

CITY OF EDGEWATER

AND

EDGEWATER REDEVELOPMENT AUTHORITY

AND

TRINITY DEVELOPMENT GROUP, INC.

PURCHASE, SALE AND DEVELOPMENT AGREEMENT

Dated as of November 1, 2015

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PURCHASE, SALE AND DEVELOPMENT AGREEMENT

THIS PURCHASE, SALE AND DEVELOPMENT AGREEMENT, dated as of November 3, 2015, (the “Effective Date”) and any amendments hereto made in accordance herewith (as from time to time amended and supplemented in accordance herewith, this “Agreement”), is made by and between the CITY OF EDGEWATER, a Colorado home rule municipal corporation (the “City”), the EDGEWATER REDEVELOPMENT AUTHORITY, a Colorado urban renewal authority (the “Authority”), and TRINITY DEVELOPMENT GROUP, INC, a Georgia corporation (together with any permitted successors and/or assigns, “Developer”).

Recitals

This Agreement is made with respect to the following facts:

A. The City is a municipal corporation and political subdivision duly organized and existing under the Constitution and laws of the state of Colorado and its home rule charter.

B. The City owns a tract of land within the City limits that is described in Exhibit A hereto (the “Property”), which Exhibit is incorporated herein by reference, and that it and the Authority desire to be sold to be redeveloped in order to bolster local economic activity.

C. The Authority is the tenant, and the City is the landlord, under that certain ground lease, dated August 10, 1984 (the “Ground Lease”), over that portion of the Property that is described in Exhibit B hereto, which Exhibit is incorporated herein by reference, and is the owner of all of the improvements situated within the area subject to the ground lease.

D. The Developer desires to purchase and redevelop the Property and to provide assurance to the City and the Authority that the Property will be redeveloped in the immediate future and will not be held by the Developer for speculative or other purposes.

E. The City intends to convey the Property to the Developer for development of a project in accordance with this Agreement (the “Project”) and the intent of the City and the Authority is that, prior to such conveyance, there shall be a merger in the City of the interests of the City’s fee ownership of the Property and the interests of the Authority’s Ground Lease over a portion of the Property.

F. The Developer has agreed to design and construct the Project on the Property in accordance with this Agreement and with all applicable local, state and federal laws.

G. The City, the Authority and the Developer entered into that certain Purchase Sale and Development Agreement dated as of June 15, 2013 (the “First Agreement”) and, by letter dated December 12, 2013, Developer terminated the First Agreement pursuant to the terms thereof. The City, the Authority and the Developer entered into that certain Purchase, Sale and Development Agreement dated as of January 2, 2014 (the “Second Agreement”) and, by letter dated September 30, 2014, Developer terminated the Second Agreement pursuant to the terms

thereof. The City, the Authority and the Developer entered into that certain Purchase, Sale and Development Agreement dated as of November 1, 2014, (the “Third Agreement”) and, by letter dated August 26, 2015, Developer terminated the Third Agreement pursuant to the terms thereof.

H. The City, the Authority and the Developer desire to enter into this Agreement to replace the terminated First Agreement, Second Agreement and Third Agreement.

Agreement

NOW, THEREFORE, in consideration of the premises herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1 DEFINITIONS.

Section 1.01 Definitions. As used in this Agreement, the following terms will have the following meanings:

“Agreement” has the meaning set forth in the first paragraph of this Agreement. References to Sections and Exhibits are to this Agreement unless otherwise qualified.

“Authority” has the meaning set forth in the first paragraph of this Agreement.

“City” has the meaning set forth in the first paragraph of this Agreement.

“City Code” means the Code of Ordinances of the City of Edgewater.

“Closing” means the events occurring at the time described in Section 3.06.

“Deed” has the meaning set forth in Section 3.06(a).

“Developer” has the meaning set forth in the first paragraph of this Agreement.

“Development Conditions” means: (i) such terms of this Agreement as govern the development of the Property; and (ii) all finally approved plats, plans and other documents that are required or permitted by the City Code for the development of the Project or any part of the Project.

“Environmental Laws” means all federal, state and local environmental, health and safety statutes, as may from time to time be in effect, including but not limited to federal laws such as the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. §§ 9602, et seq., the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601(20)(D), the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901, et

seq., the Federal Water Pollution Control Act, as amended by the Clean Water Act Amendments of 1977, 33 U.S.C. §§ 1251, et seq. (“CWA”), the Clean Air Act of 1966, as amended, 42 U.S.C. §§ 7401, et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136, et seq., the Occupational Safety and Health Act, 29 U.S.C. §§ 651, et seq., the Safe Drinking Water Act, 42 U.S.C. §§ 300f, et seq., the Toxic Substances Control Act, 15 U.S.C. §§ 2601, et seq., and any and all federal, state and local rules, regulations, authorizations, judgments, decrees, concessions, grants, franchises, agreements and other governmental restrictions and other agreements relating to the environment or to any pollutants, as may from time to time be in effect.

“Notice Address” means the appropriate address for notice set forth below, as amended from time to time:

City: City of Edgewater
2401 Sheridan Boulevard
Edgewater, Colorado 80214
Attn: City Manager

With a Copy to:

Thad W. Renaud, Esq.
Murray Dahl Kuechenmeister & Renaud LLP
1530 16th Street, Suite 200
Denver, CO 80202

Developer: Trinity Development Group, Inc.
1915 Airport Road, Suite 2
Atlanta, GA 30341
Attn: Mr. Vincent A. Riggio and Ms. Shannon Greene

With a Copy to: _____

“Permitted Exceptions” has the meaning set forth in Section 3.04.

“Project” has the meaning set forth in Recital E and Section 2.01.

“Property” is that property described in Exhibit A hereto (the “Premises”), together with the interests, easements, rights, and benefits appurtenant thereto, and all buildings, structures, improvements, and fixtures, if any, now situated on the Premises; all and singular the tenements,

hereditaments, easements, appurtenances, licenses, passages, waters, water rights, water courses, other rights, liberties and privileges thereof or in any way now or hereafter appertaining, including homestead or any other claim at law or in equity as well as any after-acquired title, and the reversion and reversions, remainder and remainders thereof; and all other rights appertaining to the use or enjoyment of the Premises and improvements located in or upon the Premises.

“Property Information” has the meaning set forth in Section 3.02.

“Purchase Price” means a sum of money, the amount of which is determined in accordance with the provisions set forth in Subsection 3.06(b).

“Review Period” means the period beginning on the Effective Date and ending on August 31, 2016 .

“Title Commitment” has the meaning set forth in Section 3.04.

“Title Company” has the meaning set forth in Section 3.04.

“Title Policy” means an ALTA Owner's title insurance policy issued by the Title Company, in an amount to be determined by the Developer, dated as of Closing and reflecting Developer as fee owner of the Property, subject only to the standard pre-printed exceptions (if not removed by arrangement of the Developer under Section 3.04(a)), Permitted Exceptions and such other easements, rights-of-way and exceptions as may be agreed upon in writing by the parties.

SECTION 2 DESCRIPTION OF THE DEVELOPMENT.

Section 2.01 Description of the Development. The Project is the redevelopment of the Property in accordance with this Agreement, including the Development Conditions. The physical nature of the Project shall be at the discretion of the Developer, so long as the use of the Project shall be for not less than Fifty Thousand (50,000) square feet of sales-tax generating retail uses, with or without office uses over such sales tax generating uses, and with or without residential uses over or among such sales tax generating uses, and so long as each and every aspect of the Project has received any and all City approvals required to construct the Project pursuant to the requirements of the City Code. Developer understands and agrees that the current zoning of the Property does not permit residential use, and that the City’s consideration of any rezoning application that Developer may make shall be made in accordance with the provisions of Section 5.02 below. Developer agrees to develop the Property with reasonable care and diligence and to carry out and complete the Project in accordance with the Development Conditions. The Provisions of this Section 2.01 shall survive the Closing on the Property for a period of five (5) years after the Effective Date.

SECTION 3 ACQUISITION AND CONVEYANCE OF THE PROPERTY. Developer agrees to buy, and the City agrees to sell, the Property on the terms and conditions set forth in this Agreement.

Section 3.01 Property Inspection and Environmental Assessment.

(a) During the Review Period, the City shall provide Developer, its employees and agents, with ongoing access to the Property to, at Developer's sole cost and expense, inspect it, conduct any due diligence, tests, surveys, assessments, including environmental assessments, or other studies or analysis, including an appraisal, or to collect any data, samples, specimens or information as Developer deems necessary, in its sole discretion; provided that Developer shall repair any damage resulting from any such activities and shall return the Property substantially to its condition prior to such damage. Developer shall not permit claims or liens of any kind against the Property for work performed on the Property at the Developer's request. Developer agrees to indemnify, protect and hold City harmless from and against any liability, damage, cost or expense incurred by City and caused by any such work, claim or lien. This indemnity includes the City's right to recover all costs and expenses incurred by the City to defend against any such liability, damage, cost or expense, or to enforce this section, including the City's reasonable attorney fees, legal fees and expenses. A copy of any research materials, reports, assessments, analysis or studies, including but not limited to marketing studies, that are prepared by or on behalf of the Developer and that concern the Property shall be promptly delivered to the City. Any such materials, or portions of materials, that constitute or contain marketing studies or analysis (as opposed to studies or analysis or depictions of the physical nature of the Property) shall be treated by the City as confidential commercial information under Section 24-72-204(3)(a)(IV) of the Colorado Revised Statutes. The provisions of this paragraph shall survive the termination of this Agreement.

Section 3.02 Materials to be Delivered. Developer acknowledges that, prior to the Effective Date, the City has delivered to Developer the following materials concerning the Property (the "Property Information"):

(a) The City's most recent title insurance policy, if any, relating to the Property;

(b) A copy of the most recent, if any, survey, plats, environmental reports, soil reports, as-built plans of all improvements located on the Property, site plans of the Property, and all leases for any part of the Property which City has in its possession or control.

Section 3.03 Developer's Due Diligence. Developer shall have the Review Period during which to inspect the Property and to review all matters affecting or relating to the Property or the Developer's desired Project, including, but not limited to, the location, availability and adequacy of utilities, zoning, engineering, soil conditions, tests, surveys, the economic feasibility of and presale (or pre-lease) interest in the Project, the appraised value of the Property and the financing for acquisition of the Property and development of the Project as well as other studies or analyses (including any environmental assessment), and the Property

Information. If, as a result of such inspection and review, Developer finds the Property unsatisfactory to it, in its sole and absolute discretion, and delivers written notice to the City of the exact nature of such unsatisfactory condition(s) within the Review Period, then, and except as to unsatisfactory condition based upon the Purchase Price, the Developer may terminate this Agreement and the parties shall proceed thereafter in accordance with the provisions of Section 4 below.

Section 3.04 Survey and Title Evidence.

(a) The City shall, on or before December 31, 2015, deliver to Developer, at the City's expense, an ownership and encumbrance report issued by a title company with an agency in Colorado, covering the Property, together with legible copies of all exception documents disclosed by such report. Within the Review Period, Developer shall choose a title company with an agency in Colorado (the "Title Company") and shall advise the City in writing of its choice. Within twenty (20) days after the date of such advisement, the City shall cause the Title Company to issue a Title Commitment covering the Property, together with legible copies of all exception documents disclosed by such Title Commitment. Such Title Commitment shall commit to insure fee simple title to the Property in Developer an a dollar amount to be determined by the Developer and subject only to (i) the Title Company's standard pre-printed exceptions to title; (ii) this Agreement; and (iii) all matters of record disclosed in the Title Commitment (collectively, the "Permitted Exceptions"). On or before the date of the Closing, the City shall cause such Commitment to be endorsed so as to change the effective date to a date no more than one week prior to the Closing. City shall pay the pro rata portion of the title insurance premium at the Closing that is attributable to Purchase Price (and the Developer shall pay the remainder of the premium) and the City shall have the Title Policy delivered to Developer as soon as practicable after the Closing. If required by the Title Company in order to insure the property in the amount set forth in this subsection (a), and if the City's existing appraisal of the Property is deemed insufficient by the Title Company for that purpose, Developer will obtain and pay for an appraisal of the Property and provide copies of it to the City and the Title Company. If required by the Title Company to delete the standard preprinted exceptions set for the in the Title Commitment, and if the Developer desires that such preprinted exceptions be deleted, the Developer will obtain and pay for an ALTA survey of the Property and provide copies of the same to the City and the Title Company at such time prior to the Closing as may be required by the Title Company.

(b) Written notice of unmerchantability of title or of any other unsatisfactory title condition, as determined in Developer's sole discretion, shown by the Title Commitment shall be given by or on behalf of Developer on or before the end of the Review Period. If the City does not receive Developer's notice prior to the expiration of the Review Period, Developer accepts the condition of title of the Property as disclosed by the Title Commitment as satisfactory. If the City timely receives notice of unmerchantability of title or any other unsatisfactory title condition(s), the City shall use reasonable efforts, at no more than nominal cost, to correct such title condition(s). If such condition(s) are not corrected fifteen (15) days after receipt of the Developer's notice, Developer will have the right to terminate this Agreement by notice to the City given within five (5) calendar days after such fifteen (15) day period.

Section 3.05 SPECIAL DISTRICT DISCLOSURE STATEMENT. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. PURCHASERS SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES. PURCHASERS SHOULD INVESTIGATE THE SPECIAL TAXING DISTRICTS IN WHICH THE PROPERTY IS LOCATED BY CONTACTING THE COUNTY TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE PROPERTY, AND BY OBTAINING FURTHER INFORMATION FROM THE BOARD OF COUNTY COMMISSIONERS, THE COUNTY CLERK AND RECORDER, OR THE COUNTY ASSESSOR.

Section 3.06 Closing. Closing of the acquisition by Developer from the City of the Property will take place at the Title Company on or before forty-five (45) days after the expiration of the Review Period, or such earlier date as may be agreed upon in writing by City and Developer. At Closing, the following will occur, each being a condition precedent to the others and all being considered as occurring simultaneously:

(a) The Authority shall convey to the City, by Quit Claim Deed, all of its interest in and to any improvements on the Property, and shall assign to the City all of its interest as tenant under that certain ground lease, dated August 10, 1984, over that part of the Property described in Exhibit B hereto. The City shall execute, have acknowledged and deliver to Developer: (i) a General Warranty Deed (the "Deed") conveying title to the Property to Developer, free and clear of all taxes and subject only to such liens, encumbrances and other matters as may make up the Permitted Exceptions; (ii) a certification that all representations and warranties made by the City in this Agreement are true, accurate and complete at the time of the Closing; (iii) an affidavit certifying that the City is not a foreign person, foreign corporation, foreign partnership, foreign trust or foreign estate, as those terms are defined in the Internal Revenue Code of 1986, as amended, and the corresponding income tax regulations; and (iv) such affidavits and agreements to or with Title Company as Title Company shall require to issue to Developer a policy of owner's title insurance.

(b) Developer will deliver to the City, in funds that comply with all applicable Colorado laws, but including only electronic transfer funds, certified check, savings and loan teller's check or a cashier's check ("Good Funds"), a sum equal to Nine Dollars (\$9.00) per square foot of the Property that is or remains zoned by the City for commercial uses within the Project, plus the sum of Twenty-Five Thousand Dollars (\$25,000.00) for each multiple-family condominium or apartment residential dwelling unit that may be approved by the City to be a part of the Project, plus the sum of Ninety-Thousand Dollars (\$90,000.00) for each townhome residential dwelling unit that may be approved by the City to be a part of the Project (collectively

the “Purchase Price”). Provided that the project shall be anchored by a natural food grocer and shall include other, significant sales-tax generating businesses, the City, the Authority and the Developer agree that they shall negotiate in good faith to determine the amount of a credit toward the Purchase Price, which amount shall not exceed the portion of the Purchase Price attributable to the portion of the Property that is or remains zoned for commercial uses within the Project, for the Developer’s use in constructing infrastructure or tenant finish or other improvements necessary or desirable for the commercial portions of the Project. The Developer understands and agrees that, among the principal considerations of the City and the Authority in such negotiations is the amount of sales tax and property tax likely to be derived from the Project from the City and the Authority, respectively. Developer shall also deliver to the City a certification that all representations and warranties made by Developer in this Agreement are true, accurate and complete at the time of the Closing. City and Authority will deliver to Developer respective certifications that all representations and warranties made by each of them in this Agreement remain true, accurate and complete at the time of the Closing. City will deliver to the Authority, in Good Funds, the sum of Three Hundred Fifty Thousand Dollars (\$350,000).

(c) The City and the Developer will each pay one-half (50%) of the Title Company’s closing costs and will execute settlement sheets, closing instructions, and such other agreements and documents (with customary prorations in accordance with local practice for commercial property transactions) as may be required to implement and to carry out the intent of this Agreement.

(d) The Title Company will issue the Title Policy to Developer, or unconditionally commit to so issue the Title Policy promptly following Closing.

Section 3.07 Risk of Loss. If, prior to the Closing, the Property or any part thereof is damaged or destroyed by fire, earthquake, flood or other casualty, to a degree that Developer determines its use is adversely affected, Developer may at its option terminate this Agreement by written notice to the City prior to the Closing. In the event of such termination by Developer, the City and the Developer shall proceed in accordance with the provisions of Section 4 below. In the event that the Developer fails to terminate this Agreement as a result of such casualty, the Developer agrees that it is purchasing the Property in its then “as is” condition as a result of such casualty.

Section 3.08 “As Is” Nature of Transaction. The City has not made, does not make and specifically negates and disclaims any representations, warranties, covenants or guarantees of any kind, whether express or implied: (a) concerning or with respect to the presence of hazardous substances on the Property or compliance of the Property with any and all applicable Environmental Laws and (b) the value, nature, quality or condition of the water, soil and geology of the Property. The Developer acknowledges and agrees that to the maximum extent permitted by law, the sale of the Property, as provided for herein, is made on an “as is,” “where is” and “with all faults” condition and basis with respect to the existence of hazardous substances and the condition of the water, soil and geology of the Property. The Developer and anyone claiming by, through or under the Developer hereby fully and irrevocably releases the City and its successors from any and all claims that it may now have or hereafter acquire against the City, its

officials, officers, employees, representatives and agents for any cost, loss, liability, damage, expense, claim, demand, action or cause of action arising from or related to any such defects and conditions, including, without limitation, compliance with Environmental Laws, affecting the Property or any portion thereof.

SECTION 4 EARNEST MONEY. The provisions of this section shall survive the termination of this Agreement.

Section 4.01 Deposit of Earnest Money. The City acknowledges that prior to the Effective Date earnest money, in Good Funds in the amount of Ten Thousand Dollars (\$10,000) (the “Earnest Money”), has been deposited with the City by the Developer. Developer shall pay an additional Forty Thousand Dollars (\$40,000) as Earnest Money upon the expiration of the Review Period. Upon the expiration of the Review Period, all Earnest Money shall become non-refundable but for the City’s default under this Agreement or the failure of any conditions precedent which survive the Review Period.

Section 4.02 Return of Earnest Money. If Developer or the City has a right to terminate this Agreement and the Developer or the City exercises that right in a timely manner, then the City shall return the Earnest Money to the Developer, without interest, within five (5) business days after the date of termination.

Section 4.03 Application of Earnest Money at Closing. If this Agreement has not been terminated prior to Closing, at Closing all of the Earnest Money deposited with the City shall be applied to the Purchase Price.

Section 4.04 Remedy on Termination or Default. If Developer or the City has a right to terminate this Agreement and the Developer or the City exercises that right in a timely manner, the Developer shall be entitled to return of the Earnest Money, as set forth in Section 4.02 above, as Developer’s sole and exclusive remedy at law and/or equity. In the event that the Earnest Money becomes non-refundable as a result of the expiration of the Review Period and, thereafter, the Developer fails to purchase the Property pursuant to the terms of this Agreement, City shall be entitled to retain all of the Earnest Money, as liquidated damages and as the City’s sole and exclusive remedy at law and/or equity. The Developer and the City agree that it would be impracticable and extremely difficult to ascertain the actual damages suffered by the City as a result of Developer’s failure to purchase the Property pursuant to this Agreement and that under the circumstances existing as of the Effective Date of this Agreement, the liquidated damages provided for in this Section represent a reasonable estimate of the damages that the City would incur as a result of such failure; provided, however, that this provision shall not limit the City’s right to receive reimbursement for attorneys’ fees nor waive or affect the City’s rights under other sections of this Agreement. The City and the Developer acknowledge that the payment of such liquidated damages is not intended as a forfeiture or penalty, but is intended to constitute liquidated damages to the City. In the event of a default hereunder by the City or the Authority, Developer may terminate this Agreement and receive a refund of the Earnest Money, or may pursue an action against the City and the Authority for specific performance as its sole and exclusive remedy at law or in equity under this Agreement; provided, however, that this

provision shall not limit the Developer's right to receive reimbursement for attorneys' fees nor waive or affect the Developer's rights under other sections of this Agreement.

SECTION 5 DEVELOPMENT APPROVALS.

Section 5.01 Development Approval. Developer shall, during the Review Period, process all necessary applications required for the development associated with the Project through the City as required by the City's ordinances and regulations, including, but not limited to, any rezoning applications under Chapter 16 of the City Code, and any subdivision or Site Development Plan applications under Chapter 17 of the City Code.

Section 5.02 Development Approvals Generally. The City agrees reasonably to cooperate with Developer with respect to applications for any permits or approvals required by the City Code, and any permits or approvals required from any other governmental agency; provided, however, that all applications for such permits and approvals are in compliance with the applicable ordinances and regulations, approved plans and specifications, and all applicable codes and regulations. Nothing contained herein shall be construed to obligate the City to issue any permit or approval necessary in connection with the Project, and the City may issue any such permit or approval in its sole discretion, in accordance with applicable City ordinances and the City code. Any approval of the necessary applications made under Section 5.01 above will not be unreasonably delayed, withheld or conditioned. The Developer understands and agrees, however, that the City's consideration and decision with respect to any application the Developer may file in order to obtain approval of the Project will be a quasi-judicial decision made in accordance with applicable law and without regard to this Agreement. Accordingly, in the event that the Developer has not received, during the Review Period, full development approval of the Project proposed by Developer, whether due to political opposition, initiative, referendum, litigation, the City's lack of support or any other cause, after a minimum of two (2) good faith efforts to obtain such approval, then the Developer shall have the right to terminate this Agreement by written notice to the City. In the event of such termination by the Developer, the City and the Developer shall proceed in accordance with the provisions of Section 4 above, and Developer agrees that the return of Earnest Money pursuant to said Section shall be Developer's sole and exclusive remedy with respect to the City's failure to have approved the Project.

SECTION 6 REPRESENTATIONS AND WARRANTIES

Section 6.01 Representations and Warranties by Developer Developer represents and warrants to City, and agrees that the following matters are now true and shall be true as of Closing:

(a) That Trinity Development Group, Inc., is a corporation duly organized and validly existing under the laws of the State of Georgia, is not in violation of any provisions of its governing documents or the laws of the State of Colorado, has the power and legal right to enter into this Agreement and has duly authorized the execution, delivery and performance of this Agreement by proper action;

(b) That the consummation of the transactions contemplated by this Agreement will not violate any provisions of the governing documents of Developer or constitute a default or result in the breach of any term or provision of any contract or agreement to which Developer is a party or by which it is bound;

(c) That Developer will cooperate with the City with respect to any litigation brought by a third party concerning the Project or this Agreement, except where by the nature of the litigation the City and Developer are adverse;

(d) That there is no litigation, proceeding or investigation contesting the power or authority of the Developer or its officers with respect to the Project or this Agreement, and Developer is unaware of any such litigation, proceeding or investigation that has been threatened.

Section 6.02 Representations and Warranties by the City. The City represents and warrants to Developer, and agrees that the following matters are now true and shall be true as of Closing:

(a) That the City is a home rule municipal corporation and political subdivision validly existing under the laws of the State of Colorado.

(b) That the City has the power to enter into and has taken all actions required to authorize this Agreement and to carry out its obligations hereunder.

(c) That there is no litigation, proceeding or investigation contesting the power or authority of the City or its officials to enter into or consummate the transactions contemplated by this Agreement, and the City is unaware of any such litigation, proceeding or investigation that has been threatened nor does the City know of any basis for any such action.

(d) That the execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not (i) conflict with or contravene any law, order, rule or regulation applicable to the City or to the City's governing documents, (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the City is a party or by which it may be bound or affected, or (iii) permit any party to terminate any such agreement or instruments or to accelerate the maturity of any indebtedness or other obligation of the City.

(e) That the Property is not subject (and will not be subject until after the Closing relative to time periods after the Closing) to any ad valorem real estate taxes or other real estate taxes because the Property is owned by the Seller, a municipal corporation.

(f) That the City has received no notice of any disputes concerning the location of the lines and corners of the Property;

(g) That the City has received no notice of action, contemplated action, or plans: to close any public street adjoining the Property; to terminate, modify, or change any curb cut or street opening permit, license, approval with respect to vehicular or pedestrian access between the Property and any adjoining public street; or to erect a median or similar barrier within any public

street adjoining the Property that would restrict or limit access between the Property and such street;

(h) That the City has received no notice of action, contemplated action, or plans for a moratorium on the issuance of utility, development, or building permits, licenses, or approvals necessary to utilize the Property for commercial purposes, nor is City aware of any moratorium or threat of a moratorium on applications to rezone or to seek variances with respect to the Property;

(i) That the City has received no notice of violations or alleged violations of any governmental rules and/or regulations with reference to the Property, or with reference to public or private easements for utilities which serve and inure to the benefit of the Property;

(j) That to City's best knowledge no part of the Property is located in a flood zone as such is identified by Federal, State or local agencies; and

(k) That between the Effective Date and the Closing, the physical condition of the Property will not be changed.

Section 6.03 Representations and Warranties by the Authority. The Authority represents and warrants to Developer, and agrees that the following matters are now true and shall be true as of Closing:

(a) That the Authority is Colorado urban renewal authority validly existing under the laws of the State of Colorado.

(b) That the Authority has the power to enter into and has taken all actions required to authorize this Agreement and to carry out its obligations hereunder.

(c) That there is no litigation, proceeding or investigation contesting the power or authority of the Authority or its officials to enter into or consummate the transactions contemplated by this Agreement, and the Authority is unaware of any such litigation, proceeding or investigation that has been threatened nor does the Authority know of any basis for any such action.

(d) That the execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not (i) conflict with or contravene any law, order, rule or regulation applicable to the Authority or to the Authority's governing documents, (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the Authority is a party or by which it may be bound or affected, or (iii) permit any party to terminate any such agreement or instruments or to accelerate the maturity of any indebtedness or other obligation of the Authority.

(e) That the Authority has received no notice of any disputes concerning the location of the lines and corners of its ground lease over a portion of the Property;

(f) That the Authority has received no notice of action, contemplated action, or plans: to close any public street adjoining the Property; to terminate, modify, or change any curb cut or street opening permit, license, approval with respect to vehicular or pedestrian access between the

Property and any adjoining public street; or to erect a median or similar barrier within any public street adjoining the Property that would restrict or limit access between the Property and such street;

(g) That the Authority has received no notice of action, contemplated action, or plans for a moratorium on the issuance of utility, development, or building permits, licenses, or approvals necessary to utilize the Property for commercial purposes, nor is Authority aware of any moratorium or threat of a moratorium on applications to rezone or to seek variances with respect to the Property;

(h) That the Authority has received no notice of violations or alleged violations of any governmental rules and/or regulations with reference to the Property, or with reference to public or private easements for utilities which serve and inure to the benefit of the Property;

(i) That to Authority's best knowledge no part of the Property is located in a flood zone as such is identified by Federal, State or local agencies; and

SECTION 7 RESTRICTIONS ON ASSIGNMENT AND TRANSFER

Section 7.01 Limitation on Assignment. Developer will not assign its rights or delegate its duties and obligations pursuant to this Agreement without the prior written consent of the City, which may be withheld in the City's sole discretion and any purported assignment without consent of the City will be null and void. As a condition to granting consent, an assignee will expressly assume in writing the obligations of Developer hereunder and upon any such full assumption of obligations, Developer shall be released from any and all obligations hereunder. For purposes of this Section 7.01, any sale, transfer, assignment, pledge or hypothecation of an interest in Developer that results in a change in control of Developer, or in which Developer retains less than a 51% ownership interest in the Property, will constitute an assignment of this Agreement.

SECTION 8 CONDITIONS PRECEDENT

Section 8.01 Developer's Conditions.

The obligation of Developer to consummate this Agreement, and the purchase and sale contemplated hereby in accordance with the terms and provision of this Agreement, is subject to the fulfillment and satisfaction on or prior to Closing as to the conditions described in Subparagraphs 8.01 (1), (2), (3), (4), (5), (6), and (8), and on or before the expiration of the Review Period as to the conditions described in Subparagraphs 8.01 (7) and (9), or the waiver thereof in writing by Developer:

(1) Each and all agreements and covenants of City as provided in this Agreement shall have been fully and duly performed in accordance with the terms and provisions of this Agreement;

(2) Each and all warranties and representations of City as contained in this Agreement shall be true and correct as of Closing;

(3) There shall not have occurred any material or adverse change, as determined in Developer's reasonable discretion, in (i) the zoning of the Property, except as may be expressly contemplated by this Agreement; (ii) the title to the Property; (iii) the availability of access to the Property; or (iv) the availability to the Property of sewer, water, electricity or any other utilities;

(4) Receipt by Developer of all governmental authorizations, licenses, and permits including, without limitation, construction and use permits, building permits, curb cuts, driveway access or access control permits and sign permits (collectively, the "Permits") relating to the development and use of the Property, in accordance with the Development Conditions, with all appeal rights having expired, or if an appeal has been filed, with the appeal having been denied without further opportunity for appeal (the "Permit Contingency"). For purposes hereof, the Development Conditions are as defined in Section 1 of this Agreement as they exist from time to time for development of the Property as a store front retail development and/or office over store front retail development, with or without residential dwelling units over or among the store front retail development (the "Intended Use");

(5) Consummation of the Final Rezoning. For purposes hereof, the Final Rezoning is deemed to be the rezoning of the Property to a zoning classification or classifications, with such conditions as are satisfactory to Developer in Developer's sole discretion, for Developer's development of the Project (as said term is hereinafter defined), with all appeal rights having expired with no appeal having been filed, or if an appeal has been filed, the appeal having been denied without further opportunity for appeal (the "Zoning Contingency"). For purposes of this subparagraph, the Project is deemed to be the Intended Use;

(6) Receipt by Developer of verification that sanitary sewer and storm sewer and other suitable drainage facilities, and water, gas, telephone and electric utility services, satisfactory for the proposed use of the Property by Developer, are available to and for the use of the Property in accordance with the Development Conditions. All such services shall be located at the property lines of the Property and available for immediate connection and use without payment of any charges or assessments by Developer other than usual and ordinary connection fees or services charges;

(7) Receipt by the Developer of engineering studies of the Property, including topographical survey, soil bearing tests, hydrology tests, and other engineering data as Developer may reasonably require, all meeting, in the Developer's sole discretion, engineering costs and standards for development of the Property in accordance with the Development Conditions. The cost of such studies shall be paid by the Developer;

(8) The full and complete execution of commercial leases for retail tenants of not less than 50,000 square feet of the Property by Developer, as Landlord, on terms and conditions acceptable to the Developer in its sole discretion; and

(9) Approval by Developer of the suitability and economic feasibility of the Property, the physical condition of the Property, and the Permitted Exceptions, in the Purchaser's sole discretion, for the Purchaser's intended uses of the Property (the "Inspection Contingency").

Section 8.02 City's Conditions. The obligation of City to consummate this Agreement, and the purchase and sale contemplated hereby in accordance with the terms and provision of this Agreement, is subject to the fulfillment and satisfaction on or prior to Closing as to the conditions described in Subparagraphs 8.02 (1) and (2), and on or before the expiration of the Review Period as to the conditions described in Subparagraph 8.02 (3), or the waiver thereof in writing by City:

(1) Each and all agreements and covenants of Developer as provided in this Agreement shall have been fully and duly performed in accordance with the terms and provisions of this Agreement;

(2) Each and all warranties and representations of Developer as contained in this Agreement shall be true and correct as of Closing; and

(3) The Developer shall have presented to the City for its approval, and the City shall have approved, in the City's reasonable discretion, of the sales-tax generating retail anchor tenant(s) who will be Developer's initial tenant(s) on the Property, which approval may be withheld, among other reasons, if each such tenants are not reasonably projected to provide the City of Edgewater annual sales tax revenues of at least Ten Dollars (\$10.00) per square foot of retail space constructed on the Property for each such tenants use.

Section 8.03 Termination of Agreement for Failure of Condition Precedent. In the event Developer or City provides the other party with written notice within the stipulated period(s) set forth above that it shall be unable to satisfy one or more of the conditions set forth above within such stipulated period(s), this Agreement shall be deemed terminated without the necessity of further documentation, all Earnest Money shall be promptly refunded to Developer, and neither party to this Agreement shall thereafter have any further right or claim against the other hereunder, except for those matters to survive the termination of this Agreement pursuant to the expressed terms of this Agreement.

SECTION 9 DEVELOPER'S DUTY TO COMMENCE CONSTRUCTION. The provisions of this section shall survive the consummation and closing of the purchase and sale transaction contemplated by this Agreement.

Section 9.01 Developer's Duty to Commence Construction. If the Developer does not commence construction of the Project on or before the date that is two (2) years after the date of Closing, then the Developer shall pay to the City, on a monthly basis thereafter until such construction is commenced, the sum of Ten Thousand Dollars (\$10,000). If the Developer does not commence construction of the Project on or before the date that is two (2) years and one-hundred eighty (180) days after the date of Closing, then the Developer shall pay to the City, on a monthly basis thereafter until such construction is commenced, the sum of Twenty-Five

Thousand Dollars (\$25,000). If the Developer does not commence construction of the Project on or before the date that is three (3) years after the date of Closing, then the Developer shall pay to the City, on a monthly basis thereafter until such construction is commenced, the sum of Fifty Thousand Dollars (\$50,000). For purposes of this section, the terms “commence construction of the Project” shall mean that the Developer has obtained a building permit or permits for the construction of improvements on the Property for the use of the storefront retail tenant or tenants that were approved by the City during the Review Period, and has substantially relied on such permit(s) by way of engaging in substantial, actual construction activities relative to the Property.

SECTION 10 MISCELLANEOUS.

Section 10.01 Notices. All notices, certificates or other communications hereunder will be sufficiently given and will be deemed given when given by hand delivery, overnight delivery, mailed by certified or registered mail, postage prepaid, addressed to the appropriate Notice Address or at such other address or addresses as any party hereto designates in writing to the other party hereto.

Section 10.02 Waiver. No failure by either party hereto to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement, or to exercise any right or remedy consequent upon a breach of this Agreement, will constitute a waiver of any such breach or of such or any other covenant, agreement, term or condition. Either party by giving notice to the other party may, but will not be required to, waive any of its rights or any conditions to any of its obligations hereunder. No waiver will affect or alter the remainder of this Agreement, but each and every covenant, agreement, term and condition of this Agreement will continue in full force and effect with respect to any other then existing or subsequent breach.

Section 10.03 Attorneys' Fees. In any proceeding brought to enforce the provisions of this Agreement, the court shall award the party that substantially prevails on a contested material issue (whether by judgment, award or settlement) its reasonable attorneys' fees, actual court costs and other expenses incurred in connection with said material issue.

Section 10.04 Conflicts of Interest. The City will not knowingly allow, and except as disclosed in writing to the City, Developer will not knowingly permit, any of the following persons to have any interest, direct or indirect, in this Agreement: a member of the governing body of the City; an employee of the City who exercises responsibility concerning the Project, or an individual or firm retained by the City who has performed consulting or other professional services in connection with the Project. The City will not allow and Developer will not knowingly permit any of the above persons or entities to participate in any decision relating to this Agreement that affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is directly or indirectly interested.

Section 10.05 Titles of Sections. Any titles of the several parts and Sections of this Agreement are inserted for convenience of reference only and will be disregarded in construing or interpreting any of its provisions.

Section 10.06 City Not a Partner; Developer Not City's Agent. Notwithstanding any language in this Agreement or any other agreement, representation or warranty to the contrary, the City will not be deemed or constituted a partner of, or as being in a joint venture with, Developer, Developer will not be the agent of the City, and the City will not be responsible for any debt or liability of Developer.

Section 10.07 Applicable Law; Binding Effect. The laws of the State of Colorado will govern the interpretation and enforcement of this Agreement without giving effect to principals of conflicts of law. This Agreement will be binding on and inure to the benefit of the parties hereto, and their successors and assigns, subject to the limitations on assignment of this Agreement by Developer set forth in Section 7.01.

Section 10.08 Brokers. City and Developer each warrant and represent to the other that it has had no dealings with any real estate agent or broker with reference to the Property and this Agreement.

Section 10.09 Further Assurances. The parties hereto agree to execute such documents, and take such action, as may be reasonably requested by the other party hereto to confirm or clarify the intent of the provisions hereof and to effectuate the agreements herein contained and the intent hereof.

Section 10.10 Time of Essence. Time is of the essence of this Agreement. The parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

Section 10.11 Counterparts. This Agreement may be executed in several counterparts, each of which together will be an original and all of which will constitute but one and the same instrument.

Section 10.12 Non-Liability of City Officials and Employees. No council member, commissioner, board member, official, employee, agent or consultant of the City will be personally liable to Developer in the event of breach or Event of Default by the City or for any amount that may become due to Developer under the terms of this Agreement.

Section 10.13 Incorporation of Exhibits. All exhibits attached to this Agreement are incorporated into and made a part of this Agreement.

Section 10.14 Jointly Drafted; Rules of Construction. The parties hereto agree that this Agreement was jointly drafted, and, therefore, waive the application of any law, regulation, holding, or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

Section 10.15 No Third-Party Beneficiaries. No third-party beneficiary rights are created in favor of any person not a party to this Agreement it being the intent of the parties hereto that they be and remain the sole beneficiaries of this Agreement.

Section 10.16 Integration and Amendment. This Agreement contains the entire agreement of the parties hereto with respect to the subject matter of this Agreement, and representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect. This provision may not be orally waived. This Agreement shall not be amended except by way of a written agreement executed by each and every party hereto. This provision may not be orally waived.

Section 10.17 Possession of the Property. Possession of the Property shall be delivered by City to Developer no later than the date of Closing.

Section 10.18 Time for Performance. In the event that any notice or performance date hereunder shall be required to be performed on a weekend or legal holiday, then such date shall automatically be extended to the next regular business day.

Section 10.19 Exclusive Rights. During the term of this Agreement, Developer will have an exclusive right to purchase the Property, and City covenants and agrees not to seek or consider any other proposal concerning the purchase, lease, or the acquisition of any other interest in the Property by any third party.

Section 10.20 Condemnation. If, prior to Closing, all or any portion of the Property is subject to an eminent domain proceeding or the threat of an eminent domain proceeding, City shall promptly provide Developer with written notice thereof. After receiving such notice, Developer shall have the option of purchasing the Property subject to such proceedings, without reduction of the Purchase Price, whereupon any awards attributable to the Property shall be paid to Purchaser, or terminating this Agreement without further obligation hereunder, in which event the Earnest Money shall be returned forthwith to Purchaser.

Section 10.21 Severability. If any paragraph, section, provision, sentence, clause, or portion of this Agreement is determined to be illegal, invalid, or unenforceable, such determination shall in no way affect the legality, validity, or enforceability of any other paragraph, section, provision, sentence, clause, or portion of this Agreement, and any such affected portion or provision shall be modified, amended, or deleted to the extent possible and permissible to give the fullest effect to the purposes of the parties to this Agreement.

Section 10.22 Section 1031 Exchange. The City acknowledges and agrees that the Developer may choose to treat this transaction as part of a like-kind exchange of properties as contemplated by Section 1031 of the Internal Revenue Code (an "Exchange"). Should the Developer elect to engage in an Exchange, the City agrees to cooperate reasonably with the Developer to enable the Exchange to be consummated, provided, however, that the City shall not be obligated to accept title to any real estate; to incur any actual or potential liability or expense in connection with the Exchange, or to delay the Closing. The Developer, by engaging in the Exchange shall not be released from any of its duties, obligations, or liabilities hereunder, and the Developer hereby acknowledges and agrees that the City does not represent or warranty the effectiveness of the Exchange.

Section 10.23 Memorandum of Agreement. Neither City nor Developer shall record this Agreement, but upon request of one to the other, they shall execute and acknowledge a Memorandum of Agreement and either party shall be entitled to record such Memorandum of Agreement. Upon termination of this Agreement by expiration or otherwise, City and Developer shall execute, acknowledge and deliver the necessary documents to release of record any such Memorandum of Agreement.

IN WITNESS WHEREOF, the City has caused these presents to be executed in its corporate name and with its official seal hereunto affixed and attested by its duly authorized officials, the Authority has caused these presents to be executed by its duly authorized officer, and Developer has caused these presents to be executed by its duly authorized officer, as of the date first above written.

CITY OF EDGEWATER, COLORADO

(SEAL)

Attest:

Beth Hedberg, MMC, City Clerk

Bonnie McNulty, Mayor

DEVELOPER

TRINITY DEVELOPMENT GROUP, INC. a
Georgia corporation

By: _____
Vincent A. Riggio, President

AUTHORITY

EDGEWATER REDEVELOPMENT AUTHORITY,
A Colorado urban renewal authority

By: _____
Steven Martin, Chair

Exhibit A

LEGAL DESCRIPTION OF THE PROPERTY

Lots 1 through 48, Block 77; a portion of Lots 1 through 24, Block 78; a portion of vacated 22nd Avenue (platted as Pearl Street); and a portion of vacated Chase Street (platted as Madison Avenue) of Edgewater, a subdivision filed for record April 22, 1889 in Book 1 at page 37, Reception No. 21073, being those parcels conveyed to Dillon Real Estate Co., Inc., as described in deeds filed for record Dec 19, 1977 in Book 3117 at Page 963 and Book 3117 at 965, situate in the southeast one quarter of the northeast one quarter of Section 36, Township 3 South, Range 69 West of the Sixth Principal Meridian, City of Edgewater, County of Jefferson, State of Colorado, described as follows:

BEGINNING at the southwest corner of Block 77, Edgewater, as monumented by an aluminum cap PSL 438, from which an illegible aluminum cap at the southwest corner of the southeast one quarter of the northeast one quarter of Section 36 bears S 33°28'54" W a distance of 60.40 feet;

Thence N 89°34'32" E, along the south line of Block 77 and the south line of Block 78, Edgewater; a distance of 451.00 feet to the east line of that parcel described in Book 3117 at Page 963;

Thence N 00°25'28" W, along said east line, a distance of 650.07 feet to the north right of way line of vacated 22nd Avenue;

Thence S 89°35'21" W, along said north right of way line, passing through a plastic cap PLS 24330 at 39.91 feet, a distance of 451.00 feet to the west line of Block 77, as monumented by a plastic cap PLS 24330;

Thence S 00°25'28" E, along said west line, a distance of 650.18 feet to the POINT OF BEGINNING.

Containing 6.731 acres of land more or less.

Exhibit B

PORTION OF PROPERTY SUBJECT TO GROUND LEASE

A PARCEL OF LAND LOCATED WITHIN BLOCK 78, EDGEWATER, A SUBDIVISION IN THE COUNTY OF JERFFERSON, STATE OF COLORADO, ACCORDING TO THE RECORDED PLAT THEREOF, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE NORTH LINE OF WEST 20TH AVENUE AND THE EAST LINE OF THEAT TRACT OF LAND AS DESCRIBED IN B3117 P963;

THENCE NORTHERLY, 188.00 FEET ALONG THE EAST LINE OF THAT TRACT AS DESCRIBED IN SAID B3117 P963 TO THE TRUE POINT OF BEGINNING;

THENCE WESTERLY, 119.00 FEET PARALLEL WITH THE NORTH LINE OF SAID WEST 20TH AVENUE;

THENCE NORTHERLY, 218.00 FEET PARALLEL WITH THE EAST LINE OF THAT TRACT AS DESCRIBED IN B3117 P963;

THENCE EASTERLY, 40.00 FEET PARALLEL WITH THE NORTH LINE OF SAID WEST 20TH AVENUE;

THENCE NORTHERLY, 51.30 FEET PARALLEL WITH THE EAST LINE OF THAT TRACT AS DESCRIBED IN SAID B3117 P963;

THENCE EASTERLY, 79.00 FEET PARALLEL WITH THE NORTH LINE OF SAID WEST 20TH AVENUE TO THE EAST LINE OF THAT TRACT AS DESCRIBED IN SAID B3117 P963;

THENCE SOUTHERLY, 269.30 FEET ALONG THE EAST LINE OF THAT TRACT OF LAND AS DESCRIBED IN SAID B3117 P963 TO THE TRUE POINT OF BEGINNING.

COUNTY OF JEFFERSON,
STATE OF COLORADO