



WOLTZ
& ASSOCIATES
 INC.
 BROKERS & AUCTIONEERS

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AUCTION
REAL ESTATE PURCHASE AGREEMENT

(This is a legally binding contract; if not understood, seek competent advice before signing.)

AGENCY DISCLOSURE: REALTORS ARE REQUIRED BY LAW AND THEIR CODE OF ETHICS TO TREAT ALL PARTIES TO THE TRANSACTION HONESTLY. The Seller and the Buyer each confirm that disclosure of the agency relationships described below has been made in writing. (Check **either A or B** below.)

- A. _____ The Seller and the Buyer confirm that in connection with the transaction under this Agreement, the Listing Firm, the Selling Firm, and its Agents, are acting on behalf of the Seller as Seller’s agent.
- B. _____ The Seller and the Buyer confirm that in connection with the transaction described by this Agreement, the Listing Firm and its Agents are acting on behalf of the Seller as the Seller’s agent, and the Selling Firm and its Agents, by agreement, are acting on behalf of the Buyer as the Buyer’s agent.

THIS AGREEMENT OF PURCHASE AND SALE (**Agreement**) made and entered into this 23rd day of July, 2014, between **TIMBERBROOK ASSOCIATES, L.C.**, a Virginia limited liability company, whose address is 5100 Bernard Drive, Roanoke, Virginia 24018 ("**Seller**"); _____ ("**Buyer**"); and **Woltz & Associates, Inc.** ("**Agent**") (each a “party” and, collectively, the “parties”).

W-I-T-N-E-S-S-E-T-H:

REAL PROPERTY: Buyer agrees to buy and Seller agrees to sell the land and all improvements thereon situate in the County of Botetourt, Virginia, known as **Lot One, containing 14.2744 acres**, as shown on the plat of survey (the “**Plat**”) entitled “PLAT SHOWING THE SUBDIVISION OF TRACT “A-1” (28.3533 ACRES) “BOTETOURT COMMONS”, P.B __, PG. __, PROPERTY OF TIMBERBROOK ASSOCIATES, L.C., CREATING NEW LOT ONE (14.2744 ACRES) AND REMAINING TRACT “A-1” (14.0789 ACRES)” dated July 3, 2014, and prepared by Lumsden Associates, P.C., which Plat will be recorded in the Clerk’s Office of the Circuit Court of Botetourt County, Virginia, on or before closing (the “**Property**”), and being **Auction Tract 10**. (Complete legal description to be furnished in Deed.) This sale is in gross and not by the acre.

PURCHASE PRICE: The Purchase Price (the “**Purchase Price**”) of the Property is _____ Dollars \$ _____).

DEPOSIT: The Buyer has made a deposit of _____ Dollars (\$ _____) (“**Deposit**”) by check in hand paid on the signing of this Agreement, paid by Buyer to Agent; receipt of which is hereby acknowledged. The Deposit shall be placed in Agent’s escrow account until final settlement and may be placed in an interest bearing account. The Buyer and Seller waive any claim to interest resulting from such Deposit.

THIS IS A CASH AGREEMENT. THERE IS NO CONTINGENCY FOR BUYER TO OBTAIN FINANCING. The residue of the purchase price shall be payable as follows: Cash at Settlement on or before **September 8, 2014** (the “**Settlement Date**”) payable in good funds. If closing does not occur on or before the Settlement Date through no fault of Seller, Buyer shall be in default. Seller may, in its sole discretion, permit closing after this date, and, in such case, shall charge the Buyer interest at the rate of 12% per annum of the Purchase Price which shall be due and payable by Buyer at closing. Time is of the essence with regard to the Settlement Date.

The Seller agrees to convey the said Property with a Special Warranty Deed, same to be prepared at the expense of the Seller, and the cost of Virginia Grantor’s tax shall be borne by the Seller. It is agreed that the Property is being conveyed free and clear of all liens and indebtedness other than the lien for real estate taxes for the tax period in which closing occurs (which taxes shall be prorated at closing). It is agreed that the Property is to be conveyed subject to all recorded conditions, easements, covenants, and restrictions, all matters shown or disclosed on the Plat or in the Notes set forth on the Plat, all matters which would be shown or disclosed on an accurate survey of the Property, and all Exceptions set forth in Fidelity National Title Insurance Company Commitment No. 4843119 (revised 7-22-2014), with an effective date of June 13, 2014.

This Agreement arose out of an auction sale (the “**Auction**”) of the Property and other real estate parcels pursuant to a Real Estate Confirmation Auction Contract dated May 16, 2014, between Seller and Agent, as amended and supplemented (the “**Auction Contract**”). Agent and/or Seller have incurred certain expenses and costs with respect to the Auction and the preparation of this Agreement (collectively, the “**Auction Expenses**”). Agent is entitled to a commission with regard to the Property and this Agreement as set forth in the Auction Contract (the “**Agent’s Fee**”).

MECHANIC’S LIEN DISCLOSURE: An effective lien for work performed prior to settlement may be filed after settlement. Seller shall deliver to Buyer at settlement an affidavit signed by Seller stating either that; No labor or materials have been furnished to the property within the statutory period, OR: If labor and materials have been furnished during the statutory period, the costs thereof have been paid.

FAIR HOUSING: The Seller and Buyer acknowledge that in the sale, purchase or exchange of real property, Agent has the responsibility to offer equal service to all clients and prospects without regard to race, color, religion, national origin, sex, elderliness, familial status or handicap.

MEGAN’S LAW: Buyer shall exercise whatever due diligence Buyer deems necessary with respect to information on any sexual offenders registered under Chapter 23 (19.2-387 et seq.) of Title 19.2. Such information may be obtained by contacting your local police department or the Department of State Police, Central Criminal Records Exchange, at 804-674-2000 or www.vsp.state.va.us.

SETTLEMENT EXPENSES/RISK OF LOSS: The expenses of examination of title, title insurance premiums and costs, and recordation (exclusive of the grantor’s tax paid by Seller) shall be borne by the Buyer. All applicable rents, interest, real estate taxes and assessments, insurance and other escrow deposits are to be pro-rated as of settlement. The risk of loss or damage to or destruction of any structure on the premises by any means until the deed of conveyance is delivered is assumed by the Seller.

DEFAULT: (a) In the event that Seller defaults in the performance of its obligations under this Agreement, (i) the rights of Agent against Seller due to such default shall be controlled by the Auction Contract; and (ii) Buyer shall have the right to elect one of the following remedies, which remedies constitute the only remedies available to Buyer, and, once Buyer elects a remedy, the elected remedy shall constitute the sole and exclusive remedy available to Buyer: (A) Buyer may elect to seek specific performance against Seller, provided that Buyer is not in default under this Agreement and Buyer provides written notice to Seller of its election to seek specific performance within forty-five (45) days after the Settlement Date and such specific performance action is filed in a court of competent jurisdiction within sixty (60) days after the Settlement Date, **or** (B) Buyer may elect to receive a full refund of the Deposit by giving written notice of such election to Seller and Agent, in which event this Agreement shall terminate, the Deposit shall be refunded to Buyer,

and Seller and Buyer shall have no further obligations to each other under this Agreement.

(b) In the event that Buyer defaults in the performance of its obligations under this Agreement, (i) Buyer agrees to pay the Auction Expenses and the Agent's Fee, and Buyer further agrees that the Deposit shall be retained by Agent and applied to the Auction Expenses and the Agent's Fee; and (ii) Seller shall have the right to elect one of the following remedies, which remedies constitute the only remedies available to Seller, and, once Seller elects a remedy, the elected remedy shall constitute the sole and exclusive remedy available to Seller: (A) Seller may elect to seek specific performance against Buyer, provided that Seller is not in default under this Agreement and Seller provides written notice to Buyer of its election to seek specific performance within forty-five (45) days after the Settlement Date and such specific performance action is filed in a court of competent jurisdiction within sixty (60) days after the Settlement Date, **or** (B) Seller may elect to seek a money judgment for damages incurred by Seller due to Buyer's default, after taking into account the application of the Deposit under (b)(i) above.

COMMISSION: Seller agrees to pay the Agent's Fee pursuant to the terms of the Auction Contract.

ATTORNEY'S FEES: In any action or proceeding involving a dispute between the Buyer, the Seller and/or the Agent, arising out of this Agreement, or to collect the Agent's Fee, the prevailing party shall be entitled to receive from the non-prevailing party reimbursement of reasonable attorney's fees and court costs incurred by the prevailing party in such action or proceeding, to be determined by the court.

POSSESSION: Possession of Property to be given on the date of actual settlement.

AUCTION TERMS AND CONDITIONS: This Property is being sold "AS IS, WHERE IS". Buyer agrees to comply with all auction terms and conditions and announcements made on the date of sale, and Buyer acknowledges receipt of the Real Estate Bidder's Package on day of sale. The Buyer's decision to purchase is based upon Buyer's own due diligence rather than upon any information provided by Seller, Agent, or their agents or representatives.

Except for the warranty of title in the deed delivered at closing, Seller makes no warranty or representation of any kind, express or implied, as to the condition, quality, or fitness for a particular purpose of the Property or any portion thereof, and in no event shall Seller be liable for any consequential or punitive damages under this Agreement or with respect to the Property. The Property is sold subject to applicable zoning.

BUYER ACKNOWLEDGES AND AGREES THAT, PRIOR TO THE AUCTION, BUYER HAD THE OPPORTUNITY TO INSPECT THE PROPERTY AND THAT BUYER IS SATISFIED WITH THE CONDITION OF THE PROPERTY. BUYER ACCEPTS THE PROPERTY "AS IS," AND IN ITS PRESENT CONDITION WITH BUYER ASSUMING ALL RISK THEREOF. BUYER ACKNOWLEDGES AND AGREES THAT SELLER HAS NOT AGREED TO PERFORM ANY WORK OR REMEDIATION ON OR ABOUT THE PROPERTY AS A CONDITION OF BUYER'S PURCHASE OF THE PROPERTY. BUYER ACKNOWLEDGES AND AGREES THAT SELLER HAS NOT MADE, WILL NOT MAKE, AND HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES REGARDING THE ENVIRONMENTAL CONDITION, ZONING, OR OTHER CONDITION OF THE PROPERTY, AND BUYER WAIVES ALL CLAIMS AGAINST SELLER WITH REGARD TO THE ZONING, CONDITION (INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL MATTERS), QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY OR ANY PORTION THEREOF, AND, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BUYER HEREBY RELEASES AND DISCHARGES SELLER FROM ALL SUCH CLAIMS NOW AND IN THE FUTURE.

FACSIMILES: This Agreement may be signed in one or more counterparts, each of which is deemed to be an original, and all of which shall together constitute one of the same original. Documents obtained via facsimile machines or email shall also be considered as originals.

LAND USE ASSESSMENT: In the event the Property is taxed under land use assessment and this sale results in disqualification from land use eligibility (without regard to any change of use contemplated by Buyer), Seller shall pay any rollback taxes assessed. If the Property continues to be eligible for land use

assessment, Buyer agrees to make application, at Buyer's expense, for continuation under land use and to pay any rollback taxes resulting from failure to file or to qualify. Notwithstanding anything herein to the contrary, the provisions of this paragraph shall survive settlement and the delivery of the deed of bargain and sale.

LIKE-KIND EXCHANGE: Seller and Buyer each shall have the right, at the option of either or both, to dispose of or purchase the Property through a transaction that is structured to qualify as a like-kind exchange of property within the meaning of Section 1031 of the Internal Revenue Code of 1986. Each party agrees to execute any necessary documents related to the Seller's or Buyer's affecting a qualifying like-kind exchange, provided that the non-exchanging party shall not incur any additional costs due to the exchange of the other party. In no event shall any like kind exchange contemplated by this provision affect any other provision of this Agreement or result in any extension of the Settlement Date unless agreed to by all parties to this Agreement, including Agent.

PARTIES: This Agreement shall be binding upon and shall inure to the benefit of the parties, *i.e.*, Buyer and Seller and their heirs, successors and assigns. As used herein, words in the singular include the plural and the masculine includes the feminine and neuter genders, as appropriate.

CHOICE OF SETTLEMENT AGENT (Notice to Buyer): You have the right to select a settlement agent to handle the closing of this transaction. The settlement agent's role in closing your transaction involves the coordination of numerous administrative and clerical functions relating to the collection of documents and the collection and disbursement of funds required to carry out the terms of the Agreement between the parties. If part of the purchase price is financed, your lender will instruct the settlement agent as to the signing and recording of loan documents and the disbursement of loan proceeds. No settlement agent can provide legal advice to any party to the transaction except a settlement agent who is engaged in the private practice of law in Virginia and who has been retained or engaged by a party to the transaction for the purpose of providing legal services to that party.

Escrow, closing and settlement service guidelines: The Virginia State Bar issues guidelines to help settlement agents avoid and prevent the unauthorized practice of law in connection with furnishing escrow, settlement or closing services. As a party to a real estate transaction, you are entitled to receive a copy of these guidelines from your settlement agent, upon request, in accordance with the provisions of the Consumer Real Estate Settlement Protection Act.

REPRESENTATIONS AND WARRANTIES OF PARTIES: Seller represents and warrants to Buyer as follows: Seller is duly organized (or incorporated) in its state of organization (or incorporation); Seller is validly existing and is qualified to enter into this Agreement; Seller is authorized to transact business in the Commonwealth of Virginia, and Seller has the full right, power, and authority, without the joinder of any other person or entity, to execute and deliver this Agreement and to perform all duties and obligations imposed on Seller by this Agreement.

If Buyer is not a natural person, Buyer represents and warrants to Seller as follows: Buyer is duly organized (or incorporated) in its state of organization (or incorporation); Buyer is validly existing and is qualified to enter into this Agreement; Buyer is authorized to transact business in the Commonwealth of Virginia, and Buyer has the full right, power, and authority, without the joinder of any other person or entity, to execute and deliver this Agreement and to perform all duties and obligations imposed on Buyer by this Agreement. In the event that there are two or more Buyers under this Agreement, each such Buyer, which is not a natural person, shall be deemed to give the representations and warranties set forth in this paragraph.

ADDITIONAL TERMS AND CONDITIONS: The parties acknowledge that, pursuant to discussions with the surveyor, the Plat has received preliminary review and unofficial approval by the Botetourt County Subdivision Agent. At closing, Buyer agrees to accept the Plat with all modifications required by the Botetourt County Subdivision Agent as a condition of final approval, provided that such modifications do not (a) reduce the acreage or (b) impose any new or additional public easements or restrictions upon the Property which materially and adversely affect Buyer's intended use of the Property. In the event that such

modification of the Plat results in a conflict with the requirements of (a) or (b) in the previous sentence, Seller shall not be in default under this Agreement and, by written notice from Buyer given to Seller and Agent within five (5) business days after Buyer receives written notice of such required modification, Buyer may terminate this Agreement, in which event the Deposit will be returned to Buyer and none of the parties hereto shall have any further obligations to each other under this Agreement or under the Auction Contract.

At closing, the Property will be conveyed to Buyer subject to (a) the Permanent Greenspace Easement which encumbers the Existing Permanent Greenspace Easement Area as shown on the Plat together with an easement of ingress and egress over the Property from Commons Parkway to the Existing Permanent Greenspace Easement Area for the benefit of the owners of the parcels of land utilizing the Permanent Greenspace Easement; and (b) use restrictions prohibiting the Property from being used for (i) a retail banking operation (which shall include, without limitation, a savings bank or a credit union which accepts deposits pursuant to applicable Virginia or federal law), but such restriction shall not prohibit the operation on the Property of the following business: mortgage, insurance, stock brokerage, investment banking, or any other business which does not entail the acceptance of deposits as a regulated bank, savings bank, or credit union under applicable Virginia or federal law, and (ii) a freestanding exterior automated teller machine (ATM) kiosk (and both use restrictions shall expire on February 1, 2021).

APPLICABLE LAW: This Agreement shall be construed under the laws of the Commonwealth of Virginia.

WITNESS the following signatures and seals.

Buyer:

By: _____ (Seal) _____
Date
Its:

Seller:

TIMBERBROOK ASSOCIATES, L.C.

By: _____ (Seal) _____
Steven S. Strauss, Manager Date

Deed To: _____

Listing Firm: Woltz & Associates, Inc.

By: _____
Its: Agent

Buyer's Address:

Buyer's Phone # _____

Buyer's e-mail: _____

Buyer's choice of settlement services: _____

Phone: _____

Selling Firm: _____

Firm Phone No. _____ Fax No. _____

Selling Agent: _____

Agent's Phone: _____

Agent's E-mail: _____

Agent's Signature: _____