

## AGREEMENT FOR THE SALE OF REAL PROPERTY

This agreement for the sale of real property ("Agreement") is entered into this date by and between D & D Lodging, L.L.C., an Illinois limited liability company ("Seller") and THE CITY OF O'FALLON, ILLINOIS, and Illinois Municipal Corporation ("Purchaser").

WHEREAS, Seller owns the real property located in St. Clair County, Illinois and described in **Exhibit A**, attached hereto and made a part hereof ("Property").

WHEREAS, Purchaser desires to purchase Property that has been improved according to the Shoppes at Green Mount Conference Center Development Agreement, executed between the Purchaser and D & D Lodging, L.L.C., on \_\_\_\_\_, 2007 ("Development Agreement").

NOW THEREFORE IT IS AGREED AS FOLLOWS:

Section 1. Purchase Price. Purchaser promises to pay Seller as the total purchase price for the Property a sum equal to the Developer's Acquisition Cost as defined in paragraph 1 of the parties Development Agreement. The purchase price shall be part of the Development Costs as defined on page 2 of the party's Development Agreement. The purchase price shall be paid at Closing.

Section 2. Title Review / Title Insurance.

Seller shall furnish Purchaser with a commitment for the issuance of the Title Insurance Policy within fourteen (14) days of the execution of this Agreement. Purchaser shall have thirty (30) days from the date of receipt of the commitment for title insurance to review and make written objections to Seller. Notwithstanding the foregoing, Purchaser may not object to matters contained in the usual printed exceptions in such title insurance policies, items of record and any additional recorded easements necessary to facilitate the construction and operation of the Development Project, collectively "Permitted Exceptions". Seller shall have until Closing to cure all such objections. In the event Seller is unable to cure said objections prior to Closing, the Purchaser may terminate this Agreement. At Closing, Seller shall furnish, at Seller's expense, an owner's title insurance policy in the amount of the Purchase Price ("Title Insurance Policy"), insuring Purchaser against loss or damage sustained by Purchaser by reason of the un-marketability of Seller's title but subject to the Permitted Exceptions.

Section 3. Contingencies.

This Agreement is subject to the following contingencies;

3.1 Inspection contingency. In addition to any other conditions set forth in this Agreement, Purchaser's obligation to consummate the purchase provided for herein shall be subject to the fulfillment by satisfaction or waiver in the reasonable discretion of

Purchaser, within sixty (60) days after the date of this agreement of the following contingencies;

3.1.1 Engineering Report. An engineering report satisfactory to and received by the Purchaser pertaining to drainage and wet lands. Said engineering study and report shall be furnished to Purchaser at the expense of Seller.

3.1.2 Environmental Audit. Seller shall obtain, at Seller's expense, a written Phase I Environmental Assessment Report (together with a Phase II Environmental Assessment Report if such Phase I report suggests environmental concerns, or is inconclusive or incomplete as to the existence of possible environmental risk of violation), prepared by an engineering firm acceptable to Purchaser verifying that the Property is free of any environmental risk or violations, and that the Property does not have or contain any underground tanks or other underground storage facilities which contain or may have at any time contained any petroleum product or any other hazardous or toxic substance regulated by any applicable federal, state or local laws relating thereto.

3.1.3 Archeological Survey Seller shall, at Seller's expense, provide Purchaser with an archeological survey of the Property.

The terms and conditions of all reports as provided in Sections 3.1.1, 3.1.2 and 3.1.3 shall survive the Closing and the transfer of the Property to the Purchaser. Except to the extent required by law, neither the Seller nor the Purchaser will reveal the reports of the inspections and reports to any third party (other than each parties' attorney or other professional advisors, provided the Seller or the Purchaser, as the case may be, shall make any such party aware of and take reasonable steps to preserve the confidential nature of such results and information) not approved in writing by the other party, who's approval shall not be unreasonably withheld. If for any reason the transaction contemplated herein does not close, Purchaser agrees to return to Seller all reports provided by Seller.

3.1.4 Approval of Agreement. Approval of this Agreement by the City Council of the City of O'Fallon, Illinois.

3.1.5 The parties entering into the Shops at Greenmount Conference Center Development Agreement, attached hereto as Exhibit "C".

3.1.6 Written proof from Seller to Purchaser that Seller has sufficient financing in place in order to construct a 128 room Hilton Garden Inn hotel on the parcel of real estate adjoining the Property herein.

3.1.7 Written proof from Seller to Purchaser that Seller has acquired a franchise "Flag" for a 128 room Hilton Garden Inn hotel to be constructed on the parcel of real estate adjoining the Property herein.

Section 4. Obligation to Pay Taxes. All ad valorem real property taxes and all governmental or other assessments levied against the Property for the current tax year shall be paid by Seller through the Closing Date as hereinafter defined.

Section 5. Closing Date. This transaction shall be closed within fourteen (14) days after all contingencies are met or waived by Purchaser

Section 6. Possession. Purchaser shall be entitled to possession of the Property on the Closing Date.

Section 7. Representations and Warranties of Seller. As additional consideration for this purchase, Seller represents, warrants and covenants to the best of Seller's actual knowledge:

7.1 That the Property and all portions thereof comply with all material governmental requirements, and the intended use as a convention center of the Property is not a material violation of any currently existing governmental requirement or private agreement, covenant, reservation or restriction.

7.2 Authorization Sellers have the full power and authority to enter into and execute this Agreement and all agreements and documents contemplated hereby, to make the representations and warranties set forth herein, and to perform the covenants and obligations of Sellers to be performed hereunder.

7.3 The condition of the Property is such that the convention center, as described in the parties Development Agreement, may be constructed on the Property without any adverse effect.

7.4 Effectiveness of Representations and Warranties Unless the context otherwise requires, or unless otherwise agreed in writing by the parties, the representations and warranties of Seller set forth herein will and shall be true and correct to the best of Seller's actual knowledge on the date of this Agreement and on the Closing Date and shall survive Closing and shall not be merged in the deed or other Closing documents.

Section 8. Representations and Warranties of Purchaser

As additional consideration for this sale, Purchaser represents, warrants, and covenants as follows:

8.1 Authorization. Purchaser has the full power and authority to enter into and execute this Agreement and all contracts and documents contemplated hereby, to make the representations and warranties set forth herein, and to perform the covenants and obligations of Purchaser to be performed hereunder. No action by any federal, state, other municipality, or other governmental department, commission, board, bureau, or instrumentality, except as stated in Section 3.1.4, is necessary to make this Agreement a valid instrument, binding upon Purchaser in accordance with its terms. Purchaser agrees

to provide on or before Closing such documents as are reasonably requested by Seller to evidence Purchaser's authority hereunder. Neither the execution of this Agreement nor its performance by Purchaser will conflict with or result in the breach of any mortgage, encumbrance, instrument, restriction, covenant, agreement, or other undertaking whatsoever.

8.2 Effectiveness of Representations and Warranties. Unless the context otherwise requires, or unless otherwise agreed to in writing by Purchaser, the representations and warranties of Purchaser set forth herein will and shall be true and correct on the date of this Agreement and on the Closing Date, and shall survive Closing.

Section 9. Compliance with Laws. Seller shall promptly comply with all laws, ordinances, regulations, directions, rules, and other requirements of all governmental authorities applicable to the use or occupancy of the Property and in this connection promptly make all required repairs, alterations, and conditions.

Section 10. Covenants of Seller. Seller warrants that Seller is the owner of good and marketable title to the Property free of all monetary liens at the time of Closing.

Section 11. Deed. Upon payment of the total purchase price for the Property as provided in this Agreement and performance by Purchaser of all other terms, conditions, and provisions of this Agreement, Seller shall forthwith deliver to Purchaser a good and sufficient special warranty deed ("Deed"). Simultaneously with the delivery of the Deed, Purchaser shall execute the Lease Agreement for the benefit of Seller in the form attached to the Development Agreement, and Seller shall be permitted to record a memorandum of the Lease.

Section 12. Events of Default.

12.1 Should the Purchaser default in any of its obligations herein and fail or refuse to close this transaction as herein provided, Seller shall be entitled to pursue each and every available remedy at law or in equity.

12.2 Should Seller refuse to close in accordance with the terms of this Agreement, and provided that Purchaser is ready, willing and able to close this transaction, Purchaser shall be entitled to pursue each and every remedy at law or in equity.

Section 13. Waiver. Failure of either party at anytime to require specific performance of any provision of this Agreement shall not limit the party's right to enforce the provision, nor shall any waiver of any breach of any provision constitute a waiver of any succeeding breach of that provision or a waiver of that provision itself.

Section 14. Successor Interests. This Agreement shall be binding upon and inure to the benefit of the parties, their successors, and assigns but no interest of either Purchaser or Seller shall be assigned, subcontracted, or otherwise transferred, voluntarily or

involuntarily, without the prior written consent of other party, which consent shall not be unreasonably withheld.

Section 15. Survival of Covenants. Any covenants the full performance of which is not required prior to the closing or final payment of the purchase price shall survive the closing and the final payment of the purchase price and be fully enforceable thereafter in accordance with their terms.

Section 16. Notices. Any notice under this Agreement shall be in writing and shall be effective when actually delivered in person or three (3) days after being deposited in the U.S. mail, registered or certified, postage prepaid and addressed to the party at the address stated in **Exhibit B** to this Agreement, or such other address as either party may designate by written notice to the other.

Section 17. Time. Time is of the essence of this Agreement.

Section 18. Law Governing. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

Section 19. Attorney Fees. In the event any arbitration, mediation, suit or action is brought by any party under this Agreement to enforce any of its terms, or in any appeal therefrom, it is agreed that the prevailing party shall be entitled to reasonable costs and attorney fees to be approved by the arbitrator, mediator, trial court, and/or appellate court.

Section 20. Presumption. This Agreement or any section thereof shall not be construed against any party due to the fact that said Agreement or any section thereof was drafted by said party.

Section 21. Computation of Time. In computing any period of time pursuant to this Agreement, the day of the act, event or default from which the designated period of time begins to run shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the period shall begin to run on the next day which is not a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the day thereafter which is not a Saturday, Sunday or legal holiday.

Section 22. Titles and Captions. All article, sections and paragraph titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the context nor affect the interpretation of this Agreement.

Section 23. Pronouns and Plurals. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the Person or Persons may require.

Section 24. Entire Agreement. This Agreement, together with the referenced Exhibits, both in this Agreement and the Development Agreement contains the entire understanding between and among the parties and supersedes any prior understanding and agreements among them respecting the subject matter of this Agreement.

Section 25. Further Action. The parties hereto shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purposes of this Agreement.

Section 26. Good Faith, Cooperation and Due Diligence. The parties hereto covenant, warrant and represent to each other good faith, complete cooperation, due diligence and honesty in fact in the performance of all obligations of the parties pursuant to this Agreement. All promises and covenants are mutual and dependent.

Section 27. Counterparts. 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.

Section 28. Parties in Interest. Nothing herein shall be construed to be to the benefit of any third party, nor is it intended that any provisions shall be for the benefit of any third party.

Section 29. Savings Clause. If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Section 30. Separate Counsel. The Purchaser hereby expressly acknowledges that they have been advised that they have not been represented by the Seller's attorney in this matter and have been advised and urged to seek separate legal counsel for advice in this matter. Seller hereby expressly acknowledges that they have been advised that they have not been represented by the Purchaser's attorney in this matter and have been advised and urged to seek separate counsel for advice in this matter.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

**SELLER**  
D & D LODGING, LLC

**PURCHASER**  
CITY OF O'FALLON, ILLINOIS

By: \_\_\_\_\_  
Darrell G. Shelton, Member

By: \_\_\_\_\_  
Gary L. Graham, Mayor

By: \_\_\_\_\_  
Darwin M. Miles, Member

ATTEST: \_\_\_\_\_  
Phil Goodwin, City Clerk

EXHIBIT A

DESCRIPTION OF PROPERTY

**PROPERTY DESCRIPTION FOR  
PROPOSED LOT 12B**

ALL OF LOT 12B OF THE PROPOSED “THE SHOPPES AT GREEN MOUNT, 1<sup>ST</sup> AMENDMENT AND THE NORTH ADJACENT 7.79 ACRES”, AND BEING A PART OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 2 NORTH RANGE 8 WEST OF THE THIRD PRINCIPAL MERIDIAN, ST. CLAIR COUNTY, ILLINOIS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 12 OF “THE SHOPPES AT GREEN MOUNT, REFERENCE BEING HAD TO THE PLAT THEREOF RECORDED IN DOCUMENT NUMBER A01916664 OF THE ST. CLAIR COUNTY LAND RECORDS, THENCE NORTH 89 DEGREES 54 MINUTES 11 SECONDS WEST ALONG THE NORTH LINE OF REGENCY ( 60.00 FEET WIDE) PARK FOR A DISTANCE OF 223.69 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT; THENCE CONTINUING ALONG SAID NORTH LINE OF REGENCY PARK, NORTH 89 DEGREES 54 MINUTES 11 SECONDS WEST FOR A DISTANCE OF 325.52 FEET; THENCE NORTHWESTERLY ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 270.00 FEET AN ARC LENGTH OF 164.78 FEET; THENCE LEAVING SAID NORTH LINE OF REGENCY PARK, NORTH 34 DEGREES 43 MINUTES 51 SECONDS EAST FOR A DISTANCE OF 53.00 FEET; THENCE NORTH 51 DEGREES 50 MINUTES 51 SECONDS WEST FOR A DISTANCE OF 18.87 FEET; THENCE NORTH 00 DEGREES 05 MINUTES 49 SECONDS EAST FOR A DISTANCE OF 271.49 FEET; THENCE SOUTH 89 DEGREES 54 MINUTES 11 SECONDS EAST FOR A DISTANCE OF 98.44 FEET; THENCE NORTH 00 DEGREES 05 MINUTES 49 SECONDS EAST FOR A DISTANCE OF 246.78 FEET TO THE NORTH LINE OF SAID LOT 12; THENCE SOUTH 89 DEGREES 30 MINUTES 43 SECONDS EAST ALONG SAID NORTH LINE FOR A DISTANCE OF 258.14 FEET; THENCE LEAVING SAID NORTH LINE, SOUTH 00 DEGREES 05 MINUTES 49 SECONDS WEST FOR A DISTANCE OF 245.01 FEET; THENCE SOUTH 89 DEGREES 54 MINUTES 11 SECONDS EAST FOR A DISTANCE OF 46.43 FEET; THENCE SOUTH 00 DEGREES 05 MINUTES 49 SECONDS WEST FOR A DISTANCE OF 186.40 FEET; THENCE SOUTH 89 DEGREES 54 MINUTES 11 SECONDS EAST FOR A DISTANCE OF 62.00 FEET; THENCE SOUTH 00 DEGREES 05 MINUTES 49 SECONDS WEST FOR A DISTANCE OF 189.07 FEET TO THE POINT OF BEGINNING AND CONTAINING 5.16 ACRES MORE OR LESS.

**EXHIBIT B**

ADDRESSES FOR NOTICES

**SELLER**

D & D Lodging, LLC  
1331 Park Plaza Drive, Suite # 4  
O'Fallon, IL 62269

with a copy to:

Linda Kniepkamp  
Greensfelder, Hemker & Gale  
12 Wolf Creek  
Suite # 100  
Swansea, IL 62226

**PURCHASER**

City Clerk  
City of O'Fallon  
255 South Lincoln  
O'Fallon, IL 62269

with a copy to:

Dale Funk  
Attorney at Law  
807 West Highway 50  
O'Fallon, IL 62269