

PURCHASE AND SALE AGREEMENT

by and among

MILL VILLAGE LUMBERYARD
a Mississippi Limited Liability Company,
("Seller")

and

CITY OF TUPELO, MISSISSIPPI
a Mississippi municipal corporation,
("Purchaser")

Dated: June ____, 2020

PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT (this “Agreement”) is made and entered into as of this ____ day of **May, 2020**, (the “Execution Date”) by and among **Mill Village Lumberyard**, a Mississippi Limited Liability Company (“Seller”), and **City of Tupelo, Mississippi**, a Mississippi municipal corporation (“Purchaser”).

1. PURCHASE AND SALE.

(a) **Real Property/Property.** On the terms and conditions set forth herein, Seller shall sell to Purchaser and Purchaser shall purchase from Seller the real property situated in the City of Tupelo, State of Mississippi, which is more particularly described in **EXHIBIT A** attached hereto and the improvements thereon (the “Real Property”), which constitutes all of the real estate located at **418 South Spring Street** commonly referred to as “Gravlee Lumber,” and **406 South Broadway Street**, more commonly referred to as the “Ice Plant” (collectively referenced herein as the “Property”), together with all tenements, hereditaments, rights, privileges, interests, easements and appurtenances now or hereafter belonging or in any way pertaining to the Real Property and/or the improvements thereon.

(b) **Personal Property.** On the terms and conditions set forth herein, Seller shall sell to Purchaser and Purchaser shall purchase from Seller, any equipment, furniture, fixtures, appliances, tools, instruments, records, and other tangible personal property owned by Seller and currently stored on the Property remaining 30 days after the Closing Date, and/or used solely in connection with the operation of the Property (the “Personal Property”). It is the intent of the parties to allow Seller 30 days to remove personal property simply stored on site, or not in use relative to the current operation and functionality of the property, and that after said 30 days, any remaining personal property becomes the property of Purchaser.

2. PURCHASE PRICE.

(a) **Payment.** Subject to the terms hereof and the conditions contained herein, Seller agrees to sell, and Purchaser agrees to purchase, Seller’s Assets for a total purchase price of **FOUR HUNDRED TEN THOUSAND and NO/100 Dollars** (\$410,000.00) (the “Purchase Price”). The Purchase Price plus or minus any costs and proration for which Seller and/or Purchaser are responsible under the terms hereof, shall be paid by Purchaser to Seller at Closing by wire or check drawn on the Purchaser’s bank account.

(b) **NO LIABILITIES ASSUMED. PURCHASER IS NOT ASSUMING ANY LIABILITIES OF SELLER OR OF ANY OTHER PARTY WHATSOEVER IN RELATION TO THE ASSETS OR IN CONNECTION WITH THE GENERAL INTANGIBLES TO BE TRANSFERRED TO PURCHASER.**

3. CLOSING

(a) **The Closing Date.** Unless otherwise agreed to by Seller and Purchaser in writing, the Closing of the purchase and sale under this Agreement (the “Closing”) shall occur on or before _____; provided that all conditions to Closing set forth herein have

been satisfied or waived; and provided further, that Purchaser shall have the right to extend the Closing for a period not to exceed thirty (30) days. The date on which the Closing actually takes place shall be referred to herein as the “**Closing Date**”.

(b) **The Closing Process.** Closing shall occur at a mutually agreeable location and manner between the parties, at or prior to the Closing Date, Purchaser and Seller shall exchange, all documents and monies necessary to close this transaction as herein provided. Time is of the essence in this Agreement. Closing shall occur in accordance with the procedures and instructions given by Seller and Purchaser to the Escrow Agent prior to Closing.

4. DUE DILIGENCE

(a) **Seller’s Due Diligence Materials.** Promptly following execution of this Agreement, but on no event more than five (5) business days after the Execution Date, Seller shall commence with a Title Search and report identifying any exceptions, liens, or encumbrances associated with the property.

(b) **Third Party Reports.** Seller shall remove all monetary liens on the Real Property at Closing, or prior thereto. Only those exceptions set forth having been approved in writing by Purchaser prior to the Due Diligence Termination Deadline, shall be “**Permitted Exceptions**” to the Deed. **Purchaser shall order the Third Party Reports within five (5) business days following the Execution Date.**

(d) **Due Diligence Period.** For a period beginning on the execution date and ending either five (5) business days prior to the agreed upon Closing Date Purchaser may, at its option, conduct such due diligence with respect to the Assets as Purchaser deems appropriate. The costs and fees of Purchaser’s inspections, shall be paid by the purchaser. If Purchaser determines there is a defect or encumbrance on the title, Seller shall have 30 days in which to cure said defect and the Closing Date shall be automatically extended 30 days from the date Seller is given notice of such encumbrance or defect; provided, however, that in no event will the Due Diligence Period be extended beyond the date which is sixty (60) days after the Execution Date, unless otherwise agreed to by the parties in writing. If there is a defect or encumbrance on the Property that is not cured within the time specified, Purchaser may elect to terminate this contract with no further obligation. If such defect or encumbrance is cured within the stated period and Purchaser decides not to complete the sale, Purchaser shall pay to Seller as its sole remedy, the sum of Ten Thousand and No/100 Dollars (\$10,000.00) as liquidated damages, and the remainder of this contract shall be null and void.

5. COSTS AND PRORATIONS

(a) **Costs and Expenses.** Costs and expenses associated with the sale of the Assets pursuant to this Agreement shall be allocated between the parties as follows:

(i) Purchaser shall pay all taxes related to the sale or transfer of the Assets if any, including, without limitation, any state, county, or local sales, use and transfer taxes due and payable by virtue of the sale or transfer to Purchaser of Seller’s Assets;

(ii) Purchaser shall pay the cost of all Third Party Reports that Purchaser orders except for the title search fee, as described below;

(iii) Seller shall pay the cost of the title search fee charged by an attorney of Seller's choosing, reasonably required by Purchaser, such costs not to exceed, in the aggregate Three Thousand Five Hundred and No/100 Dollars (\$3,500.00);

(iv) Purchaser shall pay any recording fees for the Deed and the recording fees for any other recordable documents, and Seller shall pay the cost of obtaining and recording any releases necessary to deliver title to the Seller's Assets in accordance with the terms of this Agreement;

(v) Seller and Purchaser agree that no Broker has been used and no such fees will be due at closing;

(vi) Purchaser and Seller shall each pay one-half of any escrow fees if escrow is utilized, and Purchaser and Seller shall each pay their own attorney's fees.

(b) **Prorations and Adjustments.** Property taxes shall be prorated between Seller and Purchaser at Closing, with all taxes related to periods prior to Closing to be paid by Seller at Closing. Prorations of utilities and other operating expenses shall be prorated based on the prior month's costs if necessary.

6. POSSESSION. At Closing, Seller shall deliver to Purchaser possession of the Property, subject only to rights of Seller to remove personal property not related to or used in connection with the Real Property, but merely stored on the premises, within 30 days following the Closing Date.

7. REPRESENTATIONS AND WARRANTIES OF SELLER. Subject to the foregoing, Seller represents and warrants to Purchaser, as of the date hereof and as of the Closing Date, as follows:

(a) **Authority.** Seller has full power and authority to execute and deliver this Agreement and all related documents, and to carry out the transactions contemplated herein. This Agreement is valid, binding and enforceable as against Seller in accordance with its terms. The execution of this Agreement and the consummation of the transaction contemplated herein does not result in a breach of the terms and conditions of nor constitute a default under or violation of any of Seller's organizational documents or of any law, regulation, court order, mortgage, note, agreement, license or other instrument or obligation to which Seller is a party

(b) **Necessary Action.** Seller will take all reasonable efforts, with all due diligence, to take all action and obtain all consents prior to the Closing Date necessary for them to lawfully enter into and carry out the terms of this Agreement, including, but not limited to, providing any notice of the sale of the Property to the tenants thereof or any governmental agency or authority, to the extent the same may be required by law.

(c) **Taxes and Tax Returns.** All returns, reports and filings of any kind or nature, required to be filed by Seller with respect to the Property prior to Closing which relate to the

Assets and/or operations at the Property have been properly completed and timely filed in material compliance with all applicable requirements and all taxes or other obligations levied or assessed against the Seller have been timely paid.

(d) **Litigation.** There are no actions, suits, investigations or proceedings pending or threatened by or before any court, administrative agency or other governmental authority or any arbitrator against or relating to the Property. The transaction contemplated herein has not been challenged by any governmental agency or any other person, nor does Seller know or have reasonable grounds to know, of any basis for any such actions, suits or proceedings.

(e) **Bankruptcy.** Seller has not filed a voluntary petition in bankruptcy, or admitted in writing its inability to pay its debts as they become due, or has made a general assignment for the benefit of creditors, or filed a petition or an answer seeking arrangement with creditors or taking advantage of any bankruptcy or insolvency law, nor is any such action pending. No order, judgment or decree has been entered by a court of competent jurisdiction, on the application of a creditor, adjudicating Seller bankrupt or insolvent or approving a petition seeking reorganization of Seller or of all or a substantial part of their assets, nor is any such order, judgment or decree pending.

(f) **Liens.** No construction or other work currently being undertaken or undertaken between the Execution Date and the Closing Date at the Property will result in any mechanics', materialmen's or similar claims or liens being presently claimed or which may be claimed against the Property after the Closing Date and, with respect to any work performed prior to the Closing Date, Seller has made or will make arrangements for payment of all such work. No such construction or other work will be undertaken between the Execution Date and the Closing Date, unless disclosed in writing to Purchaser, except in the ordinary course of business.

(g) **Title to Assets/No Options.** Seller has good and marketable fee simple title to Seller's Assets, and will transfer the Seller's Assets to Purchaser free of all liens or encumbrances except the Permitted Exceptions. Seller's Assets are not subject to any option or other right to purchase in favor of any third party.

(h) **Condition of the Property.** The property is conveyed in "as is" condition with no guaranty or warranty of any kind.

(i) **No Default.** There are no actual defaults or alleged defaults by Seller in any of their obligations under any mortgage, contract, lease or other agreement affecting or relating to the Property or to any of Seller's Assets.

8. REPRESENTATIONS AND WARRANTIES OF PURCHASER. Purchaser hereby warrants and represents to Seller that:

(a) **Authority.** Purchaser has full power and authority to execute and deliver this Agreement and all related documents, and to carry out the transactions contemplated herein. The execution of this Agreement and the consummation of the transaction contemplated herein does not result in a breach of the terms and conditions of nor constitute a default under or violation of any law, regulation, court order, mortgage, note, bond, indenture, agreement,

license or other instrument or obligation to which Purchaser is a party or by which Purchaser or any of the assets of Purchaser may be bound or affected.

(b) **Status of Purchaser.** Purchaser is a _____ and authorized to lawfully consummate the transactions provided for herein.

(c) **Necessary Action.** Purchaser will make all reasonable efforts, with all due diligence, to take all action and obtain all consents prior to Closing necessary for Purchaser to lawfully enter into and carry out the terms of this Agreement.

9. BROKERS. Seller and Purchaser agree no Broker has been used in connection with this sale.

10. SELLER'S AND COVENANTS

(a) **Closing.** At the Closing, Seller agrees that it will:

(i) Execute and deliver to Purchaser or to the Escrow Agent, as appropriate, a good and sufficient deed (the "**Deed**"), conveying all of its rights, title and interest to Purchaser, and other instruments of transfer and conveyance as shall be reasonable or necessary to transfer and assign Seller's Assets to Purchaser as herein provided;

(ii) Deliver fee simple marketable title to the Real Property and Property and marketable title to the Personal Property subject to no liens, interests, charges, easements or encumbrances other than the Permitted Exceptions; provided, however, that Seller shall have the right to satisfy this closing obligation by directing the Escrow Agent (if used) to make any payments necessary from the Purchase Price to remove any such liens, charges and encumbrances;

(vii) Pay for any of the costs and expenses identified in Paragraph 5 for which it is responsible; and

(viii) Execute and deliver Seller's settlement statement to Escrow Agent or Purchaser.

(d) **Post-Closing.** After the Closing, Seller agrees that it will take such actions and properly execute and deliver to Purchaser such further instruments of assignment, conveyance and transfer as, in the reasonable opinion of counsel for Purchaser and Seller, may be necessary to assure, complete and evidence the full and effective transfer and conveyance of Seller's Assets and the continued licensing of the Property.

10. PURCHASER’S COVENANTS

(a) **Pre-Closing.** Between the date hereof and the Closing, except as contemplated by this Agreement or with the consent of Seller, Purchaser agrees that:

(i) Purchaser will not take any action inconsistent with its obligations under this Agreement or which could hinder or delay the consummation of the transaction contemplated by this Agreement; and

(ii) Purchaser will make all reasonable efforts, with all due diligence, to obtain all consents, approvals and licenses necessary to permit the consummation of the transaction contemplated by this Agreement and/or necessary to permit Purchaser to own the Property as of the Closing Date.

(b) **Closing.** At the Closing, Purchaser agrees that it will:

(i) Pay the Purchase Price due at Closing;

(ii) Pay for any of the costs and expenses specified in Paragraph 5 for which it is responsible; and

(iii) Execute and deliver Purchaser’s settlement statement to the Escrow Agent, or Seller.

(c) **Post-Closing.** After the Closing, Purchaser agrees that it will take such actions and properly execute and deliver such further instruments as Seller may reasonably request to evidence the transactions provided for in this Agreement.

11. MUTUAL COVENANTS. Following the execution of this Agreement, Purchaser and Seller agree:

(a) If any event should occur that would prevent fulfillment of the conditions to the obligations of any party hereto to consummate the transaction contemplated by this Agreement, to use its or their reasonable efforts to cure the same as expeditiously as possible.

(b) To cooperate fully with each other in preparing, filing, prosecuting, and taking any other actions which are or may be reasonable and necessary to obtain the consent of any governmental instrumentality or any third party or to accomplish the transaction contemplated by this Agreement.

12. CONDITIONS PRECEDENT TO CLOSING

(a) **Purchaser’s Conditions.** Purchaser’s obligation to purchase Seller’s Assets hereunder is subject to the following conditions, any one or all of which may be waived by Purchaser:

(i) Damage and Condemnation. Prior to the Closing Date, the risk of physical loss to Seller’s Assets shall be borne by Seller. Accordingly, it shall be

a condition to Purchaser's obligation hereunder that prior to the Closing Date, no material portion of the Property nor any material portion of the Real Property or Personal Property shall have been damaged or destroyed by fire or other casualty, or shall have been taken or condemned by any public or quasi-public authority under the power of eminent domain, in any such case to an extent which causes the Property to lose its current or to become impracticable to operate as of the Closing Date. If the Real Property or Personal Property or the Property shall have been so damaged or destroyed and Purchaser waives this condition, Seller shall assign to Purchaser all its rights to any insurance proceeds in connection therewith and the Purchase Price shall be reduced by any deductible which Purchaser shall be required to pay in connection with such damage or destruction. If the Real Property or Personal Property or the Property shall be so taken or condemned prior to Closing, and if Purchaser waives this condition, Seller shall pay or assign to Purchaser all Seller's right to the proceeds of any condemnation award in connection thereof and the purchase price shall be reduced by Purchaser's reasonable estimate of the amount by which the cost to repair the portion of the Real or Personal Property or the Property affected by such taking exceeds such condemnation award

(ii) No Defaults. Seller shall not be in default, where said default cannot be cured by Closing, under any mortgage, contract, lease or other agreement affecting or relating to the Seller's Assets.

(iii) Seller's and Operator's Performance. Seller and Operator shall have performed all of their obligations under this Agreement that are to be performed prior to or at Closing to the extent the same have not been waived by Purchaser in accordance with the terms hereof.

(iv) Seller's and Operator's Representations and Warranties. Seller's and Operator's representations and warranties contained in this Agreement shall be true at and as of the date of Closing as though such representations and warranties were then again made.

(b) **Seller's Conditions.** Seller's obligation to sell Seller's Assets hereunder is subject to the fulfillment of each of the following conditions, any one or all of which may be waived by Seller in writing:

(i) Purchaser's Representations and Warranties. Purchaser's representations and warranties contained in this Agreement shall be true in all material respects at and as of the date of Closing as though such representations and warranties were then again made.

(ii) Purchaser's Performance. Purchaser shall have performed its obligations under this Agreement that are to be performed prior to or at Closing to the extent the same have not been waived by Seller in accordance with the terms hereof.

13. INDEMNIFICATION

(a) **Seller's and Operator's Indemnification Obligations.** Seller and Operator shall jointly and severally indemnify, defend and hold harmless Purchaser and Purchaser's partners, employees, agents and tenants from and against any and all costs, losses, damages, liabilities and obligations whether or not known as of the Closing Date which arise directly or indirectly from:

(i) Seller's ownership or possession of the Seller's Assets;

(ii) Any misrepresentation, breach of warranty or nonfulfillment of any agreement or covenant on the part of Seller under this Agreement or from any misrepresentation in any certificate furnished or to be furnished by Seller to Purchaser hereunder;

(iii) Any Hazardous Substances or violation of Environmental Laws at the Property known to Seller as of the Execution Date or any violation of Environmental Laws at the Property between the Execution Date and the Closing date; and

(iv) Any failure in connection with the transaction contemplated herein to comply with the requirements of any laws or regulations relating to bulk sales or transfers.

(b) **Survival.** Seller and Purchaser agree that the agreements set forth in this Paragraph 14 shall survive for a period of one (1) year after the Closing.

14. TERMINATION AND REMEDIES

(a) **Grounds for Termination.** This Agreement may be terminated and the transaction contemplated herein abandoned at any time prior to Closing:

(i) By mutual written agreement of the parties;

(ii) By Seller, if any of the conditions set forth in Paragraph 13(b) shall have become incapable of fulfillment prior to the Closing Date through no fault of Seller and the same shall not have been waived by Seller;

(iii) By Purchaser, if any of the conditions set forth in Paragraph 13(a) shall have become incapable of fulfillment prior to the Closing Date through no fault of Purchaser and the same shall not have been waived by Purchaser;

(iv) By either Seller or Purchaser in the event of a material breach by the other party of its obligations hereunder;

(v) By either Seller or Purchaser if through no fault of the terminating party, the Closing has not occurred by the Closing Date specified in Paragraph 3;

(vi) By Purchaser upon Purchaser's receipt of written notification from Seller of any fact which would materially change any of the representations or warranties of Seller or Operator herein; or

(vii) By Purchaser for any reason at any time on or before the Due Diligence Termination Deadline.

(b) **Seller's Remedies.** In the event of a material breach by Purchaser of its obligations hereunder, Seller acknowledges and agrees as follows:

SELLER'S SOLE REMEDY SHALL BE TO TERMINATE THIS AGREEMENT AND TO RETAIN THE DEPOSIT AS FULL AND COMPLETE LIQUIDATED DAMAGES, THE PARTIES ACKNOWLEDGING AND AGREEING THAT THE AMOUNT OF DAMAGES WHICH SELLER MAY INCUR AS A RESULT OF SUCH TERMINATION MAY BE DIFFICULT TO ASCERTAIN AND THAT THE AMOUNT STATED HEREIN IS A REASONABLE AND FAIR ESTIMATE THEREOF, AFTER WHICH THE PARTIES SHALL HAVE NO FURTHER RIGHTS OR OBLIGATIONS HEREUNDER.

(c) **Purchaser's Remedies.** In the event of a material breach by Seller of its obligations hereunder Purchaser acknowledges and agrees that Purchaser's sole remedies shall be, at its option, to either (1) terminate this Agreement, obtain a refund of the Deposit and require Seller to reimburse Purchaser for verifiable and receipted expenses up to \$10,000.00 of out of pocket expenses incurred by Purchaser in connection herewith.

(d) **Exclusive Remedies.** In the event of the termination of this Agreement pursuant to any provisions of Paragraph 15 other than Paragraph 15(a)(iv) as a result of a material default by either party, neither party shall have any further rights or remedies hereunder, other than liquidated damages herein. Seller and Purchaser hereby agree that their respective remedies set forth in this Paragraph 15 are their sole and exclusive remedies hereunder, and hereby waive any and all other rights or remedies they may have at law or in equity as a result of the termination of this Agreement pursuant to this Paragraph 15.

15. NOTICES. Any notice, request or other communication to be given by any party hereunder shall be in writing and shall be sent by overnight courier guaranteeing overnight delivery or by facsimile transmission to the addresses or facsimile numbers shown below. E-mail addresses are shown in this Paragraph for informational purposes only. E-mail is not an adequate means of providing notice under this Agreement; provided, however, if confirmation of receipt of e-mail notice is received, it shall be effective notice.

To Purchaser: City of Tupelo, Mississippi
P.O. Box 1485
Attention: Jason Shelton, Mayor
Facsimile: (662) 840-2075
E-Mail: jason.shelton@tupeloms.gov

To Seller: Mill Village Lumberyard, LLC
2844 Traceland Dr.
Tupelo, MS 38801
Attention: Douglas M. Wright, Jr.
Facsimile: 662-844-6971
E-Mail: dwright@cesltc.com

15. SOLE AGREEMENT. This Agreement may not be amended or modified in any respect whatsoever except by instrument in writing signed by the parties hereto. This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior negotiations, discussions, writings and agreements between them.

16. SUCCESSORS. The terms of this Agreement shall be binding upon and inure to the benefit of and be enforceable by and against the heirs, successors and assigns of the parties hereto. The parties specifically acknowledge and agree that at anytime prior to the Closing, Purchaser may assign its rights and obligations hereunder. Purchaser shall provide Seller with written notice of any such assignment.

17. SURVIVAL. All covenants, warranties and representations of Purchaser and/or Seller herein shall survive the Closing, and shall continue in effect for a period of one (1) year after the Closing Date, after which they shall terminate and be of no further force or effect; provided, however, that if Purchaser notifies Seller in writing of a claim prior to the expiration of such one (1) year period such representation or warranty shall survive until the resolution of such claim. The indemnity obligations of both parties shall survive the Closing Date until all indemnified claims are barred by applicable statute of limitations.

18. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Mississippi.

19. SEVERABILITY. Should any one or more of the provisions of this Agreement be determined to be invalid, unlawful or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

20. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be an original; but such counterparts shall together constitute but one and the same instrument. A photocopy, fax copy, or electronic image copy, which depicts the inclusion of one or more signatures by pen on paper, shall be deemed an original.

21. CONFIDENTIALITY. In the event the transaction contemplated by this Agreement fails to close for any reason, Purchaser and Seller agree to keep confidential any proprietary information disclosed to them by the other party during the course of this transaction.

22. ATTORNEYS' FEES. In the event of litigation or other proceedings involving the parties to this Agreement to enforce any provision of this Agreement, to enforce any remedy available upon default under this Agreement, or seeking a declaration of the rights of either party under this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party such reasonable attorneys' fees and costs as may be actually incurred, including its costs and fees on appeal.

23. CONSTRUCTION. Each party acknowledges and agrees that it has participated in the drafting and the negotiation of this Agreement and has been represented by counsel during the course thereof. Accordingly, in the event of a dispute with respect to the interpretation or enforcement of the terms hereof, no provision shall be construed so as to favor or disfavor either party hereto.

[SIGNATURE PAGES FOLLOWS]

IN WITNESS WHEREOF, the Seller hereby executes this Purchase and Sale Agreement as of the day and year first written above.

SELLER: MILL VILLAGE LUMBERYARD, LLC, a Mississippi Limited Liability Company

By: _____
Name: Douglas M. Wright, Jr.
Title: Sole Managing Member

IN WITNESS WHEREOF, the Purchaser hereby executes this Purchase and Sale Agreement as of the day and year first written above.

PURCHASER:

_____,
a Mississippi Municipal Corporation

By: _____
Name: Jason L. Shelton
Title: Mayor

EXHIBITS & SCHEDULES

EXHIBIT A – Real Property Description