

CONTRACT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS CONTRACT to sell and purchase real property (this “Contract”) is made and entered into as of the ____ day of _____, 2022, by and between Caporoma, LLC, a North Carolina limited liability company (hereafter “Seller” or “Nelson”), and the City of Hendersonville, a North Carolina Municipal Corporation (hereafter “City” or “Buyer”).

WITNESSETH

WHEREAS, Seller is the owner of a lot or parcel of land in the City of Hendersonville consisting of +/- 0.39 acres, having and address of 110 Williams St., Hendersonville, NC, and being more particularly described in that deed recorded in Deed Book 1191 at page 124 fo the Henderson County Registry, having Tax Parcel ID# 9568-97-8675, and any appurtenances thereto (collectively the “Property”), and more specifically described in Exhibit “A”, which is attached hereto and incorporated herein by reference; and

WHEREAS, the City has requested and Seller has agreed to sell the Property to the City upon the terms and conditions hereinafter set forth.

AGREEMENT

For the considerations hereafter set forth, Seller agree to sell and City agrees to buy the property hereinafter described on the following terms and conditions:

- 1. PROPERTY.** As used herein, “Property” refers to all of that parcel of land (including improvements if any) described on Exhibit A, having an address of 110 Williams Street, Hendersonville North Carolina, with a Tax Parcel ID# 9568-97-8675. All of the parcel and interest to be conveyed is collectively hereafter referred to as the “Property.”
- 2. PURCHASE PRICE OF PROPERTY.** The total purchase price of the Property shall be Two Hundred Fifty Thousand and no/100s Dollars (\$250,000.00), which shall be paid as follows:
 - (a)** An Earnest Money Deposit in the total amount of Five Thousand and no/100s Dollars (\$5,000.00), which shall be paid to Sherri Brewer, Esq., with the law firm of Hogan & Brewer, as Escrow Agent (“Escrow Agent”) within five (5) business days after the Effective Date, and held in escrow and credited to the purchase price at closing, or disbursed as hereafter provided;
 - (b)** The balance shall be paid at closing to the Seller by wire transfer of funds, or other means acceptable to such Seller.
- 3. EFFECTIVE DATE.** The Effective Date of this Contract shall be the date of the last to occur of the following: 1) Date of the last party to sign this Agreement; or Approval by the City of Hendersonville City Council in open session, as provided in Paragraph 12 hereafter.

4. CLOSING DATE. Closing of the transfer of the Property shall occur on or December 20, 2024 at the law offices of Hogan & Brewer, Hendersonville, North Carolina, or such other place, or in such other manner as may be mutually acceptable to the parties.

5. RESERVED.

6. TRANSFER OF TITLE TO PROPERTY. At closing, Seller shall deliver to Buyer a General Warranty Deed conveying fee simple marketable title to the Property, subject only to specific instruments on the public record at the Effective Date agreed to by Buyer (not objected to by Buyer prior to the end of the Examination Period, zoning and other land use laws and ordinances and the lien of the then current year's *ad valorem* taxes which shall be pro-rated as of the date of closing (the "Permitted Exceptions").

7. EXAMINATION PERIOD. As used in this Contract, "Examination Period" shall mean that period of time after the Effective Date to a date which is thirty (30) days after the Effective Date. Buyer shall have the right to terminate this Agreement during the Examination period for any reason (by delivering written Notice to the Seller prior to its expiration). If the due diligence examination conducted by Buyer during the Examination Period indicates a presence of contaminated soils and Buyer terminates this Agreement based upon such finding, Buyer shall receive a refund of the Earnest Money, less \$2,000 which shall be retained by the Seller. If, however, Buyer terminates for any other reason, or for no reason, during the Examination Period, Buyer shall not receive a refund of any portion of the Earnest Money. In any event, whether Seller is entitled to retain \$2,000 or \$5,000 under the terms of this paragraph, such amount retained by Seller shall be Seller's full and complete compensation for the Buyer's cancellation during the Examination Period, including any and all extensions of the Examination Period.

8. TITLE EXAMINATION. After the Effective Date, City shall, at its expense, cause a title examination to be made of the Property before the end of the Examination Period. In the event such title examination shall reveal that Seller's title is not fee simple marketable and insurable at regular rates, subject only the Permitted Exceptions, then City shall promptly notify Seller in writing of such title defects and exceptions. Seller shall then have thirty (30) days to cure the defect (provided that if such objection or defect is of an established monetary amount, then it may be cured by withholding and disbursing the necessary amounts at closing). Closing shall be extended for the time reasonably necessary to cure the defect; however, if Seller is unable or unwilling to cure the defect, the City shall have the option of terminating this Contract receiving a full refund of its Earnest Money Deposit (\$5,000), or taking title to the Property in its then condition without reduction of the purchase price (except for those defects that can be cured by withholding an established monetary amount), as its sole and exclusive remedies. Within fourteen (14) days after the Effective Date, Seller shall deliver to City copies of any title insurance policies it has in its possession affecting the Property or any portion thereof as well as any leases of the Property or any portion thereof.

9. INSPECTIONS. During the Examination Period, separate and apart from the title examination, the City, its agents or representatives, at City's expense, shall have the right to enter upon the Property for the purpose of examining the physical condition of the Property by inspecting, examining, performing soil borings, environmental and other testing and conducting any surveys it deems appropriate (collectively, "Inspections"). Buyer shall conduct all such Inspections in a good and workmanlike manner and shall repair any damage to the Property caused by City's entry. Inspections shall occur during reasonable hours so as to not interfere with Seller's use of the Property or the use of the Property by any tenant of the Seller. Seller shall deliver to City any studies, reports, inspections, or surveys that Seller has in its possession affecting, or relating to the Property, including without limitation any environmental studies. Seller represents that neither Seller, nor Seller's members, officers or employees, have any knowledge of any adverse environmental conditions or contamination of the Property. City shall keep as confidential any such matters furnished to it by Seller, or the result of any Inspection performed by City, to the extent permitted under Public Records laws of North Carolina. All inspections shall be completed during the Examination Period (subject to any extension granted by Seller), and if any physical conditions are not objected to within that time (as extended) the physical condition of the Property shall be deemed accepted by Buyer, except for matters occurring after that time.

10. POSSESSION. Seller can and will deliver unencumbered possession of the Property to City as of the Closing Date. The Property shall be vacant and unoccupied prior to the Closing Date.

11. PROPERTY CONVEYED "AS IS." Except as otherwise provided herein, the Property and improvements are conveyed and accepted "as is" with all faults. Seller makes no representations or warranties as to the condition of the Property, or suitability for any purpose, including for its Intended Use, except as otherwise provided herein; however, that except for normal wear and tear, Seller will deliver the Property to the Buyer in substantially the same condition as of the Effective Date of this Agreement. Prior to Closing, any risk of loss shall be upon Seller.

12. NOT WITHSTANDING ANY EXECUTION OF THIS CONTRACT, IT IS UNDERSTOOD AND AGREED BY SELLER THAT THIS CONTRACT IS SUBJECT TO APPROVAL BY CITY COUNCIL IN OPEN SESSION AS REQUIRED BY NORTH CAROLINA LAW, AND THAT THIS CONTRACT IS NOT BINDING UNTIL SUCH APPROVAL IS GIVEN AND THE CONTRACT HAS BEEN PREAUDITED AS REQUIRED BY THE NORTH CAROLINA LOCAL GOVERNMENT BUDGET AND FISCAL CONTROL ACT.

13. RISK OF LOSS. Prior to closing, risk of loss with respect to the property shall be upon the Seller.

14. CLOSING COSTS. Seller shall pay for deed preparation and any other documents necessary to perform Seller's obligations under this Contract, for excise tax or other conveyance tax, any deferred tax, and all costs necessary to convey clear title. Buyer shall pay for recording costs, costs of title search, title insurance, survey (if Buyer chooses to procure a survey), and any inspection costs. Each party shall pay its own attorney's and consultant's fees.

15. PRO-RATIONS. Ad Valorem taxes for the Property shall be pro-rated between the parties on a calendar year basis as of the Closing Date. If the Seller's share for that year has not been paid, the Seller's 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.

16. BROKERAGE COMMISSION. The parties represent to each other that no real estate brokers have been engaged with respect to 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 undisclosed or alleged brokerage commissions, if any.

17. DEFAULT. If City shall default in the performance of any of its obligations hereunder, Seller shall be entitled to cancel this Contract and receive the Earnest Money Deposit as liquidated damages. Such liquidated damages shall be Seller's sole and exclusive remedy. Unless otherwise limited herein, 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 (i) when received if personally delivered with written acknowledgment of receipt, (ii) when deposited in the United States mail, postage prepaid, certified or register mail, return receipt requested, or (iii) when 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 SELLER: Caporoma, LLC
Attn: Mary Kay White

_____ [Address]

19. APPLICABLE LAW. This Contract shall be governed by and construed in accordance with the laws of the State of North Carolina. The sole 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 IS 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, subject only to approval of this Contract by the City Council in open session.

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

Caporoma Properties, LLC, SELLER

Dated Signed: _____ (SEAL)
James Anderson, Member

Dated Signed: _____ (SEAL)
Margaret Foley Ross, Member

Dated Signed: _____ (SEAL)
Mary Kay White, Member

Dated Signed: _____ (SEAL)
Carol Stiles Barthel

Dated Signed: _____

_____ (SEAL)

Ricardo C. Bierrenbach DeCastro, Member

CITY OF HENDERSONVILLE

ATTEST:

City Clerk
(SEAL)

By: _____

John Connet, City Manager

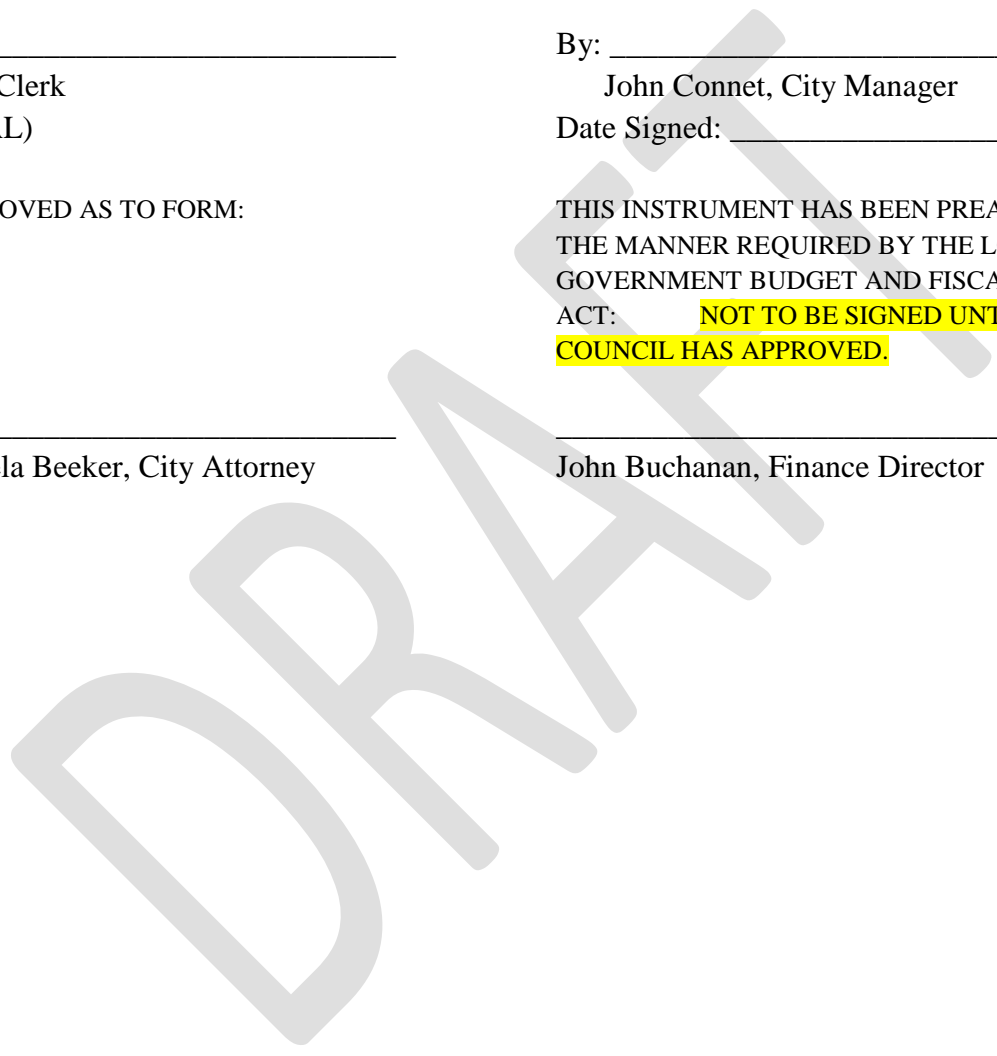
Date Signed: _____

APPROVED AS TO FORM:

THIS INSTRUMENT HAS BEEN PREAUDITED IN THE MANNER REQUIRED BY THE LOCAL GOVERNMENT BUDGET AND FISCAL CONTROL ACT: **NOT TO BE SIGNED UNTIL CITY COUNCIL HAS APPROVED.**

Angela Beeker, City Attorney

John Buchanan, Finance Director



Acknowledgement of Escrow Agent

The undersigned, Sherri Brewer, Esquire, as Escrow Agent, agrees to hold the Earnest Money Deposit and to disburse the same according to the terms of the Agreement.

This _____ day of _____, 2024.

Sherri Brewer, Esquire
Escrow Agent

DRAFT

EXHIBIT A

PROPERTY DESCRIPTION

BEGINNING at a ½ inch pipe located in the Western margin of the right of way of Williams Street, said point also being located in the Northernmost corner of the Caporoma Tract as described in deed recorded in Deed Book 1166, at Page 33, Henderson County Registry; thence, from said beginning point, running partially with the Southwestern margin of the right of way of Williams Street, South 31 degrees 01 minutes 05 seconds East 102.93 feet to a rebar located in the boundary of the Anders Tract as described in deed recorded in Deed Book 440 at Page 625, Henderson County Registry, thence with the boundary of the aforereferenced Anders Tract, South 59 degrees 00 minutes 00 seconds West 168.01 feet to a ½ inch rebar located in the boundary of The City of Hendersonville Tract as described in deed recorded in Deed Book 431, at Page 695, Henderson County Registry; thence, with the boundary of same, North 30 degrees 59 minutes 50 seconds West 100 feet to a new iron pin located in the Southern boundary of The City of Hendersonville Tract as described in deed recorded in Deed Book 1054, at Page 51, Henderson County Registry; thence, with the Southern boundary of same, North 58 degrees 00 minutes 05 seconds East 167.99 feet to a mag nail set; thence, North 57 degrees 59 minutes 41 seconds East 2.17 feet **TO THE POINT AND PLACE OF BEGINNING** and being 0.39 acre, more or less, as shown on a survey prepared by David C. Huntley, PLS, entitled Survey For Caporoma Properties, LLC, dated February 17, 2004, and being Drawing Number H-4843, reference to which is hereby made and incorporated herein.

AND BEING all of that property as described in deed recorded in Deed Book 1166, at Page 33, of the Henderson County Registry.