

## REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT (the “Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between \_\_\_\_\_ (“Buyer”), and Lake Francis Case Development Corporation, a South Dakota nonprofit corporation (“Seller”).

### RECITALS

WHEREAS, Seller has the right to acquire and transfer a certain parcel of real property located in Brule County, South Dakota, legally described as:

Lot 2, Block 2, Smokey Groves Addition to City of Chamberlain in the southwest quarter of section 27, Township 104 North, Range 71 West of 5th Principal Meridian, City of Chamberlain, Brule County, South Dakota

together with all buildings and improvements located thereon (if any) and all of the right, title and interest in and to any easements, privileges, rights of way, appurtenances or right to the same belonging thereto or inuring to the benefit thereof, subject to easements of record;

WHEREAS, Buyer desires to purchase the above-described property (the “Property”) from Seller and Seller desires to sell the Property to Buyer pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual representations, warranties, and covenants contained herein, and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do agree as follows:

1. Conveyance. On the terms and subject to the conditions set forth in this Agreement, on the Closing Date, Seller shall sell, convey, transfer and assign to Buyer, and Buyer shall purchase, acquire, and assume from Seller, Seller’s fee simple ownership and all of Seller’s interests in and to the Property together with all improvements located thereon, if any, and all appurtenances attached thereto.
2. Purchase Price and Sale Terms. In consideration for the purchase and sale of the Property, Buyer shall pay to Seller the sum of ONE DOLLAR (\$1) in immediately available funds (the “Purchase Price”), payable at Closing.
3. Closing. The closing of the transaction contemplated in this Agreement shall occur on or before \_\_\_\_\_, 2022 at Brule County Abstract Co. (the “Title Company”), or at such other time and place as the parties may reasonably agree (the “Closing” or the “Closing Date”).
4. Real Estate Taxes and Assessments. Seller shall be responsible for and shall pay all real estate taxes of record or assessments entered on the books of the local assessing authority, which were assessed for the year 2021 (payable in 2022) and for all prior years. Real estate taxes assessed for the year 2022 (payable in 2023) shall be prorated to 12:01 a.m. on the

date of Closing. Upon Closing, Buyer shall be responsible for paying all real estate taxes assessed for the year 2023 (payable in 2024) and for all subsequent years when due and payable. It is agreed that the proration of the real estate taxes shall be based upon the real estate taxes assessment available at the time of Closing.

5. Title Insurance. Buyer shall promptly order within ten (10) days of the execution of this Agreement, from the Title Company, a current title commitment (the "Title Commitment") for an ALTA owner's policy of title insurance, which shall:

- (a) be in the amount of the Purchase Price;
- (b) Only the following title exceptions:
  - (i) current taxes not yet due and payable; and
  - (ii) easements, covenants and restrictions which are approved by Buyer, in Buyer's reasonable discretion.

The title exceptions contained within this subsection (b) shall herein be referred to as "Allowable Exceptions"; and

- (c) insure the interest of Buyer as owner.

The cost of the Title Commitment, and the title policy itself, shall be paid by Buyer.

Buyer shall be allowed ten (10) days after receipt of the Title Commitment to examine title to the Property, and to make any objections thereto in Buyer's sole and absolute discretion (the "Title Objections"). If such Title Objections are made by Buyer, Seller shall be allowed ten (10) days to insure over or to remove such Title Objections. In the event the Seller fails to satisfy or correct any such Title Objections of which Seller is so notified prior to Closing, then the Buyer shall, by written notice to the Seller, elect one of the following prior to or at Closing: (i) To waive such Title Objections, in which event such Title Objections shall become one of the Allowable Exceptions, and to complete the transaction in accordance with the terms of this Agreement; or (ii) To terminate this Agreement and in such event the parties hereto shall have no further rights, duties or obligations under this Agreement.

6. Construction Time Requirement. In the event Buyer is purchasing the Property without financing, Buyer acknowledges and agrees it shall begin commencement of construction at the Property within three (3) months of the Closing Date (the "***Construction Time Requirement***"). In the event Buyer fails to meet the Construction Time Requirement, then all right, title, and interest in and to the Property shall automatically revert to Seller.

For purposes of this Section, "***commencement of construction***" shall be defined as the point of having obtained a building permit with the City of Chamberlain and beginning actual excavation and continuing on a daily or regular basis until project completion.

7. Seller's Representations, Warranties and Covenants. Seller represents, warrants and covenants the following to Buyer, each of which representations, warranties and covenants shall be true and effective as of the date hereof and as of the date of Closing:
- (a) Transfer of Property. Seller has the right to acquire and transfer to Buyer fee simple ownership in the Property free and clear of any and all liens, mortgages, encumbrances, security interests, pledges, restrictions, covenants, easements or other interest or obligations of whatever kind and nature, except as otherwise disclosed in the Commitment and accepted by Buyer pursuant to this Agreement, or as the parties may otherwise agree in writing;
  - (b) Applicable Laws. To the best of Seller's knowledge, Seller and the Property are in compliance with all applicable laws, ordinances, regulations, statutes, rules and restrictions, and Seller has not received notice from any governmental authority of any violation of law affecting any portion of the Property;
  - (c) Access. The Property has access to presently existing streets and roads adjoining or situated on or adjacent to the Property without the need of any permits, easements or licenses.
8. Buyer's Representations, Warranties and Covenants. Buyer represents, warrants, and covenants as follows:
- (a) Ability to Contract. Buyer has the authority to enter into this Agreement and this Agreement shall be a valid and binding obligation on Buyer, subject to the terms and conditions contained herein; and
  - (b) Payment. Subject to the terms and conditions of this Agreement, Buyer agrees to pay Seller the Purchase Price.
  - (c) As Is/Where Is. Buyer acknowledges, represents and warrants that as of the Closing Date, Buyer is familiar with the Property and will have made such independent investigations as Buyer deems necessary or appropriate concerning the Project. Except as expressly provided in Section 7 above, Seller makes no representations or warranties and specifically disclaims any representation, warranty or guaranty, oral or written, past, present or future with respect to the physical condition or any other aspect of the Property, including, without limitation, the state of repair or lack thereof of any of the Property and the conformity of the Property to past, current or future building code requirements.
9. Obligations at Closing. At Closing, the following shall occur:
- (a) Seller shall deliver to Buyer (i) a good and sufficient warranty deed for the Property; and (ii) such other documents as deemed reasonably necessary by Buyer, Title Company, or closing agent to transfer the Property to Buyer or as may be required pursuant to this Agreement.

(b) Buyer shall deliver to Seller the Purchase Price;

(c) In addition to the items set forth above, Buyer and Seller shall cause the following deliveries to be made; (i) Buyer's payment of the transfer tax and recording fee to the Brule County Register of Deeds; (ii) any and all Closing fees or other regular and usual fees not expressly addressed herein shall be paid by Buyer; (iii) settlement statements showing the Purchase Price, and any adjustments thereto; and (iv) any other documents as required effectuating the transfer of the Property, including any other documents required by the Title Company or closing agent; and

(d) If any of the above-specified conditions remain unsatisfied at the Closing of this Agreement, or any representation, warranty, or covenant of either party has been breached, then Buyer or Seller may, at its election: (i) waive such unsatisfied conditions and proceed to Closing; (ii) extend the Closing to such date, mutually agreed upon by Buyer and Seller, upon which all conditions precedent, representations, and warranties shall have been satisfied; or (iii) upon written notice to the other party, terminate this Agreement and in such event the parties hereto shall have no further rights, duties or obligations under this Agreement. The parties hereto agree to use their commercially reasonable best efforts and agree to mutually cooperate to satisfy all of the conditions precedent contained herein.

10. Failure to Close. If Buyer fails or refuses to close the transactions contemplated herein on or before the Closing Date, Buyer, its owners, members, managers, officers, affiliates, subsidiaries, successors, and assigns shall be prohibited from purchasing any real property from Seller for one (1) year from the date of this Agreement.

11. Miscellaneous.

(a) Survival of Representations, Warranties and Covenants. The representations, warranties and covenants contained herein, and all other rights, duties and obligation hereunder, shall survive Closing and are and shall be deemed to be continuing representations, warranties, covenants, rights, duties and obligations.

(b) Counterparts/Facsimile. This Agreement may be executed by facsimile/electronic signature and in any number of counterparts as deemed appropriate by the parties, all of which taken together shall constitute one and the same instrument.

(c) Benefit. This Agreement shall inure to the benefit of and be binding upon the parties hereto and also upon their respective heirs, representatives, successors and assigns.

(d) Brokers. Buyer and Seller each represent and warrant to the other that they have not entered into any agreement, incurred any obligation, or know of any facts which might result in the obligation for any party to pay a sales or brokerage commission for this transaction. Seller and Buyer each agree to indemnify and hold the other harmless from any liability, including reasonable attorneys' fees, arising from a breach of this representation and warranty.

- (e) Severability. Should any provision in this Agreement be deemed unenforceable as to a particular circumstance or set of facts, the unenforceability shall be limited to such circumstance or set of facts and all remaining provisions of this Agreement shall remain fully binding and enforceable as between Seller and Buyer.
- (f) Further Assurances. Each party, upon the request of the other, agrees to perform any further acts, and to execute and deliver any other documents, which are reasonably necessary to carry out the provisions of this Agreement.
- (g) Entire Agreement; Waiver. This Agreement contains the entire agreement of the parties. It may not be changed orally but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification, extension, or discharge is sought. A waiver of any term or provision shall not be construed as waiver of any other term or provisions or as waiver of subsequent performance of the same provision of this Agreement.
- (h) Drafting Presumption. Buyer and Seller agree that they participated in the drafting of this Agreement and, in the event that any dispute arises in the interpretation or construction of this Agreement, no presumption shall arise that either one party or the other drafted this Agreement.
- (i) Notice. Any notice hereunder shall be given in writing to the party for whom it is intended in person or by registered mail at the following address stated in the opening of this Agreement, or such future address as may be designated in writing.
- (j) Assignment. Buyer may not assign this Agreement without the consent of Seller, which shall not be unreasonably withheld.
- (k) Governing Law. This Agreement is subject to and shall be governed by and construed and enforced in accordance with the laws of the State of South Dakota without regard to conflict of laws principles. All actions or proceedings arising directly or indirectly from this Agreement shall be brought in Brule County, South Dakota. The parties irrevocably submit to the jurisdiction of such courts.

*[Signatures begin on next page]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for the purposes herein contained as of the date first written above.

SELLER:

LAKE FRANCIS  
DEVELOPMENT CORPORATION

\_\_\_\_\_  
By: Chad Pinkelman  
Its: Executive Director

BUYER:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name: