



Item Overview

Business Meeting – 12/05/2016

Agenda # 8

Subject: Consider Proposed Town Acquisition of American Legion Property

Staff:

Roger Stancil, Town Manager
Ken Pennoyer, Director of Business Management
Ralph Karpinos, Town Attorney

Department:

Town Manager’s Office
Business Management
Town Attorney’s Office

Overview: Tonight the Council may authorize the Town Manager to sign a contract to purchase the 35 acre American Legion Property on Legion Road for \$7,900,000.



Recommendations

That the Council receive public input and authorize the Manager to sign a contract to purchase the Legion property and execute all the necessary documents needed to complete the acquisition, including the lease of the buildings and surrounding grounds back to the American Legion for three years.

Decision Point

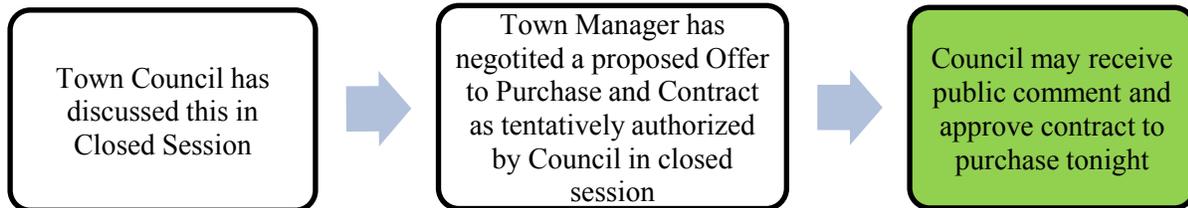
- Should the Council purchase the American Legion Property?

Key Issues

- Town could purchase entire 35 acre tract
- Planning process would precede decisions on how to use parts of property
- Some of purchase price could be recovered if part of property is later sold for private development
- Proposed Agreement for Purchase and Sale is subject to final acceptance by the general membership of Chapel Hill Post 6, American Legion Inc. (See Sec. 9 of attached Agreement for Purchase and Sale of Real Property.)
- Buildings and surrounding lands would be leased to American Legion for three years

Fiscal Impact/Resources: Initial \$3.6 million payment would come from Fund Balance; source of two future payments would be determined later.

Where is this item in its process?



Council Goals:

<input checked="" type="checkbox"/>		Create a Place for Everyone	<input checked="" type="checkbox"/>		Develop Good Places, New Spaces
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<input checked="" type="checkbox"/>		Support Community Prosperity	<input checked="" type="checkbox"/>		Nurture Our Community
<input type="checkbox"/>		Facilitate Getting Around	<input type="checkbox"/>		Grow Town and Gown Collaboration



Attachments:

- Resolution
- Budget Ordinance
- Project Ordinance
- Proposed Offer to Purchase and Contract
- Proposed Lease
- Land Description
- Map of Leased Premises

A RESOLUTION AUTHORIZING THE TOWN MANAGER TO EXECUTE AN OFFER TO PURCHASE AND CONTRACT AND LEASE FOR THE AMERICAN LEGION PROPERTY (2016-12-05/R-8)

WHEREAS, the Town Council and citizens of Chapel Hill have for some time indicated an interest in the possible acquisition by the Town of the 35 acre American Legion Property on Legion Road; and

WHEREAS, the Town Council has discussed the possibility of acquiring this parcel of land a number of times in public session and in closed session; and

WHEREAS, the 35 acre American Legion Property has the potential to be used for a number of possible purposes which would be beneficial to the Town and its citizens; and

WHEREAS, the Town closed the 2016 Fiscal Year with \$3.6 million over its targeted fund balance; and

WHEREAS, in November the residents of Chapel Hill approved a \$40.3 million bond referendum; and

WHEREAS, the American Legion renewed a previous opportunity to the Town to make an offer to purchase the property; and

WHEREAS, the Council authorized the Town Manager to enter into negotiations for the possible acquisition of the Legion Property; and

WHEREAS, as a result of those negotiations the Town has been given the opportunity to contract to purchase the property for \$7.9 million, subject to formal acceptance by the general membership of Chapel Hill Post 6, American Legion, Inc.; and

WHEREAS, the Council finds that the acquisition of the Legion property for this price is supported by a formal appraisal, informal estimates of value, and recent prices for land purchases in the Chapel Hill area; and

WHEREAS, the Council finds that the acquisition of the Legion property will provide the opportunity for the Town to consider opportunities for potential different uses for parts of the property which will provide benefit to the Town and its residents; and

WHEREAS, pending the development of a plan for the future uses of the property the Council finds that the lease of the buildings and surrounding open space back to the American Legion for 3 years for \$1.00 per years is reasonable.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Town of Chapel Hill that the Council authorizes the Town Manager to execute an offer to purchase and contract to purchase the 35 acre American Legion property and lease of the buildings substantially in the form and

under the terms presented to the Council on December 5, 2016 and to complete all necessary steps to finalize the transactions described therein and as presented to the Council.

This the 5th day of December, 2016.

AN ORDINANCE TO AMEND “THE ORDINANCE CONCERNING APPROPRIATIONS AND THE RAISING OF REVENUE FOR THE FISCAL YEAR BEGINNING JULY 1, 2016” (2016-12-05/O-3)

BE IT ORDAINED by the Council of the Town of Chapel Hill that the Budget Ordinance entitled “An Ordinance Concerning Appropriations and the Raising of Revenue for the Fiscal Year Beginning July 1, 2016” as duly adopted on June 13, 2016, be and the same is hereby amended as follows:

ARTICLE I

APPROPRIATIONS	Current Budget	Increase	Decrease	Revised Budget
GENERAL FUND				
Mayor/Council	\$ 440,634	\$ -	\$ -	\$ 440,634
Town Manager/CaPA	2,451,568	-	-	2,451,568
Human Resource Dev't	1,961,898	-	-	1,961,898
Business Management	2,103,786	-	-	2,103,786
Technology Solutions	1,945,508	-	-	1,945,508
Attorney	339,184	-	-	339,184
Planning & Sustainability	4,348,079	-	-	4,348,079
Housing and Community	746,472	-	-	746,472
Public Works	13,309,948	-	-	13,309,948
Police	13,473,673	-	-	13,473,673
Fire	9,392,501	-	-	9,392,501
Parks and Recreation	7,218,178	-	-	7,218,178
Library	3,052,127	-	-	3,052,127
Non-Departmental	8,031,800	3,650,000	-	11,681,800
GENERAL FUND TOTAL	\$ 68,815,356	\$ 3,650,000	\$ -	\$ 72,465,356

ARTICLE II

REVENUES	Current Budget	Increase	Decrease	Revised Budget
GENERAL FUND				
Other Revenues	\$ 60,343,397	\$ -	\$ -	\$ 60,343,397
Appropriated Fund Balance	8,471,959	3,650,000	-	12,121,959
GENERAL FUND TOTAL	\$ 68,815,356	\$ 3,650,000	\$ -	\$ 72,465,356

This the 5th day of December, 2016.

AN ORDINANCE TO AMEND THE CAPITAL PROJECTS ORDINANCE FOR VARIOUS CAPITAL PROJECTS (2016-12-05/O-4)

BE IT ORDAINED by the Council of the Town of Chapel Hill that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the capital project ordinance for various capital projects funded from a variety of sources is hereby amended as follows:

“SECTION I

The capital projects as authorized by the Town Council include various capital projects funded from grants, the Capital Improvements Program funds, and other miscellaneous sources of revenue for a variety of projects extending beyond one year.

SECTION II

The Manager of the Town of Chapel Hill is hereby directed to proceed with the implementation of these projects within terms of funds appropriated here.

SECTION III

Revenues anticipated to be available to the Town to complete the project are hereby amended as follows:

	Current Budget	Revised Budget
Other Revenues	\$ 29,626,294	\$ 29,626,294
Transfer from General Fund	<u>2,940,160</u>	<u>6,590,160</u>
Total Revenues	\$ 32,566,454	\$ 36,216,454

SECTION IV

Amounts appropriated for capital projects are hereby amended as follows:

	Current Budget	Revised Budget
Other Projects	\$ 32,566,454	\$ 32,566,454
American Legion Property	<u> -</u>	<u> 3,650,000</u>
Total Expenditures	\$ 32,566,454	\$ 36,216,454

SECTION V

The Town Manager is hereby directed to report annually on the financial status of the project in an informational section to be included in the Annual Budget, and shall keep the Council informed of any unusual occurrences.

SECTION VI

Copies of this projects ordinance shall be entered into the minutes of the Council and copies shall be filed within five days of adoption with the Manager, Business Management Director and Town Clerk.”

This the 5th day of December, 2016.

**NORTH CAROLINA
ORANGE COUNTY**

**AGREEMENT FOR PURCHASE AND
SALE OF REAL PROPERTY**

THIS AGREEMENT, including any and all exhibits or addenda attached hereto (“Agreement”), is made this _____ day of _____, 2016 by and between Town of Chapel Hill, (a North Carolina municipal corporation) (“Buyer”), and Chapel Hill Post 6, American Legion, Inc. (a North Carolina non-profit corporation) (“Seller”). The Effective Date of this Agreement shall be the date this Agreement has been fully executed by both Buyer and Seller.

IN CONSIDERATION OF the purchase price and the other mutual promises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

Section 1. Sale of Property and Payment of Purchase Price:

A. Seller agrees to sell and Buyer agrees to purchase all that Property of Seller located at 1714 Legion Road, Chapel Hill, Orange County, North Carolina and described in Exhibit A attached hereto and incorporated herein by reference, including all rights, privileges, hereditaments, and easements appurtenant thereto, including without limitation, all water rights, rights of way, roadways and roadbeds, and utilities used or to be used in connection with the Property, together with all buildings and improvements thereon and all fixtures used or to be used in connection with the Property.

B. Buyer shall pay Seller as the Purchase Price the total sum of Seven Million Nine Hundred Thousand and 00/100 Dollars (\$7,900,000.00) payable as follows:

(i) Within three (3) business days after the Effective Date, Buyer shall deposit Earnest Money in the amount of Forty Thousand and 00/100 Dollars (\$40,000.00) cash in escrow with Mr. Eric Hinson, Attorney at Law, Chapel Hill, North Carolina to be applied as part payment of the Purchase Price of the Property at Closing, or disbursed as agreed upon under the provisions of Section 6 hereinbelow. The Earnest Money held in Mr. Hinson’s attorney trust account shall not bear interest for the benefit of any of the parties hereto.

(ii) Buyer’s Promissory Note in the amount of Four Million Three Hundred Thousand Dollars and 00/100 (\$4,300,000.00) and bearing simple interest at the rate of one percent (1%) per annum secured by a deed of trust on the property transferred and payable in two consecutive annual installments, the first installment consisting of \$2.15 million plus accumulated interest to the date of payment due on the first anniversary of Closing Date and the second installment consisting of the entire remaining principal balance due plus accumulated interest to the date of payment on the second anniversary

of Closing Date. The Closing Date of this Agreement shall mean the date and time of recording of the deed. The promissory note may be prepaid at any time in whole or in part without penalty and without further interest on the amounts prepaid from the date of such prepayment.

(iii) The balance of the Purchase Price at Closing in the amount of Three Million Five Hundred Sixty Thousand and 00/100 Dollars (\$3,560,000.00) payable in cash or immediately available funds.

Section 2. Closing:

A. Closing shall occur on or before March 31, 2017. At Closing, Seller shall deliver to Buyer a general warranty deed and other documents customarily executed or delivered by a seller in similar transactions, including without limitation, a bill of sale for any personalty, an owner's affidavit, lien waiver forms and a non-foreign status affidavit (pursuant to the Foreign Investment in Real Property Tax Act), and Buyer shall pay to Seller the Purchase Price. At Closing, the Earnest Money 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.

B. Seller and Buyer agree that all property taxes (on a calendar year basis), leases, rents, mortgage payments and utilities or any other assumed liabilities, if any, shall be prorated as of the date of Closing with the following exceptions: first, Buyer agrees to maintain its current property tax exemption, if any, including timely reapplying for such status for the tax year 2017, if required; and second, Buyer shall assume and pay the Storm Water Fee for the entire year 2017.

C. Seller shall pay for preparation of the deed and all other documents necessary to perform Seller's obligations under this Agreement, excise tax (revenue stamps), any deferred or rollback real property taxes, and other conveyance fees or taxes required by law. Buyer shall pay recording costs, costs of any title search, title insurance, survey, and the cost of any examinations or inspections undertaken by Buyer under this Agreement. Each party shall pay its own attorney's fees.

D. 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) leases, and (c) 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.

E. Buyer agrees, in the event the Buyer designates any of the Property as a park and any naming opportunity for the Property so designated arises, Buyer will use its best efforts to name the Property so designated as Legion Park. Buyer further agrees, in the event the access road into the Property shall become a formal street, to use its best efforts to name the street Robert Bauman Road or Way or Bauman Road or Way.

Section 3. Adverse Information and Compliance with Laws:

A. 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. For purposes of this Agreement, a "confirmed" special assessment is defined as an assessment that has been approved by a governmental agency or an owners' association for the purpose(s) stated, whether or not it is fully payable at time of Closing. A "pending" special assessment is defined as an assessment that is under formal consideration by a governing body. Seller shall pay all owners' association assessments and all governmental assessments confirmed as of the time of Closing, if any, and Buyer shall take title subject to all pending assessments disclosed by Seller herein, if any.

B. 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.

C. Seller represents and warrants that it has no actual knowledge of the presence or disposal, except as in accordance with applicable law, within the buildings or on the Property of hazardous or toxic waste or substances, which are defined as those substances, materials, and wastes, including, but not limited to, those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR Part 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302.4) and amendments thereto, or such substances, materials and wastes, which are or become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a Hazardous Substance pursuant to Section 311 of the Clean Water Act of 1977 (33 U.S.C. §1321) or listed pursuant to Section 307 of the Clean Water Act of 1977 (33 U.S.C. §1317), (v) defined as a hazardous waste pursuant to Section 1004 of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6903) or (vi) defined as a hazardous substance

pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601). Seller has no actual knowledge of any contamination of the Property from such substances as may have been disposed of or stored on neighboring tracts.

D. Upon Closing, Buyer agrees to lease to Seller for Three (3) Years from the Closing Date that portion of the Property and upon all those terms and conditions shown in the Lease Agreement attached hereto as Exhibit B and made a part hereof. Seller discloses to Buyer that at the time of making this Agreement (1) a portion of the property to be leased to Seller is currently subject to an oral, month-to-month lease to a tenant who operates a business on the leasehold and (2) Seller from time to time licenses the use of the main building which it occupies for its own activities to others on a temporary basis. Seller expects to continue these uses during the term of its Lease Agreement, and Buyer consents to these continued uses by Seller, its tenant and licensees.

Section 4. Examination Period and Inspections:

Beginning on the Effective Date of the Agreement and continuing through and until March 15, 2017, Buyer shall have the rights described hereinbelow to examine and inspect the property and title thereto to determine whether the Property is suitable and acceptable for Buyer's purposes in Buyer's sole judgment and discretion. If Buyer chooses at any time during the Examination Period not to purchase the Property, for any reason or no reason, and provides written notice to Seller thereof prior to the expiration of the Examination Period, then this Agreement shall terminate, and Buyer shall receive a return of the Earnest Money.

A. Seller agrees to use its best efforts to deliver to Buyer as soon as reasonably possible after the Effective Date copies of all information relating to the Property in possession of or available to Seller, including but not limited to: title insurance policies, surveys and copies of all presently effective warranties or service contracts related to the Property. Seller authorizes (1) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney's file to Buyer and both Buyer's and Seller's agents and attorneys; and (2) the Property's title insurer or its agent to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to Buyer and both Buyer's and Seller's agents and attorneys. If Buyer does not consummate the Closing for any reason other than Seller default, then Buyer shall return to Seller all materials delivered by Seller to Buyer pursuant to this Section 4, if any, and shall, upon Seller's request, provide to Seller copies of (subject to the ownership and copyright interests of the preparer thereof) any and all studies, reports, surveys and other information relating directly to the Property prepared by or at the request of Buyer, its employees and agents, and shall deliver to Seller, upon the release of the Earnest Money, copies of all of the foregoing without any warranty or representation by Buyer as to the contents, accuracy or correctness thereof.

B. Title Examination: After the Effective 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 fifteen (15) days to cure said noticed defects. If Seller does not cure the defects or objections within fifteen (15) days of notice thereof, then Buyer may terminate this Agreement and receive a return of Earnest Money (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 North Carolina. Title to the Property must be insurable at regular rates, subject only to standard exceptions and Permitted Exceptions.

C. Inspections: 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, and performing such surveying, environmental, engineering, topographical, geological, soil and other tests, borings, studies, and measurements as Buyer deems necessary or desirable to thoroughly review and examine the Property. Buyer shall conduct all such on-site inspections, examinations, tests and measurements 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 and shall conduct same in a manner that does not unreasonably interfere with Seller's or any tenant's use and enjoyment of the Property. In that respect, Buyer shall make reasonable efforts to undertake on-site inspections outside of the hours any tenant's business is open to the public and shall give prior notice to any tenants of any entry onto any tenant's portion of the Property for the purpose of conducting inspections. Upon Seller's request, Buyer shall provide to Seller evidence of general liability insurance. Buyer shall also have a right to review and inspect all contracts or other agreements affecting or related directly to the Property and shall be entitled to review such books and records of Seller that relate directly to the operation and maintenance of the Property, provided, however, that Buyer shall not disclose any information regarding this Property (or any tenant therein) unless required by law and the same shall be regarded as confidential, to any person, except to its attorneys, accountants, lenders and other professional advisors, in which case Buyer shall obtain their agreement to maintain such confidentiality. Buyer assumes all responsibility for the acts of itself, its agents or representatives in exercising its rights under this Section 4 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. Buyer shall have from the Effective Date through the end of the Examination Period to perform the above inspections, examinations and testing. If Buyer chooses at any time during the Examination Period not to purchase the Property, for any reason or no reason, and provides written notice to Seller thereof prior to the expiration of the Examination Period, then this Agreement shall terminate, and Buyer shall receive a return of the Earnest Money.

Section 5. 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. If the Property is not in substantially the same condition at Closing as of the date of the Agreement, reasonable wear and tear excepted, then the Buyer may (i) terminate this Agreement and receive a return of the Earnest Money or (ii) proceed to Closing whereupon Buyer shall be entitled to receive, in addition to the Property, any of the Seller's insurance proceeds, if any, payable on account of the damage or destruction applicable to the Property.

Section 6. Earnest Money Disbursement:

In the event that any of the conditions hereto are not satisfied, or in the event of a breach of this Agreement by Seller, then the Earnest Money shall be returned to Buyer, but such return shall not affect any other remedies available to Buyer for such breach. In the event Buyer breaches this Agreement, then the Earnest Money shall be forfeited, but such forfeiture shall not affect any other remedies available to Seller for such breach. In the event of any dispute between the Parties concerning the disbursement of the Earnest Money, the agent holding the Earnest Money may deposit the disputed monies with the appropriate clerk of court in accordance with North Carolina General Statutes.

Section 7. 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, tendered to a nationally recognized overnight courier service, deposited in the United States mail, certified, return receipt requested, or sent via electronic mail or facsimile, using the addresses set out below, or at such other addresses as specified by written notice delivered in accordance herewith.

Buyer's Notice Address shall be Mr. Roger L. Stancil, Town Manager, Town of Chapel Hill, 405 Martin Luther King Jr. Blvd., Chapel Hill, NC 27514, telephone 919-969-5000, facsimile 919-969-2063, email rstancil@townofchapelhill.org; with a copy to Mr. Ralph D. Karpinos, Town Attorney, at the same mailing address, telephone 919-968-2746, facsimile same, email rkarpinos@townofchapelhill.org.

Seller's Notice Address shall be Mr. William Munsee, Post Commander, Chapel Hill Post 6, American Legion, Inc., 109 Fawn Ridge Road, Chapel Hill, NC 27516, telephone 919-201-0167, facsimile none, email wmunsee@aol.com; with a copy to Mr. Richard J. Snider, Jr., Attorney, Snider & Rawlins, 105 S. 4th Street, Mebane, NC 27302, telephone 919-619-3184, facsimile 919-928-5511, email rick@snider-rawlins.com.

Section 8. Assignment:

This Agreement may not be assigned by either party without the express written consent of the non-assigning party, which consent shall be entirely in the discretion of the party. All attempted assignments without the consent of the non-assigning party shall be void.

Section 9. Authority:

The Closing of this Agreement for the Seller is contingent upon the approval of the sale by the general membership of Chapel Hill Post 6, American Legion, Inc. in accordance with the provisions of its Articles of Incorporation, Constitution, and Bylaws including those provisions which reference the participation of the American Legion Department of North Carolina. Seller promises to use its best efforts promptly to seek and obtain the approval of its members as provided herein. In the event the general memberships does not approve the sale on or before December 15, 2016, then, and in that event, this Agreement shall terminate and the Earnest Money shall be returned to the Buyer.

Except as provided hereinabove, 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.

Section 10. Brokers:

Seller discloses that William Munsee, who has acted as a principal on behalf of Seller, is the holder of a North Carolina Real Estate Brokers license, although he has not acted in that capacity in this transaction and is not being compensated for his work in this transaction.

Buyer and Seller represent and warrant to each other that they have not employed nor engaged any broker, real estate agent or salesman, finder, dealer, or consultant to be involved in this transaction. Buyer and Seller agree to indemnify and hold each other harmless from any and all claims of any broker, real estate agent or salesman, finder, dealer, or consultant claiming by, through or under the indemnifying party for fees or commissions arising out of the sale of the Property to Buyer.

Section 11. Miscellaneous:

A. Time is of the Essence. Time shall be strictly of the essence with respect to the performance of all of the obligations of the Parties to this Agreement.

B. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be considered to be an original and all of which together will constitute

the same instrument. Scanned, faxed, or other electronic copies of the executed Agreement shall be effective as originals.

C. Entire Agreement and Amendment. This Agreement constitutes the sole and entire agreement among the parties hereto and supersedes all prior negotiations, representations, or agreements, written or oral, as to the matters contained herein, and all such prior negotiations, representations or agreements are merged herein. No modification or amendment of this Agreement shall be binding unless in writing and signed by all parties hereto.

D. Parties Bound. This Agreement shall be binding upon and inure to the benefit of the parties, their respective personal representatives, successors and assigns.

E. 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.

F. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of North Carolina.

IN WITNESS WHEREOF, and by authority duly given, the parties hereto have caused this Agreement to be executed as of the dates indicated.

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

Finance Officer for Buyer
Date: _____

BUYER:
Town of Chapel Hill

SELLER:
American Legion Post 6, Chapel Hill, Inc.

By: _____
Roger L. Stancil, Town Manager
Date: _____

By: _____
William E. Munsee, Post Commander
Date: _____

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

Eric Hinson, Attorney at Law
Date: _____

Exhibit B**NORTH CAROLINA
ORANGE COUNTY****LEASE AGREEMENT**

THIS LEASE is made and entered into this _____ day of _____, 2017, by and between Town of Chapel Hill (Landlord) and Chapel Hill Post 6, American Legion, Inc. (Tenant).

WHEREAS, Tenant, as Seller, has sold to Landlord, as Buyer, Tenant's Property at 1714 Legion Road, Chapel Hill, North Carolina; and

WHEREAS, Landlord has agreed to lease back to Tenant a part of the Property acquired as described hereinbelow; and

WHEREAS, it is the intent of the parties that Tenant shall use and enjoy and keep and maintain the buildings on the leased premises and the Landlord shall use and enjoy and keep and maintain the grounds of the Property acquired, including the leased premises;

NOW, THEREFORE, in consideration of the rent to be paid and the mutual covenants contained herein, the parties hereto agree as follows:

**SECTION ONE
SUBJECT AND PURPOSE**

Landlord leases to Tenant that certain real property and improvements situated thereon known and identified as a part of 1714 Legion Road, Chapel Hill, North Carolina, consisting of the American Legion Post Building and other buildings and improvements and designated surrounding driveways, parking areas, and open fields currently in use and cleared of vegetation, all as more particularly shown on the overhead photograph attached as Exhibit "A".

As long as Tenant is entitled to possession of demised premises, Tenant shall have the nonexclusive right to use any parking, driveways, sidewalks and other common areas of the property as they may exist from time to time, provided, however, that Landlord may make alterations to the premises exclusive of the buildings so long as Tenant's access to the premises and that of its subtenants and licensees is maintained.

**SECTION TWO
TERM AND RENT**

The term of this Lease shall be for a period of three (3) years, commencing on the date the Property is transferred from Tenant to Landlord (Closing Date) and terminating on the third anniversary of the Closing Date unless extended or terminated under other

provisions of this Lease. Tenant shall pay rent for the term of the Lease of the demised premises the sum of \$1 per annum during the initial term payable on each anniversary of the Closing Date.

Upon expiration of the initial term, this Lease Agreement shall continue on a month-to-month basis until terminated at the election of either party by giving 60-days written notice to the other party of the intent to terminate. Tenant shall pay rent for each month of the term in the amount of \$1 per month after the expiration of the initial term payable on the first day of each month of the continuing term.

SECTION THREE USE OF PREMISES

The demised premises are to be used by Tenant in a manner consistent with Tenant's prior use as the owner of the Property including, without limitation, meetings of the American Legion Post 6, subletting a part of the premises to a dance studio, and licensing others to use the Post main building to conduct meetings and parties. Tenant shall restrict its use to such purposes and shall not use or permit the use of the premises for any other purpose without the written consent of the Landlord, which written consent shall not be unreasonably withheld.

SECTION FOUR ALTERATIONS, ADDITIONS AND IMPROVEMENTS

Subject to the limitation that no substantial portion of the building on the demised premises shall be demolished or removed by Tenant without the prior written consent of the Landlord, Tenant may at any time and from time to time during the Lease term, subject to the conditions set forth below and at its own expense, make any alterations, additions or improvements in and to the demised premises and the building. Alterations shall be performed in a workmanlike manner and shall not weaken or impair the structural strength, or lessen the value of the building on the premises, or change the purposes for which the building, or any part thereof, may be used. Conditions with respect to alterations or improvements are as follows:

1. Before commencement of any work, all plans and specifications shall be filed with and approved by all governmental departments or authorities, if any, having jurisdiction and any public utility company having an interest therein, and all work shall be done in accordance with the requirements of local regulations.
2. No material structural alterations or improvements shall be constructed without the prior written consent of the Landlord, which consent shall not be unreasonably withheld.
3. All such alterations or additions must be approved in advance by Landlord.

.All alterations, additions and improvements on or in the demised premises at the commencement of the term and that may be erected or installed during the term, shall be part of the demised premises, except that all movable trade fixtures installed by the Tenant shall be and remain the property of the Tenant.

SECTION FIVE REPAIRS

Tenant shall, at its own expense, keep all buildings on the premises in as good repair as when the premises were received by it, and it shall return the premises at the expiration or termination of this Lease in good order and condition, less ordinary wear and tear. The Tenant shall keep and maintain the roof, exterior masonry walls, exterior doors, windows and glass of all the buildings on the demised premises in good condition and agrees that if any of the aforementioned becomes defective during the term of this Lease, that Tenant will repair and restore the defective part to good condition. The Tenant further agrees to repair or replace any defective parts or components of the electrical, plumbing, and heating and air conditioning systems.

Landlord shall, at its own expense, shall keep the exterior grounds of the Property, including the leased premises, in good condition, keeping all open areas properly mown, and repairing the roads and parking areas.

SECTION SIX TAXES

Landlord shall pay on or before the last day on which payment may be made without penalty or interest, all ad valorem taxes, assessments or other governmental charges that shall or may during the Lease term be imposed on or arise in connection with the demised premises or any part thereof.

Tenant shall pay all ad valorem taxes assessed against its personal property located on the demised premises, and Tenant shall also pay all privilege and occupational taxes, sales taxes, income taxes and all other taxes assessed in connection with the operation of its business.

SECTION SEVEN UTILITIES

The Tenant shall be solely liable for all water, sewer, electrical, gas, heating and cooling services, telephone and broadband services consumed on the demised premises.

SECTION EIGHT INSURANCE

During the term of the Lease and for any further time that Tenant shall hold the demised premises, the following types and amounts of insurance shall be maintained in force:

1. Tenant shall maintain comprehensive general liability insurance on an occurrence basis, with Landlord as a named insured, with a company qualified to transact business in North Carolina, with minimum limits of liability in the amount of One Million Dollars (\$1,000,000). The policy shall cover accident or damage which occurs on any portion of the demised premises. Certification of such coverage from the insurer, providing thirty (30) days notice to Landlord prior to cancellation or termination, shall be furnished to Landlord.

2. Tenant shall maintain fire and extended coverage insurance on the completed buildings and other improvements in an amount equal to the full insurable value thereof. Said policies of insurance shall provide for payment of loss thereunder to the Landlord and Tenant, as their interests may appear.

SECTION NINE UNLAWFUL OR DANGEROUS ACTIVITY

Tenant shall neither use nor occupy the demised premises or any part thereof for any unlawful or ultrahazardous purposes, nor operate or conduct its business in a manner constituting a nuisance of any kind, provided, however, Tenant and Tenant's Licensees may serve and consume alcoholic beverages on the demised premises during the term of the initial lease and any continuation thereof so long as permits from the North Carolina Alcoholic Beverage Control Board and reasonable dram shop personal liability insurance is maintained when required.

SECTION TEN DEFAULT OR BREACH

Each of the following events shall constitute a default or breach of this Lease by Tenant:

1. If Tenant, or any successor or assignee of Tenant, while in possession, shall file a petition of bankruptcy under any Bankruptcy Act, or shall voluntarily take advantage of any such Act by answer or otherwise, or shall make an assignment for the benefit of creditors.

2. If Tenant shall fail to pay Landlord any rent when the rent shall become due and shall not make the payment within fifteen (15) days after written notice thereof by Landlord to Tenant.

3. If Tenant shall vacate or abandon the demised premises.
4. If this Lease shall be assigned or transferred to or shall pass to or devolve on any other person or party, except in the manner herein permitted.

SECTION ELEVEN EFFECT OF DEFAULT

In the event of any default hereunder, the rights of Landlord shall be as follows:

1. Landlord shall have the right to cancel and terminate this Lease, as well as all of the right, title and interest of Tenant hereunder, by giving to Tenant not less than thirty (30) days written notice of cancellation and termination. On expiration of the time fixed in the notice, this Lease and the right, title and interest of the Tenant shall hereunder terminate in the same manner and with the same force and effect, except as to Tenant's liability, as if the date fixed in the Notice of Cancellation and Termination were the end of the term herein originally determined.
2. Landlord may elect, but shall not be obligated, to make any payment required of Tenant herein or comply with any agreement, term or condition required hereby to be performed by Tenant, and Landlord shall have the right to enter the demised premises at reasonable times and upon reasonable notice for the purposes of correcting or remedying any such default and to remain until the default has been corrected or remedied, but any expenditure for the correction by Landlord shall not be deemed to waive or release the default of Tenant or the right of Landlord to take any action as may be otherwise permissible hereunder in the case of any default.

SECTION TWELVE SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE

Tenant agrees that this Lease and Tenant's rights hereunder shall be deemed subject and subordinate to any mortgages, deeds of trust, or security instrument which may now exist or may hereafter be executed by Landlord covering the Building and land upon which the Building is located, or any part thereof, and to all advances, renewals, modifications or extensions thereof, provided, however, that Landlord shall require a covenant from the lender under any such mortgage or deed of trust that provides that so long as Tenant is not in default hereunder, its possession hereunder shall not be disturbed. The Landlord's interest in this Lease may be assigned as security for any financing now or hereafter required by Landlord. In the event any proceedings are brought or notice given by any assignee for foreclosure of any mortgage on the Building or for the exercise of any rights pursuant to any mortgage or assignment, Tenant will attorn to the mortgagee, assignee or purchaser at a foreclosure sale as the case may be and will recognize such assignee, mortgagee or purchaser as Landlord, providing such assignee, mortgagee or purchaser agrees in writing not to disturb Tenant's possession so long as Tenant is not in default under the terms of this Lease.

SECTION THIRTEEN ACCESS TO PREMISES

Tenant shall permit Landlord or its agents to enter the demised premises at all reasonable hours to inspect the premises or make repairs that Tenant may neglect or refuse to make in accordance with the provisions of this Lease or to conduct surveys, tests, and other inspections or examinations of the Property , but Landlord shall enter the premises for said purposes at such times and in such manner as not to unduly disrupt the business operations of Tenant.

SECTION FOURTEEN EASEMENTS, AGREEMENTS OR ENCUMBRANCES

The parties shall be bound by all existing easements, agreements and encumbrances of record relating to the demised premises, and Landlord shall not be liable to Tenant for any damages resulting from any action taken by holder of any interest pursuant to the rights of that holder thereunder.

SECTION FIFTEEN QUIET ENJOYMENT

Landlord warrants that Tenant shall be granted peaceable and quiet enjoyment of the demised premises free from any eviction or interference by Landlord if Tenant pays the rent and other charges provided herein, and otherwise fully and punctually performs the terms and conditions imposed upon Tenant.

SECTION SIXTEEN LIABILITY OF LANDLORD

Tenant shall be in exclusive control and possession of the demised premises, and Landlord shall not be liable for any injury or damages to any property or to any person on or about the demised premises (exclusive of the common areas) nor for any injury or damages to any property of Tenant. Tenant hereby indemnifies Landlord against any and all claims, losses, costs (including reasonable attorney's fees) or liabilities incurred by Landlord on account of any injury or damages to any property or to any person on or about the demised premises (exclusive of the common areas) . In this regard, Tenant agrees to obtain and pay for general public liability insurance with respect to said premises in the amount specified in Section Eight hereinabove for the protection of both Landlord and Tenant.

SECTION SEVENTEEN NOTICE

Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by certified mail, or if to

Landlord by personal hand delivery, which shall be addressed to the parties as follows (unless written notification is given of another address):

TO TENANT: Roger L. Stancil, Town Manager
Town of Chapel Hill
405 Martin Luther King Jr. Blvd.
Chapel Hill, NC 27514

TO LANDLORD: William Munsee, Post Commander
Chapel Hill Post 6, American Legion, Inc.
109 Fawn Ridge Road
Chapel Hill, NC 27516

Such communications shall for all purposes be deemed to have been given as of the date of deposit of such communication as registered or certified mail in the United States Postal Service. Such communication shall for all purposes be deemed to have been received as of four (4) days following the date of deposit of such communication as registered or certified mail in the United States Postal Service. Any and all hand-delivered communications shall be deemed to have been delivered and received on the actual date of delivery. Landlord agrees that it or its agents or employees shall sign a receipt for any notice hand delivered to it if requested to do so.

SECTION EIGHTEEN ASSIGNMENT, MORTGAGE OR SUBLEASE

Except as permitted by Section Three hereinabove, neither Tenant nor its successors or assigns shall assign, mortgage, pledge or encumber this Lease or sublet the demised premises in whole or in part or permit the premises to be used or transferred by operation of law, without the prior written consent of the Landlord in each instance, which consent shall not be unreasonably withheld.

SECTION NINETEEN DESTRUCTION OF PREMISES

Where more than twenty five percent (25%) of the demised premises is destroyed by a natural disaster, utility failure, or fire either Landlord or Tenant shall have the option of refusing to repair or replace the premises and the duty to pay rental under this Lease shall terminate as of the date of the disaster.

SECTION TWENTY SIGNAGE

Tenant shall be responsible for all exterior and interior signage for the leased premises. Signage on the exterior of the building should conform with the architectural style of the building. Tenant may keep and maintain a reasonable sign at the Legion Road

entrance to the property together with keeping and maintaining reasonable warning and limits on use signage of the type currently in use on the property. Questions about the signage are to be discussed with the Landlord. No other signs, graphics, or advertising that are visible or audible outside the demised premises shall be permitted without Landlord's written consent.

**SECTION TWENTY ONE
MISCELLANEOUS PROVISIONS**

COMPLETE AGREEMENT. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and shall not be changed or terminated except by written instrument subsequently executed by the parties hereto with the same formality as this Agreement. This Agreement and the terms and conditions hereof shall apply to and be binding on the heirs, legal representatives, successors and assigns of the parties.

SEVERABILITY. If any portion of this Agreement shall be held invalid or shall be voided, then such portion of this Agreement shall be severed and excised from the remainder hereof and, so far as is reasonable and possible, the remainder of this Agreement shall be considered valid and operative and effect shall be given to the intent manifested in the portion of this Agreement held valid or voided.

APPLICABLE LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

BINDING EFFECT. All of the covenants, conditions and obligations herein contained shall be binding upon and inure to the benefit of the parties and the respective successors and assigns of the parties hereto to the same extent as if such successor and assign were in each case named as a party to this Lease.

IN WITNESS WHEREOF, the parties have executed this Lease on the day and year first above written.

Town of Chapel Hill

_____(SEAL)
Roger L. Stancil, Town Manager

Chapel Hill Post 6, American Legion, Inc.

William Munsee, Post Commander

EXHIBIT A

DESCRIPTION OF THE PROPERTY

7/31/2015

Orange County Interactive GIS

Orange County NC Interactive GIS

GIS Data Currency Dates Help County Home Page LR/GIS Home Page

Print Buffer Task Export Results

Search Results Map Layers

Search Results (1)

- Parcel Search - [PIN = '9799554972'] - 1 parcels found
 - 9799554972 (AMERICAN LEGION POST)
 - Select this Parcel Only
 - PIN 9799554972
 - PINSTATUS ACTIVE
 - OWNER_TYPE
 - INTEREST OWNERS
 - OWNER1 AMERICAN LEGION POST
 - OWNER2
 - ADDRESS1 PO BOX 2323
 - ADDRESS2
 - CITY CHAPEL HILL
 - STATE NC
 - ZIPCODE 27515
 - TOWNSHIP 7
 - TOWNSHIP_NAME CHAPEL HILL
 - SIZE 35.17A
 - CALCULATED ACRES 36.23 A
 - SUBCODE
 - LEGL_DESC E/3 AMERICAN LEGION I
 - RATECODE 22
 - LANDVALUE 1739100
 - BLDGVALUE 661500
 - BLDGONT 2
 - VALUATION 2400600
 - TAXSTATUS E
 - FARMUSE
 - USEVALUE 0
 - DEPREF 179/585
 - LEGALREF
 - DATESOLD 1/13/1961 12:00:00 AM
 - TAXSTAMPS 3
 - STAMPVALUE 2727.272
 - YEAR BUILT
 - SOFT 8378
 - SUBDIVISION_NAME
 - SCHOOL_SYSTEM Chapel Hill/Carrboro School
 - [Link to Documents and Error Checks](#)
 - [Link to Building Info](#)
 - [Link to Interactive Zoning Map](#)
 - [Link to Zoning Report](#)

