



41 Perimeter Center East, Suite 250  
 Dunwoody, Georgia 30346  
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[dunwoodyga.gov](http://dunwoodyga.gov)

## **MEMORANDUM**

**To:** Mayor and City Council

**From:** Warren Hutmacher, City Manager

**Date:** September 10, 2012

**Subject:** **Intergovernmental Agreement with the Urban Redevelopment Agency**

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### **ITEM DESCRIPTION**

Staff recommends revising the provisions in the IGA with the URA as it relates to transference and sale of land.

### **BACKGROUND**

In May, the City appointed members to the Urban Redevelopment Agency in order to implement the Project Renaissance Urban Redevelopment Plan. The adopted Urban Redevelopment Plan outlines the City's strategy to redevelop a 16 acre property, purchased by the City in 2011, and a 19 acre property the City has under contract to purchase over the next three years.

In June, the City entered a Development Agreement with John Wieland Homes and Neighborhoods. The Development Agreement identifies the responsibilities and obligations of both parties as it relates to the redevelopment of the full 35 acres. Following the adoption of the Development Agreement, the City adopted an Intergovernmental Agreement (IGA) with the Urban Redevelopment Agency (URA) to further outline and define the specific implementation roles of the City and the Urban Redevelopment Agency as it relates to the Development Agreement and implementation of the Urban Redevelopment Plan.

As outlined in the IGA, the Urban Redevelopment Agency serves an important role related to refinancing the 16 acre parcel and selling residential lots to John Wieland Homes and Neighborhoods.

### **UPDATE**

Since the adoption of the IGA with the URA, the URA has worked with staff to implement the Development Agreement with John Wieland Homes and Neighborhoods. Through this process, staff has identified two sections of the agreement in need of immediate modification related to the transference and sale of property. The changes outlined below will allow the URA to meet the deadlines agreed upon in the Development Agreement with John Wieland Homes and Neighborhoods.

First, URA is currently limited to taking action only as specifically set forth in the Development Agreement. However, in order to effectuate the duties and responsibilities outlined in the Development Agreement related to the transference and sale of land, the URA requires additional flexibility to implement the City's vision for Project Renaissance. In this regard, a clause has been added to sections 2.02(d), 2.03(a), 3.02(c), and 3.03(a) which would allow the URA to take "other actions necessary to effectuate the Development



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Agreement." These additions have been "tracked" and the text is underlined in the attached IGA.

Secondly, the notice periods stated in the IGA are too inflexible for this transaction and need to be modified. Rather than the current thirty days notice of any property transference, staff recommends the URA provide written notice to the City and provide a ten day review period during which the Mayor or any member of Council may object and request a delay for discussion at the next City Council meeting. This change has been added to sections 2.03(a) and 3.03(a). The additions have been "tracked" and the text is underlined in the attached IGA.

### **RECOMMENDATION**

Staff recommends approval of the revised Intergovernmental Agreement with the Urban Redevelopment Agency.

**A RESOLUTION AUTHORIZING AND APPROVING AN AMENDED  
INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY AND THE  
DUNWOODY URBAN REDEVELOPMENT AGENCY**

**WHEREAS:** on April 9, 2012, in conformity with Chapter 61 of Title 36 of the Official Code of Georgia Annotated, entitled the "Urban Redevelopment Law," as amended, (hereinafter the "Urban Redevelopment Law"), the City passed Resolution 2012-04-09 making findings necessary to authorize the use of redevelopment powers within the City; and

**WHEREAS:** on April 9, 2012, in conformity with the Urban Redevelopment Law, the City passed Resolution 2012-04-10 designating a 35 acre redevelopment area located along North Shallowford Road consisting of a 16 acre parcel owned by the City, and a 19 acre parcel upon which the City has a purchase option agreement as a redevelopment area; and

**WHEREAS:** on April 23, 2012, the City established an Urban Redevelopment Plan, entitled Project Renaissance, regarding the Redevelopment Parcels (hereinafter the "Urban Redevelopment Plan"); and

**WHEREAS:** pursuant to the City's Urban Redevelopment Plan, on April 23, 2012, the City passed Resolution 2012-04-13 activating the Urban Redevelopment Agency of Dunwoody; and

**WHEREAS:** pursuant to the City's Urban Redevelopment Plan, the Urban Redevelopment Authority will acquire certain properties from the City to conduct a redevelopment in accordance with the previously adopted Development Agreement with JW Acquisitions, LLC; and

**WHEREAS:** on June 26, 2012, the City and the URA executed an Intergovernmental Agreement for the purposes of conducting the redevelopment of the properties owned by the URA and the City and URA currently desire to amend said Agreement as attached hereto and incorporated herein; and

**WHEREAS,** the parties are authorized to enter into intergovernmental agreements pursuant to the Constitution of the State of Georgia.

**NOW THEREFORE BE IT RESOLVED** by the Mayor and Council for the City of Dunwoody that the Amended Intergovernmental Agreement between the City of Dunwoody and the Urban Redevelopment of Authority of Dunwoody, as attached hereto and incorporated herein by reference, is hereby approved and adopted and the Mayor, City Manager and City Attorney are instructed to execute all documents necessary and perform all actions necessary to effect same.

#M.12.

STATE OF GEORGIA  
CITY OF DUNWOODY

**RESOLUTION 2012-09-XX**

**SO RESOLVED AND EFFECTIVE**, this 10<sup>th</sup> day of September, 2012.

Approved:

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Michael G. Davis, Mayor

Attest:

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Sharon Lowery, City Clerk (Seal)

**INTERGOVERNMENTAL AGREEMENT**

This **INTERGOVERNMENTAL AGREEMENT** (hereinafter “Intergovernmental Agreement”), dated as of June 28, 2012, by and among the CITY OF DUNWOODY, GEORGIA (hereinafter the “City”) a municipal corporation of the State of Georgia, and the URBAN REDEVELOPMENT AGENCY OF DUNWOODY, GEORGIA (hereinafter the “Authority”), a public body corporate and politic created and existing under the laws of the State of Georgia.

**WITNESSETH:**

**WHEREAS**, the City is a municipality created by the 2008 Georgia General Assembly pursuant to Ga. L. 2008, p. 3526 and the Mayor and the City Council of Dunwoody constitute the duly elected governing authority for the City; and

**WHEREAS**, on April 9, 2012, in conformity with Chapter 61 of Title 36 of the Official Code of Georgia Annotated, entitled the “Urban Redevelopment Law,” as amended, (hereinafter the “Urban Redevelopment Law”), the City passed Resolution 2012-04-09 making findings necessary to authorize the use of redevelopment powers within the City; and

**WHEREAS**, on April 9, 2012, in conformity with the Urban Redevelopment Law, the City passed Resolution 2012-04-10 designating a 35 acre redevelopment area located along North Shallowford Road consisting of a 16 acre parcel owned by the City, and a 19 acre parcel upon which the City has a purchase option agreement as a redevelopment area; and

**WHEREAS**, the 16 acre and 19 acre parcels are more specifically described as follows: a 16 acre parcel, within the City and owned by the City, further described in Exhibit A1 (hereinafter the “16 Acre Parcel”), and 19 contiguous acres of property in the City, consisting of approximately 10.68 acres under contract to the City, and an 8.32 acre parcel owned by the City, further described in Exhibit A2 (hereinafter “the 19 Acre Parcel”). Hereinafter, “the 16 Acre Parcel” and “the 19 Acre Parcel” may be jointly referred to hereinafter as the “Redevelopment Parcels”; and

**WHEREAS**, a copy of the Contract for Purchase and Sale/(Hospital), dated October 13, 2011, and the Reinstatement of and 3<sup>rd</sup> Amendment to the Purchase and Sale/(Hospital), dated March 9, 2012, by and among Atlanta Healthcare Management, L.P. and American Medicorp Development Company as Seller and the City of Dunwoody as Buyer regarding the 19 Acre Parcel (hereinafter “19 Acre Purchase Agreement”) is attached hereto as Exhibit “B” and incorporated herein as if set out in full; and

**WHEREAS**, on April 23, 2012, the City established an Urban Redevelopment Plan, entitled Project Renaissance, regarding the Redevelopment Parcels (hereinafter the “Urban Redevelopment Plan”), and

**WHEREAS**, on April 23, 2012, the City passed Resolution 2012-04-13 activating the Urban Redevelopment Agency of Dunwoody; and

**WHEREAS**, on May 14, 2012, the City passed Resolution 2012-04-16 appointing the members of the Urban Redevelopment Agency of Dunwoody; and

**WHEREAS**, pursuant to the Urban Redevelopment Plan and in conformity with the Urban Redevelopment Law, the City solicited presented private companies to present a redevelopment plan for the Redevelopment Parcels; and

**WHEREAS**, pursuant to the Urban Redevelopment Plan and in conformity with the Urban Redevelopment Law, the plan presented by JW Acquisitions, LLC (hereinafter "JW Acquisitions") is determined to be the most conducive to implement the vision of the Urban Redevelopment Plan; and

**WHEREAS**, on June 11, 2012, the City passed Resolution 2012-06-20 approving the execution of a development agreement entitled Acquisition and Development Agreement by and among the JW Acquisitions and the City (hereinafter the "Development Agreement"); and

**WHEREAS**, a copy of the Development Agreement is attached hereto as Exhibit "C" and incorporated herein as if set out in full; and

**WHEREAS**, the parties are authorized to enter into intergovernmental agreements pursuant to the Constitution of the State of Georgia;

**NOW THEREFORE, IN CONSIDERATION OF** the respective representations, agreements and obligations set forth hereinafter and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**ARTICLE I  
ASSIGNMENT OF DEVELOPMENT AGREEMENT**

**Section 1.01. Assignment of Development Agreement; Cooperation.** By virtue of the execution of this Intergovernmental Agreement, the City hereby assigns and the Authority hereby accepts the assignment of the Development Agreement and all of the obligations set forth therein. The Authority further agrees to cooperate with the City to execute any and all additional documents necessary to accomplish said assignment in conformance with the Development Agreement.

**Section 1.02. Obligations of the Authority.** The Authority agrees that it shall:

- (a) Accept and be bound by all obligations set forth in said Development Agreement; and

**Section 1.02. Obligations of the City.** Subject to the additional obligations set forth in this Intergovernmental Agreement, the City agrees that it shall:

- (a) Remain obligated to perform any and all repair, maintenance, and construction obligations as set forth in the Development Agreement at no cost to the Authority. Such obligations shall include but not be limited to the repair, maintenance and construction of the stormwater systems, road

systems, sewer systems, and designated improvements on the Redevelopment Parcels.

**ARTICLE II**  
**16 ACRE PARCEL: FINANCING;**  
**TRANSFER; SALE**

**Section 2.01. Financing.**

- (a) Upon the execution of this Intergovernmental Agreement, the City and the Authority shall cooperate to arrange financing in a sufficient amount to pay any and all indebtedness existing as of the date of this Agreement on the 16 Acre Parcel.
- (b) The parties shall be obligated to accept reasonable market terms for such financing.
- (c) The parties agree that they shall each be obligated to execute any and all documents necessary to procure appropriate financing for the transaction in an amount to pay, at a minimum, all currently existing indebtedness on the 16 Acre Parcel.
- (d) The City agrees that it shall pay and service any and all debt which is incurred in furtherance of this transfer of the 16 Acre Parcel.

**Section 2.02. Transfer.**

- (a) Upon the approval of an Ordinance by City Council transferring the 16 Acre Parcel to the Authority, the City shall transfer the 16 Acre Parcel to the Authority.
- (b) At closing, any existing security interests in the 16 Acre Parcel shall be paid in full.
- (c) At the time of transfer:
  - (i) The City shall have the authority to retain any areas which remain property of the City pursuant to the Development Agreement, i.e. park areas, rights-of-way, drainage features, or other such areas.
  - (ii) Following the conveyance, the City shall retain the right to reacquire possession of any Authority property and/or property interests which are necessary to accomplish its duties set forth in the Development Agreement, and upon notice, the Authority shall promptly convey any such property to the City at no cost to the City ~~within 15 days of receiving notice.~~
- (d) The Authority acknowledges that it shall have no right or authority to encumber, pledge, dispose of, or otherwise take any action regarding the 16 Acre Parcel other than those actions as specifically set forth in the Development Agreement and this Intergovernmental Agreement or other action necessary to effectuate the Development Agreement. Since any such action would threaten immediate and irreparable injury to the City, the parties agree that the City would have the right to seek an injunction regarding such actions and seek specific performance for the reconveyance of the property to the City.
- (e) The parties agree that should the City so elect, at the time of transfer, the City may record a security interest in the 16 Acre Parcel based upon its right to

receive proceeds from the transactions set forth in the Development Agreement.

**Section 2.03. Sale.**

- (a) The Authority shall only dispose of the 16 Acre Parcel, or part thereof, consistent with the terms of the Development Agreement, or other action necessary to effectuate the Development Agreement, and shall commence disposition only after providing the City with ~~30 days~~ written notice of same. The City shall have ten days to review any sale of land during which time the Mayor or any member of Council may request a delay for discussion at the next City Council meeting. At the City Council meeting, the Council may choose to modify or object to the transaction or the Council may choose to authorize or take no further action related to the transaction.
- (b) In consideration of the City's obligation to service the indebtedness on the property, the Parties agree that any sums due from JW Acquisitions, or from any other source, pursuant to the Development Agreement shall be paid directly to the City.

**Section 2.04. General.** The parties shall cooperate to execute any and all such further agreements necessary to affect the financing and transfer as contemplated in this Article II of this Agreement.

**ARTICLE III  
19 ACRE PARCEL; PURCHASE;  
TRANSFER; SALE**

**Section 3.01. Purchase.** The City agrees that it shall purchase 19 Acre Parcel as contemplated in the 19 Acre Option to Purchase Agreement and pursuant to the terms thereof.

**Section 3.02. Transfer.**

- (a) Upon acquisition of the various parcels as contemplated in the 19 Acre Option to Purchase Agreement, the City may transfer the parcel purchased to the Development Authority via an Ordinance adopted by the City Council less any areas which shall be remain property of the City pursuant to the Development Agreement, i.e. park areas, rights-of-way, drainage features, or other such areas at the City may deem proper in its sole discretion. The timing of such transfer shall remain at the discretion of the City.
- (b) Following the conveyance, the City shall retain the right to have possession of any further property and/or property interests which are necessary to accomplish its duties set forth in the Development Agreement, and upon notice, the Authority shall promptly convey any such property to the City.
- (c) The Authority acknowledges that it shall have no right or authority to encumber, pledge, dispose of, or otherwise take any action regarding the 19 Acre Parcel other than those actions as specifically set forth in the Development Agreement and this Intergovernmental Agreement or other action necessary to effectuate the Development Agreement. Since any such action would threaten immediate and irreparable injury to the City, the parties agree that the City would have the right to seek an injunction



regarding such actions and seek specific performance for the reconveyance of the property to the City.

- (d) The parties agree that should the City so elect, at the time of transfer, the City may record a security interest in the 16 Acre Parcel based upon its right to receive proceeds from the transactions set forth in the Development Agreement.

**Section 3.03. Sale.**

- (a) The Authority shall only dispose of the 19 Acre Parcel consistent with the terms of the Development Agreement, or other action necessary to effectuate the Development Agreement, and shall commence disposition only after providing the City with ~~30 days~~ written notice of same. The City shall have ten days to review any sale of land during which time the Mayor or any member of Council may request a delay for discussion at the next City Council meeting. At the City Council meeting, the Council may choose to modify or object to the transaction or the Council may choose to authorize or take no further action related to the transaction.
- (b) In consideration of the City's obligation to purchase the property, the Parties agree that any sums due from JW Acquisitions, or from any other source, pursuant to the Development Agreement shall be paid directly to the City.

**Section 3.04. General.** The parties shall cooperate to execute any and all such further agreements necessary to affect the financing and transfer as contemplated in this Article III of this Agreement.

**ARTICLE IV  
EFFECTIVE DATE; TERM; TERMINATION**

**Section 4.01. Effective Date; Term; Termination.**

- (a) This Intergovernmental Agreement shall become effective upon its delivery and execution by all parties and shall be in full force and effect for a term of fifty (50) years, or until such time as it is otherwise terminated pursuant to the terms set forth herein.
- (b) In the event that the Development Agreement is terminated pursuant to its terms, this Intergovernmental shall likewise concurrently terminate subject to the parties carrying out such further duties as necessary to return the parties to their positions prior to the execution of this Intergovernmental Agreement including but not limited to the reconveyance to the City of any property conveyed to the Authority pursuant to this Intergovernmental Agreement.
- (c) The City may terminate this Intergovernmental Agreement upon thirty (30) days written notice to the Authority. In the event of such termination, the Development Authority shall convey any property conveyed to it pursuant to this Intergovernmental Agreement (and not otherwise disposed of consistent with the Development Agreement) to the City within 15 days of the effective date of termination, provided, however, that the City shall be responsible for any debts due and owing which have been incurred for the payment of the purchase price for the acquisition of any such property.

**ARTICLE V  
GENERAL PROVISIONS**

**Section 5.01. Costs and Expenses of this Intergovernmental Agreement.**

- (a) City agrees that during the Intergovernmental Agreement Term it shall pay directly to the Authority an amount sufficient to reimburse the Authority for all out-of-pocket costs and expenses reasonable incurred by the Authority, including without limitation the reasonable fees and expenses of legal counsel, in connection with this Intergovernmental Agreement or the performance of its obligations hereunder.
- (b) Such Additional Payments shall be billed to the City by the Authority from time to time, together with a statement certifying that the amount billed has been incurred or paid by such party for one or more of the above items. Amounts so billed shall be paid by the City within thirty (30) days after receipt of the bill by the City.

**Section 5.02. Payments.** All payments contemplated by this Intergovernmental Agreement shall be made in lawful money of the United States in a mutually agreed upon format to such accounts as the receiving party shall provide notice from time to time.

**Section 5.03. Services Provided by the City to the Authority.** So long as the Authority is not in default under this Intergovernmental Agreement, the City shall provide accounting and administrative support for the activities of the Authority at no cost to the Authority.

**Sections 5.04. Consents.** The Authority agrees that it shall not convey any property pursuant to the terms of the Development Agreement without the prior written consent of the City.

**ARTICLE VI  
EVENTS OF DEFAULT; REMEDIES**

**Section 6.01. Events of Default Defined.** The following shall be “Events of Default” with respect to the parties obligations under this Intergovernmental Agreement, and the terms “Event of Default” or “Default” shall mean, whenever they are used in this Intergovernmental Agreement with respect to the obligations of the parties, any one or more of the following events:

- (a) The failure to pay amounts required to be paid pursuant to this Intergovernmental Agreement at the times specified therein and continuing for a period of ten (10) days after notice of any such failure.
- (b) The breach in any material respect of any to observe, perform or comply with any covenant, condition or agreement herein to be observed or performed for a period of thirty (30) days after written notice specifying such breach or failure and requesting that it be remedied.
- (c) A party shall (i) apply for consent to the appointment of or the taking of possession by a receiver, custodian, trustee or liquidator of it or of all or a substantial part of its property, (ii) enter into an agreement of composition with its creditors, (iii) admit in writing its inability to pay its debts generally as such debts become due, (iv) make a general assignment for the benefit of its creditors, (v) commence a voluntary case under the federal bankruptcy law or any similar law in effect in a foreign jurisdiction (as now or hereafter

in effect), (vi) file a petition or answer seeking to advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, (vii) fail to controvert in a timely or appropriate manner or acquiesce in writing to any petition filed against it in an involuntary case under such federal bankruptcy law or any similar law in effect in a foreign jurisdiction, or (viii) take any action for the purpose of effecting any of the foregoing.

- (d) A proceeding or case shall be commenced, without the application of the party, in any court of competent jurisdiction, seeking (i) the liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts of the party, (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of the party or of all or any substantial part of the assets of it, or (iii) similar relief in respect of the party under law relating to bankruptcy, insolvency, reorganization, winding-up or composition and adjustment of debts, and such proceeding or case shall continue undismissed or an order, judgment or decree approving or ordering any of the foregoing shall be entered and shall continue unvacated and unstayed and in effect for a period of sixty (60) days, whether consecutive or not.

**Section 6.02. Remedies on Default**

- (a) Whenever any Event of Default referred to in Section 6.01 hereof shall have happened and be subsisting, the non-defaulting party, to the extent permitted by law, may from time to time take whatever action at law or in equity or under the terms of this Intergovernmental Agreement may appear necessary or desirable to collect any amounts payable hereunder then due or thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant.
- (b) No action taken pursuant to this Section shall relieve the defaulting party from its obligations pursuant to this Intergovernmental Agreement, all of which shall survive any such action

**Section 6.03. No Remedy Exclusive.** No remedy herein conferred upon or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Intergovernmental Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the exercise of any remedy, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

**Section 6.04. Waiver of Events of Default.** Any party may waive in writing any Event of Default in the obligations hereunder and its consequences. In case of any such waiver, or in case any proceeding taken on account of any such Event of Default shall be discontinued or abandoned or determined adversely to the defaulting party, then and in every such case the parties shall be restored to

their former position and rights hereunder, but no such waiver or rescission shall extend to or affect any subsequent or other Event of Default it impair or exhaust any right, power or remedy consequent thereon.

**Section 6.04. Event of Default by the Authority.** In the event of a default by the Authority hereunder, the Authority's ownership interest in any property in its possession conveyed pursuant to this Intergovernmental shall be terminated immediately and the property shall be reconveyed to the City.

## **ARTICLE VII MISCELLANEOUS**

**Section 7.01. Notices.** All notices, certificates and other communications provided for hereunder shall be in writing and sent (a) by U.S. mail with return receipt requested (postage prepaid), or (b) by a recognized overnight delivery service (with charges prepaid).

**Section 7.02. Severability.** In the event any provision of this Intergovernmental Agreement shall be held invalid or unenforceable by any court or competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 7.03. Amendments, Changes and Modifications.** This Intergovernmental Agreement may not be amended, changed, modified, altered except in writing mutually executed by the parties.

**Section 7.04. Execution of Counterparts.** This Intergovernmental Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 7.05. Law Governing Construction of this Intergovernmental Agreement.** This Intergovernmental Agreement is prepared and entered into with the intention that the law of the State of Georgia, exclusive of such state's rules governing choice of law, shall govern its construction.

**Section 7.06. Time of Essence.** Time is of the essence of this Intergovernmental Agreement. Anywhere a day certain is stated for payment or for performance of any obligation, the day certain so stated enters into and becomes a part of the consideration for this Intergovernmental Agreement.

## **SIGNATURES AND SEALS**

**IN WITNESS WHEREOF**, the parties hereto have caused this Intergovernmental Agreement to be executed and attested, under seal, by its duly authorized officers as indicated below.

[Signatures and Seals Appear on the Following Pages]

**URBAN REDEVELOPMENT  
AGENCY OF DUNWOODY,  
GEORGIA**

[SEAL]

By: \_\_\_\_\_  
Ken Wright, Chairman

Attest:  
  
\_\_\_\_\_  
Secretary

Date:  
  
\_\_\_\_\_

As to the Authority, signed, sealed,  
And delivered in the presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

(NOTARY SEAL)

[Signatures and Seals Continued on Following Page]

[Signatures and Seals Continued from Preceding Page]

**CITY OF DUNWOODY, GEORGIA**

By: \_\_\_\_\_  
Michael G. Davis, Mayor

Attest: \_\_\_\_\_  
Sharon Lowery, City Clerk

[SEAL]

As to the City, signed, sealed,  
and delivered in the presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

(NOTARY SEAL)

Approved as to Form

\_\_\_\_\_  
City Attorney

## **Exhibit A1 – 16 Acre Parcel – Legal Description**

All that tract or parcel of land lying and being in Land Lot 345, of the 18th District City of Dunwoody, DeKalb County, Georgia, and being more particularly described as follows:

Beginning at a capped 1/2" rebar set at the intersection of the southerly right of way of North Shallowford Road (having a variable width right of way) with the westerly right of way of Dunwoody Park Drive (having an apparent 60' right of way); thence, leaving the southerly right of way of North Shallowford Road and running along said westerly right of way of Dunwoody Park Drive the following calls and distances South 39°15' 09" West, 251.95 feet to a 1/2" rebar found; thence, 294.12 feet along the arc of a curve deflecting to the left, having a radius of 344.38 feet and a chord bearing and distance of South 14°47' 09" West, 285.26 feet to a 1/2" rebar found; thence, South 09°40' 51" East, 38.55 feet; thence, leaving the aforesaid westerly right of way of Dunwoody Park Drive and running along the common line with the Estates at Dunwoody Park Ga, LLC (recorded in DB 21645 pg 63) the following calls and distances South 80°19' 09" West, 29.65 feet; thence, 24.18 feet along the arc of a curve deflecting to the right, having a radius of 113.00 feet and a chord bearing and distance of South 86°26' 57" West, 24.13 feet; thence, North 87°25' 16" West, 221.18 feet; thence, 72.58 feet along the arc of a curve deflecting to the right, having a radius of 263.00 feet and a chord bearing and distance of North 79°30' 55" West, 72.35 feet; thence, North 71°36' 34" West, 250.04 feet; thence, 208.29 feet along the arc of a curve deflecting to the right, having a radius of 513.00 feet and a chord bearing and distance of North 59°58' 41" West, 206.86 feet to the easterly right of way of Dunwoody Park North (having an apparent 60' right of way); thence, leaving said common line of the Estates at Dunwoody Park Ga, LLC and continuing along the aforesaid public right of way Dunwoody Park North 12.28 feet along the arc of a curve deflecting to the right, having a radius of 161.03 feet and a chord bearing and distance of North 42°28' 32" East, 12.27 feet to a 1/2" rebar found at the terminus of the public right of way of Dunwoody Park North; thence along the aforesaid terminus of Dunwoody Park North, North 45°16' 06" West, 60.03 feet to a capped 1/2" rebar set on the westerly terminus of the aforesaid right of way; thence, leaving the westerly right of way of Dunwoody Park North along the common line of Atlanta Jewish Federation, Inc. (recorded in DB 12193 PG 191), the following calls and distances South 73°43' 32" West, 90.68 feet to a capped 1/2" rebar set; thence, North 53°18' 27" West, 316.97 feet; thence, South 74°32' 39" West, 262.91 feet to a capped 1/2" rebar set on the easterly right of way of Chamblee Dunwoody Road (having a variable right of way); thence, running along the aforesaid easterly right of way the following calls and distances 175.55 feet along the arc of a curve deflecting to the right, having a radius of 350.35 feet and a chord bearing and distance of North 17°44' 30" East, 173.72 feet to a 1/2" rebar found; thence, North 32°07' 36" East, 182.63 feet to a 1/2" rebar found; thence, leaving the aforesaid right of way of Chamblee Dunwoody Road and running, along the common line of Tangier Investments, LLC (recorded in DB 17014 PG 252) and Delido Apartments LTD (recorded in DB 17789 PG 371) South 88°57' 21" East, 772.69 feet to a 1/2" rebar set; thence, continuing along the common line of Delido Apartments LTD (recorded in DB 17789 PG 371) and Reldnac Shallowford LLC (recorded in DB 20018 PG 251) South 89°03' 38" East, 532.99 feet to a 1/2" rebar found on the southerly right of way of North Shallowford Road; thence, running along the aforesaid southerly right of way of North Shallowford Road South 50°30' 43" East, 208.56 feet to a 1/2" rebar, and The Point of Beginning.

Containing 696,935 square feet or 15.9994 acres of land, more or less.

## **Exhibit A2 – 19 Acre Parcel – Legal Description**

### **8.32 Acres Owned by the City**

#### **Tax Parcels 18-344-01-001, 18-344-01-003 & 18-344-01-010**

Being all that tract or parcel of land lying and being in Land Lot 344, of the 18<sup>th</sup> District of DeKalb County, Georgia, and being more particularly described as follows:

Beginning for the same at a 1" crimp top pipe found at the common corner of Land Lots 344, 345, 352 and 353 of the aforesaid District; thence, leaving the said Point of Beginning and running along the northern line of said Land Lot 344 and the property now or formerly owned by DeKalb–Lake Ridge, LLC as described in a deed recorded among the Land Records of DeKalb County, Georgia in Deed Book 17650, Page 759 the following courses and distances: North 89° 50' 23" East, 838.08 feet to a 1/2" rebar found; thence, North 89° 06' 36" East, 500.68 feet; thence, North 89° 06' 36" East, 248.17 feet to the centerline of Tributary "A" of Nancy Creek; thence, leaving the aforesaid line of Land Lot 344, and running along the centerline of the said creek the following courses and distances: South 44° 29' 24" East, 44.65 feet; thence, South 31° 09' 43" East, 51.17 feet; thence, South 18° 55' 36" East, 63.68 feet; thence, South 32° 52' 48" East, 51.92 feet; thence, South 12° 18' 02" East, 59.73 feet; thence, South 13° 22' 21" East, 56.08 feet; thence, South 09° 23' 41" East, 58.18 feet; thence, South 06° 18' 24" East, 33.35 feet; thence, South 02° 52' 02" West, 63.46 feet; thence, South 06° 43' 57" West, 25.27 feet; thence, South 13° 41' 19" East, 67.40 feet; thence, leaving the aforesaid creek and running along the property now or formerly owned by Wellington Place Condominium as described in the aforesaid Land Records in Deed Book 10547, Page 359, North 89° 28' 05" West, 371.85 feet to the right of way of Pernoshal Court (having a 60' Right of Way); thence, running along the said easterly and northerly right of way lines of Pernoshal Court the following courses and distances: 20.83 feet along the arc of a curve deflecting to the left, having a radius of 60.00 feet and a chord bearing and distance of North 35° 49' 44" East, 20.73 feet; thence, North 64° 07' 05" West, 16.96 feet to a 3/8" rebar found; thence, North 64° 07' 05" West, 242.36 feet; thence, North 64° 07' 05" West, 212.70 feet; thence, 174.82 feet along the arc of a curve deflecting to the left, having a radius of 602.96 feet and a chord bearing and distance of North 72° 25' 27" West, 174.21 feet; thence, 88.27 feet along the arc of a curve deflecting to the left, having a radius of 602.96 feet and a chord bearing and distance of North 84° 55' 27" West, 88.19 feet; thence, North 89° 07' 05" West, 165.15 feet; thence, 248.83 feet along the arc of a curve deflecting to the left, having a radius of 331.56 feet and a chord bearing and distance of South 69° 22' 55" West, 243.03 feet to an "X" Scribe found; thence, South 47° 52' 55" West, 197.09 feet to the easterly right of way of North Shallowford Road (having an 80' Right of Way); thence, running along the said easterly right of way of North Shallowford Road, 244.34 feet along the arc of a curve deflecting to the left, having a radius of 2,071.45 feet and a chord bearing and distance of North 45° 16' 42" West, 244.20 feet; thence, leaving the aforesaid easterly right of way of North Shallowford Road and running along the westerly line of aforesaid Land Lot 344 and along the aforesaid property of Dekalb–Lake Ridge, LLC, North 01° 44' 14" East, 279.73 feet to a 1" crimp top pipe, and the Point of Beginning.

Containing 623,222 square feet or 14.3072 Acres of land, more or less.

Property is subject to all easements and rights of way recorded and unrecorded.

### **10.68 Acres Under Contract to the City**



**Tax Parcel 18-334-01-001**

Being all that tract or parcel of land lying and being in Land Lot 344, of the 18<sup>th</sup> District of DeKalb County, Georgia, and being more particularly described as follows:

To find the Point of Beginning, commence at a 1"crimp top pipe found at the common corner of Land Lots 344, 345, 352 and 353 of the aforesaid District; thence, leaving the said point and running along the northern line of said Land Lot 344 and the property now or formerly owned by DeKalb–Lake Ridge, LLC, as described in a deed recorded among the Land Records of DeKalb County, Georgia in Deed Book 17650, Page 759: North 89° 50' 23" East, 838.08 feet to a 1/2" rebar found; thence, North 89° 06' 36" East, 500.68 feet to the True Point of Beginning of the herein described tract or parcel of land; thence, leaving said Point of Beginning and continuing along the aforesaid northern line of Land Lot 334, North 89° 06' 36" East, 248.17 feet to the centerline of Tributary "A" of Nancy Creek; thence, leaving the aforesaid line of Land Lot 344, and running along the centerline of the said creek the following courses and distances: South 44° 29' 24" East, 44.65 feet; thence, South 31° 09' 43" East, 51.17 feet; thence, South 18° 55' 36" East, 63.68 feet; thence, South 32° 52' 48" East, 51.92 feet; thence, South 12° 18' 02" East, 59.73 feet; thence, South 13° 22' 21" East, 56.08 feet; thence, South 09° 23' 41" East, 58.18 feet; thence, South 06° 18' 24" East, 33.35 feet; thence, South 02° 52' 02" West, 63.46 feet; thence, South 06° 43' 57" West, 25.27 feet; thence, South 13° 41' 19" East, 67.40 feet; thence, leaving the centerline of the aforesaid creek and running along the property now or formerly owned by Wellington Place Condominium as described in a deed recorded among the aforesaid Land Records in Deed Book 10547, Page 359, North 89° 28' 05" West, 371.85 feet to the easterly Right of Way Line of Pernoshal Court (having a 60 feet wide right of way); thence, running along the said easterly and northerly right of way lines of Pernoshal Court the following courses and distances: 20.83 feet along the arc of a curve deflecting to the left, having a radius of 60.00 feet and a chord bearing and distance of North 35° 49' 44" East, 20.73 feet; thence, North 64° 07' 05" West, 16.96 feet to a 3/8" rebar found; thence, North 64° 07' 05" West, 242.36 feet; thence, leaving the aforesaid northerly line of Pernoshal Court and running along the property now or formerly owned by Atlanta Healthcare Management LTD, as described in deed recorded among the aforesaid Land Records in Deed Book 10472, Page 794, North 25° 22' 55" East, 442.28 feet to the Point of Beginning.

Containing 236,456 square feet or 5.4283 Acres of land, more or less.

Property is subject to all easements and rights of way recorded and unrecorded.

Together with:

**Tax Parcel 18-334-01-003**

Being all that tract or parcel of land, lying and being in Land Lot 344, of the 18<sup>th</sup> District of DeKalb County, Georgia, and being more particularly described as follows:

Beginning for the same at a 1"crimp top pipe found at the common corner of Land Lots 344, 345, 352 and 353 of the aforesaid District; thence, leaving the said Point of Beginning and running along the northern line of said Land Lot 344 and the property now or formerly owned by DeKalb–Lake Ridge, LLC, as described in a deed recorded among the Land Records of DeKalb County, Georgia in Deed Book 17650, Page 759, North 89° 50' 23" East, 838.08 feet to a 1/2" rebar found; thence, leaving the northern line of Land Lot 334 and running along the property now or formerly owned by Atlanta Healthcare Management LTD, as described in deed recorded among the

aforesaid Land Records in Deed Book 10472, Page 794, South 10° 40' 06" West, 250.69 feet to the northerly Right of Way Line of Pernoshal Court (having a 60 feet wide right of way); thence, running along the said line of Pernoshal Court the following courses and distances, 88.27 feet along the arc of a curve deflecting to the left, having a radius of 602.96 feet and a chord bearing and distance of North 84° 55' 27" West, 88.19 feet; thence, North 89° 07' 05" West, 165.15 feet; thence, 248.83 feet along the arc of a curve deflecting to the left, having a radius of 331.56 feet and a chord bearing and distance of South 69° 22' 55" West, 243.03 feet to an "X" Scribe found; thence, South 47° 52' 55" West, 197.09 feet to the northeasterly Right of Way Line of North Shallowford Road (having an 80 feet wide right of way); thence, running along the said line of North Shallowford Road, 244.34 feet along the arc of a curve deflecting to the left, having a radius of 2,071.45 feet and a chord bearing and distance of North 45° 16' 42" West, 244.20 feet; thence, leaving the aforesaid line of North Shallowford Road and running along the westerly line of aforesaid Land Lot 344 and along the aforesaid property of Dekalb–Lake Ridge, LLC, North 01° 44' 14" East, 279.73 feet to a 1" crimp top pipe, and the Point of Beginning.

Containing 243,490 square feet or 5.5897 Acres of land, more or less.

Property is subject to all easements and rights of way recorded and unrecorded.

**Exhibit B – 19 Acre Purchase Agreement***Final***CONTRACT FOR PURCHASE AND SALE  
(Hospital)**

**THIS CONTRACT** is made and entered into as of the “Contract Date” (as defined in Section 22) by and between Atlanta Healthcare Management, L.P. and American Medicorp Development Company (together, the “Seller”) and the City of Dunwoody, Georgia (the “Purchaser”).

In consideration of the mutual covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**1. CONTRACT TO BUY AND SELL**

Seller hereby agrees to sell and Purchaser hereby agrees to purchase all that certain: approximately 19.08-acre tract of land, which is more particularly described in Exhibit “A” attached hereto and made a part hereof by reference lying and being in Dunwoody, DeKalb County, Georgia (the “Land”), together with (i) (A) all rights and interests appurtenant thereto and (B) all access, air, water, riparian, development, utility and solar rights related thereto (the “Appurtenant Rights”), (ii) all improvements located on the Land, together with any and all fixtures of any kind owned by Seller and attached to or used in connection with the ownership, maintenance, or operation of the Land or improvements located thereon (the “Improvements”) (the Land, the Appurtenant Rights and the Improvements are referred to collectively as the “Real Property”); (iii) the lessor’s interest in that certain Ground Lease dated as of November 15, 1977, a short form of which is recorded in Deed Book 4290, Page 20 with P&S Associates, as lessee and related agreements (together, the “P&S Ground Lease”); and (iv) to the extent assignable and elected to be assumed by Purchaser pursuant to Section 5(d) hereinafter, all of Seller’s rights, title and interest in and to all “Service Contracts” (as defined in Exhibit C to this Contract), permits, licenses, certificates of occupancy, warranties, architectural or engineering plans and specifications, and governmental approvals which relate to the Real Property, the Improvements or the Land (hereinafter collectively referred to as the “General Intangibles”). The Real Property and the General Intangibles are herein collectively called the “Property”.

**2. EARNEST MONEY**

(a) Within three (3) business days after the Contract Date, Purchaser will deposit with First American Title Insurance Company, National Commercial Services, 6077 Primacy Parkway, Suite 121, Memphis, TN 38119, Attn: Ms. Carol Slone (the “Escrow Agent”), the cash sum of One Hundred Thousand and No/100 (\$100,000.00) Dollars as earnest money (together with any interest earned thereon) to be held and applied to the Purchase Price in accordance with the provisions hereof. All Earnest Money shall become non-refundable, absent Seller’s default and except as provided in Sections 4, 7 and 20, upon the expiration of the

“Inspection Period” defined in Section 5 if Purchaser does not terminate this Contract before the expiration of such “Inspection Period.” All interest and other income that accrues on the Earnest Money shall belong to the party to whom the Earnest Money is to be disbursed and shall be disbursed to such party in accordance with this Contract.

(b) Purchaser shall make an additional deposit of Earnest Money in the amount of Five Hundred Thousand and No/100 Dollars (\$500,000.00) if the Closing has not occurred on or before March 30, 2012 as set forth in Section 6 of this Contract.

### 3. PURCHASE PRICE

The purchase price for the Property shall be Five Million Five Hundred Thirty-Two Thousand and No/100 Dollars (\$5,532,000.00). The balance of the Purchase Price shall be paid in full at the Closing by wire transfer of immediately available funds to an account designated by Seller. Purchaser shall also pay to Seller at the Closing an additional sum equal to the actual cost that Seller has incurred in demolishing certain improvements on a portion of the Land on which the former hospital was located, consisting of approximately 14.26 acres, prior to the Contract Date, up to a maximum of Six Hundred Thousand and No/100 Dollars (\$600,000.00). This reimbursement amount will be shown on the settlement statement (described in Section 6 of this Contract) as a separate line item. Seller will provide reasonable documentation of such costs to Purchaser before the Closing.

### 4. TITLE AND SURVEY

(a) At the Closing, Seller shall convey to Purchaser good and transferable fee simple title to the Property by Limited Warranty Deed (the “Deed”), subject only to the “Permitted Exceptions” (as defined in Section 6(b)(i) of this Contract).

(b) Purchaser may, at its own sole cost and expense, obtain a survey of the Property during the Inspection Period (the “Survey”). If Purchaser decides to do so, Purchaser shall deliver to Seller a full size copy of the Survey.

(c) Purchaser shall obtain a commitment for an Owner’s Policy of Title Insurance (the “Title Commitment”) issued by First American Title Insurance Company, National Commercial Services (the “Title Company”), pursuant to which the Title Company shall commit to issue to Purchaser a standard owner’s policy of title insurance in the amount of the Purchase Price. The Title Company shall also promptly deliver a copy of the Title Commitment and related documents to Seller. If Purchaser objects to any matter shown on the Title Commitment or the Survey, then Purchaser may notify Seller in writing of such objections (the “Objections”) before the

date that is thirty (30) days after the Contract Date (the "Title Objection Deadline"). Any matters not objected to prior to the Title Objection Deadline shall be deemed waived by Purchaser. Within ten (10) business days of receipt from Purchaser of any such Objections, Seller shall notify Purchaser as to whether Seller shall cure such Objections. In such event, Seller may, at its sole election, (i) undertake with due diligence such actions necessary to eliminate or otherwise remedy the Objections to Purchaser's reasonable satisfaction on or before the Closing, at Seller's expense, or (ii) if Seller determines that it is either unable or unwilling to remedy any such Objections, Seller may terminate this Contract by delivering written notice of such termination to the Purchaser within the ten (10) business day period unless Purchaser shall deliver a written waiver of all Objections that Seller is unable or unwilling to cure as provided above; it being understood that Seller shall have no obligation to eliminate or otherwise remove any Objection. Purchaser shall have the right to terminate this Contract by giving written notice to Seller within five (5) business days after receipt of Seller's written notice. If this Contract is terminated pursuant to this Section 4, Seller shall cause the Title Company to return the Earnest Money to Purchaser and no party hereunder shall have any further rights or obligations under this Contract other than those rights and obligations that are expressly stated to survive termination. After the Title Objection Deadline, Purchaser shall have no further right to object to any item, exception or other matter shown on any of the foregoing, unless such matter first arises after the last day of the Inspection Period (as hereinafter defined in Section 5) in which case Purchaser shall have the same right to object to such matters as it had after having been given the opportunity to review the initial Title Commitment. Notwithstanding anything to the contrary herein contained, Seller covenants and agrees that at or prior to Closing, Seller, at Seller's sole cost and expense, shall (i) cause to be released or insured over all mechanics' and contractors' liens which encumber the Property; (ii) pay in full all past due and delinquent ad valorem taxes and assessments of any kind constituting a lien against the Property; and (iii) cause to be released any loan security documents which encumber the Property under which Seller is the debtor.

## 5. INSPECTION

(a) Commencing upon the Contract Date and during the life of this Contract, Purchaser shall have the right to go on the Property personally or through agents, employees and contractors for the purpose of making soil tests and such other tests, analyses and investigations of the Property as Purchaser deems necessary. Purchaser shall pay all costs incurred in making such tests, analyses and investigations. Purchaser shall repair any damage to the Property occurring as a result of any of the foregoing if this Contract is terminated pursuant to the terms of this Contract and Purchaser shall indemnify and hold Seller harmless from and against any losses, claims, damages, liabilities, penalties, costs and expenses (including, but not limited to, reasonable attorneys' fees and expenses) arising or resulting from any entry upon the Property by Purchaser or Purchaser's

representatives, contractors, agents or employees. Purchaser's obligations and liabilities under this Section 5 shall survive the expiration or termination of this Contract. Purchaser must notify Seller in writing by 5:00 p.m. Eastern Time on December 23, 2011 (the "Inspection Period") of Purchaser's intent to terminate this Contract for any reason or no reason at all, and if so notified, this Contract shall become null and void, except as otherwise provided in this Contract, and the Earnest Money shall be immediately refunded to the Purchaser. All Earnest Money shall become non-refundable at the expiration of the Inspection Period except as otherwise expressly provided in this Contract.

(b) No later than five (5) business days after the Contract Date, Seller shall deliver to Purchaser the items listed on Exhibit C attached hereto ("Seller's Deliveries"). Purchaser shall keep the information set forth in Seller's Deliveries confidential to the fullest extent permitted by law. If the transactions contemplated in this Contract are not consummated for any reason whatsoever, Purchaser shall return Seller's Deliveries and all copies thereto to Seller immediately.

(c) The sum of One Hundred Dollars (\$100.00) (the "Independent Consideration") out of the Earnest Money is independent of any other consideration provided hereunder, shall be fully earned by Seller upon the Contract Date and is not refundable to Purchaser under any circumstances. Accordingly, if this Contract is terminated for any reason by either party, the Independent Consideration shall be paid by the Title Company to Seller.

(d) Purchaser shall have until the expiration of the Inspection Period to inform Seller in writing which, if any, of the Service Contracts listed in Exhibit D attached hereto Purchaser shall assume at the Closing. Purchaser's failure to notify Seller in writing of its election to assume any Service Contract before the Inspection Period expires shall be deemed a decision by Purchaser to reject such Service Contract (the "Assumed Services Contract"). Seller shall be responsible for any and all fees, charges or expenses incurred as a result of the cancellation of any Service Contracts that Purchaser elects to reject.

## 6. CLOSING

(a) Purchaser and Seller shall consummate and close the sale contemplated by this Contract (the "Closing") at the offices of the Title Company/Escrow Agent on March 30, 2012 or upon such earlier date as the parties may agree (the "Closing Date"), as mutually agreed upon by both parties; provided, however, that the Closing may be conducted by mail in escrow. Notwithstanding the foregoing, however, Purchaser shall have the right to extend the Closing until July 31, 2012, by giving written notice to Seller and the Title Company by 5:00 pm Eastern Time on March 23, 2012. Simultaneously with such notice, Purchaser will

make the additional deposit of \$500,000.00 as non-refundable Earnest Money as described in Section 2(b) of this Contract. If the Closing has not occurred on or before July 31, 2012, absent a Seller default or event of *force majeure*, this Contract shall automatically terminate. In the event of such termination, the Escrow Agent will promptly pay all Earnest Money to Seller and the parties will be released of all obligations and liabilities under this Contract except as provided otherwise in this Contract.

(b) Seller's Deliveries in Escrow. At the Closing, Seller shall deliver to the Title Company the following documents:

- (i) Deed. The Deed, which will be executed by Seller and convey to Purchaser title to the Real Property that is insurable by the Title Company free and clear of all liens, restrictions and encumbrances except the "Permitted Exceptions," which shall mean those exceptions approved or waived by Purchaser pursuant to Section 4 and the following (1) ad valorem real estate taxes and installments of governmental assessments for public improvements benefiting the Real Property, that are not delinquent; (2) zoning and building laws, ordinances, resolutions, and regulations; (3) covenants, agreements, conditions, restrictions, reservations and other matters of record (subject, however, to Purchaser's rights under Section 4(c) to make Objections); and (4) all matters that would be shown on an accurate survey of the Property.
- (ii) Bill of Sale, General Assignment and Assumption Agreement. A bill of sale, general assignment and assumption agreement (the "Assignment"), without warranty of any kind regarding the property or property interests transferred, conveying to Purchaser, ownership in all of the Improvements, including all fixtures located on the Property, as well as, to the extent assignable, all General Intangibles and the Assumed Service Contracts.
- (iii) P&S Ground Lease Assignment and Assumption Agreement. An assignment and assumption agreement (the "P&S Ground Lease Assignment"), without warranty, conveying to Purchaser all of lessor's obligations and interest under the P&S Ground Lease.
- (iv) Authority. Evidence of existence, organization, and authority of Seller and the authority of the person executing documents on behalf of Seller, reasonably satisfactory to the Title Company.

- (v) FIRPTA. A Foreign Investment in Real Property Tax Act affidavit executed by Seller. If Seller fails to provide the necessary affidavit and/or documentation of exemption on the Closing Date, Purchaser may proceed with withholding provisions as provided by law.
- (vi) Seller's Affidavit. A seller's affidavit or similar certification, consistent with a limited warranty deed, as may be required by the Title Company to issue the title policy, and such other instruments and documents, such as lien waivers and mechanics lien indemnities, as the Title Company shall reasonably require, that are consistent with a limited warranty deed in order to issue its owner's title policy insuring Purchaser's fee simple title to the Property free and clear of the "standard printed exceptions".
- (vii) Additional Documents. A settlement statement and any additional documents that Purchaser or the Title Company may reasonably require for the proper consummation of the transaction contemplated by this Contract.
- (viii) Georgia Withholding Tax Affidavit. An Affidavit of Seller's Residence which demonstrates that Seller is exempt from the withholding requirements of O.C.G.A. Section 48-7-128.
- (ix) Broker's Lien Waiver Affidavit. A Broker's Lien Waiver Affidavit executed by each Broker.
- (x) Closing Statement. A closing statement duly executed by Seller setting forth in reasonable detail the financial transaction contemplated by this Contract, including without limitation the Purchase Price, all prorations, the allocation of costs specified herein, and the source, application and disbursement of all funds (the "Closing Statement").
- (c) Purchaser's Deliveries in Escrow. At the Closing, Purchaser shall deliver to the Title Company the following:
  - (i) Purchase Price. The Purchase Price, plus or minus applicable prorations and less a credit for the full amount of the Earnest Money or any other credits contemplated by this Contract, deposited by Purchaser with the Title Company in immediate, same-day federal funds (all or any part of which may be the proceeds of a loan) wired for credit into such account as the Title Company may designate.



- (ii) Assignment and Assumption. The Assignment and the P&S Ground Lease Assignment.
- (iii) Additional Documents. A settlement statement and any additional documents that Seller or the Title Company may reasonably require for the proper consummation of the transaction contemplated by this Contract.
- (iv) Closing Statement. The Closing Statement executed by Purchaser.

(d) Closing Costs. At Closing, Purchaser shall pay any transfer taxes and recording costs to be paid in connection with the conveyance of the Property to Purchaser. Purchaser shall also pay the cost of obtaining the Title Commitment, the premiums for any title insurance policy and the cost of the Survey. Any fees for the services of Escrow Agent shall be divided equally between Seller and Purchaser. Each party shall pay and be responsible for all fees and expenses of its respective attorneys and other representatives, excluding commissions or fees due to any real estate brokers which shall be paid as provided in Section 17 hereinafter.

(e) Prorations. As of the date of Closing, Purchaser and Seller shall prorate ad valorem taxes on the Property and all items of income, rent and expenses in connection with ownership, operation and maintenance of the Property, for the year in which the Closing occurs. All adjustments and prorations to the Purchase Price payable at Closing shall be computed as of the end of the day preceding the Closing Date, with the Seller being entitled to receive all revenues and shall be charged with all expenses relating to the ownership and operation of the Property through the day preceding the Closing Date. All other items which are customarily prorated in transactions similar to the transaction contemplated hereby, and which were not heretofore dealt with, will be prorated as of the end of the day preceding the Closing Date.

## 7. **CONDITION AND POSSESSION OF THE PROPERTY**

At Closing, Seller shall deliver to Purchaser possession of the Property in substantially the same condition as on the Contract Date, normal wear and tear excepted. If all or any material portion of the Property shall be condemned, damaged or destroyed prior to the Closing, Purchaser may elect to (i) terminate this Contract, or (ii) receive such insurance proceeds or condemnation award as may be paid or payable with respect to such condemnation, damage or destruction and complete the Closing. Purchaser's election under this paragraph shall be exercised by written notice to Seller within fifteen (15) days after receipt of written notice from Seller of such condemnation, damage or destruction or of written notice of the amount of the insurance or condemnation award payable with respect to such

condemnation, damage or destruction, whichever is later. If Purchaser elects to terminate this Contract under this Paragraph, all Earnest Money paid hereunder shall be immediately refunded to Purchaser.

## 8. DEFAULT

If the sale contemplated by this Contract is not consummated through default of Seller, Purchaser may, as its sole and exclusive remedy, either (a) receive the return of all of the Earnest Money, which return shall operate to terminate this Contract and release Purchaser and Seller from any and all liability hereunder, or (b) enforce specific performance of Seller's obligation to convey the Property to Purchaser in accordance with the terms of this Contract. If said sale is not consummated because of Purchaser's default, then Seller shall be entitled, as its sole and exclusive remedy, to terminate this Contract and retain the Earnest Money as liquidated damages. It is hereby agreed that Seller's damages will be difficult to ascertain and that the Earnest Money constitutes a reasonable liquidation thereof, and is not intended as a penalty, but as full liquidated damages.

## 9. NOTICE

(a) Any notice required or permitted to be given hereunder shall be sufficient if in writing and if hand delivered, delivered by nationally recognized overnight courier or sent by U.S. Certified Mail, postage prepaid and return receipt requested, to the party being given such notice at the following address:

Seller: American Medicorp Development Company  
One Park Plaza  
Nashville, TN 37203  
Attn: Mr. Ron Woods,  
Real Estate Department  
E-mail: [Ron.Woods@HCAhealthcare.com](mailto:Ron.Woods@HCAhealthcare.com)

With copies to: TMG Realty Advisors  
1201 Peachtree Street, NE  
Building 400, Suite 20  
Atlanta, GA 30361  
Attn: Mr. Tony Martin  
E-Mail: [tmartin@TMGrealtyadvisors.com](mailto:tmartin@TMGrealtyadvisors.com)

And  
Waller Lansden Dortch & Davis, LLP  
511 Union Street, Suite 2700  
Nashville, TN 37219  
Attn: Carla F. Fenswick, Esq.  
E-Mail: [Carla.Fenswick@wallerlaw.com](mailto:Carla.Fenswick@wallerlaw.com)

Purchaser:  
The City of Dunwoody, Georgia  
41 Perimeter Center East, Suite 250  
Dunwoody, GA 30346  
Attn: City Manager (with copies to City  
Attorney and City Clerk)  
E-Mail:  
[Warren.Hutmacher@dunwoodyga.gov](mailto:Warren.Hutmacher@dunwoodyga.gov)

With copy to:  
FSB FisherBroyles, a Limited Liability  
Partnership  
5023 Buckline Crossing  
Dunwoody, GA 30338  
Attn: Alison S. Woodrow, Esq.  
E-mail: [Woodrow@fsblegal.com](mailto:Woodrow@fsblegal.com)

(b) Any party may change said address by giving the other party hereto notice of such change of address. Notice given as hereinabove provided shall be deemed received by the party to whom it is addressed on the date on which said notice is hand delivered, delivered by overnight courier or deposited in a U.S. Post Office sent Certified Mail, return receipt requested with proper postage affixed hereto. Notice may also be delivered by e-mail to the addresses set forth above (or to any other address designated by the applicable by written notice to the other party); provided by each fax or e-mail delivery shall be followed promptly by delivery of such notice by one of the methods described in the first sentence of Section 9(a).

## 10. ASSIGNMENT

Purchaser shall be entitled to assign its right, title and interest herein only with the prior written consent of Seller, such consent not to be unreasonably withheld or delayed. Notwithstanding the foregoing, Purchaser may assign this Contract without necessity of Seller's consent to an entity which is controlled by Purchaser; provided that Seller is notified of such assignment in writing, and Purchaser shall remain liable for all obligations of Purchaser under this Contract. Any approved assignee shall expressly assume all of Purchaser's duties, obligations and liabilities hereunder.

## 11. SUCCESSORS AND ASSIGNS

This Contract shall bind and inure to the benefit of Seller and Purchaser and their respective successors and assigns. In no event, however, shall any assignment of Purchaser's rights under this Contract operate to release Purchaser from liability under this Contract.

**12. TIME OF ESSENCE**

Time is of essence of this Contract.

**13. SOLE CONTRACT**

This Contract constitutes the sole and entire agreement between the parties hereto with respect to the subject matter hereof, and no modification of this Contract shall be binding unless signed by all parties to this Contract. No representation, promise, or inducement not included in this Contract shall be binding upon any party hereto.

**14. POSSESSION**

Possession of the Property shall be granted by Seller to Purchaser at the time of Closing of this Contract.

**15. SELLER'S COVENANTS**

Seller agrees that during the period from the Contract Date through the Closing Date Seller will perform the following covenants:

(a) Except as Purchaser may otherwise consent in writing, until the Closing Date, unless this Contract is sooner terminated, Seller shall: (i) maintain the Property in its present condition and repair, ordinary wear and tear excepted and subject to the terms of Section 7(b) hereof; (ii) maintain the existing insurance policies for the Property and the operation thereof (and any replacements thereof) in full force and effect, (iii) not grant to any third party any interest in the Property or any part thereof or further voluntarily encumber the Property; provided, however, that this prohibition shall not apply to any back-up contract to sell the Property in the event that this Contract is terminated, (iv) not construct any improvements on, or make any material changes to, the Property and (v) not seek, consent to, or otherwise concur in any zoning variance or change without Purchaser's prior written consent.

(b) Seller will not, without the prior written consent of Purchaser, (i) enter into any operating contract that will not be fully performed by Seller on or before the Closing Date, or (ii) enter into any lease or easement for the Property.

(c) Prior to Closing, Seller will notify Purchaser of any notice received by Seller of any material change in or to the Property, promptly upon Seller's receipt thereof.

## 16. MISCELLANEOUS

(a) This Contract and said other instruments shall, in all respects, be governed, construed, applied and enforced in accordance with laws of the State of Georgia (as may be amended). All disputes will be filed with the Superior Court of DeKalb County, Georgia.

(b) This Contract may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Contract. To facilitate execution of this Contract, the parties may execute and exchange by telephone facsimile or e-mailed counterparts of the signature pages; provided, however, the Purchaser and Seller shall each receive from the other within ten (10) days of the Contract Date an original, fully executed Contract.

(c) Should either party employ attorneys to enforce any of the provisions hereof, the party losing in any final judgment agrees to pay the prevailing party all reasonable costs, charges and expenses, including reasonable attorneys' fees, expended or incurred in connection therewith.

(d) In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by Seller to Purchaser at the Closing, Seller agrees to perform, execute and/or deliver or cause to be delivered, executed and/or delivered, but without any obligation to incur any additional liability or expense, after the Closing any and all further acts, deeds and assurances as may be reasonably necessary to consummate the transactions contemplated hereby and/or to further perfect and deliver to Purchaser the conveyance, transfer and assignment of the Property and all rights related thereto.

(e) Except as otherwise provided herein, this Agreement may be amended or modified by, and only by, a written instrument executed by Seller and Purchaser.

## 17. REAL ESTATE BROKER

Purchaser and Seller covenant and agree that they have dealt with no real estate broker other than TMG Realty Advisors, which represents Seller (the "Seller's Broker"), and Colliers International – Atlanta, Inc., which represents Purchaser (the "Purchaser's Broker"), in connection with the purchase and sale of the Property under the terms of this Contract and shall hold each other harmless and indemnify one another against the claims of any other real estate broker

arising by virtue of any act or alleged act of said party. Seller's Broker represents the Seller as provided in a separate agreement between the Seller's Broker and the Seller, and Seller shall be responsible for any payments due Seller's Broker. Any commission or fee due to Purchaser's Broker will be paid by Seller's Broker in accordance with a separate agreement between Seller's Broker and Purchaser's Broker.

## 18. **DISCLAIMER**

(a) Purchaser acknowledges and agrees that as of the expiration of the Inspection Period, Purchaser will have had the opportunity to fully inspect the Property, will have had the opportunity to make all investigations as it deems necessary or appropriate and will be relying solely upon its inspection and investigation of the Property for all purposes whatsoever, including, but not limited to, the determination of the condition of the structures, improvements, soils, subsurface, drainage, surface and groundwater quality, and all other physical characteristics; availability and adequacy of utilities; compliance with governmental laws and regulations; access; encroachments; acreage and other survey matters; and the character and suitability of the Property. In addition, Purchaser acknowledges and agrees that the Property is being purchased and will be conveyed "As Is" with all faults and defects, whether patent or latent, as of the Closing. There have been no representations, warranties, guarantees, statements or information, express or implied, pertaining to the Property, its condition, or any other matters whatsoever, made to or furnished to Purchaser by Seller or any employee or agent of Seller, except as specifically set forth in this Contract.

(b) From and after Closing, Purchaser waives, releases, and forever discharges Seller, its directors, officers, shareholders, employees, and agents, and their respective heirs, successors, personal representatives and assigns (collectively, the "Released Parties"), of and from any and all suits, legal or administrative proceedings, claims, demands, actual damages, punitive damages, losses, costs, liabilities, interest, attorneys' fees and expenses of whatever kind and nature, in law or in equity, known or unknown (collectively, "Liabilities"), that Purchaser ever had, now has, or in the future may have, against any of the Released Parties, based upon, or arising directly or indirectly out of: (i) the condition, status, quality or nature of the Property; and (ii) the existence, presence or condition of the asbestos-containing material, if any, on, in or under the Property. Notwithstanding the foregoing to the contrary, however, nothing in this Section 18 shall release Seller from any act of fraud or a breach of any representation or warranty made by Seller pursuant to Section 20 below.

## 19. **COVENANTS AND AGREEMENTS OF SELLER.**

(a) Leasing Arrangements. During the pendency of this Agreement, Seller will not enter into any lease affecting the Property without Purchaser's prior written consent in each instance.

(b) New Contracts. During the pendency of this Agreement, Seller will not enter into any contract or agreement that will be an obligation affecting or an encumbrance on title to the Property or any part thereof subsequent to the Closing without Purchaser's prior written consent in each instance, except contracts entered into in the ordinary course of business that are terminable without cause (and without penalty or premium) on thirty (30) days (or less) notice.

## 20. WARRANTIES

As a material inducement to Purchaser to enter into this Contract and consummate this transaction, (a) Seller represents and warrants to Purchaser that:

- (i) Seller has not received written notice of, nor does Seller have any actual knowledge of any actual, pending or threatened action, litigation, rezoning, condemnation or proceeding in existence as of the Contract Date with respect to the Property or against the Property;
- (ii) To the best of Seller's actual knowledge, as of the Contract Date, neither the entering into of this Contract nor the consummation of the transaction contemplated hereby will constitute or result in a violation or breach by Seller of any agreement or restriction to which either Seller or the Property is subject. Seller has not received any written notice or claim of any violations of any covenants, restrictions, easements or other agreements of record or actually known to Seller benefitting, burdening or otherwise affecting the Property, including without limitation, the P&S Ground Lease.
- (iii) Seller has been duly organized and is validly existing as a Georgia limited liability company. Seller has the full right and authority and has obtained any and all consents required therefor to enter into this Contract. The person signing this Contract on behalf of Seller is authorized to do so. This Contract has been, and the documents to be executed by Seller pursuant to this Contract will be, authorized and properly executed and does and will constitute the valid and binding obligations of Seller, enforceable against Seller in accordance with their terms.
- (iv) [Deleted]

- (v) Seller has not granted to any person, firm or entity any unrecorded rights in or rights to acquire all or any part of the Property, and there is no outstanding unrecorded agreement by Seller to sell all or any part of the Property to any other person, firm or entity.
- (vi) To the best of Seller's actual knowledge and except (A) as listed in Exhibit D attached hereto and (B) any lease, sublease or occupancy agreement entered into by the lessee under the P&S Ground Lease, there are no leases, use agreements, operating agreements, management agreements, or other agreements or instruments in force or effect that grant to any person whomsoever or any entity whatsoever any right, title, interest or benefit in or to all or any part of the Property or any rights relating to the use, operation, management, maintenance or repair of all or any part of the Property.
- (vii) [Deleted]

Seller shall promptly notify Purchaser, in writing, of any event or condition known to Seller which occurs prior to Closing hereunder and which causes a material change in the facts relating to, and the truth of, any of the above representations and warranties. At the Closing, Seller shall reaffirm and restate such representations and warranties, subject to disclosure of any changes in facts or circumstances which may have occurred since the date hereof. If any change in any foregoing representation is a material change, Purchaser may, at its option, terminate this Contract by written notice to Seller and receive a full refund of the Earnest Money.

(b) As a material inducement to Seller to execute this Agreement and consummate this transaction, Purchaser represents and warrants to Seller that:

- (i) Conflicts. To the best of Purchaser's knowledge, as of the Contract Date, neither the entering into of this Contract nor the consummation of the transaction contemplated hereby will constitute or result in a violation or breach by Purchaser of any agreement or restriction to which Purchaser is subject.
- (ii) Organization and Authority. Purchaser has been duly organized and is validly existing as a municipality in the State of Georgia. Purchaser has the full right and authority and has obtained any and all consents required therefor to enter into this Contract. The person signing this Contract on behalf of Purchaser is authorized to do so. This Contract has been, and the documents



to be executed by Purchaser pursuant to this Contract will be, authorized and properly executed and does and will constitute the valid and binding obligations of Purchaser enforceable against Purchaser in accordance with their terms.

(c) The representations and warranties of Seller and Purchaser set forth in this Section 20 shall survive Closing.

## 21. SPECIAL STIPULATIONS

(a) Any condition for Purchaser's benefit herein may be waived by the Purchaser at or before Closing.

(b) In the event that the date for taking any action under this Contract (including, but not limited to, the giving of a notice of termination or closing) falls on a Saturday, Sunday or legal holiday, then such time period shall automatically be extended until 5:00 p.m. Eastern Time on the next regularly scheduled business day in Dunwoody, Georgia.

## 22. CONTRACT DATE

In the event this Contract is not signed simultaneously by both parties, it shall be considered to be an offer made by the party first executing it to other party. In such event, said offer shall expire at 11:59 p.m. Eastern Time on the fifth (5th) business day following execution by the offering party, unless by that time one copy executed by the party to whom the offer has been made, shall have been placed in the mail (certified, return receipt), personally delivered or delivered by nationally-recognized overnight courier to the party making the offer or delivered by e-mail; provided, however, that such e-mail delivery will be followed promptly by delivery of a copy by one of the methods described in the first sentence of Section 9(a). The "Contract Date" of this Contract shall be the date upon which the later of Seller or Purchaser to sign this Contract does so evidenced by the date beside said party's name.

**[Remainder of page intentionally left blank]**

**SELLER: American Medicorp Development Company**

By: W. Mark Kimbrough  
Name: W. Mark Kimbrough  
Title: Vice President

Date: 10/13/11

**Atlanta Healthcare Management, L.P.**

By: Atlanta Market GP, Inc.,  
its general partner

By: W. Mark Kimbrough  
Name: Mark Kimbrough  
Title: VP

Date: 10/13/11

**PURCHASER: City of Dunwoody, Georgia**

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

Date: \_\_\_\_\_

**SELLER: American Medicorp Development Company**

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

Date: \_\_\_\_\_

Name: W. Mark Kimbrough

Title: Vice President

**Atlanta Healthcare Management, L.P.**

**By: Atlanta Market GP, Inc.,  
its general partner**

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

Date: \_\_\_\_\_

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

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

**PURCHASER: City of Dunwoody, Georgia**

By: WA. HT

Date: 10/13/11

Name: WARREN HUTMACHER

Title: CITY MANAGER

## EXHIBIT LIST

Exhibit A – Land Description

Exhibit B – [Deleted]

Exhibit C – Seller's Deliveries

Exhibit D – Service Contracts

**Exhibit A****Description of the Land**

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 344 OF THE 18<sup>TH</sup> DISTRICT OF DEKALB COUNTY, GEORGIA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A ½ INCH IRON PIN FOUND AT THE INTERSECTION OF NORTHEASTERLY RIGHT OF WAY OF NORTH SHALLOWFORD ROAD BEING 80 FEET IN WIDTH AND THE NORTHWESTERLY RIGHT OF WAY OF PERNOSHAL COURT, THENCE ALONG SAID NORTHEASTERLY RIGHT OF WAY ALONG A CURVE TO THE LEFT HAVING AN ARC LENGTH OF 247.51 FEET A RADIUS OF 1861.00 FEET AND BEING SUBTENDED BY A CHORD BEARING OF NORTH 43 DEGREES 35 MINUTES 14 SECONDS WEST A DISTANCE OF 247.33 FEET TO A ½ INCH IRON PIN FOUND ON SAID RIGHT OF WAY AND THE COMMON LAND LOT LINE OF LAND LOT 344 AND 345 OF THE 18<sup>TH</sup> DISTRICT OF DEKALB COUNTY, GEORGIA, THENCE LEAVING SAID RIGHT OF WAY ON THE EASTERLY PROPERTY LINE OF NOW OR FORMERLY DEKALB LAKE RIDGE LLC NORTH 02 DEGREES 58 MINUTES 45 SECONDS EAST A DISTANCE OF 275.88 FEET TO A 1.5 INCH CRIMP TOP PIPE FOUND AT THE COMMON LAND LOT CORNER OF LAND LOTS 344, 345, 352, AND 353, THENCE ALONG THE SOUTHERLY PROPERTY LINE OF NOW OR FORMERLY DEKALB LAKE RIDGE LLC AS RECORDED IN DEED BOOK 17650 PAGE 759 ALSO BEING THE COMMON LAND LOT LINE OF LAND LOTS 353 AND 344 SOUTH 88 DEGREES 58 MINUTES 15 SECONDS EAST A DISTANCE OF 829.96 FEET TO A 1 INCH CRIMP TOP PIPE FOUND, THENCE SOUTH 88 DEGREES 53 MINUTES 33 SECONDS EAST ALONG SAID COMMON LAND LOT LINE AND DEKALB LAKE RIDGE PROPERTY LINE A DISTANCE OF 769.80 FEET TO THE CENTERLINE OF NANCY CREEK BEING THE PROPERTY LINE, THENCE FOLLOWING THE MEANDERINGS OF SAID CENTERLINE OF CREEK ALONG THE WESTERLY PROPERTY LINE OF NOW OR FORMERLY DUNWOODY COURT CONDOMINIUMS RECORDED IN PLAT BOOK 4 PAGE 121 THE FOLLOWING TRAVERSE COURSES: SOUTH 44 DEGREES 01 MINUTES 11 SECONDS EAST A DISTANCE OF 3.68 FEET TO A POINT, THENCE SOUTH 55 DEGREES 57 MINUTES 24 SECONDS EAST A DISTANCE OF 13.13 FEET TO A POINT, THENCE SOUTH 31 DEGREES 57 MINUTES 35 SECONDS EAST A DISTANCE OF 31.98 FEET TO A POINT, THENCE SOUTH 22 DEGREES 07 MINUTES 00 SECONDS EAST A DISTANCE OF 167.18 FEET TO A POINT, THENCE SOUTH 11 DEGREES 21 MINUTES 35 SECONDS EAST A DISTANCE OF 77.64 FEET TO A POINT, THENCE SOUTH

06 DEGREES 53 MINUTES 04 SECONDS EAST A DISTANCE OF 40.81 FEET TO A POINT, THENCE CONTINUING ALONG THE WESTERLY PROPERTY LINE OF NOW OR FORMERLY WRENS CROSS CONDOMINIUMS RECORDED IN DEED BOOK 2729 PAGE 292 AND THE CENTERLINE OF NANCY CREEK, SOUTH 12 DEGREES 34 MINUTES 31 SECONDS EAST A DISTANCE OF 54.36 FEET TO A POINT, THENCE SOUTH 01 DEGREES 48 MINUTES 37 SECONDS WEST A DISTANCE OF 55.37 FEET TO A POINT, THENCE SOUTH 10 DEGREES 14 MINUTES 35 SECONDS WEST A DISTANCE OF 40.45 FEET TO A POINT, THENCE SOUTH 10 DEGREES 46 MINUTES 27 SECONDS EAST A DISTANCE OF 76.43 FEET TO A POINT, THENCE LEAVING SAID CENTERLINE OF NANCY CREEK ALONG THE NORTHERLY PROPERTY LINE OF NOW OR FORMERLY WELLINGTON PLACE CONDOMINIUMS AS SHOWN ON A PLAT BY BROWNING ENGINEERING AND DEVELOPMENT CO. INC. DATED SEPTEMBER 27, 1970, NORTH 88 DEGREES 08 MINUTES 36 SECONDS WEST A DISTANCE OF 289.58 FEET TO AN ¼ INCH IRON PIN FOUND, THENCE NORTH 88 DEGREES 08 MINUTES 36 SECONDS WEST A DISTANCE OF 86.33 FEET TO A P/K NAIL SET IN CUL-DE-SAC ASPHALT, THENCE ON THE RIGHT OF WAY OF PERNOSHAL COURT ALONG A CURVE TO THE LEFT HAVING AN ARC LENGTH OF 22.80 FEET A RADIUS OF 60.00 FEET AND BEING SUBTENDED BY A CHORD BEARING OF NORTH 38 DEGREES 05 MINUTES 27 SECONDS EAST A DISTANCE OF 22.66 FEET TO A P/K NAIL SET IN CUL-DE-SAC ASPHALT, THENCE NORTHWESTERLY, WESTERLY, AND SOUTHWESTERLY ALONG THE NORTHEASTERLY, NORTHERLY AND NORTHWESTERLY RIGHT-OF-WAY OF PERNOSHAL COURT THE FOLLOWING COURSE AND DISTANCES NORTH 62 DEGREES 47 MINUTES 37 SECONDS WEST A DISTANCE OF 13.95 FEET TO A ½ INCH IRON PIN FOUND, THENCE NORTH 62 DEGREES 47 MINUTES 37 SECONDS WEST A DISTANCE OF 236.28 FEET TO A ½ INCH IRON PIN SET ON SAID NORTHERLY RIGHT OF WAY OF PERNOSHAL COURT NEAR THE BACK OF CURB OF AN ASPHALT PARKING LOT, THENCE NORTH 62 DEGREES 47 MINUTES 37 SECONDS EAST A DISTANCE OF 215.53 FEET TO A ½ INCH IRON PIN SET ON SAID RIGHT OF WAY, THENCE ALONG A CURVE TO THE LEFT HAVING AN ARC LENGTH OF 174.25 FEET A RADIUS OF 602.96 FEET AND BEING SUBTENDED BY CHORD BEARING OF NORTH 71 DEGREES 04 MINUTES 22 SECONDS WEST A DISTANCE OF 173.65 FEET TO P/K NAIL SET ON SAID RIGHT OF WAY, THENCE ALONG A CURVE TO THE LEFT HAVING AN ARC LENGTH OF 88.83 FEET A RADIUS OF 602.96 FEET AND BEING SUBTENDED BY A CHORD BEARING OF NORTH 83 DEGREES 34 MINUTES 21 SECONDS WEST A DISTANCE OF 88.75 FEET TO A ½ INCH IRON PIN SET ON SAID RIGHT OF WAY, THENCE NORTH 87 DEGREES 16 MINUTES 30 SECONDS WEST A DISTANCE OF 167.60 TO A ½ INCH IRON PIN SET ON SAID RIGHT OF WAY, THENCE ALONG A CURVE TO THE LEFT HAVING AN

ARC LENGTH OF 203.54 FEET A RADIUS OF 331.56 FEET AND BEING SUBTENDED BY A CHORD BEARING OF SOUTH 74 DEGREES 37 MINUTES 12 SECONDS WEST A DISTANCE OF 200.36 FEET TO A POINT ON SAID RIGHT OF WAY, THENCE ALONG THE SAME CURVE TO THE LEFT HAVING AN ARC LENGTH OF 45.29 FEET A RADIUS OF 331.56 FEET AND BEING SUBTENDED BY A CHORD BEARING OF SOUTH 53 DEGREES 07 MINUTES 12 SECONDS WEST A DISTANCE OF 45.26 FEET TO A ½ INCH IRON PIN SET ON SAID RIGHT OF WAY, THENCE SOUTH 49 DEGREES 43 MINUTES 30 SECONDS WEST A DISTANCE OF 196.39 FEET TO A ½ IRON PIN FOUND ON THE NORTHEASTERLY RIGHT-OF-WAY OF NORTH SHALLOWFORD ROAD AND THE POINT OF BEGINNING.

SAID TRACT OR PARCEL OF LAND CONTAINS 621,145.10 SQUARE FEET OR 14.260 ACRES AS SHOWN ON PLAT BY HARTRAMPF, INC., DATED 07-03-07. LAST REVISED 06-10-08.

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 344 OF THE 18<sup>TH</sup> DISTRICT OF DEKALB COUNTY, GEORGIA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERLY RIGHT OF WAY OF PERNOSHAL COURT BEING 60 FEET IN WIDTH AS PER PLAT BOOK 63 PAGE 16 AND THE NORTHEASTERLY RIGHT OF WAY LINE OF NORTH SHALLOWFORD ROAD BEING 80 FEET IN WIDTH AT AN IRON PIN SET ON SAID RIGHT OF WAY, THENCE ALONG SAID SOUTHEASTERLY RIGHT OF WAY LINE OF PERNOSHAL COURT NORTH 49 DEGREES 25 MINUTES 09 SECONDS EAST A DISTANCE OF 198.21 FEET TO AN IRON PIN SET ON SAID RIGHT OF WAY, THENCE ALONG A CURVE TO THE RIGHT HAVING AN ARC LENGTH OF 98.90 FEET A RADIUS OF 271.56 FEET AND BEING SUBTENDED BY A CHORD BEARING OF NORTH 59 DEGREES 51 MINUTES 07 SECONDS EAST A DISTANCE OF 98.35 FEET TO AN IRON PIN SET ON SAID RIGHT OF WAY, THENCE ALONG THE SAME CURVE TO THE RIGHT HAVING AN ARC LENGTH OF 104.91 FEET A RADIUS OF 271.56 FEET AND BEING SUBTENDED BY A CHORD BEARING OF NORTH 81 DEGREES 21 MINUTES 07 SECONDS EAST A DISTANCE OF 104.26 FEET TO AN IRON PIN SET ON SAID RIGHT OF WAY, THENCE SOUTH 87 DEGREES 34 MINUTES 51 SECONDS EAST A DISTANCE OF 167.60 FEET TO A IRON PIN SET ON SAID RIGHT OF WAY, THENCE ALONG A CURVE TO THE RIGHT HAVING AN ARC LENGTH OF 236.91 FEET A RADIUS OF 542.96 FEET AND BEING SUBTENDED BY A CHORD BEARING OF SOUTH 75 DEGREES 04 MINUTES 52 SECONDS EAST A DISTANCE OF 235.03 FEET TO AN IRON PIN SET ON SAID RIGHT OF WAY, THENCE SOUTH 62 DEGREES 34 MINUTES 52

SECONDS EAST A DISTANCE OF 5.01 FEET TO A 1 INCH OPEN TOP PIPE FOUND ON SAID RIGHT OF WAY, THENCE LEAVING SAID 60 FOOT RIGHT OF WAY SOUTH 25 DEGREES 59 MINUTES 39 SECONDS WEST A DISTANCE OF 327.10 FEET TO A ½ INCH IRON PIN FOUND, THENCE ALONG THE NORTHERLY PROPERTY LINE OF NOW OR FORMERLY GABLES REALTY LTD. RECORDED IN DEED BOOK 13058 PAGE 546 NORTH 88 DEGREES 01 MINUTES 41 SECONDS WEST A DISTANCE OF 259.75 FEET TO A ½ INCH IRON PIN FOUND, THENCE SOUTH 62 DEGREES 57 MINUTES 32 SECONDS WEST A DISTANCE OF 164.65 FEET TO AN IRON PIN SET AND SAID POINT BEING ON THE NORTHERLY RIGHT OF WAY OF NORTH SHALLOWFORD FORD, THENCE ALONG SAID RIGHT OF WAY NORTH 38 DEGREES 34 MINUTES 25 SECONDS WEST A DISTANCE OF 301.62 FEET TO THE POINT OF BEGINNING.

SAID TRACT OR PARCEL OF LAND CONTAINS 210,142 SQ.FT. OR 4.82 ACRES AS SHOWN ON PLAT BY HARTRAMPF, INC., DATED 06-05-07 LAST REVISED 06-10-08



**Exhibit B**

[DELETED]

## Exhibit C

### SELLER'S DELIVERIES

- (i) Tax bills for the Property from the years 2009, 2010 and 2011, if available;
- (ii) [Deleted];
- (iii) Any environmental studies of the Property in Seller's actual possession;
- (iv) All written contracts and agreements relating to the ownership, leasing, operation, management or maintenance of the Property (the "Service Contracts") which are listed in Exhibit 2 attached hereto;
- (v) Copy of P&S Ground Lease and any amendments thereto;
- (vi) Copies of July 3, 2007 Surveys of the Land (or portions of the Land) by Hartrumpf Engineers – Architects - Surveyors; and
- (vii) Copies of any commitments for title insurance policies or title insurance policies pertaining to the Property or any portion thereof in Seller's actual possession.

**Exhibit D**

**SERVICE CONTRACTS**

- 1) Management Contract with Lincoln Harris, CSG; and
- 2) Parking Agreement dated as of August 18, 1980 between Seller (by its predecessor Charter Medical Corporation) and P&S Associates.

**REINSTATEMENT OF AND THIRD AMENDMENT TO  
CONTRACT FOR PURCHASE AND SALE  
(Hospital)**

**THIS REINSTATEMENT OF AND THIRD AMENDMENT TO CONTRACT FOR PURCHASE AND SALE (“this Contract”)** is made and entered into as of the “Contract Date” (as defined in Section 22) by and between Atlanta Healthcare Management, L.P. and American Medicorp Development Company (together, the “Seller”) and the City of Dunwoody, Georgia (the “Purchaser”).

WHEREAS, Purchaser and Seller are parties to that certain Contract for Purchase and Sale (Hospital) dated October 13, 2011, as amended by that certain Amendment to Contract dated December 13, 2011 and that certain Second Amendment to Contract dated February 8, 2012 (as amended, the “Original Contract”), pertaining to that certain real property consisting of approximately 19.084 acres lying and being in Dunwoody, DeKalb County, Georgia, as more particularly described in the Contract;

WHEREAS, Purchaser and Seller have significantly changed the terms of the transaction contemplated in the Original Contract, and, therefore, the parties desire to reinstate the Original Contract with certain modifications thereto; and

WHEREAS, the parties agree that this Contract shall replace the Original Contract in its entirety, and, in the event of any conflicts between the terms and conditions of the Original Contract and the terms and conditions of this Contract, this Contract shall control;

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**1. CONTRACT TO BUY AND SELL**

Seller hereby agrees to sell and Purchaser hereby agrees to purchase all that certain: approximately 4.825-acre tract of land (Parcel “A1”), and approximately 3.298-acre tract of land (Parcel “B”), both of which are more particularly described in Exhibit “A” attached hereto and made a part hereof by reference and shown on the site plan in Exhibit “B” attached hereto and made a part hereof by reference, lying and being in Dunwoody, DeKalb County, Georgia (collectively, Parcel “A1” and Parcel “B” shall be referred to as the “Land”), together with (i) (A) all rights and interests appurtenant thereto and (B) all access, air, water, riparian, development, utility and solar rights related thereto (the “Appurtenant Rights”), (ii) all improvements located on the Land, together with any and all fixtures of any kind owned by Seller and attached to or used in connection with the ownership, maintenance, or operation of the Land or improvements located

thereon (the "Improvements") (the Land, the Appurtenant Rights and the Improvements are referred to collectively as the "Real Property"); (iii) the lessor's interest in that certain Ground Lease dated as of November 15, 1977, a short form of which is recorded in Deed Book 4290, Page 20 with P&S Associates, as lessee and related agreements (together, the "P&S Ground Lease"); and (iv) to the extent assignable and elected to be assumed by Purchaser pursuant to Section 5(d) hereinafter, all of Seller's rights, title and interest in and to all "Service Contracts" (as defined in Exhibit C to this Contract), permits, licenses, certificates of occupancy, warranties, architectural or engineering plans and specifications, and governmental approvals which relate to the Real Property, the Improvements or the Land (hereinafter collectively referred to as the "General Intangibles"). The Real Property and the General Intangibles are herein collectively called the "Property".

## 2. EARNEST MONEY

(a) Purchaser has deposited with First American Title Insurance Company, National Commercial Services, 6077 Primacy Parkway, Suite 121, Memphis, TN 38119, Attn: Ms. Carol Slone (the "Escrow Agent"), the cash sum of One Hundred Thousand and No/100 (\$100,000.00) Dollars as earnest money (together with any interest earned thereon) to be held and applied to the Purchase Price in accordance with the provisions hereof. All Earnest Money shall become non-refundable, absent Seller's default and except as provided in Sections 4, 7 and 20, upon the expiration of the "Inspection Period" defined in Section 5 if Purchaser does not terminate this Contract before the expiration of such "Inspection Period." All interest and other income that accrues on the Earnest Money shall belong to the party to whom the Earnest Money is to be disbursed and shall be disbursed to such party in accordance with this Contract.

(b) Purchaser shall make an additional deposit of Earnest Money in the amount of Five Hundred Thousand and No/100 Dollars (\$500,000.00) if the Closing has not occurred on or before June 15, 2012 as set forth in Section 6 of this Contract.

## 3. PURCHASE PRICE

The purchase price for the Property and reimbursement for the actual cost that Seller has incurred in demolishing certain improvements on Parcel "B" on which a portion of the former hospital was located prior to the Contract Date, up to a maximum of Six Hundred Thousand and No/100 Dollars (\$600,000.00), shall be Three Million Seven Hundred Fifty Thousand and No/100 Dollars (\$ 3,750,000.00). The balance of the Purchase Price shall be paid in full at the Closing by wire transfer of immediately available funds to an account designated by Seller. This reimbursement amount will be shown on the settlement statement (described in Section 6 of this Contract) as a separate line item. Seller will provide reasonable documentation of such costs to Purchaser before the Closing.

#### 4. TITLE AND SURVEY

(a) At the Closing, Seller shall convey to Purchaser good and transferable fee simple title to the Property by Limited Warranty Deed (the "Deed"), subject only to the "Permitted Exceptions" (as defined in Section 6(b)(i) of this Contract).

(b) Purchaser has obtained a survey of the Property (the "Survey").

(c) Purchaser has obtained a commitment for an Owner's Policy of Title Insurance (the "Title Commitment") issued by First American Title Insurance Company, National Commercial Services (the "Title Company"), pursuant to which the Title Company shall commit to issue to Purchaser a standard owner's policy of title insurance in the amount of the Purchase Price. Purchaser has notified Seller in writing of Purchaser's objections to matters shown on the Title Commitment and the Survey (the "Objections") prior to February 1, 2012 (the "Title Objection Deadline"), as required under the Original Contract. Any matters that were not objected to prior to the Title Objection Deadline are deemed waived by Purchaser, except as expressly provided below in this Section 4(c). Seller has responded to the Objections in accordance with the Original Contract as of February 16, 2012; it being understood that Seller shall have no obligation to eliminate or otherwise remove any Objection except as expressly provided below in the last sentence of this Section 4(c). Purchaser's right under the Original Contract to terminate the Original Contract by giving written notice to Seller within five (5) business days after receipt of Seller's written response has expired and is of no further effect. Purchaser has no further right to object to any item, exception or other matter shown on any of the foregoing, unless such matter first arises after the last day of the Inspection Period (as hereinafter defined in Section 5) in which case Purchaser shall have the same right to object to such matters as it had after having been given the opportunity to review the initial Title Commitment. Notwithstanding anything to the contrary herein contained, Seller covenants and agrees that at or prior to Closing, Seller, at Seller's sole cost and expense, shall (i) cause to be released or insured over all mechanics' and contractors' liens which encumber the Property; (ii) pay in full all past due and delinquent ad valorem taxes and assessments of any kind constituting a lien against the Property; and (iii) cause to be released any loan security documents which encumber the Property under which Seller is the debtor.

#### 5. INSPECTION

(a) Commencing upon the Contract Date and during the life of this Contract, Purchaser shall have the right to go on the Property personally or through agents, employees and contractors for the purpose of making soil tests and such other tests, analyses and investigations of the Property as Purchaser deems necessary. Purchaser shall pay all costs incurred in making such tests, analyses and investigations. Purchaser shall repair any damage to the Property occurring as a result of any of the foregoing if this Contract is terminated pursuant to the terms

of this Contract and Purchaser shall indemnify and hold Seller harmless from and against any losses, claims, damages, liabilities, penalties, costs and expenses (including, but not limited to, reasonable attorneys' fees and expenses) arising or resulting from any entry upon the Property by Purchaser or Purchaser's representatives, contractors, agents or employees. Purchaser's obligations and liabilities under this Section 5 shall survive the expiration or termination of this Contract. Purchaser must notify Seller in writing by 5:00 p.m. Eastern Time on April 23, 2012 (the "Inspection Period") of Purchaser's intent to terminate this Contract for any reason or no reason at all, and if so notified, this Contract shall become null and void, except as otherwise provided in this Contract, and the Earnest Money shall be immediately refunded to the Purchaser. All Earnest Money shall become non-refundable at the expiration of the Inspection Period except as otherwise expressly provided in this Contract.

(b) Purchaser acknowledges that Seller has delivered to Purchaser the items listed on Exhibit C attached hereto ("Seller's Deliveries"). Purchaser shall keep the information set forth in Seller's Deliveries confidential to the fullest extent permitted by law. If the transactions contemplated in this Contract are not consummated for any reason whatsoever, Purchaser shall return Seller's Deliveries and all copies thereto to Seller immediately.

(c) The sum of One Hundred Dollars (\$100.00) (the "Independent Consideration") out of the Earnest Money is independent of any other consideration provided hereunder, shall be fully earned by Seller upon the Contract Date and is not refundable to Purchaser under any circumstances. Accordingly, if this Contract is terminated for any reason by either party, the Independent Consideration shall be paid by the Title Company to Seller.

(d) Purchaser shall have until the expiration of the Inspection Period to inform Seller in writing which, if any, of the Service Contracts listed in Exhibit D attached hereto Purchaser shall assume at the Closing. Purchaser's failure to notify Seller in writing of its election to assume any Service Contract before the Inspection Period expires shall be deemed a decision by Purchaser to reject such Service Contract (the "Assumed Services Contract"). Seller shall be responsible for any and all fees, charges or expenses incurred as a result of the cancellation of any Service Contracts that Purchaser elects to reject.

## 6. CLOSING

(a) Purchaser and Seller shall consummate and close the sale of Parcel "A1" and Parcel "B" contemplated by this Contract (the "Closing") at the offices of the Title Company/Escrow Agent on June 15, 2012 or upon such earlier date as the parties may agree (the "Closing Date"), as mutually agreed upon by both parties; provided, however, that the Closing may be conducted by mail in escrow. Notwithstanding the foregoing, however, Purchaser shall have the right to extend the Closing until July 31, 2012, by giving written notice to Seller and the Title

Company by 5:00 pm Eastern Time on June 1, 2012. Simultaneously with such notice, Purchaser will make the additional deposit of \$500,000.00 as non-refundable Earnest Money as described in Section 2(b) of this Contract. If the Closing has not occurred on or before July 31, 2012, absent a Seller default or event of *force majeure*, this Contract shall automatically terminate. In the event of such termination, the Escrow Agent will promptly pay all Earnest Money to Seller and the parties will be released of all obligations and liabilities under this Contract except as provided otherwise in this Contract.

(b) Seller's Deliveries in Escrow. At the Closing, Seller shall deliver to the Title Company the following documents:

- (i) Deed. The Deed, which will be executed by Seller and convey to Purchaser title to the Real Property that is insurable by the Title Company free and clear of all liens, restrictions and encumbrances except the "Permitted Exceptions," which shall mean those exceptions approved or waived by Purchaser pursuant to Section 4 and the following (1) ad valorem real estate taxes and installments of governmental assessments for public improvements benefiting the Real Property, that are not delinquent; (2) zoning and building laws, ordinances, resolutions, and regulations; (3) covenants, agreements, conditions, restrictions, reservations and other matters of record (subject, however, to Purchaser's rights under Section 4(c) to make Objections); and (4) all matters that would be shown on an accurate survey of the Property.
- (ii) Bill of Sale, General Assignment and Assumption Agreement. A bill of sale, general assignment and assumption agreement (the "Assignment"), without warranty of any kind regarding the property or property interests transferred, conveying to Purchaser, ownership in all of the Improvements, including all fixtures located on the Property, as well as, to the extent assignable, all General Intangibles and the Assumed Service Contracts.
- (iii) P&S Ground Lease Assignment and Assumption Agreement. An assignment and assumption agreement (the "P&S Ground Lease Assignment"), without warranty, conveying to Purchaser all of lessor's obligations and interest under the P&S Ground Lease.
- (iv) Authority. Evidence of existence, organization, and authority of Seller and the authority of the person executing documents on behalf of Seller, reasonably satisfactory to the Title Company.



- (v) FIRPTA. A Foreign Investment in Real Property Tax Act affidavit executed by Seller. If Seller fails to provide the necessary affidavit and/or documentation of exemption on the Closing Date, Purchaser may proceed with withholding provisions as provided by law.
  - (vi) Seller's Affidavit. A seller's affidavit or similar certification, consistent with a limited warranty deed, as may be required by the Title Company to issue the title policy, and such other instruments and documents, such as lien waivers and mechanics lien indemnities, as the Title Company shall reasonably require, that are consistent with a limited warranty deed in order to issue its owner's title policy insuring Purchaser's fee simple title to the Property free and clear of the "standard printed exceptions".
  - (vii) Additional Documents. A settlement statement and any additional documents that Purchaser or the Title Company may reasonably require for the proper consummation of the transaction contemplated by this Contract.
  - (viii) Georgia Withholding Tax Affidavit. An Affidavit of Seller's Residence which demonstrates that Seller is exempt from the withholding requirements of O.C.G.A. Section 48-7-128.
  - (ix) Broker's Lien Waiver Affidavit. A Broker's Lien Waiver Affidavit executed by each Broker.
  - (x) Closing Statement. A closing statement duly executed by Seller setting forth in reasonable detail the financial transaction contemplated by this Contract, including without limitation the Purchase Price, all prorations, the allocation of costs specified herein, and the source, application and disbursement of all funds (the "Closing Statement").
- (c) Purchaser's Deliveries in Escrow. At the Closing, Purchaser shall deliver to the Title Company the following:
- (i) Purchase Price. The Purchase Price, plus or minus applicable prorations and less a credit for the full amount of the Earnest Money or any other credits contemplated by this Contract, deposited by Purchaser with the Title Company in immediate, same-day federal funds (all or any part of which may be the proceeds of a loan) wired for credit into such account as the Title Company may designate.

- (ii) Assignment and Assumption. The Assignment and the P&S Ground Lease Assignment.
- (iii) Additional Documents. A settlement statement and any additional documents that Seller or the Title Company may reasonably require for the proper consummation of the transaction contemplated by this Contract.
- (iv) Closing Statement. The Closing Statement executed by Purchaser.

(d) Closing Costs. At Closing, Purchaser shall pay any transfer taxes and recording costs to be paid in connection with the conveyance of the Property to Purchaser. Purchaser shall also pay the cost of obtaining the Title Commitment, the premiums for any title insurance policy and the cost of the Survey. Any fees for the services of Escrow Agent shall be divided equally between Seller and Purchaser. Each party shall pay and be responsible for all fees and expenses of its respective attorneys and other representatives, excluding commissions or fees due to any real estate brokers which shall be paid as provided in Section 17 hereinafter.

(e) Prorations. As of the date of Closing, Purchaser and Seller shall prorate ad valorem taxes on the Property and all items of income, rent and expenses in connection with ownership, operation and maintenance of the Property, for the year in which the Closing occurs. All adjustments and prorations to the Purchase Price payable at Closing shall be computed as of the end of the day preceding the Closing Date, with the Seller being entitled to receive all revenues and shall be charged with all expenses relating to the ownership and operation of the Property through the day preceding the Closing Date. All other items which are customarily prorated in transactions similar to the transaction contemplated hereby, and which were not heretofore dealt with, will be prorated as of the end of the day preceding the Closing Date.

## 7. CONDITION AND POSSESSION OF THE PROPERTY

At Closing, Seller shall deliver to Purchaser possession of the Property in substantially the same condition as on the Contract Date, normal wear and tear excepted. If all or any material portion of the Property shall be condemned, damaged or destroyed prior to the Closing, Purchaser may elect to (i) terminate this Contract, or (ii) receive such insurance proceeds or condemnation award as may be paid or payable with respect to such condemnation, damage or destruction and complete the Closing. Purchaser's election under this paragraph shall be exercised by written notice to Seller within fifteen (15) days after receipt of written notice from Seller of such condemnation, damage or destruction or of written notice of the amount of the insurance or condemnation award payable with respect to such condemnation, damage or destruction, whichever is later. If Purchaser elects to

terminate this Contract under this Paragraph, all Earnest Money paid hereunder shall be immediately refunded to Purchaser.

## 8. DEFAULT

If the sale contemplated by this Contract is not consummated through default of Seller, Purchaser may, as its sole and exclusive remedy, either (a) receive the return of all of the Earnest Money, which return shall operate to terminate this Contract and release Purchaser and Seller from any and all liability hereunder, or (b) enforce specific performance of Seller's obligation to convey the Property to Purchaser in accordance with the terms of this Contract. If said sale is not consummated because of Purchaser's default, then Seller shall be entitled, as its sole and exclusive remedy, to terminate this Contract and retain the Earnest Money as liquidated damages. It is hereby agreed that Seller's damages will be difficult to ascertain and that the Earnest Money constitutes a reasonable liquidation thereof, and is not intended as a penalty, but as full liquidated damages.

## 9. NOTICE

(a) Any notice required or permitted to be given hereunder shall be sufficient if in writing and if hand delivered, delivered by nationally recognized overnight courier or sent by U.S. Certified Mail, postage prepaid and return receipt requested, to the party being given such notice at the following address:

Seller: American Medicorp Development Company  
One Park Plaza  
Nashville, TN 37203  
Attn: Mr. Ron Woods,  
Real Estate Department  
E-mail: [Ron.Woods@HCAhealthcare.com](mailto:Ron.Woods@HCAhealthcare.com)

With copies to: TMG Realty Advisors  
1201 Peachtree Street, NE  
Building 400, Suite 20  
Atlanta, GA 30361  
Attn: Mr. Tony Martin  
E-Mail: [tmartin@TMGrealtyadvisors.com](mailto:tmartin@TMGrealtyadvisors.com)

And Waller Lansden Dortch & Davis, LLP  
511 Union Street, Suite 2700  
Nashville, TN 37219  
Attn: Carla F. Fenswick, Esq.  
E-Mail: [Carla.Fenswick@wallerlaw.com](mailto:Carla.Fenswick@wallerlaw.com)

Purchaser: The City of Dunwoody, Georgia  
41 Perimeter Center East, Suite 250

Dunwoody, GA 30346  
Attn: City Manager (with copies to City  
Attorney and City Clerk)  
E-Mail:  
[Warren.Hutmacher@dunwoodyga.gov](mailto:Warren.Hutmacher@dunwoodyga.gov)

With copy to: FSB FisherBroyles, a Limited Liability  
Partnership  
5023 Buckline Crossing  
Dunwoody, GA 30338  
Attn: Alison S. Woodrow, Esq.  
E-mail: [Woodrow@fsblegal.com](mailto:Woodrow@fsblegal.com)

(b) Any party may change said address by giving the other party hereto notice of such change of address. Notice given as hereinabove provided shall be deemed received by the party to whom it is addressed on the date on which said notice is hand delivered, delivered by overnight courier or deposited in a U.S. Post Office sent Certified Mail, return receipt requested with proper postage affixed hereto. Notice may also be delivered by e-mail to the addresses set forth above (or to any other address designated by the applicable by written notice to the other party); provided by each fax or e-mail delivery shall be followed promptly by delivery of such notice by one of the methods described in the first sentence of Section 9(a).

#### 10. ASSIGNMENT

Purchaser shall be entitled to assign its right, title and interest herein only with the prior written consent of Seller, such consent not to be unreasonably withheld or delayed. Notwithstanding the foregoing, Purchaser may assign this Contract without necessity of Seller's consent to an entity which is controlled by Purchaser; provided that Seller is notified of such assignment in writing, and Purchaser shall remain liable for all obligations of Purchaser under this Contract. Any approved assignee shall expressly assume all of Purchaser's duties, obligations and liabilities hereunder.

#### 11. SUCCESSORS AND ASSIGNS

This Contract shall bind and inure to the benefit of Seller and Purchaser and their respective successors and assigns. In no event, however, shall any assignment of Purchaser's rights under this Contract operate to release Purchaser from liability under this Contract.

#### 12. TIME OF ESSENCE

Time is of essence of this Contract.

### 13. SOLE CONTRACT

This Contract constitutes the sole and entire agreement between the parties hereto with respect to the subject matter hereof, and no modification of this Contract shall be binding unless signed by all parties to this Contract. No representation, promise, or inducement not included in this Contract shall be binding upon any party hereto.

### 14. POSSESSION

Possession of the Property shall be granted by Seller to Purchaser at the time of Closing of this Contract.

### 15. SELLER'S COVENANTS

Seller agrees that during the period from the Contract Date through the Closing Date Seller will perform the following covenants:

(a) Except as Purchaser may otherwise consent in writing, until the Closing Date, unless this Contract is sooner terminated, Seller shall: (i) maintain the Property in its present condition and repair, ordinary wear and tear excepted and subject to the terms of Section 7(b) hereof; (ii) maintain the existing insurance policies for the Property and the operation thereof (and any replacements thereof) in full force and effect, (iii) not grant to any third party any interest in the Property or any part thereof or further voluntarily encumber the Property; provided, however, that this prohibition shall not apply to any back-up contract to sell the Property in the event that this Contract is terminated, (iv) not construct any improvements on, or make any material changes to, the Property and (v) not seek, consent to, or otherwise concur in any zoning variance or change without Purchaser's prior written consent.

(b) Seller will not, without the prior written consent of Purchaser, (i) enter into any operating contract that will not be fully performed by Seller on or before the Closing Date, or (ii) enter into any lease or easement for the Property.

(c) Prior to Closing, Seller will notify Purchaser of any notice received by Seller of any material change in or to the Property, promptly upon Seller's receipt thereof.

### 16. MISCELLANEOUS

(a) This Contract and said other instruments shall, in all respects, be governed, construed, applied and enforced in accordance with laws of the State of Georgia (as may be amended). All disputes will be filed with the Superior Court of DeKalb County, Georgia.

(b) This Contract may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Contract. To facilitate execution of this Contract, the parties may execute and exchange by telephone facsimile or e-mailed counterparts of the signature pages; provided, however, the Purchaser and Seller shall each receive from the other within ten (10) days of the Contract Date an original, fully executed Contract.

(c) Should either party employ attorneys to enforce any of the provisions hereof, the party losing in any final judgment agrees to pay the prevailing party all reasonable costs, charges and expenses, including reasonable attorneys' fees, expended or incurred in connection therewith.

(d) In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by Seller to Purchaser at the Closing, Seller agrees to perform, execute and/or deliver or cause to be delivered, executed and/or delivered, but without any obligation to incur any additional liability or expense, after the Closing any and all further acts, deeds and assurances as may be reasonably necessary to consummate the transactions contemplated hereby and/or to further perfect and deliver to Purchaser the conveyance, transfer and assignment of the Property and all rights related thereto.

(e) Except as otherwise provided herein, this Agreement may be amended or modified by, and only by, a written instrument executed by Seller and Purchaser.

## 17. REAL ESTATE BROKER

Purchaser and Seller covenant and agree that they have dealt with no real estate broker other than TMG Realty Advisors, which represents Seller (the "Seller's Broker"), and Colliers International – Atlanta, Inc., which represents Purchaser (the "Purchaser's Broker"), in connection with the purchase and sale of the Property under the terms of this Contract and shall hold each other harmless and indemnify one another against the claims of any other real estate broker arising by virtue of any act or alleged act of said party. Seller's Broker represents the Seller as provided in a separate agreement between the Seller's Broker and the Seller, and Seller shall be responsible for any payments due Seller's Broker. Any commission or fee due to Purchaser's Broker will be paid by Seller's Broker in accordance with a separate agreement between Seller's Broker and Purchaser's Broker.

## 18. DISCLAIMER

(a) Purchaser acknowledges and agrees that as of the expiration of the Inspection Period, Purchaser will have had the opportunity to fully inspect the Property, will have had the opportunity to make all investigations as it deems

necessary or appropriate and will be relying solely upon its inspection and investigation of the Property for all purposes whatsoever, including, but not limited to, the determination of the condition of the structures, improvements, soils, subsurface, drainage, surface and groundwater quality, and all other physical characteristics; availability and adequacy of utilities; compliance with governmental laws and regulations; access; encroachments; acreage and other survey matters; and the character and suitability of the Property. In addition, Purchaser acknowledges and agrees that the Property is being purchased and will be conveyed "As Is" with all faults and defects, whether patent or latent, as of the Closing. There have been no representations, warranties, guarantees, statements or information, express or implied, pertaining to the Property, its condition, or any other matters whatsoever, made to or furnished to Purchaser by Seller or any employee or agent of Seller, except as specifically set forth in this Contract.

(b) From and after Closing, Purchaser waives, releases, and forever discharges Seller, its directors, officers, shareholders, employees, and agents, and their respective heirs, successors, personal representatives and assigns (collectively, the "Released Parties"), of and from any and all suits, legal or administrative proceedings, claims, demands, actual damages, punitive damages, losses, costs, liabilities, interest, attorneys' fees and expenses of whatever kind and nature, in law or in equity, known or unknown (collectively, "Liabilities"), that Purchaser ever had, now has, or in the future may have, against any of the Released Parties, based upon, or arising directly or indirectly out of: (i) the condition, status, quality or nature of the Property; and (ii) the existence, presence or condition of the asbestos-containing material, if any, on, in or under the Property. Notwithstanding the foregoing to the contrary, however, nothing in this Section 18 shall release Seller from any act of fraud or a breach of any representation or warranty made by Seller pursuant to Section 20 below.

## 19. COVENANTS AND AGREEMENTS OF SELLER.

(a) Leasing Arrangements. During the pendency of this Agreement, Seller will not enter into any lease affecting the Property without Purchaser's prior written consent in each instance.

(b) New Contracts. During the pendency of this Agreement, Seller will not enter into any contract or agreement that will be an obligation affecting or an encumbrance on title to the Property or any part thereof subsequent to the Closing without Purchaser's prior written consent in each instance, except contracts entered into in the ordinary course of business that are terminable without cause (and without penalty or premium) on thirty (30) days (or less) notice.

## 20. WARRANTIES

As a material inducement to Purchaser to enter into this Contract and consummate this transaction, (a) Seller represents and warrants to Purchaser that:

- (i) Seller has not received written notice of, nor does Seller have any actual knowledge of any actual, pending or threatened action, litigation, rezoning, condemnation or proceeding in existence as of the Contract Date with respect to the Property or against the Property;
- (ii) To the best of Seller's actual knowledge, as of the Contract Date, neither the entering into of this Contract nor the consummation of the transaction contemplated hereby will constitute or result in a violation or breach by Seller of any agreement or restriction to which either Seller or the Property is subject. Seller has not received any written notice or claim of any violations of any covenants, restrictions, easements or other agreements of record or actually known to Seller benefitting, burdening or otherwise affecting the Property, including without limitation, the P&S Ground Lease.
- (iii) Seller has been duly organized and is validly existing as a Georgia limited liability company. Seller has the full right and authority and has obtained any and all consents required therefor to enter into this Contract. The person signing this Contract on behalf of Seller is authorized to do so. This Contract has been, and the documents to be executed by Seller pursuant to this Contract will be, authorized and properly executed and does and will constitute the valid and binding obligations of Seller, enforceable against Seller in accordance with their terms.
- (iv) [Deleted]
- (v) Seller has not granted to any person, firm or entity any unrecorded rights in or rights to acquire all or any part of the Property, and there is no outstanding unrecorded agreement by Seller to sell all or any part of the Property to any other person, firm or entity.
- (vi) To the best of Seller's actual knowledge and except (A) as listed in Exhibit D attached hereto and (B) any lease, sublease or occupancy agreement entered into by the lessee under the P&S Ground Lease, there are no leases, use agreements, operating agreements, management agreements, or other agreements or instruments in force or effect that grant to any person whomsoever or any entity whatsoever any right, title, interest or benefit in or to all or any part of the Property or any rights relating to the use, operation, management, maintenance or repair of all or any part of the Property.



(vii) [Deleted]

Seller shall promptly notify Purchaser, in writing, of any event or condition known to Seller which occurs prior to Closing hereunder and which causes a material change in the facts relating to, and the truth of, any of the above representations and warranties. At the Closing, Seller shall reaffirm and restate such representations and warranties, subject to disclosure of any changes in facts or circumstances which may have occurred since the date hereof. If any change in any foregoing representation is a material change, Purchaser may, at its option, terminate this Contract by written notice to Seller and receive a full refund of the Earnest Money.

(b) As a material inducement to Seller to execute this Agreement and consummate this transaction, Purchaser represents and warrants to Seller that:

(i) Conflicts. To the best of Purchaser's knowledge, as of the Contract Date, neither the entering into of this Contract nor the consummation of the transaction contemplated hereby will constitute or result in a violation or breach by Purchaser of any agreement or restriction to which Purchaser is subject.

(ii) Organization and Authority. Purchaser has been duly organized and is validly existing as a municipality in the State of Georgia. Purchaser has the full right and authority and has obtained any and all consents required therefor to enter into this Contract. The person signing this Contract on behalf of Purchaser is authorized to do so. This Contract has been, and the documents to be executed by Purchaser pursuant to this Contract will be, authorized and properly executed and does and will constitute the valid and binding obligations of Purchaser enforceable against Purchaser in accordance with their terms.

(c) The representations and warranties of Seller and Purchaser set forth in this Section 20 shall survive Closing.

## 21. SPECIAL STIPULATIONS

(a) Any condition for Purchaser's benefit herein may be waived by the Purchaser at or before Closing.

(b) In the event that the date for taking any action under this Contract (including, but not limited to, the giving of a notice of termination or closing) falls on a Saturday, Sunday or legal holiday, then such time period shall automatically be extended until 5:00 p.m. Eastern Time on the next regularly scheduled business day in Dunwoody, Georgia.

**22. CONTRACT DATE**

This Contract may be executed in multiple counterparts, each of which shall be deemed an original and together which shall constitute one and the same instrument. To facilitate execution of this Contract, the parties may execute and exchange by telephone facsimile or e-mailed counterparts of the signature pages; provided, however, that such e-mail delivery will be followed promptly by delivery of a copy by one of the methods described in the first sentence of Section 9(a). The "Contract Date" of this Contract shall be the date upon which the later of Seller or Purchaser to sign this Contract does so evidenced by the date beside said party's name.

**23. OPTION TO PURCHASE**

On the last day of the Inspection Period, unless Purchaser notifies Seller of Purchaser's intent to terminate this Contract pursuant to Section 5 hereof, Purchaser and Seller shall enter into a Real Estate Option Agreement in the form attached hereto as Exhibit E (the "Option Agreement"), whereby Seller shall convey to Purchaser, and Purchaser shall acquire from Seller, an option to purchase the parcels of real property identified as "Parcel C" and "Parcel A2" on Exhibit B to this Contract.

**[Remainder of page intentionally left blank]**

**SELLER: American Medicorp Development Company**

By: Nicholas L. Paul  
Name: Nicholas L. Paul  
Title: Vice President

Date: 3/9/12

**Atlanta Healthcare Management, L.P.**

By: Atlanta Market GP, Inc.,  
its general partner

By: Nicholas L. Paul  
Name: Nicholas L. Paul  
Title: vp

Date: 3/9/12

**PURCHASER: City of Dunwoody, Georgia**

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

Date: \_\_\_\_\_

## EXHIBIT LIST

Exhibit A – Land Description

Exhibit B – Site Plan

Exhibit C – Seller’s Deliveries

Exhibit D – Service Contracts

Exhibit E – Option Agreement

**Exhibit A**

**Description of the Land**

Parcel "A1":

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 344 OF THE 18<sup>TH</sup> DISTRICT OF DEKALB COUNTY, GEORGIA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERLY RIGHT OF WAY OF PERNOSHAL COURT BEING 60 FEET IN WIDTH AS PER PLAT BOOK 63 PAGE 16 AND THE NORTHEASTERLY RIGHT OF WAY LINE OF NORTH SHALLOWFORD ROAD BEING 80 FEET IN WIDTH AT AN IRON PIN SET ON SAID RIGHT OF WAY, THENCE ALONG SAID SOUTHEASTERLY RIGHT OF WAY LINE OF PERNOSHAL COURT NORTH 49 DEGREES 25 MINUTES 09 SECONDS EAST A DISTANCE OF 198.21 FEET TO AN IRON PIN SET ON SAID RIGHT OF WAY, THENCE ALONG A CURVE TO THE RIGHT HAVING AN ARC LENGTH OF 98.90 FEET A RADIUS OF 271.56 FEET AND BEING SUBTENDED BY A CHORD BEARING OF NORTH 59 DEGREES 51 MINUTES 07 SECONDS EAST A DISTANCE OF 98.35 FEET TO AN IRON PIN SET ON SAID RIGHT OF WAY, THENCE ALONG THE SAME CURVE TO THE RIGHT HAVING AN ARC LENGTH OF 104.91 FEET A RADIUS OF 271.56 FEET AND BEING SUBTENDED BY A CHORD BEARING OF NORTH 81 DEGREES 21 MINUTES 07 SECONDS EAST A DISTANCE OF 104.26 FEET TO AN IRON PIN SET ON SAID RIGHT OF WAY, THENCE SOUTH 87 DEGREES 34 MINUTES 51 SECONDS EAST A DISTANCE OF 167.60 FEET TO A IRON PIN SET ON SAID RIGHT OF WAY, THENCE ALONG A CURVE TO THE RIGHT HAVING AN ARC LENGTH OF 236.91 FEET A RADIUS OF 542.96 FEET AND BEING SUBTENDED BY A CHORD BEARING OF SOUTH 75 DEGREES 04 MINUTES 52 SECONDS EAST A DISTANCE OF 235.03 FEET TO AN IRON PIN SET ON SAID RIGHT OF WAY, THENCE SOUTH 62 DEGREES 34 MINUTES 52 SECONDS EAST A DISTANCE OF 5.01 FEET TO A 1 INCH OPEN TOP PIPE FOUND ON SAID RIGHT OF WAY, THENCE LEAVING SAID 60 FOOT RIGHT OF WAY SOUTH 25 DEGREES 59 MINUTES 39 SECONDS WEST A DISTANCE OF 327.10 FEET TO A ½ INCH IRON PIN FOUND, THENCE ALONG THE NORTHERLY PROPERTY LINE OF NOW OR FORMERLY GABLES REALTY LTD. RECORDED IN DEED BOOK 13058 PAGE 546 NORTH 88 DEGREES 01 MINUTES 41 SECONDS WEST A DISTANCE OF 259.75 FEET TO A ½ INCH IRON PIN FOUND, THENCE SOUTH 62 DEGREES 57 MINUTES 32 SECONDS WEST A DISTANCE OF 164.65 FEET TO AN IRON PIN SET AND SAID POINT BEING ON THE NORTHERLY RIGHT OF WAY OF NORTH SHALLOWFORD FORD, THENCE ALONG SAID RIGHT OF WAY NORTH 38 DEGREES 34

MINUTES 25 SECONDS WEST A DISTANCE OF 301.62 FEET TO THE POINT OF BEGINNING.

SAID TRACT OR PARCEL OF LAND CONTAINS 210,142 SQ.FT. OR 4.82 ACRES AS SHOWN ON PLAT BY HARTRAMPF, INC., DATED 06-05-07 LAST REVISED 06-10-08

Parcel "B":

[Insert legal description for Parcel "B"]

**TRACT 1**  
**Tax Parcel 18 334 01 010**

Being all that tract or parcel of land, lying and being in Land Lot 344, of the 18<sup>th</sup> District of DeKalb County, Georgia, and being more particularly described as follows:

To find the Point of Beginning, commence at a 1" crimp top pipe found at the common corner of Land Lots 344, 345, 352 and 353 of the aforesaid District; thence, leaving the said point and running along the northern line of said Land Lot 344 and the property now or formerly owned by DeKalb-Lake Ridge, LLC, as described in a deed recorded among the Land Records of DeKalb County, Georgia in Deed Book 17650, Page 759, North 89° 50' 23" East, 838.08 feet to a 1/2" rebar found at the True Point of Beginning of the herein described tract or parcel of land;

thence, leaving said Point of Beginning and continuing along the aforesaid northern line of Land Lot 334, North 89° 06' 36" East, 500.68 feet; thence, leaving the northern line of Land Lot 334 and running along the property now or formerly owned by Atlanta Healthcare Management LTD, as described in a deed recorded among the aforesaid Land Records in Deed Book 10472, Page 798, South 25° 22' 55" West, 442.28 feet to the northerly Right of Way Line of Pernoshal Court (having a 60 feet wide right of way); thence, running along the said line of Pernoshal Court the following courses and distances: North 64° 07' 05" West, 212.70 feet; thence, 174.82 feet along the arc of a curve deflecting to the left, having a radius of 602.96 feet and a chord bearing and distance of North 72° 25' 27" West, 174.21 feet; thence, leaving the aforesaid line of Pernoshal Court and running along the property now or formerly owned by Atlanta Healthcare Management LTD, as described in a deed recorded among the aforesaid Land Records in Deed Book 10472, Page 798, North 10° 40' 06" East, 250.69 feet to a 1/2" rebar, and the Point of Beginning.

Containing 143,276 square feet or 3.2892 Acres of land, more or less.

Property is subject to all easements and rights of way recorded and unrecorded.

**Exhibit B**

**[Insert site plan showing all parcels]**



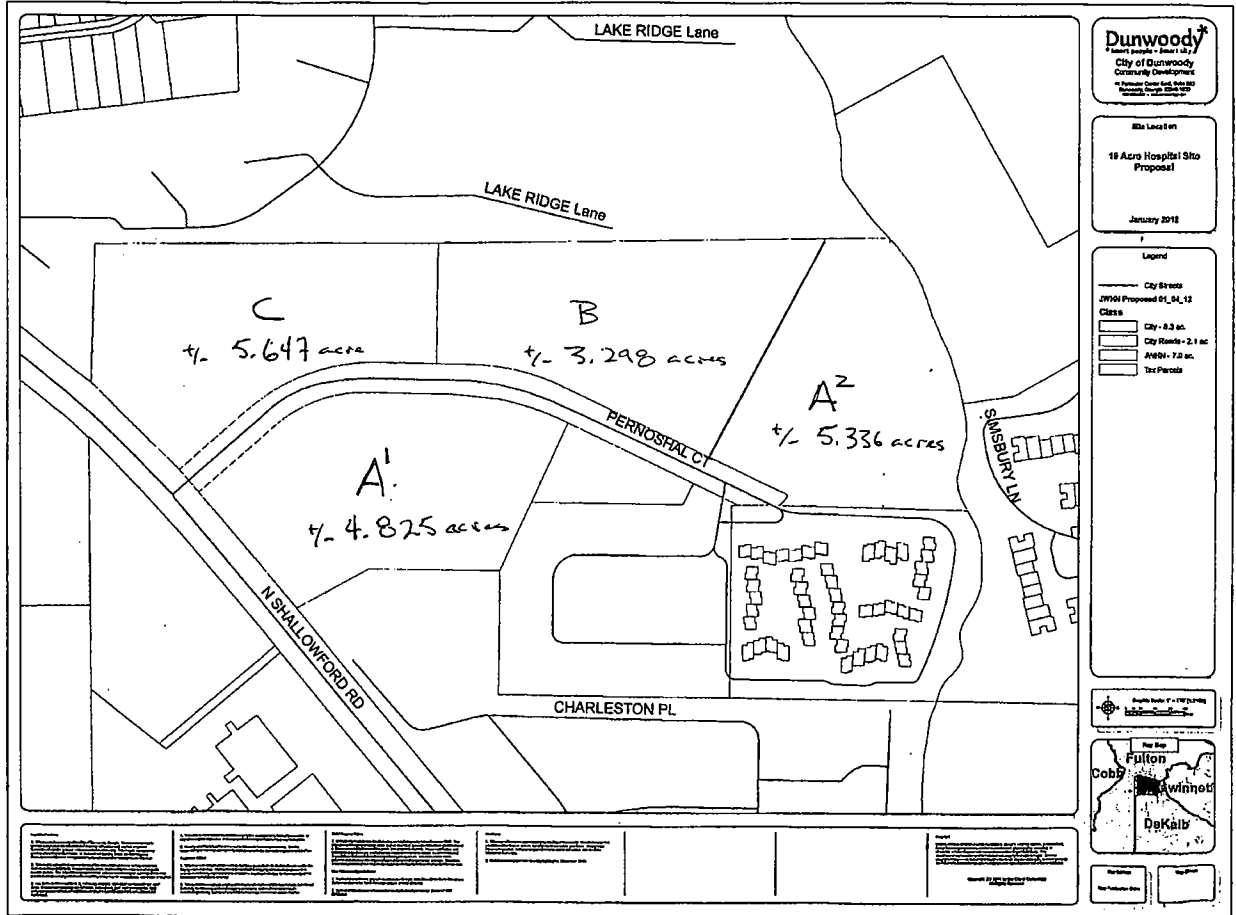


Exhibit C

SELLER'S DELIVERIES

- (i) Tax bills for the Property from the years 2009, 2010 and 2011, if available;
- (ii) [Deleted];
- (iii) Any environmental studies of the Property in Seller's actual possession;
- (iv) All written contracts and agreements relating to the ownership, leasing, operation, management or maintenance of the Property (the "Service Contracts") which are listed in Exhibit 2 attached hereto;
- (v) Copy of P&S Ground Lease and any amendments thereto;
- (vi) Copies of July 3, 2007 Surveys of the Land (or portions of the Land) by Hartrumpf Engineers – Architects · Surveyors; and
- (vii) Copies of any commitments for title insurance policies or title insurance policies pertaining to the Property or any portion thereof in Seller's actual possession.

**Exhibit D**

**SERVICE CONTRACTS**

- 1) Management Contract with Lincoln Harris, CSG; and
- 2) Parking Agreement dated as of August 18, 1980 between Seller (by its predecessor Charter Medical Corporation) and P&S Associates.

**Exhibit E**  
**Option Agreement**

**REAL ESTATE OPTION AGREEMENT**

THIS REAL ESTATE OPTION AGREEMENT (this "Agreement") made as of the date upon which the final party to execute this Agreement does so as evidenced by the date below such party's signature (the "Agreement Date") by and between Atlanta Healthcare Management, L.P. and American Medicorp Development Co. (together, "Seller") and the City of Dunwoody, Georgia ("Purchaser").

**WITNESSETH:**

WHEREAS, Seller is the owner of one or more certain parcels of real property in Dunwoody, DeKalb County, Georgia, which parcels are identified as Parcel A2 and Parcel C on Exhibit A attached hereto and made a part hereof (collectively, "the Option Property"); and

WHEREAS, Seller desires to grant to Purchaser an option to purchase the Option Property pursuant to the terms of this Agreement; and

WHEREAS, all terms used in this Agreement with an initial capital letter which are not otherwise defined herein shall have the meanings given to such terms in the Reinstatement.

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties, Seller and Purchaser agree as follows:

1. **Grant of Option.** For and in consideration of the sum of Fifty Thousand and No/100 Dollars (\$50,000.00) (the "Option Money") that shall be paid to Seller within three days after the Agreement Date, Seller hereby gives and grants unto Purchaser, upon the terms and conditions hereinafter set forth, the exclusive and irrevocable right and option to purchase the Option Property (the "Option"). Notwithstanding any provision of this Agreement or the "Reinstatement" (as defined below) seeming to the contrary, Purchaser acknowledges and agrees that the Option Money is consideration paid to Seller in return for the Option and that therefore, the Option Money shall be non-refundable (absent Seller's default) regardless of whether Purchaser actually purchases the Option Property. In the event Purchaser does not exercise the Option or does not otherwise purchase the Option Property, the Option Money shall be retained by Seller in full satisfaction of all obligations of Purchaser under this Agreement. If Purchaser does exercise the Option, then the Option Money shall be applied to the Purchase Price at the closing of the Parcel C.

2. **Option Period.** The Option may be exercised at any time from the Agreement Date up to 11:59 p.m. Eastern Time, on the first anniversary of the Agreement Date (the "Option Period").

3. **Exercising the Option.** Purchaser shall have the right at any time during the Option Period, within its sole discretion, to exercise the Option to purchase the Option Property by giving written notice (“**Purchaser’s Option Notice**”). In the event Purchaser exercises the Option, Purchaser shall purchase the Option Property pursuant to the terms and conditions of that certain Reinstatement of and Third Amendment to Contract for Purchase and Sale (Hospital) between Seller and Purchaser, dated as of March 26, 2012 (the “**Reinstatement**”), as applicable to the Option Property. Notwithstanding the foregoing, however, Purchaser acknowledges and agrees that it has already completed its inspection and review of title and survey matters for the Option Property and that the Title Objection Deadline has expired and is of no further effect except as expressly provided otherwise in Section 4(c) of the Reinstatement. Further, Purchaser acknowledges and agrees that the Inspection Period (as defined in Section 5 of the Reinstatement) has expired and that Purchaser has no right to terminate the Reinstatement or this Agreement with respect to the Option Property; provided, however, that Purchaser may elect not to exercise the Option.

4. **Purchase Price and Closing Date.**

(a) **Closing Date(s).** Purchaser may exercise the Option only for all of the Option Property, and upon such exercise, Purchaser shall have an obligation to close its purchase of all of the Option Property. Purchaser may elect, however, to close its purchase of Parcel A2 and Parcel C on different dates by giving written notice to Seller simultaneously with Purchaser’s exercise of the Option. Purchaser will identify the date(s) by which it will close its purchase of the Option Property; provided, however, that the purchase and sale of Parcel A2 must close, if at all, on or before July 31, 2013 and the purchase and sale of Parcel C must close, if at all, on or before August 29, 2014. Closing dates for each or both of the two parcels comprising the Option Property may not be sooner than thirty (30) days after Purchaser exercises the Option with respect to such parcel. Purchaser shall not have any right to use or occupy any part of the Option Property unless and until Purchaser has closed its purchase of such part of the Option Property.

(b) **Purchase Price.** The purchase price for each of the two parcels (the “Purchase Price”) comprising the Option Property will depend on the closing dates for such parcels. The Purchase Price for each of the parcels will be as set forth on the schedule attached hereto as Exhibit B and made a part of this Agreement. The Option Money will be applied to the purchase price for Parcel C at the applicable closing.

5. **Seller’s Covenants.** Seller hereby agrees to perform the covenants set forth in Sections 15 and 19 of the Reinstatement with respect to the Option Property.

6. Real Estate Brokers. Purchaser and Seller covenant and agree that they have dealt with no real estate broker other than TMG Realty Advisors, which represents Seller (the "Seller's Broker"), and Colliers International – Atlanta, Inc., which represents Purchaser (the "Purchaser's Broker"), in connection with the purchase and sale of the Option Property under the terms of this Agreement and the Reinstatement and shall hold each other harmless and indemnify one another against the claims of any other real estate broker arising by virtue of any act or alleged act of said party. Seller's Broker represents the Seller as provided in a separate agreement between the Seller's Broker and the Seller, and Seller shall be responsible for any payments due Seller's Broker. Any commission or fee due to Purchaser's Broker will be paid by Seller's Broker in accordance with a separate agreement between Seller's Broker and Purchaser's Broker.

7. Warranties. As a material inducement to Purchaser to enter into this Contract and consummate the transaction contemplated herein, Seller hereby represents and warrants to Purchaser all of the representations and warranties set forth in Section 20(a) of the Reinstatement and Purchaser hereby represents and warrants to Seller all of the representations and warranties set forth in Section 20(b) of the Reinstatement. In accordance with Section 20 of the Reinstatement, Seller shall promptly notify Purchaser, in writing, of any event or condition known to Seller which occurs prior to a closing hereunder and which causes a material change in the facts relating to, and the truth of, any of the representations and warranties set forth in Section 20(a) of the Reinstatement. If any change in any such representation is a material adverse change, Purchase may at its sole option, cancel its exercise of the Option and not close its purchase of the Option Property; provided, however that in no event shall Purchaser be entitled to receive a refund of the Option Money.

8. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

9. Entire Agreement. This Agreement embodies the entire agreement between the parties relative to the subject matter) hereof, and there are no oral or parol agreements existing between Seller and Purchaser relative to the subject matter hereof which are not expressly set forth herein and covered hereby.

10. Headings. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation hereof.

11. Interpretation. Whenever the context hereof shall so require, the singular shall include the plural, the male gender shall include the female gender and the neuter, and vice versa.

12. Notice. Any notice required or permitted to be delivered hereunder shall be sent and deemed received in accordance with the notice provisions of the Purchase and Sale Contract.

13. Governing Law. This Agreement shall be construed under and in accordance with the laws of the State of Georgia.

14. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

15. Attorneys' Fees. Should either party employ an attorney or attorneys to enforce any of the provisions hereof or to protect its interest in any manner arising under this Agreement, the non-prevailing party in any action pursued in courts of competent jurisdiction (the finality of which is not legally contested) agrees to pay to the prevailing party all reasonable costs, damages and expenses, including attorneys' fees, witness fees and travel and lodging expenses, expended or incurred in connection therewith.

16. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall comprise one and the same instrument.

17. Business Day. In the event that the date for taking any action under this Agreement (including, but not limited to, the giving of a notice of exercise) falls on a Saturday, Sunday or legal holiday, then such time period shall automatically be extended until 5:00 p.m. Eastern Time on the next regularly scheduled business day in Dunwoody, Georgia.

[Signatures appear on following page]



EXECUTED AND DELIVERED as of the Agreement Date.

**SELLER: American Medicorp Development Co.**

By: *Nicholas L. Paul*  
Name: Nicholas L. Paul  
Title: Vice President  
Date: 4/20/12

**Atlanta Healthcare Management, L.P.**

**By: Atlanta Market GP, Inc.,  
its general partner**

By: *Nicholas L. Paul*  
Name: Nicholas L. Paul  
Title: VP  
Date: 4/20/12

**PURCHASER: City of Dunwoody, Georgia**

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

EXECUTED AND DELIVERED as of the Agreement Date.

**SELLER: American Medicorp Development Co.**

By: \_\_\_\_\_  
Name: Nicholas L. Paul  
Title: Vice President  
Date: \_\_\_\_\_

**Atlanta Healthcare Management, L.P.**

**By: Atlanta Market GP, Inc.,  
its general partner**

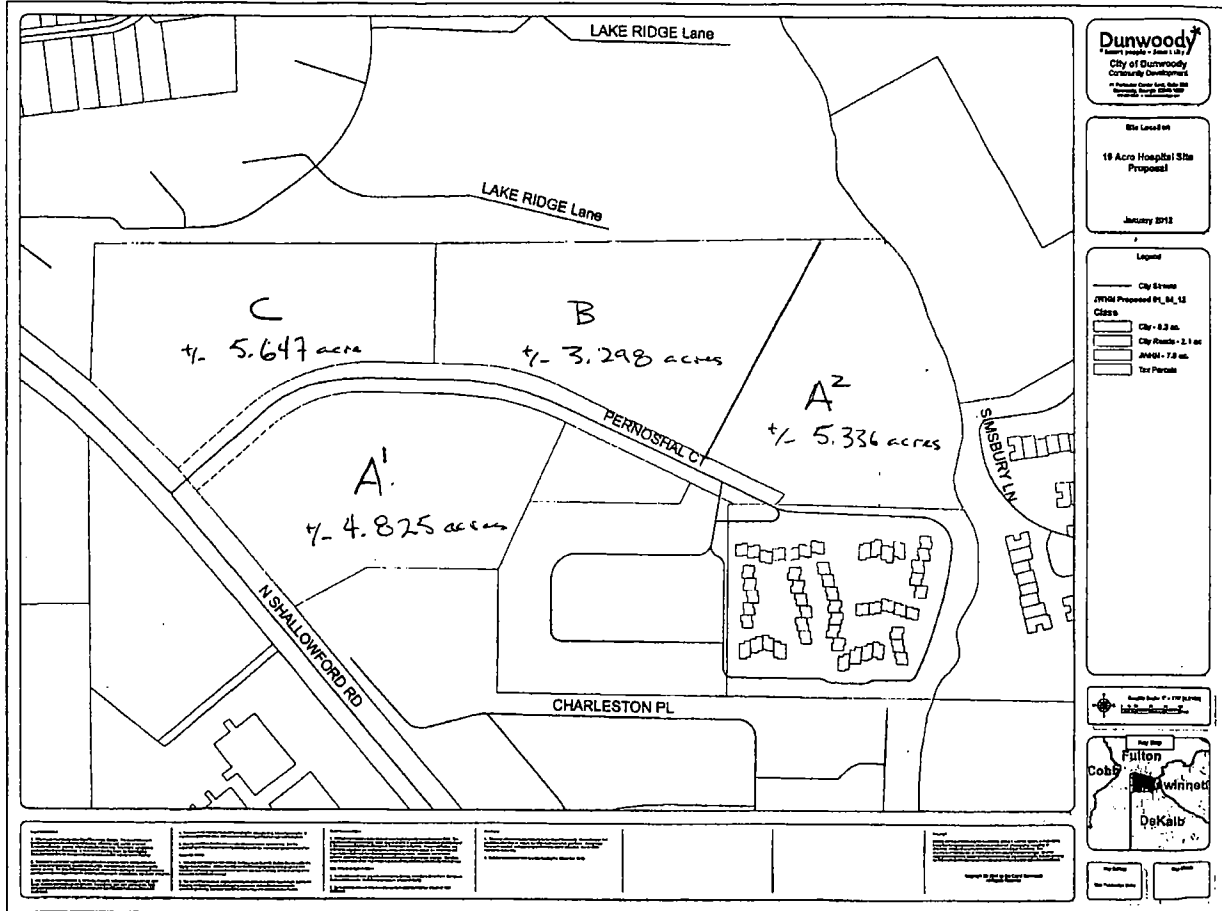
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**PURCHASER: City of Dunwoody, Georgia**

By: WA. HT  
Name: WARREN HUTMACHER  
Title: CITY MANAGER  
Date: 4/23/12

Attest:  
By: Sharon Lowery  
Name: Sharon Lowery  
Title: City Clerk  
Date: 4/23/12

Exhibit A  
Option Property



## Exhibit B

Closing and Price Schedule

<b>Closing Date</b>	<b>Parcel "A2" Option Price</b>
Before 7/1/2012	\$505,250.00
7/1/2012 – 7/31/2012	\$508,365.00
8/1/2012 – 8/31/2012	\$511,582.00
9/1/2012 – 9/30/2012	\$514,697.00
10/1/2012 – 10/31/2012	\$517,916.00
11/1/2012 – 11/30/2012	\$521,030.00
12/1/2012 – 12/31/2012	\$524,249.00
1/1/2013 – 1/31/2013	\$527,467.00
2/1/2013 – 2/28/2013	\$530,374.00
3/1/2013 – 3/31/2013	\$533,592.00
4/1/2013 – 4/30/2013	\$536,707.00
5/1/2013 – 5/31/2013	\$539,925.00
6/1/2013 – 7/31/2013	\$543,040.00

Maximum Interest = \$37,790.00 (\$505,250.00 @ 7.5%, up to 1 year)

[continued on next page]

<b>Closing Date</b>	<b>Parcel "C" Option Price</b>
Before 7/1/2012	\$1,876,750.00
7/1/2012 – 7/31/2012	\$1,884,084.00
8/1/2012 – 8/31/2012	\$1,891,662.00
9/1/2012 – 9/30/2012	\$1,898,996.00
10/1/2012 – 10/31/2012	\$1,906,574.00
11/1/2012 – 11/30/2012	\$1,913,908.00
12/1/2012 – 12/31/2012	\$1,921,486.00
1/1/2013 – 1/31/2013	\$1,929,064.00
2/1/2013 – 2/28/2013	\$1,935,909.00
3/1/2013 – 3/31/2013	\$1,943,487.00
4/1/2013 – 4/30/2013	\$1,950,821.00
5/1/2013 – 5/31/2013	\$1,958,399.00
6/1/2013 – 6/30/2013	\$1,965,733.00
7/1/2013 – 7/31/2013	\$1,973,311.00
8/1/2013 – 8/31/2013	\$1,980,889.00
9/1/2013 – 9/30/2013	\$1,988,223.00
10/1/2013 – 10/31/2013	\$1,995,801.00
11/1/2013 – 11/30/2013	\$2,003,135.00
12/1/2013 – 12/31/2013	\$2,010,713.00
1/1/2014 – 1/31/2014	\$2,018,291.00
2/1/2014 – 2/28/2014	\$2,025,136.00
3/1/2014 – 3/31/2014	\$2,032,714.00
4/1/2014 – 4/30/2014	\$2,040,048.00

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5/1/2014 – 5/31/2014	\$2,047,626.00
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6/1/2014 – 8/29/2014	\$2,054,960.00
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Maximum Interest = \$178,210.00 (\$1,876,750.00 @ 4.75434%, up to 2 years)

**Exhibit C – Development Agreement**  
**[Exhibits Intentionally Omitted]**

#M.12.

**ACQUISITION AND DEVELOPMENT AGREEMENT**

**THIS ACQUISITION AND DEVELOPMENT AGREEMENT** (this “**Agreement**”) is entered into this 11th day of June, 2012 (the “**Contract Date**”), between **JW ACQUISITIONS, LLC**, a Georgia limited liability company (“**Buyer**”), the **CITY OF DUNWOODY, GEORGIA**, a Georgia municipal corporation (“**Seller**”). Seller and Buyer may hereinafter be referred to collectively as the “**Parties**” and individually as a “**Party**.”

**WITNESSETH**

**WHEREAS**, Seller owns that approximately 15.9344 acre tract of land located in Land Lot 345 of the 18th District, the City of Dunwoody, Georgia and as more particularly described in the **Exhibit “A”** attached hereto (the “**Sixteen Acre Parcel**”); and

**WHEREAS**, Seller has a right to purchase all of that approximately 19.14 acre tract of land located in Lot 344 of the 18th District, the City of Dunwoody, Georgia and as more particularly described in the **Exhibit “B”** attached hereto (the “**Nineteen Acre Parcel**”) pursuant to that certain contract with Atlanta Healthcare Management, L.P. and American Medicorp Development Company (collectively, the “**Nineteen Acre Owner**”) a copy of which is attached hereto as **Exhibit “B-1”** (the “**Nineteen Acre Contract**”), a portion of which Seller anticipates purchasing prior to July 31, 2012 (the “**7/31/2012 Nineteen Acre Parcel**”), a portion of which Seller anticipates purchasing on or before July 31, 2013 (the “**7/31/2013 Nineteen Acre Parcel**”), and a portion of which Seller anticipates purchasing on or before August 29, 2014 (the “**8/29/2014 Nineteen Acre Parcel**”), which 7/31/2012 Nineteen Acre Parcel is more particularly described in the **Exhibit “B-2”** attached hereto, which 7/31/2013 Nineteen Acre Parcel is more particularly described in the **Exhibit “B-3”** attached hereto, and which 8/29/2014 Nineteen Acre Parcel is more particularly described in the **Exhibit “B-4”** attached hereto; and

**WHEREAS**, the Parties intend for Buyer to acquire title to the portions of the Sixteen Acre Parcel and the Nineteen Acre Parcel designated as Residential Tracts on the **Exhibit “C”** and **Exhibit “D”** attached hereto (collectively, the “**Land**”) and thereafter construct owner-occupied single-family homes, sidewalks, landscaped areas, no more than two (2) private amenity facilities and other improvements; and

**WHEREAS**, the Parties intend for Seller to retain title to the portions of the Sixteen Acre Parcel and the Nineteen Acre Parcel other than the Property to be used for parks, green space, civic buildings, drainage facilities, roads, commercial buildings, parking, sidewalks, landscaped areas, and other uses as elected by Seller, which portions are designated as City Tracts and Commercial Tract on the **Exhibit “C”** and **Exhibit “D”** attached hereto (collectively, the “**Retained Property**”); and

**WHEREAS**, attached hereto as **Exhibit “E”** are plans (the “**Land Plans**”) depicting the proposed development of the Property by Buyer and certain portions of the Retained Property by or on behalf of Seller (such proposed development is herein sometimes referred to as the “**Project**”); and

**WHEREAS**, Seller has complied, or intends to comply, with O.C.G.A. Section 36-61-10, and the regulations promulgated pursuant thereto (the “**URA**”), and allowed potential buyers, including Buyer, to bid for the Property; and

**WHEREAS**, Buyer acknowledges that Seller plans to sell the Property, and assign Seller’s rights under this Agreement and the Nineteen Acre Contract, if necessary, to an entity created in accordance with applicable provisions of the URA (the “**Development Authority**”).

**NOW THEREFORE**, for and in consideration of the foregoing premises, the mutual covenants and agreements set forth herein, and other good and valuable consideration, all of which each party respectively agrees

constitutes sufficient consideration received at or before the execution and delivery hereof, the Parties do hereby agree as follows:

1. **Recitals.** The above stated recitals are hereby incorporated into and made a part of this Agreement.
2. **Definitions.**

“**Affiliate**” will have the meaning given to it in Section 20 below.

“**Agreement**” will have the meaning given to it above.

“**Buyer**” will have the meaning given to it above and will include any assignee pursuant to an assignment of the buyer’s rights under this Agreement made in accordance with the terms and provisions of Section 20 below.

“**Buyer-Created Liens**” will mean any and all liens and encumbrances (including mechanic’s and materialmen’s liens) affecting and/or encumbering the Property and created (whether or not voluntarily or solely) by, through or under Buyer or any of Buyer’s Related Parties, whether as a result of such party’s actions, omissions or otherwise.

“**Buyer Default**” will have the meaning given to it in Section 13.(a) below.

“**Buyer Default Notice**” will have the meaning given to it in Section 13.(a) below.

“**Buyer’s Funds**” will have the meaning given to it in Section 11.(c)(1) below.

“**Buyer’s Related Parties**” will mean Buyer’s agents and representatives (including, without limitation, Buyer’s officers, employees, consultants and contractors).

“**Casualty**” will mean events such as fire, flood, tornado, hurricane, earthquake, windstorm, hail or any other event which causes damage to the Property.

“**Claims**” will mean any and all claims, demands, liabilities, damages, losses, costs, expenses (including, without limitation, court costs and attorneys’ fees), actions and causes of action.

“**Closing**” will have the meaning given to it in Section 11.(a) below.

“**Complete**” will mean with respect to the Existing Road Network the following: Seller’s remediation of any defects in such network that exist as of the Contract Date.

“**Condominium Declaration**” will mean that certain Declaration of Condominium for the Shallowford-Dunwoody Master Condominium by Shallowford-Dunwoody, LLC dated July 31, 2006, recorded in Deed Book 18993, Page 773, DeKalb County, Georgia records, as amended and restated by Amended and Restated Declaration of Condominium for the Shallowford-Dunwoody Master Condominium dated April 17, 2007, recorded in the Deed Book 19929, Page 51, DeKalb County, Georgia records, and re-recorded in Deed Book 20160, Page 299, DeKalb County, Georgia records, as amended by First Amendment to the Amended and Restated Declaration of Condominium for the Shallowford-Dunwoody Master Condominium dated January 5, 2009, recorded in Deed Book 21253, Page 664, DeKalb County, Georgia records, as affected by Assignment of Declarant Rights dated July 22, 2010, recorded in Deed Book 22066, Page 190, DeKalb County, Georgia records.

“**Contract Date**” will have the meaning given to it above.



“**Control**” will have the meaning given to it in Section 21 below.

“**Deed**” will have the meaning given to it in Section 11.(b)(1) below.

“**Earnest Money**” will mean the \$100,000.00 deposit Buyer has delivered to Seller prior to the Contract Date, which deposit will be retained by Seller, returned to Buyer, or applied to the payment of a portion of the Purchase Price to the extent provided by the terms and provisions of this Agreement.

“**Environmental Laws**” will mean all statutes specifically described in the definition of “Hazardous Materials” below and all other federal, state, and local environmental health and safety statutes, ordinances, codes, rules, regulations, orders and decrees regulating, relating to or imposing liability or standards concerning or in connection with Hazardous Materials.

“**Existing Road Network**” will mean the road beds, gutters and curbs, from curb to curb as they exist at the Property as of the Contract Date.

“**Final Closing**” will mean the Closing of the sale of the last of the Property to Buyer.

“**Final Plat**” will mean a final plat of the portion of the Sixteen Acre Parcel to be sold to Buyer pursuant to this Agreement substantially in accordance with the Land Plans.

“**Financially unfeasible**” will have the meaning given to it in Section 3.(d) below.

“**First Closing**” will have the meaning given to it in Section 3 below, and the lots to be conveyed to Buyer will be those identified in writing by Buyer not less than five (5) days prior to the scheduled date of this Closing.

“**First Closing Date**” will have the meaning given to it in Section 3 below.

“**Force Majeure**” will mean any event (including, without limitation, a Legal Requirement enacted, promulgated or issued after the Contract Date) the occurrence of which prevents or delays the performance by either Party of any obligation imposed upon it hereunder and is not such Party’s fault (financial inability excepted), and the prevention or cessation of which event is beyond the reasonable control of the applicable Party, but excluding in any and all events the payment of money.

“**Governmental Authority**” will mean any federal, state, county, municipal or other government or any governmental or quasi-governmental subdivision, agency, department, commission, board, bureau, court, office or instrumentality or any of them.

“**Hazardous Materials**” will mean any substance, material, waste, gas or particular matter which is regulated by any local governmental authority, the State of Georgia, or the United States Government, including, but not limited to, (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyl, (iv) radioactive material, or (v) any “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” or “restricted hazardous waste” under any provision of Georgia or United States law, including, without limitation, (a) the Federal Water Pollution Control Act (the Clean Water Act), 33 U.S.C. §1251 et seq., (b) the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., (c) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq., or (d) the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., or any other substances or materials which are now or hereafter categorized as hazardous or toxic under any local, state or federal law, statute, ordinance, rule or regulation pertaining to environmental or substance regulation, contamination, cleanup or disclosure.

“**Immediately Available Funds**” will mean funds paid by either (i) cashier’s check or certified check drawn on a national banking association acceptable to Seller, or (ii) wire transfer of immediately available federal funds.

“**Initial Term**” will have the meaning given to it in Section 4 below.

“**Key Roads**” will mean the roads identified as such on the Land Plans.

“**Land**” will have the meaning given to it above. For avoidance of doubt, this term does not include all of the land depicted on Exhibit “C” but only the portions indicated as such to be sold to Buyer. Once metes and bounds descriptions have been obtained for the portions to be sold to Buyer, these descriptions will be added to this Agreement via a written supplement signed by the Parties.

“**Land Plans**” will have the meaning given to it above and will also include any modifications made thereto by written agreement of the Parties after being requested by Buyer and approved by Seller, which approval by Seller will not be unreasonably withheld, conditioned or delayed.

“**Legal Requirements**” will mean all laws, statutes, ordinances, rules, regulations, orders and requirements of Governmental Authorities including, but not limited to, zoning and land use laws, building codes, and Environmental Laws.

“**LOI**” will mean that certain letter agreement between Seller and John Wieland Homes and Neighborhoods dated May 2, 2012, and accepted by John Wieland Homes and Neighborhoods on May 3, 2012.

“**Nineteen Acre Owner**” will have the meaning given to it above.

“**Nineteen Acre Parcel**” will have the meaning given to it above.

“**7/31/2012 Nineteen Acre Parcel**” will have the meaning given to it above.

“**7/31/2013 Nineteen Acre Parcel**” will have the meaning given to it above.

“**8/29/2014 Nineteen Acre Parcel**” will have the meaning given to it above.

“**Parties**” and “**Party**” will have the meanings given to them above.

“**Permitted Exceptions**” will mean any and all of the following to the extent they are of public record and affect title to all or any portion of the Property as of the Contract Date: easements, restrictive covenants, agreements, leases, licenses, options, claims, clouds, encroachments, rights, taxes, assessments, fees, mechanics’ or materialmen’s liens (inchoate or perfected), liens for federal or state taxes, and any other encumbrances of any nature whatsoever, together with matters that would be reflected by an on-the-ground survey of the Property. This term will also mean (i) the matters described on the Exhibit “L” attached hereto, and (ii) any reservations of easements for roads, utilities, sewer and storm drainage purposes, and other purposes consistent with Project development, in widths and alignment as may be mutually agreed to by the Parties or as reflected in the Land Plans, or as identified in the Zoning Entitlement. This term shall not, however, include any of the following which affect title to all or any portion of the Property: (1) deeds to secure debt, mortgages, liens, financing statements, security interests, or any other encumbrances or instruments that secure indebtedness or any monetary obligation of Seller or any other party other than Buyer-Created Liens, and Buyer-Created Liens shall constitute Permitted Exceptions; or (2) leases, license agreements or other instruments granting a party possessory rights to all or any portion of the Property.

“**Pro Rata Earnest Money**” shall mean (i) with respect to the Sixteen Acre Parcel, \$60,000.00, and (ii) with respect to the Nineteen Acre Parcel, \$40,000.00.

“**Project**” will have the meaning given to it above.

“**Property**” will mean the Land and all improvements located thereon and all of the following: (ii) all of Seller’s right, title and interest in and to oil, gas, hydrocarbons and other minerals in, on, or under or that may be produced from the Land, (iii) any and all rights, titles, powers, privileges, easements, licenses, rights-of-way and interests appurtenant to the Land, (iv) all and singular the rights, titles, benefits, privileges, remainders, reversions, easements, tenements, hereditaments, interests and appurtenances of Seller pertaining to the Land, including, without limitation, any right, title and interest, if any, of Seller (but without warranty whether statutory, express or implied) in and to adjacent strips or gores, if any, between the Land and abutting properties not owned by Seller, either at law or in equity, in possession or expectancy, but excluding, in any event, any interest of Seller in and to adjacent streets, highways, roads, alleys or rights-of-way, and (v) all rights, titles, powers, privileges, interests, licenses, easements and rights-of-way appurtenant or incident to any of the foregoing (but without warranty whether statutory, express or implied).

“**Property Reports**” will mean all geotechnical, soils, engineering, environmental and property condition reports and plans and specifications in Seller’s possession or control relating to the Property, other than those relating solely to improvements that have been duly removed in accordance with Legal Requirements prior to the Contract Date. Property Reports existing as of the Contract Date are listed on the Exhibit “J” attached hereto.

“**Purchase Price**” means \$6,370,000.00 for all of the Property, to be payable as provided in Section 5 below, and subject to any change thereto to the extent expressly provided for by the terms and provisions of this Agreement.

“**Release**” will mean any spilling, leakage, pumping, pouring, emitting, emptying, discharging, injecting, leaching, seeping, dumping, or disposing into the indoor or outdoor environment, including the abandonment or discarding of barrels, drums, containers, tanks, or other receptacles containing or previously containing any Hazardous Material, or the threat of any of the foregoing.

“**Retained Property**” will have the meaning given to it above. For avoidance of doubt, this term does not include all of the land depicted on Exhibit “D” but only the portions indicated as such to be retained by Seller. Once metes and bounds descriptions have been obtained for the portions to be retained by Seller, these descriptions will be added to this Agreement via a written supplement signed by the Parties.

“**Seller**” will have the meaning given to it above.

“**Seller Default**” will have the meaning given to it in Section 13.(b) below.

“**Seller Default Notice**” will have the meaning given to it in Section 13.(b) below.

“**Seller Indemnitees**” will mean Seller’s partners and/or members and its and such partners’ and/or members’ respective agents, officers, partners, trustees, contractors, servants, employees, representatives, affiliates, lenders, successors and assigns.

“**Seller’s Related Parties**” will mean any of Seller’s, or the Development Authority’s after a valid assignment of this Agreement by Seller to the Development Authority, agents, officers, directors, contractors, servants, employees or representatives.

“**Sixteen Acre Parcel**” will have the meaning given to it above.

“**Sketch Plat**” will mean a sketch of a final plat of the Sixteen Acre Parcel substantially in accordance with the Land Plans.

“**Storm Collection Devices**” will mean the network of culverts, drains and underwater pipes which collectively gather rain water and move it to a final collection point and which are located at the Sixteen Acre Parcel as of the Contract Date.

“**Term**” will mean the Initial Term together with any extension thereof agreed to in writing by the Parties.

“**Transaction Costs**” will have the meaning given to it in Section 12(b)(i) below.

“**Zoning Entitlement**” will have the meaning given to it in Section 3 below.

### 3. **Sale and Purchase; Early Termination Rights; First Closing Conditions Precedent.**

(a) Seller agrees to sell the Property to Buyer on the terms and conditions contained in this Agreement, and Buyer agrees to purchase the Property from Seller on the terms and conditions contained in this Agreement. Notwithstanding anything to the contrary contained in this Agreement, Buyer will have the right, as its sole and exclusive remedy, to terminate this Agreement (in whole or in part to the extent a partial termination is expressly permitted by this Agreement) by giving Seller written notice thereof prior to July 31, 2012 (subject to this deadline date being extended to August 31, 2012 with respect to subpart (4) of this Section by either Party pursuant to a written notice thereof to the other Party), or prior to December 15, 2012 if such termination is with respect to subpart (5) of this Section, provided that any of the following have occurred and Buyer has reasonably cooperated with efforts by Seller to cause the creation of the Zoning Entitlement (including, without limitation, acting as the official applicant for the same) (if no such termination notice is delivered to Seller prior to the applicable date, Buyer will be conclusively deemed to have waived this right to terminate this Agreement notwithstanding the fact that any of the following may have occurred): (1) a Force Majeure event occurs that renders the Property unusable or untenable for residential land development or otherwise causes a material adverse change to the legal, physical, environmental, financial or other condition of the Property (or material portion thereof); (2) a Governmental Authority imposes Legal Requirements that have, or are expected to have, a material adverse change to the legal, physical, environmental, financial or other condition of the Property (or a material portion thereof); (3) Seller informs Buyer in writing that it has no intention of honoring Seller’s commitments made in the LOI; (4) the Condominium Declaration, or any related restrictions with respect to the development of the Sixteen Acre Parcel in existence due to the existence of the Condominium Declaration are still in force or effect; or (5) either a site plan specific designation that conforms in all material respects to the Land Plans is not created, or such a site plan specific designation that conforms in all material respects to the Land Plans is by created, but stipulations are created that relate to the same and Buyer, in good faith, finds it financially unfeasible to complete its planned development of the Property; provided, however, if any failure of the foregoing conditions precedent affects all or substantially all of either the portion of the Sixteen Acre Parcel or the Nineteen Acre Parcel to be sold to Buyer, then Buyer shall have the right, at its election, to terminate this Agreement either in its entirety or only as to all of the applicable portion to be sold to Buyer (i.e., if such failure affects a material portion of the Nineteen Acre Parcel to be sold to Buyer, Buyer shall have the right to terminate this Agreement in its entirety or only with respect to Buyer’s and Seller’s rights and obligations with respect to such portion of the Nineteen Acre Parcel).

(b) If Buyer terminates this Agreement as provided in this Section 3, (A) the Earnest Money (or only the Pro Rata Earnest Money with respect to the applicable parcel if Buyer terminates this Agreement only with respect to the portion of the Sixteen Acre Parcel or the portion of the Nineteen Acre Parcel to be purchased by Buyer) shall be returned to Buyer within five (5) business days after such termination, (B) in the event of a partial termination, the Parties’ rights and obligations under this Agreement relating solely to the parcel portion as to which this Agreement was terminated shall terminate immediately (the remaining provisions hereof continuing in

full force and effect), except those that expressly survive a termination hereof, and (C) in the event of a termination of this Agreement in its entirety, the Parties shall have no further rights or obligations under this Agreement except those that expressly survive a termination hereof. In addition to the conditions precedent to Closings set forth in Section 11.(g) below, Buyer's obligation to close the first acquisition of a portion of the Property (the "**First Closing**") is subject to the satisfaction of the following conditions precedent (the "**First Closing Conditions Precedent**"): (1) a site plan specific designation is created that conforms in all material respects with the Land Plans and the provisions of this Agreement that relate to the design of such site plan prior to its creation with no stipulations related to the same that cause Buyer, in good faith, to find it financially unfeasible to complete its planned development of the Property (herein called the "**Zoning Entitlement**"); (2) the Existing Road Network is in good working order, and within a reasonable amount of time thereafter Seller will cause the Existing Road Network to be Complete except for curbs, gutters and topping; and (3) all Storm Collection Devices located in public rights-of-way on or contiguous to the Sixteen Acre Parcel are in good working order, and within a reasonable amount of time thereafter Seller will cause such devices to be complete and fully functional in all material respects, which will be conclusively deemed to have occurred upon satisfaction of Seller's covenants in Section 15.(b) below with respect to such Storm Collection Devices. Seller will notify Buyer in writing when all of the First Closing Conditions Precedent have been satisfied, and, provided that in good faith Buyer agrees that all of the First Closing Conditions Precedent have been satisfied, the First Closing shall take place on the tenth (10th) day after the later of (i) Buyer's receipt of such written notice, and (ii) provided that Buyer or the Development Authority has acted as the official applicant of, and otherwise cooperated in all material respects with Seller in connection with, the Final Plat, the Final Plat has been approved and recorded with the DeKalb County, Georgia land records office (the actual date on which the First Closing occurs is herein referred to as the "**First Closing Date**"); provided, however, if on December 15, 2012, Buyer has received such written notice but the Final Plat has not yet been approved and recorded in such land records, the Final Closing will nevertheless occur on December 30, 2012 provided that the Sketch Plat has been approved by Seller and all time periods for appeals have expired.

(c) Seller will use all reasonable efforts to cause the Zoning Entitlement to be created by December 15, 2012, but shall have no obligation to cause the same to be created, and provided that Buyer reasonably cooperates with such efforts by Seller (including, without limitation, acting as the official applicant for the same), Buyer's only recourse in the event the Zoning Entitlement is not created will be to terminate this Agreement as provided above in this Section notwithstanding anything to the contrary in this Agreement. In addition to the foregoing termination right, if the Zoning Entitlement provides for fewer than 70 lots on the portion of the Sixteen Acre Parcel to be sold to Buyer, or if the Zoning Entitlement provides for fewer than 36 lots on the portion of the Nineteen Acre Parcel to be sold to Buyer, and Buyer waives in writing its right to exercise its termination right above with respect to this Agreement in its entirety or a permitted partial termination thereof, the Purchase Price set forth on Exhibit "H" shall be automatically reduced based on a lot for lot basis (\$60,094.00 per lot) and the Parties shall promptly execute and deliver an amended Exhibit "H" reflecting the modified number of lots and/or acreage and the reduced Purchase Price. Additionally, if the Zoning Entitlement has not been created by July 31, 2013, Seller will have the right to terminate this Agreement by giving Buyer written notice thereof at any time after such date and prior to the Zoning Entitlement being created or a waiver by Buyer of its termination right as contemplated by the immediately preceding sentence. If Seller terminates this Agreement as provided in immediately preceding sentence, the Earnest Money shall be returned to Buyer within five (5) business days after such termination and the Parties shall have no further rights or obligations under this Agreement except those that expressly survive a termination hereof.

(d) The manner in which the Parties intend to address potential development obstacles that might have been discovered had Buyer been provided with a "free look" inspection of the Property is set forth in Section 15(m) below. Additionally, in all instances in this Agreement where the Buyer is making a determination whether it is financially unfeasible to complete its planned development of the Property, such development will (or are reasonably expected to) be deemed to be found financially unfeasible if the matter or matters, individually or in the aggregate, will have a materially adverse effect on the economic performance of the Project.

(e) If a Force Majeure event or any other event (including, without limitation, any condemnation proceedings or impositions of Legal Requirements but excluding any event resulting from acts or omissions of Buyer or any of Buyer's Related Parties) occurs that causes a material adverse change to the legal, physical, environmental, financial or other condition of all or any portion of (i) the remaining portions of the Property as a whole to be acquired by Buyer, or (ii) either of the portion of the Sixteen Acre Parcel to be sold to Buyer or the portion of the Nineteen Acre Parcel to be sold to Buyer, as applicable, then Buyer may, as its sole and exclusive remedy as a result thereof, terminate this Agreement, in whole or in part as provided below, by giving Seller written notice thereof within not less than thirty (30) days and not more than sixty (60) days following Buyer's written notice to Seller of the occurrence of the applicable event. If the event giving rise to a Buyer termination right pursuant to this paragraph is one that applies to the Property as a whole to be acquired by Buyer, then Buyer will only have the right, as its sole and exclusive remedy, to terminate this Agreement in its entirety within the foregoing time period. If the event giving rise to a Buyer termination right pursuant to this paragraph is one that applies only with respect to all or any material portion of the portion of the Sixteen Acre Parcel to be sold to Buyer, or all or any material portion of the portion of the Nineteen Acre Parcel to be sold to Buyer, then Buyer may within the time period described above, as its sole and exclusive remedy as a result thereof, terminate this Agreement with respect to the applicable portion of the Property, in which case all other rights and obligations of Seller and Buyer hereunder relating solely to the unpurchased portions of the Property as to which this Agreement was terminated, except those which expressly survive a termination of this Agreement, shall terminate immediately (the remaining provisions hereof continuing in full force and effect to the extent not affected by Buyer's termination of this Agreement pursuant to this paragraph). The terms of this paragraph are not intended to modify or vitiate the provisions of Section 15(m) below.

4. **Term.** Subject to any earlier termination as provided in this Agreement, the initial term of this Agreement (the "**Initial Term**") shall be the period of time beginning on the Contract Date and ending on the date of the Final Closing. Notwithstanding anything contained herein to the contrary, the rights and obligations of the Parties hereunder that expressly survive Closings and any termination hereof shall survive the Term.

5. **Purchase Price.** The Purchase Price will, subject to potential increase, decrease or adjustment as provided in this Agreement, be paid to Seller in amounts as specified in the Exhibit "F" attached hereto. Such amounts are based on an identified number of lots of the Property being purchased by Buyer, recognizing that with respect to lots within portions of the Nineteen Acre Parcel, such Purchase Price amounts will be calculated based upon the number of "blank" lots (as shown on the Land Plans) included within the acreage being acquired by Buyer.

(a) Acceleration of Lot Purchases. In the event that Buyer elects in accordance with Section 11.(a) below, or the Parties otherwise agree in writing, for Seller to sell, and Buyer to buy, more lots than are identified on Exhibit "F" (as the same may be amended as set forth in Section 5(b) or otherwise) for a scheduled Closing date, the portion of the Purchase Price to be paid by Buyer at the applicable Closing will be increased to the amount equal to the number of lots to be sold to Buyer multiplied by the applicable price per lot as set forth on Exhibit "F".

(b) Decrease in Allowable Lots. In the event that the Zoning Entitlement provides for fewer than 70 lots on the portion of the Sixteen Acre Parcel to be sold to Buyer, or fewer than 36 lots on the portion of the Nineteen Acre Parcel to be sold to Buyer, and Buyer does not exercise its termination right as a result thereof, (i) Exhibit "F" shall be automatically amended to remove such shortfall in lots from the last lots to be purchased from the applicable portion of either or both of such parcels and to adjust the per lot Purchase Price such that Seller will continue to receive, on average, \$60,094.00 per lot to be sold to Buyer, in the reverse order of scheduled purchase, and the Parties shall promptly execute and deliver an amended Exhibit "F" reflecting the modified number of lots and the decreased aggregate Purchase Price, and (ii) the Purchase Price shall be decreased as provided above.

(c) Miscellaneous. The Parties acknowledge and agree that at the First Closing Seller will sell to Buyer, at no cost to Buyer, certain property between the "Gates of Woodlawn homes" and certain of the Retained Property, which property is currently planned for an amenity facility to be completed by Buyer, and which property

will be identified by Seller prior to the First Closing and is a part of the "Property" as this term is defined in this Agreement.

(d) Acquisition of Nineteen Acre Parcel Acreage. The manner in which Buyer will acquire title to portions of the portion of the Nineteen Acre Parcel will be governed in part by this subsection, and for the purposes of this subsection, the portion of the Nineteen Acre Parcel to be sold to Buyer is referred to as "**Buyer's Portion**". If Buyer intends to purchase a portion of Buyer's Portion, Buyer must give Seller not less than 30 days' advance written notice thereof (or 45 days advance written notice if Buyer is requesting use of Easement Portions as contemplated by subpart (3) below) and in such notice provide Seller with the following: (1) an identification of the to-be-developed lots within Buyer's Portion that Buyer intends to buy; (2) portions of Buyer's Portion which Buyer desires to purchase at the applicable Closing and thereafter utilize for amenity facilities and/or development infrastructure reasonably necessary for the development of the applicable to-be-purchased lots; and (3) any portions of Buyer's Portion that Buyer does not want to purchase at the applicable Closing, but instead desires to utilize for development infrastructure via easement rights to be granted to Buyer pursuant to an agreement with Seller to be executed and delivered by the Parties at the applicable Closing (collectively, "**Easement Portions**"). In no event will any Easement Portions affect portions of Buyer's Portion if the same will adversely affect, in the reasonable opinion of Seller, the ability of the remaining portions of Buyer's Portion to be developed for residential use consistent with the Land Plans. The form of all instruments creating such easement rights for Buyer will be reasonably acceptable to the Parties and will in any event provide for such relocation rights as Seller or Buyer may reasonably require. The Parties acknowledge and agree that the Purchase Price for the identified to-be-developed lots within Buyer's Portion, as such price is established above, includes as a component thereof the cost to acquire title to the property described in subpart (2) above and the easement rights described in subpart (3) above. If Buyer has notified Seller of any Easement Portions to be encumbered in connection with a proposed acquisition of a portion of Buyer's Portion, Seller will as soon as practicable thereafter (but in no event later than 30 days thereafter) advise Buyer whether any such portions will adversely affect the ability of the remaining portions of Buyer's Portion to be developed for residential use consistent with the Land Plans. Additionally, the Parties will work together with reasonable diligence to satisfy any Legal Requirements applicable to the rights to be granted to Buyer as well as to finalize, no later than 10 days prior to the scheduled date of the applicable Closing, the instrument to be utilized to create the applicable easement rights, which instrument will be a required delivery item for both Parties at such Closing.

## 6. **Miscellaneous Covenants of Parties.**

(a) Agreements Affecting Property. Seller hereby covenants and agrees with Buyer that, prior to each Closing, except as otherwise expressly provided to the contrary in this Agreement, Seller will not sell, assign, rent, lease, convey (absolutely or as security), grant a security interest in, or otherwise encumber or dispose of, the Property not then sold to Buyer (or any interest or estate therein) without the prior written consent of Buyer, which consent will not be unreasonably delayed but may be given or withheld by Buyer in Buyer's sole and absolute discretion.

(b) Operating Memoranda. The Parties acknowledge that the provisions of this Agreement will likely require a certain degree of cooperation between the Parties, and that refinements or future events may demonstrate that non-material changes or supplements are appropriate with respect to the detail of performance by the Parties. If and when, from time to time during the Term, the Parties find such changes or supplements are necessary or appropriate, they shall effectuate such changes or supplements through operating memoranda reasonably agreed to by the Parties which, after execution and delivery, shall be attached hereto as addenda and thereafter become a part of this Agreement, and may be further changed or supplemented from time to time as necessary or appropriate, upon further agreement of the Parties. The foregoing shall not apply with respect to any material changes or supplements.

(c) Other Governmental Permits. Buyer shall apply from time to time for such other permits or approvals from Governmental Authorities having jurisdiction over aspects of the Project in connection with the development of, or the provision of services to, the Project. Provided that such cooperation does not entail incurring material cost unreimbursed by Buyer or the giving of indemnity(ies), or both, Seller will cooperate with Buyer in Buyer's efforts to obtain such permits or approvals, and provide such information or documents reasonably required to process or obtain such permits or approvals.

(d) Effect of Transfers. The Parties acknowledge that in connection with the development of the Project after Buyer has acquired title to some or all of the Property, Buyer will be transferring title to portions of the Property to third parties. In no event will any such parties acquire any rights or interests in or to this Agreement, and such parties are in not intended to be, and shall not be, beneficiaries in any way with respect to the rights and obligations of the Parties under this Agreement.

(e) Assignments by Seller. Seller shall have the right to assign this Agreement and all of Seller's interest in, and rights under, this Agreement, without any requirement that it obtain the consent or approval thereof from Buyer, to the Development Authority provided that Seller enters into an agreement with the Development Authority which provides in part that the development obligations of Seller under this Agreement are incorporated into such agreement. Seller hereby agrees that following such assignment, Seller will fund and remain responsible for the obligations of the Seller under this Agreement by providing necessary resources to the Development Authority. Any assignment of this Agreement and all of Seller's interest in, and rights under, this Agreement will require the prior written consent of Buyer, which consent will not be unreasonably delayed but may be given or withheld by Buyer in Buyer's sole and absolute discretion. Further (but without limiting the generality of the foregoing), no assignment consented to in writing by Buyer shall be effective unless and until Seller delivers a fully-executed assignment of this Agreement in which the assignee expressly assumes to be bound by this Agreement and to assume, pay and perform all of the duties, obligations, agreements and covenants of Seller under this Agreement from and after the effective date of the applicable assignment. The covenants of Seller in this Section are "material covenants".

(f) Permits and Approvals Independent. All permits, entitlements and approvals generally which may be issued or granted by Seller with respect to the Property, constitute independent actions and approvals by Seller, and will be issued or granted by Seller in Seller's sole discretion subject to compliance with Legal Requirements applicable thereto.

## 7. **Representations and Warranties of Seller.**

(a) Seller Representations and Warranties. Seller hereby represents and warrants to Buyer, which representations and warranties shall be deemed made by Seller to Buyer as of the Contract Date and also as of the date of each respective Closing except as otherwise expressly provided below to the contrary and only as to Property not previously purchased by Buyer from Seller, that:

(1) Parties in Possession. There are no parties in possession of any portion of the Property except Seller; parties having easement rights under instruments filed and properly indexed of record as of the Contract Date (or consented to by Buyer in its sole and absolute discretion) in the real property records of the county in which the Property is located, and the owner of the Nineteen Acre Parcel. There are no lease or license agreements in effect with respect to the Property, or any portion thereof, under which Seller is the landlord or licensor.

(2) Power and Authority. Seller has, or on the date of the applicable Closing will have, the power and authority to carry out Seller's obligations hereunder. All requisite action necessary to authorize Seller to enter into this Agreement and to carry out Seller's obligations hereunder has been, or on the date of the applicable Closing will have been, taken. The individual executing this Agreement on behalf of Seller has the full right,



power and authority to do so. On or before the date of the applicable Closing, Seller will have the power and authority to sell and convey the Property in accordance with the terms of this Agreement.

(3) No Suits or Tax Assessments. To Seller's knowledge and other than as otherwise may be disclosed to Buyer by Seller and which do not result in Buyer, in good faith, finding it financially unfeasible to complete its planned development of the Property, (i) there are no suits (at law or in equity) or special tax assessments pending or, to Seller's knowledge, threatened that affect title to the Property, or that would or might have a material adverse effect on the Property, or (ii) there is no suit (at law or in equity) pending or threatened against or affecting Seller or the Property which (A) in any manner raises any question affecting the validity or enforceability of this Agreement, the Nineteen Acre Contract or any other agreement or instrument to which Seller is a party, or by which it is bound, and that is to be used in connection with, or is contemplated by, this Agreement, or (B) could materially and adversely affect the ability of Seller to perform Seller's obligations hereunder, or under any document to be delivered pursuant hereto.

(4) Condemnation Proceedings. Seller has no knowledge, nor has Seller received any actual written notice, of any condemnation or eminent domain proceedings pending or threatened in writing against all or any material portion of the Property as of only the Contract Date.

(5) Seller Is Not a "Foreign Person". Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code (i.e., Seller is not a foreign corporation, foreign partnership, foreign trust, foreign estate or foreign person as those terms are defined in the Internal Revenue Code and regulations promulgated thereunder). Seller is not a "non-resident of Georgia" as that term is defined under O.C.G.A. Section 48-7-128, and the regulations promulgated pursuant thereto.

(6) No Violations. Seller has received no written notice from any Governmental Authority of any existing or threatened violation which remains uncured of any statute, ordinance, code, rule, regulation or other Legal Requirement of any Governmental Authority applicable to the ownership, operation, use, maintenance or condition of the Property or any part thereof, and Seller has no knowledge of the existence of the same.

(7) No Acquisition Rights. To Seller's knowledge, no person, firm or entity, other than (i) Seller with respect to the portions of the Nineteen Acre Parcel to be sold to Buyer, and (ii) Buyer after the Contract Date with respect to all of the Property, has any rights to acquire title to, or any interest in, all or any part of the Property.

(8) Environmental. Seller has no knowledge of the existence of any Hazardous Materials on the Property other than as reflected in one or more of the Property Reports. Seller has received no written notice from any Governmental Authority of any existing or threatened violation of any Environmental Laws relating to the Property.

(9) No Violations. Neither the entry into nor the performance of, exercise of rights under nor compliance with this Agreement has resulted, or will result in, any violation of, or a conflict with or default under, the organizational documents of Seller, any judgment, decree, order, contract or agreement by which Seller is bound (including, without limitation, the Nineteen Acre Contract, or any Legal Requirement applicable to Seller or the Property.

(10) No Broker. Seller has not enlisted the services of a broker or other commissionable agent, or taken actions which could give rise to a commission, in connection with the sale of the Property to Buyer.

(11) No Misstatement. No representation or warranty of Seller in this Agreement, and to Seller's knowledge no Property Reports, contains any untrue statement of material fact, or omits to state a material

fact, necessary in order to make such representation or warranty not misleading in light of the circumstances under which it is made.

(12) Nineteen Acre Contract. Exhibit "B-1" is a true, correct, and complete copy of the Nineteen Acre Contract, and the same has not, as of only the Contract Date, been assigned, pledged, modified, amended or waived in any respect except as specifically set forth on Exhibit "B-1".

(13) Property Reports. To Seller's knowledge, the listing of Property Reports set forth on Exhibit "J" identifies all such reports in the possession or control of Seller as of only the Contract Date. Seller will promptly deliver true and correct copies of such listed Property Reports to Buyer after the Contract Date. Seller will deliver to Buyer any additional Property Reports that come into the possession or control of Seller after the Contract Date and before the earlier of the date of the Final Closing or the date of any earlier termination of this Agreement in its entirety by either Party.

(14) Impact Fees. There are no impact or development fees, taxes, levies, assessments, or special fees of any kind (other than normal ad valorem property taxes and transfer taxes) imposed by any governmental authority as of the Contract Date or the date of the applicable Closing that will be payable by Buyer in connection with its purchase and use of the Property as contemplated hereby.

(15) Additional Improvements. To Seller's knowledge, no commitments have been made to any governmental authority, utility company, school board, church, religious body, homeowner's association or other organization, group or individual that would impose an obligation upon Buyer to construct any improvements, to make any contribution of money, to dedicate any land or to maintain any land, parks or improvements.

(16) No Assessments. Seller has no knowledge, nor has Seller received any written notice, of any site or area improvements that have been constructed or installed by any public authority, the cost of which may be assessed in whole or in part against Buyer or any part of the Property.

(b) Definition of Seller's Knowledge. As used in this Agreement, the phrases "Seller's knowledge" or "knowledge of Seller" or any similar phrase shall mean the current actual knowledge of Warren Hutmacher and Kimberly Greer, without any investigation or inquiry and without regard to the knowledge of (i) any current or former employees, agents, contractors or representatives of Seller, or (ii) any other Seller's Related Parties. The foregoing representations and warranties shall not survive a termination of this Agreement by either Party, except as to portions of the Property previously acquired by Buyer. Additionally, such representations and warranties with respect to portions of the Property sold to Buyer pursuant to this Agreement shall only survive the applicable Closing of the sale of such Property for a period of twelve (12) months thereafter. As a result, any and all rights of action of Buyer for any breach by Seller of any representation or warranty with respect to portions of the Property sold to Buyer pursuant to this Agreement shall not merge with the applicable Deed and other instruments executed and delivered by Seller at the applicable Closing, but shall terminate after the applicable Closing and shall only survive such Closing for a period of twelve (12) months thereafter.

(c) Waiver of Representations and Warranties. Each of the representations and warranties contained in this Section are intended for the benefit of Buyer, may not be assigned independently of this Agreement, and may be waived by Buyer, in whole or in part, by an instrument in writing signed by Buyer or as otherwise expressly provided in this Agreement.

## 8. Covenants of Seller.

(a) Seller's Covenants. From the Contract Date until the date of the Closing of the sale of the applicable portion(s) of the Property, except as required or prohibited by order of court or Governmental Authority with jurisdiction over the Property, Seller shall:

(1) maintain the Property, during the time it owns the Property, in its present condition, ordinary wear and tear and damage by fire or other Casualty excepted; provided, however, that, subject to the terms of Sections 15.(b), (f) and (m), Seller shall not have to make or perform any repairs to the Property which (i) are of a capital nature, (ii) would individually or collectively cost in excess of \$100,000.00 unless insurance proceeds are available to pay the entire cost (less any insurance deductible) of such repairs, or (iii) are to be made to property that will be demolished in connection with the anticipated development of the Project;

(2) not encumber title to the Property without the prior written consent of Buyer, which consent may be withheld by Buyer in Buyer's sole and absolute discretion;

(3) not become a party to any new licenses, leases, contracts or agreements of a continuing nature relating to the Property, unless Buyer has consented to the same;

(4) use and operate the Property, during the time it owns the Property, in compliance in all material respects with all applicable Legal Requirements;

(5) within five (5) business days after receipt, provide Buyer with copies of any and all written notices received from any Governmental Authority having jurisdiction over the Property regarding or alleging violations of any Legal Requirements applicable thereto;

(6) within a reasonable amount of time after obtaining current actual knowledge of the same (and in any event within five business days thereafter), advise Buyer of any pending or threatened litigation, arbitration or administrative hearing concerning or affecting the Property;

(7) notify Buyer within five (5) business days after Seller obtains actual knowledge of any inaccuracy or breach of any of the representations and warranties of Seller or Buyer hereunder, but in any event prior to the next Closing;

(8) not assign Seller's interest in the Nineteen Acre Contract to any party other than a party to whom Seller's interest in this Agreement has been transferred;

(9) timely perform all of Seller's covenants and obligations hereunder, including, without limitation, the covenants of Seller set forth in Section 15 below; and

(10) Seller shall (i) provide Buyer with copies of any notices of default or termination sent by Seller to the Nineteen Acre Owner contemporaneously with Seller's delivery thereof, and (ii) promptly (but in no event more than five business days) after Seller's receipt thereof provide Buyer with copies of any notices of default or termination from the Nineteen Acre Owner.

(b) Survival of Seller's Obligations. The obligations of Seller in Section 8.(a) above shall not survive the applicable Closing for the applicable portion of the Property or any termination of this Agreement.

(c) Requests for Consent. Except as otherwise expressly provided to the contrary above, whenever Buyer's consent is required under the provisions of this Section 8, such consent shall not be unreasonably or arbitrarily refused, conditioned or delayed and shall be given or refused by Buyer in writing within ten (10) business days after Buyer's receipt of Seller's written request therefor. In connection with any refusal by Buyer to consent to a matter requested by Seller, Buyer shall provide Seller with a reasonably detailed written description of the reason Buyer is withholding its consent and a description of those changes, if any, which, if made, would cause Buyer to consent to the matter being requested (such changes are herein referred to as "**Buyer's Required Changes**"). The failure of Buyer to either (i) respond in writing within ten (10) business days after the receipt of

Seller's written request for the same, or (ii) provide the applicable Buyer's Required Changes with Buyer's written refusal to provide its consent to the matter being requested (or, if no Buyer's Required Changes exist, Buyer must provide Seller with written notice of such nonexistence), shall be deemed to constitute Buyer's consent to the matter requested by Seller.

## 9. Representations and Warranties of Buyer.

(a) Buyer's Representations and Warranties. Buyer represents and warrants to Seller, which representations and warranties shall be deemed made by Buyer to Seller as of the Contract Date and also as of date of each Closing (but only as to Property not previously purchased by Buyer from Seller), as follows:

(1) No Representations, Warranties, or Guarantees. Except for the covenants, representations and warranties specifically set forth herein (including, without limitation, Seller's development, approval and other covenants herein), or in any other documents or instruments delivered in connection herewith, and the limited warranty of title contained in any Deed, Buyer is purchasing the Property, and the Property shall be conveyed and transferred to Buyer, "AS IS" "WHERE IS" and "WITH ALL FAULTS" and, except as specifically set forth in the Deed and in this Agreement or in any other documents or instruments delivered in connection herewith, without any warranties, representations, or guarantees, either express or implied, of any kind, nature, or type whatsoever from or on behalf of Seller. Buyer acknowledges that, except as specifically set forth in Section 7.(a)(11), in connection with its acquisition of the Property, it has not relied and is not relying on, and Seller shall have no liability or obligation whatsoever for any inaccuracy in or omission from, any information, documents, sales brochures, or other literature, maps or sketches, projections, pro formas, statements, representations, guarantees, or warranties (whether express or implied, or oral or written, or material or immaterial), if any, that may have been given, made or made available by or on behalf of Seller other than the limited warranty of title contained in the Deed, and the representations and warranties set forth in this Agreement or in any other documents or instruments delivered in connection herewith. The representations of Buyer in this subsection shall in no way limit or restrict the remedies available to Buyer pursuant to this Agreement, the conditions precedent to Buyer's obligations at each Closing or Seller's liabilities, duties, obligations, representations and warranties hereunder or under any other documents or instruments delivered in connection herewith.

(2) No Reliance by Buyer. Except for the covenants, representations and warranties specifically set forth herein (including, without limitation, Seller's development, approval and other covenants herein), or in any other documents or instruments delivered in connection herewith, and the limited warranty of title contained in any Deed, Buyer is not entitled to rely upon, and is not relying upon, Seller or any of Seller's Related Parties as to (i) the quality, nature, adequacy, or physical condition of the Property; (ii) the quality, nature, adequacy, or physical condition of soils or the existence of ground water at the Property; (iii) the existence, quality, nature, adequacy, or physical condition of any utilities serving the Property; (iv) the development potential of the Property, its habitability, merchantability or fitness, suitability, or adequacy of the Property for any particular purpose; (v) the zoning or other legal status of the Property; (vi) the Property's or its operations' compliance with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions, or restrictions including, without limitation of the generality of the foregoing, any pertaining to health, safety, hazardous waste or environmental matters, of any governmental or quasi-governmental entity, or of any other person or entity; or (vii) except for the limited warranty of title contained in the Deed, the condition of the title to the Property, or the nature, status and extent of any right-of-way, lease, right of redemption, possession, lien, encumbrance, license, reservation, covenant, condition, restriction, or any other matter affecting title to the Property. The representations of Buyer in this subsection shall in no way limit or restrict the remedies available to Buyer pursuant to this Agreement, the conditions precedent to Buyer's obligations at each Closing or Seller's liabilities, duties, obligations, representations and warranties hereunder or under any other documents or instruments delivered in connection herewith.

(3) Sufficiency of Buyer's Inquiries and Investigations. Buyer has had and will have, pursuant to this Agreement, an adequate opportunity to make such legal, factual, and other inquiries and investigations as it deems necessary, desirable, or appropriate with respect to the Property. Those inquiries and investigations of Buyer may include, but are not limited to, the physical components of all portions of the Property, the condition of the Property, the state of facts that an accurate survey and inspection would show, zoning ordinances, resolutions, and regulations of the city, county, and state where the Property is located, and the value and marketability of the Property.

(4) Intentionally Omitted.

(5) No Financing by Seller. Buyer's execution and performance of this Agreement is not in any way conditioned upon or based in reliance upon any efforts by Seller or any entity related to Seller giving or assisting Buyer in obtaining any financing associated with the purchase or development of the Property.

(6) Power and Authority. Buyer has the full right, power and authority to purchase the Property as provided in this Agreement and to carry out Buyer's obligations hereunder. All requisite action necessary to authorize Buyer to enter into this Agreement and to carry out Buyer's obligations hereunder has been taken. The individual executing this Agreement on behalf of Buyer has the full right, power and authority to do so.

(7) No Suits. There is no suit (at law or in equity) pending or known to Buyer to be threatened against or affecting Buyer which (i) in any manner raises any question affecting the validity or enforceability of this Agreement or any other agreement or instrument to which Buyer is a party or by which it is bound and that is to be used in connection with, or is contemplated by, this Agreement, or (ii) could materially and adversely affect the ability of Buyer to perform Buyer's obligations hereunder, or under any document to be delivered pursuant hereto.

(8) Environmental Reports and Other Materials. Without limiting or restricting the remedies available to Buyer pursuant to this Agreement, the conditions precedent to Buyer's obligations at each Closing or Seller's liabilities, duties, obligations, representations and warranties hereunder, it is Buyer's responsibility to assure itself that the information contained in the Property Reports and other information related to the Property which may be supplied by Seller or any of Seller's Related Parties, or made available by Seller or any of Seller's Related Parties, to Buyer is accurate, true and complete, and any reliance by Buyer on the information set forth in the Property Reports, which reliance is hereby recognized by Seller, shall be undertaken at the risk of Buyer.

(9) No Payments. Except as stated in this Agreement, Buyer has not paid or agreed to pay any consideration to Seller or to any agent or representative of Seller in order to induce Seller to enter into this Agreement.

(10) No Violations. Neither the entry into nor the performance of, exercise of rights under nor compliance with this Agreement has resulted, or will result in, any violation of, or a conflict with or default under, the organizational documents of Buyer, any judgment, decree, order, contract or agreement by which Buyer is bound, or any Legal Requirement applicable to Buyer.

(11) No Broker. Buyer has not enlisted the services of a broker or other commissionable agent, or taken actions which could give rise to a commission, in connection with the transactions contemplated by this Agreement.

(12) No Default. There does not exist any Buyer Default (as defined in Section 13.(a) below) or, to Buyer's actual knowledge, fact or circumstance which, with the giving of notice, the passage of time, or both, could become a Buyer Default.

(13) No Misstatement. No representation or warranty of Buyer in this Agreement contains any untrue statement of material fact, or omits to state a material fact, necessary in order to make such representation or warranty not misleading in light of the circumstances under which it is made.

(b) Covenants of Buyer. Buyer covenants and agrees with Seller that, prior to each Closing, Buyer will notify Seller within a reasonable amount of time (and in any event within five business days) after Buyer obtains actual knowledge of any inaccuracy or breach of any of the representations and warranties of Seller or Buyer hereunder. The obligations of Buyer in this subparagraph shall not survive the Final Closing or any termination of this Agreement.

(c) Waiver of Representations or Warranties. Each of the representations and warranties contained in this Section are intended for the benefit of Seller, may not be assigned independently of this Agreement by Seller, and may be waived in whole or in part, by Seller, but only by an instrument in writing signed by Seller or as otherwise expressly provided in this Agreement.

#### 10. **Limitations to Seller's Representations and Warranties.**

(a) Acknowledgements and Agreements of Buyer. Buyer acknowledges and agrees as follows:

(1) Disclaimer of Express Warranties. That, except for Seller's representations and warranties in this Agreement or in any other documents or instruments delivered in connection with this Agreement, and except for the limited warranty of title in the Deed, Seller has not made, and Seller hereby specifically disclaims, any warranty, guaranty or representation (except those set forth in this Agreement or in any other documents or instruments delivered in connection with this Agreement), oral or written, past, present or future, of, as to, or concerning (i) the nature and condition of the Property, including, without limitation, the water, soil and geology, and the suitability thereof and of the Property for any and all activities and uses which Buyer may elect to conduct thereon; and (ii) the compliance of the Property or its operation with any laws, ordinances, orders, rules or regulations of any governmental or other body. Buyer acknowledges that having been given the opportunity to inspect the Property, Buyer is relying solely on Buyer's own investigation of the Property and has not relied on, and is not relying on (and Seller shall have no liability or obligation whatsoever for any inaccuracy in or omission from), any information, documents, sales brochures, or other literature, maps or sketches, projections, pro formas, statements, representations, guarantees, or warranties (whether express or implied, or oral or written, or material or immaterial), if any, that may have been given, made or made available by or on behalf of Seller or any of Seller's Related Parties other than the limited warranty of title contained in the Deed and the representations and warranties set forth in this Agreement or in any other documents or instruments delivered in connection with this Agreement. Any information heretofore provided or made available to, and to be provided and made available to, Buyer or any of Buyer's Related Parties by or on behalf of Seller with respect to the Property was obtained from a variety of sources and Seller (A) has not made any independent investigation or verification of such information; and (B) makes no representations, guarantees or warranties as to the truth, accuracy or completeness of such information. Except for Seller's covenants, representations and warranties in this Agreement (including, without limitation, Seller's development, approval and other covenants herein), or in any other documents or instruments delivered in connection herewith, and except for the limited warranty of title in the Deed, Buyer is purchasing the Property, and the Property shall be conveyed and transferred to Buyer, "AS IS" "WHERE IS" and "WITH ALL FAULTS, KNOWN OR UNKNOWN" and, except as specifically set forth in the Deed and in this Agreement or in any other documents or instruments delivered in connection herewith, without any warranties, representations, or guarantees, either express or implied, of any kind, nature, or type whatsoever from or on behalf of Seller or any of Seller's Related Parties. Buyer expressly acknowledges that, in consideration of the agreements of Seller herein, except as otherwise specified herein, Seller makes no warranty or representation, express or implied, or arising by operation of law, including, but not limited to, any warranty of condition, habitability, merchantability, tenantability or fitness for a particular use or purpose, or with respect to the value, profitability or marketability of the Property, or with regard to compliance with any environmental protection, pollution or land use laws, rules, regulations, orders, or

requirements including, but not limited to, those pertaining to the handling, generating, treating, storing, or disposing of any hazardous waste or substance with respect to the Property.

(2) Hazardous Substances Disclaimer. Without in any way limiting any other provisions of this Agreement or the Deed, other than the representations set forth above in Section 7.(a)(8), Seller makes no representation or warranty with respect to the presence on or beneath the Property (or any property in proximity thereto) of Hazardous Materials and shall have no liability to Buyer therefor. By acceptance of this Agreement and the Deed, Buyer acknowledges that Buyer's opportunity for inspection and investigation of the Property (and other property in proximity thereto) will be adequate to enable Buyer to make Buyer's own determination with respect to the presence on or beneath the Property of Hazardous Materials, and except as otherwise expressly provided herein, Buyer accepts the risk of the presence of any Hazardous Materials. Buyer acknowledges that Buyer is familiar with the inspection, purchase and operation of commercial real estate such as the Property.

(3) Disclaimer of Implied Warranties. Seller hereby expressly disclaims any and all implied warranties (including, without limitation, implied warranties of condition, merchantability, habitability, fitness for a particular purpose, and implied warranties with respect to the value, profitability or marketability of the Property) and, except as specifically set forth in the Deed or this Agreement or in any other documents or instruments delivered in connection herewith, Seller hereby disclaims any representation or warranty with regard to compliance with any environmental protection, pollution or land use laws, rules, regulations, orders, or requirements including, but not limited to, those pertaining to the handling, generating, treating, storing, or disposing of any hazardous waste or substance.

(b) As Is, Where Is. Except for the covenants, representations and warranties specifically set forth herein (including, without limitation, Seller's development, approval and other covenants herein), or in any other documents or instruments delivered in connection herewith, and the limited warranty of title contained in any Deed, Buyer agrees that Seller shall not be responsible or liable to Buyer for any defects, errors, omissions, contamination, pollution, or on account of any other conditions affecting the Property, as Buyer is purchasing the Property "**AS IS**" "**WHERE IS**" and "**WITH ALL FAULTS, KNOWN OR UNKNOWN**". Except for the covenants, representations and warranties specifically set forth herein (including, without limitation, Seller's development, approval and other covenants herein), or in any other documents or instruments delivered in connection herewith, Buyer, by its execution hereof, accepts the Property in its physical condition as of the Contract Date (reasonable wear and tear and damage by fire or other Casualty excepted), "**AS IS**" "**WHERE IS**" and "**WITH ALL FAULTS, KNOWN OR UNKNOWN**," and acknowledges that Buyer has no recourse whatsoever against Seller in the event of discovery of any defects, errors, omissions, contamination, pollution, or conditions of any kind, latent or patent, therein, thereon or thereunder. Except for the covenants, representations and warranties specifically set forth herein (including, without limitation, Seller's development, approval and other covenants herein), or in any other documents or instruments delivered in connection herewith, Buyer, or anyone claiming by, through or under Buyer, hereby fully releases Seller and all Seller Indemnitees from any claim, cost, loss, liability, damage, expense, demand, action or cause of action arising from or related to any defects, errors, omissions, contamination, pollution, or other conditions affecting the Property. Buyer further acknowledges and agrees that this release shall be given full force and effect according to each of its expressed terms and provisions, including, but not limited to, those relating to unknown and suspected claims, damages and causes of action. This covenant releasing Seller shall be a covenant running with the land and shall be binding upon Buyer, Buyer's heirs, executors, administrators, personal representatives, successors, grantees and assigns. The terms of this Section 10.(b) are subject to, and shall in no manner impair, the remedies available to Buyer pursuant to this Agreement, the conditions precedent to Buyer's obligations at each Closing or the covenants, representations and warranties contained in this Agreement or in any other documents or instruments delivered in connection herewith. The disclaimers, waivers and releases of claims set forth in Sections 10.(a) and 10.(b) above shall survive all Closings and any termination of this Agreement.

## 11. Closings.

(a) Dates and Place. The closing of the sale of portions of the Property to Buyer (each a "Closing") shall take place at the offices of William H. Dodson, II, Atlanta, Georgia at 10:00 a.m. Eastern Standard Time on the dates identified below, unless any such location, dates or time is changed in writing by Seller and Buyer or is extended pursuant to any other provision(s) of this Agreement. The conditions precedent to Buyer's obligations at each Closing are set forth in Section 11.(g) of this Agreement. The conditions precedent to Seller's obligations at each Closing are set forth in Section 11.(h) of this Agreement. Additionally, Buyer shall have no right or obligation to purchase any of the Property until such time as the First Closing Conditions Precedent (as defined in Section 3 above) have all been satisfied or waived in writing by Buyer. The First Closing Date is the date as provided for in Section 3 above, and such date will be the "Q1" as identified on Exhibit "F". Each successive Closing date is the corresponding day of the third (3rd) month following the previous Closing date; provided, however, that if any month does not have such a corresponding day, then the Closing shall occur on the last day of such month (by way of example only, if the First Closing Date is November 30, 2012, "Q2" would be February 28, 2013 and "Q3" would be May 30, 2013). Not less than thirty (30) days prior to a required Closing date other than the First Closing Date, Buyer shall provide Seller with a written designation of the lots (and additional acreage pursuant to Section 5.(d) above, if applicable) comprising a portion of the Property that Buyer will be purchasing at such Closing, which designation shall in no event be less than the minimum number of lots to be purchased by Buyer at such Closing as identified on Exhibit "F", and Buyer may elect in such written notice to purchase at such Closing more than such minimum number of lots. After such written election, Buyer will be obligated to purchase at the applicable Closing the number of lots Buyer has elected to buy, and such lots shall constitute the portion of the Property to be purchased by Buyer, and sold by Seller, at such Closing. Buyer shall not be in default hereunder for failure to purchase the minimum number of lots set forth on Exhibit "F" for any quarter, so long as Buyer purchases the minimum number of lots to be purchased in each year as set forth on Exhibit "F". Notwithstanding the foregoing or anything else to the contrary in this Agreement, (1) Buyer shall have no right to designate any acreage within the 7/31/2013 Nineteen Acre Parcel as acreage to be purchased by Buyer until after July 31, 2013 without the prior written consent of Seller, which consent may be withheld by Seller at any time that Seller had not yet acquired title to all or any portion of the 7/31/2013 Nineteen Acre Parcel, and (2) Buyer shall have no right to designate any acreage within the 8/29/2014 Nineteen Acre Parcel as acreage to be purchased by Buyer until after August 29, 2014 without the prior written consent of Seller, which consent may be withheld by Seller at any time that Seller had not yet acquired title to all or any portion of the 8/29/2014 Nineteen Acre Parcel. At the Final Closing, Buyer will receive a credit for the Earnest Money that has not theretofore been delivered to Buyer, or retained as liquidated damages by Seller, pursuant to the terms and provisions of this Agreement.

(b) Seller's Obligations at Closing. At each Closing, but subject to the satisfaction of the conditions precedent set forth in Section 11.(h) below (or Seller's written waiver of the same), Seller shall execute (if appropriate) and deliver to Buyer (or to a third-party in escrow for delivery to Buyer upon satisfaction of, or Seller's written waiver of, the conditions precedent set forth in Section 11.(h) below), at Seller's sole cost and expense (except as otherwise provided in this Section), the following:

(1) a duly executed and acknowledged Limited Warranty Deed (each a "Deed") substantially in the form of that attached hereto as Exhibit "G" covering the portion of the Property Seller is obligated to sell to Buyer at the applicable Closing, together with two (2) copies of the Georgia transfer tax declaration therefor, each of which will transfer title to Buyer subject only to the Permitted Exceptions which encumber such portion of the Property;

(2) possession of the portion of the Property Seller is obligated to sell to Buyer at the applicable Closing, subject only to the Permitted Exceptions which encumber such portion of the Property;

(3) a non-foreign affidavit as permitted by Section 1445 of the Internal Revenue Code and the regulations promulgated thereunder, together with an affidavit will confirm Seller's principal place of business and Georgia residency;



(4) a final closing statement itemizing and approving all receipts, disbursements and prorations made in connection with the applicable Closing (which may be executed and delivered electronically);

(5) an affidavit of title substantially in the form of that attached hereto as Exhibit "K" covering the portion of the Property Seller is obligated to sell to Buyer at the applicable Closing;

(6) all current unpaid real estate and personal property tax bills, if any, related to the Property being sold to Buyer at the applicable Closing in Seller's possession; and

(7) such other documents as may be reasonably required to close this transaction, duly executed and acknowledged, if necessary; provided, however, any other conveyance documents reasonably requested by Buyer shall be without recourse or warranty and without any representations with respect to the subject matter thereof.

(c) Buyer's Obligations at Closing. At each Closing, but subject to the satisfaction of the First Closing Conditions Precedent and the conditions precedent set forth in Section 11.(g) below (or Buyer's written waiver of the same), Buyer shall execute, acknowledge and deliver to Seller (or to a third-party in escrow for delivery to Seller upon satisfaction of, or Buyer's written waiver of, the First Closing Conditions Precedent and the conditions precedent set forth in Section 11.(g) below), at Buyer's sole cost and expense, the following:

(1) the portion of the Purchase Price for the Property being purchased by Buyer at such Closing in Immediately Available Funds, increased or reduced by the net amount of prorations owed by or to Buyer, as appropriate (such adjusted amount of funds is herein referred to as the "**Buyer's Funds**");

(2) a final closing statement itemizing and approving all receipts, disbursements and prorations made in connection with the applicable Closing (which may be executed and delivered electronically);

(3) any and all affidavits and forms then reasonably and customarily required by the title insurer to be signed by buyers of property and not requiring the payment of any money, assumption of any liability or giving of any indemnity; and

(4) such other documents as may be reasonably required to close this transaction, duly executed and acknowledged, if necessary; provided, however, any other conveyance documents reasonably requested by Buyer shall be without recourse or warranty and without any representations with respect to the subject matter thereof.

Additionally, at the First Closing only, Buyer shall deliver to Seller Immediately Available Funds in an amount equal to the amount of the First Deposit.

(d) Prorations of Revenues and Expenses. All revenues payable to, and expenses payable by, Seller with respect to the Property being purchased by Buyer and which are applicable to the period of time before and after the date of the applicable Closing, determined in accordance with sound accounting principles consistently applied, shall be prorated between Seller and Buyer as provided herein. Except as otherwise provided to the contrary in this Agreement, Seller shall be entitled to all such revenue and shall be responsible for all such expenses for the period of time up to, but not including, such date, and Buyer shall be entitled to all such revenue, and shall be responsible for all such expenses, for the period of time from, after and including such date. Such prorations as of the date of the applicable Closing shall be shown on the closing statements executed by the Parties (with such supporting documentation as the Parties may reasonably require being attached as exhibits to the closing statements) and shall increase or decrease (as the case may be) the cash amount payable by Buyer pursuant to this Agreement. Notwithstanding anything to the contrary contained herein, there shall be no proration of insurance

premiums. If the amount of any charges due or to become due for any services or utilities provided to the Property for any period of time spanning the date of the applicable Closing is not known or determinable as of such date, such charges shall be prorated at Closing based upon the most recent bill therefor and such proration shall be final and binding on the Parties.

(e) Tax Prorations. Standby fees, taxes and assessments for the Property for the year of each Closing (including, without limitation, assessments of any property owner's association or similar entity) shall be prorated as of the date of the applicable Closing. If an exact determination of such fees, taxes and assessments cannot be made at the Closing because an outstanding tax bill is not obtainable, the Parties shall estimate the amount of the same at the Closing based on the amount of such fees, taxes and assessments for the Property in the immediately preceding year and such other relevant factors including, without limitation, the amount of the Purchase Price for the Property being sold to Buyer at such Closing, subject to adjustment upon receipt of the final tax bill. This adjustment shall occur in no event later than sixty (60) days after such receipt, and either party owing the other party a sum of money based on such subsequent proration shall promptly pay such sum to the other party, together with interest thereon at the rate of two percent (2%) per annum over the "prime rate" (as announced from time to time in the Wall Street Journal) from the date of the applicable Closing to the date of payment if the required payment is not made within thirty (30) days after the applicable party's receipt of (i) a written request for such payment of such sum, and (ii) copies of reasonable back-up documentation. Seller's estimated tax proration amount shall be credited to the Purchase Price payable at the applicable Closing. Charges for municipal or other governmental improvements secured by a lien or liens (each a "**Municipal Lien**") or by a bond or bonds against all or any portion of the Property shall, as applicable, be prorated at a Closing. Seller shall pay and discharge at a Closing all Municipal Liens and/or special assessments due and payable on or prior to date of the applicable Closing, and Buyer shall be responsible for all municipal or other governmental improvement liens and/or special assessments levied or otherwise due and payable after such date. Notwithstanding the foregoing, (1) if such charges are due and payable in installments, Seller shall pay, or cause to be paid, all installments (prorated to the date of the applicable Closing) due and payable in, or deferred with respect to the years prior to, the year in which the Closing occurs, and Buyer shall be responsible for the payment of all installments due and payable in the years after the year in which the Closing occurs, and (2) if such charges are not due and payable in installments, then Seller shall pay such charges and discharge at or prior to the Closing the lien or liens securing the same. Buyer shall also be responsible for the payment of all property taxes, whether retroactive or not, imposed by any taxing authority due to a change in the use or ownership of the Property accruing from and after the applicable Closing with respect to portions of the Property purchased at the same. The rights and obligations of the Parties set forth in this subsection shall survive the applicable Closing.

(f) Proration Timing. In making the prorations required by Sections 11.(d) and 11.(e), the economic burdens and benefits of ownership of the Property on the date of the applicable Closing shall be allocated to Buyer.

(g) Conditions Precedent to Buyer's Closing Obligations. Notwithstanding anything to the contrary set forth in this Agreement, Buyer's obligations at a Closing are subject to the satisfaction of the following conditions precedent:

(1) Delivery of Documents. On or before the date of the applicable Closing, Seller shall have delivered to or for the benefit of Buyer all of the documents, information and other things required of Seller pursuant to Section 11.(b) above;

(2) Correctness of Representations and Warranties. On the date of the applicable Closing, none of the representations and warranties of Seller set forth in this Agreement or in any other documents or instruments delivered by Seller at such Closing shall be untrue or inaccurate in any material respect (subject to any changes to such representations and warranties as to which Seller has given written notice thereof to Buyer prior to the date of the applicable Closing);

(3) Seller's Performance. On or before the date of the applicable Closing, Seller shall have performed in all material respects all of the material covenants and other obligations of Seller under this Agreement to be performed on or before such date;

(4) No Litigation. On the date of the applicable Closing, there shall be no litigation (other than condemnation or eminent domain litigation) pending seeking to enjoin the consummation of the sale and purchase hereunder, or seeking to recover title to the Property, or any part thereof or interest therein;

(5) Acquisition of Title to Nineteen Acre Parcel. On the date of the applicable Closing occurring prior to August 29, 2014, Seller shall have acquired title to all of the 7/31/2012 Nineteen Acre Parcel, and on the date of the applicable Closing occurring after July 31, 2013, Seller shall have acquired title to all of the 7/31/2013 Nineteen Acre Parcel, and on the date of the applicable Closing occurring after August 29, 2014, Seller shall have acquired title to all of the 8/29/2014 Nineteen Acre Parcel;

(6) No Material Adverse Change. No event described in Section 3(e) above shall have occurred giving Buyer a right to terminate this Agreement that is still in effect as of the date of the applicable Closing; and

(7) Title. Buyer's title insurer, if any, shall be unconditionally prepared to issue an owner's title policy at standard premium rates in the State of Georgia on a standard ALTA Form insuring Buyer's fee simple title to the Property being purchased at the applicable Closing, free and clear of all exceptions and encumbrances other than any Permitted Exceptions, with a liability limit in an amount equal to or less than the amount of the Purchase Price being paid at such Closing.

Each of the conditions contained in this Section 11.(g) are intended for the benefit of Buyer and may be waived, in whole or in part, by Buyer, but only by an instrument in writing signed by Buyer or as otherwise expressly provided in this Agreement. Buyer's remedies for the failure of the foregoing conditions precedent to be satisfied, and Seller's opportunity to cure any such failure, are set forth in Section 12.(b) below; provided, however, if any of the conditions precedent identified in subparts (4) and (5) above have not been satisfied by the scheduled Closing date and remain unsatisfied as of the tenth (10th) business day after Seller's receipt of written notice thereof, then, if this Agreement has not theretofore been terminated by Seller pursuant to an express right to do so set forth in this Agreement, Buyer's sole and exclusive remedy for such failure shall be, except as otherwise provided to the contrary in Section 12.(b) below, to terminate this Agreement by giving Seller written notice thereof within the thirty (30) day time period required by Section 12.(b) below. Notwithstanding anything to the contrary contained in this Agreement, if Buyer records, or authorizes the recording of, the Deed delivered by Seller at a Closing and/or releases, or authorizes the release of, the applicable Buyer's Funds to Seller, Buyer will be deemed to have waived any unsatisfied conditions contained in this Section 11.(g) or Section 3 above, as applicable, and the applicable Closing will be deemed to have occurred.

(h) Conditions Precedent to Seller's Closing Obligations. Notwithstanding anything to the contrary set forth in this Agreement, Seller's obligations at a Closing are subject to the satisfaction of the following conditions precedent:

(1) Delivery of Documents and Lot Designation. On or before the date of the applicable Closing, Buyer shall have delivered to or for the benefit of Seller all of the funds, documents, information and other things required of Buyer pursuant to Section 11.(c) above, and not less than thirty (30) days before the date of the applicable Closing, Buyer shall have delivered to Seller a written designation of the lots comprising a portion of the Property that Buyer will be purchasing at such Closing (including non-lots acreage with respect to the portions of the Nineteen Acre Parcel to be sold to Buyer as provided by this Agreement), which designation shall in no event be less than the minimum number of lots (and such non-lots acreage) to be purchased by Buyer at such Closing as identified on Exhibit "F" or as otherwise expressly permitted by this Agreement;

(2) Correctness of Buyer's Representations and Warranties. On the date of the applicable Closing, none of the representations and warranties of Buyer set forth in Section 9 above shall be untrue or inaccurate in any material respect;

(3) Buyer's Performance. On or before the date of the applicable Closing, Buyer shall have performed in all material respects all of the material covenants and other obligations of Buyer under this Agreement to be performed on or before such date; and

(4) No Litigation. On the date of the applicable Closing, there shall be no litigation commenced by any party other than Seller or any Seller's Related Parties (other than condemnation or eminent domain litigation) pending seeking to enjoin the consummation of the sale and purchase hereunder, or seeking to recover title to the Property, or any part thereof or interest therein.

(5) Acquisition of Title to Nineteen Acre Parcel. On the date of the applicable Closing occurring prior to August 29, 2014, Seller shall have acquired title to all of the 7/31/2012 Nineteen Acre Parcel, and on the date of the applicable Closing occurring after July 31, 2013, Seller shall have acquired title to all of the 7/31/2013 Nineteen Acre Parcel, and on the date of the applicable Closing occurring after August 29, 2014, Seller shall have acquired title to all of the 8/29/2014 Nineteen Acre Parcel; provided, however, none of the foregoing shall be a condition precedent to Seller's obligations at a Closing if, as of any of the foregoing dates, (i) all material conditions precedent to Seller's obligation to purchase the applicable portion of the Nineteen Acre Parcel have been satisfied and the applicable Nineteen Acre Owner is otherwise ready, willing and able to sell such portion to Seller in material accordance with the Nineteen Acre Contract, and (ii) Seller breaches its obligation to purchase such portion in accordance with the Nineteen Acre Contract.

Each of the conditions contained in this Section 11.(h) are intended for the benefit of Seller and may be waived, in whole or in part, by Seller, but only by an instrument in writing signed by Seller or as otherwise expressly provided in this Agreement. Seller's remedies for the failure of the foregoing conditions precedent to be satisfied, and Buyer's opportunity to cure any such failure, are set forth in Section 12.(a) below.

(i) Closing Costs. Seller shall pay: fees for preparation of the conveyance documentation; any fees or other costs required to discharge, release or bond against at Closing any encumbrances other than Permitted Exceptions; Seller's attorneys' fees and expenses; the Georgia transfer tax due with respect to the limited warranty deeds by which portions of the Property is conveyed to Buyer; one-half of the fees and expenses of any escrow agents; any delinquent taxes or assessments and Seller's pro rata share of any taxes or assessments required to be pro-rated pursuant to the terms of this Agreement; and other expenses stipulated to be paid by Seller under other provisions of this Agreement or otherwise incurred by Seller. Buyer shall pay: the premiums, charges or fees for any title insurance policy to be obtained by Buyer; premiums, charges or fees for any mortgagee policy of title insurance and special endorsements required by the lender; one-half of the fees or expenses of any escrow agents; if applicable, any intangibles taxes with respect to mortgages or deeds to secure debt; Buyer's attorneys' fees and expenses; all costs and expenses incurred in connection with any financing obtained by Buyer with respect to transaction contemplated hereby; all recording and filing fees for all recordable instruments executed and delivered by Seller at each Closing; Buyer's pro rata share of any taxes or assessments required to be pro-rated pursuant to the terms of this Agreement; and other expenses stipulated to be paid by Buyer under other provisions of this Agreement or otherwise incurred by Buyer.

## 12. Remedies Following Default at a Closing.

(a) Remedies of Seller. If any condition or conditions to Seller's obligations at a Closing set forth in Section 11.(h) above cannot or will not be satisfied prior to the scheduled Closing date and Buyer fails to satisfy that condition within ten (10) business days after Buyer's receipt of written notice of the foregoing from Seller (and

the failure of such condition(s) is/are not attributable to a default by Seller which has not been cured within the applicable cure period), Seller may, as its sole and exclusive remedy for Buyer's failure to satisfy any such condition or conditions precedent (or default relating to a Closing, as the case may be), terminate this Agreement in its entirety or only as to all of the parcel with respect to which the applicable portion of the Property was to be sold to Buyer (i.e., if such failure affects all or substantially all of the portion of the Nineteen Acre Parcel to be sold to Buyer, Seller shall have the right to terminate this Agreement in its entirety or only with respect to Buyer's and Seller's rights and obligations with respect to such portion of the Nineteen Acre Parcel) by delivering written notice thereof to Buyer and receive either the entire amount of the Earnest Money or the Pro Rata Earnest Money attributable to the Sixteen Acre Parcel or Nineteen Acre Parcel (as applicable) as liquidated damages and not as a penalty. Buyer and Seller agree that actual damages resulting from Buyer's failure to satisfy any such condition or conditions precedent would be difficult or impossible to ascertain and that the amount of the Earnest Money (or Pro Rata Earnest Money, if applicable) is a reasonable estimate of the damages for such breach or failure. After any termination of this Agreement by Seller pursuant to this subparagraph, the Parties shall be released from all further liabilities and obligations hereunder relating solely to the portion of the Sixteen Acre Parcel or Nineteen Acre Parcel, or both (as applicable), not theretofore acquired by Buyer (the remaining provisions of this Agreement continuing in full force and effect to the extent not affected by Seller's termination of this Agreement pursuant to this subparagraph) (i) except those that expressly survive a termination of this Agreement, and (ii) other than damages and any other amounts recoverable by Seller as a result of a Buyer Default as defined in Section 13.(a) below. Notwithstanding the foregoing, if the condition precedent that has not been satisfied is Section 11.(h)(5), Seller shall only have the right to terminate this Agreement as to the portion of the Nineteen Acre Parcel to be sold to Buyer.

(b) Remedies of Buyer. Unless otherwise provided for in this Section 12.(b), if any condition or conditions to Buyer's obligations at a Closing set forth in Section 11.(g) above (excluding, however, the conditions precedent identified in subparts (4) and (5) of Section 11.(g) above) cannot or will not be satisfied prior to the scheduled Closing date and Seller fails to satisfy that condition within ten (10) business days after Seller's receipt of written notice of the foregoing from Buyer (and the failure of such condition(s) is/are not attributable to a default by Buyer which has not been cured within the applicable cure period, and the aforesaid event materially and adversely affects either Buyer's intended use and development of the Property or the actual or potential value thereof), Buyer, within thirty (30) days after the expiration of such cure period and as Buyer's sole and exclusive remedy (Buyer specifically waiving any right to bring an action for monetary damages including, without limitation, compensatory, consequential, speculative and punitive damages), may elect one of the following remedies:

(i) to terminate this Agreement with respect to the portion of the Sixteen Acre Parcel to be sold to Buyer (if such Closing was to be for a portion of such portion) or the portion of the Nineteen Acre Parcel to be sold to Buyer (if such Closing was to be for a portion of such portion) by delivering written notice thereof (a "**Termination Notice**") to Seller within such thirty (30) day period, in which case (1) the Pro Rata Earnest Money attributable to the Sixteen Acre Parcel or Nineteen Acre Parcel (as applicable) shall be returned to Buyer, by Seller to the extent such Earnest Money has not theretofore been delivered to Buyer or retained by Seller as liquidated damages, within five (5) business days after such termination, (2) if the condition which has not been satisfied is a breach of a representation or warranty known by Seller to have been inaccurate or misleading when made or of any of Seller's covenants in subsections (a)(1) through (a)(7) of Section 8 above and the aforesaid event materially and adversely affects either Buyer's intended use and development of the Property or the actual or potential value thereof, then Seller shall be obligated to reimburse Buyer for all of Buyer's actual out-of-pocket inspection, financing and other costs related to Buyer's entering into this Agreement, inspecting the Property and preparing for the applicable Closing (collectively, "**Transaction Costs**") up to an aggregate amount of \$50,000.00 (Seller agrees to pay any amounts owing to Buyer pursuant to this subpart (2) within 30 days after its receipt of written evidence of the actual amount of reimbursable costs incurred by Buyer); provided, however, the foregoing shall not limit or include the sums which may be payable by Seller pursuant to Section 20 below, and (3) all other rights and obligations of Seller and Buyer hereunder relating solely to the unpurchased portions of the Property as to which

this Agreement was terminated, except those which expressly survive a termination of this Agreement, shall terminate immediately (the remaining provisions hereof continuing in full force and effect to the extent not affected by Buyer's termination of this Agreement pursuant to this subparagraph);

(ii) to notify Seller in writing within such thirty (30) day period that Buyer has waived Buyer's right to terminate this Agreement as a result of Seller's failure to satisfy such condition or conditions after the expiration of such ten (10) business day period, in which event the applicable Closing shall take place as provided in Section 11 above on the fifth (5th) business day after Seller's receipt of such written waiver notice; or

(iii) if the failure of such condition or conditions is caused by a failure of Seller to perform any of Seller's obligations set forth in Section 11.(b) above, to either (A) terminate this Agreement either (i) in its entirety, or (ii) with respect to the portion of the Sixteen Acre Parcel to be sold to Buyer (if such Closing was to be for a portion of such portion) or the portion of the Nineteen Acre Parcel to be sold to Buyer (if such Closing was to be for a portion of such portion) by delivering a Termination Notice to Seller within such thirty (30) day period, in which case the Pro Rata Earnest Money attributable to the Sixteen Acre Parcel or Nineteen Acre Parcel (as applicable) shall be returned to Buyer, by Seller to the extent such Earnest Money has not theretofore been delivered to Buyer or retained by Seller as liquidated damages, within five (5) business days after such termination and Seller shall be obligated to reimburse Buyer for all of Buyer's actual out-of-pocket Transaction Costs up to an aggregate amount of \$50,000.00 (Seller agrees to pay any amounts owing to Buyer pursuant to this subpart (A) within 30 days after its receipt of written evidence of the actual amount of reimbursable costs incurred by Buyer); provided, however, the foregoing shall not limit or include the sums which may be payable by Seller pursuant to Section 20 below, or (B) commence legal proceedings within such thirty (30) day period solely to enforce all rights of specific performance of Seller's obligations set forth in Section 11.(b) above; provided, however, if Buyer enforces specific performance of such obligations of Seller, such action for specific performance will not be construed to require Seller to cure any untrue representation not caused by Seller's (or any third party Controlled by Seller's) action or failure to act, comply with any covenant under this Agreement (other than covenants with respect to Seller's performance of its obligations in Section 11.(b) above), cure any physical condition of the Property not caused by Seller's (or any third party Controlled by Seller's) action or failure to act, or cause any third party not Controlled by Seller to take any action with respect to the Property or Seller; and provided further, however, if, within such thirty (30) day period, (A) Buyer fails to terminate this Agreement as provided in this Section or commence legal proceedings seeking specific performance, and (B) Buyer has not notified Seller in writing that Buyer has waived Buyer's right to terminate this Agreement as a result of Seller's failure to satisfy the applicable condition or conditions after the expiration of such ten (10) business day period, this Agreement shall automatically terminate in whole or in part, as applicable.

If this Agreement automatically terminates in whole or in part, as applicable, as provided in this Section 12.(b), the Earnest Money (or applicable portion thereof) shall be returned to Buyer, by Seller to the extent the Earnest Money has not theretofore been delivered to Buyer or retained by Seller as liquidated damages, within five (5) business days after such termination.

After any termination of this Agreement by Buyer pursuant to this Section 12.(b) or any automatic termination as provided above, the Parties shall be released from all further liabilities and obligations hereunder (i) except those that expressly survive a termination of this Agreement, and (ii) other than damages and any other amounts recoverable by Buyer as a result of the failure of Seller to satisfy one or more of its non-Closing obligations under this Agreement.

Notwithstanding anything to the contrary contained in this Agreement, if (i) any of the conditions precedent identified in subpart (5) of Section 11.(h) above have not been satisfied by the scheduled Closing date for a portion of the Nineteen Acre Parcel and remain unsatisfied as of the tenth (10th) business day after Seller's receipt of written notice thereof, (ii) this Agreement has not theretofore been terminated by Seller pursuant to an express right to do so set forth in this Agreement, (iii) all material conditions precedent to Seller's obligation to purchase the

applicable portion of the Nineteen Acre Parcel have been satisfied and the applicable Nineteen Acre Owner is otherwise ready, willing and able to sell such portion to Seller in material accordance with the Nineteen Acre Contract, and (iv) Seller breaches its obligation to purchase such portion in accordance with the Nineteen Acre Contract, then Buyer, within thirty (30) days after the expiration of such cure period and as Buyer's sole and exclusive remedy (Buyer specifically waiving any right to bring an action for monetary damages including, without limitation, compensatory, consequential, speculative and punitive damages), may elect to terminate this Agreement with respect to the portion of the Nineteen Acre Parcel to be sold to Buyer by delivering written notice thereof to Seller within such thirty (30) day period, in which case (1) the Pro Rata Earnest Money attributable to the Nineteen Acre Parcel shall be returned to Buyer, by Seller to the extent such Earnest Money has not theretofore been delivered to Buyer or retained by Seller as liquidated damages, within five (5) business days after such termination, (2) Seller shall be obligated to reimburse Buyer for Transaction Costs which only relate specifically to the portion of the Nineteen Acre Parcel to be sold to Buyer (Seller agrees to pay any amounts owing to Buyer pursuant to this subpart (2) within 30 days after its receipt of written evidence of the actual amount of reimbursable costs incurred by Buyer); provided, however, the foregoing shall not limit or include the sums which may be payable by Seller pursuant to Section 20 below, and (3) all other rights and obligations of Seller and Buyer hereunder relating solely to the unpurchased portions of the Property as to which this Agreement was terminated, except those which expressly survive a termination of this Agreement, shall terminate immediately (the remaining provisions hereof continuing in full force and effect to the extent not affected by Buyer's termination of this Agreement pursuant to this paragraph).

(c) Liability Limitation. **NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER SELLER OR BUYER BE LIABLE FOR SPECIAL, EXEMPLARY, CONSEQUENTIAL, SPECULATIVE OR PUNITIVE DAMAGES.**

(d) Survival of Obligations. The rights and obligations of the Parties set forth in this Section 12 shall survive the Closings of the transactions contemplated hereby or any termination of this Agreement.

### 13. **Defaults and Remedies Not Related to a Closing.**

(a) Buyer Default. Any one or more of the following shall, if not cured within the period of time specified for cure (which shall not be less than thirty (30) days following Buyer's receipt of written notice from Seller or its agent asserting that Buyer is in breach of one or more of the following (each a "**Buyer Default Notice**"), constitute a material default by Buyer under this Agreement (each a "**Buyer Default**"):

(1) Default by Buyer in the due and punctual payment, performance or observance of any material obligation or material covenant of Buyer under this Agreement other than Buyer's covenants in Section 11 or otherwise related to Buyer's failure to perform in connection with a Closing, for which Seller's remedies are set forth in Section 12(a) (to avoid doubt, all indemnification obligations of Buyer, as well as obligations to pay to Seller, or reimburse Seller for, monetary amounts, are "material obligations").

(2) Any representation or warranty made by Buyer in this Agreement is false or misleading in any material respect as of the time made.

(3) Any report, certificate or other document furnished by Buyer to Seller pursuant to this Agreement is intentionally false or misleading in any material respect at the time furnished.

(4) The filing by Buyer of a petition for the appointment of a receiver or trustee with respect to Buyer or any of its property.

(5) The making by Buyer of a general assignment for the benefit of creditors.

(6) The entry of an order for relief under any state or federal bankruptcy or other insolvency statutes.

(7) The filing by Buyer of an insolvency proceeding with respect to Buyer or any proceeding with respect to Buyer for compromise, adjustment or other relief under the laws of any country or state relating to relief of debtors.

(b) Seller Default. Any one or more of the following shall, if not cured within the period of time specified for cure (which shall not be less than thirty (30) days following Seller's receipt of a written notice from Buyer or its agent asserting that Seller is in breach of one or more of the following (each a "**Seller Default Notice**"), constitute a material default by Seller under this Agreement (each a "**Seller Default**"):

(1) Default by Seller in the due and punctual payment, performance or observance of any material obligation or material covenant of Seller under this Agreement other than Seller's covenants in Section 11 or otherwise related to Seller's failure to perform in connection with a Closing, for which Buyer's remedies are set forth in Section 12(b) (to avoid doubt, all indemnification obligations of Seller, as well as obligations to pay to Buyer, or reimburse Buyer for, monetary amounts, are "material obligations").

(2) Any representation or warranty made by Seller in this Agreement is false or misleading in any material respect as of the time made.

(3) Any report, certificate or other document furnished by Seller to Buyer pursuant to this Agreement is intentionally false or misleading in any material respect at the time furnished.

(4) The filing by Seller of a petition for the appointment of a receiver or trustee with respect to Buyer or any of its property.

(5) The making by Seller of a general assignment for the benefit of creditors.

(6) The entry of an order for relief under any state or federal bankruptcy or other insolvency statutes.

(7) The filing by Seller of an insolvency proceeding with respect to Seller or any proceeding with respect to Seller for compromise, adjustment or other relief under the laws of any country or state relating to relief of debtors.

(c) Default Notices to Buyer. At any time that there exists a default by Buyer in the due and punctual payment, performance or observance of any obligation of Buyer under this Agreement, Seller may give Buyer a written notice, indicated to be a "Buyer Default Notice" under this Section, identifying such default and specifying a period of time for cure of the same (which shall not be less than 30 days).

(d) Remedies for Buyer Defaults. Except as otherwise expressly provided to the contrary in this Agreement (for example, in the last sentence of this subsection), if a Buyer Default exists and is not cured following the delivery of a Buyer Default Notice and the expiration of the cure period described above, then Seller may, until such time as the applicable Buyer Default has been cured, as its sole remedies for such Buyer Default: (1) recover from Buyer any sums of money that are due and payable by Buyer to Seller under this Agreement as well as any damages that may be provable by Seller as a result of Buyer's breach of its obligations under this Agreement (excluding any special, exemplary, consequential, speculative or punitive damages); or (2) commence an action for specific performance or other equitable relief against Buyer with respect to the applicable Buyer



Default. Notwithstanding the foregoing, if any Buyer Default has occurred and is continuing on the date of a scheduled Closing, Seller will have, in addition to the foregoing, the remedies provided for in Section 12.(a) above.

(e) Default Notices to Seller. At any time that there exists a default by Seller in the due and punctual payment, performance or observance of any obligation of Seller under this Agreement, Buyer may give Seller a written notice, indicated to be a "Seller Default Notice" under this Section, identifying such default and specifying a period of time for cure of the same (which shall not be less than 30 days).

(f) Remedies for Seller Defaults. Except as otherwise expressly provided to the contrary in this Agreement (for example, Section 3 above and in the last sentence of this subsection), if a Seller Default exists and is not cured following the delivery of a Seller Default Notice and the expiration of the cure period described above, then Buyer may, until such time as the applicable Seller Default has been cured, as its sole remedies for such Seller Default: (1) recover from Seller any sums of money that are due and payable by Seller to Buyer under this Agreement as well as any damages that may be provable by Buyer as a result of Seller's breach of its obligations under this Agreement (excluding any special, exemplary, consequential, speculative or punitive damages); or (2) commence an action for specific performance or other equitable relief against Seller with respect to the applicable Seller Default. Notwithstanding the foregoing, if any Seller Default has occurred and is continuing on the date of a scheduled Closing, Buyer will have, in addition to the foregoing, the remedies provided for in Section 12.(b) above.

(g) Remedies for Certain Seller Development Defaults. Except as otherwise expressly provided to the contrary in this Agreement (for example in the last sentence of this subsection), if a Seller Default exists and is not cured following the delivery of a Seller Default Notice and the expiration of the cure period described above, and such Seller Default is with respect to a breach of Seller's covenants in Sections 15(c), (d), (e) and/or (h) below, then Buyer may, until such time as the applicable Seller Default has been cured, in addition to the remedies provided above in subparagraph 13(f), enter upon the Retained Property and perform or cause to be performed any or all of Seller's covenants to be performed pursuant to Sections 15.(c), (d), (e) and/or (h), Seller hereby granting an irrevocable license to Buyer and its agents, representatives, consultants, contractors and subcontractors to enter upon the Retained Property to complete same only to the extent Buyer has the foregoing self-help remedies available to it pursuant to this subparagraph, which license will automatically terminate with no further action required by either Party once Seller has satisfied in all material respects its obligations pursuant to Sections 15(c), (d), (e) and/or (h) below. If Buyer properly effects the foregoing self-help remedies, Buyer will be entitled to recover from Seller 125% of all of Buyer's costs reasonably incurred in connection therewith (such 25% surplus representing agreed upon fair compensation for Buyer's administrative burdens), the amount of such costs to be paid by Seller to Buyer within fifteen (15) days of Seller's receipt of written evidence reasonably satisfactory to Seller of the amount of the same (and if not so timely paid may, at Buyer's option, be credited to the Purchase Price payable at the subsequent Closing(s) until paid).

(h) Enforcement. As the remedy at law for the breach of any of the terms of this Agreement may be inadequate, each enforcing Party shall have the right of temporary and permanent injunction, specific performance and other equitable relief that may be granted in any proceeding brought to enforce any provision hereof or thereof, without the necessity of proof of actual damage or inadequacy of any legal remedy.

#### **14. Indemnification and Exculpation of Seller.**

(a) No Liability. In no event shall Seller have any liability in connection with the demolition, environmental remediation and/or construction of improvements at the Property as a result of, or arising from, any approvals relating thereto given or withheld (or the right to give or withhold such approvals) pursuant to this Agreement, or as a result or arising from any other right to review, comment on or evaluate any plans, drawings, specifications or other documents in connection with the construction and development of improvements upon portions of the Property. In no event shall any such review, approval, comment or evaluation by Seller relieve Buyer of any liability or responsibility under this Agreement, it being understood that Buyer is at all times

ultimately relying on Buyer's skill, knowledge and professional training and experience in preparing (or causing the preparation of) any plans, drawings, specifications or other documents. Buyer further waives and releases any Claims or other remedies of any kind whatsoever against Seller or any Seller Indemnitees for property damage and bodily or personal injuries to Buyer or any of Buyer's Related Parties (or any other party entering the Property on behalf of or at the direction of Buyer) arising out of Buyer's development activities or entrance into or onto, or use in any manner of, the Property, but excluding any Claim arising in whole or in part out of the gross negligence or willful misconduct of Seller or any Seller Indemnitees.

(b) Indemnities. Buyer shall at all times hereafter indemnify, save, defend and hold Seller and all of the Seller Indemnitees harmless from all Claims arising out of or in any way relating, in whole or in part, to actions undertaken in connection with the entering in, on or across any of the Property by Buyer, any of Buyer's Related Parties or any other party on behalf of or at the direction of Buyer at any time prior to Buyer's acquisition of title thereof, **EVEN IF SUCH CLAIMS WERE CAUSED BY THE CONTRIBUTORY OR PARTIAL NEGLIGENCE OF SELLER OR ANY SELLER INDEMNITEES**, but excluding any Claim arising in whole or in part out of the sole or gross negligence or willful misconduct of Seller or any Seller Indemnitees.

The foregoing indemnities given by Buyer shall in no event cover Claims arising (i) from Seller's or any Seller Indemnitees' sole or gross negligence or willful misconduct, (ii) from a condition which arises entirely during the period of time beginning on the Contract Date and ending on the date that Buyer acquires title to the applicable portion of the Property, or (iii) from a condition which arises entirely after any transfer by Buyer of such portion of the Property to a bona fide third-party purchaser as contemplated by the proposed residential development to take place at the Property.

(c) Survival. The rights and obligations of the Parties set forth in this Section 14 shall survive the Closings of the transactions contemplated hereby or any termination of this Agreement.

**15. Development Covenants of Seller.** For so long as this Agreement is in force or effect (and in the event of partial termination, then the following shall apply only to the portion of the Land to which this Agreement is still in effect with respect thereto):

(a) Zoning Entitlement. Seller will use reasonable efforts to cause the Zoning Entitlement to be created by December 15, 2012, but shall have no obligation to cause the same to be created, and provided that Buyer reasonably cooperates with such efforts by Seller (including, without limitation, acting as the official applicant for the same), Buyer's only recourse in the event the Zoning Entitlement has not been created by this date will be to terminate this Agreement as provided in Section 3 above notwithstanding anything to the contrary in this Agreement.

(b) Road Network and Storm Collection Devices Work. Seller will retain ownership of and responsibility for the Existing Road Network and Storm Collection Devices; provided, however, that notwithstanding the foregoing, Seller shall not be responsible for damages caused by Buyer or Buyer's contractors or such contractors' subcontractors, but will remain responsible for any damage related to the construction of the parks and other improvements by City paid contractors, and for the ongoing maintenance thereof, in a clean and neat appearance, and in all material respects not less attractive in presentation, or less functional, than other roads and storm collection devices owned by Seller as of the Contract Date. As soon as practicable after the Contract Date, and in any event prior to March 31, 2013, Seller will perform or cause to be performed the following with respect to the Existing Road Network, the Storm Collection Devices and the existing water distribution system at the Sixteen Acre Parcel: cause all of the foregoing to be in good working order prior to the First Closing Date and as soon as practicable thereafter (i) cause the Existing Road Network to be Complete except for curbs, gutters and topping, and (ii) cause the Storm Collection Devices and the then existing water distribution system at the Sixteen Acre Parcel to be complete and fully functional in all material respects. Once not less than 95% of the single-family residences contemplated by the Land Plans have been completed, Seller will perform or cause to be

performed the following to all public roads located on or contiguous to the Property (i.e., "top" such public roads) as soon as practicable after such completion: application of final layer of asphalt and applicable road striping in the manner customarily performed by or on behalf of Seller with respect to public roads with the city limits of the City of Dunwoody, Georgia.

(c) 1.4 Acre Park. Seller will construct or cause the construction of a public park approximately 1.4 acres in size in generally the location of the park shown on the Land Plans as the "1.4 Acre Park" and not materially dissimilar to that shown on the Exhibit "H-1" attached hereto. Such construction will include the removal of any existing infrastructure at the location of this park. Seller will work with Buyer prior to the First Closing in connection with a design for this park, including, without limitation, landscaping, hardscaping, and other design elements such as playgrounds and benches, but the design for this park will be as reasonably determined by Seller; provided, however, if agreements of the Parties are reached prior to the First Closing in connection with a design for this park, such agreements will be documented via a supplement to this Agreement and the construction of this park will be substantially in accordance with such design agreements unless Buyer otherwise consents in writing to one or more variances thereto. The grading and planting of grass for this park will be completed by March 1, 2013, the final construction of this park will be completed by November 1, 2013, and this park will be open to the public by November 1, 2013, or as soon as practicable after such date, and will remain so thereafter unless the Parties agree in writing otherwise. Seller will maintain this park, or cause this park to be maintained, in clean and neat appearance, and in all material respects not less attractive in presentation to the condition of other parks owned by Seller as of the Contract Date.

(d) 1.9 Acre Park. Seller will construct or cause the construction of a public park approximately 1.9 acres in size in generally the location of the park shown on the Land Plans as the "1.9 Acre Park" and not materially dissimilar to that shown on the Exhibit "H-2" attached hereto. Such construction will include the removal of any existing infrastructure at the location of this park. Seller will work with Buyer prior to the First Closing in connection with a design for this park, including, without limitation, landscaping, hardscaping, and other design elements such as playgrounds and benches, but the design for this park will be as reasonably determined by Seller; provided, however, if agreements of the Parties are reached prior to the First Closing in connection with a design for this park, such agreements will be documented via a supplement to this Agreement and the construction of this park will be substantially in accordance with such design agreements unless Buyer otherwise consents in writing to one or more variances thereto. The grading and planting of grass for this park will be completed by March 1, 2013, the final construction of this park will be completed by April 1, 2014, and this park will be open to the public by April 1, 2014, or as soon as practicable after such date, and will remain so thereafter unless the Parties agree in writing otherwise. Seller will maintain this park, or cause this park to be maintained, in clean and neat appearance, and in all material respects not less attractive in presentation to the condition of other parks owned by Seller as of the Contract Date.

(e) Linear Park Network. Seller will construct or cause the construction of the linear park network as generally depicted on the Exhibit "H-3" attached hereto. Such construction will include the removal of any existing infrastructure at the location of this park. Seller will work with Buyer prior to the First Closing in connection with a design for this park, including, without limitation, landscaping, hardscaping, and other design elements such as benches, lighting, signage and pet stations, but the design for this park will be as reasonably determined by Seller; provided, however, if agreements of the Parties are reached prior to the First Closing in connection with a design for this park, such agreements will be documented via a supplement to this Agreement and the construction of this park will be substantially in accordance with such design agreements unless Buyer otherwise consents in writing to one or more variances thereto. The final construction of this park will be completed by March 1, 2013, and this park will be open to the public by March 1, 2013, or as soon as practicable after such date, and will remain so thereafter unless the Parties agree in writing otherwise. Seller will maintain this park, or cause this park to be maintained, in clean and neat appearance, and in all material respects not less attractive in presentation to the condition of other parks owned by Seller as of the Contract Date. Buyer acknowledges that Buyer will be responsible for the construction of all sidewalks abutting the Property as well as

any other sidewalks described in Section 16 below, and also for improvements to portions of this park located within any gated areas at the Project, and Seller will be responsible for the construction of up to 12 foot wide paths adjacent to portions of the Retained Property (including, without limitation, the foregoing linear park, commercial area, and 1.4 acre park) all as depicted on the Land Plans or as otherwise noted in the Zoning Entitlement.

(f) Drainage Area on 16 Acre Parcel. Seller will retain ownership of and responsibility for the "Drainage Area" on the Sixteen Acre Parcel as depicted on the Land Plans, including all pipes and structures within this area or located within Seller-owned rights-of-way. Buyer acknowledges that Buyer is responsible for installing and maintaining BMP's in accordance with Legal Requirements to keep this drainage area reasonably free of additional sediment and debris. The drainage area at the Sixteen Acre Parcel was designed and installed based on a more intensive use than the proposed uses of the Property as contemplated by the Land Plans, and as a result of the foregoing and the reduction of impervious surfaces and reduced water flows at the applicable portions of the Property, the Parties do not anticipate that any further studies or modifications will need to be made to this drainage area and facilities related thereto. Notwithstanding the foregoing, Seller may, if Seller believes it to be economically and environmentally feasible to do so, reduce the overall size of the detention pond located on the Sixteen Acre Parcel for the purpose of creating additional linear park space near the entrance of Dunwoody Park Drive provided that such reduction can be effected without violating any Legal Requirements applicable thereto. The extent to which the size of this detention pond is reduced will be determined in the sole discretion of Seller, although Seller will consult with Buyer in connection with Seller's reduction efforts. If there is such a reduction in size of this detention pond and Seller creates one or more platted lots for development, Seller will first offer in writing to sell such lot or lots to Buyer for \$60,000.00 each, and will only sell such lot or lots to another party if Buyer does not agree to purchase such lot or lots within thirty (30) days after Buyer's receipt of such written offer, and/or does not purchase such lot or lots, in the same manner as portions of the Sixteen Acre Parcel are to be sold to Buyer, within six (6) months after Buyer's receipt of such written offer.

(g) Project Signage. With respect to any entry monuments or directional signage at the Project, if such monuments or signage incorporates the branded image of Seller and are approved in writing by Seller prior installation ("**Approved Signage**"), then Seller will reimburse Buyer for one-half of the cost of any such monuments or signage, but not to exceed \$30,000.00 in the aggregate, such reimbursement to occur within thirty (30) days after the later of (1) the installation/construction of any such Approved Signage, and (2) Seller's receipt of evidence reasonably satisfactory of the actual cost incurred by Buyer to acquire such Approved Signage (i.e., the actual cost of the Approved Signage only, and in no event any costs incurred by Buyer to install/construct the same). Other than as provided above in this subsection, Buyer shall be responsible for the cost to design, acquire and install/construct all monuments and other signage at the Project.

(h) 5 Acre Park. Seller will construct or cause the construction of a public park approximately 5 acres in size in generally the location of the park shown on the Land Plans as the "5 Acre Park" and not materially dissimilar to that shown on the Exhibit "H-4" attached hereto. Such construction will include the removal of any existing infrastructure at the location of this park. Seller will work with Buyer prior to the First Closing in connection with a design for this park, including, without limitation, landscaping, hardscaping, and other design elements such as playgrounds and benches, but the design for this park will be as reasonably determined by Seller; provided, however, if agreements of the Parties are reached prior to the First Closing in connection with a design for this park, such agreements will be documented via a supplement to this Agreement and the construction of this park will be substantially in accordance with such design agreements unless Buyer otherwise consents in writing to one or more variances thereto. The final construction of this park will be completed by May 31, 2015, and this park will be open to the public by May 31, 2015, or as soon as practicable after such date, and will remain so thereafter unless the Parties agree in writing otherwise. Seller will maintain this park, or cause this park to be maintained, in clean and neat appearance, and in all material respects not less attractive in presentation to the condition of other parks owned by Seller as of the Contract Date.

(i) Potential Relocation of Pernoshal Road. No sooner than 2023, Seller will attempt to relocate Pernoshal Road to an area along the southern property line of the portion of the Property being sold to Buyer out of the Nineteen Acre Parcel such that it is connected with existing pavement to the Property at the entrance to Buyer's gated community as constructed. The failure of such a relocation to occur will not give rise to any rights or remedies of Buyer against Seller under this Agreement or otherwise at law or in equity.

(j) Trail Network. Seller will construct or cause the construction of a trail network which connects portions of the Retained Property located on the Sixteen Acre Parcel with portions of the Retained Property located on the Nineteen Acre Parcel. The design and location for this trail network will be as determined by Seller in its sole and absolute discretion, but in any event will have a width of not less than approximately eight (8) feet and will not encroach upon any of the portion of the Nineteen Acre Parcel to be sold to Buyer and will not materially deviate from the planned location as shown on the Exhibit "H-5" attached hereto. Once completed, Seller will use reasonable efforts to connect this trail to Brook Run Park, but the failure of Seller to so connect this trail will not give rise to any rights or remedies of Buyer against Seller under this Agreement or otherwise at law or in equity.

(k) Suspension of Development Activities. Upon the occurrence and during the continuance of a Buyer Default, Seller will have the right, but not any obligation and in addition to any other remedies available to Seller as a result of such Buyer Default, to suspend one or more of the development activities of Seller described in this Section 15. In the event of such suspension, the deadline dates for suspended work will be extended on a day-for-day basis.

(l) Cost of Development Activities. Unless otherwise expressly provided to the contrary in this Agreement, the cost to design, plan for, construct, maintain, equip and complete the construction of, or to perform, the development activities of Seller described in this Section 15 will be the sole responsibility of Seller.

(m) Remediation of Development Obstacles. If identified by Buyer in a written notice delivered to Seller on or before July 31, 2012, Seller will cure to the reasonable satisfaction of Buyer any of the following: any matters with respect to the Property (including, without limitation, title and survey matters [whether or not Permitted Encumbrances], and/or the physical, geological, or environmental conditions of the Property and/or any improvements on or serving the same and/or its infrastructure) that Buyer desires corrected and that cost \$25,000.00 or more to correct. Alternatively, if Seller cannot cure, or chooses not to cure in a written notice delivered to Buyer on or before August 31, 2012, any such matters within a reasonable amount of time following such date, the Purchase Price will be equitably reduced based on the reasonably anticipated cost to be incurred by Buyer to cure the same, but in no event will any such reduction be more than \$750,000.00. If the anticipated cost to cure such matters exceeds \$750,000.00 and Seller elects in writing not to cure such matters, Buyer may terminate the Agreement with respect to the portion of the Sixteen Acre Parcel to be sold to Buyer (if matters to be cured affect such portion) or the portion of the Nineteen Acre Parcel to be sold to Buyer (if matters to be cured affect such portion), or in its entirety if matters to be cured affect both such portions, by giving Seller written notice thereof within thirty (30) days after Buyer's receipt of such election notice, in which case the Earnest Money or the Pro Rata Earnest Money, as applicable, will be returned to Buyer within five (5) business days thereafter and the Parties shall have no further rights or obligations under this Agreement except those that expressly survive a termination of the same including, without limitation, rights and obligations continuing in full force and effect to the extent not affected by Buyer's termination of this Agreement pursuant to this subparagraph.

(n) Development of Retained Property. Buyer will include in its application for the Zoning Entitlement a listing of uses of the Retained Property to be prohibited by the Zoning Entitlement, and all such prohibited uses as reflected in the Zoning Entitlement actually created are herein referred to as the "**Restricted Uses**". Prior to any sale of all or any portion of the Retained Property, Seller will file of record in DeKalb County, Georgia an instrument identifying the Restricted Uses and prohibiting the same by owners or operators of all or any portions of the Retained Property, which instrument will be in form and content reasonably acceptable to the Parties and in any event will provide for a termination of the prohibitions against all of the Restricted Uses on the earlier of

(i) the date on which all residential dwellings developed at the Sixteen Acre Parcel portion of the Project have been constructed and sold at least once, or (ii) the date that is seventh annual anniversary of the creation of the Zoning Entitlement. As of the Contract Date, Seller has identified the following as preferred uses for portions of the Retained Property: restaurant use and retail use. Notwithstanding the immediately preceding sentence, Seller shall have no obligation to use, or cause the use of, any portion of the Retained Property for any of such preferred uses. Finally, Seller will include a commercial designation for the portions of the Retained Property identified as "Commercial Areas" or "Commercial Tract" on the Land Plans in Seller's planned commercial zoning application.

**16. Development Covenants of Buyer.** For so long as this Agreement is in force or effect (and in the event of partial termination, then the following shall apply only to the portion of the Land to which this Agreement is still in effect with respect thereto):

(a) Sidewalk Construction and Drainage Area Responsibility. Buyer shall construct sidewalks to the specific widths as shown on Exhibit "H", and any other sidewalks identified as a Buyer construction obligation on the Land Plans and/or the Zoning Entitlement, which construction shall be completed no later than April 30, 2014. Buyer will be responsible for installing and maintaining BMP's in accordance with Legal Requirements to keep this drainage area reasonably free of additional sediment and debris.

(b) Public Areas Hardscapes and Landscape Elements. For the avoidance of doubt, the Parties acknowledge and agree that Buyer will have no responsibility for the construction or installation of hardscapes and landscape elements on property not owned by Buyer including, without limitation, any of the Retained Property.

(c) Construction of Residential Dwellings at the Property. Provided the following is not prohibited by the Zoning Entitlement, Buyer will construct no more than 125 owner-occupied single-family residential dwellings at the Property, Buyer acknowledging that the actual number of such dwellings that may eventually be constructed at the Property will be subject to the Zoning Entitlement, and Seller and Buyer acknowledging that if the Zoning Entitlement allows only something less than 70 lots on the portion of the Property located on the Sixteen Acre Parcel, or something less than 36 lots on the portion of the Property located on the Nineteen Acre Parcel, Buyer may in good faith determine that it is financially unfeasible to complete Buyer's planned development of the Property and exercise the remedies expressly provided to Buyer in this Agreement as a result thereof.

(d) Housing Unit Elevation Plans. Provided that the same do not conflict with, and/or violate, any Legal Requirements applicable thereto and/or the Zoning Entitlement, the elevations of the owner-occupied single-family dwellings shall be substantially similar to those identified in the Exhibit "I" attached hereto, which elevations may be modified with the prior written consent of Seller provided that any such modifications do not conflict with, and/or violate, any Legal Requirements applicable thereto and/or the Zoning Entitlement. Materials used for the exterior of such dwellings may include brick, stone, cement siding, hard coat stucco, or any combination thereof provided that the foregoing does not conflict with, and/or violate, any Legal Requirements applicable thereto and/or the Zoning Entitlement. Buyer will not use, or allow the use of, composite board siding, vinyl siding, EFIS stucco or other non-durable exterior materials in the construction/renovation of any such dwellings at the Property. Buyer shall use its best efforts to incorporate brick elements into the exteriors of all such dwellings constructed at the Property.

(e) Limitation of Housing Dwellings on Key Roads. No more than three (3) owner-occupied single-family dwellings constructed adjacent to Key Roads shall have front-loaded garages.

(f) No Side-By-Side Townhomes. Buyer will not construct, or permit the construction of, any side-by-side townhouses on any portion of the Property; provided, however, both "Gates on Woodlawn" paired homes and "Woodstock Downtown Bailey" paired homes as depicted in the Land Plans and/or the Zoning Entitlement will be allowed at the Project as long as the exterior elevations of a paired home is sufficiently varied from its adjacent home.

(g) Breakdown of Housing Types; Limitation of Private Amenities. The Land Plans contemplate a variety of owner occupied single-family dwellings being constructed at the Project. Buyer shall submit to Seller prior to the First Closing an initial breakdown of the variety and placement of all such dwellings for acceptance by Seller, but such variety and placement can thereafter be modified with the prior written consent of Seller, which consent will not be unreasonably withheld, conditioned or delayed. In no event will Buyer construct, or permit the construction of, more than two (2) private amenity facilities at the Project.

(h) Covenants Regarding Construction Activities at the Property. Intentionally omitted.

(i) Rights of Way Construction Requirements. All alterations and excavations within the rights-of-way at the Project must be pursuant to plans, calculations, and technical specifications prepared by a professional engineer licensed to practice in the State of Georgia, and approved by the appropriate staff of Seller, pursuant to conditions of zoning (if any) and standards set forth or promulgated under the Zoning Entitlement and, when applicable, all other Legal Requirements, including, but not limited to, the standards of any Governmental Authority having jurisdiction over such rights-of-way.

(j) Suspension of Development Activities. Upon the occurrence and during the continuance of a Seller Default, Buyer will have the right, but not any obligation and in addition to any other remedies available to Buyer as a result of such Seller Default, to suspend one or more of the development activities of Buyer described in this Section 16. In the event of such suspension, the deadline dates for suspended work will be extended on a day-for-day basis.

(k) Cost of Development Activities. Unless otherwise expressly provided to the contrary in this Agreement, the cost to design, plan for, construct, maintain, equip and complete the construction of, or to perform, the development activities of Buyer described in this Section 16 will be the sole responsibility of Buyer.

**17. Condemnation.** If all or any material portion of the Property is condemned or taken, or threatened to be condemned or taken, by any Governmental Authority, Seller shall give Buyer immediate notice thereof with a complete description of all relevant information and complete copies of all relevant documentation. Within thirty (30) days of such Notice, Buyer may elect to either: (i) terminate this Agreement with respect to all or the affected portion of the Property by written notice to Seller within thirty (30) days of Buyer's receipt of such Notice (whereupon the Purchase Price shall be adjusted for lots or acreage not purchased in accordance with Section 5); or (ii) collect all awards from any condemnation and keep this Agreement in full force and effect, in which case Seller shall promptly execute all documents reasonably required by Buyer to assign Seller's rights therein to Buyer. For purposes of this Section, the phrase "material portion of the Property" will mean the taking of any of the following portions of the Property: (1) any portion of any lot (or planned lot depicted on the Land Plans) that would materially affect Buyer's planned construction of any improvements thereon or Buyer's projected sales price thereof; (2) any portion of the Property the loss of which materially and adversely affects access thereto or visibility thereof; or (3) any portion of the Property the loss of which Buyer reasonably believes will materially and adversely affect the overall development, appearance or sales (including slowing of sales or lowering of sales prices) at either the Nineteen Acre Parcel or the Sixteen Acre Parcel (in which case Buyer shall have the option to terminate this Agreement as to the entire such parcel).

**18. Force Majeure.** If either Party shall be delayed or hindered in, or prevented from, the performance of any act required hereunder by reason of any Force Majeure event, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Section shall not apply to nor operate to excuse Buyer or Seller from the payment of amounts due to the other Party strictly in accordance with the terms of this Agreement. Each Party shall promptly notify the other Party of any Force Majeure delay as soon as practicable after the same has been identified.

**19. Brokers.** Buyer and Seller represent, warrant and agree that no real estate commissions, finders' fees, or brokers' fees have been or will be incurred in connection with the sale of the Property by Seller to Buyer. In the event of a real estate commission claim, Buyer shall indemnify, defend and hold Seller and all Seller Indemnitees harmless from any claim, liability, obligation, cost or expense (including attorneys' fees and expenses) for fees or commissions relating to Buyer's purchase of the Property asserted against Seller by any broker or other person claiming by, through or under Buyer or whose claim is based on Buyer's acts. In the event of a real estate commission claim, Seller shall indemnify, defend and hold Buyer harmless from any claim, liability, obligation, cost or expense (including attorneys' fees and expenses) for fees or commissions relating to Buyer's purchase of the Property asserted against Buyer by any broker or other person claiming by, through or under Seller or whose claim is based on Seller's acts. The rights and obligations of the Parties set forth in this Section shall survive all Closings and any termination of this Agreement.

**20. Recovery of Costs and Fees.** Any Party who is the prevailing party in any legal proceeding against the other Party brought under or with respect to this Agreement or the transaction contemplated hereby shall be additionally entitled to recover court costs and reasonable attorneys' fees and expenses (at trial and on appeal) from the non-prevailing party as awarded by court. For purposes of this Section, a Party shall be considered to be the "prevailing party" to the extent that (1) such Party initiated the litigation and substantially obtained the relief which it sought (whether by judgment, voluntary agreement or action of the other Party, trial, or alternative dispute resolution process), (2) such Party did not initiate the litigation and did not receive judgment in its favor, but the Party receiving the judgment did not substantially obtain the relief which it sought, (3) such Party did not initiate the litigation, but received a judgment in its favor, or (4) the other party to the litigation withdrew its claim or action without having substantially received the relief which it was seeking. The rights and obligations of the Parties set forth in this Section shall survive all Closings and any termination of this Agreement.

**21. Assignment Restrictions.** Buyer shall not, and shall not have the right to, assign this Agreement or any of Buyer's interest in, or rights under, this Agreement, or permit a Change in Ownership (as defined below), without obtaining the prior written consent of Seller, which consent may be withheld by Seller in Seller's sole and absolute discretion; provided, however, that notwithstanding any provision of this Agreement to the contrary, if Buyer is not then in default under this Agreement and provided that Buyer notifies Seller in writing of such assignment not less than five (5) business days before the scheduled date of the applicable Closing, Buyer shall be permitted to assign in good faith its rights under this Agreement without first obtaining Seller's consent thereto to (1) any entity under the Control (as defined below) of Buyer or any of Buyer's managers, executive officers, and/or shareholders as of the Contract Date, or (2) any Affiliate (as hereinafter defined) of Buyer. The term "**Change in Ownership**" will mean any direct or indirect change in the ownership structure or Control (as defined below) of Buyer including, without limitation, any direct or indirect change of beneficial ownership and any change of managing member, general partner or other control party, and any agreement to do any of the foregoing, and the term "**Affiliate**" will mean a person or entity that is directly or indirectly, through one or more intermediaries, Controlled by or under common Control with the party in question. As used in the two immediately preceding sentences, the term "**Control**" will mean, with respect to an entity that is a corporation, the right to the exercise, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the shares of the controlled corporation and, with respect to an entity that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity. Buyer acknowledges and agrees that (i) any assignment by Buyer in contravention of this Section shall be void and shall not relieve Buyer of Buyer's obligations and liabilities hereunder, and (ii) any assignment of this Agreement permitted hereby shall not relieve Buyer from its obligations set forth herein. No assignment consented to in writing by Seller shall be effective unless and until Buyer delivers a fully-executed assignment of this Agreement in which the assignee expressly assumes to be bound by this Agreement and to assume, pay and perform all of the duties, obligations, agreements and covenants of Buyer under this Agreement from and after the effective date of the applicable assignment. The covenants of Buyer in this Section are "material covenants".



**22. Notices.** All notices, requests, demands and other communications hereunder shall be in writing and shall be (i) delivered by hand, (ii) transmitted by electronic transmission and promptly confirmed by either (a) Federal Express (or comparable overnight delivery service) with signature required, or (b) certified mail, return receipt requested, (iii) sent prepaid by Federal Express (or a comparable overnight delivery service) with signature required, or (iv) sent by the United States mail, certified, postage prepaid, return receipt requested, at the addresses and with such copies as designated below. Any notice, request, demand or other communication delivered or sent in the manner aforesaid shall be deemed given and received (as the case may be) when actually delivered by hand delivery, electronic transmission (and confirmed as provided above), or overnight courier, or, when sent by United States mail, postage prepaid, certified mail, return receipt requested, the earlier of (a) the date of actual delivery, or (b) three (3) business days after deposit in the United States mail.

If to Seller:	City of Dunwoody 41 Perimeter Center East, Suite 250 Dunwoody, Georgia 30346 Attention: Warren Hutmacher
With a copy to:	Alison S. Woodrow, Esq. FSB FisherBroyles 5023 Buckline Crossing Dunwoody, Georgia 30338
With a copy to:	City of Dunwoody 41 Perimeter Center East, Suite 250 Dunwoody, Georgia 30346 Attention: City Attorney
If to Buyer:	JW Acquisitions, LLC 4125 Atlanta Road SE Smyrna, Georgia 30080 Attention: Director of Land Acquisitions Email: Bryan.Musolf@jwhomes.com
With a copy to:	JW Acquisitions, LLC 4125 Atlanta Road SE Smyrna, Georgia 30080 Attention: General Counsel Email: <a href="mailto:Rob.Parker@jwhomes.com">Rob.Parker@jwhomes.com</a>

**23. Survival.** Except as expressly provided to the contrary in this Agreement (including, without limitation, Section 7.(b) above), the terms, conditions and provisions of this Agreement shall be not be merged into any of the instruments and documents executed and delivered at any Closing, and shall survive such Closing.

**24. Run With The Land.** The rights and obligations of the Parties under this Agreement shall run with the land.

**25. Miscellaneous.**

(a) Time of Essence. Time is of the essence hereof.

(b) Time for Performance. Whenever any determination is to be made or action to be taken on a date specified in this Agreement, if such date shall fall upon a Saturday, Sunday or holiday observed by federal savings

banks in the State of Georgia (each other day being a "business day" for purposes hereof), the date for such determination or action shall be extended to the first business day immediately thereafter. Except as expressly noted herein to the contrary, time periods herein referred to shall mean Eastern Standard Time or Eastern Daylight Time, as applicable.

(c) Governing Law. This Agreement shall be governed by and construed under and in accordance with the laws of the State of Georgia without regard to its principles of conflicts of laws. All obligations of the Parties created hereunder are performable in the county where the Property is located.

(d) Entire Agreement; Modifications. This Agreement supersedes all prior discussions and agreements between Seller and Buyer with respect to the Property and contains the sole and entire understanding between Seller and Buyer with respect to the Property. All promises, inducements, offers, letters of intent, solicitations, agreements, commitments, representations and warranties heretofore made between the Parties are merged into this Agreement. This Agreement shall not be modified or amended in any respect except by a written instrument executed by or on behalf of each of the Parties.

(e) 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.

(f) Captions. All captions, headings, section and subsection numbers and letters and other reference numbers or letters are solely for the purpose of facilitating reference to this Agreement and shall not supplement, limit or otherwise vary in any respect the text of this Agreement.

(g) References. All references to sections or subsections shall be deemed to refer to the appropriate section or subsection of this Agreement. Unless otherwise specified in this Agreement, the terms "herein," "hereof," "hereunder" and other terms of like or similar import, shall be deemed to refer to this Agreement as a whole, and not to any particular section or subsection hereof.

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

(i) Waiver. Any condition or right of termination, cancellation or rescission granted by this Agreement to Buyer or Seller may be waived by such party. However, no waiver of any of the foregoing or any condition or covenant of this Agreement to be satisfied or performed by a Party shall be deemed to imply or constitute a further waiver of the same, or any like condition or covenant, and nothing contained in this Agreement nor any act of a Party, except a written waiver signed by such Party, shall be construed as a waiver of any condition or covenant to be performed by the other Party.

(j) Rights Cumulative. Except as expressly limited by the terms of this Agreement, all rights, powers and privileges conferred under this Agreement shall be cumulative and not restrictive of those given by law.

(k) Successors and Assigns. This Agreement shall be binding upon and inure of the benefit of the Parties and their respective heirs, successors and permitted assigns.

(l) No Site Improvement Work. The Property shall be delivered to Buyer on an "as-is" basis, and, except as otherwise expressly provided to the contrary in this Agreement, Buyer shall be responsible for all site improvement work including, but not limited to, (i) earthwork and grading as needed for construction of contemplated improvements, (ii) providing on-site, below ground storm water detention, and (iii) extending utilities from the boundary line of the Property to individual lots and improvements to be constructed thereon.

(m) No Third Party Beneficiaries. There are no third-party beneficiaries, express or implied, of this Agreement.

(n) Legal Construction. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. Furthermore, in lieu of any such invalid, illegal or unenforceable provision, there shall be automatically added to this Agreement a provision as similar to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

(o) Gender and Number. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural and vice versa, unless the context requires otherwise.

(p) Rule of Construction. The Parties acknowledge that the Parties and their respective counsel have each reviewed and revised this Agreement, and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

(q) Further Assurances. Seller and Buyer each covenant and agree to sign, execute and deliver, or cause to be signed, executed and delivered, and to do or make, or cause to be done or made, upon the written request of the other party, any and all agreements, instruments, papers, deeds, acts or things, supplemental, confirmatory or otherwise, as may be reasonably required by either Party for the purpose of or in connection with consummating the transactions described herein. This includes, without limitation, any instruments to be filed in the real property records of the county in which the Property is located to provide notice of the rights, remedies, covenants, conditions, restrictions or other matters set forth in this Agreement, the Land Plans and/or the Zoning Entitlement as Seller or Buyer, or both, may elect.

(r) No Special Relationship. This Agreement does not and shall not be construed to create a partnership, joint venture, relationship of principal and agent, or any other relationship between the Parties except the relationship of transferor and transferee specifically established hereby. Neither Buyer nor Seller shall be deemed to be a fiduciary of the other Party.

(s) Electronic Transmission. An electronically transmitted copy of a duly executed counterpart of this Agreement shall be sufficient to evidence the binding agreement of each Party to the terms hereof and will constitute an "original" executed counterpart of this Agreement. However, each Party agrees to promptly deliver at least two (2) multiple originals (or multiple original counterparts, if applicable) of this Agreement to the other Party following the delivery of an electronically transmitted copy thereof.

(t) Reporting Requirements. Seller and Buyer agree to comply with any and all reporting requirements applicable to the transaction which is the subject of this Agreement which are set forth in any Legal Requirement of any Governmental Authority including, without limitation, The Foreign Investment in Real Property Tax Act of 1980 and Seller and Buyer further agree upon request to furnish the other party with evidence of such compliance.

(u) Signatory Exculpation. The signatory(ies) for Buyer is/are executing this Agreement in his/their capacity as representative of Buyer and not individually and, therefore, shall have no personal or individual liability of any kind in connection with this Agreement and the transactions contemplated by it. The signatory(ies) for Seller is/are executing this Agreement in his/their capacity as representative of Seller and not individually and,

therefore, shall have no personal or individual liability of any kind in connection with this Agreement and the transactions contemplated by it.

(v) Seller Consent. Except as expressly set forth to the contrary in this Agreement, any time Seller's consent or approval is required, Seller will not unreasonably delay providing a response to Buyer, but Seller may withhold such consent or approval in Seller's sole and absolute discretion.

(w) No Reliance. The Parties represent and acknowledge that in executing this Agreement they do not rely upon, and have not relied upon, any representation or statement made by any other Party by any other Party's agents, representatives, or attorneys will regard to the subject matter, basis or effect of this Agreement except as specifically provided herein.

(x) Representatives. Until the Closing of the sale of the last of the Property to Buyer, each Party will designate, by written notice to the other Party from time to time, a representative that will act as such Party's representative for coordination of design and construction matters and shall have authority to render ordinary day-to-day decisions and furnish information contemplated to be made or furnished by such Party pursuant to this Agreement.

(y) Estoppel Certificates. Each Party (an "**Estoppel Responding Party**") shall, from time to time, within fifteen (15) business days after written request by the other Party (a "**Requesting Party**"), execute and deliver to the Requesting Party and/or such third party designated by the Requesting Party a statement in writing certifying (1) that, except as may be otherwise specified by the Estoppel Responding Party, (i) this Agreement is in full force and effect and unmodified, (ii) the Estoppel Responding Party is not in default in the performance or observance of its obligations under this Agreement, and (iii) to the Estoppel Responding Party's actual knowledge, the Requesting Party is no in default in the performance and observance of the Requesting Party's obligations under this Agreement, and (2) as to such other factual matters as the Requesting Party may reasonably request with respect to this Agreement, the status of any matter relevant to this Agreement, or the performance or observance of the provisions of this Agreement.

(z) Diligent Performance. With respect to any duty or obligation imposed on a Party by this Agreement, unless a time limit is specified for the performance of such duty or obligation, it shall be the duty or obligation of the other Party to commence and perform the same in a diligent and workmanlike manner and to complete the performance of such duty or obligation as soon as reasonably practicable after commencement of performance.

(aa) No Personal Liability. Notwithstanding anything to the contrary set forth in this Agreement, no elective or appointed board, commission, agency, officer or employee of Seller, and no person who is, directly or indirectly, a partner, member, officer, director, shareholder, trustee, beneficiary, employee or agent of Buyer, shall be personally liable for any of the obligations of Seller or Buyer hereunder, and each Party shall look solely to the assets of Seller or Buyer (as the case may be) and shall have no recourse against the assets of such other party as specified in this subsection.

**26. Independent Contract Consideration.** Buyer shall deliver to Seller contemporaneously with its delivery of this Agreement to Seller, in Immediately Available Funds, the amount of One Hundred Dollars (\$100.00) (the foregoing amount is herein referred to as the "**Independent Contract Consideration**"), which amount the parties bargained for and agreed to as consideration to Seller for allowing Buyer to exercise various rights prior to the First Closing Date. The Independent Contract Consideration is in addition to and independent of any other consideration or payment provided in this Agreement, is non-refundable, and it is fully earned and shall be retained by Seller notwithstanding any other provision of this Agreement to the contrary.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement effective as of the Contract Date.


**BUYER:**

JW ACQUISITIONS, LLC, a Georgia limited liability company

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

**SELLER:**

CITY OF DUNWOODY, GEORGIA, a Georgia municipal corporation

By:   
Name: Michael G. Davis  
Title: Mayor

Attest: Sharon Lowery  
Sharon Lowery, City Clerk

**EXHIBITS:**

- Exhibit "A"** - Legal Description of Sixteen Acre Parcel
- Exhibit "B"** - Legal Description of Nineteen Acre Parcel
- Exhibit "B-1"** - Copy of Nineteen Acre Contract
- Exhibit "B-2"** - Depiction of 7/31/2012 Nineteen Acre Parcel
- Exhibit "B-3"** - Depiction of 7/31/2013 Nineteen Acre Parcel
- Exhibit "B-4"** - Depiction of 8/29/2014 Nineteen Acre Parcel
- Exhibit "C"** - Depiction of the Property
- Exhibit "D"** - Depiction of the Retained Property
- Exhibit "E"** - Land Plans
- Exhibit "F"** - Annual Minimum Payment Schedule
- Exhibit "G"** - Limited Warranty Deed
- Exhibit "H"** - Drawings for 1.4 Acre Park
- Exhibit "H-2"** - Drawings for 1.9 Acre Park
- Exhibit "H-3"** - Depiction of Linear Park Network and Sidewalk Construction
- Exhibit "H-4"** - Drawings for 5 Acre Park
- Exhibit "H-5"** - Planned location of the Trail Network
- Exhibit "I"** - Depictions of Housing Unit Plans for the Project
- Exhibit "J"** - Listing of Property Reports
- Exhibit "K"** - Closing Affidavit