

REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement (this “**Agreement**”) is made to be effective as of the latest date on which this Agreement is executed and delivered by all of the signatories hereto (the “**Effective Date**”) by and between **City of Westerville, Ohio**, an Ohio municipal corporation (“**Seller**”), and **Continental Development Ventures, LLC**, an Ohio limited liability company (“**Buyer**”; the Seller and Buyer are sometimes individually referred to herein as a “**Party**” and collectively as the “**Parties**”).

RECITALS

A. Seller is the owner of certain real property located in Franklin County, Ohio, commonly known as 64 E. Walnut Street, Westerville, Ohio 43081, consisting of approximately 5.20 +/- acres of land and the improvements located thereon, being tax parcel number 080-000105-00, as generally depicted on the Exhibit A attached hereto and incorporated herein by reference, together with all privileges, easements, rights of way and appurtenant rights relating to or benefiting such land (collectively, the “**Property**”).

B. Based upon the terms and conditions of this Agreement, Buyer desires to purchase the Property from Seller for the purposes of demolishing the structures on the Property and redeveloping the Property for commercial purposes, including a boutique hotel (the “**Hotel**”), full service sit-down restaurant (the “**Restaurant**”), multi-family residential housing (the “**Multi-Family Housing**”) and parking facility (the “**Parking Facility**”; collectively referred to herein as the “**Development**”).

C. Seller, in consideration of Buyer’s intent to complete the Development on the Property, desires to sell the Property to Buyer upon the terms and conditions contained in this Agreement.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller agree as follows:

1. SALE AND PURCHASE. Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, the Property upon the terms and conditions set forth herein. The Parties acknowledge that the Seller shall split and retain a portion of the Property fronting on E. Park Street and along Summit Street in the northeast corner of the Property, as generally depicted on Exhibit A attached hereto and incorporated herein by reference. The exact acreage to be retained by Seller shall be determined by Seller prior to the end of the Approval Period, but shall be substantially in accordance with the attached Exhibit A. The purchase and sale of the Property shall be on an “as is, where is” basis, as more specifically provided for in Section 10, below.

2. PURCHASE PRICE. The purchase price for the Property shall be Two Million Five Hundred Thousand Dollars (\$2,500,000.00) (the “**Purchase Price**”). The Purchase Price, plus

or minus any credits or adjustments required by this Agreement to be made at the Closing (as defined below), shall be paid by Buyer to Seller in cash or other immediately available funds at the Closing.

3. DEPOSIT AND DEFAULT. Within three (3) days of the Effective Date, Buyer shall deposit in escrow with Talon Title Agency, LLC, as agent for First American Title Insurance Company (the “**Title Company**”) an earnest money deposit of Twenty-five Thousand Dollars (\$25,000.00) (the “**Deposit**”). The Deposit, which will include any additional deposit made pursuant to Section 7, shall be held by the Title Company in a non-interest-bearing account. If the transaction for the purchase of the Property is closed as provided herein, then the Deposit shall be credited against the Purchase Price at the closing of the transaction contemplated by this Agreement (the “**Closing**” or “**Closing Date**”). In the event of a dispute over disposition of the Deposit, the Title Company shall retain the Deposit in the account referenced above until (i) Buyer and Seller give the Title Company mutual written instructions with respect thereto or (ii) disposition has been ordered by a final and non-appealable court order.

If the Closing fails to occur due to Buyer’s default, including, but not limited to, Buyer’s failure to execute the negotiated and agreed upon Development Agreement at Closing in accordance with this Agreement’s requirements, Seller shall retain the Deposit as liquidated damages, and Buyer shall be responsible for all of the Title Company’s escrow fees and title costs. In the event Closing does not occur as a result of a default by Seller, Buyer may elect to: (i) terminate this Agreement and be entitled to return of the Deposit, and Seller shall be responsible for all Buyer’s document out-of-pocket third-party expenses incurred in connection with this transaction not to exceed the amount of the Deposit and all of the Title Company’s escrow fees and title costs; or (ii) seek specific performance of this Agreement provided that Buyer shall be required to file any action for specific performance within six (6) months of the occurrence of Seller’s default in order to exercise such remedy. The foregoing remedies shall be the parties’ sole remedy in lieu of any other remedy at law or equity, and each of Seller and Buyer expressly waives any other claim for damages or remedies against each other. The foregoing limitation on damages and remedies apply only to a party’s default in failing to purchase and/or sell and to close, and shall not apply to any other defaults of this Agreement, be it before or after Closing.

4. CLOSING. The Closing shall occur not later than thirty (30) days after the expiration of the Approval Period on a date mutually agreeable to the Parties. The Closing shall take place during regular business hours and at such place and manner as may be reasonably acceptable to Buyer and Seller. Seller or Buyer may elect to proceed with the purchase and sale of the Property through an escrow closing with the Title Company in accordance with the general provisions of any usual form of escrow agreement then furnished and in use by the Title Company, with such special provisions as may be required to conform to this Agreement.

5. POSSESSION: Seller shall deliver possession of the Property to Buyer at the Closing free and clear of any tenants or other parties having any rights thereto, other than Permitted Exceptions. Seller shall have the right, but not the obligation, to remove any fixtures, equipment, personal property, or improvements prior to Closing as it may determine in its sole

discretion, and Buyer acknowledges that such removal shall not affect the Purchase Price or Buyer's obligations hereunder. Any personal property not removed by Seller prior to Closing, shall be deemed abandoned and become the property of Buyer. Seller shall bear risk of loss until Closing.

6. BUYER'S FEASIBILITY AND DUE DILIGENCE. For a period of time commencing on the Effective Date and continuing until ninety (90) days after the Effective Date (the "**Feasibility Period**"), Buyer may review the Reports (as hereinafter defined) and, at Buyer's sole cost and expense, perform or cause to be performed such reviews, investigations, evaluations, examinations and inspections of or with respect to the Property as Buyer, in its sole and absolute discretion, deems necessary, desirable or appropriate to evaluate the Property's feasibility and suitability for Buyer's intended purpose of constructing and operating the Development (the "**Intended Use**"). Collectively, the foregoing review, investigations, examinations and inspections shall be referred to herein as "**Due Diligence**" and the "**Due Diligence Conditions**". In the course of its Due Diligence, Buyer may terminate this Agreement for any reason or no reason within the Feasibility Period, whereupon the Title Company shall return the Deposit to Buyer, and the Parties shall be relieved from any further liability under this Agreement, except obligations which are expressly stated to survive the termination of this Agreement.

(a) Reports. To assist Buyer with its Due Diligence, Seller shall provide Buyer with the following reports, documents and materials (collectively, the "**Reports**"):

(i) Title Commitment. At Seller's expense, Seller shall deliver a title commitment to Buyer within fifteen (15) days of the Effective Date (the "**Title Commitment**") issued by the Title Company. The Title Commitment shall show that Seller holds marketable title in fee simple to the Property, free and clear from all defects, liens and encumbrances whatsoever except for: (a) zoning ordinances; (b) easements, agreements and standard building and use restrictions of record which would not materially interfere with Buyer's Intended Use; (c) any mortgages or other liens which will be paid at Closing and released such that the mortgages and other liens will not be contained in the final owner's policy of title insurance; (d) matters created by or resulting from acts or omissions of Buyer, its agents, employees or contractors; (e) legal streets and highways; (f) tenants in possession that Seller will cause to vacate the Property prior to Closing; (g) those specifically set forth in this Agreement; and (h) real estate taxes and assessment installments which are a lien on the Property but are not due and payable until after Closing (the "**Permitted Exceptions**"). The Title Commitment shall include copies of all easements and restrictions for Buyer's review. At Closing, Seller shall pay the base premium for an owner's policy of title insurance in the amount of the Purchase Price to be issued to Buyer pursuant to said Title Commitment. The costs for deletion of standard exceptions, the premium for any lender's title policy, and any endorsements required by Buyer or its lender, will be at Buyer's sole expense.

(ii) Additional Property Information. Seller shall, at its sole cost and expense, no later than ten (10) business days following the Effective Date, to the extent

within Seller's possession or control, provide Buyer with copies of all readily accessible documents relating to the physical condition of the Property, including, but not limited to, aerial photographs, environmental assessments, wetlands delineations, and surveys. All documents being delivered to Buyer under this Section 6(a)(ii) are on an as-is, where-is basis, solely as an accommodation. Seller makes no representation, express or implied, or arising by operation of law, as to the accuracy, completeness or any other aspect of the information contained in such documents. Should Buyer elect to terminate this Agreement, Buyer shall return all documents (including copies thereof made by Buyer) furnished by Seller to Seller.

(b) Conditions to Access Property. In order to conduct Due Diligence, Buyer shall have access to the Property during normal business hours and after twenty-four (24) hour advance notice to Seller via electronic mail to Jason Bechtold, City of Westerville Assistant City Manager, e-mail: jason.bechtold@westerville.org and Rachel Ray, City of Westerville Economic Development Director, e-mail: Rachel.ray@westerville.org, with copies sent via e-mail to the Seller's representative and counsel identified in Section 23 below. Except as otherwise provided herein, all entries, analysis, inspections and testing, if any, performed in accordance with these requirements, shall be at the sole risk and expense of Buyer. Buyer shall repair any material damage to the Property caused by the entry of Buyer or its agents, representatives and/or consultants, and Buyer hereby indemnifies and holds Seller harmless from any lien, claim, suit or action for non-payment, personal injury or property damage and all costs and expenses incurred in connection therewith (including, without limitation, attorneys' fees and other professional fees) caused by Buyer or its agents, representatives and/or consultants at or to the Property. Buyer shall maintain or cause to be maintained commercial general liability insurance with a combined single limit of liability of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate, evidence of which shall be provided to Seller in the form of an insurance certificate, and shall require its consultants (i.e. inspectors and surveyor) who enter upon the Property to conduct Due Diligence to also have adequate liability insurance and workers' compensation coverage. All obligations set forth in this Section 6(b) shall survive the Closing or the termination of this Agreement for any reason.

(c) Objection Notices. If Buyer, in its sole and absolute discretion, determines that any matter discovered or disclosed in the course of its Due Diligence or review of the Reports is objectionable (as to such matter, an "**Objection**"), then it shall deliver written notice to Seller prior to the expiration of the Feasibility Period citing the applicable Objections and providing to Seller a copy of any report or inspection (if applicable) with the objectionable condition (an "**Objection Notice**"). If Buyer has not delivered an Objection Notice related to any Due Diligence Condition and/or Report, then such Due Diligence Condition and/or Report shall be conclusively presumed to have been satisfied or waived and to be a Permitted Exception. If Buyer delivers an Objection Notice within the Feasibility Period, Seller shall not be obligated to cure any Objection described in the Objection Notice. However, Seller shall, from and after the date the Objection Notice is

delivered to Seller, have up to ten (10) days to cure said Objections (the “**Seller’s Cure Period**”). If there are any Objections that Seller is unwilling to cure or cannot cure (the “**Uncured Objections**”), it shall provide Buyer with notice of the same prior to the expiration of Seller’s Cure Period. If Seller fails to provide notice to Buyer in accordance with the immediately preceding sentence, Seller shall be deemed to have chosen to not cure the Objections. On or prior to the later of (i) ten (10) days after the expiration of the Seller’s Cure Period and (ii) the expiration of the Feasibility Period, Buyer, may: (i) waive the Uncured Objections in writing in which case the Uncured Objections will become Permitted Exceptions or (ii) terminate this Agreement by providing written notice of termination to Seller, whereupon the Title Company shall return the Deposit to Buyer, and the Parties shall be relieved from any further liability under this Agreement, except obligations which are expressly stated to survive the termination of this Agreement. In the event that Buyer fails to provide written notice of its election within the time set forth above for such notice, the Uncured Objection(s) shall be deemed waived and become a Permitted Exception(s). Nothing in this Section 6(c) shall limit Buyer’s right to terminate this Agreement during the Feasibility Period as otherwise provided in this Section 6 for any or no reason.

7. APPLICATION DEADLINE; APPROVAL PERIOD. Buyer shall have (i) one hundred eighty (180) days after the Effective Date (the “**Application Deadline**”), to submit its preliminary development plan application (the “**Development Application**”) to the City of Westerville Planning Commission (the “**Planning Commission**”), and (ii) two hundred seventy (270) days after the Effective Date (the “**Approval Period**”) to satisfy itself in its reasonable discretion that all necessary use, zoning, platting, site plan, utility permits, access easements, building permits, special use permits, liquor permits, and any other approvals from all applicable authorities required to allow Buyer’s Intended Use are available (the “**Approvals**”). Buyer shall diligently pursue the required Approvals. Notwithstanding anything contained in this Agreement to the contrary, if Buyer fails to submit its Development Application by the Application Deadline, then the Deposit shall become non-refundable and deemed earned by Seller (but remain applicable to the Purchase Price), except in the case of Seller’s default.

If Buyer does not obtain the Approvals despite its diligent efforts to obtain the same prior to the expiration of the Approval Period, then either Party may terminate this Agreement by providing notice of termination to the other Party no later than fifteen (15) days after the expiration of the Approval Period, whereupon the Title Company shall return the Deposit to Buyer, less any amounts of the Deposit which are non-refundable which non-refundable amounts shall be disbursed to Seller by Title Company, and the Parties shall be relieved from any further liability under this Agreement, except obligations which are expressly stated to survive the termination of this Agreement. If neither Party terminates, as provided above, then Buyer shall promptly deposit an additional \$25,000 to be held and applied in the same manner as the original Deposit.

8. DEVELOPMENT AGREEMENT. Buyer and Seller shall agree to the form of a development agreement (the “**Development Agreement**”) on or before the Application Deadline.

The Development Agreement will include specific terms for financing the “eligible costs” related to the Parking Facility.

The Development Agreement shall incorporate the other obligations of Buyer and restrictions applicable to the Property as provided for in Section 17, 18, 19, 20, and 21 of this Agreement, and may contain requirements for additional documents, such as easements, parking and access easements, real estate tax guaranty(ies), etc. If Buyer and Seller, including approval by Westerville City Council on the Seller’s behalf, do not agree to the form of the Development Agreement on or before the Application Deadline, then either Buyer or Seller may terminate this Agreement by providing notice of termination to the other Party at any time thereafter prior to the Parties’ agreement to the form of Development Agreement, whereupon the Deposit, less any portion of the Deposit which is non-refundable, shall be returned to Buyer, and the Parties shall have no further obligations under this Agreement, except obligations which are expressly stated to survive the termination of this Agreement.

9. WARRANTIES AND REPRESENTATIONS. Seller hereby warrants and represents to Buyer as of the Effective Date and as of the date of Closing, to the actual knowledge of Seller’s City Manager without independent inquiry or investigation, and except as may be disclosed in the Reports, that:

(a) Seller has good, marketable and indefeasible fee simple title to the Property and Seller has no knowledge of any off-record or undisclosed legal or equitable interest in any part of the Property owned by any other person, or entity;

(b) subject to the provisions of Sections 34 and 35 below, Seller and/or the party on behalf of Seller executing this Agreement have full power and authority to execute and deliver this Agreement and all documents now or hereafter to be delivered by it pursuant to this Agreement and to perform all obligations arising under this Agreement and the same shall be enforceable against Seller in accordance with its terms;

(c) the execution of this Agreement by Seller does not, and the performance by Seller of the transactions contemplated by this Agreement will not, violate or constitute a breach of any contract, permit, license, order or decree to which Seller is a party or by which Seller is bound;

(d) the Property is not located in a federally-designated flood hazard area or special seismic area;

(e) Seller is not aware of any violations of applicable laws regarding hazardous materials which may be located on the Property. This representation is not to be interpreted as a representation from Seller that there are no hazardous materials located on the Property, and Buyer shall rely on its own inspection as permitted by Section 6 to determine if hazardous materials are located on the Property.

(f) there are and will be no mortgages, liens, special assessments, bond financing or other encumbrances (other than the Permitted Exceptions) affecting the Property, other than special assessments, bond financing or other encumbrances that may be established in connection with and for purposes of the Development;

(g) there are no parties in possession of the Property or any portion thereof, as lessees, tenants or otherwise; there are no leases or tenancies encumbering the Property; and no person or entity other than Seller has any right to possession of the Property or any portion thereof;

(h) there are no pending, threatened or contemplated condemnation or similar proceedings affecting or relating to the Property or any portion thereof;

(i) except as otherwise disclosed herein, and as may result in connection with the Development, Seller has not received notice of, nor does Seller have any knowledge of, any proposed or actual assessments against the Property relating to utilities, sewers, roadways or other improvements.

(j) there are no pending or threatened lawsuits, administrative proceedings or arbitration proceedings that involve or affect the Property; and

(k) Seller has paid for all labor and material furnished to and work performed on the Property under contracts with Seller, and no person has a lien or right to lien against the Property for work and materials furnished to the Property under contracts with Seller.

All representations and warranties of Seller set forth above survive the Closing for six (6) months at which time they shall immediately terminate if Buyer has not previously commenced litigation based on the breach thereof, provided, however, that Buyer agrees that no representation or warranty of Seller set forth above shall be deemed to be untrue or incorrect, and Seller shall not be deemed to be in breach thereof, if Buyer had knowledge on the Effective Date or the Closing Date, as applicable, that any representation or warranty was untrue or incorrect.

10. PROPERTY "AS IS". Buyer, by its execution hereof, acknowledges that, other than as provided in this Agreement or in any closing documents executed in connection therewith: this Agreement, or in any other documents Seller delivers at Closing, 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 as to, concerning or with respect to: (i) the value, nature of quality or condition of the Property; including, without limitation, the water, soil, geology of the real property; (ii) the income to be derived from the Property; (iii) the suitability of the Property for any and all activities and uses which Buyer may conduct thereon or with respect thereto; (iv) the compliance of or by the Property or its operations or use with any laws, rules, ordinances or regulations or any applicable government authority or body; (v) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Property, (vi)

the manner of quality of the construction or materials, if any incorporated into the Property, or any portion thereof; (vii) the manner, quality, state of repair or lack of repair of the Property; or (viii) any other matter with respect to the Property, and specifically that, except as provided in Section 9(e) Seller has not made, does not make and specifically disclaims any representations regarding compliance with any environmental protection, pollution or land use laws, rules, regulations, orders or requirements, including, the disposal or existence, in or on the Property, of any hazardous materials. Other than as provided in this Agreement or in any closing documents executed in connection therewith, Buyer shall rely on its own inspections of the Property in determining whether or not to proceed with this transaction, and the conveyance and delivery of the Property contemplated by this Agreement is "AS IS" and "WITH ALL FAULTS". This Section shall survive the Closing.

11. DEED. At Closing, Seller shall convey to Buyer marketable title in fee simple to the Property by transferable and recordable limited warranty deed (the "**Deed**"), free and clear of all liens and encumbrances except the Permitted Exceptions. Prior to the Closing, Buyer shall obtain all necessary approvals for the legal description of the Property set forth in said Deed. Seller shall cooperate with Buyer in obtaining the necessary approvals for said legal description. Seller shall also pay all real property conveyance fees or other fees or taxes charged by any governmental agency for the transfer of the Property.

12. OTHER CLOSING DOCUMENTS AND CONDITIONS TO CLOSING.

(a) Documents to Buyer. In addition to the above-described Deed, Seller shall execute (to the extent applicable) and deliver to Buyer at the Closing the following documents and instruments in form reasonably satisfactory to Buyer, each of which shall be a condition to Buyer's obligation to close the transaction contemplated by this Agreement: (i) a non-foreign person certificate (pursuant to 26 U.S.C. § 1445), and any other document customarily executed and delivered by a seller at a real estate closing in the county where the Property is located and which may be reasonably requested by Buyer; (ii) such affidavits from Seller in such form and content as may be reasonably acceptable to Seller to enable the Title Company to issue endorsements or delete the standard exceptions listed therein from the owner's title insurance policy and, if applicable, loan title insurance policy, to be issued hereunder; (iii) a settlement statement; (iv) the Development Agreement and related documents required by the Development Agreement; and (v) such evidence of authority as Buyer or the Title Company reasonably may deem necessary to evidence the authority of Seller to enter into this Agreement and to consummate the transactions contemplated hereby.

(b) Documents to Seller. Buyer shall deliver the following documents and instruments at the Closing in form reasonably satisfactory to Seller, each of which shall be a condition to Seller's obligation to close the transaction contemplated by this Agreement: (i) corresponding originals of the settlement statement; (ii) the entire amount of the Purchase Price, increased or decreased by the net adjustments from or due Buyer, as shown on the settlement statement; (iii) a certificate of good standing or full force and

effect or any comparable certificate for Buyer issued by the applicable governmental authority of the jurisdiction in which Buyer was formed; (iv) a certified copy of the consent or resolution of Buyer, authorizing the purchase of the Property from Seller in accordance with this Agreement and the execution and delivery of all documents required under this Agreement by the entity and/or individual executing all such documents on behalf of Buyer; (v) the Development Agreement and related documents required by the Development Agreement, and (vi) any additional documents reasonably required by the Title Company in order to complete the transaction described in this Agreement.

13. PRORATIONS AND ADJUSTMENTS. The Title Company shall prepare a settlement statement which shall show the following charges, prorations and adjustments: (a) the transfer taxes or fees which shall be charged to Seller; (b) real estate taxes and assessments due and/or accrued prior to the Closing (collectively, the "**Taxes**"), which shall be prorated as of the Closing Date, if any; (c) the base owner's title insurance premium, which shall be charged to Seller; (d) the loan policy insurance premiums and associated costs, if any, and the costs of deleting standard exceptions and any endorsements to the owner's or lender's policies, which shall be charged to Buyer; (e) the cost of recording the Deed, which shall be charged to Buyer; (f) the closing or settlement fee of Title Company with shall be equally divided and charged to Buyer and Seller; and (g) any other amounts agreed upon by the parties. Each party shall be responsible for its own legal fees and out-of-pocket expenses. All other closing costs shall be paid in accordance with community custom for the location of the Property.

14. TAXES AND ASSESSMENTS. As the Property is currently exempt from taxation, it is anticipated that there will not be any prorations of Taxes at Closing. Prorations completed at closing shall be final.

This Section 14 shall survive the Closing.

15. EASEMENTS. Prior to or at Closing, Seller may grant or reserve access, right-of-way and easements on the Property, subject to Buyer's prior written approval which shall not be unreasonably withheld or delayed. Seller and Buyer shall cooperate regarding the placement, location and terms of said easements so as to not hinder Buyer's development of the Property.

16. COMMISSION. Buyer warrants that it has not engaged the services of a real estate agent (s) or broker(s) in connection with the transactions contemplated by this Agreement, and agrees to defend and hold harmless Seller from all claims and costs due or otherwise incurred by Seller as a result of anyone claiming by or through Buyer any fee, commission or compensation on account of this Agreement.

This Section 16 shall survive Closing.

17. CONSTRUCTION OF DEVELOPMENT. Buyer shall commence demolition of the existing improvements on the Property within ninety (90) days after Closing (the "**Construction Commencement Date**"), and thereafter diligently pursue the construction of the Development to

completion, such that: (i) a certificate of occupancy is issued for all of the Hotel, Multi-Family Housing and Parking Facility, and the same are ready for operation, no later than 30 months after Closing (the “**Completion Date**”), such dates being extended by delays due to force majeure events. Seller’s remedies for Buyer’s failure to meet such deadlines shall be further detailed in the Development Agreement and a Construction Manager at Risk Agreement (or such similar agreement) negotiated as part of the Development Agreement referenced in Section 8, above. As utilized in this Agreement a “force majeure event” shall mean an act or event causing delay due to strike, lockout or other labor or industrial disturbance, civil disturbance, order of any government, court or regulatory body claiming jurisdiction and declaring a disaster or similar emergency situation, act of the public enemy, war, terrorism, riot, sabotage, blockade, embargo, inability to secure materials or labor by reason of governmental regulation or order, lightning, earthquake, hurricane, flood, explosion, abnormal weather conditions or other act of God, fire or any other cause beyond the reasonable control of Buyer whether or not similar to any of the foregoing causes. For purposes of this definition, lack of funds or inability to obtain financing shall not be deemed a force majeure event. In the case of any force majeure event, Buyer shall use commercially reasonable efforts to minimize the delay under the circumstances but shall not be required to spend money to do so.

Buyer shall give Seller notice of any events of force majeure that occur within fifteen (15) business days of the date Buyer obtains knowledge of any such force majeure event.

18. **BUILDING SPECIFICATIONS.** The specifications for the Development, which may be expounded further in the Development Agreement, shall include the following:

- (a) **Hotel/Restaurant Specifications.** The specifications for the Hotel shall be the following (collectively, the “**Hotel Specifications**”):
- (i) the Hotel will be a Tribute Portfolio by Marriott hotel (or such similar first-class boutique hotel reasonably acceptable to Seller);
 - (ii) approval for the Hotel has been obtained from the franchisor with a term required by the franchisor;
 - (iii) it is anticipated that the Hotel will have 81 rooms but shall have no less than 73 rooms;
 - (iv) the Restaurant shall contain not less than 3,500 sq/ft), and may be a component within the Hotel or may be a separate condominium unit; and
 - (v) the hard construction cost attributable to the Hotel and Restaurant, excluding any allocation of the Purchase Price and the costs of furniture, fixtures and equipment, will not be less than \$10,000,000.00 (the “**Hotel/Restaurant Construction Cost**”); provided, however, that the combined total of the Hotel/Restaurant Construction Cost and the Multi-Family Housing Construction Cost shall be no less than \$48,000,000.00 (the “**Required Construction Investment**”).

- (b) Multi-Family Housing Specifications. The specifications for the Multi-Family Housing shall be the following (collectively, the “**Multi-Family Housing Specifications**”):
- (i) the Multi-Family Housing shall be Class A multi-family housing;
 - (ii) shall contain approximately 247 units;
 - (iii) shall be in conformance with the Approvals;
 - (iv) shall include a pedestrian bridge which connects the Parking Facility to the Multi-Family Housing and Hotel; and
 - (v) the hard construction cost attributable to the Multi-Family Housing, excluding any allocation of the Purchase Price and the costs of furniture, fixtures and equipment, will not be less than \$38,000,000.00 (the “**Multi-Family Housing Construction Cost**”); provided, however, that the combined total of the Multi-Family Housing Construction Cost and the Hotel/Restaurant Construction Cost shall be not less than the Required Construction Investment.
- (c) Parking Facility Specifications. The specifications for the Parking Facility shall be the following:
- (i) the Parking Facility shall contain approximately 400 parking spaces;
 - (ii) shall provide for the City to have exclusive rights to the one hundred (100) parking spaces within the Parking Facility closest to the Parking Facility Entrance (the “**Public Parking Spaces**”) to make available to the public on terms, rules and regulations established by City from time to time in its sole discretion. The location and configuration of the Public Parking Spaces shall be provided to City via an easement or lease at no cost to City as to be further provided for in the Development Agreement; and
 - (iii) Buyer shall have the exclusive rights to the remaining parking spaces in the Parking Facility for use by the guests, residents, employees and other invitees of the Hotel, Restaurant and Multi-Family Housing on terms, rules and regulations established by Buyer from time to time in its sole discretion, provided that such terms, rules and regulations do not interfere with or impair the City's use and operation of the Public Parking Spaces or public access thereto. The Parties shall agree and cooperate on methods of enforcement to ensure that the parking areas in the Parking Facility are being used only by those permitted to use them as set forth above. Buyer shall implement such enforcement mechanisms as are reasonably required to protect the Public Parking Spaces from unauthorized use by guests, residents, employees and other invitees of the Hotel, Restaurant and Multi-Family Housing.

19. SELLER'S RIGHT TO REPURCHASE. The following rights of Seller shall be incorporated into the Development Agreement: If Buyer fails to commence construction of the Development by the Construction Commencement Date or fails to complete construction of the Development by the Completion Date, with such deadlines being extended for any periods of delay due to force majeure, as defined in Section 17 above, then Seller, as its sole and exclusive remedy for Buyer's failure to meet the conditions in this Section 19 (other than as may be set forth in the Development Agreement or ancillary documents provided for in the Development Agreement), may repurchase the Property from Buyer or any successors, assigns and transferees of Buyer by giving notice of such election no later than sixty (60) days following the expiration of the Construction Commencement Date or the Completion Date, as applicable, and as may be extended by a force majeure event. Subject to the provisions set forth below regarding financing, the purchase price for the repurchase shall equal eighty percent (80%) of the Purchase Price. If a repurchase of the Property occurs under the foregoing provisions, all closing costs, expenses, and prorations shall be allocated in the same manner as set forth in this Agreement (with Seller being the "buyer" for the repurchase, and Buyer will be the "seller" for the repurchase), provided that no commission shall be payable in connection with the repurchase of the Property. Seller agrees to execute any and all documents required to subordinate its right to repurchase the Property as provided in this Section to Buyer's third-party creditors to the extent necessary for Buyer to obtain financing described below relating to the Property. Such subordination shall provide that Seller's right to repurchase shall be junior and subject to any mortgage placed on the Property and any other financing or loan (e.g., mezzanine loan) by any third-party lender of Buyer, and Seller shall enter into an intercreditor agreement with each such lender, if requested by the lender, on terms similar or analogous to the terms of such lender's intercreditor agreements with subordinate lenders including that Seller pay off the principal and interest plus all other sums due on such loan or loans as part of any repurchase by Seller. For avoidance of doubt, while such repurchase right constitutes Seller's sole and exclusive remedy for the failure of the conditions set forth above in this Section 19, Seller does not waive any rights and powers Seller may have pursuant to the terms of the Development Agreement or ancillary documents provided for in the Development Agreement, or under its Codified Ordinances or other law applicable to governmental entities (such as police powers and zoning) to the extent such rights and powers would apply to an ordinary landowner who violates such ordinances or other laws.

20. POST CLOSING OBLIGATIONS. The Development Agreement shall contain certain post-closing obligations related to the Property, which shall include the following:

- (a) Real Estate Tax Valuation. Within three (3) years after the Construction Commencement Date, the Parties anticipate the Development should achieve an incremental market valuation as determined by the Franklin County Auditor of at least \$51,000,000.00 in the aggregate, excluding the value of the Parking Facility (the "**Minimum Property Valuation**"). As such, for the period of thirty (30) years after the Outside Completion Date, Buyer shall not file a real estate tax complaint or otherwise contest the valuation of the Property as determined by the Franklin County Auditor that seeks an assessed valuation less than the Minimum Property

Valuation. Upon the request of Seller, Buyer shall cooperate with the Seller by providing such information as Seller shall reasonably request and shall provide a representative(s) to testify before the Board of Revision to support the establishment and maintenance of such real property tax valuations by the Franklin County Auditor or in connection with any dispute relating to the same. Further, Buyer's obligations with respect to minimum real estate taxes and service payments in lieu of taxes to be paid shall be secured by guaranteed minimum services payments pursuant to a Minimum Service Payment Agreement (or such similar agreement) to be negotiated as part of the Development Agreement referenced in Section 8, above. The minimum service payments shall be minimum service payment obligations for purposes of Ohio Revised Code Section 5709.91. The Minimum Service Payment Agreement shall provide that Buyer shall make payments to the City equal to the difference between the service payments in lieu of taxes actually received by the City for the applicable semi-annual collection period and the minimum service payment obligation for that semi-annual collection period.

- (b) Condominium Restriction. No portion of the Property shall be subjected to a residential condominium structure of ownership under Ohio Revised Code Chapter 5311, as the same may be amended, modified or replaced ("**Ohio Condominium Law**"), without the prior consent of Seller, which consent may be withheld in Seller's sole discretion; provided, however, that the foregoing restriction shall not prohibit Buyer from creating up to four (4) condominium units on the Property to establish the Parking Facility and related infrastructure/common areas, Hotel, Restaurant, and Multi-Family Housing as separate parcels.

This Section 20 shall survive the Closing.

21. USE RESTRICTION. The Development Agreement shall contain a use restriction that provides that the Property may only be used for a mixed-use development, including a Hotel, Restaurant, Multi-Family Housing and Parking Facility, meeting the Building Specifications, for a period of thirty (30) years from the Completion Date. The Development Agreement shall also include restrictions prohibiting the uses set forth on the Exhibit B attached hereto, with no time limitation on such uses restrictions except as may be noted on such Exhibit B, notwithstanding that some of such uses may be permitted by applicable zoning.

22. RECORDING OF DEVELOPMENT AGREEMENT. At Closing, Buyer and Seller shall record the executed Development Agreement with the County Recorder's Office, the provisions of which shall be binding upon Buyer's successors, assigns and transferees.

23. NOTICES. Any notice or other communication required or intended to be given under this Agreement shall be in writing and shall be deemed to be duly given if delivered personally with evidence of receipt, if deposited in the United States mail, marked certified or

registered, return receipt requested, with postage prepaid, or by nationally recognized overnight delivery service, addressed as follows:

Seller:

City of Westerville, Ohio
21 S. State St.
Westerville, Ohio 43081
Attn: Monica Dupee, City Manager

With a copy to:

Andrew Winkel, Esq.
Metz Bailey & McLoughlin
33 E. Schrock Road
Westerville, Ohio 43081
e-mail: awinkel@metzbailey.com

and

Matthew A. LaBuhn, Esq.
Onda LaBuhn Ernsberger & Boggs Co., LPA
35 N. Fourth Street, Suite 100
Columbus, Ohio 43215
(614) 716-0500 (phone)
email: mal@ondalabuhn.com

Buyer:

Continental Development Ventures, LLC
150 East Broad Street, Suite 800
Columbus, Ohio 43215
Attn: Jonathan E. Kass
email: jkass@cdventures.com

With a copy (that shall not constitute notice) to:

Continental Development Ventures, LLC
150 East Broad Street, Suite 800
Columbus, Ohio 43215
Attn: Mark A. Damante
email: mdamante@cdventures.com

or to such other addresses as Buyer or Seller may designate from time to time in a written notice to each other. Any notices required hereunder shall be in writing and shall be deemed effective three (3) days after deposit in the facilities of the U.S. Postal Service if mailed, upon receipt if sent via overnight delivery, and upon receipt if personally delivered.

24. ASSIGNMENT. Provided that Buyer provides five (5) business days' prior notice to Seller, Buyer may assign its rights and obligations hereunder to an assignee that is affiliated or controlled by Buyer. For the purposes hereof, "affiliated and controlled" shall mean an entity which is owned more than fifty (50%) by Buyer, any of their respective principals or any combination thereof or of which Buyer and/or such principals, has voting and management control. Otherwise, Buyer may only assign its rights and obligations under this Agreement with the prior written consent of Seller, which may be withheld in Seller's sole discretion.

25. ENTIRE AGREEMENT. This document constitutes the entire agreement between the parties and supersedes all prior or contemporaneous discussions, representations or agreements relating to the subject matter contained herein. No amendments, modifications or additions to this Agreement shall be made or be binding on any party unless made in writing and signed by each party. All parties hereto acknowledge that they participated equally in the drafting of this Agreement and no court construing this Agreement shall construe it more stringently against one party than the other. This Agreement may be executed in multiple counterparts, and all counterparts, when taken together, shall constitute one and the same Agreement. Counterparts executed electronically and/or transmitted via facsimile or electronic mail shall be effective to bind the parties.

26. SEVERABILITY OF PROVISIONS. This Agreement shall be construed in accordance with the laws of the state in which the Property is situated. If any part of this Agreement is held to be invalid or unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect.

27. HEADINGS AND PRONOUNS. The headings to the sections hereof have been inserted for convenience of reference only and shall in no way modify or restrict any provision hereof or be used to construe any of such provisions. Any pronoun used herein shall include all other numbers and genders, as the context or the number and gender of its antecedent may require.

28. NO MERGER. Unless specified elsewhere in this Agreement, all warranties, representations, obligations, covenants and agreements contained herein shall survive the Closing and shall not be merged with any instruments delivered by Seller to Buyer at the Closing.

29. PERSONS BOUND. Except to the extent limited herein, this Agreement shall inure to the benefit of and bind the parties hereto and their respective successors, assigns and transferees.

30. ATTORNEY FEES. In the event litigation results from this Agreement, then the prevailing party (to the extent allowed by law and, in the case of Seller, expressly subject to appropriation of funds by City Council) shall be entitled to recover all costs, including attorney fees, incurred in connection with such litigation (including appellate proceedings) against the non-prevailing party.

31. TIME OF THE ESSENCE. Time is of the essence with respect to all matters contained within this Agreement which must be performed within a stated time period or on a particular day; provided, however, that if the date for performance is on a Saturday, Sunday or federal holiday on which banks in Columbus, Ohio are closed, then the date for performance shall be extended to the next business day.

32. CONDEMNATION. The risk of any permanent or temporary taking of any part or all of the Property by condemnation or eminent domain (hereinafter called the "**Taking**") shall be borne by Seller until completion of the Closing. If, prior to Closing, Seller becomes aware of any actual or proposed Taking, Seller shall immediately give Buyer written notice thereof and shall keep Buyer informed of and provide Buyer an opportunity to participate in any and all negotiations concerning such Taking and/or the potential settlement of claims relating thereto. In the event of any such actual or proposed Taking, Buyer shall have the right to terminate this Agreement by giving written notice to that effect to Seller at any time on or prior to the Closing Date. In the alternative, if Buyer proceeds with the Closing despite such actual or proposed Taking, (i) the purchase price for the Property shall be reduced by the amount of any and all proceeds actually received by Seller at or prior to the Closing in connection with said Taking, (ii) Buyer shall succeed to all rights of Seller to any and all such proceeds payable after the Closing and (iii) Seller shall execute and deliver such documents as Buyer may reasonably require to evidence the assignment of all such rights to Buyer. Seller represents and warrants that it is not aware of any pending or threatened Taking.

33. BUYER'S DUE DILIGENCE DOCUMENTS. In the event this Agreement is terminated for any reason other than a default by Seller, Buyer shall provide to Seller copies of all Due Diligence materials assembled by Buyer with respect to the physical nature of the Property, provided, however, that such documents are to be provided with the express understanding that Buyer makes no representations or warranties as to the truth or accuracy of such documents and Seller agrees to use and rely on such documents at its own risk.

34. SELLER CONTINGENCY. This Agreement and purchase of the Property is wholly contingent upon Seller obtaining approval of this Agreement and the transaction contemplated herein from the City Council of Seller ("**Council Approval**"). It is understood that Seller shall notify Buyer in writing within thirty-five (35) days after the Effective Date whether Council Approval has been obtained. If the Council Approval is received this Agreement shall continue in full force and effect. If the Council Approval is not received Seller shall so notify Buyer, the Deposit shall be returned to Buyer, this Agreement shall terminate and neither party shall have any further rights or obligations under the terms hereof, except rights or obligations which are expressly stated to survive the termination of this Agreement.

35. DISCLAIMER/PUBLIC RECORDS. The Seller's execution of this Agreement shall not constitute a representation, warranty or guarantee, whether express or implied, that the Seller, its Planning Commission or Council or any of their officers, employees, agents or representatives approve or in any way recommend, approve, or consent to the proposed plans, drawings, specifications or development of the Property. This Agreement and all documents related thereto are subject to disclosure pursuant to the Ohio Public Records Law.

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement to be effective as of the Effective Date.

SELLER:

City of Westerville, Ohio

By: _____
Monica Dupee, City Manager

Date: _____

BUYER:

Continental Development Ventures, LLC

By: _____

Name: _____

Its: _____

Date: _____

EXHIBIT A

Depiction of the Property

Draft

EXHIBIT B

Prohibited Uses

In addition to uses prohibited by the applicable zoning regulations, the Property shall not be used for the following prohibited uses: food trucks, any discount retail store, including so-called dollar stores; residential hotel or similar lodging facility other than a “transient hotel” as defined in Section 3731.01 of the Ohio Revised Code, as may be modified or amended; public parking for pay (except as specifically permitted under the Development Agreement and related parking financing arrangements); warehouse including mini storage; bill board(s); gas station and/or convenience store; daycares; schools; medical uses, including urgent cares and pharmacies; non-profit organizations/uses; gun store; tire store; oil change facility; car wash; new or used car lot; auto repair; funeral parlor; tattoo parlor; pawn shop; drug paraphernalia store; flea market; escort services; off track betting facility; check-cashing, short-term loan, payday loan or other similar business; amusement or recreation establishment, including without limitation a pool hall, bowling alley, massage establishments (except as may be customarily associated with a Tribute Portfolio by Marriott hotel (or similar first-class boutique hotel) or Class-A multi-family housing project), vapor bars and or hookah establishments; game center, gambling establishment, establishment with electronic gaming machines (except as may be customarily associated with a Tribute Portfolio by Marriott hotel (or similar first-class boutique hotel) or Class-A multi-family housing project), theater (except as may be customarily associated with a Tribute Portfolio by Marriott hotel (or similar first-class boutique hotel) or Class-A multi-family house project), play house, movie theater, a store that sells or rents videotapes, DVDs, video games or other comparable items that have a rating above NC-17 (or other comparable classification), adult book store, or establishment featuring a male or female revue or any other similar or related uses; any combination of, or parking to support, any or all of the foregoing prohibited uses.