

**PURCHASE AND SALE AGREEMENT**

**AGREEMENT**, dated May 2, 2016, by and among Matthew Larson and Nancy Larson, residing at 123 U.S. Highway 74, in Union City, North Carolina 28001 (collectively, “Seller”), and SwampLand Ventures, LLC, a North Carolina limited liability company, having its principal place of business at 201 South College Street, Charlotte, North Carolina 28244 (“Buyer”).

**WHEREAS**, the Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, property located in Union County, North Carolina, more particularly described in Article 2 of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises set forth herein and subject to the terms and conditions hereof, Buyer and Seller (“the parties”) agree as follows:

**ARTICLE 1**

**DEFINITIONS**

**1.1 Defined Terms.** As used in this Agreement, terms defined in the preamble, recitals, and in context, of this Agreement, have the meaning set forth therein, and the following terms have the meanings set forth below:

“**Agreement**,” means this Agreement for the purchase and sale of the Property.

“**Agreement Deposit**,” has the meaning assigned to it in Article 3.2 of this Agreement.

“**Closing**,” is to occur according to the terms set out in Section 6 of this Agreement, on a date to which the parties agree, and no later than 120 days following the Effective Date (the date the sale is consummated, the “Closing Date”).

“**Consent**,” means any consent, approval, authorization, notice, or designation, registration, declaration, or filing with, any Person.

“**Contract**,” means any contract, lease, agreement, license, instrument, arrangement, commitment, or understanding to which the Buyer or Seller is a party or by which it or any of its properties or assets may be bound or affected.

“**Effective Date**,” means the date that this Agreement is fully executed, including by the Title Company.

**“Inspection Documents,”** are those documents set out in Section 5.3 of this Agreement.

**“Inspection Period,”** has the meaning assigned to it in Article 5.2 of this Agreement.

**“Land,”** has the meaning assigned to it in Section 2.2.1 of this Agreement.

**“Laws,”** means all federal, state, local, or foreign laws, rules and regulations.

**“Letter Deposit,”** means the deposit of Ten Thousand and 00/100 Dollars (\$10,000.00), which Buyer has deposited into escrow with the Title Company, as escrow agent.

**“Lien,”** means any lien, charge, encumbrance, security interest, mortgage, or pledge.

**“Material Damage,”** means damage which may be cause for termination of a Lease or costing in Seller’s Judgment \$1,000,000 or more to repair.

**“Order,”** means any judgment, award, order, writ, injunction, or decree issued by any Federal, state, local, or foreign authority, court, tribunal, agency, or other governmental authority, or by any arbitrator, to which any Seller or its assets are subject, or to which the Buyer or its assets are subject as the case may be.

**“Permitted Exceptions,”** has the meaning assigned to it in Article 4.4 of this Agreement.

**“Person,”** means any individual, a partnership, joint venture, corporation, trust, unincorporated organization, government (and any department or agency thereof) or other entity.

**“Property,”** has the meaning assigned to it in Article 2.1 of this Agreement.

**“Purchase Price,”** has the meaning assigned to it in Article 3.1 of this Agreement.

**“Real Property,”** has the meaning assigned to it in Article 2.2.3 of this Agreement.

**“Related Rights,”** has the meaning assigned to it in Article 2.2.2 of this Agreement.

**“Survey,”** has the meaning assigned to it in Article 4.9 of this Agreement.

**“Taxes,”** has the meaning assigned to it in Section 6.6 of this Agreement.

**“Termination Date,”** has the meaning assigned to it in Article 13 of this Agreement.

**“Title Commitment,”** has the meaning assigned to it in Article 4.2 of this Agreement.

**“Title Objection,”** has the meaning assigned to it in Article 4.3 of this Agreement.

**“Title Objection Date,”** has the meaning assigned to it in Section 4.2 of this Agreement.

**“Water Rights,”** has the meaning assigned to it in Article 2.2.4 of this agreement.

## **ARTICLE 2**

### **PURCHASE AND SALE**

**2.1 Agreement of Purchase and Sale.** Subject to the terms of this Agreement, Seller will sell and Buyer will purchase the Property, comprising the Land, Related Rights, Real Property, and the Water Rights, more particularly described below.

**2.2 Definition of Property.** For all purposes hereof, the Property shall be deemed to include the following:

**2.2.1 Land.** The land consists of all Seller’s right, title, and interest in and to that real and personal property located in Union County, North Carolina, consisting of approximately 55 acres of land, on which Seller has operated a horse farm, and Buyer intends to build a mixed-use residential and commercial development, (the “Land”), as more fully described by the following:

**i. Metes and Bounds of Land.** The Land commences at the Northeast quarter of Section 25, Township 7 South, Range 87 West of the 4th P.M., Union County, North Carolina; Thence South 88° 45’ 33” East, along the north line of said Section 25, a distance of 620.10 feet to the Point of Beginning; Thence South 01° 14’ 27” West, a distance of 2,240.00 feet; Thence South 8° 32’ 48” East to the Center thread of Buckskin Creek being 1,895 feet more or less; Thence Westerly along the centerline of said Creek to its intersection with the West line of Larson Road (being North Carolina State Road 269); Thence North 88° 45’ 33” West, a distance of 2,275.05 feet; Thence North 01° 14’ 27” East, a distance of 2,096.00 feet; Thence South 88° 45’ 33” East, a distance of 3,106.09 feet to the Point of Beginning.

- 2.2.2 Related Rights.** The property consists of the Land, together with all appurtenant and related rights including but not limited to development rights, free and clear of rights of first refusal, other agreements and other encumbrances of any kind, (the “Related Rights”).
- 2.2.3 Real Property.** The real property consists of all surface, mineral, and geothermal estates and/or rights and/or interests in the Land, together with and including all and singular the tenements, hereditaments, easements, rights-of-way, and appurtenances belonging or in any way appertaining or relating to the aforesaid real property, together with and including all improvements and fixtures of any kind located on the aforesaid real property and/or on any of the foregoing, and together with and including any and all rents, income, profits, proceeds, and products of and from any of the Property (the “Real Property”).
- 2.2.4 Water Rights.** The water rights, (collectively, “Water Rights”), means all waters, water courses, water, riparian, and flood rights, and related property (whether appropriative, or otherwise, and whether or not appurtenant to the Real Property, and whether now or hereafter existing or acquired) including, but not limited to:
- i. any and all adjudicated, licensed, permitted, certificated, declared, perfected, unperfected, Mendenhall, and other water rights and/or flood rights, and claims to and applications for any such water rights and/or flood rights, appurtenant to or with a point of diversion and/or place of use on the aforesaid Real Property;
  - ii. the water rights and/or flood rights and claims to and applications for water rights and/or flood rights;
  - iii. ditches and ditch rights and reservoirs and reservoir rights;
  - iv. shares of stock and/or other interests in any aforesaid water or water rights and/or flood rights, and/or in any irrigation or ditch companies;
  - v. any and all wells, pumps, casing, tubing, pipes, pipelines, electric power lines, tanks, dams, weirs and other diversion works, ditches, head-gates, turnouts and other equipment, facilities, and property associated, used or useful in connection with any aforesaid water rights and/or flood rights and claims to and applications for such water rights and/or flood rights; and,

- vi. and any and all rents, income, profits, proceeds and products of and from any of the property described herein.

### **ARTICLE 3**

#### **PURCHASE PRICE AND AGREEMENT DEPOSIT**

- 3.1 **Purchase Price.** The purchase price for the Property (the “Purchase Price”) shall be a total of Twelve Million Five Hundred Sixty Five Thousand and 00/100 dollars (\$12,565,000.00), to be paid, after application of the Agreement Deposit, at Closing, which must occur no later than 120 days after the Effective Date, unless such date is extended in writing by the parties.
- 3.2 **Agreement Deposit.** No later than two business days after the Effective Date, Buyer shall deposit into escrow with the Title Company, as escrow agent, earnest money totaling Seven Hundred Fifty Thousand and 00/100 dollars (\$750,000) (“Agreement Deposit”).
- 3.3 **Application of Letter Deposit.** The Letter Deposit shall be applied to the Agreement Deposit requirement.
- 3.4 **Refundable Agreement Deposit.** The Agreement Deposit will be fully refundable to Buyer until the expiration of the Inspection Period.

### **ARTICLE 4**

#### **TITLE AND SURVEY**

- 4.1 **Title Insurance.** Seller shall bear the cost of a standard owner’s policy of title insurance in favor of Buyer.
- 4.2 **Title Examination.** No later than ten (10) days prior to the Inspection Period termination date (the “Title Objection Date”), Buyer must, at Buyer’s expense, cause the Title Company to issue to Buyer an owner’s title insurance commitment (as initially issued to Buyer, the “Title Commitment”) and deliver the Title Commitment to the Seller, along with copies of all exception matters listed in the Title Commitment.
- 4.3 **Title Objections.** No later than the Title Objection Date, Buyer will notify Seller in writing and in reasonable detail of what objections, if any, Buyer has to the Title

Commitment or survey (the “Title Objections”), other than the Permitted Exceptions, set out in Section 4.4, to which Buyer is not permitted to object.

- 4.4 Permitted Exceptions.** Permitted Exceptions includes and refers to: all exceptions to title in the Title Commitment approved or deemed approved by Buyer; the rights and interests of the parties claiming under leases; Title Company’s standard printed exceptions, exclusions and conditions contained in an ALTA Owner’s Title Policy; zoning ordinances and regulations and other laws or regulations governing use or enjoyment of the Property; matters affecting title created by, on behalf of, or with the consent of Buyer; and, liens to secure taxes and assessments not yet due and payable.
- 4.5 Status and Standing of Water Rights.** During the Inspection Period, Buyer shall review the status and standing of the Water Rights, as well as the condition of title to all the Property, including, without limitation, as reflected in the Commitment and applicable surveys, and determine, in its sole discretion, whether it desires to object to the condition of title, giving Seller the opportunity to cure title and/or survey or other defects, or to purchase the Property subject to its then existing condition.
- 4.6 Survey.** On or before the Title Objection Date, Buyer must, at Buyer’s expense, deliver to Seller a survey of the Property (the “Survey”) which has been drawn in accordance with the 2011 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys adopted by ALTA/ACSM, and with all Table A requirements, by a licensed surveyor or engineer reasonably approved by Seller.
- 4.7 Duty to Modify Title.** Prior to notifying Seller of any Title Objections Buyer must endeavor in good faith to cause Title Company to modify and update the Title Commitment to reflect Buyer’s requested corrections and revisions. Failure to so timely notify Seller is deemed a Buyer waiver of Buyer’s rights under this Article.
- 4.8 Seller Remedies.** Seller must notify Buyer no longer than five (5) calendar days after receiving Buyer’s notice of Title Objections under Section 4.3, of whether Seller will cause any Title Objections to be removed from Title, insured over, or cured (either by endorsement or by “writing over” in a manner satisfactory to Buyer). Seller’s failure to provide such notice to Buyer within the required period as to the action Seller will take with respect to any Title Objection is deemed an election by Seller to not remove from title, insure over or cure the Title Objection.
- 4.9 No Obligation to Cure.** Seller has no obligation to take any steps, bring any action, or incur any costs, effort or expenses whatsoever regarding any Title Objection.

**4.10 Buyer's Remedies.** If Seller is deemed to have notified Buyer that Seller will not remove, insure over, or cure any or all of the Title Objections, then Buyer has until the Title Objection Date to notify Seller whether Buyer will:

- i. proceed with the purchase and acquire the Property subject to the Title Objections; or,
- ii. terminate this Agreement, in which case the Agreement Deposit will be refunded to Buyer.

Buyer's failure to provide Seller with notice shall be deemed an election by Buyer under Section 4.10 (i).

## **ARTICLE 5**

### **INSPECTIONS**

**5.1 Cooperation.** Seller shall cooperate with Buyer in all Buyer's inspections, investigations, and evaluations of the Property.

**5.2 Inspection Period.** Buyer will have ninety (90) days (the "Inspection Period") after the Effective Date within which to inspect and investigate all aspects of the Property. During the Inspection Period, Buyer may continue evaluating the Inspection Documents.

**5.3 Inspection Documents.** During the Inspection Period, Seller shall provide to Buyer, at Seller's cost, except as otherwise indicated, all documents pertinent to the Property, including, without limitation, the following documents, among others, within one (1) day following the Effective Date (collectively, the "Inspection Documents"):

- i. an updated Title Commitment and copies of any new documents of record cited in Schedule B-I and/or B-II;
- ii. all plats of any of the Property, including, without limitation, survey plats;
- iii. all environmental audits and appraisals of any of the Property;
- iv. tax documents and business records relating to the Property; and,

- v. all adjudication decrees, licenses, certificates, permits, declarations, changes of ownership, extensions of time for applying water rights to beneficial use, surveys, studies, evaluations and other documents relating to any of the Water Rights.

**5.4 Insurance Requirement.** Before Buyer may enter the Property, Buyer must provide Seller with a certificate of insurance naming Seller (and any other persons designated by Seller) as an additional insured and with an insurer satisfactory to Seller and with insurance limits in a minimum amount of \$1,000,000 dollars of personal injury and property damage liability coverage, including contractual liability).

**5.5 Other Inspections.** All other investigations shall be at the sole cost of Buyer. Seller will fully cooperate with all of Buyer's investigations and will provide Buyer and its representatives full access to all books, records, files, reports, and information, as well as to the Property, and to all of Seller's agents and employees with knowledge of the Property.

## ARTICLE 6

### CLOSING

**6.1 Time and Place of Closing.** The consummation of this Agreement (the "Closing") will be held by escrow deliveries to the Escrow Agent and the closing of escrow no later than one hundred and twenty (120) calendar days from the Effective Date, or such earlier date as Buyer and Seller mutually agree upon (the "Closing Date").

**6.2 Closing Costs.** Closing costs shall be allocated in accordance with the custom in Mecklenburg County, North Carolina.

**6.3 Seller's Closing Obligations.** Not later than one (1) business day prior to the Closing Date, Seller shall deposit the following items into escrow with the Escrow Agent:

- i. **Deed.** A duly executed deed;
- ii. **Bill of Sale and Assignment.** Two duly executed counterparts of a bill of sale and assignment and assumption of any leases, licenses, permits and service contracts associated with the Property;
- iii. **Authority.** Such evidence as the Title Company may reasonably require as to the authority of the person or persons executing documents on behalf of Seller;



- iv. **FIRPTA.** An affidavit duly executed by Seller stating that Seller is not a “foreign person” as defined in the Federal Foreign Investment in Real Property Tax Act of 1980 and the 1984 Tax Reform Act;
- v. **Title Affidavit.** A title insurance affidavit, if required by the Title Company, duly executed by Seller, in form and content satisfactory to Seller and Title Company and sufficient to allow the Title Company to remove the standard exceptions from the Title Commitment;
- vi. **Closing Statement.** An executed counterpart settlement statement setting forth the amounts paid by or on behalf of or credited to Buyer and Seller; and
- vii. **Other Items.** Deliver such additional documents as shall be reasonably requested by the Title Company or required to consummate the transactions contemplated by this Agreement.

**6.4 Seller’s Deliveries at Closing.** At Closing, Seller shall deliver, or cause to be delivered, to the Buyer, the following:

- i. **Property Items.** All keys and original copies of the Leases, the Service Contracts and licenses and permits [and any letters of credit received by Seller as a security deposit from any tenant under any of the Leases], if any, in Seller’s possession, together with material leasing and property files and records which are in Seller’s possession (provided that Seller may retain copies of any such files and documents as it deems necessary); and,
- ii. **Occupancy.** Possession and occupancy of the Property subject to the Permitted Title Exceptions and rights of tenants and occupants.

**6.5 Buyer’s Closing Obligations.** No later than 12:00 p.m. on the Closing Date, Buyer will deliver into escrow with the Escrow Agent the following items:

- i. **Purchase Price.** The full amount of the Purchase Price, adjusted by credits, in immediately available federal funds wire transferred to Escrow Agent’s account and deliver to Escrow Agent instructions to immediately release the full amount to Seller;
- ii. **Authority.** Such evidence as Seller or the Title Company may reasonably require as to the authority of the person or persons executing documents on behalf of Buyer;

- iii. **Closing Statement.** An executed counterpart settlement statement setting forth the amount paid by or on behalf of or credited to Buyer and Seller; and,
  - iv. **Other Items.** Such additional documents as shall be reasonably requested by the Title Company or required to consummate the transaction contemplated by this Agreement.
- 6.6 Taxes.** General, special, ad valorem, personal property, and other property taxes and assessments imposed by any governmental authority and any association assessments, fees and dues (collectively, the “Taxes”) for the then-current calendar year should be prorated. If the Closing Date occurs prior to the receipt by Seller of all tax bills for the calendar year, Buyer and Seller will prorate Taxes for such calendar year based on the previous year and a post-closing “true-up” shall take place once all tax bills for the calendar year are received. Buyer will pay all increases in Taxes due to the change in ownership or use of the Property, and the same will not be prorated.
- 6.7 Utilities.** All utility bills for the Property shall be prorated. In the event Seller has not received utility bills through the Closing Date, utilities shall be prorated based on the most recent bills and a post-closing “true-up” shall take place within ninety (90) days of Closing. Buyer shall pay to Seller all utility deposits paid by Seller with respect to the Property.
- 6.8 Close of Escrow.** The close of escrow, including, without limitation, Seller’s delivery to Buyer of the Property by deed, together with such change of ownership and other documentation as is necessary to transfer the Water Rights and any other parts of the Property, and Buyer’s delivery to Seller of the Purchase Price, shall occur on the Closing Date. Closing will be subject to the satisfaction or waiver of conditions set out in Article 11 and Article 12 of this Agreement.

## ARTICLE 7

### **SELLER’S REPRESENTATIONS AND WARRANTIES**

The Seller represents and warrants the following to the Buyer:

- 7.1 Access to Property.** There are adequate means of ingress and egress for vehicular and pedestrian traffic to and from the Property and each adjoining street, road, or highway. All routes of ingress and egress to and from the Property, to the extent they pass through

adjoining property, do so in accordance with valid public or private easements that will inure to the benefit of Buyer.

- 7.2 Nothing Affecting Property.** To Seller's knowledge, the Property does not violate any restriction, condition or agreement contained in any easement, reciprocal easement, restrictive covenant, or similar instrument or agreement affecting the Property or any part thereof.
- 7.3 Material Disclosure.** Seller has disclosed to Buyer any and all facts and circumstances that materially affect the Property or the construction, use, operation, management, leasing, occupancy, status, condition and legal compliance of the Property or any portion thereof.
- 7.4 Soils, Flood, and Other Zone Designations.** There are no soil conditions adversely affecting the Property and the Property is not in an area identified by any agency or department of federal, state or local government as having flood or geological hazards. To Seller's knowledge, no portion of the Property is situated in an area designated by the Secretary of the United States Department of Housing and Urban Development (or by any other federal, state, municipal, or other governmental instrumentality) as having special flood or mudslide hazards.
- 7.5 Separate Legal Parcel.** The Land is a separate and distinct legal parcel, and has been created by way of a subdivision of land completed in accordance with all Applicable Laws, including any local ordinances, rules and regulations.
- 7.6 Utilities.** All utilities required by Applicable Laws or by the needs of occupants of the Property for the operation of the improvements including, but not limited to, water, sewer, gas and electric, enter the Land through adjoining public streets or if they pass through adjoining private land, do so in accordance with valid public or private easements which will inure to the benefit of Buyer.
- 7.7 Availability of Utilities.** All of said utilities are available to the Property in form and amount necessary for the present and contemplated use of the Property. No fact, condition, or proceeding exists which would result in the termination or impairment of the furnishing of or an increase in rates or services to the Property of the foregoing utility services.
- 7.8 No Violations of Applicable Law.** The location, ownership, operation, use, and occupancy of the Property for the purposes for which they are presently used, thereon do not violate any applicable Law, including without limitation all Environmental Laws and

the Americans with Disabilities Act. There are no violations of any Applicable Law affecting any portion of the Property, and no written notice of any such violation has been issued by any Governmental Authority.

- 7.9 Zoning and Permits.** The Property is properly zoned for its present and contemplated use, and is otherwise in full compliance with all Applicable Laws, including without limitation all federal, state and local laws, ordinances, rules, regulations or orders (including without limitation zoning laws, subdivision laws, building codes, fire codes, those relating to historical preservation, aviation, environment, health and safety. To Seller's knowledge, information and belief, all licenses, permits, approvals and consents required in connection with the present and contemplated use and occupancy of the Property have been duly issued by the appropriate Governmental Authorities or private authorities and are in full force and effect.
- 7.10 No Pending Requests.** There are no pending or threatened requests, applications or proceedings to alter or restrict the zoning or other use restrictions applicable to the Property; Seller has received no notice from any Governmental Authority of zoning, building, fire, water, use, health, environmental or other violations of Applicable Law issued in respect of the Property which have not been heretofore corrected, and Seller has no reason to believe that any Governmental Authority has issued, contemplates or has any basis for issuing any such notice, and no such violations exist.
- 7.11 Authority.** The Seller has full power, authority, and legal right to execute and deliver, and to perform its obligations under this Agreement and to consummate the transactions contemplated hereunder and has taken all necessary action to authorize the purchase hereunder on the terms and conditions of this Agreement and to authorize the execution, delivery and performance of this Agreement.
- 7.12 Executed.** This Agreement has been duly executed by the Seller and constitutes a legal, valid, and binding obligation of the Seller, and is enforceable against Seller in accordance with its terms.
- 7.13 Absence of Undisclosed Liabilities.** The Seller has no knowledge, based upon facts known to it as of the date of this Agreement, which could form the basis for any assertions against the Seller of any material claim or liability of any nature.
- 7.14 Environmental.** To Seller's knowledge, Seller has not caused the Property to be in violation of, and Seller has received no written notice from a governmental authority with jurisdiction over the Property that the Property is in violation of, any Environmental Law. For purposes hereof, (i) "Environmental Law" means any Federal, state, local or

administrative agency law, rule, regulation, ordinance or order relating to Hazardous Materials, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et. seq.) and the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et. seq.); and (ii) “Hazardous Material” means any substance, chemical, waste or other material listed as “hazardous” or “toxic” under any Environmental Law, including, without limitation, petroleum and petroleum byproducts.

- 7.15 Governmental and other Consents.** No consent, approval or authorization of or designation, declaration or filing with any governmental authority or other persons or entities on the part of the Seller is required in connection with the execution or delivery of this Agreement or the consummation of the transactions contemplated hereby.
- 7.16 No Defaults.** There are no existing defaults or events which with notice or lapse of time or both would constitute defaults thereunder, the consequences of which in the aggregate would have a material adverse effect on this Agreement.
- 7.17 Market Conditions.** As of the date of this Agreement, no material adverse change in or material disruption of conditions in the financial, banking or capital markets which we in our sole discretion, deem material in connection with this Agreement.
- 7.18 Compliance with the Law.** Seller agrees to comply in all material respects with any Law the violation of which could have a material adverse effect on the Seller.

## **ARTICLE 8**

### **BUYER’S REPRESENTATIONS AND WARRANTIES**

The Buyer represents and warrants to the Seller as follows:

- 8.1 Corporation.** The Buyer is a corporation duly incorporated, validly existing and in good standing under the laws of North Carolina, and has all requisite corporate power and authority and legal right to carry on the business that is contemplated under this Agreement.
- 8.2 Authority.** The Buyer has full corporate power, authority, and legal right to execute and deliver, and to perform its obligations under this Agreement and to consummate the transactions contemplated hereunder, and has taken all necessary action to authorize the purchase hereunder on the terms and conditions of this Agreement and to authorize the execution, delivery and performance of this Agreement.

- 8.3 Executed.** This Agreement has been duly executed by the Buyer, and constitutes a legal, valid and binding obligation of the Buyer, enforceable against Buyer in accordance with its terms.
- 8.4 Compliance with Instruments and Consents.** Neither the execution and the delivery of this Agreement by Buyer nor the consummation of the transactions contemplated hereby will conflict with or result in any violation of or constitute a default under any term of the certificate of incorporation or the bylaws for which the Buyer is bound.
- 8.5 Adverse Agreements.** The Buyer is not a party to or subject to any Contract, or subject to any charter or other corporate restriction or any Law which materially and adversely affects the business, operations, prospects, properties, assets or condition, financial or otherwise, of the Buyer and its obligations under this Agreement.

## ARTICLE 9

### SELLER'S COVENANTS

The Seller agrees that prior to the Closing:

- 9.1 Cooperation.** Seller shall use its best efforts to cause the sale contemplated by this Agreement to be consummated, and, without limiting the generality of the foregoing, to obtain the consents, permits, and licenses that may be necessary or reasonably required in order for the Seller to effect the transactions contemplated hereby.
- 9.2 Mineral Rights.** The Seller shall use its best efforts and otherwise cooperate to obtain from the holder of any mineral rights underlying the Property, for the benefit of Buyer, a waiver of all such holder's rights to extract minerals of any kind from the Property.
- 9.3 Refrain for Marketing.** Seller shall not market the Property to others following the Effective Date of this Agreement.
- 9.4 Legal Fees and Expenses.** Seller shall pay the fees and expenses of Seller's legal counsel, accountants, and other consultants or advisors incurred in connection with this Agreement. Real estate taxes, assessments, and any items of income and expense shall be prorated as of the Closing Date.

- 9.5 Ordinary Course of Business.** The Seller shall not conduct any business, or enter into any contract to sell, transfer or otherwise dispose of any assets related to Property, that would affect this Agreement.
- 9.6 Right of First Refusal.** The Seller shall deliver, on the Effective Date, notice of the Agreement and its terms and conditions to any parties holding a right of first refusal on any Water Rights or other Property and to provide Buyer with a copy of such notice immediately thereafter. Such notice delivered on the Effective Date shall be sufficient to trigger the running of any period for exercise of a right of first refusal.
- 9.7 Further Assurances.** Following the Closing, the Seller shall execute and deliver any further instruments of transfer and take all reasonable action as may be necessary or appropriate to transfer to the Buyer the Property.

## **ARTICLE 10**

### **BUYER'S COVENANTS**

The Buyer agrees that prior to the Closing:

- 10.1 Cooperation.** The Buyer shall use its best efforts to cause the sale contemplated by this Agreement to be consummated, and, without limiting the generality of the foregoing, to obtain the consents and permits which may be necessary or reasonably required in order for the Buyer to effect the transactions contemplated hereby.
- 10.2 Assumption of Liabilities.** Buyer shall not assume any debt of Seller.
- 10.3 Legal Fees and Expenses.** Buyer shall pay the fees and expenses for its respective legal counsel, accountants, and other consultants or advisors incurred in connection with the transaction. Real estate taxes, assessments, and any items of income and expense shall be prorated as of the Closing Date.
- 10.4 Mineral Rights.** The Buyer shall use its best efforts and otherwise cooperate to obtain from the holder of any mineral rights underlying the Property, for the benefit of Buyer, a waiver of all such holder's rights to extract minerals of any kind from the Property.
- 10.5 Financing.** The Buyer shall use its best efforts acquire the financing necessary to purchase and pay for the Property, and to pay all related fees and expenses.

## ARTICLE 11

### **CONDITIONS TO THE SELLER'S OBLIGATIONS**

The Seller is obligated to consummate the transactions that this Agreement contemplates only if each of the following conditions has been either satisfied or waived on or before the Closing Date:

- 11.1 Buyer's Representations and Warranties.** Buyer's representations and warranties set forth herein shall be true in all material respects on and as of the Closing Date, except as affected by transactions contemplated or permitted by this Agreement.
- 11.2 Buyer's Covenants.** The Buyer shall have performed all its obligations and agreements and complied with all its covenants contained in this Agreement prior to the Closing Date.
- 11.3 Documentation.** All matters and proceedings taken in connection with this Agreement as herein contemplated, including forms of instruments and matters of title, shall be reasonably satisfactory to the Seller and to its counsel.
- 11.4 Buyer's Closing Certificate.** The Seller must have received a certificate of the Buyer, certifying the truth of the statements in Section 11.1 and Section 11.2.

## ARTICLE 12

### **CONDITIONS TO THE BUYER'S OBLIGATIONS**

The Buyer is obligated to consummate the transactions that this Agreement contemplates only if each of the following conditions has been either satisfied or waived on or before the Closing Date:

- 12.1 Seller's Representations and Warranties.** Seller's representations and warranties contained herein shall be true and correct in all material respects on and as of the Closing Date, except as affected by transactions contemplated or permitted by this Agreement.
- 12.2 Seller's Covenants.** The Seller shall have performed all of its obligations and agreements and complied with all of its covenants contained in this Agreement prior to the Closing Date.



- 12.3 Documentation.** All matters and proceedings taken in connection with this Agreement, including forms of instruments and matters of title, shall be reasonably satisfactory to the Buyer and to its counsel.
- 12.4 Seller’s Closing Certificate.** The Buyer must have received a certificate of the Seller, certifying to the truth of the statements in Section 12.1, and Section 12.2.

### **ARTICLE 13**

#### **TERMINATION**

- 13.1 Buyer’s Special Right to Terminate.** Buyer may terminate this Agreement at any time during the Inspection Period for any reason, with no further liability.
- 13.2 Termination Following the Inspection Period.** Either the Buyer or the Seller has the discretionary authority to terminate this Agreement at anytime following the Inspection Period.
- 13.3 Discretionary Authority to Send Notice of Intent to Terminate.** The Buyer or Seller may send a notice stating that it has grounds for termination and that it intends to terminate this Agreement (a “Notice of Intent to Terminate”) in accordance with this Article if any one or more of the following events has occurred and is continuing:
- i.** the Seller or Buyer has made any misrepresentations under this Agreement.
  - ii.** the Seller or Buyer has breached any material covenant under this Agreement that cannot be cured;
  - iii.** the Seller or Buyer breached any material covenant under this Agreement that can be cured, and it failed to cure that breach within ten (10) calendar days after receiving the Buyer or Seller’s Notice of Intent to Terminate;
  - iv.** the Buyer cannot obtain financing for the funds necessary to consummate this Agreement, and to pay all related fees and expenses;
  - v.** a petition under any bankruptcy or insolvency law is filed by or against the Buyer or Seller.

- 13.4 Notice of Intent to Terminate.** The Notice of Intent to Terminate, shall include a statement of all amounts owed, the amount of any setoff to be taken, and a statement of all obligations due.
- 13.5 Obligations Arising.** If Buyer or Seller sends a Notice of Intent to Terminate, the non-terminating party shall perform all obligations under this Agreement that the terminating party has a legal right to declare due.
- 13.6 Effective Date of Termination.** If the Buyer delivers a Notice of Intent to Terminate under this Article, then termination is effective when the Seller has both received payment of all money due and the Seller has performed all of its obligations to be performed.
- 13.7 Survival of Common Law Rights and Obligations.** All rights in law and equity and all obligations arising from any ground for termination stated herein survive this Agreement's termination.

## **ARTICLE 14**

### **RISK OF LOSS**

- 14.1 Condemnation.** If, prior to Closing, a governmental authority initiates action to take the Property or a portion thereof by eminent domain proceedings, Buyer may either:
- i. terminate this Agreement without further liability to Buyer, upon which the Escrow Agent will return the Agreement Deposit to Buyer and neither party shall have any obligation to the other under this Agreement, except as expressly provided herein; or,
  - ii. continue to Closing.

Should Buyer elect under clause ii., then Buyer has the right to consult with Seller regarding the eminent domain proceedings and at Closing Buyer will be assigned the award of the condemning authority.

- 14.2 Casualty.** Seller assumes all risks and liability for damage to or injury occurring to the Property by fire, storm, accident, or any other casualty or cause until Closing.
- 14.3 Material Damage.** If, between the Effective Date and the Closing Date, the Property suffers Material Damage, then Seller shall promptly notify Buyer. Buyer may elect, by

written notice delivered to Seller within fifteen (15) business days after receipt of such notice, either to:

- i. terminate this Agreement upon which Escrow Agent will return the Agreement Deposit to Buyer, and neither Buyer nor Seller shall have any further obligation to the other except as may be expressly provided herein; or,
- ii. continue to Closing and award any insurance proceeds resulting from the Material Damage to Buyer (but only to the extent that the proceeds do not exceed the Purchase Price). If Buyer does not terminate this Agreement in the case of Material Damage Seller shall assign to Buyer at the Closing, its right to recover under any insurance policies covering such damage (but only to the extent that the proceeds do not exceed the Purchase Price) and shall pay Buyer at the Closing the deductible amount, if any.

The Closing Date may be extended as necessary to permit Buyer and Seller the full fifteen (15) business days.

**14.4 Non-Material Damage.** If between the Effective Date and the Closing Date, the Property suffers damages which is not Material Damage, Seller shall at Seller's option, either:

- i. repair such damage at its expense, to the reasonable approval of the Buyer, prior to the Closing (and if such repair cannot reasonably be completed prior to the Closing, Seller shall have the right to extend the Closing Date until such repairs are completed); or,
- ii. convey the Property to Buyer without making such repairs and assign to Buyer all insurance proceeds payable on account of such damage (but only to the extent that the proceeds do not exceed the Purchase price).

## ARTICLE 15

### **ESCROW AGENT**

**15.1 Investment of Agreement Deposit.** Escrow Agent shall invest the Agreement Deposit in an interest bearing account at a commercial bank whose deposits are insured by the Federal Deposit Insurance Corporation. Escrow Agent shall invest the Agreement Deposit only in such accounts as will allow Escrow Agent to disburse the Agreement Deposit upon no more than one (1) business day's notice.

- 15.2 Interest.** All interest and other income earned on the Agreement Deposit deposited with Escrow Agent hereunder shall be reported for income tax purposes as earnings of Buyer.
- 15.3 Notice of Receipt of Agreement Deposit.** Escrow Agent shall notify Seller, no later than one (1) business day after Escrow Agent's receipt thereof, that Escrow Agent has received the Agreement Deposit in immediately available funds, and is holding the same in accordance with the terms of this Agreement.
- 15.4 Payment at Closing.** If the Closing takes place under this Agreement, Escrow Agent shall deliver the Agreement Deposit to, or upon the instructions of, Seller on the Closing Date.
- 15.5 Payment on Demand.** If Buyer or Seller claims the Agreement Deposit pursuant to the provisions of this Agreement, such party claiming the Agreement Deposit shall deliver written notice of such claim to the Escrow Agent and to the other party and Escrow Agent shall disburse the Agreement Deposit to the party demanding it, The Escrow Agent shall thereupon be released and discharged from any further duty or obligation hereunder.
- 15.6 Objection to Payment of Demand.** The Escrow Agent shall not disburse the Agreement Deposit pursuant to Section 15.5, if either Buyer or Seller within ten (10) days of either Buyer or Seller's demand for payment, notifies Escrow Agent of any objection to such requested disbursement of the Agreement Deposit.
- 15.7 No Consent in Connection with Termination.** If Buyer delivers a written request to Escrow Agent and Seller for the return of the Agreement Deposit at any time before the Inspection Period in connection with the termination of this Agreement by Buyer, then Escrow Agent shall promptly refund the Agreement Deposit to Buyer without the necessity of Seller's consent.
- 15.8 Escrow Amount.** If Buyer or Seller terminates, Escrow Agent shall return Escrow Amount to Buyer. The Escrow Agent shall dispose of the Escrow Amount in one of the following two ways:
- i. In Accordance with Notice of the Seller and Buyer.** The Escrow Agent shall dispose of the Escrow Amount in the manner instructed in accordance with a notice that both the Seller and the Buyer execute and then deliver to the Escrow Agent; or,
  - ii. In Accordance with a Court Order.** The Escrow Agent shall dispose of the Escrow Amount when and in the manner that a court of competent jurisdiction

instructs in an order that is final and no longer subject to appeal in the opinion of the Escrow Agent's counsel.

- 15.9 Exculpation of Escrow Agent.** Escrow Agent's duties are herein specifically provided and are purely ministerial in nature, and Escrow Agent shall incur no liability whatsoever except for its willful misconduct or negligence, so long as Escrow Agent is acting in good faith.
- 15.10 Indemnification of Escrow Agent.** Seller and Buyer do each hereby release Escrow Agent from any liability for any error of judgment or for any act done or omitted by Escrow Agent in the good faith performance of its duties hereunder. Seller and Buyer do each hereby indemnify Escrow Agent against, and agree to hold, save, and defend Escrow Agent harmless from, any costs, liabilities, and expenses incurred by Escrow Agent in serving as Escrow Agent hereunder and in faithfully discharging its duties and obligations hereunder.
- 15.11 Execution by Escrow Agent.** Escrow Agent has executed this Agreement solely for the purpose of acknowledging and agreeing to the provisions of this Article 15. Escrow Agent's consent to any modification or amendment of this Agreement other than this Article 15 shall not be required.

## **ARTICLE 16**

### **GENERAL PROVISIONS**

- 16.1 Captions.** The section headings appearing in this Agreement are for convenience of reference only and are not intended to limit or define the text of any section or subsection.
- 16.2 Time is of the Essence.** Time is of the essence; however, if the date for performance of any action under this Agreement shall fall on a Saturday, Sunday, or legal holiday, such action shall, and may, be performed on the next succeeding business day which is not a Saturday, Sunday, or legal holiday.
- 16.3 Final and Exclusive Agreement.** This Agreement constitutes the final, exclusive agreement between the parties on the matters contained in this Agreement. All earlier and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement.

- 16.4 Merger.** Except as expressly provided in this Agreement, all rights of Buyer will merge into the deed and other instruments delivered by Seller at Closing, and will not survive Closing.
- 16.5 Survival.** All provisions of this Agreement which are not fully performed as of Closing shall survive Closing; provided, however, that the representations and warranties of Seller, and the representations and warranties of Buyer shall survive Closing for a period of twelve (12) months from the Effective Date.
- 16.6 Buyer's Remedies.**
- i. Specific Performance.** The Buyer may specifically enforce the Seller's obligations.
  - ii. Setoff.** Without limiting any other remedies available to the Buyer under this Agreement or at law, the Buyer may set off against any amount it is obligated to pay under the Agreement to the Seller, sums in the Buyer's possession that are reasonably sufficient to secure the Buyer from Seller's breach of its obligations under this Agreement.
  - iii. Cumulative Remedies.** In addition to any rights and remedies stated in this Agreement, the Buyer may exercise all of its rights at law or equity.
- 16.7 Governing Law.** This Agreement is governed by the laws of North Carolina, in which the Property is located. All actions or claims arising out of or in connection with this Agreement or any other actions or claims between the parties hereto shall be brought only in state court in the county in which the Property is located.
- 16.8 Confidentiality.** Buyer and Seller shall keep any negotiations and communications between the parties regarding the purchase of the Property confidential, including through the Inspection Period, and thereafter. Buyer and Seller shall not disclose any matter related to such negotiations and communications to any third party, except, on a "need to know" basis, to the party's attorneys, accountants, or similar consultants if such attorneys, accountants, or similar consultants agree to keep such negotiations, communications, and related matters confidential. This confidentiality provision shall apply throughout the Inspection Period, and thereafter.
- 16.9 Notices.** Any notice, demand, request or other instrument which may be or is required to be given under this Agreement shall be in writing, and shall be sent to the address of the recipient indicated in this Agreement or to such other address as that party may hereafter

designate in writing, either by personal delivery, by fax transmission, by recognized overnight courier, or by U.S. certified mail, return receipt requested. Notice is considered given on the date of hand or courier delivery, confirmed facsimile transmission, deposit with such overnight courier for next business day delivery, or deposit in the United States mail.

**16.10 Assignment.** Buyer may not assign its rights under this Agreement without first obtaining Seller's written approval, which approval may be given or withheld in Seller's discretion. However, at Closing, Buyer, may assign its rights under this Agreement without obtaining the Seller's written approval if such assignment is to an entity controlling, controlled by, or under common control with Buyer, in which instance Buyer shall provide Seller with notice of such assignment; provided, however, that Buyer shall not be released of Buyer's obligations hereunder.

To evidence the parties' agreement to the provisions of this Agreement, the parties have executed and delivered this Agreement on the date stated in the preamble.

**[THE REMAINDER OF THIS PAGE INTENTIONALLY BLANK]**

By signing below, the parties signify that the terms described in this Agreement are acceptable.

**BUYER**

SWAMPLAND VENTURES, LLC, a North Carolina limited liability company

---

JAMES MCELWAIN

Date \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

**SELLER**

---

MATTHEW LARSON

Date \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

---

NANCY LARSON

Date \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

**[SIGNATURES CONTINUED ON THE FOLLOWING PAGE]**



JOINDER OF TITLE COMPANY,

**INCLUDING AS ESCROW AGENT**

Fidelity National Title Insurance Company, including as escrow agent herein, joins in the execution of this Agreement for the limited purposes of acknowledging and agreeing to the provisions set out in Article 4 and Article 15.

FIDELITY NATIONAL TITLE,

INSURANCE COMPANY

\_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_