

OPTION TO PURCHASE AGREEMENT

THIS OPTION TO PURCHASE AGREEMENT (this “*Agreement*”) is executed as of this _____ day of _____, 2019 (the “*Effective Date*”), by and between the City of Hartsville, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina (the “*City*”), and Boykin Properties, LLC (the “*Developer*”, and each a “*Party*” and together the “*Parties*”).

WHEREAS, the City is the owner of that certain property (the “*Property*”) described as follows:

Address: 559 West Carolina Avenue Hartsville, South Carolina

Tax Map No: 056-09-03-004

WHEREAS, the Developer is presently contemplating the purchase of the Property and desires to purchase an exclusive option to purchase the Property and the City desires to grant such an option; and

NOW THEREFORE, in consideration of the Option Price (as defined below) and other valuable consideration, the receipt and sufficiency of which as consideration are hereby acknowledged, the Parties hereby covenant, agree and contract as follows:

1. OPTION TO PURCHASE; PURCHASE PRICE. The City hereby bargains, grants, sells and conveys to the Developer an exclusive option to purchase the Property (the “*Option*”) subject to the terms and conditions contained in this Agreement. During the Option Term (as defined herein) the Developer shall have the exclusive right to purchase the Property, subject to the provisions of this Agreement, for the purchase price of Two Dollars (\$2.00) (the “*Purchase Price*”).

2. CONSIDERATION FOR OPTION. In consideration for the grant of the Option, in addition to the mutual covenants and promises contained in this Agreement, the Developer hereby agrees to pay the City the amount of One Dollar (\$1.00) (the “*Option Price*”). In the event that the Developer chooses to exercise the Option, the amount of the Option Price shall be applied to the Purchase Price. In the event that the Developer does not exercise the Option within the Option Term, the City shall retain the Option Price.

3. TERM OF THE OPTION. The Option term (the “*Option Term*”) shall begin as of the Effective Date and shall automatically expire and terminate twenty-four (24) months later on _____, 2021 (the “*Expiration Date*”), unless extended by mutual agreement of the Parties.

4. LIMITED EXCLUSIVITY.

A. The City agrees, warrants and represents that the Option granted and conveyed pursuant to this Agreement is and shall remain the only option to purchase granted by the City for the Property during the Option Term, and that the City shall not take any action, or fail to take any necessary action,

that will result in the further encumbrance of the Property during the Option Term. However, the City may still actively pursue the sale of the Property to other interested investors, purchasers or developers.

B. In the event a subsequent purchaser of the Property makes any offer to purchase the Property from the City, the City agrees to grant the Developer a right of first refusal allowing the Developer five (5) business days to beat any competing offer by a percentage of at least 5% (of the proffered purchase price) that is made during the pendency of the Option Term. In the event the Developer does exercise the right of first refusal, in writing and in accordance with the foregoing terms, the City, in its sole discretion, may elect to terminate the Option.

5. EXERCISE OF OPTION. The Option granted herein must be exercised by the Developer on or before the Expiration Date. The City acknowledges that the Developer may exercise the Option in its sole discretion and shall have no obligation to exercise the Option. In order to exercise the Option, the Developer shall deliver written notice (the “**Notice**”) to the City by personal delivery or by certified mail. The Notice shall set forth the deadline for closing on the conveyance of the Property (the “**Closing Date**”), which shall not be less than 30 days, nor greater than 120 days, after the date upon which the Option is exercised. In the event that the Developer fails to exercise the Option within the Option Term, neither Party shall have any further liability or obligations under this Agreement.

6. ACCESS TO PROPERTY; TESTS AND SURVEYS. During the Option Term, the City shall permit the Developer’s representatives to have full access to the Property for the purposes of conducting appraisals, surveys, soil and engineering studies, environmental surveys and other reasonable investigations (collectively, the “**Surveys**”) of the suitability of the Property for the purposes contemplated by the Developer. The Developer shall bear the entire cost for any Surveys. In the event that any Survey requires the disturbance of the Property, the Developer shall restore the Property to its prior condition. The Developer shall provide the City with reasonable advance notice of any need to gain access to the Property, which shall not be less than 24-hours notice.

7. COOPERATION. The City agrees to cooperate fully with the Developer and its representatives, and to obtain the cooperation of anyone occupying the Property during the Option Term, in the Developer’s efforts relating to the Surveys.

8. CITY’S REPRESENTATIONS, WARRANTIES, AND COVENANTS. The City hereby makes the following representations, warranties and covenants, each of which is limited to the knowledge of the City, without duty of the Developer to investigate the veracity thereof and each of which is material and is relied upon by Developer as consideration for the purchase of the Option, which are true and correct as of the Effective Date and which the City represents, warrants and covenants shall remain true and correct during the Option Term, and provided the Option is exercised by the Developer, through the Closing Date:

A. The City is the sole owner of good and marketable fee simple title to all of the Property, insurable subject only to those liens, claims, options, encumbrances, rights-of-way, easements, conditions, covenants and restrictions as may be reasonably acceptable to the Developer.

B. No options or other contracts have been granted or entered into which are still outstanding giving any other party a right to purchase any interest in the Property and no options or other contracts will be granted or entered into by the City giving any other party a right to purchase any interest in the Property.

C. To the best of the City's knowledge, the City is not in violation of and, to the best of the City's knowledge, has not received notice of the violation of any applicable building, zoning or other ordinances, resolutions, statutes or regulations of any government or governmental agency in respect to operation, use, maintenance or condition of the Property or any part thereof or requiring any repairs or alterations.

D. To the best of the City's knowledge, there are no condemnation or eminent domain proceedings pending or contemplated against the Property or to the best of the City's knowledge pending or contemplated against the Property or any part thereof, and the City has not received a notice, oral or written, of any public authority or other entity to take or use the Property or any part thereof.

E. The City is current with all real and personal property taxes and the Property is free from special taxes or assessments. All roll back taxes accrued against the Property shall be paid by the City.

F. The City has the right, power and authority to enter into this Agreement and to convey the Property in accordance with the terms and conditions of this Agreement. This Agreement, when executed and delivered by the City, will be a valid and binding obligation of the City in accordance with its terms.

G. No payments for work, materials or improvements furnished to the Property will be due or owing upon the Closing Date, and the City shall execute standard mechanic's lien waiver forms as may be required by the Developer's title insurance company.

H. The City has not, and has no knowledge or reason to believe that any other party has, stored or disposed of any substance or materials on the Property that would be classified by federal, South Carolina, or local laws or regulations as toxic or hazardous wastes or substances ("**Hazardous Substances**"), and the City has no knowledge or reason to believe that the Property contains any substances or material that would be classified by federal, South Carolina or local laws or regulations as Hazardous Substances.

I. The City shall not cause or permit any action to be taken, or fail to take such action when necessary, which would cause any of the foregoing representations or warranties to be untrue as of the Effective Date through the Expiration Date, or in the event that Developer elects to exercise the Option, the Closing Date. The City agrees to immediately notify the Developer in writing of any event or condition to the City's knowledge which occurs prior to the Expiration Date, or in the event the Developer elects to exercise the Option, the Closing Date, which causes a change in the facts related to or the truth of any of the above representations. The City has disclosed to the Developer, and will continue to disclose to the Developer, any and all facts necessary to prevent the statements herein from being misleading.

J. On or before the Closing Date, the City will do, make, execute and deliver all such additional and further acts, deeds, instruments and documents as may be reasonably required by the Developer to completely vest in and assure to the Developer full rights in or to the Property.

9. DEVELOPER'S WARRANTIES, REPRESENTATIONS, AND COVENANTS. This Agreement, when executed and delivered by Developer, will be a valid and binding obligation of Developer in accordance with its terms. The undersigned representative of the Developer has the requisite power and authority to purchase the Option. In the event that the Developer elects to exercise the Option, the Developer will have taken such action necessary to authorize the purchase of the Property pursuant to the terms of this Agreement.

10. RISK OF LOSS. If the Property or any part thereof suffers any damage prior to the Expiration Date, or in the event that the Developer elects to exercise the Option, the Closing Date, from fire or other casualty, which the City shall have no obligation to repair, the City may either (a) terminate this Agreement and receive a refund of the Option Price, or (b) consummate the purchase of the Property, in which case, the proceeds of any insurance covering such damage, up to the amount of the Purchase Price, shall be assigned to the Developer on the Closing Date.

11. PRO-RATED ITEMS AND ADJUSTMENTS. The City shall pay for the cost of all deed stamps and transfer taxes and the Developer shall pay for the recording fees of this transaction. The Parties shall each pay their own legal fees related to the transaction contemplated hereby. The City shall be responsible for payment of all expenses applicable to the Property which are incurred prior to the Closing Date. The Developer shall be responsible for payment of all expenses applicable to the Property which are incurred from and after the Closing Date including, but not limited to, real estate taxes and assessments and fire, hazard, theft and liability insurance premiums. The adjustments and prorations required under this Agreement shall be computed as of the Closing Date and the Purchase Price paid to the City hereunder shall be adjusted to reflect such prorations. The City shall be responsible for any rollback taxes relating to the Property, which amounts shall be estimated and deducted from the proceeds paid to the City. The City shall be responsible for paying to the City any shortfall due on rollback taxes immediately upon receipt by the City of the actual tax or rollback tax bill.

12. DELIVERY OF CLOSING DOCUMENTS. In addition to other conditions precedent set forth elsewhere in this Agreement, the City shall deliver to the Developer on the Closing Date all of the following documents, the delivery and accuracy of which shall further condition the Developer's obligations to consummate the purchase and sale herein contemplated:

A. A Limited Warranty Deed satisfactory in form and substance to counsel for the Developer, conveying good and marketable fee simple title to the Property, free and clear of all liens, encumbrances, easements and restrictions of every nature and description, except those previously approved in writing by the Developer.

B. The City's affidavit or lien waiver satisfactory for the purpose of removing any mechanic's lien exception from any title insurance policy to be issued in connection with the purchase of the Property.

C. An affidavit of the City providing the City's federal identification number and certifying that this transaction is not subject to withholding taxes in accordance with the laws of the State.

D. Evidence the authority of the persons signing the deed and other documents to be executed by the City at closing and the power and authority of the City to convey the Property to the Developer in accordance with this Agreement.

E. Such other documentation as may be reasonably required in the opinion of the Developer or its counsel to consummate and close the transaction contemplated herein pursuant to the terms and conditions of this Agreement.

13. POSSESSION. Possession of the Property shall be delivered to the Developer at the time of closing and delivery of the limited warranty deed.

14. COMPLETENESS AND MODIFICATION. This Agreement constitutes the entire agreement between the Parties hereto with respect to the transactions contemplated herein and it supersedes all prior discussions, undertakings or agreements between the Parties. This Agreement shall not be modified except by a written agreement executed by the Parties.

15. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their respective successors and assigns.

16. COUNTERPARTS. To facilitate execution, this Agreement may be executed in as many counterparts as may be required.

17. INVALID PROVISIONS. In the event any one or more of the provisions contained in this Agreement shall be for any reason held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement; this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

18. TIME. Time is of the essence of this Agreement and the provisions hereof.

19. RECORDING. Either Party may record a memorandum of this Agreement in the Office of the Register of Deeds for Darlington County.

[Remainder of Page Left Blank]

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

CITY OF HARTSVILLE, SOUTH
CAROLINA

Witness #1

Natalie Zeigler, City Manager

Witness #2

BOYKIN PROPERTIES, LLC

Witness #1

[Print Name]

Witness #2

Witness #1

[Print Name]

Witness #2

ACKNOWLEDGMENT

I, the undersigned Notary Public for South Carolina, do hereby certify that the above representative of the City of Hartsville, Natalie Zeigler, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and seal this _____ day of _____, 2019.

_____(SEAL)
 Print name: _____
 Notary Public for S. C.
 My commission expires: _____

ACKNOWLEDGMENT

I, the undersigned Notary Public for South Carolina, do hereby certify that _____
_____ personally appeared before me this day and
acknowledged the due execution of the foregoing instrument.

WITNESS my hand and seal this _____ day of _____, 2019.

_____(SEAL)
 Print name: _____
 Notary Public for S. C.
 My commission expires: _____