

STATE OF NORTH CAROLINA

OFFER TO PURCHASE
AND CONTRACT

COUNTY OF BUNCOMBE

THIS OFFER TO PURCHASE AND CONTRACT ("Contract"), is made and entered into this ____ day of November, 2009, by and between **BUNCOMBE COUNTY**, hereinafter referred to as the "Seller", and **MOUNTAIN HOUSING OPPORTUNITIES, INC.**, hereinafter referred to as the "Purchaser" (said designations shall include the respective parties, whether one or more, individual or corporate, and their respective heirs, devisees, successors in interest or assigns).

WITNESSETH:

WHEREAS, the Seller is the owner of that certain real property in Buncombe County, North Carolina, with such improvements and fixtures as are located thereon, said real property being more particularly described on Exhibit A attached hereto and made a part hereof (hereinafter referred to as "Property"); and

WHEREAS, Purchaser hereby offers to purchase from the Seller and the Seller hereby agrees to sell and convey said Property to the Purchaser on the following terms and conditions:

1. Purchase Price. The purchase price for said Property shall be the lesser of \$1,800,000.00, or the appraised value of the Property, as determined by an appraisal obtained by the Purchaser. The Purchase Price shall be payable as follows:

- (a) \$5,000.00 Earnest Money Deposit which shall be held in escrow by Roberts & Stevens, P.A. ("Escrow Agent") until the sale is closed, at which time it will be credited to the Purchaser, or until this contract is otherwise terminated, and
- (b) the balance of the purchase price in cash at closing.

2. Inspection Period. The Purchaser shall have one hundred (180) days from the date hereof to investigate the feasibility of its proposed project for the Property. During the Inspection Period, the Purchaser shall have the right to inspect the Property, perform appropriate tests and investigate such matters as Purchaser deems appropriate. If Purchaser decides to not purchase the Property during the Inspection Period, for any reason or for no reason, in its sole discretion, the Purchaser can terminate the Contract and the entire Earnest Money Deposit will be returned to the Purchaser. During the Inspection Period, the Purchaser at its sole responsibility must make determination as to restrictions, easements, zoning or other governmental regulations that would prevent the reasonable use of the Property for commercial development and multifamily residential use and development as set forth herein. The Seller agrees to cooperate with the Purchaser in the re-zoning of said Property to enable the Purchaser to develop its Project.

3. Title. The Seller, upon the payment of the purchase price as provided above, shall execute and deliver to the Purchaser, or its successors and assigns, a good and sufficient special warranty deed conveying to the Purchaser, fee simple marketable title to the Property, free of all encumbrances, easements and restrictions, except for those items specifically approved by the Purchaser, and except for ad valorem taxes for the year of Closing, which shall be prorated as of the date of Closing. The Seller and Purchaser agree that the Seller shall attach to such conveyance covenants and conditions which assure that the Property will be put to a public use by the Purchaser. The Property must have legal access to a public right of way. To the extent that the tax bill for the year of Closing shall not be available for exact proration as of the Closing, the Seller and the Purchaser or their representatives shall meet as soon after the Closing as possible and compute and settle the required closing adjustments between the parties as of the date of Closing. The title to the Property must be insurable as to fee and marketability and shall not contain an exception to mechanics or materialmen's liens, based on an affidavit from the Seller, and shall have full survey coverage.

4. Seller's Closing Costs. The Seller shall pay for North Carolina Revenue Stamps, if applicable, the preparation of the deed conveying the Property to the Purchaser, Seller's pro-rata share of ad valorem taxes for the year of Closing to the date of Closing, and any other liens or encumbrances on the Property.

5. Purchaser's Closing Costs. The Purchaser shall pay for any examination of title and title insurance that it may require, the survey, its pro-rata share of ad valorem taxes and the recording fees for the deed and its financing documents.

6. Closing. The Closing of the purchase and sale of the Property and conveyance of title to the Property to the Purchaser shall be completed on or before ninety (90) days after the expiration of the Inspection Period, unless extended by Purchaser as set forth herein. Closing shall occur at the offices of Purchaser's attorneys, Roberts & Stevens, P.A., 11th Floor, BB & T Building, Asheville, North Carolina or such other place within the City of Asheville on which the parties may agree.

7. Extension of Closing Date. The Purchaser shall have the right to extend the Closing Date for an additional ninety (90) days upon the payment of an additional Earnest Money Deposit to the Escrow Agent in the amount of \$5,000.00, which amount shall be non-refundable. However, if the Closing does not occur due to default of the Seller, the additional Earnest Money Deposit as well as the initial Earnest Money Deposit will be returned to the Purchaser. If Purchaser extends the Closing Date and pays the additional Earnest Money Deposit to the Escrow Agent as set forth herein, said additional Earnest Money Deposit will be credited to the Purchaser at Closing, in addition to the initial \$5,000.00 Earnest Money Deposit set forth above in Paragraph 1.

8. Possession. The Seller shall give the Purchaser possession of the Property at Closing.

9. Condition of Property. Seller represents that it has not received any notices of environmental contamination, condemnation, assessment, title defects or

other pending or threatened matters regarding the Property which would be likely to materially interfere with Purchaser's ability to use the Property for its intended purpose. In addition, the Seller represents and warrants that the Property shall remain until Closing in substantially the same condition as it is now. However, the Seller shall have the right to remove the fencing and gate currently on the Property prior to the Closing. Seller will not perform or take any actions hereafter which would be likely to interfere with Purchaser's ability to make use of the Property for its intended purpose or which would adversely affect the value of or title to the Property.

10. Commission. Seller agrees to pay any real estate commission due in connection with the sale to Purchaser.

11. Seller Warranties. The Seller warrants that the following representations are true and correct as of the date of this Agreement and will be true as of the date of Closing: (a) that it has not used, stored, or disposed of toxic or hazardous substances or contaminants upon the Property and that it has no knowledge of such use, storage or deposits; (b) that there are no graveyards or cemeteries on the Property; (c) that it has not entered into an agreement, oral or written, not referred to herein, with reference to the Property; and (d) neither the Seller nor the Property are subject to any claim, demand, suit, unfiled lien, proceeding or litigation of any kind, pending or outstanding, or to the knowledge of the Seller, threatened or likely to be made or instituted which would in any way be binding upon the Purchaser or its successors or assigns or affect or limit the Purchaser or its successors or assigns in the full use and enjoyment of the Property or which would limit or restrict in any way the Seller's right or ability to enter into this Contract and consummate the sale and purchase contemplated hereby.

12. Conditions of Closing. This Contract is subject to the following conditions which, if not met, shall entitle the Purchaser, at its option, to terminate this Contract at any time prior to Closing and to receive a refund of all Earnest Money Deposit:

- (a) the Purchaser must be able to obtain construction and permanent financing on the Property, at the terms and interest rates necessary to finance the development by Purchaser and acceptable to Purchaser, in its sole discretion
- (b) the Purchaser must be able to obtain a Buncombe County Housing Services Program loan in the amount of \$500,000.00 on such terms as the Purchaser finds acceptable, in its sole discretion
- (c) the zoning classification of said Property must be appropriate or changed or a variance granted so that the Purchaser can build and develop residential units with a density of 30 units per acre and can develop commercial space as Purchaser deems appropriate;
- (d) electricity, gas, public sewer, public water and any other utilities must be available to the Property in sufficient quantity to service such intended use at standard usage fees;
- (e) the survey of the Property must be acceptable to the Purchaser, in its sole discretion, and the survey must not reveal any boundary disputes, overlaps or encroachments;
- (f) the Property must be suitable for Purchaser's intended use as indicated above in Purchaser's sole discretion;

- (g) the physical condition of the Property must be such that the Purchaser's proposed use can be developed without incurring any extraordinary costs;
- (h) the Seller must be able to convey title to the Property to the Purchaser in fee simple free from all liens and encumbrances except as set forth in Paragraph 3 above;
- (i) there must be no environmental contamination of said Property;
- (j) the Property must appraise at a minimum of the Purchase Price by an appraiser selected by Purchaser;
- (k) the Purchaser must receive an environmental report on the Property satisfactory to Purchaser in its sole discretion;
- (l) the Purchaser must receive confirmation that the Property is not located in a floodplain or flood zone.

13. Default. In the event that the Seller defaults or fails to perform any of the conditions or obligations of the Seller under the Contract (or in the event any of the representations and warranties contained herein are not true and correct as of the date hereof and as of the Closing Date), the Purchaser shall be entitled to exercise any and all rights and remedies available to it at law or in equity, including without limitation, a refund of any and all Earnest Money Deposit, an action at law for damages or an action in equity for specific performance or the right to terminate this Contract by giving written notice to the Seller. In the event that the Purchaser defaults or fails to perform any of the conditions or obligations of the Purchaser under this Contract, the Seller shall be entitled to retain the Earnest Money Deposit and to exercise any and all rights and remedies available to it at law or in equity, including without limitation, an action at law for damages or the right to terminate this Contract by giving written notice to the Purchaser.

14. Risk of Loss. Risk of loss prior to Closing shall be on the Seller. If, prior to Closing, any of the Property shall be destroyed or damaged by fire or other casualty, then this Contract may, in the sole discretion of the Purchaser, be terminated. If after the occurrence of any such casualty this Contract is not so terminated by the Purchaser, the Contract shall continue in full force and effect between the Parties.

15. Survival. All the terms, conditions, representations and agreements contained herein shall survive the Closing and the delivery of the deed and other documents for such period of time as shall be necessary for the full performance of this Contract.

16. Notice. Any notice required or permitted to be given under this Contract shall be in writing and shall be deemed to have been given when deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

Seller:

Buncombe County

Planning and Development
46 Valley Street
Asheville, NC 28801
Attn: Jon Creighton, Assistant County Manager/Director of Planning

Purchaser:

Mountain Housing Opportunities, Inc.
64 Clingman Avenue, Suite 101
Asheville, NC 28801
Attn: Cindy Weeks

Any party may, from time to time, by notice as herein provided, designate a different address or authorized person to which notice shall be sent.

17. Entire Agreement. This Contract contains the entire understanding and agreement by and between the Parties and all prior or contemporaneous oral or written agreements or instruments are merged herein and no amendment to this Contract shall be effective unless the same is in writing and signed by the Parties hereto.

18. North Carolina Law. This Contract shall be governed by and construed in accordance with the laws of the State of North Carolina.

19. Assignment. Subject to the prior written approval of Seller, which approval shall not be unreasonably withheld, this Contract shall be assignable by the Purchaser and shall bind and inure to the benefit of the successors or assigns of the Purchaser.

IN WITNESS WHEREOF, the Seller and the Purchaser have executed this Contract, as of the day and year first above written.

Seller:

BUNCOMBE COUNTY

By:

Name: _____

—

Title: _____

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Purchaser:

**MOUNTAIN HOUSING OPPORTUNITIES,
INC.**

By: _____

—

Name: _____
—

Title: _____
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EXHIBIT A

That tract of land consisting of 2.3 acres, more or less, and identified as PIN 9740.40-2891 on the Buncombe County tax records.

The Purchaser will have a survey prepared of said property and the deed from the Seller to the Purchaser shall be based on said survey.