



**KANNAPOLIS CITY COUNCIL  
MEETING AGENDA  
Kannapolis City Hall  
401 Laureate Way, Kannapolis NC  
July 23, 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**

**APPROVAL/CORRECTION OF MINUTES**

1. June 25, 2018 Meeting Minutes
2. Closed Session Minutes June 25, 2018

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

1. **Budget Amendment Carryover Funds FY2018** (Eric Davis, Finance Director)
2. **Agreement for Engineering Services for FY 2018-2019** (Wilmer Melton, III, Director of Public Works)
3. **Personnel Policy 400.021 - Merit Incentive Pay** (Tina Cline, Human Resource Director)
4. **Personnel Policy 400.19 - Shift Differential Pay** (Tina Cline, Human Resource Director)
5. **North Carolina League of Municipalities Advocacy Goals** (Mike Legg, City Manager; Annette Privette Keller, Communications Director).
6. **Personnel Policy 400.23 - Water and Sewer Utilities Incentive Pay Program** (Tina Cline, Human Resource Director)

**BUSINESS AGENDA**

- A. **Public Hearing Voluntary Annexation of property located at 3821 Shiloh Church Road (PIN 4672-69-6150) and Motion to adopt an Ordinance to annex** (Zachary D. Gordon, AICP, Planning Director)
- B. **Second Supplemental Agreement for Transportation Improvement Project C-4916C between the City of Kannapolis and the North Carolina Department of Transportation and Amend the Project Ordinance** (Wilmer Melton, III, Director of Public Works)
- C. **Oakwood Avenue Sidewalk Project Construction Engineering Inspection (CEI) Services Contract (TIP# C-4916C)** (Wilmer Melton III, Director of Public Works)

**D. College Station Leases 443 and 479 N. Cannon Blvd** (Irene Sacks, Director of Economic & Community Development)

**E. Board of Adjustment Appointment** (Zachary D. Gordon, AICP, Planning Director)

**CITY MANAGER REPORT**

**CITY COUNCIL COMMENTS**

**SPEAKERS FROM THE FLOOR**

**UPCOMING SCHEDULE**

August 13

August 27

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

**CITY OF KANNAPOLIS  
COUNCIL MEETING MINUTES  
June 25, 2018**

A regular meeting of the City Council of the City of Kannapolis, North Carolina was held on Monday, June 25, 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  
Roger Haas  
Van Rowell  
Diane Berry  
Doug Wilson  
Tom Kincaid

Council Members Absent: None

City Manager: Mike Legg

City Clerk: Bridgette Bell

Staff Present: Ernie Hiers Terry Clanton  
Andy Yoos Irene Sacks  
Tina Cline Donie Parker  
Zac Gordon Tony Eury  
Gary Mills Annette Privette Keller  
Jason May

Visitors Present: Kirk Beard Beverly Lockhart  
Ron Byrd Chris Hill  
Greg Summitt Yolanda Thompson  
Maggie Thrasher Bobbie Hudson  
Gerry Depken Lisa Gallimore  
Sophia Wilkerson Brittany Honeycutt  
Nathan Payne Mark Spitzer  
Terri Stancil Ron Haithcock  
Sheryl Thrasher Horne

**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 Haas.

1 **ADOPTION OF AGENDA:**

2 Council Member Wilson made a motion to approve the agenda. Motion was seconded by Council  
3 Member Dayvault and approved by unanimous vote.  
4

5 **APPROVAL/CORRECTION OF MINUTES:**

6 Motion was made by Council Member Kincaid to approve the May 29, 2018 meeting Minutes.  
7 Motion was seconded by Council Member Haas and approved by unanimous vote.  
8

9 Motion was made by Council Member Dayvault to approve the Closed Session meeting minutes  
10 from May 29, 2018. Motion was seconded by Council Member Wilson and approved by  
11 unanimous vote.  
12

13 Motion was made by Mayor Pro tem Berry to approve the June 11, 2018 meeting Minutes. Motion  
14 was seconded by Council Member Kincaid and approved by unanimous vote.  
15

16 Motion was made by Council Member Haas to approve the Closed Session meeting minutes from  
17 June 11, 2018. Motion was seconded by Council Member Kincaid and approved by unanimous  
18 vote.  
19

20 **PROCLAMATIONS:**

21 Mayor Hinnant proclaimed the month of July as Parks and Recreation Month.  
22

23 **RECOGNITIONS**

24 **NC Department of Labor Annual Safety Awards (Andy Yoos, Risk Manager)**

25 The City of Kannapolis has been recognized by the North Carolina Department of Labor for  
26 maintaining a safe and healthful workplace in 2017. Mr. Yoos recognized the following  
27 departments. The Gold award recognizes departments whose employees did not miss more than  
28 1.25 days of work. The Silver award recognizes departments whose employees did not miss more  
29 than one full day of work due to injury.  
30

31 Administration: Gold Award, Second Year  
32 Police Silver Award, Second Year  
33 Customer Service: Gold Award, Fifth Year  
34 Engineering, Fire, General Services, Planning, Legal, Water Treatment Plant – Gold  
35 Award, First Year  
36

37 **Recognition of outgoing Planning and Zoning Commission Member David Baucom (Zachary**  
38 **D. Gordon, AICP, Planning Director)**

39 Mr. Gordon presented Mr. Baucom with a Plaque of Appreciation for his tenure on the Kannapolis  
40 Planning and Zoning Commission. Mr. Baucom served from June 30, 2006 through June 30, 2018.  
41

42 **Recognition of outgoing Planning and Zoning Commission Member Bob Caison (Zachary**  
43 **D. Gordon, AICP, Planning Director)**

44 Mr. Gordon presented Mr. Caison with a Certificate of Appreciation and a thank you letter from  
45 the Mayor. Mr. Caison served on the Kannapolis Planning and Zoning Commission from August  
46 25, 2015 through June 30, 2018.



1 **CONSENT AGENDA:**

2 Council Member Kincaid made a motion to approve the Consent Agenda. Motion was seconded  
3 by Council Member Dayvault and approved by unanimous vote.  
4

5 Budget Amendment for Downtown/ College Station (Eric Davis, Finance Director) (Copy  
6 included as Exhibit A)  
7

8 **BUSINESS AGENDA:**

9 **FY 2018-19 CDBG Non-profit Funding Recommendations (Sherry Gordon, Community  
10 Development Program Administrator) (Copy included as Exhibit B)**

11 Mrs. Gordon presented the following facts:  
12

13 As a HUD Entitlement City, we can budget up to 15% of our annual grant allocation for non-profit  
14 public service activities that benefit low and moderate income citizens. In previous years, about  
15 ten organizations were awarded grants each year averaging \$5,000 each. This year the City  
16 received 26 applications for funding. In an attempt to broaden the reach of grants and allow new  
17 organizations to receive funding, there are 20 organizations proposed to be awarded amount  
18 averaging \$2,500. Some of the eligible CDBG public service grant activities include:  
19

- 20 • Employment services (e.g., job training);  
21 • Crime prevention and public safety;  
22 • Child care;  
23 • Health services;  
24 • Substance abuse services (e.g., counseling and treatment)  
25 • Fair housing counseling;  
26 • Education programs;  
27 • Energy conservation;  
28 • Services for senior citizens;  
29 • Services for homeless persons;  
30 • Welfare services (excluding income payments);  
31 • Homebuyer down payment assistances; and  
32 • Recreational services.  
33

34 Those non-profits proposed for funding are as follows:  
35

- 36 1. **Academic Learning Ctr. - \$2,500** after school tutoring 2 days a week at all 5 elem.  
37 KCS  
38 2. **Big Brothers Big Sisters - \$2,000** Bigs in Blue mentoring program at Forest Park  
39 Elementary School one hr. a week  
40 3. **Cabarrus Cooperative Christian Ministry - \$10,000** “Getting Ahead in a Just  
41 Getting By World” evidence based 15 wk course  
42 4. **Cabarrus Health Alliance - \$2,500** comprehensive dental health for high need  
43 students  
44 5. **Cabarrus Meals on Wheels - \$2,500** personnel cost of preparing meals for seniors  
45 6. **Classroom Central - \$2,000** delivery cost of school supplies to all Kannapolis City  
46 Schools

7. **Community Free Clinic - \$2,000** diabetic patient medical supplies
8. **Conflict Resolution (Teen Court) - \$2,000** first time youth offenders program
9. **Elder Orphan Care - \$2,000** safety modifications to at-risk elderly clients
10. **Genesis Counseling - \$2,000** outpatient services for substance abuse
11. **Jr. Achievement - \$2,000** economics, personal finance day program Kannapolis Middle School
12. **Jr. Charity League - \$2,000** purchase school uniforms
13. **Main Street Mission - \$2,000** Getting Ahead classes resources and materials
14. **Midway's Oppt House - \$2,500** services for homeless programs, bus passes
15. **New Piney Grove Comm Ctr - \$2,000** music & dance 4 day summer camp
16. **Operation Homeless - \$2,500** soup kitchen
17. **Prevent Child Abuse - \$2,500** support The Terrie Hess House Child Advocacy Center
18. **Prosperity Unlimited, Inc. - \$2,000** pre-purchase, foreclosure counseling
19. **Trinity United Methodist - \$1,000** hosting Gods Supper Table
20. **Vision for Life of Kannapolis - \$2,000** tutoring & parenting/life skills training

Council Member Dayvault asked about the Kannapolis History Associates request of \$1658. He knows that it does not fit in with the rest of the groups, but is an education piece and wondered if the funds from the history book could be contributed to the Kannapolis History Associates. He said they have done a great job in recording the City's history, which at some point will be gone. Mr. Legg said that sounded reasonable and agreed they should find money for the Kannapolis History Associates.

Council Member Haas made a motion to approve the FY 2018-19 CDBG Non-profit recommendations including finding funding for the Kannapolis History Associates. Council Member Wilson seconded the motion and it was approved by unanimous vote.

**Public Hearing and consider a motion to adopt an Ordinance to extend the corporate limits of the City of Kannapolis to include property located at 2482 Shiloh Church Road (PIN 4672-4253-31) (Zachary D. Gordon, Planning Director) (Copy included as Exhibit C)**

Mr. Gordon provided the following information:

- Property Owner: Maggie Frances Thrasher
- Applicant: Same
- Property Location: 2482 Shiloh Church Road
- Property Area: Approximately 0.9+/- acres
- Parcel Identification Number: (4672-4253-31)
- Existing Zoning: Cabarrus County Zoning Designation CR (Countryside Residential)
- Proposed Zoning: To Be Determined
- Applicant has submitted petition requesting contiguous "Voluntary Annexation".
- Property currently is vacant
- Initial step in annexation process is for City Council to Adopt a Resolution Directing the Clerk to Investigate the sufficiency of a petition; and
- Adopt a Resolution of Intent to Annex and Fix Date of Public Hearing for June 25, 2018 of approximately 0.9 +/- acres at 2482 Shiloh Church Road (PIN: 4672-4253-31)

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

5  
6 The City is in the process of extending utilities in this area to facilitate future development.  
7 According to the City's current long range planning document - Move Kannapolis Forward 2030  
8 Comprehensive Plan, identifies this area as a "Primary Service Area". The Primary Service area is  
9 "land where provision of services is preferred. These are areas to encourage development within  
10 the planning horizon. Annexation is also envisioned as a part of the agreement to provide services."

11  
12 At the last Council meeting, the City Council directed the City Clerk to investigate and certify the  
13 sufficiency of the petition and also Council adopted a Resolution of Intent to annex and set a public  
14 hearing for tonight.

15  
16 Mayor Hinnant opened the public hearing to those in attendance for an opportunity to speak.  
17 Sheryl Thrasher Horne of 8522 Redstone View Drive, Charlotte, NC. She is the daughter of  
18 Maggie Francis Thrasher who owns the property. She told Council she was very excited to be here  
19 to here. The area is growing by leaps and bounds and because she loves this property so much,  
20 will go to great lengths to keep the beauty of the countryside along with going forward and offering  
21 services and bringing the community together with this beauty salon.

22  
23 Maggie Francis Thrasher of 2482 Shiloh Church Road told Council that her two daughters moved  
24 her in with them and instead of letting the house go empty, she knew that Sheryl wanted a place  
25 of her own. She decided to give it to her so she could have a place for her beauty shop.

26  
27 There being no further speakers, Mayor Hinnant closed the public hearing.

28  
29 Council Member Dayvault made a motion to adopt An Ordinance to Extend the Corporate Limits  
30 of the City of Kannapolis to include approximately .9 +/- acres of property located at 2482 Shiloh  
31 Church Road (Cabarrus County PIN 4672-4253-31. Council Member Wilson seconded the motion  
32 and it was approved by unanimous vote.

33  
34 **Adoption of Budget Ordinance for FY18-19 (Eric Davis), Finance Director) (Copy included**  
35 **as Exhibit D)**

36 Mr. Davis acknowledge that in accordance with state statutes, the City Manager has proposed a  
37 balanced budget to the City Council before June 1 and the Council held a public hearing on the  
38 proposed budget in accordance with state statutes.

39  
40 The FY 2019 budget is \$69,264,364 which includes all seven operating funds of the City. The  
41 budget includes no property tax increase. The current tax rate will remain at .63 cents per \$100  
42 valuation - a home valued at \$150,000 will pay \$945 annually in property taxes for all City  
43 services.

44  
45 The City's budget is composed of two primary revenue sources: property taxes and sales taxes.  
46 The City's population is expected to be 50,000 by the end of this year – an approximate 15%

1 increase since 2010. This population growth, largely the result of new residential development,  
2 equates to an increase of \$756,944 in new property tax revenues due to private sector growth in  
3 the FY 2018 budget. Sales tax revenues are projected to increase by \$455,000 in FY 2019.

4  
5 The budget does include an increase in the environmental fee of \$3.75 a month to recoup the cost  
6 of recycling/garbage and yard debris collection and a \$15 increase in the annual vehicle license  
7 fee to pay for the costs of operating the Concord/Kannapolis Rider System and other transportation  
8 services. Other notable items in the budget include:

- 9  
10 • The Downtown Revitalization Project – first year debt expenditures for the sports and  
11 entertainment venue; the Demonstration Project parking deck; Phase II Streetscape and  
12 Infrastructure, and the renovation of College Station – the new home of the downtown  
13 Rowan County Community College Cosmetology Program.  
14  
15 • Investment in Employee Benefits – increases in salaries and benefits to compete with the  
16 surrounding regional market.  
17  
18 • Capital Improvements – Funding for Fire Station II and III; Irish Buffalo Greenway Phase  
19 I; Oakwood Avenue Sidewalk; and the Irish Buffalo Creek Sewer Line Extension  
20  
21 • One-time expenses for the following: Unified Development Ordinance Reorganization;  
22 Police Radio and Tower upgrades; Master Plans for Eastside & Westside Parks; Cannon  
23 Blvd Corridor Plan and the North Main Street revitalization plan  
24

25 Council Member Dayvault stated at the last meeting he talked about adding an Economic  
26 Development position that would work with counties in trying to recruit new businesses. The idea  
27 is to plan this year and to include with next year's budget. He is still concerned about the salary  
28 issues that came up. After looking at the different places in the budget, he came up with about  
29 \$138,000 to \$188,000 that could be used to make up depicts in the starting salaries of the Police  
30 and Public Works.

31  
32 Multi-media specialists \$60,000 (which was \$30,000 for ½ year)  
33 Planner Position \$60,000 (which was \$30,000 for ½ year)  
34 Saturday Group Implementation \$30,000  
35 20% reduction in marketing budget \$24,500, which leaves \$100,000 in marketing dollars  
36 Finance travel 50% reduction \$13,500  
37

38 These totals amount to \$188,000 and if we subtract out half years for the two positions, basically  
39 leaver \$128,000. He does not know what it would be to look at construction managers and police  
40 officers, he would suggest to raise the Police Officers starting pay to \$39,000 per year and any  
41 existing police officers currently under that range, bring them up to \$39,000. Also public works  
42 employees who are at the \$29,000 suggest going to \$34,000. Same for fire positions and other  
43 positions that are public service based. It doesn't affect the bottom line and perhaps they could  
44 just hold these funds and not spend until they are looked at. But the salaries, especially for the  
45 police and construction manager could be fixed tonight.  
46

1 Council Member Kincaid stated as the City moves forward in revitalizing, there is going to be a  
2 lot of issues, some of what Mr. Dayvault has addressed tonight. Mr. Kincaid has discussed with  
3 the City Manager some of the fundamental issues of the budget that he simply cannot go along  
4 with. Unfortunately, he is not going to vote for the budget as written.

5  
6 Council Member Haas stated he could probably go through the budget and find something he could  
7 concern himself with, if he wanted to. He always tries to take one the priorities the Council has set  
8 out themselves and has to ask does this budget try and achieve what those priorities are, instead of  
9 looking at individual things. If everyone will remember at the retreat, employee retention and  
10 recruitment was very important. He still feels we need to wait on the compensation study simply  
11 because he does not like to pick winners and losers. As in giving to some and leaving out others  
12 until next time. The compensation study does that. He has a difficult time saying I'll do two or  
13 three, but not do the others. If he worked for one of the other departments, he would ask, 'Where  
14 is my part?'

15 The most important thing to provide the services to our citizens and to do so efficiently. There is a  
16 lot of things in government that are not profitable, but socially useful like the transportation system.  
17 He supports staff and knows they worked hard and long to ensure all priorities are covered within  
18 the budget and that is the way he would like to see it stay.

19  
20 Council Member Wilson agrees with what his predecessors have said. One thing everyone is in  
21 agreement with is we need an economic development person. The City has been owners of  
22 downtown for quite some time, have made strides, but still think we have lost time and possibly  
23 could have done quicker. The City still has a great deal to still be invested. The sooner we can get  
24 someone on board, the better off we will be.

25  
26 Council Member Rowell commented this is the first time he has looked at something of this  
27 magnitude. With regards to all of the issues that came to light at the last meeting, Mr. Legg has  
28 laid out a plan of action to address issues and feels Council should follow Mr. Legg's  
29 recommendations and to make any necessary changes and adjustments city wide. Like Mr. Haas  
30 said, we have a budget that reflects what we are doing in Kannapolis, which is extraordinary. He  
31 commended Staff on their hard work.

32  
33 Council Member Dayvault agrees with everything that has been said so far. He went back to the  
34 staffing study done in 2015 by SpringStead. If we are going to follow the staffing study to a tee,  
35 then this year, will be adding one recreation program coordinator, one part-time fire inspector, four  
36 additional police officers and one full-time engineering tech. The other part of the study is the  
37 compensation study. One of his concerns is if we don't fix some of these starting pays in this  
38 budget, then it will get pushed down the road for another study to be done, then it will be another  
39 six months out. We still have a police officer and couple of other positions posted and according  
40 to the Human Resource Director's memorandum, we are the lowest paying, specifically with  
41 police. He went on to say that these departments that have positions such as construction manager  
42 I, starting police officer, starting fire fighter, these are all things that would be well within the  
43 \$120,000, \$150,000 to \$175,000 he found in the budget and could have found a little more. That  
44 is the reason he put these numbers together to try and fix some of this tonight. Also so that our  
45 number one priority, employee retention and recruitment are justified, not six months from now,  
46 or whenever a study gets done.

1 Council Member Haas feels uncomfortable in pulling things out of the budget and replacing with  
2 something else and not having the time to look at what kind of impact it will have moving forward.  
3 He assumes the City Manager and Staff propose these for a purpose. He has a problem with pulling  
4 things out and not taking a look at why they are no longer needed, when they were put in the  
5 budget. He asks what is the purpose and impact does it have afterwards. But we don't have time  
6 enough because the budget has to be done approved this week. That is why he asked earlier to have  
7 a meeting separate for further discussion.  
8

9 Council Member Kincaid said that he did not want anyone to misunderstand that he was trying to  
10 pick winners and losers. He kept his comments very brief. He has personal beliefs and fundamental  
11 reasons for doing this and he's not trying to get an argument started. He feels what Ryan is trying  
12 to say is that we did a study, so why do another one if we aren't going to follow it. If not, why do  
13 we have them done in the first place?  
14

15 Mayor Hinnant sincerely believes that we should have a fair and equitable wage system that is good  
16 for our employees. At our retreat employees were in the top five list. We want to be sure our  
17 employees are treated in a proper way and are paid a fair wages. He believes in that tremendously.  
18 He voted for the study a couple of years ago and would vote for a new study to be done. He assumes  
19 that Mr. Legg and Staff has already gone through this process and would assume that he and Tina  
20 sat down with each of the department heads to discuss when positions are needed and if there are  
21 any need for wage increases. Then Eric and his Staff incorporate as much as could be incorporated  
22 and that Mr. Legg oversaw that whole process to ensure there was some equity and fairness for all  
23 departments. His concern about picking a group or a couple of groups to add money to, he doesn't  
24 know how fair that is to the rest of the group. He assumes that those decisions have already been  
25 made and that we already have the best recommendations possible. He thought that we had  
26 maintained some of those recommendations from the last study, or that things changed and we  
27 needed more of this and a fewer of that. At this point, he doesn't know if he has the ability to make  
28 a decision if we need to take \$138,000 or \$188,000 and put into salaries for this or that group. He  
29 doesn't know, maybe it should be \$250,000 taken out of the budget, that is what the salary will tell  
30 us. He recommendation is to wait on the study, because maybe the number should be more.  
31

32 On another note, He and Mr. Dayvault have discussed the need for an economic development  
33 person. The question is not if, but when. There are numerous corridors studies previously done  
34 and Council has not had enough information to make a decision as to what will north Kannapolis  
35 look like. He is not certain that Council has the skills to make that decision about recommendations  
36 from some kind of expert whose is a third party person.  
37

38 City Manager Legg stated that a staffing study and a compensation study were done together. The  
39 compensation study was followed with the exception of a couple of tweaks. Immediately following  
40 the staffing study, we created our own in house engineering department, created our on in house  
41 planning department, created our on in house communication department, all privatized. The study  
42 did not address any of those positions. Then was the creation of a general services department,  
43 which did not exist prior to the study. He and Tina spent several months meeting with department  
44 heads to look at the study and to view the needs of each department. Mr. Dayvault had suggested  
45 several sources of revenue. He suggested they be put on hold until a staffing study can be done. If  
46 there is a consensus of Council, that all entry levels positions be evaluated and bring back to

1 Council options on how to fund. If it is the goal to find immediate relief, we can do that in a short  
2 period of time. He would also suggest that Council adopt the budget as is, unless Council is willing  
3 to find an alternate solution in the next four days. He's committed to put a freeze on those items  
4 that Ryan mentioned for six months, do a short term analysis on entry level positions in all  
5 departments and in a month or so, bring back recommendations. At that time, the budget could be  
6 amended to address those things.

7  
8 Council Member Dayvault made a motion to approve the budget ordinance with the considerations  
9 as noted. Council Member Rowell seconded the motion. It was approved by a 6-1 vote with  
10 Council Member Kincaid voting no.

11  
12 **Approval of Fiscal Year 2018 - 2019 Fee Schedule (Eric Davis, Finance Director) (Copy**  
13 **included as Exhibit E)**

14 Mr. Davis reviewed changes for the FY2018-2019 fee schedule.

15  
16 Council Member Haas made a motion to approve the FY 2018-219 Fee Schedule. Council Member  
17 Wilson seconded the motion. It was approved by a 6-1 vote with Council Member Kincaid voting  
18 no.

19  
20 **Boards and Commissions Appointments**

21 This matter will be deferred to the July 09, 2018 Council meeting.

22 Motion by Council Member Wilson and seconded by Council Member Kincaid. The motion was  
23 approved by unanimous vote.

24  
25 **CITY MANAGER REPORT:** None.

26  
27 **CITY COUNCIL COMMENTS:** Council Member Dayvault

28  
29 **SPEAKERS FROM THE FLOOR:**

30 Bobbi Hudson of 123 South East Avenue. Ms. Hudson's major concern is drag racing, speeding  
31 and unlicensed dirt bikes on South East Avenue. She asked if the speed limit could be reduced to  
32 25MPH and a Children Playing sign be installed. Ms. Hudson provided an event list report she  
33 obtained from the police department pertaining to South East Avenue. (Copy included as Exhibit  
34 F)

35  
36 Brittney Honeycutt of 202 South East Avenue. Ms. Honeycutt's also spoke on the reckless  
37 speeding on South East Avenue. She told a story of how a car jumped the curb, overcorrected and  
38 landed in a yard. Children play in the area and there are walkers. She asked to decrease the speed  
39 limit.

40  
41 Mayor Hinnant responded to Ms. Hudson and Ms. Honeycutt to contact Mr. Melton at the back of  
42 the room to discuss signage.

43  
44 **CLOSED SESSION:**

45 Mayor Pro tem Berry made a motion to go into closed session pursuant to G.S. 143.318.11 (a) (3)  
46 for consulting with an attorney in order to preserve the attorney-client privilege and G.S.

1 143.318.11 (a) (4) for discussing matters related to the location or expansion of industries or  
2 businesses in the area. Motion was seconded by Council Member Wilson and approved by  
3 unanimous vote.

4  
5 Council went into closed session at 7:26 PM.

6  
7 Council Member Wilson made a motion to come of out closed session. Motion was seconded by  
8 Council Member Dayvault and approved by unanimous vote.

9  
10 Council resumed regular session at 8:20 PM.

11  
12 There being no further business, Council Member Haas made a motion to adjourn. Motion was  
13 seconded by Council Member Rowell and approved by unanimous vote.

14  
15 The meeting adjourned at 8:20PM on Monday, June 25, 2018.

16  
17  
18  
19  
20 \_\_\_\_\_  
Milton D. Hinnant, Mayor

21  
22  
23 \_\_\_\_\_  
24 Bridgette Bell, MMC, NCCMC  
25 City Clerk





**City of Kannapolis  
City Council Meeting  
July 23, 2018  
Staff Report**

**TO:** Mayor and City Council  
**FROM:** Eric Davis, Finance Director  
**TITLE:** Budget Amendment Carryover Funds FY2018

**A. Action Requested by City Council**

**Motion to approve a Budget Ordinance amendment appropriating funds from Fiscal Year 2018 to Fiscal Year 2019**

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

Majority present at meeting

**C. Background**

Budget amendment #19-1 brings over funds from the fiscal year 2018 budget to the 2019 budget. The some of the funds are from donations and grants for specific purposes. Since the money was not expended in fiscal year 2018 the amendment budgets the money in fiscal year 2019. Other funds are from projects not completed in 2018. With the reappropriation of the funds the projects can be completed.

**D. Fiscal Considerations**

The budget amendment appropriates funds from the fiscal year 2018 budget to the 2019 budget.

**E. Policy Issues**

None

**F. Legal Issues**

None

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

- 1) Motion to approve budget amendment 19-1 (Recommended)**
- 2) Do not adopt Budget Ordinance
- 3) Table to a future meeting

**ATTACHMENTS:**

**File Name**

📎 Council\_Ba\_New\_Budget\_Carryover\_2018.doc

**ORDINANCE AMENDING BUDGET FOR THE  
CITY OF KANNAPOLIS, NORTH CAROLINA  
FOR THE FISCAL YEAR BEGINNING JULY 1, 2018  
AND ENDING JUNE 30, 2019  
Amendment # 19-1**

**BE IT ORDAINED** by the City Council of the City of Kannapolis, North Carolina meeting in open session this 23<sup>rd</sup> day of July 2018, that the following amendment to the Budget Ordinance for the City of Kannapolis, North Carolina for the Fiscal Year beginning July 1, 2018 and ending June 30, 2019 is hereby adopted:

**SECTION I - General Fund**

Expenditures:

Increase Parks Train Supplies Expenditure: 15010-46610	\$18,381
Increase Police Supplies – Target Kids Expenditure: 12050-46630	\$20,956
Increase Police Capital – Machinery & Equipment Expenditure: 12065-59500 STATE	\$30,000
Increase Police Public Safety Supplies Expenditure: 12065-46400 STATE	\$32,074
Increase Police Public Safety Supplies Expenditure: 12065-46400 FEDERAL	\$41,277
Increase IT Small Equipment & Tools Expenditure: 11500-46200	\$3,000
Increase GS Small Equipment & Tools Expenditure: 11600-46200	\$32,300

Revenues:

Increase Appropriated Fund Balance Revenue: 19900-39900	\$172,988
Increase Donations – Target Kids Revenue: 12050-37100	\$5,000

## **SECTION II - Water & Sewer Fund**

### **Expenditures:**

Increase Repairs and Maintenance Equipment  
Expenditure: 36200-44400 \$50,000

Increase Repairs and Maintenance Water Tank  
Expenditure: 36200-44700 \$12,500

Increase Contracted Services  
Expenditure: 36200-48000 \$10,000

Increase Capital – Machinery & Equipment  
Expenditure: 36200-59500 \$189,779

Increase Capital - Infrastructure  
Expenditure: 362000-59600 \$45,000

Increase Contracted Services  
Expenditure: 36000-48000 \$25,145

Increase Capital – Machinery & Equipment  
Expenditure: 36000-59500 \$14,000

### **Revenues:**

Increase Appropriated Fund Balance  
Revenue: 39900-39900 \$346,424

## **SECTION III - Downtown Fund**

### **Expenditures:**

Increase Contracted Services  
Expenditure: 80000-48000 \$50,500

Increase Capital – Machinery & Equipment  
Expenditure: 80000-59500 \$18,145

Increase Small Equipment & Tools  
Expenditure: 80000-46200 \$21,144

### **Revenues:**

Increase State Grants  
Revenue: 80000-34000 \$42,389

Increase Appropriated Fund Balance  
Revenue: 89900-39900 \$47,400

This ordinance is approved and adopted this 23<sup>rd</sup> day of July, 2018.

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Milton D. Hinnant, Mayor

**ATTEST:**

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Bridgette Bell, MMC  
City Clerk



**City of Kannapolis  
City Council Meeting  
July 23, 2018  
Staff Report**

**TO:** Mayor and City Council  
**FROM:** Wilmer Melton, III, Director of Public Works  
**TITLE:** Agreement Engineering Services for FY2018-2019

**A. Action Requested by City Council**

**Motion to approve the Contract for Engineering Services between Alley, Williams, Carmen and King, Inc. (AWCK) and the City of Kannapolis for FY 2019 and authorize the City Manager execute the contract.**

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

Majority present at meeting

**C. Background**

On May 8, 2018, we advertised for engineering and inspection services and received three submittals. Upon review of the firms' qualifications and ability to perform the work, we recommend that City Council award the FY 2019 Engineering Services contract to Alley, Williams, Carmen & King, Inc. (AWCK).

**D. Fiscal Considerations**

The total amount budgeted for Engineering Services in FY 2019 is \$250,000.

**E. Policy Issues**

City Council authorization is needed in order to execute contracts of this amount.

**F. Legal Issues**

None

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

- 1. Motion to approve the Contract for Engineering Services between Alley, Williams, Carmen and King, Inc. (AWCK) and the City of Kannapolis for FY 2019 and authorize the City Manager execute the contract. (Recommended)**

2. Deny approval of the Contract for Engineering Services between Alley, Williams, Carmen and King, Inc. (AWCK) and the City of Kannapolis for FY 2019.
3. Table to a future meeting.

ATTACHMENTS:

File Name

📎 AWCK\_Agreement\_for\_services.pdf

**STATE OF NORTH CAROLINA  
COUNTY OF CABARRUS**

**CONTRACT FOR CITY ENGINEERING  
ADMINISTRATION ACTIVITIES OF  
THE CITY OF KANNAPOLIS  
ENGINEERING DEPARTMENT**

**THIS AGREEMENT**, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the City of Kannapolis, a North Carolina Municipal Corporation (hereinafter called "the City") and Alley, Williams, Carmen & King, Inc., a North Carolina Corporation located in Kannapolis, North Carolina (hereinafter called "the Consultant").

**WITNESSETH:**

**WHEREAS**, the City is actively implementing water, wastewater, street, stormwater and environmental engineering activities for the benefit of the community; and

**WHEREAS**, the Consultant has expertise in the administrative management of city engineering activities and has submitted a proposal to the City in response to the request for proposal pertaining to same; and

**WHEREAS**, the City and the Consultant desire to memorialize the Consultant's proposal and the City 's award of the contract,

**NOW THEREFORE**, the City and the Consultant agree as follows:

**1. SCOPE OF SERVICES:** The Consultant agrees to provide and perform for and on behalf of the City all of those services stipulated in the Scope of Services attached to this contract as Exhibit "A", of which are hereby incorporated as a part of this contract as if fully set forth herein. The City agrees to perform in a timely manner all the necessary and usual obligations of a City that are required to support implementation of the City's Engineering activities and to support the Consultant in the carrying out of the Scope of Services. The term of this agreement is for the period July 1, 2018, through June 30, 2019 unless earlier terminated as herein provided.

**2. COMPENSATION FOR SERVICES:** In the provision of the aforementioned services, all of which are described in Exhibit "A", the Consultant shall receive compensation in the form of a not to exceed fee of \$ 250,000.00 without prior approval. This fee shall be paid to the Consultant in accordance with Section 3 below. It is specifically agreed that the cost of providing all the agreed upon services related to the administration by the Consultant of the Kannapolis Engineering Department shall not exceed the above amounts unless specifically authorized by the City in advance. Any different or additional Scope of Services approved and authorized by the City in advance



shall be compensated when authorized in accordance with the terms agreed to by both parties in a formally executed Contract Addendum.

**3. METHOD OF PAYMENT:** By the fourth (4th) day of each month, the Consultant shall prepare and submit to the City an invoice statement for service rendered during the previous calendar month. The invoice shall include a description of actual services performed, hours of service rendered, the rate for each service, the monthly total for service and the cumulative total to date in comparison with the annual not-to-exceed fee. The City shall compensate the Consultant for services satisfactorily performed within fourteen (14) days of the date of said invoice statement. Fees for services outside the scope of this agreement shall be billed and paid in accordance with the Schedule of Fees included in Exhibit "B" which is attached hereto.

**4. TERMINATION OF CONTRACT FOR CAUSE:** If the Consultant shall fail to fulfill in a timely, professional and proper manner all obligations under this contract, or should the Consultant violate any of the covenants, agreements, or stipulations of this contract, the City shall have the right to terminate this contract immediately by giving written notice to the Consultant of such termination and specifying the effective date thereof at least twenty-one (21) days before the effective date of such termination. In a like manner, if the City shall fail to fulfill in a timely, professional and proper manner all obligations under this contract, or should the City violate any of the covenants, agreements, or stipulations of this contract, the Consultant shall have the right to terminate this contract immediately by giving written notice to the City of such termination and specifying the effective date thereof at least twenty-one (21) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Consultant under this contract shall, at the option of the City, become the property of the City and the Consultant shall be entitled to receive just and equitable compensation for any work satisfactorily completed pursuant to this contract. However, the City shall not be obligated to pay any remaining charges for work satisfactorily completed where there exists a right in favor of the City for refund, reimbursement or offset in connection with any obligations arising from the Consultant to the City.

**5. INSURANCE:** Throughout the term of this agreement the Consultant shall provide and maintain the following insurance coverages:

- (a) Workman's Compensation Insurance and other insurance required by law.
- (b) Comprehensive General Liability and Property Damage Insurance in an amount of no less than \$1,000,000 combined single limits, naming the City as an additional insured.
- (c) Errors and Omissions coverage in an amount of no less than \$1,000,000.
- (d) Fidelity Bond indemnifying the City in the amount of \$20,000.

6. **LEGAL REMEDIES:** The Consultant shall not be relieved of any liability to the City for damages sustained by the City by virtue of any breach of this contract by the Consultant. It is specifically understood that the City may withhold any payments to the Consultant for the purpose of offset until such time as the exact amount of damages due the City from the Consultant is determined.

7. **CHANGES:** The City may, from time to time, request changes in the Scope of Services of the Consultant to be performed hereunder. Such changes, including any increase or decrease in the amount of the Consultant's compensation which may be mutually agreed upon between the City and the Consultant, shall be incorporated in written amendments to this contract after appropriate authorization as called for in Section 2 of this contract.

8. **EQUAL EMPLOYMENT OPPORTUNITY:** The Consultant shall not discriminate against any employee or applicant for employment on account of race, color, religion, sex or national origin or because of handicapping condition or Vietnam Era Veteran status. The Consultant shall take affirmative action to ensure equal employment opportunity with respect to all of its employment practices.

9. **ENTIRE AGREEMENT:** This is the entire agreement between the parties and there are no terms, conditions, representations or warranties relating to the work to be performed hereunder which are not specifically set forth herein.

10. **REPORTS AND INFORMATION:** The Consultant, at such times and in such manner as the City may require, shall furnish the City such periodic reports as it may request pertaining to the work or services undertaken pursuant to this contract, the cost and obligations incurred or to be incurred in connection therewith, and any other matters covered by this contract.

11. **CONFLICT OF INTEREST:** The Consultant covenants and agrees that during the term of this agreement, the Consultant shall not provide professional engineering, land development design and/or surveying services to any client on any parcel of property located within the territorial and extraterritorial jurisdiction of the City, without prior approval from the City. Upon execution of this contract, the Consultant shall provide the City with a list of projects within the territorial and extraterritorial jurisdiction of the City of Kannapolis upon which a signed services contract has been executed between the Consultant and the client of said projects. Notwithstanding the prohibition described above, the Consultant shall be allowed to proceed with the fulfillment of the firm's contractual obligations to the extent that those obligations existed prior to the execution of this agreement. Furthermore, during the term of this agreement, the Consultant shall be responsible for immediately revealing to the City any and all potential conflicts of interest that might arise.



12. **LIMITATIONS OF LIABILITY:** The consultant will be reviewing the plans and work of other engineers, architects, surveyors, and contractors during the normal course of administrating the engineering department. As a result of such reviews, inspections, and administrative activities, the consultant is not liable for any errors, omissions, construction deficiencies or construction repairs for work done by such others engineers, architects, surveyors, and contractors.

**IN WITNESS WHEREOF**, the parties have executed this agreement as of the day and year first above written.

**CITY OF KANNAPOLIS**

**BY:** \_\_\_\_\_  
**Wilmer Melton, III**  
**Director of Public Works**

**BY:** \_\_\_\_\_  
**Michael B. Legg**  
**City Manager**

**ATTEST:**

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

(SEAL)

**ALLEY, WILLIAMS, CARMEN, & KING, INC.**

**BY:** Jeffery D. Moody  
**Jeffery D. Moody, Vice-President**

**ATTEST:**

David W. Lipe  
**David W. Lipe, PE**



**EXHIBIT “A”**  
**SCOPE OF SERVICES**  
**Engineering Administration Services**

**GENERAL SERVICES**

The consultant will perform complex professional, technical and administrative work as assigned by the City Engineer. More specifically, the Consultant will:

1. Provide professional and non-professional staff to carry out the duties described herein under the direction of the City Engineer. A flexible section of support staff of engineers, (civil, geotechnical, and environmental), technician, surveyors and administrators with a wide range of duties, responsibilities and initiatives.
2. Advise the City of known compliance issues relating to compliance to applicable local, state and federal environmental laws & regulations.
3. Administer technical aspects of the Unified Development Ordinance as needed.
4. Coordinate local, state and federal permitting for land development projects (site plans and subdivisions) as directed by the City Engineer.
5. Provide revisions and updates to land development standards manual and stormwater design manual and practices as needed.
6. Ability to assist staff in providing inventory and condition assessment related work for street and stormwater infrastructure management program. May include a combination of program level work (program enhancement recommendations, creation of data collection and assessment processes and procedures) and actual field data collection and condition assessment.
7. Participate as support staff in the development of short & long range plans for infrastructure & facilities improvement including, but not limited to, Capital Improvement Plan, Water Supply & Distribution Plan, Sewer Collection Plan, WSACC Master Plan and Stormwater Master Plan.
8. Monitor & analyze various technical reports for regulatory compliance as deemed necessary and within the realm of expertise of the firm.
9. Attend staff level Plan Review Committee meetings as needed.
10. Perform computer-aided drafting, mapping, plotting, printing and archiving as needed to carry out the duties described herein.
11. Attend and participate in the meetings of the City Council and the Planning Commission as needed.

12. Attend and make presentations to various boards and citizen groups and provide visual aids as needed.
13. Attend regularly scheduled City Staff meetings as needed.
14. Provide technical assistance to other City Departments as directed by the City Engineer.
15. Prepare plans, specifications, and estimates for smaller scale projects not requiring public bidding for construction.
16. Establish & maintain effective working relationships with City officials, other consultants, contractors, land developers, residents and business owners.
17. Perform all relevant and related tasks, otherwise not stated above, as required by the City Engineer.

### **SUPPLEMENTAL SERVICES**

In the event that special projects or supplemental services are undertaken which are mutually determined to fall outside the scope of services for the operation and routine activities of the department, the hourly rates on the rate schedule included in this scope of services will become the basis upon which any special project would be compensated.

Furthermore, engineering design, construction plan preparation and contract administration related to specific water, wastewater, stormwater, street, sidewalk, or similar projects will be excluded from this contract but will be offered under separate agreement.



## EXHIBIT "B"

### SCHEDULE OF FEES

#### HOURLY CHARGE RATE SCHEDULE – JULY 1, 2017

This information is confidential and is intended for use by the recipient only.

1. Engineers:
 

a. EI – Engineering Intern	\$ 70.00	-	\$ 90.00/Hr.
b. Registered Professional Engineer	100.00	-	130.00/Hr.
c. Associate/Registered Professional Engineer	115.00	-	155.00/Hr.
d. Principal/Registered Professional Engineer	175.00	-	200.00/Hr.
  
2. Architects:
 

a. Architects in Training	\$ 70.00	-	\$ 90.00/Hr.
b. Registered Architect	85.00	-	125.00/Hr.
c. Associate/Registered Architect	135.00	-	155.00/Hr.
d. Principal/Registered Architect	165.00	-	175.00/Hr.
  
3. Surveyors:
 

a. Surveyor in Training	\$ 60.00	-	\$ 80.00/Hr.
b. Registered Land Surveyor	80.00	-	100.00/Hr.
c. Associate/Registered Land Surveyor	90.00	-	115.00/Hr.
  
4. Technical Staff:
 

a. Project Manager	\$ 80.00	-	\$ 120.00/Hr.
b. CADD Designer/Technician	65.00	-	95.00/Hr.
  
5. Survey Parties:
 

a. 2-Man Party	\$140.00	-	\$155.00/Hr.
b. 3-Man Party	190.00	-	205.00/Hr.
  
6. Construction Observer
 

	\$ 75.00	-	\$ 95.00/Hr.
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7. Clerical
 

	\$ 50.00	-	\$ 65.00/Hr.
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8. Other:
  - a. Employees' overtime (when authorized in advance): 1.50 times Hourly Charge Rate.
  - b. Professional Consultants: 1.10 times the amount billed to AWCK, Inc.
  - c. Printing and Mailing: 1.10 times the amount billed to AWCK, Inc.
  - d. Mileage: Travel to job site No Charge, but time is included from our office to job site and return.
  - e. Overnight or extended travel: 1.10 times the amount billed to AWCK, Inc.
  - f. The above rates are subject to adjustment in accordance with normal salary and rate review practices on an annual basis.
  - g. Where ranges of hourly charge rates are listed, the rate charged will be the actual charge rate associated with the individual performing the services.
  - h. Payment will be made monthly based on invoices submitted by Alley, Williams, Carmen & King, Inc.



**City of Kannapolis  
City Council Meeting  
July 23, 2018  
Staff Report**

**TO:** Mayor and City Council  
**FROM:** Tina Cline, Human Resource Director  
**TITLE:** Personnel Policy 400.021 - Merit Incentive Pay

**A. Action Requested by City Council**

**Motion to amend Personnel Policy 400.021 - Merit Incentive Pay to be effective retroactively to 07/01/2018.**

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

Majority present at meeting

**C. Background**

The Merit Incentive Pay policy establishes policy to award one time lump merit increases to employees whose salary level is at the maximum of the pay range and who meet or exceed performance expectations. To be eligible for the one time payment, the employee's salary must have been at the maximum of the pay grade range for twelve months. Proposed amendments to this policy include:

- Addition of the word “regular” to clarify only regular full-time employees are eligible to receive merit incentive pay. Probationary and part-time employees are not eligible for merit incentive pay.
- Increases the percentage for merit incentive pay from up to 2.5% to 3% to be consistent with the current merit pay eligibility percentage.
- Incorporates language to state the actual amount of merit incentive pay will be based on the performance evaluation score and applied to the merit pay matrix to be consistent with how other merit increases are determined.
- Incorporates language to address when an employee’s recommended performance merit increase will cause the salary to exceed the maximum of the range. The salary will be adjusted to the maximum of the range and the remainder paid out as a lump sum. As the policy is currently worded, the employee's salary is adjusted the maximum and the difference is forfeited.
- Incorporates language to allow the City Manager to award merit incentive pay as a type of bonus payment at his discretion throughout the year in recognition of significant accomplishment, which is already defined in the policy.

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

Funding lump sum merit pay is included in the adopted FY 2019 annual budget.

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

None

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

Amendments to the Merit Incentive Pay Policy require Council approval.

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

1. **Motion to amend Personnel Policy 400.021 Merit Incentive Pay to be effective July 1, 2018 (Recommended)**
2. Do No Amend Personnel Policy
3. Table Action to a future meeting

#### **ATTACHMENTS:**

File Name

400.021\_-\_Merit\_Incentive\_Pay\_07042018\_-\_Proposed\_revisions.doc





**CITY OF KANNAPOLIS**

**PERSONEL POLICIES AND PROCEDURES**

**SUBJECT:                                      Position Classification Plan**

**POLICY NUMBER:                      400.021**

**EFFECTIVE DATE:                      07/01/2003**

**AMENDMENT DATE(S): 07/01/2018**

**SUBJECT: MERIT INCENTIVE PAY**

**PURPOSE:** To establish an incentive plan for City employees who have reached the maximum level of the assigned salary range.

**STATEMENT OF POLICY:**

The City recognizes the value of the expertise, experience and commitment of long-term employees and the limited opportunity for promotional advancement within the organization. This plan establishes a method of rewarding the performance of employees who are no longer eligible for merit increases to the base salary but whose work performance is nonetheless meritorious. Such compensation allows the City to retain qualified and well-trained employees to preserve the effective and efficient continuity of the daily operations of the city and the provision of city services.

**ELIGIBILITY**

Merit incentive pay is reserved to reward **regular** full-time employees for meritorious service and work performance which should include but not be limited to: (1) meeting assigned annual performance goals and objectives as agreed upon by the City Manager, Department Director, and/or Supervisor; (2) outstanding work achievement; (3) use of innovative management techniques and cost saving measures; (4) technical or professional competence, and (5) other exceptional job related performance.

**ADMINISTRATION OF MERIT INCENTATIVE PAY PLAN**

1) **Performance Based Merit Incentive Pay**

- a. On an eligible employee's salary effective date, a performance evaluation shall be accomplished by the City Manager or appropriate supervisor. Based upon this formal evaluation, an eligible employee may receive merit incentive pay in an amount not to exceed **three two and one half (2½ 3%)** of annual base salary. **The actual percentage awarded shall be based on the employee's performance review score and applied to the merit pay matrix.** The incentive pay shall be paid in a lump sum the next pay date of the pay period following approval by the City Manager. Merit incentive pay shall be a one-time payment and will not increase the employee's base salary.
- b. **If an employee's most recent performance review for a merit increase will exceed the maximum of the range, the employee's pay will be advanced to the maximum of the range and the remaining balance of the increase paid by lump sum**
- c. An employee promoted or reclassified to a higher pay range is ineligible for merit incentive pay provided that employee has not yet reached the maximum salary of the new pay range. An employee must have been at the maximum salary level of the new pay range for a minimum of one year to be eligible for merit incentive pay.

## 2) Discretionary Merit Incentive Pay

- a. The City Manager may, at his discretion, award one time merit incentive pay up to 3% throughout the year at times other than an employee's formal evaluation in recognition of significant accomplishment as defined above.
- b. Discretionary merit incentive pay may be awarded to any full time employee without regard to the employee's salary position within the pay range.

DATE: \_\_\_\_\_

APPROVAL: \_\_\_\_\_



**City of Kannapolis  
City Council Meeting  
July 23, 2018  
Staff Report**

**TO:** Mayor and City Council  
**FROM:** Tina Cline, Human Resource Director  
**TITLE:** Personnel Policy 400.19 - Shift Differential Pay

**A. Action Requested by City Council**

**Motion to amend Personnel Policy 400.19 - Position Classification Plan to be effective retroactively to July 4, 2018.**

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

Majority present at meeting

**C. Background**

The purpose of the proposed changes is to extend shift differential pay to eligible Water Treatment Plant employees. The policy currently only covers Police Department employees assigned to the Communications Division. These are the only departments utilizing regular third shift assignments. Shift differential pay is a part of the career advancement program for water and sewer utility workers as addressed in the City Manager's FY 19 budget message.

**D. Fiscal Considerations**

Funding is included in the approved FY 2019 annual budget.

**E. Policy Issues**

None

**F. Legal Issues**

Amendments to the Shift Differential Pay policy require Council approval.

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

- 1. Motion to amend Personnel Policy 400.19 - Shift Differential Pay to be effective retroactively to July 4, 2018 (Recommended)**
2. Do No Amend Personnel Policy
3. Table Action to a future meeting

**ATTACHMENTS:**

**File Name**

▣ 400.19 - \_\_Shift\_Differential\_Pay\_-\_Proposed\_Revisions\_07042018.doc



**CITY OF KANNAPOLIS**

**PERSONNEL**

**POLICIES AND PROCEDURES**

**SUBJECT:** Shift Differential Pay

**POLICY NO:** 400.19

**EFFECTIVE DATE:**

**REVIEW DATE:**

**AMENDMENT DATE(S):** 07/04/2018

**SUBJECT:** Shift Differential Pay

**PURPOSE:** To establish guidelines for shift differential pay for communications personnel.

**STATEMENT OF POLICY:**

All regular fulltime **communications** personnel assigned and working a **regular, non-rotating** night shift schedule shall receive shift differential pay in addition to their regular base hourly rate. **Differential pay shall be at a rate of \$1.00 per hour.**

**1) Police Department Communications Division**

Authorization for shift differential pay will be given only after a fulltime **communications** employee has been released from training upon the recommendation of the supervisor with approval of the Chief of Police in accordance with the following guidelines:

~~a) Differential pay shall be at a rate of \$1.00 per hour.~~

- b) Differential pay will only be paid to civilian employees assigned to a regular, non-rotating night shift. The night shift is defined as any twelve (12) hour shift beginning between the hours of 5 PM and 7 PM.
- c) Newly hired employees will be ineligible for shift differential pay during training. Upon release from training status and final assignment to a regular, non-rotating night shift a payroll transaction request will be submitted to the Chief of Police for approval of the shift differential.
- d) Upon the Chief's approval, the payroll transaction request will be forwarded to Human Resources for implementation.
- e) In the event that a current employee is reassigned to a regular, non-rotating **night day** shift, a payroll transaction request form will be submitted to end the shift differential.
- f) Employees working outside their normal rotation (training, supplementary duty, etc.) will be compensated according to their regular assignment and not the hours worked on a specific day, provided the hours worked outside the regular assignment does not exceed seven (7) consecutive days.

**2) Water Treatment Plant**

Authorization for shift differential pay will be given only after a fulltime **Water Treatment Plant** employee has been released from training upon the recommendation of the supervisor with approval of the Department Director in accordance with the following guidelines:

~~a) Differential pay shall be at a rate of \$1.00 per hour.~~

- b) Differential pay will only be paid to Water Treatment Plant employees assigned to a regular, non-rotating night shift. The night shift is defined as any **eight (8), ten (10), or** twelve (12) hour shift beginning between the hours of 5 PM and 7 PM.
- c) Newly hired employees will be ineligible for shift differential pay during training. Upon release from training status and final assignment to a regular, non-rotating night shift a payroll transaction request will be submitted to the Department Director for approval of the shift differential.
- d) Upon the Director's approval, the payroll transaction request will be forwarded to Human Resources for implementation.
- e) In the event that a current employee is reassigned to a regular, non-rotating **night day** shift, a payroll transaction request form will be submitted to end the shift differential.

**DATE:** \_\_\_\_\_

**APPROVAL:** \_\_\_\_\_





**City of Kannapolis  
City Council Meeting  
July 23, 2018  
Staff Report**

**TO:** Mayor and City Council  
**FROM:** Mike Legg, City Manager  
**TITLE:** North Carolina League of Municipalities Advocacy Goals

**A. Action Requested by City Council**

**Motion to adopt City of Kannapolis' State Advocacy Goals.**

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

Majority present at meeting

**C. Background**

The N.C. League of Municipalities is accepting proposals for 2018-19 Advocacy Goals through Aug. 1. Every two years the cities and towns of North Carolina develop legislative and regulatory goals for the upcoming legislative biennium. These goals serve as the guide to the League's advocacy efforts here in Raleigh. More than that, they are a collective statement of the priorities of North Carolina municipalities, big and small, urban, suburban and rural. The process of setting the Municipal Advocacy Goals is an opportunity for each municipality to have a voice in telling state legislators and other state policymakers what is important to them.

**D. Fiscal Considerations**

None.

**E. Policy Issues**

None.

**F. Legal Issues**

None.

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

1. **Motion to adopt City of Kannapolis' State Advocacy Goals (recommended)**
2. Take no action.
3. Table to a future meeting.

**ATTACHMENTS:**

**File Name**

📎 NCLM\_Advocacy\_Goals\_2018.pdf



**July 18, 2018**

Before each session of the North Carolina Legislative Assembly municipalities throughout the State work with the North Carolina League of Municipalities (NCLM) to develop its advocacy goals. Advocacy goals are the items we anticipate legislators will address or we would like for them to address during the session.

The NCLM asks all municipalities to submit their top items they feel are priorities. The top 50 or so are adopted as a state wide platform. The items are then advocated for by the NCLM staff and their lobbyists.

Below are the ten items that appear to have the greatest impact on the City of Kannapolis and should be priorities for the next session of the General Assembly.

1. **Rural – Urban (Assignment of County Distress Ratings).** SB563. NCLM should continue to support this bill in its current format. This bill would designate areas – not counties as distress areas in an attempt to more appropriately allocate funds to areas in the state that need assistance. This is a new approach to the economic tier program.
2. **Online Internet Sales Revenues.** Recent Congressional action now allows states to collect sales taxes from online internet sales. How these revenues will be divided will be determined by the state. A study committee is expected to begin work on this later this fall. The NCLM should work to ensure that fund allocation will be fair to all counties and municipalities.
3. **Sweepstakes Bill.** Pending clarification of certain details, the NCLM should support this bill if it solves issues law enforcement encounters with these types of businesses. The bill would increase criminal penalties for possession of more than 4 electronic machines within 100 feet of any other machine. Local zoning is not part of the bill but should perhaps be added.
4. **Building Code Regulatory Reform.** HB 948. This bill have several improvements to the building inspection process that could have local benefits including the establishment of a new pool of inspectors based in the NC Department of Insurance. However the NCLM should pursue clarifications and protections in the current bill and monitor this bill for changes should it continue to advance in the process.
5. The NCLM should continue to oppose **Unfunded Mandates for Municipalities.**



6. **Moving Municipal Election Dates.** Bills are in legislative committees that would result in moving municipal elections to even years (same as County/Statewide/National elections). The NCLM should oppose these bills so as to maintain separate, focused municipal elections.
7. **Public Transportation Funding.** The NCLM should work to remove caps on light rail funding (S335) and restore funding for bus maintenance (S99). These changes have created significantly negative impacts to local and regional transit system stability and future options.
8. **Utility Rate/Water/Sewer System Regulations.** Bills continue to be introduced which would remove systems from local control and privatize the systems. The NCLM should oppose these bills.
9. **Local Control.** The NCLM should continue to advocate for local control including revenues remaining in the hands of municipalities.

####



**City of Kannapolis  
City Council Meeting  
July 23, 2018  
Staff Report**

**TO:** Mayor and City Council  
**FROM:** Tina Cline, Human Resource Director  
**TITLE:** Personnel Policy 400.23 - Water and Sewer Utilities Incentive Pay Program

**A. Action Requested by City Council**

**Motion to approve new Personnel Policy 400.23 - Water and Sewer Utilities Incentive Pay Program to be effective August 1, 2018.**

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

Majority present at meeting

**C. Background**

The purpose for this new policy is to define career advancement incentive pay for eligible employees of the Water and Sewer Distribution division and Water Treatment Plant. This initiative was referenced in the City Manager's FY 19 budget message.

**D. Fiscal Considerations**

Funding for the new incentive pay program will come from Water Sewer Fund lapsed salaries generated by turnover throughout the year. There are currently fourteen employees who will immediately benefit from this program at a projected cost of \$39,000.

**E. Policy Issues**

None

**F. Legal Issues**

New personnel administrative policies and amendments to personnel policies affecting employee compensation require Council approval.

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

- 1. Motion to approve Personnel Policy 400.23 - Water and Sewer Utilities Incentive Pay Program to be effective August 1, 2018 (Recommended)**

2. Do No Approve Personnel Policy
3. Table Action to a future meeting

ATTACHMENTS:

File Name

400.23\_Water\_Sewer\_Utility\_Incentive\_Pay\_Program\_-\_Draft.doc



**CITY OF KANNAPOLIS**

**PERSONNEL**

**POLICIES AND PROCEDURES**

**SUBJECT:** Water and Sewer Utilities Incentive Pay Program

**POLICY NO:** 400.23

**EFFECTIVE DATE:** August 1, 2018

**REVIEW DATE:** \_\_\_\_\_

**APPROVED:** \_\_\_\_\_  
**CITY MANAGER**

**AMENDMENT DATE(S):** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SUBJECT:** WATER AND SEWER UTILITIES INCENTIVE PAY PROGRAM

**PURPOSE:** To establish guidelines for the Water and Sewer Utilities Incentive Pay Program.

**STATEMENT OF POLICY:**

Regular full-time Water and Sewer Utilities employees who engage in the construction, maintenance, repair, and/or operation of water and sewer utilities, infrastructure, and/or water treatment plant who obtain one or more of the certifications listed on the Addendum are eligible for an incentive premium in accordance with the guidelines specified herein.

Authorization for the incentive premium will be given only after a careful review of the employee's academic transcript or official certification. To be eligible, certifications earned must meet the following criteria:

1. Eligible employees who are currently employed shall obtain prior approval of certification work from the Public Works Director in order for such certifications to be eligible for consideration for the incentive premium upon completion.
2. Certifications must be earned in accordance with the governing body for the certification as defined on the Addendum. It will be the responsibility of the employee to obtain and provide the Public Works Director with satisfactory verification that the certification was received in accordance with this requirement. If any discrepancies in certification arise, the decision of the Public Works Director will be final.
3. Incentive premium for a new certification will begin the first pay period of the month, fifteen days after the certification has been submitted to the Public Works Director.
4. Incentive premium will cease for all certifications that are not maintained or renewed in accordance with the provisions of the governing board for the certification.



## **ADDENDUM #1**

<b>CERTIFICATION</b>	<b>GOVERNING BODY</b>	<b>AMOUNT</b>
A Surface	NC Water Treatment Facility Operator Certification Board	\$1,250
A Distribution	NC Water Treatment Facility Operator Certification Board	\$1,250
B Distribution	NC Water Treatment Facility Operator Certification Board	\$750
Collections 3	Water Pollution Control Systems Operator Certification Commission	\$750
Collections 4	Water Pollution Control Systems Operator Certification Commission	\$1,250
Bacteria Lab	NC Department of Health and Human Services & NC Waterworks Operators Association	\$500
Process Control	NC Department of Health and Human Services & NC Waterworks Operators Association	\$500
Pesticide		\$250
Pipeline Assessment Certification	Pipeline Assessment Certification Program	\$500
Cross Connection	NC Water Treatment Facility Operator Certification Board	\$750
Backflow Tester	NC Water Treatment Facility Operator Certification Board and NC Rural Water Association	\$750
Primary ORC	NC Water Treatment Facility Operator Certification Board & Water Pollution Control Systems Operator Certification Commission	\$2,000
Backup ORC	Water Pollution Control Systems Operator Certification Commission	\$1,000

APPROVED:

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City Manager

---

Date



**City of Kannapolis  
City Council Meeting  
July 23, 2018  
Staff Report**

**TO:** Mayor and City Council  
**FROM:** Zachary D. Gordon, AICP, Planning Director  
**TITLE:** Public Hearing Voluntary Annexation of Property - 3821 Shiloh Church Road

**A. Action Requested by City Council**

- 1. Conduct a Public Hearing on proposed annexation of property located at 3821 Shiloh Church Road.**
- 2. Consider a motion to adopt an Ordinance to Annex approximately 1.3 +/- acres of property located at 3821 Shiloh Church Road (PIN 4672-69-6150)**

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

Majority present at meeting

**C. Background**

The owners of the subject property, Kenneth and Teresa Irvin, have submitted a petition for the voluntary annexation of property located at 3821 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 parcel is currently vacant and has a Cabarrus County zoning designation of CR - Countryside Residential. This annexation will allow for the property to be developed as part of a residential subdivision to be located on adjoining property that was recently annexed by the City. **The petition is for a contiguous annexation.** (See attached Vicinity Map).

As is required by the North Carolina General Statutes, an initial City of Kannapolis zoning designation must be applied to the property by the Planning and Zoning Commission within 60 days of the effective date of the annexation. The Planning and Zoning Commission will be reviewing a request for a conditional rezoning for a residential subdivision, which includes this property, at their August 8, 2018 meeting.

Under the terms of the Annexation Agreement between Kannapolis and Concord, the proposed annexation of property is located within the area where Kannapolis may annex (see attached Annexation Agreement and map). Per this agreement, the City of Concord was notified of the petition for annexation (see attached letter).

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

None

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

The subject 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).

According to the City's current long range planning document - ***Move Kannapolis Forward 2030 Comprehensive Plan***, this property is located in a designated "Primary Service Area". A 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." The City is in the process of extending utilities in this area to facilitate future development.

#### **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 the sufficiency of the petition. City Council must also adopt a Resolution of Intent to Annex and fix a public hearing date for consideration of the petition.

The City Clerk has signed a Certificate of Sufficiency for the proposed annexation, dated July 9, 2018 (see attached), and the City Council, at its July 9, 2018 meeting, adopted a Resolution of Intent to Annex and fix Date of Public Hearing for July 23, 2018 (see attached) to consider this petition for annexation. Public notice for this public hearing was provided on July 13th and 20th (see attached notice).

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

1. **Motion to adopt An Ordinance to Extend the Corporate Limits of the City of Kannapolis to include approximately 1.3 +/- acres of property located at 3821 Shiloh Church Road (Cabarrus County PIN 4672-69-6150 (Recommended)**
2. Do not approve Ordinance
3. Table action to a future meeting

#### **ATTACHMENTS:**

##### **File Name**

- ☐ A-2018-04\_Annexation\_request.pdf
- ☐ Vicinity\_A\_2018\_04.pdf
- ☐ A-2018-04\_Legal\_Description.pdf
- ☐ Survey\_Plan\_Annexation.pdf
- ☐ Resolution\_directing\_clerk-Certificate\_of\_Sufficiency\_for\_3821\_Shiloh\_Church\_Rd.pdf
- ☐ Resolution\_of\_Intent\_to\_Annex\_and\_set\_public\_hearing\_for\_3821\_Shiloh\_Church.pdf
- ☐ City\_of\_Concord-Annex\_Agreement\_-\_without\_metes\_and\_bounds\_attachments.pdf

- ▢ Non-annexation\_Map\_Concord\_-A-2018-03.pdf
- ▢ Concord\_Notice\_-\_Irvin\_Annexation.pdf
- ▢ A-2018-04\_CC\_7.23.18\_Public\_Ad.pdf
- ▢ Annexation\_Ordinance\_-\_Irvin\_Annexation.pdf



**PETITION REQUESTING A NON-CONTIGUOUS (SATELLITE) ANNEXATION**

DATE: 4/30/2018

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 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>Kenneth Irvin</u>	<u>421 10th Street NE Naples, FL 33964</u>	<div>DocuSigned by:  E695B12544E644B...</div>
2. <u>Teresa Irvin</u>	<u>421 10th Street NE Naples, FL 33964</u>	<div>DocuSigned by:  E695B12544E644B...</div>
3. _____	_____	_____
4. _____	_____	_____

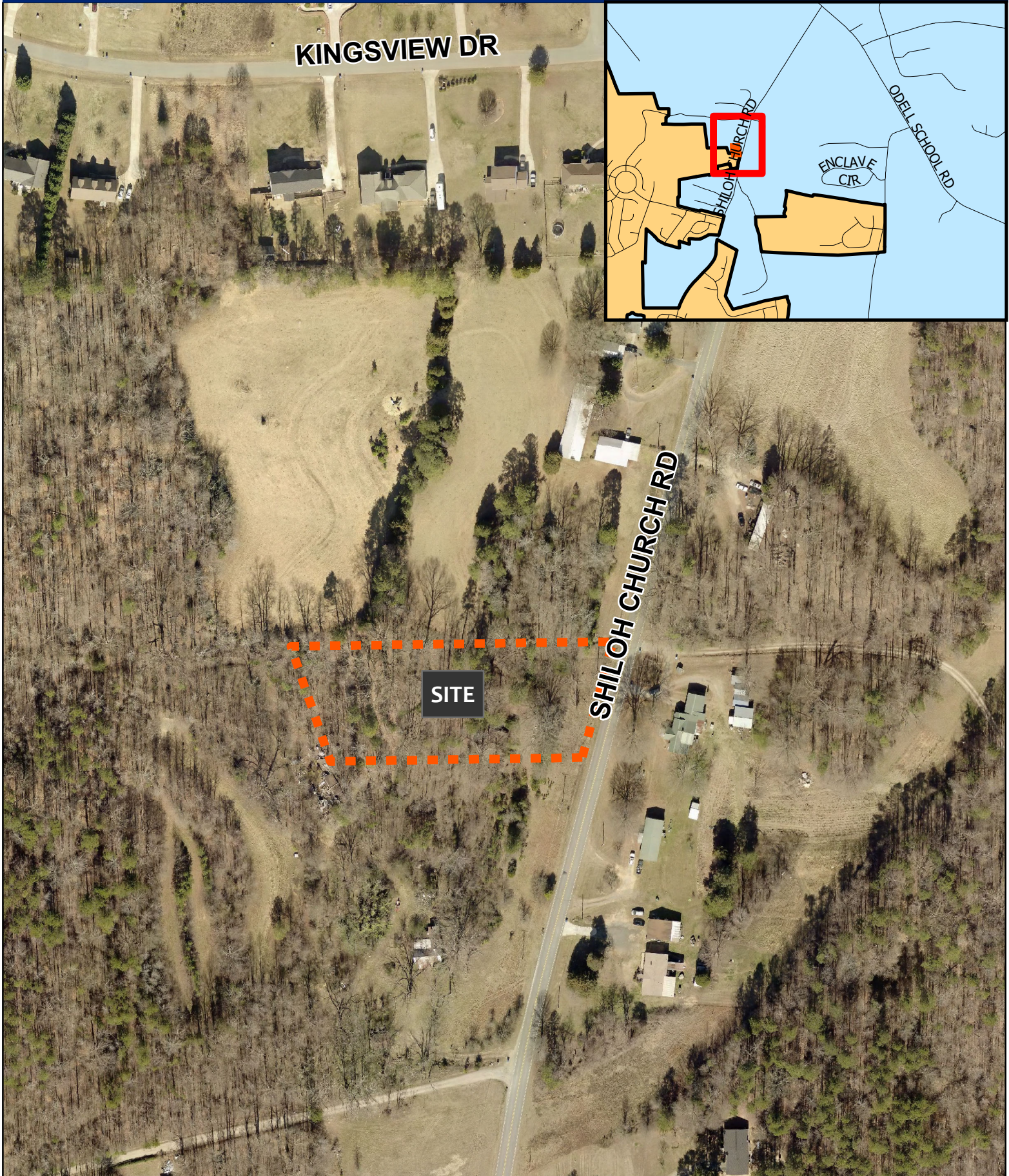
\*Family members (e.g., husbands and wives) need to sign separately. Signatures for corporations, institutions, etc., are by those with the authority to sign legal documents.





# Vicinity Map

Case Number: A-2018-04  
Applicant: Kenneth and Teresa Irvin  
Pin: 4672-69-6150

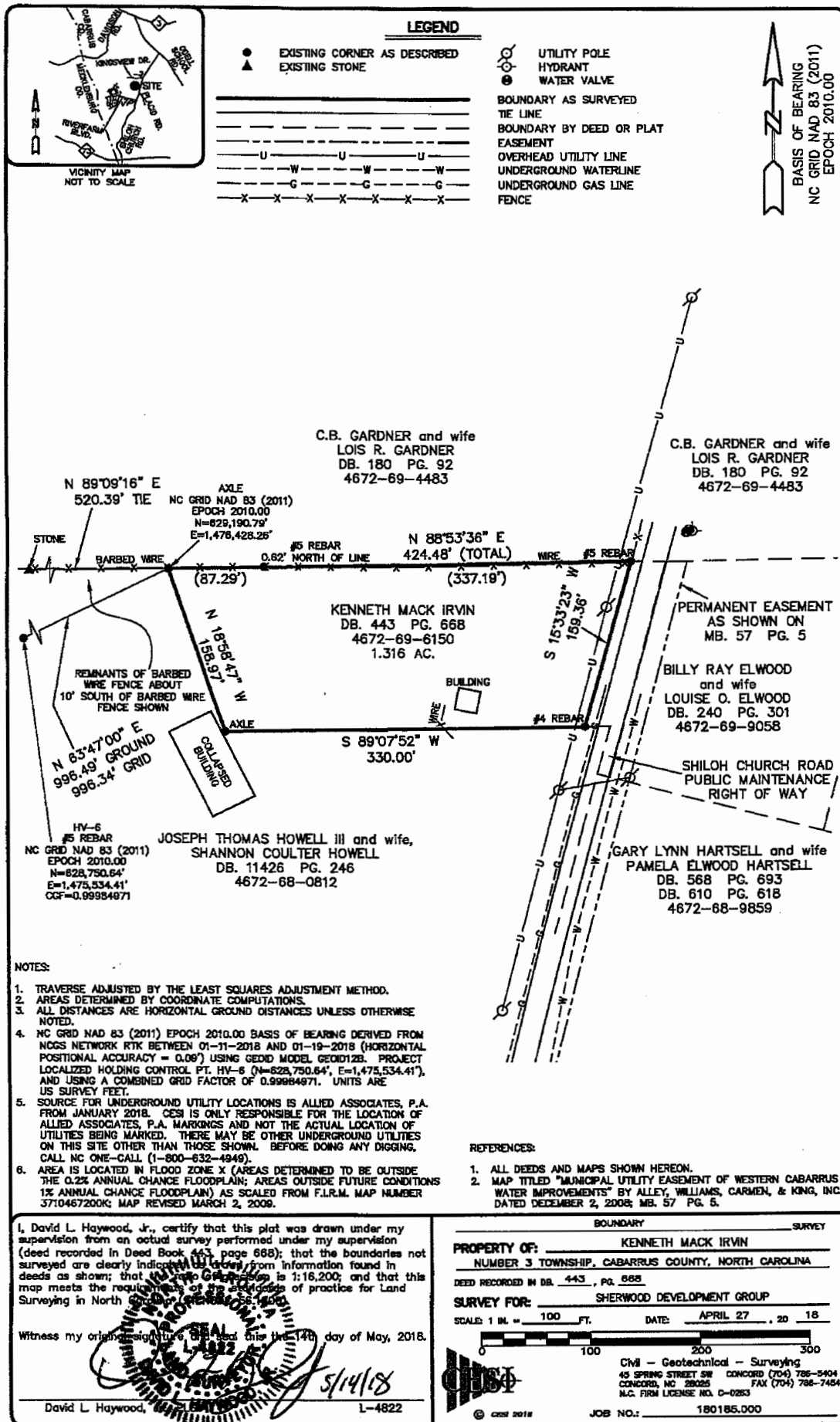




Legal Description  
Cabarrus County tax parcel 4672-69-6150

Lying and being in Number 3 Township, Cabarrus County, North Carolina, and lying on the western side of Shiloh Church Road (public maintenance right of way), and being the property of Kenneth Mack Irvin (Deed Book 443 at page 668), and being more particularly described as follows:

Commencing at control point HV-6, a #5 rebar having NC NAD 83 (2011) epoch 2010.00 grid coordinates of N=628,750.64 feet, and E=1,475,534.41 feet; thence N 63°47'00" E and a ground distance of 996.49 feet (combined grid factor=0.99984971) to an existing axle having NC NAD 83 (2011) epoch 2010.00 grid coordinates of N=629,190.79 feet, and E=1,476,428.26 feet, said axle being a corner of Joseph Thomas Howell III and wife, Shannon Coulter Howell (Deed Book 11426 at page 246), in the southern line of C.B. Gardner and wife Lois R. Gardner (Deed Book 180 at page 92) and the POINT OF BEGINNING; thence from the POINT OF BEGINNING with the southern line of said Gardner N 88°53'36" E (passing an existing #5 rebar 0.62 feet north of line at 87.29 feet) a total distance of 424.48 feet to an existing #5 rebar on the western side of Shiloh Church Road (public maintenance right of way); thence with the western side of Shiloh Church Road S 15°33'23" W 159.36 feet to an existing #4 rebar; thence with Joseph Thomas Howell III and wife, Shannon Coulter Howell (Deed Book 11426 at page 246) the following two courses and distances: 1) S 89°07'52" W 330.00 feet to an existing axle; and 2) N 18°58'47" W 158.97 feet to the POINT OF BEGINNING containing 1.316 acres.





**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 9<sup>th</sup> day of July 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, Kannapolis City Clerk, do hereby certify that I have investigated the attached petition and hereby make the following findings:

- a) The petition contains an adequate property description of the area proposed for annexation.
- b) The area described in petition is contiguous to the City of Kannapolis primary corporate limits, as defined by G.S. 160A-31.
- c) The petition is signed by and includes addresses of 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 9<sup>th</sup> day of July 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 23<sup>rd</sup> day of July, 2018.

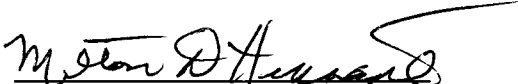
Section 2. The area proposed for annexation is described as follows:

Lying and being in Number 3 Township, Cabarrus County, North Carolina, and lying on the western side of Shiloh Church Road (public maintenance right of way), and being the property of Kenneth Mack Irvin (Deed Book 443 at page 668), and being more particularly described as follows:

Commencing at control point HV-6, a #5 rebar having NC NAD 83 (2011) epoch 2010.00 grid coordinates of N=628,750.64 feet, and E=1,475,534.41 feet; thence N 63°47'00" E and a ground distance of 996.49 feet (combined grid factor=0.99984971) to an existing axle having NC NAD 83 (2011) epoch 2010.00 grid coordinates of N=629,190.79 feet, and E=1,476,428.26 feet, said axle being a corner of Joseph Thomas Howell III and wife, Shannon Coulter Howell (Deed Book 11426 at page 246), in the southern line of C.B. Gardner and wife Lois R. Gardner (Deed Book 180 at page 92) and the POINT OF BEGINNING; thence from the POINT OF BEGINNING with the southern line of said Gardner N 88°53'36" E (passing an existing #5 rebar 0.62 feet north of line at 87.29 feet) a total distance of 424.48 feet to an existing #5 rebar on the western side of Shiloh Church Road (public maintenance right of way); thence with the western side of Shiloh Church Road S 15°33'23" W 159.36 feet to an existing #4 rebar; thence with Joseph Thomas Howell III and wife, Shannon Coulter Howell (Deed Book 11426 at page 246) the following two courses and distances: 1) S 89°07'52" W 330.00 feet to an existing axle; and 2) N 18°58'47" W 158.97 feet to the POINT OF BEGINNING containing 1.316 acres.

Section 3. Notice of public hearing shall be published in the Independent Tribune on July 11, 2018

**ADOPTED this the 9<sup>th</sup> day of July, 2018.**

  
Milton D. Hinnant, Mayor

ATTEST:

  
Bridgette Bell, MMC, NCCMC  
City Clerk

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:

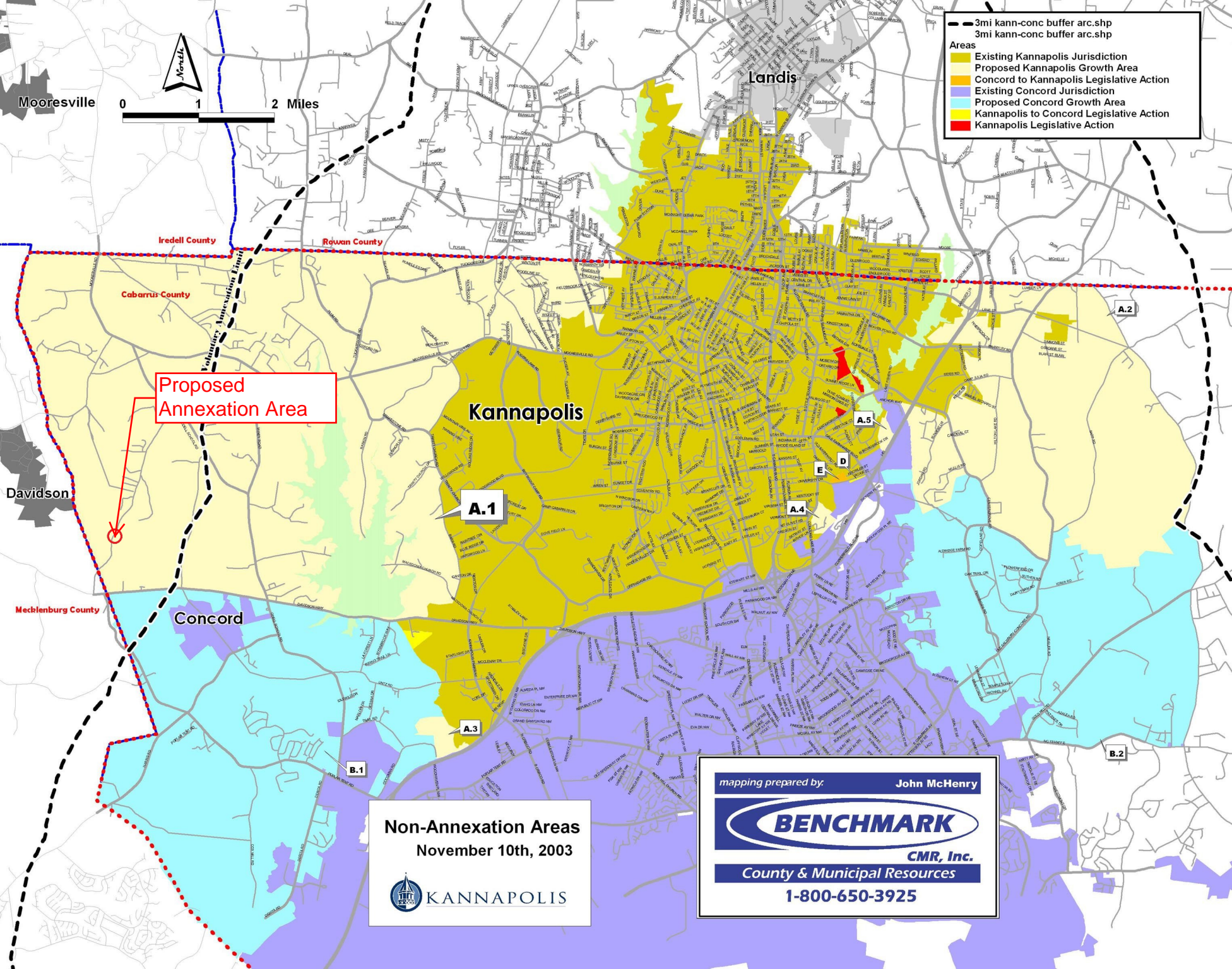
Vickie C. Weant  
Vickie Weant, CMC, City Clerk

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

Non-Annexation Areas  
November 10th, 2003



KANNAPOLIS

mapping prepared by: John McHenry



CMR, Inc.  
County & Municipal Resources  
1-800-650-3925



July 3, 2018

Mr. Lloyd Payne, City Manager  
City of Concord  
35 Cabarrus Ave W,  
Concord, NC 28025

(Via USPS & Email)

**Re: Petition for Annexation of Property (3821 Shiloh Church Road, Cabarrus County PIN 4672-69-6150) - Case # A-2018-04**

Dear Mr. Payne:

Per the terms of the Annexation Agreement (see attached) between Kannapolis and Concord, the purpose of this letter is to inform you that the City of Kannapolis has received a petition for voluntary annexation of property in Area A.1 of the agreement (see enclosed petition with attachments), within which area the City may annex property. More specifically, the property requested for annexation is located on Shiloh Church Road and encompasses 1.316 +/- acres (see attached vicinity map).

**The Kannapolis City Council will consider this petition for annexation at a public hearing to be held at 6:00 pm in the City Hall chambers, located at 401 Laureate Way, Kannapolis, on July 9, 2018.**

The above-referenced property currently has a Cabarrus County Zoning designation of CR – Countryside Residential. As is required by the North Carolina General Statutes, an initial City of Kannapolis zoning designation must be applied to the property within 60 days of the effective date of the annexation. The property owner intends to develop this property for single family residential use.

Please feel free to contact me if you have any questions or would like to offer input regarding this annexation petition.

Sincerely,

Zachary D. Gordon, AICP  
Planning Director

Attachments

Cc: Mike Legg, City Manager (via email)  
Wally Safrit, City Attorney (via email)  
Bridgette Bell, City Clerk (via email)  
Susie Morris, Cabarrus County Planning and Zoning Manager (via email)



# NORTH CAROLINA COMMUNITY NEWSPAPERS

## Order Confirmation

Order# 0000481538

Client: KANNAPOLIS, CITY OF

Payor Customer: KANNAPOLIS, CITY OF

Client Phone: 7049204300

Payor Phone: 7049204300

Account #: 3143368

Payor Account: 3143368

Address: ACTS PAYABLE/WANDAY TEAR SHEET

Payor Address: ACTS PAYABLE/WANDAY TEARSHI

KANNAPOLIS NC 28081

KANNAPOLIS NC 28081

Fax: 7049337463

Sales Rep: aboan

Email: byow@kannapolisnc.gov

Ordered By: Pam

Total Amount: \$521.58

Status:

Materials:

Payment Amount: \$521.58

Amount Due: \$0.00

Tear Sheets: 0

Proofs: 0

Affidavits: 1

Blind Box:

Tax Amount: 0.00

Payment Method: Credit - Debit Card

PO Number:

Order Notes:

Invoice Text:

Ad Number	Ad Type	Ad Size	Color
0000481538-01	CLS Liner	2 X 41 II	\$0.00

### Pick Up Number

Production Method  
AdBooker (liner)

### Production Color

Production Notes

Product and Zone	Placement	Position	# Inserts
CON Independent Trib	C-Announcements	General-Spec Notice	2

Run Schedule Invoice Text: NOTICE OF PUBLIC HEARING Kannapolis City Hall

Run Dates: 7/13/2018, 7/20/2018

Taeline: NOTICE OF PUBLIC HEARING KANNAPOLIS CITY HALL LAUREATE CENTER 401

LAUREATEWAY KANNAPOLIS NC 28081 CITY COUNCIL MEETING MONDAY JUL

Ad Content Proof

Note: Ad size does not reflect actual ad



### NOTICE OF PUBLIC HEARING

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

City Council Meeting  
Monday, July 23, 2018 at 6:00 pm

### Public Hearing Notice

**Public Hearing Notice - Irvin Annexation - A-2018-04** - Public Hearing to consider the voluntary annexation of approximately 1.4 +/- acres located at 3821 Shiloh Church Road further identified as Cabarrus County PIN #4672-69-6150.

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 [tdcline@kannapolisnc.gov](mailto:tdcline@kannapolisnc.gov).

**Publish: July 13, 20, 2018.**

**AN ORDINANCE TO EXTEND THE CORPORATE LIMITS**  
**OF THE CITY OF KANNAPOLIS, NORTH CAROLINA**

**WHEREAS**, pursuant to NCGS 160A-31 the City Council has stated its intent to annex property contiguous to the City's boundary as described below; and

**WHEREAS**, the City Council has by resolution set a public hearing on the question of this annexation at Kannapolis City Hall, located at 401 Laureate Way at 6:00 PM on the 23<sup>th</sup> day of July, 2018 after due notice by the Independent Tribune newspaper on the 13<sup>th</sup> day of July and 20<sup>th</sup> day of July, 2018;

**WHEREAS**, the City Council further finds that the public health, safety and welfare of the City of Kannapolis, North Carolina and of the area proposed for annexation will be best served by annexing the area described;

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

**Section 1.** By virtue of the authority granted pursuant to N.C.G.S. Chapter 160A, Article 4A, Part 1, Section 160A-31 the following described territory is hereby annexed and made part of the City of Kannapolis, North Carolina as of the 23<sup>th</sup> day of July, 2018, and being more particularly described as Cabarrus County PIN 4672-69-6150, as follows:

**SEE EXHIBIT A – METES AND BOUNDS DESCRIPTION**

**Section 2.** Upon and after the 23<sup>th</sup> day of July 2018, the above-described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Kannapolis, North Carolina and shall be entitled to the same privileges and benefits as other parts of the City of Kannapolis, North Carolina. Said territory shall be subject to municipal taxes according to G.S. 160A-31(e).

**Section 3.** The Mayor of the City of Kannapolis, North Carolina shall cause to be recorded in the office of the Register of Deeds of Cabarrus County, and in the office of the Secretary of State at Raleigh, North Carolina, an accurate map of the annexed territory, described in Section above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the Board of Elections, as required by G.S. 163-288.1.

**Adopted this 23th day of July, 2018.**

**ATTEST:**

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

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

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Walter M. Safrit, II, City Attorney



**City of Kannapolis  
City Council Meeting  
July 23, 2018  
Staff Report**

**TO:** Mayor and City Council  
**FROM:** Wilmer Melton, III - Director of Public Works  
**TITLE:** Oakwood Avenue Sidewalk TIP#C-4916C 2nd Supplemental Agreement

**A. Action Requested by City Council**

- 1. Motion to approve the Second Supplemental Agreement between the City of Kannapolis and the North Carolina Department of Transportation for Transportation Improvement Project C-4916C and authorize the City Manager to execute the Agreement.**
- 2. Motion to amend the Project Ordinance for the Oakwood Avenue Sidewalk Project.**

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

Majority present at meeting

**C. Background**

On June 18, 2018, we received bids on the Oakwood Avenue Sidewalk Project that were 85.39% higher than the engineer's estimate. Upon receipt and review of the bids, we rejected all bids and will be re-advertising the Project this Fall. Prior to re-advertising, we have requested additional Congestion Mitigation and Air Quality (CMAQ) funds to cover the Project. At the request of the City of Kannapolis, The North Carolina Department of Transportation (NCDOT) has prepared a second Supplemental Agreement for TIP Project C-4916C for the construction of sidewalk along Oakwood Avenue from Windsor Drive to Rogers Lake Road.

The Supplemental Agreement is for additional funding which increases the federal participation for the Project up to \$2,028,800 and the local match to \$507,200. City Council entered into the first supplemental agreement with the NCDOT in March of 2016 in which the federal participation was \$880,000 and the local match was \$220,000. By execution of this Agreement, the City agrees to the requirements set forth by NCDOT as stated in the Agreement. The City will be responsible for completing the Project within five (5) years of authorization of Federal funds for the Project.

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

The total estimated cost of the Sidewalk Project has been modified to \$2,536,000. The federal participation in this Project is 80% of the Project cost up to a total federal amount of \$2,028,800. The City is responsible for all costs over the \$2,028,800 that is estimated to be \$507,200.

NCDOT has agreed to administer the disbursement of project funds on behalf of the Federal Highway Administration (FHWA). The City will submit requests to NCDOT for reimbursement of expenses on the Project. The City of Kannapolis will borrow the funds for the City's share of this Project; debt service payments will be funded through current Powell Bill Funds.

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

City Council approval is required prior to the City entering into this 2<sup>nd</sup> Supplemental Agreement with the North Carolina Department of Transportation for Transportation Improvement Project C-4916C.

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

None

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

1. **Approve the second Supplemental Agreement between the City of Kannapolis and the North Carolina Department of Transportation for TIP #C-4916C and authorize the City Manager to execute the Agreement. (Recommended)**
2. **Approve the revised Project Ordinance for the Oakwood Avenue Sidewalk Project TIP #C-4916C. (Recommended)**
3. Take no action.
4. Table to a future meeting

#### **ATTACHMENTS:**

##### **File Name**

- ☐ Oakwood\_Ave\_Sidewalk\_TIP\_#C-4916C\_2nd\_Supplemental\_Agreement.pdf
- ☐ Vicinity\_Map\_of\_Oakwood\_Sidewalk\_CMAQ\_Project.pdf
- ☐ Oakwood\_Avenue\_Sidewalk\_#2\_7-23-18.pdf

NORTH CAROLINA  
CABARRUS COUNTY

**2<sup>nd</sup> SUPPLEMENTAL AGREEMENT**

DATE: 6/27/2018

NORTH CAROLINA DEPARTMENT OF  
TRANSPORTATION

TIP #: C-4916C

AND

WBS ELEMENTS: PE 44016.1.F3

ROW 44016.2.F3

CITY OF KANNAPOLIS

CON 44016.3.F3

FEDERAL-AID #: CMS-1034(9)

CFDA #: 20.205

TOTAL SUPPLEMENTAL FUNDS [NCDOT PARTICIPATION] \$1,148,800

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, the Department and the Municipality on 5/22/2014, entered into a certain Project Agreement for the original scope: construction of sidewalk on Oakwood Avenue from Windsor Drive to Rogers Lake Road, programmed under Project C-4916C; and,

WHEREAS, on 4/18/2016, the Department, in concurrence with the Cabarrus-Rowan Metropolitan Planning Organization, allocated additional Congestion Mitigation and Air Quality (CMAQ) funds for the Project; and,

WHEREAS, the Department, in concurrence with the Cabarrus-Rowan Metropolitan Planning Organization, reallocated Congestion Mitigation and Air Quality (CMAQ) funds from cancelled Project C-5603C to increase funding on this Project,

NOW THEREFORE, the parties wish to supplement the aforementioned Agreement whereby the following provisions are amended:

## FUNDING

The Department's original participation was \$880,000. The Department agrees to reimburse the Municipality an additional \$1,148,800 of Congestion Mitigation and Air Quality funds. The Municipality will provide \$287,200 as their local match and all costs that exceed the total estimated funding, per the Revised Funding Table below:

**REVISED FUNDING TABLE**

<b>Fund Source</b>	<b>Federal Funds Amount</b>	<b>Reimbursement Rate</b>	<b>Non-Federal Match \$</b>	<b>Non-Federal Match Rate</b>
Congestion Mitigation and Air Quality (orig. agreement)	\$630,000	80 %	\$157,500	20 %
CMAQ (1 <sup>st</sup> supp. Agreement)	\$250,000	80 %	\$62,500	20 %
CMAQ (2 <sup>nd</sup> supp. Agreement)	\$1,148,800	80 %	\$287,200	20 %
Sub-totals	2,028,800		\$507,200	
<b>Total Estimated Funding</b>		<b>\$2,536,000</b>		

Except as hereinabove provided, the Agreement heretofore executed by the Department and the Municipality on 5/22/2014, is ratified and affirmed as therein provided.

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: \_\_\_\_\_

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 \_\_\_\_\_ (Governing Board) of the City of Kannapolis as  
attested to by the signature of \_\_\_\_\_, Clerk of the

\_\_\_\_\_ (Governing Board) on \_\_\_\_\_ (Date)

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

(SEAL)

\_\_\_\_\_  
(FINANCE OFFICER)

Federal Tax Identification Number

\_\_\_\_\_  
Remittance Address:

\_\_\_\_\_  
City of Kannapolis

\_\_\_\_\_  
DEPARTMENT OF TRANSPORTATION

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

(CHIEF ENGINEER)

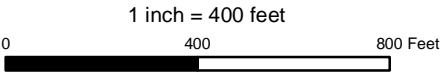
DATE: \_\_\_\_\_

APPROVED BY BOARD OF TRANSPORTATION ITEM O: \_\_\_\_\_ (Date)





# OAKWOOD AVENUE SIDEWALK CMAQ



**N**  
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.



**CITY OF KANNAPOLIS, NORTH CAROLINA  
ORDINANCE AMENDING THE OAKWOOD AVENUE SIDEWALK  
CAPITAL PROJECT ORDINANCE  
Amendment #18-2**

**BE IT ORDAINED** by the City Council of the City of Kannapolis, North Carolina meeting in open session this 23<sup>rd</sup> day of July, 2018, that the following amendment to the Oakwood Avenue Sidewalk Capital Project Ordinance for the City of Kannapolis, North Carolina is hereby adopted:

**FUND 235: OAKWOOD AVENUE SIDEWALK**

**SECTION I:** Increase Fund Revenue Estimate as follows:

Increase Transfer from General Funds (23500-39200)	\$ 287,200
Increase funds from State Grants (23500-34000)	\$ 1,148,800

**SECTION II:** Increase Fund Expenditures as follows:

Capital Outlay (23500-59200)	\$ 1,436,000
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This Ordinance is approved and adopted this 23<sup>RD</sup> day of July, 2018.

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

ATTEST:

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



**City of Kannapolis  
City Council Meeting  
July 23, 2018  
Staff Report**

**TO:** Mayor and City Council  
**FROM:** Wilmer Melton III, Director of Public Works  
**TITLE:** Oakwood Avenue Sidewalk Project Construction Engineering Inspection (CEI) Services Contract (TIP# C-4916C)

**A. Action Requested by City Council**

**Motion to award the Oakwood Avenue Sidewalk Project CEI Services Contract to Alley, Williams, Carmen & King, Inc. (AWCK) Consulting Engineers in the amount of \$143,031.06 and authorize the City Manager to execute contract.**

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

Majority present at meeting

**C. Background**

In March of 2017, we received letters of interest from prospective consultants on the Oakwood Avenue Sidewalk Project (TIP #C-4916C) for CEI Services and Alley, Williams, Carmen and King, Inc. (AWCK) was the selected firm to perform this work.

NCDOT has also reviewed the attached contract and cost and is in concurrence. Therefore, it is my recommendation that City Council award the CEI Services for the Oakwood Avenue Sidewalk Project to AWCK.

**D. Fiscal Considerations**

Funding for this work is covered as a part of the Oakwood Avenue Project Ordinance.

**E. Policy Issues**

None

**F. Legal Issues**

None

<b>G. Alternative Courses of Action and Recommendation</b>
--

1. **Award the Oakwood Avenue Sidewalk Project CEI Services Contract to Alley, Williams, Carmen & King, Inc. (AWCK) in the amount of \$143,031.06 and authorize the City Manager execute contract. (Recommended)**
2. Take no action.
3. Table to a future meeting.

ATTACHMENTS:

File Name

- ☐ Services\_Contract\_(Professional)\_(Federally\_Assisted\_Projects-AlleyWilliamsCarmenKing)\_6-26-18.doc
- ☐ C-4916C\_Exhibit\_A.pdf
- ☐ C-4916C\_Exhibit\_B.pdf
- ☐ C-4916C\_Exhibit\_C.pdf

**STATE OF NORTH CAROLINA**

**CITY OF KANNAPOLIS**

**SERVICES CONTRACT  
(Engineer/Uniform Guidance)**

This Contract (the "Contract") is made and entered into as of the \_\_\_\_ day of July, 2018, by the City of Kannapolis ("City") and Alley, Williams, Carmen & King, Inc. ("Engineer").

**Sec. 1. Engineer Authority.** The Engineer is a firm licensed to do business in the State of North Carolina.

**Sec. 2. Services and Scope to be Performed.** The Engineer shall perform the services described herein for the construction of a sidewalk on Oakwood Avenue (TIP Project C-4916C) as set forth in Exhibit "A" attached hereto and incorporated herein (the "Project"). In this Contract, "services" means the services that the Engineer is required to perform pursuant to this Contract and all of the Engineer's duties to the City that arise out of this Contract. Any amendments, corrections, or change orders by either party must be made in writing signed in the same manner as the original. Engineer must perform all services required of it under this Agreement with that degree of skill, care and diligence normally shown by a consultant performing services of a scope and purpose and magnitude comparable with the nature of the services to be provided under this Agreement.

**Sec. 3. Complete Work without Extra Cost.** Unless otherwise provided, the Engineer shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary related to the Project.

**Sec. 4. Compensation.** The City shall pay the Engineer for the services in Exhibit "B" estimated to be \$143,031.06. Any additional services needed beyond regularly scheduled services may require additional charges. The City shall not be obligated to pay the Engineer any payments, fees, expenses, or compensation other than those authorized by this section or authorized by a duly approved amendment or change order.

The CEI portion of this proposal is calculated using 165 hours/month per NCDOT format for CEI fee calculations. The duration of this project is approximately 6 months. The CEI fee will be based on the actual number of hours required for this project. The Construction Administration is based on Engineer's understanding of the tasks associated with the project. The CA fee will be based on the actual number of hours required for this project. The Direct Expenses are estimated based on our understanding of the project. Actual billing of Direct Expenses will be based on actual expenses incurred. This estimated fee does not include services related to audits which may occur after the completion of construction. Any services required of the engineer after project completion will be billed on an hourly basis.

This fee shall be paid to the Engineer in accordance with Section 4. The Engineer will upon review and approval from NCDOT adjust on a yearly basis the approved overhead calculation. For this project the initial approved overhead rate for the Engineer is 134.75% with a cost of capital of 0.2457%. The initial overhead rate for Subconsultant, PSI, Inc. is 176.67% with a cost of capital of 0.760%. Overhead rates for actual cost agreements are not provisional and there will be no reconciliation to true up actual period costs. Once the NCDOT Office of Inspector General issues an acceptance letter for the current year's overhead rate, then the Engineer will at that time begin billing the updated rate. In addition, hourly pay rates are subject to be adjusted yearly in July. Compensation will be based on the hourly pay rates at the time of work. The hourly rates in this proposal are based on May 2018 and are subject to change in July 2018. Any additional services approved and authorized by the City in advance shall be compensated as authorized in accordance with the terms agreed to by both parties in an executed Contract Amendment.

**Sec. 5. Term.** This Contract shall begin upon execution of contract by all parties (the "Commencement Date") with an estimated duration of six (6) months (the "Term").

**Sec. 6. Engineer's Billings to City.** Payments will be made in accordance with Section 4. Engineer shall submit an invoice to the City of Kannapolis' Finance Department upon completion of the Project. Upon receipt of the pay request the City will verify the amounts and if correct, will authorize payment. Final payment shall be made to the Engineer within thirty (30) days after submittal by Engineer. Should a discrepancy arise, the City shall notify the Engineer within sixty (60) days after invoice submittal.

## **Sec. 7. Insurance.**

### **A. Insurance Coverage**

Engineer shall obtain insurance to satisfy the requirements hereunder. The policies shall be with companies authorized to do business in North Carolina and rated "A" or above by A.M. Best Company. Engineer, individually or by and through its subconsultants, shall satisfy the following requirements and provide the following coverages:

#### **(a) General Requirements.**

1. Engineer shall name the City as an additional insured under the automobile, commercial and umbrella liability policies required by this section.
2. Engineer's insurance shall be primary of any self-funding and/or insurance otherwise carried by the City for all loss or damages arising from Engineer's operations under this Agreement. Engineer and each of its subconsultants shall and does waive all rights of subrogation against the City.
3. City shall be exempt from, and in no way liable for any sums of money that may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of Engineer and/or subconsultant providing such insurance.
4. Prior to execution of this Contract by City, Engineer shall provide the certificates of insurance and endorsements documenting that the insurance requirements-set forth in this paragraph have been met, and that the City be given thirty (30) days' written notice of any intent to amend coverage or make material changes to or terminate any policy by either the insured or the insurer. Engineer shall further provide such certificates of insurance to the City at any time requested by the City after the execution of this Agreement, and shall provide such certificates within five (5) days after the City's request. The City's failure to review a certificate of insurance sent by or on behalf of Engineer shall not relieve Engineer of its obligation to meet the insurance requirements set forth in this Agreement.
5. Should any or all of the required insurance coverage be self-funded/self-insured, Engineer shall furnish to the City a copy of the Certificate of Self-Insurance or other documentation from the North Carolina Department of Insurance.

#### **(b) Types of Insurance.**

1. **Automobile Liability.** Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than \$1,000,000 bodily injury each person, each accident and \$1,000,000 property damage, or \$1,000,000 combines single limit-bodily injury and property damage.
2. **Commercial General Liability.** Bodily injury and property damage liability as shall protect Engineer and any subconsultant performing work under this Agreement, from claims of bodily injury or property damage which arise from operation of this Agreement, whether such operations are performed by Engineer, any subconsultant, or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate, or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products, operations, personal injury liability and contractual liability, assumed under the indemnity provision of this Agreement.

3. Workers' Compensation Insurance. Engineer shall meet the statutory requirements of the State of North Carolina, \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit.
  4. Umbrella. Umbrella liability coverage of no less than \$2,000,000.
  5. Professional errors and omissions ("E & O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000), combined single limits per occurrence and aggregate.
- (c) Certificates of all required insurance and endorsements shall be furnished to the City and shall contain the provision that the City will be given thirty (30) days advance written notice of any intent to amend or terminate by either the insurance or the insuring company.
- (d) Failure to maintain the insurance coverage required in this paragraph is a material default subject to termination of this Agreement.

**B. Notice of Cancellation**

Engineer shall notify the City, in writing, as required in Sec. 9, immediately upon learning of cancellation or reduction of the insurance afforded by its policy.

**Sec. 8. Attachments.** The following attachments (whether or not executed) are made a part of this Contract and incorporated herein by reference: Exhibit "A", Exhibit "B" and Exhibit "C". In the event an interpretation conflict exists between the principal contract terms and the terms of the Exhibits, the terms, conditions and provisions of the principal contract shall prevail.

**Sec. 9. Notice.** All notices that may be proper or necessary to be served or made hereunder shall be in writing and will be deemed delivered when: (a) Actually received with verifiable evidence thereof; (b) Upon receipt by sender of a certified mail, return receipt signed by an employee or agent of the Party; (c) Upon proof of delivery by a nationwide provider of next-day delivery services and addressed to the respective other Party at the address set forth in this Agreement or such other address as the Party may have designated by notice or Agreement amendment to the other Party. Consequences to be borne due to failure to receive a notice due to improper notification by the intended receiving Party of a new address will be borne by the intended receiving Party. A change of address, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this Contract shall be deemed given at the time of actual delivery, if it is personally delivered.

The addressee of the Parties to this Agreement are as follows:

To the City:

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

To the Engineer:

Jeffery D. Moody  
Vice-President  
Alley, Williams, Carmen & King, Inc.  
120 South Main Street  
Kannapolis, North Carolina 28081  
Telephone: 704-938-1515

**Sec. 10. Indemnification.** The Engineer shall defend, indemnify, and save harmless the City, its agents, officers, and employees, from and against all charges that arise in any manner from, in connection with, or out of this Contract as a result of the acts or omissions of the Engineer or subconsultants or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable except for damage or injury caused solely by the negligence of the City its agents, officers, or employees. In performing its duties under this section, the Engineer shall at its sole expense defend the City, its agents, officers, and employees with legal counsel reasonably acceptable to City. As used in this subsection – "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, expenses, interest, reasonable attorney's fees, and amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders. This section shall remain in force despite termination of this Contract (whether by expiration of the term or otherwise) and termination of the services of the Contract.

**Sec. 11. Non-appropriation Clause.** If this Contract is for multiple years or is automatically renewed for additional years, Engineer acknowledges that the City is a governmental entity, and the contract validity is based upon the availability of public funding under the authority of its statutory mandate. In the event that public funds are unavailable and not appropriated for the performance of City's obligations under this contract, then this contract shall automatically expire without penalty to the City, thirty (30) days after written notice to Engineer advising of the unavailability and non-appropriation of public funds. It is expressly agreed that the City shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this Contract, but only as an emergency fiscal measure during a substantial financial crisis which affects generally its governmental operations.

**Sec. 12. Termination for Cause.** If the Engineer shall fail to fulfill in a timely, professional and proper manner all obligations under this contract, or should the Engineer violate any of the covenants, agreements, or stipulations of this contract, the City shall have the right to terminate this contract immediately by giving written notice to the Engineer of such termination and specifying the effective date thereof at least twenty-one (21) days before the effective date of such termination. In a like manner, if the City shall fail to fulfill in a timely, professional and proper manner all obligations under this contract, or should the City violate any of the covenants, agreements, or stipulations of this contract, the Engineer shall have the right to terminate this contract immediately by giving written notice to the City of such termination and specifying the effective date thereof at least twenty-one (21) days before the effective date of such termination. In such event, Engineer shall be entitled to receive just and equitable compensation for any work satisfactorily completed pursuant to this contract. However, the City shall not be obligated to pay any remaining charges for work satisfactorily completed where there exists a right in favor of the City for refund, reimbursement or offset in connection with any obligations arising from the Engineer to the City.

**Sec. 13. Miscellaneous.**

- (a) Choice of Law and Forum. This Contract shall be deemed made in Cabarrus County, North Carolina. This Contract shall be governed by and construed in accordance with the laws of North Carolina. The exclusive forum and venue for all actions arising out of this Contract shall be the appropriate division of the North Carolina General Court of Justice, in Cabarrus County. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.
- (b) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out this Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.
- (c) Performance of Government Functions. Nothing contained in this Contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.
- (d) Severability. If any provision of this Contract shall be unenforceable, the remainder of this Contract shall be enforceable to the extent permitted by law.
- (e) Assignment, Successors and Assigns. Without the City's written consent, the Engineer shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out this Contract. Unless the City otherwise agrees in writing, the Engineer and all assigns shall be subject to all of the City's defenses and shall be liable for all of the Engineer's duties that arise out of this Contract and all of the City's claims that arise out of this Contract. Without granting the Engineer the right to assign, it is agreed that the duties of the Engineer that arise out of this Contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.
- (f) Compliance with Law. In performing all of the Work, the Engineer shall comply with all applicable law.
- (g) City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS ENGINEERS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND

WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONSULTANTS AND VENDORS UNDER CITY CONTRACTS.

- (h) EEO Provisions. During the performance of this Contract the Engineer agrees as follows:

The Engineer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Engineer shall take affirmative action to ensure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Engineer shall post in conspicuous places available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Engineer in all solicitations or advertisements for employees placed by or on behalf of the Engineer, state all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.

- (i) No Third Party Right Created. Independent Engineer. This Contract is intended for the benefit of the City and the Engineer and not any other person. This Contract is not intended to and does not constitute, create, give, rise to, or otherwise recognize a joint venture, partnership, corporation or other formal business association or organization of any kind between Engineer and the City. The rights and the obligations of the parties are only those set forth in this Contract. Engineer must perform under this Contract as an independent Engineer and not as a representative, employee, agent, or partner of the City.
- (j) Principles of Interpretation. In this Contract, unless the context requires otherwise the singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. Reference to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The word "person" includes natural persons, firms, companies' associations, partnerships, trusts, corporations, governmental agencies and units, and any other legal entities. TIME IS OF THE ESSENCE AS TO ALL PROVISIONS OF THIS CONTRACT.
- (k) Modifications. Entire Agreement. A modification of this Contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless the City Manager or other duly authorized official signs it for the City. This Contract contains the entire agreement between the parties pertaining to the subject matter of this Contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this Contract.
- (l) Dispute Resolution. All disputes arising between Engineer and City pursuant to performance of this Contract shall be resolved or attempted to be resolved before proceeding with litigation through the City's "Rules Implementing Mediated Settlement Conferences".
- (m) Confidentiality. Employees of Engineer in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Engineer covenants that all data, documents, discussion, or other information developed or received by Engineer or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Engineer without written authorization by City. City shall grant such authorization if disclosure is required by law. Engineer's covenant under this section shall survive the termination of this Agreement.
- (n) W-9 Form. Engineer shall provide a completed W-9 form to the City upon execution of this Contract.
- (o) E-Verify. For agreements that include construction or services, employers and their subconsultants with 25 or more employees in North Carolina as defined in Article 2 of Chapter 64 of the NC General Statutes must comply with E-Verify requirements to contract with the City. E-Verify is a Federal program operated by the US Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal



law. By executing this Contract, Engineer certifies that Engineer complies with the requirements of the E-Verify program.

- (p) The Project is a federally-assisted project requiring Engineer to comply with the Provisions for Contracts Under Federal Awards, contained in Exhibit "C." The following is the Uniform Guidance procurement policy compliance statement:

"Contracts funded with federal grant or loan funds must be procured in a manner that conforms with all applicable Federal laws, policies, and standards, including those under the Uniform Guidance (2 C.F.R. Part 200)."

[THE REMAINING PORTION OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the City of Kannapolis and the Engineer have caused this Contract to be executed under seal by their respective duly authorized agents or officers.

CITY OF KANNAPOLIS:

ALLEY, WILLIAMS, CARMEN & KING, INC.:

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

By: \_\_\_\_\_  
Jeffery D. Moody, P.E., Vice-President

APPROVED AS TO FORM:

\_\_\_\_\_  
Attorney for the City of Kannapolis

**APPROVAL BY CITY FINANCE OFFICER**

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

\_\_\_\_\_  
Eric Davis, Finance Director

## EXHIBIT "A"

1. Basic Services - The Engineer shall provide the following basic services for the Project:

A. Construction Administration:

- Meet with City Staff to review the project, conduct a project walk-through.
- Conduct a pre-construction conference to review specific project requirements with the selected contractor.
- Evaluate and approve subcontracts using NCDOT forms.
- Evaluate and monitor DBE utilization using NCDOT forms.
- Evaluate material submittals; we will coordinate this review with NCDOT.
- Conduct monthly construction meetings.
- Review partial pay applications on a monthly basis to verify quantities, record of DBE payment, sales tax receipts for the City's reimbursement, record of payment to employees per Davis-Bacon Labor regulations, and monitoring of Sediment Control measures.
- Review final change order at project completion, verify quantities and recommend final payment.
- Assist the City as needed when submitting for reimbursement to NCDOT.
- The Project Engineer will visit the project on a periodic basis.

B. Construction Engineering and Inspection (CEI):

- Provide construction inspection while the contractor is working to include daily project diaries and "no work" diaries during periods of no work on the project.
- Perform field acceptance testing of concrete
- Make concrete cylinders for testing of compressive strength
- Conduct Employee wage interviews

The above fee does not include the following items:

1. Fees due to the City or any other agency associated with the application/permit process.
2. Permit fees.
3. Record Drawings/Certifications
4. Printing Costs, Plans and Specifications
5. Quality Assurance Testing of Asphalt Pavements (NCDOT has typically done this for federal-aid projects)
6. Services required after the completion of the project (FHWA/NCDOT Audits, etc.).

## EXHIBIT "B"

Version: 2017.01.11.RUS

CEI and ALL TECHNICIANS' SCOPE and ESTIMATE (WITH SHIRT PREMIUM) by 8% (8%+STANDARD) or ON-CALL

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION  
PROFESSIONAL SERVICES MANAGEMENT UNIT

## Construction Engineering and Inspection (CEI)

WBS-44076.3.F3

OAKWOOD AVENUE SIDEWALK

TIP C-4916C

Choose YES or NO to  
Hide/Unhide Appropriate  
Estimate Sheets as dictated  
by Task Order Scope.

## ENGINEERING AND INSPECTION TECHNICIANS

			Regular Direct Labor	
AWCK, INC	Prime Contractor Technicians		\$ 32,735.34	Prime CEI Tech Salary Cost
AWCK, INC	Prime Contractor Overhead Audited -- FIELD	134.75%	\$ 44,110.87	\$ 76,846.21
PSI, INC	Subcontractor1 Technicians		\$ 352.00	Sub1 CEI Tech Salary Cost
PSI, INC	Subcontractor1 Overhead Audited -- FIELD	176.67%	\$ 621.88	\$ 973.88
SUBCONTRACTOR2 NAME	Subcontractor2 Technicians		\$ -	Sub2 CEI Tech Salary Cost
SUBCONTRACTOR2 NAME	Subcontractor2 Overhead Audited -- FIELD		\$ -	\$ -
SUBCONTRACTOR3 NAME	Subcontractor3 Technicians		\$ -	Sub3 CEI Tech Salary Cost
SUBCONTRACTOR3 NAME	Subcontractor3 Overhead Audited -- FIELD		\$ -	\$ -
Subtotal			\$ 77,820.09	\$ 77,820.09
Operating Margin (Fixed Fee Rate) (Usually 9%)			9.00%	\$ 7,003.81
Subtotal			\$ 84,823.90	
AWCK, INC	TOTAL PREMIUM LABOR - Prime Contractor		\$ 1,487.97	Prime TOTAL CEI Tech Cost
PSI, INC	TOTAL PREMIUM LABOR - Subcontractor1		\$ 16.00	Sub1 TOTAL CEI Tech Cost
SUBCONTRACTOR2 NAME	TOTAL PREMIUM LABOR - Subcontractor2		\$ -	Sub2 TOTAL CEI Tech Cost
SUBCONTRACTOR3 NAME	TOTAL PREMIUM LABOR - Subcontractor3		\$ -	Sub3 TOTAL CEI Tech Cost
TOTAL DIRECT SALARY COST CEI TECHNICIANS			\$ 86,327.87	\$ 86,327.87

## PROJECT MANAGEMENT/CONTRACT ADMINISTRATION

	Position	Direct Labor	
AWCK, INC	Prime Contractor Project Manager	\$ 18,667.60	Prime PM/CA Salary Cost
AWCK, INC	Prime Contractor Overhead	\$ 25,154.59	\$ 43,822.19
PSI, INC	Subcontractor1 Project Manager	\$ 890.40	Sub1 PM/CA Salary Cost
PSI, INC	Subcontractor1 Overhead	\$ 1,573.07	\$ 2,463.47
SUBCONTRACTOR2 NAME	Subcontractor2 Project Manager	\$ -	Sub2 PM/CA Salary Cost
SUBCONTRACTOR2 NAME	Subcontractor2 Overhead	\$ -	\$ -
SUBCONTRACTOR3 NAME	Subcontractor3 Project Manager	\$ -	Sub3 PM/CA Salary Cost
SUBCONTRACTOR3 NAME	Subcontractor3 Overhead	\$ -	\$ -
Subtotal		\$ 46,285.66	

Operating Margin (Fixed Fee Rate) (Usually 9%)	9.00%	\$	4,165.71
TOTAL DIRECT SALARY COST PMICA		\$	50,451.37

\$	46,285.66	\$	4,165.71
\$		\$	50,451.37

APPENDIX D (continued)

PROJECT DIRECT EXPENSES

TOTAL DIRECT EXPENSES	\$	6,116.07
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AGREEMENT COSTS AND FEES SUMMARY

Direct Salary Cost CEI Technicians	\$	86,327.87
Direct Salary Cost Project Management/Contract Administration	\$	50,451.37
Project Direct Expenses	\$	6,116.07
TOTAL AGREEMENT COSTS AND FEES	\$	142,895.31

AWCK, INC	Facilities Cost of Capital (Prime Contractor TECHNICIANS) FIELD	0.246%	\$	86.43
AWCK, INC	Facilities Cost of Capital (Prime Contractor PROJECT MANAGER) HOME	0.246%	\$	45.87
PSI, INC	Facilities Cost of Capital (Subcontractor 1 TECHNICIANS) FIELD	0.760%	\$	2.68
PSI, INC	Facilities Cost of Capital (Subcontractor 1 PROJECT MANAGER) HOME	0.760%	\$	6.77
SUBCONTRACTOR2 NAME	Facilities Cost of Capital (Subcontractor 2 TECHNICIANS) FIELD		\$	-
SUBCONTRACTOR2 NAME	Facilities Cost of Capital (Subcontractor 2 PROJECT MANAGER) HOME		\$	-
SUBCONTRACTOR3 NAME	Facilities Cost of Capital (Subcontractor 3 TECHNICIANS) FIELD		\$	-
SUBCONTRACTOR3 NAME	Facilities Cost of Capital (Subcontractor 3 PROJECT MANAGER) HOME		\$	-

TOTAL Non-DIRECT SALARY COST CEI TECHNICIANS & PMICA	\$	135.75
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TOTAL DIRECT and NON-DIRECT SALARY COST CEI TECHs & PMICA	\$	136,914.99
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Contingency

TOTAL AGREEMENT AMOUNT	\$	143,031.06
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FOR STAND-ALONE PURCHASE ORDERS ONLY -- ADDITIVE:

STAND-ALONE PO WILL BE WRITTEN FOR THIS AMOUNT

MANHOURS TECHNICIANS	1111
MANHOURS PROJECT MANAGEMENT	435
TOTAL MANHOURS	1546
LABOR COSTS	\$ 136,914.99
DIRECT EXPENSES	\$ 6,116.07
TOTAL COSTS	\$ 143,031.06

PRIME DIRECTS COST	\$	5,947.57
SUB1 DIRECTS COST	\$	168.50
SUB2 DIRECTS COST	\$	-
SUB3 DIRECTS COST	\$	-
	\$	6,116.07

Prime TOTAL CoC Cost	126.30	\$	PRIME TOTAL D&ND Salary COST	133,142.83
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Sub1 TOTAL CoC Cost	9.45	\$	Sub1 TOTAL D&ND Salary COST	3,772.16
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Sub2 TOTAL CoC Cost	-	\$	Sub2 TOTAL D&ND Salary COST	-
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Sub3 TOTAL CoC Cost	-	\$	Sub3 TOTAL D&ND Salary COST	-
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\$	135.75	\$	136,914.99
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TOTAL AGREEMENT AMOUNT	\$	143,031.06
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ENGINEERING AND INSPECTION - TECHNICIANS  
DIRECT LABOR COST SUMMARY  
OAKWOOD AVENUE SIDEWALK  
AWCK, INC

GRAND TOTAL FOR ALL CALENDAR YEARS										2017	TO	0
Personnel Classification / Employee Name	Regular Hours <sup>1</sup>	Overtime Hours <sup>2</sup>	Total Hours	Regular Rate <sup>3</sup>	Regular Labor Cost	Overtime Hours	Overtime Rate	Overtime Labor Cost	Shift Premium Hours	Shift Premium Rate	Shift Premium Labor Cost	Total Labor Cost
TOTALS	990	99	1089		\$32,735.34	99		\$1,487.97	0		\$ -	\$34,223.31

NOTES:

- 1 Estimated 165 hours / month  
2 Estimated 10% of Regular Hours  
3 Rates shown are Maximum Allowable Rates for purposes of establishing the Project CEI budget.

Actual Reimbursable Rates will be approved by the DEPARTMENT for each technician and shall not exceed the maximum allowable rates established for the classification.

TOTAL PREMIUM LABOR \$ 1,487.97



Total Labor Cost  
 \$368.00

**ENGINEERING AND INSPECTION - TECHNICIANS  
 DIRECT LABOR COST SUMMARY  
 OAKWOOD AVENUE SIDEWALK  
 PSI, INC**

Personnel Classification / Employee Name	CALENDAR YEAR										Shift Premium Hours	Shift Premium Rate	Shift Premium Labor Cost	Total Labor Cost
	Regular Hours <sup>1</sup>	Overtime Hours <sup>2</sup>	Total Hours	Regular Rate <sup>3</sup>	Regular Labor Cost	Overtime Hours	Overtime Rate	Overtime Labor Cost	Overtime Hours	Overtime Rate				
NCDOT Certified Technician	20	2	22	\$ 16.00	\$ 352.00	2	\$ 8.00	\$ 16.00			\$ 1.60	\$ -	\$ -	\$ 368.00
			0	\$ -	\$ -	0	\$ -	\$ -			\$ -	\$ -	\$ -	\$ -
			0	\$ -	\$ -	0	\$ -	\$ -			\$ -	\$ -	\$ -	\$ -
			0	\$ -	\$ -	0	\$ -	\$ -			\$ -	\$ -	\$ -	\$ -
			0	\$ -	\$ -	0	\$ -	\$ -			\$ -	\$ -	\$ -	\$ -
			0	\$ -	\$ -	0	\$ -	\$ -			\$ -	\$ -	\$ -	\$ -
			0	\$ -	\$ -	0	\$ -	\$ -			\$ -	\$ -	\$ -	\$ -
			0	\$ -	\$ -	0	\$ -	\$ -			\$ -	\$ -	\$ -	\$ -
			0	\$ -	\$ -	0	\$ -	\$ -			\$ -	\$ -	\$ -	\$ -
			0	\$ -	\$ -	0	\$ -	\$ -			\$ -	\$ -	\$ -	\$ -
			0	\$ -	\$ -	0	\$ -	\$ -			\$ -	\$ -	\$ -	\$ -
			0	\$ -	\$ -	0	\$ -	\$ -			\$ -	\$ -	\$ -	\$ -
			0	\$ -	\$ -	0	\$ -	\$ -			\$ -	\$ -	\$ -	\$ -
			0	\$ -	\$ -	0	\$ -	\$ -			\$ -	\$ -	\$ -	\$ -
			0	\$ -	\$ -	0	\$ -	\$ -			\$ -	\$ -	\$ -	\$ -
			0	\$ -	\$ -	0	\$ -	\$ -			\$ -	\$ -	\$ -	\$ -
			0	\$ -	\$ -	0	\$ -	\$ -			\$ -	\$ -	\$ -	\$ -
			0	\$ -	\$ -	0	\$ -	\$ -			\$ -	\$ -	\$ -	\$ -
			0	\$ -	\$ -	0	\$ -	\$ -			\$ -	\$ -	\$ -	\$ -
			0	\$ -	\$ -	0	\$ -	\$ -			\$ -	\$ -	\$ -	\$ -
<b>TOTALS</b>	20	2	22		\$ 352.00	2		\$ 16.00			0	\$ -	\$ -	\$ 368.00

TOTAL PREMIUM LABOR \$ 16.00

NOTES:  
<sup>1</sup> Estimated 165 hours / month  
<sup>2</sup> Estimated 10% of Regular Hours  
<sup>3</sup> Rates shown are Maximum Allowable Rates for purposes of establishing the Project CEI budget.  
 Actual Reimbursable Rates will be approved by the DEPARTMENT for each technician and shall not exceed the maximum allowable rates established for the classification.



**ENGINEERING AND INSPECTION - TECHNICIANS  
DIRECT LABOR COST SUMMARY  
OAKWOOD AVENUE SIDEWALK  
PSI, INC**

GRAND TOTAL FOR ALL CALENDAR YEARS 0 TO 0												
Personnel Classification / Employee Name	Regular Hours <sup>1</sup>	Overtime Hours <sup>2</sup>	Total Hours	Regular Rate <sup>3</sup>	Regular Labor Cost	Overtime Hours	Overtime Rate	Overtime Labor Cost	Shift Premium Hours	Shift Premium Rate	Shift Premium Labor Cost	Total Labor Cost
TOTALS	20	2	22		\$352.00	2		\$16.00	0		\$ -	\$368.00

**TOTAL PREMIUM LABOR \$ 16.00**

NOTES:

- <sup>1</sup> Estimated 165 hours / month  
<sup>2</sup> Estimated 10% of Regular Hours  
<sup>3</sup> Rates shown are Maximum Allowable Rates for purposes of establishing the Project CEI budget.  
Actual Reimbursable Rates will be approved by the DEPARTMENT for each technician and shall not exceed the maximum allowable rates established for the classification.

Total Labor Cost
\$ 18,667.60

**ENGINEERING MANAGEMENT/CONTRACT ADMINISTRATION**  
**DIRECT LABOR COST**  
**OAKWOOD AVENUE SIDEWALK**  
**AWACK, INC**

**Robert J. Stroup:**  
 Overtime is not allowed for  
 PROJECT MANAGERS.

CALENDAR YEAR									
Personnel Classification / Employee Name <sup>1</sup>	Regular Hours	Overtime Hours	Total Hours	Regular Rate	Regular Labor Cost	Overtime Hours	Overtime Rate	Overtime Labor Cost	Total Labor Cost
PROJECT MANAGER/DAVID LIPE	413		413	\$ 45.20	\$ 18,667.60	0	\$ 22.60	\$ -	\$ 18,667.60
					\$ -			\$ -	\$ -
					\$ -			\$ -	\$ -
					\$ -			\$ -	\$ -
					\$ -			\$ -	\$ -
<b>TOTALS</b>	<b>413</b>	<b>0</b>	<b>413</b>		<b>\$ 18,667.60</b>	<b>0</b>	<b>\$ 22.60</b>	<b>\$ -</b>	<b>\$ 18,667.60</b>

<sup>1</sup> One Management visit for prime firm is reimbursable every quarter  
 One Management visit from subcontractors is reimbursable two times per year

**ENGINEERING MANAGEMENT/CONTRACT ADMINISTRATION**  
**DIRECT LABOR COST SUMMARY**  
**OAKWOOD AVENUE SIDEWALK**  
**AWCK, INC**

		CALENDAR YEAR				TO			
		0				0			
Personnel Classification / Employee Name <sup>1</sup>	Regular Hours	Overtime Hours	Total Hours	Regular Rate	Regular Labor Cost	Overtime Hours	Overtime Rate	Overtime Labor Cost	Total Labor Cost
<b>TOTALS</b>	413	0	413		\$ 18,667.60	0		\$ -	\$ 18,667.60

<sup>1</sup> One Management visit for prime firm is reimbursable every quarter  
One Management visit from subcontractors is reimbursable two times per year

Total Labor Cost
\$ 890.40

**ENGINEERING MANAGEMENT/CONTRACT ADMINISTRATION**  
**DIRECT LABOR COST**  
**OAKWOOD AVENUE SIDEWALK**  
**PSI, INC**

Personnel Classification / Employee Name <sup>1</sup>	CALENDAR YEAR							Total Labor Cost
	Regular Hours	Overtime Hours	Total Hours	Regular Rate	Regular Labor Cost	Overtime Hours	Overtime Rate	Overtime Labor Cost
PROJECT MANAGER-Scott McCune	9		9	\$ 41.60	\$ 374.40	0	\$ 20.80	\$ -
Administrator-Mia Wyatt Husseini	4		4	\$ 12.00	\$ 48.00	0	\$ 6.00	\$ -
Principal Consultant-Rupesh Kadam	9		9	\$ 52.00	\$ 468.00	0	\$ 26.00	\$ -
			0		\$ -	0	\$ -	\$ -
<b>TOTALS</b>	22	0	22		\$ 890.40	0	\$ 52.80	\$ 890.40

<sup>1</sup> One Management visit for prime firm is reimbursable every quarter  
One Management visit from subcontractors is reimbursable two times per year

**ENGINEERING MANAGEMENT/CONTRACT ADMINISTRATION**  
**DIRECT LABOR COST SUMMARY**  
**OAKWOOD AVENUE SIDEWALK**  
**PSI, INC**

CALENDAR YEAR										0	TO	0
Personnel Classification / Employee Name <sup>1</sup>	Regular Hours	Overtime Hours	Total Hours	Regular Rate	Regular Labor Cost	Overtime Hours	Overtime Rate	Overtime Labor Cost	Total Labor Cost			
TOTALS	22	0	22		\$ 890.40	0		\$ -	\$ 890.40			

<sup>1</sup> One Management visit for prime firm is reimbursable every quarter  
One Management visit from subcontractors is reimbursable two times per year

CONTRACT ENGINEERING AND INSPECTION  
DIRECT EXPENSES  
FIELD EQUIPMENT AND SUPPLIES FURNISHED BY  
OAKWOOD AVENUE SIDEWALK

TOTAL DIRECT COSTS: \$ 6,116.07

\* Vehicle Base Rates per M. L. Sylvester, PE memo dated January 5, 2017 entitled "Vehicle Base Rates for Construction Engineering & Inspection".

Phones, Computers, iPads, Data Plans, WiFi, etc. are in Overhead.

Item No.	Description	Months	Quantity	Unit	Unit Price	Unit Tax	Total Unit Cost	Salvage Value	Total Cost
1	Project Vehicles - 2 wheel drive - # Vehicles *	6	1	veh-mo	\$770.00		\$ 770.00		\$ 4,620.00
2	Gas Reimbursement: 2-WD @ \$0.13 per mile Gas reimbursement based on \$2.13/gal/16 mpg	6	200	miles	\$0.13				\$ 156.00
3	Project Vehicles - 4 wheel drive - # Vehicles *			veh-mo	\$840.00		\$ 840.00		\$ -
4	Gas Reimbursement: 4-WD @ \$0.15 per mile Gas reimbursement based on \$2.13/gal/14mpg			miles	\$0.15				\$ -
5	Project Vehicles - Survey Vehicle - # Vehicle			veh-mo			\$ -		\$ -
6	Gas Reimbursement: Survey Vehicle @ \$TBD per mile Gas reimbursement based on \$TBD/gal/18 mpg			miles			\$ -		\$ -
7	Communication (# mobile phones). -- RECOVERED THROUGH FIRM'S OVERHEAD.			mo			\$ -		\$ -
8	Survey Equipment			Actual Cost (Not-to-Exceed)			\$ -		\$ -
9	Towler 3450 Thick Nuclear Gauges (Rent/Purchase)			ea			\$ -		\$ -
10	Leak Test, Calibration, Cleaning and Lubrication			yr			\$ -		\$ -
11	Yearly NCENR License Fee of			yr			\$ -		\$ -
12	Quarterly Testing of 10 Badges per test			yr			\$ -		\$ -
13	Mounted Transportation Box			Actual Cost (Not-to-Exceed)			\$ -		\$ -
14	Safety Harness w/ 2 Lanyards			Actual Cost (Not-to-Exceed)			\$ -		\$ -
15	Field Office/ Rent Monthly)			mo			\$ -		\$ -
16	Field Office Set up			mo			\$ -		\$ -
17	Utilities (Monthly)			mo			\$ -		\$ -
18	Office Furniture			Actual Cost (Not-to-Exceed)			\$ -		\$ -
19	Monthly Office supplies (\$50 per month) -- RECOVERED THROUGH FIRM'S OVERHEAD.			mo			\$ -		\$ -
20	Computer (Laptop) -- RECOVERED THROUGH FIRM'S OVERHEAD.			Actual Cost (Not-to-Exceed)			\$ -		\$ -
21	Concrete Air Pet			Actual Cost (Not-to-Exceed)			\$ -		\$ -
22	Concrete Slump Cone			Actual Cost (Not-to-Exceed)			\$ -		\$ -
23	Conventional Density Equipment Set			Actual Cost (Not-to-Exceed)			\$ -		\$ -
24	Cooler			Actual Cost (Not-to-Exceed)			\$ -		\$ -
25	Cooler Maintenance (Yearly)			Actual Cost (Not-to-Exceed)			\$ -		\$ -
26	Fax			Actual Cost (Not-to-Exceed)			\$ -		\$ -
27	Trips by Project Management			mi	\$ 0.535		\$ 0.535		\$ -
28	PEF Prime = 4 trips per year @ _____ miles (Total # of Trips)			mi	\$ 0.535		\$ 0.535		\$ -
29	PEF Subconsultant1 = 2 trips per year @ _____ miles (Total # of Trips)			mi	\$ 0.535		\$ 0.535		\$ -
30	PEF Subconsultant2 = 2 trips per year @ _____ miles (Total # of Trips)			mi	\$ 0.535		\$ 0.535		\$ -
31	PEF Subconsultant3 = 2 trips per year @ _____ miles (Total # of Trips)			mi	\$ 0.535		\$ 0.535		\$ -
32	-- Miscellaneous Direct Costs, etc. --						\$ -		\$ -
33							\$ -		\$ -
34	PSI, Inc. lab services 50 cylinders at \$20.00/each	50	1	each	\$ 20.000		\$ 20.000		\$ 1,000.00
35	PSI Nuclear Density Equipment Fee-estimated at 5 days	5	1	days	\$ 25.000		\$ 25.000		\$ 125.00
36							\$ -		\$ -
37							\$ -		\$ -
38	Project Engineer mileage	67	6	miles	\$ 0.535		\$ 0.535		\$ 215.07
39	Miscellaneous						\$ -		\$ -
40	Miscellaneous						\$ -		\$ -
41	Miscellaneous						\$ -		\$ -
42	Miscellaneous						\$ -		\$ -

TOTAL DIRECT COSTS: \$ 6,116.07





## EXHIBIT "C"

PAT McCRORY  
Governor

NICHOLAS J. TENNYSON  
Secretary

### Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

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NCDOT is providing the following list of contract provisions (as noted by the US Code or the Code of Federal Regulations) that should be included in all contracts or subcontracts that include federal funding.

- Title 2 CFR 200 is the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* and is applicable government-wide to any contract with Federal Funding. Appendix II contains a list of contract provisions that should be included in contracts.
- Title 23 CFR 172 is the *Procurement, Management, and Administration of Engineering and Design Related Services*, subject to the provisions of 23 USC 112(a) – related to construction. Contract provisions that are not already included in 2 CFR 200, are listed below. These should be included in all professional engineering contracts.
- Construction Contracts, funded under Title 23 of the US Code (Federal-aid Highway Program), have specific required contract provisions. Resources to build the contract proposal and include appropriate provisions are listed below.

**IMPORTANT: It is the Local Government Agency responsibility to ensure all provisions are included in relevant contracts, in which federal funds are participating. You may need to consult with your legal representative or contracts office to ensure your contracts are in compliance.**

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### ALL CONTRACTS AND SUB-CONTRACTS WITH FEDERAL FUNDS

Pursuant to Title 2 Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, **the following list of contract provisions should be incorporated into every sub-recipient contract, if federal funds will be used on the contract.** Please note applicability requirements.

#### 2 CFR 200, Appendix II

<https://www.gpo.gov/fdsys/pkg/CFR-2014-title2-vol1/xml/CFR-2014-title2-vol1-part200-appII.xml>

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.



(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage

determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research



work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

(I) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(J) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(K) See §200.322 Procurement of recovered materials.

## PROFESSIONAL SERVICES CONTRACTS

Pursuant to Title 23 CFR 172, *Procurement, Management, and Administration of Engineering and Design Related Services*, the following contract provisions should be included, either by reference or by physical incorporation into the language of each contractor or subcontract, as applicable. Provisions that are **not** already noted in 2 CFR 200 are in **bold**.

- (i) Administrative, contractual, or legal remedies in instances where consultants violate or breach contract terms and conditions, and provide for such sanctions and penalties as may be appropriate;
- (ii) **Notice of contracting agency requirements and regulations pertaining to reporting;**
- (iii) **Contracting agency requirements and regulations pertaining to copyrights and rights in data;**
- (iv) **Access by recipient, the subrecipient, FHWA, the U.S. Department of Transportation's Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the consultant which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions;**
- (v) **Retention of all required records for not less than 3 years after the contracting agency makes final payment and all other pending matters are closed;**
- (vi) Standard DOT Title VI Assurances (DOT Order 1050.2);
- (vii) **Disadvantaged Business Enterprise (DBE) assurance, as specified in 49 CFR 26.13(b);**
- (viii) **Prompt pay requirements, as specified in 49 CFR 26.29;**
- (ix) **Determination of allowable costs in accordance with the Federal cost principles;**
- (x) **Contracting agency requirements pertaining to consultant errors and omissions;**
- (xi) **Contracting agency requirements pertaining to conflicts of interest, as specified in 23 CFR 1.33 and the requirements of this part; and**
- (xii) A provision for termination for cause and termination for convenience by the contracting agency including the manner by which it will be effected and the basis for settlement.
- (xiii) All contracts and subcontracts exceeding \$100,000 shall contain, either by reference or by physical incorporation into the language of each contract, a provision for lobbying certification and disclosure, as specified in 49 CFR part 20.

## CONSTRUCTION CONTRACTS

NCDOT has developed guidance to help Local Government Agencies build a contract proposal for highway construction projects that complies with applicable federal and state requirements. LGAs should reference this website first for assistance and direction on developing contract documents:

<https://connect.ncdot.gov/municipalities/Pages/Bid-Proposals-for-LGA.aspx>

For other non-highway construction or service contracts, please reference FHWA's Contract Provision matrix, noting applicability requirements:

<http://www.fhwa.dot.gov/construction/contracts/provisions.cfm>



**City of Kannapolis  
City Council Meeting  
July 23, 2018  
Staff Report**

**TO:** Mayor and City Council  
**FROM:** Irene Sacks, Director of Economic & Community Development  
**TITLE:** Leases for 443 & 479 N. Cannon Blvd

**A. Action Requested by City Council**

**Motion to authorize the City Manager to execute leases for 443 and 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 nearly complete, the City engaged a broker to market the remaining commercial spaces to attract new tenants. Chip Mark with Mark Real Estate Advisors has brought two leases to the City for approval: Five-year lease of 443 N. Cannon Blvd to Larissa Olivares, Leslie Olivares, and Lizet Candiani for an event and meeting space; and five-year lease of 479 N. Cannon Blvd to Jose Espinal for a retail clothing store.

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

**D. Fiscal Considerations**

The leases will generate \$51,700 combined in the first year in revenue to the City as owners of the Shopping Center (with annual increases).

Following the approval of these leases, there are two vacant space remaining in the College Station shopping center with 1,600 sf each.

**E. Policy Issues**

None

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

<b>G. Alternative Courses of Action and Recommendation</b>
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1. **Motion to authorize the City Manager to execute leases for 443 and 479 N. Cannon Blvd with minor changes as needed. (Recommended)**
2. Do not authorize the execution of the lease.
3. Table action to a future meeting.

**ATTACHMENTS:**

File Name

- Public\_Notice\_(443\_and\_479\_N\_Cannon\_Bld)\_7-23-2018.docx
- 443\_N.\_Cannon\_Lease.docx
- 479\_N.\_Cannon\_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:

443 and 479 N. Cannon Blvd  
Kannapolis, North Carolina

The City intends to lease the property at 443 N. Cannon Blvd to Lizet Candiani, Larissa Olivares, and Leslie Olivares 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: \$2,975.00, Year 2: \$3,064.25, Year 3: \$3,156.18, Year 4: \$3,250.86, Year 5: \$3,348.39.

The City intends to lease the property at 479 N. Cannon Blvd to Jose Espinal 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: \$1,200.00, Year 2: \$1,224.00, Year 3: \$1,248.48, Year 4: \$1,273.45, Year 5: \$1,298.92.

All persons interested in the leases 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, July 23, 2018. At that time the board intends to authorize the leases of 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](mailto:tcline@kannapolisnc.gov)*** as soon as possible but no later than 48 hours before the scheduled event.

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**ADVERTISING INSTRUCTIONS:**

To be published as a Legal Ad on **FRIDAY JULY 13, 2018**

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

Bridgette Bell, City Clerk

(704) 920-4303

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

**COLLEGE STATION LEASE AGREEMENT**

**Between**

**City of Kannapolis**

**and**

**Lizet Candiani, Larissa Olivares, Leslie Olivares**

Tenant \_\_\_\_\_

## INDEX TO COLLEGE STATION LEASE

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ARTICLE III.	<u>Construction and Acceptance of Demised Premises</u>
ARTICLE IV.	<u>Monthly Payment</u>
ARTICLE V.	<u>Common Area</u>
ARTICLE VI.	<u>Use and Care of Premises</u>
ARTICLE VII.	<u>Maintenance and Repair of Premises</u>
ARTICLE VIII.	<u>Alterations</u>
ARTICLE IX.	<u>Landlord's Right of Access; Use of Roof</u>
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ARTICLE XII.	<u>Indemnity, Public Liability Insurance and Fire Extended Coverage Insurance</u>
ARTICLE XIII.	<u>Non-Liability for Certain Damages</u>
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ARTICLE XVI.	<u>Assignment and Subletting</u>
ARTICLE XVII.	<u>Property Taxes</u>
ARTICLE XVIII.	<u>Default by Tenant and Remedies</u>
ARTICLE XIX.	<u>Mechanics' Liens</u>
ARTICLE XX.	<u>Holding Over</u>
ARTICLE XXI.	<u>Subordination</u>
ARTICLE XXII.	<u>Merchant's Association</u>
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ARTICLE XXVI.	<u>Landlord's Lien</u>
ADDENDUM A .....	Hazardous Materials
ADDENDUM B .....	Additional Lease Provisions
EXHIBIT "A" .....	Shopping Center Site Plan Showing Premises
EXHIBIT "B" .....	Legal Description of Shopping Center
EXHIBIT "C" .....	Description of Landlord's and Tenant's Work
EXHIBIT "D" .....	Shopping Center Rules and Regulations
EXHIBIT "E" .....	Definition of Common Area Costs
EXHIBIT "F" .....	Landlord's Sign Criteria

Tenant \_\_\_\_\_



THE STATE OF NORTH CAROLINA

COUNTY OF CABARRUS

This lease, entered into this \_\_\_\_\_ day of July, 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": Lizet Candiani, Larissa Olivares, Leslie Olivares
- d) Tenant's mailing address: 955 East 13<sup>th</sup> St, Kannapolis, NC 28083
- e) Tenant's trade name: TBD
- f) Tenant's address in Shopping Center: 443 N. Cannon Blvd, Kannapolis, NC
- g) "Premises": approximately 4,200 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: Events and meeting rental facility
- k) Minimum Guaranteed Rental: per month Year 1: \$2,975.00, Year 2: \$3,034.50, Year 3: \$3,095.19, Year 4: \$3,157.09, Year 5: \$3,220.24
- l) Initial Common Area Maintenance Charge per month under Section 5.3: \$262.50 per month (\$0.75) per square foot per year).
- m) Initial Insurance Escrow Payment per month under Section 12.3: \$87.50 per month (\$0.25 per square foot per year).
- n) Initial Tax Escrow Payment per month under Section 17.2: \$0 per month (\$0.00 per square foot per year).
- o) Security Deposit: One month's total payment

Tenant \_\_\_\_\_

1.2 The sum of:

	Year 1	Year 2	Year 3	Year 4	Year 5
Initial Minimum Guaranteed Rental; and	\$2,975.00	\$3,034.50	\$3,095.19	\$3,157.09	\$3,220.24
Initial Common Area Maintenance Charge; and	\$262.50	\$267.75	\$273.11	\$278.57	\$284.14
Initial Insurance Escrow Payment; and	\$87.50	\$89.25	\$91.04	\$92.86	\$94.71
Initial Tax Escrow Payment; and	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Initial Monthly Payment Total	\$3,325.00	\$3,391.50	\$3,459.33	\$3,528.52	\$3,599.09

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, if any, 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 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 August 15, 2018 or earlier. The Commencement Date of this lease shall be on August 15, 2018 or earlier. Occupancy of the Premises by Tenant prior to the

Tenant \_\_\_\_\_

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 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. 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 be 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 maintain as part of the Common Area the hard surface parking area within the Shopping Center as shown on Exhibit B or in reasonable proximity thereto, it being expressly agreed, however, that in addition to the rights reserved to Landlord in Section 5.1 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

Tenant \_\_\_\_\_

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 (l).

**ARTICLE VI. Use and Care of Premises.**

6.1 The Premises may be used only for the purpose or purposes specified in Section 1.1 (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 (i) advertise that it sells products or services at "discount", "cut-price", or "cut-rate" prices, (ii) permit any objectionable or unpleasant odors to emanate from the Premises, (iii) 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, (iv) place an antenna, awning or other projection on the exterior of the Premises; (v) distribute leaflets or other solicit advertising material in the Common Area; (vi) 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, (vii) 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

Tenant \_\_\_\_\_

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 7.1 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 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 Tenant acknowledges that the air conditioning and heating equipment (HVAC) is in proper working condition upon execution of this Lease. Repair and 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

Tenant \_\_\_\_\_

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 approved 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 approved 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, at Tenant's expense, 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 or monument sign (if any) Furthermore, Tenant waives any liability on the part of Landlord arising out of Tenant's use of the pylon or monument sign and agrees to hold Landlord harmless from and against any liability arising out of Tenant's use of such sign.

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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, internet 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 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 and shall name the Landlord as additional insured. 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 XVIII 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.

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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(m) 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 Payments 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. Landlord shall not 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

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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 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.

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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 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

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with Landlord under this Section 17.2 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(n) 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.

17.4 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.

17.5 Any payment to be made pursuant to this Article XVII 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,

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- 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.

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 18.5 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 18.4 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.

18.5 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

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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.

18.6 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.

18.7 Upon receipt from Tenant of the sum stated in Section 1.1(o) 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.

18.8 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.

18.9 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

Tenant \_\_\_\_\_

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.

18.10 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

Tenant \_\_\_\_\_

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

**ARTICLE XXV. Miscellaneous.** 25.1 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.

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

25.3 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.

25.4 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.

25.5 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.

25.6 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 \_\_\_\_\_ and \_\_\_\_\_. 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.

25.7 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.

Tenant \_\_\_\_\_

25.8 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.

25.9 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.

25.10 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 XXVI. 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, 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 \_\_\_\_\_

**EXECUTED BY LANDLORD**, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**LANDLORD:**

\_\_\_\_\_

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

Its: \_\_\_\_\_

**EXECUTED BY TENANT**, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**TENANT:**

\_\_\_\_\_

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

Its: \_\_\_\_\_

This lease is subject to approve by the Kannapolis City Council, its City Manager, or its designee.

Tenant \_\_\_\_\_

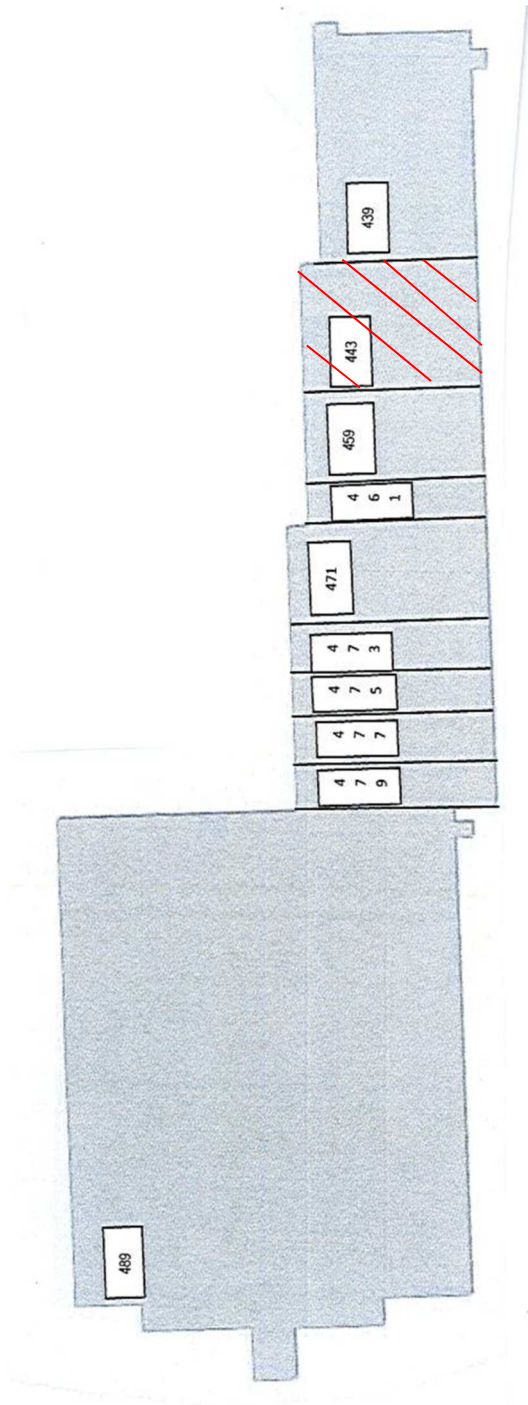
**ADDENDUM "A"**  
**HAZARDOUS MATERIALS**

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 \_\_\_\_\_

EXHIBIT A

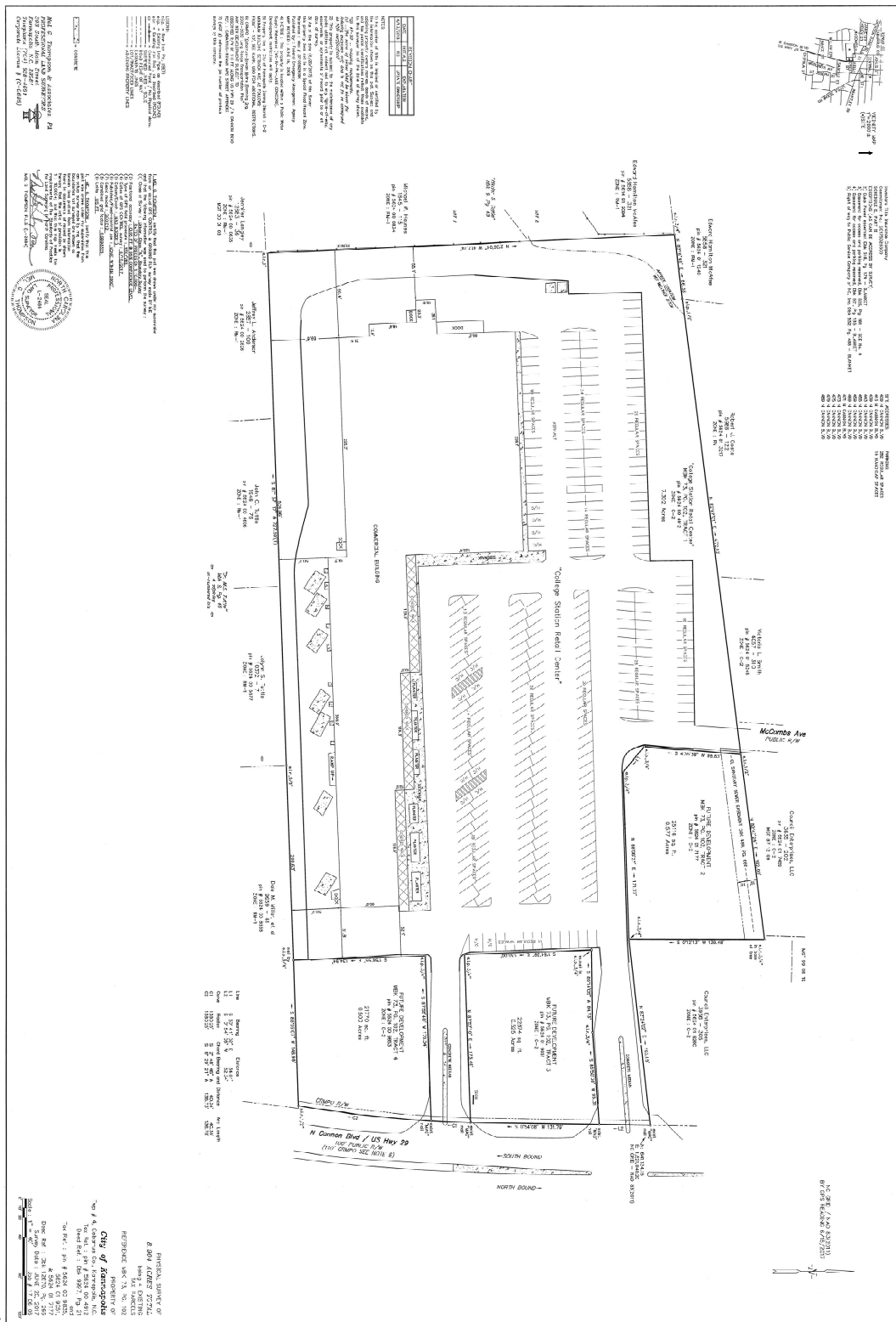
Shopping Center Site Plan Showing Premises



Tenant \_\_\_\_\_



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## **EXHIBIT C**

### **Description of Landlord's Work and Tenant's Work**

1. Tenant agrees to accept the Premises in As-Is condition and is responsible for removing the interior temporary walls.

Tenant \_\_\_\_\_

## 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. 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

Tenant \_\_\_\_\_

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 were 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 \_\_\_\_\_

## 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;
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);

Tenant \_\_\_\_\_

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.
26. Costs related to Shopping Center for promotional events, marketing, Shopping Center advertising, mass media platform creation and maintenance.

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.

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## EXHIBIT F

### Sign Criteria

Tenants are responsible for following the sign criteria. Any nonconforming or unapproved sign must be brought into conformance at the expense of the Tenant.

#### GENERAL REQUIREMENTS

- A. All signs shall comply with all state and local laws governing signage, electrical installations, location, and materials. All electric signs are to be UL listed.
- B. Tenant shall obtain written approval from Landlord for signage prior to manufacturing or installation. Tenant shall submit drawings showing design, color, size, and location of proposed sign.
- C. Tenant shall obtain any required permits prior to installation.
- D. The cost of fabrication, installation, illumination and maintenance of all signs shall be the sole responsibility of each Tenant.
- E. All signs and sign structures shall be kept in good repair. The Landlord reserves the right to cause the removal of any sign not so maintained or removed.
- F. Signs with flashing, blinking, rotating, moving, or animated lights are prohibited.
- G. Upon the termination of Tenant's lease, Tenant will remove the sign and repair, patch, or plug any damaged building façade material caused by the sign to a condition acceptable to the Landlord. All repairs to exterior materials must be performed by a contractor acceptable to the Landlord.
- H. All signs shall be in accordance with the following requirements:
  - 1. Signs, symbols and/or trademarks must have preliminary approval by the Landlord before shop drawings are made
  - 2. Tenant shall submit two (2) sets of shop drawings to the Landlord for approval. Drawings must show size of all letters, spacing, materials, mounting methods and overall sign dimensions in relation to lease area. Landlord approval is for design compliance only and it does not indicate approval of the technical portion of the sign or compliance with the city ordinance.
  - 3. Signs previously used by owners or sign contractors must conform to the conditions and limitations of this document. Re-use of an existing sign must be approved by the Landlord.

#### SPECIFIC REQUIREMENTS

##### A. STOREFRONT SIGN REQUIREMENTS

- 1. Tenant must install a storefront sign on the sign band. Only one sign is permitted for each Tenant, unless permitted in writing by Landlord.
- 2. Minimum length: 50% of storefront façade width; Maximum length: 75% of storefront façade width, but not more than 30 feet. Letters not to exceed 24" in height.
- 3. No exposed raceways, ballast boxes, or electrical transformers will be permitted. Sign company names or stamps must be concealed.
- 4. For illuminated signs, signs will be LED; returns and trim caps shall be painted Dark Bronze. If using a raceway, raceways must be surface mounted.

##### B. OTHER SIGNAGE

- 1. Temporary wall signs, pennants, over-roof signs, inflatable displays are not permitted.
- 2. Vinyl banners are permitted only with Landlord's written approval, and shall be used for a period not to exceed 30 days.
- 3. Signage on windows must comply with local regulations and requires Landlord's written approval. Paper signs and handmade signs are permitted only with Landlord's written approval.
- 4. Tenant must have storefront number displayed on or above the entryway. Size, type, and color of number shall be approved by the Landlord.

Tenant \_\_\_\_\_



## **ADDENDUM B**

### **Additional Lease Provisions**

1. Article I, is hereby amended by the addition of Section 1.1 (p) as follows:

“(p) The Tenant parties to this Lease acknowledge that they constitute a partnership. Each Tenant is a partner of the partnership. Each partner is an agent of the partnership for the purpose of its business. The act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership. Notice to one partner shall be deemed notice to all partners.”

2. Article VI, is hereby amended by the addition of subsection 6.8, as follows:

“6.8 Use of the Premises by Tenant or any Licensee as meeting space shall be subject to the following conditions which shall be acknowledged by all Licensees by written agreement prior to use of the Premises for Licensee’s event (the “Event”).

(a) Licensee and its Event participants shall abide by the conditions set out in this First Amendment.

(b) The conduct of all Event participants, spectators, service providers and volunteers while on the Premises shall be the responsibility of the Tenant. Tenant also accepts all responsibility for any injury to person(s) or property, or loss of or damage to property or theft of personal property on the Premises during the license period, or resulting therefrom. Failure by any individual or group to follow all applicable laws, rules and regulations will be cause for ejection.

(c) Licensee is authorized pursuant to the License to use the Premises to hold the Event, and for no other purpose, unless Tenant gives Licensee prior written authorization for additional permitted uses. Licensee may not use the Premises in any manner that may render the insurance for the Premises or upon any of Landlord’s property void, or which may result in increased insurance premiums for Landlord with respect to the Premises or any other of Landlord’s property.

(d) Tenant shall require Licensee to obtain and maintain any necessary permits, licenses, or other forms of permission necessary to use the Premises in a lawful manner. Licensee shall not be allowed to use the Premises in any manner that would violate local, state or federal laws or regulations.

(e) Landlord retains the right to enforce all necessary and proper rules for the management and operation of the Premises. The Landlord shall have the right to enter the Premises at any time for any reasonable purpose, including without limitation, to confirm compliance with this Lease for an emergency that may threaten the Premises or injury to any person in or near the Premises. Tenant shall provide its contact information and be accessible during the licensee period.

(f) Use of the Premises by a Licensee shall, in no event, be deemed to create a sub-lease relationship or any other relationship other than a licensor-licensee relationship with Tenant.

(g) The Premises is a smoke-free facility. All tobacco or vapor products are prohibited except in designated areas. Flammable or volatile materials are prohibited in the Premises.

(h) Tenant shall require that Licensee shall obtain all required ABC permits in the event alcohol products are served. Dram Shop insurance shall be required from all Licensees in the event alcohol is intended to be served. Proof of insurance shall be provided prior to occupying the Premises. Landlord shall be named as an additional insured.

(i) The number of guests permitted at any event shall not exceed to lawful capacity of \_\_\_\_\_ persons.

Tenant \_\_\_\_\_

- (j) Amplified sound permits shall be required of any Licensee which will be providing any form of amplified sound during the Event.
- (k) The licensee period shall be between the hours of 7 AM and 11 PM.
- (l) There will be no reserved parking associated with the licensing of the Premises.
- (m) No portion of the entrances, exists, corridors, passageways, halls, lobbies, stairways, escalators, aisles, driveways, sidewalks, ramps or other common areas shall be obstructed or used for any other purpose than ingress and egress. All exit doors shall remain unlocked during the Event."
- (n) Illegal drugs, gambling, vulgar language, or solicitation are prohibited.
- (o) Weapons of any kind are prohibited in the facility and on the premises, except those carried by Police or as approved by the City Manager or his designee.
- (p) Animals are prohibited, except service animals and those approved by the City Manager or his designee.
- (q) Games of chance Sweepstakes and Beach Bingo are prohibited. This does not apply to games that award prizes when there is no charge for participation.
- (r) Food must be cooked offsite. Rental facilities are not for preparing food for sale.
- (s) Licensee will observe and obey all the laws of the United States and the state of North Carolina; all applicable ordinances of the City of Kannapolis and Cabarrus or Rowan Counties; all rules, regulations and requirements of the Cabarrus or Rowan County Health Department; the City of Kannapolis Police and Fire Departments and other municipal authorities of the City. Lessee will obtain and provide proof of all licenses, permits, and union and trade organization clearances required by any public body or by contract at their own expense.
- (t) The City of Kannapolis reserves the right to interrupt, terminate, or cancel an event when in the judgment of the City Manager, his designee, the Chief of Police or Fire Chief, such action is necessary in the interests of public safety and/or the Licensee or Tenant is in violation of this policy. User waives any claims for damages or compensation should the event be interrupted, terminated or canceled.

Tenant \_\_\_\_\_

**COLLEGE STATION LEASE AGREEMENT**

**Between**

**City of Kannapolis**

**and**

**Jose Daniel Espinal**

**INDEX TO COLLEGE STATION LEASE**

**ARTICLE I. Definitions and Certain Basic Provisions**

JDE

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ADDENDUM

.....	Hazardous Materials
EXHIBIT "A" .....	Shopping Center Site Plan
Showing Premises	
EXHIBIT "B" .....	Legal Description of

JDE

Shopping Center	
EXHIBIT "C" .....	Description of Landlord's and
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EXHIBIT "D" .....	Shopping Center Rules and
Regulations	
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Area Costs	
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Sign Criteria	

THE STATE OF NORTH CAROLINA

COUNTY OF CABARRUS

This lease, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the Landlord and the Tenant hereinafter named.

**ARTICLE 1. Definitions and Certain Basic Provisions.**

1.1

- "Landlord": City of Kannapolis
- Landlord's Address: 401 Laureate Way, Kannapolis NC  
28081
- "Tenant": Jose Daniel Espinal
- Tenant's mailing address: 12101 Battle Creek Court Charlotte, NC  
28269
- Tenant's trade name:
- Tenant's address in Shopping Center: Suite 479
- "Premises": approximately 1,600 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.
- 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.
- Estimated Completion Date: Approximately eight (8) weeks from full lease execution and approval by the city of Kannapolis
- Permitted Use: Full service retail clothing store
- Minimum Guaranteed Rental: per month (yr. 1 \$1,200.00, yr. 2 \$1,226.66, yr. 3 \$1,253.86, yr. 4 \$1,281.61  
yr. 5 \$1,309.91)
- Initial Common Area Maintenance Charge per month under Section 5.3: \$100.00 per month (\$.75) per square foot per year).
- Initial Insurance Escrow Payment per month under Section 12.3: \$33.33 per month (\$.25 per

JDE

square foot per year).

- Initial Tax Escrow Payment per month under Section 17.2: \$0 per month (\$.00 per square foot per year).
- Security Deposit: \$1,333.33 due at lease execution
-



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 \$1,281.61 \$1,309.91			\$1,200.00	\$1,226.66	\$1,253.86
Initial Common Area Maintenance Charge; and \$100.00	\$100.00	\$100.00	\$100.00	\$100.00	
Initial Insurance Escrow Payment; and \$33.33	\$33.33	\$33.33	\$33.33	\$33.33	
Initial Tax Escrow Payment; and	N/A	N/A	N/A	N/A	N/A
Initial Capital Reserve Payment; and					
Initial Monthly Payment Total \$1,443.24	\$1,333.33	\$1,359.99	\$1,387.19	\$1,414.94	

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, if any, 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 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 September 21, 2018 or earlier. The Commencement Date of this lease shall be on September 21, 2018 or earlier. 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 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. 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.

5.2 Landlord shall maintain as part of the Common Area the hard surface parking area within the Shopping Center as shown on Exhibit B or in reasonable proximity thereto, it being expressly agreed, however, that in addition to the rights reserved to Landlord in Section 5.1 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 (l).

**ARTICLE VI. Use and Care of Premises.**

6.1 The Premises may be used only for the purpose or purposes specified in Section 1.1 (j) above, and for no other purpose or 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 (i) advertise that it sells products or services at "discount", "cut-price", or "cut-rate" prices, (ii) permit any objectionable or unpleasant odors to emanate from the Premises, (iii) 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, (iv) place an antenna, awning or other projection on the exterior of the Premises; (v) distribute leaflets or other solicit advertising material in the Common Area; (vi) 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, (vii) 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 7.1 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 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 Tenant acknowledges that the air conditioning and heating equipment (HVAC) is in proper working condition upon execution of this Lease. Repair and 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 approved 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 approved 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.

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10.2 Tenant agrees to have erected and/or installed and fully operative, at Tenant's expense, 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 or monument sign (if any). Furthermore, Tenant waives any liability on the part of Landlord arising out of Tenant's use of the pylon or monument 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, internet 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 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 and shall name the Landlord as additional insured. 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 XVIII 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(m) 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; 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. Landlord shall not 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 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

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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.

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.

**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 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 17.2 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(n) 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.

17.4 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.

17.5 Any payment to be made pursuant to this Article XVII 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.**  
shall be deemed to be events of default by Tenant under this lease:

18.1 The following events

- 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.
- 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.

- 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.
- 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.
- 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,
- Tenant shall desert or vacate any portion of the Premises.
- Tenant shall do or permit to be done anything which creates a lien upon the Premises.
- 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:

- 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.
- 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.
- 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.
- 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

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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 18.5 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.

18.5 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.

18.6 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.

18.7 Upon receipt from Tenant of the sum stated in Section 1.1(o) 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.

18.8 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.

18.9 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.

18.10 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.

**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 XXV. Miscellaneous.** 25.1 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.

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

25.3 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.

25.4 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.

25.5 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.

25.6 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.

25.7 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.

25.8 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.

25.9 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.

25.10 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 XXVI. 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, 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.

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EXECUTED BY LANDLORD, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

LANDLORD:

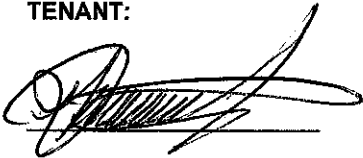
\_\_\_\_\_

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

Its: \_\_\_\_\_

EXECUTED BY TENANT, this 7 day of 2, 2018.

TENANT:



By: JOSE DANIEL ESPINAL

Its: owner

This lease is subject to approval by the Kannapolis City Council, its City Manager, or its designee.



## ADDENDUM "A"

### HAZARDOUS MATERIALS

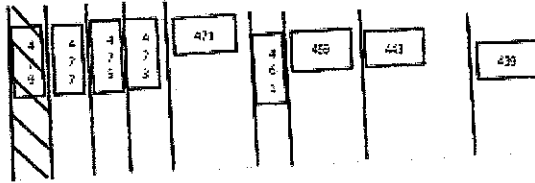
- As used in this Rider, the term "Hazardous Materials" shall mean any element, compound, mixture, solution, particle or substance which is dangerous or harmful or potentially dangerous or harmful to the health or welfare of life or environment, including but not limited to explosives, petroleum, petroleum 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).
- 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.
- 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.
- 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.
- 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.



EXHIBIT A

Shopping Center Site Plan Showing Premises

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**EXHIBIT B**

**Legal Description**

EXHIBIT C

**Description of Landlord's Work and Tenant's Work**

Tenant agrees to accept the Premises in As-Is condition

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## 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:

- 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.
- 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.
- 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.
- 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.
- 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:
  - Vend, peddle or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet or other matter whatsoever;
  - Exhibit any sign, placard, banner, notice or other written material;
  - Distribute any circular, booklet, handbill, placard or other materials;
  - Solicit membership in any organization, group or association or contribution for any purpose
  - 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;
  - Use the Common Area for any purpose when none of the business establishment within the Shopping Center is open for business or employment
  - 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);
  - 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;
  - Solicit any other business or display any merchandise.
- 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.
- All floor area, including vestibules, entrances and exits, doors, fixtures, windows and plate glass

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shall be maintained in a safe neat, and clean condition.

- No portion of this Common Area or the Shopping Center shall be used for any lodging or illegal purposes.
- 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. 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.
- 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.
- No Tenant shall place or permit any radio or television antenna, loudspeaker, amplifier or other device in the Common Area or were the same can be seen or heard in the Common Area without the prior written consent of Landlord.
- No person shall use any part of Common Area for any purpose other than those for which the Common Area is intended.
- No part of the Common Area shall be used for storing or maintaining any material or property, whether on a temporary basis or otherwise.
- 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.
- 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
- 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.

## 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):

- Alarm systems, alarm services, security personnel, security services, patrol services and fire protection;
- Maintenance of sprinkler systems (both fire and irrigation) serving the Shopping Center and/or Common Area;
- 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;
- Regulation or direction of traffic;
- 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;
- Planting, replanting and replacing flowers, trees, shrubbery, planters and other landscaping items and materials;
- 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;
- 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;
- Maintaining and operating sewage treatment facilities, if any;
- 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;
- All licenses and permit fees and surcharges that may result from any law, rule regulation, guideline or order;
- Lighting and power to the Common Area;
- Energy to heat, ventilate and air condition areas in which the Common Area is located;
- Water services, if any, furnished by Landlord for the non-exclusive use of all tenants and their guests and invitees;
- Operating and maintaining any public toilets and restrooms;
- Removal of snow, ice, trash and debris;

- Maintaining federal, state or local governmental ambient air and environmental standards;
- Installing, renting, maintaining and operating signs of all types;
- The installation, rental, maintenance, repair and replacement of music program services and loudspeaker systems, including furnishing electricity therefore;
- Parcel pick-up and delivery services;
- All materials, supplies and services purchased or hired in the operation of the Common Area or for the purposes set forth in this Exhibit;
- 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;
- 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);
- 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
- 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.
- Costs related to Shopping Center for promotional events, marketing, Shopping Center advertising, mass media platform creation and maintenance.

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.



## EXHIBIT F

### Sign Criteria

Tenants are responsible for following the sign criteria. Any nonconforming or unapproved sign must be brought into conformance at the expense of the Tenant.

#### GENERAL REQUIREMENTS

- All signs shall comply with all state and local laws governing signage, electrical installations, location, and materials. All electric signs are to be UL listed.
- Tenant shall obtain written approval from Landlord for signage prior to manufacturing or installation. Tenant shall submit drawings showing design, color, size, and location of proposed sign.
- Tenant shall obtain any required permits prior to installation.
- The cost of fabrication, installation, illumination and maintenance of all signs shall be the sole responsibility of each Tenant.
- All signs and sign structures shall be kept in good repair. The Landlord reserves the right to cause the removal of any sign not so maintained or removed.
- Signs with flashing, blinking, rotating, moving, or animated lights are prohibited.
- Upon the termination of Tenant's lease, Tenant will remove the sign and repair, patch, or plug any damaged building façade material caused by the sign to a condition acceptable to the Landlord. All repairs to exterior materials must be performed by a contractor acceptable to the Landlord.
- All signs shall be in accordance with the following requirements:
  - Signs, symbols and/or trademarks must have preliminary approval by the Landlord before shop drawings are made
  - Tenant shall submit two (2) sets of shop drawings to the Landlord for approval. Drawings must show size of all letters, spacing, materials, mounting methods and overall sign dimensions in relation to lease area. Landlord approval is for design compliance only and it does not indicate approval of the technical portion of the sign or compliance with the city ordinance.
  - Signs previously used by owners or sign contractors must conform to the conditions and limitations of this document. Re-use of an existing sign must be approved by the Landlord.

#### SPECIFIC REQUIREMENTS

- STOREFRONT SIGN REQUIREMENTS
  - Tenant must install a storefront sign on the sign band. Only one sign is permitted for each Tenant, unless permitted in writing by Landlord.
  - Minimum length: 50% of storefront façade width; Maximum length: 75% of storefront façade width, but not more than 30 feet. Letters not to exceed 24" in height.
  - No exposed raceways, ballast boxes, or electrical transformers will be permitted. Sign company names or stamps must be concealed.
  - For illuminated signs, signs will be LED; returns and trim caps shall be painted Dark Bronze. If using a raceway, raceways must be surface mounted.
- OTHER SIGNAGE

- Temporary wall signs, pennants, over-roof signs, inflatable displays are not permitted.
- Vinyl banners are permitted only with Landlord's written approval, and shall be used for a period not to exceed 30 days.
- Signage on windows must comply with local regulations and requires Landlord's written approval. Paper signs and handmade signs are permitted only with Landlord's written approval.
- Tenant must have storefront number displayed on or above the entryway. Size, type, and color of number shall be approved by the Landlord.
-



**City of Kannapolis  
City Council Meeting  
July 23, 2018  
Staff Report**

**TO:** Mayor and City Council  
**FROM:** Zachary D. Gordon, AICP, Planning Director  
**TITLE:** Board of Adjustment Appointment

**A. Action Requested by City Council**

**Motion to appoint a member to the Board of Adjustment**

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

Majority present at meeting

**C. Background**

There is currently a vacancy on the Board of Adjustment due to the departure of Jeff Parker. At its July 9th meeting City Council previously appointed Darrin Jordan to fill this vacancy; however Darrin was unable to serve due to personal family matters.

Additionally, Board Member James Palmer's term was up for re-appointment. City Council moved Mr. Palmer from a regular board member to serve as an alternate. Staff recommends appointing James Palmer as the regular member and to appoint a new person to serve as the alternate. Attached is a list of applications on file.

**D. Fiscal Considerations**

None

**E. Policy Issues**

City Council is responsible for making all appointments to the Board of Adjustment in accordance with the Policy for Appointments to Boards, Committees, and Commissions.

**F. Legal Issues**

None

<b>G. Alternative Courses of Action and Recommendation</b>
--

1. **Appoint James Palmer as a regular board member and appoint a new member to serve as alternate from list of candidates attached.  
(Recommended)**
2. Table action until a future date.

ATTACHMENTS:

File Name

- ▢ Applications\_on\_File\_7-19-2018.pdf
- ▢ BOA\_MEMBER\_LIST\_2018-2019.pdf

**BOARDS & COMMISSIONS  
APPLICATIONS ON FILE**

**07-19-2018**

**Name:** Bobbi Hague

Date Applied: 04-19-2016

**Address:** 1401 Brantley Rod, Kannapolis, NC 28083

**Daytime Phone:** 704-298-4302

**Cell:** 704-957-7583 (Preferred # to call)

**Email:** so-b-it1@hotmail.com

**County Residence:** Cabarrus

**Professional Background:** Office Manager for IT dept at Wachovia

**Educational Background:** one year at Morgan State University-completed Data Processing Course

**Current Employer:** Retired

**Community & Civic Involvement:** 4-H, Boy Scouts, Optimist Club and local church

**Other Board, Commissions, or Committees on which you are currently serving:** Crime Victims Program - PVC

**List three people who are not related to you:** Betty Parker, Brenda Slade, Wilma Means

**Boards/Commissions applied for:**

**PARKS AND RECREATION COMMISSION (1<sup>st</sup> Choice)**

**Please explain why you want to be a member of this commission:** I have suggestions that I have expressed on several occasions and nothing seems to be considered. I would like to be on the Board to help with decision making and see how programs are decided. The citizens of Kannapolis deserve to know how money is allocated for the Parks and Recreation is actually spent.

**Why do you believe Parks and Recreation is important to the City of Kannapolis:** Every great City has one thing in common-great parks? Our residents deserve the best.

**What are three Parks and Recreation priorities you believe the City should address?** Something for the youth (Rec Center). Something for senior citizens (Senior Center-everyone can't afford the YMCA. A dog park for our 4-legged residents.

**Other choices but did not fill out questionnaire: (2) Personnel Advisory; (3) Community Development Commission; (4) Planning & Zoning; (5) ESC; (6) BOA**

**Name:** Avie Banks

Date Applied: 04-26-2016

**Address:** 9675 Walkers Glen Dr, NW Concord, NC 28027

**Daytime Phone:** 707-787-8168      **Cell:** 919-741-7226

**Email:** newbanks lady@msn.com

**County Residence:** Cabarrus

**Professional Background:** 15 years in clinical research development, training and management

**Educational Background:** BA, Sociology (UNC-CH), Masters in BA & Health Admin (Pfeiffer Univ)

**Current Employer:** PPD

**Community & Civic Involvement:** March of Dimes, March for Babies, Family Tean (2013 to present), raised over \$3000. American Red Cross – certified instructor/trainer

**Other Board, Commissions, or Committees on which you are currently serving:** Cabarrus County-Adult Home Advisory Committee (ACHCAC-2015 to present)

**List three people who are not related to you:** Cari Corech, Proj Manager, Austin TX, Laurie Abounader, Charlotte, Takisah Ayburn, Charlotte.

**Boards/Commissions applied for:**

**DOWNTOWN KANNAPOLIS, INC. (1<sup>st</sup> choice)**

**Explain why you want to be a member of this Board:** My heart is to see the vitality & rebuilding of downtown businesses and homes to walking community of great food, market & community vendors & activities.

**Briefly explain what role you believe downtown events should play in revitalizing downtown**

**Kannapolis:** I believe downtown events are essential to spreading the word of on goings in the community & connecting local businesses and residents.

**Describe your interest and availability to participate in event production and management, including budgeting, promotions and marketing, recruiting volunteers, vendors and sponsors, and providing day-of-event support:**

My interest is here as I do this often in my professional life & support many of these events as a volunteer or participate for many events/non-profit organizations that I support.

**COMMUNITY DEVELOPMENT COMMISSION (2<sup>nd</sup> Choice)**

**Why are community development/revitalization issues important to the City of Kannapolis?** As a previous resident of the City of Kannapolis during grade school, I have many fond memories of the events, places & people that embodied the sense of community. By serving on this commission, I hope to continue, revive & extend my knowledge & support in the ongoing community development.

**What do you consider to be three major community issues for our City?** 1) Continued involvement of youth from all parts of Kannapolis to have an opportunity to learn & enjoy events. 2) Advertising community events to all residents via effective social media, prime & streaming sources, 3) lack of business investment into the community.

**How should the City address the community's needs as it evolves economically?** Bring events outside of downtown. Have community block parties-sponsored by Police, Churches, etc. To spread the word about on goings in the city.

**Other choices but did not fill out questionnaire: (3) Parks & Recreation; (4) Personnel Advisory Board; (5) BOA; (6) P&Z**

**Name:** Harriet Ivey

Date Applied: 04-27-2016

**Address:** 112 Auburn Street, Kannapolis NC 28081

**Daytime Phone:** 704-492-7822      **Cell:** 704-492-7822

**Email:** iharriett452@gmail.com

**County Residence:** Cabarrus

**Professional Background:** Journalist at Independent Tribune/Military Veteran

**Educational Background:** BA degree English/Media-Journalism

**Current Employer:** Unemployment claims consultant

**Community or Civic Involvement:** Community clean up project (4-23-16)

**Other Board, Commissions, or Committees on which you are currently serving:**

**List three people who are not related to you:** Terry Prather, Tina Hathcock, Kim, owner of D&K Tax

**Boards/Commissions applied for:**

**COMMUNITY DEVELOPMENT COMMISSION (1st Choice)**

**Why are community development/revitalization issues important to the City of Kannapolis?**

Community is what makes the city a city.

**What do you consider to be three major community issues for our City?** Unemployment, City beautification. Outlets for children whom are our future. They need something to do and somewhere to go when school is out.

**How should the City address the community's needs as it evolves economically?** Fairly and quickly

**DOWNTOWN KANNAPOLIS, INC. (2nd Choice)**

**Explain why you want to be a member of this Board:** I want to help make downtown Kannapolis look thriving again.

**Briefly explain what role you believe downtown events should play in revitalizing downtown Kannapolis:** Downtown events are wonderful because they attract people to come and see the city.

**Describe your interest and availability to participate in event production and management, including budgeting, promotions and marketing, recruiting volunteers, vendors and sponsors, and providing day-of-event support:** I have a lot of interest, but not a lot of time. I work 8-5 Mon-Fri, but I can do something. Every little bit helps. Which is why I volunteered to pick up community trash on 4-23-15.

**PARKS & RECREATION COMMISSION (3rd Choice)**

**Please explain why you want to be a member of this commission:** Our children need an outlet outside the home. They need beautiful places to grow and play outside.

**Why do you believe Parks and Recreation is important to the City of Kannapolis:** Parks and Recreation is FREE. This is vital to a community where there is a high unemployment rate. Parents don't have to worry about scraping up money to find an outlet for their children.

**What are three Parks and Recreation priorities you believe the City should address?** Keep the parks and recreation facilities clean and safe. Keep the facilities beautiful with nice landscaping. Advertise that the facilities are available.

**PLANNING & ZONING COMMISSION (4th Choice)**

**Please explain why you want to be a member of this commission:** Planning and Zoning is very important. Helps keep business and home in the right areas.

**PLANNING & ZONING COMMISSION - CONTINUED**

**Briefly explain what you believe are the three most important issues facing our community at this time and how you believe this commission can play a role in addressing each issue:** Planning and Zoning can help bring more businesses into the area to help lower unemployment in the city. Planning and Zoning can ensure our children have room to play and grow. Children need an outlet. Planning and Zoning can ensure that resident areas are not overcrowded. People can become hostile when they feel trapped or enclosed.

**What is your vision for the City of Kannapolis and what do you consider this commission's role to be in accomplishing that vision?** My vision for Kannapolis is for it to be a thriving community again like it used to be when Cannon Mills was in operation. Planning and Zoning must continue to be diligent towards attracting new businesses to the area.

**Other choices but did not fill out questionnaire: (4) Personnel Advisory Board; (6) BOA; (5) Personnel Advisory Board (Stated did not know enough about these boards to apply)**



**Name:** Yolanda E. Thompson

Date Applied: 05-09-2016

**Address:** 2308 Coach House Lane, Kannapolis, NC 28081

**Daytime Phone:** 704-933-8370

**Cell:** 980-621-0081

**Email:** [yolanda.thompson@rhanet.org](mailto:yolanda.thompson@rhanet.org)

**County Residence:** Cabarrus

**Current Employer:** RHA Health Services

**Occupation/Title:** Social Worker

**Professional Background:** 20 years SW with Cabarrus County until 10-2015. Currently serving as Contract SW

**Professional Background:** B.A. Criminal Justice minor psychology

**Community and Civic Involvement:** Via service with CCDHS served as SW for female inmates being released from jail. CCM Food Pantry at CCDHS. Low Income Energy Assistance Program (LIEAP), Community Trainer and Community Outreach

**Other Board, Commissions, or Committees on which you are currently serving?** Since leaving CCDHS, restarting Teen Youth Group, focusing on females in High School

**List three people not related to you:** Kimberly Middlebooks, Tammy Bare, and Pam Smith

**Boards/Commissions applied for:**

**COMMUNITY DEVELOPMENT COMMISSION (Only Choice)**

**Why are community development/revitalization issues important to the City of Kannapolis?** Although it has been over 10 years since the Mill closed, the downtown and surrounding areas have not yet recovered. Revitalization is crucial to the survival of our Town. Bringing in businesses with jobs for those in the community not only impacts our tax base, but also brings success to its citizens. Community development makes our town attractive to businesses and families and creates a sense of well-being.

**What do you consider to be three major community issues for our City?** Local jobs, however plans to revitalize downtown will assist with this. Programs for youth involvement in the community. Parks in low income areas of the town.

**How should the City address the community's needs as it evolves economically?** Restore Police Officers to various communities to discourage drug use in low income areas. Identify and focus on issues with the Youth and provide alternatives.

**Name:** E. Alyce Quinn

Date Applied: 05-24-2016

**Address:** 2485 Acadia Ct. Kannapolis, NC

**Daytime Phone:** N/A

**Cell:** 704-467-2678

**Email:** alycequinn42@gmail.com

**County Residence:** Cabarrus

**Current Employer:** Retired from General Electric Co. Hickory

**Professional Background:** Also worked for Hartford Ins. In corporate insurance company

**Occupation/Title:** Marketing Specialists in electric utility cos.

**Educational Background:** Business Administration

**Civic Background: Community & Civic Involvement:** N/A

**Other Board, Commissions, or Committees on which you are currently serving:** Many church committees including Finance, administration, and community involvement over past 40 years.

**List three people who are not related to you:** Tom Cabannis, Roger Haas, Dawn Evans

**Boards/Commissions applied for:**

**COMMUNITY DEVELOPMENT COMMISSION (No Particular Preference)**

**Why are community development/revitalization issues important to the City of Kannapolis?** As a resident of Kannapolis for the past 16 years, I have witnessed the deterioration of the downtown area and loss of services and businesses effective our citizens. I would like to see the downtown businesses and services restored for the use of our citizens as well as a drawing card to bring more residents within the downtown area.

**What do you consider to be three major community issues for our City?** Local owned and operated businesses and services, increased tax revenues, improved infrastructure

**How should the City address the community's needs as it evolves economically?** Did not answer

**DOWNTOWN KANNAPOLIS, INC. (No Particular Preference)**

**Explain why you want to be a member of this Board: Briefly explain what role you believe downtown events should play in revitalizing downtown Kannapolis:** Same reasons as I included for the Community Development Commission. Both of these commissions are needed to produce, enhance and maintain growth in our city.

**Briefly explain what role you believe downtown events should play in revitalizing downtown Kannapolis:** Added and/or improved local businesses and activities, which relate to more income for the city businesses and government.

**Describe your interest and availability to participate in event production and management, including budgeting, promotions and marketing, recruiting volunteers, vendors and sponsors, and providing day-of-event support:** I can be available to any of these needs (just not all of them at one time please)

**Name:** Andy Brannigan

Date Applied: 05-31-2016

**Address:** 2460 Acadia Ct. Kannapolis, NC 28083

**Daytime Phone:** 901-857-01938

**Cell:** 901-857-0938

**Email:** [ajbran70@yahoo.com](mailto:ajbran70@yahoo.com)

**County Residence:** Cabarrus

**Current Employer:** Falcon Engineering and Catawba College

**Professional Background:** Professional Manager/Director with excellent experience in several industries (finance, healthcare and retail)

**Occupation/Title:** Office Manager (Falcon); Asst Coach Men's soccer (Catawba College)

**Educational Background:** Two Bachelor's degrees; one in Finance and one in Health Care Management

**Civic Background: Community & Civic Involvement:** Director of Coaching for Catawba Soccer Youth Academy in Salisbury

**Other Board, Commissions, or Committees on which you are currently serving:** N/A

**List three people who are not related to you:** Jamey Basinger, Ken Hassler, Adam Pethel

**Boards/Commissions applied for:**

**DOWNTOWN KANNAPOLIS, INC.**

**Explain why you want to be a member of this Board: Briefly explain what role you believe downtown events should play in revitalizing downtown Kannapolis:** I see the development and promotion of downtown Kannapolis as a major factor in the success of the community, and I would like to be a part of organizing, coordinating, and promoting the city I live in!

**Briefly explain what role you believe downtown events should play in revitalizing downtown Kannapolis:** Arts, culture and entertainment are what will attract families and businesses to downtown Kannapolis. The recent announcement of the demonstration project will be key to the economic development of the downtown business district and events will the customers to those new businesses, restaurants, etc.

**Describe your interest and availability to participate in event production and management, including budgeting, promotions and marketing, recruiting volunteers, vendors and sponsors, and providing day-of-event support:** If I am given a position as a member of the Downtown Kannapolis Board, I will make certain to attend board meetings and be actively involved in all events with the planning, organization, and operations, but also in day-of-event coordination/support as needed to make them a success.

**PERSONNEL ADVISORY BOARD**

**Please explain why you want to be a member of this commission (Personnel Advisory):** As a new member to the Kannapolis community, I see tremendous opportunities for development, promotion, and growth in the Downtown Kannapolis area. The downtown is a major venue for the future growth of Kannapolis brining families and businesses in for events.

**What experience or education have you had relative to this Board?** Business development, management, strategic planning, event coordination, marketing/selling, strong communication, are just some of my skills I have developed both in my management and coaching careers in the last 25 years of experience.

**Name:** Jessica Hughes

**Date Applied:** 05-31-2016

**Address:** 425 Oak Avenue, Kannapolis, NC 28081

**Daytime Phone:** 704-224-2258

**Cell:** 704-224-2258

**Email:** jesshughes87@aol.com

**County Residence:** Cabarrus

**Current Employer:** Pro Master, Inc.

**Occupation/Title:** Blender

**Professional Background:** N/A

**Educational Background:** High School diploma from A.L. Brown (2005), Associate in Science degree from RCCC (2012)

**Community & Civic Involvement:** Volunteer on political campaigns, attended Kannapolis Cit. Academy

**List three people who are not related to you:** Gary Scoggins, Lacie Keene, Delane Brakefield

**Boards/Commissions applied for:**

**PARKS & RECREATION COMMISSION (Only Choice)**

**Please explain why you want to be a member of this commission:** I first became interested in serving on the Parks and Recreation Commission when my niece began playing soccer at our parks through the YMCA. Also, I want to be a part of the team that helps make Kannapolis a better place.

**Why do you believe Parks and Recreation is important to the City of Kannapolis:** The Parks and Recreation Commission are important to Kannapolis because parks provide a place for families to remain active? Recreational activities bring in families from surrounding areas which provides the opportunity to bring in money for our city.

**What are three Parks and Recreation priorities you believe the City should address?** 1) Safety; 2) NC House Bill 2; 3) Ways to help Kannapolis grow, and remain a place families want to live.

**Name:** Christopher Gordon

Date Applied: 07-25-2017

**Address:** 2394 Shady Lane Avenue ext., Kannapolis, NC 28081

**Daytime Phone:** 704-918-4108      **Cell:** 704-956-9782

**Email:** [cgordon@hmsworldwide.com](mailto:cgordon@hmsworldwide.com)

**County Residence:** Cabarrus

**Occupation/Title:** Creator Director/Senior Executive

**Current Employer:** Hirschfeld Marketing Services

**Professional Background:** Former certified General Contractor/Professional Racecar driver/Actor & Stuntman/ Sports Marketing Professional

**Educational Background:** Associates Degree in Motorsports Marketing and Management

**Civic Background: Community & Civic Involvement:** Kannapolis Citizens Academy – Fall 2015

**Other Board, Commissions, or Committees on which you are currently serving:**

**List three people who are not related to you:** Todd Kirschfield, President of HMS, Kenny Marckese Police Officer, Ronnie Bacelo –business owner Kannapolis

**Boards/Commissions applied for:**

**PLANNING & ZONING COMMISSION (1<sup>st</sup> choice)**

**Please explain why you want to be a member of this commission:** To be an integral part of shaping the future growth of Kannapolis. I own a company here in Kannapolis that produces 3-D renderings that could prove very useful when planning future infrastructure.

**Briefly explain what you believe are the three most important issues facing our community at this time and how you believe this commission can play a role in addressing each issue.** Strategic planning now is imperative to shaping the next chapter of our city for future generations to grow and prosper. Ensuring that our infrastructure and public services can remain sufficient and keep pace as the city grows in coming years. Keeping the City prosperous and growing while maintaining its small town character and charm.

**What is your vision for the City of Kannapolis and what do you consider this commission's role to be in accomplishing that vision?** To be a world class destination for business to prosper. A safe place with great educational institutions and entertainment options for its citizens. A place people are proud to call home. This commission strategic planning is the linchpin to bring the vision for the future of Kannapolis to fruition.

**DOWNTOWN KANNAPOLIS, INC (2nd choice)**

**Explain why you want to be a member of this Board:** Marketing, event production and management is what I do on a daily basis. I would bring a lot of experience to this board from the corporate world.

**Briefly explain what role you believe downtown events should play in revitalizing downtown Kannapolis:** Develop a sense of pride and unity in the community. Bringing citizens to the downtown area will support current businesses and drive new businesses to the area. Drive tourism dollars by bringing in citizens from other regions.

**Describe your interest and availability to participate in event production and management, including budgeting, promotions and marketing, recruiting volunteers, vendors and sponsors, and providing day-of-event support:** My strengths would lie in the promotion, marketing and day of event support. I would be interested in helping with any of these line items but depending on scheduling, couldn't guarantee what events I could attend.

**Name:** Lisa Aldorasi (**Lives outside City**)

Date Applied: 08-17-2017

**Address:** 5219 Sabre Drive, Kannapolis, NC 28081

**Daytime Work/Cell:** 732-895-2566

**Email:** [lisa.aldorasi@gmail.com](mailto:lisa.aldorasi@gmail.com)

**County Residence:** Cabarrus

**Current Employer:** Commercial Credit Group, Inc.

**Professional Background:** I am a paralegal with over 20 years of administrative experience

**Occupation/Title:** Paralegal

**Educational Background:** AAS in Paralegal Technology

**Civic Background: Community & Civic Involvement:** I was a volunteer at Camp Jinka, a camp for kids who have been affected by the diagnosis of a brain tumor. I have also volunteered at Samaritan's Table, Samaritan's Purse and Habitat for Humanity. I was a board member of the PTO at Northwest Cabarrus High School.

**Other Board, Commissions, or Committees on which you are currently serving:** I am currently serving Board Member of the Booster Club at Northwest Cabarrus High School.

**List three people who are not related to you:** Farrar Griggs, Lawyer, Cindy Griggs, P&R Commission Member, Lisa Perry, business owner in Concord (also a Chamber member)

**Boards/Commissions applied for:**

**PLANNING & ZONING COMMISSION (1<sup>st</sup> choice)**

**Please explain why you want to be a member of this commission:** By serving on the P&Z Commission, I hope to become more in tune with that is going on in my community. My children are older now and I feel the timing is good for me to get more involved.

**Briefly explain what you believe are the three most important issues facing our community at this time and how you believe this commission can play a role in addressing each issue.** I feel that Kannapolis is underrated. It has a great history and at this point is a pool of potential. I think commerce need d to be revitalized and grown in Kannapolis; this committee would be an integral part in that process. I think the perception of Kannapolis is sometimes less than it should be. As a town that is commutable to Charlotte, it has the potential to change that perception.

**What is your vision for the City of Kannapolis and what do you consider this commission's role to be in accomplishing that vision?** I think the Research Campus is only the beginning of what can come to Kannapolis. I think the P&Z Commission role is to guide the town into the future maintaining its root and having wings.

**Parks & Recreation Commission (2<sup>nd</sup> Choice) No response to questions.**

**Community Development Commission (3<sup>rd</sup> Choice) No response to questions**

**Downtown Kannapolis, Inc. (3<sup>rd</sup> Choice) No response to questions**

**Name:** Eric Purvis

Date Applied: 02-23-2018

**Address:** 907 Lee Avenue, Kannapolis, NC 28081

**Daytime Phone:** 704-938-1468

**Work/Cell:** 704-773-9582

**Email:** [epurvispi@yahoo.com](mailto:epurvispi@yahoo.com)

**County Residence:** Cabarrus

**Current Employer:** Marshall Investigations, Inc.

**Professional Background:** Private Investigator

**Occupation/Title:** N/A

**Educational Background:** N/A

**Civic Background: Community & Civic Involvement:** Mason, Youth Committee-First Baptist Church

**Other Board, Commissions, or Committees on which you are currently serving:** N/A

**List three people who are not related to you:** Roger Haas, Tom Cabaniss, Charles Bullings

**Boards/Commissions applied for:**

**PARKS & RECREATION COMMISSION (1<sup>st</sup> Choice)**

**Please explain why you want to be a member of this commission:** As a member of the community, I feel that Parks and Recreation is a vital part of Kannapolis in choosing a healthy image for the city. I would love to be a part of the changes and future of this program. I have experience in working with sports programs and the park system. I feel that I could bring experience to this commission.

**Why do you believe Parks and Recreation is important to the City of Kannapolis:** Parks and Recreation is a vital part of the fitness and community goals of the city for promoting a much healthier Kannapolis? Kannapolis has some great programs such as loop the loop and Run Kannapolis that can be expanded and improved. I look forward to seeing this happen.

**What are three Parks and Recreation priorities you believe the City should address?** 1) a review of current parks for needs and improvements. 2) Expansion of parks services 3) a review to determine if Parks and Recreation services are available throughout Kannapolis

**COMMUNITY DEVELOPMENT COMMISSION (2<sup>nd</sup> Choice)**

**Why are community development/revitalization issues important to the City of Kannapolis?** To keep Kannapolis growing and productive in the community.

**What do you consider to be three major community issues for our City?** 1) downtown revitalization; 2) Citywide Services; 3) Attracting Business and families to Kannapolis to work and live.

**How should the City address the community's needs as it evolves economically?** People in general don't; like taxes, but they are a necessary part of growth and investment in the city.

**DOWNTOWN KANNAPOLIS, INC. (3<sup>rd</sup> Choice)**

**Explain why you want to be a member of this Board:** I'm excited about downtown Kannapolis and would love to be a part of the many great things we are going to do there.

**Briefly explain what role you believe downtown events should play in revitalizing downtown Kannapolis:** Bringing the public to events and making the stakeholders in the downtown development project

**Describe your interest and availability to participate in event production and management, including budgeting, promotions and marketing, recruiting volunteers, vendors and sponsors, and providing day-of-event support:** I can assist with volunteering, promotions, and day of event support.



**PERSONNEL ADVISORY BOARD (4<sup>th</sup> Choice)**

**Please explain why you want to be a member of this commission:** To help the City get the best qualified people in needed position for the City. To review hiring policies and create best practices.

**What experience or education have you had relative to this Board?** Investigator for the State of NC both criminal and administrative matters that specifically dealt with personnel issues.

**BOARD OF ADJUSTMENT (5<sup>th</sup> Choice)**

**Please explain why you want to be a member of this commission:** To help resolve the variance issues throughout the city.

**Briefly explain what you believe are the three most important issues facing our community at this time and how you believe this commission can play a role in addressing each issue.** Downtown development

**What is your vision for the City of Kannapolis and what do you consider this commission's role to be in accomplishing this vision?** This commission can help the city with the various variance issues that arise.

**PLANNING & ZONING COMMISSION (6<sup>th</sup> Choice)**

**Please explain why you want to be a member of this commission:** Former investigator with the Engineering and Survey Board for NC. Familiar with plans and zoning laws.

**Briefly explain what you believe are the three most important issues facing our community at this time and how you believe this commission can play a role in addressing each issue.** Downtown Development-approval of new business in the downtown area. Neighborhood resources-new parks and community centers. Infrastructure -review of our current utilities and plans to improve them.

**What is your vision for the City of Kannapolis and what do you consider this commission's role to be in accomplishing that vision?** Business zoning for new businesses, planning of new downtown attractions.



**Name:** Jeffrey P. Newton

Date Applied: 02-15-2018

**Address:** 2688 Keady Mill Loop, Kannapolis, NC 28081

**Daytime Phone:** 704-935-2634

**Work/Cell:** 757-641-7898

**Email:** [jpnewton2002@yahoo.com](mailto:jpnewton2002@yahoo.com)

**County Residence:** Cabarrus

**Current Employer:** None. Retired.

**Professional Background:** Retired US Navy Officer (25+ years); division manager, program manager and project manager for various government contractors (23+years) specializing in reliability maintenance

**Occupation/Title:** N/A

**Educational Background:** BS Liberal Studies; MPA Human Resource Management

**Civic Background: Community & Civic Involvement:** On Landscape Committee for small HOA in early 1980's

**Other Board, Commissions, or Committees on which you are currently serving:** None

**List three people who are not related to you:** Chrystal Phelps, Mary Jane Quesnel, Beth Simmons

**Boards/Commissions applied for:**

**PERSONNEL ADVISORY BOARD (1<sup>st</sup> Choice)**

**Please explain why you want to be a member of this commission:** Throughout my US Navy and civilian careers I dealt with many personnel issues and learned most importantly to listen, ask informed questions, and based on the facts, determine the outcome that benefited both my employer and the employee. I feel these traits would make me a valuable member of the board.

**What experience or education have you had relative to this Board?** I hold a MPA as well as a MS in Human Resources Management from Troy University. I was manager with hire/fire authority for different companies and am used to working as a team member to reach viable solutions. I have worked with diverse groups of people throughout my entire career.

**PARKS & RECREATION COMMISSION (2nd Choice)**

**Please explain why you want to be a member of this commission:** I enjoy spending time outside and find the Kannapolis park system extensive and viable. I would like to be a part of this program to help it to continue to grow. Amenities like a strong park system benefit the community and help people determine where they want to live and grow their families.

**Why do you believe Parks and Recreation is important to the City of Kannapolis:** Readily available open spaces are a must to bring communities together. In my short time in Kannapolis, my wife and I have enjoyed visiting the different parks and really enjoyed the Christmas lights and theme at Village Park. As a veteran, I find the Veterans Park a fitting tribute.

**What are three Parks and Recreation priorities you believe the City should address?** More walking trails similar to Irish Buffalo Creek; continued expansion/upgrading of existing parks; and exploring ways to get more green areas into new and existing developments.

**Name:** Carrie Brown **(Lives Outside City)**

Date Applied: 02-22-2018

**Address:** 6312 Miller Road, Kannapolis, NC 28081

**Daytime Phone:** N/A

**Cell:** 704-507-6629

**Email:** [browncarrienc@gmail.com](mailto:browncarrienc@gmail.com)

**County Residence:** Cabarrus

**Current Employer:** CSM Production (Formerly JHE Production Group)

**Occupation/Title:** Senior Manager – Creative Services

**Professional Background:** Since moving to NC, I have worked for NASCAR Media Group, NASCAR and CSM Production Group.

**Educational Background:** Graduated with honors from Wilmington University in 2008 with BA degree in General Studies.

**Community & Civic Involvement:** Participated in Kannapolis 101 Class

**Other Boards & Commissions on which you are currently serving?** N/A

**List three people who are not related to you:** Derek Land, Jacqueline Gafrarar, Brook Horn

**Boards/Commissions applied for:**

**PLANNING & ZONING COMMISSION (Only Choice)**

**Please explain why you want to be a member of this commission:** While participating in the Kannapolis 101 Class, I learned about the various departments within the City government. I was/am so interested and eager to learn more about the P&Z Department along with the Commission and their respective policies and procedures. The P&Z Commission (and Department) are instrumental in growing Kannapolis in a structured and smart way as well as ensuring current and future buildings comply with codes and I think that is extremely important work. I would love to be a part of such an important area while the City grows and is reborn.

**Briefly explain what you believe are the three most important issues facing our community at this time and how you believe this commission can play a role in addressing each issue.** I believe the first and most pressing issue is to ensure the growth of downtown. Kannapolis is planned strategically. While this issue is moving forward every day, I think I could provide valuable insights into which type of development is considered, dismissed, or approved since I am of a young demographic and excited to see downtown grown and flourish responsibly. I believe another issue facing Kannapolis is development outside of the downtown core. Everyone wants to see Kannapolis grow and prosper, but to do so in a manner that is beneficial to everyone is challenging. I believe I would be able to pinpoint what areas need more opportunities with a mindset for fairness and equality while ensuring the development is in the best interest of the entire City. Lastly, I believe attracting more businesses to the Kannapolis area to improve job and salary prospects is crucially important to the success of the City. I believe the Commission can attract first class employees by taking care of the first two issues.

**What is your vision for the City of Kannapolis and what do you consider this commission's role to be in accomplishing that vision?** My vision for Kannapolis is reborn and booming downtown core, suburban areas that include residents of all income levels, and job opportunities with first class employers. I believe the commission's role is to ensure all growth and development is thoughtful and in the best interest of the City residents. The commission should help decide which areas are developed and at what time along with following all codes and ordinance to ensure a successful City for decades to come.

**Name:** Diamelen Partridge (**Lives Outside City**)

Date Applied: 02-01-2018

**Address:** 4505 Rainbow Drive, Kannapolis, NC 28081

**Daytime Phone:** N/A

**Cell:** 704-770-7747

**Email:** diamelenpartridge@rocketmail.com

**County Residence:** Cabarrus

**Current Employer:** American Homes 4 Rent

**Occupation/Title:** Field Inspector

**Professional Background:** Positions include: Field Team Management, Vendor Management, Leasing, Segment Producer, and Production Coordination for local television shows, Special Events Manager, Teaching, and Community Arts Manager

**Educational Background:** University of Oregon- Communications, NCREC Licensed

**Community & Civic Involvement:** Target Grant Arts in School-Coordinator & Instructor-LA County. Special Olympics Equestrian Coach, Project Manager-Love Week- Partnering with Habit, Ada Jenkins, Butterfly Bin, Friendship Trays among others, Davidson Town events Coordinator. After school Enrichment & Career Fair Coordinator, LA county CA, Huntersville Mayoral & Council Elections Support Events Judge, Queens Cup Charlotte

**List three people who are not related to you:** Lori Kawulock, Annette Staudinger, Sharon Mills

**Boards/Commissions applied for:**

**PARKS & RECREATION COMMISSION (1<sup>st</sup> Choice)**

**Please explain why you want to be a member of this commission:** I believe in the value of staying active, creative, plugged into social circles and being a life learner. I bring a background with layers of experience in different sized communities and different outreach objectives and feel I can use those lessons and experiences and that knowledge base to add to the Kannapolis Parks & Recreation team. It is an area I find exciting and valuable and have always made an effort to plug in and participate wherever I have lived. Parks are a tangible reflection of the quality of life in a community and I value participating in that role.

**Why do you believe Parks and Recreation is important to the City of Kannapolis:** One a “people level” I believe an opportunity to connect and expand ones circle and community enriches individuals and families. On a “city level” I see the value of a strong, positive parks and recreation presence. This is always a visible representation to surrounding areas and to the local community of a thriving and connected city which draws others in and leads to growth. As Kannapolis revitalization kicks off, I believe parks improve the local tax base and increase property values.

**What are three Parks and Recreation priorities you believe the City should address?** As the City looks to develop, thoughtfulness and best practices in regards to parks to produce vegetative buffers to development should be important. Enhancing and further defining pedestrian amenities with possible parking and entrance improvements. Safety being defined as a priority. Possibly partnering with local schools to expand offerings in interweave students with community at large.

**DOWNTOWN KANNAPOLIS, INC. (2<sup>nd</sup> Choice)**

**Explain why you want to be a member of this Board:** I align completely with the mission statement of Downtown Kannapolis, Inc. As a new citizen of the community with extensive background in coordinating and managing events as well as procuring opportunities for connection and enrichment, I would love to come alongside the momentum and groundwork that this organization has poured into the revitalization of the community. I value forward vision and I value history and tradition and am excited for our renewed city.

**Briefly explain what role you believe downtown events should play in revitalizing downtown Kannapolis:** Downtown events play the dual role of valuing and connecting the residents of Kannapolis as well as being the “face” of the community that shines outward and draws individuals, families, and businesses in. As the City moves forward with vision, events are the brand that is most recognizable and help create the culture and tangible environment that give the community a sense of identity and belonging.

**DOWNTOWN KANNAPOLIS, INC. CONTINUED**

**Describe your interest and availability to participate in event production and management, including budgeting, promotions and marketing, recruiting volunteers, vendors and sponsors, and providing day-of-event support:** I have experience in each aspect of these positions and am willing to participate for reach. For any given event, my participation would be based on scheduling/timing. I currently work full time weekdays, but have flexibility and of course have some evenings and weekends and would love to help where I can.

**Community Development Commission (3<sup>rd</sup> Choice) No response to questions**

**Name:** Drew Maher

**Address:** 1309 Mooresville Road, Kannapolis (BUSINESS ADDRESS) Lives in Mooresville

**Daytime Phone:** Work/Cell: 704-258-9227

**Email:** drew@dmahrproperties.com

**County Residence:** Cabarrus

**Current Employer:** Self Employed/Business Owner-DM Properties & Assoc

**Professional Background:** 3 years MILK Professional Umpire, 6+ Years business consultant for The Dartmouth Group, LTD. 5+Years real estate brokerage

**Occupational/Title:** Real Estate Broker – Owner/Broker in charge

**Educational Background:** A.L. Brown HS (2003) Lenoir-Rhyne University (2007) Bachelor's Degree Business and Sports Management

**Civic Background: Community & Civic Involvement:** Served on Central Carolina Association of Realtors Board (2014-2016). Kannapolis Dixie Youth Sponsor (2014-present)

**Other Board, Commissions, or Committees on which you are currently serving:** N/A

**List three people who are not related to you:** Ryan Dayvault, Randy Long, Chris Puckett

**Boards/Commissions applied for:**

**PLANNING & ZONING COMMISSION (Only Choice)**

**Please explain why you want to be a member of this commission:** Growing up in Kannapolis I was provided many life molding opportunities, Shadybrook Elementary, Kannapolis Dixie Youth, Wonder Football, Midway Methodist Church, etc., all played invaluable roles in my upbringing. I am passionate about Kannapolis and believe I can do the same for many others. My passion in regards to seeing Kannapolis grow combined with my professional experience gives me confidence that I can add value to the long term goals of this great City.

**Briefly explain what you believe are the three most important issues facing our community at this time and how you believe this commission can play a role in addressing each issue:** 1-Connecting and engaging with the lifelong residents as Kannapolis goes through new development and changes.  
2-Marketing to those less familiar with Kannapolis-Creating interest for personal and business relocations.  
3-Road and Utility infrastructure – creating convenient access into Kannapolis and providing business opportunities along these roadways.

**What is your vision for the City of Kannapolis and what do you consider this commission's role to be in accomplishing that vision?** Building upon the intimate small town feel, providing consistent gradual growth, I believe we want to be known as the place to live with convenient access to all the surrounding attractions, but a place you can live or operate a business without relying on outside factors. Building upon the current direction of the city I believe will be prosperous and exciting for many years to come.

**Name:** Gene Overcash

**Address:** 1001 Orangewood Street, Kannapolis, NC 28081

**Daytime Phone:** Home-704-932-4619 Work-704-938-6121 Cell-980-622-4512

**Email:** [govercash@curb.com](mailto:govercash@curb.com)

**County Residence:** Cabarrus

**Current Employer:** Mike Curb – Curb Motorsports Museum

**Occupational/Title:** Museum Manager

**Professional Background:** 71-94 G&S Metal, Catawba College, YMCA, Self Employed Landscaping

**Educational Background:** AL Brown HS, Rowan Tech – Kannapolis Fire Department

**Civic Background: Community & Civic Involvement:** NCMHOF induction ceremony, Curb Museum, Kannapolis Fire Department (20 yrs.)

**Other Board, Commissions, or Committees on which you are currently serving:** N/A

**List three people who are not related to you:** Danny Scott, Larry Phillips, Donie Parker

**Boards/Commissions applied for:**

**PLANNING & ZONING COMMISSION (Only Choice)**

**Please explain why you want to be a member of this commission:** Helping make City bigger and better place to live. Keep Kannapolis safe and growing the right way. Learn more about the City, plans and some way to get involved with the growth.

**Briefly explain what you believe are the three most important issues facing our community at this time and how you believe this commission can play a role in addressing each issue:** More business in City, Building the correct community, Bring more people to the City.

**What is your vision for the City of Kannapolis and what do you consider this commission's role to be in accomplishing that vision?** To be able to help with the growing of downtown and not only baseball, with the help of bringing entertainment to the city with music.

**Name:** Jamie Newman

Date Applied: 05-04-2018

**Address:** 306 Oakshade Avenue, Kannapolis NC28083

**Daytime Phone:** 704-605-7503

**Work/Cell:** 704-920-1325

**Email:** [jamie.newman@cabarrushealth.org](mailto:jamie.newman@cabarrushealth.org)

**County Residence:** Cabarrus

**Current Employer:** Cabarrus Health Alliance

**Professional Background:** Experience in Human Resources in manufacturing, retail, local government and healthcare; executive selection and development; business consulting; retail management.

**Occupation/Title:** Human Resources Manager

**Educational Background:** Master of Arts in Industrial and Organizational Psychology; Bachelor of Arts in Psychology; Certified Senior Profession in HR (SPHR); SHRM Certified Professional.

**Civic Background: Community & Civic Involvement:** Executive Board Member for Sow Much Good; fundraising for Operation Homeless; volunteer Career Counseling for CMS; Volunteer Faithful Friends; Community Relations Chairperson for Cabarrus Regional Society for HR Management (CRSHRM); VP CRSHRM.

**Other Board, Commissions, or Committees on which you are currently serving:** Current President of Cabarrus Regional Society for HR Management

**List three people who are not related to you:** Dianne Berry, Erin Shoe, Claudia Wilder

**Boards/Commissions applied for:**

**PERSONNEL ADVISORY BOARD (1<sup>st</sup> Choice)**

**Please explain why you want to be a member of this commission:** I would like to increase my involvement in local government and I believe serving on this board would be the ideal opportunity because I would be able to make meaningful contributions. HR is my chosen field and employee relations is of particular interest to me. Working with employees to find resolutions that are fair, within policy, and benefit both organization and the employee is challenging and always an interesting endeavor. I would enjoy the opportunity to serve the City of Kannapolis and its employees in this capacity.

**What experience or education have you had relative to this Board?** A master's degree in industrial and organizational psychology uniquely prepares me to deal with HR related issues from the legal, business and human perspectives. I have attained HR certifications from HRCI and SHRM, which are both recognized as standards in the field that signify an understanding of best practices, employment law and human resources management. I have worked in manufacturing, retail, healthcare and local government, and have experiences in business to business consulting with senior leaders, all of which have given me the opportunity to work with many types of employees at different organizational levels.



**Name:** Mark Goodnight

Date Applied: 04-30-2018

**Address:** 909 N. Main Street, Kannapolis, NC 28081

**Daytime Phone:** 704-938-9259

**Work/Cell:** 704-773-0818

**Email:** [markgoodnight2018@gmail.com](mailto:markgoodnight2018@gmail.com)

**County Residence:** Rowan

**Current Employer:** Allen Tate Realtors

**Professional Background:** Real Estate Broker last 15 years

**Occupation/Title:** Real Estate Broker

**Educational Background:** 1981 graduate of UNCC with BA in Business

**Civic Background: Community & Civic Involvement:** Boy Scouts, Habitat, church

**Other Board, Commissions, or Committees on which you are currently serving:** N/A

**List three people who are not related to you:** Dale Bullock, Wilmer Melton, Ryan Dayvault

**Boards/Commissions applied for:**

**COMMUNITY DEVELOPMENT COMMISSION (Only Choice)**

**Why are community development/revitalization issues important to the City of Kannapolis?** Because of all new development in the downtown area. This will affect us for years to come.

**What do you consider to be three major community issues for our City?** Employment, housing, recreation

**How should the City address the community's needs as it evolves economically?** Will need community involvement to stay on track with development.



**Name:** Teresa (Tess) Dalsing

Date Applied: 04-30-2018

**Address:** 901 Central Drive, Kannapolis, NC 28083

**Daytime Phone:** N/A

**Work/Cell:** 704-591-9173

**Email:** [ttess51070@gmail.com](mailto:ttess51070@gmail.com) or [tess.dalsing@allentate.com](mailto:tess.dalsing@allentate.com)

**County Residence:** Cabarrus

**Current Employer:** Allen Tate Realtors

**Professional Background:** Counseling and administrative

**Occupation/Title:** Real Estate/Broker

**Educational Background:** MS in child psychology

**Civic Background: Community & Civic Involvement:** Esther House domestic violence-group counselor and school speaker, raceway-various fundraisers.

**Other Board, Commissions, or Committees on which you are currently serving:** None.

**List three people who are not related to you:** John Kindom, Justin Colasacco, Susan Billar

**Boards/Commissions applied for:**

**COMMUNITY DEVELOPMENT COMMISSION (1st Choice)**

**Why are community development/revitalization issues important to the City of Kannapolis?** I work and live in the Kannapolis community. I am raising three boys in this community. It is important to be involved in the community and to encourage others to do the same. It takes active community members to make a difference within a community and I can do just that.

**What do you consider to be three major community issues for our City?** I believe that poverty, drug abuse and our educational system are three major factors that could use more exposure, education, resources and funds.

**How should the City address the community's needs as it evolves economically?** The City needs to stay actively involved within the community in order to stay abreast of what needs are current. The City and its community will continually evolve and the City needs to stay involved in order to keep matters current.

**PERSONNEL ADVISORY BOARD (2nd Choice) No response to questions**

**PLANNING & ZONING COMMISSION (3rd Choice)**

**Please explain why you want to be a member of this commission:** I have recently moved to the Kannapolis area and would like to be involved in the day-to-day happenings. I have a MS in child psychology and I have always done everything I can do to help others. The community development commission would be a great way to give back, help others in the Kannapolis community and get to know others in the Kannapolis area.

**Briefly explain what you believe are the three most important issues facing our community at this time and how you believe this commission can play a role in addressing each issue.** I believe that education, poverty and drug abuse are the three most important issues facing the Kannapolis/Charlotte area at that this time. The commission could look at ways to create programs or strengthen existing programs for the community. Programs aimed towards prevention, programs that [provide resources to those in need and programs that support our local teachers and build up the educational process.

**What is your vision for the City of Kannapolis and what do you consider this commission's role to be in accomplishing that vision?** I would like to be an active part in creating programs for Kannapolis that I will offer the necessary resources for those having economic hardships. I would like to be a part of educating the community on the current drug epidemic and assist in creating programs for prevention, intervention and healing.

**PARKS & RECREATION COMMISSION (4<sup>th</sup> Choice) No response to questions**

**BOARD OF ADJUSTMENT (5<sup>th</sup> Choice)**

**Please explain why you want to be a member of this commission:** While this is not my first pick, I could still benefit from this board because I am a local Realtor. I not only could offer my own expertise toward each zoning request, but I would lean more that could benefit my own personal career.

**Briefly explain what you believe are the three most important issues facing our community at this time and how you believe this commission can play a role in addressing each issue.** N/A

**What is your vision for the City of Kannapolis and what do you consider this commission's role to be in accomplishing this vision?** N/A

**Name:** Ryan French

Date Applied: 05-21-2018

**Address:** 1901 Pennsylvania Avenue, Kannapolis NC 28083

**Daytime Phone:** N/A

**Work/Cell:** 252-521-7967

**Email:** RyanLee\_French@yahoo.com

**Residence:** Cabarrus

**Current Employer:** French Express Coffee House

**Occupation/Title:** CEO

**Professional Background:** Owner/Operator French Express Coffee House owner 3 years

**Educational Background:** BS in Professional Aeronautics from Embry-Riddle Aeronautical University

**Civic Background: Community & Civic Involvement:** Rotary Club of Kannapolis for 5 years, Fusion City, church for 4 years, Royal Rangers teacher at Living Water Church

**Other Board, Commissions, or Committees on which you are currently serving:** N/A

**List three people who are not related to you:** Mike Legg, Thomas Kincaid

**Boards/Commissions applied for:**

**PLANNING & ZONING COMMISSION (1st Choice)**

**Please explain why you want to be a member of this commission:** I am an active member of the community who wants to be part and assist with the advancement of Kannapolis.

**Briefly explain what you believe are the three most important issues facing our community at this time and how you believe this commission can play a role in addressing each issue:** The 3 biggest issues this for this commission is facing our community awareness, safety and traffic concerns. Communication and citizen involvement are the keys for all those issues.

**What is your vision for the City of Kannapolis and what do you consider this commission's role to be in accomplishing that vision?** To create a vibrant downtown where small businesses will thrive. This commission will ensure all businesses will have a balance opportunity.

**PARKS & RECREATION COMMISSION (2nd Choice)**

**Please explain why you want to be a member of this commission:** I want to guarantee our parks maintain the highest standard going forward.

**Why do you believe Parks and Recreation is important to the City of Kannapolis:** The parks of Kannapolis provide a safe place for all families to congregate.

**What are three Parks and Recreation priorities you believe the City should address?** Child Security, Maintenance and Future Vision

**Community Development Commission (3rd Choice) No response to questions.**

**Board of Adjustment (4th Choice) No response to questions**

**Personnel Advisory Board (5th Choice) No response to questions**

**Downtown Kannapolis, Inc. (6th Choice) No response to questions**

# Kannapolis Board of Adjustment

## July 2018- June 2019

<b><u>CHAIRMAN</u></b> Jonathan Farmer 5309 Randolph Road Kannapolis, NC 28081	(H) None (W) 704-699-6613 Email: <a href="mailto:jonathanfarmer1985@gmail.com">jonathanfarmer1985@gmail.com</a> Expires: 6/30/2020 Term: 3 <sup>rd</sup>
<b><u>Vice-Chairman</u></b>	
Andrew Baker 220 York Avenue Kannapolis, NC 28083	(H) & (W) 704-652-1730 Email: <a href="mailto:awb127@yahoo.com">awb127@yahoo.com</a> Term Expires: 6/30/2020 Term: 3 <sup>rd</sup>
Colby Meadows 608 Walter Street Kannapolis NC 28083	(H) 704-933-2046 Email: <a href="mailto:emeadows84@yahoo.com">emeadows84@yahoo.com</a> Term Expires: 06/30/2021 Term: 3 <sup>rd</sup>
Mark Comer PO Box1407 Kannapolis, NC 28081	(H) 704-925-1663 (C)704-968-6989 Email: <a href="mailto:mtcomer1@bellsouth.net">mtcomer1@bellsouth.net</a> Term Expires: 06/30/2021 Term: 1 <sup>st</sup>
JoAnn Crosby 322 Wisteria Lane Kannapolis, NC 28083	H) 704-933-01332 (C) 704-562-7101 Email: <a href="mailto:jlcrosby@winstream.net">jlcrosby@winstream.net</a> Term Expires: 06/30/2019 Term: 1 <sup>st</sup>
<b><u>Alternate #1</u></b> M. Ryan Craft 914 Polo Street Kannapolis NC 28081	(W) 704-224-1961 Email: <a href="mailto:awbmrc@yahoo.com">awbmrc@yahoo.com</a> Term Expires: 06/30/2020 Term: 2 <sup>nd</sup>
<b><u>Alternate #2</u></b> James Palmer 2375 Curecanti Court Kannapolis NC 28083	(H) 704-787-1973 (W) 704-938-1512 Email: <a href="mailto:james@yourpbd.com">james@yourpbd.com</a> Term Expires: 06/30/2021 Term: 3 <sup>rd</sup>
<b><u>*Rowan E.T.J. Representative</u></b> Boyd Hardin 902 East 22 <sup>nd</sup> Street Kannapolis, N.C. 28083	(H) 704- 933-0086 Email: <a href="mailto:rhardin45@hotmail.com">rhardin45@hotmail.com</a> Expires: 6/30/2021 Term: 3 <sup>rd</sup>

The Board of Adjustment meets the Third Tuesday of each month, at 6:00 P.M., at the Kannapolis City Hall Municipal Building located at 401 Laureate Way, Kannapolis. **\*Appointed by Rowan County Commissioners for representation of Extraterritorial Jurisdiction in Rowan County.**