

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT, made and entered into by and between **BUNCOMBE COUNTY**, a body politic and corporate of the State of North Carolina (hereinafter sometimes referred to as "County"); and **WICKED WEED BREWING, LLC**, a North Carolina limited liability company (hereinafter sometimes referred to as "Wicked Weed").

THAT WHEREAS, the County is the owner of a certain tract or parcel of land located at 145 Jacob Holm Way, Candler, North Carolina (hereinafter sometimes "Property"), and as more particularly described in deed recorded in Book 5175, Page 931 Buncombe County, NC Registry. Said Property includes a building approximately 40,000 square feet of industrial space. The Property is also shown on the records of the Buncombe County Tax Office as PIN: 9617-73-4279.

WHEREAS, the Property is that tract shown as Phase III Lot A, 5.80± Acres (D.M.D.), as shown on plat recorded in Plat Book 106, Page 194 Buncombe County Registry reference to which plat is hereby made for purposes of description.

WHEREAS, Wicked Weed desires to acquire from the County and County is willing to sell pursuant to the terms and conditions set forth herein the Property.

WHEREAS, the Wicked Weed and County enter into this Agreement to formalize the terms and understanding of their agreement as to such purchase and sale.

NOW, THEREFORE, in consideration of an initial earnest money deposit in the amount of One Hundred and 00/100ths U.S. Dollars (\$100.00) (the "Initial Deposit"), to be paid by Wicked Weed as provided below, County agrees to sell to Wicked Weed and Wicked Weed agrees to purchase from County, on the terms and conditions set forth as follows:

1. **Property to be Conveyed.** As of the Closing Date (as hereinafter defined), and subject to the terms and conditions hereinafter set forth, the County shall assign, convey, transfer and deliver to Wicked Weed and Wicked Weed will acquire from the County all of County's right, title and interests in and to the Property in fee simple, including the following:

- (a) All of County's interest in the Property described above.
- (b) All easements and other rights and privileges appurtenant to the said Property, including any development approvals, permits or parking rights relating to said Property (the "Appurtenances").
- (c) All improvements located on the Property (the "Improvements").

Notwithstanding any other provision of this Agreement, the Property shall not include Hazardous Substances (as hereinafter defined).

The County represents and warrants that the Property is, or shall be upon conveyance, free and clear of all liens, security interests, mortgages, assessments, liabilities or encumbrances or leasehold interests.

2. **Purchase Price and Good Faith Deposit.** The purchase price for the Property shall be One Million Three Hundred Thousand and 00/100 U.S. Dollars (\$1,300,000.00); said Purchase Price to be payable as follows:

- (a) The Initial Deposit, and any additional deposits made if applicable, shall be applied in reduction of the Purchase Price.
- (b) The \$1,299,900.00 balance of the purchase price shall be paid at Closing by wire transfer or other method of immediately available County funds.

Personal and real property taxes of the Property for the current year shall be prorated as of the date of Closing.

The Initial Deposit shall be paid to County directly upon execution hereof to be held by the County Finance office until either (i) the sale is closed, at which time it will be credited to Wicked Weed, or (ii) this Agreement is otherwise terminated pursuant to the terms hereof.

3. **Due Diligence.** County previously has delivered, or shall deliver to Wicked Weed within fifteen (15) calendar days after request of Wicked Weed, true and correct copies of the following items (if same are available) (the "Due Diligence Items"):

- (a) Copies of any existing title or other insurance policies covering all or any part of the Property; and
- (b) Copies of any outstanding service contracts, lease and/or sublease agreements, utility agreements, management agreements, maintenance agreements, security agreements and other agreements relating to the Property (whether or not said agreements are cancelable at will or otherwise); and
- (c) Copies of any agreements entered into by County that impose use, operation or development restrictions on the Property; and
- (d) Copies of any geotechnical reports and environmental site assessments in County's possession, and relating to the Property; and
- (e) Copies of any site plans and civil engineering drawings previously prepared by or on behalf of County, and relating to the Property.

Upon termination of this Agreement for any reason prior to Closing, the Due Diligence Items shall be returned to County. Furthermore, the Wicked Weed and its accountants, appraisers, attorneys, and other representatives shall be afforded, at the Wicked Weed's expense, the opportunity to review all Due Diligence Items at any time reasonably requested by the Wicked Weed prior to the Closing Date or the termination of this Agreement.

4. **Inspection Period.** Wicked Weed hereby certifies that Wicked Weed and its agents and representatives have conducted such investigation and evaluation of the Property as it has deemed in its sole discretion to be necessary and appropriate.

5. **Title Examination.** By not later than the effective date of this Agreement, Wicked Weed shall, at its sole discretion, procure a title insurance binder. If the title to the Property is not marketable, or if the Property is encumbered by easements, restrictions or other matters of record that will prevent or adversely impact Wicked Weed's intended use of the Property, Wicked Weed shall advise County in writing of the objections to title, and County shall have a period of ten (10) calendar days after the date

of the notice within which to remedy the objections to the satisfaction of Wicked Weed. The objections to title may be based on a survey of the Property obtained by Wicked Weed under Paragraph 6. County covenants to cure, at or prior to Closing Date, all objections that may be satisfied by the payment of a fixed sum of money, such as deeds of trust, mortgages or statutory liens, and County's failure to cure such objections shall be a default under this Agreement. If the other objections raised by Wicked Weed are not cured or remedied within the ten (10) day period, Wicked Weed may at its election either: (a) accept title to the Property subject to the objections, or (b) terminate this Agreement, in which event the Initial Deposit and any other deposit shall be returned to Wicked Weed. In addition, County shall allow no encumbrances or easements to be placed on or granted with respect to the Property, other than those existing as of the Effective Date, without the prior written consent of Wicked Weed. If any such encumbrances or easements arise prior to the Closing Date and Wicked Weed objects, County shall, at its sole expense, cure the objections. Title exceptions, including those set forth in any prior title insurance commitment, not specifically objected to by Wicked Weed by written notice to County as provided herein or which are objected to but waived by Wicked Weed prior to Closing shall be deemed and referred to as "Permitted Encumbrances."

6. **Survey.** Wicked Weed may, at Wicked Weed's expense and sole discretion, cause a licensed surveyor to prepare an accurate survey of the Real Property (the "Survey"). The legal description of the Real Property prepared from the survey, if any, may be used in the documents necessary for conveyance of the Real Property. However, if County breaches this Agreement, County shall reimburse Wicked Weed for the expense thereof within seven (7) calendar days from the delivery to County of the written invoice for said Survey.

7. **County's Representations and Warranties.** The County represents and warrants, to the best of County's knowledge, that:

(a) The County is the owner of the Property in fee simple saving and excepting easements, restrictions and rights of way of record, none of which, upon County's information and belief, will prevent or adversely impact Wicked Weed's intended use of the Property.

(b) This Agreement constitutes the legal, valid and binding obligation of the County enforceable against it in accordance with its terms (subject to the provisions of federal and any other applicable bankruptcy, reorganization or similar law relating to or affecting the rights and remedies of creditors and to the usual equitable principles). Neither the execution, delivery nor performance of this Agreement by the County will, with or without the giving of notice or the passage of time, or both, conflict with, violate any provisions of, have an adverse effect on, result in a default, breach, right to accelerate or loss of rights under, or result in the creation of any lien, charge or encumbrance upon any property or assets of the County under, any terms or provisions of any franchise, mortgage, note, deed of trust, lease, license, agreement, contract, understanding or other instrument to which the County is a party or by which the County or any of its properties may be bound or affected, or any law, rule or regulation or any order, judgment or decree of any government, governmental instrumentality or court, domestic or foreign, having jurisdiction over the County or any of County's respective properties.

(c) That all information provided to Wicked Weed are true and correct in all material respects.

(d) As of the date hereof, no tax liabilities or assessments, whether federal, state, county, municipal or otherwise, have been proposed or assessed which remain unpaid nor will any such be assessed which remain unpaid and not appealed through the Closing Date and which would result in the creation of a lien on the Property.

(e) The County has not: (i) incurred any obligation or liability, absolute, accrued, contingent or otherwise, whether due or to become due which singly or in the aggregate could materially adversely affect the Property, liabilities or financial condition of the County; (ii) mortgaged, pledged or subjected to consensual lien, charge, security interest or any other encumbrance or restriction on the Property; (iii) sold, transferred, leased to others or otherwise disposed of the Property or waived or released any right of substantial value which would materially impair the value of the Property; or (iv) received any notice of termination of any contract, sales order, lease or other agreement or suffered any damage, destruction or loss (whether or not covered by insurance) which, in any case or in the aggregate, has had or could have a materially adverse effect on the Property.

(f) The County has complied in all material respects with all laws, regulations and orders applicable to the Property. The use of the Property and the maintenance thereof does not contravene any zoning ordinance or other administrative regulation or violate any restrictive covenant or other provision of law or contract.

(g) There are no claims, actions, suits, or arbitration proceedings, governmental investigations, or other legal or administrative proceedings of which the County has been notified or threatened against or affecting the County at law or in equity, or before any governmental authority, nor is there any basis known to the County for any such litigation, proceeding or investigation.

**The provisions of this Paragraph 7 shall survive Closing.**

8. **Environmental Matters.** The County and any members, managers or other owners thereof represent and warrant, to the best of County's knowledge, that:

(a) No claim, lawsuit, agency proceeding, or other legal, quasi-legal, or administrative challenge has been brought against the County in relation to the Real Property or the existence of any hazardous condition thereon during the County's period of ownership of the Property, and the County is not aware and does not suspect that any hazardous condition existed prior to its ownership of the Property.

(b) The County has not used the Property in violation of Environmental Laws.

(c) The County has not spilled, discharged, released, deposited, or placed any Hazardous Substance on the Property in violation of Environmental Laws, whether in containers or other impoundments, or directly in the lands or waters on the Property. The County is not aware of any spills of such substances in or on the Property.

(d) No governmental entity has served upon the County any notice claiming any violation of any statute, ordinance or regulations or noting the need for any repair, construction, alteration or installation with respect to the Property, or requiring any change in the means or methods of those conducting operations thereon.

The term "Hazardous Substances" shall mean any substance, chemical, or waste that is or shall be listed or defined as hazardous, toxic, or dangerous under Environmental Laws, and the term "Environmental Laws" means any and all federal, state, local and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, judicial decisions, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions relating to the environment or the release of any materials into the environment, whether existing or hereafter enacted or issued.

**The provisions of this Paragraph 8 shall survive Closing.**

9. **Wicked Weed's Representations, Warranties, and Acknowledgments.** The Wicked Weed represents and warrants, to the best of its knowledge, that the Wicked Weed has full power and authority to enter into this Agreement and to carry out the transactions contemplated hereby. All proceedings required to be taken to authorize the execution, delivery and performance of this Agreement have been properly taken. This Agreement constitutes the legal, valid and binding obligation of the Wicked Weed enforceable against it in accordance with its terms (subject to the provisions of federal and any other applicable bankruptcy, reorganization or similar law relating to or affecting the rights and remedies of creditors and to the usual equitable principles), subject, however, to the terms set forth herein and the approval of the Buncombe County Board of Commissioners.

**The provisions of this Paragraph 9 shall survive Closing.**

10. **Risk of Loss.** From and after the effective date of this Agreement, the Risk of shall be on Wicked Weed.

11. **Conditions.** Wicked Weed's obligations under this Agreement shall be subject to the satisfaction of the following conditions (any of which may be waived by Wicked Weed by giving written notice of waiver to County):

- (a) As of September 30, 2014, no exceptions to title to the Real Property shall exist other than the Permitted Encumbrances.
- (b) As of September 30, 2014, County shall have complied in all material respects with its obligations under this Agreement, and all representations and warranties of County set forth in this Agreement shall continue to be accurate in all material respects.

If any of the foregoing conditions has not been satisfied or waived as of September 30, 2014, Wicked Weed shall have the right, exercisable by delivery of written notice to County on or before September 30, 2014, to terminate this Agreement. Upon such termination, the Initial Deposit and any other deposits shall be returned to Wicked Weed.

12. **Condemnation.** If any taking pursuant to the power of eminent domain is threatened or occurs before the Closing Date as to all or any portion of the Property that Wicked Weed deems material, including any access or other easements benefiting the Property, or a sale occurs in lieu thereof, Wicked Weed may elect either to: (a) terminate this Agreement by delivery of written notice of termination to County within ten (10) days after written notice from County of the condemnation or threat thereof; or (b) proceed to Closing, in which event all proceeds, awards and other payments arising from any such taking or sale of the Property shall be assigned to and paid to Wicked Weed, without any adjustment of the Purchase Price. If Wicked Weed elects to terminate this Agreement, the Initial Deposit shall be returned to Wicked Weed.

13. **Closing Date.** The parties agree to execute and deliver any and all documents necessary to close the transfer of the Property and to complete the transactions provided herein on or before March 31, 2018 (hereinafter "Closing Date" or "Closing").

13.A. **Option to Exercise Early Closing Date.** Wicked Weed has the right to accelerate the Closing Date for its purchase of the Property and County shall sell to Wicked Weed the Property, AS IS and in its then present condition, subject to the terms and conditions of this Agreement. This right to

accelerate the Closing Date may be exercised by Wicked Weed at any time between October 1, 2014 and December 31, 2017. Should Wicked Weed exercise this right to accelerate the Closing Date then the parties agree to close the transfer of the Property and to complete the transactions provided herein within thirty (30) days of County's receipt of notice of such acceleration in such place in Buncombe County as is mutually agreeable to the parties.

14. **Closing Documents.** On the Closing Date, the County shall execute and deliver to the Wicked Weed the following closing documents:

- (a) A North Carolina Special Warranty Deed free and clear of all liens, charges and encumbrances, except: (i) ad valorem real property taxes for the calendar year of sale (to be prorated as of the Closing Date) and (ii) such other Permitted Encumbrances;
- (b) An Affidavit and Indemnification in form reasonably acceptable to Wicked Weed and Wicked Weed's title insurer affirming that there are no outstanding possessory rights, liens or rights to claim liens against the Property, and any other affidavits reasonably required by Wicked Weed's title insurer;
- (c) An Affidavit that County is not a "foreign person" within the meaning of the Foreign Investment in Real Property Tax Act, and information necessary to complete an IRS Form 1099;
- (d) If applicable, an Assignment and Assumption Agreement pursuant to which County shall assign to Wicked Weed any and all rights that County may have under the existing contracts, licenses, permits and warranties relating to the Property;
- (e) Any consents of third parties which are necessary to effectively assign any contracts or other rights and interests in the Property;
- (f) All other documents necessary to transfer or assign to Wicked Weed any zoning approvals, permits, or other development rights with respect to the Property; and
- (g) The Closing Settlement Statement.

At Closing, Wicked Weed shall execute and deliver to County the following:

- (a) The Closing Settlement Statement; and
- (b) Documents evidencing the authority of Wicked Weed to execute and deliver its closing documents.

15. **Default.**

(a) If Wicked Weed defaults under this Agreement, the sole remedy of County shall be to retain the Initial Deposit as well as any and all improvements made to the Property. Such Initial Deposit shall constitute liquidated damages for Wicked Weed's default, it being agreed that County's damages in the event of a default by Wicked Weed would be difficult to estimate precisely and that the Initial Deposit and Additional Deposit, if paid, constitute the parties' best estimate of such damages.

(b) Upon the breach by County of any of the representations and warranties contained herein, or the default by County in the performance of any other obligation of County set forth in this Agreement, Wicked Weed may exercise all remedies available to it at law or in equity, including any or all of the following: (a) Wicked Weed may terminate this Agreement by delivery of written notice to County, in which event Wicked Weed shall be entitled to the prompt return of the Initial Deposit; (b) Wicked Weed may institute proceedings in any court of competent jurisdiction to specifically enforce the

performance by County of the terms of this Agreement; or (c) Wicked Weed may assert an action for money damages as a result of County's default.

16. **Brokerage Commissions.** County and Wicked Weed represent and warrant to each other that neither has dealt with any broker or brokerage company in connection with the proposed purchase and sale of the Property to Wicked Weed. In the event of any claims for brokers' or finders' fees or commissions by any other person or entity in connection with the negotiation, execution or consummation of this Agreement, the party on whose alleged statement, representation or agreement such claim or liability arises shall indemnify, hold harmless and defend the other party from and against such claim, including, without limitation, reasonable attorneys' fees and costs.

17. **Notices.** Any notices permitted or required to be given under this Agreement shall be given to the parties by personal delivery, delivery by a nationally recognized over-night courier service, first class mail/return receipt requested, or by facsimile transmission to the following addresses.

If to County: County of Buncombe  
c/o County Manager  
205 College Street, Suite 300  
Asheville, NC 28801

with a copy to: County of Buncombe  
Senior county Staff Attorney  
59 Woodfin Place, Suite 100  
Asheville, NC 28801

If to Wicked Weed: Wicked Weed Brewing, LLC  
91 Biltmore Avenue  
Asheville, NC 28801

Each such notice shall be deemed to have been given on the date the notice is actually received; provided, however, that, with respect to any notice delivered by facsimile transmission such notice shall be effective (a) upon sending if the sending party actually received confirmation of delivery by 5:00 p.m. eastern standard time during a business day, or (b) the next business day, if otherwise. Either party may change its address(es) or facsimile number(s) by written notice to the other party pursuant to the provisions hereof.

**18. Indemnification.**

(a) The County agrees that from and after the date hereof it will indemnify and save the Wicked Weed harmless from and against and in respect of any and all liabilities, demands, claims, costs, losses or damages, together with all legal and other costs or expenses including reasonable attorneys' fees and disbursements based upon, resulting from, arising out of or attributable to any default under or breach of any representation, warranty or agreement on the part of the County under this Agreement. The liability of the County to indemnify the Wicked Weed hereunder shall be conditional upon the Wicked Weed notifying the County in writing of any fact or circumstance which may give rise to such liability with reasonable promptness after such fact or circumstance first comes to the attention of the Wicked Weed (but delay in giving such notice shall not relieve the County from any liability which they

may have hereunder unless the County is prejudiced thereby), and to the extent a defense to the fact or circumstance which may give rise to such liability exists or may exist, the County shall have a right to participate in the defense of such matter through its counsel and at its expense. Nothing herein shall be construed as a waiver on the part of the County to any defense of any claim, including, but not limited to the defense of governmental immunity.

And that the county's obligations under this paragraph shall be limited to the extent and manner of recovery pursuant to County's self-insured claim policies and North Carolina law.

(b) The Wicked Weed agrees that from and after the date hereof it will indemnify and save the County harmless from and against and in respect of any and all liabilities, demands, claims, costs, losses or damages, together with all legal and other costs or expenses, including reasonable attorney's fees and disbursements based upon, resulting from, arising out of or attributable to any default under or breach of any representation, warranty, or agreement on the part of the Wicked Weed under this Agreement. The liability of the Wicked Weed to indemnify the County hereunder shall be conditional upon the County notifying the Wicked Weed in writing of any fact or circumstance which may give rise to such liability with reasonable promptness after such fact or circumstance first comes to the attention of the County (but delay in giving such notice shall not relieve the Wicked Weed from any liability which it may have hereunder unless the Wicked Weed is prejudiced thereby), and to the extent a defense to the fact or circumstance which may give rise to such liability exists or may exist, the Wicked Weed shall have a right to participate in the defense of such matter through its counsel and at its expense.

19. **Expenses.** County shall pay for (a) any current and prior years' ad valorem property taxes, and (b) any other costs or expenses customarily allocated to the County in commercial property transfers in Buncombe County, North Carolina. Wicked Weed shall pay for (a) the expenses incident to this Agreement and the performance of Wicked Weed's obligations hereunder, (b) the cost of any survey, if any, (c) the expense of obtaining any title insurance commitment and any title insurance premium, (d) the recording of any documents with the Buncombe County Register of Deeds Office, and (e) any other costs or expenses customarily allocated to the Wicked Weed in commercial property transfers in Buncombe County, North Carolina. Except as otherwise provided herein, any and all expenses related to the Property (including, but not limited to, utilities charges and other operating expenses) shall be prorated, and charged and credited to the parties at the Closing. Each party shall pay its own attorneys' fees and any other costs that it may incur in connection with the Closing.

20. **Miscellaneous Provisions.**

(a) Entire Understanding. This Agreement constitutes the entire and complete agreement between the parties hereto and supersedes any prior oral or written agreements between the parties with respect to the Property. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions herein set forth, and that no modification of this Agreement and no waiver of any of its terms or conditions shall be effective unless made in writing and duly executed by both parties.

(b) Binding Effect. This Agreement shall be binding upon and inure to the benefit of County and Wicked Weed and their respective successors and permitted assigns.

(c) Governing Law. Claims, disputes and/or other matters in question between the parties that are not resolved by mediation shall be heard in the North Carolina General Courts of Justice in Asheville, Buncombe County, North Carolina, which said Court shall have jurisdiction to hear any dispute



between the parties arising out of this agreement. The Parties hereby agree that this paragraph establishes exclusive and sole jurisdiction for any legal proceeding in Buncombe County, North Carolina.

(d) Captions. The captions in this Agreement are inserted only as a manner of convenience and for reference and in no way define, limit or describe the scope of this Agreement or the scope or content of any of its provisions.

(e) Waiver and Modification. Failure by any party hereto to insist upon or enforce any of their respective rights hereunder shall not constitute a waiver thereof, except as provided herein.

(f) Time Is Of The Essence. Time is of the essence with respect to the payments, performance required of the various parties under this Agreement ends on a Saturday, Sunday or any day on which the state courts of Buncombe County, North Carolina are closed, that time period shall be extended until the next business day.

(g) Counterparts and Facsimile Execution. This Agreement may be executed in counterparts, each of which shall be an original, and all of which together shall constitute the same document. This Agreement, if executed and delivered by facsimile shall be sufficient for purposes of binding the sending party.

(h) Attorneys' Fees. In the event either party hereunder institutes any legal action or proceeding to enforce its rights under this Agreement, the party substantially prevailing in such litigation shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation, prosecution and/or defense of such action or proceeding.

(i) Survival. The representations, warranties and agreements set forth in this Agreement shall survive the Closing or any termination of this Agreement and shall not be merged in to the Deed or instruments of conveyance or any of the other documents or instruments executed or delivered at or after the time of Closing pursuant to or by any reason of this Agreement.

(j) Assignment. Wicked Weed may not assign this Agreement without the written consent of County, but if assigned by agreement, then this Agreement shall be binding on the assignee and the assignee's heirs and successors.

(k) Effective Date. The Effective Date of the Agreement shall be the date that the document has been fully signed by both County and Wicked Weed.

IN WITNESS WHEREOF, County and Wicked Weed have caused this Agreement to be duly executed and delivered on the last date noted below.

Signature Page Follows

WICKED WEED:

\_\_\_\_\_

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

Dated: \_\_\_\_\_

Buncombe County,  
a body politic and corporate of the  
State of North Carolina

\_\_\_\_\_  
By: Wanda Greene,  
County Manager

Dated: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Kathy Hughes, Clerk to the Board