



**KANNAPOLIS CITY COUNCIL  
MEETING AGENDA  
Kannapolis City Hall  
401 Laureate Way, Kannapolis NC  
September 11, 2017  
6:00 PM**

**Please turn off cell phones or place on silent mode.**

**CALL TO ORDER AND WELCOME**

**MOMENT OF SILENT PRAYER AND PLEDGE OF ALLEGIANCE**

**ADOPTION OF AGENDA - Motion to Adopt Agenda or make revisions**

**PROCLAMATIONS**

1. September 11, 2017 - A Day of Recognition and Remembrance
2. September 19, 2017 - National Thank a Police Officer Day

**CONSENT AGENDA - Motion to Adopt Consent Agenda or make revisions**

1. **Resolution Approving Condemnation Action** (Mike Legg, City Manager and Walter M. Safrit, II, City Attorney)
2. **Acceptance of Grant Funds from Cabarrus Health Alliance to Expand the Loop the Loop Program** (Annette Privette-Keller, Director of Communications)
3. **Resolution Supporting NCDOT Funding for Project Hercules** (Wilmer Melton, III, Director of Public Works)
4. **Resolution to Terminate Phase III Covenants Kannapolis Business Park** (Mike Legg City Manager and Walter M. Safrit, II, City Attorney)
5. **City of Kannapolis and the NCDOT Utility Relocation Agreement – TIP #B-5369** (Wilmer Melton, III, Director of Public Works)
6. **Resolution to Lease Property to Rowan Cabarrus Community College** (Mike Legg, City Manager and Walter M. Safrit, II, City Attorney)

**BUSINESS AGENDA**

- A. **Presentation of Proposed Brand Implementation Plan for the City of Kannapolis** (Annette Privette-Keller, Director of Communications)
- B.
  1. **Public Hearing for Case #TA 2017-06;**
  2. **Motion to Adopt a Statement of Consistency;**
  3. **Motion to adopt Ordinance to amend the UDO Text for the following sections for UDO ; Table 4.6-1, Principal Uses Permitted in Zoning Districts; add Section 5.36, Outdoor Banquet Facilities; add definition outdoor banquet facilities Appendix A, definitions regarding defining outdoor banquet facilities allowing conditional use in certain zoning districts** (Zachary D. Gordon, Planning Director)

- C. 1. **Public Hearing for Case #TA 2017-07;**  
2. **Motion to adopt a Statement of Consistency;**  
3. **Motion to adopt Ordinance to amend the UDO Text for the following sections of the UDO; Table 4.6-1, Principal Uses Permitted in Zoning Districts; and add a definition for stadium uses to Appendix A, Definitions regarding defining stadiums and allowing as a permitted use in the CC (Center City) zoning district (Zachary D. Gordon, Planning Director)**
- D. **Light Rail Transit Connector** (Eddie Smith, Deputy City Manager)

**CITY MANAGER REPORT**

**CITY COUNCIL COMMENTS**

**CLOSED SESSION**

**GS. 143-318.11 (a) (3) to consult with an attorney in order to preserve the attorney-client privilege and G.S. 143.318.11 (a) (4) for discussing matters relating to the location or expansion of industries or businesses in the area (Mayor Pro tem Wilson)**

**ADJOURN**

**UPCOMING SCHEDULE**

September 25, 2017

October 09, 2017

October 23, 2017

In accordance with ADA regulations, anyone in need of an accommodation to participate in the meeting should notify the ADA coordinator at [tcline@kannapolisnc.gov](mailto:tcline@kannapolisnc.gov) or 704-920-4302 at least forty-eight (48) hours prior to the meeting.



***Office of the Mayor***  
***KANNAPOLIS, NORTH CAROLINA***  
***P R O C L A M A T I O N***

***September 11<sup>th</sup> - A Day of Recognition and Remembrance***

**WHEREAS**, the United States was attacked on September 11, 2001, leading to the tragic death of thousands of United States citizens, as well as citizens from more than 90 different nations and territories, and

**WHEREAS**, on September 11, 2001, more than 400 New York City first responders were killed when the World Trade Center towers collapsed, and

**WHEREAS**, in the aftermath of the attacks, first responders from across the nation searched for survivors and were instrumental in clean up and identification of victims, remaining at Ground Zero in New York City until the site was completely cleared, and

**WHEREAS**, our nation witnessed and shared in the tragedy of September 11, and in the immediate aftermath of the attacks, became unified under a remarkable spirit of service and compassion that inspired and helped heal our nation, and

**WHEREAS**, September 11, 2017, will be the sixteenth anniversary of the 9/11 attacks. Families of the September 11<sup>th</sup> victims, survivors, first responders, rescue and recovery workers, and volunteers called for Congress to pass legislation to authorize formally the establishment of September 11<sup>th</sup> as an annually recognized “National Day of Service and Remembrance”.

**NOW, THEREFORE, I MILTON D. HINNANT** on behalf of the Kannapolis City Council do proclaim in tribute to all of the victims, and the many who rose in service to the September 11<sup>th</sup> terrorist attacks, will observe September 11, 2017 as a National Day of Recognition and Remembrance, and furthermore call upon all its citizens and organizations to consider joining in this observance and to engage in activities of tribute, solemn remembrance and charitable service.



**IN WITNESS WHEREOF** I have hereunto set my hand and caused the Great Seal of the City of Kannapolis to be affixed this 11<sup>th</sup> day of September, 2017.

*Milton D. Hinnant*



**OFFICE OF THE MAYOR  
Kannapolis, North Carolina  
P R O C L A M A T I O N**

***THANK A POLICE OFFICER DAY  
Saturday, September 16, 2017***

**WHEREAS**, President John F. Kennedy issued the first Police Week proclamation in 1962 and noted that “law enforcement agencies play an essential role in safeguarding the rights and freedoms which have been guaranteed by the Constitution to every American citizen”. He also encouraged citizens to honor police officers “who by their faithful and loyal devotion to their responsibilities have rendered a dedicated service to their communities and in so doing, have established for themselves an enviable and enduring reputation for preserving the rights and security of all citizens”; and

**WHEREAS**, the Kannapolis Police Department are recognized as leaders while effectively providing for the protection of lives and property, preserve the public peace with the highest level of professionalism and ethical standards and perform countless acts of public services, maintain order and keep our neighborhoods safe and respond in times of crises; and

**WHEREAS**, policing is also intellectually challenging and through constant application of new procedures and techniques, our Kannapolis Police Officers are becoming more efficient in their enforcement of our laws. Officers need to make instinctive decisions on dangerous streets, interpreting laws that attorneys spend hours debating in peaceful offices; and

**WHEREAS**, Police Officers never know what dangers the next call will bring. The work can be stressful, demanding and frightening, and the physical challenges are obvious. The job comes with emotional challenges as well; and

**WHEREAS**, we challenge our citizens to take five minutes out of your day to thank our Kannapolis Police Officers who spend their lives protecting and defending our citizens. While honoring their Oath they know that in an instant, any assignment can turn into danger. Members of our Kannapolis Police Department embrace the established values of the City of Kannapolis: Excellence, Professionalism, Integrity, Stewardship and they also serve with valor and distinction.

**NOW THEREFORE, BE IT PROCLAIMED** that the Kannapolis City Council hereby declare Saturday, September 16, 2017 as: “**Thank a Kannapolis Police Officer Day**” and hereafter on the third Friday of every September, be designed as **Thank a Kannapolis Police Officer Day** in the City of Kannapolis; and

**BE IT FURTHER RESOLVED** that the Kannapolis City Council hereby encourage citizens to take a moment out their day to show appreciation to our Kannapolis Police Officers through small acts of gratitude, or by simply saying “Thank You”, or by wearing blue clothing or a blue ribbon in support of our brave men and women for the difficult job they undertake every day and are often taken for granted.



**WITNESS WHEREOF** I have set my hand and caused the Great Seal of the City of Kannapolis to be affixed this 11<sup>th</sup> day of September 2017.

Milton D. Hinnant





**City of Kannapolis  
City Council Meeting  
September 11, 2017  
Staff Report**

**TO:** Mayor and City Council  
**FROM:** Mike Legg, City Manager and Walter M. Safrit, II City Attorney  
**TITLE:** Resolution Approving Condemnation Action

**A. Action Requested by City Council**

**Motion to adopt the Resolution to approve condemnation related to acquisition of fee interest in property for the Northwest Service District Water Project.**

**B. Required Votes to Pass Required Action**

Majority present at meeting

**C. Background**

The City desires to award contracts for the Project identified above. Fee interest in certain Property must be obtained for the water storage tank required for the Project (survey attached). In the event the City cannot obtain rights of way from any affected landowner voluntarily, the City must exercise its eminent domain authority and condemn the property. The City has been unable to acquire, by negotiated purchase, essential property from certain landowners in the project area. The appraised fair market value of the property is \$73,300.00.

**D. Fiscal Considerations**

Project costs will be increased by normal litigation costs associated with condemnation.

**E. Policy Issues**

Condemnation is a common and normal municipal function.

**F. Legal Issues**

None.

**G. Alternative Courses of Action and Recommendation**

1. **Adopt the Resolution.** In the absence of a voluntary conveyance, condemnation is the only recourse. **(Recommended)**
2. Decline to adopt the Resolution.

ATTACHMENTS:

**File Name**

- ▢ Resolution\_Readliing\_Family\_Limited\_Partnership\_(8-16-17).doc
- ▢ survey-to\_staff\_report\_condemnation.pdf
- ▢ appraisal\_to\_staff\_report\_condemnation.pdf
- ▢ survey-to\_staff\_report\_condemnation.pdf

**CITY OF KANNAPOLIS  
RESOLUTION**

WHEREAS, the City of Kannapolis is engaged in construction of the Northwest Service District Water Project (the "Project"); and

WHEREAS, the Project requires land acquisition for a water storage tank; and

WHEREAS, said Project will require the City of Kannapolis to obtain a fee simple interest of property owned by the following entities as shown on the attached survey (the "Premises") for the compensation indicated below being appraised fair market value:

Readling Family Limited Partnership	\$73,300.00
-------------------------------------	-------------

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Kannapolis, that:

Section 1. Council considers it necessary and declares its intention to acquire a fee simple interest for the purpose of the Project, as more fully described hereinabove.

Section 2. The Mayor, City Manager, City Clerk, City Attorney and all other appropriate officers and employees of the City are authorized and directed to take any action necessary to effectuate the intent of this Resolution including, but not limited to, the initiation of eminent domain proceedings for the Premises. All prior actions of said individuals consistent with this Resolution are hereby ratified.

Section 3. The Project is hereby declared to be necessary for the immediate preservation of the public health, safety and welfare.

Section 4. This Resolution shall take effect upon adoption.

Adopted this the \_\_\_\_ day of August, 2017.

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Milton D. Hinnant  
Mayor

ATTEST:

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Bridgette Bell, MMC, NCCMC  
City Clerk

I, JEFFREY L. GREEN, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTION RECORDED AS SHOWN). THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION AS SHOWN. THAT THE RATIO OF PRECISION OR POSITIONAL ACCURACY AS CALCULATED IS 1:10,000. THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH NCQS 47-30 AS AMENDED. WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEAL THIS 7TH DAY OF AUGUST, A.D. 2017.

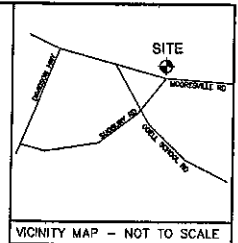
State of North Carolina  
I, \_\_\_\_\_, Review Officer of Cabarrus County,  
North Carolina, certify that the map or plat which this certification is affixed meets all statutory requirements for recording.



*Jeffrey L. Green*  
PROFESSIONAL LAND SURVEYOR  
L-3972  
REGISTRATION NUMBER

Review Officer

Date

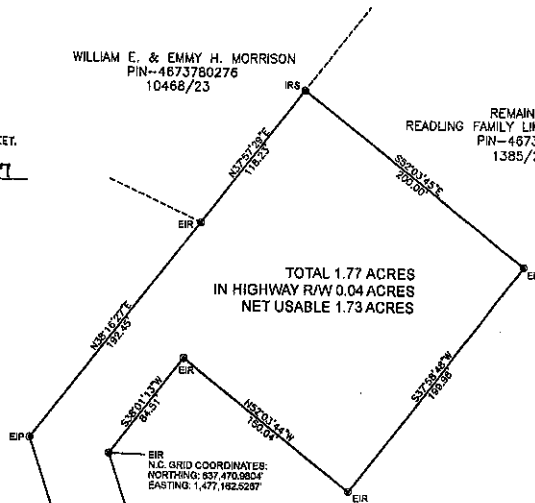


**CERTIFICATE OF PURPOSE OF PLAT**  
I, JEFFREY L. GREEN, PROFESSIONAL LAND SURVEYOR, NO. L-3972  
CERTIFY TO THE FOLLOWING AS REQUIRED IN G.S. 47-30(9)(11):  
THAT THIS SURVEY IS OF AN EXISTING PARCEL OR PARCELS OF LAND  
AND DOES NOT CREATE A NEW STREET OR CHANGE AN EXISTING STREET.  
*Jeffrey L. Green*  
SURVEYOR  
8/7/2017  
DATE

WILLIAM E. & EMMY H. MORRISON  
PIN-4673780276  
10468/23

REMAINDER  
READLING FAMILY LIMITED PARTNERSHIP  
PIN-467397059  
1385/258

**TITLE REFERENCE**  
PROPERTY REAL ID-03-005-0001.00  
PIN-4673725980000  
DEED BOOK 1385 PAGE 258  
PLAT BOOK 57 PAGE 28  
CABARRUS COUNTY, NORTH CAROLINA



WILLIAM EMERSON MORRISON  
PIN-4673770273  
6399/336

REMAINDER  
READLING FAMILY LIMITED PARTNERSHIP  
PIN-467397059  
1385/258

LINE	BEARING	DISTANCE
L1	S18°24'19"E	36.10'
L2	N74°10'42"W	60.47'
L3	N18°23'49"W	36.02'
L4	N18°23'49"W	50.22'

WILLIAM EMERSON MORRISON  
PIN-46737829840000  
PLAT BOOK 57 PAGE 26

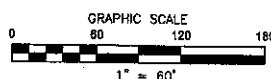
MOORESVILLE ROAD  
N.C. HWY 3

SUDBURY ROAD  
NCSR 1607

**NOTES:**

1. THIS PROPERTY IS SUBJECT TO ANY AND ALL EASEMENTS, RIGHT OF WAYS, AND AGREEMENTS OF RECORD PRIOR TO THE DATE OF THIS PLAT.
2. ALL PROPERTY LINES AND CORNERS ESTABLISHED USING EXISTING CORNERS FOUND, EXISTING BOUNDARY EVIDENCE, AND DEEDS AND PLATS OF RECORD IN THE CABARRUS COUNTY REGISTRY.
3. ALL DISTANCES ARE HORIZONTAL.
4. ALL AREAS BY COORDINATE COMPUTATION.
5. THERE ARE NO IRON MONUMENTS WITHIN 2000' OF THIS PROJECT.
6. GRID COORDINATES ESTABLISHED USING GPS METHODS USING OPUS.
7. THIS PROPERTY IS NOT LOCATED WITHIN A DESIGNATED FLOOD ZONE PER FEMA MAP # 3710417300K, REVISED MARCH 2, 2009.
8. THIS PROPERTY IS LOCATED WITHIN A PUBLIC WATERSHED - ADDITIONAL RESTRICTIONS MAY APPLY. WS-II, YADIN RIVER BASIN, COODLE CREEK.
9. PROPERTY IS CURRENTLY ZONED AO.
10. SETBACKS FOR AO ZONING:  
FRONT - 75' (MINOR COLLECTOR)  
FRONT - 50' (LOCAL ROAD)  
SIDE - 20' - TOTAL OF 40'  
REAR - 30'
11. TOTAL NUMBER OF LOTS BEING RECORDED - (1)

**LEGEND**  
UNLESS OTHERWISE DENOTED  
● = IRON MONUMENT  
○ = IRON ROD  
□ = EXISTING CONCRETE MONUMENT  
○ = EXISTING IRON PIPE  
○ = SHERM MONUMENT  
○ = UTILITY POLE  
○ = CALCULATOR POINT  
--- = ADJOINING BOUNDARY LINE  
--- = CHAIN LINK FENCE  
--- = OVERHEAD UTILITY



RECOMBINATION PLAT OF  
**MUNICIPAL UTILITY LOT**  
PROPERTY OF  
**READLING FAMILY LIMITED PARTNERSHIP**  
FOR  
**THE CITY OF KANNAPOLIS**  
NUMBER 3 TOWNSHIP, CABARRUS COUNTY, NORTH CAROLINA

AUGUST, 2017 SCALE 1" = 60'  
FIELD WORK PERFORMED APRIL 2017

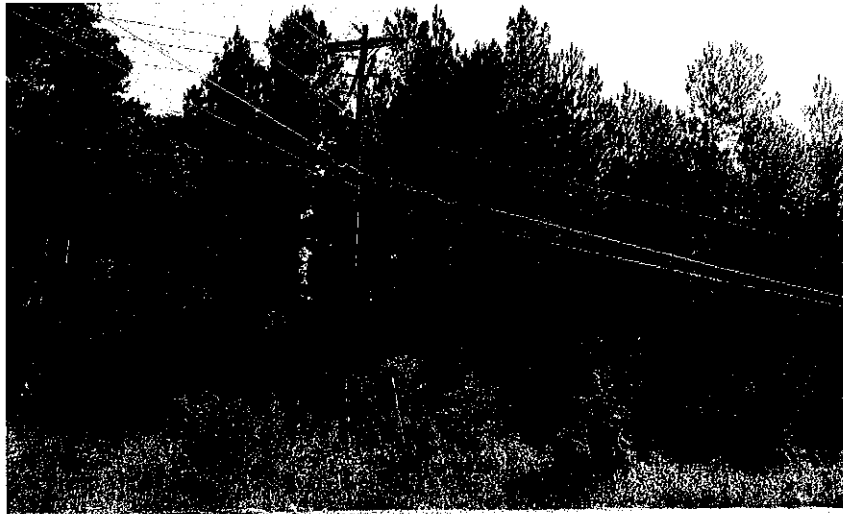
OWNER: READLING FAMILY LIMITED PARTNERSHIP  
1426 THE PLAZA  
CHARLOTTE, N.C. 28205

SURVEYOR: JEFFREY L. GREEN, PLS  
5322 BIG OAK CHURCH ROAD  
EAGLE SPRINGS, N.C. 27242  
(910) 975-2308

# **APPRAISAL REPORT**

**OF**

1.81± ACRES SITE  
10500 MOORESVILLE ROAD  
DAVIDSON, NORTH CAROLINA 28036



**PARCEL #4673-77-2598-0000**

**PREPARED FOR**  
CITY OF KANNAPOLIS  
MR. WILMER MELTON, III, DIRECTOR OF PUBLIC WORKS  
401 LAUREATE WAY  
KANNAPOLIS, NORTH CAROLINA 28081

**EFFECTIVE DATE OF APPRAISAL**  
APRIL 22, 2017

**DATE OF REPORT**  
APRIL 29, 2017

**PREPARED BY**  
TIMOTHY N. TALLENT, CCRA  
STATE CERTIFIED GENERAL APPRAISER  
TALLENT & ASSOCIATES  
1036 BRANCHVIEW DRIVE, SUITE 204  
CONCORD, NORTH CAROLINA 28025  
704-787-9395

# TALLEN AND ASSOCIATES

April 29, 2017

City of Kannapolis  
Attn: Mr. Wilmer Melton, III, Director of Public Works  
401 Laureate Way  
Kannapolis, North Carolina 28081

Re: 1.81± Acres Site, 10500 Mooresville Road, Davidson, North Carolina

Dear Mr. Melton:

Tallent and Associates Real Estate Services is pleased to submit the accompanying appraisal of the above referenced property. The purpose of the appraisal is to develop an opinion of the market value as is of the fee simple interest in the property. The client for this assignment is City of Kannapolis, and the intended use is for asset valuation purposes.

The appraisal is intended to conform with the Uniform Standards of Professional Appraisal Practice (USPAP), the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute, and applicable state appraisal regulations. The appraisal is also prepared in accordance with the appraisal regulations issued in connection with the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA).

To report the assignment results, we use the Appraisal Report option of Standards Rule 2-2(a) of the current edition of USPAP. As USPAP gives appraisers the flexibility to vary the level of information in an Appraisal Report depending on the intended use and intended users of the appraisal, we adhere to our internal standards for an Appraisal Report – Standard Format. This type of report has a moderate level of detail. It summarizes the information analyzed, the appraisal methods employed, and the reasoning that supports the analyses, opinions, and conclusions. It meets or exceeds the former Summary Appraisal Report requirements that were contained in the previous edition of USPAP.

The accompanying report contains the information we have compiled in the preparation of your requested appraisal.

The report assumes that no environmental conditions exist. If, in the future, it is discovered that adverse environmental conditions exist, I reserve the right to revise the report and valuation conclusion, if necessary. I am not an expert in the environmental field and am not qualified to render a decision as to whether or not hazardous conditions exist.

Based on our inspection and analysis of the property, it is our opinion that the Market Value of the fee simple interest in the property, as of the date of inspection, April 22, 2017, is:

**\$73,300**

**SEVENTY THREE THOUSAND THREE HUNDRED DOLLARS**

Sincerely,  
TALLEN & ASSOCIATES



Wendy R. Walters  
State Certified Residential Appraiser

I, JEFFREY L. GREEN, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTION RECORDED AS SHOWN). THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION AS SHOWN. THAT THE RATIO OF PRECISION OR POSITIONAL ACCURACY AS CALCULATED IS 1:10,000. THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH NCQS 47-30 AS AMENDED. WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEAL THIS 7TH DAY OF AUGUST, A.D. 2017.

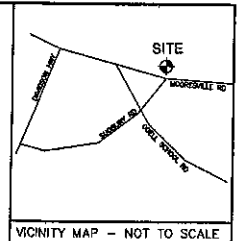
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*Jeffrey L. Green*  
PROFESSIONAL LAND SURVEYOR  
L-3972  
REGISTRATION NUMBER

Review Officer

Date

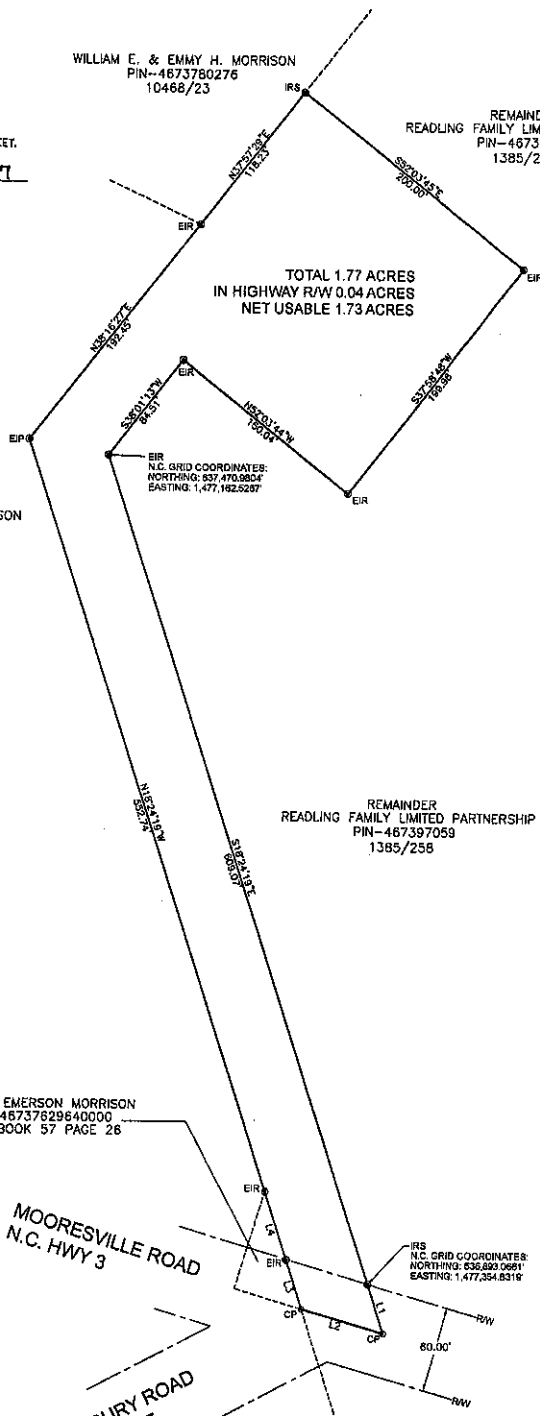


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REMAINDER  
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CABARRUS COUNTY, NORTH CAROLINA



WILLIAM EMERSON MORRISON  
PIN-4673770273  
6399/336

N.C. GRID COORDINATES:  
NORTHING: 837,470.9804  
EASTING: 1,477,162.5287

REMAINDER  
READLING FAMILY LIMITED PARTNERSHIP  
PIN-467397059  
1385/258

LINE	BEARING	DISTANCE
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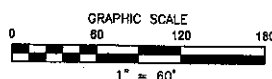
WILLIAM EMERSON MORRISON  
PIN-46737829840000  
PLAT BOOK 57 PAGE 26

N.C. GRID COORDINATES:  
NORTHING: 636,693.0691  
EASTING: 1,477,354.8316

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FRONT - 50' (LOCAL ROAD)  
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RECOMBINATION PLAT OF  
**MUNICIPAL UTILITY LOT**  
PROPERTY OF  
**READLING FAMILY LIMITED PARTNERSHIP**  
FOR  
**THE CITY OF KANNAPOLIS**  
NUMBER 3 TOWNSHIP, CABARRUS COUNTY, NORTH CAROLINA  
AUGUST, 2017 SCALE 1"= 60'  
FIELD WORK PERFORMED APRIL 2017

OWNER: READLING FAMILY LIMITED PARTNERSHIP  
1426 THE PLAZA  
CHARLOTTE, N.C. 28205

SURVEYOR: JEFFREY L. GREEN, PLS  
5322 BIG OAK CHURCH ROAD  
EAGLE SPRINGS, N.C. 27242  
(910) 975-2308





**City of Kannapolis  
City Council Meeting  
September 11, 2017  
Staff Report**

**TO:** Mayor and City Council  
**FROM:** Annette Privette-Keller, Director of Communications  
**TITLE:** Budget Amendment to accept a \$25,332 grant from CHA

**A. Action Requested by City Council**

**Motion to Approve Budget Amendment #18-5 to accept a \$25,332 grant from Cabarrus Health Alliance for expansion of the Loop the Loop Program.**

**B. Required Votes to Pass Required Action**

Majority present at meeting

**C. Background**

The Cabarrus Health Alliance (CHA) was awarded a 3-year, nearly \$2.5 million grant from the U.S. Department of Health & Human Services to focus on reducing health disparities among African American and Hispanic populations in Cabarrus County. Called the REACH (Racial and Ethnic Approaches to Community Health) program, the program uses policy, systems, and environmental approaches to address the leading causes of chronic disease and obesity, as well as promoting healthy lifestyles. The timeframe of the grant period is October 2014 to September 2017.

Through the REACH grant, CHA is providing the City of Kannapolis with funding to create plans and policy changes that are consistent with the goals of the program: to increase access to healthy food, access to physical activity opportunities, and clinical and community linkages.

The Cabarrus Health Alliance has \$25,332 available to design and purchase eight signs which will be placed at Kannapolis City School locations. The signs will include maps of exercise "loops" people can use around the schools and nearby neighborhoods. Wherever possible the new exercise loops will tie into the City's existing Loop the Loop Program.

These funds will also cover the cost of a sign to market the Downtown Farmers Market.

**D. Fiscal Considerations**

The grant funds of \$25,332 will cover the costs of the additional signage.

### **E. Policy Issues**

The grant supports the City's Discover a Healthy Life Brand and allows us to expand the successful Loop the Loop Program to children and their families in their school neighborhoods.

### **F. Legal Issues**

None.

### **G. Alternative Courses of Action and Recommendation**

- 1. Approve the Budget Amendment to accept a \$25,332 grant from Cabarrus Health Alliance for expansion of the Loop the Loop Program (Recommended)**
2. Do not accept the grant funds.

#### **ATTACHMENTS:**

File Name

 Council\_BA\_18-5\_GRANT\_Budget\_Amendment.pdf

**ORDINANCE AMENDING BUDGET FOR THE  
CITY OF KANNAPOLIS, NORTH CAROLINA  
FOR THE FISCAL YEAR BEGINNING JULY 1, 2017  
AND ENDING JUNE 30, 2018  
Amendment # 18-5**

**BE IT ORDAINED** by the City Council of the City of Kannapolis, North Carolina meeting in open session this 11th day of September 2017, that the following amendment to the Budget Ordinance for the City of Kannapolis, North Carolina for the Fiscal Year beginning July 1, 2017 and ending June 30, 2018 is hereby adopted:

**SECTION I - WATER & SEWER FUND**

Expenditures:

Increase Marketing/Branding Expenditure: 11120-43425	\$25,332
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Revenues:

Donations Revenue: 10000-37100	\$25,332
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This ordinance is approved and adopted this 11<sup>th</sup> day of September 2017.

\_\_\_\_\_  
Milton D. Hinnant, Mayor

**ATTEST:**

\_\_\_\_\_  
Bridgette Bell, MMC, NCCMC  
City Clerk



**City of Kannapolis  
City Council Meeting  
September 11, 2017  
Staff Report**

**TO:** Mayor and City Council  
**FROM:** Wilmer Melton, III - Director of Public Works  
**TITLE:** Resolution Supporting NCDOT funding for Project Hercules

**A. Action Requested by City Council**

**Motion to approve the Resolution Supporting NCDOT Funding for Project Hercules.**

**B. Required Votes to Pass Required Action**

Majority present at meeting

**C. Background**

Project Hercules is an \$85 million, one-million square foot industrial building. The Project will bring a minimum of 600 full-time jobs with benefits to the community and throughout the region. The efforts to bring the firm to Kannapolis has been a joint partnership with Cabarrus County, Cabarrus County Economic Development Corporation and NCDOT. NCDOT is proposing to fund approximately \$2.7 million in roadway improvements to facilitate the proposed development and requests the City of Kannapolis provide a resolution of support for the improvements.

**D. Fiscal Considerations**

None

**E. Policy Issues**

None

**F. Legal Issues**

None

**G. Alternative Courses of Action and Recommendation**

- 1. Approve motion authorizing execution of the Resolution Supporting NCDOT Funding for Project Hercules. (Recommended)**
2. Deny motion authorizing execution of the Resolution Supporting NCDOT Funding for Project Hercules.

**ATTACHMENTS:**

**File Name**

 Resolution\_Supporting\_NCDOT\_funding\_for\_Project\_Hercules.pdf

**RESOLUTION OF SUPPORT FOR THE  
NC DEPARTMENT OF TRANSPORTATION FUNDING  
FOR ROAD IMPROVEMENTS RELATED TO PROJECT HERCULES**

**WHEREAS**, an economic development project titled Project Hercules has been proposed within the City of Kannapolis and Cabarrus County; and

**WHEREAS**, Project Hercules is projected to include up to \$85,000,000 in real and personal property value increases; and

**WHEREAS**, Project Hercules is projected to include up to 600 full time jobs plus additional seasonal part time employment; and

**WHEREAS**, to be fully realized Project Hercules will need roadway and infrastructure improvements to NC Highway 73, Macedonia Church Road, Barr Road, Kannapolis Parkway and the I-85/George Liles Parkway ramps; and

**WHEREAS**, the Board of Commissioners and Kannapolis City Council have both approved economic development incentives to support the Project Hercules investment and job creation;

**WHEREAS**, the City of Kannapolis and the Cabarrus County Board of Commissioners are supportive of the NC Department of Transportation proposal to fund up to \$2,700,000 to aid in constructing the required infrastructure and roadway improvements;

**NOW THEREFORE, BE IT RESOLVED** by the City of Kannapolis that they support and encourage the NC Department of Transportation to approve the Trust Fund Economic Development and Economic Development Highway Fund for Project Hercules;

Adopted this the 11<sup>th</sup> day of September 2017.

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Milton D. Hinnant  
Mayor

ATTEST:

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Bridgette Bell, MMC, NCCMC  
City Clerk



**City of Kannapolis  
City Council Meeting  
September 11, 2017  
Staff Report**

**TO:** Mayor and City Council  
**FROM:** Mike Legg, City Manager and Walter M. Safrit, II, City Attorney  
**TITLE:** Terminate Phase III Covenants Kannapolis Business Park

**A. Action Requested by City Council**

**Motion to adopt a Resolution Terminating Phase III Declaration of Covenants, Conditions and Restrictions for Kannapolis Business Park.**

**B. Required Votes to Pass Required Action**

Majority present at meeting

**C. Background**

The final phase of the Kannapolis Gateway Business Park was a 5.582 acre tract and a 1.599 acre tract located on the west side of Kannapolis Parkway (copy of map attached). The 5.582 acre tract was sold in 2007 to Parkway Commons of Kannapolis, LLC which desires to construct Class A apartments and townhomes. The property is properly zoned for that use but the Declaration of Covenants, Conditions and Restrictions (CCR's) has provisions which are incompatible with the vision of their project. It appears the developer has an understanding that the City would remove the CCR's as a condition of a land swap between the City and developer for the fire station site (copy of CCR's attached). The CCR's for Phase III affect only this property.

The developer has requested that the CCR's be rescinded. City staff has no objection so as to allow this projected use which will substantially add to the City tax value and otherwise promote economic growth in a preferred area.

**D. Fiscal Considerations**

None.

**E. Policy Issues**

None.



<b>F. Legal Issues</b>
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None.

<b>G. Alternative Courses of Action and Recommendation</b>
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1. **Adopt the Resolution (Recommended).**
2. Amend the Resolution followed by Adoption.
3. Reject the Resolution.

**ATTACHMENTS:**

**File Name**

- ☐ Resolution\_Authorizing\_Termination\_of\_Kannapolis\_Business\_Park\_(Phase\_III)\_Covenants\_\_(9-5-17).pdf
- ☐ declarations-staff\_report\_Business\_Park.pdf
- ☐ amendment-staff\_report\_Business\_Park.pdf
- ☐ Map\_to\_Staff\_Report\_-Business\_Park.pdf

Resolution # \_\_\_\_\_

**CITY OF KANNAPOLIS  
RESOLUTION AUTHORIZING TERMINATION  
OF KANNAPOLIS BUSINESS PARK (PHASE III) COVENANTS**

WHEREAS, the City of Kannapolis ("City") was the developer of Kannapolis Business Park including a 5.582 acre tract (the "Property") on the west side of Kannapolis Parkway; and

WHEREAS, the City recorded a Declaration encumbering only the Property with certain Easements, Covenants and Restrictions ("CCR's"); and

WHEREAS, the Property was sold to Parkway Commons of Kannapolis, LLC which intends to develop the Property for multifamily use with apartments and townhomes; and

WHEREAS, the developer has requested a release or termination of the CCR's as it impairs its vision and plan for completion of its project; and

WHEREAS, the City concurs that release or termination of the CCR's are in the best interests of the City as it desires to promote healthy development and the increased tax base for the benefit of all City residents.

NOW THEREFORE, the City Council RESOLVES as follows:

1. The City Manager is authorized to execute the attached Second Amendment to Declaration of Easements, Protective Covenants and Restrictions and all other documents necessary which are consistent with the general interest of this Resolution.
2. This Resolution shall take effect upon adoption.

This the 11th day of September, 2017.

\_\_\_\_\_  
Milton D. Hinnant  
Mayor

Attest:

\_\_\_\_\_  
Bridgette Bell, MMC, NCCMC  
City Clerk

7784  
0282

33110

BOOK 7784 PAGE 282

CABARRUS COUNTY  
FILED  
09/07/2007 3:23 PM  
LINDA F. MCANEE  
Register Of Deeds  
By. [Signature] Deputy/Asst.  
EXCISE TAX \$0.00

File Prepared by, and when recorded return to:  
Walter M. Safrit, II.  
Rutledge, Friday, Safrit & Smith  
PO Box 24, Kannapolis, NC 28082

STATE OF NORTH CAROLINA  
COUNTY OF CABARRUS

DECLARATION OF  
EASEMENTS, PROTECTIVE  
COVENANTS AND RESTRICTIONS  
(KANNAPOLIS GATEWAY BUSINESS  
PARK, PHASE III)

THIS DECLARATION OF EASEMENTS, PROTECTIVE COVENANTS AND RESTRICTIONS (the "Declaration") is made to be effective as of the 6<sup>th</sup> day of September, 2007, by CITY OF KANNAPOLIS, a North Carolina municipal corporation (the "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of approximately 5.582 acres of land situated in Cabarrus County, North Carolina, being further described in Exhibit A, attached hereto and by this reference made a part hereof (the "Declarant's Property" or the "Property"). The Declarant's Property is further identified on that certain Plat of Subdivision (the "Plat"), recorded in Map Book 47, Page 76 of the Cabarrus County Public Registry (the "Registry") as Lot 1 and shall also be known as Phase III of Kannapolis Gateway Business Park.

WHEREAS, this Supplementary Declaration is executed for Phase III of Kannapolis Gateway Business Park pursuant to the provisions of Article VI (Section 6.02) of the Declaration of Easements, Protective Covenants and Restrictions recorded in Deed Book 3916 at page 55, Cabarrus County Registry.

WHEREAS, Declarant, for itself and for its successors and assigns, desires to create uses in accordance with a general scheme or plan of development on the Property (the "Development"), to provide for the preservation of the values therein and for the preservation of the quality of the Development and, to this end, does declare and publish its intent to subject the Property to the covenants,

restrictions, easements, conditions, charges, and liens hereinafter set forth. All covenants, restrictions and conditions created herein shall run with the Property, as applicable, and shall be binding on all persons or entities having or acquiring any right, title, or interest in the Property or any part thereof, and shall inure to the benefit of each owner thereof.

NOW, THEREFORE, Declarant, for and in consideration of the recitals hereinabove stated (which, by this reference, are incorporated into the operative and enforceable provisions of this Declaration) and the grants, agreements and covenants contained herein, does hereby declare that all of Declarant's Property shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, conditions, charges and liens hereinafter set forth, which are for the purpose of protecting the value and desirability of the Property, and shall run with the land and be binding on all parties having any right, title or interest in the Property or any part thereof, their successors and assigns, and shall inure to the benefit of each owner thereof, provided, however, that any and all rights, powers and reservations of Declarant including but not limited to those relating to issuances of approval, enforcement, curing of defaults and rights of regulation according to this Declaration are personal to Declarant in its corporate capacity and may be transferred to its successor and assigns.

## ARTICLE I

### DEFINITIONS

As used herein all capitalized terms shall have the respective meanings and definitions specified in this Article I or as may be otherwise specifically defined. All definitions shall be applicable equally to the singular and plural forms of such defined terms.

1.1. "Applicable Authorities" shall mean the federal, state, county, and municipal authorities having jurisdiction on the use, development and servicing of the Property, including all rules, regulations, requirements, and zoning ordinances promulgated by such authorities.

1.2. "Declarant" shall mean and refer to the party identified as Declarant in this first paragraph of this Declaration and its successors and assigns.

1.3. "Hazardous Materials" shall mean (i) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), as amended from time to time, and regulations promulgated thereunder; (ii) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.) ("CERCLA"), as amended from time to time, and regulations promulgated thereunder; (iii) asbestos; (iv) petroleum products and polychlorinated biphenyls; (v) any other substance, the presence of which on the Property (as hereinafter defined) is prohibited by any government requirement; and (vi) any other substance which by any government requirement requires special handling in its collection, storage, treatment or disposal.

1.4. "Improvements" shall mean and include, but not be limited to, buildings, of a permanent or temporary nature (with temporary buildings being permitted only during the construction of other Improvements), outbuildings, underground installations, slope alterations, dams, spillways, ponds, lakes, surface water drainage facilities, islands in the ponds and lakes (other than any detention pond that is constructed as part of the Stormwater Drainage System), sediment control devices, roads, berms, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, windbreaks, plantings, planted trees and shrubs, poles, signs, utilities, water lines, sewer, electrical and gas distribution facilities, heating, cooling and air circulation equipment and facilities, loading area, roofed structures, railroad trackage, hedges, tennis courts, exterior illumination, changes in exterior color or shape and all other

structures or landscaping improvements of every type and kind initially or at any time thereafter placed or constructed on any Site.

1.5. "Mortgage" shall mean and include a mortgage, a deed of trust, a sale-leaseback, a sale repurchase or other bona fide financing transaction. "Mortgagee" or "Lender" shall mean and refer to the holder and owner of a Mortgage of the beneficiary of a deed of trust.

1.6. "Occupant" shall mean any person, corporation, partnership, or organization who or which has purchased, leased, rented, or is otherwise legally entitled to occupy and use any Site or portion thereof.

1.7. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Site or real property interest therein if developed under any form of common ownership, but excluding trustees under deeds of trust, Mortgagees, and all others holding title merely as security for the performance of an obligation; provided, however, that any such fee simple owner may delegate to a lessee of its Site all of its rights and obligations under this Declaration for the term of such lease and for purposes hereof upon such delegation such lessee shall be bound by the obligations and shall be entitled to exercise the rights of the fee simple Owner during the term of such lease, but no such delegation shall relieve such fee simple Owner from liability for the performance of such fee simple Owner's obligations hereunder. In the event any Site owned by two or more persons or entities, then each shall be fully liable hereunder as an Owner. As to any Site that is subjected to, organized, formed, created or converted into a condominium project, or similar project, the unit owners association or similar governing or ownership organization or entity shall be deemed the Owner.

1.8. "Property" shall mean and refer to that certain tract of land described in Exhibit "A."

1.9. "Site" shall mean all contiguous land owned by an Owner within the Property (which shall include all of any parcel subjected to common use or common ownership by more than one person or entity), but shall not include any street right-of-way, easement or other part of the Property at any time owned by Declarant for public or private roads or utility facilities, or by any public utility or any governmental entity for roads or utility facilities, or other facilities related to development of the Property. As to any contiguous lot, piece or parcel of land in the Property that is subjected to, formed, created or converted into a condominium project, then, the entirety of such lot, piece or parcel of land shall be deemed one Site regardless of the number of individual units or unit owners within such project. A Site is distinguishable from a Lot in that a Site may be a subdivided portion of a Lot or a recombination of Sites or Lots within the Property.

1.10. "Supplemental Declaration" shall mean any declaration of covenants, conditions and restrictions subsequently imposed by Declarant upon all or any portion of the Property by Declarant. Certain conditions and provisions applicable to Supplemental Declarations are set forth herein.

## ARTICLE II

### ARCHITECTURAL CONTROL

2.1. Committee. Immediately after the recording of this Declaration, Declarant shall establish an architectural review and control committee (hereinafter referred to as the "Committee"). The initial Committee shall consist of three (3) members. At all times while this Declaration remains in effect, the individual who serves from time-to-time as the Knapolis City Manager shall be a permanent member of the Committee (the "Permanent Member"). Except for the Permanent Member, all members of the Committee shall be appointed by Declarant. Declarant, at its sole option, shall have the right at any time

to replace or remove any members of the Committee appointed by it. The Committee will select its own chairperson and may adopt its own rules of order, and the chairperson, himself or herself, or upon the request of any member thereof may call a meeting of the Committee with not less than twenty-four (24) hours prior written notice thereof to each member. A majority of members voting may act at a meeting at which a quorum is present. A quorum of the Committee shall consist of a majority of its members. The Committee may take action without a meeting by the written consent of all of the members of the Committee. The Committee may engage and seek advice from professional persons including without limitation attorneys, architects, engineers, surveyors, landscape architects and land planners in connection with the review of submitted plans and specifications, in which event the fees of such professional persons may be charged to and paid by any Owner or Occupant who has submitted such plans as a condition to approval. Other organizational and operational matters shall be determined by the Committee at its meetings. Consistent with the requirements of this Declaration, the Committee may, but shall not be required to, adopt such written design criteria as it may deem appropriate from time to time and may amend and terminate prior written design criteria from time to time as it may deem appropriate. The initial mailing address of the Committee shall be City of Kannapolis, PO Box 1199, Kannapolis, North Carolina, 28082. The Committee may change its address at any time without notice. Each member of the Committee shall be responsible for the costs or expenses resulting from the member's service on the Committee.

2.2. Submission of Plans. Before commencing the construction or alteration of all initial or any subsequent buildings, enclosures, fences, loading docks, parking facilities, storage yards, signs, storage tanks, landscaping or any other structures or any other Improvements which create, impact, or affect the exterior or physical appearance of the structures, the Improvements, the Site, or any part thereof, the Owner or applicable Occupant of every such Site or part thereof shall first submit to the Committee preliminary plans and specifications (the "Plans") for any or all of the foregoing as such Owner or Occupant intends to construct, as well as all the data, drawings and information specifically required by this Section 2.2, all in duplicate. The Plans must be submitted in a manner and form such that the Committee can adequately review the physical appearance of the proposed structures and Improvements. One such copy of the Plans shall become the sole property of the Committee. No structures or Improvements which create, impact, or affect the exterior or physical appearance of any structures, Improvements, or Site, or any part thereof shall be constructed, erected, placed or materially altered on any Site or part thereof until the Plans have been submitted to and approved in writing by the Committee. The Plans shall include but not be limited to the following:

2.2.1 Topographic Plan. Topographical plat showing contour grades (with 2-foot contour intervals) and showing the location of all Improvements, structures, walks, patios, driveways, fences and walls. Existing and finished grades shall be shown at lot corners and at corners of proposed Improvements. Site drainage provisions shall be included as well as cut and fill details if any appreciable change in the topographic contours is contemplated. Each Site shall be required to incorporate into the Plans a scheme to connect a stormwater drainage system to the Stormwater Drainage System for the Property, and, unless the Owners of adjoining Sites so agree, no Owner on any Site shall be permitted to drain (except by natural surface drainage over existing contours and only over non-impervious surfaces) or detain in another Site any stormwater.

2.2.2 Elevation Drawings. Exterior elevations of all proposed buildings and structures.

2.2.3 Specification of Materials. Exterior materials, colors, textures and shapes, which, if required by the Committee, shall also be identified by manufacturer's name, product name and identifying number where appropriate, all of which shall be consistent with the requirements of Article III of this Declaration.

2.2.4 Landscaping. Landscaping plan, including walkways, berms, fences and walls, elevation changes, watering systems, vegetation and ground cover, all of which Declarant may require to be consistent with, or coordinated with, landscape improvements on adjacent Sites.

2.2.5 Parking and Drives. Parking area and driveway plan, which Declarant may require to be coordinated with driveways on adjacent Sites.

2.2.6 Screening. Screening, including site, location and method.

2.2.7 Utilities. Utility connections, including routing of electrical lines, gas lines, telephone lines, water lines, sanitary sewer lines, CATV cable service.

2.2.8 Exterior Lighting Plan. Exterior illumination (which Declarant may require to be coordinated with exterior illumination then installed on adjacent Sites), including location, and if required by the Committee, the manufacturer's fixture number and supporting illumination test data.

2.2.8 Identification Signs. Signs, flags and other horizontal or vertical advertising or identification not necessary for structural purposes, including size, height, shape, color, location and materials.

2.2.9 Trash Storage. Trash container storage locations and related screening.

2.2.10 Access. Ingress and egress design and plan.

2.2.11 Curb and Gutter. Curbing including curb cuts to public rights-of-way, and gutters.

2.2.12 Use. Proposed use of Site and such matters as may be required by Applicable Authorities.

2.2.13 Other Matters. Such specifications as may be required under Article III of this Declaration.

2.3. Basis of Approval. Approval of the Plans shall be based on general adequacy of site dimensions, structural design, conformity and harmony of the exterior design and location with neighboring structures and neighboring Sites, relation of finished grades and elevations to neighboring Sites, compatibility with premier, first class multi-family residential, commercial office, retail and service/retail developments in the area, and conformity to both the specific and general restrictions and covenants set forth herein. The Committee shall have the right to disapprove any submitted Plans of any Site if such Plans are not in conformity with the provisions of this Declaration or the requirements of Applicable Authorities, or if the Committee, acting pursuant to Section 2.1 hereof in its commercially reasonable discretion, determines that such Plans are not in the best interest of the contemplated development of the Property as a premier, first class multi-family residential, commercial office, retail, and service/retail development as described by this Declaration.

2.4. Procedure for Approval. At such time as the Plans meet the approval of the Committee, acting pursuant to Section 2.1 hereof, one complete set of Plans (the "Approved Plans") will be retained by the Committee and the other complete set of Plans shall be marked "Approved," signed by the chairperson on behalf of the Committee and returned to the party submitting the Plans. If disapproved by the Committee, acting pursuant to Section 2.1 hereof, one set of such plans shall be returned marked "Disapproved" and shall be accompanied by a statement of the reasons for disapproval, which statement shall be signed by the chairperson on behalf of the Committee. Any material modifications



of the Approved Plans must again be submitted to the Committee for its approval. The Committee's approval or disapproval, as required herein, shall be in writing. In no event shall the Committee give verbal approval of any Plans and any Owner shall not be entitled to rely upon or to assert as a defense any claim of verbal approval by the Committee to any Plans. Prior to or upon completion of the Improvements to which Approved Plans relate, a final set of the Plans used to complete the Improvements (the "As-Built Plans") shall also be submitted to the Committee, and any substantial and material differences between the As-Built Plans and the Approved Plans shall be subject to the Committee's approval process as set forth in Article II of this Declaration.

2.5. Failure to Act. If the Committee fails to approve or disapprove the Plans within thirty (30) days after the receipt by the Committee (such receipt date being evidenced in writing by a member of the Committee), then the Plans shall be deemed to be Approved Plans as submitted and the Improvements shown thereon shall be constructed in accordance with such Approved Plans.

2.6. Reconstruction. Nothing contained in the Declaration shall prohibit the reconstruction on a Site of Improvements that have been approved by the Committee in the event the existing Improvements are destroyed by fire or other such hazard; provided, however, that the covenants and conditions contained herein shall continue to apply to the Site. Any repair or reconstruction of Improvements shall be performed in accordance with the Approved Plans for the Site. Additional plans and approvals shall be required only when the repair or reconstruction materially differs from the Approved Plans. In the event any Improvements are partly destroyed or damaged, the Owner or applicable Occupant of the Site on which such damage or destruction occurs shall repair (including any applicable rebuilding) such Improvements within six (6) months thereafter, subject in all events to the terms and conditions of this Declaration; provided, however, that if any such Improvements are totally damaged or destroyed and the Owner or Occupant does not desire to so repair and rebuild such Improvements, then such damaged or destroyed Improvements shall be completely razed, dismantled and removed completely from the Site, and the Site shall be completely cleared of any and all debris and the Site shall be landscaped by the Owner pursuant to Plans submitted to the Committee and subsequently approved pursuant to Article II of this Declaration. The dismantling and removal of the destroyed Improvements shall begin within 120 days after the damage occurs and shall be completed no later than 180 days after the damage occurs. For purposes of this Declaration, total damage or destruction shall mean that the Improvements are damaged or destroyed to such an extent that the Owner, in the reasonable exercise of his or its judgment, cannot reconstruct or rebuild such Improvements for their intended purpose. If, in the opinion of the Committee, any such Owner or Occupant has failed in any of his or its duties or responsibilities under this Section 2.6, then the Committee may give such Owner or Occupant written notice of such failure and such Owner or Occupant must, within thirty (30) days after receiving such notice, perform the repairs required or remove such Improvements. Should any such Owner or Occupant fail to fulfill this duty and responsibility within such period, then the Declarant, through its authorized agent or agents, shall have the right and power to enter onto the Site and perform such repairs or remove such Improvements without any liability for damages for wrongful entry, trespass or otherwise to any person and without any liability for damages allegedly caused to the Property or any Improvements thereon. The Owner and Occupants of any part of the Property on which such work is performed shall be liable for the cost of such work and shall promptly reimburse the Declarant, as applicable, for such cost. If such Owner or Occupant shall fail to reimburse the Declarant within thirty (30) days after receipt of a statement for such work from the Declarant, then said indebtedness shall be a joint and several debt of both the Owner and Occupant of such Site, and shall constitute a lien against the Site on which said work has been performed. Any such lien created by this Section 2.6 shall be subordinate only to any Mortgages existing on the Site at the time the work is performed.

2.7. Limitation of the Committee's Liability.

2.7.1 Exculpation. Neither the Declarant, the Committee nor any member thereof, shall be liable in damages or otherwise to anyone submitting Plans to them for approval, or to any Owner or Occupant of land affected by this Declaration, by reason of a mistake in judgment, negligence, variance, inconsistency or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any such Plans.

2.7.2 No Warranty in Approval. The Committee's approval of any building Plans, specifications, site or landscape plans or elevations or any other approvals or consents given or requirements imposed or suggested in connection therewith by the Committee pursuant hereto or otherwise shall not be deemed a warranty, representation or covenant as to the adequacy or accuracy of the design or structure of such buildings, landscaping or other Improvements, or that other action taken pursuant thereto or in reliance thereon complies with, or is not in violation of, any applicable laws, rules or regulations, and by taking title to or leasing any part of the Property, the Owner and Occupant, for themselves and their heirs, successors and assigns, do hereby expressly release and relieve Declarant, the Committee and all other members of the Committee of any and all liability in connection therewith.

2.8. Waiver. Every person, corporation, partnership, organization, limited liability company or other entity that submits Plans to the Committee for approval agrees, by submission of such Plans, and every Owner or Occupant of any of the Property agrees by acquiring title to any Site or an interest therein, that he or it will not bring any action, proceeding or suit against the Committee or any member thereof to recover for damages caused or allegedly caused by the Committee.

2.9. Time Limitation. All approvals issued by the Committee as provided for in this Article II shall be effective for a period of two (2) years from the date approval is given or deemed to have been given as provided in Section 2.5 of this Article II. In the event construction of any work contemplated by the Approved Plans has not commenced within such two (2) year period, then approval shall be deemed expired and no construction shall thereafter commence unless a written renewal is granted by the Committee. For purposes of this Section 2.9, construction shall be deemed to have commenced when building footings for the Improvements to which Improved Plans related have been poured.

2.10 Approval of 532-unit Multifamily Development. The development of a 532-unit (+/-) multifamily development in substance and form according to plans already submitted to and approved by Declarant's planning authority, on approximately 31 contiguous acres (including the 5.582 acre tract comprising Phase III, is deemed approved by the Committee.

### ARTICLE III

#### DEVELOPMENT STANDARDS AND PROTECTIVE COVENANTS

The intent of Declarant is to incorporate into the Development design standards and materials similar to other mixed use projects of similar size and scope in the Charlotte Metropolitan Statistical Area in order to create on the Property a first-class mixed use project. The ultimate uses for the Development may consist of a mix of multi-family residential, office, retail and service/retail or exclusively of retail, service/retail uses. In furtherance of that intent, the Committee shall require all improvements in the Development to comply with the following development standards and protective covenants:

3.1. Uses of the Property. The following provisions shall be applicable to any and all construction, improvement, alteration, addition or use of the Property and, as applicable, shall be incorporated into the Plans:

3.1.1 Prohibited Uses. The following uses of the Property are not permitted:

- (1) Warehousing and manufacturing of products, materials or other items where such activity takes place outside of a screened or enclosed structure or facility.
- (2) Any use which involves the raising, breeding or keeping of any animals, insects, fish or poultry where said activity takes place outside of an enclosed structure or facility.
- (3) Objectionable or nuisance uses, as reasonably determined by the Committee, by reason of odor, dust, fumes, smoke, noise, vibration, refuse matter or water-carried waste.
- (4) Junk or salvage yards.
- (5) Uses in violation of the laws of the Applicable Authorities.
- (6) Unless specifically approved in writing by the Committee, the placement, holding, locating disposal, manufacture, storage or dumping of Hazardous Materials; provided, however, that this restriction shall not apply to the sale of gasoline, motor oil or other petroleum products, provided, that such petroleum products are handled, stored and disbursed within the rules, regulations and requirements of all Applicable Authorities.
- (7) Unless specifically approved in writing by the Committee (which approval may be withheld for any reason or for no reason), the use of explosives or any other dangerous or unsafe materials.

3.1.2 Permissible Uses. All Sites within the Property shall be used only for multi-family residential, office, retail sales, service/retail uses (including, without limitation restaurants, banks and service offices), and any other uses which the Committee, acting within its commercially reasonable discretion, determines to be in the best interest of the contemplated development of the Property as a premier, first-class multi-family residential, commercial office, retail, and service/retail development in the Charlotte metropolitan statistical area; subject to the conditions set forth in this Declaration and subject to the requirements of the Applicable Authorities. In the event that a use is permitted by this Declaration but not permitted by the Applicable Authorities, such use shall be permitted by this Declaration only if the Applicable Authorities specifically approve a variance for such use and only if such use is otherwise approved by the Declarant.

3.2. Site Plan Requirements. Plans submitted to the Committee for approval shall include a site plan that provides such information regarding development of the Site as complies with the following minimum requirements:

3.2.1 Grading and Drainage. All structures will be equipped with gutters, downspouts and/or other drainage conveyances. All surface drainage, including roof drainage of buildings, shall be designed to conduct stormwater into the Stormwater Drainage System.

3.2.2 Setback Lines. All structures shall comply with the requirements of the Applicable Authorities with respect to setback lines. In addition, except as provided herein, unless approved by the Committee, no structures of any kind and no part thereof shall be placed within twenty (20) feet of the boundary of any adjacent Site; within thirty (30) feet of the border of any roadways or streets; or within thirty (30) feet of any other structure. Each Owner or Occupant shall fully maintain any setback areas on its or his Site. The following improvements are expressly excluded from the setback restriction:

- (1) Structures below and covered by the ground where such structures will not interfere with utility lines.
- (2) Steps, walks, driveways, curbing, and parking (as allowed by the Applicable Authorities).
- (3) Planters, walls, fences, hedges, retaining walls, and signs when specifically approved by the Committee which are also within the limits set by the Applicable Authorities, items constructed or installed pursuant to a landscaping and hardscaping plan for the frontage of the Property, and other items approved by the Committee.
- (4) Approved landscaping, including landscaped earthen berms.

3.2.3 Parking. No parking areas may be located within ten (10) feet of the border of any roadway, street, lake or any other dedicated thoroughfare and no parking shall be permitted on any such roadways, streets, or other dedicated thoroughfares. The Site Plan shall include location, configuration and numbers of parking spaces. Except for any temporary parking areas utilized by Declarant, parking areas shall be paved with either asphalt or concrete.

3.3 Construction Methods. All Plans shall contain specific information as to construction materials, consistent with the requirements of Section 3.10, and construction methods, to be utilized.

3.4 Driveways. Driveways shall be paved with concrete or asphalt. No driveway approach shall be permitted within thirty (30) feet of a street intersection or so close to a property line that an adjoining property Owner would be unable to have reasonable access to its or his Site. Driveway width shall be a minimum of ten (10) feet.

3.5 Landscape Treatment. No Plans for any building, structure or other Improvement to be erected, placed or altered in or upon any Site shall be approved by the Committee unless the Plans include separate landscape plans satisfactory to the Committee, such landscape plans to specify plantings and hardscape construction to be installed on the Site. Approved landscaping must be installed within thirty (30) days following the granting of a temporary or permanent certificate of occupancy for the building except as delays may be approved by the Committee and subject to any delays caused by weather conditions. Landscape treatment of the Site shall be in the form of grass lawns and ground covers, shade trees in parking areas, and trees and plantings in areas used as dividers and in any areas of limited use. Landscaping shall be used to mark entrance points and parking areas. Irrigation watering systems shall be installed as may be required by the Committee. Except as otherwise approved by the Committee, all non-impervious portions of any Site shall contain ground cover, preferably properly maintained grass along the front of each Site between the street curb and the building area. For undeveloped Sites, and subject to the requirements of the Applicable Authorities for prevention of soil erosion, and only as the same may be applicable to property cleared of shrubs and trees and held for future development, the Owner of such Site must install and maintain grass cover on the Site. Landscape treatment shall not be in violation of sight line requirements set by the Applicable Authorities for street or driveway intersections. All landscaping shall be designed for reasonable maintenance and all landscaped areas shall be maintained in

a high quality at all times, including all necessary watering. Paving or terracing may be used in areas where excessive maintenance would otherwise be required.

3.6 Screening. Storage areas, trash storage, collection, sorting or handling areas, and roof objects (including without limitation fans, vents, cooling towers, and skylights) shall either be housed in closed buildings or be screened for sound and sight from public view and from exposure to the street level on adjoining Sites and from any public or private roadways and streets that adjoin such Site. Such ground-level screening shall normally include landscaping or permanent fences (excluding chain link fences), or approved solid materials and shall be located as far from property lines as reasonably possible.

3.7 Antennae; Satellite Dishes. All antennae shall be screened from view from public or private streets. Antenna towers and satellite dishes shall be erected on a Site only if approved by the Committee.

3.8 Loading Docks and Areas. Loading docks and areas shall not be located on the street side of any building or structure unless they are approved by the Committee. Loading areas may not encroach on setback areas, except in connection with the approval of street side loading areas for corner buildings. Loading docks and areas shall be screened from any public or private roadways and streets that adjoin such Site in a manner approved by the Committee.

3.9 Exterior Illumination. All exterior lighting shall be designed, erected, altered and maintained in accordance with the Plans submitted to and approved in writing by the Committee. If required by the Committee, lighting shall be compatible and harmonious with other lighting then installed throughout the entire Property and shall be in keeping with the specific function and building type served. Illumination will be encouraged on all exterior walls facing public streets and for all parking areas. All lighting shall be provided from a non-apparent light source, that is, a structure or design which screens, covers, or shades the light bulb or globe. No exterior lighting shall be directed toward any areas adjacent to the Site.

3.10 Building Design and Materials. The objective in building design standards is to obtain consistency and quality in architectural design to protect and enhance values of all Sites within the Property. In order to maintain consistency, yet permit interest and variety and the use of the new materials as they may develop, all architectural designs, including those for alterations, additions or remodeling, are subject to review and approval of the Committee, in the exercise of its commercially reasonable judgment, pursuant to the terms of this Declaration; provided, however, that, unless otherwise approved by the Committee, all Improvements shall be constructed with brick exteriors, and the size, color and design pattern shall be satisfactory to the Committee and otherwise harmonious with other Improvements within the Property. Plans shall address compatibility of design and materials with all exterior surfaces of any other Improvements within a Site and among Improvements within the Property. No building may be covered with or have an exterior of sheet or corrugated metal of any kind, wood (with the exception of trim areas), asbestos, iron, steel or plastic. If provided, roof slopes shall be of a design that is compatible with other Improvements within the Property. Flat roof construction shall require parapet borders.

3.11 Rooftop Treatments. In addition to being screened as required by Section 3.6 hereof, rooftop equipment, piping, flashing and other items exposed to any view from adjoining property shall be painted to match the roof surfacing color, or otherwise blended with the roof surface. Built-up roofs and roof top items which include equipment, piping, flashing and other items shall be maintained for continuity of the roof appearance and shall be screened as provided by Section 3.6. Stand fans, skylights, cooling towers, communication towers, vents and any other structures or equipment, whether located on the roof or elsewhere, shall be architecturally compatible or effectively shielded from view

from any public or private street by an architecturally sound method and shall be screened as provided by Section 3.6.

3.12 Waste Disposal. All facilities and plans for the disposal of wastes other than by public sewerage methods or by trash removal must be approved in writing by the Committee.

3.13 Signs: All signs must be approved in writing by the Committee prior to fabrication or installation, and the Committee's approval or disapproval of such signs must consistent with the requirements of the Applicable Authorities and otherwise be exercised in a commercially reasonable manner. The location, size and construction of signs must preserve and enhance the character of a premier first class multi-family residential, commercial office, retail and service/retail development. Flashing or moving character signs shall not be installed. Illuminated signs shall be rear lighted or lighted from nonapparent light sources. No billboards or advertising signs other than those identifying the occupant, nature of the business or products shall be permitted. The only other signs permitted within a Site shall be either signs of a directional nature or temporary signs indicating "for sale" or "for lease", the size of which must be approved by the Committee. All permitted signs shall be of a design and material consistent with the Improvements on a Site. The Committee shall not object to logos or trademarks of regional or national entities or retail organizations (provide, however, the Committee may review the size, location, materials, graphic composition and colors of such signs). In order to enhance the appearance and architectural harmony of the Property, an Owner or Occupant may present to the Committee from time to time an integrated signage program to apply to a specific Site, with criteria as to sign design, location, materials and graphic composition. If the integrated signage program is approved by the Committee, all signs erected on the affected Site that conform to such signage program and criteria need not require specific Committee approval.

3.14 Excavation: No excavation shall be made except in conjunction with construction of any Improvements and only after having received approval by the Committee. When such Improvements are completed, all exposed openings shall be back-filled, compacted, graded and returned to landscaped conditions approved by the Committee.

3.15 Construction Completion: Once commenced, construction shall be diligently pursued to completion. Such construction may not be left in a partly finished condition any longer than four (4) months. If construction is not diligently pursued for a period of time greater than four (4) months, then such existing construction already begun shall be immediately and completely razed, dismantled and removed from the Site by the Owner, the Site shall be completely cleared of any and all debris and the Site shall then be landscaped by the Owner pursuant to the Approved Plans.

3.16 Utilities. Transformers, electric, gas or other meters of any type, or other apparatus shall be screened in a manner consistent with the requirements of Section 3.6 of this Declaration. All utility lines placed on the Property after the recordation of this Declaration, except for temporary utility lines utilized during construction of the respective Improvements, shall be underground, unless otherwise approved by the Committee.

3.17 Additional Easements and Common Area Dedications. As a prerequisite of approval of Plans, the Committee shall have the power to require the Owner who has submitted Plans to grant any additional utility and drainage easements as may be reasonably required for the enjoyment and benefit of the Owners and Occupants of all or any portion of the Property. Where possible, the Committee shall attempt to locate any such required easements along the perimeter of the affected Site, within existing or proposed rights-of-way, within other existing or proposed easements, or in such a manner as to not materially impair the proposed use of the affected Site.

3.18 Proposed 532-unit Multifamily Development. The proposed development referred to in Section 2.10 shall be exempt from the requirements of this Article, so long as it meets all Applicable Authorities and follows the site plan referred to in Section 2.10.

#### ARTICLE IV

##### MAINTENANCE

4.1. Maintenance of a Site. Owners and Occupants of any portion of the Property or Improvements thereon shall have the duty and responsibility, at their sole cost and expense, to keep their Sites so owned or occupied, including buildings, Improvements, grounds or drainage systems or other rights-of-way incident thereto, in a well-maintained, safe, clean and attractive condition at all times. Such maintenance includes, but is not limited to, the following:

4.1.1 Trash and Waste Removal. Removal of all litter, trash, refuse and waste at least once a week.

4.1.2 Landscape Maintenance. Landscape maintenance and replacement, including, without limitation, regular watering of all landscaping within a Site, regular pruning of trees and shrubs, replacement of dead, dying or decaying trees, and shrubs, if applicable, regular lawn mowing, such that the grass level on undeveloped land is not higher than eight (8) inches and the grass level on a developed Site is not higher than five (5) inches, and regular trash and debris removal from all exterior ground surfaces within a Site.

4.1.3 Exterior Lighting and Mechanical Facilities. Maintenance of exterior lighting and mechanical facilities in good working order and free of damage or deterioration.

4.1.4 Parking and Driveway Areas. Maintenance of parking areas, driveways and roads in good repair, and restriping, as necessary, of parking areas.

4.1.5 Improvements. General maintenance of, and repair of exterior damage to, any Improvements, subject to the provisions of Section 2.6 hereof, so as to maintain such Improvements in a first-class condition, normal wear and tear excepted.

4.2 Underground Installation. All utility installations shall be underground (except for temporary overhead power lines installed during the construction of improvements on a Lot, which shall be removed promptly upon completion of construction).

4.3 Maintenance. To the extent that responsibility for maintenance is not assumed by the appropriate public utility, the maintenance of any utility line or facility located on a Lot or Site that serves only a single Lot or Site shall be the responsibility of the Owner of the Lot or Site served by that utility line or facility, and the maintenance of any utility line or facility located on a Lot or Site that serves multiple Lots or Sites shall be the responsibility of the Owners of the Lots or Sites served by that utility line or facility in a manner determined between such Owners.

#### ARTICLE V

##### ENFORCEMENT OF DECLARATION AND COVENANTS

5.1 Reciprocal Rights; Covenants Run With Land. Except as otherwise provided for herein, all restrictions, conditions, covenants and agreements contained herein are made for the direct, mutual and



reciprocal benefit of each and every Site or part thereof in favor of every other Site or part thereof; shall create reciprocal rights and obligations between the respective Owners of all Sites and privity of contract and estate between and among all Owners of all Sites or parts thereof, their heirs, successors and assigns; and shall as to the Owner of each Site, his or its heirs, successors and assigns, operate as covenants running with the land, for the benefit of all other Sites or parts thereof.

5.2. Attorney's Fees. In any legal or equitable proceeding for the enforcement of or to remedy the violation of the covenants set forth in this Declaration or any provision hereof, the losing party or parties shall pay the reasonable attorney's fees (based on time expended and not on statutory presumption) and costs of the prevailing party or parties, in such amount as may be fixed by the Court in such proceeding. Such fees upon appropriate docketing of a judgment to such effect shall become a lien against the Site (if any) of the losing party. All remedies provided herein or otherwise available, at law or in equity, shall be cumulative and not exclusive.

5.3. Inspection. Declarant and/or the Committee may from time to time at any reasonable hour or hours and upon prior reasonable notice to any Owner or Occupant, if applicable, enter upon and inspect any Site and Improvements that are subject to this Declaration to ascertain compliance herewith, without any liability for damages for wrongful entry, trespass or otherwise to any such person inspecting and without any liability for damages allegedly caused.

5.4. By Whom Enforceable. Subject to the limitations set forth herein, this Declaration may be enforced by Declarant or by any Owner, but neither of them shall have any obligation to do so nor be liable to anyone in the event of their failure so to do. Notwithstanding the foregoing, the City shall have the right, but not the obligation, to enforce this Declaration and all terms and conditions set forth herein at any time, whether or not the City is an Owner, and the City's enforcement of this Declaration shall not require the City to own any Lot or any portion of any Lot within the Property.

5.5. Specific Enforcement. All provisions of the covenants set forth in this Declaration may be specifically enforced by any Court of competent jurisdiction upon petition by any party entitled to enforce them as herein provided.

5.6. Failure to Enforce Not a Waiver of Rights. The failure of Declarant, the Committee or any Owner to enforce any covenants herein contained shall in no event be deemed to be a waiver either of the right to do so thereafter or of the right to enforce any other provision of this Declaration.

5.7. Right to Correct. In the event the Owner of any Site or part thereof fails to remedy any default, deficiency or violation of this Declaration (including but not limited to the construction or installation of Improvements not within the Approved Plans, improper uses, noncomplying uses, or failure to maintain) within thirty (30) days after written notice thereof is delivered to such Owner by Declarant, then Declarant shall, in addition to all other remedies provided for herein, have the right, privilege and license to cure such default, deficiency or violation and perform any and all reasonable correction including, without limitation, the performance of any required maintenance and destruction and removal of any Improvements constructed without approval of the Committee as provided in Article II hereof. In pursuing the correction remedies granted by this Section 5.7, Declarant shall have the right and power to enter onto or into each applicable Site and the Improvements thereon and perform any such correction action without any liability for damages for wrongful entry, trespass or otherwise to any person and without any liability for damages allegedly caused. The Owners and Occupants of any Site or Improvements on which such work is performed shall be liable for the cost of such acts including reasonable attorney's fees (based on time expended and not on statutory presumption) and shall promptly reimburse Declarant for such costs. If such Owner or Occupant shall fail to reimburse Declarant within thirty (30) days after receipt of a statement for the cost of such acts from Declarant as applicable, then

said indebtedness shall be a debt of all of said persons and shall constitute a lien against the Site and Improvements on which said acts were performed. Any such lien created pursuant to this Section 5.7 shall bear interest from the date of delinquency at the rate then imposed by Cabarrus County for delinquent real estate taxes. Any such lien created by this Section 5.7 shall be subordinate only to real estate taxes and to any Mortgages existing on the Property at the time such acts are performed.

## ARTICLE VI

### RIGHTS OF MORTGAGEES

Any Mortgagee, upon written request to Declarant, will be given written notification from Declarant of any default in the performance by the Owner of a Site of any obligation under this Declaration which is not cured within such period of time as may otherwise be required under the applicable Article of this Declaration. Such Mortgagee will be given thirty (30) days to cure such default should it so elect.

## ARTICLE VII

### TERM, MODIFICATION AND ASSIGNMENT OF DECLARANT'S RIGHTS AND DUTIES

7.1 Term. Unless extended, modified, amended or terminated as provided in Section 7.2 hereof, this Declaration, every provision hereof and every covenant, condition and restriction contained herein shall continue in full force and effect until June 30, 2047; provided, however, that unless terminated at the conclusion of the present or any extension term by a majority vote of all Owners, this Declaration shall continue thereafter for successive extension terms of five (5) years each. The vote to terminate shall be in writing, be recorded among the Land Records of Cabarrus County, North Carolina, and be certified to be correct by Declarant which shall be prima facie evidence of the truth of the matter certified.

7.2. Modifications. This Declaration, or any provision hereof, may be extended, modified or amended (but not terminated completely except as provided for in Section 7.1 or this Section 7.2), as to the whole of the Property or any portion thereof. Any such extension, modification or amendment must receive the vote of 67% of all Owners and the Declarant and as to the termination hereof, the vote of 80% of all Owners and the Declarant is required. However, in no event shall a modification adopted pursuant to this Section 7.2 materially alter the obligations or rights of an Owner with respect to its Site without the consent of such Owner. The vote shall be in writing or shall be certified to be correct by Declarant, which certification shall be prima facie evidence of the truth of the matter certified. Notwithstanding the foregoing: Declarant may at any time, at Declarant's sole and absolute discretion, extend, modify, amend or terminate this Declaration as to any Site or portion of the Property owned by Declarant. In no event will any amendment or modification of this Declaration affect adversely the access to, ingress to or egress from, any Site. No such extension, modification, amendment or termination shall be effective until an appropriate instrument in writing has been executed, acknowledged and recorded in the Land Records of Cabarrus County, North Carolina. Further, Declarant may grant waivers and exceptions as provided in Section 8.8 hereinafter.

7.3. Assignment of Declarant's Rights and Duties. Any and all rights and powers of Declarant herein contained or hereafter granted to Declarant pursuant to the terms and provisions of this Declaration may be assigned, in whole or in part, to any person, corporation, partnership or organization which will assume the position of Declarant pertaining to the particular rights, powers, and reservations assigned, and upon any such person, corporation, partnership or organization's evidencing its consent in

writing to accept such assignment and assume such position, he or it shall, to the extent of such assignment, have the same rights, powers, and reservations as Declarant and be subject to the same obligations, if any, which then exist by reason of this Declaration; provided, however, Declarant shall not assign such rights, powers, and reservations to any person or entity who is not an Owner of a portion of the Property. Upon the occurrence of such assignment, Declarant will serve written notice thereof on all then Owners in accordance with Section 8.7 hereof, or if such assignment has occurred prior to the conveyance of any Site from Declarant to another Owner, such notice will be given to such Owner by Declarant either contemporaneously with the delivery of the deed to such Site by Declarant or by record notice by recording a notice of such assignment in the Land Records of Cabarrus County, North Carolina. Upon the occurrence of such assignment and the giving of such notice, Declarant, its employees, officers, and agents shall be released and relieved from any and all liability and obligations imposed upon it as Declarant by this Declaration occurring subsequent to the date of such assignment and assigned as set forth herein.

## ARTICLE VIII

### MISCELLANEOUS PROVISIONS

8.1. Constructive Notice and Acceptance. Each Owner, Mortgagee, and every person, corporation, partnership, limited liability company, organization or other entity, who or that now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every easement, covenant, condition and restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person, corporation, partnership, limited liability company, organization or other entity, acquired such right, title or interest. The provisions of this Section 8.1 that bind any such party to any obligation set forth in this Declaration will not apply to any Mortgagee until such time as it becomes a mortgagee in possession of the Site of the Owner or becomes the Owner by foreclosure, by power of sale, by deed in lieu of foreclosure or sale, or otherwise of such Site, in which case such Mortgagee and its successors and assigns (including, but not limited to, the successful bidder at a foreclosure or other sale of a Site) as Owner of such Site will be so bound only as long as such party is the Owner of such Site. All Occupants who are not Owners are and shall be conclusively deemed to have notice of and to have agreed to and be bound by all terms and provisions of this Declaration, and each Owner of a Site will provide for all such Occupants to so agree to and to be so bound in arrangements, written or otherwise, with such Occupants.

8.2. Subdivision. Other than by Declarant, no Site may be subdivided without the consent of the Committee. Except in accordance with the requirements of Applicable Authorities, no dedication of any part of a Site for a public road shall be made and no private right-of-way shall be granted; provided, however, that Declarant reserves the right at any time and from time to time to dedicate any portions of the Property owned by it as a public right-of-way and upon such dedication this Declaration will thereafter no longer affect or apply to the portions of the Property so dedicated and accepted.

8.3. Rezoning. No Owner or any other person or entity may apply or join in an application to amend, vary or modify the applicable zoning ordinances or rezone or apply for any zoning variance or waiver as to all or any portion of the Property without the prior written consent of Declarant where such amendment, variance or modification will materially affect the development or uses of a Site or Sites within the Property. Declarant may apply for such rezoning as to any portion of the Property owned by it at anytime.

8.4. Force Majeure. Declarant or the Committee shall be excused for the period of any delay and shall not be deemed in default with respect to the performance of any of the terms, covenants and conditions of this Declaration when prevented from so doing by cause or causes beyond its reasonable

control, which shall include, without limitation, all labor strikes, riots, or warlike operations, invasions, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, fire or other casualty, inability to obtain any material or services, weather, acts of God, or any other cause, whether similar or dissimilar to the foregoing, not within its or their reasonable control.

8.5. Headings. Article and Section headings, where used herein, are inserted for convenience of reference only, are not intended to be a part of this Declaration or in any way to define, limit or describe the scope and intent of the particular paragraphs to which they refer, and accordingly shall not be deemed or construed to affect the meaning of any provision hereof.

8.6. Effect of Invalidation. If any provision of this Declaration is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

8.7. Written Notice. Whenever written notice is required or specified herein, such written notice shall be deemed given only when delivered in person, or deposited in the United States certified or registered mail, postage paid, or delivered by a nationally-recognized overnight carrier that provides proof of delivery with airbill charges prepaid and addressed to the address shown on the most recent Notice of Ownership filed with Declarant. Whenever actual receipt is specified or required herein, then such actual receipt shall be deemed obtained when notice is given in writing and delivered in person or otherwise actually received by the designated recipient, or three (3) days after the certified mailing where such notice is sent to the Owner by United States mail at the address shown on the most recent Notice of Ownership filed with Declarant.

8.8. Exceptions and Waivers. Declarant reserves the right to grant exceptions to and waive any of the provisions contained in this Declaration. Such exceptions and waivers shall be granted by Declarant only when, in its sole and absolute discretion, the exception or waiver is harmonious with the general intent or purpose of this Declaration. Every exception and waiver granted by Declarant shall be made in writing in recordable form and may be recorded. The granting of any exception or waiver with respect to any Site or part thereof shall not be deemed an amendment of this Declaration except to the extent specifically set forth in such exception or waiver, shall not entitle any Owner or Occupant to similar rights or privileges and shall create no negative reciprocal easements in favor of any other party.

8.9. Other Covenants and Restrictions. Nothing contained in this Declaration is to be construed as preventing or inhibiting Declarant or any Owner or Owners of any Site from imposing further covenants or restrictions on his or its Site or from providing for cross-easement agreements or an owner's association in connection with the development thereof; provided, however, that any additional covenants or restrictions recorded by any party other than Declarant may not be less restrictive than the terms and conditions of this Declaration. Subsequent or further covenants and restrictions imposed upon any Site or portion thereof by the Owner thereof may specifically provide that they are supplemental to this Declaration, in which event they shall be Supplemental Declarations and they shall be a part of this Declaration but only as to the Site or portions thereof against which such Supplemental Declarations are recorded, and in such event all terms, provisions, covenants, rights and remedies set forth herein shall be a part of and incorporated by reference into such Supplemental Declarations. However, Supplemental Declarations recorded by Declarant may selectively designate which terms, provisions, covenants, rights and remedies of this Declaration are to be incorporated by reference. Such Supplemental Declarations may contain provisions limiting the ability of Owners and Occupants, but not of Declarant, from enforcing the provisions of Supplemental Declarations against Owners or Occupants of all or any portion of the Site subjected to such Supplemental Declarations. The Owners and Occupants of Sites subjected to Supplemental Declarations may not enforce the provisions of such Supplemental Declarations against any Owner or Occupant hereunder or against Declarant except to the extent any such Owner or Occupant or

Declarant owns or occupies real property subject to such Supplemental Declarations and has consented to be bound by the terms of such Supplemental Declarations.

8.10 Conflict. In the event of any conflict between this Declaration of Easements, Protective Covenants and Restrictions (Kannapolis Gateway Business Park, Phase III) and any other declaration or restriction with respect to the Property referred to as Phase III, the terms of this Declaration shall control.

8.11. Cumulative Remedies. The various rights, options, elections, powers and remedies contained in this Declaration shall be construed as cumulative, and no one of them shall be exclusive of any of the others or of any other legal or equitable remedy available to Declarant or any Owner in the event of breach or default in the terms hereof, and the exercise of one right or remedy of any such party shall not impair its right to any other right or remedy until all obligations imposed upon any other party, person and entity have been fully performed.

8.12 Time is of the Essence. In regard to the acts, duties, obligations or responsibilities to be performed by any Occupant or Owner pursuant to this Declaration, time is of the essence as to such performance.

8.13 Governing Law. This Declaration shall be governed by, and construed and interpreted in accordance with, the laws and the judicial decisions of the State of North Carolina.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed by its duly authorized City Manager as of the date first written above.

Declarant:

CITY OF KANNAPOLIS,  
a North Carolina municipal corporation

By: \_\_\_\_\_

City Manager

STATE OF NORTH CAROLINA

COUNTY OF CABARRUS

I, Rebecca Barber, a Notary Public of the County and State aforesaid, certify that Michael B. Legg, personally came before me this day and acknowledged that he is City Manager of the City of Kannapolis, a North Carolina municipal corporation, and that he as being authorized to do so, executed the foregoing Deed of Release.

WITNESS my hand and official stamp or seal, this 6<sup>th</sup> day of September, 2007.

My commission expires: 10/17/08

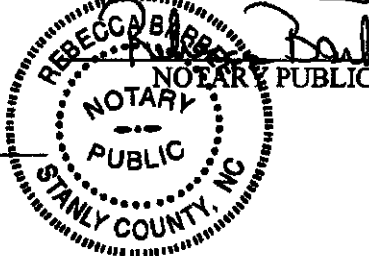


EXHIBIT "A"  
to  
Declaration of Easements, Protective Covenants and Restrictions  
for  
Kannapolis Gateway Business Park (Phase III)  
of the  
City of Kannapolis

Description of Declarant's Property

SITUATED in Cabarrus County, North Carolina and being more particularly described as follows:

Lying and being in Number Four Township, Cabarrus County, in the City of Kannapolis and being all of Lot 1 containing 5.582 acres as shown on the plat recorded in Plat Book 47 at page 76, Cabarrus County Registry.

Drawn by and Mail to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**STATE OF NORTH CAROLINA  
COUNTY OF CABARRUS**

**SECOND AMENDMENT TO DECLARATION OF EASEMENTS,  
PROTECTIVE COVENANTS AND RESTRICTIONS**

This Second Amendment to Declaration of Easements, Protective Covenants and Restrictions (this "**Second Amendment**") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, by **ALLUVIAN DEVELOPMENT, LLC**, a North Carolina limited liability company ("**Phase III Owner**") and **CITY OF KANNAPOLIS**, a North Carolina Municipal Corporation ("**Declarant**").

**RECITALS**

A. Declarant recorded that certain Declaration of Easements, Protective Covenants and Restrictions (the "**Original Declaration**") recorded in Book 3916 and Page 55 of the Cabarrus County, North Carolina, Register of Deeds (the "**Registry**"), as amended by that certain First Amendment to Declaration of Easements, Protective Covenants and Restrictions, recorded in Book 6590 at Page 38 of the Registry, as supplemented by that certain Declaration of Easements, Protective Covenants and Restrictions (Kannapolis Gateway Business Park, Phase III) recorded in Book 7784 and Page 282 of the Registry (the "**Supplemental Declaration**"), and as further amended by that certain First Amendment to Declaration of Easements, Protective Covenants and Restrictions (Kannapolis Gateway Business Park, Phase III), recorded in Book 7928 at Page 01 of the Registry (as amended and supplemented, the "**Declaration**"); and

B. Phase III Owner, is the sole owner of that certain 5.582 acres of land known as Phase III of Kannapolis Gateway Business Park in Cabarrus County, North Carolina, as more particularly described on Exhibit A of the Supplemental Declaration ("**Phase III**"); and

C. The Declaration may be amended with respect to each Phase pursuant to Section 6.02 of the Original Declaration by an instrument executed by the Owners of not less than three-fourths (3/4) of the Parcels within a Phase; and

The undersigned, have caused this Second Amendment to be executed the date and year first written above.

PHASE III OWNER:

**ALLUVIAN DEVELOPMENT, LLC,**  
a North Carolina limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CABARRUS COUNTY  
NORTH CAROLINA

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: \_\_\_\_\_

name(s) of principal(s)

Date: \_\_\_\_\_, 2016

\_\_\_\_\_  
(official signature of Notary)

\_\_\_\_\_, Notary Public  
(Notary's printed or typed name)

(Official Seal)

My commission expires: \_\_\_\_\_

[EXECUTION CONTINUES ON FOLLOWING PAGE]



DECLARANT:

**CITY OF KANNAPOLIS,**  
a North Carolina municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CABARRUS COUNTY**  
**NORTH CAROLINA**

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: \_\_\_\_\_

name(s) of principal(s)

Date: \_\_\_\_\_, 2016

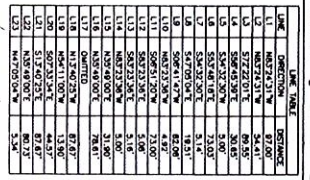
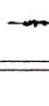
\_\_\_\_\_  
(official signature of Notary)

\_\_\_\_\_, Notary Public  
(Notary's printed or typed name)

(Official Seal)

My commission expires: \_\_\_\_\_

1



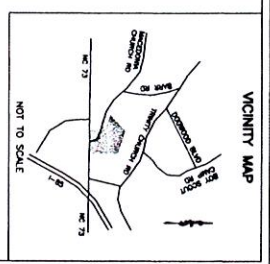
1

DATE: 9.9.05  
W. J. M. M. M. M. M.  
 PUBLIC WORKS DIRECTOR

RECEIVED OF DEEDS WITHIN 30 DAYS OF  
9/9/05  
DATE

LEWIS, WILLIAMS, CARMEN & KING, INC.  
10 CHAPEL HILL ROAD  
RRLINGTON, N.C. 27215  
P.O. BOX 1179  
336/726-5534

BOBBI LYNN DAVIS: City of Kentucky 244 Oak Ave. Kentucky, KY 40001  
BURLINGTON, N.C. 21215  
JOB NO. 05527  
336/226-5534



		COWS (kg)			
		NUMBER	AGE	LENGTH	CHORD LENGTH
C1	224.00	194.50	123.53	386.13	386.13
C2	224.00	194.50	123.53	386.13	386.13
C3	54.15	33.50	48.12	54.00	48.00
C4	69.23	194.50	66.21	52.00	47.00
C5	200.92	40.75	52.00	52.00	47.00
C6	200.92	40.75	52.00	52.00	47.00
C7	78.33	194.50	76.27	51.00	46.50
C8	21.15	13.50	16.00	21.00	16.00
C9	21.15	13.50	16.00	21.00	16.00
C10	21.15	13.50	16.00	21.00	16.00
C11	21.15	13.50	16.00	21.00	16.00
C12	21.15	13.50	16.00	21.00	16.00
C13	56.41	46.50	56.40	55.00	50.00
C14	78.33	19.50	75.25	74.23	69.23
C15	22.21	31.50	21.50	21.50	21.50
C16	38.32	79.50	38.32	67.50	28.25
C17	38.32	79.50	38.32	67.50	28.25
C18	46.15	53.50	46.15	53.50	46.15
C19	46.15	53.50	46.15	53.50	46.15
C20	24.84	53.50	24.84	53.50	24.84
C21	75.15	31.50	75.00	75.00	75.00
C22	75.15	31.50	75.00	75.00	75.00
C23	69.72	66.50	69.50	65.44	61.67
C24	21.83	66.50	18.90	51.00	46.00
C25	69.72	66.50	69.50	65.44	61.67
C26	40.81	44.50	25.50	51.00	46.00
C27	184.40	44.50	18.25	52.74	45.50
C28	184.40	44.50	18.25	52.74	45.50
C29	21.51	11.60	21.18	21.18	21.18
C30	21.51	11.60	21.18	21.18	21.18
C31	220.50	1078.75	71.92	1041.75	70.50

1. DEVELOPER/OWNER WITH THIS PARK IS EXEMPT FROM STEADYSTATE DETENTION IN THE DEVELOPMENT JURISDICTION OF THE CITY OF CHICAGO. THIS PROPERTY DRAINS DIRECTLY ONTO LAND LOCATED WITHIN A FLOODWAY DISTRICT.
2. THIS PROPERTY IS LOCATED IN A FLOOD PRONE AREA AS Delineated ON THE CHICAGO FLOOD HAZARD MAP, 1984, AND IS LOCATED IN FLOOD HAZARD ZONE A, CHICAGO'S EFFECTIVE DATE NOVEMBER 1984.
3. SITE CONTAINS 66,872 ACRES TOTAL, WITH A TOTAL OF 100% (0) LOTS.
4. 1,542 ACRES DEDICATED TO R.L. KITCHEN ROAD.
5. COMMON AREAS SHALL BE MAINTAINED BY THE OWNERS ASSOCIATION AND SUBJECT TO RESTRICTIONS COORDINATE.
6. DEVELOPER/OWNER WITH THIS PARK IS SUBJECT TO AND/OR RESTRICTED BY THE CITY OF CHICAGO'S FLOOD HAZARD MAP, 1984, AND IS LOCATED IN FLOOD HAZARD ZONE A, CHICAGO'S EFFECTIVE DATE NOVEMBER 1984.

DESIGN AND CONSTRUCTION OF THE PROJECT SHALL BE IN ACCORDANCE WITH THE CITY OF CHICAGO'S FLOOD HAZARD MAP, 1984, AND IS LOCATED IN FLOOD HAZARD ZONE A, CHICAGO'S EFFECTIVE DATE NOVEMBER 1984.

LEGEND:

CALCULATED POINT	X
IRON STAKE FOUND	•
IRON STAKE SET	○
RIGHT-OF-WAY DISK	●
COMMON AREA	

**CITY OF KANNAPOLIS**  
SOLVED FOR  
**#4 TOWNSHIP, CABARRUS COUNTY, N. C.**  
Zoning Classification: CD "Campus Development"  
SCALE: 1"=200' AUGUST 3, 2005



**City of Kannapolis  
City Council Meeting  
September 11, 2017  
Staff Report**

**TO:** Mayor and City Council  
**FROM:** Wilmer Melton, III - Director of Public Works  
**TITLE:** NCDOT Utility Relocation Agreement – TIP #B-5369

**A. Action Requested by City Council**

**Motion to approve the Utility Relocation Agreement between the City of Kannapolis and the North Carolina Department of Transportation for water and sewer line relocation work associated with the TIP #B-5369 and to authorize the City Manager to execute the Agreement.**

**B. Required Votes to Pass Required Action**

Majority present at meeting

**C. Background**

The North Carolina Department of Transportation and the Federal Highway Administration is in the process of replacing Bridge No. 53 on Centergrove Road (SR 2114) over Cold Water Creek in Cabarrus County. Bridge No. 53 was built in 1957 and is reaching the end of its useful life. The purpose of the Project is to provide a safe and more durable structure at this location.

As a part of this Project, the water and sewer utilities have to be relocated in order to accommodate the new bridge structure. In addition, this Project has been added to the I-85 Widening Project to accelerate and complete the mainline widening (I-85) by December of 2018. In order to achieve this completion date, the contractor has proposed the simultaneous closure and replacement of Lake Concord Road, Centergrove Road, Brantley Road, and Moose Road bridges.

The scope of the utility work associated with the bridge replacement is the relocation of the City's 8- inch sanitary sewer and 8-inch potable water mains which are in conflict. This includes the installation of approximately 340 linear feet of 8-inch water line and 385 linear feet of 8-inch sanitary sewer in conflict.

#### **D. Fiscal Considerations**

The total estimated cost of the proposed work is \$381,689.60 and due to the acceleration of this Project, some of the engineering work has been completed and was paid from FY 2017 operating budget. The North Carolina Department of Transportation will be paying 50% of the preliminary engineering, utility relocation costs and construction administration for a total of \$188,044.80. The total estimated cost for the preliminary engineering, utility relocation, construction administration and rights-of-way that the City is responsible for will be \$193,644.80 and funded from the Water and Sewer Fund. The North Carolina Department of Transportation will not be cost sharing for rights-of-way acquisition.

Preliminary Engineering	\$41,189.60
Rights-of-Way	\$5,600.00
Construction	\$291,214.50
Construction Admin	<u>\$43,685.50</u>
<b>TOTAL</b>	<b>\$381,689.60</b>

#### **E. Policy Issues**

City Council approval is required prior to the City entering into this Utility Relocation Agreement with the North Carolina Department of Transportation for TIP #B-5369.

#### **F. Legal Issues**

None

#### **G. Alternative Courses of Action and Recommendation**

1. **Authorize the City Manager to execute the Utility Relocation Agreement between the City of Kannapolis and the North Carolina Department of Transportation for water and sewer line relocation work associated with TIP #B-5369. (Recommended)**
2. Deny authorization for the City Manager to execute the Utility Relocation Agreement which may result in potential loss of Powell Bill funding.

#### **ATTACHMENTS:**

##### **File Name**

- ❑ Centergrove\_Road\_Bridge\_TIP\_B-5369\_Utility\_Agreement.pdf
- ❑ B-5369\_Utility\_Relocation\_Construction\_Estimate.pdf
- ❑ B-5369\_AWCK\_-\_Kannapolis\_UPEA.pdf

\*\*\*\*\*

**UTILITY RELOCATION AGREEMENT**

**NCDOT HIGHWAY WBS ELEMENT NO.**

\_\_\_\_\_

**TRANSPORTATION IMPROVEMENT PROGRAM NO.**

\_\_\_\_\_

**COUNTY**

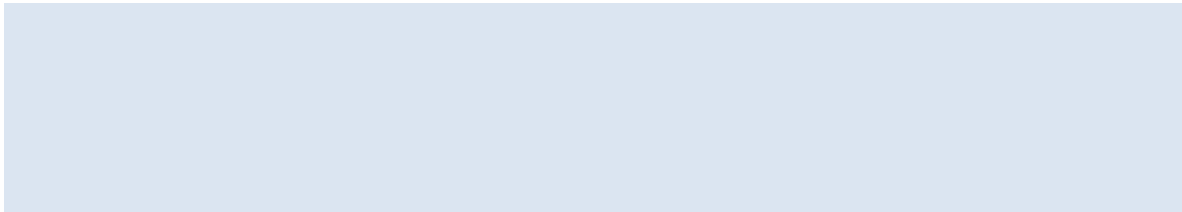
\_\_\_\_\_

\*\*\*\*\*

This agreement made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by  
and between the Department of Transportation, an agency of the State of North  
Carolina, hereinafter referred to as the DEPARTMENT, and  
\_\_\_\_\_ Inc. hereinafter referred to as the  
COMPANY:

**WITNESSETH:**

**THAT WHEREAS, the DEPARTMENT will submit a project for  
construction as follows:**



known as route \_\_\_\_\_ in \_\_\_\_\_ County,  
North Carolina to be designated as N.C. State Highway Project and/or WBS  
Element \_\_\_\_\_ and, WHEREAS, the construction of said project will  
require certain adjustments to be made to the existing facilities of the COMPANY;



**NOW, THEREFORE, in order to facilitate the orderly and expeditious relocation of the said facilities of COMPANY, the DEPARTMENT and the COMPANY have agreed as follows:**

**1. That the scope, description, and location of work to be undertaken by the COMPANY are as follows**

**2. That any work performed under this agreement shall comply with DEPARTMENT's "POLICIES AND PROCEDURES FOR ACCOMMODATING UTILITIES ON HIGHWAY RIGHTS OF WAY" dated January 1, 1975, and such amendments thereto as may be in effect at the date of this agreement. The work to be performed by the COMPANY shall conform with Federal Highway Administration's Federal-Aid Policy Guide, Subchapter G, Part 645, Subpart A hereinafter referred to as FAPG dated December 9, 1991, and such amendments thereto as may be in effect at the date of this agreement. The provisions of said FAPG and amendments thereto are incorporated in this agreement by reference as fully as if herein set out. Any work performed under this agreement not in compliance with FAPG shall constitute unauthorized work and the DEPARTMENT shall be relieved of participating in the costs of such unauthorized work unless such work is done pursuant to a supplemental agreement attached to and made a part hereof.**

**3. That the COMPANY will prepare an estimate, broken down as to estimated cost of labor, construction overhead, materials and supplies, handling charges, transportation and equipment, rights of way, preliminary engineering and construction engineering, including an itemization of appropriate credits for salvage and betterments, and accrued depreciation all in sufficient detail to provide the DEPARTMENT a reasonable basis for analysis. Unit costs, such as broad gauge units of property, may be used for estimating purposes where the COMPANY uses such units in its own operations. The COMPANY will also prepare plans, sketches or drawings showing their existing facilities, temporary and permanent changes to be made with reference to the DEPARTMENT's new right of way using appropriate nomenclature, symbols, legend, notes, color coding or the like. The before mentioned estimate and plans are attached hereto and made a part hereof. The DEPARTMENT will not reimburse the COMPANY for any utility relocations or changes not necessitated by the construction of the highway project, nor for changes made solely for the benefit or convenience of the COMPANY, its contractor, or a highway contractor.**

**4. That the DEPARTMENT's authority, obligation, or liability to pay for relocations as set forth in this agreement is based on the COMPANY having a right of occupancy in its existing location by reason of the fee, an easement or other real property interest, the damaging or taking of which is compensable in eminent domain.**

5. That payment for all work done hereunder shall be made in accordance with the requirements of FAPG unless payment is being made pursuant to a supplemental agreement attached to and made a part of this agreement.

6. That the construction work provided for in this agreement will be performed by the method or methods as specified below:

BY COMPANY'S REGULAR FORCE: The COMPANY proposes to use its regular construction or maintenance crews and personnel at its standard schedule of wages and working hours in accordance with the terms of its agreement with such employees.

BY EXISTING WRITTEN CONTINUING CONTRACT: The COMPANY proposes to use an existing written continuing contract under which certain work as shown by the COMPANY's estimate is regularly performed for the COMPANY and under which the lowest available costs are developed.

BY CONTRACT: The COMPANY does not have adequate staff or equipment to perform the necessary work with its own forces. The COMPANY proposes to award a contract to the lowest qualified bidder who submits a proposal in conformity with the requirements and specifications for the work to be performed as set forth in an appropriate solicitation for bids.

7. a. It is contemplated by the parties hereto that the construction of this State Highway Project will begin on or about the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

b. Based on the best information available at the present time to the COMPANY, indicate applicable paragraph below:

\_\_\_ Materials are available and it is expected that work will be complete prior to highway construction.

\_\_\_ All work will take place during highway construction and arrangements for said work will be coordinated with highway construction operations at preconstruction conference.

\_\_\_ Work will begin promptly upon notification by DEPARTMENT; however, it is not expected to be complete prior to highway construction. Any remaining work will be coordinated with highway construction operations at preconstruction conference.

\_\_\_ Other (Specify)

8. That the method used by the COMPANY in developing the relocation costs shall be as indicated by Paragraph (a), (b), or (c) as follows:

- a. ☐ Actual direct and related indirect costs accumulated in accordance with a work order accounting procedure prescribed by the applicable Federal or State regulatory body.
- b. ☐ Actual direct and related indirect costs accumulated in accordance with an established accounting procedure developed by the COMPANY and approved by the DEPARTMENT.
- c. ☐ On a lump-sum basis where the estimated cost to the DEPARTMENT does not exceed \$100,000.00. Except where unit costs are used and approved, the estimate shall show such details as man-hours by class and rate; equipment charges by type, size, and rate; materials and supplies by items and price; and payroll additives and other overhead factors.

9. Indicate if (a) or (b) is applicable:

- a. ☐ That the replacement facility is not of greater functional capacity or capability than the one it replaces, and includes no COMPANY betterments.
- b. ☐ That the replacement facility involves COMPANY betterments, or is of greater functional capacity or capability than the one it replaces.

10. That the total estimated cost of the work proposed herein, including all cost to the DEPARTMENT and COMPANY less any credit for salvage, is estimated to be ----- \$-----

The estimated non-betterment cost to the DEPARTMENT, including all cost less any credits for salvage, betterments, accrued depreciation and additional work done by the COMPANY will be ----- \$-----

The estimated cost to the COMPANY including betterments, and any additional work done by the COMPANY will be ----- \$-----

*(The above costs shall be supported by attached estimate and plans)*

11. That in the event it is determined there are changes in the scope of work, extra work, or major changes from the statement of work covered by this agreement, reimbursement shall be limited to costs covered by a modification of this agreement or a written change or extra work order approved by the DEPARTMENT.



**12. Periodic progress billings of incurred costs may be made by COMPANY to the DEPARTMENT not to exceed monthly intervals; however, total progress billing payments shall not exceed 95% of the approved non-betterment estimate. Progress billing forms may be obtained from the Area Utility Agent.**

**13. One final and detailed complete billing of all cost shall be made by COMPANY to the DEPARTMENT at the earliest practicable date after completion of work and in any event within six months after completion of work. The statement of final billing shall follow as closely as possible the order of the items in the estimate portion of this agreement.**

**14. That the DEPARTMENT shall have the right to inspect all books, records, accounts and other documents of the COMPANY pertaining to the work performed by it under this agreement at any time after work begins and for a period of 3 years from the date final payment has been received by the COMPANY.**

**15. That the COMPANY obligates itself to erect, service and maintain the facilities to be retained and installed over and along the highway within the DEPARTMENT right of way limits in accordance with the mandate of the Statute and such other laws, rules, and regulations as have been or may be validly enacted or adopted, now or hereafter.**

**16. That if, in the future, it becomes necessary due to highway construction or improvement to adjust or relocate utilities covered in this agreement being relocated at DEPARTMENT expense that are crossing or otherwise occupying highway right of way, the non-betterment cost of same will be that of the DEPARTMENT.**

**17. That if, at any time, the DEPARTMENT shall require the relocation of or changes in the location of the encroaching facilities covered in this agreement being relocated at COMPANY expense, the COMPANY binds itself, its successors and assigns, to promptly relocate or alter the facilities, in order to conform to the said requirements, without any cost to the DEPARTMENT.**

**18. That the COMPANY agrees to relinquish their rights in that portion of right of way vacated by their existing facilities now absorbed within DEPARTMENT right of way.**

**19. Proper temporary and permanent measures shall be used to control erosion and sedimentation in accordance with all local, State and Federal regulations.**

**20. The COMPANY agrees to comply with the environmental rules and regulations of the State of North Carolina. Violation to the NC Sedimentation Pollution Control Act, Clean Water Act, NC Coastal Management Act, or other environmental commitment outlined in the project permits may result in work stoppage, penalties and/or construction delays.**

**21. The COMPANY agrees to comply with Buy America. United States Codes (USC) 313 and Code of Federal Regulations 23 CFR 635.410: Requires the use of domestic steel and iron in all federally funded construction projects.**

**IN WITNESS WHEREOF, the parties hereby have affixed their names by their duly authorized officers the day and year first above written.**

**DEPARTMENT OF TRANSPORTATION**

**BY:** \_\_\_\_\_  
**AREA UTILITY AGENT**

**ATTEST OR WITNESS**

\_\_\_\_\_  
**(TITLE)**

\_\_\_\_\_  
**(NAME OF COMPANY)**

**BY:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.**



**Engineers Construction Estimate  
B-5369 Utility Relocations Estimate**

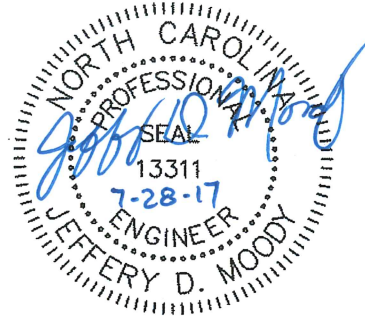
Date: July 28, 2017

Project No:16511

Bridge No. B-3569 Utility Relocation Estimate							
ITEM	DESC.	SECT	ITEM DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENSION
1	NCDOT	800	MOBILIZATION	1	LS	LUMP SUM	\$ 10,000.00
2	NCDOT	801	CONSTRUCTION SURVEYING	1	LS	LUMP SUM	\$ 6,000.00
3	NCDOT		CLEARING AND GRUBBING	0.5	AC	\$ 5,000.00	\$ 2,500.00
4			TRAFFIC CONTROL	1	LS	\$ 5,000.00	\$ 5,000.00
5			FOUNDATION CONDITIONING MATERIAL, MINOR STRUCTURES	100	TON	\$ 35.00	\$ 3,500.00
6			FOUNDATION CONDITIONING GEOTEXTILE	350	SY	\$ 2.00	\$ 700.00
7			8" DIP RJ WATER LINE	590	LF	\$ 85.00	\$ 50,150.00
8			MECHANICAL JOINT FITTINGS	560	LBS	\$ 4.00	\$ 2,240.00
9			18"X 0.325" STEEL CASING-OPEN CUT	40	LF	\$ 145.00	\$ 5,800.00
10			2" TEMPORARY BLOW OFF	1	EA	\$ 350.00	\$ 350.00
11			2" TEMPORARY BYPASS FOR TESTING AND CHLORINATION	1	EA	\$ 1,500.00	\$ 1,500.00
12			TIE TO EXISTING WATER MAIN	2	EA	\$ 2,500.00	\$ 5,000.00
13			8" DIP RJ SEWER PIPE	61	LF	\$ 85.00	\$ 5,185.00
14			8" DIP SEWER PIPE	229	LF	\$ 120.00	\$ 27,480.00
15			8" PVC SEWER PIPE	66	LF	\$ 65.00	\$ 4,290.00
16			4' DIAMETER UTILITY MANHOLE	3	EA	\$ 2,500.00	\$ 7,500.00
17			4' DIAMETER UTILITY MANHOLE CUT-IN	1	EA	\$ 3,000.00	\$ 3,000.00
18			UTILITY MANSHOLE Wall 4' DIAMETER	16.5	LF	\$ 210.00	\$ 3,465.00
19			SANITARY SEWER RING AND LID	3	EA	\$ 250.00	\$ 750.00
20			SANITARY SEWER RING AND LID WATERTIGHT	1	EA	\$ 350.00	\$ 350.00
21			TIE-IN TO EXISTING MANHOLE	1	EA	\$ 2,000.00	\$ 2,000.00
22			CONCRETE PIER FOOTINGS	2	EA	\$ 1,500.00	\$ 3,000.00
23			CONCRETE PIER -STEM	12.5	LF	\$ 200.00	\$ 2,500.00
24			8" PIPE INSULATION	140	LF	\$ 100.00	\$ 14,000.00
25			SEEDING AND MULCHING	0.5	AC	\$ 2,500.00	\$ 1,250.00
26			PLUG EXISTING WATER MAIN	2	EA	\$ 1,200.00	\$ 2,400.00
27			PLUG EXISTING SEWER MAIN	2	EA	\$ 750.00	\$ 1,500.00
28			REMOVE EXISTING SANITARY SEWER PIPE	123	LF	\$ 20.00	\$ 2,460.00
29			ABANDON EXISTING 8" UTILITY LINE	852	LF	\$ 15.00	\$ 12,780.00
30			DEMOLISH EXISTING PIERS	1	LS	LUMP SUM	\$ 10,000.00
31			ASPHALT DRIVEWAY PATCH	120	SY	\$50.00	\$ 6,000.00

Bridge No. B-3569 Utility Relocation Estimate							
ITEM	DESC.	SECT	ITEM DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENSION
32			SILT FENCE	360	LF	\$ 3.00	\$ 1,080.00
33			RIP RAP	300	TON	\$ 50.00	\$ 15,000.00
34			TRENCH ROCK	230	CY	\$ 150.00	\$ 34,500.00
SUB TOTAL							\$ 253,230.00
15% CONTINGENCY							\$ 37,984.50
TOTAL CONSTRUCTION COST							\$ 291,214.50

Since ENGINEER has no control over the cost of labor, materials, equipment or services, ENGINEER'S opinions of probable Total Project Costs and Construction Cost provided for herein are to be made on the basis of ENGINEER'S experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but ENGINEER cannot and does not guarantee that proposals, bids or actual Total Project of Construction Costs will vary from opinions of probable cost prepared by ENGINEER. If prior to the Bidding or Negotiating Phasing, the Owner wishes assurance as to Total Project or Construction Costs, OWNER shall employ an independent cost estimator.





PAT McCRORY  
*Governor*

NICHOLAS J. TENNYSON  
*Secretary*

September 1, 2016

WBS ELEMENT: 46084.1.1 (B-5369)  
COUNTY: Cabarrus  
DESCRIPTION: Replacement of Bridge No. 53 over Cold Water Creek on SR 2114  
(Centergrove Road)

SUBJECT: Utility Conflict – City of Kannapolis

Mr. Wilmer Melton, III  
Director of Public Works  
City of Kannapolis  
401 Laureate Way  
Kannapolis, NC 28081

Dear Mr. Melton:

Attached is an executed Utility Preliminary Engineering Agreement which covers the non-betterment engineering costs for the design of your relocation plans on the above referenced project. Upon acceptance by the Department of your relocation plans, please proceed with billing the Department of Transportation in accordance with your non-betterment estimate of \$20,594.80.

Thank you for your cooperation in this matter.

Sincerely,

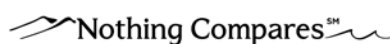
Ronald B. Wilkins, PE  
State Utilities Manager

DocuSigned by:  
  
By: 6082FF96FCAC434...  
Todd D. Lapham  
Utility Agent

RBW:tdl

Attachments

Cc: Mr. Rick Baucom, PE: Assistant Div. Construction Engineer  
Mr. Tim Boland, PE: Division Operations Engineer  
Mr. Steve Nance: Division Utility Coordinator  
Mr. Josh Barbour; KCI Technologies, Inc.





\*\*\*\*\*

**UTILITY PRELIMINARY ENGINEERING AGREEMENT**

**WBS ELEMENT:** 46084.1.1

**TRANSPORTATION IMPROVEMENT PROGRAM NO.:** BRSTP-2114(1) B-5369

**COUNTY:** Cabarrus

\*\*\*\*\*

This agreement made this 1<sup>st</sup> day of September, 2016, by and

between the Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the DEPARTMENT, and \_\_\_\_\_

the City of Kannapolis \_\_\_\_\_ hereinafter referred to as the COMPANY:

**W I T N E S S E T H:**

**THAT WHEREAS, the DEPARTMENT will submit a project for construction as follows:**

The relocation of the City of Kannapolis's 8" sanitary sewer and 8" potable water lines that are in conflict with the replacement of Bridge No. 53 over Cold Water Creek on SR 2114 (Centergrove Road). Project included the installation of approximately 340 lf of 8" water line and 385 lf of 8" sanitary sewer line.

known as route SR 2114 in Cabarrus County, North Carolina to be designated as N.C. State Highway Project and/or WBS Element 46084.1.1 and,

**WHEREAS, the construction of said project will require certain engineering of plans for adjustments to be made to the existing facilities of the COMPANY;**

**NOW, THEREFORE, in order to facilitate the orderly and expeditious relocation of the said facilities of COMPANY, the DEPARTMENT and the COMPANY have agreed as follows:**

1. That the DEPARTMENT has agreed to reimburse the COMPANY for preliminary engineering charges associated with certain adjustments to be made to the existing facilities of the COMPANY.

2. That any work performed under this agreement shall comply with DEPARTMENT's "POLICIES AND PROCEDURES FOR ACCOMMODATING UTILITIES ON HIGHWAY RIGHTS OF WAY" dated January 1, 1975, and such amendments thereto as may be in effect at the date of this agreement. The work to be performed by the COMPANY shall conform with Federal Highway Administration's Federal-Aid Policy Guide, Subchapter G, Part 645, Subpart A hereinafter referred to as FAPG dated December 9, 1991, and such amendments

thereto as may be in effect at the date of this agreement. The provisions of said FAPG and amendments thereto are incorporated in this agreement by reference as fully as if herein set out. Any work performed under this agreement not in compliance with FAPG shall constitute unauthorized work and the DEPARTMENT shall be relieved of participating in the costs of such unauthorized work unless such work is done pursuant to a supplemental agreement attached to and made a part hereof.

3. That the COMPANY or COMPANY Engineering firm will prepare an estimate, broken down as to estimated cost of preliminary engineering, overhead rate, job classification pay rate, indirect cost rates, cost of capital rate and estimated man-day hours all in sufficient detail to provide the DEPARTMENT a reasonable basis for analysis. The before mentioned estimate is attached hereto and made a part hereof. The DEPARTMENT will not reimburse the COMPANY for any preliminary engineering not necessitated by the construction of the highway project, nor for changes made solely for the benefit or convenience of the COMPANY.

4. That payment for all work done hereunder shall be made in accordance with the requirements of FAPG unless payment is being made pursuant to a supplemental agreement attached to and made a part of this agreement.

5. That the preliminary engineering work provided for in this agreement will be performed by the method or methods as specified below:

☐ BY COMPANY'S REGULAR FORCE: The COMPANY proposes to use its regular personnel at its standard schedule of wages and working hours in accordance with the terms of its agreement with such employees.

☒ BY EXISTING WRITTEN CONTINUING CONTRACT: The COMPANY proposes to use an existing written continuing contract under which certain work as shown by the COMPANY's estimate is regularly performed for the COMPANY and under which the lowest available costs are developed. The COMPANY shall submit a copy of the continuing contract (including rates) to the DEPARTMENT for review and approval.

☐ BY CONTRACT: The COMPANY does not have adequate staff to perform the necessary engineering design with its own forces. The COMPANY submits to DEPARTMENT a draft advertisement for review and approval, and in accordance with NC General Statute 143-64.31 and 23 CFR 172, will select firms qualified to provide such service on the basis of demonstrated competence and qualification for the type of professional services and to negotiate a contract for those services at a fair and reasonable fee with the best qualified firm. The COMPANY shall submit overhead rates to the DEPARTMENT for review and approval in accordance with DEPARTMENT audit requirements. Refer to DEPARTMENT requirements at the following site:

<https://connect.ncdot.gov/projects/Roadway/Private%20Engineering%20Firm%20Resources/NC DOT%20Audit%20Requirements%20Fiscal%20Form.pdf>

6. a. It is contemplated by the parties hereto that the construction of this State Highway Project will begin on or about the June, 2017



b. Based on the best information available at the present time to the COMPANY, indicate applicable paragraph below:

- ☒ Preliminary Engineering will be complete allowing adequate time for materials and completion of certain adjustments prior to highway construction.
- ☐ Preliminary Engineering will be complete prior to highway construction; however, certain adjustments are not expected to be complete prior to highway construction.
- ☐ Other (Specify)

7. Indicate if (a) or (b) is applicable:

- a. ☒ That preliminary engineering is for the adjustments of existing facilities in conflict with said project.
- b. ☐ That the preliminary engineering involves COMPANY's request for new facilities in addition to adjustments of existing facilities in conflict with said project.

8. That the total estimated cost of the preliminary engineering proposed herein, including all cost to the DEPARTMENT and COMPANY, is estimated to be-----

\$ 41,189.60

The estimated preliminary engineering cost to the DEPARTMENT, including all cost less any preliminary engineering for new facilities requested by the COMPANY.-----

\$ 20,594.80

The estimated cost to the COMPANY for any additional preliminary engineering charges for new facilities requested by the COMPANY will be-----

\$ 20,594.80

*(The above costs shall be supported by attached estimate)*

9. That in the event it is determined there are changes in the scope of work, extra work, or major changes from the statement of work covered by this agreement, reimbursement shall be limited to costs covered by a modification of this agreement or a written change or extra work order approved by the DEPARTMENT.

10. Periodic progress billings of incurred costs may be made by COMPANY to the DEPARTMENT not to exceed monthly intervals; however, total progress billing payments shall not exceed 95% of the approved non-betterment estimate. Progress billing forms may be obtained from the State Utility Agent. One final and detailed complete billing of all costs shall be made by COMPANY to the DEPARTMENT at the earliest practicable date after completion of work and in any event within 6 months after completion of work. The statement of final billing shall



follow as closely as possible the order of the items in the estimate portion of this agreement.

11. That the DEPARTMENT shall have the right to inspect all books, records, accounts and other documents of the COMPANY pertaining to the work performed by it under this agreement at any time after work begins and for a period of 3 years from the date final payment has been received by the COMPANY.

12. That in the future, it becomes necessary due to highway construction or improvement to adjust or relocate utilities covered under this agreement, the DEPARTMENT does not obligate itself to participate in future payments for preliminary engineering.

IN WITNESS WHEREOF, the parties hereby have affixed their names by their duly authorized officers the day and year first above written.

DEPARTMENT OF TRANSPORTATION

DS  
BY: *JDL* DocuSigned by: *Amy Dupree*  
311D3367B136499  
~~ASSISTANT STATE UTILITY AGENT~~  
Area Utility Agent

ATTEST OR WITNESS

*Bridgetta Sele*  
(TITLE) *City Clerk*



*City of Kannapolis*  
(NAME OF COMPANY)

BY: *Wm B. Legg*

TITLE: *City Manager*

This instrument has been preaudited in a manner required by the local government budget and fiscal control act.

*Eric W. ... 1/13/16*  
Finance Director

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.



**alley, williams, carmen & king, inc.**

*Engineering • Land Surveying • Construction Inspection*

**Design Manhour Estimate B-5369 Utility Relocation Preliminary Engineering**

<b>Personnel</b>	<b>Hours</b>	<b>Hourly Charge Rate</b>	<b>Extension</b>
Jeffery D. Moody, PE Design Engineer	48	\$198.00	\$9,504.00
Matt, Cuininningham, PLS			
Research	16	\$96.00	\$1,536.00
Surveying	32	\$96.00	\$3,072.00
Checking R/W	16	\$96.00	\$1,536.00
Randy Casper, EI			
Flood Study	68	\$90.80	\$6,174.40
Design	120	\$90.80	\$10,896.00
Gina Cunningham, Drafting Technician			
Drafting Plats	24	\$67.40	\$1,617.60
Drafting Survey Data	24	\$67.40	\$1,617.60
Cole Cunningham, Surveying Technician	32	\$45.00	\$1,440.00
Wes Webb, PE			
Flood Study	26	\$146.00	\$3,796.00
<b>Total Design Fee</b>			<b>\$41,189.60</b>

120 South Main Street • P.O. Box 1248 • Kannapolis, North Carolina 28082

Tel. - 704-938-1515 • Fax - 704-938-6810 • awck.com

**ESTABLISHED • 1960**



**City of Kannapolis  
City Council Meeting  
September 11, 2017  
Staff Report**

**TO:** Mayor and City Council  
**FROM:** Mike Legg, City Manager and Walter M. Safrit, II City Attorney  
**TITLE:** Resolution to Lease Property to Rowan Cabarrus Community College

**A. Action Requested by City Council**

**Motion to Approve Resolution to Lease Property to Rowan Cabarrus Community College.**

**B. Required Votes to Pass Required Action**

Majority present at meeting

**C. Background**

One of the major challenges for the redevelopment of the Downtown has been to find a suitable site for relocation of Rowan Cabarrus Community College ("RCCC") cosmetology facilities outside of the Central Business District. It appears that this issue has been resolved.

RCCC currently is a Tenant at the leased premises located at 120 West Avenue (the "West Avenue Premises"), pursuant to a lease agreement (the "West Avenue Lease") dated July 2, 2014 (as amended October 31, 2014 and September 21, 2015) executed by and between RCCC and Atlantic American Properties, Inc. for which City is the successor in interest and Landlord. The West Avenue Lease commenced on June 1, 2015, demising approximately 30,000 square feet of rentable space for a term of twenty (20) years at an annual fixed rent of \$217,280.

RCCC is willing to relocate and lease, upon the same material terms and conditions, the premises located at 489 North Cannon Boulevard which was or will be acquired by the City for its cosmetology educational facilities and terminate the West Avenue Lease. Upon execution of this Lease and acceptance of the Cannon Boulevard Premises, the West Avenue Lease would terminate. The Cannon Boulevard Lease would contain the terms and conditions herein provided. RCCC has requested a term of twenty (20) years for the Cannon Boulevard lease and the Staff has no objections.

#### **D. Fiscal Considerations**

None.

#### **E. Policy Issues**

Relocation of the Community College from its current downtown location is consistent with the City Downtown Revitalization Plan.

#### **F. Legal Issues**

City is authorized to lease property to another governmental entity pursuant to NCGS 160A-274.

#### **G. Alternative Courses of Action and Recommendation**

1. **Adopt the Resolution. (Recommended)**
2. Adopt the Resolution with amendments.
3. Reject the Resolution.

#### **ATTACHMENTS:**

##### **File Name**

- ❏ Resolution\_For\_Lease\_Of\_Land\_RCCC\_(9-5-17).pdf
- ❏ Commercial\_Lease\_(City-Trustees\_Of\_Rowan\_Cabarrus\_Community\_College)\_Exe....pdf
- ❏ Public\_Hearing\_Notice\_(489\_North\_Cannon\_Blvd)\_8-23-17.doc

**RESOLUTION FOR LEASE OF  
LAND FOR RELOCATION OF  
ROWAN CABARRUS COMMUNITY COLLEGE**

WHEREAS, Rowan Cabarrus Community College (“RCCC”) is a city tenant pursuant to a lease located at 120 West Avenue in the Downtown District of the City; and

WHEREAS, in order to accomplish the plans and purposes for the City Downtown Redevelopment Project it is necessary to relocate RCCC to a City facility outside the Downtown District which meets both the City and RCCC program requirements and objectives; and

WHEREAS, the City of Kannapolis has acquired or contracted to acquire real property located 489 North Cannon Boulevard, in the city which will meet the needs of RCCC for their academic programs; and

WHEREAS, the real property described in the attached Lease Agreement (“Lease Agreement”) provides a facility for the relocation of RCCC which meets its program requirements and objectives; and

WHEREAS, the City Council finds that the real property will not be needed for City use for the term of the Lease.

NOW THEREFORE, BE IT RESOLVED that the terms, conditions and provisions of the Lease Agreement are hereby approved and ratified pursuant to NCGS 160A-274; and

BE IT FURTHER RESOLVED, all action performed or to be performed by the City Manager, City Attorney and appropriate staff necessary for lease of the Property and otherwise comply with the intent of this Resolution are hereby authorized and ratified, subject to additional non-substantive changes and corrections deemed necessary by the City Manager.

This the 11th day of September, 2017.

\_\_\_\_\_  
Milton D. Hinnant, Mayor

Attest:

\_\_\_\_\_  
Bridgette Bell, MMC, NCCMC  
City Clerk

## **LEASE AGREEMENT AND OPTION TO LEASE**

**THIS LEASE AGREEMENT AND OPTION TO LEASE** (the "Lease") is made as of the \_\_\_\_\_ day of August, 2017, by and between **THE CITY OF KANNAPOLIS**, a North Carolina municipal corporation ("Landlord") and **THE TRUSTEES OF ROWAN CABARRUS COMMUNITY COLLEGE** ("Tenant", and, for purposes of this Lease, Rowan Cabarrus Community College is sometimes referenced herein as "RCCC").

### **RECITALS:**

1. Rowan Cabarrus Community College currently is a Tenant of Landlord at the leased premises located at 120 West Avenue, Kannapolis, North Carolina (the "West Avenue Premises"), pursuant to a lease agreement (the "West Avenue Lease") dated July 2, 2014 (as amended October 31, 2014 and September 21, 2015) executed by and between RCCC and Atlantic American Properties, Inc. for which Landlord is the successor in interest; and
2. The West Avenue Lease commenced on June 1, 2015, demising approximately 30,000 square feet of rentable space for a term of twenty (20) years at an annual fixed rent of \$217,280; and
3. There are approximately 17 years and 9 months remaining on the West Avenue Lease with a termination date of May 31, 2035; and;
4. RCCC desires to lease the premises located at 489 North Cannon Boulevard, Kannapolis, North Carolina (the "Cannon Boulevard Premises") as a relocation of its cosmetology educational facilities and terminate the West Avenue Lease; and
5. Upon execution of this Lease and acceptance of the Cannon Boulevard Premises, the remaining term (the "Remaining Term" also referred to herein as "Term") for the West Avenue Lease shall continue at the Cannon Boulevard Premises in accordance with the terms and conditions herein provided.
6. This Lease is a novation of the West Avenue Lease.
7. This Lease is authorized pursuant to the provisions of North Carolina General Statute 160A-274. The Recitals are incorporated as a part of this Lease.

### **LEASE TERMS:**

**1. DEMISED PREMISES.** For the term and subject to the provisions and conditions hereof, Landlord leases to Tenant, and Tenant rents from Landlord, that certain building (referenced herein as the "Building"), consisting of a total of approximately 42,331 gross square feet and having a street address of 489 North Cannon Boulevard, Kannapolis, North Carolina. A portion ("Demised Premises") of the Building is rented to Tenant as set forth in Exhibit 3.3 attached, of approximately 32,673 square feet of rentable area. There are approximately 8,444 square feet of unrented space ("Remaining Rental Space") in the Building. The Building is located on land more particularly described in Exhibit 1.1, attached hereto (the "Land"). The Building, this Lease, Tenant, and Tenant's employees, guests and invitees shall have all of the benefits of the areas designated as "Common Areas" in the site plans ("Plans") developed by Landlord. The configuration of the Demised Premises and the Remaining Rental Space within the Building will be shown on the Plans.

**2. USE.** Tenant shall use the Premises to provide instruction to College students, primarily as a school of cosmetology and to provide student live project experiences for students and related support functions. Tenant agrees that it will not use, or permit or suffer the use of, the Premises, or any part thereof, for any other business or purpose. Tenant and its officers, employees, agents, customers, business visitors, business guests, licensees and invitees shall be entitled to the nonexclusive use of 275 spaces in the parking areas, driveways and walkways within the property known

as 489 Cannon Blvd, but such use shall be in common with Landlord and all other tenants to whom Landlord has or may hereafter grant similar nonexclusive rights to use the same, including, but not limited to, the owners and lessees of other leased spaces and the officers, employees, agents, customers, business visitors, business guests, licensees and invitees of such owners and lessees, their successors and assigns; provided, however, that such use by Tenant shall be subject to such rules and regulations as Landlord may from time to time adopt governing the same; and provided, further, that Landlord shall at all times have full control, management and direction of said Common Areas, and that Landlord shall have the right at any time to change the layout thereof, including the right to reasonably add to or subtract from their shape and size, as well as to alter their location, while maintaining access to the facility and the parking space count addressed above.

### **3. TERM.**

3.1 Commencement of the Remaining Term. The Remaining Term of the Lease shall commence on the first date (the "Commencement Date") to occur of the following: (i) the date of Substantial Completion, as defined below, of the construction to be performed on the Demised Premises shown on the Plans; (ii) the date on which Tenant shall take possession of the Demised Premises; or (iii) the date that Tenant would have taken possession of the Demised Premises but for any postponement resulting from Tenant's delay with respect to any obligation of Tenant set forth in Exhibit 3.1 attached hereto or caused by Tenant in the Substantial Completion of the Demised Premises. The term "Substantial Completion" means the date on which Landlord has caused the Demised Premises to be constructed substantially in accordance with the portion of the Plans that constitute Landlord's Work as set forth in Exhibit 3.1 so that Tenant may use the Demised Premises for the use or uses specified in Section 2. The Demised Premises shall be deemed substantially complete even if work to be performed by Tenant remains incomplete and even though minor or insubstantial details of construction, mechanical adjustment or decoration (collectively, the "Punchlist Items") remain to be performed, provided that such Punchlist Items do not materially interfere with Tenant's use of the Demised Premises or the conduct of its business thereon.

3.2 Duration of Term. The Term shall continue until May 31, 2035 (the "Expiration Date"), unless extended or sooner terminated as herein provided.

3.3 Acknowledgment of Term. When the Commencement Date is established, Landlord and Tenant shall promptly execute a Tenant Acceptance Agreement substantially in the form set forth in Exhibit 3.3 attached hereto (the "Tenant Acceptance Agreement"), which shall also identify the Punchlist Items to be completed by Landlord and the date or dates by which such Punchlist Items shall be completed.

3.4 Delay in Completion of Building. The date of Substantial Completion of the Demised Premises is estimated to occur on July 1, 2018 (the "Estimated Completion Date"). If Landlord shall be unable to deliver possession of the Demised Premises to Tenant on the Estimated Commencement Date for any reason, Landlord shall not be subject to any liability to Tenant, the validity of this Lease shall not be affected and Tenant shall not be relieved from any obligation hereunder.

3.5 Special Right of Termination. Notwithstanding any other provision of this Lease, Landlord and Tenant acknowledge and agree that continuation of Tenant's obligations under this Lease is subject to the appropriation of funds by the North Carolina General Assembly to Tenant for the purpose operating a Community College, and the Cabarrus County Commission for the purpose of payment of Rent under this Lease. In the event that Tenant, or any constituent institution of Tenant that is responsible for payment of Rent under this Lease, determines that appropriated funding for the payment of Rent is insufficient to continue to pay Rent (the "Funding Determination"), Tenant may terminate this Lease by written notice delivered to Landlord, and upon delivery of such written notice to Landlord, Tenant's obligations under this Lease shall terminate; provided, however, that Tenant shall have no such right of termination, notwithstanding the Funding Determination, if the Cabarrus County Commission appropriates sufficient funds of the specified purpose of paying Rent but Tenant uses those appropriated funds for any other purpose. Nothing in this Section 3.5 shall be construed from prohibiting Tenant from substituting other available funds for appropriated funds when paying Rent or any other usage fee reserved herein, and by acceptance of possession of the Demised Premises, Tenant shall have agreed that, before this Lease is terminated pursuant to this Section 3.5 as a result of sufficient funds not being appropriated from the specified purpose of paying Rent, Tenant will use reasonable efforts to seek other sources of funding, including without limitation, new grants, to pay such Rent as it becomes due. Tenant further agrees that, prior to termination of the Lease by Tenant pursuant to this Section 3.5, Tenant shall use reasonable efforts to seek other funding, including, without limitation, new grants,, to pay such Rent as it becomes due; provided,

however, if such loss of funding is a result of RCCC losing its accreditation, Tenant, before terminating this Lease pursuant to this Section 3.5, will use reasonable efforts to assign the rights and delegate the obligations of Tenant under this Lease to an accredited community college in the North Carolina Community College System reasonably acceptable to Landlord that has obtained or will obtain funding to pay the Rent due under this Lease.

#### **4. RENT.**

4.1 Rent. Commencing on the Commencement Date and continuing throughout the term of this Lease, Tenant shall be Two Hundred Seventeen Thousand Two Hundred Eighty and No/100 Dollars (\$217,280.00) per year (the "Rent"), payable in equal monthly installments of Eighteen Thousand One Hundred Six and 67/100 Dollars (\$18,106.67). Such Rent shall be payable during the term hereof, in advance, beginning on the Commencement Date and continuing thereafter on or before the first day of each calendar month during the term of this Lease without notice, demand, setoff or deduction. The Rent is inclusive of real estate taxes, any common area maintenance and Landlord insurance.

4.2 Late Charges and Interest. In addition to the remedies which are provided under Section 19 of this Lease, if any monthly payment of Rent or any monies due hereunder from Tenant shall not be received by Landlord which are not paid on or before the date due as provided in this Lease shall bear interest at the rate of one percent (1%) per month from said due date until paid. Said late charge and interest shall be due without any requirement of Landlord to provide notice to Tenant of failure to make payments.

#### **5. MAINTENANCE, REPAIRS, ALTERATIONS, UTILITIES.**

5.1 Maintenance, Repair and Replacement of Demised Premises by Tenant. Once the Landlord has completed construction as shown on the Plans, at its sole cost and expense, Tenant shall make such repairs, replacements or restorations (in quality equivalent or better than the original work) as may be required to maintain the interior portion of the Demised Premises and all installations and systems located therein in safe, good order and condition generally, ordinary wear and tear only excepted.

5.2 Alterations and Additions. Provided that no Event of Default by Tenant shall have occurred and be continuing, Tenant shall have the right during the Term, and at Tenant's sole cost and expense, to make interior, nonstructural alterations to the Building (collectively, the "Interior Alterations"); provided, however, that: (i) prior to making any such Interior Alterations, Tenant shall submit to Landlord for its approval a set of detailed plans and specifications (the "Alterations Plans") relating to such Interior Alterations. Landlord shall provide comments on any such Alterations Plans in a timely manner, and Tenant shall incorporate such comments prior to commencement of the Interior Alterations related to such Alterations Plans; (ii) all Interior Alterations that have been approved by Landlord shall be made in a good and workmanlike manner; (iii) Tenant shall provide Landlord with at least five (5) business days' advance written notice of the commencement of any such Interior Alterations that have been approved by Landlord; (iv) In the event any mechanic's or materialman's lien is filed against the Demised Premises or any portion thereof as a result, or partially as a result, of any act, omission, use or work performed by or on behalf of Tenant in respect of such Interior Alterations, then Tenant shall promptly obtain and record any and all release of lien bonds as are required to extinguish such liens as a matter of law, and shall take all other action reasonably requested by Landlord in order to extinguish or eliminate the claims of such mechanics or materialmen; (v) Tenant shall not at any time permit any work to be performed on the Demised Premises except by duly licensed contractors or artisans approved in advance by Landlord, each of whom must carry both general public liability insurance in an amount of not less than \$2,000,000 on a policy or policies of insurance issued by a company reasonably acceptable to Landlord and worker's compensation insurance in such amounts as may be required by applicable law, and certificates of all such insurance, naming Landlord and Tenant as additional insureds, shall be furnished to Landlord prior to commencement of the Interior Alterations and all such policies of insurance as are required under this clause (v) shall remain in effect until full completion of the Interior Alterations; (vi) in the event that any Interior Alterations involve the installation of, or modify or relocate any portion of, any electrical, mechanical or utility systems, then upon completion of the Interior Alterations, Tenant shall provide Landlord with "as-built" or marked up Alterations Plans showing the actual location of such systems; (vii) all such Interior Alterations, as well as all fixtures, equipment and improvements that have been installed in the Demised Premises as of the Commencement Date or that are installed by Tenant after the Commencement Date (except Tenant's trade fixtures), shall, subject to the provisions of Section 3.6, become and remain the property of Landlord, and shall be surrendered to Landlord upon expiration or earlier termination of this Lease; and (viii) if requested by Landlord, Tenant, at Tenant's sole expense, shall upon expiration or earlier termination of this Lease



or vacation of the Demised Premises by Tenant, remove such improvements as constitute Interior Alterations that are designated by Landlord for removal and shall restore the Demised Premises to the same condition as existed on the Commencement Date, ordinary wear and tear excepted. Tenant shall make no structural alterations or additions to the Demised Premises or any portion thereof or in any way alter or modify the exterior of the Demised Premises (collectively, the "Alterations"), without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Prior to making any such Alterations, Tenant shall submit to Landlord for its approval a set of plans and specifications (the "Plans") relating to such Alterations. Landlord shall provide comments on any such Plans in a timely manner. All Alterations that have been approved by Landlord shall be made in a good and workmanlike manner. Tenant shall not at any time permit any work to be performed on the Demised Premises except by duly licensed contractors or artisans approved in advance by Landlord, each of whom must carry both general public liability insurance in an amount of not less than \$2,000,000 on policy of insurance issued by a company reasonably acceptable to Landlord and worker's compensation insurance in such amounts as may be required by applicable law. Certificates of all such insurance, naming Landlord as additional insured, shall be furnished to Landlord prior to commencement of the Alterations and all such policies of insurance as are required under this Section 5.2 shall remain in effect until full completion of the Alterations. All such Alterations, as well as all fixtures, equipment and improvements that have been installed in the Demised Premises as of the Commencement Date or that are installed by Tenant after the Commencement Date (except Tenant's trade fixtures), shall become the property of Landlord upon such installation, and shall be surrendered to Landlord upon early termination of this Lease.

5.3 Utilities and Janitorial Services. Except to the extent otherwise provided in Section 7, Tenant shall contract and pay directly for all utilities and services supplied to the Premises, including electricity, water and cleaning of the interior of the Premises, together with any taxes thereon.

6. PROPERTY OF TENANT. Tenant shall maintain and care for its personal property on the Demised Premises, insure the same to such extent as it deems appropriate, and shall neither have nor make any claim against Landlord for any loss or damage to the same, regardless of the cause therefor. Tenant shall timely pay any and all taxes levied or assessed against or upon Tenant's equipment, fixtures, furniture, leasehold improvements and personal property located in the Demised Premises. Upon early termination of this Lease, and only if Tenant is not in default of any of its obligations hereunder, Tenant may remove all trade fixtures and personal goods and effects that it has placed in the Demised Premises, but upon such removal, Tenant shall repair all damage caused by such removal. If Tenant does not remove its property from the Demised Premises upon early termination of this Lease for whatever cause, such property shall be deemed abandoned by Tenant, and Landlord may dispose of the same in whatever manner Landlord may elect without incurring any liability or obligation to Tenant, and the cost thereof shall be charged to Tenant.

7. SERVICES PROVIDED TO THE DEMISED PREMISES BY LANDLORD; LANDLORD'S INSURANCE. Provided that no default or event of default by Tenant has occurred and is continuing, Landlord shall provide the following services and supplies to the Demised Premises during the Term:

7.1 Heating and Air Conditioning Service. Landlord shall provide seasonable heating and air-conditioning to the Demised Premises. Except as provided below, maintenance of the heating and air conditioning equipment shall be the responsibility of Tenant throughout the Term of this Lease. In the event of the failure of a major component of the heating and air conditioning equipment, Landlord will be responsible for the replacement of the component. Major components are limited to the compressor, heat exchanger, and/or condenser. Landlord shall install separate metering in the Demised Premises to determine the actual consumption by Tenant of the services described in this Section.

7.2 Information and Communications Services. Landlord has installed, or has caused to be installed, into the Demised Premises all equipment and core wiring necessary to provide the Demised Premises with access to and use of a central information, security, utilities control and communications system that provides for telecommunications, internet access, security access, utilities controls and technology access to computer and data processing services.

7.3 Separate Metering for Services. Notwithstanding any terms to the contrary in this Lease, including Section 5.3, Landlord reserves the right at all times to determine the utilities providers that shall have the right to provide utilities services to the Building, and at no time shall Tenant have the right to arrange for utilities services through a provider that is not approved by Landlord.

7.4 Landlord's Insurance. Landlord shall maintain "all risk" coverage on a full replacement cost basis covering the Building (other than any interior improvements made by Tenant) as it exists on the Commencement Date and such other insurance in such amounts covering such other liabilities or hazards as deemed appropriate by Landlord. Landlord's insurance shall be subject to such deductible amounts as Landlord may elect. Except as set forth in this Section 7.5, the amount and scope of coverage of Landlord's insurance shall be determined by Landlord from time to time.

**8. TELECOMMUNICATIONS SERVICES.** Tenant acknowledges and agrees that any requirement of Tenant to arrange for telecommunication service to the Demised Premises is the sole responsibility of Tenant and that, except for the installation of equipment and core wiring described in Section 7.2, Landlord has no responsibility or obligation to provide or arrange for such telecommunication services, nor to permit installation of any facilities or equipment in or outside the Building.

**9. SIGNS.** Tenant and Landlord agree that there is a reasonable expectation of signage on the building and at the plaza entrance to facilitate wayfinding by the Tenant's clients.

9.1 Building Signs. Tenant may attach permanent building signage identifying the College and its educational functions, which complies with the City of Kannapolis Signage Ordinance. This sign(s) shall not exceed a size commensurate with the portion of the façade allocated to the Tenant.

9.2 Plaza Sign. Tenant shall be allocated space on the plaza sign commensurate in size to the percentage of leased space within the plaza. Tenant shall be responsible for all costs associated with their sign and must seek prior written consent from the Landlord.

9.3 Temporary Signs. The Tenant may not erect, install or display any temporary sign or advertising material within the parking lot, upon the Building or the exterior of the Demised Premises, or the walls of any part of the Demised Premises, without the prior written consent of Landlord.

**10. COMPLETION OF IMPROVEMENTS.** Upon the due execution and delivery of this Lease, Landlord agrees to proceed with due diligence to prepare the Demised Premises in accordance with the requirements of Landlord's obligations set forth in Exhibit 3.1 and otherwise in accordance with the terms of this Lease.

**11. TENANT'S COMPLIANCE WITH CERTAIN LAWS AND INSURANCE REQUIREMENTS.**

11.1 Compliance with Laws. In addition to the requirements of Section 12, Tenant agrees, on behalf of itself, and or its employees, agents, contractors, customers, invitees, licensees, visitors, assigns or subtenants ("Tenant Related Party" or "Tenant Related Parties") that Tenant shall comply with all applicable laws, ordinances and other requirements of public authorities, all regulations, covenants, restrictions and declarations, relating to Tenant's use and occupancy of the Demised Premises or the conduct of Tenant's business therein.

11.2 Compliance with Insurance Requirements. Tenant shall comply with the requirements of all insurance underwriters that insure any portion of the Building. Tenant shall not occupy or use the Building for any purpose that would increase the rate of fire or other insurance coverage on the Building.

**12. COMPLIANCE WITH ENVIRONMENTAL LAWS.**

12.1 Definitions. For purposes of this Section 12, the following terms shall have the corresponding meanings ascribed to them:

12.1.1 Hazardous Materials. The term "Hazardous Materials" shall mean any (a) oil, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other wastes, materials or pollutants which (i) pose a hazard to the Premises, to persons on or about the Premises or the environment or (ii) cause the Landlord to be in violation of any Hazardous Materials Laws; (b) asbestos in any form, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyl's, or radon gas; (c) chemical, material or substance defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous waste", "restricted hazardous

waste", or "toxic substances" or words of similar import under any applicable local, state or federal law or under the regulations adopted or publications promulgated pursuant thereto; and (d) other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority.

12.1.2 Hazardous Materials Claims. The term "Hazardous Materials Claims" shall mean any enforcement, cleanup, removal, remedial or other governmental or regulatory actions, agreements or orders instituted pursuant to any Hazardous Materials Laws; and any claims, judgments, damages, penalties, fines, costs, liabilities or losses, including sums paid in settlement of claims, attorneys' fees, consultants' fees and experts' fees incurred or suffered by Landlord resulting from the presence, release or discharge of any Hazardous Materials.

12.1.3 Hazardous Materials Laws. The term "Hazardous Materials Laws" shall mean any federal, state or local laws, ordinances, regulations or policies relating to the environment, health and safety, and Hazardous Materials or to industrial hygiene or the environmental conditions on, under or about the Building, the Land, or the Premises, including, without limitation, soil, groundwater and indoor and ambient air conditions.

## 12.2 Tenant Compliance With Hazardous Materials Laws; Tenant Indemnity.

12.2.1 Compliance. With respect to its use of the Demised Premises and the soil, groundwater under and surface water on the Premises, Tenant shall comply, and shall require all Tenant Related Parties to comply, with all Hazardous Materials Laws. Tenant shall promptly cure and satisfy all Hazardous Materials Claims arising out of or by reason of the activities or businesses of Tenant and all Tenant Related Parties.

12.2.2 Use of Hazardous Materials. Other than office supplies, and chemicals and compounds associated with the cosmetology trades and similar substances commonly found in office and classroom buildings in quantities or concentrations that do not violate any Hazardous Materials Laws, without the prior written consent of Landlord (which may be withheld for any reason or for no reason), Tenant shall not cause or permit any Hazardous Materials to be brought upon, kept or used in or about the Demised Premises by Tenant or by Tenant Related Parties.

12.2.3 Indemnity. Tenant hereby indemnifies, defends, protects and holds Landlord, Landlord's officers, directors, managers, members, shareholders, employees, contractors and agents, any lender for Landlord, and each of Landlord's successors and assigns, harmless from any and all Hazardous Materials Claims arising from or related to the obligations of Tenant set forth in this Section 12.2. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work required by any federal, state or local government agency or political subdivision because of Hazardous Materials that are or that allegedly are introduced into the Demised Premises by Tenant or any Tenant Related Party. The indemnity set forth in this Section 12.2.3 shall survive the expiration or earlier termination of this Lease and is in addition to the indemnity set forth in Section 15.

## 13. SUBLEASE AND ASSIGNMENT.

13.1 Prohibition against Assignment; General Conditions to Sublease. Except as set forth in Section 3.5, Tenant shall not assign its interest in this Lease to any party. Tenant shall not sublet all or any portion of the Demised Premises or sublet the Demised Premises for a term shorter than the Term without first obtaining Landlord's prior written consent thereto, which Landlord shall not unreasonably withhold or delay, provided that: (i) the space to which the proposed sublease relates, when added to all other space that has been sublet by Tenant, if any, does not exceed 25% of the total rentable area of the Demised Premises; (ii) the proposed sublease shall be to any of (a) a public charity, (b) a for-profit or not-for-profit educational institution, (c) an entity that is engaged in research, educational services or other activities with RCCC, consistent with the mission of community colleges as stated in Chapter 115D of the North Carolina General Statutes, or (d) a governmental entity engaging in work related to use by RCCC of the Demised Premises, (iii) the proposed use by a subtenant shall be for the purposes of conducting research, engaging in educational activities, fostering the transfer of knowledge into the economy or providing ancillary support or other incidental uses to RCCC; (iii) the proposed subtenant shall be of a character, business reputation and financial standing, and shall be engaged in a business, acceptable to Landlord and in keeping with the commercial standards applied by Landlord to the Building; (iv) the proposed subtenant shall not then be occupying other space in the Building and as a result would cease to occupy such space, nor shall it be a prospective tenant then negotiating with Landlord; and (v) the document creating the sublease shall be subject to Landlord's approval. If Landlord consents to a proposed sublease, such consent shall not release Tenant from its obligations hereunder and shall not be deemed consent to any further sublease. Tenant shall not

mortgage or encumber this Lease. In no event shall this Lease be assignable by operation of any law, and Tenant's rights hereunder may not become, and shall not be listed by Tenant as, an asset under any bankruptcy, insolvency, or reorganization proceedings.

13.2 Procedures to Seek Consent to Sublease. In the event Tenant should desire to sublet the Demised Premises or any part thereof or for any portion of the Term, Tenant shall give Landlord not less than thirty (30) days' prior written notice (the "Sublease Notice"), which shall specify: (i) the date on which Tenant desires to make such sublease effective; (ii) the name and business of the proposed sublessee; (iii) the designation and location of the space affected; (iv) the proposed effective date and duration of the sublease; (v) the proposed rental rate to be paid to Tenant by such subtenant; and (vi) all other information that may be useful to Landlord to determine that the proposed sublease complies with the requirements of clauses (i) through (v) of Section 13.1. Landlord shall then have a period of ten (10) days following receipt of such notice within which to notify Tenant in writing that Landlord either consents or withholds consent to such proposed sublease.

13.3 Effect of Sublease. Any approved sublease shall be expressly subject to the terms and conditions of this Lease. If an Event of Default occurs following any approved sublease, and in addition to any other remedies available to Landlord, Landlord may collect directly from Tenant's subtenant all rents becoming due to Tenant and apply such amount against any Rent due to Landlord. Tenant authorizes and directs any subtenant to pay rent directly to Landlord upon receipt from Landlord of a notice of default by Tenant. Receipt by Landlord of Rent from any assignee, sublessee or occupant of the Demised Premises shall not be a waiver of the covenant in this Lease prohibiting assignment and restricting subleases.

14. FIRE OR OTHER CASUALTY. In the event of damage to the Demised Premises by fire or other casualty, Tenant shall give immediate notice thereof to Landlord. Subject to the rights of Landlord's lender, Landlord shall thereupon cause the damage to be repaired with reasonable speed, at the expense of Landlord (subject to reimbursement for costs of repair available under any policy of insurance maintained by Landlord or by Tenant, as applicable, and Tenant reimbursing Landlord for any commercially reasonable deductibles with respect to Landlord's insurance in accordance with the requirements of Section 4.1(iv)), subject to delays which may arise by reason of adjustment of loss under insurance policies and for delays beyond the control of Landlord; and provided, that Landlord's responsibility under this Section 14 to repair the Demised Premises shall be limited to the Demised Premises as the same exists on the Commencement Date and shall exclude any interior improvements made by Tenant. In no event shall Landlord be responsible to repair, restore, or rebuild any of the Tenant's property or any alterations or additions made by Tenant. If, as a result of such casualty, the Demised Premises are rendered untenable, in the reasonable judgment of Landlord, Rent on the Demised Premises shall abate in the proportion that the Demised Premises remain untenable. If such fire or casualty does not result in a total destruction to the Demised Premises and Tenant is able to continue its operations during repairs, Rent shall be adjusted and prorated in the proportion that the area of unusable space bears to the total rentable area of the Demised Premises. In the event the damage shall be so extensive that Landlord shall determine, in its sole discretion, not to repair or rebuild, or if the fire or casualty shall not be of a type for which Landlord has carried insurance, or if insurance proceeds are inadequate to perform repairs or rebuild, or if the holder of any deed of trust or similar security interest covering the Building shall not permit the application of adequate insurance proceeds for repair or restoration, then, at the sole option of Landlord, exercisable by written notice to Tenant given within sixty (60) days after Landlord is notified of the fire or casualty, this Lease shall be terminated as of a date specified in such notice (which shall not be more than sixty (60) days thereafter), and the Rent (taking into account any abatement as aforesaid) shall be adjusted to the date of the occurrence of such casualty and Tenant shall thereupon promptly vacate the Demised Premises. Other than the abatement of Rent, Landlord shall have no liability for any losses claimed by Tenant by reason of annoyance, inconvenience, injury or loss of business resulting from the fire or other casualty, Landlord's decision not to rebuild the Demised Premises or from the necessity of repairing the Demised Premises.

15. LIMITATION ON LIABILITY; INDEMNITY. Tenant agrees that Landlord, its employees, agents, contractors, customers, invitees, licensees, visitors, assignees or subtenants (sometimes individually referenced as a "Landlord Related Party" and sometimes collectively referenced as the "Landlord Related Parties") shall not be liable to Tenant for, and Tenant hereby releases Landlord and Landlord Related Parties from, any personal injury or damage to or loss of property from any cause whatsoever unless such damage, loss or injury is the result of the willful actions or gross negligence of Landlord or Landlord Related Parties. Tenant shall and does hereby indemnify, defend and hold Landlord and the Landlord Related Parties harmless of and from all loss or liability, including without limitation all costs and expenses (including attorneys' and expert witness fees) incurred by Landlord and the Landlord Related Parties in connection with any failure of Tenant to fully perform its obligations under this Lease and in connection with any

personal injury or damage of any type or nature occurring in or resulting out of Tenant's use of the Demised Premises, unless due to the willful actions or gross negligence of Landlord or the Landlord Related Parties. Anything in this Lease, either express or implied, to the contrary notwithstanding, Tenant acknowledges and agrees that each of the covenants, undertakings and agreements of Landlord, is, nevertheless, made and intended not as a personal covenant, undertaking and agreement of Landlord, or for the purpose of binding either Landlord personally or the assets of Landlord, except Landlord's interest in the Building; and that no personal liability or personal responsibility is assumed by, nor shall at any time be asserted or enforceable against Landlord or any Landlord Related Parties on account of any covenant, undertaking or agreement of Landlord in this Lease contained, all such personal liability and personal responsibility, if any, being expressly waived and released by Tenant. Notwithstanding anything contained in this Lease to the contrary, Tenant agrees that it shall look solely to the interest of Landlord in the Building for the collection of any judgment (or other judicial process) requiring the payment of money by Landlord for any default under this Lease, subject, however, to the prior rights of any holder of any first deed of trust. The provisions of this Section 15 shall survive expiration or earlier termination of this Lease.

**16. ACCESS TO DEMISED PREMISES.** Tenant shall give Landlord, its agents and employees, access to the Demised Premises at all reasonable times, and at any time in the case of an emergency, without charge or diminution of rent, to enable Landlord: (i) to examine the same and to make such repairs, additions and alterations as Landlord may deem advisable for the preservation of the integrity, safety and good order of the Building or any part thereof, and (ii) upon reasonable notice, to show the Demised Premises to prospective mortgagees and purchasers. In the event of an emergency, Landlord may enter the Demised Premises by means of a master key or forcibly, without any liability whatsoever to Tenant and without such entry constituting an eviction of Tenant or a termination of this Lease.

**17. EMINENT DOMAIN.** If all of the Demised Premises, or such part thereof as will make the same unusable, as determined by Landlord, exercising commercially reasonable discretion, for the purposes contemplated by this Lease, is taken under the power of eminent domain (or a conveyance in lieu thereof), then this Lease shall terminate as of the date possession is taken by the condemnor. Rent shall be adjusted between Landlord and Tenant as of such date. If only a portion of the Demised Premises is taken and Tenant can continue use of the remainder of the Demised Premises, then this Lease will not terminate, but Rent shall abate in a just and proportionate amount to the loss of use occasioned by the taking. Tenant shall have no right or claim to any part of any award made to or received by Landlord for any taking and no right or claim for any alleged value of the unexplored portion of this Lease. Tenant may make a claim against the condemning party (but not against Landlord) for any moving expenses, loss of profits, or taking of Tenant's personal property (other than its leasehold estate) to which Tenant may be entitled so long as any such claim does not reduce the award payable to Landlord.

**18. INSOLVENCY.** The insolvency in either the context of bankruptcy or equity of Tenant; or the assignment by Tenant for the benefit of creditors, or the admission in writing of an inability to pay debts generally as they become due; or the commencement of a case by or against Tenant under any insolvency, bankruptcy, creditor adjustment, debtor rehabilitation or similar laws; or the consent by Tenant to the appointment of, or taking possession by, a receiver, trustee, custodian, or similar official for it or for any of its respective property or assets (unless, in the case of involuntary proceedings, the same shall be dismissed within thirty (30) days after institution) shall constitute an immediate Event of Default under this Lease by Tenant. In the event of such Event of Default, and in addition to all rights of Landlord at law or in equity, the Landlord shall be entitled, without further notice to Tenant, to pursue all remedies set forth in Section 19.

**19. DEFAULT.**

**19.1 Default by Tenant.** In addition to any Event of Default identified elsewhere in this Lease, each of the following events shall be deemed to be an event of default by Tenant under this Lease (each, an "Event of Default"):

**19.1.1 Payment of Rent.** Tenant shall fail or refuse to pay any installment of Rent or any other amounts payable to Landlord hereunder as and when herein provided and such failure or refusal continues for five (5) days following Tenant's receipt of written notice of such nonpayment from Landlord (provided that Landlord shall not be required to deliver more than one such notice in any twelve (12) month period).

**19.1.2 Performance of Other Obligations.** Tenant shall fail or refuse to perform any of its obligations other than the payment of Rent by the date that performance is required and such failure or refusal

continues for a period of thirty (30) days after written notice of such failure or refusal is delivered to Tenant; provided, however, that no such written notice shall be required for an Event of Default described in Section 18.

19.2 Remedies of Landlord. Upon the occurrence of any Event of Default, Landlord shall have the option to pursue any one or more of the following remedies:

19.2.1 Termination of Lease or Tenant's Right to Possession. Landlord may terminate this Lease or terminate Tenant's right to possession and to require Tenant to immediately surrender the Demised Premises to Landlord. Tenant agrees to pay to Landlord on demand the costs which Landlord may suffer by reason of such termination either of the Lease or of possession.

19.2.2 Recovery of Possession. Landlord may enter upon and take possession of the Demised Premises and expel or remove Tenant and any other person who may be present, by force if necessary (to the extent allowed by law), without terminating the Lease or being liable for prosecution or any claim for damages.

19.2.3 Reentry. Landlord may reenter upon the Demised Premises, without being liable for prosecution or any claim for damages, and undertake all obligations of Tenant under the terms of this Lease. Tenant agrees to reimburse Landlord on demand for any expenses which Landlord may incur in effecting compliance with Tenant's obligations.

19.2.4 Remedies at Law and in Equity. Upon the occurrence of an Event of Default, Landlord shall have the right and authority, in addition to the rights and remedies set forth in this Lease, to seek all rights and remedies at law (both at common law and in accordance with statutory law) and in equity that may be available to landlords from time-to-time in commercial lease transactions in the State of North Carolina.

19.2.5 Reletting of Demised Premises. In any event in which this Lease shall have been terminated, or in any event in which Landlord shall have elected to recover possession of the Demised Premises without terminating this Lease, or in any event where Landlord shall have elected to pursue its remedies available at law or in equity or to declare the Accelerated Rent Component to be due and payable, Landlord may, in its own name, as agent for Tenant, if this Lease has not been terminated, or in its own behalf, if this Lease has been terminated, relet the Demised Premises or any part thereof for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term of this Lease) and on such terms (which may include concessions or free rent) as Landlord in its sole discretion may determine. In connection with any such reletting, Landlord may cause the Demised Premises to be altered, divided, or otherwise changed or prepared for reletting, the cost of which shall be payable by Tenant. No reletting shall be deemed a surrender and acceptance of the Demised Premises.

19.2.6 Cure Rights. Landlord may cure, at any time, without notice except as otherwise herein provided, any default by Tenant under this Lease. Whenever Landlord so elects, all unrecovered costs and expenses incurred by Landlord in curing a default, including, without limitation, reasonable attorneys' fees, together with interest on the amount of costs and expenses so incurred at the rate announced by Bank of America, N.A. as its prime rate plus four percent (4%) per annum, shall be paid by Tenant to Landlord on demand, and shall be recoverable as Rent.

19.2.7 Additional Liabilities of Tenant. With respect to all periods of time up to and including the expiration of the Term of this Lease (or what would have been the expiration date in the absence of default or breach), Tenant shall remain liable to Landlord under this Lease as follows: (i) in the event of termination of this Lease on account of Tenant's default or breach, Tenant shall remain liable to Landlord for damages equal to the Rent and other charges payable under this Lease by Tenant as if this Lease were still in effect, less the net proceeds of any reletting after deducting all costs incident thereto and such damage shall be payable to Landlord monthly upon presentation to Tenant of a bill for the amount due; and (ii) in the event and so long as this Lease shall not have been terminated after default or breach by Tenant, the Rent and all other charges payable under this Lease shall be reduced by the net proceeds of any reletting by Landlord (after deducting all costs incident thereto) and any amount due to Landlord shall be payable monthly upon presentation to Tenant of a bill for the amount due.

19.3 No Liability for Failure to Mitigate. Landlord shall in no event be responsible or liable for any failure to relet the Demised Premises or any part thereof, or for any failure to collect any rent due upon a reletting.

19.4 Waivers by Tenant. Tenant hereby waives all errors and defects of the procedural nature in any proceedings brought against it by Landlord under this Lease. Tenant further waives the right to trial by jury and any notices to quit as may be specified by statute and agrees that five (5) days notice shall be sufficient in any case where a longer period may be statutorily specified.

19.5 Remedies Cumulative. Pursuit by Landlord of any one or more of the remedies provided in this Lease shall not preclude pursuit of any other remedies provided hereunder or by law, which shall be cumulative, nor shall pursuit of any remedy constitute a forfeiture or waiver of any Rent due or of any damages accruing to Landlord by reason of breach or default by Tenant. Actions to collect amounts due Landlord may be brought from time to time, on one or more occasions without the necessity of Landlord's waiting until the expiration of the Term.

19.6 Costs and Attorneys' Fees. In any action that Landlord may seek against Tenant upon the occurrence of an Event of Default, Landlord shall also be entitled to claim as damages all costs incurred in such action and reasonable attorneys' fees.

19.7 Venue. The parties agree that any litigation concerning this Lease may be brought before the Superior Court of North Carolina and that Cabarrus County, North Carolina shall be the proper venue for any such action.

## **20. SUBORDINATION, ATTORNMENT, NON-DISTURBANCE AND ESTOPPEL CERTIFICATES.**

20.1 Subordination of Lease. This Lease is and shall be subject and subordinate to all deeds of trust, mortgages, assignments of leases, and similar security documents (each a, "Mortgage") which may now or hereafter encumber the Building, and to all renewals, modifications, consolidations, replacements and extensions thereof. This subordination shall be self-operative, and no further instrument of subordination shall be required by any trustee, beneficiary, mortgagee or secured party, but in confirmation of such subordination, Tenant shall execute, within ten (10) days after request, any instrument that Landlord may reasonably require acknowledging such subordination. Notwithstanding the foregoing, the party holding a Mortgage to which this Lease is subordinate shall have the right to recognize and preserve this Lease in the event of any trustee or foreclosure sale or possessory action, and in such case this Lease shall continue in full force and effect at the option of the party holding the superior encumbrance or lien and Tenant shall attorn to such party and shall execute and deliver any instrument that has for its purpose and effect the confirmation of such attornment.

20.2 Non-Disturbance. With respect to any Mortgage entered into by Landlord after the execution of this Lease, Tenant's subordination of this Lease shall be subject to Tenant receiving assurance from the Mortgage holder on commercially reasonable terms that Tenant's possession of the Demised Premises and this Lease will not be disturbed so long as no Event of Default has occurred and Tenant attorns to the record owner of the Demised Premises.

20.3 Execution of Estoppel Certificates. Tenant agrees to execute within ten (10) days of Landlord's request therefor, but not more frequently than two (2) times in any calendar year, estoppel certificates addressed to such third parties as Landlord may request setting forth facts relating to the date of occupancy and the expiration date of this Lease, the amount of Rent and other amounts due, the date to which Rent is paid, whether or not Tenant has any defense or offsets to the enforcement of this Lease or knowledge of any default or breach by Landlord, that this Lease is in full force and effect and unmodified, except as to any modifications or amendments copies of which Tenant shall attach to such estoppel certificate, and such other facts and information as Landlord or such third parties may reasonably request.

21. NOTICES. Any notice which Landlord or Tenant is required or desires to give to the other shall be deemed sufficiently given or rendered if delivered in writing, either personally or by (i) certified mail, return receipt requested, in which case notice shall be deemed delivered five (5) days after deposit, postage prepaid in the U.S. mail, or (ii) a nationally recognized overnight carrier, in which case notice shall be deemed delivered one (1) business day after deposit with such carrier, The addresses set forth below may be changed by written notice to the other party; provided that no notice of a change of address or facsimile number shall be effective until actual receipt of such notice. Addresses for notice are set forth below:

LANDLORD: City of Kannapolis  
401 Laureate Way  
Kannapolis, North Carolina 28081  
Attention: City Manager  
Telephone for Airbill: 704-920-4300

TENANT: The Trustees of Rowan Cabarrus Community College  
1333 S. Jake Alexander Blvd.  
Salisbury, NC 28145  
Attn: President  
Telephone for Airbill: 704-216-2722

**22. HOLDING OVER.** If Tenant shall hold over after any early termination of this Lease, such holding over shall not be deemed to be a renewal of this Lease but shall be deemed to create a tenancy-at-sufferance and by such holding over Tenant shall be deemed to have agreed to be bound by all of the terms and conditions of this Lease except those as to the term hereof and except that during such tenancy-at-sufferance, Tenant shall pay to Landlord: (i) Rent at the rate equal to one hundred fifty percent (150%) of the Rent that was payable in the last month of the Term.

**23. WAIVER OF SUBROGATION.** Landlord and Tenant each hereby releases the other from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation or otherwise for any loss or damage to property caused by fire or any other perils that could be insured against or that are required to be insured against under the terms of the Lease, even if such loss or damage shall have been caused by the negligence or willful actions of the other party, or anyone for whom such party may be responsible, including, without limitation, any subtenants or occupants of the Demised Premises; provided, however, that this release shall be applicable and in force and effect only to the extent that such release shall be lawful at that time and in any event only with respect to loss or damage occurring during such time as the releaser's policies shall contain a clause or endorsement to the effect that any such release shall not adversely affect or impair said policies or prejudice the right of the releaser to recover thereunder and then only to the extent of the insurance proceeds payable under such policies. Each of Landlord and Tenant agrees that it will request its insurance carriers to include in its policies such a clause of endorsement. If extra cost shall be charged therefor, each party shall advise the other thereof and of the amount of the extra cost, and the other party, at its election, may pay the same, but shall not be obligated to do so. If such other party fails to pay such extra costs, the release provisions of this Section shall be inoperative against such other party to the extent necessary to avoid invalidation of such releaser's insurance.

**24. MECHANIC'S LIEN.** Tenant shall keep the Demised Premises free from any liens arising out of any work performed, materials furnished, or obligations incurred by or on behalf of Tenant. Should any claim of lien or other lien be filed against the Demised Premises by reason of any act or omission of Tenant or any Tenant Related Entities, then Tenant shall cause the same to be canceled and discharged of record by bond or otherwise within ten (10) days after the filing thereof. Should Tenant fail to discharge such lien within such ten (10) day period, then Landlord may discharge the same, in which event Tenant shall reimburse Landlord, on demand, as Additional Rent, for the amount of the lien or the amount of the bond, if greater, plus all administrative costs incurred by Landlord in connection therewith. The remedies provided herein shall be in addition to all other remedies available to Landlord under this Lease or otherwise. Tenant shall have no power to do any act or make any contract that may create or be the foundation of any lien, encumbrance, mortgage or other security interest upon the reversionary or other estate of Landlord, or any interest of Landlord in the Demised Premises. NO CONSTRUCTION LIENS OR OTHER LIENS FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED TO THE DEMISED PREMISES SHALL ATTACH TO OR AFFECT THE INTEREST OF LANDLORD IN AND TO THE DEMISED PREMISES.

**25. PUBLIC LIABILITY INSURANCE.** At all times during the term hereof, Tenant shall maintain in full force and effect with respect to the Demised Premises and Tenant's use thereof, comprehensive public liability insurance with an insurance company that is acceptable to Landlord in the exercise of its commercially reasonable discretion, naming Landlord, Landlord's agent and any trustee or beneficiary under a deed of trust that encumbers the Property and any mortgagee of any mortgage that encumbers the Property as an additional insured, covering injury to persons in amounts at least equal to Five Million Dollars (\$5,000,000.00) per occurrence and Five Million Dollars (\$5,000,000.00) per accident, and damage to property of at least Five Million Dollars (\$5,000,000.00). Each such policy



shall provide that it shall not be cancelable without at least thirty (30) days prior written notice to Landlord and to any such trustee, beneficiary or mortgagee named in an endorsement thereto and shall be issued by an insurer and in a form satisfactory to Landlord. Tenant shall deliver to Landlord duplicate originals or certificates of such insurance at or prior to the Commencement Date, together with evidence of paid-up premiums, and shall deliver to Landlord renewals thereof at least fifteen (15) days prior to each expiration.

**26. QUIET ENJOYMENT.** If Tenant promptly and punctually complies with each of its obligations hereunder, Tenant shall peacefully have and enjoy the possession of the Demised Premises during the Term hereof, without hindrance or disturbance by anyone claiming by, through or under Landlord (except for the rights reserved to Landlord pursuant to Section 19.2.6); provided, however, that no action of Landlord in working in space in the Building, or in repairing or restoring the Demised Premises, shall be deemed a breach of this covenant giving Tenant any right to modify this Lease either as to term, Rent payable, or other obligations to be performed.

**27. BROKERS' COMMISSIONS.** Each of Landlord and Tenant shall indemnify, defend and hold the other harmless from any and all damages resulting from any claims that may be asserted against Landlord or Tenant, respectively, by any broker, finder or other person, with whom such indemnifying party has or allegedly has dealt. The provisions of this Section 27 shall survive the expiration or earlier termination of this Lease.

**28. PRIOR AGREEMENTS, AMENDMENTS.** Neither party hereto has made any representation or promise to the other except as contained herein. No agreement hereinafter made shall be effective to change, modify, discharge or affect an abandonment of this Lease, in whole or in part, unless such agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought.

**29. MISCELLANEOUS PROVISIONS.**

**29.1 Headings of Sections.** Headings of Sections in this Lease are for convenience of reference only and shall not be considered in construing the meaning of the contents of such Section.

**29.2 Severability.** If any provision of this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall be valid and enforceable to the fullest extent permitted by law.

**29.3 No Waiver.** The failure of Landlord to insist in any one or more instances upon the strict performance of any one or more of the covenants, conditions or obligations of this Lease, or to exercise any right, remedy or election herein contained, shall not be construed as a waiver or relinquishment in the future of such performance or exercise, but the same shall continue and remain in full force and effect with respect to any subsequent breach, act or omission.

**29.4 Sale by Landlord.** Landlord may sell the Building and the Land without affecting the rights or obligations of Tenant hereunder and upon the sale of the Building and the Land, Landlord shall be relieved of all responsibility for the Demised Premises and shall be released from any liability thereafter accruing under this Lease. Subject to the foregoing, the provisions of this Lease shall be binding upon and inure to the benefit of the successors and assigns of Landlord.

**29.5 Binding Effect.** This Lease shall be binding upon the respective parties hereto, and upon their heirs, executors, successors and permitted assigns.

**29.6 Recordation.** This Lease may not be recorded without Landlord's prior written consent. Upon the request of either party, the other party shall execute a recordable memorandum of this Lease that complies with the requirements of Section 47-118 of the North Carolina General Statutes and the requesting party may, at its cost, record such memorandum.

**29.7 Interpretation.** In construing this Lease, the singular shall include the plural, and the masculine, feminine or neuter includes the other. The term "Landlord" as used in this Lease means the fee owner of the Building, or, if different, the party holding and exercising the right, as against all others (except tenants of the Building) to possession of the entire Building.

**29.8 No Accord and Satisfaction.** No payment by Tenant or receipt by Landlord of a lesser amount than the correct Rent due hereunder shall be deemed to be other than a payment on account, nor shall any endorsement or

statement on any check or any letter accompanying any check or payment be deemed to effect or evidence an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance or pursue any other remedy in this Lease or at law prohibited.

29.9 Governing Law. This Lease shall be governed and construed in accordance with the laws and judicial decisions of the State of North Carolina, without giving effect to conflicts of laws principles.

29.10 Condition of Demised Premises upon Termination. Upon the termination of this Lease, for any reason whatsoever, Tenant shall quit and deliver up the Demised Premises reasonably and quietly in as good order and condition as at the Commencement Date of this Lease, and otherwise in accordance with the provisions of this Lease, reasonable wear and tear excepted.

29.11 Counterparts; Electronic and Facsimile Signatures. This Lease may be executed in two or more counterparts and shall be deemed to have become effective when and only when one or more of such counterparts shall have been signed by or on behalf of each of the parties hereto (and all such counterparts shall be deemed to constitute but one and the same instrument) and shall have been delivered by each of the parties to each other. Electronic and facsimile signatures of this Lease shall operate to bind the party to this Lease whose signature has been sent by electronic communication or faxed, as applicable, to the other party.

29.12 Force Majeure. The occurrence of any of the following events shall excuse such obligations of Landlord or Tenant as are thereby rendered impossible or reasonably impracticable for so long as such event continues or for a period equal to the delay in the completion of performance of the impaired obligation, as the case may be: strikes, lockouts, labor disputes, acts of God, inability to obtain labor, materials or reasonable substitutes therefor, governmental restrictions, regulations or controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform. Notwithstanding the foregoing, the occurrence of such events shall not excuse Tenant's obligations to pay Rent or any other payments due from Tenant to Landlord hereunder.

29.13 Disclaimers Relating to Intellectual Property. Landlord agrees, on behalf of itself and any affiliate of Landlord, however, designated, that it and they shall not have a claim, right or license to, or any other interest in, any intellectual property, proprietary information, know-how, materials, processes, other information or results or assets owned, licensed or used by RCCC or produced by RCCC or its or their sublessee, contractors, agents, representatives or employees, in connection with research or any other activities as a result of the agreements set forth in this Lease. Except as specifically set forth in this Lease, including without limitation, as set forth in Addendum 2A and in Addendum 2B, nothing in this Lease shall be construed to require RCCC or the State Board of Community Colleges, organized under the laws of the State of North Carolina (the "State Board") to relinquish or limit the ability of RCCC or the State Board to control the educational offerings or research conducted in the Building or to own, license, or transfer intellectual property created by RCCC or by its contractors, agents, representatives and all decisions as to educational offerings provided by, or the research conducted by, RCCC in the Building shall be the sole discretion of RCCC, subject to compliance with all applicable laws and the terms and provisions of this Lease.

30. Option to Lease. In addition to the Demised Premises, Landlord agrees to grant an option to lease as follows:

30.1 Option to Lease Remaining Rental Space. Landlord hereby grants and conveys to Tenant the exclusive right and option to lease the Remaining Rental Space in the Cannon Boulevard Building of approximately 8,444 square feet of rentable area as described in Section 1 hereinabove ("Option"), to include the warehouse space and receiving area space as indicated in Exhibit 3.1.

30.2 Term. Tenant may exercise the Option by providing written notice to Landlord at any time during the Term of the Lease. The Option must be exercised for the entire Remaining Rental Space.

30.3 Option Consideration. No consideration for the Option will be required by Landlord during the period from the Commencement Date through September 30, 2018. Thereafter, as consideration for this Option, Tenant shall pay to Landlord, the sum of \$8,000 annually and a like sum each year thereafter during the Lease Term until exercised.

30.4 Lease Provisions for Option Space. The Lease terms for the Option Space shall:

- (a) Contain the material terms and conditions of the RCCC Lease Agreement;
- (b) Terminate upon the termination of the RCCC Lease;
- (c) Contain customary triple net lease provisions;
- (d) Provide that Landlord has no upfit obligations;
- (e) Provide for a rent calculation based upon \$7.00 per square foot annually without increase during the term.

30.5 Memorandum of Option. A memorandum of this Option may be recorded by either the Landlord or Tenant.

**31. TERMINATION OF EXISTING LEASE.** The Landlord and Tenant acknowledge and agree that the existing Lease Agreement between the parties for the building located at 120 West Avenue, Kannapolis, North Carolina hereto will be terminated by written agreement at or before the Commencement Date of this Lease Agreement. In no event shall any condition of this Lease be interpreted to accrue rent for both the West Avenue Lease and the Cannon Boulevard Lease simultaneously.

**32. EXHIBITS.** All of the Exhibits identified below are hereby deemed to be incorporated into this Lease by this reference and shall be enforceable in accordance with their respective terms:

Exhibit 1.1	Description of Land
Exhibit 3.1	Tenant's Work/Landlord's Work
Exhibit 3.3	Tenant's Acceptance Agreement
Exhibit 4.1	Schedule of Rent

[Signatures on following page]

**IN WITNESS WHEREOF**, the parties hereto have caused this Lease to be executed by their duly authorized representatives as of the day and year first above written.

**TENANT:**

**THE TRUSTEES OF ROWAN CABARRUS COMMUNITY COLLEGE**

By: \_\_\_\_\_  
Carol S. Spalding  
President

**LANDLORD:**

**CITY OF KANNAPOLIS**  
a North Carolina municipal corporation

By: \_\_\_\_\_  
Michael B. Legg  
City Manager

**EXHIBIT 1.1  
TO  
LEASE AGREEMENT  
BETWEEN  
CITY OF KANNAPOLIS, AS LANDLORD  
AND  
THE TRUSTEES OF ROWAN CABARRUS COMMUNITY COLLEGE, AS TENANT  
DATED: \_\_\_\_\_**

**DESCRIPTION OF LAND**

SITUATED in the City of Kannapolis, Cabarrus County, North Carolina, and being more particularly described as follows:

(Legal Description Attached)

**EXHIBIT 3.1  
TO  
LEASE AGREEMENT  
BETWEEN  
CITY OF KANNAPOLIS, AS LANDLORD  
AND  
THE TRUSTEES OF ROWAN CABARRUS COMMUNITY COLLEGE, AS TENANT  
DATED: \_\_\_\_\_**

**DESCRIPTION OF THE PLANS**

(Plans Attached)

**EXHIBIT 3.3**  
**TO**  
**LEASE AGREEMENT**  
**BETWEEN**  
**CITY OF KANNAPOLIS, AS LANDLORD**  
**AND**  
**THE TRUSTEES OF ROWAN CABARRUS COMMUNITY COLLEGE, AS TENANT**  
**DATED: \_\_\_\_\_**

**TENANT ACCEPTANCE AGREEMENT**

THIS AGREEMENT, dated \_\_\_\_\_, 2018 is an amendment to the Lease Agreement (the "Lease") (unless otherwise defined herein, defined terms, denoted by initial capital letters, shall have the meanings ascribed to them in the Lease) for space in the office building known as 489 North Cannon Boulevard, located in Kannapolis, North Carolina, dated as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between **CITY OF KANNAPOLIS**, a North Carolina municipal corporation, as Landlord, and **THE TRUSTEES OF ROWAN CABARRUS COMMUNITY COLLEGE**, as Tenant.

Pursuant to the provisions of Paragraph 3.3 of the Lease, Landlord and Tenant hereby mutually agree that:

1. Except for those items shown on the attached "Punch List," which Landlord will remedy within forty-five (45) days hereof, Landlord has fully completed the construction work required under the terms of the Lease.

2. Tenant is in possession of, and has accepted, the Demised Premises. The Demised Premises are tenantable, Landlord has no further obligation for construction (except as specified above), and Tenant acknowledges that both the Building and the Demised Premises are satisfactory in all respects except for any latent defects for which Landlord shall be and remain responsible. All conditions of the Lease required of Landlord as of this date have been fulfilled (except specified above), and there are no defenses or setoffs against the enforcement of the Lease by Landlord.

3. Landlord and Tenant stipulate and agree that: (i) the Commencement Date for the Remaining Term of the Lease is \_\_\_\_\_, \_\_\_\_\_; (ii) the Term of the Lease expires May 31, 2035; (iii) the Demised Premises contains \_\_\_\_\_ rentable square feet; (iv) the Building contains \_\_\_\_\_ rentable square feet, a portion of which is subject to the Option to Lease contained in Section 30.

All other terms and conditions of the Lease and Option to Lease are hereby ratified, confirmed and reaffirmed by Landlord and Tenant.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Agreement as of the date first written above.

LANDLORD:

CITY OF KANNAPOLIS  
a North Carolina municipal corporation

By: \_\_\_\_\_  
Michael B. Legg, City Manager

TENANT:

**THE TRUSTEES OF ROWAN CABARRUS COMMUNITY COLLEGE**

By: \_\_\_\_\_  
Printed Name/Title: \_\_\_\_\_



## EXHIBIT 1.1

### Legal Description

All of that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate, lying and being in Cabarrus County, North Carolina and described as follows:

Commencing at an iron pin located on the western right-of-way of North Cannon Boulevard (US Hwy. 29 and 601 – 100' right-of-way) and being the common corner of Dale M. Miller (Deed Book 5067, page 197) and Cannon (Deed Book 3215, page 87); thence leaving said right-of-way along the common line of Miller and Cannon, N 49-43-46 W for 150.20 feet to an iron pin being the Point of Beginning. Thence along the common line of Miller, Tuttle (Deed Book 595, page 61, Book 1946, page 76) and Anderson (Deed Book 2857, page 100), N 89-40-50 W for 727.35 feet to an iron pin; thence along the common line of Haynes (Deed Book 1645, page 115) and McAfee (Deed Book 759, page 66), N 00-16-09 E for 417.85 feet to an iron pin; thence along the common line of McAfee (Deed Book 608, page 72), Costa (Deed Book 2708, page 271) and Smith (Deed Book 4057, page 310), S 85-11-33 E for 538.62 feet to an iron pin located on the eastern side of McCombs Avenue; thence along the common line of Cannon (Deed Book 3215, page 87), S 06-55-40 W for 99.83 feet to an iron pin; thence S 48-22-18 E for 33.99 feet to an iron pin; thence S 89-22-50 E for 168.71 feet to an iron pin; thence along the common line of Smith (Deed Book 2655, page 55), S 85-39-59 E for 196.16 feet to an iron pin located on the western right-of-way of North Cannon Boulevard (US Hwy. 29 and 601); thence along said right-of-way, S 03-10-35 W for 52.38 feet to an iron pin; thence leaving said right-of-way along the common line of Cannon (Deed Book 3215, page 87), N 88-07-26 W for 95.28 feet to an iron pin; thence N 88-19-45 W for 84.96 feet to an iron pin; thence S 00-20-51 W for 129.95 feet to an iron pin; thence S 89-41-51 E for 173.50 feet to an iron pin located on the western right-of-way of North Cannon Boulevard (US Hwy. 29 and 601); thence along said right-of-way, S 05-12-17 W for 40.32 feet to an iron pin; thence leaving said right-of-way along the common line of Cannon (Deed Book 3215, page 87), N 89-41-25 W for 170.02 feet to an iron pin; thence S 00-27-05 W for 135.32 feet to the Point of Beginning. Said tract contains 7.306 acres (318,272 sq. ft.), more or less.





## **PUBLIC NOTICE**

### **LEASE OF CITY PROPERTY**

The City Council of the City of Kannapolis will consider executing a lease for the following city-owned property:

28,000 square feet of Lease Space  
489 North Cannon Boulevard  
Kannapolis, North Carolina

The proposed lease to be considered for the identified property is for a term of twenty years. Tenant will also have the option to purchase the additional adjoining 8218 square feet of space in accordance with the lease terms. The proposed lease is available for inspection by contacting the City Clerk. In consideration of the lease, Tenant will pay fair market rent of \$7.76 per square foot and the option space at \$7.00 per square foot for second floor space with 3 percent annual increases.

All persons interested in this lease are invited to attend the meeting of the City Council to be held in the Council Chambers, City Hall, 401 Laureate Way, Kannapolis, North Carolina at 6:00 pm on Monday, September 25, 2017. At that time the council intends to authorize the lease of and option for the property described above.

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### **PUBLICATION DIRECTION**

**Publish as a Legal Ad: Publish on the following date: Friday, August 25, 2017**

If this date is not acceptable, or any problems please contact immediately:

Bridgette Bell, MMC, NCCMC

City Clerk

City of Kannapolis

401 Laureate Way

Kannapolis, NC 28081

Phone: 704-920-4303

Fax: 704-933-7463

Email: [bbell@kannapolisnc.gov](mailto:bbell@kannapolisnc.gov)



**City of Kannapolis  
City Council Meeting  
September 11, 2017  
Staff Report**

**TO:** Mayor and City Council  
**FROM:** Annette Privette-Keller, Director of Communications  
**TITLE:** Presentation of Brand Implementation Plan

**A. Action Requested by City Council**

Presentation Only.

**B. Required Votes to Pass Required Action**

Presentation Only, no action required

**C. Background**

Three years ago the City strategically adopted and implemented a branding plan. We would like to update you on the next steps in the process to further implement the brand in conjunction with the Downtown Revitalization Project. Initially the implemented would occur over the next three years. The plan would be used to ensure the City's brand is disseminated throughout the region to drive economic development to the City as a whole and specifically to the Downtown Revitalization Project.

**D. Fiscal Considerations**

None

**E. Policy Issues**

None

**F. Legal Issues**

None

**G. Alternative Courses of Action and Recommendation**

Presentation Only. No Action is Required

ATTACHMENTS:

**File Name**

No Attachments Available



**City of Kannapolis  
City Council Meeting  
September 11, 2017  
Staff Report**

**TO:** Mayor and City Council  
**FROM:** Zachary D. Gordon, AICP Planning Director  
**TITLE:** TA-2017-06 - Public Hearing for Text Amendments

**A. Action Requested by City Council**

- 1. Hold Public Hearing for Case #TA 2017-06;**
- 2. Motion to adopt a Statement of Consistency for Case #TA 2017-06;**
- 3. Adopt an Ordinance to Amend Text of UDO for Case #TA 2017-06, as recommended by Planning and Zoning Commission.**

**B. Required Votes to Pass Required Action**

Majority present at meeting

**C. Background**

As the popularity of rural and outdoor weddings continues to increase, City staff have received numerous requests from property owners to establish wedding venues on their properties. Currently such uses are not listed as a permitted use, nor are they defined in the UDO. The UDO does permit events (including outdoor events) in conjunction with bed and breakfast inns if approved with a Conditional Use Permit (CUP). Staff has reviewed several surrounding municipalities, including Huntersville, Monroe, and Cabarrus County, in drafting the proposed ordinance.

The proposed amendment would define the outdoor venues as *Outdoor Banquet Facilities* and would permit them with a CUP on lots of 5 acres or greater in the AG (Agricultural District), RE (Rural Estate), RL (Residential Low Density), and RM-1 and RM-2 (Residential Medium Density) zoning districts. Staff is proposing the requirement for a CUP in order to provide neighboring property owners with the opportunity to provide their input to the Board of Adjustment regarding how they would be impacted by such uses. A CUP is also proposed due to the fact that each property will have unique characteristics which require review of their location, and the design and specifics of the facility. This amendment would also set supplemental use standards for outdoor banquet facilities, including standards on parking, screening, noise, and hours of operation.

**At their August 2, 2017 meeting, the Planning and Zoning Commission unanimously recommended approval of the proposed text amendments.**

#### **D. Fiscal Considerations**

None

#### **E. Policy Issues**

The proposed text amendments to the UDO for Table 4.6-1, Section 5.36 and Appendix A are shown in the attached Ordinance to Amend Text of UDO

#### **F. Legal Issues**

None

#### **G. Alternative Courses of Action and Recommendation**

Planning staff concurs with the recommendation of the Planning and Zoning Commission and recommends approval of the proposed text amendments to Table 4.6-1, Section 5.36, and Appendix A of the UDO as presented. The City Council may choose to either approve, or deny the text amendment as presented. City Council may also add, delete, or change any of the language as proposed.

#### **The following actions are required to recommend approval of TA 2017-06:**

1. Consider Resolution to Adopt a Statement of Consistency for TA 2017-06
2. Consider Ordinance to Amend Text of UDO, Table 4.6-1, Section 5.36, and Appendix A as recommended by the Planning and Zoning Commission.

#### **The following actions are required to recommend denial of TA 2017-06:**

1. Consider Resolution to not Adopt a Statement of Consistency for TA-2017-06
2. Consider motion to deny TA-2017-06

#### **ATTACHMENTS:**

##### **File Name**

- ❑ Application\_TA-2017-06.pdf
- ❑ TA-2017-06\_CC\_Legal\_Ad.pdf
- ❑ TA-2017-06\_CC\_Resolution\_for\_Statement\_of\_Consistency.pdf
- ❑ Ordinance\_to\_amend\_text\_of\_UDO\_-\_TA\_2017-06.pdf



**Planning and Zoning Commission and Board of Adjustment**  
**General Application Form**  
*(Not for Site Plan Review Submittals)*

Type of Action Requested (Check One):

Variance	_____	SIA Application	_____
Conditional Use Permit	_____	Nonconformity Adjustment	_____
Subdivision Exception	_____	Watershed Boundary Modification	_____
Zoning Text Amendment	<input checked="" type="checkbox"/>	Zoning Map Amendment	_____
Appeal	_____	Conditional Zoning Map Amendment	_____

Applicant: City of Kannapolis - Planning Dept Owner: \_\_\_\_\_

Address: 401 Laureate Way Address: \_\_\_\_\_

Kannapolis, NC 28081

Telephone: 704-920-4350 Telephone: \_\_\_\_\_

Email: zgordon@kannapolisnc.gov Email: \_\_\_\_\_

Legal relationship of applicant to property owner: \_\_\_\_\_

Property Location/Address: \_\_\_\_\_

Tax Parcel Number: \_\_\_\_\_ Zoning District: \_\_\_\_\_ Acreage of Site: \_\_\_\_\_

Zachary D. Gordon \_\_\_\_\_  
Applicant Name (Print) Property Owner Name (Print)

[Signature] 7-21-17 \_\_\_\_\_  
Applicant Signature & Date Property Owner Signature & Date

***The agenda deadline is the first day of the month preceding the month of the meeting. To be considered for placement on the next meeting agenda, the signed application, application fee, and five (5) copies of any required site plans for staff review must be submitted by the deadline. However, to remain on the next meeting agenda, fifteen (15) copies of such plans, determined by staff to conform to all ordinance standards, must be submitted at least ten (10) days before the meeting date. All fees are nonrefundable and help to cover administrative and notification costs.***

For Staff Use Only:

Filing Fee: \_\_\_\_\_ Receipt # \_\_\_\_\_

Application No.: \_\_\_\_\_ Date Submitted (Complete): \_\_\_\_\_





## CITY OF KANNAPOLIS

### AN APPLICATION TO AMEND THE TEXT OF THE UNIFIED DEVELOPMENT ORDINANCE

I Zachary D. Gordon, City of Kannapolis, hereby make application for an amendment to the following section(s) of the Unified Development Ordinance:

Article 4, Table 4.6-1; Article 5, Section 5.36; and Appendix A

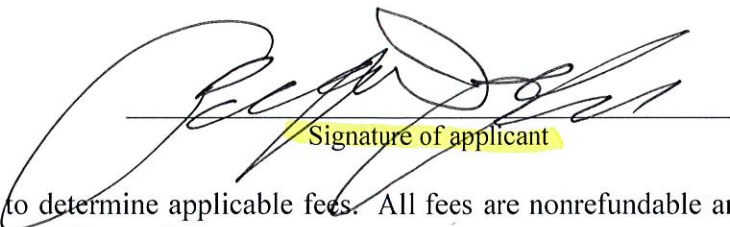
In the space provided below, or on a separate sheet, present your requested text for the Ordinance provisions in question:

See attached text

---

State your reasons for amending the text of the Ordinance:

To create a definition of "outdoor banquet facilities" and to allow such uses as a Conditional Use with Supplemental Use Regulations in certain zoning districts of the City.



Signature of applicant

**Fee:** Please refer to fee schedule to determine applicable fees. All fees are nonrefundable and help to cover administrative and notification costs.

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**STAFF USE ONLY**

Scheduled Planning Commission meeting date: August 2, 2017

Dates advertised in newspaper: 7/21/17 and 7/29/17

**Planning Commission recommendation:** \_\_\_\_\_

**Recommended changes to proposed text:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

City Council Meeting Date: \_\_\_\_\_

Dates advertised in newspaper: \_\_\_\_\_ and \_\_\_\_\_

**City Council Decision:** \_\_\_\_\_

**Changes to proposed text:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date written notice of final decision sent to applicant: \_\_\_\_\_



**PO Box 968, Hickory, NC 28603 Order Confirmation for Ad #0000380323-01**

<b>Client</b>	KANNAPOLIS,CITY OF	<b>Payor Customer</b>	KANNAPOLIS,CITY OF	<b>Acct. Exec</b>	aboan
<b>Client Phone</b>	704-920-4300	<b>Payor Phone</b>	704-920-4300		
<b>Account#</b>	3143368	<b>Payor Account</b>	3143368		
<b>Address</b>	ACTS PAYABLE/WANDA/TEARSHEETS,4 KANNAPOLIS NC 28081 USA	<b>Payor Address</b>	ACTS PAYABLE/WANDA/TEARSHEET KANNAPOLIS NC 28081	<b>Ordered By</b>	Ryan
<b>Fax</b>	704-933-7463				
<b>EMail</b>	byow@kannapolisnc.gov				

<b>Total Amount</b>	<b>\$681.46</b>	<b>Status</b>		<b><u>Materials</u></b>
<b>Payment Amt</b>	<b>\$681.46</b>			
<b>Amount Due</b>	<b>\$0.00</b>			
<b>Payment Method</b>	Credit - Debit Card - Visa:0775	<b><u>Tear Sheets</u></b>	<b><u>Proofs</u></b>	<b><u>Affidavits</u></b>
		0	0	1
				<b><u>PO Number</u></b>
				<b><u>Blind Box</u></b>

Text:

Order Notes:

<b>Ad Number</b>	<b>Ad Type</b>	<b>Color</b>	<b>Production Color</b>
0000380323-01	CLS Liner	<NONE>	
<b>Pick Up Number</b>	<b>Ad Size</b>	<b>Production Method</b>	<b>Production Notes</b>
	2.0 X 54 Li	AdBooker (liner)	
<b>Product</b>	<b>Placement/Class</b>	<b>Position</b>	<b># Inserts</b>
<b>Run Schedule Invoice Text</b>			<b>Cost</b>
<b>Run Dates</b>			
<b>Tag Line</b>			

CON Independent Trib::	C-Announcements - Classified	General-Spec Notice-Annc-Clas	2	\$681.46
NOTICE OF PUBLIC HEARING Kannapolis City Hall Laureate Center 401 Laureate Way, Kannapolis, NC 28081 City Council Meeting Mond				
8/18/2017, 8/25/2017				
NOTICEOFPUBLICHEARINGKANNAPOLISCITYHALLLAUREATECENTER401LAUREATEWAYKANNAPOLISNC28081CITYCOUNCILMEE				



**Ad Content Proof**



**NOTICE OF PUBLIC HEARING**

**Kannapolis City Hall  
Laureate Center  
401 Laureate Way, Kannapolis, NC 28081**

**City Council Meeting  
Monday, August 28, 2017 at 6:00 pm**

**Public Hearing Notice**

**Public Hearing Notice - Zoning Text Amendment - TA-2017-06 - Public Hearing to consider text amendments to the following sections of the Unified Development Ordinance; (1) Article 4 Zoning Districts and Dimensional Regulations, Table 4.6-1 Principal Uses Permitted in Zoning Districts; (2) Article 5 Supplemental Use Regulations, add Section 5.36 Outdoor Banquet Facilities; and (3) Appendix A Definitions adding a definition for Outdoor Banquet Facilities, concerning defining outdoor banquet facilities and allowing as a conditional use in certain zoning districts.**

**Public Hearing Notice - Zoning Text Amendment - TA-2017-07 - Public Hearing to consider text amendments to the following sections of the Unified Development Ordinance; (1) Article 4 Zoning Districts and Dimensional Regulations, Table 4.6-1 Principal Uses Permitted in Zoning Districts; and (2) Appendix A Definitions adding a definition for stadium uses, and allowing stadiums in the CC zoning district.**

If you have questions or concerns regarding this case, please contact the City of Kannapolis Planning Department at 704-920-4350.

Hearing impaired persons desiring additional information or having questions regarding this subject should call the North Carolina Relay Number for the Deaf (1-800-735-8262). The meeting facility is accessible to people with disabilities. To request special accommodations in advance, contact the City's ADA Coordinator at 704-920-4302 or email [tcline@kannapoliscnc.gov](mailto:tcline@kannapoliscnc.gov).

**Publish: August 18 and August 25, 2017.**



**RESOLUTION TO ADOPT A STATEMENT OF CONSISTENCY  
FOR TEXT AMENDMENT  
CASE #TA-2017-06**

**WHEREAS**, Section 160A-383 (2013) of the North Carolina General Statutes specifies that the governing board shall also approve a statement describing whether its action is consistent with an adopted comprehensive and any other officially adopted plan that is applicable; and

**WHEREAS**, the Kannapolis City Council considers text amendments to Table 4-6.1, Principal Uses Permitted in Zoning Districts, Section 5.36, to permit Outdoor Banquet Facility uses, and Appendix A, Definitions, to be consistent with the purposes of the *2015 City of Kannapolis Land Use Plan*, reasonable and in the public interest because they will address the need for outdoor event venues, require the issuance of a Conditional Use Permit, and require supplemental standards to mitigate potential negative effects; and

**WHEREAS**, the City Council conducted a Public Hearing on August 28, 2017 for consideration of text amendment case TA-2017-06 as submitted by the Planning Department staff;

**NOW, THEREFORE BE IT RESOLVED** that the City Council finds the text amendment as represented in Case TA-2017-06 to be consistent with the *2015 City of Kannapolis Land Use Plan* adopted by City Council, in the public interest, reasonable, and is recommended for approval by the City Council based on consideration of the application materials, information presented at the Public Hearing, and the recommendation provided by Staff.

**Adopted this the 28<sup>th</sup> day of August, 2017;**

\_\_\_\_\_  
Milton D. Hinnant, Mayor

**ATTEST:**

\_\_\_\_\_  
Bridgette Bell, MMC, NCCMC  
City Clerk

**AN ORDINANCE TO AMEND TEXT OF THE UNIFIED DEVELOPMENT ORDINANCE,  
TABLE 4.6-1 PRINCIPAL USES PERMITTED IN ZONING DISTRICTS, ARTICLE 5  
SUPPLEMENTAL USE REGULATIONS, SECTION 5.36 OUTDOOR BANQUET FACILITIES,  
AND APPENDIX A DEFINITIONS  
CASE #TA-2017-06**

**WHEREAS**, per Section 3.8 of the Kannapolis Unified Development Ordinance (“UDO”), the City Council has final authority on zoning text amendments; and

**WHEREAS**, per Section 3.8 of the UDO, the Planning and Zoning Commission, at its regular meeting on August 2, 2017, recommended approval of the text amendment by a unanimous vote; and

**WHEREAS**, City Council conducted a public hearing to consider an amendments to the following sections of the UDO: (1) Article 4 Zoning Districts and Dimensional Regulations, Table 4.6-1 Principal Uses Permitted in Zoning Districts; (2) Article 5 Supplemental Use Regulations, add Section 5.36 Outdoor Banquet Facilities; and (3) Appendix A Definitions adding a definition for Outdoor Banquet Facilities on August 28, 2017; and

**WHEREAS**, the proposed amendment is consistent with the goals and policies of the 2015 Land Use Plan and reasonable;

**NOW, THEREFORE, BE IT ORDAINED**, by the Kannapolis City Council that (1) Article 4 Zoning Districts and Dimensional Regulations, Table 4.6-1 Principal Uses Permitted in Zoning Districts; (2) Article 5 Supplemental Use Regulations, Section 5.36 Outdoor Banquet Facilities; and (3) Appendix A Definitions of the UDO be amended as follows:

**The proposed text amendments to the UDO for Appendix A, Definitions; Table 4.6-1, Principal Uses Permitted in Zoning Districts; and Section 5.36, Outdoor Banquet Facilities, are shown as underline additions below:**

**APPENDIX A  
Definitions**

OUTDOOR BANQUET FACILITIES – An establishment which is rented by individuals or groups to accommodate private, by invitation only, functions including, but not limited to, weddings, catered receptions, rehearsal dinners, business meetings/retreats, where any portion of the event is held outside of the primary structure on the property.

TABLE 4.6-1: PRINCIPAL USES PERMITTED IN ZONING DISTRICTS																
* All uses permitted in the CC, CD, and I-1 Districts are subject to supplemental design regulations in Article 11 of this Ordinance.																
P - Permitted Use	S - Permitted Use with Supplemental Regulations in Article 5 and/or Article 11 (see "§ 0.00" for reference)															
C - Conditional Use	(-) Prohibited Use															
USE	ZONING DISTRICTS															
	NAICS	AG	RE	RL	RM-1	RM-2	RV	RC	B-1	O-1	CC*	C-1	C-2	CD-R*	CD*	I-1*
<b>INSTITUTIONAL AND CIVIC</b>																
Animal Shelter	-	C	-	-	-	-	-	-	-	-	-	-	P	-	-	P
Auditorium/Indoor Public Assembly, up to 350 seats	-	C	C	C	C	C	C	C	P	P	P	P	P	-	-	-
Auditorium/Indoor Public Assembly, more than 350 seats	-	-	-	-	-	-	C	C	C	C	P	P	P	-	-	-
Botanical Gardens/Nature Preserves	71213, 71219	P	P	P	P	P	P	P	P	P	P	P	P	-	P	P
Cemeteries, Crematories, & Mausoleums (§ 5.9)	81222	C/S	C/S	C/S	C/S	C/S	C/S	C/S	C/S	C/S	C/S	C/S	P/S	-	-	P/S
Child Care Center (§ 5.16) <sup>(b)(12)</sup>	6244	C/S	C/S	C/S	C/S	C/S	C/S	C/S	P/S	P/S	P/S	P/S	P/S	-	P/S	C/S
Civic, Social, and Fraternal Organizations	8134	C	C	C	C	C	C	C	P	P	P	P	P	-	-	-
Correctional Institutions	92214	-	-	-	-	-	-	-	-	-	C	-	-	-	-	C
Country Club	71391	P	P	P	P	P	P	P	-	-	-	P	P	-	-	-
Convention Center/Visitors Bureau	561591	-	-	-	-	-	-	-	-	-	P	P	P	-	P	-
Golf Course, public or private	71391	P	P	P	P	P	P	P	-	-	-	P	P	-	-	-
Government Buildings (excl. correctional institutions) and Facilities	-	C	C	C	C	C	C	C	P	P	P	P	P	-	P	P
Hospital	622	-	-	-	-	-	-	-	-	-	P	P	P	-	P	-
Museums and Art Galleries	71211, 71212	C	C	C	C	C	C	C	C	C	P	P	P	-	P	-
<b>Outdoor Banquet Facility (§ 5.36)</b>	-	C/S	C/S	C/S	C/S	C/S	-	-	-	-	-	-	-	-	-	-
Park - Public, neighborhood	71219	P	P	P	P	P	P	P	P	P	P	P	P	-	P	P
Park - Public, other than neighborhood	71219	P	C	C	C	C	C	C	P	P	P	P	P	-	P	P
Performing Arts Companies & Artists	7111	-	-	-	-	-	-	-	P	P	P	P	P	-	-	-
Postal Service Facilities	491	-	-	-	-	-	-	-	-	P	P	C	P	-	P	P
Recreational Sports Clubs (Hunting Clubs, Fishing Clubs, etc.)	713990	C	C	C	C	C	C	C	P	P	P	P	P	-	-	-
Religious Institutions (§ 5.29) <sup>(b)(17)</sup>	813110	C/S	C/S	C/S	C/S	C/S	C/S	C/S	P/S	P/S	P/S	P/S	P/S	-	-	-
Residential Care Facilities (includes Group Homes) (§ 5.17)	623	C/S	C/S	C/S	C/S	C/S	C/S	C/S	C/S	C/S	P/S	P/S	P/S	-	-	-
School - Boarding	6111	C	C	C	C	C	C	C	C	C	C	C	C	-	-	-
School - Business, Computer and Management	6114	-	-	-	-	-	-	-	-	C	P	P	P	-	-	P
School - Charter, Private & Parochial	61111	C	C	C	C	C	C	C	P	C	C	P	P	-	-	-
School - Fine Arts	61161	-	-	-	-	-	-	-	P	C	P	P	P	-	P	-
School - Public, Elementary & Secondary	6111	P	P	P	P	P	P	P	P	P	P	P	P	-	-	-
School - Technical and Trade	6116	-	-	-	-	-	-	-	C	C	P	P	P	-	P	P
School - University or College	6112, 6113	C	-	-	-	-	-	-	-	C	P	P	P	-	P	-
Social Assistance (excluding child care centers)	624	C	C	C	C	C	C	C	P	P	P	P	P	-	-	-
Zoo, public or private	71213	C	-	-	-	-	-	-	-	-	-	-	C	-	C	C

## 5.36.OUTDOOR BANQUET FACILITIES

### 5.36.1.APPLICABILITY.

The provisions of this Section shall apply to any Outdoor Banquet Facility establishment as defined herein and allowed in Table 4.6-1 (see Article 4) subject to the provisions below.

### 5.36.2.MINIMUM LOT SIZE.

Any property which contains an Outdoor Banquet Facility shall have a minimum lot size of 5 acres.

### 5.36.3.STRUCTURES ON SITE.

One single-family detached residence may be located on site.

### 5.36.4.APPROVAL CRITERIA.

A Conditional Use Permit, granted by the Board of Adjustment, is required for any Outdoor Banquet Facility in accordance with the procedures of Section 3.5 of this ordinance. Any application for an Outdoor Banquet Facility shall, at a minimum, comply with the requirements below.

**5.36.4.2Location.** An Outdoor Banquet Facility shall only be permitted with a Conditional Use Permit in the following zoning districts: “AG”, “RE”, “RL”, “RM-1”, and “RM-2”.

**5.36.4.3Off-Street Parking.** The facility shall provide a minimum of two parking spaces for the owner/operator, plus one for every four persons in attendance at events. Staff, caterers, and other service providers shall be included in the parking calculations at a rate of one space for each employee or service provider.

5.36.4.4Access Drives and Parking Areas. The initial 50 feet of driveway from the public or private street providing access to the site shall be paved with concrete or asphalt. Internal drives, parking and service areas shall be paved with materials suitable for accommodating the anticipated traffic. These areas shall be well maintained, minimizing dust, and kept free of potholes, weeds, etc. Gravel, crushed stone, or other materials may be approved as a condition of the Conditional Use Permit.

5.36.4.5Hours of Operation. The hours of operation, including set-up and break-down for an event, shall be set as a condition of the Conditional Use Permit.

5.36.4.6Noise Ordinance. All events shall comply with the City of Kannapolis Noise Ordinance, including the requirement for a sound permit if required.

5.36.4.7Screening and Fencing. Any Outdoor Banquet Facility that is located adjacent to a residential zoning district or property developed for residential use shall provide a minimum of a Type 2 Buffer Yard ~~with a minimum 6 foot tall opaque fence or wall,~~ wherever the property abuts the residentially zoned or used property. Event areas shall be located at a minimum of 60 feet from any adjacent residential zoning district or property developed for residential use. This setback may be increased as a condition of any Conditional Use Permit granted by the Board of Adjustment.

Parking areas shall be located 50 feet from adjacent properties and shall be screened from public streets and adjoining properties with perimeter landscaping as required in Section 7.6.2.A. of this ordinance.

Buffering and screening requirements may be modified by the Board of Adjustment during the time of Conditional Use Permit approval based on the topography and use of the property.

**ADOPTED this the 11<sup>th</sup> day of September, 2017.**

\_\_\_\_\_  
Milton D. Hinnant, Mayor

**ATTEST:**

\_\_\_\_\_  
Bridgette Bell, MMC, NCCMC  
City Clerk





**City of Kannapolis  
City Council Meeting  
September 11, 2017  
Staff Report**

**TO:** Mayor and City Council  
**FROM:** Zachary D. Gordon, AICP Planning Director  
**TITLE:** TA 2017-07 - Public Hearing for Text Amendments

<b>A. Action Requested by City Council</b>
--

- 1. Hold Public Hearing;**
- 2. Consider Resolution to Adopt a Statement of Consistency for TA-2017-07**
- 3. Consider Ordinance to Amend Text of UDO for proposed TA-2017-07 as recommended by the Planning and Zoning Commission, or motion to deny text amendment recommended by Planning and Zoning Commission.**

<b>B. Required Votes to Pass Required Action</b>
--

Majority present at meeting

<b>C. Background</b>
----------------------

The City of Kannapolis is currently engaged in the planning and design of a Sports and Entertainment Venue (SEV) to be located in downtown. When completed the SEV will serve as the new home for the Kannapolis Intimidators Minor League Baseball team, and also provide a venue for other activities and events such as performances and community gatherings. Currently, the Unified Development Ordinance (UDO) does not include a definition for stadium or an allowance for such use in any zoning district.

The proposed amendment would define *stadium* and permit them by-right in the CC (Center City) zoning district. Stadiums that are accessory to a school use are already permitted by the UDO. Staff reviewed the definitions of several local municipalities, including Charlotte and Gastonia, in drafting this amendment. The proposed definition includes sporting events as well as other performances, while excluding such uses as a racetrack or drag strip.

**At their August 2, 2017 meeting, the Planning and Zoning Commission unanimously recommended approval of the proposed text amendments.**

#### **D. Fiscal Considerations**

None

#### **E. Policy Issues**

The proposed text amendments to the UDO for Table 4.6-1 and Appendix A are shown in the attached Ordinance to Amend Text of UDO

#### **F. Legal Issues**

None

#### **G. Alternative Courses of Action and Recommendation**

Planning staff concurs with the recommendation of the Planning and Zoning Commission and recommends approval of the proposed text amendments to Table 4.6-1 and Appendix A of the UDO as presented. The City Council may choose to either approve, or deny the text amendment as presented. City Council may also add, delete, or change any of the language as proposed.

**The following actions are required to recommend approval of TA 2017-07:**

1. Consider Resolution to Adopt a Statement of Consistency for TA 2017-07
2. Consider Ordinance to Amend Text of UDO, Table 4.6-1 and Appendix A as recommended by the Planning and Zoning Commission.

**The following actions are required to recommend denial of TA 2017-07:**

1. Consider Resolution to not Adopt a Statement of Consistency for TA 2017-07
2. Consider motion to deny TA-2017-07.

#### **ATTACHMENTS:**

##### **File Name**

- ❑ Application\_-\_TA-2017-07.pdf
- ❑ TA-2017-07\_CC\_Legal\_Ad.pdf
- ❑ TA-2017-07\_CC\_Statement\_of\_Consistency.pdf
- ❑ Ordinance\_to\_amend\_the\_text\_of\_UDO\_-\_TA\_2017-07.pdf



**Planning and Zoning Commission and Board of Adjustment**  
**General Application Form**  
*(Not for Site Plan Review Submittals)*

Type of Action Requested (Check One):

Variance	_____	SIA Application	_____
Conditional Use Permit	_____	Nonconformity Adjustment	_____
Subdivision Exception	_____	Watershed Boundary Modification	_____
Zoning Text Amendment	<input checked="" type="checkbox"/>	Zoning Map Amendment	_____
Appeal	_____	Conditional Zoning Map Amendment	_____

Applicant: City of Kannapolis - Planning Dept Owner: \_\_\_\_\_

Address: 401 Laureate Way Address: \_\_\_\_\_  
Kannapolis, NC 28081

Telephone: 704-920-4350 Telephone: \_\_\_\_\_

Email: zgordon@kannapolisnc.gov Email: \_\_\_\_\_

Legal relationship of applicant to property owner: \_\_\_\_\_

Property Location/Address: \_\_\_\_\_

Tax Parcel Number: \_\_\_\_\_ Zoning District: \_\_\_\_\_ Acreage of Site: \_\_\_\_\_

Zachary D. Gordon \_\_\_\_\_  
Applicant Name (Print) Property Owner Name (Print)

[Signature] 7-21-17 \_\_\_\_\_  
Applicant Signature & Date Property Owner Signature & Date

***The agenda deadline is the first day of the month preceding the month of the meeting. To be considered for placement on the next meeting agenda, the signed application, application fee, and five (5) copies of any required site plans for staff review must be submitted by the deadline. However, to remain on the next meeting agenda, fifteen (15) copies of such plans, determined by staff to conform to all ordinance standards, must be submitted at least ten (10) days before the meeting date. All fees are nonrefundable and help to cover administrative and notification costs.***

For Staff Use Only:

Filing Fee: \_\_\_\_\_ Receipt # \_\_\_\_\_

Application No.: \_\_\_\_\_ Date Submitted (Complete): \_\_\_\_\_



## **CITY OF KANNAPOLIS**

### **AN APPLICATION TO AMEND THE TEXT OF THE UNIFIED DEVELOPMENT ORDINANCE**

I Zachary D. Gordon, City of Kannapolis, hereby make application for an amendment to the following section(s) of the Unified Development Ordinance:

Article 4, Table 4.6-1; Appendix A

In the space provided below, or on a separate sheet, present your requested text for the Ordinance provisions in question:

See attached text

---

State your reasons for amending the text of the Ordinance:

To create a definition of "stadium" and to allow such use as a Permitted Use in the "CC" (Center City) zoning district.

---

Signature of applicant

**Fee:** Please refer to fee schedule to determine applicable fees. All fees are nonrefundable and help to cover administrative and notification costs.

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**STAFF USE ONLY**

Scheduled Planning Commission meeting date: August 2, 2017

Dates advertised in newspaper: 7/21/17 and 7/29/17

**Planning Commission recommendation:** \_\_\_\_\_

**Recommended changes to proposed text:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

City Council Meeting Date: \_\_\_\_\_

Dates advertised in newspaper: \_\_\_\_\_ and \_\_\_\_\_

**City Council Decision:** \_\_\_\_\_

**Changes to proposed text:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date written notice of final decision sent to applicant: \_\_\_\_\_



PO Box 968, Hickory, NC 28603 Order Confirmation for Ad #0000380323-01

<b>Client</b>	KANNAPOLIS,CITY OF	<b>Payor Customer</b>	KANNAPOLIS,CITY OF	<b>Acct. Exec</b>	aboan
<b>Client Phone</b>	704-920-4300	<b>Payor Phone</b>	704-920-4300		
<b>Account#</b>	3143368	<b>Payor Account</b>	3143368		
<b>Address</b>	ACTS PAYABLE/WANDA/TEARSHEETS,4 KANNAPOLIS NC 28081 USA	<b>Payor Address</b>	ACTS PAYABLE/WANDA/TEARSHEET KANNAPOLIS NC 28081	<b>Ordered By</b>	Ryan
<b>Fax</b>	704-933-7463				
<b>EMail</b>	byow@kannapolisnc.gov				

<b>Total Amount</b>	<b>\$681.46</b>	<b>Status</b>		<b><u>Materials</u></b>	
<b>Payment Amt</b>	<b>\$681.46</b>				
<b>Amount Due</b>	<b>\$0.00</b>				
<b>Payment Method</b>	Credit - Debit Card - Visa:0775	<b><u>Tear Sheets</u></b>	<b><u>Proofs</u></b>	<b><u>Affidavits</u></b>	<b><u>PO Number</u></b>
		0	0	1	<b><u>Blind Box</u></b>

Text:

Order Notes:

<b>Ad Number</b>	<b>Ad Type</b>	<b>Color</b>	<b>Production Color</b>	
0000380323-01	CLS Liner	<NONE>		
<b>Pick Up Number</b>	<b>Ad Size</b>	<b>Production Method</b>	<b>Production Notes</b>	
	2.0 X 54 Li	AdBooker (liner)		
<b>Product</b>	<b>Placement/Class</b>	<b>Position</b>	<b># Inserts</b>	<b>Cost</b>
<b>Run Schedule Invoice Text</b>				
<b>Run Dates</b>				
<b>Tag Line</b>				

CON Independent Trib::	C-Announcements - Classified	General-Spec Notice-Annc-Clas	2	\$681.46
NOTICE OF PUBLIC HEARING Kannapolis City Hall Laureate Center 401 Laureate Way, Kannapolis, NC 28081 City Council Meeting Mond				
8/18/2017, 8/25/2017				
NOTICEOFPUBLICHEARINGKANNAPOLISCITYHALLLAUREATECENTER401LAUREATEWAYKANNAPOLISNC28081CITYCOUNCILMEE				



**Ad Content Proof**



**NOTICE OF PUBLIC HEARING**

**Kannapolis City Hall  
Laureate Center  
401 Laureate Way, Kannapolis, NC 28081**

**City Council Meeting  
Monday, August 28, 2017 at 6:00 pm**

**Public Hearing Notice**

**Public Hearing Notice - Zoning Text Amendment - TA-2017-06 - Public Hearing to consider text amendments to the following sections of the Unified Development Ordinance; (1) Article 4 Zoning Districts and Dimensional Regulations, Table 4.6-1 Principal Uses Permitted in Zoning Districts; (2) Article 5 Supplemental Use Regulations, add Section 5.36 Outdoor Banquet Facilities; and (3) Appendix A Definitions adding a definition for Outdoor Banquet Facilities, concerning defining outdoor banquet facilities and allowing as a conditional use in certain zoning districts.**

**Public Hearing Notice - Zoning Text Amendment - TA-2017-07 - Public Hearing to consider text amendments to the following sections of the Unified Development Ordinance; (1) Article 4 Zoning Districts and Dimensional Regulations, Table 4.6-1 Principal Uses Permitted in Zoning Districts; and (2) Appendix A Definitions adding a definition for stadium uses, and allowing stadiums in the CC zoning district.**

If you have questions or concerns regarding this case, please contact the City of Kannapolis Planning Department at 704-920-4350.

Hearing impaired persons desiring additional information or having questions regarding this subject should call the North Carolina Relay Number for the Deaf (1-800-735-8262). The meeting facility is accessible to people with disabilities. To request special accommodations in advance, contact the City's ADA Coordinator at 704-920-4302 or email [tcline@kannapoliscnc.gov](mailto:tcline@kannapoliscnc.gov).

**Publish: August 18 and August 25, 2017.**



**RESOLUTION TO ADOPT A STATEMENT OF CONSISTENCY  
FOR TEXT AMENDMENT  
CASE# TA-2017-07**

**WHEREAS**, Section 160A-383 (2013) of the North Carolina General Statutes specifies that the governing board shall also approve a statement describing whether its action is consistent with an adopted comprehensive and any other officially adopted plan that is applicable; and

**WHEREAS**, the Kannapolis City Council considers text amendments to Table 4-6.1, Principal Uses Permitted in Zoning Districts to permit “stadium” uses in the Center City zoning district and Appendix A, Definitions to be consistent with the *2015 City of Kannapolis Land Use Plan* which designates the Center City district as the Central Business District for the City, where such uses are appropriate, reasonable and in the public interest because the amendments will address the need to update the ordinance to provide for new types of development; and

**WHEREAS**, the City Council conducted a Public Hearing on August 28, 2017 for consideration of text amendment case TA-2017-07 as submitted by the Planning Department staff;

**NOW, THEREFORE BE IT RESOLVED** that the City Council finds the text amendment as represented in Case TA-2017-07 to be in the public interest, reasonable and consistent with the *2015 City of Kannapolis Land Use Plan* adopted by the City Council, and is recommended for approval by the City Council based on consideration of the application materials, information presented at the Public Hearing, and the recommendation provided by Staff.

**Adopted this the 28<sup>th</sup> day of August, 2017;**

\_\_\_\_\_  
Milton D. Hinnant, Mayor

**ATTEST:**

\_\_\_\_\_  
Bridgette Bell, MMC, NCCMC  
City Clerk



**AN ORDINANCE TO AMEND TEXT OF THE UNIFIED DEVELOPMENT ORDINANCE,  
TABLE 4.6-1 PRINCIPAL USES PERMITTED IN ZONING DISTRICTS,  
AND APPENDIX A DEFINITIONS  
CASE #TA-2017-07**

**WHEREAS**, per Section 3.8 of the Kannapolis Unified Development Ordinance (“UDO”), the City Council has final authority on zoning text amendments; and

**WHEREAS**, per Section 3.8 of the UDO, the Planning and Zoning Commission, at its regular meeting on August 2, 2017, recommended approval of the text amendment by a unanimous vote; and

**WHEREAS**, City Council conducted a public hearing to consider an amendments to the following sections of the UDO: (1) Article 4 Zoning Districts and Dimensional Regulations, Table 4.6-1 Principal Uses Permitted in Zoning Districts to permit “stadium” uses in the Center City zoning district; and (2) Appendix A Definitions adding a definition for stadium uses on August 28, 2017; and

**WHEREAS**, the proposed amendment is consistent with the goals and policies of the 2015 Land Use Plan and reasonable;

**NOW, THEREFORE, BE IT ORDAINED**, by the Kannapolis City Council that (1) Article 4 Zoning Districts and Dimensional Regulations, Table 4.6-1 Principal Uses Permitted in Zoning Districts; and (2) Appendix A Definitions of the UDO be amended as follows:

**The proposed text amendments to the UDO for Appendix A, Definitions; and Table 4.6-1, Principal Uses Permitted in Zoning Districts, are shown as underline additions below:**

**APPENDIX A  
Definitions**

STADIUM – A structure or facility designed, intended, or used primarily for outside athletic events or other performances and containing **fixed** seating for over one ~~hundred (100)~~ thousand (1000) spectators of those events, but not including a racetrack, dragstrip, or any structure within a publicly owned park.

TABLE 4.6-1: PRINCIPAL USES PERMITTED IN ZONING DISTRICTS																	
* All uses permitted in the CC, CD, and I-1 Districts are subject to supplemental design regulations in Article 11 of this Ordinance.																	
P - Permitted Use	S - Permitted Use with Supplemental Regulations in Article 5 and/or Article 11 (see "§ 0.00" for reference)																
C - Conditional Use	( ) Prohibited Use																
USE	NAICS	AG	RE	RL	RM-1	RM-2	RV	RC	B-1	O-I	CC*	C-1	C-2	CD-R^	CD*	I-1*	I-2
INSTITUTIONAL AND CIVIC																	
Animal Shelter	-	C	-	-	-	-	-	-	-	-	-	-	P	-	-	P	P
Auditorium/Indoor Public Assembly, up to 350 seats	-	C	C	C	C	C	C	C	P	P	P	P	P	-	-	-	-
Auditorium/Indoor Public Assembly, more than 350 seats	-	-	-	-	-	-	C	C	C	C	C	P	P	-	-	-	-
Botanical Gardens/Nature Preserves	71213, 71219	P	P	P	P	P	P	P	P	P	P	P	P	-	-	P	P
Cemeteries, Crematories, & Mausoleums (§ 5.9)	81222	C/S	C/S	C/S	C/S	C/S	C/S	C/S	C/S	C/S	C/S	C/S	P/S	-	-	P/S	P/S
Child Care Center (§ 5.16) <sup>(b)(2)</sup>	6244	C/S	C/S	C/S	C/S	C/S	C/S	C/S	P/S	P/S	P/S	P/S	P/S	-	P/S	C/S	-
Civic, Social, and Fraternal Organizations	8134	C	C	C	C	C	C	C	P	P	P	P	P	-	-	-	-
Correctional Institutions	92214	-	-	-	-	-	-	-	-	-	C	-	-	-	-	C	C
Country Club	71391	P	P	P	P	P	P	P	-	-	-	P	P	-	-	-	-
Convention Center/Visitors Bureau	561591	-	-	-	-	-	-	-	-	-	P	P	P	-	P	-	-
Golf Course, public or private	71391	P	P	P	P	P	P	P	-	-	-	P	P	-	-	-	-
Government Buildings (excl. correctional institutions) and Facilities	-	C	C	C	C	C	C	C	P	P	P	P	P	-	P	P	P
Hospital	622	-	-	-	-	-	-	-	-	-	P	P	P	-	P	-	-
Museums and Art Galleries	71211, 71212	C	C	C	C	C	C	C	C	C	P	P	P	-	P	-	-
Park - Public, neighborhood	71219	P	P	P	P	P	P	P	P	P	P	P	P	-	P	P	P
Park - Public, other than neighborhood	71219	P	C	C	C	C	C	C	P	P	P	P	P	-	P	P	P
Performing Arts Companies & Artists	7111	-	-	-	-	-	-	-	P	P	P	P	P	-	-	-	-
Postal Service Facilities	491	-	-	-	-	-	-	-	-	P	P	C	P	-	P	P	P
Recreational Sports Clubs (Hunting Clubs, Fishing Clubs, etc.)	713990	C	C	C	C	C	C	C	P	P	P	P	P	-	-	-	-
Religious Institutions (§ 5.29) <sup>(b)(1)(7)</sup>	813110	C/S	C/S	C/S	C/S	C/S	C/S	C/S	C/S	P/S	P/S	P/S	P/S	-	-	-	-
Residential Care Facilities (includes Group Homes) (§ 5.17)	623	C/S	C/S	C/S	C/S	C/S	C/S	C/S	C/S	P/S	P/S	P/S	P/S	-	-	-	-
School - Boarding	6111	C	C	C	C	C	C	C	C	C	C	C	C	-	-	-	-
School - Business, Computer and Management	6114	-	-	-	-	-	-	-	-	C	P	P	P	-	-	P	P
School - Charter, Private & Parochial	61111	C	C	C	C	C	C	C	P	C	C	P	P	-	-	-	-
School - Fine Arts	61161	-	-	-	-	-	-	-	P	C	P	P	P	-	P	-	-
School - Public, Elementary & Secondary	6111	P	P	P	P	P	P	P	P	P	P	P	P	-	-	-	-
School - Technical and Trade	6116	-	-	-	-	-	-	-	C	C	P	P	P	-	P	P	P
School - University or College	6112, 6113	C	-	-	-	-	-	-	-	C	P	P	P	-	P	-	-
Social Assistance (excluding child care centers)	624	C	C	C	C	C	C	C	P	P	P	P	P	-	-	-	-
Stadium	-	-	-	-	-	-	-	-	-	-	P	-	-	-	-	-	-
Zoo, public or private	71213	C	-	-	-	-	-	-	-	-	-	-	C	-	C	C	C

**ADOPTED this the 11<sup>th</sup> day of September, 2017.**

\_\_\_\_\_  
Milton D. Hinnant, Mayor

**ATTEST:**

\_\_\_\_\_  
Bridgette Bell, MMC, NCCMC  
City Clerk



**City of Kannapolis  
City Council Meeting  
September 11, 2017  
Staff Report**

**TO:** Mayor and City Council  
**FROM:** Eddie Smith, Deputy City Manager  
**TITLE:** Light Rail Transit Connector

**A. Action Requested by City Council**

**Motion to approve participating 50/50 with the City of Concord to provide an Express Route to the LYNX Blue Line at J.W. Clay Boulevard in Charlotte, starting July 1, 2018.**

**B. Required Votes to Pass Required Action**

Majority present at meeting

**C. Background**

CK Rider and CATS currently provide an express route (80X) for commuters from Big Lots/First Assembly in Concord to Uptown Charlotte. When CATS opens the Blue Line Light Rail Extension (March 2018), the current 80x route is scheduled to be eliminated; therefore, there will not be any direct service to the CATS system or Uptown Charlotte (The #1 requested destination).

There are two options available for CK Rider to continue providing an express service to connect Concord/Kannapolis commuters, to Uptown Charlotte via the new Blue Light Rail Extension. The two options connect the Rider Transit Center on Ridge Avenue and the J.W. Clay Light Rail Station. The preferred option is a seven-days-a-week, two bus, multiple round-trip service but it is cost-prohibitive. Transit staff has identified a proposed option that is similar to the preferred option, less expensive, but only provides one bus, one-way service, and little room for expansion; however, this proposed option allows for expansion of service without significant increase in operational or capital costs. Without this connector express route, commuter would no longer have a connection between the CK Rider Transit System and Uptown Charlotte.

**D. Fiscal Considerations**

The staff recommended, preferred option, would be a \$92,207 increase in the transit budget starting July 1, 2018. The funding source would be decided during the budget process. Likely funding would be the General Fund or Vehicle Registration Fees, both of which currently fund transit expenses.

### **E. Policy Issues**

If City Council decides not to fund the Light Rail Extension route, there could be a decrease in service to commuters who may no longer have a connection to CATS.

### **F. Legal Issues**

None

### **G. Alternative Courses of Action and Recommendation**

- 1. Approve allocating funds to split 50/50 costs of providing Proposed Express Route service between CK Rider Transit Center and LYNX Blue Line at J.W. Clay Boulevard in Charlotte (Recommended)**
- 2. Do Nothing. Allow Charlotte Connector route (80X) to be eliminated.**

#### **ATTACHMENTS:**

File Name

No Attachments Available



**City of Kannapolis  
City Council Meeting  
September 11, 2017  
Staff Report**

**TO:** Mayor and City Council  
**FROM:** Mike Legg, City Manager  
**TITLE:** Closed Session

**A. Action Requested by City Council**

**GS. 143-318.11 (a) (3) to consult with an attorney in order to preserve the attorney-client privilege and G.S. 143.318.11 (a) (4) for discussing matters relating to the location or expansion of industries or businesses in the area (Mayor Pro tem Wilson)**

**ADJOURN**

**B. Required Votes to Pass Required Action**

**C. Background**

**D. Fiscal Considerations**

**E. Policy Issues**

**F. Legal Issues**

**G. Alternative Courses of Action and Recommendation**

**ATTACHMENTS:**

File Name

No Attachments Available



**City of Kannapolis  
City Council Meeting  
September 11, 2017  
Staff Report**

**TO:** Mayor and City Council  
**FROM:** Bridgette Bell, City Clerk  
**TITLE:** September Meeting Schedule

**A. Action Requested by City Council**

September 25, 2017  
October 09, 2017  
October 23, 2017

**B. Required Votes to Pass Required Action**

**C. Background**

**D. Fiscal Considerations**

**E. Policy Issues**

**F. Legal Issues**

**G. Alternative Courses of Action and Recommendation**

**ATTACHMENTS:**

File Name

No Attachments Available