

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 _____, 2023, by and between Glenn N. Bennett, and wife, Deborah S. Bennett, of 1341 Valmont Drive, Hendersonville, NC, hereinafter sometimes collectively the “Bennetts,” and Martha Bennett Rogers, of 113 Acadia Avenue, Piedmont, SC 29673, sometimes referred to as “Rogers”, the Bennetts and Rogers collectively hereinafter referred to as the “Sellers,” and the City of Hendersonville, a North Carolina Municipal Corporation (hereafter “City” or “Buyer”).

WITNESSETH

WHEREAS, Sellers are the owners of a +/- 40 acre parcel of land located on Long John Mountain, being that real property described in that deed recorded in Deed Book 708 at Page 335 of the Henderson County Registry, having a tax PIN of 9559-73-4839 (the “Subject Property”); and

WHEREAS, the Bennetts and Rogers are the owners of a +/- 0.84 acre tract of land, being that real property described in Deed Book 1117 at Page 165 of the Henderson County Registry, also being shown as Tract A on that plat recorded in Plat Cabinet C at Page 278A of the Henderson County Registry, having a tax PIN of 9559-83-2386 (the “Small Bennett Tract”); and

WHEREAS, the Bennetts are the owners of a +/- 19.30 acre parcel of land, being that 19.30 acre parcel shown on that plat recorded in Plat Book 2011 at Page 8330 of the Henderson County Registry, and consisting of those parcels described in Deed Book 1117 at Page 156 and Deed Book 5700 at Page 711 of the Henderson County Registry, said 19.30 acre parcel having a tax PIN of 9559-93-3355 (the “Large Bennett Tract”); and

WHEREAS, Mountain Acres, LLC, a North Carolina limited liability company, owns that property shown as Area 1, Area 2, Area 3, and Area 4 on the plat recorded in plat book 2013 at Slide 9125 of the Henderson County Registry, said Areas 1-4 collectively having a tax PIN of 9559-55-3329 (the “Mountain Acres Property”); and

WHEREAS, Areas 1-3 of the Mountain Acres Property is subject to a conservation easement granted in favor of Carolina Mountain Land Conservancy, a North Carolina nonprofit corporation, said conservation easement being recorded in Deed Book 1557 at Page 184 of the Henderson County Registry; and

WHEREAS, the City wishes to construct a water tank on the Mountain Acres Property, and purchase of the Subject Property is necessary to facilitate the construction of said water tank;

WHEREAS, the City has requested and the Bennetts and Rogers have agreed to sell the Subject Property to the City upon the terms and conditions hereinafter set forth; and

WHEREAS, the City has requested and the Bennetts and Rogers have agreed to sell the Small Bennett Tract to the City upon the terms and conditions hereinafter set forth; and

WHEREAS, the City has requested and the Bennetts have agreed to convey an easement across the Large Bennett Tract to the City, said easement to be appurtenant to the Subject Property, upon the terms and conditions hereinafter set forth; and

WHEREAS, Larry Wayne Rogers, husband of Martha Bennett Rogers, is joining in this Contract to convey any marital interest that he may have in the Subject 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. SUBJECT PROPERTY. As used herein, "Subject Property" refers to that +/- 40 acre parcel of land located on Long John Mountain, being that real property described in that deed recorded in Deed Book 708 at Page 335 of the Henderson County Registry, having a tax PIN of 9559-73-4839. The City agrees to purchase and the Bennetts and Rogers agree to sell and convey fee simple marketable title to the Subject Property to the City.

- a. The City agrees to place a conservation easement in favor of Conserving Carolina, a North Carolina nonprofit corporation, on the Subject Property to maintain the Subject Property in its natural state, without improvement, except that the following specific activities shall be permitted.
 - i. Development of a passive recreation park.
 - ii. Construction/installation, maintenance, repair and replacement of waterlines and other City owned utilities, including but not limited to City water system infrastructure, City sewer system infrastructure and City stormwater infrastructure, including all on site activities reasonably required for all of the foregoing; activities reasonably required for the construction, maintenance, repair and replacement of a water tower and its appurtenant infrastructure (including water lines) on the Mountain Acres Property; and installation of electrical service as required.
 - iii. Construction of a paved vehicular access road from the Easement crossing the Large Bennett Tract, through the Subject Property, to the Mountain Acres Property, in sufficient width to allow the City to carry out its authorized activities on the Subject Property and the Mountain Acres Property, said vehicular access road through the Subject Property hereinafter referred to as the "Bennett Trail Extension." It is understood and agreed that the Bennett Trail Extension may be used to provide vehicular access to and through the Mountain Acres Property to other

properties adjacent to the Mountain Acres Property owned by the City or Conserving Carolina. No other vehicular access roads will be constructed on the Subject Property without the consent of Conserving Carolina.

- iv. Construction of hiking trails
 - v. Construction of a parking area.
 - vi. Construction of a small restroom facility
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- b. Removal of trees on the Subject Property shall be only as is reasonably necessary for the performance of the permitted activities on the Subject Property.
 - c. It is agreed that the conservation easement shall be put in place no later than the date that the water tank constructed on the Mountain Acres property is operational; provided however, that nothing herein shall obligate the City to construct said water tank.

2. LARGE BENNETT TRACT. As used herein, “Large Bennett Tract” refers to that +/- 19.30 acre parcel shown on that plat recorded in Plat Book 2011 at Page 8330 of the Henderson County Registry, and consisting of those parcels described in Deed Book 1117 at Page 156 and Deed Book 570 at Page 711 of the Henderson County Registry, said 19.30 acre parcel having a tax PIN of 9559-93-3355. As part of the purchase price for the Subject Property, the Bennetts agree to convey to the City a thirty foot (30’) wide permanent easement and a construction easement twenty foot (20’) wide running along and with the 30’ wide permanent easement (collectively referred to as the “Easement”) across the Large Bennett Tract. The Easement granted shall contain the following terms and conditions:

- a. The Easement shall be used to provide 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 authorized activities on Subject Property and the Mountain Acres Property. The Easement will be appurtenant to and run with the Subject Property and the Mountain Acres Property.
- b. It is understood and agreed that the Subject Property and/or the Mountain Acres Property may be developed into a public, passive recreation park, and that therefore the Easement will also be used as a public access in and to the Subject Parcel and the Mountain Acres Property during the operating hours of the park. It is also understood and agreed that the Easement may be used to provide vehicular access to and through the Mountain Acres Property to other properties adjacent to the Mountain Acres Property owned by the City, Conserving Carolina or Mountain Acres, LLC.
- c. The location of the Easement shall be subject to the mutual agreement of both the City and the Bennetts.

- d. The access road within the easement shall be constructed and maintained at the sole cost and expense of the City. Construction of the access road shall include, at a minimum, paving with at least 2" of asphalt over a 6" aggregate base course.
- e. The City shall cause to be prepared a survey, to be recorded, showing the location of the agreed upon proposed Easement. In the event the City and the Bennetts are unable to agree on the location for the Easement, the City or the Bennetts may terminate this Agreement by giving written notice to all other parties.
- f. The access road within the Easement shall be gated, provided however that the gate will be open during the operating hours of any park operated on the Subject Property and/or the Mountain Acres Property, during construction or maintenance activities on the Subject Property or the Mountain Acres Property, and when the Subject Property and/or the Mountain Acres Property is being accessed by the City, or the City's agents and invitees. The Bennett's shall be provided access through the gate so that they may access their property at all times.
- g. The access road in the Easement will be named "Bennett Trail."
- h. The City will construct and landscape a buffer area separating the Easement from balance of the Large Bennett Tract in the event the Subject Property and/or the Mountain Acres Property are developed into a park such that the access road within the Easement becomes available for passage by the public. Once constructed, maintenance of the buffer area shall be the responsibility of the City. The location and size of the buffer area shall be determined by agreement of the parties and shall be shown on the survey of the Easement (reference subparagraph 2(e) above). Sellers shall grant a maintenance easement to the City across the buffer area.
- i. The 20' wide portion of the Easement that is a construction easement shall be effective during such times as the construction, installation, maintenance, repair and/or replacement of the water/sewer/stormwater infrastructure is occurring on the Subject Property, or , installation, maintenance, repair and/or replacement of the water tank and its appurtenant infrastructure and waterlines is occurring on the Mountain Acres Property, including a reasonable period of time before and after authorized activities for set up and clean up. At the City's election, the 20' construction easement shall be flexible dependent upon reasonable construction requirements, such that it may be located on either side, or split and located both sides, of the 30' permanent easement, or any combination thereof, at different points along the permanent easement, provided that the total width of the construction easement and the permanent easement may not exceed 50'.

3. SMALL BENNETT TRACT. As used herein, "Small Bennett Tract" refers to that +/- 0.84 acre tract of land, being that real property described in Deed Book 1117 at Page 165 of the Henderson County Registry, also being shown as Tract A on that plat recorded in Plat Cabinet C

at Page 278A of the Henderson County Registry, having a tax PIN of 9559-83-2386. The City agrees to purchase and the Bennetts and Rogers agree to sell and convey fee simple marketable title to the Small Bennett Tract to the City.

4. PURCHASE PRICE OF SUBJECT PROPERTY TOGETHER WITH EASEMENT ACROSS THE LARGE BENNETT TRACT, SECURITY DEPOSIT AND EXAMINATION PERIOD FEE.

- a. Purchase Price. The total purchase price for the Subject Property, including the Easement across the Large Bennett Tract described in paragraph 2 above, shall be NINE HUNDRED TWENTY-TWO THOUSAND AND NO/100S DOLLARS (\$922,000.00).
- b. Earnest Money Deposit and Examination Period Fee. The City shall pay to the Escrow Agent 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.

5. PURCHASE PRICE OF THE SMALL BENNETT TRACT, SECURITY DEPOSIT AND EXAMINATION PERIOD FEE.

- a. Purchase Price. The total purchase price for the Small Bennett Tract FIFTY-ONE THOUSAND THREE HUNDRED AND NO/100S DOLLARS (\$51,300.00).
- b. Earnest Money Deposit and Examination Period Fee. The City shall pay to the Escrow Agent the sum of \$5,000 as an earnest money deposit and Examination Period fee (reference paragraph 9 below) for the Small Bennett Tract. In the event the City elects to terminate this Agreement during the Examination Period, the Sellers shall be entitled to retain \$2,500 as compensation for the Examination Period, and the City shall be entitled to a reimbursement of the remaining \$2,500 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 \$5,000 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 Small Bennett Tract, the entire \$5,000 shall be credited against the Purchase Price at closing.

6. EFFECTIVE DATE. The Effective Date of this Contract shall be the date of signing by the last party to sign this Contract.

7. CLOSING DATE. 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.

8. TRANSFER OF TITLE TO SUBJECT PROPERTY AND SMALL BENNETT TRACT. At closing, Sellers shall deliver to Buyer a General Warranty Deed conveying fee simple marketable title to the Subject Property and the Small Bennett Tract. Bennetts shall also deliver an Easement Deed, in form acceptable to the City, containing terms consistent with the terms of this Agreement. Larry Wayne Rogers shall also sign the general warranty deed at closing, conveying his marital interest in and to the Subject Property and the Small Bennett Tract to the City.

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, the Large Bennett Tract, and the Small Bennett Tract, 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, the Large Bennett Tract and the Small Bennett Tract, 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. After the Effective Date, 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 Seller's title is not fee simple marketable and insurable at regular rates, subject only the Permitted Exceptions, then City shall have the right to terminate this Contract.

11. POSSESSION. Exclusive Possession of the property shall be delivered by the Sellers at Closing. The City shall be entitled to exclusive possession of the entirety of the Subject Property 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 and/or the Small Bennett Tract is not in the same condition at closing as it is on the expiration of the Examination Period; (2) the Large Bennett tract is no longer in a suitable condition for the construction of the Easement; or (3) a title defect arises affecting the Subject Property, the Small Bennett Tract, or the Large Bennett Tract, 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) or (3), the City shall have no obligation to close on the purchase of either parcel, 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 for the Large Bennett Tract, and a refund of \$2,500 of its security deposit and due diligence fee for the Small Bennett Tract.

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 (2023) for the Subject 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. Unpaid taxes for prior years, if any, 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 THE
BENNETTS: Glenn and Deborah Bennett
1341 Valmont Drive
Hendersonville, NC 28791

IF TO
ROGERS: Martha Rogers
113 Acadia Avenue
Piedmont, SC 29673

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.

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

GLENN N. BENNETT, SELLER

Dated Signed: _____ (Seal)

DEBORAH S. BENNETT, SELLER

Dated Signed: _____ (Seal)

MARTHA BENNETT ROGERS, SELLER

Dated Signed: _____ (Seal)

LARRY WAYNE ROGERS, as to his marital interest

Dated Signed: _____ (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

DRAFT