

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

**NEGOTIATED OFFER RECEIVED PURSUANT TO N.C.G.S. § 160A-269
("Offer")**

NOW COMES WNH INVESTMENTS, LLC, a North Carolina limited liability company, ("Buyer") and offers to purchase from the **CITY OF HENDERSONVILLE**, a North Carolina municipal corporation ("CITY") that property more particularly described in paragraph below entitled "PROPERTY", attached hereto and incorporated by reference, on the terms and conditions hereinafter set forth:

PROPERTY: Lying and Being in HENDERSON County, being all of that real property identified as Parcel B1, containing 2,227 sq. ft., as shown on that Plat recorded in Plat Book 2023 at page 14832, Henderson County registry. The Property is a portion of a tax parcel ID of 9568880780. The property was acquired by the CITY in Deed Book 399 at Page 565 of the Henderson County Register of Deeds Office.

OFFER: Buyer offers to pay to CITY the sum of \$50,000.00.

ADDITIONAL TERMS AND CONDITIONS: Those additional terms and conditions as specified in Exhibit A, attached hereto and incorporated by reference, shall be deemed part of this Offer as if fully set forth herein.

UPSET BID PROCEDURE TO GOVERN: It is acknowledged that the sale of the Property, if any, will be governed by the procedures of North Carolina General Statute § 160A-269 (the "Statute"). This Offer will be presented to the Hendersonville City Council for consideration of whether to issue a proposed acceptance of the Offer. "Proposed Acceptance" shall mean the adoption of a Resolution by the Hendersonville City Council at a duly held meeting, proposing to accept this Offer, and directing that this Offer be advertised for upset bid. If Hendersonville's City Council issues a Proposed Acceptance, the Buyer shall deposit with the CITY Clerk a sum equal to five (5%) percent of this Offer. The CITY shall then cause to be published in a newspaper of record a notice that it proposes to accept this Offer, generally describing the Property and the terms of this Offer, and advise that anyone may make an upset bid within ten days of the publication of the notice in an amount prescribed by the Statute. If there is an upset bid, then upon the maker of the upset bid making the deposit with the CITY Clerk as is required by the Statute, the deposit made hereunder shall be refunded, and this Offer shall be deemed null and void. If there is no upset bid received, this Offer will again be presented to the Hendersonville City Council for Final Acceptance. "Final Acceptance" shall mean the adoption of a Resolution by the City Council, adopted at a duly called meeting, stating that this Offer has been finally accepted.

DUE DILIGENCE PERIOD: If the City Council issues Final Acceptance of this Offer, then there shall be a due diligence period of 30 days, beginning on the date of the Final Acceptance, during which period Buyer may terminate the Agreement, formed by the Final Acceptance of this Offer, for any reason or for no reason at all. Said period shall be referred to as the "Due Diligence Period." At the commencement of the Due Diligence Period, the CITY agrees to provide Buyer with any information and reports that it or its consultants have regarding the Property, including title and survey information, soils reports and environmental assessments. During the Due Diligence Period, Buyer shall be permitted to make such investigations of the Property, at Buyer's sole expense, and shall be permitted to make applications for any and all developmental approval of Buyer's plans for the Property. Buyer shall repair and return to the condition as of the date of this Offer any damage caused by all investigations of the Property performed by or on behalf of the Buyer.

At least ten days prior to the expiration of the Due Diligence Period, the Buyer may request in writing, an extension the Due Diligence Period for an additional 30 days. Extensions shall be at the sole and absolute discretion of the CITY.

CLOSING: If the City Council issues Final Acceptance of this Offer, then closing shall occur within 30 days after the conclusion of the Due Diligence Period at CITY offices in Hendersonville, or such other place as is mutually agreeable to the parties. At closing, CITY shall deliver the title as described hereinbelow to the Property, and Buyer shall pay to CITY the balance of the purchase price in certified funds.

TITLE: CITY shall deliver a fee simple title to the Property by a Special Warranty Deed, subject to Permitted Exceptions as provided hereinbelow.

PERMITTED EXCEPTIONS: Title to the Property shall be subject to valid and enforceable restrictions of record and easements and rights of way affecting the Property, any applicable zoning or other land use laws and ordinances, and the lien for ad valorem taxes, if any.

The CITY will reserve easements for the placement, construction, replacement, and repair of utility lines on the Property.

COSTS: CITY shall be responsible for preparing the deed conveying title, and any documentary stamps that it is not exempt from paying. Buyer shall be responsible for all other costs. Each party will be responsible for its own attorney's fees.

OFFER AND ACCEPTANCE. This instrument shall constitute a binding offer by Buyer to the CITY and shall remain open for acceptance by the CITY until such time as (1) an upset bid has been received, and the bid deposit has been received by the CITY for such upset bid; (2) the CITY rejects this Offer, or (3) the CITY issues a Final Acceptance

of this Offer, whichever occurs first. In the event the CITY receives an upset bid and the bid deposit for such upset bid is received by the CITY, or in the event the CITY rejects this Offer, then this Offer shall be deemed terminated, and neither party hereto shall have any obligation, duty, or liability to the other party. In the event the CITY issues a Final Acceptance of this Offer, this Offer shall become a binding Agreement between the parties hereto and shall be interpreted as an Agreement between the parties hereto in spite of the many references to this document as an "Offer."

REJECTION OF OFFER: It is understood and agreed by the Buyer that at any time prior to the issuance of a Final Acceptance of this Offer, the CITY may (1) reject any and all offers (including this Offer) and/or upset bids received, and/or (2) withdraw the Property from sale, as allowed by North Carolina General Statute § 160A-269.

EXECUTION OF THIS OFFER: The Buyer represents and warrants that this Offer has been duly authorized, and that the person signing has the authority to sign this Offer on behalf of the Buyer.

This Offer is made this 30 day of OCTOBER, 2023.

WNH Investments, LLC, a North Carolina
limited liability company, BUYER

By: 

Print name:

Title: *Member Mgr*

Date of Proposed Acceptance by the CITY: _____

Date of Final Acceptance by the CITY: _____

EXHIBIT A

ADDITIONAL TERMS AND CONDITIONS

- 1. DISCLAIMER OF WARRANTIES:** BUYER ACKNOWLEDGES AND AGREES THAT THE CITY DOES NOT, BY THE ISSUANCE OF A PROPOSED ACCEPTANCE OR FINAL ACCEPTANCE, OR BY THE EXECUTION AND DELIVERY OF ANY DOCUMENT OR INSTRUMENT EXECUTED AND DELIVERED IN CONNECTION WITH THE SALE OF THE PROPERTY, MAKE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE WHATSOEVER, WITH RESPECT TO THE PROPERTY, AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE CITY MAKES, AND SHALL MAKE, NO EXPRESS OR IMPLIED WARRANTY AS TO MATTERS OF TITLE (OTHER THAN THE CITY'S LIMITED WARRANTY OF TITLE SET FORTH IN THE SPECIAL WARRANTY DEED TO BE DELIVERED AT CLOSING), SUCH MATTERS AS AN ACCURATE SURVEY WOULD REVEAL, VALUE & MARKETABILITY OF THE PROPERTY, ZONING, TAX CONSEQUENCES, PHYSICAL OR ENVIRONMENTAL CONDITION (INCLUDING, WITHOUT LIMITATION, LAWS, RULES, REGULATIONS, ORDERS AND REQUIREMENTS PERTAINING TO THE USE, HANDLING, GENERATION, TREATMENT, STORAGE OR DISPOSAL OF ANY TOXIC OR HAZARDOUS WASTE OR TOXIC, HAZARDOUS OR REGULATED SUBSTANCE), VALUATION, GOVERNMENTAL APPROVALS, GOVERNMENTAL REGULATIONS OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE PROPERTY, (HEREINAFTER COLLECTIVELY CALLED THE "DISCLAIMED MATTERS"). BUYER AGREES THAT, WITH RESPECT TO THE PROPERTY, BUYER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF THE CITY. IF THE CITY ISSUES A FINAL ACCEPTANCE FOR THE PROPERTY, THE CITY SHALL SELL AND CONVEY TO BUYER, AND BUYER SHALL ACCEPT, THE PROPERTY "AS IS", "WHERE IS", AND WITH ALL FAULTS, AND THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS, COLLATERAL TO OR AFFECTING THE PROPERTY BY THE CITY OR ANY THIRD PARTY. WITHOUT IN ANY WAY LIMITING ANY PROVISION OF THIS PARAGRAPH, BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT IT HEREBY WAIVES, RELEASES AND DISCHARGES ANY CLAIM IT HAS, MIGHT HAVE HAD OR MAY HAVE AGAINST THE CITY WITH RESPECT TO (i) THE DISCLAIMED MATTERS, (ii) THE CONDITION OF THE PROPERTY, EITHER PATENT OR LATENT, (iii) THE PAST, PRESENT OR FUTURE CONDITION OR COMPLIANCE OF THE PROPERTY WITH REGARD TO ANY ENVIRONMENTAL PROTECTION, POLLUTION CONTROL OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, INCLUDING, WITHOUT LIMITATION, CERCLA, AND (iv) ANY OTHER STATE OF FACTS THAT EXISTS WITH RESPECT TO THE PROPERTY. THE TERMS AND CONDITIONS OF THIS PARAGRAPH SHALL EXPRESSLY SURVIVE THE CONSUMMATION OF THE PURCHASE AND SALE OF THE PROPERTY ON THE CLOSING DATE, THE DELIVERY OF THE DEED AND THE PAYMENT OF THE

PURCHASE PRICE, WITHOUT REGARD TO ANY LIMITATIONS UPON SURVIVAL SET FORTH IN THIS OFFER.

2. **Form of Deposit.** Buyer's five percent deposit shall be made in cash, cashier's check, or money order. Any interest earned on the deposit while held by the CITY shall accrue to the benefit of the CITY, whether or not the Hendersonville City Council issues a Final Acceptance of this Offer and whether or not the purchase and sale of the Property contemplated hereby is consummated in accordance with the terms and provisions of this Offer.
3. **Other Payments at Closing.**
 - a. **Taxes.** Buyer will be responsible for ad valorem taxes accruing after the date of sale, it being acknowledged that the Property has been exempt from taxation during the period The CITY has owned the Property. In the event Closing occurs in 2024, taxes will be prorated between the CITY and the Buyer over the 2024 calendar year.
 - b. **Dues, Assessments, Common Area Maintenance.** All dues, assessments and common area maintenance charges, and similar impositions imposed upon or assessed against the Property (herein called the "CAM Fees"), for the year in which Closing occurs shall be prorated as of the Closing Date on a calendar year basis.
 - c. **Other.** Any other items which are customarily prorated in connection with the purchase and sale of properties similar to the Property shall be prorated as of the Closing Date.

In the event that the amount of any item to be prorated is not determinable at the time of Closing, such proration shall be made on the basis of the best available information, and the parties shall re-prorate such item promptly upon receipt of the applicable bills therefor and shall make between themselves any equitable adjustment required by reason of any difference between the estimated amount used as a basis for the proration at Closing and the actual amount subject to proration. In the event any prorated item is due and payable at the time of Closing, the same shall be paid at Closing. If any prorated item is not paid at Closing, the CITY shall deliver to Buyer the bills therefor promptly upon receipt thereof and Buyer shall be responsible for the payment in full thereof within the time fixed for payment thereof and before the same shall become delinquent.

4. **Possession at Closing.** The CITY shall surrender possession of the Property to Buyer on the Closing Date, subject to the Permitted Exceptions.
5. **Remedies.**

(a) If the Hendersonville City Council issues a Final Acceptance of this Offer, and if the purchase and sale of the Property contemplated hereby is not consummated in accordance with the terms and provisions of this Offer due to circumstances or conditions which constitute a default by Buyer under this Offer, the bid deposit shall retained by the CITY as the CITY's full liquidated damages for such default. The parties acknowledge that the CITY's actual damages in the event of a default by Buyer will be difficult to ascertain, that such liquidated damages represent the parties' best estimate of such damages, and that the CITY and Buyer believe such liquidated damages are a reasonable estimate of such damages. The parties expressly acknowledge that the foregoing liquidated damages are intended not as a penalty, but as full liquidated damages, in the event of a

default. Such liquidated damages shall be the sole and exclusive remedy of the CITY by reason of a default by Buyer, and the CITY hereby waives and releases any right to sue Buyer for specific performance of this Offer or to prove that the CITY's actual damages exceed the amount which is herein provided to the CITY as full liquidated damages.

(b) If the Hendersonville City Council issues a Final Acceptance of this Offer, and if the purchase and sale of the Property contemplated hereby is not consummated in accordance with the terms and provisions of this Offer due to circumstances or conditions which constitute a default by the CITY under this Offer, the Earnest Money shall be refunded to Buyer promptly upon request, and Buyer, as its sole and exclusive remedy, shall have the right to terminate this Offer, in which event all rights and obligations of the parties under this Offer shall expire, and this Offer shall become null and void, and the CITY shall have no other liability to Buyer under this Offer.

6. **General Provisions.**

- a. **Brokers.** There are no real estate brokers, agents or consultants involved in the making of this Offer, or in any Proposed Acceptance or Final Acceptance issued by the CITY, and the parties hereto shall indemnify and hold each other harmless from any fee or brokerage claims arising out of this transaction.
- b. **Divestment Act.** The Buyer is not listed on the Final Divestment List ("Divestment List") created by the North Carolina State Treasurer pursuant to Article 6E, N.C.G.S. § 147-86.55, *et seq.*, ("Iran Divestment Act of 2015"). The Buyer shall not utilize in the performance of its obligations hereunder any agent, contractor or subcontractor listed on the Divestment List.
- c. **E-Verify.** The Buyer shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes of North Carolina. Further, if the Buyer utilizes an agent, contractor or subcontractor, Buyer shall require them to comply with the requirements of Article 2 of Chapter 64 of the General Statutes of North Carolina.
- d. **Notice.** Whenever any notice, demand or request is required or permitted under this Offer, such notice, demand or request shall be in writing and shall be delivered by hand, be sent by registered or certified mail, postage prepaid, return receipt requested, or be sent by nationally recognized commercial courier (UPS, FedEx, etc.) for next business day delivery, to the addresses set forth below.

To the Buyer:

WNH INVESTMENTS, LLC
Attn: Harry B. Iler III
521 N Main St
Hendersonville NC 28792

To the CITY:

CITY OF HENDERSONVILLE
Attn: John Connet, City Manager
160 6th Avenue East
Hendersonville NC 28792

With copy to:

Angela Beeker, City Attorney
160 6th Avenue East
Hendersonville NC 28792

All notices, demands or requests delivered by hand shall be deemed given upon the date so delivered; those given by mailing as hereinabove provided shall be deemed given on the date of deposit in the United States Mail; those given by commercial courier as hereinabove provided shall be deemed given on the date of deposit with the commercial courier. Nonetheless, the time period, if any, in which a response to any notice, demand or request must be given shall commence to run from the date of receipt of the notice, demand or request by the addressee thereof. Any notice, demand or request not received because of changed address of which no notice was given as hereinabove provided or because of refusal to accept delivery shall be deemed received by the party to whom addressed on the date of hand delivery, on the first calendar day after deposit with commercial courier, or on the third calendar day following deposit in the United States Mail, as the case may be. Notices may be sent by email or facsimile for convenience, but must be followed up by one of the means above, which will be the official notice.

- e. **Assignment.** This Offer may not be assigned by the Buyer.
- f. **Headings.** The use of headings, captions and numbers in this Offer is solely for the convenience of identifying and indexing the various provisions in this Offer and shall in no event be considered otherwise in construing or interpreting any provision in this Offer.
- g. **Applicable Law, Venue.** This Offer shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of North Carolina. The sole venue for any suit, claim or action shall be in a state or federal court sitting in HENDERSON County, North Carolina. Nothing herein shall be deemed to confer jurisdiction upon the federal courts, except as may be otherwise provided by law.
- h. **Entire Offer; Modification.** This Offer supersedes all prior discussions and agreements among the CITY and Buyer with respect to the purchase and sale of the Property and other matters contained herein, and this Offer contains the sole and entire understanding among the CITY and Buyer with respect thereto. This Offer shall not be modified or amended except by an instrument in writing executed by or on behalf of the CITY and Buyer.
- i. **Attorney's Fees.** In the event of any litigation between Buyer and the CITY arising under or in connection with this Offer, the prevailing party shall be entitled to recover from the other party the expenses of litigation (including reasonable attorneys' fees, expenses and disbursements) incurred by the prevailing party.
- j. **Authority.** Each party hereto warrants and represents that such party has full and complete authority to enter into this Offer and each person executing this Offer on behalf of a party

warrants and represents that he has been fully authorized to execute this Offer on behalf of such party and that such party is bound by the signature of such representative.

- k. **Counsel.** Each party hereto warrants and represents that each party has been afforded the opportunity to be represented by counsel of its choice in connection with the execution of this Offer and has had ample opportunity to read, review, and understand the provisions of this Offer.
- l. **No Construction Against Preparer.** No provision of this Offer shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party's having or being deemed to have prepared or imposed such provision.
- m. **No Lien.** This Offer is not and shall not be deemed or considered to convey or be an interest in or lien against the Property.
- n. **No Recording.** In no event shall this Offer or any memorandum hereof be recorded by Buyer in any public records, and any such recordation or attempted recordation shall constitute a breach of this Offer by Buyer.
- o. **Time of Essence; Dates.** Time is of the essence of this Agreement. Anywhere a day certain is stated for payment or for performance of any obligation, the day certain so stated enters into and becomes a part of the consideration for this Agreement. If any date set forth in this Agreement shall fall on, or any time period set forth in this Agreement shall expire on, a day which is a Saturday, Sunday, federal or state holiday, or other non-business day, such date shall automatically be extended to, and the expiration of such time period shall automatically to be extended to, the next day which is not a Saturday, Sunday, federal or state holiday or other non-business day. The final day of any time period under this Agreement or any deadline under this Agreement shall be the specified day or date, and shall include the period of time through and including such specified day or date. All references to the "Effective Date," if any, shall be deemed to refer to the date the CITY issues a Final Acceptance of this Offer.