

**OPUS MYERS PARK CONDOMINIUM  
PURCHASE AND SALE AGREEMENT**

AGREEMENT DATE: \_\_\_\_\_

PURCHASER'S NAME: \_\_\_\_\_

PURCHASER'S ADDRESS: \_\_\_\_\_

PURCHASER'S PHONE: \_\_\_\_\_

SELLER'S NAME: **Opus Myers Park, LLC**

SELLER'S ADDRESS: 1617 Queens Road West  
Charlotte, NC 28207

“Agreement” means this Purchase and Sale Agreement and includes all exhibits, schedules and addenda attached to this Purchase and Sale Agreement. In consideration of the reciprocal covenants stated herein, Seller and Purchaser agree as follows:

1. **PURCHASE AND SALE:**

- A. **General.** Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller the following property upon the terms and conditions set forth in this Agreement: that condominium unit to be located in Mecklenburg County, North Carolina, to be designated and described as Building Unit \_\_\_\_\_ (the “Unit”) of **OPUS MYERS PARK CONDOMINIUM** (the “Condominium”) pursuant to that Declaration of Condominium for the Condominium to be recorded in the Mecklenburg County Registry, (the “Declaration”), together with all easements, rights, interests and privileges appurtenant thereto (collectively, the “Property”). The Unit and the remainder of the improvements within the Condominium shall be constructed by Seller in accordance with the terms of this Agreement, and the Condominium shall be created by Seller prior to Closing by recording the Declaration in the form attached as **Exhibit B** to the Public Offering Statement delivered by Seller to Purchaser (the “Public Offering Statement”). The Property shall include an undivided interest in the “Common Elements” of the Condominium, and shall include certain “Limited Common Elements”, as more particularly described in the Declaration and Public Offering Statement, including, but not limited to the Parking Spaces and Storage Unit described herein.
- B. **Parking Spaces.** Purchaser shall be allocated two (2) assigned parking spaces as set forth in the Declaration. Purchaser and Seller hereby agree that the parking spaces to be allocated to the Unit shall be the parking spaces identified as No. \_\_\_\_\_ and No. \_\_\_\_\_ on Exhibit C attached to this Agreement. The parties acknowledge that some of the parking spaces are “tandem” spaces where one car is parked in front of another. If spaces allocated to Purchaser are tandem, Purchaser must select both adjoined tandem spaces. All parking spaces shall be selected from the choices made available by Seller, at the Seller’s sole discretion.
- C. **Storage Unit.** Purchaser shall select one (1) assigned storage unit from the choices made available by Seller, at the Seller’s sole discretion and in accordance with the Declaration. Purchaser and Seller hereby agree that the storage unit to be allocated to the Unit shall be the storage unit identified as No. \_\_\_\_\_ on **Exhibit C** attached to this Agreement.

2. **PURCHASE PRICE AND TERMS OF PAYMENT:**

- A. **Purchase Price.** Subject to adjustment as may be provided herein, the purchase price for the Property (the “Purchase Price”) is \$ \_\_\_\_\_ to be paid as set forth herein. The Purchase Price shall be increased (or decreased) by the Additional Costs (or credits) of any Change Orders (if approved by Seller) in accordance with Paragraph 10 of this Agreement.

B. **Deposit.** Purchaser shall pay to Seller a deposit of \$\_\_\_\_\_ (20% of the Purchase Price) (the "Deposit"), which shall be considered fully earned by Seller upon the execution of this Agreement. The Deposit shall be paid as follows:

1. An initial deposit (the "Initial Deposit") in the amount of \$\_\_\_\_\_ (50% of the Deposit) paid to Seller at the time of execution of this Agreement; and
2. An additional deposit in the amount of \$\_\_\_\_\_ (50% of the Deposit) paid to Seller within five (5) business days following Seller's written notice to Purchaser that Seller has substantially completed the steel frame of the Building in which the Unit is located.

Purchaser's failure to deliver the entire Deposit timely as scheduled shall be deemed a material default by Purchaser under the terms of this Agreement. In this event, Seller shall be entitled to retain all Deposits earned either paid, or unpaid, in addition to all other rights and remedies as outlined in this Agreement.

The Deposit shall be credited to the amount of the Purchase Price due at Closing or disbursed in accordance with this Agreement in the event this Agreement is terminated. The Initial Deposit shall be placed by Seller in a trust or escrow account in an insured bank or savings and loan association in North Carolina, and shall be held and disbursed by Seller in accordance with the terms of this Agreement. THE INITIAL DEPOSIT SHALL BECOME NON-REFUNDABLE UPON EXPIRATION OF THE RESCISSION PERIOD (AS HEREINAFTER DEFINED) AND PURCHASER HEREBY AUTHORIZES SELLER TO DISBURSE THE INITIAL DEPOSIT FROM ITS TRUST OR ESCROW ACCOUNT AT ANY TIME AFTER THE RESCISSION PERIOD EXPIRES. After the expiration of the Rescission Period, all additional portions of the Deposit are non-refundable except as otherwise expressly provided in this Agreement. After the expiration of the Rescission Period, Seller shall be entitled to use the Deposit for any purpose related to the Condominium without obligation to segregate same, and without obligation to return any interest earned thereon. Interest, if any accrued on the Deposit, shall not be credited toward the Purchase Price.

C. **Balance.** The balance of the Purchase Price shall be paid at Closing as provided in Paragraph 7.A.

D. **Association Assessments.** Purchaser acknowledges that the Property shall be subject to the Declaration and that upon purchase of the Property, Purchaser shall be personally subject to all provisions of the Declaration, including but not limited to provisions requiring membership in and payment of assessments to the Opus Myers Park Condominium Owners Association, Inc. (the "Association") that is to be created prior to Closing. Purchaser further acknowledges that the Declaration may be amended from time to time as provided therein. At Closing, Purchaser shall pay to the Association: (i) a portion of the monthly installment of the assessment for Common Expenses against the Unit, prorated to the date of Closing, and (ii) an initial working capital contribution in an amount equal to twice the monthly installment of the assessment for Common Expenses against the Unit. These amounts shall be non-refundable.

3. **ADDITIONAL ITEMS:** Purchaser also acknowledges that he has received, reviewed and understood each of the documents or items listed below (initial each line):

\_\_\_\_\_ **Exhibit A** - Floor Plans for the Unit

\_\_\_\_\_ **Exhibit B** - Specifications for the Unit

\_\_\_\_\_ **Exhibit C** - Garage Plan indicating Parking Spaces and Storage Unit

The Floor Plans, Specifications and Garage Plan are referred to herein as the "Plans".

4. **RIGHT OF RESCISSION:** WITHIN SEVEN (7) DAYS FOLLOWING THE EXECUTION OF THIS AGREEMENT AND RECEIPT OF THE PUBLIC OFFERING STATEMENT (THE "RESCISSION PERIOD"), PURCHASER HAS THE ABSOLUTE RIGHT TO CANCEL THIS AGREEMENT WITHOUT PENALTY BY GIVING WRITTEN NOTICE OF CANCELLATION TO SELLER. If Purchaser elects to cancel as provided above, it shall be entitled to the return of the Initial Deposit, and the parties shall have no further rights and liabilities under this Agreement.
5. **BINDING ARBITRATION:** Seller and Purchaser agree that ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE BREACH THEREOF, INCLUDING BUT NOT LIMITED TO ANY WARRANTY DISPUTE OR OTHER DISPUTE RELATING TO THE CONSTRUCTION OR DESIGN OF THE UNIT OR THE CONDOMINIUM, SHALL BE SETTLED BY ARBITRATION in accordance with the applicable rules of the American Arbitration Association in the City of Charlotte, North Carolina, and judgment upon the award of the arbitrator(s) may be entered in any court having jurisdiction. Consistent with the expedited nature of arbitration, each party will, upon the written request of the other party, promptly provide the other with copies of documents on which the producing party may rely in support of or in opposition to any claim or defense. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by the arbitrator(s), which determination shall be conclusive. All discovery shall be completed within 30 days following the appointment of the arbitrator(s). The arbitrator(s) shall have the authority to assess the administrative fees and expenses of the AAA and the compensation and expenses of the arbitrator(s), as well as to assess attorneys' fees. The arbitrator(s) shall not have the authority to assess punitive or other damages not measured by the prevailing party's actual damages. Following Closing, Article XIX of the Declaration shall govern any Claim (as defined in the Declaration).
6. **FINANCING:** PURCHASER'S OBLIGATION TO PURCHASE THE UNIT SHALL NOT BE CONDITIONED UPON PURCHASER'S ABILITY TO OBTAIN A PRE-QUALIFICATION LETTER OF A MORTGAGE LOAN OR A MORTGAGE LOAN.
7. **CLOSING:**
  - A. The closing of the transactions contemplated under this Agreement (the "Closing") shall take place on the "Scheduled Closing Date", which shall be the date specified by Seller in a written notice to Purchaser, delivered at least ten (10) business days prior to the Scheduled Closing Date, notifying Purchaser that the Unit will be substantially complete and that a Certificate of Occupancy for the Unit will be issued by the Scheduled Closing Date specified. If necessary, the Scheduled Closing Date may be extended by Seller for a reasonable period to allow Seller to substantially complete the construction of the Unit. Purchaser agrees that any Change Orders relating to the Unit may extend the Scheduled Closing Date. The issuance of a Certificate of Occupancy or its equivalent by the appropriate governmental agency shall constitute irrefutable and conclusive evidence of substantial completion of the Unit. The fact that the Unit may require minor repairs, touch-ups or adjustments ("punch list items"), or that all of the Common Elements have not been completed, shall not constitute a valid reason for Purchaser to fail to close on the Scheduled Closing Date. It is estimated that the Scheduled Closing Date shall be \_\_\_\_\_, 2018.
  - B. The Closing shall take place at a location designated by Purchaser in the metropolitan area where the Condominium is located. The location of the Closing shall be reasonably acceptable to Seller.
  - C. The Closing shall be deemed to have occurred on the date that Seller receives all funds due from Purchaser for the Purchase Price and as otherwise shown on the Closing Statement prepared by the closing attorney in accordance with this Agreement, and Purchaser has executed all necessary documents (the "Actual Closing Date").
  - D. Purchaser shall, at his expense, make arrangements with the appropriate utility companies to establish accounts for utility services to the Unit. In the event Purchaser fails to make such arrangements, then Purchaser agrees to pay Seller on demand any utility charges for the Unit pertaining to periods after the Closing, together with an administrative charge equal to fifteen

percent (15%) of the charges so incurred. Purchaser agrees to pay any and all charges associated with the installation of utility services to the Unit.

- E. Time is of the essence as to the Scheduled Closing Date and with respect to any other provision of this Agreement that requires performance by the Purchaser or Seller within a specified time.
- F. To the extent Purchaser requests a delay in the Closing, and Seller consents to such delay, Purchaser shall reimburse Seller for all costs incurred by Seller as a result of such delay, including, without limitation, simple interest against the full Purchase Price of the Unit (including Additional Costs for Change Orders) (less any payments received by the Seller from the Purchaser), at the rate of eighteen percent (18%) per annum from the date of Closing as initially scheduled hereunder until the Actual Closing Date as delayed by Purchaser (the "Late Fee"). The parties agree that the Late Fee constitutes a good faith estimate of the damages, which will be incurred by Seller as a result of a consented delay and shall be paid at Closing.
- G. All parking spaces and storage units shall be assigned in the order in which units are contracted for; provided, however, if Purchaser is unable or unwilling to close on the Scheduled Closing Date, Seller may reassign Purchaser's parking spaces and/or storage unit such that other purchasers of units who contract for a unit after Purchaser but close before Purchaser shall have priority in the assignment of parking spaces. Purchaser shall have no recourse against Seller for any such reassignment.
- H. All payments by Purchaser at Closing shall be made by wire transfer of funds or by certified check or cashier's check, in United States currency, drawn on a bank located in the metropolitan area where the Condominium is located.
- I. Seller represents that the Scheduled Closing Date is a "good faith estimate" and does not represent and warrant to Purchaser that the Unit will be completed by that particular date. As construction of the Condominium progresses, Seller may elect to update Purchaser periodically as to the estimated completion date for the Unit, but such updates shall not be binding upon Seller, and the Scheduled Closing Date shall be established only in the manner provided in Paragraph 7.A. Seller shall have no liability for any delay to Closing requested by Seller as a result of events outside of Seller's reasonable control.
- J. Unless the parties agree to extend the time for Closing by an amendment to this Agreement that is signed by both Seller and Purchaser, this Agreement will terminate automatically on the third anniversary of the Effective Date if Purchaser is not in default hereunder and the Closing has not occurred by that date.
- K. Purchaser shall not be excused from payment of any homeowner's dues, capital contributions or assessments because Seller has not yet finished or completed the punch list items. Until such punch list items are complete, Purchaser shall not make any material alterations to the Unit potentially affected by the completion of punch list items. Upon Closing, Purchaser shall be deemed to have accepted the Unit, subject only to completion of punch list items. Seller shall have no obligation to make repairs post-Closing except for completion of punch list items. Once the punch list items are completed, Purchaser agrees to sign all documents reasonably requested by Seller or any contractor confirming the completion of such punch list items. Purchaser and Seller agree that there shall be no holdback or escrow of any part of the Purchase Price due at Closing on account of Seller's obligations to complete any items after Closing, including, but not limited to the punch list items.

8. **EXPENSES OF CLOSING:**

A. The additional costs to be paid by the Purchaser at the Closing include the following:

1. All closing costs associated with the Purchaser's financing, including the loan origination fee, prepaid items such as interest and escrows, loan discount points, Purchaser's legal fees, and any insurance premiums (including private mortgage insurance and homeowners' insurance).
2. All title insurance premiums.
3. The cost of recording the deed and the mortgage.
4. Purchaser's pro rata share of all real property taxes on the Unit, which shall be prorated on a calendar year basis as of the Actual Closing Date.
5. If the Unit is not separately assessed in the calendar year in which the Closing occurs and/or if the assessment as of the Actual Closing Date does not include completed improvements, the parties shall estimate the ad valorem property taxes for the year in which Closing occurs and prorate the same on a calendar year basis as of the Actual Closing Date. When the tax bill is issued for the Unit, if said tax bill differs from the estimated amount, the parties may, at the request of either Purchaser or Seller, recalculate the proration such that the party that has been negatively impacted by the inaccurately estimated tax proration shall be reimbursed by the other party provided, however, that the difference to the negatively impacted party exceeds \$100.00.
6. Purchaser's pro rata share of the monthly installment of the assessment for Common Expenses against the Unit, prorated to the date of settlement, and (ii) an initial working capital contribution in an amount equal to twice the monthly installment of the assessment for Common Expenses against the Unit. These amounts shall be payable to the Association, and shall not be refundable.

B. Seller agrees to pay the following amounts in connection with the Closing:

1. The expense of preparation of the deed, the lien affidavit and the Internal Revenue Service Form 1099.
2. The cost of revenue stamps on the deed, and the cost of recording any release documents.

9. **CONSTRUCTION OF IMPROVEMENTS:** Seller agrees that it will construct or complete the Unit substantially in accordance with the Plans. Purchaser acknowledges that the Plans are not the actual working drawings for the Unit and that the Plans may vary in non-material respects. Purchaser also acknowledges that in the course of construction of the Unit, certain changes, deviations, or omissions may be necessitated by governmental authorities having jurisdiction over the Unit, job conditions, design changes by the contractor, architect or engineer, or availability of materials. All such changes, deviations, and omissions are hereby authorized by Purchaser, provided the changes do not materially affect the size or the value of the Unit. Seller expressly reserves the right to make substitutions of materials or products in the construction of the Unit, provided such substitutions are materially equal to or superior to those indicated by the Plans.

**THE UNIT IS NOT BEING SOLD BY THE "SQUARE-FOOT."** The square footage of any component of the Unit and the Condominium may vary from that which is indicated in marketing materials, blueprints, plans, documents attached to this Agreement, or received by Purchaser in any other information. Purchaser, through a professional appraiser, should verify any and all associated square footages related to the Unit. If any component of the Unit is larger or smaller than that which was indicated by the marketing materials or any other information, the Purchase Price shall not be adjusted

either up or down. **THE PURCHASE PRICE IS NOT CONTINGENT UPON AN APPRAISAL.**

Purchaser acknowledges that the estimated square footage of the Unit stated on the Plans is approximate and utilized a system of measurement that measures to the outside surfaces of all exterior walls of the Unit and includes areas within all vertical shafts within the Unit (including elevators but excluding interior fire stairwells), and includes the area of private exterior terraces adjacent to that Unit.

10. **CHANGE ORDERS:**

- A. Purchaser acknowledges that the Unit is not, and cannot become, a customized dwelling. Except as expressly provided in herein, Purchaser shall have no rights to require any changes to the Plans. Seller shall have the right, in its sole and absolute discretion, to approve any requests of Purchaser to change the Plans. Any such changes agreed to by Seller are referred to herein as "Change Orders". Purchaser shall be solely responsible for the cost (the "Additional Cost") of each Change Order (including a non-refundable processing fee of up to \$250.00, which shall not be credited against the Purchase Price). As a condition to approving the request for a Change Order, Seller will require Purchaser to pay to Seller an amount equal to the Additional Cost of the Change Order as an additional Deposit. The Purchase Price set forth in Paragraph 2.A shall be increased to reflect the Additional Costs of all Change Orders. Likewise, the Purchase Price set forth in Paragraph 2.A shall be reduced with a deductive Change Order (the Deposit shall not be adjusted in this case). A Change Order shall not be effective unless evidenced by a written amendment to this Agreement and at the time of execution of that amendment, Purchaser shall pay to the Seller the total increase in the Purchase Price resulting from the Change Order as an additional Deposit. In the event Seller fails to make a change as required by such written amendment to this Agreement, but instead delivers the Unit without the Change Order, Purchaser's sole remedy shall be a credit to the Purchase Price at Closing in an amount that is the sum of (a) the increase in the Purchase Price resulting from the Change Order that was not included in the Unit, and (b) a return of the procession fee.
- B. Seller will not be required to begin work on any Change Order until all Deposit(s) are received, all contingencies set forth in this Agreement have been satisfied and Purchaser has complied in all respects with the provision of this Paragraph 10.

11. **EXTERIOR CHANGES:** Plans and specifications relating to the exterior of the Condominium including, but not limited to, landscaping, exterior lighting, exterior design of the Unit, exterior colors, finish selections, and material selections shall be the exclusive province of the Seller. Purchaser shall have no ability to demand or control any changes to any of the elements outlined in this Paragraph under any circumstances.

12. **INSPECTIONS:**

- A. After completion of construction of the Unit and prior to Closing, Seller shall notify Purchaser in writing (an "Inspection Notice") that the Unit is available for inspection. Purchaser shall schedule an inspection with Seller within ten (10) days of the date of the Inspection Notice. If Purchaser fails to schedule an inspection with Seller, Seller may, by written notice to Purchaser, schedule an inspection at a time of Seller's choosing. If Purchaser fails to attend a scheduled inspection, (1) Purchaser shall be deemed to have accepted the Unit in its then-present condition, and (2) Purchaser shall be deemed to have waived any and all rights to assert the Unit is incomplete or in need of repairs.
- B. Purchaser acknowledges that neither the federal Occupational Safety and Health Act (OSHA) nor Seller's insurance will allow Purchaser to make unaccompanied visits to the construction area. Purchaser agrees that he will not visit the construction area except for scheduled visits with a representative of Seller. Purchaser agrees to hold Seller harmless from and against any liability for personal injury or property damage resulting from visits to the construction area by Purchaser or his

invitees, and releases Seller from any liability resulting from an injury to Purchaser or his invitees. The provisions of this Paragraph 12 shall survive Closing and/or a termination of this Agreement.

13. **LIMITED WARRANTIES:**

- A. Purchaser acknowledges that the issuance of a Certificate of Occupancy or its equivalent for the Unit by the appropriate governmental agency shall constitute conclusive evidence that the Seller has fulfilled all of its obligations with respect to the Unit, subject to the completion of any punch list items.
- B. For a period of one (1) year from the date of receipt of a Certificate of Occupancy for the Unit (which date may occur before the Actual Date of Closing), the Seller shall warrant to the Purchaser that the Unit and all common elements completed as of that date are constructed in a good and workmanlike manner according to sound engineering and construction standards, free from defective materials, so as to meet the standard of workmanlike quality prevailing in Mecklenburg County, North Carolina, and that the Unit and all applicable common elements are suitable for use for residential purposes. The warranties and representations stated herein shall be made only to the Purchaser and its successors and assigns in title to the Unit and shall not apply or extend to any other parties. In addition, Seller shall extend to Purchaser all additional warranties provided to Seller by subcontractors and manufacturers (if any) specific to the Unit. Purchaser understands and agrees that: (a) Thomasson Efirm LLC, the construction manager for the Condominium ("Thomasson"), and not Seller, is responsible for making warranty repairs to the Unit and the Condominium, (b) warranty requests and claims are to be directed to Thomasson, and not Seller, (c) Thomasson, and not Seller, will coordinate repairs, (d) warranty responsibilities are limited to repairing any defects in materials and workmanship, and (e) that Purchaser shall be responsible for any loss or damage to its personal property, and for insuring that property.
- C. EXCEPT AS SET FORTH IN PARAGRAPH 13.B., NO EXPRESSED OR IMPLIED WARRANTIES UNLESS REQUIRED BY LAW ARE MADE BY SELLER. SELLER EXPRESSLY DISCLAIMS ANY IMPLIED (OR OTHERWISE) WARRANTIES INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND/OR ANY WARRANTY RELATING TO THE APPLIANCES, COUNTERTOPS, CABINETRY, FLOORING MATERIALS, FINISH HARDWARE, PERSONAL PROPERTY AND EQUIPMENT WITHIN THE UNIT, INCLUDING BUT NOT LIMITED TO THE HEATING AND AIR CONDITIONING SYSTEMS AND ELEVATORS, BUT WILL FURNISH TO THE ASSOCIATION, UPON REQUEST, ALL MANUFACTURERS' WARRANTIES WITH RESPECT TO THOSE ITEMS. UNLESS REQUIRED BY LAW, NO ADDITIONAL REPRESENTATION OR WARRANTY, WHETHER EXPRESSED, IMPLIED OR OTHERWISE, IS OR WILL BE MADE BY SELLER. WITH RESPECT TO THE APPLIANCES, COUNTERTOPS, CABINETRY, FLOORING MATERIALS, FINISH HARDWARE, PERSONAL PROPERTY, EQUIPMENT AND HEATING AND AIR CONDITIONING SYSTEM WITHIN THE UNITS, PURCHASER AGREES TO LOOK SOLELY TO THE MANUFACTURERS WITH RESPECT TO ANY CLAIMS RELATING TO THOSE ITEMS. PURCHASER FURTHERMORE AGREES THAT NO WARRANTY IS MADE WITH RESPECT TO ANY CONSUMER PRODUCTS, AS THAT TERM IS DEFINED IN THE MAGNUSON-MOSS FEDERAL TRADE COMMISSION IMPROVEMENT ACT.
- D. WITHOUT IN ANY WAY EXPANDING THE WARRANTIES PROVIDED BY SELLER, PURCHASER AND SELLER AGREE THAT PURCHASER'S SOLE AND EXCLUSIVE REMEDY AGAINST SELLER FOR ALL LOSS OR DAMAGE ARISING FROM A DEFECT COVERED BY WARRANTY (IRRESPECTIVE OF WHETHER SUCH DEFECT IS DISCOVERABLE OR LATENT) OR FAILURE TO CURE SAME, SHALL BE THE COST OF REPAIR OF ANY SUCH DEFECT, OR, AT THE SOLE OPTION OF SELLER, THE REPAIR OR IF NECESSARY, THE REPLACEMENT OF SUCH DEFECTIVE COMPONENT. SELLER'S TOTAL LIABILITY SHALL IN NO EVENT EXCEED THE PURCHASE PRICE. IN THE EVENT A DEFECT IS DISCOVERED BY PURCHASER, SELLER SHALL HAVE REASONABLE TIME TO CURE SUCH DEFECT. SUCH NOTICE (OF DEFECT) SHALL BE GIVEN TO SELLER WITHIN ONE (1) YEAR OF CLOSING IN WRITING, DELIVERED

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED. THIS LIMITATION REPLACES ALL OTHERWISE APPLICABLE STATUTES OF LIMITATION. PURCHASER AND SELLER AGREE THAT INCIDENTAL AND CONSEQUENTIAL DAMAGES ARE EXPRESSLY EXCLUDED. ALL WARRANTIES OF THE SELLER (OTHER THAN THE WARRANTY OF TITLE IN THE DEED) WITH RESPECT TO THE UNIT AND PERSONAL PROPERTY ARE EMBODIED IN THIS PARAGRAPH 13. THIS PARAGRAPH 13 CONSTITUTES THE FINAL EXPRESSION OF THE PARTIES' AGREEMENT AS TO WARRANTIES AND REMEDIES FOR BREACH THEREOF.

- E. Purchaser further acknowledges that the Association shall be responsible for the routine maintenance of the Condominium (including but not limited to repainting of common elements and care of landscaped and public areas), and that Seller shall not have any liability resulting from the Association's failure to perform its maintenance obligations.
  - F. Seller makes no representations or warranties as to the condition or health of any shrubs, trees or plantings located within the Condominium but will deliver to the Association any nursery's warranties with respect to those plants.
  - G. The provisions of this Paragraph 13 shall survive the Closing.
14. **REAL ESTATE BROKER:** Seller and Purchaser acknowledge that this Agreement was procured without intervention of any broker except for the brokers listed on the signature page of this Agreement, each of which shall be entitled to a commission payable by Seller in accordance with the terms of a separate agreement with Seller if and only if the sale closes. Purchaser shall indemnify Seller against the claim of any other broker, including any attorney's fees incurred as a result of such claim. In any event, no commission, fee or charge shall be earned or due and payable to any broker if Closing does not occur for any reason. All commissions shall be based solely on the initial, unadjusted Purchase Price set forth in Paragraph 2.A. exclusive of any Additional Costs. If any Change Order is approved which decreases the Purchase Price, the commission shall be based on such reduced Purchase Price.
15. **DEFAULT:**
- A. If Seller fails to perform any of the covenants of this Agreement, then Purchaser shall have the right, as his sole remedy, to terminate this Agreement, in which event the Deposit and Additional Costs paid by Purchaser to Seller pursuant to this Agreement shall be returned to Purchaser with interest thereon accruing at an annual rate of five percent (3.50%) from the actual date the funds were received by Seller. Following such a termination, the parties shall be relieved of further liability hereunder. Purchaser's legal and equitable remedies shall be limited to those contained in this Paragraph 15.A and in no event shall Seller be liable for damages, including consequential damages, of any kind.
  - B. If Purchaser fails to perform any of the covenants of this Agreement, then Seller shall have the right to terminate this Agreement and retain the Deposit and Additional Costs paid by Purchaser. In addition, Seller shall have the right to exercise any other right or remedy it may have as a result of Purchaser's default, including but not limited to, an action for monetary damages, the recoupment of any Late Fees, and/or specific performance.
16. **CONVEYANCE:** Seller shall convey marketable title to the Unit by Special Warranty Deed, subject to the following matters (the "Permitted Exceptions"):
- A. All taxes and assessments not yet due and payable.
  - B. Applicable zoning ordinances and all other restrictions and regulations by governmental authorities.
  - C. All of the terms, conditions, provisions, rights, privileges, obligations, easements and liens set forth and contained in the Declaration, and the Articles of Incorporation and the Bylaws for the



Association, as now or hereafter amended. Purchaser expressly acknowledges, by execution of this Agreement, that the Unit shall be subject to all of the terms, conditions, use restrictions, easements, assessments, architectural restrictions and other provisions contained in those documents and all amendments thereto, including the obligation to pay monthly assessments to the Association.

- D. All other restrictions, agreements, and easements of record which affect the Unit and/or the Condominium including the Restriction Instruments and Consent Agreement (as such terms are defined in the Public Offering Statement delivered by Seller to Purchaser).
- E. Matters that would be disclosed by an inspection of the Property and/or that are known by Purchaser.

The acceptance of the deed by Purchaser shall be deemed to be full performance and discharge of every agreement and obligation on the part of Seller to perform pursuant to the provisions of this Agreement, except those which are specifically designated in this Agreement to survive the Closing or which survive the Closing by operation of law.

17. **COMPLETION OF DEVELOPMENT:**

A. Purchaser acknowledges that construction activities at the Condominium may continue subsequent to the Closing, and that such activity may cause some inconvenience to Purchaser. As provided in Paragraph 7.A, the fact that the entire Condominium, including Common Elements, are not complete shall not operate to delay Closing. Purchaser agrees to make no claim against Seller, its employers, contractors or agents as a result of such activity and further acknowledges that if Purchaser or a member of Purchaser's family, or any invitee of Purchaser enters on any construction site within the Condominium outside of the Unit, the indemnities and waivers contained in Paragraph 12 shall apply.

B. The provisions of this Paragraph 17 shall survive the Closing.

18. **POSSESSION:** Possession of the Unit shall be delivered by Seller to Purchaser at Closing.

19. **PERSONAL POSSESSIONS:** Unless otherwise agreed to in writing by Seller, Purchaser may not place any personal property or other material in the Unit or the storage unit until Closing has occurred. If Seller agrees in writing to allow Purchaser to place its personal property or other materials in the Unit or the storage unit prior to Closing, Purchaser alone shall be liable for any loss or damage as a result thereof to such personal property or other materials being present at the Condominium for any reason whatsoever.

20. **FORCE MAJEURE:** Notwithstanding anything to the contrary in this Agreement, if Seller is delayed, hindered or prevented in the performance of any act by reason of governmental action, fire, strike, shortage of materials or any other reason beyond Seller's reasonable control, the performance of such act shall be excused for the period of delay and the date of Closing shall be extended for the period necessary to complete performance after the end of the period of such delay. Notwithstanding the foregoing, if any such delay exceeds one hundred eighty (180) days, then, either Purchaser or Seller may terminate this Agreement and Purchaser shall receive a return of all Deposits previously tendered.

21. **ASSESSMENTS:** Purchaser acknowledges the Declaration, and the Articles of Incorporation and the Bylaws for the Association, as now or hereafter amended, will require assessment of each unit in order to produce sufficient funds to pay for insurance, maintenance, operation and repair of the common elements of the Condominium and to otherwise enable the Condominium to perform its undertakings. Such assessments, which do not include taxes on the Unit, are to be determined from time to time from estimates of anticipated and accrued costs by the Executive Board of the Association and shall

be payable monthly.

22. **CASUALTY.** In the event the Unit and/or the Building in which the Unit is located are destroyed or materially damaged by fire or other casualty prior to Closing, Seller shall notify Purchaser in writing of such destruction or damage. Thereafter, Seller, at its sole and exclusive option, may elect either: (a) to repair and rebuild the Unit and/or the Building pursuant to the terms of this Agreement, in which event the Closing shall be delayed for a reasonable period time to allow Seller to repair and rebuild the Unit and/or the Building; or (b) to terminate this Agreement, in which event Seller shall refund to Purchaser the Deposit and any Additional Costs received by Seller from Purchaser. Seller shall notify Purchaser whether it will repair and rebuild pursuant to this Section within sixty (60) days of the date on which the damage or destruction occurred.
23. **RISK OF LOSS.** The risk of loss after Closing shall be upon Purchaser.
24. **NOTICE:** Any notices, requests, or other communications required or permitted to be given hereunder shall be in writing and shall be either (i) delivered by hand, (ii) mailed by United States registered mail, return receipt requested, postage prepaid, or (iii) sent by a reputable, national overnight delivery service (e.g., Federal Express, Airborne, etc.) and addressed to the parties at the addresses set forth on the first page of this Agreement. Any such notice, request, or other communication shall be considered given or delivered, as the case may be, on the earlier to occur of (1) date of hand delivery (if delivered by hand), the third (3<sup>rd</sup>) day following deposit in the United States mail (if sent by United States registered mail), the next business day following deposit with an overnight delivery service with instructions to deliver on the next day or on the next business day (if sent by overnight delivery service), and (2) rejection or other refusal to accept or inability to deliver because of a changed address of which no notice was given. Each party may give notice to the other party of a change of its address for the purpose of giving notice under this Paragraph.
25. **ASSIGNMENT:** This Agreement is personal to Purchaser and may not be assigned by Purchaser without the prior written consent of Seller, which consent may be withheld by Seller in its sole discretion. Any attempted assignment in violation of this provision shall be null and void. Seller shall have the right to assign its rights under this Agreement without the consent of Purchaser.
26. **SUCCESSORS AND ASSIGNS; BINDING EFFECT:** This Agreement shall be binding upon, and shall inure to the benefit of, the heirs, successors, executors, administrators, legal representatives and permitted assigns of the respective parties.
27. **EFFECTIVE DATE:** The "Effective Date" of this Agreement shall be the date on which the last one of Seller and Purchaser has signed this Agreement and delivered a fully executed counterpart to the other.
28. **OFFER BINDING:** Purchaser acknowledges that Purchaser's Initial Deposit is tendered with this Agreement subject to prior sale of the Unit and that this Agreement is not binding upon Seller until executed by an authorized officer of Seller. This Agreement may be executed in multiple, separate counterparts, and such counterparts shall constitute one and the same document.
29. **PURCHASER:** If Purchaser is composed of more than one person, the choices, designations, and other decisions of one person shall bind all of the others, and all persons composing Purchaser shall be jointly and severally liable for all obligations of Purchaser under this Agreement.
30. **MISCELLANEOUS:** References to Purchaser or Seller and other references contained herein shall be deemed to include the plural, neuter, feminine and masculine. If any provision of this Agreement is held invalid or unenforceable, the remainder of it shall not be affected thereby, and to this end the provisions hereof are declared severable.
31. **COMPLETE AGREEMENT:** This Agreement contains all agreements of Seller and Purchaser with respect to the Property, and supersedes any prior written or oral agreements between the parties. Neither party is relying on any statement nor any representation made by or on behalf of the other party

that is not set forth in this Agreement, including but not limited to any matters that may be set forth in Seller's marketing materials for the Condominium. This Agreement may not be modified orally, but only by a written modification agreement executed by both Seller and Purchaser.

32. **GOVERNING LAW:** This Agreement shall be governed by and construed under the laws of the State of North Carolina.

33. **RESTRICTION ON RESALE:** Purchaser acknowledges that Seller has a legitimate interest in minimizing speculation by real estate investors within Opus Myers Park Condominium, promoting stability of ownership of the residential units within the condominium and eliminating "flipping" of units. For a period of twelve (12) months after Closing, Purchaser shall not voluntarily convey fee simple ownership of the Property to any third party. This restriction on conveyance of the Property shall not apply to a conveyance by Purchaser to a trustee for the benefit of a member or members of Purchaser's family or to a gift by Purchaser to a member or members of Purchaser's family; however, the restriction shall run with the property and transfer to such grantee from Purchaser and shall bind the grantee for the remainder of the twelve-month period. Notwithstanding any other provision of the Agreement, if Purchaser or Purchaser's grantee breaches any of the terms of this Paragraph 33, then: (a) Seller may seek and have from and against Purchaser any remedy at law or in equity, including but not limited to an action for damages and/or injunctive relief; (b) Seller may file and maintain such action against Purchaser in the Superior Court of Mecklenburg County, North Carolina, and Purchaser hereby submits to the jurisdiction of that Court; and (c) Seller may recover all costs of such action from Purchaser, including reasonable attorney's fees.

**WHEN SIGNED BY BOTH PARTIES, THIS DOCUMENT WILL BECOME A BINDING CONTRACT IMPOSING LEGALLY ENFORCEABLE OBLIGATIONS UPON YOU. IF YOU DO NOT FULLY UNDERSTAND THIS DOCUMENT OR IF YOU DO NOT FEEL IT MEETS YOUR NEEDS, YOU SHOULD CONSULT A NORTH CAROLINA REAL ESTATE ATTORNEY BEFORE SIGNING IT.**

**IN WITNESS WHEREOF,** Seller and Purchaser have executed this Agreement as of the day and year indicated below (the "Effective Date").

**SELLER:**  
OPUS MYERS PARK, LLC

**PURCHASER:**

\_\_\_\_\_  
James J. Gross, Manager

\_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**PURCHASER:**

\_\_\_\_\_

Date: \_\_\_\_\_

**SELLER'S BROKER:**

**PURCHASER'S BROKER:**

\_\_\_\_\_  
for HM Properties, Inc., Brokerage Agency

\_\_\_\_\_

**PUBLIC OFFERING STATEMENT ACKNOWLEDGMENT**

The undersigned hereby acknowledges receipt of the Public Offering Statement of Opus Myers Park Condominium, pursuant to Section 47C-4-102 of the General Statutes of the State of North Carolina.

The date today is: \_\_\_\_\_

Unit # \_\_\_\_\_

Signed by: \_\_\_\_\_

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

Signed by: \_\_\_\_\_

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