AGREEMENT OF PURCHASE AND SALE

This Agreement of Purchase and Sale ("**Agreement**"), dated as of the _____ day of _____, 2018 (the "**Effective Date**"), is by and between **MILL STREET DEVELOPMENT ONE LLC**, a Virginia limited liability company (on behalf of itself and any permitted successors and assigns, "**Seller**" and/or "**Declarant**")), and the **TOWN OF VIENNA, VIRGINIA**, a Virginia municipal corporation (the "**Town**").

RECITALS:

WHEREAS, Seller is the owner of record of certain real property comprising approximately 10,160 square feet, and identified as 223-241 Mill Street, NE, Vienna, Virginia 22180 (the "**Land**"), having acquired the Land by deed recorded among the land records of Fairfax County, Virginia on May 24, 2016, in Deed Book 24554, at Page 0821; and

WHEREAS, the Land is currently improved by a commercial building and surface parking ("**Existing Improvements**") which, together with the Land, and all rights, privileges and interests appurtenant to the Land and Existing Improvements, including all rights of way, easements, appurtenances and all other rights pertaining thereto are referred to collectively as the "**Property**"; and

WHEREAS, Seller desires to demolish the Existing Improvements and to redevelop the Property (the "**Project**") to include a new, four-story (with basement) commercial building (the "**New Building**"), pursuant to conceptual plans and detailed preliminary elevations presented and reviewed by the Town on May 30, 2018 (collectively, the "**Development Plans**"), a list of which is attached hereto as **Exhibit "A"**, a **"Detailed Floor Plan"** of the proposed public parking facility, a copy of which is attached hereto as **Exhibit "B"**, a Condominium Unit Legal Description, a copy of which is attached hereto as **Exhibit "C"**, and a list of general design elements to be incorporated into the final architectural and engineering design plans, a copy of which is attached hereto as **Exhibit "D"**, and site plan modifications to be requested by Seller a copy of which is attached hereto as Exhibit "E"; and

WHEREAS, Seller desires to sell to the Town, and the Town desires to purchase from Seller, a portion of the New Building for use as a public parking facility, pursuant to the terms and conditions set forth in this Agreement, and in accordance with the Development Plans and Detailed Floor Plan.

AGREEMENT:

NOW, THEREFORE, for and in consideration of the recitals, the mutual promises, conditions and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and the Town agree as follows:

ARTICLE I

PURCHASE AND SALE OF PROPERTY (CONDOMINIUM UNIT)

Section 1.1 Sale.

(a) Subject to the provisions of this Agreement and the public appropriation of funds, Seller agrees to sell to the Town, and the Town agrees to purchase from Seller, a condominium unit comprising the entirety of the second floor of the New Building and associated vehicle ramp(s) (the "**Condominium Unit**"), together with an undivided interest in the general and any and all interests in the limited common elements of the Condominium appurtenant to the Condominium Unit (collectively, with the Condominium Unit, the "**To Be Acquired Property**"), as more particularly described on **Exhibit "C"** (which description may be amended following the Town obtaining a commitment for title insurance as provided in this Agreement), which Condominium Unit is to be constructed by Seller in substantial accordance with the Development Plans and as otherwise shown on and required by the provisions of **Exhibit "A"**, **Exhibit "B"**, **Exhibit "D"**, and Exhibit "E", and in accordance with any and all zoning approvals, including an approved Site Plan Modification, as part of a proposed non-residential condominium to be located on all or a portion of the Land, to be known as Mill Street Vienna Commercial Condominium (the "**Condominium**").

(b) The Condominium Unit to be conveyed to the Town shall include a pro-rata share of all common elements and applicable limited common elements within the Condominium, including, without limitation and by way of illustration (subject to the final construction and composition of the Condominium), any common driveways, stairs, hallways, utility rooms and other to-be-enumerated amenities and appurtenances. Seller intends to create the Condominium at or prior to the date of substantial completion of the Project, and it is the intent of Seller, and the Town's understanding, that thereafter the Project will be managed and operated in accordance with the Condominium Instruments (as hereinafter defined). This Agreement is specifically contingent upon the formal acceptance of the Condominium Instruments by the Town Council during the Study and Financing Period.

(c) Seller and the Town agree that the square footage of the Condominium Unit will be measured and calculated, and certified, by Seller's architect after substantial completion of the Condominium Unit, in a manner appropriate for the garage and parking ramp uses constituting the Condominium Unit. The Town further acknowledges that the Condominium Instruments, including the Condominium Plans to be attached to the Declaration of Condominium (the "**Declaration**"), will show the size of the Condominium Unit calculated in accordance with the requirements of Chapter 4.2 of Title 55 of the Code of Virginia (the "**Condominium Act**") and the Declaration to be approximately 43,000 gross square feet of space. The Town acknowledges that the square footages as designed and finally determined by Seller's architect are likely to differ from the preliminary measures referenced in this Agreement. The Town agrees that such variance shall not be deemed to be material and shall not result in the Town having a termination right under this Agreement, nor shall any variance result in an adjustment to the Purchase Price, except in accordance with Section 1.2(f).

Section 1.2 Purchase Price and Terms of Payment.

The total purchase price for the To Be Acquired Property ("**Purchase Price**") shall be Four Million Six Hundred Thousand and No/100 Dollars ($4,600,000.00), subject to adjustment as provided in this Agreement, and will be paid in the following manner:

(a) Within five (5) business days following the Effective Date, the Town shall deposit in escrow with Stewart Title and Escrow, Inc. ("**Escrow Agent**"), 10505 Judicial Drive, Suite 300, Fairfax, Virginia 22030, attention: Mark Fitzgerald, Senior Vice President, cash or other immediately available funds in the amount of Two Hundred and Thirty Thousand and No/100 Dollars ($230,000.00) (the "**Initial Deposit**"). The Initial Deposit, together with any other deposits made hereunder, together with interest thereon, will be collectively referred to herein as the "**Deposit**." Escrow Agent shall acknowledge receipt of the Initial Deposit (and any additional portions of the Deposit as provided herein) and hold the same in accordance with the terms of this Agreement. The Deposit shall be fully refundable to the Town until the expiration or sooner termination of the Study and Financing Period (as defined in Section 2.2 hereof). If this Agreement is not terminated pursuant to Section 2.2, then the Deposit shall be deemed to be fully earned by Seller and nonrefundable to the Town, except as provided in Section 10.2, or as otherwise provided under this Agreement. The Initial Deposit shall be released to Seller following the expiration or sooner termination of the Study and Financing Period, although a condition precedent to such release shall be Seller executing and causing to be recorded (at Seller's cost) a deed of trust against the Land securing ("**Deed of Trust**") the amount of the Initial Deposit (and agreeing that such deed of trust shall be amended, as applicable, to include any additional payments to be made by the Town to Seller under this Agreement). Such Deed of Trust shall be subject to the approval of Seller's existing lender and future construction lender, shall be in second position behind such lender's deed of trust lien unless agreed otherwise by the lender, and if not approved by any such lender, the Town will consider in its reasonable discretion such alternate security for the release of installments of the Deposit, as may be proposed by Seller, such as but not limited to escrowed funds or letters of credit. The total Deposit, including both amounts released to Seller and amounts held by Escrow Agent, shall be credited against the Purchase Price at Closing. Interest on the Deposit shall be deemed to be earned by the Town.

(b) Within five (5) business days following final legislative and ministerial approvals of the architectural and engineering designs, and any other required land use and associated approvals, being granted by the Town and Fairfax County, as applicable, the Town shall deposit in escrow with Escrow Agent an additional Two Hundred and Thirty Thousand and No/100 Dollars ($230,000.00) (the "**Second Deposit**"). If the Study and Financing Period has expired, the Second Deposit shall be treated, for all purposes under this Agreement, in the same manner and released under the same conditions as the Initial Deposit.

(c) Within five (5) business days following Seller providing evidence reasonably satisfactory to the Town that construction of the New Building has commenced and the foundation/basement of the New Building has been completed, and following evidence being provided to the Town that Seller has obtained and closed on a construction loan in the full budgeted amount for construction of the Project, together with an appropriate contingency amount, the Town shall deposit in escrow with Escrow Agent an additional One Million Three Hundred Eighty Thousand and No/100 Dollars ($1,380,000.00) (the "**Third Deposit**"). The Buyer, subject to a confidentiality and non-disclosure agreement, shall have the right to review the construction loan application and final closing documents. The Third Deposit shall be treated, for all purposes under this Agreement, in the same manner and released under the same conditions as the Initial Deposit and the Second Deposit.

(d) Within five (5) business days following Seller providing evidence reasonably satisfactory to the Town that construction of the New Building has proceeded to the point that the New Building is under roof, the Town shall deposit in escrow with Escrow Agent an additional One Million Three Hundred Eighty Thousand and No/100 Dollars ($1,380,000.00) (the "**Fourth Deposit**"). The Fourth Deposit shall be treated, for all purposes under this Agreement, in the same manner and released under the same conditions as the Initial Deposit, the Second Deposit, and the Third Deposit.

(e) The balance of the Purchase Price (plus or minus the prorations as set forth herein and the adjustments set forth in Section 7.3) shall be paid to Seller in cash or by wire transfer of other immediately available funds at the consummation of the transaction(s) that are contemplated by this Agreement (the "**Closing**").

(f) Notwithstanding anything else in this Agreement to the contrary, the parties agree that the Condominium Unit shall be constructed and striped in substantial compliance with **Exhibit "B"**, except to conform to engineering issues and comments in connection with permit review of the plans and specifications therefor by the Town of Vienna and Fairfax County. During the Study and Financing Period (defined below), Seller shall cause its design team to refine and improve the Detailed Floor Plan of the Garage Unit in accordance with code and good engineering practice. Seller shall provide such updates of the Detailed Floor Plan from time to time but in any event not later than thirty (30) days after the Effective Date, for comment and approval by Town. Seller and Town will use diligent efforts to agree to a final Detailed Floor Plan within the Study and Financing Period, and upon such approval, Seller and Town will enter into an amendment of this Agreement replacing the current **Exhibit "B"** with the approved final Detailed Floor Plan. If, prior to Closing, the number of building code–compliant parking spaces available is reduced to less than 114, the Town may terminate this Agreement by written notice to Seller to be effective within thirty (30) days following delivery thereof. If Seller causes the Condominium Unit to contain 114 or more parking spaces within such 30-day period, this Agreement shall continue. If Seller does not cause the Condominium Unit to contain 114 or more parking spaces within such 30-day period, this Agreement shall terminate and all Deposits shall be returned to the Town. If after the acceptance of final Detailed Floor Plan the number of parking spaces actually delivered is fewer than 121, then the Purchase Price shall be reduced by $36,220.00 for each parking space fewer than the number specified in the Detailed Floor Plan. However, if the number of spaces is below 25% of the number specified, the Town, in its sole discretion, may elect to receive a reduction in the Purchase price or terminate the Agreement and all Deposits and payments shall be returned to the Town.

ARTICLE II

ACCESS TO PROPERTY; STUDY AND FINANCING PERIOD; CONDITIONS

Section 2.1 Access to the Property; Due Diligence Materials.

From and after the Effective Date, Seller shall provide the Town and its consultants and other agents and representatives with access to the Property to perform the Town's inspections and review. Seller has delivered or made available to the Town, or shall within the Delivery Period (as defined below) or as soon thereafter as reasonably available in the case of the

Condominium Instruments, deliver or make available to the Town, copies of any and all of the following (the "**Due Diligence Materials**"), to the extent in Seller's possession or reasonably obtainable by Seller: (a) The proposed Declaration and Bylaws for the Condominium, including the plats and plans and all other exhibits thereto when available, and drafts of any rules and regulations to be promulgated by the Condominium Association or the Board of Directors of the Condominium Association (collectively, the "**Condominium Instruments**"); (b) any existing title reports or title abstracts; (c) any existing surveys; (d) any environmental reports; (e) any other documentation reasonably requested by the Town. The "**Delivery Period**" shall mean the period which ends five (5) business days following the Effective Date (or such later date as any such material is available to Seller). The Town may in its discretion review any or all of the following within the applicable time periods described in this Agreement:

(a) Title to the Property and survey matters (if applicable).

(b) The Due Diligence Materials.

(c) The physical condition of the Property.

(d) The zoning, land use, building, environmental and other statutes, rules, or regulations applicable to the Property.

(e) Seller's plan for development of the Project, including Seller's identification of source(s) of funds for construction, process for securing such funding, and timeline(s) for construction and delivery of the Condominium Unit.

(f) Seller's plan for initial funding of reserves for the Condominium and for ongoing operation of the Condominium.

(g) Any other matters that the Town deems relevant.

Section 2.2 Study and Financing Period.

(a) The Town shall have until 5:00 p.m. Eastern Time on the date which is ninety (90) calendar days following the Effective Date (such period being referred to herein as the "**Study and Financing Period**") to review and approve the matters described in Sections 2.1 above in the Town's sole and absolute discretion, and to determine how and if it plans to finance the amounts it is obligated to pay under this Agreement or otherwise secure such funds. If the Town determines that it chooses to proceed ("**Proceed Notice**") with the purchase of the To Be Acquired Property, then the Town shall, before the expiration of the Study and Financing Period, so notify Seller in writing. If the Town fails to timely tender a Proceed Notice to Seller, for any reason or for no reason, then the Deposit shall be returned to the Town, this Agreement shall terminate without further action of the parties, and neither party shall have any further rights or obligations hereunder except as provided herein. Notwithstanding the foregoing, the Town shall have a minimum of fifteen (15) business days to review and approve the proposed Condominium Instruments. Accordingly, if the Condominium Instruments are not provided to the Town for review in sufficient time to allow the Town a minimum of fifteen (15) business days to review and approve the same prior to the expiration of the Study and Finance Period, the Study and

Finance Period shall be extended by sufficient days to ensure a fifteen (15) business day review period following the Town's receipt of completed drafts of the same.

Section 2.3 Conditions Precedent to The Town's Obligations at Closing.

It shall be a condition to the Town's obligation to purchase the To Be Acquired Property that each and every one of the following conditions shall have been satisfied in all material respects as of the Closing Date (or waived by the Town).

(a) Each of Seller's representations and warranties shall be true and complete in all material respects as if made on and as of the Closing Date.

(b) Seller shall have performed and complied in all material respects with all covenants and conditions required by this Agreement to be performed or complied with at or prior to the Closing Date.

(c) The Town shall be able to obtain the Title Policy in accordance with Section 4.2.

(d) In the event of the failure of any condition precedent set forth in this Section 2.3, and Seller's failure to cure the same prior to the later of (A) the Closing Date, or (B) the date which is ten (10) days after Seller's receipt of written notice of such failure, the Town, at its sole election but without waiver of its rights under Section 10.2 (dealing with certain defaults of Seller), may (i) terminate this Agreement (and receive a return of the Deposit), (ii) waive the condition and proceed to Closing or (iii) extend the Closing Date for such additional period of time, not to exceed sixty (60) days, as may be reasonably required to allow Seller to remedy such failure.

Section 2.4 Conditions Precedent to Seller's Obligations at Closing.

It shall be a condition to Seller's obligation to sell the Property that each and every one of the following conditions shall have been satisfied as of the Closing Date (or waived by Seller):

(a) Each of the Town's representations and warranties shall be true and complete in all material respects as if made on and as of the Closing Date.

(b) The Town shall have performed and complied in all material respects with all covenants and conditions required by this Agreement to be performed or complied with at or prior to the Closing Date.

(c) In the event of the failure of any condition precedent set forth in this Section 2.4, and the Town's failure to cure the same prior to the later of (A) the Closing Date, or (B) for failures of the Town's conditions precedent other than the Town's failure to proceed to Closing, the date which is ten (10) days after the Town's receipt of written notice of such failure, Seller, at its sole election but without waiver of its rights under Section 10.1 (dealing with certain defaults of the Town), may (i) terminate this Agreement, (ii) waive the condition and proceed to

Closing or (iii) extend the Closing Date for such additional period of time, not to exceed sixty (60) days, as may be reasonably required to allow such failure to be remedied.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

Section 3.1 Representations and Warranties of Seller.

Seller hereby makes the following representations and warranties with respect to the Property as of the Effective Date and the Closing Date:

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

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

(c) This Agreement (i) has been, and all documents executed by Seller which are to be delivered to the Town at Closing will be, duly authorized, executed and delivered by Seller, (ii) does not and such other documents will not violate any provision of any agreement or judicial order to which Seller is a party or to which Seller or, to Seller's actual knowledge, the Property is subject, and (iii) does not require any consent or approval or vote that has not been taken or given, or as of the Closing Date shall not have been taken or given.

(d) There is no litigation or governmental proceeding (including, but not limited to any condemnation proceeding) pending or, to Seller's knowledge, threatened in writing, with respect to Seller which impairs Seller's ability to perform its obligations under this Agreement.

(e) Seller has received no written notice from any governmental authority of any violation of any law applicable to the Property.

(f) To Seller's actual knowledge, all of the Due Diligence Materials delivered or made available by Seller to the Town in connection with the Property are true, correct, and complete copies of such items in Seller's possession.

(g) Seller is aware that ground water is present at and around the Land and agrees that the presence of ground water near or under the surface of the Land will not constitute an event of force majeure.

(h) Seller is a duly organized and validly existing limited liability company under the laws of the Commonwealth of Virginia.

(i) Seller has not granted to any party any license, lease, or other right relating to the use or possession of the To Be Acquired Property or any part thereof, including, without limitation, any leases of space in the Property, except as disclosed to the Town; Seller reserves the right to lease, license, sell or otherwise dispose of portions of the Property other than the To Be Acquired Property.

(j) Seller has not received any written notice from any governmental or regulatory authority of the presence or release of any Hazardous Materials (as defined in Section 3.6(a)(2)) that would cause the Property to be in violation of any applicable Environmental Laws (as defined in Section 3.6(a)(2)) and that remains uncured, nor has Seller received written notice from any applicable governmental or regulatory authority. Except as otherwise disclosed in such environmental reports, Seller has no actual knowledge that (i) there are Hazardous Substances located at, on or under the Property, (ii) Hazardous Substances have leaked, escaped or been discharged, emitted or otherwise released from the Land underlying the Property onto any adjoining properties or from any adjoining property onto the Property, or (iii) the Property is not in compliance with applicable Environmental Laws.

(k) Neither Seller, nor any affiliate controlled by Seller, nor to Seller's knowledge any affiliate who directly or indirectly controls Seller is, nor will they become during the term of this Agreement: (i) 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 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), regulation, or other governmental action, and to Seller's knowledge Seller is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities, or (ii) a "specially designated global terrorist" or other person listed in Appendix A to Chapter V of 31 C.F.R., as the same has been from time to time updated and amended, or a person either: (i) included within the term "designated national" as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515 or (ii) designated under Sections 1(a), 1(b), 1(c) or 1(d) of Executive Order No. 13224, 66 Fed. Reg. 49079 (published September 25, 2001) or a person similarly designated under any related enabling legislation or any other similar executive orders.

Each of the representations and warranties of Seller contained in this Section 3.1: (1) shall be true in all material respects as of the date of Closing, subject in each case to (A) any Exception Matters (as defined below), and (B) other matters expressly permitted in this Agreement or otherwise specifically approved in writing; and (2) shall survive the Closing as provided herein. As used herein, the terms "best of Seller's knowledge," "Seller's actual knowledge," "Seller's knowledge" and any similar phrase shall mean the current actual knowledge of Ian Black, Michael Postal and Jason Iannotti (the "Knowledge Parties") who are the individuals having responsibility for general oversight of the Property on behalf of Seller; provided, however, that none of Ian Black, Michael Postal, or Jason Iannotti shall have any personal liability in connection with, or arising out of, this Agreement.

Section 3.2 No Liability for Exception Matters.

As used herein, the term "**Exception Matter**" shall refer to a matter which would make a representation or warranty of Seller contained in this Agreement untrue or incorrect and which is disclosed to the Town in writing by Seller before Closing or of which the Town obtains knowledge before the Closing. If the Town first obtains knowledge of any material Exception Matter after the expiration of the Study and Financing Period and prior to Closing and such Exception Matter was not the result of the breach of this Agreement, negligence or willful misconduct of Seller, its affiliates or their respective agents, the Town's sole remedy shall be to terminate this Agreement on the basis thereof, upon written notice to Seller within the earlier of (a) five (5) calendar days following the Town's obtaining knowledge of such Exception Matter or (b) the Closing, whichever occurs first, in which event the Deposit shall be returned to the Town, unless within five (5) business days after receipt of such notice or by the Closing, as the case may be, Seller notifies the Town in writing that it elects to attempt to cure or remedy such Exception Matter, in which event there shall be no return of the Deposit unless and until Seller is unable to so cure or remedy within the time period set forth below. Seller shall be entitled to extend the Closing Date (as defined in Section 8.2 below) for up to ten (10) business days in order to attempt to cure or remedy any Exception Matter. The Town's failure to give notice within five (5) calendar days after it has obtained knowledge of a material Exception Matter shall be deemed a waiver by the Town of such Exception Matter. Seller's failure to timely cure any Exception Matter that it has agreed to cure shall be a material breach of this Agreement. Upon any termination of this Agreement, neither party shall have any further rights or obligations hereunder, except as provided herein. If the Town obtains knowledge of any Exception Matter before the Closing, but nonetheless elects to proceed with the acquisition of the To Be Acquired Property, Seller shall have no liability with respect to such Exception Matter, notwithstanding any contrary provision, covenant, representation or warranty contained in this Agreement.

Section 3.3 Survival of Seller's Representations and Warranties of Sale.

Seller agrees to indemnify and hold the Town harmless from any costs and expenses arising out of or relating to any breach or untruth of Seller's representations and warranties contained herein. The foregoing agreement to indemnify and hold harmless, and the representations and warranties of Seller contained herein, shall survive for a period of one (1) calendar year after the Closing, after which such indemnities, representations and warranties shall expire and be of no further force or effect. Any claim which the Town may have against Seller for a breach of any such representation or warranty, whether such breach is known or unknown, which is not specifically asserted by written notice to Seller within such period shall not be valid or effective, and Seller shall have no liability with respect thereto. Seller shall have no liability to the Town for a misrepresentation or breach of representation or warranty under this Agreement, if the aggregate amount of all claims by the Town of misrepresentation or breach of representation or warranty is less than $10,000.00. The maximum amount for which Seller shall be liable, and for which the Town shall have the right to assert claims against Seller, arising out of any and all misrepresentations or breaches of any representation or warranty under this Agreement shall not exceed the sum of $230,000.00, in the aggregate.

Section 3.4 Representations and Warranties of the Town.

The Town represents and warrants to Seller as follows:

(a) This Agreement and all documents executed by the Town which are to be delivered to Seller at Closing do not and at the time of Closing will not violate any provision of any agreement or judicial order to which the Town is a party or to which the Town is subject.

(b) The Town is a municipal corporation operating in conformance with the laws of the Commonwealth of Virginia. This Agreement has been, and all documents executed by the Town which are to be delivered to Seller at Closing will be, duly authorized, executed and delivered by the Town.

(c) Each of the representations and warranties of the Town contained in this Section shall be deemed remade by the Town as of the Closing and shall survive the Closing.

Section 3.5 The Town's Independent Investigation.

(a) By the Town electing to proceed under Section 2.2, the Town will be deemed to have acknowledged and agreed that it has been given a full opportunity to inspect and investigate each and every aspect of the Property, either independently or through agents of the Town's choosing, including, without limitation:

(i) All matters relating to title and survey, together with all governmental and other legal requirements such as taxes, assessments, zoning, use permit requirements and building codes.

(ii) The physical condition and aspects of the Property. Such examination of the physical condition of the Property shall include an examination, if the Town so desires, for the presence or absence of Hazardous Materials, as defined below, which shall be performed or arranged by the Town (subject to the provisions of Section 9.3 hereof) at the Town's sole expense. For purposes of this Agreement, "**Hazardous Materials**" shall mean inflammable materials, explosives, radioactive materials, asbestos, asbestos–containing materials, polychlorinated biphenyls, lead, lead-based paint, radon, under and/or above ground tanks, hazardous materials, hazardous wastes, hazardous substances, extremely hazardous substances, restricted hazardous waste, special waste, regulated substance, pollutants, contaminants, toxic substances, materials or wastes, oil, biological organisms, products or wastes in locations and quantities injurious to human health, or related materials, which are listed or regulated in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 6901, et seq.), the Resources Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901, et seq.), the Clean Water Act (33 U.S.C. Section 1251, et seq.), the Safe Drinking Water Act (14 U.S.C. Section 1401, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, et seq.), and the Toxic Substance Control Act (15 U.S.C. Section 2601, et seq.), and all regulations promulgated under the foregoing, and any other applicable federal, state or local laws, statutes, rules, ordinances, or regulations now

or hereafter in effect, the purpose for which is the protection of the environment (collectively, "**Environmental Laws**").

(iii) Any recorded easements and/or access rights affecting the Property.

(iv) Any other documents or agreements of significance affecting the Property that have been provided by Seller.

(v) All other matters of material significance affecting the Property, including, but not limited to, the Due Diligence Materials.

(b) Except as expressly stated herein, Seller makes no representation or warranty as to the truth, accuracy or completeness of any materials, data or information delivered by Seller to the Town in connection with the transaction contemplated hereby. The Town acknowledges and agrees that all materials, data and information delivered by Seller to the Town in connection with the transaction contemplated hereby are provided to the Town as a convenience only and that any reliance on or use of such materials, data or information by the Town shall be at the sole risk of the Town, except as otherwise expressly stated herein. Without limiting the generality of the foregoing provisions, the Town acknowledges and agrees that (a) any environmental or other report with respect to the Property which is delivered by Seller to the Town shall be for general informational purposes only, (b) the Town shall not have any right to rely on any such report delivered by Seller to the Town, but rather will rely on its own inspections and investigations of the Property and any reports commissioned by the Town with respect thereto, (c) neither Seller, any affiliate of Seller nor the person or entity which prepared any such report delivered by Seller to the Town shall have any liability to the Town for any inaccuracy in or omission from any such report and (d) the failure to deliver any report as to the environmental or other condition of the Property, including any proposal for work at the Property which was not performed by Seller, shall not be actionable by the Town under this Agreement or otherwise.

(c) Except as otherwise set forth in this Agreement or any Closing Document, the Property is being sold in its "AS IS, WHERE IS" condition, "WITH ALL FAULTS" and without representation or warranty (all of which Seller hereby disclaims) as of the Effective Date and the Date of Closing. The parties agree that all understandings, agreements, letters of intent and letters of interest heretofore made between them or their respective agents or representatives are merged in this Agreement and the Exhibits annexed hereto, with the parties satisfied with the opportunity afforded for full investigation, of the Property and all matters affecting the Property and the ownership, use, occupancy, management, operation and maintenance thereof, and neither party is relying upon any statement or representation by the other, unless such statement or representation is specifically embodied in this Agreement or in any Closing Document. The Town expressly agrees and acknowledges that, except as otherwise set forth in this Agreement or any Closing Document, no warranty or representation is made by Seller as to, and the Town hereby expressly releases and waives any and all claims with respect to, the fitness for any particular purpose, merchantability, design, condition or repair, value, expense of operation, income potential, compliance with drawings or specifications, absence of defects, absence of faults, flooding, or compliance with laws and regulations including without limitation those relating to health, safety, zoning, the environment and the Americans with Disabilities Act, or as

to any other fact or condition which has or might affect the Property or the ownership, use, occupancy, operation, condition, repair, value, expense of operation or income potential thereof. Seller has not authorized any broker, agent, representative, consultant, partner, officer, employee, attorney or any other person to make any statements, certifications, representations or warranties regarding the Property or any matter relating thereto, and Seller expressly disclaims and shall not be liable for any statements, certifications, representations or warranties made by any of the foregoing parties, whether made on their own behalf or acting or purporting to act on behalf of Seller.

Section 3.6 Survival.

The provisions of this Article III shall survive the Closing.

ARTICLE IV

TITLE

Section 4.1 Conditions of Title.

(a) Upon execution of this Agreement, and receipt of any prior title reports in possession of Seller as part of the Due Diligence Materials, the Town promptly shall order (i) a preliminary title report or commitment (the "**Title Report**") from a title company of its choosing qualified to do business in Virginia, which may be the Escrow Agent (the "**Title Company**") and (ii) any plat or survey or any update thereto from a duly licensed surveyor (the "**Survey**") if desired by the Town or if necessary to support the issuance of the Title Policy. Promptly upon the Town's receipt thereof, the Town shall provide to Seller a copy of (x) the Title Report, together with copies of all underlying documents relating to title exceptions referred to therein and (y) the Survey (if any), which shall be certified to the Title Company, the Town and Seller. The Town shall pay the entire cost of the Title Report and the Survey.

(b) Prior to the date which is six (6) business days prior to the expiration of the Study and Financing Period (the "**Title Review Date**"), the Town shall furnish Seller with a written statement of objections, if any, to conditions to the title to the To Be Acquired Property, including, without limitation, any objections to any matter first disclosed by the Survey (collectively, "**Objections**"). In the event the Title Company amends or updates the Title Report after the Title Review Date (each, a "**Title Report Update**"), the Town shall furnish Seller with a written statement of Objections to any matter first raised in a Title Report Update within three (3) business days after its receipt of such Title Report Update (each, a "**Title Update Review Period**"). Should the Town fail to notify Seller in writing of any Objections in the Title Report prior to the Title Review Date, or to any matter first disclosed in a Title Report Update prior to the Title Update Review Period, as applicable, the Town shall be deemed to have approved such matters which shall be considered to be "**Conditions of Title**" as defined in Section 4.1(e) below.

(c) If Seller receives a timely Objection in accordance with Section 4.1(b) (**"Town's Notice**"), Seller shall have the right, but not the obligation, within three (3) business days after receipt of Town's Notice ("**Seller's Response Period**"), to elect to attempt to cure any

such matter upon written notice to the Town ("**Seller's Response**"), and may extend the Closing Date for up to ten (10) business days to allow such cure. If Seller does not give any Seller's Response, Seller shall be deemed to have elected not to attempt to cure any such matters. Notwithstanding the foregoing or any other provision of this Agreement, Seller shall in any event be obligated to cure all matters or items (i) that are mortgage or deed of trust liens or security interests against the To Be Acquired Property, (ii) real estate tax liens, other than liens for taxes and assessments, (iii) mechanic's or materialmen's liens against the To Be Acquired Property, (iv) liens of the Condominium Association upon the To Be Acquired Property, and (v) that have been voluntarily placed against the To Be Acquired Property by Seller after the date of this Agreement and that are not otherwise permitted pursuant to the provisions hereof (the "**Non-Permitted Exceptions**"). Seller shall be entitled to apply the Purchase Price towards the payment or satisfaction of such liens.

(d) If Seller elects (or is deemed to have elected) not to attempt to cure any Objections raised in any Town's Notice timely delivered by the Town to Seller pursuant to Section 4.1(b), then the Town, as its sole and exclusive remedy, shall have the option of terminating this Agreement by delivering written notice thereof to Seller within three (3) business days after (as applicable) (i) its receipt of Seller's Response stating that Seller will not attempt to cure any such Objection or (ii) the expiration of Seller's Response Period if Seller does not deliver a Seller's Response. In the event of such a termination, the Deposit shall be returned to the Town, and neither party shall have any further rights or obligations hereunder. If no such termination notice is timely received by Seller hereunder, the Town shall be deemed to have waived all such Objections and matters of title not objected to, in which event those Objections and matters of title shall become "**Conditions of Title**" under Section 4.1(e). If Seller notifies the Town that it elects to attempt to cure any such Objection but then does not for any reason effect such cure on or before the Closing Date as it may be extended hereunder, then such failure by Seller shall be a material breach of Seller's obligations under this Agreement.

(e) At the Closing, Seller shall convey title to the To Be Acquired Property, including all other appurtenances thereto, to the Town by special warranty deed (the "**Deed**") subject to no exceptions other than:

(i) Matters created by, or with the written consent of, the Town;

(ii) Non-delinquent liens for real estate taxes and assessments; and

(iii) Any Conditions to Title, excluding the Non-Permitted Exceptions.

All of the foregoing exceptions shall be referred to collectively as the "**Conditions of Title**." Subject to the terms and conditions contained elsewhere in this Agreement, by acceptance of the Deed and the Closing of the purchase and sale of the To Be Acquired Property, (x) the Town agrees it is assuming for the benefit of Seller all of the obligations of Seller with respect to the Conditions of Title from and after the Closing, and (y) the Town agrees that Seller shall have conclusively satisfied its obligations with respect to title to the Property. The provisions of this Section shall survive the Closing.

Section 4.2 Evidence of Title.

Delivery of title in accordance with the foregoing shall be evidenced by the willingness of the Title Company to issue, at Closing, its Owner's ALTA Policy of Title Insurance in the amount of the Purchase Price showing title to the To Be Acquired Property vested in the Town, subject to the Conditions of Title (excluding the Non-Permitted Exceptions) and including an ALTA 4.1-06 endorsement (Condominium), and including extended coverage over the so-called "pre-printed" standard exceptions (the "**Title Policy**"). The Title Policy may contain such endorsements as reasonably required by The Town provided that the issuance of such endorsements shall not be a condition to The Town's obligations hereunder. The Town shall pay the costs for all such endorsements.

ARTICLE V

RISK OF LOSS AND INSURANCE PROCEEDS

Section 5.1 Minor Loss.

The Town shall be bound to purchase for the full Purchase Price as required by the terms hereof, without regard to the occurrence or effect of any damage to the To Be Acquired Property or destruction of any improvements thereon or condemnation of any portion of the To Be Acquired Property, provided that: (a) the cost to repair any such damage or destruction does not exceed One Hundred Thousand and No/100 Dollars ($100,000) in the estimate of an architect or contractor selected by Seller and reasonably acceptable to the Town or in the case of a condemnation, the diminution in the value of the remaining To Be Acquired Property as a result of a partial condemnation is not material (as hereinafter defined) and (b) upon the Closing, there shall be a credit against the Purchase Price due hereunder equal to the pro rata share that the Town would receive under the Condominium Documents with respect to the To Be Acquired Property of any insurance proceeds or condemnation awards collected by Seller as a result of any such damage or destruction or condemnation, plus in the case of an insured loss, the amount of any insurance deductible, less any sums expended by Seller toward the collection of such proceeds or awards and the restoration or repair of the Property (the nature of which restoration or repairs, but not the right of Seller to effect such restoration or repairs, shall be subject to the approval of the Town, which approval shall not be unreasonably withheld, conditioned or delayed). If the proceeds or awards have not been collected as of the Closing, then such proceeds or awards shall be assigned to the Town, except to the extent needed to reimburse Seller for sums expended to collect such proceeds or awards or to repair or restore the To Be Acquired Property, and Seller shall retain the rights to such proceeds and awards to such extent.

Section 5.2 Major Loss.

If the cost to repair the damage or destruction as specified above exceeds One Hundred Thousand and No/100 Dollars ($100,000) in the estimate of an architect or contractor selected by Seller and reasonably acceptable to the Town or the diminution in the value of the remaining Property as a result of a condemnation is material (as hereinafter defined), then the Town may, at its option to be exercised within five (5) calendar days of Seller's notice of the occurrence of the damage or destruction or the commencement of condemnation proceedings, either terminate this Agreement or elect to consummate the purchase for the full Purchase Price as required by the terms hereof an otherwise in accordance with this Agreement. If the Town elects to terminate

this Agreement by delivering written notice thereof to Seller or fails to give Seller notice within such five (5) day period that the Town will proceed with the purchase, then this Agreement shall terminate, the Initial Deposit shall be returned to the Town and neither party shall have any further rights or obligations hereunder except as provided herein. If the Town elects to proceed with the purchase, then upon the Closing, there shall be a credit against the Purchase Price due hereunder equal to the amount of any insurance proceeds or condemnation awards collected by Seller as a result of any such damage or destruction or condemnation, plus the amount of any insurance deductible, less any sums expended by Seller toward the collection of such proceeds or awards or to restoration or repair of the To Be Acquired Property (the nature of which restoration or repairs, but not the right of Seller to effect such restoration or repairs, shall be subject to the approval of the Town, which approval shall not be unreasonably withheld, conditioned or delayed). If the proceeds or awards have not been collected as of the Closing, then such proceeds or awards shall be assigned to the Town, except to the extent needed to reimburse Seller for sums expended to collect such proceeds or awards or to repair or restore the To Be Acquired Property, and Seller shall retain the rights to such proceeds and awards to such extent.

Section 5.3 Town Initiated Condemnation.

Notwithstanding anything to the contrary set forth in this Agreement, in the event that a condemnation is initiated by or at the request of the Town, other than as contemplated by Seller's approved site plans, the Town shall not be entitled to a right to terminate this Agreement or receive a credit for condemnation proceeds in excess of sums expended by Seller toward the collection of such proceeds or awards and the restoration or repair of the Property, and the Town shall proceed to Closing at the full Purchase Price.

ARTICLE VI

BROKERS AND EXPENSES

Section 6.1 Brokers.

The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction. If any person brings a claim for a commission or finder's fee based upon any contact, dealings or communication with the Town or Seller, then the party through whom such person makes his, her or its claim shall defend the other party and the Escrow Agent (each, an "**Indemnified Party**") from such claim, and shall indemnify each Indemnified Party and hold each Indemnified Party harmless from any and all costs, damages, claims, liabilities or expenses (including without limitation, court costs and reasonable attorneys' fees and disbursements) incurred by each Indemnified Party in defending against the claim. The provisions of this Section 6.1 shall survive the Closing or, if the purchase and sale is not consummated, any termination of this Agreement.

Section 6.2 Expenses.

Except as expressly provided in this Agreement, each party hereto shall pay its own expenses incurred in connection with this Agreement and the transactions contemplated hereby.

ARTICLE VII

OTHER AGREEMENTS

Section 7.1 Delivery of To Be Acquired Property.

(a) Seller shall deliver possession of the To Be Acquired Property to the Town on the Closing Date, in the condition required herein, vacant and free and clear of all tenancies and parties in possession and: (i) in "broom clean" condition; and (ii) free of any and all personal property, furniture, appliances, debris or debris piles.

(b) Should Seller fail to deliver the Property as required under Section 7.1(a) on the Closing Date, then the Town may elect, in its sole discretion and without waiver of its rights under Section 10.2, to extend the Closing Date for no more than thirty (30) days to permit Seller to comply with its obligation under Section 7.1(a); provided, however, that the Purchase Price shall be reduced by Twenty Thousand and No/100 Dollars ($20,000.00) for each ten (10) day period that Closing is delayed pursuant to this Section 7.1(b).

Section 7.2 Changes to Plans.

In the event that from time to time before Closing, Seller proposes changes to the Development Plans or the Condominium Instruments after the Study and Financing Period, Seller shall request the same in writing to the Town. Seller shall not make material changes to the Development Plans or the Condominium Instruments without the prior written consent of the Town, which consent shall not be unreasonably withheld, conditioned or delayed. The Town must affirmatively consent and approve in writing to any material changes. For the purposes of this Section of the Agreement, the Town Manager may approve or reject any proposed material changes in its reasonable discretion.

Section 7.3 Processing of Permits.

(a) The Seller shall have the right to terminate this Agreement (and the Deposit shall be returned to the Town) by thirty (30) days' written notice ("**Seller Termination Notice**") in the event that zoning, building permit, inspection or non-RUP processing and approvals are materially denied, delayed or conditioned to an unusual or unreasonable extent. If Seller receives the requested approvals within thirty (30) days after the Seller Termination Notice, that Seller Termination Notice shall be deemed to be void and of no further force or effect.

(b) Without limiting the effect of Section 7.3(a), it shall be deemed to be a material denial, delay and/or condition to an unusual or unreasonable extent if Seller's compliance with a comment, requirement or condition would cause the Project, New Building or Condominium Unit to fail to comply with the requirements of this Agreement, including without limitation, **Exhibit "B"** or **Exhibit "D"**.

ARTICLE VIII

CLOSING AND ESCROW

Section 8.1 Escrow Instructions.

Seller and the Town shall each deliver the Title Company their own reasonable escrow instructions as may be appropriate to enable the Title Company (or closing agent if different) to comply with the terms of this Agreement.

Section 8.2 Closing.

(a) Seller shall endeavor to provide the Town with a written completion notice statement not less than thirty (30) days prior to the anticipated date of Substantial Completion. Upon Seller's achievement of Substantial Completion, Seller shall provide written notice of the same to the Town, together with copies of the items specified in Section 8.2(b) ("**Completion Notice**"). Upon the Town's receipt of the Completion Notice, Seller and the Town shall arrange for an inspection of the To Be Acquired Property and the common elements of the Condominium ("**Completion Inspection**"), accompanied by the architect of record and the general contractor. Such inspection shall occur no later than the date which is ten (10) business days after the date of the Completion Notice. Seller and the Town shall work with the architect of record and the general contractor to develop an agreed punchlist of incomplete items. Seller shall cause the general contractor to cause all punchlist items to be completed within sixty (60) days after the date of the inspection.

(b) As used herein, "**Substantial Completion**" shall mean the achievement of all of the following:

(i) Substantial completion of the shell and core of the New Building, and of the To Be Acquired Property, including without limitation, all general and common elements of the Condominium, all in accordance with the Development Plans and the Floor Plans, as evidenced by Seller's receipt of an executed G-704 Notice of Substantial Completion signed by the general contractor and the architect of record;

(ii) Receipt of a shell and core non-residential use permit for the New Building and evidence that the To Be Acquired Property has passed all required building inspections; and

(iii) Recordation of the Condominium Instruments.

(c) The Town shall have the right to terminate this Agreement (and receive a return of the Deposit) by thirty (30) days' written notice ("SC Termination Notice") if Substantial Completion has not occurred on or before the date which is twenty-four (24) months after commencement of construction. Such right to terminate shall expire upon Seller's achievement of Substantial Completion. If Seller achieves Substantial Completion within thirty (30) days after the SC Termination Notice, the SC Termination Notice shall be deemed to be

void and of no further force or effect and the Town's right to terminate pursuant to this Section 8.2(c) shall expire and be of no further force or effect.

(d) The Closing hereunder shall be held and delivery of all Closing Documents at the Closing under the terms of this Agreement shall be made at the offices of the Title Company or as otherwise mutually agreed on a date designated in writing by the Town to Seller, but in no event later than thirty (30) calendar days following the Completion Inspection, or upon such other date and time as the Town and Seller may mutually agree upon in writing (the "Closing Date"). Except as expressly provided herein, the Closing Date may not be extended without the prior written approval of both Seller and the Town.

(e) If the Town, in its sole discretion, wishes to finance the purchase of the To Be Acquired Property through the issuance and sale of general obligation bonds, then the parties agree as follows:

(i) Town shall provide written notice to Seller during the Study and Financing Period that it wishes to engage in such a financing process. If Seller timely receives such notice, Seller will consider in good faith during the Study and Financing Period a commercially reasonable amendment to this Agreement at Town's expense, to the schedule, procedures and timing of the Closing to accommodate such financing method. Following the Study and Financing Period, Seller will not be obligated to make further changes to the schedule, procedures and timing of the Closing.

(ii) Town shall provide Seller with a proposed schedule, procedures and timing for the Closing for Seller's reasonable approval, which schedule shall provide for dates for depositing of Closing Documents into escrow, the Town's initiation of the bond issuance and sale process, and the funding, delivery and recording (as applicable) of the Closing Documents.

(iii) Without limitation, Seller shall not be obligated to do any of the following: (A) incur any additional risk, liability or expense due to the Town's election of bond financing or an extended closing procedure, (B) accept recordation or funding later than the date which is thirty (30) calendar days following the Completion Inspection, or (C) grant, or permit the association of the Condominium to grant, any property, liens or security interests to any lenders, bondholders, trustees or other third parties.

(iv) If Town and Seller agree to an accommodation of the Town's proposed closing schedule and procedures, the Town and Seller shall enter into a written amendment of this Agreement with respect to such matters.

Section 8.3 Deposit of Documents.

(a) At or before the Closing, Seller shall deposit into escrow the following items (the "**Seller Closing Documents**"):

(i) the duly executed and acknowledged Deed conveying the To Be Acquired Property to the Town subject to the Conditions of Title;

(ii) a counterpart signature to a settlement statement in form and substance approved by Seller and the Town;

(iii) an affidavit pursuant to Section 1445(b)(2) of the Code, and on which the Town is entitled to rely, that Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Code;

(iv) a duly executed and acknowledged seller's title affidavit (with gap indemnity) in a form reasonably required by the Title Company to issue the Title Policy insuring that title to the To Be Acquired Property is as is required pursuant to the term of this Agreement; and

(v) evidence reasonably acceptable to the Town of Seller's authority to execute, deliver, and perform its obligations under this Agreement and each of the foregoing documents to be delivered by Seller at Closing.

(b) At or before Closing, the Town shall deposit into escrow the following items ("**Town Closing Documents**," and together with the Seller Closing Documents, the "**Closing Documents**"):

(i) immediately available funds necessary to close this transaction, including, without limitation, the Purchase Price (less any deposits) and funds sufficient to pay the Town's closing costs and share of prorations hereunder;

(1) a counterpart signature to a settlement statement in form and substance approved by Seller and the Town; and

(ii) Evidence reasonably acceptable to Seller of the Town's authority to execute, deliver, and perform its obligations under this Agreement and each of the foregoing documents to be delivered by the Town at Closing.

(c) Seller and the Town shall each execute and deposit such transfer tax declarations and such other instruments as are reasonably required by the Title Company or otherwise required to close the escrow and consummate the acquisition of the Property in accordance with the terms hereof. Seller and the Town hereby designate Title Company as the "**Reporting Person**" for the transaction pursuant to Section 6045(e) of the Code and the regulations promulgated thereunder and agree to execute such documentation as is reasonably necessary to effectuate such designation.

Section 8.4 Prorations.

(a) Prorations. Condominium dues (including any general or special assessments or reserve contributions levied against the To Be Acquired Property or Seller) shall be prorated and adjusted as to the date of Closing. Rents, water charges, utilities, insurance and

interest on existing encumbrances taken subject to, if any, and operating charges are to be adjusted to the date of Closing with all receipts and obligations through and including the day of Closing charged to Seller. Taxes, general and special, are to be adjusted according to the certificate of tax issued by the collector of taxes, except that assessments or notations thereof, for improvements completed prior to the date hereof, whether assessment therefore has been levied or not, and all rollback taxes (if any) shall be paid by the Seller or, if known, allowance made therefore at the time of Closing. If a current certificate of tax is not available at Closing, then taxes shall be adjusted based on 103% of the most recently available tax bill. The Town of Vienna is a tax exempt entity and the Town shall be entitled to all rebates of real property taxes and assessments attributable to the To Be Acquired Property due to such tax-exempt status and shall have the benefit of any reduction in tax due as a condition of recordation of the Deed based on the Town's tax-exempt status.

(b) Settlement Cost. Closing costs shall be charged as follows: (i) the cost of the ALTA Title Policy and any special endorsements thereto, the Town's survey or survey updates and the cost of the Town's due diligence efforts shall be paid by the Town; (ii) the cost of preparing the Deed and the Grantors' tax and the Regional Congestion Relief Fee shall be paid by Seller; (iii) all other recording costs and recording taxes (other than for matters created by the Seller in connection with any Seller financing of the Project) shall be paid by the Town; (iv) the Town shall be responsible for all costs in connection with its financing; (v) Seller and the Town shall each pay into an account established for the owners association of the Condominium a pro rata share of the startup expenses of the owners association of the Condominium; and (vi) each party shall be responsible for their respective attorneys' fees.

(c) Purpose and Intent. Except as expressly provided herein, the purpose and intent as to the provisions of prorations and apportionments set forth in this Section 8.4 and elsewhere in this Agreement is that Seller shall bear all expenses of ownership and operation of the Property and shall receive all income therefrom accruing through 11:59 p.m. of the day preceding the Closing Date and the Town shall bear all such expenses and receive all such income accruing thereafter.

(d) The provisions of this Section 8.4 shall survive the Closing.

ARTICLE IX

MISCELLANEOUS

Section 9.1 Notices.

Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by a commercial overnight courier that guarantees next business day delivery and provides a receipt, or (d) by facsimile or electronic mail transmission with a confirmation copy delivered by another method permitted under this Section, and such notices shall be addressed as follows:

To the Town: Town of Vienna
127 Center Street South

Vienna, Virginia 22180
Attn: Mercury Payton, Town Manager
Tel: (703) 255-6370
Email: manager@viennava.gov

With a copy to: Town of Vienna
127 Center Street South
Vienna, Virginia 22180
Attn: Steven D. Briglia, Town Attorney
Tel: (703) 255-6305
Email: sbriglia@viennava.gov

To Seller: Mill Street Development One LLC
c/o Tenacity Group LLC
9001 Edmonston Road
Suite 30
Greenbelt, MD 20770
Attn: Michael Postal
Tel: 301-502-5060
Email: MikePostal@TenacityGroup.com

or to such other address as either party may from time to time specify in writing to the other party. Any notice or other communication sent as hereinabove provided shall be deemed effectively given (i) on the date of delivery, if delivered in person; or (ii) on the date mailed if sent by certified mail, postage prepaid, return receipt requested or by a commercial overnight courier. Such notices shall be deemed received (A) on the date of delivery, if delivered by hand or overnight express delivery service; or (B) on the date indicated on the return receipt if mailed. If any notice mailed is properly addressed but returned for any reason, such notice shall be deemed to be effective notice and to be given on the date of mailing. Any notice sent by the attorney representing a party shall qualify as notice under this Agreement.

Section 9.2 Entire Agreement.

This Agreement, together with the Exhibits and schedules hereto, and the documents delivered at Closing contain all representations, warranties and covenants made by the Town and Seller and constitute the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement together with the Exhibits and schedules hereto.

Section 9.3 Entry and Indemnity.

In connection with any entry by the Town, or its agents, employees or contractors onto the Property, the Town shall give Seller reasonable advance notice of such entry and shall conduct such entry and any inspections in connection therewith (a) during normal business hours, (b) in compliance with all applicable laws, and (c) otherwise in a manner reasonably acceptable to Seller. Without limiting the foregoing, prior to any entry to perform any invasive on-site testing, including but not limited to any borings, drillings or samplings, the Town shall

give Seller written notice thereof, including the identity of the company or persons who will perform such testing and the proposed scope and methodology of the testing. Seller shall approve or disapprove, in Seller's reasonable discretion, the proposed invasive testing within three (3) business days after receipt of such notice. If Seller fails to respond within such three (3) business day period, Seller shall be deemed to have disapproved the proposed testing. If the Town or its agents, employees or contractors take any sample from the Property in connection with any such approved testing, the Town shall provide to Seller a portion of such sample being tested to allow Seller, if it so chooses, to perform its own testing. The Town shall permit Seller or its representative to be present to observe any testing or other inspection or due diligence review performed on or at the Property. Upon the request of Seller, at Seller's sole cost and expense, the Town shall promptly deliver to Seller copies of any reports relating to any testing or other inspection of the Property performed by the Town or its agents, representatives, employees, contractors or consultants, except to the extent the same are confidential or are prepared by the Town's attorneys or accountants. The Town shall maintain, and shall assure that its contractors maintain, public liability and property damage insurance with a combined single limit of not less than $1,000,000 per occurrence, with excess or umbrella coverage of at least $5,000,000 as to the Town, and otherwise in amounts and in form and substance adequate to insure against all liability of the Town and its agents, employees or contractors, arising out of any entry or inspections of the Property pursuant to the provisions hereof, and the Town shall provide Seller with evidence of such insurance coverage prior to its entry onto the Property. The Town shall indemnify, defend and hold Seller harmless from and against any costs, damages, liabilities, losses, expenses, liens or claims (including, without limitation, court costs and reasonable attorneys' fees and disbursements) arising out of or relating to any entry on the Property by the Town, its agents, employees or contractors in the course of performing the inspections, testings or inquiries provided for in this Agreement, including, without limitation, any release of Hazardous Materials or any damage to the Property; provided that the Town shall not be liable to Seller solely as a result of the discovery by the Town of a pre-existing condition on the Property to the extent the activities of the Town, its agents, representatives, employees, contractors or consultants do not exacerbate the condition. The provisions of this Section 9.3 shall be in addition to any access or indemnity agreement previously executed by the Town in connection with the Property; provided that in the event of any inconsistency between this Section 9.3 and such other agreement, the provisions of this Section 9.3 shall govern. The foregoing indemnity shall survive beyond the Closing, or, if the sale is not consummated, beyond the termination of this Agreement. The Town's right of entry, as provided in this Section 9.3, shall continue up through the date of Closing.

Section 9.4 Time.

Time is of the essence in the performance of each of the parties' respective obligations contained in this Agreement.

Section 9.5 Attorneys' Fees.

If either party hereto fails to perform any of its obligations under this Agreement or if any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Agreement, whether prior to or after Closing, or if any party defaults in payment of its post-Closing financial obligations under this Agreement, then the defaulting party

or the party not substantially prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

Section 9.6 Assignment.

The parties' rights and obligations hereunder shall not be assignable without the prior written consent of the other party.

Section 9.7 Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

Section 9.8 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

Section 9.9 Interpretation of Agreement.

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

Section 9.10 Amendments.

This Agreement may be amended or modified only by a written instrument signed by the Town and Seller.

Section 9.11 Drafts Not an Offer to Enter into a Legally Binding Contract; Effective Date

The parties hereto agree that the submission of a draft of this Agreement by one party to another is not intended by either party to be an offer to enter into a legally binding contract with respect to the purchase and sale of the To Be Acquired Property. The parties shall be legally bound with respect to the purchase and sale of the To Be Acquired Property pursuant to the terms of this Agreement only if and when the parties have been able to negotiate all of the terms and provisions of this Agreement in a manner acceptable to each of the parties in their respective sole discretion, and both Seller and the Town have fully executed and delivered to each other a counterpart of this Agreement (or a copy by facsimile transmission). The last date upon which either Seller or the Town executes and delivers a counterpart of this Agreement to the other shall

be the "**Effective Date**" of this Agreement, and such date shall be inserted in the first paragraph of this Agreement.

Section 9.12 No Partnership.

The relationship of the parties hereto is solely that of seller and purchaser with respect to the To Be Acquired Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

Section 9.13 No Third Party Beneficiary.

The provisions of this Agreement are not intended to benefit any third parties.

Section 9.14 Further Assurances.

Each party agrees to execute and deliver, after the Closing, such forms of corrective deeds, bills of sale or other documentation as the other party may reasonably request to carry out the intent of this Agreement.

Section 9.15 Warranties.

Seller warrants the Condominium Unit and any Common Elements to the extent prescribed by Section 55-79.79 of the Condominium Act. At Closing, Seller shall provide the Town with a fully executed Certificate of Warranty (the "**Warranty Certificate**"). Any warranties received by Seller from manufacturers, suppliers and/or contractors shall inure to the benefit of the Town on a non-exclusive basis in common with the Seller and the condominium association, unless the warranty is specifically limited to Seller.

Section 9.16 Expiration.

The terms and conditions of this Agreement shall expire and be of no further force or effect upon recordation of the Deed at Closing, except as expressly provided otherwise hereunder. The recordation of the Deed shall be deemed to be a full performance and discharge of every agreement and obligation of Seller herein contained and expressed, all of which agreements and obligations shall expire and terminate with the delivery of the Deed and thereafter be of no further force and effect, except as such are, by the express terms hereof, to survive Closing.

Section 9.17 Confidentiality.

(a) The Town agrees that, subject to applicable provisions of law, including the Freedom of Information Act, unless Seller specifically and expressly otherwise agrees in writing, all of the Due Diligence Materials are and shall be treated by the Town as proprietary, privileged and confidential. Prior to Closing, subject to applicable law, the Town shall not disclose such information to any other person except (i) agents, employees, contractors, advisers, consultants and professionals assisting the Town with the transaction contemplated herein, or the Town's potential financing sources, and then only on a need-to-know basis, and upon the Town making each such person agree to the confidentiality restrictions set forth herein, or (ii) as required pursuant to a court order or applicable law. In connection with any order under item

(ii), above, the Town shall (a) promptly, and in no event more than five (5) business days after the Town's receipt of such court order, deliver a copy of same, together with any notices or other documents which were served on the Town with such court order, to Seller, and (b) cooperate in any effort instituted by Seller to prevent such disclosure. In the event the purchase and sale contemplated hereby fails to close for any reason whatsoever, the Town agrees to deliver to Seller all Due Diligence Materials in the possession of the Town.

(b) Except as expressly provided for in this Section 9.17(b), neither party shall make any press releases or public announcements disclosing the name of the other party or its affiliates at any time without the prior written consent of the other party, in the other party's sole and absolute discretion.

Section 9.18 No Recordation.

Purchaser and Seller agree not to record this Agreement or any memorandum hereof.

Section 9.19 Liability of Seller.

It is hereby expressly agreed that any liability of the Seller arising hereunder, for any reason whatsoever, shall be limited to the Seller's interest in and to the Property. In no event shall any officer, director, member, employee, agent or representative of Seller have any personal liability in connection with this Agreement or the transaction envisioned herein, except to the extent any proceeds from the sale of the Property are distributed to such persons.

Section 9.20 Waiver.

No waiver of any breach of any agreement or provision contained herein shall be deemed a waiver of any preceding or succeeding breach of any other agreement or provision herein contained. No extension of time for the performance of any obligation or act shall be deemed an extension of time for the performance of any other obligation or act.

Section 9.21 Bonds and Other Security.

The Town acknowledges that Seller or an affiliate thereof may have posted various bonds, escrows and deposits in connection with the construction and development of the Project. All such bonds, escrows and deposits (collectively, the "**Bonds and Deposits**") shall remain the property of Seller, and Seller is not assigning, conveying or transferring to the Town any right, title or interest of Seller or any of its affiliates to any such Bonds and Deposits or the right to reimbursement thereof. All such Bonds and Deposits shall be paid to Seller. If the Town receives any such Bonds and Deposits or the proceeds therefrom, the Town shall promptly deliver such Bonds and Deposits or such proceeds to Seller. In addition, if any draw is made upon any such Bonds and Deposits which draw is a result of any action or inaction of the Town or otherwise caused by the Town, then the Town shall promptly pay to Seller the amount thereof. From and after Closing, the Town shall cooperate with Seller, and execute such documents and instruments reasonably requested by Seller, in order to effect a release to Seller (or its affiliate) of all Bonds and Deposits as soon after Closing as is possible. Purchaser's obligations pursuant to this Section 9.21 shall survive the Closing.

ARTICLE X

Default

Section 10.1 The Town's Default.

If the Town shall fail or refuse to purchase the To Be Acquired Property in violation of the Town's obligations hereunder for any reason other than a default by Seller under this Agreement, or shall otherwise be in default of its obligations hereunder, Seller shall have as its sole and exclusive remedy the right to terminate this Agreement and retain the full amount of the Deposit and all interest earned thereon. Seller and the Town acknowledge and agree that (a) it would be extremely difficult to accurately determine the amount of damages suffered by Seller as a result of the Town's default hereunder; (b) the Deposit constitutes a fair and reasonable amount to be received by Seller as agreed and liquidated damages for the Town's default under this Agreement, as well as a fair, reasonable and customary amount to be paid as liquidated damages to a seller in an arm's length transaction of the type contemplated by this Agreement upon a default by the purchaser thereunder; and (c) receipt by Seller of the Deposit upon the Town's default hereunder shall not constitute a penalty or a forfeiture.

Section 10.2 Seller's Default.

If Seller shall refuse or fail to convey the To Be Acquired Property to the Town in violation of Seller's obligations hereunder for any reason other than a default by the Town under this Agreement, or if Seller shall otherwise be in default of its material obligations under this Agreement, the Town shall have as its sole remedies hereunder the right to: (i) waive the default and proceed to close the transaction; (ii) terminate this Agreement by giving Seller written notice thereof, whereupon Escrow Agent or Seller shall return the Deposit to the Town, and if such failure is a result of an intentional or willful breach by Seller of its obligations hereunder or the untruth or inaccuracy of a representation or warranty which was knowingly untrue or inaccurate when made, then Seller shall pay to the Town all of the Town's out-of-pocket due diligence and other transaction costs in an amount not to exceed $75,000; or (iii) seek specific performance of Seller's obligation to construct New Building and to convey the To Be Acquired Property pursuant to the terms and conditions of this Agreement, in which case (but only if the Town is successful in seeking specific performance) Seller shall reimburse the Town for all reasonable attorneys' fees and other charges incurred in by the Town in seeking such remedy and the Town's out-of-pocket due diligence and other transaction costs. In the event the remedy of specific performance in clause (iii) is or becomes unavailable to the Town due to the willful misconduct of Seller, then the Town may sue for damages or pursue such remedies against Seller as shall be permitted by applicable law (including reasonable attorneys' fees and other charges incurred in by the Town). Any reimbursement of costs contemplated by this section shall be made by Seller to the Town within thirty (30) calendar days following Seller's receipt of invoice(s) and supporting documentation justifying such amounts.

Section 10.3 Attorneys' Fees.

Notwithstanding anything to the contrary in this Agreement, in the event that either Seller or Purchaser, as the case may be, shall bring a lawsuit against the other party to enforce their

respective rights under Sections 10.1 or 10.2, above, the losing party shall pay the prevailing party's costs and expenses incurred in connection with such litigation, including without limitation reasonable attorneys' fees. The "prevailing party" shall be determined by the court hearing such matter.

Section 10.4 Indemnities.

Notwithstanding anything to the contrary in this Agreement, the limitations on remedies set forth in Section 10.1 and 10.2 do not apply to indemnity obligations of either party under this Agreement.

Section 10.5 Survival.

This Section 10 shall survive Closing and any termination of this Agreement indefinitely.

ARTICLE XI

Provisions Regarding Escrow Agent.

Section 11.1 General.

Escrow Agent shall hold the Deposit and the remainder of the Purchase Price, as prorated and adjusted, in accordance with the terms of this Agreement, including this Article XI. Escrow Agent shall hold the Deposit, if, as and when received, in a federally insured savings account (the "**Escrow Account**") with a bank with branches in the Town of Vienna or Fairfax County, Virginia or Washington, D.C. and shall not commingle the Deposit with any other funds. The Escrow Account shall be placed in a non-interest-bearing account, unless Town requests in writing that the Escrow Account be placed in an interest bearing account. In the event that a party gives notice that the Deposit is to be disbursed to it under this Agreement, such notice shall be given to the other party and to the Escrow Agent, and shall set forth the reason why the requesting party believes that it is entitled to receive the Escrow Deposit (the "**Notice**"). Within ten (10) days after receipt of the Notice, the other party shall either (i) agree in writing to permit such disbursement by Escrow Agent or (ii) inform Escrow Agent and the requesting party, in writing, that the other party does not agree to permit such disbursement. If the other party acts under clause (i), then Escrow Agent shall promptly make the disbursement as requested by the requesting party. If the other party acts under clause (ii), then Escrow Agent shall retain the funds in the amount of such claim and shall not make any disbursement thereof until the earlier of (a) receipt of joint written instructions executed by Seller and Purchaser directing the disbursement of such funds, pursuant to which Escrow Agent shall promptly make the disbursement in accordance with said written instructions, or (b) receipt of an order issued by a court of competent jurisdiction, directing the disbursement of such funds, pursuant to which Escrow Agent shall promptly make the disbursement of such funds as directed by said order. If the other party fails to respond during the foregoing ten (10) day period, same shall be deemed to be a response by the other party under clause (i) above.

Section 11.2 Limitation on Liability.

The following provisions shall control with respect to the rights, duties and liabilities of the Escrow Agent:

(a) The Escrow Agent acts hereunder as a depository only and is not responsible or liable in any manner whatsoever for the (i) sufficiency, correctness, genuineness or validity of any written instrument, notice or evidence of a party's receipt of any instruction or notice which is received by the Escrow Agent, or (ii) identity or authority of any person executing such instruction, notice or evidence.

(b) The Escrow Agent shall have no responsibility hereunder except for the performance by it in good faith of the acts to be performed by it hereunder, and the Escrow Agent shall have no liability except for its own breach of this Agreement, willful misconduct or negligence.

(c) The Escrow Agent shall not be responsible for the solvency or financial stability of any financial institution with which Escrow Agent is directed to invest funds escrowed hereunder.

(d) The Escrow Agent shall be reimbursed on an equal basis by Buyer and Seller for any reasonable expenses incurred by the Escrow Agent arising from a dispute with respect to any amount held in escrow, including the cost of any legal expenses and court costs incurred by the Escrow Agent, should the Escrow Agent deem it necessary to retain an attorney with respect to the disposition of the amount held in escrow.

(e) In the event of a dispute between the parties hereto with respect to the disposition of any amount held in escrow, the Escrow Agent shall be entitled, at its own discretion, to deliver such amount to an appropriate court of law pending resolution of the dispute.

[SIGNATURES FOLLOW ON NEXT PAGE]

The parties hereto have executed this Agreement as of the date set forth in the first paragraph of this Agreement.

Seller: *MILL STREET DEVELOPMENT ONE LLC*, a Virginia limited liability company

By: _____
Printed Name: _____
Title: _____

The Town: *TOWN OF VIENNA*, a Virginia municipal corporation

By: _____
Printed Name: _____
Title: _____

LIST OF EXHIBITS AND SCHEDULES

Exhibits

Exhibit A	Development Plans with setbacks, elevations and scaled street and streetscape elements
Exhibit B	Detailed Floor Plan of the Public Parking Facility
Exhibit C	Condominium Unit Legal Description
Exhibit D	General design elements to be incorporated into the final architectural and engineering design plans

Exhibit A

DEVELOPMENT PLANS (SEE ATTACHED)

Exhibit B

DETAILED FLOOR PLAN OF THE PUBLIC PARKING FACILITY

Exhibit C

LEGAL DESCRIPTION OF CONDOMINIUM UNIT

(TO BE DETERMINED AND ATTACHED

Exhibit D

GENERAL DESIGN ELEMENTS TO BE INCORPORATED INTO THE FINAL ARCHITECTURAL AND ENGINEERING DESIGN PLANS

1. The Condominium Unit will consist of approximately 43,000 sf of gross floor area.

2. Parking floor will be delivered Substantially Complete with striping, stairs and elevator.

3. Rough in of electrical junction box, electrical conduit and concrete pads for Town's future installation of equipment for a "pay for parking garage" and six (6) "level 3" electric vehicle charging stations, all as shown on **Exhibit "B"**.

4. Expected yield of up to and approximately 127 legal parking spaces, typical size of 9'X18', as shown on **Exhibit "B"**.

5. Detailed design elevations that show general design, material mix, streetscape improvements, floor plan details and SWM plans that affect the rear of the lot and residences.

6. Parking garage rear wall facing the Park Street residents to be solid. Sides and front can be open.

7. There will be no rear access road or rear access to the building.

8. The Design will be made with the understanding that the Town will allow Seller to use the Town right-of–way to facilitate a workable street front on Mill Street that will include required 25% landscaping and a sidewalk with widths of up to 11 feet. Seller to provide that the sidewalk will be at least 5 feet wide.

9. The Condominium Documents will provide that the Association and designated Unit Owners will maintain designated portions of the frontage improvements (including those in the ROW) from the building to the curb such that all such frontage improvements are maintained for as long as the New Building exists.

10. Height inside garage to be 10 feet with a minimum 9'6" height clearance.

11. Garage floor will incorporate appropriate drainage and have a slope of 1.5% +/- 5%.

12. The Parties understand that the CM Zone requires a 15-foot front setback and a 10-foot rear setback for a total of 25 feet. To park the site above grade and build to the proposed 123-foot building width, a site plan modification is required, providing a minimum of 11 feet of relief (9 feet for the front setback and 2 feet for the rear setback). The Town of Vienna shall reasonably approve a site plan modification so that the total setbacks equal a minimum of 14 feet, with an 8 foot or less rear setback.

13. The sidewalks on Mill Street, shall be designed and constructed as a general continuation of the Church Street Sidewalk Concept starting at the corner of Church Street and Mill Street and ending at Ayr Hill Road and Mill Street.

14. Parallel parking on Mill Street, NE located on the Project side shall be incorporated into the sidewalk/streetscape plan and running the length of the Project.

15. Any windows on the back of the building will be frosted.

16. Mechanical equipment to be set back on the roof so as to not be visible from the homes on Mill Street, NE.