

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

**CONTINGENT CONTRACT TO
SELL AND PURCHASE REAL
PROPERTY**

THIS CONTRACT to sell and purchase real property (this “Contract”) is made and entered into as of this ____ day of April 2017, by and between A. Cotten Wright, Receiver for DCG Real Assets, LLC, et al, pursuant to order of the United States District Court for the Western District of North Carolina, Charlotte Division (the “Court”) in Case No. 3:16-cv-00285 (hereafter either “Receiver” or “Seller”), and the Town of Huntersville, a North Carolina Municipal Corporation (“Town” or “Buyer”).

WITNESSETH

WHEREAS, Seller is the title holder of, or will acquire from a foreclosure transfer those tracts or parcels of land located in Huntersville and/or otherwise has the authority to transfer such property as Receiver, and which are more particularly described on Exhibit A attached hereto (the “Property”), and

WHEREAS, upon final acquisition of all of the parcels comprising the Property, Seller wishes to sell and Town wishes to purchase the Property on the terms and conditions hereafter set forth.

AGREEMENT

Contingent upon Seller acquiring fee simple title to the Property, and obtaining authority of the Court, Seller agrees to sell and Town agrees to purchase all (but not less than all) of the Property on the following terms, conditions and limitations:

1. **PROPERTY:** All of those tracts and parcels described on Exhibit A attached hereto and incorporated herein.
2. **PURCHASE PRICE OF PROPERTY:** The purchase price of the Property shall be One Hundred Sixty-Five Thousand Dollars (\$165,000.00), which shall be paid at closing to Receiver by wire transfer of funds, or other means acceptable to Seller.
3. **EFFECTIVE DATE.** The Effective Date of this Contract shall be the later of (a) the final date of signing by the parties, (b) Court approval of the sale of the Property, or (c) approval by the Town of Huntersville Board of Commissioners in open session, as provided in Paragraph 12(b) hereafter.
4. **CLOSING DATE.** Closing of the transfer of the Property shall occur on or before thirty (30) days from the Effective Date at Town’s offices in Huntersville, North Carolina, or such other place, or in such other manner as may be mutually acceptable to the parties.

5. **INTENDED USE.** The Town intends that the Property be used for governmental or public purposes, or for such other purposes as Town, or its assigns may deem appropriate ("Intended Use").
6. **EXAMINATION PERIOD.** As used in this Contract, "Examination Period" shall mean that period of time after the Effective Date to a date which is twenty-one (21) days after the Effective Date.
7. **TITLE EXAMINATION.** After the Effective Date, Town may, at its expense, cause a title examination to be made of the Property before the end of the Examination Period. In the event such title examination reveals that Seller's title is not fee simple marketable and insurable at regular rates, subject only to the Permitted Exceptions, then Town shall promptly notify Seller in writing of such title defects and exceptions and shall have the option of terminating this Contract, or take title in its then condition without reduction of the purchase price (except those defects that can be cured by withholding an established monetary amount).
8. **INSPECTIONS.** During the Examination Period, Town, its agents or representatives, and at Town's expense, shall have the right to enter upon the Property for the purpose of inspecting, examining, performing soil borings, environmental and other testing and conducting any surveys it deems appropriate (collectively, "Inspections"). Buyer shall conduct all such Inspections in a good and workmanlike manner, and shall repair any damage to the Property caused by Town's entry. Inspections shall occur during reasonable business hours so as to not interfere with Seller's use of the Property. Seller represents that it has no actual knowledge of any adverse environmental conditions or contamination of the Property. All inspections shall be completed during the Examination Period (subject to any extension granted by Seller), and if any conditions are not objected to within that time (which may be extended) shall be deemed accepted, except for matters occurring after that time.
9. **POSSESSION.** Seller can and will deliver unencumbered possession of the Property to Town as of the Closing Date.
10. **PROPERTY CONVEYED "AS IS."** Except as otherwise provided herein, the Property and improvements, if any, are conveyed and accepted "as is" with all faults. Seller makes no representations or warranties as to the condition of the Property, or suitability for any purpose, including for its Intended Use.
11. **TRANSFER OF TITLE TO PROPERTY:** On the Closing Date, Seller shall deliver to Town a Special Warranty Deed conveying fee simple marketable title to the Property free and clear subject to all liens, encumbrances, claims, rights-of-way, easements, and restrictive covenants which Town has not objected to as a result of its title examination and other due diligence inspections except that the Property may be conveyed subject to the following permitted exceptions ("Permitted Exceptions"):
 - a. Ad valorem taxes for any year subsequent to the year of closing.

- b. Easements, rights of way, setbacks and conditions shown on a recorded plat of record including but not limited to Map Book 51 Page 639 Mecklenburg County Registry.
 - c. All zoning, subdivision, land use another laws, regulations or ordinances applicable to the Property, provided that they do not impair or preclude the right of the Town to use the Property for its Intended Use.
 - d. That Declaration and Conveyance of Easements and Maintenance Agreements for Huntersville Town Center Development, recorded in Book 24759, Page 750, Mecklenburg County Registry, corrected by notice of typographical error in Book 24770, Page 683.
 - e. That Agreement for Construction, Operation and Financing of Parking Deed recorded in Book 24759, Page 738, Mecklenburg County Registry, corrected by notice of typographical error in Book 24770, Page 677.
12. **CONDITIONS.** This Contract, in addition to any conditions otherwise contained herein, is specifically subject to the following conditions:
- (a) **THIS CONTRACT IS SUBJECT TO FINAL APPROVAL BY THE BOARD OF COMMISSIONERS OF THE TOWN OF HUNTERSVILLE AS REQUIRED BY NORTH CAROLINA LAW AND IS NOT BINDING UNTIL SUCH APPROVAL IS GIVEN.**
 - (b) **THIS CONTRACT IS ALSO SUBJECT TO COURT APPROVAL OF THE SALE OF THE REAL PROPERTY TO THE TOWN, BY THE RECEIVER.**
 - (c) Seller can and will deliver unencumbered possession of the Property to Buyer as of the Closing Date.
13. **RISK OF LOSS.** Prior to closing, risk of loss with respect to the Property shall be upon Seller.
14. **CLOSING COSTS.** Seller shall pay for the preparation of a Deed and any other documents necessary to perform Seller's obligations under this Contract, for excise tax or other conveyance tax, any deferred tax and all costs necessary to convey clear title. Buyer shall pay for recording costs, costs of title search, title insurance, survey, and any inspection costs. Each party shall pay its own attorney's and consultant's fees.
15. **PRORATIONS.** Ad Valorem real property taxes for the Property shall be pro-rated between the parties on a calendar year basis as of the Closing Date. If the taxes are then due and payable, and not paid, the Seller's share will be withheld from the Purchase Price and paid by Buyer. If the taxes have been paid, Buyer shall reimburse Seller for Buyer's share at closing. If the then current year's taxes have not been determined, prorations shall be estimated based on the prior year's taxes, withheld from the Seller and paid by the Buyer. Leases, if any, shall be pro-rated and pre-paid rents and security deposits shall be withheld from Seller as a credit against the Purchase Price.
16. **BROKERAGE COMMISSION.** Receiver represents that it has not been represented by a Broker, or agent. Town represents that it has not been represented by a Broker, or

agent. Seller and Buyer each agree to indemnify and hold the other harmless from and against any and all claims, demands, and costs arising out of alleged brokerage commissions, if any.

17. **DEFAULT.** In the event of Default by either party, the non-defaulting party shall have all remedies available to it in law or equity, including specific performance with any remedies sought against the Seller to be subject to Court approval.
18. **NOTICES.** Unless otherwise provided herein, all notices and other communications which may be, or are required to be given by one of the parties to the other, shall be in writing and shall be deemed to have been properly given and received on the date delivered (i) in person with written acknowledgement of receipt (ii) by deposit in the United States mail, postage prepaid, certified or registered mail, return receipt requested, or (iii) sent by a nationally recognized overnight courier, all at the following addresses (provided that either party may change its notice address by notice to the other):

IF TO BUYER: Town of Huntersville
 Attn: Gerald D. Vincent, Interim Town Manager
 Post Office Box 664
 101 Huntersville-Concord Road
 Huntersville, NC 28078

IF TO SELLER: A. Cotten Wright, Receiver for
 DCG Real Assets, LLC
 Grier Furr & Crisp, P.A.
 101 North Tryon Street, Suite 1240
 Charlotte, North Carolina 28246

19. **APPLICABLE LAW.** This Contract shall be governed by and construed in accordance with the laws of the State of North Carolina. The sole venue for any litigation hereunder shall be the Court.
20. **ENTIRE AGREEMENT.** This Contract contains the entire understanding and agreement between the parties, and supersedes all prior oral or written agreements between the parties. No amendment to this Contract shall be effective unless the same is in writing and signed by the parties hereto.
21. **BINDING EFFECT.** This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and assigns.
22. **TIME OF THE ESSENCE.** Time is of the essence with respect to all time periods and dates for performance of this Contract.
23. **COUNTERPARTS.** This contract may be executed in one or more counterparts. Signed facsimiles shall constitute originals.

24. **AUTHORITY.** Seller and Buyer represent to each other that each is authorized to enter into and perform its obligations under this Contract, subject only to Court approval for the sale of the Property, and approval of this Contract by the Board of Commissioners of the Town of Huntersville in open session as required by action of the Board of Commissioners to authorize this purchase in closed session and by North Carolina Law appropriating the funds for the purchase.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed effective as of the Effective Date.

BUYER: TOWN OF HUNTERSVILLE

By: _____
Name: Gerald D. Vincent
Title: Interim Town Manager
Date of Signing: _____

**SELLER: A. COTTEN WRIGHT, RECEIVER
FOR DCG REAL ASSETS, LLC**

By: A. Cotten Wright Receiver
Name: A. Cotten Wright
Title: Receiver
Date of Signing: 4-20-2017

EXHIBIT A

Parcel 1: 102 Old Statesville Road, Huntersville, North Carolina Mecklenburg County Tax Parcel No. 017-116-11, currently titled to DGC Commercial Fund I, LLC

Parcel 2: 109 Gilead Road, Huntersville, North Carolina; Mecklenburg County Tax Parcel No. 017-116-99, currently titled to DCG Commercial Fund I, LLC

Parcel 3: A portion of Mecklenburg County Tax Parcel No.s 017-116-18 and 017-116-43, currently titled to Polaris Properties of the Carolinas, LLC and HTCP Development One, LLC respectively.

The above parcels are generally depicted as shown below in purple:

