

**January 9, 2025**  
**Item No. 8.5.**  
**Northgate Surface Lot Real Estate Contract**

**Sponsor:** Michael Ostrowski, Chief Development Officer

**Reviewed By CBC:** N/A

**Agenda Caption:** Presentation, discussion, and possible action regarding a real estate contract with Capstone Collegiate Communities, LLC for the sale of approximately 1.57 acres of land, generally located at 301 Patricia Street in the Northgate District, for \$13,000,000.

**Relationship to Strategic Goals:**

- Diverse & Growing Economy

**Recommendation(s):** Staff recommends approval.

**Summary:** In July and August 2024, the City issued a Request for Proposals (RFP) to solicit bids for a redevelopment project, receiving three proposals. These proposals were evaluated based on the following criteria:

- The qualifications and experience of the firms,
- The overall value and impact of the proposed redevelopment project, and
- The financial benefit to the City, including purchase price, redevelopment value, and ongoing City-related costs.

To enhance the area, the City also required that proposals incorporate the following additional components:

1. At least 100 parking spaces reserved exclusively for City use.
2. Dedicated areas for ride-share pick-up and drop-off to serve the surrounding community.
3. A 3,500–5,000 square foot space for a law enforcement substation.
4. Public restroom facilities.
5. Refuse container storage.
6. Redevelopment of remaining property into a public greenspace, plaza, or courtyard, including provisions for its operation and maintenance.

After reviewing the submissions, staff recommended entering into a real estate agreement with Capstone Collegiate Communities, LLC for the purchase price of \$13 million, and the construction of a multi-story mixed-use building. Following the real estate agreement, a development agreement will be negotiated, covering the design and construction of a public plaza, pedestrian amenities, enclosed trash collection, and other site improvements.

**Key Contract Terms**

**Purchase Price:** \$13 million

**Feasibility Period:** 120 days, extendable by 30 days with mutual consent and a \$100 fee

**Feasibility Fee:** \$1,000

**Earnest Money:** \$130,000 (refundable until development agreement approval) + \$65,000 upon development agreement approval

**Agreement Timeline**

- **Feasibility Period:** 120 days to assess project feasibility.
- **Development Agreement Period:** A 60-day window follows the feasibility period for the parties to finalize terms of the development agreement. If terms cannot be reached, either party may terminate the contract.
- **Approval and Closing Period:** Once the development agreement is approved by the City Council, Capstone will have 12 months to secure necessary project approvals and close on the property.

#### **Public Engagement**

During the feasibility and development agreement phases, the City will conduct a public engagement process. This will define the plaza design, establish the project's relationship to its surroundings, and identify complementary ground-floor uses and amenities. This engagement will complement the City's ongoing small-area planning efforts.

**Budget & Financial Summary: Purchase Price:** \$13 million

**Feasibility Period:** 120 days, extendable by 30 days with mutual consent and a \$100 fee

**Feasibility Fee:** \$1,000

**Earnest Money:** \$130,000 (refundable until development agreement approval) + \$65,000 upon development agreement approval

#### **Attachments:**

1. Real Estate Contract - Capstone

## REAL ESTATE CONTRACT

THIS CONTRACT OF SALE (“Real Estate Contract”) is made by and between the **CITY OF COLLEGE STATION, TEXAS**, a Texas Home Rule Municipal Corporation, situated in Brazos County, Texas (“SELLER”), and **CAPSTONE COLLEGIATE COMMUNITIES, LLC**, an Alabama Limited Liability Company (“BUYER”), upon the terms and conditions set forth herein.

### ARTICLE I PURCHASE AND SALE

- 1.1** Subject to the terms and conditions of this Real Estate Contract, SELLER agrees to sell and convey by Special Warranty Deed and BUYER agrees to purchase and pay for:
- a fee simple interest in and to all those certain lots, tracts or parcels of land, lying and being situated in Brazos County, Texas and being LOTS 14, 15, 16 & 17, BLOCK 1 BOYETT'S SUB-DIVISION (VOLUME 38, PAGE 614 DRBCT) AND LOTS 18, 24, 25, 26, 27 & 28, BLOCK 1 W. C. BOYETT ESTATE PARTITION (VOLUME 100, PAGE 440 DRBCT) JOSEPH E. SCOTT LEAGUE SURVEY, ABSTRACT 50 COLLEGE STATION, BRAZOS COUNTY, TEXAS, together with all improvements located thereon, together with all and singular the rights and appurtenances pertaining to the PROPERTY, including all right, title and interest of SELLER in and to adjacent roads, streets, alleys or rights-of-way, and together with all assignable applications, bonds, permits, licenses, approvals, utility rights, entitlements, development rights and similar rights related thereto, if any, and all site plans, surveys, soil and substrata studies, architectural drawings, plans and specifications, engineering plans and studies, floor plans, landscape plans and other plans or studies of any kind that relate thereto, if any (all of such real property, rights, and appurtenances being herein referred to as the “PROPERTY”), for the consideration and subject to the terms, provisions, and conditions set forth herein.
- 1.2** **City Council Approval.** This Real Estate Contract to sell and purchase the PROPERTY is subject to approval by vote of the City Council of the City of College Station, Texas (the “City Council”), such approval reflected by the signature of SELLER’s representatives to this Real Estate Contract.
- 1.3** SELLER has provided a Commitment for Title Insurance (the “Title Commitment”) to insure title to BUYER at BUYER’S option pursuant to the terms of this Real Estate Contract; said Title Commitment attached hereto as **EXHIBIT B** and made a part hereof for all intents and purposes.
- 1.4** SELLER has provided a copy of the existing survey, as shown in **EXHIBIT A**.
- 1.5** BUYER may at its cost order a Phase 1 Environmental Site Assessment.
- 1.6** The parties agree that general real estate taxes on the PROPERTY for the then current year, interest on any existing indebtedness shall be prorated as of the closing date and shall be adjusted

in cash at the closing. SELLER is a tax-exempt entity. BUYER agrees and understands that SELLER assumes no responsibility for rollback taxes, if any.

## **1.7 Feasibility.**

**(a) Feasibility Period.** BUYER requires adequate time to complete due diligence. BUYER shall have a **feasibility period of one hundred and twenty (120) days** from **Opening of Escrow** as set forth below (the “Feasibility Period”) to conduct, at BUYER’s sole expense, such marketing studies, engineering, environmental, feasibility, zoning, land plan or land use studies or reviews, inspections, investigations, and reviews of the PROPERTY that BUYER deems necessary or advisable in its discretion. BUYER and its employees, agents and/or independent contractors may come upon said PROPERTY at any time prior to Closing (as defined below) in connection with BUYER’S review of the PROPERTY. BUYER shall, at its expense, promptly repair and restore any damage to the PROPERTY caused by BUYER and/or its agents in connection with such inspections, studies, or tests. **BUYER hereby agrees to indemnify, defend, and hold SELLER harmless from and against all loss, cost, damage, claims or cause of action actually incurred by SELLER or asserted against SELLER arising from personal injury or property damage caused by actions taken at the PROPERTY by BUYER or its agents, engineers or consultants; provided, however, this indemnity shall not extend to, and SELLER hereby releases BUYER from liability for, any claims, damages or other liability resulting from or related to any existing environmental contamination or other existing condition on the Property that may merely be discovered by BUYER, and any disclosure of such matters by BUYER or its consultants to a governmental agency that may be required by applicable law.** SELLER acknowledges that BUYER intends to conduct an investigation of the PROPERTY, which may include examination of any and all documentation with respect to the PROPERTY, examination of the title to the PROPERTY, conduct tests to determine the presence or absence of hazardous waste, asbestos, radon and other similar materials and substances, and determine the compliance of the PROPERTY with all applicable laws, rules, codes and regulations. Notwithstanding anything contained herein to the contrary, BUYER’s repair and indemnification obligations pursuant to this Section shall survive closing hereunder or termination of this Real Estate Contract (regardless of the reason for termination), as the case may be. During the first thirty (30) days of the Feasibility Period, SELLER shall provide to BUYER copies of any previous environmental assessments, geotechnical reports, studies, or analyses made on or relating to the PROPERTY, any plats of the PROPERTY, and copies of current utility capacity letters for the PROPERTY.

- i.** BUYER agrees to seek public input with respect to the Project (as defined below) during the Feasibility Period, including BUYER representative(s) attendance at a minimum of three (3) public stakeholder meetings.

(b) **Extending the Feasibility Period.** SELLER and BUYER may mutually agree in writing to extend the Feasibility Period by thirty (30) days beyond the initial 120-day period. If the parties agree on such an extension, BUYER will deposit an additional **ONE HUNDRED DOLLARS (\$100.00)** of Earnest Money with Title Company on or before the expiration of the initial 120-day period or any feasibility extension. The City Manager has the authority to agree to and execute any feasibility extension agreements.

(c) **BUYER Decision During 120 Day Feasibility Period.** (i) If, prior to the expiration of the Feasibility Period of one hundred and twenty (120) days, BUYER determines in its sole discretion that the condition of the Property is unsatisfactory for any reason or no reason or that Buyer is no longer interested in pursuing the Project (as defined below), BUYER may terminate this Real Estate Contract by serving written notice of termination to SELLER, and the Title Company (as defined below) shall immediately refund the Initial Earnest Money (as defined below) to BUYER, and this Real Estate Contract and the rights, duties and obligations of the parties hereunder shall terminate and be of no further force or effect, except for those provisions which expressly survive; (ii) If BUYER terminates this Real Estate Contract after the expiration of the 120 day Feasibility Period, the Initial Earnest Money shall become non-refundable to BUYER except in the event of a default by SELLER or as otherwise specifically provided for herein.

(d) On or before the expiration of the Feasibility Period, BUYER shall provide SELLER and the Title Company with written notice that either (i) the PROPERTY is acceptable and BUYER desires to consummate the transaction contemplated herein, subject to the terms of this Real Estate Contract (including without limitation the provisions of Section 1.8 and Section 1.9), or (ii) the PROPERTY is not acceptable and BUYER desires to terminate this Real Estate Contract. BUYER's failure to notify SELLER, in writing, that the PROPERTY is not acceptable during the Feasibility Period shall mean the PROPERTY is acceptable and this Real Estate Contract remains in effect. BUYER'S election to proceed to close the transaction contemplated with respect to the PROPERTY shall constitute BUYER's election that the PROPERTY is acceptable, subject to the terms of this Real Estate Contract (including without limitation the provisions of Section 1.8 and Section 1.9).

(e) On or before the expiration of the Feasibility Period, if SELLER and BUYER cannot agree on the form of the Development Agreement (subject to modifications required by the final Approvals obtained by BUYER) prior to the expiration of the Feasibility Period, either party may terminate this Real Estate Contract, in which event the Title Company shall refund the BUYER the Earnest Money.

**1.8 Development Agreement Approval Period.** If SELLER and BUYER have not previously approved the form of the Development Agreement as contemplated by Section 1.7(e) above, SELLER and BUYER shall have sixty (60) days after the expiration of the Feasibility

Period (the “Development Agreement Approvals Period”), using good faith reasonable efforts, to agree on the terms of the Development Agreement. The form of the Development Agreement must be approved by both SELLER and BUYER. Promptly upon SELLER and BUYER agreeing to the terms of the Development Agreement, SELLER shall submit the Development Agreement to the City Council for its consideration and approval. BUYER’s and SELLER’s obligation to proceed to Closing shall be conditioned upon the parties entering into the Development Agreement at Closing. If (a) SELLER and BUYER cannot agree on the form of the Development Agreement (subject to modifications required by the final Approvals obtained by BUYER) prior to the expiration of the Development Agreement Approval Period, or (b) the City Council either disapproves or fails within a reasonable time to approve the agreed-upon form of the Development Agreement, either party may terminate this Real Estate Contract, in which event the Title Company shall refund to BUYER the Earnest Money. For the avoidance of doubt, a party’s decision to not approve the Development Agreement during the Feasibility Period or Development Agreement Approval Period is not a breach of the Agreement; provided, however, once the Development Agreement has been approved by SELLER, BUYER and the City Council as described in this Section 1.8, SELLER and BUYER shall be obligated to execute the Development Agreement (subject to modifications required by the final approvals obtained by BUYER) at Closing.

### **1.9 Governmental Approvals.**

(a) SELLER acknowledges that BUYER’s intended use of the PROPERTY is for a mixed-use “NG-1 Compliant High-Rise Structure” along with the Development Improvements as defined below in Article X, “Development Agreement” (the “Project”). From and after the effective date of this Real Estate Contract, BUYER may, at its sole cost, liability and expense, pursue from the appropriate governmental entities having jurisdiction over the PROPERTY, including without limitation, the City of College Station (the “City”), Brazos County, and the State of Texas (and its agencies) (the “State”), all written, final, and irrevocable site plan approvals, zoning approvals, building permits, curb cut approvals, and various other Federal, State and municipal approvals and permits that Buyer deems, in its sole and absolute discretion, necessary or desirable for BUYER’s proposed development of the PROPERTY into the Project (collectively, the “Approvals”). Such Approvals must be final and non-appealable without an appeal having been filed. In connection with BUYER’s applications for and efforts to obtain the Approvals, SELLER shall reasonably cooperate with BUYER’s efforts and shall execute such applications (including, without limitation, BUYER’S application for and pursuit of final and non-appealable plat approval and rezoning) and take such actions as are reasonably requested by BUYER. BUYER shall pay all fees and expenses incurred by BUYER in attempting to obtain any Approvals.

(b) If BUYER has not received the Approvals prior to the expiration of the Development Agreement Approval Period, BUYER shall have the right to continue to pursue the Approvals through the date that is twelve (12) months following the date on which the City Council has approved the Development Agreement (the “Approvals Period”) by depositing the Additional Earnest Money (as defined below). If at any time during the

Approvals Period (i) BUYER is denied by the applicable governmental authority with respect to any of the Approvals, (ii) BUYER has not received the Approvals, or (iii) BUYER reasonably believes that BUYER will not be able to receive the Approvals prior to such date, BUYER may terminate this Real Estate Contract by serving written notice of termination to SELLER, in which event the Title Company shall (x) deliver the Initial Earnest Money to SELLER, and (y) refund the Additional Earnest Money to BUYER, and this Real Estate Contract and the rights, duties and obligations of the parties hereunder shall terminate and be of no further force or effect, except for those provisions which expressly survive. If BUYER terminates this Real Estate Contract after the expiration of the Approvals Period, the Additional Earnest Money shall become non-refundable to SELLER except in the event of a default by SELLER or as otherwise specifically provided for herein.

(c) BUYER acknowledges that SELLER is a Texas Home Rule Municipal Corporation with regulatory authority over land use and building applications, including subdivision, zoning, development, and construction on real property within College Station city limits.

**(d) BUYER RECOGNIZES AND EXPRESSLY AGREES THAT SELLER IS NOT OBLIGATED BY VIRTUE OF THIS AGREEMENT TO APPROVE ANY APPLICATION OR REQUEST FOR GOVERNMENTAL APPROVALS WHICH SELLER OR BUYER MAY SUBMIT TO A GOVERNMENTAL BODY AND CERTIFIES AND ACKNOWLEDGES THAT SELLER HAS NOT MADE ANY REPRESENTATIONS TO OR AGREEMENTS WITH BUYER THAT SELLER WILL GRANT ANY GOVERNMENTAL APPROVALS SUBMITTED BY BUYER OR SELLER.**

**1.10 SELLER's Agreement to Cooperate.** To the extent permitted by applicable law and provided that BUYER shall have submitted all applications and other required information, documents, instruments and approvals in a complete and prompt manner, and without the following being deemed to limit or otherwise shorten any time periods prescribed by law, SELLER shall, with respect to the Project:

- (a) Reasonably cooperate with BUYER with respect to its timely filing of all applications for, obtaining and monitoring compliance matters relating to, and timely renewal of, all applicable permits, licenses, authorizations and approvals (collectively, the "Permits") with the City and all applicable agencies thereof;
- (b) Use commercially reasonable efforts to cause all Permit decisions necessary for the establishment and equipping of the Project to be made within sixty (60) days (ninety (90) days if a public hearing is requested) of filing the applicable and materially complete application approved by SELLER in accordance with the applicable statutes and regulations; and

(c) Use commercially reasonable efforts to effect, as expeditiously as reasonably possible, any act that would further the completion and continued operation of the Project, including without limitation, prompt completion of any required inspections in connection with the issuance of a certificate of occupancy for the Project, subject to BUYER'S compliance with any and all requirements for the issuance of the same.

**1.11** The sale of the PROPERTY shall be made by a Special Warranty Deed substantially in the form prepared by SELLER attached hereto as **EXHIBIT C**.

**ARTICLE II  
PURCHASE PRICE**

**2.1** The purchase price for said PROPERTY shall be the amount of **THIRTEEN MILLION AND NO/100 DOLLARS (\$13,000,000.00)**.

**2.2** The purchase price shall be payable in full at closing.

**ARTICLE III  
EARNEST MONEY AND FEASIBILITY FEE**

**3.1** **Earnest Money.** Within three (3) business days after the full execution of this Real Estate Contract by BUYER and SELLER, BUYER agrees to deposit with SOUTH LAND TITLE, LLC at 3800 Cross Park Drive, Bryan, Texas 77802 (the "Title Company") as an earnest money deposit, the sum of **ONE HUNDRED THIRTY THOUSAND AND NO/100 DOLLARS (\$130,000.00)** in cash (the "Initial Earnest Money"). The date on which such Initial Earnest Money is deposited with the Title Company is referred to herein as "**Opening of Escrow**". If BUYER has not terminated this Real Estate Contract prior to the expiration of the Development Agreement Approval Period, within three (3) business days after the date on which the City Council has finally approved the Development Agreement, BUYER will deposit with the Title Company an additional deposit in the amount of **SIXTY-FIVE THOUSAND AND NO/100 DOLLARS (\$65,000.00)** in cash (the "Additional Earnest Money"; and together with the Initial Earnest Money, the "Earnest Money"). The Title Company shall be directed to invest the Earnest Money in an interest-bearing account mutually acceptable to SELLER and BUYER. Any interest earned on this account shall be added to the Earnest Money and considered a part of the Earnest Money. The Earnest Money shall be credited to the Purchase Price at Closing.<sup>1</sup>

**3.2** If the transaction contemplated by this Agreement fails to close by reason of default or breach of SELLER (or the failure of a condition precedent), the Earnest Money shall be returned to BUYER. Should BUYER determine not to go forward with purchasing the PROPERTY, BUYER's sole recourse shall, subject to the terms of Article IX, be to terminate this Agreement prior to the expiration of the Feasibility Period, Development Agreement Approval Period or the Approvals Period, as the case may be (or later if such election to terminate is in connection with the failure of a condition precedent) and receive the return of the Earnest Money as provided above. If the transaction contemplated by this Agreement fails to close by reason of default or breach of

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<sup>1</sup> Amount of Earnest Money is an open issue.



BUYER, then SELLER shall be entitled to receive and retain from BUYER the Earnest Money as liquidated damages and as SELLER's sole and exclusive remedy against BUYER. Upon BUYER and SELLER'S joint written notice to the Title Company of the termination of this Real Estate Contract, the Title Company shall disburse such Earnest Money and any accrued interest thereon to BUYER and/or SELLER as instructed therein.

**3.3 Feasibility Fee.** Within seven (7) business days after the full execution of this Real Estate Contract by BUYER and SELLER, BUYER will deliver to SELLER the sum of **ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00)** in cash ("Feasibility Fee") as the required fee for the one hundred and twenty (120) day Feasibility Period as defined herein above. This Feasibility Fee is non-refundable, and it will not be a credit to the purchase price.

#### **ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER**

**4.1** SELLER hereby represents and warrants to BUYER as of the effective date and as of the Closing Date that, except as otherwise disclosed in written notice from SELLER to BUYER at or prior to the Closing, that:

- (a) SELLER has the full right, power, and authority to enter into and perform its obligations under this Real Estate Contract.
- (b) This Real Estate Contract has been duly authorized by requisite action and is enforceable against SELLER in accordance with its terms; neither the execution and delivery of this Real Estate Contract nor the consummation of the sale provided for herein will constitute a violation or breach by SELLER of any provision of any agreement or other instrument to which SELLER is a party or to which SELLER may be subject although not a party, or will result in or constitute a violation or breach of any judgment, order, writ, junction or decree issued against or binding upon SELLER or the Property.
- (c) To SELLER's knowledge there are no judgments, orders, suits, actions, garnishments, attachments or proceedings of any nature by or before any court, commission, board or other governmental body pending which involve or affect, or could involve or affect, the Property or the validity or enforceability of this Real Estate Contract or SELLER's closing documents.
- (d) SELLER has provided (or will provide) BUYER with true, complete and correct copies of all notices and information received by SELLER from any person or entity relating to the presence of any hazardous substances on the Property. SELLER has not removed, or caused to be removed, any underground storage tanks from the Property and to SELLER's knowledge there are no underground storage tanks located on the Property.
- (e) AFTER CLOSING, AS BETWEEN BUYER AND SELLER, THE RISK OF LIABILITY OR EXPENSE FOR ENVIRONMENTAL PROBLEMS, EVEN

IF ARISING FROM EVENTS OCCURRING BEFORE CLOSING, WILL BE THE SOLE RESPONSIBILITY OF BUYER, REGARDLESS OF WHETHER THE ENVIRONMENTAL PROBLEMS WERE KNOWN OR UNKNOWN AT CLOSING. ONCE CLOSING HAS OCCURRED, BUYER AGREES TO INDEMNIFY, HOLD HARMLESS, AND RELEASE SELLER FROM LIABILITY FOR ANY LATENT DEFECTS AND FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY, INCLUDING LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE DISPOSAL ACT, OR THE TEXAS WATER CODE. ONCE CLOSING OCCURS, BUYER AGREES TO INDEMNIFY, HOLD HARMLESS, AND RELEASE SELLER FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF SELLER'S OWN NEGLIGENCE OR THE NEGLIGENCE OF SELLER'S REPRESENTATIVES. ONCE CLOSING OCCURS, BUYER AGREES TO INDEMNIFY, HOLD HARMLESS, AND RELEASE SELLER FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THEORIES OF PRODUCTS LIABILITY AND STRICT LIABILITY, OR UNDER NEW LAWS OR CHANGES TO EXISTING LAWS ENACTED AFTER THE EFFECTIVE DATE THAT WOULD OTHERWISE IMPOSE ON SELLER IN THIS TYPE OF TRANSACTION NEW LIABILITIES FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY.

- (f)** No person, firm or entity, other than Buyer, has any right or option to purchase, lease, or otherwise acquire or possess the Property or any part thereof.
- (g)** To SELLER's knowledge, no default or breach by SELLER exists under any recorded easement, covenant, agreement or restriction affecting the Property.
- (h)** To SELLER's knowledge, there are no adverse or other parties in possession of the Property or of any part thereof, except for SELLER. Except as otherwise disclosed in the Title Commitment, SELLER has not granted to any party a license, lease, or other right of possession with respect to the Property.
- (i)** SELLER hereby covenants and agrees that from and after the Feasibility Period, SELLER shall not, without the prior written consent of BUYER, materially change or alter the physical condition of the Property, grant or consent to the creation of any easement, restriction, lien, assessment or encumbrance affecting the Property, or enter into or modify any lease, contract or other agreement respecting possession or ownership of the Property.
- (j)** SELLER shall not grant or consent to any building, water, sewer or other moratorium with respect to the Property that would prevent BUYER from

obtaining building permits or certificates of occupancy for BUYER's intended development and use of the Property in accordance with the Development Agreement.

When reference is made in this Article IV to SELLER's "knowledge", such term shall include only the current actual knowledge of SELLER's Council members, officials, officers, agents, and employees (none of which shall have any personal liability with respect to any such matters) and shall not be deemed to imply that SELLER, SELLER's Council members, officials, officers, agents, and employees have conducted any representation or warranty that is so qualified. BUYER agrees that SELLER has no duty of inquiry or investigation to make any such representation or warranty and SELLER shall have no liability to BUYER for failing to discover whether a condition as to which such a qualified representation or warranty is made is true or exists, regardless of the level of effort or expense required to make such an inquiry.

SELLER's representations and warranties under this Section 4.1 shall survive the Closing for a period of one (1) year.

**THERE ARE NO OTHER WARRANTIES OR REPRESENTATIONS.**

**BUYER ACKNOWLEDGES THAT, EXCEPT AS SET FORTH IN THIS SECTION 4.1, SELLER HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATIONS AS TO THE PHYSICAL CONDITION OF THE PROPERTY, OR ANY OTHER MATTER AFFECTING OR RELATED TO THE PROPERTY (OTHER THAN WARRANTIES OF TITLE AS PROVIDED AND LIMITED HEREIN). BUYER EXPRESSLY AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PROPERTY IS CONVEYED "AS IS" AND "WITH ALL FAULTS", AND SELLER EXPRESSLY DISCLAIMS, AND BUYER ACKNOWLEDGES AND ACCEPTS THAT SELLER HAS DISCLAIMED, ANY AND ALL REPRESENTATIONS, WARRANTIES OR GUARANTIES OF ANY KIND, ORAL OR WRITTEN EXPRESS OR IMPLIED (EXCEPT AS TO TITLE AS HEREIN PROVIDED AND LIMITED) CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION, (I) THE VALUE, CONDITION, MERCHANTABILITY, HABITABILITY, MARKETABILITY, PROFIT-ABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, OF THE PROPERTY, (II) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO ANY IMPROVEMENTS ON THE PROPERTY HEREIN CONVEYED, AND (III) THE MANNER OF REPAIR, QUALITY OF REPAIR, STATE OF REPAIR OR LACK OF REPAIR OF ANY SUCH IMPROVEMENTS.**

**ARTICLE V  
REPRESENTATIONS AND WARRANTIES OF BUYER**

**5.1** BUYER represents and warrants to SELLER as of the effective date and as of the Closing Date that:

- (a) BUYER has the full right, power, and authority to purchase the PROPERTY from SELLER as provided in this Real Estate Contract and to carry out BUYER's obligations under this Real Estate Contract and all requisite action necessary to authorize BUYER to enter into this Real Estate Contract and to carry out BUYER's obligations hereunder has been obtained on or before closing will have been taken.

**ARTICLE VI  
CLOSING**

**6.1** The closing (the "Closing") shall be held at Title Company, within sixty (60) days after the expiration of the Approvals Period (the "Closing Date"). SELLER and BUYER may mutually agree, in writing, to extend the Closing Date, but in no event shall the Closing be extended more than thirty (30) additional days from the originally-scheduled Closing Date. The City Manager is authorized to extend the Closing Date on behalf of SELLER.

**6.2** At the Closing, SELLER shall:

- (a) Prepare, at SELLER's cost, and deliver to BUYER the duly executed and acknowledged Special Warranty Deed conveying the PROPERTY, free and clear of any and all leases, liens and encumbrances, except for those listed on Schedule B of the Title Commitment attached as **EXHIBIT B** and those additional reservations and matters set forth in the Special Warranty Deed attached hereto as **EXHIBIT C**.
- (b) Deliver possession of the PROPERTY to BUYER.
- (c) At BUYER's election, deliver to BUYER an Owner's Title Policy insuring indefeasible title issued by Title Company, in BUYER's favor in the full amount of the purchase price, insuring BUYER's fee simple interest in the PROPERTY subject only to such exceptions as shown on the Title Commitment attached as **EXHIBIT B** and those additional easements, reservations and other matters set forth in the Special Warranty Deed attached hereto as **EXHIBIT C**. BUYER shall pay the cost of the base premium for the Owner's Title Policy in the amount of the purchase price.
- (d) Pay SELLER'S Broker and/or Real Estate Commission fees, if any.
- (e) Pay the SELLER's expenses or attorney fees.

- (f) Receive the Purchase Price and Feasibility Fee, together with any accrued interest thereon.
  - (g) Deliver executed Development Agreement (as defined below) with the BUYER related to the PROPERTY.
  - (h) Deliver such additional documents as may be reasonably required by the Title Company or BUYER in order to consummate the transaction described in this Real Estate Contract.
- 6.3** Upon such performance by SELLER at closing, BUYER shall:
- (a) Pay the purchase price.
  - (b) If BUYER elects to get a new survey of the PROPERTY, pay the cost of the new survey of the PROPERTY, and pay any additional premium for the survey/boundary deletion in the Owner's Title Policy, if the deletion is requested by BUYER.
  - (c) If BUYER elects to acquire an Owner's Title Policy, pay the cost of any extended coverage and endorsements thereto. BUYER shall also pay the cost of any Loan Title Policy insuring indefeasible title issued by Title Company, in BUYER's favor in the full amount of the purchase price, insuring BUYER's fee simple interest in the PROPERTY subject only to such exceptions as shown on the Title Commitment attached as **EXHIBIT B** and those additional easements, reservations and other matters set forth in the Special Warranty Deed attached hereto as **EXHIBIT C**.
  - (d) Pay the escrow fees.
  - (e) Pay the cost for tax certificates.
  - (f) Pay BUYER'S Broker and/or Real Estate Commission fees, if any.
  - (g) Pay the sole costs to obtain, deliver and record all documents to be recorded at closing relative to any lien BUYER may obtain for the purchasing of the PROPERTY.
  - (h) Pay the costs to record all documents recorded at closing for the purchase of the PROPERTY.
  - (i) Pay the BUYER's expenses and attorney fees.
  - (j) Pay any and all other closing costs customary to BUYER.
  - (k) Deliver executed Development Agreement with the SELLER related to the PROPERTY.

(f) Deliver such additional documents as may be reasonably required by the Title Company or SELLER in order to consummate the transaction described in this Real Estate Contract.

6.4 **BUYER Conditions to Closing.** Notwithstanding the foregoing or any other term or provision of this Real Estate Contract to the contrary, SELLER and BUYER agree that BUYER's obligation to close under this Real Estate Contract is conditioned upon satisfaction of the following conditions (collectively, the "Closing Conditions"):

- (a) All representations and warranties of SELLER hereunder shall be true and correct in all material respects as of the Closing Date.
- (b) All deliveries required of SELLER hereunder hereof have been duly delivered by SELLER to the Title Company or BUYER, as applicable.
- (c) As of the Closing Date, the Property shall be in substantially the same condition as existed on the Effective Date.
- (d) No action, suit or proceeding against or concerning the Property, at law or in equity, shall be pending before any federal, state, municipal or other governmental court, department, commission, board, bureau, agency or other instrumentality, foreign or domestic.
- (e) SELLER and BUYER have agreed upon the final form of the Development Agreement.

If any of the foregoing Closing Conditions has not been satisfied or waived as of the Closing Date, BUYER shall have the right, exercisable by delivery of written notice to SELLER on or before the Closing Date, to either (i) terminate this Real Estate Contract (without waiver of any rights or remedies under Article IX), and upon such termination, the Earnest Money shall be returned to BUYER and this Real Estate Contract shall terminate and be of no further force or effect, or (ii) extend the Closing Date up to thirty (30) days to enable the party or parties responsible for such unsatisfied condition to satisfy such condition. If BUYER elects to extend the Closing Date and the condition is satisfied within thirty (30) days, the Closing Date shall be five (5) business days after such condition is satisfied. If BUYER elects to extend the Closing Date and the condition is not satisfied in within thirty (30) days, BUYER may elect to terminate this Real Estate Contract (without waiver of any rights or remedies under Article IX), and upon such termination, the Earnest Money shall be returned to BUYER and this Real Estate Contract shall terminate and be of no further force or effect.

## **ARTICLE VII SPECIAL CONDITIONS**

7.1 The Special Warranty Deed will contain the following reservations and information, and the following **AS IS** language:

Contract No. 25300260  
Real Estate Contract – Capstone – Northgate Parking Lot

**GRANTOR hereby reserves for itself, its successors and assigns**, all of the Reserved Groundwater Rights. As used in this Special Warranty Deed, the following terms shall have the following meanings: Groundwater – All of the underground water, percolating water, artesian water, and any other water from any and all reservoirs, formations, depths and horizons beneath the surface of the earth, excluding underflow or flow in a defined subterranean channel; Reserved Groundwater - All of the Groundwater now or in the future located in, on or under the Property. Reserved Groundwater Rights - All of the Reserved Groundwater, together with the right to explore for, drill for, pump, develop, withdraw, produce and transport the Reserved Groundwater and Groundwater produced from other properties, from surface locations other than on the PROPERTY, including, without limitation, all personal property rights and entitlements relating to or applicable to the Reserved Groundwater, including, without limitation, permits, licenses, historical use entitlements, wells, pumps, and infrastructure; provided that there shall never in any event be any ingress or egress on or across the surface of the above-described premises for the purposes of exploration, development, production or transportation of such Groundwater, it being expressly contemplated by the parties to this instrument that any production of such Groundwater shall be from the surface of other property.

**GRANTOR hereby reserves unto itself, its successors and assigns**, any and all oil, gas and other minerals in, on or under the premises described on the attached **EXHIBIT A**; and provided that there shall never in any event be any ingress or egress on or across the surface of the above described premises for the purposes of exploration, development, production or transportation of such oil, gas or other minerals, it being expressly contemplated by the parties to this instrument that any production of such minerals shall be from the surface of other property and that there shall be no development of any minerals that would require mining, shaft mining, pit mining or any other kind of mining that would require utilization of the surface of the PROPERTY, or through the pooling of such mineral interests for the development with adjacent parcels.

GRANTOR waives all rights with respect to the surface and no owner of the mineral estate shall ever have rights of ingress or egress except as may have been reserved by GRANTOR under the reservations and exceptions expressly listed in this deed or its predecessors in title.

**GRANTEE ACKNOWLEDGES THAT, EXCEPT AS EXPRESSLY SET FORTH IN THE REAL ESTATE CONTRACT DATED \_\_\_\_\_, 2024 BETWEEN GRANTOR AND GRANTEE, GRANTOR HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATIONS AS TO THE PHYSICAL CONDITION OF THE PROPERTY, OR ANY OTHER MATTER AFFECTING OR RELATED TO THE PROPERTY (OTHER THAN WARRANTIES OF TITLE AS PROVIDED AND LIMITED HEREIN). GRANTEE EXPRESSLY AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PROPERTY IS CONVEYED “AS IS” AND “WITH ALL FAULTS”, AND GRANTOR EXPRESSLY DISCLAIMS, AND GRANTEE ACKNOWLEDGES AND ACCEPTS THAT GRANTOR HAS DISCLAIMED, ANY AND ALL REPRESENTATIONS,**

WARRANTIES OR GUARANTIES OF ANY KIND, ORAL OR WRITTEN, EXPRESS OR IMPLIED (EXCEPT AS TO TITLE AS HEREIN PROVIDED AND LIMITED) CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION (I) THE VALUE, CONDITION, MERCHANTABILITY, HABITABILITY, MARKETABILITY, PROFITABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, OF THE PROPERTY (II) THE MANNER OR QUALITY OF THE CONSTRUCTION, OR THE MATERIALS, IF ANY, INCORPORATED INTO THE CONSTRUCTION, OF ANY IMPROVEMENTS TO THE PROPERTY AND (III) THE MANNER OF REPAIR, QUALITY OF REPAIR, STATE OF REPAIR OR LACK OF REPAIR OF ANY SUCH IMPROVEMENTS. BY GRANTEE'S ACCEPTANCE OF THIS DEED, GRANTEE REPRESENTS THAT GRANTEE HAS MADE (I) ALL INSPECTIONS OF THE PROPERTY TO DETERMINE ITS VALUE AND CONDITION DEEMED NECESSARY OR APPROPRIATE BY GRANTEE, INCLUDING, WITHOUT LIMITATION, INSPECTIONS FOR THE PRESENCE OF ASBESTOS, PESTICIDE RESIDUES, HAZARDOUS WASTE AND OTHER HAZARDOUS MATERIALS AND (II) INVESTIGATIONS TO DETERMINE WHETHER ANY PORTION OF THE PROPERTY LIES WITHIN ANY FLOOD HAZARD AREA AS DETERMINED BY THE U.S. ARMY CORPS OF ENGINEERS OR OTHER APPLICABLE AUTHORITY.

**ARTICLE VIII  
BREACH BY BUYER**

**8.1** In the event BUYER fails to fully and timely perform any of BUYER'S obligations under this Real Estate Contract (and such failure is not cured within thirty (30) days of written notice from SELLER), or fails to consummate the sale of the PROPERTY for any reason except SELLER's default, SELLER may, as its sole and exclusive remedy, terminate this Real Estate Contract, in which event the Title Company shall deliver to SELLER the Earnest Money, including the Initial Earnest Money and any Additional Earnest Money on deposit with the Title Company.

**ARTICLE IX  
BREACH BY SELLER**

**9.1** In the event SELLER fails to consummate the conveyance of the PROPERTY (SELLER being in default and BUYER not being in default hereunder), BUYER shall have the right either to:

- (a)** Terminate this Real Estate Contract, in which event the Title Company shall return to BUYER the Earnest Money, including the Initial Earnest Money and any Additional Earnest Money on deposit with the Title Company, and if SELLER intentionally or willfully fails to consummate the Closing in accordance with this Real Estate Contract despite BUYER being ready, willing and able to close, SELLER shall reimburse BUYER for its reasonable, out-of-pocket expenses incurred by BUYER up to \$250,000.00;



- (b) Waive, before or at the Closing, the applicable objection or condition and proceed to close the transaction contemplated hereby in accordance with the remaining terms hereof; or
- (c) Enforce the terms of this Real Estate Contract against SELLER though the remedy of specific performance.

**9.2** Furthermore, if the remedy of specific performance is not available to BUYER due to the actions of SELLER and SELLER has sold, leased or encumbered the Property in a manner that impairs or precludes BUYER's ability to pursue specific performance, then BUYER shall have the right to pursue a claim for monetary damages, if any against SELLER.

**9.3** Any action for specific performance by BUYER must be instituted, if at all, within sixty (60) days after the date of the scheduled Closing; and, if such action is not so instituted within such period of time, then BUYER shall be deemed conclusively to have waived the right to institute such action and to have elected to terminate this Real Estate Contract in accordance with Section 9.1(a). In addition, no action for specific performance may be instituted by BUYER against SELLER with respect to any condition due to any cause not reasonably within the control of SELLER, BUYER's remedies in such event being limited to termination or waiver as described above.

## **ARTICLE X DEVELOPMENT AGREEMENT**

**10.1** The parties acknowledge and agree that the PROPERTY is being acquired by the BUYER with the intent of building and operating a mixed-use development consisting of a "NG-1 Compliant High-Rise Structure" on the PROPERTY, along with associated parking areas, related amenities, common areas, a law enforcement substation, public restrooms, and other on-site improvements benefiting the occupants, users, invitees and visitors of the development and Northgate (herein called the "Intended Use" or the "Mixed Use Facility"). Along with developing the Mixed-Use Facility, BUYER, with the cooperation of SELLER and on BUYER's behalf, intends to design, coordinate, develop and construct a public plaza on the PROPERTY and within the Patricia Street Right-of-Way, consisting of, among other things, pedestrian amenities, enclosed trash collection, related amenities and other on-site improvements (collectively the "Public Plaza"). (As herein used, the Mixed-Use Facility and the Public Plaza, together with all improvements contemplated, discussed or permitted in the Development Agreement, shall collectively mean the "Development Improvements"). SELLER acknowledges that before the Closing Date BUYER may elect to modify the proposed Development Improvements. The Development Agreement to be executed by SELLER and BUYER at Closing shall describe the final Development Improvements.

**10.2** At Closing and in connection with the PROPERTY, the parties shall enter into an Economic Development Agreement according to Chapter 380 of the Texas Local Government

Code (the “Development Agreement”). The Development Agreement will provide, among other things, the following:

- (a) SELLER is promoting local economic development to stimulate business and commercial development in the City of College Station by selling the PROPERTY for the purchase price. The purchase price of the PROPERTY is conditioned on the BUYER satisfying the Development Proposal attached as **EXHIBIT D**, as amended by the Development Agreement. To ensure the Development Improvements are provided, BUYER will provide certain financial guarantees either in the form of cash or backed by a security as indicated in the Development Agreement.
- (b) BUYER shall complete the responsibilities of BUYER as indicated in the BUYER’s Development Proposal attached as **EXHIBIT D**, as amended by the Development Agreement. As set forth in BUYER’s Development Proposal, the Project will include certain public improvements to be agreed upon by SELLER and BUYER and specified in the Development Agreement. BUYER and SELLER agree that the Conceptual Site Plan and the overall design of the site and buildings will change. A finalized site plan and building design will be finalized as part of the Development Agreement. BUYER acknowledges and agrees that the City shall not be obligated to issue a certificate of occupancy to BUYER for the Project unless and until BUYER has constructed the aforementioned public improvements in accordance with the Development Agreement.
- (c) If BUYER does not commence construction of the Project within ninety (90) days after Closing or as amended within the Development Agreement, SELLER will have a right to repurchase the Property from BUYER by paying to BUYER the purchase price paid by BUYER under this Real Estate Contract, less any customary and reasonable real estate transaction expenses incurred by SELLER related to the repurchase; provided, however, if BUYER’s failure to commence construction is a result of revocation of a Permit by the SELLER, then BUYER shall have thirty (30) days after receipt of SELLER’s demand in order to commence construction before SELLER may exercise its repurchase right under this paragraph. When BUYER commences construction, SELLER’s repurchase right under this paragraph shall terminate. Commencement of construction is defined as the issuance of a valid building/site permit and the beginning of significant site work.
- (d) Once BUYER has commenced construction, BUYER shall pursue construction of the Project with commercial diligence.
- (e) BUYER shall construct one hundred (100) parking spaces on the Property to be used on an exclusive basis by the City, along with a 50/50 revenue share between BUYER and SELLER in perpetuity. Notwithstanding anything in the Development Agreement to the contrary, if all of the parking spaces are not completed and fully operational by the date that is four (4) years after Closing (the “Parking Deadline”), SELLER will be entitled to retain 100% of the parking revenue thereon for each day beyond the Parking Deadline that such parking spaces are not operational, after which SELLER and BUYER shall split such revenue on a 50/50 basis.

- (f)** BUYER shall construct on the Property a pick-up/drop-off area designed for ride sharing services.
- (g)** BUYER shall provide for the other Development Improvements contemplated in this article hereinabove, including, without limitation, the law enforcement substation, trash dumpsters and enclosures, and public restroom facilities.
- (h)** BUYER shall enter into a lease with SELLER, pursuant to which BUYER shall lease the law enforcement substation area to SELLER. Upon termination or expiration of such lease, or if SELLER ceases to use the area as a law enforcement substation or other similar use for a continuous period in excess of three hundred sixty five (365) days, BUYER shall thereafter be free to use, occupy or lease such area to a third party after written notice is delivered to SELLER by BUYER.
- (i)** BUYER shall pay all development, permit, impact, parkland dedication, and other fees related to the Development Improvements. Notwithstanding the foregoing, however, SELLER agrees to provide BUYER with a credit against any parkland dedication fees owed by BUYER in an amount equal to the expenses incurred by BUYER in constructing the Public Plaza improvements in the Patricia Street Right-of-Way. For avoidance of doubt, expenses incurred by BUYER in constructing the Public Plaza improvements on the Property (and not in the right-of-way), would not be credited by the SELLER.
- (j)** BUYER shall commit to contributing a certain amount of approved and budgeted funds towards the Public Plaza within the overall development and surrounding Northgate.
- (k)** The obligations of BUYER under the Development Agreement with respect to the development and completion of the Project may be subject to extension due to a Force Majeure Event. The term “Force Majeure Event” shall be defined in the Development Agreement.

**ARTICLE XI  
MISCELLANEOUS**

**11.1 Survival of Covenants.** Any of the representations, warranties, covenants, and agreements of the parties, as well as any rights and benefits of the parties, pertaining to the period of time following the Closing Date, shall survive the Closing and shall not be merged by deed or otherwise be extinguished.

**11.2 Notice.** Any notice required or permitted to be delivered by this Real Estate Contract shall be deemed received when sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to SELLER or BUYER, as the case may be, at the addresses set forth below:

**BUYER:**  
Capstone Collegiate Communities, LLC  
431 Office Park Drive  
Birmingham, Alabama 35223  
Attn: John E. Vawter  
Telephone: 205-414-6400  
Email: [jvawter@capstonemail.com](mailto:jvawter@capstonemail.com)

**ATTORNEY  
FOR BUYER:**  
Matthew W. Grill  
Maynard Nexsen PC  
1901 Sixth Avenue North, Suite 1700  
Birmingham, Alabama 35203  
Telephone: 205-254-1000  
Email: [mgrill@maynardnexsen.com](mailto:mgrill@maynardnexsen.com)

**SELLER:**  
City of College Station  
Attention: Adam C. Falco, City Attorney  
City Attorney's Office  
P. O. Box 9960  
College Station, Texas 77842  
Telephone: 979-764-3507  
Email: [afalco@cstx.gov](mailto:afalco@cstx.gov)

**11.3 Texas Law to Apply.** This Real Estate Contract shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created by this Real Estate Contract are to be performed in Brazos County, Texas.

**11.4 Parties Bound.** This Real Estate Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns. The persons executing this Real Estate Contract do so in their capacities as set forth below and in no other capacity whatsoever, and such persons shall have no personal liability for executing this Real Estate Contract in a representative capacity. All such liability is limited to the principal for which they execute this document as a representative. Buyer may assign this Real Estate Contract without the consent of Seller if such assignment is to an affiliate of Buyer,

or to a wholly owned entity of Buyer or Buyer's owner. Except as provided above, any other assignment of this Real Estate Contract by Buyer shall require the consent of Seller.

**11.5 Invalid Provision.** In case any one or more of the provisions contained in this Real Estate Contract shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Real Estate Contract, and this Real Estate Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in the Real Estate Contract. In lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this Real Estate Contract a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

**11.6 Construction.** The parties acknowledge that each party and its counsel have reviewed and revised this Real Estate Contract and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Real Estate Contract or any amendments or exhibits hereto.

**11.7 Prior Agreements Superseded.** This Real Estate Contract embodies the entire agreement of the parties and supersedes any and all prior understandings or written or oral agreements between the parties respecting subject matter within and may only be amended or supplemented by an instrument in writing executed by the party against whom enforcement is sought.

**11.8 Time of Essence.** Time is of the essence to this Real Estate Contract.

**11.9 Gender.** Words of any gender used in this Real Estate Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

**11.10 Multiple Counterparts.** This Real Estate Contract may be executed in a number of identical counterparts. If so executed, each of the counterparts shall, collectively, constitute but one agreement. In making proof of this Real Estate Contract it shall not be necessary to produce or account for more than one counterpart.

**11.11 Real Estate Contract Execution.** This Real Estate Contract by SELLER to SELL the PROPERTY is approved by vote of the City Council of the City of College Station, Texas; such approval reflected by the signature of SELLER's representative to this Real Estate Contract. Once this Real Estate Contract is executed by the BUYER and SELLER, the FULLY EXECUTED date shall be the date this Real Estate Contract is approved by vote of the City Council.

**11.12 Memorandum of Real Estate Contract.** Upon request of either party, both parties shall promptly execute a memorandum of this Real Estate Contract suitable for filing of record, provided that the form of such memorandum shall be subject to the reasonable approval of both parties. The cost to record such memorandum shall be paid by the requesting party.

**11.13 Brokers.** Each of SELLER and BUYER represents and warrants to the other party that it has not dealt with any brokers or other intermediaries in connection with this transaction.

**[signature page to follow]**

**LIST OF EXHIBITS:**

**EXHIBIT A** Copy of Existing Survey

**EXHIBIT B** Title Commitment with an effective date of September 29, 2024

**EXHIBIT C** Special Warranty Deed

**EXECUTED** on this the \_\_\_\_\_ day of \_\_\_\_\_, 2025 (“Effective Date”).

**SELLER:**

**CITY OF COLLEGE STATION, TEXAS**  
a Texas Home Rule Municipal Corporation

**BUYER:**

**CAPSTONE COLLEGIATE COMMUNITIES, LLC, an Alabama limited liability company**

By: \_\_\_\_\_

**Mayor**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Attest:**

**City Secretary**

Date: \_\_\_\_\_

**APPROVED:**

\_\_\_\_\_  
**City Manager**

Date: \_\_\_\_\_

\_\_\_\_\_  
**Assistant City Manager/CFO**

Date: \_\_\_\_\_

\_\_\_\_\_  
**City Attorney**

Date: \_\_\_\_\_

**THE STATE OF ALABAMA**  
**COUNTY OF JEFFERSON**

§  
§ **ACKNOWLEDGMENT**  
§

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2025,  
by \_\_\_\_\_ [Name], \_\_\_\_\_ [Title] of CAPSTONE  
COLLEGIATE COMMUNITIES, LLC, an Alabama limited liability company, on behalf of said  
company.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of Texas

**THE STATE OF TEXAS**  
**COUNTY OF BRAZOS**

§  
§ **ACKNOWLEDGMENT**  
§

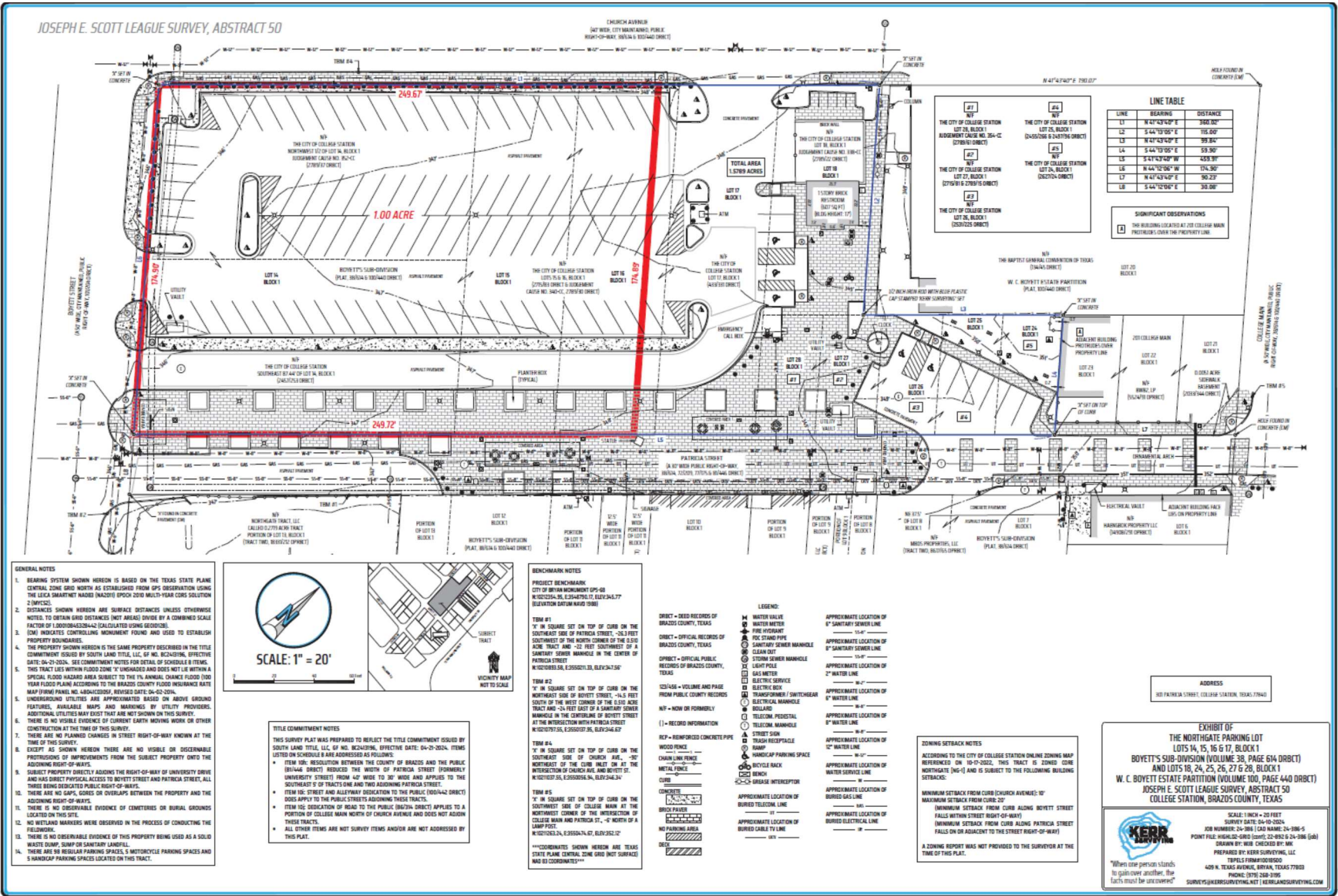
This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2025,  
by JOHN P. NICHOLS, as Mayor of the CITY OF COLLEGE STATION, TEXAS, a Texas Home  
Rule Municipal Corporation, on behalf of said municipality.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of Texas



**EXHIBIT A**

LOTS 14, 15, 16 & 17, BLOCK 1 BOYETT'S SUB-DIVISION (VOLUME 38, PAGE 614 DRBCT) AND LOTS 18, 24, 25, 26, 27 & 28, BLOCK 1 W. C. BOYETT ESTATE PARTITION (VOLUME 100, PAGE 440 DRBCT) JOSEPH E. SCOTT LEAGUE SURVEY, ABSTRACT 50 COLLEGE STATION, BRAZOS COUNTY, TEXAS.



**EXHIBIT B**

Title Commitment effective September 29, 2024

Contract No. 25300260

Real Estate Contract – Capstone – Northgate Parking Lot

COMMITMENT FOR TITLE INSURANCE T-7

ISSUED BY

TEXAN TITLE INSURANCE COMPANY

SCHEDULE A

Effective Date: **September 29, 2024, 8:00 am**

GF No. **BC2413196**

Commitment issued **October 8, 2024,**

1. The policy or policies to be issued are:
  - a. OWNER'S POLICY OF TITLE INSURANCE (Form T-1)  
(Not applicable for improved one-to-four family residential real estate)  
Policy Amount:  
PROPOSED INSURED:
  - b. TEXAS RESIDENTIAL OWNER'S POLICY OF TITLE INSURANCE  
ONE-TO-FOUR FAMILY RESIDENCES (Form T-1R)  
Policy Amount:  
PROPOSED INSURED:
  - c. LOAN POLICY OF TITLE INSURANCE (Form T-2)  
Policy Amount:  
PROPOSED INSURED:  
Proposed Borrower:
  - d. TEXAS SHORT FORM RESIDENTIAL LOAN POLICY OF TITLE INSURANCE (Form T-2R)  
Policy Amount:  
PROPOSED INSURED:  
Proposed Borrower:
  - e. LOAN TITLE POLICY BINDER ON INTERIM CONSTRUCTION LOAN (Form T-13)  
Binder Amount:  
PROPOSED INSURED:  
Proposed Borrower:
  - f. OTHER  
Policy Amount:  
PROPOSED INSURED:
2. The interest in the land covered by this Commitment is: **Fee Simple**
3. Record title to the land on the Effective Date appears to be vested in:  
**City of College Station, Texas, a Texas Home Rule Municipal Corporation**

4. Legal description of land:

**Tract One:**

**Lots Fourteen (14), Fifteen (15), Sixteen (16) and Seventeen (17) in Block One (1), of Boyett's Subdivision, a subdivision in Brazos County, Texas, according to the map or plat thereof recorded in Volume 38, Page 614 of the Deed Records of Brazos County, Texas.**

**Tract Two:**

**Lots Eighteen (18), Twenty-four (24), Twenty-five (25), Twenty-six (26), Twenty-seven (27) and Twenty-eight (28), in Block One (1), of Boyett's Subdivision, a subdivision in Brazos County, Texas, according to the map or plat thereof recorded in Volume 100, Page 440 of the Deed Records of Brazos County, Texas.**

**COMMITMENT FOR TITLE INSURANCE T-7  
ISSUED BY**

GF No. **BC2413196**

**TEXAN TITLE INSURANCE COMPANY  
SCHEDULE B**

**EXCEPTIONS FROM COVERAGE**

In addition to the Exclusions and Conditions and Stipulations, your Policy will not cover loss, costs, attorney's fees, and expenses resulting from:

1. The following restrictive covenants of record itemized below (We must either insert specific recording data or delete this exception):

**ITEM 1 OF SCHEDULE "B" IS HEREBY DELETED IN ITS ENTIRETY.**

2. Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements.
3. Homestead or community property or survivorship rights, if any of any spouse of any insured. (Applies to the Owner's Policy only.)
4. Any titles or rights asserted by anyone, including, but not limited to, persons, the public, corporations, governments or other entities,
  - a. to tidelands, or lands comprising the shores or beds of navigable or perennial rivers and streams, lakes, bays, gulfs or oceans, or
  - b. to lands beyond the line of the harbor or bulkhead lines as established or changed by any government, or
  - c. to filled-in lands, or artificial islands, or
  - d. to statutory water rights, including riparian rights, or
  - e. to the area extending from the line of mean low tide to the line of vegetation, or the rights of access to that area or easement along and across that area.  
(Applies to the Owner's Policy only.)

5. Standby fees, taxes and assessments by any taxing authority for the year **2024**, and subsequent years; and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership, but not those taxes or assessments for prior years because of an exemption granted to a previous owner of the property under Section 11.13, Texas Tax Code, or because of improvements not assessed for a previous tax year. (If Texas Short Form Residential Loan Policy of Title Insurance (T-2R) is issued, that policy will substitute "which become due and payable subsequent to Date of Policy" in lieu of "for the year year**2024** and subsequent years.")
6. The terms and conditions of the documents creating your interest in the land.
7. Materials furnished or labor performed in connection with planned construction before signing and delivering the lien document described in Schedule A, if the land is part of the homestead of the owner. (Applies to the Loan Title Policy Binder on Interim Construction Loan only, and may be deleted if satisfactory evidence is furnished to us before a binder is issued.)
8. Liens and leases that affect the title to the land, but that are subordinate to the lien of the insured mortgage. (Applies to Loan Policy (T-2) only.)
9. The Exceptions from Coverage and Express Insurance in Schedule B of the Texas Short Form Residential Loan Policy of Title Insurance (T-2R). (Applies to Texas Short Form Residential Loan Policy of Title Insurance (T-2R) only.) Separate exceptions 1 through 8 of this Schedule B do not apply to the Texas Short Form Residential Loan Policy of Title Insurance (T-2R).

10. The following matters and all terms of the documents creating or offering evidence of the matters (We must insert matters or delete this exception.):

- a. **Rights of Parties in possession. (OWNER POLICY ONLY)**
- b. **Intentionally deleted.**
- c. **Intentionally deleted.**
- d. **Any portion of the subject property lying within the boundaries of a public or private roadway, whether dedicated or not.**
- e. **All leases, grants, exceptions or reservations of coal, lignite, oil, gas and other minerals, together with all rights, privileges and immunities relating thereto, appearing in the Public Records whether listed in Schedule B or not. There may be leases, grants, exceptions or reservations of mineral interests that are not listed.**
- f. **All leases, grants, exceptions or reservations of the geothermal energy and associated resources below the surface of the land, together with all rights, privileges, and immunities relating thereto, appearing in the Public Records whether listed in Schedule B or not. There may be leases, grants, exceptions or reservations of the geothermal energy and associated resources below the surface of the land that are not listed.**
- g. **Rights of tenants, as tenants only, under existing lease agreements affecting the land.**
- h. **Terms, conditions and stipulations as set forth in Resolution by and between The County of Brazos and the Public dated March 14, 1932, recorded in [Volume 81, page 446](#), Deed Records of Brazos County, Texas.**
- i. **Streets and Alleyways dedicated by A. P. Boyett et al to the Public, dated May 29, 1939, recorded under [Volume 100, page 442](#), Deed Records of Brazos County, Texas.**
- j. **Easement from Oran Boyett et al to the public, dated April 21, 1934, recorded in [Volume 86, page 314](#), Deed Records of Brazos County, Texas.**
- k. **Intentionally deleted.**
- l. **Mineral reservation in Deed executed by Boyett Investments, Ltd. to City of College Station, Texas, dated October 4, 1995, recorded in [Volume 2457, page 253](#), Official Records of Brazos County, Texas. Title to this reservation has not been traced subsequent to the date of the above-cited instrument.**
- m. **Mineral reservation in Deed executed by Paula Jan Boyett to City of College Station, Texas, dated June 17, 1996, recorded in [Volume 2627, page 24](#), Official Records of Brazos County, Texas. Title to this reservation has not been traced subsequent to the date of the above-cited instrument.**
- n. **Intentionally deleted.**
- o. **Intentionally deleted.**
- p. **Intentionally deleted.**
- q. **Intentionally deleted.**
- r. **Intentionally deleted.**

- s. Intentionally deleted.
- t. Intentionally deleted.
- u. Intentionally deleted.
- v. All matters, as evidenced by [survey](#) dated July 19, 2024, prepared by Michael Konetski, R.P.L.S. No. 6531, including but not limited to:
  - a) Any claim or right of adjoining property owner to that strip of land lying between the fence and the boundary line on the east side of the property;
  - b) Discrepancy between fence line and actual property line on the north and east side of the property;
  - c) Adjacent building protrudes over property line on the east side of the property;
  - d) Encroachment of buildings, structures, and improvements over the property line(s), including but not limited to planter box(s), restroom(s), and covered area(s);
  - e) Six inch (6") water line;
  - f) Water valve(s), water meter(s), electric service(s), transformer/switchgear, electrical manhole(s), street sign(s), utility vault(s), and any easement rights appurtenant thereto.

**NOTE:** Federal law prohibits enforcement of such personal restrictions and even limits the ability of the title company to report or show them. To the extent such personal restrictions are contained in any document listed as an exception to title in this insuring form, such personal restrictions or covenants are omitted from the exception. If the Company or its title insurance agent have provided copies of documents containing such personal restrictions or covenants, we are simply providing a true copy of the recorded documents and do not publish, state, or imply such personal restrictions or covenants are enforceable.



**COMMITMENT FOR TITLE INSURANCE T-7  
ISSUED BY**

**TEXAN TITLE INSURANCE COMPANY  
SCHEDULE C**

Your Policy will not cover loss, costs, attorneys' fees, and expenses resulting from the following requirements that will appear as Exceptions in Schedule B of the Policy, unless you dispose of these matters to our satisfaction, before the date the Policy is issued:

1. Documents creating your title or interest must be approved by us and must be signed, notarized and filed for record.
2. Satisfactory evidence must be provided that:
  - a. no person occupying the land claims any interest in that land against the persons named in paragraph 3 of Schedule A,
  - b. all standby fees, taxes, assessments and charges against the property have been paid,
  - c. all improvements or repairs to the property are completed and accepted by the owner, and that all contractors, sub-contractors, laborers and suppliers have been fully paid, and that no mechanic's, laborer's or materialmen's liens have attached to the property,
  - d. there is legal right of access to and from the land,
  - e. (on a Loan Policy only) restrictions have not been and will not be violated that affect the validity and priority of the insured mortgage.
3. You must pay the seller or borrower the agreed amount for your property or interest.
4. Any defect, lien or other matter that may affect title to the land or interest insured, that arises or is filed after the effective date of this Commitment.
5. NOTE: Procedural Rule P-27 as provided for in Article 9.39A of the Texas Insurance Code requires that "Good Funds" be received and deposited before a Title Agent may disburse from its Trust Fund Account.
6. **NOTE: We find no outstanding liens of record affecting the subject property. Inquiry should be made concerning the existence of any unrecorded lien or other indebtedness which could give rise to any security interest claim in the subject property.**
7. **Company requires an official copy of the minutes of the meeting wherein the City of College Station authorizes the purchase of subject property and designates the individual authorized to sign on behalf of the City of College Station.**
8. **Company requires proof that the subject property qualified for each ad valorem tax exemption that was granted to it for the last three tax years.**
9. **If any party to the transaction will execute documents based on a Statutory Durable Power of Attorney, Company requires the agent presenting such power of attorney to provide the Company with a Certification of Durable Power of Attorney by Agent, pursuant to Sec. 751.203 of the Texas Estates Code, before the date of closing.**
10. **Company will require tax certificates on the subject property showing all taxes paid up to and including the year 2023.**

11. Company will require a properly executed Waiver of Inspection.
12. Company requires an Affidavit as to Debts and Liens to be executed at closing.
13. "The title insurance policy being issued to you contains an Arbitration Provision. It allows you or the Company to require arbitration if the amount of Insurance is \$2,000,000 or less. If you want to retain your right to sue the Company in case of a dispute over a claim, you must request deletion of the Arbitration Provision before the policy is issued. If you are the purchaser in the transaction and elect deletion of the Arbitration Provision, a form will be presented to you at closing for execution. If you are the lender in the transaction and desire deletion of the Arbitration Provision, please inform us through your Closing Instructions."
14. For informational purposes: Texas law may require certain Seller notices. Some notices, including the Notice to Purchaser of Special Taxing or Assessment District, are required to be filed in the real property records. The title company does not determine what notices are required for any specific transaction and does not identify districts in which the property is located. Please contact an attorney for guidance regarding Seller notice requirements. The Seller should notify the title company of any notices they will want recorded at the time of closing.

The following is for informational purposes only:

The current vesting deed is as follows:

Warranty Deed executed by Lohnie Hines Boyett et al to City of College Station, Texas, dated October 23, 1996, recorded in [Volume 2715, page 86](#), [Volume 2789, page 37](#) and [Volume 2457, page 253](#), Official Records of Brazos County, Texas. (Lot 14)

Warranty Deed executed by Lohnie Hines Boyett et al to City of College Station, Texas, dated October 23, 1996, recorded in [Volume 2715, page 83](#), Official Records of Brazos County, Texas. (Lots 15-16)

Warranty Deed executed by W. O. Reed to City of College Station, Texas, dated April 20, 1962, recorded in [Volume 433, page 331](#), Deed Records of Brazos County, Texas. (Lot 17)

Judgment styled The City of College Station vs. William G. Boyett et al under Cause no. [338-CC](#) in the County Court at law Number Two in Brazos County, Texas. (Lot 18)

Warranty Deed executed by Paula Jan Boyett to City of College Station, Texas, dated June 17, 1996, recorded in [Volume 2627, page 24](#), Official Records of Brazos County, Texas. (Lot 24)

Warranty Deeds executed by Oran Parker Boyett et al to City of College Station, Texas, dated December 8, 1995, recorded in [Volume 2455, page 266](#), Volume 2497, page 96 and Judgment in Volume 2587, page 331, Official Records of Brazos County, Texas. (Lot 25)

Warranty Deed executed by Norma Sue Bankston to City of College Station, Texas, dated February 5, 1996, recorded in [Volume 2531, page 225](#), Official Records of Brazos County, Texas. (Lot 26)

Warranty Deed executed by Lohnie Hines Boyett to City of College Station, Texas, dated October 23, 1996, recorded in [Volume 2715, page 81](#) and in [Volume 2789, page 15](#), Official Records of Brazos County, Texas. (Lot 27)

Judgment styled The City of College Station vs. William G. Boyett et al under Cause no. [354-CC](#) in the County Court at law Number Two in Brazos County, Texas. (Lot 28)

Countersigned  
**South Land Title, LLC**

By \_\_\_\_\_  
Authorized Counter Signature



## COMMITMENT FOR TITLE INSURANCE (Form T-7)

### TEXAS TITLE INSURANCE INFORMATION

Title insurance insures you against loss resulting from certain risks to your title.

The commitment for Title Insurance is the title insurance company's promise to issue the title insurance policy. The commitment is a legal document. You should review it carefully to completely understand it before your closing date.

El seguro de título le asegura en relación a pérdidas resultantes de ciertos riesgos que pueden afectar el título de su propiedad.

El Compromiso para Seguro de Título es la promesa de la compañía aseguradora de títulos de emitir la póliza de seguro de título. El Compromiso es un documento legal. Usted debe leerlo cuidadosamente y entenderlo completamente antes de la fecha para finalizar su transacción.

Your Commitment of Title insurance is a legal contract between you and us. The Commitment is not an opinion or report of your title. It is a contract to issue you a policy subject to the Commitment's terms and requirements.

Before issuing a Commitment for Title Insurance (the Commitment) or a Title Insurance Policy (the Policy), the Title Insurance Company (the Company) determines whether the title is insurable. This determination has already been made. Part of that determination involves the Company's decision to insure the title except for certain risks that will not be covered by the Policy. Some of these risks are listed in Schedule B of the attached Commitment as Exceptions. Other risks are stated in the Policy as Exclusions. These risks will not be covered by the Policy. The Policy is not an abstract of title nor does a Company have an obligation to determine the ownership of any mineral interest.

- **MINERALS AND MINERAL RIGHTS** may not be covered by the Policy. The Company may be unwilling to insure title unless there is an exclusion or an exception as to Minerals and Mineral Rights in the Policy. Optional endorsements insuring certain risks involving minerals, and the use of improvements (excluding lawns, shrubbery and trees) and permanent buildings may be available for purchase. If the title insurer issues the title policy with an exclusion or exception to the minerals and mineral rights, neither this Policy, nor the optional endorsements, ensure that the purchaser has title to the mineral rights related to the surface estate.

Another part of the determination involves whether the promise to insure is conditioned upon certain requirements being met. Schedule C of the Commitment lists these requirements that must be satisfied or the Company will refuse to cover them. You may want to discuss any matters shown in Schedules B and C of the Commitment with an attorney. These matters will affect your title and your use of the land.

When your policy is issued, the coverage will be limited by the Policy's Exceptions, Exclusions and Conditions, defined below.

- **EXCEPTIONS** are title risks that a Policy generally covers but does not cover in a particular instance. Exceptions are shown on Schedule B or discussed in Schedule C of the Commitment. They can also be added if you do not comply with the Conditions section of the Commitment. When the Policy is issued, all Exceptions will be on Schedule B of the Policy.

- **EXCLUSIONS** are title risks that a Policy generally does not cover. Exclusions are contained in the Policy but not shown or discussed in the Commitment.

- **CONDITIONS** are additional provisions that qualify or limit your coverage. Conditions include your responsibilities and those of the Company. They are contained in the Policy but not shown or discussed in the Commitment. The Policy Conditions are not the same as the Commitment Conditions.

## Continuation of Texas Title Insurance Information

GF No. **BC2413196**

You can get a copy of the policy form approved by the Texas Department of Insurance by calling the Title Insurance Company at or by calling the title insurance agent that issued the Commitment. The Texas Department of Insurance may revise the policy form from time to time.

You can also get a brochure that explains the policy from the Texas Department of Insurance by calling 1-800-252-3439.

Before the Policy is issued, you may request changes in the policy. Some of the changes to consider are:

- Request amendment of the "area and boundary" exception (Schedule B, paragraph 2). To get this amendment, you must furnish a survey and comply with other requirements of the Company. On the Owner's Policy, you must pay an additional premium for the amendment. If the survey is acceptable to the Company and if the Company's other requirements are met, your Policy will insure you against loss because of discrepancies or conflicts in boundary lines, encroachments or protrusions, or overlapping of improvements. The Company may then decide not to insure against specific boundary or survey problems by making special exceptions in the Policy. Whether or not you request amendment of the "area and boundary" exception, you should determine whether you want to purchase and review a survey if a survey is not being provided to you.
  - Allow the Company to add an exception to "rights of parties in possession." If you refuse this exception, the Company or the title insurance agent may inspect the property. The Company may except to and not insure you against the rights of specific persons, such as renters, adverse owners or easement holders who occupy the land. The Company may charge you for the inspection. If you want to make your own inspection, you must sign a Waiver of Inspection form and allow the Company to add this exception to your Policy.
- The entire premium for a Policy must be paid when the Policy is issued. You will not owe any additional premiums unless you want to increase your coverage at a later date and the Company agrees to add an Increased Value Endorsement.

**DELETION OF ARBITRATION PROVISION**

(Not applicable to the Texas Residential Owner's Policy)

ARBITRATION is a common form of alternative dispute resolution. It can be a quicker and cheaper means to settle a dispute with your Title Insurance Company. However, if you agree to arbitrate, you give up your right to take the Title Insurance Company to court and your rights to discovery of evidence may be limited in the arbitration process. In addition, you cannot usually appeal an arbitrator's award.

**Your policy contains an arbitration provision (shown below). It allows you or the Company to require arbitration if the amount of insurance is \$2,000,000 or less. If you want to retain your right to sue the Company in case of a dispute over a claim, you must request deletion of the arbitration provision before the policy is issued. You can do this by signing this form and returning it to the Company at or before the closing of your real estate transaction or by writing to the Company.**

The arbitration provision in the Policy is as follows:

"Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured, unless the Insured is an individual person (as distinguished from an Entity). All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction."

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

**Texan Title Insurance Company**

Premium Amount	Rate Rules	Property Type	County Code	Liability at Reissue Rate		
1	2	3 <b>3</b>	4	5	6	7 8



**EXHIBIT C**

Special Warranty Deed

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**SPECIAL WARRANTY DEED**

**DATE:** \_\_\_\_\_, 202\_

**GRANTOR:** THE CITY OF COLLEGE STATION, TEXAS  
a **Texas Home Rule Municipal Corporation**

**GRANTOR's MAILING ADDRESS:** P. O. Box 9960  
(including county) Brazos County  
College Station, Texas 77842

**GRANTEE:** CAPSTONE COLLEGIATE COMMUNITIES, LLC, an Alabama limited liability company

**GRANTEE'S MAILING ADDRESS:** \_\_\_\_\_  
(including county) \_\_\_\_\_

**CONSIDERATION:** TEN AND NO/ Dollars (\$10.00) and other good and valuable consideration

**PROPERTY:**

All those certain lots, tracts or parcels of land, lying and being situated in Brazos County, Texas and being LOTS 14, 15, 16 & 17, BLOCK 1 BOYETT'S SUB-DIVISION (VOLUME 38, PAGE 614 DRBCT) AND LOTS 18, 24, 25, 26, 27 & 28, BLOCK 1 W. C. BOYETT ESTATE PARTITION (VOLUME 100, PAGE 440

Contract No. 25300260  
Real Estate Contract – Capstone – Northgate Parking Lot

Page **26** of **31**

DRBCT) JOSEPH E. SCOTT LEAGUE SURVEY, ABSTRACT 50 COLLEGE STATION, BRAZOS COUNTY, TEXAS.

**RESERVATIONS FROM AND EXCEPTIONS TO CONVEYANCE AND WARRANTY:**

1. [To be added]

**GRANTOR hereby reserves for itself, its successors and assigns**, all of the Reserved Groundwater Rights. As used in this Special Warranty Deed, the following terms shall have the following meanings: Groundwater – All of the underground water, percolating water, artesian water, and any other water from any and all reservoirs, formations, depths and horizons beneath the surface of the earth, excluding underflow or flow in a defined subterranean channel; Reserved Groundwater - All of the Groundwater now or in the future located in, on or under the Property. Reserved Groundwater Rights - All of the Reserved Groundwater, together with the right to explore for, drill for, pump, develop, withdraw, produce and transport the Reserved Groundwater and Groundwater produced from other properties, on, under and over the Property, including, without limitation, all personal property rights and entitlements relating to or applicable to the Reserved Groundwater, including, without limitation, permits, licenses, historical use entitlements, wells, pumps, and infrastructure; provided that there shall never in any event be any ingress or egress on or across the surface of the above-described premises for the purposes of exploration, development, production or transportation of such Groundwater, it being expressly contemplated by the parties to this instrument that any production of such Groundwater shall be from the surface of other property.

**GRANTOR hereby reserves unto itself, its successors and assigns**, any and all oil, gas and other minerals in, on or under the Property; provided that there shall never in any event be any ingress or egress on or across the surface of the above described Property for the purposes of exploration, development, production or transportation of such oil, gas or other minerals, except as may have been reserved by predecessors in title, it being expressly contemplated by the parties to this instrument that any production of such minerals shall be from the surface of other property and that there shall be no development of any minerals that would require mining, shaft mining, pit mining or any other kind of mining that would require utilization of the surface, or through the pooling of such mineral interests for the development with adjacent parcels.

GRANTOR waives all rights with respect to the surface and no owner of the mineral estate shall ever have rights of ingress or egress except as may have been reserved by GRANTOR under the reservations and exceptions expressly listed in this deed or its predecessors in title.

**GRANTEE ACKNOWLEDGES THAT, EXCEPT AS EXPRESSLY SET FORTH IN THE REAL ESTATE CONTRACT DATED \_\_\_\_\_, 2024 BETWEEN GRANTOR AND GRANTEE (THE “REAL ESTATE CONTRACT”), GRANTOR HAS NOT**

MADE AND DOES NOT MAKE ANY REPRESENTATIONS AS TO THE PHYSICAL CONDITION OF THE PROPERTY, OR ANY OTHER MATTER AFFECTING OR RELATED TO THE PROPERTY (OTHER THAN WARRANTIES OF TITLE AS PROVIDED AND LIMITED HEREIN). GRANTEE EXPRESSLY AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PROPERTY IS CONVEYED "AS IS" AND "WITH ALL FAULTS", AND GRANTOR EXPRESSLY DISCLAIMS, AND GRANTEE ACKNOWLEDGES AND ACCEPTS THAT GRANTOR HAS DISCLAIMED, ANY AND ALL REPRESENTATIONS, WARRANTIES OR GUARANTIES OF ANY KIND, ORAL OR WRITTEN, EXPRESS OR IMPLIED (EXCEPT AS TO TITLE AS HEREIN PROVIDED AND LIMITED) CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION (I) THE VALUE, CONDITION, MERCHANTABILITY, HABITABILITY, MARKETABILITY, PROFITABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, OF THE PROPERTY (II) THE MANNER OR QUALITY OF THE CONSTRUCTION, OR THE MATERIALS, IF ANY, INCORPORATED INTO THE CONSTRUCTION, OF ANY IMPROVEMENTS TO THE PROPERTY AND (III) THE MANNER OF REPAIR, QUALITY OF REPAIR, STATE OF REPAIR OR LACK OF REPAIR OF ANY SUCH IMPROVEMENTS. BY GRANTEE'S ACCEPTANCE OF THIS DEED, GRANTEE REPRESENTS THAT GRANTEE HAS MADE (I) ALL INSPECTIONS OF THE PROPERTY TO DETERMINE ITS VALUE AND CONDITION DEEMED NECESSARY OR APPROPRIATE BY GRANTEE, INCLUDING, WITHOUT LIMITATION, INSPECTIONS FOR THE PRESENCE OF ASBESTOS, PESTICIDE RESIDUES, HAZARDOUS WASTE AND OTHER HAZARDOUS MATERIALS AND (II) INVESTIGATIONS TO DETERMINE WHETHER ANY PORTION OF THE PROPERTY LIES WITHIN ANY FLOOD HAZARD AREA AS DETERMINED BY THE U.S. ARMY CORPS OF ENGINEERS OR OTHER APPLICABLE AUTHORITY.

GRANTOR, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, GRANTS, SELLS, and CONVEYS to GRANTEE the Property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to GRANTEE and GRANTEE's successors and assigns forever. GRANTOR binds GRANTOR and GRANTOR's legal representatives, successors and assigns to warrant and forever defend all and singular the property to GRANTEE and GRANTEE's successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under GRANTOR but not otherwise, and except as to the reservations from and exceptions to conveyance and warranty recited above.

Reference is hereby made to that certain Development Agreement (the "DA") dated to be effective as of \_\_\_\_\_, by and between Grantor and Grantee (or Grantee's predecessor in interest). Capitalized terms used herein shall have the same meanings assigned to them in the DA. As set forth more fully in the DA, subject to Force Majeure as defined in the DA, Grantor has the right to repurchase the Property if Grantee does not commence construction of the Project within ninety (90) days after Closing by paying to Grantee the purchase price paid by Grantee under the Real Estate Contract, less any customary and reasonable real estate transaction expenses incurred by

Grantor related to the repurchase; provided, however, if Grantee's failure to commence construction is a result of revocation of a Permit by Grantor, then Grantee shall have thirty (30) days after receipt of Grantor's demand in order to commence construction before Grantor may exercise its repurchase right under this paragraph; provided, further, when Grantee commences construction, Grantor's repurchase right under this paragraph shall terminate (without waiver of any rights under this Deed or Real Estate Contract).

When the context requires, singular nouns and pronouns include the plural.

**[signature page to follow]**

**CITY OF COLLEGE STATION, TEXAS,  
Texas Home Rule Municipal Corporation.**

By: \_\_\_\_\_  
**JOHN P. NICHOLS, Mayor**

**ATTEST:**

\_\_\_\_\_  
**City Secretary**

**THE STATE OF TEXAS   §  
                                  §    ACKNOWLEDGMENT  
COUNTY OF BRAZOS   §**

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_, by **JOHN P. NICHOLS**, as Mayor of the City of College Station, a municipal home rule corporation, on behalf of said municipality.

\_\_\_\_\_  
**NOTARY PUBLIC in and for the State of Texas**

**PREPARED IN THE OFFICE OF:**  
City of College Station  
City Attorney's Office  
P. O. Box 9960  
College Station, Texas 77842-9960

**RETURN ORIGINAL DOCUMENT TO:**  
City of College Station  
City Attorney's Office  
P. O. Box 9960  
College Station, Texas 77842-9960