

PURCHASE AND SALE AGREEMENT
314, 328, 334, 340 & 344 EVERGREEN AVENUE,
EAST LANSING, MICHIGAN

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made this ___ day of December, 2018, by and between Royal Apartments USA, Inc., an Illinois corporation, and Vlahakis Development, LLC, a Michigan limited liability company (hereinafter collectively referred to as the "Purchaser"), and the Downtown Development Authority of the City of East Lansing, (hereinafter referred to as the "Seller").

WHEREAS, Seller is the current fee simple Seller of parcels of real property commonly described as 314, 328, 334, 340 & 344 Evergreen Avenue, East Lansing, Michigan, which real property, together with all improvements, personal property, and intangible property rights described in Section 1 below and as legally described on Schedule 1 attached hereto and identified as tax parcel numbers: 20-01-13-228-015; 20-01-13-228-014; 20-01-13-228-008, and 20-01-13-228-007;

WHEREAS, Seller desires to sell and Purchaser desires to purchase said property on the terms and conditions herein provided;

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged and agreed, Seller and Purchaser hereby agree as follows:

1. **PROPERTY:** That certain real property owned by Seller consisting of the above referenced land, which is generally described in Schedule 1 attached hereto and incorporated herein by reference, together with Seller's entire right, privilege, easements and appurtenances benefiting the property, including, without limitation, rights in adjacent streets, roads and alleys, and all water rights and all easements, rights-of-way and other appurtenances used or connected with the beneficial use or enjoyment of the Property; together with all improvements, fixtures, appurtenances, chattels and structures now or hereafter located on the real estate, outdoor parking areas, and such other improvements, structures, systems and utilities as are located on the real estate and used in connection with the maintenance and operation thereof, all of the foregoing being collectively referred to as the "Property".

2. **PURCHASE PRICE:** The Purchase Price for the Property shall be Five Million Five Hundred Eighty Thousand and No/100 Dollars (\$5,580,000.00), (**the "Purchase Price"**), payable by federal bank wire transfer on the day of Closing (as herein defined).

3. **EARNEST MONEY DEPOSIT:** On or before three (3) business days after full execution of this Purchase and Sale Agreement (the "**Contract**") between the parties hereto, Purchaser shall deposit with Transnation Title Agency, East Lansing, ("**Title Company**") **the** sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) as an earnest money deposit ("**Earnest Money**"). The Earnest Money shall be held for the Purchaser's benefit pursuant to the terms and conditions set forth herein. The Earnest Money shall be disbursed and applied as follows:

a. If the sale of the Property closes pursuant to the terms of this Agreement, all Earnest Money deposited with the Title Company shall be applied to the Purchase Price for the benefit of the Purchaser regardless of any delays in filings in Section 7.a. or 7.b. below.

b. If any of the contingencies set forth in Paragraph 5 are not met, despite the good faith efforts of the Purchaser, Purchaser shall be entitled to a refund of any Earnest Money that was not forfeited pursuant to Section 7 below.

c. If the sale of the Property does not close pursuant to this Agreement as a result of Purchaser defaulting in its obligation to close or failing to exercise good faith to remove the contingencies, through no fault of the Seller and through no fault of the City, the Purchaser shall forfeit any and all remaining Earnest Money which shall be promptly disbursed to the Seller.

d. If the sale of the Property does not close pursuant to this Agreement as a result of Seller or City failing to exercise good faith to remove the contingencies, despite the good faith of the Purchaser, the Purchaser shall be entitled to a refund of all Earnest Money deposited.

4. **CONDITION OF TITLE:** Seller will convey to Purchaser good and marketable title to the Property in fee simple, by warranty deed, free and clear of all exceptions except for the Permitted Exceptions defined in Section 6 herein.

5. **CONTINGENCIES AND INSPECTION PERIOD:** Unless waived in writing signed by parties, Purchaser's obligation to purchase and Seller's obligation to sell the Property pursuant to the terms of this Agreement are contingent upon all the following:

a. The Purchaser, the Seller and the City of East Lansing (hereinafter referred to as the "City") entering into a Development Agreement by April 1, 2019 which shall include, but is not limited to, the following:

i. That the Purchaser shall pay prevailing wages for the construction of the entire project. The Purchaser shall at all times make every reasonable effort to utilize residents of Michigan, and particularly from the Capital region, as labor necessary to complete the project. The Purchaser shall utilize Michigan-made products in the completion of the project wherever it is reasonably possible to do so.

ii. Any Tax Increment Financing through Brownfield plans shall be at the discretion of the City but limited to reimbursements for environmental remediation and public infrastructure in accordance with the City policy.

iii. The Purchaser shall provide support for the Downtown by providing Twenty-Five Thousand Dollars (\$25,000.00) to the DDA for advertising purposes.

iv. A ground lease with the City of the north 35 feet of City's Parking Lot #4 located at the northwest corner of Abbot Road and Albert Avenue, together with sufficient additional land on said Lot #4 and part of the adjoining right-of-way for Albert Avenue (which is intended to be vacated or abandoned by the City as a public road in connection with the partial relocation of Albert Avenue further south), as necessary for columns to support Purchaser's proposed building and improvements. Said lease shall also include the use of the air space above Lot #4 and said vacated or abandoned part of Albert Avenue, and use of underground space below said Lot #4 and said vacated or abandon part of Albert Avenue. Said lease shall be for an initial term of forty-nine (49) years, and include rights of Purchaser to renew the lease for up to forty-nine (49) additional years. Said ground lease shall not include the ground surface south of the north 35 feet of Lot #4, and shall not include the airspace located above said ground surface and below the floor of Purchaser's proposed building which will be

elevated at a minimum of 24 feet in such area, as said area is being retained by the City for use as a public plaza, other than those areas which will be occupied by the support columns which will be leased as provided for herein. It is intended that said lease terms shall allow Purchaser to construct a 14-story mixed use condominium building with an additional mezzanine level on said Lot #4, the vacated or abandoned part of Albert Avenue, and the Dublin Square property to the north which Purchaser intends to acquire. Except as otherwise provided herein, upon expiration of said lease, if the building and improvements have not previously been removed by Purchaser, the condominium units (other than those units described in Section 5.a.v. below) in that portion of the building to be constructed on Lot #4 and the vacated or abandoned part of Albert Avenue, and that the portion of the parking spaces below Lot #4 and vacated or abandoned part of Albert Avenue, shall revert to the City, subject to the terms of a condominium Master Deed approved by the City and Purchaser. Said reversion to the City shall be subject to the rights and obligations of unit owners, and subject to rights of unit owners in the general and limited common elements on all the real property comprising the condominium project as provided in said Master Deed.

v. A purchase and sale of the air space above Lot #4, and the vacated or abandoned part of Albert Avenue, which will be occupied by the 11th through 14th floors of the building proposed by Purchaser, which 11th through 14th floors shall be used for the construction of residential condominium units which shall be occupied by the unit owners or their owners' families. The condominium units to be constructed on said floors eleven (11) through fourteen (14) shall not revert to the City of East Lansing.

vi. The Purchaser shall provide reasonable evidence of Purchaser's ability to finance the project and sufficient security to the City by way of a reasonable performance guarantee required by the City upon failure to complete the project.

vii. Necessary infrastructure improvements in the City right of way including new water, storm and sanitary sewer, roadways and other infrastructure improvements in accordance with City standards, including the payment of connection charges and capital connection charges in accordance with City rates. These are expenses to be paid for through Brownfield TIF reimbursements.

viii. That any private parking on the project may be open to the public but shall not provide rates lower than those established by the City. Further, as long as the City provides free parking on Sundays, all private parking open to the public on the project shall be free to the public on Sundays as well.

ix. The vacation or abandonment of Albert Avenue as a public road in connection with the relocation of Albert Avenue to the south, and the extension of Albert Avenue by the Purchaser, at Purchaser's expense, through City Lot #8 onto Evergreen (at the City's option). If the City elects this option to extend Albert Avenue, the expense shall be reimbursed to the Purchaser through Tax Increment Financing pursuant to an approved Brownfield plan.

b. The Property passing the Purchaser's Inspection. Purchaser shall have ninety (90) days from the date of full execution of the Agreement and delivery by Seller of the Due Diligence Materials as outlined in Section 6 herein, whichever last occurs (the "Initial Inspection Period") to physically inspect the Property, and review all aspects with respect to the Property including but not limited to: conduct surveys, soils, engineering, percolation, geological, hazardous and toxic materials, environmental and other tests on the Property; to review zoning, building and other applicable ordinances, laws and regulations; to perform economic feasibility studies of the Property; to determine the availability of

financing; to determine the availability for purchase or lease of adjoining properties owned by the City or other private parties necessary for Purchaser's intended development; and to negotiate certain additional entitlements not in conflict with or in excess of those entitlements specified in Section 5.a.ii above with the City, County and State governments applicable (the foregoing collectively the "**Inspections**"). Purchaser shall approve or disapprove the Inspections and all other matters relating to or affecting Purchaser's planned subdivision, entitlement, development or ownership of the Property, such as (without limitation) environmental impact reports or negative declarations, any matters dealing with or which might affect or condition any approval, authorization or permit necessary or appropriate to Purchaser's plans and activities at the Property, zoning and any agreements relating to any of the foregoing, in each case in Purchaser's reasonable, good faith discretion. Purchaser shall share any surveys, soils, engineering, percolation, geological, hazardous and toxic materials, environmental and other test results on the Property within 30 days of receipt of such test results. In the event Purchaser is unable to complete said Inspections prior to the expiration of the Initial Inspection Period, Purchaser shall have the right to extend the Inspection Period for up to one(1) additional period of thirty (30) days upon making payment to Seller in the amount of Fifteen Thousand and 00/100 Dollars (\$15,000.00) (the "Extension Fee"). If the City determines sufficient progress is being made toward completion of the project on each occasion, the Purchaser may extend the Inspection Period for up to four additional 30 day periods upon making payment to Seller of additional Extension Fees in the amount of Fifteen Thousand Dollars (\$15,000.00) for each of said thirty (30) day extensions prior to the expiration of the Initial Inspection Period or extended Inspection Period then in force, whichever is applicable. Said Extension Fees shall be non-refundable, but shall be applicable to the Purchase Price. If Purchaser determines that the Property is not suitable for Purchaser's intended use based upon any matters reviewed during Purchaser's Inspection, Purchaser shall provide notice of the basis for said determination to Seller and Seller shall have 30 days (or a reasonable time agreeable to both Purchaser and Seller) within which to cure said defect, during which time the inspection period shall be automatically extended. If in Purchaser's reasonable, good faith discretion, the Seller is unable to cure the defect or Purchaser is unable to satisfy any requirements imposed by Purchaser's lender, Purchaser may terminate this Agreement by giving written notice to Seller on or before the expiration of the Initial Inspection Period or if applicable, the Extended Inspection Period (herein called a "Termination Notice"). In the event Purchaser provides Seller with a Termination Notice, any Earnest Money not forfeited pursuant to Section 7 will be refunded to Purchaser promptly upon request.

- c. The property involved in the project being removed from the City's Historic District.
- d. The property involved in the project is zoned to allow the project as submitted in the site plan.
- e. The Purchaser obtaining an approved Site Plan and Brownfield Plan for the Property.

6. **DUE DILIGENCE MATERIALS:**

a. Title Commitment. Within five (5) Business Days after the Effective Date, Seller shall request from the Title Company a title commitment for the Property (the "Seller's Title Commitment"), specifying Seller as the record owner of the Property, showing Purchaser as the prospective named insured, in the amount of the Property Purchase Price, showing the status of title of the Property and listing all exceptions (including, but not limited to, easements, restrictions, rights-of-way, covenants, reservations, encumbrances, liens and other conditions, if any, affecting the Property) which would appear in the Owner's Policy of Title Insurance, when issued, together with true, correct and legible copies of all items and documents referred to therein. Within five business days after receipt of the title

commitment and related documents by Seller, Seller shall convey it to Purchaser. Seller shall deliver to Purchaser title at closing subject only to the "Permitted Exceptions," as defined herein. Purchaser shall have a period (the "Review Period") ending on the date which is fifteen (15) business days after the date on which Purchaser receives the last of (i) the Title Commitment; and (ii) true, legible copies of all instruments referred to in the Title Commitment, in which to notify Seller of any objections Purchaser has to any matters shown or referred to in the Title Commitment ("Objection Notice"). Any exception to which Purchaser does not object shall be considered a "Permitted Exception". In the event Purchaser timely provides Seller an Objection Notice, Seller shall have the right, but not the obligation, at its sole cost, to eliminate or modify such unacceptable exceptions or conditions and shall give Purchaser written notice of Seller's intent to eliminate or modify such unacceptable exceptions or conditions within ten (10) days following delivery of the Objection Notice ("Seller's Cure Period"). In the event Seller is unable or unwilling to eliminate or modify such unacceptable exceptions or conditions to the satisfaction of Purchaser within Seller's Cure Period, and so notifies Purchaser in writing (the "No Cure Notice"), then in that event Purchaser may elect in writing delivered to Seller within ten (10) days following delivery of the No Cure Notice to Purchaser to elect to either (1) waive such Objections, or (2) terminate this Contract, in which later event this Contract shall terminate and the parties hereto shall have no further obligations one to the other. In the event Purchaser fails to timely give notice that Purchaser terminates the Contract as aforesaid in Section 6.a.(2), Purchaser shall be deemed to have elected to waive any such unacceptable conditions and exceptions and close subject to such waived Objections. Seller shall have no obligation to remove or cure title objections, except for (1) liens of an ascertainable amount created by Seller (including any financing which encumbers the Property), which liens Seller shall cause to be released at the Closing or affirmatively insured over by the Escrow Agent, as title insurer, (2) any exceptions or encumbrances to title which are created by Seller after the date of this Agreement without Purchaser's consent, and (3) non-consensual liens not exceeding \$25,000 in the aggregate, all of which liens, exceptions and encumbrances Seller shall cause to be released at the Closing or affirmatively insured over by the Escrow Agent as title insurer notwithstanding any Objection Notice or the lack thereof.

b. Survey. During the Initial Inspection Period, Purchaser may, at Purchaser's cost, obtain a survey of the Property. The results of said survey must be acceptable to Purchaser, in Purchaser's reasonable discretion, as determined during the Initial Inspection Period, or Purchaser may terminate this Agreement upon written notice to Seller prior to the expiration of the Initial Inspection Period. If Purchaser does obtain a survey, Purchaser shall cause a full-size copy of such survey to be delivered to each Seller and the Escrow Agent promptly after such survey is completed.

c. Due Diligence Documents. Within ten (10) business days after the Effective Date, Seller shall deliver to Purchaser, all books, records, documents, site plans, floor plans, permits, surveys, soil tests, engineering reports, traffic studies, feasibility studies, easements, licenses, franchise agreements, development agreements, and documentation, leases (including without limitation those specified in Section 12 herein), zoning documents, and any other third party report and/or agreement, including without limitation environmental and physical inspection reports, or other written materials regarding the Property within the Seller's possession or control pertaining to the Property and Development rights. Seller warrants the foregoing deliveries to be all the due diligence materials obtained and maintained by Seller during Seller's acquisition and ownership of the Property and Development rights. Seller shall provide upon receipt any new or additional information pertaining to the Property and Development

rights, and any amendment or supplement to any due diligence document, within five (5) Business Days of receipt thereof. Purchaser shall have the right to request a copy of any due diligence document not heretofore in Purchaser's possession.

7. **PURCHASER'S REASONABLE DILIGENCE:** Purchaser will exercise reasonable diligence to investigate all aspects of the site and attempt to timely satisfy such contingencies.

a. Purchaser shall, on or before December 17, 2018, submit a site plan for Purchaser's proposed project including the Property and special use permit application to the City and pay the required fees. Purchaser shall make a good faith effort to make a site plan as complete as practical given the time constraints, and Seller acknowledges that said site plan will not include detailed construction drawings. Further, Purchaser agrees that as promptly as practical after receipt for written notice from the City of East Lansing that either of said submittals are incomplete or deficient, Purchaser shall provide said missing or incomplete items as promptly as practical. Failure of the Purchaser to submit a site plan or special use permit application on or before December 17, 2018 as provided herein so shall cause 25% of the Earnest Money to be forfeited to the Seller as liquidated damages for interest and lost opportunities while this sale was pending and the Seller may, at its option, terminate this agreement upon written notice to Purchaser given within thirty (30) days after any default by Purchaser in making such submittals.

b. Purchaser shall, on or before January 15, 2019, submit a Brownfield Plan to the City meeting the requirements of Public Act 381 of 1996. Failure of the Purchaser to submit a Brownfield plan on or before January 15, 2019 shall cause 25% of the Earnest Money to be forfeited to the Seller as liquidated damages for interest and lost opportunities while this sale was pending and the Seller may, at its option, terminate this agreement upon written notice to Purchaser given within thirty (30) days after any default by Purchaser in making such submittal.

In the event Purchaser fails to perform any obligation of Purchaser hereunder, and if such failure continues for thirty (30) days after written notice of such failure is sent by Seller to Purchaser, then in such event Seller may declare Purchaser in default of this Agreement. Purchaser shall not be in default to the City upon execution of this Agreement and throughout the duration of this agreement.

8. **OTHER OFFERS WHILE AGREEMENT PENDING** Seller shall not seek other buyers while this Agreement is pending. Seller may continue to develop a process by which to market the Property should this Agreement terminate without sale of the Property but will not issue an RFP while this Agreement is pending without Purchaser's written consent. Purchaser and Seller shall deliver a fully executed copy of this Agreement to Title Company within three (3) business days after the Effective Date.

9. **GOOD FAITH NEGOTIATIONS:** Both Purchaser and Seller will act honestly, diligently and in good faith in their respective endeavors to negotiate and satisfy the remaining contingencies. The Seller and the City shall be deemed to have acted in good faith if they act reasonably in negotiations consistent with this Agreement and the most recent two development agreements entered into by the City for neighboring developments. The Purchaser shall be deemed to have acted in good faith if the Purchaser seeks no entitlements greater than those allowed pursuant to this Agreement, agrees to the terms of this Agreement in the Development Agreement and seeks no terms of the Development Agreement substantially more favorable to the Purchaser than the most recent two development agreements entered into by the City for neighboring developments, except to the extent otherwise provided in this Agreement.

10. **PROPERTY CONDITION:** From and after the date hereof, Seller shall not, without the prior written consent of Purchaser, cause, permit, suffer, or agree to cause, permit or suffer all or any portion of the Property or any interest therein to become subject to any lease, license, tenancy agreement, contract, covenant, condition, limitation, restriction, reservation, easement, right-of-way, servitude, lien, claim, encumbrance, charge or other matter affecting title to or use of the Property.

11. **ENTITLEMENTS:** Upon execution of the Contract, Seller shall execute a Seller Authorization identifying the Purchaser as a representative to process all entitlement applications with city, county, and/or state. Seller agrees to execute such zoning and/or other applications and filings related to the Property as Purchaser may reasonably request and to generally cooperate in processing the same during Inspection Period. Seller shall assign and transfer all development entitlements to Purchaser at Closing.

12. **OCCUPANCY:** Purchaser is aware that Seller has existing leases in place governing all or a portion of the Property. Provided Seller has accurately disclosed all existing leases to Purchaser in accordance with Purchaser takes the Property subject to the existing leases and may have occupancy of the Property for development purposes at the conclusion of the current lease terms in August of 2020. To the extent Purchaser wants occupancy earlier, Purchaser shall be responsible for any and all costs in termination of the existing leases and any and all relocation costs required by law including but not limited to and any all other costs and expenses incurred by the Seller or City associated with displacing occupants of the Property.

13. **ASSIGNMENT:** Purchaser may not assign or otherwise transfer any of its rights and/or obligations under the Contract without Seller's written approval, which shall not be unreasonably withheld conditioned, or delayed. The parties recognize that Purchaser will form a new entity to own and develop the Property, and that assignment of all development rights and entitlements to such entity is imperative for Purchaser's successful development and ownership of the Property. Any assignee shall agree to be bound by all of the terms of this agreement and all of the terms of the Development Agreement.

14. **BROKER DISCLOSURE AND BROKERAGE FEE:** Both Seller and Purchaser hereby acknowledge and warrant that there are no real estate brokers involved in this transaction.

15. **CONTACT INFORMATION:** Purchaser and Seller, respectively, shall each provide Title Company within 3 business days of execution of the Contract, all said party's contact information. All communications, notices and demands of any kind which either party may be required or desire to give to or serve upon the other party, shall be made in writing and delivered by personal service to the other party or sent by registered mail, postage paid, return receipt requested, facsimile transmission, or by overnight mail service (next day delivery) to the provided address. Notice by personal delivery, overnight courier (next day delivery), or facsimile transmission shall be effective upon receipt of such notice. Notice by registered mail shall be deemed effective forty-eight (48) hours after such notice is deposited in the mail. Either party may change its address by giving the other party and Title Company written notice of its new address.

16. **CLOSING:** Closing shall take place within sixty (60) calendar days after the expiration of Purchaser's Inspection Period, or Extended Inspection Period if applicable, and the satisfaction of all contingencies. The Closing shall be held at the office of the Title Company or at such other location as may be acceptable to both Seller and Purchaser. Neither Purchaser nor Seller need be physically

present at the Closing provided that all necessary documents and agreements have been properly executed and notarized (if applicable) and delivered to the Title Company, as Escrow Agent, at least one (1) Business Day prior to Closing.

a. Seller's Deliveries. At Closing, Seller shall deliver any necessary documents required by the Escrow Agent, title insurance underwriters, the Warranty Deed, any consents required by third parties, including governmental agencies, and any additional closing documents required by this Agreement (the "Closing Documents"). The parties shall cooperate as reasonably necessary to cause any required parcel division to be completed prior to closing.

b. Purchaser's Deliveries. At Closing, Purchaser shall to deliver to the Escrow Agent the Closing Documents and the Purchase Price for both the Property in good funds by federal wire transfer.

c. Other Documents. At the Closing, Seller and Purchaser shall cause to be delivered to the Escrow Agent such other instruments and documents as may be reasonably necessary and appropriate in order to complete the Closing of the transactions contemplated by this Agreement in accordance with the terms hereof.

d. Funding and Recording. Upon the completion of the deliveries of funds, documents and/or instruments specified herein, the Escrow Agent, shall be authorized and instructed to: (a) deliver the Property Purchase Price to Seller, after deducting all expenses therefrom which are chargeable to Seller; and (b) cause the Warranty Deed and such other appropriate closing documents to be immediately recorded in the appropriate real property records of Ingham County, Michigan.

e. Closing Costs. Seller shall pay its proportionate share of the prorations set forth below in subsection 16f below and the basic premium for the title policy for the Purchase Price and one-half (½) of the escrow fee payable to the Escrow Agent. Purchaser shall pay its proportionate share of the prorations set forth in subsection 16f below, and the premiums for any endorsements or modifications to the title policy, which may be obtained by Purchaser at its sole election. Except as otherwise provided in this Agreement, all other escrow and closing costs shall be allocated to and paid by Seller and Purchaser on the date of Closing, in accordance with the manner in which such costs are customarily borne by such parties in sales of similar property Ingham County, Michigan; provided, however, each party shall pay its own attorneys' and consultants' fees. The obligations of Seller and Purchaser under this Section shall survive the Closing.

f. Prorations. Real estate taxes, charges and assessments (special or otherwise) and rents and fees relating to the Property, shall be prorated equitably at Closing based upon such amounts due and payable for the calendar year in which the Closing occurs and the actual number of days remaining from Closing to the end of such calendar year. Taxes shall be prorated at Closing as if they cover the calendar year in which such taxes are first billed. The obligations of Seller and Purchaser under this Section 16 shall survive the Closing.

17. WARRANTIES:

a. Seller's Representations, Warranties and Covenants. Seller represents, warrants and covenants with Purchaser that:

- i. Seller owns the Property, and is not precluded from entering into this Agreement or consummating the transactions described in this Agreement by the terms of any other contract, lease or agreement to which Seller is bound;
- ii. The persons signing this Agreement on behalf of Seller have full power and authority to bind Seller;
- iii. All necessary documents evidencing such power and authority shall be provided to the Title Company and Purchaser at Closing;
- iv. Seller will provide to Purchaser, at Closing, a Foreign Investment Tax Certificate (“FIRPTA Certificate”) in accordance with Section 1445 of the Internal Revenue Code;
- v. Except as identified in Section 5d of this Agreement during the term of this Agreement, Seller shall not, without providing prior notice to Purchaser and having received the express written consent of Purchaser, commence any proceeding to change, redefine, or otherwise modify any use, zoning, building, or code requirements applicable to the Property, or any portion thereof, or cause any additional title exceptions to be recorded against the Property which may not be removed by Seller prior to Closing;
- vi. Except for the leases identified in Section 12 of this Agreement, there are no other agreements (written or oral) with respect to the Property, and all Property and personal property, general intangible property, and development documents have been delivered to the Purchaser and are true and correct in all material respects;
- vii. To Seller’s knowledge, each of the development rights documents or agreements is in full force and effect, none of the parties thereto is in default of any of its obligations they are under, and no event has occurred that, without giving of notice or passage of time, or both, which constituted default they are under;
- viii. Except for the leases identified in Section 12 of this Agreement and the possibility that relocation costs may be required to be paid, no Tenant or third party is entitled to free rent, abatement of rent, or other concession or allowance or work relative to the Property;
- ix. To Seller’s knowledge, no Tenant or third party has made any claim under its lease or other agreement that Seller is in default thereunder, and that it is entitled to any refunds, credits, or services which it has not received or is not receiving, and no brokerage commission or other compensation is payable (or will, with the passage of time or occurrence of any events or both, be payable) with respect to any lease;
- x. Other than two current management agreements and the leases identified in Section 12, there are no service or maintenance contracts or management or leasing agreements (written or oral) relating to or affecting the Project;
- xi. The Seller agrees to provide Purchaser any documents described above coming into Seller’s possession or produced by Seller after the initial delivery above, and to continue to provide the same during the pendency of this agreement;
- xii. No services, material, or work has been supplied to the Property in which payment has not been paid in full. Except as disclosed to Purchaser in Schedule “2” attached hereto, the Seller represents and warrants that Seller has no knowledge that there have ever been any Hazardous Materials used, handled, manufactured, generated, produced, stored, treated, processed, transferred, or disposed of at or on the Property, except in compliance with all applicable Environmental Laws;
- xiii. Except as disclosed to Purchaser in Schedule “2” attached hereto, the Seller represents and warrants that it has received no notice that the Project is in violation of any Environmental Laws. No lien has been imposed on the Project by any federal, state, or local government or quasi-governmental agency in connection with any violation with

any Environmental Law, or the presence of any Hazardous Materials on or off the Project;

- xiv. Except as disclosed to Purchaser, in Schedule "2" attached hereto, the Seller represents and warrants that it is not aware of any pending or threaten litigation or proceedings before any administrative agencies in which any person or entity alleges the violation or threaten violation of any Environmental Law, or the presence, release, threat of release, or placement on or at the Project of any Hazardous Materials, or any facts that would give rise to any such action, nor has the Seller received notice that any governmental or quasi-governmental authority or any employee or agent thereof, has determined or requires an investigation to determine that there has been a violation of any Environmental Laws, at, on, or in connection with the Project or that there exists a presence, release, threat of release, or placement of any Hazardous Materials on or at the Project, or the use, handling, manufacturing, generation, production, storage, treatment, processing, transportation, or disposal of any Hazardous Materials at the Project; nor has Seller received any request for inspection, request for information, notice, demand, administrative inquiry, or any formal or informal complaint or claim in respect to or connection in violation or threaten violation of any Environmental Laws or existence of Hazardous Materials relating to the Project or any facilities, operations, or activities conducted thereon or any business conducted in connection therewith.
- xv. The representations and warranties of Seller set forth in this Agreement shall be true and correct on and as of the Closing Date with the same force and effect as if such representations and warranties had been made on and as of the Closing Date. If the representations and warranties of Seller are not true and correct as of the Effective Date and as of the Closing Date, Purchaser shall not be obligated to perform under this Agreement and shall receive a return of the Earnest Money. Seller, by having closed the sale of the Project, shall be deemed conclusively to have certified at Closing that all representations and warranties stated herein were true and correct on and as of the Closing Date.

b. Purchaser's Representations, Warranties and Covenants. As of the Effective Date and the Closing Date, Purchaser hereby represents, warrants, covenants and agrees as follows:

- i. Purchaser is an Illinois corporation, duly formed and existing under the laws of the State of Illinois; and,
- ii. The execution, delivery and performance of this Agreement have been duly authorized, and this Agreement constitutes the legal, valid and binding obligation of Purchaser.

18. **LIMITATION OF REMEDIES FOR PURCHASER, WAIVER:** Except for claims by the Purchaser that the Purchaser is entitled to return of the Earnest Money pursuant to the terms of this agreement, Purchaser agrees that its sole and exclusive remedy against the Seller for any claim arising out of this Purchase and Sale Agreement, shall be to seek and obtain specific performance of the terms of this Agreement including temporary and permanent injunctive relief. All other claims arising out of this Agreement, whether for breach of contract, tort, warranty, or otherwise are waived by Purchaser even if this Agreement or the Development Agreement are hereafter declared to be invalid. If this Agreement is collaterally assigned to any other party or to a lender having advanced funding, said party and lender and its successors and assigns shall have as its sole and exclusive remedy specific performance of the terms of this Agreement including temporary and permanent injunctive relief, and

shall be deemed to have waived any other claims as specified in this provision. The prevailing party in any proceeding or court action to enforce the terms of this agreement shall also be entitled to an award of its reasonable costs and attorney fees incurred in such enforcement action. The award of monetary relief shall be limited to those reasonable costs and attorney fees permitted by this Agreement, any sanctions ordered or permitted under Michigan law, and the amount of Earnest Money owed to the Purchaser in accordance with the terms of this Agreement.

19. **LIMITATION OF REMEDIES, SELLER:** Seller's sole and exclusive remedy shall be limited to its rights to the Earnest Money pursuant to this agreement. The prevailing party in any proceeding or court action to enforce the terms of this agreement shall also be entitled to an award of its reasonable costs and attorney fees incurred in such enforcement action. The award of monetary relief shall be limited to those reasonable costs and attorney fees permitted by this Agreement, any sanctions ordered or permitted under Michigan law, and the amount of Earnest Money owed to the Seller in accordance with the terms of this Agreement.

20. **MICHIGAN LAW TO CONTROL, JURISDICTION, VENUE AND SEVERABILITY.** This Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with Michigan law. Jurisdiction and venue shall be in the Ingham County Circuit Court for any disputes concerning this Agreement. If any part, term, or provision of this Agreement is found by a court of competent jurisdiction to be illegal or unenforceable, the validity of the remaining portions and provisions will not be affected and the rights and obligations of the parties will be construed and enforced as if this Agreement did not contain the particular part, term, or provision held to be invalid unless it is a material term or provision of the agreement that would significantly alter the nature of the Agreement. All terms, conditions, responsibilities, duties, promises and obligations of the parties are binding upon the parties, their successors and assigns.

21. **EFFECTIVE DATE.** The Effective Date of this Agreement shall be the date the last party signs this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first set forth above.

[Signatures on the following page]

Seller:

**DOWNTOWN DEVELOPMENT AUTHORITY
OF THE CITY OF EAST LANSING,**

By: _____

Date: _____

Its: _____

Purchaser:

ROYAL APARTMENTS USA, INC.,
an Illinois corporation

By: _____

Date: _____

Its: _____

VLAHAKIS DEVELOPMENT, LLC,
a Michigan limited liability company

By: _____

Date: _____

Paul J. Vlahakis

Its: Manager

APPROVED AS TO FORM:

By _____

Thomas M. Yeadon, City Attorney