

To: Mayor J.B. Lawrence and Blowing Rock Town Council  
From: Kevin Rothrock, Planning Director  
Subject: Approval of Resolution 2016-22 Authorizing a Three (3) Year Lease for Use of the Historic Ice House  
Date: September 13, 2016

At the June 14, 2016 Council meeting, Town Council agreed to consider a lease agreement with Sheri Furman, owner of Take Heart, for use of the Ice House for a retail business. The proposed terms are a three (3) year initial lease with an incrementally increasing lease rate of \$875/month plus utilities for the first year, \$900/month plus utilities for the second year, and \$950/month plus utilities for the third year.

To meet NC General Statutes, a 30-day public notice was advertised in the Blowing Rocket on August 4, 2016 describing the referenced incremental lease rate, plus utilities, for the initial three (3) year term.

### **ICE HOUSE RENOVATION**

The Ice House was recently renovated by VPC Builders. Punch list items are being finalized and all work should be completed by September 12, 2016. This would allow Ms. Furman to occupy the building on September 14, 2016 if the attached resolution is approved.

### **GENERAL LEASE TERMS**

Some of the lease terms include:

1. Insurance – The tenant must provide a \$500,000 policy for both public liability and property damage
2. Repairs – The tenant is responsible for interior repairs and the Landlord is responsible for exterior repairs
3. Sublease – no subleases are permitted without Landlord approval

### **ATTACHMENTS**

1. Resolution 2016-22 which authorizes Town Council to enter into a three (3) year lease agreement with Take Heart retail business
2. Lease Agreement between Town and Sheri Furman
3. Proposal from Sheri Furman, owner of Take Heart
4. Public Notice from August 4, 2016

**RESOLUTION #2016-22**

**A RESOLUTION TO AUTHORIZE LEASE OF THE HISTORIC ICE HOUSE**

WHEREAS, the Town of Blowing Rock is the owner of a certain tract of real property referred to as the Historic Ice House, located at 140 Maple Street; and

WHEREAS, NC General Statutes 160A-272 permits the Town to lease property for terms less than 10 years; and

WHEREAS, the Town provided 30-day public notice in the Blowing Rocket describing the property to be leased and the proposed lease terms under consideration, consistent with NC General Statute 160A-272; and

WHEREAS, the Town received a proposal to lease the Ice House from Bless Your Heart (dba Take Heart) for three (3) years with an incrementally increasing lease rate; and

WHEREAS, the property is zoned CB, Central Business which permits retail business at this location; and

NOW, THEREFORE, the Blowing Rock Town Council resolves that:

1. The Town Council accepts the lease terms from Take Heart of \$875.00/month plus utilities for year one (1) beginning on September 14, 2016, \$900.00/month plus utilities for year two (2), and \$925.00/month plus utilities for year three (3).
2. The lease term shall end on September 13, 2019
3. This resolution shall be effective upon adoption.

This the 13<sup>th</sup> day of September, 2016.

\_\_\_\_\_  
J.B. Lawrence, Mayor

ATTEST:

\_\_\_\_\_  
Hilari H. Hubner, Town Clerk

PREPARED BY: DEAL, MOSELEY & SMITH, LLP, Attorneys at Law, P.O. Box 311,  
Boone, NC 28607 Tel (828)264-4734

STATE OF NORTH CAROLINA

LEASE AGREEMENT

COUNTY OF WATAUGA

THIS LEASE AGREEMENT made and entered into this 13th day of September, 2016 by and between TOWN OF BLOWING ROCK, a North Carolina Municipal Corporation of Watauga County, North Carolina (hereinafter referred to as "Landlord"); and SHERI FURMAN d/b/a TAKE HEART, LLC, a North Carolina Limited Liability Company, a citizen and resident of Watauga County, North Carolina (hereinafter referred to as "Tenant").

WITNESSETH:

1. Premises. That for and in consideration of the mutual covenants and agreements contained herein and subject to the terms and conditions hereinafter set forth, Landlord does hereby demise and lease unto the Tenant and the Tenant does hereby lease from Landlord those certain premises described as the property known as the Historic Ice House Building located at 140 Maple Street, in the Town of Blowing Rock, hereinafter called "Demised Premises".
2. Acceptance of Property and Conditions of Lease Agreement. Neither Landlord nor its agents have made any representations with respect to the Demised Premises except as expressly set forth herein and no rights, easements, or leases are acquired by the Tenant by implication or otherwise except as expressly set forth in the provisions of this lease. Tenant acknowledges that Landlord has completed certain renovations and improvements to the Demised Premises, and Tenant, by taking possession of the Demised Premises, agrees to accept the same in its "as is" condition.
3. Term and Rent. The term of this lease shall be for three (3) years, commencing on September 14, 2016, and ending on September 13, 2019 both dates inclusive, unless sooner terminated as herein provided. During the first year of the lease term, beginning on September 14, 2016, and continuing on the 14<sup>th</sup> day of each month thereafter, Tenant shall pay Landlord rent in equal monthly payments of Eight Hundred Seventy Five Dollars and 00/100 (\$875.00). Beginning on September 14, 2017, and continuing on the same day of each month thereafter, Tenant shall pay Landlord in equal monthly payments of Nine Hundred Dollars and 00/100 (\$900.00). Beginning on September 14, 2018, and continuing on the same day of each month thereafter until the termination of this Lease Agreement, Tenant shall pay Landlord in equal monthly payments of Nine Hundred Fifty Dollars and 00/100 (\$950.00). The rent shall be paid to Landlord at P.O. Box 47, Blowing Rock, North Carolina 28605, or at such other place as Landlord shall designate to the Tenant.
4. Taxes. During the term of this lease, Tenant shall not be responsible for paying any real property taxes imposed on the Demised Premises. Tenant shall pay any

personal property taxes imposed on the contents located in the building on the Demised Premises.

5. Insurance. The Tenant shall obtain a public liability insurance policy for the minimum coverage of \$500,000.00 bodily injury and property damage liability (combined single limit), \$500,000.00 each occurrence and \$1,000,000.00 aggregate. Landlord shall be named as an additional insured on said policy and shall be furnished with a copy of same.

Landlord shall not be liable to Tenant for any business interruption or any loss or damage to property or injury to or death of persons occurring in the Demised Premises, or in any manner growing out of or connected with the Tenant's use and occupation of the Demised Premises, or the condition thereof, whether or not caused by the negligence or other fault of the Landlord or its agents, employees, sub-tenants, licensees, or assigns. This release shall apply to the extent that such business interruption, loss, or damage to property or injury to or death of persons is covered by insurance, regardless of whether such insurance is payable to or protects Landlord or Tenant, or both. Nothing herein shall be construed to impose any other or greater liability upon Landlord than what would have existed in the absence of this provision. The applicable insurance policies of the Tenant shall contain a clause to the effect that this release shall not affect the right of the insured to recover under such policies. The release in favor of the Landlord contained herein is in addition to, and not in substitution for or in diminution of, the hold harmless and indemnification provisions hereof.

Landlord shall maintain a hazard insurance policy on the building in which the Demised Premises are located for an amount no less than the estimated replacement cost of the building. Tenant shall maintain insurance for the contents located in the building on the Demised Premises and owned by Tenant.

6. Repairs. Tenant shall, at the Tenant's expense, make all necessary repairs and replacements to the interior of the Demised Premises, and Landlord, at Landlord's expense, shall make all necessary repairs and replacements to the exterior of the Demised Premises. Further, any repairs or replacements which must be made as a result of Tenant's negligence shall be made at Tenant's expense, and upon default on the part of Tenant in paying for such repairs or replacements, Landlord shall be entitled to add the cost of such repairs or replacements to the Tenant's account and the expense thereof shall constitute and be collectible as additional rent. All repairs and replacements shall be in quality and class at least equal to the original work, and Landlord shall have the right to select the contractors who perform the work associated with the repairs or replacements.
7. Use of Property. The Tenant shall use the Demised Premises for the specific purpose of operating a retail floral design business with an emphasis on holiday promotions through the various seasons. The hours of operation are to be Thursday, Friday and Saturday from 10:00 AM to 6:00 PM from May through October, and the store would be open on Tuesdays and Wednesdays by special

requests. In November and December the store would be open Thursday through Saturday as a Christmas Holiday House. In January through April, the store would be open on special event weekends such as Winterfest, Valentines Day and the Wine Festival.

8. Improvement of the Property. No alteration or addition to the improvements on the Demised Premises shall be made by the Tenant without the written consent of Landlord. Any alteration, addition or improvement made by the Tenant after such consent shall have been given, and any fixtures installed as a part thereof, shall at Landlord's option become the property of the Landlord upon the expiration or other sooner termination of this lease; provided, however, that Landlord shall have the right to require the Tenant to remove such fixtures at the Tenant's cost upon such termination of this lease.

The Tenant shall have the right to construct, erect, place, paint, maintain and control on the Demised Premises any sign or signs which may be necessary in the conduct of its business and it shall have the right to remove the sign or signs at the expiration or earlier termination of this lease, provided, that upon the removal of said sign or signs, the said building shall be put in the same condition it was in at the time of the placing or painting of said sign, as far as is reasonably possible. Provided, that Tenant's right to erect, place, paint, maintain and control a sign or signs on the Demised Premises shall be subject to and conditioned upon Landlord's prior written approval with respect to the number of signs, dimensions, color, and materials used with respect to said signage.

9. Utilities. Tenant shall pay all utility charges, including, but not limited to, gas, electricity, light, heat, water, sewer, power and telephone or other communication service used, rendered, or supplied upon or in connection with the Demised Premises and shall indemnify Landlord against any liability or damages on such account.
10. Assignment and Subletting. The Tenant shall not assign this lease or sublet any part of the Demised Premises without the prior written consent of Landlord.
11. Surrender of the Demised Premises. At the expiration of the lease term, the Tenant shall surrender the Demised Premises in as good condition as they were in at the beginning of the term, reasonable use and wear and damages by the elements excepted.
12. Damage or Destruction by Fire. In the event that the Demised Premises shall be damaged or destroyed by fire, the elements or other casualty during the lease term, then in that event either the Landlord or the Tenant shall have the right to cancel and terminate this lease with the rents to be adjusted as of the date said lease is terminated. Upon such termination, neither party shall have any rights against or obligations to the other party.

13. Condemnation. If the whole of the Demised Premises shall be condemned and taken by any governmental authority or other entity having a power of eminent domain, then this lease shall immediately terminate, and the Tenant shall have no interest in any damages and/or monies paid by virtue of such condemnation. In the event of a partial appropriation or condemnation of the Demised Premises that does not materially affect the Tenant's use thereof, the Tenant shall continue in possession of the unappropriated part of the Demised Premises under the terms and conditions hereof except that in such case if the Tenant actually loses the use of part of the Demised Premises, the Tenant shall be entitled to an equitable reduction in rent payable hereunder. In the event such partial appropriation or condemnation materially affects the Tenant's use of the Demised Premises, the Tenant may, at its option, terminate this lease and Landlord shall refund the Tenant any unearned rental existing at the time of said termination. However, the Tenant shall have no interest in any damages and/or monies paid by virtue of such condemnation.

Notwithstanding the foregoing, Tenant shall be entitled to a separate award made to Tenant for loss of business, moving expense or the taking of Tenant's fixtures or equipment if a separate award for such items is made.

14. Indemnity and Attorney's Fees. The Tenant shall indemnify and save Landlord harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in, upon or at the Demised Premises, or the occupancy or use by the Tenant of the Demised Premises or any part thereof, or occasioned wholly or in part by any act or omission of the Tenant, its agents, employees or invitees. In case Landlord shall, without fault on its part, be made a party to any litigation instituted against the Tenant by reason of the Tenant's use or occupancy of the Demised Premises, then the Tenant shall protect and hold Landlord harmless and shall pay all costs, expenses and reasonable attorney's fees that may be incurred or paid by Landlord in such litigation. In addition, Tenant shall pay all costs, expenses and reasonable attorneys' fees that may be incurred or paid by Landlord in enforcing the covenants and agreements of the Tenant contained in this lease.
15. Damages. If the Demised Premises shall be deserted or vacated, or if proceedings are commenced against the Tenant in any court under a bankruptcy act or for the appointment of a trustee or receiver of the Tenant's property either before or after the commencement of the lease term, or if there shall be a default in the payment of rent or any part thereof for more than five (5) days after said rent is due, or if there shall be default in the performance of any other covenant, agreement, condition, rule or regulation herein contained or hereafter established on the part of the Tenant for more than twenty (20) days after written notice of such default by Landlord, this lease (if Landlord so elects) shall thereupon become null and void, and Landlord shall have the right to re-enter or repossess the Demised Premises, either by force, summary proceedings, surrender or otherwise, and dispossess and remove therefrom the Tenant, or other occupants thereof, and their effects, without being liable to any prosecution therefor. In such case, Landlord may, at its option,

relet the Demised Premises or any part thereof, as the agent of the Tenant, and the Tenant shall pay Landlord the difference between the rent hereby reserved and agreed to be paid by the Tenant for the portion of the term remaining at the time of re-entry or repossession and the amount, if any, received or to be received under such reletting for such portion of the term. The Tenant waives and shall waive all right to trial by jury in any summary proceeding hereafter instituted by Landlord against the Tenant in respect of the Demised Premises.

16. Quiet Enjoyment. Landlord covenants that if and so long as Tenant pays the basic rent and performs all of the terms, covenants, and conditions of this lease on Tenant's part to be performed, Tenant shall peaceably and quietly have, hold and enjoy the Demised Premises for the term of this lease, but always subject to the provisions of the lease.
17. Notice. All notices, consents, requests, instructions or other communications provided for herein shall be deemed validly given, made and served if in writing and either delivered personally or sent by certified or registered mail, postage prepaid and, pending the designation of another address, addressed as follows:

If to Tenant:                    Sheri Furman  
    Take Heart, LLC  
  
\_\_\_\_\_

If to Landlord:                The Town of Blowing Rock  
   P.O. Box 47  
   Blowing Rock, NC 28605

Any such notices, consents, requests, instructions, or other communications sent by certified or registered mail shall for the purposes of this lease be considered received one (1) day after it is deposited in the United States Mail, postage pre-paid.

18. Time of the Essence. For all periods set forth in this Lease time shall be of the essence.
21. Miscellaneous. All rights and liabilities herein given to or imposed upon either of the parties hereto shall extend to the heirs, executors, administrators, and assigns of such parties. Unless the context expressly or impliedly requires or indicates a contrary meaning, whenever used in this lease, a noun or pronoun in any gender shall include the remaining genders, the singular shall include the plural and the plural shall include the singular. The law of the State of North Carolina shall control this lease.

IN WITNESS WHEREOF, Landlord and Tenant have caused this instrument to be duly executed and sealed the day and year first above written.

LANDLORD:

TOWN OF BLOWING ROCK  
A North Carolina Municipal Corporation

By: \_\_\_\_\_(SEAL)

TENANT:

TAKE HEART, LLC  
A North Carolina Limited Liability Company

By: \_\_\_\_\_(SEAL)  
Sheri Furman, Member-Manager

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of said County and State, do hereby certify that \_\_\_\_\_, Landlord, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

WITNESS my hand and official seal this the \_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

NOTARIAL SEAL:



STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of said County and State, do hereby certify that SHERI FURMAN, Member-Manager of Take Heart, LLC, a North Carolina Limited Liability Company, Tenant, personally appeared before me this day and acknowledged the execution of the foregoing instrument on behalf of the company.

WITNESS my hand and official seal this the \_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

NOTARIAL SEAL:

# PROPOSAL

**To: Town of Blowing Rock**

For: Rental of "Ice House"

140 Maple Street

Blowing Rock, NC 28605

**Presented by:**

**Bless Your Heart dba Take Heart**

1009 Main Street

Blowing Rock, NC 28605

Contact Person: Sheri Furman                      828-295-3444    or    828-295-8424

**Type of Business:**

**Retail. Floral Design. Holiday Promotions.**

The "Ice House" is directly behind our current store front and would enable us to expand and help facilitate our current location on Main Street. We would use it as an extension of our current business much like an annex or an extension of our daily operations. We would also promote holidays and town events, sales and special features out of this location. Example: Wine Festival or Christmas House to sell our Christmas garland and wreaths.

**Number of Employees:** Currently we have 3-4 employees based upon season and events. I would rotate these employees to serve at the Ice House location. We would have 1-2 employees there based upon the season and expected growth.

**Business History:** Bless Your Heart (dba Take Heart) has been in business for approximately 19 years and has had a location in Blowing Rock for 10 years. We are a property owner of our commercial space that is located on Main Street. We are seeking the rental of the "Ice House" as an avenue to expand and help facilitate our ever growing current business.

**Proposed Hours of Operation:**

**January-April:** We would have the Ice House opened on weekends Thursday - Saturday for special events such as Winterfest, Valentine's Day and the Wine Festival.

**May-October:** We would seek to have the Ice House open on Monday, Thursday, Friday and Saturday. We will open also on Tuesday and Wednesday upon demand, request and event. Our hours of operation would be 10-6. (We often extend our current shop hours from 6:00 to 7:30 and would consider this for the Rock House as well).

**November -December:** We will be open Thursday, Friday and Saturday. (Other days upon request and demand. ) We will seek to turn this facility into a Christmas Holiday House with wreaths, garlands and arrangements and would pursue creating it as a destination place.

**Proposed Lease Amount:**

**First Year: \$875/month plus utilities**

**Second Year: \$900/ month plus utilities**

**Third Year: \$950/month plus utilities**

**Regarding Lease:** We default to your recommended commercial lease agreement. We would make rent payments the first of every month or as instructed.

**Insurance:** We would carry insurance on the contents of the building.

**Security Deposit:** We would pay one month's rent.

**Signage:** Since the Ice House is located directly behind us and 50 paces from our front door, we expect to promote the Ice House mainly through invitation and foot traffic of our current customer base. We would make all signage compliant to the sign ordinance.

**Personal Note:**

As a current property owner of one of the oldest buildings in town, it would be an honor as well as a personal quest to create a viable business in the historic building known as the Ice House. One of the joys of being a shop keeper is to participate in the history of our town by honoring the past as well as working diligently to create an economy in our historic structures for the future. We feel we have experience in operating out of a small venue and making it successful. We would enjoy bringing "life" once again to the Ice House and representing our town by having a successful business in this historic location.

  
SHERI FLORMAN TAKE HEART

## **PUBLIC NOTICE**

On Tuesday, September 13, 2016 at 6:00 PM, the Blowing Rock Town Council will consider a resolution authorizing a lease agreement for the use of the Historic Ice House building located at 140 Maple Street. The lease agreement will be a three (3) year term between the Town and Bless Your Heart (dba Take Heart) with an incrementally increasing lease rate of \$875/month plus utilities for the first year, \$900/month plus utilities for the second year, and \$950/month plus utilities for the third year.

The regular Town Council meeting will be held in the Council Chambers in the Blowing Rock Town Hall, 1036 Main Street. The Town Hall is ADA accessible.

Hilary H. Hubner  
Town Clerk