

**CFT NV DEVELOPMENTS, LLC  
REAL PROPERTY PURCHASE AND  
SALE AGREEMENT AND JOINT  
ESCROW INSTRUCTIONS**

for

Cedar Center North Shopping Center  
South Euclid, Ohio

By and between

The City of South Euclid,  
an Ohio Municipal Corporation  
(as Seller)

and

CFT NV DEVELOPMENTS, LLC,  
a Nevada limited liability company  
(as Buyer)





- 8.2. Located in Cedar North Shopping Center (the "**Shopping Center**").
9. **Tax Parcel Identification Number of the Property:** 704-24-006.
10. **Dimensions of the Property:** approximately 145.68 feet, by 235.50 feet, area: 34,234 square feet.
11. **Purchase Price** for the Property: \$825,000 in the aggregate.
12. **Deposit:** \$25,000.00 (the Deposit shall include any interest accrued thereon while in Escrow).
13. **Important Dates:**
- 13.1. **Opening of Escrow:** The date on which Escrow Officer (as defined below) receives a fully executed copy of this Agreement along with the Deposit, as acknowledged by Escrow Officer in a written notice to both Buyer and Seller, and opens an escrow (the "**Escrow**") with the Escrow Company (as defined below).
- 13.2. **Inspection Period:** The period between the Opening of Escrow and Ninety (90) calendar days thereafter, subject to extension or early expiration as set forth herein, during which Buyer shall evaluate the suitability of the Property for the Proposed Project and complete its due diligence, including, without limitation, inspection of the condition of title, access, Utilities (as defined below), soil and the environment of the Property. Notwithstanding the foregoing, the expiration of the Inspection Period shall be extended day-for-day for every day of delay of Buyer's receipt of the Title Documents after the date set forth below in Section 7.
- 13.3. **Permitting Period:** The period between the end of the Inspection Period and One Hundred Fifty (150) calendar days thereafter, subject to extension or early expiration as set forth herein, during which Buyer shall obtain the Permits.
- 13.4. **Closing or Closing Date.** The date on which Escrow closes and title to the Property is transferred to Buyer by recordation of the Deed which shall occur no later than thirty (30) days after the expiration of the Permitting Period (as such terms are defined below) or as provided for herein. Buyer shall not, however, be required to close escrow between September 15<sup>th</sup> and March 31<sup>st</sup>.
14. Title insurance costs are allocated as follows: (a) Seller shall pay for the cost of a basic coverage owner's title insurance policy; (b) Buyer shall pay for the difference between the basic coverage and extended coverage (ALTA) owner's title insurance policy; and (c) Buyer shall pay for the cost of all endorsements requested by Buyer.
15. Survey costs are allocated as follows: Seller shall pay up to Five Thousand Dollars (\$5,000.00) for the cost of the Survey (as defined below), or the update of an existing survey owned by Seller. Buyer shall pay all additional costs of the Survey.
16. **Title Company:** Chicago Title Insurance Company, Stephen B. Smith, [Stephen.b.smith@cft.com](mailto:Stephen.b.smith@cft.com), 1111 Superior Avenue, Suite 600, Cleveland, OH 44114, Tel: 216-696-1275, Title No.: 555140654.

17. **Escrow Company:** Chicago Title Insurance Company, Stephen B. Smith, [Stephen.b.smith@ctf.com](mailto:Stephen.b.smith@ctf.com), 1111 Superior Avenue, Suite 600, Cleveland, OH 44114, Tel: 216-696-1275, Title No.: 555140654.
18. **Escrow Officer:** TBD.
19. **Seller's Real Estate Broker:** Micheal Hirsh of Kowit & Company, 6009 B Landerhaven Drive, Mayfield Heights, OH 44124
20. **Buyer's Real Estate Broker:** Steve Eisenberg of Arnold J. Eisenberg, Inc., 24500 Chagrin Blvd., 120, Beachwood, OH 44122
21. **Brokers' Fees:** Seller's Real Estate Broker shall receive Four percent (4%) of the Purchase Price, and Buyer's Real Estate Broker shall receive Four percent (4%) of the Purchase Price.
22. **Restrictive Covenants:** Seller shall not allow any real property leased or owned by Seller (including any parent, subsidiary or affiliated entity or agent) within the Restricted Area on or after the Closing to be used (i) for the sale of Asian Food or for a "Noodles & Company", or (ii) in a way which interferes with access to the Property or visibility of the Property (including Buyer's building and signs) (collectively, the "**Restrictive Covenants**"). The term "**Asian Food**" includes, without limitation, Chinese, Japanese (including sushi), Vietnamese, Thai, Hawaiian, Mongolian, Cajun, Indian and Korean foods, food cooked in a wok, food generally recognized as Chinese food, soy sauce-based food, and food in a buffet format. The term "**Restricted Area**" is defined as real property Seller (including any parent, subsidiary or affiliated entity or agent) leases, owns or owned on or after the Closing within the Shopping Center or within a one (1) mile radius of the exterior boundary of the Prooperty. Seller shall execute and deliver to Buyer at the Closing a Declaration of Restrictive Covenant or other evidence of the Restrictive Covenants suitable for recording in the form attached as Exhibit C (the "**Declaration of Restrictive Covenants**").

(Signature Page Follows)

**Signatures for Real Property Purchase Agreement**

This Real Property Purchase Agreement consists of the foregoing Basic Provisions, the following General Provisions, and the Exhibits listed below, all of which are incorporated herein by this reference. If there are any inconsistencies between the Basic Provisions and the General Provisions, the Basic Provisions shall prevail. If there are any inconsistencies between the Exhibits and the Basic Provisions or General Provisions, then the Basic Provisions and General Provisions shall prevail.

Exhibit List

1. *Exhibit A* Legal Description of the Property (See Section 2, General Provisions)
2. *Exhibit B* Deed (See Section 8, General Provisions)
3. *Exhibit C* Declaration of Restrictive Covenant (See Section 22, Basic Provisions)
4. *Exhibit D* Seller's Work (See Section 10, General Provisions)

Signature of Seller:

Signature of Buyer:

THE CITY OF SOUTH EUCLID,  
an Ohio Municipal Entity

CFT NV DEVELOPMENTS, LLC,  
a Nevada limited liability company

By: \_\_\_\_\_  
Name: Georgine Welo  
Title: its Mayor

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

## GENERAL PROVISIONS

### **1. General Definitions.**

1.1. **Permits:** All authorizations and approvals issued by government agencies without right of appeal and necessary for Buyer to install Buyer Improvements and operate its business on the Property such as zoning changes, variances, use permits, environmental law compliance (including any retention ponds or special drainage systems, if applicable), site plan approvals, parking approvals, sign approvals, curb cuts and other access approvals, utility connection permits, and building permits.

1.2. **Buyer Improvements:** All buildings (including a drive-thru), installations, structures, equipment, together with all related components and all identification, advertising and directional signs and media required by Buyer to be located on the Property.

1.3. **Hazardous Materials:** Any hazardous or toxic substance or container which is or becomes regulated by any governmental authority and includes, without limitation, underground storage tanks and any substance which is (a) defined as "Hazardous Substance," "Hazardous Waste," or "Extremely Hazardous Substance" pursuant to any provision of the United States Code, including United States Code sections commonly known as the Federal Water Pollution Control Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §9601 et seq., the Toxic Substance Control Act, 15 U.S.C. §2601 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §1802, the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., or other applicable federal, state or local laws, constitutions, statutes, ordinances, rules, regulations, orders, rulings or decrees regulating the generation, storage, transportation, discharge, disposal, release or removal of environmentally hazardous substances, (b) mold, (c) petroleum, petroleum by-product, or fraction thereof, and (d) asbestos or asbestos containing materials.

1.4. **Title Documents:** The Title Report, the Survey and the Underlying Documents.

2. **Property.** The subject property, including all improvements located thereon and all rights and easements appurtenant thereto (collectively, the "**Property**"), is described in the Basic Provisions and more specifically described by the legal description attached hereto as Exhibit A. A final legal description of the Property will be determined by the ALTA survey prepared during the Inspection Period and will be deposited into Escrow by Buyer. The legal description delivered to Escrow will then be the legal description for the Property for use in the deed provided by Seller to Buyer at the Closing.

3. **Property Condition.** Except as specifically provided in this Agreement, Buyer is acquiring the Property on an "AS-IS, WHERE-IS, WITH ALL FAULTS" basis, with no representation or warranty of any kind, expressed or implied with respect to the condition of the Property.

### **4. Representations and Warranties.**

4.1. **Seller Representations and Warranties.** Seller represents and warrants the following, which representations and warranties are made for the benefit of Buyer (as of the date of this Agreement and as of the Closing Date):

4.1.1. That Seller is the fee owner of the Property and can deliver marketable fee simple title to Buyer;

4.1.2. Seller is validly existing in the state of its formation, and has all requisite power and authority to enter into this Agreement, and no additional signatories or consents are required to make this Agreement binding and fully enforceable;

4.1.3. Each individual executing this Agreement on behalf of Seller is duly authorized to execute and deliver this Agreement on behalf of Seller;

4.1.4. That this Agreement is binding and enforceable on Seller in accordance with its terms, and does not conflict with any other obligation on Seller; and

4.1.5. That Seller has no actual knowledge after reasonable inquiry of any: (i) condition which adversely affects the construction of Buyer Improvements (such as any construction black-out periods applicable to the Shopping Center) or the use of the Property for the Proposed Project, including by way of example only, restrictions against the sale of chicken, fish, or tea-based beverages from the Premises, (ii) enacted, pending or proposed condemnation proceedings or other governmental action, (iii) pending or threatened litigation, (iv) pending or proposed plans to alter access to the Property, (v) presence on the Property of any Hazardous Materials, or (vi) restriction applicable to Seller or the Property restricting Buyer's use of the Property (e.g., limitations on the sale of chicken, noodles, tea, etc.), or granting another party the right to use, possess or occupy any portion of the Property (e.g., right of first refusal to acquire same), or the right to consent to Buyer's use, possession or occupancy, of any portion of the Property. Seller represents that there are none, but in the event that any third-party consents for the construction of Tenant's improvements and/or for Tenant's intended use of the Property are necessary, Seller shall obtain same within the Inspection Period.

4.2. Buyer Representations and Warranties. Buyer represents and warrants the following, which representations and warranties are made for the benefit of Seller (as of the date of this Agreement and as of the Closing Date):

4.2.1. That Buyer is validly existing in the state of its formation, and has all requisite power and authority to enter into this Agreement, to purchase and own property and conduct business in the state where the Property is located, and no additional signatories or consents are required to make this Agreement binding and fully enforceable;

4.2.2. Each individual executing this Agreement on behalf of Buyer is duly authorized to execute and deliver this Agreement on behalf of Buyer; and

4.2.3. That this Agreement is binding and enforceable on Buyer in accordance with its terms, and does not conflict with any other obligation on Buyer.

4.3. Brokers. Buyer and Seller represent and warrant to each other that they have not engaged or dealt with any broker or agent with respect to the Property except the broker(s) identified in the Basic Provisions. If any broker(s) are identified in the Basic Provisions, Seller shall pay all amounts due such broker(s) pursuant to a separate agreement. Buyer and Seller shall each defend, indemnify and hold the other harmless from and against all claims, losses and liabilities incurred by the indemnified party in connection with any claim or

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demand by any person or entity for any broker's, finder's or other fee or compensation in connection with the indemnifying party's entry into this Agreement.

4.4. Indemnification; Survival. Any representations and warranties made by CFT NV Developments, LLC, under this Article, CFT NV Developments, LLC shall indemnify and hold the City of South Euclid harmless against all claims, losses and liabilities incurred by the City of South Euclid in the event any of the representations and warranties proves to be untrue. The indemnity and reimbursement obligations set forth in this Agreement shall survive for eighteen (18) months after the later of the termination of this Agreement or the Closing Date. The parties understand that under Ohio Revised Code the City of South Euclid cannot legally indemnify another entity.

## 5. Inspection by Buyer.

5.1. Seller's Property Information. Within ten (10) calendar days after the Date of this Agreement, Seller shall provide Buyer with legible copies of the following items in Seller's possession, or available to Seller, whether they are applicable solely to the Property or to a larger parcel of which the Property is a part: (a) all land and engineering surveys; (b) all soil tests and environmental reports; (c) all traffic studies; (d) all building or site plans; (e) all correspondence from any governmental authority and (f) all unrecorded Underlying Documents, including unrecorded portions of partially-recorded documents. If any of the foregoing items are not available during the time period specified above but become available prior to the Closing Date, Seller shall promptly provide them to Buyer. Seller shall also provide all other information concerning the Property as Buyer may reasonably request. Seller shall provide Buyer with written notice as to a listing of documents disclosed and if Seller does not have any documents with respect to any of the categories listed herein, an affirmative representation in writing that Seller does not have any documents for any such category.

5.2. Buyer Obtaining Information. During the Inspection Period, Buyer shall (a) have access to the Property, obtain all information deemed necessary by Buyer to investigate title and the Survey, and complete its review of such information; and (b) perform such tests and inspections of the soil, improvements, and environment of the Property as Buyer deems necessary. In the event Buyer reasonably determines that a Phase II environmental analysis is required, Seller shall, at its sole cost and expense, conduct such Phase II analysis. Buyer may enter the Property and conduct all tests Buyer deems necessary. If the Property is damaged as a result of Buyer's exercise of its rights hereunder, Buyer shall repair and restore the Property to a similar condition as existed prior to Buyer's exercise of such rights. Except for any matters that are found to be the result of the negligence or intentional acts of Seller, Seller's agents and any unaffiliated third parties, Buyer hereby agrees to indemnify and hold Seller harmless for, from and against any and all mechanics liens, actions, claims, costs, fees, liabilities, or damages arising from Buyer's exercise of Buyer's rights granted pursuant to this Section. Notwithstanding any provision to the contrary in this Agreement, the parties acknowledge and agree that any diminution in the marketable value of the Property based on information discovered or disclosed during the Inspection Period shall not be subject to the indemnity set forth in the previous sentence.

6. Survey. Buyer shall deliver or cause a duly licensed surveyor ("**Surveyor**") to prepare and deliver a copy of a current-on-the-ground ALTA/ACSM Land Title Survey of the Property (the "**Survey**") reasonably acceptable to Buyer and in a form acceptable to Buyer and Title Company issuing the Title Policy (as such terms are defined below). The Survey shall

show the minimum detail and survey certification as required by Buyer, Buyer's Lender (if applicable), and Title Company.

7. **Title Review.** Buyer shall cause Title Company to issue to Buyer and Surveyor a preliminary title report or title commitment (the "**Title Report**") with respect to the Property within ten (10) business days following the Opening of Escrow and deliver the same to Buyer along with complete and legible copies of all documents and maps referred to as exceptions to title, referred to in documents included as exceptions to title (whether recorded, unrecorded or partially recorded) or referred to in the legal description (the "**Underlying Documents**"). The Title Company will prepare the Title Report in anticipation of issuing an ALTA Extended Coverage Owner's Policy (deleting any arbitration rights), on the Closing Date in the full amount of the Purchase Price showing fee title to the Property vested in Buyer, in Buyer's permitted assignee or designated entity, subject only to the Permitted Exceptions (as defined below) and modified by any Buyer-requested endorsements (the "**Title Policy**").

7.1. **Buyer's Review of Title.** Buyer shall have until that day which is fifteen (15) business days prior to the expiration of the Inspection Period (the "**Title Objection Letter Deadline**") to give Seller and Escrow Holder (and Surveyor, as applicable) written notice ("**Buyer's Title Objection Letter**") of Buyer's disapproval or conditional approval of any matters shown in the Title Documents. The failure of Buyer to send Buyer's Title Objection Letter on or before the Title Objection Letter Deadline shall be deemed to constitute Buyer's approval of the condition of title to the Property (other than monetary liens against the Property, which Buyer and Seller hereby agree shall be removed at Closing). Any matters listed on the Title Report not objected to by Buyer shall be deemed approved by Buyer (collectively, the "**Permitted Exceptions**").

7.2. **Seller's Review of Title Objections.** If Buyer expressly disapproves or expressly conditionally approves any matter of title shown in the Title Report as set forth in Buyer's Title Objection Letter, then Seller may, but shall have no obligation to, within five (5) business days thereafter ("**Seller's Election Period**"), elect to disregard, eliminate or ameliorate to Buyer's satisfaction the disapproved or conditionally approved title matters by giving Buyer written notice ("**Seller's Title Cure Letter**") of those disapproved or conditionally approved title matters, if any, which Seller agrees to so eliminate or ameliorate by the end of the Permitting Period. Notwithstanding the foregoing, Seller shall use good faith efforts when determining whether or not to eliminate or ameliorate the same.

7.3. **Resolution of Title Objections.**

7.3.1. If Seller does not elect to eliminate or ameliorate any disapproved or conditionally approved title matters in Buyer's Title Objection Letter, or if Buyer disapproves Seller's Title Cure Letter, or if Seller fails to timely deliver Seller's Title Cure Letter, then Buyer shall have the right, upon delivery to Seller and Escrow Holder by written notice on or before ten (10) business days following the expiration of the Inspection Period, to either: (1) waive its prior disapproval of certain matters, in which event such disapproved matters shall be deemed approved and one of the Permitted Exceptions; or (2) terminate this Agreement and the Escrow created pursuant hereto in which event Buyer shall be entitled to the return of the Deposit, together with all interest accrued thereon while in Escrow. Failure to take either one of the actions described in (1) and (2) above within twenty (20) days of the date of Seller's Title Cure Letter (or if Seller did not deliver Seller's Title Cure Letter, the date by which same was due) shall be deemed to be Buyer's election to take the action described in (1) above.

7.3.2. If, in Seller's Title Cure Letter, Seller has agreed to either eliminate or ameliorate to Buyer's satisfaction prior to the expiration of the Permitting Period certain disapproved or conditionally approved title matters described in Buyer's Title Objection Letter, but Seller is unable or unwilling to subsequently do so to Buyer's satisfaction, then Buyer shall have the right upon delivery of a written notice to Seller and Escrow Holder on or before one (1) business day prior to the expiration of the Permitting Period to: (1) waive its prior disapproval, in which event said disapproved matters shall be deemed approved and one of the Permitted Exceptions; (2) extend the time for Seller's correction of such disapproved matters (in which event Seller shall have until the Closing or such other period mutually agreed upon by both parties); or (3) terminate this Agreement and the Escrow created pursuant hereto in which event Buyer shall be entitled to the return of the Deposit, together with all interest accrued thereon while in Escrow. Notwithstanding the foregoing, Seller shall make a good faith effort to ameliorate those disapproved or conditionally approved title matters in Seller's Title Cure Letter.

7.3.3. If, five (5) days prior to the Closing Date, Seller is unable to subsequently correct the remaining disapproved matters to Buyer's satisfaction, then Seller shall notify Buyer in writing on or before such date, and Buyer shall have the right upon delivery of a written notice to Seller and Escrow Holder on or before the Closing Date to: (1) waive its prior disapproval, in which event said disapproved matters shall be deemed approved and part of the Permitted Exceptions; or (2) terminate this Agreement and the Escrow created pursuant hereto in which event Buyer shall be entitled to the return of the Deposit, together with all interest accrued thereon while in Escrow.

**8. Deed.** Upon the Closing Date, marketable fee simple title to the Property shall be conveyed to Buyer by grant deed or regular warranty deed in substantially the form attached hereto as Exhibit B (the "**Deed**") in recordable form duly executed and acknowledged by Seller, without reference to any recorded or unrecorded liens, encumbrances, assessments, easements, leases, taxes, and subject only to the Permitted Exceptions.

## **9. Buyer Obligations.**

9.1. Application for Permits. Before expiration of the Permitting Period, Buyer shall, at Buyer's expense, apply for, and use reasonable efforts to obtain, the Permits. If Buyer does not obtain the Permits, or if they are available only with conditions unacceptable to Buyer, Buyer shall have the right to terminate this Agreement by giving written notice to Seller. Upon such termination, all obligations and liabilities of Buyer and Seller under this Agreement shall terminate (except those obligations contained herein that expressly survive termination) and the Deposit shall be returned to Buyer, and Buyer shall return to Seller all materials and data that Buyer received from Seller pertaining to the Property.

As a part of the process of seeking the Permits, Buyer may enter into agreements restricting the use of, or granting easements over, the Property conditioned upon Buyer closing Escrow and obtaining title to the Property. Buyer may also agree to conditions in exchange for the issuance of use permits or any other Permits. At Buyer's request, Seller shall cooperate to the fullest extent necessary to obtain the Permits but without having to incur any out-of-pocket costs and expenses, shall join with Buyer in all applications and proceedings, and shall execute all agreements, easements, and dedications required by Buyer to facilitate Buyer's use, or required by governmental agencies as a condition to issuance of the Permits.

## **10. Seller Obligations.**

10.1. Removal of Improvements, Grading and Compaction. Prior to the date Buyer obtains the Permits, Seller shall complete all Seller's Work, as set forth on Exhibit D ("**Seller's Work**").

10.2. Title and Survey Cooperation. Seller shall deliver to the Title Company and Surveyor such instruments, documents, releases, and agreements and shall perform such other acts as Title Company and Surveyor may reasonably require in order to issue the (i) Title Policy with only the Permitted Exceptions and (ii) the ALTA Survey, respectively.

10.3. Tax Deferred Exchange. If requested by a party, Seller and Buyer shall cooperate in structuring this transaction to accommodate a tax deferred exchange under Section 1031 of the Internal Revenue Code of 1986, as amended (the "**Code**"). This cooperation shall include execution of all documents reasonably required to accomplish the exchange, including participation with an exchange intermediary. No exchange cooperation is required if it will delay the close of this transaction or will impose any material additional expense on a cooperating party.

10.4. Replatting or Subdividing. If any replatting, subdividing, lot line adjustment or similar action is required to effectuate the Closing, or for the issuance of the Permits, the construction of the Buyer Improvements or the use of the Property by Buyer, or at the request of Seller (the "**Replat**"), then Seller shall promptly commence and diligently pursue the completion of the Replat at its expense, and the Inspection Period, the Permitting Period and the date for Closing shall be extended on a day-for-day basis until Seller completes the Replat to Buyer's reasonable satisfaction. In the event that the Replat is not completed by Seller within sixty (60) days after the opening of Escrow (the "**Replat Deadline**"), then Buyer shall have the right to terminate this Agreement and the Escrow created pursuant hereto, in which event Buyer shall be entitled to the return of the Deposit, together with all interest accrued thereon while in Escrow.

**11. Closing Contingencies.** Buyer's obligation to consummate the transactions contemplated hereby is subject to satisfaction of the following conditions (each of which conditions, Buyer shall have the right to waive, in whole or in part, in its sole discretion):

11.1. Inspection Period. On or prior to the expiration of the Inspection Period:

11.1.1. Buyer's approval of the suitability of the Property for the Proposed Project, including without limitation the economic and market feasibility of the Property.

11.1.2. Buyer's approval of the Title Documents as set forth in Section 7 herein.

11.1.3. Buyer's approval of any environmental site assessments deemed necessary by Buyer.

11.1.4. Buyer's approval of any soils tests deemed necessary by Buyer.

11.1.5. Buyer's approval of documents to be provided to Buyer and Seller pursuant to Section 5.1, and any other documents revealed during the Inspection Period.

11.1.6. Buyer's approval of the completion of any Replat.

11.1.7. Buyer obtaining final approval for the Property and the Proposed Project from its real estate committee and its legal counsel.

11.1.8. During the Inspection Period, Seller and Buyer shall negotiate and agree upon the terms for a set of Reciprocal Easements, Restrictions and Operating Agreement for the Shopping Center, to be recorded at the close of escrow and binding both Buyer and Seller's respective properties, to run with the land.

11.2. Permitting Period. On or prior to the expiration of the Permitting Period:

11.2.1. Buyer's receipt of the Permits.

11.2.2. Buyer's approval of the zoning, restrictions, and similar governmental regulations for the Property.

11.2.3. Buyer's approval of the building and sign visibility available to Buyer on the Property.

11.2.4. Buyer's approval of the Utilities available to Buyer on the Property.

11.2.5. Buyer's approval of the completion of any Replat.

11.2.6. Buyer's approval of the completion of all of Seller's obligations as set forth in Section 10.

11.3. Deed Contingency. As an unwaivable contingency to Closing, the Deed must be free and clear of all recorded and unrecorded liens, encumbrances, assessments, easements, leases, taxes, and subject only to the Permitted Exceptions.

11.4. Termination by Buyer. In the event that one or more of the foregoing conditions has not been fulfilled or waived by Buyer by the end of either the Inspection Period or the Permitting Period as applicable, Buyer shall have the right to terminate this Agreement by written notice to Seller. Upon such termination, all further obligations and liabilities of Buyer and Seller under this Agreement shall terminate (except as otherwise specifically provided) and the Deposit shall be returned to Buyer, and Buyer shall return to Seller all materials and data that Buyer received from Seller pertaining to the Property.

11.5. Early Expiration; Extension. In the event Buyer satisfies or waives the foregoing conditions for a certain period, Buyer has the right, but not the obligation, to shorten the Inspection Period, the Permitting Period, or the thirty (30) day period prior to Closing, as applicable. In the event Buyer cannot satisfy the foregoing conditions during a certain contingency period, Buyer shall have the right to extend each or any of the Inspection Period, the Permitting Period, the Title Cure Period and the thirty (30) day period prior to Closing (as applicable) for thirty (30) days upon notice to Seller. Buyer shall have the right at anytime to enforce the consummation of this Agreement by moving immediately to Closing and effecting the transfer of the Property in exchange for funds in the amount of the Purchase Price.

**12. Escrow and Closing Instructions.** This Section constitutes joint escrow instructions to Escrow Officer for the purpose of completing the sale contemplated by this Agreement. The parties agree to execute any additional escrow instructions as may be

required by Escrow Officer, provided such additional instructions are reasonable and do not conflict with or alter the terms and conditions of this Agreement.

12.1. Opening of Escrow and Deposit. Upon execution of this Agreement, Buyer shall deliver a fully executed copy of this Agreement to Escrow Officer. The Deposit, as an earnest money deposit, shall be deposited in Escrow by Buyer by check, cashier's check or wire transfer of cash on or within five (5) business days of the delivery of the fully executed agreement to Escrow Officer. Escrow Officer shall confirm the date of Opening of Escrow and receipt of the Deposit allocation by notice to Buyer and Seller. Prior to expiration of the Inspection Period, the Deposit shall be fully refundable to Buyer, but applicable to the Purchase Price if Escrow closes. After expiration of the Inspection Period, the Deposit shall be nonrefundable to Buyer (except in the event of a breach by Seller) but applicable to the Purchase Price if Escrow closes; provided, however, the Deposit shall remain refundable to Buyer during the Permitting Period with respect to satisfaction of the closing contingencies (including the receipt of the Permits) set forth in Section 11.2 of this Agreement.

12.2. Investment of Deposited Funds. At Buyer's request, the Deposit shall be invested by Escrow Officer in a federally insured market competitive interest-bearing money market account, or as otherwise approved by Buyer. The Deposit (including all interest accrued on such Deposit while in Escrow), shall be for the benefit of Buyer, and shall be credited towards the Purchase Price at the Closing.

12.3. Closing Costs. All taxes, assessments, utility charges and rents shall be prorated by Escrow Officer as of the Closing Date using a three hundred sixty five (365) day year and a thirty (30) day month. Seller shall pay and discharge all other monetary encumbrances against the Property. Casualty insurance shall not be prorated, but shall be cancelled as of the Closing Date. All transfer taxes, documentary taxes, delinquent property taxes and assessments (if any), and recording charges shall be paid by Seller at Closing. The cost of Title Insurance shall be paid as provided in the Basic Provisions. All escrow fees of the Escrow Company shall be paid equally by Buyer and Seller.

12.4. Buyer's Closing Obligations. On or before the Closing, Buyer shall deposit with Escrow Officer in immediately available wire transfer funds the balance of the Purchase Price and any escrow and title charges set forth in Section 12.3 and listed on the Buyer-approved settlement statement as required for Closing.

12.5. Seller's Closing Obligations. At the Closing, Seller shall deliver to Escrow Officer: (a) a duly executed and acknowledged Deed, (b) an appropriate affidavit of non-foreign seller status, (c) a duly executed copy of the Declaration of Restrictive Covenant, and (d) all other documents required by Buyer or Escrow Officer for the Closing.

12.6. Brokers' Fees. Upon Closing, Escrow Officer shall, on behalf of Seller and out of the sale proceeds due to Seller, disburse the fees based on the allocation set forth in the Basic Provisions.

12.7. Escrow Officer's Closing Obligations. Buyer shall provide Escrow Officer with additional closing instructions by written letter prior to the date of the Closing.

**13. Attorneys' Fees.** If any action is commenced to enforce any provision of this Agreement, the prevailing party as determined by a final court judgment shall be entitled to

recover from the other party such reasonable attorneys' fees and costs incurred in the action as the court may award.

**14. Risk of Loss; Condemnation.**

14.1. Risk of Loss. Except as otherwise provided to the contrary elsewhere in this Agreement the risk of loss to the Property shall be borne by Seller until the Closing. From and after the Closing, all risk of loss with respect to the Property shall be borne by Buyer.

14.2. Condemnation. In the event of condemnation or notice of condemnation of all or a substantial portion of the Property (in Buyer's reasonable determination) prior to the Closing, Buyer shall have the right to terminate this Agreement by written notice delivered to the other party within ten (10) business days after the later of: (i) the date of such condemnation; or (ii) the date Seller's notice regarding the condemnation is delivered to Buyer. If Buyer elects to terminate this Agreement, the Deposit and interest remaining in Escrow shall be refunded to Buyer and the parties shall have no further obligations to each other under this Agreement, except as specifically set forth in this Agreement. If Buyer elects to continue with this Agreement, the parties shall proceed to the Closing with no reduction in the Purchase Price and, at the Closing, Seller shall (i) pay to Buyer through Escrow any condemnation proceeds received by Seller with respect to the Property, and (ii) assign to Buyer all of Seller's right, title and interest in and to any condemnation proceeds with respect to the Property, less fees, costs and expenses incurred by Seller in connection therewith.

**15. Remedies Upon Breach.**

15.1. Buyer's Remedies. If Escrow fails to close due to a breach by Seller, Buyer's remedies shall include, in addition to its other remedies at law or in equity, the right to specific performance.

15.2. Seller's Remedies. IF ESCROW FAILS TO CLOSE DUE TO A BREACH BY BUYER, BUYER AND SELLER AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE SELLER'S DAMAGE BY REASON OF BUYER'S BREACH, THAT THE AMOUNT OF BUYER'S DEPOSIT SHOWN IN THE BASIC PROVISIONS IS A REASONABLE ESTIMATE OF SUCH DAMAGES, AND THAT SELLER SHALL RETAIN BUYER'S DEPOSIT AS LIQUIDATED DAMAGES AND AS SELLER'S SOLE REMEDY AGAINST BUYER. BY PLACING THEIR INITIALS IMMEDIATELY BELOW, BUYER AND SELLER FURTHER AGREE THAT BUYER'S DEPOSIT IS A REASONABLE SUM FOR LIQUIDATED DAMAGES CONSIDERING ALL CIRCUMSTANCES AS OF THE DATE OF THIS AGREEMENT, AND RECEIPT OF BUYER'S DEPOSIT SHALL BE SELLER'S SOLE AND EXCLUSIVE REMEDY IN LIEU OF ANY OTHER RIGHT OR REMEDY AT LAW OR IN EQUITY (INCLUDING, WITHOUT LIMITATION, SELLER'S RIGHT TO SEEK SPECIFIC PERFORMANCE OF THIS AGREEMENT AGAINST BUYER) TO WHICH SELLER MIGHT OTHERWISE BE ENTITLED.

BUYER AND SELLER EACH CONFIRMS THAT IT HAS READ AND UNDERSTANDS AND ACCEPTS THIS LIQUIDATED DAMAGES PROVISION.

\_\_\_\_\_  
Seller's initials

\_\_\_\_\_  
Buyer's initials

## **16. Miscellaneous Provisions.**

16.1. Amendment. This Agreement may be changed only by a written amendment executed by Seller and Buyer.

16.2. Consents. Unless otherwise specified in this Agreement, whenever a party is asked to provide consent under this Agreement, such party shall not unreasonably withhold, condition or delay giving the consent requested.

16.3. Interpretation of Agreement. This Agreement shall be interpreted to give effect to its fair meaning and shall be construed as though it was prepared by both parties. The invalidity of any provision of this Agreement shall not affect the validity of any other provision of this Agreement. Section headings in this Agreement are for convenience only and shall not be used in interpreting its provisions.

16.4. Notices. All notices required or allowed in this Agreement shall be in writing and shall be sent to the addresses (including any department or individual noted therein) shown in the Basic Provisions. A party may change its address for notice by giving notice to the other party. Notice may be delivered by either: (i) personal delivery, (ii) reputable national courier or delivery service for overnight or second-day delivery, (iii) U.S. Mail certified with return receipt requested, or (iv) Registered e-mail service such as R-Post. Notices are effective on the earliest of the date received, the date of the delivery receipt, or the third day after postmark, as applicable.

16.5. References. All references to this Agreement include references to all amendments to this Agreement. All references to the Closing Date in this Agreement include references to all automatic extensions of the Closing Date, and any extensions by agreement between Seller and Buyer. References to the Property include references to all or any portion of the Property.

16.6. Successors and Assigns. All of the provisions hereof shall inure to the benefit of and be binding upon the personal representatives, heirs, successors and assigns of Seller and Buyer. Except as otherwise provided, Buyer shall have no right to assign its interest hereunder without the prior written consent of Seller, which consent may not be unreasonably withheld, conditioned or delayed by Seller. Notwithstanding the foregoing, Buyer shall have the right to have title vest at closing in any affiliated or subsidiary entity designated by Buyer, or to assign its interest in this Agreement to Panda Express, Inc., Panda Restaurant Group, Inc. or to an entity, including a limited liability company, owned or controlled by Buyer, to a parent, wholly owned subsidiary or affiliated entity of Buyer, to successor by merger or consolidation, or to an entity that acquires substantially all the assets of Buyer without first obtaining Seller's consent thereto.

16.7. Time and Excusable Delays. Unless otherwise set forth herein, reference to days in this Agreement means consecutive calendar days including weekends and holidays. In the event any time period provided for in this Agreement expires on a weekend or legal holiday (being defined as any holiday recognized by the United States Postal Service), the time period shall be automatically extended to the next business day. Except as may otherwise be set forth herein, any performance provided for herein shall be timely made if completed no later than 5:00 p.m. California time, on the day of performance. **TIME IS OF THE ESSENCE OF THIS AGREEMENT AND EACH AND EVERY PROVISION HEREOF.**

16.8. Waiver. No right or remedy under this Agreement shall be waived unless the waiver is in writing and signed by the party claimed to have made the waiver. One waiver shall not be interpreted as a continuing waiver.

16.9. No Partnership, Third Person. It is not the intent of this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other similar business arrangement between Seller and Buyer. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, corporation or other entity not a party hereto (including, without limitation, any broker), and no such party shall have any right or cause of action hereunder.

16.10. Entire Agreement. This Agreement, together with any exhibits attached hereto, constitutes the entire agreement between, and the reasonable expectations of, the parties pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged herein. No change or addition shall be made to this Agreement except by a written agreement executed by Buyer and Seller. Buyer shall not record this Agreement nor any memorandum thereof in the public records without Seller's prior written approval, which may be withheld in Seller's sole and absolute discretion.

16.11. Indemnification. CFT NV Developments, LLC, pursuant to the provisions in 4.4 above, indemnifies the City of South Euclid. Should the City of South Euclid make a claim for indemnification it shall promptly notify CFT NV Developments, LLC of such claim. The City of South Euclid shall give to CFT NV Developments, LLC the right to defend, prosecute and settle the matter for which indemnification is sought, using legal counsel selected by CFT NV Developments, LLC, or its insurer with prior approval of the City of South Euclid, (which shall not be unreasonably withheld)

16.12. Further Documents. Buyer and Seller shall execute and deliver all such documents and perform all such acts as reasonably requested by the other party from time to time, prior to and following the Closing, to carry out the transactions contemplated by this Agreement.

16.13. Counterparts. This Agreement may be executed in any number of counterparts. Each such counterpart hereof shall be deemed an original, but all counterparts shall constitute one agreement.

16.14. Non-Foreign Person. Seller acknowledges that it is not a "foreign person," as that term is defined in Section 1445(f)(3) of the Code and, on or before the Closing, Seller shall provide Escrow Agent with Seller's affidavit stating such.

16.15. Tax Reporting. Escrow Agent, as the party responsible for closing the transaction contemplated hereby within the meaning of Section 6045(e) of the Code, shall file all necessary information, reports, returns and statements (collectively, the "Tax Reports") regarding this transaction as required by the Code, including, without limitation, the Tax Reports required pursuant to Section 6045 of the Code. Escrow Agent further agrees to indemnify and hold Buyer and Seller, and their respective attorneys and brokers, harmless from and against all losses, claims, costs, liabilities, penalties, or expenses resulting from Escrow Agent's failure to file the Tax Reports which Escrow Agent is required to file pursuant to this Section.

16.16. Confidentiality. Subject to Ohio Revised Code Section 149, the parties will maintain all Confidential Information in confidence and will not disclose such information to any other party without written consent. Also subject to provisions of ORC Section 149, CFT NV Developments, LLC acknowledges and understands that this document, once presented to City Council to authorize the Mayor to enter into said agreement, becomes a public document subject to disclosure to any party that requests a copy of it. **"Confidential Information"** includes the terms of this Agreement and any and all other information, whether oral or written, communicated by Buyer to Seller relating to Buyer's proposed development of the Property, including without limitation, Buyer's financial information, plans, specifications, site plans or drawings (regardless of whether such information is labeled confidential). Confidential Information may be released only to such employees, partners, consultants, attorneys, brokers and lenders who have a reasonable need for such Confidential Information, provided that such need and use is related solely to the transactions contemplated herein, and that such persons agree to maintain the confidential nature of such information, or in connection with the enforcement of this Agreement. This provision is binding upon submission of this Agreement and remains binding on the parties even if the parties do not enter into this Agreement, or this Agreement is terminated.

16.17. Applicable Law. The laws of the state in which the Property is located shall govern the validity, performance and enforcement of this Agreement. If either party institutes legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be the county in which the Property is located or the United States District Court having jurisdiction over such county.

16.18. Force Majeure. Any prevention, delay or stoppage due to strike, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, failure of power, governmental restrictions, governmental approvals, judicial orders, riots, insurrection, enemy or hostile governmental action, terrorism, civil commotion, fire or other casualty, and other reason of a similar or dissimilar nature beyond the reasonable control of the party obligated to perform ("**Force Majeure**"), shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage and the period for the performance of any act, including, without limitation, the contingency periods set forth herein, shall be extended for the period of the delay. Force majeure shall excuse the performance by that party for a period equal to the prevention, delay or stoppage, provided that the party prevented, delayed or stopped shall have given the other party written notice thereof within ten (10) days of such event causing the prevention, delay or stoppage, together with a reasonable estimate of the time period of such delay. Delays or failure to perform resulting from lack of funds or financial inability shall not be deemed delays beyond the reasonable control of a party. No extension of time will be granted for rain, snow, wind, cold temperatures, flood or other natural phenomena of normal intensity for the locality where the Property is located. Otherwise, TIME IS OF THE ESSENCE OF THIS AGREEMENT AND EACH AND EVERY PROVISION HEREOF.

*The remainder of this page is intentionally left blank.*

*Signatures are on the last page of the Basic Provisions of this Agreement, but before the General Provisions of this Agreement.*

**EXHIBIT A**

**TO REAL PROPERTY PURCHASE AGREEMENT**

Legal Description of the Property

**Parcel "B" in the Lot Split of PPN: 703-23-003 for the City of South Euclid, Ohio as shown by the recorded plat in Volume 367 of Maps, Page 96 of Cuyahoga County Records.**

The Property includes all easements and other rights appurtenant thereto.

**EXHIBIT B**  
**TO REAL PROPERTY PURCHASE AGREEMENT**

Deed

To be prepared by Escrow or Title and reasonably agreed upon between Seller and Buyer during escrow.

**EXHIBIT C**

**TO REAL PROPERTY PURCHASE AGREEMENT**

Declaration Of Restrictive Covenant

WHEREAS, under the Purchase Agreement dated February \_\_\_\_, 2015 (the "**Agreement**"), The City of South Euclid, a Municipal Entity of the State of Ohio ("**Seller**") agreed to sell to CFT DEVELOPMENTS, LLC, a California limited liability company ("**Buyer**"), real property (the "**Property**") located in Cedar North Shopping Center (the "**Shopping Center**") as legally described in Exhibit A and;

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller covenants and agrees as follows:

1. Seller shall not allow any real property leased or owned by Seller (including any parent, subsidiary or affiliated entity or agent) within the Restricted Area on or after the Closing to be used (i) for the sale of Asian Food or for a "Noodles & Company", or (ii) in a way which interferes with access to the Property or visibility of the Property (including Buyer's building and signs) (collectively, the "**Restrictive Covenants**"). The term "**Asian Food**" includes, without limitation, Chinese, Japanese (including sushi), Vietnamese, Thai, Hawaiian, Mongolian, Cajun, Indian and Korean foods, food cooked in a wok, food generally recognized as Chinese food, soy sauce-based food, and food in a buffet format. The term "**Restricted Area**" is defined as real property Seller (including any parent, subsidiary or affiliated entity or agent) leases, owns or owned on or after the Closing within the Shopping Center or within a one (1) mile radius of the exterior boundary of the Property.

2. These restrictions are for the benefit of Buyer and run with the Property and are for the benefit of and binding upon all successive owners and occupants of the Property.

3. This instrument shall be recorded in each county or parish in which the Property is located. Exhibit A is attached hereto and incorporated herein by this reference.

4. Failure to comply with any of the foregoing restrictions shall be grounds for relief which may include, without limitation, an action to recover damages, injunctive relief or any combination thereof.

IN WITNESS WHEREOF, the undersigned has executed this Declaration of Restrictive Covenant as of the date set forth below.

THE CITY OF SOUTH EUCLID,  
A Municipal Entity of the State of Ohio

By: \_\_\_\_\_  
Name: Georgine Welo  
Title: its Mayor  
Date: \_\_\_\_\_

PLEASE ATTACH ALL EXHIBITS  
ALL SIGNATURES MUST BE NOTARIZED

EXHIBIT A

(To the Declaration of Restrictive Covenant)

Legal Description of the Shopping Center

PPN's: 704-24-006, 007, 008, 044 and 045

Situated in the City of South Euclid, County of Cuyahoga and State of Ohio and known as being a part of Parcel "BB" in the Lot Split Plat of P.P. No. 704-23-003 as recorded in Volume 364 of Maps, Page 64 of Cuyahoga County Records, of part of Original Euclid Township Lot No. 24, Tract No. 2 being further bounded and described as follows:

Beginning at a 5/8-inch diameter iron pin found in the Westerly line of Warrensville Center Road, 86 feet wide, at the Northeasterly corner of aforesaid Parcel "BB";

Thence South 0° 38' 50" East, along the Westerly line of Warrensville Center Road a distance of 114.71 feet to a drill hole set at the Northerly end of a curved turnout between said Westerly line and the Northerly line of Stanhope Road, 50 feet wide;

Thence Southwesterly, along said curved turnout deflecting to the right an arc distance of 31.70 feet to a drill hole set in the Northerly line of Stanhope Road, said curved line having a radius of 20.00 feet, a central angle of 90° 49' 20" and a chord which bears South 44° 45' 50" West 28.49 feet;

Thence North 89° 49' 30" West, along the Northerly line of Stanhope Road a distance of 164.51 feet to a railroad spike found at the Westerly terminus of said Stanhope Road;

Thence South 0° 38' 50" East, along said Westerly terminus a distance of 50.00 feet to a capped iron pin set;

Thence North 89° 49' 30" West, a distance of 50.70 feet to a capped iron pin set;

Thence North 0° 38' 50" West, a distance of 185.00 feet to a capped iron pin set in the Northerly line of aforesaid Parcel "BB", also being the Southerly line of Eastway-Colony Estates as recorded in Volume 140 of Maps, Page 15 of Cuyahoga County Records;

Thence South 89° 49' 30" East, along said Northerly line a distance of 235.50 feet to the place of beginning and containing 0.786 acres (34,234 square feet) of land, as surveyed by Stephen Hovancsek & Associates, Inc., in October, 2011 under the direction of Robert Smoltz, Registered Surveyor No. 6763, State of Ohio, be the same more or less but subject to all legal highways.

The basis of bearing for this description being the centerline of Cedar Road, established as North 89° 55' 00" West in the aforesaid plat recorded in Volume 364 of Maps, Page 64 of Cuyahoga County Records. All capped iron pins set are 5/8-inch diameter rebar, 30 inches long with a plastic cap stamped SH&A 6763.

**EXHIBIT D**

**TO REAL PROPERTY PURCHASE AGREEMENT**

Seller shall, at Seller's expense, cause to be constructed and completed at the time and in the manner set forth in this Exhibit D, the site preparation and improvements described below, all of which are referred to as "**Seller's Work**":

NONE; N/A.