



**KANNAPOLIS CITY COUNCIL
MEETING AGENDA
Kannapolis City Hall
401 Laureate Way, Kannapolis NC
April 9, 2018
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

FIRST READING

1. **Text amendment to Article 3, Section 3.7.1 of the Unified Development Ordinance (UDO) amending the voting requirements for Board of Adjustment (BOA) actions** (Zachary D. Gordon, AICP, Planning Director)

APPROVAL/CORRECTION OF MINUTES

1. February 26, 2018 Meeting Minutes

CONSENT AGENDA - Motion to Adopt Consent Agenda or make revisions

1. **The City of Kannapolis and the North Carolina Department of Transportation Locally Administered Project Agreement – TIP #C-5603F** (Wilmer Melton III, Director of Public Works)
2. **Lane Street Water Line Replacement Project** (Wilmer Melton, III, Director of Public Works)
3. **RCCC Water Extension, North Cannon Boulevard** (Wilmer Melton, III, Director of Public Works)

BUSINESS AGENDA

- A. **Update on the Rogers Lake Road Separated Grade Project Y-4810K** (Wilmer Melton, III, Director of Public Works)
- B. **Irish Buffalo Creek Tributary Sewer Trunk Line** (Wilmer Melton, III, Director of Public Works)
- C. **New tenant leases for College Station Shopping Center** (Irene Sacks, Director of Economic & Community Development)
- D. **Voluntary annexation of approximately 29.15 acres on Shiloh Church Road (Property Identification Numbers (PIN): 4672-58-5733, and 4672-49-9371** (Zachary D. Gordon, AICP, Planning Director).

- E. Voluntary annexation of approximately 22.35 acres on Shiloh Church Road (Property Identification Numbers (PIN): 4672-68-3634, 4672-68-0812 (Zachary D. Gordon, AICP, Planning Director)**
- F. Appointment to the Rowan-Kannapolis ABC Board (Mike Legg, City Manager)**
- G. Rescheduling the regularly scheduled May 28th City Council Meeting due to the Holiday (Bridgette Bell, City Clerk)**

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 Berry)

MOTION TO ADJOURN

UPCOMING SCHEDULE

April 23, 2018

May 14, 2018

May 28, 2018 Subject to Change

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 or 704-920-4302 at least forty-eight (48) hours prior to the meeting.



**City of Kannapolis
City Council Meeting
April 9, 2018
Staff Report**

TO: Mayor and City Council
FROM: Zachary D. Gordon, AICP, Planning Director
TITLE: TA 2018-03 - BOA Voting

A. Action Requested by City Council

First reading of TA-21018-03 (no action required).

B. Required Votes to Pass Required Action

Presentation Only, no action required

C. Background

Currently the UDO requires a 4/5th vote for administrative appeals and variances decided by the BOA. State statute only requires a 4/5th vote for variances. The proposed amendment would only require a 4/5th vote for variance decisions; all other actions by the BOA would require a simple majority vote.

D. Fiscal Considerations

None

E. Policy Issues

The proposed text amendments to the UDO are shown below as additions and deletions (strikethrough).

Section 3.7. APPEALS AND VARIANCES

3.7.1 APPLICATION.

The Board of Adjustment (BOA), may decide appeals of administrative interpretations and decisions and may grant variances from the requirements of this Ordinance. (1) ~~Approval requires a 4/5 vote, vacant positions or members who are excused from voting (but not abstentions)~~ shall not be considered "members of the Board" in determining 4/5 approval

The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on

the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

F. Legal Issues

None

G. Alternative Courses of Action and Recommendation
--

First reading of proposed TA-2018-03. A public hearing will be held at the April 23rd Council Meeting for Council's consideration.

ATTACHMENTS:

File Name

- ▢ 1_Signed_Application.pdf
- ▢ April_9_2018_Legal_Ad.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	<u>X</u>	Zoning Map Amendment	_____
Appeal	_____	Conditional Zoning Map Amendment	_____

Applicant: Zachary D. Gordon, AICP 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: Planning Director

Property Location/Address: _____

Tax Parcel Number: _____ Zoning District: _____ Acreage of Site: _____

Zachary D. Gordon, AICP _____
Applicant Name (Print) Property Owner Name (Print)

 _____
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, AICP, hereby make application for an amendment to the following section(s) of the Unified Development Ordinance:

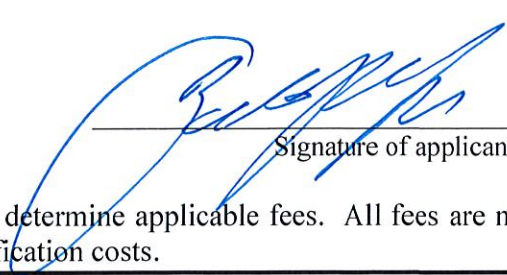
Section 3.7.1.

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

See attached staff report

State your reasons for amending the text of the Ordinance:

See attached staff report



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.

STAFF USE ONLY

Scheduled Planning Commission meeting date: _____

Dates advertised in newspaper: _____ and _____

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: _____

CITY OF KANNAPOLIS

MEMORANDUM

TO: Amanda Boan
The Independent Tribune
FROM: Pam Scaggs, Administrative Assistant
DATE: March 29, 2018
SUBJECT: Display Ad

Please publish this Notice of Public Hearing as a **display ad** in the non-legal section of *The Independent Tribune*.

Publish dates: Friday, March 30, 2018
Friday, April 6, 2018

Send invoice and affidavit of publication to: pscaggs@kannapolisnc.gov

Call me at 704-920-4350 if you have any questions.

Thank you.
Pam Scaggs
pscaggs@kannapolisnc.gov



**NOTICE OF PUBLIC HEARING
Kannapolis City Hall
Laureate Center
401 Laureate Way, Kannapolis, NC 28081**

**City Council Meeting
Monday, April 9, 2018 at 6:00 pm**

Public Hearing Notice

Public Hearing Notice – Zoning Text Amendment – TA-2018-03 – Public Hearing to consider a text amendment to Section 3.7.1 of the Unified Development Ordinance amending the voting requirements for Board of Adjustment (BOA) actions.

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@kannapolisnc.gov.

DRAFT – NOT APPROVED BY CITY COUNCIL
CITY OF KANNAPOLIS
COUNCIL MEETING MINUTES
February 26, 2018

A regular meeting of the City Council of the City of Kannapolis, North Carolina was held on Monday, February 26, 2018 at 6:00 p.m., at the Kannapolis City Hall located at 401 Laureate Way, Kannapolis, NC.

CITY COUNCIL MEMBERS PRESENT:

Mayor: Milton D. Hinnant

Council Members: Ryan Dayvault
Van Rowell
Tom Kincaid
Doug Wilson
Dianne Berry
Roger Haas

Council Members Absent: None

City Manager: Mike Legg

Deputy City Manager: Eddie Smith

City Clerk: Bridgette Bell

City Attorney: Walter M. Safrit, II

Staff Present: David Hancock Annette Privette Keller
Tony Eury Wilmer Melton, III
Trent Marlow Terry Clanton
Eric Davis David Jordan
Irene Sacks Richard Denton
Pat Patty Zac Gordon
Ernie Hiers Terry Spry
Gary Mills

Visitors: Jennifer Woodford Dr. Mark Spitzer
Adam Peck Bethany Peck
Chuck Stanec Megan Baker
Tanesha Lockett Shari Whiting
Katie Pohlman Hollie Morton
Bob Doty Travis Furr
Chris Hill Jennifer Hyatt
Tim Roth Jared Gohlke
Joe Yurco Jamie Beach
Jodi Ramirez Cory Kluttz
Christopher Fisher J.J. Snider
Jeremey Brown Hugh Barnes

Jeremy Abernathy	Chris Morris
Tracy Winecoff	David Winecoff
Matthew Hoehman	Thomas Howie
Shedrick Hall	Stephen Johnson
Brad Jordan	Dale Castor
Sophia Wilkerson	Rick Barnhardt
Dorethea Smith	Bobbi Hague
Gerry Depken	Mercedes Harrington
Danny Anderson	Chris Howard
Thomas Howie	John McKinley

CALL TO ORDER AND WELCOME:

Mayor Hinnant called the meeting to order and welcomed those in attendance. A moment of silent prayer and the Pledge of Allegiance was led by Council Member Dayvault.

ADOPTION OF AGENDA:

Council Member Dayvault made a motion to move Consent Agenda 2- *Amend City Fee Schedule to include Tournament Fees for Ballfields and Fees for Gymnasiums* to Business Agenda Item D. Motion was seconded by Council Member Wilson and approved by unanimous vote.

PROCLAMATIONS:

Mayor Hinnant proclaimed the month of March as National Nutrition Month.

RECOGNITIONS:

Recognition of Officer of the Year and Firefighter of the Year Awards (Division Chief Tracy Winecoff) (Copy included as Exhibit A)

Senior Captain Chris Morris was recognized for receiving the Larry C. Phillips Fire Officer of the Year Award and Engineer Jeremy Abernathy the Danny E. Scott Firefighter of the Year Award.

Recognition of the Kannapolis Police Department's Medal of Valor (J.W. Chavis, Chief of Police) (Copy included as Exhibit B)

Chief J.W. Chavis and Deputy Chief Terry Clanton awarded Investigator Trey Hinton the Kannapolis Police Department's Medal of Valor for his exemplary service in the performance of duty in the shooting and attempt to locate a wanted person on the afternoon of April 28, 2018. His exemplary actions rose above and beyond the call of duty.

Recognition of the Kannapolis Police Department's Unit Commendation Communicators (J.W. Chavis, Chief of Police) (Copy included as Exhibit C)

Chief J.W. Chavis and Deputy Chief Terry Clanton awarded the following tele communicators for their exemplary service in the performance of duty during an officer involved shooting that occurred on the afternoon of April 28, 2018. Megan Baker, Tanesha Lockett, Shari Whiting, Katie Pohlman and Hollie Morton.

APPROVAL/CORRECTION OF MINUTES

Council Member Haas made a motion to approve the January 22, 2018 minutes. Motion was seconded by Mayor Pro tem Berry and approved by unanimous.

1
2 **CONSENT AGENDA:**

3 Mayor Pro tem Wilson made a motion to approve the Consent Agenda. Motion was seconded by
4 Council Member Dayvault and approved by unanimous vote.
5

6 Resolution to amend the 2018 Meeting Calendar (Bridgette Bell, City Clerk) (Copy included as
7 Exhibit D)
8

9 Motion to amend the City Fee Schedule (Gary Mills, Director of Parks and Recreation) (Copy
10 included as Exhibit E)
11

12 **BUSINESS AGENDA:**
13

14 **Presentation Discover a Healthy Life & Cooking for a Healthy Life (Annette Privette-Keller,**
15 **Director of Communications, Jennifer Woodford and Dr. Mark Spitzer)**

16 The City is continuing to expand its Discover a Healthy Life Brand. Working in collaboration with
17 North Carolina Research Campus and the Cabarrus Health Alliance, the newest phase of the brand
18 will be the launch of the Cooking for a Healthy Life Initiative.
19

20 Jennifer Woodford, Director of Communications and Campus Development for the North Carolina
21 Research Campus & David H. Murdock Research Institute along with Dr. Mark Spitzer, Vice
22 President, North Carolina Operations, Castle & Cooke, North Carolina, LLC, presented a power
23 point on Cooking for a Healthy Life. The purpose of the Cooking for a Health Life is to encourage
24 cooking as a cornerstone of a healthy live. The program offers free easy recipes, cooking tips, and
25 healthy news from the NC Research Campus partners: The City of Kannapolis; Cabarrus Health
26 Alliance; NC Research Campus/CCNC; Dole Nutrition Institute; Duke Clinical & Translational
27 Science Institute; NC State Plants for Human Health Institute; Rowan-Cabarrus Community
28 College and the UNC Nutrition Research Institute.
29

30 Goals of Cooking for a Healthy Life are to improve health outcomes for our community through
31 a clear message and one access point, establish the NCRC and its partners as a go-to resource for
32 trustworthy nutrition information, recipes and tips on healthy living. Cooking for a Healthy Life
33 would also increase interaction with the campus and the community and help expand the city's
34 Discover a Healthy Life Brand.
35

36 Cooking for a Healthy Life is a culinary nutrition initiative for events throughout the year such as
37 the March 14th kickoff where you can learn to make and enjoy Fiesta Bowls and yogurt parfaits
38 with Chief Mark Allison of the Dole Nutrition Institute. Forthcoming events demonstrate
39 delicious, healthy springtime meals while sharing tips for consuming a balanced nutritious diet.
40

41 There being no questions, Mayor Hinnant thanked Mrs. Woodford and Dr. Spitzer for the
42 presentation.
43

44 **Appointment to the Parks & Recreation Commission (Gary Mills, Director of Parks and**
45 **Recreation)**

46 Mr. Mills explained that Commission member Kevin May had to step down from the P&R
47 Commission, as he has moved out of town. His term expires in June 2020, and there is a need to
48 fill his unexpired term. The P&R Commission reviewed three available applications at their

1 February meeting and recommended Lisa Aldorasi to fill the unexpired term. In review of her
2 application it was noted that it appears she lives about 200 feet outside the City limits of
3 Kannapolis just off of Trinity Church Road and Stirewalt Road. They would like to still
4 recommend her for appointment as she received a couple strong recommendations from other
5 Commission Members. If she cannot be appointed, then the Commission recommended Philip
6 Belfield to fill the unexpired term.

7
8 Following general discussion, Council Member Haas made a motion to appoint Lisa Aldorasi.
9 Motion was seconded by Council Member Rowell. Following more general discussion, Council
10 Member Haas withdrew his motion. Council Member Rowell seconded.

11
12 Council Member Kincaid made a motion to appoint Philip Belfield to serve the unexpired term of
13 Kevin May to expire June 30, 2020. Motion was seconded by Council Member Dayvault and was
14 approved by unanimous vote.

15
16 **2018 Federal Legislative Priorities (Mike Legg, City Manager) (Copy included as Exhibit F)**

17 The Mayor and several Councilmembers will be attending the National League of Cities
18 Conference in Washington DC in two weeks. Mr. Legg highlighted the list of legislative priorities,
19 positions and requests that will be provided to our Congressional delegation during this trip. In an
20 era without Congressional earmarks, the Federal Priority List includes a significant focus larger
21 federal funding considerations as well as advocacy and policy development.

22
23 **1. General Economic Development:**

24
25 **The City of Kannapolis supports continued funding of the Federal Economic Development**
26 **programs to support job creation opportunities for communities, including Kannapolis.**

27 Locally, significant land development activity and new economic investment is beginning to grow
28 again. Now that the country is back from the economic collapse, strong partnerships between
29 Federal, State and Local governments can put our nation on a path to a bright future by out-
30 innovating, out-building and out-educating our rivals. Over the past few years, many federal
31 economic development programs have been in jeopardy of substantial cuts. Perhaps as importantly
32 for Kannapolis, cuts in funding for the Economic Development Administration (EDA) and
33 innovation and science programs at the National Institute of Standards and Technology (NIST)
34 Technology Innovation Program, the National Science Foundation (NSF), and the Agricultural
35 Research Service (ARS) would be particularly harmful to the growth of the North Carolina
36 Research Campus. More specifically, the City requests future funding support from the federal
37 government in growing the local economy in Kannapolis through several proposed initiatives and
38 projects.

39
40 **2. Community Development:**

41
42 **The City of Kannapolis supports continued funding of HUD Community Development Block**
43 **Grant (CDBG) programs at current or increased levels and the continuation of the Low**
44 **Income Housing Tax Credit Program.** Since 1988, the City has received more than \$12.5 million
45 in CDBG formula grants from HUD. In the last seven years alone, the City has received nearly
46 \$4.5 million in CDBG and HOME funds. Funds have been used for creating jobs, improvements
47 to sidewalks, Village Park, support of numerous local non-profit agencies, 20 new homes in
48 partnership with Community Development Corp, Prosperity Unlimited & Habitat for Humanity.

1 Provided down payment assistance for more than 20 first-time, low-to-moderate income
2 homebuyers. Rehabilitation of seven owner-occupied homes and several new affordable apartment
3 developments due to the Low Income Housing Tax Credit Program. HUD funds are the City of
4 Kannapolis' primary funding sources for affordable housing and community development; without
5 these resources, our ability to support and revitalize our fragile neighborhoods would be severely
6 diminished.

7 8 **3. Sales Tax Equality:** 9

10 **The City of Kannapolis supports federal legislation to level the playing field between E-** 11 **commerce and brick-and-mortar retailers by giving state and local governments the** 12 **authority to collect sales taxes on remote sales.**

13 The City of Kannapolis calls on Congress to close the online sales tax loophole and pass e-fairness
14 legislation to place brick-and-mortar community businesses on a level playing field with online
15 retailers and afford consumers more choice through fair competition. Allowing local governments
16 the flexibility to collect the taxes already owed to them on remote online purchases removes an
17 unfair disadvantage for local businesses, while helping cities close budget gaps. Collecting owed
18 sales taxes means more money for basic services, such as roads and police officers, without
19 increasing the overall federal deficit.

20
21 While the internet creates exciting new marketplaces, it has also put traditional retail outlets and
22 small locally-owned businesses at an unfair disadvantage because of outdated and inequitable tax
23 and regulatory environments. The Supreme Court's decision in *Quill Corp. v. North Dakota*, 504
24 U.S. 298 (1992), left state and local governments unable to adequately enforce their existing sales
25 tax laws on sales by out-of-state catalog and online sellers. The Court, however, explicitly stated
26 that Congress had the constitutional authority to enact legislation overruling its decision. Thus, if
27 Congress acts upon its authority to regulate interstate commerce, state and local governments could
28 collect taxes owed on Internet and mail order sales amounting to \$23 billion nationwide.

29 30 **4. Transportation Programs:**

31 **The City of Kannapolis supports comprehensive federal investments in transportation** 32 **infrastructure as long as there are no unfunded mandates or unrealistic expectations of** 33 **Municipalities to fund these improvements.**

34 The City of Kannapolis urges Congress to authorize a new, long-term federal surface
35 transportation and infrastructure program that recognizes the central role of transportation to
36 metropolitan and regional economies and includes local voices in planning and project selection.
37 With a strong federal partnership, cities can continue transportation and infrastructure investments
38 that ensure everyone in our communities has access to education, training and employment.
39 *Transportation drives local economies, which drive the nation.* Targeting infrastructure spending
40 directly to local governments will not only create jobs but also lay the foundation for long-term
41 benefits in communities.

42
43 *The Highway Trust Fund is not keeping up with demand.* Financed by federal gasoline taxes and
44 redistributed through the states to cities and towns is not nearly enough to fund critically important
45 transportation projects. Additionally, North Carolina's status as a "donor" state (sending more
46 gasoline taxes to Washington than are returned to Raleigh) further weakens the state and local
47 ability to keep up with transportation needs.
48

1
2 *Federal transportation policy must be coordinated with our country's energy and environmental*
3 *policies to decrease reliance on foreign oil, reduce greenhouse gas emissions, and prevent other*
4 *adverse public health impacts.*
5

6 **5. Utility Infrastructure Programs**

7 **The City of Kannapolis supports increased federal investments in local utility infrastructure.**

8 Federal funding for local water and sewer utility improvements has all but disappeared over the
9 past decade. The nation's utility infrastructure is in desperate need of replacement, repair and
10 expansion to facilitate new economic growth and prosperity. More specifically, the City supports
11 funding resources to help address the more than \$70 million in water, sanitary sewer and
12 stormwater projects identified in the City's Ten-year Capital Improvement Plan. These projects
13 are intended to create a more efficient system through repair and replacement and to create new
14 jobs and private sector investment through expanding the availability of these services.
15

16 **6. Public Safety Funding**

17 **The City of Kannapolis supports continued funding of SAFER and AFG Grant Funding** 18 **allocations for fire departments and the COPS funding programs for law enforcement** 19 **agencies.**

20 The FIRE Act Grant Program administered by FEMA (including both AFG and SAFER) is the
21 only grant program available to fire departments across United States. The USDOJ Justice
22 Assistance Grant program (JAG) and Community Orienting Policing Services program (COPS)
23 are two of the few remaining grant programs available for local law enforcement agencies. These
24 programs continue to come under threat. These funds have been a critical funding source for us
25 and we apply for funding every year.
26

27 Since 2007, the City of Kannapolis has received more than \$3.5 million from these police and fire
28 grant programs. Attached Exhibit F is a list of grants and awards over the past six years.
29

30 **7. Public Health**

31 **The City of Kannapolis is supportive of any efforts by the federal government to address the** 32 **public needs of physical and mental health. With the crisis of childhood obesity, opioids,** 33 **homelessness and mental health, municipalities are struggling to address these public needs** 34 **with very little infrastructure and funding in place to deal with these critical human issues.** 35 36

37 **8. Zip Code Reorganization**

38 **A matter of long-standing concern for the City of Kannapolis is the assignment of zip codes** 39 **for property located both within the City's corporate limits, as well as for areas that the City** 40 **has authority to annex in the future.**

41 This issue has been pushed into the forefront by the recent opening of several major employers
42 and developments who are struggling with a physical Kannapolis address and a different
43 municipality zip code. Growth in these areas is escalating rapidly and we would like to request
44 that the zip codes be reassigned to reflect the physical location of these industrial and commercial
45 areas while it is practical to do so.
46

47 The City's primary designated employment, commercial and residential growth areas are all
48 located in non-Kannapolis zip code areas. The City has several large scale industrial development

1 projects such as Gordon Food Service (located on Glen Afton Boulevard), Amazon (located on
2 Macedonia Church Road) and Afton Ridge, a regional commercial/retail center who are in the
3 Kannapolis city limits but have the 28027 (Concord) zip code. Company executives have told us
4 how confusing it is for them to explain to vendors and customers how to get to their facility because
5 of the Concord zip code address and the Kannapolis street address. This same scenario exists in
6 the City's western jurisdiction, where most of our new residential and commercial development is
7 now occurring. In consideration of the above, the City is asking for help in appealing to the U.S.
8 Post Office to re-assign zip codes for all property within the City's corporate limits to a Kannapolis
9 zip code. For those areas where the City has annexation agreements, we would also request that a
10 Kannapolis zip code be assigned.

11
12 Mr. Legg concluded while the list is generally in final form, some adjustments to content and
13 presentation will be made by staff prior to presentation to the Congressional delegation.
14 Additionally, staff will provide a to the Congressional Delegation our legislative priority list from
15 the North Carolina Research Campus as well as an update on activities occurring in our City
16 (Amazon, Downtown projects, etc.).

17
18 Following general discussion, Council Member Dayvault made a motion to approve the 2018
19 Federal Legislative Priorities as presented. Council Member Wilson seconded the motion and it
20 was approved by unanimous vote.

21
22 **Amend City Fee Schedule to include Tournament Fees for Ballfields and Fees for**
23 **Gymnasiums (Gary Mills, Parks and Recreation Director) (Copy included as Exhibit G)**

24 We have recently had a number of organizations approach the department requesting usage of our
25 fields for hosting tournaments. At the time we did not have a tournament fee schedule for usage
26 of the fields for an entire weekend. We examined the tournament fees from seven neighboring
27 communities and developed the following fee structure and recommendation for usage of our fields
28 at Safrit Park and for usage of the gymnasiums from outside organizations. A comparison was
29 made with other local municipalities and is attached for your review. The P&R Commission
30 reviewed the fees at their January meeting and recommends approval of the following fees for
31 Kannapolis fields for tournament use and for Gym usage where we have Staff present. Mr. Mills
32 reviewed the chart as outlined in attached Exhibit G.

33
34 Council Member Dayvault stated approximately 3 years ago, he and Council Member Wilson met
35 with the Kannapolis City Schools to get an agreement in place for the city to promote the facilities
36 that already exists in the school system in an effort and to encourage to keep kids off the street and
37 get them into a gym. They have concerns as it relates to the Gym Fee.

38
39 Council Member Wilson stated there has been a deficient in Kannapolis for a long time for gym
40 space for kids. In talking with the school system, they all came to the conclusion this was a need.
41 They feel it is more important for kids to be able to go to a gym. He expressed concerns about the
42 fees. The proposed gym usage fee is \$30/per hour. Most kids cannot afford \$30/per hour when
43 they can join the YMCA for \$26 a month. He feels the Gym Fees can be looked at again and
44 suggested that the Gym Fee be pulled from the schedule and allow more time to discuss.

45
46 Mr. Mills stated the driving force behind this fee schedule is outside agencies looking to use the
47 facilities. There was no fee schedule in place. If there is a group organization affiliated with the

1 City, there is no fee. The proposed fee schedule is more directed to organizations outside the city
2 requesting use of the Gym.

3 Council Member Dayvault made a motion to approved the Field Fees for Tournament Use and
4 removed the Gym Usage Fees and to bring back to Council for discussion at the March 26th
5 meeting. Council Member Wilson seconded the motion and it was approved by unanimous vote.
6

7 **CITY MANAGER REPORT:** Mr. Legg noted that Staff is busy preparing notebooks for the
8 upcoming Council retreat. More information will be forthcoming.
9

10 **CITY COUNCIL COMMENTS:** None
11

12 **SPEAKERS FROM THE FLOOR:**

13 Chuck Stanec, of 11156 River Oaks Drive NW Concord, is a Candidate for Cabarrus County
14 Commissioner. His platform is for the security and safety of children and how prepared are we for
15 county growth. He expressed pleasure in working with City Council.
16

17 Thomas Howie and Shedrick Hall of 2307 Carolina Avenue, spoke on the awareness of the Vegan
18 Love Culture Foundation. Vegan Love Culture believes in going back into the earth for natural
19 healing and health as well as to unite all human families. Mr. Howie told of three upcoming events
20 in Kannapolis and invited everyone to attend.
21

22 Adam Peck of 602 Summertake Drive, Concord is a candidate for Cabarrus County Sherriff and
23 invited everyone to a meet and greet event at the Kannapolis Train Station on March 6, from 6:00
24 to 8:00 PM.
25

26 There being no further business, Council Member Wilson made a motion to continue the meeting
27 to March 2, 2018 at 4:00 at the City Hall Executive Conference Room. Motion was seconded by
28 Council Member Kincaid and approved by unanimous vote.
29

30 The meeting recessed at 7:10 PM on Monday, February 26, 2018.
31
32
33
34

35 Bridgette Bell, MMC, NCCMC
36 City Clerk
37

Milton D. Hinnant
Mayor



**City of Kannapolis
City Council Meeting
April 9, 2018
Staff Report**

TO: Mayor and City Council
FROM: Wilmer Melton, III - Director of Public Works
TITLE: Bethpage Road Sidewalk Phase I Project C-5603F

A. Action Requested by City Council

- 1. Motion to approve the Agreement between the City of Kannapolis and the North Carolina Department of Transportation for TIP #C-5603F Bethpage Road Sidewalk Phase I Project and authorize the City Manager to execute the Agreement.**
- 2. Motion to approve the Project Ordinance for the TIP #C-5603F Bethpage Road Sidewalk Phase I Project.**

B. Required Votes to Pass Required Action

Majority present at meeting

C. Background

At the request of the City of Kannapolis, The North Carolina Department of Transportation (NCDOT) has prepared an Agreement for TIP #C-5603F for the construction of sidewalk along Bethpage Road from S. Main Street to existing sidewalk at Leonard Avenue; and along the south side of Bethpage Road from Westgreen Drive to Klondale Avenue.

The Agreement provides for 80% federal funding participation in the amount of \$648,000 for the Project and a 20% local match in the amount of \$162,000. By execution of this Agreement, the City agrees to the requirements set forth by NCDOT as stated in the Agreement.

D. Fiscal Considerations

The total estimated cost of the TIP #C-5603F Bethpage Road Sidewalk Phase I Project is \$810,000. The federal participation in this Project is 80% up to a maximum \$648,000. The City is responsible for all costs over the federal match of \$648,000 and our estimated local match of 20% is \$162,000.

The Bethpage Road Sidewalk Project was identified by Council as one of our planned CIP projects.

E. Policy Issues

City Council approval is required prior to the City entering into this Agreement with the North Carolina Department of Transportation for TIP #C-5603F Bethpage Road Sidewalk Phase I Project.

The final ranking of this project at the March 2018 City Council Retreat was 15 out of 48. Based on the post retreat staff analysis it is recommended to be slated for financing in the FY 2020 budget. However, the project needs to proceed now due to NCDOT timing considerations.

F. Legal Issues

None

G. Alternative Courses of Action and Recommendation

1. **Approve the Agreement between the City of Kannapolis and the North Carolina Department of Transportation for TIP #C-5603F Bethpage Road Sidewalk Phase I Project and authorize the City Manager to execute the Agreement. (Recommended)**
2. **Approve the Project Ordinance for the TIP #C-5603F Bethpage Road Sidewalk Phase I Project. (Recommended)**
3. Take no action and do not table to a future meeting (effectively asking NCDOT to remove the project from its work program).
4. Table the action to a future meeting.

ATTACHMENTS:

File Name

- ❑ 2018_03-09_Agreement_C-5603F_Bethpage_Rd_Sidewalk_Phase_1.pdf
- ❑ Sidewalk_Phases_I_and_II.pdf
- ❑ Bethpage_Road_Sidewalk_4-2018_Project_Ordinance.pdf

NORTH CAROLINA
CABARRUS COUNTY

LOCALLY ADMINISTERED PROJECT - FEDERAL

DATE: 2/24/2018

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

AND

CITY OF KANNAPOLIS

TIP #: C-5603F

WBS Elements: PE 43713.1.6

ROW 43713.2.6

CON 43713.3.6

OTHER FUNDING:

FEDERAL-AID NUMBER: CMAQ-1001(079)

CFDA #: 20.205

Total Funds [NCDOT Participation] \$648,000

THIS AGREEMENT is made and entered into on the last date executed below, by and between the North Carolina 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 "Municipality".

WITNESSETH:

WHEREAS, Fixing America's Surface Transportation (FAST) Act allows for the allocation of Congestion Mitigation and Air Quality funds to be available for certain specified transportation activities; and,

WHEREAS, the Municipality has requested federal funding for Bethpage Road Sidewalk, Phase I, hereinafter referred to as the Project, in Cabarrus County, North Carolina; and,

WHEREAS, subject to the availability of federal funds, the Municipality has been designated as a recipient to receive funds allocated to the Department by the Federal Highway Administration (FHWA) up to and not to exceed the maximum award amount of \$648,000 for the Project; and,

WHEREAS, the Department has agreed to administer the disbursement of said funds on behalf of FHWA to the Municipality for the Project in accordance with the Project scope of work and in accordance with the provisions set out in this Agreement; and,

WHEREAS, the Department has programmed funding in the approved Transportation Improvement Program for the Project; and,

WHEREAS, the governing board of the Municipality has agreed to participate in certain costs and to assume certain responsibilities in the manner and to the extent as hereinafter set out; and,

WHEREAS, this Agreement is made under the authority granted to the Department by the North Carolina General Assembly including, but not limited to, the following applicable legislation: General Statutes of North Carolina (NCGS) Section 136-66.1, Section 136-71.6, Section 160A-296 and 297, Section 136-18, Section 136-41.3 and Section 20-169, to participate in the planning, construction and/or implementation of the Project approved by the Board of Transportation.

NOW, THEREFORE, this Agreement states the promises and undertakings of each party as herein provided, and the parties do hereby covenant and agree, each with the other, as follows:

1. GENERAL PROVISIONS

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT

All parties to this Agreement, including contractors, subcontractors, and subsequent workforces, associated with any work under the terms of this Agreement shall provide reports as required by the Federal Funding Accountability and Transparency Act (FFATA) for this Project.

AGREEMENT MODIFICATIONS

Any modification to scope, funding, responsibilities, or time frame will be agreed upon by all parties by means of a Supplemental Agreement.

LOCAL PUBLIC AGENCY TO PERFORM ALL WORK

The Municipality shall be responsible for administering all work performed and for certifying to the Department that all terms set forth in this Agreement are met and adhered to by the Municipality and/or its contractors and agents. The Department will provide technical oversight to guide the Municipality. The Department must approve any assignment or transfer of the responsibilities of the Municipality set forth in this Agreement to other parties or entities.

PERSON IN RESPONSIBLE CHARGE

The Municipality shall designate a person or persons to be in responsible charge of the Project, in accordance with Title 23 of the Code of Federal Regulations, Part 635.105. The person, or persons, shall be expected to:

- Administer governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;

- Maintain knowledge of day to day project operations and safety issues;
- Make or participate in decisions about changed conditions or scope changes that require change orders or supplemental agreements;
- Visit and review the project in accordance with the project scope and scale;
- Review financial processes, transactions and documentation to reduce the likelihood of fraud, waste, and abuse;
- Direct project staff, agency or consultant, to carry out project administration and contract oversight, including proper documentation; and
- Be aware of the qualifications, assignments and on-the-job performance of the agency and consultant staff at all stages of the project.

The person in responsible charge must be a full-time employee of the Municipality, but the duties may be split among several employees, if necessary.

COMPLIANCE WITH STATE/FEDERAL POLICY

The Municipality, and/or its agent, including all contractors, subcontractors, or sub-recipients shall comply with all applicable Federal and State policies and procedures, stated both in this Agreement and in the Department's guidelines and procedures, including the *Local Programs Management Handbook*.

FAILURE TO COMPLY - CONSEQUENCES

Failure on the part of the Municipality to comply with any of the provisions of this Agreement will be grounds for the Department to terminate participation in the costs of the Project and, if applicable, seek repayment of any reimbursed funds.

2. SCOPE OF PROJECT

The Project consists of design, right of way acquisition, construction, and contract administration of approximately 2700 linear feet of sidewalk, curb and gutter, and associated storm drainage along the north side of Bethpage Road from South Main Street to existing sidewalk at Leonard Avenue; and along the south side of Bethpage Road from Westgreen Drive to Klondale Avenue.

The Department's funding participation in the Project shall be restricted to the following eligible items:

- Design
- Environmental Documentation
- ROW Acquisition
- Utility Relocation
- Construction

as further set forth in this Agreement.

3. FUNDING

REIMBURSEMENT FOR ELIGIBLE ACTIVITIES

Subject to compliance by the Municipality with the provisions set forth in this Agreement and the availability of federal funds, the Department shall reimburse (80%) of eligible expenses incurred by the Municipality up to a maximum amount of Six Hundred Forty Eight Thousand Dollars (\$648,000), as detailed below. The Municipality shall provide the non-federal match, as detailed in the FUNDING TABLE below, and all costs that exceed the total estimated cost.

FUNDING TABLE

Fund Source	Federal Funds Amount	Reimbursement Rate	Non-Federal Match \$	Non-Federal Match Rate
Congestion Mitigation and Air Quality	\$648,000	80%	\$162,000	20%
Total Estimated Cost			\$810,000	

WORK PERFORMED BY NCDOT

All work performed by the Department on this Project, including, but not limited to, reviews, inspections, and Project oversight, during any phase of the delivery of the Project, shall reduce the funding available to the Municipality under this Agreement. The Department will set aside ten percent (10%) of the total estimated cost, or \$81,000, to use towards the costs related to review and oversight of this Project, including, but not limited to review and approval of plans, environmental documents, contract proposals, engineering estimates, construction engineering

and inspection oversight, and other items as needed to ensure the Municipality's appropriate compliance with state and federal regulations.

In the event that the Department does not utilize all the set-aside funding, then those remaining funds will be available for reimbursement to the Municipality at the above reimbursement rate. For all costs of work performed on the Project, whether incurred by the Municipality or by the Department, the Municipality shall provide the non-federal match. The Department will bill the Municipality for the non-federal match of any costs that the Department incurs on the Project and for any costs that exceed the Total Estimated Cost.

4. PERIOD OF PERFORMANCE

The Municipality has five (5) years to complete all work outlined in the Agreement from the date of authorization of Federal funds for the initial phase of work. Completion for this Agreement is defined as completion of all construction activities or implementation activities, acceptance of the project, and submission of a final reimbursement package to the Department.

If additional time is needed to complete the Project, then a supplemental agreement must be executed. The Department and/or FHWA reserves the right to revoke the funds awarded if the Municipality is unable to meet milestone dates included herein.

5. PRELIMINARY ENGINEERING AUTHORIZATION

If Preliminary Engineering is an eligible expense, then upon receipt of an executed agreement, the Department will authorize Preliminary Engineering funds and shall notify the Municipality, in writing, once funds have been authorized and can be expended. The Municipality shall not initiate any work, nor solicit for any professional services prior to receipt of written authorization from the Department to proceed. Any work performed, or contracts executed, prior to receipt of written authorization to proceed will be ineligible for reimbursement.

6. PROFESSIONAL AND ENGINEERING SERVICES

The Municipality shall comply with the policies and procedures of this provision if the Municipality is requesting reimbursement for the Preliminary Engineering contract or the Construction Contract Administration / Construction Engineering and Inspection contract.

PROCUREMENT POLICY

When procuring professional services, the Municipality must adhere to Title 2 Code of Federal Regulations Part 200; Title 23 of the Code of Federal Regulations, Part 172; Title 40 United States Code, Chapter 11, Section 1101-1104; NCGS 143-64, Parts 31 and 32; and the Department's *Policies and Procedures for Major Professional or Specialized Services Contracts*. Said policies and standards are incorporated in this Agreement by reference at www.fhwa.dot.gov/legregs/legislat.html and www.ncleg.net/gascripts/Statutes/Statutes.asp.

- The Municipality shall ensure that a qualified firm is obtained through an equitable selection process, and that prescribed work is properly accomplished in a timely manner and at a just and reasonable cost.
- All Professional Services Firms shall be pre-qualified by the Department in the Work Codes advertised.
- A pre-negotiation audit will be conducted by the Department's External Audit Branch. The Municipality shall not execute a consultant contract until the Department's review has been completed.

SMALL PROFESSIONAL AND ENGINEERING SERVICES FIRMS REQUIREMENTS

Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Small Professional Services Firms (SPSF). This policy conforms with the SPSF Guidelines as approved by the North Carolina Board of Transportation.

- The Municipality shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.
- If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

WORK BY ENTITY

If the Design, Planning, Contract Administration and/or Construction Engineering and Inspection required for this project will be undertaken by the Municipality, and the Municipality requests reimbursement, then the Municipality must submit a request and supporting documentation to the Department for review and approval, prior to any work being initiated by the Municipality.

7. PLANNING / ENVIRONMENTAL DOCUMENTATION

The Municipality shall prepare the environmental and/or planning document, including any environmental permits, needed to construct the Project, in accordance with the National Environmental Policy Act (NEPA) and all other appropriate environmental laws and regulations. All work shall be performed in accordance with Departmental procedures and guidelines. Said documentation shall be submitted to the Department for review and approval.

- The Municipality shall be responsible for preparing and filing with all proper agencies the appropriate planning documents, including notices and applications required to apply for those permits necessary for the construction of the desired improvements. Copies of approved permits should be forwarded to the Department.
- The Municipality shall advertise and conduct any required public hearings.
- If any permit issued requires that action be taken to mitigate impacts associated with the improvements, the Municipality shall design and implement a mitigation plan. The Department will determine if any mitigation costs are eligible for reimbursement. The Municipality shall bear all costs associated with penalties for violations and claims due to delays.
- The Municipality shall be responsible for designing an erosion control plan if required by the North Carolina Sedimentation Pollution Control Act of 1973, NCGS 113A, Article 4, incorporated in this Agreement by reference at www.ncleg.net/gascripts/Statues/Statutes.asp and obtaining those permits required thereby in order to construct the Project. During the construction of the improvements, the Municipality, and its contractors and agents, shall be solely responsible for compliance with the provisions of said Act and the plan adopted in compliance therewith.

8. DESIGN

CONTENT OF PLAN PACKAGE

The Municipality, and/or its agent, shall prepare the Project's plans, specifications, and a professional estimate of costs (PS&E package), in accordance with the Department's guidelines and procedures, and applicable Federal and State standards. All work shall be submitted to the Department for review and approval. The plans shall be completed to show the design, site plans, landscaping, drainage, easements, and utility conflicts.

9. RIGHT OF WAY / UTILITY AUTHORIZATION

If the costs of right of way acquisition or utility relocation are an eligible expense, the Municipality shall submit a letter of request to the Department to authorize and set up right of way and/or utility funding. The acquisition for right of way, construction easements, and/or utility relocation may be undertaken only after the Municipality receives written authorization from the Department to proceed.

10. PROJECT LIMITS AND RIGHT OF WAY (ROW)

The Municipality shall comply with the policies and procedures of this provision regardless of whether the Municipality is requesting reimbursement for the Right of Way phase of the Project.

SPONSOR PROVIDES ROW

The Municipality, at no liability whatsoever to the Department, shall be responsible for providing and/or acquiring any required ROW and/or easements for the Project.

ROW GUIDANCE

The Municipality shall accomplish all ROW activities, including acquisition and relocation, in accordance with the following: Title 23 of the Code of Federal Regulations, Part 710, Subpart B and Title 49 of the Code of Federal Regulations, Part 24, [Uniform Act] incorporated by reference at www.fhwa.dot.gov/legisregs/directives/fapgtoc.htm; NCGS, Chapter 133, Article 2, Sections 133-5 through 133-18, Relocation Assistance, incorporated by reference at www.ncleg.net/gascripts/Statutes/Statutes.asp; and the North Carolina Department of Transportation Right of Way Manual.

APPRAISAL

The Municipality shall submit the appraisal to the Department for review and approval in accordance with Departmental policies and procedures.

CLEARANCE OF PROJECT LIMITS / ROW

The Municipality shall remove and dispose of all obstructions and encroachments of any kind or character (including hazardous and contaminated materials) from said ROW, with the exception that the Municipality shall secure an encroachment agreement for any utilities (which shall remain

or are) to be installed within the Department's ROW, or follow other applicable approval process, for utilities within the Municipality's ROW. The Municipality shall indemnify and save harmless the Department, Federal Highway Administration, and the State of North Carolina, from any and all damages and claims for damages that might arise on account of said right of way acquisition, drainage, and construction easements for the construction of said Project. The Municipality shall be solely responsible for any damages caused by the existence of said material now and at any time in the future and will save the Department harmless from any legal actions arising as a result of this contaminated and/or hazardous material and shall provide the Department with documentation proving the proper disposal of said material.

RELOCATION ASSISTANCE

The Municipality shall provide relocation assistance services and payments for families, businesses, and non-profit organizations being displaced by the Project in full accordance with the Federal relocation requirements of Title 49 Code of Federal Regulations, Part 24 [Uniform Act], as amended. Relocation assistance services and payments may be accomplished by contract with any other municipal corporation, or State or Federal agency, rendering such services upon approval by the Department and Federal Highway Administration.

11. UTILITIES

The Municipality, and/or its agent, at no liability to the Department, shall relocate, adjust, relay, change or repair all utilities in conflict with the Project, regardless of ownership. All utility work shall be performed in a manner satisfactory to and in conformance with State and Federal rules and regulations, prior to Municipality beginning construction of the project. This Agreement does not modify or supersede any existing Utility Encroachment Agreements that may be in place.

12. RIGHT OF WAY / UTILITY / RAILROAD CERTIFICATION

The Municipality, upon acquisition of all right of way/property necessary for the Project, relocation of utilities, and coordination with the railroad shall provide the Department all required documentation (deeds/leases/easement/plans/agreements) to secure certification. Certification is only issued after all ROW is in public ownership or property is publicly accessible by a legal document; utilities in conflict with the project are relocated, or a plan for their relocation during construction has been approved; and coordination with the railroad (if applicable) has occurred and been documented.

13. CONTRACT PROPOSAL AND ENGINEER'S ESTIMATE

CONTRACT PROPOSAL

The Municipality shall develop a contract proposal that will be advertised for bids. The proposal shall comply with NCDOT Specifications and Standard Drawings as applicable to the Project. The proposal shall also contain provisions, as applicable, per Title 23 Code of Federal Regulations 633 and 635 to include, but not be limited to: FHWA 1273, Buy America, Davis-Bacon Wage Rates, Non-discrimination, DBE Assurances, Contractor Certification regarding suspension and debarment, and other provisions as required by the Department.

ENGINEER'S ESTIMATE

The Municipality shall develop an itemized engineer's estimate to show items referenced to the NCDOT Standard Specifications, if applicable, along with units and unit price. The engineer's estimate will be used as the basis for comparing bids received.

14. CONSTRUCTION AUTHORIZATION

The Municipality shall submit the required environmental and/or planning document, ROW certification, final construction plans, total contract proposal, and an estimate of Project costs (final PS&E package) to the Department for review and approval.

- After approval of all documentation, the Department will request construction authorization from the Federal Highway Administration.
- The Municipality shall not advertise for bids prior to receiving written construction authorization from the Department.

15. CONTRACTOR PROCUREMENT

ADVERTISE FOR BIDS

Upon receipt of written construction authorization from the Department, the Municipality may advertise the Project. The Municipality shall follow applicable Federal and/or State procedures pertaining to the advertisement of the Project, bid opening, and award of the contract, according to Title 2 of the Code of Federal Regulations, Part 200 and Title 23 of the Code of Federal Regulations, Part 633 and Part 635, incorporated by reference at

www.fhwa.dot.gov/legregs/directives/fapgtoc.htm; and NCGS, Chapter 143, Article 8 (Public Contracts), incorporated by reference at www.ncleg.net/gascripts/Statutes/Statutes.asp.

CONSTRUCTION CONTRACTOR REQUIREMENTS

All Contractors submitting bids on the project shall be pre-qualified by the Department. All proposed subcontractors must be pre-qualified before construction work begins. Any subcontractors who are proposed to meet the Disadvantaged Business Enterprise goal must be certified by the Department.

CONSTRUCTION SUBCONTRACTOR REQUIREMENTS

Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Disadvantaged Business Enterprises (DBEs), or as required and defined in Title 49 of the Code of Federal Regulations, Part 26 and the North Carolina Administrative Code. These provisions are incorporated into this Agreement by reference <https://connect.ncdot.gov/projects/Contracts/Pages/LGA-Projects.aspx>.

- The Municipality shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.
- If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

AWARDING CONTRACT

After the advertisement of the Project for construction bids, the Municipality shall request concurrence from the Department to award the construction contract by submitting a letter along with tabulated bids received depicting Disadvantaged Business Enterprises (DBE) goals, and a resolution recommending award of the Project to the lowest responsible, responsive bidder. The Department will review the submitted information and provide written approval to the Municipality prior to the contract being awarded by the Municipality.

DELAY IN PROCUREMENT

In the event the Project has not been let to contract within six (6) months after receiving construction authorization from the Department, the Municipality shall be responsible for

documenting to the Department justification for project delay and that the Project remains in compliance with the terms of this Agreement, the approved plans and specifications, and current codes.

FORCE ACCOUNT

Force account work is only allowed when there is a finding of cost effectiveness for the work to be performed by some method other than a contract awarded by a competitive bidding process, or there is an emergency. Written approval from the Department is required prior to the use of force account by the Municipality. Federal Highway Administration regulations governing Force Account are contained in Title 23 Code of Federal Regulations, Part 635.201, Subpart B; said policy being incorporated in this Agreement by reference www.fhwa.dot.gov/legisregs/directives/cfr23toc.htm. North Carolina General Statutes governing the use of Force Account, Chapter 143, Article 8 (Public Contracts) can be found at www.ncleg.net/gascripts/Statutes/Statutes.asp.

16. CONSTRUCTION

The Municipality, and/or its agents shall construct the Project in accordance with the plans and specifications of the Project as filed with, and approved by, the Department. During the construction of the Project, the procedures set out below shall be followed:

CONSTRUCTION CONTRACT ADMINISTRATION

The Municipality shall comply with the NCDOT Construction Manual as referenced at <http://www.ncdot.org/doh/operations/dp%5Fchief%5Feng/constructionunit/formsmanuals/construction/>, which outlines the procedures for records and reports that must be adhered to in order to obtain uniformity of contract administration and documentation. This includes, but is not limited to, inspection reports, material test reports, materials certification, documentation of quantities, project diaries, and pay records. The Municipality, and/or its agent, shall perform the construction engineering, sampling and testing required during construction of the Project, in accordance with Departmental procedures, including the Department's Guide for Process Control and Acceptance Sampling and Testing. The Municipality shall document that said compliance was accomplished in accordance with State and Federal procedures, guidelines, standards and specifications.

RETAINAGE

The Municipality shall not retain any portion of a payment due the contractor.

SIGNAGE

The Municipality shall provide and maintain adequate signage and other warning devices for the protection of the public in accordance with the approved traffic control plans for the Project and the current edition of the Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways, or any subsequent revision of the same, published by the Federal Highway Administration and effective at the time of award of the contract.

SITE LAYOUT

The Municipality shall be responsible for ensuring that all site layout, construction work, and Project documentation are in compliance with applicable city, state and federal permits, guidelines, and regulations, including American Association of State Highway and Transportation Officials (AASHTO) guidelines and Americans with Disabilities Act (ADA) Standards for Accessible Design (www.usdoj.gov/crt/ada/stdspdf.htm).

RIGHT TO INSPECT

The Department and representatives of the Federal Highway Administration shall have the right to inspect, sample or test, and approve or reject, any portion of the work being performed by the Municipality or the Municipality's contractor to ensure compliance with the provisions of this Agreement. Prior to any payment by the Department, any deficiencies inconsistent with approved plans and specifications found during an inspection must be corrected.

CONTRACTOR COMPLIANCE

The Municipality will be responsible for ensuring that the contractor complies with all of the terms of the contract and any instructions issued by the Department or FHWA as a result of any review or inspection made by said representatives.

CHANGE ORDERS

If any changes in the Project plans are necessary, the Department must approve such changes prior to the work being performed.

SHOP DRAWINGS

Shop Drawings shall be submitted in accordance with the approved plans and specifications and may require review by the Designer.

17. CLOSE-OUT

Upon completion of the Project, the Municipality shall be responsible for the following:

FINAL INSPECTION

The Municipality shall arrange for a final inspection by the Department. Any deficiencies determined during the final field inspection must be corrected prior to final payment being made by the Department to the Municipality. Additional inspection by other entities may be necessary in accordance with the Department's guidelines and procedures. The Municipality shall provide the Department with written evidence of approval of completed project prior to requesting final reimbursement.

FINAL PROJECT CERTIFICATION

The Municipality will provide a certification to the Department that all work performed for this Project is in accordance with all applicable standards, guidelines, and regulations.

18. MAINTENANCE

The Municipality, at no expense or liability to the Department, shall assume all maintenance responsibilities for the Bethpage Road Sidewalk, Phase I, or as required by an executed encroachment agreement.

19. REIMBURSEMENT

SCOPE OF REIMBURSEMENT

Activities eligible for funding reimbursement for this Project shall include:

- Design
- Environmental Documentation
- ROW Acquisition
- Utility Relocation
- Construction

REIMBURSEMENT GUIDANCE

The Municipality shall adhere to applicable administrative requirements of Title 2 Code of Federal Regulations, Part 200 (www.fhwa.dot.gov/legregs/directives/fapgtoc.htm) "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards." Reimbursement to the Municipality shall be subject to the policies and procedures contained in Title 23 Code of Federal Regulations, Part 140 and Part 172, which is being incorporated into this Agreement by reference at www.fhwa.dot.gov/legregs/directives/fapgtoc.htm. Reimbursement to the Municipality shall be subject to the guidance contained in Title 2 Code of Federal Regulations, Part 170 (<http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>) and Office of Management and Budget (OMB) "Federal Funding Accountability and Transparency Act" (FFATA). Said reimbursement shall also be subject to the Department being reimbursed by the Federal Highway Administration and subject to compliance by the Municipality with all applicable federal policy and procedures.

REIMBURSEMENT LIMITS

▪ WORK PERFORMED BEFORE NOTIFICATION

Any costs incurred by the Municipality prior to written notification by the Department to proceed with the work shall not be eligible for reimbursement.

▪ NO REIMBURSEMENT IN EXCESS OF APPROVED FUNDING

At no time shall the Department reimburse the Municipality costs that exceed the total funding per this Agreement and any Supplemental Agreements.

▪ UNSUBSTANTIATED COSTS

The Municipality agrees that it shall bear all costs for which it is unable to substantiate actual costs or any costs that have been deemed unallowable by the Federal Highway Administration and/or the Department's Financial Management Division.

▪ WORK PERFORMED BY NCDOT

All work performed by the Department on this Project, including, but not limited to, reviews, inspections, and Project oversight, shall reduce the maximum award amount of \$648,000 available to the Municipality under this Agreement. The Department will bill the Municipality for the non-federal match of any costs that the Department incurs on the Project and for any costs that exceed the Total Estimated Cost.

- **CONSTRUCTION ADMINISTRATION**

Reimbursement for construction contract administration will be made as governed by Departmental policy that limits reimbursement for construction contract administration to no more than fifteen (15%) percent of the actual construction contract of the Project. These costs will also include any cost overruns and charges to the Project by the Department during the Construction Phase.

- **CONSTRUCTION CONTRACT UNIT PRICES**

Reimbursement for construction contract work will be made on the basis of contract unit prices in the construction contract and any approved change orders.

- **RIGHT OF WAY**

Reimbursement will be limited to the value as approved by the Department. Eligible costs for reimbursement of Right of Way Acquisition include: realty appraisals, surveys, closing costs, and the agreed upon just compensation for the property, at the reimbursement rate as shown in the FUNDING TABLE.

- **FORCE ACCOUNT**

Invoices for force account work shall show a summary of labor, labor additives, equipment, materials and other qualifying costs in conformance with the standards for allowable costs set forth in 2 CFR 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." Reimbursement shall be based on actual eligible costs incurred with the exception of equipment owned by the Municipality or its Project partners. Reimbursement rates for equipment owned by the Municipality or its Project partners cannot exceed the Department's rates in effect for the time period in which the work is performed.

BILLING THE DEPARTMENT

- **PROCEDURE**

The Municipality may bill the Department for eligible Project costs in accordance with the Department's guidelines and procedures. Proper supporting documentation shall accompany each invoice as may be required by the Department. By submittal of each invoice, the Municipality certifies that it has adhered to all applicable state and federal laws and regulations as set forth in this Agreement.

Along with each invoice, the Municipality is responsible for submitting the FFATA Subrecipient Information Form, which is available at <https://connect.ncdot.gov/municipalities/Funding/Pages/default.aspx>.

- **INTERNAL APPROVALS**

Reimbursement to the Municipality shall be made upon approval of the invoice by the Department's Financial Management Division.

- **TIMELY SUBMITTAL OF INVOICES**

The Municipality may invoice the Department monthly for work accomplished, but no less than once every six (6) months to keep the Project funds active and available. If the Municipality is unable to invoice the Department, then they must provide an explanation. Failure to submit invoices or explanation may result in de-obligation of funds.

- **FINAL INVOICE**

All invoices associated with the Project must be submitted within six (6) months of the completion of construction and acceptance of the Project to be eligible for reimbursement by the Department. Any invoices submitted after this time will not be eligible for reimbursement.

20. REPORTING REQUIREMENTS AND RECORDS RETENTION

PROJECT EVALUATION REPORTS

The Municipality is responsible for submitting quarterly Project evaluation reports, in accordance with the Department's guidelines and procedures, that detail the progress achieved to date for the Project.

PROJECT RECORDS

The Municipality and its agents shall maintain all books, documents, papers, accounting records, Project records and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, the Municipality shall make such materials available at its office and shall require its agent to make such materials available at its office at all reasonable times during the contract period, and for five (5) years from the date of payment of the final voucher by the Federal Highway Administration, for inspection and audit by the Department's Financial

Management Section, the Federal Highway Administration, or any authorized representatives of the Federal Government.

21. OTHER PROVISIONS

REFERENCES

It will be the responsibility of the Municipality to follow the current and/or most recent edition of references, websites, specifications, standards, guidelines, recommendations, regulations and/or general statutes, as stated in this Agreement.

INDEMNIFICATION OF DEPARTMENT

The Municipality agrees to indemnify and hold harmless the Department, FHWA and the State of North Carolina, to the extent allowed by law, for any and all claim for payment, damages and/or liabilities of any nature, asserted against the Department in connection with this Project. The Department shall not be responsible for any damages or claims, which may be initiated by third parties.

DEBARMENT POLICY

It is the policy of the Department not to enter into any agreement with parties that have been debarred by any government agency (Federal or State). By execution of this agreement, the Municipality certifies that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal or State Agency or Department and that it will not enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction.

TITLE VI - CIVIL RIGHTS ACT OF 1964

The Municipality shall comply with Title VI of the Civil Rights Act of 1964, (Title 49 CFR, Subtitle A, Part 21). Title VI prohibits discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.

OTHER AGREEMENTS

The Municipality is solely responsible for all agreements, contracts, and work orders entered into or issued by the Municipality for this Project. The Department is not responsible for any expenses or obligations incurred for the Project except those specifically eligible for Congestion Mitigation and Air Quality funds and obligations as approved by the Department under the terms of this Agreement.

AVAILABILITY OF FUNDS

All terms and conditions of this Agreement are dependent upon, and, subject to the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

IMPROPER USE OF FUNDS

Where either the Department or the FHWA determines that the funds paid to the Municipality for this Project are not used in accordance with the terms of this Agreement, the Department will bill the Municipality.

TERMINATION OF PROJECT

If the Municipality decides to terminate the Project without the concurrence of the Department, the Municipality shall reimburse the Department one hundred percent (100%) of all costs expended by the Department and associated with the Project.

AUDITS

In accordance with 2 CFR 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," Subpart F – Audit Requirements, and the Federal Single Audit Act Amendments of 1996, the Municipality shall arrange for an annual independent financial and compliance audit of its fiscal operations. The Municipality shall furnish the Department with a copy of the annual independent audit report within thirty (30) days of completion of the report, but not later than nine (9) months after the Municipality's fiscal year ends.

REIMBURSEMENT BY MUNICIPALITY

For all monies due the Department as referenced in this Agreement, reimbursement shall be made by the Municipality to the Department within sixty (60) days of receiving an invoice. A late

payment penalty and interest shall be charged on any unpaid balance due in accordance with NCGS 147-86.23.

USE OF POWELL BILL FUNDS

If the other party to this agreement is a Municipality and fails for any reason to reimburse the Department in accordance with the provisions for payment hereinabove provided, NCGS 136-41.3 authorizes the Department to withhold so much of the Municipality's share of funds allocated to Municipality by NCGS 136-41.1, until such time as the Department has received payment in full.

ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties and there are no understandings or agreements, verbal or otherwise, regarding this Agreement except as expressly set forth herein.

AUTHORIZATION TO EXECUTE

The parties hereby acknowledge that the individual executing the Agreement on their behalf is authorized to execute this Agreement on their behalf and to bind the respective entities to the terms contained herein and that he has read this Agreement, conferred with his attorney, and fully understands its contents.

FACSIMILE SIGNATURES

A copy or facsimile copy of the signature of any party shall be deemed an original with each fully executed copy of the Agreement as binding as an original, and the parties agree that this Agreement can be executed in counterparts, as duplicate originals, with facsimile signatures sufficient to evidence an agreement to be bound by the terms of the Agreement.

GIFT BAN

By Executive Order 24, issued by Governor Perdue, and NCGS 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and

Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor).

22. SUNSET PROVISION

All terms and conditions of this Agreement are dependent upon, and subject to, the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

IT IS UNDERSTOOD AND AGREED that the approval of the Project by the Department is subject to the conditions of this Agreement, and that no expenditures of funds on the part of the Department will be made until the terms of this Agreement have been complied with on the part of the Municipality.

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Municipality by authority duly given.

L.S. ATTEST:

CITY OF KANNAPOLIS

BY: _____ BY: _____

TITLE: _____ TITLE: _____

DATE: _____

NCGS 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.

Approved by _____ of the City of Kannapolis as attested to by the
signature of _____ Clerk of the _____ on
_____(Date)

This Agreement has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

(SEAL)

(FINANCE OFFICER)

Federal Tax Identification Number

City of Kannapolis

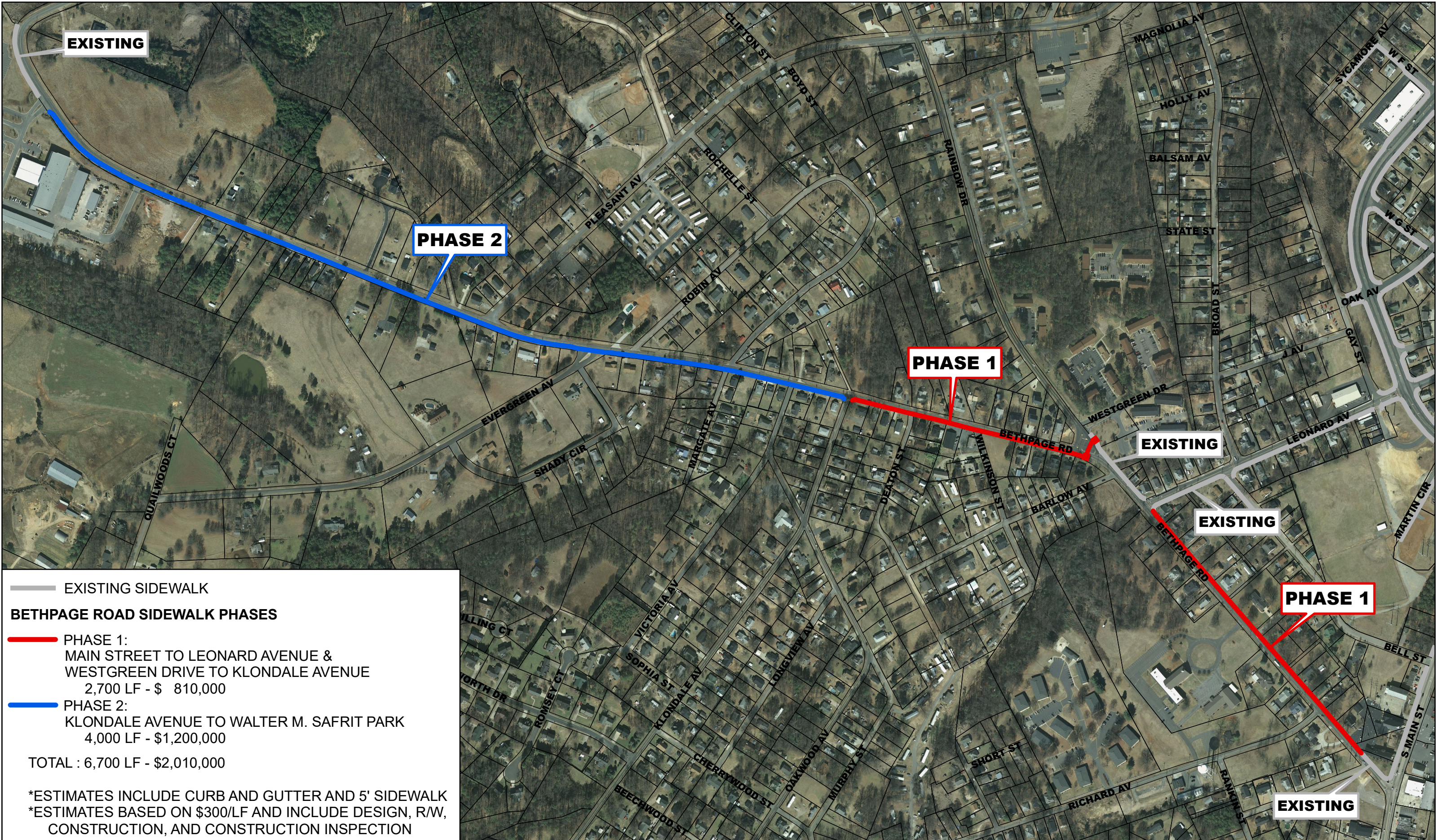
Remittance Address:

DEPARTMENT OF TRANSPORTATION

BY: _____
(CHIEF ENGINEER)

DATE: _____

APPROVED BY BOARD OF TRANSPORTATION ITEM O: _____(Date)



— EXISTING SIDEWALK

BETHPAGE ROAD SIDEWALK PHASES

PHASE 1:
MAIN STREET TO LEONARD AVENUE &
WESTGREEN DRIVE TO KLONDALE AVENUE
2,700 LF - \$ 810,000

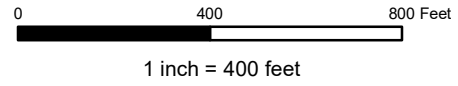
PHASE 2:
KLONDALE AVENUE TO WALTER M. SAFRIT PARK
4,000 LF - \$1,200,000

TOTAL : 6,700 LF - \$2,010,000

*ESTIMATES INCLUDE CURB AND GUTTER AND 5' SIDEWALK
*ESTIMATES BASED ON \$300/LF AND INCLUDE DESIGN, R/W,
CONSTRUCTION, AND CONSTRUCTION INSPECTION



BETHPAGE ROAD SIDEWALK



DISCLAIMER: This map is prepared from recorded deeds, plats, tax maps, surveys, planimetric maps, and other public records and data from various federal, state, and local agencies. Maps and associated information must be accepted and used by the recipient with the understanding that the primary information sources should be consulted for verification of the information contained on these maps. As such, the City of Kannapolis provides no warranties, expressed or implied, concerning the accuracy, completeness or reliability, or suitability of this data. Furthermore, the City of Kannapolis assumes no liability whatsoever associated with the use or misuse of such data.

S:\GIS\Maps\Public Works\Bethpage Sidewalk\Sidewalk Revised.mxd (MML) 1-5-17

**CITY OF KANNAPOLIS, NORTH CAROLINA
BETHPAGE ROAD SIDEWALK (PHASE 1)
PROJECT ORDINANCE**

BE IT ORDAINED by the City Council of the City of Kannapolis, North Carolina that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following Capital Project Ordinance is hereby adopted:

Section 1. The project authorized consists of the construction of a sidewalk on Bethpage Road.

Section 2. The City Manager is hereby directed to proceed with the Capital Project in compliance with the North Carolina General Statutes and within the budget contained herein.

Section 3. The following revenues are anticipated to be available to complete this project:

City Funds	\$ 162,000
NCDOT Funds	\$ 648,000

TOTAL	\$ 810,000

Section 4. The following amount is appropriated for the project:

Construction	\$ 810,000

TOTAL	\$ 810,000

Section 5. The finance officer is hereby directed to maintain within the Capital Project Fund sufficient specific detailed accounting records to provide for accounting to the City Council as required by North Carolina law.

Section 6. The finance officer is directed to report quarterly on the financial status of each project element in Section 4 and on total project revenue.

Section 7. The Budget Officer is directed to include a detailed analysis of past and future costs and revenues on this project in annual budget information presented to City Council.

Section 8. The City Manager is hereby authorized to transfer funds from one line item to another line item without further approval by the City Council.

Section 9. Copies of this Capital Project Ordinance shall be made available to the Budget Officer and the Finance Director for direction in carrying out this project.

This Ordinance is approved and adopted this 9th day of April 2018.

Milton D. Hinnant, Mayor

ATTEST:

Bridgette Bell, MMC, NCCMC
City Clerk



**City of Kannapolis
City Council Meeting
April 9, 2018
Staff Report**

TO: Mayor and City Council
FROM: Wilmer Melton, III - Director of Public Works
TITLE: Lane Street Water Line Replacement

A. Action Requested by City Council

Motion to approve the Project Ordinance and Reimbursement Resolution for the Lane Street Water Line Replacement Project.

B. Required Votes to Pass Required Action

Majority present at meeting

C. Background

The Lane Street Water Line Project consists of the replacement of approximately 10,000 linear feet of existing 2", 6", 8", and 10" AC and galvanized water pipe along Lane Street from N. Cannon Boulevard to China Grove Road. The design, survey, construction and contingency for this Project is estimated at approximately \$2,000,000. The estimated Project cost also includes potential point repairs for the sanitary sewer so that we don't have to disturb Lane Street after the paving is complete.

This Project was identified in our CIP as a project that needed to be completed prior to NCDOT's work along Lane Street to improve traffic flow and address accidents and fatalities along the corridor. This work was originally slated to begin after the I-85 Widening Project was completed; however, NCDOT has accelerated this Project and is prepared to begin work in late summer/fall of 2018.

D. Fiscal Considerations

Presently, this Project is funded within our CIP in FY 2020. It will be included in future financing but the project needs to start now to coincide with the NCDOT project timeline.

E. Policy Issues

City Council must approve the Project Ordinance in order for us to move forward with the Project.

F. Legal Issues

None

G. Alternative Courses of Action and Recommendation
--

1. **Approve the Project Ordinance and Reimbursement Resolution for the Lane Street Water Line Replacement. (Recommended)**
2. Deny approval of the Project Ordinance and Reimbursement Resolution for the Lane Street Water Line Replacement and replace the water line at a higher cost after the NCDOT paving has been completed
3. Table action to a future meeting.

ATTACHMENTS:

File Name

- ❏ 2018_04-09_Resolution_Lane_Street_Water_Line.doc
- ❏ 2018_04-09_Project_Ordinance_Lane_Street_Water.doc
- ❏ Lane_Street_Water_Line.pdf

RESOLUTION _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KANNAPOLIS
DECLARING THE INTENT OF THE CITY OF KANNAPOLIS TO REIMBURSE
ITSELF FOR CAPITAL EXPENDITURES INCURRED IN CONNECTION WITH
THE PROCEEDS OF CERTAIN TAX-EXEMPT OBLIGATIONS TO BE ISSUED.**

WHEREAS, the City Council of the City of Kannapolis (the "*City*") has determined that it is in the best interest of the City to construct a water line along Lane Street (the "*Project*");

WHEREAS, the City presently intends, at one time or from time to time, to finance all or a portion of the costs of the Project with the proceeds of tax-exempt obligations (the "*Bonds*") to finance, or to reimburse the City for, all or a portion of the costs of the Project; and

WHEREAS, the City desires to proceed with the Project and will incur and pay certain expenditures in connection with the Project prior to the date of issuance of the Bonds (the "*Original Expenditures*"), such Original Expenditures to be paid for originally from a source other than the proceeds of the Bonds, and the City intends, and reasonably expects, to be reimbursed for such Original Expenditures from a portion of the proceeds of the Bonds to be issued at a date occurring after the dates of such Original Expenditures;

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

Section 1. ***Official Declaration of Intent.*** The City presently intends, and reasonably expects, to reimburse itself for the Original Expenditures incurred and paid by the City on or after the date occurring 60 days prior to the date of adoption of this Resolution from a portion of the proceeds of the Bonds. The City reasonably expects to issue the Bonds to finance all or a portion of the costs of the Project and the maximum principal amount of Bonds expected to be issued by the City to pay for all or a portion of the costs of the Project is \$2,000,000.

Section 2. ***Compliance with Regulations.*** The City adopts this Resolution as a declaration of official intent under Section 1.150-2 of the Treasury Regulations promulgated under Section 103 of the Internal Revenue Code of 1986, as amended, to evidence the City's intent to reimburse the City for the Original Expenditures from proceeds of the Bonds.

Section 3. ***Itemization of Capital Expenditures.*** The Finance Director of the City, with advice from bond counsel, is hereby authorized, directed and designated to act on behalf of the City in determining and itemizing all of the Original Expenditures incurred and paid by the City in connection with the Project during the period commencing on the date occurring 60 days prior to the date of adoption of this Resolution and ending on the date of issuance of the Bonds.

Section 4. ***Effective Date.*** This Resolution shall become effective immediately upon the date of its adoption.

Adopted this 9th day of April 2018.

Milton D. Hinnant, Mayor

Attest:

Bridgette Bell, MMC, NCCMC
City Clerk

**CITY OF KANNAPOLIS, NORTH CAROLINA
DOWNTOWN WATER & SEWER INFRASTRUCTURE
CAPITAL PROJECT ORDINANCE
18 - 15**

BE IT ORDAINED by the City Council of the City of Kannapolis, North Carolina that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following Capital Project Ordinance is hereby adopted:

Section 1. The project authorized consists of replacement of a water line on Lane Street.

Section 2. The City Manager is hereby directed to proceed with the Capital Project in compliance with the North Carolina General Statutes and within the budget contained herein.

Section 3. The following revenues are anticipated to be available to complete this project:

Loan Proceeds	\$2,000,000

TOTAL	\$2,000,000

Section 4. The following amount is appropriated for the project:

Capital Outlay	\$2,000,000

TOTAL	\$2,000,000

Section 5. The finance officer is hereby directed to maintain within the Capital Project Fund sufficient specific detailed accounting records to provide for accounting to the City Council as required by North Carolina law.

Section 6. The finance officer is directed to report quarterly on the financial status of each project element in Section 4 and on total project revenue.

Section 7. The Budget Officer is directed to include a detailed analysis of past and future costs and revenues on this project in annual budget information presented to City Council.

Section 8. The City Manager is hereby authorized to transfer funds from one line item to another line item without further approval by the City Council.

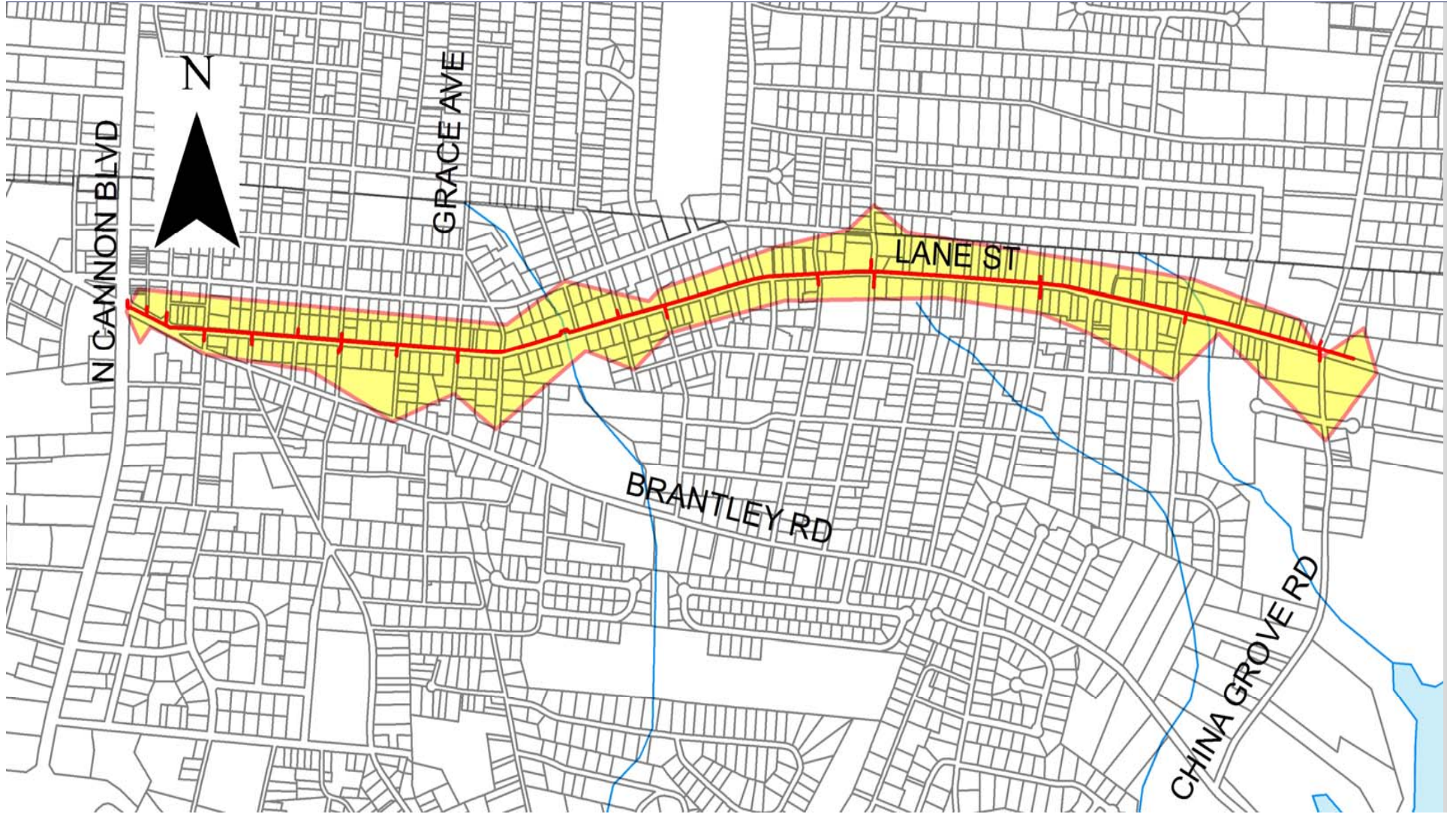
Section 9. Copies of this Capital Project Ordinance shall be made available to the Budget Officer and the Finance Director for direction in carrying out this project.

This Ordinance is approved and adopted this 9th day of April 2018.

Milton D. Hinnant, Mayor

ATTEST:

Bridgette Bell, MMC, NCCMC
City Clerk





**City of Kannapolis
City Council Meeting
April 9, 2018
Staff Report**

TO: Mayor and City Council
FROM: Wilmer Melton, III - Director of Public Works
TITLE: RCCC Water Extension, North Cannon Boulevard

A. Action Requested by City Council

Motion to award the RCCC Water Extension, North Cannon Boulevard Contract to the lowest responsible bidder, Carolina Siteworks, Inc., in the amount of \$483,179.40 and authorize the City Manager to execute contract.

B. Required Votes to Pass Required Action

Majority present at meeting

C. Background

The Project consists of approximately 756 linear feet of 12" water line, 778 linear feet of 8" water line and appurtenances. The water extension will satisfy the domestic and minimum fire flow requirements for the proposed RCCC Cosmetology Center to be located at 489 N. Cannon Boulevard.

Two bids were received on the Project and opened Friday March 23, 2018.

<u>Contractor</u>	<u>RCCC Water Main Extension</u>
Carolina Siteworks, Inc.	\$483,179.40
Landsdown Earth & Pipe, Inc.	\$831,604.07

The Contractor is awaiting Notice to Proceed on the Project following Council approval. The contract time for completion of the work is 60 days from the Notice to Proceed.

D. Fiscal Considerations

This Project is planned to be funded out of cash reserves to enhance fire flows and to support the Downtown Redevelopment effort and the necessary relocation of RCCC.

E. Policy Issues

Council approval is required for City Manager to execute a contract in this amount.

F. Legal Issues

None

G. Alternative Courses of Action and Recommendation

1. **Approve awarding the RCCC Water Extension, North Cannon Boulevard Project to the lowest responsible bidder, Carolina Siteworks, Inc., in the amount of \$483,179.40 and have the City Manager execute the Contract. (Recommended)**
2. Reject awarding the RCCC Water Extension, North Carolina Boulevard Project to the lowest responsible bidder, Carolina Siteworks, Inc. and delay the Project.
3. Table action to a future meeting.

ATTACHMENTS:

File Name

- ☐ Certified_Bid_Tab.pdf
- ☐ RCCC_Water_Extension_North_Cannon_Boulevard_Map.pdf



DESCRIPTION: INSTALLATION OF 12" DIP WATER MAIN ON NORTH CANNON BLVD AND 8" PVC WATER MAIN TO SERVE THE FUTURE RCCC COSMETOLOGY DEPARTMENT.

								ENGINEER'S ESTIMATE				CAROLINA SITEWORKS, INC. 300 WADE DR CHINA GROVE, NC 28023				LANDSDOWN EARTH & PIPE, INC. 3214 SUMMERFIELD DR MONROE, NC 28110			
ITEM	Desc.	Sect.	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION				
1	NCDOT	800	MOBILIZATION	1	LS	LUMP SUM	\$ 9,800.00	LUMP SUM	\$ 20,000.00	LUMP SUM	\$ 17,813.70	LUMP SUM	\$ 20,000.00	LUMP SUM	\$ 17,813.70				
2	NCDOT	801	CONSTRUCTION SURVEYING/AS-BUILTS	1	LS	LUMP SUM	\$ 5,000.00	LUMP SUM	\$ 8,500.00	LUMP SUM	\$ 20,000.00	LUMP SUM	\$ 8,500.00	LUMP SUM	\$ 20,000.00				
3	SP	1	TRAFFIC CONTROL	1	LS	LUMP SUM	\$ 10,000.00	LUMP SUM	\$ 30,000.00	LUMP SUM	\$ 20,000.00	LUMP SUM	\$ 30,000.00	LUMP SUM	\$ 20,000.00				
4	WSACC	02620	12" DUCTILE IRON PIPE (CLASS 350)	640	LF	\$ 70.00	\$ 44,800.00	\$ 91.70	\$ 58,688.00	\$ 100.00	\$ 64,000.00	\$ 91.70	\$ 58,688.00	\$ 100.00	\$ 64,000.00				
5	WSACC	02620	8" DUCTILE IRON PIPE (CLASS 350)	60	LF	\$ 60.00	\$ 3,600.00	\$ 78.80	\$ 4,728.00	\$ 90.00	\$ 5,400.00	\$ 78.80	\$ 4,728.00	\$ 90.00	\$ 5,400.00				
6	WSACC	02620	12" RESTRAINED JOINT DUCTILE IRON PIPE (CLASS 350)	120	LF	\$ 80.00	\$ 9,600.00	\$ 123.70	\$ 14,844.00	\$ 200.00	\$ 24,000.00	\$ 123.70	\$ 14,844.00	\$ 200.00	\$ 24,000.00				
7	WSACC	02620	8" RESTRAINED JOINT DUCTILE IRON PIPE (CLASS 350)	100	LF	\$ 70.00	\$ 7,000.00	\$ 97.40	\$ 9,740.00	\$ 100.00	\$ 10,000.00	\$ 97.40	\$ 9,740.00	\$ 100.00	\$ 10,000.00				
8	WSACC	02620	6" RESTRAINED JOINT DUCTILE IRON PIPE (CLASS 350)	30	LF	\$ 65.00	\$ 1,950.00	\$ 93.40	\$ 2,802.00	\$ 90.00	\$ 2,700.00	\$ 93.40	\$ 2,802.00	\$ 90.00	\$ 2,700.00				
9	WSACC	02620	8" C-900 PVC PIPE (CLASS 200)	815	LF	\$ 55.00	\$ 44,825.00	\$ 44.00	\$ 35,860.00	\$ 100.00	\$ 81,500.00	\$ 44.00	\$ 35,860.00	\$ 100.00	\$ 81,500.00				
10	WSACC	02620	MECHANICAL JOINT FITTINGS	3,100	LBS	\$ 4.00	\$ 12,400.00	\$ 4.28	\$ 13,268.00	\$ 10.00	\$ 31,000.00	\$ 4.28	\$ 13,268.00	\$ 10.00	\$ 31,000.00				
11	WSACC	15104	12" GATE VALVES	2	EA	\$ 2,500.00	\$ 5,000.00	\$ 2,827.00	\$ 5,654.00	\$ 4,000.00	\$ 8,000.00	\$ 2,827.00	\$ 5,654.00	\$ 4,000.00	\$ 8,000.00				
12	WSACC	15104	8" GATE VALVES	2	EA	\$ 1,600.00	\$ 3,200.00	\$ 1,635.00	\$ 3,270.00	\$ 6,000.00	\$ 12,000.00	\$ 1,635.00	\$ 3,270.00	\$ 6,000.00	\$ 12,000.00				
13	WSACC	15104	6" GATE VALVES	3	EA	\$ 1,100.00	\$ 3,300.00	\$ 1,261.00	\$ 3,783.00	\$ 4,000.00	\$ 12,000.00	\$ 1,261.00	\$ 3,783.00	\$ 4,000.00	\$ 12,000.00				
14	WSACC	15104	2" GATE VALVES	1	EA	\$ 800.00	\$ 800.00	\$ 600.00	\$ 600.00	\$ 2,000.00	\$ 2,000.00	\$ 600.00	\$ 600.00	\$ 2,000.00	\$ 2,000.00				
15	WSACC	15106	FIRE HYDRANTS	2	EA	\$ 3,000.00	\$ 6,000.00	\$ 6,000.00	\$ 12,000.00	\$ 6,000.00	\$ 12,000.00	\$ 6,000.00	\$ 12,000.00	\$ 6,000.00	\$ 12,000.00				
16	WSACC	01025	2" PERMANENT BLOW OFF	1	EA	\$ 400.00	\$ 400.00	\$ 1,500.00	\$ 1,500.00	\$ 2,000.00	\$ 2,000.00	\$ 1,500.00	\$ 1,500.00	\$ 2,000.00	\$ 2,000.00				
17	WSACC	01025	2" TEMPORARY BLOW OFF	1	EA	\$ 350.00	\$ 350.00	\$ 1,300.00	\$ 1,300.00	\$ 2,000.00	\$ 2,000.00	\$ 1,300.00	\$ 1,300.00	\$ 2,000.00	\$ 2,000.00				
18	WSACC	02703	1" WATER METER ASSEMBLY	2	EA	\$ 2,500.00	\$ 5,000.00	\$ 3,000.00	\$ 6,000.00	\$ 2,000.00	\$ 4,000.00	\$ 3,000.00	\$ 6,000.00	\$ 2,000.00	\$ 4,000.00				
19	WSACC	01025	4" BACKFLOW PREVENTION FOR FILLING NEW WATER LINES	1	EA	\$ 3,000.00	\$ 3,000.00	\$ 4,800.00	\$ 4,800.00	\$ 13,000.00	\$ 13,000.00	\$ 4,800.00	\$ 4,800.00	\$ 13,000.00	\$ 13,000.00				
20	WSACC	15107	10"x10" TAPPING, SLEEVE, & VALVE	1	EA	\$ 6,500.00	\$ 6,500.00	\$ 7,580.00	\$ 7,580.00	\$ 15,000.00	\$ 15,000.00	\$ 7,580.00	\$ 7,580.00	\$ 15,000.00	\$ 15,000.00				
21	WSACC	01025	TIE TO EXISTING 8" WATER MAIN	1	EA	\$ 1,500.00	\$ 1,500.00	\$ 3,500.00	\$ 3,500.00	\$ 15,000.00	\$ 15,000.00	\$ 3,500.00	\$ 3,500.00	\$ 15,000.00	\$ 15,000.00				
22	WSACC	01025	TIE TO EXISTING 6" WATER MAIN	1	EA	\$ 1,500.00	\$ 1,500.00	\$ 3,500.00	\$ 3,500.00	\$ 15,000.00	\$ 15,000.00	\$ 3,500.00	\$ 3,500.00	\$ 15,000.00	\$ 15,000.00				
23	WSACC	01025	TIE TO EXISTING 2" WATER MAIN	1	EA	\$ 1,000.00	\$ 1,000.00	\$ 3,000.00	\$ 3,000.00	\$ 15,000.00	\$ 15,000.00	\$ 3,000.00	\$ 3,000.00	\$ 15,000.00	\$ 15,000.00				
24	SP	2	RECONNECT TO EXISTING WATER METER	1	EA	\$ 1,000.00	\$ 1,000.00	\$ 900.00	\$ 900.00	\$ 15,000.00	\$ 15,000.00	\$ 900.00	\$ 900.00	\$ 15,000.00	\$ 15,000.00				
25	WSACC	02240	24"x0.250" CASING PIPE - BORE	110	LF	\$ 250.00	\$ 27,500.00	\$ 600.00	\$ 66,000.00	\$ 500.00	\$ 55,000.00	\$ 600.00	\$ 66,000.00	\$ 500.00	\$ 55,000.00				
26	WSACC	02240	18"x0.250" CASING PIPE - BORE	80	LF	\$ 200.00	\$ 16,000.00	\$ 580.00	\$ 46,400.00	\$ 500.00	\$ 40,000.00	\$ 580.00	\$ 46,400.00	\$ 500.00	\$ 40,000.00				
27	SP	3	DEAD-END THRUST BLOCK	1	EA	\$ 2,500.00	\$ 2,500.00	\$ 600.00	\$ 600.00	\$ 2,000.00	\$ 2,000.00	\$ 600.00	\$ 600.00	\$ 2,000.00	\$ 2,000.00				
28	NCDOT	340	ABANDON EXISTING 6" PIPE	60	LF	\$ 15.00	\$ 900.00	\$ 20.00	\$ 1,200.00	\$ 100.00	\$ 6,000.00	\$ 20.00	\$ 1,200.00	\$ 100.00	\$ 6,000.00				

PROJECT: RCCC WATER MAIN
EXTENSION

OWNER: CITY OF KANNAPOLIS

ALLEY, WILLIAMS, CARMEN AND KING, INC.
CONSULTING ENGINEERS

120 SOUTH MAIN STREET
KANNAPOLIS, NC 28081
704-938-1515



ENGINEER'S CERTIFIED BID TABULATION

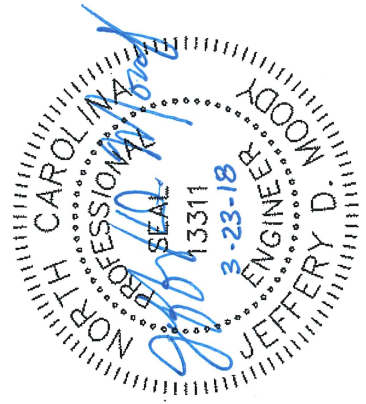
BID DATE: MARCH 23, 2018 AT 2:00PM

PAGE 2 OF 2

DESCRIPTION: INSTALLATION OF 12" DIP WATER MAIN ON NORTH CANNON BLVD AND 8" PVC WATER MAIN TO SERVE THE FUTURE RCCC COSMETOLOGY DEPARTMENT.

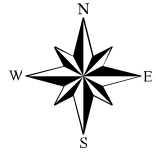
ITEM	Desc.	Sect.	DESCRIPTION	QUANTITY	UNIT	ENGINEER'S ESTIMATE			CAROLINA SITEWORKS, INC. 300 WADE DR CHINA GROVE, NC 28023			LANDSDOWN EARTH & PIPE, INC. 3214 SUMMERFIELD DR MONROE, NC 28110		
						UNIT PRICE	EXTENSION		UNIT PRICE	EXTENSION		UNIT PRICE	EXTENSION	
29	NCDOT	340	ABANDON EXISTING 2" PIPE	35	LF	\$ 10.00	\$ 350.00		\$ 20.00	\$ 700.00		\$ 100.00	\$ 3,500.00	
30	SP	4	ABANDON EXISTING FIRE HYDRANT	1	EA	\$ 750.00	\$ 750.00		\$ 600.00	\$ 600.00		\$ 6,000.00	\$ 6,000.00	
31	SP	5	REPLACE EXISTING SANITARY SEWER WITH 8" DUCTILE IRON PIPE (CLASS 50)	20	LF	\$ 150.00	\$ 3,000.00		\$ 200.00	\$ 4,000.00		\$ 400.00	\$ 8,000.00	
32	SP	6	REPLACE EXISTING SANITARY SEWER WITH 4" DUCTILE IRON PIPE (CLASS 50)	60	LF	\$ 75.00	\$ 4,500.00		\$ 150.00	\$ 9,000.00		\$ 300.00	\$ 18,000.00	
33	NCDOT	1605	SILT FENCE	430	LF	\$ 4.00	\$ 1,720.00		\$ 4.00	\$ 1,720.00		\$ 5.00	\$ 2,150.00	
34	SP	7	CATCH BASIN SILT SACKS	6	EA	\$ 500.00	\$ 3,000.00		\$ 333.00	\$ 1,998.00		\$ 500.00	\$ 3,000.00	
35	SP	8	CATCH BASIN PROTECTION	1	EA	\$ 350.00	\$ 350.00		\$ 400.00	\$ 400.00		\$ 500.00	\$ 500.00	
36	SP	9	GUTTERBUDDY	2	EA	\$ 400.00	\$ 800.00		\$ 200.00	\$ 400.00		\$ 200.00	\$ 400.00	
37	NCDOT	1631	MATTING FOR EROSION CONTROL	320	SY	\$ 6.00	\$ 1,920.00		\$ 3.00	\$ 960.00		\$ 2.00	\$ 640.00	
38	NCDOT	1660	SEEDING AND MULCHING	1	LS	LUMP SUM	\$ 2,500.00		LUMP SUM	\$ 2,000.00		LUMP SUM	\$ 10,000.00	
39	SP	10	ASPHALT ROADWAY REPAIR	35	SY	\$ 115.00	\$ 4,025.00		\$ 180.00	\$ 6,300.00		\$ 300.00	\$ 10,500.00	
40	SP	11	ASPHALT DRIVEWAY REPAIR	800	SY	\$ 45.00	\$ 36,000.00		\$ 39.33	\$ 31,464.00		\$ 163.00	\$ 130,400.00	
41	NCDOT	848	CONCRETE DRIVEWAY REPAIR	70	SY	\$ 65.00	\$ 4,550.00		\$ 81.00	\$ 5,670.00		\$ 300.00	\$ 21,000.00	
42	SP	12	REMOVE/REPLACE CURB AND GUTTER	40	LF	\$ 40.00	\$ 1,600.00		\$ 40.00	\$ 1,600.00		\$ 300.00	\$ 12,000.00	
43	NCDOT	852	CONCRETE ISLAND	25	SY	\$ 65.00	\$ 1,625.00		\$ 81.00	\$ 2,025.00		\$ 300.00	\$ 7,500.00	
44	NCDOT	545	INCIDENTAL STONE	10	TN	\$ 50.00	\$ 500.00		\$ 40.00	\$ 400.00		\$ 100.00	\$ 1,000.00	
						Subtotal	\$ 301,615.00			\$ 439,254.00			\$ 756,003.70	
						10% Contingency	\$ 30,161.50			\$ 43,925.40			\$ 75,600.37	
						Total	\$ 331,776.50			\$ 483,179.40			\$ 831,604.07	

I HEREBY CERTIFY THIS BID TAB TO BE A TRUE
AND ACCURATE COPY OF THE BIDS RECEIVED





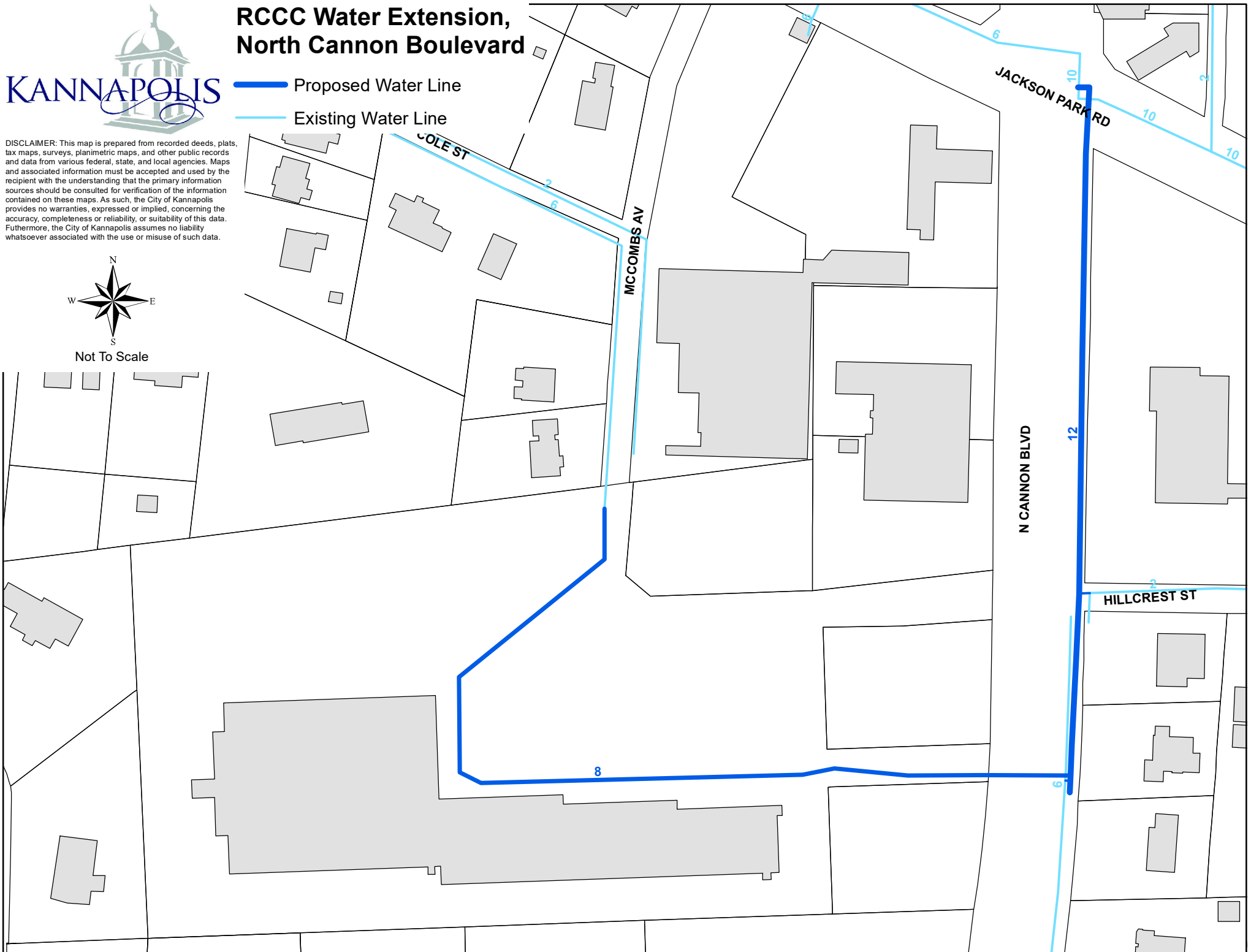
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Not To Scale

RCCC Water Extension, North Cannon Boulevard

- Proposed Water Line
- Existing Water Line





**City of Kannapolis
City Council Meeting
April 9, 2018
Staff Report**

TO: Mayor and City Council
FROM: Wilmer Melton, III - Director of Public Works
TITLE: Rogers Lake Road Y-4810K Update

A. Action Requested by City Council

Presentation only, no action required.

B. Required Votes to Pass Required Action

Presentation Only, no action required

C. Background

In 1996, the City of Kannapolis and the North Carolina Department of Transportation (NCDOT) executed a traffic separation study of the rail corridors within the City's planning limits which serves as a master plan concerning rail crossings. As a result of the study, a grade separated crossing in the vicinity of Rogers Lake Road was recommended. The City of Kannapolis received \$1,111,500 in funds allocated to NCDOT by the Federal Highway Administration (FHWA) for preliminary engineering associated with the improvements at the rail crossing at Rogers Lake Road (SR 1766).

The improvements at this location will consist of a grade separated crossing in the vicinity of Rogers Lake Road where it crosses Norfolk Southern, North Carolina Railroad tracks. The \$1,111,500 facilitated the design of the Project and placed us in a shovel-ready position for construction funding. As a result of the City of Kannapolis' effort in securing designated funds for Preliminary Design, the Project has been placed in an accelerated condition with right-of-way acquisition beginning in the summer of 2018 and construction to begin summer 2019.

D. Fiscal Considerations

There are no fiscal considerations regarding the items that Council will be hearing this evening. However, we will have costs associated with utility relocation and sidewalk participation for this Project.

E. Policy Issues

None

F. Legal Issues

None

G. Alternative Courses of Action and Recommendation

None. Presentation only

ATTACHMENTS:

File Name

No Attachments Available



**City of Kannapolis
City Council Meeting
April 9, 2018
Staff Report**

TO: Mayor and City Council
FROM: Wilmer Melton, III - Director of Public Works
TITLE: Irish Buffalo Creek Tributary Sewer Trunk Line Project

A. Action Requested by City Council

Motion to award the Irish Buffalo Creek Tributary Sewer Trunk Line Project to the lowest responsible bidder, Herrin Industrial, Inc., in the amount of \$2,233,629.45 and authorize the City Manager to execute contract.

B. Required Votes to Pass Required Action

Majority present at meeting

C. Background

The Project consists of the installation of approximately 799 linear feet of 8-inch PVC gravity sewer, 7,999 linear feet of 12-inch PVC gravity sewer, 1,476 linear feet of 12-inch DIP gravity sewer, 52 precast concrete manholes, and other miscellaneous items required to construct the Project along an unnamed tributary of Irish Buffalo Creek between Irish Buffalo Creek near Rogers Lake Road and Boy Scout Camp Road near Kannapolis Parkway.

Sealed bids were received on Thursday March 22, 2018.

<u>Contractor</u>	<u>Irish Buffalo Creek Tributary Sewer Trunk Line</u>
Herrin Industrial, Inc.	\$2,233,629.45
RH Price, Inc.	\$2,324,098.70
Fuller & Co. Construction	\$2,894,726.79
Dellinger, Inc.	\$3,953,085.40
State Utility Contractors, Inc.	\$4,312,734.80

D. Fiscal Considerations

The Irish Buffalo Creek Tributary Sewer Trunk Line Project is funded through revenue bonds.

E. Policy Issues

Council approval is required for the City Manager to execute a contract in this amount.

F. Legal Issues

None

G. Alternative Courses of Action and Recommendation

1. **Approve awarding the Irish Buffalo Creek Tributary Sewer Trunk Line Project to the lowest responsible bidder, Herrin Industrial, Inc., in the amount of \$2,233,629.45 and authorize the City Manager to execute contract. (Recommended)**
2. Reject award of the Irish Buffalo Creek Tributary Sewer Trunk Line Project to the lowest responsible bidder, Herrin Industrial, Inc., and delay the Project.
3. Table action to a future meeting.

ATTACHMENTS:

File Name

- ☐ Recommendation_of_Award.pdf
- ☐ Certified_Bid_Tabulation.pdf
- ☐ Project_Map_-_Irish_Buffalo_Creek_Tributary_Sewer_Trunk_Line.pdf

DAVIS & FLOYD

SINCE 1954

March 28, 2018

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

Re: Award Recommendation
Irish Buffalo Creek Tributary Sewer Trunk Line
D&F Job Number: 041030.00

Dear Mr. Melton:

Sealed bids were received at 2 P.M. on March 22, 2018 at the offices of the City of Kannapolis for the Irish Buffalo Creek Tributary Sewer Trunk Line project. The bids have been reviewed, and a tabulation of the bids received is enclosed. The lowest responsive, responsible bidder for the total unit price bid was Herrin Industrial, Inc. with a total unit price bid of \$2,233,629.45.

Based upon a review of their current licensing status with the State of North Carolina, we feel the lower bidder is both qualified and competent in performing work associated with the project. Davis & Floyd hereby recommends that the project be awarded to Herrin Industrial, Inc. in the amount of \$2,233,629.45.

Please advise if you have any questions regarding this matter.

Very truly yours,

DAVIS & FLOYD



Thomas R. Mann, P.E.
Engineer

Enclosures: Certified Bid Tabulation

James R. Mann

Davis & Floyd, Inc.
Greenville, South Carolina
Certified As Correct:
Project No. 041030.00

Irish Buffalo Creek Tributary Sewer Trunk Line Project
City of Kannapolis
Project Manager: Thomas Mann, PE
Bid Date: 3/22/18

Item	Description	Quantity	Units	Unit Price	Amount	RI Price, Inc. Charlotte, NC License #22401	Unit Price	Amount	Fuller & Co. Construction Bessemer City, NC License #64580
1.	Mobilization (Section 01025, Item 1)	1	LS	\$39,852.47	\$39,852.47	\$39,852.47	\$39,852.47	\$39,852.47	\$70,803.00
2.	PVC Sewer (SP-1, Item 2)								
2.A	8-inch PVC SDR-35 Sewer								
2.A.1	6' - 6' Depth	39	LF	\$77.76	\$3,032.64	\$80.00	\$83.91	\$3,120.00	\$3,272.49
2.A.2	6' - 8' Depth	27	LF	\$82.76	\$2,234.52	\$80.00	\$83.91	\$2,160.00	\$2,265.57
2.A.3	8' - 10' Depth	203	LF	\$87.76	\$17,815.28	\$85.00	\$83.91	\$17,255.00	\$17,033.73
2.A.4	10' - 12' Depth	311	LF	\$92.76	\$28,848.36	\$95.00	\$83.91	\$29,545.00	\$26,096.01
2.A.5	12' - 14' Depth	61	LF	\$97.76	\$5,983.36	\$106.00	\$83.91	\$6,466.00	\$5,118.51
2.A.6	14' - 16' Depth	23	LF	\$107.76	\$2,478.48	\$120.00	\$83.91	\$2,760.00	\$1,929.93
2.A.7	16' - 18' Depth	33	LF	\$117.76	\$3,886.08	\$140.00	\$83.91	\$4,620.00	\$2,769.03
2.A.8	18' - 20' Depth	69	LF	\$127.76	\$8,815.44	\$175.00	\$83.91	\$12,075.00	\$5,789.79
2.A.9	20' - 22' Depth	33	LF	\$137.76	\$4,546.08	\$220.00	\$83.91	\$7,260.00	\$2,769.03
2.B	12-inch PVC SDR-35 Sewer								
2.B.1	6' - 6' Depth	0	LF	\$82.18	\$0.00	\$88.00	\$94.46	\$0.00	\$0.00
2.B.2	6' - 8' Depth	350	LF	\$92.18	\$32,263.00	\$88.00	\$94.46	\$30,860.00	\$33,061.00
2.B.3	8' - 10' Depth	1,045	LF	\$102.18	\$106,778.10	\$93.00	\$94.46	\$97,185.00	\$98,710.70
2.B.4	10' - 12' Depth	1,997	LF	\$112.18	\$224,023.46	\$103.00	\$94.46	\$205,691.00	\$188,636.62
2.B.5	12' - 14' Depth	2,160	LF	\$122.18	\$263,908.80	\$114.00	\$94.46	\$246,240.00	\$204,033.60
2.B.6	14' - 16' Depth	1,043	LF	\$132.18	\$137,863.74	\$128.00	\$94.46	\$133,504.00	\$98,521.78
2.B.7	16' - 18' Depth	622	LF	\$172.18	\$107,095.96	\$148.00	\$94.46	\$92,056.00	\$58,754.12
2.B.8	18' - 20' Depth	419	LF	\$202.18	\$84,713.42	\$183.00	\$94.46	\$76,677.00	\$39,578.74
2.B.9	20' - 22' Depth	319	LF	\$212.18	\$67,685.42	\$230.00	\$94.46	\$73,370.00	\$30,132.74
2.B.10	22' - 24' Depth	44	LF	\$222.18	\$9,775.92	\$300.00	\$94.46	\$13,200.00	\$4,156.24
3.	DIP Sewer (SP-1, Item 3)								
3.A	12-inch Ductile Iron Pipe Class 50								
3.A.1	6' - 6' Depth	44	LF	\$101.37	\$4,450.28	\$106.00	\$114.46	\$4,664.00	\$5,036.24
3.A.2	6' - 8' Depth	28	LF	\$111.37	\$3,118.36	\$106.00	\$114.46	\$2,968.00	\$3,204.88
3.A.3	8' - 10' Depth	336	LF	\$121.37	\$40,780.32	\$111.00	\$114.46	\$37,296.00	\$38,458.56
3.A.4	10' - 12' Depth	436	LF	\$131.37	\$57,277.32	\$121.00	\$114.46	\$52,756.00	\$49,904.56
3.A.5	12' - 14' Depth	104	LF	\$141.37	\$14,702.48	\$132.00	\$114.46	\$13,728.00	\$11,903.84
3.A.6	14' - 16' Depth	153	LF	\$161.37	\$24,689.61	\$146.00	\$114.46	\$22,338.00	\$17,512.38
3.A.7	16' - 18' Depth	142	LF	\$171.37	\$24,334.54	\$171.00	\$114.46	\$24,282.00	\$16,253.32
3.A.8	18' - 20' Depth	0	LF	\$221.37	\$0.00	\$205.00	\$114.46	\$0.00	\$0.00
3.A.9	20' - 22' Depth	37	LF	\$231.37	\$8,560.60	\$252.00	\$114.46	\$9,324.00	\$4,235.02
3.A.10	22' - 24' Depth	166	LF	\$241.37	\$40,067.42	\$322.00	\$114.46	\$53,452.00	\$19,000.39
4.	Steel Casing Pipe with DIP Sewer (SP-2, Item 1)								
4.A	24-inch Steel Casing & 12-inch DIP Class 50 Sewer								
4.A.1	10' - 12' Depth	30	LF	\$85.81	\$2,574.30	\$200.00	\$759.73	\$6,000.00	\$22,791.90
5.	Tie to Existing Sewer System (SP-1, Item 5)	1	EA	\$5,191.59	\$5,191.59	\$11,500.00	\$4,171.98	\$11,500.00	\$4,171.98
6.	Standard Manholes (Section 01025, Item 6)								
6.A	4' - 0" Diameter	52	EA	\$2,074.72	\$107,885.44	\$3,200.00	\$5,438.16	\$166,400.00	\$282,784.32
7.	Manhole Additional Depth (Section 01025, Item 7)								
7.A	4' - 0" Diameter	483	VF	\$257.14	\$124,198.62	\$210.00	\$174.89	\$101,430.00	\$84,471.97
8.	Vent Pipe (Section 01025, Item 9)	6	EA	\$824.95	\$4,949.70	\$1,200.00	\$1,177.51	\$7,200.00	\$7,065.06
9.	PVC Sewer Tap & Lateral (Section 01025, Item 10)	1	EA	\$5,077.58	\$5,077.58	\$2,500.00	\$945.80	\$2,500.00	\$945.80
10.	DIP Sewer Tap & Lateral (Section 01025, Item 10)	1	EA	\$5,077.58	\$5,077.58	\$3,000.00	\$1,083.30	\$3,000.00	\$1,083.30
11.	Asphalt Driveway Replacement (Section 01025, Item 13)	50	SY	\$8.88	\$3,944.00	\$60.00	\$58.15	\$3,000.00	\$2,907.50
12.	Concrete Driveway Replacement (Section 01025, Item 14)	135	SY	\$55.81	\$7,533.35	\$70.00	\$75.39	\$9,450.00	\$10,177.65

Thomas R. Mann

Davis & Floyd, Inc.
Greenville, South Carolina
Certified As Correct:
Project No. 041030.00

Irish Buffalo Creek Tributary Sewer Trunk Line Project
City of Kannapolis
Project Manager: Thomas Mann, PE
Bid Date: 3/22/18

Item	Description	Quantity	Units	Herrin Industrial, Inc. Mt. Pleasant, NC License #71184		RI Price, Inc. Charlotte, NC License #23401		Fuller & Co. Construction Bessemer City, NC License #64580	
				Unit Price	Amount	Unit Price	Amount	Unit Price	Amount
13.	Stone Roadway Replacement (Section 01025, Item 15)	369	SY	\$31.55	\$11,641.95	\$12.00	\$4,428.00		\$4,582.98
14.	Asphalt Roadway Replacement (Section 01025, Item 16)	187	SY	\$130.81	\$24,461.47	\$115.00	\$21,505.00	\$108.32	\$20,255.84
15.	Clearing, Grubbing, and Disposal of Debris (SP-1, Item 18)	1	LS	\$62,500.00	\$62,500.00	\$140,000.00	\$140,000.00	\$820,496.00	\$820,496.00
16.	Seeding and Mulching (SP-4, Item 18)	1	LS	\$47,085.00	\$47,085.00	\$55,000.00	\$55,000.00	\$43,642.50	\$43,642.50
17.	Sedimentation and Erosion Control Devices (SP-1, Item 20)								
17.A	Temporary Sediment Tube	6	EA	\$62.93	\$377.58	\$150.00	\$900.00	\$50.00	\$300.00
17.B	Temporary Compost Sock	15	EA	\$66.16	\$992.40	\$200.00	\$3,000.00	\$85.00	\$1,275.00
17.C	Sediment Fencing	12,420	LF	\$1.72	\$21,362.40	\$2.50	\$31,050.00	\$2.29	\$28,441.80
17.D	Inlet Protection	1	EA	\$126.94	\$126.94	\$200.00	\$200.00	\$200.00	\$200.00
17.E	Temporary Construction Exit	8	EA	\$4,569.75	\$36,558.00	\$2,500.00	\$20,000.00	\$2,936.00	\$23,488.00
17.F	Erosion Control Matting	15,131	SY	\$1.81	\$27,387.11	\$2.00	\$30,262.00	\$1.82	\$27,538.42
18.	Anti-Sleep Collars (Section 01025, Item 22)	1	EA	\$931.00	\$931.00	\$1,000.00	\$1,000.00	\$1,159.00	\$1,159.00
19.	Culverts (SP-2, Item 2)								
19.A	36-inch HDPE Culvert with Headwalls	1	LS	\$6,028.81	\$6,028.81	\$20,000.00	\$20,000.00	\$13,174.00	\$13,174.00
19.B	54-inch HDPE Culvert with Headwalls	1	LS	\$8,926.09	\$8,926.09	\$31,000.00	\$31,000.00	\$26,003.00	\$26,003.00
20.	Stream Crossing (SP-2, Item 3)	4	EA	\$13,232.50	\$52,930.00	\$15,000.00	\$60,000.00	\$10,093.00	\$40,372.00
21.	Concrete Encasement (SP-2, Item 4)	220	LF	\$157.75	\$34,705.00	\$185.00	\$40,700.00	\$177.73	\$39,100.60
22.	Traffic Control (SP-2, Item 5)	1	LS	\$5,732.50	\$5,732.50	\$1,500.00	\$1,500.00	\$5,000.00	\$5,000.00
23.	Easement Grading (SP-2, Item 6)	1	LS	\$20,775.00	\$20,775.00	\$12,000.00	\$12,000.00	\$44,924.00	\$44,924.00
24.	Gates (SP-2, Item 7)	4	EA	\$519.38	\$2,077.52	\$2,500.00	\$10,000.00	\$1,125.00	\$4,500.00
25.	Tree Relocation (SP-2, Item 8)	1	EA	\$5,387.50	\$5,387.50	\$3,000.00	\$3,000.00	\$750.00	\$750.00
26.	Utility Construction As-Built Drawings (SP-2, Item 9)	1	EA	\$8,081.25	\$8,081.25	\$12,000.00	\$12,000.00	\$11,025.50	\$11,025.50
Contingency		10%			\$203,057.22		\$211,281.70		\$263,156.98
Total Base Bid Amount					\$2,233,629.45		\$2,324,098.70		\$2,894,726.79

Davis & Floyd, Inc.
Greenville, South Carolina
Certified As Correct:
Project No. 041030.00

Thomas R. Mann

Irish Buffalo Creek Tributary Sewer Trunk Line Project
City of Kannapolis
Project Manager: Thomas Mann, PE
Bid Date: 3/22/18

Item	Description	Quantity	Units	Dellinger, Inc. Monroe, NC License #5992		State Utility Contractors, Inc. Monroe, NC License #17793		Amount
				Unit Price	Amount	Unit Price	Amount	
1.	Mobilization (Section 01025, Item 1)	1	LS	\$70,000.00	\$70,000.00	\$78,000.00	\$78,000.00	
2.	PVC Sewer (SP-1, Item 2)							
2.A	8-inch PVC SDR-35 Sewer							
2.A.1	0' - 6' Depth	39	LF	\$67.00	\$2,613.00	\$232.00	\$9,048.00	
2.A.2	6' - 8' Depth	27	LF	\$81.00	\$2,187.00	\$233.00	\$6,291.00	
2.A.3	8' - 10' Depth	203	LF	\$105.00	\$21,315.00	\$235.00	\$47,705.00	
2.A.4	10' - 12' Depth	311	LF	\$145.00	\$45,095.00	\$237.00	\$73,707.00	
2.A.5	12' - 14' Depth	61	LF	\$205.00	\$12,505.00	\$245.00	\$14,945.00	
2.A.6	14' - 16' Depth	23	LF	\$285.00	\$6,555.00	\$250.00	\$5,750.00	
2.A.7	16' - 18' Depth	33	LF	\$385.00	\$12,705.00	\$280.00	\$9,240.00	
2.A.8	18' - 20' Depth	69	LF	\$400.00	\$27,600.00	\$310.00	\$21,390.00	
2.A.9	20' - 22' Depth	33	LF	\$430.00	\$14,190.00	\$362.00	\$11,946.00	
2.B	12-inch PVC SDR-35 Sewer							
2.B.1	0' - 6' Depth	0	LF	\$90.00	\$0.00	\$239.00	\$0.00	
2.B.2	6' - 8' Depth	350	LF	\$105.00	\$36,750.00	\$240.00	\$84,000.00	
2.B.3	8' - 10' Depth	1,045	LF	\$130.00	\$135,850.00	\$242.00	\$252,890.00	
2.B.4	10' - 12' Depth	1,997	LF	\$173.00	\$345,481.00	\$245.00	\$489,265.00	
2.B.5	12' - 14' Depth	2,160	LF	\$235.00	\$507,600.00	\$250.00	\$540,000.00	
2.B.6	14' - 16' Depth	1,043	LF	\$321.00	\$334,803.00	\$257.00	\$268,051.00	
2.B.7	16' - 18' Depth	622	LF	\$415.00	\$258,130.00	\$286.00	\$177,892.00	
2.B.8	18' - 20' Depth	419	LF	\$425.00	\$178,075.00	\$324.00	\$135,756.00	
2.B.9	20' - 22' Depth	319	LF	\$450.00	\$143,550.00	\$363.00	\$115,797.00	
2.B.10	22' - 24' Depth	44	LF	\$530.00	\$23,320.00	\$430.00	\$18,920.00	
3.	DIP Sewer (SP-1, Item 3)							
3.A	12-inch Ductile Iron Pipe Class 50							
3.A.1	0' - 6' Depth	44	LF	\$169.00	\$7,436.00	\$262.00	\$11,538.00	
3.A.2	6' - 8' Depth	28	LF	\$184.00	\$5,152.00	\$263.00	\$7,364.00	
3.A.3	8' - 10' Depth	336	LF	\$204.00	\$68,544.00	\$265.00	\$89,040.00	
3.A.4	10' - 12' Depth	436	LF	\$249.00	\$108,564.00	\$269.00	\$117,284.00	
3.A.5	12' - 14' Depth	104	LF	\$310.00	\$32,240.00	\$275.00	\$28,600.00	
3.A.6	14' - 16' Depth	153	LF	\$388.00	\$59,364.00	\$286.00	\$43,758.00	
3.A.7	16' - 18' Depth	142	LF	\$485.00	\$68,870.00	\$310.00	\$44,020.00	
3.A.8	18' - 20' Depth	0	LF	\$500.00	\$0.00	\$350.00	\$0.00	
3.A.9	20' - 22' Depth	37	LF	\$530.00	\$19,610.00	\$370.00	\$13,690.00	
3.A.10	22' - 24' Depth	166	LF	\$600.00	\$99,600.00	\$410.00	\$68,060.00	
4.	Steel Casing Pipe with DIP Sewer (SP-2, Item 1)							
4.A	24-inch Steel Casing & 12-inch DIP Class 50 Sewer							
4.A.1	10' - 12' Depth	30	LF	\$340.00	\$10,200.00	\$500.00	\$15,000.00	
5.	Tie to Existing Sewer System (SP-1, Item 5)	1	EA	\$3,100.00	\$3,100.00	\$10,600.00	\$10,600.00	
6.	Standard Manholes (Section 01025, Item 6)							
6.A	4' - 0" Diameter	52	EA	\$4,200.00	\$218,400.00	\$3,500.00	\$182,000.00	
7.	Manhole Additional Depth (Section 01025, Item 7)							
7.A	4' - 0" Diameter	483	VF	\$245.00	\$127,935.00	\$260.00	\$125,580.00	
8.	Vent Pipe (Section 01025, Item 9)	6	EA	\$2,300.00	\$13,800.00	\$1,700.00	\$10,200.00	
9.	PVC Sewer Tap & Lateral (Section 01025, Item 10)	1	EA	\$3,000.00	\$3,000.00	\$1,500.00	\$1,500.00	
10.	DIP Sewer Tap & Lateral (Section 01025, Item 10)	1	EA	\$3,700.00	\$3,700.00	\$4,500.00	\$4,500.00	
11.	Asphalt Driveway Replacement (Section 01025, Item 13)	50	SY	\$65.00	\$3,250.00	\$60.00	\$3,000.00	
12.	Concrete Driveway Replacement (Section 01025, Item 14)	135	SY	\$100.00	\$13,500.00	\$90.00	\$12,150.00	

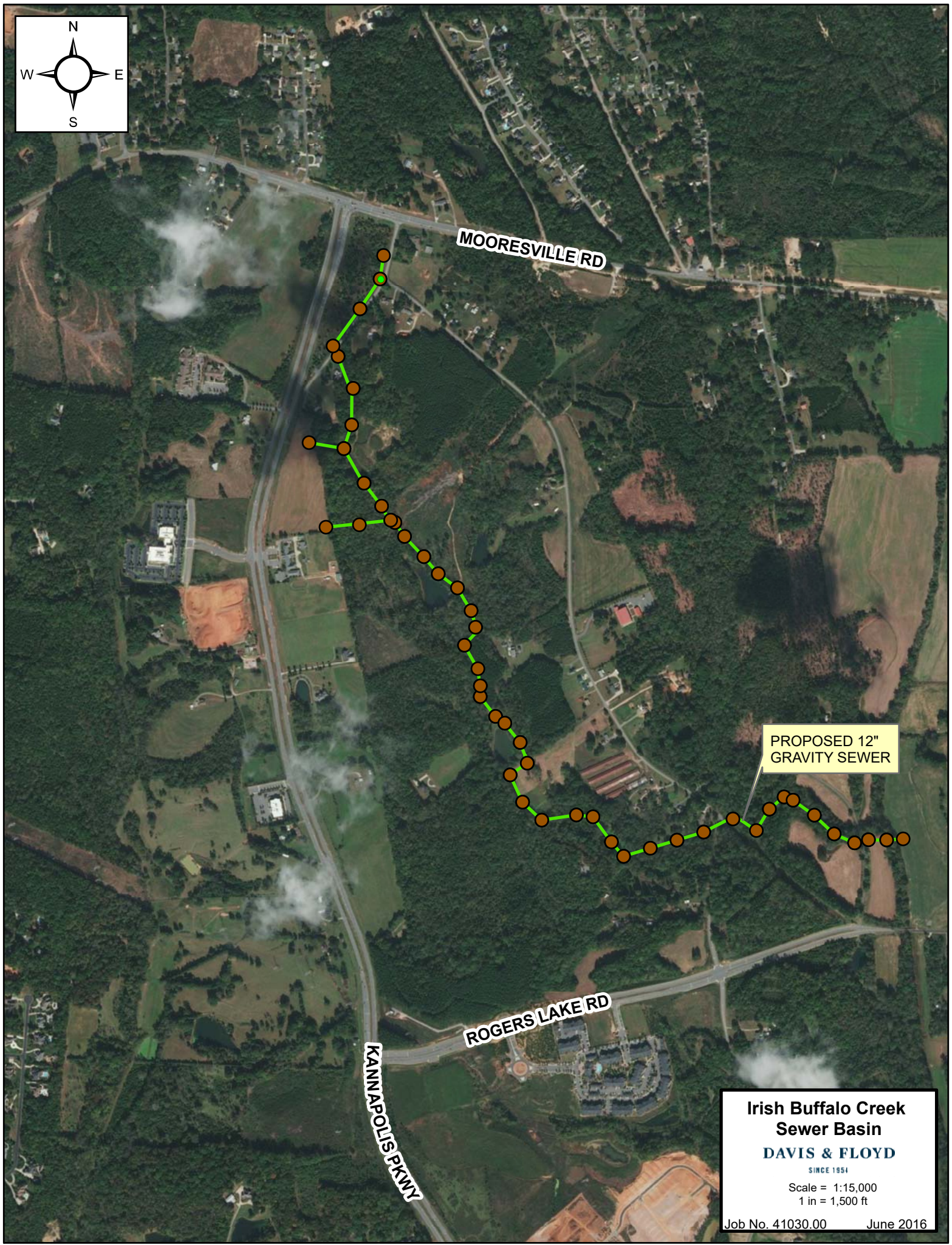
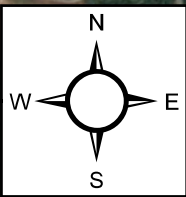
Davis & Floyd, Inc.
Greenville, South Carolina
Certified As Correct:
Project No. 041030.00

James R. Mann

Irish Buffalo Creek Tributary Sewer Trunk Line Project
City of Kannapolis
Project Manager: Thomas Mann, PE
Bid Date: 3/22/18

Item	Description	Quantity	Units	Dellinger, Inc. Monroe, NC License #5992		State Utility Contractors, Inc. Monroe, NC License #17793		Amount
				Unit Price	Amount	Unit Price	Amount	
13.	Stone Roadway Replacement (Section 01025, Item 15)	369	SY	\$28.00	\$10,332.00	\$22.00	\$8,118.00	
14.	Asphalt Roadway Replacement (Section 01025, Item 16)	187	SY	\$80.00	\$14,960.00	\$910.00	\$170,170.00	
15.	Clearing, Grubbing, and Disposal of Debris (SP-1, Item 18)	1	LS	\$101,000.00	\$101,000.00	\$113,500.00	\$113,500.00	
16.	Seeding and Mulching (SP-1, Item 18)	1	LS	\$36,000.00	\$36,000.00	\$21,000.00	\$21,000.00	
17.	Sedimentation and Erosion Control Devices (SP-1, Item 20)							
17.A	Temporary Sediment Tube	6	EA	\$1,000.00	\$6,000.00	\$110.00	\$660.00	
17.B	Temporary Compost Sock	15	EA	\$1,500.00	\$22,500.00	\$700.00	\$10,500.00	
17.C	Sediment Fencing	12,420	LF	\$4.00	\$49,680.00	\$3.00	\$37,260.00	
17.D	Inlet Protection	1	EA	\$300.00	\$300.00	\$500.00	\$500.00	
17.E	Temporary Construction Exit	8	EA	\$5,100.00	\$40,800.00	\$3,000.00	\$24,000.00	
17.F	Erosion Control Matting	15,131	SY	\$31.00	\$45,393.00	\$3.00	\$45,393.00	
18.	Anti-Sleep Collars (Section 01025, Item 22)	1	EA	\$2,200.00	\$2,200.00	\$1,000.00	\$1,000.00	
19.	Culverts (SP-2, Item 2)							
19.A	36-inch HDPE Culvert with Headwalls	1	LS	\$20,000.00	\$20,000.00	\$45,000.00	\$45,000.00	
19.B	54-inch HDPE Culvert with Headwalls	1	LS	\$31,000.00	\$31,000.00	\$93,000.00	\$93,000.00	
20.	Stream Crossing (SP-2, Item 3)	4	EA	\$12,500.00	\$50,000.00	\$30,500.00	\$122,000.00	
21.	Concrete Encasement (SP-2, Item 4)	220	LF	\$300.00	\$66,000.00	\$160.00	\$35,200.00	
22.	Traffic Control (SP-2, Item 5)	1	LS	\$5,000.00	\$5,000.00	\$4,500.00	\$4,500.00	
23.	Easement Grading (SP-2, Item 6)	1	LS	\$15,000.00	\$15,000.00	\$30,000.00	\$30,000.00	
24.	Gates (SP-2, Item 7)	4	EA	\$5,500.00	\$22,000.00	\$1,000.00	\$4,000.00	
25.	Tree Relocation (SP-2, Item 8)	1	EA	\$5,000.00	\$5,000.00	\$1,000.00	\$1,000.00	
26.	Utility Construction As-Built Drawings (SP-2, Item 9)	1	EA	\$5,900.00	\$5,900.00	\$6,000.00	\$6,000.00	
	Contingency	10%			\$359,371.40		\$392,066.80	
Total Base Bid Amount					\$3,953,085.40		\$4,312,734.80	

*Math Error(s)



PROPOSED 12"
GRAVITY SEWER

**Irish Buffalo Creek
Sewer Basin**

DAVIS & FLOYD

SINCE 1954

Scale = 1:15,000
1 in = 1,500 ft

Job No. 41030.00 June 2016



**City of Kannapolis
City Council Meeting
April 9, 2018
Staff Report**

TO: Mayor and City Council
FROM: Irene Sacks, Director of Economic & Community Development
TITLE: College Station Commercial Leases

A. Action Requested by City Council

Motion to authorize the City Manager to execute leases for 461 N. Cannon Blvd. and for 479 N. Cannon Blvd.

B. Required Votes to Pass Required Action

Majority present at meeting

C. Background

The City purchased a shopping center on N. Cannon Blvd to house the Rowan-Cabarrus Community College cosmetology facility. Now that renovations for the anchor building are underway, the City engaged a broker to market the remaining commercial spaces to attract new tenants.

Chip Mark with Mark Real Estate Advisors has brought the following new leases to the City for approval:

- Five-year lease of 461 N. Cannon Blvd to Marcos Martinez Gonzalez & Paula Beltran for a western wear store.
- Five-year lease of 479 N. Cannon Blvd to Marco Sanchez for a party supply store.

Mr. Mark has reviewed the tenants' business history and feels these would bring positive traffic to the shopping center.

D. Fiscal Considerations

The two leases will generate approximately \$28,000 in the first year in new revenue to the City as owners of the Shopping Center (with annual increases).

E. Policy Issues

None.

F. Legal Issues

None

G. Alternative Courses of Action and Recommendation

1. **Motion to authorize the City Manager to execute leases for 461 N. Cannon Blvd and 479 N. Cannon Blvd. (Recommended)**
2. Do not authorize the execution of one or both leases.
3. Table action to a future meeting.

ATTACHMENTS:

File Name

- ❑ Public_Notice_(461_N_Cannon_Blvd)_4-9-2018.docx
- ❑ Western_Wear_Lease.pdf
- ❑ Public_Notice_(479_N_Cannon_Blvd)_4-9-2018.docx
- ❑ Marco_Sanchez_Lease.pdf



**PUBLIC NOTICE
LEASE OF CITY PROPERTY**

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

461 N. Cannon Blvd
Kannapolis, North Carolina

The City intends to lease the property to Marcos Martinez Gonzalez & Paula Beltran for a term of five years. In consideration of the lease, Tenant will pay the City base monthly rent for the following years of the term: Year 1: \$933.33, Year 2: \$962.55, Year 3: \$991.67, Year 4: \$1,020.83, Year 5: \$1,050.00.

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, April 9, 2018. At that time the board intends to authorize the lease of and option for the property described above.

Anyone who requires an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a program, service, or activity of **the City of Kannapolis**, should contact the office of ***Tina H. Cline, Human Resource Director, by phone at 704-920-4302 or by email at tccline@kannapolisnc.gov*** as soon as possible but no later than 48 hours before the scheduled event.

ADVERTISING INSTRUCTIONS:

To be published as a Legal Ad on **WEDNESDAY, MARCH 28, 2018**

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

Bridgette Bell, City Clerk

(704) 920-4303

bbell@kannapolisnc.gov

RETAIL CENTER LEASE

Between

City of Kannapolis

and

TBD Western Wear

INDEX TO STANDARD COMMERCIAL SHOPPING CENTER

LEASE

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EXHIBIT "E" Definition of Common Area Costs	
EXHIBIT "F"Landlord's Sign Criteria	

Tenant _____

Landlord _____

**STANDARD COMMERCIAL
SHOPPING CENTER LEASE**

THE STATE OF NORTH CAROLINA

COUNTY OF

This lease, entered into this 7th day of March, 2018, by and between the Landlord and the Tenant hereinafter named.

ARTICLE 1. Definitions and Certain Basic Provisions.

1.1

- a) "Landlord": City of Kannapolis
- b) Landlord's Address: 401 Laureate Way Kannapolis, NC 28081
- c) "Tenant": Marcos Martinez Gonzalez
- d) Tenant's mailing address: 870 Cold Water Ext
Kannapolis, NC 28083
- e) Tenant's trade name: TBD Western Wear
- f) Tenant's address in Shopping Center: Suite 461
- g) "Premises": approximately 1400 square feet in Building (computed from measurements to the exterior of outside walls of the building and to the center of interior walls), such premises being shown and outlined within the cross-hatched area of the site plan attached hereto as Exhibit A, and being part of the Shopping Center situated upon the property described in Exhibit B attached hereto. "Shopping Center" shall refer to the property described in Exhibit B, together with such additions and other changes as Landlord may from time to time designate as included within the Shopping Center.
- h) Lease term: Commencing on the "Commencement Date" as defined in Section 3.2 and ending 60 months thereafter except that in the event the Commencement Date is a date other than the first day of a calendar month, said term shall extend for said number of months in addition to the remainder of the calendar month following the Commencement date.
- i) "Estimated Completion Date": "ready for occupancy"
- j) Permitted Use: Sale of Western Wear clothing, hats, boots and related apparel
- k) Minimum Guaranteed Rental: per month (yr. 1 \$933.33, yr. 2 \$962.55, yr. 3 \$991.67, yr. 4 \$1020.83, yr. 5 \$1050.00)
- l) Initial Common Area Maintenance Charge per month under Section 5.3: \$87 per month (\$.75 per square foot per year).
- m) Initial Insurance Escrow Payment per month under Section 12.3: \$29 per month (\$.25 per square foot per year).
- n) Initial Tax Escrow Payment per month under Section 18.2: \$58 per month (\$.50 per square foot per year).
- o) Initial Capital Reserve Payment per month: N/A

Tenant _____

Landlord _____

p) Security Deposit: One month's total rent

1.2 The sum of:

	<u>yr. 1</u>	<u>yr. 2</u>	<u>yr. 3</u>	<u>yr. 4</u>	<u>yr.5</u>
Initial Minimum Guaranteed Rental; and	\$933.33	\$962.55	\$991.67	\$1,020.83	\$1,050.00
Initial Common Area Maintenance Charge; and	\$87.00	\$87.00	\$87.00	\$87.00	\$87.00
Initial Insurance Escrow Payment; and	\$29.00	\$29.00	\$29.00	\$29.00	\$29.00
Initial Tax Escrow Payment; and	\$58.00	\$58.00	\$58.00	\$58.00	\$58.00
Initial Capital Reserve Payment; and					
Initial Monthly Payment Total	\$1107.33	\$1136.55	\$1165.67	\$1194.83	\$1224.00

1.3 Each of the foregoing definitions and basic provisions shall be construed in conjunction with and limited by references thereto in other provisions of this lease.

ARTICLE II. Granting Clause. 2.1 In consideration of the obligation of Tenant to pay rent and other charges as herein provided and in consideration of the other terms, covenants and conditions hereof, Landlord hereby demises and leases to Tenant, and Tenant hereby takes from Landlord, the Premises TO HAVE AND TO HOLD the Premises of the lease term, all upon the terms and conditions set forth in this lease.

ARTICLE III. Construction and Acceptance of Demised Premises. 3.1 Landlord shall proceed to construct improvements upon the Premises in compliance with the "Description of Landlord's Work" in Exhibit C attached hereto, with such minor variations as Landlord may deem advisable, and tender the Premises to Tenant. However, Tenant acknowledges that Landlord is relying on a third party to construct the Shell Building and Landlord's work will not commence until such third party delivers a Shell building to Landlord. Landlord may terminate this Lease with written notice to Tenant if the Shell building is not delivered to Landlord by the third party within eighteen (18) months of the execution date of this Lease. The Premises shall be deemed to be "Ready for Occupancy" when Landlord certifies in writing to Tenant that Landlord has substantially completed Landlord's Work, as described in Exhibit C. If the Premises are not Ready for Occupancy prior to the Estimated Completion Date, Landlord shall not be deemed to be in default hereunder or otherwise liable in damages to Tenant, nor shall the term of this lease be affected, except that if for any reason the Premises are not Ready for Occupancy within eighteen (18) months following the Estimated Completion Date, Tenant may at its option terminate this lease by written notice to Landlord delivered within thirty (30) days following the expiration of such eighteen (18) month period, in which event neither party shall have any further liabilities or obligations hereunder, except the Landlord shall repay to Tenant any prepaid rent or security deposit. When the Premises are Ready for Occupancy, Tenant agrees to accept possession thereof and to proceed with due diligence to perform the work described under "Description of Tenant's Work" in Exhibit C, all of such work to be performed in compliance with Exhibit C, and to install its fixtures, furniture and equipment. Any Tenant Work involving venting, opening, sealing, waterproofing or any altering of the roof shall be performed by Landlord's roofing contractor at Tenant's expense. Tenant shall provide Landlord with a certificate from Landlord's roofing contractor that all of Tenant's work involving venting, opening, sealing, waterproofing or in any way altering the roof has been performed in compliance with Exhibit C. Tenant hereby holds Landlord harmless from any damage to the Premises, resulting, directly or indirectly, from Tenant's venting, opening, sealing, waterproofing or other altering of the roof unless such a certificate from Landlord's roofing contractor has been delivered to Landlord before the date of any such damage.

Tenant _____

Landlord _____

In the event of any dispute as to work performed or required to be performed by Landlord or Tenant, the certificate of Landlord's architect or engineer shall be conclusive. By initiating Tenant Work in the Premises, Tenant shall be deemed to have accepted the same and to have acknowledged that the same fully comply with Landlord's covenants and obligations hereunder. Tenant further agrees that, if requested by Landlord, Tenant will furnish Landlord with a written statement that Tenant has accepted the Premises and that Landlord has fully complied with Landlord's covenants and obligations hereunder. Tenant agrees to furnish to Landlord a Certificate of Occupancy from applicable local authorities on or before the Commencement Date.

3.2 Tenant agrees to open the Premises to the public on June 1, 2018, The Commencement Date of this lease shall be on June 1, 2018, Occupancy of the Premises by Tenant prior to the Commencement Date shall be subjected to all of the terms and provisions of this lease excepting only those requiring the payment of rent. Landlord and Tenant each agree that at the request of either they will, following the Commencement Date, execute and deliver a recordable short form lease containing the basic provisions of this lease, acknowledging that Tenant has accepted possession, and reciting the exact Commencement Date and termination date of this lease.

ARTICLE IV. Monthly Payment. 4.1. Monthly Payment, as specified in Section 1.2 shall accrue hereunder from the Commencement Date, and shall be payable at the place designated for the delivery of notices to Landlord at the time of payment, without demand and without set-off or deduction, for any reason whatsoever.

4.2 The first Minimum Guaranteed Rental payment shall be due and payable on or before the Commencement Date, and subsequent Minimum Guaranteed Rental payments shall be due and payable on or before the first day of each succeeding calendar month during the lease term; provided that if the Commencement Date is a date other than the first day of a calendar month, there shall be due and payable on or before such date as Minimum Guaranteed Rental for the balance of such calendar month a sum equal to that proportion of the rent specified for the first full calendar month as herein provided, which the number of days from the Commencement Date to the end of the calendar month during which the Commencement Date shall fall bears to the total number of days in such month.

ARTICLE V. Common Area. 5.1 The "Common Area" is the part of the Shopping Center designated by Landlord from time to time for the common use of all tenants, including among other facilities, parking area (both surface and structure/garage parking spaces), sidewalks, landscaping, curbs, loading areas, private streets and alleys, lighting facilities, hallways, malls, restrooms, and other areas and improvements provided by Landlord for the common use of all tenants, all of which shall be subject to Landlord's sole management and control and shall be operated and maintained in such manner as Landlord, in its discretion shall determine. Landlord reserves the right to change from time to time the dimensions and location of the Common Area as shown on Exhibit A as well as the location, dimensions, identity and type of any building shown on Exhibit A and to construct additional buildings or additional stories on existing buildings or other improvements in the Shopping Center, and to eliminate buildings from the plan shown on Exhibit A. Tenant and its employees, customers, subtenants, licensees and concessionaires shall have the non-exclusive right and license to use the Common Area as constituted from time to time, such use to be permitted by Landlord to be in common with Landlord, other tenants of the Shopping Center and other persons permitted by Landlord to use the same. Tenant and Tenant's agents, employees and invitees will comply fully with all requirements of the rules and regulations which are attached hereto as Exhibit D, and made a part hereof as though fully set out herein. Landlord shall at all times have the right to change such rules and regulations or to promulgate other rules and regulations in such manner as may be deemed advisable for safety, care or cleanliness of the Shopping Center and for preservation of good order therein, all of which rules and regulations, changes and amendments will be forwarded to Tenant in writing and shall be carried out and observed by Tenant. Tenant shall further be responsible for the compliance with such rules and regulations by the employees, servants, agents, visitors and invitees of Tenant. Landlord may temporarily close any part of the Common Area for such periods of time as may be necessary to prevent the public from obtaining perspective rights or to make repairs or alterations.

Tenant _____

Landlord _____

5.2 Landlord shall construct, at its sole cost and expense, a hard surface parking area within the shopping Center as shown on Exhibit A or in reasonable proximity thereto, it being expressly agreed, however, that in addition to the rights reserved to Landlord in Section 6.1 above, Landlord may from time to time substitute for any parking area shown on Exhibit A other areas or multi-level parking facilities reasonably accessible to the tenants of the Shopping Center.

5.3 Tenant agrees to pay as an additional charge each month its proportionate share of the cost of operation and maintenance of the Common Area (including, among other costs, those listed on Exhibit E which may be incurred by Landlord in its discretion, and including an allowance in the amount of fifteen percent (15%) of the total Common Area costs for Landlord's overhead and administrative costs. The proportionate share to be paid by Tenant of the cost of operation and maintenance of the Common Area shall be computed on the ratio that the total area of the Premises bears to the total number of square feet of leasable space within the Shopping Center. Such proportionate share shall be paid by Tenant in monthly installments in such amounts as are estimated and billed by Landlord at the beginning of each twelve (12) month period commencing and ending on dates designated by Landlord, each installment being due on the first day of each calendar month. If at any time during such twelve (12) month period it shall appear that Landlord has underestimated Tenant's proportionate share of Common Area costs for such twelve (12) month period, Landlord may re-estimate Tenant's proportionate share of Common Area costs and may bill Tenant for any deficiency which may have accrued during such twelve (12) month period and thereafter the monthly installment payable by Tenant shall also be adjusted. Within one hundred twenty (120) days or such reasonable time thereafter (in Landlord's determination) after the end of each such twelve (12) month period, Landlord shall deliver to Tenant a statement of Common Area costs for such twelve (12) month period and the monthly installments paid or payable shall be adjusted between Landlord and Tenant, and each party hereby agrees that Tenant shall pay Landlord or Landlord shall credit Tenant's account (or, if such adjustment is at the end of the term, pay Tenant), within thirty (30) days of receipt of such statement, the amount of any excess or deficiency in Tenant's proportionate share of Common Area costs paid by Tenant to Landlord during such twelve (12) month period. Failure of Landlord to provide the statement called for hereunder shall not relive Tenant from its obligations hereunder. The initial Common Area Maintenance Charge subject to adjustment as provided herein, shall be that amount set out in Section 1.1 (m).

ARTICLE VI. Use and Care of Premises. 6.1 The Premises may be used only for the purpose or purposes specified in Section 1.j above, and for no other purpose of purposes without the prior written consent of Landlord. Tenant shall use in the transaction of business in the Premises the trade name specified in Section 1.1 (e) above and no other trade name without the prior written consent of Landlord. Tenant shall not at any time leave the Premises vacant, but shall in good faith continuously throughout the term of this lease conduct and carry on in the entire Premises the type of business for which the Premises are leased. Tenant shall operate its business with a complete line of full selection and sufficient stock of first class merchandise of current style and type, attractive displays and in an efficient, high class and reputable manner so as to produce the maximum amount of sales from the Premises, and shall, except during reasonable periods for repairing, cleaning and decorating keep the Premises open to the public for business with adequate and competent personnel in attendance on all days and during all hours (including evenings) established by Landlord from time to time as store hours for the Shopping Center, and during any other days and hours extent Tenant may be prohibited from being open for business by applicable law, ordinance or government regulation.

6.2 Tenant shall not, without Landlord's prior written consent, keep anything within the Premises for any purpose which increases the insurance premium cost of invalidates any insurance policy carried on the Premises or other part of the Shopping Center. Tenant shall pay as additional rental, upon demand of Landlord, any such increased premium cost due to Tenant's use or occupation of the Premises. All property kept, stored or maintained within the Premises by Tenant shall be at Tenant's sole risk.

Tenant _____

Landlord _____

6.3 Tenant shall not conduct within the Premises any fire, auction or bankruptcy sales or operate within the Premises a "Wholesale" or "factory outlet" store, a cooperative store or a "second hand" store, a "surplus" store or a store commonly referred to as a "discount house". Tenant shall not advertise that it sells products or services at "discount", "cut-price", or "cut-rate" prices. Tenant shall not permit any objectionable or unpleasant odors to emanate from the Premises, no place or permit any radio, television, loudspeaker or amplifier on the roof or outside the Premises or where the same can be seen or heard from outside the building or in the Common Area, no place an antenna, awning or other projection on the exterior of the Premises; nor business or distribute leaflets or other solicit advertising material in the Common Area; nor take any other action which in the exclusive judgement of Landlord would constitute a nuisance or would disturb or endanger other tenants of the Shopping Center or unreasonably interfere with their use of their respective premises, nor do anything which would tend to injure the reputation of the Shopping Center.

6.4 Tenant will take good care of the Premises and keep the same free from waste at all times. Tenant shall keep the Premises and sidewalks, service-ways and loading areas adjacent to the Premises neat, clean and free from dirt, rubbish, insects and pests at all times, and shall store all trash and garbage within the Premises, arranging for the regular pickup of such trash and garbage at Tenant's expense. Tenant will store all trash and garbage within the area designated by Landlord for such trash pickup and removal and only in receptacles of the size, design and color from time to time prescribed by Landlord. Receiving and delivery of goods and merchandise and removal of garbage and trash shall be made only in the manner and areas from time to time prescribed by Landlord. Landlord may, at its sole option, arrange for collection of all trash and garbage and, should Landlord exercise such election, Tenant's proportionate share of the cost thereof will be part of its Common Area Maintenance Charge. Tenant shall not operate an incinerator or burn trash or garbage within the Shopping Center.

6.5 Tenant shall maintain all display windows in a neat, attractive condition, and shall keep all display windows and exterior electric signs in front of the Premises lighted from dusk until 10:00 PM every day, including Sundays and holidays.

6.6 Tenant shall include the address and identity of its business activities in the Premises in all advertisements made by Tenant in which the address and identity of any similar local business activity of Tenant is mentioned.

6.7 Tenant shall procure, at its sole expense, any permits and licenses required for the transaction of business in the Premises and otherwise comply with all applicable laws, ordinances and governmental regulations.

ARTICLE VII. Maintenance and Repair of Premises. 7.1 Landlord shall keep the foundation, the exterior walls (except store fronts, plate glass windows, doors, door closure devices, window and door frames, molding, locks and hardware and painting or other treatment of interior and exterior walls) and roof of the Premises in good repair, ordinary wear and tear excepted. Any repairs required to be made by Landlord hereunder which are occasioned by the act or negligence of Tenant, its agents, employees, subtenants, licensees and concessionaires, shall be paid for by Tenant upon demand to the extent not covered by net insurance proceeds paid to Landlord therefore. In the event that the Premises should become in need of repairs required to be made by Landlord hereunder, Tenant shall give immediate written notice thereof to Landlord and Landlord shall not be responsible in any way for failure to make any such repairs until a reasonable time shall have elapsed after delivery of such written notice. Landlord's obligation hereunder is limited to repairs specified in this Section 8.1 only, and Landlord shall have no liability for any damages or injury arising out of any condition or occurrence causing a need for such repairs.

7.2 Tenant shall furnish, maintain and replace all electric light bulbs, tubes and tube casings.

Tenant _____

Landlord _____

7.3 Tenant shall keep the Premises in good, clean condition and shall, at its sole cost and expense, make all needed repairs and replacements, including replacement of cracked or broken glass, and shall keep all plumbing units, pipes and connections free from obstruction and protected against ice and freezing. If any repairs, replacements or maintenance required on the part of Tenant hereunder are not accomplished within ten (10) days after written notice to Tenant from Landlord, Landlord may, at its option, perform such repairs, replacements or maintenance without liability to Tenant for any loss or damage which may result to its stock or business by reasons thereof, and Tenant shall pay to Landlord immediately upon demand as additional rental hereunder the cost of such repairs, replacements or maintenance plus (15%) of such cost. At the expiration of this lease, Tenant shall surrender the Premises in good condition, reasonable wear and tear and loss by fire or other casualty accepted and shall surrender all keys for the Premises to Landlord and shall inform Landlord of all combinations on locks, safes and vaults, if any, in the Premises. Upon move out by Tenant, should the Premises require any repairs which are the responsibility of Tenant hereunder, Landlord shall have the right to make such repairs at Tenant's sole cost.

7.4 Maintenance of the air conditioning and heating equipment shall be solely the responsibility of Tenant. Throughout the entire term of this lease, Tenant shall at its own costs and expense, enter into a regularly scheduled preventative maintenance/service contract with a maintenance contractor for servicing all hot water, heating and air conditioning systems and equipment within the Premises. The maintenance contractor and the contract must be approved by Landlord. The service contract must include all services suggested by the equipment manufacturer within the operation/maintenance manual and must become effective (and a copy thereof delivered to Landlord) with thirty (30) days of the date Tenant takes possession of the Premises.

ARTICLE VIII Alterations.

- 8.1 Tenant shall not make any alterations, additions or improvements to the Premises without the prior written consent of Landlord, except for the installation of unattached, moveable trade fixtures which may be installed without drilling or cutting or otherwise defacing the Premises. All alterations, additions, improvements and fixtures (other than unattached, moveable trade fixtures) which may be made or installed by either party upon the Premises shall remain upon and be surrendered with the Premises and become the property of Landlord at the termination of this lease, unless Landlord requests their removal in which event Tenant shall remove the same and restore the Premises to their original condition at Tenant's expense. Any linoleum, carpeting or other floor covering which may be cemented or otherwise affixed to the floor of the Premises is a permanent fixture and shall become the property of Landlord without credit or compensation to Tenant.
- 8.2 All construction work done by Tenant within the Premises, including without limitation Tenant's Work referred to in Section 3.1, shall be performed in a good and workmanlike manner, in compliance with all governmental requirements, and the requirements of any contract or deed of trust to which the Landlord may be a party and in such manner as to cause a minimum of interference with other construction in progress and with the transaction of business in the Shopping Center. Tenant agrees to indemnify Landlord and hold it harmless against any loss, liability or damage resulting from such work, and prior to commencement of any such work Tenant shall, if requested by Landlord, furnish bond or other security satisfactory to Landlord against any such loss, liability or damage.
- 8.3 Tenant agrees that all venting, opening, sealing, waterproofing or any altering of the roof shall be performed by Landlord's roofing contractor at Tenant's expense and that when completed Tenant shall furnish to Landlord a certificate from Landlord's roofing contractor that all such alterations approved by Landlord have been completed in accordance with the plans and specifications therefore approved by Landlord. Tenant agrees

Tenant _____

Landlord _____

that all improvements, alterations, repairs or other work performed upon the Premises under any provisions of this lease shall be performed under the direction of a general contractor selected from an Approved Contractor List to be furnished by Landlord. Tenant further agrees that plans and drawings for installation or revision of mechanical, electrical or plumbing systems shall be designed by an engineer selected from and Approved Engineers List to be furnished by Landlord, such design work to be done at Tenant's expense.

ARTICLE IX. Landlord's Right of Access; Use of Roof. 9.1 Landlord shall have the right to enter upon the Premises at any reasonable time for the purpose of inspecting the same, or of making repairs to the Premises, or of making repairs, alterations or additions to adjacent premises, or of showing the Premises to prospective purchasers, lessees or lenders.

9.2 Use of the roof above the Premises is reserved to Landlord. Tenant shall not be allowed on the roof without Landlord's prior written consent.

ARTICLE X. Signs; Store Fronts. 10.1 Tenant shall not, without Landlord's prior written consent (a) make any changes to or paint the store front; or (b) install any exterior lighting, decorations or paintings or (c) erect or install any signs, banners, window or door lettering, placards, decorations or advertising media of any type which can be viewed from the exterior of the Premises, excepting only dignified displays of customary type for its display window. All signs, decorations and advertising media shall conform in all respects to Landlord's sign criteria attached hereto as Exhibit F. All signs shall be kept in good conditions and in proper operating order at all times. Landlord reserves the right to designate a uniform type of signs for the Shopping Center to be installed and paid for by Tenant.

10.2 Tenant agrees to have erected and/or installed and fully operative on or before the Commencement Date of this lease all signs in accordance with Landlord's sign criteria. The Tenant, upon vacation of the Premises, or the removal or alteration of its sign for any reason, shall be responsible for the repair, painting, and/or replacement of the building fascia surface where signs are attached.

10.3 Tenant shall pay its prorated cost of electricity if Tenant maintains a sign on Landlord's pylon sign (if any) Furthermore, Tenant waives any liability on the part of Landlord arising out of Tenant's use of the pylon sign and agrees to hold Landlord harmless from and against any liability arising out of Tenant's use of such sign.

10.4 During the period that is six (6) months prior to the end of the lease term and at any time Tenant is in default hereunder and such default has remained uncured for at least thirty (30) days, Landlord shall have the right to erect on the Premises signs indicating that the Premises are available for lease.

ARTICLE XI. Utilities. 11.1 Landlord agrees to cause to be provided and maintained the necessary mains, conduits and other facilities necessary to supply water, electricity, gas (if applicable), telephone service and sewerage service to the Premises, subject to any special provisions contained in Exhibit C. Landlord shall not be responsible for providing any meters or other devices for the measurement of utilities supplied to the Premises. Tenant shall at Tenant's sole cost and expense make application and arrange for the installation of all such meters or other devices.

11.2 Tenant shall promptly pay all charges for electricity, water, gas, telephone service, sewage service and other utilities furnished to the Premises and shall promptly pay any maintenance charges therefore Landlord may, if it so elects, furnish one or more utility services to Tenant, and in such event Tenant shall purchase such services as are tendered by Landlord, and shall pay on demand as additional retail the rates established therefore by Landlord which shall not exceed the rates which would be charged for the same services if furnished directly by the local public utility companies. Landlord may at any time discontinue furnishing any such service without obligation to Tenant other than to connect the Premises to the public utility, if any, furnishing such service.

Tenant _____

Landlord _____

11.3 Landlord shall not be liable for any interruption or failure whatsoever in utility services and Tenant shall comply with all terms and provisions of this lease notwithstanding any such failure or interruption.

ARTICLE XII. Indemnity, Public Liability Insurance and Fire Extended Coverage Insurance.

12.1 Landlord shall not be liable to Tenant or to Tenant's employees, agents or visitors, or to any person or entity whomsoever, for injury to person or damage to or loss of property on or about the Premises or the Common Area caused by the negligence or misconduct of Tenant, its officers, partners, employees, agents, subtenants, licensees, concessionaires, visitors or any other person entering the Shopping Center under the express or implied invitation of Tenant, or arising out of the use of the Premises by Tenant and the conduct of its business therein, ' or arising out of any breach or default by Tenant in the performance of its obligations hereunder or resulting from any other cause except Landlord's negligence, and Tenant hereby agrees to indemnify Landlord (including without limitation the trustee and beneficiaries if Landlord is a trust), Landlord's agents and employees and hold them harmless from any loss, expense, claims or actions arising out of such damage or injury (including without limitation any court costs and attorneys' fees). The provisions of this section shall survive the termination of this lease with respect to any claims or liability occurring prior to such termination.

12.2 Tenant shall procure and maintain throughout the term of this lease, at its sole cost and expense, (i) a policy of public liability insurance insuring both Landlord and Tenant against all claims demands or actions arising out of or in connection with Tenant's use or occupancy of the Premises, or by the condition of the Premises, the limits of such policy or policies to be in an amount not less than \$500,000 in respect of injuries to or death of any one person, and in an amount not less than \$1,000,000 in respect of any one occurrence or disaster, and in an amount not less than \$100,000 in respect of property damaged or destroyed, (ii) fire and extended coverage insurance covering all alterations, additions, partitions and improvements made or placed by Tenant in the Premises, and (iii) insurance covering glass breakage in the Premises, all such policies to be written by insurance companies satisfactory to Landlord. Tenant shall obtain a written obligation on the part of each insurance company to notify Landlord at least ten (10) days prior to cancellation of such insurance. Such policies or duly executed certificates of insurance shall be promptly delivered to Landlord and renewal thereof as required shall be delivered to Landlord at least thirty (30) days prior to the expiration of the respective policy terms. Tenant's failure to comply with the foregoing requirements relating to insurance shall constitute an event of default hereunder. In addition to the remedies provided in Article XIX of this lease, Landlord may, but is not obligated to, obtain such insurance and Tenant shall pay to Landlord upon demand as additional rental the premium cost thereof plus interest thereon at the rate equal to the lesser of the highest rate permitted by law or eighteen percent (18%) per annum from the date of payment by Landlord until repaid by Tenant.

12.3 Tenant agrees to pay its proportionate share of Landlord's cost of carrying fire and extended coverage insurance and liability insurance in such amounts as Landlord deems necessary or desirable Landlord ("Insurance") on the Shopping Center. During each month of the lease term, Tenant shall make a monthly escrow deposit with Landlord equal to 1/12 of it proportionate share of the Insurance on the Shopping Center which will be due and payable for that particular year. Tenant authorizes Landlord to use the funds deposited with Landlord under this section to pay the cost of Insurance. Each Insurance Escrow Payment shall be due and payable at the same time and manner of the payment of Minimum Guaranteed Rental as provided herein. The amount of the initial monthly Insurance Escrow Payment will be that amount set out in Section 1.1(n) above. The initial monthly Insurance Escrow Payment is based upon Tenant's proportionate share of the estimated Insurance on the Shopping Center for the year in question, and the monthly Insurance Escrow Payment is subject to increase or decrease as determined by Landlord to reflect and accurate monthly escrow of Tenant's estimate proportionate share of the Insurance. The Insurance Escrow Payment account of Tenant shall be reconciled annually. If Tenant's total Insurance Escrow Payment are less than Tenant's actual proportionate share of the Insurance on the Shopping Center, Tenant shall pay to Landlord upon demand the difference;

Tenant _____

Landlord _____

if the total Insurance Escrow payments of Tenant are more than Tenant's actual proportionate share of the Insurance on the Shopping Center, Landlord shall retain such excess and credit it to Tenant's Insurance Escrow Payment account. Tenant's proportionate share of the cost of Insurance on the Shopping Center shall be computed by multiplying the cost of Insurance by a fraction, the numerator of which shall be the number of square feet of floor space in the Premises and the denominator of which shall be the number of square feet of all stories in the Shopping Center that are leasable on January 1, of the applicable year.

ARTICLE XIII. Non-Liability for Certain Damages

13.1 Landlord and Landlord's agents and employees shall not be liable to Tenant of any other person or entity whomsoever for any injury to person or damage to property caused by the Premises or other portions of the Shopping Center becoming out of repair or damaged or by defect in or failure of equipment, pipes or wiring, or broken glass, or by the backing up of drains or by glass, water, steam, electricity or oil leaking, escaping or flowing into the Premises, nor shall Landlord be liable to Tenant or any other person or entity whomsoever for any loss or damage that may be occasioned by or through the acts or omissions of other tenants of the Shopping Center or of any other person or entities whomsoever, excepting only duly authorized employees and agents of Landlord. With respect to latent or patent defects in the Premises or in the building of which they form a part, a Landlord's liability shall not extend beyond one (1) year from the date of substantial completion of construction of the Premises, whether or not such defects are discovered within such one-year period.

ARTICLE XIV. Damage by Casualty.

14.1 Tenant shall give immediate written notice to Landlord of any damage caused to the Premises by fire or other casualty.

14.2 In the event that the Premises shall be damaged or destroyed by fire or other casualty insurable under standard fire and extended coverage insurance and Landlord does not elect to terminate this lease as hereinafter provided, Landlord shall proceed with reasonable diligence and at its sole cost and expense to rebuild and repair the Premises. If the building in which the Premises are located shall (i) be destroyed or substantially damaged by a casualty not covered by Landlord's insurance; or (ii) be destroyed or rendered untenable to an extent of fifty percent (50%) of the first floor area by a casualty covered by Landlord's insurance; or (iii) be damaged to such extent that the remaining term of this lease is not sufficient to amortize the cost of reconstruction, then Landlord may elect to either terminate this lease as hereinafter provide or to proceed to rebuild with reasonable diligence and at its sole cost and expense to rebuild and repair the Premises. Should Landlord elect to terminate this lease it shall give written notice of such election to Tenant within ninety (90) days after the occurrence of such casualty. If Landlord should not elect to terminate this lease, Landlord shall proceed with reasonable diligence and at its sole cost and expense to rebuild and repair the Premises. In the event of any damage or destruction to the Premises, Tenant shall, upon notice from Landlord, forthwith remove, at Tenant's sole cost and expense, such portion or all of Tenant's shelves, bins, machinery and other trade fixtures and all other property belonging to Tenant or Tenant's licensees from such portion or all of the Premises as Landlord shall request.

14.3 Landlord's obligation to rebuild and repair under this Article XIV shall in any event be limited to restoring Landlord's Work as described in Exhibit C to substantially the condition in which the same existed prior to the casualty, and all be further limited to the extent of the insurance proceeds available to Landlord for such restoration, and Tenant agrees that promptly after completion of such work by Landlord, it will proceed with reasonable diligence and at its sole cost and expense to rebuild, repair and restore its signs, fixtures and equipment and other items of Tenant's Work as described in Exhibit C.

14.4 Tenant agrees that during any period of reconstruction or repair of the Premises it will continue the operation of its business within the Premises to the extent practicable. During the period from the occurrence of the casualty until Landlord's repairs are completed, the Minimum Guaranteed Rental shall be reduced to such extent as may be fair and reasonable under the circumstances.

Tenant _____

Landlord _____

14.5 Notwithstanding anything herein to the contrary, in the event the holder of any indebtedness, secured by a mortgage or deed of trust covering the Premises requires that the insurance proceeds be applied to such indebtedness then Landlord shall have the right to terminate this lease by delivering written notice of termination to Tenant within fifteen (15) days after such requirement is made by any such holder, whereupon all rights and obligations hereunder shall cease and terminate.

14.6 Each of Landlord and Tenant 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 from any loss or damage to property. Caused by fire or any other perils insured in policies of insurance covering such property, even if such loss or other perils insured in policies of insurance covering such property, even if such loss or damage shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible, including any other tenants or occupants of the Shopping Center; 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 times as the releasor'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 releasor 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 or endorsement. If extra cost shall be charged therefore, each party shall advise the other thereof and of the amount of the extra cost, and the 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 releasor's insurance.

ARTICLE XV. Eminent Domain. 15.1 If more than twenty percent (20%) of the floor area of the Premises should be taken for any public or quasi-public use under any governmental law, ordinance or regulation under any governmental law, ordinance or regulation or by right of eminent domain or by private purchase in lieu thereof this lease shall terminate and the rent shall be abated during the unexpired portion of this lease, effective on the date physical possession is taken by the condemning authority.

15.2 If less than twenty percent (20%) of the floor area of the Premises should be taken as aforesaid, this lease shall not terminate; however, the Minimum Guaranteed Rental payable hereunder during the unexpired portion of this lease shall be reduced in proportion to the area taken, effective on the date physical possession is taken by the condemning authority. Following such partial taking, and receipt of condemnation proceeds. Landlord shall make all necessary repairs or alterations within the scope of Landlord's Work as described in Exhibit C necessary to make the Premises an architectural whole.

15.3 If any part of the Common Area shall be taken as aforesaid, this lease shall not terminate nor shall the rental payable hereunder be reduced, except that either Landlord or Tenant may terminate this lease if the area of the Common Area remaining following such taking plus any additional parking area provided by Landlord in reasonable proximity to the shopping center shall be less than seventy percent (70%) of the area of the Common Area immediately prior to the taking. Any election to terminate this lease in accordance with this provision shall be evidenced by written notice of termination delivered to the other party within thirty (30) days after the date physical possession is taken by the condemning authority.

15.4 All compensation awarded for any taking (or the proceeds of private sale in lieu thereof) of the Premises or Common Area shall be the property of Landlord and Tenant hereby assigns its interest in an such award to Landlord; provided, however, Landlord shall have no interest in any award made to Tenant for loss of business or for the taking of Tenant's fixtures and other property if a separate award for such items is made to Tenant. Tenant shall in no event be entitled to any award for the value of the unexpired term of this lease.

Tenant _____

Landlord _____

ARTICLE XVI. Assignment and Subletting.

16.1 Tenant shall not assign or in any manner transfer this lease or any estate or interest therein, or sublet the Premises or any part thereof, or grant any license, concession or other right to occupy any portion of the Premises without the prior written consent of Landlord. All cash or other proceeds of any assignment, such proceeds as exceed the rentals called for hereunder in the case of a subletting and all cash or other proceeds of any other transfer of Tenant's interest in this lease shall be paid to Landlord as received by Tenant, whether such assignment, subletting or other transfer is consented to by Landlord or not, unless Landlord agrees to the contrary in writing, and Tenant hereby assigns all rights it might have or ever acquire in any such proceeds to Landlord. Consent by Landlord to one or more assignments or sublettings shall not operate as a waiver of Landlord's rights as to any subsequent assignments and sublettings. Notwithstanding any assignment or subletting, Tenant and any guarantor of Tenant's obligations under this lease shall at all times remain fully and primarily responsible and liable for the payment of the rental herein specified and for compliance with all of its other obligations under this lease. Upon any subletting or assignment by Tenant in accordance with the terms hereof, any renewal options, expansion options, right of first refusal and/or exclusive use provisions shall become null and void.

16.2 Tenant shall give Landlord at least sixty (60) days advance written notice of any proposed assignment or subletting, such notice to be accompanied by a copy of the proposed sublease or assignment. Landlord shall have the right to terminate this lease effective as of the proposed effective date of the assignment or subletting by giving Tenant written notice thereof within thirty (30) days after Landlord's receipt of said notice from Tenant. Should Landlord not elect to so terminate this lease in connection with any proposed subletting or assignment, Landlord shall continue to have the right to disapprove same.

16.3 Tenant shall not mortgage, pledge or otherwise encumber its interest in this lease or in the Premises.

16.4 In the event of the transfer and assignment by Landlord of its interest in this lease and in the building containing the Premises to a person expressly assuming Landlord's obligations under this lease, Landlord shall hereby be released from any further obligations hereunder, and Tenant agrees to look solely to such successor in interest of the Landlord for performance of such obligations. Any security given by Tenant to secure performance of Tenant's obligations hereunder, may be assigned and transferred by Landlord to such successor in interest, and Landlord shall thereby be discharged of any further obligation relating thereto.

ARTICLE XVII. Property Taxes.

17.1 Tenant shall be liable for all taxes levied against personal property and trade fixtures placed by tenant in the Premises. If any such taxes are levied against Landlord or Landlord's property and if Landlord elects to pay the same or if the assessed value of Landlord's property is increased by inclusion of personal and trade fixtures placed by Tenant in the Premises and Landlord elects to pay the taxes based on such increase, Tenant shall pay to Landlord upon demand that part of such taxes for which Tenant is primarily liable hereunder.

17.2 Tenant agrees to pay its proportionate share of all taxes, assessments and governmental charges of any kind and nature whatsoever levied or assessed against the Shopping Center, any other charges, taxes and/or impositions now in existence or hereafter imposed by any governmental authority based upon the privilege of renting the Premises or upon the amount of rent collected therefore and any tax, fee, levy, assessment or charge which is imposed as the result of a transfer, either partial or total, of Landlord's interest in the Premises or which is added to a tax or charge hereinbefore included within the definition of real property tax by reason of such transfer (all of the foregoing being hereinafter referred to as the "Taxes"). During each month of the term of this lease, Tenant shall make a monthly escrow deposit with Landlord equal to 1/12 of its proportionate share of the Taxes on the Shopping Center which will be due and payable for that particular year. Tenant authorizes Landlord to use the funds deposited with Landlord under this Section 18.2 to pay the Taxes levied or assessed against the Shopping Center. Each Tax Escrow Payment shall be due and payable at the same time and in the same manner as the time and manner of the payment of Minimum Guaranteed Rental as provided herein. The amount of the initial monthly Tax Escrow Payment will be that amount set out in Section 1.1(o) above. The initial monthly Tax Escrow Payment is based upon Tenant's proportionate share of the estimated taxes on the Shopping Center for the year in question, and the monthly Tax Escrow Payment is subject to increase or decrease as determined by Landlord to share of the Taxes.

Tenant _____

Landlord _____

The Tax Escrow Payment account of Tenant shall be reconciled annually. If the Tenant's total Tax Escrow Payments are less than Tenant's actual pro rata share of the Taxes on the Shopping Center, Tenant shall pay to Landlord upon demand the difference; if the total Tax Escrow Payments of Tenant are more than Tenant's actual pro rata share of the Taxes on the Shopping Center, Landlord shall retain such excess and credit it to Tenant's Tax Escrow Payment account. Tenant's proportionate share of the Taxes on the Shopping Center shall be computed by multiplying the Taxes by a fraction, the numerator of which shall be the number of square feet of floor space in the Premises and the denominator of which shall be the number of square feet of all store in the Shopping Center that are leasable on January 1, of the applicable year.

17.3 The Landlord shall have the right to employ a tax consulting firm to attempt to assure a fair Tax burden on the Shopping Center.

17.5 Tenant may, alone or along with any other tenants of said building, at its or their sole cost and expense, in its or their own name(s) dispute and contest and Taxes by appropriate proceedings diligently conducted in good faith, but only after Tenant and all other tenants, if any, joining with Tenant in such contest have deposited with Landlord the amount so contested and unpaid, or their proportionate shares thereof as the case may be, which shall be held by Landlord without obligation for interest until the termination of the proceedings, at which the amount(s) deposited shall be applied by Landlord toward the payment of the items held valid (plus any court costs, interest, penalties and other liabilities associated with the proceedings), and Tenant's share of any excess shall be returned to Tenant. Tenant further agrees to pay to Landlord upon demand Tenant's share (as among all tenants who participate in the contest) of all court costs, interest, penalties and other liabilities relating to such proceedings. Tenant hereby indemnifies and agrees to hold Landlord harmless from and against any cost, damage or expense (including attorneys' fees) in connection with any such proceedings.

17.6 Any payment to be made pursuant to this Article XVIII with respect to the real estate tax year in which this lease commences or terminates shall bear the same ratio to the payment which would be required to be made for the full tax year as that part of such tax year covered by the term of this lease bears to a full tax year.

ARTICLE XVIII. Default by Tenant and Remedies.
deemed to be events of default by Tenant under this lease:

18.1 The following events shall be

- 1.) Tenant shall fail to pay an installment of rental or any other amount payable to Landlord as herein provided and such failure shall continue for a period of ten (10) days.
- 2.) Tenant shall fail to comply with any term, provisions or covenant of this lease, other than the payment of rental of any other amount payable to Landlord and shall not cure such failure within ten (10) days after written notice thereof to Tenant.
- 3.) Tenant or any guarantor of Tenant's obligations under this lease shall become insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors.
- 4.) Tenant or any guarantor of Tenant's obligations under this lease shall file a petition under any section or chapter of the National Bankruptcy Act, as amended, or under any similar law or statute of the United States or any State thereof; or Tenant or any guarantor of Tenant's obligations under this lease shall be adjudged bankrupt or insolvent in proceedings filed against Tenant or any guarantor of Tenant's obligations under this lease shall be adjudged bankrupt or insolvent in proceedings filed against Tenant or any guarantor of Tenant's obligations under this lease.
- 5.) A receiver of Trustee shall be appointed for all Premises or for all or substantially all of the assets of Tenant or any guarantor of Tenant's obligations under this lease,
- 6.) Tenant shall desert or vacate any portion of the Premises.
- 7.) Tenant shall do or permit to be done anything which creates a lien upon the Premises.
- 8.) The business operated by Tenant shall be closed for failure to pay any State sales tax as required or for any other reason.

Tenant _____

Landlord _____

Upon the occurrence of any such event of default, Landlord shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:

- A. Terminate this lease in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which Landlord may have for possession or arrearages in rental, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying said premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages thereof.
- B. Enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying said premises or any part thereof, by force if necessary, without being liable for prosecution or any claim for damages therefore with or without having terminated the lease.
- C. Do whatever Tenant is obligated to do under the terms of this lease (and enter upon the Premises in connection therewith if necessary) without being liable for prosecution or any claim for damages therefore, and Tenant agrees to reimburse Landlord on demand for any expenses which Landlord may incur in thus effecting compliance with Tenant's obligations under this lease, and Tenant further agrees that Landlord shall not be liable for any damages resulting to the Tenant from such action.
- D. Alter all locks and other security devices at the Premises without terminating this lease.

18.2 Exercise by Landlord of any one or more remedies hereunder granted or otherwise available shall not be deemed to be an acceptance of surrender of the Premises by Tenant, whether by agreement or by operation of law, it being understood that such surrender can be effected only by the written agreement of Landlord and Tenant. No such alteration of locks or other security devices and no removal or other exercise of dominion by Landlord over the property of Tenant or others at the Premises shall be deemed unauthorized or constitute a conversion, Tenant hereby consenting, after any event of default, to the aforesaid exercise of dominion over Tenant's property within the Premises. All claims for damages by reason of such re-entry and/or repossession and/or alteration of locks or other security devices are hereby waived, as are all claims for damages by reason of any distress warrant, forcible detainer proceedings sequestration proceedings or other legal process. Tenant agrees that any re-entry by Landlord may be pursuant to judgement obtained in forcible detainer proceedings or other legal proceedings or without the necessity for any legal proceedings, as Landlord may elect, and Landlord shall not be liable in trespass or otherwise.

18.3 In the event Landlord elects to terminate the lease by reason of an event of default, then notwithstanding such termination, Tenant shall be liable for and shall pay to Landlord at the address specified for notice to Landlord herein the sum of all rental and other amounts payable to Landlord pursuant to the terms of this lease which have accrued to date of such termination, plus, as damages, an amount equal to the total rental (Minimum Guaranteed plus Tenant's Common Area Maintenance Charge, Insurance Escrow Payment and Tax Escrow Payment hereunder for the remaining portion of the lease term (had such term not been terminated by Landlord prior to the date of expiration stated in Article 1).

18.4 In the event that Landlord elects to repossess the Premises without terminating the lease, then Tenant shall be liable for and shall pay to Landlord at the address specified for notice to Landlord herein all rental and other amounts payable to Landlord pursuant to the terms of this lease which have accrued to the date of such repossession, plus total rental (Minimum Guaranteed plus Tenant's Common Area Maintenance Charge, Insurance Escrow Payment and Tax Escrow Payment required to be paid by Tenant to Landlord during the remainder of the lease term until the date of expiration of the term as stated in Article 1, diminished by any net sums thereafter received by Landlord through reletting the Premises during said period (after deducting expenses incurred by Landlord as provided in Section 19.5 hereof). In no event shall Tenant be entitled to any excess of any rental obtained by reletting over and above the rental herein reserved. Actions to collect amounts due by Tenant to Landlord as provided in this Section 19.4 may be brought from time to time, on one or more occasions, without the necessity of Landlord's waiting until expiration of the lease term.

18.6 Landlord may, but need not, relet the Premises or any part thereof for such rent and upon such terms as Landlord, in its sole discretion, shall determine (including the right to relet the Premises for a greater or lesser term than that remaining under this lease, the right to relet the Premises as a part of a larger area, and the right to change the character or use of the Premises). If Landlord elects to relet the Premises, it shall only be required to use the same efforts it then uses to lease other space or properties which it owns or manages, provided, however that Landlord may be leasing or have available and may place a suitable prospective tenant in any such available space regardless of when such alternative space becomes available, provided, further, the Landlord shall not be required to observe any instruction given by Tenant about such reletting or accept any tenant offered by Tenant unless such offered tenant has a creditworthiness acceptable to Landlord, leases the entire Premises, agrees to use the Premises

Tenant _____

Landlord _____

in a manner consistent with the lease and leases the Premises at the same rent, for no more than the current term and on the same terms and conditions as in this lease without any expenditure by Landlord for tenant improvements or broker's commissions. In any such case, Landlord may, but shall not be required to, make repairs, alterations and additions in or to the Premises and redecorate the same to the extent Landlord deems necessary or desirable.

18.7 In the event Tenant is comprised of more than one person and/or entity, all such persons and/or entities shall be jointly and severally liable for all of the obligations and liabilities of Tenant under this lease.

18.8 Upon receipt from Tenant of the sum stated in Section 1.1(q) above, such sum shall be held by Landlord without interest as security for the performance by Tenant of Tenant's covenants and obligations under this lease, it being expressly understood that such deposit is not an advance payment of rental or a measure of Landlord's damages in case of default by Tenant. If at any time during the term of this lease any of the rental herein reserved shall be overdue and unpaid, or any other sum payable by Tenant to Landlord hereunder shall be overdue and unpaid then Landlord may at its option apply any portion of said deposit to the payment of any such overdue rental or other sum. In the event of the failure of Tenant to keep and perform any of the other terms, covenants and conditions of this lease to be kept and performed by Tenant, then the Landlord at its option may apply the security deposit, or so much thereof as may be necessary, to compensate the Landlord for loss, cost or damage sustained, incurred or suffered by Landlord due to such breach on the part of tenant. Should the security deposit, or any portion thereof be applied by Landlord as herein provided, Tenant shall, upon written demand of Landlord, remit to Landlord a sufficient amount in cash to restore the security deposit to the original sum deposited, and tenant's failure to do so within five days after receipt of such demand shall constitute a default under this lease. Any remaining balance of such deposit shall be returned by Landlord to Tenant at such time after termination of this lease that all tenant's obligations under this lease have been fulfilled.

18.9 In the event of any default by Landlord, Tenant will give Landlord written notice specifying such default with particularity, and Landlord shall thereupon have thirty (30) days (or such longer period as may be required in the exercise of due diligence) in which to cure any such default. Unless and until Landlord fails to so cure any default after such notice, Tenant shall not have any remedy or cause of action by reason thereof. All obligations of Landlord hereunder will be construed as covenants, not conditions. The term "Landlord" shall mean only the owner, for the time being, of the Shopping Center, and in the event of the transfer by such owner of its interest in the Shopping Center, and in the event of the transfer by such owner of its interest in the Shopping Center, such owner shall thereupon be released and discharged from all covenants and obligations of the Landlord thereafter accruing, but such covenants and obligations shall be binding during the lease term upon each new owner for the duration of such owner's ownership. Notwithstanding any other provisions hereof, in the event of any breach or default by Landlord in any term or provision of this lease, Tenant agrees to look solely to the equity or interest then owner by Landlord in the land and improvements which constitute the Shopping Center, however, in no event shall any deficiency judgment or any money judgment of any kind be sought or obtained against Landlord.

18.11 In the event that Landlord shall have taken possession of the Premises pursuant to the authority herein granted, then Landlord shall have the right to keep in place and use all of the furniture, fixtures and equipment at the Premises, including that which is owned by or leased to Tenant at all times prior to any foreclosure thereon by Landlord or repossession thereof by any lessor thereof or third party having a lien thereon. Landlord shall also have the right to remove from the Premises (without the necessity of obtaining a distress warrant, writ of sequestration or other legal process and without being liable for prosecution or any claim for damages therefore) all or any portion of such furniture, fixtures, equipment and other property located thereon and place same in storage at any place within the County in which the Premises is located; and in such event, Tenant shall be liable to Landlord for costs incurred by Landlord in connection with such removal and storage and shall indemnify and hold Landlord harmless from all loss, damage, cost, expense and liability in connection with such removal and storage. Landlord shall also have the right to relinquish possession of all or any portion of such furniture, fixtures, equipment and other property to any person ("Claimant") claiming to be entitled to possession thereof who presents to Landlord a copy of any instrument represented to Landlord by Claimant to have been executed by Tenant (or any predecessor of Tenant) granting Claimant the right under various circumstances to take possession of such furniture, fixtures, equipment or other property, without the necessity on the part of Landlord to inquire into the authenticity of said instrument and without the necessity of Landlord's making any nature of investigation or inquiry as to the validity of the factual or legal basis upon which Claimant purports to act' and Tenant agrees to indemnify and hold Landlord harmless from all cost, expense, loss, damage and liability incident to Landlord's relinquishment of possession of all or any portion of such furniture, fixtures, equipment or other property to Claimant.

Tenant _____

Landlord _____

18.12 The rights and remedies of Landlord herein stated shall be in addition to any and all other rights and remedies which Landlord has or may hereafter have at law or in equity; and Tenant stipulated and agrees that the rights herein granted Landlord are commercially reasonable.

ARTICLE XIX. Mechanics' Liens. 19.1 Tenant shall have no authority, express or implied, to create or place any lien or encumbrance of any kind or nature whatsoever upon, or in any manner to bind, the interest of Landlord or Tenant in the Premises or to charge the rentals payable hereunder for any claim in favor of any person dealing with Tenant, including those who may furnish materials or perform labor for any construction or repairs. Tenant covenants and agrees that it will pay or cause to be paid all sums legally due and payable by it on account of any labor performed or materials furnished in connection with any work performed on the Premises on which any lien is or can be validly and legally asserted against its leasehold interest in the Premises or the improvements thereon and that it will save and hold Landlord harmless from any and all loss, cost or expense based on or arising out of asserted claims or liens against the leasehold estate or against the right, title and interest of the Landlord in the Premises or under the terms of this lease, and shall discharge any such lien at Tenant's expense and Landlord's cost thereof, plus interest thereon at the lesser of the highest rate permitted by law or eighteen percent (18%) per annum, shall be reimbursed by Tenant upon demand as additional rental hereunder.

ARTICLE XX. Holding Over. 20.1 In the event Tenant remains in possession of the Premises after the expiration of this lease with Landlord's written consent but without the execution of a new lease, it shall be deemed to be occupying said premises as a tenant from month to month at a rental equal to the rental (Minimum Guaranteed Rental) herein provided times 1.25 and otherwise subject to all the conditions provisions and obligations of this lease insofar as the same are applicable to a month to month tenancy. The foregoing shall not constitute Landlord's consent for Tenant to holdover. In the event Tenant remains in possession of the Premises after the expiration of this lease without Landlord's consent, Tenant shall also pay to Landlord all expiration of this lease without Landlord's consent, Tenant shall also pay to Landlord all damages sustained by Landlord resulting from retention of possession by Tenant, including without limitation the loss of any proposed subsequent tenant for any portion of the Premises.

ARTICLE XXI. Subordination. 21.1 Tenant accepts this lease subject and subordinate to any mortgage, deed of trust or other lien presently existing or hereafter created upon the Premises or the Shopping Center, and to any renewals and extensions thereof, but Tenant agrees that any such mortgagee shall have the right at any time to subordinate such mortgage, deed of trust or other lien to this lease. Landlord is hereby irrevocably vested with full power and authority to subordinate this lease to any mortgage, deed of trust or other lien hereafter placed upon the Premises or the Shopping Center, and Tenant agrees upon demand to execute such further instruments subordinating this lease as Landlord may request, and, upon any failure of Tenant to do so, without limitation of Landlord's remedies, Landlord shall have the right to execute same as attorney-in-face for Tenant.

ARTICLE XXII. Merchant's Association. 22.1 In the event that Landlord shall organize a merchants association and/or marketing fund composed of tenants in the Shopping Center, Tenant agrees that it will join, actively participate and maintain current membership in such association, will pay such dues and assessments as may be fixed and determined from time to time by the association and will comply with such group advertising, reasonable bylaws, rules and regulations as may be adopted from time to time by the association.

ARTICLE XXIII. Notices. 23.1 Wherever any notice is required or permitted hereunder such notice shall be in writing. Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered whether actually received or not when deposited in the United States mail, postage prepaid, Certified or Registered Mail, Return Receipt Requested, addressed to the parties hereto at the respective addresses set out in Section 1.1 above, or at such other addresses as they may have hereafter specified by Written Notice.

23.2 If any when included within the term "Landlord" as used in this instrument there are more than one person, firm or corporation, all shall jointly arrange among themselves for their joint execution of such notice specifying some individual at some specific address for the receipt of notices and payments to Landlord; if and when included within the term "Tenant" as used in this instrument there are more than one person, firm or corporation, all shall jointly arrange among themselves for their joint execution of such a notice specifying some individual at some specific address for the receipt of notices and payments to Tenant. All parties included within the terms "Landlord" and "Tenant", respectively, shall be bound by notices and payments to Tenant. All parties included within the terms "Landlord" and "Tenant", respectively, shall be bound by notices and payments given in accordance with the provisions of this Article to the same effect as if each had received such notice or payment.

Tenant _____

Landlord _____

ARTICLE XXIV. Late Charges. 24.1 In the event Tenant fails to pay to Landlord when due any installment of rental or other sum to be paid to Landlord which may become due hereunder, Landlord will incur additional expenses in an amount not readily ascertainable and which has not been elsewhere provided for between Landlord and Tenant. If Tenant should fail to pay to Landlord when due any installment of rental or other sum to be paid hereunder, Tenant will pay Landlord when due any installment of rental or other sum to be paid hereunder, Tenant will pay Landlord on demand a late charge equal to the greater of (i) \$100.00 or (ii) ten percent (10%) of the past due amount. Failure to pay such late charge upon demand therefore shall be an event of default hereunder. Provisions for such late charge shall be in addition to all other rights and remedies available to Landlord hereunder or at law or in equity and shall not be construed as liquidated damages or limiting Landlord's remedies in any manner.

*

ARTICLE XXVI. Miscellaneous. 26.1 Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between parties hereof, it being understood and agreed that neither the method of computation of rental, nor any other provisions contained herein, nor any acts of the parties hereto shall be deemed to create any relationship between the parties hereto other than the relationship of Landlord and Tenant. Whenever herein the singular number is used, the same shall include the plural, and words of any gender shall include each other gender.

26.2 The captions used herein are for convenience only and do not limit or amplify the provisions hereof.

26.4 Time is of the essence with respect to all provisions of this lease, except that whenever a period of time herein prescribed for action to be taken by Landlord, Landlord shall not be liable or responsible for and there shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other cause of any kind whatsoever which are beyond the reasonable control of Landlord. At any time when there is outstanding a mortgage, deed of trust or similar security instrument covering Landlord's interest in the Premises, Tenant may not exercise any remedies for default by Landlord hereunder unless and until the holder of the indebtedness secured by such mortgage, deed of trust or similar security instrument shall have received written notice of such default and a reasonable time for curing such default shall thereafter have elapsed.

26.5 Landlord agrees that if Tenant shall perform all of the covenants and agreements, herein required to be performed by Tenant, Tenant shall, subject to the terms of this lease, at all times during the continuance of this lease have the peaceable and quiet enjoyment and possession of the Premises.

26.6 This lease contains the entire agreement between the parties, and no agreement shall be effective to change, modify or terminate this lease in whole or in part unless such agreement is in writing and duly signed by the party against whom enforcement of such change, modification or termination is sought.

26.7 Tenant warrants that it has had no dealing with any broker or agent in connection with the negotiation or execution of this lease other than Chip Mark and Mark Real Estate Advisors. Tenant agree to indemnify and hold Landlord harmless from and against any claims by any other broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Tenant with regard to this leasing transaction.

26.8 Tenant agrees to furnish from time to time when requested by Landlord, the holder of any deed of trust or mortgage or the lessor under any ground lease covering all or any part of the Shopping Center or the improvements therein or the Premises or any interest of Landlord therein, a certificate signed by Tenant confirming and containing such factual certifications and representations deemed appropriate by Landlord, the holder of any deed of trust or mortgage or the lessor under any ground lease covering all or any part of the Shopping Center or the improvements therein or the Premises or any interest of Landlord therein, and Tenant shall, within ten (10) days following receipt of said certificate from Landlord, return a fully executed copy thereof to Landlord. In the event Tenant shall fail to return a fully executed copy of such certificate to Landlord within the foregoing ten-day period, then Tenant shall be deemed to have approved and confirmed all of the terms, certifications and representations contained in such certificate. Tenant hereby irrevocably appoints Landlord as attorney-in-fact for the Tenant with full power and authority to execute and deliver in the name of Tenant such certificate if Tenant fails to deliver the same with such ten (10) day period and such certificate as signed by Landlord shall be fully binding on Tenant.

* There is no article 25.

Tenant _____

Landlord _____

26.9 The laws of the State in which the Premises is located shall govern the interpretation, validity, performance and enforcement of this lease. If any provision of this lease should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this lease shall not be affected thereby, and it is also the intention of the parties to this lease that in lieu of each clause or provision of this lease that is illegal, invalid or unenforceable, there be added as a part of this lease a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

26.10 The terms, provisions and covenants contained in this lease shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors in interest and legal representatives except as otherwise herein expressly provided.

26.13 The person(s) executing this lease on behalf of Tenant hereby represent and warrant to Landlord that such execution has been duly authorized by all requisite action of Tenant so that upon such execution this lease will be binding upon and enforceable against Tenant in accordance with its terms. Tenant agrees to furnish to Landlord from time to time upon request such written proof of such authorization as Landlord may reasonably request.

ARTICLE XXVII. Landlord's Lien. Landlord shall have and Tenant hereby grants to Landlord a continuing security interest for all rentals and other sums of money becoming due hereunder from Tenant, upon all goods, wares, equipment, fixtures, furniture, inventory, accounts, contract rights, chattel paper and other personal property of Tenant situated on the Premises, which is located at 489 North Cannon Blvd., and such property shall not be removed therefrom without the consent of Landlord until all arrearages in rent as well as any and all other sums of money then due to Landlord hereunder shall first have been paid and discharged. Products of collateral are also covered. In the event of a default under this lease, Landlord shall have, in addition to any other remedies provided herein or by law, all rights and remedies under the Uniform Commercial Code, including without limitation the right to sell the property described in this paragraph at public or private sale upon five (5) days notice to Tenant. Tenant hereby agrees to execute such other instruments necessary or desirable in Landlord's discretion to perfect the security interest hereby created. Any statutory lien for rent is not hereby waived, the express contractual lien herein granted being in addition and supplementary hereto. Landlord and Tenant agree that this lease and security agreement serves as a financing statement and that a copy or photographic or other reproduction of this portion of this lease may be filed of record by Landlord and have the same force and effect as the original. This security agreement and financing statement also covers fixtures located at the Premises described in Exhibit A attached hereto, and may be filed for record in the real estate records. The record owner of this property is . Tenant warrants that the collateral subject to the security interest granted herein is not purchased or used by Tenant for personal, family or household purposes.

Tenant _____

Landlord _____

EXECUTED BY LANDLORD, this _____ day of _____, 20____.

LANDLORD:

WITNESS:

By:

Its:

EXECUTED BY TENANT, this _____ day of _____, 20____.

TENANT:

ATTEST / WITNESS:

By:

Its:

This lease is subject to approval by city manager of the City of Kannapolis, its designee or its city council.

Tenant _____

Landlord _____

ADDENDUM "A"
HAZARDOUS MATERIALS

1. As used in this Rider, the term "Hazardous Materials" shall mean any element, compound, mixture, solution, particle or substance which is dangerous or harmful or potentially dangerous or harmful to the health or welfare of life or environment, including but not limited to explosives, petroleum, petroleum products, radioactive materials, hazardous wastes, hazardous substances, toxic substances or related materials, including, without limitation: (1) any substances defined as or included within the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "toxic substances," "hazardous pollutants" or "toxic pollutants," or other similar terms, as those terms are used in the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Clean Air Act and the Clean Water Act, or any amendments thereto, or any regulations promulgated thereunder, and any other law or regulation promulgated by any federal, municipal, state, county or other governmental or quasi governmental authority and/or agency or department thereof; (2) any "PCBs" or "PCB items" (as defined in 40 C.F.R. 4 761.3); or (3) any "asbestos" (as defined in 40 C.F.R. 4 763.63).
2. Tenant shall not use, generate, manufacture, produce, store, release, discharge or dispose of on, in, or under the demised Premises any Hazardous Materials (as defined in subparagraph 1 above), or allow any other person or entity to do so.
3. Tenant shall comply with all local, state and federal laws, ordinances and regulations relating to Hazardous Materials on, in, under or about the demised Premises.
4. Tenant shall promptly notify Landlord should Tenant receive notice of, or otherwise become aware of, any: (a) pending or threatened environmental regulatory action against Tenant or the Landlord or concerning the demised Premises in any way; (b) claims made or threatened by any third party relating to any loss or injury resulting from any Hazardous Material concerning the [refer to premises however described in lease] in any way; or (c) release or discharge, or threatened release or discharge, of any Hazardous Materials in, on, under or about the demised Premises.
5. Tenant agrees to indemnify, defend and hold Landlord, any property manager, and their respective agents and employees harmless from and against any and all liabilities, claims, demands, costs and expenses of every kind and nature (including attorneys' fees) directly or indirectly attributable to Tenant's failure to comply with this Rider, including, without limitation: (a) all consequential damages; (b) the costs of any required or necessary repair, remediation, testing, monitoring, cleanup or detoxification of any property, and (c) the preparation and implementation of any closure, remedial or other required plan. The indemnity contained in this Rider shall survive the termination or expiration of this Lease.

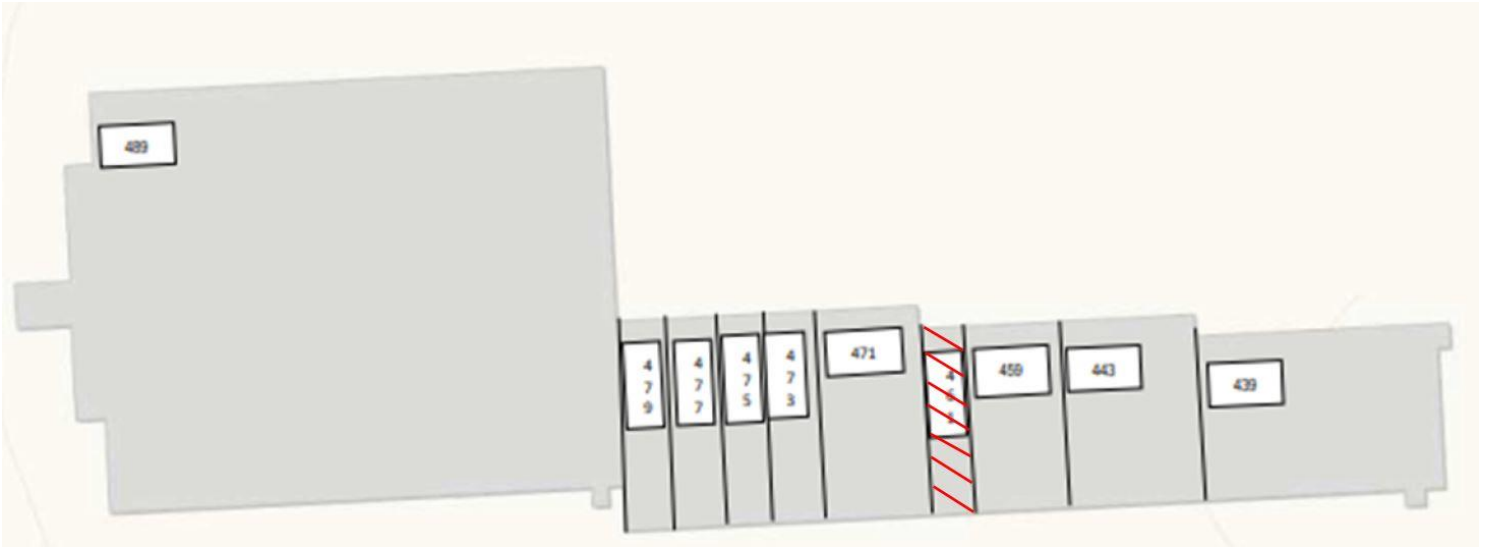
Tenant _____

Landlord _____

EXHIBIT A

Shopping Center Site Plan Showing Premises

Plus Exhibit A continued



Tenant _____

Landlord _____

EXHIBIT A
page 2
All non-building areas are
considered the common area,
including covered walkways and
sidewalks.



Tenant _____

Landlord _____

EXHIBIT B

Legal Description

To be provided at a later date.

Tenant _____

Landlord _____

EXHIBIT C

Description of Landlord's Work and Tenant's Work

1. Tenant agrees to accept the Premises in as-is condition.

Tenant _____

Landlord _____

EXHIBIT D

Rules and Regulations to Use of the Common Area

The use of the Common Area by Tenant and Tenant's agents, employees, servants, visitors and invitees shall be subject to the following rules and regulations:

1. Landlord shall have the right and authority to designate specific areas within the Shopping Center or in reasonable proximity thereto in which automobiles and other transportation vehicles owned by Tenant, Tenant's employees, servants, agents, licensees and concessionaires shall be parked. Tenant shall furnish to Landlord upon request a complete list of all license numbers of all automobiles and other transportation vehicles operated by Tenant, Tenant's employees, servants, agents, licensees or concessionaires.
2. All loading and unloading of goods shall be done only at such times, in the area and through the entrances as shall as designated from time to time for such purposes by Landlord.
3. The delivery or shipping of merchandise, supplies and fixtures to and from the Premises shall be subject to such rules and regulation as in the sole discretion of Landlord shall be necessary for the proper operation of the Shopping Center.
4. No person shall use any utility area, truck facility or other area reserved for use in connection with the conduct of business except for the specific purpose for which such area is designed.
5. Except as permitted in a Tenant's lease of the Premises or except as permitted by Landlord's prior written consent, no person shall within the Common Area:
 - a. Vend, peddle or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet or other matter whatsoever;
 - b. Exhibit any sign, placard, banner, notice or other written material;
 - c. Distribute any circular, booklet, handbill, placard or other materials;
 - d. Solicit membership in any organization, group or association or contribution for any purpose
 - e. Parade, patrol, picket, demonstrate or engage in any conduct that might tend to interfere with or impede the use of the Common Area by Landlord or any occupant or any employee, or invitee of any occupant of the Shopping Center, create a disturbance, attract attention or harass, annoy, disparage or be detrimental to the interests of any business establishments within the Shopping Center;
 - f. Use the Common Area for any purpose when none of the business establishment within the Shopping Center is open for business or employment
 - g. Throw, discard or deposit any paper, glass or extraneous matter of any kind, except in designated receptacles, or create litter or hazards of any kind (Tenant agrees to crush boxes and deposit in trash container);
 - h. Deface, damage or demolish any sign, light standard or fixture, landscaping material or other improvements within, or property situated within the Common Area of the Shopping Center, and;
 - i. Solicit any other business or display any merchandise.
6. The Common Area plumbing facilities shall not be used for any purpose other than that for which they are constructed, and no foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage or damage resulting from a violation of this provision shall be borne by Tenant, who shall, or whose employees, agent or invitees shall have caused it.
7. All floor area, including vestibules, entrances and exits, doors, fixtures, windows and plate glass shall be maintained in a safe neat, and clean condition.
8. No portion of this Common Area or the Shopping Center shall be used for any lodging or illegal purposes.
9. The sidewalks, halls, passages, exits, entrances, elevators, shopping malls, escalators and stairways of the Common Area or the Shopping Center shall not be obstructed by any Tenant or used by and Tenant for any purpose other than for ingress and to egress from their respective Premises.

Tenant _____

Landlord _____

EXHIBIT D

Page Two

The halls, passages, exits, entrances, elevators, shopping malls escalators, stairways are not for the use of the general public and Landlord shall at all cases retain the right to control and prevent access thereto of all persons whose presence in the judgement of Landlord shall be prejudicial to the safety, character, reputation and interest of the Shopping Center and its tenants, provided that nothing herein contained shall be construed to prevent such access to persons with whom any Tenant normally deals in the ordinary course of its business, unless such persons are engaged in illegal activities. No tenant and no employee or invitee of any Tenant shall go upon the roof or any building in the Shopping Center except for the sole purpose of servicing its air conditioning units or rooftop equipment.

10. In the case of any invasion, mob, riot, public excitement or other circumstances rendering such action advisable in Landlord's sole discretion, Landlord reserves the right to prevent access to the Common Area and Shopping Center during the continuance of the same by such action as Landlord may deem appropriate, including closing entrances to the Shopping Center and Common Area.
11. No Tenant shall place or permit any radio or television antenna, loudspeaker, amplifier or other device in the Common Area or where the same can be seen or heard in the Common Area without the prior written consent of Landlord.
12. No person shall use any part of Common Area for any purpose other than those for which the Common Area is intended.
13. No part of the Common Area shall be used for storing or maintaining any material or property, whether on a temporary basis or otherwise.
14. Any repairs, maintenance or replacements to the Common Area required to be made by Landlord which are occasioned by the act or negligence of any Tenant, its agents, employees, sub-tenants, licensees and concessionaires, shall be paid for by such Tenant upon demand to the extent not covered by insurance proceeds paid to Landlord therefore.
15. No Tenant shall make any alteration, addition or improvement to or remove any portion of the Common Area, and no Tenant shall make any changes to or paid any portion of the Common Area, or install any lighting decorations or paintings in or to the Common Area, or erect or install any signs, banners, placards, decorations or advertising media or any type in the Common Area
16. Landlord may waive any one of more of these rules and regulations for the benefit of any particular tenant or lessee, but no such waiver by Landlord shall be construed as a waiver of such rules and regulations in favor of any other tenant or lessee, no prevent Landlord from thereafter enforcing any such rules and regulations against any or all of the tenants of the Shopping Center.

Landlord shall at all times have the right to change these rules and regulations or to promulgate other rules and regulations in such manner as may be deemed advisable for safety, care, or cleanliness of the Shopping Center, for preservation of good order therein, or for other purposes, all of which rules and regulations, changes and amendments shall be carried out and observed by Tenant. Tenant shall further be responsible for the compliance with these rules and regulations by the employees, servants, agents, visitors and invitees of Tenant. In the event any provisions of these rules and regulations shall conflict with any specific provisions of the Lease Agreement to which this Exhibit D is attached, the provisions of the Lease Agreement shall control.

Tenant _____

Landlord _____

EXHIBIT E

Cost of Operation and Maintenance of the Common Area

The cost of operation and maintenance of the Common Area shall include by shall not be limited to, all cost and expenses incurred by Landlord in operating, maintaining, repairing, lighting, signing, cleaning, painting, stripping, insuring, equipping, staffing, heating and cooling, securing, and policing of the Common Area, including, among other costs, all costs and expenses for or associated with the following (which may be incurred by landlord in its sole discretion):

1. Alarm systems, alarm services, security personnel, security services, patrol services and fire protection;
2. Maintenance of sprinkler systems (both fire and irrigation) serving the Shopping Center and/or Common Area;
3. Insurance, including, without limitation, liability insurance for personal injury, death and property damage, insurance against fire, extended coverage, theft or other causalities, fidelity bonds for personnel, insurance against liability for assault and battery, defamation and claims of false arrest and plate glass insurance;
4. Regulation or direction of traffic;
5. Repair or replacement, cleaning, sweeping painting, striping and repaving of asphalt parking areas, concrete parking areas, all parking garage areas, curbs, walkways, pipe bollards, guardrails, bumpers, fences, screens, flagpoles, bicycle racks, signs and other markers, landscaping, drainage pipes, ducts, conduits and similar items and lighting facilities;
6. Planting, replanting and replacing flowers, trees, shrubbery, planters and other landscaping items and materials;
7. Any surcharges levied upon or assessed against parking spaces or areas payments toward mass transit or carpooling facilities or otherwise as required by federal, state or local governmental authorities;
8. Maintenance, repair and replacement of utility systems serving the Common Area, including, but not limited to, water, sanitary sewer and storm water lines and drainage systems, electrical, gas, telephone and lighting systems (including bulbs, poles and fixtures) and other utility lines, pipes and conduits, including utility charges in connection with any of the foregoing systems;
9. Maintaining and operating sewage treatment facilities, if any;
10. Maintenance, repair, replacement and substitution of and for all portions of the buildings in the Shopping Center (excluding the premises and premises (leased to other tenants), including walls, roofs and roof flashings, canopies, skylights, signs, planters, benches, fire exits, doors and hardware, window, glass and glazing;
11. All licenses and permit fees and surcharges that may result from any law, rule regulation, guideline or order;
12. Lighting and power to the Common Area;
13. Energy to heat, ventilate and air condition areas in which the Common Area is located;
14. Water services, if any, furnished by Landlord for the non-exclusive use of all tenants and their guests and invitees;
15. Operating and maintaining any public toilets and restrooms;
16. Removal of snow, ice, trash and debris;
17. Maintaining federal, state or local governmental ambient air and environmental standards;
18. Installing, renting, maintaining and operating signs of all types;
19. The installation, rental, maintenance, repair and replacement of music program services and loudspeaker systems, including furnishing electricity therefore;
20. Parcel pick-up and delivery services;
21. All materials, supplies and services purchased or hired in the operation of the Common Area or for the purposes set forth in this Exhibit
22. Inspecting, maintenance, repair and acquisition costs (including depreciation) of any and all machinery and equipment used in the operation and maintenance of the Common Area or for any of the purposes set forth in this Exhibit E, including personal property taxes and other charges and taxes incurred in connection with such equipment;

Tenant _____

Landlord _____

EXHIBIT E

Page Two

23. Any and all personnel, including, without limitation, security and maintenance people, secretaries, bookkeepers and any other personnel related to the operation of the Common Area or for the purpose set forth in this Exhibit E (including within such costs and expenses for such personnel, without limitation, salaries, wages, leasing commissions, expenses and other compensation, including so-called fringe benefits, life, disability, medical and health insurance, pension plans, social security taxes, F.I.C.A., unemployment and other employment taxes, workmen's compensation, insurance and the like);
24. Assessments levied against the Shopping Center by any community association or otherwise under any applicable restrictive covenants or the like covering the Shopping Center and other property within a development complex; and
25. Administrative costs attributable to the Common Area for on-site personnel and an overhead administrative cost allowance in the amount of 15% of the total Common Area costs.

Provided there should be no duplication of costs in this **Exhibit E** with any costs Tenant is responsible to pay in other provisions of the Lease Agreement to which this Exhibit is attached.

Tenant _____

Landlord _____

EXHIBIT F

Sign Criteria

To be provided at a later date

Tenant _____

Landlord _____



**PUBLIC NOTICE
LEASE OF CITY PROPERTY**

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

479 N. Cannon Blvd
Kannapolis, North Carolina

The City intends to lease the property to Marco Sanchez for a term of five years. In consideration of the lease, Tenant will pay the City base monthly rent for the following years of the term: Year 1: \$1,066.66, Year 2: \$1,100.00, Year 3: \$1,133.30, Year 4: \$1,166.66, Year 5: \$1,200.00.

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, April 9, 2018. At that time the board intends to authorize the lease of and option for the property described above.

Anyone who requires an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a program, service, or activity of **the City of Kannapolis**, should contact the office of ***Tina H. Cline, Human Resource Director, by phone at 704-920-4302 or by email at tcline@kannapolisnc.gov*** as soon as possible but no later than 48 hours before the scheduled event.

ADVERTISING INSTRUCTIONS:

To be published as a Legal Ad on **FRIDAY, MARCH 30, 2018**

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

Bridgette Bell, City Clerk

(704) 920-4303

bbell@kannapolisnc.gov

RETAIL CENTER LEASE

Between

City of Kannapolis

and

TBD

Tenant _____

Landlord _____

INDEX TO STANDARD COMMERCIAL SHOPPING CENTER

LEASE

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Tenant _____

Landlord _____

**STANDARD COMMERCIAL
SHOPPING CENTER LEASE**

THE STATE OF NORTH CAROLINA

COUNTY OF

This lease, entered into this 13th day of March, 2018, by and between the Landlord and the Tenant hereinafter named.

ARTICLE 1. Definitions and Certain Basic Provisions.

1.1

- a) "Landlord": City of Kannapolis
- b) Landlord's Address: 401 Laureate Way Kannapolis, NC 28081
- c) "Tenant": Marco Sanchez
- d) Tenant's mailing address: 1122 Rachel Lane Salisbury, NC 28147
- e) Tenant's trade name: TBD
- f) Tenant's address in Shopping Center: Suite 479
- g) "Premises": approximately 1600 square feet in Building (computed from measurements to the exterior of outside walls of the building and to the center of interior walls), such premises being shown and outlined within the cross-hatched area of the site plan attached hereto as Exhibit A, and being part of the Shopping Center situated upon the property described in Exhibit B attached hereto. "Shopping Center" shall refer to the property described in Exhibit B, together with such additions and other changes as Landlord may from time to time designate as included within the Shopping Center.
- h) Lease term: Commencing on the "Commencement Date" as defined in Section 3.2 and ending 60 months thereafter except that in the event the Commencement Date is a date other than the first day of a calendar month, said term shall extend for said number of months in addition to the remainder of the calendar month following the Commencement date.
- i) "Estimated Completion Date": "ready for occupancy"
- j) Permitted Use: Party supply store, selling party accessories, piñatas, candy and the renting of tents and chairs for the purpose of hosting parties
- k) Minimum Guaranteed Rental: per month (yr. 1 \$1066.66, yr. 2 \$1100.00, yr. 3 \$1133.30, yr. 4 \$1166.66, yr. 5 \$1200.00)
- l) Initial Common Area Maintenance Charge per month under Section 5.3: \$100.00 per month (\$.75) per square foot per year).
- m) Initial Insurance Escrow Payment per month under Section 12.3: \$33.33per month (\$.25 per square foot per year).
- n) Initial Tax Escrow Payment per month under Section 18.2: \$66.66 per month (\$.50 per square foot per year).
- o) Initial Capital Reserve Payment per month: N/A
- p) Security Deposit: 1 month total payment

Tenant _____

Landlord _____

1.2 The sum of:

	<u>yr. 1</u>	<u>yr. 2</u>	<u>yr. 3</u>	<u>yr. 4</u>	<u>yr.5</u>
Initial Minimum Guaranteed Rental; and	\$1066.66	\$1100.00	\$1133.30	\$1166.66	\$1200.00
Initial Common Area Maintenance Charge; and	\$100	\$100	\$100	\$100	\$100
Initial Insurance Escrow Payment; and	\$33.33	\$33.33	\$33.33	\$33.33	\$33.33
Initial Tax Escrow Payment; and	\$66.66	\$66.66	\$66.66	\$66.66	\$66.66
Initial Capital Reserve Payment; and					
Initial Monthly Payment Total	\$1266.65	\$1299.99	\$1333.29	\$1366.65	\$1399.99

1.3 Each of the foregoing definitions and basic provisions shall be construed in conjunction with and limited by references thereto in other provisions of this lease.

ARTICLE II. Granting Clause. 2.1 In consideration of the obligation of Tenant to pay rent and other charges as herein provided and in consideration of the other terms, covenants and conditions hereof, Landlord hereby demises and leases to Tenant, and Tenant hereby takes from Landlord, the Premises TO HAVE AND TO HOLD the Premises of the lease term, all upon the terms and conditions set forth in this lease.

ARTICLE III. Construction and Acceptance of Demised Premises. 3.1 Landlord shall proceed to construct improvements upon the Premises in compliance with the "Description of Landlord's Work" in Exhibit C attached hereto, with such minor variations as Landlord may deem advisable, and tender the Premises to Tenant. However, Tenant acknowledges that Landlord is relying on a third party to construct the Shell Building and Landlord's work will not commence until such third party delivers a Shell building to Landlord. Landlord may terminate this Lease with written notice to Tenant if the Shell building is not delivered to Landlord by the third party within eighteen (18) months of the execution date of this Lease. The Premises shall be deemed to be "Ready for Occupancy" when Landlord certifies in writing to Tenant that Landlord has substantially completed Landlord's Work, as described in Exhibit C. If the Premises are not Ready for Occupancy prior to the Estimated Completion Date, Landlord shall not be deemed to be in default hereunder or otherwise liable in damages to Tenant, nor shall the term of this lease be affected, except that if for any reason the Premises are not Ready for Occupancy within eighteen (18) months following the Estimated Completion Date, Tenant may at its option terminate this lease by written notice to Landlord delivered within thirty (30) days following the expiration of such eighteen (18) month period, in which event neither party shall have any further liabilities or obligations hereunder, except the Landlord shall repay to Tenant any prepaid rent or security deposit. When the Premises are Ready for Occupancy, Tenant agrees to accept possession thereof and to proceed with due diligence to perform the work described under "Description of Tenant's Work" in Exhibit C, all of such work to be performed in compliance with Exhibit C, and to install its fixtures, furniture and equipment. Any Tenant Work involving venting, opening, sealing, waterproofing or any altering of the roof shall be performed by Landlord's roofing contractor at Tenant's expense. Tenant shall provide Landlord with a certificate from Landlord's roofing contractor that all of Tenant's work involving venting, opening, sealing, waterproofing or in any way altering the roof has been performed in

compliance with Exhibit C. Tenant hereby holds Landlord harmless from any damage to the Premises, resulting, directly or indirectly, from Tenant's venting, opening, sealing, waterproofing or other altering of the roof unless such a certificate from Landlord's roofing contractor has been delivered to Landlord before the date of any such damage. In the event of any dispute as to work performed or required to be performed by Landlord or Tenant, the certificate of Landlord's architect or engineer shall be conclusive. By initiating Tenant Work in the Premises, Tenant shall be deemed

Tenant _____

Landlord _____

to have accepted the same and to have acknowledged that the same fully comply with Landlord's covenants and obligations hereunder. Tenant further agrees that, if requested by Landlord, Tenant will furnish Landlord with a written statement that Tenant has accepted the Premises and that Landlord has fully complied with Landlord's covenants and obligations hereunder. Tenant agrees to furnish to Landlord a Certificate of Occupancy from applicable local authorities on or before the Commencement Date.

3.2 Tenant agrees to open the Premises to the public on June 1, 2018 or earlier, The Commencement Date of this lease shall be on June 1, 2018, Occupancy of the Premises by Tenant prior to the Commencement Date shall be subjected to all of the terms and provisions of this lease excepting only those requiring the payment of rent. Landlord and Tenant each agree that at the request of either they will, following the Commencement Date, execute and deliver a recordable short form lease containing the basic provisions of this lease, acknowledging that Tenant has accepted possession, and reciting the exact Commencement Date and termination date of this lease.

ARTICLE IV. Monthly Payment. 4.1. Monthly Payment, as specified in Section 1.2 shall accrue hereunder from the Commencement Date, and shall be payable at the place designated for the delivery of notices to Landlord at the time of payment, without demand and without set-off or deduction, for any reason whatsoever.

4.2 The first Minimum Guaranteed Rental payment shall be due and payable on or before the Commencement Date, and subsequent Minimum Guaranteed Rental payments shall be due and payable on or before the first day of each succeeding calendar month during the lease term; provided that if the Commencement Date is a date other than the first day of a calendar month, there shall be due and payable on or before such date as Minimum Guaranteed Rental for the balance of such calendar month a sum equal to that proportion of the rent specified for the first full calendar month as herein provided, which the number of days from the Commencement Date to the end of the calendar month during which the Commencement Date shall fall bears to the total number of days in such month.

ARTICLE V. Common Area. 5.1 The "Common Area" is the part of the Shopping Center designated by Landlord from time to time for the common use of all tenants, including among other facilities, parking area (both surface and structure/garage parking spaces), sidewalks, landscaping, curbs, loading areas, private streets and alleys, lighting facilities, hallways, malls, restrooms, and other areas and improvements provided by Landlord for the common use of all tenants, all of which shall be subject to Landlord's sole management and control and shall be operated and maintained in such manner as Landlord, in its discretion shall determine. Landlord reserves the right to change from time to time to the dimensions and location of the Common Area as shown on Exhibit A as well as the location, dimensions, identity and type of any building shown on Exhibit A and to construct additional buildings or additional stories on existing buildings or other improvements in the Shopping Center, and to eliminate buildings from the plan shown on Exhibit A. Tenant and its employees, customers, subtenants, licensees and concessionaires shall have the non-exclusive right and license to use the Common Area as constituted from time to time, such use to be permitted by Landlord to be in common with Landlord, other tenants of the Shopping Center and other persons permitted by Landlord to use the same. Tenant and Tenant's agents, employees and invitees will comply fully with all requirements of the rules and regulations which are attached hereto as Exhibit D, and made a part hereof as though fully set out herein. Landlord shall at all times have the right to change such rules and regulations or to promulgate other rules and regulations in such manner as may be deemed advisable for safety, care or cleanliness of the Shopping Center and for preservation of good order therein, all of which rules and regulations, changes and amendments will be forwarded to Tenant in writing and shall be carried out and observed by Tenant. Tenant shall further be responsible for the compliance which such rules and regulations by the employees, servants, agents, visitors and invitees of Tenant. Landlord may temporarily close any part of the Common Area for such periods of time as may be necessary to prevent the public from obtaining perspective rights or to make repairs or alterations.

5.2 Landlord shall construct, at its sole cost and expense, a hard surface parking area within the shopping Center as shown on Exhibit A or in reasonable proximity thereto, it being expressly agreed, however, that in addition to the rights reserved to Landlord in Section 6.1 above, Landlord may from time to time substitute for any parking

Tenant _____

Landlord _____

area shown on Exhibit A other areas or multi-level parking facilities reasonably accessible to the tenants of the Shopping Center.

5.3 Tenant agrees to pay as an additional charge each month its proportionate share of the cost of operation and maintenance of the Common Area (including, among other costs, those listed on Exhibit E which may be incurred by Landlord in its discretion, and including an allowance in the amount of fifteen percent (15%) of the total Common Area costs for Landlord's overhead and administrative costs. The proportionate share to be paid by Tenant of the cost of operation and maintenance of the Common Area shall be computed on the ratio that the total area of the Premises bears to the total number of square feet of leasable space within the Shopping Center. Such proportionate share shall be paid by Tenant in monthly installments in such amounts as are estimated and billed by Landlord at the beginning of each twelve (12) month period commencing and ending on dates designated by Landlord, each installment being due on the first day of each calendar month. If at any time during such twelve (12) month period it shall appear that Landlord has underestimated Tenant's proportionate share of Common Area costs for such twelve (12) month period, Landlord may re-estimate Tenant's proportionate share of Common Area costs and may bill Tenant for any deficiency which may have accrued during such twelve (12) month period and thereafter the monthly installment payable by Tenant shall also be adjusted. Within one hundred twenty (120) days or such reasonable time thereafter (in Landlord's determination) after the end of each such twelve (12) month period, Landlord shall deliver to Tenant a statement of Common Area costs for such twelve (12) month period and the monthly installments paid or payable shall be adjusted between Landlord and Tenant, and each party hereby agrees that Tenant shall pay Landlord or Landlord shall credit Tenant's account (or, if such adjustment is at the end of the term, pay Tenant), within thirty (30) days of receipt of such statement, the amount of any excess or deficiency in Tenant's proportionate share of Common Area costs paid by Tenant to Landlord during such twelve (12) month period. Failure of Landlord to provide the statement called for hereunder shall not relieve Tenant from its obligations hereunder. The initial Common Area Maintenance Charge subject to adjustment as provided herein, shall be that amount set out in Section 1.1 (m).

ARTICLE VI. Use and Care of Premises. 6.1 The Premises may be used only for the purpose or purposes specified in Section 1.j above, and for no other purpose of purposes without the prior written consent of Landlord. Tenant shall use in the transaction of business in the Premises the trade name specified in Section 1.1 (e) above and no other trade name without the prior written consent of Landlord. Tenant shall not at any time leave the Premises vacant, but shall in good faith continuously throughout the term of this lease conduct and carry on in the entire Premises the type of business for which the Premises are leased. Tenant shall operate its business with a complete line of full selection and sufficient stock of first class merchandise of current style and type, attractive displays and in an efficient, high class and reputable manner so as to produce the maximum amount of sales from the Premises, and shall, except during reasonable periods for repairing, cleaning and decorating keep the Premises open to the public for business with adequate and competent personnel in attendance on all days and during all hours (including evenings) established by Landlord from time to time as store hours for the Shopping Center, and during any other days and hours extent Tenant may be prohibited from being open for business by applicable law, ordinance or government regulation.

6.2 Tenant shall not, without Landlord's prior written consent, keep anything within the Premises for any purpose which increases the insurance premium cost of invalidates any insurance policy carried on the Premises or other part of the Shopping Center. Tenant shall pay as additional rental, upon demand of Landlord, any such increased premium cost due to Tenant's use or occupation of the Premises. All property kept, stored or maintained within the Premises by Tenant shall be at Tenant's sole risk.

6.3 Tenant shall not conduct within the Premises any fire, auction or bankruptcy sales or operate within the Premises a "Wholesale" or "factory outlet" store, a cooperative store or a "second hand" store, a "surplus" store or a store commonly referred to as a "discount house". Tenant shall not advertise that it sells products or services at "discount", "cut-price", or "cut-rate" prices. Tenant shall not permit any objectionable or unpleasant odors to emanate

Tenant _____

Landlord _____

from the Premises, no place or permit any radio, television, loudspeaker or amplifier on the roof or outside the Premises or where the same can be seen or heard from outside the building or in the Common Area, no place an antenna, awning or other projection on the exterior of the Premises; nor business or distribute leaflets or other solicit advertising material in the Common Area; nor take any other action which in the exclusive judgement of Landlord would constitute a nuisance or would disturb or endanger other tenants of the Shopping Center or unreasonably interfere with their use of their respective premises, nor do anything which would tend to injure the reputation of the Shopping Center.

6.4 Tenant will take good care of the Premises and keep the same free from waste at all times. Tenant shall keep the Premises and sidewalks, service-ways and loading areas adjacent to the Premises neat, clean and free from dirt, rubbish, insects and pests at all times, and shall store all trash and garbage within the Premises, arranging for the regular pickup of such trash and garbage at Tenant's expense. Tenant will store all trash and garbage within the area designated by Landlord for such trash pickup and removal and only in receptacles of the size, design and color from time to time prescribed by Landlord. Receiving and delivery of goods and merchandise and removal of garbage and trash shall be made only in the manner and areas from time to time prescribed by Landlord. Landlord may, at its sole option, arrange for collection of all trash and garbage and, should Landlord exercise such election, Tenant's proportionate share of the cost thereof will be part of its Common Area Maintenance Charge. Tenant shall not operate an incinerator or burn trash or garbage within the Shopping Center.

6.5 Tenant shall maintain all display windows in a neat, attractive condition, and shall keep all display windows and exterior electric signs in front of the Premises lighted from dusk until 10:00 PM every day, including Sundays and holidays.

6.6 Tenant shall include the address and identity of its business activities in the Premises in all advertisements made by Tenant in which the address and identity of any similar local business activity of Tenant is mentioned.

6.7 Tenant shall procure, at its sole expense, any permits and licenses required for the transaction of business in the Premises and otherwise comply with all applicable laws, ordinances and governmental regulations.

ARTICLE VII. Maintenance and Repair of Premises.

7.1 Landlord shall keep the foundation, the exterior walls (except store fronts, plate glass windows, doors, door closure devices, window and door frames, molding, locks and hardware and painting or other treatment of interior and exterior walls) and roof of the Premises in good repair, ordinary wear and tear excepted. Any repairs required to be made by Landlord hereunder which are occasioned by the act or negligence of Tenant, its agents, employees, subtenants, licensees and concessionaires, shall be paid for by Tenant upon demand to the extent not covered by net insurance proceeds paid to Landlord therefore. In the event that the Premises should become in need of repairs required to be made by Landlord hereunder, Tenant shall give immediate written notice thereof to Landlord and Landlord shall not be responsible in any way for failure to make any such repairs until a reasonable time shall have elapsed after delivery of such written notice. Landlord's obligation hereunder is limited to repairs specified in this Section 8.1 only, and Landlord shall have no liability for any damages or injury arising out of any condition or occurrence causing a need for such repairs.

7.2 Tenant shall furnish, maintain and replace all electric light bulbs, tubes and tube casings.

7.3 Tenant shall keep the Premises in good, clean condition and shall, at its sole cost and expense, make all needed repairs and replacements, including replacement of cracked or broken glass, and shall keep all plumbing units, pipes and connections free from obstruction and protected against ice and freezing. If any repairs, replacements or maintenance required on the part of Tenant hereunder are not accomplished within ten (10) days after written notice to Tenant from Landlord, Landlord may, at its option, perform such repairs, replacements or maintenance without liability to Tenant for any loss or damage which may result to its stock or business by reasons thereof, and Tenant shall pay to Landlord immediately upon demand as additional rental hereunder the cost of such repairs, replacements or maintenance plus (15%) of such cost. At the expiration of this lease, Tenant shall surrender the Premises in good

Tenant _____

Landlord _____

condition, reasonable wear and tear and loss by fire or other casualty accepted and shall surrender all keys for the Premises to Landlord and shall inform Landlord of all combinations on locks, safes and vaults, if any, in the Premises. Upon move out by Tenant, should the Premises require any repairs which are the responsibility of Tenant hereunder, Landlord shall have the right to make such repairs at Tenant's sole cost.

7.4 Maintenance of the air conditioning and heating equipment shall be solely the responsibility of Tenant. Throughout the entire term of this lease, Tenant shall at its own costs and expense, enter into a regularly scheduled preventative maintenance/service contract with a maintenance contractor for servicing all hot water, heating and air conditioning systems and equipment within the Premises. The maintenance contractor and the contract must be approved by Landlord. The service contract must include all services suggested by the equipment manufacturer within the operation/maintenance manual and must become effective (and a copy thereof delivered to Landlord) with thirty (30) days of the date Tenant takes possession of the Premises.

ARTICLE VIII Alterations.

8.1 Tenant shall not make any alterations, additions or improvements to the Premises without the prior written consent of Landlord, except for the installation of unattached, moveable trade fixtures which may be installed without drilling or cutting or otherwise defacing the Premises. All alterations, additions, improvements and fixtures (other than unattached, moveable trade fixtures) which may be made or installed by either party upon the Premises shall remain upon and be surrendered with the Premises and become the property of Landlord at the termination of this lease, unless Landlord requests their removal in which event Tenant shall remove the same and restore the Premises to their original condition at Tenant's expense. Any linoleum, carpeting or other floor covering which may be cemented or otherwise affixed to the floor of the Premises is a permanent fixture and shall become the property of Landlord without credit or compensation to Tenant.

8.2 All construction work done by Tenant within the Premises, including without limitation Tenant's Work referred to in Section 3.1, shall be performed in a good and workmanlike manner, in compliance with all governmental requirements, and the requirements of any contract or deed of trust to which the Landlord may be a party and in such manner as to cause a minimum of interference with other construction in progress and with the transaction of business in the Shopping Center. Tenant agrees to indemnify Landlord and hold it harmless against any loss, liability or damage resulting from such work, and prior to commencement of any such work Tenant shall, if requested by Landlord, furnish bond or other security satisfactory to Landlord against any such loss, liability or damage.

8.3 Tenant agrees that all venting, opening, sealing, waterproofing or any altering of the roof shall be performed by Landlord's roofing contractor at Tenant's expense and that when completed Tenant shall furnish to Landlord a certificate from Landlord's roofing contractor that all such alterations approved by Landlord have been completed in accordance with the plans and specifications therefore approved by Landlord. Tenant agrees

that all improvements, alterations, repairs or other work performed upon the Premises under any provisions of this lease shall be performed under the direction of a general contractor selected from an Approved Contractor List to be furnished by Landlord. Tenant further agrees that plans and drawings for installation or revision of mechanical, electrical or plumbing systems shall be designed by an engineer selected from and Approved Engineers List to be furnished by Landlord, such design work to be done at Tenant's expense.

ARTICLE IX. Landlord's Right of Access; Use of Roof.

9.1 Landlord shall have the right to enter upon the Premises at any reasonable time for the purpose of inspecting the same, or of making repairs to the Premises, or of making repairs, alterations or additions to adjacent premises, or of showing the Premises to prospective purchasers, lessees or lenders.

9.2 Use of the roof above the Premises is reserved to Landlord. Tenant shall not be allowed on the roof without Landlord's prior written consent.

Tenant _____

Landlord _____

ARTICLE X. Signs; Store Fronts.

10.1 Tenant shall not, without Landlord's prior written consent (a) make any changes to or paint the store front; or (b) install any exterior lighting, decorations or paintings or (c) erect or install any signs, banners, window or door lettering, placards, decorations or advertising media of any type which can be viewed from the exterior of the Premises, excepting only dignified displays of customary type for its display window. All signs, decorations and advertising media shall conform in all respects to Landlord's sign criteria attached hereto as Exhibit F. All signs shall be kept in good conditions and in proper operating order at all times. Landlord reserves the right to designate a uniform type of signs for the Shopping Center to be installed and paid for by Tenant.

10.2 Tenant agrees to have erected and/or installed and fully operative on or before the Commencement Date of this lease all signs in accordance with Landlord's sign criteria. The Tenant, upon vacation of the Premises, or the removal or alteration of its sign for any reason, shall be responsible for the repair, painting, and/or replacement of the building fascia surface where signs are attached.

10.3 Tenant shall pay its prorated cost of electricity if Tenant maintains a sign on Landlord's pylon sign (if any) Furthermore, Tenant waives any liability on the part of Landlord arising out of Tenant's use of the pylon sign and agrees to hold Landlord harmless from and against any liability arising out of Tenant's use of such sign.

10.4 During the period that is six (6) months prior to the end of the lease term and at any time Tenant is in default hereunder and such default has remained uncured for at least thirty (30) days, Landlord shall have the right to erect on the Premises signs indicating that the Premises are available for lease.

ARTICLE XI. Utilities.

11.1 Landlord agrees to cause to be provided and maintained the necessary mains, conduits and other facilities necessary to supply water, electricity, gas (if applicable), telephone service and sewerage service to the Premises, subject to any special provisions contained in Exhibit C. Landlord shall not be responsible for providing any meters or other devices for the measurement of utilities supplied to the Premises. Tenant shall at Tenant's sole cost and expense make application and arrange for the installation of all such meters or other devices.

11.2 Tenant shall promptly pay all charges for electricity, water, gas, telephone service, sewage service and other utilities furnished to the Premises and shall promptly pay any maintenance charges therefore Landlord may, if it so elects, furnish one or more utility services to Tenant, and in such event Tenant shall purchase such services as are tendered by Landlord, and shall pay on demand as additional retail the rates established therefore by Landlord which shall not exceed the rates which would be charged for the same services if furnished directly by the local public utility companies. Landlord may at any time discontinue furnishing any such service without obligation to Tenant other than to connect the Premises to the public utility, if any, furnishing such service.

11.3 Landlord shall not be liable for any interruption or failure whatsoever in utility services and Tenant shall comply with all terms and provisions of this lease notwithstanding any such failure or interruption.

ARTICLE XII. Indemnity, Public Liability Insurance and Fire Extended Coverage Insurance.

12.1 Landlord shall not be liable to Tenant or to Tenant's employees, agents or visitors, or to any person or entity whomsoever, for injury to person or damage to or loss of property on or about the Premises or the Common Area caused by the negligence or misconduct of Tenant, its officers, partners, employees, agents, subtenants, licensees, concessionaires, visitors or any other person entering the Shopping Center under the express or implied invitation of Tenant, or arising out of the use of the Premises by Tenant and the conduct of its business therein, ' or arising out of any breach or default by Tenant in the performance of its obligations hereunder or resulting from any other cause except Landlord's negligence, and Tenant hereby agrees to indemnify Landlord (including without limitation the trustee and beneficiaries if Landlord is a trust), Landlord's agents and employees and hold them harmless from any loss, expense, claims or actions arising out of such damage or injury (including without limitation any court costs and

Tenant _____

Landlord _____

attorneys' fees). The provisions of this section shall survive the termination of this lease with respect to any claims or liability occurring prior to such termination.

12.2 Tenant shall procure and maintain throughout the term of this lease, at its sole cost and expense, (i) a policy of public liability insurance insuring both Landlord and Tenant against all claims demands or actions arising out of or in connection with Tenant's use or occupancy of the Premises, or by the condition of the Premises, the limits of such policy or policies to be in an amount not less than \$500,000 in respect of injuries to or death of any one person, and in an amount not less than \$1,000,000 in respect of any one occurrence or disaster, and in an amount not less than \$100,000 in respect of property damaged or destroyed, (ii) fire and extended coverage insurance covering all alterations, additions, partitions and improvements made or placed by Tenant in the Premises, and (iii) insurance covering glass breakage in the Premises, all such policies to be written by insurance companies satisfactory to Landlord. Tenant shall obtain a written obligation on the part of each insurance company to notify Landlord at least ten (10) days prior to cancellation of such insurance. Such policies or duly executed certificates of insurance shall be promptly delivered to Landlord and renewal thereof as required shall be delivered to Landlord at least thirty (30) days prior to the expiration of the respective policy terms. Tenant's failure to comply with the foregoing requirements relating to insurance shall constitute an event of default hereunder. In addition to the remedies provided in Article XIX of this lease, Landlord may, but is not obligated to, obtain such insurance and Tenant shall pay to Landlord upon demand as additional rental the premium cost thereof plus interest thereon at the rate equal to the lesser of the highest rate permitted by law or eighteen percent (18%) per annum from the date of payment by Landlord until repaid by Tenant.

12.3 Tenant agrees to pay its proportionate share of Landlord's cost of carrying fire and extended coverage insurance and liability insurance in such amounts as Landlord deems necessary or desirable Landlord ("Insurance") on the Shopping Center. During each month of the lease term, Tenant shall make a monthly escrow deposit with Landlord equal to 1/12 of its proportionate share of the Insurance on the Shopping Center which will be due and payable for that particular year. Tenant authorizes Landlord to use the funds deposited with Landlord under this section to pay the cost of Insurance. Each Insurance Escrow Payment shall be due and payable at the same time and manner of the payment of Minimum Guaranteed Rental as provided herein. The amount of the initial monthly Insurance Escrow Payment will be that amount set out in Section 1.1(n) above. The initial monthly Insurance Escrow Payment is based upon Tenant's proportionate share of the estimated Insurance on the Shopping Center for the year in question, and the monthly Insurance Escrow Payment is subject to increase or decrease as determined by Landlord to reflect and accurately monthly escrow of Tenant's estimate proportionate share of the Insurance. The Insurance Escrow Payment account of Tenant shall be reconciled annually. If Tenant's total Insurance Escrow Payment are less than Tenant's actual proportionate share of the Insurance on the Shopping Center, Tenant shall pay to Landlord upon demand the difference; if the total Insurance Escrow payments of Tenant are more than Tenant's actual proportionate share of the Insurance on the Shopping Center, Landlord shall retain such excess and credit it to Tenant's Insurance Escrow Payment account. Tenant's proportionate share of the cost of Insurance on the Shopping Center shall be computed by multiplying the cost of Insurance by a fraction, the numerator of which shall be the number of square feet of floor space in the Premises and the denominator of which shall be the number of square feet of all stories in the Shopping Center that are leasable on January 1, of the applicable year.

ARTICLE XIII. Non-Liability for Certain Damages

13.1 Landlord and Landlord's agents and employees shall not be liable to Tenant or any other person or entity whomsoever for any injury to person or damage to property caused by the Premises or other portions of the Shopping Center becoming out of repair or damaged or by defect in or failure of equipment, pipes or wiring, or broken glass, or by the backing up of drains or by glass, water, steam, electricity or oil leaking, escaping or flowing into the Premises, nor shall Landlord be liable to Tenant or any other person or entity whomsoever for any loss or damage that may be occasioned by or through the acts or omissions of other tenants of the Shopping Center or of any other person or entities whomsoever, excepting only duly authorized employees and agents of Landlord. With respect to latent or patent defects in the Premises or in the

Tenant _____

Landlord _____

building of which they form a part, a Landlord's liability shall not extend beyond one (1) year from the date of substantial completion of construction of the Premises, whether or not such defects are discovered within such one-year period.

ARTICLE XIV. Damage by Casualty. 14.1 Tenant shall give immediate written notice to Landlord of any damage caused to the Premises by fire or other casualty.

14.2 In the event that the Premises shall be damaged or destroyed by fire or other casualty insurable under standard fire and extended coverage insurance and Landlord does not elect to terminate this lease as hereinafter provided, Landlord shall proceed with reasonable diligence and at its sole cost and expense to rebuild and rebuild and repair the Premises. If the building in which the Premises are located shall (i) be destroyed or substantially damaged by a casualty not covered by Landlord's insurance; or (ii) be destroyed or rendered untenable to an extent of fifty percent (50%) of the first floor area by a casualty covered by Landlord's insurance; or (iii) be damaged to such extent that the remaining term of this lease is not sufficient to amortize the cost of reconstruction, then Landlord may elect to either terminate this lease as hereinafter provide or to proceed to rebuild with reasonable diligence and at its sole cost and expense to rebuild and repair the Premises. Should Landlord elect to terminate this lease it shall give written notice of such election to Tenant within ninety (90) days after the occurrence of such casualty. If Landlord should not elect to terminate this lease, Landlord shall proceed with reasonable diligence and at its sole cost and expense to rebuild and repair the Premises. In the event of any damage or destruction to the Premises, Tenant shall, upon notice from Landlord, forthwith remove, at Tenant's sole cost and expense, such portion or all of Tenant's shelves, bins, machinery and other trade fixtures and all other property belonging to Tenant or Tenant's licensees from such portion or all of the Premises as Landlord shall request.

14.3 Landlord's obligation to rebuild and repair under this Article XIV shall in any event be limited to restoring Landlord's Work as described in Exhibit C to substantially the condition in which the same existed prior to the casualty, and all be further limited to the extent of the insurance proceeds available to Landlord for such restoration, and Tenant agrees that promptly after completion of such work by Landlord, it will proceed with reasonable diligence and at its sole cost and expense to rebuild, repair and restore its signs, fixtures and equipment and other items of Tenant's Work as described in Exhibit C.

14.4 Tenant agrees that during any period of reconstruction or repair of the Premises it will continue the operation of its business within the Premises to the extent practicable. During the period from the occurrence of the causality until Landlord's repairs are completed, the Minimum Guaranteed Rental shall be reduced to such extent as may be fair and reasonable under the circumstances.

14.5 Notwithstanding anything herein to the contrary, in the event the holder of any indebtedness, secured by a mortgage or deed of trust covering the Premises requires that the insurance proceeds be applied to such indebtedness then Landlord shall have the right to terminate this lease by delivering written notice of termination to Tenant within fifteen (15) days after such requirement is made by any such holder, whereupon all rights and obligations hereunder shall cease and terminate.

14.6 Each of Landlord and Tenant 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 from any loss or damage to property. Caused by fire or any other perils insured in policies of insurance covering such property, even if such loss or other perils insured in policies of insurance covering such property, even if such loss or damage shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible, including any other tenants or occupants of the Shopping Center; 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 times as the releasor'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 releasor to recover thereunder and then only to the extent of the insurance proceeds payable under such policies. Each of Landlord and

Tenant _____

Landlord _____

Tenant agrees that it will request its insurance carriers to include in its policies such a clause or endorsement. If extra cost shall be charged therefore, each party shall advise the other thereof and of the amount of the extra cost, and the 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 releasor's insurance.

ARTICLE XV. Eminent Domain. 15.1 If more than twenty percent (20%) of the floor area of the Premises should be taken for any public or quasi-public use under any governmental law, ordinance or regulation under any governmental law, ordinance or regulation or by right of eminent domain or by private purchase in lieu thereof this lease shall terminate and the rent shall be abated during the unexpired portion of this lease, effective on the date physical possession is taken by the condemning authority.

15.2 If less than twenty percent (20%) of the floor area of the Premises should be taken as aforesaid, this lease shall not terminate; however, the Minimum Guaranteed Rental payable hereunder during the unexpired portion of this lease shall be reduced in proportion to the area taken, effective on the date physical possession is taken by the condemning authority. Following such partial taking, and receipt of condemnation proceeds. Landlord shall make all necessary repairs or alterations within the scope of Landlord's Work as described in Exhibit C necessary to make the Premises an architectural whole.

15.3 If any part of the Common Area shall be taken as aforesaid, this lease shall not terminate nor shall the rental payable hereunder be reduced, except that either Landlord or Tenant may terminate this lease if the area of the Common Area remaining following such taking plus any additional parking area provided by Landlord in reasonable proximity to the shopping center shall be less than seventy percent (70%) of the area of the Common Area immediately prior to the taking. Any election to terminate this lease in accordance with this provision shall be evidenced by written notice of termination delivered to the other party within thirty (30) days after the date physical possession is taken by the condemning authority.

15.4 All compensation awarded for any taking (or the proceeds of private sale in lieu thereof) of the Premises or Common Area shall be the property of Landlord and Tenant hereby assigns its interest in an such award to Landlord; provided, however, Landlord shall have no interest in any award made to Tenant for loss of business or for the taking of Tenant's fixtures and other property if a separate award for such items is made to Tenant. Tenant shall in no event be entitled to any award for the value of the unexpired term of this lease.

ARTICLE XVI. Assignment and Subletting. 16.1 Tenant shall not assign or in any manner transfer this lease or any estate or interest therein, or sublet the Premises or any part thereof, or grant any license, concession or other right to occupy any portion of the Premises without the prior written consent of Landlord. All cash or other proceeds of any assignment, such proceeds as exceed the rentals called for hereunder in the case of a subletting and all cash or other proceeds of any other transfer of Tenant's interest in this lease shall be paid to Landlord as received by Tenant, whether such assignment, subletting or other transfer is contented to by Landlord or not, unless Landlord agrees to the contrary in writing, and Tenant hereby assigns all rights it might have or ever acquire in any such proceeds to Landlord. Consent by Landlord to one or more assignments or sublettings shall not operate as a waiver of Landlord's rights as to any subsequent assignments and sublettings. Notwithstanding any assignment or subletting, Tenant and any guarantor of Tenant's obligations under this lease shall at all times remain fully and primarily responsible and liable for the payment of the rental herein specified and for compliance with all of its other obligations under this lease. Upon any subletting or assignment by Tenant in accordance with the terms hereof, any renewal options, expansion options, right of first refusal and/or exclusive use provisions shall become null and void.

16.2 Tenant shall give Landlord at least sixty (60) days advance written notice of any proposed assignment or subletting, such notice to be accompanied by a copy of the proposed sublease or assignment. Landlord shall have the right to terminate this lease effective as of the proposed effective date of the assignment or subletting by giving Tenant written notice thereof within thirty (30) days after Landlord's receipt of said notice from Tenant. Should Landlord not

Tenant _____

Landlord _____

elect to so terminate this lease in connection with any proposed subletting or assignment, Landlord shall continue to have the right to disapprove same.

16.3 Tenant shall not mortgage, pledge or otherwise encumber its interest in this lease or in the Premises.

16.4 In the event of the transfer and assignment by Landlord of its interest in this lease and in the building containing the Premises to a person expressly assuming Landlord's obligations under this lease, Landlord shall hereby be released from any further obligations hereunder, and Tenant agrees to look solely to such successor in interest of the Landlord for performance of such obligations. Any security given by Tenant to secure performance of Tenant's obligations hereunder, may be assigned and transferred by Landlord to such successor in interest, and Landlord shall thereby be discharged of any further obligation relating thereto.

ARTICLE XVII. Property Taxes. 17.1 Tenant shall be liable for all taxes levied against personal property and trade fixtures placed by tenant in the Premises. If any such taxes are levied against Landlord or Landlord's property and if Landlord elects to pay the same or if the assessed value of Landlord's property is increased by inclusion of personal and trade fixtures placed by Tenant in the Premises and Landlord elects to pay the taxes based on such increase, Tenant shall pay to Landlord upon demand that part of such taxes for which Tenant is primarily liable hereunder.

17.2 Tenant agrees to pay its proportionate share of all taxes, assessments and governmental charges of any kind and nature whatsoever levied or assessed against the Shopping Center, any other charges, taxes and/or impositions now in existence or hereafter imposed by any governmental authority based upon the privilege of renting the Premises or upon the amount of rent collected therefore and any tax, fee, levy, assessment or charge which is imposed as the result of a transfer, either partial or total, of Landlord's interest in the Premises or which is added to a tax or charge hereinbefore included within the definition of real property tax by reason of such transfer (all of the foregoing being hereinafter referred to as the "Taxes"). During each month of the term of this lease, Tenant shall make a monthly escrow deposit with Landlord equal to 1/12 of its proportionate share of the Taxes on the Shopping Center which will be due and payable for that particular year. Tenant authorizes Landlord to use the funds deposited with Landlord under this Section 18.2 to pay the Taxes levied or assessed against the Shopping Center. Each Tax Escrow Payment shall be due and payable at the same time and in the same manner as the time and manner of the payment of Minimum Guaranteed Rental as provided herein. The amount of the initial monthly Tax Escrow Payment will be that amount set out in Section 1.1(o) above. The initial monthly Tax Escrow Payment is based upon Tenant's proportionate share of the estimated taxes on the Shopping Center for the year in question, and the monthly Tax Escrow Payment is subject to increase or decrease as determined by Landlord to share of the Taxes.

The Tax Escrow Payment account of Tenant shall be reconciled annually. If the Tenant's total Tax Escrow Payments are less than Tenant's actual pro rata share of the Taxes on the Shopping Center, Tenant shall pay to Landlord upon demand the difference; if the total Tax Escrow Payments of Tenant are more than Tenant's actual pro rata share of the Taxes on the Shopping Center, Landlord shall retain such excess and credit it to Tenant's Tax Escrow Payment account. Tenant's proportionate share of the Taxes on the Shopping Center shall be computed by multiplying the Taxes by a fraction, the numerator of which shall be the number of square feet of floor space in the Premises and the denominator of which shall be the number of square feet of all store in the Shopping Center that are leasable on January 1, of the applicable year.

17.3 The Landlord shall have the right to employ a tax consulting firm to attempt to assure a fair Tax burden on the Shopping Center.

17.5 Tenant may, alone or along with any other tenants of said building, at its or their sole cost and expense, in its or their own name(s) dispute and contest and Taxes by appropriate proceedings diligently conducted in good faith, but only after Tenant and all other tenants, if any, joining with Tenant in such contest have deposited with Landlord the amount so contested and unpaid, or their proportionate shares thereof as the case may be, which shall be held by

Tenant _____

Landlord _____

Landlord without obligation for interest until the termination of the proceedings, at which the amount(s) deposited shall be applied by Landlord toward the payment of the items held valid (plus any court costs, interest, penalties and other liabilities associated with the proceedings), and Tenant's share of any excess shall be returned to Tenant. Tenant further agrees to pay to Landlord upon demand Tenant's share (as among all tenants who participate in the contest) of all court costs, interest, penalties and other liabilities relating to such proceedings. Tenant hereby indemnifies and agrees to hold Landlord harmless from and against any cost, damage or expense (including attorneys' fees) in connection with any such proceedings.

17.6 Any payment to be made pursuant to this Article XVIII with respect to the real estate tax year in which this lease commences or terminates shall bear the same ratio to the payment which would be required to be made for the full tax year as that part of such tax year covered by the term of this lease bears to a full tax year.

ARTICLE XVIII. Default by Tenant and Remedies.
deemed to be events of default by Tenant under this lease:

18.1 The following events shall be

- 1.) Tenant shall fail to pay an installment of rental or any other amount payable to Landlord as herein provided and such failure shall continue for a period of ten (10) days.
- 2.) Tenant shall fail to comply with any term, provisions or covenant of this lease, other than the payment of rental of any other amount payable to Landlord and shall not cure such failure within ten (10) days after written notice thereof to Tenant.
- 3.) Tenant or any guarantor of Tenant's obligations under this lease shall become insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors.
- 4.) Tenant or any guarantor of Tenant's obligations under this lease shall file a petition under any section or chapter of the National Bankruptcy Act, as amended, or under any similar law or statute of the United States or any State thereof; or Tenant or any guarantor of Tenant's obligations under this lease shall be adjudged bankrupt or insolvent in proceedings filed against Tenant or any guarantor of Tenant's obligations under this lease shall be adjudged bankrupt or insolvent in proceedings filed against Tenant or any guarantor of Tenant's obligations under this lease.
- 5.) A receiver of Trustee shall be appointed for all Premises or for all or substantially all of the assets of Tenant or any guarantor of Tenant's obligations under this lease,
- 6.) Tenant shall desert or vacate any portion of the Premises.
- 7.) Tenant shall do or permit to be done anything which creates a lien upon the Premises.
- 8.) The business operated by Tenant shall be closed for failure to pay any State sales tax as required or for any other reason.

Upon the occurrence of any such event of default, Landlord shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:

- A. Terminate this lease in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which Landlord may have for possession or arrearages in rental, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying said premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages thereof.
- B. Enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying said premises or any part thereof, by force if necessary, without being liable for prosecution or any claim for damages therefore with or without having terminated the lease.
- C. Do whatever Tenant is obligated to do under the terms of this lease (and enter upon the Premises in connection therewith if necessary) without being liable for prosecution or any claim for damages therefore, and Tenant agrees to reimburse Landlord on demand for any expenses which Landlord may incur in thus effecting compliance with Tenant's obligations under this lease, and Tenant further agrees that Landlord shall not be liable for any damages resulting to the Tenant from such action.
- D. Alter all locks and other security devices at the Premises without terminating this lease.

Tenant _____

Landlord _____

18.2 Exercise by Landlord of any one or more remedies hereunder granted or otherwise available shall not be deemed to be an acceptance of surrender of the Premises by Tenant, whether by agreement or by operation of law, it being understood that such surrender can be effected only by the written agreement of Landlord and Tenant. No such alteration of locks or other security devices and no removal or other exercise of dominion by Landlord over the property of Tenant or others at the Premises shall be deemed unauthorized or constitute a conversion, Tenant hereby consenting, after any event of default, to the aforesaid exercise of dominion over Tenant's property within the Premises. All claims for damages by reason of such re-entry and/or repossession and/or alteration of locks or other security devices are hereby waived, as are all claims for damages by reason of any distress warrant, forcible detainer proceedings sequestration proceedings or other legal process. Tenant agrees that any re-entry by Landlord may be pursuant to judgement obtained in forcible detainer proceedings or other legal proceedings or without the necessity for any legal proceedings, as Landlord may elect, and Landlord shall not be liable in trespass or otherwise.

18.3 In the event Landlord elects to terminate the lease by reason of an event of default, then notwithstanding such termination, Tenant shall be liable for and shall pay to Landlord at the address specified for notice to Landlord herein the sum of all rental and other amounts payable to Landlord pursuant to the terms of this lease which have accrued to date of such termination, plus, as damages, an amount equal to the total rental (Minimum Guaranteed plus Tenant's Common Area Maintenance Charge, Insurance Escrow Payment and Tax Escrow Payment hereunder for the remaining portion of the lease term (had such term not been terminated by Landlord prior to the date of expiration stated in Article 1).

18.4 In the event that Landlord elects to repossess the Premises without terminating the lease, then Tenant shall be liable for and shall pay to Landlord at the address specified for notice to Landlord herein all rental and other amounts payable to Landlord pursuant to the terms of this lease which have accrued to the date of such repossession, plus total rental (Minimum Guaranteed plus Tenant's Common Area Maintenance Charge, Insurance Escrow Payment and Tax Escrow Payment required to be paid by Tenant to Landlord during the remainder of the lease term until the date of expiration of the term as stated in Article 1, diminished by any net sums thereafter received by Landlord through reletting the Premises during said period (after deducting expenses incurred by Landlord as provided in Section 19.5 hereof). In no event shall Tenant be entitled to any excess of any rental obtained by reletting over and above the rental herein reserved. Actions to collect amounts due by Tenant to Landlord as provided in this Section 19.4 may be brought from time to time, on one or more occasions, without the necessity of Landlord's waiting until expiration of the lease term.

18.6 Landlord may, but need not, relet the Premises or any part thereof for such rent and upon such terms as Landlord, in its sole discretion, shall determine (including the right to relet the Premises for a greater or lesser term than that remaining under this lease, the right to relet the Premises as a part of a larger area, and the right to change the character or use of the Premises). If Landlord elects to relet the Premises, it shall only be required to use the same efforts it then uses to lease other space or properties which it owns or manages, provided, however that Landlord may be leasing or have available and may place a suitable prospective tenant in any such available space regardless of when such alternative space becomes available, provided, further, the Landlord shall not be required to observe any instruction given by Tenant about such reletting or accept any tenant offered by Tenant unless such offered tenant has a creditworthiness acceptable to Landlord, leases the entire Premises, agrees to use the Premises

in a manner consistent with the lease and leases the Premises at the same rent, for no more than the current term and on the same terms and conditions as in this lease without any expenditure by Landlord for tenant improvements or broker's commissions. In any such case, Landlord may, but shall not be required to, make repairs, alterations and additions in or to the Premises and redecorate the same to the extent Landlord deems necessary or desirable.

18.7 In the event Tenant is comprised of more than one person and/or entity, all such persons and/or entities shall be jointly and severally liable for all of the obligations and liabilities of Tenant under this lease.

18.8 Upon receipt from Tenant of the sum stated in Section 1.1(q) above, such sum shall be held by Landlord without interest as security for the performance by Tenant of Tenant's covenants and obligations under this lease, it being expressly understood that such deposit is not an advance payment of rental or a measure of Landlord's damages in case of default by Tenant. If at any time during the term of this lease any of the rental herein reserved shall be overdue and unpaid, or any other sum payable by Tenant to Landlord hereunder shall be overdue and unpaid then Landlord may at its option apply any portion of said deposit to the payment of any such overdue rental or other sum. In the event of the failure of Tenant to keep and perform any of the other terms, covenants and conditions

Tenant _____

Landlord _____

of this lease to be kept and performed by Tenant, then the Landlord at its option may apply the security deposit, or so much thereof as may be necessary, to compensate the Landlord for loss, cost or damage sustained, incurred or suffered by Landlord due to such breach on the part of tenant. Should the security deposit, or any portion thereof be applied by Landlord as herein provided, Tenant shall, upon written demand of Landlord, remit to Landlord a sufficient amount in cash to restore the security deposit to the original sum deposited, and tenant's failure to do so within five days after receipt of such demand shall constitute a default under this lease. Any remaining balance of such deposit shall be returned by Landlord to Tenant at such time after termination of this lease that all tenant's obligations under this lease have been fulfilled.

18.9 In the event of any default by Landlord, Tenant will give Landlord written notice specifying such default with particularity, and Landlord shall thereupon have thirty (30) days (or such longer period as may be required in the exercise of due diligence) in which to cure any such default. Unless and until Landlord fails to so cure any default after such notice, Tenant shall not have any remedy or cause of action by reason thereof. All obligations of Landlord hereunder will be construed as covenants, not conditions. The term "Landlord" shall mean only the owner, for the time being, of the Shopping Center, and in the event of the transfer by such owner of its interest in the Shopping Center, and in the event of the transfer by such owner of its interest in the Shopping Center, such owner shall thereupon be released and discharged from all covenants and obligations of the Landlord thereafter accruing, but such covenants and obligations shall be binding during the lease term upon each new owner for the duration of such owner's ownership. Notwithstanding any other provisions hereof, in the event of any breach or default by Landlord in any term or provision of this lease, Tenant agrees to look solely to the equity or interest then owner by Landlord in the land and improvements which constitute the Shopping Center, however, in no event shall any deficiency judgment or any money judgment of any kind be sought or obtained against Landlord.

18.11 In the event that Landlord shall have taken possession of the Premises pursuant to the authority herein granted, then Landlord shall have the right to keep in place and use all of the furniture, fixtures and equipment at the Premises, including that which is owned by or leased to Tenant at all times prior to any foreclosure thereon by Landlord or repossession thereof by any lessor thereof or third party having a lien thereon. Landlord shall also have the right to remove from the Premises (without the necessity of obtaining a distress warrant, writ of sequestration or other legal process and without being liable for prosecution or any claim for damages therefore) all or any portion of such furniture, fixtures, equipment and other property located thereon and place same in storage at any place within the County in which the Premises is located; and in such event, Tenant shall be liable to Landlord for costs incurred by Landlord in connection with such removal and storage and shall indemnify and hold Landlord harmless from all loss, damage, cost, expense and liability in connection with such removal and storage. Landlord shall also have the right to relinquish possession of all or any portion of such furniture, fixtures, equipment and other property to any person ("Claimant") claiming to be entitled to possession thereof who presents to Landlord a copy of any instrument represented to Landlord by Claimant to have been executed by Tenant (or any predecessor of Tenant) granting Claimant the right under various circumstances to take possession of such furniture, fixtures, equipment or other property, without the necessity on the part of Landlord to inquire into the authenticity of said instrument and without the necessity of Landlord's making any nature of investigation or inquiry as to the validity of the factual or legal basis upon which Claimant purports to act' and Tenant agrees to indemnify and hold Landlord harmless from all cost, expense, loss, damage and liability incident to Landlord's relinquishment of possession of all or any portion of such furniture, fixtures, equipment or other property to Claimant.

18.12 The rights and remedies of Landlord herein stated shall be in addition to any and all other rights and remedies which Landlord has or may hereafter have at law or in equity; and Tenant stipulated and agrees that the rights herein granted Landlord are commercially reasonable.

ARTICLE XIX. Mechanics' Liens.

19.1 Tenant shall have no authority, express or implied, to create or place any lien or encumbrance of any kind or nature whatsoever upon, or in any manner to bind, the interest of Landlord or Tenant in the Premises or to charge the rentals payable hereunder for any claim in favor of any person dealing with Tenant, including those who may furnish materials or perform labor for any construction or repairs. Tenant covenants and agrees that it will pay or cause to be paid all sums legally due and payable by it on account of any labor performed or materials furnished in connection with any work performed on the Premises on which any lien is or can be validly and legally asserted against its leasehold interest in the Premises or the improvements thereon and that it will save and hold Landlord harmless from any and all loss, cost or expense based on or arising out of asserted claims or liens against the leasehold estate or against the right, title and interest of the Landlord in the Premises or under the terms of this lease, and shall discharge any such lien at Tenant's expense and Landlord's cost

Tenant _____

Landlord _____

thereof, plus interest thereon at the lesser of the highest rate permitted by law or eighteen percent (18%) per annum, shall be reimbursed by Tenant upon demand as additional rental hereunder.

ARTICLE XX. Holding Over. 20.1 In the event Tenant remains in possession of the Premises after the expiration of this lease with Landlord's written consent but without the execution of a new lease, it shall be deemed to be occupying said premises as a tenant from month to month at a rental equal to the rental (Minimum Guaranteed Rental) herein provided times 1.25 and otherwise subject to all the conditions provisions and obligations of this lease insofar as the same are applicable to a month to month tenancy. The foregoing shall not constitute Landlord's consent for Tenant to holdover. In the event Tenant remains in possession of the Premises after the expiration of this lease without Landlord's consent, Tenant shall also pay to Landlord all expiration of this lease without Landlord's consent, Tenant shall also pay to Landlord all damages sustained by Landlord resulting from retention of possession by Tenant, including without limitation the loss of any proposed subsequent tenant for any portion of the Premises.

ARTICLE XXI. Subordination. 21.1 Tenant accepts this lease subject and subordinate to any mortgage, deed of trust or other lien presently existing or hereafter created upon the Premises or the Shopping Center, and to any renewals and extensions thereof, but Tenant agrees that any such mortgagee shall have the right at any time to subordinate such mortgage, deed of trust or other lien to this lease. Landlord is hereby irrevocably vested with full power and authority to subordinate this lease to any mortgage, deed of trust or other lien hereafter placed upon the Premises or the Shopping Center, and Tenant agrees upon demand to execute such further instruments subordinating this lease as Landlord may request, and, upon any failure of Tenant to do so, without limitation of Landlord's remedies, Landlord shall have the right to execute same as attorney-in-face for Tenant.

ARTICLE XXII. Merchant's Association. 22.1 In the event that Landlord shall organize a merchants association and/or marketing fund composed of tenants in the Shopping Center, Tenant agrees that it will join, actively participate and maintain current membership in such association, will pay such dues and assessments as may be fixed and determined from time to time by the association and will comply with such group advertising, reasonable bylaws, rules and regulations as may be adopted from time to time by the association.

ARTICLE XXIII. Notices. 23.1 Wherever any notice is required or permitted hereunder such notice shall be in writing. Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered whether actually received or not when deposited in the United States mail, postage prepaid, Certified or Registered Mail, Return Receipt Requested, addressed to the parties hereto at the respective addresses set out in Section 1.1 above, or at such other addresses as they may have hereafter specified by Written Notice.

23.2 If any when included within the term "Landlord" as used in this instrument there are more than one person, firm or corporation, all shall jointly arrange among themselves for their joint execution of such notice specifying some individual at some specific address for the receipt of notices and payments to Landlord; if and when included within the term "Tenant" as used in this instrument there are more than one person, firm or corporation, all shall jointly arrange among themselves for their joint execution of such a notice specifying some individual at some specific address for the receipt of notices and payments to Tenant. All parties included within the terms "Landlord" and "Tenant", respectively, shall be bound by notices and payments to Tenant. All parties included within the terms "Landlord" and "Tenant", respectively, shall be bound by notices and payments given in accordance with the provisions of this Article to the same effect as if each had received such notice or payment.

ARTICLE XXIV. Late Charges. 24.1 In the event Tenant fails to pay to Landlord when due any installment of rental or other sum to be paid to Landlord which may become due hereunder, Landlord will incur additional expenses in an amount not readily ascertainable and which has not been elsewhere provided for between Landlord and Tenant. If Tenant should fail to pay to Landlord when due any installment of rental or other sum to be paid hereunder, Tenant will pay Landlord when due any installment of rental or other sum to be paid hereunder, Tenant will pay Landlord on demand a late charge equal to the greater of (i) \$100.00 or (ii) ten percent (10%) of the past due amount. Failure to pay such late charge upon demand therefore shall be an event of default hereunder. Provisions for such late charge shall be in addition to all other rights and remedies available to Landlord hereunder or

Tenant _____

Landlord _____

at law or in equity and shall not be construed as liquidated damages or limiting Landlord's remedies in any manner.

*

ARTICLE XXVI. Miscellaneous. 26.1 Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between parties hereof, it being understood and agreed that neither the method of computation of rental, nor any other provisions contained herein, nor any acts of the parties hereto shall be deemed to create any relationship between the parties hereto other than the relationship of Landlord and Tenant. Whenever herein the singular number is used, the same shall include the plural, and words of any gender shall include each other gender.

26.2 The captions used herein are for convenience only and do not limit or amplify the provisions hereof.

26.4 Time is of the essence with respect to all provisions of this lease, except that whenever a period of time herein prescribed for action to be taken by Landlord, Landlord shall not be liable or responsible for and there shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other cause of any kind whatsoever which are beyond the reasonable control of Landlord. At any time when there is outstanding a mortgage, deed of trust or similar security instrument covering Landlord's interest in the Premises, Tenant may not exercise any remedies for default by Landlord hereunder unless and until the holder of the indebtedness secured by such mortgage, deed of trust or similar security instrument shall have received written notice of such default and a reasonable time for curing such default shall thereafter have elapsed.

26.5 Landlord agrees that if Tenant shall perform all of the covenants and agreements, herein required to be performed by Tenant, Tenant shall, subject to the terms of this lease, at all times during the continuance of this lease have the peaceable and quiet enjoyment and possession of the Premises.

26.6 This lease contains the entire agreement between the parties, and no agreement shall be effective to change, modify or terminate this lease in whole or in part unless such agreement is in writing and duly signed by the party against whom enforcement of such change, modification or termination is sought.

26.7 Tenant warrants that it has had no dealing with any broker or agent in connection with the negotiation or execution of this lease other than Chip Mark of Mark Real Estate Advisors. Tenant agree to indemnify and hold Landlord harmless from and against any claims by any other broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Tenant with regard to this leasing transaction.

26.8 Tenant agrees to furnish from time to time when requested by Landlord, the holder of any deed of trust or mortgage or the lessor under any ground lease covering all or any part of the Shopping Center or the improvements therein or the Premises or any interest of Landlord therein, a certificate signed by Tenant confirming and containing such factual certifications and representations deemed appropriate by Landlord, the holder of any deed of trust or mortgage or the lessor under any ground lease covering all or any part of the Shopping Center or the improvements therein or the Premises or any interest of Landlord therein, and Tenant shall, within ten (10) days following receipt of said certificate from Landlord, return a fully executed copy thereof to Landlord. In the event Tenant shall fail to return a fully executed copy of such certificate to Landlord within the foregoing ten-day period, then Tenant shall be deemed to have approved and confirmed all of the terms, certifications and representations contained in such certificate. Tenant hereby irrevocably appoints Landlord as attorney-in-fact for the Tenant with full power and authority to execute and deliver in the name of Tenant such certificate if Tenant fails to deliver the same with such ten (10) day period and such certificate as signed by Landlord shall be fully binding on Tenant.

26.9 The laws of the State in which the Premises is located shall govern the interpretation, validity, performance and enforcement of this lease. If any provision of this lease should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this lease shall not be affected thereby, and it is also the intention of the parties to this lease that in lieu of each clause or provision of this lease that is illegal, invalid or unenforceable,

*There is no article 25.

Tenant _____

Landlord _____

there be added as a part of this lease a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

26.10 The terms, provisions and covenants contained in this lease shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors in interest and legal representatives except as otherwise herein expressly provided.

26.13 The person(s) executing this lease on behalf of Tenant hereby represent and warrant to Landlord that such execution has been duly authorized by all requisite action of Tenant so that upon such execution this lease will be binding upon and enforceable against Tenant in accordance with its terms. Tenant agrees to furnish to Landlord from time to time upon request such written proof of such authorization as Landlord may reasonably request.

ARTICLE XXVII. Landlord's Lien. Landlord shall have and Tenant hereby grants to Landlord a continuing security interest for all rentals and other sums of money becoming due hereunder from Tenant, upon all goods, wares, equipment, fixtures, furniture, inventory, accounts, contract rights, chattel paper and other personal property of Tenant situated on the Premises, which is located at _____, and such property shall not be removed therefrom without the consent of Landlord until all arrearages in rent as well as any and all other sums of money then due to Landlord hereunder shall first have been paid and discharged. Products of collateral are also covered. In the event of a default under this lease, Landlord shall have, in addition to any other remedies provided herein or by law, all rights and remedies under the Uniform Commercial Code, including without limitation the right to sell the property described in this paragraph at public or private sale upon five (5) days notice to Tenant. Tenant hereby agrees to execute such other instruments necessary or desirable in Landlord's discretion to perfect the security interest hereby created. Any statutory lien for rent is not hereby waived, the express contractual lien herein granted being in addition and supplementary hereto. Landlord and Tenant agree that this lease and security agreement serves as a financing statement and that a copy or photographic or other reproduction of this portion of this lease may be filed of record by Landlord and have the same force and effect as the original. This security agreement and financing statement also covers fixtures located at the Premises described in Exhibit A attached hereto, and may be filed for record in the real estate records. The record owner of this property is _____. Tenant warrants that the collateral subject to the security interest granted herein is not purchased or used by Tenant for personal, family or household purposes.

Tenant _____

Landlord _____

EXECUTED BY LANDLORD, this _____ day of _____, 20_____.

LANDLORD:

WITNESS:

By:

Its:

EXECUTED BY TENANT, this _____ day of _____, 20_____.

TENANT:

ATTEST / WITNESS:

By:

Its:

This lease is subject to approval by city manager of the City of Kannapolis, its designee or its city council.

Tenant _____

Landlord _____

ADDENDUM "A"
HAZARDOUS MATERIALS

1. As used in this Rider, the term "Hazardous Materials" shall mean any element, compound, mixture, solution, particle or substance which is dangerous or harmful or potentially dangerous or harmful to the health or welfare of life or environment, including but not limited to explosives, petroleum, petroleum products, radioactive materials, hazardous wastes, hazardous substances, toxic substances or related materials, including, without limitation: (1) any substances defined as or included within the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "toxic substances," "hazardous pollutants" or "toxic pollutants," or other similar terms, as those terms are used in the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Clean Air Act and the Clean Water Act, or any amendments thereto, or any regulations promulgated thereunder, and any other law or regulation promulgated by any federal, municipal, state, county or other governmental or quasi-governmental authority and/or agency or department thereof; (2) any "PCBs" or "PCB items" (as defined in 40 C.F.R. 4 761.3); or (3) any "asbestos" (as defined in 40 C.F.R. 4 763.63).
2. Tenant shall not use, generate, manufacture, produce, store, release, discharge or dispose of on, in, or under the demised Premises any Hazardous Materials (as defined in subparagraph 1 above), or allow any other person or entity to do so.
3. Tenant shall comply with all local, state and federal laws, ordinances and regulations relating to Hazardous Materials on, in, under or about the demised Premises.
4. Tenant shall promptly notify Landlord should Tenant receive notice of, or otherwise become aware of, any: (a) pending or threatened environmental regulatory action against Tenant or the Landlord or concerning the demised Premises in any way; (b) claims made or threatened by any third party relating to any loss or injury resulting from any Hazardous Material concerning the [refer to premises however described in lease] in any way; or (c) release or discharge, or threatened release or discharge, of any Hazardous Materials in, on, under or about the demised Premises.
5. Tenant agrees to indemnify, defend and hold Landlord, any property manager, and their respective agents and employees harmless from and against any and all liabilities, claims, demands, costs and expenses of every kind and nature (including attorneys' fees) directly or indirectly attributable to Tenant's failure to comply with this Rider, including, without limitation: (a) all consequential damages; (b) the costs of any required or necessary repair, remediation, testing, monitoring, cleanup or detoxification of any property, and (c) the preparation and implementation of any closure, remedial or other required plan. The indemnity contained in this Rider shall survive the termination or expiration of this Lease.

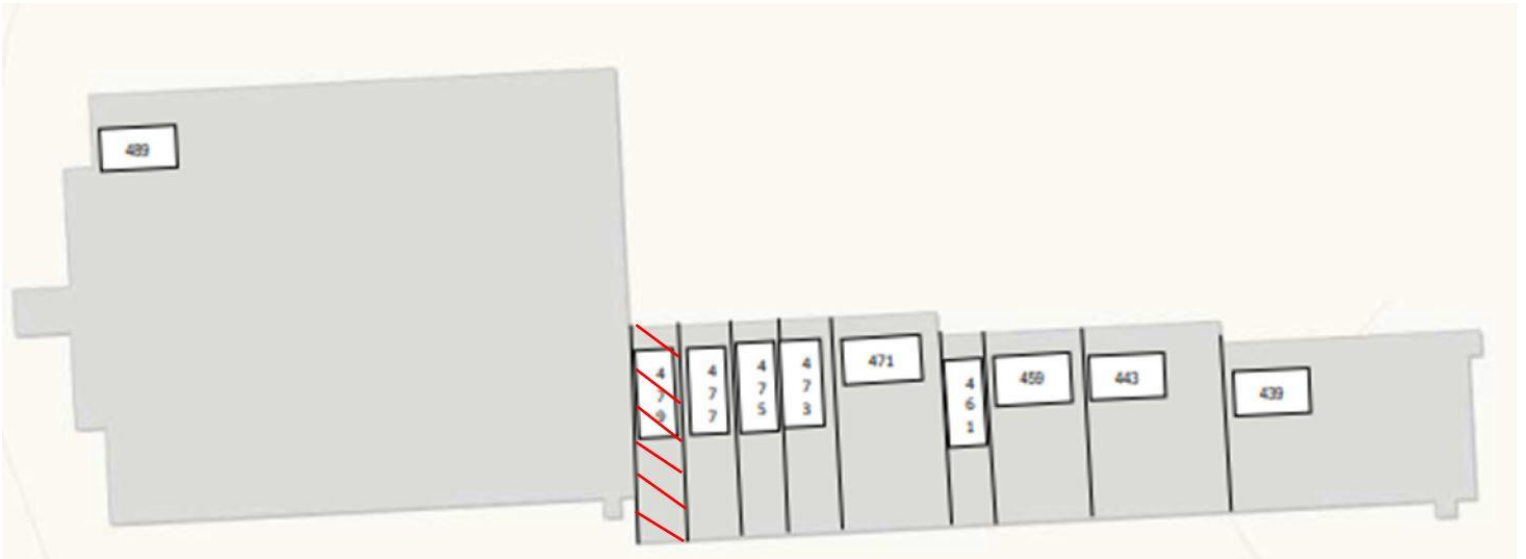
Tenant _____

Landlord _____

EXHIBIT A

Shopping Center Site Plan Showing Premises

Plus Exhibit A continued



Tenant _____

Landlord _____

EXHIBIT A
page 2
All non-building areas are
considered the common area,
including covered walkways and
sidewalks.



Tenant _____

Landlord _____

EXHIBIT B

Legal Description

To be provided at a later date.

Tenant _____

Landlord _____

EXHIBIT C

Description of Landlord's Work and Tenant's Work

1. Tenant agrees to accept the Premises in as-is condition.

Tenant _____

Landlord _____

EXHIBIT D

Rules and Regulations to Use of the Common Area

The use of the Common Area by Tenant and Tenant's agents, employees, servants, visitors and invitees shall be subject to the following rules and regulations:

1. Landlord shall have the right and authority to designate specific areas within the Shopping Center or in reasonable proximity thereto in which automobiles and other transportation vehicles owned by Tenant, Tenant's employees, servants, agents, licensees and concessionaires shall be parked. Tenant shall furnish to Landlord upon request a complete list of all license numbers of all automobiles and other transportation vehicles operated by Tenant, Tenant's employees, servants, agents, licensees or concessionaires.
2. All loading and unloading of goods shall be done only at such times, in the area and through the entrances as shall as designated from time to time for such purposes by Landlord.
3. The delivery or shipping of merchandise, supplies and fixtures to and from the Premises shall be subject to such rules and regulation as in the sole discretion of Landlord shall be necessary for the proper operation of the Shopping Center.
4. No person shall use any utility area, truck facility or other area reserved for use in connection with the conduct of business except for the specific purpose for which such area is designed.
5. Except as permitted in a Tenant's lease of the Premises or except as permitted by Landlord's prior written consent, no person shall within the Common Area:
 - a. Vend, peddle or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet or other matter whatsoever;
 - b. Exhibit any sign, placard, banner, notice or other written material;
 - c. Distribute any circular, booklet, handbill, placard or other materials;
 - d. Solicit membership in any organization, group or association or contribution for any purpose
 - e. Parade, patrol, picket, demonstrate or engage in any conduct that might tend to interfere with or impede the use of the Common Area by Landlord or any occupant or any employee, or invitee of any occupant of the Shopping Center, create a disturbance, attract attention or harass, annoy, disparage or be detrimental to the interests of any business establishments within the Shopping Center;
 - f. Use the Common Area for any purpose when none of the business establishment within the Shopping Center is open for business or employment
 - g. Throw, discard or deposit any paper, glass or extraneous matter of any kind, except in designated receptacles, or create litter or hazards of any kind (Tenant agrees to crush boxes and deposit in trash container);
 - h. Deface, damage or demolish any sign, light standard or fixture, landscaping material or other improvements within, or property situated within the Common Area of the Shopping Center, and;
 - i. Solicit any other business or display any merchandise.
6. The Common Area plumbing facilities shall not be used for any purpose other than that for which they are constructed, and no foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage or damage resulting from a violation of this provision shall be borne by Tenant, who shall, or whose employees, agent or invitees shall have caused it.
7. All floor area, including vestibules, entrances and exits, doors, fixtures, windows and plate glass shall be maintained in a safe neat, and clean condition.
8. No portion of this Common Area or the Shopping Center shall be used for any lodging or illegal purposes.
9. The sidewalks, halls, passages, exits, entrances, elevators, shopping malls, escalators and stairways of the Common Area or the Shopping Center shall not be obstructed by any Tenant or used by and Tenant for any purpose other than for ingress and to egress from their respective Premises.

Tenant _____

Landlord _____

EXHIBIT D

Page Two

The halls, passages, exits, entrances, elevators, shopping malls escalators, stairways are not for the use of the general public and Landlord shall at all cases retain the right to control and prevent access thereto of all persons whose presence in the judgement of Landlord shall be prejudicial to the safety, character, reputation and interest of the Shopping Center and its tenants, provided that nothing herein contained shall be construed to prevent such access to persons with whom any Tenant normally deals in the ordinary course of its business, unless such persons are engaged in illegal activities. No tenant and no employee or invitee of any Tenant shall go upon the roof or any building in the Shopping Center except for the sole purpose of servicing its air conditioning units or rooftop equipment.

10. In the case of any invasion, mob, riot, public excitement or other circumstances rendering such action advisable in Landlord's sole discretion, Landlord reserves the right to prevent access to the Common Area and Shopping Center during the continuance of the same by such action as Landlord may deem appropriate, including closing entrances to the Shopping Center and Common Area.
11. No Tenant shall place or permit any radio or television antenna, loudspeaker, amplifier or other device in the Common Area or where the same can be seen or heard in the Common Area without the prior written consent of Landlord.
12. No person shall use any part of Common Area for any purpose other than those for which the Common Area is intended.
13. No part of the Common Area shall be used for storing or maintaining any material or property, whether on a temporary basis or otherwise.
14. Any repairs, maintenance or replacements to the Common Area required to be made by Landlord which are occasioned by the act or negligence of any Tenant, its agents, employees, sub-tenants, licensees and concessionaires, shall be paid for by such Tenant upon demand to the extent not covered by insurance proceeds paid to Landlord therefore.
15. No Tenant shall make any alteration, addition or improvement to or remove any portion of the Common Area, and no Tenant shall make any changes to or paid any portion of the Common Area, or install any lighting decorations or paintings in or to the Common Area, or erect or install any signs, banners, placards, decorations or advertising media or any type in the Common Area
16. Landlord may waive any one of more of these rules and regulations for the benefit of any particular tenant or lessee, but no such waiver by Landlord shall be construed as a waiver of such rules and regulations in favor of any other tenant or lessee, no prevent Landlord from thereafter enforcing any such rules and regulations against any or all of the tenants of the Shopping Center.

Landlord shall at all times have the right to change these rules and regulations or to promulgate other rules and regulations in such manner as may be deemed advisable for safety, care, or cleanliness of the Shopping Center, for preservation of good order therein, or for other purposes, all of which rules and regulations, changes and amendments shall be carried out and observed by Tenant. Tenant shall further be responsible for the compliance with these rules and regulations by the employees, servants, agents, visitors and invitees of Tenant. In the event any provisions of these rules and regulations shall conflict with any specific provisions of the Lease Agreement to which this Exhibit D is attached, the provisions of the Lease Agreement shall control.

Tenant _____

Landlord _____

EXHIBIT E

Cost of Operation and Maintenance of the Common Area

The cost of operation and maintenance of the Common Area shall include by shall not be limited to, all cost and expenses incurred by Landlord in operating, maintaining, repairing, lighting, signing, cleaning, painting, stripping, insuring, equipping, staffing, heating and cooling, securing, and policing of the Common Area, including, among other costs, all costs and expenses for or associated with the following (which may be incurred by landlord in its sole discretion):

1. Alarm systems, alarm services, security personnel, security services, patrol services and fire protection;
2. Maintenance of sprinkler systems (both fire and irrigation) serving the Shopping Center and/or Common Area;
3. Insurance, including, without limitation, liability insurance for personal injury, death and property damage, insurance against fire, extended coverage, theft or other casualties, fidelity bonds for personnel, insurance against liability for assault and battery, defamation and claims of false arrest and plate glass insurance;
4. Regulation or direction of traffic;
5. Repair or replacement, cleaning, sweeping painting, striping and repaving of asphalt parking areas, concrete parking areas, all parking garage areas, curbs, walkways, pipe bollards, guardrails, bumpers, fences, screens, flagpoles, bicycle racks, signs and other markers, landscaping, drainage pipes, ducts, conduits and similar items and lighting facilities;
6. Planting, replanting and replacing flowers, trees, shrubbery, planters and other landscaping items and materials;
7. Any surcharges levied upon or assessed against parking spaces or areas payments toward mass transit or carpooling facilities or otherwise as required by federal, state or local governmental authorities;
8. Maintenance, repair and replacement of utility systems serving the Common Area, including, but not limited to, water, sanitary sewer and storm water lines and drainage systems, electrical, gas, telephone and lighting systems (including bulbs, poles and fixtures) and other utility lines, pipes and conduits, including utility charges in connection with any of the foregoing systems;
9. Maintaining and operating sewage treatment facilities, if any;
10. Maintenance, repair, replacement and substitution of and for all portions of the buildings in the Shopping Center (excluding the premises and premises (eased to other tenants), including walls, roofs and roof flashings, canopies, skylights, signs, planters, benches, fire exits, doors and hardware, window, glass and glazing;
11. All licenses and permit fees and surcharges that may result from any law, rule regulation, guideline or order;
12. Lighting and power to the Common Area;
13. Energy to heat, ventilate and air condition areas in which the Common Area is located;
14. Water services, if any, furnished by Landlord for the non-exclusive use of all tenants and their guests and invitees;
15. Operating and maintaining any public toilets and restrooms;
16. Removal of snow, ice, trash and debris;
17. Maintaining federal, state or local governmental ambient air and environmental standards;
18. Installing, renting, maintaining and operating signs of all types;
19. The installation, rental, maintenance, repair and replacement of music program services and loudspeaker systems, including furnishing electricity therefore;
20. Parcel pick-up and delivery services;
21. All materials, supplies and services purchased or hired in the operation of the Common Area or for the purposes set forth in this Exhibit
22. Inspecting, maintenance, repair and acquisition costs (including depreciation) of any and all machinery and equipment used in the operation and maintenance of the Common Area or for any of the purposes set forth in this Exhibit E, including personal property taxes and other charges and taxes incurred in connection with such equipment;

Tenant _____

Landlord _____

EXHIBIT E

Page Two

23. Any and all personnel, including, without limitation, security and maintenance people, secretaries, bookkeepers and any other personnel related to the operation of the Common Area or for the purpose set forth in this Exhibit E (including within such costs and expenses for such personnel, without limitation, salaries, wages, leasing commissions, expenses and other compensation, including so-called fringe benefits, life, disability, medical and health insurance, pension plans, social security taxes, F.I.C.A., unemployment and other employment taxes, workmen's compensation, insurance and the like);
24. Assessments levied against the Shopping Center by any community association or otherwise under any applicable restrictive covenants or the like covering the Shopping Center and other property within a development complex; and
25. Administrative costs attributable to the Common Area for on-site personnel and an overhead administrative cost allowance in the amount of 15% of the total Common Area costs.

Provided there should be no duplication of costs in this **Exhibit E** with any costs Tenant is responsible to pay in other provisions of the Lease Agreement to which this Exhibit is attached.

Tenant _____

Landlord _____

EXHIBIT F

Sign Criteria

To be provided at a later date

Tenant _____

Landlord _____

EXHIBIT G

Option

Provided Tenant is not in default and it provides 6 months written notice to Landlord prior to the end of the lease term, Tenant may extend the lease for 3 additional years at a rent to be mutually agreed upon by the Landlord and Tenant.

Tenant _____

Landlord _____



**City of Kannapolis
City Council Meeting
April 9, 2018
Staff Report**

TO: Mayor and City Council
FROM: Zachary D. Gordon, AICP, Planning Director
TITLE: Voluntary Annexation of Property at 3747 Shiloh Church Road

A. Action Requested by City Council

- 1. Motion to approve a Resolution Directing the Clerk to Investigate the sufficiency of the petition.**
- 2. Motion to adopt a Resolution of Intent to annex approximately 29.15+/- acres at 3747 Shiloh Church Road and Fix Date of Public Hearing for April 23, 2018**

B. Required Votes to Pass Required Action

Majority present at meeting

C. Background

The owners of the subject properties, Brett L. Fowler and Stewart Van Every Fowler, have submitted a petition for the voluntary annexation of approximately 29.15+/- acres located at 3747 Shiloh Church Road and an adjoining unaddressed parcel. The property is currently located in an unincorporated portion of Cabarrus County in an area identified as the "Western Planning Area" of the County's long-range plan. The parcels are vacant and have a Cabarrus County zoning designation of CR - Countryside Residential. This annexation request is being made to facilitate the development of a potential residential subdivision.

The petition is for a contiguous annexation as the property is adjacent to the City's existing limits on the west side (See attached Vicinity Map).

As is required by the North Carolina General Statutes, an initial City of Kannapolis zoning designation will be applied to the property by the Planning and Zoning Commission within 60 days of the effective date of the annexation.

D. Fiscal Considerations

None.

E. Policy Issues

The property is located in an unincorporated area of Cabarrus County that is currently zoned CR, with a 2 acre required minimum lot size. While this property is located outside of the City's corporate limits, it is within an area designated as "Proposed Kannapolis Growth Area", in an "Annexation Agreement" between the City of Kannapolis and City of Concord (see attached). The City is in the process of extending utilities in this area to facilitate future development.

According to the City's current long range planning document - ***Move Kannapolis Forward 2030 Comprehensive Plan***, identifies this area as a "Primary Service Area". The Primary Service area is "land where provision of services is preferred. These are areas to encourage development within the planning horizon. Annexation is also envisioned as a part of the agreement to provide services."

F. Legal Issues

Prior to considering the annexation ordinance, pursuant to NCGS 160A-31, the City Council must first direct the City Clerk to Investigate an Intent to Annex and certify the sufficiency of the petition. City Council must also adopt a Resolution of Intent to Annex and set a public hearing date for consideration of the petition. It is requested that the public hearing date be set for April 23, 2018.

G. Alternative Courses of Action and Recommendation

1. Motion to approve a Resolution Directing the Clerk to Investigate the Sufficiency of the Petition (Recommended).
2. Motion to approve a Resolution of Intent to annex approximately 29.15 acres Shiloh Church Road (Property Identification Numbers (PIN): 4672-58- 5733, and 4672-49-9371 (Recommended).
3. Do not approve Resolutions.
4. Table action to a future meeting.

ATTACHMENTS:

File Name

- ☐ petition_form_-_contiguous.pdf
- ☐ Vicinity_Map.pdf
- ☐ DT_9699-177.pdf
- ☐ Resolution_directing_the_Clerk_to_investigate_an_intent_to_annex.pdf
- ☐ Certificate_of_Sufficiency.pdf
- ☐ Resolution_to_set_a_public_hearing.pdf
- ☐ FOWLER_PIN_4672_58_5733.pdf
- ☐ FOWLER_PIN_4672-49-9371.pdf
- ☐ DT_9699-193.pdf
- ☐ City_of_Concord-Annex_Agreement_-_without_metes_and_bounds_attachments.pdf
- ☐ Non-annexation_Map_Concord_-_2007.pdf

KANNAPOLIS



PETITION REQUESTING A CONTIGUOUS ANNEXATION

DATE: 03/27/2018

To the City Council of the City of Kannapolis, North Carolina:

1. We, the undersigned owners of real property, respectfully request that the area described in paragraph 2 below be annexed to the City of Kannapolis, North Carolina.
2. The area to be annexed is contiguous to the primary limits of the City of Kannapolis, North Carolina and the boundaries of such territory are as follows:

See Attached **Survey Map** and **Metes and Bounds Description**

3. This petition is signed by all property owners of the area to be annexed.
4. ☒ The undersigned owners acknowledge that the following City service(s) is (are) not presently available for immediate taps upon annexation: water ☒ sewer ☐; and, subsequently agree that the City shall not provide water and sewer service to the area to be annexed except in accordance with the City's standard water and sewer policy.
5. ☒ The undersigned owners declare that zoning vested rights have been established on the area to be annexed under G.S. 160A-385.1 or G.S. 153A-344.1, and provide proof of such rights by attachment hereto.

☒ The undersigned owners hereby declare that no such vested rights have been established and that any vested rights previously acquired are hereby terminated.

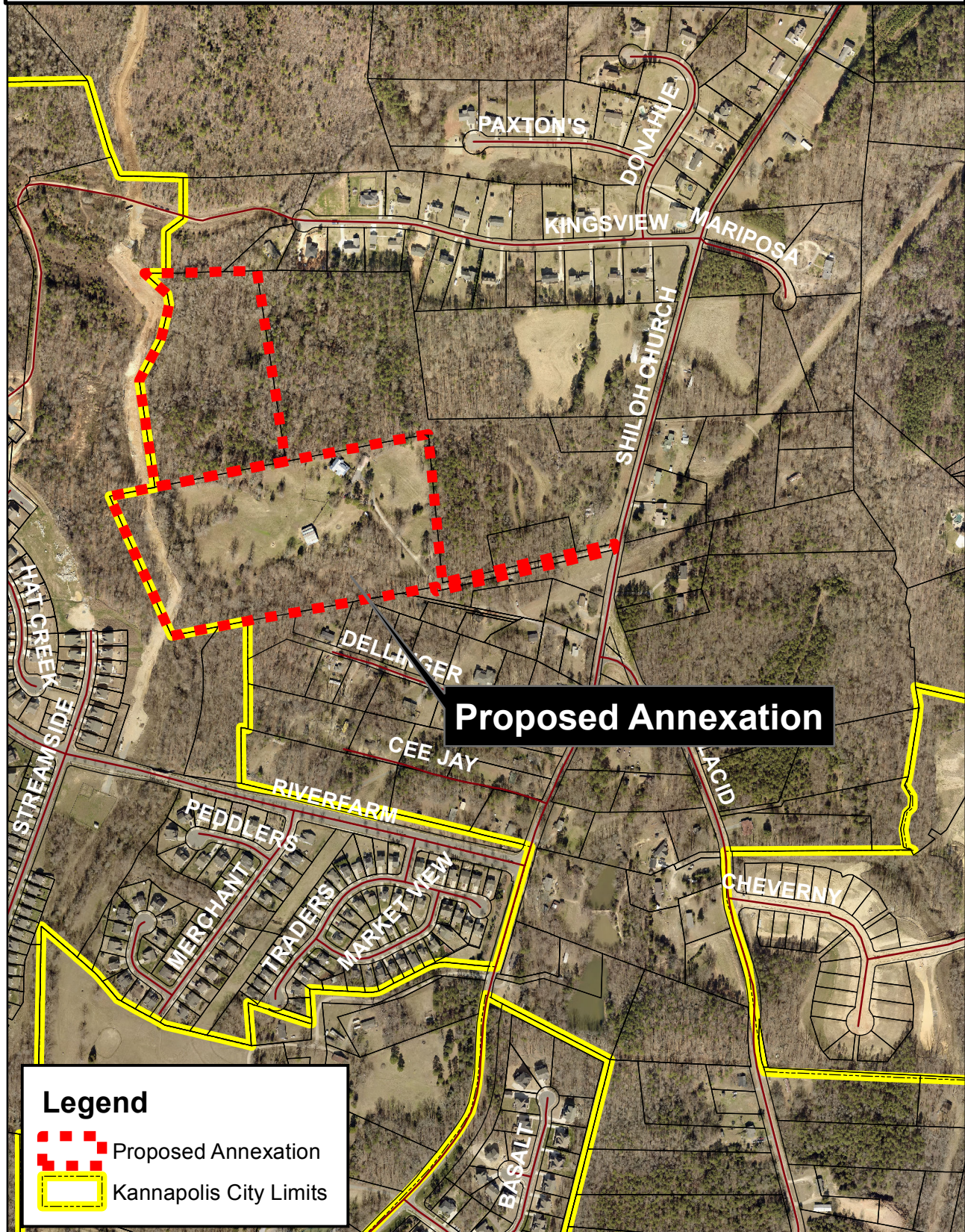
<u>Name</u> (print or type)	<u>Address</u>	<u>Signature*</u>
1. Brett Fowler	3747 Shiloh Church Road	<i>Brett Fowler</i> <small>dotloop verified 03/27/18 11:37AM EDT QLBF-CMMJ-RNRM-MQ9M</small>
2. Stewart Van Every	3747 Shiloh Church Road	<i>Stewart Van Every</i> <small>dotloop verified 03/27/18 10:24AM EDT F57D-TWUV-HFQE-JKIS</small>
3. _____	_____	_____
4. _____	_____	_____

*Family members (e.g., husbands and wives) need to sign separately. Signatures for corporations, institutions, etc., are by those with the authority to sign legal documents.



A-2018-01 - Fowler Annexation Voluntary Annexation Vicinity Map

Applicant: Brett Fowler and Stewart Van Every Fowler
PIN: 4672-58-5733, 4672-49-9371



9699
0177

FILED
CABARRUS COUNTY NC
LINDA F. McABEE
REGISTER OF DEEDS

FILED Sep 14, 2011
AT 02:56 pm
BOOK 09699
START PAGE 0177
END PAGE 0192
INSTRUMENT # 19541
EXCISE TAX \$0.00
EBD

⑥
+2

Return To: 1222 8051
LSI-LPS
East Recording Solutions
700 Cherrington Parkway
Coraopolis, PA 15108
Prepared By: Lisa Wilkerson
4801 Frederica Street
Owensboro, KY 42301

DEED OF TRUST

MIN 100021200003826376

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated 09/09/2011 together with all Riders to this document.

(B) "Borrower" is BRETT L FOWLER and STEWART VAN EVERY FOWLER, husband and wife

Borrower is the trustor under this Security Instrument.

(C) "Lender" is U.S. Bank N.A.

Lender is a National Association organized and existing under the laws of The United States Of America
Lender's address is 4801 Frederica Street, Owensboro, KY 42301

(C-1) The name of the Mortgage Broker is

2300057111
NORTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS - Deed of Trust
VMP (P)
Walters Kluwer Financial Services

Initials: B2
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(D) "Trustee" is WJ Kellam, Jr.

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the beneficiary under this Security Instrument.** MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated **09/09/2011**

The Note states that Borrower owes Lender **Three Hundred Thousand and 00/100ths** Dollars

(U.S. \$ **300,000.00**) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **October 01, 2041**

(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- | | | |
|--|---|---|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> 1-4 Family Rider |
| <input type="checkbox"/> VA Rider | <input type="checkbox"/> Biweekly Payment Rider | <input type="checkbox"/> Other(s) [specify] |

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee and Trustee's successors and assigns, in trust, with power of sale, the following described property located in the

County of Cabarrus :
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]
SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE APART THEREOF

Parcel ID Number: 030080005-000000 which currently has the address of
3747 SHILOH CHURCH RD [Street]
DAVIDSON [City], North Carolina 28036 [Zip Code]
("Property Address"):

TO HAVE AND TO HOLD this property unto Trustee and Trustee's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument

as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. If Borrower has breached any covenant or agreement in this Security Instrument and Lender has accelerated the obligations of Borrower hereunder pursuant to Section 22 the Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or

ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series

of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing

the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve, if permitted under Applicable Law, in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve, if permitted under Applicable Law. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, if permitted under Applicable Law, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement

provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be

dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly

notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic

Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

Initials: *BE*
BEJ

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, and if it is determined in a hearing held in accordance with Applicable Law that Trustee can proceed to sale, Trustee shall take such action regarding notice of sale and shall give such notices to Borrower and to other persons as Applicable Law may require. After the time required by Applicable Law and after publication of the notice of sale, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, Trustee's fees of 5 % of the gross sale price; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it. The interest rate set forth in the Note shall apply whether before or after any judgment on the indebtedness evidenced by the Note.

23. Release. Upon payment of all sums secured by this Security Instrument, Lender or Trustee shall cancel this Security Instrument. If Trustee is requested to release this Security Instrument, all notes evidencing debt secured by this Security Instrument shall be surrendered to Trustee. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.


24. Substitute Trustee. Lender may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder by an instrument recorded in the county in which this Security Instrument is recorded. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

25. Attorneys' Fees. Attorneys' fees must be reasonable.

BY SIGNING UNDER SEAL BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

 (Seal)
BRETT L FOWLER -Borrower

 (Seal)
STEWART VAN EVERY FOWLER -Borrower

(Seal) (Seal)
-Borrower -Borrower

(Seal) (Seal)
-Borrower -Borrower

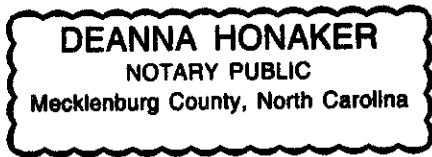
(Seal) (Seal)
-Borrower -Borrower

STATE OF NORTH CAROLINA, *Cabarrus* County ss:
I, *Deanna Honaker*
a Notary Public of the County of *Mecklenburg*, State of North Carolina, do hereby
certify that **BRETT L FOWLER** and **STEWART VAN EVERY FOWLER**

who ~~is~~ ^{are} known to me or proved to me on the basis of satisfactory evidence to be the person(s) described,
personally appeared before me this day, each acknowledging to me that ~~he/she~~ they voluntarily signed the
foregoing instrument for the purpose stated therein, and in the capacity indicated.

Witness my hand and official seal this *9* day of *September, 2011*

My Commission Expires: *5-16-2016*



[Signature]

Notary Public
Deanna Honaker

STATE OF NORTH CAROLINA, **Allegheny** County ss:
The foregoing certificate of
a Notary Public of the County of **Cabarrus**, State of **North Carolina**,
is certified to be correct.

This **09th** day of **September, 2011**

Registrar of Deeds

By _____
Deputy Assistant

Order No.: **12228051**
Loan No.: **2300057111**

Exhibit A

The following described property:

Being all that tract or parcel of land lying in Township Number Three in Cabarrus County, North Carolina, and being more particularly described as follows:

To locate the true point and place of beginning, commence at a PK Nail located in the intersection of Shiloh Church Road (state Road No.1600) with the Centerline of Dellinger Drive (State Road No.1843) and from PK Nail run N. 13-42-45 E. 569.19 feet to a railroad spike located in the intersection of Shiloh Church Road and Placid Road (State Road No.1818); thence N. 05-39-49 E 260.40 feet to a point in the Westerly margin of the 40 foot right-of-way of Shiloh Church Road, said point also being the Northeastern corner of the property of James R. McKnight (now or formerly) as described in Deed recorded in Deed Book 495 at Page 506 in the Cabarrus County, North Carolina, Public Registry (the "Registry"), said point being the true point and place of beginning; and from said point and place of beginning, leaving the Westerly right-of-way margin of Shiloh Church Road and running thence with the Northerly property line of the aforesaid McKnight property S. 77-03-14 W. 772.29 feet to a one-inch pipe; thence N. 10-34-32 W. 19.68 feet to a point; thence S. 79-25-28 W. 1,157.44 feet to a No.5 Rebar; thence with a common boundary line of the property of Sally B. Roberts (now or formerly) as same is described as Tract 3 in deed recorded in Deed Book 1282 at Page 83 in the Registry; thence N. 23-59-32 W. 657.91 feet to a nail in stones; thence with a common boundary line of the aforesaid Roberts property and the property of J.W. Overcash (now or formerly) as described in deed recorded in Deed Book 390 at Page 790 in the Registry, N. 79-16-00 E. 1,382.18 feet to a #5 rebar; thence, continuing with common boundary lines of the aforesaid Overcash property, S. 05-55-27 E. 645.89 feet to an axle; thence N. 77-03-114 E. 760.85 feet (passing through a one-inch pipe at 599.29 feet and a One-Half inch pipe at 728.18 feet) to a point in the Western margin of the right-of-way of Shiloh Church Road; thence with the western margin of the right-of-way of Shiloh Church Road S. 13-28-51 W. 21.03 feet to a point, said point being the true point and place of beginning, all as shown on that certain Survey entitled "Boundary Survey 19.19 AC Tract being the property of Sally B. Roberts, First and Second Tracts recorded in Deed Book 1446, Page 349" prepared by Samuel L. King, Jr., Registered Land Surveyor, dated March 29, 1996, last revised April 30, 1996, reference to which is hereby made for a more particular description.

Assessor's Parcel No: 03008 0005.000000

**RESOLUTION DIRECTING THE CLERK TO INVESTIGATE AN
INTENT TO ANNEX UNDER Chapter 160A ARTICLE 4A**

WHEREAS, the City Council may initiate annexation of contiguous property owned by the petitioners by adopting a resolution stating its intent to annex the property of the area described herein; and

WHEREAS, N.C.G.S Chapter 160A, Article 4A, Part 1 provide that the sufficiency of the petition shall be investigated by the City Clerk of the City of Kannapolis, North Carolina before further annexation proceedings consistent within the intent to annex can take place; and

WHEREAS, the City Council of the City of Kannapolis, North Carolina deems it advisable to direct the City Clerk to investigate the sufficiency of the intent to annex;

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

The City Clerk is hereby directed to investigate the sufficiency of the above-described intent to annex under N.C.G.S. Chapter 160A, Article 4, Part 1 and to certify as soon as possible to the City Council the result of the investigation.

ADOPTED this the 9th day of April 2018.

Milton D. Hinnant, Mayor

ATTEST:

Bridgette Bell, MMC, NCCMC
City Clerk

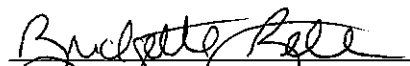
CERTIFICATE OF SUFFICIENCY

To the City Council of the City of Kannapolis, North Carolina.

I, Bridgette Bell, City Clerk, do hereby certify that pursuant to NCGS Chapter 160A, Article 4A, Part 4, I have investigated the petition attached hereto and have found as a fact that said petition is signed by all owners of real property lying in the area described therein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the City of Kannapolis, this 4th day of April, 2018.




Bridgette Bell, MMC, NCCMC
City Clerk

**RESOLUTION OF INTENT TO ANNEX AND FIX DATE OF PUBLIC HEARING ON QUESTION OF
ANNEXATION PURSUANT TO CHAPTER 160A ARTICLE 4A (Part 1) Section 160A-31(a)**

WHEREAS, pursuant to NCGS 160A-31 the City Council may initiate annexation of real property contiguous to the City's boundary pursuant to a Petition for Annexation by all property owners located therein by adopting a Resolution stating its intent to annex the property described.

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

- Section 1. A public hearing on the question of annexation of the area described herein will be held at the Laureate Center, 401 Laureate Way, Kannapolis, NC at 6:00 PM on the 23rd day of April, 2018.
- Section 2. The area proposed for annexation is described as follows:
See Attached Metes and Bounds Description
- Section 3. Notice of public hearing shall be published in the Independent Tribune on April 11, 2018

ADOPTED this the 9th day of April, 2018.

Milton D. Hinnant, Mayor

ATTEST:

Bridgette Bell, MMC, NCCMC
City Clerk

LEGAL DESCRIPTION PIN 4672-58-5733

ALL THAT REAL PROPERTY IN NO. 3 TOWNSHIP, CABARRUS COUNTY, NORTH CAROLINA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A # 5 REBAR, DESIGNATED AS HV-6 ON AN UNRECORDED MAP TITLED "BOUNDARY SURVEY FOR PROPERTY OF BRETT L. FOWLER AND WIFE, STEWART VAN EVERY FOWLER & JOSEPH THOMAS III AND WIFE, SHANNON COULTER HOWELL" BY CESI DATED FEBRUARY 02, 2018, (CESI JOB NUMBER 180016.000), SAID # 5 REBAR HAVING A NORTH CAROLINA GRID COORDINATE OF N = 628,750.64 FEET, E = 1,475,534.41 FEET {NAD 83 (2011)};

THENCE N 43° 49' 34" W, A GROUND DISTANCE OF 349.37 FEET (GRID DISTANCE OF 349.32 FEET, COMBINED GRID FACTOR OF 0.99984971), TO AN EXISTING #5 REBAR AT THE SOUTHEASTERLY CORNER OF THE LANDS OF BRETT L. FOWLER AND WIFE STEWART VAN EVERY FOWLER, DEED BOOK 2631 PAGE 108, HAVING A NORTH CAROLINA GRID COORDINATE OF N = 629,002.66 FEET, E = 1,475,292.52 FEET {NAD 83 (2011)}, SAID EXISTING #5 REBAR BEING THE TRUE POINT OF BEGINNING;

THENCE N 79° 11' 54" E, WITH THE LINE OF THE LANDS OF JOSEPH THOMAS HOWELL III AND WIFE SHANNON COULTER HOWELL DEED BOOK 11426 PAGE 246, A DISTANCE OF 624.98 FEET, TO A #5 REBAR;

THENCE S 05° 56' 49" E, WITH THE LINE OF THE LANDS OF JOSEPH THOMAS HOWELL III AND WIFE SHANNON COULTER HOWELL DEED BOOK 11426 PAGE 246, A DISTANCE OF 645.83 FEET, TO AN AXLE;

THENCE N 77° 02' 19" E, PASSING A #5 REBAR AT A DISTANCE OF 224.70 FEET (THE SOUTHWEST CORNER OF THE LANDS OF JOSEPH THOMAS HOWELL III AND WIFE SHANNON COULTER HOWELL DEED BOOK 12282 PAGE 90), PASSING A #4 REBAR AT A DISTANCE OF 585.40 (THE SOUTHEAST CORNER OF THE LANDS OF JOSEPH THOMAS HOWELL III AND WIFE SHANNON COULTER HOWELL DEED BOOK 12282 PAGE 90), PASSING A BENT 1" PIPE BESIDE A 1/2" PIPE AT 599.46 FEET, PASSING A NAIL AT THE BEND IN 1/2" PIPE AT 728.18 FEET, PASSING A NAIL AT THE BEND IN 1/2" PIPE (PIPE IS 1.1 FEET NORTH OF LINE) AT 733.18 FEET, TO A 3/4" NAIL AT A TOTAL DISTANCE OF 760.85 FEET;

THENCE S 13° 27' 56" W, A DISTANCE OF 21.03 FEET, TO A SPIKE NAIL;

THENCE S 77° 02' 19" W, WITH THE LINES OF JAMES MCKNIGHT AND WIFE LIDDIE B. MCKNIGHT, DEED BOOK 495 PAGE 506, A DISTANCE OF 772.29 FEET, TO A SET #5 REBAR;

THENCE N 10° 35' 27" W, AND CONTINUING WITH THE LANDS OF JAMES MCKNIGHT, DEED BOOK 495 PAGE 506, A DISTANCE OF 19.68 FEET, TO A SET #5 REBAR;

THENCE S 79° 44' 30" W, WITH THE LINE OF JAMES MCKNIGHT, DEED BOOK 495 PAGE 506, AND THE NORTH LINE OF TTO PARTNERS, LLC, DB 12300 PAGE 203, A DISTANCE OF 326.82 FEET TO A 1-1/2" PINCHED PIPE;

THENCE S 80° 04' 14" W, ALONG THE NORTHERLY LINE OF THE LANDS OF EMILIO SILVA AND WIFE MARTHA L. HERNANDEZ VIZAINO, DEED BOOK 7945 PAGE 271, A DISTANCE OF 25.00 FEET, TO A #5 REBAR;

THENCE S 79° 17' 17" W, ALONG THE NORTHERLY LINE OF THE LANDS OF BILLY E. BRAWLEY AND WIFE HAZEL N. BRAWLEY DEED BOOK 415 PAGE 603, A DISTANCE OF 276.02 FEET, TO A 1-1/2" PIPE;

THENCE S 79° 34' 33" W, ALONG THE NORTHERLY LINE OF THE LANDS OF JESS MCKNIGHT AND WIFE ADDIE MCKNIGHT, DEED BOOK 155 PAGE 445, A DISTANCE OF 210.15 FEET, TO A 1" ROD BESIDE FLAT IRON;

THENCE S 78° 58' 08" W, PASSING A #5 REBAR AT 131.57 FEET (CORNER OF THE LANDS OF THE FARM AT RIVERPOINTE HOMEOWNERS ASSOCIATION COMMON OPEN SPACE) DEED BOOK 8417 PAGE 128, TO A #5 REBAR (CORNER OF WAYNE PATRICK HOLDINGS, LLC) DEED BOOK 8782 PAGE 132, AT A TOTAL DISTANCE OF 319.12 FEET;

THENCE N 24° 01' 03" W, AND WITH THE LINES OF WAYNE PATRICK HOLDINGS LLC DEED BOOK 8782 PAGE 132, A DISTANCE OF 657.91 FEET, TO A BENT AXLE AND BENT #5 REBAR;

THENCE N 79° 15' 41" E, AND CONTINUING WITH THE LINES OF WAYNE PATRICK HOLDINGS LLC DEED BOOK 8782 PAGE 132, PASSING A SET #5 REBAR AT 185.00 FEET, FOR A TOTAL DISTANCE OF 200.00 FEET TO A COMPUTED POINT IN THE BRANCH, SAID COMPUTED POINT IN BRANCH BEING THE SOUTHWEST CORNER OF THE LANDS OF BRETT L. FOWLER AND WIFE STEWART VAN EVERY FOWLER, DEED BOOK 2631 PAGE 108;

THENCE N 79° 17' 07" E, AND WITH THE LINE OF THE LANDS OF BRETT L. FOWLER AND WIFE STEWART VAN EVERY FOWLER, DEED BOOK 2631 PAGE 108, A DISTANCE OF 557.19 FEET TO A #5 REBAR, SAID #5 REBAR BEING THE TRUE POINT OF BEGINNING.

THE ABOVE DESCRIBED PROPERTY CONTAINS 833,974 SQ. FT (19.145 AC)

LEGAL DESCRIPTION PIN 4672-49-9371

ALL THAT REAL PROPERTY IN NO. 3 TOWNSHIP, CABARRUS COUNTY, NORTH CAROLINA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A # 5 REBAR, DESIGNATED AS HV-6 ON AN UNRECORDED MAP TITLED "BOUNDARY SURVEY FOR PROPERTY OF BRETT L. FOWLER AND WIFE, STEWART VAN EVERY FOWLER & JOSEPH THOMAS III AND WIFE, SHANNON COULTER HOWELL" BY CESI DATED FEBRUARY 02, 2018, (CESI JOB NUMBER 180016.000), SAID # 5 REBAR HAVING A NORTH CAROLINA GRID COORDINATE OF N = 628,750.64 FEET, E = 1,475,534.41 FEET {NAD 83 (2011)};

THENCE N 43° 49' 34" W, A GROUND DISTANCE OF 349.37 FEET (GRID DISTANCE OF 349.32 FEET, COMBINED GRID FACTOR OF 0.99984971), TO AN EXISTING #5 REBAR AT THE SOUTHEASTERLY CORNER OF THE LANDS OF BRETT L. FOWLER AND WIFE STEWART VAN EVERY FOWLER, DEED BOOK 2631 PAGE 108, HAVING A NORTH CAROLINA GRID COORDINATE OF N = 629,002.66 FEET, E = 1,475,292.52 FEET {NAD 83 (2011)}, SAID EXISTING # 5 REBAR BEING THE TRUE POINT OF BEGINNING;

THENCE ALONG THE SOUTHERLY LINE OF SAID DEED BOOK 2631 PAGE 108, S 79° 17' 07" W, A DISTANCE OF 557.19 FEET, TO A COMPUTED POINT IN THE BRANCH;

THENCE WITH THE BRANCH, AND ALONG THE WESTERLY LINE OF SAID DEED BOOK 2631 PAGE 108, THE FOLLOWING FIVE (5) COURSES:

1. N 08° 31' 08" W, A DISTANCE OF 467.21 FEET TO A COMPUTED POINT;
2. THENCE WITH THE BRANCH N 28° 02' 59" E, A PASSING A SET #5 REBAR AT A DISTANCE OF 68.00 FEET, FOR A TOTAL DISTANCE OF 195.49 FEET TO A #5 REBAR;
3. THENCE N 13° 47' 22" E, A DISTANCE OF 155.55 FEET, TO A #5 REBAR;
4. THENCE N 09° 20' 39" W, A DISTANCE OF 48.00 FEET TO A #5 REBAR;
5. THENCE N 46° 53' 42" W, A DISTANCE OF 123.80 FEET TO A #5 REBAR, AT THE NORTHWEST CORNER OF THE LANDS OF BRETT L. FOWLER AND WIFE STEWART VAN EVERY FOWLER, DEED BOOK 2631 PAGE 108;

THENCE N 89° 26' 35" E, ALONG THE NORTHERLY LINE OF SAID DEED BOOK 2631 PAGE 108, PASSING A #5 REBAR AT 94.09 FEET, PASSING A #5 REBAR AT 338.28, FOR A TOTAL DISTANCE OF 462.91 FEET TO A #5 REBAR AT THE NORTHEAST CORNER OF THE LANDS OF BRETT L. FOWLER AND WIFE STEWART VAN EVERY FOWLER, DEED BOOK 2631 PAGE 108;

THENCE S 08° 32' 37" E, ALONG THE EASTERLY LINE OF THE LANDS OF BRETT L. FOWLER AND WIFE STEWART VAN EVERY FOWLER, DEED BOOK 2631 PAGE 108, A DISTANCE OF 827.71 FEET, TO A #5 REBAR, SAID EXISTING #5 REBAR BEING THE TRUE POINT OF BEGINNING.

THE ABOVE DESCRIBED PROPERTY CONTAINS 435,819 SQ. FT (10.005 AC)

9699
0193

FILED
CABARRUS COUNTY NC
LINDA F. McABEE
REGISTER OF DEEDS
FILED Sep 14, 2011
AT 02:57 pm
BOOK 09699
START PAGE 0193
END PAGE 0198
INSTRUMENT # 19542
EXCISE TAX \$0.00
EBD

EQUITY LINE OF CREDIT DEED OF TRUST
(Governed by Article 9, Chapter 45, North Carolina General Statutes)

This document was prepared by:
Lisa Wilkerson

Return To: 12228051
LSI-LPS
East Recording Solutions
700 Cherrington Parkway
Coraopolis, PA 15108

Name of Mortgage Broker:

1. **DATE AND PARTIES.** The date of this Deed of Trust (Security Instrument) is 09/09/2011.
The parties and their addresses are as follows:

GRANTOR: **BRETT L FOWLER and STEWART VAN EVERY FOWLER, husband and wife**
3747 SHILOH CHURCH RD, DAVIDSON, NC 28036

☐ If checked, refer to the attached Addendum incorporated herein, for additional Grantors, their signatures and acknowledgments.

TRUSTEE:

Ronald H. Davis
347 North Caswell Street, Charlotte, NC 28204

LENDER:

U.S. Bank National Association N.D.
4325 17th Avenue S.W.
Fargo, ND 58103

2. **CONVEYANCE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (defined below) and Grantor's performance under this Security Instrument, Grantor irrevocably grants, conveys and sells to Trustee, in trust for the benefit of Lender, with power of sale, the following described property:
SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE APART THEREOF

6/45-

The property is located in Cabarrus at 3747 SHILOH CHURCH RD
(County)
(Address) , DAVIDSON , North Carolina 28036
(City) (ZIP Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, ditches, and water stock and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property").

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount secured by this Security Instrument at any one time shall not exceed \$ 38,000.00 . This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument.
4. **SECURED DEBT.** The term "Secured Debt" is defined as follows:
 - A. All advances, including present and future advances, from Lender to Grantor under any promissory note, contract or other evidence of debt executed by Grantor in favor of Lender (including any extensions, renewals or modifications thereof) evidencing the equity line of credit secured hereby, made at any time within thirty years after the date of this Security Instrument, whether or not this Security Instrument is specifically referenced. If more than one person signs this Security Instrument, each Grantor agrees that this Security Instrument will secure all advances that are made to any one or more Grantor, or any one or more Grantor and others. All such advances are secured as if made on the date of this Security Instrument.
 - B. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

In the event that Lender fails to provide any required notice of the right of rescission, Lender waives any subsequent security interest in the Grantor's principal dwelling that is created by this Security Instrument.

5. **DEED OF TRUST COVENANTS.** Grantor agrees that the covenants in this section are material obligations under the Secured Debt and this Security Instrument. If Grantor breaches any covenant in this section, Lender may refuse to make additional extensions of credit and reduce the credit limit. By not exercising either remedy on Grantor's breach, Lender does not waive Lender's right to later consider the event a breach if it happens again.

Payments. Grantor agrees that all payments under the Secured Debt will be paid when due and in accordance with the terms of the Secured Debt and this Security Instrument.

Prior Security Interests. With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Grantor agrees to make all payments when due and to perform or comply with all covenants. Grantor also agrees not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written approval.

Claims Against Title. Grantor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Grantor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Grantor's payment. Grantor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Grantor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Grantor may have against parties who supply labor or materials to maintain or improve the Property.

Property Condition, Alterations and Inspection. Grantor will keep the Property in good condition and make all repairs that are reasonably necessary. Grantor shall not commit or allow any waste, impairment, or deterioration of the Property. Grantor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Grantor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Grantor will notify Lender of all demands, proceedings, claims, and actions against Grantor, and of any loss or damage to the Property.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender shall give Grantor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property shall be entirely for Lender's benefit and Grantor will in no way rely on Lender's inspection.

Authority to Perform. If Grantor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Grantor appoints Lender as attorney in fact to sign Grantor's name or pay any amount necessary for performance. Lender's right to perform for Grantor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument.

Leaseholds; Condominiums; Planned Unit Developments. Grantor agrees to comply with the provisions of any lease if this Security Instrument is on a leasehold. If the Property includes a unit in a condominium or a planned unit development, Grantor will perform all of Grantor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.

Condemnation. Grantor will give Lender prompt notice of any pending or threatened action, by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Grantor authorizes Lender to intervene in Grantor's name in any of the above described actions or claims. Grantor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the

Property. Such proceeds shall be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

Insurance. Grantor shall keep Property insured against loss by fire, flood, theft and other hazards and risks reasonably associated with the Property due to its type and location. This insurance shall be maintained in the amounts and for the periods that Lender requires. What Lender requires pursuant to the preceding two sentences can change during the term of the Secured Debt. The insurance carrier providing the insurance shall be chosen by Grantor subject to Lender's approval, which shall not be unreasonably withheld. If Grantor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Security Instrument.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "loss payee clause." Grantor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Grantor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Grantor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Grantor.

Unless otherwise agreed in writing, all insurance proceeds shall be applied to the restoration or repair of the Property or to the Secured Debt, whether or not then due, at Lender's option. Any application of proceeds to principal shall not extend or postpone the due date of the scheduled payment nor change the amount of any payment. Any excess will be paid to the Grantor. If the Property is acquired by Lender, Grantor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

Financial Reports and Additional Documents. Grantor will provide to Lender upon request, any financial statement or information Lender may deem reasonably necessary. Grantor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Grantor's obligations under this Security Instrument and Lender's lien status on the Property.

6. **WARRANTY OF TITLE.** Grantor warrants that Grantor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to irrevocably grant, convey and sell the Property to Trustee, in trust, with power of sale. Grantor also warrants that the Property is unencumbered, except for encumbrances of record.
7. **DUE ON SALE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, a transfer or sale of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable.
8. **DEFAULT.** Grantor will be in default if any of the following occur:

Fraud. Any Consumer Borrower engages in fraud or material misrepresentation in connection with the Secured Debt that is an open end home equity plan.

Payments. Any Consumer Borrower on any Secured Debt that is an open end home equity plan fails to make a payment when due.

Property. Any action or inaction by the Borrower or Grantor occurs that adversely affects the Property or Lender's rights in the Property. This includes, but is not limited to, the following: (a) Grantor fails to maintain required insurance on the Property; (b) Grantor transfers the Property; (c) Grantor commits waste or otherwise destructively uses or fails to maintain the Property such that the action or inaction adversely affects Lender's security; (d) Grantor fails to pay taxes on the Property or otherwise fails to act and thereby causes a lien to be filed against the Property that is senior to the lien of this Security Instrument; (e) a sole Grantor dies; (f) if more than one Grantor, any Grantor dies and Lender's security is adversely affected; (g) the Property is taken through eminent domain; (h) a judgment is filed against Grantor and subjects Grantor and the Property to action that adversely affects Lender's interest; or (i) a prior lienholder forecloses on the Property and as a result, Lender's interest is adversely affected.

Executive Officers. Any Borrower is an executive officer of Lender or an affiliate and such Borrower becomes indebted to Lender or another lender in an aggregate amount greater than the amount permitted under federal laws and regulations.

9. **REMEDIES ON DEFAULT.** In addition to any other remedy available under the terms of this Security Instrument, Lender may accelerate the Secured Debt and foreclose this Security Instrument in a manner provided by law if Grantor is in default. In some instances, federal and state law will require Lender to provide Grantor with notice of the right to cure, or other notices and may establish time schedules for foreclosure actions.

At the option of the Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter.

If there is a default, Trustee shall at the request of the Lender, advertise and sell the Property as a whole or in separate parcels at public auction to the highest bidder for cash, after having first given such notice of hearing as to commencement of foreclosure proceedings and obtained such findings or leave of court as may be then required by law, and convey absolute title free and clear of all right, title and interest of Grantor at such time and place as Trustee designates. Trustee shall give notice of sale including the time, terms and place of sale and a description of the Property to be sold as required by the applicable law in effect at the time of the proposed sale.

Upon sale of the Property and to the extent not prohibited by law, Trustee shall make and deliver a deed to the Property sold which conveys absolute title to the purchaser, and after first paying all fees, charges and costs, including the Trustee's commission, shall pay to Lender all moneys advanced for repairs, taxes, insurance, liens, assessments and prior encumbrances and interest thereon, and the principal and interest on the Secured Debt, paying the surplus, if any, to Grantor. The Trustee's commission shall be five percent of the gross proceeds of the sale for a completed foreclosure. Lender may purchase the Property. The recitals in any deed of conveyance shall be prima facie evidence of the facts set forth therein.

The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require complete cure of any existing default. By not exercising any remedy on Grantor's default, Lender does not waive Lender's right to later consider the event a default if it happens again.

10. **EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS.** If Grantor breaches any covenant in this Security Instrument, Grantor agrees to pay all expenses Lender incurs in performing such covenants or protecting its security interest in the Property. Such expenses include, but are not limited to, fees incurred for inspecting, preserving, or otherwise protecting the Property and Lender's security interest. These expenses are payable on demand and will bear interest from the date of payment until paid in full at the highest rate of interest in effect as provided in the terms of the Secured Debt. Grantor agrees to pay all costs and expenses incurred by Lender in collecting, enforcing or protecting Lender's rights and remedies under this Security Instrument. This amount may include, but is not limited to, reasonable attorneys' fees not exceeding 15 percent of the outstanding balance on the Secured Debt, court costs, and other legal expenses. To the extent permitted by the United States Bankruptcy Code, Grantor agrees to pay the reasonable attorneys' fees Lender incurs to collect the Secured Debt as awarded by any court exercising jurisdiction under the Bankruptcy Code. This Security Instrument shall remain in effect until released. Grantor agrees to pay for any recordation costs of such release.
11. **ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES.** As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), and all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law.
Grantor represents, warrants and agrees that:
 - A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance is or will be located, stored or released on or in the Property. This restriction does not apply to small quantities of Hazardous Substances that are generally recognized to be appropriate for the normal use and maintenance of the Property.
 - B. Except as previously disclosed and acknowledged in writing to Lender, Grantor and every tenant have been, are, and shall remain in full compliance with any applicable Environmental Law.
 - C. Grantor shall immediately notify Lender if a release or threatened release of a Hazardous Substance occurs on, under or about the Property or there is a violation of any Environmental Law concerning the Property. In such an event, Grantor shall take all necessary remedial action in accordance with any Environmental Law.
 - D. Grantor shall immediately notify Lender in writing as soon as Grantor has reason to believe there is any pending or threatened investigation, claim, or proceeding relating to the release or threatened release of any Hazardous Substance or the violation of any Environmental Law.
12. **ESCROW FOR TAXES AND INSURANCE.** Unless otherwise provided in a separate agreement, Grantor will not be required to pay to Lender funds for taxes and insurance in escrow.
13. **JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND.** All duties under this Security Instrument are joint and individual. If Grantor signs this Security Instrument but does not sign an evidence of debt, Grantor does so only to mortgage Grantor's interest in the Property to secure payment of the Secured Debt and Grantor does not agree to be personally liable on the Secured Debt. If this Security Instrument secures a guaranty between Lender and Grantor, Grantor agrees to waive any rights that may prevent Lender from bringing any action or claim against Grantor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws. The duties and benefits of this Security Instrument shall bind and benefit the successors and assigns of Grantor and Lender.
14. **SEVERABILITY; INTERPRETATION.** This Security Instrument is complete and fully integrated. This Security Instrument may not be amended or modified by oral agreement. Any section in this Security Instrument, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section of this Security Instrument cannot be enforced according to its terms, that section will be severed and will not affect the enforceability of the remainder of this Security Instrument. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Security Instrument are for convenience only and are not to be used to interpret or define the terms of this Security Instrument. Time is of the essence in this Security Instrument.
15. **SUCCESSOR TRUSTEE.** Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee without any other formality than the designation in writing. The successor trustee, without conveyance of the Property, shall succeed to all the title, power and duties conferred upon Trustee by this Security Instrument and applicable law.
16. **NOTICE.** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Security Instrument, or to any other address designated in writing. Notice to one grantor will be deemed to be notice to all grantors.
17. **LINE OF CREDIT.** The Secured Debt includes a revolving line of credit. Although the Secured Debt may be reduced to a zero balance, this Security Instrument will remain in effect until released.
18. **APPLICABLE LAW.** This Security Instrument is governed by the laws as agreed to in the Secured Debt, except to the extent required by the laws of the jurisdiction where the Property is located, and applicable federal laws and regulations.

19. **RIDERS.** The covenants and agreements of each of the riders checked below are incorporated into and supplement and amend the terms of this Security Instrument.

[Check all applicable boxes]

☐ Assignment of Leases and Rents ☐ Other

20. ☒ **ADDITIONAL TERMS.**

When Recorded return to:

U.S. Bank

1250 Osborn Ave.

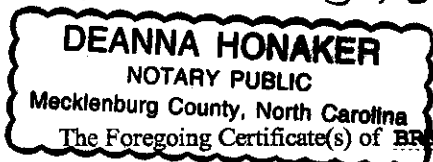
Oshkosh, WI 54902

SIGNATURES: By signing below under Seal, Grantor agrees to the terms and covenants contained in this Security Instrument and in any attachments. Grantor also acknowledges receipt of a copy of this Security Instrument on the date stated on page 1.

(Signature) Brett L Fowler 9-9-11 (Seal) (Date) (Signature) Stewart Van Every Fowler 9-9-11 (Seal) (Date)

ACKNOWLEDGMENT:

(Individual) I Deanna Honaker, STATE OF North Carolina, COUNTY OF _____ } ss.
do hereby certify that **BRETT L FOWLER and STEWART VAN EVERY FOWLER**
who ~~is~~ are known to me or proved to me on the basis of satisfactory evidence to be the person(s) described,
personally appeared before me this day and acknowledged the due and voluntary execution of the foregoing
instrument for the purpose stated therein.
Witness my hand and official seal, this the 9 day of September, 2011.
My commission expires: 5-16-2016



(Notary Public)
Deanna Honaker
The Foregoing Certificate(s) of **BRETT L FOWLER and STEWART VAN EVERY FOWLER**

is are certified to be correct. This instrument and this certificate are duly registered at the date and time in the Book and Page shown on the first page hereof.

By _____ REGISTER OF DEEDS FOR Cabarrus COUNTY
Deputy/Assistant-Register of Deeds

Order No.: **12228051**
Loan No.: **2300057111**

Exhibit A

The following described property:

Being all that tract or parcel of land lying in Township Number Three in Cabarrus County, North Carolina, and being more particularly described as follows:

To locate the true point and place of beginning, commence at a PK Nail located in the intersection of Shiloh Church Road (state Road No.1600) with the Centerline of Dellinger Drive (State Road No.1843) and from PK Nail run N. 13-42-45 E. 569.19 feet to a railroad spike located in the intersection of Shiloh Church Road and Placid Road (State Road No.1818); thence N. 05-39-49 E 260.40 feet to a point in the Westerly margin of the 40 foot right-of-way of Shiloh Church Road, said point also being the Northeastern corner of the property of James R. McKnight (now or formerly) as described in Deed recorded in Deed Book 495 at Page 506 in the Cabarrus County, North Carolina, Public Registry (the "Registry"), said point being the true point and place of beginning; and from said point and place of beginning, leaving the Westerly right-of-way margin of Shiloh Church Road and running thence with the Northerly property line of the aforesaid McKnight property S. 77-03-14 W. 772.29 feet to a one-inch pipe; thence N. 10-34-32 W. 19.68 feet to a point; thence S. 79-25-28 W. 1,157.44 feet to a No.5 Rebar; thence with a common boundary line of the property of Sally B. Roberts (now or formerly) as same is described as Tract 3 in deed recorded in Deed Book 1282 at Page 83 in the Registry; thence N. 23-59-32 W. 657.91 feet to a nail in stones; thence with a common boundary line of the aforesaid Roberts property and the property of J.W. Overcash (now or formerly) as described in deed recorded in Deed Book 390 at Page 790 in the Registry, N. 79-16-00 E. 1,382.18 feet to a #5 rebar; thence, continuing with common boundary lines of the aforesaid Overcash property, S. 05-55-27 E. 645.89 feet to an axle; thence N. 77-03-114 E. 760.85 feet (passing through a one-inch pipe at 599.29 feet and a One-Half inch pipe at 728.18 feet) to a point in the Western margin of the right-of-way of Shiloh Church Road; thence with the western margin of the right-of-way of Shiloh Church Road S. 13-28-51 W. 21.03 feet to a point, said point being the true point and place of beginning, all as shown on that certain Survey entitled "Boundary Survey 19.19 AC Tract being the property of Sally B. Roberts, First and Second Tracts recorded in Deed Book 1446, Page 349" prepared by Samuel L. King, Jr., Registered Land Surveyor, dated March 29, 1996, last revised April 30, 1996, reference to which is hereby made for a more particular description.

Assessor's Parcel No: 03008 0005.000000

STATE OF NORTH CAROLINA

ANNEXATION AGREEMENT

COUNTY OF CABARRUS

WHEREAS, the City of Kannapolis, a North Carolina municipal corporation, (hereinafter "Kannapolis") and the City of Concord, a North Carolina municipal corporation, (hereinafter "Concord") have undertaken a joint planning effort to encourage the orderly development of the unincorporated areas adjacent to the two municipalities; and

WHEREAS, Kannapolis and Concord desire to reduce uncertainty among residents and property owners in the potential growth areas of the municipalities which will improve planning by both public and private interests in such areas; and

WHEREAS, the General Statutes of North Carolina, Chapter 160A, Section 58.21 et seq. authorized municipalities to enter into binding agreements relating to future annexations and designating areas which are not subject to annexation by each participating municipality; and

NOW, THEREFORE upon the premises contained herein the parties hereto agree as follows:

1. This Agreement is executed pursuant to the authority of Article 4A, Part 6 of G.S. Chapter 160A of the North Carolina General Statutes (the "Act").
2. Subject to the provisions hereinafter stated, Kannapolis shall not annex the following area(s) shown on Exhibit "B.1" and "B.2" which are incorporated herein as a part of this Agreement.
3. Subject to the provisions hereinafter stated, Concord shall not annex the following area(s) shown on Exhibit "A.1," "A.2," "A.3," "A.4," and "A.5" which are incorporated herein as a part of this Agreement.
4. The effective date of this Agreement is December 11, 2003, or the date of adoption of an ordinance approving this Agreement by the last participating city to do so, whichever is later, and shall terminate at 12:01 am on the tenth anniversary following the effective date, or as otherwise terminated as provided herein.
5. This Agreement shall not be effective unless and until each participating city has held a public hearing on this Agreement, or the participating cities have held a joint public hearing, prior to adopting the ordinance approving this Agreement. Until such time as the required public hearings are held and the respective approving ordinances are adopted, this Agreement shall be considered a proposed agreement.

6. At least sixty (60) days prior to the adoption of any annexation ordinance affecting geographical area which is subject to this Agreement, the participating city proposing such annexation shall give written notice to the other participating city of the proposed annexation. Such notice shall describe the area to be annexed by a legible map, clearly and accurately showing the boundaries of the area to be annexed in relation to this Agreement delineated by roads, streams and any other prominent geographical features. Such notice shall not be effective for more than 180 days.
7. This Agreement may be modified or terminated only by a subsequent amending agreement adopted and executed by each participating cities. Any amending agreement shall be adopted by ordinance after public hearings as provided in G.S. 160A-31(c).
8. This Agreement shall not be binding beyond three miles of the primary corporate limits of a participating city unless approved by the Cabarrus County Board of County Commissioners. Provided, however, that any area where this Agreement is not binding because of failure of the Board of County Commissioners to approve it, shall become subject to this Agreement if a subsequent annexation brings it within three miles. The approval of a Board of County Commissioners shall be evidenced by a resolution adopted after a public hearing as provided in G.S. 160A-58.24(c) and (e) and 160A-31(c).
9. This Agreement may be terminated by a participating city, by repealing the ordinance which approved this Agreement and providing a five year advance written notice to the other participating city. Upon the expiration of the five-year notice period, this Agreement shall terminate.
10. From and after the effective date of this Agreement, no participating city may adopt an annexation ordinance as to all or any portion of an area in breach of this Agreement:
11. Nothing in this Agreement shall be construed to authorize the annexation of any area which is not otherwise subject to annexation under applicable law.
12. This Agreement contains the entire agreement between the participating cities.

IN WITNESS WHEREOF, the Mayors of the participating cities execute this Agreement in duplicate, to become effective as provided in paragraph 4 hereinabove, this the _____ day of December, 2003.

CITY OF KANNAPOLIS

By: O. Ray Moss
O. Ray Moss, Mayor

ATTEST:

Bridgette Bell
Bridgette Bell, CMC, City Clerk

APPROVED AS TO FORM:

Walter M. Safrit, II
Walter M. Safrit, II, City Attorney



CITY OF CONCORD

By: Scott Padgett
Scott Padgett, Mayor

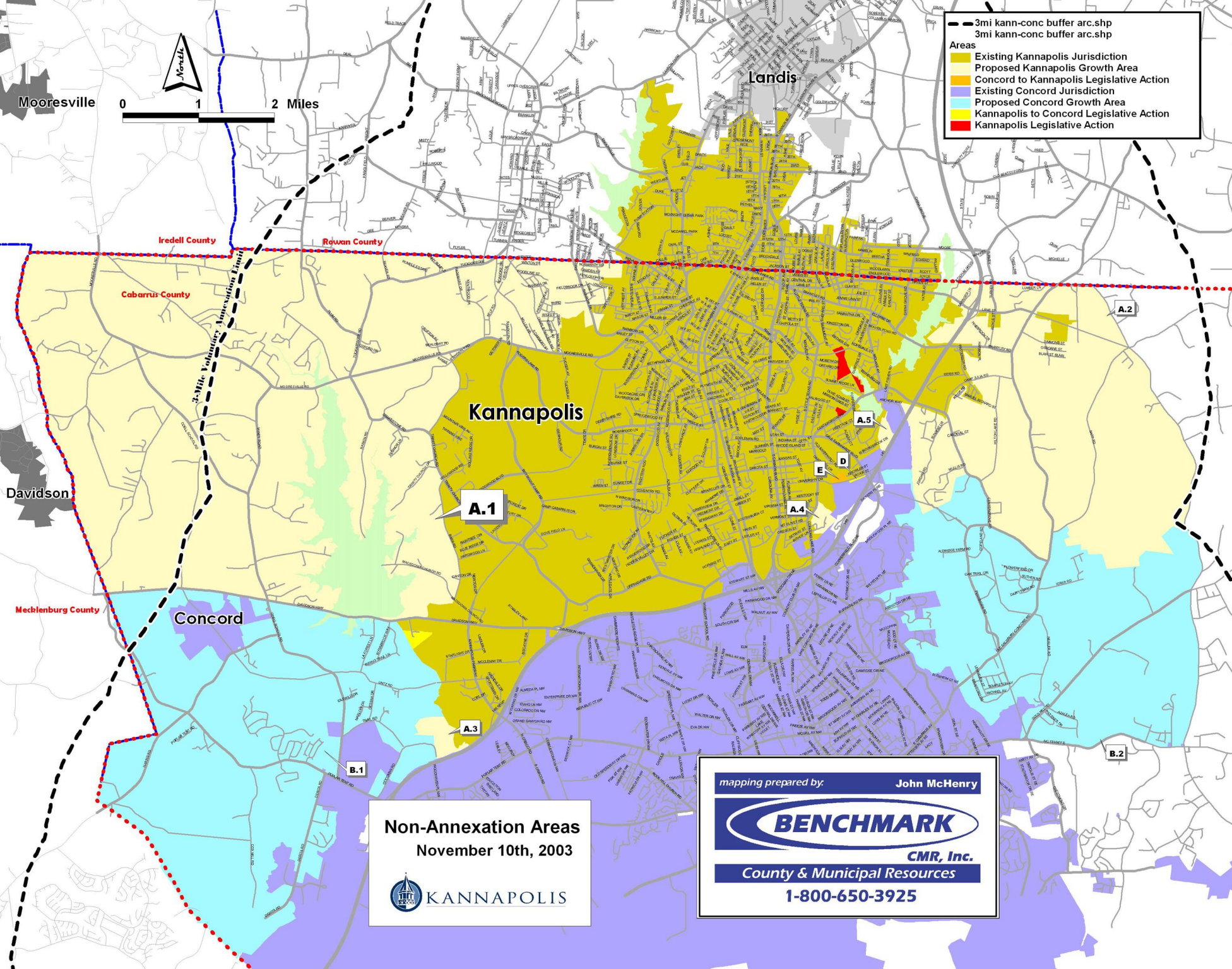
ATTEST:

Vickie C. Weant
Vickie Weant, CMC, City Clerk

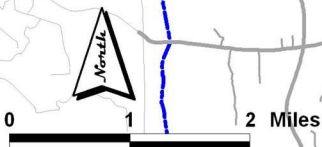
APPROVED AS TO FORM:

Albert Benshoff
Albert Benshoff
City Attorney






- 3mi kann-conc buffer arc.shp
- 3mi kann-conc buffer arc.shp
- Areas
- Existing Kannapolis Jurisdiction
- Proposed Kannapolis Growth Area
- Concord to Kannapolis Legislative Action
- Existing Concord Jurisdiction
- Proposed Concord Growth Area
- Kannapolis to Concord Legislative Action
- Kannapolis Legislative Action



Non-Annexation Areas
November 10th, 2003



KANNAPOLIS

mapping prepared by: John McHenry



BENCHMARK

CMR, Inc.

County & Municipal Resources

1-800-650-3925



**City of Kannapolis
City Council Meeting
April 9, 2018
Staff Report**

TO: Mayor and City Council
FROM: Zachary D. Gordon, AICP, Planning Director
TITLE: Voluntary Annexation of Property - 3739 and 3749 Shiloh Church Road

A. Action Requested by City Council

1. Motion to approve a Resolution Directing the Clerk to Investigate the sufficiency of the petition.
2. Motion to adopt a Resolution of intent to annex approximately 22.35 +/- acres on Shiloh Church Road (PIN 4672-68-3634, 4672-68-0812) and Fix Date of Public Hearing for April 23, 2018.

B. Required Votes to Pass Required Action

Majority present at meeting

C. Background

The owners of the subject properties, Joseph and Shannon Howell, have submitted a petition for the voluntary annexation of approximately 22.35+/- acres located at 3739 and 3749 Shiloh Church Road. The property is currently located in an unincorporated portion of Cabarrus County in an area identified as the "Western Planning Area" of the County's long-range plan. The parcels are predominantly vacant with small outbuildings and have a Cabarrus County zoning designation of CR - Countryside Residential. This annexation request is being made to facilitate the development of a potential residential subdivision.

The petition is for a **noncontiguous annexation** as the property is not adjacent to the City's existing limits (See attached Vicinity Map).

As is required by the North Carolina General Statutes, an initial City of Kannapolis zoning designation will be applied to the property by the Planning and Zoning Commission within 60 days of the effective date of the annexation.

D. Fiscal Considerations

None.

E. Policy Issues

The property is located in an unincorporated area of Cabarrus County that is currently zoned CR, with a 2 acre required minimum lot size. While this property is located outside of the City's corporate limits, it is within an area designated as "Proposed Kannapolis Growth Area", in an "Annexation Agreement" between the City of Kannapolis and City of Concord (see attached). The City is in the process of extending utilities in this area to facilitate future development. According to the City's current long range planning document - ***Move Kannapolis Forward 2030 Comprehensive Plan***, identifies this area as a "Primary Service Area". The Primary Service area is "land where provision of services is preferred. These are areas to encourage development within the planning horizon. Annexation is also envisioned as a part of the agreement to provide services."

F. Legal Issues

Prior to considering the annexation ordinance, pursuant to NCGS 160A-31, the City Council must first direct the City Clerk to determine and certify the sufficiency of the petition and set a public hearing for consideration of the petition. It is requested that the public hearing date be set for April 23, 2018.

G. Alternative Courses of Action and Recommendation

1. **Motion to approve a Resolution Directing the Clerk to Investigate the Sufficiency of the Petition. (Recommended)**
2. **Motion to approve a Resolution of intent to annex approximately 22.35 +/- acres on Shiloh Church Road (PIN 4672-68-3634, 4672-68-0812) and Fix Date of Public Hearing for April 23, 2018 (Recommended).**
3. Do not approve Resolutions.
4. Table action to a future meeting.

ATTACHMENTS:

File Name

- Howell_AnnexPetitionSigned2018_0205.pdf
- Vicinity_Map.pdf
- Howell_survey.pdf
- Resolution_directing_the_Clerk_to_investigate_an_intent_to_annex.pdf
- Certificate_of_Sufficiency.pdf
- Resolution_to_set_a_public_hearing.pdf
- HOWELL_PIN_4672_68_0812.pdf
- HOWELL_PIN_4672_68_3634.pdf
- City_of_Concord-Annex_Agreement_-_without_metes_and_bounds_attachments.pdf
- Kannapolis_Growth_Area_Smith_Annexation.pdf



PETITION REQUESTING A NON-CONTIGUOUS (SATELLITE) ANNEXATION

DATE: 2-4-18

To the City Council of the City of Kannapolis, North Carolina:

1. We, the undersigned owners of real property, respectfully request that the area described in paragraph 2 below be annexed to the City of Kannapolis, North Carolina.
2. The area to be annexed is non-contiguous to the City of Kannapolis, North Carolina and the boundaries of such territory are as follows:

See Attached Survey Map and Metes and Bounds Description

3. A vicinity map is attached showing the area proposed for annexation in relation to the primary corporate limits of the City of Kannapolis, North Carolina (and in relation to the primary corporate limits of another municipality if substantial question of whether the area is closer to another municipality than to the City of Kannapolis, North Carolina).

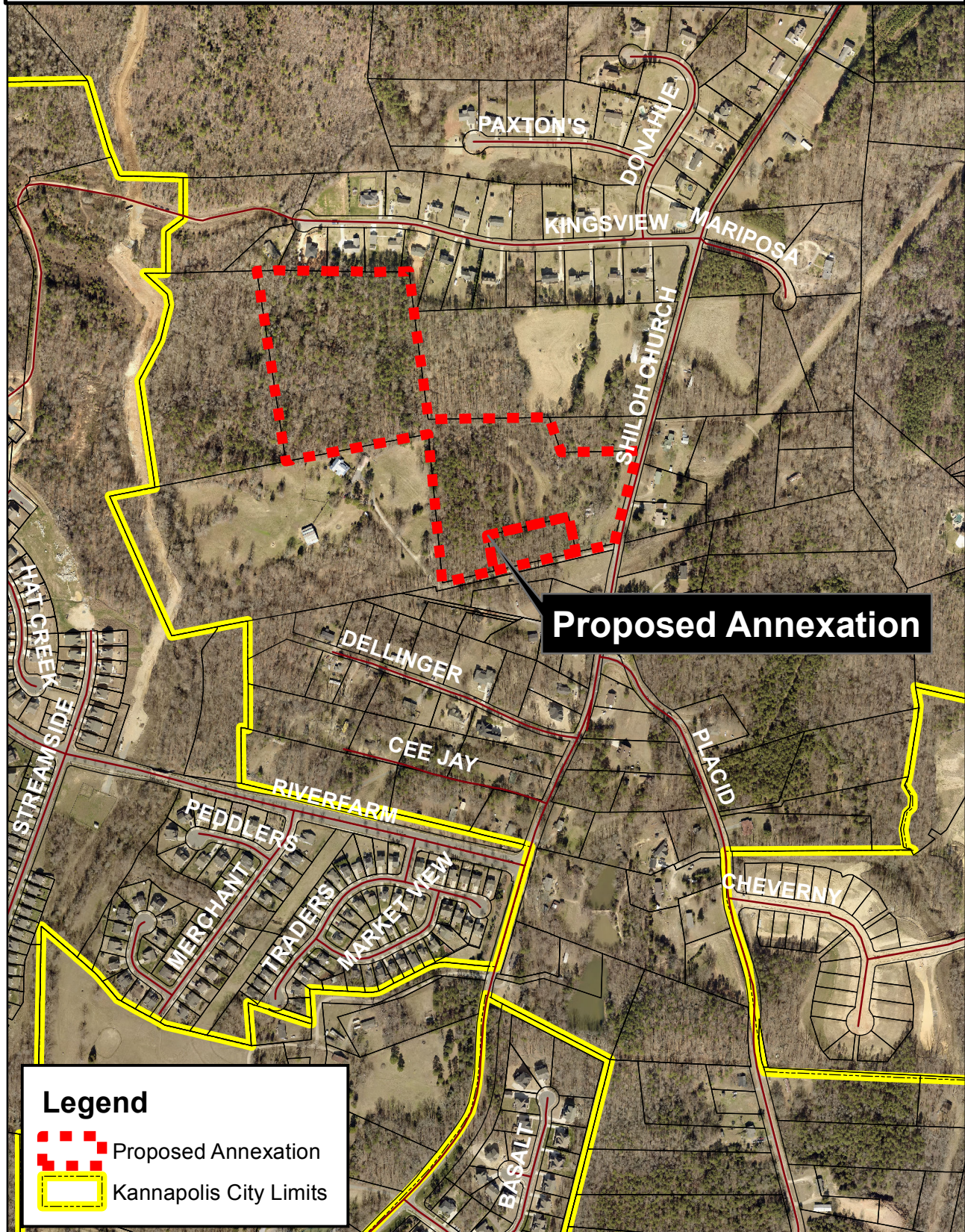
<u>Name</u> (print or type)	<u>Address</u>	<u>Signature</u>
1. <u>Joseph Howell III</u>	<u>10339 Samuels Way Dr Huntersville</u> <u>NC 28078</u>	<u>Joseph T Howell III</u>
2. <u>Shannon Howell</u>	<u>10339 Samuels Way Dr.</u> <u>Huntersville NC 28078</u>	<u>Shannon Howell</u>
3. _____	_____	_____
4. _____	_____	_____

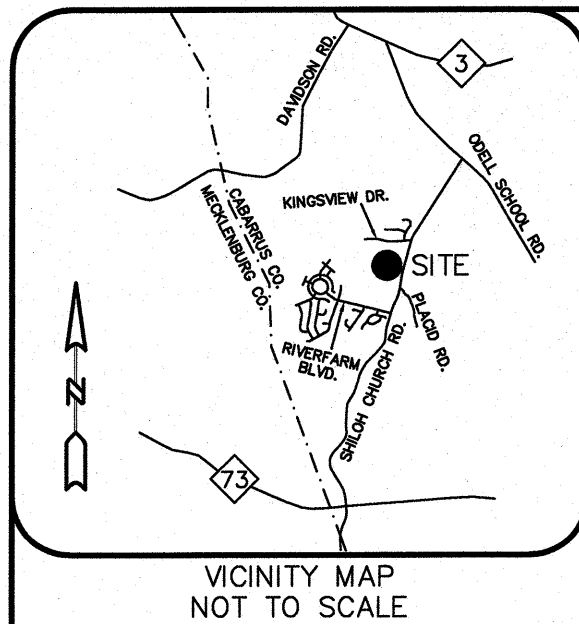
*Family members (e.g., husbands and wives) need to sign separately. Signatures for corporations, institutions, etc., are by those with the authority to sign legal documents.



A-2018-02 - Howell Annexation Voluntary Annexation Vicinity Map

Applicant: Joseph and Shannon Howell
PIN: 4672-68-3634, 4672-68-0812



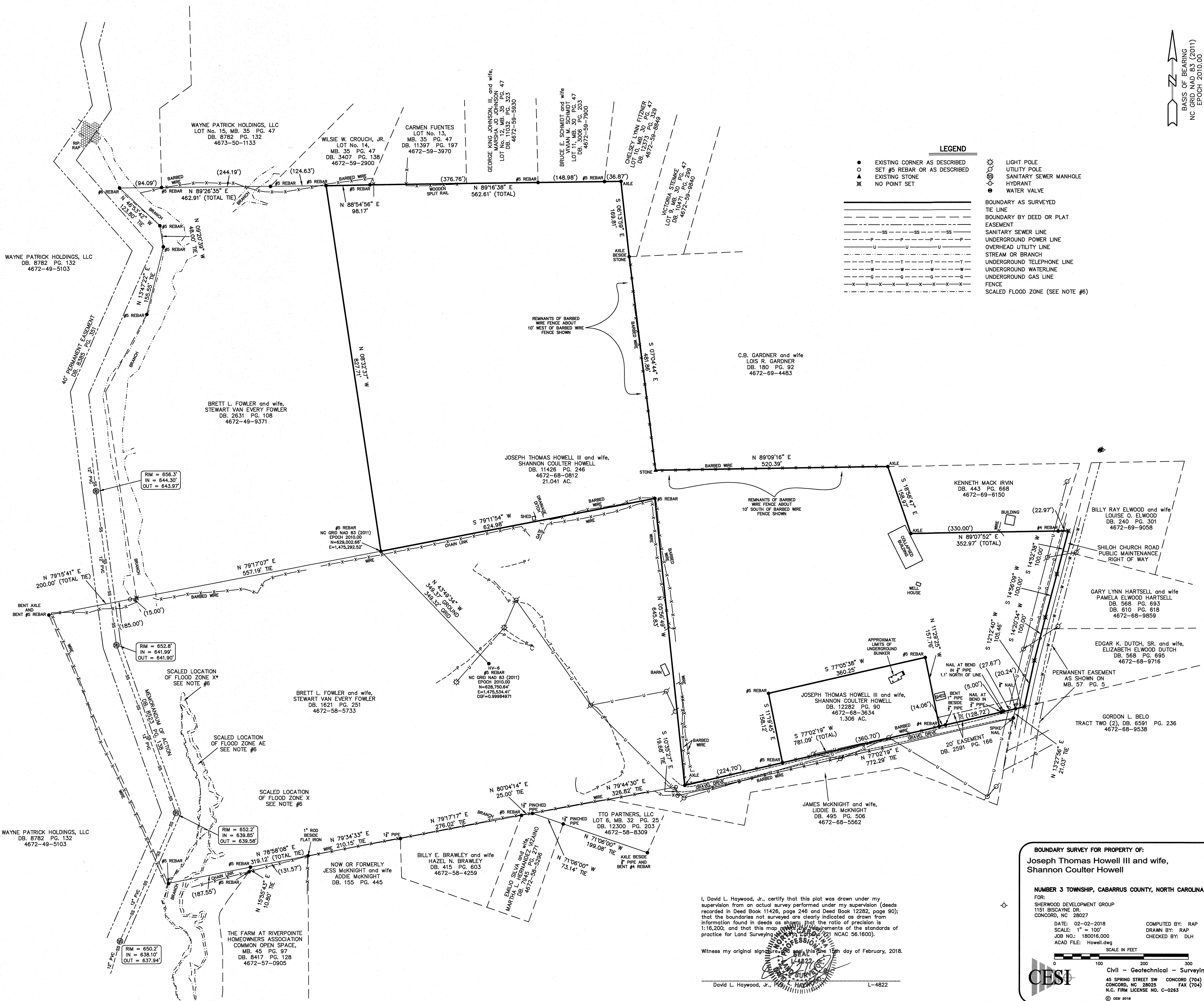


VICINITY MAP
NOT TO SCALE

BASE OF BEARING
NC GRID NAD 83 (2011)
EPOCH 2010.00

- NOTES:
1. TRAVERSE ADJUSTED BY THE LEAST SQUARES ADJUSTMENT METHOD.
 2. AREAS DETERMINED BY COORDINATE COMPUTATIONS.
 3. ALL DISTANCES ARE HORIZONTAL, GROUND DISTANCES UNLESS OTHERWISE NOTED.
 4. NC GRID NAD 83 (2011) EPOCH 2010.00 BASIS OF BEARING AND NAVD 88 ELEVATIONS DERIVED FROM NCDS NETWORK RTK BETWEEN 01-11-2018 AND 01-19-2018 (HORIZONTAL POSITIONAL ACCURACY = 0.09'; VERTICAL ACCURACY = 0.12') USING GEOD MODEL GEOD12B. PROJECT LOCALIZED HOLDING CONTROL PT. IV-6 (N=428,750.64; E=1,475,534.41), AND USING A COMBINED GRID FACTOR OF 0.99984971. UNITS ARE US SURVEY FEET.
 5. SOURCE FOR UNDERGROUND UTILITY LOCATIONS IS ALLIED ASSOCIATES, P.A. CESI IS ONLY RESPONSIBLE FOR THE LOCATION OF ALLIED ASSOCIATES, P.A. MARKINGS AND NOT THE ACTUAL LOCATION OF UTILITIES BEING MARKED. THERE MAY BE OTHER UNDERGROUND UTILITIES ON THIS SITE OTHER THAN THOSE SHOWN. BEFORE DOING ANY DIGGING, CALL NC ONE-CALL (1-800-632-4949).
 6. FLOOD ZONE DATA SCALED FROM F.I.R.M. MAP NUMBER 3710467200K; MAP REVISED MARCH 2, 2009.
ZONE AE = SPECIAL FLOOD HAZARD AREAS SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD WITH BASE FLOOD ELEVATIONS DETERMINED.
ZONE X* = AREAS OF 0.2% ANNUAL CHANCE FLOOD; AREAS OF 1% ANNUAL CHANCE FLOOD WITH AVERAGE DEPTHS OF LESS THAN 1 FOOT OR WITH DRAINAGE AREAS LESS THAN 1 SQUARE MILE, AND AREAS PROTECTED BY LEVEES FROM 1% ANNUAL CHANCE FLOOD.
ZONE X = AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN; AREAS OUTSIDE FUTURE CONDITIONS 1% ANNUAL CHANCE FLOODPLAIN.
 7. VERTICAL DATUM FOR SANITARY SEWER ELEVATIONS IS NAVD 88.
 8. UNABLE TO PLOT COLONIAL PIPELINE COMPANY EASEMENT CROSSING PARCELS 4672-68-0812 AND 4672-68-3634 RECORDED IN DB. 321 PG. 391.

- REFERENCES:
1. ALL DEEDS AND MAPS SHOWN HEREON.
 2. MAP TITLED "ALTA/ACSM LAND TITLE SURVEY FOR: EAST DAVIDSON PROPERTIES, LLC" BY CONCORD ENGINEERING & SURVEYING, INC.; LAST REVISED 12-22-1999; JOB NO.: 99-10-19.
 3. MAP TITLED "FINAL PLAT: SUNSET RIDGE PHASE I" BY KING ENGINEERING OF CONCORD, INC.; DATED NOVEMBER 14, 1996; MB. 30 PG. 47.
 4. MAP TITLED "PROPERTY OF: RONALD GOLD OVERCASH" BY A.N. JAMES SURVEYING AND MAPPING, INC.; DATED FEBRUARY 20, 1998; MB. 32 PG. 25.
 5. MAP TITLED "FINAL SUBDIVISION PLAT OF: THE FARM AT RIVERPOINTE PHASE II" BY ACQUITECH SURVEYING & MAPPING LLP; LAST REVISED 01-05-2000; MB. 35 PG. 47.
 6. MAP TITLED "SUBDIVISION PLAT OF: THE FARM AT RIVERPOINTE PHASE 1B, MAP 3" BY CONCORD ENGINEERING & SURVEYING, INC.; DATED 12-29-2004; MB. 45 PG. 97.
 7. MAP TITLED "MUNICIPAL UTILITY EASEMENT OF WESTERN CABARRUS WATER IMPROVEMENTS" BY ALLEY, WILLIAMS, CARMEN, & KING, INC.; DATED DECEMBER 2, 2006; MB. 57 PG. 5.
 8. MAP TITLED "PLAT OF PROPOSED SANITARY SEWER RIGHT-OF-WAY & TEMPORARY CONSTRUCTION EASEMENT PROPERTY OF D.R. HORTON, INC." BY ALLEY, WILLIAMS, CARMEN, & KING, INC.; LAST REVISED JULY 1, 2006.



I, David L. Haywood, Jr., certify that this plat was drawn under my supervision from an actual survey performed under my supervision (deeds recorded in Deed Book 11426, page 246 and Deed Book 12282, page 90); that the boundaries not surveyed are clearly indicated as drawn from information found in deeds as shown; that the ratio of precision is 1:16,200; and that this map meets the requirements of the standards of practice for Land Surveying as set forth in NCAC 56.16000.

Witness my original signature and seal this 15th day of February, 2018.

David L. Haywood, Jr., P.E., L.S.

BOUNDARY SURVEY FOR PROPERTY OF:
Joseph Thomas Howell III and wife,
Shannon Coulter Howell

NUMBER 3 TOWNSHIP, CABARRUS COUNTY, NORTH CAROLINA

FOR:
SHERWOOD DEVELOPMENT GROUP
1151 BISCAYNE DR.
CONCORD, NC 28027

DATE: 02-02-2018
SCALE: 1" = 100'
JOB NO.: 180016.000
ACAD FILE: Howell.dwg

COMPUTED BY: RAP
DRAWN BY: RAP
CHECKED BY: DJH

Civil - Geotechnical - Surveying
45 SPRING STREET SW CONCORD (704) 786-5404
CONCORD, NC 28025 FAX (704) 786-7454
N.C. FIRM LICENSE NO. C-0283
© CESI 2018

**RESOLUTION DIRECTING THE CLERK TO INVESTIGATE AN
INTENT TO ANNEX UNDER Chapter 160A ARTICLE 4A**

WHEREAS, the City Council may initiate annexation of noncontiguous property owned by the petitioners by adopting a resolution stating its intent to annex the property of the area described herein; and

WHEREAS, N.C.G.S Chapter 160A, Article 4A, Part 4 provide that the sufficiency of the petition shall be investigated by the City Clerk of the City of Kannapolis, North Carolina before further annexation proceedings consistent within the intent to annex can take place; and

WHEREAS, the City Council of the City of Kannapolis, North Carolina deems it advisable to direct the City Clerk to investigate the sufficiency of the intent to annex;

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

The City Clerk is hereby directed to investigate the sufficiency of the above-described intent to annex under N.C.G.S. Chapter 160A, Article 4, Part 4 and to certify as soon as possible to the City Council the result of the investigation.

ADOPTED this the 9th day of April 2018.

Milton D. Hinnant, Mayor

ATTEST:

Bridgette Bell, MMC, NCCMC
City Clerk

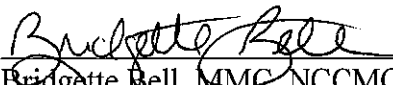
CERTIFICATE OF SUFFICIENCY

To the City Council of the City of Kannapolis, North Carolina.

I, Bridgette Bell, City Clerk, do hereby certify that pursuant to NCGS Chapter 160A, Article 4A, Part 4, I have investigated the petition attached hereto and have found as a fact that said petition is signed by all owners of real property lying in the area described therein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the City of Kannapolis, this 4th day of April, 2018.




Bridgette Bell, MMC, NCCMC
City Clerk

**RESOLUTION OF INTENT TO ANNEX AND FIX DATE OF PUBLIC HEARING ON QUESTION OF
ANNEXATION PURSUANT TO CHAPTER 160A ARTICLE 4A (Part 4) Section 160A-58.1**

WHEREAS, pursuant to NCGS 160A-58.1 the City Council may initiate annexation of real property noncontiguous to the City's boundary pursuant to a Petition for Annexation by all property owners located therein by adopting a Resolution stating its intent to annex the property described.

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

- Section 1. A public hearing on the question of annexation of the area described herein will be held at the Laureate Center, 401 Laureate Way, Kannapolis, NC at 6:00 PM on the 23rd day of April, 2018.
- Section 2. The area proposed for annexation is described as follows:
See Attached Metes and Bounds Description
- Section 3. Notice of public hearing shall be published in the Independent Tribune on April 11, 2018

ADOPTED this the 9th day of April, 2018.

Milton D. Hinnant, Mayor

ATTEST:

Bridgette Bell, MMC, NCCMC
City Clerk

LEGAL DESCRIPTION PIN 4672-68-0812

ALL THAT REAL PROPERTY IN NO. 3 TOWNSHIP, CABARRUS COUNTY, NORTH CAROLINA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A # 5 REBAR, DESIGNATED AS HV-6 ON AN UNRECORDED MAP TITLED "BOUNDARY SURVEY FOR PROPERTY OF BRETT L. FOWLER AND WIFE, STEWART VAN EVERY FOWLER & JOSEPH THOMAS III AND WIFE, SHANNON COULTER HOWELL" BY CESI DATED FEBRUARY 02, 2018, (CESI JOB NUMBER 180016.000), SAID # 5 REBAR HAVING A NORTH CAROLINA GRID COORDINATE OF N = 628,750.64 FEET, E = 1,475,534.41 FEET {NAD 83 (2011)};

THENCE N 43° 49' 34" W, A GROUND DISTANCE OF 349.37 FEET (GRID DISTANCE OF 349.32 FEET, COMBINED GRID FACTOR OF 0.99984971), TO AN EXISTING #5 REBAR AT THE SOUTHEASTERLY CORNER OF THE LANDS OF BRETT L. FOWLER AND WIFE STEWART VAN EVERY FOWLER, DEED BOOK 2631 PAGE 108, HAVING A NORTH CAROLINA GRID COORDINATE OF N = 629,002.66 FEET, E = 1,475,292.52 FEET {NAD 83 (2011)}, SAID EXISTING #5 REBAR BEING THE TRUE POINT OF BEGINNING;

THENCE N 08° 32' 37" W, ALONG THE EASTERLY LINE OF THE LANDS OF BRETT L. FOWLER AND WIFE STEWART VAN EVERY FOWLER, DEED BOOK 2631 PAGE 108, A DISTANCE OF 827.71 FEET, TO A #5 REBAR IN THE SOUTHERLY LINE OF THE LANDS OF WILSE W. CROUCH, JR., DEED BOOK 3407 PAGE 138;

THENCE N 88° 54' 56" E, ALONG THE SOUTHERLY LINE OF THE LANDS OF WILSE W. CROUCH, JR., DEED BOOK 3407 PAGE 138, A DISTANCE OF 98.17 FEET, TO A #5 REBAR AT THE SOUTHWEST CORNER OF THE LANDS OF CARMEN FUENTES, DEED BOOK 11397 PAGE 197;

THENCE N 89° 16' 38" E, ALONG THE NORTHERLY LINE OF SAID DEED BOOK 11426 PAGE 246, PASSING A #5 REBAR AT 376.76 FEET, PASSING A #5 REBAR AT 525.74 FEET, FOR A TOTAL DISTANCE OF 562.61 FEET TO A #5 REBAR, BEING A CORNER OF THE LANDS OF CHELSEY LYNN FITZNER DEED BOOK 12373 PAGE 329;

THENCE S 06° 13' 59" E, WITH THE LINE OF CHELSEY LYNN FITZNER DEED BOOK 12373 PAGE 329, A DISTANCE OF 169.81 FEET, TO AN AXLE AT THE NORTHWEST CORNER OF THE LANDS OF C.B. GARDNER AND WIFE LOIS R. GARDNER DEED BOOK 180 PAGE 92;

THENCE S 07° 04' 44" E, ALONG THE WESTERLY LINE OF C. B. GARDNER DEED BOOK 180 PAGE 92, A DISTANCE OF 481.86 FEET, TO A STONE, IN THE SOUTHERLY LINE OF C. B. GARDNER DEED BOOK 180 PAGE 92;

THENCE N 89° 09' 16" E, ALONG THE SOUTHERLY LINE OF C. B. GARDNER DEED BOOK 180 PAGE 92, A DISTANCE OF 520.39 FEET, TO AN AXLE, AT THE NORTHWESTERLY CORNER OF THE LANDS OF KENNETH MACK IRVIN, DEED BOOK 443 PAGE 668;

THENCE S 18° 58' 47" E, ALONG THE WESTERLY LINE OF THE LANDS OF KENNETH MACK IRVIN DEED BOOK 443 PAGE 668, A DISTANCE OF 158.97 FEET TO AN AXLE,

AT THE SOUTHWESTERLY CORNER OF THE LANDS OF KENNETH MACK IRVIN,
DEED BOOK 443 PAGE 668;

THENCE N 89° 07' 52" E, ALONG THE SOUTHERLY LINE OF THE LANDS OF
KENNETH MACK IRVIN DEED BOOK 443 PAGE 668, PASSING #4 REBAR AT 330.00
FEET, FOR A TOTAL DISTANCE OF 352.97 FEET, TO A COMPUTED POINT IN SHILOH
CHURCH ROAD;

THENCE WITH SHILOH CHURCH ROAD IN A SOUTHWESTERLY DIRECTION THE
FOLLOWING FOUR (4) COURSES:

1. S 14° 52' 38" W, A DISTANCE OF 100.00 FEET, TO A COMPUTED POINT;
2. S 14° 56' 09" W, A DISTANCE OF 100.00 FEET, TO A COMPUTED POINT;
3. S 14° 20' 34" W, A DISTANCE OF 100.00 FEET, TO A COMPUTED POINT;
4. S 12° 12' 40" W, A DISTANCE OF 105.46 FEET, TO A COMPUTED POINT;

THENCE S 77° 02' 19" W, PASSING A 3/4" NAIL AT 20.24 FEET, PASSING A NAIL IN A
1/2" (PIPE BEING 1.1 FEET NORTH OF LINE) AT 47.91 FEET, PASSING A NAIL AT THE
BEND OF A 1/2" PIPE AT 52.91 FEET, PASSING A BENT 1" PIPE BESIDE A 1/2" PIPE AT
181.63 FEET, FOR A TOTAL DISTANCE OF 195.69 FEET TO A #4 REBAR AT THE
SOUTHEASTERLY CORNER OF THE LANDS OF JOSEPH THOMAS HOWELL III AND
WIFE SHANNON COULTER HOWELL DEED BOOK 12282 PAGE 90;

THENCE N 11° 29' 25" W, ALONG THE EASTERLY LINE OF THE LANDS OF JOSEPH
THOMAS HOWELL III AND WIFE SHANNON COULTER HOWELL, DEED BOOK 12282
PAGE 90, A DISTANCE OF 157.76 FEET TO A #5 REBAR AT THE NORTHEASTERLY
CORNER OF THE LANDS OF JOSEPH THOMAS HOWELL III AND WIFE SHANNON
COULTER HOWELL DEED BOOK 12282 PAGE 90;

THENCE S 77° 05' 38" W, ALONG THE NORTHERLY LINE OF THE LANDS OF JOSEPH
THOMAS HOWELL III AND WIFE SHANNON COULTER HOWELL, DEED BOOK 12282
PAGE 90, A DISTANCE OF 360.25 FEET TO A #5 REBAR AT THE NORTHWESTERLY
CORNER OF THE LANDS OF JOSEPH THOMAS HOWELL III AND WIFE SHANNON
COULTER HOWELL DEED BOOK 12282 PAGE 90;

THENCE S 11° 19' 45" E, ALONG THE WESTERLY LINE OF THE LANDS OF JOSEPH
THOMAS HOWELL III AND WIFE SHANNON COULTER HOWELL, DEED BOOK 12282
PAGE 90, A DISTANCE OF 158.12 FEET TO A #5 REBAR AT THE SOUTHWESTERLY
CORNER OF THE LANDS OF JOSEPH THOMAS HOWELL III AND WIFE SHANNON
COULTER HOWELL DEED BOOK 12282 PAGE 90;

THENCE S 77° 02' 19" W, A DISTANCE OF 224.70 FEET TO AN AXLE, BEING A
COMMON CORNER WITH THE LANDS OF BRETT L. FOWLER AND WIFE STEWART
VAN EVERY FOWLER DEED BOOK 1621 PAGE 251;

THENCE N 05° 56' 49" W, ALONG THE EASTERLY LINE OF THE LANDS OF BRETT L.
FOWLER AND WIFE STEWART VAN EVERY FOWLER DEED BOOK 1621 PAGE 251, A
DISTANCE OF 645.83 FEET, TO A #5 REBAR;

THENCE S 79° 11' 54" W, ALONG THE NORTHERLY LINE OF THE LANDS OF BRETT L.
FOWLER AND WIFE STEWART VAN EVERY FOWLER DEED BOOK 1621 PAGE 251, A

DISTANCE OF 624.98 FEET, TO A #5 REBAR BEING THE TRUE POINT OF BEGINNING.

THE ABOVE DESCRIBED PROPERTY CONTAINS 916,532 SQ. FT (21.041 AC)

LEGAL DESCRIPTION PIN 4672-68-3634

ALL THAT REAL PROPERTY IN NO. 3 TOWNSHIP, CABARRUS COUNTY, NORTH CAROLINA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A # 5 REBAR, DESIGNATED AS HV-6 ON AN UNRECORDED MAP TITLED "BOUNDARY SURVEY FOR PROPERTY OF BRETT L. FOWLER AND WIFE, STEWART VAN EVERY FOWLER & JOSEPH THOMAS III AND WIFE, SHANNON COULTER HOWELL" BY CESI DATED FEBRUARY 02, 2018, (CESI JOB NUMBER 180016.000), SAID # 5 REBAR HAVING A NORTH CAROLINA GRID COORDINATE OF N = 628,750.64 FEET, E = 1,475,534.41 FEET {NAD 83 (2011)};

THENCE N 43° 49' 34" W, A GROUND DISTANCE OF 349.37 FEET (GRID DISTANCE OF 349.32 FEET, COMBINED GRID FACTOR OF 0.99984971), TO AN EXISTING #5 REBAR AT THE SOUTHEASTERLY CORNER OF THE LANDS OF BRETT L. FOWLER AND WIFE STEWART VAN EVERY FOWLER, DEED BOOK 2631 PAGE 108, HAVING A NORTH CAROLINA GRID COORDINATE OF N = 629,002.66 FEET, E = 1,475,292.52 FEET {NAD 83 (2011)};

THENCE N 79° 11' 54" E, WITH THE LINE OF THE LANDS OF JOSEPH THOMAS HOWELL III AND WIFE SHANNON COULTER HOWELL DEED BOOK 11426 PAGE 246, A DISTANCE OF 624.98 FEET, TO A #5 REBAR;

THENCE S 05° 56' 49" E, WITH THE LINE OF THE LANDS OF JOSEPH THOMAS HOWELL III AND WIFE SHANNON COULTER HOWELL DEED BOOK 11426 PAGE 246, A DISTANCE OF 645.83 FEET, TO AN AXLE;

THENCE N 77° 02' 19" E, WITH THE LINE OF THE LANDS OF JOSEPH THOMAS HOWELL III AND WIFE SHANNON COULTER HOWELL DEED BOOK 11426 PAGE 246, A DISTANCE OF 224.70 FEET TO A #5 REBAR, SAID #5 REBAR BEING THE TRUE POINT OF BEGINNING;

THENCE N 11° 19' 45" W, AND WITH THE LINE OF THE LANDS OF JOSEPH THOMAS HOWELL III AND WIFE SHANNON COULTER HOWELL, DEED BOOK 11426 PAGE 246, A DISTANCE OF 158.12 FEET TO A #5 REBAR;

THENCE N 77° 05' 38" E, AND WITH THE LINE OF THE LANDS OF JOSEPH THOMAS HOWELL III AND WIFE SHANNON COULTER HOWELL, DEED BOOK 11426 PAGE 246, A DISTANCE OF 360.25 FEET, TO A #5 REBAR;

THENCE S 11° 29' 25" E, AND WITH THE LINE OF THE LANDS OF JOSEPH THOMAS HOWELL III AND WIFE SHANNON COULTER HOWELL, DEED BOOK 11426 PAGE 246, A DISTANCE OF 157.76, FEET TO A #5 REBAR;

THENCE S 77° 02' 19" W, AND WITH THE LINE OF THE LANDS OF BRETT L. FOWLER AND WIFE STEWART VAN EVERY FOWLER, DEED BOOK 1621 PAGE 251, A DISTANCE OF 360.70 FEET, TO A #5 REBAR, SAID #5 REBAR BEING THE TRUE POINT OF BEGINNING.

THE ABOVE DESCRIBED PROPERTY CONTAINS 56,913 SQ. FT (1.307 AC)

STATE OF NORTH CAROLINA

ANNEXATION AGREEMENT

COUNTY OF CABARRUS

WHEREAS, the City of Kannapolis, a North Carolina municipal corporation, (hereinafter "Kannapolis") and the City of Concord, a North Carolina municipal corporation, (hereinafter "Concord") have undertaken a joint planning effort to encourage the orderly development of the unincorporated areas adjacent to the two municipalities; and

WHEREAS, Kannapolis and Concord desire to reduce uncertainty among residents and property owners in the potential growth areas of the municipalities which will improve planning by both public and private interests in such areas; and

WHEREAS, the General Statutes of North Carolina, Chapter 160A, Section 58.21 et seq. authorized municipalities to enter into binding agreements relating to future annexations and designating areas which are not subject to annexation by each participating municipality; and

NOW, THEREFORE upon the premises contained herein the parties hereto agree as follows:

1. This Agreement is executed pursuant to the authority of Article 4A, Part 6 of G.S. Chapter 160A of the North Carolina General Statutes (the "Act").
2. Subject to the provisions hereinafter stated, Kannapolis shall not annex the following area(s) shown on Exhibit "B.1" and "B.2" which are incorporated herein as a part of this Agreement.
3. Subject to the provisions hereinafter stated, Concord shall not annex the following area(s) shown on Exhibit "A.1," "A.2," "A.3," "A.4," and "A.5" which are incorporated herein as a part of this Agreement.
4. The effective date of this Agreement is December 11, 2003, or the date of adoption of an ordinance approving this Agreement by the last participating city to do so, whichever is later, and shall terminate at 12:01 am on the tenth anniversary following the effective date, or as otherwise terminated as provided herein.
5. This Agreement shall not be effective unless and until each participating city has held a public hearing on this Agreement, or the participating cities have held a joint public hearing, prior to adopting the ordinance approving this Agreement. Until such time as the required public hearings are held and the respective approving ordinances are adopted, this Agreement shall be considered a proposed agreement.

6. At least sixty (60) days prior to the adoption of any annexation ordinance affecting geographical area which is subject to this Agreement, the participating city proposing such annexation shall give written notice to the other participating city of the proposed annexation. Such notice shall describe the area to be annexed by a legible map, clearly and accurately showing the boundaries of the area to be annexed in relation to this Agreement delineated by roads, streams and any other prominent geographical features. Such notice shall not be effective for more than 180 days.
7. This Agreement may be modified or terminated only by a subsequent amending agreement adopted and executed by each participating cities. Any amending agreement shall be adopted by ordinance after public hearings as provided in G.S. 160A-31(c).
8. This Agreement shall not be binding beyond three miles of the primary corporate limits of a participating city unless approved by the Cabarrus County Board of County Commissioners. Provided, however, that any area where this Agreement is not binding because of failure of the Board of County Commissioners to approve it, shall become subject to this Agreement if a subsequent annexation brings it within three miles. The approval of a Board of County Commissioners shall be evidenced by a resolution adopted after a public hearing as provided in G.S. 160A-58.24(c) and (e) and 160A-31(c).
9. This Agreement may be terminated by a participating city, by repealing the ordinance which approved this Agreement and providing a five year advance written notice to the other participating city. Upon the expiration of the five-year notice period, this Agreement shall terminate.
10. From and after the effective date of this Agreement, no participating city may adopt an annexation ordinance as to all or any portion of an area in breach of this Agreement:
11. Nothing in this Agreement shall be construed to authorize the annexation of any area which is not otherwise subject to annexation under applicable law.
12. This Agreement contains the entire agreement between the participating cities.

IN WITNESS WHEREOF, the Mayors of the participating cities execute this Agreement in duplicate, to become effective as provided in paragraph 4 hereinabove, this the _____ day of December, 2003.

CITY OF KANNAPOLIS

By: O. Ray Moss
O. Ray Moss, Mayor

ATTEST:

Bridgette Bell
Bridgette Bell, CMC, City Clerk

APPROVED AS TO FORM:

Walter M. Safrit, II
Walter M. Safrit, II, City Attorney



CITY OF CONCORD

By: Scott Padgett
Scott Padgett, Mayor

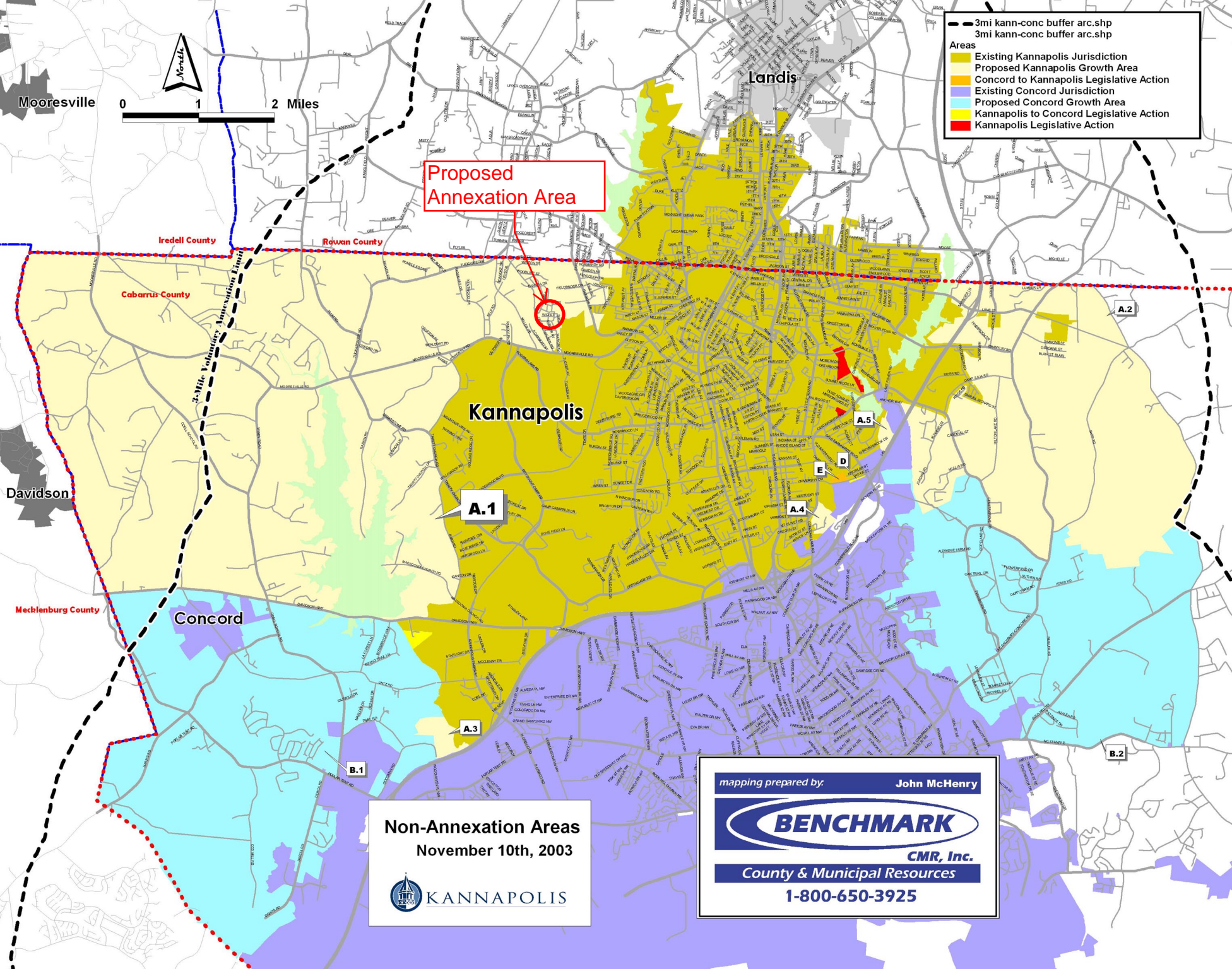
ATTEST:

Vickie C. Weant
Vickie Weant, CMC, City Clerk

APPROVED AS TO FORM:

Albert Benshoff
Albert Benshoff
City Attorney





3mi kann-conc buffer arc.shp
3mi kann-conc buffer arc.shp

Areas

- Existing Kannapolis Jurisdiction
- Proposed Kannapolis Growth Area
- Concord to Kannapolis Legislative Action
- Existing Concord Jurisdiction
- Proposed Concord Growth Area
- Kannapolis to Concord Legislative Action
- Kannapolis Legislative Action

Proposed
Annexation Area

Kannapolis

Concord

Non-Annexation Areas
November 10th, 2003



KANNAPOLIS

mapping prepared by:

John McHenry



CMR, Inc.

County & Municipal Resources

1-800-650-3925



**City of Kannapolis
City Council Meeting
April 9, 2018
Staff Report**

TO: Mayor and City Council
FROM: Mike Legg, City Manager
TITLE: Appointment to the Rowan-Kannapolis ABC Board

A. Action Requested by City Council

Motion to appoint seat to the Rowan-Kannapolis ABC Board (Mike Legg, City Manager)

B. Required Votes to Pass Required Action

Majority present at meeting

C. Background

The Rowan - Kannapolis ABC Board consists of a three members with each of the three seats appointed by Rowan County, the City of Kannapolis and the City of Salisbury The ABC Board retains authority to set policy and adopt rules in conformity with ABC laws and commission rules As the terms of the initial board members expire, their successors shall be appointed for three - year terms. Ken Argo currently serves as the City of Kannapolis' representative on the Rowan - Kannapolis ABC Board The seat is for a three -year term beginning July 2014 and ending June 2017. At the February 12, 2018 City Council Meeting, Council extended Mr. Argo's term though June 2018 because of the lack of applicants.

We now have three individuals who have expressed a desire to serve on the Rowan - Kannapolis ABC Board as the City's representative:

Ryan French. 1905 Pennsylvania Ave (in the City limits). Owner of French Express Coffee House adjacent to Planet Fitness (former BiLo) on Cannon Blvd. Former member of the NC Highway Patrol. Member of Kannapolis Rotary Club.

Sam Moore. 6121 Chisholm Trail (in the City limits). Owner of Bavarian Motors, Charlotte. Member of Kannapolis Rotary Club.

Mike Price. 6208 Stirewalt Road (not in the City limits). Director of Public Safety/EMS Instructor at Central Piedmont Community College. Former Cabarrus County Paramedic.

Note that there is not a requirement for residency as this is not a City board (but obviously that can be a consideration).

Of course others can be considered but these are three that have specifically approached the City about serving.

Because Mr. Argo agreed to serve through June of this year, the terms for the new appointee would be effective July 1, 2018 through June 30, 2020, after which the appointee could be reappointed for a full three year term. The ABC Board would like for this to be resolved as soon as possible but there is time if City Council needs to deliberate beyond Monday's meeting.

D. Fiscal Considerations

None.

E. Policy Issues

None.

F. Legal Issues

None.

G. Alternative Courses of Action and Recommendation
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1. **Motion to make appointment to the Rowan-Kannapolis ABC Board (recommended).**
2. Table the action to a future meeting.

ATTACHMENTS:

File Name

No Attachments Available



**City of Kannapolis
City Council Meeting
April 9, 2018
Staff Report**

TO: Mayor and City Council
FROM: Bridgette Bell, City Clerk
TITLE: May 28th City Council Meeting Reschedule

A. Action Requested by City Council

Motion to reschedule or cancel the May 28, 2018 City Council meeting

B. Required Votes to Pass Required Action

Majority present at meeting

C. Background

In accordance with NC General Statutes, 160A-71(a), City Council is required to adopt a regular meeting schedule for the following year. Council adopted a meeting schedule at their December 11th meeting.

Monday, May 28th (Memorial Day) is a holiday and happens to fall on our regularly scheduled 4th Monday meetings. Council will need to take action to either cancel or reschedule the meeting to another date.

In order for Staff to have sufficient notice regarding deadlines for public hearing publications, it is recommended that Council consider taking action tonight to either reschedule the meeting to another day or cancelling altogether.

Staff recommends either canceling the meeting or rescheduling for March 29, 30 or 31.

D. Fiscal Considerations

None

E. Policy Issues

City Council has taken similar action in past when a holiday falls on a regularly scheduled Council meeting day.

F. Legal Issues

None.

G. Alternative Courses of Action and Recommendation
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- 1. Motion to reschedule the May 28th City Council meeting to another day or canceling the meeting (Recommended) |**
2. Take no action and continue with the scheduled meeting date of May 28th.
3. Defer action to a future meeting (Not recommended due to public meeting notice deadlines)

ATTACHMENTS:

File Name

📎 Amended_Schedule_2018_CC.pdf



**AMENDED- Effective February 26, 2018
KANNAPOLIS CITY COUNCIL
REGULAR SCHEDULED MEETINGS
YEAR 2018**

January 08, 2018
January 22, 2018

February 12, 2018
February 26, 2018

March 12, 2018 **Meeting Cancelled – Due to the National League of Cities Conference**
March 26, 2018

April 09, 2018
April 23, 2018

May 14, 2018
May 28, 2018 **(Memorial Day Holiday – Subject to Change)**

June 11, 2018
June 25, 2018

July 09, 2018
July 23, 2018

August 13, 2018
August 27, 2018

September 10, 2018
September 24, 2018

October 08, 2018
October 22, 2018

November 12, 2018
November 26, 2018

December 10, 2018
December 24, 2018 **(Meeting Cancelled)**

**All meetings will begin at 6:00 PM in the Kannapolis City Hall located at
401 Laureate Way, Kannapolis. (Unless otherwise noted)**



**City of Kannapolis
City Council Meeting
April 9, 2018
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 Berry)

MOTION TO 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