

Item #2019 **10**



**ROCKY MOUNT**  
CITY MANAGER'S OFFICE  
THE CENTER OF IT ALL

City Council Agenda

Date: April 17, 2019

To: The Honorable Mayor and City Council

Subject: Notice of Intent to Exchange City of Rocky Mount Owned Real Property

Summary of Requested Action:

It is the intent of City Council to enter into an Exchange Agreement that provides for the transfer of city property located at 2305 N. Wesleyan Boulevard for the purpose of securing the right to purchase properties owned by Log Cabin Homes (LCH) located on the east side of Middle St and 410 N Pearl Street through June 30, 2026. The intent of the agreement is to secure rights for the Monk to Mill Trail Project until such time that NCDOT project funding is available to complete the purchase.

Department Requesting Action: Department of Public Works

Budgetary Impact:

The Exchange Agreement provides for the transfer of City property located at 2305 N. Wesleyan Boulevard, appraised at a value of \$61,000, as a non-refundable option fee. In return, the City receives exclusive rights to obtain properties owned by LCH at a fixed price throughout the term of the agreement.

City Manager's Recommendation:

*Recommend Approval. R. H. Honey*  
4/18/19

**RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF ROCKY MOUNT AUTHORIZING  
AN EXCHANGE OF PROPERTY BETWEEN  
THE CITY AND LOG CABIN HOMES LTD**

**WHEREAS**, the City owns a 7.5-acre parcel of real property located in the City of Rocky Mount at 2305 North Wesleyan Boulevard (PIN 386105186424), which together with other undertakings of the City hereinafter described, is valued at approximately \$61,000, which real estate is surplus to the needs of the City (the “City Property”); and

**WHEREAS**, the City will reserve a 30-foot easement across the City Property for existing and future utilities and grant Log Cabin Homes Ltd (“LCH”) a nonexclusive access easement across another City owned parcel (Pin # 386105181874) to reach the City Property from North Wesleyan Boulevard. In addition, if LCH undertakes an adaptive reuse project on other property that LCH owns on Pearl Street, the City has agreed to construct a gravel parking lot in the vicinity available for general public parking; and

**WHEREAS**, Log Cabin Homes (“LCH”) owns real property located at 513 Keen Street adjacent to Middle Street (Pin #385019520134) and at 410 North Pearl Street (Pin #385019513763) valued at approximately \$950,000 (collectively the “LCH Property”); and

**WHEREAS**, the City has agreed to convey the City Property to LCH in exchange for the exclusive right and option to purchase the LCH Property, exercisable at any time prior to June 30, 2026 at a price of not more than \$600,000 and not less than \$420,000 depending on the amount of any NC Department of Commerce Building Reuse Grant received by LCH. The grant will defray a portion of the costs of relocating LCH’s business from Pearl Street to 2321 North Wesleyan Boulevard, just North of the City Property, as more fully set forth in the Option Agreement; and

**WHEREAS**, the City believes that the right to purchase the LCH Property under the terms provided in the Option Agreement constitutes full and fair consideration for the conveyance of the City Property and the rights granted and undertakings set forth above; and

**WHEREAS**, the complete details of the transaction hereby authorized are set forth in an Exchange Agreement and an Option Agreement to be entered into between the City and LCH, which agreements are incorporated herein by reference; and

**WHEREAS**, N.C. Gen. Stat. § 160A-271 authorizes the City to make such an exchange if authorized by the City Council by resolution adopted in a regular meeting of the Council upon at least 10 days public notice; and

**WHEREAS**, the City has given the required notice, the provisions of which are incorporated herein by reference, by publication in the Rocky Mount Telegram, and the City Council is convened in a regular meeting;

**NOW, THEREFORE**, be it resolved by the City Council of the City of Rocky Mount:

1. The exchange of the City Property for the right and option to purchase the LCH Property as described above is hereby authorized.
2. The Mayor and City Manager, or either of them, is hereby authorized and directed to execute the necessary instruments to carry out the exchange.

Adopted this 10<sup>th</sup> day of June, 2019.

# MEMORANDUM



ROCKY MOUNT, NC  
THE CENTER OF IT ALL

## City Council

**To:** Rochelle Small-Toney, City Manager

**Cc:** Brad Kerr, Director of Public Works

**From:** Chris Beschler, Assistant City Manager

**Date:** April 17, 2019

**Re:** Log Cabin Homes Purchase Option

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Attached, please find the proposed Purchase Option Agreement and Exchange Agreement for parcels associated with the proposed Monk to Mill Trail project. The intent of the agreement is to secure rights to the project Right-of-Way until NCDOT project funding is available to complete the purchase. The Monk to Mill Trail project is now a committed project in the NCDOT State Transportation Improvement Program (STIP) with Construction scheduled for 2025. The proposed purchase option secures the right to purchase properties owned by Log Cabin Homes (LCH) through June 30, 2026. The subject properties shown on the attached exhibits are located on the east side of Middle St and 410 N Pearl Street.

The Exchange Agreement provides for the transfer of city property located at 2305 N. Wesleyan Blvd., appraised value \$61,000, as a non-refundable option fee. The city would retain a 30-foot easement over the existing and proposed sewer lines running through the property and grant an ingress/egress easement over 2313 N. Wesleyan Blvd which will be retained by the City. Other than the retained easements, the city has no operational need for the property. Log Cabin Homes intends to use to parcel as an operating and materials storage yard for their proposed relocation and expansion at 2321 N. Wesleyan Blvd.

The terms of the Option and Exchange Agreements are outlined as follows:

### Option Agreement

- Agreement period expires June 30, 2026.
- The city receives exclusive rights to obtain properties at a fixed price throughout term of agreement.
- There is no penalty to the City if the option is not exercised.
- The City agrees to support Log Cabin Homes application for a Reuse Grant to facilitate a proposed relocation and expansion at 2321 N. Wesleyan Blvd.

- The maximum grant award is a \$500,000 Department of Commerce Reuse Grant (40 jobs at \$12,500 per job) plus a \$50,000 supplemental grant from the Carolina Gateway Partnership (CGP). Of the grant proceeds, \$20,000 will be used by CGP to administer the grant. The maximum net proceeds to LCH is \$530,000.
- Should LCH be awarded the grant, the base purchase price of \$950,000 will be reduced by the net proceeds of the Reuse Grant.
- The Net Purchase price with the maximum grant award is \$420,000.
- Should LCH not pursue the grant or net grant proceeds be less than \$350,000, the purchase price is capped at \$600,000.
- There are three (3) payment options enshrined in the agreement:
  - Cash or certified funds
  - 10-year annual installment payments if LCH receives Reuse grant funds
  - 25-year annual installment payments if LCH does not receive Reuse grant funds
- Unless otherwise mutually agreed, closing with occur between 12 and 14 months from notice to LCH of the City's intent to close.
- LCH will maintain the property in substantially the same or better condition except that select structures on 410 N Pearl Street that are proposed for demolition as part of the Monk to Mill project may be removed if LCH desires.
- LCH agrees to make no material improvements or expansions on the Property during the Option Period, nor place any lien or encumbrances on the property
- All furniture, equipment and stored materials on the Property are the property of the LCH, and LCH shall remove the same from the Property prior to Closing.
- LCH will retain right of first refusal to lease or purchase the property located at 410 N Pearl Street if any portion of the property is made available for lease or purchase in the future.

#### Exchange Agreement

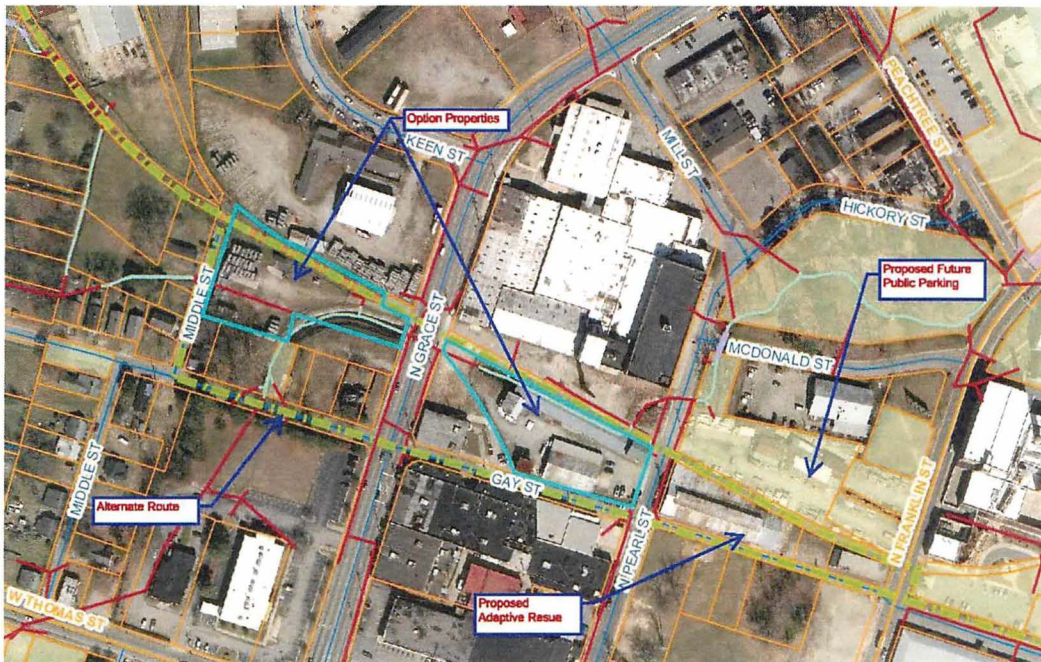
- Closing for the City Parcel located at 2305 North Wesleyan Boulevard, shall occur within forty-five (45) days of the adoption of a resolution by the Rocky Mount City Council authorizing the execution of the Agreement
- Consistent with the July 9, 2004 lease agreement for the City parcels identified as 413 N Pearl St, the City agrees to construct a minimum of 25 public gravel parking spaces with driveway access to Franklin Street, and a secondary driveway access to either Pearl Street

or McDonald Street within 12 months of LCH vacating the parcel. The parking lot will have lighting at a level consistent with other public parking lots operated by the City.

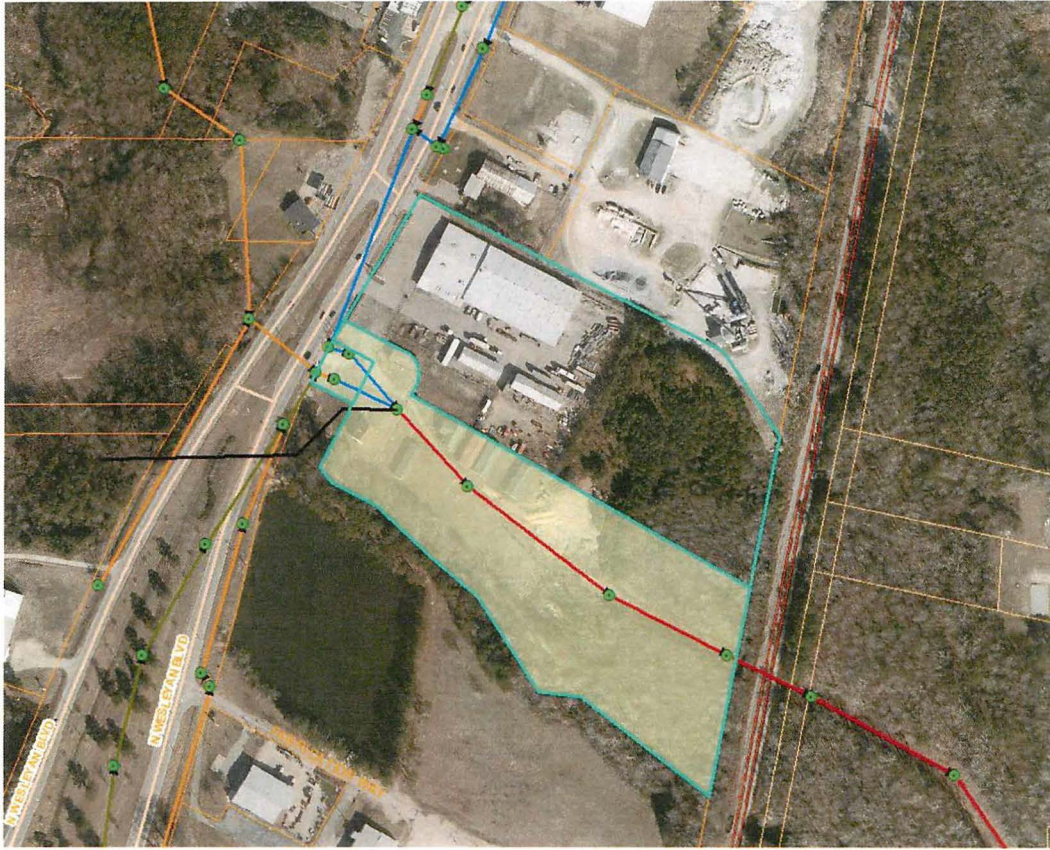
- The City further agrees that the 25 gravel parking spaces will be considered sufficient to satisfy City Land Development Code parking requirements for a proposed Adaptive Reuse of the existing building on 411 N. Pearl St.
- If LCH undertakes the Adaptive Reuse Project, the City agrees that the building on the Adaptive Reuse Parcel will be permitted to have a public entrance on its northern boundary with 413 N Pearl St at a mutually agreed upon location. The sidewalks required to meet ADA requirements for the proposed entrance may be constructed in accordance with City standards and at the sole expense of LCH.

Staff recommends that Council adopt the Resolution of Intent.

#### Log Cabin Homes Properties



2305 North Wesleyan Boulevard



**RESOLUTION OF INTENT TO EXCHANGE REAL PROPERTY**

WHEREAS, the City of Rocky Mount owns property at 2305 N. Wesleyan Boulevard; and

WHEREAS, N.C. Gen. Stat. §160A-271 permits the City to exchange real property; and

WHEREAS, the City of Rocky Mount intends to enter into an Exchange Agreement pursuant to N.C. Gen. Stat. § 160A-271 with Log Cabin Homes Ltd. to exchange certain City-owned real property located on 2305 N. Wesleyan Boulevard for an option to purchase certain real property owned by Log Cabin Homes located on Keen Street and N. Pearl Street; and

WHEREAS, all parcels are located within the corporate limits of the City; and

WHEREAS, the City Property to be exchanged is located at 2305 N. Wesleyan Blvd. (Pin #386105186424). The City will reserve a 30-foot easement across the City Property for existing and future utilities and grant Log Cabin Homes a nonexclusive access easement across another City-owned parcel (Pin #386105181874) to reach the City Property from N. Wesleyan Boulevard; and

WHEREAS, in addition, if Log Cabin Homes undertakes an adaptive reuse project on other property that it owns on Pearl Street, the City would agree to construct a gravel parking lot in the vicinity available for general public parking; and

WHEREAS, the City Property to be conveyed to Log Cabin Homes and the undertakings of the City are valued at approximately \$61,000; and will serve as the option fee under the Option Agreement. The Option Agreement will grant the City the exclusive right and option to purchase the southernmost portion of the Log Cabin Homes' Property located at 513 Keen Street adjacent to Middle Street (Pin #385019520134) and 410 N. Pearl Street (Pin #385019513763); and

WHEREAS, the option to acquire the Log Cabin Homes Property may be exercised at any time prior to June 30, 2026 at a price of not more than \$600,000 and not less than \$420,000 depending on the amount of any North Carolina Department of Commerce Building Reuse grant received by Log Cabin Homes; and said grant will defray a portion of the costs of relocating Log Cabin Homes' business to 2321 N. Wesleyan Boulevard just north of the City Property as more fully set forth in the Option Agreement; and the City will support the grant application; and

WHEREAS, the City believes the right to purchase the Log Cabin Homes' Property under terms provided in the Option Agreement constitutes full and fair consideration for the conveyance of the City Property and the rights granted. The complete details of this transaction are set forth in an Exchange Agreement and an Option Agreement to be entered into between the City and Log Cabin Homes,

copies of which are available to the public in the Office of the City Clerk during regular business hours; and

WHEREAS, if the option is exercised, the intended use of the Log Cabin Homes' Property is for the Monk to Mill Trail Project.

WHEREAS, N.C. Gen. Stat. §160A-271 required that the City publish notice of its intent to authorize the exchange ten (10) days prior to the regular meeting at which the exchange is to be authorized; and

WHEREAS, the City Council intends to authorize the exchange at its regular meeting to be held May 13, 2019.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Rocky Mount:

1. That the City Council hereby states its intent to authorize at its May 13, 2019 meeting the real property exchange set out herein; and

2. That the City Clerk of authorized to publish a notice in the Rocky Mount Telegram describing the properties to be exchanged, setting the value of the properties and announcing the City Council's intent to authorize the exchange at its May 13, 2019 regular meeting.

Adopted: \_\_\_\_\_

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Pamela O. Casey  
City Clerk



## OPTION AGREEMENT

**THIS OPTION AGREEMENT** (this “**Agreement**”) is made and entered into this the \_\_\_\_\_, 2019 by and between Log Cabin Homes Ltd., a corporation organized in the State of Delaware and authorized to do business in North Carolina (“**LCH**”), and the City of Rocky Mount, a North Carolina municipal corporation (“**the City**”).

### WITNESSETH:

**WHEREAS**, LCH is the owner of those two (2) certain tracts or parcels of land located in the City of Rocky Mount, Nash County, North Carolina, more particularly described on Appendix 1, attached hereto and made a part hereof, together with all improvements, rights, privileges, easements and appurtenances belonging or appertaining thereto (collectively the “**Property**”); and

**WHEREAS**, the City desires to exchange certain City owned property located at 2305 N Wesleyan Blvd (PIN 386105186424), more particularly described on Appendix 2 (the “**City Property**”), subject to the retention of utility easements for existing and future public utilities on, for an option to purchase the Property; and

**WHEREAS**, in exchange for the conveyance of the City Property, LCH has agreed to grant the City an option to purchase the Property as provided herein; and

**WHEREAS**, the City and LCH have entered into an Exchange Agreement (the “**Exchange Agreement**”) dated the \_\_\_ day of \_\_\_\_\_, 2019, the provision of which are incorporated in this Agreement by reference;

**NOW, THEREFORE**, for and in consideration of the foregoing recitals, the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Grant of Option**. In consideration of the terms and conditions of this Agreement and the Option Fee (as hereinafter defined), LCH hereby grants and conveys to the City the exclusive right and option (the “**Option**”) to purchase the Property from LCH during the Option Period (as hereinafter defined) for the Adjusted Purchase Price (as hereinafter defined), upon the terms and conditions set forth in this Agreement.

2. **Option Fee**. As consideration for the **Option**, the City agrees to transfer title to the City Property, subject to recordation of a 30-foot utility easement for the existing 24 inch sewer line and a proposed future 24 inch sewer line in the southeast corner of the parcel. The closing for the transfer shall occur as provided in the Exchange Agreement. The value of City Property is hereby established at \$61,000 as determined by an appraisal prepared by Collice C. Moore, Jr., and dated March 29, 2018. The conveyance of the City Property constitutes the Option Fee under this Agreement and shall be nonrefundable unless there is a default or breach

by LCH, (Remedies on Default, Paragraph 18) or damage or destruction to the improvements (Risk of Loss, Paragraph 20), in which case LCH shall pay the City \$61,000.

3. Option Period.

- (a) The **Option Period** shall commence on the Effective Date (as hereinafter defined) and shall continue until June 30, 2026. The City shall have the Option Period to conduct its investigation of the Property, including determining the suitability of the Property for its intended use, conducting a survey of the Property, securing financing, and, at its option, obtaining an owner's title insurance commitment for the Property. The costs and expenses of all of the foregoing items shall be borne by the City.
- (b) LCH agrees to make no material improvements or expansions on the Property during the Option Period, nor place any lien or encumbrances thereon.
- (c) LCH shall act reasonably to cooperate with the City in its investigation of the Property, including without limitation, its surveying of the Property, obtaining title insurance, and inspecting the Property.
- (d) LCH agrees that, during the Option Period the City may make surveys, inspections, tests (including subsurface test) and other examinations (collectively, the "**Inspection**"), with respect to the Property. The City and its agents, servants, employees, and contractors shall have the right to enter upon the Property for the purpose of conducting the Inspection. In performing the Inspection, the City shall not damage the Property and shall leave it in the same condition, or in substantially the same condition, as it was prior to the City's entry.
- (e) LCH agrees to use its best efforts to deliver to the City as soon as reasonably possible after the commencement of the Option Period, copies of all title information in possession of or available to LCH, including but not limited to: title insurance policies or title opinions, attorney's opinions on title, surveys, covenants, deeds, notes and deeds of trust and easements relating to the Property. LCH authorizes (1) any attorney presently or previously representing LCH to release and disclose any title insurance policy in such attorney's file to the City and the City's agents and attorneys; and (2) the Property's title insurer or its agent to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to the City and the City's agents and attorneys.

4. Effective Date. The **Effective Date** of this Agreement is the date it is executed by the City.

5. Exchange Agreement. The Exchange Agreement is incorporated in this Agreement by reference and is an integral part hereof. This Agreement is attached to the Exchange Agreement as Appendix 3 and incorporated therein. In event of a conflict between

any provision of this Agreement and a provision contained in the Exchange Agreement, the provision in the Exchange Agreement shall control.

6. Material and Equipment. All furniture, equipment and stored materials on the Property are the property of the LCH, and LCH shall remove the same from the Property prior to Closing.

7. Exercise of the Option. The City may exercise the Option at any time during the Option Period by providing written notice to LCH of such exercise. Upon the exercise of the Option by the City as aforesaid, this Agreement shall constitute a binding agreement for the purchase and sale of the Property. If the Option is not exercised during the Option Period, the Option shall lapse and thereafter be null and void and of no legal effect.

8. LCH's Reservation. LCH reserves the right to sell free from any claims of the City under this Agreement any or all other buildings (buildings not wholly or partially located on the Property) or other real estate (real estate not included wholly or partially in the description of the Property on Appendix 1) it owns which are adjacent to the Property which is the subject to this Agreement during the Option Period or any renewal period thereof.

9. Adjusted Purchase Price. The purchase price is part of LCH's compromise to perfect this Option Agreement and absolutely does not represent LCH's costs (which are substantially greater) for the vacancy of the Property including but not limited to the construction of lost facilities, land values, relocation and business interruption cost, etc. The purchase price for the Property shall not be more than Six Hundred Thousand Dollars (\$600,000) nor less than Four Hundred Twenty Thousand Dollars (\$420,000) (the "Adjusted Purchase Price"), as hereinafter provided.

The Adjusted Purchase Price shall not exceed \$600,000, which shall be the amount to be paid to LCH at Closing if no grants are applied for, if grants are applied for but no grant money is received, or if total grant funding received is less than \$350,000. Any grants received will be deducted from the \$950,000 compromise value of the Property (for example if LCH received grants totaling \$400,000 the Adjusted Purchase Price would be \$550,000), but in no event shall the Adjusted Purchase Price be more than \$600,000, nor less than \$420,000. It is anticipated that the eligible grant amount will be \$500,000, supplemented by a Carolina Gateway Partnership (CGP) grant in the amount of \$50,000, less a \$20,000 administrative fee, for a net grant in the maximum amount of \$530,000. The amount of any grants received shall be deducted from the \$950,000 compromise value of the Property, but in no event shall the Adjusted Purchase Price be more than \$600,000, nor less than \$420,000, regardless of the amount of any grant or grants received, or if no grant is received.

10. City's Payment Options. The City may exercise any one of the following three (3) payment options:

- (a) Installment Payment Option 1. If LCH applies for and receives NC Department of Commerce Building Reuse grant funds, or other grant

funds, the City agrees to pay LCH the Adjusted Purchase Price, plus the prime rate of interest in effect on the date of Closing and adjusted annually, in equal annual installments over a ten (10) year term. The initial installment shall be due at Closing and annual installments shall be made on July 15<sup>th</sup> of each year thereafter. The outstanding balance may be paid at any time without prepayment penalty.

- (b) Installment Payment Option 2. If LCH does not apply for or receive NC Department of Commerce Building Reuse grant funds, or any other grant funds, the City agrees to pay LCH the Adjusted Purchase Price of \$600,000, plus the prime rate of interest in effect on the date of Closing and adjusted annually in equal annual installments over a twenty-five (25) year term. The initial installment shall be due at Closing and annual installments shall be made on July 15<sup>th</sup> of each year thereafter. The outstanding balance may be paid at any time without prepayment penalty.
- (c) Payment Option 3. The City may pay the Adjusted Purchase Price at Closing to LCH in cash or by certified funds.

11. Closing. Closing of the purchase and sale of the Property shall occur at the office of the City's attorney, on a date and time which shall be specified by the City in its notice exercising the option (the "Closing Date"), but in no event shall the Closing take place earlier than twelve (12) months nor later than fourteen (14) months after the date of exercise, or at such other place and time as the parties hereto shall mutually agree (the "**Closing**"). At Closing:

- (a) LCH shall:
  - (i) Execute and deliver to the City, or such other grantee as named by the City, a general warranty deed to the Property, in reasonable form and content satisfactory to the City in the City's reasonable discretion, conveying good and marketable title in fee simple, as hereinabove provided, and based upon a legal description of the Property from a survey prepared for the City, and acceptable to LCH, or in the event the City does not obtain a survey, the property description on Appendix 1 shall be used to prepare the deed from LCH to the City. Title shall be conveyed subject to the following:
    - (a) Zoning ordinances in effect;
    - (b) All easements and rights of way of record that will not materially and adversely affect the City's intended use of the Property;
    - (c) Taxes for the year in which the closing takes place (which shall be prorated on the calendar year basis to the Closing Date);

(d) Such other exceptions as are approved in writing by the City;

All of the foregoing are hereinafter referred to as the "Permitted Exceptions". Notwithstanding the foregoing, LCH shall satisfy and discharge of record any and all mortgages or deeds of trust encumbering the Property and in no event shall any such mortgage or deed of trust be considered a Permitted Exception.

- (ii) Pay LCH's closing costs as hereinafter specified;
  - (iii) Deliver to the City an affidavit indicating that LCH is not a foreign entity;
  - (iv) Deliver to the City and the City's title insurer an affidavit and indemnity agreement in standard form regarding contractor's and materialmen's liens on the Property reasonably acceptable to the City's title insurer;
  - (v) If requested, deliver to the City a resolution reasonably satisfactory to the City, authorizing the transaction contemplated herein; and
  - (vi) Satisfy and discharge of record any mortgage, deed of trust, and other liens encumbering the Property.
- (b) The City shall:
- (i) Pay the Purchase Price as herein defined;
  - (ii) Pay the City's closing costs as hereinafter specified;

Closing costs at the Closing shall be paid as hereinafter specified:

- (a) By LCH:
  - (i) All taxes due on the Property for years prior to the year of the Closing;
  - (ii) LCH's portion of the prorated ad valorem real property taxes for the year of Closing on the Property;
  - (iii) There shall be no LCH's brokerage fees;
  - (iv) LCH's attorney's fees;
  - (v) The cost of deed preparation, revenue stamps required by law, any assessments, pending or confirmed, and the cost to clear any lien, encumbrance or other title exception on the Property required to be cleared by LCH;
  - (vi) All late payment penalties, if any, and personal property taxes on the Property for the entire year in which the Closing occurs; and
  - (vii) Such other incidental costs and fees customarily paid by sellers in Nash County, North Carolina land transactions of this nature.
- (b) By the City:
  - (i) The cost of the preparation of this Agreement;
  - (ii) The City's attorney's fees;
  - (iii) The City's portion of the prorated ad valorem real property taxes for the year of the Closing on the Property;

- (iv) The cost of recording the general warranty deed to the Property;
- (v) The cost of the surveys and fees and premiums for the Commitment for title insurance; and fees and premiums for the policies of title insurance for the Property, if any; and
- (vi) Such other incidental costs and fees customarily paid by purchasers in Nash County, North Carolina land transactions of this nature.

After the Closing, LCH agrees that it will take such actions and properly execute and deliver to the City such further instruments of assignment, conveyance and transfer as may be reasonably necessary to assure the full and effective transfer and conveyance of the Property and title thereto.

12. Condition of Property at Closing: The Property must be in substantially the same or better condition at Closing as on the date this Agreement is executed by LCH. LCH shall keep and maintain the two (2) buildings shown on Appendix 1b, attached hereto and made a part hereof, in at least as good a condition as the same were on the date this Agreement was executed by LCH. LCH may remove any other buildings or structures from the Property provided the removal is done in a good and workman like manner, and no remnants or other parts of the building or structure are left on the Property, and the portion of the Property where the removed building or structure was located is left in a clean, level condition.

13. Possession. Possession of the Property shall be delivered at Closing. LCH shall remove, by Closing, all personal property which is not a part of the purchase and all garbage and debris from the Property.

14. Delay in Closing: If a party is unable to complete Closing by the Closing Date but intends to complete the transaction and is acting in good faith and with reasonable diligence to proceed to Closing (“Delaying Party”), and if the other party is ready, willing and able to complete Closing on the Closing Date (“Non-Delaying Party”) then the Delaying Party shall give as much notice as possible to the Non-Delaying Party and shall be entitled to a delay in Closing. If the parties fail to complete Closing within fifteen (15) business days of the Closing Date, or to further extend the Closing Date by written agreement, then the Delaying Party shall be in default and the Non-Delaying Party may terminate this Agreement and shall be entitled to enforce any remedies available to such party under this Agreement for the breach.

15. Conditions Precedent to the City’s Obligations. If the Option is exercised by the City, the obligations and liabilities of the City hereunder shall be in all respects conditioned upon satisfaction of each of the following conditions precedent (the “Conditions Precedent”) at or prior to Closing:

- a. Neither LCH nor the Property shall be subject to any judgment or decree of competent jurisdiction, or to any litigation or administrative proceeding which would adversely affect the Property, or which would adversely affect LCH’s right to enter into this Agreement.

- b. All representations and warranties made by LCH in this Agreement shall be true and accurate and remain in full force and effect as of the date of Closing.
- c. The present zoning of the Property shall not have been changed or modified and no application for any change or modification by LCH shall be pending as of the date of Closing.
- d. There shall be no restrictive covenants which prevent, restrict, or limit in any way the use of the Property for any use intended by the City.

16. Covenants of LCH. LCH hereby makes the following representations, warranties and covenants with respect to the Property, which are true as of the date of this Agreement and shall also be true as of the date of the exercise of the Option and shall survive Closing, upon each of which LCH acknowledges and agrees that the City is entitled to rely and has relied:

As of the date of this Agreement there is one lien or encumbrance against the Property which secures a loan to BB&T with a current outstanding balance that does not exceed \$351,890.71.

- a. There are no other mortgages, deed of trust, or other lien or encumbrance against the Property and LCH agrees that during the Option Period it will not place any additional or further liens or encumbrances against the Property or increase the amount of the existing BB&T indebtedness.
- b. To the best of LCH's knowledge, LCH has complied with all applicable laws, ordinances, regulations and restrictions relating to the Property.
- c. To the best of LCH's knowledge, there are no parties, other than LCH, occupying any portion of the Property as lessees, or otherwise, and there are no leases applicable to or affecting the Property.
- d. LCH has received no notice of and LCH has no knowledge of any pending or threatened condemnation or similar proceeding or special assessment affecting the Property, or any part thereof and LCH has no knowledge of any such proceeding or assessment contemplated by any Governmental Authority. As used herein, the term "Governmental Authority" shall mean the United States, the State of North Carolina, and any agency, department, commission, board, bureau or instrumentality of any of them, including any North Carolina city or county. If LCH receives such notice during the term of this Agreement, LCH shall immediately notify the City in writing.
- e. LCH has no knowledge of any unpaid charges, debts, liabilities, claims or obligations arising from the construction, occupancy, ownership, use or operation of the Property, which could give rise to any mechanics' or materialmen's or other statutory lien against the Property, or any part thereof.
- f. LCH has not caused any Hazardous Materials to be placed, held, stored, located, dumped or disposed of on the Property in a manner which violates applicable law. With the exception of the releases associated with North Carolina Department of Environmental Quality (NCDEQ), Division of Waste Management, Leaking Aboveground Storage Tank incident number 85745 and Leaking Underground Storage Tank incident number 5710, LCH has no knowledge of any Hazardous

Materials being placed, held, stored, located, dumped or disposed of on the Property in a manner which violates applicable law. If such knowledge becomes available, LCH shall immediately notify the City in writing. For purposes of this Agreement, "Hazardous Materials" means any substance: (i) the presence of which requires investigation or remediation under any applicable law or federal, state or local statute, regulation, rule, ordinance, order, action, policy or common law; or (ii) which is or becomes defined as a "hazardous substance," pollutant or contaminant under any applicable law or federal, state or local statute, regulation, rule or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act (42 USC § 6901 et seq.) and the Resource Conservation and Recovery Act (42 USC § 6901 et seq.); or (iii) which is toxic, radioactive, carcinogenic, or otherwise hazardous and is or becomes regulated by any governmental authority; or (iv) without limitation which contains polychlorinated biphenyls (PCB's), asbestos or area formaldehyde insulation. LCH suspects that the railroad bed on the Property may be contaminated and that the lot between Grace and Middle Streets is contaminated and advises the City to assess the condition of the Property before exercising the Option.

- g. There is no pending, or to LCH's knowledge, threatened litigation or administrative proceedings which could adversely affect title to the Property or any part thereof or the ability of LCH to perform any of its obligations hereunder. If such notice or knowledge becomes available to the LCH during the term of this Agreement, LCH shall immediately notify the City in writing.
- h. To the best of LCH's knowledge performance of this Agreement will not result in any breach of, or 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 LCH is a party or by which LCH or the Property is bound.
- i. To the best of LCH's knowledge, all documents and information delivered or to be delivered by LCH to the City are complete, true and correct in all material respects unless otherwise stated, provided that LCH is not warranting in any way the accuracy or correctness of any statement made by third parties within such documents.
- j. LCH is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1954, as amended.
- k. To the best of LCH's knowledge, there are no unrecorded leases or claims of lien affecting the Property.
- l. Promptly upon obtaining knowledge of the institution of foreclosure or any proceedings for the condemnation of the Property, or any portion thereof, or any other proceedings arising out of injury or damage to the Property, or any portion thereof, LCH will notify the City of the pendency of such proceedings.
- m. LCH shall not knowingly act in a manner that would cause any of LCH's representations and warranties to be breached between the date hereof and the exercise of the Option or Closing, provided that LCH shall have no obligation,



nor shall this Agreement be affected by, acts of third parties that are inconsistent with such representations.

- n. To the best of LCH's knowledge there are no confirmed or proposed special assessments against the Property.
- o. LCH shall deliver to the City the following items related to the Property (hereinafter the "Preliminary Information"):
  - i. Copies of any notices received by LCH from governmental authorities relating to the utilities on the Property, the water and/or sewer system, roads, wetlands, or other similar information in LCH's possession which may help the City in its inspection of the Property.
  - ii. Copies of the latest survey in LCH's possession.

17. Conditions Precedent to LCH's Obligations. If this Option is exercised by the City, LCH's obligations hereunder are conditioned upon performance by the City of the following conditions precedent:

- a. All representations and warranties made by the City in this Agreement shall be true and accurate and remain in full force and effect.
- b. Payment by the City at Closing of the Purchase Price in the manner herein provided.

18. Remedies on Default.

- a. Remedies of LCH. In the event of a default or breach by the City, after the exercise of the Option, of any of the terms and provisions of this Agreement, the Option Fee (City Property) shall be retained by LCH, but the retention of the City Property shall not affect or limit any other remedies available to LCH at law or in equity.
- b. Remedies of the City. In the event of (a) a default or breach by LCH of any of the terms and provisions of this Agreement, or (b) a termination by the City resulting under Risk of Loss paragraph, regardless of whether prior to or after the exercise of the Option, LCH agrees to pay the City the sum of \$61,000 within thirty (30) days of receipt of written notice from the City, but such payment shall not affect or limit any other remedies available to the City at law or in equity if the payment results from a default or breach of this Agreement.
- c. Cure Period. Prior to exercising any rights under this paragraph the non-defaulting party shall provide the defaulting party with a written notice stating the nature of the default and the actions that must be taken to cure the default. The defaulting party shall have thirty (30) days from the date of receipt of the default notice to cure the default.

19. Eminent Domain. Notwithstanding anything in this Agreement to the contrary, if prior to the exercise of the Option or prior to Closing, any part of the Property is condemned,

threatened, or appropriated by public authority or any party exercising the right of eminent domain, the City may elect to terminate this Agreement by delivering written notice of termination to LCH, and the parties hereto shall have no further liability to each other hereunder and the Option Fee (the City Property) shall be retained by LCH. Should the City elect not to terminate this Agreement, the Purchase Price shall be reduced by the amount of the award received by LCH.

20. Risk of Loss. The risk of loss or damage by fire or any other casualty prior to closing shall be upon LCH. If any of the improvements on the Property are destroyed or materially damaged prior to exercise of the Option or prior to Closing, LCH, at its option, shall either (i) restore the damaged improvements to the condition they were in immediately prior to the damage and maintain the same in their restored condition until Closing, or (ii) demolish and completely remove the damaged improvements, from the Property, leaving the portion of the Property where the damaged improvements were formerly located in a clean, level condition. If either one or both of the two (2) buildings shown on Appendix 1b are destroyed or materially damaged and LCH elects to remove (i.e. rather than restore) the same from the Property the Adjusted Purchase Price shall be reduced by the fair market value of the building or buildings immediately prior to their damage or destruction. In the event the parties are unable to agree on the fair market value for such improvements immediately prior to their damage or destruction the dispute as to the same shall be resolved under the Dispute Resolution provisions of Paragraph 26. There shall be no reduction in the Adjusted Purchase Price for any improvements removed from the Property except for the aforementioned two (2) buildings.

21. Brokerage. The City and LCH shall pay their own brokerage fees. Each party hereto agrees to indemnify, defend and hold the other party harmless of and from any loss suffered as a result of brokerage fees claimed by any party with whom they have dealt.

22. Assignment. This Agreement may not be assigned by either party without the prior written consent of the other party.

23. Survival. All of the representations, warranties, covenants and agreements of LCH and the City made in or pursuant to the Agreement shall survive Closing and be merged into the Deed or any other document or instrument executed and delivered in connection therewith.

24. Miscellaneous. This Agreement constitutes the entire agreement between the parties hereto and it is understood and agreed that all undertakings, negotiations, representations, promises, inducements and agreements heretofore entered into between these parties are merged herein. This Agreement may not be changed orally, but only by an agreement in writing signed by both the City and LCH. No waiver of any of the provisions to this Agreement shall be valid unless in writing and signed by the party against whom it is sought to be enforced. During the period of this agreement, LCH parcels may only be transferred to a family owned trust and the provisions of the Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns (should assignment be consented to) as may be

applicable. The provisions of this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of North Carolina proper venue for any litigation or mediation concerning a breach of the Agreement shall be Nash County, North Carolina. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. Time is of the essence of this Agreement.

25. Memorandum of Option. At the request of either party a memorandum hereof (the "Memorandum") in statutory form shall be executed by the parties and this Agreement, or the Memorandum hereof, may be recorded at the cost of the party requesting the same. This Agreement is a public record and is subject to the North Carolina Public Records Law. The Option Fee property (City Property) shall not be encompassed in any legal description of a Memorandum recorded pursuant to this paragraph.

26. Dispute Resolution. In the event of any dispute between LCH and the City hereunder, the City Manager or her designee on the behalf of the City and the President or his designee on behalf of LCH shall meet and attempt to resolve such dispute. If the parties are unable to resolve such dispute following this meeting, either party may by notice to the other, require the parties to submit their dispute to mediation by a mediator jointly selected by the parties. If the parties are unable to agree upon a mediator, or if the parties are unable to resolve such dispute by mediation, the parties agree that any dispute with respect to this Agreement shall be submitted to binding arbitration, under the terms of which the parties shall jointly select an arbitrator and agree upon the procedures for the arbitration, and abide by the decision of such arbitrator with respect to any interpretation of the Agreement, or any other matter in dispute with regard to the subject matter of this Agreement.

In the event parties are unable to agree upon an arbitrator, each party shall select an arbitrator with knowledge and experience in purchase and sale of real property and the two (2) arbitrators thus selected shall select a third arbitrator, and the decision of a majority of the arbitrators shall be binding upon the parties with respect to their interpretation of this Agreement, or any dispute with regards of the subject matter of this Agreement. In the event the parties are unable to agree upon the procedures for the arbitration, the parties shall follow the Revised Uniform Arbitration Act as set forth in Article 45C of Chapter 1 of the North Carolina General Statutes. The cost of the arbitration shall be borne equally by the parties, except that the arbitrator(s) may award the prevailing party its cost and reasonable attorney's fees in the event that the arbitrator(s) determines that the other party commenced or pursued the arbitration in bad faith or without just cause. Any arbitrator(s) selected shall make written findings upon which the arbitrator's decision is based and such decision shall be final and binding upon the parties and shall be enforceable between them in any subsequent legal action or proceeding. The parties agree that the decision rendered by the arbitrator(s) may be entered as a judgement in the Superior Court of Nash County, North Carolina, or any other state or federal court having jurisdiction, with the same force and effect as any other judgment.

27. Notices. Notices given pursuant to this Agreement shall be in writing, delivered in person, by overnight delivery, or by certified or registered mail, return receipt requested, postage or fees prepaid, addressed to the mailing addresses given herein, and shall be deemed effective upon the date received via personal delivery, certified mail or overnight delivery service (e.g., Federal Express). The parties hereto shall be responsible for notifying each other of any change of address. Mailing addresses of the parties:

LCH:           Log Cabin Homes, Ltd.  
                  Thomas J. Vesce  
                  P.O. Box 1457, Rocky Mount, NC 27802

THE CITY:    City of Rocky Mount  
                  Attention: City Manager  
                  P.O. Box 1180  
                  Rocky Mount, North Carolina 27802-1180

28. LCH's Grant of Option Irrevocable for Sixty (60) Days. LCH agrees that the City shall have sixty (60) days from the date set out beside LCH's name below in order to execute the Agreement and thereby establish a legally binding agreement between the parties as of the Effective Date. LCH's signature shall constitute an irrevocable offer to the City to enter into this Agreement during the aforesaid sixty (60) day period, which may be accepted by the City's execution of this Agreement.

29. LCH's Option to Lease or Purchase the People's Building Supply Parcel. Effective on the Closing Date, LCH shall have the right of first refusal to lease or purchase the People's Building Supply parcel [DB1253, PG947] (the "People's Building Supply Parcel") as provided in this paragraph for a period of five (5) years. In the event the City decides to lease or sell the People's Building Supply Parcel and has a tenant or purchaser ready, willing, and able to enter into a lease or purchase the property on terms and conditions acceptable to the City, the City shall provide LCH notice of its intent to lease or sell the parcel, together with the name of the prospective tenant or purchaser and a copy of the proposed lease or purchase contract, and LCH shall have thirty (30) days from receipt to execute the lease or a purchase contract in the same amount and return it to the City. If LCH does not return an executed copy of the lease or purchase contract within thirty (30) days, the right of first refusal as to that lease or purchase contract shall lapse and thereafter be null and void and of no legal effect and the City may lease or sell the parcel under the same or substantially the same terms and conditions to the tenant or purchaser named in the notice provided to LCH. If the City does not lease or sell the parcel to the prospective tenant or prospective purchaser, the right of first refusal shall continue for the remainder of the five (5) year option period and the City shall follow the same procedure if it desires to lease or sell the parcel to another tenant or purchaser. The lease or sale of the People's Building Supply Parcel is subject to compliance with all statutory requirements for the lease or sale of municipally owned property as provided in Article 12 of Chapter 160A of the North Carolina General Statutes.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed effective as provided in Paragraph 4 above.

Date: \_\_\_\_\_

LOG CABIN HOMES LTD.

By: \_\_\_\_\_ (SEAL)  
Thomas J. Vesce  
Vice-President

Date: \_\_\_\_\_

CITY OF ROCKY MOUNT

By: \_\_\_\_\_  
David W. Combs,  
Mayor

NORTH CAROLINA

\_\_\_\_\_ COUNTY

I, \_\_\_\_\_, Notary Public, for the County and State aforesaid, do hereby certify that Thomas J. Vesce as president of Log Cabin Homes, Ltd. (personally known to me or having produced \_\_\_\_\_ as identification) personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein stated.

Witness my hand and official seal, this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Notary Public (Printed Name)

My Commission Expires: \_\_\_\_\_ (SEAL)

NORTH CAROLINA

\_\_\_\_\_ COUNTY

I, \_\_\_\_\_, Notary Public, for the County and State aforesaid, do hereby certify that David W. Combs as Mayor of the City of Rocky Mount (personally known to me or having produced \_\_\_\_\_ as identification) personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein stated.

Witness my hand and official seal, this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Notary Public (Printed Name)

My Commission Expires: \_\_\_\_\_ (SEAL)

**APPENDIX 1**

**Log Cabin Homes Ltd./City of Rocky Mount**

**(Description of the Property)**

**The Property includes all the right, title and interest of LCH to any and all railroad right of way in the City of Rocky Mount described on exhibit maps labeled LCH Middle Street property Appendix 1a and 410 N. Pearl St property Appendix 1b**

**REFERENCE**

D.B. 1475, PG. 998  
 D.B. 1471, PG. 609  
 D.B. 1477, PG. 312  
 D.B. 1466, PG. 591  
 D.B. 1756, PG. 396  
 D.B. 1945, PG. 86  
 D.B. 2790, PG. 15  
 D.B. 2924, PG. 63

**NOTES**

AREAS COMPUTED BY COORDINATE METHOD  
 DISTANCES SHOWN ARE GROUND HORIZONTAL  
 DISTANCES IN U.S. SURVEY FEET

Curve Table			
Curve #	Chord Length	Radius	Chord Bearing
C1	86.08	428.40	S46° 39' 38.72"E

Line Table		
Line #	Length	Direction
L1	9.81	S17° 51' 49"W
L2	10.00	NG1° 33' 02"W
L3	19.81	NG0° 03' 44"W

**LEGEND**

- EX. ADJACENT PROPERTY
- EX. RIGHT OF WAY
- PROPOSED EASEMENT
- EXISTING CHAIN LINK FENCE
- EXHIBIT AREA



VICINITY MAP

REVISIONS

EXHIBIT MAP FOR:

CITY of ROCKY MOUNT

LOG CABIN HOMES MIDDLE STREET PARCELS

CITY OF ROCKY MOUNT  
 NASH COUNTY NORTH CAROLINA

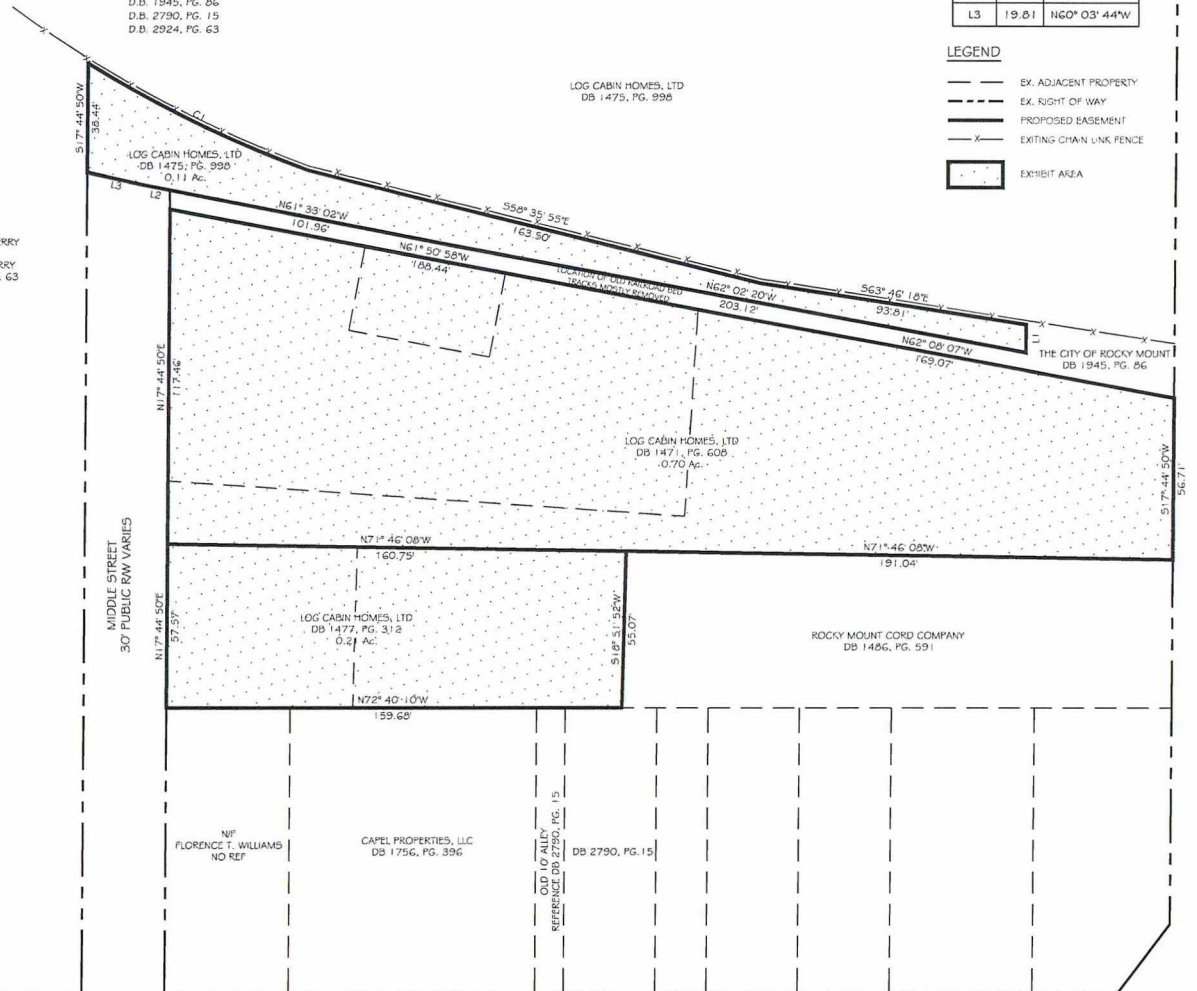


ROCKY MOUNT PUBLIC WORKS  
 THE CENTER OF IT ALL

SHEET TITLE:  
**APPENDIX 1a**

DATE:	3-19-2019
SURVEYED BY:	EHC
DESIGNED BY:	WBC
DRAWN BY:	KSH
CHECKED BY:	EHC
SCALE:	1" = 30'
SHEET NUMBER:	1 OF 1

E-1



DERRICK V. TERRY  
 and wife  
 SHELLI O. TERRY  
 DB 2924, PG. 63

LOG CABIN HOMES, LTD  
 DB 1475, PG. 998

LOG CABIN HOMES, LTD  
 DB 1475, PG. 998  
 0.11 Ac.

LOG CABIN HOMES, LTD  
 DB 1471, PG. 609  
 0.70 Ac.

LOG CABIN HOMES, LTD  
 DB 1477, PG. 312  
 0.21 Ac.

ROCKY MOUNT CORD COMPANY  
 DB 1486, PG. 591

FLORRENCE T. WILLIAMS  
 NO REF

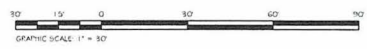
CAPEL PROPERTIES, LLC  
 DB 1756, PG. 396

OLD 10' ALLEY  
 REFERENCE DB 2790, PG. 15

DB 2790, PG. 15

GAY STREET  
 PUBLIC R/W VARIES

THIS MAP MAY NOT BE A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS AND HAS NOT BEEN REVIEWED FOR COMPLIANCE WITH RECORDING REQUIREMENTS FOR PLATS



D:\\_300\_Survey\2019\20190319\20190319.dwg, JK24, harrish, 19 Mar 2019 9:41:11 AM





REFERENCE  
 D.B. 1253, PG. 947  
 D.B. 1326, PG. 716  
 D.B. 1945, PG. 86

LEGEND  
 --- EX. ADJACENT PROPERTY  
 --- EX. RIGHT OF WAY  
 --- FROGLOSED EASEMENT  
 [Dotted Area] EXHIBIT AREA



VICINITY MAP  
 REVISIONS

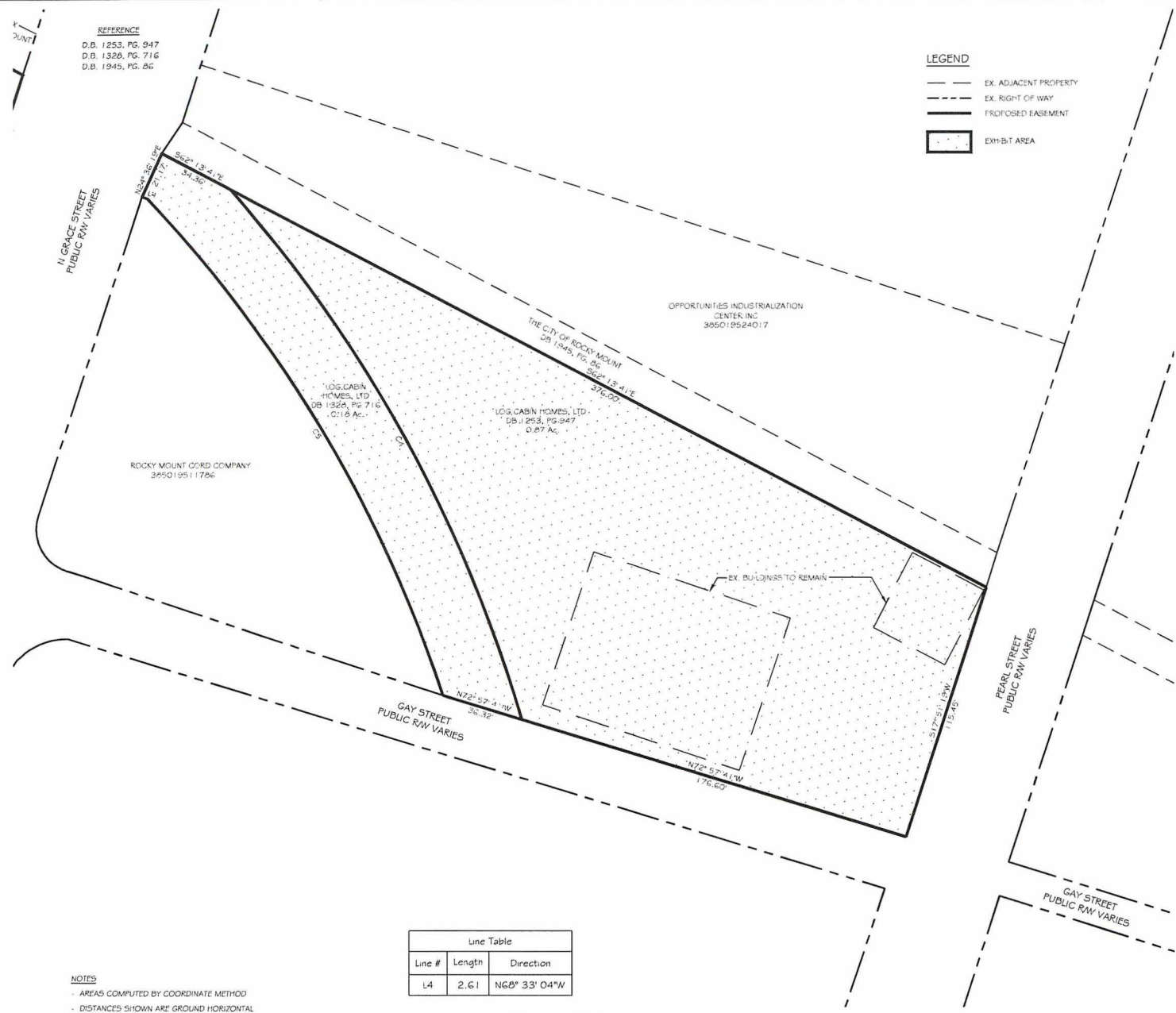
EXHIBIT MAP FOR:  
**CITY of ROCKY MOUNT**  
 \$  
**LOG CABIN HOMES PEARL STREET PARCELS**  
 CITY OF ROCKY MOUNT  
 NASH COUNTY NORTH CAROLINA



**ROCKY MOUNT PUBLIC WORKS**  
 THE CENTER OF IT ALL

SHEET TITLE:  
**APPENDIX 1b**  
 DATE: 3-29-2019  
 SURVEYED BY: EHC  
 DESIGNED BY: WBC  
 DRAWN BY: KSH  
 CHECKED BY: EHC  
 SCALE: 1" = 30'  
 SHEET NUMBER: 1 OF 1  
 SHEET

E-2



NOTES  
 - AREAS COMPUTED BY COORDINATE METHOD  
 - DISTANCES SHOWN ARE GROUND HORIZONTAL DISTANCES IN U.S. SURVEY FEET

Line Table		
Line #	Length	Direction
L4	2.61	N68° 33' 04"W

Curve Table			
Curve #	Chord Length	Radius	Chord Bearing
C5	256.57	584.22	N30° 50' 40.53"W
C4	268.49	614.22	N28° 49' 40.53"W

D:\\_DWM\_Survey\2019\20190329\RockyMount\Appendix 1b\Appendix 1b.dwg, 1: 02/24/2019, 10:47:30 AM

APPENDIX 2

Log Cabin Homes Ltd./City of Rocky Mount







(Description of the City Property)

The Property includes all the right, title and interest of the City of Rocky Mount described on exhibit map labeled Appendix 2 less easements over existing and proposed utilities to be retained by the City of Rocky Mount.

**NOTES**

- DISTANCES SHOWN ARE GROUND HORIZONTAL DISTANCES IN U.S. SURVEY FEET

**LEGEND**

-  EX. ADJACENT PROPERTY
-  EX. RIGHT OF WAY
-  EXISTING PROPERTY LINE
-  EXISTING CROSS ACCESS EASEMENT
-  PROPOSED INGRESS/EGRESS & REGRESS EASEMENT
-  30' SEWER EASEMENT

**REFERENCE**

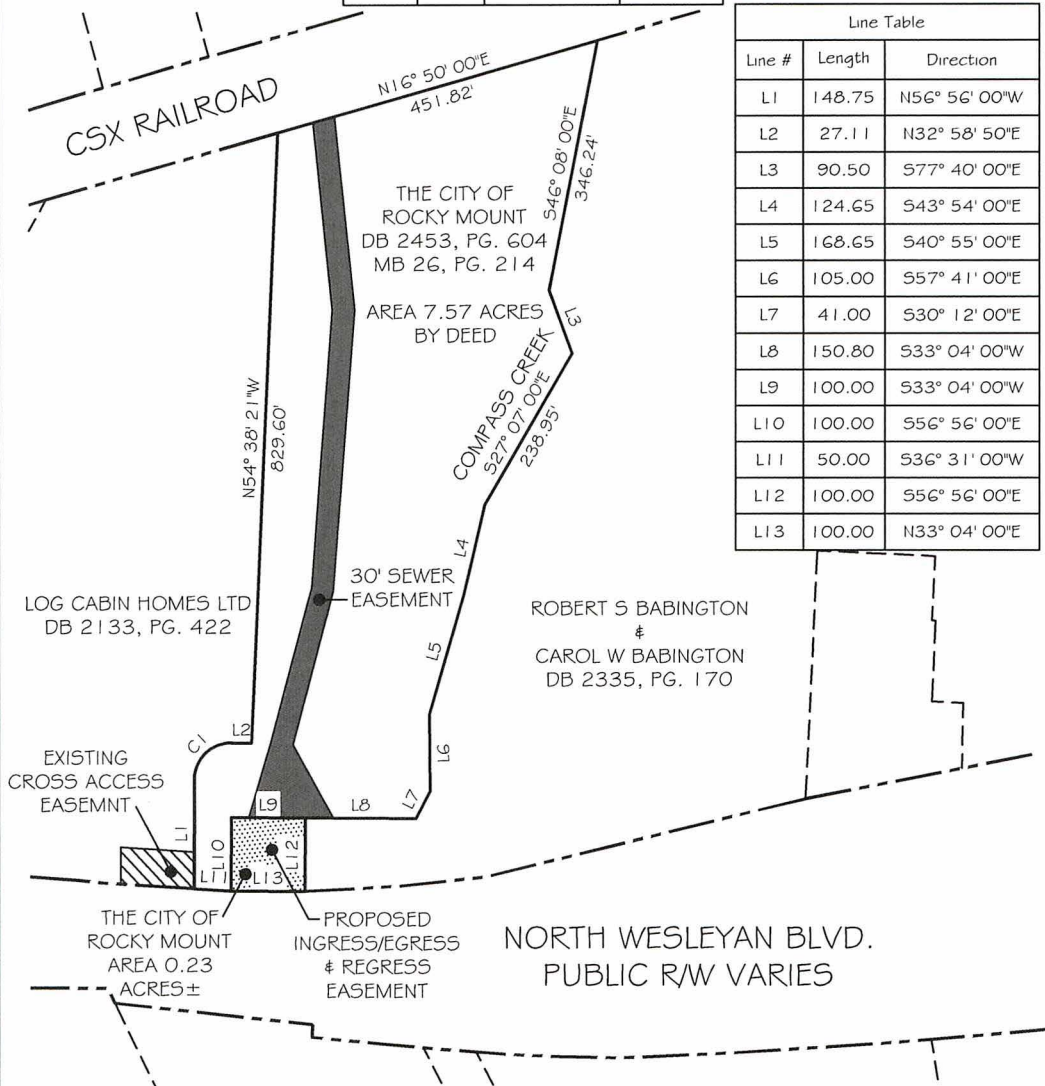
- D.B. 1494, PG. 427
- D.B. 1494, PG. 428
- D.B. 1491, PG. 723



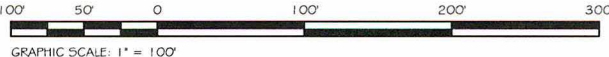
VICINITY MAP  
(not to scale)

Curve Table			
Curve #	Radius	Cord Bearing	Cord Length
C1	50.00	S11° 58' 35"E	70.66

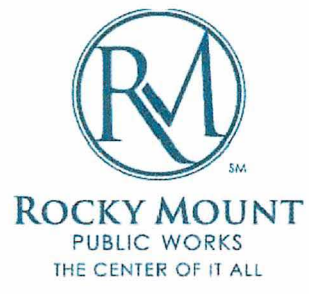
Line Table		
Line #	Length	Direction
L1	148.75	N56° 56' 00"W
L2	27.11	N32° 58' 50"E
L3	90.50	S77° 40' 00"E
L4	124.65	S43° 54' 00"E
L5	168.65	S40° 55' 00"E
L6	105.00	S57° 41' 00"E
L7	41.00	S30° 12' 00"E
L8	150.80	S33° 04' 00"W
L9	100.00	S33° 04' 00"W
L10	100.00	S56° 56' 00"E
L11	50.00	S36° 31' 00"W
L12	100.00	S56° 56' 00"E
L13	100.00	N33° 04' 00"E



THIS MAP MAY NOT BE A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS AND HAS NOT BEEN REVIEWED FOR COMPLIANCE WITH RECORDING REQUIREMENTS FOR PLATS



01\_CSM\_Survey2019Bentley2305 N. Wesleyan.dwg, 5/14/19, 11:43am



**UTILITY EASEMENT ACROSS PROPERTY OF**  
**2304 N. WESLEYAN BLVD.**  
**APPENDIX 2**

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NORTH CHURCH STREET, ROCKY MOUNT, N.C.  
 (ROCKY MOUNT TOWNSHIP)

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MARCH 4, 2019

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Scale: 1" = 100'      SHEET E-3

**APPENDIX 3**  
**Exchange Agreement**

NORTH CAROLINA

NASH COUNTY

**THIS EXCHANGE AGREEMENT** (this “Agreement”), is made and entered into this \_\_\_ day of \_\_\_\_\_, 2019, by and between the **City of Rocky Mount**, a North Carolina municipal corporation (the “City”), and **Log Cabin Homes Ltd.**, a Delaware corporation authorized to do business in the State of North Carolina (“LCH”);

### **RECITALS**

1. The City owns a tract or parcel of real estate located at 2305 North Wesleyan Boulevard in the City of Rocky Mount, more particularly described on Appendix 2 (the “City Parcel”), that is surplus to the needs of the City except for certain easements for existing and future public utilities which shall be reserved to the City in the locations shown on Appendix 2 (the “City’s Utility Easements”). The City Parcel is currently leased to LCH under a Lease dated April 14, 2009 (the “LCH Lease”) and said Lease shall terminate upon the exchange of the property to LCH. The City Parcel is valued at \$61,000.

2. LCH owns two (2) tracts or parcels of real estate, one identified as a portion of 513 Keen Street (PIN 385019520134) and the other identified as 410 North Pearl Street (PIN 385019513763) in the Nash County tax records. The portions of these lands subject to this Agreement and more particularly described on Appendix 1 include the Star Enterprises parcel (DB 1475 PG 608), the St Paul Holiness Church parcel (DB 1477 PG 312), the southern portion of the PVC, Inc. parcel (DB 1475 PG 998) making up the balance of the former railroad ROW, Peoples

Building Supply parcel (DB 1253 PG 947) and the CSX Transportation Inc. parcel (DB 1328 PG 716) (collectively the “LCH Parcel”). The compromise value of the LCH Parcel is \$950,000, this includes the value of the real estate and the buildings and structures on the LCH Parcel, a portion of the anticipated cost to relocate LCH’s business to the City Parcel or an adjacent parcel, City assistance with the building reuse grant LCH has an interest in applying for as hereinafter provided, and the avoidance of cost incident to eminent domain.

3. The City is authorized pursuant to N.C. Gen. Stats. 160A-271 to exchange any real or personal property owned by the City for other real or personal property if the City receives a full and fair consideration in exchange for its property.

4. The City has agreed to exchange the City Parcel and grant an access easement across adjoining City owned real estate for the exclusive right and option to purchase the LCH Parcel (the “Option Agreement”) exercisable at any time prior to June 30, 2026 at a price of not more than \$600,000 and not less than \$420,000, as provided in the Option Agreement. A copy of the Option Agreement is attached hereto as Appendix 3.

5. All Appendices attached to this Agreement are incorporated herein by reference and constitute an integral part of this Agreement.

**NOW, THEREFORE**, for and in consideration of the premises, the real estate and other good and valuable consideration to be exchanged by and between the parties hereunder, the City and LCH agree as follows:

1. Incorporation of Recitals. The above and foregoing recitals comprise a part of this Agreement and are incorporated herein by reference.

2. Conveyance of City Parcel. The City shall convey the City Parcel to LCH at closing (the "Exchange Closing", hereinafter defined) by general warranty deed free and clear of all encumbrances, but subject to all easements, restrictions, and conveyance of record in the Nash County Registry affecting the said property. The LCH Lease shall terminate effective upon the recording of the deed conveying the City Parcel to LCH. The City Parcel shall be conveyed subject to the City's Utility Easements shown on the Appendix 2 which shall be reserved to the City in the deed conveying the property. The City shall also grant LCH a non-exclusive perpetual appurtenant easement for ingress, egress, and regress to and from U.S. Highway 301 across City Parcel # 386105181874 to the City Parcel. LCH shall be responsible for the construction of any desired access improvements across the property; cost of access maintenance; protection of existing and future utilities on the property; maintenance access for existing and future utilities on the property; and other mutually agreeable terms and conditions.

3. Option Agreement. Duplicate originals of the Option Agreement, a copy of which is attached hereto as Appendix 3, shall be executed by LCH and delivered to the City at the Exchange Closing. The City shall execute the duplicate originals, and return one (1) executed original to LCH. At the Exchange Closing, the parties shall execute a Memorandum of Option at the request of either party, which may be recorded at the cost of the party requesting recordation. The Memorandum of Option shall describe only the LCH Parcel which is under option to the City, and shall not include the City Parcel located at 2305 North Wesleyan Boulevard. In the event of

a conflict between any provision of this Agreement and a provision of the Option Agreement, the provision in this Agreement shall control.

4. Closing. The Exchange Closing (closing for the City Parcel located at 2305 North Wesleyan Boulevard) shall occur at the office of the City's attorney on a mutually agreeable date and time within forty-five (45) days of the adoption of a resolution by the Rocky Mount City Council authorizing the execution of this Agreement and the exchange and other transactions contemplated herein.

5. LCH Adaptive Reuse Project. LCH owns a parcel of real estate located at 411 North Pearl Street (PIN 6602) (the "Adaptive Reuse Parcel"), across the street from the LCH Parcel at 410 North Pearl Street which will be under the option to the City. There is an existing building on the Adaptive Reuse Parcel, which LCH proposes to develop for an adaptive reuse (the "Adaptive Reuse Project"). If LCH undertakes the Adaptive Reuse Project, the City agrees that the building on the Adaptive Reuse Parcel will be permitted to have a public entrance on its northern boundary at a mutually agreed upon location, subject to compliance with all applicable building code requirements. The sidewalks required to meet ADA requirements for the proposed entrance may be constructed on the 413 N Pearl St parcels in accordance with City standards and at the sole expense of LCH.

6. Parking in the Vicinity of Adaptive Reuse Parcel. LCH currently occupies under a lease with the City dated July 9, 2004 (the "Lease") [the terms and conditions of which, including the 90 day termination provision, shall remain in full force and effect] for four (4) parcels located at 413 North Pearl Street (PIN 7658, 9752, 9615 & 9517) on which are located several structures



that are being used by LCH for milling operations and material storage (collectively the “Leased Parcel”). If LCH undertakes the Adaptive Reuse Project, the City agrees to demolish all buildings and structures on the Leased Parcel and construct a gravel parking lot which will be compliant with the then applicable Rocky Mount Land Development Code thereon within twelve (12) months from the date LCH vacates and removes all of its equipment, stored materials, and other property from the Leased Parcel. Effective upon the removal of the equipment, stored materials, and other property from the Leased Parcel the Lease shall terminate. The gravel parking lot will be available for general public parking, will have a minimum of twenty-five (25) parking spaces, driveway access to Franklin Street, and a secondary driveway access to either Pearl Street or McDonald Street. The parking lot will have lighting at a level consistent with other public parking lots operated by the City. The City further agrees that the gravel parking lot will be considered sufficient to satisfy City parking requirements for the Adaptive Reuse of the existing building on the Adaptive Reuse Parcel.

7. Building Reuse Grant. If LCH applies for and receives a North Carolina Department of Commerce Building Reuse Grant to help defray a portion of the cost of relocating LCH’s current operations to the City Parcel, or a parcel adjacent thereto, the amount of the grant award (less the \$20,000 grant administrative fee) will be deducted from the purchase price (the “Adjusted Purchase Price”) as provided in the Option Agreement. The eligible grant amount is anticipated to be \$500,000, supplemented by a Carolina Gateway Partnership (CGP) grant in the amount of \$50,000, for a net grant of \$530,000. The City agrees to support the grant application subject to the following:

- (a) The City will be the Grantee and LCH will be the sub-grantee.

- (b) The City and CGP will prepare the grant applications.
- (c) LCH agrees to fully assist the City and CGP in the preparation of the grant application by providing all required supporting information, documentation, approvals, and such other and further documentation or information as may be reasonably requested by the City or CGP.
- (d) The City agrees to administer the grant through CGP.
- (e) \$20,000 of Building Reuse grant proceeds will be used by CGP for grant administration.
- (f) Any financial liability for failing to meet job creation requirements or other grant requirements will be the sole responsibility of LCH. LCH's financial liability may be secured by a Deed of Trust or promissory note, provided however, no lien shall be placed on the City Parcel or the LCH Parcel which is under Option.

8. Payment for the LCH Parcel. If the City exercises its option under the Option Agreement the \$950,000 compromise value of the LCH Parcel shall be reduced by the amount of any grants received by LCH to arrive at the Adjusted Purchase Price, or the amount to be paid to LCH at Closing. The Adjusted Purchase Price shall not exceed \$600,000 (which shall be maximum amount of the Adjusted Price if no grants are applied for or received, or grants totaling less than \$350,000 are received) and shall not be less than \$420,000 (if net grants of \$530,000 or

more are received) may be paid at Closing in cash or by certified funds or in installments as provided in the Option Agreement, at the election of the City.

9. Further Assurances. Both parties shall cooperate with each other, and take such other and further actions, and execute and deliver such documents as may be reasonably requested by the other party to effectuate the purposes of this Agreement. Both parties acknowledge that due to the length of the Option Period, modifications may be necessary or desirable in this Agreement or the Option Agreement, and each party agrees to work in good faith with the other party with respect to any requested modifications.

10. Successor and Assigns. LCH agrees that during the option period, LCH parcels may only be transferred to a family owned trust or family members and that this Agreement and the Option Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto and their respective successors and assigns.

11. Notices. All notices under this Agreement shall be in writing, and delivered to the parties as set forth in the Option Agreement.

12. Miscellaneous. This Agreement, including the Appendices, constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof, and it is understood and agreed that all undertakings negotiations, representations, promises, inducements, and agreements heretofore entered into between the parties with respect to the real estate referenced herein are merged in this Agreement. Any term not defined herein shall have the meaning ascribed to it in the Option Agreement. This Agreement may not be assigned by either party without the prior written consent of the other party. This Agreement may not be changed

orally, but only by a written document signed by each of the parties. No waiver of any provision of this Agreement shall be valid unless in writing and signed by the party against whom it is sought to be enforced. The provisions of this Agreement shall be governed by and construed and enforced in accordance with the laws with the State of North Carolina. The headings contained in this Agreement are solely for the convenience of the parties and do not constitute a part of this Agreement and shall not be used to construe or interpret any provision hereof. This Agreement shall be considered for all purposes as having been prepared by the joint efforts of the parties and shall not be construed against one party or the other as a result of preparation, substitution, submission, or any other event of negotiation. The invalidity or unenforceability of any term or provision hereof shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect, and, if any such unenforceable provision hereof is enforceable in any part or to any less extent, such provision shall be enforceable in all such parts and to the greatest extent permissible under applicable law. This Agreement may be executed in any number of counterparts each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument, and the parties hereto may execute this Agreement by signing any such counterpart.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed as of the day and year first written above.

[SIGNATURE PAGE FOLLOWS]

**CITY OF ROCKY MOUNT**

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

**LOG CABIN HOMES LTD.**

By: \_\_\_\_\_

Name: Thomas J. Vesce

Title: Vice-President

**APPENDIX 1**

**City/LCH Exchange Agreement**

**(LCH Parcel)**

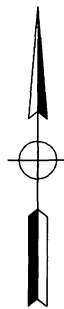
**Exhibit Maps 1a and 1b**



REFERENCE  
 D.B. 1253, PG. 247  
 D.B. 1376, PG. 716  
 D.B. 1185, PG. 86

LEGEND

	EX. A. ADJACENT TRACT
	EX. B. ADJACENT TRACT
	EX. C. ADJACENT TRACT
	EX. D. ADJACENT TRACT
	EX. E. ADJACENT TRACT



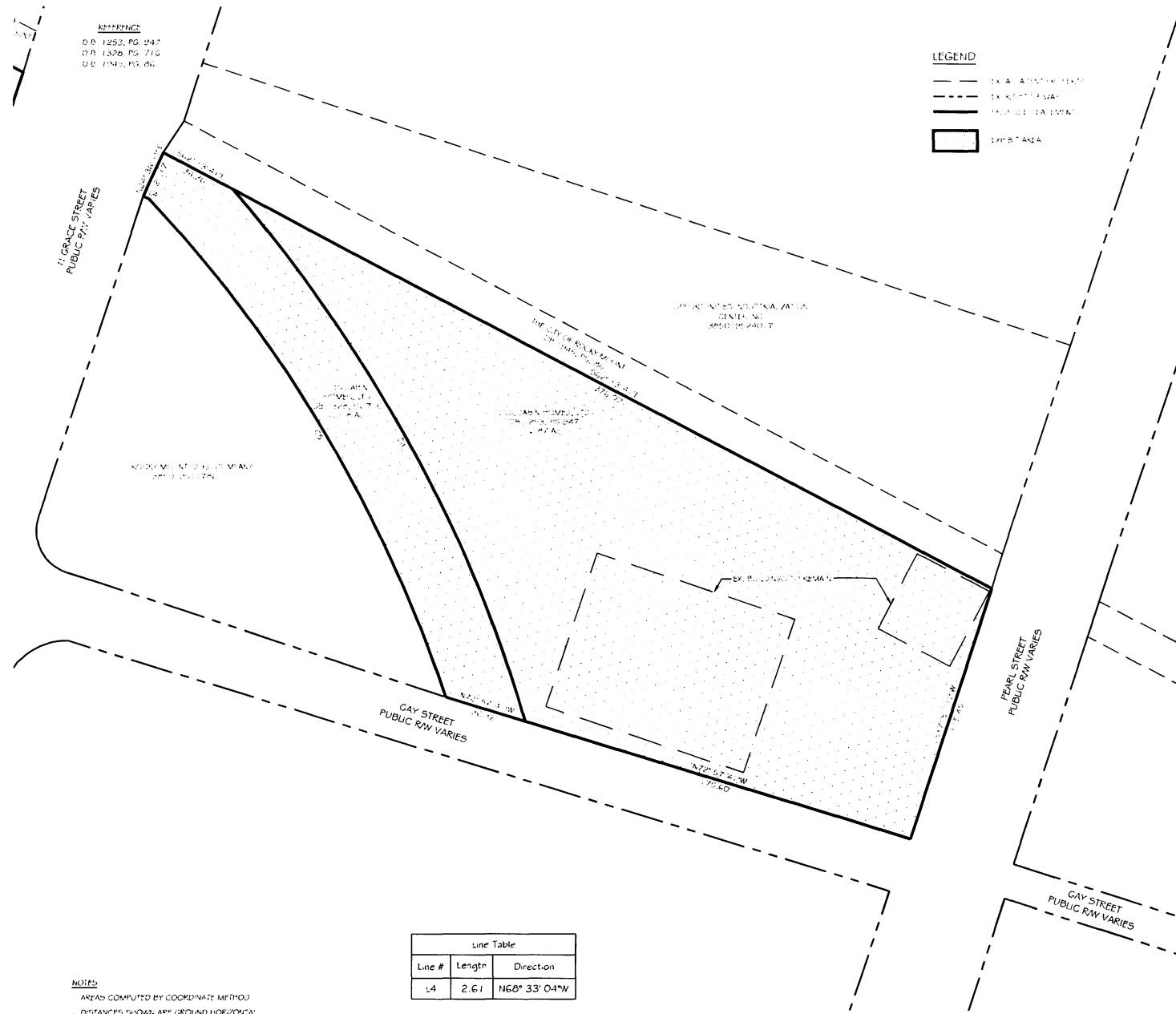
VICINITY MAP  
 REVISIONS

EXHIBIT MAP FOR:  
**CITY of ROCKY MOUNT**  
 &  
**LOG CABIN HOMES PEARL STREET PARCELS**  
 CITY OF ROCKY MOUNT  
 NASH COUNTY NORTH CAROLINA



**ROCKY MOUNT**  
 PUBLIC WORKS  
 THE CENTER OF IT ALL

SHEET TITLE:  
**APPENDIX 1b**  
 DATE: 3-29-2019  
 SURVEYED BY: EHC  
 DESIGNED BY: WBC  
 DRAWN BY: KSH  
 CHECKED BY: EHC  
 SCALE: 1" = 30'  
 SHEET NUMBER: 1 OF 1  
 SHEET

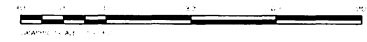


NOTES:  
 AREAS COMPUTED BY COORDINATE METHOD  
 DISTANCES SHOWN ARE GROUND HORIZONTAL  
 DISTANCES IN U.S. SURVEY FEET

Line Table		
Line #	Length	Direction
L4	2.61	N68° 33' 04"W

Curve Table			
Curve #	Chord Length	Radius	Chord Bearing
C5	256.57	584.22	N30° 50' 40.53"W
C4	268.49	614.22	N28° 49' 40.53"W

THIS MAP MAY NOT BE A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE AND CURRENTLY ENFORCEABLE REGULATIONS. THIS MAP IS REVIEWED FOR COMPLIANCE WITH ANY APPLICABLE AND CURRENTLY ENFORCEABLE REGULATIONS.



E-2









APPENDIX 2

City/LCH Exchange Agreement  
(City Parcel and Easements)

**NOTES**

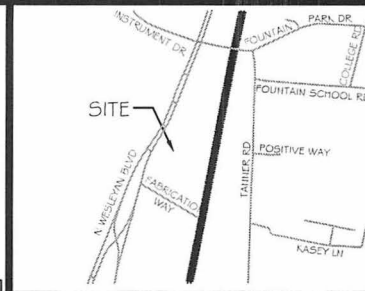
- DISTANCES SHOWN ARE GROUND HORIZONTAL DISTANCES IN U.S. SURVEY FEET

**LEGEND**

-  EX. ADJACENT PROPERTY
-  EX. RIGHT OF WAY
-  EXISTING PROPERTY LINE
-  EXISTING CROSS ACCESS EASEMENT
-  PROPOSED INGRESS/EGRESS & REGRESS EASEMENT
-  30' SEWER EASEMENT

**REFERENCE**

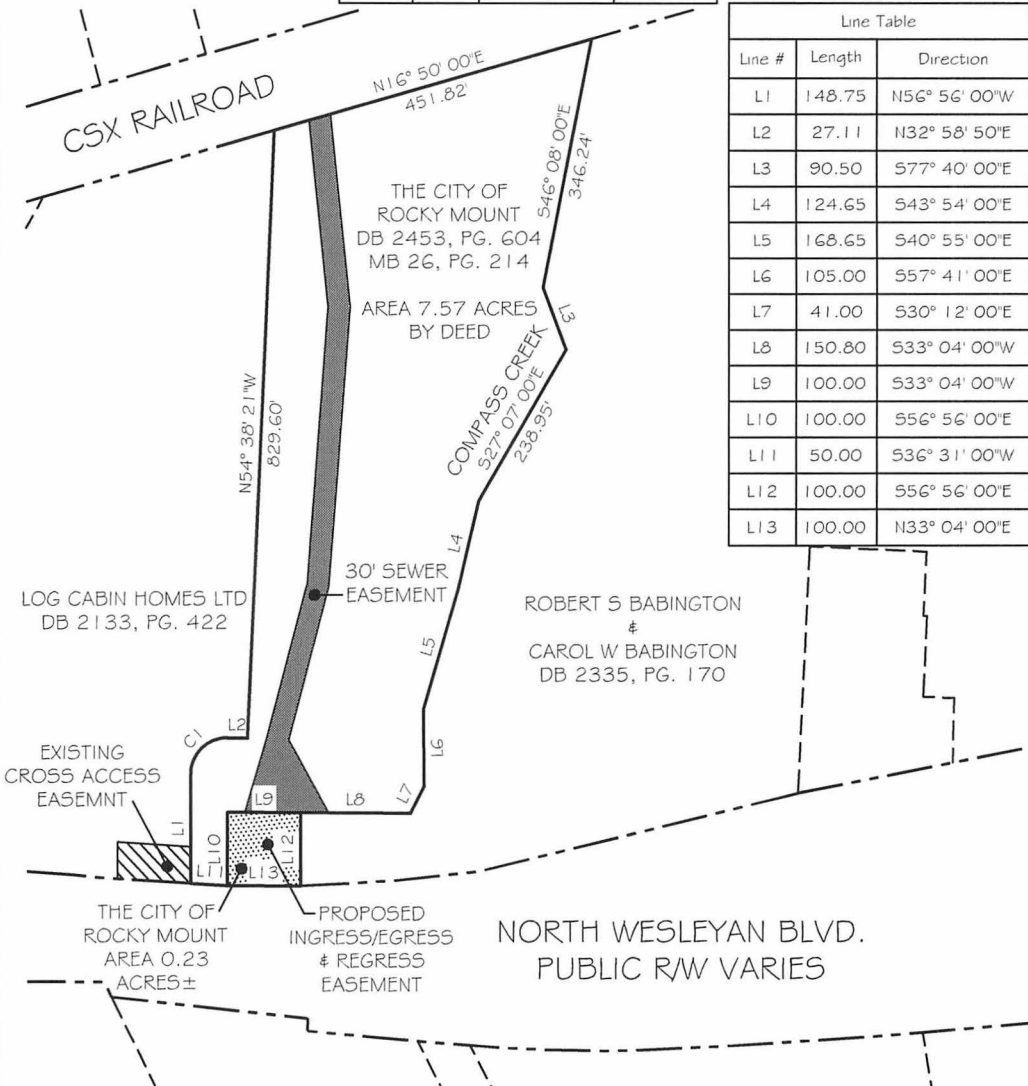
- D.B. 1494, PG. 427
- D.B. 1494, PG. 428
- D.B. 1491, PG. 723



VICINITY MAP  
(not to scale)

Curve Table			
Curve #	Radius	Cord Bearing	Cord Length
C1	50.00	S11° 58' 35"E	70.66

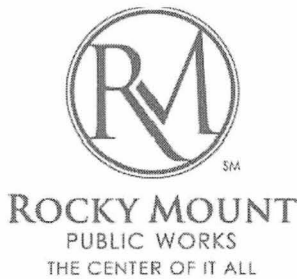
Line Table		
Line #	Length	Direction
L1	148.75	N56° 56' 00"W
L2	27.11	N32° 58' 50"E
L3	90.50	S77° 40' 00"E
L4	124.65	S43° 54' 00"E
L5	168.65	S40° 55' 00"E
L6	105.00	S57° 41' 00"E
L7	41.00	S30° 12' 00"E
L8	150.80	S33° 04' 00"W
L9	100.00	S33° 04' 00"W
L10	100.00	S56° 56' 00"E
L11	50.00	S36° 31' 00"W
L12	100.00	S56° 56' 00"E
L13	100.00	N33° 04' 00"E



THIS MAP MAY NOT BE A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS AND HAS NOT BEEN REVIEWED FOR COMPLIANCE WITH RECORDING REQUIREMENTS FOR PLATS



G:\CSW\Survey\2019\2304 N. Wesleyan.dwg, 8.5x14, harrick, Fr, Mar 29, 2019 at 11:43am



UTILITY EASEMENT ACROSS PROPERTY OF  
2304 N. WESLEYAN BLVD.  
APPENDIX 2

NORTH CHURCH STREET, ROCKY MOUNT, N.C.  
(ROCKY MOUNT TOWNSHIP)

MARCH 4, 2019

Scale: 1" = 100'

SHEET E-3

APPENDIX 3

City/LCH Exchange Agreement

(Option Agreement)

**PUBLIC NOTICE**  
**Notice of Intent to Exchange**  
**The Real Property of the City of Rocky Mount**

Publication Dates  
**April 30, 2019**

**CITY OF ROCKY MOUNT  
NOTICE OF INTENT TO EXCHANGE  
CITY OF ROCKY MOUNT  
OWNED REAL PROPERTY**

Please take notice that the City of Rocky Mount intends to enter into an Exchange Agreement pursuant to N.C., Gen. Stat. § 160A-271 with Log Cabin Homes Ltd. ("LCH") to exchange certain City owned real property located on N. Wesleyan Blvd. (the "City Property") for an option to purchase certain real property owned by LCH located on Keen Street and N. Pearl Street (collectively the "LCH Property"). All parcels are located within the corporate limits of the City.  
The City Property to be exchanged is located at 2305 N. Wesleyan Blvd. (Pin

#386105186424). The City will reserve a 30-foot easement across the City Property for existing and future utilities and grant LCH a nonexclusive access easement across another City owned parcel (Pin #386105181874) to reach the City Property from N. Wesleyan Blvd. In addition, if LCH undertakes an adaptive reuse project on other property that LCH owns on Pearl Street, the City would agree to construct a gravel parking lot in the vicinity available for general public parking. The City Property to be conveyed to LCH and the undertakings of the City are valued at approximately \$61,000 and will serve as the option fee under the Option Agreement. The Option Agreement will grant the City the exclusive right and option to purchase the southernmost portion of the LCH Property located at 513 Keen Street adjacent to Middle Street (Pin #385019520134) and 410 N. Pearl Street (Pin #385019513763). The option to acquire the LCH Property may be exercised at any time prior to June 30, 2026 at a price of not more than \$600,000 and not less than \$420,000 depending on the amount of any NC Department of Commerce Building Reuse grant received by LCH. The grant will defray a portion of the costs of relocating LCH's business to 2321 N. Wesleyan Blvd. just north of the City Property as more fully set forth in the Option Agreement. The City will support the grant application. The City believes that the right to purchase the LCH Property under terms provided in the Option Agreement constitutes full and fair consideration for the conveyance of the City Property and the rights granted. The complete details of this transaction are set forth in an Exchange Agreement and an Option Agreement to be entered into between the City and LCH, copies of which are available to the public in the Office of the City Clerk during regular business hours. If the option is exercised the intended use of the LCH Property is for the Monk to Mill Trail Project. All persons interested in this exchange are invited to attend the meeting of the City Council to be held at 7:00 PM on Monday, May 13, 2019 in the

George W. Dudley City Council Chamber on the third floor of the Frederick E. Turnage Municipal Building, Rocky Mount, North Carolina, at which time the City Council intends to authorize the exchange described above.

**BY ORDER OF THE CITY COUNCIL**  
Pamela O. Casey, City Clerk  
4/30/19