

**“AS-IS” CONTRACT FOR SALE AND PURCHASE**

**(Residential Land or Lots)**

SELLER: \_\_\_\_\_

BUYER: \_\_\_\_\_

BINDING AGREEMENT DATE: \_\_\_\_\_, 2017  
[To Be Inserted By **Seller** Per Schedule 1 (a) ]

PROPERTY ADDRESS  
And/Or DESCRIPTION: See Exhibit "A"

**“AS-IS” CONTRACT FOR SALE AND PURCHASE**

THIS “AS-IS” CONTRACT FOR SALE AND PURCHASE (this “**Agreement**”) is made as of the Binding Agreement Date by and between

\_\_\_\_\_, a Georgia limited liability company (“**Seller**”), whose address is \_\_\_\_\_  
and \_\_\_\_\_ (“**Buyer**”), whose address is \_\_\_\_\_.

Buyer and Seller hereby agree that Seller shall sell the Property to Buyer and Buyer shall purchase the Property from Seller, upon the following terms and conditions and for the price herein set forth.

**Article 1.**  
**Defined Terms**

1.1. Certain Definitions. As used herein, the following terms shall have the following meanings:

(a) “**Closing Date**” shall mean on or before November 2, 2017.

~~(a)~~(b) "**Purchase Price:**"

Bid Price	\$ _____
10% Buyers Premium	\$ _____
Purchase Price	\$ _____
10% Earnest Money Binder	\$ _____
Balance of	\$ _____
	due at closing

(c) “**Deposit**” shall mean the amount from time to time held by the Title Company (the holder of the Deposit being hereinafter sometimes referred to as the “**Escrow Agent**”) as Buyer’s earnest money deposit. The Deposit shall consist initially of the sum of \_\_\_\_\_ (the “**Initial Deposit**”), which represents 10% of the purchase price.

(d) "**Disclosed Seller Broker**" shall mean:

Broker Name: \_\_\_\_\_; Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_ Facsimile Number: \_\_\_\_\_  
Selling Agent Name: \_\_\_\_\_; Phone Number: \_\_\_\_\_  
Selling Agent Email: \_\_\_\_\_

(d) **"Disclosed Buyer Broker"** shall mean:

Broker Name: Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_; Facsimile Number: \_\_\_\_\_

Selling Agent Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Selling Agent Email: \_\_\_\_\_

(f) **"Purchase Price"** Thousand and No/100 U.S. Dollars.

(g) **"Title Company"** and **"Closing Agent"** shall mean,

\_\_\_\_\_. Buyer understands and agrees that Seller's attorneys shall act as agents for the Title Company (and, if so indicated on Page 2 hereof, as the escrow agent for purposes of holding the Deposit, and as the closing agent at Closing).

1.2. Other Defined Terms. Other capitalized terms contained in this Agreement shall have the meanings assigned to them herein, including as set forth in Schedule 1 attached hereto.

## Article 2.

### **"AS-IS" With Right to Inspect**

2.1. Information Regarding Property. Seller has provided and may provide Buyer with documents and information pertaining to the Property. All of such information and documentation is provided simply as an accommodation to Buyer, and Seller makes no representations as to their accuracy or completeness. Buyer understands that some of the foregoing documents were provided by others to Seller, and were not prepared by or verified by Seller. In no event shall Seller be obligated to deliver or make available to Buyer any of Seller's internal memoranda, attorney-client privileged materials or appraisals of the Property, if any.

2.4.2.2. Indemnification. Buyer shall protect, defend, indemnify, save and hold harmless the Seller Group against any and all claims, demands, fines, suits, actions, proceedings, orders, decrees, judgments, damage or liability (including attorneys' fees incurred by the Seller Group with respect thereto) of any kind or nature, by or in favor of anyone whomsoever, resulting from, arising from, or occasioned in whole or in part by, any act or omission by Buyer, its agents, contractors, employees, representatives or invitees in, upon, or at the Property, or from Buyer's inspection, examination and inquiry of or on the Property. The provisions of this Section shall survive the Closing or termination of this Agreement.

2.5.2.3. Condition of the Property. If this Agreement is not timely terminated pursuant to **Section 2.2** above, Buyer shall be deemed to have approved the Property in all respects, and the following provisions shall thereupon be applicable and shall survive the Closing or termination of this Agreement:

(a) Buyer does hereby acknowledge, represent, warrant and agree to and with Seller that, except as otherwise expressly provided in this Agreement: (i) Buyer is expressly purchasing the Property in its existing condition **"AS IS, WHERE IS, AND WITH ALL FAULTS"** with respect to all facts, circumstances, conditions and defects; (ii) Seller has no obligation to inspect

for, repair or correct any such facts, circumstances, conditions or defects, or to compensate Buyer for same; (iii) Seller has specifically bargained for the assumption by Buyer of all responsibility to inspect and investigate the Property and of all risk of adverse conditions, and has structured the Purchase Price and other terms of this Agreement in consideration thereof; (iv) Buyer has undertaken all such inspections and investigations of the Property as Buyer deems necessary or appropriate under the circumstances as to the condition of the Property and the suitability of the Property for Buyer's intended use, and based upon same, Buyer is and will be relying strictly and solely upon such inspections and examinations, and the advice and counsel of its own consultants, agents, legal counsel and officers, and Buyer is and will be fully satisfied that the Purchase Price is fair and adequate consideration for the Property; (v) Seller is not making and has not made any warranty or representation with respect to any materials or other data provided by Seller to Buyer (whether prepared by or for the Seller or others) or the education, skills, competence or diligence of the preparers thereof, or the physical condition or any other aspect of all or any part of the Property as an inducement to Buyer to enter into this Agreement and thereafter to purchase the Property or for any other purpose; and (vi) by reason of all the foregoing, Buyer assumes the full risk of any loss or damage occasioned by any fact, circumstance, condition or defect pertaining to the Property. Without limiting the generality of any of the foregoing, Buyer specifically acknowledges that Seller does not represent or in any way warrant the accuracy of any marketing information or pamphlets listing or describing the Property or the information, if any, provided by Seller to Buyer; and

(b) SELLER HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND OR NATURE WHATSOEVER (INCLUDING WARRANTIES OF HABITABILITY AND FITNESS FOR PARTICULAR PURPOSES), WHETHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES WITH RESPECT TO THE PROPERTY OR ITS CONSTRUCTION; DEFECTS CAUSED BY ACTS OF THE ORIGINAL SELLER, DEVELOPER, OR BUILDER OF THE PROPERTY, OR ANY SUPPLIER, CONTRACTOR, SUBCONTRACTOR, OR MATERIALMAN; DEFECTS PERTAINING TO STRUCTURAL ELEMENTS, SYSTEMS, EQUIPMENT, APPLIANCES, UTILITIES, OR FIXTURES RELATED TO THE PROPERTY; TAX LIABILITIES; ZONING; LAND VALUE; AVAILABILITY OR ACCESS OF UTILITIES; INGRESS OR EGRESS; GOVERNMENTAL APPROVALS; OR THE SOIL CONDITIONS OF THE REAL PROPERTY; REGARDLESS OF WHETHER SUCH CONDITIONS CURRENTLY EXIST OR EMERGE OVER TIME; and

(c) FURTHER AND WITHOUT IN ANY WAY LIMITING ANY OTHER PROVISION OF THIS AGREEMENT, SELLER MAKES NO WARRANTY WITH RESPECT TO THE PRESENCE ON OR BENEATH THE REAL PROPERTY (OR ANY PARCEL IN PROXIMITY THERETO) OF HAZARDOUS MATERIALS. BY ACCEPTANCE OF THIS AGREEMENT AND THE DEED, BUYER ACKNOWLEDGES THAT BUYER'S OPPORTUNITY FOR INSPECTION AND INVESTIGATION OF SUCH REAL PROPERTY (AND OTHER PARCELS IN PROXIMITY THERETO) HAS BEEN ADEQUATE TO ENABLE BUYER TO MAKE BUYER'S OWN DETERMINATION WITH RESPECT TO THE PRESENCE ON OR BENEATH THE REAL PROPERTY (AND OTHER PARCELS IN PROXIMITY THERETO) OF SUCH HAZARDOUS MATERIALS. FURTHERMORE, BUYER'S CLOSING HEREUNDER SHALL BE DEEMED TO CONSTITUTE AN EXPRESS WAIVER OF BUYER'S AND ITS SUCCESSORS' AND ASSIGNS' RIGHTS TO SUE ANY OF THE SELLER GROUP, AND OF BUYER'S RIGHT TO CAUSE ANY OF THE SELLER

GROUP TO BE JOINED IN AN ACTION BROUGHT UNDER ANY FEDERAL, STATE OR LOCAL LAW, RULE, ACT, OR REGULATION NOW EXISTING OR HEREAFTER ENACTED OR AMENDED WHICH PROHIBITS OR REGULATES THE USE, HANDLING, STORAGE, TRANSPORTATION OR DISPOSAL OF HAZARDOUS MATERIALS, OR WHICH REQUIRES REMOVAL OR REMEDIAL ACTION WITH RESPECT TO SUCH HAZARDOUS MATERIALS, SPECIFICALLY INCLUDING BUT NOT LIMITED TO FEDERAL "CERCLA," "RCRA," AND "SARA" ACTS.

~~2.6.2.4.~~ Maintenance of Property. Except as Buyer may otherwise consent in writing, until the Closing Date, unless this Agreement is sooner terminated, Seller shall maintain the Property in its present condition and repair, ordinary wear and tear excepted and subject to the terms of **Section 9.2** hereof.

### **Article 3.**

#### **Purchase Price and Terms of Payment; Closing Adjustments**

3.1. Purchase Price. The total Purchase Price shall be the Purchase Price set forth in **Section 1.1** of this Agreement.

[X] This is an all-cash transaction and Buyer's obligations hereunder are not in any way contingent upon Buyer obtaining financing.

3.2. Payment of Purchase Price. The Purchase Price shall be paid as follows:

(a) Credit for Deposit The Deposit shall be non-refundable except as otherwise provided herein. The Deposit may be held in a non-interest bearing or interest bearing account.

(b) Payment at Closing. The balance of the Purchase Price, subject to the prorations and adjustments set forth in this Agreement, shall be paid (i) by Buyer to Seller, by wire transfer to Title Company's account at the time of Closing; and (ii) by the Title Company to Seller, by wire transfer to Seller's account immediately upon Closing.

(c) Wired funds must be received in the Title Company's account prior to 2:00 p.m. Eastern time on the Closing Date in order for Seller to receive the benefit of such funds. Accordingly, if funds are received after 2:00 p.m. Eastern time on any day, they shall not be deemed received until the following Business Day. If the Title Company does not receive the funds on the Closing Date, and Seller elects not to exercise any of its default remedies, Buyer shall pay interest on the Purchase Price from the Closing Date until the funds are deemed to have been received, at the rate of fifteen percent (15%) per annum.

3.3. Closing Adjustments and Prorations. Real estate taxes, assessments, and other expenses (and, if appropriate, income) shall be prorated as of 12:01 a.m. on the Closing Date.

(a) Lease Prepayments and Security Deposits. In the event that a Tenant occupies the Property as of the Closing Date, Buyer shall receive credit against the Purchase Price at Closing for any unforfeited Security Deposit and any other money, together with any earned interest, in Seller's actual possession for the account of Tenant, including all other deposits and any prepaid rents paid to Seller by the Tenant.

(b) Taxes and Assessments; Pending and Certified Liens. Taxes and assessments (including any community association dues and assessments, if any) for the year of Closing shall be prorated based upon the amount of such taxes for the year of Closing if the amount of such taxes is known at the time of Closing; if such amount cannot be then ascertained, proration shall be based upon the amount of the taxes, with the maximum discount allowed by law, if any, for the preceding year. If any tax proration shall be based upon the amount of taxes for the year preceding the year of Closing, such taxes, at the request of either party, shall be re-prorated and adjusted between the parties, on the basis of the maximum discounted payment, forthwith after the tax bills for the year of Closing are received. County or other public liens, if any, certified or for which the work has been substantially completed on the date of Closing, shall be paid by Seller, and any other such liens shall be assumed by Buyer. Other assessments not included on the regular property tax bills, license fees for transferred licenses, and state or municipal fees and taxes for the Property for the applicable fiscal period during which Closing takes place, shall be adjusted on the basis of the most recent ascertainable assessments and rates, and shall be re-prorated as necessary pursuant to **subparagraph (e)** below.

(c) Utility Charges. Electric, water, sewer, gas, fuel, waste collection and removal and other utility and operating expenses relating to the Property shall be prorated as of the Closing Date. It shall be assumed that the utility charges were incurred uniformly during the billing period in which the Closing occurs. If bills for the applicable period are unavailable, the amounts of such charges will be estimated based upon the latest known bills. Notwithstanding the foregoing, to the extent possible, (i) Seller and Buyer shall request the utility companies to read the meters as of the Prorations Date; (ii) Seller shall be responsible for all such utility charges incurred through the Prorations Date; (iii) Buyer shall make application to the various companies for the continuation of such services and the establishment of the required accounts in the name of Buyer effective from and after the Prorations Date; (iv) all prepaid deposits for utilities shall be refunded to Seller at the time of closing by the utility companies; and (v) it shall be Buyer's responsibility to make any utility deposits required for the continuation of such services from and after the Prorations Date.

(d) Other Prorations. In addition to the previously stated adjustments and prorations at Closing, the parties shall also make such adjustments and prorations to the Purchase Price as are customary and usual in transactions similar to the transaction contemplated by this Agreement.

(e) Re-Proration and Post-Closing Adjustments. In the event that any adjustments or prorations cannot be apportioned or adjusted at Closing by reason of the fact that final or liquidated amounts have not been ascertained, or are not available as of such date, the parties hereto agree to apportion or adjust such items on the basis of their best estimates of the amounts at Closing, and to re-prorate any and all of such amounts promptly when the final or liquidated amounts are ascertained. In the event of any omission or mathematical error on the closing statement, or if the prorations, apportionments and computations shall prove to be incorrect for any reason, the same shall be promptly adjusted when determined and the appropriate party paid any monies owed. This provision shall survive the Closing.

3.4. Costs and Expenses. Buyer shall pay all escrow, settlement, closing and similar fees, all costs of recording, all documentary stamp, transfer and similar taxes, the title insurance premium

for any title insurance policy and endorsements requested or required by Buyer, and the costs of any survey or survey update obtained by Buyer, as well as the cost of obtaining the Title Commitment. Attorneys' fees, consulting fees, and other due diligence expenses shall be borne by the party incurring such expense. The provisions of this Section shall survive the Closing.

**Article 4.**  
**Title**

4.1. Evidence of and Encumbrances Upon Title. Buyer shall order through the Title Company a Title Commitment within five (5) business days of the Seller Acceptance, and upon receipt thereof shall promptly deliver a copy of the Title Commitment to Seller. The Title Commitment shall be the basis upon which Buyer reviews the status of title to the Real Property. Buyer may deliver to Seller written objections to exceptions contained in the Title Commitment on or before the Feasibility Date; provided, however, the following shall be deemed "**Acceptable Encumbrances,**" and Buyer shall not have the right to object to Acceptable Encumbrances:

- (a) Real property taxes and assessments for the year in which the sale and purchase shall be closed, which shall be prorated as provided for herein;
- (b) The standard printed exceptions contained in owner's title insurance policies;
- (c) Zoning and other regulatory laws and ordinances affecting the Property;
- (d) Conditions, easements and restrictions of record;
- (e) Any other matters of record that do not render title unmarketable; and
- (f) Any matters that are approved in writing by Buyer, or deemed approved by Buyer in accordance with this Agreement, or that are caused or permitted by Buyer.

If Buyer timely delivers a written objection (a "**Title Objection**") to any item (other than an Acceptable Encumbrance), then Seller shall have the right but not the obligation to use commercially reasonable diligence to remove, discharge or correct such liens, encumbrances or objections, and shall have a period of sixty (60) days after receipt of the Title Objection (the "**Title Cure Period**") in which to do so (and if necessary the Closing Date shall be extended). If, however, Buyer fails to timely give written notice of Title Objections prior to the Feasibility Date, all title matters shall be deemed approved by Buyer and shall constitute Acceptable Encumbrances. Seller shall not, in any event, be obligated to pay any sums of money or to litigate any matter in order to remove, discharge or correct any lien, encumbrance or objection. If Seller shall be unwilling or unable to remove or discharge such other liens, encumbrances or objections within such Title Cure Period, then Buyer may, at its option, no later than five (5) days after Seller notifies Buyer of Seller's unwillingness or inability, either terminate this Agreement or accept title in its then-existing condition without reduction of the Purchase Price (provided that Buyer's failure to timely give notice of its election within said five [5] day period shall be deemed to be its election to accept title in its then-existing condition without reduction of the Purchase Price). If Buyer shall elect to terminate this Agreement pursuant to this section, Buyer shall execute and deliver to Seller the Termination Agreement and the Due Diligence Reports, the Deposit shall be delivered to Buyer, this Agreement shall terminate, and thereafter

neither Seller nor Buyer shall have any further rights or obligations hereunder, except that Buyer shall remain obligated with respect to the indemnities and obligations of this Agreement which specifically survive termination. If Buyer fails to give written notice of objection to Seller on or before the Feasibility Date, all matters reflected on the Title Commitment shall be deemed to be Acceptable Encumbrances.

4.2. Survey. Buyer may cause a survey of the Real Property to be prepared or updated at Buyer's sole cost and expense, and have a copy of same delivered to Seller. Any such survey shall conform to ALTA requirements and be certified to Buyer, Seller and the Title Company. If any encroachments or other matters not acceptable to Buyer are shown, Buyer may give written notice of objection to Seller prior to the Feasibility Date, in which case any such encroachment or other matter shall be treated in the same manner as a title defect pursuant to **Section 4.1** above. If, however, Buyer fails to obtain a survey or update, or if Buyer obtains a survey or update but fails to give written notice of objection prior to the Feasibility Date, all encroachments and other matters of survey shall be deemed approved by Buyer and shall constitute Acceptable Encumbrances.

4.3. Title Policy. At Closing and as a condition to Buyer's obligation to close, the Title Company shall issue or be irrevocably and unconditionally committed to issue to Buyer an owner's title insurance policy, insuring that title is vested in Buyer as the fee simple owner of the Land in the full amount of the Purchase Price and subject to only the Acceptable Encumbrances.

## **Article 5.** **Escrow and Closing**

5.1. Escrow Instructions. This Agreement shall serve as the instructions to the Title Company as the escrow holder for consummation of the purchase and sale contemplated hereby. Seller and Buyer agree to execute such reasonable additional and supplementary escrow instructions as may be appropriate to enable the Title Company to comply with the terms of this Agreement; provided, however, that in the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions, the terms of this Agreement shall control.

5.2. Time and Place. Closing shall take place at the offices of the Title Company on the Closing Date or such earlier date as may be mutually acceptable to the parties, with all deliveries to be made in escrow to the Title Company prior to or on the Closing Date; provided, however, that pursuant to **Section 4.1**, Seller, at Seller's option, may extend the Closing Date for purposes of curing objections to the status of title that were timely and properly raised by Buyer.

5.3. Seller's Documents. At Closing, Seller shall prepare and deliver to Buyer the following items: (a) an executed Deed in form sufficient to convey title to the Property in accordance with the requirements of this Agreement, together with any State, County and local transfer tax declarations and forms required to be executed by Seller; (b) an executed Affidavit in form sufficient to permit the Title Company to delete the requirements of the Title Commitment and insure title to the Property in accordance with the requirements of this Agreement; (c) an executed Bill of Sale (without warranties) with respect to the Personal Property, if any, in form sufficient to convey title to the Personal Property in accordance with the requirements of this



Agreement; and (d) an executed Closing Statement reflecting all financial aspects of the transaction.

5.4. Buyer's Deliveries. At Closing Buyer shall deliver to Seller and/or Title Company (as appropriate) (a) cash to close in the amount required by **Section 3.2**; (b) any State, County and local transfer tax declarations and forms required to be executed by Buyer; and (c) an executed Closing Statement.

5.5. Other Documents. Buyer and Seller shall each deliver such other documents as are otherwise required by this Agreement to consummate the purchase and sale of the Property in accordance with the terms hereof. Unless the parties otherwise agree in writing, the Title Company is hereby designated as the "**Reporting Person**" for the transaction pursuant to Section 6045(e) of the United States Code and the regulations promulgated thereunder. If requested in writing by either party, the Title Company shall confirm its status as the "**Reporting Person**" in writing, which such writing shall comply with the requirements of Section 6045(e) of the United States Code and the regulations promulgated thereunder.

5.6. Possession. Possession of the Property (subject to any existing Lease) shall be surrendered to Buyer at the Closing.

## **Article 6.** **Environmental Matters**

6.1. Release. Without limiting the provisions of **Section 2.6**, Buyer acknowledges that Seller is not in any manner responsible to Buyer for the presence of any Hazardous Materials at, on, in, under or relating to the Property, if any. Buyer hereby specifically releases the Seller Group from any and all claims, losses, liabilities, fines, charges, damages, injuries, penalties, response costs, and expenses of any and every kind whatsoever (whether known or unknown) relating to the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release of any Hazardous Materials on the Property, if any, including without limitation, any residual contamination in, on, under or about the Property or affecting natural resources, whether prior to or following Closing, and also including, without limitation, any liability due to asbestos-containing materials at the Property. Each covenant, agreement, representation, and warranty of Buyer contained in this **Section 6.1** of this Agreement shall survive the Closing or termination of this Agreement.

6.2. Indemnification. Without limiting the provisions of **Section 2.4** and **Section 2.6(c)**, Buyer hereby indemnifies and agrees to defend, protect, save and hold Seller Group harmless from and against any and all losses, liabilities, fines, charges, damages, injuries, penalties, response costs, expenses (including attorneys' fees and costs at all levels) and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against Seller, with respect to or as a direct or indirect result of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release of any Hazardous Material from the Property. The foregoing indemnification includes (a) all foreseeable and unforeseeable consequential damages to the maximum extent permitted by law; (b) the costs of any required or necessary repair, remediation, or decontamination of the Property; and (c) any fines and penalties that may be imposed. This agreement to defend, indemnify, protect, save and hold harmless shall survive the Closing of this

Agreement, and shall be in addition to any other obligations or liability that Buyer may have to Seller Group at common law or by statute or otherwise.

**Article 7.**  
**Brokerage**

Buyer represents and warrants to Seller that Buyer has not contacted or entered into any agreement with any real estate broker, agent, finder, or any other party in connection with this transaction other than Seller's Broker (unless a Buyer's Broker is specified in **Section 1.1(c)**, in which case, Buyer's contact has been limited to Buyer's Broker and Seller's Broker), and that Buyer has not taken any action which would result in any real estate broker's, finder's, or other fees or commissions being due or payable to any other party with respect to this transaction. Buyer hereby indemnifies, protects, defends and agrees to hold Seller harmless from any loss, liability, damage, cost, or expense (including, but not limited to, reasonable attorneys' fees) resulting to Seller from a breach of the representation and warranty made by Buyer herein. Seller agrees to pay the Seller's Broker a commission in accordance with a separate written agreement by and between Seller's Broker and the Broker, which commission shall be paid only if, as and when Closing actually occurs and the Purchase Price is received by Seller. Buyer's Broker (if any) shall receive a portion of the Seller's Broker's commission pursuant to a cooperative brokerage agreement between Seller's Broker and Buyer's Broker (although closing agent is expressly authorized to pay the commission to both Seller's Broker and Buyer's Broker at Closing out of the proceeds of the sale). The provisions of this Article shall survive the Closing and termination of this Agreement.

**Article 8.**  
**Default**

8.1. **Buyer's Default.** If Buyer shall fail to close the transaction contemplated hereby as and when required, or if Buyer shall otherwise be in default of its obligations hereunder prior to Closing, the Deposit shall be paid over to Seller as agreed and liquidated damages, it being acknowledged by Buyer and Seller that in such event Seller will suffer substantial damages, but such damages are incapable of exact ascertainment and that the Deposit constitutes a reasonable pre-estimate of such damages and not a penalty. After payment to Seller of the Deposit, neither Seller nor Buyer shall have any further rights or obligations hereunder, except that Buyer shall remain obligated pursuant to the provisions hereof which survive termination. If, subsequent to Closing, Buyer shall fail to comply with its obligations contained herein which survive Closing, Seller, in addition to any rights and remedies provided herein, shall be entitled to any and all remedies available at law or in equity. Anything contained herein to the contrary notwithstanding, it is agreed that, should Buyer default after the Feasibility Date, Buyer's obligations shall include delivery of the entire Deposit, and Seller shall be entitled to damages in the amount of the entire Deposit.

8.2. **Seller's Default.** If this transaction shall not be closed because of default of Seller, the Deposit shall, at Buyer's election, be refunded to Buyer on demand, and after repayment of the Deposit to Buyer, this Agreement shall be null and void, and neither Seller nor Buyer shall have any further rights or obligations hereunder, except that Buyer shall remain obligated pursuant to the provisions hereof which survive termination; or Buyer shall have the right to sue for specific

performance of this Agreement, provided that such specific performance remedy shall be available to Buyer only upon Buyer's full satisfaction of each of Buyer's obligations under this Agreement, including without limitation Buyer's obligation to deliver the Deposit to the Title Company, and delivering sufficient proof to the Title Company and Seller that Buyer is ready, willing and able to close this transaction. The option selected by Buyer shall be Buyer's sole and exclusive remedy, and in no event shall Buyer be entitled to damages (beyond actual costs of inspection – septic). Buyer agrees to indemnify, defend, protect, save and hold harmless Seller and each of Seller's directors, officers, employees, agents, affiliates, members, stockholders and other principals and representatives from and against any and all losses, claims, liabilities, damages, injuries, penalties and other costs and expenses of any and every kind whatsoever (collectively the "Losses") paid, incurred or suffered by or asserted against Seller as a result of or arising out of Buyer wrongfully seeking, commencing and/or prosecuting a specific performance action against Seller, or in any way wrongfully filing a lis pendens or similar action against the Property, which Losses shall include, without limitation, any amounts which would otherwise have been realized by Seller had Seller been able to sell, transfer or convey the Property to any other buyer free of any such specific performance, lis pendens or other similar action.

8.3. No Obligation of Seller after Closing. Buyer expressly acknowledges and agrees that Seller has no obligations with respect to the Property that survive the Closing, except as specifically set forth herein. The provisions of this Section shall survive the Closing.

## **Article 9.** **Miscellaneous**

9.1. Assignability. Buyer may not assign this Agreement, nor may any of Buyer's rights hereunder be transferred in any manner to any person or entity, without Seller's specific prior written consent, which consent may be withheld by Seller for any reason whatsoever. If Buyer assigns this Agreement pursuant to the terms hereof (with Seller's consent, if required): (a) the assignee shall be liable (jointly and severally with assignor) for all of Buyer's obligations hereunder; (b) the assignor (i.e., the original Buyer hereunder) shall remain obligated (but jointly and severally with assignee) with respect to all of Buyer's obligations hereunder; and (c) the assignor and any assignee shall execute such instruments of assignment and assumption in such form as Seller may require in confirmation of the provisions hereof.

9.2. Risk of Loss. Seller agrees to give Buyer prompt notice of any fire or other casualty affecting the Property after the Binding Agreement Date or of any actual or threatened (to the extent that Seller has current actual knowledge thereof) taking or condemnation of all or any portion of the Property after the Binding Agreement Date. If, after the Binding Agreement Date and prior to Closing, there shall occur damage to the Property caused by fire or other casualty which would cost an amount less than or equal to two percent (2%) of the Purchase Price to repair, then the cost of restoration shall be a Seller obligation, Closing shall proceed as scheduled, and restoration costs escrowed at Closing. If such damage shall exceed two percent (2%) of the Purchase Price to repair, then, in such event, Buyer shall have the right to terminate this Agreement by giving written notice to Seller within ten (10) days after Buyer has received notice from Seller or otherwise learns of such damage. Upon such termination, the Deposit shall be delivered to Buyer, and neither party shall have any further rights or obligations hereunder;

except, however, that Buyer shall remain obligated with respect to the indemnities and obligations herein which specifically survive termination. If Buyer does not timely elect to terminate this Agreement, then the Closing shall take place as provided herein, and at Closing, Seller shall assign to Buyer all interest of Seller in and to the insurance proceeds payable to Seller on account of the casualty event, and Seller shall receive a credit in the amount of any sums reasonably incurred by Seller before the Closing to repair any damage caused by such event. Seller makes no representation or warranty with respect to the amount of the proceeds that will be available from the insurance company in connection with any such casualty, including, without limitation, whether Buyer will be entitled to the actual cash value or the replacement cost of the Property. The provisions of this Section shall survive the Closing.

9.3. Construction. The terms “**Seller**” and “**Buyer,**” whenever used in this Agreement, shall include the heirs, personal representatives, successors and assigns of the respective parties hereto; provided, however, that Buyer’s right of assignment is restricted by the provisions hereof. Whenever used, the singular number shall include the plural and the plural the singular, and the use of any gender shall include all genders. The term “**including,**” as used herein, shall in all instances mean “**including, but not limited to.**” The headings in this Agreement are intended solely for convenience of reference, and shall be given no effect in the interpretation of this Agreement. This Agreement and any related instruments shall not be construed more strictly against one party than against the other by virtue of the fact that initial drafts may have been prepared by counsel for one of the parties, it being recognized that this Agreement and any related instruments are the product of extensive negotiations between the parties hereto.

9.4. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which will constitute the same Agreement. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto, but having attached to it one or more additional signature pages.

9.5. Severability and Waiver. Invalidation of any one Section or provision of this Agreement by judgment or court order shall in no way affect any other Section or provision. Failure of any party to this Agreement to insist on the full performance of any of its provisions by the other party (or parties) shall not constitute a waiver of such performance, unless the party failing to insist on full performance of the provision declares in writing signed by it that it is waiving such performance. A waiver of any breach under this Agreement by any party, unless otherwise expressly declared in writing, shall not be a continuing waiver or waiver of any subsequent breach of the same or other provision of this Agreement. The provisions of this Section shall survive the Closing.

9.6. Governing Law. The laws of the State (without regard to conflicts of law) shall govern the validity, construction, enforcement and interpretation of this Agreement.

9.7. Further Acts. In addition to the acts and deeds recited in this Agreement and contemplated to be performed, executed, and/or delivered under this Agreement, Seller and Buyer agree to perform, execute and/or deliver, or cause to be delivered, executed and/or

delivered, at Closing or after Closing, all further acts, deeds, and assurances reasonably necessary to consummate the transactions contemplated hereby.

9.8. Notices. All notices, demands, requests, and other communications required or permitted hereunder shall be in writing. All such notices, demands, requests and other communications (and copies thereof) shall be deemed to be delivered (a) if sent by messenger, upon personal delivery to the party to whom the notice is directed; (b) if sent by facsimile, upon electronic or telephonic confirmation of receipt from the receiving facsimile machine; (c) if sent by overnight courier, with request for next Business Day delivery, on the next Business Day after sending; or (d) whether actually received or not, two (2) Business Days after deposit in a regularly maintained receptacle for the United States mail, registered or certified, return receipt requested, postage prepaid, addressed as follows (or to such other address as the parties may specify by notice given pursuant to this Section):

TO SELLER:

TO BUYER:

At the address set forth on the first page of this Agreement

Attn: \_\_\_\_\_

Telephone No. \_\_\_\_\_

Facsimile No. \_\_\_\_\_

Email Address: \_\_\_\_\_

9.9. Entire Agreement and Amendment. This Agreement contains the entire understanding between Buyer and Seller with respect to the subject matter hereof. Neither this Agreement nor any provision hereof may be modified, amended, changed, waived, discharged or terminated orally. Any such action may occur only by an instrument in writing signed by the party against whom enforcement of the modification, change, waiver, discharge or termination is sought.

9.10. Recording. This Agreement shall not be recorded, and Buyer agrees that recording same constitutes a default by Buyer.

9.11. Exhibits and Schedules. The Exhibits and Schedules that are referenced in and/or attached to this Agreement are incorporated in, and made a part of, this Agreement for all purposes.

9.12. Time of the Essence. Seller and Buyer expressly agree that time is of the essence with respect to this Agreement. If the final day of any period or any date of performance under this Agreement falls on a date which is not a Business Day, then the final day of the period or the date of performance, as applicable, shall be extended to the next day which is a Business Day.

9.13. No Third Party Beneficiary. This Agreement is solely between Seller and Buyer, and no other party shall be entitled to rely upon any provision hereof for any purpose whatsoever.

9.14. Back-Up Contract(s). Buyer understands that Seller may negotiate with other parties and may enter into back-up contracts for the sale of the Property. The back-up contracts will be

subject and subordinate to this Agreement, so long as this Agreement is in full force and effect and Buyer is not in default hereunder.

9.15. Requisite Senior Management Approval. Prior to execution and delivery of this Agreement by Seller, this Agreement is subject to approval by Seller's senior management. Neither the submission of any proposal or this Agreement for examination to Buyer, nor any correspondence or course of dealing between Buyer or Seller, shall constitute a reservation of or option for the Property or in any manner bind Seller. No contract or obligation on the part of Seller shall arise until this Agreement is approved by Seller's senior management and fully executed and unconditionally delivered by Seller. If, however, Seller executes and returns this Agreement to Buyer, the requirement for Senior Management Approval shall be deemed satisfied.

9.16. Limitation on Liability. Buyer expressly agrees that the obligations and liabilities of Seller under this Agreement and any document referenced herein shall not constitute personal obligations of the officers, directors, employees, agents, trustees, partners, members, representatives, stockholders or other principals and representatives of Seller. Notwithstanding anything to the contrary, Seller's liability, if any, arising in connection with this Agreement or with the Property shall be limited to Seller's interest in the Property for the recovery of any judgment against Seller, and Seller shall not be personally liable for any such judgment or deficiency after execution thereon. The limitations of liability contained in this paragraph shall apply equally and inure to the benefit of Seller's present and future officers, directors, trustees, shareholders, agents and employees, and their respective heirs, successors and assigns. The provisions of this Section shall survive the Closing or termination of this Agreement.

9.17. Mold Disclosure. Mold and/or other microscopic organisms can be found almost anywhere. They occur naturally in the environment and can grow on virtually any organic substance as long as moisture and oxygen are present. Mold and/or other microscopic organisms may cause property damage and/or health problems. Buyer acknowledges and agrees that Seller shall not be responsible for any damages, liabilities, claims or losses arising out of or relating to mold and/or other microscopic organisms at the Property, including but not limited to property damages, personal injury, adverse health effects, loss of income, emotional distress, death, loss of use or loss of value, and Buyer hereby releases Seller from the same. Buyer hereby acknowledges that it has read and understood this disclosure and release, and agrees to the provisions contained herein. The provisions of this Section shall survive the Closing or termination of this Agreement.

9.18. Prohibited Persons. Neither Buyer nor any of its respective officers, directors, shareholders, partners, members or affiliates (including without limitation indirect holders of equity interests in Buyer) is or will be an entity or person (a) that is listed in the Annex to, or is otherwise subject to the provisions of Executive Order 13224 issued on September 24, 2001 ("EO13224"); (b) whose name appears on the United States Treasury Department's Office of Foreign Assets Control ("OFAC") most current list of "**Specifically Designated National and Blocked Persons**" (which list may be published from time to time in various mediums including, but not limited to, the OFAC website, <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>); (c) who commits, threatens to commit or supports "**terrorism**," as that term is defined in EO13224; (d) is subject to sanctions of the United States

government or is in violation of any federal, state, municipal or local laws, statutes, codes, ordinances, orders, decrees, rules or regulations relating to terrorism or money laundering, including, without limitation, EO13224 and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001; or (e) who is otherwise affiliated with any entity or person listed above (any and all parties described in clauses (a)-(e) above are herein referred to as a “**Prohibited Person**”). Buyer covenants and agrees that neither Buyer nor any of its respective officers, directors, shareholders, partners, members or affiliates (including without limitation indirect holders of equity interests in Buyer) shall (i) conduct any business, nor engage in any transaction or dealing, with any Prohibited Person, including, but not limited to, the making or receiving of any contribution of funds, goods, or services, to or for the benefit of a Prohibited Person; or (ii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in EO13224. The provisions of this Section shall survive the Closing or termination of this Agreement.

#### **Article 10.** **Escrow Terms**

The Escrow Agent shall hold the Deposit in escrow on the following terms and conditions:

(a) The Escrow Agent shall deliver the Deposit to Seller or Buyer, as the case may be, in accordance with the provisions of this Agreement.

(b) Any notice to or demand upon the Escrow Agent shall be in writing, and shall be sufficient only if received by the Escrow Agent within the applicable time periods set forth herein, if any. Notices to or demands upon the Escrow Agent shall be sent by United States mail, registered or certified, return receipt requested, postage prepaid, or overnight courier service, with respect for next day delivery, to the address set forth in **Section 1.1** of this Agreement, or served personally upon the Escrow Agent with receipt acknowledged in writing by the Escrow Agent. Notices from the Escrow Agent to Seller or Buyer shall be mailed to them in accordance with **Section 9.8** of this Agreement.

(c) If the Escrow Agent shall have received notice signed by either party advising that litigation between the parties over entitlement to the Deposit has been commenced, the Escrow Agent shall, on demand of either party, deposit the Deposit with the clerk of the court in which such litigation is pending. If at any time the Escrow Agent is uncertain of its duties hereunder, or if the Escrow Agent for any other reason is no longer willing to serve as escrow agent, the Escrow Agent may, on notice to the parties, take such affirmative steps as it may, at its option, elect in order to terminate its duties as the Escrow Agent, including, but not limited to, the deposit of the Deposit with a court of competent jurisdiction and the commencement of an action for interpleader, the reasonable costs of which shall be borne by whichever of the parties is the losing party. Upon the taking by the Escrow Agent of such action described, the Escrow Agent shall be released of and from all liability hereunder as escrow agent.

(d) The Escrow Agent shall not incur any liability in acting upon any signature, notice, demand, request, waiver, consent, receipt or other paper or document believed by the

Escrow Agent to be genuine. The Escrow Agent may assume that any person purporting to give it any notice on behalf of any party in accordance with the provisions hereof has been duly authorized to do so, or is otherwise acting or failing to act under this Section, except in the case of the Escrow Agent's gross negligence or willful misconduct. Escrow Agent shall not be liable for any acts taken in good faith, but only for its intentional misconduct or gross negligence.

(e) The terms and provisions of this Article shall create no right in any person, firm or corporation other than the parties and their respective successors and permitted assigns, and no third party shall have the right to enforce or benefit from the terms hereof.

(f) The Escrow Agent has executed this Agreement for the sole purpose of agreeing to act as such in accordance with the terms of this Agreement.

**Article 11.**  
**Litigation**

11.1. Attorneys' Fees; Jurisdiction; Venue. In the event of any litigation arising out of or under this Agreement and/or out of Buyer's ownership, development or construction upon the Property, the prevailing party shall be entitled to collect from the non-prevailing party reasonable attorneys' fees and costs, including at all appellate levels and in any bankruptcy proceeding. Buyer and Seller hereby submit to the jurisdiction of the Civil Courts of the State and the United States District Courts located in the State in respect of any suit or other proceeding brought in connection with or arising out of this Agreement, and venue shall be in the County. The provisions of this Section shall survive the Closing.

11.2. WAIVER OF JURY TRIAL. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY DOCUMENT EXECUTED IN CONNECTION HERewith OR RELATED HERETO, OR ANY COURSE OR CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS TRANSACTION.



**Article 12.**  
**Exhibits and Schedules**

The following Exhibits and Schedules are attached hereto and incorporated herein by reference (mark box with X, if applicable).

- Exhibit "A" – Legal Description
- Schedules 1 & 2 – Additional Definitions & Stipulations
- HOA Stipulations

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement as of the Binding Agreement Date.

**SELLER:**

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

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

**BUYER:** \_\_\_\_\_

\_\_\_\_\_

**Print Name:** \_\_\_\_\_

**EXHIBIT A**

LEGAL DESCRIPTION

## SCHEDULE 1

### ADDITIONAL DEFINITIONS

(a) “**Binding Agreement Date**” shall mean the date set forth on the cover page of this Agreement by Seller as the date of Seller’s acceptance of Buyer’s offer. Seller or Seller’s Broker shall promptly give notice of this date to Buyer or Buyer’s Broker.

(b) “**Business Day**” shall mean any day on which business is conducted by national banking institutions in Fulton County, Georgia.

(c) “**Closing**” shall mean the execution and delivery of the Deed, the Bill of Sale and the other instruments to be executed by Seller conveying the Property to Buyer and the payment by Buyer to Seller of the Purchase Price.

(d) “**County**” shall mean the County located in the State in which the Property is located.

(e) “**Deed**” shall mean the deed conveying fee title to the Real Property to Buyer, duly executed by Seller, and acknowledged and in proper form for recordation. The Deed shall come with limited “special” warranties, pursuant to which Seller will only warrant against the lawful claims of all persons claiming by, through or under Seller, but none other, without any other covenants or warranties, express or implied.

(f) “**Land**” shall mean that certain parcel of real property located in the County and State, as more particularly described on the attached **Exhibit A**.

(g) “**Leases**” shall mean any and all leases, tenancies, licenses and other rights of occupancy, or use of or for any portion of the Real Property or the Personal Property (including all amendments and renewals thereof).

(h) “**Personal Property**” shall mean all tangible personal property and fixtures owned by Seller and located on or attached to the Real Property. “**Personal Property**” does not include property owned by others such as Tenants under Leases or parties to Service Contracts.

(i) “**Property**” shall mean, collectively, the Real Property, the Personal Property and the Intangible Property.

(j) “**Real Property**” shall mean the Land, together with Seller’s interest in the buildings and other improvements and fixtures located thereon, together with all rights of ways, ingress and egress, easements, rights, privileges, hereditaments and appurtenances thereto or in any way appertaining thereto.

(k) “**Security Deposit**” shall mean the security deposit specified in any Lease and which has not been previously forfeited by Tenant prior to the Closing Date

(l) **“Seller Group”** shall mean Seller and its member and manager, and such member’s trustee, master servicer, special servicer and certificate holders and their respective past, present, and future officers, directors, shareholders, general partners, limited partners, agents, representatives, heirs, successors, assigns and attorneys and their respective heirs, successors, and assigns.

(m) **“State”** shall mean the state in which the Land is located.

(n) **“Tenant”** shall mean those persons or entities holding rights of tenant under any Lease.

(o) **“Title Commitment”** shall mean the commitment for issuance of an owner’s title insurance policy issued by the Title Company (or such other title insurance company licensed to do business in the State and selected by Buyer) in favor of Buyer in the full amount of the Purchase Price.

## SCHEDULE 2

1. **Broker Disclaimer.** No Broker in this transaction shall owe any duty greater than what is set forth in the Brokerage Relationships in Real Estate Transactions Act, O.C.G.A. §10-6A-1, et seq. Buyer acknowledges that Buyer has not relied upon any advice, representations or statements of any Broker with respect to any matter which could have been revealed through a survey, title search or inspection of the Property; the condition of the Property, any portion thereof, or any item therein; building products and construction techniques; the necessity or cost of any repairs to the Property; mold; hazardous or toxic materials or substances; termites and other wood destroying organisms; the tax or legal consequences of this Agreement and transaction; the availability and cost of utilities or community amenities; the appraised or future value of the Property; any condition(s) existing off the Property which may affect the Property; the terms, conditions and availability of financing; and the uses and zoning of the Property whether permitted or proposed.

2. **Seller's Documents.** At closing, Seller shall execute a Georgia Withholding Tax Affidavit and Affidavit of Seller's Gain as required by O.C.G.A. §48-7-128.

**HOA STIPULATIONS**

**1. HOA Matters.** If applicable, notwithstanding anything contained herein to the contrary, Buyer acknowledges that Seller has made no representations or warranties regarding:

- (i) the status of the homeowners’ association, if any (the “HOA”), applicable to the Property;
- (ii) the status of any budget and reserves maintained by the HOA;
- (iii) the amount of the initiation fee and annual or monthly HOA dues applicable to the Property;
- (iv) the status of a declaration of covenants, easements and restrictions, if any (the “Declaration”) relating to the Property; or
- (v) the status of any rights of the declarant under the Declaration.

If applicable, Buyer shall investigate the status of the foregoing HOA matters (the “HOA Matters”) during the Inspection/Feasibility Period, and Buyer shall have the right to cancel this Agreement by the end of the Inspection/Feasibility Period, as provided in Section 2.2 hereof, in the event that Buyer finds the status of the HOA Matters to be unacceptable. Buyer’s failure to cancel this Agreement by the end of the Inspection/Feasibility Period shall be automatically deemed to constitute Buyer’s acceptance of the HOA Matters, and this Agreement shall remain in full force and effect. Buyer shall be obligated to pay at Closing all then-applicable HOA initiation fees and annual or monthly dues, and/or shall be obligated to pay such initiation fees and dues once implemented by the HOA.

Buyer’s Initials:

\_\_\_\_\_  
\_\_\_\_\_

Seller’s Initials:

\_\_\_\_\_  
\_\_\_\_\_