

PURCHASE AND SALE AGREEMENT

3892 Murray Avenue, Powder Springs, Georgia 30127

(Tax parcel: 19087500350)

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is made and entered into the date it is last executed by Purchaser or Seller ("Effective Date"), by and between **VANN DAUGHERTY, SR** (hereinafter collectively referred to as "Seller") and **CITY OF POWDER SPRINGS DOWNTOWN DEVELOPMENT AUTHORITY** (hereinafter referred to as "Purchaser").

WITNESSETH:

In consideration of **TEN DOLLARS and No/100 DOLLARS (\$10.00)** in hand paid, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

1.0 **Agreement to Sell and Purchase:** Upon the terms and conditions hereinafter set forth, Seller shall sell to Purchaser and Purchaser shall purchase from Seller certain property in Cobb County, Georgia, being all of the following described property on Exhibit "A" attached hereto, which is tax ID parcel 19087500350, (the "**Property**"):

(a) All of that tract or parcel of land being more particularly described in **Exhibit A**, attached hereto and incorporated herein by way of reference commonly known as 3892 Murray Avenue, Powder Springs, Georgia 30127, also being known as Cobb County Tax Parcel 19087500350 together with all rights and appurtenances pertaining to such real property, including, without limitation, any and all right, title, and interest of Seller in and to adjacent road, alleys, easements, streets and ways (the "**Land**");

(b) The home and all improvements, structures and fixtures placed, constructed or installed on the Land (the "**Improvements**").

2.0 **Purchase Price:** The purchase price for the Property, Land and Improvements shall be **ONE HUNDRED NINETY THOUSAND DOLLARS AND 00/100 (\$190,000.00)** (the "**Purchase Price**").

At Closing, Purchaser shall pay the Purchase Price in cash or other immediately available funds at closing less the Earnest Money, which shall be applied to the Purchase Price at Closing.

3.0 **Earnest Money/Escrow Agent:**

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- (a) To secure the performance by Purchaser of its obligations under this Agreement, Purchaser shall, within seven (7) business days after the Effective Date, deposit **FIVE THOUSAND DOLLARS AND 00/100 (\$5,000)** as earnest money ("**Earnest Money**") with Escrow Agent.
- (b) Campbell & Brannon, LLC agrees to serve as Escrow Agent under the Agreement, and hold the Earnest Money paid by Purchaser as Escrow Agent. The provisions of this Agreement applicable to Escrow Agent shall together constitute escrow instructions between Seller, Purchaser and Escrow Agent.
- (c) Except as otherwise provided in this Agreement, the Earnest Money shall be refunded to Purchaser in the event Seller defaults under this Agreement by failing to consummate the purchase of the Property or for failure of any of the Seller's obligations or contingencies described herein.
- (d) The Earnest Money shall be applied to payment of the Purchase Price due at Closing.
- (e) Upon written notification (email) from Purchaser and Seller that the contemplated sale is to be consummated, the Escrow Agent shall deliver the Earnest Money to the closing attorney to be applied towards the payment of the Purchase Price, unless otherwise instructed by the parties hereto. Upon written notification signed by both Seller and Purchaser that the contemplated sale shall not take place or that this Agreement is terminated, the Escrow Agent shall deliver the Earnest Money as provided in this Agreement.
- (f) The parties hereto covenant and agree that in performing any of its duties under this Agreement, the Escrow Agent shall not be liable for any loss, costs, or damage which may be incurred as a result of serving as the Escrow Agent hereunder, except for any loss, costs or damage arising out of its willful default or gross negligence. Accordingly, the Escrow Agent shall not incur any liability with respect to (i) any action taken or omitted to be taken in good faith upon advice of its counsel given with respect to any questions relating to the duties and responsibilities of the Escrow Agent hereunder, or (ii) any action taken or omitted to be taken in reliance upon any document, including any written notice of instruction, not only as to its due execution and the validity and effectiveness of its provisions, but also as to the truth and accuracy of any information contained therein, which the Escrow Agent shall in good faith believe to be genuine, to have been signed or presented by a proper person or persons and to conform with the provisions of this Agreement.
- (g) In the event of a dispute between the parties hereto sufficient in the sole discretion of the Escrow Agent to justify its doing so, the Escrow Agent shall be entitled to tender unto the registry or custody of the Cobb County Superior Court the Earnest Money, together with such legal pleadings as it deems appropriate,

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and thereupon be discharged from all further duties, obligations and liability under the terms of this Agreement and on account of it having served as Escrow Agent hereunder.

(h) To the extent permitted by law, Purchaser and Seller hereby agree to indemnify and hold harmless Escrow Agent against any and all losses, claims, damages, liabilities and expenses including without limitation, cost of investigation and attorney's fees and disbursements which may be imposed upon or incurred by Escrow Agent in connection with its serving as Escrow Agent hereunder.

4.0 Purchaser' Inspection Contingency: Within five (5) days from the Effective Date of this Agreement, Seller shall provide Purchaser, if available, copies of all agreements and documents which affect the Property, including, but not limited to, any plans and specifications, drawings, surveys, notices, correspondence, title policies, title reports, title opinions, title documents, mortgages or deeds of trust, declarations, restrictive covenants, easements, licenses, permits and approvals, title exceptions, and any zoning, environmental, soil, engineering, structural, flood, geotechnical studies, reports, letters and tests.

For a period of Forty-five (45) days from the Effective Date (hereinafter the "**Inspection Period**"), Purchaser, its agents or representatives, at Purchaser's expense and at reasonable times during normal business hours, shall have the right to enter upon the Property to conduct and prepare any and all tests, investigations, reports, studies, and inspections of the Property that Purchaser deems necessary in its sole discretion for the purchase of the Property, including, but not limited to, environmental, structural, geotechnical, soil, topographical, geological, subsurface, engineering, site planning, feasibility studies, title review, and surveys (collectively, the "**Tests**"). Unless otherwise agreed to by Purchaser and Seller, the Inspection Period may be extended for up to fourteen (14) days, if deemed necessary by Purchaser in Purchaser's sole discretion, upon written request of Purchaser prior to the expiration of the thirty (30) day Inspection Period referenced herein. Seller shall cooperate in good faith with Purchaser and Purchaser's agents and employees during the Inspection Period and shall provide Purchaser and Purchaser's agents and employees reasonable access to the Property at mutually agreeable times to perform the Tests. Purchaser shall not disrupt or interfere with Seller or Sellers' invitees' use of the Property in connection with the Tests. Further, Purchaser shall not damage or harm the Property in connection with the Tests, and, after completion of the Tests, Purchaser shall restore the Property to substantially the same condition as it was prior to the Tests.

If at any time prior to Closing, the Purchaser finds the property unsuitable for any reason or no reason at all, in its sole discretion, Purchaser may terminate this Agreement, receive a refund of its Earnest Money paid to the Seller as provided herein, and the parties shall have no further obligations, rights, or duties

hereunder. Purchaser assumes all responsibilities for the acts of itself, its agents, or representatives in exercising their rights under this paragraph and to the extent permitted by law agrees to hold Seller harmless of and from any damages resulting therefrom.

5.0 Representations and Warranties: Seller hereby makes the following representations, warranties and covenants to Purchaser as of the Effective Date. Seller shall remake the following representations and warranties to Purchaser as of the date of Closing. The remaking of such representations, warranties and covenants as of the date of Closing shall be deemed made by Seller's acceptance of the Purchase Price and shall not require further evidence thereof. **To the best of Seller's knowledge and without independent investigation, Seller makes the following representations, warranties and covenants only during the Seller's ownership:**

(a) This Agreement constitutes a valid and binding obligation of the Seller and is enforceable against Seller in accordance with its terms.

(b) The execution and delivery of all instruments and documents required hereunder to be obtained or authorized by the Seller in order to consummate this transaction have been or will be obtained and authorized as so required.

(c) There are no actions, suits, claims, demands or proceedings of any kind or nature, legal or equitable, affecting the Property or any portion thereof, and there are no liens, special assessments, easements, reservations, restrictions, covenants, encroachments, or encumbrances other than matters of public record affecting the Property.

(d) There are no persons or entities (other than Seller) in possession of the Property and no other persons or entities known to or claiming through the Seller who have any rights to acquire the Property or have any rights or claims therein or thereto or for any portion thereof except as may appear of public record.

(e) There are no outstanding state or federal tax liens, claims or demands against the Property or against the Seller which constitute or will constitute a lien against the Property.

(f) Seller has received no written notification and, to the best of Seller's knowledge and belief, Seller has not received any other type of notification from any individual, corporation, governmental agency, bureau or authority which pertains to or concerns the environmental or ecological condition of the Property, and the environmental and ecological condition of the Property is not in violation of any law, ordinance, rule or regulation applicable thereto.

(g) To the best of the Seller's knowledge, **without independent investigation**, there presently does not exist and there has never existed on,

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above, or under the Property any Hazardous Material, and, neither Seller, nor any other person has ever caused or permitted any Hazardous Materials to be placed, held, located or disposed of, on, under or at the Property or any part thereof. No part of the Property has ever been used as a manufacturing, storage or dump site for Hazardous Materials, nor is any part of the Property affected by any Hazardous Materials Contamination.

Seller agrees that "Hazardous Materials" shall mean: (a) 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 thereunder; (b) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended from time to time, and the Superfund Amendments and Reorganization Act of 1986, as amended from time to time, and regulations promulgated thereunder; (c) asbestos; (d) polychlorinated biphenyls; (e) petroleum, petroleum by-products or petroleum constituents; (f) any substance the presence of which is prohibited by any governmental requirement; and (g) any other substance which by any governmental requirement requires special handling in its collection, storage, treatment or disposal.

"Hazardous Materials Contamination" shall mean the contamination (whether presently existing or hereafter occurring) of any improvements, facilities, soil, ground water, ambient air, subsurface strata, biota or other elements on, or of, the Property by Hazardous Materials, or the contamination of any improvements, facilities, soil, ground water, ambient air, subsurface strata, biota or other elements on, or of, any other property as a result of Hazardous Materials emanating from the Property **during Seller's ownership.**

(h) To the best of Seller's knowledge, there are no underground storage tanks located on the Property, and no portion of the Property has ever been used for a garbage dump, landfill or service station or other business selling petroleum or petroleum products.

(i) Seller is not, nor will he become, a person with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated Nationals and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities.

(j) All of the representations and warranties in this Section 5.0 are true and correct as of the date of the execution of this Agreement, **at any time during**

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Seller's ownership, and will remain true and correct throughout the term of this Agreement up to and including the date of Closing; Seller will not take any action during the term of this Agreement which would hamper or impede the consummation of this purchase and sale transaction or which would cause any of the representations and/or warranties made in this Section to become untrue, inaccurate or incomplete in any respect; Seller shall undertake those acts necessary to insure that the representations and warranties set forth herein remain true, accurate and complete during the term of this Agreement and will notify Purchaser promptly of any occurrence, notification or variation in the representations or warranties contained herein; Seller will indemnify, defend, and hold Purchaser harmless from and against any and all claims, counterclaims, suits, costs and expenses resulting from the untruthfulness of any of the representations or warranties of Seller herein.

(k) In the event any of the representations, warranties or covenants contained in this Section above are not true on the date of Closing, Purchaser, at Purchaser's election, shall be entitled to exercise any and all rights and remedies which may be available to Purchaser, at law, at equity and under the terms of this Agreement. These terms shall survive the Closing.

(l) The Seller has complied with the Georgia Security and Immigration Compliance Act as set forth in O.C.G.A. § 13-10-90 *et seq* and the federal Systematic Alien Verification for Entitlements (SAVE) Program, **if applicable**.

6.0 **Title:** Seller agrees to convey "Marketable Title" to the Property to Purchaser by Warranty Deed, subject only to (1) zoning ordinances affecting the property, (2) utility, sewer and drainage easements of record, and (3) right of ways of all public roads, together with any other exceptions which Purchaser may accept, all of which matters shall be deemed to be permitted title exceptions. "Marketable Title" shall mean title which is insurable as such by a reputable title insurance company, duly licensed and regularly doing business in the State of Georgia, at its standard rates, with only the exceptions set out herein together with standard exceptions and conditions. Purchaser shall examine title to the Property and in the event that such search shall reveal any additional title defects other than permitted exceptions or items which would customarily be removed at closing (such as deeds to secure debt), or in the event that the Survey reveals matters objectionable to Purchaser, then, upon written notice from Purchaser, Seller shall remove or cure such items. Seller shall have Ten (10) days after such notification to cure all such defects and if Seller should fail to cure such defects within such time, then Purchaser shall have the following options: (a) cancel this Agreement in the same fashion and in accordance with the termination terms herein, (b) to accept title to the Property subject to such additional defects as have not been removed, all of which shall thereafter be deemed to be permitted exceptions, or (c) grant Seller additional time to cure such defects.

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Notwithstanding anything to the contrary contained in this Agreement, Seller shall be obligated to remove at Seller's sole cost (regardless of whether Purchaser objects thereto) all deeds of trust, mortgages, mechanics' liens, UCC filings, judgments and other monetary liens voluntarily imposed on the Property by Seller or arising against the Property as a result of Seller's (or its agents' or affiliates') actions or negligent or intentional omissions or improvements made to, or services rendered in connection with the Property at the request of, or on behalf of, Seller; it being the intent of the parties that the Property be conveyed to Buyer free and clear of all such monetary liens, and in no event shall any such monetary liens be deemed Permitted Title Exceptions.

7.0 Default:

(a) In the event of a default, breach, or a breach of warranty or representation contained in this Agreement and prior to the exercise of the rights hereinafter provided to either party, the defaulting party shall be entitled to written notice of the specific default, breach, or other problem and to **Five (5) calendar days** after the receipt of that written notice in which to cure said default, breach or other problem. If such default, breach or other problem is not corrected within that period, then an event of default shall have occurred and the parties shall be entitled to the rights and remedies hereinafter set forth. Notwithstanding the foregoing provisions, Purchaser, in its sole discretion, shall have the right to extend the time period in which Seller may cure or otherwise correct any specified default, breach or problem for an additional period not to exceed thirty (30) calendar days. Upon Purchaser's written agreement to so extend, Seller shall be entitled to extend the date of Closing, if required, to a date not less than thirty (30) calendar days from the date on which Seller notifies Purchaser in writing that any such default, breach or other problem has been cured and provides Purchaser with proper documentation evidencing that fact.

(b) In the event Seller breaches any warranty or representation contained in this Agreement or fails to comply with or perform any of the conditions, covenants, or agreements contained herein and further provided that Seller fails to cure after written notice, then, at Purchaser's sole election:

- (i) Purchaser shall be entitled, upon giving written notice to Seller, to terminate this Agreement whereupon the Earnest Money shall be immediately returned to Purchaser and Seller shall immediately reimburse Purchaser for all costs incurred by Purchaser in connection with the transaction contemplated by this Agreement including, but not limited to, title exam fees, Testing costs, engineering costs and attorney's fees; or
- (ii) Purchaser shall be entitled to file suit in the Superior Court of Cobb County, Georgia for specific performance of Seller's obligations under and pursuant to the terms and provisions of this Agreement;

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provided, however if the remedy of specific performance is not available due to the acts or omissions of Seller, then Purchaser shall have all remedies at law and in equity.

(c) In the event Purchaser fails to comply with or perform any of the covenants, agreements or other obligations to be performed by Purchaser and fails to cure such problem within the period provided above, then Seller, as Seller's sole and exclusive remedy, shall be entitled to receive the Earnest Money as full liquidated damages. The parties hereto hereby acknowledge that it is impossible to more precisely estimate the specific damage to be suffered by Seller, and the parties hereto expressly acknowledge and intend that this provision shall be a provision for liquidated damages pursuant to the provisions of O.C.G.A. § 13-6-7 and not as a penalty. Thereafter, all rights, liabilities and obligations of Purchaser to Seller under this Agreement shall terminate, except as otherwise provided herein. In no event shall Seller be entitled to initiate litigation seeking legal or equitable remedies against Purchaser.

8.0 Closing: The consummation of the transaction described herein (herein referred to as "**Closing**") will be held at the offices of Campbell & Brannon, LLC, or at a mutually agreeable location, including by a remote electronic closing, exchange of documents by electronic mail and/or FEDEX and by wire transfer of funds, on or before FORTY-FIVE (45) days from the conclusion of the Inspection Period, unless the parties agree otherwise in writing or additional time is granted to remove title defects.

9.0 Delivery of Possession to Purchaser: Upon Closing, the Seller shall deliver the Property, Land and Improvements to Purchaser, except as specifically excluded herein and subject only to the terms and conditions contained herein.

10.0 Seller's Closing Documents: Conveyance will be made by Warranty Deed. Seller, if requested by Purchaser, will also convey by quitclaim deed to Purchaser any interest which it may have in the Property as shown by a survey. Seller will also execute such other documents and affidavits as reasonably necessary to convey fee simple title to Purchaser and enable it to obtain title insurance.

11.0 Costs: Seller shall pay all costs and expenses for releasing any encumbrances or liens affecting the Property, curing any title defects, Seller's attorney's fees, if any, and any other costs necessary for Seller to perform its obligations under this Purchase and Sale Agreement. Purchaser shall pay all closing costs, including costs and expenses for preparing and recording the deed, Purchaser's attorney's fees, and any other costs necessary for Purchaser to perform its obligations under this Purchase and Sale Agreement, including Escrow Agent's fees.

12.0 Waiver: The failure of any party to exercise any right hereunder, or to insist upon strict compliance with the terms and conditions of the Agreement shall not constitute a waiver hereunder.

13.0 Entire Agreement: This Agreement constitutes the entire agreement and understanding concerning the purchase and sale of the Property contemplated hereby. This Agreement may not be changed orally, but only by an amendment in writing signed by Purchaser and Seller.

14.0 Notice: All notices shall be in writing and shall be deemed to have been properly given when delivered in person, when emailed, or when deposited in the United States Mail, with adequate postage, and sent by registered or certified mail with return receipt requested, to the addresses set out below; or alternatively, for any person providing his or her e-mail address below shall be deemed to have consented to the acceptability of e-mail notifications:

PURCHASER:

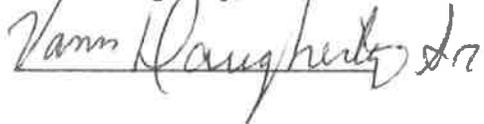
City of Powder Springs
Downtown Development Authority
Attn: Al Thurman
City Hall
4484 Marietta Street
Powder Springs, GA 30127
EMAIL: Althurman@cityofpowdersprings.org

With a copy to:

Fred Bentley, Jr.
Bentley, Bentley & Bentley
241 Washington Avenue
Marietta, Georgia 30060
EMAIL: fred@thebentleyfirm.com

SELLER:

Vann Daugherty, Sr.

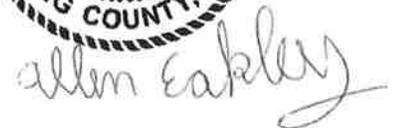


EMAIL: _____

ESCROW AGENT:

Campbell & Brannon, LLC
ATTN: Ed Goodgame
5565 Glenridge Connector, Ste 350
Atlanta, GA 30342
EMAIL: EGoodgame@campbellandbrannon.com





With a copy to: Fred Bentley, Jr.
Bentley, Bentley & Bentley
241 Washington Avenue
Marietta, Georgia 30060
EMAIL: fred@thebentleyfirm.com

The date of personal delivery, as evidenced by the courier's receipt, the date of email delivery, or three (3) calendar days after mailing shall be the effective date of said notice.

- 15.0 Survival:** Any provisions of this Agreement and all warranties, representations and covenants made herein, shall survive the Closing.
- 16.0 Governing Law:** This Agreement shall be governed by the laws of the State of Georgia. Venue and jurisdiction under this Agreement shall lie in the Superior Court of Cobb County, Georgia.
- 17.0 Taxes:** Real estate taxes for the year of the Closing shall be prorated as of the date of the Closing. In the event the current year's taxes are not available at the time of the Closing, the proration shall be based upon the previous year's taxes, and Purchaser and Seller agree to adjust between themselves any difference in the tax proration after the actual tax bill for the year of the Closing is available.
- 19.0 Binding Effect:** The Agreement shall be fully binding on and enforceable against all parties hereto and their respective heirs, administrators, successors, and permitted assigns.
- 20.0 TIME IS OF THE ESSENCE OF THIS AGREEMENT.**
- 21.0 Counterparts:** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which shall constitute one Agreement, and the signature of any party to any counterpart (or printed product of a facsimile or emailed counterpart) shall be deemed to be a signature to, and may be appended to any other counterpart.
- 22.0 Severability:** This Agreement is intended to be performed in accordance with and only to the extent permitted by all applicable laws, ordinances, rules and regulations. If any of the provisions of this Agreement or the application thereof to any person or circumstances shall for any reason and to any extent be invalid or unenforceable, then the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby but shall be enforced to the greatest extent permitted by law.
- 23.0 Further Assurances.** On and after the Effective Date of this Agreement, Seller and Purchaser shall, at the request of the other, make, execute and deliver or obtain and deliver all such affidavits, deeds, approvals, certificates, resolutions and other instruments and documents, and shall do or cause to be done all such

other things which either party may reasonably require to effectuate the provisions and intention of this Agreement.

- 24.0 Assignment.** Notwithstanding anything to the contrary, Purchaser shall have the right to assign its rights and obligations under this Agreement to any person, entity or authority. Prior to Closing, Purchaser shall notify Seller of the name of any entity who shall take title to the Property, so that the closing documents shall properly reflect the name of such entity.
- 25.0 Inurement.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their successors and assigns, if any.
- 26.0 No Other Agreements.** There are no options or rights of first refusal, recorded or unrecorded, affecting the Property, nor any other unrecorded agreements affecting the development or use of the Property. There are no commercial, farm or other leases applicable to or affecting the Property and no other parties in possession or adverse possession of the Property. To the extent that any such leases exist, Seller shall obtain a termination thereof prior to the expiration of the Inspection Period.
- 27.0 Commissions.** Purchaser has, but Seller does not have, a Broker for this transaction to which real estate sales or brokerage commissions or like commissions are or may be due in connection with this transaction as a result of the act of the Seller so warranting. Purchaser's Broker agrees and consent to the terms herein. Purchaser's Broker shall be paid a commission at closing by Purchaser equal to Ten percent (10%) of the Purchase Price (the "**Commission**"). Such Commission shall be payable at closing to Brian Patton Commercial. Seller shall indemnify, defend and hold Purchaser harmless from and against any claims by a broker and any other third parties made by or through the acts of Seller for real estate or brokerage commissions, or a finder's fee, in connection with the transactions provided for herein, and all costs and expenses incurred by Purchaser in connection therewith including, but not limited to, reasonable attorneys' fees.
- 28.0 Construction.** The parties agree that each party and/or its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any Addendum, amendments or Exhibit hereto.
- 29.0 Special Stipulations:** Notwithstanding anything herein to the contrary, the parties agree to the following:
- (a) Property Owner will remove and retain the bathtub prior to Closing.

EXHIBIT A

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WITNESS WHEREOF, the parties have set their hands and seals and agreed to be bound hereby as of the date and year first written above.

**PURCHASER:
CITY OF POWDER SPRINGS
DOWNTOWN DEVELOPMENT
AUTHORITY**

By: Albert Thurman

Its: Chairman

Date: 10-16-20

[SIGNATURES CONTINUE ON NEXT PAGE]

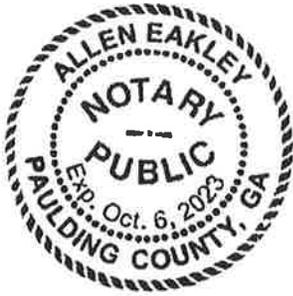
SELLER:

Vann Daugherty Sr.
VANN DAUGHERTY, SR.

Date: 09-30-2020

Allen Eakley
Notary Public
My Commission Expires:
10/6/2023

(NOTARY SEAL)



[SIGNATURES CONTINUE ON NEXT PAGE]

2/14

BROKER FOR PURCHASER:



BRIAN PATTON COMMERCIAL

Date: 10/19/20

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ESCROW AGENT ACCEPTANCE:

The undersigned Escrow Agent accepts this Agreement and agrees to perform the acts applicable to Escrow Agent in accordance with the terms of this Agreement. Escrow Agent acknowledges its receipt of both the Deposit and a fully executed original or electronic copy of this Agreement as of the date set forth underneath its signature below.

**ESCROW AGENT:
Campbell & Brannon, LLC**

By: _____

Date: _____

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

PURCHASE AND SALE AGREEMENT

4494 Marietta Street, Powder Springs, Georgia 30127
(Tax parcel: 19087600050)

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is made and entered into the date it is last executed by Purchaser or Seller ("Effective Date"), by and between **JAMES L. LOVINGGOOD, SR** (hereinafter collectively referred to as "Seller") and **CITY OF POWDER SPRINGS DOWNTOWN DEVELOPMENT AUTHORITY** (hereinafter referred to as "Purchaser").

WITNESSETH:

In consideration of **TEN DOLLARS and No/100 DOLLARS (\$10.00)** in hand paid, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

- 1.0 **Agreement to Sell and Purchase:** Upon the terms and conditions hereinafter set forth, Seller shall sell to Purchaser and Purchaser shall purchase from Seller certain property in Cobb County, Georgia, being all of the following described property on Exhibit "A" attached hereto, which is tax ID parcel 19087600050, (the "Property"):
 - (a) All of that tract or parcel of land comprised of approximately 2.04 acres being more particularly described in **Exhibit A**, attached hereto and incorporated herein by way of reference commonly known as 4494 Marietta Street, Powder Springs, Georgia 30127, also being known as Cobb County Tax Parcel 19087600050 together with all rights and appurtenances pertaining to such real property, including, without limitation, any and all right, title, and interest of Seller in and to adjacent road, alleys, easements, streets and ways (the "Land"); and
 - (b) The home and all improvements, structures and fixtures placed, constructed or installed on the Land (the "Improvements").
- 2.0 **Purchase Price:** The purchase price for the Property, Land and Improvements shall be **SIX HUNDRED FIFTY THOUSAND DOLLARS AND 00/100 (\$650,000.00)** (the "Purchase Price"). At Closing, Purchaser shall pay the Purchase Price in cash or other immediately available funds at closing less the Earnest Money, which shall be applied to the Purchase Price at Closing. **This purchase is strictly contingent upon Purchaser obtaining sufficient Purchase Price funds, in the sole discretion of the Purchaser, that will allow Purchaser to complete the purchase of the Property.**
- 3.0 **Earnest Money/Escrow Agent:**

- (a) To secure the performance by Purchaser of its obligations under this Agreement, Purchaser shall, within seven (7) business days after the Effective Date, deposit **FIVE THOUSAND DOLLARS AND 00/100 (\$5,000)** as earnest money ("**Earnest Money**") with Escrow Agent.
- (b) Campbell & Brannon, LLC agrees to serve as Escrow Agent under the Agreement, and hold the Earnest Money paid by Purchaser as Escrow Agent. The provisions of this Agreement applicable to Escrow Agent shall together constitute escrow instructions between Seller, Purchaser and Escrow Agent.
- (c) Except as otherwise provided in this Agreement, the Earnest Money shall be refunded to Purchaser in the event Seller defaults under this Agreement by failing to consummate the purchase of the Property or for failure of any of the Seller's obligations or contingencies described herein.
- (d) The Earnest Money shall be applied to payment of the Purchase Price due at Closing.
- (e) Upon written notification (email) from Purchaser and Seller that the contemplated sale is to be consummated, the Escrow Agent shall deliver the Earnest Money to the closing attorney to be applied towards the payment of the Purchase Price, unless otherwise instructed by the parties hereto. Upon written notification signed by both Seller and Purchaser that the contemplated sale shall not take place or that this Agreement is terminated, the Escrow Agent shall deliver the Earnest Money as provided in this Agreement.
- (f) The parties hereto covenant and agree that in performing any of its duties under this Agreement, the Escrow Agent shall not be liable for any loss, costs, or damage which may be incurred as a result of serving as the Escrow Agent hereunder, except for any loss, costs or damage arising out of its willful default or gross negligence. Accordingly, the Escrow Agent shall not incur any liability with respect to (i) any action taken or omitted to be taken in good faith upon advice of its counsel given with respect to any questions relating to the duties and responsibilities of the Escrow Agent hereunder, or (ii) any action taken or omitted to be taken in reliance upon any document, including any written notice of instruction, not only as to its due execution and the validity and effectiveness of its provisions, but also as to the truth and accuracy of any information contained therein, which the Escrow Agent shall in good faith believe to be genuine, to have been signed or presented by a proper person or persons and to conform with the provisions of this Agreement.
- (g) In the event of a dispute between the parties hereto sufficient in the sole discretion of the Escrow Agent to justify its doing so, the Escrow Agent shall be entitled to tender unto the registry or custody of the Cobb County Superior Court the Earnest Money, together with such legal pleadings as it deems appropriate, and thereupon be discharged from all further duties, obligations and liability under

the terms of this Agreement and on account of it having served as Escrow Agent hereunder.

(h) To the extent permitted by law, Purchaser and Seller hereby agree to indemnify and hold harmless Escrow Agent against any and all losses, claims, damages, liabilities and expenses including without limitation, cost of investigation and attorney's fees and disbursements which may be imposed upon or incurred by Escrow Agent in connection with its serving as Escrow Agent hereunder.

- 4.0 Purchaser' Inspection Contingency:** Within five (5) days from the Effective Date of this Agreement, Seller shall provide Purchaser, if available, copies of all agreements and documents which affect the Property, including, but not limited to, all existing lease agreements, property management documents and/or agreements, items to be paid for or on behalf of any lease and all documents related thereto, all service contracts relating to the Property, Land Improvements and/or leases, plans and specifications, documentation of all repairs and/or damages to the property in the last year, a copy of all warranties related to any fixtures, Land or Improvements, drawings, surveys, notices, correspondence, title policies, title reports, title opinions, title documents, mortgages or deeds of trust, declarations, restrictive covenants, easements, licenses, permits and approvals, title exceptions, and any zoning, environmental, soil, engineering, structural, flood, geotechnical studies, reports, letters and tests.

For a period of Forty-five (45) days from the Effective Date (hereinafter the "**Inspection Period**"), Purchaser, its agents or representatives, at Purchaser's expense and at reasonable times during normal business hours, shall have the right to enter upon the Property to conduct and prepare any and all tests, investigations, reports, studies, and inspections of the Property that Purchaser deems necessary in its sole discretion for the purchase of the Property, including, but not limited to, environmental, structural, geotechnical, soil, topographical, geological, subsurface, engineering, site planning, feasibility studies, title review, and surveys (collectively, the "**Tests**"). Unless otherwise agreed to by Purchaser and Seller, the Inspection Period may be extended for up to fourteen (14) days, if deemed necessary by Purchaser in Purchaser's sole discretion, upon written request of Purchaser prior to the expiration of the forty-five (45) day Inspection Period referenced herein. Seller shall cooperate in good faith with Purchaser and Purchaser's agents and employees during the Inspection Period and shall provide Purchaser and Purchaser's agents and employees reasonable access to the Property at mutually agreeable times to perform the Tests. Purchaser shall not disrupt or interfere with Seller or Sellers' invitees' use of the Property in connection with the Tests. Further, Purchaser shall not damage or harm the Property in connection with the Tests, and, after completion of the Tests, Purchaser shall restore the Property to substantially the same condition as it was prior to the Tests.

If at any time prior to Closing, the Purchaser finds the property unsuitable for any reason or no reason at all, in its sole discretion, Purchaser may terminate this

Agreement, receive a refund of its Earnest Money paid to the Seller as provided herein, and the parties shall have no further obligations, rights, or duties hereunder. Purchaser assumes all responsibilities for the acts of itself, its agents, or representatives in exercising their rights under this paragraph and to the extent permitted by law agrees to hold Seller harmless of and from any damages resulting therefrom.

5.0 Representations and Warranties: Seller hereby makes the following representations, warranties and covenants to Purchaser as of the Effective Date. Seller shall remake the following representations and warranties to Purchaser as of the date of Closing. The remaking of such representations, warranties and covenants as of the date of Closing shall be deemed made by Seller's acceptance of the Purchase Price and shall not require further evidence thereof. **To the best of Seller's knowledge and without independent investigation, Seller makes the following representations, warranties and covenants only as to the time period during the Seller's ownership:**

(a) This Agreement constitutes a valid and binding obligation of the Seller and is enforceable against Seller in accordance with its terms.

(b) The execution and delivery of all instruments and documents required hereunder to be obtained or authorized by the Seller in order to consummate this transaction have been or will be obtained and authorized as so required.

(c) There are no actions, suits, claims, demands or proceedings of any kind or nature, legal or equitable, affecting the Property or any portion thereof, and there are no liens, pending insurance claims, special assessments, easements, reservations, restrictions, covenants, encroachments, or encumbrances other than matters of public record affecting the Property.

(d) There are no persons or entities (other than Seller) in possession of the Property and no other persons or entities known to or claiming through the Seller who have any rights to acquire the Property or have any rights or claims therein or thereto or for any portion thereof except as may appear of public record.

(e) There are no outstanding state or federal tax liens, claims or demands against the Property or against the Seller which constitute or will constitute a lien against the Property.

(f) Seller has received no written notification and, to the best of Seller's knowledge and belief, Seller has not received any other type of notification from any individual, corporation, governmental agency, bureau or authority which pertains to or concerns the environmental or ecological condition of the Property, and the environmental and ecological condition of the Property is not in violation of any law, ordinance, rule or regulation applicable thereto.

(g) To the best of the Seller's knowledge, **without independent investigation**, there presently does not exist and there has never existed on, above, or under the Property any Hazardous Material, and, neither Seller, nor any other person has ever caused or permitted any Hazardous Materials to be placed, held, located or disposed of, on, under or at the Property or any part thereof. No part of the Property has ever been used as a manufacturing, storage or dump site for Hazardous Materials, nor is any part of the Property affected by any Hazardous Materials Contamination.

Seller agrees that "Hazardous Materials" shall mean: (a) 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 thereunder; (b) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended from time to time, and the Superfund Amendments and Reorganization Act of 1986, as amended from time to time, and regulations promulgated thereunder; (c) asbestos; (d) polychlorinated biphenyls; (e) petroleum, petroleum by-products or petroleum constituents; (f) any substance the presence of which is prohibited by any governmental requirement; and (g) any other substance which by any governmental requirement requires special handling in its collection, storage, treatment or disposal.

"Hazardous Materials Contamination" shall mean the contamination (whether presently existing or hereafter occurring) of any improvements, facilities, soil, ground water, ambient air, subsurface strata, biota or other elements on, or of, the Property by Hazardous Materials, or the contamination of any improvements, facilities, soil, ground water, ambient air, subsurface strata, biota or other elements on, or of, any other property as a result of Hazardous Materials emanating from the Property **at any time during Seller's ownership.**

(h) To the best of Seller's knowledge, there are no underground storage tanks located on the Property, and no portion of the Property has ever been used for a garbage dump, landfill or service station or other business selling petroleum or petroleum products.

(i) Seller is not, nor will he become, a person with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated Nationals and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities.

(j) All of the representations and warranties in this Section 5.0 are true and correct as of the date of the execution of this Agreement, **as it relates to any time during Seller's ownership**, and will remain true and correct throughout the term of this Agreement up to and including the date of Closing; Seller will not take any action during the term of this Agreement which would hamper or impede the consummation of this purchase and sale transaction or which would cause any of the representations and/or warranties made in this Section to become untrue, inaccurate or incomplete in any respect; Seller shall undertake those acts necessary to insure that the representations and warranties set forth herein remain true, accurate and complete during the term of this Agreement and will notify Purchaser promptly of any occurrence, notification or variation in the representations or warranties contained herein; Seller will indemnify, defend, and hold Purchaser harmless from and against any and all claims, counterclaims, suits, costs and expenses resulting from the untruthfulness of any of the representations or warranties of Seller herein.

(k) In the event any of the representations, warranties or covenants contained in this Section above are not true on the date of Closing, Purchaser, at Purchaser's election, shall be entitled to exercise any and all rights and remedies which may be available to Purchaser, at law, at equity and under the terms of this Agreement. These terms shall survive the Closing.

(l) The Seller has complied with the Georgia Security and Immigration Compliance Act as set forth in O.C.G.A. § 13-10-90 *et seq* and the federal Systematic Alien Verification for Entitlements (SAVE) Program, **if applicable**.

6.0 Title: Seller agrees to convey "Marketable Title" to the Property to Purchaser by Warranty Deed, subject only to (1) zoning ordinances affecting the property, (2) utility, sewer and drainage easements of record, and (3) right of ways of all public roads, together with any other exceptions which Purchaser may accept, all of which matters shall be deemed to be permitted title exceptions. "Marketable Title" shall mean title which is insurable as such by a reputable title insurance company, duly licensed and regularly doing business in the State of Georgia, at its standard rates, with only the exceptions set out herein together with standard exceptions and conditions. Purchaser shall examine title to the Property and in the event that such search shall reveal any additional title defects other than permitted exceptions or items which would customarily be removed at closing (such as deeds to secure debt), or in the event that the Survey reveals matters objectionable to Purchaser, then, upon written notice from Purchaser, Seller shall remove or cure such items. Seller shall have Ten (10) days after such notification to cure all such defects and if Seller should fail to cure such defects within such time, then Purchaser shall have the following options: (a) cancel this Agreement in the same fashion and in accordance with the termination terms herein, (b) to accept title to the Property subject to such additional defects as have not been removed, all of which shall thereafter be deemed to be permitted exceptions, or (c) grant Seller additional time to cure such defects.

Notwithstanding anything to the contrary contained in this Agreement, Seller shall be obligated to remove at Seller's sole cost (regardless of whether Purchaser objects thereto) all deeds of trust, mortgages, mechanics' liens, UCC filings, judgments and other monetary liens voluntarily imposed on the Property by Seller or arising against the Property as a result of Seller's (or its agents' or affiliates') actions or negligent or intentional omissions or improvements made to, or services rendered in connection with the Property at the request of, or on behalf of, Seller; it being the intent of the parties that the Property be conveyed to Buyer free and clear of all such monetary liens, and in no event shall any such monetary liens be deemed Permitted Title Exceptions.

7.0 Default:

(a) In the event of a default, breach, or a breach of warranty or representation contained in this Agreement and prior to the exercise of the rights hereinafter provided to either party, the defaulting party shall be entitled to written notice of the specific default, breach, or other problem and to **Five (5) calendar days** after the receipt of that written notice in which to cure said default, breach or other problem. If such default, breach or other problem is not corrected within that period, then an event of default shall have occurred, and the parties shall be entitled to the rights and remedies hereinafter set forth. Notwithstanding the foregoing provisions, Purchaser, in its sole discretion, shall have the right to extend the time period in which Seller may cure or otherwise correct any specified default, breach or problem for an additional period not to exceed thirty (30) calendar days. Upon Purchaser's written agreement to so extend, Seller shall be entitled to extend the date of Closing, if required, to a date not less than thirty (30) calendar days from the date on which Seller notifies Purchaser in writing that any such default, breach or other problem has been cured and provides Purchaser with proper documentation evidencing that fact.

(b) In the event Seller breaches any warranty or representation contained in this Agreement or fails to comply with or perform any of the conditions, covenants, or agreements contained herein and further provided that Seller fails to cure after written notice, then, at Purchaser's sole election:

- (i) Purchaser shall be entitled, upon giving written notice to Seller, to terminate this Agreement whereupon the Earnest Money shall be immediately returned to Purchaser and Seller shall immediately reimburse Purchaser for all costs incurred by Purchaser in connection with the transaction contemplated by this Agreement including, but not limited to, title exam fees, Testing costs, engineering costs and attorney's fees; or
- (ii) Purchaser shall be entitled to file suit in the Superior Court of Cobb County, Georgia for specific performance of Seller's obligations

under and pursuant to the terms and provisions of this Agreement; provided, however if the remedy of specific performance is not available due to the acts or omissions of Seller, then Purchaser shall have all remedies at law and in equity.

(c) In the event Purchaser fails to comply with or perform any of the covenants, agreements or other obligations to be performed by Purchaser and fails to cure such problem within the period provided above, then Seller, as Seller's sole and exclusive remedy, shall be entitled to receive the Earnest Money as full liquidated damages. The parties hereto hereby acknowledge that it is impossible to more precisely estimate the specific damage to be suffered by Seller, and the parties hereto expressly acknowledge and intend that this provision shall be a provision for liquidated damages pursuant to the provisions of O.C.G.A. § 13-6-7 and not as a penalty. Thereafter, all rights, liabilities and obligations of Purchaser to Seller under this Agreement shall terminate, except as otherwise provided herein. In no event shall Seller be entitled to initiate litigation seeking legal or equitable remedies against Purchaser.

- 8.0 Closing:** The consummation of the transaction described herein (herein referred to as "**Closing**") will be held at the offices of Campbell & Brannon, LLC, or at a mutually agreeable location, including by a remote electronic closing, exchange of documents by electronic mail and/or FEDEX and by wire transfer of funds, on or before **FORTY-FIVE (45) days** from the conclusion of the Inspection Period, unless the parties agree otherwise in writing or additional time is granted to remove title defects. Notwithstanding any terms herein, Purchaser will make reasonable efforts to have the Closing conducted no later than December 31, 2020.
- 9.0 Delivery of Possession to Purchaser:** Upon Closing, the Seller shall deliver the Property, Land and Improvements to Purchaser, except as specifically excluded herein and subject only to the terms and conditions contained herein.
- 10.0 Seller's Closing Documents:** Conveyance will be made by Warranty Deed. Seller, if requested by Purchaser, will also convey by quitclaim deed to Purchaser any interest which it may have in the Property as shown by a survey. Seller will also execute such other documents and affidavits as reasonably necessary to convey fee simple title to Purchaser and enable it to obtain title insurance.
- 11.0 Costs:** Seller shall pay all costs and expenses for releasing any encumbrances or liens affecting the Property, curing any title defects, Seller's attorney's fees, if any, and any other costs necessary for Seller to perform its obligations under this Purchase and Sale Agreement. Purchaser shall pay all closing costs, including costs and expenses for preparing and recording the deed, Purchaser's attorney's fees, and any other costs necessary for Purchaser to perform its obligations under this Purchase and Sale Agreement, including Escrow Agent's fees.
- 12.0 LEASE BACK OF PROPERTY:**

12.1. As part of this Agreement, Purchaser and Seller agree that Seller shall sign at Closing a lease agreement that begins at the time the Closing is consummated, (“Lease”) by which PSDDA leases back to Seller, including all Land and Improvements, for a period not to exceed July 15, 2020 beginning on the date of Closing with PSDDA for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged. The Lease shall be executed at Closing, or in a substantially similar form, a copy of which is attached hereto as Exhibit “B” and incorporated herein by reference thereto. All Lease terms shall survive the Closing. Notwithstanding any term herein, if the Closing does not occur, for any reason or no reason at all, then the Lease shall not be executed, and the Parties shall have no further obligations to one another.

2.0 12.2. At Seller’s sole cost and expense, Seller must (1) Provide all maintenance and repairs to the Property, Land and Improvements and keep it clean and in good repair; (2) Provide all landscaping and mowing of the Property; (3) Provide and maintain all HVAC, plumbing, electric and other mechanicals in good order and Seller shall pay for any repairs and/or maintenance related thereto; (4) Pay for all water, cable, and other utilities and services for or related to the Property, Land and Improvements; (5) Tenant agrees to waive and release any claims against Landlord and hold harmless and defend the Landlord from or relating to any and all liability of any kind related to the Property, condition of the Property, any personal injury, (including death) casualty, loss, or damages of any kind or nature, including but not limited to any damages or injuries related to mold, asbestos, and/or the condition of the Property and any structures on the Property. Tenant assumes all risk of loss; and (6) At Seller’s sole cost and expense, Seller must cause to be maintained at all times during this Lease Agreement full coverage renter’s policy/policies of insurance, including but not limited to coverage for the full replacement cost of all contents, and with comprehensive general liability coverage for any occupant, person, pets, customer, invitee or licensee on the Property, with limits of insurance in an amount no less than One Hundred Thousand Dollars (\$100,000.00) per person and Two Hundred Fifty Thousand Dollars (\$250,000.00) per occurrence. Seller shall be solely liable and assume the risk of loss for all liability, personal injury, property damage and/or damage to any person or contents located on the Property during the Lease. In the event of any casualty or destruction of the Property during the Lease, the Lease shall immediately terminate and the PSDDA shall be entitled to the full possession of the Property. If Seller desires to keep any contents, then Seller must remove, prior to the expiration of the Lease Agreement, any contents on the Property, Land and/or Improvements located on the Property. Immediately upon expiration of the Lease Agreement, any contents that remain in/on the Property, Land and/or Improvements shall be the sole property of Purchaser. Seller must provide Purchaser with a copy of each policy of insurance and insurance certificate referenced herein no later than at Closing.

13.0 **Waiver:** The failure of any party to exercise any right hereunder, or to insist upon strict compliance with the terms and conditions of the Agreement shall not

constitute a waiver hereunder.

14.0 Entire Agreement: This Agreement constitutes the entire agreement and understanding concerning the purchase and sale of the Property contemplated hereby. This Agreement may not be changed orally, but only by an amendment in writing signed by Purchaser and Seller.

15.0 Notice: All notices shall be in writing and shall be deemed to have been properly given when delivered in person, when emailed, or when deposited in the United States Mail, with adequate postage, and sent by registered or certified mail with return receipt requested, to the addresses set out below; or alternatively, for any person providing his or her e-mail address below shall be deemed to have consented to the acceptability of e-mail notifications:

PURCHASER:

City of Powder Springs
Downtown Development Authority
Attn: Al Thurman
City Hall
4484 Marietta Street
Powder Springs, GA 30127
EMAIL: Athurman@cityofpowdersprings.org

With a copy to: Fred Bentley, Jr.
Bentley, Bentley & Bentley
241 Washington Avenue
Marietta, Georgia 30060
EMAIL: fred@thebentleyfirm.com

SELLER:

James L. Lovinggood, Sr.
5544 Hill Road
Powder Springs, GA 30127

EMAIL: lovinggoodl@bellsouth.net

ESCROW AGENT:

Campbell & Brannon, LLC
ATTN: Ed Goodgame
5565 Glenridge Connector, Ste 350
Atlanta, GA 30342
EMAIL: EGoodgame@campbellandbrannon.com

With a copy to: Fred Bentley, Jr.
Bentley, Bentley & Bentley
241 Washington Avenue
Marietta, Georgia 30060
EMAIL: fred@thebentleyfirm.com

The date of personal delivery, as evidenced by the courier's receipt, the date of email delivery, or three (3) calendar days after mailing shall be the effective date of said notice.

- 16.0 Survival:** Any provisions of this Agreement and all warranties, representations and covenants made herein, shall survive the Closing.
- 17.0 Governing Law:** This Agreement shall be governed by the laws of the State of Georgia. Venue and jurisdiction under this Agreement shall lie in the Superior Court of Cobb County, Georgia.
- 18.0 Taxes:** Real estate taxes for the year of the Closing shall be prorated as of the date of the Closing. In the event the current year's taxes are not available at the time of the Closing, the proration shall be based upon the previous year's taxes, and Purchaser and Seller agree to adjust between themselves any difference in the tax proration after the actual tax bill for the year of the Closing is available.
- 19.0 Binding Effect:** The Agreement shall be fully binding on and enforceable against all parties hereto and their respective heirs, administrators, successors, and permitted assigns.
- 20.0 TIME IS OF THE ESSENCE OF THIS AGREEMENT.**
- 21.0 Counterparts:** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which shall constitute one Agreement, and the signature of any party to any counterpart (or printed product of a facsimile or emailed counterpart) shall be deemed to be a signature to, and may be appended to any other counterpart.
- 22.0 Severability:** This Agreement is intended to be performed in accordance with and only to the extent permitted by all applicable laws, ordinances, rules and regulations. If any of the provisions of this Agreement or the application thereof to any person or circumstances shall for any reason and to any extent be invalid or unenforceable, then the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby but shall be enforced to the greatest extent permitted by law.
- 23.0 Further Assurances.** On and after the Effective Date of this Agreement, Seller and Purchaser shall, at the request of the other, make, execute and deliver or obtain and deliver all such affidavits, deeds, approvals, certificates, resolutions and other instruments and documents, and shall do or cause to be done all such other

things which either party may reasonably require to effectuate the provisions and intention of this Agreement.

- 24.0 Assignment.** Notwithstanding anything to the contrary, Purchaser shall have the right to assign its rights and obligations under this Agreement to any person, entity or authority. Prior to Closing, Purchaser shall notify Seller of the name of any entity who shall take title to the Property, so that the closing documents shall properly reflect the name of such entity.
- 25.0 Inurement.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their successors and assigns, if any.
- 26.0 No Other Agreements.** There are no options or rights of first refusal, recorded or unrecorded, affecting the Property, nor any other unrecorded agreements affecting the development or use of the Property. There are no commercial, farm or other leases applicable to or affecting the Property and no other parties in possession or adverse possession of the Property. To the extent that any such options or leases exist, Seller shall obtain a termination thereof prior to the expiration of the Inspection Period and provide Purchaser with a copy of any such expiration and/or termination.
- 27.0 Commissions.** Purchaser has, but Seller does not have, a Broker for this transaction to which real estate sales or brokerage commissions or like commissions are or may be due in connection with this transaction as a result of the act of the Seller so warranting. Purchaser's Broker agrees and consent to the terms herein. Purchaser's Broker shall be paid a commission at closing by Purchaser equal to Ten percent (10%) of the Purchase Price (the "**Commission**"). Such Commission shall be payable at closing to Brian Patton Commercial. Seller shall indemnify, defend and hold Purchaser harmless from and against any claims by a broker and any other third parties made by or through the acts of Seller for real estate or brokerage commissions, or a finder's fee, in connection with the transactions provided for herein, and all costs and expenses incurred by Purchaser in connection therewith including, but not limited to, reasonable attorneys' fees.
- 28.0 Construction.** The parties agree that each party and/or its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any Addendum, amendments or Exhibit hereto.
- 29.0 Special Stipulations:** Notwithstanding anything herein to the contrary, the parties agree to the following:

No later than the termination or expiration of the Lease referenced herein, whichever occurs first, Seller may remove any fixtures, interior doors and knobs, mantels, cabinets, and appliances located on the Property, as well as the smokehouse located on the Property. However, Seller removes such items at his own risk and the PSDDA shall not be liable for any injuries, claims, or damages

related to any removal of any of the items listed herein. Any items of any kind or nature, including but not limited those listed herein, that remain on the Property after the expiration or termination of the Lease shall immediately become the sole property of the PSDDA and Seller shall forfeit any right or obligation related thereto. This section shall survive the Closing and the termination and/or expiration of the Lease.

WITNESS WHEREOF, the parties have set their hands and seals and agreed to be bound hereby as of the date and year first written above.

**PURCHASER:
CITY OF POWDER SPRINGS
DOWNTOWN DEVELOPMENT
AUTHORITY**

By: Albert Hurman

Its: Chairman

Date: 10-16-20

[SIGNATURES CONTINUE ON NEXT PAGE]

SELLER:

JAMES L. LOVINGGOOD, SR.

Date: James L. Lovinggood Sr.

10-15-2020
Sherril L. Watts

Notary Public

My Commission Expires:

12-11-2020

(NOTARY SEAL)



[SIGNATURES CONTINUE ON NEXT PAGE]

BROKER FOR PURCHASER:



BRIAN PATTON COMMERCIAL

Date: 10/19/20

ESCROW AGENT ACCEPTANCE:

The undersigned Escrow Agent accepts this Agreement and agrees to perform the acts applicable to Escrow Agent in accordance with the terms of this Agreement. Escrow Agent acknowledges its receipt of both the Deposit and a fully executed original or electronic copy of this Agreement as of the date set forth underneath its signature below.

**ESCROW AGENT:
Campbell & Brannon, LLC**

By: _____

Date: _____

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY

Exhibit "B"
Lease Agreement

PURCHASE AND SALE AGREEMENT
4426 Marietta Street, SW, Powder Springs, Georgia 30127
(Tax parcel ID Number: 19087500140)

THIS PURCHASE AND SALE AGREEMENT (the "**Agreement**") is made and entered into the date it is last executed by Purchaser or Seller ("**Effective Date**"), by and between **DUOC NGUYEN and CRYSTAL NGUYEN** (hereinafter collectively referred to as "**Seller**") and **CITY OF POWDER SPRINGS DOWNTOWN DEVELOPMENT AUTHORITY** (hereinafter referred to as "**Purchaser**").

WITNESSETH:

In consideration of **TEN DOLLARS and No/100 DOLLARS (\$10.00)** in hand paid, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

1.0 Agreement to Sell and Purchase: Upon the terms and conditions hereinafter set forth, Seller shall sell to Purchaser and Purchaser shall purchase from Seller certain property in Cobb County, Georgia, being all of the following described property on **Exhibit "A"** attached hereto, which is Tax ID parcel number 19087500140, with the physical address of 4426 Marietta Street, SW, Powder Springs, Georgia, 30127 (the "**Property**"):

(a) All of that tract or parcel of land comprised of approximately 0.2063 being more particularly described in **Exhibit "A"**, attached hereto and incorporated herein by way of reference commonly known as 4426 Marietta Street, Powder Springs, Georgia 30127, also being known as Cobb County Tax Parcel 19087500140 together with all rights and appurtenances pertaining to such real property, including, without limitation, any and all right, title, and interest of Seller in and to adjacent road, alleys, easements, streets and ways (the "**Land**");

(b) The building and all improvements, structures and fixtures placed, constructed or installed on the Land (the "**Improvements**").

2.0 Purchase Price: The purchase price for the Property, Land and Improvements shall be **THREE HUNDRED THIRTY THOUSAND DOLLARS AND 00/100 (\$330,000.00)** (the "**Purchase Price**").

At Closing, Purchaser shall pay the Purchase Price in cash or other immediately available funds at closing less the Earnest Money, which shall be applied to the Purchase Price at Closing. This Agreement is contingent upon Purchaser obtaining sufficient financing of the Purchase Price, in Purchaser's sole discretion, for the purchase of the Property contemplated herein.

3.0 Earnest Money/Escrow Agent:

(a) To secure the performance by Purchaser of its obligations under this Agreement, Purchaser shall, within seven (7) business days after the Effective Date, deposit **FIVE THOUSAND DOLLARS AND 00/100 (\$5,000)** as earnest money ("**Earnest Money**") with Escrow Agent.

(b) Campbell & Brannon, LLC agrees to serve as Escrow Agent under the Agreement, and hold the Earnest Money paid by Purchaser as Escrow Agent. The provisions of this Agreement applicable to Escrow Agent shall together constitute escrow instructions between Seller, Purchaser and Escrow Agent.

(c) Except as otherwise provided in this Agreement, the Earnest Money shall be refunded to Purchaser in the event Seller defaults under this Agreement by failing to consummate the purchase of the Property or for failure of any of the Seller's obligations or contingencies described herein.

(d) The Earnest Money shall be applied to payment of the Purchase Price due at Closing.

(e) Upon written notification (email) from Purchaser and Seller that the contemplated sale is to be consummated, the Escrow Agent shall deliver the Earnest Money to the closing attorney to be applied towards the payment of the Purchase Price, unless otherwise instructed by the parties hereto. Upon written notification signed by both Seller and Purchaser that the contemplated sale shall not take place or that this Agreement is terminated, the Escrow Agent shall deliver the Earnest Money as provided in this Agreement.

(f) The parties hereto covenant and agree that in performing any of its duties under this Agreement, the Escrow Agent shall not be liable for any loss, costs, or damage which may be incurred as a result of serving as the Escrow Agent hereunder, except for any loss, costs or damage arising out of its willful default or gross negligence. Accordingly, the Escrow Agent shall not incur any liability with respect to (i) any action taken or omitted to be taken in good faith upon advice of its counsel given with respect to any questions relating to the duties and responsibilities of the Escrow Agent hereunder, or (ii) any action taken or omitted to be taken in reliance upon any document, including any written notice of instruction, not only as to its due execution and the validity and effectiveness of its provisions, but also as to the truth and accuracy of any information contained therein, which the Escrow Agent shall in good faith believe to be genuine, to have been signed or presented by a proper person or persons and to conform with the provisions of this Agreement.

(g) In the event of a dispute between the parties hereto sufficient in the sole discretion of the Escrow Agent to justify its doing so, the Escrow Agent shall be entitled to tender unto the registry or custody of the Cobb County Superior Court the Earnest Money, together with such legal pleadings as it deems appropriate, and thereupon be discharged from all further duties, obligations and liability under the terms of this Agreement and on account of it having served as Escrow Agent hereunder.

(h) To the extent permitted by law, Purchaser and Seller hereby agree to indemnify and hold harmless Escrow Agent against any and all losses, claims, damages, liabilities and expenses including without limitation, cost of investigation and attorney's fees and disbursements which may be imposed upon or incurred by Escrow Agent in connection with its serving as Escrow Agent hereunder.

4.0 Purchaser's Inspection Contingency: Within five (5) days from the Effective Date of this Agreement, Seller shall provide Purchaser, if available, copies of all agreements and documents which affect the Property, including, but not limited to, any plans and specifications, drawings, surveys, notices, correspondence, title policies, title reports, title opinions, title documents, mortgages or deeds of trust, declarations, restrictive covenants, easements, licenses, permits and approvals, title exceptions, and any zoning, environmental, soil, engineering, structural, flood, geotechnical studies, reports, letters and tests.

For a period of FORTY-FIVE (45) days from the Effective Date (hereinafter the "**Inspection Period**"), Purchaser, its agents or representatives, at Purchaser's expense and at reasonable times during normal business hours, shall have the right to enter upon the Property to conduct and prepare any and all tests, investigations, reports, studies, and inspections of the Property that Purchaser deems necessary in its sole discretion for the purchase of the Property, including, but not limited to, environmental, structural, geotechnical, soil, topographical, geological, subsurface, engineering, site planning, feasibility studies, title review, and surveys (collectively, the "**Tests**"). Unless otherwise agreed to by Purchaser and Seller, the Inspection Period may be extended for up to fourteen (14) days, if deemed necessary by Purchaser, in Purchaser's sole discretion, upon written request of Purchaser prior to the expiration of the forty-five (45) day Inspection Period referenced herein. Seller shall cooperate in good faith with Purchaser and Purchaser's agents and employees during the Inspection Period and shall provide Purchaser and Purchaser's agents and employees reasonable access to the Property at mutually agreeable times to perform the Tests. Purchaser shall not disrupt or interfere with Seller or Sellers' invitees' use of the Property in connection with the Tests. Further, Purchaser shall not damage or harm the Property in connection with the Tests, and, after completion of the Tests, Purchaser shall restore the Property to substantially the same condition as it was prior to the Tests.

If at any time prior to Closing, the Purchaser finds the property unsuitable for any reason or no reason at all, in its sole discretion, Purchaser may terminate this

Agreement, receive a refund of its Earnest Money paid to the Seller as provided herein, and the parties shall have no further obligations, rights, or duties hereunder. Purchaser assumes all responsibilities for the acts of itself, its agents, or representatives in exercising their rights under this paragraph and to the extent permitted by law agrees to hold Seller harmless of and from any damages resulting therefrom.

5.0 Representations and Warranties: Seller, TO THE BEST OF HIS/HER KNOWLEDGE hereby makes the following representations, warranties and covenants to Purchaser as of the Effective Date. Seller shall remake the following representations and warranties to Purchaser as of the date of Closing. The remaking of such representations, warranties and covenants as of the date of Closing shall be deemed made by Seller's acceptance of the Purchase Price and shall not require further evidence thereof.

(a) This Agreement constitutes a valid and binding obligation of the Seller and is enforceable against Seller in accordance with its terms.

(b) The execution and delivery of all instruments and documents required hereunder to be obtained or authorized by the Seller in order to consummate this transaction have been or will be obtained and authorized as so required.

(c) There are no actions, suits, claims, demands or proceedings of any kind or nature, legal or equitable, affecting the Property or any portion thereof, and there are no liens, special assessments, easements, reservations, restrictions, covenants, encroachments, or encumbrances other than matters of public record affecting the Property.

(d) There are no persons or entities (other than Seller) in possession of the Property and no other persons or entities known to or claiming through the Seller who have any rights to acquire the Property or have any rights or claims therein or thereto or for any portion thereof except as may appear of public record.

(e) There are no outstanding state or federal tax liens, claims or demands against the Property or against the Seller which constitute or will constitute a lien against the Property.

(f) Seller has received no written notification and, to the best of Seller's knowledge and belief, Seller has not received any other type of notification from any individual, corporation, governmental agency, bureau or authority which pertains to or concerns the environmental or ecological condition of the Property, and the environmental and ecological condition of the Property is not in violation of any law, ordinance, rule or regulation applicable thereto.

(g) To the best of the Seller's knowledge, and without obtaining any independent investigation, there presently does not exist and there has never

existed on, above, or under the Property any Hazardous Material, and, neither Seller, nor any other person has ever caused or permitted any Hazardous Materials to be placed, held, located or disposed of, on, under or at the Property or any part thereof. No part of the Property has ever been used as a manufacturing, storage or dump site for Hazardous Materials, nor is any part of the Property affected by any Hazardous Materials Contamination. Notwithstanding any term herein, asbestos was professionally removed from the Property in October, 1992.

Seller agrees that "Hazardous Materials" shall mean: (a) 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 thereunder; (b) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended from time to time, and the Superfund Amendments and Reorganization Act of 1986, as amended from time to time, and regulations promulgated thereunder; (c) asbestos; (d) polychlorinated biphenyls; (e) petroleum, petroleum by-products or petroleum constituents; (f) any substance the presence of which is prohibited by any governmental requirement; and (g) any other substance which by any governmental requirement requires special handling in its collection, storage, treatment or disposal.

"Hazardous Materials Contamination" shall mean the contamination (whether presently existing or hereafter occurring) of any improvements, facilities, soil, ground water, ambient air, subsurface strata, biota or other elements on, or of, the Property by Hazardous Materials, or the contamination of any improvements, facilities, soil, ground water, ambient air, subsurface strata, biota or other elements on, or of, any other property as a result of Hazardous Materials emanating from the Property.

(h) To the best of Seller's knowledge, there are no underground storage tanks located on the Property, and no portion of the Property has ever been used for a garbage dump, landfill or service station or other business selling petroleum or petroleum products.

(i) To the best of Seller's knowledge, neither Seller is, nor will he/she become, a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated Nationals and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities.

(j) All of the representations and warranties in this Section 5.0 are true and correct to the best of Seller's knowledge as of the date of the execution of this Agreement and will remain true and correct throughout the term of this Agreement up to and including the date of Closing; Seller will not take any action during the term of this Agreement which would hamper or impede the consummation of this purchase and sale transaction or which would cause any of the representations and/or warranties made in this Section to become untrue, inaccurate or incomplete in any respect; Seller shall undertake those acts necessary to insure that the representations and warranties set forth herein remain true, accurate and complete during the term of this Agreement and will notify Purchaser promptly of any occurrence, notification or variation in the representations or warranties contained herein; Seller will indemnify, defend, and hold Purchaser harmless from and against any and all claims, counterclaims, suits, costs and expenses resulting from the untruthfulness of any of the representations or warranties of Seller herein.

(k) The Seller has complied with the Georgia Security and Immigration Compliance Act as set forth in O.C.G.A. § 13-10-90 *et seq* and the federal Systematic Alien Verification for Entitlements (SAVE) Program.

(l) In the event any of the representations, warranties or covenants contained in this Section above are not true on the date of Closing, Purchaser, at Purchaser's election, shall be entitled to exercise any and all rights and remedies which may be available to Purchaser, at law, at equity and under the terms of this Agreement. These terms shall survive the Closing.

6.0 Title: Seller agrees to convey "Marketable Title" to the Property to Purchaser by Warranty Deed, subject only to (1) zoning ordinances affecting the property, (2) utility, sewer and drainage easements of record, and (3) right of ways of all public roads, together with any other exceptions which Purchaser may accept, all of which matters shall be deemed to be permitted title exceptions. "Marketable Title" shall mean title which is insurable as such by a reputable title insurance company, duly licensed and regularly doing business in the State of Georgia, at its standard rates, with only the exceptions set out herein together with standard exceptions and conditions. Purchaser shall examine title to the Property and in the event that such search shall reveal any additional title defects other than permitted exceptions or items which would customarily be removed at closing (such as deeds to secure debt), or in the event that the Survey reveals matters objectionable to Purchaser, then, upon written notice from Purchaser, Seller shall remove or cure such items. Seller shall have Ten (10) days after such notification to cure all such defects and if Seller should fail to cure such defects within such time, then Purchaser shall have the following options: (a) cancel this Agreement in the same fashion and in accordance with the termination terms herein, (b) to accept title to the Property subject to such additional defects as have not been removed, all of which shall thereafter be deemed to be permitted exceptions, or (c) grant Seller additional time to cure such defects.

Notwithstanding anything to the contrary contained in this Agreement, Seller shall be obligated to remove at Seller's sole cost (regardless of whether Purchaser objects thereto) all deeds of trust, mortgages, mechanics' liens, UCC filings, judgments and other monetary liens voluntarily imposed on the Property by Seller or arising against the Property as a result of Seller's (or its agents' or affiliates') actions or negligent or intentional omissions or improvements made to, or services rendered in connection with the Property at the request of, or on behalf of, Seller; it being the intent of the parties that the Property be conveyed to Buyer free and clear of all such monetary liens, and in no event shall any such monetary liens be deemed Permitted Title Exceptions.

7.0 Default:

(a) In the event of a default, breach, or a breach of warranty or representation contained in this Agreement and prior to the exercise of the rights hereinafter provided to either party, the defaulting party shall be entitled to written notice of the specific default, breach, or other problem and to **Five (5) calendar days** after the receipt of that written notice in which to cure said default, breach or other problem. If such default, breach or other problem is not corrected within that period, then an event of default shall have occurred and the parties shall be entitled to the rights and remedies hereinafter set forth. Notwithstanding the foregoing provisions, Purchaser, in its sole discretion, shall have the right to extend the time period in which Seller may cure or otherwise correct any specified default, breach or problem for an additional period not to exceed thirty (30) calendar days. Upon Purchaser's written agreement to so extend, Seller shall be entitled to extend the date of Closing, if required, to a date not less than thirty (30) calendar days from the date on which Seller notifies Purchaser in writing that any such default, breach or other problem has been cured and provides Purchaser with proper documentation evidencing that fact.

(b) In the event Seller breaches any warranty or representation contained in this Agreement or fails to comply with or perform any of the conditions, covenants, or agreements contained herein and further provided that Seller fails to cure after written notice, then, at Purchaser's sole election:

- (i) Purchaser shall be entitled, upon giving written notice to Seller, to terminate this Agreement whereupon the Earnest Money shall be immediately returned to Purchaser and Seller shall immediately reimburse Purchaser for all costs incurred by Purchaser in connection with the transaction contemplated by this Agreement including, but not limited to, title exam fees, Testing costs, engineering costs and attorney's fees; or
- (ii) Purchaser shall be entitled to file suit in the Superior Court of Cobb County, Georgia for specific performance of Seller's obligations under and pursuant to the terms and provisions of this Agreement;

provided, however if the remedy of specific performance is not available due to the acts or omissions of Seller, then Purchaser shall have all remedies at law and in equity.

(c) In the event Purchaser fails to comply with or perform any of the covenants, agreements or other obligations to be performed by Purchaser and fails to cure such problem within the period provided above, then Seller, as Seller's sole and exclusive remedy, shall be entitled to receive the Earnest Money as full liquidated damages. The parties hereto hereby acknowledge that it is impossible to more precisely estimate the specific damage to be suffered by Seller, and the parties hereto expressly acknowledge and intend that this provision shall be a provision for liquidated damages pursuant to the provisions of O.C.G.A. § 13-6-7 and not as a penalty. Thereafter, all rights, liabilities and obligations of Purchaser to Seller under this Agreement shall terminate, except as otherwise provided herein. In no event shall Seller be entitled to initiate litigation seeking legal or equitable remedies against Purchaser.

8.0 Closing: The consummation of the transaction described herein (herein referred to as "**Closing**") will be held at the offices of Campbell & Brannon, LLC, or at a mutually agreeable location, including by a remote electronic closing, exchange of documents by electronic mail and/or FEDEX and by wire transfer of funds, on or before FORTY-FIVE (45) days from the conclusion of the Inspection Period, unless the parties agree otherwise in writing or additional time is granted to remove title defects. Closing shall be contingent upon Purchaser obtaining sufficient financing, in Purchaser's sole discretion, for the purchase of the Property contemplated herein. Upon Closing, Seller shall deliver immediate possession of the Property to Purchaser, including the Land and Improvements.

9.0 Lease back of Property: As part of this Agreement, Purchaser and Seller agree that Property Owner shall sign at Closing a lease agreement ("**Lease**") that begins at the time the Closing is consummated, by which PSDDA leases back to Seller the Property, including all Land and Improvements, for a period of SIX (6) MONTHS beginning on the date of Closing for a monthly rental payment amount of SEVEN HUNDRED DOLLARS (\$700.00), with the first rental payment being due on the date that is Six (6) weeks after the date of Closing. A copy of the Lease that shall be executed at Closing, in the same or substantially similar form, is attached hereto as **Exhibit "B"** and incorporated herein by reference thereto. All Lease terms shall survive the Closing. Notwithstanding any term herein, if the Closing does not occur, for any reason or no reason at all, then the Lease shall not be executed, and the Parties shall have no further obligations to one another. At Seller's sole cost and expense, Seller must cause to be maintained at all times during this Lease Agreement full coverage business owner's policy/policies of insurance, including but not limited to coverage for the full replacement cost of all contents, and with comprehensive general liability coverage for any person, customer, invitee or licensee on the Property, with limits of insurance in an amount no less than One Hundred Thousand Dollars (\$100,000.00) per person and Two

Hundred Fifty Thousand Dollars (\$250,000.00) per occurrence. Seller shall be solely liable and assume the risk of loss for all liability, personal injury, property damage and/or damage to any person or contents located on the Property during the Lease. In the event of any casualty or destruction of the Property during the Lease, the Lease shall immediately terminate and the PSDDA shall be entitled to the full possession of the Property. If Seller desires to keep any contents, then Seller must remove, prior to the expiration of the Lease Agreement, any contents on the Property, Land and/or Improvements located on the Property. Immediately upon expiration of the Lease Agreement, any contents that remain in/on the Property, Land and/or Improvements shall be the sole property of Purchaser. Seller must provide PSDDA with a copy of each policy of insurance and insurance certificate referenced herein no later than at Closing.

- 10.0 Seller's Closing Documents:** Conveyance will be made by Warranty Deed. Seller, if requested by Purchaser, will also convey by quitclaim deed to Purchaser any interest which it may have in the Property as shown by a survey. Seller will also execute such other documents and affidavits as reasonably necessary to convey fee simple title to Purchaser and enable it to obtain title insurance.
- 11.0 Costs:** Seller shall pay all costs and expenses for releasing any encumbrances or liens affecting the Property, curing any title defects, Seller's attorney's fees, if any, and any other costs necessary for Seller to perform its obligations under this Purchase and Sale Agreement. Purchaser shall pay all closing costs, including costs and expenses for preparing and recording the deed, Purchaser's attorney's fees, and any other costs necessary for Purchaser to perform its obligations under this Purchase and Sale Agreement, including Escrow Agent's fees.
- 12.0 Waiver:** The failure of any party to exercise any right hereunder, or to insist upon strict compliance with the terms and conditions of the Agreement shall not constitute a waiver hereunder.
- 13.0 Entire Agreement:** This Agreement constitutes the entire agreement and understanding concerning the purchase and sale of the Property contemplated hereby. This Agreement may not be changed orally, but only by an amendment in writing signed by Purchaser and Seller.
- 14.0 Notice:** All notices shall be in writing and shall be deemed to have been properly given when delivered in person, when emailed, or when deposited in the United States Mail, with adequate postage, and sent by registered or certified mail with return receipt requested, to the addresses set out below; or alternatively, for any person providing his or her e-mail address below shall be deemed to have consented to the acceptability of e-mail notifications:

PURCHASER:

City of Powder Springs

Downtown Development Authority
Attn: Al Thurman
City Hall
4484 Marietta Street
Powder Springs, GA 30127
EMAIL: Althurman@cityofpowdersprings.org

With a copy to: Fred Bentley, Jr.
Bentley, Bentley & Bentley
241 Washington Avenue
Marietta, Georgia 30060
EMAIL: fred@thebentleyfirm.com

SELLER:

DUOC and CRYSTAL NGUYEN
4851 Devonhurst Chase
Powder Springs, GA 30127
EMAIL: Crystalhn78@gmail.com

ESCROW AGENT:

Campbell & Brannon, LLC
ATTN: Ed Goodgame
5565 Glenridge Connector, Ste 350
Atlanta, GA 30342
EMAIL: EGoodgame@campbellandbrannon.com

With a copy to: Fred Bentley, Jr.
Bentley, Bentley & Bentley
241 Washington Avenue
Marietta, Georgia 30060
EMAIL: fred@thebentleyfirm.com

The date of personal delivery, as evidenced by the courier's receipt, the date of email delivery, or three (3) calendar days after mailing if mailed via U.S.P.S. shall be the effective date of said notice.

- 15.0 **Survival:** Any provisions of this Agreement and all warranties, representations and covenants made herein, shall survive the Closing.
- 16.0 **Governing Law:** This Agreement shall be governed by the laws of the State of Georgia. Venue and jurisdiction under this Agreement shall lie in the Superior Court of Cobb County, Georgia.

- 17.0 **Taxes:** Real estate taxes for the year of the Closing shall be prorated as of the date of the Closing. In the event the current year's taxes are not available at the time of the Closing, the proration shall be based upon the previous year's taxes, and Purchaser and Seller agree to adjust between themselves any difference in the tax proration after the actual tax bill for the year of the Closing is available.
- 18.0 **Binding Effect:** The Agreement shall be fully binding on and enforceable against all parties hereto and their respective heirs, administrators, successors, and permitted assigns.
- 19.0 **TIME IS OF THE ESSENCE OF THIS AGREEMENT.**
- 20.0 **Counterparts:** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which shall constitute one Agreement, and the signature of any party to any counterpart (or printed product of a facsimile or emailed counterpart) shall be deemed to be a signature to, and may be appended to any other counterpart.
- 21.0 **Severability:** This Agreement is intended to be performed in accordance with and only to the extent permitted by all applicable laws, ordinances, rules and regulations. If any of the provisions of this Agreement or the application thereof to any person or circumstances shall for any reason and to any extent be invalid or unenforceable, then the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby but shall be enforced to the greatest extent permitted by law.
- 22.0 **Further Assurances.** On and after the Effective Date of this Agreement, Seller and Purchaser shall, at the request of the other, make, execute and deliver or obtain and deliver all such affidavits, deeds, approvals, certificates, resolutions and other instruments and documents, and shall do or cause to be done all such other things which either party may reasonably require to effectuate the provisions and intention of this Agreement.
- 23.0 **Assignment.** Notwithstanding anything to the contrary, Purchaser shall have the right to assign its rights and obligations under this Agreement to any person, entity or authority. Prior to Closing, Purchaser shall notify Seller of the name of any entity who shall take title to the Property, so that the closing documents shall properly reflect the name of such entity.
- 24.0 **Inurement.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their successors and assigns, if any.
- 25.0 **No Other Agreements.** There are no options or rights of first refusal, recorded or unrecorded, affecting the Property, nor any other unrecorded agreements affecting the development or use of the Property. There are no commercial, farm or other leases applicable to or affecting the Property and no other parties in possession or adverse possession of the Property. To the extent that any such leases exist,

Seller shall obtain a termination thereof prior to the expiration of the Inspection Period.

- 26.0 Commissions.** Purchaser has, but Seller does not have, a Broker for this transaction to which real estate sales or brokerage commissions or like commissions are or may be due in connection with this transaction as a result of the act of the Seller so warranting. Purchaser's Broker agrees and consent to the terms herein. Purchaser's Broker shall be paid a commission at closing by Purchaser equal to Ten percent (10%) of the Purchase Price (the "**Commission**"). Such Commission shall be payable at closing to Brian Patton Commercial. Seller shall indemnify, defend and hold Purchaser harmless from and against any claims by any broker and/or any other third parties made by or through the acts of Seller for real estate or brokerage commissions, or a finder's fee, in connection with the transactions provided for herein, and all costs and expenses incurred by Purchaser in connection therewith including, but not limited to, reasonable attorneys' fees.
- 27.0 Construction.** The parties agree that each party and/or its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any Addendum, amendments or Exhibits hereto.
- 28.0 Special Stipulations:** Notwithstanding anything herein to the contrary, the parties agree to the following:
- (a) None.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

WITNESS WHEREOF, the parties have set their hands and seals and agreed to be bound hereby as of the date and year first written above.

**PURCHASER:
CITY OF POWDER SPRINGS
DOWNTOWN DEVELOPMENT
AUTHORITY**

By: Albert Thurman

Its: Chairman

Date: 10-16-20

[SIGNATURES CONTINUE ON NEXT PAGE]

SELLER:

DUOC NGUYEN

Duoc Nguyen

PRINT NAME: Duoc Nguyen

Date: 10/15/2020

Charlotte S. Wingard
[Signature]

Notary Public
My Commission Expires: 11/1/2022



SELLER:

CRYSTAL NGUYEN

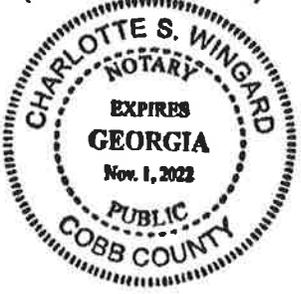
Crystal Nguyen "*Crystal Nguyen*"

PRINT NAME: Charlotte S. Wingard

Date: 10/15/20

Notary Public
My Commission Expires: *[Signature]* 11/1/22

(NOTARY SEAL)



[SIGNATURES CONTINUE ON NEXT PAGE]

SELLER:

DUOC NGUYEN

PRINT NAME: _____

Date: _____

Notary Public
My Commission Expires:

(NOTARY SEAL)

SELLER:

CRYSTAL NGUYEN

PRINT NAME: _____

Date: _____

Notary Public
My Commission Expires:

(NOTARY SEAL)

[SIGNATURES CONTINUE ON NEXT PAGE]

BROKER FOR PURCHASER:



BRIAN PATTON COMMERCIAL

Date: 10/19/20

[SIGNATURES CONTINUE ON NEXT PAGE]

ESCROW AGENT ACCEPTANCE:

The undersigned Escrow Agent accepts this Agreement and agrees to perform the acts applicable to Escrow Agent in accordance with the terms of this Agreement. Escrow Agent acknowledges its receipt of both the Deposit and a fully executed original or electronic copy of this Agreement as of the date set forth underneath its signature below.

**ESCROW AGENT:
Campbell & Brannon, LLC**

By: _____

Date: _____

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

EXHIBIT B
LEASE AGREEMENT