

## PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (this "Agreement") is made as of \_\_\_\_\_, 2022 (the "Effective Date"), by and between **FJF OH GAHANNA, L.L.C.**, a Delaware limited liability company ("Seller"), and **THE CITY OF GAHANNA, OHIO**, an Ohio municipal corporation ("Purchaser").

In consideration of this Agreement, Seller and Purchaser agree as follows:

1. **Sale of Subject Property.** Upon and subject to the conditions and limitations herein contained, Seller agrees to sell to Purchaser, and Purchaser agrees to buy from Seller, the following (collectively, the "Subject Property"):

(a) **Real Property.** Fee simple interest in that certain parcel of real estate located at 825 Tech Center Drive, Gahanna, Franklin County, Ohio, and legally described on Exhibit A attached hereto and made a part hereof (the "Land"), together with (i) all building structures, improvements and fixtures owned by Seller located on the Land (the "Improvements"), and (ii) all rights, privileges, servitudes, easements and appurtenances thereunto belonging or appertaining (collectively, the "Real Property").

(b) **Personal Property and Intangibles.** All of the equipment and personal property owned by Seller located at or installed on the Real Property and used solely in the operation of the Real Property, if any, and the right to use the name of the Subject Property and other business or trade names associated with the Subject Property to the extent the same are assignable (collectively, the "Personal Property").

(c) [Intentionally Deleted]

(d) **Permits.** Seller's interest in and to the licenses, permits, and certificates of occupancy described on Exhibit C attached hereto and made a part hereof, to the extent the same are assignable (the "Permits").

(e) **Service Contracts.** Seller's interest in and to the existing service and maintenance contracts described on Exhibit D attached hereto and made a part hereof, together with any amendments or modifications thereto, if any (the "Service Contracts") to the extent they are assignable.

(f) **Warranties.** Seller's interest in and to all unexpired warranties and guaranties given or assigned to or benefiting Seller, the Real Property or the Personal Property regarding the acquisition, construction, design, use, operation, management or maintenance of the Real Property or Personal Property that are described on Exhibit E attached hereto and made a part hereof (the "Warranties"), to the extent the same are in Seller's possession and assignable without cost to Seller.

(g) **Plans.** All of Seller's right, title and interest in and to a copy of the final plans and specifications (excluding shop drawings) relating to the construction of the Improvements in Seller's possession ("Plans"); provided, however, neither Purchaser nor its successors or assigns may use the Plans for any purpose other than the repair, maintenance or restoration of the Improvements without the prior written consent of Seller.

2. **Closing Date; Purchase Price.** The closing of the purchase and sale of the Subject Property ("Closing") shall occur on \_\_\_\_\_, 2022 **[INSERT THE DATE WHICH IS THE**

**EARLIER OF 45 DAYS AFTER THE EFFECTIVE DATE OR DECEMBER 15, 2022]** (the “Closing Date”) unless this Agreement is earlier terminated or extended, as provided herein. Purchaser shall pay to Seller, as consideration for the purchase of the Subject Property, the sum (the “Purchase Price”) of Eight Million Seven Hundred Fifty Thousand and No/100 U.S. Dollars (\$8,750,000.00), as the same may be adjusted as provided below. The Purchase Price shall be payable as follows:

(a) Within two (2) business days from the execution of this Agreement, Purchaser shall deposit in the form of cash the sum of Three Hundred Thousand and No/100 U.S. Dollars (\$300,000.00) (together with any interest earned thereon, the “Earnest Money”) with the escrow department of First American Title Insurance Company, 121 South 8th Street, Suite 1250, Minneapolis, MN 55402 (the “Title Company”) pursuant to an escrow agreement in the form of Exhibit F attached hereto and made a part hereof (the “Escrow Agreement”). Except as expressly set forth herein, the Earnest Money shall be nonrefundable to Purchaser and in the event of a termination of this Agreement shall be disbursed to Seller as liquidated damages. All or a portion of the Earnest Money shall, at Purchaser’s election, be credited against the Purchase Price at Closing.

(b) The balance of the Purchase Price, plus or minus prorations and other adjustments, if any, shall be paid into the Title Company’s escrow account at Closing by wire transfer of immediately available funds.

### 3. **Prior Inspection; Title & Survey.**

(a) Purchaser acknowledges and agrees that, prior to the date hereof, Purchaser has had an adequate opportunity to enter upon and inspect the Subject Property, and that Purchaser has received and reviewed all information, documents, reports and studies which Purchaser deems necessary or advisable in connection with Purchaser’s acquisition of the Subject Property. Purchaser notifies Seller that Purchaser is satisfied with the results of such inspections, Purchaser waives any further inspections or any contingencies associated with Purchaser’s investigations, and Purchaser elects to proceed to Closing pursuant to the terms and conditions of this Agreement.

(b) Purchaser acknowledges and agrees that, prior to the date hereof, Purchaser has received and reviewed a current title commitment (the “Commitment”) for the Real Property (with copies of all underlying title documents listed in the Commitment) for an ALTA form owner’s title policy (the “Title Insurance Policy”) issued by the Title Company; (ii) Seller’s existing survey for the Real Property (the “Survey”); and, if applicable (iii) a further update or revision to the Survey (an “Updated Survey”) obtained by Purchaser. Purchaser waives any objections in connection with the Commitment, the Survey and, if applicable, the Updated Survey. Any encumbrances shown on the Commitment, or any matters shown on the Survey or, if applicable, the Updated Survey, shall be deemed “Permitted Encumbrances”.

4. **Covenants by Seller.** Seller covenants and agrees with Purchaser that from the date hereof until the Closing Date, Seller shall conduct its business involving the Subject Property as follows, and during such period will (except as specifically provided to the contrary herein):

(a) **Conveyances; Easements.** Refrain from conveying the Subject Property, except to an affiliate or subsidiary (which transfer, if any, will be made subject to the rights of Purchaser under this Agreement), or creating on the Subject Property any easements affecting the Subject Property other than as may be required by any applicable governmental or quasi-governmental authority or by a provider of utility services, and refrain from removing any fixture or equipment; provided, however, nothing herein shall preclude Seller or Seller’s property manager from

replacing any equipment, supplies or machinery in the ordinary course of operating the Subject Property. Seller shall, upon Seller's receipt, deliver to Purchaser a copy of any easement so required by any governmental or quasi-governmental authority or provider of utility services affecting the Subject Property which does not require the consent of Purchaser, and any such easement shall constitute a Permitted Encumbrance.

(b) **Contracts.** Refrain from entering into or amending any contracts or other agreements (other than leases which are governed by Section 4(d) and other than contracts in the ordinary course of business which are cancelable by the owner of the Subject Property without penalty within thirty (30) days after giving notice thereof) without the prior written consent of Purchaser, which consent shall not be unreasonably withheld, delayed or conditioned, and which shall be deemed given if Purchaser does not object to Seller's request for approval within three (3) business days after receipt of Seller's request.

(c) **Operation of Subject Property.** Operate, maintain, repair and insure the Subject Property in a manner consistent with the existing operation, maintenance, repair and insurance of the Subject Property.

(d) **Leases.** From and after the date of this Agreement, Seller shall not enter into any new leases with respect to the Real Property without Purchaser's written approval, which approval may be withheld in Purchaser's sole discretion.

5. **Representations by Seller.** As used in this Agreement, the phrase "to Seller's knowledge" or words of similar import shall mean the actual knowledge of Jim Montalbano, Director of Asset Management for Founders Properties, L.L.C., without independent investigation or inquiry. Subject to the foregoing, Seller represents to Purchaser as follows:

(a) **Authority.** Seller is a limited liability company duly organized and validly existing and in good standing under the laws of the State of Delaware; Seller has the requisite power and authority to enter into and perform this Agreement, the Seller's Closing Documents and the Purchaser's and Seller's Closing Documents (each as hereinafter defined) to which it is a party; such documents have been duly authorized by all necessary action on the part of Seller and have been or will be duly executed and delivered; such execution, delivery and performance by Seller of such documents will not conflict with or result in a violation of Seller's organizational documents, or any judgment, order, or decree of any court or arbiter to which Seller is a party; and such documents are valid and binding obligations of Seller, and are enforceable against Seller in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, creditor's rights and other similar laws.

(b) **FIRPTA.** Seller is not a "foreign person," "foreign partnership," "foreign trust" or "foreign estate" as those terms are defined in Section 1445 of the Internal Revenue Code.

(c) **Proceedings.** To the knowledge of Seller, there is no action, litigation, investigation or proceeding relating to zoning, subdivision or condemnation pending or, to the knowledge of Seller, threatened against Seller or the Subject Property which would have a material and adverse effect on the ability of Seller to perform its obligations under this Agreement.

(d) **Leases.** There are no leases, rental agreements, tenancies or occupancies affecting the Property or persons in possession of any part thereof.

(e) **Blocked Persons.** Seller has not received written notice that Seller is:

(i) listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury (“OFAC”) pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 Sept. 25, 2001 (the “Order”) and/or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders (such lists are collectively referred to as the “Lists”);

(ii) a person who has been determined by competent authority to be subject to the prohibitions contained in the Order;

(iii) owned or controlled by, or acts for or on behalf of, any person or entity who is (x) on the Lists or any other person or entity who has been determined by competent authority to be subject to the prohibitions contained in the Order, (y) a citizen of the United States who is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation or Executive Order of the President of the United States, or (z) an “Embargoed Person,” meaning any person, entity or government subject to trade restrictions under U.S. law, including, but not limited to the International Emergency Economic Powers Act, 50 U.S.C. § 1701 et seq., the Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder.

6. **Representations by Purchaser; Other Matters; Purchaser’s Covenant.**

(a) **Representations by Purchaser.** Purchaser represents to Seller as follows:

(i) Purchaser is a municipal corporation duly organized and validly existing and in good standing under the laws of the State of Ohio, that Purchaser has the requisite power and authority to enter into this Agreement, the Purchaser’s Closing Documents and the Purchaser’s and Seller’s Closing Documents (as herein defined); such documents have been duly authorized by all necessary action on the part of Purchaser and have been or will be duly executed and delivered; that the execution, delivery and performance by Purchaser of such documents will not conflict with or result in violation of Purchaser’s organizational documents or any judgment, order or decree of any court or arbiter to which Purchaser is a party; such documents are valid and binding obligations of Purchaser, and are enforceable against Purchaser in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, creditor’s rights and other similar laws.

(ii) Purchaser has not received written notice that Purchaser is:

(A) listed on the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to the Order and/or on any other Lists;

(B) a person who has been determined by competent authority to be subject to the prohibitions contained in the Order;

(C) owned or controlled by, or acts for or on behalf of, any person or entity who is (x) on the Lists or any other person or entity who has been determined by competent authority to be subject to the prohibitions contained in the Order, (y) a citizen of the United States who is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law,

regulation or Executive Order of the President of the United States, or (z) an Embargoed Person.

(iii) Purchaser shall not transfer or permit the transfer of any interest in Purchaser or in this Agreement to any person or entity who is listed on the Lists.

(b) **Other Matters.** The representations of Seller and Purchaser contained in this Agreement shall survive Closing; provided, however, (i) any cause of action of Purchaser against Seller by reason of a breach or default of any of the representations in Section 5 set forth herein or in any certificates executed by Seller pursuant to Section 8(a) below or in any Seller's Closing Documents or Purchaser's and Seller's Closing Documents (collectively, "Seller's Representations") shall automatically expire as of the date which is six (6) months after the Closing (the "Representation Expiration Date"), except that the same shall not expire as to any such breach or default as to which Purchaser has instituted litigation of a claim for any such breach or default prior to the Representation Expiration Date, (ii) Seller's total liability for any breach or breaches of Seller's Representations shall in no event exceed two percent (2%) of the Purchase Price in the aggregate, which liability limit shall survive Closing, and (iii) Seller shall not have any liability whatsoever to Purchaser with respect to any breach or breaches by Seller of Seller's Representations, if, prior to Closing, Purchaser obtains knowledge by virtue of a written document or report received on or prior to the Closing Date of a fact or circumstance, the existence of which would constitute a breach of Seller's Representations. Among other things, for purposes hereof, Purchaser shall be deemed to have knowledge of any fact or circumstance set forth in any environmental assessments, engineering reports, Estoppel Certificates (as defined in Section 7(b)iii hereof) or other written materials reviewed or received by Purchaser on or prior to the Closing Date. Seller's representations in Section 5 set forth herein shall be deemed automatically modified to the extent that any information contained in any environmental assessments or engineering reports or other written materials reviewed or received by Purchaser prior to the Closing Date is inconsistent with the matters which are the subject of such representations in Section 5. Notwithstanding the foregoing, Seller shall not have any liability with respect to any breach of Seller's Representations to the extent the loss sustained by Purchaser as a result thereof does not exceed \$50,000.00 in the aggregate, provided, further if any such loss exceeds \$50,000.00, Seller shall be liable for the total amount of such loss subject to the maximum liability provisions herein contained.

## 7. Closing.

(a) **Closing Date.** The Closing shall occur on or prior to the Closing Date, subject to delays occasioned by operation of Section 8(b), at the office of, or by mail through escrow with, the Title Company or at such other time and place as the parties may mutually agree.

(b) **Purchaser's Closing Conditions Precedent.** Purchaser's obligation to consummate the transaction contemplated by this Agreement shall be subject to satisfaction or waiver of each of the following conditions ("Purchaser's Closing Conditions Precedent"); provided, however that Purchaser shall have the unilateral right to waive any Purchaser's Closing Conditions Precedent, in whole or in part, by written notice to Seller:

(i) The representations of Seller in Section 5 hereof shall be, in all material respects, true and complete (provided that the execution of any new leases permitted by this Agreement shall not be deemed a failure of this condition).

(ii) Seller shall have performed all of the obligations required to be performed by Seller under this Agreement, as and when required by this Agreement, in all material respects.

In the event Purchaser's Closing Conditions Precedent have not been satisfied or waived as of the scheduled Closing Date, and provided the failure to satisfy or waive any such condition is not attributable to a breach or default of this Agreement by Seller (in which event the provisions of Section 10 shall apply), at Purchaser's option this Agreement shall terminate (other than the obligations of Purchaser set forth in Sections 3(b) and 28 and the indemnity and other obligations of Seller and Purchaser set forth in Sections 12 and 23 which obligations shall survive any termination; such indemnity obligations shall be referred to herein as the "Surviving Indemnity Obligations") and the Earnest Money shall promptly be returned to Purchaser; provided, however, upon such termination Purchaser shall, at the request of Seller, execute any document reasonably requested by Seller to evidence such termination, including, without limitation, a quit claim deed. Upon such termination, neither party will have any further rights or obligations (other than the Surviving Indemnity Obligations which shall survive any such termination) regarding this Agreement or the Subject Property

(c) **Seller's Conditions Precedent.** Seller's obligation to consummate the transaction contemplated by this Agreement shall be subject to satisfaction or waiver of each of the following conditions ("Seller's Closing Conditions Precedent"), but Seller shall have the unilateral right to waive, in whole or in part, any Seller's Closing Conditions Precedent by written notice to Purchaser:

(i) The representations of Purchaser in Section 6 hereof shall be, in all material respects, true and complete.

(ii) Purchaser shall have performed all of the obligations required to be performed by Purchaser under this Agreement, as and when required by this Agreement, in all material respects.

In the event Seller's Closing Conditions Precedent have not been satisfied or waived as of the scheduled Closing Date, and provided the failure to satisfy or waive any such condition is not attributable to a breach or default of this Agreement by Purchaser (in which event the provisions of Section 10 shall apply), at Seller's option this Agreement shall terminate (other than the Surviving Indemnity Obligations, which obligations shall survive any such termination) and the Earnest Money shall promptly be returned to Purchaser; provided, however, upon such termination Purchaser shall, at the request of Seller, execute any document reasonably requested by Seller to evidence such termination, including, without limitation, a quit claim deed. Upon such termination, neither party will have any further rights or obligations (other than the Surviving Indemnity Obligations which shall survive any such termination) regarding this Agreement or the Subject Property.

## 8. **Closing Deliveries.**

(a) **Seller's Closing Documents.** On the Closing Date Seller shall execute and/or deliver to Purchaser or cause to be executed and/or delivered the following (collectively, "Seller's Closing Documents"):

(i) **Deed.** A Limited Warranty Deed (the "Deed") conveying the Real Property to Purchaser in the form attached as Exhibit H hereto.

(ii) **Bill of Sale.** A Bill of Sale transferring the Personal Property for the Subject Property, if any, in the form attached as Exhibit I hereto.

(iii) **Certificate Regarding Representations.** A certificate stating that the representations made by Seller in Section 5 above are true and complete in all material respects as of the Closing Date, or indicating any material and adverse change in any such representations.

(iv) **FIRPTA Certificate.** A non-foreign certificate properly containing such information as is required by Section 1445(b)(2) of the Internal Revenue Code and its regulations promulgated thereunder.

(v) **Title Documents.** Seller shall deliver, to Title Company only, such certificates of Seller in favor of the Title Company in order to record the Deed and issue the Title Insurance Policy, all in forms reasonably acceptable to Seller.

(vi) **Miscellaneous.** Other documents reasonably required to consummate the transaction this Agreement contemplates.

(b) **Title Insurance Policy.** At Closing, Purchaser shall receive from the Title Company, a marked-up title commitment or proforma owner's policy in accordance with the Commitment. If the Title Insurance Policy which the Title Company is prepared to issue shows any new title exceptions not shown on the Commitment or Survey that were not approved or otherwise caused by Purchaser ("Unpermitted Encumbrances"), Seller covenants and agrees, within thirty (30) days after the scheduled Closing Date (such 30-day period being sometimes hereinafter referred to as the "Cure Period"), to use reasonable efforts to remove such Unpermitted Encumbrances or to cause the Title Company to issue its endorsement over any such Unpermitted Encumbrances, which endorsement shall be in form and substance reasonably acceptable to Purchaser and the Closing shall be delayed in accordance with this Section 8(b) while Seller undertakes such efforts. If, after using reasonable efforts, as aforesaid, Seller cannot cause such Unpermitted Encumbrances to be removed or if Seller cannot cause the Title Company to issue its endorsement over any such Unpermitted Encumbrances on or before the expiration of the Cure Period, Purchaser shall, within five (5) business days following expiration of the Cure Period, elect to either (i) terminate this Agreement (other than Surviving Indemnity Obligations, which obligations shall survive any such termination) and the Earnest Money shall be returned to Purchaser, provided if Seller so requests, Purchaser shall execute any document reasonably requested by Seller to evidence such termination including, without limitation, a quit claim deed, and neither party will have any further obligations (other than the Surviving Indemnity Obligations, which obligations shall survive any such termination) or (ii) take title to the Real Property subject to the Unpermitted Encumbrances (which shall thereupon be deemed "Permitted Encumbrances") as it then is without any reduction in the Purchase Price, provided that Seller shall remove any mortgage or similar financing lien created by or through Seller. Failure of Purchaser to notify Seller within the time limits prescribed herein shall constitute an election under clause (ii) above.

(c) **Purchaser's Closing Documents.** On the Closing Date, Purchaser will execute and/or deliver or cause to be executed and/or delivered to Seller the following (collectively, "Purchaser's Closing Documents"):

(i) **Purchase Price.** The Purchase Price, plus or minus prorations or other adjustments, if any, by wire transfer of immediately available funds, to be received in Title Company's trust account on or before 12:00 p.m. Central Time on the Closing Date.

(ii) **Title Documents.** Such affidavits of Purchaser, transfer tax declarations or certificates of value or other documents as may be reasonably required by Title Company in order to record the Deed and issue the Title Insurance Policy.

(iii) **Certificate Regarding Representations.** A certificate executed by Purchaser certifying that representations made by Purchaser in Section 6(a) above are true and complete in all material respects as of the Closing Date.

(iv) **DTE 100.** An Ohio Real Property Conveyance Fee Statement of Value and Receipt (Form DTE 100).

(v) **Miscellaneous.** Other documents reasonably required to consummate the transaction this Agreement contemplates.

(d) **Purchaser's and Seller's Closing Documents.** On the Closing Date, Seller and Purchaser shall jointly execute and deliver or cause to be executed and delivered the following (collectively, the "Purchaser's and Seller's Closing Documents"):

(i) **Closing Statement.** A Closing Statement in form and substance reasonably acceptable to both Seller and Purchaser and consistent with the terms of this Agreement, showing the Purchase Price and all prorations, adjustments, credits and debits this Agreement describes.

(ii) **Assignment and Assumption of Contracts and Project Documents.** An Assignment and Assumption of Contracts and Project Documents in the form of Exhibit K attached hereto.

(iii) **Designation Agreement.** If required by the Title Company, a Designation Agreement executed by Seller, Purchaser and Title Company designating the "reporting person" for purposes of completing the Internal Revenue Service Form 1099 and, if applicable, Internal Revenue Form 8594 (the "Designation Agreement").

(iv) **Miscellaneous.** Such other documents, instruments and affidavits as shall be reasonably necessary to consummate the transaction contemplated hereby.

9. **Adjustment and Prorations.** For purposes of calculating prorations, Purchaser shall be deemed to be in title to the Subject Property, and therefore entitled to the income therefrom and responsible for the expenses thereof, for the entire day upon which the Closing occurs. All such prorations shall be made on the basis of the actual number of days of the year and month that shall have elapsed as of the Closing Date. The amount of such prorations shall be adjusted in cash after Closing, as and when complete and accurate information becomes available. Seller and Purchaser agree to cooperate and use their good faith and diligent efforts to make such adjustments within a reasonable time after the calendar year end following Closing. Except for the proration of real estate taxes (which shall be prorated on a cash basis as provided in subsections 9(a) below) and except as specifically provided otherwise herein, items of income and expense for the period prior to the Closing Date will be for the account of Seller and items of income and expense for the period on and after the Closing Date will be for the account of Purchaser, all as determined by the accrual method of accounting. The obligations of the parties pursuant to this Section 9 shall survive the Closing and shall not merge into any documents of conveyance delivered at Closing.

(a) **Real Estate Taxes and Special Assessments.** Real estate taxes and installments of assessments imposed by governmental authority (and any assessments imposed by private



covenant) due and payable in the calendar year of Closing shall be prorated as of the Closing Date on a cash basis based upon the most recent tax bills or assessment. To determine the tax proration, the total amount of real estate taxes and installments of special assessments for the Subject Property that were or will become due and payable during the calendar year of closing will be divided by 365, with the quotient referred to herein as the “Daily Tax Amount”. Seller shall be responsible for the amount calculated by multiplying the Daily Tax Amount by the number of days in the calendar year up to (but not including) the Closing Date (“Seller’s Tax Portion”). Purchaser shall be responsible for the amount calculated by multiplying the Daily Tax Amount by the number of days in the calendar year from and after the Closing Date. In the event Seller has paid real estate taxes and assessments during the year of closing in excess of the Seller’s Tax Portion, Purchaser shall provide a credit to Seller at Closing in the amount of such excess. In the event Seller has paid real estate taxes and assessments during the year of Closing in an amount less than the Seller’s Tax Portion, then Seller shall provide a credit to Purchaser at Closing for the amount of such shortfall. Seller shall receive a credit for any taxes and assessments paid by Seller and applicable to any period after the Closing. If, for the fiscal tax year in which the Closing is held, or any prior year, there are any tax protests filed, or abatement application proceedings pending at any time prior to the Closing with reference to the Property, Seller shall have the right to settle such protests or proceedings as long as such settlement does not include any agreement as to the valuation of the Property for real estate tax purposes for the period after the Closing. Otherwise, Seller shall not settle the same without Purchaser’s prior written consent. All amounts recovered as a result thereof, whether by settlement or otherwise, shall, net of attorneys’ fees and other expenses, be apportioned as of the Closing for the fiscal tax year in which the Closing is held, and paid, when received, to the parties entitled thereto. The parties agree to execute any papers or take such steps, either before or after any Closing, as may be necessary to carry out the intention of the foregoing.

(b) **Title Insurance.** Seller shall pay all title examination fees of Title Company and the premium for the standard coverage portion of the Title Insurance Policy. Purchaser shall pay the premium for the extended coverage portion of the Title Insurance Policy, if any, all fees Title Company charged for endorsements to the Title Insurance Policy, and all costs of any lender’s title insurance policy.

(c) **Survey Costs.** If Purchaser elects to obtain an Updated Survey, the costs for the Updated Survey shall be paid by Purchaser.

(d) **Closing Fee.** Seller shall pay the closing fee or escrow fee Title Company charges.

(e) **Transfer Tax.** Seller shall pay all documentation, stamp and transfer taxes payable in connection with the transfer of the Subject Property.

(f) **Recording Costs.** Purchaser shall pay the cost of recording the Deed and all other recording costs.

(g) **Other Costs.** All other costs shall be allocated in accordance with the customs prevailing in similar transactions in the metropolitan area where the Subject Property is located.

Except as otherwise expressly provided otherwise in this Agreement, all prorations provided for herein shall be final.

10. **Default/Remedies.**

(a) **DEFAULT BY SELLER.** IF SELLER DEFAULTS IN THE PERFORMANCE OF ITS OBLIGATION TO CLOSE THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT, AND SELLER FAILS TO CURE THE DEFAULT PRIOR TO THE EARLIER OF TEN (10) DAYS AFTER RECEIPT OF WRITTEN NOTICE THEREOF FROM PURCHASER OR THE THEN SCHEDULED CLOSING DATE, PURCHASER WILL BE DAMAGED AND, SUBJECT TO THE PENULTIMATE SENTENCE OF THIS SECTION 10(a), PURCHASER'S SOLE AND EXCLUSIVE REMEDY FOR SUCH DEFAULT SHALL BE TO ELECT ONE, AND ONLY ONE, OF THE FOLLOWING REMEDIES, AS FOLLOWS: (A) TO TERMINATE THIS AGREEMENT BY WRITTEN NOTICE DELIVERED TO SELLER AND THE TITLE COMPANY AND TO RECOVER THE EARNEST MONEY, OR (B) SUBJECT TO THE TERMS SET FORTH BELOW, TO SPECIFICALLY ENFORCE (WHICH ACTION FOR SPECIFIC PERFORMANCE MUST BE FILED AND SERVED UPON SELLER WITHIN SIXTY (60) DAYS AFTER THE EXPIRATION OF THE 10-DAY PERIOD TO CURE DESCRIBED IN THIS SENTENCE, OR SUCH RIGHT SHALL BE DEEMED WAIVED) SELLER'S OBLIGATION TO EXECUTE AND DELIVER THE DEED AND TO CONVEY THE SUBJECT PROPERTY TO PURCHASER IN ACCORDANCE WITH THIS AGREEMENT. EXCEPT AS EXPRESSLY PROVIDED IN THE PRECEDING SENTENCE, PURCHASER SHALL NOT HAVE THE RIGHT TO RECOVER DAMAGES OF ANY KIND OR TO OBTAIN OTHER EQUITABLE RELIEF, INCLUDING, WITHOUT LIMITATION, ANY EQUITABLE ADJUSTMENT TO THE TERMS OF THE SALE OF THE PROPERTY, IN CONNECTION WITH ANY SUCH ACTION FOR SPECIFIC PERFORMANCE. AS A CONDITION PRECEDENT TO PURCHASER'S ELECTION TO PURSUE AN ACTION FOR SPECIFIC PERFORMANCE, PURCHASER SHALL HAVE FULLY PERFORMED ALL OF PURCHASER'S OBLIGATIONS AND MADE OR TENDERED ALL DELIVERIES REQUIRED TO BE PERFORMED OR DELIVERED ON OR BEFORE THE CLOSING, INCLUDING WITHOUT LIMITATION DELIVERING OR TENDERING TO TITLE COMPANY THE BALANCE OF THE PURCHASE PRICE AND ALL OTHER FUNDS REQUIRED OF PURCHASER AND WITHOUT ASSERTING ANY EXCUSE OF PURCHASER'S PERFORMANCE DUE TO SELLER'S DEFAULT OR OTHERWISE. PURCHASER ACKNOWLEDGES THAT PURCHASER'S FULL PERFORMANCE OF ITS OBLIGATIONS ABOVE IN EVERY DETAIL IS MATERIAL TO SELLER AND, THEREFORE, IF PURCHASER FAILS TO SATISFY ANY REQUIREMENTS, SELLER SHALL BE ENTITLED TO AN IMMEDIATE DISMISSAL OF ANY SUCH ACTION. IN NO EVENT SHALL PURCHASER HAVE THE RIGHT TO FILE A LIS PENDENS AGAINST THE REAL PROPERTY OTHER THAN IN CONNECTION WITH AN ACTION FOR SPECIFIC PERFORMANCE AS PERMITTED ABOVE. THE PARTIES AGREE THAT IN NO EVENT SHALL THE FOREGOING LIMITATIONS ON PURCHASER'S REMEDIES APPLY TO ANY BREACH OF SELLER'S INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT, ANY OBLIGATION OF SELLER WHICH IS TO SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT, OR TO ANY ACTION PURSUANT TO SECTION 30 BELOW TO COLLECT ATTORNEYS' FEES INCURRED BY PURCHASER IN (i) BRINGING ANY SPECIFIC PERFORMANCE ACTION THAT MAY BE PERMITTED UNDER THIS SECTION 10(a) OR, (ii) BRINGING ANY OTHER ACTION THAT MAY BE PERMITTED UNDER THIS AGREEMENT.

(b) **DEFAULT BY PURCHASER.** IF PURCHASER DEFAULTS IN THE PERFORMANCE OF ITS OBLIGATION TO CLOSE THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT, AND PURCHASER FAILS TO CURE THE DEFAULT PRIOR TO THE EARLIER OF TEN (10) DAYS AFTER RECEIPT OF WRITTEN

NOTICE THEREOF FROM SELLER OR THE THEN SCHEDULED CLOSING DATE, SELLER WILL BE DAMAGED AND, SUBJECT TO THE LAST PARAGRAPH OF THIS SECTION 10(b), SELLER'S SOLE AND EXCLUSIVE REMEDY FOR SUCH DEFAULT SHALL BE TO RECOVER THE EARNEST MONEY AS LIQUIDATED DAMAGES. EXCEPT AS EXPRESSLY PROVIDED IN THE PRECEDING SENTENCE, SELLER SHALL NOT HAVE THE RIGHT TO RECOVER DAMAGES OF ANY KIND OR TO OBTAIN OTHER EQUITABLE RELIEF, INCLUDING, WITHOUT LIMITATION, ANY EQUITABLE ADJUSTMENT TO THE TERMS OF THE SALE OF THE SUBJECT PROPERTY.

PURCHASER ACKNOWLEDGES THAT THE ACTUAL DAMAGES THAT WOULD BE SUFFERED BY SELLER ON ACCOUNT OF SUCH DEFAULT BY PURCHASER WOULD BE EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN FOR THE FOLLOWING REASONS: (A) THE DAMAGES TO WHICH SELLER WOULD BE ENTITLED IN A COURT OF LAW WILL BE BASED IN PART ON THE DIFFERENCE BETWEEN THE ACTUAL VALUE OF THE SUBJECT PROPERTY AT THE TIME SET FOR THE CLOSING AND THE PURCHASE PRICE FOR THE SUBJECT PROPERTY AS SET FORTH IN THIS AGREEMENT; (B) PROOF OF THE AMOUNT OF SUCH DAMAGES WILL BE BASED ON OPINIONS OF VALUE OF THE SUBJECT PROPERTY, WHICH CAN VARY IN SIGNIFICANT AMOUNTS; AND (C) IT IS IMPOSSIBLE TO PREDICT AS OF THE DATE ON WHICH THIS AGREEMENT IS MADE WHETHER THE VALUE OF THE SUBJECT PROPERTY WILL INCREASE OR DECREASE AS OF THE DATE SET FOR THE CLOSING. FURTHERMORE, PURCHASER ACKNOWLEDGES THAT SELLER HAD OTHER OPPORTUNITIES TO SELL THE SUBJECT PROPERTY AND RELIED UPON THE REPRESENTATIONS OF PURCHASER THAT IT WOULD PERFORM AND PURCHASE THE SUBJECT PROPERTY FROM SELLER. PURCHASER DESIRES TO LIMIT THE AMOUNT OF DAMAGES FOR WHICH PURCHASER MIGHT BE LIABLE SHOULD PURCHASER FAIL TO CLOSE UNDER THIS AGREEMENT. PURCHASER AND SELLER WISH TO AVOID THE COSTS AND LENGTHY DELAYS WHICH WOULD RESULT IF SELLER FILED A LAWSUIT TO COLLECT ITS DAMAGES FOR SUCH BREACH OR DEFAULT UNDER THIS AGREEMENT.

THEREFORE, THE SUM REPRESENTED BY THE EARNEST MONEY SHALL BE DEEMED TO CONSTITUTE A REASONABLE ESTIMATE OF SELLER'S DAMAGES AND, EXCEPT AS PROVIDED BELOW, SELLER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF THE FAILURE TO CLOSE ESCROW RESULTING FROM PURCHASER'S BREACH OF THIS AGREEMENT SHALL BE LIMITED TO SUCH AMOUNT; PROVIDED, HOWEVER, THAT THE PARTIES AGREE THAT, IN NO EVENT, SHALL THIS LIQUIDATED DAMAGES PROVISION APPLY TO ANY BREACH OF PURCHASER'S INDEMNITY OBLIGATIONS UNDER SECTION 3(b) OF THIS AGREEMENT OR UNDER ANY OTHER INDEMNITY PROVISIONS OF THIS AGREEMENT, ANY OBLIGATION OF PURCHASER WHICH IS TO SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT OR TO ANY ACTION PURSUANT TO SECTION 30 BELOW TO COLLECT ATTORNEYS' FEES INCURRED BY SELLER IN BRINGING ANY ACTION TO COLLECT LIQUIDATED DAMAGES FROM PURCHASER AS MAY BE PERMITTED UNDER THIS SECTION 10(b) OR BRINGING ANY OTHER ACTION THAT MAY BE PERMITTED UNDER THIS AGREEMENT. SUCH RETENTION OF THE EARNEST MONEY BY SELLER IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER, AND SHALL NOT BE DEEMED TO CONSTITUTE A FORFEITURE OR PENALTY. PURCHASER HAS REVIEWED THE EFFECT OF THIS PROVISION WITH LEGAL COUNSEL AND HAS AGREED THAT SUCH DAMAGES ARE A REASONABLE AND FAIR ESTIMATE OF THE

DAMAGES SELLER WILL SUSTAIN THE OBLIGATIONS SET FORTH IN THIS SECTION 10(b) SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

11. **Damage.** If, prior to the Closing Date, all or any part of the Improvements are substantially damaged by fire or other casualty, Seller shall promptly give notice to Purchaser of such fact. Thereafter, at Purchaser's option (to be exercised by Purchaser's written notice to Seller given within fifteen (15) days after Seller's initial notice to Purchaser), this Agreement shall terminate with respect to the Subject Property. In the event of any such termination of this Agreement, neither party will have any further obligations under this Agreement (other than the Surviving Indemnity Obligations, which obligations shall survive any such termination), that Purchaser shall, at the request of Seller, execute any document reasonably requested by Seller to evidence such termination including, without limitation, a quit claim deed. If Purchaser fails to elect to terminate this Agreement (in the manner provided in this Section 11) despite such damage, or if the Improvements are damaged but not substantially, Seller shall promptly commence to repair such damage or destruction and to return the damaged Improvements to substantially their condition prior to such damage. If such damage shall be completely repaired prior to the Closing Date, then there shall be no reduction in the Purchase Price, and Seller shall retain the proceeds of all insurance related to such damage. If such damage shall not be completely repaired prior to the Closing Date, but Seller is diligently proceeding to repair, then there shall be no reduction in the Purchase Price and Seller shall complete the repair after the Closing Date and shall be entitled to receive the proceeds of all insurance related to such damage; provided, however, that Purchaser shall have the right to delay the Closing Date until repair is completed. For purposes of this Section 11, the phrase "substantially damaged" means damage which is reasonably estimated to cost \$250,000.00 or more to repair.

12. **Condemnation.** If, prior to the Closing Date, eminent domain proceedings are commenced against all or any substantial part of the Subject Property, Seller shall immediately give notice to Purchaser of such fact and, at Purchaser's option (to be exercised within fifteen (15) days after Seller's notice), this Agreement shall terminate with respect to the Subject Property; provided, however, that Seller shall not have the right to terminate this Agreement in the event of any eminent domain proceedings commenced by or on behalf of Seller. In the event of any such termination, neither party will have further obligations under this Agreement (other than the Surviving Indemnity Obligations, which obligations shall survive any such termination), except that Purchaser shall, at the request of Seller, execute any document reasonably requested by Seller to evidence such termination including, without limitation, a quit claim deed. If Purchaser fails to elect to terminate this Agreement in the manner provided in this Section 12, then there shall be no reduction in the Purchase Price, and Seller shall assign to Purchaser at the Closing Date all of Seller's right, title and interest in and to any award made or to be made in the condemnation proceedings. Prior to the Closing Date, Seller shall not designate counsel, appear in, or otherwise act with respect to the condemnation proceedings without Purchaser's prior written consent, which consent shall not be unreasonably withheld or delayed; provided, however, that if any action is necessary with respect to such proceeding to avoid any forfeiture or material prejudice, Seller shall be entitled to take such action as and to the extent necessary without obtaining Purchaser's prior written consent. For purposes of this Section 12, the words "substantial part" means that the portion of the Subject Property to be so taken is reasonably anticipated to give rise to a condemnation award of \$250,000.00 or more.

13. **Broker's Commissions.** Seller and Purchaser each represent to the other party that in connection with the transaction contemplated hereby, no third party broker or finder has been engaged or consulted by Seller or Purchaser or is entitled to compensation or commissions in connection herewith other than Jones Lang LaSalle (the "Broker"). Seller shall pay to the Broker all commissions due to the Broker, pursuant to the commission agreement between Seller and Broker (the "Listing Agreement"), at Closing, if the transaction contemplated by the Agreement is consummated. Seller shall defend, indemnify and hold harmless Purchaser from and against any and all claims of brokers, finders or any like third party claiming any right to commissions or compensation by or through acts of Seller in connection herewith. Purchaser

represents to Seller that in connection with the transaction contemplated hereby, no third party broker or finder has been engaged or consulted by Purchaser or is entitled to compensation or commissions in connection herewith other than the commissions due to the Broker under the Listing Agreement. Purchaser shall defend, indemnify and hold harmless Seller from and against any and all claims of brokers, finders or any like party claiming any right to commissions or compensation by or through acts of Purchaser in connection herewith, including without limitation claims of the Broker other than arising under the Listing Agreement. The indemnity obligations hereunder, in favor of both Seller and Purchaser, shall include, without limitation, all damages, losses, risks, liabilities and expenses (including, without limitation, reasonable attorneys' fees and costs) arising from and related to matters being indemnified hereunder; provided, however, that the total liability of Seller with respect to the foregoing shall be subject to the conditions and limitations set forth in Section 6(b) hereof. No broker, finder or like party shall be entitled to rely (as a third-party beneficiary or otherwise) on the provisions herein in claiming any right to commissions or compensation or otherwise. This Section 13 shall survive the expiration or termination of this Agreement or the Closing for six (6) months following the date of Closing.

14. **Environmental Disclosure.** Seller hereby discloses that the Real Property may contain or have contained such hazardous materials (if any) as described in the environmental reports listed on Exhibit L attached hereto and made a part hereof (the "Reports"). Seller has previously delivered the Reports to Purchaser, and Purchaser acknowledges receipt of the Reports. Purchaser acknowledges and agrees that the Reports are provided by Seller for informational purposes only and that Seller makes no representations or warranties as to the accuracy or completeness of the Reports. Purchaser will conduct its own investigations and studies of the Subject Property as it deems necessary or appropriate in order to determine the presence or absence of hazardous materials on or within the Subject Property. Purchaser hereby (a) agrees that Purchaser is relying solely on its own investigation, if any, of the Subject Property covering the effect of any hazardous materials that may be on about or within the Subject Property, whether disclosed by such investigations or not (collectively, the "Hazardous Materials Effect"), (b) assumes the risk of any and all liabilities, claims, demands, suits, judgments, losses, damages, expenses (including, without limitation, attorney's fees) and other obligations arising out of or incurred in connection with the Hazardous Materials Effect, if any, and (c) waives and releases Seller from all liabilities, claims, demands, suits, judgments, losses, damages, and expenses relating to the Hazardous Materials Effect.

15. **Assignment.** Purchaser may not assign its rights under this Agreement without the prior written consent of Seller; provided, however, Purchaser may assign its rights under this Agreement to any trust, corporation, partnership or limited liability company controlling, controlled by or under common control with Purchaser. For purposes hereof, "control" shall mean ownership (directly or indirectly) of 51% or more of the voting or comparable ownership interest of any such trust, corporation, partnership or limited liability company. Any assignment shall be subject to all the provisions, terms, covenants and conditions of this Agreement and the assignor shall, in any event, continue to be and remain liable under this Agreement, as it may be amended from time to time, as a principal and not as a surety, without notice to such assignor. Any such assignment and assumption shall be evidenced by a written agreement in form and substance reasonably acceptable to Seller.

16. **Notices.** Any notice or other communication in connection with this Agreement shall be in writing and shall be sent by nationally recognized overnight courier guaranteed next business day delivery, by email, or by personal delivery, properly addressed as follows:

<u>If to Seller:</u>	FJF OH Gahanna, L.L.C. 10350 Bren Road West Minnetonka, MN 55343 Attn: Jim Montalbano Email: Jim.Montalbano@foundersproperties.com
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with a copy to: Taft Stettinius & Hollister LLP  
2200 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402  
Attn: Julie A. Drewes and  
Lucas J. Frasz  
Email: jdrewes@taftlaw.com and  
lfrasz@taftlaw.com

If to Purchaser: The City of Gahanna, Ohio  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Email: \_\_\_\_\_

with a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn \_\_\_\_\_  
Email: \_\_\_\_\_

All notices shall be deemed given one (1) business day following deposit if delivered to an overnight courier guaranteeing next day delivery and on the same day if sent by personal delivery or by email delivered before 5:00 p.m. Central Time (and the following business day if the email is delivered after 5:00 p.m. Central Time). Attorneys for each party shall be authorized to give notices for each such party. Any party may change its address for the service of notice by giving written notice of such change to the other party, in any manner above specified.

17. **Captions.** The section headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement, and are not to be considered in interpreting this Agreement.

18. **Entire Agreement; Modification.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter herein contained, and all prior negotiations, discussions, writings and agreements between the parties with respect to the subject matter herein contained are superseded and of no further force and effect. No covenant, term or condition of this Agreement shall be deemed to have been waived by either party, unless such waiver is in writing signed by the party charged with such waiver.

19. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

20. **Controlling Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of in which the Property is located.

21. **Severability.** The unenforceability or invalidity of any provisions hereof shall not render any other provision herein contained unenforceable or invalid.

22. **“As Is” Sale.** PURCHASER ACKNOWLEDGES THAT EXCEPT AS SET FORTH IN THIS AGREEMENT OR IN THE DOCUMENTS EXECUTED AND DELIVERED BY SELLER AT CLOSING, (A) NEITHER SELLER, NOR ANY OWNER, PRINCIPAL, AGENT, ATTORNEY, EMPLOYEE, BROKER, OR OTHER REPRESENTATIVE OF SELLER, HAS MADE ANY REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SUBJECT PROPERTY OR ANY MATTER RELATED THERETO, AND (B) PURCHASER IS NOT RELYING ON ANY WARRANTY, REPRESENTATION, OR COVENANT, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITION OF THE SUBJECT PROPERTY, AND THAT PURCHASER IS ACQUIRING THE SUBJECT PROPERTY IN ITS “AS-IS” CONDITION WITH ALL FAULTS, AND (C) PURCHASER RELEASES SELLER, ITS PAST, PRESENT AND FUTURE EMPLOYEES, PARTNERS, OFFICERS, DIRECTORS, ATTORNEYS, AGENTS, ADMINISTRATORS, REPRESENTATIVES AND PREDECESSORS AND THEIR RESPECTIVE SUCCESSORS, ASSIGNS, EXECUTORS AND ADMINISTRATORS, AGENTS, EMPLOYEES, REPRESENTATIVES, ATTORNEYS, AFFILIATES AND ALL PERSONS ACTING BY, THROUGH, UNDER OR IN CONCERT WITH ANY OF THEM (COLLECTIVELY, THE “RELEASEES”) AND EVERY ENTITY AFFILIATED WITH SELLER AND RELEASEES, FROM ALL ACTIONS, CAUSES OF ACTIONS, SUITS, DEBTS, LIENS, CONTRACTS, AGENTS, OBLIGATIONS, PROMISES, RIGHTS, DEMANDS, CLAIMS, LIABILITIES, DAMAGES, JUDGMENTS, LOSSES, COSTS AND EXPENSES INCLUDING ATTORNEYS’ FEES, OF ANY NATURE WHATSOEVER KNOWN OR UNKNOWN, SUSPECTED OR UNSUSPECTED, FIXED OR CONTINGENT, WHICH PURCHASER NOW HAS, OWNS, HOLDS OR CLAIMS TO HAVE, OWN OR HOLD, OR AT ANY TIME HERETOFORE HAD, OWNED, HELD, OR CLAIMED TO HAVE, OWN OR HOLD, AGAINST SELLER AND THE RELEASEES, RELATING TO THE CONDITION OF THE SUBJECT PROPERTY. IN PARTICULAR, BUT WITHOUT LIMITATION, EXCEPT AS SET FORTH IN THIS AGREEMENT OR IN THE DOCUMENTS EXECUTED AND DELIVERED BY SELLER AT CLOSING, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE PHYSICAL CONDITION OF THE SUBJECT PROPERTY, ANY PATENT OR LATENT DEFECTS AFFECTING THE SUBJECT PROPERTY OR ANY OTHER ASPECT OF THE SUBJECT PROPERTY, INCLUDING ANY ENTITLEMENTS FOR THE SUBJECT PROPERTY, ANY GOVERNMENTAL LAWS AND REGULATIONS, INCLUDING, BUT NOT LIMITED TO, ENVIRONMENTAL LAWS, ZONING AND LAND USE LAWS AND REGULATIONS, COVENANTS, CONDITIONS OR RESTRICTIONS, WHETHER OR NOT OF RECORD, TO WHICH THE SUBJECT PROPERTY MAY BE SUBJECT, THE DEVELOPMENT, USE, CONSTRUCTION, MANAGEMENT OR OCCUPATION OF THE SUBJECT PROPERTY, INCLUDING, WITHOUT LIMITATION, THE IMPROVEMENTS CONSTRUCTED THEREON, THE PRESENCE OF ANY HAZARDOUS MATERIALS UNDER OR IN THE VICINITY OF THE SUBJECT PROPERTY AND ANY HAZARDOUS MATERIAL EFFECTS, OR ANY OTHER MATTER RELATING TO THE SUBJECT PROPERTY. PURCHASER ACKNOWLEDGES AND AGREES THAT PURCHASER WILL CONDUCT ITS OWN INVESTIGATIONS AND STUDIES OF THE SUBJECT PROPERTY AND ALL ASPECTS THEREOF, INCLUDING WITHOUT LIMITATION THE SUBJECT PROPERTY’S CHARACTERISTICS, ITS PHYSICAL CONDITION (INCLUDING ANY DEFECTS THEREIN), ALL LEGAL REQUIREMENTS APPLICABLE THERETO, THE OPERATION AND USE THEREOF, THE ENVIRONMENTAL CONDITION OF THE SUBJECT PROPERTY AND ALL MATTERS DESCRIBED IN THE PRECEDING SENTENCE; IF FOR ANY REASON WHATSOEVER PURCHASER IS PRECLUDED BY SELLER FROM CONDUCTING SUCH INVESTIGATIONS AND STUDIES, PURCHASER SHALL BE REQUIRED TO GIVE WRITTEN NOTICE THEREOF TO SELLER. PURCHASER’S WAIVERS APPLY TO ALL CLAIMS OF ANY NATURE WHATSOEVER, WHETHER KNOWN OR UNKNOWN, SUSPECTED OR UNSUSPECTED, ABSOLUTE OR CONTINGENT, AND WHETHER OR NOT DISCOVERABLE BY PURCHASER, THAT PURCHASER NOW HOLDS OR MAY HOLD AT ANY TIME IN THE FUTURE.

PURCHASER ACKNOWLEDGES AND AGREES THAT: (A) PURCHASER IS AN EXPERIENCED AND SOPHISTICATED OWNER OF REAL PROPERTY; (B) PURCHASER HAS EXPRESSLY NEGOTIATED THE LIMITATIONS OF LIABILITY CONTAINED IN THIS SECTION; AND (C) THE LIMITATIONS CONTAINED IN THIS SECTION ARE REASONABLE. PURCHASER ACKNOWLEDGES AND AGREES THAT SELLER HAS AGREED TO ENTER INTO THIS AGREEMENT IN CONSIDERATION FOR AND IN RELIANCE UPON THE FOREGOING LIMITATIONS OF LIABILITY, AND THAT THE CONSIDERATION UNDER THIS AGREEMENT IS BASED IN PART ON THE LIMITATIONS OF LIABILITY. THE PROVISIONS OF THIS SECTION SHALL APPLY TO ANY CLAIM, LOSS OR DAMAGE, IRRESPECTIVE OF ITS CAUSE OR ORIGIN, AND REGARDLESS OF WHETHER IT IS BASED ON STRICT LIABILITY OR RESULTS FROM THE PASSIVE OR ACTIVE NEGLIGENCE OF SELLER AND/OR ANY RELEASEES.

23. [Intentionally Deleted]

24. **Time of Essence.** Time is of the essence of this Agreement.

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

26. **Interpretation.** In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

27. **Tax Deferred Exchange.** Purchaser and Seller or their permitted assigns, have the right to structure the sale of the Subject Property as part of one or more deferred exchanges in accordance with the provisions of Section 1031 of the Internal Revenue Code. Purchaser and Seller will make reasonable efforts to cooperate with any such exchange requested by the other, including without limitation executing consents to assignments and other documents reasonably requested by the exchanging party; provided that: (i) the Closing Date hereunder will not thereby be delayed, (ii) the cooperating Purchaser or Seller, as the case may be, does not incur any additional expense or liability, nor assume any personal liability in connection with a request by the other party to cooperate with said exchange, (iii) the exchanging party shall not be released from its obligations under this Agreement if the exchanging party's exchange fails for any reason, and the exchanging party shall remain obligated under this Agreement, (iv) the cooperating party shall not be required to acquire title to any other real property (other than the Real Property), and (v) the exchanging party shall indemnify, defend and hold the cooperating party harmless from and against all expenses, losses, costs (including, without limitation, reasonable attorneys' fees), damages and claims resulting from the exchanging party's exchange or attempted exchange. The cooperating party hereby disclaims any responsibility for the qualification of the transactions contemplated by this Agreement as a tax-deferred exchange under Internal Revenue Code Section 1031, as amended, and the exchanging party agrees that the cooperating party shall not be liable for any tax liability, interest or penalties arising thereunder by virtue of the cooperating party's cooperation in the consummation of any such exchange or attempted exchange.

28. **Return of Documents; Confidentiality.** In the event that this Agreement is terminated or cancelled without Purchaser acquiring the Subject Property pursuant to the terms hereof, Purchaser shall, within five (5) business days thereafter, deliver to Seller all due diligence materials delivered by Seller to Purchaser. Prior to the Closing, Purchaser agrees not to disclose any due diligence materials to third parties, except that Purchaser may disclose such information to (i) those employed or engaged by Purchaser in connection with Purchaser's due diligence investigations, (ii) to Purchaser's attorneys, potential lenders, title and escrow officers and others involved in connection with the transactions described in this Agreement, (iii) to Purchaser's directors, officers, shareholders and partners, (iv) to the extent required by



law, subpoena or court order. Purchaser shall indemnify, defend and hold Seller harmless from and against any and all claims, demands, causes of action, losses, damages, liabilities, judgments, costs and expenses (including attorney's fees) asserted against or incurred by Seller as a result of any violation of, or failure to comply with this Section 28. The obligations in this Section 28 shall survive Closing or termination of this Agreement.

29. **IRS Reporting Requirements.** Seller and Purchaser acknowledge and agree that Section 6045(e) of the Internal Revenue Code of 1986 requires that notice of the sale and purchase of the Subject Property described in this Agreement, be provided to the Internal Revenue Service (the "IRS") by preparation of and filing with the IRS of one or more IRS Form 1099-B; and further, Seller and Purchaser agree to furnish and provide the Title Company any and all information and documentation, including without limitation the Designation Agreement, that the Title Company may require in order for the Title Company to (a) comply with all instructions to the IRS Forms 1099-B in the preparation thereof, and (b) prepare and timely file with the IRS said IRS Forms 1099-B with respect to this transaction.

30. **Attorneys' Fees.** If either party commences an action against the other to enforce this Agreement or because of the breach by either party of this Agreement, the prevailing party in such action shall be entitled to recover reasonable attorney fees, costs, and expenses (including expert fees and costs) incurred in connection with the prosecution or defense of such action, including any appeal, in addition to all other relief.

31. **WAIVER OF TRIAL BY JURY.** THE RESPECTIVE PARTIES HERETO SHALL AND HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AND AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, OR FOR THE ENFORCEMENT OF ANY REMEDY UNDER ANY STATUTE OR OTHERWISE.

32. **Calculation of Days.** Unless otherwise specified herein, where the term of this Agreement require the calculation of days to determine performance or notice hereunder, the days shall be calendar days, provided that if the day calculated falls on a day that is not a business day, then the next business day shall be the date for performance or deadline. As used herein the term "business day" means any day of the week other than (a) Saturday and Sunday, and (b) a day on which the banking institutions in the State where the Subject Property is located are obligated to be closed to the transaction of normal banking business.

33. **Limitation on Damages.** Neither party to this Agreement is liable to the other for any consequential, special or punitive damages under this Agreement, including, without limitation, lost profits.

34. **Electronic Signatures.** Facsimile or signatures transmitted by electronic mail in so-called "PDF" format to this Agreement or any amendment thereto shall be valid and enforceable as original signatures.

35. **Schedule and Exhibits.** The following schedule and exhibits are made a part hereof, with the same force and effect as if specifically set forth herein:

Schedule 1	-	Due Diligence Materials
Exhibit A	-	Legal Description
Exhibit B	-	[Intentionally Deleted]
Exhibit C	-	Schedule of Permits
Exhibit D	-	Schedule of Service Contracts
Exhibit E	-	Schedule of Warranties

- Exhibit F - Form of Escrow Agreement
- Exhibit G - [Intentionally Deleted]
- Exhibit H - Form of Limited Warranty Deed
- Exhibit I - Form of Bill of Sale
- Exhibit J - [Intentionally Deleted]
- Exhibit K - Form of Assignment and Assumption of Contracts and Project Documents
- Exhibit L - List of Environmental Reports

*[Signature Pages Follow]*

**IN WITNESS WHEREOF**, Seller and Purchaser have executed this Agreement as of the day and year first above written.

**SELLER:**

**FJF OH GAHANNA, L.L.C.**, a Delaware limited liability company

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

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

**IN WITNESS WHEREOF**, Seller and Purchaser have executed this Agreement as of the day and year first above written.

**PURCHASER:**

**THE CITY OF GAHANNA, OHIO**, an Ohio municipal corporation

By: \_\_\_\_\_  
Laurie Jadwin  
Its: Mayor

**APPROVED AS TO FORM:**

The City of Gahanna, Ohio  
City Attorney

By: \_\_\_\_\_  
Raymond J. Mularski, City Attorney

**EXHIBIT A**

**(Legal Description)**

**PARCEL I:**

**Tract I:**

Situated in the City of Gahanna, County of Franklin, State of Ohio:

Being in Lot Number Five (5), Quarter Township 3, Township 1 North, Range 16 West, United States Military Lands, and being a portion of an original 220.064 Acre Tract of land conveyed to Andre M. Buckles by Deed of record in Deed Book 3700, Page 120, Recorder's Office, Franklin County, Ohio, and bounded and described as follows:

Beginning, for reference, at a point at the intersection of the centerline of Taylor Road (50 feet wide) with the Southwest right-of-way line of Morrison Road and the Northeast limited access right-of-way line of Interstate Route 270, in the North line of said Lot No. 5, at the Northwest corner of a 5.745 acre tract of land conveyed as Parcel No. 1200 WD to State of Ohio by deed of record in Deed Book 3255, Page 555, Recorder's Office, Franklin County, Ohio, and at a corner of a 34.634 acre tract of land conveyed as Parcel No. 1200 WL to State of Ohio by deed of record in Deed Book 3255, Page 559, Recorder's Office, Franklin County, Ohio, all as shown upon Sheet 16 of 28 of Ohio Department of Transportation right-of-way plans for FRA-270-28.30 N;

Thence S 85° 47' 21" E along the centerline of Taylor Road, along a portion of the North line of said Lot No. 5, along the North line of said 5.745 acre tract and along a portion of the North line of said original 220.064 acre tract a distance of 1,506.38 feet to a point (passing a point at the Northeast corner of said 5.745 acre tract at 530.13 feet), the first said point being North 85° 59' 46" W a distance of 1,338.33 feet and North 85° 47' 21" West a distance of 2,205.80 feet from Franklin County Monument No. 1164 found in the centerline of Taylor Road;

Thence S 4° 12' 39" W perpendicular to the centerline of Taylor Road, perpendicular to the North line of said Lot No. 5 and perpendicular to the North line of said original 220.064 acre tract a distance of 25.00 feet to a ¾-inch I.D. iron pipe set in the South right-of-way line of Taylor Road and at the Northeast corner of a 4.716 acre tract of land conveyed out of said original 220.064 acre tract to Morrison Taylor, Ltd., by deed of record in Official Record 28006, Page 113, Recorder's Office, Franklin County, Ohio;

Thence continuing S 4° 12' 39" W along a portion of an East line of said 4.716 acre tract a distance of 392.61 feet to a ¾-inch I.D. iron pipe set at a corner of a 4.563 acre tract of land conveyed out of said original 220.064 acre tract to Morrison Taylor, Ltd., by deed of record in Official Record 30635, Page A01, Recorder's Office, Franklin County, Ohio;

Thence S 85° 47' 21" E parallel with the South right-of-way line of Taylor Road and along a North line of said 4.563 acre tract a distance of 77.11 feet to a ¾-inch I.D. iron pipe set at a corner of said 4.563 acre tract;

Thence S 31° 56' 18" E along the Northeast line of said 4.563 acre tract and along a Southwest line of an 8.699 acre tract of land conveyed to Morrison Taylor, Ltd., by deed of record in Official Record 34402, Page G17, Recorder's Office, Franklin County, Ohio, a distance of 560.22 feet to a ¾-inch I.D. iron pipe set at the Easternmost corner of said 4.563 acre tract and at a corner of said 8.699 acre tract;

Thence S 58° 03' 42" W along the Southeast line of said 4.563 acre tract, along a Northwest line of said 8.699 acre tract and along the Northwest line of proposed Techcenter Drive, as shown on the plat of Techcenter Drive and Easements Dedication Plat, of record in Plat Book 87, Page 58, Recorder's Office, Franklin County, Ohio, a distance of 479.00 feet to a ¾-inch I.D. iron pipe set in the curved Northeast right-of-way line of Morrison Road and in the curved Northeast line of said 5.745 acre tract;

Thence Southeasterly along the curved Northeast right-of-way line of Morrison Road, along a portion of the curved Northeast line of said 5.745 acre tract and with a curve to the right, data of which is radius = 3,524.04 feet and sub-delta = 4° 33' 32", a sub-chord distance of 280.33 feet bearing S 29° 10' 39" E to a ¾-inch I.D. iron pipe set at a Northwest corner of an 8.643 acre tract of land conveyed to Morrison Taylor, Ltd., by deed of record in Official Record 33808, Page F11, Recorder's Office, Franklin County, Ohio;

Thence Southeasterly continuing along a portion of the curved Northeast right-of-way line of Morrison Road, continuing along a portion of the curved Northeast line of said 5.745 acre tract, along the curved Southwest line of said 8.643 acre tract and with a curve to the right, data of which is: radius = 3,524.04 feet and sub-delta = 4° 22' 25", a sub-chord distance of 268.94 feet bearing South 24° 42' 40" East to ¾-inch I.D. iron pipe set at an angle point in the Northeast right-of-way line of Morrison Road, at a corner of said 8.643 acre tract and at a corner of said 5.745 acre tract;

Thence S 47° 29' 19" E along the Northeast right-of-way line of Morrison Road, along a Southwest line of said 8.643 acre tract and along a Northeast line of said 5.475 acre tract a distance of 69.75 feet to a ¾-inch I.D. iron pipe set at an angle point in the Northeast right-of-way line of Morrison Road, at a corner of said 8.643 acre tract, a corner of said 5.745 acre tract, in a South line of said original 220.064 acre tract and at the Northwest corner of a 0.639 acre tract of land conveyed to Alan S. Wernick and Jennifer Field by deed of record in Official Record 32658, Page 113, Recorder's Office, Franklin County, Ohio;

Thence S 83° 36' 12" E along the South line of said 8.643 acre tract, along a portion of a South line of said original 220.064 acre tract, along the North line of said 0.639 acre tract and along a portion of a North line of a 1.184 acre tract of land conveyed to Gregory F. Zuber and Thomas J. Bonasero by deeds of record in Official Record 5756, Page H20, and Official Record 32259, Page D05 and D09, Recorder's Office, Franklin County, Ohio, a distance of 537.02 feet to a ¾-inch I.D. iron pipe set at the Southeast corner of said 8.643 acre tract and at the TRUE PLACE OF BEGINNING of the tract herein intended to be described;

Thence N 6° 23' 48" E along a portion of the East line of said 8.643 acre tract, perpendicular to a South line of said original 220.064 acre tract and perpendicular to the North line of said 1.184 acre tract a distance of 499.01 feet to a ¾-inch I.D. iron pipe set at an angle point in a South line of proposed Techcenter Drive;

Thence S 83° 36' 12" E crossing a portion of said original 220.064 acre tract and along a South line of proposed Techcenter Drive a distance of 49.50 feet to a ¾-inch I.D. iron pipe set at a point of curvature;

Thence Northeasterly crossing a portion of said original 220.064 acre tract, along the curved Southeast line of proposed Techcenter Drive and with a curve to the left, data of which is: radius = 50.50 feet, delta = 90° 00' 00", a chord distance of 71.42 feet bearing North 51° 23' 48" E to a ¾-inch I.D. iron pipe set at the point of tangency;

Thence N 6° 23' 48" E crossing a portion of said original 220.064 acre tract and along the East end of proposed Techcenter Drive a distance of 51.12 feet to a ¾-inch I.D. iron pipe set;

Thence S 85° 56' 18" E crossing a portion of said original 220.064 acre tract a distance of 335.84 feet to a ¾-inch I.D. iron pipe set;

Thence S 2° 50' 20" W crossing a portion of said original 220.064 acre tract a distance of 64.69 feet to a ¾-inch I.D. iron pipe set at a point of curvature;

Thence Southeasterly crossing a portion of said original 220.064 acre tract and with a curve to the left, data of which is: radius = 180.00 feet, delta = 67° 29' 28", a chord distance of 199.98 feet bearing South 30° 54' 24" E to a ¾-inch I.D. iron pipe set at a point of reverse curvature;

Thence Southeasterly crossing a portion of said original 220.064 acre tract and with a curve to the right, data of which is: radius = 100.00 feet, delta = 71° 02' 55", a chord distance of 116.21 feet bearing South 29° 07' 41" E to a ¾-inch I.D. iron pipe set at the point of tangency;

Thence South 6° 23' 47" West crossing a portion of said original 220.064 acre tract a distance of 284.73 feet to a ¾-inch I.D. iron pipe set in a South line of said original 220.064 acre tract and in the North line of an original 40 acre tract of land conveyed as First Tract to The Claycraft Brick Company by deed of record in Official Record 23964, Page J07, Recorder's Office, Franklin County, Ohio, said original 40 acre tract being part of a forfeiture to the State of Ohio by deed of record in Official Record 33035, Page H03, Recorder's Office, Franklin County, Ohio;

Thence N 85° 27' 02" W along a portion of a South line of said original 220.064 acre tract, along a portion of the North line of said original 40 acre tract and along the North line of an original 14.212 acre tract of land conveyed as Third Tract to The Claycraft Brick Company by deed of record in Official Record 23964, Page J07, Recorder's Office, Franklin County, Ohio, said original 14.212 acre tract being part of a forfeiture to the State of Ohio by deed of record in Official Record 33035, Page H03, Recorder's Office, Franklin County, Ohio, a distance of 352.59 feet to a 1-inch I.D. iron pipe found at a corner of said original 220.064 acre tract, at the Northwest corner of said original 14.212 acre tract and at the Northeast corner of a 12.001 acre tract of land conveyed to Hobart Ridge, Inc., by deed of record in Official Record 15280, Page A07, Recorder's Office, Franklin County, Ohio;

Thence N 83° 36' 12" W along a portion of a South line of said original 220.064 acre tract, along a North line of said 12.001 acre tract and along a portion of a North line of said 1.184 acre tract a distance of 275.89 feet to the true place of beginning; Containing 7.625 acres of land more or less.

The above description was prepared by Kevin L. Baxter, Ohio Surveyor No. 7697, of C.F. Bird & R.J. Bull, Inc., Consulting Engineers & Surveyors, Columbus, Ohio, from an actual field survey performed under his supervision in July, 1997. Basis of bearings is the centerline of Taylor Road, being assumed at S 85° 47' 21" E, and all other bearings are based upon this meridian.

## **Tract II:**

Situated in the City of Gahanna, County of Franklin and State of Ohio, Quarter Township 3, Township 1 North, Range 16 West, United States Military District, and being out of the right-of-way for Techcenter Drive recorded in Plat Book 87, Page 58 and described as follows:

Beginning for reference, at the East terminus of the North right-of-way for said Techcenter Drive as recorded in Plat Book 87, Page 58, the same being a corner to the 7.625 acre tract conveyed to 825 Techcenter Drive, LLC, of record in Instrument Number 200605120091965, in a South line of that 6.910 acre tract conveyed to Columbus Southern Power Company of record in Instrument Number 199806120145917 and Instrument Number 199901040001060;

Thence S 06° 23' 34" W, with the East right-of-way line for said Techcenter Drive, the same being a West line of said 7.625 acre tract, 51.12 feet to a point of curvature;

Thence continuing with the East right-of-way line for said Techcenter Drive, the same being a West line of said 7.625 acre tract, being a curve to the right, having a central angle of 07° 00' 08", a radius of 50.50 feet, and an arc length of 6.17 feet, a chord bearing and chord distance of S 09° 52' 54" W, 6.17 feet to an iron pin set at the TRUE POINT OF BEGINNING;

Thence continuing with the East right-of-way line for said Techcenter Drive, the same being a West line of said 7.625 acre tract, being a curve to the right, having a central angle of 83° 00' 23", a radius of 50.50 feet, and an arc length of 73.16 feet, a chord bearing and chord distance of South 54° 53' 09" West, 66.93 feet to an iron pin set at a point of tangency;

Thence N 83° 36' 26" W, with the South right-of-way line for said Techcenter Drive, the same being a North line of said 7.625 acre tract, 49.50 feet to an iron pin set marking a common corner thereof, in the East line of that 8.643 acre tract conveyed to Columbus Southern Power Company of record in Instrument Number 199806120145921;

Thence N 06° 23' 34" E, with the West right-of-way line for said Techcenter Drive, the same being the East line of said 8.643 acre tract, 50.00 feet to an iron pin set marking a common corner thereof;

Thence S 80° 21' 49" E, across said Techcenter Drive right-of-way, 99.78 feet to the TRUE POINT OF BEGINNING, and containing 0.096 acre, more or less. The above description was prepared by John C. Dodgion, P.S. 8069 on January 09, 2008 and is based on existing records and an actual field survey performed in July 2007.

Iron pins set are ¾" diameter, 30" long iron pipe with plastic cap inscribed "Advanced 7661".

All references used in this description can be found at the Recorder's Office, Franklin County, Ohio. Bearings are based on the Ohio State Plane Coordinate System, NAD83 South Zone (1986 ADJ.). A bearing of South 33° 55' 24" W was held between Franklin County Monuments FCGS 5524 and FCGS 1164 Reset.

Together with all of Grantee's interest in and to that certain Storm Sewer Easement for the benefit of subject premises, granted by Andre M. Buckles to Morrison Taylor II, Ltd., filed October 30, 1997, at 10:23 a.m., and appearing of record in Instrument No. 199710300130823, Recorder's Office, Franklin County, Ohio.

**LESS AND EXCEPT** the following described tract conveyed to the City of Gahanna, Grantee, by Warranty Deed recorded 11/03/2008, in Document No. 200811030161594, of the Franklin County Records, described as follows:

Situated in the State of Ohio, County of Franklin, City of Gahanna, Quarter Township 3, Township 1 North, Range 16 West, United States Military District and being out of that 7.625 acre tract conveyed to 825 Techcenter Drive, LLC of record in Instrument Number 200605120091965, and described as follows:

Beginning at an iron pin set marking the East terminus of the North right-of-way line for Techcenter Drive as recorded in Plat Book 87, Page 58, the same being a corner to said 7.625 acre tract, in a South line of that 6.910 acre tract conveyed to Columbus Southern Power Company of record in Instrument Number 199901040001060;

Thence S 85° 56' 32" E, with said South line, the same being a North line of said 7.625 acre tract, 335.84 feet to a ¾" iron pipe (capped Bird & Bull) found marking a common corner thereof, in a West line of that 11.814 acre tract conveyed to Value Recovery Group II, LLC of record in Instrument Number 200712200217547;



Thence S 02° 50' 06" W, with a common line to said 7.625 acre and 11.814 acre tracts, 64.68 feet to an iron pin set at a point of curvature;

Thence with a common line to said 7.625 acre and 11.814 acre tracts and with a curve to the left, having a central angle of 20° 47' 51", a radius of 180.00 feet, and an arc length of 65.34 feet, a chord bearing and chord distance of S 07° 33' 47" E, 64.98 feet to an iron pin set;

Thence across said 7.625 acre tract, the following courses;

With a curve to the right, having a central angle of 15° 56' 42", a radius of 280.00 feet, and an arc length of 77.92 feet, a chord bearing and chord distance of N 62° 29' 54" W, 77.67 feet to an iron pin set at a point of reverse curvature;

With a curve to the left, having a central angle of 28° 46' 21", a radius of 220.00 feet, and an arc length of 110.48 feet, a chord bearing and chord distance of N 68° 54' 44" W, 109.32 feet to an iron pin set at a point of tangency;

N 83° 17' 54" W, 177.42 feet to an iron pin set in a West line of said 7.625 acre tract, the same being the East right-of-way line for said Techcenter Drive;

Thence with said West Line, the same being said East right-of-way line and with a curve to the left having a central angle of 07° 00' 08", a radius of 50.50 feet, and an arc length of 6.17 feet, a chord bearing and chord distance of N 09° 52' 53" E, 6.17 feet to an iron pin set;

Thence N 06° 23' 34" E, with said West line, the same being said East right-of-way line, 51.12 feet to the POINT OF BEGINNING, and containing 0.586 acre, more or less.

The above description was prepared by John C. Dodgion, P.S. 8069 on July 23, 2007 and is based on existing records and an actual field survey performed in July 2007.

Iron pins set are ¾" inch diameter, 30" long iron pipe with plastic cap inscribed "Advanced 7661".

All references used in this description can be found at the Recorder's Office, Franklin County, Ohio.

Bearings are based on the Ohio State Plane Coordinate System. NAD83 South Zone (1986 ADJ.). A bearing of S 33° 55' 24" W was held between Franklin County Monuments FCGS 5524 and FCGS 1164 Reset.

## **PARCEL II:**

Situated in the State of Ohio, County of Franklin, City of Gahanna, in Lot No. 6 (six) in David Taylor's Subdivision of Quarter Township 3, Township 1 North, Range 16 West, United States Military Lands, and being a portion of a 1.184 acre tract of land conveyed to Gregory F. Zuber and Thomas J. Bonasero by deeds of record in Official Record 5756, Page H20 and Official Record 32259, Pages D05 and D09, Recorder's Office, Franklin County, Ohio and bounded and described as follows:

Beginning, for reference, at a ¾" I.D. iron pipe found in the east right-of-way line of relocated Morrison Road, said iron pipe being 80.00 feet left of centerline station 153+97.25, as shown upon sheets 18 and 19 of 28 of Ohio department of transportation right-of-way plans for FRA-270-28.30n, FRA-317-16.67, at the northwest corner of a 0.639 acre tract of land conveyed to Alan S. Wernick and Jennifer Field by deed of record in Official Record 32658, Page 113, Recorder's Office, Franklin County, Ohio and at the southwest

corner of an 8.643 acre tract of land conveyed to Columbus Southern Power Co., by deed of record in Instrument 199806120145921, Recorder's Office, Franklin County, Ohio;

Thence S 83° 36' 12" E along the north line of said 0.639 acre tract and along a portion of the south line of said 8.643 acre tract a distance of 335.09 feet to a ¾" I.D. iron pipe previously set at the northeast corner of said 0.639 acre tract, at a northwest corner of said 1.184 acre tract and at the TRUE PLACE OF BEGINNING of the tract herein intended to be described;

Thence continuing S 83° 36' 12" E along a north line of said 1.184 acre tract, along a portion of the south line of said 8.643 acre tract and along a portion of a south line of a 7.625 acre tract of land conveyed to Morrison Taylor II, Ltd., by deed of record in Instrument 199710300130820, Recorder's Office, Franklin County, Ohio a distance of 317.72 feet to a P.K. nail previously set in the east side of a 30" Oak Tree at the northeast corner of said 1.184 acre tract and at a corner of a 12.001 acre tract of land conveyed to Hobart Ridge, Inc., by deed of record in Official Record 15280, Page A07, Recorder's Office, Franklin County, Ohio;

Thence S 71° 47' 17" W along a portion of the south line of said 1.184 acre tract and along a portion of a north line of said 12.001 acre tract a distance of 440.00 feet to a ¾" I.D. iron pipe set;

Thence N 17° 59' 56" W crossing a portion of said 1.184 acre tract and perpendicular to a north line of said 1.184 acre tract and perpendicular to a south line of said 0.639 acre tract a distance of 110.10 feet to a ¾" I.D. iron pipe set in a north line of said 1.184 acre tract and in a south line of said 0.639 acre tract;

Thence N 72° 00' 04" E along a portion of a north line of said 1.184 acre tract and along a portion of a south line of said 0.639 acre tract a distance of 140.31 feet to a ¾" I.D. iron pipe previously set at a corner of said 1.184 acre tract and at the southeast corner of said 0.639 acre tract;

Thence N 6° 23' 48" E along a west line of said 1.184 acre tract and along the east line of said 0.639 acre tract a distance of 25.00 feet to the TRUE PLACE OF BEGINNING; containing 35,802 square feet (0.822 acre) of land more or less.

The above description was prepared by Kevin L. Baxter, Ohio Surveyor No. 7697, of C.F. Bird & R.J. Bull, Inc., consulting Engineers & Surveyors, Columbus, Ohio, from an actual field survey performed under his supervision of said 1.184 acre tract and said 0.639 acre tract in April, 1996. Basis of bearings is the centerline of Taylor Road, being assumed at S 85° 47' 21" E and all other bearings are based upon this meridian.

### **PARCEL III:**

Situated in the State of Ohio, County of Franklin, City of Gahanna, lying in Quarter Township 3, Township 1 North, Range 16 West, United States Military Lands and being all out of a 11.814 acre parcel of land conveyed to Value Recovery Group II, LLC of record in Instrument Number 200712200217547, Parcel 3 (all references to records are on file in the office of the recorder, Franklin County, Ohio) said 0.057 Parcel being more fully described herein;

Beginning for reference at FCGS 1164 thence 85° 54' 11" with the centerline of Taylor Road, a distance of 2274.93 feet to a point;

Thence South 02° 50' 40" west a distance of 40.00 feet to a ¾" iron pin found with a cap inscribed turner at the northwest corner of said 11.814 acre parcel and the northeast corner of a 4.453 acre parcel or land conveyed to Richard A. Winnestaffer of record in Instrument Number 200404080078849;

Thence South 02° 50' 40" West with the east line of said 4.453 acre parcel passing a ¾" iron pin found at 430.02 feet, said iron pin being the southeast corner of said 4.453 acre parcel and the Northeast corner of a 6.910 acre parcel of land conveyed to Columbus Southern Power Company of record in Instrument Number 199806120145917, and a ¾" iron pin found at 1048.89 feet at the southeast corner of said 6.910 acre parcel and the northeast corner of a 7.625 acre parcel of land conveyed to 825 Techcenter Drive, LLC of record in Instrument Number 200605120091965, a total distance of **1113.28 feet to a point of curvature**;

Thence with the west line of said 11.814 acre parcel and the east line of said 7.625 acre parcel 65.34 feet along the arc of a curve to the left, having a radius of 180.00 feet, a central angle of 20° 47' 51", the chord of which bears South 07° 33' 37" East, a chord distance of 64.98 feet to an iron pin set at the TRUE POINT OF BEGINNING;

Thence across said 11.814 acre parcel 64.21 feet along the arc of a curve to the left, having a radius of 280.00 feet, a central angle of 13° 08' 22", the chord of which bears South 77° 02' 26" East, a chord distance of 64.07 feet to an iron pin set;

Thence South 07° 57' 45" West across said 11.814 acre parcel, a distance of 66.68 feet to an iron pin set on the easterly line of said 7.625 acre parcel;

Thence with the easterly line of said 7.625 acre parcel and the west line of said 11.814 acre parcel 97.60 feet along the arc of a curve to the right, having a radius of 180.00 feet, a central angle of 31° 04' 03", the chord of which bears north 33° 29' 34" west, a chord distance of 96.41 feet to the TRUE POINT OF BEGINNING, containing 0.057 acre of land, more or less.

For the purposes of this description a bearing of south 02° 50' 40" west was held on the west line of said 11.814 acre parcel as shown in Instrument Number 200712200217547.

All iron pins set are 1" O.D. X 30" Galvanized iron pipe with a Plastic Cap Inscribed P.S. 8114.

**PARCEL IV:**

A non-exclusive easement for utility purposes as contained within the Deed of Easement of record in Instrument No. 200409100212779.

**PARCEL V:**

A non-exclusive easement for storm sewer purposes as contained within the Deed of Easement of record in Instrument No. 199710300130823.

**EXHIBIT B**

[Intentionally Deleted]

**EXHIBIT C**

**(Schedule of Permits)**

1. Certificates of Occupancy:

- a. Certificate of Occupancy dated 4/5/2017; Permit No. 1611-0031-ALT
- b. Certificate of Use & Occupancy dated 8/23/2011; Permit No. 11060004
- c. Certificate of Use & Occupancy dated 12/10/2010; Permit No. 10090007
- d. Certificate of Use & Occupancy dated 2/5/2010; Permit No. 09080073
- e. Certificate of Use & Occupancy dated 12/2/2009; Permit No. 07100113 A-243-07
- f. Certificate of Use & Occupancy dated 7/21/2005; Permit No. 113-05
- g. Certificate of Use & Occupancy dated 6/1/2004; Permit No. 131-04
- h. Certificate of Use & Occupancy dated 2/19/1999; Permit No. 443
- i. Certificate of Use & Occupancy dated 2/19/1999; Permit No. 314

2. Elevator Certificates of Operation

- a. Elevator Certificate of Operation, Ohio Department of Commerce; Certificate No. EL40583 (State ID No. 40583, Owners Elevator ID No. 1); Certificate Expiration Date: 11/30/2022
- b. Elevator Certificate of Operation, Ohio Department of Commerce; Certificate No. EL40584 (State ID No. 40584, Owners Elevator ID No. 2); Certificate Expiration Date: 11/30/2022

**EXHIBIT D**

**(Schedule of Service Contracts)**

1. Yard Solutions. Short Form Service Contractor Agreement dated 6/27/2022.
2. Dynegy. Electric Service Agreement issued 6/30/2021.
3. Otis Elevator Company. Contract Number CSV05150 dated 10/12/2017, as amended by Contract Addendum dated 10/4/2018.
4. Speer Mechanical. Preventative Maintenance Agreement dated 10/11/2021.
5. Rain One Irrigation & Drainage. Irrigation Service Agreement dated 12/1/2020.
6. EMERgency24. Monitoring Service Agreement dated 3/12/2018.
7. Republic Services. Customer Service Agreement dated 9/8/2020.
8. HiddenCreek Landscaping Inc. Snow Contract dated 11/1/2021.
9. American National Skyline, Inc. Window Cleaning Contract dated 8/18/2021.
10. Orkin. Pest Contract Services Agreement.

**EXHIBIT E**

**(Schedule of Warranties)**

None.

**EXHIBIT F**

**(Form of Escrow Agreement)**

**EARNEST MONEY ESCROW AGREEMENT**

THIS EARNEST MONEY ESCROW AGREEMENT (“Agreement”) is made as of \_\_\_\_\_, 2022, by and among **FJF OH GAHANNA, L.L.C.**, a Delaware limited liability company (“Seller”), **THE CITY OF GAHANNA, OHIO**, an Ohio municipal corporation (“Purchaser”), and **FIRST AMERICAN TITLE INSURANCE COMPANY**, a Nebraska corporation (“Escrow Agent”).

**RECITALS:**

A. By that certain Purchase Agreement dated as of \_\_\_\_\_, 2022 (“Purchase Agreement”), between Seller and Purchaser, Seller has agreed to sell to Purchaser and Purchaser has agreed to purchase from Seller all of Seller’s right, title and interest in and to the Subject Property, upon and subject to the terms and provisions set forth in the Purchase Agreement. Pursuant to the terms and provisions of the Purchase Agreement, Purchaser has agreed to deposit into escrow with Escrow Agent the sum in cash of Three Hundred Thousand and No/100 U.S. Dollars (\$300,000.00) (together with any interest earned thereon, the “Earnest Money”), to be held, invested and disbursed by Escrow Agent in accordance with the terms and conditions of this Agreement.

B. Escrow Agent has agreed to act as escrow agent to hold, administer, invest and disburse the Earnest Money on the terms and conditions herein set forth.

C. Unless otherwise provided herein, all capitalized words and terms used herein shall have the same meanings ascribed to such words and terms as in the Purchase Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Escrow Agent shall notify Seller and Purchaser in writing upon Escrow Agent’s receipt of the Earnest Money, consisting of \$300,000.00 from Purchaser.

2. Escrow Agent shall hold, administer and disburse the Earnest Money pursuant to this Agreement. Escrow Agent, in accordance with written instructions to it from time to time from Purchaser, shall invest, and from time to time reinvest, the Earnest Money as so instructed by Purchaser.

3. Purchaser shall provide a W-9 statement to Escrow Agent if Purchaser desires for the Deposit to be invested.

4. Escrow Agent shall not be responsible for any penalties or loss of interest or any delays in withdrawing funds which may be incurred upon withdrawal of the Earnest Money in accordance with instructions given hereunder except to the extent attributable to Escrow Agent’s gross negligence. No delay shall exist if funds are withdrawn and paid within three (3) business days after receipt of instructions.

5. (a) Upon not less than five (5) business days’ prior written notice executed by Seller and delivered to both Purchaser and Escrow Agent in accordance with Section 7 below, asserting that Seller is entitled to retain the Earnest Money pursuant to the terms of the Purchase Agreement, Escrow Agent shall deliver the Earnest Money to Seller; provided, however, that if Purchaser shall,



within said 5 business day period, deliver to Seller and Escrow Agent a written notice that it disputes Seller's claim to the Earnest Money, Escrow Agent shall retain the Earnest Money until it receives written instructions executed by both Seller and Purchaser as to the disposition and disbursement of the Earnest Money, or until ordered by final court, decree or judgment in a proceeding in which Purchaser and Seller are parties, which is not subject to appeal, to deliver the Earnest Money to a particular party, in which event the Earnest Money shall be delivered in accordance with such notice, instruction, order, decree or judgment.

(a) Upon not less than five (5) business days' prior written notice executed by Purchaser and delivered to Seller and Escrow Agent in accordance with Section 7 below, asserting that Purchaser is entitled to the return of the Earnest Money pursuant to the terms of the Purchase Agreement, Escrow Agent shall deliver the Earnest Money to Purchaser; provided, however, that if Seller shall, within said 5 business day period, deliver to Purchaser and Escrow Agent a written notice that it disputes Purchaser's claim or right to receive back the Earnest Money, Escrow Agent shall retain the Earnest Money until it receives written instructions executed by both Seller and Purchaser as to the disposition and disbursement of the Earnest Money, or until ordered by final court order, decree or judgment in which Purchaser and Seller are parties, which is not subject to appeal, to deliver the Earnest Money to a particular party, in which event the Earnest Money shall be delivered in accordance with such notice, instruction, order, decree or judgment.

(b) Subject to the foregoing, this Agreement shall at all times be subject to the joint order of Seller and Purchaser and upon such joint order Escrow Agent shall deliver the Earnest Money as instructed by such joint order.

6. Purchaser shall be responsible for payment of any investment fee.

7. Any notice or other communication in connection with this Agreement shall be in writing and shall be sent by United States Certified Mail, return receipt requested, postage prepaid, by nationally recognized overnight courier guarantee next day delivery, by email, or by personal delivery, properly addressed as follows:

If to Seller: FJF OH Gahanna, L.L.C.  
10350 Bren Road West  
Minnetonka, MN 55343  
Attn: Jim Montalbano  
Email: Jim.Montalbano@foundersproperties.com

with a copy to: Taft Stettinius & Hollister LLP  
2200 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402  
Attn: Julie A. Drewes and  
Lucas J. Frasz  
Email: jdrewes@taftlaw.com and  
lfrasz@taftlaw.com

If to Purchaser: The City of Gahanna, Ohio  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Email: \_\_\_\_\_

with a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Email: \_\_\_\_\_

If to Escrow Agent: First American Title Insurance Company  
121 South 8th Street, Suite 1250  
Minneapolis, MN 55402  
Attn: \_\_\_\_\_  
Email: \_\_\_\_\_

All notices shall be deemed given three (3) business days following deposit in the United States mail with respect to certified or registered letters, one (1) business day following deposit if delivered to an overnight courier guaranteeing next day delivery and on the same day if sent by personal delivery or email. Attorneys for each party shall be authorized to give notices for each such party. Any party may change its address for the service of notice by giving written notice of such change to the other party, in any manner above specified.

8. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns under the Purchase Agreement.

9. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. In the event that any provision hereof shall be deemed illegal or unenforceable, said provision shall be severed herefrom and the remainder of this Agreement shall be enforced in accordance with the intentions of the parties as herein expressed.

10. This Agreement may not be amended or altered except by an instrument in writing executed by all the parties hereto.

11. Except as to deposits of funds for which Escrow Agent has received express written direction concerning investment or other handling, the parties hereto agree that the Escrow Agent shall invest the Earnest Money in Escrow Agent's customary money market account; provided, however, nothing herein shall diminish Escrow Agent's obligation to apply the full amount of the deposit together with interest thereon in accordance with the terms of these escrow trust instructions.

12. Facsimile or signatures transmitted by electronic mail in so-called "PDF" format to this Agreement or any amendment thereto shall be valid and enforceable as original signatures.

*[Signature Pages Follow]*

**IN WITNESS WHEREOF**, Seller, Purchaser and Escrow Agent have executed this Agreement as of the day and year first above written.

**SELLER:**

**FJF OH GAHANNA, L.L.C.**, a Delaware limited liability company

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

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

**IN WITNESS WHEREOF**, Seller, Purchaser and Escrow Agent have executed this Agreement as of the day and year first above written.

**PURCHASER:**

**THE CITY OF GAHANNA, OHIO**, an Ohio municipal corporation

By: \_\_\_\_\_  
Laurie Jadwin  
Its: Mayor

**APPROVED AS TO FORM:**

The City of Gahanna, Ohio  
City Attorney

By: \_\_\_\_\_  
Ray Mularski, City Attorney

**IN WITNESS WHEREOF**, Seller, Purchaser and Escrow Agent have executed this Agreement as of the day and year first above written.

**ESCROW AGENT:**

**FIRST AMERICAN TITLE INSURANCE  
COMPANY**, a Nebraska corporation

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

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

**EXHIBIT G**

[Intentionally Deleted]

**EXHIBIT H**

**(Form of Deed)**

**LIMITED WARRANTY DEED**

**FJF OH GAHANNA, L.L.C.**, a Delaware limited liability company authorized to transact business in Ohio ("Grantor"), for valuable consideration paid, grants with limited warranty covenants, to \_\_\_\_\_, a \_\_\_\_\_ ("Grantee"), whose tax mailing address is \_\_\_\_\_, that certain real property situated in Gahanna, Franklin County, Ohio, as legally described on Exhibit A attached hereto and made a part hereof (the "Property"), together with all improvements thereon or therein, and all privileges, rights, easements, hereditaments and appurtenances thereunto belonging, and all right, title and interest of Grantor in and to all rights-of-way included therein or adjacent thereto (before or after the vacation thereof); provided, however, that the Property is conveyed subject to, and there are excepted from the limited warranty covenants of Grantor, those matters described on Exhibit B, attached hereto and made a part hereof.

Prior instrument reference: [\_\_\_\_\_].

Address: 825 Tech Center Drive, Gahanna, OH

Tax Parcel No.: [\_\_\_\_\_]

Grantor will warrant and defend the Property with the appurtenances thereunto belonging unto the Grantee, its successors and assigns, against all lawful claims and demands of all person claiming by, through, or under the Grantor, but against none other.

*[The remainder of the page is blank; the signature page(s) follow.]*

Witness the undersigned's hand(s) as of this \_\_\_\_ day of \_\_\_\_\_, 2022.

**GRANTOR:**

**FJF OH GAHANNA, L.L.C.,**  
a Delaware limited liability company

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

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

STATE OF MINNESOTA     )  
  ) ss.  
COUNTY OF HENNEPIN    )

This instrument was executed before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_, the \_\_\_\_\_ of FJF OH GAHANNA, L.L.C., a Delaware limited liability company, on behalf of such company.

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

This instrument was prepared by  
and after recording return to:

Taft Stettinius & Hollister LLP  
2200 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402  
Attn: Lucas J. Frasz



**EXHIBIT A**

**(Legal Description)**

[\_\_\_\_\_]

**EXHIBIT B**

**(Permitted Encumbrances)**

*[To conform to Purchaser's pro forma Title Insurance Policy exceptions]*

**EXHIBIT I**

**(Form of Bill of Sale)**

**BILL OF SALE**

THIS BILL OF SALE (this “Bill of Sale”) is made as of \_\_\_\_\_, 20\_\_\_\_ (the “Effective Date”) by \_\_\_\_\_, a \_\_\_\_\_ (“Seller”), to \_\_\_\_\_, a \_\_\_\_\_ (“Purchaser”).

**RECITALS:**

A. Purchaser has acquired title from Seller to that certain real property, and any improvements situated thereon owned by Seller, more particularly described on Exhibit A attached hereto (“Property”), pursuant to a Purchase Agreement dated as of \_\_\_\_\_, 20\_\_\_\_ by and between Seller and Purchaser (or Purchaser’s predecessor-in-interest) (as amended, the “Purchase Agreement”).

B. In connection with the conveyance of the Property from Seller to Purchaser, Seller has agreed to sell to Purchaser, and Purchaser has agreed to purchase from Seller, all Personal Property (as defined in the Purchase Agreement) related thereto.

**AGREEMENT:**

In consideration of the foregoing recitals and other good and valuable consideration, Seller and Purchaser agree as follows:

1. **Conveyance.** Seller hereby transfers to Purchaser and its successors and assigns, all of Seller’s right, title and interest (if any) in and to the Personal Property without representation or warranty, except as specifically set forth in this Bill of Sale.

2. **Seller’s Warranties.** Seller warrants that Seller is the owner of the Personal Property and that Seller has the right to sell and convey the Personal Property to Purchaser. Except as expressly set forth herein or in the Purchase Agreement, Seller makes no warranties or representations as to the Personal Property. *AMONG OTHER THINGS, ALL WARRANTIES OF QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY ARE HEREBY EXPRESSLY DISCLAIMED AND EXCLUDED.*

3. **Successors and Assigns.** This Bill of Sale is binding upon and inures to the benefit of Seller and Purchaser and their respective successors and permitted assigns.

4. **Governing Law.** This Bill of Sale shall be construed and enforced in accordance with the laws of the State in which the Property is located.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, Seller has executed this Bill of Sale effective as of the Effective Date set forth above.

**SELLER:**

\_\_\_\_\_, a \_\_\_\_\_

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

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

**EXHIBIT A**  
**TO**  
**BILL OF SALE**

**(Legal Description)**

[\_\_\_\_\_]

**EXHIBIT J**

**[Intentionally Deleted]**

## EXHIBIT K

(Form of Assignment and Assumption of Contracts and Project Documents)

### ASSIGNMENT AND ASSUMPTION OF CONTRACTS AND PROJECT DOCUMENTS

THIS ASSIGNMENT AND ASSUMPTION OF CONTRACTS AND PROJECT DOCUMENTS (this "Assignment") is made as of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date"), by and between \_\_\_\_\_, a \_\_\_\_\_ ("Assignor"), and \_\_\_\_\_, a \_\_\_\_\_ ("Assignee").

#### **RECITALS:**

A. Assignee has acquired from Assignor title to that certain real property, and any improvements situated thereon owned by Assignor, more particularly described on Exhibit A attached hereto (the "Property").

B. In connection with the conveyance of the Property from Assignor to Assignee, Assignor and Assignee intend and agree that Assignor's right, title and interest in the agreements set forth on Exhibit B attached hereto and all licenses, permits, entitlements, warranties, guaranties, certificates of occupancy, if any, in the possession of Assignor, relating to the acquisition, construction, design, use, operation, management or maintenance of the Property (collectively, the "Contracts and Project Documents"), to the extent assignable, shall inure to the benefit of and be assigned and transferred to Assignee.

#### **AGREEMENT:**

In consideration of the foregoing recitals and other good and valuable consideration, Assignor and Assignee agree as follows:

1. **Assignment by Assignor.** To the extent assignable, Assignor hereby assigns and transfers to Assignee all right, title and interest of Assignor in the Contracts and Project Documents accruing from and after the Effective Date, together with any rights owned by Assignor relating thereto.

2. **Limited License.** Assignor assigns to Assignee its limited license to use the plans and specifications relating to the improvements on the Property for the purposes and subject to the conditions set forth in the Purchase Agreement dated \_\_\_\_\_, 20\_\_\_\_, by and between Assignor and Assignee.

3. **Acceptance of Assignment.** Assignee hereby accepts the assignment of the Contracts and Project Documents, and Assignee assumes and agrees to keep, perform and fulfill all of the duties, covenants, provisions, conditions and obligations of Assignor contained therein which arise or are incurred or are related to events occurring from and after the Effective Date.

4. **Successors and Assigns.** This Assignment shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

5. **Authority.** Each of the parties signing this Assignment hereby warrants and represents that it has the full legal power, authority and right to execute, deliver and perform the obligations under this Assignment, that this Assignment has been duly authorized by all requisite actions on the part of such warranting party, and that no remaining action or third party action is required to make this Assignment binding upon such party.

6. **Governing Law.** This Assignment shall be construed and enforced in accordance with the laws of the State in which the Property is located.

7. **Attorneys' Fees.** If either party commences litigation against the other for the specific performance of this Assignment, the interpretation of this Assignment, for damages for the breach hereof or otherwise for enforcement of any remedy hereunder, the parties hereto agree, in the event of any such commencement of litigation, the prevailing party shall be entitled to recover from the other party such costs and reasonable attorneys' fees as may have been incurred. Any attorneys' fees incurred in enforcing any right of indemnity set forth in this Assignment shall be recoverable and deemed to be within the scope of such indemnity and/or this attorneys' fees provision.

8. **Counterparts.** This Assignment may be executed in any number of counterparts, each of which, when so executed and when delivered, shall be an original, but all such counterparts shall together constitute but one and the same instrument.

*[Signature Page Follows]*



**IN WITNESS WHEREOF**, Assignor and Assignee have executed this Assignment effective as of the Effective Date set forth above.

**ASSIGNOR:**

\_\_\_\_\_, a \_\_\_\_\_

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

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

**IN WITNESS WHEREOF**, Assignor and Assignee have executed this Assignment effective as of the Effective Date set forth above.

**ASSIGNEE:**

\_\_\_\_\_, a \_\_\_\_\_

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

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

**EXHIBIT A**  
**TO**  
**ASSIGNMENT AND ASSUMPTION OF CONTRACTS AND PROJECT DOCUMENTS**

**(Legal Description)**

[\_\_\_\_\_]

**EXHIBIT B**  
**TO**  
**ASSIGNMENT AND ASSUMPTION OF CONTRACTS AND PROJECT DOCUMENTS**

**(Certain Assigned Agreements)**

Service Contracts:

Warranties:

**EXHIBIT L**

**(List of Environmental Reports)**

1. Phase I Environmental Site Assessment conducted by APEX dated August 17, 2018, APEX Project No. OPUS18004
2. Phase I Environmental Site Assessment Report conducted by PARTNER Engineering and Science, Inc. dated September 30, 2016, PARTNER Project No. 16-171420.1