

PURCHASE AND SALE AGREEMENT FOR REAL ESTATE

This Agreement is made and entered into as of the ____ day of June 2021, by and between **MARIETTA BOROUGH** (the “Purchaser”), and **COUNTY OF LANCASTER** (the “Seller”).

Background

Seller is the owner of certain real estate located at 1 Robert Mowrer Drive, Marietta, Marietta Borough, Lancaster County, Pennsylvania (the “Premises”) with a property ID of 420-49801-0-0000 and more particularly described in Exhibit “A” attached hereto and made a part hereof. Seller wishes to sell to Purchaser the Premises, and Purchaser wishes to purchase from Seller the Premises, upon the terms and conditions hereinafter set forth. Additionally the Seller agrees to sell, transfer, assign, and convey Seller’s interest in and to all leases, easements, rights of way, privileges, appurtenances, and covenants pertaining to or benefiting the Land, if any (collectively, the “Appurtenances”).

NOW, THEREFORE, with the preceding Background paragraph incorporated by reference, and intending to be legally bound, the parties hereto agree as follows:

ARTICLE I PURCHASE PRICE

1.1. **Purchase Price.** The purchase price for the Premises shall be **ONE DOLLAR** (\$1.00) (the “Purchase Price”), payable as follows:

1.2. **Down Payment.** Purchaser shall pay to Seller a down payment in the amount of **ZERO DOLLARS** (\$0.00) at the signing of this agreement.

1.3. **Closing.** At Closing, Purchaser shall pay the balance of the purchase price in immediately available funds.

ARTICLE II – ZONING, TITLE & REPRESENTATIONS

2.1. **Condition of Title.** Title to the Premises shall be good and marketable and insurable by a reputable title insurance company at its regular rates, but subject to building and use restrictions, ordinances, easements of roads, rights of public services companies, and easements, rights or other non-monetary encumbrances either of record or visible upon inspection.

2.2. **Limitation on Seller Representations: AS-IS; WHERE-IS Sale.** Seller makes no warranty as to the condition of the Premises, including without limitation any or all environmental matters. Purchaser acknowledges and agrees that the Premises and all personal property, fixtures, appurtenances, and personality transferred hereunder shall be sold and conveyed “AS IS; WHERE IS” and with all faults, and Purchaser assumes the risk that adverse past, present, or future physical or operational characteristics and conditions may not have been revealed by its inspection or investigation. Purchaser acknowledges that they have had the opportunity to conduct inspections of the Premises, before signing this Agreement and agree to purchase the premises.

Purchaser also acknowledges and agrees that none of the Seller, Manager, Employer, or any of their affiliates, nor any of their respective Executors, Agents, or Representatives, nor any person purporting to represent any of the foregoing, have made any representation, warranty, guaranty, promise, projection or prediction whatsoever with respect to the Premises, or any aspect thereof, written or oral, express or implied, arising by operation of law or otherwise, including, without limitation, any warranty of merchantability or fitness for a particular purpose, or any representation or warranty as to (A) the condition, quantity, quality, use, occupancy, or operation of the Premises or any portion thereof, (B) the past, present, or future revenues or expenses with respect to the Premises, (C) the compliance of the Premises or any portion thereof or the operation of the Premises with any zoning requirements, building codes, or other applicable law.

Purchaser holds Seller harmless and indemnify Seller for any and all losses and damages to Purchaser relative to the condition of the Premises, including any or all environmental matters. Seller offers no warranty as to the title to any subsurface rights to the minerals, oil, granite, stone, or gas.

2.3. Status of Sewer and Water. The Seller represents that the Premises is serviced by ___ Public water, ___ Community Water, ___ On-site Water, or X None.

The Seller represents that the Premises is served by ___ Public Sewer, ___ Community Sewage Disposal System, ___ Individual On-lot Sewage Disposal System, ___ Holding Tank, ___ Individual On-lot Sewage Disposal System in Proximity to Well, X None.

2.4. Notices Regarding Land Use Restrictions.

a. Lease with Rivertownes PA USA, Inc.: The Premises is subject to a certain lease by and between the County of Lancaster, Lessor, and Rivertownes PA USA, Inc., Lessee, dated November 18, 2003, as amended with the first amendment on March 16, 2016 and the second amendment on August 1, 2018 (all of which are attached hereto as Exhibit B and referred to collectively as the "Lease"). In order to effectuate the sale of the Premises, the Purchaser must assume the Lease from the Seller. The Purchaser agrees to the assumption of the Lease, along with all responsibilities and liabilities as Lessor under this Lease. A written third addendum shall be executed contemporaneously with the Closing of the Premises a copy of which is attached hereto and incorporated herein as Exhibit "C".

2.5. Notices & Assessments. In the event any notices, including violations, and/or assessments are received after the day and year first above written, Seller shall within ten (10) days of receiving the notices and/or assessments provide a copy of the notices and/or assessments to the Purchaser. Purchaser agrees that they will comply with all notices and/or assessments, at Purchaser's sole expense, accept the Premises and release and indemnify the Seller for any such notices and/or assessments even if such notices and/or assessments are received prior to Closing. This release and indemnification will survive settlement and Closing.

2.6. Environmental Notices. All environmental control permits, approvals, and licenses, required by any law, ordinance, or by any governmental authority having jurisdiction

thereof on the Premises have been obtained by Seller. Neither the Premises, nor the use or operation thereof by Seller, or any tenant of the Premises:

a. violates, or is alleged by any person or entity to violate, or is not in compliance, or is alleged by any person or entity not to be in compliance, with any land use, environmental, hazardous material, and waste handling, storage, treatment, disposal, or discharge laws or other laws, building codes, zoning or other ordinances, rules or regulations, fire insurance regulations, state labor department regulations, or covenants, conditions and restrictions whether federal, state, local, or private; and

b. there exists no violation, nor is there alleged by any person or entity to exist any violation, of any covenants or agreements of any kind between or with tenants, or with any governmental jurisdiction or private party purporting or acting to restrict in any way the individual use and/or severability of each lot from every other lot; and

c. neither the Premises nor the present operation, use, location and configuration of the improvements on the Land (including without limitation, the side yard, setbacks and any parking and other occupancy ratios) constitutes an illegal use under any zoning or land use law or regulation, and none of the foregoing is the subject of any variance pursuant to any zoning or land use law or regulation; and

d. there has not occurred, nor has any person or entity alleged that there has occurred, upon the Premises, nor any parcel thereof, any spillage, leakage, discharge or release into the air, soil or groundwater of any hazardous materials or regulated wastes.

2.7. Mortgage/Liens of Record. At or prior to Closing, Seller shall cause any liens of record to be satisfied. Seller shall take all such steps necessary or desirable to remove all liens and security interests of any kind held by any bank in the Premises. Seller shall not create or permit to be created any lien, easement, restrictive covenant, or other encumbrance on the Premises from the date of this Agreement until Settlement, except for encumbrances which are approved by the Purchaser in writing or which shall be removed at Settlement.

2.8. Suits. There is no action, suit, or proceeding pending or, to the best of the actual knowledge of Seller, threatened against the Seller with respect to or arising out of the ownership, management, or operation of the Premises, in any court or any federal, state, county, regional or municipal department, bureau, commission, board or agency or other governmental instrumentality. In the event foreclosure proceedings begin against the Premises, the Purchaser reserves the right to cancel this agreement with no further obligations or notice to the Seller. It shall not be considered an event of default if the Purchaser cancels this agreement due to foreclosure proceedings against the Premises.

2.9. Notice of Deficiency. Seller has not received any note or notice of any legal requirement or deficiency concerning the Premises, nor any note or notice requiring any work, repairs, construction, or alteration of the Premises. Seller has also not received any note or notice of any unsatisfactory condition of the Premises from any insurance company or Board of Fire Underwriters.

ARTICLE III - CLOSING

3.1. Date of Closing. Settlement will take place at Russell, Krafft & Gruber, LLP, 930 Red Rose Court, Suite #300, Lancaster PA, 17601, or at such other time and location agreed to by the parties, within 60 days after the transfer is approved by the National Parks Service (the "NPS"), the County of Lancaster Board of Commissioners, the Marietta Borough Council, and any and all other government agencies whose approval is required (the "Closing" or the "Closing Date"). Formal tender of deed and purchase money are waived.

3.2. Seller's Obligations. At Closing, Seller will execute and deliver a deed in a form acceptable to the Purchaser and the Seller where it specially warrants its undivided interest in the Premises ("Deed"), in form and substance acceptable to Purchaser, fully executed and acknowledged by Seller, and in proper form for recording, conveying the Premises to Purchaser. Seller shall cooperate to execute such other documents as are customarily executed by sellers in Lancaster County, Pennsylvania with respect to commercial real estate settlements.

3.3. Purchaser's Obligations. At Closing, the Purchaser shall deliver to the Seller, the Purchase Price set forth in Article I of this Agreement. Purchaser shall prepare the Deed at Purchaser's expense. Purchaser shall cooperate to execute such other documents as are customarily executed by purchasers in Lancaster County, Pennsylvania with respect to commercial real estate settlements.

3.4. Closing Costs and Prorations. All real estate taxes relating to the Premises for the year of Closing shall be prorated between Seller and Purchaser as of the date of Closing. The Purchaser shall pay the Real Estate transfer taxes, if any, and in addition, all other costs and fees related to the transfer of title of the Premises. Each party shall be responsible for its own attorneys' fees.

ARTICLE IV – LOSS AND INDEMNIFICATION

4.1. Risk of Loss. Seller is in possession of the Premises and will maintain the Premises in its present condition, normal wear and tear excepted until time of Closing.

4.2. Indemnification for Maintenance Costs. Seller will indemnify and hold harmless Purchaser from all third-party claims arising from injuries occurring at the time of or prior to Closing. Purchaser will indemnify and hold harmless Seller from all third-party claims arising from injuries occurring after Closing.

ARTICLE V – DEFAULT

5.1. Default by Purchaser. If Purchaser defaults, violates, or fails to fulfill and perform any term or condition of this Agreement, then in such case, the Seller may elect to NULLIFY AND VOID this Agreement. In all such cases, the Seller shall be released from all liability or obligations under the Agreement.

5.2. Default by Seller. If Seller defaults, violates, or fails to fulfill and perform any term or condition of this Agreement, then in such case, the Purchaser may elect to NULLIFY AND VOID this Agreement. In all such cases, the Purchaser shall be released from all liability or obligations under the Agreement.

In the event that, at Closing, Seller is unable to convey good and marketable title and such as will be insured by any reputable title insurance company at regular rates, Purchaser shall have the option of (i) taking such title as Seller can give without abatement of the Purchase Price, except for what is otherwise agreed in Article I or (ii) terminating this Agreement, in which event, the Deposit shall be returned to Purchaser, this Agreement shall become null and void, and neither party shall have any further obligations or liabilities hereunder.

ARTICLE VII – REPRESENTATIONS

6.1. Warranties and Representations of Seller. Seller represents and warrants, as of the date hereof, to its knowledge, as follows:

(a) Power and Authority. Seller has the power and authority to perform its obligation under this Agreement. This Agreement is, and all documents that are to be executed by Seller and delivered to Purchasers in connection with the transaction contemplated herein will be, the legal, valid and binding obligation of Seller, enforceable in accordance with their respective terms.

(b) No Violation of Agreements. The execution and delivery by Seller of this Agreement and the performance by it of its obligations hereunder will not result in the breach of any of the terms or provisions or constitute a default under any agreement to which Seller is a party or by which Seller is bound and will not constitute a violation of law, regulation, order, judgment, writ, injunction or decree applicable to Seller of any Court or any federal, state or municipal body or any governmental authority having jurisdiction over Seller.

(c) Seller is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended.

(d) All contractors, subcontractors and other persons or entities furnishing work, labor, materials or supplies to Seller for the Property have been paid in full and there are no claims against the Seller or the Property in connection therewith.

(e) These representations and warranties shall survive closing.

6.2. Representations and Warranties of Purchaser. Purchaser, to induce Seller to enter into this Agreement and sell the Property, represent, and warrant to Seller that:

(a) Power and Authority. Purchaser has the power and authority to perform its obligation under this Agreement. This Agreement is, and all of the documents that are to be executed by it and delivered to Seller in connection with the transaction

contemplated herein will be, the legal, valid and binding obligation of Purchaser, enforceable against it in accordance with their respective terms.

(b) **No Violation of Agreements.** The execution and delivery by Purchaser of this Agreement and the performance by it of its obligations hereunder will not result in the breach of any of the terms or provisions or constitute a default under any agreement to which Purchaser is a party or by which Purchaser is bound and will not constitute a violation of law, regulation, order, judgment, writ, injunction or decree applicable to Purchaser of any Court or any federal, state or municipal body or any governmental authority having jurisdiction over Purchaser.

6.3. **Brokerage Commissions.** Both parties represent that they both have not contacted, contracted with or entered into any agreement with any real estate broker or agent in connection with the sale of the Premises, and that they have not taken any action that might result in any real estate broker's, finder's or other fee or commission being due or payable in connection with this transaction. Purchaser shall indemnify and save harmless Seller from and against all costs, claims, expenses, or damages, including reasonable attorneys' fees, resulting from or related to any brokerage commission due or alleged to be due. This obligation to indemnify shall survive the expiration, consummation, or earlier termination of this Agreement.

ARTICLE VII – MISCELLANEOUS

7.1. **Governing Law & Representations.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. By execution of this Agreement, the parties represent that by signing below they have the authority to bind their representative organizations as a matter of law.

7.2. **Notice and Approval.** All notices required or permitted to be given hereunder shall be in writing and shall be delivered to the parties at the following addresses:

If to Seller: County of Lancaster
 c/o Parks and Recreation Administrator

Lancaster County Dept. of Parks and Recreation
1050 Rockford Road
Lancaster, PA 17602

And a copy to
Lancaster County Solicitor
150 N. Queen Street
Suite 714
Lancaster PA 17603

If to Purchaser: Marietta Borough
 c/o Borough Secretary

111 E. Market Street
Marietta, PA 17547

Notice shall be deemed to be served upon deposit in an office of the United States Postal Service, or successor governmental agency, registered or certified mail, return receipt requested, or upon receipt by a reputable overnight courier service (such as Airborne Express or Federal Express.

7.3. Integration. This Agreement constitutes the entire agreement between the parties related to the purchase and sale of the Premises and shall be deemed to be a full, final, and completed integration of all prior or contemporaneous understandings or agreements between the parties.

7.4. Additional Documentation. Seller and Purchaser shall execute all additional documentation as reasonably may be required to effectuate this Agreement.

7.5. Amendments. This Agreement may be amended or supplemented only by a written instrument signed by all parties hereto.

7.6. Counterparts. This Agreement may be executed in any number of identical counterparts, each of which shall be considered an original, but together shall constitute but one and the same agreement.

7.7. Successors. This Agreement shall be binding upon the parties hereto, their respective heirs, administrators, personal representatives, successors, and assigns.

7.8. Captions. The captions or paragraph headings are for convenience and ease of reference only and shall not be construed to limit, modify, or alter the terms of this Agreement.

7.9. Survival. The representations, warranties, and agreements set forth herein shall survive Closing.

7.10. Termination. If Purchaser timely terminates this Agreement by written notice to Seller pursuant to the termination rights set forth in this Agreement, then, upon such termination, this Agreement shall be and become null and void, and neither Purchaser nor Seller shall have any further rights or obligations hereunder.

7.11. Time of the Essence. The parties agree that time is of the essence in the performance of their respective obligations under this Agreement.

(Remainder of page intentionally left blank.)

IN WITNESS WHEREOF, this Agreement is executed under seal the day and year first above written.

ATTEST:

LANCASTER COUNTY

CHIEF CLERK

Joshua J. Parsons, *Bd. of Commr., Chairman*

Ray D'Agostino, *Bd. of Commr., V. Chairman*

Craig E. Lehman, *Commissioner*

PURCHASER:

MARIETTA BOROUGH

_____ [SEAL]

BY: _____

TITLE: _____

Exhibit "A"

Legal Description of Premises

Exhibit "B"
Leases

Exhibit "C"
Vesta Lease Third Addendum