

CITY CONTRACT # _____

AGREEMENT FOR THE PURCHASE AND SALE OF LANDS

This Agreement for the Purchase and Sale of Lands (“Agreement”) is made effective as of the date of execution (“Effective Date”) of the last signing party below, and entered into by and between the City of Cheyenne, Wyoming, a municipal corporation organized under the laws of the State of Wyoming, having its principal offices at 2101 O’Neil Avenue, Cheyenne, Wyoming 82001 (“City”), and Retail Properties C, LLC, a Wyoming corporation, 3151 Nationway, Unit E, Cheyenne, Wyoming 82001, (“Retail Properties C, LLC”), and sometimes individually referred to herein as “Party” and collectively to as “Parties.”

WHEREAS, Retail Properties C, LLC owns real property situated at 3151 Nationway, Cheyenne, Laramie County, Wyoming (“Real Property”), encompassing 125,996 square feet, 2.89 acres, having an appraised value of \$4.35 square foot, for a total appraised value of Five Hundred Forty-Eight Thousand Eighty Dollars and Sixty Cents (\$548,082.60), which parcel is particularly described in “Exhibit A – Legal Description and map of Real Property,” attached to this Agreement and incorporated herein by this reference.

WHEREAS, Retail Properties C, LLC desires to sell its Real Property to the City.

WHEREAS, the City wishes to purchase the Real Property.

NOW THEREFORE, in consideration of the mutual benefits and obligations set forth in this Agreement:

1. Purpose of Agreement. Subject to the terms and conditions set forth in Paragraphs 2-15: Retail Properties C, LLC agrees to sell to the City, and the City agrees to purchase from Retail Properties C, LLC the Real Property identified in Exhibit A, subject to all existing easements, rights of way, covenants, and restrictions, for a purchase price of Five Hundred Forty-Eight Thousand Eighty Dollars and Sixty Cents (\$548,082.60), to be paid by City in full at closing.

2. Terms of the Agreement. The Real Property and all improvements, structures, and fixtures situated on Real Property will be conveyed to the City in an “as is” condition without any representations or warranties, expressed or implied, relating to Real Property’s physical condition and without ascribing any value to them.

3. Payment of Taxes. Prior to closing, Retail Properties C, LLC shall pay, when due and payable, all property taxes and assessments asserted against the Real Property for Real Property for the current year and for all prior years. All such taxes for the current year shall be apportioned between the Parties on a pro rata basis as of the date of closing.

4. Title.

a. Prior to closing, the City shall have the right to obtain a Title Commitment

for Real Property (the “Title Commitment”) at the City’s sole cost and expense. In the event the Title Commitment shows that Retail Properties C, LLC is not vested with a good, marketable, and insurable fee simple title Real Property sufficient to convey a Special Warranty Deed consistent with the one conveyed to Retail Properties C, LLC at Book 1698, Pages 515-517, or that the Real Property is subject to liens, encumbrances, taxes, or assessments other than those identified in said Special Warranty Deed which will not be discharged prior to closing, the City shall have the right, in its sole and absolute discretion, to declare this Agreement null and void.

b. Within ten (10) days following the receipt of the Title Commitment from the City, Retail Properties C, LLC shall deliver to the City the following:

i. True, complete, and legible copies of all documents referred to in the Title Commitment to the extent that any such document has not been filed for record in the office of the Laramie County Clerk and ex-officio register of deeds;

ii. True, complete, and legible copies of all documents that are known to Retail Properties C, LLC that are not referred to in the Title Commitment and that may affect the marketability of title to Real Property;

iii. True and complete copies or originals of any lease or occupancy agreements for any portion of Real Property;

iv. All mortgages, notes, and loan documents for any mortgage which encumbers Real Property on the date hereof, which mortgages, notes, and loan documents shall be discharged by Retail Properties C, LLC prior to closing; and

v. Copies of any and all materials relating to pending or present litigation involving Real Property.

c. The City shall have twenty (20) business days from the date of receipt of the Title Commitment referred to in Section 4 in which to examine the same. If the City finds title to the Real Property to be other than as described in Section 4(a) hereof, the City shall, no later than the expiration of said period of twenty (20) business days, notify Retail Properties C, LLC in writing specifying the defect or defects; provided, that if the City fails to give Retail Properties C, LLC written notice of such defects before the expiration of said period of twenty (20) business days, the defects shown in the Title Commitment or in documents provided by Retail Properties C, LLC shall be deemed to be Permitted Exceptions and waived as title objections. The City may raise as additional objections, however, any defect first shown by any title update between the date of the Title Commitment and the closing date by giving Retail Properties C, LLC written notice of any such defect within five (5) business days after the City first has notice of same. If the City has given Retail Properties C, LLC timely written notice of defects that render

the title other than as required by this Agreement (“Defects”), and only in the event that the Defects were the result of Retail Properties C, LLC’s action or caused by Retail Properties C, LLC’s failure to act, Retail Properties C, LLC shall use their best efforts to cause such Defects to be cured within ten (10) days following receipt of such notice. In the event Retail Properties C, LLC fails to eliminate such Defects, either party may terminate this Agreement. In the event Retail Properties C, LLC creates any liens or encumbrances on Real Property which are capable of being satisfied by the payment of money at the closing, Retail Properties C, LLC shall be obligated to use the Purchase Price, if any, to cure the Defects.

d. The date for elimination of the Defects may be extended until closing. In the event Retail Properties C, LLC does not eliminate any Defect prior to or at closing, as the same may be extended under the preceding provision, the City shall have the option of either: (i) closing and accepting the title “as is,” without reduction in the Purchase Price and without claim against Retail Properties C, LLC therefore, or (ii) cancelling this Agreement. In the event of a Defect that was not caused by Retail Properties C, LLC’s action or caused by Retail Properties C, LLC’s failure to act, Retail Properties C, LLC’s only responsibility shall be to assign to the City Retail Properties C, LLC’s Title Insurance Policy or Retail Properties C, LLC’s rights under Retail Properties C, LLC’s Title Insurance Policy, whichever is applicable, and cooperate with the City in obtaining the assistance of Retail Properties C, LLC’s title insurer to remove the Defect.

e. Retail Properties C, LLC shall not create any new exceptions to title and shall use his best efforts to prevent any other person or entity from creating new exceptions to title to the Real Property prior to closing.

5. Conditions Precedent.

a. The City’s obligation to close this transaction shall be subject to fulfillment of the following conditions precedent:

i. Retail Properties C, LLC shall, at Retail Properties C, LLC’s sole cost and expense, obtain releases, at or prior to closing, for any and all liens or encumbrances affecting the Real Property caused by Retail Properties C, LLC’s action or caused by Retail Properties C, LLC’s failure to act as of the date of closing, pursuant to the terms of this Agreement.

ii. Retail Properties C, LLC shall not be in default in its obligations under this Agreement.

iii. The Escrow Agent, at the expense of the City, shall be prepared to deliver a Title Insurance Policy in a form acceptable to the City (“Title Policy”) insuring the City’s title to the Real Property in accordance with the terms of this

Agreement.

vi. It shall be a condition precedent to this Agreement that the City shall take any and all necessary steps to have the parcel shown on the map on Exhibit A replatted and subdivided to create a new lot for the portion of the lot shown in the map on Exhibit A before closing and bear all cost and expenses related to the same. If the City is not successful in replatting/subdividing the portion of the lot to conform to the map shown on Exhibit A, then either party may terminate this Agreement.

vii. It shall also be a condition precedent to this Agreement that the City shall develop the Real Property in substantially the same way as identified on the site plan identified on Exhibit B, which is attached hereto and incorporated herein by reference, so that, during and after construction, both parties have vehicular access around their respective parcels for ingress and egress for semi-tractor trailers, emergency vehicles of all kinds, and other vehicles. The terms of this paragraph shall survive closing.

b. In the event any of the foregoing conditions precedent are not fulfilled as of closing (or earlier date where specified otherwise), then the City shall have the option of either: (i) waiving the condition and closing “as is” without reduction in the Purchase Price or claim against Retail Properties C, LLC therefore, provided, that Retail Properties C, LLC assigns to the City all of Retail Properties C, LLC’s right, title, and interest to the Title Insurance Policy it obtained when it acquired the Property, or (ii) cancelling this Agreement by written notice to Retail Properties C, LLC.

6. Retail Properties C, LLC’s Representations and Warranties.

a. Retail Properties C, LLC hereby represents and warrants that the following are true statements as of the date of this Agreement and shall be true as of the date of closing, and Retail Properties C, LLC agrees to deliver a certificate confirming that the following representations and warranties are true as of the date of the closing.

i. Retail Properties C, LLC has full power and authority to sell and convey the Real Property and to execute this Agreement and such other documents described herein to be executed.

ii. Retail Properties C, LLC now has, and will have at closing, good, marketable, and indefeasible title in fee simple to the Real Property sufficient to convey a Special Warranty Deed consistent with the deed recorded at Book 1698, Pages 515-517 and subject to the Permitted Exceptions and no Party, except as herein set forth, has or shall have any right in, or to acquire, the Real Property.

iii. At closing, the Real Property shall be free and clear of all encumbrances except the Permitted Exceptions as set forth in this Agreement.

iv. At closing, the Real Property shall be free from any and all actions, suits, claims, assessments, or proceedings pending or, to the knowledge of Retail Properties C, LLC, threatened that could materially adversely affect the ownership, operation, or maintenance of the Real Property or its ability to perform hereunder.

v. To the best of Retail Properties C, LLC's knowledge, the Real Property and Retail Properties C, LLC is not currently in violation of or subject to: (i) any existing, pending, or threatened investigation or inquiry by any governmental authority; or (ii) any remedial obligations under any applicable laws pertaining to health or the environment (hereinafter sometimes collectively called "Applicable Environmental Laws"), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), and the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"). Retail Properties C, LLC shall have no obligation to remove or take any action to cure or remediate any environmentally hazardous material from the Real Property if any environmentally hazardous material is found on the Real Property.

vi. Retail Properties C, LLC does not have knowledge of any hazardous substances or solid wastes that have been disposed of or otherwise released on the Real Property. The terms "hazardous substance" and "release" shall have the meanings specified in CERCLA, and the terms "solid waste" and "disposal" or "disposed" shall have the meanings specified in RCRA; provided, to the extent that the laws of the State of Wyoming establish a meaning for "hazardous substance," "release," "solid waste," or "disposal" that is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply.

vii. There are no parties in possession of any portion of the Real Property, whether as lessees, tenants at sufferance, trespassers, or otherwise.

b. Retail Properties C, LLC shall not intentionally cause any of the representations and warranties contained herein to become materially incorrect, nor authorize any action which would do so. If subsequent to the execution of this Agreement and on or before closing, Retail Properties C, LLC nonetheless has knowledge that any of the representations and warranties set forth herein have become incorrect in any respect ("Discrepancy"), that Retail Properties C, LLC shall promptly notify the City, in writing, of the occurrence of such event. The City shall have a right to approve or disapprove any such Discrepancy, which approval or disapproval shall be given by written notice delivered to the Retail Properties C, LLC within ten (10) days prior to the closing for the

City to evaluate the effect of such Discrepancy. If the City waives such Discrepancy, and elects to acquire the Real Property, the Retail Properties C, LLC represents and warranties contained herein shall be deemed to have been made as of the closing, subject to the waived Discrepancy. If the City disapproves of the Discrepancy, and Retail Properties C, LLC fails to cure same, then upon written notice thereof to the City, this Agreement shall be terminated and all rights and obligations of the Parties hereunder shall terminate.

c. Except for the representations of Retail Properties C, LLC set forth in Section 6 that shall survive for one (1) year from the closing, the express representations and warranties made in this Agreement shall merge into any instrument or conveyance delivered at closing and shall not survive closing.

7. Risk of Loss. The Real Property shall be conveyed to the City is substantially and materially the same condition as on the date this Agreement is executed by the City, ordinary wear and tear excepted.

8. Default Provisions.

a. In the event of the wrongful failure or refusal of the City to close this transaction after sixty (60) days written notice, Retail Properties C, LLC shall be entitled to those remedies as may be provided by law.

b. In the event of Retail Properties C, LLC's failure to close in accordance with the terms and provisions of this Agreement for sixty (60) days after written notice, the City, at its option and as the City's sole and exclusive remedy for default of Retail Properties C, LLC, shall have the right to terminate this Agreement.

9. Closing Costs and Expenses. At closing, the City shall pay the cost of the Title Insurance Policy to be issued to the City and the cost of the survey, the cost of replatting/subdividing the portion of the parcel shown on the map on Exhibit A, and all recording fees necessary to record instruments received by the City at closing. Retail Properties C, LLC shall pay the recording costs with respect to documents necessary to clear title at closing and all instruments received by Retail Properties C, LLC at closing. The closing agent's fee shall be paid equally by Retail Properties C, LLC and the City. Each Party shall pay that Party's attorney's fees, if any.

10. Closing.

a. The closing of this transaction shall be held on _____, 2022, after the satisfaction of all the conditions of closing ("Closing Date"). The parties agree that First American Title Company shall prepare the closing documents.

- b. At closing, Retail Properties C, LLC shall deliver:
 - j. A special warranty deed duly executed and acknowledged in proper form for recording conveying to the City good and indefeasible fee simple title in and to Real Property, subject only to the Permitted Exceptions and to encumbrances, easements, rights of way, covenants, and restrictions identified in said Special Warranty Deed conveyed to Retail Properties C, LLC at Book 1698, Pages 515-517;
 - ii. An assignment of all rights appurtenant to the Real Property, if any, excluding mineral interests, as provided above;
 - iii. A title affidavit and a mechanic's lien affidavit;
 - iv. An affidavit of exclusive possession;
 - v. An affidavit pursuant to Internal Revenue Code Section 1445(b)(2) with respect to Retail Properties C, LLC's status as a non-foreign person;
 - vi. A certificate, or other document as acceptable to the City, confirming Retail Properties C, LLC's authority to sell Real Property; and,
 - vii. Such other documents as are usually required to insure the City's title.

c. At closing, the City, at the City's expense, shall receive an Owner's Title Insurance Policy in a form acceptable to the City, issued by a Title Insurance Company in the full amount of the Purchase Price, insuring the City's indefeasible fee simple title to Real Property by special warranty deed, subject only to the Permitted Exceptions and the printed exceptions contained in the standard form of Retail Properties C, LLC's Title Insurance Policy and to encumbrances, easements, rights of way, covenants, and restrictions identified in said Special Warranty Deed conveyed to Retail Properties C, LLC at Book 1698, Pages 515-517.

11. Brokers. The Parties each represent and warrant to the other that no Party to this transaction shall be responsible for the payment of any compensation or commission due any real estate agent, broker, salesman, or finder unless that Party has engaged the real estate agent, broker, salesman, or finder in writing. If a claim for compensation or commission in connection with this transaction is made by any agent, broker, salesman, or finder claiming to have dealt through or on behalf of one of the Parties hereto, such Party shall indemnify, defend, and hold harmless the other Parties hereunder from and against all liabilities, damages, claims, costs, fees, and expenses whatsoever (including reasonable attorney's fees and court costs at all trial and

appellate levels) with respect to said claim for compensation or commission. Anything to the contrary notwithstanding, the provisions of this paragraph shall survive the closing and any cancellation or termination of this Agreement.

12. Assignability. Neither Party shall have the right to assign this Agreement without the express written consent of the other Party.

13. Notices. Any notices required or permitted to be given under this Agreement shall be delivered by hand or mailed by certified or registered mail, return receipt requested, or overnight delivery service in a postage prepaid envelope, and addressed as follows:

If to the City/City: City of Cheyenne
2101 O'Neil Avenue
Cheyenne, Wyoming 82001
ATTN: City Clerk

If to Retail Properties C, LLC:
Retail Properties C, LLC
Robert Wirth, Manager
3151 Nationway, Unit E
Cheyenne, Wyoming 82001

14. Operation of the Real Property prior to Closing. During the period between the date hereof and the Closing Date, Retail Properties C, LLC shall:

a. Keep the Real Property in substantially the same repair and condition as of the date hereof, but excluding damages to the Real Property caused by the City's Inspection or the City's use of the Real Property;

b. Comply with all state and municipal laws, ordinances, regulations, and orders relating to the Real Property;

c. Comply with all the terms, conditions, and provisions of all liens, mortgages, agreements, insurance policies, and other contractual arrangements relating to the Real Property, make all payments due thereunder, and suffer no default therein;

d. Without written approval of the City, neither negotiate nor enter into any new contract or modify any existing contract affecting the use or operation of the Real Property which cannot be terminated without charge, cost, penalty, or premium on or before the Closing Date;

e. Operate, manage, and maintain the Real Property in the usual and customary manner for similar property;

f. Promptly notify the City in writing if any material change occurs in the occupancy or conditions affecting the Real Property; and

g. Provide the City and its representatives, employees, and agents full and complete access during normal business hours to the Real Property and adjacent areas as provided in this Agreement.

15. Miscellaneous.

a. This Agreement shall be construed and governed in accordance with the laws of the State of Wyoming. Except for enforcement of the terms and conditions of this Agreement as between the Parties, the City reserves all defenses and immunities under the Wyoming Governmental Claims Act, Wyo. Stat. § 1-39-101, *et seq.*, and other applicable constitutional and statutory provisions of the State of Wyoming. The venue for any legal proceedings shall be the First Judicial District Court sitting in Laramie County, Wyoming.

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

c. Any exhibits attached to this Agreement are incorporated in and made a part of this Agreement.

d. This Agreement constitutes the entire understanding and agreement between the Parties, and there are no understandings, agreements, representations, or warranties except as specifically set forth herein.

e. This Agreement may not be changed, altered, or modified except by an instrument in writing signed by the Party against whom enforcement of such change would be sought.

f. This Agreement shall be binding upon the Parties hereto and their respective successors and assigns.

g. The failure of any Party at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by any Party of any condition, or of any breach of any covenant, agreement, representation, or warranty contained in this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or waiver of any other condition or of any breach of any other

covenant, agreement, representation, or warranty.

h. If the final date of any period provided for herein for the performance of an obligation or for the taking of any action falls on a Saturday, Sunday, or banking holiday, then the time of that period shall be deemed extended to the next day which is not a Sunday, Saturday, or banking holiday. All time periods expiring on a specific date or period herein shall be deemed to expire at 5:00 p.m. Mountain Standard or Mountain Daylight Time, as applicable.

j. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, but such counterparts together shall constitute but one agreement.

j. During the term of this Agreement, Retail Properties C, LLC's shall not list the Real Property for sale, rent, or exchange or otherwise offer the Real Property for sale, rent, or exchange. Retail Properties C, LLC's shall have the right to disclose this Agreement to any lending institution.

k. Time is of the essence hereof, and any party who fails to tender any payment, or perform any other condition hereof as herein provided, shall be in default under this Agreement.

l. The parties acknowledge that this transaction involves a 1031 exchange and Buyer agrees to cooperate in all respects and perform all tasks requested in any way related to said 1031 transaction.

[Signatures on following page]

In witness thereof, the Parties to this Agreement, through their duly authorized representatives, have executed this Agreement on the days and dates set out below and certify that they have read, understood, and knowingly and voluntarily agreed to the terms and conditions of this Agreement.

FOR THE CITY/CITY:

Patrick Collins, Mayor

Date

(SEAL)

Attest:

Kristina F. Jones, City Clerk

Date

FOR RETAIL PROPERTIES C, LLC:

Robert Wirth
Retail Properties C, LLC

Date

[Notary signatures on following page]

State of Wyoming)
) ss.
County of Laramie)

This **Agreement for the Purchase and Sale of Lands**, consisting of ___ pages and secured by a staple, was acknowledged before me by **Patrick J. Collins, Mayor of the City of Cheyenne** (“City”), who signed said instrument on behalf of the City, appeared before, and was personally known to the officer making the certificate, and was by him duly sworn and upon oath represented that he was the Mayor of the City, that the instrument was signed on behalf of the City, and that the officer who executed the instrument on behalf of the City acknowledged the instrument to be the free act and deed of the City this ____ day of _____, 20____.

Witness my hand and official seal.

Notary Public

My Commission Expires: _____

State of Wyoming)
) ss.
County of Laramie)

This **Agreement for the Purchase and Sale of Lands**, consisting of ___ pages and secured by a staple, was acknowledged before me by **Robert Wirth, Manager of Retail Properties C, LLC**, a Wyoming Limited Liability Company (the “company”), who signed said instrument on behalf of **Retail Properties C, LLC**, appeared before, and was personally known to the officer making the certificate, and was by him duly sworn and upon oath represented that he was the Manager of the company, that the instrument was signed on behalf of the company, and that the officer who executed the instrument on behalf of the company acknowledged the instrument to be the free act and deed of the company this ____ day of _____, 20____.

Witness my hand and official seal.

Notary Public

My Commission Expires: _____