

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this “**Agreement**”) is made and entered into this ___ day of _____, 2011 by and between **BUNCOMBE COUNTY**, a body politic and corporate of the State of North Carolina (“**Seller**”), and **LINAMAR NORTH CAROLINA, INC.**, a North Carolina corporation (“**Buyer**”). [Seller and Buyer may be referred to individually as a “**Party**” or collectively as the “**Parties**”.]

BACKGROUND

Seller is the owner of all of that property located in Asheville, Buncombe County, North Carolina, containing 65.21 acres, more or less, located at 2169 Hendersonville Road in Asheville, North Carolina, more particularly described on the attached **Exhibit A**, together with all rights, appurtenances, riparian rights, rights of way, oil, gas and mineral rights, privileges, easements, interests and hereditaments appertaining to such property (collectively, the “**Real Property**”) and all of the buildings, building systems, and appurtenant structures, improvements, equipment, and fixtures that constitute the industrial plant containing approximately 405,018 square feet of building space located at the Real Property (collectively, the “**Improvements**”). The Real Property and the Improvements are collectively referred to as the “**Property**” herein. Buyer desires to purchase the Property from Seller upon the terms and conditions contained in this Agreement.

AGREEMENT

In consideration of Ten Dollars (\$10.00), the mutual covenants made in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

ARTICLE 1

PURCHASE OF PROPERTY

1.1 **Purchase of Property & Purchase Price.** Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, all of the Property pursuant to the terms and conditions contained in this Agreement for a total purchase price of Eight Million and No/100 Dollars (\$8,000,000.00) (“**Purchase Price**”). The Purchase Price consists of Six Million Five Hundred Thousand and No/100 Dollars (\$6,500,000) for the Real Property and One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000) for the Improvements.

1.2 **Closing.** Seller and Buyer shall close on the purchase and sale of the Property (“**Closing**”) on or before January 15, 2012, on a date selected by Buyer by providing at least ten (10) days prior written notice of such selection to Seller (“**Closing Date**”).

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

2.1 **Seller’s Representations and Warranties.** Seller makes the following representations and warranties to Buyer, effective as of Closing. Upon Buyer’s request, Seller agrees to certify to Buyer, in writing, that Seller’s representations and warranties remain true and accurate as of Closing.

- (a) **Levies, Assessments, and Special Fees.** There are no public assessments or liens against the Property or any claims pending that would result in the creation of any liens for

public improvements, including water, sanitary, or storm sewers or drainage facilities, whether such improvements have been completed or are being developed.

- (b) **Insurance Notices.** Seller has not received a notice from any insurance company requesting the performance of any work regarding the Property or relating to an increase in the insurance premiums applicable to the Property.
- (c) **Lawsuits.** There are no actions, suits, proceedings, attachments, executions, assignments for the benefit of creditors, or voluntary or involuntary proceedings in bankruptcy or under any applicable debtor relief laws existing pending, threatened, or anticipated that affect the Property or relate to Seller's ownership and ability to convey the Property to Buyer pursuant to this Agreement.
- (d) **Liens.** There are no outstanding actual or potential liens (filed or unfiled) on the Property arising under Seller for labor, services, or materials for improvements to the Property, and all payments due to any person or company that has furnished labor, services, or materials in connection with the Property on behalf of Seller are current.
- (e) **Agreements with Third Parties.** Seller is not a party to any contract to sell or lease all or any part of the Property to any party other than Buyer, nor has Seller given to any party other than Buyer an option that is presently exercisable to purchase or lease all or any part of the Property. Seller has not granted any liens, easements, rights of first refusal, or other contracts to third Parties with respect to the Property.

2.2 **Buyer's Representations and Warranties.** Buyer makes the following representations and warranties as of Closing: (i) Buyer is a duly authorized and existing North Carolina corporation that is authorized to transact business in North Carolina; (ii) Buyer has full right and authority to consummate the transactions contemplated in this Agreement; and (iii) each of the persons signing Closing documents on behalf of Buyer is an agent of Buyer authorized to do so by appropriate corporate action.

2.3 **Reliance; Survival.** Buyer and Seller each acknowledge and agree that each Party is materially relying on the representations and warranties contained in this Agreement. Each of the representations and warranties made in this Article shall survive Closing.

ARTICLE 3

CLOSING

3.1 **Conduct of Closing.** Closing shall be held in the offices of Buyer's counsel in North Carolina, or shall be conducted in escrow. If Closing is conducted in escrow, the Parties and their attorneys do not need to be physically present at the Closing and may deliver documents by overnight delivery service or other means; provided, all deliveries of closing documents to Buyer's counsel to be held in escrow pending Closing shall be accompanied by a closing instruction letter clearly stating the terms and conditions (consistent with this Agreement) pursuant to which the documents may be released and recorded at Closing. Upon payment of the Purchase Price, Seller shall deliver possession of the Property to Buyer at Closing.

3.2 **Conditions Precedent to Closing.** Notwithstanding the foregoing or any other provision in this Agreement, Buyer's obligation to close on the purchase of the Property after Buyer exercises its Option shall be contingent upon the satisfaction, in Buyer's sole discretion, of the following conditions (the "**Conditions Precedent**"):

- (a) The Lease Agreement for the Property between Seller and Buyer of even date herewith (the “**Lease**”) has not been terminated;
- (b) Seller is able to deliver good, indefeasible, insurable (at normal title insurance rates), and marketable fee simple title to the Property, together with all rights, appurtenances, riparian rights, rights of way, oil, gas and mineral rights, privileges, easements, interests and hereditaments appertaining thereto, free and clear of all vendor liens, mechanic’s liens, encumbrances, leases (except the Lease), encroachments, easements, claims, restrictions, covenants, third party oil, gas and mineral rights, boundary line disputes and discrepancies, abandoned easements, and other occupancies, title encumbrances, and survey issues, unless approved in writing by Buyer, and there shall be no outstanding actual or potential liens (filed or unfiled) on the Property conveyed to Buyer for labor, services, or materials for improvements to the Property, and all payments due to any person or company that has furnished labor, services, or materials in connection with the Property on behalf of Seller are current;
- (c) Resolution of boundary line discrepancies with adjoining property owners to ensure the Property described in the Special Warranty Deed and, if applicable, Quitclaim Deed to be delivered to Buyer by Seller at Closing includes all of the property necessary for Buyer’s intended use of the Property.
- (d) All of Seller’s covenants and obligations contained in this Agreement have been performed by Seller in all material respects as of the Closing Date;
- (e) All of Seller’s representations and warranties in this Agreement, including those set forth in Article 2, are true and correct in all material respects as of the Closing Date; and
- (f) No material breach by Seller shall exist under the Lease or this Agreement and Seller shall be ready, willing, and able to close under the terms of this Agreement, including Seller, at Seller’s expense, being ready, willing, and able to remove all outstanding liens, leases, and other occupancy rights on the Property arising under Seller except the Lease and those approved by Buyer in writing on or before the Closing Date.

3.3 **Failure of Condition Precedent.** If any of the foregoing Conditions Precedent (b) through (e) have not been satisfied or waived within the times and in the manner required by this Agreement, but Seller is acting in good faith and with due diligence to satisfy the Condition Precedent, then the Closing Date shall be extended by one (1) day for each day Seller is actively pursuing the satisfaction of the Condition Precedent; provided, however, if any Condition Precedent is not satisfied within ninety (90) days after the originally scheduled Closing Date, then Buyer may close on the purchase of the Property under this Agreement without waiving any rights or remedies Buyer may have against Seller with respect to Seller’s failure to satisfy the Conditions Precedent, including specific performance to require satisfaction of the Conditions Precedent post-closing. Without limiting the foregoing, Buyer, at any time, shall have the right to pursue all remedies at law or in equity against Seller with respect to Seller’s failure to satisfy any of the foregoing Conditions Precedent. The provisions of this Section 3.3 shall survive Closing.

3.4 **Seller’s Closing Documents.** At Closing, Seller shall sign and deliver the following documents to Buyer. Each document shall be in a form and substance satisfactory to Buyer and Buyer’s title insurance company.

- (a) **Special Warranty Deed.** Special Warranty Deed signed by Seller conveying to Buyer good, indefeasible, insurable (at normal title insurance rates), and marketable fee simple title to the Property, together with all rights, appurtenances, riparian rights, rights of way,

oil, gas and mineral rights, privileges, easements, interests and hereditaments appertaining thereto, free and clear of all vendor liens, mechanic's liens, encumbrances, leases, easements, claims, restrictions, covenants, third party oil, gas and mineral rights, and other title encumbrances arising under Seller except those approved by Buyer in writing.

- (b) **Liens/Possession Affidavits.** Mechanics' and materialmen's lien waiver and indemnity and possession affidavit signed by Seller and all contractors and subcontractors that have done work on the Property on behalf of Seller, to be prepared by Buyer.
- (c) **Tax Affidavits.** Substitute Form 1099S, Non-Foreign affidavit, North Carolina Resident Affidavit, and any other necessary affidavits, to satisfy federal and state tax reporting requirements;
- (d) **Settlement Statement.** Settlement Statement, to be prepared by Buyer;
- (e) **Quitclaim Deed.** Quitclaim Deed, if required to resolve any boundary issues arising from any discrepancy between the legal description of the Property derived from the recorded deed(s) or plat(s) for the Property and the legal description contained on Buyer's survey of the Property;
- (f) **Bill of Sale.** A Bill of Sale covering all personal property, equipment, and fixtures attached to the Property conveying title to such personal property to Buyer;
- (g) **Assignment of Contracts and Warranties.** An Assignment of Contracts and Warranties assigning all contracts, permits, licenses, and warranties related to the Property to Buyer, except for those that Buyer elects to terminate in writing prior to Closing; and
- (h) **Other Documents** Any other additional signed documents contemplated by this Agreement or deemed by the Parties' attorneys to be appropriate to consummate the sale of the Property to Buyer.

3.5 **Buyer's Closing Documents.** At Closing, Buyer shall sign and deliver the following documents to Seller, each in a form and substance satisfactory to Seller: (a) a signed counterpart to the Settlement Statement; and (b) any other additional signed documents contemplated by this Agreement or deemed by the Parties' attorneys to be appropriate to consummate the sale of the Property to Buyer.

3.6 **Closing Costs and Prorations.** At Closing, Seller shall pay all usual and customary Seller expenses and closing costs in connection with the Closing, including preparation of the Special Warranty Deed and federal and state tax reporting affidavits, documentary stamps/excise taxes, Seller's attorney's fees, and any costs or fees associated with the release of all outstanding liens and assessments against the Property arising under Seller. Buyer shall pay all usual and customary Buyer expenses and closing costs in connection with the Closing, including title examination, title insurance premium, Buyer's attorney's fees, and recording fees for the deed(s).

ARTICLE 4

GENERAL PROVISIONS

4.1 **Force Majeure.** Neither Seller nor Buyer shall be liable for a delay in performing their obligations under this Agreement that is the result of a government order, moratorium, insurrection, war, act of God, labor strike, or any other act or event beyond the control of either Party (each a "**Force Majeure**"); provided, if any Force Majeure claimed by Seller lasts longer than ninety (90) days or any

Force Majeure claimed by Buyer lasts longer than one (1) year, then either Party may terminate this Agreement prior to the end of the Force Majeure. All deadlines in this Agreement, including the Closing Date, shall be adjusted so that such deadline will occur one (1) day later for each day of a Force Majeure.

4.2 **Risk of Loss.** Risk of loss or damage to the Property by any cause, including the cost to remediate environmental contamination of any kind discovered on the Property, but excluding loss or damage caused by Buyer's negligence or willful misconduct, shall be on Seller. Upon recording the deed for the Property, risk of loss to the Property shall be on Buyer; provided, the terms of this Section shall not be deemed to limit or waive any indemnities, obligations, representations or warranties made by Seller in connection with this Agreement.

4.3 **TIME IS OF THE ESSENCE.** EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, TIME IS OF THE ESSENCE WITH RESPECT TO THE OBLIGATIONS TO PERFORM SET FORTH IN THIS AGREEMENT.

4.4 **Weekends / Holidays.** If the last day for any act to be performed by either Party under this Agreement falls on a Saturday, Sunday, federal holiday, or holiday in North Carolina, then the deadline for performance of such act shall be extended to and include the next following business day.

4.5 **Notices.** To be effective, any notice or other communication required, permitted, or contemplated by this Agreement must be in writing and must be sent by facsimile, email, certified mail (return-receipt requested), overnight delivery service (with proof of delivery), or commercial courier (with proof of delivery) to the following addresses. Any notice given by facsimile or email also shall be delivered by certified mail, overnight delivery service, or commercial courier within two (2) days after the original transmission. Either Party may change its address(es) by giving five (5) days prior notice to the other Party of such change. Notice shall be deemed delivered or received upon the earliest to occur of: (a) receipt of the transmission if sent by facsimile or email; (b) three (3) days after the postmark if sent by certified mail; (c) the next day that is not a Saturday, Sunday, or legal holiday if sent by overnight delivery service, or (d) upon receipt if delivered by commercial courier.

If to Seller:

Fax:
Email:

With a Required Copy to:

Fax:
Email:

If to Buyer:

Fax:
Email:

With Required Copies to:

Fax:
Email:

4.6 **Entire Agreement.** This Agreement and the attached Exhibits contain the entire agreement of the Parties with respect to the Property, and no representations, inducements, promises or agreements, oral or otherwise, between the Parties not embodied in this Agreement shall be of any force or effect. This Agreement may not be modified except by a writing signed by both Seller and Buyer.

4.7 **Construction.** The Parties agree this Agreement has been negotiated in an arms length transaction, and the provisions set forth herein are not to be construed against the Party who drafted this Agreement.

4.8 **Applicable Law.** This Agreement shall be construed in accordance with the laws of the State of North Carolina, excluding its conflicts of law principles. Any dispute regarding this Agreement or the Property shall be brought and heard exclusively in the General Courts of Justice for Buncombe County, North Carolina.

4.9 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties and their heirs, successors and assigns. This Agreement shall only become a binding contract when signed by both Buyer and Seller. This Agreement may be signed in multiple originals, all of which together shall constitute one and the same instrument.

4.10 **Principles of Interpretation and Definitions.** In this Agreement, unless the context requires otherwise: (a) "Seller" shall include the undersigned, its heirs, representatives, assigns and successors in title to the Property; (b) "Buyer" shall include the undersigned and its heirs, representatives, assigns and successors; (c) the singular includes the plural, and the plural includes the singular; (d) the pronouns "it", "its", and "they" include the masculine and feminine; (e) references to statutes or regulations include all statutory and regulatory provisions consolidating, amending, or replacing the statute or regulation; (f) references to contracts and agreements shall be deemed to include all amendments thereto; (g) the words "include", "includes", and "including" are to be interpreted as if they were followed by either the phrase "without limitation" or "but not limited to"; (h) references to an "Article", "Section", "section", or "paragraph" shall mean an article or section of this Agreement; (i) headings and titles of sections, paragraphs, and articles are for convenience only and shall not be construed to affect the meaning of this Agreement; (j) the word "shall" is mandatory; and (k) all exhibits, attachments, or documents attached to this Agreement or referred to in this Agreement are incorporated by reference into this Agreement as if fully set forth herein.

IN WITNESS WHEREOF, the Parties signed this Agreement as of the date and year first above written.

SELLER:

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

By: _____(SEAL)

Print Name: _____

Title: _____

BUYER:

LINAMAR NORTH CAROLINA, INC.,
a North Carolina corporation

By: _____(SEAL)

Print Name: _____

Title: _____

EXHIBIT A

LEGAL DESCRIPTION

BEING all those tracts of land containing a total of 65.21 acres, more or less, in Buncombe County, North Carolina, more particularly described as follows:

TRACT I:

BEING all of that property conveyed by CAROLINA POWER & LIGHT COMPANY, a North Carolina public service corporation, to VME AMERICAS, INC., a corporation, by Deed recorded March 5, 1992, in Book 1686, Page 105, Buncombe County Registry (PIN 9644-87-4957).

TRACT II:

BEING all of that property conveyed by CLARK EQUIPMENT COMPANY, a Delaware corporation, to THE VME AMERICAS, INC., a Delaware corporation, by North Carolina Non-Warranty Deed recorded May 20, 1994, in Book 1799, Page 300, Buncombe County Registry (PIN 9644-98-7146).

TRACT III:

BEING all of that property conveyed by LLOYD MARTIN COLLINSWORTH, TRUSTEE OF THE COLLINSWORTH FAMILY TRUST, ESTABLISHED MAY 25, 1989 to VOLVO CONSTRUCTION EQUIPMENT NORTH AMERICA, INC. by North Carolina General Warranty Deed recorded February 23, 1996, in Book 1893, Page 746, Buncombe County Registry (PIN 9644-89-7195).

TRACT IV:

BEING all of that first parcel conveyed by CAROLINA POWER & LIGHT COMPANY, a North Carolina public service corporation, to VOLVO CONSTRUCTION EQUIPMENT NORTH AMERICA, INC., a corporation, by Deed recorded May 9, 1997, in Book 1963, Page 34, Buncombe County Registry (PIN 9644-89-7101).

TRACT V:

BEING all of that second parcel conveyed by CAROLINA POWER & LIGHT COMPANY, a North Carolina public service corporation, to VOLVO CONSTRUCTION EQUIPMENT NORTH AMERICA, INC., a corporation, by Deed recorded May 9, 1997, in Book 1963, Page 34, Buncombe County Registry (PIN 9644-97-6333).

TRACT VI:

BEING all of that property conveyed by MARY FUNDERUD, unmarried, to VOLVO CONSTRUCTION EQUIPMENT NORTH AMERICA, INC. by North Carolina General Warranty Deed recorded August 20, 1999, in Book 2153, Page 883, Buncombe County Registry (PIN 9644-99-1143).

BEING the same property shown on a survey entitled, "ALTA/ACSM Land Title Survey of Volvo Construction Equipment North America, LLC" by Ed Holmes and Associates Land Surveyors, PA and dated June 15, 2011 and bearing drawing number D11-038.