

CITY COMMISSION MEETING AGENDA

City Hall Commission Chambers

Monday, January 6, 2020

7:00 p.m.

MEETING #5146

CALL TO ORDER

INSTALLATION OF ELECTED CITY COMMISSIONERS

ROLL CALL

ELECTION OF MAYOR AND VICE MAYOR

INVOCATION BY Jay Morford of Oasis Church

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

PETITIONS & PROCLAMATIONS

VISITORS (Limit of five minutes per individual and fifteen minutes per topic. Final action may be deferred until the next City Commission meeting unless an emergency situation does exist).

CONSENT CALENDAR

1. Approval of City Commission Special Meeting Minutes, December 30, 2019;
2. Appropriation Ordinance No.1, January 6 , 2020;
3. Cereal Malt Beverage License:
 - a. Walgreens #07817, 1801 N. 14th Avenue;
4. Approval to add Roth Option to KPERS 457 Plan.

ORDINANCES & RESOLUTIONS

UNFINISHED BUSINESS

NEW BUSINESS

1. Approval of Dodge Partners, LLC Agreement. Report by City Manager, Cherise Tieben.

OTHER BUSINESS

EXECUTIVE SESSION

Attorney/Client Privilege Matters

ADJOURNMENT

SPECIAL CITY COMMISSION MEETING MINUTES

City Hall Commission Chambers

Monday, December 30, 2019

8:00 a.m.

Meeting 5145

CALL TO ORDER

ROLL CALL Mayor Brian Delzeit, Commissioners, Joyce Warshaw, Rick Sowers, Kent Smoll, Jan Scoggins absent

PUBLIC HEARING

Mayor Brian Dezeit opened the Public Hearing on the 2019 Budget Amendments. Finance Director, Nicole May discussed the proposed budget amendments. No public comments were made. Mayor Delzeit closed the Public Hearing.

CONSENT CALENDAR

1. Approval of City Commission Meeting Minutes, December 16, 2019
2. Appropriation Ordinance for December 30, 2019;
3. Cereal Malt Beverage License:
 - a. Casa Alvarez, 1701 W. Wyatt Earp Blvd.
 - b. Taylors Road House, 2306 W. Wyatt Earp Blvd.
4. Approval of Change Order #2 for Highway-Rail Signal Interface Agreement with BNSF for 14th Avenue;
5. Approval of Kansas Law Enforcement Training Center (KLETC) Agreement;
6. Approval of Ratification of Repairs to the Vactor Combination Truck.

Commissioner Kent Smoll moved to approve the consent calendar as presented. Commissioner Joyce Warshaw seconded the motion. The motion carried 4 - 0.

NEW BUSINESS

1. Commissioner Kent Smoll moved to approve the Consulting Service Agreement in the amount of \$137,335 with SMH Consultants for Candletree #6 Design along with Improvements to Iron Rd pending review by City Attorney and development agreement with the developer. Commissioner Rick Sowers seconded the motion. The motion carried 4 -0.
2. Commissioner Joyce Warshaw moved to approve the 2019 Budget Amendments. Commissioner Kent Smoll seconded the motion. The motion carried 4 - 0.

ADJOURNMENT

Commissioner Rick Sowers moved to adjourn the meeting. Commissioner Joyce Warshaw seconded the motion. The motion carried 4 -0.

Brian Delzeit, Mayor

ATTEST:

Connie Marquez, City Clerk

CORPORATE APPLICATION FOR LICENSE TO SELL CEREAL MALT BEVERAGES

(This form has been prepared by the Attorney General's Office)

City or County of Dodge City

SECTION 1 – LICENSE TYPE			
Check One: <input type="checkbox"/> New License <input checked="" type="checkbox"/> Renew License <input type="checkbox"/> Special Event Permit			
Check One: <input type="checkbox"/> License to sell cereal malt beverages for consumption on the premises. <input checked="" type="checkbox"/> License to sell cereal malt beverages in original and unopened containers and not for consumption on the licensed premises.			
SECTION 2 – APPLICANT INFORMATION			
Kansas Sales Tax Registration Number (required): 004-361924025F-01			
I have registered as an Alcohol Dealer with the TTB. <input checked="" type="checkbox"/> Yes (required for new application)			
Name of Corporation Walgreen Co.		Principal Place of Business 300 Wilmot Rd.	
Corporation Street Address 300 Wilmot Rd.		Corporation City Deerfield	State IL Zip Code 60015
Date of Incorporation 2-15-1909		Articles of Incorporation are on file with the Secretary of State. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Resident Agent Name Jessica Lindholm		Phone No. 620-225-6095	
Residence Street Address 1203 Hennessey St. Apt. 116		City Dodge City	State KS Zip Code 67801
SECTION 3 – LICENSED PREMISE			
Licensed Premise (Business Location or Location of Special Event)		Mailing Address (If different from business address)	
DBA Name Walgreens #07817		Name Walgreens #07817	
Business Location Address 1801 N. 14th Ave.		Address P.O. Box 901	
City Dodge City	State KS Zip 67801	City Deerfield	State IL Zip 60015
Business Phone No. 620-225-6095		<input type="checkbox"/> Applicant owns the proposed business location. <input checked="" type="checkbox"/> Applicant does not own the proposed business location.	
Business Location Owner Name(s) WG-7817 KS LLC			
SECTION 4 – OFFICERS, DIRECTORS, STOCKHOLDERS OWNING 25% OR MORE OF STOCK List each person and their spouse*, if applicable. Attach additional pages if necessary.			
Name *Please see attached corporate rider*		Position	
Residence Street Address *Walgreen Co. is a publicly		City	State Zip Code
Spouse Name held company. To our		Position	
Residence Street Address knowledge, no one person		City	State Zip Code
Name owns as much as 25% of		Position	
Residence Street Address company stock.*		City	State Zip Code
Spouse Name		Position	
Residence Street Address		City	State Zip Code
Name		Position	
Residence Street Address		City	State Zip Code
Spouse Name		Position	
Residence Street Address		City	State Zip Code

Memorandum

To: Cherise Tieben, City Manager
From: Nicole May
Date: December 30, 2019
Subject: Approval of addition of Roth options to KPERS 457

Agenda Item New Business

Recommendation: I recommend the approval of adding the Roth option to our current KPERS 457 plan.

Background: We currently offer to employees an additional retirement savings option of the KPERS 457 plan. This is a voluntary contribution plan, it is the employee's choice to contribute. We have had a few employees request the option to make the contributions under a Roth option. The Roth options allows them to pay tax now and when the contributions are withdrawn they will not be required to pay tax.

Justification: To allow employees to contribute to the KPERS 457 plan under a Roth option.

Financial Considerations: None. There is no cost to have this option available.

Purpose/Mission: To allow employees various options to save for retirement.

Legal Considerations: None

Attachments: Letter to KPERS 457 requesting addition of Roth option.

January 6, 2020

KPERS 457
800 SW Jackson ST., Ste 1108
Topeka, KS 66612

To Whom It May Concern:

The City of Dodge City would like to add the Roth 457 option to our KPERS 457 Plan.

- We understand that guidelines for implementing the Roth 457 option for KPERS 457 plan.
- We have spoken to our Retirement Plan Counselor, and we understand that in order to allow Roth contributions OR in-plan Roth conversions OR rollovers into the 457 Plan from other group retirement plan Roth accounts, we must allow all three Roth options.
- We understand that if employees complete in-plan Roth conversions, this is a taxable event and the taxes must be paid by the employee in that same year with money from OUTSIDE their retirement account.
- We further understand that in-plan Roth conversions legally CANNOT be reversed.
- We agree to coordinate with our RPC to provide educational materials & group meeting opportunities to our employees so they can make informed decisions regarding the Roth options.
- We are aware that Roth contributions to a 457 plan are subject to the same contribution limits as pre-tax money (for example, normal limit of \$18,000/year TOTAL, NOT each).
- We acknowledge that, BY LAW, contribution changes to 457 Plans (including Roth contributions) must be requested by the participant not later than the calendar month prior to the month in which they are to take effect.
- We understand what we need to do in order to provide the Roth options, and agree that we will complete these requirements in a timely fashion:
 - Our payroll system will be coded to indicate that Roth contributions are going into a 457 retirement account.
 - If we are transmitting our payroll contributions via an exported file, our Payroll department will work with Empower's Plan Technical Support (prior to the first real Roth payroll run) to test the file layout to make sure it can be read correctly. If we are using Guided Payroll to transmit contributions, we will take care to enter the contributions under the correct type (pre-tax or Roth).
 - We will take care to confirm employee contribution elections as to whether they are changing pre-tax or Roth (or both), and enter it correctly into our payroll system. So that we do not have to guess what employees want, we will ask them to complete BOTH

- the pre-tax and Roth lines of the contribution change form every time they submit one.
 - We will make certain that information for 2020 will be correctly reflected on W-2's for Roth 457 contributions.
- We wish to offer the Roth options to the participants in our KPERS 457 plan, effective March 1, 2020.

Sincerely,

Nicole May
Finance Director

AGREEMENT OF PURCHASE AND SALE
(Dodge City Power District)

THIS AGREEMENT OF PURCHASE AND SALE (the "**Agreement**") dated as of January ___, 2020 (the "**Effective Date**") is made and entered into by the **City of Dodge City, Kansas**, a Kansas municipal corporation ("**Seller**"), and **Dodge Partners, LLC**, a Kansas limited liability company, and any assignees permitted pursuant to Section 10.6 below ("**Buyer**").

RECITALS

A. Seller is the owner of certain real property comprised of two (2) pad sites (each, a "**Pad Site**" and collectively, the "**Pad Sites**") generally located at North 14th Avenue and Soule (collectively, the "**Land**"), which Land is legally described as set forth on **Exhibit A-1** and generally depicted on **Exhibit A-2**; and

B. Seller desires to transfer to Buyer and Buyer desires to acquire from Seller the above-described Pad Sites subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

ARTICLE 1

PURCHASE AND SALE OF PROPERTY

Section 1.1 Sale. Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, subject to the terms, covenants and conditions set forth herein, the following:

(a) all of Seller's right, title and interest, if any, in and to the Pad Sites; and

(b) all of Seller's right, title and interest, if any, in and to all and singular the estates, rights, privileges, easements and appurtenances belonging or in any way appertaining to the Land and all of the estate, right, title, interest, claim, or demand whatsoever of Seller, if any, therein or thereto, either in law or in equity, in possession or expectancy, now owned or acquired by Seller prior to the Closing Date, including, without limitation, (i) any easements, licenses, covenants and other rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Land, including all rights and benefits, subject to the conditions and limitations, under that certain Declaration of Reciprocal Easements, Covenants, and Restrictions, recorded on March 29, 2018, at Book is Z, B: 170 P: 265 in the Office the Register of Deeds of Ford County Kansas, (the "**ECR**") and (ii) all of Seller's right, title and interest, if any, in and to all roads and alleys adjoining or servicing the Land, and (iii) any and all entitlements, development rights, allocations of development density, utility capacities, approvals, certificates, permits, consents, authorizations, variances or other similar rights or

Agreement of Purchase and Sale
Dodge City Power District

intangibles allocated to or attributable to the Pad Sites (collectively, the "**Appurtenances**").

Section 1.2 The Property. All of Seller's right, title and interest in and to the Land and Appurtenances referred to in subparagraphs (a) and (b) above are collectively referred to herein as the "Property."

Section 1.3 Purchase Price and Deposit.

(a) The purchase price of the Property is \$6.00 per square foot multiplied by the total square footage of the Land, excluding any rights of ways for adjoining public streets or roads and the North 14th Access Road (as that term is defined in the ECR), which such square footage is to be definitively confirmed by the Survey (the "**Purchase Price**") and shall be paid by Buyer to Seller by wire transfer in immediately available funds at the consummation of the purchase and sale contemplated hereunder (the "**Closing**").

(b) On or before expiration of the second (2nd) business day following the Effective Date, Buyer shall deposit in escrow with High Plains Title, 107 Gunsmoke Street, Dodge City, Kansas (the "**Title Company**") acting in its capacity as an agent for a nationally recognized title insurer reasonably acceptable to Buyer, a deposit in the amount of Twenty Thousand Dollars (\$20,000) in immediately available funds (such deposit, any additions thereto and any interest thereon shall be referred to herein as the "**Deposit**"). The Deposit shall be held by the Title Company in an interest bearing account and all interest accruing thereon shall be deemed a part of the Deposit. Except as otherwise set forth herein, the Deposit will be non-refundable upon expiration of the Conditions Period. Upon expiration of the Conditions Period, the parties hereby direct the Title Company to immediately transfer and deliver the Deposit to Seller, unless Buyer has prior to then duly exercised its rights to terminate this Agreement when and if permitted to do so in accordance with any of the provisions of this Agreement. Should Buyer fail to deposit the Deposit as required by this Section 1.3, Seller may terminate this Agreement at any time upon written notice to Buyer (without any opportunity by Buyer to cure). In such event, neither party shall have any further rights, obligations or remedies under this Agreement, except for the indemnification obligations contained in Sections 2.1 and 6.1 below and the rights contained in Section 9.2, all of which shall survive the Closing or any termination of this Agreement. If the sale of the Property as contemplated hereunder is consummated, then Buyer shall receive a credit against the Purchase Price in the amount of the Deposit.

Section 1.4 Title to the Property. At the Closing, Seller shall convey, transfer and assign to Buyer title to the Land by a duly authorized, executed and acknowledged Special Warranty Deed in a form substantially similar to that which is attached hereto as **Exhibit B** and made a part hereof for all purposes (the "**Deed**"). Seller's conveyance and the Deed shall be subject to (a) the Permitted Exceptions (as defined below), and (b) Seller's "Repurchase Rights" as described in Section 5.4 below.

ARTICLE 2

CONDITIONS PERIOD AND DUE DILIGENCE

Section 2.1 Conditions Period; Inspections and Tests. Buyer shall have a period of time to conduct due diligence in connection with the Property commencing on the Effective Date and ending at 5:00 p.m. (Dodge City time) on that date which is sixty (60) days after the Effective Date (the "**Conditions Period**"). Seller hereby grants Buyer two (2) options (each an "**Extension Option**"), each exercisable in Buyer's sole discretion, to extend the Conditions Period, if unexpired, by an additional fifteen (15) days for each exercise. To exercise each Extension Option, Buyer must, prior to the expiration of the Conditions Period and any prior extension thereof, deliver written notice to Seller of such exercise and deliver an additional Five Thousand Dollars (\$5,000) in immediately-available funds as additional escrow deposit with the Title Company (each an "**Extension Deposit**"). The Conditions Period shall expire, as applicable, immediately upon the date which is (i) sixty (60) days after the Effective Date, unless Buyer timely delivers an Extension Deposit for the first Extension Option, (ii) seventy five (75) days after the Effective Date if Buyer has exercised the first Extension Option and timely delivered the Extension Deposit, unless Buyer timely delivers the Extension Deposit for the second Extension Option, and (iii) ninety (90) days after the Effective Date if Buyer has exercised both Extension Options and timely delivered the required Extension Deposits. Each Extension Deposit shall augment the Deposit. Subject to the other terms and conditions of this Agreement, the first and second Extension Deposits, if made, shall be immediately and automatically be deemed non-refundable and the property of Seller, except as specifically provided in Sections 5.2 or 9.1 below. The parties further agree as follows:

(a) During the Conditions Period, Seller shall make the Property available to Buyer and its agents, consultants and engineers for such inspections and tests as Buyer reasonably deems appropriate. Buyer, its agents, consultants and engineers, shall have the right, at Buyer's sole cost and expense, to conduct engineering and environmental inspections and surveys of the Property. In the event that Buyer deems it necessary to perform any drilling, soil tests or other invasive testing on the Property prior to the expiration of the Conditions Period, Seller shall determine, in its sole discretion, where such drilling, soil or other invasive tests may take place, as long as in the reasonable judgment of Buyer's consultants and engineers the locations of such drilling and testing are adequate to determine the condition and suitability of the Property for Buyer's intended development. Seller shall have the right to accompany or have a representative of Seller accompany Buyer on each such entry upon the Property. Buyer further agrees that when it provides soil, water or other samples to a laboratory or other center for analysis, Buyer shall not disclose Seller's name or the source of the samples to the laboratory or other analysis center. Any such inspections conducted by Buyer or Buyer's agents shall not interfere with any neighboring property or retail stores. If Seller, in Seller's sole discretion, determines that such inspections are interfering with such neighboring properties or stores, Seller may terminate, by written notice to Buyer, any right of Buyer to conduct such particular inspections or tests, in which case Buyer shall be entitled to a refund in full of the Deposit. Buyer hereby agrees to (i) restore the Property to its previous condition promptly following the completion of each such inspection and/or test, and (ii) indemnify and hold Seller harmless from and against, any

and all losses, claims, suits, liabilities, fees (including reasonable attorneys' fees), expenses, costs or damages actually incurred or sustained by Seller arising out of actions taken at or in regard to the Property by Buyer or its agents, engineers, contractors, representatives, consultants and/or such inspections and tests. The indemnification provisions of this Section 2.1 shall survive the Closing or any termination of this Agreement. Buyer hereby understands and agrees that the nature of the sale of the Property as described in this Agreement is on an "AS IS" basis as more fully set forth in Section 4.1 hereof, and that as part of the consideration for Seller's acceptance of this Agreement, Buyer has specifically agreed with Seller that Buyer shall not be entitled to terminate this Agreement or renegotiate any of the terms and conditions hereof due to conditions discovered by Buyer as a result of any of Buyer's inspections of the Property during the Conditions Period.

(b) Notwithstanding the foregoing, and notwithstanding any to the contrary in this Agreement, Buyer shall have the unilateral right to terminate this Agreement for any reason or no reason during the Conditions Period (as the same may be extended via the Extension Option(s) described above) by providing written notice of said termination to Seller and, upon said termination, the Deposit (except for and excluding the non-refundable Extension Deposit(s) described above) shall be immediately refunded to Buyer by the Title Company.

ARTICLE 3

TITLE

Section 3.1 Preliminary Title Report and Survey. Seller shall, within ten (10) days of the Effective Date, deliver to Buyer a commitment for title insurance (the "**Title Commitment**") from the Title Company, with respect to the Land, together with copies of each of the documents creating exceptions to title to the Property as shown thereon. Buyer shall, at Buyer's sole cost and expense, and within forty-five (45) days of the Effective Date, have the right to conduct and complete an ALTA/ACSM survey of the Land (the "**Survey**").

Section 3.2 Title Period. Buyer shall have a period (the "**Title Period**") expiring on the date that is thirty-five (35) days following Buyer's receipt of the Title Commitment and copies of all exception documents and instruments in which to advise Seller in writing of its objections to the exceptions to title to the Property as shown on the Title Commitment and/or any matter reflected on the Survey to which Buyer objects. Any such exception to title shown in the Title Commitment and/or any matter reflected in the Survey to which Buyer does not specifically object (by delivering written notice to Seller within such Title Period specifying the objected to exception) shall be deemed to have been approved by Buyer. Seller shall have no obligation to cure or attempt to cure any of Buyer's objections to the Title Commitment or the Survey. In the event Seller is unable or unwilling to so cure Buyer's title or Survey objections, if any, within ten (10) days following the timely delivery to Seller of Buyer's list of objections to the title to the Property, Seller shall so notify Buyer in writing of Seller's inability or unwillingness to cure such objections. Thereafter, Buyer may, at its option, exercised by delivering written notice to Seller within ten (10) days following the date Seller delivers written notice to Buyer that Seller is so unable or unwilling to cure such title objections, (i) accept title to the Property subject to the

uncured objections raised by Buyer as permitted hereby, without an adjustment in the Purchase Price, in which event said uncured objections shall be deemed to be waived for all purposes and such uncured items as to which Buyer had an objection shall be deemed approved by Buyer, or (ii) terminate this Agreement, in which event the Deposit (except for and excluding the non-refundable Extension Deposit(s), if any, which may by then have been delivered by Buyer) shall be returned to Buyer by the Title Company and this Agreement shall be of no further force or effect, except with respect to the indemnification obligations contained in Section 2.1 above and Section 6.1 below and the rights contained in Section 9.2, all of which shall survive the Closing or any termination of this Agreement. Additionally, if Buyer shall terminate as set forth herein (or for any other reason), Buyer shall, upon request from Seller, deliver to Seller copies of any Survey, title documents or other due diligence reports created by or for Buyer during the Conditions Period and/or Title Period. If Buyer fails to give such written notice to Seller within such ten (10) day period, Buyer shall be deemed to have elected option (i) above. All matters disclosed by the Title Commitment and/or the Survey which Buyer either approves or is deemed to have approved are herein referred to as the "**Permitted Exceptions.**"

Section 3.3 Owner's Title Insurance Policy for the Property. At or promptly after the Closing, Seller will cause the Title Company to deliver to Buyer an Owner Policy of Title Insurance (the "**Title Policy**") in the full amount of the Purchase Price, insuring Buyer's title to the Property, subject to the Permitted Exceptions. Buyer may purchase and be responsible for obtaining, at Buyer's sole cost and expense, any endorsements to the Title Policy which Buyer may require and Buyer agrees Seller shall only be obligated to cause the Title Company to deliver a base title policy without any such endorsements. Buyer agrees to pay for any costs associated with the deletion of the "survey exception" from the Title Policy.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES, COVENANTS, AND INDEMNIFICATIONS

Section 4.1 Representations and Warranties of Seller. Seller hereby makes the following representations and warranties, which representations and warranties shall be true and correct as of the Effective Date and shall, if possible, be confirmed in writing by Seller at Closing:

(a) Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended (the "Code") and any related regulations.

(b) This Agreement (i) has been fully and properly authorized and approved by the governing body of Seller pursuant to all necessary actions and procedures duly taken and conducted in accordance with the requirements of all applicable Kansas law, and has been duly executed and delivered by Seller, (ii) is the legal, valid and binding obligation of Seller, legally enforceable against Seller in accordance with its terms, and (iii) does not violate any provision of applicable Kansas law or any agreement or judicial order to which Seller is a party or to which Seller is subject. All documents and instruments (including the Deed) to be executed by Seller which are to be delivered to Buyer at Closing (x) at the time of Closing will be duly executed and delivered by Seller

by the acting Mayor of Seller or such other officials of Seller who have been duly and properly authorized and empowered to do so on behalf of Seller in accordance with all requirements of applicable Kansas law, (y) at the time of Closing will be legal, valid and binding obligations of Seller, and (z) at the time of Closing will not violate any applicable Kansas law or any provision of any agreement or judicial order to which Seller is a party or to which Seller is subject.

SELLER IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE (OTHER THAN SELLER'S SPECIAL WARRANTY OF TITLE TO BE SET FORTH IN THE DEED OR OTHER SPECIFIC REPRESENTATIONS AND WARRANTIES MADE BY SELLER IN THIS AGREEMENT), TAX CONSEQUENCES, PHYSICAL OR ENVIRONMENTAL CONDITION, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, GOVERNMENTAL REGULATIONS, THE TRUTH, ACCURACY OR COMPLETENESS OF THE ITEMS OR ANY OTHER INFORMATION PROVIDED BY OR ON BEHALF OF SELLER TO BUYER OR ANY OTHER MATTER OR THING REGARDING THE PROPERTY. UPON CLOSING SELLER SHALL SELL AND CONVEY TO BUYER AND BUYER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS." BUYER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF SELLER WITH RESPECT TO THE PROPERTY. BUYER HAS CONDUCTED OR WILL CONDUCT SUCH INVESTIGATIONS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS BUYER DEEMS NECESSARY TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND WILL RELY SOLELY UPON SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF SELLER. UPON CLOSING, BUYER SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING BUT NOT LIMITED TO, CONSTRUCTION DEFECTS AND ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY BUYER'S INVESTIGATIONS. BUYER, UPON CLOSING, HEREBY WAIVES, RELINQUISHES AND RELEASES SELLER FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT (i.e., NEGLIGENCE AND STRICT LIABILITY)), LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COURT COSTS) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, WHICH BUYER MIGHT HAVE ASSERTED OR ALLEGED AGAINST SELLER AT ANY TIME BY REASON OF OR ARISING OUT OF ANY CONSTRUCTION DEFECTS, PHYSICAL AND ENVIRONMENTAL CONDITIONS, THE VIOLATION OF ANY APPLICABLE LAWS AND ANY AND ALL OTHER MATTERS REGARDING THE PROPERTY. BUYER, UPON CLOSING, SHALL AUTOMATICALLY INDEMNIFY AND HOLD SELLER HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT (I.E., NEGLIGENCE AND STRICT LIABILITY)), LOSS, DAMAGE, LIABILITIES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COURT COSTS) OF ANY AND

EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, FIXED OR CONTINGENT, ASSERTED AGAINST OR INCURRED BY SELLER AT ANY TIME BY REASON OF OR ARISING OUT OF THE VIOLATION OF ANY APPLICABLE LAWS PERTAINING TO ANY ADVERSE PHYSICAL OR ENVIRONMENTAL CONDITION PLACED OR OCCURRING ON THE PROPERTY ON OR AFTER THE CLOSING DATE. SHOULD ANY CLEAN-UP, REMEDIATION OR REMOVAL OF HAZARDOUS SUBSTANCES OR OTHER ENVIRONMENTAL CONDITIONS PLACED OR OCCURRING ON THE PROPERTY AFTER THE DATE OF CLOSING BE REQUIRED, IT IS HEREBY UNDERSTOOD AND AGREED THAT SUCH CLEAN-UP, REMOVAL OR REMEDIATION SHALL BE THE RESPONSIBILITY OF AND SHALL BE PERFORMED AT THE SOLE COST AND EXPENSE OF BUYER. THE TERMS, CONDITIONS, OBLIGATIONS AND INDEMNITIES OF THIS SECTION 4.1 SHALL EXPRESSLY SURVIVE THE CLOSING AND NOT MERGE THEREIN.

BUYER REPRESENTS AND WARRANTS TO SELLER THAT BUYER HAS KNOWLEDGE AND EXPERIENCE IN FINANCIAL AND BUSINESS MATTERS THAT ENABLE BUYER TO EVALUATE THE MERITS AND RISKS OF THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT. FURTHER, BUYER ACKNOWLEDGES THAT IT IS NOT IN A DISPARATE BARGAINING POSITION RELATIVE TO SELLER WITH RESPECT TO THIS AGREEMENT.

AS USED HEREIN, THE TERM "**HAZARDOUS SUBSTANCES**" SHALL MEAN ANY SUBSTANCE WHICH IS OR CONTAINS (I) ANY "HAZARDOUS SUBSTANCE" AS NOW OR HEREAFTER DEFINED IN §101(14) OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980, AS AMENDED (42 U.S.C. §9601 ET SEQ.) ("**CERCLA**") OR ANY REGULATIONS PROMULGATED UNDER CERCLA; (II) ANY "**HAZARDOUS WASTE**" AS NOW OR HEREAFTER DEFINED IN THE RESOURCE CONSERVATION AND RECOVERY ACT (42 U.S.C. §6901 ET SEQ.) ("**RCRA**") OR REGULATIONS PROMULGATED UNDER RCRA; (III) ANY SUBSTANCE REGULATED BY TOXIC SUBSTANCES CONTROL ACT (15 U.S.C. §2601 ET SEQ.); (IV) GASOLINE, DIESEL FUEL, OR OTHER PETROLEUM HYDROCARBONS; (V) ASBESTOS AND ASBESTOS CONTAINING MATERIALS, IN ANY FORM, WHETHER FRIABLE OR NON-FRIABLE; (VI) POLYCHLORINATED BIPHENYLS; (VII) RADON GAS; AND (VIII) ANY ADDITIONAL SUBSTANCES OR MATERIALS WHICH ARE NOW OR HEREAFTER CLASSIFIED OR CONSIDERED TO BE HAZARDOUS OR TOXIC UNDER ANY APPLICABLE FEDERAL OR STATE LAWS RELATING TO ANY OF THE PROPERTY. HAZARDOUS SUBSTANCES SHALL INCLUDE, WITHOUT LIMITATION, ANY SUBSTANCE, THE PRESENCE OF WHICH ON THE PROPERTY, (A) REQUIRES REPORTING, INVESTIGATION OR REMEDIATION UNDER APPLICABLE LAW, (B) CAUSES OR THREATENS TO CAUSE A NUISANCE ON THE PROPERTY OR ADJACENT PROPERTY OR POSES OR THREATENS TO POSE A HAZARD TO THE HEALTH OR SAFETY OF PERSONS ON THE PROPERTY OR ADJACENT PROPERTY; OR (C) WHICH, IF IT EMANATED OR MIGRATED FROM THE PROPERTY, COULD CONSTITUTE A TRESPASS.

Section 4.2 Representations and Warranties of Buyer. Buyer hereby makes the following representations and warranties, which representations and warranties shall be true and correct as of the Effective Date and shall, if possible, be confirmed in writing by Buyer at Closing:

(a) Buyer has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by Buyer's creditors, (iii) suffered the appointment of a receiver to take possession of all, or substantially all, of Buyer's assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Buyer's assets, (v) admitted in writing its inability to pay its debts as they come due or (vi) made an offer of settlement, extension or composition to its creditors generally.

(b) This Agreement (i) has been duly executed and delivered by Buyer, (ii) is the legal, valid and binding obligation of Buyer, and (iii) does not violate any provision of any agreement or judicial order to which Buyer is a party or to which Buyer is subject. All documents to be executed by Buyer which are to be delivered to Seller at Closing (iv) at the time of Closing will be duly executed and delivered by Buyer, (v) at the time of Closing will be legal, valid and binding obligations of Buyer, and (vi) at the time of Closing will not violate any provision of any agreement or judicial order to which Buyer is a party or to which Buyer is subject.

Section 4.3 Survival of Representations and Warranties. The representations and warranties of Seller and Buyer contained herein shall survive the Closing for a period of one (1) year after the Closing.

Section 4.4 Buyer's Covenants and Seller's Condition.

(a) Buyer shall promptly notify Seller in writing of any event or circumstance of which Buyer actually becomes aware that materially affects the truth of any of Buyer's representations and warranties herein.

(b) It shall be a condition to Seller's obligation to sell the Property that as of the Closing Date there shall be no breach by Buyer of any of the covenants, undertakings or agreements to be performed by Buyer prior to or at Closing pursuant to the terms of this Agreement other than such matters as shall have been cured by Buyer; and that each representation and warranty made in this Agreement by Buyer shall be true in all material respects both at the time made and as of the Closing Date. If any of the foregoing conditions are not satisfied or waived as of the Closing Date, Seller may, by written notice given to Buyer at or before the Closing, elect either to (i) terminate this Agreement or (ii) waive such condition. If Seller elects to terminate this Agreement, then neither party shall have any further rights or obligations hereunder, except the indemnification obligations that are set forth in Sections 2.1 and 6.1 hereof and the rights contained in Section 9.2 all of which shall survive the Closing or any termination of this Agreement.

Section 4.5 Seller's Covenants and Buyer's Condition.

(a) Seller shall promptly notify Buyer in writing of any event or circumstance of which Seller actually becomes aware that materially affects the truth of any of Seller's representations and warranties herein.

(b) It shall be a condition to Buyer's obligations to purchase the Property that as of the Closing Date there shall be no material breach by Seller of any of the covenants, undertakings or agreements to be performed by Seller prior to or at Closing pursuant to the terms of this Agreement other than such matters as shall have been cured by Seller; and that each representation and warranty made in this Agreement by Seller, as supplemented pursuant to Section 4.5(a) hereof, shall be true in all material respects both at the time made and as of the Closing Date. If any of the foregoing conditions are not satisfied or waived as of the Closing Date, Buyer may, by written notice given to Seller at or before the Closing, elect either to (i) terminate this Agreement, in which case Buyer shall be entitled to a refund in full of the Deposit, or (ii) waive such condition. If Buyer elects to terminate this Agreement, pursuant to this Section 4.5(b), then neither party shall have any further rights or obligations hereunder, except the indemnification obligations that are set forth in Sections 2.1 and 6.1 hereof and the rights contained in Section 9.1 below all of which shall survive the Closing or any termination of this Agreement.

ARTICLE 5

THE RETAIL PROJECT/LEASING CONDITIONS/REPURCHASE RIGHTS

Section 5.1 The Retail Project. The parties hereby recognize and agree that Buyer intends to design, develop, build and operate an approximately 16,520 square foot multi-tenant retail facility on the Property comprised of approximately 8,260 square feet on each of the two Pad Sites (the "**Retail Project**"), and that the ability to successfully build, lease and operate such Retail Project is of critical importance to both Seller and Buyer.

Section 5.2 Leasing and Letters of Intent Condition to Closing. The parties hereby recognize and agree that Buyer will use its best efforts to obtain retail leases and/or letters of intent ("**LOIs**") for the Retail Project from the period commencing with the Effective Date and ending on that date which is ninety (90) days after the Effective Date (the "**Retail Leasing Period**"). If, however, by the end of the Retail Leasing Period (i) Buyer does not have at least 8,260 square feet of unconditional leases and/or LOIs (the "**Retail Leases**") for each of the Pad Sites, and (ii) the businesses to be conducted on the Pad Site by the tenants under the Retail Leases shall be projected by the City's STAR Bond feasibility consultant (currently GAI Consulting) to generate no less than \$2,365,000 in annual retail sales for each of the two Pad Sites (the "**Retail Threshold**") (which Retail Leases, along with any sales projections available from such tenants, must be shared with the Seller's attorneys to evidence the Retail Threshold), then either Seller or Buyer may terminate this Agreement with regard to any Pad Site on which the Retail Threshold was not met by written notice to the other within ten (10) days after the end of the Retail Leasing Period. Buyer shall use best efforts to induce each retail tenant under a Retail Lease to provide to Seller or Seller's attorneys the retail sales it projects to realize from the operation of its retail business on a Pad Site. The parties further agree as follows:

(a) If Buyer meets the Retail Threshold for one Pad Site, but not the other, then Buyer shall have the right to Close on the Pad Site as to which the Retail Threshold was met, but either party may terminate this Agreement for the other Pad Site on which Retail Threshold was not met.

(b) If either party timely elects to terminate this Agreement on both Pad Sites pursuant to this Section 5.2, then the Deposit shall be retained by Seller and neither party shall have any further rights or obligations hereunder, except for the indemnification obligations contained in Sections 2.1 and 6.1 of this Agreement and the rights contained in Section 9.2 of this Agreement, all of which shall survive the Closing and, if the purchase and sale contemplated hereunder is not consummated, any termination of this Agreement.

(c) For purposes of evaluating satisfaction of the Retail Threshold for each of the two Pad Sites, the parties hereby agree that:

(i) Any retail sales projections from a tenant under a Retail Lease which is relocating its store or business to the Pad Site from its existing location within Dodge City shall be excluded from the projections. For example, if Buyer provides 10,000 square feet of Retail Leases for one of the Pad Sites, and the gross annual sales projections from such Retail Leases are \$2,800,000, but such projections include \$600,000 of annual sales from a tenant that is relocating its store or business to the Pad Site from an existing location within Dodge City, then such \$600,000 shall be excluded and the annual retail sales shall be deemed to be projected at \$2,200,000 instead of \$2,800,000 and the Retail Threshold will be deemed not to have been met for such Pad Site.

(ii) If, despite Buyer's best efforts, any tenant under a Retail Lease refuses or fails to share its projected sales from the Pad Site with Seller, then for purposes of determining satisfaction of the Retail Threshold, the projected sales shall be conclusively determined by the STAR Bond Trustee for the STAR Bond District (as defined in Section 7.1 below).

Section 5.3 Financing Conditions/CID. The parties hereby recognize and agree that Buyer will use its best efforts to obtain all private equity and debt necessary to design, develop, construct and complete the Retail Project (the "**Private Financing**") during the Retail Leasing Period described above. If, however, despite Buyer's best efforts, Buyer has not been able to secure the Private Financing by the end of the Retail Leasing Period (evidence of which Private Financing must be shared with the Seller's attorneys to demonstrate the same to Seller's commercially reasonable satisfaction), then either Seller or Buyer may terminate this Agreement by written notice to the other within five (5) days after the end of the Retail Leasing Period. If either party timely elects to terminate this Agreement pursuant to this Section 5.3, then the Deposit shall be retained by Seller and neither party shall have any further rights or obligations hereunder, except for the indemnification obligations contained in Sections 2.1 and 6.1 of this Agreement and the rights contained in Section 9.2 of this Agreement, all of which shall survive the Closing and, if the purchase and sale contemplated hereunder is not consummated, any termination of this Agreement.

If, within the first thirty (30) days of the Conditions Period, Buyer delivers to Seller a written request for a community improvement district (a “**CID**”) for all or a portion of the Property pursuant to K.S.A. 12-6a26 et seq. (the “**CID Act**”) in order to impose and collect a special add-on retail sales tax, for a duration and in an amount as permitted under the CID Act, against all retail sales generated within the CID, then, Seller agrees to advance a petition for a CID to its governing body for consideration. Buyer understands and agrees that any such petition for a CID must be accompanied by a development agreement with Seller (a “**Development Agreement**”) that would govern and control the terms and conditions of collecting and disbursing any CID revenues and the operations of the Retail Project during the term of any such CID, which Development Agreement must be acceptable to the Seller in its sole discretion. The governing body may approve, condition or disapprove of any such petition for CID in its sole and absolute discretion. If the governing body approves any such CID, the Development Agreement would provide as follows:

(a) the proceeds collected from any such special retail sales tax, net of administrative fees which Seller is permitted to retain under the CID Act, may be payable to Buyer for payment of its costs of developing and constructing the Retail Project, subject always to the limitations set forth in the CID Act and the terms and conditions of the Development Agreement;

(b) the CID proceeds described herein would be limited by a “CID Cap” to be negotiated and agreed to by the parties in the Development Agreement; and

(c) in no event shall Seller be obligated to issue any bonds in connection with such CID financing, and Buyer shall be responsible for providing all equity and private financing for the initial development construction, and may be reimbursed for its eligible costs of the Retail Project on a “pay-as-you-go” basis from the special retail sales tax assessed by Seller pursuant to the CID Act and the terms and conditions of the Development Agreement.

However, Seller agrees that if Buyer timely requests establishment of a CID (as described herein), then Buyer may terminate this Agreement at any time prior to Closing if Seller’s governing body fails or declines to provide CID financing by approving any such CID and the terms and conditions of a Development Agreement which are mutually agreeable to Seller and Buyer. If Buyer elects to so terminate this Agreement, the Deposit may be retained by Seller and neither party shall have any further rights or obligations hereunder, except for the indemnification obligations contained in Sections 2.1 and 6.1 of this Agreement and the rights contained in Section 9.2 of this Agreement, all of which shall survive the Closing and, if the purchase and sale contemplated hereunder is not consummated, any termination of this Agreement.

Section 5.4 Seller’s Repurchase Rights. Buyer hereby understands and agrees that Seller would not sell the Property to Buyer (which, for purposes hereof may mean one or both of the Pad Sites that the Buyer shall close on) without a commitment from Buyer to build and open the Retail Project on the Property on an agreed-upon schedule. Accordingly, the parties hereby agree that Seller shall have the option to repurchase the Property (collectively, the “**Repurchase Rights**”) as follows:

(a) Commencement of Construction. If Buyer has not commenced construction of the Retail Project at least one of the two Pad Sites within ninety (90) days after date of the Closing (the "**Commencement Deadline**"), then Seller shall have the right, in Seller's sole discretion, to repurchase the Property from Buyer upon written notice from Seller to Buyer (the "**Failure to Commence Notice**"). If Seller shall exercise its Repurchase Rights pursuant to the terms of this Section 5.4(a), Buyer hereby agrees with Seller that (i) said repurchase shall close within ninety (90) days of the Failure to Commence Notice, (ii) the purchase price for the repurchase shall be the applicable "Repurchase Price" as defined below) and (iii) Buyer shall convey the Property back to Seller by special warranty deed and subject to all title matters and exceptions to which the Property was subject at the time of its original conveyance by Seller to Buyer. For purposes of this Agreement, the "commencement of construction" (or similar words) shall be defined as the beginning of construction work on footings and foundations for the Retail Project (or applicable portion thereof) and undertaking a continuous program of construction related thereto. In addition, for purposes of this Agreement, in the event Buyer is prevented from commencing construction by the Commencement Deadline as a result of weather constraints, acts of God, strikes, lockout, or other labor disputes, floods, fires, landslides, order of any court, government agency or official having jurisdiction thereof, or any other cause not reasonably within the control of Buyer, in which event the Commencement Deadline shall be extended for such further reasonable time as may be required.

(b) Abandonment. If Buyer shall timely commence construction of the Retail Project on one of the two Pad Sites on or before the Commencement Deadline as set forth in subsection (a) above, but shall thereafter cease work and abandon the Property for a period of six (6) months, then Seller shall have the right, in Seller's sole discretion, to repurchase the Property from Buyer upon written notice from Seller to Buyer (the "**Abandonment Notice**"). If Seller shall exercise its right to repurchase the Property pursuant to the terms of this Section 5.4(b), Buyer hereby agrees with Seller that (i) said repurchase shall close within ninety (90) days of the Abandonment Notice, (ii) the purchase price for the repurchase shall be the applicable Repurchase Price, and (iii) Buyer shall convey the Property back to Seller by special warranty deed. For purposes of this Agreement, in the event Buyer is prevented from continuing construction of the Retail Project as a result of weather constraints, acts of God, strikes, lockout, or other labor disputes, floods, fires, landslides, order of any court, government agency or official having jurisdiction thereof, or any other cause not reasonably within the control of Buyer, in which event the Abandonment Notice requirement shall be postponed for such further reasonable time as may be required.

(c) Completion of Construction (Pad Site #1). If Buyer shall timely commence construction of the Retail Project on one of the two Pad Site ("**Pad Site #1**") on or before the Commencement Deadline as set forth in subsection (a) above, but shall thereafter fail to substantially complete and open a portion of the Retail Project on Pad Site #1 on or before that date which is six (6) months after the date of Closing, then Seller shall have the right, in Seller's sole discretion, to repurchase the Property from Buyer

upon written notice from Seller to Buyer (the "**Failure to Complete Notice**"). If Seller shall exercise its right to repurchase the Property (or portion thereof) pursuant to the terms of this Section 5.4(c), Buyer hereby agrees with Seller that (i) said repurchase shall close within ninety (90) days of the Failure to Complete Notice, (ii) the purchase price for the repurchase shall be the Repurchase Price, and (iii) Buyer shall convey the Property (or portion thereof) back to Seller by special warranty deed. For purposes of this Agreement, in the event Buyer is prevented from substantially completing construction of the Retail Project on Pad Site #1 as a result of weather constraints, acts of God, strikes, lockout, or other labor disputes, floods, fires, landslides, order of any court, government agency or official having jurisdiction thereof, or any other cause not reasonably within the control of Buyer, in which event the Failure to Complete Notice requirement shall be postponed for such further reasonable time as may be required. Upon substantial completion and opening of the Retail Project on Pad Site #1 as set herein, Seller hereby agrees that Seller's Repurchase Rights for the property that comprises Pad Site #1 as described in this Section 5.4 shall be null and void and of no further force and effect.

(d) Repurchase Rights for Pad Site #2. If Buyer has met the Retail Threshold for Pad Site #1 and timely commenced and completed construction of the Retail Project on Pad Site #1 in accordance with the terms and conditions set forth in subsections (a) through (c) above, but Buyer as not met the Retail Threshold for the second Pad Site ("Pad Site #2), or if Buyer fails to commence construction or complete construction of Pad Site #2 by the deadlines set forth in subsections (a) through (c) above, then the following terms and conditions shall govern and control Pad Site #2:

(i) Retail Threshold for Pad Site #2. If on or before October 1, 2020

(i) Buyer does not have at least 8,260 square feet of Retail Leases for Pad Site #2, and (ii) the businesses to be conducted on Pad Site #2 by the tenants under the Retail Leases shall be projected by the City's STAR Bond feasibility consultant (currently GAI Consulting) to generate no less than \$2,365,000 in annual retail sales for Pad Site #2 (or, when combined with the retail sales from Pad Site #1, an aggregate of \$4,730,000), then Seller shall have a right to repurchase Pad Site #2 from Buyer for the Repurchase Price described in subsection (e) below. Buyer shall deliver any such Retail Leases for Pad Site #2, along with any sales projections available from such tenants, to Seller's attorneys to evidence the retail sales targets described herein. Such retail sales projections shall also be subject to the terms and conditions set forth in Section 5.2(c) above.

(ii) Pad Site # 2 Commencement of Construction. If Buyer has not commenced construction of the Retail Project on Pad Site #2 on or before November 1, 2020 (the "**Pad Site # 2 Commencement Deadline**"), then Seller shall have the right, in Seller's sole discretion, to repurchase Pad Site #2 from Buyer upon written notice from Seller to Buyer (the "**Pad Site # 2 Failure to Commence Notice**"). If Seller shall exercise its Repurchase Rights pursuant to the terms of this Section 5.4(d)(ii), Buyer hereby agrees with Seller that (1) said repurchase shall close within ninety (90) days of the Pad Site #2 Failure to Commence Notice, (2) the purchase price for the repurchase shall be the

applicable "Repurchase Price" as defined below) and (3) Buyer shall convey the Property back to Seller by special warranty deed and subject to all title matters and exceptions to which the Property was subject at the time of its original conveyance by Seller to Buyer. For purposes hereof, the "commencement of construction" (or similar words) shall be defined as set forth in subsection (a) above.

(iii) Pad Site # 2 Abandonment. If Buyer shall timely commence construction of the Retail Project on Pad Site #2 on or before the Pad Site #2 Commencement Deadline as set forth in subsection (d)(ii) above, but shall thereafter cease work and abandon Pad Site #2 for a period of three (3) months, then Seller shall have the right, in Seller's sole discretion, to repurchase Pad Site #2 from Buyer upon written notice from Seller to Buyer (the "**Pad Site #2 Abandonment Notice**"). If Seller shall exercise its right to repurchase Pad Site #2 pursuant to the terms of this Section 5.4(d)(iii), Buyer hereby agrees with Seller that (1) said repurchase shall close within thirty (30) days of the Abandonment Notice, (2) the purchase price for the repurchase shall be the applicable Repurchase Price, and (3) Buyer shall convey the Property back to Seller by special warranty deed. For purposes of this Agreement, in the event Buyer is prevented from continuing construction of the Retail Project on Pad Site #2 as a result of weather constraints, acts of God, strikes, lockout, or other labor disputes, floods, fires, landslides, order of any court, government agency or official having jurisdiction thereof, or any other cause not reasonably within the control of Buyer, in which event the Abandonment Notice requirement shall be postponed for such further reasonable time as may be required.

(iv) Completion of Construction (Pad Site #2). If Buyer shall fail to substantially complete and open the Retail Project on Pad Site #2 on or before May 1, 2021, then Seller shall have the right, in Seller's sole discretion, to repurchase the Property from Buyer upon written notice from Seller to Buyer (the "**Pad Site #2 Failure to Complete Notice**"). If Seller shall exercise its right to repurchase Pad Site #2 pursuant to the terms of this Section 5.4(d)(iv), Buyer hereby agrees with Seller that (1) said repurchase shall close within thirty (30) days of the Pad Site # 2 Failure to Complete Notice, (2) the purchase price for the repurchase shall be the Repurchase Price, and (3) Buyer shall convey Pad Site #2 back to Seller by special warranty deed. For purposes of this Agreement, in the event Buyer is prevented from substantially completing construction of the Retail Project on Pad Site #2 as a result of weather constraints, acts of God, strikes, lockout, or other labor disputes, floods, fires, landslides, order of any court, government agency or official having jurisdiction thereof, or any other cause not reasonably within the control of Buyer, in which event the Pad Site #2 Failure to Complete Notice requirement shall be postponed for such further reasonable time as may be required. Upon substantial completion and opening of the Retail Project on Pad Site #2 as set herein, Seller hereby agrees that Seller's Repurchase Rights for the property that comprises Pad Site #2 as described in this Section 5.4(d) shall be null and void and of no further force and effect.

(e) Repurchase Price. For purposes of this Section 5.4, the “**Repurchase Price**” to be paid by Seller if it exercises any Repurchase Right, shall be as follows:

(i) If Seller shall exercise its Repurchase Rights as to the Property by reason of (x) Buyer’s failure to timely commence construction on Pad Site #1 or Pad Site # 2 on or before the applicable Commencement Deadline as set forth in Section 5.4(a) or 5.4(d)(ii), or (y) Abandonment as set forth in Section 5.4(b) or 5.4(d)(iii), then the Repurchase Price to be paid by Seller shall be 100% of the purchase price originally paid by Buyer at Closing, minus Seller's expenses, including reasonable attorneys' fees, incurred in connection with the exercise of the Repurchase Right and closing (the "**Repurchase Expenses**").

(ii) If Seller shall exercise its Repurchase Rights as to the Property by reason of Buyer’s failure to complete the Retail Project in accordance with the requirements of Section 5.4(c) above, then the Repurchase Price to be paid by Seller shall be 100% of the purchase price paid at Closing by Buyer for the Property (or applicable portion thereof), minus the Repurchase Expenses, plus 50% of the bona fide and verified out-of-pocket construction and development costs and expenses paid by Buyer through the date of its receipt of a Failure to Complete Notice.

(iii) If Seller shall exercise its Repurchase Rights as to Pad Site #2 by reason of Buyer’s failure to complete the Retail Project in accordance with the requirements of Section 5.4(d)(iv) above, then the Repurchase Price to be paid by Seller shall be 50% of the purchase price paid at Closing by Buyer for the Property (or applicable portion thereof), minus the Repurchase Expenses, plus 50% of the bona fide and verified out-of-pocket construction and development costs and expenses paid by Buyer through the date of its receipt of a Failure to Complete Notice.

(f) Survival. The provisions of this Section 5.4 shall survive the Closing.

ARTICLE 6

BROKERS AND EXPENSES

Section 6.1 Broker. Seller is represented in the transaction contemplated by this Agreement by CBC Real Estate Group, LLC ("**Seller's Broker**"), and Buyer is not represented in the transaction. If any person (other than Seller's Broker) brings a claim for a commission or finder's fee based upon any contact, dealings or communication with Buyer or Seller, then the party through whom such person makes his claim shall defend the other party (the "**Indemnified Party**") from such claim, and shall indemnify the Indemnified Party and hold the Indemnified

Party harmless from any and all costs, damages, claims, liabilities or expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the Indemnified Party in defending against the claim. The provisions of this Section 6.1 shall survive the Closing or, if the purchase and sale contemplated hereunder is not consummated, any termination of this Agreement.

Section 6.2 Expenses. Except as provided in Section 8.4(b) below or elsewhere in this Agreement, each party hereto shall pay its own expenses incurred in connection with this Agreement and the transactions contemplated hereby.

ARTICLE 7

STAR BOND REPORTING

Section 7.1 STAR Bond District. On March 19, 2012, pursuant to the STAR Bonds Financing Act, K.S.A. 12-17,160 *et. seq.*, as amended, the City of Dodge City approved a STAR Bond Project District (the "**Original STAR Bond District**") by passage of Ordinance No. 3527. The Original STAR Bond District did not include the Land. However, the Original STAR Bond District has been amended multiple times, and the Land was added to the Original STAR Bond District by passage of Ordinance No. 3650 on February 3, 2017 (as amended the "**STAR Bond District**") and STAR Bonds have been issued in the STAR Bond District. Though Buyer will not have access to any STAR Bond financing, Buyer acknowledges and agrees that the Land is within the STAR Bond District and benefits from infrastructure and other improvements that were financed with STAR Bonds. Accordingly, Buyer agrees to certain reporting requirements as set forth in this Article 7.

Section 7.2 Reporting Sales and Use Taxes. During the life of any STAR Bonds issued in connection with the STAR Bond District, each owner and tenant of any parcel located within the STAR Bond District must provide the Seller and/or the Kansas Department of Revenue (the "**DOR**"), or their designee(s), with documentation of sales tax receipts for each such business within the Retail Project, indicating the type and amount of the sales taxes and/or use taxes paid by such business for the particular location within the Retail Project (and not in the aggregate). During the life of any such STAR Bonds, Buyer shall additionally cause owners and new tenants of any parcels located within the Property to provide to the Seller and/or the DOR, or their designee(s), true and correct copies of all sales tax and/or use tax returns filed with the State of Kansas with respect to sales in, on or from such business, the same to be provided simultaneously with, or within ten (10) days after such filing.

Section 7.3 Lease Requirements. Buyer shall use commercially reasonable efforts to cause any and all leases, licenses, sale agreements or other agreements for transfers of portions of the Property or possession thereof (collectively, the "**Leases**") entered into by Buyer and any tenant (or other operator or user) within the Retail Project to contain a provision requiring such tenant to comply with the provisions set forth in this Article 7. Buyer shall use best efforts to enforce any such provisions in its Lease, provided however, that Buyer shall not have any liability or obligation to Seller or DOR or any other party by reason of the refusal or failure of any tenant (or other operator or user) within the Retail Project to timely or accurately report its

sales tax receipts within the Retail Project despite Buyer's best efforts. If applicable and upon request, Buyer shall, to the extent allowed by applicable laws, regulations and other requirements, provide to the DOR and the bond trustee for any STAR Bonds in the STAR Bond District, the names of all vendors operating in, on or from the Property, their Kansas sales tax identification number and their dates of operation.

Section 7.4 Generation of Retail Sales. Buyer shall not take any actions or adopt any practices or procedures which are designed to eliminate, reduce, or divert in any way any sales taxes and/or use taxes payable to the City of Dodge City and/or the State of Kansas in connection with sales made or services from, in or on and about the STAR Bond District.

Section 7.5 Survival. The provisions of this Article 7 shall survive the Closing.

ARTICLE 8

CLOSING AND ESCROW

Section 8.1 Escrow Instructions. Seller and Buyer agree to execute such escrow instructions as may be appropriate to enable the Title Company to comply with the terms of this Agreement.

Section 8.2 Closing. The Closing hereunder shall be held (either by mail or in person), and delivery of all items to be made at the Closing under the terms of this Agreement shall be made (either by mail or in person), at the offices of the Title Company, or such other place mutually agreed to by the parties, on or before 5:00 p.m. Dodge City time on that date which is one hundred and fifteen (115) days after the Effective Date, or such earlier date as the parties may mutually agree upon (the "**Closing Date**"). Such date and time may not be extended without the written approval of both Seller and Buyer.

Section 8.3 Deposit of Documents.

(a) At or before the Closing, Seller shall deposit into escrow with the Title Company the following items:

(i) one (1) duly executed and acknowledged original Deed;

(ii) an affidavit pursuant to Section 1445(b)(2) of the Internal Revenue Code (the "Code") in a form complying with the requirements of the Code, and on which Buyer is entitled to rely, that Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Code;

(iii) Copies of or excerpts from the minutes of the governing body of Seller which includes the resolutions it has duly adopted authorizing this Agreement and consummation of the transactions contemplated hereby, certified by the City Clerk of Dodge City.

(b) At or before Closing, Buyer shall deposit into escrow with the Title Company and/or cause the Title Company to issue and deliver to Seller the following items:

(i) immediately available funds necessary to close this transaction, subject to any adjustments to be made pursuant to the terms and provisions of this Agreement;

(ii) three (3) duly executed originals of the AS-IS Certificate in the form of **Exhibit E** hereto.

(c) Buyer and Seller shall each deposit such other instruments as are reasonably required by the Title Company or otherwise required to consummate the purchase and sale of the Property in accordance with the terms hereof.

Section 8.4 Prorations.

(a) The following shall all be prorated as of 12:01 a.m. on the Closing Date, on the basis of a 365-day year: (i) real property taxes and assessments for the year in which the Closing occurs; (ii) water, sewer and utility charges, if any; (iii) annual permits and/or inspection fees (calculated on the basis of the period covered); and (iv) any other expenses relating to the operation and maintenance of the Property. Seller and Buyer hereby agree that if any of the aforesaid prorations cannot be calculated accurately on the Closing Date, then the same shall be calculated within thirty (30) days after the Closing Date, or as soon as sufficient information is available to permit the parties to accurately calculate such proration(s), and either party owing the other party a sum of money based on such subsequent proration(s) shall pay said sum to the other party within ten (10) days after such calculation is made; provided, however, that the tax prorations and assessments referenced in Section (i) herein shall be final as of the Closing Date.

(b) Seller shall pay the premium for the Title Policy without any additional premium to delete the so-called "survey exception" and without any extended coverage endorsements. Buyer may purchase, at Buyer's sole cost and expense, any endorsements for the Title Policy which Buyer may require, but the issuance of the Title Policy with such endorsements shall not be a condition precedent to Closing the purchase and sale contemplated hereunder. Seller shall only be obligated to cause the Title Company to deliver to Buyer a base policy, without any endorsements, at a reasonable time after Closing. Buyer shall pay for the Survey. Buyer shall pay all expenses associated with the performance of Buyer's due diligence pursuant to Section 2.1 above. Escrow fees shall be split evenly between Buyer and Seller, each paying one-half. Recording charges, transfer taxes and any other expenses of the escrow for the sale shall be paid by Buyer. All costs and charges described in this paragraph shall be paid at Closing. Each party shall pay their own attorneys' fees. Any bills received after the Closing and not previously prorated in escrow shall be divided as provided herein, and shall be paid promptly upon receipt of a bill therefor, and any and all other costs and expenses relating to the purchase and sale transaction contemplated hereby shall be paid by the party incurring same. The provisions of this Section 8.4 shall survive the Closing.

ARTICLE 9

PROVISIONS WITH RESPECT TO DEFAULT

Section 9.1 Default by Seller. In the event Seller fails to consummate the transactions contemplated herein for any reason (except in the event of a breach or violation by Buyer of any representation or warranty of Buyer set forth herein, a failure by Buyer to perform its obligations hereunder or to consummate the transactions contemplated herein or the termination hereof pursuant to a right granted to Buyer or Seller hereunder to do so), Buyer may either (i) terminate this Agreement by notifying Seller thereof in writing, and thereupon shall be entitled to a return of the Deposit, as its sole and exclusive remedy and relief hereunder, or (ii) enforce specific performance of this Agreement, as its sole and exclusive remedy and relief hereunder. Seller shall not be liable to Buyer for any actual, punitive, speculative, consequential or other damages. Buyer hereby waives any and all other remedies and relief.

Section 9.2 Default by Buyer. If the sale and purchase of the property contemplated by this Agreement is not consummated because of Buyer's default, Seller may terminate this Agreement by notifying Buyer in writing thereof, and thereupon shall be entitled to the Deposit as liquidated damages for such default of Buyer. It is hereby agreed that Seller's damages in the event of a default by Buyer hereunder are uncertain and extremely difficult to ascertain, and that the Deposit constitutes a reasonable pre-estimate of such damages and Seller's retention thereof is intended not as a penalty, but as full liquidated damages. The right to retain the Deposit as full liquidated damages is Seller's sole and exclusive remedy in the event of default hereunder by Buyer, except, however, for the indemnification obligations of Buyer under this Agreement, for the breach of which Seller may exercise any and all rights or remedies available at law or in equity.

ARTICLE 10

MISCELLANEOUS

10.1 Notices. Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (i) in person, including, without limitation, delivery by a courier that provides a receipt, (ii) by certified mail, postage prepaid, return receipt requested, (iii) by a commercial overnight courier that guarantees next day delivery and provides a receipt or (iv) by telefacsimile, provided such notice is also given in one of the methods described in clauses (i)-(iii) above, and such notices shall be addressed as follows:

To Seller:	City of Dodge City City Manager 806 N. Second Avenue Dodge City, Kansas 67801 Telephone: 620-225-8100
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with a copy to: City of Dodge City
City Clerk
806 N. Second Avenue
Dodge City, Kansas 67801
Telephone: 620-225-8100

and a copy to: Stinson LLP
1201 Walnut, Suite 2600
Kansas City, Missouri 64106
Attention: Todd A. LaSala, Esq.
Telephone: 816-691-3410
Facsimile: 816-412-1237
E-mail: todd.lasala@stinson.com

To Buyer: _____

Attention: _____
Facsimile: _____
E-mail: _____

And a copy to: Weary Davis, LC
555 Poyntz Ave., Suite 240
Manhattan, KS 66502
Attention: Steven R. Struebing, Esq
Telephone: (785) 539- 2208
Facsimile: (785) 539-3880
E-mail: steves@wearydavis.com

or to such other address as either party may from time to time specify in writing to the other party. Any notice given by registered or certified mail shall be deemed to have been given on the third day after the same is deposited in the mail, any notice given by facsimile shall be deemed to have been given on the day sent if the sending party receives electronic confirmation of successful transmission of such notice.

10.2 Entire Agreement. This Agreement, together with the Exhibits hereto and the Inspection Agreement, contains all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda, letters of intent or agreements are replaced in total by this Agreement.

10.3 Time. Time is of the essence in the performance by each of the parties of their respective obligations contained herein. In the event that a date for performance of any obligation under this Agreement or expiration of any time period falls on a Saturday, Sunday or a holiday on which national banks are required to be closed, the date for performance of such obligation or expiration of such time period shall be adjusted to be the next occurring calendar day which is not a Saturday, Sunday or bank holiday.

10.4 Attorneys' Fees. If either party hereto fails to perform any of its obligations under this Agreement or if any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements. Any such attorneys' fees and other expenses incurred by either party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such attorneys' fees obligation is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any such judgment. The provisions of this Section shall control over any conflicting provision contained in this Agreement.

10.5 No Merger. The obligations contained herein shall not merge with the transfer of title to the Property but shall remain in effect until fulfilled in accordance with the terms hereof.

10.6 Assignment. Buyer's rights and obligations hereunder shall not be assignable without the prior written consent of Seller, which consent may not be unreasonably withheld. Any assignment of this Agreement without the prior written consent of Seller shall be void. In the event that any assignee of Buyer shall fail to perform on any of the terms and conditions of this Agreement, Buyer shall in all cases remain responsible to Seller for such performance.

10.7 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Facsimile signatures hereon shall be treated for all purposes as original signatures.

10.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas.

10.9 Interpretation of Agreement. The article, section and other headings of this Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "Person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

10.10 Amendments. This Agreement may be amended or modified only by a written instrument signed by Buyer and Seller.

10.11 Drafts Not an Offer to Enter into a Legally Binding Contract. The parties hereto agree that the submission of a draft of this Agreement by one party to another is not intended by either party to be an offer to enter into a legally binding contract with respect to the purchase and sale of the Property. The parties shall be legally bound with respect to the purchase and sale of the Property pursuant to the terms of this Agreement only if and when the parties have been able to negotiate all of the terms and provisions of this Agreement in a manner acceptable to each of

the parties in their respective sole discretion, including, without limitation, all of the Exhibits hereto, and both Seller and Buyer have fully executed and delivered to each other a counterpart of this Agreement.

10.12 No Partnership. The relationship of the parties hereto is solely that of seller and buyer with respect to the Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

10.13 No Third Party Beneficiary. The provisions of this Agreement are not intended to benefit any third parties.

10.14 Exhibits. The Exhibits attached to this Agreement are by this reference made a part hereof and are subject to revision prior to Closing.

10.15 Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and the remainder of this Agreement shall be construed and interpreted as if such invalid, illegal or unenforceable provision had never been contained herein.

[SIGNATURE PAGE FOLLOWS]

The parties hereto have executed this Agreement effective as of the Effective Date.

SELLER:

CITY OF DODGE CITY, KANSAS:

By: _____

Name: _____

Title: _____

BUYER:

DODGE PARTNERS, LLC

By: _____

Name: _____

Title: _____

JOINDER OF THE TITLE COMPANY

The Title Company joins in the execution of this Agreement for the sole purpose of acknowledging the Title Company's receipt of (i) an executed copy of this Agreement and (ii) the Deposit.

By: _____
Name: _____
Title: _____

SCHEDULE OF EXHIBITS

- A-1 The Land – Legal Description
- A-2 The Land - Map
- B. The Deed
- C. As-Is Certificate

EXHIBIT A-1

THE LAND - Legal Description

EXHIBIT A-2

THE LAND - Map

EXHIBIT B
The Deed

(Space Above Reserved For Register of Deeds Certification)

KANSAS SPECIAL WARRANTY DEED

THIS INDENTURE, made and entered into this ____ day of _____, 2020, by and between **CITY OF DODGE CITY, KANSAS**, a municipal corporation ("Grantor"), and **DODGE PARTNERS, LLC**, a Kansas limited liability company ("Grantee"), whose mailing address is _____.

WITNESSETH, THAT GRANTOR, in consideration of the sum of One Hundred Dollars (\$100.00) and other good and valuable consideration, the receipt whereof is hereby acknowledged, do by these presents **GRANT, SELL, AND CONVEY** unto Grantee, its successors and assigns, all of that certain real estate situated in the County of Ford and State of Kansas, as described on Exhibit A attached hereto (the "Property").

SUBJECT TO: (a) easements, ordinances, zoning, restrictions, declarations, and reservations of record, if any; (b) taxes and assessments, general and special, for the year 2020 and future years, not now due and payable; and (c) the rights of the public in and to parts thereof, in streets, roads or alleys.

AND SUBJECT TO that certain Real Estate Purchase Agreement dated as of October ____, 2020 between Grantor and Grantee, as amended (the "Purchase Agreement"), a copy of which Purchase Agreement (and any amendments thereto) is on file with the City Clerk of Grantor. Specifically, Grantor hereby reserves and retains unto itself the repurchase rights described in Section 5.4 of the Purchase Agreement, subject to the terms and conditions set forth therein. Grantee, for itself and its successors, assigns and successors in title, covenants and agrees that it shall take the Property subject to such repurchase rights, as the same are set forth in the Purchase Agreement. The Grantor and Grantee further agree that to the extent this Deed conflicts with the Purchase Agreement with respect to the terms of the repurchase rights, the Purchase Agreement shall control.

TO HAVE AND TO HOLD THE PROPERTY, together with all and singular the rights and appurtenances thereto in anywise belonging, to Grantee, its successors and assigns, forever; and Grantor binds itself, its successors and assigns, to **WARRANT AND FOREVER DEFEND** all and singular the Property to Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under Grantor, but not otherwise.

IN WITNESS WHEREOF, the said Grantor has caused this instrument to be executed as of the day and year first above written.

THE CITY OF DODGE CITY, KANSAS

By: _____
E. Kent Smoll, Mayor

Attest: _____
Name: _____
_____ Clerk

This instrument was acknowledged before me on _____, 2020, by E. Kent Smoll, as Mayor of the City of Dodge City, Kansas.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

(SEAL)

Print Name: _____
Notary Public in and for said County and State

My Commission Expires:

EXHIBIT A to Deed

Legal Description of the Property

EXHIBIT C

"AS IS" Certificate

This As-Is Certificate (this "**Certificate**") dated effective as of _____, 20____, is executed and delivered by DODGE PARTNERS, LLC ("**Buyer**") unto THE CITY OF DODGE CITY, KANSAS ("**Seller**").

RECITALS

Reference is hereby made to that certain Agreement of Purchase and Sale, dated as of January ____, 2020 made and entered into by and between Seller and Buyer (the "**Agreement**"), in connection with the real property described on Exhibit "A" attached hereto and made a part hereof for all purposes. Capitalized terms used herein but not otherwise defined herein shall have the meanings assigned to them in the Agreement.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Buyer hereby certifies and confirms unto Seller the following:

AGREEMENTS

1. BUYER HEREBY UNDERSTANDS AND AGREES THAT SELLER IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE (OTHER THAN SELLER'S SPECIAL WARRANTY OF TITLE AS SET FORTH IN THE DEED), ZONING, TAX CONSEQUENCES, PHYSICAL OR ENVIRONMENTAL CONDITION, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, GOVERNMENTAL REGULATIONS, THE TRUTH, ACCURACY OR COMPLETENESS OF THE ITEMS OR ANY OTHER INFORMATION PROVIDED BY OR ON BEHALF OF SELLER TO BUYER OR ANY OTHER MATTER OR THING REGARDING THE PROPERTY. AT CLOSING SELLER SELLS AND CONVEYS TO BUYER AND BUYER HEREBY ACCEPTS THE PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS." BUYER HAS NOT RELIED UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF SELLER WITH RESPECT TO THE PROPERTY. BUYER HAS CONDUCTED SUCH INVESTIGATIONS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS BUYER DEEMED NECESSARY TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND BUYER HEREBY RELIES SOLELY UPON SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF SELLER. AT CLOSING, BUYER HEREBY ASSUMES THE RISK THAT ADVERSE MATTERS, INCLUDING BUT NOT LIMITED TO, CONSTRUCTION DEFECTS AND ADVERSE

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PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY BUYER'S INVESTIGATIONS. BUYER HEREBY WAIVES, RELINQUISHES AND RELEASES SELLER FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT (i.e., NEGLIGENCE AND STRICT LIABILITY)), LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COURT COSTS) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, WHICH BUYER MIGHT HAVE ASSERTED OR ALLEGED AGAINST SELLER AT ANY TIME BY REASON OF OR ARISING OUT OF ANY CONSTRUCTION DEFECTS, PHYSICAL AND ENVIRONMENTAL CONDITIONS, THE VIOLATION OF ANY APPLICABLE LAWS AND ANY AND ALL OTHER MATTERS REGARDING THE PROPERTY.

2. BUYER HEREBY INDEMNIFIES AND HOLDS SELLER HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT (I.E., NEGLIGENCE AND STRICT LIABILITY)), LOSS, DAMAGE, LIABILITIES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COURT COSTS) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, FIXED OR CONTINGENT, ASSERTED AGAINST OR INCURRED BY SELLER AT ANY TIME BY REASON OF OR ARISING OUT OF THE VIOLATION OF ANY APPLICABLE LAWS PERTAINING TO ANY ADVERSE PHYSICAL OR ENVIRONMENTAL CONDITION PLACED OR OCCURRING ON THE PROPERTY ON OR AFTER THE DATE HEREOF. SHOULD ANY CLEAN-UP, REMEDIATION OR REMOVAL OF HAZARDOUS SUBSTANCES OR OTHER ENVIRONMENTAL CONDITIONS ON THE PROPERTY BE REQUIRED AFTER THE DATE HEREOF, IT IS HEREBY UNDERSTOOD AND AGREED BY BUYER THAT SUCH CLEAN-UP, REMOVAL OR REMEDIATION SHALL BE THE RESPONSIBILITY OF AND SHALL BE PERFORMED AT THE SOLE COST AND EXPENSE OF BUYER. THE TERMS AND CONDITIONS HEREOF HAVE EXPRESSLY SURVIVED THE CLOSING WITHOUT LIMITATION AND DO NOT MERGE WITH THE PROVISIONS OF ANY CLOSING DOCUMENTS.

3. BUYER REPRESENTS AND WARRANTS TO SELLER THAT BUYER HAS KNOWLEDGE AND EXPERIENCE IN REAL ESTATE, FINANCIAL AND BUSINESS MATTERS THAT ENABLED BUYER TO EVALUATE THE MERITS AND RISKS OF THE PURCHASE OF AND CLOSING ON THE PROPERTY. FURTHER, BUYER ACKNOWLEDGES THAT IT IS NOT AND WAS NOT IN A DISPARATE BARGAINING POSITION RELATIVE TO SELLER WITH RESPECT TO THIS AGREEMENT.

4. AS USED HEREIN, THE TERM "**HAZARDOUS SUBSTANCES**" SHALL MEAN ANY SUBSTANCE WHICH IS OR CONTAINS (I) ANY "HAZARDOUS SUBSTANCE" AS NOW OR HEREAFTER DEFINED IN §101(14) OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980, AS AMENDED (42 U.S.C. §9601 ET SEQ.) ("**CERCLA**") OR ANY REGULATIONS PROMULGATED UNDER CERCLA; (II) ANY "**HAZARDOUS WASTE**"

DB04/0832361.0002/13572717.7

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AS NOW OR HEREAFTER DEFINED IN THE RESOURCE CONSERVATION AND RECOVERY ACT (42 U.S.C. §6901 ET SEQ.) ("**RCRA**") OR REGULATIONS PROMULGATED UNDER RCRA; (III) ANY SUBSTANCE REGULATED BY TOXIC SUBSTANCES CONTROL ACT (15 U.S.C. §2601 ET SEQ.); (IV) GASOLINE, DIESEL FUEL, OR OTHER PETROLEUM HYDROCARBONS; (V) ASBESTOS AND ASBESTOS CONTAINING MATERIALS, IN ANY FORM, WHETHER FRIABLE OR NON-FRIABLE; (VI) POLYCHLORINATED BIPHENYLS; (VII) RADON GAS; AND (VIII) ANY ADDITIONAL SUBSTANCES OR MATERIALS WHICH ARE NOW OR HEREAFTER CLASSIFIED OR CONSIDERED TO BE HAZARDOUS OR TOXIC UNDER ANY APPLICABLE FEDERAL OR STATE LAWS RELATING TO ANY OF THE PROPERTY. HAZARDOUS SUBSTANCES SHALL INCLUDE, WITHOUT LIMITATION, ANY SUBSTANCE, THE PRESENCE OF WHICH ON THE PROPERTY, (A) REQUIRES REPORTING, INVESTIGATION OR REMEDIATION UNDER APPLICABLE LAW, (B) CAUSES OR THREATENS TO CAUSE A NUISANCE ON THE PROPERTY OR ADJACENT PROPERTY OR POSES OR THREATENS TO POSE A HAZARD TO THE HEALTH OR SAFETY OF PERSONS ON THE PROPERTY OR ADJACENT PROPERTY; OR (C) WHICH, IF IT EMANATED OR MIGRATED FROM THE PROPERTY, COULD CONSTITUTE A TRESPASS.

5. Buyer, on behalf of itself and its affiliates, and their respective partners, members, owners, officers, directors, agents, representatives and controlling persons, hereby releases Seller, and their respective partners, members, owners, officers, directors, agents, representatives and controlling persons (collectively, the "**Released Parties**") from any and all liability, responsibility, claims, damages, losses and expenses arising out of or related to the condition (including the presence in the soil, air, structures and surface and subsurface waters, of Hazardous Substances that have been or may in the future be determined to be toxic, hazardous, undesirable or subject to regulation and that may need to be specially treated, handled and/or removed from the Property under current or future Environmental Laws or guidelines), valuation, salability or utility of the Property, or its suitability for any purpose whatsoever. Without limiting the foregoing, Buyer, on behalf of itself and its affiliates, and their respective partners, members, owners, officers, directors, agents, representatives and controlling persons, specifically releases the Released Parties from any and all responsibility, claims, damages, losses and expenses Buyer may have against any of the Released Parties now or in the future arising from the environmental condition of the Property or the presence of Hazardous Substances or contamination on or emanating from the Property. The foregoing waivers and releases by Buyer shall survive, without limitation, the Closing and shall not be deemed merged into the provisions of any Closing documents.

6. Buyer acknowledges that it has inspected the Property, observed its physical characteristics and existing conditions and had the opportunity to conduct such investigations and studies on and of said Property and adjacent areas as it deemed necessary, Buyer, on behalf of itself and its affiliates, and their respective partners, members, owners, officers, directors, agents, representatives and controlling persons, hereby waives any and all objections to or complaints (including but not limited to actions based on federal, state or common law and any private right of action under any Environmental Laws to which the Property is or may be subject)

DB04/0832361.0002/13572717.7

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DB04/0832361.0002/13572717.5

against any of the Released Parties regarding physical characteristics and existing conditions, including without limitation structural and geologic conditions, subsurface soil and water conditions and solid and hazardous waste and Hazardous Substances on, under, adjacent to or otherwise affecting the Property or related to prior uses of the Property. The foregoing waivers by Buyer expressly survived, without limitation, the Closing and shall not be deemed merged into the provisions of any Closing documents.

7. Buyer further hereby assumes the risk of changes in applicable laws and regulations (including without limitation, Environmental Laws) relating to past, present and future environmental, safety or health conditions on, or resulting from the ownership or operation of, the Property, and the risk that adverse physical characteristics and conditions, including without limitation the presence of Hazardous Substances or other substances, may not be revealed by its investigation.

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SIGNATURE PAGE FOLLOWS.]**

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IN WITNESS WHEREOF, Buyer has executed and delivered this Certificate as of the date set forth above.

BUYER:

By: _____

Name: _____

Title: _____

DB04/0832361.0002/13572717.5

DB04/0832361.0002/13572717.5

EXHIBIT "A" TO AS-IS CERTIFICATE

The Land