

[Address of Property]
Roanoke Rapids, NC 27870

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PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement ("**Agreement**") is entered into by and between the Seller and Purchaser, both hereinafter defined, whereby the Seller agrees to sell and Purchaser agrees to buy the Property, hereinafter defined, upon the terms, conditions and provisions set forth below.

1. PARTIES

1.1 **Seller.** Title to the Property is held by City of Roanoke Rapids, North Carolina, a _____ (the "**Seller**"). For purposes of this Agreement, (i) Seller's address is set forth below, and (ii) Seller's Attorney shall be the person or firm so designated below:

City of Roanoke Rapids
1040 Roanoke Avenue
P.O. Box 38
Roanoke Rapids, NC 27870
Attention: Drewery N. Beale
Phone: () ____ - ____
Fax: () ____ - ____

with a copy to Seller's Attorney

Phone: _____
Fax: _____
E-mail: _____

1.2 Purchaser. For purposes of this Agreement, (i) "**Purchaser**" refers to [name of new limited liability company, an Illinois] limited liability company, (ii) Purchaser's address shall be as set forth below, and (iii) Purchaser's Attorney shall be the person or firm so designated below.

[name of limited liability company]

_____, Illinois _____

Attention: _____

Phone: (____) ____ - ____

Fax: (____) ____ - ____

E-mail: _____

with a copy to:

Donald J. Kreger
Patricia S. Ullman
Schiff Hardin, LLP
6600 Sears Tower
Chicago, IL 60606
Phone: 312-258-5500
Fax: 312-258-5600
E-mail: dkreger@schiffhardin.com
pullman@schiffhardin.com

and a copy to:

Wayne L. Pierce
SBK-Brooks Investment Corp.
208 S. LaSalle St., Suite 2048
Chicago, IL 60604
Phone: 312-324-0772
Fax: 312-541-1743
E-mail: wpierce@sbkbrooks.com

2. PROPERTY

2.1 Property to be Purchased and Sold. The property that is the subject of this Agreement is the approximately 8.8 acres of real estate and related improvements including a building containing approximately [] square feet and situated in Halifax County, North Carolina, being all of the real estate commonly known as [address of property], Roanoke Rapids, North Carolina 27280, which is legally described in Exhibit A attached hereto (the "**Real Estate**"), together with all buildings, improvements and fixtures on such Real Estate, and other property (if any) described in Exhibit A attached hereto; and all privileges and appurtenances pertaining thereto, including any right, title and interest, if any, of Seller in and to adjacent streets, alleys, or rights-of-way; Seller's interest in and to any licenses and permits with respect to the Property; and Seller's interest in any warranties or guaranties relating to the Real Estate, (all of the above, including the Real Estate, are hereinafter collectively called the "**Property**").

3. PURCHASE PRICE

3.1 Payment of Purchase Price; Investment of Earnest Money. The purchase price for the Property (exclusive of prorations, closing adjustments and costs provided for elsewhere in this Agreement) shall be TWELVE MILLION FIVE HUNDRED THOUSAND and NO/100 DOLLARS (\$12,500,000) (the "**Purchase Price**"). The Purchase Price shall be payable in U.S. dollars by Purchaser as set forth in the following subparagraphs.

- (a) **Payment Schedule.** Purchaser shall pay to Seller the amounts shown below (the "**Payments**") on the first day of each month of the Lease Term (as hereinafter defined). Except as otherwise provided herein, the Payments shall be non-refundable to Purchaser, but applicable to the Purchase Price. [Note: The \$200,000 payments in each of the first five lease years will be dealt with in the Lease.]

<u>Month</u>	<u>Amount</u>
1	\$250,000
2	\$57,281.25
3	\$57,281.25
4	\$57,281.25
5	\$250,000
6	\$250,000
7 – 120 (end of year 9)	\$57,281.25
121 – 180 (years 10 through 15)	\$98,203.49

- (b) **Balance of Purchase Price.** The balance of the Purchase Price ("**Balance**"), if any, plus or minus prorations, closing adjustments and costs as set forth in this Agreement, if any, is due at the closing of the transaction contemplated by this Agreement ("**Closing**") and must be paid by an official cashier's check from a U.S. bank, made payable to the order of [Chicago Title Insurance Company or First American Title Company] ("**Title Company**") or by wire transfer to a bank account designated by the Title Company.

4. **CONTINGENCIES**

4.1 **Due Diligence.** Purchaser shall have a period which shall be the later of (i) forty-five (45) days following the Effective Date and (ii) twenty (20) business days following receipt of the last to be received of the due diligence materials listed on Exhibit E attached hereto and made a part hereof (the "**Due Diligence Materials**") to conduct due diligence (the "**Due Diligence Period**"), including, without limitation, review of the Title Commitment and the Survey (as both such terms are hereinafter defined) and environmental and other investigation activities at the Property. Seller agrees to reasonably cooperate with Purchaser's investigation of the Property and the feasibility of the transaction. During the Due Diligence Period, Purchaser may terminate this Agreement for any reason, or no reason.

5. CLOSING

5.1 Closing Location. The closing of the transaction contemplated in this Agreement ("**Closing**") will take place in escrow at [_____].

5.2 Closing Date and Time. The Closing will take place not later than thirty (30) days following Purchaser's written notice to Seller, but in no event later than [_____, 2023] ("**Closing Date**"). Time is of the essence with respect to the parties' obligations under this Agreement.

6. CLOSING DOCUMENTS

6.1 Seller's Deliveries. At the Closing, Seller shall deposit in the Closing Escrow (hereinafter defined) with the Title Company, at Seller's sole cost and expense, the following:

- (a) duly executed and acknowledged special warranty deed (the "**Deed**"), in recordable form, conveying title in fee simple to all of the Real Estate, free and clear of any and all liens, encumbrances other than the "**Permitted Title Exceptions**" listed on Exhibit B attached hereto;
- (b) Title Commitment for delivery of an ALTA Owner's Policy of Title Insurance in the form then customarily issued by the Title Company in the full amount of the Purchase Price (the "**Owner's Title Policy**"), to be dated as of the later of the date of Closing or the date of recording of the Deed, and insuring Purchaser's title to the Real Estate subject only to the Permitted Title Exceptions and the standard printed exceptions, and containing an extended coverage endorsement;
- (c) such documents as are required under the applicable Internal Revenue Code reporting requirements or disclosure, including an affidavit in the form required under FIRPTA (as hereinafter defined);
- (d) State of North Carolina and any applicable county transfer declaration forms;
- (e) Closing Statement consistent with the provisions of this Agreement;
- (f) such proof of Seller's authority and authorization to enter into this transaction as may be required by the Title Company;
- (g) Bill of Sale in customary form to convey the Personal Property (as hereinafter defined);
- (h) Lease (as hereinafter defined);
- (i) Affidavit of Title;

- (j) all other documents that are customarily required to close transactions such as the one contemplated herein, including ALTA Statements, Gap Undertakings and other documents customarily required by the Title Company consistent with this Agreement or otherwise required in accordance with the terms and conditions of this Agreement and the Closing Escrow Instructions (hereinafter defined).

6.2 Purchaser's Deliveries. At the Closing, Purchaser shall deposit in the Closing Escrow with the Title Company, at Purchaser's sole cost and expense, the following:

- (a) the Balance of the Purchase Price, if any, net of prorations and adjustments, if any, plus Purchaser's closing costs;
- (b) such proof of Purchaser's authority and authorization to enter into this transaction as may be required by the Title Company;
- (c) all other documents that are customarily required to close transactions such as the one contemplated herein, including, Purchaser's Affidavits, Gap Undertakings, broker's affidavits, and other documents customarily required by the Title Company consistent with this Agreement, or otherwise required by Purchaser's lender, if any, or in accordance with the terms and conditions of this Agreement and the Closing Escrow Instructions.

6.3 Joint Deliveries. At the Closing, Purchaser and Seller shall jointly execute the North Carolina and any applicable county form transfer declarations deposited by Seller, a closing statement initially prepared by Seller, closing escrow instructions in the form attached hereto as Exhibit D (the "**Closing Escrow Instructions**") establishing the "**Closing Escrow**," the Lease, and any other disbursement authorizations or forms required by the Title Company.

6.4 Survey and Title Insurance. Within 2 business days following the Effective Date, Seller shall order a survey prepared in accordance with the Minimum Standard Detail Requirements for ALTA/ACSM land title surveys jointly established and adopted by ALTA and ACSM in 2005 and including items 1, 2, 3, 4, 6 (as to zoning), 7(a), 7(b) (i), 8, 9, 10, 11(a) and 13 of Table A (the "**Survey**"). The Survey shall be dated no earlier than six (6) months prior to the Effective Date, and shall be certified to Purchaser, the Title Company and such other parties reasonably designated by Purchaser. Seller shall provide Purchaser a commitment for the Owner's Title Policy issued by the Title Company, and showing title in Seller ("**Title Commitment**"). The Title Commitment shall be conclusive evidence of good title as therein shown as to all matters to be insured by the Owner's Title Policy.

If the Title Commitment discloses any title exceptions that are not Permitted Title Exceptions, which may be either exceptions pertaining to liens or encumbrances of a definite or ascertainable amount that may be removed by the payment of money at the Closing ("**Monetary Exceptions**") or other matters ("**Non-Monetary Exceptions**") which Purchaser is not prepared to accept as additional Permitted Title Exceptions, then:

- (a) Purchaser shall provide notice to Seller of the existence of such of the Monetary Exceptions or Non-Monetary Exceptions as Purchaser is unwilling to accept ("**Cure Notice**") within 10 days after delivery to Purchaser by the Seller of the Title Commitment; and
- (b) Seller shall have the Monetary Exceptions or Non-Monetary Exceptions, as the case may be, removed from the Title Commitment prior to Closing.

If new Monetary Exceptions or Non-Monetary Exceptions arise after the expiration or waiver of the Due Diligence Period and prior to Closing, Seller will cure and remove such new Monetary Exceptions or Non-Monetary Exceptions prior to Closing. If Seller is unable to cure and remove (or procure Insurance Over) the new Monetary Exceptions or Non-Monetary Exceptions by the Closing Date (which Seller may extend by up to ten (10) business days in order to cure and remove (or procure Insurance Over) the same), Purchaser may: (i) waive the new Monetary Exceptions or Non-Monetary Exceptions in writing and accept such title as Seller is able to convey, without recourse against Seller at law, in equity or otherwise, but with the right to deduct from the Purchase Price Monetary Exceptions, or (ii) terminate this Agreement by delivering notice to Seller of such termination on or before the Closing Date.

7. SALES EXPENSES TO BE PAID AT OR PRIOR TO CLOSING

7.1 Seller's Expenses. Seller's expenses, which shall be paid at or prior to Closing shall consist of: (i) all recording fees for documents required to release any liens of record, if any; (ii) the cost of the Owner's Title Policy including those endorsements specified in Section 6.1(b); (iii) 1/2 of the Closing Escrow fee (including NY Style fee); (iv) state and county transfer taxes; and (iv) all other expenses required to be paid by Seller under other provisions of this Agreement.

7.2 Purchaser's Expenses. Purchaser's expenses, which shall be paid at or prior to Closing shall consist of: (i) recording fees for the Deed; (ii) 1/2 of the Closing Escrow fee (including NY Style fee); (iii) all expenses of issuing any title policy endorsements required by Purchaser other than those endorsements specified in Section 6.1(b) (if any); and (iv) all other expenses required to be paid by Purchaser under this Agreement.

8. PRORATIONS AND ADJUSTMENTS

8.1 General Prorations. Items described in the following Subparagraphs 8.1(a) and 8.1(b) shall, to the extent (and only to the extent) applicable to the Property be prorated and adjusted between Seller and Purchaser as of Closing, in the manner provided in such Subparagraphs.

- (a) **Utilities.** The parties hereto contemplate that Purchaser will have possession of the Property as tenant prior to Closing. At Closing, all utilities shall have been established in Purchaser's name and there shall be no proration of utility charges.
- (b) **Real Estate Taxes.** Real estate taxes for the Property, if any, shall be the responsibility of Seller up to the Closing Date. Purchaser shall be

responsible for real estate taxes assessed against the Property and applicable to the period subsequent to the Closing Date. The Property is currently exempt from real estate taxes. If the Property becomes subject to real estate tax prior to the Closing, then the tax bill for the year of Closing shall be prorated between Seller and Purchaser, with Seller giving Purchaser a credit at Closing for that portion of the tax bill which applies to the period from the beginning of such tax year up to and including the Closing Date.

8.2 **Finality; Survival.** All prorations shall be final. The covenants and agreements set forth in this Section 8 shall survive the Closing for a period of one year.

9. **POSSESSION**

9.1 **Possession Date.** The possession of the Property shall be delivered to the Purchaser pursuant to the provisions of the Lease, the form of which is attached hereto and made a part hereof as Exhibit C (the "Lease").

10. **ACCESS TO PROPERTY**

10.1 **Availability and Purposes.** From and after the Effective Date, Seller shall allow Purchaser or Purchaser's representatives to have reasonable access to the Property to conduct due diligence investigations, provided that Purchaser gives Seller at least forty-eight (48) hours notice. In connection with such due diligence, Purchaser will have the right to conduct invasive soil investigations, but only with prior written approval of Seller, which approval shall not be unreasonably withheld.

10.2 **Purchaser's Access-Related Responsibilities.** Purchaser shall:

- (a) be liable for any damage to property or persons occurring as a result of any such access or any inspections conducted by or on behalf of Purchaser prior to the Closing ("**Inspections**"), and
- (b) repair, restore and otherwise correct any damage to the Property caused by the Inspections if Purchaser for any reason does not close when and as provided in this Agreement.

In addition, Purchaser shall defend and indemnify Seller against, and shall hold Seller harmless from, any and all claims, liabilities, losses, costs, damages, penalties and expenses, out-of-pocket expenses and reasonable attorneys' fees, paid by, incurred by or asserted against Seller as a result of any such damage to property or persons or failure to repair or correct the same. The indemnity contained in this Section 10 shall survive the Closing of the transaction contemplated by this Agreement or the earlier termination of this Agreement for a period of one year from the date of the Closing or earlier termination of this Agreement, as the case may be.

11. **ASSIGNMENT OF LEASES AND CONTRACTS**

11.1 **Leases.** The Property shall be subject to no leases other than the Lease.

11.2 **Contracts.** The Property is not subject to any contracts entered into by Seller that will be assigned to Purchaser at Closing.

12. **DEFAULT**

12.1 **By Purchaser.** Unless otherwise provided for herein, if Purchaser fails to comply with the terms and conditions under this Agreement or otherwise defaults in the performance of Purchaser's obligations under this Agreement, then so long as Seller is not then in default or breach under this Agreement after any applicable grace period, Seller may terminate this Agreement, in which event any Rent Credit (as defined in the Lease) paid by Seller to Purchaser shall be immediately due and payable to Seller as liquidated damages ("**Liquidated Damages**") as Seller's sole and exclusive remedy; provided, that Purchaser shall be liable for payment to Seller of all attorneys fees and other expenses incurred by Seller in collecting all or any portion of the Rent Credit. The parties agree that Seller's actual damages in the event of default are difficult to ascertain and further agree that the Liquidated Damages is a reasonable estimate of the damages to Seller in the event of Purchaser's default. Such sum is intended to be liquidated damages, and not a penalty.

12.2 **By Seller.** In the event Seller fails to comply with the terms and conditions under this Agreement or otherwise defaults in the performance of Seller's obligations under this Agreement, or if any of Seller's representations or warranties made pursuant to this Agreement shall not be true and correct in all material respects when made, then Purchaser shall have the right to pursue all rights and remedies at law or in equity, including specific performance of this Agreement, in which event Purchaser will be entitled to have a court of competent jurisdiction require Seller to convey title to the Property to Purchaser in accordance with the terms of this Agreement.

13. **REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER**

13.1 **Seller's Representations and Warranties.** Seller hereby represents and warrants to Purchaser, which representations and warranties shall also be deemed made by Seller to Purchaser as of the Closing, and the accuracy of which shall be a condition on the part of Purchaser to consummate Closing, that:

- (a) Seller is duly authorized and empowered to convey the Property;
- (b) all obligations of Seller arising from the ownership and operation (as an owner) of the Property which accrued prior to the Closing Date and are not obligations of Purchaser under the Lease have been paid as they became due or will be paid at or prior to Closing or promptly upon receipt if an invoice therefor is received after Closing;
- (c) obligations for which provisions are herein made for proration or other adjustments at Closing, or which relate to income or other taxes payable in ordinary course by Seller, which Seller shall pay when due, to the best of Seller's knowledge, there will be no obligations of Seller with respect to the Property outstanding as of the Closing Date;

- (d) to the best of Seller's knowledge, Seller has received no notice of the commencement of any legal action against Seller for the damaging, taking or acquiring of all or any part of the Property, either temporarily or permanently, by condemnation or by exercise of the right of eminent domain that has not been disclosed by Seller to Purchaser;
- (e) to the best of Seller's knowledge, Seller has received no written notice from any governmental department or agency having jurisdiction as to conditions affecting the Property that alleges a violation of law or governmental ordinances, orders or requirements relating to the Property with respect to which any corrective action was not completed prior to the date of the execution of this Agreement by Seller that has not been disclosed by Seller to Purchaser;
- (f) Seller is not a "foreign person", as that term is defined for purposes of the Foreign Investment in Real Property Tax Act, Internal Revenue Code Section 1445, as amended, and the regulations promulgated thereunder (collectively "**FIRPTA**");
- (g) this Agreement when executed and delivered by Purchaser and Seller, will constitute the valid and binding agreement of Seller enforceable against Seller in accordance with its terms subject to insolvency laws and principles of equity;
- (h) to the best of Seller's knowledge, neither the execution and delivery of this Agreement nor the consummation of the transaction contemplated hereby will violate or be in conflict with (i) any applicable provisions of law, (ii) any order of any court or government agency having jurisdiction over the Seller, or (iii) any agreement or instrument to which Seller is a party or under which Seller is bound;
- (i) there are no actions, suits, claims or other proceedings pending or, to the best of Seller's knowledge, contemplated or threatened against Seller that could affect Seller's ability to perform its obligations under this Agreement;
- (j) to Seller's actual knowledge and except as otherwise disclosed to Purchaser in the Phase I: (i) neither the Property, nor any part thereof is in breach of any federal, state, county, city or local environmental laws, rules, codes, regulations or ordinances (collectively, "**Environmental Laws**"), (ii) no part of the Property has ever been used as a landfill, dump, toxic or waste disposal site or storage area, (iii) there are no underground storage tanks at the Property, or, with respect to removed tanks, at the time of removal, any contaminated soil was removed, (iv) Seller has never used the Property for, and to Seller's actual knowledge the Property has not been used for, the storage, manufacture, disposal, handling, transportation or use of any Hazardous Materials (defined herein) in excess of levels

permitted by applicable Environmental Laws, and (v) no notice, demand or other communication in writing has been received by Seller of any investigation, administrative proceeding, litigation, regulatory hearing or other action proposed, threatened or pending, alleging noncompliance with or the violation of any Environmental Law and relating to the Property, and Seller has no actual knowledge of any such notice given to previous owners or tenants. **"Hazardous Materials"** means (1) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et. seq.), as amended from time to time, and regulations promulgated under such act; (2) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et. seq.) (**"CERCLA"**), as amended from time to time, and regulations promulgated under such act; (3) petroleum, oil, diesel fuel or asbestos; (4) polychlorinated biphenyls; (5) any substance the presence of which on the Property is prohibited by any governmental requirement; and (6) any other substance which by any governmental requirement requires special handling in its collection, storage, treatment or disposal.

- (k) To the best of Seller's knowledge without investigation, Seller is not described in, covered by or specially designated pursuant to, or affiliated with any person described in, covered by or specially designated pursuant to, any Anti-Terrorism Law or any list issued by any department or agency of the United States of America in connection with any Anti-Terrorism Law. For purposes hereof, **"Anti-Terrorism Law"** shall mean Executive Order 13224, as amended; the International Emergency Economic Powers Act, 50 U.S.C. Sections 1701-06 et seq.; the Iraqi Sanctions Act, Pub.L. 101-513, 104 Stat. 2047-55; the United Nations Participation Act, 22 U.S.C. Section 287c; the Antiterrorism and Effective Death Penalty Act; the International Security and Development Cooperation Act, 22 U.S.C. Section 2349 aa-9; the Terrorism Sanctions Regulations, 31 C.F.R. Part 595; the Terrorism List Governments Sanctions Regulations, 31 C.F.R. Part 596; and the Foreign Terrorist Organizations Sanctions Regulations, 31 C.F.R. Part 597.

- (l) Other than the Lease, the Property will not be subject to any written or oral service agreement, lease, license or other agreement that may not be canceled by Purchaser without liability at or prior to the Closing.

As used herein, "to the knowledge of Seller" or "Seller's knowledge" mean the knowledge of Seller, its officers, trustees and agents.

Seller will deliver to Purchaser at Closing a statement certifying that the representations and warranties set forth above are true and correct in all material respects as of the Closing with the same effect as though made on the Closing. If, prior to the Closing, any of the representations or warranties made by Seller are untrue, inaccurate or incorrect in any material respect, Seller will give Purchaser written notice thereof within three (3) business days of

obtaining such knowledge (but, in any event, prior to the Closing). If Seller is unable or unwilling to cure such misrepresentation by the Closing Date (which Seller may extend by up to ten (10) business days for the purpose of such cure), then Purchaser, may elect to: (i) waive such misrepresentations or breaches of representations and warranties and consummate the purchase and sale of the Property without any reduction of or credit against the Purchase Price; or (ii) terminate this Agreement by written notice given to Seller by the Closing Date, in which event neither party will have any further liabilities or obligations under to this Agreement, except those liabilities or obligations that expressly survive termination of this Agreement. Notwithstanding the foregoing terms of this paragraph to the contrary, if the misrepresentation or breach was caused by Seller's intentional acts or omissions to act, Purchaser may treat the same as a breach of this Agreement and pursue the remedies available to it under this Agreement. Seller's representations and warranties pursuant to this Section 13 shall survive for a period of one year following the Closing.

13.2 Certain Covenants of Seller. From and after the Effective Date (as hereinafter defined) of this Agreement, Seller agrees:

- (a) that it will not, without the prior consent of Purchaser, enter into any new written or oral service agreement, lease, license or other agreement (as owner of the Property) with respect to the Property that may not be canceled by Purchaser without liability at or prior to the Closing;
- (b) to notify Purchaser promptly of any litigation, arbitration or administrative hearing before any governmental body or agency concerning or affecting the Property as to which Seller receives written notice after the date hereof;
- (c) not grant any easements or other documents which may encumber the Property following the Closing Date;
- (d) not enter into any agreement or option to sell the Property or any part thereof, or interest therein; and
- (e) in addition to the acts and covenants recited herein and contemplated to be performed, executed, and delivered by Seller, Seller shall timely perform, execute, and deliver or cause to be timely performed, executed, and delivered at, prior to, or after the Closing, as the case may be, any and all further reasonable acts, covenants, and assurances as Purchaser or the Title Company may reasonably require in order to consummate the transactions contemplated herein

14. REPRESENTATIONS, WARRANTIES AND COVENANTS TO SELLER

14.1 Purchaser's Representations and Warranties. Purchaser represents, warrants and covenants to Seller, which representations and warranties shall also be deemed made by Purchaser to Seller as of the Closing, and the accuracy of which shall be a condition on the part of Seller to consummate the Closing, as follows:

- (a) Purchaser has all requisite power and authority to consummate the transaction contemplated by this Agreement and has by proper proceedings or actions duly authorized the execution and delivery of this Agreement and the consummation of the transaction contemplated hereby;
- (b) this Agreement when executed and delivered by Purchaser and Seller, will constitute the valid and binding agreement of Purchaser enforceable against Purchaser in accordance with its terms, subject to insolvency;
- (c) to Purchaser's knowledge, neither the execution and delivery of this Agreement nor the consummation of the transaction contemplated hereby will violate or be in conflict with (i) any applicable provisions of law, (ii) any order of any court or government agency having jurisdiction over the Purchaser, or (iii) any agreement or instrument to which Purchaser is a party or under which Purchaser is bound;
- (d) there are no actions, suits, claims or other proceedings pending or, to Purchaser's knowledge, contemplated or threatened against Purchaser that could affect Purchaser's ability to perform its obligations under this Agreement; and
- (e) Purchaser will have sufficient funds available to consummate the Closing of the transaction described in this Agreement.

14.2 Certain Covenants of Purchaser. From and after the Effective Date of this Agreement, in addition to the acts and covenants recited herein and contemplated to be performed, executed, and delivered by Purchaser, Purchaser shall timely perform, execute, and deliver or cause to be timely performed, executed, and delivered at, prior to, or after the Closing, as the case may be, any and all further reasonable acts, covenants, and assurances as Seller or the Title Company may reasonably require in order to consummate the transactions contemplated herein.

15. PERSONAL PROPERTY

15.1 Description. The items of personal property which are being transferred by Seller to Purchaser as a part of this transaction include all right, title and interest of Seller in and to such items located on the Property as of the Effective Date of this Agreement, with the exception of those items which are the property of Purchaser as tenant under the Lease (the "**Personal Property**"). Seller shall deliver to Purchaser a bill of sale at Closing to convey the Personal Property.

16. CONDITION OF AND DAMAGE TO PROPERTY

16.1 "AS IS, WHERE IS" Transfer. The Property shall be conveyed in its condition as of the Effective Date of this Agreement, damage by Casualty (hereinafter defined) excepted. Except as otherwise expressly provided in this Agreement, the Property shall be transferred to Purchaser in "AS IS, WHERE IS" condition, with all faults.**

17. CONDEMNATION

17.1 Eminent Domain Exercise. If, prior to the Closing Date, condemnation proceedings are commenced for the taking of ten percent (10%) or more of the Property, Purchaser may, at its option, terminate this Agreement by written notice to Seller within ten (10) days after Purchaser receives written notice of the commencement of such condemnation proceedings. In such event, any Payments paid to Seller shall be refunded to Purchaser. In the alternative, Purchaser shall have the right to proceed to consummate the purchase of the Property, in which event: (i) Seller will assign to Purchaser (without recourse) at the Closing the rights of Seller to the awards, if any, for the taking; (ii) Purchaser may appear and defend any such condemnation proceedings; and (iii) any award in condemnation shall become the property of Purchaser, but the Purchase Price shall not be reduced.

18. RISK OF LOSS

18.1 Risk Allocation. Seller shall bear the risk of loss or damage to the Property from fire or other insured or uninsured loss or casualty ("**Casualty**") until Closing, to the extent provided herein. After Closing, the risk of loss shall be and is assumed by Purchaser.

18.2 Casualties. If, prior to the Closing Date, there is a Casualty affecting ten percent (10%) or more of the Property, Purchaser may, at its option, terminate this Agreement by written notice to Seller within ten (10) days after Purchaser receives written notice of the occurrence of such Casualty. In such event, any Payments paid to Seller shall be refunded to Purchaser. In the alternative, Purchaser shall have the right to proceed to consummate the purchase of the Property, in which event Seller shall:

- (a) assign to Purchaser all insurance proceeds received by Seller on account of such Casualty (after deducting any proceeds spent by Seller in the repair or preservation of the Property and any amounts to reimburse Seller for the costs incurred to collect such proceeds;
- (b) assign to Purchaser of all rights and claims of Seller under Seller's insurance policy on the Property (the "**Insurance Policy**"); and
- (c) provide credit to Purchaser at Closing in an amount equal to the deductible, if any, that Purchaser will incur under the Insurance Policy on account of such Casualty.

18.3 Adjustment of Losses. Seller agrees to fully cooperate with and assist Purchaser in adjusting any loss and perfecting and pursuing any claim under the Insurance Policy, but Seller shall not be obligated to incur any expenses in connection therewith.

18.4 Insurance Policies. Seller shall maintain Seller's current Insurance Policy in effect until Closing. It shall be the obligation of Purchaser to procure Purchaser's own policies of insurance to be effective from and after the date of Closing.

19. BROKER'S COMMISSIONS

19.1 Representations and Warranties and Indemnities Regarding Brokers.

Purchaser represents and warrants to Seller that no broker was involved on behalf of Purchaser in submitting, showing or selling the Property to Purchaser. Purchaser shall indemnify and defend Seller from and against any damages, losses, costs and expenses incurred by Seller as a result of any breach by Purchaser of the warranty and representation in the immediately preceding sentence. Seller represents and warrants to Purchaser that no broker was involved on behalf of Seller in submitting, showing or selling the Property to Purchaser. Seller shall indemnify and defend Purchaser from and against any damages, losses, costs and expenses incurred by Purchaser as a result of any breach by Seller of the warranty and representation in the immediately preceding sentence.

19.2 Survival of Obligation. The obligations and indemnities of the parties under Section 19 shall survive the Closing or earlier termination of this Agreement.

20. NOTICES

20.1 Form and Manner of Sending. All notices and other communications under this Agreement shall be in writing and may be given by any of the following methods: (a) personal delivery; (b) confirmed facsimile transmission; (c) registered or certified mail, postage prepaid, return receipt requested; or (d) recognized, national overnight delivery service. Notices shall be sent to the appropriate party at its address or facsimile number provided in Section 1 above (or at such other address or facsimile number for such party as shall be specified by notice given hereunder). Notices shall be deemed properly delivered and received: (i) the same day when personally delivered or sent by confirmed facsimile transmissions; (ii) two (2) business days after posted with U.S. mail; or (iii) one (1) day after deposit with overnight courier service.

21. PARKING EASEMENTS

21.1 Easement Property. Seller shall identify acreage satisfactory to Purchaser (the "Parking Parcel") during the Due Diligence Period, which acreage will be available to Purchaser to use as off-site parking. It shall be a condition of Closing that Purchaser have exclusive permanent easement rights over and across the Parking Parcel, along with permanent easements to access same from the Property (collectively, the "Parking Easements").

21.2 No Additional Cost. Seller shall provide the Parking Easements to Purchaser at no additional cost to Purchaser.

22. PRIVACY

22.1 Recording. A memorandum of this Agreement in the form attached hereto as Exhibit F shall be recorded with the office of the Halifax County Recorder of Deeds.

22.2 Confidentiality. Purchaser shall keep the information obtained pursuant to the Inspections confidential, except such information may be revealed to Purchaser's principals, attorneys and other consultants hired in connection with the acquisition or disposition of the

Property. Seller and Purchaser shall keep all other information regarding this Agreement confidential, except that such information may be revealed to the parties' respective principals, attorneys and other consultants hired in connection with the acquisition or disposition of the Property.

23. OTHER PROVISIONS

23.1 Entire Agreement. This Agreement constitutes the entire agreement between the parties as to the subject matter hereof and supersedes all prior understandings and agreements concerning such subject matter. There are no representations, agreements arrangements or understandings oral or written between the parties relating to the subject matter contained in this Agreement which are not fully expressed or referred to herein.

23.2 Successors And Assigns. The provisions of this Agreement shall bind and inure to the benefit of Purchaser and Purchaser's heirs, legal representatives, successors and permitted assigns and shall bind and inure to the benefit of Seller and its successors and assigns; provided, however, that this Agreement may not be assigned by Purchaser without the prior written consent of Seller. However, Purchaser will have the right to assign this Agreement without Seller's consent to any entity affiliated with Purchaser or in which Purchaser maintains an interest.

23.3 Further Assurances. Each party shall execute, acknowledge and deliver to the other party such instruments and take such other actions, in addition to the instruments and actions specifically provided for herein at any time and from time to time after execution of this Agreement whether before or after the Closing, as may be reasonably necessary in order to effectuate the provisions of this Agreement or the transaction contemplated herein or to confirm or perfect any right to be created or transferred hereunder or pursuant to this transaction, provided that neither party shall be required to incur any material expense in connection therewith.

23.4 Severability. If any clause or provision of this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction as against any Person or under any circumstances, the remainder of this Agreement and the applicability of any such clause or provision to other Persons or circumstances shall not be affected thereby. All other clauses or provisions of this Agreement, not found invalid or unenforceable, shall be and remain valid and enforceable.

23.5 Time. Time is of the essence of this Agreement.

23.6 Strict Compliance. Any failure by either party to insist upon strict performance by the other party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, irrespective of the number of violations or breaches that may occur, and each party, notwithstanding any such failure, shall have the right thereafter to insist upon strict performance by the other of any and all of the provisions of this Agreement.

23.7 Governing Law. The provisions of this Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of North Carolina. Any dispute shall be brought in the state or federal courts located in Halifax County, North Carolina,

or at Purchaser's option, any other court in which Purchaser shall initiate legal or equitable proceedings and which has subject matter jurisdiction over the matter in controversy. To the maximum extent permitted by law, the parties expressly waive any right each may have to assert the doctrine of *forum non conveniens* or to object to venue to the extent any proceeding is brought in accordance with this Section 23.7.

23.8 Waiver Of Jury Trial. EXCEPT AS PROHIBITED BY LAW, THE PARTIES SHALL, AND THEY HEREBY DO, EXPRESSLY WAIVE TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF, CONNECTED WITH, OR RELATING TO THIS AGREEMENT OR THE RELATIONSHIP CREATED HEREBY. With respect to any matter for which a jury trial cannot be waived, the parties agree not to assert any such claim as a counterclaim in, nor move to consolidate such claim with, any action or proceeding in which a jury trial has been waived.

23.9 Attorneys' Fees. In any legal action or other proceeding between the parties regarding this Agreement (an "Action"), the prevailing party will be entitled to the payment by the losing party of its reasonable attorneys' fees, court costs and litigation expenses, as determined by the court. The term "prevailing party" as used herein includes, without limitation, a party: (i) who agrees to dismiss an Action on the other party's performance of the covenants allegedly breached, (ii) who obtains substantially the relief it has sought; or (iii) in whose favor an Action is dismissed (with or without prejudice). In addition, the prevailing party in any Action will be entitled, in addition to and separately from the amounts recoverable under this Section, to the payment by the losing party of the prevailing party's reasonable attorneys' fees, court costs and litigation expenses incurred in connection with any proceeding to enforce a judgment in such Action. It is the intent of the parties that the provisions of this Section be distinct and severable from the other rights of the parties under this Agreement, will survive the entry of judgment in any Action and will not be merged into such judgment.

23.10 Gender And Singular/Plural; Definition Of Person. Any reference in this Agreement to any one gender, masculine, feminine or neuter, includes the other two, and the singular includes the plural, and vice versa, unless the context requires otherwise. As used herein, the term "Person" shall mean an individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or association or any governmental agency or political subdivision thereof.

23.11 Certain References. Unless otherwise provided in this Agreement, the following rules of construction and interpretation apply to this Agreement: (a) headings and captions are for convenient reference only and in no way define or limit the terms of this Agreement; (b) use of the word "including" will not be interpreted to exclude anything else when following any general statement and will not be construed to limit such statement to the specific items identified immediately after the word "including" to similar items regardless of whether non-limiting language (e.g., "without limitation", "but not limited to") appear, rather use of the word "including" will be deemed to refer to all other things that could reasonably fall within the broadest possible scope of the applicable general statement; (c) use of the words "shall" and "will" denote a mandatory duty, have the same meaning and are interchangeable unless the context requires otherwise; (d) use of the word "may" denotes a discretionary right, not an obligation or duty; (e) the singular of any word is interchangeable with the plural and vice-versa;

(f) the neuter, masculine and feminine of any word are interchangeable with each other; (g) references to Sections and Subsections are references to Sections and Subsections, as the case may be, of this Agreement; and (h) the term "herein", "hereof" or "hereunder" or similar terms used in this Agreement refer to this entire Agreement and not to the particular provision or Section in which the term is used.

23.12 Captions. The captions in this Agreement are for convenience and reference only and in no way define, limit or describe the scope of this Agreement or the intent of any provision hereof.

23.13 No Oral Changes. This Agreement cannot be changed or any provision waived orally. ANY CHANGES TO, OR ADDITIONAL PROVISIONS FOR, OR WAIVERS RELATING, TO THIS AGREEMENT MUST BE SET FORTH IN WRITTEN FORM AND SIGNED BY ALL PARTIES HERETO.

23.14 Exhibits. All Exhibits described herein and attached hereto are incorporated herein by this reference for all purposes.

23.15 Date Of Performance. If any date for performance hereunder falls on a Saturday, Sunday or other day which is a federal holiday or a holiday under the laws of the State of North Carolina, the date for such performance shall be the next succeeding business day.

23.16 No Presumption Regarding Drafting. It is acknowledged and presumed that the substance and form of this Agreement have been fully reviewed by the parties hereto and approved as to form by their respective counsel. It is further acknowledged and agreed that no presumption shall exist against either party hereto by virtue of this Agreement being considered to have been drafted by counsel for either party thereto.

23.17 Counterparts And Counterparts By Facsimile. This Agreement may be executed in multiple counterparts all of which when taken together shall constitute an Agreement for the sale of real estate under the laws of the State of North Carolina. A counterpart transmitted by facsimile machine shall be treated as an original document. The signature of any party thereon shall be considered as an original signature, and the document transmitted shall be considered to have the same binding legal effect as an original signature on an original document. At the request of either party, any facsimile document shall be re-executed by both parties in original form. No party hereto may raise the use of a facsimile machine or the fact that any signature was transmitted through the use of a facsimile machine as a defense to the enforcement of this Agreement or any amendment executed in compliance with this Section. This Section does not supersede the requirements of Section 20 which must be adhered to in order to provide notices.

23.18 Use of the Property. It is the intent of the parties that the Property be used as a theater/entertainment venue. Seller shall insure that any licenses required for such use shall continue in full force and effect up to and including the Closing Date.

23.19 Marketing/Incentives. Any State of North Carolina economic incentives for the future development of the Property by Purchaser shall be utilized by Purchaser for the marketing of the Property as a theater/entertainment venue. Seller shall use its best efforts to

assist Purchaser to (1) obtain marketing assistance from the State of North Carolina and from the Halifax County Tourism Board, and (2) develop and implement a marketing plan for the use of the Property.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK-SIGNATURE PAGE
FOLLOWS]**

IN WITNESS HEREOF, Purchaser and Seller agree that, upon execution of this Purchase and Sale Agreement by Seller and Purchaser, this Purchase and Sale Agreement shall be in full force and effect and that the "Effective Date" of this Purchase and Sale Agreement shall be the date on which the Seller executes this Agreement and delivers a fully executed original to Purchaser; provided, however, that if Seller fails to execute this Agreement within ten (10) business days following the Purchaser Acceptance Date, then Purchaser's acceptance of this Agreement shall be null and void.

PURCHASER:

_____, an Illinois limited
liability company

By: _____

Date Executed by Purchaser ("Purchaser
Acceptance Date")

[SIGNATURE CLAUSE CONTINUED ON FOLLOWING PAGE]

SELLER:

CITY OF ROANOKE RAPIDS, a

By: _____
Printed Name: _____
Its: _____

Attest: _____
Printed Name: _____
Title: _____

Date Executed by Seller