

## **AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY**

**THIS AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY** (“**Agreement**”) is made as of the Effective Date, as defined in Section 1.03, by **WAKE COUNTY, NORTH CAROLINA**, a body politic and corporate, whose address is P.O. Box 550, Raleigh, North Carolina 27602 (the “County”) (“**Seller**”), and **DHIC, INC.**, a North Carolina non-profit corporation (“**Buyer**”), whose address is 113 S. Wilmington Street, Raleigh, North Carolina 27601.

### **RECITALS**

WHEREAS, the County owns 19+ acres of real property (“the Property”) more particularly described in Exhibit "A" attached hereto and incorporated and further identified in Deed Book 5418, Page 249, Wake County Registry, located in Holly Springs, North Carolina; and

WHEREAS, by vote of the Wake County Board of Commissioners (“Board”) on or about June 5, 2017, the Property was declared “surplus”; and

WHEREAS, in January 2020, an RFP was released for the purpose of solicit offers for its sale pursuant which mandated a certain portion of the real property be utilized for the construction of affordable housing, subject to final acceptance by the Board; and

WHEREAS, My Computer Career, Inc. (“MCC”) and DHIC, Inc. (“DHIC”) were the only parties to respond to the RFP and submitted a satisfactory, joint proposal; and

WHEREAS, MCC and DHIC submitted a detailed RFP response that includes a plan for the subdivision of the Parent Tract into two parcels for the construction of affordable housing and commercial development; and

WHEREAS, MCC and DHIC have jointly engaged the Town of Holly Springs (“Town”) and have developed a preliminary site plan with input from Town planning staff and have entered into a Memorandum of Agreement (MOA) dated September 16, 2020, approved by the respective governing boards of the County and Town; and

WHEREAS, the County desires to dedicate an approximate 9+/- acre portion of the Property for affordable housing (“County Parcel” or “Property”) in accordance with G.S. 153A-378(3) and has negotiated a separate conveyance of an approximate 10+/- acre portion of the property to the Town (“Town Parcel”) as identified in “Exhibit B”; and

WHEREAS, the County hereby agrees to transfer the County Parcel to Buyer, subject to terms and conditions set out hereinafter.

**NOW, THEREFORE**, for and in consideration of the sum of ONE HUNDRED AND NO/100 DOLLARS (\$100.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller agree as follows:

## ARTICLE I PURCHASE AND SALE

**Section 1.01. Property.** Seller agrees to sell, and Buyer agrees to purchase, the “**Property**,” identified as the “County Parcel” in the attached “Exhibit B”, roughly comprised of 9+/- acres, consisting of (a) fee simple title to the Property and (b) all rights, ways, privileges and easements appurtenant to the Property, including Seller’s right, title and interest in and to all strips, gores, streets, alleys and ways, public or private, adjoining or crossing the Property, all of which are appurtenant to, and shall benefit, the Property.

**Section 1.02. Intangible Rights.** The sale of the Property shall include the sale, transfer and conveyance of all of Seller’s right, title and interest in and to all Approvals, as defined in Section 5.01, and, to the extent transferrable, all warranties, guaranties, certificates, licenses, bonds, water and sewer agreements, permits, authorizations, consents, approvals, and development orders, which in any respect whatsoever relate to or arise out of the use, occupancy, possession, development, construction or operation of the Property (collectively, “**Seller’s Permits**”). The sale shall also include the sale, transfer and conveyance of all of Seller’s right, title and interest in and to, to the extent transferrable, all intangible personal property, including, without limitation, maintenance and service contracts, prepaid water and sewer connection fees, utility capacities, impact fee credits, development agreements, approvals, easements, permits, plans, reports, surveys, environmental and other studies, consents and agreements, as well as all rents, issues, proceeds and profits now or hereafter accruing from the Property, all of which are intended to encompass all of Seller’s contractual rights, benefits and entitlements relating to the Property (collectively, the “**Intangible Personal Property**”).

**Section 1.03. Effective Date.** The “**Effective Date**” of this Agreement shall be the date on which the last of Seller and Buyer has executed this Agreement and so notified the other in writing.

## ARTICLE II PURCHASE PRICE, COVENANTS, TERMS & CONDITIONS

### **Section 2.01. Purchase Price.**

**In consideration of Buyer’s covenant to develop and construct at least one hundred twenty-five (125) affordable housing units on the Property, the terms, conditions in this Agreement, and restrictive covenants to be placed on the Property, which shall run with the land, Seller hereby agrees to a donative conveyance of the subject Property in accordance with N.C.G.S. 153A-378(3). Buyer warrants that it is a qualified non-profit to take title to the subject Property and that the County’s donative conveyance is expressly conditioned on conveyance restrictions and legal covenants that shall run with the land encumbering the Property for a period of at least thirty years (30 years) to ensure at least 125 affordable housing units shall be continuously set aside and available for qualifying tenants as negotiated under Wake County’s Affordable Housing Development Program. Restrictions and limitations set forth herein.**

**Section 2.02. Covenants, Terms and Conditions for Donative Conveyance.**

(1) Seller's conveyance of the subject Property is expressly conditioned on Buyer's satisfaction the following:

(2) The Wake County Board of Commissioner's approval of the essential terms of the conveyance and Buyer's demonstration of compliance with all terms and conditions set forth in the County's Request for Proposals Disposition of County-Owned Land 1317 N. Main Street, Holly Springs, NC 27602;

(3) Buyer's completion and documentation of all Approvals required under Article 5.1 of this Agreement;

(4) Buyer's furnishing of satisfactory financial documentation to Seller, which shall be approved solely in accordance with Seller's financial requirements for the development of the Property;

(5) Satisfactory compliance with all applicable environmental laws and regulations required pursuant to the National Environmental Policy Act (NEPA), 24 CFR 58, and other related laws and authorities;

(6) Buyer's execution of a Development Agreement approved by the Wake County Board of Commissioners and ancillary agreements associated therewith, such as a Deed of Trust and Promissory Note in favor of the County, that adequately protect the County's investment and interest in the Project;

(7) Buyer's covenant and agreement not to request further contribution from Seller for any of the infrastructure or improvements to be constructed on the Property, other than those approved by the Wake County Board of Commissioners.

(8) Buyer's acceptance of foreclosure rights in the special warranty deed in favor of the County in the event the Buyer's development related approvals (as listed in Section 5) issued by the Town expire due to the Buyer's lack of development activity and failure to meet development milestones in accordance with the Town's development ordinance requirements.

(9) Buyer's acceptance of legal covenants and restrictions which shall run with the land for a period of at least thirty (30) years requiring the affordable housing units to be exclusively restricted to affordable housing use, said time period to run from the time a certificate of occupancy is issued for said units, which shall include a right of entry and foreclosure rights in favor of the County in the event the Property is not actively used for affordable housing or affordable housing development.

### ARTICLE III TITLE AND SURVEY

**Section 3.01. Evidence of Title.** At least ninety (90) days prior to the Closing Date (as defined in Section 9.01), Buyer shall order a title insurance commitment for the Property, issued by a nationally recognized title insurer, and copies of all documents referenced therein (collectively, the “**Commitment**”), which shall commit to issue to Buyer, upon recording of the Deed, as defined in Section 9.04, an owner’s policy of title insurance (the “**Title Policy**”). At Closing, Seller shall provide to Buyer any and all documents reasonably necessary to satisfy all requirements (including those relating to the release of any and all Monetary Encumbrances, as defined in Section 3.03) set forth in the Commitment and such documents necessary to delete from the Title Policy the standard pre-printed exceptions, other than the survey exception.

**Section 3.02. Survey.** At least ninety (90) days prior to the Closing Date, Buyer shall, at Buyer’s sole cost and expense, obtain a survey of the Property (the “**Survey**”).

**Section 3.03. Objections to Title or Survey.** If Buyer encounters any matters of title or survey that are not acceptable to Buyer in Buyer’s sole and absolute discretion, then Buyer shall notify Seller of any and all objections to same (each a “**Title Defect**”) in writing no later than sixty (60) days prior to the Closing Date (“**Notice of Title Defect**”). All title exceptions contained in the Commitment or shown on the survey to which Buyer does not object shall become permitted exceptions to title (“**Permitted Exceptions**”). Notwithstanding the foregoing, Seller shall be obligated to pay and satisfy of record any recorded lien or mortgage or other title exception or defect that is monetary in nature (“**Monetary Encumbrances**”) prior to or at Closing. Seller shall provide written notice to Buyer within ten (10) days after receipt of the Notice of Title Defect specifying which, if any, of the Title Defects Seller elects to cure prior to Closing (“**Seller’s Response**”). If Seller fails to timely provide Seller’s Response, Seller shall be deemed to have elected to cure none of the Title Defects. If Buyer is dissatisfied with Seller’s Response then, at the option of Buyer, Buyer may (a) terminate this Agreement by written notice to Seller delivered at least twenty (20) days prior to Closing, or (b) proceed to Closing without satisfaction of the Title Defects Seller has elected not to cure, which such Title Defects shall be deemed Permitted Exceptions. If this Agreement is terminated pursuant to this Section, the Deposit shall be promptly returned to Buyer and neither party shall have any further rights or obligations hereunder, except for those matters that expressly survive termination of this Agreement.

### ARTICLE IV INVESTIGATION OF PROPERTY

**Section 4.01. Right of Entry.** Buyer, and all of Buyer’s agents, contractors, consultants, representatives and other persons designated by Buyer, shall have the right to enter on the Property, for the purpose of investigation, discovery and testing of the Property, including, without limitation, surveying, soil testing and boring, hydrological studies, environmental studies, structural inspections or any other studies or tests Buyer determines in its reasonable discretion to be necessary or appropriate (collectively, the “**Inspections**”). Seller shall cooperate with Buyer in conjunction with the Inspections, including (a) providing access to the Property at all reasonable times prior to Closing, and (b) in regard to Buyer’s efforts to obtain all appropriate or relevant information concerning the Property. Provided Buyer has not terminated this Agreement or

defaulted hereunder, all rights provided to Buyer in this Section shall continue unabated through Closing. All Inspections shall be at Buyer's sole cost and expense, and shall be performed in a manner so as not to unreasonably interfere with Seller's interest in the Property. Buyer shall not permit a lien of any type to attach to the Property as a result of any Inspections and upon completion of any Inspection, Buyer shall restore any damage to the Property caused by such Inspection. Buyer hereby indemnifies and holds Seller harmless from all injury, damage, loss, cost or expense, including, but not limited to, attorneys' fees and court costs resulting from the Inspections. The indemnity obligations of this Section shall survive for a period of one (1) year after Closing or earlier termination of this Agreement.

**Section 4.02. Property Documents.** Within ten (10) days following the Effective Date, Seller shall furnish to Buyer all materials concerning the Property which Seller possesses, or which Seller may reasonably obtain, and Seller shall continue to furnish to Buyer within three (3) business days following Seller's receipt of the same, all materials concerning the Property of which Seller acquires possession subsequent to the Effective Date, including, but not limited to, copies of all title insurance policies, plans, plats, surveys, zoning and land use information, contracts, soil tests and reports, environmental tests and reports, engineering studies, inspection reports, due diligence materials, CAD files, appraisals, feasibility studies, landscape plans, site plans and all other governmental and quasi-governmental applications, approvals, consents and authorizations relating to the Property. All of the information to be furnished under this Section shall collectively be referred to as the "**Property Documents**." At Closing, Seller shall assign to Buyer, to the extent assignable, all of its right, title and interest in and to the Property Documents and deliver, to the extent reasonably available, all of the original Property Documents, Seller's Permits and Intangible Personal Property, all without representation or warranty.

**Section 4.03. Delivery to Seller.** In the event Buyer shall terminate this Agreement based upon the results of its Inspections or if Buyer for any reason (other than a default by Seller) fails to purchase the Property, then upon said termination or upon said failure to purchase, and as a condition to the return of any Deposit to Buyer, Buyer promptly shall deliver to Seller copies of all documents, reports, written materials and studies which are in the possession of Buyer and part of Buyer's due diligence (or any agents or other parties which Buyer controls) and which relate in any way to the Property or to its quality, condition, use, development or developability (collectively, the "**Returned Materials**"), which shall be delivered without any representations or warranties by Buyer. Said Returned Materials shall be delivered to Seller without cost and expense to Seller and as additional consideration to Seller for entering into this Agreement. The provisions of this Section 4.03 shall survive the termination of this Agreement

**Section 4.04. AS-IS SALE.** EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT AND IN THE DOCUMENTS TO BE DELIVERED AT CLOSING, BUYER IS ACQUIRING THE PROPERTY "AS IS," "WHERE IS" AND "WITH ALL FAULTS," AND SELLER HAS NOT MADE AND DOES NOT AND WILL NOT MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WITH RESPECT TO THE QUALITY, PHYSICAL CONDITION, EXPENSES, LEGAL STATUS, ZONING, VALUE, UTILITY OR POTENTIAL OF THE PROPERTY, OR ANY OTHER MATTER OR THING AFFECTING OR RELATING TO THE PROPERTY OR THIS AGREEMENT THAT MIGHT BE PERTINENT IN CONSIDERING WHETHER TO PURCHASE THE PROPERTY OR TO MAKE AND ENTER INTO THIS AGREEMENT, AND

EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT AND IN THE DOCUMENTS TO BE DELIVERED AT CLOSING, SELLER HAS NOT MADE, AND BUYER HAS NOT RELIED UPON, ANY SUCH REPRESENTATIONS.

## **ARTICLE V APPROVALS**

**Section 5.01. Approvals.** Promptly following the Effective Date, Buyer shall proceed diligently using all commercially reasonable efforts to initiate and pursue all final approvals, permits, agreements and consents for Buyer's intended development of the Property (the "**Intended Development**"), to the extent required to enable Buyer to develop the Intended Development including, without limitation: (i) approval of the rezoning of the Property to permit Buyer's Intended Development ("**Rezoning Approval**"), for which Buyer shall timely file the necessary application(s) and/or documents; (ii) financing for the Intended Development ("**Financing Approval**"); (iii) approval of a site plan for the Intended Development by all applicable governmental authorities ("**Site Plan Approval**"), for which Buyer shall timely file the necessary application(s) and/or documents; (iv) approval of all engineering plans and construction documents by all applicable governmental authorities ("**Construction Document Approval**" and, collectively with the Rezoning Approval, Financing Approval and the Site Plan Approval, the "**Approvals**"). Rezoning Approval, Site Plan Approval and Construction Document Approval shall be deemed to have been obtained when it is duly issued by the approving agency. If an appeal has been filed with respect to an Approval, the Approval shall not be deemed obtained until the appeal has been dismissed with finality. Buyer shall have the right to appeal the denial of any application for approval and to defend any appeal filed by a third-party. Upon its receipt of Rezoning Approval, Financing Approval, Site Plan Approval and Construction Document Approval (but not before the issuance of the last of the foregoing), Buyer shall deliver written notice thereof to Seller.

**Section 5.02. Seller's Cooperation.** Seller shall cooperate with and not impede in any way Buyer's efforts to obtain the Approvals, including executing, within three (3) business days after Buyer's written request, any and all documents which are required to be executed by Seller in its capacity as the owner of the Property; provided, however, in no event shall Seller be required to attend meetings or otherwise take an active role in pursuing any of the Approvals.

**Section 5.03. Buyer to Proceed with Commercially Reasonable Diligence; Approvals Deadlines.** Buyer shall proceed with commercially reasonable diligence to obtain the Approvals. If, despite Buyer's commercially reasonable efforts, Buyer is unable to obtain any of the approvals listed in Section 5.01 of this Agreement within one (1) year after the Effective Date, Buyer and/or Seller shall have the right to terminate this Agreement upon written notice to the other Party.

## **ARTICLE VI SELLER'S REPRESENTATIONS AND WARRANTIES**

Seller represents and warrants to Buyer as true and correct, both on the Effective Date and throughout the period of time until Closing, that:

**Section 6.01. Authority of Seller.** Seller has the lawful right, power, authority and capacity to bind Seller to the terms hereof and consummate the transactions contemplated by this Agreement. Notwithstanding the above, the parties recognize that this Agreement and any material modifications hereto must be approved by the Wake County Board of Commissioners.

**Section 6.02. Transaction Authorized.** The execution, delivery and performance of this Agreement by Seller have been duly authorized. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will: (a) result in a breach of, or default under, any agreement to which Seller is a party or by which Seller is bound; or (b) violate any restrictions to which Seller is subject.

**Section 6.03. Binding Obligation.** This Agreement constitutes a valid, binding, legal, and enforceable obligation of Seller.

**Section 6.04. No Notice of Violation.** Seller has received no notice of any violations or potential violation of any zoning, health, environmental or other laws, codes, ordinances, regulations, orders or requirements of any city, county, state or other governmental authority having jurisdiction thereof, or any private restrictive covenants affecting the Property.

**Section 6.05. Ownership and Parties in Possession.** Seller owns fee simple title to the Property. There are no parties in possession of any portion of the Property whether as lessees, tenants-at-sufferance, trespassers or otherwise, other than Seller. No other person or entity has any right, claim or interest in the Property or any portion thereof, arising out of adverse possession, prescriptive rights, or otherwise.

**Section 6.06. No Litigation; Taking.** Seller has not received any notice of nor does Seller have knowledge of any judgment or suit or proceeding pending or threatened affecting Seller or any portion of the Property, including but not limited to any Taking (as defined in Section 12.01).

## **ARTICLE VII BUYER'S REPRESENTATIONS AND WARRANTIES**

Buyer represents and warrants to Seller, as true and correct, both on the Effective Date and throughout the period of time until and through Closing, that Buyer is a non-profit corporation duly organized, validly existing and in good standing under the laws of the State of North Carolina, and, the person executing this Agreement on behalf of Buyer has the lawful right, power, authority and capacity to bind Buyer to the terms hereof and consummate the transactions contemplated by this Agreement, pursuant to the terms, provisions and conditions of this Agreement.

## **ARTICLE VIII SELLER'S COVENANTS**

**Section 8.01. Conveyance.** Seller will convey to Buyer at Closing, marketable fee simple title to the Property, free and clear of any liens, mortgages, pledges, security interests, options, rights, leases, charges, claims, encumbrances or restrictions other than the Permitted Exceptions.

**Section 8.02. Changes to Documents and Condition of the Property.** Seller shall maintain the Property in substantially the same condition as exists as of the Effective Date and shall not terminate, modify, amend or waive any provision of any lease, contract, permit, agreement, or any other document previously provided, or to be provided, to Buyer in accordance with this Agreement, or any benefit or entitlement described in this Agreement to be conveyed to Buyer, without the prior written consent of Buyer, which may not be unreasonably withheld, conditioned or delayed.

## **ARTICLE IX CLOSING**

**Section 9.01. Closing.** Subject to the terms and conditions of this Agreement, the purchase and sale of the Property (the “**Closing**”) shall occur on the thirtieth (30<sup>th</sup>) day following Buyer’s receipt of the Approvals and Buyer’s satisfaction of all terms and conditions set forth in Article II, but in no event later than December 31, 2021 (the “**Closing Date**”).

**Section 9.02. Place of Closing.** The Closing shall occur on the Closing Date at the offices of Buyer’s attorney, unless otherwise agreed to between the parties. To the extent possible, Closing shall be conducted without personal attendance of the parties, but through an exchange of documents and funds in escrow with Buyer’s attorney as closing agent.

**Section 9.03. Expenses of Closing and Prorations.**

- (A) Taxes.
- (B) Transfer Tax/Recording Fees. Seller shall pay the State of North Carolina recording fees associated with Closing.
- (C) Title Policy and Survey. Buyer shall pay for the cost of the Commitment and the Title Policy and for the cost of the Survey.
- (D) Attorneys’ Fees. Each party shall pay its own attorneys’ fees and costs.

**Section 9.04. Documents for Closing.** At Closing, Seller shall execute and deliver each of the following documents in a form reasonably acceptable to Buyer:

- (A) A special warranty deed (the “**Deed**”), conveying to Buyer or its assignee marketable and insurable fee simple title to the Property, subject only to the Permitted Exceptions;
- (B) An affidavit attesting to and sufficient for Buyer to obtain title insurance on the Property;

**Section 9.05. Further Assurances.** At Closing, the parties hereto shall perform such other acts, and shall execute, acknowledge and deliver such other instruments, documents and other materials as the other party hereto or the Escrow Agent or the closing agent may reasonably request in order to effectuate the Closing and the transactions contemplated by this Agreement.



All of the documents executed by Seller which are to be delivered to Buyer at Closing will be duly authorized, legal, valid and binding obligations of Seller, which, at the time of Closing, will be sufficient to convey title (if they purport to do so), and do not, and at the time of Closing will not, violate any provisions of any agreement to which Seller is a party or to which it is subject. The parties shall cooperate, including without limitation, executing any other documents, following the Closing, as reasonably necessary to effectuate the intent of all terms and conditions set forth in this Agreement.

**Section 9.06. Conditions Precedent.** The obligation of Buyer to proceed to Closing is subject to the satisfaction of each of the following conditions (collectively, the “**Conditions Precedent**”):

(A) Seller shall have performed all of its covenants and not be in default of any of its obligations under this Agreement;

(B) Seller’s representations and warranties contained in this Agreement shall be true and correct;

(C) The status of title to the Property shall be as required by this Agreement and the title insurance company shall be prepared to issue the Title Policy insuring the Property in the amount of the Purchase Price subject only to the Permitted Exceptions;

(D) There shall have been no material adverse change in the physical condition of the Property or any utility serving the Property after the Effective Date; and

(E) Buyer shall have received the Approvals and satisfaction of all conditions and documentation required pursuant to Article II of this Agreement

**Section 9.07. Failure to Satisfy Conditions Precedent.** If any of the Conditions Precedent are not satisfied as of the Closing Date, Buyer shall have the right, at its sole option, to (a) terminate this Agreement, whereupon the Deposit shall be promptly returned to Buyer and neither party shall have any further rights or obligations hereunder, except for those matters that expressly survive termination of this Agreement, or (b) waive the Condition(s) Precedent and proceed to Closing or (c) for any unsatisfied Condition(s) Precedent, extend the Closing Date for such period or periods of time as Buyer, in its sole discretion, may determine, provided that the total extension period does not exceed fifteen (15) days. If Buyer extends the Closing Date as provided above and the Condition(s) Precedent has not been satisfied prior to such extended date, Buyer shall either terminate this Agreement as provided in subsection (a), or waive the Condition(s) Precedent and proceed to Closing as provided in subsection (b).

## **ARTICLE X REAL ESTATE BROKERS**

Buyer agrees to defend, indemnify and hold Seller harmless from and against any and all costs and liabilities, including, without limitation, attorneys’ fees through all levels of proceedings, for brokerage or professional service fees claimed by any broker employed or claiming to have been employed by Buyer. The indemnification provided hereunder shall be applicable to any party claiming that it is owed a fee or other form of compensation due to or arising out of this Agreement.

## ARTICLE XI NOTICE

**Section 11.01. Notice and Addresses.** All notices required or desired to be given under this Agreement shall be in writing and either (a) hand-delivered, (b) sent by certified mail, return receipt requested, (c) sent via FedEx or similar overnight service, or (d) sent via electronic mail, so long as notice is also provided through either method (a), (b) or (c) as herein described. All notices shall be addressed to the party being noticed, and shall be deemed to have been given (i) when delivered, if by hand delivery, (ii) three (3) business days after deposit in a U.S. Post Office or official letter box, if sent by certified mail, (iii) one (1) business day after timely deposited in a FedEx or similar overnight service depository, or (iv) upon transmission by sender if sent via electronic mail. All notices shall be delivered or sent prepaid for the specified service by the party giving notice, and shall be addressed as follows:

SELLER: WAKE COUNTY ATTORNEY'S OFFICE  
Attn: Scott Warren  
Post Office Box 550  
Raleigh, NC 27602  
Telephone: 919-856-5500

Copy To:

BUYER: DHIC, INC.  
113 S. Wilmington Street  
Raleigh, North Carolina 27601  
Attn: Natalie Britt, Vice President, Real Estate  
Development  
Telephone No.: (919) 600-5364  
E-Mail: [Natalie@dhic.org](mailto:Natalie@dhic.org)

or to any other address hereafter designated by any of the parties, from time to time, in writing and otherwise in the manner set forth herein for giving notice.

**Section 11.02. Attorneys.** The respective attorneys for Seller and Buyer are hereby authorized to give any notice pursuant to this Agreement on behalf of their respective clients.

## ARTICLE XII DEFAULTS

**Section 12.01. Buyer's Default.** In the event of any default by Buyer ("**Buyer's Default**"), including, but not limited to, the failure of Buyer to close this transaction, the parties acknowledge it would be impossible to ascertain the amount of damages suffered by Seller, and therefore the parties agree that in the event there is a Buyer's Default, the Deposit shall be paid to and accepted by Seller as full and liquidated damages and as Seller's sole and exclusive remedy

and each of the parties shall thereafter be released of any further liability or responsibility hereunder, except for the obligations that expressly survive termination of this Agreement.

**Section 12.02. Seller's Default.** In the event of any default by Seller ("**Seller's Default**"), Buyer shall be entitled to (a) terminate this Agreement and receive a prompt refund of the Deposit and/or (b) seek specific performance of this Agreement.

**Section 12.03. Notice and Cure Period.** Buyer shall take no action with respect to a Seller's Default, and Seller shall take no action with respect to a Buyer's Default, until the non-defaulting party has given written notice to the defaulting party and the defaulting party has failed to cure the default within ten (10) days after receipt of such notice.

### **ARTICLE XIII MISCELLANEOUS PROVISIONS**

**Section 13.01. Choice of Law and Venue.** This Agreement shall be construed and interpreted under the laws of the State of North Carolina, without giving effect to principles of conflict of laws, except where specifically pre-empted by Federal law. Proper venue with respect to any state or federal litigation in connection with this Agreement shall be exclusively in the County.

**Section 13.02. Amendments.** No amendment to this Agreement shall bind any of the parties unless and until such amendment is in writing and executed by Buyer and Seller.

**Section 13.03. Entire Agreement.** This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between the parties and no prior written documents, and no prior or contemporary oral statements, representations, promises, or understandings not embodied in this Agreement shall be of any force and/or effect.

**Section 13.04. Survival.** Unless otherwise provided for in this Agreement, all terms and provisions of this Agreement, including, without limitation each parties' representations and warranties, and obligations to indemnify, defend and hold harmless set forth in Section 4.01 and Articles X and XI of this Agreement shall survive the Closing or earlier termination of this Agreement.

**Section 13.05. Assignment.**

(A) All of the representations, warranties, covenants, conditions and obligations herein contained shall be binding upon and inure to the benefit of the respective successors and assigns of the parties.

(B) Buyer shall not have the right to assign its rights and/or obligations in this Agreement without the prior written consent of Seller, which may be withheld in Seller's sole discretion. Notwithstanding the foregoing, Buyer may assign this Agreement to a non-profit entity which is controlled or managed by Buyer or an affiliate of Buyer, provided that Buyer must provide Seller with written notice of such assignment.

(C) Seller shall not be entitled to assign this Agreement.

**Section 13.06. Interpretation.** Captions and section headings contained in this Agreement are for convenience and reference only; in no way do they define, describe, extend or limit the scope or intent of this Agreement or any provision hereof. The terms and provisions of this Agreement have been fully negotiated between the parties and each party has been afforded the opportunity to engage, if such party desires, legal counsel to assist in the preparation, negotiation, and drafting of this Agreement. Accordingly, the terms and provisions of this Agreement shall not be interpreted for or against either Seller or Buyer as the drafting party. The terms “herein,” “hereby,” “hereof,” “hereto,” “hereunder” and any similar terms refer to this Agreement in its entirety and not solely to the particular section or paragraph in which the term is used.

**Section 13.07. Number and Gender.** All terms and words used in this Agreement, regardless of the number and gender in which used, shall be deemed to include any other gender or number as the context or the use thereof may require.

**Section 13.08. Possession.** Exclusive possession of the Property shall be delivered to Buyer at Closing.

**Section 13.09. Representations.** All representations, warranties and covenants set forth herein are material and of the essence to this Agreement.

**Section 13.10. Waiver.** No waiver of any provision of this Agreement shall be effective unless it is in writing signed by the party against whom it is asserted, and any waiver of any provision of this Agreement shall be applicable only to the specific instance to which it is related and shall not be deemed to be a continuing or future waiver as to such provision or a waiver as to any other provision.

**Section 13.11. Severability.** The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision was omitted.

**Section 13.12. Time Periods.** Time shall be of the essence with respect to this Agreement. The calculation of the number of days that has passed during any time period prescribed in the Agreement shall be based on calendar days, unless otherwise expressly set forth herein, and shall commence on the day immediately following the action or event giving rise to the commencement of the period and shall expire on the last day of the time period. Furthermore, any time period provided for herein which shall end on a Saturday, Sunday or legal holiday in the State of North Carolina, shall extend to the next full business day. The term “business day” as used herein shall not include Saturday, Sunday and legal holidays in the State of North Carolina. All times shall mean either Eastern Standard Time or Eastern Daylight Time as then currently applicable.

**Section 13.13. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement. To facilitate execution and delivery of this Agreement, the parties may execute and exchange executed counterparts by facsimile or e-mail in a PDF file to the other party

or to the other party's counsel. Facsimile or signatures in a PDF file shall have the same legal effect as original signatures.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement on the dates indicated below.

**SELLER:**

WAKE COUNTY ATTORNEY'S OFFICE

Attn: Scott Warren

Post Office Box 550

Raleigh, NC 27602

Telephone: 919-856-5500

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

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

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

Dated: \_\_\_\_\_, 2020

**BUYER:**

DHIC, INC.

113 S. Wilmington Street

Raleigh, North Carolina 27601

Attn: Natalie Britt, Vice President, Real Estate  
Development

Telephone No.: (919) 600-5364

E-Mail: [Natalie@dhic.org](mailto:Natalie@dhic.org)

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

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

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

Dated: \_\_\_\_\_, 2020

## ESCROW AGENT

The undersigned agrees to act as Escrow Agent in accordance with the terms of this Agreement.

ESCROW AGENT:

\_\_\_\_\_

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

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

Its: \_\_\_\_\_

Dated: \_\_\_\_\_, 2020

**EXHIBIT “A”**  
**LEGAL DESCRIPTION**