

**Bredfeldt, Erik A.**

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**From:** Reid Fogler <reidfogler@gmail.com>  
**Sent:** Friday, January 17, 2020 7:49 PM  
**To:** Bredfeldt, Erik A.; Vipul  
**Subject:** Development of lot 10

Erik,

Thank you for our meeting with the new city manager. It was important to share with Lee where we have been, where we are and where we would like to take this development. As a Gainesvillian it was wonderful to meet Lee and see that he has a significant amount of knowledge, experience, and understanding of infill redevelopment and revitalization of urban cores. My take away from our meeting is that Lee and the management team see the importance of getting this done and doing it well. With that understanding we wish to push forward.

Since we went under contract we have been busy furthering this project. We had to make sure that the "dirt was good" we engaged GSE to direct us in this determination. We have conducted a Phase I and Phase II study regarding the site and the results satisfied our curiosity. Other developments worth noting. We have completed our First Step Meeting with the city all went smoothly there. We have had a positive dialog with Phil Mann to develop a plan for improving the on street parking. We actually signed our parking agreement with MCG Parking LLC. prior to signing the Contract for Sale and Purchase with the city.

Markets are always evolving. Change certainly has occurred since we began this process. Hilton has had a solid presence in the down town Gainesville market with the Hampton Inn and always had an interest in our site. We have been happy to see Marriott become a reality for us as well. In 2017 Marriott was in a wait and see posture as the AC Marriott at 13th and University was not yet operational. The AC Marriott opened in 2018 and has performed very well and as a result our location has been green lighted by Marriott. We have known throughout the process that a hotel would be well received on Lot 10. Per our meetings with Marriott we have engaged the Highland Group from Atlanta to conduct a hotel market study. The Highland Group is a well respected consultant in the Hotel industry. The purpose of this feasibility study by Highland Group was to give us an unbiased opinion of the brand that will best fit for the location optimizing hotel demand as well as ROI.

After multiple meetings we received a report that identified what we believe is the correct formula for hotel and meeting space in downtown Gainesville. There is plenty of good news regarding the report. Some of the highlights include a call for meeting space as we had previously described and the City has expressed a desire for. Additionally the size and scope of the hotel has grown. Highland Group indicates that the Key Count (number of rooms) should be in the neighborhood of 160 rooms. There is a recommendation for a roof top bar component. The report suggests that a Tribute which is Marriott brand would be the flag that would best suit the location and development. We find the report to buoy our beliefs and desires. We followed the feasibility study with a proforma also from Highland Group. We are now investing our resources to confirm that this beautiful hotel will make a reasonable return on investment.

Recently we have traveled to see a Tribute being developed in St. Petersburg Florida and met with its developer. We have modeled our proforma based on the recommendations from Highland Group. We have worked with Lisa Sexton the brand manager for Marriott's Tribute Brand. We continue to work with Lisa to refine our goal of creating the absolute best building for Lot 10. This week in addition to meeting with our city manager we have worked with the developers of two other Tribute Hotels in college towns. As well as an extensive follow up meeting with a design build firm that recently opened an office here in Gainesville. I share

all of this to illustrate that while this process is more long and drawn out than any of us would prefer, we continue to march on with the purpose of creating an investment that is a gem that furthers our downtown.

All of this effort demonstrates we are still diligently working toward meeting the remaining benchmarks. We have spent considerable time and resources advancing the project and think that both parties would benefit from our continuing rather than returning to square one. Per our contract for sale and purchase regarding Lot Ten, between The city of Gainesville and 1+1=3 LLC. We recognize that Performance benchmarks (6) and (7) have not been met as described in paragraph 4. In order to further this redevelopment we dutifully and respectfully request that we amend the contract to July 31st. This additional time will allow for us all to work through and resolve the remaining questions regarding profitability. Resolving those items will allow us to satisfy Performance Benchmarks (6) and (7).

In closing I would like to thank both Lee Feldman and the city staff for their support of this project,

**Reid R Fogler**



PO Box 12322, Gainesville, Florida 32604

## Bredfeldt, Erik A.

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**From:** Reid Fogler <reidfogler@gmail.com>  
**Sent:** Friday, December 20, 2019 11:40 AM  
**To:** Bredfeldt, Erik A.; Vipul  
**Subject:** Lot Ten

Erik,

Since our last benchmark date of October 4th, 2019 we have employed the Highland Group of Atlanta to do an independent study of Lot Ten. The Highland Group is a well respected consultant in the Hotel industry. After multiple meetings we received a report that identified what we believe is the correct formula for hotel and meeting space in downtown Gainesville. There is plenty of good news regarding the report. Some of the highlights include a call for meeting space as we had previously described and the City has expressed a desire for. Additionally the size and scope of the hotel has grown. Highland Group indicates that the Key Count (number of rooms) should be 160 rooms. There is a recommendation for a roof top bar component. The report suggests that a Tribute which is Marriott brand would be the flag that would best suit the location and development. We find the report to buoy our beliefs and desires.

While we have satisfied the previously identified Performance benchmarks we are still diligently working toward meeting the current benchmarks. We have spent considerable time and resources advancing the project and think that both parties would benefit from our continuing rather than returning to square one. Per our contract for sale and purchase regarding Lot Ten, between The city of Gainesville and 1+1=3 LLC. We recognize that Performance benchmarks (6) and (7) have not been met as described in paragraph 4. Our group continues to work on this development opportunity and would like to see it to completion.

Since receiving the Highland Groups report we have traveled to see a Tribute being developed in St. Petersburg Florida and met with its developer. We have modeled proforma based on the recommendations from Highland Group. Just this morning we completed a call with Lisa Sexton the brand manager for Marriott's Tribute Brand. The call was very productive. Lisa is sending me information to use in a meeting we have scheduled for Monday with contractors to help manage the economics with the design build process. I share all of this to illustrate that while this process is more long and drawn out than any of us would prefer, we continue to march on in hopes of creating a gem that far exceeds what anyone of us had previously envisioned. Erik, I think at this point it may be beneficial to schedule a meeting with our new City Manager Lee Feldman to discuss our current position and how best to proceed.

Thank you for your commitment to this project and diligent work thus far,

**Reid R Fogler**



PO Box 12322, Gainesville, Florida 32604



## Bredfeldt, Erik A.

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**From:** Reid Fogler <reidfogler@gmail.com>  
**Sent:** Friday, October 04, 2019 12:41 PM  
**To:** Bredfeldt, Erik A.; Vipul; Denise Hutson  
**Subject:** Lot 10 Contract for Sale and Purchase  
**Attachments:** Marriot support letter.pdf; Garage Contract McGurn Redacted.pdf; LOT\_10\_SURVEYpdf.PDF; Lot 10 Title Commitment.pdf

Erik,

Thank you for all your work with 1+1=3 LLC. regarding lot 10. Erik you have been great to work with! If the city did not have you representing their best interests I do not know if we would have made it to this point. Our team is excited to be moving forward! We recognize that today October 4th our deposit will go hard and we are committed and look forward to seeing this contract to closing.

Since we went under contract in May we have been busy furthering this project. We had to make sure that the "dirt was good" we engaged GSE to direct us in this determination. We have conducted a Phase I and Phase II study regarding the site and the results satisfied our curiosity. I have attached a google drive link for the city.

Markets are always evolving. Change certainly has occurred since we began this process back in September of 2017. Hilton has had a solid presence in the down town Gainesville market with the Hampton Inn and always had an interest in our site. We have been happy to see Marriott become a reality for us as well. In 2017 Marriott was in a wait and see posture as the AC Marriott at 13th and University was not yet operational. The AC Marriott opened in 2018 and has performed very well and as a result our location has been green lighted by Marriott. We have known throughout the process that a hotel would do well on Lot 10. Per our meetings with Marriott we have engaged the Highland Group from Atlanta to conduct a hotel market study. The purpose of this feasibility study by Highland Group is to give us an unbiased opinion of the brand that will best fit for the location optimizing hotel demand as well as ROI.

Other developments worth noting. We have completed our First Step Meeting with the city all went smoothly there. We have had a positive dialogue with Phil Mann to develop a plan for improving the on street parking. We actually signed our parking agreement with MCG Parking LLC. prior to signing the Contract for Sale and Purchase with the city. I have enclosed a copy of it. We have been working from an old survey that has worked for us thus far. We will order an updated survey shortly. I have attached a copy of the survey.

It is our goal and desire to deliver a truly great building to our downtown community. We look forward to continuing on this path with you.

The following benchmarks have been completed as follows:

 **14137\_Phase\_I\_II\_SS LOT 10.pdf**

- (1) Title Commitment (see attached).
- (2) Complete survey (see attached).
- (3) Approval of hotel franchise letter from Tim Sponsler (see attached).



(4) Complete all property due diligence as required by Buyer, its lenders, partners and hotel franchisor Phase II from GSE (see attached google drive link).

(5) Executed agreement for parking PSA between MCG and 1+1+3 (see attached).

All the best,

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**Reid R Fogler**



PO Box 12322, Gainesville, Florida 32604







**Transaction Identification Data for reference only:**

Community Title, LLC  
175 NW 138th Terrace, Suite 100,  
Newberry, FL 32669  
ALTA Universal ID:  
LOAN ID Number:  
Issuing Office File Number: CT-19-1209  
Order No.: 7682652  
Property Address: 150 SW 2nd Ave  
Gainesville, FL 32601  
Revision Number:

**Fidelity National Title Insurance Company**

**SCHEDULE A**

**AMERICAN LAND TITLE ASSOCIATION COMMITMENT**

1. Commitment Date: 05/23/2019 at: 5:00 PM
2. Policy or Policies to be issued:
  - A. ALTA Owners 2006 with Florida Modifications  
Proposed Insured: 1+1=3 of Gainesville, LLC, a Florida limited liability company  
Proposed Amount of Insurance: \$2,340,000.00
3. The estate or interest in the Land described or referred to in this Commitment is (Identify estate covered, i.e., fee, leasehold, etc):  
  
Fee Simple
4. Title to the Fee Simple estate or interest in the land is at the Commitment Date vested in:  
  
City of Gainesville, Florida, a municipal corporation under the laws of the State of Florida
5. The Land is described as follows in Exhibit "A" attached hereto and made part hereof.

Countersigned:

BY: U E M C o r m e e  
Authorized Officer or Agent



**SCHEDULE B SECTION I  
REQUIREMENTS**  
AMERICAN LAND TITLE ASSOCIATION COMMITMENT

The following requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
  - A. Duly authorized Warranty Deed **including a statement that the City is not reserving any interest in Phosphate, Minerals, Metals or Petroleum in the property as described in Schedule A** from City of Gainesville, Florida to 1+1=3 of Gainesville, LLC, a Florida limited liability company.
5. Proof of payment of any outstanding assessments in favor of Alachua County, Florida, any special taxing district and any municipality. NOTE: If this requirement is not satisfied the following exception will appear on Schedule B:

Any outstanding assessments in favor of Alachua County, Florida, any special taxing district and any municipality.
6. Proof of payment of service charges for water, sewer, waste and gas, if any, through the date of closing. NOTE: If this requirement is not met the following exception will appear on Schedule B:

Any lien provided for by Florida Statutes in favor of any city, town, village or port authority for unpaid service charges for service by any water, sewer, waste or gas system supplying the insured land or service facilities.
7. Proof satisfactory to the Company must be furnished of the good standing of 1+1=3 of Gainesville, LLC under the laws of the state of its incorporation.

NOTE: No open mortgage(s) were found of record. Agent must confirm with the owner that the property is free and clear.

NOTE: 2018 Real Property Taxes, No Tax Due under Tax I.D. No. 14574-000-000.

NOTE: Because the contemplated transaction involves an all-cash closing, the Company has not performed searches on the names of the purchasers/proposed insured. If the Company is asked to insure a Mortgage from said purchasers, we will require notification of same and we reserve the right to make additional requirements and/or exceptions which we may deem necessary after conducting name searches on the purchasers.

**END OF SCHEDULE B SECTION I**



**SCHEDULE B SECTION II  
EXCEPTIONS  
AMERICAN LAND TITLE ASSOCIATION COMMITMENT**

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

The Policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this form.
2. Taxes and assessments for the year 2019 and subsequent years, which are not yet due and payable.
3. Standard Exceptions:
  - A. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.
  - B. Rights or claims of parties in possession not shown by the public records.
  - C. Any lien, or right to a lien, for services, labor, or materials heretofore or hereafter furnished, imposed by law and not shown by the public records.
  - D. Taxes or assessments which are not shown as existing liens in the public records.
4. Any claim that any portion of the insured land is sovereign lands of the State of Florida, including submerged, filled or artificially exposed lands accreted to such land.
5. Any lien provided by County Ordinance or by Chapter 159, Florida Statutes, in favor of any city, town, village or port authority for unpaid service charges for service by any water, sewer or gas system supplying the insured land.
6. Restrictions, covenants, conditions, easements and other matters as contained on the Plat of ORIGINAL GAINESVILLE, recorded in Deed Book H, Page 383, of the Public Records of Alachua County, Florida.

NOTE: Exception 1 above shall be deemed deleted as of the time the settlement funds or proceeds of the loan to be secured by the insured mortgage, as applicable, are disbursed by the Company or its authorized agent. Neither the Company nor its agent shall, however, be under any duty to disburse any sum except upon a determination that no such adverse intervening matters have appeared of record or occurred.

NOTES ON STANDARD EXCEPTIONS:



**SCHEDULE B SECTION II  
EXCEPTIONS  
AMERICAN LAND TITLE ASSOCIATION COMMITMENT**

Item 3A will be deleted from the policy(ies) upon receipt of an accurate survey of the Land acceptable to the Company. Exception will be made for any encroachment, setback line violation, overlap, boundary line dispute or other adverse matter disclosed by the survey.

Items 3B, 3C, and 3D will be deleted from the policy(ies) upon receipt of an affidavit acceptable to the Company, affirming that, except as disclosed therein (i) no parties in possession of the Land exist other than the record owner(s); (ii) no improvements have been made to the Land within 90 days prior to closing which have not have been paid for in full; and (iii) no unpaid taxes or assessments are against the Land which are not shown as existing liens in the public records. Exception will be made for matters disclosed in the affidavit.

NOTE: All recording references in this form shall refer to the public records of Alachua County, Florida, unless otherwise noted.

NOTE: In accordance with Florida Statutes section 627.4131, please be advised that the insured hereunder may present inquiries, obtain information about coverage, or receive assistance in resolving complaints, by contacting Fidelity National Title Insurance Company, 3600 NW 43rd Street Suite E-1, Gainesville, FL 32606; Telephone 352-415-6054.

Searched By: Carol S. Davis

**END OF SCHEDULE B SECTION II**



**EXHIBIT "A"**

Block 1, RANGE 2, ORIGINAL GAINESVILLE, according to the map or plat thereof, as recorded in Deed Book H, Page(s) 383, of the Public Records of Alachua County, Florida.











Marriott International, Inc.  
East Region  
Lodging Development

6675 Westwood Boulevard  
Suite 175  
Orlando, FL 32821

October 2, 2019

Tim Sponsler  
Area Vice President  
Florida & Tennessee  
Phone: 407/741-3781

Mr. Vipul Patel  
Mr. Reid Fogler  
1+1=3 of Gainesville, LLC  
3425 SW 87<sup>th</sup> Drive  
Gainesville, FL 32608

Dear Vipul and Reid:

Based on our visit together and touring your proposed hotel site, I would be very supportive of your partnership developing a Marriott hotel brand in downtown Gainesville.

The hotel consulting firm (Highland Group) that you have contracted to conduct a hotel market study has contacted me for information and will work with us collectively to discern which brand would be the best fit for the location for optimizing hotel demand as well as ROI.

Please keep in mind that formal approval for the Marriott hotel brand will require the submission of the franchise applications and review by Marriott's Development Committee. However, I don't anticipate any issues as I'm fully supportive of the location.

If you or anyone related to these proposed projects have any questions, please don't hesitate to contact me at 407/903-6101.

Sincerely,

Tim Sponsler  
Vice President, Lodging Development



**PURCHASE AND SALE AGREEMENT**

between

**MCG Parking LLC, Seller**

and

**1+1=3 of Gainesville, LLC, Purchaser**

dated as of

May 9<sup>th</sup>, 2019

K om

## PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT (this "Agreement"), dated as of May 9<sup>th</sup> 2019, (the "Effective Date"), is entered into between MCG Parking LLC, a Florida limited liability company ("Seller"), having an address of 101 SE 2nd Place, Suite 202, Gainesville, Florida 32601 and 1 + 1 = 3 of Gainesville, LLC, a Florida limited liability company ("Purchaser"), having an address at Post Office Box 12322, Gainesville, Florida 32604

### RECITALS

- A. Seller holds a license (the "License") granted under a License Agreement (as hereinafter defined) to use and control "Replacement Spaces" and "Development Spaces" (collectively referred to herein as the "Garage Spaces") in a parking garage owned by the City of Gainesville; and
- B. Under Section 13 of the License Agreement, Seller has the right to assign all or a portion of its rights and obligations associated with the Garage Spaces; and
- C. Subject to the terms and conditions of the License Agreement and hereof, Seller desires to sell to Purchaser all of its assignable rights and obligations under the License Agreement and Purchaser desires to purchase all such rights and obligations from Seller.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### ARTICLE I

#### LICENSE

**Section 1.01. License.** Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller all license rights of Seller as set forth in the License Agreement, upon the terms and conditions hereinafter set forth:

- (a) Seller's rights to use and control Garage Spaces in a parking garage owned by the City of Gainesville are set forth in a License Agreement for Use of Parking Garage recorded December 13, 2003, in the Official Record Book 2824, Page 843 of Alachua County, Florida, and more particularly described in Exhibit A attached hereto (the "License Agreement") as assigned in the Assignment of License recorded October 3, 2012, in the Official Record Book 4139, Page 1966 of Alachua County, Florida, and more particularly described in Exhibit B attached hereto (the "Assignment")
- (b) As stated in the License Agreement, Section 3, *License Period*, the term of the License shall run for 99 full years from the date the Certificate of Occupancy for the parking garage was issued by the City of Gainesville.

- (c) As stated in the License Agreement, Section 18, *Early Termination*, the City of Gainesville may terminate the License for any reason, upon notifying the Seller at least ninety (90) days in advance of the effective date of termination.

## ARTICLE II

### PURCHASE PRICE

**Section 2.01. Purchase Price.** Purchaser shall pay Seller the sum of [REDACTED] the "Purchase Price". In the event the Closing shall occur on or after January 31, 2020, the Purchase Price shall increase to [REDACTED]

**Section 2.02. Payment of Purchase Price.** Purchaser shall pay the Purchase Price as follows:

- (a) The sum of [REDACTED] the "Deposit", within five (5) Business Days following the Effective Date, by Purchaser's certified check or official bank check, payable to Salter Feiber, P.A. (the "Escrow Agent"), subject to collection, or by wire transfer of immediately available federal funds to an account at such bank as designated by Escrow Agent.
- (b) Any interest earned on the principal portion of the Deposit shall be deemed to be part of the Deposit and shall be paid together with the principal portion of the Deposit, it being understood and agreed that if the transaction contemplated under this Agreement closes, any interest earned on the Deposit shall be paid to Seller and credited to the Purchase Price upon the Closing.
- (c) Seller agrees to hold a note secured by a security agreement in the License and UCC-1 executed by Buyer in the principal amount of [REDACTED] and [REDACTED] fully amortizing for a term of 10 years at an initial interest rate of [REDACTED] per annum. The interest rate will increase on the 2<sup>nd</sup>, 4<sup>th</sup>, 6<sup>th</sup> and 8<sup>th</sup> year by [REDACTED] per annum. The note to Seller shall provide for a thirty (30) day grace period in the event of default, shall provide for right of prepayment in whole or in part without penalty, and shall be otherwise in form and content in accordance with standard covenants in use in the Eighth Judicial Circuit Bar Association. Said note shall provide that in the event any installment is more than ten (10) days delinquent, the holder may assess a late charge of [REDACTED] of the late installment payment, which late payment shall be due with the late installment payment, and in any event, shall be due no later than the due date of the next installment payment. Failure to pay the late charge when due shall constitute a default under the promissory note. The purchase note shall not be assumable, directly or indirectly, and shall include a standard due on sale clause prohibiting sale or transfer other than by descent and distribution in case of death. As additional security for the note, the Buyer will execute and deliver to Seller at closing such other documents as may be reasonably required by

Seller, including without limitation, a collateral assignment of license rights, security agreement and UCC-1 Financing Statement.

**Section 2.03. Purchaser's Attorney as Escrow Agent.** Notwithstanding anything to the contrary herein contained, Seller acknowledges that Escrow Agent is also acting as Purchaser's counsel in connection with this Agreement and the transactions contemplated hereunder. Seller further acknowledges and agrees that the Escrow Agent may represent Purchaser as Purchaser's counsel, in any action, suit, or other proceeding between Seller and Purchaser or in which Seller and Purchaser may be involved.

### ARTICLE III

#### ADDITIONAL COMPENSATION

If, during the [REDACTED] following Closing, the City of Gainesville exercises its option in accordance with Section 18 of the Lease Agreement, to Early Termination, Purchaser agrees to pay Seller an additional payment ("Additional Payment") equal to [REDACTED]. In such event, the outstanding balance of the Purchase Price and the Additional Payment shall be immediately payable to Seller from funds received by Purchaser from the City of Gainesville in collection of the early termination fee.

Upon the expiration of [REDACTED] from the Closing Date, this provision for the Additional Payment shall terminate but the requirement to pay the outstanding balance of the Purchase Price from funds received by Purchaser shall remain in full force and effect. This provision shall survive closing.

### ARTICLE IV

#### DUE DILIGENCE INVESTIGATION

**Section 4.01. Due Diligence Materials.** Seller shall, if not already made available to Purchaser, deliver, cause to be delivered, or make available, copies of the documents and materials pertaining to the License to the extent within Seller's possession or control and any other documents relating to the Property reasonably requested by Purchaser (collectively, the "Due Diligence Materials").

**Section 4.02. Purchaser's Right to Inspect.**

- (a) In conducting the Inspections or otherwise accessing the parking garage (the "Garage"), Purchaser shall at all times comply with all laws and regulations of the City of Gainesville and applicable governmental authorities. In connection with any inspections, neither Purchaser nor any of Purchaser's Representatives shall unreasonably interfere with or permit unreasonable interference with any person or property located in Garage.

(b) Purchaser shall schedule and coordinate all inspections or other access thereto with the City of Gainesville and Seller and Purchaser shall give both the City of Gainesville and Seller at least three (3) Business Days prior notice thereof. Seller shall be entitled to have a representative present at all times during each such inspection or other access. Seller shall allow the Purchaser's Representatives unlimited access to the Garage and to other information pertaining thereto in the possession or within the control of the Seller for the purpose of the Inspections. Notwithstanding, Purchaser shall coordinate Purchaser's inspections with the City of Gainesville.

**Section 4.03. Seller Indemnification.** Purchaser agrees to indemnify and hold Seller harmless from and against any and all losses, costs, damages, liens, claims, liabilities, or expenses (including, but not limited to, Seller's reasonable attorneys' fees, court costs, and disbursements but excluding consequential and indirect damages) incurred by Seller arising from or by reason of Purchaser's and/or Purchaser's Representatives' access to, or inspections of, the Property, except to the extent such losses, costs, damages, liens, claims, liabilities, or expenses are caused by or resulting from: (a) any acts or omissions of Seller; (b) Seller's negligence; and/or (c) any pre-existing, dangerous, illegal, or defective condition.

## ARTICLE V

### CLOSING

**Section 5.01. Closing Date.** The closing of the transaction contemplated by this Agreement (the "Closing") shall take place on the earlier of: (i) December 31, 2020, (ii) 30 days from written notice from Purchaser, or (iii) simultaneous with Purchaser's closing of the Lot 10 Property described in Section 5.03 herein (the "Closing Date") at the offices of Salter Feiber, P.A. located at 3940 NW 16th Blvd., Bldg. B Gainesville, FL 32605, or at Purchaser's request, with notice to Seller's attorney at least ten (10) Business Days prior to the Closing Date, at the offices of Purchaser's lender or Purchaser's lender's attorneys.

**Section 5.02. Closing Costs.** Seller and Purchaser shall each pay the fees and expenses of its own counsel in connection with the preparation and negotiation of this Agreement. The Agreements and instruments related to the transaction contemplated by this Agreement and such legal costs shall not be part of the closing costs; *provided, however*, that if any legal action is instituted under this Agreement, the prevailing party in such action shall be entitled to recover from the other party costs related to such legal action, including reasonable attorneys' fees and costs in all trial, appellate, post-judgment, and bankruptcy proceedings.

(a) Seller shall pay:

- i. [REDACTED]
- ii. [REDACTED] Seller in connection with the preparation, review, and negotiation of this Agreement and the transactions and the Closing contemplated by this Agreement, including any attorneys' or consultancy fees.

Handwritten initials: "M" and "K".

(b) Purchaser shall pay:

- i. [REDACTED]
- ii. any other fees or costs related to Purchaser's due diligence reviews; and
- iii. all costs related to the recording fees payable in connection with the recording of Purchaser's lender's security instruments, if any.

**Section 5.03. Closing Conditions.** As a condition benefiting Purchaser only, the obligation of Purchaser to consummate the Closing shall be contingent upon the Purchaser completing the purchase from the City of Gainesville of the following described real property:

Block 1, Range 2, Map of Gainesville, Florida, recorded in Deed Record H, page 383 of the Ancient records of Alachua County, Florida (Currently Tax Parcel # 14574-000-000, and commonly referred to as City Parking Lot #10);

(the "Lot 10 Property").

#### ARTICLE VI REPRESENTATIONS AND WARRANTIES

**Section 6.01. Seller's Representations and Warranties.** Seller represents and warrants to Purchaser on and as of the date of this Agreement and on and as of the Closing Date, as follows:

- (a) Seller is qualified to conduct business in the State of Florida, and has the requisite power and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby.
- (b) The execution, delivery, and performance of this Agreement by Seller and all agreements, instruments, and documents herein provided to be executed by Seller on the Closing Date do not violate any contract, agreement, commitment, lease, order, judgment, or decree to which Seller is a party. This Agreement is valid and binding upon Seller, subject to bankruptcy and other similar laws affecting the enforcement of creditors' rights generally.
- (c) Neither the execution, delivery, or performance of this Agreement, nor the consummation of the transactions contemplated hereby is prohibited by, or requires Seller to obtain any consent, authorization, approval, or registration under any law, statute, rule, regulation, judgment, order, writ, injunction, or decree which is binding upon Seller which has not been previously obtained.
- (d) There is no litigation, arbitration, or other legal or administrative suit, action, proceeding, or investigation pending or threatened against or involving Seller or the License



Agreement, including, but not limited to, any condemnation action relating to the Property.

- (e) Seller has not entered into any service, maintenance, supply, leasing, brokerage, and listing and or other contracts relating to the License which will be binding upon the Purchaser after the Closing.
- (f) Seller has or will deliver or make available to Purchaser complete copies of all the Due Diligence Materials to the extent in Seller's possession or under Seller's control with regard to the Garage Spaces and assigned License Agreement, and there are no other documents or information included within the definition of Due Diligence Materials that have not been provided to the Purchaser. In Seller's knowledge, none of such Due Diligence Materials contains any untrue statement of a material fact or omits to state a fact necessary to make the statement of fact contained therein not misleading in any material respect.
- (g) Seller has not: (i) filed any voluntary or had involuntarily filed against it in any court or with any governmental body pursuant to any statute either of the United States or of any State, a petition in bankruptcy or insolvency or seeking to effect any plan or other arrangement with creditors, or seeking the appointment of a receiver; (ii) had a receiver, conservator, or liquidating agent or similar person appointed for all or a substantial portion of its assets; (iii) suffered the attachment or other judicial seizure of all, or substantially all, of its assets; (iv) given notice to any person or governmental body of insolvency; or (v) made an assignment for the benefit of its creditors or taken any other similar action for the protection or benefit of its creditors. Seller is not insolvent and will not be rendered insolvent by the performance of its obligations under this Agreement.

**Section 6.02. Purchaser's Representations and Warranties.** Purchaser represents and warrants that

- (a) Purchaser is a limited liability company duly formed, validly existing, and in good standing under the laws of the State of Florida, is qualified to conduct business in the State of Florida, and has the requisite power and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby
- (b) The execution, delivery, and performance of this Agreement by Purchaser and all agreements, instruments, and documents herein provided to be executed by Purchaser on the Closing Date: (i) do not violate the Operating Agreement of Purchaser, or any contract, agreement, commitment, lease, order, judgment, or decree to which Purchaser is a party; and (ii) have been duly authorized by the consent of the members of Purchaser and the appropriate and necessary action has been taken by such members on the part of Purchaser. The individuals executing this Agreement and the instruments referenced herein on behalf of Purchaser have the legal power, right, and actual authority to bind Purchaser to the terms and conditions hereof and thereof. This Agreement is valid and



binding upon Purchaser, subject to bankruptcy, reorganization, and other similar laws affecting the enforcement of creditors' rights generally.

- (c) Neither the execution, delivery, or performance of this Agreement, nor the consummation of the transactions contemplated hereby is prohibited by, or requires Purchaser to obtain any consent, authorization, approval, or registration under any law, statute, rule, regulation, judgment, order, writ, injunction, or decree which is binding upon Purchaser which has not been previously obtained.
- (d) To the best of its knowledge, there are no judgments, orders, or decrees of any kind against Purchaser unpaid or unsatisfied of record, nor any actions, suits, or other legal or administrative proceedings pending or, to the best of Purchaser's actual knowledge, threatened against Purchaser, which would have any material adverse effect on the business or assets or the condition, financial or otherwise, of Purchaser or the ability of Purchaser to consummate the transactions contemplated by this Agreement.

## ARTICLE VII NOTICES

**Section 7.01. Delivery of Notices.** Unless specifically stated otherwise in this Agreement, all notices, demands, consents, approvals, waivers, or other communications (collectively referred to as "Notices") shall be in writing and delivered to Purchaser, Seller, or Escrow Agent, at the addresses set forth in Section 7.02, by one of the following methods:

- (a) personal delivery, whereby delivery is deemed to have occurred at the time of delivery;
- (b) overnight delivery by a nationally recognized overnight courier company, whereby delivery is deemed to have occurred the Business Day following deposit with the courier;
- (c) registered or certified mail, postage-prepaid, return receipt requested, whereby delivery is deemed to have occurred on the third Business Day following deposit with the United States Postal Service; or
- (d) electronic transmission (facsimile or email) provided that the transmission is completed no later than 5:00 pm on a Business Day and the original also is sent by personal delivery, overnight delivery or by mail in the manner previously described, whereby delivery is deemed to have occurred at the end of the Business Day on which electronic transmission is completed.

### **Section 7.02. Parties Addresses.**

- (a) Unless changed in accordance with Section 7.02(b) of this Agreement, the addresses for all communications and notices shall be as follows:



**If to Seller:**

Kenneth R. McGurn  
Linda C. McGurn  
MCG Parking LLC  
101 SE 2nd Place, Suite 202  
Gainesville, Florida 32601

**If to Purchaser:**

1 + 1 - 3 of Gainesville, LLC  
Post Office Box 12322,  
Gainesville, Florida 32604  
Attn. Reid R. Fogler

**If to Escrow Agent:**

Denise L. Hutson  
Salter Feiber, P A.  
3940 NW 16<sup>th</sup> Blvd , Bldg B  
Gainesville, FL 32605

- (b) Any party may, by notice given in accordance with this Article, designate a different address or person for receipt of all communications or notices.
- (c) Any notice under this Agreement may be given by the attorneys of the respective parties who are hereby authorized to do so on their behalf.

**ARTICLE VIII**

**REMEDIES**

**Section 8.01. Remedies.**

- (a) If Purchaser shall default in the observance or performance of Purchaser's obligations under this Agreement and the Closing does not occur as a result thereof (a "Purchaser Default"). Seller's sole and exclusive remedy shall be to retain the Deposit and any interest earned thereon, as liquidated damages for Purchaser's Default. Upon payment of the Deposit and any interest earned thereon to Seller, this Agreement shall be terminated and the parties shall be released from further liability to each other hereunder, except for those obligations and liabilities that are expressly stated to survive termination of this Agreement. SELLER AND PURCHASER AGREE THAT IT WOULD BE

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IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES WHICH SELLER MAY SUFFER UPON A PURCHASER DEFAULT AND THAT THE DEPOSIT AND ANY INTEREST EARNED THEREON, AS THE CASE MAY BE, REPRESENTS A REASONABLE ESTIMATE OF THE TOTAL NET DETRIMENT THAT SELLER WOULD SUFFER UPON A PURCHASER DEFAULT. SUCH LIQUIDATED AND AGREED DAMAGES ARE NOT INTENDED AS A FORFEITURE OR A PENALTY WITHIN THE MEANING OF APPLICABLE LAW.

- (b) If Seller shall default in the performance of any of Seller's obligations to be performed under this Agreement and the Closing does not occur as a result thereof (a "Seller Default"), Purchaser's sole and exclusive remedy shall be to either: (i) terminate this Agreement by delivery of written notice to Seller and Escrow Agent, and Escrow Agent or Seller, as applicable, shall return the Deposit to Purchaser, with the interest earned thereon, if any, whereupon this Agreement shall terminate and neither party shall have any further rights or obligations with respect to each other or this Agreement, except those that are expressly provided in this Agreement to survive the termination hereof; or (ii) continue this Agreement and seek specific performance of Seller's obligations hereunder, and if Purchaser prevails thereunder, Seller shall reimburse Purchaser for all reasonable legal fees, court costs, and all other reasonable costs of such action. Notwithstanding the foregoing, if Seller shall willfully default in its obligation to close the transaction hereunder on the Closing Date and specific performance shall not be a legally available remedy to Purchaser as a result thereof, then Purchaser shall have the right to receive a return of the Deposit and be entitled to (and Seller shall reimburse Purchaser for) Purchaser's Costs (which reimbursement obligation shall survive the termination of this Agreement). The term "Purchaser's Costs" is defined for the purpose of this Agreement as the expenses, if any, actually incurred by Purchaser for the actual and reasonable third-party costs incurred by Purchaser in connection with the negotiation of this Agreement and Purchaser's due diligence with respect to the Property, including, without limitation, reasonable attorneys' fees.
- (c) Upon the release of the Deposit, and any interest accrued thereon, to either Purchaser or Seller, as the case may be, and reimbursement of Purchaser's Costs (if applicable), this Agreement shall be deemed null and void and no party hereto shall have any obligations to, or rights against, the other hereunder, except as expressly provided herein.

## ARTICLE IX

### BROKERS

**Section 9.01. Brokers.** Purchaser and Seller each represent and warrant to each other that they dealt with no broker in connection with, nor has any broker had any part in bringing about, this transaction. Seller and Purchaser shall each indemnify, defend, and hold harmless the other from and against any claim of any broker or other person for any brokerage commissions, finder's fees, or other compensation in connection with this transaction if such claim is based in

whole or in part by, through, or on account of, any acts of the indemnifying party or its agents, employees, or representatives and from all losses, liabilities, costs, and expenses in connection with such claim, including without limitation, reasonable attorneys' fees, court costs, and interest.

## ARTICLE X

### MISCELLANEOUS

**Section 10.01. Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Florida.

**Section 10.02. Merger; No Representations.** This Agreement constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. This Agreement is entered into after full investigation, no party is relying upon any statement or representation, not set forth in this Agreement, made by any other party.

**Section 10.03. Business Days.** Whenever any action must be taken (including the giving of notices) under this Agreement during a certain time period (or by a particular date) that ends or occurs on a non-business day, then such period (or date) shall be extended until the next succeeding business day. As used herein, the term "Business Day" shall mean any day other than a Saturday, a Sunday, or a legal holiday on which national banks are not open for general business in the State of Florida.

**Section 10.04. Modifications and Amendments.** This Agreement cannot under any circumstance be modified or amended orally and no agreement shall be effective to waive, change, modify, terminate, or discharge this Agreement, in whole or in part, unless such agreement is in writing and is signed by both Seller and Purchaser.

**Section 10.05. Successors and Assigns; Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs or successors and permitted assigns. Purchaser shall have the right to assign, transfer, or convey its rights and obligations under this Agreement or in the Property without the prior written consent of Seller, provided that any assignee shall assume all of Purchaser's obligations hereunder and succeed to all of Purchaser's rights and remedies hereunder and written notice to Seller of the assignment and assumption must be delivered to Seller prior to the Closing. If an assignee assumes all of Purchaser's obligations under this Agreement in writing, then upon the effective date of the assignment of this Agreement to such assignee, Purchaser shall be released from all obligations under this Agreement.

**Section 10.06. Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect, invalidate, or render unenforceable any other term or provision of this Agreement. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of



the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement be consummated as originally contemplated to the greatest extent possible.

**Section 10.07. Further Assurances.** Each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances, and assurances and take such further actions as may be reasonably required to carry out the provisions of this Agreement and give effect to the transactions contemplated hereby, provided such documents are customarily delivered in real estate transactions in the State of Florida and do not impose any material obligations upon any party hereunder except as set forth in this Agreement.

**Section 10.08. Counterparts.** This Agreement may be executed by the parties in separate counterparts, each of which when so executed and delivered shall be an original for all purposes, but all such counterparts shall together constitute but one and the same instrument.

**Section 10.09. Headings.** The captions or paragraph titles contained in this Agreement are for convenience and reference only and shall not be deemed a part of the text of this Agreement.

**Section 10.10. No Waivers.** No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party providing the waiver. No waiver by either party of any failure or refusal to comply with any obligations under this Agreement shall be deemed a waiver of any other or subsequent failure or refusal to so comply.

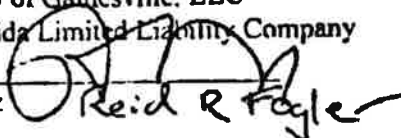
**Section 10.11. Waiver of Jury Trial.** SELLER AND PURCHASER HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER ARISING IN TORT OR CONTRACT) BROUGHT BY SUCH PARTY AGAINST THE OTHER ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above.

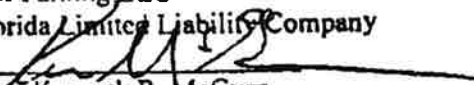
**PURCHASER:**

1+1=3 of Gainesville, LLC  
a Florida Limited Liability Company

By:   
Name: Reid R. Fogle  
Title:

**SELLER:**

MCG Parking LLC  
a Florida Limited Liability Company

By:   
Name: Kenneth R. McGurn  
Title: Managing Member

