

LEGAL NOTICE

STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA

INVITATION FOR UPSET BID

In accordance with NC General Statute § 160A – 269, Transylvania County hereby notices receipt of an offer of \$600,000 and the required five percent (5%) deposit for a parcel of real property containing approximately 0.69 acres of land, located at 842 North Broad Street (Emergency Medical Services Base Station), Brevard, North Carolina (PIN: 8586-73-9812), that has been declared surplus by the Transylvania County Board of Commissioners.

Within 10 days from December 20, 2021, any person desiring to upset the bid offer shall submit a sealed bid that is not less than 10 percent (10%) of the first \$1,000 and five percent (5%) of the remainder. When a bid is raised, the bidder shall deposit with the Clerk to the Board of Commissioners five percent (5%) of the increased bid, and the Clerk shall re-advertise the offer at the increased bid amount. Bidders shall not attach any conditions to their bids. This procedure shall be repeated until no further qualifying upset bids are received, at which time the Board of Commissioners may accept the offer(s) and the sell the parcel to the highest bidder(s). Additionally, any upset bid needs to include language, which will be reduced to a contractual agreement with the winning bidder, that Transylvania County shall be permitted to occupy the property for at least 180 days following the closing date. Further details can be found on Transylvania County's website at www.transylvaniacounty.org.

Bids shall be delivered to the office of the Clerk to the Board of Commissioners, 101 S. Broad Street, Brevard, NC 28712, no later than 5:00 p.m., Monday, January 3, 2022. The bid deposit shall be in the form of a certified check, cash, or official bank check (no personal checks) made payable to Transylvania County.

Transylvania County reserves the right to withdraw the property from sale at any time before the final high bid is accepted and further reserves the right to reject at any time all bids. For additional information regarding terms and conditions of the upset bid process, contact Clerk to the Board Trisha Hogan at (828) 884-1936.

This the 17th day of December, 2021.

Trisha M. Hogan
Clerk to the Board

Transylvania Times: **Please publish Monday, December 20, 2021 as a legal advertisement** and provide an **affidavit of publication**.

Distribution:

Media

Members, Board of Commissioners

County Attorney

County Manager

File

REAL PROPERTY PURCHASE AGREEMENT

(EMS Facility, Brevard, Transylvania County, North Carolina)

THIS REAL PROPERTY PURCHASE AGREEMENT (this "**Agreement**") is hereby made and entered into by and between TRANSYLVANIA COUNTY, a body politic under the laws of the State of North Carolina (the "**County**" or "**Seller**"), and MINERAL SPRINGS, L.L.C., a North Carolina limited liability company (the "**Purchaser**").

WITNESSETH THAT:

WHEREAS, Seller is the owner of a certain tract or parcel of land having an address of 842 North Broad Street, Brevard, Transylvania County, North Carolina, containing an estimated acreage of approximately 0.69 acres, more or less, which land is more particularly described in **Exhibit "A"** attached hereto and by this reference made a part hereof (and shown generally on the aerial photograph attached hereto as **Exhibit "B"** and by this reference made a part hereof), together with all rights, easements and appurtenances pertaining thereto and all improvements, trees, bushes, landscaping and foliage thereon (collectively, the "**Property**"); and

WHEREAS, Purchaser desires to purchase the Property from Seller, and Seller is willing to sell and convey same to Purchaser, on the terms set forth herein and subject only to the following matters: (i) real estate taxes and assessments (if any) for the current and subsequent years that are not yet due and payable, and (ii) general utility easements of record serving the Property which do not interfere with the intended use of the Property by Purchaser (the "**Permitted Exceptions**");

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are all hereby acknowledged by each of the parties hereto, the parties hereto agree as follows:

1. **Purchase Price.** On and subject to the terms and conditions herein set forth, Seller shall sell and transfer the Property to Purchaser and Purchaser shall purchase the Property from Seller and pay to Seller the sum of **SIX HUNDRED THOUSAND AND NO/100 DOLLARS (\$600,000.00)** (the "**Purchase Price**"), by delivery of immediately available and collectible funds, less the Deposit and subject to adjustments, prorations and credits as herein provided.
2. **Closing Costs.** Seller's attorneys' fees and local and state transfer taxes, stamp and document taxes and similar taxes (if any) shall be paid by Seller. Purchaser shall pay (i) the premium for the issuance to Purchaser of an ALTA owner's policy of title insurance for the Property without exception for any matter other than the Permitted Exceptions, (ii) all recording fees on recordable documents (except for any title clearance documentation, costs of recording which shall be paid by Seller), and (iii) its own attorneys' fees. Any other closing costs shall be paid according to local custom as agreed upon by the parties.
3. **Prorations.** Seller shall be responsible for and shall promptly pay any and all utility charges and similar charges with respect to the Property attributable to the period up to and including the day of Closing. Real property ad valorem taxes, if any, shall be prorated (employing a 365-day year) between Purchaser and Seller as of the date of Closing based upon the most recently available property assessment. If such assessment is not available for the year in question, taxes shall be, upon the request of either party, re prorated when the amount thereof can be ascertained and the provisions hereof shall survive the Closing and the delivery of Seller's deed. All assessments levied against the Property shall be paid in full by Seller on or before Closing, even if said assessments are due in installments subsequent to Closing. In the event the Property is subject to any so-called "rollback" tax or other tax pursuant to which real estate taxes for prior years may be collectible or increased as a result of a change of ownership, change of use or change in zoning of the Property, then Seller shall be obligated for the payment of such additional taxes.
4. **Closing.** Unless sooner terminated, the consummation of the purchase and sale of the Property contemplated under this Agreement (the "**Closing**") shall be held on the date that is the thirtieth (30th) day following the last day of the Inspection Period, or on such earlier date as may be designated by Purchaser upon not less than fifteen (15) business days' notice to Seller. Closing shall be held at a time designated by Purchaser at the offices of Seller, or at such other location as may be reasonably designated by Purchaser. Notwithstanding the foregoing, the parties agree that the Closing may occur through the mail pursuant to a mutually-acceptable escrow arrangement among Seller, Purchaser and the Title Insurance Company (as defined in Paragraph 7 below) or another mutually-acceptable escrow agent. Seller agrees to deliver possession of the Property to Purchaser at Closing free of any right of possession, tenancies, licenses, or claims or rights of possession by any party other than Purchaser, subject only to the further provisions of Section 23 of this Agreement.
5. **Deposit.** Not later than three (3) business days following Purchaser's receipt of the Notice of Proposed Acceptance in accordance with the terms of and as defined in Paragraph 18 hereof, Purchaser agrees, as required by the Sale Authorization Statute (hereafter defined in Paragraph 18), to deposit with the Clerk of the County (the "**Clerk**") the sum of **THIRTY THOUSAND AND NO/100 DOLLARS (\$30,000.00)** (the foregoing sum being herein, together with any additional sums deposited in accordance with the provisions Section 6(d) of this Agreement, the "**Deposit**"). The Deposit (including, without limitation, the Seller's Consideration Payment hereafter described) shall be held in trust by the Clerk to be applied for Purchaser's benefit against the Purchase Price at Closing or otherwise disbursed as provided by this Agreement. The Clerk shall make disbursements of the Deposit in accordance with the terms of this Agreement or otherwise based upon joint written direction of Seller and Purchaser. Purchaser acknowledges that **ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00)** of the Deposit ("**Seller's Consideration Payment**") is non-refundable to Purchaser when deposited with the Clerk, and shall be disbursed to and retained by Seller as consideration for the due diligence rights and other rights provided to Purchaser

by this Agreement in the case of any termination of this Agreement (except for cases of Seller's default or in other limited circumstances expressly set forth to the contrary in this Agreement, in which cases the Seller's Consideration Payment shall be refunded to Purchaser with the balance of the Deposit in accordance with the express terms of this Agreement).

6. **Inspections Prior to Closing.**

(a) **Investigations.** Purchaser, its agents and representatives, shall be entitled, between the Effective Date and Closing, to enter upon the Property and to inspect, examine, and perform topographical surveys, soil tests, borings, percolation tests and other tests and studies deemed necessary in the sole discretion of Purchaser for analysis of the topography, demographics and other physical conditions of the Property and in connection with Purchaser's determination as to the marketability and suitability of the Property for Purchaser's intended use or other commercial redevelopment and improvement thereon. Tests and studies to be undertaken by Purchaser (individually or collectively, as the context requires or permits, "**Investigations**") may include, in Purchaser's discretion and without limitation, investigations, examinations, tests and studies regarding zoning, the presence of hazardous or toxic substances, soil conditions, the condition of all structures and improvements on the Property, availability of utilities, governmental requirements and restrictions affecting the Property, as well as interviews with Seller's administrative personnel involved in the management of the Property. The Investigations shall be conducted in a reasonable manner and so as not to unreasonably interfere with the operation of Seller's existing operations upon the Property. Investigations shall be permitted at all reasonable times, and Seller shall have the right (but no obligation) to have a representative present at any Investigations conducted on the Property. Seller shall cooperate with Purchaser with respect to Purchaser's Investigations and shall provide Purchaser and any party employed or engaged by Purchaser to perform any Investigations on the Property ("**Purchaser's Representatives**") with access to the Property for such Investigations at all reasonable times through Closing or earlier termination of this Agreement. Purchaser agrees to endeavor to undertake and complete its Investigations with reasonable diligence.

(b) **Restoration and Indemnity.** After the performance of any Investigations and if Purchaser does not close on acquisition of the Property pursuant to the terms hereof (or restoration otherwise is necessary to avoid unreasonable interference with the operations of Seller upon the Property), Purchaser shall promptly restore any damage to the Property so that the Property is returned to substantially the same condition as existed prior to the conduct of said Investigations, exclusive of normal wear and tear and customary effects of the surveys, tests and inspections, and such obligation of Purchaser shall survive any termination of this Agreement. Purchaser shall indemnify, defend and hold Seller harmless from any and all damage, costs or liens arising or claimed as a result of Purchaser's Investigations on the Property and from any claims, loss or damage (including, without limitation, court costs and attorneys' fees), suffered by Seller as a result of such Investigations of the Property by Purchaser or Purchaser's Representatives, and such obligation shall survive Closing or any termination of this Agreement; provided that (i) without expanding by implication the scope of the foregoing indemnity, the foregoing agreement to indemnify and hold harmless shall not apply to any loss, cost, damage, expense or liability arising out of or related to (x) any condition upon or under the Property not caused by Purchaser, (y) any violation of law existing with respect to the Property not caused by Purchaser, or (z) the negligence or willful misconduct of Seller and its shareholders, members, officers, directors, managers, beneficiaries, trustees, employees, agents or contractors; and (ii) except for any claim for indemnification by Purchaser made by Seller that in turn pertains to a claim made against Seller by a third party (as to which the following limitation shall not pertain), no claim for indemnification may be pursued against Purchaser pursuant to the provisions hereof unless Seller shall have given Purchaser notice of its claim for indemnification on or before the date that is the three (3) month anniversary of, as applicable, Closing or the termination of this Agreement (or, if such date falls upon a Saturday, Sunday or legal holiday, the following business day).

(c) **Seller's Due Diligence Deliveries.** Seller hereby covenants to deliver to Purchaser, as soon as reasonably possible after the Effective Date (and, in any case, not later than five business days following the Effective Date), the "**Property Documentation**", being copies of all documentation, test results, surveys, and other information that Seller has in its possession or control with respect to the Property (but not Seller's operations thereupon), to the extent not provided by Seller to Purchaser prior to the Effective Date of this Agreement. Without limitation, Seller within such period shall deliver to Purchaser the following documents to the extent in Seller's possession or control (and to the extent not sooner delivered):

- (i) Copies of any existing geotechnical reports respecting the Property;
- (ii) Copies of any environmental reports respecting the Property (including, without limitation, any asbestos test or study reports pertaining to any improvements thereon);
- (iii) Copies of all current Service Contracts for common area maintenance and other services respecting the Property;
- (iv) Copies of any existing surveys of the Property or policies of title insurance pertaining thereto; and
- (v) Copies of any FEMA maps or like materials with respect to storm drainage.

All of the Property Documentation to be delivered by Seller to Purchaser pursuant to this Paragraph 6(C) or described herein but previously delivered by Seller to Purchaser are sometimes collectively referred to as "**Seller's Deliveries.**" Seller makes no representations or warranties respecting Seller's Deliveries, except that Seller represents and warrants that, to its knowledge (and except as may be communicated to the contrary in connection with delivery of such materials to Purchaser), none of the Seller's Deliveries is false or materially misleading in any way. Notwithstanding any contrary provision of this Agreement, Seller shall not be in default under the terms of this Agreement if any items enumerated for delivery by Seller as elements of the Property Documentation are not in fact available, are not in Seller's custody or control or do not exist, and Seller's failure to deliver any such Property Documentation as required by the provisions of this Agreement shall not be a default by Seller under this Agreement, so long as such failure is not a willful, knowing and bad-faith failure to deliver such Property Documentation.

(d) **Termination Right.** At any time on or before the last day of the Inspection Period (as hereafter defined), Purchaser shall have the right, in its sole and absolute discretion, for any reason or no reason, to give written notice of its election to terminate this Agreement to Seller in the manner hereinafter provided for the giving of notice. If notice of termination is given by Purchaser to Seller in accordance with the provisions of this Subsection (D) on or before the last day of the Inspection Period, then the Clerk shall refund the Deposit to Purchaser (except for Seller's Consideration Payment, which shall be paid to and retained by Seller as consideration for the rights afforded Purchaser by this Agreement as aforesaid), this Agreement shall terminate and be deemed null and void and of no further force or effect, and the parties shall be relieved of any further liability or obligation under this Agreement, except for such obligations as are herein expressly stated to survive termination. For purposes of this Agreement, the "**Inspection Period**" shall

mean, subject to extension as hereinafter provided, the period from the Effective Date through and including the day that is sixty (60) days following the Effective Date of this Agreement. Notwithstanding the foregoing, Seller hereby acknowledges and agrees that Purchaser may desire to extend the Inspection Period for a variety of reasons, including (without limitation) the need to perform additional environmental investigations of the Property and/or to obtain certain approvals or consents for Purchaser's intended use of the Property. Accordingly, upon the deposit of an additional **FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00)** (the "**First Extension Deposit**") with the Clerk (for a total Deposit at such time of **\$35,000.00**) at any time on or before the last day of the initial 60-day Inspection Period, the last day of the Inspection Period shall be automatically extended for thirty (30) additional days (the "**First Extension**"), so that it expires on the date that is ninety (90) days following the Effective Date. The First Extension Deposit shall, upon deposit with the Clerk, be part of the "**Deposit**" for purposes of this Agreement, and shall be held and disposed of in accordance with the provisions of this Agreement regarding the Deposit.

7. **Conveyance of Title.**

(a) **Conveyance and Closing Documents.** Seller shall convey good and marketable fee simple title to the Property to Purchaser pursuant to a recordable limited or special warranty deed. "**Good and marketable title**" as used herein shall mean ownership which, when acquired by Purchaser, will be insurable by a regionally or nationally recognized title insurance company selected by Purchaser (the "**Title Insurance Company**") under its standard ALTA owner's form title insurance policy at standard rates and free and clear of all liens, encumbrances, and other exceptions to title except the Permitted Exceptions. The legal description to be incorporated into the aforesaid limited or special warranty deed shall be based upon the description of the Property set forth in Seller's vesting deed; provided that Seller agrees that it will also at Closing, and for no additional consideration beyond payment of the Purchase Price, execute and deliver to Purchaser in recordable form a quitclaim or non-warranty deed to the Property utilizing a legal description for the Property drawn from Purchaser's survey, as well as a quitclaim deed to the Property and any adjacent property owned by Purchaser and/or Ingles Markets, Incorporated, using a single perimeter boundary description for same drawn from the Survey and/or comparable surveys, in order to, among other things, eliminate any strips, gores, gaps or overlaps between such properties. The sale of the Property includes all of Seller's ownership and rights, if any (but exclusive of public right-of-way interests), in any land lying in the bed of any street or highway, opened or proposed, in front of or adjoining the Property. It also includes any right of Seller to any unpaid amount by reason of any taking by condemnation and/or for any damage to the Property by reason of change of grade of any street or highway. Seller will deliver at no additional cost to Purchaser, at Closing or thereafter, on demand, any documents that Purchaser may require to collect the award and damages. This provision shall survive the Closing. Seller shall deliver to Purchaser at Closing affidavits acceptable to Purchaser and the Title Insurance Company stating that Seller has sole and exclusive possession of the Property and stating, among other things that may be reasonably required by Purchaser and/or the Title Insurance Company, that either (i) there have been no improvements, additions, alterations, repairs or any changes of any kind whatsoever made to the Property during the last one hundred twenty (120) days immediately preceding Closing (or such longer period as may give rise to liens under applicable law), or (ii) if there have been any such improvements or repairs, that all lienors or potential lienors in connection with such improvements or repairs have been paid in full. Without limitation, Seller shall execute and deliver or cause to be executed and delivered documents and evidence as required to satisfy North Carolina requirements for issuance of title insurance without exception for mechanics liens under the laws of the State of North Carolina. Seller shall also execute and deliver (or cause to be executed and delivered) in connection with the Closing documentation as reasonably required by Purchaser or the Title Insurance Company, including, without limitation, affidavits, certificates and other information sufficient to satisfy requirements of the Internal Revenue Code (including Sections 1445 and 6045 thereof) and any similar laws and requirements of the State of North Carolina, as well as any documentation necessary to dissolve any brokerage lien rights associated with conveyance of the Property by Seller to Purchaser or otherwise. If any such laws and/or regulations pertaining thereto require withholding of funds from the Purchase Price for remittance to taxing authorities, Seller shall cooperate with Purchaser in taking actions at Closing as necessary so to satisfy such requirements. Seller shall deliver to Purchaser and the Title Insurance Company appropriate evidence of authority to consummate the transaction contemplated hereby at or prior to Closing.

(b) **Title Examination.** Seller covenants and agrees with Purchaser that Purchaser shall have until the close of the Inspection Period to examine the title to the Property and notify Seller of any Additional Exception. For purposes of this Agreement, an "**Additional Exception**" shall be defined as any objection or defect, other than a matter included in the Permitted Exceptions, that affects the marketability or insurability of the title to the Property or Purchaser's intended development or use of same. In the event Seller is notified of an Additional Exception (whether one or more), Seller agrees promptly to employ its good faith best efforts to procure a cure for same. In the event, however, Seller is unable through the exercise of its good faith best efforts, which shall include the payment of money with respect to any existing deeds of trust, mortgages, liens or other monetary encumbrances to title or with regard to any other Additional Exceptions which are created by Seller or which Seller permits to be created from and after the Effective Date hereof, to cure any Additional Exceptions prior to Closing, then, at Purchaser's option, Purchaser may either (i) take title to the Property despite the existence of the uncured Additional Exceptions (which shall then become "Permitted Exceptions" hereunder) or (ii) terminate this Agreement, in which event all of the Deposit paid by Purchaser shall be immediately refunded to Purchaser by the Clerk, and neither Purchaser nor Seller shall have any further liabilities, obligations or rights with regard to this Agreement, which shall then become null and void and of no further force or effect, except that such termination shall be without prejudice to any rights of Purchaser with respect to a default by Seller under this Agreement and except also that, unless the failure to cure is due to Seller's default, the Clerk shall pay to Seller and Seller shall retain, in connection with any such termination under this Paragraph, Seller's Consideration Payment in consideration of the rights afforded Purchaser by this Agreement. Notwithstanding anything herein contained to the contrary, (x) any existing deeds of trust, mortgages, mechanics' or materialmen's liens and similar monetary liens and encumbrances not caused or entered into by Purchaser, as well as any existing tenancies, leases or like rights of parties in possession shall be automatically deemed "**Additional Exceptions**" to which objection is made by Purchaser, regardless of whether Purchaser gives written notice of objection thereto to Seller, and Purchaser under no circumstances shall be deemed to have waived any such Additional Exceptions unless such waiver shall be an express waiver in writing executed by Purchaser, and (y) Seller shall, at or prior to Closing (and whether or not Purchaser has provided written notice of objection thereto), pay any ad valorem taxes which constitute a lien against the Property (other than those not then due and payable) as well as any other liquidated and uncontested monetary liens against the Property (the foregoing being, collectively, "**Removable Monetary Encumbrances**"), failing which Purchaser may remove the uncured Removable Monetary Encumbrances and proceed to Closing with a credit against the Purchase Price in the amount reasonably expended by Purchaser to remove such Removable Monetary Encumbrances.

(c) **Updates of Title and Survey.** Following Purchaser's initial title examination and receipt of the Survey (hereafter defined), Purchaser may at any time prior to Closing update title to the Property and/or the Survey and give notice to Seller of any additional objections first revealed by such update. Following Seller's receipt of any such supplemental notice of title or survey objections, the parties shall have the same rights and obligations respecting new objections so raised as do the parties with respect to Purchaser's initial notice respecting Additional Exceptions, provided that, absent subsequent written agreement of the parties to the contrary, the Closing Date shall not be extended and the rights of the parties must be exercised on or before the Closing Date established hereby.

8. **Condemnation and Destruction.** In the event, at any time between the making of this Agreement and Closing, all or any portion of the Property is condemned by any legally constituted authority for any public use or purpose, or any improvements located on the Property are damaged or destroyed by whatever cause, then Purchaser may elect either: (i) to terminate this Agreement, in which event all Deposit paid by Purchaser shall be immediately refunded to Purchaser by the Clerk, and neither Purchaser nor Seller shall have any further liabilities, obligations or rights with regard to this Agreement, which shall become null and void and of no further force and effect; provided, however, that the Clerk shall pay to Seller and Seller shall retain, in connection with any such termination under this Paragraph, Seller's Consideration Payment in consideration of the rights afforded Purchaser by this Agreement; or (ii) to collect all proceeds from any condemnation or from any insurance policies insuring the improvements located on the Property from damage or destruction and have the terms of this Agreement remain in full force and effect and binding on the parties hereto (with Purchaser receiving a credit against the Purchase Price for any deductibles and the amount of any uninsured casualty). In the event of a condemnation in which Purchaser does not elect to terminate this Agreement pursuant to the foregoing terms, then the term "Property" as used herein shall thereafter refer to the Property less and except any portion thereof taken by such condemnation.

9. **Agreement Assignable by Purchaser.** The rights and interest of Purchaser in and to this Agreement may be assigned or transferred by Purchaser at any time.

10. **Survival of Closing.** All warranties, covenants and representations made herein by either Seller or Purchaser shall survive Closing for a period of twelve (12) months, except as may be otherwise herein expressly provided to the contrary.

11. **Seller's Representations and Warranties.** Seller represents, warrants and covenants to Purchaser as of the date hereof, and shall again represent and warrant to Purchaser as of the date of Closing, that:

(a) **Authority.** Seller is a body politic of the State of North Carolina and has complete and full authority, subject to the further provisions of Paragraph 18 below, to (i) execute this Agreement and to convey to Purchaser good and marketable fee simple title to the Property, in accordance with Paragraph 7 of this Agreement, free and clear of all liens, encumbrances and other exceptions to title except for the Permitted Exceptions, and (ii) execute and deliver the limited or special warranty deed to the Property contemplated hereby and such other documents, instruments and agreements, including (but not limited to) affidavits and certificates, as are required by this Agreement or necessary to effectuate the transaction contemplated herein. The person executing this Agreement on behalf of Seller further represents and warrants that such person is a duly qualified and appointed representative of Seller and has all requisite power and authority on behalf of Seller to enter into this Agreement as the valid, binding and enforceable obligation of Seller.

(b) **Assessments.** All assessments that are liens against the Property are shown in the official records of the taxing authorities in whose jurisdiction the Property is located; no improvements (site or area) have been constructed or installed by any public authority, the cost of which may be assessed in whole or in part against any part of the Property in the future; and Seller has not been notified of any possible future improvements that might create an assessment against any part of the Property.

(c) **No Condemnation.** Seller has received no notice of, nor has any knowledge of, any pending or threatened taking or condemnation of the Property or any portion thereof.

(d) **No Further Encumbrances, etc.** Seller will not sell, convey, assign, pledge, encumber, lease or contract to sell, convey, assign, pledge, encumber or lease all or any part of the Property, nor restrict the use of all or any part of the Property, nor take or cause to be taken any action in conflict with this Agreement at any time between the Effective Date and (i) Closing or (ii) the earlier termination of this Agreement pursuant to its terms. Seller additionally hereby represents and warrants that, subject to the further provisions of Paragraph 18 hereinbelow, no rights of first refusal or similar agreements exist in connection with the Property or any portion thereof that would in any way interfere with Purchaser's ability to purchase the Property as provided herein, or which are in any way in contravention of the spirit and intent of this Agreement.

(e) **No Litigation.** Seller has no knowledge of, nor has Seller received any notice of, any actual or threatened action, litigation, or proceeding by any organization, person, individual or governmental agency (including, without limitation, governmental actions under condemnation authority or proceedings similar thereto) against the Property (or any portion thereof) or Seller, nor has any such organization, person, individual or governmental agency communicated to Seller anything which Seller believes to be a threat of any such action, litigation or proceeding.

(f) **No Violations.** Seller has not received notice of any violations of law, municipal or county ordinance, or other legal requirement with respect to the Property or with respect to the use, occupancy or construction thereon.

(g) **Environmental Matters.** During Seller's ownership of the Property and, to Seller's knowledge, at all times prior to Seller's ownership of the Property, (i) none of the Property has been excavated, (ii) no landfill was deposited on, or taken from, the Property, (iii) no construction debris or other debris (including, without limitation, rocks, stumps, or concrete) was buried upon any of the Property, and (iv) no toxic wastes or hazardous materials were deposited, disposed of, stored, generated or released on or from the Property.

(h) **FIRPTA.** Seller is not a "foreign person", "foreign corporation", "foreign partnership", "foreign trust", or "foreign estate", as those terms are defined in Internal Revenue Code Section 1445(F)(3), nor is the sale of the Property subject to any withholding requirements imposed by the Internal Revenue Code (including, without limitation, Section 1445 thereof) or any comparable laws of the State of North Carolina, and Purchaser has no obligation under any such laws to withhold any monies from the Purchase Price in

accordance with the provisions of such laws in connection with the transaction contemplated hereby (or, if same shall not be the case such that Purchaser is obligated to withhold from the Purchase Price under any such laws, Seller shall cooperate with Purchaser in connection with Closing to allow for withholding and compliance with such laws, as necessary).

(i) **Possession.** Seller is in sole and exclusive possession of the Property and no person or entity claims any right of possession to all or any portion thereof, except for the Permitted Exceptions.

In addition to all other rights and remedies of Purchaser set forth herein, Seller shall defend, indemnify and hold Purchaser, its employees, officers, shareholders, directors, agents, contractors, assigns and successors-in-interest, harmless from and against any and all claims, actions, loss, cost, damage and expense (including reasonable attorneys' fees) resulting from a breach by Seller of any of the representations, warranties and covenants contained in this Agreement.

12. **Notices.** All notices, requests, demands or other communications hereunder shall be in writing addressed as follows:

If to Seller: Transylvania County
101 South Broad Street
Brevard, North Carolina 28712
Attention: Ms. Jaime Laughter, County Manager (jaime.laughter@transylvaniacounty.org)

If to Purchaser:	Mailing Address:	Delivery Address:
	Mineral Springs, L.L.C. P.O. Box 6676 Asheville, North Carolina 28816 Attention: RPI II	Mineral Springs, L.L.C. 2913 U.S. Highway 70 West Black Mountain, North Carolina 28711-9103 Attention: RPI II

or to such other address as the parties may from time to time designate by notice in writing to the other parties and shall be delivered as follows: either (a) personally, (b) by deposit in the U.S. mail, registered or certified mail, return receipt requested, postage prepaid or (c) by deposit for next business day delivery to a nationally recognized courier that provides next day service to be billed to the sender thereof. Any such communication delivered as provided in the previous sentence shall be deemed given (a) when delivered personally, (b) when deposited with the courier, or (c) when deposited in the U.S. mail. While notices shall be effective at the times provided above, the period in which a response to any such notice must be given, or any action taken with respect thereto, run from the date of actual receipt by the addressee; provided that rejection, failure or refusal to accept delivery or the inability to deliver because of changed address of which no notice was given, shall be deemed to constitute actual receipt of such notice by the addressee. A copy of all notices, requests, demands or other communications sent to Purchaser shall simultaneously be sent to W. Daniel Hicks, Jr., Law Offices of W. Daniel Hicks, Jr., LLC, 555 Sun Valley Drive, Suite N4, Roswell, Georgia 30076.

13. **Amendment.** Neither this Agreement nor any provision hereof may be changed, amended, modified, waived or discharged orally or by any course of dealing, but only by an instrument in writing signed by the party against which enforcement of the change, amendment, modification, waiver or discharge is sought.

14. **[INTENTIONALLY OMITTED]**

15. **Brokers.** Each party represents and warrants to the other that no real estate broker or agent has been instrumental in the procurement of this Agreement, except for **John Spake Real Estate, Inc. ("Spake" or "Broker")**. Except for Broker (who shall be paid by Purchaser as hereafter provided), Purchaser and Seller each represents and warrants to the other party that the representing party has not dealt in this transaction with any broker, agent, commission salesman or like party entitled to a commission or other compensation with respect to the sale of the Property contemplated by this Agreement and that no real estate commission or compensation shall be payable to any party for procurement and execution of this Agreement or the sale of the Property contemplated hereby as a result of acts of the representing party, except for in either such case Broker. If, but only if, Closing occurs hereunder, Purchaser shall pay Broker a commission in accordance with the terms of a separate agreement between Purchaser and Broker. Each party shall indemnify and save the other party wholly harmless against any loss, cost or other expense, including court costs and reasonable attorneys' fees, that may be incurred by such other party by reason of any breach of the foregoing warranties or covenants, the foregoing to survive Closing or any termination of this Agreement. The parties acknowledge that Broker has represented Purchaser with respect to this Agreement and the purchase of the Property contemplated hereby, and that Broker shall be paid by Purchaser as aforesaid. The foregoing covenants and indemnities shall survive Closing or any sooner termination of this Agreement, notwithstanding any contrary provision of this Agreement.

16. **Default.** In the event the purchase and sale of the Property contemplated by this Agreement is not consummated because of the inability, failure or refusal, for whatever reason whatsoever, by Seller to convey the Property in accordance with the terms and conditions provided herein, or because of other fault of Seller or reason provided herein for Purchaser's not consummating this transaction, all of the Deposit paid in connection with this Agreement shall be refunded to Purchaser (except that Seller's Consideration Payment shall be paid to Seller as consideration for the rights afforded Purchaser by this Agreement in connection with any termination other than a termination due to Seller's default), without prejudice to any other legal or equitable right or remedy of Purchaser against Seller. In the event the purchase and sale of the Property contemplated by this Agreement is not consummated because of the default of Purchaser, then the Clerk shall deliver the Deposit paid hereunder to Seller and Seller shall retain such Deposit as full, complete and final liquidated damages. Seller and Purchaser hereby agree that it would be difficult or impossible to ascertain the damages accruing to Seller as a result of a default by Purchaser under this Agreement, but that the amount of the Deposit is a reasonable pre-estimate of same. The payment of said liquidated damages shall not be deemed a penalty, but shall constitute Seller's sole and exclusive remedy against Purchaser and shall be in lieu of the exercise by Seller of any other legal or equitable right or remedy which Seller may have against Purchaser as a result of Purchaser's default.

17. **Miscellaneous Provisions.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of North Carolina. Failure of either Purchaser or Seller to exercise any right given hereunder or to insist upon strict

compliance with regard to any term, condition or covenant specified herein, shall not constitute a waiver of Purchaser's or Seller's right to exercise such right or to demand strict compliance with any term, condition or covenant under this Agreement. This Agreement may be executed in multiple counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same Agreement. The parties further agree that this Agreement may be validly executed and delivered by facsimile or other electronic signature and transmission, and such electronic signatures and transmission shall be valid and binding upon the parties as if original signed copies had been provided. All captions, headings, paragraph and subparagraph numbers and letters are solely for reference purposes and shall not be deemed to be supplementing, limiting, or otherwise varying the text of this Agreement. The invalidity or lack of enforceability of a particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted. Time is of the essence of this Agreement. Whenever the last day for the exercise of any privilege or the discharge of any duty hereunder shall fall upon a Saturday, Sunday or any United States holiday, the party having such privilege or duty shall have until 11:59 p.m. on the next succeeding business day to exercise such privilege or to discharge such duty. This Agreement constitutes the sole and entire agreement of the parties and is binding upon and shall inure to the benefit of Seller and Purchaser, their heirs, successors, legal representatives and assigns.

18. **Offer and Acceptance; Date of Agreement.** This Agreement shall be executed first by Purchaser as an offer to purchase (the "**Offer**") made to Seller pursuant to the provisions N.C.G.S. §160A-269 (the "**Sale Authorization Statute**"). If Seller proposes to accept the Offer in accordance with the Sale Authorization Statute, Seller shall give Purchaser prompt notice of such proposed acceptance (the "**Notice of Proposed Acceptance**"), following which Purchaser shall timely deposit the Deposit in accordance with the provisions of Paragraph 5 hereof. Seller shall likewise publish notice of the Offer (the "**Notice of Offer**") in accordance and compliance with the terms of the Sale Authorization Statute. If Purchaser's Offer is not raised by bid in accordance with the Notice of Offer, then if Seller remains willing to accept the Offer, Seller shall countersign this Agreement and return a countersigned copy to Purchaser. If Purchaser's Offer is raised by another bidder within the period provided by the Sale Authorization Statute, Seller shall follow the procedures articulated in the Sale Authorization Statute and, if Purchaser desires to pursue its interest in purchase of the Property further, Purchaser may increase its bid in accordance with the provisions of the Sale Authorization Statute, with the procedures articulated in the Sale Authorization Statute continued thereafter until such time as either (i) Purchaser is the final successful bidder or (ii) Purchaser declines to up the high bid of a competing bidder. If Purchaser becomes the final successful bidder after any increase in the purchase price articulated in the Offer, then the Purchase Price hereunder shall be modified to be the final successful bid amount tendered by Purchaser (the "**Purchaser's Final Bid Amount**"), and the Deposit amount hereunder shall be modified to equal five percent (5%) of the Purchaser's Final Bid Amount. To evidence Purchaser's Offer at the Purchaser's Final Bid Amount, Purchaser shall either re-execute this Agreement with the amounts of the Purchase Price and Deposit set forth herein revised accordingly or initial interlined changes marked on this Agreement to reflect such final amounts. Thereafter, if Seller remains willing to accept the Offer at Purchaser's Final Bid Amount, Seller shall countersign the modified Agreement so tendered and return a countersigned copy to Purchaser. The "**Effective Date**" of this Agreement shall be the date upon which this Agreement, as it may have been modified in accordance with the foregoing to reflect Purchaser's Final Bid Amount (if applicable), is countersigned by Seller following compliance with the Sale Authorization Statute, as indicated by date beneath Seller's signature below, it being expressly understood and agreed (a) that Seller will not countersign this Agreement, if at all, until after full compliance with the Sale Authorization Statute, following which Purchaser is the successful bidder as set out above (with signature following such events being "**Statutorily Authorized Signature**"), and (b) that the Effective Date under this Agreement under no circumstances shall occur unless and until Statutorily Authorized Signature by Seller has occurred, with such signature delivered to Purchaser. If Purchaser ultimately is not the successful bidder with respect to the Property based on the procedures articulated in the Sale Authorization Statute, then in such case (and notwithstanding any contrary provision of this Agreement) the Deposit (inclusive of the Seller's Consideration Payment) shall be promptly refunded to Purchaser by the Clerk.

19. **Survey; No Adjustment of Purchase Price.** Purchaser shall, prior to the end of the Inspection Period (and if it so elects), obtain at its expense a survey (the "**Survey**") of the Property, prepared by a North Carolina Registered Land Surveyor. Should the Survey reveal Additional Exceptions (as defined in Paragraph 7), Seller and Purchaser shall have the same rights and obligations with respect thereto as do such parties with regard to Additional Exceptions revealed by Purchaser's title examination, all as provided in and by Paragraph 7. Seller and Purchaser agree that the acreage of the Property and the boundary lines thereof shall be conclusively determined by the Survey. No adjustment to the Purchase Price shall be made if the Survey reveals that the Property contains more or less acreage than the approximate acreage stated on the first page of this Agreement.

20. **Additional Provisions Regarding Deposit.** The parties agree as follows for the benefit of the Clerk and as direction to the Clerk in connection with its holding of the Deposit pursuant to this Agreement. If the Closing takes place under this Agreement, the Clerk shall deliver the Deposit to, or upon the instructions of, Seller on the date of the Closing. Otherwise, the Deposit shall be disbursed in accordance with the provisions of this Agreement or on joint instructions of Seller and Purchaser. If Purchaser shall timely elect to terminate this Agreement pursuant to either of Paragraphs 6, 7 or 8 hereof, the Clerk, without requirement for any authorization or other action or joinder from Seller, promptly shall disburse the Deposit in accordance with the operative provision of this Agreement. Except as otherwise provided in the immediately preceding sentence, upon receipt of any written certification from a party hereto claiming the Deposit pursuant to the other provisions of this Agreement, the Clerk shall promptly forward a copy thereof to the other party hereto and, unless such party within ten (10) calendar days of receipt thereof notifies the Clerk of any objection to such requested disbursement of the Deposit, the Clerk shall disburse the Deposit in accordance with the provisions of this Agreement pursuant to the request of the party demanding such disbursement and shall thereupon be released and discharged from any further duty or obligation hereunder. If there is any dispute as to whether the Clerk is obligated to deliver the Deposit or as to whom the Deposit is to be delivered, other than as provided in the fourth (4th) sentence of this Paragraph 20, the Clerk shall either (a) refuse to make any delivery of the Deposit and continue to hold same until receipt by the Clerk of an authorization in writing, signed by Seller and Purchaser, directing the disposition of the Deposit or (b) alternatively, bring an appropriate action or proceeding in interpleader for leave to deposit the Deposit in a court of competent jurisdiction pending a determination of disposition of the Deposit by the court. The Clerk and the party determined to be entitled to the Deposit shall be reimbursed for all costs and expenses of such action or proceeding by the party determined not to be entitled to the Deposit. Upon making delivery of the Deposit in any of the manners herein provided, the Clerk shall have no further liability or obligation hereunder; provided that the foregoing in no way otherwise releases Seller with respect to its obligations and duties under this Agreement.

21. **Like-Kind Exchange.** Seller, at the request of Purchaser, agrees to cooperate with Purchaser so that Purchaser may purchase the Property in a transaction intended to qualify in whole or in part as a tax-deferred exchange pursuant the Internal Revenue

Code as is in existence as of the Effective Date hereof, and as same may be amended (the "**Code**"). In order to implement such exchange, Purchaser may, upon written notice to Seller, assign its rights, but not its obligations, under this Agreement to a third party designated by Purchaser to act as a qualified intermediary (as such phrase is defined in applicable Internal Revenue Service regulations), and Seller agrees to make all deliveries due hereunder to or as may be directed by such intermediary and to execute such instruments as Purchaser may reasonably request in connection therewith; provided, however, that Seller shall not be required to incur any additional expense (unless Purchaser agrees to reimburse Seller for same at the Closing) or liability as a result of such cooperation, exchange or assignment.

22. **Anti-Terrorism.** Each party hereto hereby represents and warrants, to the other parties hereto, that it (i) is not listed on any terrorist watch list published by any department, branch or agency of the United States, (ii) is not an entity or person that the other parties hereto are prohibited from doing business with under any anti-terrorism or anti-money laundering law, (iii) will not violate any anti-terrorism law, and (iv) will not knowingly do business with any entity or person that has violated any anti-terrorism law.

23. **Seller's Post-Closing Possession** The parties acknowledge that Seller may desire to remain in possession of the Property temporarily following Closing to facilitate Seller's orderly relocation of existing emergency medical services ("**EMS**") being conducted from the Property ("**EMS Operations**") to another suitable location. To that end, and if Seller desires so to remain in possession of the Property for EMS Operations temporarily following Closing, the parties agree that Seller will be allowed to remain in possession of the Property post-Closing for a period not to exceed one hundred eighty (180) days following the Closing Date, **TIME BEING OF THE ESSENCE** with respect to such outside date for Seller's post-Closing possession. Seller's post-Closing possession shall be on and subject to the following agreements: (i) Seller shall not be obligated to pay any rent to Purchaser during the permitted period of post-Closing possession, except for expenses as contemplated below with respect to taxes, insurance, operation and maintenance of the Property; (ii) Seller shall be responsible for the payment of any and all fees and expenses associated with the provision of utilities and services to the Property during possession by Seller, and Seller will be responsible to pay (or reimburse to Purchaser) any ad valorem taxes attributable to the period of its post-Closing possession; (iii) Seller shall be obligated to maintain or cause to be maintained, for the benefit of Seller and Purchaser, as their interests may appear, and with appropriate waivers of subrogation in favor of Purchaser, casualty and liability insurance (naming both Purchaser and Seller as loss payees, insureds or an additional insured, as applicable and appropriate) with respect to the Property in forms and amounts and with companies reasonably acceptable to Purchaser (all such insurance to be maintained by Seller at the sole cost and expense of Seller); (iv) Seller shall have no obligation to repair or restore any damage following a casualty after Closing so long as the insurance required by this Paragraph has been maintained and the proceeds thereof, net of reasonable expenses of collection, have been paid to Purchaser); (v) Purchaser shall have no obligation for maintenance of the Property relative to Seller during any period of post-Closing possession by Seller and (vi) Seller shall be solely and totally responsible for all costs whatsoever of maintenance and repair required with respect to use or occupancy of the Property by Seller during any period of post-Closing possession (nothing herein, however, obligating Seller to repair any casualty damage if insurance required by this Paragraph has been maintained and the proceeds thereof, net of reasonable expenses of collection, have been paid to Purchaser) and shall, to the extent required for continued use or occupancy thereof by Seller, cause the Property to comply, and shall comply as to its use of the Property, in all respects with all applicable laws (including, particularly, but without limitation, environmental laws). In the event of fire or any other casualty with respect to the Property during any period of Seller's post-Closing occupancy as a result of which the Improvements on the Property are totally destroyed, then Seller's right of post-Closing occupancy shall automatically terminate. If Seller's right does not so automatically terminate, Purchaser shall have no right to terminate Seller's rights of post-Closing occupancy prior to the date established by this Paragraph, but Seller, at its option, may elect to vacate the Property at any time after any such casualty and, upon vacation and abandonment by Seller in such case, all further rights of post-Closing possession (but not Seller's obligations) under this Paragraph shall cease and terminate. All payment obligations pertaining to the period of Seller's post-Closing possession shall survive surrender of possession following the permitted period of post-Closing possession by Seller.

***[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK;
SIGNATURES BEGIN ON THE FOLLOWING PAGE]***

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

SELLER:

TRANSYLVANIA COUNTY,

a body politic under the laws of the State of North Carolina

By: _____

Name: Jaime Laughter

Title: County Manager

Attest: _____

Name: Trisha Hogan

Title: County Clerk

Date of Execution: _____

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

[SIGNATURES CONTINUED FROM PRIOR PAGE]

PURCHASER:

MINERAL SPRINGS, L.L.C.,
a North Carolina limited liability company

By: _____

Name: Laura A. Ingle

Title: Manager

Date of Execution: _____

EXHIBIT "A"

DESCRIPTION OF PROPERTY

ALL THAT TRACT OR PARCEL OF LAND lying and being in the Town of Brevard, Transylvania County, North Carolina, conveyed by Deed recorded at Deed Book 119, Page 7, in the Office of the Register of Deeds of Transylvania County, North Carolina, being also Tax Parcel No. 8586739812000 according to the system of tax parcel numbering currently in use in Transylvania County, North Carolina.

EXHIBIT "B"

AERIAL PHOTOGRAPH SHOWING PROPERTY

