

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K

Current report filing

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FILER

Medalist Diversified REIT, Inc.

CIK: **1654595** | IRS No.: **000000000** | State of Incorporation: **MD** | Fiscal Year End: **1231**
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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM 8-K

CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): April 8, 2022

Medalist Diversified REIT, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Maryland
(State or other jurisdiction of incorporation
or organization)

001-38719
(Commission File Number)

47-5201540
(I.R.S. Employer
Identification No.)

**1051 E. Cary Street Suite 601
James Center Three
Richmond, VA, 23219**
(Address of principal executive offices)

(804) 344-4435
(Registrant's telephone number, including area code)

None
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

Emerging Growth Company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class

**Name of each Exchange on
Which Registered**

**Trading
Symbol(s)**

Common Stock, \$0.01 par value
8.0% Series A Cumulative Redeemable Preferred Stock, \$0.01 par value

Nasdaq Capital Market
Nasdaq Capital Market

MDRR
MDRRP

ITEM 1.01 ENTRY INTO A MATERIAL DEFINITIVE AGREEMENT.

On April 8, 2022, Medalist Diversified Holdings, L.P., the operating partnership of Medalist Diversified REIT, Inc. (the “Company”), entered into a Purchase and Sale Agreement (the “PSA”), a copy of which is filed hereto as Exhibit 10.1. Pursuant to the PSA, the Company, through its operating partnership, shall acquire a retail center property totaling approximately 79,732 square feet of gross leasable area located in Salisbury, North Carolina, commonly referred to as the Salisbury Marketplace property (“Salisbury Marketplace”), from RCC Salisbury Marketplace, LLC, a Virginia limited liability company and unaffiliated seller (the “Seller”), for a purchase price of \$10,025,000, subject to customary prorations and adjustments. The Company has made a \$100,000 earnest money deposit to the Seller, which shall become non-refundable forty-five (45) days following the execution of the PSA if the Company does not terminate the PSA prior to the expiration of such period (the “Inspection Period”). If the Company does not elect to terminate the PSA prior to the end of the Inspection Period, then the Company is required to make an additional \$50,000 nonrefundable earnest money deposit to the Seller. The closing of the acquisition of the Salisbury Marketplace is expected to occur within thirty (30) days of the expiration of the Inspection Period, subject to the Company’s right to extend the closing date by fifteen (15) days upon the delivery of an additional \$25,000 nonrefundable earnest money deposit. The Company expects to invest up to approximately \$3.2 million of equity in Salisbury Marketplace.

The PSA contains provisions, representations, warranties, covenants and indemnities that are customary and standard for the real estate industry and the purchase of a retail center property. Several conditions to closing on the acquisition remain to be satisfied, and there can be no assurance that we will complete the transaction on the general terms described above or at all.

Certain statements included in this Current Report on Form 8-K are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Forward-looking statements above include, but are not limited to, matters identified as expectations and matters with respect to the future acquisition of Salisbury Marketplace. The Company undertakes no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. For more information regarding risks and uncertainties that may affect the Company’s future results, review the Company’s filings with the Securities and Exchange Commission.

ITEM 9.01 FINANCIAL STATEMENTS AND EXHIBITS.
(d) Exhibits

Exhibit No.	Description
10.1	Purchase and Sale Agreement, dated as of April 8, 2022, by and between RCC Salisbury Marketplace, LLC and Medalist Diversified Holdings, L.P.
104	Cover Page Interactive Data File (embedded within the Inline XBRL Document)

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

MEDALIST DIVERSIFIED REIT, INC.

Dated: April 12, 2022

By: /s/ Thomas E. Messier

Thomas E. Messier

Chief Executive Officer, Chairman of the Board, Treasurer and
Secretary

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is made and entered into this 8th day of April, 2022, by and between RCC SALISBURY MARKETPLACE, LLC, a Virginia limited liability company ("Seller"), and MEDALIST DIVERSIFIED HOLDINGS, L.P., a Delaware limited partnership ("Purchaser").

WITNESSETH:

WHEREAS, Seller has offered to sell its right, title and interest in and to certain improved real property located at 2106 Statesville Blvd., Salisbury, NC 28147, commonly known as "Salisbury Marketplace," to Purchaser and Purchaser has offered to purchase such interest in and to the property from Seller; and

WHEREAS, the parties desire to provide for said purchase and sale on the terms and conditions hereinafter set forth;

NOW, THEREFORE, for and in consideration of the foregoing premises, the mutual covenants and agreements set forth herein and other good and valuable consideration, all of which each party respectively agrees constitutes sufficient consideration received at or before the execution hereof, the parties hereto do hereby agree as follows:

1. **DEFINITIONS AND MEANINGS.** In addition to any other terms whose definitions are fixed and defined by this Agreement, each of the following defined terms, when used in this Agreement with an initial capital letter, shall have the meaning ascribed thereto by this Section 1:

1.1 "Agreement" means this Purchase and Sale Agreement, together with all exhibits attached hereto.

1.2 "Closing" means the consummation of the purchase and sale contemplated by this Agreement by the deliveries required under Section 10 hereof.

1.3 "Closing Date" means the time and date, established under Subsection 10.1 hereof, when the purchase and sale contemplated by this Agreement is to be consummated, as such date may be extended by mutual agreement of the parties or pursuant to the provisions of this Agreement, provided Closing shall occur prior to 2:00 pm EST on the Closing Date or it will be deemed to occur the next business day.

1.4 "Due Diligence Items" means those documents and other items set forth on Schedule 1.4 hereof to the extent such items are in Seller's possession or control.

1.5 "Earnest Money" shall have the meaning set forth in Section 4.2.

1.6 "Escrow Agent" means GRS Title Group, 901 East Byrd Street, Suite 1510, Richmond, Virginia 23219; Attn: Michelle Rogers; Phone: (804) 486-9469; Email: mrogers@grs-title.com.

1.7 "Execution Date" means the date on which this Agreement is duly executed by both Seller and Purchaser; and such date shall be inserted in the preamble on the first page of this Agreement.

1.8 [Intentionally deleted].

1.9 [Intentionally deleted].

1.10 “**Inspection Period**” means the period of time commencing on the Execution Date and ending at 5:00 P.M., Salisbury, North Carolina time on the day which is forty-five (45) days following the Execution Date, as the same may be extended pursuant to Section 13.1.

1.11 “**Permitted Exceptions**” means, other than any Mandatory Cure Items, any Title Objections to which Purchaser fails to object or which Purchaser waives pursuant to Section 5 hereof.

1.12 “**Property**” means collectively all of the following:

(i) That certain tract or parcel of real property commonly known as Salisbury Marketplace, located in Salisbury, North Carolina, and being more particularly described in the legal description attached hereto as **Exhibit "A"** and incorporated herein by reference, together with all of Seller’s rights, interests, ways, privileges, easements, appurtenances, plants, shrubs and trees located thereon or appurtenant thereto, and all right, title and interest of Seller in and to all public and private ways abutting, adjoining or traversing said tracts or parcels of real property (collectively, the "**Land**");

(ii) all buildings, structures, improvements, equipment, fixtures, appliances, mechanical, heating, ventilating, air conditioning, plumbing and electrical systems and equipment and other improvements of any and every nature located on the Land (exclusive of personalty owned or leased by any tenant occupying any portion of the Land) (the "**Improvements**");

(iii) all personal property which is now owned or hereafter acquired by Seller prior to the Closing Date and used in connection with the ownership, operation and maintenance of the Shopping Center (as hereinafter defined) and which is located at the Shopping Center (as defined below) (exclusive of personalty owned or leased by any tenant occupying any portion of the Land) (the "**Personalty**");

(iv) all of Seller's right, title and interest in and to (a) the leases with all amendments thereto described on **Exhibit "C-1"** attached hereto and incorporated herein by reference, and (b) any other written lease or written rental, occupancy, concession or license agreement entered into by Seller after the Execution Date which affects all or any portion of the Land and the Improvements and pertains to the leasing, rental, occupancy or licensing of the Land and the Improvements, together with all rents, issues and profits therefrom and security deposits thereunder, subject to the adjustments and prorations provided herein (the "**Tenant Leases**");

(v) to the extent assignable or transferable without the consent of any third parties and without penalty or fee, all of Seller's right, title and interest in and to all warranties, guarantees and bonds from third parties (including, without limitation, contractors, subcontractors, materialmen, suppliers, manufacturers, vendors and distributors) received in connection with or relating to the Land, the Improvements or the Personalty or with respect to the performance and quality of workmanship or the quality of materials relating to any of the foregoing, to the extent in Seller’s possession or under Seller’s control (the "**Warranties**");

(vi) to the extent assignable or transferable without the consent of any third parties and without penalty or fee, all of Seller's right, title and interest in and to all permits, licenses, approvals, consents and certificates affecting the construction, ownership, occupancy, operation, maintenance, use and manner of use of the Shopping Center, including without limitation, zoning and variance approvals, special use or exception approvals or other zoning or building approvals, building permits and certificates of occupancy, issued by all governmental authorities or agencies having jurisdiction over any of the Shopping Center or the operation thereof, to the extent in Seller’s possession or under Seller’s control (the "**Permits**");

(vii) to the extent assignable or transferable without the consent of any third parties and without penalty or fee, all "as built" surveys of the Property, "as built" plans and specifications of the Improvements, building and landscape plans and specifications and blueprints and engineering and architectural drawings relating to the Shopping Center (including any plans, specifications, blueprints or drawings for tenant improvements, outparcels and future

expansions or modifications of the Shopping Center) which are now or hereafter in the possession of Seller (the "**Plans and Specifications**"); and

(viii) all of Seller's right, title and interest in and to any tenant data, telephone numbers and listings, all master keys and keys to common areas, all good will, the tradenames or fictitious names of "Salisbury Marketplace" and any other rights, privileges and/or appurtenances owned by Seller and related to or used in connection with the existing business operation of the Shopping Center (the "**Other Business Assets**").

The types or items of property described in subparagraphs (i) - (viii) above are sometimes hereinafter collectively referred to as the "**Property**." The Property is also sometimes herein referred to as the "**Shopping Center**."

1.13 "**Purchase Price**" means the amount which Purchaser shall pay to consummate the purchase and sale of the Property as provided in Subsection 3.1 of this Agreement.

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1.14 "**Title Objection**" and "**Title Objections**" mean any deeds to secure debt, mortgages, liens, financing statements, security interests, easements, leases, restrictive covenants, agreements, options, claims, clouds, encroachments, rights, taxes, assessments, mechanics' or materialmen's liens (inchoate or perfected), liens for federal or state income, estate or inheritance taxes and other encumbrances of any nature whatsoever, whether existing of record or otherwise, together with any and all matters of any kind or description, including, without limitation, matters of survey and any litigation or other proceedings affecting Seller and which affect title to the Property, or the right, power and authority of Seller to convey to Purchaser title to the Property, in accordance with the terms of this Agreement, other than the Tenant Leases.

2. **SALE AND PURCHASE.** Seller agrees to sell the Property to Purchaser on the terms and conditions contained in this Agreement, and Purchaser agrees to purchase the Property from Seller on the terms and conditions contained in this Agreement.

3. **PURCHASE PRICE.**

3.1 **Amount of Purchase Price.** The Purchase Price for the Property shall be Ten Million Twenty-Five Thousand and No/100 Dollars (\$10,025,000.00).

3.2 **Payment of Purchase Price.** On the Closing Date, Purchaser shall pay the balance of the Purchase Price to Seller in cash, federal funds check or by wire transfer of immediately available funds to an account with a Federal Reserve member bank designated by Seller, less a credit for the Earnest Money to the extent paid, and as adjusted pursuant to the adjustments and prorations provided herein.

4. **EARNEST MONEY.**

4.1 **Deposit.** Within three (3) business days following the execution of this Agreement, Purchaser shall deposit the sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) with Escrow Agent as the earnest money deposit (the "**Initial Earnest Money Deposit**"). Upon the expiration of the Inspection Period, in the event Purchaser does not terminate this Agreement pursuant to the terms hereof, the Earnest Money shall become non-refundable and shall not be returnable to the Purchaser under any circumstances except as otherwise expressly provided in this Agreement, including, without limitation, Section 12.1 below in the event of a default by Seller which remains uncured after applicable notice and cure periods. If Purchaser shall validly exercise any right or option under this Agreement to rescind, cancel or terminate this Agreement, the Earnest Money shall be immediately paid over and refunded to Purchaser in accordance with the terms and conditions of an escrow agreement to be entered into by and between Seller, Purchaser and Escrow Agent, the form of which is attached hereto as **Exhibit "D"** and incorporated herein by reference (the "**Escrow Agreement**"), in which event neither Seller nor Purchaser shall have any further rights, duties or obligations under this Agreement, except as otherwise expressly provided herein. Escrow Agent shall promptly invest the Earnest Money and disburse same in accordance with the terms, conditions and provisions of the Escrow Agreement, and interest and income earned thereon shall accrue to and become part of the Earnest Money. Purchaser shall pay any of Escrow Agent's fees and banking charges for serving as escrow agent, if any. At and in the event of Closing, Escrow Agent shall tender the Earnest Money to Seller on the Closing Date and the Earnest Money so delivered to Seller shall be applied and credited in reduction of the Purchase Price.

4.2 **Additional Earnest Money Deposit.** In the event Purchaser does not elect to terminate this Agreement prior to the expiration of the Inspection Period, within three (3) business days after the expiration of the Inspection Period, Purchaser shall deposit the additional sum of Fifty Thousand and No/100 Dollars (\$50,000.00) with Escrow Agent (the "**Additional Earnest Money Deposit**"). The Additional Earnest Money Deposit (and the Closing Extension Deposit (defined below), if any) shall be held along with the Initial Earnest Money Deposit and shall be collectively referred to as the "**Earnest Money**."

5. TITLE EXAMINATION AND OBJECTIONS.

5.1 **Title Examination.** Promptly after the Execution Date, Purchaser will order a title insurance commitment for the Property (the "**Title Commitment**") from Escrow Agent, in its capacity as a title insurance company (the "**Title Company**"), which Title Commitment shall be certified to a current date and thereafter, if Purchaser does not elect to terminate this Agreement prior to the expiration of the Inspection Period, updated prior to the Closing Date. On or before the day that is five (5) business days prior to the expiration of the Inspection Period, Purchaser may notify Seller, in writing ("**Purchaser's Title Notice**"), of any matters shown on the Title Commitment or Survey (as defined herein) to which Purchaser objects. Seller has no obligation to cure any Title Objection other than the Mandatory Cure Items (as defined below). Within three (3) business days after receipt of Purchaser's Title Notice (the "**Election Date**"), Seller shall notify Purchaser, in writing, of any Title Objections (other than the Mandatory Cure Items) which it either refuses to cure or is unable to cure in a manner acceptable to Purchaser. The absence of such notice from Seller shall be deemed to be Seller's election not to satisfy, correct or cure any objections set forth in the Purchaser's Title Notice.

5.2 **Election Not to Correct Title Objections.** In the event Seller notifies Purchaser on or before the Election Date of its election (or Seller is deemed to have elected) not to satisfy or correct any or all of the objections set forth in the Purchaser's Title Notice, Purchaser shall, by notice to Seller within two (2) business days after the Election Date, elect one of the following:

5.2.1 To waive such Title Objection(s) identified in Purchaser's Title Notice and to close the transaction in accordance with the terms of this Agreement with no abatement to the Purchase Price, in which event such Title Objection(s) shall be considered Permitted Exceptions; or

5.2.2 To terminate this Agreement by notice to Seller and to receive a complete refund of all the Earnest Money in accordance with the terms hereof, together with all interest accrued thereon (less and except the sum of One Hundred Dollars (\$100), which shall be paid to Seller as consideration for entering into this Agreement), in which event neither Seller nor Purchaser shall have any further rights, duties or obligations under this Agreement, except as otherwise expressly provided herein. If Purchaser fails to give a written notice of termination within the time required herein, it shall be conclusively deemed that Purchaser has elected to waive the Title Objections (other than the Mandatory Cure Items) not so corrected or removed, and accept them as Permitted Exceptions.

5.3 **Mandatory Cure Items.** Notwithstanding anything herein to the contrary, Seller shall be obligated to remove or discharge the following: any deed of trust, deed to secure debt, mortgage, financing statements, and security interests entered into or granted by Seller and encumbering the Property, and any mechanics' liens arising from work performed by Seller (and not any third party or tenant) and real estate tax arrearages with respect to the Land and Improvements which a tenant is not required to pay directly to the taxing authority under its lease and encumbering the Property (collectively, the "**Mandatory Cure Items**"); provided, however, that Seller shall not be obligated to cure any lien or encumbrance caused by or arising from Purchaser's inspections of the Property.

5.4 Additional Title Matters. In the event that any update(s) of the Title Commitment or Survey delivered after the date that Purchaser's Title Notice is required to be made under Section 5.1 discloses any matters not set forth in and first arising after the date of the original Title Commitment or the Survey which adversely affect the marketability of title to the Property for its current use, then no later than five (5) business days after Purchaser's receipt of the updated Title Commitment or update to the Survey, as applicable, Purchaser shall give written notice (the "**Additional Title Notice**") to Seller of any such Title Objection disapproved by Purchaser. If Purchaser does not deliver the Additional Title Notice to Seller within the time-period set forth above, then Purchaser shall be deemed to have waived any objections to such matters disclosed in the updated Title Commitment or update of the Survey, as applicable, and such matters shall be considered Permitted Exceptions. In no event shall Seller intentionally cause any matters to affect title to the Property after the Execution Date without Purchaser's prior written consent, not to be unreasonably withheld, conditioned or delayed. Within three (3) business days after receiving the Additional Title Notice pursuant to this section, Seller will notify Purchaser in writing which matters objected to in the Additional Title Notice, if any, Seller will cure, satisfy or remove and Seller's failure to so notify Purchaser will be deemed to be Seller's notice that it will not cure, satisfy or remove any matters raised in the Additional Title Notice objected to by Purchaser. In the event Seller elects to cure less than all of the matters objected to in the Additional Title Notice, then Purchaser shall have the option to: (i) waive such Title Objection(s) identified in the Additional Title Notice and to close the transaction in accordance with the terms of this Agreement with no abatement to the Purchase Price, in which event such Title Objection(s) shall be considered Permitted Exceptions, or (ii) terminate this Agreement by notice to Seller and to receive a complete refund of all the Earnest Money in accordance with the terms hereof, together with all interest accrued thereon (less and except the sum of One Hundred Dollars (\$100), which shall be paid to Seller as consideration for entering into this Agreement), in which event neither Seller nor Purchaser shall have any further rights, duties or obligations under this Agreement, except as otherwise expressly provided herein, such option to be exercised within two (2) business days following the date of Seller's actual or deemed notification that Seller elects to cure less than all of the matters properly objected to in the Additional Title Notice. If Purchaser fails to give a written notice of termination within the time required herein, it shall be conclusively deemed that Purchaser has elected to waive the Title Objection(s) identified in the Additional Title Notice not so corrected or removed, and accept them as Permitted Exceptions.

6. SELLER'S REPRESENTATIONS AND WARRANTIES. As used in this Section 6, the phrase "to the extent of Seller's actual knowledge" shall mean the actual knowledge of Roby Hackney, asset manager for Seller ("**Seller's Representative**"). There shall be no duty imposed or implied to investigate, inspect or audit any such matters and no implied, imputed or constructive knowledge of Seller's Representative, and there shall be no personal liability on the part of Seller's Representative. To the extent Purchaser has or acquires actual knowledge prior to the Closing Date that these representations and warranties are inaccurate, untrue or incorrect in any material way and thereafter elects to consummate the transactions contemplated by this Agreement, such representations and warranties shall be deemed modified to reflect Purchaser's knowledge. If at any time Seller discovers that any of warranties or representations set forth herein is untrue in any material respect, then Seller shall notify Purchaser of such discovery, in which event such warranty or representation shall be deemed modified to the extent described in such notice. Upon Seller giving written notice to Purchaser of the modification of any such warranty or representation that was untrue in any material respect, then, notwithstanding any other provision of this Agreement, Purchaser shall have five (5) days after receipt of such notice to notify Seller of Purchaser's election to terminate the Agreement, provided, however, notwithstanding if any provision in this Agreement to the contrary, that (a) if a change in facts after the date hereof causes the representations made in the Section 6.12 to be untrue (e.g., a lease expires, a tenant defaults or vacates, etc.), Seller has no liability and Purchaser will proceed to Closing, it being agreed that Seller shall have no liability for any tenant default and Seller does not guaranty the obligations of any tenant under the respective Tenant Leases; (b) if a change in facts after the date hereof causes the representation made in Section 6.7 or 6.8 to be untrue, Seller shall have the right to adjourn the Closing for a period not to exceed thirty (30) days to cure such breach, provided that if Seller fails to cure such breach prior to Closing (as may be extended) Purchaser shall have the right, as its sole and exclusive remedy, to terminate this Agreement and receive a refund of the Earnest Money; and (c) if a change in facts after the date hereof causes the representation made in Section 6.10 to be untrue, the provisions of Section 11.2 shall govern (collectively, (a)-(c) being referred to herein as the "**Permitted Variances**"). If Purchaser elects to terminate the Agreement hereunder, Purchaser shall be entitled to receive a complete refund of all the Earnest Money in accordance with the terms hereof, together with all interest accrued thereon (less and except the sum of One Hundred Dollars (\$100), which shall be paid to Seller as consideration for entering into this Agreement), and neither party shall thereafter have any rights or obligations to the other hereunder, other than pursuant to any provision hereof which expressly survives the termination of this Agreement, except that in the event such untrue warranty or representation was the result of intentional fraud on the part of Seller, Purchaser will have the right to have its actual third party out of pocket expenses (not to exceed \$50,000) incurred in connection with the transaction that is the subject matter of this Agreement reimbursed by Seller. If Purchaser fails to give a written notice of termination within the time required herein, it shall be conclusively deemed that Purchaser

has elected to proceed with the transaction contemplated by this Agreement without any abatement to the Purchase Price and/or claim against Seller. As an inducement to Purchaser to enter into this Agreement and to purchase the Property, Seller represents and warrants to Purchaser, as follows:

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6.1 **Authority.** Seller has the right, power and authority to enter into this Agreement and to consummate the transactions contemplated herein. Seller is a limited liability company that is duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia and is qualified to transact business in the State of North Carolina.

6.2 **Execution and Delivery.** The execution and delivery of this Agreement, and the performance and observance by Seller of Seller's duties and obligations under this Agreement and of all other acts necessary and appropriate for the consummation of the transactions contemplated herein, are not in violation of (i) any contract, agreement or other instrument (including, without limitation, any lease, license, covenant, commitment or understanding) to which Seller is a party or by which the Property is bound, (ii) any law, rule, regulation, notice, order decree or judgment of any nature to which Seller is a party or by which the Property is bound, or (iii) the governing agreement(s) of Seller.

6.3 **Rights of Third Parties.** To Seller's knowledge, Seller is not a party to any outstanding right of first refusal, right of reverter or option to purchase relating to the Property or any interest therein which has not been waived or expired by its terms. Subject to the Tenant Leases, Seller has enjoyed the continuous and uninterrupted quiet possession, use and operation of the Property, without material complaint or objection by any person during the term of Seller's ownership of the Property.

6.4 **Non-Foreign Status.** Seller is not a "foreign person" within the meaning of Section 1445(f) of the Internal Revenue Code of 1986, as amended (the "**Code**").

6.5 **OFAC Compliance.** Neither Seller nor to Seller's knowledge any of its partners, members, shareholders or other equity owners is, nor will they become, a person or entity with whom United States persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("**OFAC**") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including, without limitation, the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action, and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities.

6.6 **Governmental Authority.** No authorization, consent or approval of any governmental authority (including, without limitation, courts) is required for the execution and delivery by Seller of this Agreement or the performance of its obligations hereunder.

6.7 **Claims.** Seller has not received any written notice within the last twelve (12) months of any action, suit or proceeding pending or threatened in writing against, by or affecting Seller's right to transfer the Property or the title of the Property and which remains uncured or unresolved.

6.8 **Compliance with Laws.** Seller has received no written notice within the last twelve (12) months of the material violation of or failure to comply with any law, ordinance, rule, regulation or requirement which is applicable to the Property, which remains uncured.

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6.9 **Solvency.** Seller has not (a) made a general assignment for the benefit of creditors, (b) filed any voluntary petition in bankruptcy or, to Seller's knowledge, suffered the filing of an involuntary petition by Seller's creditors, (c) suffered the appointment of a receiver to take possession of all or substantially all of Seller's assets, (d) suffered the attachment or other

judicial seizure of all, or substantially all, of Seller's assets, (e) admitted in writing its inability to pay its debts as they come due, or (f) made an offer of settlement, extension or composition to its creditors generally.

6.10 **Condemnation.** Seller has not received any written notice within the last twelve (12) months of any pending or, to Seller's knowledge, threatened action by any governmental authority or agency having the power of condemnation or eminent domain, which might result in all or any portion of the Property or any interest therein being taken by eminent domain, condemnation or conveyed in lieu thereof.

6.11 **Service Contracts.** Except as set forth in Schedule 6.11 attached hereto and incorporated herein by reference and the Tenant Leases, there are no management, maintenance, service or other contracts or agreements (oral or written), specifically including but not limited to contracts or other agreements with vendors for any equipment, property or services affecting the Property or the operation thereof entered into by or binding upon Seller for which Purchaser shall, at or after the Closing, have any obligation or liability whatsoever (the "**Service Contracts**"). Seller will terminate its property management agreement at Closing. Except as set forth in Schedule 6.11, Seller has not, within the last year, received any written notice of any default under any Service Contract or other such contract or agreement that has not been cured or waived.

6.12 **Leases.** The Tenant Leases described on the rent roll attached hereto as **Exhibit "C-1"** attached hereto and incorporated herein by reference constitute and accurately reflect the only Tenant Leases affecting the Property or any portion thereof as of the Execution Date. Except as set forth on **Exhibit "C-2"** or as otherwise set forth in the Tenants Leases, there are no unpaid tenant improvement allowances, unpaid leasing commissions and/or outstanding free rent periods with respect to the current term of the Tenant Leases.

6.13 **Intentionally Deleted.**

6.14 **Intentionally Deleted.**

6.15 **Closing.** Except with respect to any representation or warranty for which Seller has given Purchaser notice of a changed condition and the Permitted Variances, all of the representations and warranties made herein by Seller are true and correct as of the Execution Date and shall be true and correct in all material respects as of the Closing Date.

6.16 **No Other Warranties and Representations.** Except as expressly stated in this Section 6, Seller makes no representation or warranty as to the truth, accuracy or completeness of any materials, data or information delivered by Seller or its brokers or agents to Purchaser in connection with the transaction contemplated hereby. Purchaser acknowledges and agrees that all materials, data and information delivered by Seller to Purchaser in connection with the transaction contemplated herein are provided to Purchaser as a convenience only and that any reliance on or use of such materials, data or information by Purchaser shall be at the sole risk of Purchaser, except as otherwise expressly stated herein. Neither Seller, nor any affiliate of Seller, nor the person or entity which prepared any report or reports delivered by Seller to Purchaser, shall have any liability to Purchaser for any inaccuracy in or omission from any such reports.

6.17 **SELLER'S LIMITATION OF LIABILITY.** All representations and warranties made in this Agreement by Seller shall survive Closing for a period of nine (9) months (the "**Survival Period**"), and upon expiration thereof shall be of no further force or effect except to the extent that with respect to any particular alleged breach, Purchaser gives Seller written notice on or before the expiration of the Survival Period of such alleged breach with reasonable detail as to the nature of such breach and files an action against Seller with respect thereto within thirty (30) days after the giving of such notice. Notwithstanding anything to the contrary contained in this Section 6.17, Seller shall have no liability to Purchaser for the breach of any representation or warranty made in this Agreement unless the loss resulting from Seller's breach of its representations and warranties exceeds, in the aggregate, Thirty Thousand and No/100 Dollars (\$30,000.00) the "**Threshold Amount**", in which event Seller shall be liable for each dollar of damages in excess of the Threshold Amount resulting from the breach or breaches of its representations and warranties; provided, however, in no event shall Seller's total liability for any such breach or breaches exceed, in the aggregate, Three Hundred Thousand and No/100 Dollars (\$300,000.00) (the "**Damage Cap**"). In no event shall any claim for a breach of any representation or warranty of either party be actionable or payable if the breach in question results from, or is based on, a condition, state of facts or other matter which was known to the non-breaching party prior to Closing or which was contained in the Due Diligence Items or in any other of Seller's files, books or records made available to Purchaser

for inspection or could have been discovered by Purchaser with the application of reasonable efforts to inspect the Property prior to Closing. Seller will not be liable or responsible in any circumstances for any consequential or punitive damages or lost profits, and Purchaser hereby releases and waives all claims for such damages and lost profits. If, prior to the expiration of the Survival Period, Purchaser has not notified Seller, in writing, of any claim Purchaser has against Seller for breach of any of Seller's representations and warranties and commenced an action against Seller within thirty (30) days of giving such notice, Purchaser will be forever barred and precluded from making a claim based upon any breach of the Seller's representations and warranties, and Seller will be deemed released from all liabilities and obligations with respect thereto.

7. **PURCHASER'S REPRESENTATIONS AND WARRANTIES.** As an inducement to Seller to enter into this Agreement and to sell the Property, Purchaser represents and warrants to Seller, as follows:

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7.1 **Authority.** Purchaser has the right, power and authority to enter into this Agreement and to consummate the transactions contemplated herein. Purchaser is a validly created limited partnership under the laws of the State of Delaware that is qualified to do business in the State of North Carolina.

7.2 **Execution and Delivery.** The execution and delivery of this Agreement and the performance and observance by Purchaser of Purchaser's duties and obligations under this Agreement and of all other acts necessary and appropriate for the consummation of the transactions contemplated herein, are consistent with and not in violation of, and will not create any adverse condition, default or breach under, (i) any contract, agreement or other instrument (including, without limitation, any lease, license, covenant, commitment or understanding) to which Purchaser or its assets or properties are a party or are bound, (ii) any law, rule, regulation, notice, order, decree or judgment of any nature to which Purchaser or its assets or properties are a party or are bound, or (iii) the articles of incorporation, by-laws and shareholders' agreements (if any) of Purchaser.

7.3 **Non-Foreign Status.** Purchaser is not a "foreign person" within the meaning of the Code.

7.4 **OFAC Compliance.** Neither Purchaser nor any of its affiliates, nor any of their respective partners, members, shareholders or other equity owners, and none of their respective employees, officers, directors, representatives or agents is, nor will they become, a person or entity with whom United States persons or entities are restricted from doing business under OFAC regulations (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including, without limitation, the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action, and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities.

7.5 **DISCLAIMER.** EXCEPT AS STATED IN THIS AGREEMENT AND IN THE SPECIAL WARRANTY DEED TO BE DELIVERED BY SELLER TO PURCHASER AT CLOSING, IN CONNECTION WITH THE CONVEYANCE OF THE PROPERTY AS PROVIDED FOR HEREIN, SELLER HAS NOT MADE, AND DOES NOT MAKE, ANY REPRESENTATIONS, WARRANTIES OR COVENANTS OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE QUALITY OF CONDITION OF THE PROPERTY, THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH PURCHASER MAY CONDUCT THEREON, COMPLIANCE BY THE PROPERTY WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND SPECIFICALLY, SELLER DOES NOT MAKE ANY REPRESENTATIONS REGARDING HAZARDOUS SUBSTANCES.

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7.6 **"AS IS" SALE.** EXCEPT AS SET FORTH IN THIS AGREEMENT, PURCHASER AGREES TO ACCEPT THE PROPERTY AT THE CLOSING WITH THE PROPERTY BEING IN ITS PRESENT AS IS CONDITION WITH ALL FAULTS. PURCHASER ACKNOWLEDGES AND AGREES THAT PURCHASER IS EXPERIENCED IN THE

OWNERSHIP, DEVELOPMENT AND/OR OPERATION OF PROPERTIES SIMILAR TO THE PROPERTY AND THAT PURCHASER PRIOR TO THE CLOSING WILL HAVE INSPECTED THE PROPERTY TO ITS SATISFACTION AND IS QUALIFIED TO MAKE SUCH INSPECTION. PURCHASER ACKNOWLEDGES THAT IT IS FULLY RELYING ON PURCHASER'S (OR PURCHASER'S REPRESENTATIVES') INSPECTIONS OF THE PROPERTY AND, EXCEPT FOR SELLER'S REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS AGREEMENT AND IN THE SPECIAL WARRANTY DEED TO BE DELIVERED BY SELLER TO PURCHASER AT CLOSING, NOT UPON ANY STATEMENT (ORAL OR WRITTEN) WHICH MAY HAVE BEEN MADE OR MAY BE MADE (OR PURPORTEDLY MADE) BY SELLER OR ANY OF ITS REPRESENTATIVES. PURCHASER ACKNOWLEDGES THAT PURCHASER HAS (OR PURCHASER'S REPRESENTATIVES HAD), OR PRIOR TO THE CLOSING WILL HAVE, THOROUGHLY INSPECTED AND EXAMINED THE PROPERTY TO THE EXTENT DEEMED NECESSARY BY PURCHASER IN ORDER TO ENABLE PURCHASER TO EVALUATE THE CONDITION OF THE PROPERTY AND ALL OTHER ASPECTS OF THE PROPERTY (INCLUDING, BUT NOT LIMITED TO, THE ENVIRONMENTAL CONDITION OF THE PROPERTY); AND PURCHASER ACKNOWLEDGES THAT, EXCEPT AS SET FORTH IN THIS AGREEMENT, PURCHASER IS RELYING SOLELY UPON ITS OWN (OR ITS REPRESENTATIVES') INSPECTION, EXAMINATION AND EVALUATION OF THE PROPERTY. EXCEPT AS SET FORTH IN THIS AGREEMENT, PURCHASER HEREBY EXPRESSLY ASSUMES ALL RISKS, LIABILITIES, CLAIMS, DAMAGES AND COSTS (AND AGREES THAT SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL OR OTHER DAMAGES) RESULTING OR ARISING FROM OR RELATED TO THE OWNERSHIP, USE, CONDITION, LOCATION, MAINTENANCE, REPAIR OR OPERATION OF THE PROPERTY ATTRIBUTABLE TO THE PERIOD FROM AND AFTER THE DATE OF CLOSING. PURCHASER EXPRESSLY WAIVES (TO THE EXTENT ALLOWED BY APPLICABLE LAW) ANY CLAIMS UNDER FEDERAL, STATE OR OTHER LAW THAT PURCHASER MIGHT OTHERWISE HAVE AGAINST SELLER RELATING TO THE USE, CHARACTERISTICS OR CONDITION OF THE PROPERTY EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED BY THIS AGREEMENT OR IN THE SPECIAL WARRANTY DEED TO BE DELIVERED BY SELLER TO PURCHASER AT CLOSING.

7.7 **ENVIRONMENTAL MATTERS.** PURCHASER REPRESENTS TO SELLER THAT PURCHASER WILL CONDUCT PRIOR TO CLOSING SUCH INVESTIGATIONS OF THE PROPERTY REGARDING THE ENVIRONMENTAL CONDITIONS THEREOF AS PURCHASER DEEMS NECESSARY OR DESIRABLE TO SATISFY ITSELF AS TO THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY HAZARDOUS OR TOXIC SUBSTANCES ON OR DISCHARGED FROM THE PROPERTY, AND WILL RELY SOLELY UPON SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF SELLER OR ITS AGENTS OR EMPLOYEES WITH RESPECT THERETO. UPON CLOSING, PURCHASER SHALL ASSUME THE RISK THAT ADVERSE ENVIRONMENTAL CONDITIONS MAY NOT HAVE BEEN REVEALED BY PURCHASER'S INVESTIGATIONS AND PURCHASER, UPON CLOSING, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELEASED, SELLER (AND SELLER'S PARTNERS AND SUCH PARTNERS' OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS) FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT), LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES ACTUALLY INCURRED) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, WHICH PURCHASER MIGHT HAVE ASSERTED OR ALLEGED AGAINST SELLER (AND SELLER'S PARTNERS AND SUCH PARTNERS' OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS) AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT ADVERSE ENVIRONMENTAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS REGARDING THE ENVIRONMENTAL CONDITION OF THE PROPERTY. NOTWITHSTANDING THE FOREGOING, HOWEVER, PURCHASER SHALL NOT AND HEREBY DOES NOT RELEASE SELLER (OR SELLER'S PARTNERS OR SUCH PARTNERS' OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS) FROM ANY OF SUCH CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT), LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES ACTUALLY INCURRED) WHICH PURCHASER MIGHT ASSERT OR ALLEGE AGAINST SELLER (AND SELLER'S PARTNERS AND SUCH PARTNERS' OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS) AT ANY TIME BY REASON OF OR ARISING OUT OF ANY FRAUD OR INTENTIONAL MISREPRESENTATION BY SELLER (OR ANY OF SELLER'S PARTNERS OR SUCH PARTNERS' OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS).

8. **COVENANTS OF SELLER.** As a material inducement to Purchaser to enter into this Agreement and to purchase the Property, Seller hereby covenants unto Purchaser the following:

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8.1 **Access to Property.** Purchaser, upon one (1) business day's notice to Seller, and subject to the rights of tenants under the Tenant Leases, shall have reasonable access to the Property at all times subsequent to the date of execution of this Agreement and prior to its termination, with full right to, at Purchaser's sole cost and expense, (i) inspect the Property; and (ii) to conduct all non-invasive tests thereon, including, but not limited to, surveys, a phase I environmental site assessment and property condition inspection, with respect thereto as Purchaser, its counsel, licensed engineers, surveyors or other representatives may deem necessary or desirable. Any entry on or to the Property by provisions hereof shall be at the risk of Purchaser, who hereby agrees not to cause damage to the Property and indemnifies Seller from any damage caused thereby; provided, however, and notwithstanding the foregoing, that Purchaser shall not be liable for any pre-existing condition of the Property merely discovered (and not aggravated) by Purchaser or its representatives. In no event shall Purchaser have the right to conduct any invasive testing on the Property, without the prior written consent of Seller which may be withheld in Seller's sole discretion. In the event Purchaser wishes to conduct tenant interviews, Purchaser shall provide Seller with written notice not less than forty-eight (48) hours prior to the proposed time for such tenant interview. Seller shall have the right to have a representative present during any such tenant interview. In the event Purchaser elects to terminate this Agreement prior to the expiration of the Inspection Period or if the Purchaser fails to close for any reason (other than Seller's default), if requested by Seller, Purchaser shall assign and deliver to Seller, without any cost or expense to Seller, all third party reports obtained by Purchaser in connection with its review and inspection of the Property. Purchaser agrees that its access to the Property shall be afforded in such a manner as not to interfere with the businesses or operations of Seller, any tenant under the Tenant Leases, or any of their respective customers, suppliers or distributors. Purchaser shall indemnify Seller for any loss or damage, including court costs and reasonable attorneys' fees, incurred by Seller due to Purchaser's inspection of the Property hereunder; provided, however, and notwithstanding the foregoing, that Purchaser shall not be liable for any pre-existing condition of the Property merely discovered (and not aggravated) by Purchaser or its representatives. Purchaser shall promptly restore the Property to its condition existing prior to the commencement of such activities which disturb or alter such Property. Furthermore, Purchaser agrees to maintain and/or cause any of its representatives or agents conducting on the Property any surveys, tests, investigations, analysis or assessments pursuant to this Section 8.1 to maintain and have in effect workers' compensation insurance required by law, with statutory limits of coverage, and commercial general liability insurance with (i) all risk coverage (ii) waiver of subrogation, and (iii) limits of not less than Two Million Dollars (\$2,000,000) for personal injury, including bodily injury and death, and property damage. The terms of this Section 8.1 related to Purchaser's obligations to indemnify Seller for any loss or damage, to restore the Property and to assign the third party reports shall survive the termination of this Agreement.

8.2 **No Pending Legal Matters.** If Seller receives any written notice, or otherwise acquires knowledge, of the commencement of any legal action or notice from any governmental or quasi-governmental authority materially, adversely affecting the Property, Seller agrees to promptly provide written notice of same to Purchaser.

8.3 **Intentionally Deleted.**

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8.4 **Conducting Business.** Seller shall operate and maintain the Shopping Center through and including the Closing Date in a manner consistent with its past practices and in accordance with the provisions of this Agreement, provided Seller is under no obligation to make any capital repairs or improvements to the Property. Seller shall, promptly upon receiving any notice or knowledge of any material damage or destruction to the Property, give Purchaser notice thereof. From and after the Execution Date and continuing through and until the Closing Date, Seller, at Seller's cost and expense, shall maintain in effect its present hazard and public liability insurance policies. Prior to the expiration of the Inspection Period, Seller shall have the right to enter into any new lease or extend, renew or materially modify any existing Tenant Lease without obtaining Purchaser's prior written consent. In such event, Seller, shall, however, deliver a copy of the proposed new lease or extension, renewal or other modification agreement to Purchaser at least five (5) business days prior to the expiration of the Inspection Period, together with an estimate of the tenant allowances, leasing commissions, tenant improvements costs and other out-of-pocket costs and

expenses (collectively, "**Leasing Costs**") estimated to be incurred in connection with such transaction. Seller has disclosed to Purchaser that it has entered into an extension of the Food Lion lease (the "**Food Lion Lease Amendment**") with the intent of executing such extension on or prior to the Closing Date. Notwithstanding anything contained herein to the contrary, Seller shall be responsible for the Leasing Costs with respect to the Food Lion Lease Amendment and shall pay such costs at Closing, if due, or otherwise provide Purchaser with a credit at Closing in the amount of such Leasing Costs. Following the Inspection Period, Seller shall not enter into any new lease or extend, renew or materially modify any existing Tenant Lease without obtaining Purchaser's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. At the Closing, Purchaser shall reimburse Seller for all actual out-of-pocket Leasing Costs incurred by Seller with respect to any such new Lease/extension/renewal or modification, and shall assume all unperformed liabilities and obligations of Seller with respect to such transactions pursuant to the assignment and assumption of Tenant Leases referred to in Section 10.2.4 hereof.

8.5 **Deliveries.** To the extent not already provided to Purchaser prior to the Execution Date, Seller covenants and agrees to deliver the Due Diligence Items to Purchaser on or before the Execution Date, provided such materials are delivered without representation or warranty. Such delivery may be effected by making some or all of the Due Diligence Items electronically available to Purchaser via an FTP website.

8.6 **Tenant Estoppels.** Seller shall use commercially reasonable efforts to provide estoppel certificates ("**Tenant Estoppels**") dated prior to the Closing Date from tenants under the Tenant Leases. The Tenant Estoppels shall be substantially in the form of **Schedule 8.6** attached hereto and made a part hereof; provided, however, that any tenant shall be permitted to replace such form and deliver as its Tenant Estoppel, if applicable, (x) the form required pursuant to its Tenant Lease or (y) the form customarily provided by such tenant. It shall be a condition to Purchaser's obligation to Close under this Agreement that Seller deliver to Purchaser not less than three (3) business days prior to the Closing Date, Tenant Estoppels executed by the applicable tenants (i) under the Tenant Leases commonly known as Food Lion, CitiTrends and Family Dollar (each, a "**Major Tenant**"), and (ii) occupying fifty percent (50%) of the occupied leasable square footage in the Shopping Center, excluding the space occupied by the Major Tenants (the "**Required Estoppels**"). Seller's delivery of the Required Estoppels shall be a condition precedent to Purchaser's obligation to close the transaction contemplated by this Agreement; provided, however, if Seller fails to deliver any Required Estoppels such failure shall not constitute a default by Seller. In the event Seller fails to deliver the Required Estoppels to Purchaser prior to the Closing Date (as may be extended), Purchaser's sole remedy shall be to terminate this Agreement by written notice to Seller and upon such termination, the Earnest Money shall be refunded to Purchaser (less and except the sum of One Hundred Dollars (\$100) which shall be paid to Seller as consideration for entering into this Agreement) and neither Seller nor Purchaser shall have any further liability hereunder except as may specifically survive the termination of this Agreement. In the event any tenant delivers its Tenant Estoppel more than thirty (30) days prior to the Closing Date, Seller shall have no obligation to either request an updated Tenant Estoppel from any such tenant and/or deliver another Tenant Estoppel from such tenant dated a date that is within thirty (30) days of the Closing Date. Seller will prepare the draft Tenant Estoppels for Purchaser's review and Purchaser shall provide any comments to the same within three (3) business days following receipt of such draft Tenant Estoppels. Seller shall have the right to extend Closing in its sole discretion by up to ten (10) business days for the purpose of obtaining the Required Estoppels.

8.7 **Estoppels for Covenants, Easements, etc.** Seller shall use commercially reasonable efforts to provide prior to the Closing Date an estoppel certificate prior to Closing, in form and substance reasonably acceptable to Purchaser, from all parties to any reciprocal easement agreements, declarations of covenants, conditions, and restrictions, or similar agreements; provided, however, (i) Purchaser is responsible for preparing the estoppel certificates and providing Seller with an address for the recipient of such estoppel, (ii) delivery of any such estoppel shall not be a condition precedent to Purchaser's obligation to close the transaction contemplated by this Agreement and (iii) in the event any such party delivers an estoppel more than thirty (30) days prior to the Closing Date, Seller shall have no obligation to either request an updated estoppel from any such party and/or deliver another estoppel from such party dated a date that is within thirty (30) days of the Closing Date.

8.8 **Service Contracts.** Prior to the expiration of the Inspection Period, Purchaser shall notify Seller of any Service Contract which Purchaser wishes to assume as of the Closing, in Purchaser's sole and absolute discretion. Seller shall terminate all other Service Contracts at Seller's sole cost and expense; provided, however, that if any such Service Contract does not permit Seller to terminate same as of the Closing Date, Purchaser shall assume all obligations thereunder until the effective date of the termination, but shall have no liability with regard to events occurring prior to the Closing Date. If Purchaser does not provide such notice to Seller, Purchaser shall be deemed to have elected to assume all Service Contracts.

8.9 **Monument Sign Replacement and Parking Lot Work.** Subject to the provisions below in this Section 8.9, Seller is responsible for completing at Seller's sole cost and expense and in a lien free manner the Landlord's Work as set forth in the Food Lion Fifth Lease Modification Agreement dated April 6, 2022 (collectively, the "**Work**"). Seller shall obtain all required lien waivers reasonably required by the Title Company in connection with the final policy of title insurance to be issued at Closing evidencing that all Work which has been completed as of Closing has been paid for. Notwithstanding the foregoing provisions to the contrary, in the event the Work has not been completed as of Closing, (i) Seller shall assign to Purchaser and Purchaser shall assume at Closing the construction contract(s) related to the uncompleted portion of the Work (the "**Work Contracts**"), (ii) Seller shall credit Purchaser (against the Purchase Price) for the unpaid amounts owed under the Work Contracts, and (iii) Purchaser shall be solely responsible for performing the uncompleted Work and paying to the contractor(s) thereunder following Closing.

8.10 **SNDAs.** At Purchaser's request and together with the Tenant Estoppels, Seller agrees to submit to the SNDA Tenants (defined below) and request such SNDA Tenants to execute a subordination, attornment and non-disturbance agreement (an "**SNDA**"). If Purchaser desires to request SNDAs, Purchaser shall prepare the SNDAs at Purchaser's sole cost and expense and provide them to Seller for distribution with the Tenant Estoppels. Seller shall have no other obligations with respect to any such SNDAs. The inability of Purchaser to obtain any SNDA from any SNDA Tenant shall in no event affect Purchaser's obligations to perform as required pursuant to the terms and conditions of this Agreement, it being acknowledged and agreed that the delivery of an SNDA from the SNDA Tenants is not a condition precedent to Purchaser's obligations to close hereunder. For purposes of this Section 8.10, the "**SNDA Tenants**" shall mean each tenant for whom Purchaser's lender requires an SNDA. Purchaser will deliver draft SNDAs to Seller for each SNDA Tenant within thirty (30) days after the Execution Date. Seller agrees to submit to the SNDA Tenants the Purchaser-completed draft SNDAs within two (2) business days following receipt of all completed SNDAs from Purchaser and Purchaser's request to submit the same to the SNDA Tenants..

9. SURVEY AND LEGAL DESCRIPTION.

9.1 **Surveys.** Promptly after the Execution Date, Purchaser may, at Purchaser's expense, have the Property surveyed to ALTA standards as determined by Purchaser (or its lender) by land surveyors of Purchaser's choice, registered as such in the State of North Carolina. Upon Seller's request, Purchaser shall deliver a PDF copy of such survey (the "**Survey**") to Seller.

9.2 **Legal Description.** For purposes of the special warranty deed and other documents to be delivered to Purchaser by Seller at Closing, the legal descriptions of the Property shall be as set forth on **Exhibit "A"**. To the extent that the Survey describes the Property in any way different than said legal description, the Survey legal description will be conveyed by quitclaim deed to be delivered at Closing with no adjustment to the Purchase Price, provided Purchaser shall cover all recording costs and charges related to the quitclaim deed.

10. CLOSING.

10.1 **Closing Date.** The Closing shall be held through deliveries to Escrow Agent (with no physical attendance by Purchaser or Seller required) on or before the date which is thirty (30) days following the expiration of the Inspection Period. Notwithstanding the foregoing, Purchaser shall have the right to extend the Closing Date for one (1) additional period of fifteen (15) days by delivering to the Escrow Agent the sum of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) (the "**Closing Extension Deposit**").

10.2 **Deliveries At Closing.** On the Closing Date, the Closing shall occur as follows, subject to satisfaction of all of the terms and conditions of this Agreement:

10.2.1 Seller shall convey the Property to Purchaser (subject to the Permitted Exceptions), by delivering to Purchaser (i) a North Carolina special warranty deed in the form attached hereto as Schedule 10.2.1, conveying the Property to Purchaser pursuant to the legal description attached hereto as **Exhibit "A"**, and, if applicable, (ii) a quitclaim deed in form reasonably acceptable to Purchaser and Seller, conveying the Property to Purchaser pursuant to the legal description to be drawn from the Survey.

10.2.2 Seller shall deliver to Purchaser an owner's affidavit in a form in the form attached hereto as Schedule 10.2.2.

10.2.3 Seller shall deliver to Purchaser a certificate and affidavit of non-foreign status in a form satisfying the requirements of the foreign investors real property tax act ("**FIRPTA**").

10.2.4 Seller shall execute and deliver to Purchaser a bill of sale and assignment in the form attached hereto as Schedule 10.2.4 (the "**Bill of Sale and Assignment**"), which shall be countersigned by Purchaser. By executing and delivering the Bill of Sale and Assignment, Seller shall convey to Purchaser the Personalty (subject only to the Permitted Exceptions).

10.2.5 Seller shall execute and deliver to Purchaser a general assignment in the form attached hereto as Schedule 10.2.5 (the "**General Assignment**"), which shall be countersigned by Purchaser. By executing and delivering the General Assignment, Seller shall assign to Purchaser the Warranties, the Permits, the Service Contracts (except for those that Purchaser has elected to terminate), the Plans and Specifications and the Other Business Assets.

10.2.6 Seller shall execute and deliver to Purchaser an assignment and assumption of leases in the form attached hereto as Schedule 10.2.6 (the "**Lease Assignment**"), which shall be countersigned by Purchaser. By executing and delivering the Lease Assignment, Seller shall assign to Purchaser the Tenant Leases.

10.2.7 Seller and Purchaser shall execute and deliver a closing statement in form and substance reasonably satisfactory to both Seller and Purchaser setting forth and describing the Adjustments required under and described in Subsection 10.4 hereof and such other matters reasonably required by Purchaser and reasonably approved by Seller (the "**Closing Statement**").

10.2.8 Seller shall execute and deliver to Purchaser a letter (or letters) addressed to the tenants under the Tenant Leases in the form attached hereto as Schedule 10.2.8, to be delivered to the tenants by Purchaser following Closing.

10.2.9 Seller shall execute and deliver to Purchaser a letter (or letters) addressed to the vendors under the Service Contracts not terminated in accordance with this Agreement in the form attached hereto as Schedule 10.2.9.

10.2.10 Seller shall provide Purchaser with a certificate dated the Closing Date stating that all of the representations and warranties of Seller contained in Section 6 hereof are true and correct as of the date such representations and warranties are made and, in all material respects, as of the Closing Date, except as to those matters with respect to the representations and warranties made herein by Seller that Purchaser may otherwise have been given notice regarding a changed condition.

10.2.11 Seller shall deliver to the Title Company such duly executed and verified certificates, resolutions, affidavits and other documents respecting the power and authority to perform the obligations hereunder and as to the due authorization thereof by appropriate proceeding and as to the authority of the members, partners or officers of Seller, as the case may be, as the Title Company may reasonably request.

10.2.12 Concurrently with Seller's deliveries at the Closing, Purchaser shall pay to Seller the Purchase Price as provided in Subsection 3.2 hereof.

10.2.13 Seller shall deliver the following items to Purchaser promptly following the Closing:

(i) to the extent in the possession or control of Seller, the originals of (a) the Permits, (b) the Warranties, (c) the Service Contracts, and (d) the Plans and Specifications;

(ii) the originals (to the extent in Seller's possession or control) of the Tenant Leases, including all riders, attachments, addenda and amendments thereto, guarantees thereof and all other documents which are or will be binding and enforceable on, or with respect to, Purchaser (or documents which create an estoppel effect on, or with respect to, Purchaser) relating to the Tenant Leases; and

(iii) any and all keys to the Improvements in Seller's possession.

All other items of Personalty to be conveyed hereunder which are not expressly required to be delivered under this Paragraph shall remain at, and be located upon, the Property on the Closing Date.

10.2.14 In addition to all documents, instruments and agreements expressly provided for herein, Purchaser and Seller shall execute and/or provide such other documents as may be reasonably required by counsel for either party to effectuate the purposes of this Agreement.

10.2.15 Seller shall deliver exclusive possession of the Property to Purchaser at Closing subject only to the Permitted Exceptions and tenants in possession under the Tenant Leases.

10.3 **Closing Costs.** At the Closing, Seller and Purchaser shall respectively pay the following costs and expenses:

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10.3.1 Seller shall pay (i) the fees and expenses of Seller's attorneys, (ii) the cost of any transfer taxes or documentary stamp taxes attributable to the deed of conveyance for the Property, (iii) the cost of recording the deed, (iv) one-half of any Escrow Agent's fees, provided Seller's share shall not exceed \$500.00, and (v) the brokerage commission (pursuant to a separate written agreement) to the Broker, and any other costs and expenses actually incurred by Seller or required to be borne by Seller hereunder.

10.3.2 Purchaser shall pay (i) all title insurance costs, premiums, search and exam fees and endorsement costs (iii) recording and filing fees for all recordable instruments other than the deed delivered by Seller at the Closing pursuant to the terms hereof, (iv) the costs of the Survey, (v) the fees and expenses of Purchaser's attorneys and other professional or third-party fees and expenses incurred by Purchaser in connection with the transactions contemplated herein, (vi) any costs and expenses incurred in connection with Purchaser's financing of the Property, (vii) the balance of any Escrow Agent fees, and (viii) any other costs and expenses actually incurred by Purchaser or required to be borne by Purchaser hereunder.

10.4 **Prorations.** All matters involving prorations or adjustment to be made in connection with the Closing and not specifically provided for in some other provision of this Agreement shall be prorated as of 11:59 P.M. Eastern time of the day immediately preceding the Closing Date. The following prorations or adjustments (the "**Adjustments**") shall be apportioned by way of credits to or against the Purchase Price (except as otherwise provided herein), as follows:

10.4.1 **Taxes:** At the Closing, all state, county and city ad valorem taxes (real and personal property) with respect to the Property (other than any such taxes paid directly by any tenant of the Property, which amounts shall not be prorated) shall be prorated, based upon the amount of such taxes payable in the calendar year of the Closing, if known, or otherwise, based on taxes payable in the previous calendar year. Any and all refunds, credits, claims or rights to appeal respecting the amount of any real property taxes or other taxes or assessments charged in connection with the Property for any period shall belong to Purchaser following the Closing, except that if prior to the end of the Inspection Period Seller has applied for a property tax refund or has appealed the valuation of the Property for any period of time prior to the Closing Date, then Seller shall be entitled to any refund applicable to such period (unless such refund must be credited to a tenant of the Property by Purchaser, in which case such refund shall belong to Purchaser to the extent of such required credits to such tenant).

10.4.2 Receivables and Monthly Rentals: Except as otherwise provided in subparagraph 10.4.7 below, all monthly rentals and other fixed monthly charges payable for the month of the Closing and collected prior to Closing shall be prorated as of 11:59 P.M. Eastern time of the day immediately preceding the Closing Date. Seller shall be entitled to receive all collected rentals from the Property for the period of its ownership through 11:59 P.M. Eastern time of the day immediately preceding the Closing Date and any rentals for such period of Seller's ownership shall be paid to Seller. As used herein, the term "**Unpaid Rents**" means any tenant rentals, excluding Expenses (defined below, which shall be handled in accordance with Section 10.4.7 below)), owed to Seller from the tenant and not paid as of the Closing Date. Seller hereby assigns to Purchaser without warranty any and all Unpaid Rents. Seller specifically acknowledges and agrees that Purchaser shall have the right to compromise, forgive or otherwise deal with Unpaid Rents in respect of the tenant owing the same, which dealing may result in economic advantage to Purchaser, all without liability or obligation to Seller. Provided, however, that if any Unpaid Rents are not otherwise forgiven, compromised or dealt with, such Unpaid Rent, if and when collected by Purchaser, shall be applied first to any unpaid rent and other sums then due and owed to Purchaser from the tenant accruing after the Closing through the date of collection, with any remaining amounts allocable to the period prior to Closing being paid to Seller (after deduction of all actual, reasonable collection costs including attorneys' fees). Without limiting the foregoing, Seller specifically agrees not to undertake any effort to collect Unpaid Rents owed to Seller from any person if such person or any affiliate of such person is in possession of any space in the Property at the time of any such collection effort.

10.4.3 Utilities: Excluding any utilities in the name of tenants, in order to prorate charges for water, gas, electricity and any other utility services, representatives of Seller and of Purchaser shall arrange with the appropriate utility companies and governmental agencies to render final bills based upon a reading as of the day before the Closing of the meters monitoring the servicing of the Property. Seller shall pay all charges for utilities accrued to the time of such readings and shall be responsible for the payment of such bills as and when rendered. If, however, final bills for the foregoing charges are not rendered as of the Closing Date or such readings are not possible as of the day before Closing, the proration for utilities will be done as of 11:59 P.M. Eastern time the day before Closing and will be based on the most current and accurate billing information available. Should such proration be inaccurate upon receipt of the actual bills for the Property, Purchaser and Seller, promptly upon receipt by either of them of the utility bills, shall make the proper adjustment so that the proration will be accurate, based upon the actual amount of the utility bills, and payment shall be made promptly by Seller or Purchaser, whichever shall be required to make such payment, to the other party for the purpose of making such adjustment. All utility deposits shall be retained by Seller, provided that upon mutual agreement of Seller and Purchaser and with consent of the respective utility companies, utility deposits may be assigned to Purchaser. In such event, the amount of the assigned deposits will be paid by Purchaser to Seller at the Closing in addition to the Purchase Price.

10.4.4 Intentionally Omitted.

10.4.5 Intentionally Omitted.

10.4.6 Security Deposits: Seller shall transfer to Purchaser by way of a credit against the Purchase Price all security deposits actually held or received by Seller under the Tenant Leases and the aggregate amount of any unapplied advance and pre-paid rentals with respect to the Tenant Leases.

10.4.7 Additional Rent. All additional rent actually paid to Seller under the Tenant Leases, including, without limitation, charges or reimbursements for real estate taxes, insurance or operating expenses (including estimated payments thereof), parking charges and charges for special services owed under the applicable Tenant Lease (collectively, "**Expenses**") shall be prorated as follows: Seller will be solely responsible for reconciling any Expenses and additional rents for the 2021 calendar year and Seller may bill Tenants directly for any remaining amounts owed in connection with such reconciliation. With respect to the 2022 calendar year, Seller shall provide Purchaser following Closing with copies of all applicable invoices in Seller's possession and after Closing shall promptly forward

to Purchaser any operating expense bills received by Seller for payment out of additional rent received from the applicable Tenant. Purchaser shall be responsible for reconciling the 2022 calendar year Expenses and additional rents, and Purchaser shall provide Seller (for Seller's review and approval) with a written reconciliation of the same (the "**Reconciliation Statement**") on or before the earlier of (i) March 31, 2023 and (ii) the date that is ten (10) days prior to the date landlord is required to deliver the Reconciliation Statement to the applicable tenant under the applicable Tenant Lease. Within ten (10) days following Seller's approval of the Reconciliation Statement, Purchaser shall forward the Reconciliation Statement to the Tenants. Purchaser hereby covenants to use commercially reasonable efforts to enforce the provisions of the Tenant Leases which require the Tenants and/or third parties to reimburse the landlord for the Property with respect to the 2022 reconciliation period. If the costs incurred by Seller for Expenses exceed the receipts of Seller for Expenses (subject to what the applicable Tenant Lease permits the landlord to collect for the Tenant) for the period from January 1, 2022 to Closing, on a Tenant-by-Tenant basis, then Purchaser shall pay to Seller (upon receipt) on a prorated basis to the extent the reconciliation is collected from the applicable Tenant the amount of this shortfall upon receipt of 2022 year-end reconciliation payments for Expenses from the Tenant(s) for which a Seller shortfall exists. In the event Seller or Purchaser receives an invoice for Expenses after the Closing relating to a period prior to the Closing and less than one hundred percent (100%) of the cost of such invoice is collectable under the applicable Tenant Leases, Seller and Purchaser agree that any such Expenses shall be pro-rated between Seller and Purchaser in an equitable manner. If, at Closing, there are any amounts of additional rent outstanding for any period prior to January 1, 2022, such amounts shall not be apportioned at Closing (collectively, "**Pre 2022 Outstanding Additional Rent**") but such Pre 2022 Outstanding Additional Rent shall remain payable to Seller by the applicable Tenant(s) and Seller shall have the right to collect such amounts from the applicable Tenants after Closing, provided (i) Seller shall have no right commence any legal proceeding against a tenant to collect such Pre 2022 Outstanding Additional Rent, (ii) Purchaser and Seller agreed to work together in good faith after Closing to collect any Pre 2022 Outstanding Additional Rent owed to Seller and (iii) Purchaser shall promptly pay to Seller any Pre 2022 Outstanding Additional Rent received by Purchaser from a Tenant after Closing.

10.4.8 **Service Contracts.** Prepaid charges in connection with any Service Contracts that Purchaser elects (or is deemed to elect) to assume, or licenses or permits, shall be credited to Seller. Accrued charges in connection with such Service Contracts, or licenses or permits, shall be credited to Purchaser.

10.4.9 **Private Assessments.** Except to the extent such items are the responsibility of tenants, payments due under any assessments imposed by private covenant shall be prorated as of the Closing.

10.4.10 **Adjustments.** Except as otherwise expressly provided herein, all adjustments and prorations, including without limitation, the Adjustments described in this Subsection 10.4, shall be determined or estimated to the extent practicable, and monetary adjustment shall be made between Seller and Purchaser. As the amounts of the respective items become finally ascertained, but in no event later than one hundred eighty (180) days after the Closing Date, further adjustment shall be promptly made between the parties in cash. For purposes of this Section 10.4, Closing shall not be deemed to have occurred unless and until Seller's proceeds are received by Seller by 3:00 pm EST on such date. Notwithstanding any provision herein to the contrary, Closing and any prorations shall be computed or re-computed, as applicable as of the following business day in the event Seller's proceeds cannot be delivered by 3:00 pm EST on the actual date on which Closing occurs. The foregoing provision shall survive Closing hereunder and shall bind both Purchaser and Escrow Agent notwithstanding any provision in this Agreement to the contrary. The parties agree to make any subsequent adjustment to prorations following Closing to comply with this paragraph.

10.4.11 **Survival.** The provisions of this Section 10 shall survive the Closing.

11. CASUALTY AND CONDEMNATION.

11.1 **Risk of Loss.** Until the purchase of the Property has been consummated on the Closing Date, all risk of loss of, or damage to, or destruction of, the Property (whether by fire, flood, tornado or other casualty, or by the exercise of the power of condemnation or eminent domain, or otherwise) shall belong to and be borne by Seller.

11.2 **Casualty or Condemnation.** In the event of any damage to or destruction of the Property or any portion thereof which is reasonably estimated by Seller and Purchaser to cost Three Hundred Fifty Thousand Dollars (\$350,000.00) or less to replace or repair, subject to the other terms and conditions of this Agreement, Purchaser shall nonetheless be obligated to consummate the purchase of the Property. In the event of any damage to or destruction of the Property or any portion thereof which is reasonably estimated by Seller and Purchaser to cost in excess of Three Hundred Fifty Thousand Dollars (\$350,000.00) to replace or repair, or in the event of any taking or written threat of taking by eminent domain or condemnation (or any conveyance in lieu thereof) of the Property or any “material portion” (as defined below) thereof by anyone having the power of eminent domain or condemnation, Purchaser shall, by notice to Seller provided within ten (10) days of receiving notice from Seller of such event, elect to: (i) terminate this Agreement, whereupon the Earnest Money, together with all interest accrued thereon (less and except the sum of One Hundred Dollars (\$100) which shall be paid to Seller as consideration for entering into this Agreement), shall be returned to Purchaser, in which event neither Seller nor Purchaser shall have any further rights, duties or obligations under this Agreement, except as otherwise expressly provided herein; or (ii) consummate the purchase of the Property with no reduction in Purchase Price, subject to the following provisions of this Subsection 11.2. If Purchaser does not elect to terminate this Agreement pursuant to clause (i) of this Subsection 11.2 (or if the cost to replace or repair the damage or destruction is estimated to be Three Hundred Fifty Thousand Dollars (\$350,000.00) or less), then Seller shall on the Closing Date pay to Purchaser all insurance proceeds then received by Seller, together with any deductible amounts under Seller's insurance policies (except for (a) Seller's allocable share of business interruption or rental loss insurance proceeds, which shall be treated as an Adjustment in accordance with Subsection 10.4 hereof, and (b) such proceeds which have been paid by Seller to unaffiliated independent contractors for the repair or restoration of the Property occasioned by the damage or destruction; provided, however, Seller shall have no duty to undertake any such repair or restoration) and all condemnation awards and compensation then received by Seller which are not paid to tenants pursuant to the Tenant Leases. In addition, Seller shall transfer and assign to Purchaser, without representation or warranty to Purchaser, all rights and claims of Seller and all unpaid insurance proceeds (and all rights and claims relating thereto) with respect to the damage or destruction (except for (a) Seller's allocable share of business interruption or rental loss insurance proceeds, which shall be treated as an Adjustment in accordance with Subsection 10.4 hereof, and (b) sums which have been paid by Seller to unaffiliated independent contractors for the repair or restoration of the Property occasioned by the damage or destruction; provided, however, Seller shall have no duty to undertake any such repairs or restorations) and all compensation and awards on account of such taking. For the purposes of this Subsection 11.2, a “material portion” of the Property shall mean three percent (3%) or more of the Property based upon value, any taking that will allow any Major Tenant to terminate its Tenant Lease, or any taking that renders the Property and the Improvements located thereon to be non-conforming (provided that any taking that renders the Property and the Improvements located thereon to be legal non-conforming shall not be deemed a “material portion”).

12. DEFAULT.

12.1 **Seller's Default.** If the sale and purchase of the Property contemplated by this Agreement is not consummated because of Seller's default, failure or refusal to perform hereunder, and such default is not cured within ten (10) days following written notice to Seller specifying such default, at Purchaser's option, as Purchaser's sole remedies hereunder either (a) the Earnest Money, to the extent paid, shall be refunded to Purchaser on demand, and if Seller's default was intentional, willful and material, Purchaser shall be entitled to reimbursement by Seller of Purchaser's actual, documented, out-of-pocket third-party expenses and costs, including reasonable attorneys' fees, incurred by Purchaser in connection with its due diligence investigations of the Property not to exceed Thirty Thousand and 00/100 Dollars (\$30,000.00), whereupon this Agreement shall be terminated and neither party shall have any further rights or obligations with respect hereto except as specifically set forth herein, or (b) Purchaser shall have the right to seek specific performance of this Agreement, which right must be exercised by Purchaser within thirty (30) days following the scheduled Closing Date. Purchaser shall have no right to receive any other equitable or legal relief. Notwithstanding the foregoing, Purchaser shall be deemed to have elected to pursue the remedy set forth in clause (a) above as its sole and exclusive remedy if Purchaser fails to timely file suit for specific performance against Seller on or before thirty (30) days following the scheduled Closing Date. Purchaser shall not be entitled to record a *lis pendens* against the Property other than in connection with any such timely filed specific performance action. The remedies set forth in this Section 12.1 shall be Purchaser's sole remedies arising from a default, breach or failure to perform by Seller. Purchaser hereby

waives for itself and anyone who may claim by or through Purchaser, any and all rights to pursue any other remedial rights or sue or recover any amounts from Seller (including, without limitation, punitive, indirect and consequential damages), except to the extent set forth in the foregoing clauses (a) or (b) and except as set forth in Section 6.17, and shall not commence or pursue any such remedy. No partner, manager of, member or, beneficial interest holder in or agent of Seller, nor any advisor, trustee, manager, member, director, officer, employee, beneficiary, shareholder, participant, representative or agent of any company, corporation or trust that is or becomes a member, trustee or manager of Seller (collectively "**Seller Parties**"), shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into under or pursuant to the provisions of this Agreement, or any amendment or amendments to any of the foregoing made at any time or times, heretofore or hereafter, or in or with respect to any document, agreement or instrument delivered at Closing, except to the extent such parties are determined, pursuant to a final, non-appealable judgment, to have knowingly and intentionally defrauded Purchaser. Notwithstanding anything contained herein to the contrary, the terms of this Section 12.1 shall survive Closing and the delivery of the deed and termination of this Agreement.

12.2 **Purchaser's Default.** If the sale and purchase of the Property contemplated by this Agreement is not consummated because of Purchaser's default, failure or refusal to perform hereunder, Seller shall be entitled, as its sole and exclusive remedy hereunder or otherwise, to payment of the Earnest Money, with interest thereon, as full and complete liquidated damages for such default of Purchaser, the parties hereto acknowledging that it is difficult or impossible to estimate more precisely or accurately the damages which might be suffered by Seller upon Purchaser's default. Seller's receipt of the Earnest Money, with interest thereon, is intended not as a penalty, but as full liquidated damages. The right to retain such sums as full liquidated damages is Seller's sole and exclusive remedy in the event of default hereunder by Purchaser, and Seller hereby waives and releases any right to (and hereby covenants that it shall not) sue Purchaser: (i) for specific performance of this Agreement, or (ii) to recover actual damages in excess of such sums. Purchaser hereby waives and releases any right to (and hereby covenants that it shall not) sue Seller to seek or claim a refund of such sums (or any part thereof) on the grounds that such amount is unreasonable in amount and exceeds Seller's actual damages or that the retention of such sums by Seller constitutes a penalty and not agreed upon and reasonable liquidated damages. The parties further acknowledge and agree that the liquidated damages provided herein is a reasonable pre-estimate of Seller's probable loss resulting from Purchaser's default. Notwithstanding the foregoing or anything to the contrary in this Agreement, Seller's receipt and acceptance of the Earnest Money shall not prejudice, waive or in any manner affect any and all remedies available at law, in equity, or hereunder with respect to enforcing Purchaser's obligations that expressly survive cancellation or termination of this Agreement.

13. CONDITIONS PRECEDENT.

13.1 **Inspection Period Condition.** Purchaser's obligation to consummate the purchase of the Property in accordance with the terms and conditions of this Agreement is subject to and conditioned upon Purchaser's determination, on or before 5:00 p.m., Salisbury, North Carolina time on the date that is forty-five (45) days following Execution Date (as the same may be extended, the "**Inspection Date**") that the acquisition of the Property is desirable, which determination shall be made in Purchaser's sole and absolute discretion for any reason (or for no reason).

13.2 **Satisfaction or Waiver of Inspection Period Condition.** If the condition precedent in Subsection 13.1 is not satisfied or waived by Purchaser as aforesaid, then Purchaser shall have the right to terminate this Agreement by providing written notice to Seller and Escrow Agent on or before 5:00 p.m., Salisbury, North Carolina time on the Inspection Date. If Purchaser does not give timely notice to Seller and Escrow Agent of Purchaser's intent to terminate this Agreement, then this Agreement shall continue in full force and effect and the Earnest Money shall be non-refundable except as otherwise expressly set forth herein. In the event that Purchaser timely sends notice of its intent to terminate this Agreement, then Escrow Agent shall immediately refund to Purchaser the Earnest Money, together with accrued interest thereon (less and except the sum of One Hundred Dollars (\$100) which shall be paid to Seller as consideration for entering into this Agreement), in which event neither Seller nor Purchaser shall have any further rights, duties or obligations under this Agreement, except as otherwise expressly provided herein.

13.3 **Conditions Precedent to Purchaser's Obligation to Close.** In addition to any other conditions precedent in favor of Purchaser as may be expressly set forth elsewhere in this Agreement, Purchaser's obligations under this Agreement are subject to the timely fulfillment of the conditions set forth in this Section 13.3 on or before the Closing Date, or such earlier date as is set forth below. Each condition may be waived in whole or in part only by written notice of such waiver from Purchaser

to Seller, in Purchaser's sole and absolute discretion. Subject to the terms of this Agreement, Purchaser may terminate this Agreement upon written notice to Seller due to the failure of any of the conditions precedent contained in this Agreement, in which event Purchaser shall be entitled to a prompt return of the Earnest Money (less and except the sum of One Hundred Dollars (\$100) which shall be paid to Seller as consideration for entering into this Agreement), and the parties hereto shall have no further obligations hereunder except those which by their terms expressly survive any such termination.

13.3.1 Seller performing and complying in all material respects with all of the terms of this Agreement to be performed and complied with by Seller prior to or at the Closing, subject to any notice and/or cure period set forth in this Agreement.

13.3.2 On the Closing Date, all of the representations and warranties of Seller set forth in Section 6 hereof shall be true, accurate and complete in all material respects, except as to any Permitted Variances and those matters with respect to the representations and warranties made herein by Seller that Purchaser may otherwise have been given notice regarding a changed condition.

14. **BROKERS AND INDEMNIFICATION.**

14.1 **Commission.** All negotiations relative to this Agreement and the sale and purchase of the Property as contemplated by this Agreement have been conducted by and between Seller and Purchaser without the intervention of any person or party as agent or broker, except for Berkeley Capital (the "**Broker**"), which shall be paid a commission at Closing by Seller pursuant to a separate agreement. Seller and Purchaser warrant and represent that there are and will be no brokers' or intermediaries' commissions or fees payable as a consequence of the sale and purchase of the Property as contemplated by and provided for in this Agreement, other than the commission to Broker, if any, which shall be paid by Seller pursuant to a separate agreement. Seller and Purchaser shall and do hereby indemnify, defend and hold harmless each of the other from and against the claims, demands, actions and judgments (including, without limitation, attorneys' fees and expenses incurred in defending any claims or in enforcing this indemnity) of any and all brokers, agents and other intermediaries alleging a commission, fee or other payment to be owing by reason of any dealings, negotiations or communications with the indemnifying party in connection with this Agreement or the sale and purchase of the Property. The foregoing indemnities shall survive the rescission, cancellation, termination or consummation of this Agreement.

15. **TIME OF ESSENCE.** Time is of the essence of this Agreement.

16. **GOVERNING LAW.** This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of North Carolina.

17. **NOTICES.** Any notices, requests or other communications required or permitted to be given hereunder shall be in writing and shall be delivered by nationally recognized courier (such as Federal Express) which maintains a record or receipt of delivery, hand, facsimile transmission or other electronic transmission (including email transmission of a PDF), and addressed to each party at its addresses, facsimile numbers or email addresses as set forth below:

To Seller:

RCC Salisbury Marketplace, LLC
1504 Santa Rosa Road, Suite 100
Richmond, Virginia 23229
Attn: Ashby R. Hackney
Burke S. Lewis, Esq.
Email: ashby@hackneyrealestate.com
burke@hackneyrealestate.com
Phone: (804) 288-3081 x101

With a copy to:

Hirschler Fleischer PC
2100 East Cary Street
Richmond, Virginia 23223
Attn: Brandt H. Stitzer, Esq.
Email: bstitzer@hirschlerlaw.com
Phone: (804) 771-9517

To Purchaser:

Medalist Diversified Holdings, L.P.
Three James Center
1051 E. Cary Street
Richmond, Virginia 23219
Attention: William R. Elliott
Email: bill.elliott@medalistprop.com
Phone: (804) 344-4434

With a copy to:

KVCF, PLC
1401 East Cary Street
Richmond, VA 23219
Attention: Cindy J. Heidel
Email: cheidel@kv-legal.com
Phone: (804) 823-4033

Any such notice, request or other communication shall be considered given or delivered, as the case may be, on the date of hand, courier, or other electronic transmission (including e-mail). Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, request or other communication. By giving at least five (5) days' prior written notice thereof, any party may from time to time at any time change its mailing address hereunder. Any notice given by counsel to a party shall have the same effect as if given by such party.

18. **ENTIRE AGREEMENT; MODIFICATION.** This Agreement supersedes all prior discussions and agreements between Seller and Purchaser with respect to the Property and contains the sole and entire understanding between Seller and Purchaser with respect to the Property. All promises, inducements, offers, letters of intent, solicitations, agreements, commitments, representations and warranties heretofore made between such parties are merged into this Agreement. This Agreement shall not be modified or amended in any respect except by a written instrument executed by or on behalf of each of the parties to this Agreement.

19. [Intentionally deleted].

20. **EXHIBITS.** Each and every exhibit referred to or otherwise mentioned in this Agreement is attached to this Agreement and is and shall be construed to be made a part of this Agreement by such reference or other mention, in the same manner and with the same effect as if each exhibit were set forth in full and at length every time it is referred to or otherwise mentioned.

21. **CAPTIONS.** All captions, heading, Section, Subsection, Paragraph and subparagraph numbers and letters and other reference numbers or letters are solely for the purpose of facilitating reference to this Agreement and shall not supplement, limit or otherwise vary in any respect the text of this Agreement.

22. **REFERENCES.** All references to Sections, Subsections, Paragraphs or subparagraphs shall be deemed to refer to the appropriate Section, Subsection, Paragraph or subparagraph of this Agreement. Unless otherwise specified in this Agreement, the terms "herein", "hereof", "hereunder" and other terms of like or similar import, shall be deemed to refer to this Agreement as a whole, and not to any particular Section, Subsection, Paragraph or subparagraph hereof. Words of any gender used in this Agreement shall be held

and construed to include any other gender, and words of a singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

23. **COUNTERPARTS.** This Agreement may be executed in several counterparts and by electronic or facsimile signatures which shall be deemed originals, each of which shall constitute an original and all of which together shall constitute one and the same instrument. Transmission of a signed copy of this Agreement or any amendment or addendum by facsimile or by electronic delivery of a PDF copy, and the retransmission of any signed facsimile or electronic delivery of a PDF copy shall be the same as delivery of an original.

24. **WAIVER.** Any condition or right of termination, cancellation or rescission granted by this Agreement to Purchaser or Seller may be waived by such party.

25. **RIGHTS CUMULATIVE.** Except as expressly limited by the terms of this Agreement (including Subsection 12.2), all rights, powers and privileges conferred hereunder shall be cumulative and not restrictive of those given by law.

26. **ASSIGNMENT.** Purchaser shall neither assign its rights nor delegate its obligations hereunder without obtaining Seller's prior written consent, which consent may be granted or withheld in Seller's sole discretion. Notwithstanding anything to the contrary contained in this Section 26, Purchaser may assign without Seller's consent, on or prior to the Closing, all of its rights and delegate all of its obligations hereunder to an entity under common ownership or control with Purchaser, provided that Purchaser provides to Seller (i) at least 10 days prior to Closing the name and signature block for such assignee and (ii) prior to Closing a copy of an executed assignment and assumption agreement in which such assignee assumes all of Purchaser's rights, duties and obligations under this Agreement. No such assignment shall relieve Purchaser of its obligations hereunder. No transfer or assignment in violation of the provisions hereof shall be valid or enforceable, and such shall be deemed a Purchaser default hereunder

27. **SUCCESSORS AND ASSIGNS.** This Agreement shall apply to, be binding upon and enforceable against and inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns to the same extent as if specified at length throughout this Agreement.

28. **DATE FOR PERFORMANCE.** 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 the Closing must be held, expires on a Saturday, Sunday or legal or bank holiday, then such time period shall be automatically extended through the close of business on the next regularly scheduled business day.

29. **FURTHER ASSURANCES.** The parties hereto agree that they will each take such steps and execute such documents as may be reasonably required by the other party or parties to carry out the intents and purposes of this Agreement.

30. **SEVERABILITY.** In the event any provision or portion of this Agreement is held by any court of competent jurisdiction to be invalid or unenforceable, such holding shall not affect the remainder hereof, and the remaining provisions shall continue in full force and effect at the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

31. **VENUE/BINDING ARBITRATION/INTERPRETATION.** This Agreement will be deemed to have been made in the State of North Carolina and will be construed, and the rights and liabilities determined, in accordance with the law of the State of North Carolina, without regard to the conflicts of laws rules of such jurisdiction. The parties hereby waive any right to trial by jury and further agree that any controversy or claim relating to or arising from this Agreement (an "**Arbitrable Dispute**") will be settled by arbitration. Arbitration on any Arbitrable Dispute will proceed in Wayne County, North Carolina, in accordance with the Commercial Arbitration Rules of the Judicial Arbitration and Mediation Services (the "**JAMS**") as such rules may be modified herein or as otherwise agreed by the parties in controversy. Following thirty (30) days' notice by any party of intention to invoke arbitration, any Arbitrable Dispute not mutually resolved within such thirty (30) day period will be determined by a single arbitrator upon which the parties agree, or, in the event of an absence of such agreement the single arbitrator will be appointed by JAMS. Should any provision of this Agreement require interpretation by the arbitrator, it is agreed that the arbitrator shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of all parties have participated in the preparation hereof

32. **AUTHORITY OF SELLER.** The undersigned member of Seller hereby represents and warrants to Purchaser that it has full right, power and authority to execute and deliver this Agreement for and on behalf of Seller.

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33. **AUTHORITY OF PURCHASER.** The undersigned officer of Purchaser, in the event Purchaser is not an individual, hereby represents and warrants that he has full right, power and authority to execute and deliver this Agreement for and on behalf of Purchaser.

34. **LIKE-KIND EXCHANGE.** Each of the parties hereto agrees to cooperate at no expense to the cooperating party with the other party (or any member of the other party) in effecting an I.R.C. Section 1031 exchange, including executing and delivering any and all documents required by the exchange trustee or intermediary; provided, however, that the cooperating party shall have no obligation to execute any document, enter any transaction or arrangement or take or omit any other action, if such party determines in its reasonable discretion that the same would result in any liability, cost, expense, increased risk, delay or other detriment to the cooperating party.

35. **Audited Financial Statements.** Seller hereby agrees to reasonably cooperate (at no third party cost to Seller) with Purchaser during the term of this Agreement in the preparation by Purchaser and its advisors, at Purchaser's sole cost and expense, of audited financial statements of the Property for the most recent completed fiscal year of Seller and the current fiscal year-to-date that comply with Form 8-K filing requirements and Rule 3-14 of Regulation S-X, both as promulgated by the United States Securities and Exchange Commission, including current and historical operating statements and information regarding the Property.

[Remainder of Page Intentionally Left Blank; Signatures Begin on Next Page]

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IN WITNESS WHEREOF, the parties hereto have duly signed, sealed, and delivered this Agreement on the day and year first above written.

"SELLER":

RCC SALISBURY MARKETPLACE, LLC,
a Virginia limited liability company

By: HRE Retail Fund GP II, LLC,
a Delaware limited liability company,
its Manager

By: /s/ Ashby R. Hackney
Ashby R. Hackney, Managing Member

[Signatures Continue on Next Page]

"PURCHASER":

**MEDALIST DIVERSIFIED HOLDINGS,
L.P.,**

a Delaware limited partnership

By: /s/ William R. Elliott

Name: William R. Elliott

Title: Authorized Signatory

Document Information [Line Items]

<u>Document Type</u>	8-K
<u>Amendment Flag</u>	false
<u>Document Period End Date</u>	Apr. 08, 2022
<u>Entity File Number</u>	001-38719
<u>Entity Registrant Name</u>	Medalist Diversified REIT, Inc.
<u>Entity Central Index Key</u>	0001654595
<u>Entity Tax Identification Number</u>	47-5201540
<u>Entity Incorporation, State or Country Code</u>	MD
<u>Entity Address, Address Line One</u>	1051 E. Cary Street Suite 601
<u>Entity Address, Address Line Two</u>	James Center Three
<u>Entity Address, City or Town</u>	Richmond
<u>Entity Address, State or Province</u>	VA
<u>Entity Address, Postal Zip Code</u>	23219
<u>City Area Code</u>	804
<u>Local Phone Number</u>	344-4435
<u>Written Communications</u>	false
<u>Soliciting Material</u>	false
<u>Pre-commencement Tender Offer</u>	false
<u>Pre-commencement Issuer Tender Offer</u>	false
<u>Entity Emerging Growth Company</u>	true
<u>Elected Not To Use the Extended Transition Period</u>	false

Common Stock [Member]**Document Information [Line Items]**

<u>Title of 12(b) Security</u>	Common Stock, \$0.01 par value
<u>Trading Symbol</u>	MDRR
<u>Security Exchange Name</u>	NASDAQ
<u>8.0% Series A Cumulative Redeemable Preferred Stock, \$0.01 par value</u>	

Document Information [Line Items]

<u>Title of 12(b) Security</u>	8.0% Series A Cumulative Redeemable Preferred Stock, \$0.01 par value
<u>Trading Symbol</u>	MDRRP
<u>Security Exchange Name</u>	NASDAQ

