

PURCHASE AGREEMENT
Armstrong

THIS PURCHASE AGREEMENT (“**Agreement**”) is made as of ~~August~~ _____, 2012, between THE HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE CITY OF RAMSEY, MINNESOTA, a public body politic and corporate under the laws of the state of Minnesota (“**Seller**”) and KONA PROPERTIES, LLC, a Minnesota limited liability company (“**Buyer**”).

RECITALS

A. Seller is the owner of certain real property located in the City of Ramsey (the “**City**”), Anoka County, Minnesota legally described on Exhibit A (the “**Property**”). As used in this Agreement the term “Property” also includes all hereditaments and appurtenances to the Property. There are no improvements located on the Property. The Parties do not contemplate the conveyance of any personal property pursuant to this Agreement.

B. Seller desires to sell and Buyer desires to buy the Property for use as a convenience store/gas station subject to the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the premises and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as set forth below.

AGREEMENT

In consideration hereof, the parties agree as follows:

ARTICLE 1
RECITALS.

The foregoing recitals are incorporated herein by this reference.

ARTICLE 2
CONVEYANCE.

2.1 **Conveyance.** Subject to the terms and conditions of this Agreement, Seller shall convey the Property to Buyer at the Closing (as defined below).

ARTICLE 3
PURCHASE PRICE.

3.1 **Price.** The purchase price (“**Purchase Price**”) for the Property shall be \$11.00 per gross square foot, based on the Survey defined in Section 4.2 hereof, rounded to the nearest whole square foot.

3.2 **Earnest Money.** Within two (2) business days after Seller’s execution of this Agreement (the “**Effective Date**”), Buyer shall deposit earnest money in the amount of \$25,000 (the “**Earnest Money**”) with Commercial Partners Title, LLC (“**Title**”). Title shall hold the Earnest Money in escrow pursuant to the provisions of the Earnest Money Escrow Agreement in the form attached hereto as Exhibit B. Buyer and Seller shall each pay one half of Title’s fee, if any, for holding and disbursing the Earnest Money. Notwithstanding anything else in this Agreement to the contrary, unless Buyer

terminates this Agreement ~~by on or before~~ 5:00 p.m. Local Time (defined in Section 14.11 below) on the ~~thirtieth day after the Effective Date~~ Contingency Date (as defined in Section 6.2 below), the Earnest Money shall be disbursed by Title Company to Seller and shall not be refundable to Buyer under any circumstances except for (a) Seller's uncured default under this Agreement; or (b) a timely termination of this Agreement by Buyer pursuant to Section 8.3 below.

3.3 **Interest Bearing Account.** The Earnest Money shall be placed in an interest bearing account by the Title Company. The term Earnest Money shall include any interest accrued on the amount deposited with Title.

3.4 **Balance of Payment.** The balance of the Purchase Price shall be paid in cash by wire transfer of immediately available funds on the Closing Date. At Closing, the Earnest Money shall be applied as a credit against the Purchase Price to be paid by Buyer to Seller.

ARTICLE 4 TITLE EXAMINATION.

4.1 **Title Commitment.** Seller shall, at Seller's expense and within 10 days after the Effective Date, furnish to Buyer a commitment ("**Title Commitment**") for an ALTA Form B 2006 owner's policy of title insurance ("**Policy**"), from Title covering all of the land that will be included within the Property, together with legible copies of all documents referenced therein and in the Survey (as defined below).

4.2 **Survey.** Seller shall, at Seller's expense and within 10 days after the Effective Date, furnish Buyer with a current ALTA/ACSM Land Title survey of the Property prepared by a surveyor registered under the laws of the Minnesota (the "**Survey**"). The Survey must be certified to Seller, Buyer, and Buyer's lender, if requested by Buyer, and Title. The Survey shall be prepared in accordance with the "Minimum Standard Detail Requirements" for ALTA/ACSM Land Title Surveys, jointly established by ALTA and ASCM in 2011, and shall include Items 1,3,4 and 19 of Table A thereof. Buyer shall pay for any Table A Items required by Buyer and/or its lender not listed above, any additional fieldwork or revisions to the Survey that Buyer may require, or any update to the Survey, at or before Closing, to reflect the final boundaries of the Property.

4.3 **Objections.** The date the Title Commitment, the underlying documents, as described in Section 4.1 above and the Survey have all been delivered to Buyer is the "Title Matters Delivery Date." Buyer shall have until and through ten (10) days following the Title Matters Delivery Date to notify Seller of specific objections that Buyer has to the Title Commitment (including any exception documents) and the Survey (the "Title Review Period"). Upon expiration of said Title Review Period, if Buyer has not notified Seller of any unacceptable items in the Commitment (including any exception documents) or the Survey, Buyer shall be deemed to have accepted all exceptions to title referenced in the Commitment and all matters shown on the Survey, and such accepted exceptions shall be included in the term "Permitted Exceptions" as used herein. In the event Buyer does object to any matters shown in the Commitment (including any exception documents) or the Survey within the Title Review Period, Seller shall have a period of ten (10) days, commencing on the day after the Effective Date of Notice (as defined in Section 14.4 below) of Buyer's objections and ending at 5:00 p.m. Central Daylight or Standard Time, as applicable, on the tenth (10th) day thereafter (the "Election Period"), to notify Buyer of Seller's election to cure or not cure any one or more of such objections, it being understood and agreed that Seller has no duty or obligation to cure or attempt to cure such objections. In the event that Seller is unable or unwilling to cure Buyer's objections prior to the expiration of the Election Period, Seller shall notify Buyer in writing of such fact prior to the expiration of the Election Period, it being understood and

agreed that if Seller fails to provide such notice, Seller shall be deemed to have elected not to cure any such objections. In such event, or if Seller shall fail to provide any such notice to Buyer, Buyer shall have until ~~thirty~~ten (30) days after the last day of the Election Period within which to either (a) waive Buyer's objections in writing and accept title to the Property subject to the matters which Seller has been unable or unwilling to cure; or (b) terminate this Agreement in writing and the Earnest Money shall be returned to Buyer and neither Seller nor Buyer shall have any further obligation hereunder, except as to those obligations provided for herein which are stated to survive termination of this Agreement. If Buyer does not so waive such objections in writing or so terminate this Agreement in writing Buyer shall be deemed to have waived Buyer's objections and accepted the Property subject to the matters which Seller has been unable or unwilling to eliminate and such accepted exceptions shall be included in the term "Permitted Exceptions".

4.4 **Policy.** At Closing, Seller will cause Title to furnish to Buyer a suitably marked up Title Commitment initialed by Title or a proforma title policy undertaking to issue the Policy in the form required by the Title Commitment as approved by Buyer and otherwise in accordance with this Agreement.

ARTICLE 5 COSTS AND FEES CONCERNING DEVELOPMENT OF PROPERTY.

5.1 **Seller's Plat Obligations.** ~~Not later than September 4, 2012, Seller will prepare and submit an application to the City for approval of a plat of the HRA Property (the "Plat"). The Plat must plat the Property as a separate lot and must dedicate a right of way or easement for a public street contiguous to the easterly boundary of the Property. Seller will use commercially reasonable efforts to cause the City to submit the Plat to the City's city council (the "City Council") for preliminary plat approval and final plat approval on or before 5:00 Local Time (defined below) on the date which is 150 days after the date of this Agreement (the "Contingency Date"). The parties acknowledge and agree that the City Council of the City of Ramsey and all other governmental authorities with jurisdiction have approved the plat of COR TWO (the "Plat"), the subdivision in which the Property is located. A copy of the Plat is attached hereto as Exhibit C. The Plat will be recorded at the Closing of the earliest of Lot 3, 4 or 5 to close.~~

5.2 **Construction Reimbursement Obligations.** It is understood and agreed that the owner of Lot 3 will construct an access drive to serve Lots 3, 4 and 5, the plans for which have been approved by the City. At Closing, in addition to the Purchase Price, Buyer will pay to Seller that portion of the cost of construction of the access drive equal to a fraction of the cost of the entire access drive, the numerator of which is the number of square feet of the access drive lying on Lot 35 and the denominator of which is the total number of square feet of the access drive lying on Lots 3, 4 and 5, as evidenced by sheet C2.1 of the approved site plans dated July 25, 2012, and the cost of construction of any and all utilities extended to the site as part of that common construction equal to a fraction of the cost of the entire utility improvements, the numerator of which is the portion of the utilities serving Lot 35 and the denominator being the total cost of the utility improvements. An engineers opinion of probable construction costs are attached as Exhibit D. The provisions of this Section shall survive the Closing.

5.3 **Fees.** It is understood and agreed that the City's ordinances impose various fees and charges that are payable upon the approval of a final plat. ~~Attached as Exhibit C is a description of the fees and charges that will be payable when the Plat is approved and an estimate of the amount of the fees and charges attributable the Property (the "Platting Fees"). Buyer is responsible for the payment of the Platting Fees, and Seller is responsible for the payment of the fees or charges that are payable upon the approval of the Plat that are attributable to portions of the property owned by Seller in the development~~

~~known as The COR (the “**HRA Property**”) other than the Property. Buyer must pay the Platting Fees at Closing. Seller has made a good faith effort to accurately set forth the nature and amount of the Platting Fees on Exhibit C, but Seller is not representing or warranting the accuracy of Exhibit C and in the event of a conflict between the terms of the City’s ordinances and Exhibit C, Buyer will be required to pay all fees due and payable with respect to the Property under the terms of the City’s ordinances (the “**Platting Fees**”), and that, in connection with the approval referenced in Section 5.1 above, Seller has paid such Platting Fees, including those attributable to the Property. The Platting Fees attributable to the Property are \$39,201.00, and at Closing, in addition to the Purchase Price, Buyer shall pay such amount.~~

5.4 **Signage.** Attached hereto as Exhibits E-1 and F-1 are drawings showing the locations of the signage to be placed at the entry to the Property and the entry to the Project, respectively. Attached hereto as Exhibits E-2 (the “**Drive Entry Sign**”) and F-2 (the “**Project Entry Sign**”) are depictions of the signs to be placed in such locations. Buyer shall pay one third of the cost of construction of the Drive Entry Sign and the incidences thereof, including, without limitation, landscaping and shall be entitled to the use of one (1) 4 foot by 4 foot panel thereon. Buyer shall pay one third of the cost of construction of the Project Entry Sign and the incidences thereof, including, without limitation, landscaping and shall be entitled to the use of one (1) 6 foot by 8 foot panel thereon, which payment shall be made within thirty (30) days after Seller bills Buyer for the cost thereof. After construction, Seller shall maintain the Drive Entry Sign and the Project Entry Sign including the incidences thereto, but retains the right to include the cost thereof in costs payable by Buyer as owner of Lot 5, by virtue of the Special Service District for COR TWO, among other properties, created by the Ramsey City Council. The provisions of this Section shall survive the Closing.

5.5 **5.4–Expenses of Buyer.** Buyer shall pay all other costs of the development of the Property, including, without limitation, obtaining an approved site plan for the Property, designing the stormwater management and drainage system for the Property; and designing and constructing Buyer’s building, parking facilities, sanitary sewer and watermain connections, stormwater management and drainage system, landscaping and related improvements on the Property.

ARTICLE 6
DUE DILIGENCE; RIGHT OF ENTRY; CONTINGENCY DATE.

6.1 **Property Information.** Seller shall, within 5 business days after the Effective Date, deliver to Buyer engineering studies, analysis, soil test borings, environmental studies and other documents pertaining to the physical condition, development, and/or operation of the Property in Seller’s possession or control, if any (the “**Property Information**”). Seller makes no representation or warranty to Buyer regarding the truth or accuracy of the information or data contained in the Property Information.

6.2 **Right of Entry.** During period commencing on the Effective Date, through and including the sixtieth (60th) day after the date of this Agreement (the “**Contingency Date**”), Buyer and its employees, agents and contractors shall have the right to enter the Property during normal business hours and upon reasonable prior notice to Seller to inspect the same, perform surveys, environmental assessments, soil and other tests and for other investigations and activities consistent with the purposes of this Agreement (collectively, the “**Inspections**”). Notwithstanding the foregoing, Buyer and its employees, agents and independent contractors shall have the right to enter onto the Property after the Contingency Date to show the Property to prospective lenders and others and to inspect the Property, but Buyer shall not conduct any Investigations after the Contingency Date.

6.3 **Damage.** All Inspections shall be conducted at reasonable times in such manner so as to not cause unreasonable interference with the use or occupancy of, or damage to, the Property. Buyer

shall promptly repair any damage and restore the Property to its condition immediately prior to such entry and damage. If it is not reasonably practical to restore the Property to its condition prior to such Inspections, Buyer will not be required to restore the Property if prior to undertaking any such Inspections, Buyer receives written approval of Seller that it will not be required to restore the Property.

6.4 **Indemnity for Costs of Inspections.** Buyer shall promptly pay for all services rendered by its agents, employees and contractors to conduct the Inspections and provide the Data and Services, and shall not allow any mechanic's liens to attach to, or be filed against, the Property. Buyer shall indemnify, protect, defend and hold Seller harmless from and against any obligation, liability, claim (including any claim for damage to property or injury to or death of any persons), lien or encumbrance, loss, damage, cost or expense, including attorneys' fees, whether or not legal proceedings are instituted, in any way arising from the Inspections or examinations of the Property by Buyer or its agents, employees or contractors. The indemnity which is the subject of the preceding sentence shall not cover liability arising from the physical condition of the Property unless such physical condition is created by Buyer. Such agreement to repair and restore, and to indemnify and hold harmless Seller, shall survive Closing or any termination of this Agreement notwithstanding any provision to the contrary in this Agreement.

6.5 **Indemnity for Injuries.** The right of entry granted by this Section 6 shall be at Buyer's sole risk. Buyer shall indemnify, defend and hold Seller harmless against claims, damages, costs and expenses, including attorneys' fees, for injury, including death, to any person, or damage or loss of any kind to property, including the Property, that may occur as a result of Buyer's exercise of the rights granted under this Paragraph 6.

6.6 **Approval or Termination.**

(a) If Buyer has no objections to the results of Buyer's audits and inspections of the Property and the matters made available to Buyer pursuant to this Article 6, Buyer may continue this Agreement by delivering to Seller written notice (the "Approval Notice") on or prior to the Contingency Date.

(b) Buyer may, at Buyer's sole discretion and option, for any reason, at any time on or before the Contingency Date, elect to terminate this Agreement and not purchase the Projects, by giving written notice to Seller of such election to terminate (the "Termination Notice"). If Buyer neither delivers the Approval Notice nor the Termination Notice to Seller on or before the Contingency Date, it shall be deemed that Buyer shall have delivered the Approval Notice and the parties shall proceed to Closing as provided in this Agreement. Notwithstanding anything contained herein to the contrary, if Buyer delivers the Termination Notice on or prior to the Contingency Date, this Agreement shall terminate, and neither Seller nor Buyer shall have any further obligation under this Agreement, except as to those obligations provided for herein which are stated to survive termination of this Agreement. If Buyer delivers the Approval Notice or is deemed to have delivered the Approval Notice, Buyer shall be deemed to have waived the right to terminate this Agreement pursuant to this Section 6.6 and the parties shall proceed to Closing pursuant to the provisions of this Agreement.

ARTICLE 7
**CLOSING; CLOSING DATE; CLOSING DOCUMENTS; CONDITION SUBSEQUENT;
CLOSING COST ALLOCATIONS**

7.1 **Closing; Closing Date.** The Closing shall occur on the tenth (10th) day after the Contingency Date (the “**Closing Date**”). The Closing shall be held at 10:00 a.m. on the Closing Date at the offices of Title or at such other place, date and time as Seller and Buyer may agree in writing.

7.2 **Seller’s Closing Documents.** At Closing, Seller shall execute, acknowledge (where appropriate), and deliver to Buyer and/or Title, as appropriate, the following, each dated as of the Closing Date.

(a) A Quitclaim Deed (“Deed”) conveying to Buyer the Property, free and clear of any liens or encumbrances other than the Permitted Exceptions; provided however that the Deed will contain a restriction on the use of the Property as set forth on Exhibit G attached hereto.

(b) An affidavit indicating that on the Date of Closing there are no outstanding, unsatisfied judgments, tax liens or bankruptcies against or involving Seller, that there has been no skill, labor or material furnished to the Property at the request of Seller for which mechanics’ liens could be filed, and that there are no other unrecorded interests in the Property of any kind, including but not limited to any leasehold interests in the Property, except for Permitted Exceptions.

(c) A Certification Regarding Non-Foreign Status (“Non-Foreign Affidavit”), executed and sworn to under oath on behalf of Seller, in satisfaction of Section 1445(b)(4) of the Internal Revenue Code of 1986, as amended;

(d) An irrevocable title commitment, binding the Title Company to issue an Owner’s Policy of Title Insurance (the “Owner’s Policy”), dated as of the date of recordation of the Deed, insuring title to the Property in Buyer, in conformity with the Title Commitment and this Agreement, subject only to the Permitted Exceptions and recordation of the Deed;

(e) A certified copy of a Resolution of Seller’s board of commissioners authorizing the execution of this Agreement and the performance of Seller’s obligations under this Agreement to Buyer;

(f) The Plat;

(g) A settlement statement consistent with this Agreement; and

(h) Such other documents as may be reasonably and customarily required in connection with the transaction contemplated by this Agreement, each duly executed and acknowledged (where applicable) by Seller..

7.3 **Buyer’s Closing Documents.** At Closing, Buyer shall execute, acknowledge (where appropriate), and deliver to Title and Seller the following, each dated as of the Closing Date:

(a) The balance of the Purchase Price, it being understood and agreed that the Earnest Money shall be applied to and credited against the Purchase Price and shall be disbursed to Seller by Title at Closing.;

(b) A standard form Purchaser’s Affidavit;

- (c) Evidence acceptable to Title as to the authority and capacity of the person or persons acting for Buyer to the transactions contemplated by this Agreement and the execution and delivery of closing documents to be delivered by Buyer at Closing;
- (d) A Certificate of Real Estate Value;
- (e) A settlement statement consistent with this Agreement executed by Buyer; and
- (f) Such other documents as may be reasonably and customarily required in connection with the transaction contemplated by this Agreement, each duly executed and acknowledged (where applicable) by Buyer.

7.4 **Closing Escrow.** The parties acknowledge and agree that Closing may occur by delivery in escrow of the items set forth in Sections 7.2 and 7.3 above, with appropriate instructions for recording and disbursement consistent with this Agreement and that neither party need be physically present at Closing.

7.5 **Conditions Subsequent.**

(a) The Deed shall contain a reservation of a right of re-entry for breach of conditions subsequent in favor of Seller pursuant to which Seller may commence an action in Anoka County District Court seeking a order re-vesting title to the Property in Seller if (i) Buyer does not commence construction of the improvements on the Property (the "Buyer Improvements") within 365 days after the date of the Deed; or (ii) Buyer does not substantially complete the construction of Buyer Improvements within 546 days after the date of the Deed. For purposes of this right of re-entry, Buyer will be deemed to have commenced construction when Buyer has (a) obtained building permits for the construction of Buyer Improvements; and (b) caused material or labor to be furnished to the Property in a manner and to an extent sufficient that a mechanic's lien for such work would attach and take effect pursuant to Minn. Stat. §514.05, and Buyer will be deemed to have substantially completed construction of Buyer Improvements when Buyer Improvements are sufficiently complete to make them eligible for receipt of a certificate of occupancy under the City's ordinances. To facilitate Buyer's acquisition of financing for the project, Seller will subject Seller's interest under the right of re-entry to the lien of a mortgage granted by Buyer provided Buyer and the Mortgagee agree that the proceeds of the loan that the mortgage secures must be used to pay hard or soft costs Buyer incurs in connection with the acquisition of the Property and the construction of Buyer Improvements and provided further that Buyer and mortgagee acknowledge, in writing, that if Buyer defaults in the performance of Buyer's obligations under the mortgage and the mortgagee forecloses before Buyer has satisfied the conditions of the right of re-entry, Seller may redeem the Property from foreclosure, as an owner, within the time allowed by law. The provisions of this Section 7.5 shall survive the Closing and the delivery of the Deed.

(b) It is understood and agreed that Buyer intends to engage a regional operator of first-class "C-stores and gas facilities." Not later than thirty (30) days prior to the Contingency Date, Buyer shall identify such operator by written notice to Seller. Seller shall have the right to approve said operator, which approval shall not be unreasonably withheld, and shall be given or denied within fifteen days after the identification of such operator to Seller in writing. Seller shall not be deemed to be acting unreasonably if it disapproves the proposed operator because the proposed operator has previously operated businesses in the City of Ramsey and has not complied with all City requirements for the operation of that facility.

7.6 **Closing Cost Allocations.** Each party shall pay its share of the closing costs which are customarily paid by a seller or buyer in a transaction of this character in the county where the Property is located, except as follows or as otherwise agreed:

(a) Seller shall pay the following Closing costs: (i) Seller's attorneys' fees and costs; (ii) the cost of the title examination and related searches; (iii) the cost of the Survey; and (iv) one-half (1/2) of Title's escrow/closing charges; and (vi) other Closing costs not expressly identified in this Section 7.6(a) and normally paid by sellers of comparable properties.

(b) Buyer shall pay the following Closing costs: (i) Buyer's attorneys' fees and costs; (ii) the costs and expenses of Buyer's audits and inspections of the Property and matters pertaining thereto; (iii) the premium for the owner's policy of title insurance and any additional premiums for obtaining endorsements to the Owner's Policy, if such endorsements are desired by Buyer; (iv) the cost of any lender's policy of title insurance and endorsements; (v) one-half (1/2) of Title's escrow/closing charges; and (vi) other Closing costs not expressly identified in this Section 7.6(b) and normally paid by buyers of comparable properties.

ARTICLE 8
PRORATIONS

8.1 Real Estate Taxes. In connection with recording the Plat, Seller shall pay the real estate taxes, if any, due and payable with respect to the HRA Property in the year the Plat is recorded. If the Plat is recorded in the year of Closing and if the HRA Property is not exempt from real estate taxes due and payable in the year of Closing, Buyer must reimburse Seller for Buyer's pro rata share of the real estate taxes due and payable with respect to the HRA Property in the year of Closing. Buyer's pro rata share shall be determined by multiplying the amount of the real estate taxes by a fraction, the numerator of which is the square foot area of the Property, and the denominator of which is the square foot area of the HRA Property. Seller and Buyer must then further pro rate the pro rata portion of the real estate taxes, if any, attributable to the Property on a per diem basis as of the Closing Date.

8.2 Special Assessments. Special assessments levied against the Property shall be prorated as of the Closing Date. Buyer must reimburse Seller for Buyer's pro rata share of installments of levied special assessments due and payable with respect to the HRA Property in the year of Closing. Buyer's pro rata share shall be determined by multiplying the amount of levied special assessments by a fraction, the numerator of which is the square foot area of the Property, and the denominator of which is the square foot area of the HRA Property. Seller and Buyer must then further pro rate the pro rata portion of the installments of levied special assessments attributable to the Property on a per diem basis as of the Closing Date.

8.3 Master Declaration. Seller agrees that it will take such steps as may be necessary to ensure that, as of the Contingency Date, the Property is not subject to that certain Master Declaration – Ramsey Town Center dated August 5, 2005, recorded in the Office of the Anoka County Recorder and the Anoka County Registrar of Titles as Document Nos. 1978252.001 (Abstract) and 484495.001 (Torrens) (the "**Master Declaration**"). Should Seller fail to do so, not later than the scheduled Closing Date, Buyer may, at its option, terminate this Agreement by written notice to Seller. Should Buyer fail to terminate this Agreement by the scheduled Closing Date (as set forth in Section 7.1 above), Buyer shall be deemed to have waived its right to terminate pursuant to this Section 8.3 and the parties will prorate any assessments levied against the Property pursuant to the terms of the Master Declaration on a per diem basis from January 1 of the year of Closing through the day before the Closing Date. Buyer will pay any assessments pending under the Master Declaration as of the Closing Date.

ARTICLE 9
REPRESENTATIONS AND WARRANTIES OF SELLER.

9.1 **Seller's Representations and Warranties.** Seller makes the following representations and warranties to Buyer:

(a) **Authority.** Seller has the legal authority to enter into this Agreement and sell the Property.

(b) **Litigation.** There are no actions, suits, proceedings or investigations pending against the Property, including, without limitation, (A) condemnation or eminent domain claims, actions or proceedings, or (B) actions to seize any portion of the Property under any civil or criminal law authorizing seizure or forfeiture as a penalty for violation.

(c) **No Tenants.** To the best of Seller's actual knowledge, there are no tenants or other third parties in possession of any portion of the Property.

(d) **Hazardous Substances.** To the best of Seller's actual knowledge: there are no Hazardous Substances located on the Property; the Property is not subject to any liens or claims by government or regulatory agencies or third parties arising from the release or threatened release of Hazardous Substances in, on or about Property; and the Property has not been used in connection with the generation, disposal, storage, treatment or transportation of Hazardous Substance. For purposes of this Agreement, the term "Hazardous Substance" includes but is not limited to substances defined as "hazardous substances," "toxic substances" or "hazardous wastes" in the Comprehensive Environmental Response Compensation Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq., and substances defined as "hazardous wastes," "hazardous substances," "pollutants, or contaminants" as defined in the Minnesota Environmental Response and Liability Act, Minnesota Statutes, §115B.02. The term "hazardous substance" also includes asbestos, polychlorinated biphenyls, petroleum, including crude oil or any fraction thereof, petroleum products, heating oil, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas useable for fuel (or mixtures of natural gas and synthetic gas).

(e) **Minnesota Required Statutory Disclosures.** As required by statute, Seller hereby represents to Buyer that, to the best of Seller's actual knowledge, :

(i) There are no wells located on the Property.

(ii) There are no underground or above ground storage tanks of any size or type located on the Property.

(iii) Sewage is not currently generated at the Property.

(iv) There are no abandoned individual sewage treatment systems located on the Property.

(v) Methamphetamine production has not occurred on the property.

(f) **Non-Foreign Person.** Seller is not a foreign person, foreign partnership, foreign trust or foreign estate as those terms are defined in Section 1445 of the Internal Revenue Code.

(g) **Other Interests.** There are no unrecorded mortgages, contracts, purchase agreements, options, leases, easements or other agreements or interests relating to the Property and there are no persons in possession of any portion of the Property, except as may be disclosed by the Title Commitment or the Survey.

For purposes of the representations and warranties made in Section 9.1 hereof, the phrase "to Seller's knowledge" or any like phrase used therein, shall mean and refer to matters of which Kurt Ulrich, the Executive Director of Seller is currently, actually aware without inquiry or investigation.

9.2 **Buyer's Representations and Warranties.** Buyer makes the following representations and warranties to Seller:

(a) Buyer is a limited liability company, duly organized pursuant to the laws of the State of Minnesota, and is fully authorized to transact business in the State of Minnesota;

(b) The individual signing this Agreement on behalf of Buyer is fully authorized and empowered to sign this Agreement on Buyer's behalf; and

(c) To the best of Buyer's knowledge, Buyer is in compliance with the requirements of Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001)(and other similar requirements contained in the rules and regulations of the Office of Foreign Assets Control, Department of the Treasury and in any enabling legislation or other Executive Orders or regulations in respect thereof. Buyer is not on any list of terrorist or terrorist organizations or parties to which any United States person or entity is prohibited from doing business maintained by any governmental agency and available to the general public..

9.3 **Survival.** The representations set forth above will survive the Closing of this transaction and Seller's delivery of the Deed to Buyer for a period of ninety (90) days after the Closing Date, and action by either party for breach of the other's representations and warranties must be commenced within such ninety (90) day period by filing an action in Anoka District Court or such right shall be deemed waived.

ARTICLE 10 COMMISSIONS.

Seller and Buyer each agree to pay the commissions, if any, contracted by each of them, respectively, with a third party or parties, in accordance with separate agreements between the contracting parties; provided however that Seller agrees to pay a commission to Pine Creek Associates, LLC ("**Buyer's Broker**") which shall not exceed five percent (5%) of the Purchase Price; but provided further that Seller reserves the right to engage its own broker, in which case the commission payable to such broker and Buyer's Broker shall not exceed eight percent (8%) of the Purchase Price which Buyer's Broker shall be entitled to one-half (four percent (4%)) of the Purchase Price. Seller and Buyer warrant and represent to each other that all claims for brokerage fees, commissions or finders' or similar fees in connection with the transactions contemplated by this Agreement, insofar as such claims are based on agreements made by either party hereto, shall be paid by the contracting party hereto and the other party hereto shall have no obligation with respect thereto. Seller and Buyer shall each indemnify and hold the other harmless from and against all liability, loss, cost, damage or expense (including but not limited to attorneys' fees and costs of litigation) which the other party suffers or incurs because of any claim by any broker, agent or finder claiming by, through or under such indemnifying party, whether or not such claim is meritorious, for any compensation with respect to the sale and purchase of the Property or the execution of this Agreement.

ARTICLE 11 CONDEMNATION.

If a public or private entity with the power of eminent domain commences condemnation proceedings against all of any part of the Property, Seller must immediately notify Buyer, and Buyer may, at Buyer's sole option, terminate this Agreement pursuant to Article 12. Buyer will have twenty (20) days from Buyer's receipt of Seller's notice to Buyer to exercise Buyer's termination right. If Buyer does not terminate this Agreement within said twenty (20) day period, the Parties must fully perform their obligations under this Agreement, with no reduction in the Purchase Price, and Seller must assign to Buyer, on the Closing Date, all of Seller's right, title and interest in any award made or to be made in the condemnation proceedings. Seller may not designate counsel, appear or otherwise act with respect to any such condemnation proceedings without Buyer's prior written consent unless Buyer fails to respond within seven (7) days to a request for such written consent.

ARTICLE 12
DEFAULT; REMEDIES

12.1 If Buyer fails to consummate this Agreement for any reason whatsoever other than Seller's default, Seller may, as Seller's sole remedy, terminate this Agreement and retain the Earnest Money as liquidated damages, in which event neither Buyer nor Seller shall have any further obligations under this Agreement, except as to those obligations provided for herein which are intended to survive termination of this Agreement. Seller and Buyer acknowledge the difficulty and inconvenience of ascertaining Seller's actual damages in the event of Buyer's default and agree that the Earnest Money will be paid to Seller as liquidated damages and not as a penalty, which amount the parties agree is a reasonable sum considering all of the circumstances existing on the date of this Agreement, including, without limitation, the relationship of the amount of the Earnest Money to the range of harm to Seller that reasonably could be anticipated because of Buyer's breach hereof, Seller's anticipated use of the proceeds of sale and the fact that proof of actual damages would be impracticable.

12.2 If Seller fails to consummate this Agreement for any reason whatsoever, other than Buyer's default, Buyer shall, as Buyer's sole remedy, select any one of the following: (i) terminate this Agreement, in which event Buyer shall be entitled to return of the Earnest Money and neither Seller nor Buyer shall have any further obligations under this Agreement, except those matters expressly provided in this Agreement to survive termination; (ii) purchase the Project notwithstanding such default, with no reduction in the Purchase Price, pursuant to the remaining terms of this Agreement thereby waiving any claim for default or any claim for reimbursement to Buyer; or (iii) enforce specific performance of Seller's obligations under this Agreement; provided, however, that any such action for specific performance must be instituted, if at all, by commencement of such action ninety (90) days after the date of the breach or alleged breach by Seller, and, if such action is not so instituted within such period of time, the Buyer shall be deemed conclusively to have waived the right to institute such action and to have elected to pursue the other remedies provided hereinabove; if any, and provided further, however, that no action for specific performance may be instituted by Buyer against Seller with respect to any breach of a representation and warranty or failure of any condition due to any cause not reasonably within the control of Seller, Buyer's remedies in such event being limited to termination or waiver as described above. Buyer hereby expressly waives its rights to seek damages of any kind or nature, including, without limitation, special, indirect or consequential damages in the event of Seller's default hereunder.

12.3 In the event of litigation between Seller and Buyer regarding this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees, costs, and expenses (including expert fees and costs) incurred in connection with the prosecution or defense of such action, including any appeal, in addition to all other relief. For the purposes of this Agreement, "prevailing party" shall mean the party which obtains the principal relief it has sought, whether by compromise, settlement, judgment or otherwise. In addition, the non-prevailing party shall be responsible for payment of any and all actual third party costs and/or expenses (including, without limitation, reasonable attorney's fees and expert fees) incurred by the prevailing party in the enforcement of any of its rights and/or remedies under this Agreement, at law or in equity.

ARTICLE 13
AS-IS SALE; RELEASE

13.1 **As-Is Sale.** Except as otherwise specifically provided in Section 9.1 of this Agreement, Seller has not made, does not make and specifically disclaims any representations, warranties, promises, covenants, agreements or guarantees of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to: (a) the nature, quality or

condition of the Property, including, without limitation, the water, soil and geology; (b) the suitability of the Property for any and all activities and uses which Buyer may conduct thereon; (c) the compliance of or by the Property or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body; (d) the habitability, merchantability or fitness for a particular purpose of the Property; or (e) the presence of any endangered or threatened species on the Property, as well as the suitability of the Project as habitat for any of those species. WITHOUT LIMITING THE FOREGOING, EXCEPT AS SET FORTH IN SECTION 9.1, SELLER DOES NOT MAKE AND HAS NOT MADE ANY REPRESENTATION OR WARRANTY REGARDING THE PRESENCE OR ABSENCE OF ANY HAZARDOUS SUBSTANCE ON, UNDER OR ABOUT THE PROPERTY OR THE COMPLIANCE OR NON-COMPLIANCE OF THE PROPERTY WITH ANY AND ALL FEDERAL, STATE OR LOCAL ENVIRONMENTAL LAWS, ORDINANCES, REGULATIONS, ORDERS, DECREES OR RULES REGULATING, RELATING TO OR IMPOSING LIABILITY OR STANDARDS OF CONDUCT CONCERNING ANY HAZARDOUS SUBSTANCES. THE PROVISIONS OF THIS SECTION 13.1 SHALL SURVIVE THE CLOSING.

13.2 Release. EFFECTIVE ON THE CLOSING DATE, BUYER RELEASES SELLER AND ANY AGENT, REPRESENTATIVE, AFFILIATE, OFFICER, SHAREHOLDER OR EMPLOYEE OF SELLER (A "SELLER RELATED PARTY") FROM ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES WHICH ANY PURCHASER OR ANY PARTY RELATED TO OR AFFILIATED WITH BUYER (A "BUYER RELATED PARTY") HAS OR MAY HAVE ARISING FROM OR RELATED TO ANY MATTER OR THING RELATED TO THE PHYSICAL CONDITION OF THE PROPERTY, AND ANY ENVIRONMENTAL CONDITIONS AT, IN, ON OR UNDER THE PROPERTY, AND BUYER WILL NOT LOOK TO SELLER OR ANY SELLER RELATED PARTY IN CONNECTION WITH THE FOREGOING FOR ANY REDRESS OR RELIEF. THIS RELEASE WILL BE GIVEN FULL FORCE AND EFFECT ACCORDING TO EACH OF ITS EXPRESS TERMS AND PROVISIONS, INCLUDING THOSE RELATING TO UNKNOWN AND UNSUSPECTED CLAIMS, DAMAGES AND CAUSES OF ACTION. THIS RELEASE INCLUDES CLAIMS OF WHICH BUYER IS PRESENTLY UNAWARE OR WHICH BUYER DOES NOT PRESENTLY SUSPECT TO EXIST WHICH, IF KNOWN BY BUYER, WOULD MATERIALLY AFFECT BUYER'S RELEASE TO SELLER. THIS SECTION 13.2 SHALL SURVIVE CLOSING.

ARTICLE 14 MISCELLANEOUS

14.1 Binding Effect; No Third Party Benefit. This Agreement and all of the terms, provisions and covenants contained herein apply to, are binding upon and inure to the benefit of the parties hereto, and subject to any restrictions on assignment contained herein, their respective successors and assigns. Except as otherwise expressly provided in this Agreement, Seller and Purchaser do not intend by any provision of this Agreement to confer any right, remedy or benefit upon any third party (express or implied), and no third party will be entitled to enforce or otherwise will acquire any right, remedy or benefit by reason of any provision of this Agreement.

14.2 Section Headings. Article and section headings used in this Agreement are for reference and identification only and are not intended to in any way limit or amplify the terms and provisions of this Agreement.

14.3 Time of Essence. Time is of the essence as to this Agreement and each and every provision hereof.

14.4 **Notices.** All notices, requests, demands, elections, offers, acceptances and other communications required or desired to be delivered hereunder shall be in writing and shall be deemed given, effective and received (whether refused or received) (the “**Effective Date of Notice**”) on the earliest of (a) the date of personal delivery; (b) ten (10) days after deposit in the United States mail, postage prepaid, certified or registered mail, return receipt requested; (c) one (1) business day after deposit with a national overnight air courier, fees prepaid; or (d) the date of transmission via facsimile machine confirmed by the sender’s machine facsimile transmission, or electronic mail sent to the intended addressee at the address set forth below, provided that a copy of the facsimile or electronic mail also is sent to the intended addressee by one of the means described in clauses (a) or (c) above; provided however, that if the notice is sent via electronic mail and the addressee responds via electronic mail, such response shall be deemed to constitute receipt by the addressee, in which case it shall not be necessary to send an original of the electronic mail communication as provided above. All of the communications describe in this Paragraph shall be addressed to the appropriate party at its address listed below:

To Seller: The Housing and Redevelopment Authority in and for the City of Ramsey, Minnesota
Ramsey Municipal Center\
7550 Sunwood Drive
Ramsey, Minnesota 55303
Attention: Kurt Ulrich, Executive Director
Telephone: 763-427-1410
Facsimile: 763-427-5543
Email: kurt.ulrich@cityoframsey.com

With a copy to: Fabyanske, Westra, Hart & Thomson, P.A.
800 LaSalle Avenue, Suite 1900
Minneapolis, Minnesota 55402
Attention: Judith E. Krow
Telephone: 612-359-7614
Facsimile: 612-359-7602
Email: ~~jkrow@fwhtlaw.com~~ jkrow@fwhtlaw.com

To Buyer: KONA Properties, LLC
1715 Yankee Doodle Rd #200
Eagan ~~MN~~ Minnesota 55121
Attention: _____ Gary A. Gabrielson
Telephone: _____ 612-670-1700
Facsimile: _____ 952-285-6508

Email: _____

With a copy to: _____

Attention: _____
Telephone: _____
Facsimile: _____
Email: _____ gary@pinecreekassoc.com

Each of the above-listed addressees and notice parties may change its, his or her address and number for notice purposes under this paragraph by delivering to the other addressees a written notice of change of

address and number in a manner specified in this paragraph for delivery of notices; provided however, no such change of address or number shall be effective against another addressee until written notice of such change is actually received by such addressee. Attorneys for either party may give notices and other communications as provided herein for the party such attorney represents.

14.5 **Assignment.** Buyer shall not have the right to assign this Agreement or any interest herein without the express written consent of Seller, which consent shall not be unreasonably withheld, conditioned or delayed, and in the event Seller consents to such assignment, Buyer shall remain liable for, and the assignee shall assume, all obligations of Buyer hereunder. Notwithstanding the foregoing, Buyer shall have the right, without Seller's consent, but with prior written notice to Seller not later than five (5) days prior to the Closing Date, to assign this Agreement to an entity in which the direct or indirect owners of Buyer have a direct or indirect interest.

14.6 **Complete Agreement.** This Agreement contains the entire agreement of Seller and Buyer with respect to the subject matter hereof, and may not be varied, amended, or superseded except by written agreement between the parties hereto.

14.7 **Severability.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, the legality, validity, and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable provision there shall be added automatically as a part of this Agreement a provision as close in meaning to such illegal, invalid or unenforceable provision as may be possible and be legal, valid, and enforceable.

14.8 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota.

14.9 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original hereof, and all of which taken together shall constitute one and the same agreement.

14.10 **Exhibits.** All references in this Agreement to exhibits are references to exhibits attached to this Agreement, all of which are made a part of this Agreement for all purposes. If any exhibit attached to this Agreement contains blanks, the same, and any exhibits thereto, shall be completed correctly and in accordance with the terms and provisions contained in this Agreement prior to or at the time of execution and delivery thereof.

14.11 **Days.** Any reference to "day" or "days" in this Agreement shall, unless the context clearly requires otherwise, mean calendar days. Any reference to "business days" shall mean calendar days excluding Saturdays, Sundays, or legal holidays of the State of Minnesota. Any time period provided herein (whether relating to delivery of documents or other items, or relating to the inspection period, Closing or any other matter) which ends on a day which is not a business day shall be deemed to be extended to, and to end on, the next business day succeeding such day. Any reference to "Local Time" shall mean standard or daylight savings time then in effect in the time zone where the Property is located.

14.12 **No Waiver.** Neither the failure of either party to exercise any power given hereunder or to insist upon strict compliance by the other party with its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof constitutes a waiver of either party's right to demand compliance with the terms hereof.

14.13 **No Joint Venture; Partnership.** Seller and Buyer, by entering into this Agreement and the transactions contemplated hereby, shall not be considered joint venturers or partners.

14.14 **Gender, Number and Language of Inclusion.** As used in this Agreement, the singular shall include the plural and vice versa, the masculine, feminine and neuter adjectives shall include one another.

14.15 **Construction.** The rule of strict construction shall not apply to this Agreement. This Agreement shall not be interpreted in favor of or against either Seller or Buyer merely because of their respective efforts in preparing it.

SIGNATURE PAGES FOLLOW

SELLER'S SIGNATURE PAGE
TO
PURCHASE AGREEMENT
BETWEEN
THE HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE CITY OF RAMSEY,
MINNESOTA, A PUBLIC BODY POLITIC AND CORPORATE UNDER THE LAWS OF THE
STATE OF MINNESOTA
AND
KONA PROPERTIES, LLC, A MINNESOTA LIMITED LIABILITY COMPANY

SELLER:

**THE HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE CITY OF
RAMSEY, MINNESOTA, A PUBLIC BODY POLITIC AND CORPORATE UNDER THE LAWS
OF THE STATE OF MINNESOTA**

By: _____
Name: Colin McGlone
Title: Board Chair

By: _____
Name: Kurt Ulrich
Title: Executive Director

(Separate Signature Page to Purchase Agreement)

BUYER'S SIGNATURE PAGE
TO
PURCHASE AGREEMENT
BETWEEN
THE HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE CITY OF RAMSEY,
MINNESOTA, A PUBLIC BODY POLITIC AND CORPORATE UNDER THE LAWS OF THE
STATE OF MINNESOTA
AND
KONA PROPERTIES, LLC, A MINNESOTA LIMITED LIABILITY COMPANY

BUYER:

KONA PROPERTIES, LLC, a Minnesota limited liability company

By: _____
Name: _____
Title: _____

(Separate Signature Page to Purchase Agreement)

LIST OF EXHIBITS

- Exhibit A – Legal Description of Property
- Exhibit B – Form of Earnest Money Escrow Agreement
- Exhibit C – Plat
- Exhibit D - Engineer's Estimate of Construction Costs
- Exhibit E-1 – Location of Signage – Drive Entry
- Exhibit E-2 – Depiction of Signage – Drive Entry
- Exhibit F-1 – Location of Signage – Project Entry
- Exhibit F-2 – Depiction of Signage – Project Entry
- Exhibit F – Use Restriction

EXHIBIT A

Legal Description of Property

EXHIBIT B

Form of Earnest Money Escrow Agreement

EARNEST MONEY ESCROW AGREEMENT

THIS EARNEST MONEY ESCROW AGREEMENT (“Agreement”) is made as of August ____, 2012, by and among THE HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE CITY OF RAMSEY, MINNESOTA, a public body politic and corporate under the laws of the state of Minnesota (“Seller”) and KONA PROPERTIES, LLC, a Minnesota limited liability company (“Buyer”) and COMMERCIAL PARTNERS TITLE, LLC, a Minnesota limited liability company (“Escrow Agent”).

RECITALS:

A. By that certain Purchase Agreement dated of even date herewith (“Purchase Agreement”), between Seller and Buyer, Seller has agreed to sell to Buyer or its affiliates, and Buyer to purchase or cause its affiliates to purchase from Seller all of its right, title and interest in and to certain real property located in the City of Ramsey, Minnesota as more fully described therein (the “Subject Property”), upon and subject to the terms and provisions set forth in the Purchase Agreement.

B. Seller and Buyer desire that Escrow Agent act as escrowee to receive, hold and disburse funds in the manner hereinafter set forth.

C. Unless otherwise provided herein, all capitalized words and terms used herein shall have the same meanings ascribed to such words and terms as in the Purchase Agreement.

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

1. Within two (2) business days following the execution of the Purchase Agreement, Buyer shall deposit with Escrow Agent the sum of Twenty Five Thousand no/100 Dollars (\$25,000.00) as the deposit (“Deposit”). Upon receipt by Escrow Agent, the Deposit shall be invested in Escrow Agent’s customary money market account. Interest accrued on the Deposit shall belong, and be paid, to the party entitled to the Deposit and the Deposit shall include such accrued interest pursuant to the Agreement. Escrow Agent shall acknowledge to Seller, in writing, receipt of the Initial Deposit and Additional Deposit when it is delivered to Escrow Agent.

2. Buyer’s Tax Identification Number is _____.

3. Seller’s Tax Identification Number is _____.

4. Escrow Agent is hereby released and exculpated of all liability whatsoever arising out of or in connection with its activities as Escrow Agent hereunder, except to the extent of loss or damage caused by its negligence, breach of fiduciary duty, failure to comply with the terms of this Earnest Money Escrow Agreement or willful misconduct. Buyer and Seller hereby jointly indemnify and hold Escrow Agent harmless from and against any and all claims, liabilities, judgments, attorney’s fees and other expenses of every kind or nature arising out of this Earnest Money Escrow Agreement, other than

such claims, liabilities, judgments, attorney's fees and other expenses resulting from the negligence, breach of fiduciary duty or willful misconduct of Escrow Agent or Escrow Agent's failure to comply with the terms of this Earnest Money Escrow Agreement.

5. In the event Escrow Agent receives written notice of default, non-performance, dispute or exercise of right under the Purchase Agreement from Seller or Buyer accompanied by a demand for delivery to such party of the Deposit, Escrow Agent is immediately to give written notice to the other party of such claim and accompanying demand. In the event the other party fails to dispute or object to such claim and demand within five (5) business days from the date of Escrow Agent's written notice, Escrow Agent is authorized to deliver the Deposit to the party making such claim and demand. In the event the other party disputes or objects to the aforesaid claim and demand within the 5-business day period prescribed herein, Escrow Agent is not to deliver the Deposit deposited hereunder without receipt of a mutual agreement of the parties, in writing, or appropriate court order. In such an event, Escrow Agent shall either hold the same, or at Escrow Agent's election, deposit the same with a court of competent jurisdiction to determine how the Deposit should be disbursed. Escrow Agent shall be entitled to rely on the decision of such court with respect to the disposition of the Deposit. In the event of any dispute regarding disposition of any portion of the Deposit, Escrow Agent shall be entitled to consult with its counsel and receive reimbursement for all reasonable expenses of such consultation with respect to its duties as Escrow Agent. All such expenses shall be paid from the Deposit deposited herein to the extent such funds are sufficient, with an amount equal to the same being promptly paid to the recipient of the Deposit, whether Buyer or Seller, by the non-prevailing party in the dispute, whether Buyer or Seller. Subject to the foregoing, this Agreement shall at all times be subject to the joint order of Seller and Buyer and upon such joint order Escrow Agent shall deliver the Deposit as instructed by such joint order.

6. There shall be no escrow fee hereunder.

7. All notices, requests, demands, elections, offers, acceptances and other communications required or desired to be delivered hereunder shall be in writing and shall be deemed given, effective and received (whether refused or received) (the "**Effective Date of Notice**") on the earliest of (a) the date of personal delivery; (b) ten (10) days after deposit in the United States mail, postage prepaid, certified or registered mail, return receipt requested; (c) one (1) business day after deposit with a national overnight air courier, fees prepaid; or (d) the date of transmission via facsimile machine confirmed by the sender's machine facsimile transmission, or electronic mail sent to the intended addressee at the address set forth below, provided that a copy of the facsimile or electronic mail also is sent to the intended addressee by one of the means described in clauses (a) or (c) above; provided however, that if the notice is sent via electronic mail and the addressee responds via electronic mail, such response shall be deemed to constitute receipt by the addressee, in which case it shall not be necessary to send an original of the electronic mail communication as provided above. All of the communications describe in this Paragraph shall be addressed to the appropriate party at its address listed below:

To Seller: The Housing and Redevelopment Authority in and for the City of Ramsey,
Minnesota
Ramsey Municipal Center\
7550 Sunwood Drive
Ramsey, Minnesota 55303
Attention: Kurt Ulrich, Executive Director
Telephone: 763-427-1410
Facsimile: 763-427-5543
Email: kurt.ulrich@cityoframsey.com

With a copy to: Fabyanske, Westra, Hart & Thomson, P.A.
800 LaSalle Avenue, Suite 1900
Minneapolis, Minnesota 55402
Attention: Judith E. Krow
Telephone: 612-359-7614
Facsimile: 612-359-7602
Email: jkrow@fwhtlaw.com

To Buyer: KONA Properties, LLC
1715 Yankee Doodle Rd #200
Eagan ~~MN~~ Minnesota 55121
Attention: _____ Gary A. Gabrielson
Telephone: _____ 612-670-1700
Facsimile: _____ 952-285-6508

Email: _____

With a copy to: _____

Attention: _____
Telephone: _____
Facsimile: _____
Email: _____ gary@pinecreekassoc.com

To Escrow Agent: Commercial Partners Title, LLC
200 South Sixth Street, Suite 1300
Minneapolis, Minnesota 55402
Attention: Jane Miller
Telephone: 612-337-2498
Facsimile: _____
Email: janem@cptitle.com

Each of the above-listed addressees and notice parties may change its, his or her address and number for notice purposes under this paragraph by delivering to the other addressees a written notice of change of address and number in a manner specified in this paragraph for delivery of notices; provided however, no such change of address or number shall be effective against another addressee until written notice of such change is actually received by such addressee. Attorneys for either party may give notices and other communications as provided herein for the party such attorney represents.

8. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns under the Purchase Agreement.

9. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota. In the event that any provision hereof shall be deemed illegal or unenforceable, said provision shall be severed herefrom and the remainder of this Agreement shall be enforced in accordance with the intentions of the parties as herein expressed.

10. This Agreement may not be amended or altered except by an instrument in writing executed by all the parties hereto.

11. If any party shall bring suit against the other to enforce the terms of this Agreement, the losing party shall pay to the prevailing party the prevailing party's costs and expenses (including, without limitation, reasonable attorneys' fees and costs) incurred in enforcing this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

SELLER;

THE HOUSING AND REDEVELOPMENT
AUTHORITY IN AND FOR THE CITY
OF RAMSEY, MINNESOTA

By: _____
Kurt Ulrich
Its Executive Director

BUYER:

KONA PROPERTIES, LLC

By: _____
Name: _____
Title: _____

ESCROW AGENT:

COMMERCIAL PARTNERS TITLE, LLC

By: _____
Name: _____
Title: _____

EXHIBIT C

Platting Fees
Development Fee Allocation

EXHIBIT D

Engineer's Estimate of ~~Probable Construction Costs~~ Construction Costs

EXHIBIT E-1

Signage Easement – Drive Entry

EXHIBIT E-2

Signage Easement – Project Entry

EXHIBIT G

Use Restriction

For the purposes of this Exhibit F and the foregoing Agreement, the following terms shall have the following meanings:

“Quick Serve Restaurant” means a restaurant (with or without drive-through windows) where customers order at a counter and either wait at the counter for their orders to be delivered or seat themselves in the seating area after ordering at the counter and staff brings the order to the customers’ table but performs no other services ordinarily performed by restaurant waitstaff.

Lot 5 Owner” means the owner, from time to time of Lot 5.

“Restricted Menu” means hot beef (including hamburger) and/or hot chicken sandwiches as the primary menu item served by the facility in question.

Commencing on the Closing Date (as defined in the foregoing Agreement), so long as McDonalds is operating a McDonalds restaurant/store on Lot 4, the Lot 5 Owner will not cause or permit the use of Lot 5 or any part thereof as a Quick Serve Restaurant serving the Restricted Menu. If, at any time after the Closing Date, McDonalds is not operating a McDonalds restaurant store on Lot 4, then there shall be no restrictions on the ability of the Lot 5 Owner to use, or allow the use of all or a portion of Lot 5 for any lawful purpose, including, without limitation, as a Quick Serve Restaurant serving the Restricted Menu. Nothing herein will prevent the Lot 5 Owner or any assignee or subtenant thereof from time to time from operating (a) a full service restaurant; that is, a restaurant where customers seat themselves or are seated by staff and have their orders taken at their tables with such orders served by waitstaff; and/or (b) a so-called convenience store selling food items, including without limitation, cold sandwiches, hot sandwiches and pizza.

Document comparison by Workshare Professional on Wednesday, August 29, 2012
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Description	n:\pl\84959\84959-004\1553027_3.doc
Document 2 ID	file://N:/PL/84959/84959-004/1553027_4.doc
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Legend:	
<u>Insertion</u>	
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Format change	
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Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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Moved from	0
Moved to	0
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Format changed	0
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