

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT, made and entered into by and between **BUNCOMBE COUNTY**, a body politic and corporate of the State of North Carolina (hereinafter sometimes referred to as "County"); and Deep River South Development II, LLC, a South Carolina limited liability company or its nominee (hereinafter sometimes referred to as "Deep River South Development").

THAT WHEREAS, the County is the owner of a certain tract or parcel of land described as follows:

Being that certain tract or parcel of land as same is set forth and described in Deed Book 5310, Page 500 Buncombe County Registry, and being that 137.218 acre parcel as same is shown on plat recorded in Plat Book 50, Page 107 in said registry (Hereinafter the "Property").

WHEREAS, Deep River South Development desires to acquire from the County and County is willing to sell pursuant to the terms and conditions set forth herein the Property.

WHEREAS, the Deep River South Development and County enter into this Agreement to formalize the terms and understanding of their agreement as to such purchase and sale.

NOW, THEREFORE, in consideration of an initial earnest money deposit in the amount of Two Hundred and Fifty Thousand and 00/100ths U.S. Dollars (\$250,000.00) (the "Initial Deposit"), to be paid by Deep River South Development to County as provided below, County agrees to sell to Deep River South Development and Deep River South Development agrees to purchase from County, on the terms and conditions set forth as follows:

1A. The Recitals set forth above, along with the definitions of certain terms are incorporated herein by reference as if fully restated.

1. **Property to be Conveyed.** As of the Closing Date (as hereinafter defined), and subject to the terms and conditions hereinafter set forth, the County shall assign, convey, transfer and deliver to Deep River South Development and Deep River South Development will acquire from the County all of County's right, title and interests in and to the Property in fee simple, including the following:

- (a) All of County's interest in the Property described above.
- (b) All personal property found on the Property. Should the transaction proceed to sale, County will provide any Bill of Sale that Deep River South Development might reasonably request as deemed reasonable by County.
- (c) All improvements, if any, located on the Property (the "Improvements").

Notwithstanding any other provision of this Agreement, the Property shall not include Hazardous Substances (as hereinafter defined).

The County represents and warrants that the Property is, or shall be upon conveyance, free and clear of all liens, security interests, mortgages, assessments, liabilities or encumbrances or leasehold interests.

2. **Purchase Price and Good Faith Deposit.** The purchase price for the Property shall be Five Million and 00/100 U.S. Dollars (\$5,000,000.00); said Purchase Price to be payable as follows:

- (a) The Initial Deposit, and any additional deposits made if applicable, shall be applied in reduction of the Purchase Price.
- (b) The \$4,750,000.00 balance of the purchase price shall be paid at Closing by wire transfer or other method of immediately available County funds.

Pursuant to N.C. Gen. Stat. §105-278.1(b), the Property is currently exempted from taxation.

The Initial Deposit shall be paid to County directly upon execution hereof to be held by the County Finance office until either (i) the sale is closed, at which time it will be credited to Deep River South Development, or (ii) this Agreement is otherwise terminated pursuant to the terms hereof.

3. **Due Diligence.** County previously has delivered, or shall deliver to Deep River South Development within fifteen (15) calendar days after the full execution of this Agreement, true and correct copies of the following items (if same are available) (the "Due Diligence Items"):

- (a) Copies of any existing title or other insurance policies covering all or any part of the Property; and
- (b) Copies of any outstanding service contracts, lease and/or sublease agreements, utility agreements, management agreements, maintenance agreements, security agreements and other agreements relating to the Property (whether or not said agreements are cancelable, at will, or otherwise); and
- (c) Copies of any agreements entered into by County that impose use, operation or development restrictions on the Property; and
- (d) Copies of any geotechnical reports and environmental site assessments in County's possession, and relating to the Property; and
- (e) Copies of any site plans and civil engineering drawings previously prepared by or on behalf of County, and relating to the Property.

Upon termination of this Agreement for any reason prior to Closing, the Due Diligence Items shall be returned to County. Furthermore, Deep River South Development and its accountants, appraisers, attorneys, and other representatives shall be afforded, at Deep River South Development's expense, the opportunity to review all other Due Diligence Items at any time reasonably requested by Deep River South Development prior to the Closing Date or the termination of this Agreement.

4. **Inspection Period.** Deep River South Development and its agents and representatives shall have through and including September 22, 2018, to conduct such investigations and evaluations of the Property as it deems in its sole discretion to be necessary and appropriate (the "Inspection Period").

Deep River South Development shall have the right to extend the Inspection Period, in monthly increments, up to an additional six (6) months, with a payment of \$10,000 per month paid to the County Clerk. Such additional extension deposits that may be paid to extend the Inspection Period shall be applicable to the Purchase Price but non-refundable to Deep River South Development in the event that the contemplated transaction does not close for any reason, other than Seller's default.

5. **Title Examination.** By not later than September 3, 2018, Deep River South Development shall, at its sole discretion, procure a title insurance binder. If the title to the Property is not marketable, or if the Property is encumbered by easements, restrictions or other matters of record that will prevent or adversely impact Deep River South Development's intended use of the Property, Deep River South Development shall advise County in writing of the objections to title, and County shall have a period of ten (10) calendar days after the date of the notice within which to remedy the objections to the satisfaction of Deep River South Development. County covenants to cure, at or prior to Closing Date, all objections that may be satisfied by the payment of a fixed sum of money, such as deeds of trust, mortgages or statutory liens, and County's failure to cure such objections shall be a default under this Agreement. If the other objections raised by Deep River South Development are not cured or remedied within the ten (10) day period, Deep River South Development may at its election either: (a) accept title to the Property subject to the objections, or (b) terminate this Agreement, in which event the Initial Deposit and any other deposit shall be returned to Deep River South Development. In addition, County shall allow no encumbrances or easements to be placed on or granted with respect to the Property, other than those existing as of the Effective Date, without the prior written consent of Deep River South Development. If any such encumbrances or easements arise prior to the Closing Date and Deep River South Development objects, County shall, at its sole expense, cure the objections. Title exceptions, including those set forth in any prior title insurance commitment, not specifically objected to by Deep River South Development by written notice to County as provided herein or which are objected to but waived by Deep River South Development prior to Closing shall be deemed and referred to as "Permitted Encumbrances."

6. **County's Representations and Warranties.** The County represents and warrants, to the best of County's knowledge, that:

(a) The County is the owner of the Property in fee simple saving and excepting easements, restrictions and rights of way of record, none of which, upon County's information and belief, will prevent or adversely impact Deep River South Development's intended use of the Property. Such easements, restrictions and rights of way of record include, but may not be limited to, that certain greenway easement as same is set forth and described in Book 5621, Page 452 Buncombe County Registry.

(b) This Agreement constitutes the legal, valid and binding obligation of the County enforceable against it in accordance with its terms (subject to the provisions of federal and any other applicable bankruptcy, reorganization or similar law relating to or affecting the rights and remedies of creditors and to the usual equitable principles). Neither the execution, delivery nor performance of this Agreement by the County will, with or without the giving of notice or the passage of time, or both, conflict with, violate any provisions of, have an adverse effect on, result in a default, breach, right to accelerate or loss of rights under, or result in the creation of any lien, charge or encumbrance upon any property or assets of the County under, any terms or provisions of any franchise, mortgage, note, deed of trust, lease, license, agreement, contract, understanding or other instrument to which the County is a party or by which the County or any of its properties may be bound or affected, or any law, rule or regulation or any order, judgment or decree of any government, governmental instrumentality or court, domestic or foreign, having jurisdiction over the County or any of County's respective properties.

(c) As of the date hereof, no tax liabilities or assessments, whether federal, state, county, municipal or otherwise, have been proposed or assessed which remain unpaid nor will any such

be assessed which remain unpaid and not appealed through the Closing Date and which would result in the creation of a lien on the Property.

(d) County will provide Deep River South Development access to the Property in a reasonable and timely manner in order that Deep River South Development might conduct its due diligence. County will cooperate with Deep River South Development's due diligence in such manner as it shall deem reasonable and appropriate in its sole discretion.

(e) Any and all obligations of County in and to this agreement are subject to and contingent upon the approval of the Buncombe County Board of Commissioners and compliance with N.C. Gen. Stat. §160A-269.

7. Deep River South Development's Representations, Warranties, and Acknowledgments.

Deep River South Development represents and warrants, to the best of its knowledge, as follows:

(a) that Deep River South Development has full power and authority to enter into this Agreement and to carry out the transactions contemplated hereby. All proceedings required to be taken to authorize the execution, delivery and performance of this Agreement have been properly taken.

(b) In conducting its due diligence, Deep River South Development shall indemnify, defend and hold harmless the County and its subsidiaries, divisions, officers, directors and employees from all liability, loss, costs, claims, damages, expenses, attorney fees, judgments and awards arising or claimed to have arisen, from any injury caused by, or allegedly caused by, either in whole or in part, any act or omission of the Deep River South Development or any employee, agent or assign of the Deep River South Development. Deep River South Development shall indemnify the County in all instances except where the County is primarily negligent through an act or omission. Nothing herein shall be construed as a waiver on the part of the County to any defense of any claim, including, but not limited to the defense of governmental immunity.

(c) This Agreement constitutes the legal, valid and binding obligation of Deep River South Development enforceable against it in accordance with its terms (subject to the provisions of federal and any other applicable bankruptcy, reorganization or similar law relating to or affecting the rights and remedies of creditors and to the usual equitable principles).

8. Risk of Loss. County will maintain its current policies of insurance in force and effect until Closing.

9. Conditions. Deep River South Development's obligations under this Agreement shall be subject to the satisfaction of the following conditions (any of which may be waived by Deep River South Development by giving written notice of waiver to County):

- (a) As of September 22, 2018, no exceptions to title to the Property shall exist other than the Permitted Encumbrances.
- (b) As of September 22, 2018, County shall have complied in all material respects with its obligations under this Agreement, and all representations and warranties of County set forth in this Agreement shall continue to be accurate in all material respects.
- (c) As of September 22, 2018, upon the termination of the "Inspection Period" as identified in Paragraph 4, or as such date may be extended as noted in Paragraph 4, Deep River South Development shall be satisfied that the Property can be developed in a reasonable and economically viable manner.

- (d) By not later than September 22, 2018, or as of such date to which the Inspection Period may be extended as set forth above in Paragraph 4, Deep River South Development shall have obtained satisfactory financial commitment at 85% LTV approval.

If any of the foregoing conditions has not been satisfied or waived as of September 22, 2018, or as of such date to which the Inspection Period may be extended, as set forth above in Paragraph 4, Deep River South Development shall have the right, exercisable by delivery of written notice to County on or before expiration of the Inspection Period, as the same may be extended as set forth in Paragraph 4, to terminate this Agreement. Upon such termination, the Initial Deposit and any other deposits shall be returned to Deep River South Development.

10. **Condemnation.** If any taking pursuant to the power of eminent domain is threatened or occurs before the Closing Date as to all or any portion of the Property that Deep River South Development deems material, including any access or other easements benefiting the Property, or a sale occurs in lieu thereof, Deep River South Development may elect either to: (a) terminate this Agreement by delivery of written notice of termination to County within ten (10) days after written notice from County of the condemnation or threat thereof; or (b) proceed to Closing, in which event all proceeds, awards and other payments arising from any such taking or sale of the Property shall be assigned to and paid to Deep River South Development, without any adjustment of the Purchase Price. If Deep River South Development elects to terminate this Agreement, the Initial Deposit shall be returned to Deep River South Development.

11. **Closing Date.** The parties agree to execute and deliver any and all documents necessary to close the transfer of the Property and to complete the transactions provided herein within thirty (30) days of the end of the Inspection Period, (hereinafter "Closing Date" or "Closing").

12. **Closing Documents.** On the Closing Date, the County shall execute and deliver to the Deep River South Development the following closing documents:

- (a) A North Carolina Non-Warranty Deed free and clear of all liens, charges and encumbrances, except: (i) ad valorem real property taxes for the 2019 calendar year that become due on the Property should Deep River South Development exercise its right to extend the Inspection Period into calendar year 2019 and (ii) such other Permitted Encumbrances;
- (b) An Affidavit and Indemnification in form reasonably acceptable to Deep River South Development and Deep River South Development's title insurer affirming that there are no outstanding possessory rights, liens or rights to claim liens against the Property, and any other affidavits reasonably required by Deep River South Development's title insurer;
- (c) All other documents necessary to transfer or assign to Deep River South Development any zoning approvals, permits, or other development rights with respect to the Property; and
- (d) The Closing Settlement Statement.

At Closing, Deep River South Development shall execute and deliver to County the following:

- (a) The Closing Settlement Statement; and
- (b) Documents evidencing the authority of Deep River South Development to execute and deliver its closing documents.

13. Default.

(a) If Deep River South Development defaults under this Agreement, the sole remedy of County shall be to retain the Initial Deposit as well as any and all improvements made to the Property. Such Initial Deposit shall constitute liquidated damages for Deep River South Development's default, it being agreed that County's damages in the event of a default by Deep River South Development would be difficult to estimate precisely and that the Initial Deposit and Additional Deposit, if paid, constitute the parties' best estimate of such damages.

(b) Upon the breach by County of any of the representations and warranties contained herein, or the default by County in the performance of any other obligation of County set forth in this Agreement, Deep River South Development may exercise all remedies available to it at law or in equity, including any or all of the following: (a) Deep River South Development may terminate this Agreement by delivery of written notice to County, in which event Deep River South Development shall be entitled to the prompt return of the Initial Deposit; (b) Deep River South Development may institute proceedings in any court of competent jurisdiction to specifically enforce the performance by County of the terms of this Agreement; or (c) Deep River South Development may assert an action for money damages as a result of County's default.

14. Brokerage Commissions. James Wilson of Pulliam Properties, Inc., represents the County and Deep River South Development is not represented by a Broker. The County signed a listing agreement with James Wilson of Pulliam Properties, Inc., agreeing to pay a 3 % commission at sale. The County will show this arrangement on the closing statement and have closing funds disbursed accordingly. In the event of any other claims for brokers' or finders' fees or commissions by any other person or entity in connection with the negotiation, execution or consummation of this Agreement, the party on whose alleged statement, representation or agreement such claim or liability arises shall indemnify, hold harmless and defend the other party from and against such claim, including, without limitation, reasonable attorneys' fees and costs.

15. Notices. Any notices permitted or required to be given under this Agreement shall be given to the parties by personal delivery, delivery by a nationally recognized over-night courier service, first class mail/return receipt requested, or by facsimile transmission to the following addresses.

If to County: County of Buncombe
c/o County Manager
200 College Street, Suite 300
Asheville, NC 28801

If to Deep River South Development: Deep River South Development II , LLC
Scott Gillespie
600 University Ridge , #19
Greenville, SC 29601

And a Copy to: Michael R. Donaldson
Attorney-at-Law
7385 McShu Lane
Hudson, OH 44236

And a Copy to:

Bell Carrington Price & Gregg, LLC
Attn: Brian Price
408 East North Street
Greenville, SC 29601

Each such notice shall be deemed to have been given on the date the notice is actually received; provided, however, that, with respect to any notice delivered by facsimile transmission such notice shall be effective (a) upon sending if the sending party actually received confirmation of delivery by 5:00 p.m. eastern standard time during a business day, or (b) the next business day, if otherwise. Either party may change its address(es) or facsimile number(s) by written notice to the other party pursuant to the provisions hereof.

16. Expenses. The Property is not currently subject to taxation, and County shall not be responsible for any ad valorem taxes that become due should Deep River South Development, or its nominee, exercise its right to extend the Inspection Period into calendar year 2019. County shall pay (a) its expenses incident to this Agreement and the performance of County's obligations hereunder and (c) (b) any other costs or expenses customarily allocated to the County in commercial property transfers in Buncombe County, North Carolina. Deep River South Development shall pay for (a) any and all ad valorem taxes that become due on the Property should it exercise its right to extend the Inspection Period into calendar year 2019, (b) its expenses incident to this Agreement and the performance of Deep River South Development's obligations hereunder, (c) the cost of any survey, if any, (d) the expense of obtaining any title insurance commitment and any title insurance premium, (e) the recording of any documents with the Buncombe County Register of Deeds Office, and (f) any other costs or expenses customarily allocated to a Buyer in commercial property transfers in Buncombe County, North Carolina. Except as otherwise provided herein, any and all expenses related to the Property (including, but not limited to, utilities charges and other operating expenses) shall be prorated, and charged and credited to the parties at the Closing. Each party shall pay its own attorneys' fees and any other costs that it may incur in connection with the Closing.

17. Miscellaneous Provisions.

(a) Entire Understanding. This Agreement constitutes the entire and complete agreement between the parties hereto and supersedes any prior oral or written agreements between the parties with respect to the Property. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions herein set forth, and that no modification of this Agreement and no waiver of any of its terms or conditions shall be effective unless made in writing and duly executed by both parties.

(b) Binding Effect. This Agreement shall be binding upon and inure to the benefit of County and Deep River South Development and their respective successors and permitted assigns.

(c) Governing Law. Claims, disputes and/or other matters in question between the parties that are not resolved by mediation shall be heard in the North Carolina General Courts of Justice in Asheville, Buncombe County, North Carolina, which said Court shall have jurisdiction to hear any dispute between the parties arising out of this agreement. The Parties hereby agree that this paragraph establishes exclusive and sole jurisdiction for any legal proceeding in Buncombe County, North Carolina.

(d) Captions. The captions in this Agreement are inserted only as a manner of convenience and for reference and in no way define, limit or describe the scope of this Agreement or the scope or content of any of its provisions.

(e) Waiver and Modification. Failure by any party hereto to insist upon or enforce any of their respective rights hereunder shall not constitute a waiver thereof, except as provided herein.

(f) Time Is Of The Essence. Time is of the essence with respect to the payments, performance required of the various parties under this Agreement ends on a Saturday, Sunday or any day on which the state courts of Buncombe County, North Carolina are closed, that time period shall be extended until the next business day.

(g) Counterparts and Facsimile Execution. This Agreement may be executed in counterparts, each of which shall be an original, and all of which together shall constitute the same document. This Agreement, if executed and delivered by facsimile shall be sufficient for purposes of binding the sending party.

(h) Attorneys' Fees. In the event either party hereunder institutes any legal action or proceeding to enforce its rights under this Agreement, the party substantially prevailing in such litigation shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation, prosecution and/or defense of such action or proceeding.

(i) Survival. The representations, warranties and agreements set forth in this Agreement shall survive the Closing or any termination of this Agreement and shall not be merged in to the Deed or instruments of conveyance or any of the other documents or instruments executed or delivered at or after the time of Closing pursuant to or by any reason of this Agreement.

(j) Assignment. Deep River South Development may not assign this Agreement without the written consent of County, which consent will not be unreasonably withheld, conditioned or delayed. If assigned with County's consent, this Agreement shall be binding on the assignee and the assignee's heirs and successors.

(k) Effective Date. The Effective Date of the Agreement shall be the date that the document has been fully signed by both County and Deep River South Development.

IN WITNESS WHEREOF, County and Deep River South Development have caused this Agreement to be duly executed and delivered on the last date noted below.

{Signature Page Follows}

DEEP RIVER SOUTH DEVELOPMENT, LLC:



By: Scott Gillespie

Its: Manager

Date: January 8, 2018

BUNCOMBE COUNTY,
a body politic and corporate of the
State of North Carolina

By: Mandy Stone,
County Manager

Date: _____

ATTEST:

Kathy Hughes, Clerk to the Board