

ENVIRONMENTAL ESCROW AGREEMENT

THIS ENVIRONMENTAL ESCROW AGREEMENT ("Agreement") is entered into on this the ____ day of January, 2015, by and between GWC Properties, a North Carolina General Partnership ("Seller") and the City of Durham ("Buyer"), and Carey L. Ewing, Ewing Law Center, P.C. ("Escrow Agent").

RECITALS:

WHEREAS, Seller has agreed to sell and Buyer has agreed to buy the property more particularly described on Exhibit "A" ("the Site"); and

WHEREAS, an environmental assessments indicates the potential presence of hazardous substances at the Site, which may increase the costs of redevelopment of the Site as intended for Buyer; and

WHEREAS, as an inducement for Buyer to proceed with the transaction, Seller has agreed to place certain funds in escrow ("Escrow Fund"), under the custody of the Escrow Agent, which will be available post-closing to: (a) reimburse Buyer for payment of costs it may incur in redeveloping the Site as a result of asbestos containing materials, petroleum residue, and other environmental pollution conditions which may exist on the Site, pursuant to the terms of this Agreement;

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises contained herein, which the parties acknowledge constitutes adequate consideration, the parties agree as follows:

1. Appointment of Escrow Agent. Buyer and Seller appoint Escrow Agent to serve as their Escrow Agent under this Agreement. Escrow Agent accepts that appointment and agrees to serve as such in accordance with the terms of this Agreement.

2. Initial Deposit to Escrow Fund. At the closing of the sale of the Site, Seller shall deliver Five Hundred Thousand Dollars (\$500,000.00) to Escrow Agent, which shall constitute the Initial Escrow Fund, and which shall be managed by Escrow Agent pursuant to the terms of this Agreement. Of the \$500,000, Fifty Thousand (\$50,000) is intended to compensate for the risk of environmental contamination resulting from tenants remaining on the Site after Buyer obtains title.

3. Revised MLV. At its sole cost, Buyer shall retain consultants to complete an environmental assessment, including but not limited to the Recognized Environmental Conditions listed in the *Preliminary Soil Management Cost Estimate*, Terracon (December 24, 2014). The assessment shall be completed within 60 days of conveyance of title to Buyer and, based on the assessment, shall include a revised estimate of the Most Likely Value ("MLV") to remediate environmental contamination prior to and during development of the site ("Revised MLV"), which Revised MLV shall include an estimate of net costs to Buyer of mitigation, remediation and disposal of the environmental contamination, including all "Charges" as defined in Section 10. Buyer retains the right to review and dispute the Revised MLV in accordance with the process specified in Section 6 below. If the agreed upon Revised MLV is less than \$450,000, the difference, being \$450,000 minus the Revised MLV, shall be remitted to Seller's account at Investors Title Exchange Corporation by

Escrow Agent within 10 days. If the agreed upon Revised MLV is more than \$450,000, the Escrow Fund shall not change.

4. Investment of Escrow Fund.

A. Eligible Investments. Escrow Agent shall retain the Escrow Fund in the non-interest bearing Trust Account of the Escrow Agent held by a bank or other financial institution authorized to transact business in the United States, such institution having assets in excess of \$500,000,000. Any change in how the Escrow Fund is managed shall be approved in advance by Seller and Buyer. So long as Escrow Agent complies with the investment guidelines set forth above, Escrow Agent shall have no responsibility or liability for the investment performance of the Escrow Fund account.

B. Statements. Escrow Agent shall issue statements on a quarterly basis to Buyer and Seller, detailing all disbursements made, and any other debits or credits entered, for the applicable period and with respect to the monies constituting the Escrow Fund account.

5. Use of Escrow Fund.

A. Permissible Disbursements for Redevelopment of Site. (i) During the term of this Agreement, disbursement from the Escrow Fund shall be made to Buyer to pay the costs for remediation, mitigation or disposal of environmental contamination, including Charges as defined in Section 10; and (ii) During the term of this Agreement, Buyer may also seek disbursement from the Escrow Fund to pay the costs for the assessment, remediation, mitigation or disposal of any environmental contamination, including Charges as defined in Section 10, caused by any tenant on the Site. Remediation, mitigation or disposal of environmental contamination shall be as required by or in accordance with the laws and regulations of North Carolina as administered and approved by the North Carolina Department of Environment and Natural Resources (DENR), or by Federal law or regulation.

B. Impermissible Disbursements. No other uses of the Escrow Fund besides those listed in sub-Section 5.A. above shall be permitted.

6. Process for Review of Revised MLV, Disbursement Requests, and Disbursements.

A. Disbursement Requests from Buyer. Each request by Buyer for disbursement from the Escrow Fund shall be in writing and shall itemize the work for which payment or reimbursement is to be made, the amount to be disbursed and the payee, and shall include copies of any purchase orders, invoices or other supporting documentation ("Disbursement Request"). Buyer shall also provide Escrow Agent any additional documentation or information Escrow Agent reasonably requests to understand a Disbursement Request. Buyer shall deliver a copy of any Disbursement Request or additional documentation or information to Seller at the same time it is delivered to the Escrow Agent.

B. Comment Period for Seller. Upon receipt of the Revised MLV and Disbursement Requests, Seller shall have ten (10) calendar days (the "Comment Period") to object in writing, delivered simultaneously to Escrow Agent and Buyer, with an explanation for the objection.

C. Disbursement for Uncontested Requests. If Seller makes no such objection during the Comment Period, Seller shall be deemed to have waived any objection to the Disbursement Request, and the Escrow Agent shall pay the Disbursement Request promptly after the Comment Period.

D. Resolution of Disputes. If Seller disputes the Revised MLV or subsequent Disbursement Requests, Escrow Agent shall resolve the dispute as directed by a Review Committee consisting of three NC licensed professional engineers. Seller and Buyer may each select one member of the Review Committee within 10 days of the delivery of Seller's written objection, and the two members selected will then select the third member within an additional 10 days. Within 10 days of the third member's selection, the Review Committee will review the disputed Revised MLV or the disputed Disbursement Request, as maybe the case. Review Committee members will be compensated for their services at a fixed rate of \$150/hour each, the cost of such compensation to be borne equally by each party. The parties hereby agree that the majority decision of the Review Committee shall be final and binding on the parties. Failure of either party to participate in this procedure or to abide by the decision of the Review Committee will constitute grounds for Escrow Agent's payment or non-payment of the disputed Disbursement Request as advocated by the participating party.

i. The Review Committee may adjust the Revised MLV and, by majority vote, if the Revised MLV is less than \$450,000, will authorize Escrow Agent to remit to Seller the difference, if any, as specified in Section 3.

ii. The Review Committee will review any disputed Disbursement Requests and the written submissions of the parties as to its appropriateness and, by majority vote, will authorize Escrow Agent to pay or not pay the disputed Disbursement Request in full or in part.

7. Term of Agreement, and Disbursement of any Balance in Escrow Fund at Termination. The term of this Agreement shall continue until the earlier of: (i) three (3) years from the date of this Agreement or until the site is fully excavated, whichever shall first occur; or (ii) the date all of the parties enter into an agreement terminating this Agreement. Any remaining balance in the Escrow Fund account at termination of this Agreement shall be the property of Seller, and shall be remitted to Seller by Escrow Agent, unless litigation concerning this Agreement is on-going, in which case no disbursement shall be made.

8. Buyer's Remedies for Environmental Conditions. Buyer acknowledges that Seller's obligations to Buyer regarding environmental conditions on the Site before closing is limited to Seller's obligations under this Agreement, and Buyer waives any and all contractual, statutory or other claims against Seller arising from environmental conditions which existed on the Site before closing, except a claim to enforce this Agreement.

10. Environmental Escrow Extended to Tenant Contamination.

A. Certain Tenants may remain on site for a period of three (3) to eleven (11) months after title transfer to Buyer.

B. Fifty Thousand Dollars of the Escrow Fund as deposited in accordance with Section 2 and as revised in accordance with Section 3 shall be also utilized for all Charges that arise in any manner from, in connection with, or out of environmental contamination by Tenants at the site as a

result of acts or omissions of the Tenants, their employees, invitees or agents, or anyone for whose acts any of them may be liable.

C. "Charges" as used in this Agreement means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this Agreement.

D. When all tenants have terminated their leasehold interest in their premises located on the Site and have fully vacated the Site, only such portion of the \$50,000 tenant escrow deposit shall be retained as shall be reasonably determined to be necessary for assessment, remediation, mitigation and disposal of environmental contamination of the tenant premises. The balance of the \$50,000 tenant escrow shall be paid by the Escrow Agent to the Seller's account at Investors Title Exchange Corporation. In the event of a dispute between Seller and Buyer as to how these funds should be disbursed, said dispute shall be resolved in the same fashion as set forth in Section 6.D.

9. Exculpation and Indemnification of Escrow Agent.

Buyer and Seller acknowledge and agree that:

A. Escrow Agent Not Bound. Escrow Agent is not a party to, and is not bound by, the Option Agreement or any other agreement between Buyer and Seller, and has absolutely no duty or responsibility to look to, comply with or enforce any of the terms or conditions of any such agreement.

B. Good Faith Reliance. Escrow Agent shall be protected in acting upon any Disbursement Request, written notice, request, waiver, consent, certificate, receipt, authorization, power of attorney, mechanic's lien waiver or other paper or document which Escrow Agent, in good faith, believes to be genuine and what it purports to be, and shall have no duty or responsibility to investigate or inquire into the accuracy, authenticity or legal sufficiency of any such item. Escrow Agent may consult with legal counsel in the event a dispute or question arises as to the construction of any of the provisions of this Agreement or the duties of Escrow Agent, and Escrow Agent shall incur no liability and shall be fully protected by acting in good faith in accordance with the opinion and instructions of such counsel.

C. Exculpation. The Escrow Agent shall not be liable for any error of judgment or any mistake of fact or law, or for anything else which the Escrow Agent may do or refrain from doing in connection with this Agreement, except for its own gross negligence, willful misconduct or failure to reasonably comply with written investment instructions.

D. Right to Refrain From Acting. In the event of a disagreement or dispute between Buyer and Seller which results in adverse claims or demands being made on Escrow Agent, or in the event that Escrow Agent has a good faith doubt as to what action Escrow Agent should take under this Agreement, the Escrow Agent may, at its option, refuse to comply with the conflicting claims or demands or to take other action so long as the disagreement or dispute or good

faith doubt continues or persists, and may, by way of interpleader, deposit the entire amount of Escrow Funds with any North Carolina court of competent jurisdiction. In any such case, Escrow Agent shall be entitled to continue to refrain from taking further action under this Agreement until Escrow Agent receives either (i) a joint written notice signed by Buyer and Seller directing the disposition of the Escrow Funds, (ii) a final order of an North Carolina court of competent jurisdiction directing such disposition, (iii) a decision by a majority of the members of the Review Committee referenced in Section 5.D. of this Agreement.

E. Resignation. Escrow Agent may resign as such by giving no less than twenty (20) days' advance written notice of its intention to resign to Buyer and Seller. Escrow Agent's resignation shall take effect on the later of the effective date of resignation specified in the notice, or twenty (20) days after the date Escrow Agent's notice is received by Buyer and Seller. Escrow Agent's duties under this Agreement shall terminate on the effective date of resignation, and Escrow Agent shall thereupon deliver the entire amounts then constituting the Escrow Fund, together with final statements of account, to any successor escrow agent which shall be designated in a joint written notice signed by Buyer and Seller. If Buyer and Seller fail to designate a successor before the effective date of Escrow Agent's resignation, Escrow Agent may petition any North Carolina court of competent jurisdiction for appointment of a successor escrow agent and, pending such appointment, may deposit the entire amount of the Escrow Fund with the court.

F. Indemnification. In the event Escrow Agent becomes involved in litigation in connection with or arising out of its service as Escrow Agent under this Agreement, except by reason of Escrow Agent's own misconduct, gross negligence or failure to reasonably comply with written investment instructions, Buyer and Seller shall indemnify and hold Escrow Agent harmless against any loss, damages, costs and expenses (including reasonable attorneys' fees) incurred by Escrow Agent in connection with such litigation and reimburse or split, as the case may be, said costs equally.

10. Miscellaneous.

A. Relation to Option to Purchase. To the extent there is any conflict between the terms of this Agreement and the Option to Purchase between Buyer and Seller, the terms of this Agreement shall control.

B. Notices. (i) Any notice to be given hereunder shall be deemed given if in writing and delivered personally or mailed by certified mail, postage prepaid, return receipt requested, or by courier, fee prepaid, guaranteeing overnight delivery, and to the party to receive notice at the following address or such address as any party may designate by notice to the other:

If to Seller:
GWC Properties
c/o Marcus G. Carpenter III
Post Office Box 1728
Durham, NC 27702

If to Buyer:
City of Durham
Director, General Services
101 City Hall Plaza

Durham, NC 27701

If to Escrow Agent:
Carey L. Ewing, Attorney at Law
Ewing Law Center, P.C.
2304 South Miami Boulevard #121,
Durham, NC 27703

(ii) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

C. Jurisdiction. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of North Carolina applicable to agreements made and to be entirely performed within such state. It shall be deemed made in Durham County, North Carolina. The exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

D. All the terms and conditions of this Agreement shall be binding upon, and inure to the benefit of and be enforceable by, the parties hereto and their respective successors and assigns.

E. Modification and Waiver. This Agreement may be amended, modified, superseded or canceled, and any of the terms or conditions hereof may be waived, only by a written instrument executed by each party hereto and otherwise in accordance with law or, in the case of a waiver, by the party waiving compliance. Further, a modification is not enforceable against the Buyer unless the Mayor, City Manager or a deputy or assistant City Manager signs it for the Buyer. The failure of any party at any time or times to require performance of any provisions hereof will in no manner affect the right at a later time to enforce the same. No waiver by any party of any condition, or of the breach of any term contained in this Agreement whether by conductor otherwise, in any one or more instances shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition of or the breach of any other term of this Agreement.

F. This Agreement shall be construed as if jointly prepared by Seller and Buyer.

G. This Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument.

H. Performance of Government Functions. Nothing contained herein shall be

deemed or construed to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

I. Severability. If any provision of this Agreement shall be unenforceable, the remainder of this Agreement shall be enforceable to the extent permitted by law.

J. Assignment. Successors and Assigns. Without the Buyer's written consent, the Sellers shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this Agreement. Unless the Buyer otherwise agrees in writing, the Sellers and all assignees shall be subject to all of the Buyer's defenses and shall be liable for all of the Sellers' duties that arise out of this Agreement, and all of the Buyer's claims that arise out of this Agreement. Without granting the Sellers the right to assign, it is agreed that the duties of the Sellers that arise out of this Agreement shall be binding upon it and its heirs, personal representatives, successors, and assigns.

K. No Third Party Rights Created. This Agreement is intended for the benefit of the City and the Sellers and not any other person.

L. Principles of Interpretation and Definitions. In this Agreement, unless the context requires otherwise: (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include", "including", etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement", whether or not capitalized, refer to this instrument. (4) Titles of sections, paragraphs, and articles are for convenience only, and shall not be construed to affect the meaning of this contract. (5) "Duties" includes obligations. (6) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (7) The word "shall" is mandatory. (8) The word "day" means calendar day.

M. Entire Agreement. This Agreement contains the entire agreement between the parties pertaining to the subject matter of it. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this Agreement.

[Signatures begin on the following page]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first above written.

SELLER:

GWC Properties,
a North Carolina General Partnership

BUYER:

City of Durham

By: _____(SEAL)
Marcus G. Carpenter, III
General Partner

By: _____(SEAL)
Thomas J. Bonfield, City Manager

ESCROW AGENT

ATTEST:

By: _____(SEAL)
Carey L. Ewing, Attorney at Law

City Clerk

NORTH CAROLINA
COUNTY OF DURHAM

ACKNOWLEDGMENT BY PARTNERSHIP

I, a notary public in and for said county and state, certify that Marcus G. Carpenter, III personally (1) appeared before me this day, (2) stated that he or she is a general partner in GWC Properties, a partnership, (3) acknowledged that the foregoing agreement with the City of Durham carries on in the usual way the partnership's business, and (4) acknowledged the due execution of the agreement on behalf of the partnership. This the _____ day of _____, 2015.

My commission expires:

Notary Public

NORTH CAROLINA
COUNTY of DURHAM

ACKNOWLEDGMENT BY CITY OF DURHAM

I, a Notary Public in and for the aforesaid County and State certify that

_____ personally appeared before me this day, and acknowledged that he or she is the _____ City Clerk of the City of Durham, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing agreement was signed in its corporate name by its _____ City Manager, sealed with its corporate seal, and attested by its said City Clerk or Deputy City Clerk. This the _____ day of _____, 2015.

My commission expires:

Notary Public

NORTH CAROLINA
COUNTY OF DURHAM

ACKNOWLEDGMENT BY CORPORATION

I, a notary public in and for the aforesaid county and state, certify that

_____ personally appeared before me this day and stated that he or she is _____ Secretary of Ewing Law Center, P.C., a corporation, and that by authority duly given and as the act of the corporation, the foregoing agreement with the City of Durham was signed in its name by its _____, whose name is Carey L. Ewing, sealed with its corporate seal, and attested by him/herself as its said Secretary or Assistant Secretary. This the _____ day of _____, 2015.

My commission expires:

Notary Public