

STATE OF NORTH CAROLINA

CONTRACT OF PURCHASE AND SALE

COUNTY OF MECKLENBURG

THIS CONTRACT OF PURCHASE AND SALE (the "Contract") is made and entered into this ____ day of _____, _____ (said date being the latter date by which this Contract has been signed by both Buyer and Seller (the "Effective Date")), by and between **Mecklenburg County**, a political subdivision of the State of North Carolina ("Seller"), and **City of Charlotte**, a North Carolina municipal corporation ("Buyer").

WITNESSETH:

Now, therefore, the Seller and the Buyer agree that the terms and conditions of this sale and purchase are as follows:

1. SUBJECT PROPERTY. Buyer hereby offers to purchase, and Seller hereby agrees to sell and convey all of those parcels of land described as follows:

Real Property: all of Mecklenburg County tax parcel #s 073-162-01, 073-162-02, 073-161-01, 073-161-03, and 073-161-06, containing a total of approximately one (1) acre in Charlotte, NC, and to be further identified by a boundary survey to be obtained by Buyer.

As used herein, the term "Subject Property" or "Property" shall be deemed to include the following:

a) The real estate listed above, together with all improvements thereon, and all easements, tenements, hereditaments, privileges, air rights, minerals, and appurtenances in any way belonging thereto.

b) All licenses, permits and franchises issued by any federal, state or municipal authority relating to the use, maintenance or operation of the real estate running to or in favor of Buyer.

2. PURCHASE PRICE

The purchase price ("Purchase Price") for the Subject Property shall be Six Million Eight Hundred Ten Thousand and no/100 Dollars (\$6,810,000.00). The Purchase Price shall be payable as follows:

a. No later than two (2) business days after the Effective Date, Buyer shall deliver to Kimberly E. Fox, PLLC, 19826 North Cove Road, Ste E, Cornelius, N.C. 28031, Attn: Kimberly E. Fox, Attorney, who, by agreement of the parties, shall act as escrow agent for purposes of this transaction (the "Escrow Agent"), a deposit of One Hundred Seventy Thousand Two Hundred Fifty and no/100 Dollars (\$170,250.00) in the form of a check or wire transfer of funds. All amounts paid by Buyer as earnest money for this Contract and all interest, if any, earned thereon (collectively, the "Earnest Money") shall be applied to the Purchase Price upon closing, refunded, or applied upon default as specified by the terms of this Contract.

b. The balance of the Purchase Price shall be payable by wire transfer of immediately available funds at closing.

3. TESTS AND OTHER DUE DILIGENCE INVESTIGATIONS

From the Effective Date through and including the date that is forty-five (45) days thereafter (the "Examination Period"), Buyer shall make whatever inquiry it deems appropriate into matters of survey, title, and the condition of the Property and shall promptly notify Seller of any objection regarding same. Buyer shall indemnify, defend and hold Seller harmless from and against any claims, damages or liability (including reasonable attorneys' fees), and shall repair any damage to the Subject Property, resulting from or relating to Buyer's exercise of its rights afforded in this Section 3. This indemnity shall survive the termination of this Contract. Seller shall have no obligation to cure any objection. If Seller does not cure such objection, Buyer shall have the option to either (a) waive Buyer's objection and purchase the Property as otherwise contemplated in this Contract, without any adjustment in the Purchase Price, or (b) terminate this Contract by giving written notice to Seller prior to expiration of the Examination Period, and receive a refund of the Earnest Money. Notwithstanding anything herein to the contrary, the parties hereby specifically acknowledge and agree that, following the expiration of the Examination Period, the Earnest Money shall be non-refundable to Buyer except in the case of a default (including the lapse of any cure period) by Seller hereunder.

4. CLOSING

The closing of this transaction (the "Closing") shall occur on a date and at a time mutually agreed upon by the parties, but said date being no later than fifteen days following the expiration of the Examination Period (the "Closing Date").

5. CLOSING DOCUMENTS; PRORATIONS

At Closing, Seller shall execute and deliver to Buyer (i) a good and sufficient special warranty deed, conveying good and marketable fee simple title to the Subject Property free and clear of all liens and encumbrances except (a) easements, restrictions and rights-of-way of record, (b) ad valorem real property taxes for the calendar year of sale, to the extent not yet due and payable (as applicable), (c) zoning ordinances and governmental regulations affecting the Property, and (d) such other matters as are approved by Buyer, or deemed approved by Buyer under Section 3 above; and (ii) an owner's affidavit in customary form and reasonably acceptable to Buyer and Buyer's title insurer, and otherwise sufficient for such title insurer to issue an owner's policy of title insurance to Buyer in the amount of the Purchase Price.

6. CLOSING EXPENSES

At Closing, each party shall be responsible for the following closing expenses:

- a. Seller shall be responsible for the cost of preparation of its deed and the cost of revenue stamps, if any, attached to the deed.

- b. Buyer shall be responsible for the cost of recording the deed, its policy of title insurance and the preparation of any survey of the Property desired by Buyer.
- c. Each party will be responsible for all of its other closing costs, including its respective attorneys' fees.
- d. Taxes on the Property shall not be collected or prorated at closing, as both Buyer and Seller are exempt from Mecklenburg County property taxes.

7. ESCROW OF EARNEST MONEY

Escrow Agent is appointed escrow agent to receive, hold and disburse the Earnest Money in accordance with the terms of this Contract.

8. INTENTIONALLY OMITTED

9. BROKERAGE COMMISSIONS

Buyer and Seller each warrant to the other that no individual or representative of any brokerage firm has acted on its behalf pursuant to the Contract or in connection with the sale and purchase of the Subject Property. Each party hereto shall indemnify and hold harmless the other from and against any loss or liability by reason of the breach by the indemnifying party of the foregoing warranty and representation.

10. TIME OF THE ESSENCE

Time is of the essence to this Contract.

11. DEFAULT; LIQUIDATED DAMAGES; REMEDIES

If Buyer fails to comply with or perform in any material respect any of the conditions to be complied with or any of the covenants, agreements or obligations to be performed by Buyer under the terms and provisions of this Contract, and Buyer fails to cure its breach or non-performance hereunder within seven (7) business days of Buyer's receipt from Seller of a reasonably detailed notice specifying such breach or non-performance, the sole remedy of Seller shall be to terminate this Agreement by delivery of written notice to Buyer, in which event Seller may retain the Earnest Money as liquidated damages, it being agreed that Seller's damages in the event of a default by Buyer would be difficult to estimate precisely and that the Earnest Money constitutes the parties' best estimate of such damages. Upon any such termination, neither party shall have any further rights or obligations regarding this Contract other than those which survive closing as specifically set forth herein.

If Seller breaches in any material respect any representation or warranty contained in this Contract or fails to comply with or perform in any material respect any of the conditions to be complied with or any of the covenants, agreements or obligations to be performed by Seller under the terms and provisions of this Contract, and Seller fails to cure any such breach or non-performance hereunder within seven (7) business days of Seller's receipt from Buyer of a

reasonably detailed notice specifying such breach or non-performance, Buyer may, as Buyer's exclusive remedies against Seller for Seller's default, either: (i) obtain specific performance of the obligations of Seller under this Contract, or (ii) terminate this Contract and receive an immediate refund of the Earnest Money. Upon any such termination, neither party shall have any further rights or obligations regarding this Contract other than those which survive closing as specifically set forth herein.

12. AS-IS.

Buyer acknowledges that it will accept the Property in its "as is" condition without any representation or warranty from Seller except as may be expressly set forth in this Contract.

13. BUYER'S REPRESENTATIONS AND WARRANTIES

Buyer represents and warrants that:

- a. Buyer has the requisite power and authority to enter into and perform the terms of this Contract; the execution and delivery of this Contract and the consummation of the transactions contemplated hereby have been duly authorized by all necessary parties; and no other proceedings on Buyer's part are necessary in order to permit Buyer to consummate the transaction contemplated hereby.
- b. No further approval, consent, order or authorization of or designation, registration or declaration with, any governmental authority is required in connection with the valid execution and delivery of and compliance with this Contract by Buyer.
- c. This Contract and all documents executed by Buyer that are to be delivered to Seller at the Closing are, or at the time of Closing will be, duly authorized, executed and delivered by Buyer. This Contract and such documents are, or at the Closing will be, legal, valid, and binding obligations of Buyer, and do not, and, at the time of Closing will not, violate any provisions of any agreement or judicial order to which Buyer is a party or to which it is subject.
- d. There are no proceedings pending or, to Buyer's knowledge, threatened against Buyer in any court or before any governmental authority or any tribunal which, if adversely determined, would have a material adverse effect on its ability to purchase the Subject Property or to carry out its obligations under this Contract.

14. MISCELLANEOUS

- a. Merger and Modification. This instrument constitutes the entire agreement between the parties and supersedes any and all prior agreements, arrangements and understandings, whether oral or written, between the parties. All negotiations, correspondence and memorandums passed between the parties hereto are merged herein and this agreement cancels and supersedes all prior agreements between the parties with reference thereto. No modification of this

instrument shall be binding unless in writing, attached hereto, and signed by the party against whom or which it is sought to be enforced.

- b. Waiver. No waiver of any right or remedy shall be effective unless in writing and nevertheless shall not operate as a waiver of any other right or remedy or of the same right or remedy on a future occasion.
- c. Caption and Words. The captions and headings contained herein are solely for convenience and reference and do not constitute a part of this instrument. All words and phrases in this instrument shall be construed to include the singular and plural number, and the masculine, feminine or neuter gender, as the context requires.
- d. Binding Effect. This instrument shall be binding upon and shall insure to the benefit of the parties and their heirs, successors and permitted assigns.
- e. North Carolina Law. This instrument shall be construed in accordance with the laws of North Carolina without giving effect to its conflict of laws principles.
- f. Two Originals. This instrument may be executed in two (2) or more counterparts as the parties may desire, and each counterpart shall constitute an original.
- g. Follow Through. Each party will execute and deliver all additional documents and do all such other acts as may be reasonably necessary to carry out the provisions and intent of this instrument.
- h. Severability. If any one or more of the terms, provisions, covenants or restrictions of this agreement shall be determined by a Court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated. If, moreover, any one or more of the provisions contained in this Contract shall for any reason be determined by a Court of competent jurisdiction to be excessively broad as to duration, geographical scope, activity or subject, it shall be construed, by limiting or reducing it, so as to be enforceable to the extent compatible with the then applicable law.
- i. Notices. All notices and communications hereunder shall be in writing and shall be deemed to have been duly given if delivered in person or by an overnight service, such as Federal Express, or deposited in the United States mail by registered or certified mail, postage prepaid, properly addressed as follows:

If Buyer to: Tony Korolos
 Manager, Real Estate Division
 City of Charlotte
 600 E. 4th St.
 Charlotte, NC 28202

Phone: 704.249.6148

With a copy to: Catherine L. Cooper
Sr. Asst. City Attorney
600 E. 4th St., 7th Floor
Charlotte, NC 28202
Phone: 704.432.4761
Fax: 704.632.8333

If Seller to: Mecklenburg County
600 East 4th Street, 11th Floor
Charlotte, NC 28202
Phone: (980) 314-2939
Email: dennis.lacaria@mecklenburgcountync.gov
Attn: Mr. Dennis LaCaria

With a copy to: Ruff, Cond, Cobb, Wade & Bethune, L.L.P.
Attn: David C. Dwyer, Esq.
831 E. Morehead St., Suite 860
Charlotte, NC 28202
Phone: 704.377.1634
E-mail: ddwyer@rbcwb.com

Notices shall be deemed to be given upon personal delivery or when delivered if deposited with the United States mail service, or the same business day if deposited with an overnight delivery service.

- j. No Construction Against Preparer. No provision of this Contract shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party's having or being deemed to have prepared or imposed such provision.
- k. Risk of Loss. Between the date of this Contract and the Closing, the risks and obligations of ownership and loss of the Subject Property and the correlative rights against insurance carriers and third parties shall belong to Seller. In the event of the destruction or substantial damage to the Subject Property prior to Closing, so long as the same is not caused by Buyer or Buyer's agent, Buyer shall have the right, at Buyer's option, to terminate this Contract by giving written notice thereof to Seller prior to Closing, in which event all rights and obligations of Seller and Buyer under this Contract shall expire, and this Contract shall become null and void. If Buyer does not so terminate this Contract, the Purchase Price shall be reduced by the total of any insurance proceeds received by Seller prior to Closing by reason of such damage or destruction and by the amount of any deductible applicable to the policy of insurance, and, at Closing, Seller shall assign to Buyer all insurance proceeds to be paid or to become payable after Closing by reason of such damage or destruction.

1. Covenant of Seller. Seller agrees not to take any intentional action (or intentionally fail to take any action) which would cause any of Seller's representations or warranties to be untrue in any material respect.

18. SPECIAL COVENANTS OF BUYER.

Buyer agrees to construct affordable housing, as defined by the Department of Housing and Urban Development, on a location or locations within the proposed master development on the Subject Property. A minimum of forty (40) housing units or fifteen percent (15%) of the total residential development, whichever number is ultimately greater, will be dedicated for affordable housing. Said units will be for persons earning at or below eighty percent (80%) of Area Median Income. The affordability period for the affordable housing units will be no less than thirty (30) years. The provisions of this Section 18 shall survive Closing.

19. ASSIGNMENT.

Neither party shall have the right to assign this Contract without the prior written consent of the other party.

20. ESCROW AGENT PROVISIONS.

Escrow Agent is appointed to receive, hold and disburse the Earnest Money in accordance with the following terms and conditions:

(a) The Earnest Money shall be invested by Escrow Agent in an interest-bearing account at a national bank.

(b) The interest earned on the Earnest Money shall be reinvested for so long as the escrow shall continue, and shall be considered a part of the Earnest Money.

(c) In the event this Contract is terminated, Escrow Agent is instructed to disburse the Earnest Money in accordance with the terms of this Contract.

(d) In the event the sale of the Property is closed, Escrow Agent is instructed to deliver the Earnest Money to Seller to be treated as a credit against the Purchase Price, or, at the election of Buyer, returned to Buyer.

(e) Buyer and Seller agree that Escrow Agent shall not be liable for any reason except gross negligence or intentional misconduct.

(f) Escrow Agent shall comply with any terms contained in this Contract with respect to the disbursement of the Earnest Money. Any request for disbursement shall be signed by Buyer and Seller; provided, however, that: (i) if Buyer terminates this Contract prior to the expiration of the Examination Period, Seller's consent to the disbursement of the Earnest Money to Buyer shall not be required, and (ii) if either party makes a written request for disbursement to Escrow Agent, with a written copy to the other party, and the other party fails to object in writing within five business (5) days, the Escrow Agent shall be authorized to disburse that portion of

the Earnest Money requested to the requesting party. Notwithstanding anything in this Contract to the contrary, Escrow Agent is authorized to disburse the Earnest Money in accordance with the order of judgment of a court of competent jurisdiction.

(g) In the event of any dispute regarding the application of any portion of the Deposit, Escrow Agent shall be authorized to disburse all or a portion of the Deposit to a court of competent jurisdiction, to be held pending resolution of that dispute.

[Signatures appear on following page]

IN WITNESS WHEREOF, the parties hereto have executed this Contract under seal as of the day and year first above written.

SELLER:

MECKLENBURG COUNTY,
a political subdivision of
the State of North Carolina

By: _____
Name: _____
Title: _____ County Manager

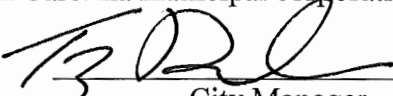
Date: _____

Approved as to Form:

County Real Estate Attorney

BUYER:

CITY OF CHARLOTTE,
a North Carolina municipal corporation

By: 
Its: _____ City Manager
Name: _____

Date: _____

This instrument has been pre-audited in the Manner
required by the Local Government Budget and Fiscal Control Act.

City Director of Finance

Escrow Agent hereby acknowledges receipt of the Earnest Money, and agrees to hold the
same in accordance with the terms set forth herein.

ESCROW AGENT:

Kimberly E. Fox, PLLC

By: _____
Name: _____
Title: _____