

OPTION TO PURCHASE AGREEMENT

THIS OPTION TO PURCHASE AGREEMENT (this “**Contract**”) is made and entered into as of the ____ day of _____, 202__ (the “**Effective Date**”), by and between the **TOWN OF PINEVILLE**, a North Carolina municipal corporation (the “**Town**”) and **CONE MILL DEVELOPMENT VENTURES, LLC**, a North Carolina limited liability company (“**Developer**”). The Town and the Developer are sometimes separately referred to in this Contract as a “Party” or jointly referred to as the “Parties.”

RECITALS:

A. The Town, Pineville Redevelopment and Investment, Inc. (“**Pineville Redevelopment**”) and Developer are parties to that certain AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY, dated October 23, 2024 (as amended and assigned from time to time, the “**Purchase Agreement**”) pursuant to which the Town and Pineville Redevelopment have agreed to sell, and Developer has agreed to purchase, that certain real property located at 200 Dover Street and 306 Dover Street in Pineville, North Carolina, owned by the Town and having Mecklenburg County Tax Parcel Numbers 221-051-11 and 221-051-17, respectively, and that certain real property located at 436 Cone Avenue in Pineville, North Carolina, owned by Pineville Redevelopment and having Mecklenburg County Tax Parcel Number 221-051-07, all being more particularly described on Exhibit A attached hereto (collectively, the “**Property**”).

B. On or about the date hereof, the Town and Pineville Redevelopment have sold and conveyed the Property to Developer in accordance with the terms of the Purchase Agreement.

C. Developer intends to develop a portion of the Property into individual townhome units (each a, “**Townhome**”).

C. Pursuant to the terms of the Purchase Agreement, the Town shall have the option to re-purchase the Property upon certain terms and conditions, as more particularly set forth herein.

D. Pursuant to N.C.G.S. §160D-1005 and N.C.G.S §160D-1312, a public hearing regarding this Contract and the Purchase Agreement was held at the December 10, 2024 meeting of the Town of Pineville Town Council (the “**Town Council**”). The notice of public hearing specified, among other things, the location of the Property subject to this Contract and the Purchase Agreement, the development uses proposed on the Property in accordance with the Development Plan, and the appraisal of the Property. The Purchase Agreement was available for public inspection at the Town’s Town Hall. At that meeting, the Town Council passed a Resolution approving the Purchase Agreement, attached hereto as Exhibit B.

E. The Town and Developer, pursuant to the Purchase Agreement, hereby enter into this Contract to more specifically set forth their understandings regarding the Town’s option to purchase the Property.

AGREEMENT:

NOW, THEREFORE, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and Developer hereby agree as follows:

SECTION 1. Incorporation of Recitals; Defined Terms.

(a) The above recitals are true and correct and by this reference are incorporated as if fully set forth herein.

(b) Defined terms are indicated herein by initial capital letters; and shall have the meanings set forth herein, whether or not such terms are used before or after the definitions are set forth; and if not specifically set forth herein, defined terms shall have the meanings set forth in the Purchase Agreement.

(c) “Development Plan” shall mean the plan that becomes part of the zoning of the Property as approved by Town Council, which establishes the level and detail of development allowed absent further zoning action except as otherwise allowed or required under this Contract, and which is generally consistent with that certain Developer’s Concept Plan dated September 2024 as set forth on Exhibit C hereto. For the avoidance of doubt, such Development Plan is not approved by Town Council by execution of this Contract, and must be approved by Town Council, if at all, pursuant to all applicable laws and ordinances.

(d) “Force Majeure”: No Party shall be responsible for any default, delay or failure to perform if such default, delay or failure to perform is due to causes beyond such Party’s reasonable control, including, but not limited to, strikes, lockouts, actions or inactions of governmental authorities, epidemics, pandemics, wars, embargoes, fires, hurricanes, adverse weather, acts of God, interference duly caused by any other Party, or the default of a common carrier. In the event of a default, delay or failure to perform due to causes beyond such Party’s reasonable control or due to interference by another Party, any date or times by which the Parties are otherwise scheduled to perform, if any, shall be extended for a period of time equal in duration to the time lost by reason of the cause beyond the reasonable control of such Party. Written notice of such alleged delay shall be given to the other Party within fifteen (15) days of the commencement of such delay and shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure event are minimized. Notwithstanding the foregoing, in no event shall Developer’s performance of its obligations under this Contract be extended beyond one hundred fifty (150) days after the applicable deadline herein.

(e) “Improvements” shall mean all buildings, structures, fixtures, parking areas, parks, roadways, sidewalks, and other improvements located on the Property.

(f) “Phase I” shall mean the portion of the Property and Improvements labeled as “Phase I” on the Development Plan.

(g) “Phase I Deadline” shall mean the date that is twelve (12) months after the Effective Date.

(h) “Phase I Improvements” shall mean the Improvements set forth on the Development Plan and labeled as “Phase I” thereon.

(i) “Phase II” shall mean the portion of the Property and Improvements labeled as “Phase II” on the Development Plan.

(j) “Phase II Deadline” shall mean the date this is thirty-six (36) months after the Effective Date.

(k) “Phase II Improvements” shall mean the Improvements set forth on the Development Plan and labeled as “Phase II” thereon.

SECTION 2. Option to Purchase.

(a) Town shall have the option to re-purchase (i) Phase I in the event that the Phase I Improvements have not been commenced on or before the date that is twelve (12) months after the Effective

Date; and/or (ii) Phase II in the event that the Phase II Improvements have not been commenced on or before the date that is thirty-six (36) months after the Effective Date; and/or (iii) Phase I and/or Phase II (as applicable), in the event that following commencement of construction thereon, the entity developing such applicable phase abandons its construction activities for either (A) a total period of ninety (90) consecutive days, or (B) a total period of one hundred twenty (120) cumulative days in any consecutive six (6) month period, in each case subject, however, to Force Majeure (in either event, an “**Abandonment**”); and/or (iv) any undeveloped portion of the Property in the event that the square footage of the Phase II Improvements designated as commercial use is, in the aggregate, less than 24,000 as of the date that is seventy-two (72) months after the Effective Date.

(b) In the event that Town exercises its right to re-purchase either Phase I and/or Phase II portion of the Property from Developer in accordance with Section 2(a), the Town shall provide written notice thereof to Developer (the “**Exercise Notice**”) no later than the date that is sixty (60) days after the Phase I Deadline, Phase II Deadline, or Abandonment (as applicable), which Exercise Notice shall contain the date the Town intends to close on the sale by Developer and the purchase by the Town (the “**Closing**”) of the applicable portion of the Property (such date being, the “**Closing Date**”); provided, however, the Closing Date shall be no more than one hundred twenty (120) days after the date on which the Exercise Notice is received by Developer. From and after the date on which the Exercise Notice is given, this Contract shall be deemed for all purposes to be a legally enforceable contract between Town and Developer for the sale and purchase of the Phase I and/or Phase II portion of the Property upon the terms and conditions herein.

(c) In the event that Town exercises its right to re-purchase either Phase I and/or Phase II portion of the Property from Developer in accordance with Section 2(a), the purchase price thereof shall be the appraised value of the applicable portion of the Phase I Improvements, Phase II Improvements and/or undeveloped portion of the Property (as applicable) at the time Town exercises its right to re-purchase, as determined by an appraiser selected by Town that has at least 10 years experience of appraising commercial properties in Mecklenburg County (“**Experience Qualifications**”). If Developer does not agree with the appraised value determined by such appraiser, it can hire its own appraiser (at Developer’s cost) that meets the Experience Qualifications, and the average of the two appraisals shall be used.

(d) From and after the date the Town provides the Exercise Notice, the Town, at the Town's option and expense, may order a title insurance search and commitment for an ALTA extended coverage owner's title insurance policy, obtain one or more surveys of the Property and the Town shall also have the right to obtain such inspections and make such other tests of the Property as the Town desires in its sole discretion at the Town's expense. If the Town determines that it does not want to purchase the Property then the Town may cancel its Exercise Notice at any time prior to the Closing Date, and neither party to this Contract shall have any further rights or obligations hereunder.

(e) Notwithstanding the foregoing, the Town agrees to execute and record, within ten (10) business days after Developer’s request therefor, (i) a partial release of this Contract with respect to each completed Townhome in Phase I upon completion of each such Townhome, as evidenced by the receipt of a certificate of occupancy by the applicable governmental authority, (ii) a partial release of this Contract with respect to the portion of Phase II on which an existing building is located that used to be operated as Pineville Town Hall, upon recordation of a subdivision plat creating a separate parcel for such portion of Phase II and receipt of all building permits from the applicable governmental authorities for the restoration and remodeling of such building, (iii) a partial release of this Contract with respect to each portion of the Phase II Improvements for which construction of the exterior walls has been completed, as evidenced by written certification from the general contractor and/or architect for such Phase II Improvements, and (iv) a termination of this Contract upon completion of both Phase I and Phase II, as evidenced by Developer’s receipt of certificates of occupancy issued by the applicable governmental agency for all of the Townhomes on the Property.

SECTION 3. Closing and Closing Date.

(a) Closing shall occur at the offices of the attorney for the Town, or such other place as the parties may mutually agree, on the Closing Date as designated by the Town in the Exercise Notice. At the Closing, Developer shall execute and deliver to the Town a special warranty deed (the "**Deed**") well and sufficiently granting, bargaining, selling, assigning, and conveying to the Town fee simple title to the Property (or the applicable portion thereof), free and clear of all liens and monetary encumbrances other than real property taxes and assessments not yet due and payable and all matters of public record. Developer shall pay, or cause to be paid, for the preparation of the Deed and all transfer taxes as required by law. The Deed shall be in immediately recordable form acceptable to the Town, and duly executed by Developer, and acknowledged.

(b) At the Closing, Developer shall deliver to the Town such affidavits as its title company shall reasonably require in order to omit from its title insurance policy all mechanics' liens arising from the acts or omissions of Developer and rights of parties in possession, without additional expense to Developer.

(c) At the Closing, Developer shall, if requested, deliver to the Town an affidavit stating, under penalty of perjury, Developer's United States taxpayer identification number and that Developer is not a "foreign person" as defined in Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended, and otherwise in the form prescribed by the Internal Revenue Service.

(d) At the Closing, Developer shall deliver possession of the Property (or applicable portion thereof) to the Town, free and clear of any indebtedness, security liens, and defects affecting the marketability of title for the Property (other than the real property taxes and assessments applicable to the Property that are not yet due and payable and all matters of public record).

SECTION 4. Default. In the event Developer breaches this Contract or fails to comply with or perform any of the covenants, agreements, or obligations to be performed by Developer under the terms and provisions of this Contract, Town shall be entitled to all remedies available at law and equity, including enforcing this Agreement by specific performance.

SECTION 5. Miscellaneous.

(a) Notices. Any notice pursuant to this Contract shall be given in writing by (i) personal delivery, (ii) reputable overnight delivery service with proof of delivery, (iii) United States Mail, postage prepaid, registered or certified mail, return receipt requested, or (iv) electronic mail (e-mail) transmission, sent to the intended addressee at the address set forth below. Any notice may be given by a Party or a Party's attorney. If a notice is given by certified or registered mail (as described in item (iii)), it shall be deemed given when deposited in the United States mail. If a notice is given by overnight delivery (as described in item (ii)), it shall be deemed given when delivered to the applicable overnight courier. Any notice given by personal delivery (as described in item (i)) shall be deemed given on actual receipt by the addressee thereof (or upon refusal to accept delivery). If a notice is given by electronic mail (e-mail) transmission, it shall be deemed given on the date of the transmission. The addresses for notices given pursuant to this Contract shall be as follows:

Town: Town of Pineville
200 Dover Street
Pineville, North Carolina 28134
Attn: Ryan Spitzer

Email: rspitzer@pinevillenc.gov

With a copy to: Johnston Allison Hord
1065 East Morehead Street
Charlotte, North Carolina 28204
Attn: John Buben
Email: jbuben@jahlaw.com

Developer: Cone Mill Development Ventures, LLC
3315 Springbank Lane, Suite 308
Charlotte, North Carolina 28226
Attention: Kirk Broadbooks
Email: kirk.broadbooks@gmail.com

With a copy to: Alexander Ricks PLLC
1420 E. 7th Street, Suite 100
Charlotte, North Carolina 28204
Attention: Jim McLeod
Email: jim.mcleod@alexanderricks.com

Either Party may, from time to time, by notice as herein provided, designate a different address to which notices shall be sent.

(b) Applicable Law. This Contract shall be construed and enforced in accordance with the substantive laws of the State of North Carolina, without regard to principles of conflicts of laws. The only proper venue and court for litigation related to, arising out of, or connected with this Contract or the relationships between the parties established by this Contract shall be Mecklenburg County Superior Court.

(c) Entire Agreement. This Contract and any exhibits and schedules hereto contain the entire understanding and agreement by and between the Parties and all prior or contemporaneous oral or written agreements or instruments are merged, and no amendment to this Contract shall be effective unless the same is in writing and signed by the Parties hereto; if there is a conflict between the terms of this Contract and the terms of the Purchase Agreement, the terms of this Contract shall control. Pursuant to North Carolina law, major modifications or significant changes to this Contract shall follow the same notice, public hearing, and approval procedures as were followed initially when the Parties formed this Contract. Unless this Contract is amended by vote of the Town Council taken with the same formality as the vote approving this Contract, no officer, official or agent of the Town has the power to amend, modify or alter this Contract or waive any of its conditions except as set forth herein.

(d) Binding Effect. This Contract shall be binding upon and shall inure to the benefit of the Parties hereto and their respective permitted successors and assigns.

(e) Severability. If any term or provision, or any portion thereof, of this Contract, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Contract, or the application of such term or provision to persons or circumstances, other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Contract shall be valid and be enforced to the fullest extent permitted by law.

(f) Captions and Headings. The captions and headings throughout this Contract are for convenience and reference only and the words set forth herein shall in no way be held to define or add to the interpretation, construction or meaning of any provision of this Contract.

(g) Counterpart Originals. This Contract may be executed in counterparts, each of which shall constitute an original and all of which when taken together shall constitute but one original. PDF or facsimile copies of signatures on this Contract shall be effective as originals.

(h) Assignment. Neither Developer nor Affiliate may Assign this Contract (which for avoidance of doubt, shall include a change in Control of Developer) or any of its rights or obligations hereunder, in whole or in part, whether voluntarily, by operation of law, or otherwise, nor permit or consummate any direct or indirect change of Control of Developer (and/or any assignee-Affiliate of Developer) without the prior written consent of Town; provided, however, Developer may Assign its rights and obligations under this Contract to the following without the Town's consent: (1) TRI Pointe Homes Holdings, Inc., (2) Stanley Martin Homes, LLC, (3) Red Cedar Development, LLC, (4) Century Communities or (5) a joint venture entity owned and controlled by (i) any of the foregoing, and (ii) Developer; provided, however, that any such assignment without Town's consent shall only be permitted if such assignee develops the Phase I Improvements in accordance with the elevations depicted on Exhibit D-1 or Exhibit D-2 attached hereto and incorporated herein by reference, which elevations have been approved by the Town.

For purposes herein, "Assign" shall mean to transfer, delegate, sell, pledge, encumber, or otherwise dispose of any rights or obligations under this Agreement to any third party, including by way of merger, consolidation, asset sale, or any transaction or series of transactions that results in a change in the beneficial ownership of more than fifty percent (50%) of a party's voting securities or management Control.

For purposes herein, "Affiliate" shall mean any individual, a trust, an estate, a domestic corporation, a foreign corporation, a professional corporation, a partnership, a limited partnership, a limited liability company, a foreign limited liability company, an unincorporated association, or another entity that is directly Controlling or Controlled by the Developer, TRI Pointe Homes Holdings, Inc., Stanley Martin Homes, LLC, Red Cedar Development, LLC or Century Communities (as applicable).

For purposes herein, "Control", "Controlling", or "Controlled by" shall mean the direct ownership of more than fifty percent (50%) of the voting securities of Developer (and/or Affiliate), TRI Pointe Homes Holdings, Inc., Stanley Martin Homes, LLC, Red Cedar Development, LLC, Century Communities or possession of the right to vote more than fifty percent (50%) of the voting interest in the ordinary direction of the Developer's (and/or Affiliate's), TRI Pointe Homes Holdings, Inc.'s, Stanley Martin Homes, LLC's, Red Cedar Development, LLC's or Century Communities' affairs.

(i) Recording. The Parties agree to enter into a memorandum of this Contract, which the Town may record in the Office of the Register of Deeds for Mecklenburg County, North Carolina. Within ten (10) days following any written request, Developer shall return to the Town an original signed and notarized memorandum of this Contract.

(j) Attorneys' Fees and Costs. If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach or default in connection with any of the provisions of the Contract, the prevailing Party or parties shall be entitled to recover reasonable paralegal and attorneys' fees and other costs incurred in that action or proceeding, including those related to appeals, in addition to any other relief to which it or they may be entitled.

(k) No Partnership. Nothing contained in this Contract shall be construed to make the Town a partner with Developer or render either Party liable for the debts or obligations of the other.

(l) Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is not a

Business Day, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. Eastern Standard Time, unless otherwise expressly provided for herein.

(m) Time of the Essence. Time is of the essence with respect to every provision of this Contract.

(n) Further Assurances. On and after the Effective Date, the Town and Developer shall, at the request of the other, make, execute and deliver or obtain and deliver all such affidavits, deeds, approvals, certificates, resolutions and other instruments and documents, and shall do or cause to be done all such other things which either Party may reasonably require to effectuate the provisions and intention of this Contract.

(o) No Third-Party Rights Created. This Contract is intended for the benefit of the Town and Developer and their successors and assigns and not for any other person, and no such persons shall enjoy any right, benefit, or entitlement under this Contract.

(p) No Waiver of Governmental Authority or Discretion. Nothing in this Contract shall be construed to bind, estop, direct, limit, or impair the future regulatory, legislative, or governmental discretion of the Town Council in a manner not permitted by law. The Town shall incur no liability to Developer for any losses or damages it may incur as a result of or in connection with the Town's exercise or performance of its regulatory, legislative, or governmental powers or functions, or any judicial determination regarding such exercise or performance, provided the Town shall be contractually bound by the terms of this Contract.

(q) Release of Information. Town and Developer acknowledge that this Contract and related documents provided by Developer are subject to disclosure under the North Carolina Public Records Act, N.C.G.S. § 132-1 et seq. (the "Act"), except for information that is excluded from the disclosure requirements of the Act pursuant to N.C.G.S. § 132-1.2. Developer acknowledges that this disclosure of the Town's public records requirements is given pursuant to N.C.G.S. § 132-1.11(b) and agrees that such disclosure is full and sufficient to the satisfaction of Developer. Both Parties agree that this section will survive the termination of the Contract. Nothing in this Contract precludes either Party from discussing the terms of this Contract or its work product with its attorneys, accountants, consultants, contractors, or potential lenders or investors, or prevents the holding of public Council meetings in compliance with applicable laws.

(r) Construction of Agreement. Both Parties hereto have been represented by counsel in the negotiation of this Contract, and neither this Contract nor any provision hereof shall be construed against a party hereto because such party drafted it or caused it to be drafted.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed, under seal, as of the Effective Date.

TOWN:

TOWN OF PINEVILLE

ATTEST

By: _____(SEAL)
Name: _____
Title: _____

Town Clerk

[SEAL]

This instrument has been preaudited in the manner required by the “Local Government Budget and Fiscal Control Act.”

Name: _____
Title: Finance Director

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I certify that _____ personally appeared before me this day and acknowledged that (s)he is the _____ of THE TOWN OF PINEVILLE, a municipal corporation of the State of North Carolina, and that (s)he, in such capacity, being authorized to do so, voluntarily signed the foregoing on behalf of the corporation for the purposes stated therein.

Date: _____

By: _____
Print Name: _____

[SEAL OR STAMP]

Notary Public
My Commission Expires: _____

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed, under seal, as of the Effective Date.

DEVELOPER:

CONE MILL DEVELOPMENT VENTURES, LLC

By: _____(SEAL)

Name: _____

Title: _____

STATE OF NORTH CAROLINA

COUNTY OF _____

I certify that _____ personally appeared before me this day and acknowledged that (s)he is the _____ of CONE MILL DEVELOPMENT VENTURES, LLC, a North Carolina limited liability company, and that (s)he, in such capacity, being authorized to do so, voluntarily signed the foregoing on behalf of the company for the purposes stated therein.

Date: _____

By: _____

Print Name: _____

[SEAL OR STAMP]

Notary Public

My Commission Expires: _____

Exhibit A

Description of the Property

ALL that certain lot or parcel of land situate, lying, and being in Mecklenburg County, North Carolina, and more particularly described as follows:

PARCEL I:

All that Tract of 27.561 Acres shown as Tract 1 on A Recombination & R/W Dedication Plat Showing Property Along Jack Hughes Lane recorded in [Map Book 64, at Page 414](#), in the Office of the Register of Deeds for Mecklenburg County, North Carolina.

PARCEL II:

All that Tract of 0.998 Acre shown as Tract 7 on A Recombination & R/W Dedication Plat Showing Property Along Jack Hughes Lane recorded in [Map Book 64, at Page 414](#), in the Office of the Register of Deeds for Mecklenburg County, North Carolina.

PARCEL III:

All that Tract of 0.931 Acre shown as Tract 8 on A Recombination & R/W Dedication Plat Showing Property Along Jack Hughes Lane recorded in [Map Book 64, at Page 414](#), in the Office of the Register of Deeds for Mecklenburg County, North Carolina.

Exhibit B

Town Resolution Approving this Contract and Purchase Agreement

Exhibit C

Development Plan



CONE MILL SITE - CONCEPT PLAN

SEPTEMBER 2024

Kimley»Horn

Exhibit D-1

Approved Elevations



STANLEY • MARTIN
HOMES

24' FRONT LOAD TOWNHOMES
PINEVILLE CONE MILL
PINEVILLE, NORTH CAROLINA

Exhibit D-2

Approved Elevations



5-Plex Front Elevation

tri pointe
HOMES

22' Rear Load Townhomes
Pineville, NC

02.23.2024





5-Plex Rear Elevation

tri pointe
HOMES

22' Rear Load Townhomes
Pineville, NC

02.23.2024

sg
Scott Gardner
Architect, Inc.



5-Plex Left Elevation

5-Plex Right Elevation

tri pointe
HOMES

22' Rear Load Townhomes
Pineville, NC

02.23.2024

sg
Scott Gardner
Architect, Inc.