

STATE OF GEORGIA  
COUNTY OF FULTON

**RESOLUTION TO APPROVE A PURCHASE AND SALE AGREEMENT BY AND BETWEEN SANDY SPRINGS SHOPPING CENTER, LTD. L.P. AND CITY OF SANDY SPRINGS FOR THE PURCHASE OF REAL ESTATE IN LAND LOTS 71 AND 89 OF THE 17<sup>TH</sup> DISTRICT, FULTON COUNTY, GEORGIA, AT ROSWELL ROAD AND HILDERBRAND AVENUE, FOR THE BOYLSTON CONNECTOR**

**WHEREAS**, the City desires to construct a new public road and right-of-way between Roswell Road and Boylston Drive (“Boylston Connector”); and

**WHEREAS**, in order to construct the Boylston Connection, the City must acquire certain property located in Land Lots 71 and 89 of the 17<sup>th</sup> District, Fulton County, Georgia at Roswell Road and Hilderbrand Avenue, consisting of 18,235 square feet (0.419 acres) (“Property”); and

**WHEREAS**, the Property is owned by Sandy Springs Shopping Center, LTD. L.P. (“Owner”); and

**WHEREAS**, the Owner has agreed to sell the Property to the City for a purchase price of \$850,000.00 pursuant to the terms of that certain Purchase and Sale Agreement by and between the Owner and the City, attached hereto as an exhibit (“Agreement”); and

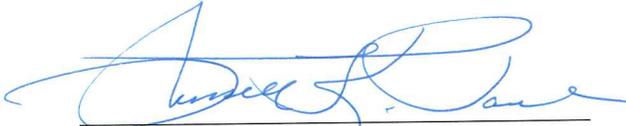
**WHEREAS**, the City desires to enter into the Agreement attached hereto.

**NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF SANDY SPRINGS, GEORGIA:**

1. To facilitate the construction of the Boylston Connector, the City approves the Agreement attached hereto; and
2. The City Manager is hereby authorized to execute the Agreement attached hereto; and
3. The City Manager and the City Attorney are hereby authorized to make such minor revisions to the Agreement as may be deemed reasonable, necessary, and in the best interest of the City prior to execution by the City Manager; and
4. The City Manager and the City Attorney are hereby authorized to take such actions deemed necessary or prudent to effectuate the intent of this resolution.

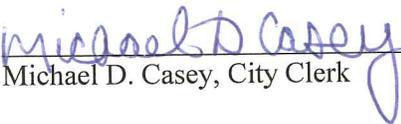
**RESOLVED** this the 6<sup>th</sup> day of October, 2015.

Approved:



Russell K. Paul, Mayor

Attest:



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Michael D. Casey, City Clerk

(Seal)



## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (hereinafter "Agreement") is made and entered into as of the Effective Date specified below, by and between SANDY SPRINGS SHOPPING CENTER, LTD. L.P., a Georgia limited partnership (hereinafter called "Seller"); and CITY OF SANDY SPRINGS, a municipal corporation organized and existing under the laws of the State of Georgia, (hereinafter called "Purchaser").

### WITNESSETH:

1. Property. Purchaser hereby agrees to purchase and take from Seller, subject to and in accordance with all of the terms and conditions of this Agreement, the following property:

Those certain fee simple parcels of land and easements comprising a portion of what is currently known as Tax Parcel 17 008900090470 in Sandy Springs, Fulton County, Georgia, and lying and being in Land Lots 71 and 89, of the 17th District, Fulton County, Georgia and as more particularly described as set forth on Exhibit "A" attached hereto and as depicted as "Proposed Right-Of-Way" on Exhibit "A-1" attached hereto, with the existing building, paving, fencing, and such other land improvements as are located on such fee simple parcels and owned by Seller, including all lighting fixtures, all electrical, mechanical, plumbing, air conditioning, and any other systems or fixtures as are attached thereto (collectively, the "Improvements"), and all plants, trees and shrubbery now a part of such fee simple parcels (all such property referred to collectively herein as the "Property"). The Property is a part of the parcel located at 6125 Roswell Road according to the current system of addressing property in the City of Sandy Springs, Georgia. On Exhibit "A-1" there are two (2) areas adjacent to the area depicted on Exhibit "A-1." One is on the west side and lies between the Proposed Right-Of-Way area shown on Exhibit "A-1" and the existing right-of way of Roswell Road. This area is approximately 37.05' by 22.58' and is referred to herein as the "Roswell Road Right-of-Way Dedication Area." The other is on the east side and lies between the Proposed Right-Of-Way area shown on Exhibit "A-1" and the existing right-of way of Boylston Drive. This area is approximately 37.00' by 17.79' and is referred to herein as the "Boylston Drive Right-of-Way Dedication Area" and the Roswell Road Right-of-Way Dedication Area and the Boylston Drive Right-of-Way Dedication Area are collectively referred to herein as the "Dedication Areas." In addition to selling the Property to Purchaser, Seller has agreed to dedicate the Dedication Areas to Purchaser at no cost to Purchaser. The parties do not yet have legal descriptions for the Dedication Areas. They will be provided by Purchaser and will be subject to Seller's reasonable approval.

2. Purchase Price, Method of Payment. The purchase price for the Property (the "Purchase Price") shall be **EIGHT HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$850,000.00)**. The Purchase Price, after crediting the Earnest Money, and subject to the prorations and adjustments hereinafter described, shall be paid by Purchaser to Seller on the Closing Date by wire transfer to an account designated by Seller, or other payment medium acceptable to Seller.

3. Earnest Money.

(a) Within five (10) days after the Effective Date, as defined herein below, Purchaser shall pay to **MEYER CLOSINGS, LLC** (the "Escrow Agent") the sum of **TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00)** as the initial earnest money deposit. The initial earnest money deposit and any additional earnest money paid to the Escrow Agent by Purchaser pursuant to this Agreement are herein called the "Earnest Money."

(b) If Closing should occur hereunder, Escrow Agent shall pay the Earnest Money to the closing agent (if different than the Escrow Agent) and the Earnest Money shall be applied and credited in reduction of the Purchase Price.

(c) If Closing does not occur hereunder because: (1) Purchaser exercises any unexpired right or option under this Agreement to rescind, cancel or terminate this Agreement within the time provided herein, (2) Seller fails or is unable to deliver Seller's deed and other Deliveries to Purchaser conveying the quality of title to the Property required by this Agreement, or (3) Seller defaults under this Agreement and fails to cure such default within the period allowed for cure, Purchaser shall have the option to notify Escrow Agent, after the passage of any required notice period, to immediately refund the Earnest Money to Purchaser, less the sum of **TWENTY-FIVE AND NO/100 DOLLARS (\$25.00)**, which shall be paid to Seller in consideration for this Agreement, whereupon this Agreement shall terminate and the parties to this Agreement shall have no further rights, duties or obligations to the others, except as otherwise specifically provided by this Agreement.

(d) Otherwise, the Earnest Money shall be deemed non-refundable and shall be paid to Seller upon the termination of this Agreement. Until one of the preceding conditions should exist, the Earnest Money shall be held and disbursed by Escrow Agent strictly in accordance with the terms and provisions of **Section 6** of this Agreement.

4. Title. For purposes of this Section 4, the Property shall be deemed to include the Dedication Areas.

(a) Warranty of Title. Seller warrants that, as of the Effective Date, Seller owns Good and Marketable Fee Simple Title (defined below) to the Property. At Closing, Seller shall deliver to Purchaser Seller's limited warranty deed in proper form for recording conveying Good and Marketable Fee Simple Title to the Property to Purchaser. In the event Seller should be unable to convey the Property at Closing to Purchaser with the quality of title required by this Section, Purchaser may either take such title as Seller can give without reduction of the Purchase Price, or Purchaser may terminate this Agreement, in which event, Purchaser's Earnest Money shall be refunded (less the sum of **TWENTY-FIVE AND NO/100 DOLLARS (\$25.00)**, which shall be paid to Seller in consideration for this Agreement), and, except as otherwise provided herein, neither Purchaser nor Seller shall have any further liability or obligations to the other hereunder.

(b) Good and Marketable Fee Simple Title / Existing Title Exceptions. For all purposes of this Agreement, "Good and Marketable Fee Simple Title" shall mean fee simple title such title as is insurable by a nationally recognized title insurance company selected by Purchaser which is licensed to do business in Georgia under such title company's standard ALTA form of Georgia owner's policy of title insurance, at its standard rates subject only to the following, hereinafter called the "Permitted Exceptions": (i) the standard exclusions therein; (ii)

ad valorem taxes assessed against the Property not due and payable on or before the Closing Date; (iii) all matters, if any, not objected to within the period provided in Section 4(d) or which are waived by Purchaser. "Existing Title Exceptions" means all zoning and land use laws, codes and regulations, liens, easements, encumbrances, leases and other restrictions of public record affecting Seller's Good and Marketable Fee Simple Title to the Property on the Effective Date, but including matters of survey.

(c) Title Objections. Purchaser shall have until October 15, 2015 to conduct an examination of the condition of Seller's title to the Property (including matters of survey), and to deliver to Seller written notice of any objections by Purchaser to the condition of Seller's title.

(d) Title Cure Period. Seller shall have until October 20, 2015 in which to review Purchaser's title objections, and, if Seller elects, to give Purchaser notice of any objections specified in the Objection Notice which Seller intends to attempt to cure. With the exception of any "Monetary Encumbrances," as defined herein, Seller shall have no obligation to take any action whatsoever to cure any objections by Purchaser to the condition of Seller's title which are Existing Title Exceptions. Any Existing Title Exceptions to which Purchaser does not object by October 15, 2015 (other than Monetary Encumbrances) shall become Permitted Title Exceptions at the end of such period. Unless Seller timely notifies Purchaser of any of Purchaser's objections which Seller intends to cure, Seller shall be deemed to have declined to cure any such objections. Seller shall have a reasonable time, but not beyond October 26, 2015, to remove any of Purchaser's objections to Seller's title which Seller has agreed to attempt to cure, provided that Seller shall not be deemed to be in default of this Agreement if Seller fails or is unable to remove the title objections after attempting cure. Seller may at any time give Purchaser notice that Seller is unable to cure or elects not to cure any or all of Purchaser's title objections (any such notice being referred to herein as "No Cure Notice").

(e) Removal of Monetary Encumbrances. Notwithstanding any other provision of this Agreement, Seller shall be obligated to remove not later than Closing all security deeds, mortgages, tax liens, financing statements and other liquidated financial encumbrances of any kind affecting Seller's title to the Property incurred by, against or at the instance of Seller or assumed by Seller, whether or not such matters were included in any notice of objection by Purchaser to Seller's title ("Monetary Encumbrances"). The closing attorney shall withhold and disburse from the Purchase Price a sufficient amount thereof to satisfy all such Monetary Encumbrances.

(f) Purchaser's Termination Right. If Seller fails to attempt or is unable to cure all of Purchaser's valid objections to the condition of Seller's title hereunder, or if Seller fails to remove all such objections, if any, which Seller has agreed to attempt to cure within the time allowed herein, then at the option of Purchaser, to be exercised by Purchaser no later than October 30, 2015, Purchaser may, in Purchaser's sole discretion: (1) waive all of Purchaser's unsatisfied objections (other than Monetary Encumbrances) and purchase the Property without reduction of the Purchase Price, in which case, all remaining Existing Title Exceptions other than Monetary Encumbrances shall become Permitted Exceptions; or (2) terminate this Agreement by written notice to Seller, in which case Seller shall promptly refund any Earnest Money paid (less the sum of **TWENTY-FIVE AND NO/100 DOLLARS (\$25.00)**, which shall be paid to Seller in consideration for this Agreement) and, upon receipt of such refund, except as otherwise provided by this Agreement, neither Purchaser nor Seller shall have any further liability or obligations to the other.

(g) Changes in Condition of Seller's Title after the Effective Date. Seller agrees and covenants with Purchaser that, from and after the Effective Date, Seller will not take any action or intentionally allow any condition within Seller's reasonable control to exist which will adversely affect the condition of Seller's title on the Effective Date. However, notwithstanding **Subsection (f)** hereof, in the event that, after the county record date of Purchaser's examination of title or title commitment and before Closing, Purchaser discovers any adverse change in the condition of Seller's title (other than Monetary Encumbrances) which did not first appear of record until after the Effective Date of this Agreement, Purchaser shall have the additional right to object to such new matters at any time prior to the Closing; and, in the event of such objections, Seller shall have thirty (30) days within which to cure all such objections. If Seller should fail to cure all such new objections within such thirty (30) day period, Purchaser shall have the right to elect within ten (10) days following the end of such thirty (30) day period between the actions described in parts (1) and (2) of **Subsection (f)** hereof. If Purchaser elects to close notwithstanding such objections, there shall be no reduction of the Purchase Price and all title restrictions of record on the date of Closing (other than Monetary Encumbrances) shall become Permitted Exceptions. Notwithstanding the foregoing, Purchaser acknowledges that Seller may grant a temporary easement (the "Temporary Easement") to permit the party to whom Seller is selling the adjacent shopping center property to demolish the buildings located on the shopping center property that encroach onto the Property and Purchaser shall not be entitled to object to the Temporary Easement so long as the Temporary Easement has terminated on or before the Closing Date. If the party to whom Seller is selling the adjacent shopping center property requests additional easements over the Property, Purchaser will cooperate in good faith with Seller and such purchaser to agree upon the form of any such easements by no later than October 30, 2015 and will not unreasonably withhold its approval of such easements. Once such easements have been approved by Purchaser, Seller may enter into such easements and such easements shall become Permitted Exceptions.

(h) Failure to Deliver Written Election. If Purchaser should fail to make a timely election by delivery of written notice to Seller between the waiver and termination alternatives of parts (1) and (2) of **Subsections (f)** and **(g)** hereof, Purchaser shall be conclusively deemed to have elected to terminate this Agreement.

5. Purchaser's Inspection and Other Due Diligence. For purposes of this Section 5, the Property shall be deemed to include the Dedication Areas.

(a) Access and Inspection. From the Effective Date of this Agreement until the Closing Date, Seller hereby grants Purchaser the right to enter upon the Property at reasonable times after reasonable prior notice to Seller, and at Purchaser's sole risk, for the purpose of conducting such appraisals, traffic studies, wetlands studies, environmental and soils tests and reports, engineering and any other inspections and investigations contemplated by this Agreement. Notwithstanding the foregoing, without Seller's express consent, representatives of Purchaser shall not enter the interior of any buildings located upon the Property, any fenced and gated areas without a representative of Seller being present.

(b) Intentionally deleted.

(c) Purchaser's Right to Terminate. In the event that Purchaser's inspection and investigation of the Property results in a determination by Purchaser that the Property is

unsatisfactory for Purchaser's intended uses or is otherwise unsuitable or unacceptable in any respect, Purchaser may terminate this Agreement by delivery to Seller (with copy to the Escrow Agent) of written notice of termination on or before close of business (5:00 p.m. local time) on October 15, 2015. The period beginning on the Effective Date and ending on the earlier of: (1) the date Purchaser delivers written notice to Seller that Purchaser waives all rights to terminate this Agreement pursuant to (i) this Subsection, (ii) the Environmental Condition described in **Section 25** (Special Stipulations), or (2) October 15, 2015 is sometimes referred to herein as the "Free Look Period". Upon receipt of a timely notice of termination, the Escrow Agent shall promptly refund all Earnest Money paid (less the sum of **TWENTY-FIVE AND NO/100 DOLLARS (\$25.00)**, which shall be paid to Seller in consideration for this Agreement), and, upon receipt of such refund, neither Purchaser nor Seller shall have any further liability or obligations to the other except as otherwise provided by this Agreement. If Purchaser does not deliver such written notice of termination on or before the expiration of the Free Look Period, Purchaser shall be deemed to have waived its right to terminate this Agreement pursuant to this **Section 5**, and Purchaser's right to terminate shall expire, become null and void and shall have no further force or effect. Except in the case of an express written waiver, nothing herein shall be deemed to result in a waiver of any other express right or option of Purchaser to terminate this Agreement, including Purchaser's right to terminate under **Section 4** (Title), or the Environmental Condition, which shall be conditions separate from Purchaser's termination right hereunder.

(d) **Inspections at Purchaser's Risk and Expense.** All inspections and testing of the Property by Purchaser and its agents shall be performed at the sole cost and risk of Purchaser. All information provided to Purchaser by Seller, or any person or entity acting on Seller's behalf, is without warranty of any kind and shall be used by Purchaser, if at all, in Purchaser's sole discretion and at Purchaser's sole risk. If this Agreement is terminated, Purchaser shall promptly return to Seller all information that exists in any form or media regarding the Property provided by or on behalf of Seller, together with copies, at no cost to Seller, of all title, surveys, engineering, traffic, environmental, soils and other reports and studies obtained by Purchaser through its investigation of the Property. To the extent permitted by law, Purchaser agrees to indemnify and hold Seller harmless from and against any liens, claims, actions, charges, damages, expenses (including, without limitation, attorneys' fees and court costs) and liabilities incurred through the exercise by Purchaser of the rights granted in this paragraph. If the transaction contemplated by this Agreement fails to close for any reason whatsoever (other than as a result of a material default by Seller) Purchaser shall also promptly restore any portion of the Project damaged or destroyed as a result of Purchaser's activities on the Project to as near as is reasonably possible to the condition that existed immediately prior to Purchaser's activities on the Project that resulted in such damage or destruction. The provisions of this paragraph shall survive Closing and any termination of this Agreement.

(e) **Insurance for Inspections.** Prior to conducting any on-site inspection of the Property, other than mere visual examination, Purchaser and each contractor and/or consultant participating in such inspection shall obtain, and during the period of such access, inspection or testing shall maintain at Purchaser's expense commercial general liability/casualty insurance and personal injury liability coverage which insurance policies must have limits for property damage, bodily injury and death of not less than **ONE MILLION DOLLARS (\$1,000,000)** for any one (1) occurrence.

(f) Invasive Testing. Seller does not authorize Purchaser to conduct Phase II testing or any other invasive testing on the Property without Seller's express written consent which consent shall not be unreasonably withheld.

6. Escrow Instructions.

(a) Handling of Earnest Money. Escrow Agent shall promptly advise Seller and Purchaser if the Earnest Money is not received by Escrow Agent in a timely fashion. Escrow Agent shall promptly deposit and hold the Earnest Money in the federally insured account at the banking institution where the Escrow Agent maintains the other funds it holds in escrow for its clients and others ("Escrow Account"). Escrow Agent may commingle the Earnest Money with funds of other clients in the Escrow Account and shall retain the interest earned on the Earnest Money to compensate the Escrow Agent for performing its obligations hereunder. Escrow Agent shall not be accountable for any direct or indirect incidental benefit which Escrow Agent may receive from the depository bank which is attributable to the Earnest Money.

(b) Disbursement of Funds. At such time as Escrow Agent receives written notice from Seller or Purchaser, or both, stating the identity of the party to whom the Earnest Money is to be disbursed, Escrow Agent shall disburse such Earnest Money pursuant to such notice; provided, however, that if such notice is given by either Seller or Purchaser but not both, and the person to whom the Earnest Money is to be disbursed is other than the closing attorney, Escrow Agent shall notify the other party in writing of such notice and shall withhold disbursement of the Earnest Money for a period of five (5) calendar days after giving such notice. If the Escrow Agent receives written notice from either Seller or Purchaser within such five (5) day period, which notice countermands or objects to the earlier notice of disbursement, then Escrow Agent shall withhold such disbursement until both Seller and Purchaser can agree upon a disbursement of the Earnest Money. Notwithstanding the foregoing, if Purchaser notifies Escrow Agent on or before the expiration of the Inspection Period of its election to terminate this Agreement pursuant to **Section 5**, then no confirming notice from Seller shall be required by Escrow Agent, and Escrow Agent shall promptly disburse the Earnest Money as provided in **Section 5** without requesting or waiting for confirming notice from Seller. Seller and Purchaser agree to send to the other a duplicate copy of any written notice sent to Escrow Agent requesting disbursement or countermanding or objecting to a request for disbursement.

(c) Limited Liability. In performing any of its duties hereunder, Escrow Agent shall not incur any liability to anyone for any damages, losses or expenses, except for any negligence, willful misconduct or breach of trust by Escrow Agent under this Agreement, and, accordingly, Escrow Agent shall not incur any such liability with respect to the following: (1) any action taken or omitted in good faith upon advice of its legal counsel given with respect to any questions relating to the duties and responsibilities of Escrow Agent under this Agreement; or (2) any action taken or omitted in reliance on any instrument, including any written notice or instruction provided for in this Agreement, not only as to its due execution and the validity and effectiveness of its provisions but also as to the truth and accuracy of any information contained therein, which Escrow Agent shall in good faith believe to be genuine, to have been signed or presented by a person or persons having authority to sign or present such instrument, and to conform with the provisions of this Agreement.

(d) Disputes / Interpleader. Notwithstanding anything in this Agreement to the contrary, upon a dispute between Seller and Purchaser sufficient in the sole discretion of Escrow

Agent to justify its doing so, or if Escrow Agent has not disbursed the Earnest Money on or before the thirtieth (30th) day following the Closing Date specified in **Section 7**, then Escrow Agent shall be entitled, but not required, to tender the Earnest Money into the registry or custody of any court of competent jurisdiction, together with such pleadings as it may deem appropriate, and thereupon be discharged from all further duties and liabilities under this Agreement (other than with respect to any liabilities for negligence, willful misconduct or breach of trust by Escrow Agent). The Escrow Agent may reimburse itself from the Earnest Money for a reasonable attorney's fee and other reasonable costs of filing any such interpleader action. The Escrow Agent may also, in its discretion, elect to refrain for any period from initiating any such interpleader action, and may in lieu thereof, continue to hold the Earnest Money in escrow subject to the terms and conditions of this Section pending a resolution of all disputes between the parties.

7. Closing. The term "Closing," as used herein, means the consummation of the purchase and sale of the Property pursuant to this Agreement. The Closing shall include, *inter alia*, the delivery and acceptance of the Purchase Price by Seller and the execution and delivery by Purchaser and Seller as applicable of the Closing Documents and other Deliveries described herein.

(a) Closing Date. The term "Closing Date," as used herein, means the date on which the Closing is consummated.

(1) Closing Date. Subject to the rights of Purchaser and Seller to defer the Closing Date by exercising their respective extension rights as set forth in this Agreement, the Closing shall take place within five (5) business days after the portions of the buildings that encroach from the adjacent shopping center property onto the Property have been demolished, the resultant debris removed and the area where the portions of the buildings that encroached from the adjacent shopping center property onto the Property has been graded. The Closing shall take place at a time and on a date specified by Purchaser (or if no such notice has been received, at 1:00 p.m. local time on the date that is five (5) business days after the portions of the buildings that encroach from the adjacent shopping center property onto the Property have been demolished, the resultant debris removed and the area where the portions of the buildings that encroached from the adjacent shopping center property onto the Property has been graded) (the "Closing Date") at City Hall, 7840 Roswell Road, Sandy Springs, Georgia 30350; or at the law offices of the closing attorney, as elected by Purchaser. If the portions of the buildings that encroach from the adjacent shopping center property onto the Property have not been demolished with the resultant debris removed and the area where the portions of the buildings that encroached from the adjacent shopping center property onto the Property graded by April 30, 2016, this Agreement shall automatically terminate whereupon Purchaser's Earnest Money shall be refunded (less the sum of **TWENTY-FIVE AND NO/100 DOLLARS (\$25.00)**, which shall be paid to Seller in consideration for this Agreement), and, except as otherwise provided herein, neither Purchaser nor Seller shall have any further liability or obligations to the other hereunder.

(2) Intentionally deleted.

(b) Closing Documents. On the Closing Date:

(1) Seller Deliveries. Seller shall deliver to Purchaser the following documents and instruments, all in a standard form and substance reasonably satisfactory to legal

counsel for Purchaser and Seller, duly executed by or on behalf of Seller (where applicable under oath or in proper legal form for recording): (i) a limited warranty deed conveying Seller's Good and Marketable Fee Simple Title to the Property and the Dedication Areas to Purchaser, subject only to Permitted Exceptions; (ii) any curative documents which Seller may agree to furnish in connection with the Closing pursuant to **Section 4** hereof; (iii) a Sellers' affidavit of ownership with respect to the Property and the Dedication Areas, qualified to the knowledge of Seller and providing that nothing contained therein shall in any way enlarge or otherwise modify the warranty of title given in the deed of conveyance at Closing; and (iv) such tax certifications, affidavits of authority and residency, affidavits with respect to title to property, affidavits concerning the participation of brokers, a waiver of lien by the listing broker (if any), and other customary closing documents as reasonably requested by Purchaser, Purchaser's title insurance company or the closing attorney.

(2) **Purchaser Deliveries.** Purchaser shall pay the Purchase Price to Seller in accordance with the provisions of this Agreement, and shall also execute and deliver affidavits concerning the participation of brokers, a waiver of lien from Purchaser's broker and other customary closing documents as reasonably requested by Seller, Purchaser's title insurance company or the closing attorney.

(3) **Closing Memorandum.** Purchaser and Seller shall execute and deliver a settlement statement, HUD-1 Form or closing memorandum disclosing the prorations, adjustments, funds paid and received by and to all parties at the Closing in reasonable detail, together with such other information concerning the Closing as the closing attorney should reasonably consider necessary and proper to properly and accurately document the Closing.

(c) **Prorations and Adjustments to Purchase Price.** The following prorations and adjustments shall be made between Purchaser and Seller at Closing, or thereafter if Purchaser and Seller shall agree:

(1) All city, state and county ad valorem taxes and similar impositions levied or imposed upon or assessed against the Property, hereinafter called the "Taxes", for the year in which Closing occurs shall be prorated as of the Closing Date. Regardless of whether the tax bills for 2015 are available, all such Taxes shall be prorated as of the Closing Date based upon the tax bills for 2014, and Purchaser shall be responsible to pay or reimburse Seller for all 2015 Taxes in excess of Seller's share based on such proration. If the Property is part of a larger tax parcel, the proration shall be based on a per acre amount for the taxes attributable to the land only. In the event any of the Taxes are due and payable at the time of Closing, the same shall be paid at Closing. If the Taxes are not paid at Closing, Seller shall deliver to Purchaser the bills for the Taxes promptly upon the receipt thereof and Purchaser shall thereupon be responsible for the payment in full of the Taxes within the time fixed for payment thereof and before the same shall become delinquent. Seller shall have the exclusive right and option to continue to prosecute any tax appeal pending on the Closing Date for any year before the year of Closing, shall be solely responsible for any additional Taxes for such prior year, and shall be entitled to any refund or rebate for any such year. Purchaser shall have the sole right and responsibility to prosecute any appeal for taxes for the year of Closing.

(2) Any other items which are customarily prorated in connection with the purchase and sale of properties similar to the Property shall be prorated as of the Closing Date. All such prorations and adjustments to be made in conjunction with the Closing shall be made as

of the Closing Date and shall be effective at Closing, except as otherwise provided and as further specified herein. For clarification, the Property is a portion of a shopping center owned by Seller. The income and expenses related to the shopping center for the month in which the Closing occurs shall not be prorated. Seller shall be entitled to all such income and shall be responsible for all such expenses.

(d) Costs of Closing. At Closing:

(1) Seller shall pay: (i) the State of Georgia Real Estate Transfer Tax, if any, payable on the recording of Seller's deed (ii) fees of Seller's attorney and any other advisors, (iii) the cost of satisfying all Monetary Encumbrances and removing the same from the public records, (iv) the cost of preparing and filing any curative documents which Seller may agree to deliver pursuant to **Section 4** hereof, and (v) any other costs which Seller may expressly agree to pay pursuant to this Agreement, but no other charges.

(2) Purchaser shall pay: (i) all recording costs not payable by Seller, (ii) all costs of Purchaser's title examination, title commitment and any updates and Purchaser's title premiums, (iii) all costs of Purchaser's surveys, appraisals, soils and environmental testing, wetlands investigations and other due diligence costs incurred in connection with Purchaser's due diligence investigation of the Property; (iv) any fees and costs of applying for and closing any loan which Purchaser may elect to seek; (v) the fees of Purchaser's attorney and other advisors, and (vi) any other costs and expenses of the transaction which are not the obligation of any other person hereunder.

8. Warranties and Representations of Seller. Seller represents, warrants and covenants that, to Seller's present knowledge, information and belief (for purposes of this Section 8, the Property shall be deemed to include the Dedication Areas):

(a) Seller is a limited partnership duly authorized and existing under the laws of the State of Georgia. Seller has the right, power, authority, discretion and capacity to sell the Property in accordance with the terms, provisions and conditions of this Agreement. The individuals who have executed this Agreement on behalf of Seller in their representative capacities are duly constituted, appointed or elected and authorized to do so; any consent required by Seller's members or partners to make such action effective has been obtained.

(b) There are no lawsuits pending or threatened against or involving Seller or the Property which affect Seller's title.

(c) Seller has not received any notice of pending or threatened claims, condemnations, planned public improvements, annexation, special assessments, rezoning or other adverse claims affecting the Property other than possible condemnation of the Property by Purchaser.

(d) On the Closing Date, Seller will not be indebted to any contractor, laborer, mechanic, materialman, architect or engineer for work, labor or services performed or rendered, or for materials supplied or furnished, in connection with the Property for which any such person could claim a lien against the Property.

(e) Seller will pay or cause to be paid promptly when due all city, state and county ad valorem taxes and similar taxes and assessments, all sewer and water charges and all other governmental charges levied or imposed upon or assessed against the Property between the Effective Date and the Closing Date, except that, if Purchaser elects to close while a tenant remains in possession of the Property, Seller shall not be responsible for utility charges for the month in which the Closing occurs.

9. Warranties and Representations of Purchaser. (a) Purchaser is a municipal corporation duly authorized and existing under the laws of the State of Georgia. Subject to the conditions specified herein below, Purchaser has the right, power, authority, discretion and capacity to sell the Property in accordance with the terms, provisions and conditions of this Agreement. The individual who has executed this Agreement on behalf of Seller in his representative capacities is duly constituted, appointed or elected and authorized to do so.

(b) Seller acknowledges that Purchaser's obligation to close the purchase and sale of the Property hereunder is subject to and conditioned upon the City Council of Sandy Springs, Georgia's approval of this Agreement; provided, however: (1) Purchaser shall present this Agreement for approval and make its determination within thirty (30) day of the Effective Date, and (2) nothing herein shall be deemed to affect Purchaser's insurance, indemnity and other obligations under **Sections 5 and 8**. If this Agreement is not approved by the City Council of Sandy Springs, Georgia, Purchaser shall promptly so notify Seller whereupon this Agreement shall terminate, Purchaser's Earnest Money shall be refunded (less the sum of **TWENTY-FIVE AND NO/100 DOLLARS (\$25.00)**, which shall be paid to Seller in consideration for this Agreement), and, except as otherwise provided herein, neither Purchaser nor Seller shall have any further liability or obligations to the other hereunder.

10. Default and Remedies.

(a) If the purchase and sale of the Property contemplated hereby does not close in accordance with the terms and conditions of this Agreement as the result of actions, failures or circumstances which constitute a breach or default by Purchaser of Purchaser's obligations under this Agreement, and if Purchaser fails or refuses to cure such default within ten (10) days after delivery of written notice thereof from Seller describing the default and, if any action is possible to cure the same, describing such action, Seller shall be paid the Earnest Money as bargained for liquidated damages incurred by Seller arising from Purchaser's failure to close, and not a penalty. Notwithstanding the foregoing, failure to close on the Closing Date and deliver the Purchase Price (net of any prorations and adjustments described in this Agreement) to Seller shall not be a default that is entitled to any notice or opportunity to cure.

(b) If the purchase and sale of the Property contemplated hereby does not close in accordance with the terms and conditions of this Agreement as the result of actions, failures or circumstances which constitute a material breach or material default by Seller of Seller's obligations under this Agreement, and if Seller fails or refuses to cure such default within ten (10) days after delivery of notice thereof from Purchaser describing the default and, if any action is possible to cure the same, describing such action, Purchaser shall elect, as its sole remedies, either: (1) to terminate this Agreement by delivery of written notice of termination to Seller, in which case the Earnest Money shall be promptly refunded to Purchaser, and Purchaser shall have the right within six (6) months thereafter to commence an action for non-consequential damages

incurred by Purchaser, provided that the maximum provable damages shall not exceed the amount equal to the amount of the Earnest Money refunded to Purchaser hereunder; or (2) in the alternative, Purchaser shall have the right to sue Seller for specific performance of this Agreement, and, if Seller should receive an order for specific performance, Purchaser shall also be entitled to receive a monetary award of damages not in excess of Purchaser's reasonable attorney's fees and costs of the litigation. The inability of Seller to convey the Property to Purchaser on the Closing Date with the quality of title required by this Agreement shall not constitute a default by Seller under this Agreement unless the title restriction causing such inability arises after the Effective Date by reason of a willful action of Seller in violation of this Agreement or the failure to take an action required by this Agreement which Seller was required to have taken.

11. Condition to Purchaser's Obligation to Close. As stated above Seller is under contract to sell the adjoining shopping center property. Purchaser's obligation to acquire the Property under this Agreement is conditioned upon the portions of the buildings that encroach from the adjacent shopping center property onto the Property having been demolished.

12. Condemnation.

(a) If all or any material part of the Property is taken by eminent domain proceedings by any government agency other than Purchaser or any agency or instrumentality thereof, or, if there is the commencement or bona fide threat of the commencement of any such proceedings by any such agency prior to Closing, Purchaser shall have the right, at its option, to terminate this Agreement by giving written notice to Seller on or before the date ten (10) days after the date upon which Seller gives Purchaser written notice of such taking or threat thereof, in which event Purchaser's Earnest Money shall be refunded to Purchaser and, with the exception of any rights and obligations which expressly survive the termination of this Agreement by any other terms thereof, all rights and obligations of the parties under this Agreement shall expire. Any condemnation action instituted or threatened by Purchaser or any agency or instrumentality thereof prior to Closing shall have no effect on this Agreement.

(b) In the event of a threat or taking of less than a material part of the Property by any such governmental agency other than Purchaser or any agency or instrumentality thereof prior to Closing, Purchaser shall have no right to terminate this Agreement by reason of such taking. Instead, if less than a material part of the Property is threatened or taken by any such eminent domain proceedings prior to Closing, and if the purchase and sale of the Property contemplated by this Agreement is thereafter consummated: (1) Purchaser shall receive a credit for the total of any awards or other proceeds actually received by Seller with respect to any taking less the amounts expended by Seller prior to Closing to obtain the award and paid for the repair or restoration of the Property; and (2) at Closing, Seller shall assign to Purchaser all rights of Seller in and to any awards or other proceeds payable thereafter by reason of such taking or threat thereof. For the purposes of this Subsection 12(b), a taking shall be deemed to be of a "material" part of the Project only if such taking involves either: (1) the taking of more than twenty (20%) of the parking spaces on the Property; or (2) the taking of more than ten percent (10%) of the interior space in the Improvements.

(c) In the event that all or any part of the Property is taken by eminent domain proceedings by Purchaser or any agency or instrumentality thereof, such taking shall not affect this Agreement or the amount of the Purchase Price hereunder, and the Purchase Price shall be

paid to Seller and the Closing shall occur contemporaneously with such taking of all or part of the Property.

13. Assignment. This Agreement may not be assigned by Purchaser, in whole or in part, without the prior written consent of Seller.

14. Binding Effect. This Agreement shall be binding upon and enforceable against, and shall inure to the benefit of, Purchaser and Seller and their respective legal representatives, successors and permitted assigns.

15. Brokerage Commission; Disclosure. Seller and Purchaser hereby represent and warrant to the other that he/she/they have not dealt with any real estate Broker, agent or salesperson so as to create any legal right or claim in any such Broker, agent or salesperson for a commission or similar fee or compensation with respect to the negotiation and/or consummation of this Contract. Purchaser and Seller acknowledge that they are not represented by a Broker unless they have signed a brokerage agreement with said Broker. If any party hereto is not represented by a Broker, that party acknowledges full responsibility for protecting his/ her/their own interests.

16. Modification. This Agreement supersedes all prior discussions and agreements between Seller and Purchaser and their respective Brokers with respect to the purchase and sale of the Property and other matters contained herein, and this Agreement, together with any letters or written amendments executed by the parties contemporaneously with or subsequent to the execution of this Agreement, contains the sole and entire understanding between Seller and Purchaser with respect thereto. This Agreement shall not be modified or amended except by an instrument in writing signed by or on behalf of Seller and Purchaser. No consent of the Brokers shall be required for any such modification or amendment unless such modification or amendment affects the Brokers' commission rights hereunder (excluding, however, any modification with respect to price).

17. Applicable Law. This Agreement shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of Georgia.

18. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

19. Time. Time is and shall be of the essence of this Agreement.

20. Captions. The captions and headings used in this Agreement are for convenience only and do not in any way restrict, modify or amplify the terms of this Agreement.

21. Exhibits. Each and every Exhibit referred to or otherwise mentioned in this Agreement is attached to this Agreement and is and shall be construed to be made a part of this Agreement by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each Exhibit were set forth in full and at length every time it is referred to or otherwise mentioned.

22. Notices. All notices, requests, demands, tenders and other communications hereunder shall be in writing. Any such notice, request, demand, tender or other communications shall be deemed to have been duly given if personally delivered or upon receipt if sent by United States Mail, Certified Mail, Return Receipt Requested, with all postage prepaid, or by a nationally recognized overnight courier such as federal Express or United Parcel Service to the address for each party set forth below its execution hereof. Any party, by written notice to the others in the manner herein provided, may designate an address different from that set forth herein.

Seller: Sandy Springs Shopping Center, LTD. L.P.  
c/o Parian Investments, Inc.  
736 Johnson Ferry Road, Suite C-240  
Marietta, Georgia 30068  
Attn: Donna R. Maslia

With a copy to: Charles A. Brake, Jr., Esq.  
Miller & Martin PLLC  
1180 W. Peachtree Street, NW  
Suite 2100  
Atlanta, Georgia 30309

Purchaser: City of Sandy Springs, Georgia  
Attn: John McDonough, City Manager  
7840 Roswell Road  
Sandy Springs, Georgia 30350

With a copy to: Wendell K. Willard, City Attorney  
City of Sandy Springs, Georgia  
7840 Roswell Road  
Sandy Springs, Georgia 30350-

Escrow Agent: Andy Meyer  
Meyer Closings, LLC  
One Premier Plaza  
5605 Glenridge Drive  
Suite 800  
Atlanta, Georgia 30342

23. Survival. Except as otherwise specified in this Agreement, all conditions or stipulations shall merge with the Closing herein.

24. Miscellaneous. If the final date for any period provided for herein for the performance of any obligation or for the taking of any action falls on Saturday, Sunday, or banking holiday, then the time of the period shall be deemed extended to the next day which is not a Saturday, Sunday, or banking holiday.

25. Special Stipulations. The following Special Stipulations, if conflicting or inconsistent with any of the preceding portions of this Agreement, or any exhibit, addendum attached hereto, shall control the rights and obligations of the parties and the interpretation of this

Agreement (for purposes of this Section 25, the Property shall be deemed to include the Dedication Areas):

(a) Environmental Condition. Seller acknowledges that Purchaser's obligation to close the purchase the Property shall be conditioned upon the receipt of a Phase I and, if recommended by Purchaser's environmental engineer or consultant, a Phase II environmental assessment of the Property with the scope and specific tests recommended by Purchaser's environmental engineer or consultant. All such environmental testing shall be at Purchaser's sole cost and risk. Purchaser shall order any applicable Phase II testing before the end of the Free Look Period. In the event that: (1) any Phase II testing has been ordered within the time provided herein, but the report with the results of such tests has not been completed and received by Purchaser before the end of the Free Look Period, and (2) if, after the results of such Phase II testing reveals contamination of the Improvements, soil or groundwater of the Property at concentrations reasonably unacceptable to Purchaser, Purchaser may terminate this Agreement by delivery of written notice of termination to Seller within ten (10) days after the delivery of the such Phase II environmental report to Purchaser, but not later than October 30, 2015 in any event, in which case this Agreement shall terminate, the Escrow Agent shall refund the Earnest Money to Purchaser (less the sum of **TWENTY-FIVE AND NO/100 DOLLARS (\$25.00)** to be paid to Seller for entering into this Agreement), and neither party shall have any further obligation or liability to the other, except as otherwise specifically provided by this Agreement. If Purchaser has not delivered Purchaser's notice of termination to Seller within the time provided in this Section 25(a), Purchaser's right to terminate the Agreement pursuant to this Stipulation shall expire. Notwithstanding the foregoing, Purchaser acknowledges that it may not conduct any Phase II testing or any other invasive testing on the Property without Seller's express written consent which consent shall not be unreasonably withheld. If Seller does not grant such consent, Purchaser may terminate this Agreement by delivery of written notice of termination to Seller within ten (10) days after Seller denies such consent, in which case this Agreement shall terminate, the Escrow Agent shall refund the Earnest Money to Purchaser (less the sum of **TWENTY-FIVE AND NO/100 DOLLARS (\$25.00)** to be paid to Seller for entering into this Agreement), and neither party shall have any further obligation or liability to the other, except as otherwise specifically provided by this Agreement.

26. Time for Acceptance. This Agreement shall be regarded as an offer made by Seller to Purchaser on October 5, 2015 and is open for acceptance by Purchaser on or before 5:00 p.m. Eastern Time on October 7, 2015 (the "Acceptance Date"). The only manner of acceptance binding upon Seller shall be the execution of this Agreement by Purchaser and receipt by Seller of one (1) fully executed copy not later than 5:00 p.m. on the Acceptance Date. The actual date of the receipt by Seller of a fully-executed copy of this Agreement is sometimes referred to herein as the "Effective Date." Seller shall confirm the Effective Date by entering the date of receipt in the space provided below and returning one (1) copy to Purchaser. The parties agree that executed signature pages to this Agreement may be exchanged by email and that such emailed signature pages shall be treated as originals.

27. Sale in Lieu of Condemnation. Purchaser and Seller acknowledge that they are entering into this Agreement so that Purchaser may purchase the Property from Seller, and Seller may sell the Property to Purchaser, in lieu of Purchaser acquiring the Property and the Dedication Areas by eminent domain proceedings.

28. Property Conveyed "As Is". For purposes of this Section 28, the Property shall be deemed to include the Dedication Areas. Except as expressly set forth in this Agreement and in the closing documents delivered by Seller to Purchaser at Closing, the Property is being conveyed to Purchaser "as is" and "with all faults." Except as expressly set forth in this Agreement and in the closing documents delivered by Seller to Purchaser at Closing, Seller has not made, does not make, any express or implied representations and warranties regarding or relating to the Property. By proceeding with the acquisition of the Property at Closing, Purchaser confirms that it has investigated all of the matters regarding the Property that Purchaser deems relevant to its satisfaction, and is acquiring the Property in "as is" condition, subject to the provisions of this Agreement and in the closing documents delivered by Seller to Purchaser at Closing. This Section 28 shall survive the Closing.

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SIGNATURES BEGIN ON THE FOLLOWING PAGE.]**

**IN WITNESS WHEREOF**, Seller and Purchaser have caused this Agreement to be executed and sealed by their duly authorized representatives on the dates written below.

**SELLER:**

SANDY SPRINGS SHOPPING CENTER, LTD.  
L.P., a Georgia limited partnership

By: \_\_\_\_\_ (L.S.)  
Its: \_\_\_\_\_

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Seller confirms that the Effective Date of this Agreement is \_\_\_\_\_, 2015.

\_\_\_\_\_  
Initial here

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SIGNATURES CONTINUE ON THE FOLLOWING PAGE.]**



**ESCROW AGENT:**

MEYER CLOSINGS, LLC

Date: \_\_\_\_\_, 2015

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

Its: \_\_\_\_\_

EXHIBIT "A"  
LEGAL DESCRIPTION

EXHIBIT "A-1"

DRAWING OF THE PROPERTY