



# TOWN CENTER REQUEST FOR PROPOSALS FOR COMMERCIAL DEVELOPMENT



1214 LULA LAKE ROAD  
LOOKOUT MOUNTAIN,  
GEORGIA 30750

p. 706.820.1586  
f. 706.820.0138

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## Development Opportunity

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Dear Potential Developers,

Thank you for your interest in the commercial development of the Town Center site in the heart of the City of Lookout Mountain, Georgia.

With this Request for Proposals (RFP), we are seeking one or more experienced real estate developers who understand and are fully committed to the mission and vision of a Town Center in our City.

The Town Center is intended to become the hub of commercial and social interaction for our residents who already enjoy the benefits of living in a close knit and safe environment.

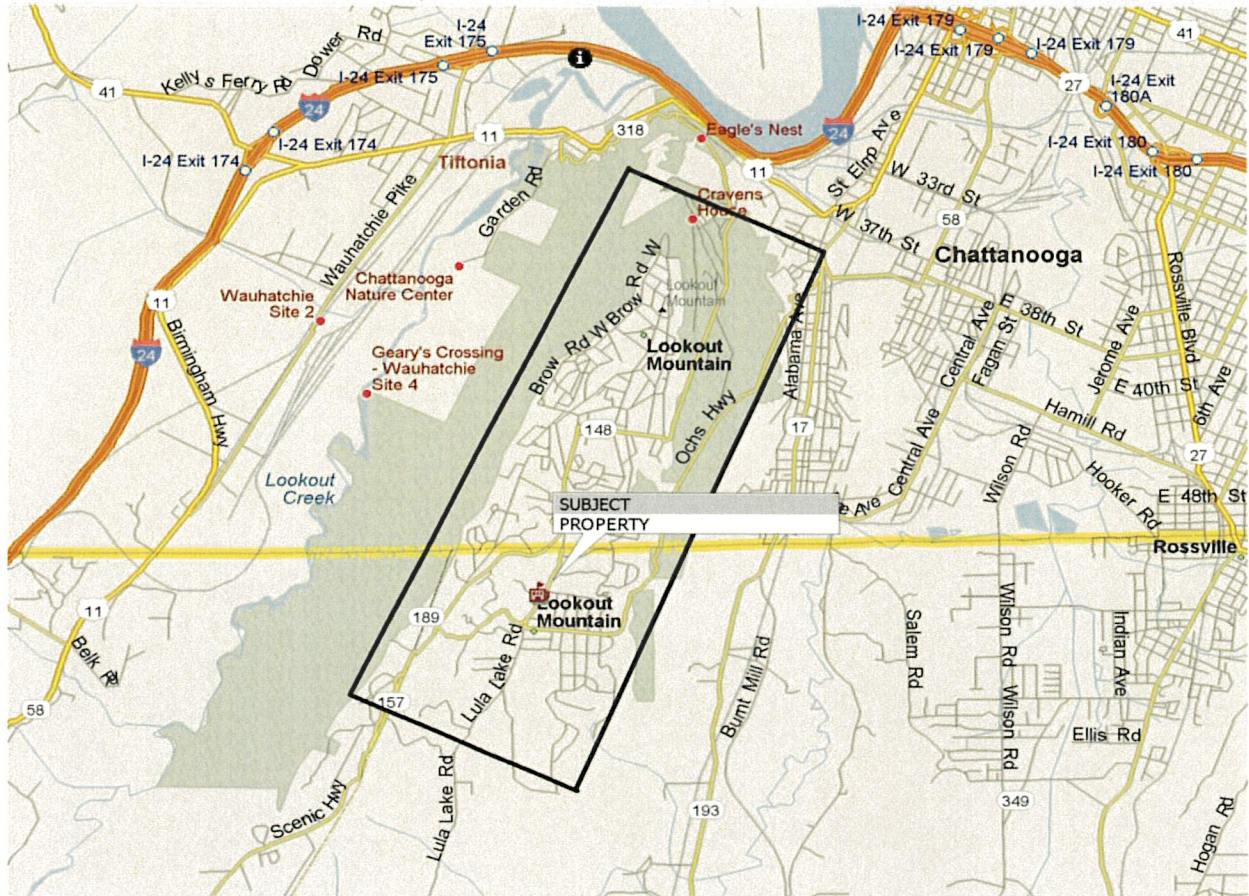
In addition to the information contained in this RFP, there are a number of documents and drawings that will be of value to you in preparation of a proposal. This information is available at City Hall and should be reviewed by all prospective developers.

We appreciate your interest and look forward to receiving your proposal.

Sincerely,  
David S. Bennett  
Mayor



## Location



## Future Development

The Property listed in the RFP is located in an historic area which was the location of a major Civil War battle. As a result, there are a number of Civil War monuments commemorating various battles and skirmishes in the area. There is a large Civil War park located atop Lookout Mountain. Lookout Mountain is one of the major tourist attractions in the area, along with Rock City, Ruby Falls, the Incline Railway, Point Park, two Civil War Museums, inns, etc. Lookout Mountain is a relatively steep mountain, which overlooks the city of Chattanooga and Missionary Ridge. Lookout Mountain gained its name from Union soldiers being stationed atop the mountain to watch troop movements during the battle of Chattanooga.

There is relatively little development on the side of Lookout Mountain due to the steep topography. The top of Lookout Mountain includes two separate but contiguous municipalities: the City of Lookout Mountain, Georgia and the Town of Lookout Mountain, Tennessee. Development on top of Lookout Mountain is a mixture of residential housing interspersed with limited commercial development in the center of each municipality. The predominant land uses in the area are up-scale residences. The area is expected to remain primarily residential with little additional property being zoned for commercial use.



## **Governmental Services**

Governmental services for the Town Center will be provided by the City of Lookout Mountain, Georgia. The services which taxpayers receive include fire and police protection, sewer service, garbage service, brush removal, and administrative services. The City of Lookout Mountain is governed by a Mayor and City Council and is supported by a Municipal Planning Commission, Board of Zoning Appeals, and Sewer Advisory Board. The City is fortunate to have competent, dedicated employees and volunteers.

## **Summary**

The Property listed in the RFP is located at 1214 Lula Lake Road near residential and tourist areas near Chattanooga, on a continuation of one of the main highways leading from Chattanooga to the top of Lookout Mountain. There are several tourist-oriented developments in the immediate area. The tourist trade is relatively stable, and operations such as Rock City, Ruby Falls, the Incline Railway and Point Park have been in operation for a number of years and are well known in this area. The population base of the area is stable, and property values are high. Property in the area should continue to remain stable for the foreseeable future.

## **FORMAL NOTICE AND REQUEST FOR PROPOSALS**

***The City of Lookout Mountain has advertised and posted the following notice that contains important information for prospective developers. PLEASE CAREFULLY REVIEW THE NOTICE IN ITS ENTIRETY:***

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### **NOTICE OF PROPOSED SALE OF REAL PROPERTY AND REQUEST FOR PROPOSALS**

#### **CITY OF LOOKOUT MOUNTAIN, GEORGIA**

The City of Lookout Mountain, Georgia (the "City"), is offering for sale and development certain real property located in the City's Town Center district. In the alternative, the City would consider retaining ownership of the property and leasing it to a qualified developer. The City is soliciting proposals for the purchase (or lease) of the property, which must be accompanied by specific plans for the development of the property, a timeline for the proposed development, evidence of financial responsibility, and a commitment to certain architectural, design, aesthetic, parking, stormwater and other requirements established by the City. Additional information and documents regarding the Request for Proposals (RFP) may be obtained at the City's City Hall, 1214 Lula Lake Road, Lookout Mountain, Georgia 30750, telephone (706) 820-1586, extension 4, or by email to [kennylee@lookoutmtnga.com](mailto:kennylee@lookoutmtnga.com).

As discussed below, interested parties may submit proposals for the purchase (or lease) and development of all or part of the property being offered. The City reserves the right to reject any and all proposals, to sell or lease all or part of the property, and to sell or lease the property in parcels to one or more developers.

**General Description of Property:** The property being offered for development is part of the City of Lookout Mountain's Town Center District located at 1214 Lula Lake Road, Lookout Mountain, Georgia 30750. The Town Center District includes the City of Lookout Mountain's City Hall and Fire Hall located on the western portion of the Town Center District, neither of which is being offered for sale or lease. The property offered consists of two "Pad Areas" located on the eastern portion of the Town Center District adjacent to Lula Lake Road, as shown on the Architectural Concept Plan included in the full RFP which is available for review at the City Hall (address above), and developers may submit proposals for the purchase or lease of either or both of the "Pad Areas."

**Conditions of Sale or Lease:** The purchase price for the property must be paid in cash or certified funds at closing, and any lease of the property must be accompanied by a deposit of at least \$10,000. There will be NO contingences for financing or other conditions. Prospective developers are advised that the property is being offered for the specific purpose of the development of the Town Center which will include new commercial, office or mixed-purpose buildings to be constructed by the developer. This development will include common areas of access and egress and green space which will be constructed and owned by



the City and maintained through contributions from the City and the developer. The property offered for development will be "pad ready," generally meaning that the City will establish connections or "stub outs" for electricity, natural gas, water, and sewer service and underground sleeves for communication lines (all as reasonable and appropriate for the development and the buildings proposed) before construction begins. The developer will be responsible, at its sole cost and expense, for installing any grease traps serving the buildings, including all lines leading to and from the grease traps, and for running its own lines from the existing fire vault now on site. Any required modifications to the existing fire service and/or vault, as well as the need (if any) for back flow preventers, fire pumps, vault modifications, and any related or similar items, will be the sole responsibility and expense of the developer. The developer is further advised that there is a history of considerable rock in this area, and the cost of excavating rock or otherwise addressing unsuitable soil will be the sole responsibility and expense of the developer. The developer will have access, along with the City, to parking in the Town Center and to approximately 20 additional parking spaces already constructed by the City across from the Town Center on the east side of Lula Lake Road.

The developer selected will be required to enter into a binding contract with the City within (60) sixty days of the City's acceptance of the proposal, or such acceptance may be terminated. Extensions of this deadline may be granted in the discretion of the City. The contract will be in form and content acceptable to the City and its attorney, and will set forth both the terms of the purchase or lease of the real estate and the developer's commitment to (a) the development plans proposed, (b) a timeline for the commencement and completion of the development, (c) zoning requirements applicable to the property, and (d) additional architectural, design, aesthetic, parking and other requirements established or to be established by the City (including but not limited to Design Guidelines referenced in the City's Town Center Zoning Ordinance, Ordinance No. 323). A sample Real Estate Purchase and Development Agreement with various provisions the City will require is attached as Exhibit A to the full RFP which is available for review at City Hall (address above). This sample agreement is subject to such modifications and additions as the City and its attorney may consider necessary or advisable. Any Lease Agreement will contain provisions similar to those contained in the sample Real Estate Purchase and Development Agreement, confirming the developer's commitment to the provisions of this RFP and the Plans proposed by the developer, the absence of contingencies, and the City's right to rescind under the circumstances stated, and such other provisions as the City and its attorney may require.

**The property will be sold or leased to the developer making the highest, best and most responsible proposal which is determined to be the most advantageous to the City, taking into consideration the factors and criteria described in this RFP.** Developers submitting proposals may be afforded an opportunity for discussion, negotiation, and revision of proposals after proposals are submitted and prior to award for the purpose of obtaining best and final offers. All responsible developers found by the City to have submitted proposals reasonably susceptible of being selected for award shall be given an opportunity to participate in such discussions, negotiations, and revisions. During this process, the City will not disclose the contents of proposals to competing developers.

**In determining which proposal is best and most responsible, the City will consider not only on the monetary consideration being offered but also the development plans and architectural and design concepts proposed by the developer and the City's evaluation of the developer's qualifications, experience, financial strength, professional reputation, and ability to successfully complete and operate the development. Proposals from developers should include evidence of the foregoing, including evidence of the developer's ability to obtain binding commitments from prospective commercial tenants. The City must be satisfied not only that the developer has the financial ability to buy or lease the property but also that there is a high probability that the proposed development will succeed and be an asset to the City, its residents, and the Town Center. The City may, in its discretion, accept less than the full fair market value of the property if a developer's proposal is for other reasons determined to be advantageous to the City. The City reserves the right to reject all proposals or any proposal that is not responsive or responsible and to waive technicalities, informalities, or immaterial defects contained in the proposals.**

Developers should submit development plans and schematic drawings or sketches as part of their proposals. If a developer's proposal is determined to be the best and most responsible of those submitted, the developer will then be required to provide architectural and design concepts as part of its proposal. Concept drawings prepared for the Town Center by Franklin Associates Architects, copies of the Town Center Zoning Ordinance, copies of the Design Guidelines, and other information regarding the type of development desired by the City and its residents are available at City Hall (address above) and should be reviewed by all prospective developers. Development plans should be consistent with the traditional architectural styles and types of materials depicted in the concept drawings and should be in keeping with the character of the community. Stormwater management and erosion, sedimentation and pollution control plans will need to be reviewed and approved by the City and be in compliance with MS4 requirements. Proposal forms and other written materials regarding the proposed sale or lease and development of the property, including applicable requirements and conditions for developers, may be obtained at City Hall.

**Deadline for Proposals; Date and Time of Opening:** Sealed proposals will be accepted by the City at City Hall, 1214 Lula Lake Road, Lookout Mountain, Georgia 30750, until 1:00 p.m. on May 16, 2025, and will be opened at or about 1:15 p.m. on that date. All proposals submitted must be sealed and must be logged in by the City Clerk no later than 1:00 p.m. on May 16, 2025. Absolutely no proposals will be accepted after 1:00 p.m.

**Pre-Proposal Conference:** A Pre-Proposal Conference will be held on April 30, 2025, at 12 Noon, at City Hall, 1214 Lula Lake Road, Lookout Mountain, Georgia 30750. The purpose of the Pre-Proposal Conference is to provide prospective developers with information regarding the proposed sale and development of the property and to address any questions or concerns. A representative of the City will be present, and prospective developers are strongly urged to attend the Pre-Proposal Conference to obtain additional information.



**Specific Description of Property:** The property being offered for sale (or lease) and development are the two "Pad Areas" depicted on the Architectural Concept Plan included in the full RFP and on the map of Walker County, Georgia Tax Parcel 4006 029. Any conveyance or lease of the property will be subject to:

Declaration of Easements, Covenants, Conditions and Restrictions dated October 1, 2020, recorded in Deed Book 02107, Page 435, in the Office of the Clerk of the Superior Court of Walker County, Georgia.

Electric Power Board Easement as granted to the City of Chattanooga, dated December 28, 1977, recorded in Deed Book 440, Page 37, in the Office of the Clerk of the Superior Court of Walker County, Georgia.

Electric Power Board Easement as granted to the City of Chattanooga, dated May 2, 1956, recorded in deed of record in Deed Book 182, Page 427, in the Office of the Clerk of the Superior Court of Walker County, Georgia.

Parking Easement as granted to the City of Lookout Mountain, Georgia, a municipal corporation, dated January 1, 1969, recorded in Deed Book 319, Page 478, in the Office of the Clerk of the Superior Court of Walker County, Georgia.

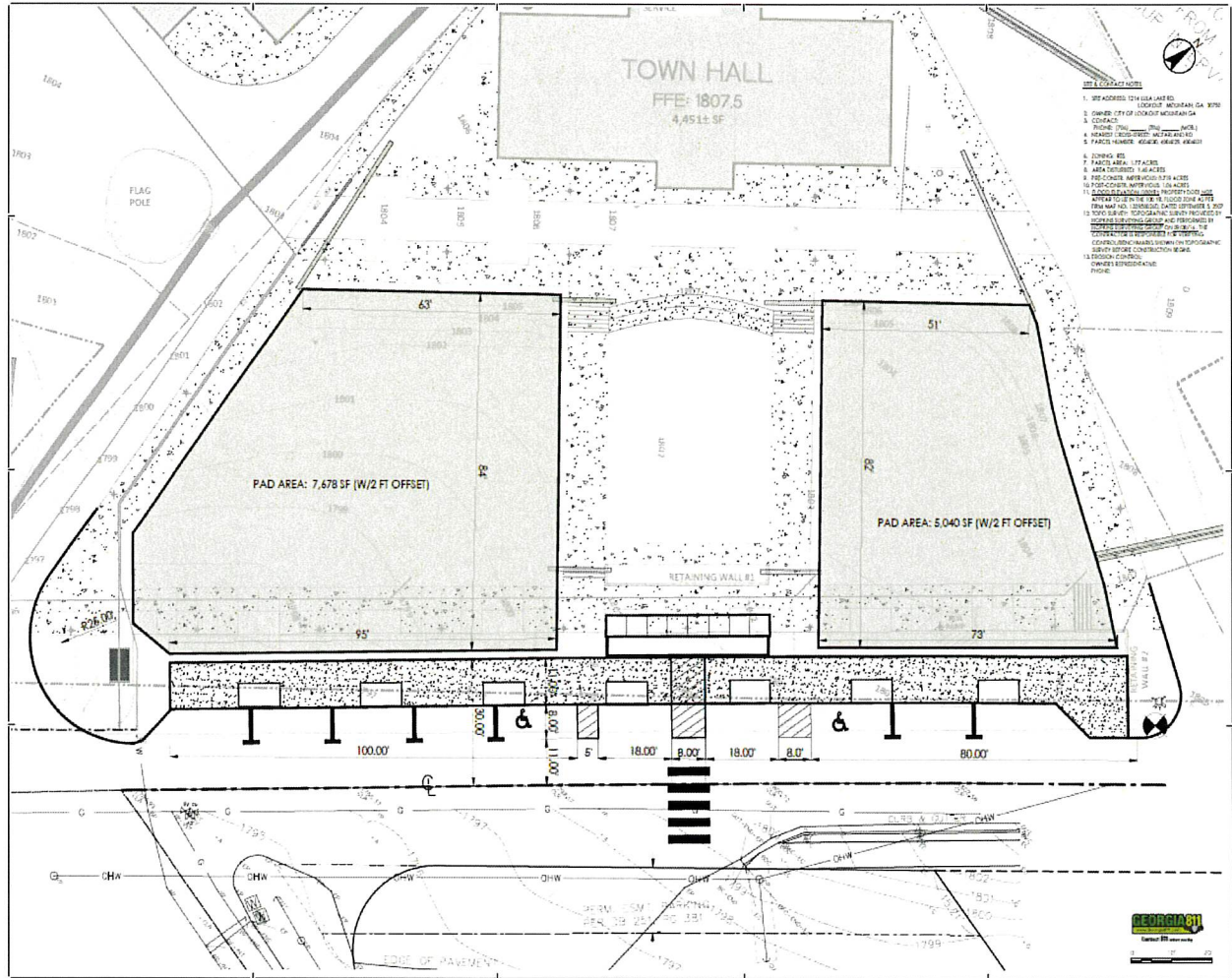
The conveyance or lease will be subject to any other easements or restrictions of record, to applicable City ordinances, and to such matters as would be revealed by a survey of the property.

The City would consider selling limited portions of adjoining property not strictly falling within the boundaries shown if needed for the development proposed.

This the 3rd day of April, 2025.

David S. Bennett  
Mayor, City of Lookout Mountain, Georgia

# ARCHITECTURAL CONCEPT PLAN





**Lookout Mountain Town Center**  
**Request for Proposals Letter of Interest Form**

By submitting this Letter of Interest, I acknowledge receipt of the Request for Proposal (RFP) issued on April 3, 2025, by the City of Lookout Mountain, Georgia.

I hereby confirm my request on behalf of \_\_\_\_\_ (name of company) to review all components and addenda of the RFP as part of determining our intent to respond with a proposal based on the requirements contained in the RFP.

I understand that submission and approval of this Letter of Interest is required before I may be provided access to all due diligence documents that accompany the RFP.

Completed Letters of Interest should be returned by Email or Hand Delivery no later than April 30, 2025, to:

Kenny Lee, City Manager  
City of Lookout Mountain, Georgia  
1300 Lula Lake Road  
Lookout Mtn., GA 30750  
p. 706.820.1586, extension 4  
f. 706.820.0138  
[kennylee@lookoutmtnga.com](mailto:kennylee@lookoutmtnga.com)

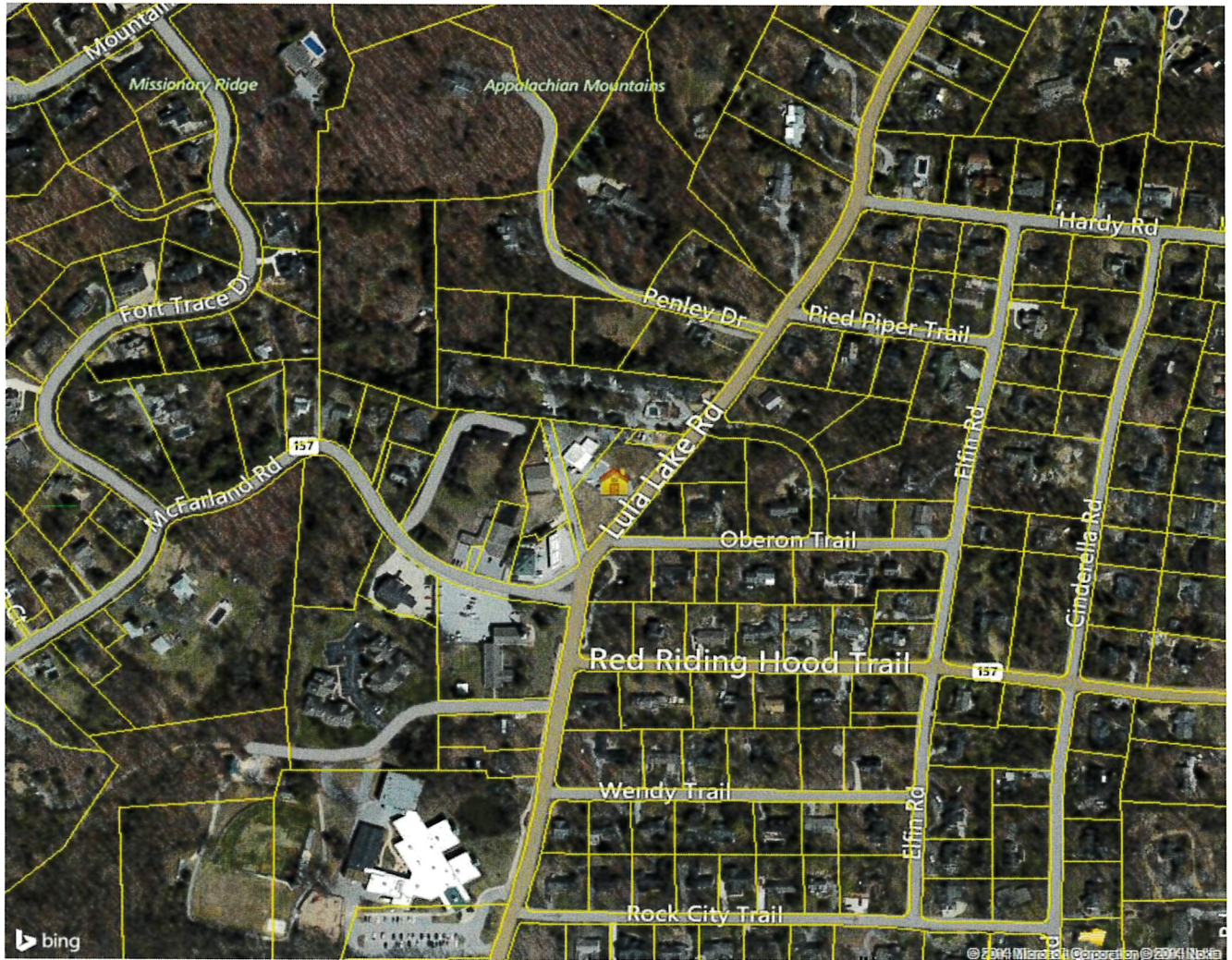
I hereby submit this Letter of Interest. A resume with my company's qualifications, experience and development projects completed is enclosed. I agree to provide a current financial statement and proof of funds, both in form satisfactory to the City of Lookout Mountain, upon request.

\_\_\_\_\_  
Authorized Signature and Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title/Contact Information

Name:		
Company:		
Position:		
Address:		
City:	St:	Zip:
Direct Dial Office:		
Cell:		
Email:	Website:	



### Property History/Ownership

*The subject was purchased in March of 2012 by City of Lookout Mountain, GA from Charter Real Estate Corporation. This transaction is recorded in Book 1715, Page 486 in the Office of the Clerk of the Superior Court of Walker County, Georgia. According to the Walker County Assessor of Property the subject is identified as Tax Parcel Number 4006 030. The property while owned by the City is tax exempt so there is no recent tax history.*

### Hours of Operation

City of Lookout Mountain, Georgia  
City Hall 706-820-1586  
Monday – Friday 8:00 a.m. to 4:00 p.m.

**Contact: Kenny Lee or Cindy Roberts**



## EXHIBIT A

### REAL ESTATE PURCHASE AND DEVELOPMENT AGREEMENT

#### [SAMPLE FORM – SUBJECT TO MODIFICATION]

**THIS DEVELOPMENT AGREEMENT** (this "**Agreement**") is made as of this \_\_\_\_ day \_\_\_\_\_, 20\_\_\_\_ (the "**Effective Date**") by and between the **CITY OF LOOKOUT MOUNTAIN, GEORGIA**, a Georgia municipal corporation ("**City**"), and \_\_\_\_\_ ("**Developer**").

#### **BACKGROUND STATEMENT**

City is the owner of certain real property located in Walker County, Georgia which comprises the Lookout Mountain, Georgia Town Center Project (the "**Project**"). The Project consists of municipal buildings serving as a fire station and city hall, together with the access driveways and ancillary parking serving the municipal buildings, as shown more particularly on the preliminary Town Center Plan attached hereto as **Exhibit A** (the "**Town Center Plan**"). In addition to serving certain municipal functions, City also desires for the Project to contain commercial/retail buildings (the "**Retail Buildings**") and certain common areas (*i.e.*, hardscaped and landscaped areas) (the "**Common Areas**") to be used by municipal employees, individuals shopping or otherwise visiting the Retail Buildings, and the City's citizens. The location and general depiction of both the Retail Buildings and the Common Areas are shown on the Town Center Plan. A statement of Developer's plans for the development of the Retail Buildings, together with a preliminary budget, conceptual drawings, and schedule setting forth Developer's preliminary timeline for (i) financing, (ii) Commencement of Construction (as defined in Section 8.1(c)), (iii) construction milestones, and (iv) Substantial Completion (as defined in Section 8.1(d)) of the contemplated improvements are attached hereto as **Exhibit B** (collectively, the "**Developer's Conceptual Plans**"). Developer desires to purchase a portion of the Project consisting of the real property on which the Retail Buildings are to be located (the "**Property**") together with all rights and appurtenances thereto, for the purpose of constructing not more than \_\_\_\_\_ thousand (\_\_\_\_\_) square feet of commercial/retail space, subject to the terms, conditions and restrictions and approval of the City, all as more particularly specified in this Agreement.

#### **STATEMENT OF AGREEMENT**

For and in consideration of the sum of Ten Dollars (\$10.00) paid by Developer to City, the receipt of which is hereby acknowledged by City, the mutual covenants and benefits contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Developer hereby agree as follows:

##### **1. PROPERTY**

1.1 Agreement to Purchase. City hereby agrees to sell and Developer hereby agrees to purchase the Property, subject to the terms and conditions of this Agreement. The parties

acknowledge that the exact location of the Property will be determined based on the final "footprint" of the Retail Buildings as set forth in the approved Developer's Plans and Specifications (as defined in Section 6.1(b)). Once the exact "footprint" of the Retail Buildings has been determined, City, at its sole cost and expense, shall have a subdivision plat (the "**Plat**") prepared by a licensed surveyor setting forth the exact location of the Property. The Plat shall be recorded in the land records for Walker County, Georgia and shall serve as the legal description to be used in connection with the conveyance of the Property by City to Developer. Developer acknowledges that the Plat and the division of the land comprising the Project are subject to approval of City's Municipal Planning Commission.

## **2. PURCHASE PRICE, DEPOSIT AND TERMS OF PAYMENT**

2.1 Purchase Price. The Purchase Price of the Property shall be \_\_\_\_\_ Thousand Dollars (\$\_\_\_\_\_).

2.2 Deposit. Simultaneously with Developer's execution of this Agreement, Developer shall deliver to City a deposit in the amount of Twenty-Five Thousand Dollars (\$25,000) (the "**Deposit**") to be held pursuant to the terms of this Agreement. The Deposit shall be held by City as security for the faithful performance by Developer of all the terms, covenants and conditions of this Agreement to be kept and performed by Developer and not as a measure of City's damage in case of a Developer default. If Developer defaults with respect to any provision of this Agreement, City may apply all or part of the Deposit toward the payment of any sum in default, or toward the payment of any amount which City may spend or become obligated to spend by reason of Developer's default (including but not limited to attorneys' fees and other costs of pursuing any claims against Developer), or to compensate City in whole or in part for any other loss or damage which City may suffer by reason of Developer's default. If Developer shall fully and faithfully perform every provision of this Agreement to be performed by it, the Deposit or any balance thereof then remaining shall be returned to Developer following Substantial Completion of the Retail Buildings.

2.3 Terms of Payment. At Closing, Developer shall pay to City the Purchase Price, plus all closing costs which are the responsibility of Developer hereunder, and subject to all prorations required by this Agreement. All amounts due by Developer at Closing shall be paid by bank wire transfer of readily available funds to an escrow account designated by Title Agent (as defined in Section 3.2).

## **3. INSPECTION, TITLE AND SURVEY**

3.1 Inspection Period.

(a) Developer and its agents, representatives, contractors, subcontractors, consultants, suppliers, employees, licensees and invitees (collectively, "**Agents**") shall have the right for a period of ninety (90) days from and after the Effective Date (the "**Inspection Period**") to conduct, at Developer's sole cost and expense, such physical, engineering, environmental, soil and feasibility studies on the Property as Developer deems appropriate, subject to the terms and conditions of this Section 3.1. During the Inspection Period, Developer and its Agents shall have the right (subject to the terms hereof) to enter onto the Property for the purpose of conducting the

foregoing studies, after providing to City at least twenty-four (24) hours' prior written notice (which notice may be given by email to Kenny Lee, City Manager at [kennylee@lookoutmtnga.com](mailto:kennylee@lookoutmtnga.com); provided, however, and notwithstanding the foregoing, that Developer and its Agents shall obtain City's written consent before conducting any invasive testing (e.g., borings, drilling, soil/water sampling, etc.) within the Project. City shall have the right to have a representative present during any inspections of the Property. Developer shall pay all expenses incurred or caused to be incurred by Developer in connection with any inspections and/or testing, including but not limited to all expenses incurred to comply with applicable laws. Developer's obligations in this Section 3.1(a) expressly survive termination of this Agreement.

(b) Prior to entering onto the Property or commencing any inspections or studies, Developer shall obtain and provide evidence of the insurance required pursuant to Section 9.1. Developer covenants and agrees that it will not in connection with any inspections, studies or other activities of Developer and/or its Agents permitted by this Section 3.1 permit any lien or encumbrance to attach to the Property. Developer shall repair promptly all damage to the Property or any portion of the Project caused by or resulting from the activities of Developer and/or its Agents, restoring the Property and/or such improvements to substantially the same as their former condition. Developer shall indemnify, defend (with counsel acceptable to City) and hold City harmless from and against any and all liens, encumbrances, claims, losses, liabilities, costs, expenses, damages, causes of action, demands, and proceedings (including but not limited to attorneys' fees and costs), arising out of, or directly or indirectly related to, Developer's rights hereunder and/or the activities of Developer or its Agents within the Project. Developer's obligations in this Section 3.1(b) expressly survive the termination of this Agreement.

(c) In the event Developer reasonably determines that the Property is unsuitable for its intended purpose, Developer shall, prior to the expiration of the Inspection Period, provide City with written notice of such determination and identify with specificity what item or items are the basis for such determination, such items to include without limitation any applicable objection based on the Title Commitment (as defined in Section 3.2) and the Survey (as defined in Section 3.3) (the "**Objection Notice**"). Upon receipt of the Objection Notice, City shall have sixty (60) days (the "**Objection Cure Period**") in which to reasonably cure Developer's objections. If City fails to cure Developer's objections within the Objection Cure Period, Developer may terminate this Agreement by giving written notice to City of such termination no later than ten (10) days after the earlier of (i) expiration of the Objection Cure Period, or (ii) Developer's receipt of City's response to the Objection Notice. Upon receipt by City of such termination notice, the Deposit shall be returned to Developer, and neither party shall have any further rights or obligations under this Agreement except those which expressly survive termination. If Developer does not provide an Objection Notice, or otherwise elects not to terminate this Agreement pursuant to this Section 3.1(c), then Developer shall be deemed to have waived any objections relating to the Property or its suitability and to have elected to maintain this Agreement in full force and effect upon expiration of the Inspection Period, or the Objection Cure Period, as the case may be. Notwithstanding anything to the contrary set forth in this Agreement, in the event that this Agreement is terminated and Developer is entitled to the Deposit pursuant to this Section 3.1(c), but Developer has not fully complied with its obligations otherwise set forth in this Agreement, then the Deposit shall remain in escrow and shall secure the satisfaction of all of Developer's obligations under this Agreement.

3.2 Title. Developer may obtain, at Developer's sole cost and expense, a commitment for a current ALTA Form owner's title insurance policy covering the Property, issued by such title insurance company as acceptable to Developer (the "**Title Company**") through Title Guaranty & Trust Company, 617 Walnut Street, Chattanooga, Tennessee, Attn: Brian Kopet, Phone 423-266-5751; email: [bkopet@tgt1887.com](mailto:bkopet@tgt1887.com) or another Chattanooga-area title agent designated by City (the "**Title Agent**"), together with legible copies of all instruments identified as exceptions in Schedule B-II thereof (collectively, the "**Title Commitment**"). In the event the Title Commitment reveals a matter that Developer reasonably determines renders the Property unsuitable for its intended purpose, Developer shall provide such objection to City in accordance with the terms and time limitations set forth in Section 3.1.

3.3 Survey. Developer, at Developer's sole cost and expense, may obtain a survey of the Property (the "**Survey**"). In the event the Survey reveals a matter that Developer reasonably determines renders the Property unsuitable for its intended purpose, Developer shall provide such objection to City in accordance with the terms set forth in Section 3.1.

3.4 Reciprocal Easement Agreement. City and Developer acknowledge that the Project is currently subject to that certain Declaration of Easements, Covenants, Conditions and Restrictions dated October 1, 2020 and recorded at Book 02107, Page 435 in the Walker County, Georgia land records (the "**Original REA**"). Developer further acknowledges that in connection with the transaction contemplated by this Agreement, that the Original REA shall be amended and restated in order to clarify and otherwise address certain easement rights and obligations of the parties relating to the Project (the "**A&R REA**"); *provided, however*, that the Common Areas shall at all times remain the sole and exclusive property of City, and Developer shall have no ownership interest therein. The A&R REA shall, without limitation, provide for the following: (a) reciprocal utility, access, storm water, parking, and drainage easements; (b) obligations with respect to the construction of the Common Areas; (c) the sharing of Common Area maintenance expenses; (d) signage; (e) restrictions against certain uses; and (f) such other terms and provisions as are customary for such instruments as reasonably determined by the parties. A draft of the proposed A&R REA shall be delivered by City to Developer for approval (such approval not to be unreasonably withheld) fifteen (15) days prior to the expiration of the Inspection Period. City and Developer shall cooperate in work in good faith in order to reach a definitive agreement as to the terms of the A&R REA prior to the expiration of the Inspection Period.

3.5 Permitted Exceptions. The Property shall be conveyed to Developer subject to (a) the A&R REA; (b) easements, covenants, conditions, restrictions and other matters of record, provided that the same do not prevent or materially impede the ability of Developer to improve the Property in accordance with the Developer's Plans and Specifications approved in accordance with Section 6.1(b); (c) restriction on transfer of the Property for five (5) years unless otherwise approved by City; (d) City's repurchase rights as set forth in Section 11.2(a); and (e) all matters approved or accepted or deemed approved or accepted by Developer pursuant to this Agreement (collectively, the "**Permitted Exceptions**").

#### 4. CLOSING

4.1 Closing Dates and Procedure. Subject to the requirements and conditions set forth in this Agreement, the closing of the acquisition of the Property by Developer (the "**Closing**"),



shall occur on the date (the "**Closing Date**") that is thirty (30) days after the satisfaction of the City's Conditions Precedent (as defined in Section 7.1(a)) and the Developer's Conditions Precedent as defined in Section 7.1(b)). The Closing shall be conducted at the office of Title Agent or, in City's discretion, at the offices of City's counsel.

4.2 Closing Documents, Closing Costs and Prorations.

(a) At or prior to Closing:

(i) City shall deliver: (A) a special warranty deed (the "**Deed**") conveying title to the Property subject to the Permitted Exceptions; (B) an owner's no-lien affidavit for the benefit of the Title Agent and the Title Company; (C) a counterpart of a closing statement in form approved by City and Developer; (D) a counterpart of the A&R REA; (E) to the extent required by Title Agent, appropriate evidence to establish that the transaction been duly authorized by the governing body of City; and (F) any other documents reasonably necessary or appropriate to complete and evidence the transaction to take place at such Closing.

(ii) Developer shall deliver: (A) if required by Title Agent, a Developer's no-lien affidavit as to Developer's activities as to the Property; (B) a counterpart of a closing statement in form approved by City and Developer; (C) a counterpart of the A&R REA; (D) appropriate evidence to establish the authority of Developer to enter into and close the transaction and the due authorization of the transaction by Developer's members; and (E) any other documents reasonably necessary or appropriate to complete and evidence the transaction to take place at such Closing.

(b) At Closing:

(i) City shall pay: (A) state documentary stamps associated with the Deed; and (B) one-half (1/2) of Title Agent's closing fees, which shall include without limitation all wire fees, courier and overnight delivery service fees, photocopy charges and out-of-pocket costs.

(ii) Developer shall pay: (A) the Purchase Price for the Property; (B) search fee and premium for the owner's title insurance policy (including endorsements); (C) all costs and charges incident to any financing obtained by Developer, including, without limitation, documentary stamp tax and intangible tax, recording fees, and lender's title insurance premiums; (D) the cost of the Survey; and (E) one-half (1/2) of Title Agent's closing fees, which shall include without limitation all wire fees, courier and overnight delivery service fees, photocopy charges and out-of-pocket costs.

(iii) Developer shall be responsible for the payment of real estate taxes and assessments for the Property on and after the Closing Date, with taxes and assessments for the year of the Closing to be prorated as of the Closing Date.

4.3 Possession. City shall deliver exclusive possession of the Property to Developer at the Closing.

## 5. REPRESENTATIONS AND WARRANTIES

5.1 City's Representations and Warranties. City represents and warrants to Developer as follows:

(a) City's execution, delivery, and/or performance of this Agreement is not prohibited by and will not constitute a default under any other agreement to which City is subject or bound.

(b) City is a municipal corporation duly organized and validly existing under the laws of the State of Georgia.

(c) This Agreement has been duly authorized by the governing body of City.

(d) EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY CONTAINED IN THIS SECTION 5.1 AND IN DOCUMENTS DELIVERED BY CITY IN CONNECTION WITH THE CLOSING (COLLECTIVELY, THE "**CLOSING DOCUMENTS**"), IT IS UNDERSTOOD AND AGREED THAT CITY DISCLAIMS ALL WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY. DEVELOPER ACKNOWLEDGES AND AGREES THAT UPON CLOSING, CITY SHALL SELL AND CONVEY TO DEVELOPER AND DEVELOPER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS," WITH ALL FAULTS, AND, THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS PERTAINING TO OR AFFECTING THE PROPERTY MADE BY CITY. THE TERMS AND CONDITIONS OF THIS SECTION 5.1 SHALL EXPRESSLY SURVIVE CLOSING AND NOT MERGE INTO THE DEED OR ANY OF THE CLOSING DOCUMENTS.

5.2 Developer's Representations and Warranties. Developer represents and warrants to City as follows:

(a) Developer is a [corporation] [limited liability company] duly organized and validly existing under the laws of the State of Georgia. [**Note:** Developer may also be an individual.]

(b) Developer's execution, delivery, and/or performance of this Agreement is not prohibited by and will not constitute a default under any other agreement, covenant, document or instrument to which Developer or any of its principals are subject or bound.

(c) The financial statements of Developer and its principals that have been delivered to City are true, correct and accurate in all material respects.

(d) Developer has full power, capacity, authority, and legal right to execute and deliver this Agreement and to perform all transactions, including the execution and delivery of all documents, required of Developer for the performance of this Agreement; and the person signing below on behalf of Developer is duly authorized to execute this Agreement and bind Developer.

(e) This Agreement has been duly authorized by Developer and its governing body and, when executed and delivered, shall constitute a legal, valid, and binding obligation of Developer, enforceable against Developer in accordance with its terms.

(f) There is no litigation, pending or threatened, which would have a material and adverse effect on Developer's ability to perform its obligations under this Agreement.

(g) Developer and its principals have the financial capacity to perform Developer's obligations hereunder, both before and after Closing, including but not limited to the ability to pay when due all construction costs and all other financial commitments made by Developer and/or Developer's principals hereunder.

(h) Developer and its principals have the necessary qualifications, expertise and skills necessary in order to complete the construction, development and management of the Retail Buildings as contemplated by this Agreement.

Developer's representations and warranties are true and correct on the Effective Date, shall be true and correct on the Closing Date, and shall expressly survive the Closing. The truth and accuracy of these representations and warranties at the time of the Closing shall be a condition to all of City's obligations under this Agreement.

## **6. DEVELOPER'S AND CITY'S PRE-CLOSING COVENANTS AND OBLIGATIONS**

6.1 Developer's Pre-Closing Covenants. Prior to Closing, Developer covenants with City to complete the following:

(a) Promptly upon the execution of this Agreement, Developer shall proceed with the implementation of its plans for the development of the Property in a manner consistent with this Agreement and, to the extent Developer has not already done so, shall initiate all actions necessary for Developer's compliance with and fulfillment of its obligations hereunder.

(b) No later than ninety (90) days after the Effective Date (the "**Plans and Specifications Completion Period**"), Developer shall submit to City detailed plans and specifications for Developer's proposed development of the Property and the Retail Buildings (the "**Developer's Plans and Specifications**"), with the understanding and acknowledgement by City that mechanical, electrical, and plumbing (MEP) and interior floor plans are subject to modification consistent with tenant needs. The Plans and Specifications submitted within the Plans and Specifications Completion Period must, among other things, be suitable for the construction of each building's shell and shall include the exteriors of the Retail Buildings as well as structural, rough ("stub in") MEP and civil engineering components (*i.e.*, all elements of final plans and specifications except the finish out drawings). Developer shall also submit to City, within the Plans and Specifications Completion Period, a detailed construction timeline fully consistent with Exhibit B hereto setting forth time periods for the Commencement of Construction, construction milestones and Substantial Completion of the improvements (collectively, the "**Construction Timeline**"). In addition to the foregoing, Developer's Plans and Specifications shall (i) be based on the Developer's Conceptual Plans and be consistent with (A) the architectural, design, aesthetic, parking and other requirements established by City or applicable to the Project,

(B) the conditions, requirements and provisions set forth in City's Request for Proposals issued on April 3, 2025, (C) the traditional architectural styles and types of materials depicted in the Franklin Associates drawings for the Project, and (D) City's zoning ordinance (as amended) and town center design guidelines; (ii) be prepared by an architect licensed in the State of Georgia; (iii) contain elevations of the Retail Buildings; and (iv) be in a form customarily used and required for the construction of improvements similar in nature to the Retail Buildings. The Developer's Plans and Specifications shall be subject to the review and approval of City and the City's architect.

(c) No later than ninety (90) days after the Effective Date, Developer shall provide to City for its review a detailed budget setting forth the funds needed to complete the construction of the Retail Buildings in accordance with the Developer's Plans and Specifications (the "**Construction Budget**").

(d) No later than ninety (90) days after the Effective Date (the "**Construction Financing Period**"), Developer shall provide to City for its review and approval a commitment letter from a federally insured financial institution that finances projects similar to the construction of the Retail Buildings in the State of Georgia (the "**Construction Financing Commitment**"). The Construction Financing Commitment must commit the financial institution (the "**Construction Lender**") to loan to Developer at least \_\_\_\_\_ percent (\_\_\_%) of the funds needed to construct the Retail Buildings in accordance with the Construction Budget (the "**Construction Loan**"). If within the above-referenced ninety (90) day period Developer is unable to secure and provide to City a Construction Financing Commitment satisfactory both to Developer and to City in each of their sole discretion, either party may terminate this Agreement by giving notice of termination within fifteen (15) days after the expiration of the above-referenced ninety (90) day period; *provided, however*, that City shall, in any event, have at least fifteen (15) days after City's receipt of a Construction Financing Commitment which City disapproves within which to give notice of termination. **[Provisions regarding investor commitments and binding lease commitments will be added as appropriate. Information from Developer on these subjects and on the Developer entity is requested.]**

6.2 City's Pre-Closing Covenants. Prior to Closing, City covenants with Developer to complete the following:

(a) No later than One Hundred Fifty (150) days after Developer provides City with Developer's Plans and Specifications (that are detailed, complete and in compliance with Section 6.1(b) of this Agreement), and provided Developer has complied with its obligations under this Agreement (including without limitation those obligations set forth in Section 6.1 above), and provided further that any and all objections on the City's part to any of the documents or undertakings required of Developer under this Agreement have been resolved as provided herein, City shall take such action as necessary in order to make the Property "pad ready" by providing connections or "stub outs" for electric, water, natural gas, and sewer service to the building site and with underground sleeves for utilities and communication lines, all to an area located no further than five feet (5') from the respective boundary line(s) of the Property. Such connections shall include a two-inch (2") water line and a four-inch (4") PVC sewer line. Developer shall make its own arrangements with the utility and service providers for the necessary utilities and other services. Notwithstanding City's obligation to provide connections or "stub outs" pursuant to this Section 6.2(a), Developer shall be responsible, at its sole cost and expense, for installing any grease



traps serving the Retail Buildings, including all lines leading to and from such grease traps. Developer shall likewise be responsible, at its sole cost and expense, for running its own lines from the existing fire vault now on site and shall be deemed to have determined that the existing fire service lines, and vault, are adequate for Developer's proposed usage. Any required modifications to the existing fire service and/or vault, as well as the need (if any) for back flow preventers, fire pumps, vault modifications, and any related or similar items, are the sole responsibility of Developer. Developer acknowledges that there is a history of considerable rock in the area, and the cost of excavating rock or otherwise addressing unsuitable soil will be Developer's sole responsibility and expense.

(b) [Provisions will be added, as applicable and appropriate, regarding the City's approval or disapproval of Developer's Plans and Specifications, investor commitments, construction financing, binding lease agreements, etc., and the City's right to terminate the Agreement based on these matters.]

## 7. CONDITIONS TO CLOSING

7.1 Conditions to the Parties' Obligations to Close. Notwithstanding any other provision of this Agreement to the contrary, the obligation of City, on the one hand, and Developer, on the other hand, to consummate the conveyance of the Property contemplated by this Agreement is contingent upon the following:

(a) City's obligation to convey the Property is expressly subject to the satisfaction of each and all of the following conditions precedent (collectively, the "**City's Conditions Precedent**"), provided that City, at its election, upon written notice signed by City's Mayor and delivered to Developer at or prior to the Closing, may waive all or any of such conditions:

(i) Developer shall have executed and delivered to City all of the documents required of Developer under Section 4.2(a)(ii).

(ii) Developer shall have performed all of its covenants, agreements and obligations under this Agreement, including but not limited to those set forth in Section 6.1.

(iii) All of Developer's representations and warranties set forth in Section 5.2 shall be true and correct in all material respects on the Closing Date.

(iv) The Construction Lender and Developer shall be ready, willing and able to close the Construction Loan simultaneously with the Closing of the conveyance of the Property by City to Developer. **The Property shall not be conveyed to Developer unless the Construction Loan closes simultaneously with the conveyance.**

(v) Developer shall demonstrate to the satisfaction of the City that Developer has obtained and set aside any and all funding, in addition to the Construction Loan, needed for the construction of the Retail Buildings and the timely completion of all of Developer's obligations under this Agreement.

(vi) City and City's architect shall have given final approval to Developer's Plans and Specifications as provided in Section 6.1(b). **[City must also approve, to the extent applicable, any investor commitments, construction financing commitment and binding lease agreements.]**

(vii) Title Agent shall hold the Purchase Price for distribution to City.

City's Conditions Precedent are intended solely for the benefit of City. If, as of the Closing Date, any of the City's Conditions Precedent are not fully satisfied or waived in writing by City, then City shall have the right, upon written notice to Developer, either to (A) terminate this Agreement, in which case (I) the remainder of the Deposit shall be promptly refunded to Developer, and (II) subject to any provisions of this Agreement which expressly survive the termination of this Agreement, all further rights and obligations of the parties under this Agreement shall terminate, or (B) to waive City's Conditions Precedent and proceed to Closing. In the event the failure of a City's Conditions Precedent arises from a default by Developer under this Agreement, then City may elect to retain the Deposit and to otherwise pursue its remedies set forth in Section 11.1(a) for a Developer default of this Agreement, rather than the failure of a City's Conditions Precedent.

(b) Developer's obligation to close the transaction hereunder shall be subject to the satisfaction of each and all of the following conditions precedent (collectively, the "**Developer's Conditions Precedent**"), provided that Developer, at its election, upon written notice delivered to City at or prior to the Closing, may waive all or any of such conditions:

(i) City shall have executed and delivered to Developer all of the Documents required of City under Section 4.2(a)(i).

(ii) City shall have performed all of its material covenants, agreements and obligations under this Agreement, including without limitation the obligations to provide the Property in a "pad" ready condition in accordance with Section 6.2(a).

(iii) All of City's representations and warranties set forth in Section 5.1 shall be true and correct in all material respects on the Closing Date.

Developer's Conditions Precedent are intended solely for the benefit of Developer. If, as of the Closing Date, any of the Developer's Conditions Precedent are not fully satisfied or waived in writing by Developer, then Developer shall have the right, upon written notice to City, either to (A) terminate this Agreement, in which case (I) the remainder of the Deposit shall be promptly refunded to Developer, and (II) subject to any provisions of this Agreement which expressly survive the termination of this Agreement, all further rights and obligations of the parties under this Agreement shall terminate, or (B) to waive Developer's Conditions Precedent and proceed to Closing. In the event the failure of a Developer's Conditions Precedent arises from a default by City under this Agreement, then Developer may elect to pursue its remedies set forth in Section 11.1(b) for a City default of this Agreement, rather than the failure of a Developer's Conditions Precedent.

## 8. DEVELOPER'S AND CITY'S POST-CLOSING COVENANTS AND OBLIGATIONS

8.1 Developer's Post-Closing Covenants. Developer covenants and agrees that it will be subject to and will fully comply with each and all of the following obligations, requirements and conditions after closing:

(a) Developer shall obtain all necessary approvals relating to the Retail Buildings, such approvals to include without limitation approval by the City's Municipal Planning Commission in accordance with City ordinances and all necessary permits and approvals to allow for the construction of the Retail Buildings, such permits and approvals to include without limitation any land disturbance and building permits (collectively, the "**Development Approvals**"). Developer shall apply for the Development Approvals in a timely manner (*e.g.*, such application may be prior to Closing, if necessary) in order to allow Developer to meet the Construction Timeline. Developer acknowledges in connection with obtaining such Development Approvals that any material change to Developer's Plans and Specifications not approved by City may result in the denial of the applicable Development Approvals.

(b) Developer shall promptly engage an experienced, reputable general contractor licensed in the State of Georgia to complete the construction of the Retail Buildings. Developer shall consult with City on a timely basis concerning the general contractors Developer is considering. Developer shall have the right to select the contractor it desires to complete the construction of the Retail Buildings; *provided, however*, that (i) the contractor selected by Developer must be a reputable construction contractor licensed in the State of Georgia; (ii) the contract signed with the contractor must be the form used by the American Institute of Architects (AIA) and contain the standard and customary AIA contract provisions and general conditions; and (iii) the contractor must be required to obtain payment and performance bonds in the amount of the contract issued by a bonding company licensed in Georgia and acceptable to Developer and City.

(c) Unless and until the Retail Buildings are fully completed in accordance with Developer's Plans and Specifications and a certificate of occupancy issued in accordance with Section 8.1(d)(v) below, Developer shall neither encumber nor permit the encumbrance of the Property, the Retail Buildings, or any of the Retail Buildings' equipment or fixtures with any security deed, mortgage, security agreement or any other form of encumbrance or security interest whatsoever.

(d) Developer shall be responsible, at Developer's sole cost and expense, for constructing the Retail Buildings in accordance with the Developer's Plans and Specifications, all in a good and workmanlike manner in accordance with all applicable laws, regulations, codes, City ordinances and design guidelines, industry standards, and the Development Approvals and in accordance with the Construction Timeline. Without limiting the generality of the foregoing, Developer specifically covenants and agrees as follows:

(i) Developer shall cause Commencement of Construction of all Retail Buildings to occur in accordance with the Construction Timeline. For purposes hereof, "**Commencement of Construction**" shall mean the occurrence of all of the following: (i)

issuance of all of the Development Approvals; (ii) the completion of footings, site grading, and a foundation or slab for the Retail Buildings substantially in accordance with the approved Developer's Plans and Specifications; and (iii) physical commencement of construction of vertical components of the Retail Buildings.

(ii) Developer shall proceed with due diligence to commence and complete construction of the Retail Buildings in accordance with the approved Developer's Plans and Specifications and in accordance with any plans and specifications relating to specific tenant improvements. All work shall be performed using good and workmanlike construction practices in accordance with all applicable laws, regulations, codes, City ordinances and design guidelines, industry standards, and Development Approvals and shall meet the milestones set forth in the Construction Timeline; *provided, however*, that a delay in meeting milestones set forth in the Construction Timeline will be permitted to the extent, but only to the extent, the delay is caused by an Act of God as defined in Official Code of Georgia Annotated Section 1-3-3 and controlling Georgia case law interpreting that section.

(iii) Developer shall cause the Property to remain free of materialmen's and mechanic's liens at all times. Developer shall further maintain the Property in a neat and orderly condition throughout construction and keep driveways and other property within the Project clear of trash and construction materials at all times. If Developer fails to maintain its job site, streets and/or surrounding portions of the Project in compliance with this Section 8.1, then City, shall have the right (but not the obligation) to undertake such clearing, removal or other action to render compliance with this Section 8.1, and the costs incurred by City shall be reimbursed by Developer to City within ten (10) days after written demand from City to Developer, together with a ten percent (10%) administrative charge.

(iv) City and/or City's architect shall have the right, but not the obligation, to monitor the construction of the Retail Buildings for consistency with Developer's Plans and Specifications, applicable laws and the terms of this Agreement. In no case shall any such monitoring constitute approval of construction, installation or other work that is not in compliance with Developer's Plans and Specifications, applicable laws and the terms of this Agreement, nor shall the failure of City or the City's architect to address any such non-compliance be deemed a waiver of any right of City to enforce compliance. Any material deviation from the Developer's Plans and Specification by Developer or its contractor must be specifically approved in writing by City.

(v) Developer acknowledges that certificates of occupancy will not be issued for the Retail Buildings unless and until construction is fully completed in accordance with Developer's Plans and Specifications and with all applicable laws, regulations, codes, City ordinances and design guidelines, industry standards, and the Development Approvals and the buildings are ready for occupancy by tenants which have executed Binding Lease Agreements.



(e) Developer shall Substantially Complete the construction of the Retail Buildings in accordance with the Developer's Plans and Specifications in accordance with the Construction Timeline; *provided, however*, that a delay in Substantial Completion of the construction of the Retail Buildings may be permitted to the extent, but only to the extent, the delay is caused by an Act of God as defined in Official Code of Georgia Annotated Section 1-3-3 and controlling Georgia case law interpreting that section. For purposes of this Agreement, "**Substantially Complete**" or "**Substantial Completion**" shall be deemed to mean (i) completion of construction of the Retail Buildings in full compliance with all terms, conditions and provisions of this Agreement subject, however, to the completion of certain tenant improvements relating to tenant leases and other "punch-list" items, and (ii) City's issuing a certificate of occupancy for the Retail Buildings.

8.2 City's Post-Closing Covenants. After Closing, City covenants with Developer as follows:

(a) Subject to the limitations contained in this Section 8.2(a), City shall be responsible for the completion of improvements to the Common Areas located within the Project. Developer may provide input regarding the design of the improvements to the Common Areas and the selection of any landscape architect, but the design of the improvements, the materials used, the landscape architect selected, and all other matters pertaining to the improvements to the Common Areas, shall be in the sole discretion of City. City shall be obligated to pay no more than the total sum of \$50,000 (the "Common Area Cost Cap") toward the completion (including design, construction and installation) of the Common Areas and improvements to them. To the extent the cost to complete the design, construction and installation of the Common Areas and necessary improvements exceed the Common Area Cost Cap, City and Developer shall collaborate to determine suitable means to raise additional funding (e.g., community fundraising, contribution of additional funds by Developer, etc.); provided, however that in no event shall City be obligated to spend more than the Common Area Cost Cap to complete the design, construction and installation of the Common Areas and their improvements. The Common Area for purposes of this Agreement is defined as the area between the two developer parcels shown on Exhibit A (the "Town Center Plan") plus the areas surrounding the Property which are denoted by diagonal "thatching," as likewise shown on Exhibit A. The already constructed city hall, fire station, sitework solely for the city hall and fire station, and across street parking are not included in the "Common Area Cost Cap" referenced above.

(b) City at its own expense has caused the parking area on the east side of Lula Lake Road to be completed. That parking area, containing approximately 20 parking spaces, will be available for the nonexclusive use of Developer and tenants and customers of the Retail Buildings, as well as for City personnel and residents.

(c) Except on days when federal, state, county or city elections are conducted ("Election Days"), tenants and customers of the Retail Buildings shall have the right, on a first come-first served basis, to park in City-owned spaces within the Project, on the west side of Lula Lake Road. On Election Days, voters and election workers shall be given priority to park in City-owned spaces within the Project, and City will have the right, in its sole discretion, to reserve such spaces for the sole and exclusive use of voters and election workers.

## 9. DEVELOPER'S INSURANCE REQUIREMENTS

9.1 Required Insurance. Unless otherwise agreed to by Developer and City, prior to the any entry onto the Property by Developer or any of its Agents and until Substantial Completion, Developer shall deliver to City current certificates of insurance, and renewals thereof, which evidence that Developer is carrying:

(a) Workers' Compensation insurance in statutory amounts and Employer's Liability insurance in the amount of One Hundred Thousand Dollars (\$100,000);

(b) A Commercial General Liability insurance policy covering losses, damages and claims arising out of Developer's occupation, use of, activities on and ownership of property within the Project, including property damage and death, and including coverage for contractual liability, products/completed operations liability, and explosion, collapse and underground damage liability, which policy shall be written by a financially responsible insurance company, and shall have a limit of at least Two Million Five Hundred Thousand Dollars (\$2,500,000) per occurrence;

(c) Automobile Liability insurance covering all vehicles owned, hired or non-owned used in connection with Developer's construction activities in the Project in an amount of at least One Million Dollars (\$1,000,000);

(d) Excess Liability insurance with limits of Five Million Dollars (\$5,000,000) per occurrence/annual aggregate; and

(e) Builder's Risk insurance with coverage in an amount equal to one hundred percent (100%) of the completed value of the Retail Buildings.

Developer shall require that the Workers' Compensation, Commercial General Liability and Automobile Liability insurance required to be maintained by Developer be endorsed to provide that the underwriter waives its right of subrogation against City. In addition, the Commercial General Liability policy(ies) and Automobile Liability Policy shall be endorsed specifically to name City as an additional insured. The insurance certificates required by this Section 9.1 shall provide that in the event of cancellation or material change, thirty (30) days' prior written notice shall be given to City. If requested to do so by City, Developer shall also furnish the originals or certified copies of the insurance policies for inspection. Such policies shall be subject to the approval of City as to adequacy. Should Developer fail to procure or to maintain in force the insurance specified herein, City may secure such insurance and the cost thereof shall be borne by Developer. Developer agrees to reimburse City the cost of any such insurance plus a ten percent (10%) administrative charge within ten (10) days after billing by City. Any sum remaining unpaid fifteen (15) days after billing by City shall bear interest at the rate of fifteen percent (15%) per annum until paid to City. Developer's compliance with the provisions above and the limits of liability shown for each of the insurance coverages to be provided by Developer shall not be deemed to constitute a limitation of Developer's liability for the claims or in any way limit, modify or otherwise affect the Developer's contractual indemnification obligations. The insolvency, bankruptcy, or failure of any insurance company carrying insurance for Developer or any subcontractor, or the failure of any insurance company to pay claims accruing shall not be held to waive any of the provisions of this Agreement.

## 10. LIMITATION OF LIABILITY; INDEMNIFICATION

10.1 Limitation of City's Liability. City's review and approval of any designs, plans, specifications, drawings, documents or other information (including without limitation the Developer's Conceptual Plans, Plans and Specifications, Construction Timeline, and Construction Budget) all shall be solely for the purpose of City determining that the Retail Buildings to be constructed by Developer on the Property are compatible with the Town Center Plan, the Project, the provisions of this Agreement, and all applicable zoning regulations and design guidelines and standards. No such approval shall constitute or be deemed to constitute a representation, warranty, guaranty or assurance that the alleged facts, opinions, descriptions or other matters set forth therein are true or accurate, nor that the Property has been or will be improved by Developer properly, safely, or in accordance with all applicable laws. With respect to any matter approved by City pursuant to the terms of this Agreement, except as otherwise expressly set forth herein, City does not assume nor shall City be deemed to assume any liability, cost or obligation with respect thereto by virtue of City's approval thereof.

10.2 Developer's Release. Developer hereby releases City and its Mayor, Council Members, other City officials, employees, agents, contractors, attorneys, architects, insurers, risk management pools, and all of their respective predecessors and successors in interest (all of the foregoing along with City itself being collectively referred to as the "**City Releasees**") and agrees that City Releasees shall have no liability of any kind relative to the design, engineering or structural integrity of any improvements constructed upon the Property or within the Project, and/or the compliance of such improvements with applicable laws, whether such improvements are made, constructed or installed by Developer, or its contractor. Without limiting the generality of the foregoing, none of the City Releasees shall be liable to Developer or any other person or entity for any loss, damage, cost, expense, physical or personal injury or claim of any kind or character, whether directly, indirectly, solely or in any contributory manner, arising from, caused by or related to: (i) Developer's ownership, use, development, improvement, lease, sale and/or conveyance of any portion of the Property, and/or any improvements constructed thereon; (ii) any use of the Property by Developer, its Agents or any of its tenants; (iii) any act or omission of Developer, (iv) any violation or alleged violation by Developer of any applicable law, regulation or code; (v) any defect in the workmanship, design of, construction of, or material in, any improvement constructed by Developer on the Property; (vi) any defect in soils or in the preparation of soils and accomplishment of finish grading on the Property; (vii) the presence or existence of any hazardous or toxic substances, materials or waste in or on the soil or ground water of any of the Property, whether known or unknown; (viii) any accident or casualty on any of the Property; (ix) Developer's breach of its representations and warranties; or (x) any other cause whatsoever in connection with Developer's ownership, development, use, dealings with, lease, or sale or other disposition of the Property, or Developer's performance or failure to perform under this Agreement (all of the foregoing being collectively referred to as the "**Claims**"). The foregoing release shall apply irrespective of City's approval, recommendation or other direction with regard to any such matter.

10.3 Developer's Indemnification. Developer agrees to indemnify, defend (with counsel acceptable to City) and hold the City Releasees harmless from and against any and all claims, losses, liabilities, costs, damages, causes of action, demands, and proceedings arising out of, or directly or indirectly related to: (i) Developer's ownership, use, development, improvement, lease,



sale and/or conveyance of any portion of the Property, and/or any improvements constructed thereon; (ii) any use of the Property by Developer, its Agents or any of its tenants; (iii) any act or omission of Developer, (iv) any violation or alleged violation by Developer of any applicable law, regulation or code; (v) any defect in the workmanship, design of, construction of, or material in, any improvement constructed by Developer on the Property; (vi) any defect in soils or in the preparation of soils and accomplishment of finish grading on the Property; (vii) the presence or existence of any hazardous or toxic substances, materials or waste in or on the soil or ground water of any of the Property, whether known or unknown; (viii) any accident or casualty on any of the Property; (ix) Developer's breach of its representations and warranties; or (x) any other cause whatsoever in connection with Developer's ownership, development, use, dealings with, lease, or sale or other disposition of the Property, or Developer's performance or failure to perform under this Agreement. This indemnity shall include, but is not limited to, attorneys' fees and costs, court costs and investigation fees and expenses, and shall apply irrespective of City's approval, recommendation or other direction with regard to such matter.

The terms of this Section 10 expressly survive the Closing and any termination of this Agreement.

## **11. DEFAULT AND REMEDIES**

### **11.1 Pre-Closing Default.**

(a) Developer's Pre-Closing Default. In the event of any breach or default by Developer, or if any of Developer's representations and warranties in this Agreement are untrue, under this Agreement, which breach, default or failure, continues beyond any applicable notice and cure period expressly provided by this Agreement, then City shall have the right to terminate this Agreement and all of Developer's rights hereunder, by written notice to Developer, in which event the Deposit shall be retained by City and City will have the right to pursue all other rights and remedies available to it at law or in equity.

(b) City's Pre-Closing Default. If City fails to perform its obligations under this Agreement, and such failure continues beyond all applicable notice and cure periods expressly provided in this Agreement, then Developer, at its election (and as its sole and exclusive remedy), may either: (a) terminate this Agreement, whereupon the remainder of the Deposit shall be immediately refunded to Developer; or (b) institute an action for specific performance, which right must be exercised by Developer within ninety (90) days of Developer's written default notice to City. Developer hereby waives any and all other remedies, including, without limitation, the right to claim or seek monetary damages on account of a default by City.

### **11.2 Post-Closing Default.**

(a) Developer's Post-Closing Default before Commencement of Construction. In the event of a default or breach of this Agreement by Developer after Closing but before Commencement of Construction with respect to any post-Closing or surviving obligation or covenant, which breach, default or failure continues beyond any applicable notice and cure period expressly provided by this Agreement, City may avail itself of any and all remedies available at law or in equity, including but not limited to any remedies provided herein or in any other

documents delivered at Closing, and this provision shall expressly survive Closing. Without limiting the generality of the foregoing, in event of a default or breach of this Agreement by Developer after Closing but before Commencement of Construction with respect to any post-Closing or surviving obligation or covenant, which breach, default or failure continues beyond any applicable notice and cure period expressly provided by this Agreement, City shall have the right to require the conveyance of the Property back to City, or to any third party designated by City, for the sum of One Thousand Dollars (\$1,000.00). Developer and its principals expressly acknowledge and agree that such sum of \$1,000.00 constitutes fair and adequate consideration for the reconveyance of the Property. City shall exercise its right to require such conveyance, if at all, by delivering written notice to Developer or the then owner of the Property (the "**Repurchase Notice**"), and specifying the date for closing, which shall be within forty-five (45) days after City's delivery of the Repurchase Notice. Developer shall pay to City all costs, expenses and attorneys' fees incurred by City in connection with Developer's default or breach and/or the reconveyance of the Property, any or all of which may, in the discretion of the City, be deducted or offset from the \$1,000.00 repurchase/conveyance price set forth above. The provisions for repurchase in this Section 11.2(a) shall survive the Closing and shall be contained in the Deed.

(b) Developer's Post-Closing Default after Commencement of Construction. In the event of a default or breach of this Agreement by Developer after Commencement of Construction with respect to any post-Closing or surviving obligation or covenant, which breach, default or failure continues beyond any applicable notice and cure period expressly provided by this Agreement, City may avail itself of any and all remedies available at law or in equity, including but not limited to any remedies provided herein or in any other documents delivered at Closing, and this provision shall expressly survive Closing. Without limiting the generality of the foregoing, City may, following thirty (30) days' written or electronic notice to Developer, specifically enforce the terms of this Agreement and may require Developer to develop the property in accordance with this Agreement and Developer's Plans and Specifications. In this event, the City will be entitled to injunctive relief as well as the recovery of damages and to any other relief provided by law or contract. Developer will be liable to City for all costs and expenses (including but not limited to attorneys' fees, architects' fees, and other experts' fees) incurred by City in enforcing the terms of this Agreement. **[Additional and/or alternative remedies and provisions may be added to protect the City's interests.]**

(c) City Post-Closing Default. In the event of a default by City under this Agreement with respect to any post-Closing or surviving obligation or covenant, which breach, default or failure, continues beyond any applicable notice and cure period expressly provided by this Agreement, Developer may avail itself of any and all remedies available at law or in equity, including, without limitation, any remedies provided herein, or in any other documents delivered at Closing, and this provision shall expressly survive Closing. Notwithstanding the foregoing, any recovery of damages shall be limited to Developer's actual damages and, in addition, by Section 10.1 hereof. Developer and its Principals hereby expressly waive any other damages including, without limitation, punitive or consequential damages.

## **12. GENERAL PROVISIONS**

12.1 Notice. All notices and other communications given pursuant to this Agreement shall be in writing and shall be (a) mailed by first class, United States mail, postage prepaid,

certified, with return receipt requested, and addressed to the parties hereto at the address listed below, (b) hand delivered to the intended addressee, (c) sent by nationally recognized overnight courier, or (d) sent by way of electronic mail, which, if receipt of which is not confirmed by the addressee of such electronic mail message within twenty-four (24) hours, then such message shall be followed by a confirmatory letter sent by notice methods (a), (b) or (c) above within one (1) business day of the expiration of said 24-hour period. Notice sent by certified mail, postage prepaid, shall be effective three (3) business days after being deposited in the United States mail; all other notices shall be effective upon delivery to the address of the addressee. The parties hereto may change their addresses by giving notice thereof to the other in conformity with this provision:

**If to Developer:**

[DEVELOPER NAME]

Attn: [Developer's President or Principal]

\_\_\_\_\_

Tel \_\_\_\_\_

Fax \_\_\_\_\_

Email \_\_\_\_\_

**If to City:**

CITY OF LOOKOUT MOUNTAIN, GEORGIA

Attn: Mayor

1214 Lula Lake Road

Lookout Mountain, GA 30750

Tel: (706) 820-1586

Fax \_\_\_\_\_

Email \_\_\_\_\_

With a copy to:

William H. Pickering, City Attorney

CHAMBLISS, BAHNER & STOPHEL, P.C.

Liberty Tower – Suite 1700

Chattanooga, TN 37450

Tel: (423) 757-0218

Fax: (423) 508-1218

Email: wpickering@chamblisslaw.com

The parties hereto shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by at least five (5) days' written notice to the other party.

12.2 Termination. In the event this Agreement is terminated by Developer or City as permitted by this Agreement, the Deposit shall be held, or delivered to the party entitled to the same, pursuant to the applicable provisions hereof, and the parties shall be released of any further obligations to each other hereunder, except for those provisions hereof, and obligations of the parties hereunder expressly stated in this Agreement to survive termination, all of which shall remain in full force and effect.

12.3 Survival. All representations and warranties of City and Developer, and all provisions of this Agreement that contemplate performance, or enforcement of a right or obligation, under this Agreement after Closing shall expressly survive the Closing contemplated

by this Agreement indefinitely, unless a specific time period is specified as to such representation, warranty, right or obligation, in which event such specific period shall apply thereto.

12.4 Recordation. This Agreement may be recorded by either party in the Office of the Clerk of the Superior Court of Walker County, Georgia.

12.5 Time of Essence. Time is of the essence with respect to all matters set forth in and arising under this Agreement; provided this provision shall not be construed to undermine any express cure period afforded any party under this Agreement.

12.6 Time Periods; Local Time. If the time period by which any right, option or election provided under this Agreement must be exercised, or by which any act required hereunder must be performed, or by which Closing is to be held, expires on a Saturday, Sunday or holiday on which banks in the State of Georgia are closed for business, then such time period shall be automatically extended to the close of business on the next regular business day. All references to a specific number of days shall refer to calendar days except as otherwise specified. All references to "**business day**" in this Agreement shall exclude Saturdays, Sundays and holidays on which banks in the State of Georgia are closed for business. All references to the time of day in this Agreement shall refer to the time of day in Walker County, Georgia.

12.7 No Waiver. The failure of any party hereto to enforce any provision of this Agreement shall not be construed to be a waiver of such or any other provision, nor in any way to affect the validity of all or any part of this Agreement or the right of such party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

12.8 Applicable Law; Venue; Jury Trial Waiver.

(a) This Agreement shall be construed and interpreted under the laws of the State of Georgia.

(b) Venue for any proceeding brought with respect to this Agreement shall be maintained and lie exclusively in the courts located in Walker County, Georgia, or the United States District Court for the Northern District of Georgia, Rome Division. Each party shall submit to the jurisdiction and venue of such courts, and shall not seek to remove or transfer any action to any other venue based on *forum non conveniens* or otherwise.

(c) City and Developer each knowingly, voluntarily and intentionally waive any right which either of them may have to a trial by jury with respect to any litigation or legal proceeding based upon or arising directly, indirectly or otherwise in connection with, out of, related to or from this Agreement including, by way of example but not limitation, any course of conduct, course of dealings, verbal or written statements or acts or omissions of either party which in any way relate to this Agreement. City and Developer have specifically discussed and negotiated for this waiver and understand the legal consequences of it.

12.9 Construction of Agreement. Developer and City acknowledge that they have read, understand, and have had the opportunity to be advised by legal counsel as to each and every one of the terms, conditions, restrictions, and the effect of all the provisions of this Agreement.

Developer and City agree to the enforcement of any and all of these provisions and execute this Agreement with full knowledge of these provisions. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the provisions shall not apply the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the document. Typewritten or handwritten provisions inserted in this Agreement that are initialed by the parties shall control over all printed provisions of this Agreement in conflict therewith. Titles or captions of sections contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

12.10 Severability. The provisions of this Agreement are intended to be independent from each other. In the event any provisions hereof should be declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason whatsoever, such illegality, unenforceability, or invalidity shall not affect the remainder of this Agreement.

12.11 Entire Agreement; Amendment. This Agreement, together with the attached Exhibits, embodies the entire agreement between the parties concerning the subject matter hereof and supersedes any and all prior or contemporaneous negotiations, understandings, agreements, letters of intent or otherwise, all of which are hereby superseded and of no force or effect. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged, or terminated except by an instrument in writing signed by the party against which the enforcement is sought, and then only to the extent set forth in such instrument. Nothing in this section to the contrary, however, shall prevent the termination of this Agreement in accordance with the terms of this Agreement specifically providing for its termination and not requiring any separate written instrument of termination.

12.12 Exhibits. The Exhibits referred to in and attached to this Agreement are incorporated herein in full by reference. The provisions set forth therein shall control in the event of any conflict or inconsistency with the provisions contained in the body of this Agreement.

12.13 No Joint Venture; No Third Party Beneficiaries. It is hereby acknowledged by Developer and City that the relationship between them created hereby is not intended to be and shall not in any way be construed to be that of a partnership, joint venture, or principal and agent. No person or entity not a party to this Agreement shall be deemed or construed a direct or indirect beneficiary hereof, nor entitled to rely on any provision hereof or the conduct and performance of the parties thereto, all of such provisions, conduct and performance being solely for the benefit of the parties hereto.

12.14 Assignment; Successors and Assigns. Subject to the following limitations, this Agreement shall be binding upon and inure to the benefit of the parties' successors and assigns. Developer shall not assign this Agreement or any interest hereunder, in whole or in part, without the prior written consent of City. Any attempted assignment by Developer that is not approved in writing by City shall be null and void. Any assignment by Developer shall not release or discharge Developer and/or its principals from their obligations under this Agreement.



12.15 Counterparts. This Agreement may be executed in separate counterparts. It shall be fully executed when each party whose signature is required has signed at least one counterpart even though no one counterpart contains the signatures of all the parties.

12.16 Guaranty. In order to induce City to enter into this Agreement and to agree to the provisions hereof, \_\_\_\_\_ and \_\_\_\_\_ (the "**Principals**"), being principals who own or control control Developer, hereby personally and unconditionally, jointly and severally, guarantee the full performance of all obligations of Developer under this Agreement, including but not limited to all obligations, agreements and commitments of Developer set forth in Sections 2, 6.1, 8.1, 10.3 and 11.2 of this Agreement. The obligations of the Principals under this Guaranty are independent of the obligations of Developer, and a separate action or actions may be brought and prosecuted against either or both Principals regardless of whether action is brought against Developer or whether Developer is joined in any such action or actions. This Guaranty (a) shall be binding on Principals and their respective executors, administrators, successors, and assigns (provided that Principals may not assign their obligations under this Guaranty without City's prior written consent) and (b) shall inure to the benefit of City and City's successors and assigns.

IN WITNESS WHEREOF, the undersigned have set their hands and seals hereto as of the day and year indicated next to their signature.

**DEVELOPER:**

Signed, sealed and delivered this \_\_\_\_ day  
of \_\_\_\_\_, 20 \_\_\_\_, in the presence of:

[DEVELOPER NAME]

\_\_\_\_\_  
Unofficial Witness

By: \_\_\_\_\_ (SEAL)

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

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

\_\_\_\_\_  
Notary Public

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

My Commission Expires:

\_\_\_\_\_

[NOTARIAL SEAL]

**CITY:**

CITY OF LOOKOUT MOUNTAIN, GEORGIA,  
a Georgia municipal corporation

Signed, sealed and delivered this \_\_\_\_ day  
of \_\_\_\_\_, 20 \_\_\_\_, in the presence of:

By: \_\_\_\_\_ (SEAL)

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

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

\_\_\_\_\_  
Unofficial Witness

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

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

[NOTARIAL SEAL]

The undersigned hereby join in this Agreement and expressly acknowledge and agree to all terms and conditions of the Guaranty set forth in Section 12.16.

Signed, sealed and delivered this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_, in the presence of:

\_\_\_\_\_  
[Principal's Name]

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

[NOTARIAL SEAL]

Signed, sealed and delivered this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_, in the presence of:

\_\_\_\_\_  
[Principal's Name]

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

[NOTARIAL SEAL]

## **EXHIBITS**

- Exhibit A     -     Town Center Plan
- Exhibit B     -     Developer's Conceptual Plans

**EXHIBIT A**

TOWN CENTER PLAN

[see attached]

**EXHIBIT B**

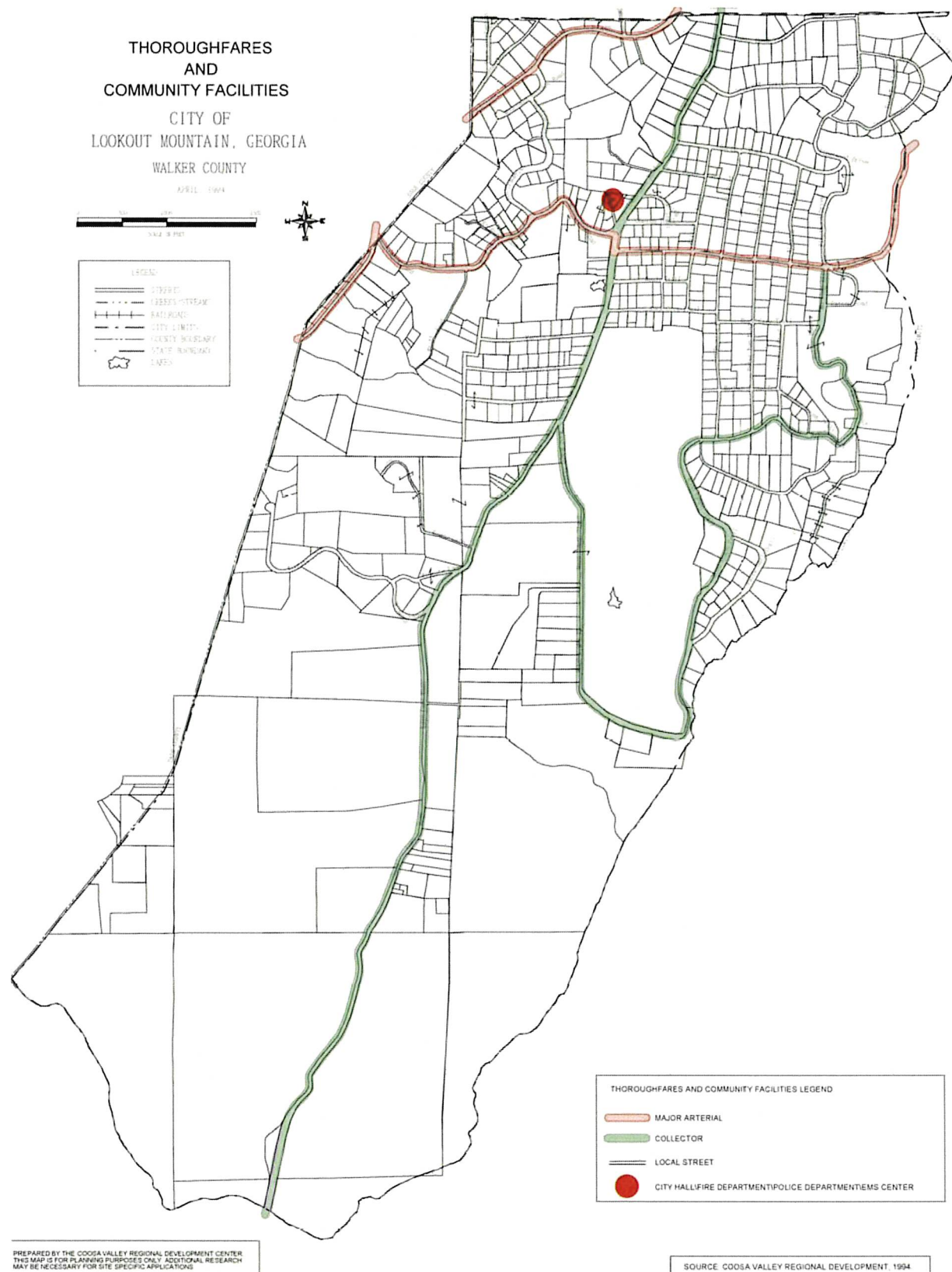
DEVELOPER'S CONCEPTUAL PLANS

Statement of Development Plans with Timetable for Beginning of  
Construction, Substantial Completion and Other Commitments

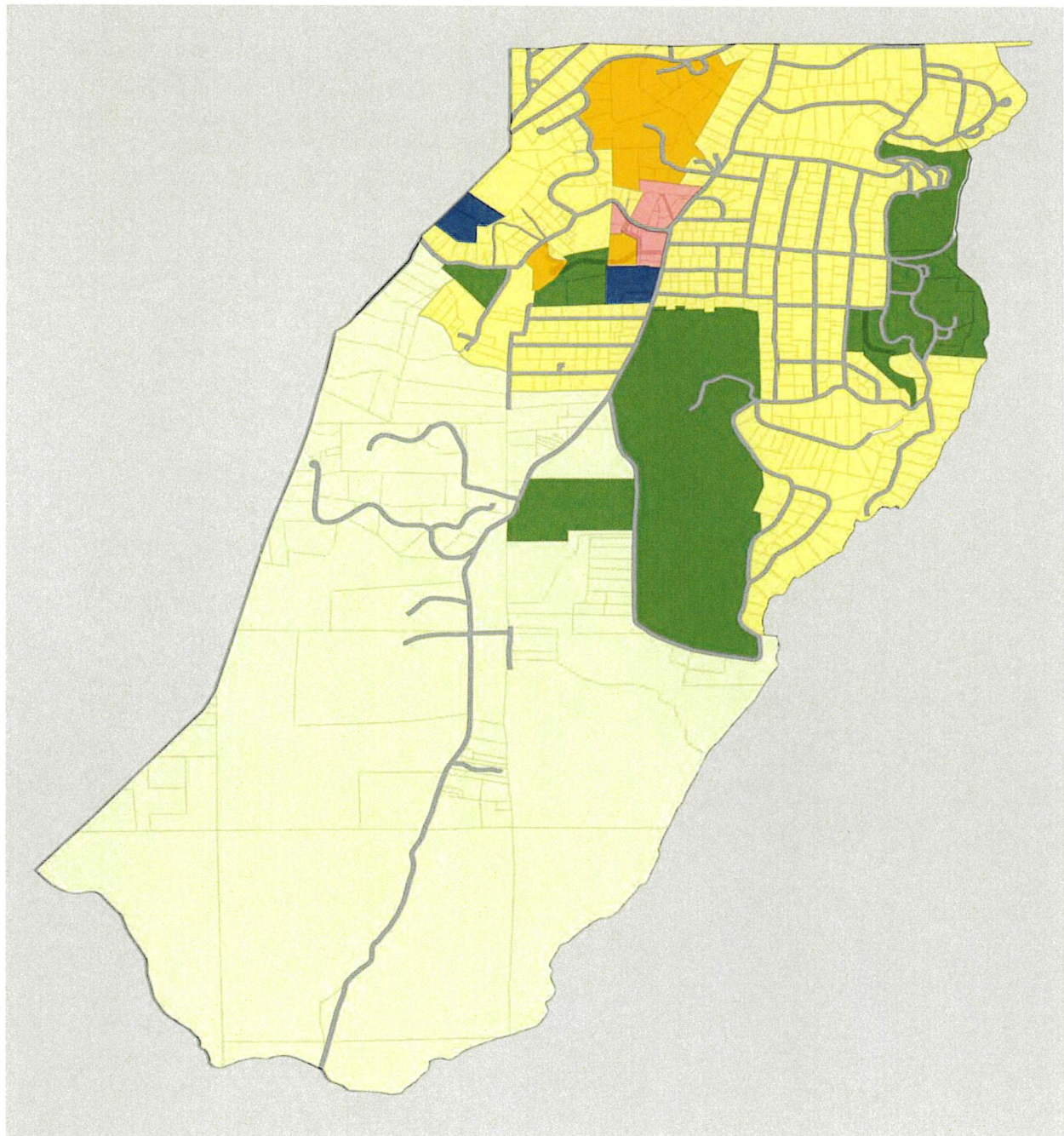
[see attached]



# Market Analysis



## Land Use & Character Areas



- Town Center
- High-Density Residential
- Medium-Density Residential
- Low-Density Residential
- Open Space, Rec, Attract
- Institutional



## Natural Resources

### Study Area Overview

Lookout Mountain, Georgia, is part of a mountain range that is oriented along an essentially north-south axis. This range is 83 miles in length. The northern most three miles are in Tennessee, 30 miles are in Georgia, and the remaining 50 miles are in Alabama. The portion of the range comprising Lookout Mountain, Georgia, has an elevation between approximately 1,100 to 2,000 feet above sea level. The area's geology consists of limestone, which is why there are so many rock outcroppings and caverns. Located in Walker County, the City's boundaries entail approximately 2.7 square miles (1,728 acres) of land. The entire community is on an underground aquifer.

### Geology

*Sand Mountain and Lookout Mountain form most of the Cumberland Plateau region in Georgia. They differ from the mountains of the Ridge and Valley by their flat tops. Both the Cumberland Plateau and the Ridge and Valley provinces are primarily sedimentary rock (formed by marine sediments compressing over millennia) such as shale (formed from silt) and sandstone (formed from sand). Much of the Cumberland Plateau is underlain with limestone, formed from the shells of marine organisms deposited in a prehistoric sea between 300-425 million years ago. Limestone is a soft and porous rock notorious for cave formations. Caves form when limestone is dissolved by weak acids produced when rainwater combines with carbon dioxide. This process of chemical erosion created some of the deepest caves east of the Mississippi, including Ellisons Cave, which has drops of up to 600 vertical feet. Several rivers have eroded deep canyons into the high plateau, forming impressive land forms such as Cloudland Canyon and Johnsons Crook.*



# Neighborhood Analysis

A neighborhood can be described as the area within which economic, environmental, governmental and social forces affect all surrounding properties in the same way they affect the Property listed in the RFP. A neighborhood is defined as a group of complementary land uses. A neighborhood is a separately identifiable, cohesive area within a community with some interests typically shared by the occupants. Most neighborhoods have recognizable natural or man-made boundaries. While physical boundaries are stipulated in order to define the neighborhood, they are often less significant than other boundaries of influence. A neighborhood may be further defined as a grouping of complimentary uses affected in a similar manner by social, economic, governmental, and/or environmental factors. In addition to physical boundaries, a neighborhood may be delineated by perceptible changes in land use and the architectural style and condition of the area's improvements. Finally, every neighborhood is subject to influence from the greater abutting or surrounding community, or metropolitan area.

## **Neighborhood Boundaries**

The subject property is located at 1214 Lula Lake Road in Lookout Mountain, Walker County, Georgia. The neighborhood boundaries may be described as the eastern side of Lookout Mountain from the base of the mountain, which is the St. Elmo area of Chattanooga to the back of the mountain at the southern boundary of the City of Lookout Mountain, Georgia. The subject neighborhood is, therefore, considered to include the municipalities of Lookout Mountain, Tennessee and Georgia.

## **Accessibility**

Access to the subject neighborhood is via either Scenic Highway or Ochs Highway (Highway 58/Georgia Highway 157) both of which are steep, winding mountain roads. Access to the property from other areas is considered to be average due to the proximity of the neighborhood to Interstates 24, 75, and 59 from the bottom of the mountain.

## **Predominant Area Developments**

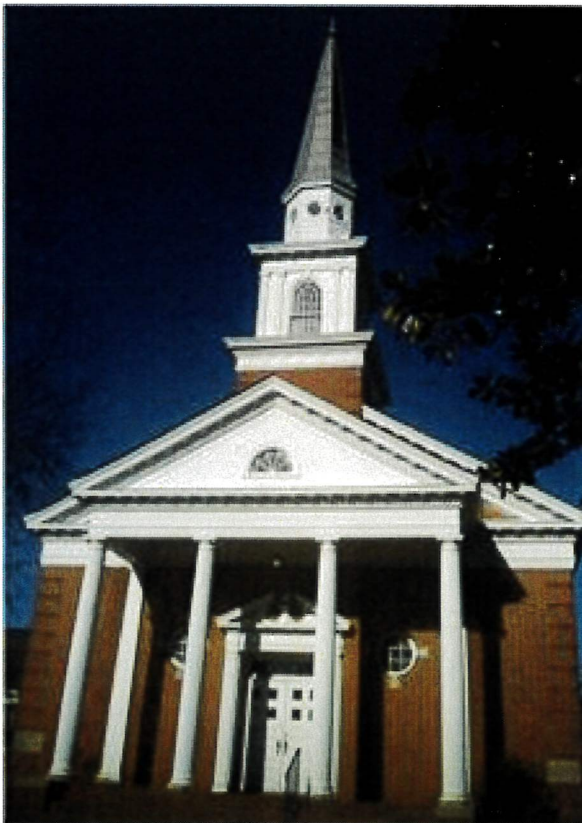
As indicated above, commercial development in the area is very limited and designed to serve the needs of local residents. There are several tourist-oriented developments in the area including Civil War memorial sites, Ruby Falls, and Rock City. The predominant land uses in the area are residential with many homes being very up-scale. Future development in the area would be expected to continue in the same patterns.



## Surrounding Areas



UT Erlanger Primary Care, 101 McFarland Road



Lookout Mountain Methodist Church  
1300 Lula Lake Road



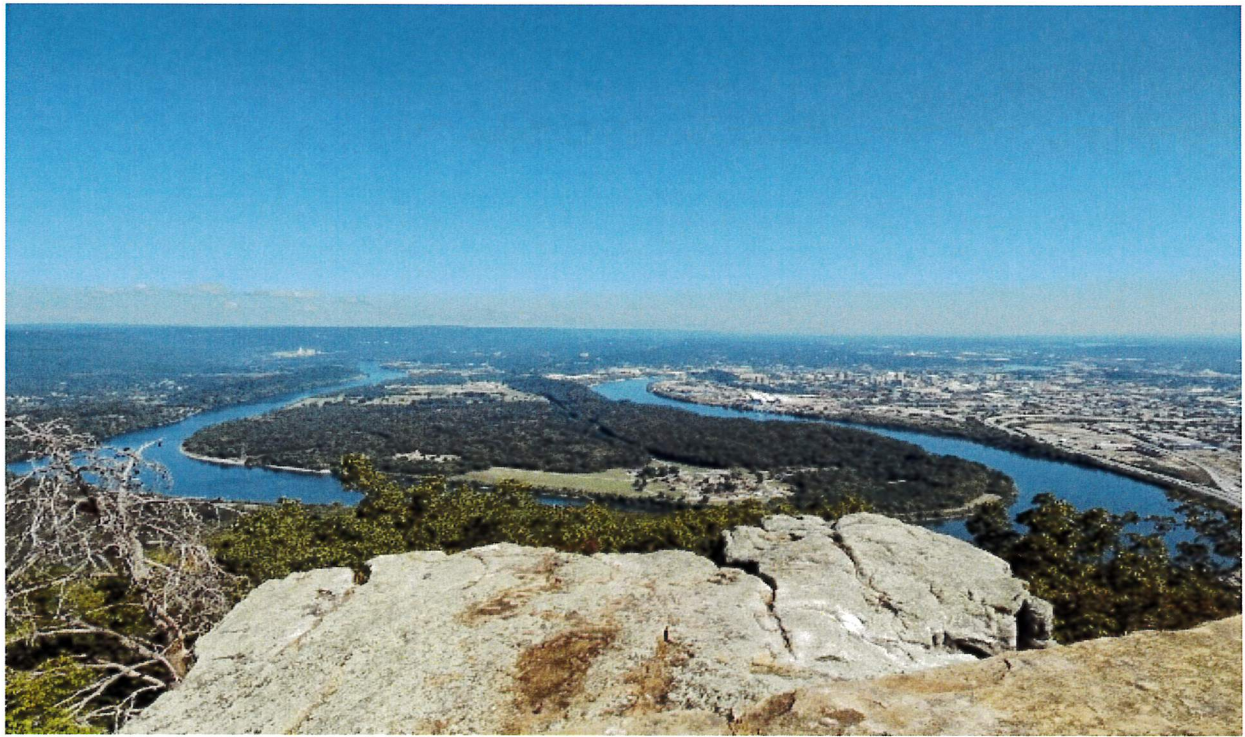
## Lookout Mountain Club





View From Lookout Mountain Club





Lookout Mountain Tennessee

View of Chattanooga



Covenant College





See Rock City



Lookout Mountain Golf Club

Lookout Mountain Golf Club







Ruby Falls



Point Park



Lookout Mountain Incline



Garden Walk



Chanticleer Inn (Lookout Mountain Inn)

