

CONTRACT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS CONTRACT to sell and purchase real property (the "Contract") is made and entered into as of the ____ day of _____, 2024, by and between Jack M. Scott, aka Jack Moses Scott (hereinafter "J Scott,"), an unmarried man, having an address of 525 S. Grove St., Hendersonville, NC 28792, and George R. Scott, an unmarried man, having an address of 514 S. Grove St., Hendersonville (hereinafter "G Scott"), J Scott and G Scott collectively hereinafter referred to as "Sellers," and the City of Hendersonville, a North Carolina Municipal Corporation (hereinafter "City" or "Buyer").

WITNESSETH

WHEREAS, Sellers are the owners of a +/- 9.65 acre parcel of land located on S. Grove Street, Hendersonville, NC, being that 9.65 acre tract shown on Exhibit A, attached hereto and incorporated herein by reference, having acquired such property by way of the deed recorded in Book 3904 at Page 50 of the of the Henderson County Registry, having a tax PIN of 9568-96-6744 (hereinafter "9.65 acre tract"); and

WHEREAS, J Scott is the owner of a +/- 7.68 acre parcel of land located on Substation Street, Hendersonville, NC, being that +/- 7.68 tract shown on Exhibit A, attached hereto and incorporated herein by reference, having acquired such property by way of that deed recorded in Deed Book 3638 at page 645 of the Henderson County Registry, having a tax PIN of 9578-06-4293 (hereinafter "7.68 acre tract"); and

WHEREAS, G Scott is the owner of a +/- 9.07 acre parcel of land located on S. Grove Street, Hendersonville, NC, being that +/- 9.07 tract shown on Exhibit A, attached hereto and incorporated herein by reference, having acquired such property by way of that deed recorded in Deed Book 3280 at page 349 of the Henderson County Registry, having a tax PIN of 9568-96-9488 (hereinafter "9.07 acre tract"); and

WHEREAS, the City has requested and the Sellers have agreed to sell to the City a portion of each of the 9.65 acre tract, the 7.68 acre tract, and the 9.07 acre tract, the portions of each tract to be recombined and conveyed as a single +/- 22.05 acre parcel, said +/- +/- 22.05 acre parcel being shown as LOT 1 on the attached Exhibit B, Exhibit B being attached hereto and incorporated herein by reference, said LOT 1 shown on Exhibit B being hereinafter referred to as the "Subject Property,"; and

WHEREAS, J Scott will retain a portion of the 7.68 acre tract, the retained portion being shown and identified on Exhibit B, attached hereto and incorporated by reference, as LOT 3. The City has requested and J Scott has agreed to convey to the City a 30' wide easement across LOT 3, the 30' easement being shown as "Proposed 4,157.21 +/- SQ. FT. 30' ACCESS RIGHT-OF-WAY," on Exhibit B. The 30' wide easement will be granted for the purpose of ingress and egress by the City to the Subject Property, by the City's successors and assigns, and by the general public

as permitted by the City, and for the construction, maintenance, repair and operation of utilities by the City, including but not limited to water, sewer, and stormwater. The 30' wide easement shall be appurtenant to LOT 1 shown on Exhibit B, attached hereto and incorporated herein by reference; and

WHEREAS, the Sellers will retain title to LOT 2, LOT 2 being shown on Exhibit B, attached hereto and incorporated herein by reference, and the City has requested and Sellers have agreed to convey to the City an exclusive 14' wide easement across the existing 14 foot wide ingress and egress strip shown as crossing the +/- 9.65 acre tract on Exhibit A, and being also shown as crossing LOT 1 and LOT 2 on Exhibit B, as "14 FOOT INGRESS AND EGRESS STRIP DESCRIBED IN D.B. 1348 P. 92 TRACT 2-2 (the "14' wide ingress and egress strip"), Exhibits A and B being incorporated herein by reference. The 14' wide easement granted across the 14' wide ingress and egress strip will be granted for the purpose of ingress and egress by the City to the Subject Property, by the City's successors and assigns, and by the general public as permitted by the City, and for the construction, maintenance, repair and operation of utilities by the City, including but not limited to water, sewer, and stormwater, and for the construction and maintenance of streambank repair measures of Mud Creek in the City's discretion. The 14' wide easement shall be appurtenant to LOT 1 shown on Exhibit B, attached hereto and incorporated herein by reference; and

WHEREAS, the 14' wide ingress and egress strip continues across that property owned by Flashback Furniture, LLC, and described in Deed Book 1125 at Page 629 of the Henderson County Registry (tax parcel number 9568-96-1309). City has requested and Sellers have agreed to convey and assign to the City any interest Sellers have in and to said 14 foot ingress and egress strip crossing said Flashback Furniture, LLC, property;

AGREEMENT

For the considerations hereafter set forth, Sellers agree to sell and City agrees to buy the Subject Property on the following terms and conditions:

- 1. WHEREAS CLAUSES.** The Whereas clauses above are incorporated herein as part of this Agreement.
- 2. SUBJECT PROPERTY.** As used herein, "Subject Property" refers to that +/- 22.05 acre parcel being shown as LOT 1 on the attached Exhibit B, Exhibit B being attached hereto and incorporated herein by reference. The City agrees to purchase and the Sellers agree to sell and convey fee simple marketable title to the Subject Property to the City.

As a specific condition precedent to the City being obligated to purchase and close on the Subject Property Sellers shall be obligated to obtain and record a quitclaim deed from R&R FC, LLC, a North Carolina limited liability company to Sellers for LOT 1, the form of the

quitclaim deed and legal description contained in said quitclaim deed to be approved by the City prior to the quitclaim deed being signed on behalf of R&R FC, LLC, and recorded.

3. EASEMENT ACROSS LOT 3. As additional consideration for the purchase price being paid for the Subject Property by the City, J Scott agrees to convey to the City a thirty foot (30') wide permanent and exclusive easement and a twenty foot (20') construction easement running along and with, and adjacent to, the 30' wide permanent easement (the permanent and construction easements collectively referred to as the "Lot 3 easement") across LOT 3, said LOT 3 being shown on Exhibit B, attached hereto and incorporated herein by reference. The Lot 3 easement conveyed to the City shall contain the following terms and conditions:

- a. The Lot 3 easement is for the following purposes:
 - i. Providing ingress and egress to the Subject Property to the City, the City's successor and assigns, and invitees, for all purposes, including but not limited to all activities on Subject Property;
 - ii. Construction, maintenance, repair and operation of any utilities by or on behalf of the City, including but not limited to water, sewer, and stormwater; and
 - iii. Providing a public access to the Subject Property as determined in the sole and absolute discretion of the City.
- b. The Lot 3 easement to be conveyed to the City is the easement shown and identified on Exhibit B, attached hereto and incorporated by reference, as "PROPOSED 4,157.21 +/- SQ. FT. 30' ACCESS RIGHT OF WAY."
- c. The Lot 3 easement shall be appurtenant to and run with the Subject Property.
- d. The City may construct an access road within the Lot 3 easement and if constructed, such access road will be constructed and maintained at the sole cost and expense of the City.
- e. The Lot 3 easement may be gated by the City at the sole discretion of the City.
- f. The 20' wide construction easement located within the Lot 3 easement shall be effective during such times as any construction, installation, maintenance, or repair activity is occurring on the Subject Property, including a reasonable period of time before and after such activities for set up and clean up, provided that the total width of the construction easement and the permanent easement may not exceed 50'.

4. EASEMENT ACROSS LOT 2. As additional consideration for the purchase price being paid for the Subject Property by the City, Sellers agree to convey to the City a fourteen foot (14') wide permanent and nonexclusive easement and a construction easement twenty foot (20') wide running along and with the 14' wide permanent easement (collectively referred to as the "Lot 2

easement”) across LOT 2, said LOT 2 being shown on Exhibit B, attached hereto and incorporated herein by reference. The Lot 2 easement conveyed to the City shall contain the following terms and conditions:

- a. The Lot 2 easement is for the following purposes:
 - i. Providing ingress and egress to the Subject Property to the City, the City’s successor and assigns, and invitees, for all purposes, including but not limited to all activities on the Subject Property;
 - ii. Construction, maintenance, repair and operation of any utilities by or on behalf of the City, including but not limited to water, sewer, and stormwater; and
 - iii. Providing a public access to the Subject Property as determined in the sole and absolute discretion of the City;
 - iv. Such streambank construction, maintenance, repair, and/or restoration activities along Mud Creek as the City may elect to conduct.
- b. The Lot 2 easement to be conveyed to the City is the easement shown and identified on Exhibit B, attached hereto and incorporated by reference, as “14’ INGRESS AND EGRESS STRIP DESCRIBED IN D.B. 1348 P 92 TRACT 2-2.”
- c. The Lot 2 easement shall be appurtenant to and run with the Subject Property.
- d. The City may construct an access road within the Lot 2 easement and if constructed, such access road will be constructed and maintained at the sole cost and expense of the City.
- e. The Lot 2 easement may be gated by the City at the sole discretion of the City.
- f. The 20’ wide construction easement located within the Lot 2 easement shall be effective during such times as any construction, installation, maintenance, or repair activity is occurring on the Subject Property or occurring within the 14’ wide ingress and egress strip, including a reasonable period of time before and after such activities for set up and clean up, provided that the total width of the construction easement and the permanent easement may not exceed 34’.

Sellers shall also assign to the City any interest of the Sellers in and to the 14’ ingress and egress strip that continues across that property owned by Flashback Furniture, LLC, and described in Deed Book 1125 at Page 629 of the Henderson County Registry (tax parcel number 9568-96-1309).

5. PURCHASE PRICE OF SUBJECT PROPERTY TOGETHER WITH EASEMENT ACROSS LOTS 2 AND 3, SECURITY DEPOSIT AND EXAMINATION PERIOD FEE.

- a. Purchase Price. The total purchase price for the Subject Property, including the easement described in paragraphs 3 and 4 above, shall be SIX HUNDRED FIFTEEN THOUSAND AND NO/100S DOLLARS (\$615,000.00).
- b. Earnest Money Deposit and Examination Period Fee. The City shall pay to the Escrow Agent, Sherri Brewer, the sum of \$10,000 as an earnest money deposit and Examination Period fee (reference paragraph 9 below) for the Subject Property. In the event the City elects to terminate this Agreement during the Examination Period, the Sellers shall be entitled to retain \$5,000 as compensation for the Examination Period, and the City shall be entitled to a reimbursement of the remaining \$5,000 deposited. In the event the City elects to terminate this Agreement outside of the Examination Period, or otherwise elects not to purchase the Subject Property outside of the Examination Period, the Sellers shall be entitled to retain the entire \$10,000 earnest money deposit and Examination Period fee as their sole and exclusive remedy under this Agreement. No other remedy shall be available at law or in equity to the Sellers for any failure to close by the City. In the event the City closes on the purchase of the Subject Tract, the entire \$10,000 shall be credited against the Purchase Price at closing.

6. EFFECTIVE DATE. This Agreement is being signed by City Manager, John Connet, on behalf of the City as an indication of the City's intent to purchase the property, and not to bind the City under the terms of this Agreement. Therefore, this Agreement shall not be binding upon the City until it has been approved and ratified by City Council. The Effective Date of this Contract shall be the date of the last to occur of the signing by all parties to this Contract or the approval by City Council.

7. CLOSING. Closing of the transfer of the Subject Property shall occur on or before sixty (60) days after the expiration of the Examination Period at such place and in such manner as may be mutually acceptable to the parties. At closing Sellers shall also deliver an Easement Deed, in form acceptable to the City, conveying or assigning to the City those easements described in paragraphs 3 and 4 above, such conveyance or assignment to be consistent with the terms of this Agreement.

8. TRANSFER OF TITLE TO SUBJECT PROPERTY. At closing, Sellers shall deliver to Buyer a GENERAL WARRANTY DEED for the Subject Property in recordable form, which shall convey fee simple marketable and insurable title, without exception for mechanics' liens, lis pendens, monetary liens and judgments, and free of other encumbrances or defects that would materially affect the value of the Subject Property, including those which would be revealed by a current and accurate survey of the Subject Property, except: (1) ad valorem taxes for the current year; (2) utility easements and unviolated covenants, conditions or restrictions; and (3) such other liens, encumbrances or defects as may be specifically approved by the City in writing. The deed shall be made to the **City of Hendersonville, a North Carolina municipal corporation.**

9. EXAMINATION PERIOD. As used in this Contract, "Examination Period" shall mean that period of time after the Effective Date to a date which is sixty (60) days after the Effective Date. Sellers hereby grant permission to the City and the City's agents to enter the Subject Property for purposes of conducting such due diligence examination and testing as deemed necessary by the City to determine the suitability of the properties for use by the City. Such right of examination includes, but is not limited to, the right to conduct surveys, studies, environmental testing and soil boring samples, and other geotechnical exploration, provided that at the conclusion of such testing the City shall restore the Subject Property to as near to their pre-testing condition as is reasonable. The City may terminate this Agreement during the Examination Period at the City's sole and absolute discretion for any reason or for no reason.

10. TITLE EXAMINATION. The City may, at its expense, cause a title examination to be made of the Subject Property before the end of the Examination Period. In the event such title examination shall reveal that J Scott's, G Scott's, or Sellers' title to any portion of the Subject Property is not fee simple marketable and insurable at regular rates, then City shall have the right to terminate this Contract, and shall be entitled to a refund of \$5,000 of the earnest money deposit.

11. POSSESSION. Exclusive Possession of the Subject Property and the Lot 2 easement and the Lot 3 easement shall be delivered by the Sellers at Closing. The City shall be entitled to exclusive possession of the entirety of the Subject Property and the Lot 2 easement and the Lot 3 easement upon closing. This paragraph shall survive closing.

12. SUBJECT PROPERTY CONVEYED "AS IS." Except as otherwise provided herein, the Subject Property and improvements, if any, are conveyed and accepted "as is" with all faults existing as of the date of the expiration of the Examination Period. Sellers make no representations or warranties as to the condition of the Subject Property, or suitability for any purpose. However, in the event that (1) the Subject Property is not in the same condition at closing as it is on the expiration of the Examination Period; (2) LOT 2 is no longer in a suitable condition for the construction or use of the Lot 2 easement; (3) LOT 3 is no longer in a suitable condition for the construction or use of the Lot 3 easement; or (4) a title defect arises affecting the Subject Property, or LOT 2 or LOT 3, rendering the title to any of them unmarketable, or rendering any of their use for the City's intended purposes impractical, then upon the occurrence of event(s) numbered (1), (2) (3) or (4), the City shall have no obligation to close on the purchase the Subject Property, the City shall have no further obligations under this Agreement, and the City shall be entitled to a refund of \$5,000 of its security deposit and due diligence fee.

13. RISK OF LOSS. Prior to closing, risk of loss shall be upon the Sellers.

14. CLOSING COSTS. Buyer shall pay the following closing costs: recording fees, costs of title search, title insurance, survey, and any inspection costs. Seller shall pay deed preparation

costs, and excise taxes due on the sale. Each party shall pay its own attorney's and consultant's fees.

15. PRO-RATIONS. Ad Valorem taxes for current year (2024) for the Subject Property shall be pro-rated between the parties on a calendar year basis as of the Closing Date. If the Sellers' share for that year has not been paid, the Sellers' share will be withheld from the Purchase Price and paid by the Buyer. If the taxes have been paid, Buyer shall reimburse Seller for Buyer's share at closing. If the then current year's taxes have not been determined, pro-rations shall be estimated based on the prior year's taxes (or other best available information as to value), withheld from Seller and paid by Buyer. Any unpaid taxes and penalties for prior years, and liens of any kind encumbering the Subject Property shall be withheld from Sellers' proceeds at closing.

16. BROKERAGE COMMISSION. Both Buyer and Sellers represent to each other that there have been no brokers involved in this transaction. Each party agrees to indemnify and hold harmless the other parties from and against any and all claims, demands and costs arising out of alleged brokerage commissions, if any.

17. DEFAULT. If Seller should default City may pursue any remedies it has in law or equity, including specific performance.

18. NOTICES. Unless otherwise provided herein, all notices and communications required to be given shall be in writing and be deemed given by (i) personally delivered with written acknowledgment of receipt, (ii) deposit in the United States mail, postage prepaid, certified or register mail, return receipt requested, or (iii) sent by a nationally recognized overnight courier, to the following address (provided that either party may change its notice address by notice to the other):

IF TO BUYER: City of Hendersonville
Attn: John Connet, City Manager
160 6th Avenue East
Hendersonville, North Carolina 28792

IF TO J SCOTT: Jack M. Scott
525 S. Grove St.
Hendersonville, NC 28792

IF TO
G SCOTT: George R. Scott
514 S. Grove St.
Hendersonville, NC 28792

19. APPLICABLE LAW. This Contract shall be governed by and construed in accordance with the laws of the State of North Carolina. The sole and exclusive venue for any litigation hereunder shall be a State or Federal court having jurisdiction in Henderson County, North Carolina.

20. ENTIRE AGREEMENT. This Contract contains the entire understanding and agreement between the parties, and supersedes all prior oral or written agreements between the parties. No amendment to this Contract shall be effective unless the same is in writing and signed by the parties hereto.

21. BINDING EFFECT. This Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.

22. TIME OF THE ESSENCE. Time is of the essence with respect to all time periods and dates for performance of this Contract.

23. COUNTERPARTS. This contract may be executed in one or more counterparts. Signed facsimiles shall constitute originals.

24. AUTHORITY. Seller and Buyer represent to each other that each is authorized to enter into and perform its obligations under this Contract.

25. SURVIVAL: If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the Closing, it shall survive the Closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

26. AUTHORIZATION TO DISCLOSE INFORMATION. Seller authorizes: (1) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney's file to Buyer and both Buyer's and Seller's agents and attorneys; (2) the Subject Property's title insurer or its agent to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to Buyer and both Buyer's and Seller's agents and attorneys, and (3) the closing attorney to release and disclose any seller's closing disclosure, settlement statement and/or disbursement summary, or any information therein, to the parties to this transaction, their real estate agent(s) and Buyer's lender(s).

27. REMOVAL OF SELLER'S PROPERTY. Seller shall remove from the Subject Property, by the date possession is delivered, (i) all personal property which is not a part of the purchase and (ii) unless otherwise agreed, all garbage and debris.

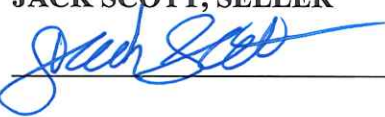
28. AFFIDAVIT AND INDEMNIFICATION AGREEMENT. Seller shall furnish at Closing an affidavit(s) and indemnification agreement(s) in form satisfactory to Buyer and Buyer's title insurer, if any, executed by Seller and any person or entity who has performed or furnished labor, services, materials or rental equipment to the Subject Property within 120 days prior to the date of Settlement and who may be entitled to claim a lien against the Subject Property as

described in N.C.G.S. §44A-8 verifying that each such person or entity has been paid in full and agreeing to indemnify Buyer, Buyer's lender(s) and Buyer's title insurer against all loss from any cause or claim arising therefrom.

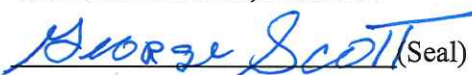
29. ASSIGNMENT. This Agreement may not be assigned by either party without the consent of the other parties to this Agreement, and if assigned, this Agreement shall be binding upon the assignee and assignee's heirs and successors.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed effective as of the date set forth above.

Dated Signed: 4-11-2024

JACK SCOTT, SELLER
 (Seal)

Dated Signed: 4/11/24

GEORGE SCOTT, SELLER
 (Seal)

CITY OF HENDERSONVILLE

ATTEST:

Jill Murray, City Clerk
(SEAL)

By: _____
John F. Connet, City Manager
Date Signed: _____

APPROVED AS TO FORM:

THIS INSTRUMENT HAS BEEN PREAUDITED IN THE MANNER REQUIRED BY THE LOCAL GOVERNMENT BUDGET AND FISCAL CONTROL ACT:

Angela Beeker, City Attorney

John Buchanan, Finance Director

