

**ORDINANCE No. 281.2016**

**ORDINANCE BY KERSHAW COUNTY COUNCIL AUTHORIZING THE EXECUTION OF AN OPTION AGREEMENT BY AND BETWEEN KERSHAW COUNTY ("OWNER") AND ERNEST HEALTH HOLDINGS, A DELAWARE CORPORATION ("OPTION HOLDER"), AND IN THE EVENT THE OPTION IS EXERCISED, AUTHORIZING THE EXECUTION OF A LIMITED WARRANTY DEED TO THE PREMISES SUBJECT TO THE OPTION AGREEMENT AND OTHER DOCUMENTS AND AFFIDAVITS REQUIRED**

**WHEREAS**, Kershaw County desires to provide for the economic development of Kershaw County;

**WHEREAS**, Kershaw County desires to provide for the economic development of Kershaw County and likewise to provide jobs for its citizens;

**WHEREAS**, Kershaw County desires to enter into an Option Agreement.

**NOW, THEREFORE, BE IT ORDAINED** by Kershaw County Council:

1. That the Option Agreement by and between Kershaw County ("Owner") and Ernest Health Holdings, a Delaware corporation ("Option Holder") a copy of which is attached hereto as Exhibit A, is approved and the execution is hereby authorized by Kershaw County.
2. That in the event Option Holder exercises the Option Agreement, the execution of a limited warranty deed to the premises in accordance with the Option Agreement and the execution of other documents and affidavits required by Option Holder as provided in the Option Agreement is authorized by Kershaw County.

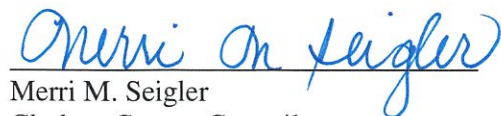
This Ordinance is effective upon 3<sup>rd</sup> reading.

KERSHAW COUNTY COUNCIL



First Reading: April 26, 2016  
Second Reading: May 24, 2016  
Public Hearing: June 14, 2016  
Third Reading: June 14, 2016

ATTEST:



Merri M. Seigler  
Clerk to County Council

FILED FOR RECORD  
2016 SEP 30 PM 2:08  
JOYCE McDONALD  
CLERK OF COURT  
KERSHAW COUNTY, S.C.

## OPTION AGREEMENT

THIS OPTION AGREEMENT ("Agreement") is made as of this 14<sup>th</sup> day of June, 2016 (the "Effective Date"), by and between Ernest Health Holdings, a Delaware corporation, with an address of c/o David B. Summer, Jr., Parker Poe Adams & Bernstein LLP, 1201 Main Street, Suite 1450, Columbia, SC 29201 (herein called the "Option Holder") and the County of Kershaw, South Carolina, 515 Walnut Street, Camden, SC 29020, (herein called the "Owner").

WITNESSETH:

1. Grant of Option/Term of Option/Extension. In consideration of Five and No/100 Dollars (\$5.00) and such other good and valuable consideration set forth herein, the Owner hereby grants to the Option Holder the irrevocable option (the "Option") for a period of One (1) year from the Effective Date (the "Initial Option Period") to purchase, subject to the terms and conditions herein set forth, the following described land containing 8.63 acres, more or less, situated within the Wateree Executive Park in Kershaw County, South Carolina, to wit:

A portion of Kershaw County TMS No. 360-00-00-108, together with all improvements, timber, rights, easements and appurtenances belonging thereunto (as more fully depicted on the attached Exhibit A, the "Premises").

The purchase price ("Purchase Price") for the Premises shall be \$30,000 per acre, based on the acreage of the Premises as shown on the Survey (as defined hereinbelow). The Option Holder shall have the right to extend the Initial Option Period for one additional one year (1) period (the "Extended Option Period")(the Initial Option Period and the Extended Option Period collectively the "Option Period") upon written notice and payment of \$25,000 for the Extended Option Period (the "Additional Option Consideration")(the Initial Option Consideration and Additional Option Consideration the "Option Consideration") to Owner prior to the end of the Initial Option Period.

2. Inspection. The Option Holder and its agents shall have the right during the Option Period to enter upon the Premises for the purpose of inspecting the same and making surveys, appraisals, environmental studies, and other inspections which may be useful to them. In the event the Option Holder fails to exercise the Option during the Option Period, it shall deliver to Owner all non-privileged due diligence materials in its possession obtained during the Option Period, all as additional consideration for this Agreement.

3. Exercise of Option. The Option Holder may exercise its Option at any time during the Option Period by giving the Owner written notice of such exercise. Such notice shall be delivered by hand to Owner or by registered mail, postage prepaid, addressed to the Owner at the address stated above. If such notice is given by registered mail, it shall be deemed to have been given on the date on which such notice is registered with the United States postal authorities, or if by hand, the date handed to and accepted by Owner (the "Option Exercise Date").

4. Closing of Purchase. In the event Option Holder exercises the Option in accordance with Section 3 above, the closing on the Premises (the "Closing") shall take place within thirty (30) days of the Option Exercise Date at the offices of Option Holder's attorney in Columbia, South Carolina (such date, the "Closing Date"). Any Option Consideration shall be applied as a credit to the Purchase Price at Closing. At Closing, Owner shall deliver to Option Holder a limited warranty deed (the "Deed") to the Premises, in accordance with Section 5 below, together with all other documents and affidavits required by Option Holder or its title insurance company, including without limitation a non-resident seller withholding affidavit and a certificate of tax compliance. Possession of the Premises shall be given to the Option Holder at Closing. The terms of this Agreement shall survive the Closing.

5. Title. Owner warrants that they now have and will have at the Closing Date exclusive possession of the Premises and good and marketable title to the Premises free and clear of all claims, liens and encumbrances, except the lien for ad valorem taxes and Permitted Exceptions (as defined below).

During the Option Period, Option Holder shall conduct an examination of title to the Premises, which shall result in the issuance by a title insurance company of Option Holder's choosing (the "Title Company"), of a title insurance commitment. Option Holder shall within fifteen (15) days of its receipt of the title commitment give Owner written notice of any Title Matters, as defined below, objected to by Option Holder. Any Title Matters revealed by Option Holder's initial examination of the title and not objected to by Option Holder shall be deemed satisfactory to Option Holder and shall be deemed to be Permitted Exceptions. Any title matters objected to by Option Holder revealed by Option Holder's initial examination of title shall be noticed to Owner within three (3) months of execution of this Option. Thereafter, Option Holder shall have until the Closing Date in which to reexamine title to the Premises and in which to give Owner written notice of any additional title matter objections arising after the date of Option Holder's initial examination of the title to the Premises. If Option Holder notifies Owner of Title Matters to which it objects under this Section, and Owner thereafter fails to agree in writing within five (5) days of receipt to satisfy any such valid objection prior to the Closing Date, then, at the option of Option Holder, Option Holder may: (i) terminate this Agreement, in which event any Option Consideration shall be refunded to Option Holder promptly upon request, all rights and obligations of the parties under this Agreement shall expire (except any indemnification obligations hereunder), and except as expressly set forth herein to the contrary, this Agreement shall be of no further force or effect; or (ii) waive such satisfaction and performance and consummate the purchase and sale of the Premises. If necessary, the Closing Date shall be extended to allow for the Owner to satisfy any valid objection which Owner has agreed in writing to correct, but not by more than thirty (30) days. Notwithstanding anything herein to the contrary, Owner shall be obligated to remove or discharge any mortgage or other monetary lien affecting the Premises. Should Owner fail to do so, Option Holder will be entitled to cure and remove such Title Matters, and all of Option Holder's cost and expense incurred in connection with such cure shall be deducted from and credited against the Purchase Price. At Closing, Owner covenants to convey to Option Holder fee simple marketable title in and to the Premises, subject only to the following: (i) current county and state ad valorem taxes not yet due and payable and (ii) the Permitted Exceptions.

For the purposes of this Agreement, the term "Permitted Exceptions" means (i) ad valorem taxes and assessments for the year in which Closing occurs and all subsequent years, (ii) beneficial rights of the Seller under Section 4 above, and (iii) any Title Matters to which Option Holder fails to object within the applicable time period above or which Option Holder waives pursuant to this Agreement. "Title Matter" and "Title Matters" mean any mortgages, liens, financing statements, security interests, easements, leases, restrictive covenants, agreements, options, claims, clouds, encroachments, rights, taxes and other encumbrances of any nature whatsoever, whether existing of record or otherwise, together with any and all matters of any kind or description, including, without limitation, matters of survey and any litigation or other proceedings affecting the Property or Seller and which affect title to the Property, or the ability, right, power and authority of Seller to convey to Option Holder fee simple, good and marketable and insurable title to the Property, in accordance with the terms of this Agreement.

6. Survey. During the Option Period, the Option Holder shall obtain, at Option Holder's expense, a survey of the Premises (the "Survey") prepared by a surveyor registered and licensed in the State of South Carolina. Within fifteen (15) days of receipt of the Survey by Option Holder, Option Holder shall give Owner written notice of any Title Matters shown on the Survey objected to by Option Holder. Any Title Matters revealed by the Survey and not objected to by Option Holder shall be deemed satisfactory to Option Holder and shall be deemed to be Permitted Exceptions. If Option Holder notifies Owner of Title Matters to which it objects under this Section, and Owner thereafter fails so to agree in writing within five (5) days of receipt to satisfy any such valid objection, then, at the option of Option Holder, Option Holder may: (i) terminate this Agreement, in which event any Option Consideration shall be refunded to Option Holder promptly upon request, all rights and obligations of the parties under this Agreement shall expire (except any indemnification obligations hereunder), and except as expressly set forth herein to the contrary, this Agreement shall be of no further force or effect; or (ii) waive such satisfaction and performance and consummate the purchase and sale of the Premises. If necessary, the Closing Date shall be extended to allow for the Owner to satisfy any valid objection which Owner has agreed in writing to correct, but not by more than thirty (30) days. The legal description of the Premises set forth in the Deed to be delivered by Owner at Closing shall be based upon and shall conform to the Survey. Such Survey shall be delivered to the Owner at least fifteen (15) days prior to Closing and be suitable for recording with the Kershaw County, South Carolina Register of Deed's Office.

7. Conditions Precedent.

(a) Tax Incentives. That in the event the Option is exercised and after the closing takes place Owner agrees to enter into a Fee In Lieu of Tax Agreement ("FILOT") under the following terms and conditions:

(i) The term of the FILOT will be for thirty (30) years, during which the property tax assessment rate will be lowered to six (6%) percent and the current millage rate of

317.5 will be locked for the term of the agreement; and

(ii) Owner will issue a Special Source Revenue Credit ("SSRC") against Option Holder's FILOT payment, which will be ten (10%) percent for the first five (5) years of operation.

(b) Sewer Line Extension. That in the event the Option is exercised and after the closing takes place Owner agrees to extend the sewer line currently located in Wateree Business Park to the property line of the premises, as mutually agreed upon by the parties to be memorialized in writing and executed by all parties within three (3) months of the execution of the Option.

(c) Gas Line Extension. That in the event the Option is exercised and after the closing takes place Owner agrees to reimburse Project Health for one-half of the cost incurred to extend the gas line to the property line of the premises in an amount not to exceed \$90,950.00 as mutually agreed upon by the parties to be memorialized in writing and executed by all parties within three (3) months of the execution of the Option.

8. Warranties, Representations, Additional Covenants of Owner and Option Holder.

(a) In order to induce Option Holder to enter into this Agreement, Owner represents and warrants to Option Holder as follows:

(i) That, on the Closing Date, Owner shall have fee simple title to the Premises, subject only to the Permitted Exceptions.

(ii) That this Agreement has been duly approved and authorized by all required action, and executed on behalf of Owner and constitutes the valid and binding agreement of Owner, enforceable against Owner in accordance with its terms.

(iii) There are no actions, suits or proceedings pending or threatened against, by or affecting Owner which affect title to the Premises or which question the validity or enforceability of this Agreement or of any action taken by Owner under this Agreement, in any court or before any governmental authority, domestic or foreign; and that there are no pending, threatened or contemplated condemnation actions involving all or any portion of the Premises.

(iv) That the execution and delivery of the documents and instruments to be executed and delivered by Owner on the Closing Date, and the performance by Owner of Owner's duties and obligations under this Agreement and of all other acts necessary and appropriate for the full consummation of the purchase and sale of the Premises as contemplated by and provided for in this Agreement, are, to the best of Owner's knowledge, consistent with and not in violation of, and will not create any adverse condition under, any contract, agreement or other instrument to which Owner is a party, or any judicial order or judgment of any nature by which Owner is bound.

(v) That to the best of Owner's knowledge, information, and belief, without duty of inquiry, there are no storage tanks located on the Premises, either above or below ground, or any underground pipes or lines on the Premises, other than for potable water or sanitary sewer, nor were there any such tanks, pipes, or lines formerly on the Premises.

(vi) Owner has received no notice of the existence of any areas on the Premises where hazardous substances or wastes have been generated, disposed of, released or found, and, to the best of Owner's knowledge, information and belief, no such areas for the generation, storage, disposal or release of any hazardous substances or wastes exist on the Premises. For purposes of this Agreement, the term "hazardous substances or wastes" shall mean petroleum including crude oil or any fraction thereof, and any substance identified in CERCLA, FIFRA, RCRA or any other federal, state or other governmental legislation or ordinance identified by its terms as pertaining to the management, disposal or release of hazardous substances or wastes. In the event Owner receives notice of any such violations affecting the Premises prior to Closing, Owner promptly shall notify Option Holder thereof.

(vii) That to the best of Owner's knowledge, information and belief, there is no condition on the Premises that is in violation of any statute, ordinance or regulation for the protection of human health or the environment.

(viii) There is no pending litigation or dispute concerning the location of the lines and corners of the Premises.

(ix) Owner does not have any knowledge of any significant adverse fact or condition relating to the Premises, which is not a matter of record or has not been specifically disclosed in writing by Owner to Option Holder.

(x) Owner has received no notice that any municipality or any governmental or quasi-governmental authority has determined that there are any violations of zoning, health, environmental or other statutes, ordinances or regulations affecting the Premises, and Owner has no knowledge of any such violations. In the event Owner receives notice of any such violations affecting the Premises prior to Closing, Owner promptly shall notify Option Holder thereof.

(b) In the event Option Holder timely delivers its Exercise, the obligation of Option Holder that arise to purchase the Premises at Closing and to perform under this Agreement shall be subject to the representations and warranties made by Owner in this Agreement being true as of the date of this Agreement and as of the Closing Date, and Owner having performed all covenants and obligations and complied with all conditions required of it by this Agreement.

(c) In order to induce Owner to enter into this Agreement, Option Holder represents and warrants to Owner as follows:

(i) Option Holder covenants that in the event it exercises the Option and closes on the purchase of the Premises, within five years of Closing, Option Holder will invest approximately Seventeen Million Eight Hundred Thousand and No/ 100 Dollars (\$17,800,000.00) into the Premises in the establishment of its business thereon and to create approximately One Hundred Thirteen (113) new jobs for the benefit of the citizens of Kershaw County and the surrounding community.

8. Taxes/Closing Costs. Ad valorem taxes shall be prorated between the Owner and the Option

Holder as of the Closing Date. Option Holder shall be responsible for the payment of any rollback taxes that may be assessed against the Premises. Option Holder shall pay the reasonable cost to Owner for preparation of the Deed and Owner's other closing documents, all transfer and documentary stamp taxes, and fees for recording the Deed.

9. Risk of Loss. In the event of loss or damage to the Premises or the improvements thereon and the appurtenances thereto caused by fire, blight, insects, disease, storm, flood, theft, improper timber harvesting, or other casualty from the Effective Date through the Closing Date or if during the such period any portion of the Premises is condemned by any governmental body or other entity with the power of condemnation, then Option Holder may at its option either (i) close this transaction in accordance with the terms of this Agreement, with the Purchase Price being reduced by the amount of such loss or damage or the value of the property condemned or (ii) be relieved of its obligations hereunder and be entitled to return of the Option Consideration paid. Owner shall disclose to Option Holder immediately any damage to the timber or improvements on the Premises which Owner becomes aware of.

10. Timber Harvesting. During the Option Period, the Owner shall be entitled to continue to harvest timber on the Premises, in accordance with South Carolina Best Management Practices for harvesting timber. Owner shall be entitled to any income received from the sale of such timber during the Option Period. Owner shall remove any and all cut trees or other timber debris caused by such harvesting activities on or prior to the Closing Date; failure to do so shall constitute damage to the Premises as set forth in Section 8 above.

11. Assignment. This Option shall be binding upon and inure to the benefit of the Owner and Option Holder and their respective heirs, devisees, executors, administrators, successors and assigns. The Option Holder may assign its interest hereunder without the prior written consent of the Owner. The Owner may sell or otherwise transfer the Premises between the Effective Date and the Closing Date, provided, however, that any such transfer of the Premises shall be made expressly subject to this Agreement.

12. Absence of Brokers. Owner represents and warrants to Option Holder that no person or other entity is entitled to any commission, broker's fee, finder's fee or other payment by reason of any action by Owner. Any amount due Owner's Broker shall be paid by Owner pursuant to a separate agreement between Owner and Owner's Broker.

13. Memorandum of Option. The Option Holder shall be entitled to record, in its sole discretion, a memorandum of this Agreement in the Office of the Kershaw County Register of Deeds. Owner agrees to execute any such memorandum requested by Option Holder.

IN WITNESS WHEREOF, The Owner and Option Holder have hereunto set their hands and seals all on this 14<sup>th</sup> day of June, 2016.

Witness:

Arnie Anderson  
[Signature]

[Signature]  
\_\_\_\_\_

OWNER:

By: [Signature]  
Name:  
Title:

OPTION HOLDER:

ERNEST HEALTH HOLDINGS

By: Arnie Anderson  
Name: Arnie Anderson  
Title: SRP Dev. Ernest Health



# EXHIBIT A

