

**TOWN OF WEAVERVILLE SEEKS OFFERS CONCERNING
THE SALE OF REAL PROPERTY**

The Town of Weaverville is seeking offers for the sale of real property owned by the Town of Weaverville in Buncombe County, North Carolina, and more particularly described as follows:

Street Address: 13 Central Avenue, Weaverville, NC, 28787

Parcel Identification Number: 9742-27-8468

Deed Reference: Book 1054 at Page 316

Persons wishing to purchase the property must use the approved "Agreement for Purchase and Sale of Real Property" which contains all of the terms and conditions acceptable to the Town for the sale of the property including, but not limited to, an "as-is" condition, required deed restrictions, no loan or other contingencies, and closing within 30 days of acceptance by the Town.

Offers must be accompanied by a 5% bid deposit and be submitted in a sealed envelope marked "Offer on 13 Central Avenue" and delivered so that it is received by the Weaverville Town Clerk at 30 South Main Street, Weaverville, NC, 28787, by 4 pm on April 8, 2019. At that time the Town Clerk will open any and all offers received. The Town Clerk will identify the highest bid and, as directed by Town Council, will then advertise the highest offer received and seek upset bids pursuant to NCGS 160A-269.

The Weaverville Town Council must approve the final high offer in order to have a binding contract. The Town reserves the right to withdraw the property from sale at any time before the final high bid is accepted and the right to reject, at any time, all bids.

Further information may be obtained during normal business hours at Weaverville Town Hall, 30 South Main Street, Weaverville, NC, 28787, by phoning 828-645-7116, or by contacting Weaverville Realty at 828-658-0700.

Derek Huninghake
Weaverville Town Clerk

Posting Date: March 19, 2019

Publication Date: March 21, 2019

AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT is by and between _____,
a(n) _____ (“Buyer”), and
(individual or State of formation and type of entity)

the **TOWN OF WEAVERVILLE**, a North Carolina municipal corporation (“Seller”).

FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH HEREIN AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. Terms and Definitions: The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

(a) **“Property”**: shall mean that real property having an address of 13 Central Avenue, Weaverville, NC, 28787, and being all of the property in Deed Reference: Book 1054, Page No.316, Buncombe County; consisting of approximately 0.19 acre; Plat Reference: Being a portion of Lot 13 of the Old Hotel Property as shown on Plat Book or Slide 154 at Page(s) 99, Buncombe County; Parcel Identification: For information purposes the tax parcel number of the Property is 9742-27-8468; and together with all buildings and improvements thereon and all fixtures and appurtenances thereto.

(b) **“Purchase Price”** shall mean the sum of \$ _____, payable on the following terms:

- (1) **“Bid Deposit”** shall mean an amount equal to five percent (5%) of the Purchase Price and shall be made payable to the Town of Weaverville and presented in the form of a cashiers, certified or other bank check with an Agreement signed by Buyer. A Bid Deposit must be submitted for an offer to be complete.
- (2) **Cash, balance of Purchase Price**, payable at closing.

(c) **“Closing”** shall mean the date and time of recording of the deed and shall occur not later than 30 days from the Contract Date. **TIME IS OF THE ESSENCE AS TO CLOSING.**

(d) **“Contract Date”** means the date this Agreement has been fully executed by both Buyer and Seller.

(e) **“Examination Period”** means 20 days after the Contract Date.

(f) **“Broker(s)”** shall mean:

Weaverville Realty (“Listing Agency”), **Cindy Ward** (“Listing Agent”)

Acting as: Seller’s Agent; Dual Agent

and _____ (“Selling Agency”),

_____ (“Selling Agent”)

Acting as: Buyer’s Agent; Seller’s (Sub)Agent; Dual Agent

(g) **“Seller’s Notice Address”** shall be as follows:

Town of Weaverville
ATTN: Town Manager
PO Box 338
Weaverville, NC 28787

(h) **“Buyer’s Notice Address”** shall be as follows:

Section 2. Conditions Prior to Acceptance by Seller: An Agreement signed by the Buyer shall constitute an offer which the Seller has the right to reject at any time up until Seller indicates its acceptance by signing this Agreement. Prior to acceptance Seller is legally obligated to publish a notice of the offer and seek upset bids in accordance with NCGS 160A-269 (a copy of which is attached hereto) until such time as the upset bid procedure is repeated with no further qualifying upset bids being received. This Agreement can only be accepted on behalf of the Seller by action of the Weaverville Town Council.

Section 3. Sale of Property and Payment of Purchase Price: Upon acceptance of this Agreement Seller agrees to sell and Buyer agrees to buy the Property for the Purchase Price subject to the provisions of this Agreement.

Section 4. As-Is Condition: The Property is being sold as-is and Seller does not warrant the condition of the Property or its fitness for any particular purpose. The Seller does not agree to perform any repairs on the Property. The condition of the Property or fitness for any particular purpose shall not be used as an excuse or reason for Buyer to avoid closing.

Section 5. Inspections: Notwithstanding the fact that the Property is being sold as-is as provided in Section 4, Buyer, its agents or representatives, at Buyer's expense and at reasonable times during normal business hours, shall have the right to enter upon the Property for the purpose of inspecting, examining, performing soil boring and other testing, and surveying the Property. Buyer shall conduct all such on-site inspections, examinations, soil boring and other testing, and surveying of the Property in a good and workmanlike manner, shall repair any damage to the Property caused by Buyer's entry and on-site inspections. Upon Seller's request, Buyer shall provide to Seller evidence of general liability insurance. Buyer assumes all responsibility for the acts of itself, its agents or representatives in exercising its right of inspection and agrees to indemnify and hold Seller harmless from any damages resulting therefrom. This indemnification obligation of Buyer shall survive the Closing or earlier termination of this Agreement. Buyer shall, at Buyer's expense, promptly repair any damage to the Property caused by Buyer's entry and on-site inspections.

Section 6. Proration of Expenses and Payment of Costs: Seller and Buyer agree that all utilities shall be prorated as of the date of Closing. Seller shall pay for the preparation of a deed and all other documents necessary to perform Seller's obligations under this Agreement and other conveyance fees or taxes required by law. Buyer shall pay recording costs, costs of any title search, title insurance, survey, the cost of any inspections or investigations undertaken by Buyer under this Agreement and any real property taxes that may become due and payable on the property as of the Closing Date or thereafter. Each party shall pay its own attorney's fees.

Section 7. Evidence of Title: Seller agrees to convey fee simple marketable and insurable title to the Property free and clear of all liens, encumbrances and defects of title other than: (a) zoning ordinances affecting the Property, (b) matters of record existing at the Contract Date that are not objected to by Buyer prior to the end of the Examination Period ("Permitted Exceptions"); provided that Seller shall be required to satisfy, at or prior to Closing, any encumbrances that may be satisfied by the payment of a fixed sum of money, such as deeds of trust, mortgages or statutory liens. Seller shall not enter into or record any instrument that affects the Property after the Contract Date without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed.

Section 8. Zoning Regulations and Restrictions: Seller and Buyer acknowledge that the Property is zoned C-1 and is subject to all regulations applicable to the C-1 zoning district as the same may from time to time be amended by action of the Weaverville Town Council. The Property is also being sold subject to the following deed restrictions:

Retail stores that sell smoking supplies and accessories such as pipes, rolling papers, grinders, and/or other paraphernalia used for consumption of tobacco, cannabis or other like substances are prohibited on the Property. Also prohibited are retail stores that sell electronic cigarettes, vaping devices, and related equipment, accessories and supplies.

Section 9. Conditions: This Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon fulfillment (or waiver by Buyer, whether explicit or implied) of the following conditions:

(a) **Title Examination:** After the Contract Date, Buyer shall, at Buyer's expense, cause a title examination to be made of the Property before the end of the Examination Period. In the event that such title examination shall show that Seller's title is not fee simple marketable and insurable, subject only to Permitted Exceptions, then Buyer shall promptly notify Seller in writing of all such title defects and exceptions, in no case later than the end of the Examination Period, and Seller shall have thirty (30) days to cure said noticed defects. If Seller does not cure the defects or objections within thirty (30) days of notice thereof, then Buyer may terminate this Agreement and receive a return of the Bid Deposit (notwithstanding that the Examination Period may have expired). If Buyer is to purchase title insurance, the insuring company must be licensed to do business in the state in which the Property is located. Title to the Property must be insurable at regular rates, subject only to standard exceptions and Permitted Exceptions.

(b) **Same Condition:** If the Property is not in substantially the same condition at Closing as of the date of the offer, reasonable wear and tear excepted, then the Buyer may (i) terminate this Agreement and receive a return of the Bid Deposit or (ii) proceed to Closing whereupon Buyer shall be entitled to receive, in addition to the Property, any of the Seller's insurance proceeds payable on account of the damage or destruction applicable to the Property.

Section 10. Leases: Seller affirmatively represents and warrants that there are no leases affecting the Property.

Section 11. Risk of Loss/Damage/Repair: Until Closing, the risk of loss or damage to the Property, except as otherwise provided herein, shall be borne by Seller. Except as to maintaining the Property in its same condition, Seller shall have no responsibility for the repair of the Property, including any improvements, unless the parties hereto agree in writing.

Section 12. Bid Deposit: In the event that any of the Conditions listed in Section 9 above are not satisfied, or in the event of a breach of this Agreement by Seller, then the Bid Deposit shall be returned to Buyer, but such return shall not affect any other remedies available to Buyer for such breach. In the event this offer is accepted and Buyer breaches this Agreement, then the Bid Deposit shall be forfeited, but such forfeiture shall not affect any other remedies available to Seller for such breach. **IF BUYER CHOOSES NOT TO PURCHASE THE PROPERTY FOR ANY REASON OTHER THAN FOR A FAILURE OF A CONDITION LISTED IN SECTION 9 ABOVE OR FOR SELLER'S BREACH OF THIS AGREEMENT, THEN BUYER SHALL FORFEIT RETURN OF THE BID DEPOSIT.**

Section 13. Closing: Closing shall occur not later than 30 days from the Contract Date with *TIME BEING OF THE ESSENCE AS TO CLOSING*. At Closing, Seller shall deliver to Buyer a special warranty deed and other documents customarily executed or delivered by a seller in similar transactions, including without limitation, an owner's affidavit, lien waiver forms, and Buyer shall pay to Seller the Purchase Price. At Closing, the Bid Deposit shall be applied as part of the Purchase Price. The Closing shall be held at the office of Buyer's attorney or such other place as the parties hereto may mutually agree. Possession shall be delivered at Closing, unless otherwise agreed herein.

Section 14. Notices: Unless otherwise provided herein, all notices and other communications which may be or are required to be given or made by any party to the other in connection herewith shall be in writing and shall be deemed to have been properly given and received on the date delivered in person or deposited in the United States mail, registered or certified, return receipt requested, to the addresses set out in Section 1, or at such other addresses as specified by written notice delivered in accordance herewith.

Section 15. Entire Agreement: This Agreement constitutes the sole and entire agreement among the parties hereto and no modification of this Agreement shall be binding unless in writing and signed by all parties hereto.

Section 16. Enforceability: This Agreement shall become a contract when signed by both Buyer and Seller and such signing is communicated to both parties; it being expressly agreed that the notice described in Section 14 is not required for effective communication for the purposes of this Section 16. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns and their personal representatives.

Section 17. Adverse Information and Compliance with Laws:

(a) **Seller Knowledge:** Seller has no actual knowledge of (i) condemnation(s) affecting or contemplated with respect to the Property; (ii) actions, suits or proceedings pending or threatened against the Property; (iii) changes contemplated in any applicable laws, ordinances or restrictions affecting the Property; or (iv) governmental special assessments, either pending or confirmed, for sidewalk, paving, water, sewer, or other improvements on or adjoining the Property, and no pending or confirmed owners' association special assessments.

(b) **Compliance:** To Seller's actual knowledge, (i) Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions pertaining to or affecting the Property; (ii) performance of the Agreement will not result in the breach of, constitute any default under or result in the imposition of any lien or encumbrance upon the Property under any agreement or other instrument to which Seller is a party or by which Seller or the Property is bound; and (iii) there are no legal actions, suits or other legal or administrative proceedings pending or threatened against the Property, and Seller is not aware of any facts which might result in any such action, suit or other proceeding.

Section 18. Survival of Representations and Warranties: All representations, warranties, covenants and agreements made by the parties hereto shall survive the Closing and delivery of the deed. Seller shall, at or within six (6) months after the Closing, and without further consideration, execute, acknowledge and deliver to Buyer such other documents and instruments, and take such other action as Buyer may reasonably request or as may be necessary to more effectively transfer to Buyer the Property described herein in accordance with this Agreement.

Section 19. Brokers: Except as expressly provided herein, Buyer and Seller agree to indemnify and hold each other harmless from any and all claims of brokers, consultants or real estate agents by, through or under the indemnifying party for fees or commissions arising out of the sale of the Property to Buyer. Buyer and Seller represent and warrant to each other that: (i) except as to the Brokers designated under Section 1 of this Agreement, they have not employed nor engaged any brokers, consultants or real estate agents to be involved in this transaction and (ii) that the compensation of the Brokers is established by and shall be governed by separate agreements entered into as amongst the Brokers, the Buyer and/or the Seller.

Section 20. Applicable Law: This Agreement shall be construed under the laws of the state of North Carolina.

Section 21. Assignment: This Agreement is not assignable.

Section 22. Authority: Each signatory to this Agreement represents and warrants that he or she has full authority to sign this Agreement and such instruments as may be necessary to effectuate any transaction contemplated by this Agreement on behalf of the party for whom he or she signs and that his or her signature binds such party.

BUYER:

Individual

Date: _____

Date: _____

Business Entity

(Name of Entity)

By: _____

Name: _____

Title: _____

Date: _____

TOWN OF WEAVERVILLE, NC

By: _____

Name: _____

Title: _____

Date: _____

The undersigned hereby acknowledges receipt of the Bid Deposit set forth herein and agrees to hold said Bid Deposit in accordance with the terms hereof.

TOWN OF WEAVERVILLE, NC

By: _____

Date: _____

§ 160A-269. Negotiated offer, advertisement, and upset bids.

A city may receive, solicit, or negotiate an offer to purchase property and advertise it for upset bids. When an offer is made and the council proposes to accept it, the council shall require the offeror to deposit five percent (5%) of his bid with the city clerk, and shall publish a notice of the offer. The notice shall contain a general description of the property, the amount and terms of the offer, and a notice that within 10 days any person may raise the bid by not less than ten percent (10%) of the first one thousand dollars (\$1,000) and five percent (5%) of the remainder. When a bid is raised, the bidder shall deposit with the city clerk five percent (5%) of the increased bid, and the clerk shall readvertise the offer at the increased bid. This procedure shall be repeated until no further qualifying upset bids are received, at which time the council may accept the offer and sell the property to the highest bidder. The council may at any time reject any and all offers. (1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, s. 25.)