

STATE OF NORTH CAROLINA

COUNTY OF HAYWOOD

## PURCHASE AND SALE AGREEMENT

THIS AGREEMENT is made and entered into this 5th day of February, 2010, by and among RCG-Waynesville, LLC, a Georgia limited liability company (herein called "Seller"); and Haywood County, North Carolina, a subdivision of the State of North Carolina and a body politic and corporate (herein called "Buyer").

### WITNESSETH:

1. **Agreement to Sell and Purchase.** For and in consideration of the Initial Earnest Money, to be paid by Buyer to Escrow Agent, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Seller and Buyer, Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase and take from Seller, subject to and in accordance with all of the terms and conditions of this Agreement, the following:

(a) All that certain lot, tract or parcel of real estate more particularly described on Exhibit "A" attached hereto, together with all plants, shrubs and trees located thereon, and together with all rights, ways and easements appurtenant thereto, including, without limitation, all of Seller's right, title and interest in and to the land underlying and the air space overlying any public or private ways or streets crossing or abutting said real estate (herein collectively called the "Land"), **provided, however,** that Buyer and Seller agree that the legal description attached as Exhibit "A" shall be replaced pursuant to the legal description for the Land to be set forth on the plat for the Subdivision provided for in Section 15;

(b) All buildings, structures and other improvements of any and every nature located on the Land and all fixtures attached or affixed, actually or constructively, to the Land or to any such buildings, structures or other improvements (herein collectively called the "Improvements");

(c) All of the right, title, interest, powers, privileges, benefits and options of Seller, or otherwise accruing to the owner of the Property, in and to (i) any development rights, allocations of development density or other similar rights allocated to or attributable to the Land or the Improvements, and (ii) any utility capacity allocated to or attributable to the Land or the Improvements, whether the matters described in the preceding clauses (i) and (ii) arise under or pursuant to governmental requirements, administrative or formal action by governmental authorities, or agreement with governmental authorities or third parties (herein called the "Entitlements");

(d) All of the right, title, interest, powers, privileges, benefits and options of Seller, or otherwise accruing to the owner of the Property, in and to all certificates, licenses, permits, authorizations, consents and approvals from governmental authorities with respect to (i)

the design, development, construction and installation of the Improvements (ii) vehicular ingress and egress to and from the Land, and (iii) the use, operation and occupancy of the Improvements, including, without limitation, the certificate of occupancy for the Improvements (herein called the "Permits"); and

(e) All of Seller's right, title and interest in and to the plans, architectural and engineering drawings and surveys.

The Land, Improvements, Entitlements, Permits and other items described in this Section 1 are sometimes herein collectively referred to as the "Property".

2. **Purchase Price; Method of Payment, Effective Date.** The purchase price for the Property (herein called the "Purchase Price"), shall be **SIX MILLION SIX HUNDRED THOUSAND DOLLARS (\$6,600,000.00)**. The Purchase Price shall be paid by Buyer to Seller on the Closing Date as follows:

(a) The Purchase Price, after crediting the Earnest Money, and subject to the prorations and adjustments herein described, shall be paid by Buyer to Seller by wire delivery of funds through the Federal Reserve System to an account designated in writing by Seller.

(b) Notwithstanding the foregoing, in the event that Seller advises Buyer that Seller is a "Foreign Person" (as defined in Section 1445 of the Internal Revenue Code of 1986, as amended, and regulations promulgated thereunder, herein called the "Code"), or in the event that Seller fails or refuses to deliver the certificate and affidavit of non-foreign status described in Section 9(a) of this Agreement, or in the event that Buyer receives notice from any Seller-transferor's agent or Buyer-transferee's agent (as each of such terms are defined in the Code), or Buyer has actual knowledge that, such certificate and affidavit is false, Buyer shall deduct and withhold from the Purchase Price a tax equal to ten percent (10%) of the Purchase Price, as required by Section 1445 of the Code. Buyer shall remit such amount to, and file the required form with, the Internal Revenue Service, and Buyer shall receive a credit against the Purchase Price for the amount so withheld.

(c) The Effective Date of this Agreement shall be the date of acceptance as provided in Section 20(y).

3. **Earnest Money.**

(a) On or before the date three (3) business days after the Effective Date, Buyer shall deliver to the Raleigh, North Carolina office of Chicago Title Insurance Company as escrow agent (herein called "Escrow Agent") the sum of **ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00)** (which sum, together with all interest actually earned thereon during the term of this Agreement, is herein called the "Initial Earnest Money"). On or before the date one hundred twenty (120) days after the Effective Date, Buyer shall deliver to Escrow Agent the additional sum of **ONE HUNDRED THOUSAND DOLLARS**

(\$100,000.00) (which sum, together with all interest actually earned thereon during the term of this Agreement, is herein called the "Additional Earnest Money"). (The Initial Earnest Money and the Additional Earnest Money are herein sometimes collectively called the "Earnest Money").

(b) Throughout the term of this Agreement, Escrow Agent shall hold and disburse the Earnest Money in accordance with the terms and conditions of this Agreement and the Chicago Title Insurance Company Conditions of Escrow attached hereto, and to invest the Earnest Money with a national bank whose depositors are insured by the Federal Deposit Insurance Corporation or other financial institutions conducting business in Raleigh, North Carolina as are reasonably acceptable to Seller and Buyer.

(c) On the Closing Date, the Earnest Money, to the extent actually paid by Buyer will be applied as part payment of the Purchase Price.

4. **Closing; Option for Postponement of Closing.**

(a) Subject to the conditions of Buyer's obligations under Section 12, the closing of the purchase and sale of the Property (herein called "Closing"), shall be held at the offices of the Escrow Agent or at such other location as is agreed upon by the parties, and at such time on or before July 31, 2010 (herein called the "Closing Date"). The Closing shall take place at 10:00 A.M. on, the Closing Date. Notwithstanding anything contained herein to the contrary, the parties recognize and agree that the parties intend to close the transaction through the simultaneous delivery of closing deliveries to the Escrow Agent without the need to conduct a face to face closing.

(b) Buyer shall have the option to postpone the Closing for a period not exceeding ninety (90) days from the Closing Date (herein called "Postponed Closing Date") should the Buyer be unable to secure satisfactory financing from the United States Department of Agriculture, for the purpose of securing alternative funding from a commercial lending source.

5. **Access and Inspection; Delivery of Documents and Information by Seller; Examination by Buyer.**

(a) Between the date of this Agreement and the Closing Date, Buyer and Buyer's agents and designees shall have the right to enter the Property for the purposes of inspecting the Property, conducting soil tests, and making surveys, mechanical and structural engineering studies, environmental assessments, and any other investigations and inspections as Buyer may reasonably require to assess the condition of the Property; **provided, however,** that such activities by or on behalf of Buyer on the Property shall not damage the Property; and **provided further, however,** that Buyer shall indemnify and hold Seller harmless from and against any and all claims for injury to person or damage to property, to the extent directly resulting from the activities of Buyer or Buyer's agents or designees on the Property, **excluding, however,** claims arising out of the discovery of, or the non-negligent accidental or inadvertent

release of, any Pollutants resulting from Buyer's investigations (unless the Pollutants are brought onto the Property by Buyer or Buyer's agents, employees, consultants or contractors).

(b) Buyer acknowledges that Seller has previously delivered, or made available to Buyer for examination or copying by Buyer, at the address for Buyer set forth below Buyer's execution of this Agreement, the following documents and information with respect to the Property:

(i) All surveys, plans, specifications, environmental, architectural plans, engineering and mechanical data relating to the Property, and reports such as soils reports and environmental audits, which are in Seller's possession or which Seller can obtain with reasonable effort without additional expense to the Seller, provided, however, that Seller has not yet provided a final survey for the Land to be conveyed;

(ii) All utility bills regarding the Property for the two-year period preceding the date of this Agreement which are in Seller's possession or which Seller can obtain with reasonable effort without additional expense to the Seller;

(iii) True, correct and complete copies of all documents and correspondence received by Seller relating to the Entitlements;

(iv) A copy of any policy of title insurance issued in favor of Seller, together with legible copies of all instruments referenced therein; and

(v) A copy of any leases subject to which the Property shall be conveyed, provided, however, that Seller has not yet provided a complete signed copy of the complete Lease between Seller and Tractor Supply Company which includes all exhibits.

(c) Prior to the Effective Date, Buyer has been given an opportunity to examine and investigate the Property, and to determine whether the Property is suitable and satisfactory to Buyer, and whether the Property can be developed in a manner that is economically feasible and otherwise suitable and satisfactory to Buyer. Therefore, subject to Seller's performance of its remaining obligation under Section 5 (b)(i) and Section 5(v), Buyer shall have no right to terminate this Agreement as a result of its inspection and review of the Property and Earnest Money shall be deemed fully earned by Seller upon delivery to the Escrow Agent and shall be non-refundable to Buyer except for a Seller default; a termination pursuant to Section 13, Section 14, Section 15 or Section 7 (b); or as otherwise specifically set forth in this Agreement.

**6. Prorations and Adjustments to Purchase Price.**

(a) The following prorations and adjustments shall be made between Buyer and Seller at Closing, or thereafter if Buyer and Seller shall agree:

(i) All city, state and county ad valorem taxes and similar impositions levied or imposed upon or assessed against the Property (herein called the "Taxes"), for the year in which Closing occurs shall be prorated as of the Closing Date on a calendar

year basis. In the event Seller has paid only a portion of the Taxes billed for the year in which Closing occurs due to the pendency of a protest of such Taxes, then, in connection with Closing, Seller shall deposit with Escrow Agent an amount equal to Seller's pro rata share of the resulting underpayment. Any such deposit with Escrow Agent shall be held in escrow by Escrow Agent pending final resolution of such protest, pursuant to escrow instructions reasonably acceptable in form and substance to Buyer, Seller, Escrow Agent and their respective counsel. In the event that, after the Closing Date, any additional Taxes are levied, imposed upon or assessed against the Property for periods prior to the Closing Date, Buyer shall give Seller written notice of such Taxes, and Seller shall be responsible for payment of such additional Taxes in full within the time fixed for payment thereof and before the same become delinquent. Without limiting the obligations of Seller pursuant to the immediately preceding sentence, Seller shall, and does hereby, indemnify, defend and hold harmless Buyer from and against any such additional Taxes (including all interest and penalties assessed or imposed in connection therewith) relating to periods prior to the Closing Date. Buyer shall, and does hereby, indemnify, defend and hold harmless Seller from and against any such additional Taxes (including all interest and penalties assessed or imposed in connection therewith) relating to periods from and after the Closing Date.

(ii) Any other items which are customarily prorated in connection with the purchase and sale of properties similar to the Property shall be prorated as of the Closing Date.

In the event that the amount of any item to be prorated is not determinable at the time of Closing, such proration shall be made on the basis of the best available information, and the parties shall re-prorate such item promptly upon receipt of the applicable bills therefor and shall make between themselves any equitable adjustment required by reason of any difference between the estimated amount used as a basis for the proration at Closing and the actual amount subject to proration. In the event any prorated item is due and payable at the time of Closing, the same shall be paid at Closing. If any prorated item is not paid at Closing, Seller shall deliver to Buyer the bills therefor promptly upon receipt thereof and Buyer shall be responsible for the payment in full thereof within the time fixed for payment thereof and before the same shall become delinquent. In making the pro-rations required by this paragraph, the economic burdens and benefits of ownership of the Property for the Closing Date shall be allocated to Buyer.

(b) Except as expressly set forth in this Agreement, Buyer shall not assume any liability, indebtedness, duty or obligation of Seller of any kind or nature whatsoever, and Seller shall pay, satisfy and perform all of the same.

## 7. Title.

(a) At Closing, Seller covenants to convey to Buyer by Special Warranty Deed (the "Deed"), in form as set forth in Exhibit "D", good and marketable fee simple title in and to the Property prepared from a new Survey as provided in Section 8 and Section 14. For the purposes of this Agreement, "good and marketable fee simple title" shall mean fee simple ownership which is: (i) free of all claims, liens and encumbrances of any kind or nature whatsoever other than the Permitted Exceptions, herein defined; and (ii) insurable by Chicago Title Insurance Company, at then current standard rates under the standard form of ALTA

owner's policy of title insurance (ALTA Owner's Policy: 06/17/08), with the standard or printed exceptions therein deleted and without exception other than for the Permitted Exceptions. Seller shall co-operate fully with Buyer in obtaining the following endorsements to its Owner's policy of title insurance: ALTA Endorsement Forms 8.2-06 Commercial Environmental Protection Lien; 17.2-06 Utility Access; 25.1-06 Same as Portion of Survey; 26-06 Subdivision; 28.06 Easement Damage or Enforced Removal; 3.1-06 Zoning Completed Structure; 9.5-06 Restrictions, Encroachments, Minerals Owner's Policy: Improved Land; 15-06 Non-Imputation-Full Equity Transfer; and 17.06 Access and Entry, with the standard or printed exceptions therein deleted and without exception other than for the Permitted Exceptions. For the purposes of this Agreement, the term "**Permitted Exceptions**" shall mean: (A) current city, state and county ad valorem taxes not yet due and payable; (B) easements for the installation or maintenance of public utilities serving only the Property; and (C) any other matters specified on **Exhibit "B"** attached hereto.

(b) Buyer shall have until **thirty days (30)** from and after the Effective Date (the "Title Review Date") in which to examine title to the Property and in which to give Seller written notice of objections which in Buyer's opinion render Seller's title less than good and marketable fee simple title. Thereafter, Buyer shall have until the Closing Date in which to reexamine title to the Property and in which to give Seller written notice of any additional objections disclosed by such reexamination which were not ascertainable as the of the effective date of the title commitment delivered to Buyer pursuant to this Agreement. Seller shall have until **ten (10) days** prior to the Closing Date in which to satisfy all objections specified in Buyer's initial notice of title objections, or agree to satisfy any such objections that can only be satisfied at Closing, and until the Closing Date in which to satisfy all objections specified in any subsequent notice by Buyer of title objections. If Seller fails or elects not to satisfy any such objections, then, at the option of Buyer, Buyer may: (i) terminate this Agreement, in which event the Earnest Money shall be refunded to Buyer immediately upon request, all rights and obligations of Seller and Buyer under this Agreement shall expire, and this Agreement shall become null and void; or (ii) satisfy the Monetary Objections (as hereinafter defined), after deducting from the Purchase Price the cost of satisfying such Monetary Objections; or (iii) waive such satisfaction and performance and consummate the purchase and sale of the Property.

8. **Survey.** Buyer shall have the right to cause an as-built survey of the Property to be prepared by a surveyor registered and licensed in the State of North Carolina and designated by Buyer, which survey shall depict such information as Buyer shall require. However, the legal description to be included in the Deed shall be prepared from a new survey of the Subdivision to be obtained by Seller and delivered to Buyer pursuant to Section 14.

9. **Proceedings at Closing.** On the Closing Date, the Closing shall take place as follows:

(a) Seller shall deliver to Buyer the following documents and instruments, duly executed by or on behalf of Seller:

(i) a General Warranty Deed, in recordable form approved by Buyer, conveying the Land and the Improvements;

(ii) an Assignment, in the form of, and on the terms and conditions approved by Seller and Buyer, transferring and assigning the Entitlements, Permits, Service Agreements and Warranties;

(iii) a Certificate and Affidavit of Non-Foreign Status, in the form of, and on the terms and conditions set forth in, that attached hereto as Exhibit "C";

(iv) a completed 1099-S request for taxpayer identification number and certification, and acknowledgment, in the form of that attached hereto as Exhibit "E";

(v) a certificate, in form and substance satisfactory to counsel for Buyer, to the effect that the representations and warranties of Seller in this Agreement are true and correct on and as of the Closing Date;

(vi) an affidavit and indemnity agreement in standard form regarding contractor's and materialmen's liens on the Property acceptable to Buyer's title insurer.

(b) Seller shall deliver to Buyer the following items, if the same have not been theretofore delivered by Seller to Buyer:

(i) Evidence in form and substance reasonably satisfactory to Buyer that Seller has the power and authority to execute and enter into this Agreement and to consummate the purchase and sale of the Property, and that any and all actions required to authorize and approve the execution of and entry into this Agreement by Seller; the performance by Seller of all of Seller's duties and obligations under this Agreement, and the execution and delivery by Seller of all documents and other items to be executed and delivered to Buyer at Closing, have been accomplished;

(ii) To the extent the same are in the possession of Seller on the date of Seller's execution of this Agreement, or reasonably can be obtained by Seller prior to Closing without incurring additional expense, all prior surveys of the Land or any portion thereof and all plans and specifications for any of the Improvements;

(iii) The originals of the Permits, to the extent in Seller's possession;  
and

(c) Buyer shall pay the remainder of the Purchase Price, after crediting the Earnest Money and making the adjustments and prorations provided for in this Agreement, to Seller in accordance with the provisions of this Agreement.

10. **Costs of Closing:** Seller shall pay the transfer tax payable on the transfer of the Property, all recording costs and other costs relating to any title clearance matters and Seller's attorneys' fees. Buyer shall pay all recording costs relating to the purchase by Buyer of the Property, the cost of any survey obtained pursuant to paragraph 8 hereof, the premium for any owner's policy of title insurance issued in favor of Buyer insuring Buyer's title to the Property and Buyer's attorneys' fees. All other costs and expenses of the transaction contemplated hereby shall be borne by the party incurring the same.

**11. Warranties, Representations and Additional Covenants of Seller.** Seller represents, warrants and covenants to and with Buyer, knowing that Buyer is relying on each such representation, warranty and covenant, that:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Georgia and authorized to do business in the State of North Carolina.

(b) Seller has the lawful right, power, authority and capacity to sell the Property in accordance with the terms, provisions and conditions of this Agreement.

(c) There are no actions, suits or proceedings pending or threatened against, by or affecting Seller which affect title to the Property or which question the validity or enforceability of this Agreement or of any action taken by Seller under this Agreement, in any court or before any governmental authority, domestic or foreign.

(d) The execution of and entry into this Agreement, the execution and delivery of the documents and instruments to be executed and delivered by Seller on the Closing Date, and the performance by Seller of Seller's duties and obligations under this Agreement and of all other acts necessary and appropriate for the full consummation of the purchase and sale of the Property as contemplated by and provided for in this Agreement, are consistent with and not in violation of, and will not create any adverse condition under, any contract, agreement or other instrument to which Seller is a party, any judicial order or judgment of any nature by which Seller is bound, or the Operating Agreement of Seller; and this Agreement, and the covenants and agreements of Seller under this Agreement, are the valid and binding obligations of Seller, enforceable in accordance with their terms.

(e) All action has been taken by Seller authorizing and approving the execution of and entry into this Agreement, the execution and delivery by Seller of the documents and instruments to be executed and delivered by Seller on the Closing Date, and the performance by Seller of Seller's duties and obligations under this Agreement and of all other acts necessary and appropriate for the consummation of the purchase and sale of the Property as contemplated by and provided for in this Agreement.

(f) On the Closing Date, either (A) there will be no indebtedness to any contractor, laborer, mechanic, materialman, architect, engineer or any other person for work, labor or services performed or rendered, or for materials supplied or furnished, in connection with the Property for which any such person could claim a lien against the Property; or (B) Seller will provide at Closing such assurances as Buyer's title insurer requires to insure Buyer's title to the Property without exception therefor.

(g) Seller will pay or cause to be paid promptly when due all city, state and county ad valorem taxes and similar taxes and assessments, all sewer and water charges and all other governmental charges levied or imposed upon or assessed against the Property which become due and payable prior to the Closing Date, and will pay or cause to be paid all expenses incurred by Seller in the use, occupancy and operation of the Property between the date hereof and the Closing Date.



(h) To Seller's knowledge and except as set forth on any survey delivered by Seller to Buyer pursuant to this Agreement, no portion of the Land is located within any Special Flood Hazard Area designated by the Federal Emergency Management Agency, or in any area similarly designated by any agency of any other governmental authority; no portion of the Land meets the definition of "wetlands" codified at 40 C.F.R. part 230.3(t), or has been similarly designated by any agency of any governmental authority; and no portion of the Land constitutes "wetlands" that have been filled, whether or not pursuant to appropriate permits.

(i) To Seller's knowledge, no portion of the Land is subject to any other classification, designation or preliminary determination of any agency of any federal, state or local government, or pursuant to any federal, state or local law, which would restrict the use, development, occupancy or operation of the Property, including, without limitation, any designation or classification as an archeological site, any classification or determination under the Endangered Species Act, or any designation as an historical site.

(j) To Seller's knowledge, other than the Permitted Exceptions, the Property is not subject to any use, development or occupancy restrictions (except those imposed by applicable zoning and subdivision laws and regulations and the Existing Leases), special taxes and assessments or utility "tap-in" fees (except those generally applicable throughout the tax district in which the Property is located), or charges or restrictions, whether existing of record or arising by operation of law, unrecorded agreement, the passage of time or otherwise.

(k) To Seller's knowledge, except as set forth in any environmental reports delivered by Seller to Buyer, no portion of the Property is used or during Seller's ownership has ever been used for the storage, processing, treatment or disposal of Pollutants; the Improvements do not contain, nor have they ever contained, Pollutants; no Pollutants have been released, introduced, spilled, discharged or disposed of by Seller, nor has there been a threat of release, introduction, spill, discharge or disposal of a Pollutant, on, in, or under the Property; there are no pending claims, administrative proceedings, judgments, declarations, or orders, whether actual or threatened, relating to the presence of Pollutants on, in or under the Property; the Property is in compliance with all federal, state and local laws, regulations, orders and requirements regarding the regulation of Pollutants; to the best of Seller's knowledge, no Pollutants have been released, introduced, spilled, discharged or disposed of on, in or under any adjacent property; and there are no underground storage tanks located on or in the Property. As used in this Agreement, "Pollutants" means any material or substance, or combination of materials or substances, which by reason of quantity, concentration, composition, or characteristic is or in the future becomes regulated under any federal, state or local environmental or common law, rule, regulation, ordinance or requirement, as may be amended, replaced or superseded.

(l) To Seller's knowledge, there are no pending, threatened or contemplated condemnation actions involving all or any portion of the Property; and, to the best of Seller's knowledge and belief, there are no existing, proposed or contemplated plans to widen, modify or realign any public rights-of-way located adjacent to any portion of the Land.

(m) There are no management, maintenance, service or other contracts with respect to the Property other than the Service Agreements; and all of the Service Agreements can be canceled on thirty (30) days notice or less; the Service Agreements are presently in full force

and effect, have not been modified, supplemented or amended, and, if in writing, are the entire agreement between Seller and the other parties thereto; Seller has fully and completely paid and performed all of the duties, obligations, liabilities and responsibilities of the owner of the Property under the Service Agreements arising on or before the date hereof; and, as of the Closing Date, there will be no management, maintenance, service or other contracts with respect to the Property other than the Assigned Service Agreements.

(n) Between the date hereof and the Closing Date, Seller shall operate the Property in the ordinary course of business and shall maintain and repair the Project so that, on the Closing Date, the Project will be in the same condition as it exists on the Effective Date, natural wear and tear and loss by insured casualty alone excepted.

(o) Between the date hereof and the Closing Date, Seller shall not make or enter into any lease or other agreement for the use, occupancy or possession of all or any part of the Property without the prior written approval of Buyer.

(p) Between the date hereof and the Closing Date, Seller shall; (i) continue to carry and maintain in force all existing policies of casualty and public liability insurance with respect to the Project; and (ii) shall not enter into any brokerage commission or fee agreement or arrangement with respect to any Existing Lease or New Lease without the prior written approval of Buyer.

(r) Seller has "good and marketable fee simple title" as defined herein, to the Property, subject to the liens and security interests securing loans to Seller that will be paid in full, satisfied and canceled at Closing.

(s) Except as set forth on the survey delivered by Seller to Buyer, there are no encroachments on the Land, and the Improvements are situated entirely within the boundaries of the Land and within applicable building lines.

(t) There are no leases or other agreements for use, occupancy or possession presently in force with respect to all or any portion of the Property, except as has been disclosed to the Buyer in writing, including the lease to Tractor Supply Company.

(u) Seller will deliver on the Closing Date all documents and instruments required by this Agreement and perform all acts necessary or appropriate for the consummation of the purchase and sale of the Property as contemplated by and provided for in this Agreement.

Seller will not cause or permit any action to be taken which will cause any of the foregoing representations, warranties or covenants to be untrue or unperformed on the Closing Date; and Seller will not cause or permit any action to be taken which will cause any of the conditions of Buyer's obligations set forth in **paragraph 12**, below, to be unsatisfied or unperformed on or as of the Closing Date.

**12. Conditions of Buyer's Obligations.** Buyer's obligation to consummate the purchase and sale of the Property on the Closing Date shall be subject to the satisfaction or

performance of the following terms and conditions, any one or more of which may be waived in writing by Buyer, in whole or in part, on or as of the Closing Date:

(a) Seller shall have fully and completely kept, observed, performed, satisfied and complied with all terms, covenants, conditions, agreements, requirements, restrictions and provisions required by this Agreement to be kept, observed, performed, satisfied or complied with by Seller before, on or as of the Closing Date;

(b) The representations and warranties of Seller in this Agreement (and the substantive facts contained in any representations and warranties limited to Seller's knowledge and belief) shall be true and correct, and certified by Seller to Buyer as such, on and as of the Closing Date, in the same manner and with the same effect as though such representations and warranties had been made on and as of the Closing Date;

(c) Buyer shall not have terminated this Agreement pursuant to an express right so to terminate set forth in Section 7 (b), Section 13 or Section 14, or upon Seller's Defaults.

(d) Seller shall have accomplished all required structural modifications in accordance with applicable code and local government requirements and as approved by Buyer, to facilitate the lease of the western portion of the building to Tractor Supply Company, subdivided the Property from the property to the east that is being retained by Seller and paid the Tenant Improvement Allowance to Tractor Supply Company, and Tractor Supply Company shall not have terminated the lease, all as is expressly set forth in the Lease between Seller and Tractor Supply Company, dated January 7, 2010.

If conditions set forth in paragraph (a), (b), (c) and (d) have not been satisfied or performed or waived in writing by Buyer on or as of the Closing Date, Buyer shall have the right, at Buyer's option, either: (i) to terminate this Agreement by giving written notice to Seller on or before the Closing Date, in which event all rights and obligations of Seller and Buyer under this Agreement shall expire, and this Agreement shall become null and void; or (ii) if such failure of condition constitutes a breach of representation or warranty by Seller, constitutes a failure by Seller to perform any of the terms, covenants, conditions, agreements, requirements, restrictions or provisions of this Agreement, or otherwise constitutes a default by Seller under this Agreement, to exercise such rights and remedies as may be provided for in Section 17 of this Agreement. In either of such events, the Earnest Money shall be refunded to Buyer immediately upon request.

13. **Conditions of Seller's Obligations.** Seller's obligation to consummate the purchase and sale of the Property on the Closing Date shall be subject to the satisfaction or performance of the following terms and conditions, any one or more of which may be waived in writing by Seller, in whole or in part, on or as of the Closing Date:

(a) Buyer shall have fully and completely kept, observed, performed, satisfied and complied with all terms, covenants, conditions, agreements, requirements, restrictions and provisions required by this Agreement to be kept, observed, performed, satisfied or complied with by Seller before, on or as of the Closing Date;

(b) Seller shall have obtained a written termination agreement in form satisfactory to Seller with Wal-Mart for its existing lease at the Property on or as of the Closing Date;

(c) Seller shall have obtained the approval of the applicable governmental agency or department having jurisdiction over the Property to create a proper subdivision of the Property from the adjacent lot, including approval for any required plat of subdivision required by such governmental agency or department.

(d) Seller shall not have terminated this Agreement pursuant to an express right so to terminate set forth in Section 13, Section 14 or Section 15, or upon Buyer's default.

If conditions set forth in paragraph (a), (b), (c) or (d) have not been satisfied or performed or waived in writing by Seller on or as of the Closing Date, Seller shall have the right, at Seller's option, either: (i) to terminate this Agreement by giving written notice to Buyer on or before the Closing Date, in which event all rights and obligations of Seller and Buyer under this Agreement shall expire, and this Agreement shall become null and void; or (ii) if such failure of condition constitutes a failure by Buyer to perform any of the terms, covenants, conditions, agreements, requirements, restrictions or provisions of this Agreement, or otherwise constitutes a default by Buyer under this Agreement, to exercise such rights and remedies as may be provided for in Section 17 of this Agreement. In either of such events, the Earnest Money shall be refunded to Buyer immediately upon request.

14. **REA.** Buyer's and Seller's obligations to close pursuant to this Agreement are expressly contingent upon their mutual agreement prior to the Title Review Date of a Restrictive Easement Agreement in form and content approved by Seller and Buyer. It is expressly agreed between the parties that Seller shall be entitled to create an out parcel fronting on Paragon Parkway from their property, and that Seller shall be responsible for obtaining any required approval of tenants of the Shopping Center. Buyer and Seller shall in good faith work to draft a mutually agreeable REA to be enacted at Closing, **provided, however,** that in the event Buyer and Seller are unable to reach a mutually agreeable REA on or before the Title Review Date, either Buyer or Seller, in their individual discretion, may terminate this Agreement, the Earnest Money, to the extent deposited, shall be refunded to Buyer and neither party shall have further rights or obligations pursuant to this Agreement except as otherwise expressly provided herein.

15. **Subdivision.** Buyer's and Seller's obligations to close pursuant to this Agreement are expressly contingent upon the legal subdivision of the Property from the Retained Property (the "**Subdivision**") prior to the Closing Date substantially as the property boundaries are shown on the attached Exhibit "A" Addendum, **provided, however,** that if such Subdivision shall provide for an additional out parcel from the Retained Property fronting on Paragon Parkway, Buyer shall likewise be entitled to hereafter create an out parcel of at least equal size at such time in the future as Buyer might determine. In the event the Subdivision is not completed and approved by Buyer on or before the Closing Date, Seller may extend the Closing Date for an additional thirty (30) day period to achieve the Subdivision. In the event the Subdivision fails to be completed by the Closing Date, as may be extended, either Buyer or Seller, in their individual discretion, may terminate this Agreement, the Earnest Money shall be refunded to Buyer and

neither party shall have further rights and obligations pursuant to this Agreement except as otherwise expressly provided herein.

16. **Possession at Closing.** Seller shall surrender possession of the Property to Buyer on the Closing Date.

17. **Remedies.**

(d) If the purchase and sale of the Property is not consummated in accordance with the terms and conditions of this Agreement due to circumstances or conditions which constitute a default by Buyer under this Agreement, the Earnest Money shall be delivered to Seller as full liquidated damages for such default. Seller and Buyer acknowledge that Seller's actual damages in the event of a default by Buyer under this Agreement will be difficult to ascertain, that such liquidated damages represent the Seller's and Buyer's best estimate of such damages, and that Seller and Buyer believe such liquidated damages are a reasonable estimate of such damages. Seller and Buyer expressly acknowledge that the foregoing liquidated damages are intended not as a penalty, but as full liquidated damages in the event of Buyer's default and as compensation for Seller's taking the Property off the market during the term of this Agreement. Such delivery of the Earnest Money shall be the sole and exclusive remedy of Seller by reason of a default by Buyer under this Agreement, and Seller hereby waives and releases any right to sue Buyer, and hereby covenants not to sue Buyer, for specific performance of this Agreement or to prove that Seller's actual damages exceed the Earnest Money which is herein provided Seller as full liquidated damages.

(e) If (i) any representation or warranty of Seller set forth in this Agreement shall prove to be untrue or incorrect in any respect, or (ii) Seller shall fail to keep, observe, perform, satisfy or comply with, fully and completely, any of the terms, covenants, conditions, agreements, requirements, restrictions or provisions required by this Agreement to be kept, observed, performed, satisfied or complied with by Seller, or (iii) the purchase and sale of the Property is otherwise not consummated in accordance with the terms and provisions of this Agreement due to circumstances or conditions which constitute a default by Seller under this Agreement (the matters described in the foregoing clauses (i), (ii) and (iii) are herein sometimes collectively called "Seller Defaults"), the Buyer shall have the right to elect to terminate this Agreement and the Earnest Money shall be refunded to Buyer immediately upon request, or Buyer may seek specific performance of this Agreement.

18. **Indemnification.** Seller shall, and does hereby, indemnify, defend and hold Buyer harmless from, against and in respect of: (i) physical injury to or the death of persons or damage to property occurring prior to the Closing Date (x) on or in the Property, or (y) in any manner arising out of, by reason of or in connection with the use, occupancy or operation of the Property; (ii) any matter arising out of, by reason of or with respect to the ownership or operation of the Property prior to the Closing Date; (iii) any breach by Seller of any representation or warranty under this Agreement; (iv) any and all actions, causes of action, suits, claims, demands, judgments, liens, proceedings and investigations (or any appeal thereof or relative thereto or other review thereof), of any kind or nature whatsoever, arising out of, by reason of, as a result of or in connection with any of the matters covered by the immediately preceding clauses (i), (ii) or (iii); and (v) any and all liabilities, damages, losses, costs, expenses (including counsel fees and

expenses and disbursements of counsel), amounts of judgment, assessments, fines or penalties, and amounts paid in compromise or settlement, suffered, incurred or sustained by Buyer on account of, by reason of, as a result of or in connection with any of the matters covered by the immediately preceding clauses (i), (ii) (iii) or (iv).

19. **Risk of Loss and Insurance.** Between the date of this Agreement and Closing, the risks and obligations of ownership and loss of the Property and the correlative rights against insurance carriers and third parties shall belong to Seller. In the event of the damage or destruction of any portion of the Property in excess of One Hundred Thousand Dollars (\$100,000) prior to Closing, Buyer shall have the right, at Buyer's option, to terminate this Agreement by giving written notice thereof to Seller prior to Closing, in which event the Earnest Money shall be refunded to Buyer immediately upon request, all rights and obligations of Seller and Buyer under this Agreement shall expire, and this Agreement shall become null and void. If Buyer does not so terminate this Agreement or if the damage or destruction is less than One Hundred Thousand Dollars (\$100,000), Buyer shall be obligated to close on the purchase of the Property the insurance proceeds shall be assigned to Buyer and Buyer shall receive a credit against the Purchase Price in the amount of the deductible under Seller's insurance policy.

20. **Condemnation.** In the event of the taking of all or any material part of the Property by eminent domain proceedings, or the commencement or bona fide threat of the commencement of any such proceedings, prior to Closing, Buyer shall have the right, at Buyer's option, to terminate this Agreement by giving written notice thereof to Seller prior to Closing, in which event the Earnest Money shall be refunded to Buyer immediately upon request, all rights and obligations of Seller and Buyer under this Agreement shall expire, and this Agreement shall become null and void. If Buyer does not so terminate this Agreement, the Purchase Price shall be reduced by the total of any awards or other proceeds received by Seller prior to Closing with respect to any taking, or, at Closing, Seller shall assign to Buyer all rights of Seller in and to any awards or other proceeds to be paid or to become payable after Closing by reason of any taking. Seller shall notify Buyer of eminent domain proceedings within five (5) days after Seller learns thereof.

21. **Broker and Commission.**

(f) All negotiations relative to this Agreement and the purchase and sale of the Property as contemplated by and provided for in this Agreement have been conducted by and between Seller and Buyer without the intervention of any person or other party as agent or broker. Seller and Buyer warrant and represent to each other that other than with regard to Broker, Seller and Buyer have not entered into any agreement or arrangement and have not received services from any broker or broker's employees or independent contractors, and there are and will be no broker's commissions or fees payable in connection with this Agreement or the purchase and sale of the Property by reason of their respective dealings, negotiations or communications.

22. **Further Assurances; Survival.** At Closing, and from time to time thereafter, Seller shall do all such additional and further acts, and shall execute and deliver all such additional and further deeds, affidavits, instruments, certificates and documents, as Buyer, Buyer's counsel or Buyer's title insurer may reasonably require fully to vest in and assure to

Buyer full right, title and interest in and to the Property to the full extent contemplated by this Agreement and otherwise to effectuate the purchase and sale of the Property as contemplated by and provided for in this Agreement. All the provisions of this Agreement (including, without limitation, the representations, covenants and warranties of Seller as set forth in this Agreement), shall survive the consummation of the purchase and sale of the Property on the Closing Date for a period of six (6) months, the delivery of the deed to Buyer and the payment of the Purchase Price. Notwithstanding any provision of this Agreement to the contrary, the indemnification provisions of paragraphs 5, 15 and 18 of this Agreement shall survive any termination of this Agreement.

23. **General Provisions.**

(g) **Notices.** Whenever any notice, demand or request is required or permitted under this Agreement, such notice, demand or request shall be in writing and shall be delivered by hand, be sent by registered or certified mail, postage prepaid, return receipt requested, or be sent by nationally recognized commercial courier for next business day delivery, to the addresses set forth below their respective executions hereof, or to such other addresses as are specified by written notice given in accordance herewith, or shall be transmitted by facsimile to the number for each party set forth below their respective executions hereof, or to such other numbers as are specified by written notice given in accordance herewith. All notices, demands or requests delivered by hand shall be deemed given upon the date so delivered; those given by mailing as hereinabove provided shall be deemed given on the date of deposit in the United States Mail; those given by commercial courier as hereinabove provided shall be deemed given on the date of deposit with the commercial courier; and those given by facsimile shall be deemed given on the date of facsimile transmittal. Nonetheless, the time period, if any, in which a response to any notice, demand or request must be given shall commence to run from the date of receipt of the notice, demand or request by the addressee thereof. Any notice, demand or request not received because of changed address or facsimile number of which no notice was given as hereinabove provided or because of refusal to accept delivery shall be deemed received by the party to whom addressed on the date of hand delivery, on the date of facsimile transmittal, on the first calendar day after deposit with commercial courier, or on the third calendar day following deposit in the United States Mail, as the case may be.

(h) **Facsimile as Writing.** The parties expressly acknowledge and agree that, notwithstanding any statutory or decisional law to the contrary, the printed product of a facsimile transmittal shall be deemed to be "written" and a "writing" for all purposes of this Agreement.

(i) **Assignment; Parties.** This Agreement may be assigned by Buyer, in whole or in part, and any such assignment shall relieve Buyer of liability for the performance of Buyer's duties and obligations under this Agreement to the extent of such assignment. This Agreement shall be binding upon and enforceable against, and shall inure to the benefit of, Buyer and Seller and their respective successors and assigns.

(j) **Headings.** The use of headings, captions and numbers in this Agreement is solely for the convenience of identifying and indexing the various provisions in this Agreement and shall in no event be considered otherwise in construing or interpreting any provision in this Agreement.

(k) **Exhibits.** Each and every exhibit referred to or otherwise mentioned in this Agreement is attached to this Agreement and is and shall be construed to be made a part of this Agreement by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full and at length every time it is referred to or otherwise mentioned.

(l) **Defined Terms.** Capitalized terms used in this Agreement shall have the meanings ascribed to them at the point where first defined, irrespective of where their use occurs, with the same effect as if the definitions of such terms were set forth in full and at length every time such terms are used.

(m) **Pronouns.** Wherever appropriate in this Agreement, personal pronouns shall be deemed to include the other genders and the singular to include the plural.

(n) **Severability.** If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall ever be held to be invalid or unenforceable, then in each such event the remainder of this Agreement or the application of such term, covenant, condition or provision to any other person or any other circumstance (other than those as to which it shall be invalid or unenforceable) shall not be thereby affected, and each term, covenant, condition and provision hereof shall remain valid and enforceable to the fullest extent permitted by law.

(o) **Non-Waiver.** Failure by any party to complain of any action, non-action or breach of any other party shall not constitute a waiver of any aggrieved party's rights hereunder. Waiver by any party of any right arising from any breach of any other party shall not constitute a waiver of any other right arising from a subsequent breach of the same obligation or for any other default, past, present or future.

(p) **Rights Cumulative.** All rights, remedies, powers and privileges conferred under this Agreement on the parties shall be cumulative of and in addition to, but not restrictive of or in lieu of, those conferred by law.

(q) **Time of Essence; Dates.** Time is of the essence of this Agreement. Anywhere a day certain is stated for payment or for performance of any obligation, the day certain so stated enters into and becomes a part of the consideration for this Agreement. If any date set forth in this Agreement shall fall on, or any time period set forth in this Agreement shall expire on, a day which is a Saturday, Sunday, federal or state holiday, or other non-business day, such date shall automatically be extended to, and the expiration of such time period shall automatically be extended to, the next day which is not a Saturday, Sunday, federal or state holiday or other non-business day. The final day of any time period under this Agreement or any deadline under this Agreement shall be the specified day or date, and shall include the period of time through and including such specified day or date. All references to the "Effective Date" shall be deemed to refer to the later of the date of Buyer's or Seller's execution of this Agreement, as indicated below their executions hereon.

(r) **Applicable Law.** This Agreement shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of North Carolina.



(s) **Entire Agreement; Modification.** This Agreement supersedes all prior discussions and agreements among Seller and Buyer with respect to the purchase and sale of the Property and other matters contained herein, and this Agreement contains the sole and entire understanding among Seller and Buyer with respect thereto. This Agreement shall not be modified or amended except by an instrument in writing executed by or on behalf of Seller and Buyer.

(t) **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

(u) **Attorney's Fees.** In the event of any litigation between Buyer and Seller arising under or in connection with this Agreement, the prevailing party shall be entitled to recover from the other party the expenses of litigation (including reasonable attorneys' fees, expenses and disbursements) incurred by the prevailing party.

(v) **Authority.** Each party hereto warrants and represents that such party has full and complete authority to enter into this Agreement and each person executing this Agreement on behalf of a party warrants and represents that he has been fully authorized to execute this Agreement on behalf of such party and that such party is bound by the signature of such representative.

(w) **Counsel.** Each party hereto warrants and represents that each party has been afforded the opportunity to be represented by counsel of its choice in connection with the execution of this Agreement and has had ample opportunity to read, review, and understand the provisions of this Agreement.

(x) **No Construction Against Preparer.** No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party's having or being deemed to have prepared or imposed such provision.

(y) **Offer and Acceptance.** This instrument shall constitute an offer by Buyer to Seller and shall remain open for acceptance until 5:00 p.m., February 12, 2010, North Carolina time, or such other date as may be specified in writing by the offeror. In order for this offer to be validly accepted, two (2) counterparts of this Agreement, fully executed on behalf of the offeree, must have been actually delivered to the offeror at the offices of David Cotton, Haywood County Manager, Waynesville, North Carolina prior to the expiration of the offer.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute, seal and deliver this Agreement, all as of the day and year first written above.

Signed, sealed and delivered in the presence of:

Brad R. [Signature]  
Unofficial Witness

SELLER:

~~RCG-WAYNESVILLE, LLC~~  
a Georgia limited liability company  
By: ~~RCG Ventures III LLC~~, a Georgia limited liability company

Name: Michael C. McMillen, Jr.  
Title: Manager/Member

Initial address for notices:

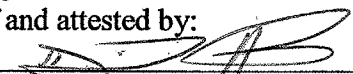
~~3060~~-2970 Peachtree Road  
Suite 805 400  
Atlanta, GA 30305  
404-816-5445 (fax)  
Attention: Harold McCabe  
Telephone Number: 404-816-5454  
Telecopy Number: 404-816-5445

With a copy to:

McGuireWoods LLP  
1170 Peachtree Street, NE  
Suite 2100  
Atlanta, Georgia 30309  
Attention: John T. Grieb, Esq.  
Telephone Number: (404) 443-5717  
Telecopy Number: (404) 443-5762  
Date of Seller's Execution:

February 10<sup>th</sup>, 2010

Signed, sealed and delivered in the presence  
of and attested by:

  
\_\_\_\_\_  
David Cotton, Clerk to the Board of  
Commissioners and County Manager

**BUYER:**

**HAYWOOD COUNTY**, North Carolina  
a subdivision of the State of North Carolina  
and a body politic and corporate

By:

  
\_\_\_\_\_  
Name: James W. Kirkpatrick III

Title: Chairman of the Board of  
Commissioners

Initial address for notices:  
215 N. Main Street  
Waynesville, NC 28786

Attention: David Cotton  
Telephone Number: (828) 452-6625  
Email: [dcotton@haywoodnc.net](mailto:dcotton@haywoodnc.net)

With a copy to:  
Nelson Mullins Riley & Scarborough LLP  
GlenLake One/2<sup>nd</sup> Floor  
4140 Parklake Avenue  
Raleigh, NC 27612  
Attention: Leon M. Killian III  
Telephone Number: (919) 877-3810  
Telecopy Number: (919) 877-3143  
Email: [chip.killian@nelsonmullins.com](mailto:chip.killian@nelsonmullins.com)  
Date of Buyer's Execution:  
January 27, 2010

Escrow Agent executes this Agreement to acknowledge and agree to hold and disburse the Earnest Money in accordance with the terms and provisions of this Agreement and the Conditions of Escrow attached hereto.

ESCROW AGENT:

Signed, sealed and delivered in the presence  
of Amy M Adams  
Unofficial Witness

**CHICAGO TITLE INSURANCE  
COMPANY**

By: W. Robbin Cox  
Name: W. Robbin Cox  
Title: VP

Initial address for notices:  
150 Fayetteville Street, Suite 570  
Raleigh, NC 27601  
Attention: Kimberly Laney  
Telephone Number: (919) 833-6900  
Telecopy Number: (919) 833-6905

**CHICAGO TITLE INSURANCE COMPANY**  
**CONDITIONS OF ESCROW**

CHICAGO TITLE INSURANCE COMPANY (hereinafter "Escrow Agent") accepts the Funds as described in the preceding Letter and/or Agreement subject to these Conditions of Escrow:

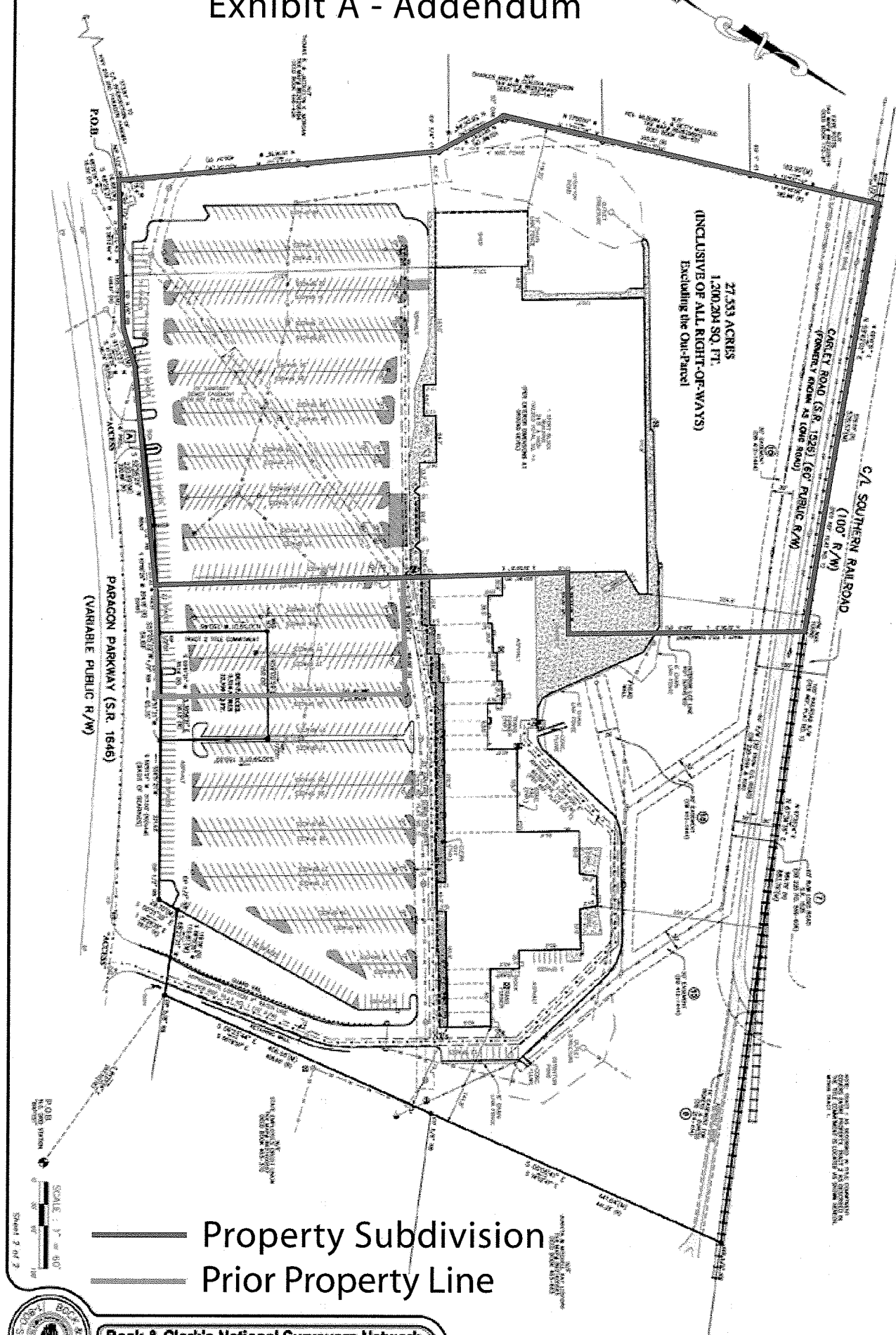
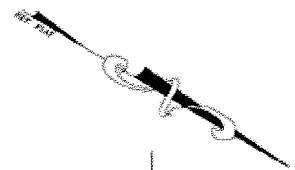
1. The Funds may be processed for collection in the normal course of business by Escrow Agent, who may commingle funds received by it with escrow funds of others in the regular escrow account at Wachovia Bank, or such other institution as maintained from time to time by Escrow Agent (hereinafter the "Depository"). The parties to this escrow acknowledge that the maintenance of such escrow accounts with some Depository institutions may result in Escrow Agent being provided with an array of bank services, accommodations or other benefits by the Depository institution. Escrow Agent or its affiliates also may elect to enter into other business transactions with or obtain loans for investment or other purposes from the Depository institution. All such services, accommodations and other benefits shall accrue to Escrow Agent, and Escrow Agent shall have no obligation to account to the parties to the escrow for the value of such services, accommodations or other benefits.
2. Escrow Agent shall not be liable for any loss caused by the failure, suspension, bankruptcy or dissolution of the Depository.
3. Escrow Agent shall not be liable for loss or damage resulting from:
  - a. Any good faith act or forbearance of Escrow Agent;
  - b. Any default, error, action or omission of any party, other than Escrow Agent;
  - c. Any defect in the title to any property unless such loss is covered under a policy of title insurance issued by the Escrow Agent;
  - d. The expiration of any time limit or other delay which is not solely caused by the failure of Escrow Agent to proceed in its ordinary course of business, and in no event where such time limit is not disclosed in writing to the Escrow Agent;
  - e. The lack of authenticity of the signatory to sign such writing;
  - f. Escrow Agent's compliance with all attachments, writs, orders, judgments, or other legal process issued out of any court;
  - g. Escrow Agent's assertion or failure to assert any cause of action or defense in any judicial or administrative proceeding; or
  - h. Any loss or damage which arises after the Funds have been disbursed in accordance with this Agreement.
4. Escrow Agent shall be fully indemnified by the parties hereto for all its expenses, costs, and reasonable attorneys' fees incurred in connection with any interpleader action which Escrow Agent may file, in its sole discretion, to resolve any dispute as to the Funds or which may be filed against the Escrow Agent. Such costs, expenses or attorneys' fees may be deducted from the Funds.
5. If Escrow Agent is made a party to any judicial, non-judicial or administrative action, hearing or process based on acts of any of the other parties hereto and not on the malfeasance and/or negligence of Escrow Agent in performing its duties hereunder, the expenses, costs and reasonable attorneys' fees incurred by Escrow Agent in responding to such action, hearing or process may be deducted from the Funds held hereunder and the party/parties whose alleged acts are a basis for such proceedings shall indemnify, save and hold Escrow Agent harmless from said expenses, costs and fees so incurred.
6. Escrow Agent shall assist Buyer and Seller, if requested, with the disbursement of proceeds at Closing. Escrow Agent shall not be responsible for the preparation of any closing documents, including but not limited to settlement statements, disbursement summaries, tax notices, prorations, deeds or other transfer documents. Should Buyer and Seller elect to obtain local counsel at their expense for the purpose of updating title and recording any closing documents Escrow Agent will cooperate with the local attorney, Buyer and Seller as the coordinator of the closing.
7. Seller and/or Buyer or their respective counsel shall be responsible for reporting necessary pursuant to IRC Section 6045 (e).
8. The terms of these Conditions of Escrow shall control in the event of any conflict between the terms contained herein and the terms of the Agreement of Purchase and Sale executed by Buyer and Seller.

**EXHIBIT A**

**LEGAL DESCRIPTION**

Tract 2 containing 15.102 acres together with that drainage easement recorded in Deed Book 433, Page 28, Haywood County Registry, as particularly described in Deed Book 690, Page 269, Haywood County Registry. See also Parcel No. 8626-39-1807.

# Exhibit A - Addendum



**Bock & Clark's National Surveyors Network**  
 National Coordinators of ALTA/ACSM Land Title Surveys  
 537 North Davidson-Maplewood Road, Jones, Ohio 44333  
 Phone: (330) 338-0000, Fax: (330) 338-1000, www.bockandclark.com

**EXHIBIT B**

**SCHEDULE OF PERMITTED EXCEPTIONS**

**LAKESIDE PLAZA, WAYNESVILLE, NORTH CAROLINA**

1. Taxes for the year 2010 and subsequent years, not yet due and payable.
2. Easements, setback lines and any other matters shown on plat recorded in Map Book A, Page 43, Haywood County Registry.
3. Easements to Carolina Power and Light Company as recorded in Book 154, Page 289; Book 161, Page 2; Book 161, Page 42; Book 217, Page 434 and Book 412, Page 1444, Haywood County Registry.
4. Right of Way Agreement in favor of the State Highway and Public Works Commission as recorded in Book 179, Page 108, Haywood County Registry.
5. Right of Way Agreements in favor of the State Highway Commission as recorded in Book 216, Page 22; Book 216, Page 67; Book 220, Page 599 and Book 220, Page 606, Haywood County Registry.
6. Easements to Junalaska Sanitary District as recorded in Book 204, Page 363; Book 204, Page 364; Book 398, Page 125 and Book 399, Page 1283, Haywood County Registry.
7. Road easement reserved in document recorded in Book 214, Page 414, Haywood County Registry.
8. Easement to Town of Waynesville as recorded in Book 265, Page 686, Haywood County Registry.
9. Deeds for rights of way recorded in Book 297, Page 706; Book 297, Page 708 and Book 297, Page 710, Haywood County Registry.
10. Road rights of way and easement recorded in Book 344, Page 452; Book 349, Page 830 and Book 349, Page 689, Haywood County Registry.
11. Easement and deed for right of way recorded in Book 324, Page 53, Haywood County Registry.
12. Right of way agreement recorded in Book 355, Page 791, Haywood County Registry.
13. Right of way encroachment agreement recorded in Book 410, Page 249, Haywood County Registry.



14. Title to that portion of insured premises specifically the 60' public right of way of Carley Road formerly known as Long Road and a portion of the 100' right of way of Southern Railroad.
15. Assignment and Assumption of Leases recorded in Book 438, Page 371 and Book 435, Page 744, Haywood County Registry.
16. Terms, conditions and provision of the unrecorded leases referenced in document recorded in Book 435, Page 744, Haywood County Registry.
17. Performance Bond recorded in Book 460, Page 2220, Haywood County Registry.

**EXHIBIT C**

**CERTIFICATION OF NON-FOREIGN STATUS  
(ENTITY TRANSFEROR) AND  
FORM 1099 INFORMATION SOLICITATION**

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by the transferor, the undersigned hereby certifies the following on behalf of the transferor named below:

1. Transferor: \_\_\_\_\_  
Entity Type: \_\_\_\_\_
2. The transferor's U.S. employer identification number is: \_\_\_\_\_  
If no U.S. employer identification number exists, then the partner's (all partners necessary) social security number(s) is(are): \_\_\_\_\_ n/a
3. The transferor's address is:  
\_\_\_\_\_  
\_\_\_\_\_
4. Closing Date: \_\_\_\_\_, 2009
5. Gross Proceeds: \$ \_\_\_\_\_
6. Address/description of Property being transferred:  
\_\_\_\_\_

Transferor hereby agrees and understands that transferee or the closing agent/attorney, may be required by law to furnish the Transferor's Taxpayer Identification Number or Employer Identification Number and any information contained herein to the Internal Revenue Service or such similar state agency and that any false statement contained herein could be punished by fine, imprisonment, or both.

- a. If there are multiple transferors, an allocation of proceeds among them: \_\_\_\_\_
- b. Whether property (other than cash) or services may be received as part of the consideration:  
\_\_\_\_\_
- c. Whether property (other than cash) or services may be received in satisfaction of an obligation having a stated principle amount: \_\_\_\_\_  
\_\_\_\_\_

- d. Whether, in connection with a contingent payment transaction, an amount of gross proceeds that cannot be determined with certainty may be received: \_\_\_\_\_
  
- e. Federal 1099: \_\_\_\_\_  
State 1099: \_\_\_\_\_  
State Non-Resident 1099: \_\_\_\_\_

Under penalty of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct, and complete, and I further declare that I have authority to sign this document on behalf of the transferor.

\_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT D**

**SPECIAL WARRANTY DEED**

Excise Tax: \_\_\_\_\_  
Tax Parcel ID No. \_\_\_\_\_ Verified by \_\_\_\_\_ County  
on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ By: \_\_\_\_\_

Mail/Box to: \_\_\_\_\_  
This instrument was prepared by: \_\_\_\_\_  
Brief description for the Index: \_\_\_\_\_

THIS DEED, made this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between

**GRANTOR:** \_\_\_\_\_ and  
whose mailing address is \_\_\_\_\_  
\_\_\_\_\_ and  
whose mailing address is \_\_\_\_\_  
(herein referred to collectively as **Grantor**) and

**GRANTEE:** \_\_\_\_\_ and  
whose mailing address is \_\_\_\_\_  
\_\_\_\_\_ and  
whose mailing address is \_\_\_\_\_  
(herein referred to collectively as **Grantee**) and

*[Include mailing address for each Grantor and Grantee; marital status of each individual Grantor and Grantee; and type of entity, e.g., corporation, limited liability company, for each non-individual Grantor and Grantee.]*

**WITNESSETH:**

For valuable consideration from Grantee to Grantor, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby gives, grants, bargains, sells and conveys unto Grantee in fee simple, subject to the Exceptions and Reservations hereinafter provided, if any, the following described property located in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of North Carolina, more particularly described as follows:

Said property having been previously conveyed to Grantor by instrument(s) recorded in Book \_\_\_\_\_, Page \_\_\_\_\_, and being reflected on plat(s) recorded in Map/Plat Book \_\_\_\_\_, page/slide \_\_\_\_\_.

All or a portion of the property herein conveyed \_\_\_ includes or \_\_\_ does not include the primary residence of a Grantor.

TO HAVE AND TO HOLD unto Grantee, together with all privileges and appurtenances thereunto belonging, in fee simple, subject to the Exceptions and Reservations hereinafter and hereinabove provided, if any.

And Grantor hereby warrants that Grantor has done nothing to impair the title as received by Grantor and that Grantor will forever warrant and defend the title against the lawful claims of all persons claiming by, through or under Grantor.

This conveyance is made subject to the following Exceptions and Reservations:

All references to Grantor and Grantee as used herein shall include the parties as well as their heirs, successors and assigns, and shall include the singular, plural, masculine, feminine or neuter as required by context.

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

\_\_\_\_\_  
(Entity Name)

By: \_\_\_\_\_ (SEAL)  
Print/Type Name & Title: \_\_\_\_\_ Print/Type Name: \_\_\_\_\_

By: \_\_\_\_\_ (SEAL)  
Print/Type Name & Title: \_\_\_\_\_ Print/Type Name: \_\_\_\_\_

By: \_\_\_\_\_ (SEAL)  
Print/Type Name & Title: \_\_\_\_\_ Print/Type Name: \_\_\_\_\_

By: \_\_\_\_\_ (SEAL)  
Print/Type Name & Title: \_\_\_\_\_ Print/Type Name: \_\_\_\_\_

State of \_\_\_\_\_ (Official/Notarial Seal)  
County of \_\_\_\_\_

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document:

\_\_\_\_\_ [insert name(s) of principal(s)].

Date: \_\_\_\_\_  
\_\_\_\_\_ Notary Public  
Notary's Printed or Typed Name

My Commission Expires:  
\_\_\_\_\_

State of \_\_\_\_\_ (Official/Notarial Seal)  
County of \_\_\_\_\_

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document:

\_\_\_\_\_ [insert name(s) of principal(s)].

Date: \_\_\_\_\_  
\_\_\_\_\_ Notary Public  
Notary's Printed or Typed Name

My Commission Expires:  
\_\_\_\_\_

**EXHIBIT E**

**FORM 1099-S INFORMATION SHEET**

Section 6045(e) of the Internal Revenue Code of 1986, as amended, requires the reporting of information on certain real estate transactions to the Internal Revenue Service. From the information you provide below, a form 1099-S will be produced and sent to the Internal Revenue Service, and a copy of it will be furnished to the Recipient of the real estate no later than January 31 of next year.

**RECIPIENT (SELLER) INFORMATION**

1. Recipient's name:

Recipient's address:

Recipient's taxpayer identification number: \_\_\_\_\_

**TRANSACTION INFORMATION**

2. Date of Closing:

3. Description of real estate transferred:

4. Entire gross proceeds from transfer of real estate:

5. Share of gross proceeds allocable to the above-named Recipient  
(respond only if there are multiple Recipients of the real estate):  
\_\_\_\_\_

6. Indicate whether property (other than cash or consideration treated as cash) or service was, will, or may be received by the Recipient:  
\_\_\_\_\_ Yes      \_\_\_\_\_ No

7. For real estate transactions involving a residence, state the portion of real property tax allocable to the purchaser for the portion of the year beginning on the purchase date:

Under penalties of perjury, the recipient hereby certifies that (i) the number shown on this statement is the Recipient's correct taxpayer identification number, (ii) the other information on this Data sheet is true, correct and complete, and (iii) the Recipient has received a copy of this Data Sheet and a Form 1099-B containing such information.

**Recipient:**

\_\_\_\_\_  
By: \_\_\_\_\_ (SEAL)