

CONDITIONAL AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT, including any and all addenda and exhibits attached hereto ("Agreement"), is by and between Piper Investments, LLC, a Georgia limited-liability company ("Buyer"), and Rutherford County, a political subdivision of the State of North Carolina ("Seller").

FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH HEREIN AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. Terms and Definitions: The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

(a) **"Property":** Those certain lots owned by Rutherford County in Phase 3 of the Queens Gap Development, Rutherford County, North Carolina as more particularly described on the attached Exhibit A.

\$ 350,000.00 (b) **"Purchase Price"** shall mean the sum of Three Hundred Fifty Thousand and 00/100 Dollars (\$350,000.00), payable on the following terms:

\$ 30,000.00 (i) **"Deposit"** shall mean the sum of Thirty Thousand and No/100 Dollars, payable simultaneously with the execution of this Agreement. The Deposit shall be immediately non-refundable but shall be applied against the Purchase Price in connection with the Closing or, if no Closing takes place, Seller will apply the Deposit as a credit toward all other contractual obligations that Buyer or its affiliates owe to Seller.

\$ 320,000.00 (ii) **"Cash Balance of Purchase Price"** at Closing in the amount of Three Hundred Twenty Thousand and 00/100 Dollars (\$320,000.00).

(c) **"Closing"** shall mean the date and time of recording of the deed.

(d) **"Closing Date"** shall mean the date when the Closing occurs which shall be no more than ten (10) days after the satisfaction of the Conditions described below.

(e) **"Contract Date"** means the date this Agreement has been fully executed by both Buyer and Seller following acceptance of this Agreement by the Board of Commissioners of Rutherford County following the expiration of the Upset Bid Period.

(f) **"Upset Bid Period"** shall mean the period commencing with the publication of notice required pursuant to N.C. Gen. Stat. §160A-269 and expiring with the conclusion of the ten (10) day publishing period during which no upset bid, or further upset bid, is filed.

(g) **"Seller's Notice Address"** shall be as follows:

County Manager, 289 North Main Street, Rutherfordton, NC, 28139
except as same may be changed pursuant to Section 10.

(h) **"Buyer's Notice Address"** shall be as follows:

c/o Daniel Hansen

Shumaker, Loop & Kendrick, LLP
128 S. Tryon Street, Suite 1800
Charlotte, NC 28202

except as same may be changed pursuant to Section 10.

Section 2. Sale of Property and Payment of Purchase Price: Seller agrees to sell and Buyer agrees to buy the Property for the Purchase Price. The parties hereto acknowledge that Seller, as a political subdivision of the State of North Carolina, is entering into this Agreement only to the extent allowed by and subject to the provisions of N.C. Gen. Stat. §160A-269 for Negotiated offer, advertisement, and upset bids.

Section 3. Proration of Expenses and Payment of Costs: Seller shall pay for preparation of a deed and all other documents necessary to perform Seller's obligations under this Agreement, excise tax (revenue stamps), and other conveyance fees or taxes required by law, and its attorneys' fees. Buyer shall pay recording costs, costs of any title search, title insurance, survey, the cost of any inspections or investigations undertaken by Buyer under this Agreement, and its attorneys' fees.

Section 4. Conditions: The obligation of Seller to sell and Buyer to buy at Closing is expressly contingent upon the fulfillment of certain conditions precedent to closing set forth in Exhibit B hereto (the "Conditions"). To the extent any of the Conditions have not been satisfied within twelve (12) months from the execution of this Agreement, either Seller or Buyer may terminate their obligations under this Agreement by written notice provided to the other party. Termination of this Agreement for any reason shall not affect Seller's right to retain the Deposit.

Section 5. Seller's Representations and Warranties. Seller represents and warrants to Buyer that as of the date of this Agreement and as of the Closing Date:

- a. Seller is a political subdivision of the State of North Carolina;
- b. Seller has the full power and authority to execute, deliver and perform its obligations under this Agreement; and

c. This Agreement and all agreements, instruments and documents herein provided to be executed by Seller are and as of the Closing Date will be duly authorized, executed and delivered by and are and will be binding upon Seller throughout the entire transaction, including post-closing obligations as set out herein.

Section 6. Buyer's Representations and Warranties. Buyer represents and warrants to Seller that as of the Effective Date and the Closing Date:

- a. Buyer has the right, power and authority to enter into this Agreement and to consummate the transaction contemplated by the terms and conditions of this Agreement;
- b. If Buyer is other than an individual, (i) Buyer is duly organized, validly existing, and in good standing under the laws of the state of its formation and the state where the Property is located, (ii) upon request of Seller's counsel, Buyer will provide Seller with copies of all Buyer's entity formation and authority documentation, including but not limited to, operating agreements, partnership agreements, certificates of good standing and certificates of formation, and (iii) the persons executing this Agreement on behalf of Buyer have been duly and validly authorized by Buyer to execute and deliver this Agreement on behalf of and bind Buyer to the terms and conditions of this Agreement.

Section 7. Disclaimer of Representations and Warranties By Seller.

(a) **No Representations.** BUYER ACKNOWLEDGES that, except as described in Section 7(c) below, neither Seller, nor any agent, employee, officer, member, manager, director, attorney, broker, representative or property manager of Seller have made and are not now making, and they specifically disclaim, any warranties, representations or guaranties of any kind or character, express or implied, statutory, oral or written, past, present or future, with respect to the Property, including, but not limited to, warranties, representations or guaranties as to any of the following matters, whether patent or latent: (i) matters of title (ii) environmental matters relating to the Property or any portion thereof, (iii) geological conditions, (iv) whether, and to the extent to which the Property or any portion thereof is affected by any stream (surface or underground), body of water, flood prone area, flood plain, floodway or special flood hazard, (v) drainage, (vi) soil conditions, (vii) zoning to which the Property or any portion thereof may be subject, (viii) the availability of any utilities to the Property or any portion thereof including, without limitation, water, sewage, gas and electric, (ix) usages of adjoining Property not owned by Seller, (x) access to the Property or any portion thereof, (xi) the value, compliance

with the plans and specifications, size, location, age, use, design, quality, description, habitability, suitability, structural integrity, operation, or physical or financial condition of the Property or any portion thereof, including, without limitation, the structural elements, appurtenances, access, landscaping, parking facilities or the electrical, mechanical, plumbing, sewage or utility systems, facilities or appliances at the Property or to be installed upon the Property, if any, (xii) the presence of hazardous substances in or on, under or in the vicinity of the Property, (xiii) the condition or use of the Property or compliance of the Property with any or all past, present or future federal, state or local ordinances, rules, regulations or laws, building, fire or zoning ordinances, codes or other similar laws, including, without limitation, the Americans with Disabilities Act, or any other statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning access and accommodation for disabled persons, (xiv) the existence or non-existence of underground storage tanks, (xv) any other matter affecting the stability or integrity of the Property, (xvi) the potential for further development of the Property, (xvii) the existence of land use, zoning or building entitlements affecting the Property, or (xviii) the habitability, merchantability, or suitability of the Property or fitness of the Property for any particular purpose.

(b) Sale "As Is". With the exception of each of the matters set out below, Buyer has not relied upon and will not rely upon, either directly or indirectly, any representation or warranty of Seller or any of its respective agents, employees, officers, members, managers, directors, attorneys, brokers, contractors, representatives or property managers and acknowledges that no such representations have been made except by contractors responsible for installation of certain infrastructure or improvements. Buyer represents that it is a knowledgeable, experienced and sophisticated Buyer of real estate and that it is relying solely on its own expertise and that of Buyer's consultants in purchasing the Property. Buyer will conduct such inspections and investigations of the Property as Buyer deems necessary, including, but not limited to, the physical and environmental conditions thereof, and shall rely upon same. Upon Closing, Buyer acknowledges that adverse matters, including, but not limited to, adverse physical and environmental conditions, may not have been revealed by Buyer's inspections and investigations. Buyer acknowledges and agrees that upon Closing, Seller shall sell and convey to Buyer and Buyer shall accept the Property AS IS. Buyer further acknowledges and agrees that there are no oral agreements, warranties or representations, collateral to or affecting the Property by Seller, any agent of Seller or any third party. The terms and conditions of this Section shall expressly survive the Closing, and shall not merge with the provisions of any closing documents. Seller is not liable or bound in any manner by any oral or written statements, representations, or information pertaining to the Property furnished by any real estate broker, agent, employee, servant or other person, unless the same is specifically set forth or referred to herein. Buyer acknowledges that the Purchase Price reflects the "as is" nature of this sale and any faults, liabilities, defects or other adverse matters that may be associated with the Property. Buyer has fully reviewed the disclaimers and waivers set forth in this Agreement with its counsel and understands the significance and effect thereof.

(c) Hazardous Substances. Seller makes no warranty with respect to the presence on or beneath the Property (or any parcel in proximity thereto) of Hazardous Substances (as defined below), except that Seller has not deposited nor caused the presence of Hazardous Substances on or beneath the Property. By acceptance of this Agreement and the Deed, Buyer acknowledges that Buyer's opportunity for inspection and investigation of the Property (and other parcels in proximity thereto) has been adequate to enable Buyer to make Buyer's own determination with respect to the presence on or beneath the Property (and other parcels in proximity thereto) of such Hazardous Substances. Furthermore, except as described above, Buyer's closing hereunder shall be deemed to constitute an express waiver of Buyer's and his successors' and assigns' rights to sue Seller, or Seller's successors or assigns, and of Buyer's right to cause Seller, or Seller's successors or assigns, to be joined in an action brought under any federal, state or local law, rule, act, or regulation now existing or hereafter enacted or amended which prohibits or regulates the use, handling, storage, transportation or disposal of Hazardous Substances or which requires removal or remedial action with respect to such hazardous materials, specifically including but not limited to federal "CERCLA", "RCRA", and "SARA" acts, as defined below.

(d) Hazardous Substances Defined. For purposes hereof, "Hazardous Substances" means any hazardous, toxic or dangerous waste, substance or material, pollutant or contaminant, as defined for purposes of the Comprehensive Environmental Response, Compensation and Liability Act Of 1980 (42 U.S.C. Sections 9601 et seq.), as amended ("CERCLA"), the Resource Conservation and Recovery Act (42 U.S.C. Sections 6901 et seq.), as amended ("RCRA"), or the Superfund Amendments and Reauthorization Act ("SARA") or any other federal, state or local law, ordinance, rule or regulation applicable to the Property, or any substance which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous, or any substance which contains gasoline, diesel fuel or other petroleum hydrocarbons, polychlorinated biphenyls (PCBs), radon gas, urea formaldehyde, asbestos, lead or electromagnetic waves.

Section 8. Risk of Loss/Damage/Repair: Until Closing, the risk of loss or damage to the Property, except as otherwise provided herein, shall be borne by Seller. Except as to maintaining the Property in its same condition, Seller shall have no responsibility for the repair of the Property, including any improvements, unless the parties hereto agree in writing.

Section 9. Closing: At Closing, Seller shall deliver to Buyer a non-warranty deed and other documents customarily executed or delivered by a seller in similar transactions, including without limitation, an owner's affidavit, lien waiver forms and a non-foreign status affidavit (pursuant to the Foreign Investment in Real Property Tax Act), and Buyer shall pay to Seller the Purchase Price. At

Closing, the Deposit shall be applied as part of the Purchase Price. The Closing shall be held at the office of Buyer's attorney or such other place as the parties hereto may mutually agree. Possession shall be delivered at Closing, unless otherwise agreed herein. Ad valorem taxes on the Property (if any) shall be paid by Buyer at Closing.

Section 10. Notices: Unless otherwise provided herein, all notices and other communications which may be or are required to be given or made by any party to the other in connection herewith shall be in writing and shall be deemed to have been properly given and received on the date delivered in person or deposited in the United States mail, registered or certified, return receipt requested, to the addresses set out in Section 1(g) as to Seller and in Section 1(h) as to Buyer, or at such other addresses as specified by written notice delivered in accordance herewith.

Section 11. Entire Agreement: This Agreement constitutes the sole and entire agreement among the parties hereto and no modification of this Agreement shall be binding unless in writing and signed by all parties hereto.

Section 12. Enforceability: This Agreement shall become a contract when a signed by both Buyer and Seller and such signing is communicated to both parties; it being expressly agreed that the notice described in Section 10 is not required for effective communication for the purposes of this Section 12. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns and their personal representatives.

Section 13. Adverse Information and Compliance with Laws:

(a) **Seller Knowledge:** Seller makes no representation or warranty in this Agreement. Without waiving any such matters, Seller has no actual knowledge of (i) condemnation(s) affecting or contemplated with respect to the Property; (ii) actions, suits or proceedings pending or threatened against the Property except for action by the Seller against Lexon Insurance Company regarding performance bonds on Phase 3; (iii) changes contemplated in any applicable laws, ordinances or restrictions affecting the Property; or (iv) governmental special assessments, either pending or confirmed, for sidewalk, paving, water, sewer, or other improvements on or adjoining the Property, and no pending or confirmed owners' association special assessments, except as follows (Insert "None" or the identification of any matters relating to (i) through (iv) above, if any). : None

Note: For purposes of this Agreement, a "confirmed" special assessment is defined as an assessment that has been approved by a governmental agency or an owners' association for the purpose(s) stated, whether or not it is fully payable at time of closing. A "pending" special assessment is defined as an assessment that is under formal consideration by a governing body. Seller shall pay all owners' association assessments and all governmental assessments confirmed as of the time of Closing, if any, and Buyer shall take title subject to all pending assessments disclosed by Seller herein, if any.

(b) **Compliance:** To Seller's actual knowledge, (i) Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions pertaining to or affecting the Property; (ii) performance of the Agreement will not result in the breach of, constitute any default under, or result in the imposition of any lien or encumbrance upon the Property under any agreement or other instrument to which Seller is a party or by which Seller or the Property is bound; and (iii) there are no legal actions, suits or other legal or administrative proceedings pending or threatened against the Property, and Seller is not aware of any facts which might result in any such action, suit or other proceeding.

Section 14. Survival of Representations and Warranties: All representations, warranties, covenants and agreements made by the parties hereto shall survive the Closing and delivery of the deed. Seller shall, at or within six (6) months after the Closing, and without further consideration, execute, acknowledge and deliver to Buyer such other documents and instruments, and take such other action as Buyer may reasonably request or as may be necessary to more effectively transfer to Buyer the Property described herein in accordance with this Agreement.

Section 15. Applicable Law: This Agreement shall be construed under the laws of the state in which the Property is located. This form has only been approved for use in North Carolina.

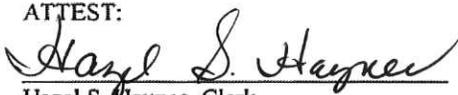
Section 16. Assignment: This Agreement may not be assigned without prior written consent of Seller.

Section 17. Authority: Each signatory to this Agreement represents and warrants that he or she has full authority to sign this Agreement and such instruments as may be necessary to effectuate any transaction contemplated by this Agreement on behalf of the party for whom he or she signs and that his or her signature binds such party.

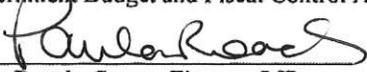
Section 18. Brokers: Except as expressly provided herein, Buyer and Seller agree to indemnify and hold each other harmless from any and all claims of brokers, consultants or real estate agents by, through or under the indemnifying party for fees or commissions arising out of the sale of the Property to Buyer. Buyer and Seller represent and warrant to each other that they have not employed nor engaged any brokers, consultants or real estate agents to be involved in this transaction.

RUTHERFORD COUNTY,
a municipal corporation of the State of North Carolina

BY: 
~~William Eckler, Chairman~~ Bryan King, Chairman
Board of County Commissioners

ATTEST:

Hazel S. Haynes, Clerk
Board of County Commissioners

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


Paula Roach, County Finance Officer

This form approved by:


Richard P. Williams, County Attorney

PIPER INVESTMENTS LLC

By: 
Name: Gerald M. Smith
Its: OWNER

Exhibit A
To
Conditional Offer to Purchase and Contract ("Contract")

The real property to be purchased under this Contract consists of the following lots in Phase 3 of the Queen's Gap subdivision in Rutherford County, North Carolina:

Property Description with Lot and Plat Book and Page Reference, Rutherford County	Deed Book & Page	Rutherford County PIN Number
QUEENS GAP PH 3 LT 288 PB 28 PG 299-305	944/495	1644985
QUEENS GAP PH 3 LT 297 PB 28 PG 299-305	944/495	1645006
QUEENS GAP PH 3 LT 287 PB 28 PG 300	944/495	1644984
QUEENS GAP PH 3 LT 295 PB 28 PG 299-305	944/495	1644992
QUEENS GAP PH 3 LT 289 PB 28 PG 299-305	944/495	1644986
QUEENS GAP PH 3 LT 290 PB 28 PG 299-305	944/495	1644987
QUEENS GAP PH 3 LT 293 PB 28 PG 299-305	944/495	1644990
QUEENS GAP PH 3 LT 286 PB 28 PG 299-305	944/495	1644983
QUEENS GAP PH 3 LT 294 PB 28 PG 300	944/495	1644991
QUEENS GAP PH 3 LT 304 PB 28 PG 299-305	944/495	1645009
QUEENS GAP PH 3 LT 302 PB 28 PG 299-305	944/495	1645010
QUEENS GAP PH 3 LT 304 PB 28 PG 299-305	944/495	1645012
QUEENS GAP PH 3 LT 305 PB 28 PG 299-305	944/495	1645013
QUEENS GAP PH 3 LT 306 PB 28 PG 299-305	944/495	1645016
QUEENS GAP PH 3 LT 303 PB 28 PG 299-305	944/495	1645011
QUEENS GAP PH 3 LT 300 PB 28 PG 299-305	944/495	1645008
QUEENS GAP PH 3 LT 265 PB 28 PG 299-305	944/495	1645015
QUEENS GAP PH 3 LT 264 PB 28 PG 299-305	944/495	1645014
QUEENS GAP PH 3 LT 298 PB 28 PG 299-305	944/495	1644994
QUEENS GAP PH 3 LT 296 PB 28 PG 299-305	944/495	1644993
QUEENS GAP PH 3 LT 307 PB 28 PG 299-305	944/495	1645017
QUEENS GAP PH 3 LT 308 PB 28 PG 299-305	944/495	1645018
QUEENS GAP PH 3 LT 309 PB 28 PG 299-305	944/495	1645019
QUEENS GAP PH 3 LT 310 PB 28 PG 299-305	944/495	1645020
QUEENS GAP PH 3 LT 311 PB 28 PG 299-305	944/495	1645021
QUEENS GAP PH 3 LT 312 PB 28 PG 299-305	944/495	1645022
QUEENS GAP PH 3 LT 276 PB 28 PG 299-305	944/495	1644973
QUEENS GAP PH 3 LT 278 PB 28 PG 299-305	944/495	1644975
QUEENS GAP PH 3 LT 279 PB 28 PG 299-305	944/495	1644976
QUEENS GAP PH 3 LT 212 PB 28 PG 299-305	944/495	1644968
QUEENS GAP PH 3 LT 280 PB 28 PG 299-305	944/495	1644977
QUEENS GAP PH 3 LT 213 PB 28 PG 299-305	944/495	1644969
QUEENS GAP PH 3 LT 244 PB 28 PG 299-305	944/495	1644970
QUEENS GAP PH 3 LT 215 PB 28 PG 299-305	944/495	1644971
QUEENS GAP PH 3 LT 285 PB 28 PG 299-305	944/495	1644982
QUEENS GAP PH 3 LT 292 PB 28 PG 299-305	968/612	1644989
QUEENS GAP PH 3 LT 291 PB 28 PG 299-305	944/495	1644988
QUEENS GAP PH 3 LT 282 PB 28 PG 299-305	944/495	1644979
QUEENS GAP PH 3 LT 281 PB 28 PG 299-305	944/495	1644978
QUEENS GAP PH 3 LT 283 PB 28 PG 299-305	944/495	1644980
QUEENS GAP PH 3 LT 275 PB 28 PG 299-305	944/495	1644972
QUEENS GAP PH 3 LT 235 PB 28 PG 299-305	944/495	1644998
QUEENS GAP PH 3 LT 313 PB 28 PG 299-305	944/495	1645023
QUEENS GAP PH 3 LT 236 PB 28 PG 299-305	944/495	1644999
QUEENS GAP PH 3 LT 234 PB 28 PG 299-305	944/495	1644997
QUEENS GAP PH 3 LT 233 PB 28 PG 299-305	944/495	1644996
QUEENS GAP PH 3 LT 232 PB 28 PG 299-305	944/495	1644995
QUEENS GAP PH 3 LT 314 PB 28 PG 299-305	944/495	1645024
QUEENS GAP PH 3 LT 315 PB 28 PG 299-305	944/495	1645025

Exhibit B
To
Conditional Agreement for Purchase and Sale of Real Property (“Contract”)

This **Exhibit B** sets forth those “Conditions” which constitute conditions precedent to Closing. Each of Buyer and Seller shall use reasonable best efforts to attempt to achieve the Conditions in a prompt manner after execution of the Agreement.

Condition One - Buyer or its Designee will acquire the Phase 3 Roads Parcel and Cemetery Parcel.

Seller will work with D.F. McCarthy Investments XVIII, LLC (as the holder of a Deed of Trust recorded at Book 1045, Page 75 of the Rutherford County Public Registry) to effect a foreclosure of the Phase 3 roadways (Tax Parcel number 1644967) (the “Phase 3 Roads Parcel”) and a cemetery plot (Tax Parcel number 1645000) (the “Cemetery Parcel”). Within five (5) business days of request, Buyer will reimburse Seller for all reasonable expenses incurred by Seller in effecting the foreclosure. Seller shall attempt to place the winning bid at the foreclosure sale for the Phase 3 Roads Parcel and the Cemetery Parcel. Rutherford County’s bid shall be in an amount substantially equal to the actual, out-of-pocket expenses that were incurred to effect the foreclosure (whether incurred by either D.F. McCarthy Investments XVIII, LLC or Seller), provided that Seller shall not be required to bid in excess of \$50,000. After expiration of the applicable foreclosure upset-bid period, Buyer agrees to pay Seller the amount of Seller’s winning bid or \$50,000, whichever is less, to acquire Seller’s rights as the successful bidder, and Buyer (or its designee) will take title to the Phase 3 Roads Parcel and the Cemetery Parcel. Buyer’s obligations under this Condition One shall survive termination of this Agreement.

Condition Two – Buyer will acquire Queens Gap Phase 3 Lots 277 and 284. Seller will institute tax-foreclosures related to outstanding taxes owed on Queens Gap Phase 3 Lot 277 (Tax Parcel number 1644974) and Phase 3 Lot 284 (Tax Parcel number 1644981), and Buyer (or its designee) shall acquire Lots 277 and 284 at or after the foreclosures. If the owners of Lots 277 and 284, or either of them, shall pay their respective taxes to cut off Seller’s ability to effect tax foreclosures (or file bankruptcy petitions which stay Seller’s ability to

foreclose), then, in order to fulfill Condition Two, Buyer or its designee will otherwise acquire title to Lots 277 and 284.

Condition Three – Buyer will acquire Queens Gap Phase 3 Lot 299. Buyer, or its designee, will obtain fee-simple title to Queens Gap Phase 3 Lot 299 (Tax Parcel number 1645007).

Condition Four – The Queens Gap Phase 3 property will be removed from the Declarations of the Queen's Gap Subdivision. Seller will propose an amendment to the Queens Gap Declarations to remove all Phase 3 property from the scope of the Declarations and will cause the amendment to be voted on at a meeting of the Queen's Gap home owners association. Seller will vote in favor of the amendment and shall encourage other owners of lots to also vote in favor of the amendment. The amendment must pass, and an amendment to the Declarations must be recorded in the Rutherford County Public Registry removing the Phase 3 property from the Declarations.