

**AGENDA
CITY OF MORRISTOWN, TENNESSEE
CITY COUNCIL MEETING
AUGUST 15, 2017 – 5:00 P.M.**

1. CALL TO ORDER

Mayor Gary Chesney

2. INVOCATION

Don Lamb, Chaplain, Morristown Fire Department

3. PLEDGE OF ALLEGIANCE

4. ROLL CALL

5. APPROVAL OF MINUTES

1. August 1, 2017

6. PROCLAMATIONS/PRESENTATIONS

**7. CITIZEN COMMENTS ABOUT AGENDA ITEMS ONLY
(Other than items scheduled for public hearing.)**

8. OLD BUSINESS

8-a. Public Hearings & Adoption of Ordinances/Resolutions

9. NEW BUSINESS

9-a. Resolutions

9-b. Introduction and First Reading of Ordinances

1. Ordinance No. _____

An Ordinance to Amend the Municipal Code of the City of Morristown, Tennessee, Appendix B and Official Zoning Map. {Rezoning of Hamblen County Tennessee Tax Parcel ID#0320421 A 01500, currently addressed as 1557 Sulphur Springs Road, from Medium Density Residential (R-2) to Intermediate Business (IB).}

{Public Hearing September 5, 2017}

9-c. Awarding of Bids/Contracts

1. Approval of contract between the City of Morristown and the State of Tennessee Department of Transportation (TDOT) for Installation of Wavetronix System on SR-34 from Near Walters Drive to Near SR-32 Overpass. The estimated cost for the city's share of the non-participating cost of \$65,100.
2. Approval of Bid for Fire Station #4 and off-site sign to Burke-Ailey Construction.
3. Approval of Bid for Bulletproof Vest(s), to TruBlu Tactical Policy Supply in the total amount of \$3,367.92 for Type II Classification and \$3,607.92 for Type IIIA Classification.
4. Approval of Professional Services Agreement with T. Clint Harrison, P.E. for Engineering Design Services on Fire Station #4 in the total amount of \$13,500.
5. Approval of Inspection and Maintenance Agreement (I&M) between the City of Morristown and Chloe Lane, LP.

9-d. Board/Commission Appointments

1. Appointment to the Municipal Airport Commission for a five (5) year term to expire on August 31, 2022; term expiring Denise Terry.

9-e. New Issues

1. Approval for Fire Departments hiring of one (1) Entry-level Firefighter.
2. Approval of Certificate of Compliance for Ashish R. Patel for a retail package store licensure, store located at 2304 Morningside Drive, DBA Cork & Keg.

9-f. Executive Session

10. CITY ADMINISTRATOR'S REPORT

11. COMMUNICATIONS/PETITIONS

This is the portion of the meeting where members of the audience may speak subject to the guidelines provided.

12. COMMENTS FROM MAYOR/COUNCILMEMBERS/COMMITTEES

13. ADJOURN

City Council Meeting/Holiday Schedule:

Regular City Council Meeting with Work Session

Aug 17, 2017	(Thursday)	City Council Roundtable, Trinity United Methodist Church
Sep. 4, 2017	(Monday)	City Employee's Holiday, Labor Day
Sep. 5, 2017	(Tues) 5:00 p.m.	Regular City Council Meeting with Work Session
Sep. 19, 2017	(Tues) 4:00 p.m.	Finance Committee Meeting
Sep. 19, 2017	(Tues) 5:00 p.m.	Regular City Council Meeting with Work Session
Oct. 3, 2017	(Tues) 5:00 p.m.	Regular City Council Meeting with Work Session
Oct. 17, 2017	(Tues) 4:00 p.m.	Finance Committee Meeting
Oct. 17, 2017	(Tues) 5:00 p.m.	Regular City Council Meeting with Work Session
Nov. 7, 2017	(Tues) 5:00 p.m.	Regular City Council Meeting with Work Session
Nov. 21, 2017	(Tues) 4:00 p.m.	Finance Committee Meeting
Nov. 21, 2017	(Tues) 5:00 p.m.	Regular City Council Meeting with Work Session
Nov. 23-24, 2017	(Thursday & Friday)	City Employee's Holiday, Thanksgiving
Dec. 5, 2017	(Tues) 5:00 p.m.	Regular City Council Meeting with Work Session
Dec. 19, 2017	(Tues) 4:00 p.m.	Finance Committee Meeting
Dec. 19, 2017	(Tues) 5:00 p.m.	Regular City Council Meeting with Work Session
Dec. 25, 2017	(Monday)	City Employee's Holiday Christmas
January 1, 2017	(Monday)	City Employee's Holiday New Year's

WORK SESSION AGENDA

- 1. No Work Session Scheduled.**

**STATE OF TENNESSEE
COUNTY OF HAMBLLEN
CORPORATION OF MORRISTOWN
AUGUST 1, 2017**

The City Council for the City of Morristown, Hamblen County, Tennessee, met in regular session at the regular meeting place of the Council in the Morristown City Center at 5:00 p.m., Tuesday, August 1, 2017, with the Honorable Mayor Gary Chesney, presiding and the following Councilmembers present; Bob Garrett, Chris Bivens, Kay Senter, Dennis Alvis, Ken Smith and Tommy Pedigo.

Charles Mills, Chaplain, Morristown Police Department, led in the invocation and Councilmember Alvis led in the "Pledge of Allegiance".

Councilmember Alvis made a motion to approve the July 18, 2017 minutes as circulated. Councilmember Smith seconded the motion and upon roll call; all voted "aye".

Mayor Chesney recognized the Noon Rotary Club for their donation to the Farmers Market, Phase II project.

A Public Hearing was held pertaining to Ordinance No. 3582. The following spoke: Evan McKinley.

Councilmember Senter made a motion to approve Ordinance No. 3582 on second and final reading. Councilmember Alvis seconded the motion and upon roll call; all voted "aye".

Ordinance No. 3582

Being an Ordinance of the City Council of Morristown, Tennessee, Amending Title 3 (Municipal Court) Chapter 1 (City Court) of the Morristown Municipal Code.

A Public Hearing was held pertaining to Ordinance No. 3583. No one spoke.

Councilmember Senter made a motion to approve Ordinance No. 3583 on second and final reading. Councilmember Smith seconded the motion and upon roll call; all voted "aye".

Ordinance No. 3583

Being an Ordinance of the City Council of Morristown, Tennessee, Amending Title 14 (Zoning and Land Use Control), Chapter 10 (Intermediate Business District), and Chapter 11 (Central Business District).

A Public Hearing was held pertaining to Ordinance No. 3584. No one spoke.

Councilmember Smith made a motion to approve Ordinance No. 3584 on second and final reading. Councilmember Senter seconded the motion and upon roll call; all voted "aye".

Ordinance No. 3584

Being an Ordinance of the City Council of Morristown, Tennessee Amending Title 14 (Zoning and Land Use Control - HOME OCCUPATIONS).

A Public Hearing was held pertaining to Ordinance No. 3585. No one spoke.

Councilmember Pedigo made a motion to approve Ordinance No. 3585 on second and final reading. Councilmember Alvis seconded the motion and upon roll call; all voted "aye".

Ordinance No. 3585

Being an Ordinance of the City Council of Morristown, Tennessee Amending Ethics Policy.

Councilmember Alvis made a motion to approve Engineering Services Agreement between the City of Morristown, Tennessee, and Lamar Dunn & Associates, Inc./DBA LDA Engineering. Councilmember Smith seconded the motion and upon roll call; all voted "aye".

Councilmember Senter made a motion to approve the Proposals from LDA Engineering to provide professional services for the following: South Cumberland Street Drainage Improvements. LDA Engineering will provide these services as follows; design services \$35,000 (lump sum), permitting including coordination between the City, TDOT and Norfolk Southern \$12,000 (hourly not to exceed), bidding services \$5,500 (lump sum); Freshour Street Culvert Project – Phase I Design (from upstream headwall to Lincoln Avenue) LDA Engineering will provide these services as follows; design services \$25,000 (lump sum), permitting/easements including coordination with City, preparation ARAP Permit and SWPPP \$15,000 (hourly not to exceed), bidding services \$5,500 (lump sum); and Debi Circle Project – FEMA Application LDA will prepare the FEMA Application for the amount of \$11,800 LDA is requesting an additional \$10,200 to collect additional information required for the application the total hourly budget amount will be \$22,000. Councilmember Smith seconded the motion and upon roll call; all voted "aye".

Councilmember Pedigo made a motion to approve the Request for Proposal for CDBG Homeowner Rehab & Repair Program submitted by Knoxville-Knox County Community Action Committee (CAC), and allow the City Administrator to

negotiate and enter into a contract with CAC. Councilmember Smith seconded the motion and upon roll call; all voted “aye”.

Councilmember Alvis made a motion to approve the Employment Agreement between the City of Morristown, Tennessee and Attorney Lauren Carroll. Councilmember Smith seconded the motion and upon roll call; all voted “aye”.

Councilmember Smith made a motion to approve the bid for three (3) HVAC Units at Rose Center to Lynch Heating and Air Conditioning in the total amount of \$18,985. Councilmember Senter seconded the motion and upon roll call; all voted “aye”.

Councilmember Smith made a motion to approve the Memorandum of Understanding between the City of Morristown and Hamblen County Government regarding maintenance of advanced warning school signs and school zone signs at SR 32 (Highway 25E) to help manage traffic near Witt Elementary School. Councilmember Alvis seconded the motion and upon roll call; all voted “aye”.

Councilmember Senter made a motion to approve minor corrections to the Employee Handbook. Councilmember Pedigo seconded the motion and upon roll call; all voted “aye”.

Councilmember Alvis made a motion to confirm the Police Departments disciplinary action on Lieutenant Tony Belisle. Councilmember Bivens seconded the motion and upon roll call; all voted “aye”.

Mayor Chesney adjourned the August 1, 2017, City Council meeting at 5:47 p.m.

MAYOR

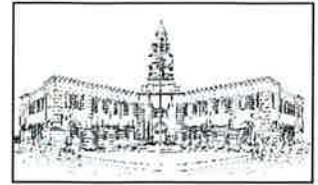
ATTEST:

CITY ADMINISTRATOR

City of Morristown

Incorporated 1855

DEPARTMENT OF COMMUNITY DEVELOPMENT & PLANNING



TO: Morristown City Council
FROM: Steve Neilson, Planning Director
DATE: August 15, 2017
SUBJECT: Rezoning Request for property located at 1557 Sulphur Springs RD.

BACKGROUND:

A rezoning request has been received by Mr. Larry Lemka to rezone his seven acre parcel located at 1557 Sulphur Springs Road. Mr. Lemka is requesting the property be rezoned from R-2, Medium Density Residential to IB, Intermediate Business.

Since this property was annexed in 1988, it has been used for a number of commercial uses. The 9,800 square foot building was originally a roller skating rink; it was the Silver Bullet Club, a rental hall, and a flea market. The building has been vacant for the past 2 to 3 years.



The properties surrounding the proposed parcel are made up of several zoning districts and land uses. The property to the north is zoned IB, Intermediate Business. The property to the west is zoned LI, Light Industrial District. The properties to the south and east are primarily single-family uses. The property in the city is zoned R-2, Medium Density Residential District and those properties outside the city are zoned R-1 by Hamblen County.

The proposed rezoning request is consistent with the Future Land Use Plan which designates this area as a commercial corridor.



The Planning Commission at its August 8th meeting heard this request and recommended approval by a vote of 9 to 0.

RECOMMENDATION:

Staff finds that the rezoning request is consistent with the surrounding zoning and is consistent with the City's Future Land Use Plan and recommends approval off the proposed request.

Rezoning of Hamblen County Tennessee Tax Parcel ID # 032042I A 01500, currently addressed as 1557 Sulphur Springs Road, from R-2 (Medium Density Residential) to IB (Intermediate Business);

ORDINANCE NO. _____, ENTITLED AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE CITY OF MORRISTOWN, TENNESSEE, APPENDIX B.

SECTION I. WHEREAS, the Morristown Planning Commission has recommended to the City Council of the City of Morristown that a certain amendment be made to Ordinance No. 2092, known as the Zoning Ordinance for the City of Morristown, Appendix B;

NOW, THEREFORE, in order to carry into effect the said amendment:

SECTION II. BE IT RESOLVED by the City Council of the City of Morristown that Ordinance No. 2092 be and the same hereby is amended so as to provide that the following described real estate be rezoned from Medium Density Residential (R-2) to Intermediate Business (IB);

Situated in the Fifth Civil District of Hamblen County, Tennessee and being described as follows;

Beginning at an iron pin in the eastern margin of Sulphur Springs Road, corner with Brown: thence North 69 deg. East 511.95 feet to an iron pin, corner with Susong; thence with Susong three calls as follows: South 58 degrees 03 minutes East 125.5 feet to an iron pin; North 67 degrees, 45 minutes East 256.58 feet to an iron pin; South 53 degrees 45 minutes East 218.58 feet to an iron pin, corner with Shaun and Collins; thence with Shaun and Collins line South 18 degrees 10 minutes East 190.65 feet to an iron pin in the Northern Boundary line of Southern Heights Subdivision; thence with said subdivision South 71 degrees 37 minutes West 539.61 feet to an iron pin; thence North 14 degrees 30 minutes West 139.63 feet to a point in the southern edge of a 30 foot right of way; thence with said right of way South 67 degrees 40 minutes East 420.04 feet to an iron pin in the eastern margin of Sulphur Springs Road; thence with the edge of said road, two calls as follows; North 28 degrees 55 minutes West 112.80 feet; thence North 18 degrees 31 minutes West 206.73 feet to the point of beginning containing seven acres more or less according to survey prepared by Robert F. Haynes, surveyor, dated January 12, 1971.

SECTION III. BE IT FURTHER ORDAINED that all maps, records and necessary minute entries be changed so as to effect the amendment as herein provided, to the extent that the area herein above described shall be permitted to be used for Intermediate Business (IB) uses exclusively.

SECTION IV. BE IT FURTHER ORDAINED that all ordinances or parts of ordinances in conflict herewith be, and the same are, repealed to the extent of such conflict but not further or otherwise.

SECTION V. BE IT FURTHER ORDAINED that this ordinance takes effect from and after the date of its final passage, the public welfare requiring it.

Passed on first reading the _____ day of _____, 2017.

Mayor

ATTEST:

City Administrator

Passed on second and final reading the _____ day of _____, 2017.

Mayor

ATTEST:

City Administrator



STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION
PROGRAM DEVELOPMENT & ADMINISTRATION DIVISION
LOCAL PROGRAMS DEVELOPMENT OFFICE

SUITE 600, JAMES K. POLK BUILDING
505 DEADERICK STREET
NASHVILLE, TN 37243-1402
(615) 741-5314

JOHN C. SCHROER
COMMISSIONER

BILL HASLAM
GOVERNOR

August 2, 2017

The Honorable Gary Chesney
Mayor, City of Morristown
100 W. First North St., P.O. Box 1499
Morristown, TN 37816-1499

Re: Installation of Wavetronix System on SR-34 from Near Walters Dr to Near SR-32
Overpass
Morristown, Hamblen County
PIN: 123961.00
Federal Project Number: NH/HSIP-34(110)
State Project Number: 32004-3227-94
Contract Number: 170108

Dear Mayor Chesney:

I am attaching a contract providing for the development of the referenced project. Please review the contract and advise me if it requires any additional explanation. The estimated cost for your agency's share of the Non-Participating cost is \$65,100.00. If you find the contract fully satisfactory, please execute it in accordance with all rules, regulations and laws, obtain the signature of the attorney for your agency and return the contract with your Non-Participating cost deposit of \$65,100.00 to me. Once the contract is fully executed, we will forward a copy to you for your records.

If you choose check, please return your check to Matt Burcham at the address listed above. If you choose deposit in the LGIP, please follow the attached instructions.

If you have any questions or need any additional information, please contact Ms. Maria Hunter at 615-532-3632 or maria.hunter@tn.gov.

Sincerely,

Whitney Britt
Transportation Manager

Attachment

CONTRACT

THIS AGREEMENT, made and entered into this _____ day of _____, 20____, by and between **THE TREASURY DEPARTMENT OF THE STATE OF TENNESSEE**, hereinafter referred to as the "Treasury", and _____, Tennessee, hereinafter referred to as the "Local Agency".

WITNESSETH:

WHEREAS, the State of Tennessee, acting through the Department of Transportation, entered into a contract with the _____, hereinafter called "Local Agency", on the _____ day of _____, 20____, relative to providing for implementation of _____;

WHEREAS, said agreement provides that the Local Agency may deposit its pro rata share of the estimated cost of the project with the Treasury for temporary investment as an alternative to furnishing the Department with said share, and the Local Agency has elected to use said alternate; and

WHEREAS, the Local Agency has made application to participate in the Local Government Investment Pool which has been accepted by the Treasury and has deposited its pro rata share of the estimated cost of the project by immediate credit transfer and advised the Treasury thereof and identified the account to which said deposit should be credited.

NOW THEREFORE, in consideration of the premises, the Treasury and the Local Agency agree as follows:

The Local Agency hereby authorizes Treasury to transfer from its Local Government Investment Pool Account (LGIP Account) relative to the above- identified project, to the account of the Department of Transportation, such amounts as said Department may request from time to time by written instructions from its Finance Director, without liability.

The Local Agency understands that no funds in its LGIP account shall be subject to withdrawal until the project is completed and the actual pro rata share of cost is determined. On completion, any surplus will be returned to the Local Agency pursuant to written instructions of said Department with an accounting of transfers made.

The Treasury will credit interest to the account which will be added to the principal and will become part of the surplus, if any, for disposition by said Department at the completion of the project. LGIP account statements will be sent to the Local Agency and said Department monthly. There will be an administrative fee charged to the Local Agency for the LGIP account at the same rate as other LGIP accounts are charged.

It is understood by the parties that the Treasury shall be responsible for the investment of aforesaid sum in accordance with the terms and conditions of the administration of the pool.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their duly authorized officials as of the date above written.

**STATE OF TENNESSEE
TREASURY DEPARTMENT**

By: _____

NAME OF OFFICIAL WHOSE
SIGNATURE APPEARS BELOW

(Type or Print)

TITLE: _____

ADDRESS: _____

TELEPHONE NO: _____

COUNTY OF: _____

SIGNATURE
OF OFFICIAL: _____

INSTRUCTIONS FOR DEPOSITING FUNDS
FOR INVESTMENT IN LOCAL GOVERNMENT INVESTMENT POOL

Enclosed herewith you will find one (1) copy of a contract relative to investing in the Local Government Investment Pool (LGIP) administered by the State Treasury Department. These are for your use in providing evidence that the Local Agency's pro-rata share of funds for the amount set forth in the project agreement relative to the project identified in the contract have been deposited for the use of the Department of Transportation. After completing the information necessary in the body of the contract you will need to have a total of four (4) original copies signed by an authorized official. Due to the sophistication of today's copiers, signatures in ink of a color other than black will clearly mark them as original signatures and prevent possible delays. Mail two (2) copies to, Assistant Director of Investment Department, P. O. Box 198785, Nashville, TN., 37219-8785, and one (1) copy to Jennifer Herstek, Finance Administrator, Tennessee Department of Transportation, 800 James K. Polk Building, Nashville, TN 37243-0329. The remaining copy is to be retained for your file until a fully executed copy is returned by the Treasury Department. Any questions you have should be directed to **Assistant Director of Investment Department at (615) 253-1536**.

Please note that due to the volume of deposits, the Treasury Department will not confirm to TDOT that your deposit has been made more than once a month. To prevent delays in project development, once you have made the deposit, call the person who signed the letter transmitting this document. Give that person the account number to which you have made your deposit, the amount of your deposit and the date on which you submitted it.

Agreement Number: 170108

Project Identification Number: 123961.00

Federal Project Number: NH/HSIP-34(110)

State Project Number: 32004-3227-94

State of Tennessee Department of Transportation

LOCAL AGENCY PROJECT AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 20__ by and between the STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION, an agency of the State of Tennessee (hereinafter called the "Department") and the City of Morristown (hereinafter called the "Agency") for the purpose of providing an understanding between the parties of their respective obligations related to the management of the project described as:

“SR-34 from near Walters Dr to near SR-32 Overpass”

A. PURPOSE OF AGREEMENT

A.1 Purpose:

- a) The purpose of this Agreement is to provide for the Department's participation in the project as further described in Exhibit A attached hereto and by this reference made a part hereof (hereinafter called the "Project") and state the terms and conditions as to the manner in which the Project will be undertaken and completed.

A.2 Modifications and Additions:

- a) Exhibit(s) are attached hereto and by this reference made a part hereof.

B. ACCOMPLISHMENT OF PROJECT

B.1 General Requirements:

a)

	Responsible Party	Funding Provided by Agency or Project.
Environmental Clearance by:	Department	Project
Preliminary Engineering by:	Department	Project
Right-of-Way by:	N/A	N/A
Utility Coordination by:	Department	Project
Construction by:	Department	Project/Agency

- b) After receiving authorization for a phase, the Agency shall commence and complete the phases as assigned above of the Project as described in Exhibit A with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions herein, and all applicable laws. The Project will be performed in accordance with all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Government Guidelines, available in electronic format, which by this reference is made a part hereof as if fully set forth herein.
- c) A full time employee of the Agency shall supervise the herein described phases of the Project. Said full time employee of the Agency shall be qualified to and shall ensure that the Project will be performed in accordance with the terms of this Agreement and all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Government Guidelines and this Agreement.

B.2 Completion Date:

- a) The Agency agrees to complete the herein assigned phases of the Project on or before **N/A**. If the Agency does not complete the herein described phases of the Project within this time period, this Agreement will expire on the last day of scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of the Agreement. An extension of the term of this Agreement will be effected through an amendment to the Agreement. Expiration of this Agreement will be considered termination of the Project. The cost of any work performed after the expiration date of the Agreement will not be reimbursed by the Department.

B.3 Environmental Regulations:

- a) The Department will review environmental documents and require any appropriate changes for approval as described in the Department's Local Government Guidelines.
- b) In the event the Agency is made responsible for the Environmental Clearances in Section B.1(a) of this Agreement, the Agency will be solely responsible for compliance with all applicable environmental regulations and for any liability arising from non-compliance with these regulations and will reimburse the Department of any loss incurred in connection therewith to the extent permitted by Tennessee Law. The Agency will be responsible for securing any applicable permits as described in the Department's Local Government Guidelines.
- c) In the event the Agency is made responsible for the Environmental Clearances in section B.1.(a) of this Agreement, then the Agency must complete environmental clearances before it begins final design and understands that a separate Notice to Proceed will be submitted for final design. Any work on final design performed ahead of this Notice to Proceed will not be reimbursable.

B.4 Plans and Specifications

- a) In the event that the Agency is made responsible for the Preliminary Engineering in Section B.1.(a) of this Agreement and federal and/or state funding is providing reimbursement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for the Preliminary Engineering phase of the Project without the written approval of the Department. Failure to obtain such written approval shall be sufficient cause for nonpayment by the Department.
- b) In the event that this Agreement involves constructing and equipping of facilities on the State Highway System and/or is a Project with Federal participation and the Agency is made responsible for Preliminary Engineering in section B.1.(a) of this Agreement, the Agency shall submit to the Department for approval all appropriate plans and specifications covering the Project. The Department will review all plans and specifications and will issue to the Agency written approval with any approved portions of the Project and comments or recommendations covering any remainder of the Project deemed appropriate.
 - 1) After resolution of these comments and recommendations to the Department's satisfaction, the Department will issue to the Agency written approval and authorization to proceed with the next assigned phase of the Project. Failure to obtain this written approval and authorization to proceed shall be sufficient cause for nonpayment by the Department.
- c) In the event that this Agreement involves the use of State Highway Right-of-Way, the Agency shall submit a set of plans to the TDOT Traffic Engineer responsible for

the land in question. These plans shall be sufficient to establish the proposed Project and its impact on the State Highway Right-of-Way.

B.5 Right-of-Way

- a) The Agency shall, without cost to the Department, provide all land owned by the Agency or by any of its instrumentalities as may be required for the Project right-of-way or easement purposes.
- b) The Agency understands that if it is made responsible for the Right-of-Way phase in section B.1(a) hereof and federal and/or state funds are providing the reimbursement, any activities initiated for the appraisal or the acquisition of land prior to authorization from the Department will not be reimbursed and that failure to follow applicable Federal and State law in this regard may make the Project ineligible for federal and/or state funding.
- c) The Department will review the processes the Agency used for the acquisition of land and other right-of-way activities. If those processes are found to be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Public Law 91-646, 84 Stat. 1894), the Department will certify that the acquisition phase was completed appropriately. The Agency understands that the Project cannot proceed to the Construction phase until this certification of the acquisition phase has been provided. It further understands that if the processes used for acquisition are such that certification is impossible, federal and/or state funds will be withdrawn from the Project. If such withdrawal does occur, the Agency hereby agrees to reimburse the Department for all federal and/or state funds expended at the time of such withdrawal.
- d) If the Agency is responsible for the Construction phase, it agrees to correct any damage or disturbance caused by its work within the State Highway Right-of-Way, including but not limited to the replacement of any control access fence removed by the Agency or its Contractor or agent during the Construction phase of the Project.

B.6 Approval of the Construction Phase

- a) In the event that the Agency is made responsible for the Construction phase in section B.1.(a) of this Agreement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for the Construction phase of the Project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department.
- b) In the event that the Department is made responsible for the Construction phase in section B.1.(a) of this Agreement, when the construction phase begins, the Agency may make such periodic visits to the Project site as necessary to familiarize itself generally with the progress and quality of the work and to determine in general if

the work is proceeding in accordance with the Construction Agreement. If there is any perceived failure, the Agency shall give prompt written notification to the Department's Resident Engineer in charge.

- c) If the Project includes State Highway Right-of-Way and the Agency is responsible for the Construction phase, the Agency shall follow all requirements imposed by the TDOT Traffic Engineer.
- d) In the event that the Project includes State Highway Right-of-Way and the Agency is performing any construction work on this project, such work shall be performed to the satisfaction of the Department. If the Agency is being compensated for any construction work under this Agreement, any remedial work deemed necessary by the Department shall be done at the Agency's sole expense.
- e) The Agency understands that all contractors allowed to bid hereunder must be included on the Department's pre-qualified contractor list. Under Federal law, however, no contractor shall be required by law, regulation, or practice to obtain a license before submitting a bid or before a bid may be considered for an award of a contract; provided, however, that this is not intended to preclude requirements for the licensing of a contractor upon or subsequent to the award of the contract if such requirements are consistent with competitive bidding.

B.7 Detours

- a) If the Agency deems a detour to be necessary to maintain traffic during a road closure, then the Agency shall select, sign, and maintain the detour route in strict accordance with the Departments Final Construction Plan Notes and the Manual on Uniform Traffic Control Devices.

B.8 Utilities

- a) In the event that the Department is made responsible for the Construction phase in Section B.1(a) of this Agreement, the Department shall also be responsible for the Utilities phase.
- b) In the event that the Agency is made responsible for the Utilities Phase in section B.1.(a) of this Agreement, the following applies:
 - 1) The Agency shall assist and ensure that all utility relocation plans are submitted by the utilities and received by the Regional TDOT Utility Office per TDOT's coordination instructions for approval prior to the Project advertisement for bids.
 - 2) The Agency agrees to provide for and have accomplished all utility connections within the right-of-way and easements prior to the paving stage of the Construction phase.

B.9 Railroad

- a) In the event that a railroad is involved, Project costs may be increased by federally required improvements. The Agency agrees to provide such services as necessary to realize these improvements. The Agency understands it may have to enter into additional agreements to accomplish these improvements.

C. PAYMENT TERMS AND CONDITIONS

C.1 Total Cost:

In the event that the Agency shall receive reimbursement for Project expenditures with federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) The Department agrees to reimburse the Agency for eligible and appropriate Project expenditures as detailed in the Department's Local Government Guidelines with federal and/or state funds made available and anticipated to become available to the Agency, provided that the maximum liability of the Department shall be as set forth in Exhibit A.

C.2 Eligible Costs:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) Only Project costs incurred after the issuance of the Notice to Proceed for each phase as detailed in the Department's Local Government Guidelines are eligible for Department reimbursement.

C.3 Limits on Federal and State Participation:

- a) Federal and/or state funds shall not participate in any cost which is not incurred in conformity with applicable federal and state law, the regulations in 23 C.F.R. and 49 C.F.R., and policies and procedures prescribed by the Federal Highway Administration (FHWA). Federal funds shall not be paid on account of any cost incurred prior to authorization by the FHWA to the Department to proceed with the Project or part thereof involving such cost. (23 CFR 1.9 (a)). If FHWA and/or the Department determines that any amount claimed is not eligible, federal and/or state participation may be approved in the amount determined to be adequately supported. The Department shall notify the Agency in writing citing the reasons why items and amounts are not eligible for federal and/or state participation. Where correctable non-compliance with provisions of law or FHWA requirements exists, federal and/or state funds may be withheld until compliance is obtained. Where non-compliance is not correctable, FHWA and/or the Department may deny participation in Project costs in part or in total.

- b) For any amounts determined to be ineligible for federal and/or state reimbursement for which the Department has made payment, the Agency shall promptly reimburse the Department for all such amounts within ninety (90) days of written notice.
- c) The Agency agrees to pay all costs of any part of this project which are not eligible for federal and/or state funding. These funds shall be provided upon written request therefore by either (a) check, or (b) deposit to the Local Government Investment Pool, whenever requested.

C.4 Payment Methodology:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) The Agency shall submit invoices, in a form outlined in the Local Government Guidelines with all necessary supporting documentation, prior to any reimbursement of allowable costs. Such invoices shall be submitted no more often than monthly but at least quarterly and indicate, at a minimum, the amount charged by allowable cost line-item for the period invoiced, the amount charged by line-item to date, the total amounts charged for the period invoiced, and the total amount charged under this agreement to date. Each invoice shall be accompanied by proof of payment in the form of a canceled check or other means acceptable to the Department.
- b) The payment of an invoice by the Department shall not prejudice the Department's right to object to or question any invoice or matter in relation thereto. Such payment by the Department shall neither be construed as acceptance of any part of the work or service provided nor as final approval of any of the costs invoiced therein. The Agency's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the Department not to constitute allowable costs. Any payment may be reduced for overpayments or increased for under-payments on subsequent invoices.
- c) Should a dispute arise concerning payments due and owing to the Agency under this Agreement, the Department reserves the right to withhold said disputed amounts pending final resolution of the dispute.

C.5 The Department's Obligations:

In the event that the Department is managing all phases of the Project herein described, this provision C.5 does not apply.

- a) Subject to other provisions hereof, the Department will honor requests for reimbursement to the Agency in amounts and at times deemed by the Department

to be proper to ensure the carrying out of the Project and payment of the eligible costs. However, notwithstanding any other provision of this Agreement, the Department may elect not to make a payment if:

1) **Misrepresentation:**

The Agency shall have made misrepresentation of a material nature in its application, or any supplement thereto or amendment thereof, or in or with respect to any document or data furnished therewith or pursuant hereto;

2) **Litigation:**

There is then pending litigation with respect to the performance by the Agency of any of its duties or obligations which may jeopardize or adversely affect the Project, this Agreement or payments to the Project;

3) **Approval by Department:**

The Agency shall have taken any action pertaining to the Project, which under this Agreement requires the approval of the Department or has made related expenditure or incurred related obligations without having been advised by the Department that same are approved;

4) **Conflict of Interests:**

There has been any violation of the conflict of interest provisions contained herein in D.16; or

5) **Default:**

The Agency has been determined by the Department to be in default under any of the provisions of the Agreement.

C.6 Final Invoices:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) The Agency must submit the final invoice on the Project to the Department within one hundred twenty (120) days after the completion of the Project. Invoices submitted after the one hundred twenty (120) day time period may not be paid.

C.7 Offset:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

- a) If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the Agency owing such amount if, upon

demand, payment of the amount is not made within sixty (60) days to the Department. Offsetting any amount pursuant to this section shall not be considered a breach of agreement by the Department.

C.8 Travel Compensation

- a) If the Project provided for herein includes travel compensation, reimbursement to the Agency for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time and subject to the Agreement Budget.

D. STANDARD TERMS AND CONDITIONS

D.1 Governing Law:

- a) This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. The Agency agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Agreement. The Agency acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407.

D.2 General Compliance with Federal, State, and Local Law:

- a) The Agency is assumed to be familiar with and observe and comply with those Federal, State, and local laws, ordinances, and regulations in any manner affecting the conduct of the work and those instructions and prohibitive orders issued by the State and Federal Government regarding fortifications, military and naval establishments and other areas. The Agency shall observe and comply with those laws, ordinances, regulations, instructions, and orders in effect as of the date of this Agreement.
- b) The parties hereby agree that failure of the Agency to comply with this provision shall constitute a material breach of this Agreement and subject the Agency to the repayment of all damages suffered by the State and/or the Department as a result of said breach.

D.3 State Law:

- a) Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision thereof, perform any other act or do any other thing in contravention of any applicable state law, provided, that if any of the provisions of the Agreement violate any applicable state law, the Agency will at once notify the Department in writing in order that appropriate changes and modifications may be

made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the Project.

D.4 Submission of the Proceedings, Agreements, and Other Documents:

- a) The Agency shall submit to the Department such data, reports, records, agreements, and other documents relating to the Project as the Department and the Federal Highway Administration may require.

D.5 Appropriations of Funds:

- a) This Agreement is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Department reserves the right to terminate the Agreement upon thirty (30) days written notice to the Agency. Said termination shall not be deemed a breach of agreement by the Department. Upon receipt of the written notice, the Agency shall cease all work associated with the Agreement. Should such an event occur, the Agency shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Agency shall have no right to recover from the Department any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.6 Rights and Remedies Not Waived:

- a) In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Agency and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.
- b) Nothing in this agreement shall be construed to limit the Department's right at any time to enter upon its highway right-of-way, including the area occupied by the Project, for the purpose of maintaining or reconstructing its highway facilities.

D.7 Department and Agency Not Obligated to Third Parties:

- a) The Department and Agency shall not be obligated hereunder to any party other than the parties to this Agreement.

D.8 Independent Contractor:

- a) The parties hereto, in the performance of this Agreement, shall not act as agents, employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting

entities and that nothing in this Agreement shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

- b) The Agency, being a political subdivision of the State, is governed by the provisions of the Tennessee Government Tort Liability Act, Tennessee Code Annotated, Sections 29-20-101, et seq, and all other applicable laws.

D.9 Maintenance:

- a) Nothing contained herein shall be construed as changing the maintenance responsibility of either party for any part of the referenced project that lies on its system of highways. If the project funded hereunder results in the installation of any traffic signal, lighting or other electrically operated device(s), then the Agency shall be solely responsible for and pay all costs associated with maintenance and operation of all electrically operated devices together with the related equipment, wiring and other necessary appurtenances, and the Agency shall furnish electrical current to all such devices which may be installed as part of the project. Additionally, the Agency shall be solely responsible for and pay all costs associated with the maintenance and operation of solar-powered devices, including, but not limited to, replacement of solar panels, batteries, lights and lenses.
- b) In the event that the Department is made responsible for the Construction phase in section B.1.(a) of this Agreement and to the extent that the Department is responsible for accomplishing the construction of the project, the Department will notify the Agency when Construction phase of the project has been completed; provided however, that failure to notify the Agency shall not relieve the Agency of its maintenance responsibilities.

D.10 Disadvantaged Business Enterprise (DBE) Policy and Obligation:

In the event that the herein-described project is funded with federal funds, the following shall apply:

- a) **DBE Policy:**
It is the policy of the Department that Disadvantaged Business Enterprises, as defined in 49 C.F.R., Part 26, as amended, shall have the opportunity to participate in the performance of agreements financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable federal and state regulations apply to this Agreement; including but not limited to project goals and good faith effort requirements.

b) DBE Obligation:

The Agency and its Contractors agree to ensure that Disadvantaged Business Enterprises, as defined in applicable federal and state regulations, have the opportunity to participate in the performance of agreements and this Agreement. In this regard, all recipients and Contractors shall take all necessary and reasonable steps in accordance with applicable federal and state regulations, to ensure that the Disadvantaged Business Enterprises have the opportunity to compete for and perform agreements. The Agency shall not discriminate on the basis of race, color, national origin or sex in the award and performance of Department-assisted agreements.

D.11 Tennessee Department of Transportation Debarment and Suspension:

- a) In accordance with the Tennessee Department of Transportation regulations governing Contractor Debarment and Suspension, Chapter 1680-5-1, the Agency shall not permit any suspended, debarred or excluded business organizations or individual persons appearing on the Tennessee Department of Transportation Excluded Parties List to participate or act as a principal of any participant in any covered transaction related to this Project. Covered transactions include submitting a bid or proposal, entering into an agreement, or participating at any level as a subContractor.

D.12 Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion (applies to federal aid projects):

a) Instructions for Certification - Primary Covered Transactions:

By signing and submitting this Agreement, the Agency is providing the certification set out below.

- 1) The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The Agency shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Department's determination whether to enter into this transaction. However, failure of the Agency to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- 2) The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Agency knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department may terminate this transaction for cause or default.

- 3) The Agency shall provide immediate written notice to the Department if at any time the Agency learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 4) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the Department for assistance in obtaining a copy of those regulations.
- 5) The Agency agrees by entering into this Agreement that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Department.
- 6) The Agency further agrees by entering into this Agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the Department, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 7) An Agency may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement portion of the "Lists of Parties Excluded From Federal Procurement or Non-procurement Programs" (Non-procurement List) which is compiled by the General Services Administration.
- 8) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- 9) Except for transactions authorized under these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Department may terminate this transaction for cause or default.

b) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions:

The prospective participant in a covered transaction certifies to the best of its knowledge and belief, that it and its principals:

- 1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, State or local department or agency;
- 2) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or agreement under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- 3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in this certification; and
- 4) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- 5) Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

D.13 Equal Employment Opportunity:

- a) In connection with the performance of any Project, the Agency shall not discriminate against any employee or applicant for employment because of race, age, religion, color, sex, national origin, disability or marital status. The Agency will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- b) The Agency shall insert the foregoing provision in all agreements modified only to show the particular contractual relationship in all its agreements in connection with the development of operation of the Project, except agreements for the standard commercial supplies or raw materials, and shall require all such Contractors to

insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the Project involves installation, construction, demolition, removal, site improvement, or similar work, the Agency shall post, in conspicuous places available to employees and applicants for employment for Project work, notices to be provided by the Department setting forth the provisions of the nondiscrimination clause.

D.14 Title VI – Civil Rights Act of 1964:

- a) The Agency shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 C.F.R., Part 21, and related statutes and regulations. The Agency shall include provisions in all agreements with third parties that ensure compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R., Part 21, and related statutes and regulations.

D.15 Americans with Disabilities Act of 1990 (ADA):

- a) The Agency will comply with all the requirements as imposed by the ADA and the regulations of the federal government issued thereunder.

D.16 Conflicts of Interest:

- a) The Agency warrants that no amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subContractor, or consultant to the Agency in connection with any work contemplated or performed relative to this Agreement.
- b) The Agency shall insert in all agreements entered into in connection with the Project or any property included or planned to be included in any Project, and shall require its Contractors to insert in each of its subcontracts, the following provision:
 - 1) "No amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subContractor, or consultant to the Agency in connection with any work contemplated or performed relative to this Agreement."

D.17 Interest of Members of or Delegates to, Congress (applies to federal aid projects):

- a) No member of or delegate to the Congress of the United States shall be admitted to any share or part of the Agreement or any benefit arising therefrom.

D.18 Restrictions on Lobbying (applies to federal aid projects):

The Agency certifies, to the best of its knowledge and belief, that:

- a) No federally appropriated funds have been paid or will be paid, by or on behalf of the Agency, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal agreement, the making of any federal grant, the making of any federal loan, and entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.
- b) If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this grant, loan, or cooperative agreement, the Agency shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The Agency shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and agreements under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

D.19 Records:

- a) The Agency shall maintain documentation for all charges against the Department under this Agreement. All costs charged to the Project, including any approved services contributed by the Agency or others, shall be supported by properly executed payrolls, time records, invoices, agreements or vouchers evidencing in proper detail and in a form acceptable to the Department the nature and propriety of the charges. The books, records, and documents of the Agency, insofar as they relate to work performed or money received under this Agreement, shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for at least three (3) years after final payment is made.
- b) Copies of these documents and records shall be furnished to the Department, the Comptroller of the Treasury, or their duly appointed representatives, upon request. Records of costs incurred includes the Agency's general accounting records and the Project records, together with supporting documents and records, of the Agency and all subContractors performing work on the Project and all other records of the Agency and subContractors considered necessary by the Department for a proper audit of costs. If any litigation, claim, or audit is started before the expiration of the three (3) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

- c) The aforesaid requirements to make records available to the Department shall be a continuing obligation of the Agency and shall survive a termination of the Agreement.

D.20 Inspection:

- a) The Agency shall permit, and shall require its Contractor, subContractor or materials vendor to permit, the Department's authorized representatives and authorized agents of the Federal Highway Administration to inspect all work, workmanship, materials, payrolls, records and to audit the books, records and accounts pertaining to the financing and development of the Project.
- b) The Department reserves the right to terminate this Agreement for refusal by the Agency or any Contractor, subContractor or materials vendor to allow public access to all documents, papers, letters or other material made or received in conjunction with this Agreement.

D.21 Annual Report and Audit:

- a) In the event that an Agency expends \$500,000 or more in federal awards in its fiscal year, the Agency must have a single or program specific audit conducted in accordance with the United States Office of Management and Budget (OMB) Circular A-133.
- b) All books of account and financial records shall be subject to annual audit by the Tennessee Comptroller of the Treasury or the Comptroller's duly appointed representative. When an audit is required, the Agency may, with the prior approval of the Comptroller, engage a licensed independent public accountant to perform the audit. The audit agreement between the Agency and the licensed independent public accountant shall be on an agreement form prescribed by the Tennessee Comptroller of the Treasury. Any such audit shall be performed in accordance with generally accepted government auditing standards, the provisions of OMB Circular A-133, if applicable, and the Audit Manual for Governmental Units and Recipients of Grant Funds published by the Tennessee Comptroller of the Treasury.
- c) The Agency shall be responsible for reimbursement of the cost of the audit prepared by the Tennessee Comptroller of the Treasury, and payment of fees for the audit prepared by the licensed independent public accountant. Payment of the audit fees of the licensed independent public accountant by the Agency shall be subject to the provisions relating to such fees contained in the prescribed agreement form noted above. Copies of such audits shall be provided to the designated cognizant state agency, the Department, the Tennessee Comptroller of the Treasury, and the

Department of Finance and Administration and shall be made available to the public.

D.22 Termination for Convenience:

- a) The Department may terminate this agreement without cause for any reason. Said termination shall not be deemed a breach of agreement by the Department. The Department shall give the Agency at least thirty (30) days written notice before the effective termination date. The Agency shall be entitled to compensation for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the Department be liable to the Agency for compensation for any service which has not been rendered. The final decision as to the amount for which the Department is liable shall be determined by the Department. Should the Department exercise this provision, the Agency shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.23 Termination for Cause:

- a) If the Agency fails to properly perform its obligations under this Agreement in a timely or proper manner, or if the Agency violates any terms of this Agreement, the Department shall have the right to immediately terminate the Agreement and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Agency shall not be relieved of liability to the Department for damages sustained by virtue of any breach of this Agreement by the Agency.
- b) In the event that the Project herein described includes Federal funds, the Agency understands that if the Federal Highway Administration (FHWA) determines that some or all of the cost of this project is ineligible for federal funds participation because of failure by the Agency to adhere to federal laws and regulations, the Agency shall be obligated to repay to the Department any federal funds received by the Agency under this agreement for any costs determined by the FHWA to be ineligible.
- c) If the Project herein described lies on the state highway system and the Agency fails to perform any obligation under this section of this agreement, the Department shall have the right to cause the Agency, by giving written notice to the Agency, to close the Project to public use and to remove the Project at its own expense and restore the premises to the satisfaction of the Department within ninety (90) days thereafter.

D.24 How Agreement is Affected by Provisions Being Held Invalid:

- a) If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance the remainder would then continue to conform to the terms and requirements of applicable law.

D.25 Agreement Format:

- a) All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

D.26 Certification Regarding Third Party Contracts:

- a) The Agency certifies by its signature hereunder that it has no understanding or contract with a third party that will conflict with or negate this Agreement in any manner whatsoever.
- b) The Agency further certifies by its signature hereunder that it has disclosed and provided to the Department a copy of any and all contracts with any third party that relate to the Project or any work funded under this Agreement.
- c) The Agency further certifies by its signature hereunder that it will not enter into any contract with a third party that relates to this project or to any work funded under this Agreement without prior disclosure of such proposed contract to the Department.
- d) The Agency hereby agrees that failure to comply with these provisions shall be a material breach of this Agreement and may subject the Agency to the repayment of funds received from or through the Department under this Agreement and to the payment of all damages suffered by the Department as a result of said breach.

D.27 Amendment:

- a) This Agreement may be modified only by a written amendment, which has been executed and approved by the appropriate parties as indicated on the signature page of this Agreement.

D.28 State Liability:

- a) The Department shall have no liability except as specifically provided in this Agreement.

D.29 Force Majeure:

- a) The obligations of the parties to this Agreement are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.

D.30 Required Approvals:

- a) The Department is not bound by this Agreement until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

D.31 Estimated Cost:

- a) The parties recognize that the estimated costs contained herein are provided for planning purposes only. They have not been derived from any data such as actual bids, etc
- b) In the event that the Department is made responsible in section B.1.(a) of this Agreement for the management of the herein described Project, the parties understand that more definite cost estimates will be produced during project development. These more reliable estimates will be provided to the Agency by the Department as they become available.

D.32 Third Party Liability:

- a) The Agency shall assume all liability for third-party claims and damages arising from the construction, maintenance, existence and use of the Project to the extent provided by Tennessee Law and subject to the provisions, terms and liability limits of the Governmental Tort Liability Act, T.C.A. Section 29-20-101, et seq, and all applicable laws.

D.33 Deposits:

- a) Required deposits and any other costs for which the Agency is liable shall be made available to the Department, whenever requested.

D.34 Department Activities:

- a) Where the Agency is managing any phase of the project the Department shall provide various activities necessary for project development. The estimated cost for these activities are included in the funds shown herein.

D.35 Congestion Mitigation and Air Quality Requirement:

- a) If the herein described project is funded with Congestion Mitigation Air Quality (CMAQ) funds, this section D.35 shall apply.
 - 1) Whereas the Agency understands and agrees that the funding provided hereunder must be obligated with the Federal Highway Administration within three years from the date of this agreement. It is further agreed that once all requirements have been met for development of the project, the Agency will expend the funds in a manner to insure its expenditure on a continuous basis until the funds are exhausted. Failure to follow this process may result in a loss of funds.

D.36 Investment of Public Funds:

- a) The facility on which this project is being developed shall remain open to the public and vehicular traffic for a sufficient time to recoup the public investment therein as shown below:

Amount		Open to Public and Vehicular Traffic
\$1.00 - \$200,000	=	5 Years
>\$200,000 - \$500,000	=	10 Years
>\$500,000 - \$1,000,000	=	20 Years

- b) Projects over \$1,000,000 carry a minimum 25 years open to public and vehicular traffic requirement and will be subject to individual review.

D.37 Federal Funding Accountability and Transparency Act:

- a) **If the Project is funded with federal funds the following shall apply:** The Agency shall comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub.L. 109-282), as amended by section 6202 of Public Law 110-252 ("the Transparency Act") and the regulations and requirements of the federal government issued thereunder, including, but not limited to, 2 CFR Part 170. The Agency shall submit the information needed for the Transparency Act in accordance with the forms and processes identified by the Department.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their respective authorized officials on the date first above written.

CITY OF MORRISTOWN

**STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION**

By: _____

**Gary Chesney
Mayor**

Date

By: _____

**John C. Schroer
Commissioner**

Date

**APPROVED AS TO
FORM AND LEGALITY**

By: _____

**Richard Jessee
Attorney**

Date

By: _____

**John Reinbold
General Counsel**

Date

EXHIBIT "A"

AGREEMENT NUMBER: 170108**PROJECT IDENTIFICATION NUMBER: 123961.00****Federal Project Number: NH/HSIP-34(110)**

PROJECT DESCRIPTION: SR-34 FROM NEAR WALTERS DR TO NEAR SR-32 OVERPASS

Change in Cost: Cost hereunder is controlled by the Highway Bridge Replacement and Rehabilitation funding available to the Department of Transportation.

TYPE OF WORK: RESURFACE AND SAFETY

PHASE	FUNDING SOURCE	FED %	STATE %	AGENCY %	ESTIMATED COST
CONST	NON-PART	0%	0%	100%	\$65,100.00

Note: The Non-Part covers the cost for the difference between the loop wire and Wavetronix System. The Agency will be responsible for one hundred percent (100%) of the actual cost of these items.

For federal funds included in this contract, the CFDA Number is 20.205, Highway Planning and Construction funding provided through an allocation from the US Department of Transportation.



Morristown City Council Agenda Item Summary

Date: August 8, 2017

Agenda Item: Acceptance of Bid – Fire Station #4

Prepared by: Joey Barnard

Subject: Awarding of Bid - Fire Station #4

Background/History: The City of Morristown has been in the planning phase for the relocation of the Fire Department's Station #4 for some time. Due to various issues associated with its current location, this became a necessity. As determined by City Council, Station #4 located at 3835 West Andrew Highway is to be relocated to Central Church Road. Council approved the purchase of property. The property for the proposed fire station was closed on November 28, 2016. The City of Morristown contracted with Mr. Eddie Fuller for architecture services related to Station #4. Mr. Fuller's contract includes design, bidding, and construction phases.

Findings/Current Activity: Mr. Fuller pre-qualified bidders. The pre-qualification of bidders and bid for Station Four was advertised in the *Citizen Tribune* on June 13, 2017 and June 14, 2017. Additionally, the bid was posted to the City of Morristown's website; Vendor Registry, an on-line bid facilitation website; and remitted to various plan rooms, which are on-line project management sites specific to construction. The qualification statements were opened on June 21, 2017. A total of eight (8) entities submitted pre-qualification statements. The submission deadline for bids was 2:00 PM on July 25, 2017. Three (3) responses were received.

Financial Impact: In anticipation of the construction of this facility, City Council authorized the issuance of bonds. Mr. Fuller organized the bids to include a base bid and eleven (11) alternates to the bid. Of those alternates, ten (10) alternates are related to the fire station and one was for the construction of an off-site sign for Historic Downtown Morristown. In addition to the alternates presented in the bid, council expressed interest in exploring the possibility of replacing all asphalt in the drive area with concrete at its workshop held on August 1, 2017.

The following, should Council make the decision to go with the low bidder, is a summary of costs:

Station #4:

Base Bid	\$1,498,000
Alternates	<u>71,723</u>
Subtotal	\$1,569,723
Replace asphalt with concrete	<u>143,838</u>
TOTAL	<u>\$1,713,561</u>

Off-Site Sign:

Base Bid	<u>\$ 32,562</u>
----------	------------------

The base bid and alternates are within budget and paid for with bond proceeds. This does not consider the funds that will be received from the future sale of the existing location of Station #4. If sale proceeds are considered, funds are sufficient to cover the posts of using concrete in lieu of asphalt in the drive areas. Funds for the off-site have been previously appropriated and the cost of the sign is within budget.

Action options/Recommendations: It is staffs' recommendation to accept the best and lowest bid received by Burke-Ailey Construction.

Attachments: Bid Tabulation, Paving Plan, Concrete-in-Lieu of Quotation.

CITY OF MORRISTOWN
FIRE STATION: STATION #4
BID TABULATION
TUESDAY, JULY 25, 2017 AT 2:00 P.M.

Bidder	Burke-Ailey Construction	Evans-Ailey Construction	McSpadden, Inc.
Base Bid	\$ 1,498,000.00	\$ 1,604,000.00	\$ 1,881,800.00
Alternate One - Electric Generator	28,159.00	27,000.00	38,900.00
Alternate Two - Alternate Coping	11,973.00	13,000.00	23,100.00
Alternate Three - Not Used	-	-	-
Alternate Four - Overhead & Coiling Doors	(5,606.00)	(5,700.00)	(5,500.00)
Alternate Five - Extended Concrete Aprons	5,279.00	17,700.00	18,900.00
Alternate Six - Steel Bollards	2,598.00	7,900.00	5,600.00
Alternate Seven - Interior Furnishings (shelving, lockers)	8,900.00	18,700.00	12,700.00
Alternate Eight - Exterior Building Identification Lettering	2,738.00	2,500.00	6,700.00
Alternate Nine - Red Paint Ceiling	788.00	1,300.00	8,700.00
Alternate Ten - Lighting Package	7,206.00	3,500.00	3,400.00
Alternate Eleven - Communications, Data, Sound Wiring	4,082.00	4,300.00	5,800.00
Alternate Twelve - Off-site Sign	32,562.00	26,000.00	33,000.00

Bidder	Burke-Ailey Construction	Evans-Ailey Construction	McSpadden, Inc.
TOTAL FIRE STATION BID PREFERRED (Includes Alts, 1,2,5,6,7,8,9,10, & 11)	\$ 1,569,723.00	\$ 1,699,900.00	\$ 2,005,600.00
Off-Site Sign (NOT INCLUDED IN STATION #4 ABOVE)	\$ 32,562.00	\$ 26,000.00	\$ 33,000.00

July 31, 2017

Fuller Architects
ATTN: Eddie Fuller

Re: City of Morristown Fire Station Four

Mr. Fuller,

Burke-Ailey Construction Co., Inc. would like to submit the following quotation for the addition of 6" concrete drive areas in lieu of asphalt paving at the proposed new Fire Station (noted in Red outlined areas).

The concrete shall be reinforced with rebar mat as per site concrete details.

The pricing includes curb and gutter approximately 665 linear feet.

The price for the above shall be One Hundred Forty Three Thousand Eight Hundred Thirty Eight (\$ 143,838.00) Dollars.

If you have any questions or if we can be of further help, please advise.

Respectfully submitted,

Jerry W. Burke
Burke-Ailey Construction Co., Inc.





Morristown City Council Agenda Item Summary

Date: August 8, 2017

Agenda Item: Approval of Bid – Bulletproof Vest

Prepared by: Joey Barnard

Subject: Bulletproof Vest - Police

Background/History: A necessity for the Morristown Police Department is bulletproof vest. This specialized gear gives the City of Morristown officers essential equipment to perform their job. This gear provides protection for the officer well-being. Due to wear-and-tear and turnover in employees, it becomes necessary to replace and purchase new bulletproof vests.

Findings/Current Activity: The bid was advertised in the *Citizen Tribune* on July 12, 2017 and on July 14, 2017. Additionally, the bid was posted to the City of Morristown's website and through Vendor Registry, an on-line bid facilitation website. The submission deadline was 2:00 PM on Wednesday, July 26, 2017. We received two (3) responses.

Financial Impact: Funds have been appropriated annually for bulletproof vests in the Police Department's budget. The City of Morristown receives reimbursement for approximately one-half the cost from the federal government. The terms of the bid are good through June 30, 2019. The bid by TruBlu Tactical Police Supply meets the specifications in the bid.

Action options/Recommendations: It is staffs' recommendation to accept the lowest and best bid submitted by TruBlu Tactical Policy Supply as detailed in the bid tabulation.

Attachments: Copy of Bid Tabulation

City of Morristown
Finance Department
Bulletproof Vest Bid
Wednesday, July 26, 2017
2:00 PM

Type II Classification Item		CW Armor	TruBlu Tactical	Summit Uniform
A.	Male average chest sizes S - XL Internal Carrier	\$ 710.00	\$ 570.00	\$ 702.65
	Male average chest sizes XXI - XXXL Internal Carrier	\$ 725.00	\$ 570.00	\$ 702.65
	Female average chest sizes S - XL Internal Carrier	\$ 710.00	\$ 570.00	\$ 702.65
	Female average chest sizes XXL - XXXL Internal Carrier	\$ 725.00	\$ 570.00	\$ 702.65
B.	Male average chest sizes S - XL External Carrier 1	\$ 225.00	\$ 149.99	\$ 174.38
	Male average chest sizes XXL - XXXL External Carrier 1	\$ 235.00	\$ 149.99	\$ 174.38
	Female average chest sizes S - XL External Carrier 1	\$ 225.00	\$ 149.99	\$ 174.38
	Female average chest sizes XXL-XXXL External Carrier 1	\$ 235.00	\$ 149.99	\$ 174.38
C.	Male average chest sizes S - XL External Carrier 2	\$ 765.00	\$ 121.99	\$ 180.00
	Male average chest sizes XXL - XXXL External Carrier 2	\$ 805.00	\$ 121.99	\$ 180.00
	Female average chest sizes S - XL External Carrier 2	\$ 765.00	\$ 121.99	\$ 180.00
	Female average chest sizes XXL - XXXL External Carrier 2	\$ 805.00	\$ 121.99	\$ 180.00
TOTAL		\$ 6,930.00	\$ 3,367.92	\$ 4,228.12

City of Morristown
Finance Department
Bulletproof Vest Bid
Wednesday, July 26, 2017
2:00 PM

	Type IIIA Classification Item	CW Armor	TruBlu Tactical	Summit Uniform
A.	Male average chest sizes S - XL Internal Carrier	\$ 720.00	\$ 630.00	\$ 794.30
	Male average chest sizes XXL - XXXL Internal Carrier	\$ 915.00	\$ 630.00	\$ 794.30
	Female average chest sizes S - XL Internal Carrier	\$ 720.00	\$ 630.00	\$ 794.30
	Female average chest sizes XXL - XXXL Internal Carrier	\$ 915.00	\$ 630.00	\$ 794.30
B.	Male average chest sizes S - XL External Carrier 1	\$ 305.00	\$ 149.99	\$ 174.38
	Male average chest sizes XXL - XXXL External Carrier 1	\$ 140.00	\$ 149.99	\$ 174.38
	Female average chest sizes S - XL External Carrier 1	\$ 305.00	\$ 149.99	\$ 174.38
	Female average chest sizes XXL-XXXL External Carrier 1	\$ 140.00	\$ 149.99	\$ 174.38
C.	Male average chest sizes S - XL External Carrier 2	\$ 845.00	\$ 121.99	\$ 180.00
	Male average chest sizes XXL - XXXL External Carrier 2	\$ 945.00	\$ 121.99	\$ 180.00
	Female average chest sizes S - XL External Carrier 2	\$ 845.00	\$ 121.99	\$ 180.00
	Female average chest sizes XXL - XXXL External Carrier 2	\$ 945.00	\$ 121.99	\$ 180.00
	TOTAL	\$ 7,740.00	\$ 3,607.92	\$ 4,594.72

T. Clint Harrison, P.E.

Civil Engineer
5123 Bethesda Road
Morristown, TN 37814
Phone 423.277.1112
charrisoneng@gmail.com

SHORT – FORM ; PROFESSIONAL SERVICES AGREEMENT

This agreement made as of _____, between **The City of Morristown (Client)** and **T. Clint Harrison, P.E. (Consultant)** to perform professional services for the assignment described as follows:

PROJECT: SITE CONSTRUCTION DRAWINGS FOR FIRE STATION #4 IN MORRISTOWN, HAMBLLEN COUNTY, TENNESSEE

I. **PROFESSIONAL SERVICES: CONSULTANT** agrees to perform the following engineering services:

SCOPE OF WORK:

- 1) Site engineering plans completed for Site Plan Approval and Public Bids. Plans include paving, grading, utilities, landscaping and erosion control with details and plan specs.
- 2) TDEC and SFM approvals;
- 3) Owner or Architect is responsible for advertising and bidding the project.

II. **COMPENSATION:** The compensation to be paid to **CONSULTANT** for providing the requested services shall be as broken down in the attached PO Request and is as follows:

<u>Design drawings and specifications for Public Bid:</u>	<u>\$ 11,300.⁰⁰</u>
<u>Construction Administration (if needed):</u>	<u>\$ 2,200.⁰⁰</u>
<u>TOTAL:</u>	<u>\$ 13,500.⁰⁰</u>

III. **PAYMENTS:** Billings for services rendered will be made at plan submission deadlines or at project completion milestones, and payment is due upon receipt of invoice. Surveys and application fees shall be paid for by the owner and are not included in this contract.

IV. **GOVERNING LAW:** Unless otherwise specified within this Agreement, the Law of the State of Tennessee shall govern this Agreement.

Client Name

By: _____

Title: _____

Date: _____

Address: _____

Consultant

By: T. Clint Harrison, P.E.

Title: owner 

T. Clint Harrison, P.E. – Civil Engineer
Date: August 4, 2017

Address: 5123 Bethesda Road
Morristown, TN 37814

Chloe Lane

Inspection and Maintenance Agreement

(I&M Agreement)

City of Morristown, TN

100 West 1st North Street

Morristown, TN 37814

(423) 581-0100

Inspection and Maintenance Agreement (I&M Agreement)

THIS AGREEMENT, made and entered into this 24th day of July, 2017, by and between Chloe Lane, LP hereinafter called the "Landowner", and
(Insert Full Name of Owner)
the City of Morristown, TN hereinafter called "City".

WITNESSETH, that

WHEREAS, the Landowner is the owner of certain property described as Dist. 1, Map 62,
Parcel 10.20, Sp-Int 000, City 500 as recorded by deed in the last land records of
(Insert Hamblen County Tax & Parcel Number)
Hamblen County, TN, Deed Book 1395 Page 560, hereafter called the "Property".

WHEREAS, the Landowner is proceeding to build on and develop the property; and

WHEREAS, the Site Plan/Subdivision known as Chloe Lane
(Name of Plan/Development)

hereafter called the "Plan", which is expressly made a part hereof, as approved or to be approved by the City, provides for management of stormwater within the confines of the property; and

WHEREAS, the City and the Landowner, its successors and assigns, agree that the health, safety and welfare of the residents of the City of Morristown, Tennessee, require that on-site stormwater management/BMP facilities be constructed and maintained on the Property; and

WHEREAS, the City requires that on-site stormwater management/BMP facilities, as shown on the Plan, be constructed and adequately maintained by the Landowner, its successors and assigns.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. The on-site stormwater management/BMP facilities shall be constructed by the Landowner, its successors, and assigns, in accordance with the plans and specifications identified in the Plan and shall, upon construction completion, be certified as such by the Plan's Engineer of Record.
2. The Landowner, its successors, and assigns, shall adequately maintain the stormwater management/BMP facilities as outlined in the Plan and contained within the Landowner's property. This includes all pipes and channels built to convey stormwater to and from the facility, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the stormwater. Adequate maintenance is herein defined as good working condition, so that these facilities

are performing their design functions. Those maintenance procedures outlined in the Plan and the City's approved BMP guidelines shall be practiced at a minimum. Common maintenance shall include the removal of debris (leaves, lawn clippings, sticks, etc.) and trash after rainfall events, checking outlet structures for clogging and cleaning, as necessary, repairing erosive areas promptly upon observation, and removing accumulated sediment.

3. The Landowner, its successors, and assigns, shall inspect the stormwater management/BMP facility and report to the City Engineer if any major repairs (i.e. structural) are necessary. The purpose of the inspection and reporting is to assure safe and proper functioning of the facilities. The inspection shall cover the entire facilities, berms, outlet structure, pond areas, access roads, etc and shall be performed at such times and such manner as to accomplish these objectives.
4. The Landowner, its successors, and assigns, will perform the work necessary to keep these facilities in good working order as appropriate. In the event a maintenance schedule for the stormwater management/BMP facilities (including sediment removal) is outlined on the approved plans or in the City's BMP guidelines, the Landowner, its successors, and assigns, shall adhere to the schedule.
5. The Landowner, its successors, and assigns, hereby grant an easement to the City, its authorized agents, and employees, to enter upon the Property and to inspect the stormwater management/BMP facilities whenever the City deems necessary. The purpose of inspection may be to check the facility for proper functioning, to follow-up on reported deficiencies or repairs, to respond to citizen complaints, and/or to check for any other reasons the City deems necessary. If problems are observed, the City shall provide the Landowner, its successors, and assigns, copies of the inspection findings and a directive to commence with the repairs within a specified timeframe.
6. In the event the Landowner, its successors, and assigns, fails to maintain the stormwater management/BMP facilities in good working condition acceptable to the City, the City may enter upon the Property and take the steps necessary to correct deficiencies identified in the inspection report. This provision shall not be construed to allow the City to erect any structure of permanent nature on the land of the Landowner, outside of the easement, for the stormwater management/BMP facilities. It is expressly understood and agreed that the City is under no obligation to routinely maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation on the City.
7. In the event the City, pursuant to this Agreement, performs work of any nature or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Landowner, its successors, and assigns, shall reimburse the City upon demand, within sixty (60) days of receipt thereof, for two hundred percent (200%) of all actual costs incurred by the City hereunder.
8. If the Landowner fails to pay the City for two hundred percent (200%) of their incurred expenses within sixty (60) days of receipt of written notice, the Landowner authorizes the City to place a lien against the property in an amount equal to two hundred percent (200%) of said expenses.
9. If the Landowner fails to reimburse the City, as described above, the Landowner further authorizes the City to collect said expenses from the Landowner through other appropriate legal action, with the Landowner to be liable for the reasonable costs of collection, court costs, and attorney fees.

10. This Agreement imposes no liability of any kind whatsoever on the City, and the Landowner agrees to hold the City harmless from any liability in the event the stormwater management/BMP facilities fail to operate properly.
11. This Agreement shall be recorded among the land records of Hamblen County, Tennessee, and shall constitute a covenant running with the land, and shall be binding on the Landowner, its administrators, executors, assigns, heirs and any other successors in interest.

WITNESS the following signatures and seals:

Chloe Lane, LP
Company/Corporation/Partnership Name (Seal)

By: Phil Ellen

Phil Ellen
(Type Name)

Manager of General Partner
(Type Title)

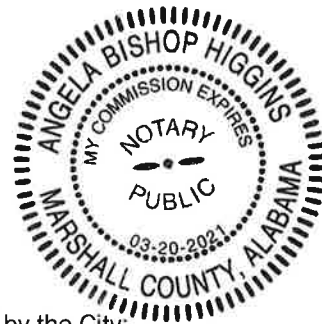
State of Alabama

County of Marshall

The foregoing Agreement was acknowledged before me this 24th day of July, 2017,

by Angela Bishop Higgins
Angela Bishop Higgins
Notary Public

My Commission Expires 3-20-2021



Approved as to form:
Frank Corral 7-25-17
City Attorney Date

Approved by the City:

Mayor Date



From the Desk of

Debbie Stamey

Deputy Clerk/Executive Assistant

(423) 585-4603

e-mail dstamey@mymorristown.com

TO: Mayor and City Council

RE: CITY COUNCIL APPOINTMENT OF BOARD/COMMISSION
MEMBER

DATE: August 11, 2017

The following Board/Commission Member's term will expire on August 31, 2017. This is a City Council appointment scheduled for the August 15, 2017, City Council meeting.

Municipal Airport Commission

Term Expiring: Denise Terry

This appointment is for a five (5) year term that will expire on August 31, 2022.

The above listed member was contacted by staff and stated she does not wish to be considered for re-appointed.

MEMORANDUM

To: Mayor and Council

From: Bill Honeycutt, Fire Chief

Date: August 8, 2017

RE: HIRING ONE ENTRY-LEVEL FIREFIGHTER

I'm requesting the Mayor and Council to appoint one (1) entry-level firefighter at the August 15, 2017 City Council meeting.

The vacant position results from a recent resignation and the funds for the requested position are included in our current budget.

Your Council packet should include a copy of the certified Civil Service roster of eligible candidates for employment with the Morristown Fire Department and as a reminder; the appointing authority (Mayor and Council) may consider the top three (3) names on the roster when appointing one eligible candidate.

I am prepared to make a recommendation.

CIVIL SERVICE BOARD

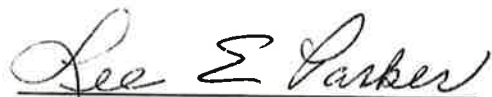
P. O. Box 1499 • MORRISTOWN, TN 37816

FIRE DEPARTMENT ENTRY-LEVEL ROSTER

Revised on January 25, 2017 to reflect recent **testing, hiring** and /or corrections

RANK	NAME	EXPIRES
1	Dylan Robinson	Sept 30, 2017
2	Chris Lowe	Sept 30, 2017
3	Travis Wice	Sept 30, 2017
4	Terry Rose	Sept 30, 2017
5	Jason Logan	Sept 30, 2017
6	Jordan Helton	Sept 30, 2017
7	David Harrington	Sept 30, 2017
8	Derek Franklin	Sept 30, 2017
9	James Bullen	Sept 30, 2017
10	Nathan Johnson	Sept 30, 2017
11	Ryan Templin	Sept 30, 2017
12	CA Barton	Sept 30, 2017
13	Shawn Kirkpatrick	Sept 30, 2017
14	Mitchell Hawks	Sept 30, 2017
15	Alex Chevez	Sept 30, 2017
16	Bill Johnson	Sept 30, 2017
17	Justin Costner	Sept 30, 2017
18	Branson Wilson	Sept 30, 2017
19	Isaac Woody	Sept 30, 2017
20	Aaryn McBryde	Sept 30, 2017
21	Gary Morrison	Sept 30, 2017

For the Civil Service Board



Lee Parker, Chairman

1-25-2017

Date



City of Morristown
P.O. Box 1499
Morristown, TN 37816



Application for Certificate of Compliance

Important Notes

1. This application shall be verified by the applicant. In the event the applicant is a partnership or corporation, each partner or stockholder shall file an accompanying application.
2. Applicant must place an advertisement in the Morristown Newspaper of general circulation for three (3) consecutive days. Applicant must attach to this application a copy of said advertisement. Application must be submitted 7 days prior to City Council meeting.
3. A fee of \$250.00 payable to the City of Morristown is required at the time of filing this application.

Personal Data (Please Print)

(In the event the applicant is a partnership or corporation, each partner or stockholder shall file an application.)

Full name of applicant: ASHISH R PATEL, CORN and KEA LLC Date of Birth [REDACTED] 20
Home Address: [REDACTED] Sevierville, TN Zip 37862
How long have you lived at current address 2 + years Home Phone 865- [REDACTED]
Social Security #: [REDACTED] Drivers License # [REDACTED]

Have you ever been convicted of any violation of a federal law, state law or municipal ordinance?
 Yes X No

If "yes", specify offense, date, and place of occurrence:

Store Name and Location

Proposed Store name: CORN & KEA
Street Address: 2304 MORNING SIDE DR, MORRISTOWN Zip 37814
Current business address (if relocation is requested): _____
Current zoning of proposed location: _____

I the undersigned applicant, do hereby authorize the City of Morristown, to make inquiry, whether verbal, written, or electronic of any and all law enforcement agencies or clerks of courts, whether, state, federal or local, concerning my criminal history of any convictions that I have had for any misdemeanor or felony, involving other than minor traffic violations, within the last ten (10) years from the date of this application.

I the undersigned applicant realize that falsification of any portion of this application shall be grounds for rejection of the application. The applicant further agrees to comply with state, federal laws, city ordinances and the rules and regulations of the Alcoholic Beverage Commission and of the State Commissioner of Revenue with references to the sale of alcoholic beverages and agrees to the validity of and reasonableness of the inspection fees which by ordinance are adopted by the City Council of the City of Morristown now or during the term of the license which may be issued.

[Signature]
Signature of Applicant

08-02-17
Date

AFFIDAVIT OF PUBLICATION

STATE OF TENNESSEE

COUNTY OF HAMBLEN

R. Michael Fishman

Printed Name

Personally appeared before the undersigned authority and made oath that he is the Editor and Publisher of the Citizen Tribune and that the attached item was published in said newspaper on the following dates:

8/3/2017, 8/4/2017, 8/6/2017.

Signed



Name of Account: Cork & Keg LLC (03)

Order Number: 22121538

Sworn to, and subscribed before me at Morristown, TN, this 7 th day of August, 2017.


Notary Public

Commission expires:

3/2/21



Page : 1 of 2 08/07/2017 08:28:52
Order Number : 22121538
PO Number :
Customer : 21898607 Cork & Keg LLC (03)
Contact : Bartley Thorton
Address1 : 1445 Robert Ridge Rd
Address2 :
City St Zip : Sevierville TN 37862
Phone : (865) 385-9690
Fax :
Printed By : CT Evelyn Hoard
Entered By : ctadtaker3
Keywords : Liquor Lis. (Ashish)
Notes :
Zones :

Ad Number : 22191399
Ad Key :
Salesperson : 03 - Tiffany Dalton
Publication : Citizen Tribune
Section : Classified Section
Sub Section : Classified Section
Category : Public Notices-130
Dates Run : 08/03/2017-08/06/2017
Days : 3
Size : 1 x 11.02, 114 lines
Words : 220
Ad Rate : Open
Ad Price : 0.00
Amount Paid : 0.00
Amount Due : 0.00

PUBLIC NOTICE

RETAIL LIQUOR LICENSE NOTICE

Take notice that
Ashish R. Patel
1445 Robert Ridge
Road, Sevierville,
TN 37862 has ap-
plied to the City of
Morristown for
Certification of
Compliance and
has or will apply to
the Tennessee Al-
coholic Beverage
Commission (ABC)
at Nashville for a
Retail Liquor Li-
cense for a store
to be named Cork
& Keg, LLC., for-
mally Cork & Keg,
2304 Morningside
Drive Morristown,
Tennessee 37814
and owned by
Ashish R. Patel,
1445 Robert Ridge
Road, Sevierville,
TN 37862, Cork &
Keg, LLC.

All persons wish-
ing to be heard on
the Certificate of
Compliance may
personally or
through counsel
appear or submit
their views in writ-
ing to: The Mor-
ristown City Coun-

Order Number : 22121538
 PO Number :
 Customer : 21898607 Cork & Keg LLC (03)
 Contact : Bartley Thorton
 Address1 : 1445 Robert Ridge Rd
 Address2 :
 City St Zip : Sevierville TN 37862
 Phone : (865) 385-9690
 Fax :
 Printed By : CT Evelyn Hoard
 Entered By : ctadtaker3
 Keywords : Liquor Lis. (Ashish)
 Notes :
 Zones :

Ad Number : 22191399
 Ad Key :
 Salesperson : 03 - Tiffany Dalton
 Publication : Citizen Tribune
 Section : Classified Section
 Sub Section : Classified Section
 Category : Public Notices-130
 Dates Run : 08/03/2017-08/06/2017
 Days : 3
 Size : 1 x 11.02, 114 lines
 Words : 220
 Ad Rate : Open
 Ad Price : 0.00
 Amount Paid : 0.00
 Amount Due : 0.00

cil on August 15,
 2017 at 5:00 p.m. in
 Council Chambers
 located at 100
 West 1st North
 Street, Morristown,
 Tennessee 37814.

The Tennessee Al-
 coholic Beverage
 Commission will
 consider the appli-
 cation at a later
 date to be set by
 the Tennessee Al-
 coholic Beverage
 Commission in
 Nashville, Tennes-
 see. Interested per-
 sons may person-
 ally or through
 counsel submit
 their views in writ-
 ing by the hearing
 date to be sched-
 uled by the TABC.
 (Rule 0100-03-09,
 continued). Any-
 one with questions
 concerning this ap-
 plication or the
 laws relating to it
 may call or write
 the Alcoholic Bev-
 erage Commission
 at 4420 Whittle
 Springs Rd, Knox-
 ville, TN 37917,
 (865) 594-6342.

Run Dates: 8/3/17,
 8/4/17, & 8/6/17

Morristown Police Department

ROGER OVERHOLT
Chief of Police



June 13, 2017

Mayor and Councilmembers:

I have completed a background check on Ashish R. Patel D.O.B. 05/31/1970 for the purpose of signing a Certificate of Compliance for the retail package store that is currently doing business as Cork & Keg Package Store located at 2304 Morningside Drive.

Based on my investigation, it is my belief that Mr. Patel has not been convicted of a felony in the **last 10 years**. You can feel confident in signing the Certificate of Compliance as a careful background check was conducted.

If you have any further questions, please feel free to contact me at (423)318-1552.

Respectfully,

Lt. Billy Gulley

Lt. Billy Gulley,
Support Services Supervisor
Morristown Police Department

cc: Roger D. Overholt, Chief of Police
file

CITY OF MORRISTOWN
100 W 1ST NORTH ST
MORRISTOWN TN 37814-1499

RECPT#: 523822

06/12/17 14:38 2842bstua

CUSTOMER#:0

NAME:

APP FOR CERT OF COMP

CHG: 808

BEER BOND

250.00

PAID AMT

25 PAID BY NAME

ASHISH R PATEPAY METHOD

CHECK

221207

AMT TENDERED:

AMT APPLIED: 250.00

CHANGE: 250.00



Bill Haslam
Governor

TENNESSEE BUREAU OF INVESTIGATION

Attn: TORIS

901 R.S. Gass Boulevard
Nashville, Tennessee 37216-2639
(615) 744-4057
Facsimile (615) 744-4289



Mark Gwyn
Director

06/13/2017

ASHISH R PATEL
1445 ROBERT RIDGE ROAD
SEVIERVILLE TN 37862

Tennessee Criminal History Records Request

NO RECORD HAS BEEN FOUND.

NOTE: All aliases submitted have been searched..

ASHISH R PATEL

Please be aware that, unless a fingerprint comparison is performed, it is impossible for the Tennessee Bureau of Investigation to be sure the record belongs to the individual you requested. Fingerprint comparison will only be performed in the event of a written appeal of criminal history results. The information you receive will be based on only those arrests which occurred within the state of Tennessee.

The Tennessee Bureau of Investigation found no Tennessee criminal history based on the information provided. No criminal record check was conducted for other states or for the Federal Bureau of Investigation.

Tennessee Open Records Information Services
Tennessee Bureau of Investigation
901 R.S. Gass Blvd.
Nashville, TN 37216



INTERNATIONALLY ACCREDITED SINCE 1994

Morristown Police Department

ROGER OVERHOLT
Chief of Police



Sevier County Sheriff's Dept.
Attn: Records

June 13, 2017

A Certificate of Compliance ^{15g}

I am requesting a records check for the purpose of an ~~an~~ Beer Permit on the following individual:

ASHISH R. PATEL

D.O.B. [REDACTED] 1970

SSN: [REDACTED]

If you have any questions, please give me a call at 423-318-1552 or fax me the results at 423-587-9518.

Thanks in advance for your assistance,

Lt. Billy Gulley, Support Services Supervisor
Morristown Police Department
P.O. Box 1283
Morristown, TN 37816-1283
Office: 423-318-1552
Fax: 423-587-9518

NO RECORD

**SEVIER COUNTY SHERIFF'S DEPT.
RECORDS BUREAU**

Date 6/13/17 By SASD

SEVIER COUNTY SHERIFF'S DEPT.
106 W. Bruce Street
Sevierville, TN 37862

*Local Sevier Co
area only for
a complete accurate
background check
for surrounding
counties & state
contact TBI.gpl*

P.O. Box 1283 • Morristown, Tennessee 37816-1283 • Phone (423)586-1215 • Fax (423)587-9518



City of Morristown
Office of the Police Department
Support Services

FAX TRANSMITTAL
COVER SHEET



TO : Sevier County Sheriff's Department
Attn: Records Division

FROM : Lt. Billy Gulley, Support Services Supervisor

RE : Records Check for a Certificate of Compliance Application

DATE : June 13, 2017

TOTAL NUMBER OF PAGES INCLUDING COVER SHEET: 2

COMMENTS: (only for the last 10 years)

THANK YOU

NOTICE

THIS MATERIAL IS INTENDED ONLY FOR THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED. IT MAY CONTAIN PRIVILEGED, CONFIDENTIAL INFORMATION THAT IS EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAWS. IF YOU ARE NOT THE INTENDED RECIPIENT PLEASE NOTE THAT YOU ARE STRICTLY PROHIBITED FROM DISSEMINATING OR DISTRIBUTING THIS MATERIAL (*other than to the intended recipient*) OR COPYING THIS MATERIAL. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THIS MATERIAL (and all copies) TO US BY MAIL TO THE *Morristown Police Department, P. O. Box: 1283, Morristown, TN 37816-1283*.

IF THERE WAS A PROBLEM RECEIVING THIS FAX, PLEASE CONTACT THIS OFFICE AT (423) 585-4630.

THANK YOU!

MORRISTOWN POLICE DEPARTMENT



COMMERCIAL PURCHASE AND SALE AGREEMENT

1. **Purchase and Sale.** For and in consideration of the mutual covenants herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned buyer Patel & Tailor and or Assigns ("Buyer") agrees to buy and the undersigned seller MBA ("Seller") agrees to sell all that tract or parcel of land, with such improvements as are located thereon, described as follows: All that tract of land known as: 2304 Morningside Drive (Address) Morristown (City), Tennessee, 37814-5518 (Zip), as recorded in Hamblen County Register of Deeds Office, 442 deed book(s), 262 page(s), and/or instrument no. and as further described as: Tax ID Parcel 034F 1 001.00 & 002.00 together with all fixtures, landscaping, improvements, and appurtenances, all being hereinafter collectively referred to as the "Property", as more particularly described in Exhibit "A" or if Exhibit A is not attached as is recorded with the Register of Deeds of the county in which the Property is located and is made a part of this Commercial Purchase and Sale Agreement ("Purchase and Sale Agreement" or "Agreement") by reference.
2. **Purchase Price.** The total purchase price for the Property shall be Six Hundred Twenty Thousand U.S. Dollars, (\$ 620,000.00) ("Purchase Price"), and is subject to all prorations and adjustments and shall be paid by Buyer at the Closing by cash, a Federal Reserve Bank wire transfer of immediately available funds, cashier's check or certified check.
3. **Earnest Money/Trust Money.** Buyer has paid or will pay within 3 business days after the Binding Agreement Date, the sum of \$ 10,000.00 with Re/Max Real Estate Tenn ("Holder") located at 4780 West Andrew Johnson Hwy Morristown TN 37814 (Address of Holder). Additional Earnest Money/Trust Money, if any, to be tendered and applied as follows: NA

This sum ("Earnest Money/Trust Money") is to be applied as part of the Purchase Price at Closing.

A. Failure to Receive Earnest Money/Trust Money. In the event Earnest Money/Trust Money is not timely received by Holder or Earnest Money/Trust Money check or other instrument is not honored for any reason by the financial institution from which it is drawn, Holder shall promptly notify Buyer and Seller. Buyer shall have three (3) business days after notice to deliver good funds to Holder. In the event Buyer does not timely deliver good funds to Holder, this Agreement shall automatically terminate and Holder shall notify the parties of the same. Holder shall disburse Earnest Money/Trust Money only as follows:

- (a) at Closing to be applied as a credit toward Buyer's Purchase Price;
- (b) upon a subsequent written agreement signed by Buyer and Seller; or
- (c) as set forth below in the event of a dispute regarding Earnest Money/Trust Money.

No party shall seek damages from Holder, nor shall Holder be liable for any such damages, and all parties agree to defend and hold harmless Holder for any matter arising out of or related to the performance of Holder's duties hereunder.

B. Disputes Regarding Earnest Money/Trust Money. In the event Buyer or Seller notifies Holder of a dispute regarding disposition of Earnest Money/Trust Money that Holder cannot resolve, Buyer and Seller agree to interplead Earnest Money/Trust Money into a court of competent jurisdiction. Holder shall be reimbursed for, and may deduct from: any funds interpleaded, its costs and expenses, including reasonable attorney's fees. The prevailing party in the interpleader action shall be entitled to collect from the other party the costs and expenses reimbursed to Holder, and upon

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CF401 - Commercial Purchase and Sale Agreement, Page 1 of 8

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[Return to Agenda](#)

payment of such funds into the court clerk's office, Holder shall be released from all further liability in connection with the funds delivered.

4. Inspection. Prior to Closing, Buyer and Buyer's agents shall have the right to enter upon the Property at Buyer's expense and at reasonable times to inspect, survey, examine, and test the Property as Buyer may deem necessary as part of Buyer's acquisition of the Property. Buyer may, for a fee, obtain a septic system inspection letter from the Tennessee Department of Environment and Conservation, Division of Ground Water Protection. Buyer shall indemnify and hold Seller and all Brokers harmless from and against any and all claims, injuries, and damages to persons and/or property arising out of or related to the exercise of Buyer's rights hereunder. Buyer shall have 30 days after the Binding Agreement Date ("Due Diligence Period") to evaluate the Property, the feasibility of the transaction, the availability and cost of financing, and any other matter of concern to Buyer. During the Due Diligence Period, Buyer shall have the right to terminate this Agreement upon notice to Seller if Buyer determines, based on a reasonable and good faith evaluation of the above, that it is not desirable to proceed with the transaction, and Buyer will be entitled to a refund of the Earnest Money/Trust Money. Within 5 days after the Binding Agreement Date, Seller shall deliver to Buyer copies of the materials concerning the Property referenced in Exhibit "B" (collectively "Due Diligence Materials"), which materials shall be promptly returned by Buyer if Agreement does not Close for any reason. If Buyer fails to timely notify Seller that it is not proceeding with the transaction, Buyer shall waive its rights to terminate this Agreement pursuant to this paragraph.

5. Title.

A. Warranties of Seller. Seller warrants that at Closing Seller shall convey good and marketable, fee simple title to the Property to Buyer, subject only to the following exceptions ("Permitted Exceptions"):

- (1) Liens for ad valorem taxes not yet due and payable.
- (2) Those exceptions to which Buyer does not object or which Buyer waives in accordance with the Title Issues and Objections paragraph below. "Good and marketable, fee simple title" with respect to the Property shall be such title:
 - (a) as is classified as "marketable" under the laws of Tennessee; and
 - (b) as is acceptable to and insurable by a title company doing business in Tennessee ("Title Company"), at standard rates on an American Land Title Association Owner's Policy ("Title Policy").

B. Title Issues and Objections. Buyer shall have 5 days after the Binding Agreement Date to furnish Seller with a written statement of any title objections, UCC-1 or UCC-2 Financing Statements, and encroachments, and other facts affecting the marketability of the Property as revealed by a current title examination. Seller shall have 3 days after the receipt of such objections (the "Title Cure Period") to cure all valid title objections. Seller shall satisfy any existing liens or monetary encumbrances identified by Buyer as title objections which may be satisfied by the payment of a sum certain prior to or at Closing. Except for Seller's obligations in the preceding sentence, if Seller fails to cure any other valid title objections of Buyer within the Title Cure Period (and fails to provide Buyer with evidence of Seller's cure satisfactory to Buyer and to Title Company), then within five (5) days after the expiration of the Title Cure Period, Buyer may as Buyer's sole remedies: (1) rescind the transaction contemplated hereby, in which case Buyer shall be entitled to the return of Buyer's Earnest Money/Trust Money; (2) waive any such objections and elect to Close the transaction contemplated hereby irrespective of such title objections and without reduction of the Purchase Price; or (3) extend the Closing Date period for a period of up to fifteen (15) days to allow Seller further time to cure such valid title objections. Failure to act in a timely manner under this paragraph shall constitute a waiver of Buyer's rights hereunder. Buyer shall have the right to reexamine title prior to Closing and notify Seller at Closing of any title objections which appear of record after the date of Buyer's initial title examination and before Closing.

6. Closing.

A. Closing Date. This transaction shall be consummated at the office of Heartland Title Company on July 31, 2017, (the "Closing Date") or at such other time and place(s) the parties may agree upon in writing.

B. Possession. Seller shall deliver possession and occupancy of the Property to Buyer at Closing, subject only to the rights of tenants in possession and the Permitted Exceptions.

7. Seller's Obligations at Closing. At Closing, Seller shall deliver to Buyer:

- (a) a Closing Statement;

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(b) deed (mark the appropriate deed below)

- ☒ General Warranty Deed ☐ Special Warranty Deed
☐ Quit Claim Deed ☐ Other: _____

(c) all documents which Seller must execute under the terms of this Agreement to cause the Title Company to deliver to Buyer the Title Policy including, without limitation, a title affidavit from Seller to Buyer and to the Title Company in the form customarily used in Tennessee commercial real estate transactions so as to enable the Title Company to issue Buyer the Title Policy with all standard exceptions deleted and subject only to Permitted Exceptions; and

(d) evidence reasonably satisfactory to Buyer at Closing of all documents/items indicated in Exhibit "C", if any (all documents to be delivered by Seller under this paragraph, including all documents/items indicated in Exhibit "C" are collectively "Seller's Closing Documents").

8. Conditions to Closing.

1. Buyer to obtain approval from the City of Morristown and The State of Tennessee Alcohol Beverage Commission prior to closing.

9. Costs.

A. Seller's Costs. Seller shall pay all existing loans and/or liens affecting the Property; the cost of recording any title curative documents, including without limitation, satisfactions of deeds to secure debt, quitclaim deeds and financing statement termination; any accrued and/or outstanding association dues or fees; fee (if any) to obtain lien payoff/estoppel letters/statement of accounts from any and all associations, property management companies, mortgage holders or other liens affecting the Property; all deed recording fees; the fees of Seller's counsel and, if checked, ☐ all transfer taxes, otherwise Buyer is responsible for transfer taxes.

In the event Seller is subject to Tax Withholding as required by the Foreign Investment in Real Property Tax Act, (hereinafter "FIRPTA"), Seller additionally agrees that such Tax Withholding must be collected from Seller by Buyer's Closing Agent at the time of Closing. In the event Seller is not subject to FIRPTA, Seller shall be required as a condition of Closing to sign appropriate affidavits certifying that Seller is not subject to FIRPTA. *It is Seller's responsibility to seek independent tax advice or counsel prior to the Closing Date regarding such tax matters.*

B. Buyer's Costs. Buyer shall pay the cost of Buyer's counsel and consultants; any costs in connection with Buyer's inspection of the Property and any costs associated with obtaining financing for the acquisition of the Property (including any intangibles tax, all deed recording fees and the cost of recording Buyer's loan documents.)

C. Additional Costs. In addition to the costs identified above, the following costs shall be paid by the parties hereto as indicated below:

<u>Item to be Paid</u>	<u>Paid by Seller</u>	<u>Paid by Buyer</u>
Survey	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Title Examination	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Premium for Standard Owner's Title Insurance Policy	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other: <u>Any and All Liscenses</u>	<input type="checkbox"/>	<input type="checkbox"/>
Other: <u>Inventory Count</u>	<input type="checkbox"/>	<input type="checkbox"/>
Other: _____	<input type="checkbox"/>	<input type="checkbox"/>

10. Taxes and Prorations. Real estate taxes on the Property for the calendar year in which the Closing takes place shall be prorated as of 12:01 a.m. local time on the Closing Date. Seller shall be responsible (even after Closing) for paying all taxes (including previous reassessments) on the Property for the time period during which Seller owned the Property and shall indemnify the Buyer therefore. In addition, the following items shall also be prorated as of 12:01 a.m. local time on the Closing Date *[Select only those that apply to this transaction; the items not checked do not apply to this Agreement]:*

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- 146 ☒ Utilities ☒ Service Contracts ☐ Tenant Improvement Costs
 147 ☐ Rents ☐ Leasing Commissions ☐ Other: _____
 148 ☐ Other: _____ ☐ Other: _____

149 **11. Representations and Warranties.**

150 **A. Seller's Representations and Warranties.** As of the Binding Agreement Date and the Closing Date, Seller
 151 represents and warrants to Buyer that Seller has the right, power, and authority to enter into this Agreement and to
 152 convey the Property in accordance with the terms and conditions of this Agreement. The persons executing this
 153 Agreement on behalf of Seller have been duly and validly authorized by Seller to execute and deliver this
 154 Agreement and shall have the right, power, and authority to enter into this Agreement and to bind Seller. Seller also
 155 makes the additional representations and warranties to Buyer, if any, as indicated on Exhibit "D".

156 **B. Buyer's Representations and Warranties.** As of the Binding Agreement Date and the Closing Date, Buyer
 157 represents and warrants to Seller that Buyer has the right, power, and authority to enter into this Agreement and to
 158 consummate the transaction contemplated by the terms and conditions of this Agreement. The persons executing
 159 this Agreement on behalf of Buyer have been duly and validly authorized by Buyer to execute and deliver this
 160 Agreement and shall have the right, power, and authority to enter into this Agreement and bind Buyer. Upon
 161 Seller's request, Buyer shall furnish such documentation evidencing signor's authority to bind Buyer.

162 **12. Agency and Brokerage.**

163 **A. Agency.**

- 164 (1) In this Agreement, the term "Broker" shall mean a licensed Tennessee real estate broker or brokerage firm and,
 165 where the context would indicate, the Broker's affiliated licensees. No Broker in this transaction shall owe any
 166 duty to Buyer or Seller greater than what is set forth in their brokerage engagements, the Tennessee Real Estate
 167 Broker License Act of 1973, as amended, and the Tennessee Real Estate Commission rules and regulations.
 168 (2) A Designated Agent is one who has been assigned by his/her Managing Broker and is working as an agent for
 169 the Seller or Buyer in a prospective transaction, to the exclusion of all other licensees in his/her company.
 170 (3) An Agent for the Seller or Buyer is a type of agency in which the licensee's company is working as an agent for
 171 the Seller or Buyer and owes primary loyalty to that Seller or Buyer.
 172 (4) A Facilitator relationship occurs when the licensee is not working as an agent for either party in this consumer's
 173 prospective transaction. A Facilitator may advise either or both of the parties to a transaction but cannot be
 174 considered a representative or advocate for either party. "Transaction Broker" may be used synonymously
 175 with, or in lieu of, "Facilitator" as used in any disclosures, forms or agreements. [By law, any licensee or
 176 company who has not entered into a written agency agreement with either party in the transaction is considered
 177 a Facilitator or Transaction Broker until such time as an agency agreement is established.]
 178 (5) A dual agency situation arises when an agent (in the case of designated agency) or a real estate firm (wherein
 179 the entire real estate firm represents the client) represents both the Buyer and Seller.
 180 (6) If one of the parties is not represented by a Broker, that party is solely responsible for their own interests, and
 181 that Broker's role is limited to performing ministerial acts for the unrepresented party.

182 **B. Agency Disclosure.**

- 183 (1) The Broker, if any, working with the Seller is identified on the signature page as the "Listing Company"; and
 184 said Broker is (Select One. The items not selected are not part of this Agreement):
 185 ☒ the Designated Agent for the Seller,
 186 ☐ the agent for the Seller,
 187 ☐ a Facilitator for the Seller, OR
 188 ☐ a dual agent.
 189 (2) The Broker, if any, working with the Buyer is identified on the signature page as the "Selling Company", and
 190 said Broker is (Select One. The items not selected are not part of this Agreement):
 191 ☐ the Designated Agent for the Buyer,
 192 ☐ the agent for the Buyer,
 193 ☐ a Facilitator for the Buyer, OR
 194 ☐ a dual agent.

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(3) **Dual Agency Disclosure.** *[Applicable only if dual agency has been selected above]* Seller and Buyer are aware that Broker is acting as a dual agent in this transaction and consent to the same. Seller and Buyer have been advised that:

1. In serving as a dual agent the Broker is representing two clients whose interests are, or at times could be, different or even adverse.
2. The Broker will disclose all adverse, material facts relevant to the transaction, and actually known to the dual agent, to all parties in the transaction except for information made confidential by request or instructions from another client which is not otherwise required to be disclosed by law.
3. The Buyer and Seller do not have to consent to dual agency, and
4. The consent of the Buyer and Seller to dual agency has been given voluntarily and the parties have read and understand their brokerage engagement agreements.
5. Notwithstanding any provision to the contrary contained herein, Seller and Buyer each hereby direct Broker, if acting as a dual agent, to keep confidential and not reveal to the other party any information which could materially and adversely affect their negotiating position unless otherwise prohibited by law.

(4) **Material Relationship Disclosure.** *[Required with dual Agency]* The Broker and/or affiliated licensees have no material relationship with either client except as follows: None. A material relationship means one of a personal, familial or business nature between the Broker and affiliate licensees and a client which would impair their ability to exercise fair judgment relative to another client.

Seller Initials _____ Buyer Initials _____

C. Brokerage. Seller agrees to pay Listing Broker at Closing the compensation specified by separate agreement. The Listing Broker will direct the closing agency/attorney to pay the Selling Broker, from the commission received, an amount, if any, in accordance with the terms and provisions specified by separate agreement. The parties agree and acknowledge that the Brokers involved in this transaction may receive compensation from more than one party. All parties to this Agreement agree and acknowledge that any real estate firm involved in this transaction shall be deemed a third party beneficiary only for the purposes of enforcing their commission rights, and as such, shall have the right to maintain an action on this Agreement for any and all compensations due and any reasonable attorney's fees and court costs.

13. Disclaimer. It is understood and agreed that the real estate firms and real estate licensee(s) representing or assisting Seller or Buyer and their brokers (collectively referred to as "Brokers") are not parties to this Agreement and do not have or assume liability for the performance or nonperformance of Seller or Buyer. Buyer and Seller agree that Brokers shall not be responsible for any of the following, including but not limited to, those matters which could have been revealed through a survey, title search or inspection of the Property; the insurability of the Property or cost to insure the Property; for the condition of the Property, any portion thereof, or any item therein; for any geological issues present on the Property; for any issues arising out of Buyer's failure to physically inspect the Property prior to entering into this Agreement and/or Closing; for building products and construction techniques; for the necessity or cost of any repairs to the Property; for hazardous or toxic materials; for the tax or legal consequences of this transaction; for the availability, capability, and/or cost of utility, sewer, septic, or community amenities; for proposed or pending condemnation actions involving the Property; for applicable boundaries of school districts or other school information; for the appraised or future value of the Property; for any condition(s) existing off the Property which may affect the Property; for the terms, conditions and availability of financing; and for the uses and zoning of the Property whether permitted or proposed. Buyer and Seller acknowledge that Brokers are not experts with respect to the above matters and that they have not relied upon any advice, representations or statements of Brokers (including their firms and affiliated licensees) and waive and shall not assert any claims against Brokers (including their firms and affiliated licensees) involving same. Buyer and Seller understand that it has been strongly recommended that if any of these or any other matters concerning the Property are of concern to them, that they secure the services of appropriately credentialed experts and professionals of Buyer's or Seller's choice for the independent expert advice and counsel relative thereto.

14. Destruction of Property Prior to Closing. If the Property is destroyed or substantially destroyed prior to Closing, Seller shall give Buyer prompt notice thereof, which notice shall include Seller's reasonable estimate of: (1) the cost to restore and repair the damage; (2) the amount of insurance proceeds, if any, available for the same; and (3) whether the damage will be repaired prior to Closing. Upon notice to Seller, Buyer may terminate this Agreement within seven (7) days after receiving such notice from Seller. If Buyer does not terminate this Agreement, Buyer shall be deemed to have

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accepted the Property with the damage and shall receive at Closing (1) any insurance proceeds which have been paid to Seller but not yet spent to repair the damage and (2) an assignment of all unpaid insurance proceeds on the claim. Buyer may request in writing, and Seller shall provide within five (5) business days, all documentation necessary to confirm insurance coverage and/or payment or assignment of insurance proceeds.

15. Other Provisions.

A. Exhibits, Binding Effect, Entire Agreement, Modification, Assignment, and Binding Agreement Date. This Agreement shall be for the benefit of, and be binding upon, the parties hereto, their heirs, successors, legal representatives and assigns. This Agreement constitutes the sole and entire agreement between the parties hereto and no modification of this Agreement shall be binding unless signed by all parties or assigns to this Agreement. No representation, promise, or inducement not included in this Agreement shall be binding upon any party hereto. Any assignee shall fulfill all the terms and conditions of this Agreement. It is hereby agreed by both Buyer and Seller that any real estate agent working with or representing either party shall not have the authority to bind the Buyer, Seller or any assignee to any contractual agreement unless specifically authorized in writing within this Agreement. The parties hereby authorize either licensee to insert the time and date of the receipt of notice of acceptance of the final offer and further agree to be bound by such as the Binding Agreement Date following the signatory section of this Agreement, or Counter Offer, if applicable.

B. Survival Clause. Any provision herein contained, which by its nature and effect, is required to be performed after Closing shall survive the Closing and delivery of the deed and shall remain binding upon the parties to this Agreement and shall be fully enforceable thereafter. Notwithstanding the above, the representations and warranties made in Exhibit "D" shall survive the Closing for a period of 90 days after the date of Closing.

C. Governing Law and Venue. This Agreement is intended as a contract for the purchase and sale of real property and shall be interpreted in accordance with the laws and in the courts of the State of Tennessee.

D. Time of Essence. Time is of the essence in this Agreement.

E. Terminology. As the context may require in this Agreement: (1) the singular shall mean the plural and vice versa; (2) all pronouns shall mean and include the person, entity, firm, or corporation to which they relate; (3) the feminine shall mean the masculine and vice versa; and (4) the term day(s) used throughout this Agreement shall be deemed to be calendar day(s) ending at 11:59 p.m. local time unless otherwise specified in this Agreement. Local time is to be determined by the location of the Property. All references to time are deemed to be local time. **In the event a performance deadline**, other than the Closing Date (as defined in paragraph six (6) herein), Day of Possession (as defined in paragraph six (6) herein), and Offer Expiration date (as defined in paragraph nineteen (19) herein), occurs on a Saturday, Sunday or legal holiday, the performance deadline shall be extended to the next following business day. Holidays as used herein are those days deemed federal holidays pursuant to 5 U.S.C. § 6103. In calculating any time period under this Agreement, the commencement day shall be the day following the initial date (e.g. Binding Agreement Date).

F. Responsibility to cooperate. Buyer and Seller agree to timely take such actions and produce, execute, and/or deliver such information and documentation as is reasonably necessary to carry out the responsibilities and obligations of this Agreement. Except as to matters which are occasioned by clerical errors or omissions or erroneous information, the approval of the Closing documents by the parties shall constitute their approval of any differences between this Agreement and the Closing. The Buyer and Seller agree that if requested after Closing they will correct any documents and pay any amounts due where such corrections or payments are appropriate by reason of mistake, clerical errors or omissions, or the result of erroneous information.

G. Notices. Except as otherwise provided herein, all notices and demands required or permitted hereunder shall be in writing and delivered either (1) in person, (2) by a prepaid overnight delivery service, (3) by facsimile transmission (FAX), (4) by the United States Postal Service, postage prepaid, registered or certified return receipt requested or (5) Email. **NOTICE** shall be deemed to have been given as of the date and time it is actually received. Receipt of notice by the real estate licensee or their Broker assisting a party as a client or customer shall be deemed to be notice to that party for all purposes under this Agreement as may be amended, unless otherwise provided in writing.

H. Remedies. In the event of a breach of this Agreement, the non-breaching party may pursue all remedies available at law or in equity except where the parties have agreed to arbitrate. Notwithstanding the above, if Buyer breaches Buyer's obligations or warranties herein Seller shall have the option to request that Holder pay the Earnest Money/Trust Money to Seller, which if disbursed to Seller by Holder shall constitute liquidated damages in full settlement of all claims by Seller. Such liquidated damages are agreed to by the parties not to be a penalty and to be a good faith estimate of Seller's actual damages, which damages are difficult to ascertain. In the event that any party hereto shall file suit for breach or enforcement of this Agreement (including suits filed after Closing which are based on or related to the Agreement), the prevailing party shall be entitled to recover all costs of such enforcement,

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including reasonable attorney's fees. The parties hereby agree that all remedies are fair and equitable and neither party will assert the lack of mutuality of remedies as a defense in the event of a dispute.

I. Equal Opportunity. This Property is being sold without regard to race, color, sex, religion, handicap, familial status, or national origin.

J. Termination by Buyer. In the event that Buyer legally and properly invokes his right to terminate this Agreement under any of the provisions contained herein, Buyer shall pay the sum of one hundred dollars (\$100.00) to Seller as consideration for Buyer's said right to terminate, the sufficiency and adequacy of which is hereby acknowledged. Earnest Money/Trust Money shall be disbursed according to the terms stated herein.

K. Severability. If any portion or provision of this Agreement is held or adjudicated to be invalid or unenforceable for any reason, each such portion or provision shall be severed from the remaining portions or provisions of this Agreement, and the remaining portions or provisions shall be unaffected and remain in full force and effect.

L. Construction. This Agreement or any uncertainty or ambiguity herein shall not be construed against any party but shall be construed as if all parties to this Agreement jointly prepared this Agreement.

16. Exhibited and Addenda. All exhibits and/or addenda attached hereto, listed below, or referenced herein are made a part of this Agreement. If any such exhibit or addendum conflicts with any preceding paragraph, said exhibit or addendum shall control:

- ☐ Exhibit "A" Legal Description
- ☒ Exhibit "B" Due Diligence Documents
- ☒ Exhibit "C" Addition to Seller's Closing Documents
- ☒ Exhibit "D" Seller's Warranties and Representations

17. Special Stipulations. The following Special Stipulations, if conflicting with any preceding paragraph, shall control:

1. Beverage inventory shall be the same amount at closing that is the day of the Binding Agreement. Seller to provide Buyer with a detailed inventory on the Binding Agreement Date of their current inventory. Inventory Level not to exceed Two Hundred Thousand Dollars (\$200,000) at Seller's last invoice cost.

2. Sale to include Point of Sale (POS) equipment, coolers, shelves and racks.

3. Buyer shall be granted an additional Thirty (30) Day Extension with payment of an Extension Fee of Ten Thousand (\$10,000). Extension Fee along with the Original Earnest Money Deposit will applied to the Purchase Price but will become non refundable should the Buyer not close.

☐ (Mark box if additional pages are attached.)

18. Method of Execution. The parties agree that signatures and initials transmitted by a facsimile, other photocopy transmittal, or by transmittal of digital signature as defined by the applicable State or Federal Law will be acceptable and may be treated as originals and that the final Commercial Purchase and Sale Agreement containing all signatures and

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initials may be executed partially by original signature and partially on facsimile, other photocopy documents, or by digital signature as defined by the applicable State or Federal Law.

19. Time Limit of Offer. This Offer may be withdrawn at any time before acceptance with Notice. Offer terminates if not countered or accepted by 5:00 o'clock ☐ a.m./ ☐ p.m. local time on the 29th day of May, 2017.

LEGAL DOCUMENTS: This is an important legal document creating valuable rights and obligations. If you have any questions about it, you should review it with your attorney. Neither the Broker nor any Agent or Facilitator is authorized or qualified to give you any advice about the advisability or legal effect of its provisions.

NOTE: Any provisions of this Agreement which are preceded by a box "☐" must be marked to be a part of this Agreement. By affixing your signature below, you also acknowledge that you have reviewed each page and have received a copy of this Agreement.

Buyer hereby makes this offer.	
<i>Ashish Patel</i>	<i>Kishorkumar Tailor</i>
BUYER <i>Ashish Patel</i> 5/23/2017 6:31:12 PM EDT	BUYER <i>Kishor Tailor and or assigns</i> 5/23/2017 6:34:18 PM EDT
By: _____	By: _____
Title: _____	Title: _____
Entity: _____	Entity: _____
05/23/2017 at 6:31 PM o'clock <input type="checkbox"/> am/ <input type="checkbox"/> pm	05/23/2017 at 6:34 PM o'clock <input type="checkbox"/> am/ <input type="checkbox"/> pm
Offer Date	Offer Date

Seller hereby:	
<input type="checkbox"/> ACCEPTS – accepts this offer. <input type="checkbox"/> COUNTERS – accepts this offer subject to the attached Counter Offer(s). <input type="checkbox"/> REJECTS this offer and makes no counter offer.	
<i>Edward J. Balling</i>	
SELLER <i>Edward J. Balling</i> 5/23/2017 09:37 PM EDT	SELLER
By: _____	By: _____
Title: <i>Executor</i>	Title: _____
Entity: _____	Entity: _____
_____ at _____ o'clock <input type="checkbox"/> am/ <input type="checkbox"/> pm	_____ at _____ o'clock <input type="checkbox"/> am/ <input type="checkbox"/> pm
Date	Date

Binding Agreement Date. This instrument shall become a "Binding Agreement" on the date ("Binding Agreement Date") the last offeror, or licensee of offeror, receives notice of offeree's acceptance. Notice of acceptance of the final offer was received on the _____ day of _____, _____ at _____ o'clock by _____ (Name).

For Information Purposes Only:

RE/MAX REAL ESTATE TEN COMMERCIAL
Listing Company
TERRY BALL
Independent Licensee
Terry.tbalk@gmail.com
Licensee Email

ReMax Real Estate Ten Commercial
Selling Company
Terry Ball
Independent Licensee
terry.tbalk@gmail.com
Licensee Email

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WORKING WITH A REAL ESTATE PROFESSIONAL

Pursuant to the Tennessee Real Estate Broker License Act, every Real Estate Licensee owes the following duties to every Buyer and Seller, Tenant and Landlord (collectively "Buyers" and "Sellers"):

1. To diligently exercise reasonable skill and care in providing services to all parties to the transaction;
2. To disclose to each party to the transaction any Adverse Facts of which Licensee has actual notice or knowledge;
3. To maintain for each party in a transaction the confidentiality of any information obtained by a Licensee prior to disclosure to all parties of a written agency agreement entered into by the Licensee to represent either or both parties in the transaction. This duty of confidentiality extends to any information which the party would reasonably expect to be held in confidence, except for any information required by law to be disclosed. This duty survives both the subsequent establishment of an agency relationship and the closing of the transaction;
4. To provide services to each party to the transaction with honesty and good faith;
5. To disclose to each party to the transaction timely and accurate information regarding market conditions that might affect such transaction only when such information is available through public records and when such information is requested by a party;
6. To give timely account for earnest money deposits and all other property received from any party to a transaction; and
7. A) To refrain from engaging in self-dealing or acting on behalf of Licensee's immediate family, or on behalf of any other individual, organization or business entity in which Licensee has a personal interest without prior disclosure of such personal interest and the timely written consent of all parties to the transaction; and
B) To refrain from recommending to any party to the transaction the use of services of another individual, organization or business entity in which the Licensee has an interest or from whom the Licensee may receive a referral fee or other compensation for the referral, other than referrals to other Licensees to provide real estate services, without timely disclosure to the party who receives the referral, the Licensee's interest in such a referral or the fact that a referral fee may be received.

In addition to the above, the Licensee has the following duties to his/her Client if the Licensee has become an Agent or Designated Agent in a transaction:

8. Obey all lawful instructions of the client when such instructions are within the scope of the agency agreement between the Licensee and Licensee's client;
9. Be loyal to the interests of the client. Licensee must place the interests of the client before all others in negotiation of a transaction and in other activities, except where such loyalty/duty would violate Licensee's duties to a customer in the transaction; and
10. Unless the following duties are specifically and individually waived in writing by a client, Licensee shall assist the client by:
 - A) Scheduling all property showings on behalf of the client;
 - B) Receiving all offers and counter offers and forwarding them promptly to the client;
 - C) Answering any questions that the client may have in negotiation of a successful purchase agreement within the scope of the Licensee's expertise; and
 - D) Advising the client as to whatever forms, procedures and steps are needed after execution of the purchase agreement for a successful closing of the transaction.

Upon waiver of any of the above duties contained in 10. above, a consumer must be advised in writing by such consumer's agent that the consumer may not expect or seek assistance from any other licensees in the transaction for the performance of said duties.

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AN EXPLANATION OF TERMS

Facilitator/Transaction Broker (not an agent for either party). The Licensee is not working as an agent for either party in this consumer's prospective transaction. A Facilitator may advise either or both of the parties to a transaction but cannot be considered a representative or advocate of either party. "Transaction Broker" may be used synonymously with, or in lieu of, "Facilitator" as used in any disclosures, forms or agreements. [By law, any licensee or company who has not entered into a written agency agreement with either party in the transaction is considered a Facilitator or Transaction Broker until such time as an agency agreement is established.]

Agent for the Seller. The Licensee's company is working as an agent for the property seller and owes primary loyalty to the seller. Even if the Licensee is working with a prospective buyer to locate property for sale, rent, or lease, the Licensee and his/her company are legally bound to work in the best interests of any property owners whose property is shown to this prospective buyer. An agency relationship of this type cannot, by law, be established without a written agency agreement.

Agent for the Buyer. The Licensee's company is working as an agent for the prospective buyer, owes primary loyalty to the buyer, and will work as an advocate for the best interests of the buyer. An agency relationship of this type cannot, by law, be established without a written buyer agency agreement.

Disclosed Dual Agent (for both parties). Refers to a situation in which the Licensee has agreements to provide services as an agent to more than one party in a specific transaction and in which the interests of such parties are adverse. This agency status may only be employed upon full disclosure to each party and with each party's informed consent.

Designated Agent for the Seller. The individual Licensee that has been assigned by his/her Managing Broker and is working as an agent for the Seller or property owner in this consumer's prospective transaction, to the exclusion of all other licensees in his/her company. Even if someone else in the Licensee's company represents a possible buyer for this Seller's property, the Designated Agent for the Seller will continue to work as an advocate for the best interests of the Seller or property owner. An agency relationship of this type cannot, by law, be established without a written agency agreement.

Designated Agent for the Buyer. The individual Licensee that has been assigned by his/her Managing Broker and is working as an agent for the Buyer in this consumer's prospective transaction, to the exclusion of all other licensees in his/her company. Even if someone else in the Licensee's company represents a seller in whose property the Buyer is interested, the Designated Agent for the Buyer will continue to work as an advocate for the best interests of the Buyer. An agency relationship of this type cannot, by law, be established without a written agency agreement.

Adverse Facts. "Adverse Facts" means conditions or occurrences generally recognized by competent licensees that have a negative impact on the value of the real estate, significantly reduce the structural integrity of improvements to real property or present a significant health risk to occupants of the property.

Confidentiality. By law, every licensee is obligated to protect some information as confidential. This includes any information revealed by a consumer which may be helpful to the other party IF it was revealed by the consumer BEFORE the Licensee disclosed an agency relationship with that other party. AFTER the Licensee discloses that he/she has an agency relationship with another party, any such information which the consumer THEN reveals must be passed on by the Licensee to that other party.

76	 05/23/2017	 05/23/2017
77	Unrepresented Party Signature Date	Unrepresented Party Signature Date
78	 05/23/2017	 05/23/2017
79	Real Estate Company Date	Real Estate Company Date
	Terry Ball	Re/Max Real Estate Ten Commercial

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RE/MAX

CONFIRMATION OF AGENCY STATUS

Every real estate licensee is required to disclose his or her agency status in a real estate transaction to any buyer or seller who is not represented by an agent and with whom the Licensee is working directly in the transaction. The purpose of this Confirmation of Agency Status is to acknowledge that this disclosure occurred. Copies of this confirmation must be provided to any signatory thereof. As used below, "Seller" includes sellers and landlords; "Buyer" includes buyers and tenants. Notice is hereby given that the agency status of this Licensee (or Licensee's company) is as follows in this transaction:

The real estate transaction involving the property located at:

2304 Morningside Drive

Morristown

TN 37814-5518

PROPERTY ADDRESS

SELLER NAME: <u>MBA</u>	BUYER NAME: <u>Patel and Tailor and or Assigns</u>
LICENSEE NAME: <u>TERRY BALL</u>	LICENSEE NAME: _____
in this consumer's current or prospective transaction is serving as:	in this consumer's current or prospective transaction is serving as:
<input type="checkbox"/> Transaction Broker or Facilitator. (not an agent for either party).	<input type="checkbox"/> Transaction Broker or Facilitator. (not an agent for either party).
<input type="checkbox"/> Seller is Unrepresented.	<input checked="" type="checkbox"/> Buyer is Unrepresented.
<input type="checkbox"/> Agent for the Seller.	<input type="checkbox"/> Agent for the Buyer.
<input checked="" type="checkbox"/> Designated Agent for the Seller.	<input type="checkbox"/> Designated Agent for the Buyer.
<input type="checkbox"/> Disclosed Dual Agent (for both parties), with the consent of both the Buyer and the Seller in this transaction.	<input type="checkbox"/> Disclosed Dual Agent (for both parties), with the consent of both the Buyer and the Seller in this transaction.

This form was delivered in writing, as prescribed by law, to any unrepresented buyer prior to the preparation of any offer to purchase, OR to any unrepresented seller prior to presentation of an offer to purchase; OR (if the Licensee is listing a property without an agency agreement) prior to execution of that listing agreement. This document also serves as confirmation that the Licensee's Agency or Transaction Broker status was communicated orally before any real estate services were provided and also serves as a statement acknowledging that the buyer or seller, as applicable, was informed that any complaints alleging a violation or violations of Tenn. Code Ann. § 62-13-312 must be filed within the applicable statute of limitations for such violation set out in Tenn. Code Ann. § 62-13-313(e) with the Tennessee Real Estate Commission, 710 James Robertson Parkway, 3rd Floor, Nashville, TN 37232, PH: (615) 741-2273. This notice by itself, however, does not constitute an agency agreement or establish any agency relationship.

By signing below, parties acknowledge receipt of Confirmation of Agency relationship disclosure by Realtor® acting as Agent/Broker OR other status of Seller/Landlord and/or Buyer/Tenant pursuant to the National Association of Realtors® Code of Ethics and Standards of Practice.

<u>Edward J Balling</u> 05/23/2017	<u>Ashish Patel</u> 05/23/2017
Seller Signature <u>Edward J Balling</u> 5/23/2017 7:10:07 PM EDT Date	Buyer Signature <u>Ashish Patel</u> 5/23/2017 6:54:23 PM EDT Date
Seller Signature _____ Date	Buyer Signature <u>Kishor Kumar Tailor</u> 5/23/2017 6:54:23 PM EDT Date
<u>Terry Ball</u> 05/23/2017	<u>Terry Ball</u> 05/23/2017
Listing Licensee <u>TERRY BALL</u> 5/23/2017 7:03:26 PM EDT Date	Selling Licensee <u>Terry Ball</u> 5/23/2017 7:03:27 PM EDT Date
<u>RE/MAX REAL ESTATE TEN COMMERCIAL</u>	<u>Re/Max Real Estate Ten Commercial</u>
Listing Company	Selling Company

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DISCLAIMER NOTICE

The Brokers and their affiliated licensees (hereinafter collectively "Licensees") involved in the Purchase and Sale Agreement (hereinafter "Agreement") regarding real estate located at

2304 Morningside Drive **Morristown** **TN 37814-5518** (hereinafter "Property")

are not attorneys and are not structural or environmental engineers. They are engaged in bringing together buyers and sellers in real estate transactions. Licensees expressly deny any expertise with respect to advice or informed opinions regarding any of the following matters. This Disclaimer Notice is an express warning to all sellers and buyers that they should not rely on any statement, comment or opinion expressed by any Licensee when making decisions about any of the following matters, including the selection of any professional to provide services on behalf of buyers or sellers. Any professional selected by buyers or sellers should be an "independent, qualified professional", who complies with all applicable state/local requirements, which may include licensing, insurance, and bonding requirements. It is strongly recommended that buyers include contingency clauses in their offers to purchase with respect to these or any other matters of concern and that buyers, in writing the offer, allow enough time to get an evaluation of the following matters from an independent, qualified professional. The matters listed below are not an exclusive list of actions or circumstances which are not the responsibility of the Licensees with whom you work. These items are examples and are provided only for your guidance and information.

- 1. THE STRUCTURAL OR OTHER CONDITIONS OF THE PROPERTY.** Consult with professional engineers or other independent, qualified professionals to ascertain the existence of structural issues, the condition of synthetic stucco (E.I.F.S.) and/or the overall condition of the Property.
- 2. THE CONDITION OF ROOFING.** Consult with a bonded roofing company for any concerns about the condition of the roof.
- 3. HOME INSPECTION.** We strongly recommend that you have a home inspection, which is a useful tool for determining the overall condition of a home including, but not limited to, electrical, heating, air conditioning, plumbing, water-heating systems, fireplaces, windows, doors and appliances. Contact several sources (like the Tennessee Department of Commerce & Insurance (<http://tn.gov/commerce/>), the American Society of Home Inspectors (www.ashi.com), the National Association of Certified Home Inspectors (www.nahi.org), and Home Inspectors of Tennessee Association (www.hita.us) and independently investigate the competency of an inspector, including whether he has complied with State and/or local licensing and registration requirements in your area. The home inspector may, in turn, recommend further examination by a specialist (heating-air-plumbing, etc.). **Failure to inspect typically means that you are accepting the Property "as is".**
- 4. WOOD DESTROYING ORGANISMS, PESTS AND INFESTATIONS.** It is strongly recommended that you use the services of a licensed, professional pest control company to determine the presence of wood destroying organisms (termites, fungus, etc.) or other pests or infestations and to examine the Property for any potential damage from such.
- 5. ENVIROMENTAL HAZARDS.** Environmental hazards, such as, but not limited to: radon gas, mold, asbestos, lead-based paint, hazardous wastes, landfills, byproducts of methamphetamine production, high-voltage electricity, noise levels, etc., require advanced techniques by environmental specialists to evaluate, remediate and/or repair. It is strongly recommended that you secure the services of knowledgeable professionals and inspectors in all areas of environmental concern.

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RF304 – Disclaimer Notice, Page 1 of 3

Version 01/01/2017

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[Return to Agenda](#)

- 40 **6. SQUARE FOOTAGE.** There are many ways of measuring square footage. Information is sometimes
41 gathered from tax or real estate records on the Property. Square footage provided by builders, real estate
42 licensees, or tax records is only an **estimate** with which to make comparisons, but **it is not guaranteed**. It is
43 advised that you have a licensed appraiser determine actual square footage.
- 44 **7. CURRENT VALUE, INVESTMENT POTENTIAL, OR RESALE VALUE OF THE PROPERTY.** A
45 true estimate of the value can only be obtained through the services of a licensed appraiser. No one, not even
46 a professional appraiser, can know the future value of a property. Unexpected and unforeseeable things
47 happen. **NOTE:** A real estate licensee's Comparative Market Analysis (CMA) or Broker's Price Opinion
48 (BPO), etc., while sometimes used to set an asking price or an offer price, is **not** an appraisal.
- 49 **8. BOUNDARY LINES, EASEMENTS, ENCROACHMENTS, AND ACREAGE.** It is strongly advised
50 that you secure the services of a licensed surveyor for a full-stake boundary survey with all boundary lines,
51 easements, encroachments, flood zones, total acreage, etc., clearly identified. It is also advised that you **not**
52 rely on mortgage loan inspection surveys, previous surveys, plat data, or Multiple Listing Service (MLS) data
53 for this information, even if acceptable to your lender.
- 54 **9. ZONING, CODES, COVENANTS, RESTRICTIONS, AND RELATED ISSUES.** Zoning, codes,
55 covenants, restrictions, home owner association by-laws, special assessments, city ordinances, governmental
56 repair requirements and related issues need to be verified by the appropriate sources in writing. If your
57 projected use requires a zoning or other change, it is recommended that you either wait until the change is **in**
58 **effect** before committing to a property or provide for this contingency in your Purchase and Sale Agreement.
- 59 **10. UTILITY CONNECTIONS, SEPTIC SYSTEM CAPABILITY, AND RELATED SERVICES.** The
60 availability, adequacy, connection and/or condition of waste disposal (sewer, septic system, etc.), water
61 supply, electric, gas, cable, internet, telephone, or other utilities and related services to the Property need to be
62 verified by the appropriate sources in writing. You should have a professional check access and/or
63 connection to public sewer and/or public water source and/or the condition of any septic system(s) and/or
64 wells. To confirm that any septic systems are properly permitted for the actual number of bedrooms, it is
65 recommended that sellers and/or buyers request a copy of the information contained in the file for the
66 Property maintained by the appropriate governmental permitting authority. If the file for this Property cannot
67 be located or you do not understand the information contained in the file, you should seek professional advice
68 regarding this matter. For unimproved land, septic system capability can only be determined by using the
69 services of a professional soil scientist and verifying with the appropriate governmental authorities that a
70 septic system of the desired type, size, location, and cost can be permitted and installed to accommodate the
71 size home that you wish to build.
- 72 **11. FLOODING, DRAINAGE, FLOOD INSURANCE, AND RELATED ITEMS.** It is recommended that
73 you have a civil or geotechnical engineer or other independent expert determine the risks of flooding,
74 drainage or run-off problems, erosion, land shifting, unstable colluvial soil, sinkholes and landfills. The risk
75 of flooding may increase and drainage or storm run-off pathways may change. Be sure to consult with the
76 proper governmental authorities, elevation surveyors, and flood insurance professionals regarding flood and
77 elevation certificates, flood zones, and flood insurance requirements, recommendations and costs.
- 78 **12. CONDEMNATION.** It is recommended that you investigate whether there are any pending or proposed
79 condemnation proceedings or similar matters concerning any portion of the Property with the State, County
80 and city/town governments in which the Property is located. Condemnation proceedings could result in all or
81 a portion of the Property being taken by the government with compensation being paid to the landowner.
- 82 **13. SCHOOL DISTRICTS AND OTHER SCHOOL INFORMATION.** It is advised that you independently
83 confirm school zoning with the appropriate school authorities, as school districts are subject to change. Other
84 school information (rankings, curriculums, student-teacher ratios, etc.) should be confirmed by appropriate
85 sources in writing.

14. INFORMATION ABOUT CRIMES, METHAMPHETAMINE PROPERTIES, OR SEX OFFENDERS. You should consult with local, state and federal law enforcement agencies for information or statistics regarding criminal activity at or near the Property, the presence of methamphetamine manufacturing, or for the location of sex offenders in a given area.

15. LEGAL AND TAX ADVICE. You should seek the advice of an attorney and/or certified tax specialist on any legal or tax questions concerning any offers, contracts, issues relating to title or ownership of the Property, or any other matters of concern, including those itemized in this Disclaimer Notice. Real estate licensees are **not** legal or tax experts, and therefore cannot advise you in these areas.

16. RECOMMENDED INSPECTORS, SERVICE PROVIDERS, OR VENDORS. The furnishing of any inspector, service provider or vendor named by the real estate licensee is done only as a convenience and a courtesy, and does not in any way constitute any warranty, representation, or endorsement. Buyers and sellers have the option to select any inspectors, service providers or vendors of the buyer's or seller's choice. You are advised to contact several sources and independently investigate the competency of any inspector, contractor, or other professional expert, service provider or vendor and to determine compliance with any licensing, registration, insurance and bonding requirements in your area.

The buyers and sellers acknowledge that they have not relied upon the advice, casual comments, or verbal representations of any real estate licensee relative to any of the matters itemized above or similar matters. The buyers and sellers understand that it has been strongly recommended that they secure the services of appropriately credentialed experts and professionals of the buyer's or seller's choice for the advice and counsel about these and similar concerns.

The party(ies) below have signed and acknowledge receipt of a copy,

Ashish Patel
 CLIENT/CUSTOMER (☒ BUYER / ☐ SELLER)
 05/23/2017 at 6:54 PM
 Date

Kishorkumar Tailor
 CLIENT/CUSTOMER (☐ BUYER / ☐ SELLER)
 05/23/2017 at 6:54 PM
 Date

The party(ies) below have signed and acknowledge receipt of a copy,

Edward J. Balling
 CLIENT/CUSTOMER (☐ BUYER / ☒ SELLER)
 05/23/2017 at 7:10 PM
 Date

CLIENT/CUSTOMER (☐ BUYER / ☐ SELLER)
 at _____ o'clock ☐ am/ ☐ pm
 Date

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EXHIBIT "B"

TO COMMERCIAL PURCHASE AND SALE AGREEMENT

Due Diligence Documents

Property Address: 2304 Morningside Drive Morristown TN 37814-5518
 Buyer: Ashish Patel and or Assigns Kishorkumar Tailor and or Assigns
 Seller: MBA

This EXHIBIT (hereinafter "Exhibit"), between the undersigned Seller and Buyer is entered into and is effective as of the Binding Agreement Date provided in the Commercial Purchase and Sale Agreement for the purpose of changing, deleting, supplementing or adding terms to said Commercial Purchase and Sale Agreement. In consideration of the mutual covenants herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the following are the Due Diligence Documents:

[Select only those items that apply to this transaction; the items not selected shall not apply to this Agreement]:

- ☒ 1. Most recent property tax assessments and tax bills.
- ☐ 2. The most recent title insurance policy insuring the Property, including complete and legible copies of all documents (whether or not recorded) which are referenced therein as title exceptions.
- ☐ 3. The most recent Survey, ALTA (American Land Title Association) of the Property or if such a survey is not available, the most recent survey of the Property prepared by a licensed Tennessee surveyor.
- ☐ 4. All soil reports covering any of the Property.
- ☐ 5. All cruise reports of existing timber on the Property.
- ☐ 6. All plans and specifications for Property improvements, including without limitation, diagrams of any outdoor irrigation system.
- ☒ 7. All existing leases and subleases (including concession and license agreements for use of space within the Property) and any amendments and letter agreements relating thereto, together with all correspondence to and from tenants, and a written summary of any leases currently in negotiation, specifying the tenant, premises to be leased, rents, and term and outlining all other material deal points.
- ☒ 8. All current insurance policies, together with a written summary of insurance coverage and premiums by policy type.
- ☒ 9. All certificates of occupancy.
- ☐ 10. All contractor, vendor, manufacturer and other warranties with respect to all real property improvements, fixtures, equipment and personal property to be conveyed.
- ☒ 11. All equipment leases and services and vendor contracts (including all amendments and side-letter agreements relating thereto).
- ☒ 12. All environmental (hazardous substances), engineering, physical inspection, marketing and feasibility studies, assessments and reports, including any wetlands reports.
- ☐ 13. A current rent roll for the Property together with monthly income and expense reports for the period of Seller's ownership of the Property (or for the previous 36 months if shorter).
- ☒ 14. A written summary of all pending or threatened litigation, insurance claims and notices of legal violations, together with the pertinent notices, demands, pleadings and other documents.
- ☒ 15. All reports, assessments or studies regarding actions required to bring the Property into compliance with the Americans with Disabilities Act or any similar state statute or local ordinance or code.
- ☒ 16. A schedule of special assessment districts and assessment amounts, if any.

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Exhibit "B" to Commercial Purchase and Sale Agreement (Due Diligence Documents), Page 1 of 2

Instant

[Return to Agenda](#)

- 38 ☒ 17. A schedule of impact fees paid or owing on the Property, if any.
- 39 ☒ 18. A schedule of allowances or rebates due on tenant improvements, if any, and proof of insurance from individual
- 40 tenants (including, as tenants, any space concessionaires of licensees).
- 41 ☐ 19. All maintenance records for the Property.
- 42 ☒ 20. All municipal, county, state or federal permits, licenses and authorizations affecting the use, operation and
- 43 maintenance of the Property.
- 44 ☐ 21. Other: _____
- 45 _____
- 46 ☐ 22. Other: _____
- 47 _____
- 48 ☐ 23. Other: _____
- 49 _____

50 If the Seller does not provide any of the requested information selected above, the Seller is representing, to the best of his

51 knowledge, that no such documentation exists for that particular item.

52 This Exhibit is made a part of the Commercial Purchase and Sale Agreement as if quoted therein verbatim. Should the terms

53 of this Exhibit conflict with the terms of the Commercial Purchase and Sale Agreement or other documents executed prior to

54 or simultaneous to the execution of this Exhibit, the terms of this Exhibit shall control, and the conflicting terms are hereby

55 considered deleted and expressly waived by both Seller and Buyer. In all other respects, the Commercial Purchase and Sale

56 Agreement shall remain in full force and effect.

57 The party(ies) below have signed and acknowledge receipt of a copy.

58	<i>Ashish Patel</i>		<i>Kishorkumar Tailor</i>	
59	BUYER	5/23/2017 6:31:36 PM EDT	BUYER	5/23/2017 6:34:31 PM EDT
60	By: _____		By: _____	
61	Title: _____		Title: _____	
62	05/23/2017	at 6:31 PM	05/23/2017	at 6:34 PM
63	Date	o'clock <input type="checkbox"/> am/ <input type="checkbox"/> pm	Date	o'clock <input type="checkbox"/> am/ <input type="checkbox"/> pm

64 The party(ies) below have signed and acknowledge receipt of a copy.

65	<i>Edward J. Balling</i>			
66	SELLER MBA	5/23/2017 7:10:19 PM EDT	SELLER	
67	By: _____		By: _____	
68	Title: _____		Title: _____	
69	05/23/2017	at 7:10 PM		
70	Date	o'clock <input type="checkbox"/> am/ <input type="checkbox"/> pm	Date	o'clock <input type="checkbox"/> am/ <input type="checkbox"/> pm

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JERRY KADER
Independent Licensee

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EXHIBIT "C"

TO COMMERCIAL PURCHASE AND SALE AGREEMENT ADDITIONS TO SELLER'S CLOSING DOCUMENTS

1 Property Address: 2304 Morningside Drive Morristown TN 37814-5518
 2 Buyer: Ashish Patel and or Assigns & Kishorkumar Tailor and or Assigns
 3 Seller: MBA

4 This EXHIBIT (hereinafter "Exhibit"), between the undersigned Seller and Buyer is entered into and is effective as of the
 5 Binding Agreement Date provided in the Commercial Purchase and Sale Agreement for the purpose of changing, deleting,
 6 supplementing or adding terms to said Commercial Purchase and Sale Agreement. In consideration of the mutual covenants
 7 herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties
 8 agree to as follows:

9 *[Select only those items that apply to this transaction; the items not selected shall not be part of the Seller's Closing*
 10 *Documents:]*

- 11 ☒ 1. **Architectural Plans.** An Assignment of Seller's rights, if any, to any architectural drawings and site plans for the
 12 Property and blue-lined copies of such drawings and plans.
- 13 ☒ 2. **Assignment of Contracts.** Duly executed and acknowledged Assignment of Contracts assigning and conveying to
 14 Buyer the Seller's interest in, to and under the assignable Contracts and containing an indemnity by Seller in favor of
 15 Buyer for Claims related to periods prior to the Closing and (if such contracts are assumed by Buyer) containing
 16 an indemnity by Buyer in favor of Seller related to the period after the Closing.
- 17 ☒ 3. **Assignment of Leases.** Duly executed and acknowledged Assignment of Leases assigning and conveying to the
 18 Buyer the Seller's interest in, to and under the Leases and containing an indemnity by the Seller in favor of Buyer
 19 for claims by tenants arising prior to the Closing, and an indemnity by Buyer in favor of Seller for claims by tenants
 20 arising after the Closing.
- 21 ☒ 4. **Assignment of Licenses.** An Assignment of any and all municipal, county, state or federal permits or licenses, as
 22 and if existing and if transferable, held or controlled by the Seller, relating to the Property.
- 23 ☐ 5. **Assignment of Name Rights.** An Assignment of Seller's rights with respect to the name
 24 _____
- 25 ☐ 6. **Assignment of Security Deposits.** An Assignment of all Security Deposits being held by Seller or the agents of
 26 Seller with respect to the Property to Buyer.
- 27 ☐ 7. **Bill of Sale.** Duly executed and acknowledged Limited Warranty Bill of Sale conveying to Buyer good and
 28 marketable title to the Personal Property (and to the Improvements to the extent they could be determined to be
 29 personal property), free of all liens, security interests and encumbrances.
- 30 ☐ 8. **Estoppel Certificates.** Estoppel certificates from all existing commercial tenants, concessionaires and licensees in
 31 the Property, if any, and in form and content acceptable to Buyer and dated no earlier than 30 days prior to Closing.
- 32 ☒ 9. **Keys and Records.** All of the keys to any doors or locks on the Property and the original tenant files and other
 33 books and records relating to the Property in Seller's possession.
- 34 ☒ 10. **Leases and Contracts.** Original or certified copies of executed counterparts of the Leases and Contracts.
- 35 ☐ 11. **Notice to Tenants.** A letter executed by the Seller in a form approved by Buyer and addressed to all tenants under
 36 the Leases, notifying such tenants of the change in ownership of the Property and directing that payment of all rent
 37 and other sums due from such tenants from and after the Closing Date be made to Buyer or such other party as
 38 Buyer may direct. (It shall be the responsibility of Seller to deliver such letters to the tenants.)

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 CF503 - Exhibit "C" to Commercial Purchase and Sale Agreement (Additions to Sellers Closing Documents), Page 1 of 2

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- 39 ☐ **12. Rent Roll.** A complete and accurate rent roll (the "Rent Roll") for the Property updated to the date of Closing and
 40 certified to be true and correct by Seller at Closing.
- 41 ☐ **13. Transfer Tax Declarations and other Tax Documents.** A transfer tax declaration and all such other tax
 42 documents as may be required of Seller in order to enable Buyer to make an appropriate 1099 filing.
- 43 If the Seller does not provide any of the requested information selected above, the Seller is representing, to the best of his
 44 knowledge, that no such documentation exists for that particular item.
- 45 This Exhibit is made a part of the Commercial Purchase and Sale Agreement as if quoted therein verbatim. Should the terms
 46 of this Exhibit conflict with the terms of the Commercial Purchase and Sale Agreement or other documents executed prior to
 47 or simultaneous to the execution of this Exhibit, the terms of this Exhibit shall control, and the conflicting terms are hereby
 48 considered deleted and expressly waived by both Seller and Buyer. In all other respects, the Commercial Purchase and Sale
 49 Agreement shall remain in full force and effect.

50 The party(ies) below have signed and acknowledge receipt of a copy.

51 <u>Ashish Patel</u>	51 <u>Kishorkumar Tailor</u>
52 BUYER <u>Ashish Patel and Dr. Javigns</u>	52 BUYER <u>Kishorkumar Tailor</u>
53 By: _____	53 By: _____
54 Title: _____	54 Title: _____
55 <u>05/23/2017</u> at <u>6:31 PM</u> o'clock <input type="checkbox"/> am/ <input type="checkbox"/> pm	55 <u>05/23/2017</u> at <u>6:34 PM</u> o'clock <input type="checkbox"/> am/ <input type="checkbox"/> pm
56 Date	56 Date

57 The party(ies) below have signed and acknowledge receipt of a copy.

58 <u>Edward J. Balling</u>	58 _____
59 SELLER MBA <u>5/23/2017 7:10:21 PM EDT</u>	59 SELLER
60 By: _____	60 By: _____
61 Title: <u>Executor</u>	61 Title: _____
62 <u>05/23/2017</u> at <u>7:10 PM</u> o'clock <input type="checkbox"/> am/ <input type="checkbox"/> pm	62 _____ at _____ o'clock <input type="checkbox"/> am/ <input type="checkbox"/> pm
63 Date	63 Date

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JERRY KADER
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EXHIBIT "D"

TO COMMERCIAL PURCHASE AND SALE AGREEMENT

Seller's Warranties and Representations

1 Property Address: 2304 Morningside Drive Morristown TN 37814-5518
 2 Buyer: Ashish Patel and or Assigns Kishorkumar Tailor and or Assigns
 3 Seller: MBA

4 This EXHIBIT (hereinafter "Exhibit"), between the undersigned Seller and Buyer is entered into and is effective as of the
 5 Binding Agreement Date provided in the Commercial Purchase and Sale Agreement for the purpose of changing, deleting,
 6 supplementing or adding terms to said Commercial Purchase and Sale Agreement. In consideration of the mutual covenants
 7 herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties
 8 agree to as follows:

9 *[Select only those items that apply to this transaction; the items not selected shall not be part of this Agreement. Each*
 10 *item selected shall be deemed material for purposes of Buyer's Remedies under the Seller's Representations and*
 11 *Warranties paragraph of the Commercial Purchase and Sale Agreement.]*

- 12 ☒ 1. **Accounts Payable.** There are no outstanding accounts payable relating to the Property that would be binding on the
 13 Buyer.
- 14 ☒ 2. **Bankruptcy.** Seller represents and warrants that Seller is solvent and has not made a general assignment for the
 15 benefit of creditors or been adjudicated as bankrupt or insolvent, nor has a receiver, liquidator or trustee of Seller or
 16 any of its respective properties (including the Property) been appointed or a petition filed by or against Seller for
 17 bankruptcy, reorganization or arrangement pursuant to the Federal Bankruptcy Act or any similar federal or state
 18 statute, or any proceeding instituted for the dissolution or liquidation of Seller.
- 19 ☒ 3. **Certificates.** To the best of Seller's knowledge, there are presently in effect permanent certificates of occupancy,
 20 licenses and permits as may be required for the Property and, to the best of Seller's knowledge, the present use and
 21 occupation of the Property is in compliance and conformity with the certificates of occupancy and all licenses and
 22 permits. There has been no notice or request of any municipal departments, insurance company or board of fire
 23 underwriters (or organization exercising functions similar thereto) directed to Seller and requesting the performance
 24 of any work or alteration in respect to the Property which has not been complied with.
- 25 ☒ 4. **Condemnation.** Seller has not been notified that any condemnation or other taking by eminent domain of the
 26 Property or any portion thereof has been instituted and, to the best of Seller's knowledge, there are no pending or
 27 threatened condemnation or eminent domain proceedings (or proceedings in the nature or in lieu thereof) affecting
 28 the Property or any portion thereof or its use.
- 29 ☒ 5. **Condition of Improvements.** Seller is not aware of any structural or other defects, latent or otherwise, in the
 30 Improvements.
- 31 ☒ 6. **Declarations.** To the best of Seller's knowledge, there is no default, or any event which with the passage of time or
 32 notice, or both, would constitute a default or breach on the part of the Seller under any declaration of easements
 33 and/or restrictive covenants affecting the Property; and, to the best of Seller's knowledge, there is no default, or
 34 claim of default, or any event which with the passage of time or notice, or both, would constitute a default or breach
 35 thereunder on the part of any other party whose property is encumbered by or benefits from any declaration.
- 36 ☒ 7. **Hazardous Substances.** To the best of Seller's knowledge (i) no "hazardous substances," or any other pollutants,
 37 toxic materials, or contaminants have been or shall prior to Closing be discharged, (ii) no underground storage tanks
 38 are located on the Property or were located on the Property and subsequently removed or filled, (iii) the Property has
 39 not previously been used as a gas station, cemetery, landfill, or as a dump for garbage or refuse, and (iv) the
 40 Property has not previously been and is not currently in violation of the Tennessee or Federal Environmental

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- 41 Protection Standards. Seller has not received any notice or demand from any governmental or regulatory agency or
42 authority requiring Seller to remove any hazardous substances or contaminants or toxic materials from the Property.
- 43 ✕ 8. **Leases.** The rent roll which Seller has provided Buyer is the complete and accurate rent roll for the Property as of
44 the date hereof setting forth the leases in effect relating to the Property and setting forth with respect to each of the
45 leases (i) the name of the tenant thereunder; (ii) the commencement and termination dates of the term of each such
46 lease and information relating to renewals or extensions thereof; (iii) the premises covered by each such lease; (iv)
47 the amount of rent, percentage rent and other charges payable thereunder and the date to which rent and other
48 charges payable thereunder have been paid; and (v) the amount of the security deposit required under each said lease
49 and held by Seller.
- 50 ✕ 9. **No Assessments.** To the best knowledge of Seller, no assessments (other than ad valorem taxes) have been made
51 against the Property that are unpaid, whether or not they have become liens.
- 52 ✕ 10. **No Liens.** All contractors, subcontractors and other persons or entities furnishing work, labor, materials or supplies
53 by or at the instance of Seller for the Property have been paid in full and, other than routine ongoing charges
54 pursuant to the Contracts, there are no claims against the Property or Seller in connection therewith.
- 55 ✕ 11. **No Liens upon Building Service Equipment.** All fixtures, equipment, apparatus, fittings, machinery, appliances,
56 furniture, furnishings and articles of personal property, attached or appurtenant to, or used in connection with the
57 occupation or operation of all or any part of the Property and which are owned by Seller are free of any and all liens,
58 encumbrances, charges or adverse interests except security deeds from which the Property (including such
59 personalty) and fixtures will be released at Closing.
- 60 ✕ 12. **No Litigation.** There are no actions, suits, or proceedings pending or, to the best of Seller's knowledge, threatened
61 by any organization, person, individual, or governmental agency against Seller with respect to the Property or
62 against the Property, or with respect thereto, nor does Seller know of any basis for such action. Seller also has no
63 knowledge of any currently pending application for changes in the zoning applicable to the Property or any portion
64 thereof.
- 65 ✕ 13. **No Other Agreements.** Except for the leases and contracts and the Permitted Exceptions, there are no leases,
66 service contracts, management agreements, or other agreements or instruments in force and effect, oral or written,
67 that grant to any person whomsoever or any entity whatsoever any right, title interest, or benefit in or to all or any
68 part of the Property, which will survive the Closing or be binding upon Buyer.
- 69 ✕ 14. **Payment of all Outstanding Bills.** All accounts payable, bills for services, utilities, taxes, assessments, and
70 payments due under any of the contracts for periods prior to the calendar month in which the Closing occurs have
71 been paid in full or shall be paid in full at Closing.
- 72 ✕ 15. **Preexisting Right to Acquire.** No person or entity has any right or option to acquire the Property or any portion
73 thereof which will have any force or effect after execution hereof, other than Buyer.
- 74 ✕ 16. **Proceedings Affecting Access.** Seller has not been notified that there are any pending proceedings that could have
75 the effect of impairing or restricting access between the Property and adjacent public roads and, to the best of
76 Seller's knowledge, no such proceedings are pending or threatened.
- 77 ✕ 17. **Service Contracts.** Seller has provided Buyer with copies of all existing equipment leases, service and vendor
78 contracts that relate to the operation, management, or maintenance of the Property. All such contracts are in full
79 force and effect in accordance with their respective provisions, and to Seller's knowledge, there is no default, or
80 claim of default, or any event which with the passage of time or notice, or both, would constitute a default on the
81 part of any party to any of such contracts. All such contracts are terminable without penalty or obligation to pay any
82 severance or similar compensation on no more than thirty (30) days' notice.
- 83 ✕ 18. **Tax Returns.** All property tax returns required to be filed by Seller relating to the Property under any law,
84 ordinance, rule, regulation, order or requirement of any governmental authority have been truthfully, correctly and
85 timely filed.
- 86 ✕ 19. **Violations.** To the best of Seller's knowledge, there are no violations of law, municipal or county ordinances,
87 building codes, or other legal requirements with respect to the Property; the Improvements comply with all
88 applicable legal requirements (including applicable zoning ordinances) with respect to the use, occupancy, and
89 construction thereof; and the conditions to the granting of the zoning of the Property have been satisfied.

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CF504 – Exhibit "D" to Commercial Purchase and Sale Agreement (Seller's Warranties and Representations), Page 2 of 3

90 ☐ **20. Zoning.** The Property is currently zoned IB under the applicable zoning ordinances of
 91 Morristown, Hamblen County, Tennessee.

92 This Exhibit is made a part of the Commercial Purchase and Sale Agreement as if quoted therein verbatim. Should the terms
 93 of this Exhibit conflict with the terms of the Commercial Purchase and Sale Agreement or other documents executed prior to
 94 or simultaneous to the execution of this Exhibit, the terms of this Exhibit shall control, and the conflicting terms are hereby
 95 considered deleted and expressly waived by both Seller and Buyer. In all other respects, the Commercial Purchase and Sale
 96 Agreement shall remain in full force and effect.

97 The party(ies) below have signed and acknowledge receipt of a copy.
 98 Ashish Patel Kishorkumar Tailor
 99 **BUYER** Ashish Patel and or Assigns **BUYER** Kishorkumar Tailor and or Assigns
 100 By: _____ By: _____
 101 _____
 102 Title _____ Title _____
 103 05/23/2017 at _____ o'clock ☐ am/ ☐ pm 05/23/2017 at 6:34 PM o'clock ☐ am/ ☐ pm
 104 **Date** _____ **Date** _____

105 The party(ies) below have signed and acknowledge receipt of a copy.
 106 Edward J Balling
 107 **SELLER** MBA **SELLER**
 108 By: _____ By: _____
 109 _____
 110 Title Executor Title _____
 111 05/23/2017 at _____ o'clock ☐ am/ ☐ pm _____ at _____ o'clock ☐ am/ ☐ pm
 112 **Date** _____ **Date** _____

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Terry Ball
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AMENDMENT “ 1 ” TO COMMERCIAL PURCHASE AND SALE AGREEMENT

Buyer: Ashish Patel & Kishorkumar Tailor
 Seller: MBA
 Property: 2304 Morningside Drive Morristown TN 37814-5518

In consideration of the mutual covenants herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to amend that certain Commercial Purchase and Sale Agreement with a Binding Agreement Date of 05/23/2017 and any incorporated addenda, exhibits or prior amendments (collectively referred to herein as “Agreement”) for the purchase and sale of real property specified above as follows:

Kishorkumar Tailor request to be removed from the Purchase and Sale Agreement for the acquisition Morristown Beverage Associates, Inc.

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 CF653 – Amendment to Commercial Purchase and Sale Agreement, Page 1 of 2

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This Amendment shall become binding when signed by all parties and shall be incorporated into the Agreement and all other terms and conditions of the Commercial Purchase and Sale Agreement shall remain in full force and effect.

The party(ies) below have signed and acknowledge receipt of a copy.

Ashish Patel

BUYER *Ashish Patel* 06/06/2017 10:32 AM EDT

By: *Buyer*

Entity:

06/06/2017 at 10:32 AM o'clock ☐ am/ ☐ pm

Date

Kishorkumar Tailor

BUYER *Kishorkumar Tailor* 06/06/2017 4:01 PM EDT

By: *Buyer*

Entity:

06/06/2017 at 4:01 PM o'clock ☐ am/ ☐ pm

Date

The party(ies) below have signed and acknowledge receipt of a copy.

Authenticsign

Edward J. Balling Executor, Estate of Peter J. Balling

SELLER *Edward J. Balling* 06/06/2017 5:25 PM EDT

By: *Executor*

Entity:

06/06/2017 at 5:25 PM o'clock ☐ am/ ☐ pm

Date

SELLER

By:

Entity:

at o'clock ☐ am/ ☐ pm

Date

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