

Spotswood Drive Parcel (TM# 29-1-31)
PURCHASE, SALE, AND DEVELOPMENT AGREEMENT

THIS AGREEMENT OF PURCHASE, SALE, AND DEVELOPMENT (hereinafter the “Agreement”), made this ____ day of July, 2022, between the **CITY OF LEXINGTON, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia (the “**Seller**”), and **ECHELON RESOURCES, INC.**, a Virginia domestic corporation (the “**Buyer**”), and/or its successors and permitted assigns, (each individually a “**Party**” and collectively “**the Parties**”).

WHEREAS, Seller owns certain real property, as more particularly described herein, located in the City of Lexington, Virginia; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, the aforementioned real property upon all of the terms and conditions set forth herein.

NOW, THEREFORE, for the hereinafter described consideration and mutual terms and conditions, the Parties agree as follows:

ARTICLE I - PROPERTY

1.1 Property Description. Seller agrees to sell and Buyer agrees to purchase a certain parcel of real property totaling 2.365 acres, more or less, along Spotswood Drive, together with all improvements, easements and appurtenances thereto belonging, further described as Tax Map # 29-1-31, (the “Property”), subject to all the terms and conditions contained herein.

ARTICLE II – PURCHASE PRICE

2.1 Purchase Price. The purchase price of the Property shall be the sum of Three Hundred Fifty Thousand Dollars (\$350,000.00) (the “Purchase Price”). The Purchase Price shall be paid as follows: upon the signing of this agreement, Buyer shall pay to Seller Five Thousand Dollars (\$5,000.00) as a deposit (the “Deposit”), with the balance of the Purchase Price to be paid in full by the Buyer on the Closing Date, as provided in Section 6.1 of this Agreement.

ARTICLE III – SELLER’S REPRESENTATIONS, WARRANTIES, AND OBLIGATIONS

3.1 Provide Reports/Plans. Within Fifteen (15) days of the Effective Date of this Agreement, Seller will provide Buyer with copies of any and all documents pertaining to the Property which are requested by Buyer and which are in Seller’s actual possession (the “Property Documents”). The “Effective Date” shall be the date this Agreement is executed by Buyer. The Property Documents include, but are not limited to, any past survey data and documents, any building plans, any environmental studies or written communications with the Environmental Protection Agency (“EPA”) or the Virginia

Department of Environmental Quality (“VDEQ”) or any other governmental agency, any title reports and any physical inspection reports or warranties that are in Seller’s actual possession. The Seller does not make any representation or warranty with regard to the accuracy, completeness, reliability, or timeliness of the Property Documents, nor does it represent or warrant that any Property Document will be relevant to Buyer’s analysis of the Property. The Seller disclaims any responsibility to update any Property Documents or to provide additional, supplementary, or superseding information, whether oral or written, whether known or unknown to Seller.

3.2 - 3.6 Intentionally Omitted.

3.7 Litigation. To the best of Seller’s actual knowledge, without inquiry, there is no litigation pending that would affect the title to the Property.

3.8 Authority. Except as otherwise provided herein, Seller has full power, authorization and approval to enter into this Agreement and to carry out its obligations hereunder.

3.9 Provide Reports. Within Forty-five (45) days of the Effective Date of this Agreement, Seller will provide, in both hard copy and editable digital format, an American Land and Title Association (“ALTA”) plat for the Property that meets standard ALTA requirements including, but not limited to, related title work, survey, access, encroachment, and contiguity requirements; a current title report for the Property; and a Phase 1 Environmental Site Assessment of the Property.

3.10 Seller’s Obligations. In accordance with terms of the conditions of this Agreement, the Seller agrees to:

- a. Fully consider any subdivision, rezoning, Conditional Use Permit and/or Zoning Text Amendment applications that are being prepared and submitted by the Buyer.
- b. Fully consider an application for the final site plan through the Lexington City Planning Commission and the Lexington City Council (the “Site Plan”).
- c. Fully consider an application for the conditional use permit or rezoning of the Property to a zoning district or districts compatible with the Project (as defined in Section 5.1, below).
- d. Process any building permit approvals necessary for completion of the Project.
- e. Provide written verification that the water and wastewater system connections for the Property are available at the Property boundary and sufficient for the Project.
- f. Waive any applicable utility tap or connection fees.
- g. Underground sewer lines may need to be relocated to avoid the future footprint of the new multifamily buildings. The costs incurred because of the need to relocate the existing sewer lines shall be split equally

between the Seller and Buyer. Buyer shall make its best effort to limit any sewer relocation costs. It is understood that these costs will likely be incurred post-Closing.

h. Confirm high-speed Internet service availability to the Property.

3.11 No Conflict. Neither the Effective Date nor the delivery of this Agreement or the documents contemplated herein, nor the consummation of the conveyance of the Property to Buyer, will conflict with or cause a breach of any of the terms and condition of, or constitute a default under, any agreement, commitment, note, mortgage, lease, bond, license, permit or other instrument or obligation by which Seller is bound.

ARTICLE IV – BUYER’S REPRESENTATIONS, WARRANTIES AND OBLIGATIONS

4.1 Sole Responsibility for Buyer Costs. Buyer shall be solely liable for any costs, fees, matches, reimbursements, or remuneration of any kind associated with Buyer’s activities, of any kind, during or following the Study Period, and will indemnify and defend Seller as provided in Section 7.4.

4.2 Authority. Buyer has full power, authorization, and approval to enter into this Agreement and to carry out its obligations hereunder.

4.3 Financing. Buyer represents that it has as of the Effective Date, and will have as of the Closing Date, as defined in Section 6.1 herein, available liquid funds in the amount of the Purchase Price, and that it will obtain the necessary funds to complete the Project.

4.4 Buyer’s Obligations. In accordance with terms of the conditions of this Agreement, the Buyer agrees to:

- a. Apply for a Conditional Use Permit to allow multifamily as a permitted use under the current R-LC zoning.
- b. Underground sewer lines may need to be relocated to avoid the future footprint of the new multifamily buildings. The costs incurred because of the need to relocate the existing sewer lines shall be split equally between the Seller and Buyer. Buyer shall make its best effort to limit any sewer relocation costs. It is understood that these costs will likely be incurred post-Closing.
- c. Purchase the Property from the Seller, subject to the terms herein.
- d. Build the Project (as defined in Section 5.1, below).
- e. Commence construction on Project within twelve months (12) months from the date of the Closing.
- f. Complete construction of the Project within twenty-four (24) months after construction begins.

4.5 No Conflict. Neither the Effective Date nor the delivery of this Agreement or the documents contemplated herein, nor the consummation of the conveyance of the Property to Buyer, will conflict with or cause a breach of any of the terms and condition of, or

constitute a default under, any agreement, commitment, note, mortgage, lease, bond, license, permit or other instrument or obligation by which Buyer is bound.

ARTICLE V – PROJECT

5.1 Development Project. Buyer is acquiring the Property for the purpose of comprehensively developing the Property into a market-rate new construction multi-family community, related amenities, and open space in accordance with the Site Plan (the “Project”).

5.2 Project Expectations. Buyer agrees that the conditions listed in Exhibit A “Project Expectations” will be addressed in any site plan and included in the final buildout of the Project, subject to any changes made prior to the City’s approval of any building permit.

ARTICLE VI – CLOSING

6.1 Time and Place. Closing and delivery of title and possession (the “Closing”) shall take place no later than thirty (30) days after the expiration of the Study Period defined below (the “Closing Date”). Buyer may proceed to Closing sooner than the expiration of the Study Period, provided Buyer waives all Seller obligations that have not been satisfied as of the Buyer’s advanced Closing Date. If Buyer proceeds to Closing sooner than the expiration of the Study Period, the remaining time in the Study Period shall be added to the Construction Period defined in Section 6.6, below. Unless otherwise agreed upon, Closing shall be held at the offices of the Title Company.

6.2 Conditions to Closing. Except as otherwise provided in this Agreement, if the Seller’s obligations are unsatisfied as of the Closing Date, and are not waived in writing by Buyer, Buyer may, at its election, terminate its obligations under this Agreement, whereupon this Agreement shall become null and void, and no Party shall thereafter have any further right or obligation hereunder except as provided in Section 7.4.

6.3 Title. Seller shall convey title to the Property by Special Warranty Deed (the “Deed”) subject to any rights, covenants, privileges, encroachments or easements encumbering the Property, whether located above, upon, or under the surface, either presently in use or of record. Subject to the terms of this Agreement, title to the Property shall be insurable in a form satisfactory to Buyer, by a nationally recognized title insurance company selected by Buyer. Title and possession of the Property shall be transferred to Buyer at Closing.

6.4 Title Examination. Buyer shall have twelve (12) months from the Effective Date (the “Study Period”), at Buyer’s sole expense, to make an examination of title of the Property. In the event the title examination discloses defects of title unsatisfactory to Buyer, in Buyer’s sole discretion, Buyer shall notify Seller in writing, prior to the expiration of the Study Period, of such title defects to which Buyer objects (an “Objection Notice”). Seller shall notify Buyer in writing within five (5) business days after receiving an Objection Notice if it believes that the Objection Notice makes reference to any title

defect that Seller cannot cure or elects in Seller's sole discretion not to cure ("Objection Response"). Upon receipt of an Objection Response from Seller, and with written notice to Seller, Buyer shall have the option within forty-five (45) days to either (i) terminate this Agreement or (ii) accept the defects, exceptions or other matters referenced in such Objection Response and proceed to Closing. In the event Buyer fails to notify Seller of its intention to terminate this Agreement, then it shall be conclusively deemed that Buyer accepts the defects, exceptions or other matters referenced in such Objection Response. In the event Seller fails to notify Buyer with an Objection Response as set forth in the preceding paragraph, Seller shall have the period until the Closing Date within which to correct all defects, exceptions or other matters that it is required to cure. If Seller fails to cure such defects, exceptions or other matters, Buyer may elect to terminate this Agreement and neither Party shall have any further obligations hereunder, except as provided in Section 7.4, or Buyer may accept the defects, exceptions or other matters.

6.5 Study Period. During the Study Period, Buyer may determine in its sole discretion that the condition of the Property is satisfactory for the intended use of Buyer.

- a. Seller shall give to Buyer and its designated agents and representatives full access to the Property during normal business hours throughout the Study Period, including the right, at Buyer's own risk, cost and expense, to cause its agents or representatives to enter upon the Property for the purpose of making surveys or soil borings, engineering, water, environmental, topographic and other similar tests, investigations or studies as Buyer may desire.
- b. During the Study Period, Buyer in its sole discretion may prepare and submit for approval the Subdivision Plan, Text Amendment application, Site Plan, rezoning application, conditional use permit application, financing application, and any other third party or regulatory approvals necessary for Closing.
- c. Provided that Buyer has undertaken work on steps listed in subparagraphs 6.5(a) or 6.5(b) above, Buyer may extend the Study Period one time for a period of up to six (6) additional months for an additional \$5,000 deposit ("Additional Deposit") by giving written Notice to the Seller within the original Study Period. Any further extension of the Study Period shall be by written agreement of the Buyer and Seller. The Buyer may terminate this Agreement during the Study Period in accordance with Section 6.8 of this Agreement, and neither Party shall have any further obligations thereafter, except as provided in Section 7.4.

6.6 Initiate Construction. Buyer will commence construction on the Property within twelve (12) months from the Closing Date (the "Construction Period"). If construction has not commenced within the Construction Period, then Seller shall have the option to reacquire title to the Property by special warranty deed free and clear of liens and encumbrances other than (i) those encumbering the Property at the time conveyed by Seller to Buyer; (ii) those contained in the Deed from Seller to Buyer; or (iii) those otherwise created or approved by Seller, and by paying to Buyer the Purchase Price theretofore paid

by Buyer to Seller (the “Repurchase Option”). For the avoidance of doubt, the Repurchase Option shall terminate when construction commences. As used in this Section, the term “commence” shall mean when the Buyer’s Contractor has begun substantial soil disturbance for the purpose of constructing the new apartment buildings on the Property, as determined by the Seller. The City Manager may waive the Repurchase Option for up to ninety (90) days if necessary to facilitate construction financing.

6.7 Notice to Proceed. If Buyer, in its sole and absolute discretion, elects to proceed with the purchase of the Property, then before the expiration of the Study Period, (i) Buyer shall deliver to Seller a written notice of Buyer’s intent to proceed (the “Notice to Proceed”). If Buyer delivers the Notice to Proceed, Buyer shall be deemed to have approved the condition of the Property in all respects, elected to proceed with the Closing and to waive its right to terminate this Agreement, except as otherwise expressly provided in this Agreement. If Buyer fails to provide a Notice to Proceed prior to the expiration of the Study Period, Buyer shall be deemed to have disapproved of the condition of the Property in all respects and to have elected not to proceed with the Closing, this Agreement shall terminate, the Deposit (and Additional Deposit, if made) shall be delivered to Buyer and the Parties hereto shall have no further obligations hereunder except as provided in Section 7.4.

6.8 Termination. Buyer may terminate this Agreement by giving Seller written notice of termination at any time prior to the expiration of the Study Period if the results of such inspections are not satisfactory to Buyer. Buyer will commence such inspections forthwith upon the Effective Date of this Agreement.

6.9 Pre-Settlement Termination. In the event that this Agreement is terminated before Closing by either Party, neither Buyer nor Seller shall have any obligation to the other, and except for damage to the Property occasioned by Buyer or its representatives, each Party shall be responsible for its own expenses, including, but not limited to, legal fees and expenses incurred in connection herewith.

6.10 Condition of the Property. Seller will convey the Property to Buyer “AS IS” and makes no representations or warranties regarding the Property except those effected by a special warranty conveyance. This sale is made subject to restrictions, covenants, agreements, and easements of record. In this regard, Seller states that it has no knowledge of any outstanding restrictions, covenants, or easements of record as of the Effective Date of this Agreement. This sale is conditioned upon the Property being in substantially the same condition on the Closing Date as the same are in on the Effective Date, except for the work required of the Parties under this Agreement. Risk of loss or damage to the Property shall be the responsibility of Seller until Closing, except that Seller shall have the right, at its sole discretion, to terminate this Agreement at any time before the Closing if the Property is substantially and/or materially damaged, in its sole and absolute discretion, by an act of God or otherwise. If said casualty occurs, Seller shall notify Buyer by certified mail within thirty (30) days of said occurrence, and each Party shall have no further actions against one another for any fees, fines, penalties, liability, or expenses of or related to the

Property, except for claims arising due to the Buyer's obligations under Section 4.4 and 7.4 hereof.

6.11 Intentionally Omitted.

6.12 Outside Closing Date. Seller shall have the right to terminate this Agreement if Closing does not occur within twenty-four (24) months of the Effective Date of this Agreement.

6.13 Prorations; Closing Costs. Seller assumes the expense of preparing the ALTA survey and Deed, related title work, Phase 1 Environmental Site Assessment, and paying its own attorneys as needed. All other expenses in connection with the purchase of the Property, including without limitation title examination, inspections, Buyer's recordation costs and Buyer's settlement agent's fees shall be borne by Buyer. Assessments, utility charges and other apportionable items, if any, shall be prorated as of the Closing Date.

6.14 Nature of Deposit. If this Agreement is terminated prior to the end of the Study Period, the Deposit (and Additional Deposit, if made) shall be refunded to the Buyer. If there is no Closing thereafter, for any reason other than a default by the Seller, the Deposit (and Additional Deposit, if made), shall remain the property of the Seller. If Closing proceeds as agreed, the Deposit and Additional Deposit shall be applied to the Purchase Price at Closing.

ARTICLE VII - MISCELLANEOUS

7.1 Notices. Any notice which a Party to this Agreement is required or may desire to give the other Party shall be in writing, addressed as provided below, and may be personally delivered or given by prepaid United States registered or certified mail, return receipt requested, or overnight mail service. Notices shall be deemed made and complete when personally delivered or mailed.

SELLER: CITY OF LEXINGTON
300 East Washington Street
Lexington, Virginia 24450
Attention: City Manager

With copy to: Jared R. Jenkins, City Attorney
Mann Legal Group, PLLC
15 East Nelson Street
Lexington, Virginia 24450

or to such other address or person as Seller may direct in writing.

BUYER: ECHELON RESOURCES, INC, C/O EDWIN GASKIN
700 Watkins Ave, #100
South Boston, VA 24592

or to such other address or person as Buyer may direct in writing.

7.2 Risk of Loss. All risk of loss or damage to the Property, or any part thereof, by fire or other casualty or cause shall remain upon Seller until Closing. In the event of damage to or destruction of any improvements prior to Closing, Buyer may declare this Agreement to be null and void and neither Party shall have any further obligations hereunder except as provided in Section 7.4.

7.3 Force Majeure. The Parties hereto are relieved of any liability if unable to meet the terms and conditions of this Agreement due to any "Act of God", riots, epidemics, pandemics, strikes, or any act or order which is beyond the control of the Party not in compliance; provided that it takes all reasonable steps practical and necessary to effect prompt resumption of its responsibilities hereunder.

7.4 Indemnification. To the extent allowed by law, Buyer shall indemnify and hold Seller harmless from and against any and all claims, judgments, damages, fines, penalties, liability, costs and expenses (including reasonable fees for attorneys, consultants and experts) arising from Buyer's (or its designated agent's and representative's) exercise of any rights hereunder. In the event Buyer for any reason does not purchase the Property, or the Buyer purchases the property but the Seller exercises its Repurchase Option, Buyer, at Buyer's expense, shall restore the Property to its prior condition to the extent of any changes made as a result of Buyer's (or its designated agent's and representative's) exercise of any rights hereunder. This Section shall survive Closing and termination of this Agreement.

7.5 Assignment. Buyer may assign this Agreement to any entity in which Edwin Gaskin is a controlling member, only with the written consent of Seller, which consent may not be unreasonably withheld. If consent is given, Buyer shall nevertheless remain liable for performance hereunder. Buyer shall provide contemporaneous notice to the Seller of such assignment. This Agreement shall be binding on the heirs, personal representatives, successors in interest and permitted assigns of the Parties.

7.6 Condemnation. In the event of condemnation or threat of condemnation of any part of the Property prior to Closing, Buyer shall have the option, in its sole discretion, to (i) terminate this Agreement or (ii) proceed to Closing without decrease in the Purchase Price conditioned upon any condemnation award being paid, credited, or assigned, as appropriate, to Buyer at Closing.

7.7 Default. In the event of any default, the non-defaulting Party shall be entitled to pursue any remedies at law or in equity in connection with the default of the other Party. The election to terminate this Agreement under the terms hereof shall not constitute a default. Nothing in this Agreement shall be construed as a waiver of the sovereign immunity of Seller or the Commonwealth of Virginia.

7.8 Entire Agreement. This Agreement, including any Exhibits attached hereto, contains the entire agreement between Seller and Buyer and all other representations, negotiations, and agreements, written and oral, including any letters of intent which pre-date the Effective Date hereof, with respect to the Property or any portion thereof, are superseded by this Agreement and are of no force and effect. This Agreement may be amended and modified only by an instrument in writing executed by both Seller and Buyer.

7.9 Approval. This Agreement, and any amendment hereto, shall not be in effect or binding until and unless approved by duly authorized agents of the City Council of the City of Lexington, Virginia, and Buyer. If this Agreement shall not be approved, neither Party shall have any further obligations hereunder.

7.10 Agents and Brokers. Both Seller and Buyer represent and warrant that they did not consult or deal with any broker or agent, real estate or otherwise, with regard to this Agreement or the transactions contemplated herein.

7.11 Time is of the Essence. The Parties hereby agree that time is of the essence with respect to performance of each of the Parties' obligations under this Agreement.

7.12 Computation of Time. In computing any period of time pursuant to this Agreement, the day of the act or event from which the designated period of time begins to run will not be included, and the last day of the period so computed will be included, unless it is a Saturday, Sunday or legal holiday recognized as such in Lexington, Virginia, in which event the period runs until the end of the next day which is not a Saturday, Sunday or such legal holiday. As used in the Agreement, "day" shall mean "calendar day" unless the term "business day" is used; "business day" shall mean a day which is not a Saturday, Sunday or legal holiday recognized as such in the Commonwealth of Virginia.

7.13 Captions. The captions in this Agreement are inserted for convenience of reference only and in no way define, describe, or limit the scope or intent of this Agreement or any of the provisions hereof.

7.14 Governing Law and Choice of Forum and Jurisdiction. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia, without regard to its conflicts of laws principles. The parties irrevocably submit to the jurisdiction and venue of the Circuit Court of Rockbridge County, Virginia in any action or proceeding arising out of, or relating to, this Agreement.

7.15. Survival. Notwithstanding any presumption to the contrary, all obligations, covenants, conditions, representations, warranties and agreements of the Seller and Buyer contained in this Agreement shall be restated as true and correct as of Closing. Each provision of this Contract which creates a right or imposes a duty that by its nature can be exercised after Closing shall survive Closing.

7.16 Interpretation. All parties hereto acknowledge that they have had the benefit of independent counsel with regard to this Agreement and that this Agreement has been

[SEAL]

Notary Public

BUYER:

By: _____
Edwin Gaskin, President – Echelon Resources, Inc. _____ Date

COMMONWEALTH OF VIRGINIA

City/County of _____, to-wit:

I, _____, Notary Public for the Commonwealth of Virginia
do hereby certify that _____, as _____ of
_____, whose name is signed to the foregoing document dated the
____ day of _____ 2022, has acknowledged the same before me in my
jurisdiction aforesaid.

Given under my hand and seal this _____ day of _____, 2022.

My commission expires: _____.

Notary Public [SEAL]