

PURCHASE AND SALE CONTRACT

THIS PURCHASE AND SALE CONTRACT (this "Contract") is made as of the Date of this Contract (as defined in paragraph 28 below) among the following parties (the "Parties"):

Purchaser: John Winkler
Seller: Watauga County
Escrow Agent: The Clerk to the Board of the Watauga County Commissioners

BACKGROUND

WHEREAS: Seller is the owner of the Property (as defined in paragraph 1 below). Purchaser desires to purchase the Property, and Seller desires to sell the Property to Purchaser, subject to and upon the terms and conditions of this Contract.

AGREEMENT

NOW, THEREFORE, in consideration of the agreements contained herein, the Earnest Money (as defined in paragraph 3 below), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Property. Seller agrees to sell, and Purchaser agrees to purchase from Seller, that certain tract or parcel of land having parcel identification number 2910-16-1829-000, located at 347 Oak Street, Boone, Watauga County, North Carolina, together with all privileges, rights, members, and appurtenances thereto and together with all improvements, fixtures, personal property, trees, and timber located thereon (collectively, the "Property").

2. Purchase Price. The purchase price (the "Purchase Price") of the Property shall be One Hundred Sixty Thousand Dollars AND NO/100 DOLLARS (160,000), payable by wire transfer, or other form of immediately available funds at Closing (as defined in paragraph 6).

3. Earnest Money. Purchaser shall deliver to Escrow Agent the sum of EIGHT THOUSAND Dollars AND NO/100 DOLLARS (8,000.00) by check as earnest money, delivered within ten (10) days after the Date of this Contract. Such sum, together with any interest earned thereon and any additions thereto, is hereinafter referred to as the "Earnest Money". The Escrow Agent shall invest such sum in an interest bearing account with an FDIC insured bank. The Earnest Money shall be retained or refunded, as the case may be, in accordance with the terms of this Contract and shall, if applicable, be applied as a credit against the Purchase Price at Closing. Purchaser agrees to sign all forms required in connection with Escrow Agent's holding and investing the Earnest Money, such as IRS and bank account forms and reports, and for such purposes the Earnest Money shall be considered the property of Purchaser until such time as Escrow Agent disburses the Earnest Money to another Party. The preceding sentence shall not change in any way the other provisions in this Contract concerning Escrow Agent's holding and disbursing the Earnest Money.

4. Costs and Prorations.

4.1 Seller shall pay any transfer or grantor tax applicable to this transfer of the Property from Seller to Purchaser. Purchaser shall pay the costs of recording the warranty deed to the Property. Each Party shall pay its own attorney's fees. Purchaser shall pay the costs of its title examination, title insurance and any survey Purchaser obtains. All other costs shall be paid

by the appropriate Party in accordance with custom for commercial real estate transactions of this type or as otherwise specifically provided for in this Contract.

4.2 All taxes, assessments, other expenses, and income related to the Property shall be prorated, credited, or added, as applicable, to the Purchase Price at Closing, and, except to the extent otherwise provided for herein, shall adjust the Purchase Price. The terms and provisions of this paragraph 4.2 shall survive Closing.

5. Title and Purchaser Objections.

5.1 Seller shall convey good, marketable and insurable title to the Property to Purchaser by special warranty deed, which shall expressly be made subject only to matters as are approved or waived by Purchaser in writing as set forth below. Regardless of whether Purchaser objects thereto, the Property shall not be subject to any (i) mortgage, deed to secure debt, deed of trust, security agreement, judgment, lien or claim of lien, or any other title exception or defect that is monetary in nature, Seller hereby agreeing to pay and satisfy of record any such title encumbrances, defects or exceptions prior to or at Closing at Seller's sole cost and expense, or (ii) any leases, management agreements, service contracts, rental agreements, licenses or occupancy agreements, whether the same are written or oral in nature. As to any other title exceptions, encumbrances or defects not covered by the preceding sentence, such as easements or restrictions, and as to matters related to the Survey (as defined in paragraph 8 below), Purchaser shall have the right, prior to the expiration of the Investigation Period (as defined in paragraph 21 hereof) to examine title to the Property and to give Notice (as defined in paragraph 11) to Seller of any objections which Purchaser may have as to the title to the Property and/or the Survey. If Purchaser fails to give any Notice to Seller by such date, Purchaser shall be deemed to have waived this right to object to any Survey or title exceptions, encumbrances or defects which would be revealed by a proper title examination, unless the same are effective and/or recorded after the Date of this Contract. Except as provided for in the preceding sentence, if Purchaser does give Seller Notice of objection to any Survey and/or title exception, encumbrance or defect, Seller shall then have the right, but not the obligation, for a period of fifteen (15) days after such Notice to cure or satisfy such objection(s); provided, however, that Seller shall be obligated to cure any monetary encumbrance. If the objection is not so satisfied by Seller, then Purchaser shall have the right to Terminate (as defined in paragraph 18.2 below) this Contract by Notice to Seller, in which case the Earnest Money shall be immediately returned to Purchaser and, except as otherwise expressly provided for herein, Purchaser and Seller shall have no further obligations under this Contract. If Seller does so timely cure or satisfy the objection, then this Contract shall continue in full force and effect. Purchaser shall have the right at any time to waive any objections that Purchaser may have previously given Seller Notice of, whereupon this Contract shall continue in full force and effect. Seller agrees not to further alter or encumber in any way, or suffer any exceptions as to, Seller's title to the Property (including, without limitation, leasing, licensing or giving an easement for any portion of the Property including any encumbrances on the improvements located on the Property) after the Date of this Contract.

5.2 As used in subparagraph 5.1, "insurable title" shall mean title insurable at standard rates by a national title company with a standard ALTA (Form B) owner's title insurance policy subject to standard exceptions only which may be approved or rejected by Purchaser, in Purchaser's sole and absolute discretion.

6. Closing. Subject to any termination rights or other Contract contingencies contained herein, the closing or settlement (the "Closing") of the transaction contemplated hereby shall be held at a place of Purchaser's choosing within Watauga County, North Carolina, or other location mutually agreeable to Purchaser and Seller, on or before the date which is thirty (30) days following the expiration of the Investigation Period. The exact time, place, and date of Closing shall be selected by Purchaser by Notice to the Parties at least five (5) days prior to the date so selected.

7. Broker and Broker's Commission.

7.1 Not applicable.

7.2 Purchaser and Seller each warrant and represent to the other that, with the exception of any Broker identified in paragraph 7.1, it has not employed or dealt with a real estate broker or agent in connection with the transaction contemplated hereby. The terms and provisions of this paragraph 7.2 shall survive Closing.

8. Survey and Inspection. Purchaser and Purchaser's agents, employees and independent contractors shall have the right and privilege to enter upon the Property prior to Closing to prepare a survey as to the Property (the "Survey") and inspect the Property to conduct soil borings and other geological, topographic, engineering, and/or landscaping tests or studies, to perform and conduct environmental site assessments, studies, tests, and/or analysis, and to otherwise investigate the feasibility of the Property for Purchaser's use (collectively, the "Inspections"), all at Purchaser's sole cost and expense.

Purchaser hereby covenants and agrees to indemnify and hold harmless Seller from any and all loss, liability, costs, claims, demands, damages, actions, causes of actions, and suits arising out of or in any manner related to the exercise by Purchaser of Purchaser's rights under this paragraph, except for any losses, liabilities, costs, claims, demands, damages, actions, causes of action, and/or suits arising out of or in any manner related to the actions or inactions of Seller and/or Seller's agents, employees, contractors, tenants, officers, directors, members, and/or managers. This indemnification shall survive Closing or termination of this Contract for one (1) year from the date of Closing or termination of this Contract, as the case may be.

9. Reserved.

10. Destruction of Improvements. If all or any material part of the improvements, if any, on the Property is destroyed or damaged (excluding normal and reasonable wear and tear) prior to Closing, Seller shall immediately give Notice to Purchaser of such damage or destruction and the details of Seller's insurance coverage (which such details shall include but not be limited to insurance coverage amounts, payments and disbursements). Purchaser shall elect to either (i) Terminate this Contract, in which event the Earnest Money shall be immediately refunded to Purchaser, or (ii) close the transaction contemplated hereby, in which event the Purchase Price shall not be reduced but Seller shall prior to Closing assign to Purchaser all of Seller's rights in any insurance proceeds paid or payable to Seller in connection with damage or destruction to or of such improvements on the Property. If Purchaser does not give timely Notice as provided for in this paragraph, Purchaser shall be deemed to have elected to close the transaction contemplated hereby in accordance with clause (ii) of this paragraph. Seller agrees until Closing to maintain any improvements located on the Property in their existing condition, normal and reasonable wear and tear excepted, and to preserve in effect all existing insurance on the improvements.

11. Notice. Each notice (the "Notice") provided for under this Contract must comply with the requirements of this paragraph. Each Notice shall be in writing, addressed to the appropriate Party (and marked to a particular individual's attention if so indicated) as hereinafter provided, and sent by a Party or its counsel by (a) depositing it with the United States Postal Service or any official successor thereto, certified or registered mail, return receipt requested, with adequate postage prepaid; (b) nationally recognized overnight express carrier; (c) by hand delivery; or (d) by email transmission of a copy in .pdf format with a duplicate copy sent on the same day of the email transmission by any of the means provided in (a), (b) or (c) above. Each Notice shall be effective upon first being so deposited or delivered by any of the four (4) methods described in the preceding sentence, but the time period in which a response, if any, to any Notice must be given or any action taken with respect thereto shall commence to run from the date of receipt of the Notice by the addressee thereof, as evidenced by the receipt or the return receipt in the case of certified mail. Rejection or other refusal by the addressee to accept or the inability to deliver because of a changed address of which no Notice was given shall be deemed to be the receipt of the Notice sent. Any Party shall have the right from time to time to change the address or individual's attention to which Notices to it shall be sent and to specify up to two additional addresses to which copies of Notices to it shall be sent by giving to the other Parties at least ten (10) days prior Notice thereof.

The addresses of the Parties are set forth below:

Notice to Purchaser:

John Winkler
215 Boone Hts. Dr. Ste. 107
Boone, NC 28607

Attention: _____
Telephone: (828) 268-1676
Email: winkheelsfan@yahoo.com

with copy to:

N/A

Attention: _____
Telephone: () - _____
Email: _____

Notice to Seller: Watauga County
814 West King Street, Suite 205,
Boone, North Carolina 28607
Attention: Deron Geouque
Telephone: (828) 265-8100
Facsimile: (828) 264-3230
Email: _____

with copy to: Eggers, Eggers, Eggers, & Eggers, PLLC
Post Office Box 248
Boone, NC 28607
Attention: Stacy C. Eggers, IV
Telephone: (828) 264-3601
Facsimile: (828) 262-5229
Email: four@eggers-law.com

Escrow Agent: Clerk to the Board of Watauga County
814 West King Street
Boone, NC 28607
Attention: _____
Fax: (828)264-3230
Main Phone: _____
Email: _____

12. Documents. Each Party shall deliver to the other Party appropriate evidence to establish the authority of such Party to enter into and close the transaction contemplated hereby. Seller shall also deliver to Purchaser at Closing Seller's deed and an affidavit of title with respect to the Property in form satisfactory to Purchaser's title insurer to issue title insurance without exception for broker's, mechanic's, materialmen's or other statutory liens or for the rights of parties in possession. Seller shall provide to Purchaser a certification complying with the requirements of Sections 1445 and 7701 of the Internal Revenue Code of 1986 (as amended) stating that Seller is not a foreign person within the meaning of such sections, without which Purchaser shall withhold as required and an affidavit or other document complying with the requirements of any applicable state withholding law. The Parties shall also deliver at Closing any other documents reasonably necessary to complete and evidence the transaction contemplated hereby.

13. Default and Remedies. If the transaction contemplated hereby fails to close by reason of Purchaser's failure or refusal to perform its obligations under this Contract, or Purchaser otherwise fails or refuses to perform its obligations hereunder in any material respects, and such failure or refusal is not cured within fifteen (15) Business Days (as hereinafter defined) after receipt of Notice from Seller, as Seller's non-exclusive remedy, Seller shall have the right to terminate this Contract by notice to Purchaser and the Escrow Agent and Escrow Agent shall pay to Seller the Earnest Money.

If Seller fails or refuses to convey the Property in accordance with the terms of this Contract or otherwise fails or refuses to perform its obligations hereunder, then Purchaser shall have the right in its sole and absolute discretion and as its sole remedy to either (a) Terminate the Contract and receive an immediate refund of the Earnest Money paid pursuant to paragraph 6 hereof, without waiving any other remedy at law or in equity, or (b) enforce specific performance of Seller's obligations under this Contract.

14. Time of Essence. Time is of the essence of this Contract.

15. Entire Agreement. This Contract constitutes the entire agreement of the Parties and may not be amended except by written instrument executed by Purchaser and Seller. Broker and Escrow Agent need not be a party to amendments to this Contract, provided such amendments do not materially affect or impair their rights or duties hereunder.

16. Interpretation. The paragraph headings are inserted for convenience only and are in no

way intended to interpret, define, or limit the scope or content of this Contract or any provision hereof. If any Party is made up of more than one person or entity, then all such persons and entities shall be included jointly and severally, even though the defined term for such Party is used in the singular in this Contract. If any right of approval or consent by a Party is provided for in this Contract, the Party shall exercise the right promptly, in good faith and with reasonableness, unless this Contract expressly gives such Party the right to use its sole discretion. The term "Business Day" shall mean Monday through Friday excluding nationally recognized holidays and holidays recognized by the state government of the State in which the property is located. If any time period under this Contract ends on a day other than a Business Day, then the time period shall be extended until the next business day.

17. Possession. Seller shall deliver actual possession of the Property at Closing.

18. Reserved.

19. Applicable Law. This Contract shall be construed and interpreted in accordance with the laws of the State of North Carolina.

20. Successors and Assigns. This Contract shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Purchaser shall have the absolute right and authority to assign in whole or in part this Contract and all of its rights hereunder to any party and any such assignee shall be entitled to all of the rights and powers of Purchaser hereunder to the extent of such assigned interest. Upon any such assignment, such assignee shall succeed to all of the rights and obligations of Purchaser hereunder to the extent of such assigned interest and shall for all purposes hereof to the extent of such assigned interest, be substituted as and be deemed the Purchaser hereunder and Purchaser shall be released from all obligations under this Contract. However, any assignee shall post an amount equal to the Earnest Money required under this contract before such Earnest Money may be released to Purchaser. No person, firm, corporation, or other entity, other than Purchaser, shall have any obligation or liability hereunder as a principal, disclosed or undisclosed, or otherwise, except as otherwise herein expressly provided.

21. Investigation Period.

21.1 The Purchaser's obligations under this Contract are subject to and conditioned upon Purchaser's investigation and study of the Property and its satisfaction with all aspects thereof deemed relevant by Purchaser, in its sole and absolute discretion, including, but not limited to: items disclosed via the examination of title to the Property and on the Survey, the zoning of the Property; the soil conditions of and availability of all utilities to the Property in adequate capacities and at appropriate locations; access to the Property via public roads; the availability of all approvals and permits required for use of the Property; and economic and feasibility studies of the Property. Purchaser shall have until the date which is ninety ~~(90)~~ days following the Date of this Contract, the "Investigation Period"), in which to make such investigations and studies with respect to the Property as Purchaser deems appropriate, in its sole and absolute discretion, and to Terminate this Contract by Notice to Seller if any aspect of the Property or matter in any way related thereto is not, for any reason whatsoever, or for no reason at all, satisfactory to Purchaser, in Purchaser's sole and absolute discretion. If Purchaser gives such Notice of Termination prior to 5:00 P.M. on the expiration date of the Investigation Period, the Earnest Money shall be refunded by Escrow Agent to Purchaser.

2
N/A
180
DAYS

22. Seller's Agreements. Seller warrants, represents and agrees that:

22.1 Seller is the owner of the Property.

22.2 No condemnation proceeding is pending or, to the best of Seller's knowledge, threatened with respect to any part of the Property.

22.3 No assessments have been made against the Property (or any part thereof) that are unpaid (except ad valorem taxes for the current year), whether or not they have become liens.

22.4 Seller has complied with all applicable laws, ordinances, regulations, statutes, and rules pertaining to and affecting the Property.

22.5 The Property is not subject to any lease, sublease, rental agreement or rights of any tenant or lessee of the Property, and that so long as this Contract remains in force, Seller shall not rent, lease, encumber or convey all or any portion of the Property, or enter into any agreement granting to anyone any right with respect to the Property, or any portion thereof.

Seller agrees to take such actions at its expense as may be necessary to cause such warranties, representations and agreements to be true and satisfied as of the date of Closing. Seller shall affirm the warranties, representations and agreements at (and as of the date of) Closing and such warranties, representations or agreements shall survive the Closing for a period of one (1) year after the Closing. For purposes of this paragraph 22, the phrase "to the best of Seller's knowledge," or words of similar import, shall be deemed to refer to the best knowledge, after independent investigation and inquiry has been made by Seller and any representative of Seller with the responsibility for overseeing the Property.

^{N/A}
23. Contingencies. ~~Not applicable.~~ See Attachment # 1

24. Escrow Agent. In performing any of its duties hereunder, the Escrow Agent shall not incur any liability to anyone for any damages, losses or expenses, except for willful default or breach of trust, and it shall accordingly not incur any such liability with respect (i) to any action taken or omitted in good faith upon advice of its counsel, or (ii) to any action taken or omitted in reliance upon any instrument, including any written notice or instruction provided for in this Contract, not only as to its due execution and the validity and effectiveness of its provisions but also as to the truth and accuracy of any information contained therein, which the Escrow Agent shall in good faith believe to be genuine, to have been signed or presented by a proper person or persons and to conform with the provisions of this Contract. The Escrow Agent is hereby specifically authorized to refuse to act except upon the written consent of Seller and Purchaser. Escrow Agent shall not have responsibility for any and all losses, claims, damages, liabilities and expenses, including reasonable costs of investigation and counsel fees and disbursements, which may be imposed upon the Escrow Agent or incurred by the Escrow Agent in connection with its acceptance or the performance of its duties hereunder, including any litigation arising from this Contract or involving the subject matter hereof, excluding any losses, claims, damages, liabilities, and/or expenses incurred, arising from, and/or related to the gross negligence and/or willful misconduct of Escrow Agent and/or its agents, employees, contractors, officers, directors, members and/or managers. In the event of a dispute between Seller and Purchaser sufficient in the reasonable discretion of the Escrow Agent to justify its doing so, the Escrow Agent shall be entitled to tender into the registry or custody of any court of competent jurisdiction all money or property in its hands under this Contract, together with such legal pleadings as it deems appropriate, and thereupon be discharged from all further duties and liabilities under this Contract. Any such legal action may be brought in the General Court of Justice in Watauga County, North Carolina. Seller and Purchaser shall bear their own costs all costs and expenses of any such legal proceedings.

25. Counterpart Execution; Electronic Signature. This Contract may be executed in separate counterparts. It shall be fully executed when each Party whose signature is required has signed at least one counterpart even though no one counterpart contains the signatures of all the Parties. The execution of a counterpart of this Contract and return of same to the other party by facsimile transmission or by email transmission of a copy in .pdf format shall constitute an original and shall serve to bind the parties so executing and returning such counterpart. This Contract may not be recorded by any party hereto without the prior written consent of the other party hereto.

26. Force Majeure. Force Majeure shall mean delays caused by any governmental or quasi-governmental entity; shortages of materials, natural resources or labor; fire; catastrophe; labor strikes; civil commotion; riots; war; inclement weather or other similar reasons not the fault of the non-performing party; acts of terrorism; acts of God; governmental prohibitions or regulations; delays due to environmental issues related to the demolition and/or construction of the improvements for the Property; inability to obtain materials; or any and all other extraordinary causes (but not including financial inability) not the fault of Purchaser. If an event of Force Majeure occurs, Purchaser shall not have any liability to Seller for non-performance of the affected provision of this Contract and the period of time Purchaser has for performance as provided in this Contract shall be extended one day for each day performance is delayed by such event of Force Majeure.

27. OFAC Representations, Warranties, and Indemnification.

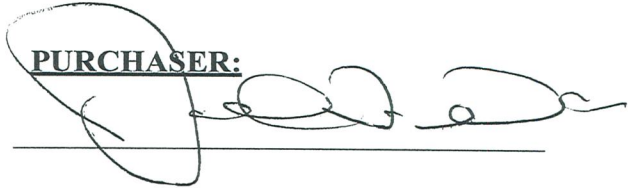
(a) Representations and Warranties. Seller and Purchaser each represents and warrants that: (i) it is not, and none of its partners, members, managers, employees, officers, directors, representatives or agents is, a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the

September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or under any other law, rule, order, or regulation that is enforced or administered by OFAC (such persons and entities each being a "Prohibited Person"); (ii) it is not acting, directly or indirectly, for or on behalf of any Prohibited Person; (iii) it is not engaged in this transaction, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of any Prohibited Person; and (iv) it will not contract with or otherwise engage in any dealings or transactions or be otherwise associated with any Prohibited Person.

28. Offer, Acceptance and Contract. This document shall constitute an offer by Purchaser. This offer is subject to acceptance by Seller pursuant to the Negotiated Offer, Advertisement, and Upset Bid process set forth of municipal governments in N.C. Gen. Stat. §160A-269 until 21 days following the completion of the upset bid process. Purchaser acknowledges that following the Upset Bid process, N.C. Gen. Stat. §160A-269 reserves to the governing board the right to reject any and all offers. Seller shall submit the advertisement for upset bids within five business days following receipt of the Earnest Money. In calculating the amount required by statute to raise the bid as set forth under this statute, Seller will evaluate any and all upset bids based upon the net proceeds to be received by Seller. In the event an upset bid is received with a different or no commission due to a Broker, such upset bid will be considered as valid if it raises the net proceed to be received by the Seller by the applicable statutory amount. In calculating all Earnest Money deposits, including any upset bids received by Purchaser, the amount of deposit shall be based upon the total contract price. In the event an Upset Bid is received and proposed to be accepted by a purchaser other than the original Purchaser to this contract, the commission set forth in this agreement shall not be due or paid and Paragraph 7.1 of this agreement shall be null and void. If this offer is so accepted by Seller, it shall become a binding contract. The validity of this Contract between Purchaser and Seller shall not be affected by whether or not any Broker or the Escrow Agent has signed this Contract or any amendments hereto. As used herein, the phrase "Date of this Contract" shall mean the first date that the Contract is executed by both Purchaser and Seller. If any time period under this Contract ends on a day other than a Business Day (as hereinafter defined), then the time period shall be extended until the next Business Day. As used herein, "Business Day" shall mean Monday through Friday excluding holidays recognized by banks and other financial institutions operating in the United States.

(See Following Page for Signatures)

IN WITNESS WHEREOF, the Parties have set their hands and seals hereto as of the day and year indicated next to their signatures.

PURCHASER:


By: John Winkler
Name: John Winkler
Title: N/A

Date signed by Purchaser: 8/19/14

SELLER:

WATAUGA COUNTY

By: 
Nathan A. Miller, Chairman

Date signed by Seller: 8/28/14

This instrument has been preaudited in the manner required by the local Government Budget and Fiscal Control Act.

8/28/14 
Date Finance Director

ESCROW AGENT

The undersigned hereby acknowledges receipt of the sum of and No/100 Dollars (\$8,000.00) from Purchaser as deposit under this Contract and agrees to serve as Escrow Agent hereunder and to perform in accordance with the terms hereof.

Clerk to the Board of Watauga County

BY: 

DATE: 8/28/14

Attachment 1

NAM
FOR A minimum
OF 18 Bedrooms

Closing is contingent upon buyer receiving a zoning permit from the Town of Boone within 180 days of acceptance of this contract by the County Commissioners. In the event the Town of Boone should deny the zoning permit, the buyer may terminate the contract and receive a full refund of the earnest money deposit. The parties may agree in writing to extend the deadline to obtain a zoning permit.