

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_ (the "Effective Date"), by and between TKC C, LLC, a North Carolina limited liability company ("Seller"), and \_\_\_\_\_ ("Buyer").

### RECITALS:

- A. Seller is the owner of the Property (as hereinafter defined in Section 1 hereof).
- B. Buyer wishes to purchase and Seller desires to sell the Property pursuant to the terms and conditions set forth herein.

### AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants, representations, warranties and agreements contained herein, and for other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged by the parties, it is hereby agreed as follows:

#### SECTION 1. Definitions.

For purposes of this Agreement, the following capitalized terms used herein shall have the meanings set forth below:

Contracts. "Contracts" means the contracts set forth on Schedule 1 attached hereto and incorporated herein by this reference.

Escrow Agent. "Escrow Agent" means Broker Post.

Improvements. "Improvements" means any parking or other improvements now or hereafter situated on the Real Property (not including the Personal Property) and all right, title and interest appurtenant to the Improvements, including, without limitation, (a) any easement, right-of-way, license, interest, right and appurtenance of any kind relating to the Improvements, (b) any award from and after the Closing Date relating to any damage or any condemnation or other taking (whether permanent or temporary) of the Improvements or any rights related thereto and (c) any insurance proceeds relating to any casualty loss due and owing to Seller as a result of damage or destruction of all or any portion of the Improvements to the extent not applied by Seller to restore the Improvements.

Judgment. "Judgment" means any judgment, order, award, or decree of any court, governmental authority, regulatory body or arbitrator or any kind.

Judicial Action. “Judicial Action” means any action, lawsuit, claim, proceeding or investigation (or group of related actions, lawsuits, proceedings or investigations).

Personal Property. “Personal Property” means all right, title and interest of Seller in and to all equipment, furniture, furnishing, fixtures and personalty, if any, located at the Real Property or the Improvements or affixed to any of the Real Property or the Improvements.

Property. “Property” means the Real Property together with the Improvements, if any, and the Personal Property.

Real Property. “Real Property” means that certain parcel of real property located in Seaford, Delaware, as more particularly described on Exhibit A attached hereto, together with all right, title and interest appurtenant to such property, including, without limitation, (a) any easements, rights-of-way, licenses, mineral rights, water rights, water stock and all other interests, rights and appurtenances of any kind relating to the Real Property, (b) Seller’s interest, if any, in any land lying in the bed of any highway, street, road, avenue, access way or in any easement, opened or proposed, in front of, at a side or adjoining the Real Property, and to the centerline thereof, (c) any award from and after the Closing Date relating to any damage or any condemnation or other taking (whether permanent or temporary) of the Real Property and the rights related thereto, and (d) any insurance proceeds relating to any casualty loss due and owing to Seller as a result of damage or destruction of all or any portion of the Real Property, to the extent not applied by Seller to restore the Real Property.

Seller’s Knowledge. Statements made herein given by Seller “to the best of Seller’s Knowledge” or “to Seller’s knowledge” are based solely upon the actual knowledge Kenneth R. Beuley during Seller’s due diligence period prior to its acquisition of the Property and subsequent to its acquisition of the Property. No inquiries or investigations, or knowledge of events or circumstances existing or occurring prior or subsequent to Seller’s acquisition of the Property, shall be deemed attributed to Seller unless it can be proven that Kenneth R. Beuley had actual knowledge of such inquiries, investigations, events or circumstances and failed to disclose such matters to Buyer prior to Closing. Notwithstanding anything contained herein to the contrary, Kenneth R. Beuley has not conducted any investigation or inquiry with respect to the representations and warranties set forth herein made “to the best of Seller’s knowledge” or “to Seller’s knowledge” and Seller shall have no liability with respect to any such representations or warranties for any matter not actually known by Kenneth R. Beuley.

Title Company. “Title Company” means Escrow Agent.

Warranties. “Warranties” means the warranties set forth on Schedule 2 attached hereto and incorporated herein by reference.

## SECTION 2. Purchase Price and Terms of Payment.

The purchase price ("Purchase Price") for the Property is \_\_\_\_\_ and NO/100 DOLLARS (\$\_\_\_\_\_.00). The Purchase Price shall be paid by Buyer as follows:

(a) Within three (3) business days after the Effective Date, Buyer shall deposit the sum of \_\_\_\_\_ THOUSAND AND NO/100 DOLLARS (\$\_\_\_\_\_.00) with the Escrow Agent and the Escrow Agent shall deposit the Earnest Money in an interest bearing account within two (2) days of receipt of Buyer's taxpayer identification number. Buyer shall be entitled to all interest accumulating on the Earnest Money, unless Seller is entitled to retain the Earnest Money as liquidated damages pursuant to the terms of Section 14 below. The \$\_\_\_\_\_.00 deposit together with interest on all such amount shall hereinafter collectively be called the "Earnest Money".

(b) Upon Closing, the Earnest Money shall be applied against the Purchase Price, and the balance of the Purchase Price shall be paid to Seller in immediately available funds.

SECTION 3. Conveyance and Title.

Subject to the terms and conditions of this Agreement and for the consideration set forth herein, Seller agrees to convey, transfer, assign, sell and deliver to Buyer at Closing all of the following:

(a) Fee simple title to the Real Property and Improvements (if any), by Special Warranty Deed, subject only to the Permitted Exceptions and the lien for ad valorem taxes that are not yet due and payable (the legal description for the Real Property to be used in the Special Warranty Deed to Buyer shall be the legal description pursuant to which Seller obtained title to the Real Property).

(b) All of Seller's right, title and interest, to the extent assignable, if any, in and to the Contracts, the Warranties and the Personal Property.

Seller agrees to deliver possession of the Property on the Closing Date to Buyer, free of any lease or other right of possession or claim of right of possession by any person or entity, except for the Permitted Exceptions.

SECTION 4. Title.

(a) At Closing, Seller shall convey to Buyer fee simple absolute title to the Property, subject only to the Permitted Exceptions and the lien of ad valorem taxes that are not yet due and payable.

(b) As soon as reasonably possible after the Effective Date, Seller shall provide to Buyer a copy of Seller's original title policy and all endorsements thereto with complete and legible copies (to the extent such copies are available) of all matters referred to therein as exceptions to title. On or prior to the expiration of the date 30 days after the Effective (the "Title Objection Period"), Buyer shall cause the Title Company to issue a commitment for title insurance (the "Title Commitment") and shall notify Seller, in writing, of such objections as Buyer may have to anything contained in the Title Commitment and any survey Buyer obtains of the Property, provided, however, that Buyer hereby agrees that it shall not be permitted to object to exceptions to title or matters of survey that do not either (i) affect the marketability or insurability of the title to the Real Property or (ii) prohibit or materially and adversely impair the use of the Real Property as a retail store. Any item contained in the Title Commitment or any matter that would be shown by a current survey of the Property to which Buyer does not object during the Title Objection Period will be deemed a "Permitted Exception". In the event Buyer notifies Seller of objections to title or to matters shown on a survey prior to the expiration of the Title Objection Period, Seller will have the right, but not the obligation (other than with respect to Monetary Liens as defined herein), to attempt to cure such objections. Within ten (10) days after receipt of Buyer's notice of objections, Seller will notify Buyer in writing if Seller elects to attempt to cure such objections ("Seller's Cure Notice"). If Seller provides no notice, Seller shall be deemed to have elected not to cure. If Seller elects not to cure such objections prior to the Closing, Buyer will have the following options: (i) to accept a conveyance of the Property subject to the Permitted Exceptions, specifically including any matter objected to by Buyer (other than a Monetary Lien) that Seller is unwilling or unable to cure, and without reduction of the Purchase Price; or (ii) to terminate this Agreement by sending written notice thereof to Seller, and upon delivery of such notice of termination, this Agreement will terminate and the Earnest Money will be released to Seller and thereafter neither party hereto will have any further rights, obligations or liabilities hereunder except with regard to any breach or default existing as of that date or to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement. If Seller notifies Buyer that Seller does not intend to attempt to cure any title objection (whether by lapse of time or by specific notice), Buyer will, within ten (10) days after (a) the date of such Seller's Cure Notice or (b) the deadline for Seller to provide Seller's Cure Notice to Buyer, notify Seller in writing whether Buyer elects to accept the conveyance under clause (i) above or to terminate this Agreement under clause (ii) above and forfeit the Earnest Money to Seller as liquidated damages. As used herein, a "Monetary Lien" is a lien, claim or encumbrance that evidences or secures a fixed monetary amount other than ad valorem real property taxes. Seller must satisfy all Monetary Liens arising from Seller's acts or omissions to act in full, at Seller's sole cost and expense, at or prior to the Closing failing which Buyer may at its option elect to satisfy any such Monetary Lien arising from Seller's acts or omissions to act and reduce the Purchase Price in accordance with the amount of money expended in addition to and not in limitation of the exercise by Buyer of any other right or remedy provided hereunder. In the event that any title exceptions or survey matters arise after Buyer's initial title search that are unacceptable to Buyer (subject to the provisions of this Section 4), Buyer may after the discovery thereof notify Seller, in which event Seller shall within five (5) days after Buyer's notice deliver written notice to Buyer of whether it will attempt to

cure such objection, and in the event Seller elects not to cure such objection (or fails to respond within such five (5) day period, which shall be treated as an election not to cure such objection), then upon such election not to cure, or in the event that Seller elects to cure same and fails to so cure it prior to Closing, then Buyer may elect either of the options set forth in subclauses (i) and (ii) above.

#### SECTION 5. Inspection and Cooperation.

(a) Buyer and its invitees and agents may during the period beginning on the Effective Date and continuing until the Closing Date enter upon the Property to conduct all inspections and investigations of the condition and all other aspects of the Property that it may deem necessary or desirable in its sole discretion, including, but not limited to, surveys, tests, studies, inquiries, investigations and reviews relating to the Property, and the right to review and copy all Contracts and Warranties. Seller shall deliver to Buyer any Contracts and Warranties at the address set forth in Section 19 hereof upon the reasonable request of Buyer. Notwithstanding the foregoing, Buyer may not perform any tests of the Property (including soil borings) of an intrusive or disruptive nature without the prior written consent of Seller, which consent shall not be unreasonably delayed or withheld. If Seller fails to respond within three (3) business days of receipt of a request from Buyer to perform a test of the Property, then such failure shall be deemed an election by Seller to prohibit such testing. Seller or any representative of Seller may be present during any and all inspections or examinations of the Property.

(b) Any tests conducted in connection with such inspections shall be conducted so as not to damage the Property and/or interfere with the use of the Property by Seller. Buyer agrees to repair or restore promptly any damage to the Property caused by Buyer, its agents, contractors and invitees. All such entries onto the Property shall be at the risk of Buyer, and Seller shall have no liability for any injuries sustained by Buyer or any of Buyer's agents, contractors or invitees. Buyer agrees to indemnify and hold Seller harmless from and against any and all loss, claim, action, demand or liability that may arise against Seller or the Property by virtue of any inspections, tests or studies of the Property, which indemnity shall survive Closing or termination of this Agreement. Upon completion of Buyer's investigations and tests, Buyer shall restore the Property to substantially the same condition as it existed before Buyer's entry upon the Property.

#### SECTION 6. Closing.

The consummation of the transactions contemplated hereby shall be held at the offices of Escrow Agent or by mail, or at such other place as the parties may mutually agree. As used in this Agreement, "Closing" means the delivery of the deed to Buyer, the delivery of the other closing documents contemplated hereunder and the delivery of the Purchase Price to Seller. The Closing shall occur on December 15, 2016, or on such earlier date as the parties may mutually agree. The date on which the Closing occurs is referred to herein as the "Closing Date".

SECTION 7. Expenses of Closing.

Seller shall pay and be responsible for the following costs: (i) documentary stamp taxes or transfer taxes on the transfer of the Property; and (ii) one-half of any escrow fees. Buyer shall pay and be responsible for the following costs: (i) all recording and filing fees for all recordable instruments executed and delivered by Seller at the Closing pursuant to the terms hereof, other than those recording and filing fees that are the responsibility of Seller as set forth above; (ii) any title examination fees or charges incurred by Buyer in connection with its furnishing of the Title Commitment and any premium for any title insurance purchased by Buyer; (iii) all costs associated with any survey of the Property; (iv) one-half of any escrow fees; and (v) all costs associated with Buyer's financing obtained in connection with this transaction. Each party shall be responsible for its own attorneys' fees and costs, except as provided otherwise by this Agreement.

SECTION 8. Closing Documents.

Seller shall execute and deliver the following documents at Closing:

- (a) Special Warranty Deed, subject only to the Permitted Exceptions.
- (b) Owner's affidavit affirming that no labor has been performed on the Real Property and Improvements within one hundred twenty (120) days prior to the Closing Date (or if work has been performed certifying as to payment in full and/or waiving lien rights as to the Real Property and Improvements) and that there are no outstanding liens or rights to claim liens against the Real Property or Improvements.
- (c) Executed closing statement itemizing the dollar amount of all financial matters relating to the Closing, including the adjustments and prorations provided herein.
- (d) A FIRPTA affidavit.
- (e) "As-Is" bill of sale with respect to the Personal Property (if any).
- (f) "As-Is" assignment of Contracts, if any Contracts exist.
- (h) "As-Is" assignment of Warranties, if any Warranties exist.
- (i) Such evidence of Seller's authority as is reasonably requested by Buyer or the Title Company.

Buyer shall execute and/or deliver, as applicable, the following at Closing:

(a) The balance of the Purchase Price in immediately available funds, as adjusted pursuant to Section 2 and Section 9 of this Agreement.

(b) Executed closing statement, itemizing the dollar amount of all financial matters related to the Closing, including the adjustments and prorations provided for herein.

(c) Such other documents as may be reasonably necessary or desirable in consummating the transaction contemplated by the Agreement that do not impose additional liability or obligations upon Seller, including evidence of the authority of the person(s) executing the closing documents on behalf of Buyer.

#### SECTION 9. Prorations and Allocations.

(a) Ad valorem taxes, assessments, utility charges and other operating expenses of the Property shall be prorated so that Buyer pays all of such charges during the period from and after the Closing Date and Seller pays all such amounts prior to such period.

(b) Any errors or omissions in computing the adjustments or apportionments at Closing shall be corrected promptly thereafter.

#### SECTION 10. Covenants Pending Closing.

Following execution of this Agreement and at all times prior to the Closing:

(a) Operation of Real Property and Improvements. Seller shall (i) maintain the Real Property and Improvements (if any) substantially in the same manner as heretofore conducted and existing and in all events in the ordinary course of business, and (ii) refrain from disposing of any Property, entering into any leases or agreements or otherwise entering into any transaction inconsistent with the transactions contemplated by this Agreement.

(b) Insurance. Seller shall keep the Real Property and any Improvements insured against fire and other hazards and shall maintain insurance with respect to the Real Property and any Improvements, and all such policies shall be kept in full force and effect until the Closing Date.

#### SECTION 11. Conditions Precedent to Closing.

(a) The obligations of Buyer under this Agreement are subject to the fulfillment on or before the Closing Date of the following conditions precedent, any one or more of which conditions may, at the option of Buyer, be waived in writing by Buyer:

(i) The representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date, with the same force and effect as made on the Closing Date.

(ii) The execution by Seller (and all other required parties) and delivery of all documents required under Section 8 hereof.

(b) Except for a failure by Seller to deliver the documents referenced in subsection (ii) above, a failure of any of the conditions precedent set forth above shall not constitute a default hereunder by Seller but shall entitle Buyer to terminate this Agreement and receive a refund of the Earnest Money and upon any such termination, neither party hereto shall have any liability to the other except for provisions that expressly survive the termination of this Agreement.

#### SECTION 12. Brokerage Commission.

The parties acknowledge that Buyer is represented by \_\_\_\_\_ and Seller is represented by Broker Post (collectively, "Broker"), and the parties represent and warrant to each other that no other brokers are involved in this transaction. Pursuant to the terms of a separate written agreement, Seller shall pay at Closing a brokerage commission to Broker. Seller shall not be obligated to pay any amount to any other broker claiming by, through or under Buyer. Buyer and Seller agree that in the event of a breach of the warranties, representations or covenants set forth in this Section, then the breaching or defaulting party shall indemnify and hold the other harmless with respect to any loss or claim, including all attorneys' fees and costs of litigation through appellate proceedings. This Section shall survive the Closing.

#### SECTION 13. Establishment of Escrow.

(a) The terms and conditions set forth in this Agreement shall constitute both an agreement between Seller and Buyer and instructions for Escrow Agent. Seller and Buyer shall promptly execute and deliver to Escrow Agent any separate or additional escrow instructions requested by Escrow Agent that are consistent with the terms of this Agreement. Any separate or additional instructions shall not modify or amend the provisions of this Agreement unless otherwise expressly agreed by mutual consent of Buyer and Seller. Buyer and Seller both hereby acknowledge and agree that Escrow Agent shall hold and deliver the Earnest Money and all other deposits that may be made under this Agreement in accordance with the terms and conditions of this Agreement and that Escrow Agent shall be relieved of all liability and held harmless by both Seller and Buyer in the event Escrow Agent makes any disbursement of such monies in accordance with the terms and provisions of this Agreement. Escrow Agent shall be relieved from any responsibility or liability and held harmless by both Buyer and Seller in connection with the discharge of Escrow Agent's duties hereunder provided that Escrow Agent exercises ordinary and reasonable care in the discharge of such duties.



(b) The Earnest Money shall be placed in an interest-bearing account of a federally insured financial institution within two (2) days of receipt of Buyer's federal tax identification number. All interest earned on the Earnest Money shall belong to Buyer unless Buyer defaults, in which event all interest earned on the Earnest Money shall belong to Seller. Escrow Agent shall not be responsible for any fluctuations in interest rate paid on the deposit(s) or for penalties for early withdrawal.

#### SECTION 14. Default and Remedies.

(a) Seller's Default. If the sale and purchase of the Property contemplated by this Agreement is not consummated because Seller defaults hereunder, then Buyer may, as its sole and exclusive remedy, either (i) terminate this Agreement and upon such termination, the Earnest Money shall be returned to Buyer and neither party shall have any liability or obligation to the other, except for the indemnity obligations of Buyer set forth in Section 5(b) hereof, or (ii) seek specific performance of this Agreement. A termination because of condemnation, casualty or any other cause beyond Seller's reasonable control shall not be deemed a default by Seller hereunder and a failure of any of the conditions precedent to Buyer's obligations hereunder that are not within the reasonable control of Seller shall not constitute a default hereunder.

(b) Buyer's Default. If the sale and purchase of the Property contemplated by this Agreement is not consummated because of Buyer's default hereunder, the Escrow Agent shall (after first giving Buyer five (5) days prior written notice) pay over the Earnest Money to Seller, as Seller's sole and exclusive remedy hereunder for such default of Buyer, the parties hereto acknowledging that it is impossible to estimate more precisely the damages that might be suffered by Seller upon Buyer's default. Seller's retention of said Earnest Money is intended not as a penalty, but as full liquidated damages. The right to receive and retain the Earnest Money as full liquidated damages is Seller's sole and exclusive remedy in the event of default hereunder by Buyer.

#### SECTION 15. Warranties and Representations of Buyer.

Buyer hereby warrants and represents as of the Effective Date and as of the Closing Date to, and covenants and agrees with, Seller as follows:

(a) Legal Capacity. Buyer has full legal capacity to execute and deliver this Agreement and to perform all of its obligations hereunder.

(b) Power. This Agreement and all other agreements, instruments and documents required to be executed or delivered by Buyer pursuant hereto have been or (if and when executed) will be duly executed and delivered by Buyer, and are or will be legal, valid and binding obligations of Buyer. No governmental consents and permissions are required to be obtained by Buyer for the execution and performance of this Agreement and the other documents to be executed by Buyer hereunder. The consummation of the transactions contemplated herein and the fulfillment of the terms hereof will not result in a breach of any of the terms or

provisions of, or constitute a default under, any agreement or document to which Buyer is a party or by which it is bound, or any order, rule or regulation of any court or of any federal or state regulatory body or any administrative agency or any other governmental body having jurisdiction over Buyer.

(c) No proceedings. There is not now pending or, to Buyer's knowledge, threatened, any action, suit or proceeding, legal, equitable or otherwise, before any court or governmental agency or body that might adversely affect Buyer's ability to perform its obligations hereunder.

#### SECTION 16. Warranties and Representations of Seller.

Seller represents, warrants and covenants to Buyer and agrees that, at and as of the Effective Date and at and as of the Closing Date, the following statements shall be true in all respects, except as disclosed in the diligence documents provided on Schedule 5(d):

(a) Power. Seller has full power to own the Property and conduct the business presently being conducted by it.

(b) Authority Relative to this Agreement. The execution, delivery and performance of this Agreement and the closing documents by Seller and the execution, delivery and performance by each individual and/or entity signing this Agreement on behalf of Seller, has been duly authorized and approved by all requisite action on the part of Seller.

(c) FIRPTA. Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the United States Bankruptcy Code.

(d) Environmental. To Seller's knowledge, except as disclosed on that certain Phase I Environmental Assessment by \_\_\_\_\_ and dated \_\_\_\_\_ **[AND ANY OTHER REPORTS TO BE DELIVERED TO BUYER]** there are no violations of any federal, state or local laws, rules, regulations or orders relating to the presence, release or existence of Hazardous Substances, at, on about, above, or under the Property, or any portion thereof, including but not limited to soil and groundwater conditions. "Hazardous Substances" for the purposes hereof shall mean any chemical, compound, material, mixture, living organism or substance that is defined or listed in, or otherwise classified pursuant to, any Environmental Laws as a "hazardous substance", "hazardous waste", "hazardous material" or "toxic pollutant". As used herein, the terms "Hazardous Substances" also means and includes, without limitation, asbestos, motor oil, waste oil, gasoline, diesel, petroleum products or constituents, solvents, polychlorinated biphenyls, and other chemical products. "Environmental Laws" shall mean any and all present and future federal, state and local laws (whether under common law, statute, rule, regulation or otherwise), requirements under permits issued with respect thereto, and other requirements of any governmental authority that regulate Hazardous Substances (including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9601, et seq.), as heretofore or hereafter amended from time to time ("CERCLA")).

(e) Survival. The above representations and warranties shall be true and correct both as of the Effective Date and the Closing Date; provided, however that if prior to the Closing Seller discloses to Buyer in writing any inaccuracy or misstatement, Buyer may, at its option and as its sole remedy, either (i) waive the breach and proceed with the Closing, in which case Seller will have no continuing liability with respect thereto, or (ii) elect to terminate this Agreement and receive a return of the Earnest Money, which shall be in addition to and not in limitation of the exercise of any right or remedy provided hereunder or at law or in equity with regard to any change in the accuracy of Seller's representations and warranties that is due to the acts or omissions of Seller. All representations and warranties of Seller in this Agreement shall terminate at Closing and Seller shall have no liability thereafter with respect to such representations and warranties. If Buyer, prior to the Closing Date, has notice of or independent knowledge that a representation or warranty of Seller is not true and correct, but fails to bring such untrue or incorrect representation or warranty to Seller's attention prior to the Closing Date, Buyer shall not be permitted to assert any claims against Seller, nor shall Seller have any liability for, the untruth or incorrectness of any such representation or warranty.

(g) Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, BUYER ACKNOWLEDGES AND AGREES THAT SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE VALUE, NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, (B) THE INCOME TO BE DERIVED FROM THE PROPERTY, (C) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES OR USES THAT BUYER MAY CONDUCT THEREON, (D) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, (E) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, (F) THE MANNER OR QUALITY OF THE CONSTRUCTION OF MATERIAL, IF ANY, INCORPORATED INTO THE PROPERTY, (G) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY, OR (H) COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, INCLUDING THE EXISTENCE IN OR ON THE PROPERTY OF HAZARDOUS MATERIALS, OR (I) ANY OTHER MATTER WITH RESPECT TO THE PROPERTY. ADDITIONALLY, NO PERSON ACTING ON BEHALF OF SELLER IS AUTHORIZED TO MAKE, AND BY EXECUTION HEREOF BUYER ACKNOWLEDGES THAT NO PERSON HAS MADE, ANY REPRESENTATION, AGREEMENT, STATEMENT, WARRANTY, GUARANTY OR PROMISE REGARDING THE PROPERTY OR THE TRANSACTION CONTEMPLATED HEREIN; AND NO SUCH REPRESENTATION, AGREEMENT,

STATEMENT, WARRANTY, GUARANTY OR PROMISE, IF ANY, MADE BY ANY PERSON ACTING ON BEHALF OF SELLER SHALL BE VALID AND BINDING UPON SELLER UNLESS EXPRESSLY SET FORTH HEREIN. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, BUYER IS RELYING SOLELY ON ITS OWN INVESTIGATION AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY SELLER EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, AND BUYER AGREES TO ACCEPT THE PROPERTY AT THE CLOSING AND EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, WAIVE ALL OBJECTIONS OR CLAIMS AGAINST SELLER (INCLUDING, BUT NOT LIMITED TO, ANY RIGHT OR CLAIM OF CONTRIBUTION) ARISING FROM OR RELATED TO THE PROPERTY. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT SELLER HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATION AS TO THE ACCURACY, TRUTHFULNESS OR COMPLETENESS OF SUCH INFORMATION EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLER IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENT, REPRESENTATION OR INFORMATION PERTAINING TO THE PROPERTY OR THE OPERATION THEREOF, FURNISHED BY ANY REAL ESTATE BROKER, CONTRACTOR, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SALE OF THE PROPERTY AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS" CONDITION AND BASIS WITH ALL FAULTS. IT IS UNDERSTOOD AND AGREED THAT THE PURCHASE PRICE HAS BEEN ADJUSTED BY PRIOR NEGOTIATION TO REFLECT THAT ALL OF THE PROPERTY IS SOLD BY SELLER AND PURCHASED BY BUYER SUBJECT TO THE FOREGOING. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE CLOSING OR ANY TERMINATION HEREOF.

SECTION 17. Risk of Loss.

Seller shall maintain the Improvements (to the extent any exist) on the Property until the Closing Date, ordinary wear and tear excepted. For any damage or other casualty to the Property prior to Closing, Seller shall assign without recourse or warranty to Buyer any insurance proceeds payable to Seller with respect to such damage or casualty, together with the amount of any deductible or other self-insured amount.

SECTION 18. Condemnation.

If any authority having the right of eminent domain shall commence negotiations with Seller or shall commence legal action against Seller for the damaging, taking or acquiring of all or any part of the Property, either temporarily or permanently, by condemnation or by exercise of

the right of eminent domain, Seller shall immediately give notice of the same to Buyer. The Purchase Price for the Property shall be reduced by the total of any awards, settlement proceeds or other proceeds received by Seller prior to the Closing Date with respect to any damage or taking. At the Closing, Seller shall assign to Buyer all rights of Seller in and to any future awards, settlement proceeds or other proceeds that are payable on or after the Closing Date. The risk of condemnation or eminent domain shall be borne by Buyer. In the event of any negotiations with any authority regarding the payment of any awards or other sums or regarding any settlement on account of any damaging, taking or acquiring through condemnation or eminent domain, Seller will inform Buyer of all such negotiations of which Seller has notice and will permit Buyer to take part therein.

SECTION 19. Notice.

All notices required or allowed by this Agreement shall be delivered in person, by third party courier (including an overnight courier service such as Federal Express) or by certified mail, return receipt requested, postage prepaid, addressed to the party or person to whom notice is to be given at the following addresses:

To Seller: TKC C, LLC  
c/o The Keith Corporation  
5935 Carnegie Boulevard, Suite 200  
Charlotte, North Carolina 28209  
Attn: Greg Keith and Ken Beuley

With a copy to: Moore & Van Allen PLLC  
100 North Tryon Street, 47<sup>th</sup> Floor  
Charlotte, North Carolina 28202-4003  
Attn: Jeffrey W. Glenney, Esq.

To Buyer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

Notice shall be deemed to have been given upon the date of mailing or deposit with an expedited mail service, unless a response is required or contemplated hereunder, in which case same shall be deemed given upon receipt. The addresses for the purpose of this paragraph may be changed by giving notice as provided herein; provided, however, that unless and until such written notice is actually received, the last address stated herein shall be deemed to continue in effect for all purposes hereunder.

SECTION 20. Entire Agreement.

This Agreement constitutes the entire agreement of the parties with respect to the Property described herein. This Agreement may not be amended or modified orally. All understandings and agreements heretofore between the parties with respect to the Property are merged in this Agreement, which alone fully and completely expresses their understanding. Handwritten provisions shall supersede typewritten provisions.

SECTION 21. No Waiver.

No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against whom it is asserted and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.

SECTION 22. Amendments.

This Agreement may not be amended, modified, altered or changed in any respect whatsoever except by further agreement in writing duly executed by the parties hereto.

SECTION 23. Captions.

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

SECTION 24. Assignment.

Neither Buyer nor Seller shall have the right to assign this Agreement without the prior written consent of the other party, which consent may be withheld in such party's sole discretion.

SECTION 25. Successors.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, assigns and legal representatives.

SECTION 26. Time.

Time is of the essence with respect to all matters contained herein. Whenever any time period is to be computed hereunder, the day from which the period shall run is not to be included, and any period ending on a Saturday, Sunday or legal holiday will be extended to the next business day.

SECTION 27. Counterparts.

This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become a binding agreement when one or more counterparts have been signed by and delivered to each of the parties.

SECTION 28. Validity.

In the event any term or provision of this Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed or deleted as such authority determines, and the remainder of this Agreement shall remain in full force and effect.

SECTION 29. No Recordation.

Neither this Agreement nor any notice or memorandum thereof shall be recorded in the public records of any jurisdiction.

SECTION 30. Miscellaneous.

Whenever used, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

SECTION 31. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located.

SECTION 32. Attorneys' Fees.

If any action, suit, arbitration or other proceeding is instituted to remedy, prevent or obtain relief from a default in the performance by any party to this Agreement of its obligations under this Agreement, the prevailing party shall be reimbursed by the other party hereto for all of such party's attorneys' fees incurred in each and every such action, suit, arbitration or other proceeding, including any and all appeals or petitions therefrom. As used in this Section, attorneys' fees shall be deemed to mean the full and actual costs of any legal services actually performed in connection with the matters involved, calculated on the basis of the usual fee charged by the attorney performing such service.

SECTION 33. Termination of Agreement.

It is understood and agreed that if either Buyer or Seller terminates this Agreement pursuant to a right of termination granted hereunder, such termination shall operate to relieve

Seller and Buyer from all obligations under this Agreement, except for any breach or default hereto occurring and such obligations as are specifically stated herein to survive the termination of this Agreement.

SECTION 34. Further Assurances.

Each party agrees that it will without further consideration execute and deliver such other documents and take such other action, whether prior or subsequent to Closing, as may be reasonably requested by the other party to consummate more effectively the purposes or subject matter of this Agreement. Without limiting the generality of the foregoing, Buyer shall, if requested by Seller, execute acknowledgments of receipt with respect to any materials delivered by Seller to Buyer with respect to the Property. The provisions of this Section 34 shall survive Closing.

SECTION 35. Limitation on Liability. In any action brought after Closing to enforce the obligations of Seller under this Agreement or any other document delivered in connection herewith (including, without limitation, any amount owing pursuant to Section 3 of the Assignment and Assumption) (collectively a "Post-Closing Action"), the judgment or decree shall not be enforceable against Seller unless and until the damages suffered by Buyer as a result thereof shall equal or exceed \$25,000, in which event Seller shall be liable for all of Buyer's damages from the first dollar thereof up to a maximum of liability of \$150,000.00 in the aggregate (collectively, the "Maximum Liability Cap"). Except as provided below, no shareholder, officer, or employee of Seller shall be held to any personal liability hereunder, and no resort shall be had to their property or assets, for the satisfaction of any claims hereunder or in connection with the affairs of Seller. Furthermore, Seller's liability in a Post-Closing Action is explicitly limited to Seller's interest in Property, including any proceeds thereof (including without limitation the proceeds of sale pursuant to this Agreement). With respect to a Post-Closing Action, Buyer shall have no recourse against any other property or assets of Seller, the general account of Seller, any separate account of Seller, or to any of the past, present or future, direct or indirect, shareholders, partners, members, managers, principals, directors, officers, agents, incorporators, affiliates or representatives of Seller (collectively, "Seller Parties") or of any of the assets or property of any of the foregoing for the payment or collection of any amount, judgment, judicial process, arbitral award, fee or cost in a Post-Closing Action and requiring the payment of money by Seller. Except as otherwise expressly set forth in this Section 35, neither Seller nor any Seller Party shall be subject to levy, lien, execution, attachment or other enforcement procedure for the satisfaction of any Post-Closing Action. Notwithstanding anything in this Section to the contrary, if Buyer obtains a judgment in a Post-Closing Action and the sales proceeds from Closing have been paid or distributed to Seller's members, principals, or other parties, such members, principals, and other parties shall be liable to Buyer to the extent of the distributions received by each. The provisions of this Section 35 shall survive the termination of this Agreement.

SECTION 36. 1031 Exchange.



Seller acknowledges and agrees that Buyer may be acquiring the Property in exchange for other property and as a part of a 1031 tax deferred exchange. In that regard, Seller agrees to cooperate with Buyer in connection with any such tax deferred exchange and shall execute any and all documents and instruments reasonably necessary in connection therewith; provided, however, Seller shall not be obligated to incur any expense, cost or liability arising out of such cooperation.

Buyer acknowledges and agrees that Seller may be selling the Property as a part of a 1031 tax deferred exchange. In that regard, Buyer agrees to cooperate with Seller in connection with any such tax deferred exchange and shall execute any and all documents and instruments reasonably necessary in connection therewith; provided, however, Buyer shall not be obligated to incur any expense, cost or liability arising out of such cooperation and shall not be required to take title to any property other than the Property in connection with such cooperation.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

BUYER:

\_\_\_\_\_

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

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

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

SELLER:

TKC C, LLC

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

Name:

Title:

Exhibit A

Legal Description of the Real Property