

1 PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement ("**Agreement**") is entered into by and between James V. Stelnicki, D.P.M., P.A., a Florida professional association, ("**Purchaser**"), or its permitted assigns as provided herein, and the City of New Port Richey, Florida, a Florida municipal corporation, ("**Seller**").

1. **Definitions.** The following capitalized terms in this Agreement shall have the following definitions:

1.1. "**Property**" means that certain real property located in Pasco County, Florida, at 6605 Madison Street, legally described as follows: (Parcel I.D. No.05-26-16-0030-04100-0160):

The North 55 feet of the East ½ of LOT 14, and the North 55 feet of LOTS 15 and 16, BLOCK 41, CITY OF NEW PORT RICHEY, according to the map or plat thereof as recorded in Plat Book 4, Page 49, Public Records of Pasco County, Florida.

1.2. "**Purchase Price**" means U.S. Eighteen Thousand and 00/100 Dollars (\$18,000.00).

1.3. "**Effective Date**" means the date that a copy of this Agreement, fully executed by Purchaser and Seller, is delivered to both Purchaser and Seller.

1.4. "**Escrow Agent**" and "**Title Company**" means First American Title Insurance Company, through its agent Booth & Cook, 7510 Ridge Road, Port Richey, Florida 34668.

1.5. "**Deposit**" or "**Deposits**" means an initial amount of \$2,000.00, plus any other amounts designated as a Deposit or Deposits in this Agreement.

1.6. "**Closing Date**" means December 3, 2020.

1.7. "**Transaction**" means the purchase and sale of the Property pursuant to this Agreement.

2. **Purchase and Sale.** Purchaser hereby agrees to buy, and Seller hereby agrees to sell, the Property on the terms of this Agreement, and subject to the conditions in this Agreement.

3. **Purchase Price.** The Purchase Price shall be payable in full at Closing. All payments from Purchaser shall be via wire transfer of collected federal funds.

4. **Title Policy.**

4.1. Within thirty (30) business days after the Effective Date, Seller shall order from the Title Company a commitment ("**Title Commitment**") for the issuance of an ALTA Owner's Title Policy ("**Title Policy**") at Closing to Purchaser. The Title Company shall be instructed to deliver a copy of the Title Commitment and copies of exceptions to Purchaser, Seller, and their counsel. Purchaser shall give Seller written notice ("**Purchaser's Title Notice**") on or before the expiration of twenty (20) days after receipt of the Title Commitment and exception documents as to whether the condition of title as set forth in the Title Commitment and/or any survey is or is not satisfactory, in Purchaser's sole discretion. In the event that the condition of title is not acceptable, Purchaser shall specify and set forth each of such objections ("**Objections**") in the Purchaser's Title Notice. Seller shall notify Purchaser in writing ("**Seller's Title Response**") within ten (10) days of receipt of Purchaser's Title Notice as to which Objections that Seller will not remove as of the Closing Date ("**Remaining Objections**"). If there are any Remaining Objections, Purchaser may, at its option by written notice within five (5) days after Seller's Title Response (or lack of response within such time frame), (i) accept title subject to the Remaining Objections, in which event the Remaining Objections shall be deemed to be waived for all purposes, or (ii) terminate this Agreement, in which event any Deposits paid shall be immediately refunded to Purchaser. Notwithstanding any of the provisions of this Section 4.1 to the contrary, if Purchaser fails to notify Seller that the condition of title as set forth in the Title Commitment and/or any survey is or is not acceptable within the time set forth herein,

the parties hereby agree that the condition of title shall be deemed acceptable. Any exceptions permitted on the Title Policy pursuant to this Section 4.1 are referred to herein as **"Permitted Exceptions"**. If the Title Company subsequently updates the Title Commitment with additional exceptions to title, the provisions for Purchaser's Title Notice and Seller's Title Response shall be reinstated with respect to the additional exceptions, with the Purchaser's Title Notice regarding the additional exceptions being due five (5) business days after the date that Purchaser receives the updated Title Commitment.

5. **The Closing and the Closing Date.** The sale and purchase of the Property shall be consummated at a Closing to be held on the Closing Date at the offices of the Title Company. Neither party need be physically present at the Closing. As used in this Agreement, the term **"Closing"** shall mean the date all of the documents necessary to transfer title to Purchaser are sent for recording with the appropriate County Clerk, and the sales proceeds are available to Seller. Title to and possession of the Property shall transfer to Purchaser at Closing.

6. **Seller's Obligations at the Closing.** At the Closing, Seller shall do the following, through Escrow Agent:

6.1. Execute and deliver to Purchaser and the Title Company:

6.1.1. A special/limited warranty deed (the **"Deed"**) conveying to Purchaser fee simple title to the Real Property and Improvements;

6.1.2. A FIRPTA Affidavit; and

6.1.3. All other agreements to be executed by Seller as specified herein.

6.2. Execute and deliver to the Title Company an affidavit of no liens as the Title Company may reasonably require so as to enable the Title Company to issue the Title Policy in accordance with this Agreement; and

6.3. Execute and deliver to Purchaser such additional documents as are necessary to carry out the provisions of this Agreement.

7. **Purchaser's Obligations at the Closing.** At the Closing, Purchaser shall do the following, through Escrow Agent:

7.1. Deliver to Seller the Purchase Price.

7.2. Execute and deliver to Seller a Development Agreement in the form attached hereto as Exhibit "A"; and

7.3. Execute and deliver to Seller such additional documents as are necessary to carry out the provisions of this Agreement.

8. **Representations and Warranties of Seller.** Seller represents and warrants to Purchaser the following:

8.1. The execution and delivery of, and the performance by Seller of its obligations under this Agreement will not contravene, or constitute a default under, any provision of applicable law or regulation or any agreement, judgment, injunction, order, decree or other instrument binding upon Seller or to which the Property is subject.

8.2. Seller has not received any written notice of any pending judicial, municipal or administrative proceedings affecting the Property, including, without limitation, proceedings for or involving condemnation, eminent domain, or environmental violations.

8.3. At all times prior to closing contemplated by this Agreement, Seller and all of its respective Affiliates: (i) shall not be a Prohibited Person; and (ii) shall be in full compliance with all applicable

orders, rules, regulations and recommendations promulgated under or in connection with United States Presidential Executive Order 13224 (“**Executive Order**”) and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (“**Patriot Act**”). The term “**Prohibited Person**” shall mean any person or entity which meets any of the following criteria:

8.3.1. A person or entity listed in the Annex to, or otherwise subject to the provisions of, the Executive Order.

8.3.2. A person or entity owned or controlled by, or acting for or on behalf of, any person or entity that is listed to the Annex to, or is otherwise subject to the provisions of, the Executive Order.

8.3.3. A person or entity with whom a party is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering law, including the Executive Order.

8.3.4. A person or entity that commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order.

8.3.5. A person or entity that is named as a “specially designated national and blocked person” on the most current list (“**List**”) published by the U.S. Department of the Treasury, Office of Foreign Assets Control at its official website (www.ustreas.gov/ofac) or at any replacement website or other replacement official publication of such list.

8.3.6. A person or entity who is an Affiliate of a person or entity listed in this Section.

8.4. If, after the Effective Date, any event occurs or condition arises that renders any of the Seller’s representations and warranties in this Section untrue or misleading in any material respect, and Seller has actual knowledge of the same, Seller shall promptly notify Purchaser in writing of such event or condition. In no event shall Seller be liable to Purchaser for, or be deemed to be in default hereunder by reason of, any breach of representation or warranty which results from any change that (i) occurs between the Effective Date and the date of Closing and (ii) is expressly permitted under the terms of this Agreement or is beyond the reasonable control of Seller to prevent. If a notice from Seller pursuant to this Section indicates any material adverse change in the representations and warranties made by Seller, Purchaser shall have the right to terminate this Agreement by written notice to Seller within ten (10) days after Seller’s notice, in which event the Deposits paid shall be immediately refunded to Purchaser. If Purchaser does not terminate this Agreement within such time period, Purchaser’s termination right in this Section shall lapse.

8.5. Notwithstanding the foregoing, to the extent that Purchaser obtains knowledge prior to Closing that any of Seller’s representations or warranties were untrue when made, or if Seller has delivered or made available to Purchaser information with respect to the Property at any time prior to the Closing Date, and such information is inconsistent with any of the representations and warranties herein and/or indicate that any such representations or warranties were not true when made or will not be true as of the Closing Date, Purchaser shall be deemed to have knowledge of such misrepresentation, and in the event Seller fails to cure such misrepresentation within ten (10) days after receipt of notice from Purchaser, Purchaser’s sole remedy as a result thereof shall be to terminate this Agreement, in which event the Deposits paid shall be immediately refunded to Purchaser, and if, notwithstanding such breach of a representation or warranty, Purchaser elects to close the Transaction, Purchaser shall be deemed to have waived its rights with respect to such breach of a representation or warranty, and Seller’s representation or warranty shall be deemed amended so as to be true and correct, and Purchaser shall be deemed to have no claim for any breach based thereon following the Closing.

9. **Representations and Warranties of Purchaser.** Purchaser represents and warrants to Seller the following:

9.1. Purchaser is duly formed, validly existing and in good standing under the laws of the State of its formation and has all requisite powers and all material governmental licenses, authorizations, consents and approvals to enter into and perform its obligations hereunder and under any document or instrument required to be executed and delivered on behalf of Purchaser hereunder.

9.2. This Agreement has been duly authorized by all necessary action on the part of Purchaser, has been duly executed and delivered by Purchaser, constitutes the valid and binding agreement of Purchaser and is enforceable in accordance with its terms. The person executing this Agreement on behalf of Purchaser has the authority to do so.

9.3. The execution and delivery of, and the performance by Purchaser of its obligations under this Agreement will not contravene, or constitute a default under, any provision of applicable law or regulation or any agreement, judgment, injunction, order, decree or other instrument binding upon Purchaser.

9.4. At all times prior to Closing contemplated by this Agreement, Purchaser and all of its respective Affiliates: (i) shall not be a Prohibited Person; and (ii) shall be in full compliance with all applicable orders, rules, regulations and recommendations promulgated under or in connection with the Executive Order and the Patriot Act.

10. **Survival.**

10.1. Any claim for a breach of such representations and warranties shall survive for one year after the Closing Date. Any claim for a breach of representation or warranty set forth in this Agreement shall be barred and shall lapse unless a claim is made in writing, with a description of the claim made, on or before the first anniversary of the Closing Date.

10.2. All other provisions of this Agreement shall be deemed merged into or waived by the instruments of Closing, except for those provisions that specifically state that they survive Closing or termination (each a "***Surviving Provision***"). If a Surviving Provision states that it survives for a limited period of time, that Surviving Provision shall survive only for the limited time specified. Any claim made in connection with a Surviving Provision shall be barred and shall lapse unless a claim is made in writing, with a description of the claim made, on or before the limited time specified in such Surviving Provision.

11. **Purchaser's Defaults; Seller's Remedies.** In the event of a breach by Purchaser of its pre-Closing or Closing obligations under this Agreement, which breach is not cured within ten (10) days after written notice of default from Seller specifying the breach (provided, however, that no such cure period shall apply for a breach of the obligation to close by the Closing Date), Seller's sole remedy shall be to terminate this Agreement Deposit. After Closing, in the event of a breach by Purchaser of its obligations under any Surviving Provisions, Seller may exercise any rights and remedies available at law or in equity.

12. **Seller's Defaults; Purchaser's Remedies.** In the event of a breach by Seller of its pre-Closing or Closing obligations under this Agreement, which breach is not cured within ten (10) days after written notice of default from Purchaser specifying the breach (provided, however, that no such cure period shall apply for a breach of the obligation to close by the Closing Date), Purchaser may elect only one of the following two remedies: (a) terminate this Agreement, in which event the Deposits paid shall be immediately refunded to Purchaser; or (b) enforce specific performance of this Agreement against Seller; In order for Purchaser to elect and pursue the remedy of specific performance, Purchaser must commence and file such action within ninety (90) days after the scheduled Closing Date. After Closing, in the event of a breach by Seller of its obligations under any Surviving Provisions, Purchaser may exercise any rights and remedies available at law or in equity.

13. **Closing Costs.** Costs of closing the Transaction shall be allocated between Seller and Purchaser as follows:

13.1. Seller shall pay documentary stamps on the deed.

13.2. Purchaser shall pay: (i) the premium for the owner's Title Policy, and any endorsements; (ii) the cost of recording the Deed; (iii) any escrow fees of the Escrow Agent; (iv) all costs associated with any Purchaser financing; and (viii) all other costs and expenses allocated to Purchaser pursuant to the terms of this Agreement.

14. **Proration of Income and Expenses.** At Closing, the following items shall be paid or adjusted or prorated between Seller and Purchaser as specified, as of the Closing Date, with the day of Closing being for Purchaser's account:

14.1. *Ad valorem* and similar taxes, and assessments for the then current tax year relating to the Property shall be prorated as of the Closing Date, assuming the maximum available discount. If the Closing shall occur before the tax rate is fixed for the then current year, the proration of taxes shall be upon the basis of the tax rate of the preceding year applied to the latest assessed valuation. Subsequent to the Closing, when the tax rate is fixed for the year in which the Closing occurs, Seller and Purchaser agree to adjust the proration of taxes and, if necessary, to refund or pay, as the case may be, on or before January 1 of the year following the Closing, an amount necessary to effect such adjustments.

15. **As-Is Purchase.** Purchaser is an experienced commercial real estate owner and shall rely solely upon its own evaluation and investigation of the condition and all aspects of the Property. Purchaser acknowledges that this Agreement grants to Purchaser every opportunity which Purchaser may need to fully evaluate the condition and all aspects of the Property. Purchaser has asked for, and has obtained in this Agreement, disclosure of information and documents regarding the Property which are in Seller's possession or control. This does not reduce Purchaser's duty to fully evaluate the Property on its own. Accordingly, except to the extent of the Seller's representations and warranties in this Agreement, Purchaser acknowledges that it is not relying upon any representations of Seller as to any matter related to Property, its condition, or its suitability for Purchaser's intended use. At Closing, Purchaser shall be deemed to accept the Property "as is" in all respects.

16. **Brokerage Commissions.** Seller shall indemnify Purchaser against, and hold Purchaser harmless from, any and all claims (and all expenses incurred in defending any such claims or in enforcing this indemnity, including attorneys' fees and court costs) by any broker or finder for a real estate commission or similar fee arising out of or in any way connected with any claimed relationship between such broker or finder and Seller. Purchaser shall indemnify Seller against, and hold Seller harmless from, any and all claims (and all expenses incurred in defending any such claims or in enforcing this indemnity, including attorneys' fees and court costs) by any broker or finder for a real estate commission or similar fee arising out of or in any way connected with any claimed relationship between such broker or finder and Purchaser. The provisions of this Section shall survive the Closing or the termination of this Agreement without time limitation.

17. **Miscellaneous.**

17.1. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Agreement embodies and constitutes the entire understanding between the parties with respect to the Transaction. No provision hereof may be waived, modified, or amended except by an instrument in writing signed by Purchaser and Seller. This Agreement may be executed in several counterparts and all so executed shall constitute one Agreement, binding on all the parties hereto even though all the parties are not signatories to the original or the same counterpart. A facsimile, scanned, or other copy of a signed version of this Agreement has the same effect as an original. Delivery by electronic transmission such as email, download or facsimile shall be deemed effective delivery.

17.2. Any notice, request, demand, instruction or other document required or permitted to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be delivered personally, or by overnight express courier, or by email, or by facsimile transmission, and addressed to the parties at their respective addresses set forth below, and the same shall be effective upon receipt if delivered personally, or by email, or by confirmed facsimile, or via overnight express courier. (If a fax number listed below is inaccurate or is not working, then the date that a notice is required to be delivered shall be extended by one day.) A party may change its address for receipt of notices by service of a notice of such change in accordance herewith.

If to Purchaser:

Dr. Omair Zafar
James V. Stelnicki, D.P.M., P.A ,
6543 Madison Street
New Port Richey, FL 34652
Email: _____
Fax: _____

If to Seller:

City of New Port Richey, Florida
City Manager
5919 Main Street
New Port Richey, FL 34652
Email: mannsd@cityofnewportrichey.org
Office: 727-853-1016
Fax: 727-853-1023

If to Escrow Agent:

Steve Booth
Booth & Cook, P.A.
7510 Ridge Road
Port Richey, Florida 34668
Email: steve@boothcook.com
Office: (727) 842-9105
Fax. No. (727) 848-7601

17.3. In any legal proceeding arising in connection with this Agreement (including without limitation any arbitration and appellate proceedings as well as any bankruptcy, reorganization, liquidation, receivership or similar proceeding) the substantially non-prevailing party agrees to pay to the substantially prevailing party all reasonable costs and expenses, including attorneys' fees and other legal costs, expended or incurred by the substantially prevailing party in connection therewith (whether incurred before, during, or subsequent to any such action or proceeding).

17.4. If at any time prior to the Closing Date, there shall be a taking by eminent domain proceedings or the commencement of any such proceedings, with respect to the Property, Seller shall promptly give written notice thereof to Purchaser. Purchaser shall have the right, at Purchaser's sole option, to terminate this Agreement by giving written notice to Seller within thirty (30) days after Purchaser receives written notice of such proceedings, in which event the Deposits paid shall be immediately returned to Purchaser, and neither party hereto shall have any further duties, obligations or liabilities to the other, except as specifically provided herein. If Purchaser does not so terminate this Agreement, the Purchase Price for the Property shall be reduced by the total of any awards or other proceeds received by Seller (directly or indirectly) with respect to any such taking, and at the Closing Seller, shall assign to Purchaser all rights of Seller in and to any awards or other proceeds payable by reason of any taking.

17.5. Purchaser shall have the right to assign this Agreement to an Affiliate of Purchaser or the principals of Purchaser, upon written notice to Seller at least five (5) days prior to the Closing Date; provided, however, that any such assignment shall not release the original Purchaser from any obligation or liability under this Agreement arising before or after Closing, including without limitation Surviving Provisions. No other assignment of this Agreement by Purchaser is permitted.

17.6. This Agreement has been submitted to the scrutiny of all parties hereto and their counsel, if desired, and shall be given a fair and reasonable interpretation in accordance with the words hereof, without consideration or weight being given to its having been drafted by any party hereto or its counsel.

17.7. The parties acknowledge that time is of the essence for each time and date specifically set forth in this Agreement. In computing any period of time pursuant to this Agreement, if the final day of a period, act or event falls on a day which is not a business day, then such final day shall be postponed until the next business day, but the commencement date of the time periods based on such final day shall not be postponed. A business day shall mean Monday through Friday, excluding days designated as a postal holiday by the United States Postal Service.

17.8. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without regard to its conflict or choice of laws rules.

17.9. As used in this Agreement, "**Affiliate**" means, as to any person or entity: (a) any other person or entity that, directly or indirectly, is in control of, is controlled by or is under common control with such person or entity; or (b) is a director, officer, shareholder, partner, member or associate of such person or entity, or of an Affiliate of such person or entity. "**Control**" means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a person or entity, whether through ownership of voting securities, by contract or otherwise.

17.10. Neither this Agreement, nor any part thereof, nor any memorandum thereof may be recorded. Recording of any such document by, or at the direction of Purchaser, shall be a material default by Purchaser under this Agreement.

17.11. This Agreement is contingent upon final approval by the City Council of the City of New Port Richey, Florida as required by law, which approval shall be at the sole and absolute discretion of the City Council. In the event the City Council fails to approve this Agreement prior to the scheduled closing date, this Agreement shall be terminated and of no further force and effect, and the Deposit shall be returned to Purchaser.

IN WITNESS WHEREOF, the parties hereto have set their hands and had their seals affixed.

PURCHASER:

SELLER:

James V. Stelnicki, D.P.M., P.A.

City of New Port Richey, Florida

By: _____
Omar Zafar, As President

By: _____
Debbie L. Manns, As City Manager

Name (printed)

Approved as to form:

Attest:

By: _____
Judy Meyers, as City Clerk

By: _____
Timothy P. Driscoll, as City Attorney

EXHIBIT A

Development Agreement

This agreement for development of property is made and entered into this _____ day of _____, 2020 by and between James V. Stelnicki, D.P.M., P.A., a Florida professional association (“Developer”), and the City of New Port Richey, a Florida municipal corporation (“Agency”).

Witnesseth:

Whereas, Developer wishes to develop a parking lot (“Project”) on property purchased from Agency, as more particularly described as follows (“Property”):

(Parcel I.D. No.05-26-16-0030-04100-0160):

The North 55 feet of the East ½ of LOT 14, and the North 55 feet of LOTS 15 and 16, BLOCK 41, CITY OF NEW PORT RICHEY, according to the map or plat thereof as recorded in Plat Book 4, Page 49, Public Records of Pasco County, Florida.

Whereas, Agency desires to enter into an agreement with Developer in accordance with the Florida Local Government Development Agreement Act; and

Whereas, Agency and Developer are desirous of entering into this Agreement to effectuate the successful development of the Project and to set forth the respective duties and responsibilities of the parties pertaining to developing the Project.

Now therefore, in consideration of the mutual promises and covenants contained herein to fulfill the publicly identified and legitimate goals of economic redevelopment, the parties hereto agree as follows:

1 Definitions

The terms defined in this agreement shall have the following meanings:

- 1.1 “Agency” means the City of New Port Richey, Florida.
- 1.2 “Agreement” means this Agreement for Development and Disposition of Property, including any Exhibits attached hereto, and any revisions to the Agreement or any of the Exhibits.
- 1.3 “City Council” means the City Council of the City of New Port Richey, the elected governing body of the City.
- 1.4 “Commencement Date” means the date on which the initial building permit is issued for any portion of the Project.
- 1.5 “Completion Date” means the date on which the City has issued a certificate of occupancy or final inspection for the Project.
- 1.6 “Construction Period” means the period beginning on the Commencement Date and ending on the Competition Date.
- 1.7 “Force Majeure” means those conditions beyond the reasonable control of Developer which will excuse Developer’s performance as defined in and subject to the conditions described in this Agreement.
- 1.8 “Project” means the redevelopment of the Property in accordance with the Project Plans.

1.9 "Proposal" means the Developer's proposal for redevelopment of the Project Site in accordance with the Plan as submitted by the Developer to Agency.

1.10 "Effective Date" means the date of final execution of this Agreement by both parties.

2 Purpose

2.1 The purpose of this Agreement is to provide for the development of the Project on the Property in accordance with the Plan as set forth in the Proposal to provide a parking lot for Developer's adjacent medical office.

3 Developer's Proposal

3.1 Developer's proposal for the redevelopment of the Property shall be submitted to Agency and shall be subject to approval of Agency, subject to such changes and revisions as are contemplated by this Agreement.

4 Developer's Obligations

4.1 In consideration of the terms and obligations in this Agreement, Developer shall construct a parking lot for use with the adjacent medical office ("Project") within three (3) years of the Effective Date. At the time of permitting the Project, Developer shall provide for and record a unity of title to replat or combine the Property with the medical office building property.

5 Project Plans

5.1 Developer shall submit the Project Concept Plans to Agency for approval. Such approval does not constitute Agency approval of Developer's detailed construction plans and specifications. Developer shall submit such construction plans and specifications to Agency for review in accordance with the procedures prescribed in Agency's Land Development Code.

6 Representation, Warranties and Covenants of Developer

6.1 Representations and Warranties. Developer represents and warrants to Agency that the following statements are presently true and accurate:

6.1.1 Developer is a validly existing corporation under the laws of the State of Florida has all requisite power and authority to carry on its business as now conducted, to own or hold property and to enter into and perform the obligations of this Agreement and each instrument to which it is or will be a party, and consents to service of process in Florida;

6.1.2 Each document in connection with the Project to which Developer is or will be a party has been authorized and will be executed and delivered by Developer, and neither the execution and delivery, nor compliance with the terms and provisions:

6.1.2.1 requires approval and consent of any other party, except as noted herein;

6.1.2.2 contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on Developer; or

6.1.2.3 results in any default of or creation of any lien on property of Developer;

6.1.3 Each document contemplated by this Agreement to which Developer will be a party will constitute a legal, valid, and binding obligation of Developer, enforceable against Developer in accordance with the terms thereof;

6.1.4 To the knowledge of Developer, there are no pending or threatened actions against Developer, or against any officer of Developer, which are likely to materially adversely affect the consummation of this transaction or the financial condition of Developer;

6.1.5 Developer has filed all federal, state, local and foreign tax returns which were required to be filed by Developer, and has paid all taxes due on such returns;

6.1.6 The chief place of business of Developer and where records are kept concerning the Project are in New Port Richey, Florida;

6.1.7 Developer is financially capable of carrying out all obligations and responsibilities in connection with the construction of the Project;

6.1.8 Covenants. Developer covenants with Agency that:

6.1.8.1 Developer shall use its best efforts to timely fulfill all the conditions herein, which are within the control of Developer or which are the responsibility of Developer to fulfill;

6.1.8.2 During the period the obligations of Developer are in effect, Developer shall cause to continue to be in effect those instruments, documents, certificates and events contemplated by this Agreement that are applicable to, and the responsibility of, Developer;

6.1.8.3 Developer shall assist and cooperate with Agency and shall use its best efforts to accomplish the development of the Project, in accordance with the Plan, the Proposal, this Agreement, and the Project Plans and will not violate any applicable laws, ordinances, rules, regulations or orders; and

6.1.8.4 Developer shall pay any costs of construction of the Project.

7 Representations, Warranties and covenants of Agency

7.1 Representations and Warranties. Agency represents and warrants to Developer that the following statements are presently true and accurate:

7.1.1 Agency is a validly existing municipal corporation of the State of Florida, has all requisite corporate power and authority to carry on its business and to perform its obligations under this Agreement and each document contemplated hereunder to which it is or will be a party;

7.1.2 This Agreement and each document to which Agency will be a party has been authorized and will be executed and delivered by Agency and neither their execution, delivery, nor compliance with their terms and provisions (i) requires the approval and consent of any other party, except as have been duly obtained or as specifically noted herein, (ii) contravenes any existing law, judgment, governmental rule, regulations or order applicable to or binding on Agency or (iii) contravenes or results in any breach of, default under or result in the creation of any lien or encumbrance on any party or Agency, under any indenture, mortgage, deed of trust, bank loan or credit agreement, applicable ordinances, resolutions or any other agreement or instrument to which Agency is a party;

7.1.3 This Agreement and each document contemplated to which Agency will be a party, constitutes or will constitute a legal, valid and binding obligation of Agency enforceable against Agency in accordance with the terms thereof, except as such enforceability may be limited by public policy or applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights generally and subject to usual equitable principles if equitable remedies are involved;

7.1.4 There are no pending or, to the knowledge of Agency, threatened actions or proceedings before any court or administrative agency against Agency, which questions the validity of this Agreement or any document contemplated hereunder, or which are likely to materially adversely affect the consummation of the transaction contemplated hereunder;

7.1.5 Covenants. Agency covenants with Developer that:

7.1.5.1 Agency shall use its best efforts to timely fulfill the conditions herein which are within the control of Agency or which are the responsibility of Agency to fulfill; and

7.1.5.2 During this Agreement and when the obligations of Agency shall be in effect, Agency shall cause to occur and to continue to be in effect those instruments, documents, certificates and events contemplated by this Agreement that are applicable to and the responsibility of Agency.

8 Default; Termination

8.1 Default by Developer. Provided that Agency is not then in default under this Agreement, there shall be an "event of default" by Developer on the occurrence of any one or more of the following:

8.1.1 Developer fails to comply with any material provision of this Agreement; or

8.1.2 Developer shall not have completed construction of the Project within three (3) years of the Effective Date.

8.2 Default by Agency. Provided Developer is not then in default under this Agreement, there shall be an "event of default" by Agency under this Agreement if Agency fails to perform or comply with any material provision of this Agreement applicable to it.

8.3 Remedies Upon Default. If a default occurs, then on 30 days written notice to the defaulting party, and on expiration of such 30 day period, if such default has not been cured, the non-defaulting party may terminate this Agreement, seek injunctive relief to enforce the terms hereof, or recover damages as applicable. Each party in any litigation shall pay their own costs, including attorney's fees and other expenses which may be incurred.

8.4 Non-Action on Failure to Observe Provisions of this Agreement. The failure of Agency or Developer to promptly insist on strict performance of any terms, covenant, condition or provision of this Agreement, or any exhibit hereto or any other agreement contemplated hereby shall not be deemed a waiver of any right or remedy that Agency or Developer may have and shall not be deemed a waiver of a subsequent default or nonperformance of such term, covenant, condition or provision.

9 Force Majeure

9.1 Delays in performance due to: fire, flood earthquake, windstorm, or sinkhole, unavailability of materials, equipment or fuel; war, declarations of hostilities, terrorist act, civil strife, strike, labor dispute, or epidemic, archaeological excavation, act of terrorism or act of God shall be deemed events of Force Majeure and such delays shall be excused in the manner herein provided. If such party is delayed in any work pursuant to this Agreement for occurrence of an event of Force Majeure, the date for action required or contemplated by this Agreement shall be extended by the number of days equal to the number of days such party is delayed. The party seeking excuse based on Force Majeure shall give written notice of the delay, giving its anticipated duration. Each party shall use its best efforts to rectify any conditions causing the delay and will cooperate with the other party, except for the occurrence of unreasonable additional costs and expenses, to overcome any loss of time that has resulted.

10 Antidiscrimination

10.1 There shall be no discrimination against or segregation of anyone on account of age, sex, race, color, marital status, sexual orientation, creed, national origin, ancestry or disability in the employment for the construction of the Project.

11 Miscellaneous

11.1 Assignment by Developer. Prior to the Completion Date Developer may not sell, convey, assign, or otherwise transfer or dispose of any or all of its rights, title, and interest in and to the Project, or any duty or obligation of Developer pertaining to the Project, or any part thereof without prior written consent of Agency, which consent Agency shall not unreasonably withhold or delay.

11.2 Notices. All notices, demands, requests for approvals, or other communications required to be given by either party to the other in writing shall be deemed given on the date delivered in person or on the date emailed by registered or certified mail, postage prepaid, return receipt requested, and addressed:

To Developer:

Dr. Omair Zafar
James V. Stelnicki, D.P.M., P.A.,
6543 Madison Street
New Port Richey, FL 34652

To Agency:

City Manager
City of New Port Richey, Florida
5919 Main Street
New Port Richey, FL 34652

With copy to:

Office of the City Attorney
5919 Main Street
New Port Richey, FL 34652

The address to which notice is to be sent may be changed by written notice. Until notice of change of address is received, a party may rely on the last address given. Notice shall be deemed given, if notice is by mail, on the date mailed to the address set forth above or as changed pursuant to this Section.

11.3 Invalid Provisions. If any provision of the Agreement is held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the requirements of applicable laws and if the remainder can substantially be reasonably performed without material hardship, so as to accomplish the intent and the goals of the parties hereto.

11.4 Applicable Law and Construction. The laws of Florida shall govern this Agreement. This Agreement has been negotiated by Agency and Developer and shall not be deemed to have been prepared by either Agency or Developer, and each of them shall be deemed to have participated equally in the preparation hereof.

11.5 Submission to Jurisdiction.

11.5.1 Each party to this Agreement submits to the jurisdiction of the State of Florida, Pasco County and the courts thereof and to the jurisdiction of the United States District Court for the Middle District of Florida, for the purposes of any suit, action or other proceeding relating to this Agreement and agrees not to assert by way of a motion as a defense or otherwise that such action is brought in an inconvenient forum or that the venue of such action is improper or that the subject matter thereof may not be enforced in or by such courts. Venue for any action arising under or in any way related to this Agreement shall lie exclusively in a court of competent jurisdiction in Pasco County, Florida or in the United States District Court for the Middle District of Florida.

11.5.2 If Developer has no officer, employee, or agent available for service of process as a resident of Florida, or if any permitted assignee thereof shall have no officer, employee, or agent available for service of process in Florida, Developer consents to service of process on its designated agent for and designates the Florida Secretary of State, its agent for the service of process in any court action between it and Agency, and such service shall be made as provided by the laws of the State of Florida for service on a non-resident; provided, however, that at the time of service on the Florida Secretary of State, a copy shall be mailed by prepaid, registered mail, return receipt requested, to the Developer at the address for notices.

11.6 Complete Agreement. This Agreement, and all of the terms and provisions contained herein, constitute the full and complete agreement between the parties, and supersedes and controls over all prior agreements, understandings, representations, and statements, whether written or oral, specifically including, but not limited to, the Proposal, made with regard to the matters addressed by this Agreement.

11.7 Captions. The section headings and captions of this Agreement are for convenience and reference only and in no way define, limit, or describe the scope or intent of this Agreement, or any part thereof.

11.8 Successors and Assigns. The terms Agency and Developer shall include their successor and assigns and all benefits and obligations shall inure to and bind such successors and assigns.

11.9 Holidays. Whenever a notice or performance under this Agreement is to be given on a Saturday, Sunday or legal holiday observed in the City of New Port Richey, it shall be postponed to the next business day.

11.10 Developer Not Agent of Agency. Developer and any contractor hired by Developer are not individually or collectively an agent or contractor of Agency, and are not subject to nor required to comply with any laws, ordinances, regulations, orders or policies of or applicable to Agency applicable or relating to public works projects of Agency or contractors retained by Agency for such types of projects. Nothing contained in this Agreement shall be constructed or deemed to name, designate or cause either directly or implicitly Developer, or any contractor thereof, to be an agent for Agency.

11.11 Public Purpose. This Agreement satisfies, fulfills, and is pursuant to and for a public purpose and municipal purpose and is in the public interest, and is a powers and authority under Florida law.

11.12 Technical Amendments. If due to minor inaccuracies herein, or changes resulting from technical matters arising during the term of this Agreement, the parties agree that changes may be made which do not change the substance of this Agreement. The City Manager, or his or her designee, as to Agency, are authorized to approve such changes and are authorized to execute any required instruments or any exhibit attached hereto or any other agreement contemplated hereby.

11.13 Effective Date. This Agreement is effective on execution and delivery by Agency and Developer following approval by the Agency governing.

11.14 Permits. The failure of this Agreement to address any particular permit, condition, term, or restriction shall not relieve Developer of the necessity of complying with the law governing said permitting requirements, conditions, terms or restrictions.

IN WITNESS WHEREOF, the parties hereto have set their hands and had their seals affixed.

SIGNATURES APPEAR ON NEXT PAGE

DEVELOPER:

James V. Stelnicki, D.P.M., P.A.

By: _____
Dr. Omair Zafar, as President

Attest:

By: _____
Judy Meyers, as City Clerk

AGENCY:

City of New Port Richey, Florida

By: _____
Debbie L. Manns, as City Manager

Approved as to form:

By: _____
Timothy P. Driscoll, as City Attorney