing before the Closing Date shall be the obligation of City and all such taxes accruing on and after the Closing Date shall be the obligation of Developer. Any refunds of real estate taxes made after the Closing shall first be applied to the unreimbursed third-party costs incurred by City or Developer in obtaining the refund, and the balance, if any, shall be paid to City (for the period prior to the Closing

Date) and to Developer (for the period commencing on and after the Closing Date). If any proceeding to determine the assessed value of the Property or the real estate taxes payable with respect to the Property has been commenced before the Effective Date and shall be continuing as of the Closing Date, City shall be authorized to continue to prosecute such proceeding and shall be entitled to any abatement proceeds therefrom allocable to any period before the Closing Date, and Developer agrees to cooperate as reasonably requested with City and to execute any and all documents reasonably requested by City in furtherance of the foregoing.

(ii) If the Property has been assessed for property tax purposes at such rates as would result in reassessment (*i.e.*, “escape assessment” or “roll-back taxes”) based upon the change in land usage or ownership of the Property on or after the Closing Date, Developer hereby agrees to pay all such taxes and to indemnify and save City harmless from and against all costs and liabilities for such taxes, which indemnity shall survive the Closing.

(c) Application of Payments Received After Closing. Any sums received by Developer to which City is entitled shall be held in trust for City, and Developer shall remit to City any such sums received by Developer to which City is entitled within five (5) Business Days after receipt thereof less reasonable, actual third-party costs and expenses of collection, including reasonable attorneys’ fees, court costs and disbursements, if any. City expressly agrees that if City receives any amounts after the Closing which are attributable, in whole or in part, to any period after the Closing Date, City shall remit to Developer that portion of the monies so received by City to which Developer is entitled within five (5) Business Days after receipt thereof.

(d) Assessment Installments. If there are special assessments pending against the Property, City shall pay any installments of such special assessments that are due and payable prior to the Closing and Developer shall pay all installments of such special assessments on or after the Closing; provided, however, that City shall not be required to pay any installments of special assessments that relate to projects that have not been completed as of the Effective Date.

(e) Utilities. Final readings and final billings for utilities will be made if possible as of the Closing Date, in which event no proration shall be made at the Closing with respect to utility bills; otherwise a proration shall be made based upon the parties’ reasonable good faith estimate and a readjustment made within thirty (30) days after Closing. City shall receive the entire advantage of any discounts for any prepayment by City prior to the Closing of any taxes, water or sewer charges, utility expenses or similar charges. Utility Deposits, plus any interest on the Utility Deposits to which City is or will be entitled that are held by the provider of the utilities and which are freely transferable to Developer, shall at the election of City be assigned by City to Developer and Developer shall pay City the full amount thereof at Closing. City shall retain the right to obtain a refund of any Utility Deposits which are not required to be assigned to Developer, and Developer will cooperate with City as reasonably requested in obtaining any refund.

(f) Continuing Contracts. Prepaid charges, payments and accrued charges under any Contracts assigned to Developer shall be prorated at Closing in a manner reasonably acceptable to City and Developer.

(g) Closing Statement. Developer and City shall cooperate to produce prior to the Closing Date a schedule of prorations and closing costs that is as complete and accurate as reasonably possible (the “Closing Statement”). If any of the aforesaid prorations cannot be calculated accurately on the Closing Date, then they shall be estimated to the extent possible as of the Closing and calculated as soon after the Closing Date as is feasible. All adjustments to initial estimated prorations shall be made by the parties with due diligence and cooperation within sixty (60) days following the Closing, or such later

time as may be required to obtain necessary information for proration, by prompt cash payment to the party yielding a net credit from such prorations from the party; provided, however, that the provisions of this paragraph shall survive the Closing; provided, however, that all real estate taxes imposed because of a change of use of the Property after Closing shall be Developer's responsibility and obligation, and City shall have no obligation or liability with respect thereto.

(h) Closing Costs. Developer and City shall each pay their own legal fees related to the preparation of this Agreement and all documents required to settle the transaction contemplated hereby. Developer shall pay (i) all costs associated with its due diligence, including the cost of appraisals, architectural, engineering, credit and environmental reports, (ii) all title insurance premiums and charges and all title examination costs, and (iii) all Survey costs related to the Property. City shall pay all transfer taxes and recording fees.

(i) Assignment of Rights Concerning Construction. The Intangible Property assigned to Developer at the Closing includes, without representation or warranty of any kind, any rights that City has or may have against third parties which have provided, or may provide, goods and services in connection with the design and/or construction of the Improvements. Developer acknowledges and agrees that Developer's recourse for any defects or deficiencies in any Improvements shall not be against City but solely against such third party which provided the goods or services related to the Improvements. Developer hereby agrees to indemnify, defend and hold City harmless from and against any claims, including future claims by purchasers of condominium units, homeowners associations, and other third parties, and all losses, damages and expenses, in any manner arising out of or in connection with the design and/or construction of the Improvements, whether such claims arising before or after the Closing. Nothing in this Section, express or implied, is intended to confer any rights upon any persons other than the parties hereto and their respective successors and assigns. The provisions of this Section 8.4(h) shall survive the Closing.

Section 8.5 **Post-Closing Obligations.**

(a) City Post-Closing Obligations.

(i) To the fullest extent permitted by applicable law, the City shall waive all permit and impact fees associated with Developer's Project.

(ii) City shall not make any material modifications to any Plans without Developer's prior written consent, which consent shall not be unreasonably withheld, delayed, or conditioned.

(b) Developer Post-Closing Obligations.

(i) Within thirty (30) days subsequent to the issuance of a certificate of occupancy for Developer's Project, or any applicable component thereof, Developer shall deliver to City an as-built Survey of the same in form and substance reasonably acceptable to City and containing reasonable reliance language in favor of City and its permitted assignees;

(ii) Developer shall not make any material modifications to any Plans affecting the Property without City's prior written consent, which consent shall not be unreasonably withheld, delayed, or conditioned.

The provisions of this Section 8.5 shall survive the Closing under this Agreement.

ARTICLE 9 BROKERS

Section 9.1 Brokers. City and Developer represent and warrant to each other that no brokerage fee or real estate commission is or shall be due or owing in connection with this transaction, and City and Developer hereby indemnify and hold the other harmless, to the extent permitted by applicable law, from any and all claims of any other broker or agent for commissions, fees or other charges relating in any way to this transaction, or the consummation thereof, based on action or alleged action of such indemnifying party. The provisions of this paragraph shall survive the Closing.

ARTICLE 10 TERMINATION AND DEFAULT

Section 10.1 Termination without Default. If the sale of the Property is not consummated because of the failure of any condition precedent to Developer's or City's obligations expressly set forth in this Agreement or for any other reason except as a result of a default by Developer in its obligation to purchase the Property in accordance with the provisions of this Agreement after City has performed or tendered performance of all of its material obligations in accordance with this Agreement, then this Agreement shall terminate and the Earnest Money Deposit shall be promptly returned to Developer and the parties shall have no further obligation to each other, except for those City's Surviving Obligations and Developer's Surviving Obligations that survive termination of this Agreement.

Section 10.2 Developer's Default. If the sale contemplated hereby is not consummated because of a default by Developer after City has performed or tendered performance of all of its material obligations in accordance with this Agreement, then: (a) this Agreement shall terminate; (b) the Earnest Money Deposit shall be paid to and retained by City as liquidated damages; and (c) except for those City's Surviving Obligations and Developer's Surviving Obligations that survive termination of this Agreement, City and Developer shall have no further obligations to each other. DEVELOPER AND CITY ACKNOWLEDGE THAT THE DAMAGES TO CITY IN THE EVENT OF A BREACH OF THIS AGREEMENT BY DEVELOPER WOULD BE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT THE AMOUNT OF THE EARNEST MONEY DEPOSIT REPRESENTS THE PARTIES' BEST AND MOST ACCURATE ESTIMATE OF THE DAMAGES THAT WOULD BE SUFFERED BY CITY IF THE TRANSACTION SHOULD FAIL TO CLOSE AND THAT SUCH ESTIMATE IS REASONABLE UNDER THE CIRCUMSTANCES EXISTING AS OF THE EFFECTIVE DATE AND UNDER THE CIRCUMSTANCES THAT CITY AND DEVELOPER REASONABLY ANTICIPATE WOULD EXIST AT THE TIME OF SUCH BREACH. THE PARTIES, HAVING MADE A DILIGENT ENDEAVOR TO ASCERTAIN THE ACTUAL COMPENSATORY DAMAGES WHICH CITY WOULD SUFFER IN THE EVENT OF DEVELOPER'S FAILURE TO PURCHASE THE PROPERTY SUBJECT TO AND IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, HEREBY AGREE THAT THE REASONABLE ESTIMATE OF SAID DAMAGES IS THE SUM EQUAL TO THE AMOUNT OF THE EARNEST MONEY DEPOSIT, WHICH SHALL BE DEEMED LIQUIDATED DAMAGES AND SHALL BE CITY'S SOLE REMEDY AT LAW OR IN EQUITY. THE AMOUNT OF THE LIQUIDATED DAMAGES HAS BEEN ESTABLISHED BY THE PARTIES AS THE AMOUNT OF THE MONETARY DAMAGES CITY WILL SUFFER IN THE EVENT OF A BREACH OF THIS AGREEMENT BY DEVELOPER AND CITY SHALL BE ENTITLED TO RECOVER NO OTHER DAMAGES FROM DEVELOPER IN THE EVENT OF A BREACH OF THIS AGREEMENT BY DEVELOPER.

This Section 10.2 is intended only to liquidate and limit City's right to damages arising due to Developer's failure to purchase the Property in accordance with the terms of this Agreement and shall not limit City's Surviving Obligations and Developer's Surviving Obligations.

Section 10.3 City's Default. If the sale contemplated hereby is not consummated because of a default by City after Developer has performed or tendered performance of all of its material obligations in accordance with this Agreement, then, Developer may, as its sole and exclusive remedy at law or in equity: (a) terminate this Agreement by giving written notice thereof to City, in which event the Earnest Money Deposit will be promptly returned to Developer promptly and the parties shall have no further obligation to each other, except for those City's Surviving Obligations and Developer's Surviving Obligations that survive termination of this Agreement; (b) waive such default and consummate the transactions contemplated hereby in accordance with the terms of this Agreement; or (c) specifically enforce this Agreement. Developer hereby irrevocably waives any other right or remedy for such default. As a condition precedent to Developer exercising any right to bring an action for specific performance as the result of City's default hereunder, Developer must commence such action within thirty (30) days after the occurrence of such default. Developer agrees that its failure timely to commence such an action for specific performance within such thirty (30) day period shall be deemed a waiver by it of its right to commence such an action.

Section 10.4 Breach of Representations. City and Developer agree that, following the Closing, each shall be liable for the direct, but not consequential or punitive, damages resulting from any breach of its representations and warranties expressly set forth in Article 7 hereof; provided, however, that: (i) the total liability of City for all such breaches and any matters relating thereto or under any law applicable to the Property or this transaction shall not, in the aggregate, exceed Two Hundred Thousand Dollars (\$200,000.00) (the "Claim Cap"); (ii) the total liability of Developer for all such breaches and any matters relating thereto or under any law applicable to the Property or this transaction shall not, in the aggregate, exceed the Claim Cap; (iii) such representations and warranties are personal to City and Developer and may not be assigned to or enforced by any other Person, other than to an assignee of Developer in accordance with Section 11.3; and (iv) the representations and warranties of City set forth in this Agreement or in any document or certificate delivered by City in connection herewith shall survive the Closing for a period of one hundred eighty (180) days, and no action or proceeding thereon shall be valid or enforceable, at law or in equity, if a legal proceeding is not commenced within that time. Notwithstanding the foregoing, however, if the Closing occurs, Developer hereby expressly waives, relinquishes and releases any right or remedy available to it at law, in equity, under this Agreement or otherwise to make a claim against City for damages that Developer may incur, or to rescind this Agreement and the transactions contemplated hereby, as the result of any of City's representations or warranties in this Agreement or any document executed by City in connection herewith being untrue, inaccurate or incorrect if Developer knew that such representation or warranty was untrue, inaccurate or incorrect at the time of the Closing. Developer agrees to first seek recovery under any insurance policies prior to seeking recovery from City, and City shall not be liable to Developer if Developer's claim is satisfied from such sources. Developer further agrees that, following the Closing, no claim may or shall be made for any alleged breach of any representations or warranties made by City under or relating to this Agreement unless the total amount of such claim or claims exceeds Twenty Five Thousand Dollars (\$25,000.00) (in which event the full amount of such valid claims against City shall be actionable up to, but not in excess of, the Claim Cap).

ARTICLE 11 MISCELLANEOUS

Section 11.1 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the transactions contemplated herein, and it supersedes all prior discussions, understandings or agreements between the parties. All Exhibits and Schedules attached hereto are a part of this Agreement and are incorporated herein by reference.

Section 11.2 Binding On Successors and Assigns. Subject to Section 11.3, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Section 11.3 Assignment by City or Developer. City may assign this Agreement to the Authority or any other Affiliate of City without the further consent of Developer. Without the prior written consent of City in its sole discretion, Developer shall not, directly or indirectly, assign this Agreement or any of its rights hereunder. Any attempted assignment in violation hereof shall, at the election of City, be of no force or effect and shall constitute a default by Developer. Notwithstanding the foregoing, Developer may assign this Agreement, or any of its rights hereunder, without the City's prior written consent, to one or more Affiliate of Developer, so long as such Affiliate Controls, is Controlled by, or is under common Control with, Carter and Associates, LLC. In connection with any such assignment by Developer (a) there shall be no "mark-up" or increase in the Purchase Price; (b) the Due Diligence Period shall have ended; and (c) at least five (5) days prior to the proposed assignment, Developer shall provide City with notice thereof and evidence that the foregoing conditions are satisfied.

Section 11.4 Waiver. The excuse or waiver of the performance by a party of any obligation of the other party under this Agreement shall only be effective if evidenced by a written statement signed by the party so excusing or waiving. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by City or Developer of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

Section 11.5 Governing Law.

(a) This Agreement shall be construed and the rights and obligations of City and Developer hereunder determined in accordance with the internal laws of the State of Georgia without regard to the principles of choice of law or conflicts of law.

(b) In recognition of the benefits of having any disputes with respect to this Agreement resolved by an experienced and expert person, City and Developer hereby agree that any suit, action, or proceeding, whether claim or counterclaim, brought or instituted by any party hereto on or with respect to this Agreement or which in any way relates, directly or indirectly, to this Agreement or any event, transaction, or occurrence arising out of or in any way connected with this Agreement or the Property, or the dealings of the parties with respect thereto, shall be tried only by a court and not by a jury. **EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION, OR PROCEEDING.**

(c) Each of City and the Developer: (i) agrees that any suit, action or other proceeding arising out of or based upon this Agreement or the subject matter hereof or any documents delivered in connection herewith shall be brought only in the courts of State of Georgia or the United States District Court for the Northern District of Georgia; (ii) irrevocably submits itself to the exclusive jurisdiction of the such courts for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement or the subject matter hereof or any documents delivered in connection herewith; (ii) waives, and agrees not to assert, by way of motion, as a defense or otherwise, in any such suit, action or proceeding, any claim that it is not subject personally to the jurisdiction of the above named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court; and (iii) consents to service of process by registered mail at the address to which notices are to be given if personal service is not with the exercise of reasonable efforts possible.

rejection or refusal to accept. Any notice to be given by any party hereto may be given by the counsel for such party.

Section 11.8 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 attorneys' fees, expended or incurred in connection therewith. Notwithstanding anything contained herein to the contrary, (i) "reasonable attorneys' fees" are not, and shall not be, statutory attorneys' fees under the Official Code of Georgia Annotated, (ii) if, under any circumstances, a party is required hereunder to pay any or all of the other party's attorneys' fees and expenses, the party responsible for payment shall be responsible only for actual legal fees and out of pocket expenses actually incurred by the other party at customary hourly rates for the work done, and (iii) the party responsible for payment shall not be liable under any circumstances for additional attorneys' fees or expenses under Official Code of Georgia Annotated Section 13-1-11. The provisions of this Section 11.8 shall survive the Closing or termination of this Agreement.

Section 11.9 IRS Real Estate Sales Reporting. Developer and City hereby agree that the Escrow Agent shall act as "the person responsible for closing" the transaction which is the subject of this Agreement pursuant to Section 6045(e) of the Code and shall prepare and file all informational returns, including IRS Form 1099-S, and shall otherwise comply with the provisions of Section 6045(e) of the Code. The provisions of this Section 11.9 shall survive the Closing.

Section 11.10 Time Periods. Any reference in this Agreement to the time for the performance of obligations or elapsed time shall mean consecutive calendar days, months, or years, as applicable. In the event the time for performance of any obligation hereunder expires on a day that is not a Business Day, the time for performance shall be extended to the next Business Day.

Section 11.11 Modification of Agreement. This Agreement may not be amended or modified except by a written agreement signed by both City and Developer that expressly states that it is intended to amend this Agreement.

Section 11.12 Further Instruments. Each party, promptly upon the request of the other, shall execute and have acknowledged and delivered to the other or to Escrow Agent, as may be appropriate, any and all further instruments reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement and which are consistent with the provisions of this Agreement.

Section 11.13 Descriptive Headings; Word Meaning. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any provisions of this Agreement. Words such as "herein", "hereinafter", "hereof" and "hereunder" when used in reference to this Agreement, refer to this Agreement as a whole and not merely to a subdivision in which such words appear, unless the context otherwise requires. The singular shall include the plural and the masculine gender shall include the feminine and neuter, and vice versa, unless the context otherwise requires. The word "including" shall not be restrictive and shall be interpreted as if followed by the words "without limitation."

Section 11.14 Time of the Essence. Time is of the essence of this Agreement and all covenants and deadlines hereunder. Without limiting the foregoing, Developer and City hereby confirm their intention and agreement that time shall be of the essence of each and every provision of this Agreement, notwithstanding any subsequent modification or extension of any date or time period that is provided for under this Agreement. The agreement of Developer and City that time is of the essence of each and every provision of this Agreement shall not be waived or modified by any conduct of the parties, and the agreement of Developer and City that time is of the essence of each and every provision of this

Agreement may only be modified or waived by the express written agreement of Developer and City that time shall not be of the essence with respect to a particular date or time period, or any modification or extension thereof, which is provided under this Agreement.

Section 11.15 Construction of Agreement. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared primarily by counsel for one of the parties, it being recognized that both Developer and City have contributed substantially and materially to the preparation of this Agreement.

Section 11.16 Limitations on Liability. Notwithstanding anything to the contrary in this Agreement, and subject to any additional limitations on City's liability set forth elsewhere in this Agreement: (a) Developer's recourse against City under this Agreement or any agreement, document, certificate or instrument delivered by City hereunder, or under any law, rule or regulation relating to the Property, shall be limited to City's interest in the Property (or, following the Closing, to the net proceeds of the sale of the Property actually received by City); and (b) in no event shall any of the City Parties have any personal liability hereunder or otherwise. The acceptance of the Deed shall constitute full performance of all of City's obligations hereunder other than those obligations of City, if any, that by the express terms hereof are to survive the Closing. For purposes of this Section 11.16, no negative capital account or any contribution or payment obligation of any partner or member of City shall constitute an asset of City. The provisions of this Section 11.16 shall survive the Closing or termination of this Agreement.

Section 11.17 Severability. The parties hereto intend and believe that each provision in this Agreement comports with all applicable local, state and federal laws and judicial decisions. If, however, any provision in this Agreement is found by a court of law to be in violation of any applicable local, state, or federal law, statute, ordinance, administrative or judicial decision, or public policy, or if in any other respect such a court declares any such provision to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent of all parties hereto that, consistent with and with a view towards preserving the economic and legal arrangements among the parties hereto as expressed in this Agreement, such provision shall be given force and effect to the fullest possible extent, and that the remainder of this Agreement shall be construed as if such illegal, invalid, unlawful, void, or unenforceable provision were not contained herein, and that the rights, obligations, and interests of the parties under the remainder of this Agreement shall continue in full force and effect.

Section 11.18 No Recording. The provisions hereof shall not constitute a lien on the Property. Neither Developer nor its agents or representatives shall record or file this Agreement or any notice or memorandum hereof in any Public Records. If Developer breaches the foregoing provision, this Agreement shall, at City's election, terminate, and City shall retain the Earnest Money Deposit in accordance with Section 10.2. Developer hereby irrevocably appoints City as its true and lawful attorney-in-fact, coupled with an interest, for the purpose of executing and recording such documents and performing such other acts as may be necessary to terminate any recording or filing of this Agreement in violation of this provision.

Section 11.19 No Implied Agreement. Neither City nor Developer shall have any obligations in connection with the transaction contemplated by this Agreement unless both City and Developer, each acting in its sole discretion, elects to execute and deliver this Agreement to the other party. No correspondence, course of dealing or submission of drafts or final versions of this Agreement between City and Developer shall be deemed to create any binding obligations in connection with the transaction contemplated hereby, and no contract or obligation on the part of City or Developer shall arise unless and until this Agreement is fully executed by both City and Developer. Once executed and delivered by City

and Developer, this Agreement shall be binding upon them notwithstanding the failure of Escrow Agent or any other Person to execute this Agreement.

Section 11.20 Electronic Signatures. Signatures to this Agreement, any amendment hereof and any notice given hereunder, executed and transmitted by facsimile or by copies of physically signed documents exchanged via email attachments in PDF format or equivalent shall be valid and effective to bind the party so signing. Each party agrees to deliver promptly an executed original of this Agreement (and any amendment hereto) with its actual signature to the other party, but a failure to do so shall not affect the enforceability of this Agreement (or any amendment hereto), it being expressly agreed that each party to this Agreement shall be bound by its own telecopied or electronically transmitted signature and shall accept the telecopied or electronically transmitted signature of the other party to this Agreement.

Section 11.21 Press Releases. City and Developer agree that, without the prior written approval of the other, they shall not issue any press release, internet posting or other similar public announcement, statement or disclosure of this Agreement, the details of the transactions contemplated hereby, or the parties hereto (or their respective affiliates and advisors), whether before or after the Closing, except to the extent otherwise required by law. Notwithstanding the above, City's approval shall not be required in connection with the usual and customary advertising and promotion of Developer's Project. The provisions of this Section 11.21 shall survive the Closing or termination of this Agreement.

Section 11.22 Like Kind Exchange. In the event that Developer elects to purchase the Property as part of a like-kind exchange pursuant to Section 1031 of the Code, City agrees to cooperate as reasonably requested with Developer in connection therewith and to execute and deliver all documents which reasonably may be required to effectuate such exchange as a qualified transaction pursuant to Section 1031 of the Code; provided, however, that: (a) the Closing shall not be delayed; (b) City shall incur no additional cost or liability in connection with the like-kind exchange; (c) Developer pays all costs associated with the like-kind exchange; (d) City is not obligated to take title to any other property; (e) Developer's obligations under this Agreement are not in any way conditioned upon its ability to accomplish any like-kind exchange and in no event shall any actual or proposed like-kind exchange limit or affect Developer's obligations or liabilities under this Agreement; and (f) Developer shall be solely responsible for, and shall indemnify, defend and hold the City harmless from, all liabilities, costs and expenses relating to any actual or proposed like-kind exchange. The indemnification provision set forth above shall survive the Closing or termination of this Agreement.

Section 11.23 Naming of Developer's Project. The name or names of Developer's Project shall be subject to the prior written approval of City, which approval shall not be unreasonably withheld, delayed or conditioned; provided, however, that City's prior approval shall not be required for any "branded" name in connection with an apartment developer (e.g., Post or Camden) or a retail developer.

Section 11.24 Right of Entry for Storage of Construction Materials. Subject to the other applicable terms of this Section 11.24, City and Developer shall work together in good faith with one another to agree upon, prior to Closing, the form and substance of a Right of Entry Agreement. Negotiations as to the form and substance of any such documents shall take into account, and such easement agreements shall be subject to and conditioned upon, public safety, the safety, coordination and logistical concerns of the affected parties. Under no circumstances shall City be obligated to grant to Developer the Right of Entry if and to the extent that City or its contractors reasonably determine that such entry and storage of construction materials and other items are not feasible or would interfere with other work being performed in connection with the City Center Project. The Right of Entry, shall, among other things, contain insurance provisions in form and substance satisfactory to City.

Section 11.25 Construction Staging Areas. City and Developer shall work together in good faith with one another prior to Closing to identify and agree upon a construction staging area or areas, which may be utilized by Developer subsequent to Closing for the storage of construction materials and related items to be utilized by Developer in connection with Developer's construction and development of Developer's Project. If the parties are able to agree upon such a construction staging area or areas prior to Closing, the applicable parties shall enter into a construction staging easement or easements reasonably acceptable to each of the applicable parties. Negotiations as to the form and substance of any such documents shall take into account, and such easement agreements shall be subject to and conditioned upon, public safety, the safety, coordination and logistical concerns of the affected parties, and the then available space within the City Center Project for such construction staging areas.

[EXECUTION PAGE FOLLOWS]

IN WITNESS WHEREOF, City and Developer hereto have executed this Agreement as of the date first written above.

CITY:

THE CITY OF SANDY SPRINGS, GEORGIA,
a public body politic and corporate of the State of
Georgia

By: John McDonough
Name: John McDonough
Title: City Manager
Date: 9/3, 2015

DEVELOPER:

SANDY SPRINGS CITY CENTER, LLC, a
Georgia limited liability company

By: Carter and Associates, LLC,
its Managing Member

[Signature]
Name: _____
Title: CEO CA Assoc
Date: 9-8, 2015

RECEIPT BY THE ESCROW AGENT

This Agreement, fully executed by both City and Developer, has been received by the Escrow Agent this 9th day of September, 2015 and by execution hereof, Escrow Agent hereby covenants and agrees to be bound by the terms of this Agreement that are applicable to it.

ESCROW AGENT

CALLOWAY TITLE AND ESCROW

By: _____

Name: S. Marcus Calloway

Title: Managing Member

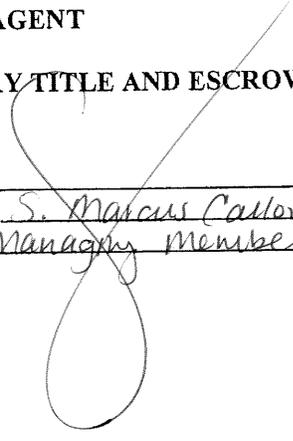
A large, stylized handwritten signature in black ink, written over the signature line and extending upwards into the title line. The signature appears to be 'S. Marcus Calloway'.

EXHIBIT A

PRELIMINARY SITE PLAN

[SUBJECT TO REVISION BY AGREEMENT OF THE PARTIES]

EXHIBIT B

NORTH PARCEL – PRELIMINARY LEGAL DESCRIPTION

[SUBJECT TO REVISION BY AGREEMENT OF THE PARTIES]

ALL that tract or parcel of land lying and being in Land Lot 89 of the 17th District, City of Sandy Springs, Fulton County, Georgia, and being more particularly described as follows:

To arrive at the point of beginning, COMMENCE at a point at the southeasterly end of the proposed mitered right-of-way line at the intersection of the northerly right-of-way line of Mt. Vernon Highway (variable right-of-way and 40' from centerline at this location) and the easterly right-of-way line of Sandy Springs Circle (variable right-of-way); thence along said proposed mitered right-of-way line North 23 degrees 22 minutes 18 seconds West, a distance of 42.47 feet to a point on the easterly right-of-way line of Sandy Springs Circle (variable right-of-way and 40' from centerline at this location); thence along the easterly right-of-way line of Sandy Springs Circle (40' from centerline) the following 2 courses and distances; along the arc of a curve to the left a distance of 97.69 feet, said curve having a radius of 343.72 feet and being subtended by a bearing of North 00 degrees 53 minutes 20 seconds West a chord distance of 97.36 feet to a point; thence North 09 degrees 01 minutes 51 seconds West a distance of 234.92 feet to a point on the northerly right-of-way line of the proposed Eva Galambos Way (variable right-of-way) and the TRUE POINT OF BEGINNING.

Thence from said TRUE POINT OF BEGINNING, continue along the easterly right-of-way line of Sandy Springs Circle (variable right-of-way and 40' from centerline at this location) the following 4 courses and distances; North 09 degrees 01 minutes 51 seconds West a distance of 37.97 feet to a point; thence along the arc of a curve to the right a distance of 119.83 feet, said curve having a radius of 2524.84 feet and being subtended by a bearing of North 07 degrees 40 minutes 16 seconds West a chord distance of 119.82 feet to a point; thence North 83 degrees 41 minutes 18 seconds East along a right-of-way jog, a distance of 6.00 feet to a point, said point being 46 feet from centerline; thence along the arc of a curve to the right a distance of 84.03 feet, said curve having a radius of 2518.84 feet and being subtended by a bearing of North 05 degrees 21 minutes 21 seconds West a chord distance of 84.03 feet to a point; thence leaving said right-of-way line of Sandy Springs Circle and proceeding North 85 degrees 39 minutes 05 seconds East, a distance of 169.20 feet to a point; thence North 27 degrees 54 minutes 43 seconds East, a distance of 26.91 feet to a point; thence North 62 degrees 19 minutes 29 seconds West, a distance of 29.73 feet to a point; thence North 27 degrees 57 minutes 45 seconds East, a distance of 69.25 feet to a point; thence along the arc of a curve to the left a distance of 36.47 feet, said curve having a radius of 1009.48 feet and being subtended by a bearing of South 62 degrees 42 minutes 27 seconds East, a chord distance of 36.47 feet to a point; thence South 19 degrees 05 minutes 31 seconds East, a distance of 19.34 feet to a point; thence along the arc of a curve to the left a distance of 68.31 feet, said curve having a radius of 1023.68 feet and being subtended by a bearing of South 66 degrees 25 minutes 25 seconds East, a chord distance of 68.29 feet to a point; thence South 62 degrees 05 minutes 17 seconds East, a distance of 32.12 feet to a point; thence South 27 degrees 42 minutes 10 seconds West, a distance of 32.34 feet to a point; thence South 62 degrees 17 minutes 50 seconds East, a distance of 17.15 feet to a point on the westerly right-of-way line of the proposed Bluestone Road (variable right-of-way); thence proceeding south along the westerly right-of-way line of the proposed Bluestone Road along the arc of a curve to the left a distance of 178.29 feet, said curve having a radius of 171.00 feet and being subtended by a bearing of South 09 degrees 39 minutes 54 seconds East, a chord distance of 170.32 feet to a point; thence continuing along the westerly right-of-way line of the proposed Bluestone Road, South 09 degrees 40 minutes 33 seconds East a distance of 16.37 feet to a point on the northerly right-of-way line of the proposed Eva Galambos Way (variable right-of-way); thence leaving said right-of-way of the proposed Bluestone Road and proceeding westerly along the northerly right-of-way line of the proposed Eva Galambos Way, South 80

degrees 32 minutes 10 seconds West a distance of 329.30 feet to a point on the easterly right-of-way line of Sandy Springs Circle and the TRUE POINT OF BEGINNING.
Said parcel containing 78,877 square feet or 1.811 acres and being labeled 'North Residential Building' as shown on a Parcel Exhibit drawing for Sandy Springs City Center, by Long Engineering, Inc., dated August 31, 2015.

EXHIBIT C

SOUTH CITY PARCEL – PRELIMINARY LEGAL DESCRIPTION

[SUBJECT TO REVISION BY AGREEMENT OF THE PARTIES]

ALL that tract or parcel of land lying and being in Land Lot 89 of the 17th District, City of Sandy Springs, Fulton County, Georgia, and being the portion of the described property below the top of the proposed cast in place parking deck and being more particularly described as follows:

To arrive at the point of beginning, COMMENCE at a point at the southeasterly end of the proposed mitered right-of-way line at the intersection of the northerly right-of-way line of Mt. Vernon Highway (variable right-of-way and 40' from centerline at this location) and the easterly right-of-way line of Sandy Springs Circle (variable right-of-way); thence along said proposed mitered right-of-way line North 23 degrees 22 minutes 18 seconds West, a distance of 42.47 feet to a point on the easterly right-of-way line of Sandy Springs Circle (variable right-of-way and 40' from centerline at this location); thence along the easterly right-of-way line of Sandy Springs Circle (40' from centerline) the following 2 courses and distances; along the arc of a curve to the left a distance of 97.69 feet, said curve having a radius of 343.72 feet and being subtended by a bearing of North 00 degrees 53 minutes 20 seconds West a chord distance of 97.36 feet to a point; thence North 09 degrees 01 minutes 51 seconds West a distance of 154.92 feet to a point on the southerly right-of-way line of the proposed Eva Galambos Way (variable right-of-way); thence leaving said right-of-way line of Sandy Springs Circle and proceeding easterly along the southerly right-of-way line of the proposed Eva Galambos Way (variable right-of-way), North 80 degrees 32 minutes 10 seconds East a distance of 35.50 feet to a point and the TRUE POINT OF BEGINNING.

Thence from said TRUE POINT OF BEGINNING, continue in an easterly direction along the southerly right-of-way of the proposed Eva Galambos Way (variable right-of-way), North 80 degrees 32 minutes 10 seconds East a distance of 280.42 feet to a point on the westerly right-of-way of the proposed Bluestone Road (variable right-of-way); thence leaving said right-of-way line of the proposed Eva Galambos Way and proceeding in a southerly direction along the westerly right-of-way line of the proposed Bluestone Road (variable right-of-way) the following 4 courses and distances; South 09 degrees 27 minutes 50 seconds East a distance of 18.29 feet to a point; thence South 14 degrees 31 minutes 24 seconds West a distance of 75.24 feet to a point; thence South 74 degrees 32 minutes 54 seconds West a distance of 15.41 feet to a point; thence South 14 degrees 32 minutes 54 seconds West a distance of 6.19 feet to a point on the southerly edge of the proposed cast in place parking deck; thence leaving said right-of-way line of the proposed Bluestone Road and proceeding along the southerly, easterly, southerly and westerly edges of the proposed cast in place parking deck the following 4 courses and distances; South 80 degrees 32 minutes 10 seconds West a distance of 95.66 feet to a point; thence South 09 degrees 27 minutes 50 seconds East a distance of 149.67 feet to a point; thence South 80 degrees 32 minutes 10 seconds West a distance of 136.33 feet to a point; thence North 09 degrees 27 minutes 50 seconds West a distance of 243.96 feet to a point on the southerly right-of-way line of the proposed Eva Galambos Way and the TRUE POINT OF BEGINNING.

Said parcel containing 45,467 square feet or 1.044 acres and being shown on a boundary exhibit drawing labeled 'South Residential Building' and a portion of the Sandy Springs City Center, by Long Engineering, Inc., dated August 14, 2015.

EXHIBIT D

SOUTH DEVELOPER PARCEL – PRELIMINARY LEGAL DESCRIPTION

[SUBJECT TO REVISION BY AGREEMENT OF THE PARTIES]

TRACT 1

ALL that tract or parcel of land lying and being in Land Lot 89 of the 17th District, City of Sandy Springs, Fulton County, Georgia, and being more particularly described as follows:

BEGINNING at a point at the southeasterly end of the proposed mitered right-of-way line at the intersection of the northerly right-of-way line of Mt. Vernon Highway (variable right-of-way and 40' from centerline at this location) and the easterly right-of-way line of Sandy Springs Circle (variable right-of-way), said point being the TRUE POINT OF BEGINNING; thence along said proposed mitered right-of-way line North 23 degrees 22 minutes 18 seconds West, a distance of 42.47 feet to a point on the easterly right-of-way line of Sandy Springs Circle (variable right-of-way and 40' from centerline at this location); thence along the easterly right-of-way line of Sandy Springs Circle (40' from centerline) the following 2 courses and distances; along the arc of a curve to the left a distance of 97.69 feet, said curve having a radius of 343.72 feet and being subtended by a bearing of North 00 degrees 53 minutes 20 seconds West a chord distance of 97.36 feet to a point; thence North 09 degrees 01 minutes 51 seconds West a distance of 154.92 feet to a point on the southerly right-of-way line of the proposed Eva Galambos Way (variable right-of-way); thence leaving said right-of-way line of Sandy Springs Circle and proceeding easterly along the southerly right-of-way line of the proposed Eva Galambos Way (variable right-of-way), North 80 degrees 32 minutes 10 seconds East a distance of 35.50 feet to a point on the westerly edge of a proposed cast in place parking deck; thence leaving said right-of-way line of the proposed Eva Galambos Way and proceeding along the westerly, southerly, easterly and southerly edges of a proposed cast in place parking deck the following 4 courses and distances; South 09 degrees 27 minutes 50 seconds East a distance of 243.96 feet to a point; thence North 80 degrees 32 minutes 10 seconds East a distance of 136.33 feet to a point; thence North 09 degrees 27 minutes 50 seconds West a distance of 149.67 feet to a point; thence North 80 degrees 32 minutes 10 seconds East a distance of 95.66 feet to a point on the westerly right-of-way line of the proposed Bluestone Road (variable right-of-way); thence proceeding in a southerly direction along the westerly right-of-way line of the proposed Bluestone Road (variable right-of-way) the following 3 courses and distances; South 14 degrees 32 minutes 54 seconds West a distance of 123.66 feet to a point; thence South 09 degrees 27 minutes 49 seconds East a distance of 53.67 feet to a point; thence South 14 degrees 32 minutes 54 seconds West a distance of 36.30 feet to a point on the northerly right-of-way line of Mt. Vernon Highway (variable right-of-way and 40' from centerline at this location); thence leaving said right-of-way line of the proposed Bluestone Road and proceeding westerly along the northerly right-of-way line of Mt. Vernon Highway, South 80 degrees 59 minutes 46 seconds West a distance of 207.88 feet to a point at the southeasterly end of the proposed mitered right-of-way line at the intersection of the northerly right-of-way line of Mt. Vernon Highway (variable right-of-way and 40' from centerline at this location) and the easterly right-of-way line of Sandy Springs Circle (variable right-of-way), said point being the TRUE POINT OF BEGINNING.

Said parcel containing 29,875 square feet or 0.686 acres and being shown on a boundary exhibit drawing labeled 'South Residential Building' and a portion of the Sandy Springs City Center, by Long Engineering, Inc., dated August 14, 2015.

TRACT 2

ALL that tract or parcel of land lying and being in Land Lot 89 of the 17th District, City of Sandy Springs, Fulton County, Georgia, and being the portion of the described property above the top of the proposed cast in place parking deck and being more particularly described as follows:

To arrive at the point of beginning, COMMENCE at a point at the southeasterly end of the proposed mitered right-of-way line at the intersection of the northerly right-of-way line of Mt. Vernon Highway (variable right-of-way and 40' from centerline at this location) and the easterly right-of-way line of Sandy Springs Circle (variable right-of-way); thence along said proposed mitered right-of-way line North 23 degrees 22 minutes 18 seconds West, a distance of 42.47 feet to a point on the easterly right-of-way line of Sandy Springs Circle (variable right-of-way and 40' from centerline at this location); thence along the easterly right-of-way line of Sandy Springs Circle (40' from centerline) the following 2 courses and distances; along the arc of a curve to the left a distance of 97.69 feet, said curve having a radius of 343.72 feet and being subtended by a bearing of North 00 degrees 53 minutes 20 seconds West a chord distance of 97.36 feet to a point; thence North 09 degrees 01 minutes 51 seconds West a distance of 154.92 feet to a point on the southerly right-of-way line of the proposed Eva Galambos Way (variable right-of-way); thence leaving said right-of-way line of Sandy Springs Circle and proceeding easterly along the southerly right-of-way line of the proposed Eva Galambos Way (variable right-of-way), North 80 degrees 32 minutes 10 seconds East a distance of 35.50 feet to a point and the TRUE POINT OF BEGINNING.

Thence from said True Point of Beginning, continue in an easterly direction along the southerly right-of-way of the proposed Eva Galambos Way (variable right-of-way), North 80 degrees 32 minutes 10 seconds East a distance of 280.42 feet to a point on the westerly right-of-way of the proposed Bluestone Road (variable right-of-way); thence leaving said right-of-way line of the proposed Eva Galambos Way and proceeding in a southerly direction along the westerly right-of-way line of the proposed Bluestone Road (variable right-of-way) the following 4 courses and distances; South 09 degrees 27 minutes 50 seconds East a distance of 18.29 feet to a point; thence South 14 degrees 31 minutes 24 seconds West a distance of 75.24 feet to a point; thence South 74 degrees 32 minutes 54 seconds West a distance of 15.41 feet to a point; thence South 14 degrees 32 minutes 54 seconds West a distance of 6.19 feet to a point on the southerly edge of the proposed cast in place parking deck; thence leaving said right-of-way line of the proposed Bluestone Road and proceeding along the southerly, easterly, southerly and westerly edges of the proposed cast in place parking deck the following 4 courses and distances; South 80 degrees 32 minutes 10 seconds West a distance of 95.66 feet to a point; thence South 09 degrees 27 minutes 50 seconds East a distance of 149.67 feet to a point; thence South 80 degrees 32 minutes 10 seconds West a distance of 136.33 feet to a point; thence North 09 degrees 27 minutes 50 seconds West a distance of 243.96 feet to a point on the southerly right-of-way line of the proposed Eva Galambos Way and the TRUE POINT OF BEGINNING.

Said parcel containing 45,467 square feet or 1.044 acres and being shown on a boundary exhibit drawing labeled 'South Residential Building' and a portion of the Sandy Springs City Center, by Long Engineering, Inc., dated August 14, 2015.

EXHIBIT E

OUTPARCEL – PRELIMINARY LEGAL DESCRIPTION

[SUBJECT TO REVISION BY AGREEMENT OF THE PARTIES]

ALL that tract or parcel of land lying and being in Land Lot 89 of the 17th District, City of Sandy Springs, Fulton County, Georgia, and being more particularly described as follows:

To arrive at the point of beginning, COMMENCE at the intersection of the westerly right-of-way line of Roswell Road (65' right-of-way) and the northerly right-of-way line of Mt. Vernon Highway (variable right-of-way and 33.24' from centerline at this location); thence along the northerly right-of-way line of Mt. Vernon Highway (variable right-of-way) South 79 degrees 01 minutes 02 seconds West, a distance of 63.10 feet to a point, said point being the TRUE POINT OF BEGINNING.

Thence from said TRUE POINT OF BEGINNING, continue along the northerly right-of-way line of Mt. Vernon Highway (variable right-of-way) the following 4 courses and distances; South 79 degrees 01 minutes 02 seconds West, a distance of 115.39 feet to a point; thence North 03 degrees 14 minutes 06 seconds East along a right-of-way jog, a distance of 6.97 feet to a point, said point being 40 feet from centerline; thence South 79 degrees 01 minutes 02 seconds West, a distance of 72.43 feet to a point; thence along the arc of a curve to the right a distance of 20.04 feet, said curve having a radius of 5750.11 feet and being subtended by a bearing of South 79 degrees 07 minutes 01 seconds West a chord distance of 20.04 feet to a point on the easterly right-of-way line of the proposed Eva Galambos Way (variable right-of-way); thence leaving said right-of-way line of Mt. Vernon Highway and proceeding northerly, westerly & northerly along the easterly right-of-way line of the proposed Eva Galambos Way the following 4 courses and distances; North 10 degrees 31 minutes 10 seconds West, a distance of 3.05 feet to a point; thence South 78 degrees 10 minutes 43 seconds West, a distance of 9.50 feet to a point; thence North 10 degrees 31 minutes 10 seconds West, a distance of 24.97 feet to a point; thence North 14 degrees 32 minutes 10 seconds East, a distance of 108.41 feet to a point; thence leaving said right-of-way line of the proposed Eva Galambos Way and proceeding in an easterly direction South 75 degrees 27 minutes 50 seconds East, a distance of 17.68 feet to a point; thence North 14 degrees 32 minutes 10 seconds East, a distance of 29.56 feet to a point; thence along the arc of a curve to the right a distance of 24.40 feet, said curve having a radius of 474.34 feet and being subtended by a bearing of South 77 degrees 27 minutes 08 seconds East, a chord distance of 24.39 feet to a point; thence South 14 degrees 32 minutes 10 seconds West, a distance of 23.61 feet to a point; thence South 75 degrees 27 minutes 50 seconds East, a distance of 26.67 feet to a point; thence North 14 degrees 32 minutes 10 seconds East, a distance of 23.10 feet to a point; thence along the arc of a curve to the right a distance of 78.49 feet, said curve having a radius of 474.89 feet and being subtended by a bearing of South 68 degrees 01 minutes 38 seconds East, a chord distance of 78.40 feet to a point; thence along the arc of a curve to the right a distance of 67.91 feet, said curve having a radius of 199.80 feet and being subtended by a bearing of South 54 degrees 32 minutes 57 seconds East, a chord distance of 67.58 feet to a point; thence South 14 degrees 53 minutes 00 seconds West, a distance of 42.52 feet to a point on the northerly right-of-way line of Mt. Vernon Highway and the TRUE POINT OF BEGINNING.

Said parcel containing 22,834 square feet or 0.524 acres and being labeled 'Outparcel' as shown on a Parcel Exhibit drawing for Sandy Springs City Center, by Long Engineering, Inc., dated August 31, 2015.

EXHIBIT F
LIST OF CONTRACTS

None

EXHIBIT G

DEPICTION OF SHARED RESIDENTIAL PARKING SPACES

[DEPICTION TO FOLLOW - SUBJECT TO REVISION BY AGREEMENT OF THE PARTIES]

SCHEDULE 1

PROPOSED FORM OF DEED

*This instrument was prepared by
and upon recordation should be
returned to:*

STATE OF GEORGIA

COUNTY OF _____

LIMITED WARRANTY DEED

THIS LIMITED WARRANTY DEED is made the _____ day of _____, 201_ between _____, a _____ (“Grantor”), whose address is 7840 Roswell Road, Building 500, Sandy Springs, Georgia 30350, and _____, a _____ (“Grantee”), whose address is c/o Carter and Associates, LLC, 171 17th Street NW, Suite 1200, Atlanta, Georgia 30363 (the words “Grantor” and “Grantee” to include their respective heirs, successors, and assigns where the context requires or permits).

WITNESSETH:

WITNESSETH that Grantor, for and in consideration of Ten and No/100 (\$10.00) Dollars in hand paid at and before the sealing and delivery of these presents, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, has granted, bargained, sold, aliened, conveyed, and confirmed, and by these presents does grant, bargain, sell, alien, convey, and confirm unto Grantee to wit:

ALL THAT TRACT OR PARCEL OF LAND lying and being located in Land Lot _____ of the _____ District of Fulton County, Georgia, as more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"), subject only to and without warranty as to those matters set forth on Exhibit "B" attached hereto and incorporated herein by this reference (the "Permitted Title Exceptions"); TOGETHER with any and all easements, rights-of-way, appurtenances, or rights appertaining or in anywise belonging thereto including, without limitation, any portion of the Property lying within the right-of-way of any publicly dedicated street, roadway or alleyway; and TOGETHER with any and all buildings, improvements, structures, or fixtures located therein or thereon.

TO HAVE AND TO HOLD the Property with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the proper use, benefit, and behoof of Grantee forever in FEE SIMPLE.

AND Grantor will warrant and forever defend the right and title to the Property unto Grantee only against the claims of those persons claiming by, through, or under Grantor (other than any claim arising out of any of the Permitted Title Exceptions), but not otherwise.

[SIGNATURE APPEARS ON FOLLOWING PAGE]

[SIGNATURE PAGE TO LIMITED WARRANTY DEED]

IN WITNESS WHEREOF, Grantor has caused this Limited Warranty Deed to be executed and delivered under seal by its duly authorized representative as of the date first written above.

GRANTOR:

Signed, sealed and delivered
in the presence of:

Unofficial Witness

By: _____

Name: _____

Official Witness (Notary Public)

Title: _____

My commission expires:

[NOTARY SEAL]

Exhibit "A" to Limited Warranty Deed

Legal Description of the Property

SCHEDULE 2
INSURANCE CERTIFICATE
[TO FOLLOW]