

BURNS, DAY & PRESNELL, P. A.

ATTORNEYS AT LAW
2626 GLENWOOD AVENUE, SUITE 560
RALEIGH, NORTH CAROLINA 27608

KENDRA K. BADER
JAMES M. DAY
DANIEL C. HIGGINS
ANDREA L. HINSHAW
GREG L. HINSHAW
EMILY D. IVERSON
JULIA Y. KIRKPATRICK
JAMES J. MILLS
LACY M. PRESNELL III - OF COUNSEL
CHARLES S. CARTER - OF COUNSEL

MAILING ADDRESS:
POST OFFICE BOX 10867
RALEIGH, NORTH CAROLINA 27605

TELEPHONE (919) 782-1441
FACSIMILE (919) 782-2311
www.burnsdaypresnell.com

April 19, 2021

Filed Electronically

F. KENT BURNS - RETIRED

Ms. Kimberley A. Campbell
Chief Clerk
North Carolina Utilities Commission
430 N. Salisbury Street
Raleigh, N.C.

Re: Transfer of Bear Den Acres Development, Inc. to Red Bird Utility Operating
Company, LLC, d/b/a Red Bird Water
Docket Nos.: W-1040, Sub 10 and W-1328, Sub 4

Dear Ms. Campbell:

At the request of the Public Staff, Red Bird Water files the enclosed redacted Non-Confidential version of the Purchase and Sale Agreement with Bear Den Acres Development, Inc.

As always, please contact me if you or the Commission have any questions regarding this information.

With best regards, we remain

Sincerely yours,

BURNS, DAY & PRESNELL, P.A.


Daniel C. Higgins

DCH/krs
Enclosure
cc: Public Staff - Legal
Public Staff - Water and Sewer

OFFICIAL COPY

Apr 19 2021

Red Bird Water
Bear Den Acres Development, Inc.

AGREEMENT FOR SALE OF UTILITY SYSTEM

THIS AGREEMENT ("Agreement"), is made and entered into this 23rd day of October, 2019, by and between CENTRAL STATES WATER RESOURCES, INC., a Missouri corporation, or its affiliate ("Buyer"), and BEAR DEN ACRES DEVELOPMENT, INC. ("Seller"), collectively ("Parties").

WITNESSETH:

WHEREAS, Seller has developed and operates, as a regulated water corporation, water facilities, in the area more particularly described and depicted in the documents attached hereto as *Exhibit "A"*, situated in McDowell County, North Carolina (hereinafter the "System"); and

WHEREAS, Buyer is a corporation, organized and existing under the constitution and the laws of the State of Missouri, with all the requisite power necessary to enter into the transaction described hereinafter; and

WHEREAS, Seller is a corporation, organized and existing under the constitution and the laws of the State of North Carolina, with all the requisite power necessary to enter into the transaction described hereinafter; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, all the assets, property and real estate connected with the System including, but not limited to, all associated improvements for the conveyance of water to each of the customers connected to the service area (defined further below as "Assets"); and

WHEREAS, the parties have reached an understanding with respect to the sale by Seller and the purchase by Buyer of all of the Assets (as hereinafter defined) of the System.

NOW, THEREFORE, it is mutually agreed that:

1. **SALE OF ASSETS.**

For and in consideration of the receipt of the Purchase Price, as set forth below, and the covenants and promises hereinafter set forth, Seller agrees that on the date of the Closing (as hereinafter defined), Seller shall sell, transfer, assign and deliver to Buyer, or Buyer's designated affiliate, all of Seller's then existing assets pertaining to the provision of water service in the System located in McDowell County, in the State of North Carolina, and related properties, including, without limitation, the following:

- A. The land, improvements thereon, easements, rights of way, permits and leases

related to the System area depicted in *Exhibit "A"* and/or generally described in *Exhibit "B"*, attached hereto:

B. All of Seller's installed water service facilities, equipment, lines, plant, pipes, manholes and appurtenances:

C. Any machinery and equipment such as meters, tools, devices, mobile work equipment, and all furniture, fixtures, machinery, supplies and other tangible items, if any, located in McDowell County, North Carolina, and used or held for use in connection with the System as generally described in *Exhibit "C"*, attached hereto:

D. All of Seller's rights, title and interest in and to any franchise agreements, franchise rights, warranties, contracts, supply contracts, agreements, bonds or other financial assurances or guaranties, and customer deposits, if any, pertaining to, allocable to or arising out of the provision of water service in McDowell County, North Carolina as generally described in *Exhibit "D"*, attached hereto:

E. All of Seller's contract rights, goodwill, and general intangibles including accounts receivable pertaining to the water service, except accounts receivable accrued prior to the Closing; and

F. All assets not described which are located in McDowell County, North Carolina, and used exclusively to operate the System, excepting therefrom, and from any other assets described in the paragraphs above of this Section 1, any and all cash, cash equivalents and banking deposits in existence prior to the Closing.

The assets to be sold and delivered, as above described, are hereinafter collectively described as the "Assets."

2. CONVEYANCES OF REAL ESTATE.

The real estate to be conveyed by Seller will include all facilities described herein and all interest of Seller in any water and other utility easements. The real estate will be conveyed by general warranty deed, in a form satisfactory to Buyer, and will vest marketable title in fact in the Buyer. Easements shall be assigned by written assignment or other means, in a form satisfactory to Buyer.

At Buyer's expense, Buyer shall obtain, at least thirty (30) calendar days prior to the Closing, a Commitment to issue an Owner's Policy of Title Insurance to Buyer in the amount of

the Purchase Price issued by a company authorized to issue title insurance in the state of North Carolina, which policy shall insure the owner's title to be marketable as the same is described and defined in the American Land Title Association ("ALTA") title examination standards ("Title Standards"). After delivery of said title insurance commitment and Buyer's completion of the examination and/or review of the commitment and other relevant title information, Buyer shall notify Seller, in writing, of any objections thereto (the Parties agreeing that any objection falling within the said Title Standards shall not constitute a valid objection so long as Seller furnishes affidavits or other papers as described in such standards in order for the title company to delete the same). If there shall be no such notice of objection, then any exceptions in such Commitment or deficiencies in the title to the property noted on such Commitment shall be deemed waived and delivery of a deed in compliance with the terms of the Commitment shall be deemed compliance with the terms of this Agreement. If notice of any objections to defects in the title, as defined above, shall be delivered to Seller, then Seller shall have five (5) business days to correct the title and the Closing shall be postponed until such time, if necessary. If Seller elects not to, or cannot, correct such defects, then Buyer, at Buyer's option, may waive such defects and proceed to close or may cancel the contract and all obligations hereunder shall be null and void.

3. REGULATORY APPROVAL.

Seller shall act diligently and cooperate with Buyer to obtain any regulatory approvals required from the North Carolina Utilities Commission ("NCUC"), North Carolina Department of Environmental Quality ("NCEQ"), or any other regulatory agency in the State of North Carolina, as determined by Buyer in its sole discretion, and to obtain transfer of Seller's permits, if any.

4. PURCHASE PRICE. Buyer agrees to pay to Seller at the Closing [REDACTED] [REDACTED] for purchase of the Assets ("Purchase Price").

5. CLOSING.

The Closing of the sale shall take place at a mutually agreeable location no later than forty-five (45) days after the effective date of any necessary regulatory authority approval, satisfaction of Seller's Representations and Warranties and Conditions Precedent set forth herein, and Buyer having obtained financing under terms acceptable to Buyer in Buyer's sole discretion, or at such other time as the parties hereto may mutually agree (the "Closing"). At the Closing, Buyer shall prepare and have delivered to Seller such deeds, bills of sale, endorsements, assignments and other

sufficient instruments of transfer and conveyance as shall be effective to vest in Buyer such title to the Assets to be sold as provided in this Agreement and as set forth in Section 6.D, and Seller will execute such documents prepared and delivered by Buyer. Upon execution and delivery of such documents to Buyer, Buyer will deliver to Seller the Purchase Price. From time to time, at Buyer's request and expense, whether at or after the Closing and without further consideration, Seller shall execute and deliver such other instruments of conveyance and transfer and take such other action as Buyer reasonably may require to more effectively convey and transfer to Buyer any of the Assets to be sold hereunder, and will assist Buyer in the collection or reduction to possession of such Assets. Buyer will pay all sales, transfer and documentary taxes, if any, payable in connection with the sale, transfers and deliveries to be made to Buyer hereunder. All ad valorem real estate taxes and assessments levied or assessed against the Assets shall be prorated according to the calendar year as of the Closing based on the most recent tax bill and assessments levied for the same, and Buyer shall receive a credit against the Purchase Price for the amount of taxes owed by Seller at the time of the Closing. Buyer shall pay the costs of recording all instruments required for the Closing to occur, the fees charged by the title company, and Buyer's attorneys' fees. Seller shall pay for all attorneys' fees incurred by Seller.

On the date of the Closing, Buyer shall accept and assume ownership and title to the Assets to be conveyed hereunder and Buyer shall assume liability, and become responsible, for all obligations in connection with the Assets going forward, excepting responsibility for any liabilities and/or obligations of Seller in connection with the Assets that existed prior to the date of the Closing.

6. **SELLER'S REPRESENTATIONS AND WARRANTIES.**

The Seller represents and warrants as follows:

A. **Organization and Standing of Seller.**

Seller is a corporation, organized and existing under the constitution and laws of the State of North Carolina in good standing with the North Carolina Secretary of State.

B. **Liabilities.**

All liabilities or obligations of Seller, whether accrued, absolute, contingent or otherwise pertaining to or arising out from the Assets are liabilities and obligations of the Seller and shall remain the obligations of Seller after the date of the Closing.

C. **Absence of Certain Changes.**

After Buyer's inspection and acceptance of the Assets, there shall not be:

- i. Any material change in the use of the Assets in connection with the business or operations of the System;
- ii. Any damage, destruction or loss whether or not covered by insurance, materially and adversely affecting the Assets.

D. **Title to Properties.**

Within twenty (20) days prior to the Closing and with Buyer's assistance, Seller shall have obtained the legal right to transfer all of the Assets. To the best of Seller's knowledge, unless Seller has disclosed any information in writing to the Buyer to the contrary, Seller owns the Assets to be sold under this Agreement, in all cases, free and clear of all liens, mortgages, pledges, leases, options, rights of first refusal, conditional sales agreements, encumbrances or other charges, except liens for taxes not yet due or payable, easements or right of ways, streets, railways, pipelines, electric transmission and distribution lines, telephone lines, drainage rights and other similar rights or restrictions of record which do not, either individually or in the aggregate have a materially adverse effect on the value or utility of the Assets to be sold hereunder.

Notwithstanding, but not in limitation of, the foregoing, Seller agrees to work with Buyer's surveyor prior to closing to establish, at Buyer's expense, the property boundaries and easement locations and to create a written plat of the distribution and collection lines showing the location of said lines with respect to lot lines, platted utility easements, if any, to the extent the same can be shown with reference to such lot lines and platted utility easements.

Within twenty (20) days prior to the Closing and with Buyer's assistance, Seller agrees to have identified any and all interests in land (including easements or license agreements) it has obtained in connection with its operation and maintenance of the System and will provide Buyer or Buyer's representatives copies of the same or a reference to the book and page number of the records of the McDowell County Recorder's Office where such easements are recorded. The cost of such identification and any related search being the sole responsibility of the Buyer.

damages for breach of this contract, then the prevailing party shall be entitled to receive their reasonable and actually incurred attorneys' fees and costs in addition to any other damages that the Party is entitled to recover at law or in equity.

27. **AUTHORITY TO EXECUTE.** Each person whose signature appears hereon represents, warrants and guarantees that he or she has been duly authorized and has full authority to execute this Agreement on behalf of the party on whose behalf this Agreement is executed.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the day and year first above written.

SELLER:

BEAR DEN ACRES DEVELOPMENT,
INC.

By: 
Mark A. Krauss, President

BUYER:

CENTRAL STATES WATER
RESOURCES, INC.


By: 
Josiah Cox, President

EXHIBIT "A"

Service Area Description

EXHIBIT "B"

Description of Land, Improvements thereon, Easements, Rights of Way, Permits and Leases
(The legal description(s) of the Land, Improvements thereon, Easements, Rights of Way shall be determined by
survey and title commitments, which shall be inserted prior to the Closing).

EXHIBIT "C"

Personal Property and Equipment

(meters, tools, devices, mobile work equipment, furniture, fixtures, machinery, supplies, and other tangible items)

Description	Balance of Associated Debt & Lender Information

EXHIBIT "D"

Rights Via Agreements, Contracts, Misc.

(franchise agreements, franchise rights, warranties, contracts, supply contracts, agreements, bonds and or other financial assurances and customer deposits)