



**KANNAPOLIS CITY COUNCIL
MEETING AGENDA
Kannapolis City Hall
401 Laureate Way, Kannapolis NC
September 24, 2018
6:00 PM**

Please turn off cell phones or place on silent mode.

CALL TO ORDER AND WELCOME

MOMENT OF SILENT PRAYER AND PLEDGE OF ALLEGIANCE

ADOPTION OF AGENDA - Motion to Adopt Agenda or make revisions

FIRST READING

1. TA-2018-05 - Consider text amendments to Table 4.6-1 and Article 11.1 of the Unified Development Ordinance (UDO) to allow Equipment Rental and Leasing (with outdoor storage) in the CD Zoning District, subject to Outdoor Storage standards in Article 11.1 of the UDO (*Zac Gordon, AICP, Planning Director*) (*FIRST READING*)
2. TA-2018-07 - Consider text amendments to Article 4.14 of the Unified Development Ordinance (UDO) to update the Flood Protection Overlay District pursuant to North Carolina's Flood Damage Prevention Ordinance (*Zac Gordon, AICP, Planning Director*) (*FIRST READING*)

PROCLAMATIONS

1. October - Community Planning Month

APPROVAL/CORRECTION OF MINUTES

1. August 13, 2018 Regular Meeting
2. August 27, 2018 Regular Meeting
3. September 10, 2018 Regular Meeting
4. Closed Session August 13, 2018
5. Closed Session August 27, 2018
6. Closed Session September 10, 2018

BUSINESS AGENDA

- A. Public Hearing on the FY 2017-18 Consolidated Annual Performance and Evaluation Report (CAPER) (*Sherry Gordon, Community Development Program Administrator*)
- B. Public Hearing to rezone property located at 2120, 2122 and an unaddressed parcel on West C Street from O-I (Office-Institutional) and RM-2 (Residential Medium Density) to C-2 - CZ (General Commercial-Conditional Zoning) (*Zac Gordon, AICP, Planning Director*)

- C. Public Hearing and Order to withdraw from dedication a portion of Right-of-Way known as Eastover Drive located off Crescent Street (*Wilmer Melton, III, Director of Public Works*)
- D. Sports and Entertainment Venue Guaranteed Maximum Price Contract (*Eddie Smith, Deputy City Manager and Walter M. Safrit, City Attorney*)
- E. Public Hearing and adoption of a Resolution approving Ballpark Development Agreement (Sports & Entertainment Venue) (*Mike Legg, City Manager and Walter M. Safrit, City Attorney*)
- F. Public Hearing and adoption of a Resolution approving a Ballpark Lease Agreement with Temerity Baseball, LLC (*Mike Legg, City Manager and Walter M. Safrit, City Attorney*)
- G. Resolution approving a Non-Relocation Agreement with Temerity Baseball, LLC (*Mike Legg, City Manager and Walter M. Safrit, City Attorney*)
- H. Resolution approving Amendments to an Installment Financing Contract and a Deed of Trust (*Eric Davis, Finance Director*)
- I. Budget Ordinance Amendment (*Eric Davis, Finance Director*)
- J. Resolution Declaring the Intent of the City to Reimburse Itself for Capital Expenditures incurred in connection with the Proceeds of Certain Tax-Exempt Obligations to be issued (*Eric Davis, Finance Director*)
- K. Public Hearing and adoption of a Resolution approving the Third Amendment to the Master Development Agreement with Kannapolis Master Venture, LLC (*Mike Legg, City Manager, Walter M. Safrit, City Attorney*)
- L. Change Order to the Demonstration Project Parking Garage Construction Agreement to facilitate additional pre-development scope of services including mobilization, existing building demolition, and site fencing. (*Mike Legg, City Manager*)

CITY MANAGER REPORT

CITY COUNCIL COMMENTS

SPEAKERS FROM THE FLOOR

In order to speak to Council, please fill out a white card and return to the City Clerk. Cards are located on the table as you enter the meeting room. Please limit comments to 3 minutes

CLOSED SESSION

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

MOTION TO ADJOURN

UPCOMING SCHEDULE

October 08, 2018
October 22, 2018

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



**City of Kannapolis
City Council Meeting
September 24, 2018
Staff Report**

TO: Mayor and City Council
FROM: Zachary D. Gordon, AICP, Planning Director
TITLE: FIRST READING - TA-2018-05, Text Amendment to Table 4.6-1 of the Unified Development Ordinance (UDO) to permit Equipment Rental and Leasing (with outdoor storage) in the CD (Campus Development District, subject to standards in Article 11.1

A. Action Requested by City Council

First Reading of TA-2018-05 (no action required)

B. Required Votes to Pass Required Action

Majority present at meeting

C. Background

Planning staff was approached by a company wanting to locate an Equipment Rental and Leasing business on a parcel in the CD district. The business requires outdoor storage of machinery. Table 4.6-1 allows Equipment Rental and Leasing in the CD district but does not allow outdoor storage.

The proposed amendment would allow Equipment Rental and Leasing with outdoor storage in the CD zoning district, subject to Article 11.1 Outdoor Storage and Solid Waste Storage Standards. Article 11.1 requires landscaping and screening of outdoor storage areas in non-residential zoning districts.

Staff believes that the proposed amendment is consistent with the purpose statement of the CD district in Article 4.3.15 of the UDO, because it provides flexibility in the internal arrangement of uses within the district while achieving integration of the district into the surrounding area. For reference, Articles 4.3.15 and 11.1 are attached.

D. Fiscal Considerations

None

E. Policy Issues

The proposed text amendments to the UDO are attached.

F. Legal Issues

None

G. Alternative Courses of Action and Recommendation

This is the first reading of proposed TA 2018-05. A public hearing will be held at the October 8, 2018 City Council meeting.

ATTACHMENTS:**File Name**

- ▣ Application_for_Text_Amendment.pdf
- ▣ Proposed_Changes_to_Table_4.6-1_and_Article_11.1.pdf
- ▣ UDO_Article_4.3.15.pdf
- ▣ UDO_Article_11_2.pdf



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

Type of Action Requested (Check One):

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

Applicant: Zachary D. Gordon, AICP - Planning Director Owner: _____

Address: 401 Laureate Way Address: _____

Kannapolis, NC 28081

Telephone: 704-920-4355 Telephone: _____

Email: zgordon@kannapolisnc.gov Email: _____

Legal relationship of applicant to property owner: _____

Property Location/Address: _____

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

Zachary D. Gordon
Applicant Name (Print)

Property Owner Name (Print)

[Signature]
Applicant Signature & Date

Property Owner Signature & Date

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

For Staff Use Only:

Filing Fee: _____

Receipt # _____

Application No.: _____

Date Submitted (Complete): _____



CITY OF KANNAPOLIS

AN APPLICATION TO AMEND THE TEXT OF THE UNIFIED DEVELOPMENT ORDINANCE

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

Table 4.6-1

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

See Attached Staff Report

State your reasons for amending the text of the Ordinance:

See Attached Staff Report

Signature of applicant

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

STAFF USE ONLY

Scheduled Planning Commission meeting date: _____

Dates advertised in newspaper: _____ and _____

Planning Commission recommendation: _____

Recommended changes to proposed text: _____

City Council Meeting Date: _____

Dates advertised in newspaper: _____ and _____

City Council Decision: _____

Changes to proposed text: _____

Date written notice of final decision sent to applicant: _____

Proposed Changes to Table 4.6-1

| TABLE 4.6-1: PRINCIPAL USES PERMITTED IN ZONING DISTRICTS | | | | | | | | | | | | | | | | | | |
|---|--|---|----|----|----|------|------|----|----|-----|-----|-----|-----|-----|-------|-----|------|-----|
| * All uses permitted in the CC, CD, and I-1 Districts are subject to supplemental design regulations in Article 11 of this Ordinance. | | | | | | | | | | | | | | | | | | |
| P - Permitted Use | | S - Permitted Use with Supplemental Regulations in Article 5 and/or Article 11 (see "§ 0.00" for reference) | | | | | | | | | | | | | | | | |
| C - Conditional Use | | (-) Prohibited Use | | | | | | | | | | | | | | | | |
| USE | | ZONING DISTRICTS | | | | | | | | | | | | | | | | |
| | | NAICS | AG | RE | RL | RM-1 | RM-2 | RV | RC | B-1 | O-I | CC* | C-1 | C-2 | CD-R* | CD* | I-1* | I-2 |
| Equestrian Boarding & Riding Arenas, Commercial | | 81291, 71131 | P | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Equipment Rental & Leasing (with indoor storage) | | 53321, 5324 | - | - | - | - | - | - | - | - | - | - | - | P | - | P | P | - |
| Equipment Rental & Leasing (with outdoor storage)(§ 11.1) | | 53231, 5324 | - | - | - | - | - | - | - | - | - | - | - | P/S | - | P/S | P/S | - |

Proposed Changes to Article 11.1

11.1.2.5 Equipment Rental and Leasing (with outdoor storage)

11.1.2.5.1 The provisions of this section shall apply to any Equipment Rental and Leasing (with outdoor storage use) located in the CD zoning district. General provisions under Section 11.1.2.1 – 11.1.2.1.8 shall also apply.

11.1.2.5.2 Outdoor storage area shall not exceed 50% of the total parcel square footage in which it is located.

4.3.15. CD CAMPUS DEVELOPMENT DISTRICT.

The CD district is established to provide for a high-quality mixture of employment and/or institutional uses of varying types in a single coordinated development. The district may include light manufacturing, office, warehousing, distribution, institutional and limited retail and service uses in an attractive campus or corporate park setting with architectural design standards, landscaping, screening and buffering. It is not intended that this district be used to accommodate single-use, single building developments which can be located in other zoning classifications. Development within the district shall conform to specific supplemental design standards of Article 11. Further, the district provides significant flexibility in internal arrangement of uses while assuring a satisfactory integration of the district into the surrounding area. Emphasis will be placed on the project's relationship to existing and future public facilities such as roads and greenways. The district is intended for application in select areas of the City primarily for new development on previously undeveloped land. However, the district may also be applied to areas which are appropriate for redevelopment or conversion where it is apparent that all of the development standards may be fulfilled.

4.3.16. ⁽¹⁾CD-R CAMPUS DEVELOPMENT – RESIDENTIAL DISTRICT.

The CD-R District is established to provide small areas within existing CD Developments for high density residential. The district allows compact residential development consisting of condos, townhouses, and apartments, with a maximum of twenty-two (22) dwelling units per acre where adequate public facilities and services are available, except as otherwise provided in this Ordinance. Development within the district shall conform to the specific design controls required for multi-family and/or single-family attached projects set forth in Article 11.2. The CD-R District shall not be approved unless the lot, parcel, or tract subject to the application adjoins an existing CD Campus Development zoning district and is coordinated with the adjacent CD project.

4.3.17. I-1 LIGHT INDUSTRIAL DISTRICT.

The I-1 district is established to provide for areas that contain a mix of light manufacturing uses, office park and limited retail and service uses that service the industrial uses in an attractive business park setting with proper screening and buffering, all compatible

with adjoining uses. I-1 districts should include areas which continue the orderly development and concentration of light industrial uses. I-1 zones should be located so as to have direct access to or within proximity to a major or minor thoroughfare. This shall not apply where an existing building or structure used as permitted within the I-1 District has been established prior to the adoption of this Ordinance on a parcel subject to an application for rezoning.

4.3.18. I-2 GENERAL INDUSTRIAL DISTRICT.

The I-2 district is established to provide for areas of heavy and concentrated fabrication, manufacturing and industrial uses which are suitable based upon adjacent land uses, access to transportation and the availability of public services and facilities. It is the intent of this district to provide an environment for industries that is unencumbered by nearby residential or commercial development. I-2 should be located in areas where conflicts with other uses can be minimized to promote orderly transitions and buffers between uses. The I-2 district is established in order to provide sites for activities which involve major transportation terminals, and manufacturing facilities that have a greater impact on the surrounding area than industries found in the I-1 district. I-2 districts should not be located adjacent to any property that is zoned for residential use, including mixed-use developments with an adjacent residential designation. I-2 zones should be restricted so as to have direct access to or within proximity to a major or minor thoroughfare. This shall not apply where an existing building or structure used as permitted within the I-2 District has been established prior to the adoption of this Ordinance on a parcel subject to an application for rezoning.

4.3.19. STANDARDS FOR BASE DISTRICTS.

4.3.19.1. Permitted Uses are listed in Table 4.6-1. Uses permitted by right, uses permitted as conditional uses and uses for which there are supplemental use regulations in Article 5 are indicated in the table. Accessory Uses shall be regulated in accordance with § 5.2 of this Ordinance.

4.3.19.2. Dimensional and density regulations, including setbacks, are listed in Table 4.7-1 and described in detail in § 4.7.

4.3.19.3. Standards for landscaping, screening and

11.1. OUTDOOR STORAGE AND SOLID WASTE STORAGE STANDARDS.

11.1.1. RESIDENTIAL DISTRICTS.

11.1.1.1. In the RE, RL, RM-1, RM-2, RV and RC districts, open storage of junk, salvage or equipment including but not limited to scrap metal, used boxes, or crates, used appliances, salvaged furniture or glassware, salvaged automobiles or parts shall be prohibited. All Nonconforming open storage areas as described above, which are not found in compliance with the requirements of this Section shall either cease and desist or meet full compliance standards no later than three (3) years following the effective date of this Ordinance or applicable amendment hereto provided however, that no existing open storage area may be expanded or enlarged except in accordance with the provisions herein.

Notwithstanding the above provisions, any open storage areas that were subject to, and have complied with, the amortization provisions of the previous Kannapolis Zoning Ordinance shall not be subject to this Section 11.1.1.1.

11.1.1.2. Open storage of materials for non-residential uses within a residential zoning district shall conform to the standards of § 11.1.2 Non-residential Zoning Districts.

11.1.2. NON-RESIDENTIAL ZONING DISTRICTS.

11.1.2.1. ⁽²⁾General Provisions.

In the AG, B-1, CC, C-1, C-2, CD, I-1 and I-2 districts, outdoor storage areas shall comply with the following, except that allowed under §§ 11.1.2.2-11.1.2.4.

11.1.2.1.1. Outdoor storage areas shall be prohibited within 50 feet of any public street right-of-way and within ⁽¹⁾one hundred (100) feet of residential uses and/or residential zoning districts. This provision shall not apply to nursery stock in non-residential zoning districts.

⁽¹⁾All measurements used in the enforcement of this Section shall be depicted on a major or minor site plan as required for development approval.

11.1.2.1.2. ⁽⁴⁾Outdoor storage areas shall be screened where visible from the public or private right-of-way and residential zoned or residential used properties by an opaque screen. This provision shall not apply to Junk/Salvage Yards (see § 5.13).

11.1.2.1.3. Except for integral units (see Definitions, Appendix A), openly stored items shall not project above the screening. Notwithstanding this requirement, no item may exceed the building height restrictions in Table 4.7-1 for the zoning district within which the item is located.

11.1.2.1.4. No open storage area shall be maintained in the required front yard area, except that allowed by §§ 11.1.2.3 and 11.1.2.4.

11.1.2.1.5. Fences of chain link ⁽⁴⁾with fabric mesh, and fences of sheet metal and barbed and razor wire, with or without slats of wood or metal inserted, shall not be considered as sufficient materials to screen outdoor storage areas or operations.

11.1.2.1.6. ⁽⁴⁾Screening shall be constructed of durable, weather-proof, permanent materials such as concrete or stone block, metal, vinyl, wood or similar material. The applicant shall ensure that the choice of materials and color are consistent and compatible with those of the principal building(s) on the site.

11.1.2.1.7. All Nonconforming open storage areas as described above, which are not found in compliance with the requirements of this Section shall either cease and desist or meet full compliance standards no later than three (3) years following the effective date of this Ordinance or applicable amendment hereto provided however, that no existing open storage area may be expanded or enlarged except in accordance with the provisions herein.

Notwithstanding the above provisions, any open storage areas that were subject, to and have complied with, the amortization provisions of the previous Kannapolis Zoning Ordinance shall not

(1) City Council 4/23/2004

(2) City Council 10/25/2004

(3) TA-2009-05 – City Council approved 5/11/2009

(4) TA-2018-02 – City Council approved 3/26/2018



**City of Kannapolis
City Council Meeting
September 24, 2018
Staff Report**

TO: Mayor and City Council
FROM: Zachary D. Gordon, AICP, Planning Director
TITLE: FIRST READING - TA-2018-07, Text Amendment to Unified Development Ordinance (UDO) to consider amendments to Article 4, Section 4.14, Floodplain Protection Overlay District (FPOD)

| |
|--|
| A. Action Requested by City Council |
|--|

First Reading of TA-2018-07 (no action required)

| |
|--|
| B. Required Votes to Pass Required Action |
|--|

Majority present at meeting

| |
|----------------------|
| C. Background |
|----------------------|

The City of Kannapolis is required, by North Carolina legislation (Part 6, Article 21, Chapter 143; Parts 3, 5 and 8, Article 19, Chapter 160A; and Article 8, Chapter 160A), to adopt regulations designed to promote the public health, safety and general welfare as it relates to flood damage prevention. North Carolina State law requires an update to the FPOD and relevant Sections to comply with the minimum criteria of the National Flood Insurance Program (NFIP) 44 CFR 60.3(d) and (e), and NC Session Law 2000-150, Senate Bill 1341 (NCGS 143-215.51-61).

The proposed amendment fulfills a statutory requirement to update Article 4.14 Floodplain Protection Overlay District (FPOD) of the Unified Development Ordinance in order to continue eligibility to obtain flood insurance for properties within the City of Kannapolis and the ETJ. Changes are also proposed to Appendices A and B9 as referenced in Article 4.14.

The proposed text changes are taken directly from the 2017 North Carolina Model Flood Damage Prevention Ordinance released by the State of North Carolina. Staff recommends adopting the proposed text amendment as presented.

| |
|---------------------------------|
| D. Fiscal Considerations |
|---------------------------------|

None

E. Policy Issues

The proposed text amendments to the UDO are attached.

F. Legal Issues

None

G. Alternative Courses of Action and Recommendation

This is the first reading of proposed TA 2018-07. A public hearing will be held at the October 8, 2018 City Council meeting.

ATTACHMENTS:

File Name

- ▢ Application_for_Text_Amendment.pdf
- ▢ 2._UDO_Article_4.14.pdf
- ▢ 3._UDO_Appendix_A_-_Definitions.pdf
- ▢ 4._UDO_Appdx_B9.pdf



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

Type of Action Requested (Check One):

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

Applicant: Zachary D. Gordon, AICP - Planning Director Owner: _____

Address: 401 Laureate Way Address: _____

Kannapolis, NC 28081 _____

Telephone: 704-920-4355 Telephone: _____

Email: zgordon@kannapolisnc.gov Email: _____

Legal relationship of applicant to property owner: _____

Property Location/Address: _____

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

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

[Signature] _____
Applicant Signature & Date Property Owner Signature & Date

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

For Staff Use Only:

Filing Fee: _____ Receipt # _____

Application No.: _____ Date Submitted (Complete): _____



CITY OF KANNAPOLIS

AN APPLICATION TO AMEND THE TEXT OF THE UNIFIED DEVELOPMENT ORDINANCE

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

Table 4.6-1

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

See Attached Staff Report

State your reasons for amending the text of the Ordinance:

See Attached Staff Report

Signature of applicant

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

STAFF USE ONLY

Scheduled Planning Commission meeting date: _____

Dates advertised in newspaper: _____ and _____

Planning Commission recommendation: _____

Recommended changes to proposed text: _____

City Council Meeting Date: _____

Dates advertised in newspaper: _____ and _____

City Council Decision: _____

Changes to proposed text: _____

Date written notice of final decision sent to applicant: _____

4.14. FLOODPLAIN PROTECTION OVERLAY (FPOD) DISTRICT.

4.14.1. FINDINGS OF FACT.

4.14.1.1. The flood prone areas within the jurisdiction of City of Kannapolis are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

4.14.1.2. These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas by uses vulnerable to floods or other hazards.

4.14.2. STATEMENT OF PURPOSE.

It is the purpose of this Floodplain Overlay District to promote public health, safety and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

- Restrict and prohibit uses that are dangerous to health, safety and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;
- Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
- Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of floodwaters;
- Control filling, grading, dredging and all other development that may increase erosion or flood damage; and
- Prevent or regulate the construction of flood barriers that will unnaturally divert floodwaters or which may increase flood hazards to other lands.

4.14.3. OBJECTIVES OF FLOODPLAIN OVERLAY DISTRICT

The objectives of this Section 4.14 are to:

- Protect human life and safety, health;

- Minimize expenditure of public money for costly flood control projects;
- Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- Minimize prolonged business losses and interruptions;
- Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, cable, sewer lines, streets and bridges located in flood prone areas;
- Minimize damage to private and public property due to flooding;
- Make flood insurance available to the community through the National Flood Insurance Program;
- Maintain the natural and beneficial functions of floodplains;
- Help maintain a stable tax base by providing for the sound use and development of flood prone areas; and
- Ensure that potential home buyers are aware that property is in a Special Flood Hazard Area.

4.14.4. LANDS TO WHICH THIS ARTICLE APPLIES.

This Section 4.14 shall apply to all Special Flood Hazard Areas within the jurisdiction, including Extra-Territorial Jurisdictions (ETJs), of the City of Kannapolis and within the jurisdictions of any other community whose governing body agrees, by resolution, to such applicability.

4.14.5. BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD.

The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) and its accompanying Flood Insurance Rate Maps (FIRM), for Cabarrus County dated ~~November 5, 2008~~ November 16, 2018, and associated Digital Flood Insurance Maps (DFIRM) panels, including any digital data developed as part of the FIS which are adopted by reference and declared to be a part of this Section 4.14 and shall constitute the official boundaries of the Floodplain Overlay District. Future revisions to the FIS and DFIRM panels that do not

change flood hazard data within the jurisdictional authority of the City of Kannapolis are also adopted by reference and declared a part of this ordinance.

4.14.6. COMPLIANCE WITH THIS ORDINANCE.

No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this Section 4.14 and other applicable regulations.

4.14.7. ABROGATION AND GREATER RESTRICTIONS.

This Section is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Section 4.14 and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

4.14.8. INTERPRETATION AND APPLICATION OF SECTION 4.14.

In the interpretation and application of this Section 4.14 all provisions shall be:

- Considered as minimum requirements;
- Liberally construed in favor of the City; and
- Deemed neither to limit nor repeal any other powers granted under State statutes.

4.14.9. PENALTIES FOR VIOLATION.

Violation of the provisions of this Section 4.14 or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a misdemeanor pursuant to NC G.S. § 143-215.58. Any person who violates this Section 4.14 or fails to comply with any of its requirements shall, upon conviction thereof, be punished in accordance with Section 1.6 of this Ordinance. Nothing contained in this Section shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation.

4.14.10. WARNING AND DISCLAIMER OF LIABILITY.

The degree of flood protection required by this Section 4.14 is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This Section 4.14 does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This Section 4.14

shall not create liability on the part of the City or any officer or employee thereof for any flood damages that result from reliance on this Section 4.14 or any administrative decision made pursuant to this Section 4.14.

4.14.11. DESIGNATION OF FLOODPLAIN ADMINISTRATOR

The City's Planning Director or his /her designee, hereinafter referred to as the Floodplain Administrator, is hereby appointed to administer and implement the provisions of this Section.

4.14.12. DUTIES OF ADMINISTRATOR

The Floodplain Administrator shall perform, but not be limited to, the following duties:

4.14.12.1. Review all floodplain development applications and issue permits for all proposed development within Special Flood Hazard Areas to assure that the requirements of this Section have been satisfied.

4.14.12.2. Review all proposed development within Special Flood Hazard Areas to assure that all necessary Local, State and Federal permits have been received.

4.14.12.3. Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).

4.14.12.4. Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained.

4.14.12.5. Prevent encroachments within floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of this § 4.14.26 are met.

4.14.12.6. Obtain actual elevation, in relation to mean sea level, of the reference level, including the basement, and all attendant utilities of all new or substantially improved structures, in accordance with 4.14.14.

4.14.12.7. Obtain actual elevation, in relation to mean sea level, to which the new or substantially improved structures and utilities have been floodproofed, in accordance with 4.14.14.

4.14.12.8. Obtain actual elevation, in relation to mean sea level, of all public utilities in accordance with the provisions of 4.14.14.

4.14.12.9. When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or surveyor in accordance with 4.14.14 and 4.14.19.4.

4.14.12.10. Where interpretation is needed as to the exact location of boundaries of the areas of the Special Flood Hazard Areas, floodways, or non-encroachment areas, for example, where there appears to be a conflict between a mapped boundary and actual field conditions, make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in § 3.7 of this Ordinance.

4.14.12.11. When Base Flood Elevation (BFE) data has not been provided in accordance with Section 4.14.5 herein, obtain, review and reasonably utilize any Base Flood Elevation (BFE) data, along with floodway data or non-encroachment area data available from a Federal, State or other source in order to administer the provisions of this Ordinance.

4.14.12.12. When Base Flood Elevation (BFE) data is provided but no floodway or non-encroachment area data has been provided in accordance with 4.14.5, obtain review, and reasonably utilize any floodway data or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this Ordinance.

4.14.12.13. When the lowest floor and the lowest adjacent grade of a structure or the lowest ground elevation of a parcel in a Special Flood Hazard Area is above the Base Flood Elevation, advise the property owner of the option to apply for a Letter of Map Amendment (LOMA) from FEMA. Maintain a copy of the Letter of Map Amendment (LOMA) issued by FEMA in the floodplain development permit file.

4.14.12.14. Permanently maintain all records to the administration of this Section and make these

records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.

4.14.12.15. Make on-site inspections of work in progress. .

4.14.12.16. Issue stop-work orders as required.

4.14.12.17. Revoke floodplain development permits as required.

4.14.12.18. Make periodic inspections throughout the Special Flood Hazard Areas within the jurisdiction of the community. The Floodplain Administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.

4.14.12.19. Follow through with corrective procedures of 4.14.16.

4.14.12.20. Review, provide input, and make recommendations for variance requests.

4.14.12.21. Maintain a current map repository to include, but not limited to, FIS Report, FIRM and other official flood maps and studies adopted in accordance with 4.14.4, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs.

4.14.12.22. Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision based on Fill (LOMR-F) and Letters of Map Revision (LOMR).

4.14.13. DEVELOPMENT PERMIT.

4.14.13.1. A floodplain development permit shall be required in conformance with the provisions of this Section prior to the commencement of any development activities within Special Flood Hazard Areas determined in accordance with the provisions of 4.14.5 of this ordinance.

4.14.13.2. Application of a Floodplain Development Permit shall be made to the Floodplain Administrator prior to any development activities located within Special Flood Hazard Areas. The

Applicant shall submit a Flood Prevention Plan as set forth in Appendix B.

4.14.13.3. The Floodplain Development Permit shall include, but not be limited to:

- A description of the development to be permitted under the floodplain development permit.
- The Special Flood Hazard Area determined for the proposed development in accordance with available data specified in Section 4.14.5.
- The regulatory flood protection elevation required for the reference level and all attendant utilities.
- The regulatory flood protection elevation required for the protection of all public utilities.
- All certification submittal requirements with timelines.
- A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse, as applicable.
- The flood openings requirements, if in Zones A, AE, AH, AO, A99.
- Limitations of below BFE enclosure uses (if applicable). (i.e. parking, building access, and limited storage only)

4.14.14. CERTIFICATION REQUIREMENTS

4.14.14.1. Elevation Certificates

- An Elevation Certificate (FEMA Form ~~81-31~~ 086-0-33) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.
- An Elevation Certificate (FEMA form 086-0-33) is required after the reference level is established. Within seven (7) calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference

level. Any work done within the seven (7) day calendar period and prior to the submission of the certification

- A final as-built Elevation Certificate (FEMA ~~81-31~~ Form 086-0-33) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

4.14.14.2. Floodproofing Certificate

- If non-residential floodproofing is used to meet the regulatory flood protection elevation requirements, a Floodproofing Certificate (FEMA ~~81-65~~ Form 086-0-34), with supporting data, an operational plan, and an inspection and maintenance plan area required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to mean sea level. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to the permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit. Failure to construct in accordance with the certified design shall be cause to withhold the

issuance of a Certificate of Compliance/Occupancy.

- A final finished Construction Floodproofing Certificate (FEMA Form 086-0-34), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the issuance of a Certificate of Compliance/Occupancy. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities. Floodproofing certificate shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to Certificate of Occupancy. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certificate design shall be cause to deny a Certificate of Compliance/Occupancy.

4.14.14.3. If a manufactured home is placed within Zone A, AO, AE, ~~or A1-30, AH, A99~~ and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required in accordance with the provisions of 4.14.19.3.

4.14.14.4. If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.

4.14.14.5. Certification Exceptions. The following structures, if located within Zone A, AO, AE ~~or A1-30, AH, A99~~, are exempt from the elevation/floodproofing certification requirements specified in 4.14.14.1 and 4.14.14.2:

- Recreational Vehicles meeting requirements of 4.14.24;
- Temporary Structures meeting requirements of 4.14.21; and
- Accessory Structures less than 150 square feet meeting requirements of 4.14.22.

4.14.14.6 Determination for existing buildings and structures

- For applications for building permits to improve buildings and structures, including alternations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, an any other improvements of or work on such building and structures, the Floodplain Administrator shall:
 - Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;
 - Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;
 - Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and
 - Notify the applicant if it is determine that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirement of the NC Building Code and this Section is required.

4.14.15. INSPECTIONS AND VIOLATIONS.

4.14.15.1. As the work pursuant to a floodplain development permit progresses, the Floodplain Administrator shall make as many inspections of the

work as may be necessary to ensure that the work is being done according to the provisions of the local Ordinance and the terms of the permit. In exercising this power, the Floodplain Administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.

4.14.15.2. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this article, the Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the conditions under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.

4.14.15.3. The Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.

4.14.15.4. When the Administrator finds violations of applicable State and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.

4.14.16. REMEDY TO VIOLATION.

4.14.16.1. If the owner of a building or property shall fail to take prompt corrective action, the Floodplain Administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:

- That the building or property is in violation of the floodplain management regulations;
- That a hearing will be held before the Floodplain Administrator at a designated place and time, not later than ten (10) days

after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and

- That following the hearing, the Floodplain Administrator may issue such order to alter, vacate, or demolish the building; or to remove fill as applicable.
- If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of this § 4.14, they shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) calendar days, nor more than one hundred eighty (180) calendar days. Where the Floodplain Administrator finds that there is imminent danger to life or other property, they may order that corrective action be taken in such lesser period as may be feasible.
- If the owner of a building or property fails to comply with an order to take corrective action from which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a misdemeanor and shall be punished at the discretion of the court.
- Any Applicant for which a Floodplain Development Permit has been denied, or to which conditions have been attached, or any Applicant owner who has received an order to take corrective action, may appeal from the decision or order pursuant to § 3.7 of this Ordinance.
- Failure to Comply with Order: If the Owner of a building or property fails to comply with an order to take corrective actions for which no Appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a Class 1 misdemeanor pursuant to NC G.S. § 143-215.58. Any person who violates this Section or fails to comply with any of its requirements shall, upon conviction thereof, be punished in accordance with Section 1.6 of this Ordinance. Nothing contained in this Section shall prevent the City from taking such other lawful action as is necessary to

prevent or remedy any violation.

4.14.17. VARIANCE PROCEDURES.

4.14.17.1. The Board of Adjustment as established by the City of Kannapolis, shall hear and decide requests for variances from the requirements of this Section 4.14 in accordance with the procedures and standards set forth in § 3.7 of this Ordinance.

4.14.17.2. Any person aggrieved by the decision of the Board of Adjustment may appeal such decision to the Court, as provided in Chapter 7A of the North Carolina General Statutes.

4.14.17.3. Variances may be issued for:

- The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure.
- Functionally dependent facilities if determined to meet the definition as stated in Appendix A of the UDO, provided such facilities are protected by methods that minimize flood damages during base flood damages during the base flood and create no additional threats to public safety.
- Any other type of development, provided it meets the requirements of 4.14.17.

4.14.17.4. In passing upon variances, the Board of Adjustment shall consider all technical evaluations, all relevant factors, all standards specified in other sections of 4.14., and:

- The danger that materials may be swept onto other lands to the injury of others;
- The danger to life and property due to flooding or erosion damage;
- The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- The importance of the services provided by the proposed facility to the community;
- The necessity to the facility of a waterfront location as defined in Appendix A as a functionally dependent facility, where applicable;
- The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

- The compatibility of the proposed use with existing and anticipated development;
- The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- The safety of access to the property in times of flood for ordinary and emergency vehicles;
- The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and effects of wave action, if applicable, expected at the site; and
- The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

4.14.17.5. The findings listed above shall be submitted to the Board of Adjustment in writing, and included in the application for a variance.

4.14.17.6. Upon consideration of the factors listed above, and the purposes of this Section 4.14, the Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this Section 4.14.

4.14.17.7. Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.

4.14.17.8. Conditions for variances are as follows:

- Variances shall not be issued when the variance will render the structure in violation of other Federal, State, or local laws, regulations, or ordinances.
- Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- Variances shall only be issued prior to development permit approval.
- Variances shall only be issued upon:
 - A showing of good and sufficient cause;
 - A determination that failure to grant the variance would result in exceptional hardship; and
 - A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense,

create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

4.14.17.9. A variance may be issued for solid waste disposal facilities per site, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in Special Flood Hazard Areas provided that all of the following conditions are met:

- The use serves a critical need in the community.
- No feasible location exists for the use outside the Special Flood Hazard Area.
- The reference level of any structure is elevated or floodproofed to at least the regulatory flood protection elevation.
- The use complies with all other applicable Federal, State, and local laws.
- The City of Kannapolis has notified the Secretary of the North Carolina Department of Crime Control and Public Safety of its intention to grant a variance at least thirty (30) calendar days prior to granting the variance.

4.14.17.10. Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and that such construction below the Base Flood Elevation increases risk of life and property, and that the issuance of a variance to construct a structure below the Base Flood Elevation will result in increased premium rates for flood insurance up to \$25 per \$100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.

4.14.17.11. The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.

4.14.18. PROVISIONS FOR FLOOD HAZARD REDUCTION.

In all Special Flood Hazard Areas the following provisions are required:

- All new construction and substantial improvements shall be designed or modified and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.

- All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damage.
- Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding to the Regulatory Flood Protection Elevation. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panel/boxes, utility/cable boxes, hot water heaters, and electric outlets/switches.
- All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.
- On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- ~~• Any alteration, repair, reconstruction or improvements to a structure, which is in compliance with the provisions of this Ordinance, shall meet the requirements of new construction as contained in this Section 4.14.~~
- Nothing in this Section 4.14 shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this Section 4.14 and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the regulatory flood protection elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this Section 4.14.
- New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by variance as specified in 4.14.17.9. A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of water treatment plant or wastewater

treatment facility may be located in a Special Flood Hazard Area only if the structure or tank is either elevated or floodproofed to at least the regulatory flood protection elevation and certified in accordance with the provisions of 4.14.14.

- All subdivision and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 USC 1334.
- When a structure is partially located in a Special Flood Hazard Area, the entire structure shall meet the requirements for new construction and substantial improvements.
- When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest base flood elevation shall apply.

4.14.19. SPECIFIC STANDARDS FOR CONSTRUCTION OF PERMANENT STRUCTURES.

In all Special Flood Hazard Areas where Base Flood Elevation (BFE) data has been provided, as set forth in 4.14.5 or 4.14.14, the following provisions, in addition to the provisions of 4.14.18 are required:

4.14.19.1. Residential Construction.

New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including the basement, elevated no lower than the regulatory flood protection elevation, as defined in Appendix A of this ordinance.

4.14.19.2. Manufactured Homes.

The following shall apply to Manufactured homes only:

- New and replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the regulatory flood protection elevation, as defined in Appendix A of this ordinance.
- Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the

State of North Carolina Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to NCGS [§ 143-143.15](#). Additionally, when the elevation would be met by an elevation of the chassis at least thirty-six (36) inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above thirty-six (36) inches in height, an engineering certification is required.

- All enclosures or skirting below the lowest floor shall meet the requirements of 4.14.20.
- An evacuation plan must be developed of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the Floodplain Administrator and the local Emergency Management coordinator.

4.14.19.3. Nonresidential Construction.

New construction and substantial improvement of any commercial, industrial, or non-residential structure shall have the reference level, including the basement, elevated no lower than the regulatory flood protection elevation, as defined in Appendix A. Structures located in A, AE, AO, ~~and A1-30 AH~~ [and A99](#) Zones may be floodproofed to the regulatory flood prevention elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the regulatory flood protection elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. For AO Zones, the floodproofing elevation shall be in accordance with 4.14.14.2. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in 4.14.4, along with the operational and maintenance plans.

4.14.20. ELEVATED BUILDINGS.

4.14.20.1. New construction or substantial improvements of elevated buildings that include fully enclosed areas which are below the lowest floor:

- 4.14.20.1.1.** [Shall not be temperature controlled](#)

or conditioned. Shall not be designed or used for human habitation, but shall only be used for the parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises.

4.14.20.1.2. Shall be constructed entirely of flood resistant materials at least to the regulatory flood protection elevation;

4.14.20.1.3. Shall include, in Zones A, AO, AE, ~~and A-1-30~~ AH and A99 flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:

- A minimum of two flood openings on different sides of each enclosed area subject to flooding;
- The total net area of all flood openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding;
- If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
- The bottom of all required flood openings shall be no higher than one (1) foot above the adjacent grade;
- Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions.
- Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator).
- The interior portion of such enclosed area shall not be partitioned or finished into separate rooms, except to enclose storage rooms.
- Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as

outlined above.

4.14.21. TEMPORARY NON-RESIDENTIAL STRUCTURES.

4.14.21.1. Prior to the issuance of a floodplain development permit for a temporary structure, the following requirements must be met:

- All applicants must submit to the Floodplain Administrator, a plan for the removal of such structure(s) in the event of a hurricane, flash flood, or other type of flood warning notification. The following information shall be submitted in writing to the Floodplain Administrator for review and written approval;
- A specified time period for which the temporary use will be permitted Time specified may not exceed three (3) months, renewable up to one (1) year;
- The name, address and phone number of the individual responsible for the removal of the temporary structure;
- The time frame prior to the event at which a structure will be removed (i.e. minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
- A copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and
- Designation, accompanied by documentation, of a location outside the Special Flood Hazard Area, to which the temporary structure will be moved.

4.14.22. ACCESSORY AND OTHER STRUCTURES.

4.14.22.1. When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Boundary Area, the following criteria shall be met:

- Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
- Accessory structures shall not be temperature-controlled;
- Accessory structures shall be designed to have low flood damage potential;
- Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;

- Accessory structures shall be firmly anchored in accordance with § 4.14.18;
- Service facilities such as electrical shall be installed in accordance with § 4.14.18.
- Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below base flood elevation in conformance with § 4.14. 20.

4.14.22.2. An accessory structure with a footprint of less than 150 square feet that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with Section 4.14.14.

4.14.22.3. Tanks: When gas and liquid storage tanks are to be placed within a Special Flood Hazard Area, the following criteria shall be met:

- Underground tanks: Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty;
- Above-ground tanks, elevated: Above-ground tanks in flood hazard areas shall be elevated to or above the Regulatory Flood Protection Elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirement of the applicable flood hazard area;
- Above-ground tanks, not elevated: Above-ground tanks that do not meet the elevation requirement of the above Section (Above-ground tanks, elevated), shall be permitted in flood hazard areas provided the tanks are designed, constructed, installed and anchored to resist all flood-related and other loads, including the effects of buoyancy, during conditions of the design flood without release of content in the floodwaters or infiltration by floodwaters into the tanks. Tanks shall be designed, constructed, installed, and anchored to resist the potential buoyant and other flood forces acting on an empty tank during design flood conditions.

- Tank inlets and vents: Tank inlets, fill openings and vents shall be:
 - At or above Regulatory Flood Protection Elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and
 - Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of design flood.

4.14.22.4. Other Development

- Fences in regulated floodways and NEAs that have the potential to block the passage of floodwaters, such as stockage fences and wire mesh fences, shall meet the requirements of Section 4.14.26.
- Retaining walls, sidewalks and driveways in regulated floodways and NEAs that involve placement of fill in regulated floodways shall meet the requirements of Section 4.14.26.
- Roads and watercourse crossings, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side, that encroach into regulated floodways shall meet the requirements of Section 4.14.26.

4.14.23. ADDITIONS/IMPROVEMENTS

4.14.23.1. Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

- Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.
- A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

4.14.23.2. Additions to post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.

4.14.23.3. Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

- Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.
- A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

4.14.23.4 Any combination of repair, reconstruction, rehabilitation, addition or improvement of a building or structure taking place during a one (1) year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started must comply with the standards for new construction. For each building or structure, the one (1) year period begins on the date of the first improvement or repair of that building or structure subsequent to the effective date of this ordinance. Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a ten (10) year period for which the cost of repairs at the time of each such flood event, on average, equals or exceeds 25% of the market value of the structure before the damage occurred. If the structure has a sustained damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The requirement does not, however, include either:

- Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified and that are the minimum necessary to assume safe living conditions.

- Any alterations of a historic structure provided that the alteration will not produce the structure's continued designation as an historic structure.

4.14.24. RECREATIONAL VEHICLES.

4.14.24.1. A Recreation vehicles shall either:

- Be on-site for fewer than 180 consecutive days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions); or
- Meets all requirements for new construction.

4.14.25. STANDARDS FOR LAND SUBDIVISIONS.

4.14.25.1. All subdivision proposals shall be consistent with the need to minimize flood damage;

4.14.25.2. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;

4.14.25.3. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards;

4.14.26. FLOODWAYS AND NON-ENCROACHMENT AREAS.

4.14.26.1. Areas designated floodways or non-encroachment areas are located within Special Flood Hazard Areas established in 4.14.5. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in 4.14.18 through 4.14.20, shall apply to all development within such areas:

4.14.26.2. No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless:

- It is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the Floodplain Administrator prior to issuance of floodplain development permit, or
- A Conditional Letter of Map Revisions (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained upon completion of the proposed encroachment.

4.14.26.3. If § 4.14.26.2 is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this Section 4.14.

4.14.26.4. No manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or

subdivision, providing the following provisions are met:

- The anchoring and the elevation standards of 4.14.19; and
- The no encroachment standard of 4.14.26.2.

4.14.27. STREAMS WITHOUT BASE FLOOD ELEVATIONS AND/OR FLOODWAYS.

4.14.27.1. Within the Special Flood Hazard Areas designated as Approximate Zone A and established in § 4.14.5, where no Base Flood Elevation (BFE) data has been provided by FEMA, the following provisions, in addition to the provisions of 4.14.18, shall apply:

4.14.27.1.1. No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of twenty (20) feet each side from top of bank or five times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

4.14.27.1.2. The BFE used in determining the regulatory flood protection elevation shall be determined based on the following criteria:

- When Base Flood Elevation (BFE) data is available from other sources, all new construction and substantial improvements within such areas shall comply with all applicable provisions of this division and shall be elevated or floodproofed in accordance with elevations established in accordance with 4.14.18 and 4.14.19.
- When floodway data is available from a Federal, State, or other resource, all new construction and substantial improvements within floodway areas shall also comply with the requirements of 4.14.19 and 4.14.22.
- All subdivision, manufactured home park and other development proposals shall provide Base Flood Elevation (BFE) data if development is greater than five (5) acres or has more than fifty (50) lots/manufactured home sites. Such Base Flood Elevation (BFE) data shall be adopted by reference in accordance with 4.14.5 and utilized in

implementing this ordinance.

- When Base Flood Elevation (BFE) data is not available from a Federal, State, or other source as outlined above, the reference level shall be elevated or floodproofed (nonresidential) to or above the Regulatory Flood Protection Elevation, as defined in Appendix A. All other applicable provisions of 4.14.19 and 4.14.20 shall also apply.

4.14.28. STANDARDS FOR RIVERINE FLOODPLAINS WITH BFE BUT WITHOUT ESTABLISHED FLOODWAYS OR NON-ENCROACHMENT AREAS

4.14.28.1. Along rivers and streams where BFE data is provided by FEMA or is available from another source but neither floodway nor non-encroachment areas are identified for a Special Flood Hazard Area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:

- Standards of Sections 4.14.18 and 4.14.19; and
- Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community.

4.14.29. AREAS OF SHALLOW FLOODING (AO ZONES).

4.14.29.1. Located within the Special Flood Hazard Areas established in § 4.14.5 are areas designated as shallow flooding areas. These areas have special flood hazard associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. In addition to Sections 4.14.18 through 4.14.20, all new construction and substantial improvements shall meet the following requirements:

4.14.29.1.1. The reference level shall be elevated at least as high as the depth number specified on the Flood Insurance Rate Map (FIRM), in feet, plus a freeboard of two (2) feet, above the highest adjacent grade; or at least four (4) feet above the highest adjacent grade if no depth is specified.

4.14.30. AREA OF SHALLOW FLOODING (ZONE AH)

4.14.30.1 Located within the Special Flood Hazard Areas established in Section 4.15.5, are areas designated as shallow flooding areas. These are subject to inundation by 1% annual chance shallow flooding (usually area of ponding) where average depths are one (1) to three (3) feet. Base Flood Elevations derived from detailed hydraulic analyses are shown in this zone. All new construction and substantial improvement shall meet the following requirement:

- Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

4.14.31. EFFECT ON RIGHTS AND LIABILITIES UNDER THE EXISTING FLOOD DAMAGE PREVENTION ORDINANCE

This Section in part comes forward by re-enactment of some of the provisions of the flood damage prevention ordinance enacted October 27, 2008 as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this section shall not affect any action, suit, or proceeding instituted or pending. All provisions of the flood damage prevention ordinance of the City of Kannapolis enacted on October 27, 2008, as amended, which are not reenacted herein are repealed.

Appendix A

Definitions

ALTERATION OF A WATERCOURSE - a dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

AREA OF SHALLOW FLOODING – A designated Zone AO or AH on a community's Flood Insurance Rate Map (FIRM) with base flood depths determined to be from one (1) to three (3) feet. These areas are located where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

AREA OF FUTURE-CONDITIONS FLOOD HAZARD - the land area that would be inundated by the 1-percent-annual-chance (100- year) flood based on future-conditions hydrology.

DESIGN FLOOD - See “Regulatory Flood Protection Elevation.”

DEVELOPMENT ACTIVITY - any activity defined as Development which will necessitate a Floodplain Development Permit. This includes buildings, structures, and non-structural items, including (but not limited to) fill, bulkheads, piers, pools, docks, landings, ramps, and erosion control/stabilization measures.

DIGITAL FLOOD INSURANCE RATE Map (DFIRM) - the digital official map of a community, issued by the Federal Emergency Management Agency (FEMA), on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

EXISTING BUILDING AND EXISTING STRUCTURE - any building and/or structure for which the “start of construction” commenced before date the community’s first floodplain management ordinance was adopted.

FLOOD INSURANCE RATE MAP (FIRM) – An official map of a community, issued by the Federal Emergency Management Agency, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated. (see also DFIRM)

FLOOD-RESISTANT MATERIAL - any building product [material, component or system] capable of withstanding direct and prolonged contact (minimum 72 hours) with floodwaters without sustaining

damage that requires more than low-cost cosmetic repair. Any material that is water-soluble or is not resistant to alkali or acid in water, including normal adhesives for above-grade use, is not flood-resistant. Pressure-treated lumber or naturally decay-resistant lumbers are acceptable flooring materials. Sheet-type flooring coverings that restrict evaporation from below and materials that are impervious, but dimensionally unstable are not acceptable. Materials that absorb or retain water excessively after submergence are not flood-resistant. Please refer to Technical Bulletin 2, *Flood Damage-Resistant Materials Requirements*, and available from the FEMA. Class 4 and 5 materials, referenced therein, are acceptable flood-resistant materials.

FLOODWAY ENCROACHMENT ANALYSIS - an engineering analysis of the impact that a proposed encroachment into a floodway or non-encroachment area is expected to have on the floodway boundaries and flood levels during the occurrence of the base flood discharge. The evaluation shall be prepared by a qualified North Carolina licensed engineer using standard engineering methods and models.

LETTER OF MAP CHANGE (LOMC) - an official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

- (a) Letter of Map Amendment (LOMA): An official amendment, by letter, to an effective National Flood Insurance Program map. A LOMA is based on technical data showing that a property had been inadvertently mapped as being in the floodplain, but is actually on natural high ground above the base flood elevation. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.
- (b) Letter of Map Revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.
- (c) Letter of Map Revision Based on Fill (LOMR-F): A determination that a structure or parcel of land has been elevated by fill above the BFE and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.
- (d) Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.

LIGHT DUTY TRUCK - any motor vehicle rated at 8,500 pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less as defined in 40 CFR 86.082-2 and is:

- (a) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or
- (b) Designed primarily for transportation of persons and has a capacity of more than 12 persons; or
- (c) Available with special features enabling off-street or off-highway operation and use.

~~MEAN SEA LEVEL—The national Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which base Flood Elevations (BFEs) shown on a FIRM as referenced. Refer to each FIRM panel to determine datum used.~~

NON-CONVERSION AGREEMENT - a document stating that the owner will not convert or alter what has been constructed and approved. Violation of the agreement is considered a violation of the ordinance and, therefore, subject to the same enforcement procedures and penalties. The agreement must be filed with the recorded deed for the property. The agreement must show the clerk's or recorder's stamps and/or notations that the filing has been completed.

TECHNICAL BULLETIN AND TECHNICAL FACT SHEET - a FEMA publication that provides guidance concerning the building performance standards of the NFIP, which are contained in Title 44 of the U.S. Code of Federal Regulations at Section 60.3. The bulletins and fact sheets are intended for use primarily by State and local officials responsible for interpreting and enforcing NFIP regulations and by members of the development community, such as design professionals and builders. New bulletins, as well as updates of existing bulletins, are issued periodically as needed. The bulletins do not create regulations; rather they provide specific guidance for complying with the minimum requirements of existing NFIP regulations.

TEMPERATURE CONTROLLED - having the temperature regulated by a heating and/or cooling system, built-in or appliance.

B.9. FLOOD PREVENTION PLAN.

The following items shall be presented to the Floodplain Administrator to apply for a Floodplain Development Permit:

1. A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
 - The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;
 - The boundary of the Special Flood Hazard Area as delineated on the FIRM or other flood map as determined in Section 4.14.5, or a statement that the entire lot is within the Special Flood Hazard Area;
 - Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in Section 4.14.5;
 - The boundary of the floodway(s) or non-encroachment area(s) as determined in Section 4.14.5;
 - The Base Flood Elevation (BFE) where provided as set forth in Section 4.14.5; 4.14.12; or 4.14.28;
 - The old and new location of any watercourse that will be altered or relocated as a result of proposed development;
 - Certification of the plot plan by a registered land surveyor or professional engineer.
2. Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area including but not limited to:
 - Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;
 - Elevation in relation to mean sea level to which any non-residential the structure in Zone AE, A, or AO will be floodproofed; and
 - Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed;
3. If floodproofing a Floodproofing Certificate (FEMA ~~84-65~~ [Form 086-0-34](#)) with supporting data and an operations plans that includes, but is not limited to, installation, exercise, and maintenance of floodproofing measures.
4. A Foundation Plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this Ordinance are met. These details include but are not limited to:

1. The proposed method of elevation, if applicable (i.e. fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/ piers/piles/shear walls);
2. Opening to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with 4.14.19 of this Ordinance when solid foundation perimeter walls are used in Zones A, AO, AE, and ~~A1-30~~ AH and A99;
5. Usage details of any enclosed areas below the lowest floor.
6. Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.
7. Certification that all other Local, State, and Federal permits required prior to floodplain development permit issuance have been received.
8. Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure that the provisions of 4.14.20 and 4.14.23 of this Ordinance are met.

A description of proposed watercourse alterations or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.



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

COMMUNITY PLANNING MONTH
OCTOBER 2018

WHEREAS, change is constant and affects all cities, towns, suburbs, counties, boroughs, townships, rural areas, and other places; and

WHEREAS, community planning and plans can help manage this change in a way that provides better choices for how people work and live; and

WHEREAS, community planning provides an opportunity for all residents to be meaningfully involved in making choices that determine the future of their community; and

WHEREAS, the full benefits of planning requires public officials and citizens who understand, support, and demand excellence in planning and plan implementation; and

WHEREAS, the month of October is designated as National Community Planning Month throughout the United States of America and its territories, and

WHEREAS, American Planning Association and its professional institute, the American Institute of Certified Planners, endorse National Community Planning Month as an opportunity to highlight the contributions sound planning and plan implementation make to the quality of our settlements and environment; and

WHEREAS, the celebration of National Community Planning Month gives us the opportunity to publicly recognize the participation and dedication of the members of planning commissions and other citizen planners who have contributed their time and expertise to the improvement of the City of Kannapolis; and

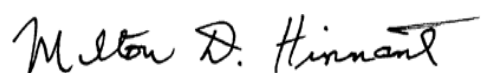
WHEREAS, we recognize the many valuable contributions made by citizen and professional planners of the City of Kannapolis and extend our heartfelt thanks for the continued commitment to public service by these individuals;

NOW, THEREFORE, I, Milton D. Hinnant, Mayor of the City of Kannapolis, by virtue of the authority vested in me as Mayor, do hereby proclaim October 2018 as:

“COMMUNITY PLANNING MONTH”

In the City of Kannapolis in conjunction with the celebration of National Community Planning Month.

IN WITNESS WHEREOF I have set my hand and caused the Great Seal of the City of Kannapolis to be affixed this 24th day of September 2018.



**CITY OF KANNAPOLIS
COUNCIL MEETING MINUTES
August 13, 2018**

A regular meeting of the City Council of the City of Kannapolis, North Carolina was held on Monday, August 13, 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 Attorney: Walter M. Safrit, II

City Clerk: Bridgette Bell

| | | |
|----------------|--------------|-------------------------|
| Staff Present: | Irene Sacks | Annette Privette Keller |
| | Trent Marlow | Wilmer Melton |
| | Tony Eury | Zac Gordon |
| | Terry Spry | Jason May |
| | Gary Mills | Donie Parker |
| | Ernie Hiers | |

| | | |
|-------------------|---------------|------------------|
| Visitors Present: | Mark Spitzer | Thomas Barnhardt |
| | Richard Flowe | Gerry Depken |
| | Ron Haithcock | Mary Rigby |
| | Jo Stephens | Eric Dearmon |
| | John Tuttle | Patti Rader |

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 Kincaid.

ADOPTION OF AGENDA:

Mayor Hinnant noted a revised agenda removing Presentation Concord/Kannapolis Area Transit (RIDER) Year in Review and Transit Update, noting that item has been moved to the August 27th City Council Meeting.

Council Member Kincaid made a motion to approve the revised agenda. Motion was seconded by Mayor Pro tem Berry and approved by unanimous vote.

APPROVAL/CORRECTION OF MINUTES:

Council Member Wilson made a motion to approve the July 09, 2018 regular meeting minutes. Motion was seconded by Council Member Dayvault and approved by unanimous vote.

Council Member Dayvault made a motion to approve the July 09, 2018 regular meeting minutes. Motion was seconded by Council Member Kincaid and approved by unanimous vote.

Council Member Haas made a motion to approve the July 09, 2018 Closed Session minutes. Motion was seconded by Mayor Pro tem Berry and approved by unanimous vote.

CONSENT AGENDA - Motion to Adopt Consent Agenda or make revision:

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

Request 25 MPH Speed Limit Modification on Azalea Avenue (Wilmer Melton, III, Director of Public Works) (Copy included as Exhibit A)

Amendment to the Davidson Road Water Main and Sudbury Road Sewer Main Capital Project Ordinance (Wilmer Melton, III, Director of Public Works) (Copy included as Exhibit B)

BUSINESS AGENDA

Downtown Block 1 - Main Street Improvements (Annette Privette Keller, Irene Sacks; Trent Marlow and Gary Mills) (Copy included as Exhibit C)

Staff was asked to evaluate and make recommendations regarding Downtown's Block 1 (Main Street Buildings) to improve the outward image of these building facades which are starting to appear less than attractive. Staff has put together recommendations that vary in scope and costs in order to approve the appearance of the block as well as to stabilize the structure itself.

This block of buildings has many of the same issues as the other structures in downtown. General upkeep and repairs have not been completed in many years. Roof damage is the major concern as it has the potential of resulting in the continued deterioration of the buildings, especially on the 2nd floor. Previous tenants of the structures have left trash and other items that need to be cleaned out. Mold is now an issue in several of the spaces which is an easy problem to solve now but if left in attended will become more complicated.

Mrs. Sacks has been working with a group of developers who have a strong interest in redeveloping Blocks 1 and 8 (Tuttle/Burgess Building), both sides of Main Street. Obviously the city has a long term (but not binding) agreement with Corporate Realty on the revitalization or redevelopment of Block 8 but no discussion has been initiated with them on the future of this block.

The initial feedback from the second group of developers is that Block 8 has deteriorated beyond making it worthwhile to preserve, and that demolition and new construction would be the most feasible path for redevelopment. Staff expects them to submit a proposal in the next month or so.

1 These developers are also interested in Block 1. In walking through these buildings, they were
2 more concerned about the stabilization of the block (especially stopping roof leaks and controlling
3 moisture) than the exterior appearance of the buildings. Even so, staff agrees that the exterior
4 image is important as well.

5
6 To address the above concerns, staff offers the following plan of action.

- 7
- 8 1. Paint the exterior wood trim on the first floor of the Main St. and Laureate Way fronting
- 9 buildings. Repair rotten wood and broken windows. (\$55,860)
- 10 2. Clean buildings of debris and mold/ replace roofs. (\$200,000)
- 11 3. Blacking out all second level windows and all lower level windows that do not receive
- 12 graphics (\$4,000)
- 13 4. Painting color blocks on the facades to give visual impression of signage. (\$5,000)
- 14 5. Remove the trees/grind stumps and replace pavers (\$5,900)
- 15 6. Adding decorative banners to eight light poles. (\$5,690)
- 16 7. Adding cone shaped trees in planters. This would be an ideal year-round solution – and can
- 17 be lighted and decorated for the Christmas Parade if we are able to salvage the electric
- 18 lines. Would coordinate with the new planters for the train station improvement project.
- 19 (\$3,349)
- 20 8. Adding generic signage to create graphic expression on the buildings. (\$4,000)
- 21 9. Add 20 to 29 graphic window murals (about 30-35 sq. ft.) each. The murals would serve
- 22 to advertise the plans for downtown as well as give life to the buildings. (\$15,040)
- 23 10. Add decorative fencing to the train station parking. (\$14,000 fencing). This could
- 24 potentially be extended to Laureate Way/First St. should the Block 8 buildings be
- 25 demolished.

26
27 Total: \$312,839

28
29 Funding would come from the \$1.1 million of remaining funds from the bond issuance used to
30 purchase downtown. This funding would also be used for the renovation of the spaces for Drs.
31 Tuttle and Burgess. It may also be used for the demolition of the Block 8 buildings and a temporary
32 treatment of that parcel. These three efforts would exhaust these funds so new funding sources for
33 other downtown initiatives like the Gem Theatre renovations would need to be established.

34
35 Council Member Dayvault called attention to Item #1 - Includes painting the exterior wood trim
36 and replacing broken windows on the first floor and wondered if it included the half circle windows
37 on top of the roof. If you recall, the street scape plan shows all of the store fronts essentially
38 taking on tradition store front appearance. He would not want to put a lot of money in trying to
39 salvage windows on the first floor when eventually will be torn out, and the second story floor
40 windows remain. In addition, he did not like #3 by blacking out the windows, if in the event of
41 future leaks, would not have natural lighting, could become worse.

42
43 Mr. Legg stated with the roof repairs, hopefully will not be any more water issues. Mr. Legg was
44 not positive that wood treatment or wood repairs on the second floor were included, but will verify.
45 At a minimum, clean up the windows to get them into better shape.

1 Mr. Dayvault said he also did not see any benefit in #4 -Painting color blocks on the facades to
2 give visual impression of signage. According to the street scape plan, already has some of the store
3 fronts taking on different coloring, so it could be money saved and put toward something else. Mr.
4 Legg agreed that needed to be refined. Mr. Dayvault would like to see the money put toward
5 something that has more value.
6

7 Mr. Legg stated at one point, Council will need to decide the time to market and find tenants. He
8 suggested that Development Finance Initiative (DFI) offer advice on that matter. As part of the
9 development agreement with Corporate Realty, it includes this block. Their vision is further down
10 the road. Irene Sacks has met with another developer interested in this block. It could ultimately
11 be that some of this could be a partnership with the private sector.
12

13 Mr. Legg responded to Mayor Hinnant's question that once this project is completed, with
14 demolition of the buildings across the street and the relocation of Dr. Burgess and Dr. Tuttle, the
15 \$1.1 million dollar funds would be exhausted.
16

17 Mayor Hinnant asked if we would be better off reducing the price of the property and to find an
18 investor who will commit to maintaining the legacy look of the buildings and allow them to do the
19 repairs and aesthetics.
20

21 Mr. Dayvault appreciated Mayor's comments and that it would be an ideal situation; however, the
22 clock is ticking and we don't have the time to wait before this building is in such disrepair and be
23 faced with the same issues as across the street. Right now, these buildings are fairly decent, the
24 buildings across the street were five years ago, but not anymore. In this case, getting the roofs
25 weatherproofed is most critical.
26

27 Mayor Hinnant's response is that the City already has someone interested in his block and if the
28 City offers an attractive purchase price, may urge them to move quickly in the process. If they are
29 not interested, then you would have the right answer.
30

31 Mr. Dayvault responded if it were something they could close on in 60 days and be under contract
32 or start working on the buildings, it would be to everyone's benefit.
33

34 City Attorney Safrit interjected the property must be sold at fair market value and could be an
35 impediment to the plan.
36

37 Council Member Roger Haas suggested while doing the improvements, why not go ahead and do
38 the whole block.
39

40 Council Member Kincaid was in agreement to do the entire block at one time. He noted that the
41 bricks in the sidewalks are bad and the trees need to be removed. If someone does purchase the
42 property, the improvements the City has done, will only make it more valuable.
43

44 Motion was made by Council Member Dayvault to authorize Staff to proceed with the Downtown
45 Block 1 - Main Street Improvement Plan. Motion was seconded by Council Member Wilson and
46 approved by unanimous vote.
47

1 **Resolution Authorizing the Upset Bid Process for property located at 610 Kansas Street**
2 **(Mike Legg, City Manager) (Copy included as Exhibit D)**

3 Staff has received a written offer from Matthew C Erich to purchase approximately 0.24 acres of
4 the city-owned land we are referring to as the “610 Kansas Street” for \$45,000. The current tax
5 value for the property is as follows:

- 6
7
 - Building - \$21,260
 - 8 • Other Buildings & Extra Features \$6,210 Land \$51,260
 - 9 • Total Tax Value \$ 78,730

10
11 The North Carolina General Statute § 160A-269 permits the City to sell property by upset bid,
12 after receipt of an offer for the property. These standards for selling the property through this
13 process are clearly described on the attached resolution. It is important to understand that starting
14 the bidding process does not lock the City Council into selling the property. Any and all bids can
15 be rejected at any time, for any reason up until the time a purchase agreement is signed by the final
16 high bidder. A minimum qualifying upset bid would be a \$47,300.

17
18 The staff recommendation (as reflected in the Resolution) is to sell this land via the upset bid
19 process.

20
21 Council Member Kincaid made a motion to approve a Resolution Authorizing the Upset Bid
22 Process for property located at the 610 Kansas Street. Motion was seconded by Council Member
23 Haas and approved by unanimous vote.

24
25 **Gem Theatre Master Plan Working Group (Mike Legg, City Manager)**

26 The City has engaged with Clearscapes, an architectural firm that has significant experience with
27 historic theatres, to develop a conceptual master plan for the Gem Theatre. The purpose is to
28 develop a practical solution for incorporating ADA-accessible bathrooms into the facility while at
29 the same time, looking at the potential evolution of the facility over the long term. The scope of
30 work and architectural firm will be presented to City Council in detail at a future meeting.

31
32 In the meantime, a Core Working Group is being assembled to move the project forward. City
33 Council is encouraged to identify a member interested in serving on this group. Meetings will
34 likely occur monthly through the beginning of 2018. The group will review the architect's work
35 and provide project direction. There will be community outreach and stakeholder input in addition
36 to the feedback from the working group. Other members of this working group include:

- 37
38
 - Mike Legg, City Manager
 - 39 • Eddie Smith, Deputy City Manager
 - 40 • Irene Sacks, Director of Economic & Community Development
 - 41 • Trent Marlow, General Services Director
 - 42 • Steve Morris, Gem Theatre owner
 - 43 • Noelle Scott, Cabarrus Arts Council
 - 44 • Bunny Nash, Cabarrus Arts Council

45
46 Motion was made by Council Member Haas to appoint Council Members Ryan Dayvault and Van
47 Rowell. Motion was seconded by Council Member Wilson and approved by unanimous vote.

1 **CLOSED SESSION:**

2 Mayor Pro tem Berry made a motion to go into closed session pursuant to G.S. 143.318.11 (a) (3)
3 for consulting with an attorney in order to preserve the attorney-client privilege and G.S.
4 143.318.11 (a) (4) for discussing matters related to the location or expansion of industries or
5 businesses in the area. Motion was seconded by Council Member Wilson and approved by
6 unanimous vote.

7
8 Council went into closed session at 6:40 PM.

9
10 Council Member Wilson made a motion to come of out closed session. Motion was seconded by
11 Council Member Dayvault and approved by unanimous vote.

12
13 Council resumed regular session at 9:55PM.

14
15 **Motion to authorize the City Manager to provide Barton Malow with a Limited Letter of**
16 **Intent/Notice to proceed (Copy included as Exhibit E)**

17 Council Member Rowell made a motion to authorize the CM to provide Barton Malow with a
18 Limited Letter of Intent/Notice to Proceed on the Sports & Entertainment Venue in an amount not
19 to exceed \$1,200,000. Motion was seconded by Council Member Kincaid and approved by
20 unanimous vote.

21
22 There being no further business, Council Member Haas made a motion to adjourn. Motion was
23 seconded by Council Member Rowell and approved by unanimous vote.

24
25 The meeting adjourned at 9:55PM on Monday, August 13, 2018.

26
27
28
29
30 _____
31 Milton D. Hinnant, Mayor

32
33 _____
34 Bridgette Bell, MMC, NCCMC
35 City Clerk

**CITY OF KANNAPOLIS
COUNCIL MEETING MINUTES
August 27, 2018**

A regular meeting of the City Council of the City of Kannapolis, North Carolina was held on Monday, August 27, 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

Mayor Pro tem: Dianne Berry

Council Members: Ryan Dayvault
Van Rowell
Doug Wilson
Roger D. Haas

Council Members Absent: Tom Kincaid

City Manager: Mike Legg

Deputy City Manager: Eddie Smith

City Clerk: Bridgette Bell

City Attorney: Walter M. Safrit, II

Staff Present: Tina Cline Annette Privette Keller
Tony Eury David Jordan
Irene Sacks Trent Marlow
Gary Mills Terry Clanton
Terry Spry Wilmer Melton
Zac Gordon Donie Parker
Jason May Ernie Hiers
Eric Davis Sherry Gordon

Visitors Present: Bobbi Hague Gerry Depken
Ron Haithcock Howard J. Boyd
Mary Rigby Sophia Wilkinson
L.J. Weslowski

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 Rowell.

1 **ADOPTION OF AGENDA:**

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

5 **FIRST READING:**

6 Text Amendment to Table 5.21-1 of the Unified Development Ordinance (UDO) to allow wireless
7 telecommunication services to be located on parcels adjacent to vacant unplatted residentially
8 zoned parcels. (Zachary D. Gordon, Planning Director) (Copy included as Exhibit A)
9

10 **CONSENT AGENDA:**

11 Council Member Dayvault made a motion to approve the Consent Agenda. Motion was seconded
12 by Council Member Wilson and approved by unanimous vote.
13

14 Request to consider withdrawal from dedication a portion of R-O-W known as Eastover Drive
15 located off Crescent Street and establish a Public Hearing date (Wilmer Melton, II, Director of
16 Public Works) (Copy included as Exhibit B)
17

18 Budget Ordinance FY2018-19 Urgent Repair Project (Sherry Gordon, Community Development
19 Administrator) (Copy included as Exhibit C)
20

21 Budget Ordinance FY2018-19 HOME Program Project (Sherry Gordon, Community
22 Development Administrator) (Copy included as Exhibit D)
23

24 Budget Ordinance FY2018-19 CDBG Program Project (Sherry Gordon, Community Development
25 Administrator) (Copy included as Exhibit E)
26

27 Budget Amendment #19-4 authorizing Bond Proceeds to be used for
28 improvements to Downtown Buildings and properties (Eric Davis, Finance Director) (Copy
29 included as Exhibit F)
30

31 Budget Amendment #19-5 authorizing additional funds for the construction of the Sports and
32 Entertainment Venue (Eric Davis, Finance Director) (Copy included as Exhibit G)
33

34 **BUSINESS AGENDA:**

35 **Concord/Kannapolis Area Transit (RIDER) Year in Review and Transit Update (Eddie**
36 **Smith, Deputy City Manager, LJ Weslowski, Transit Manager)**

37 Mr. Weslowski, Transit Manager presented the following facts.
38

39 FY19 Budget is \$4,630,451 (Concord local share increase \$226,810); (Kannapolis local share
40 increase \$210,433) Primary cost is Drivers, Ada Paratransit Growth, new service added –
41 Concord/Charlotte Express (CCX) and Compliance Position. Two questions that come up during
42 ridership: 1) Why is the bus not full and 2) why don't we use smaller buses? Ridership on each
43 route fluctuates by day, hour and even weather conditions. Sometimes 2-4 people onboard,
44 sometimes 25-30 people. Ridership is higher on some routes, lower on others. In comparison to
45
46

1 last year's bus ridership, total for 2017 was 406,760. Totals currently through July of 2018,
2 235,745. Reasons for lower ridership is gas prices are lower than years past and as part of a national
3 trend, on demand transportation companies like Uber and Lyft is taking part of ridership service
4 requests. Transit ridership are no longer living within the area, but are moving out to suburban
5 areas. The Cabarrus County Long Range Public Transit Maser Plan project began in June 2018,
6 with a Steering Committee consisting of the Cabarrus Health Alliance, Cabarrus Convention &
7 Visitor Bureau, Cabarrus Economic Development and the International Center for Community
8 Development. The final plan is due February 2019. The Concord-Charlotte Express ridership is
9 steadily rising with a growth of 47.5% over the first five months. Current Rider Projects include
10 the installation of nine shelters with seating, lighting and trash cans. 10 more shelters and 17 seats
11 are planned for installation. NCDOT requirement have significantly slowed projects down.
12 Surveying and individual site plans, ROW acquisition and construction/installation will be a single
13 procurement. Project projected to be completed Fall of 2019. Mr. Weslowski discussed future rider
14 projects to enhance customer and technology items: upgraded vehicle signage, upgraded
15 CAD/AVL (vehicle tracking) software, upgraded point of sale & pass inventory system, mobile
16 ticketing/passes and Wi-Fi.

17
18 Following general discussion, Mayor Hinnant thanked Mr. Weslowski for his presentation.
19

20 **Public Hearing concerning the approval of the execution and delivery of the Third Contract**
21 **Amendment, the City's acquisition of the Project and the granting of a security interest**
22 **therein (Eric Davis, Finance Director) (Copy included as Exhibit H)**

23 Mr. Davis explained this public hearing is a legal requirement in the debt issuance process and the
24 first step in the debt issuance process for the Sports and Entertainment Venue (SEV). Our proposed
25 financial structure intends to utilize City Hall as collateral on the loan for this venue. The principal
26 amount of this project is not to exceed \$52 million.
27

28 There being no questions, Mayor Hinnant opened the public hearing to those in attendance for an
29 opportunity to speak. There being no speakers, Mayor Hinnant closed the public hearing.
30

31 **Resolution Authorizing the Negotiation of Amendment to an Installment Financing Contract**
32 **and Providing for Certain Other Related Matters Thereto (Eric Davis, Finance Director)**
33 **(Copy included as Exhibit I)**

34 The Initial Findings Resolution is the second step in the debt issuance process. Primarily, this
35 resolution accomplishes three main goals. First, it directs City staff to make an application the
36 North Carolina Local Government Commission to issue debt in an amount not to exceed \$52
37 million in principal. Second, it directs City staff to execute the financing in accordance with all
38 applicable laws. And third, it approves of the "Financing Team", which consists of the City
39 Manager, Deputy City Manager, Finance Director, City Attorney, City Bond Counsel (Parker, Poe,
40 Adams, & Bernstein; Scott Leo), Financial Advisors (Davenport & Associates), R.W. Baird and
41 PNC as Underwriters, and Pope Flynn attorneys (Matt Davis) as Underwriter Counsel. The
42 financial pro forma for the SEV has not been completed. As the Resolution indicates, a property
43 tax rate increase is not anticipated at this time. The City is still trying to finalize two revenue
44 sources that will help with the repayment of the debt on this facility.
45

1 Approving this Resolution directs staff to proceed with issuing the debt necessary to construct the
2 Sports and Entertainment Venue in an amount not to exceed \$52 million.

3
4 Council Member Rowell made a motion to approve a Resolution Authorizing the Negotiation of
5 Amendment to an Installment Financing Contract and Providing for Certain Other Related Matters
6 Thereto. Motion was seconded by Mayor Pro tem Berry and approved by unanimous vote.
7

8 **Preliminary Salary Study Findings and Recommendation (Tina Cline, Eric Davis and Jason**
9 **May) (Copy included as Exhibit J)**

10 City Manager Legg explained this proposed salary increase was derived after Human Resources
11 and Finance staff studied the minimum starting salaries of seven other municipalities in our region.
12 Using data from the 2017 North Carolina County Salary Report, Human Resources Director Tina
13 Cline, Finance Director Eric Davis, and budget and management analyst Jason May found the
14 city's minimum pay grades were consistently lower than area benchmarks. The benchmark data
15 was collected from Cabarrus County, Iredell County, Concord, Huntersville, Mooresville,
16 Salisbury, Statesville and Harrisburg and was compared those to the minimum starting salary of
17 each pay grade for our classification schedule. Through this method, we were able to determine
18 overall starting pay rates for the City of Kannapolis are at least 1.26% less than the cities we
19 reviewed.
20

21 The analysis also supported the need for a more in depth review. In addition to approving the
22 1.26% increase to be implemented immediately, Council also approved hiring an independent
23 consultant to conduct a more comprehensive study of current salaries, salary ranges, and position
24 classifications. That study, which will include review of salaries from 21 different municipalities
25 within the region, is set to begin within the next three weeks and is expected to be concluded within
26 60 to 90 days. The findings and recommendations will then be presented to City Council who will
27 determine what action if any to take.
28

29 City staff found that the 373 full-time equivalent employees fall within pay grades ranging from a
30 minimum of \$23,157 to \$90,816 annually. Kannapolis consistently ranked lower when compared
31 to the median minimums of neighboring counties and cities, averaging 1.26 percent lower across
32 all pay grades. Employees in the lowest ranges trailed the furthest, with employees in Grade 60
33 making 7.61 percent less than those in the surrounding area.
34

35 The raise puts on hold 15 additional staff members throughout the city that had been approved,
36 including a fire marshal, civil engineer, streets crew supervisor, planner, communications
37 multimedia specialist, public works warehouse assistant, water treatment plant operator and
38 maintenance worker, and water quality technician, as well as two police officers, two park
39 maintenance technicians and two water and sewer maintenance workers.
40

41 The new positions, hired mid-fiscal year, would have cost \$432,994 in the 2018-19 fiscal year,
42 including \$295,000 for vehicles for eight of the proposed positions. The raises, by comparison,
43 will cost the city \$207,975, meaning the city will save \$225,019.
44

1 Following general discussion, Council Member Haas made a motion to approve the recommended
2 1.26% salary increase for all employees. Council Member Wilson seconded the motion with
3 Mayor Pro tem Berry casting the dissenting vote.
4
5

6 **Fishertown Annexation Report I (Mike Legg, City Manager) (Copy included as Exhibit K)**

7 Several City Staff Members have been working with Fishertown neighborhood leaders on potential
8 annexation proceedings. Two reports to City Council will occur over the next month. The first
9 report (see attached) focused on the procedures, timeline and cost to residents and property owners.
10 The second report will focus on the qualifications for annexation and the projected revenues and
11 expenditures to the City. The second report will be presented to City Council in September. There
12 will be two informational sessions, one in October and one in November.
13

14 **City Wayfinding Program- Digital Sign Location (Annette Privette-Keller, Director of**
15 **Communications) (Copy included as Exhibit L)**

16 As part of the City's Wayfinding Signage Program staff has been working to determine the most
17 impactful location for a digital sign. The sign will be used for City announcements and to publicize
18 City events and activities. As a Wayfinding Sign it will also serve to educate people that they are
19 in the City of Kannapolis. We have purchased the signs and installation is the next step. We have
20 the options of erecting two one-sided digital signs or erecting one two-sided digital sign.
21

22 The following have been identified as locations where the City would benefit from a wayfinding
23 presence and traffic counts justify the placement of the sign in these areas. The traffic counts listed
24 are the most recent provided by NCDOT. They are from 2016.
25

- 26 1. Gateway Business Park - (NC 73 @ Kannapolis Parkway in front of the retail portion of
27 the business park; 26,000 vehicles per day). Highly visible. This is an area of the City
28 where we want to make it clear that you are in Kannapolis. This is near the new Amazon
29 facility as well as various other new residential and commercial developments. The sign
30 would give us an opportunity to keep new residents, businesses and visitors informed.
31 Traffic counts are projected to escalate rapidly over the next few years. The sign would be
32 one sided at this location. Across the street a new proposed development is now planned.
33 We are discussing with the developer the possibility of having a two sided sign at this
34 location. This location would be especially developed for the sign.
35
- 36 2. Employee Credit Union - (Dale Earnhardt Blvd at Coldwater Ridge Drive - near the State
37 Employees Credit Union; 18,000 vehicles per day). Another prominent and highly visible
38 location which would target residents, businesses and visitors. We already have the right-
39 of-way needed for this sign placement.
40
- 41 3. Main Street/DEB – Near the former Brew Restaurant - 16,000 vehicles per day. We have
42 right of way for the sign but visibility is limited. Across the street there is room for the
43 sign. We would have to obtain property in order to have the sign here.
44

1 4. Cannon Boulevard/First Street – NB – 21,000/SB 24,000 vehicles per day. This is not a
2 viable site location as NCDOT has previously removed signage from this site and has
3 recently indicated that no signage would be allowed.
4

5 5. West A - Dale Earnhardt Boulevard/West A - Across from Village Park – 10,000 vehicles
6 per day. We own the property at this location.
7

8 Council Member Dayvault made a motion to direct staff to install digital signage at the (1) Gateway
9 Business Park and (2) Employee Credit Union. Motion was seconded by Council Member Haas
10 and approved by unanimous vote.
11

12 **CITY MANAGER REPORT:** None
13

14 **CITY COUNCIL COMMENTS:** None
15

16 **SPEAKERS FROM THE FLOOR:** There were no Speakers.
17

18 **CLOSED SESSION:**

19 Mayor Pro tem Berry made a motion to go into closed session pursuant to G.S.143-318.11 (a) (3)
20 to consult with an attorney in order to preserve the attorney client privilege and G.S. 143.318.11
21 (a) (4) for discussing matters relating to the location or expansion of industries or businesses in the
22 area. Motion was seconded by Council Member Wilson and was approved by unanimous vote.
23

24 Council Member Dayvault made a motion to come out of closed session. Motion was seconded by
25 Council Member Wilson and approved by unanimous vote.
26

27 Council resumed regular session at 8:59 PM.
28

29 There being no further business, Council Member Wilson made a motion to adjourn. Motion was
30 seconded by Council Member Dayvault and approved by unanimous vote.
31

32 The meeting adjourned at 8:59 PM on Monday, August 27, 2018.
33
34
35
36

37 _____
38 Milton D. Hinnant, Mayor
39

40 _____
41 Bridgette Bell, MMC, NCCMC
42 City Clerk
43

**CITY OF KANNAPOLIS
COUNCIL MEETING MINUTES
September 10, 2018**

A regular meeting of the City Council of the City of Kannapolis, North Carolina was held on Monday, September 10, 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

Deputy City Manager: Eddie Smith

City Clerk: Bridgette Bell

City Attorney: Walter M. Safrit, II

Staff Present: David Hancock Tony Eury
Gary Mills Annette Privette-Keller
Irene Sacks Trent Marlow
Terry Clanton Zac Gordon
Eric Davis Ernie Hiers

Visitors Present: Thomas Barnhardt Gerry Depken
Mike Bonoffski Janelle Murray
Keon Lewis Nathan Payne
Bobbi Hague

CALL TO ORDER AND WELCOME:

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

ADOPTION OF AGENDA:

Council Member Wilson made a motion to approve the revised agenda. Motion was seconded by Council Member Kincaid and approved by unanimous vote.

1 **PROCLAMATION:**

2 Mayor Hinnant presented Keon Lewis, Co-Chair and Mary Casey representing “Out of Darkness
3 Charlotte Walk” with a Proclamation proclaiming the week of September 9 through September
4 15th as 2018 National Suicide Prevention Week.

5
6 **CONSENT AGENDA - Motion to Adopt Consent Agenda or make revision:**

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

9
10 Budget Ordinance Amendment related to the receipt of funds from NCDOT for condemnation of
11 land for the Highway 3 widening project (Eric Davis, Finance Director) (Copy included as Exhibit
12 A)

13
14 **BUSINESS AGENDA**

15
16 **Cabarrus Visitor Bureau 2018-2019 Marketing Plan (Michael Bonoffski, Senior Vice**
17 **President of Marketing & Communications)**

18 Mr. Bonoffski presented the Cabarrus Visitor Bureau (CVB) Marketing Plan for 2018-2019. The
19 integrated plan will include traditional and digital advertising, public relations, social media,
20 influencer marketing, promotions, research and other marketing strategies. The CVB’s primary
21 target is families with children, adults from 25-49, all with an interest for racing/motorsports, an
22 interest in leisure travel. The strategy behind this approach is designed to increase awareness of
23 Cabarrus County and drive traffic to www.visitcabarrus.com, which will help build awareness as
24 an ideal place for families and general travelers to visit by increasing occupancy and spending
25 within the county. Mr. Bonoffski also mentioned that the CVB was recently honored with Destiny
26 Awards for Printed Collateral Materials and People’s Choice during the U.S. Travel Association’s
27 35th annual ESTO conference (the Educational Seminar for Tourism Organizations).

28
29 There being no questions, Mayor Hinnant thanked Mr. Bonoffski for his presentation.

30
31 **Public Hearing - TA-2018-06 Wireless Telecommunications Services (Table 5.21-1**
32 **Separation Requirements from Offsite Uses/Areas) Text amendment to Table 5.21- 1 of the**
33 **Unified Development Ordinance (UDO) to allow wireless telecommunication services to be**
34 **located on parcels adjacent to vacant un-platted residentially zoned parcels (Zac Gordon,**
35 **AICP Planning Director) SECOND READING (Copy included as Exhibit B)**

36 Mr. Gordon gave the following facts:

- 37 • **Applicant:** City of Kannapolis
- 38 • **Public Notice:** Public notice published 8/31/2018 and 9/7/2018
- 39 • **Request:** City Council to hold a public hearing (1st Reading of Text Amendment occurred
40 at August 27th Council meeting)
- 41 • **Text Amendment to Table 5.21-1, Separation Requirements from Offsite Uses/Areas,**
42 **allowing wireless telecommunication services to be located on parcels adjacent to vacant**
43 **un-platted residentially zoned parcels**
- 44
45 ➤ Table 5.231-1 currently requires separation of 100-ft or 100% of tower height between
46 wireless telecommunication services and vacant un-platted residentially zoned land
47 – This provision eliminates a number of appropriate locations

- Staff believes this restriction is unnecessary
- Towers or antenna would still be required to be designed to not be a hazard to surrounding properties (P.E. certification if less than tower height + 50' from adjoining property)
- Proposed amendment would remove separation requirement and allow telecommunication services to locate adjacent to un-platted vacant, residentially zoned land
- Planning and Zoning Commission recommended approval on August 8, 2018

Table 5.21-1
Separation Requirements from Offsite Uses/Areas

| | |
|---|--|
| Single-family or duplex residential units [1] | 200 feet or 300% of tower height, whichever is greater |
| Vacant single-family or duplex residentially zoned land which is either platted or has preliminary plat approval which is not expired [2] | |
| Vacant unplatted residentially zoned land [3] | 100 feet or 100% of tower height, whichever is greater |
| Existing multi-family residential units greater than duplex units | |
| Non-residentially zoned lands or non-residential uses | None, only setbacks apply |

[1] Includes modular homes and mobile homes used for living purposes.

[2] Separation measured from base of tower to closest building setback line.

~~[3] Includes any unplatted residential use properties without a valid preliminary subdivision plan or valid development plan and any multi-family residentially zoned land greater than a duplex.~~

There being no questions, Mayor Hinnant opened the public hearing to those in attendance for an opportunity to speak. There being no speakers, Mayor Hinnant closed the public hearing.

Council Member Dayvault made a motion to adopt a Resolution adopting a Statement of Consistency for TA-2018-06. Motion was seconded by Mayor Pro tem Berry and approved by unanimous vote.

Council Member Haas made a motion to adopt an Ordinance to amend the text of UDO for proposed TA-2018-06. Motion was seconded by Council Member Wilson and approved by unanimous vote.

CITY MANAGER REPORT:

City Manager Legg gave an update on the Fishertown Annexation. Informational workshops are slated for October and November. Staff will bring back recommendations related to the staffing

1 study next month. For the next several days, Staff will be engaging in an emergency preparedness
2 plan in light of Hurricane Florence.

3
4 **CITY COUNCIL COMMENTS:**

5 Regarding the funds received from the NCDOT acquisition of city owned property on Highway 3,
6 Council Member Dayvault suggested that some of those monies be used to repair the road and
7 parking lot of Bakers Creek Park. This project is listed as a future project, and in light of all of the
8 improvements at the tennis courts, feels the repairs should be accelerated using some of the funds.

9
10 **CLOSED SESSION:**

11 Mayor Pro tem Berry made a motion to go into closed session pursuant to G.S. 143.318.11 (a) (3)
12 for consulting with an attorney in order to preserve the attorney-client privilege and G.S.
13 143.318.11 (a) (4) for discussing matters related to the location or expansion of industries or
14 businesses in the area. Motion was seconded by Council Member Wilson and approved by
15 unanimous vote.

16
17 Council went into closed session at 6:33 PM.

18
19 Council Member Wilson made a motion to come out closed session. Motion was seconded by
20 Council Member Dayvault and approved by unanimous vote.

21
22 Council resumed regular session at 9:18 PM.

23
24 Council Member Wilson made a motion to amend the agenda to add "Motion to authorize the City
25 Manager to provide Barton Malow Company with a Limited Letter of Intent/Notice to Proceed on
26 the Sports and Entertainment Venue in an amount not to exceed \$3,000,000, inclusive of the
27 \$1,800,000 included in the initial Limited Letter of Intent/Notice to Proceed dated August 13,
28 2018". Motion was seconded by Mayor Pro tem Berry and approved by unanimous vote.

29
30 Council Member Wilson made a motion to authorize the City Manager to provide Barton Malow
31 Company with a Limited Letter of Intent/Notice to Proceed on the Sports and Entertainment Venue
32 in an amount not to exceed \$3,000,000, inclusive of the \$1,800,000 included in the initial Limited
33 Letter of Intent/Notice to Proceed dated August 13, 2018. Motion was seconded by Council
34 Member Kincaid and approved by unanimous vote.

35
36 Council Member Dayvault made a motion to amend the agenda to add "Motion to adopt a Budget
37 Ordinance in the amount of \$1,800,000". Motion was seconded by Council Member Wilson and
38 approved by unanimous vote.

39
40 Council Member Kincaid made a motion to adopt a Budget Ordinance in the amount of
41 \$1,800,000. Motion was seconded by Council Member Dayvault and approved by unanimous vote.

42
43 Council Member Kincaid made a motion to amend the agenda to add "Motion to authorize the
44 City Manager to execute contract for the asbestos abatement for Blocks 4 and 5 and award to the
45 lowest responsible bidder with an amount up to \$474, 200". Motion was seconded by Mayor Pro
46 tem Berry and approved by unanimous vote.

1 Council Member Kincaid made a motion to authorize the City Manager to execute contract for the
2 asbestos abatement for Blocks 4 and 5 and award to the lowest responsible bidder with an amount
3 up to \$474, 200. Motion was seconded by Council Member Dayvault and approved by unanimous
4 vote.

5
6 There being no further business, Council Member Rowell made a motion to adjourn. Motion was
7 seconded by Council Member Wilson and approved by unanimous vote.

8
9 The meeting adjourned at 9:25 PM on Monday, September 10, 2018.
10
11
12
13

14 _____
Milton D. Hinnant, Mayor

15
16
17 _____
18 Bridgette Bell, MMC, NCCMC
19 City Clerk



**City of Kannapolis
City Council Meeting
September 24, 2018
Staff Report**

TO: Mayor and City Council
FROM: Sherry Gordon, Community Development Program Administrator
TITLE: Public Hearing FY 2017-18 Consolidated Annual Performance and Evaluation Report (CAPER)

A. Action Requested by City Council

1) Conduct a Public Hearing for the FY 2017-18 Consolidated Annual Performance and Evaluation Report (CAPER) and, 2) Motion to authorize Staff to submit the CAPER to the US Department of Housing & Urban Development (HUD) by September 28, 2018.

B. Required Votes to Pass Required Action

Majority present at meeting

C. Background

Each year, the City must prepare a written summary of the previous year's activities and accomplishments of the CDBG Entitlement program. This report provides details on how the programs funded met HUD's national objectives of serving the needs of low income residents, as well as how the activities helped meet the goals as detailed in the City's Consolidated Plan. Citizen input is required.

The report has been made available for public inspection at the City of Kannapolis Administrative Office and on the website and has been duly advertised. A public hearing before Council is also required prior to submitting the report to HUD. The public hearing has also been duly advertised.

During FY 2017-18, the City was awarded \$336,305 in CDBG funds and expended \$219,301. No program income was generated. The unexpended funds will be carried over to FY 2018-19 line items.

Highlights of the year's activities include the following achievements:

Planned Repayments of Section 108 loans - \$62,280

The City made two payments this past fiscal year for the Section 108 loan of the Kannapolis Gateway Business Park (Location: Kannapolis Parkway & Hwy 73)

CDBG Public Services - \$44,000

The City partnered with 9 local non-profit agencies to provide public services for Kannapolis residents.

Urgent Repair - \$45,760

The City in partnership with Habitat Cabarrus made repairs to the homes of 11 low/mod homeowners.

Program Administration/Fair Housing - \$67,261

The City provided oversight for the administration of the CDBG funds and activities. \$1,000 used to affirmatively further Fair Housing by increasing awareness of the Fair Housing laws. (workshops and distributed literature)

The City received \$115,638 in HOME funds. The City of Concord submits the CAPER to HUD on behalf of the Consortium members.

Highlights of the year's activities include the following achievements:

New Construction - \$20,000 & Homeowner Rehab - \$33,000

| |
|---------------------------------|
| D. Fiscal Considerations |
|---------------------------------|

None

| |
|-------------------------|
| E. Policy Issues |
|-------------------------|

None

| |
|------------------------|
| F. Legal Issues |
|------------------------|

None

| |
|--|
| G. Alternative Courses of Action and Recommendation |
|--|

1. **Motion to authorize Staff to submit the CAPER to the US Department of Housing & Urban Development (HUD) by September 28, 2018 (Recommended).**
2. Table action to a future meeting.
3. Take no action.

ATTACHMENTS:

File Name

❏ DRAFT_CAPER.pdf

❏ FY-18_CAPER_AD.pdf

CR-05 - Goals and Outcomes

Progress the jurisdiction has made in carrying out its strategic plan and its action plan. 91.520(a)

This could be an overview that includes major initiatives and highlights that were proposed and executed throughout the program year.

The City of Kannapolis continues to make progress towards meeting its program goals in FY 2017-18. By working with community partners we have been able to expand housing options for homeless persons; increase the supply of affordable housing stock; improve condition of existing housing stock; increase homeownership opportunities; address and reduce barriers to affordable housing; increase the inventory of lead safe housing units; eliminating blight in neighborhoods; support the creation of jobs accessible to low and moderate income residents; support of expansion of education and training opportunities as well as encouraging the expansion of programs to help low/mod income residents build wealth and improve credit.

Comparison of the proposed versus actual outcomes for each outcome measure submitted with the consolidated plan and explain, if applicable, why progress was not made toward meeting goals and objectives. 91.520(g)

Categories, priority levels, funding sources and amounts, outcomes/objectives, goal outcome indicators, units of measure, targets, actual outcomes/outputs, and percentage completed for each of the grantee's program year goals.

| Goal | Category | Source / Amount | Indicator | Unit of Measure | Expected – Strategic Plan | Actual – Strategic Plan | Percent Complete | Expected – Program Year | Actual – Program Year | Percent Complete |
|--------------------------------------|-----------------------------------|-----------------|---|------------------|---------------------------|-------------------------|------------------|-------------------------|-----------------------|------------------|
| Improve and strengthen neighborhoods | Non-Housing Community Development | CDBG: \$ | Public Facility or Infrastructure Activities other than Low/Moderate Income Housing Benefit | Persons Assisted | 50 | 300 | 600.00% | | | |

| | | | | | | | | | | |
|--------------------------------------|---|---|--|------------------------|----|-----|-----------|-----|---|-------|
| Improve and strengthen neighborhoods | Non-Housing Community Development | CDBG: \$ | Public Facility or Infrastructure Activities for Low/Moderate Income Housing Benefit | Households Assisted | 50 | 125 | 250.00% | 100 | 0 | 0.00% |
| Improve and strengthen neighborhoods | Non-Housing Community Development | CDBG: \$ | Buildings Demolished | Buildings | 50 | 0 | 0.00% | 0 | 1 | |
| Improve and strengthen neighborhoods | Non-Housing Community Development | CDBG: \$ | Housing Code Enforcement/Foreclosed Property Care | Household Housing Unit | 5 | 0 | 0.00% | | | |
| Prevent and address homelessness | Affordable Housing Public Housing Homeless Non-Homeless Special Needs | CDBG: \$ / HOME Consortium Allocation: \$ | Public service activities for Low/Moderate Income Housing Benefit | Households Assisted | 50 | 774 | 1,548.00% | 60 | 0 | 0.00% |
| Prevent and address homelessness | Affordable Housing Public Housing Homeless Non-Homeless Special Needs | CDBG: \$ / HOME Consortium Allocation: \$ | Homeless Person Overnight Shelter | Persons Assisted | 50 | 25 | 50.00% | | | |

| | | | | | | | | | | |
|--|--|---|--|---------------------|-----|------|-----------|-----|-----|---------|
| Prevent and address homelessness | Affordable Housing Public Housing Homeless Non-Homeless Special Needs | CDBG: \$ / HOME Consortium Allocation: \$ | Overnight/Emergency Shelter/Transitional Housing Beds added | Beds | 5 | 8 | 160.00% | | | |
| Prevent and address homelessness | Affordable Housing Public Housing Homeless Non-Homeless Special Needs | CDBG: \$ / HOME Consortium Allocation: \$ | Homelessness Prevention | Persons Assisted | 50 | 25 | 50.00% | | | |
| Promote self sufficiency and community development | Non-Housing Community Development | CDBG: \$ | Public Facility or Infrastructure Activities for Low/Moderate Income Housing Benefit | Households Assisted | 50 | 300 | 600.00% | | | |
| Promote self sufficiency and community development | Non-Housing Community Development | CDBG: \$ | Public service activities other than Low/Moderate Income Housing Benefit | Persons Assisted | 100 | 2309 | 2,309.00% | | | |
| Promote self sufficiency and community development | Non-Housing Community Development | CDBG: \$ | Public service activities for Low/Moderate Income Housing Benefit | Households Assisted | 200 | 182 | 91.00% | 100 | 550 | 550.00% |

| | | | | | | | | | | |
|-------------------------------------|--------------------|---|---|------------------------|----|-----|---------|----|----|---------|
| Provide decent & affordable housing | Affordable Housing | CDBG: \$ / HOME Consortium Allocation: \$ | Public service activities for Low/Moderate Income Housing Benefit | Households Assisted | 20 | 182 | 910.00% | | | |
| Provide decent & affordable housing | Affordable Housing | CDBG: \$ / HOME Consortium Allocation: \$ | Homeowner Housing Added | Household Housing Unit | 3 | 1 | 33.33% | | | |
| Provide decent & affordable housing | Affordable Housing | CDBG: \$ / HOME Consortium Allocation: \$ | Homeowner Housing Rehabilitated | Household Housing Unit | 5 | 11 | 220.00% | 10 | 11 | 110.00% |
| Provide decent & affordable housing | Affordable Housing | CDBG: \$ / HOME Consortium Allocation: \$ | Direct Financial Assistance to Homebuyers | Households Assisted | 8 | 0 | 0.00% | | | |
| Provide decent & affordable housing | Affordable Housing | CDBG: \$ / HOME Consortium Allocation: \$ | Overnight/Emergency Shelter/Transitional Housing Beds added | Beds | 5 | 8 | 160.00% | | | |
| Provide decent & affordable housing | Affordable Housing | CDBG: \$ / HOME Consortium Allocation: \$ | Homelessness Prevention | Persons Assisted | 20 | 64 | 320.00% | | | |

Table 1 - Accomplishments – Program Year & Strategic Plan to Date

Assess how the jurisdiction’s use of funds, particularly CDBG, addresses the priorities and specific objectives identified in the plan, giving special attention to the highest priority activities identified.

During the FY 2017-18 CDBG activities were conducted in accordance with the priority goals and objectives identified in our Consolidated Plan. Funds were distributed to nine (9) non-profits agencies providing public services to Kannapolis residents; Eleven (11) homeowners were assisted with urgent repairs such as roof, handicap ramps or replacement of inoperable heating/air systems. HOME funds were used to construct a new single-family housing unit in partnership with Habitat for a first time homeowner and (1) house was rehabbed for a homeowner which included making the house handicap accessible.

CR-10 - Racial and Ethnic composition of families assisted

Describe the families assisted (including the racial and ethnic status of families assisted).

91.520(a)

| | CDBG |
|---|--------------|
| White | 2,016 |
| Black or African American | 2,176 |
| Asian | 0 |
| American Indian or American Native | 0 |
| Native Hawaiian or Other Pacific Islander | 0 |
| Total | 4,192 |
| Hispanic | 177 |
| Not Hispanic | 4,015 |

Table 2 – Table of assistance to racial and ethnic populations by source of funds

Narrative

The City utilizes CDBG funds to meet the needs of low/mod income communities. The clients served are composed of a broad range of races and ethnicities.

CR-15 - Resources and Investments 91.520(a)

Identify the resources made available

| Source of Funds | Source | Resources Made Available | Amount Expended During Program Year |
|-----------------|--------|--------------------------|-------------------------------------|
| CDBG | CDBG | 336,305 | 244,293 |
| HOME | HOME | | |
| HOPWA | HOPWA | | |
| ESG | ESG | | |
| Other | Other | 115,638 | |

Table 3 - Resources Made Available

Narrative

Identify the geographic distribution and location of investments

| Target Area | Planned Percentage of Allocation | Actual Percentage of Allocation | Narrative Description |
|-------------------------|----------------------------------|---------------------------------|-----------------------|
| Carver Area | 10 | 4 | (1) New dwelling |
| Villas Mobile Home Park | 0 | | |

Table 4 – Identify the geographic distribution and location of investments

Narrative

The City partnered with Habitat for Humanity to provide assistance to (1) homeowner in the Carver area with the new construction of a single-family dwelling for a family on the waiting list.

Leveraging

Explain how federal funds leveraged additional resources (private, state and local funds), including a description of how matching requirements were satisfied, as well as how any publicly owned land or property located within the jurisdiction that were used to address the needs identified in the plan.

The needs of the City's residents are greater than its resources. The City does make an effort to seek other sources of funding for its community development efforts and was recently awarded Urgent Repair funds for FY 2018-19 from the North Carolina Housing Finance Agency which will allow us to assist many more homeowners. All of the agencies receiving funds for public service activities receive the vast majority of their funding from other sources, thereby leveraging funds received by the City.

The City partnered with Kannapolis City Schools to utilize a space in one of their facilities to host a 20 week Light Construction Class which was taught by an instructor with Rowan Cabarrus Community College. Six (6) Kannapolis residents enrolled and received free sponsorship from the City of Kannapolis. A total of 10 students were in the class. (June 26, 2018 to Nov. 15, 2018)

Part of the 25% match requirement of the HOME Program is provided by partnership with Habitat for Humanity and Cooperative Christian Ministry, where volunteers and in-kind donations are used to repair and rehab homes in conjunction with HOME funds.

CR-20 - Affordable Housing 91.520(b)

Evaluation of the jurisdiction's progress in providing affordable housing, including the number and types of families served, the number of extremely low-income, low-income, moderate-income, and middle-income persons served.

| | One-Year Goal | Actual |
|--|---------------|-----------|
| Number of Homeless households to be provided affordable housing units | 0 | 0 |
| Number of Non-Homeless households to be provided affordable housing units | 10 | 13 |
| Number of Special-Needs households to be provided affordable housing units | 60 | 0 |
| Total | 70 | 13 |

Table 5 – Number of Households

| | One-Year Goal | Actual |
|--|---------------|-----------|
| Number of households supported through Rental Assistance | 60 | 0 |
| Number of households supported through The Production of New Units | 0 | 1 |
| Number of households supported through Rehab of Existing Units | 10 | 12 |
| Number of households supported through Acquisition of Existing Units | 0 | 0 |
| Total | 70 | 13 |

Table 6 – Number of Households Supported

Discuss the difference between goals and outcomes and problems encountered in meeting these goals.

The City has allocated funds to assist Prosperity Unlimited and Wesley Community Development Corporation with a multi-story congregate building with 60 apartment units for senior citizens age 55 and older (Low Income Housing Tax Credit Project). The project will consist of 40 one bedroom units and 20 two bedroom units. There will be six (6) handicap units. Construction closing was delayed but will start by October 15, 2018.

Discuss how these outcomes will impact future annual action plans.

We will be able to meet our goals for new production with the upcoming construction of the new senior housing tax credit project in 2018.

Include the number of extremely low-income, low-income, and moderate-income persons served by each activity where information on income by family size is required to determine the eligibility of the activity.

| Number of Households Served | CDBG Actual | HOME Actual |
|-----------------------------|-------------|-------------|
| Extremely Low-income | 5 | 0 |
| Low-income | 69 | 0 |
| Moderate-income | 2 | 0 |
| Total | 76 | 0 |

Table 7 – Number of Households Served

Narrative Information

CDBG funds were used to provide urgent repair for 11 homeowners. HOME funds were used to complete rehab for one (1) homeowner and one (1) new single-family dwelling was constructed in partnership with Habitat for Humanity Cabarrus.

CR-25 - Homeless and Other Special Needs 91.220(d, e); 91.320(d, e); 91.520(c)

Evaluate the jurisdiction's progress in meeting its specific objectives for reducing and ending homelessness through:

Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs

The City is a member of the Piedmont Regional Continuum of Care Consortium, made up of agencies and local governments in Union, Stanly, Cabarrus, Rowan and Davidson Counties. The PRCoC is a collaborative effort among stakeholders to reduce and eliminate homelessness. They assess housing needs and work collaboratively with HUD and North Carolina State, County and City agencies to secure grants and request funding to develop affordable housing opportunities for the chronically homeless throughout the five-county area.

City staff also serve on the Cabarrus County Homelessness Task Force group which was organized by Cooperative Christian Ministries. The group meets quarterly to review updates on factors affecting homelessness, collaborative opportunities in the community and progress at local level.

Addressing the emergency shelter and transitional housing needs of homeless persons

The City partners with Cooperative Christian Ministry in the teaching house transitional housing program to provide a way for families to move out of homelessness and towards a more stable housing financial footing. The City currently owns (5) houses in the Carver area and one house on Cline St. which are being leased to Cooperative Christian Ministry for their transitional housing program for the homeless. One of the properties that the City owned in the Carver area has been transferred to Cooperative Christian Ministry and is currently under lease purchase agreement with a family that was previously homeless.

Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families and those who are: likely to become homeless after being discharged from publicly funded institutions and systems of care (such as health care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); and, receiving assistance from public or private agencies that address housing, health, social services, employment, education, or youth needs

The City's non-profit partners are key in the prevention of homelessness. Cooperative Christian Ministry provides financial assistance for rent and utilities as well as a food pantry. Prosperity Unlimited and Habitat for Humanity provide financial literacy education and foreclosure prevention counseling. The school system provides referrals and some assistance to families at imminent risk of homelessness for

individuals who are being discharged from institutions and systems of care, there are some specialized services to assist these individuals. These support organizations include the Cabarrus County Criminal Justice Partnership Program, the Employment Security Commission's Offender Specialist to help with job seeking, Cardinal Innovations for mental health, Rowan-Cabarrus Community College for workforce training programs for offenders and its R3 Career Center (has programs for those with a criminal record), Serenity House in Concord, and the McLeod Addictive Disease Center (located in Charlotte works with youth offenders, addicts).

Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again

The City will continue to support agencies that address homelessness issues in conjunction with the Continuum of Care and the 10 year Plan to End Homelessness.

CR-30 - Public Housing 91.220(h); 91.320(j)

Actions taken to address the needs of public housing

The City does not have a public housing authority within the city limits. However, the City is served by the Rowan Housing Authority for public housing and Section 8 program services as well as the City of Concord Housing Authority.

Actions taken to encourage public housing residents to become more involved in management and participate in homeownership

The City of Concord Housing Authority as well as the Rowan County Housing Authority Administrators encourage and develop self-sufficiency in public housing residents and Section 8 recipients.

Actions taken to provide assistance to troubled PHAs

No action taken or needed as neither the City of Concord Housing Authority nor the Rowan Housing Authority are considered "troubled".

CR-35 - Other Actions 91.220(j)-(k); 91.320(i)-(j)

Actions taken to remove or ameliorate the negative effects of public policies that serve as barriers to affordable housing such as land use controls, tax policies affecting land, zoning ordinances, building codes, fees and charges, growth limitations, and policies affecting the return on residential investment. 91.220 (j); 91.320 (i)

There may be instances where public policy will adversely affect a group but there are not any policies that we are aware of or have been reported to us that place limits on growth and adversely affect the return on residential investment.

Actions taken to address obstacles to meeting underserved needs. 91.220(k); 91.320(j)

The City has identified economic development diversity in the local economy and creating new jobs as a primary goal by supporting local businesses, encouraging entrepreneurship and making business more affordable through incentives and business friendly policies. Most Kannapolis residents are more able to meet their basic needs when they are fully and securely employed. One aspect of this goal is to create the most positive living environment to help attract and retain businesses and industries. The City proactively recruits businesses to the community to provide jobs for our residents.

Actions taken to reduce lead-based paint hazards. 91.220(k); 91.320(j)

The City will continue its efforts to reduce the number of housing units containing lead-based paint hazards in order to increase the inventory of lead safe housing available to the low-income population. The City requires lead tests on all units scheduled for rehabilitation that were built prior to 1978 and includes the lead abatement work as part of the scope of services completed by the contractor.

The City will increase access to housing without LBP hazards by participating in the construction of new housing units affordable to low-income households. These include low-income housing tax credit projects as well as single family construction.

Actions taken to reduce the number of poverty-level families. 91.220(k); 91.320(j)

The City views its Consolidated Plan and Action Plans as its anti-poverty strategy. Funds are used to the benefit of low and moderate income citizens in effort to increase wealth and quality of life. Creating and building individual and family wealth is a goal of the City's CDBG and HOME programs. Housing counseling continues to be an important asset for low and moderate income residents to receive the one-on-one help necessary to address issues such as homeownership, credit issues, mortgage default, home equity conversion mortgages, fair housing, rental assistance and emergency shelter needs. This activity is coupled with expanded programs for new affordable housing production available for low and moderate income buyers and renters. Whenever available, Individual Development Account (IDA) funds will be sought to assist in helping to alleviate poverty build personal wealth and financial stability. The

City, through its partnership with Prosperity Unlimited, Inc., assisted with providing the full array of housing counseling services to its citizens.

The City's partnership with Cooperative Christian Ministry in the Teaching House transitional housing program provides a way for families to move out of homelessness and towards a more stable housing and financial footing.

Actions taken to develop institutional structure. 91.220(k); 91.320(j)

The City continues its effort to encourage new organizations or existing organizations with new programs to apply for public service activity funding, by setting aside a portion of funds specifically for these applicants. The City would like to assist in providing the start-up funds needed to establish new programs that benefit the Kannapolis community.

The Mayor and City Council make the decisions about the City's community development activities and funding, with guidance from the general public and the Community Development Commission (CDC). The CDC is a 9-member group of citizens appointed by City Council to provide input to the community development program, review annual plans, CAPERs, and other documents, and provide recommendations about funding for public service activities.

Actions taken to enhance coordination between public and private housing and social service agencies. 91.220(k); 91.320(j)

The partnerships that the City has with the HOME Consortium and local housing agencies allows more affordable housing units to be available for lower wealth residents. As resources continue to shrink we continue to leverage funds in order to be able to serve more families. Continued funding, referral cooperation, data and advocacy will help enhance the coordination among social service agencies to address both housing and non-housing needs.

Identify actions taken to overcome the effects of any impediments identified in the jurisdictions analysis of impediments to fair housing choice. 91.520(a)

The City in partnership with other agencies and organizations will both implement and support programs that help address the physical and human development needs of the low to moderate income communities. These development efforts will help eliminate and mitigate the barriers to affordable housing.

This includes and is not limited to: provide and assist in construction, rehabilitation and planning of low to moderate income housing; continue to support non-profits to assist in human development while providing educational and training needed to work toward securing available social economic opportunities; provide and assist in down payment assistance programs; workforce development

programs and financial management programs; plan for and assist non-profit agencies offering homebuyer counseling and educational programs.

CR-40 - Monitoring 91.220 and 91.230

Describe the standards and procedures used to monitor activities carried out in furtherance of the plan and used to ensure long-term compliance with requirements of the programs involved, including minority business outreach and the comprehensive planning requirements

The City of Kannapolis takes very seriously the need for program compliance and monitoring. In addition to annual monitoring visits with its subgrantees, the City also ensures compliance through frequent communication with subgrantees throughout the project period. This is done through written, telephone, and in-person communications. At the beginning of each fiscal year, the City conducts training for the non-profits that are receiving funding for public services so that they understand the reporting and documentation requirements. Sub-grantees submit reports throughout the year on project progress and are required to provide documentation with any reimbursement request.

The other primary tool used in monitoring subgrantees is the written agreement/contract between the City and the subgrantee. The contract serves as a binding document that specifies the responsibilities of each party, and the City uses the contracts as a way to ensure that HUD program rules are being followed and that the City is attaining its goals. Each contract outlines roles and responsibilities, timelines, funding, and default provisions. Each year, the City reviews its contracts with subgrantees to determine provisions or language within the contracts that should be strengthened.

Citizen Participation Plan 91.105(d); 91.115(d)

Describe the efforts to provide citizens with reasonable notice and an opportunity to comment on performance reports.

Federal regulations require the CAPER to be submitted to HUD no later than 90 days after the end of the fiscal year. The draft FY 2017-18 CAPER became available for public review and comment on September 1, 2018. A public notice was placed in the Independent Tribune on September 9, 2018 and a public hearing was held on September 24, 2018 to receive comments.

CR-45 - CDBG 91.520(c)

Specify the nature of, and reasons for, any changes in the jurisdiction's program objectives and indications of how the jurisdiction would change its programs as a result of its experiences.

No changes.

Does this Jurisdiction have any open Brownfields Economic Development Initiative (BEDI) grants?

No

[BEDI grantees] Describe accomplishments and program outcomes during the last year.

CR-45 - CDBG 91.520(c)

Specify the nature of, and reasons for, any changes in the jurisdiction's program objectives and indications of how the jurisdiction would change its programs as a result of its experiences.

No changes.

Does this Jurisdiction have any open Brownfields Economic Development Initiative (BEDI) grants?

No

[BEDI grantees] Describe accomplishments and program outcomes during the last year.



NOTICE OF PUBLIC HEARING

The Kannapolis City Council will hold a public hearing on Monday, September 24, 2018 at 6:00 p.m. (as soon thereafter as the matter may be heard) in the Kannapolis Administrative Bldg, 401 Laureate Way, Kannapolis, NC. The purpose of this hearing is to receive citizens comments and questions on the use of Fiscal Year 2017-2018 Community Development Block Grant (CDBG) & HOME funds from the US Department of Housing and Urban Development (HUD).

Copies of this Report are available for public inspection at the following location: City of Kannapolis Administrative Bldg., 401 Laureate Way, Kannapolis, NC and from the City's website: www.kannapolisnc.gov

All interested persons are invited to attend this hearing. Persons with disabilities, non-English speaking persons or anyone who needs assistance to participate in this public hearing should notify the Kannapolis Human Resource Director at (704) 920-4302 at least forty-eight (48) hours prior to the meeting, or call the North Carolina Relay Number for the Deaf at 1-800-735-8262.



PUBLICATION DIRECTIONS

Publish in Non-Legal section only with black border.

Please use all logos!

Please publish by September 13, 2018.

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City of Kannapolis
CDBG Program
401 Laureate Way
Kannapolis, NC 28081
Attn: Sherry Gordon
(704) 920-4332



**City of Kannapolis
City Council Meeting
September 24, 2018
Staff Report**

TO: Mayor and City Council
FROM: Zachary D. Gordon, AICP, Planning Director
TITLE: Public Hearing - Zoning Map Amendment #Z-2018-09 (2120, 2122 and an unaddressed parcel on West C Street)

A. Action Requested by City Council

- 1. Hold Public Hearing**
- 2. Motion to approve a Resolution adopting a Statement of Consistency**
- 3. Motion to approve a Resolution to Rezone property with conditions recommended by Staff.**

B. Required Votes to Pass Required Action

Majority present at meeting

C. Background

Overview

The applicant is proposing to rezone three parcels along West C Street in the Kannapolis ETJ from O-I (Office Institutional) and RM-2 (Residential Medium Density) to C-2-CZ (General Commercial-Conditional Zoning). The applicant is proposing to construct a small scale automotive sales establishment with a five-vehicle display area along West C Street.

Staff Analysis

Staff finds rezoning a portion of the subject properties (i.e., the O-I portions abutting West C Street) **consistent** with the *Move Kannapolis Forward 2030 Comprehensive Plan*, adopted by City Council, which calls for a Complete Neighborhood 1 Character Area. Complete Neighborhood 1 recommends that the existing character of the area be maintained. The current character of the West C Street Corridor is a mixture of existing single family residential and commercial uses.

While the northern portion of the property is designated as being located in the “Rural Edge” Character Area, Staff notes that the *Move Kannapolis Forward 2030 Comprehensive Plan* maps were developed as a general guide regarding land development and discretion should be used to identify the most appropriate fit given the site conditions and surrounding context.

Staff finds the request for rezoning reasonable and in the public interest with limited commercial uses of this property and appropriate conditions of approval for the subject parcels. The proposed rezoning with conditions of approval is not anticipated to create parking problems or adverse impacts on the environment. Finally, while the area is not served by water and sewer, the project is subject to all county requirements for well and septic services.

Previous Hearing Before Planning and Zoning Commission

The applicant's request was heard by the Planning and Zoning Commission at their July 26, 2018 meeting. At this meeting (see attached minutes) there was testimony expressing concern about the impacts of the proposed commercial use. The Planning and Zoning Commission voted unanimously to deny the request for rezoning.

Under the provisions of the UDO, as a result of the denial by the Planning and Zoning Commission, the City Council has final decision making authority on this request for rezoning.

D. Fiscal Considerations

None

E. Policy Issues

Section 3.3.5 of the UDO states that the City Council may consider the following questions, at a minimum, in reviewing an application for rezoning:

1. The size of the tract in question.

There are three (3) tracts associated with the proposed request for rezoning. In total, these tracts measure approximately 4.4 acres.

2. Does the proposal conform with and further the goals and policies of the Land Use Plan, other adopted plans, and the goals, objectives, and policies of this Ordinance?

A large portion of the subject parcels (i.e., parcel 249C 095, 249C 09501 and the southern portion of parcel 249C 005) is designated as "Complete Neighborhood 1" Character Area in the Move Kannapolis Forward 2030 Comprehensive Plan. The Complete Neighborhood 1 Character Area includes primarily existing single-family neighborhoods, which are generally stable and where the character should be maintained. In certain areas, a corner lot may provide a place for small neighborhood serving retail or other business that generates limited traffic.

The remainder of the subject property (i.e., the northern portion of parcel 249C 005) is designated in the Move Kannapolis Forward 2030 Comprehensive Plan as being located within a "Rural Edge" Character Area. This Character Area includes land that is not expected to develop within the planning horizon (by 2030).

3. Is the proposed rezoning compatible with the surrounding area?

The subject properties are located along West C Street approximately 600 feet east of the "Extra-Territorial Jurisdiction" (ETJ) boundary of the City. The surrounding properties are a

mixture of larger lot residential with large vacant parcels across West C Street from the site. A small neighborhood serving commercial node is located at West C Street and Rainbow Drive, approximately 700 feet to the east of the subject parcels. The requested rezoning would permit for small scale automotive sales use with a maximum of 5 vehicles on display on the site. The use would also permit for detailing in conjunction with the vehicles for sale.

The site will have landscape buffers along the east and west property lines, with an opaque wooden fence adjacent to the existing residential property to the east of the subject parcel. If the rezoning request is approved, Staff is recommending a 10-foot landscape buffer at the northern property line of parcel 249C 09501 to match the proposed east property line buffer.

4. Will there be adverse effects on the capacity or safety of the portion of street network influenced by the rezoning?

The subject properties are currently accessed from two driveways along West C Street. Any additional curb cuts on West C Street would have to be approved by NCDOT.

5. Will there be parking problems?

The proposed site plan includes five paved spaces for display of vehicles and six spaces for customers. This meets the requirement of 1 space per employee and 1 space per vehicle displayed. The sales of the vehicles will be online.

6. Will there be environmental impacts that the new use will generate, such as excessive storm water runoff, water, air or noise pollution, excessive nighttime lighting, or other nuisances?

The applicant has provided a concept plan. A full site plan will be required to be reviewed and approved prior to the issuance of a Zoning Clearance Permit for the use, should the rezoning request be approved.

With regard to environmental impacts, the site is located in the Kannapolis Lake Critical Area Watershed which limits the maximum built-upon area to 12%. The proposed impervious surface on the site is 8.1% (11,307 sf/approximately 3.2 acres), and will need to comply with all UDO standards with regard to maximum impervious surface.

With regard to lighting, Staff recommends a condition that any new lighting on the site to be installed shall be full cut-off fixtures with all lighting directed away from adjacent properties and from West C Street. The site plan will be reviewed by City staff to ensure the development meets all storm-water requirements.

In addition, staff is recommending that the business hours do not extend beyond 9 pm Sunday through Friday and 10 pm on Saturdays.

7. Has there been any change of character in the area due to installation of public facilities, other zone changes, new growth trends, deterioration, and development?

The surrounding area has been generally stable in the recent past. A Conditional Use Permit (CUP) was granted for a self-storage facility on West C Street and North Arbor Ave. approximately ½ mile east of the subject parcels in October 2017.

8. Is there compliance with the adequate public facilities criteria?

There are no municipal utilities in this portion of the ETJ. A well and septic system would be required from the Rowan County Health Department for any additional water or septic capacity on the site.

9. What are the zoning districts and existing land uses of the surrounding properties?

Property to the north is zoned O-I (Office-Institutional) and RM-2 (Residential Medium Density) with predominantly large-lot residential. Property to the south (across West C Street) is zoned O-I and currently vacant. Property to the west is zoned O-I with a vacant retail business on the site. An existing home is located to the east of the site (across Clawson Avenue) and is zoned O-I.

10. Is the subject property suitable for the uses to which it has been restricted under the existing zoning classification?

The subject properties are zoned O-I which would allow for office uses. The O-I designation would not allow for commercial uses such as the car lot the applicant is proposing.

11. Is the zoning compatible with the adjacent neighborhood, especially residential neighborhood stability and character?

The West C Street corridor is zoned C-2 (General Commercial) east of Rainbow Drive (on the south side of West C Street, across from Arlene Avenue), with O-I from Arlene Avenue west to the ETJ line. The subject parcels are adjacent to the existing O-I district, on the west side Clawson Avenue. There are existing residential and non-residential uses along West C Street, and the subject properties are abutted by residential uses. Staff believes that while small scale retail may be appropriate for this location, more intense commercial uses would need to be appropriately mitigated to ensure compatibility with the adjacent neighborhood.

12. What length of time has the subject property remained vacant as zoned?

The subject property is currently improved with two residences and a garage building.

13. Is there an adequate supply of land available in the subject area and the surrounding community to accommodate the zoning and community needs?

West C Street is a predominantly commercially zoned corridor of either C-2 or O-I. There is a mixture of existing homes and vacant land which could over time be converted to commercial or office uses.

14. Was the existing zoning in error at the time of adoption?

No.

F. Legal Issues

None

G. Alternative Courses of Action and Recommendation

Staff Recommendation

The City Council may choose to approve or deny the petition as presented.

Based on the request being consistent with the Move Kannapolis Forward: 2030 Comprehensive Plan, reasonable and in the public interest, staff recommends the following conditions should City Council choose to approve the rezoning request for Case Z-2018-09:

1. The uses permitted with this rezoning shall only include auto detailing and limited auto sales with not more than 5 cars displayed for sale on the property.
2. A Final Major Site Plan shall be submitted and approved by City Staff prior to issuance of a Zoning Clearance Permit.
3. NCDOT shall review any changes to the driveway access on West C Street, including any improvements and/or widening.
4. Any additional lighting installed on the subject properties shall be full cut-off fixtures with all lighting directed downward and away from adjacent properties and from West C Street.
5. A 10 foot landscape buffer shall be provided adjacent to the northern property line of parcel 249C 09501. The landscape palette shall be same as the buffer provided along the eastern portion of parcel 249C 005.
6. The business hours of operation shall not extend beyond 9pm Sunday through Friday and 10pm on Saturdays.

ALTERNATIVE COURSE OF ACTION:

APPROVAL (2 Motions):

Motion 1 (Statement of Consistency):

Should City Council choose to approve the request for rezoning as presented in Case #Z-2018-09, a motion should be made to adopt the following Statement of Consistency:

Statement of Consistency: *The City Council finds this zoning map amendment as presented in Case #Z-2018-09 to be consistent with the goals and policies of the Move Kannapolis Forward: 2030 Comprehensive Plan, adopted by City Council, which designates this property as being located in a Complete Neighborhood 1 Character Area. A Complete Neighborhood 1 Character Area calls for the existing character of the area to be maintained. The current character of the West C Street Corridor is a mixture of existing single family residential and commercial uses. Staff finds the request for rezoning reasonable and in the public interest with limited commercial uses of this property and appropriate conditions of approval for the subject parcels. The proposed rezoning with conditions of approval is not anticipated to create parking problems or adverse impacts on the environment. Finally, while the area is not served by water and sewer, the project is subject to all Rowan County requirements for well and septic services.*

Motion 2 (Resolution to Zone):

Should City Council choose to approve Case #Z-2018-09, a motion should be made to approve the Resolution to Zone.

DENIAL (2 Motions):

Motion 1 (Statement of Consistency):

Should City Council choose to deny Case #Z-2018-09, a motion should be made to adopt the following Statement of Consistency:

Statement of Consistency: *The Planning and Zoning Commission finds this zoning map amendment, as represented in Case Z-2018-09, to be inconsistent with the Move Kannapolis Forward 2030 Comprehensive Plan, adopted by City Council, (state reason(s)) and is not reasonable and in the public interest because (state reason(s)).*

Motion 2 (Resolution to Zone):

Should City Council choose to deny Case #Z-2018-09, a motion should be made to deny the Resolution to Zone.

ATTACHMENTS:

File Name

- ❑ Z-2018-09_Rezoning_Application_7.26.18-07202018150943.pdf
- ❑ Vicinity_Z_2018_09.pdf
- ❑ Zoning_Z_2018_09.pdf
- ❑ FLU_Z_2018_09.pdf
- ❑ Sept_24_Public_Notice_Ad.pdf
- ❑ Z-2018-09_September_24__2018_Abutter_Meeting_Notification.pdf
- ❑ Notice_Map_Z_2018_09.pdf
- ❑ List_of_Notified_Properties.pdf
- ❑ posted_public_notice.pdf
- ❑ 6._Proposed_Site_Plan.pdf
- ❑ 5._Complete_Neighborhood_1_Character_Sheet.pdf
- ❑ PZ_7.26.18_Signed_Minutes.pdf
- ❑ Z-2018-09_September_24__2018_Statement_of_Consistency.pdf
- ❑ Z-2018-09_Resolution_to_Zone.pdf
- ❑ Decibel_Readings.pdf
- ❑ Memorandum_to_Kannapolis_City_Council.pdf
- ❑ September_9__2018_Frank_Hyatt.pdf
- ❑ August_31__2018_Patrick_Gaddy.pdf
- ❑ August_31__2018._Sharon_Gaddy.pdf



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

Type of Action Requested (Check One):

| | | | |
|------------------------|-------|----------------------------------|----------|
| Variance | _____ | SIA Application | _____ |
| Conditional Use Permit | _____ | Nonconformity Adjustment | _____ |
| Subdivision Exception | _____ | Watershed Boundary Modification | _____ |
| Zoning Text Amendment | _____ | Zoning Map Amendment | _____ |
| Appeal | _____ | Conditional Zoning Map Amendment | <u>X</u> |

Applicant: Philip LeRoy Gaddy III Owner: SAME AS APPLICANT AND SHARON GADDY

Address: 8420 MOORESVILLE RD Address: 2122 WEST C ST
CONCORD, NC 28027 KANNAPOLIS, NC 28081

Telephone: 704-791-5153 Telephone: 980-621-5678

Email: PLGADDY2@YAHOO.COM Email: DDBLX3@YAHOO.COM

Legal relationship of applicant to property owner: SON / OWNER

Property Location/Address: 2122 WEST C ST KANNAPOLIS, NC 28081
249C-005 249C 09501

Tax Parcel Number: 249C 095 Zoning District: O-I/RM1 Acreage of Site: ±5.7

Philip LeRoy Gaddy III
Applicant Name (Print)

Philip LeRoy Gaddy III / Sharon Gaddy
Property Owner Name (Print)

Philip LeRoy Gaddy III 6-12-18
Applicant Signature & Date

Philip LeRoy Gaddy III / Sharon Gaddy 6-12-18
Property Owner Signature & Date

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

For Staff Use Only:

Filing Fee: _____ Receipt # _____

Application No. _____ Date Submitted (Complete): _____

KANNAPOLIS

APPLICATION FOR AMENDMENT TO THE

KANNAPOLIS ZONING MAP

Property Identification Number(s): 249C-005, 249C-095, 249C-09501
(attach separate list if necessary)

Present zoning classification: O-ITRM2

Requested zoning classification: CONDITIONAL COMMERCIAL

Number of parcels: 3 Approximate size of area: 5.7 ACRES

Physical location of area: _____

Are public utilities available? NO

Reason for map amendment TO IMPROVE USABILITY OF PROPERTY BY CONVENTIONAL COMMERCIAL
ZONING IN ORDER TO ESTABLISH AUTOMOTIVE SALES AND DETAILING BUSINESS AND
SERVE THE SURROUNDING COMMUNITY

The above information is true and accurate to the best of my knowledge. Signature of Applicant(s):

Pat LeRoy Galt

Sharon Gaddy

(attach separate sheet if necessary)

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

CITY OF KANNAPOLIS
APPLICATION FOR A CONDITIONAL ZONING DISTRICT
(to be attached to the Rezoning Application)

I, PHILLIP LeROY GADDY II, hereby petition for a Conditional Zoning District for the following exact land use(s), subject to the following condition(s):

The following use(s) is/are permitted by right or conditional in the general zoning district upon which the "CZ" district is based:

*SALES
DETAILING*

Condition(s) proposed by the applicant (attach separate sheet if necessary):

SEE STAFF REPORT

It is understood and acknowledged that if the property is conditionally rezoned as requested, the property involved in this request will be perpetually bound to the use(s) authorized and subject to such condition(s) as imposed, unless subsequently changed or amended as provided for in the Zoning Ordinance.

Philip LeRoy Gaddy II

Signature of Property Owner

*8420 MOORESVILLE RD
CONCORD, NC 28027
9420 SAW RD
CHINA GROVE, NC 28023*

Address

704-791-5153, 980-621-4053, 980-621-4505

Telephone #

Philip LeRoy Gaddy II

Signature of Property Owner

2120 West C. St. Kannapolis NC 28081

Address

704-938-4172

Telephone #

Please refer to fee schedule to determine applicable fees.

Fees are nonrefundable and help to cover administrative and notification costs

June 15, 2018

Dear neighbor,

I will be hosting a neighborhood meeting to discuss a zoning application for 2122 West C St. Kannapolis, NC (Owned by Phillip L. Gaddy II, Patrick B. Gaddy, and Brittney G. Haigler) on Thursday, June 21st, 2018, at 6:00 PM. This meeting will take place at the aforementioned location.

I am extending to you this invitation so that you may join in learning about the application and become better informed about it. On July 11th, 2018 there will be a hearing of the Kannapolis City Planning board and I would like you to learn the details of the application before this hearing. At the meeting we will have maps showing the property and we will describe what is proposed. You will also have the opportunity to ask questions about the proposed zoning changes.

Should you have questions about this meeting, would like to RSVP, or are unable to attend but still need details, please contact 704-791-5153 or email 1velocityinc@gmail.com.

Sincerely,

Phillip L. Gaddy II

received
15 June 18
Z-2018-09

Welcome!! Please Sign in!

Meeting to discuss proposed zoning update to 2122, 2120 West C st. Kannapolis, NC 28081

Date: 6/21/18

Print Name

Address

Phone

Email

1. ROBIN RICHARDSON

2. LORI BEVER

3. SHARON GADDY

4. BRUCE GADDY

5. PATRICK GADDY

6. BRITNEY HAIGLER

7. RANDALL SHEETS

8.

9.

10.

11.

12.

13.

14.

15.

Notes 6/21

- pebin
- Hows help community? Provides Services
 - Site plan approved →

Whats next step if approved?

- How much more does it take start the business.

Required?

- 5 car or 10 car? 5!

gravel + asphalt

- Doesn't think you have business stuff set up.

- Zoning permit? -

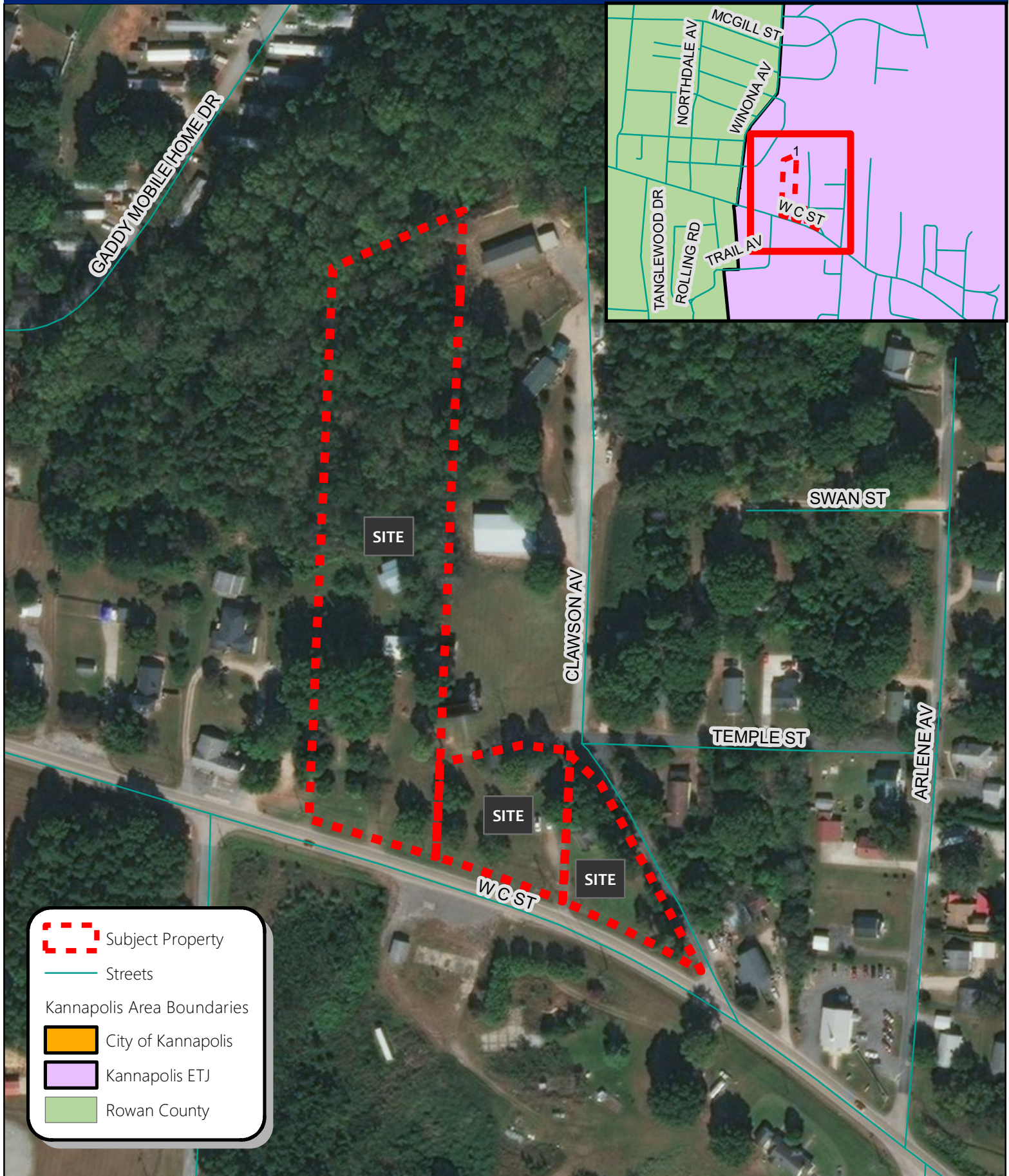
- Don't think car lots will be everywhere if thats so easy.

- Listing of what you need start this business.



Vicinity Map

Case Number: Z-2018-09
Applicant: Phillip Leroy Gaddy II ; et. al.




 Subject Property

 Streets

Kannapolis Area Boundaries

 City of Kannapolis

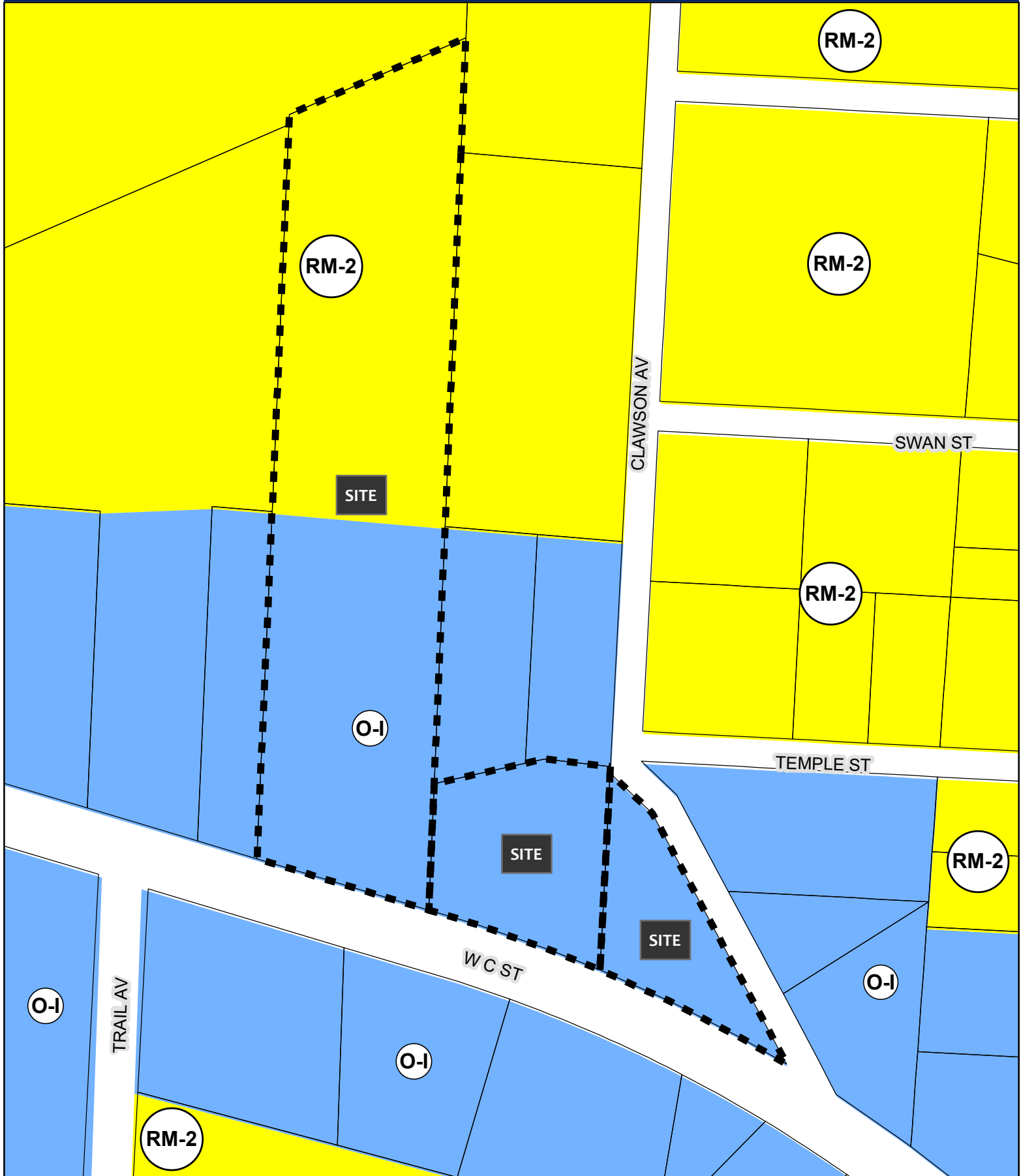
 Kannapolis ETJ

 Rowan County



Current Zoning

Case Number: Z-2018-09
Applicant: Phillip Leroy Gaddy II ; et. al.





2030 Future Land Use Plan

Case Number: Z-2018-09
Applicant: Phillip Leroy Gaddy II ; et. al.



NORTH CAROLINA COMMUNITY NEWSPAPERS

Order Confirmation
Order# 0000499650

Client: KANNAPOLIS, CITY OF
Client Phone: 7049204300
Account #: 3143368
Address: ACTS PAYABLE/MANDATE/TEARSHEET
KANNAPOLIS NC 28081

Payor Customer: KANNAPOLIS, CITY OF
Payor Phone: 7049204300
Payor Account: 3143368
Payor Address: ACTS PAYABLE/MANDATE/TEARSHI
KANNAPOLIS NC 28081

Fax: 7049337463
Email: byow@kannapolisnc.gov

Sales Rep: aboan
Ordered By: Pam

Total Amount: \$795.86
Payment Amount: \$795.86

Status:
Materials:

Amount Due: \$0.00
Tax Amount: 0.00
Payment Method: Credit - Debit Card
Order Notes:

Tear Sheets: 0
Proofs: 0
Affidavits: 1
Blind Box:

PO Number:

| Ad Number | Ad Type | Ad Size | Color |
|-----------------------|--------------------------|--------------------------|-------------------------|
| 0000499650-01 | CLS Liner | 2 X 63 li | \$0.00 |
| Pick Up Number | Production Method | Ad Booker (liner) | Production Notes |
| | | | |

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

Run Schedule Invoice Text: NOTICE OF PUBLIC HEARING Kannapolis City Hall
Run Dates: 9/14/2018, 9/21/2018
Headline: NOTICE OF PUBLIC HEARING KANNAPOLIS CITY HALL LAUREATE CENTER 401
LAUREATE WAY KANNAPOLIS NC 28081 CITY COUNCIL MEETING MONDAY
SEPTEMBER 24, 2018 6:00 PM

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, September 24, 2018 at 6:00 pm

Public Hearing Notice

Public Hearing Notice - Zoning Map Amendment - Z-2018-09 - Public hearing to consider a request to rezone property located at 2120, 2122 and an unaddressed parcel on West C Street from O-1 (Office-Institutional) and RM-2 (Residential Medium Density) to C-2 - CZ (General Commercial-Conditional Zoning), further identified as Rowan County PIN(S) #249C-005, 249C-095, and 249C-09501

Public Hearing Notice - Zoning Text Amendment - TA-2018-05 - Public hearing to consider a text amendment to Table 4.6-1 of the Unified Development Ordinance pertaining to Principal Uses Permitted in Zoning Districts, and Article 11.1 Outdoor Storage standards, to permit Equipment Rental and Leasing (with outdoor storage) in the CD (Campus Development) District subject to specific standards in Article 11.1.

Public Hearing Notice - Text Amendment - TA-2018-07 - Public hearing to consider a text amendment to Article 4, Section 4.14, Floodplain Protection Overlay District (FPD), Appendix A Definitions and Appendix 89 Flood Prevention Plan of the Unified Development Ordinance to update the FPD and relevant Sections to comply with the minimum criteria of the National Flood Insurance Program (NFIP) 44 CFR 60.3(d) and (e), and NC Session Law 2000-150, Senate Bill 1341 (NCGS 143-215.51-61).

If you have questions or concerns regarding these cases, 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 tdline@kannapolisnc.gov.

Publish: September 14, 21, 2018



September 14, 2018

Dear Property Owner:

Please be advised that the Kannapolis City Council will conduct a Public Hearing on Monday, September 24, 2018 at 6:00 PM at City Hall, located at 401 Laureate Way, for the following case:

Z-2018-09 – Conditional Zoning Map Amendment – West C Street

The purpose of the Public Hearing is to consider a request by Phillip Gaddy II, Patrick Gaddy, and Britney Haigler to rezone property owned by Phillip Gaddy II and Sharon Gaddy located at 2120, 2122 and an unaddressed parcel on West C Street from O-I (Office-Institutional) and RM-2 (Residential Medium Density) to C-2-CZ (General Commercial-Conditional Zoning) to allow for the establishment of an automotive business. The property is approximately 4.3 +/- acres in size and further identified as Rowan County Parcel Identification Number(s) 249C-005, 249C-095, and 249C-09501 (**see reverse side of this letter for vicinity map showing the location of this property**).

As an abutting property owner, you are being notified of this public hearing in accordance with the requirements of the Kannapolis Unified Development Ordinance; and are invited to attend the public hearing and present testimony, should you desire, to the City Council.

Should you have any questions about the public hearing or request, please do not hesitate to call the Planning Department at 704.920.4350.

Sincerely,

Gretchen Coperine, AICP
Senior Planner

Enclosure

The meeting facility is accessible to people with disabilities. To request special accommodation in advance, contact the City's ADA Coordinator at 704-920-4302 or e-mail to tcline@kannapolisnc.gov.

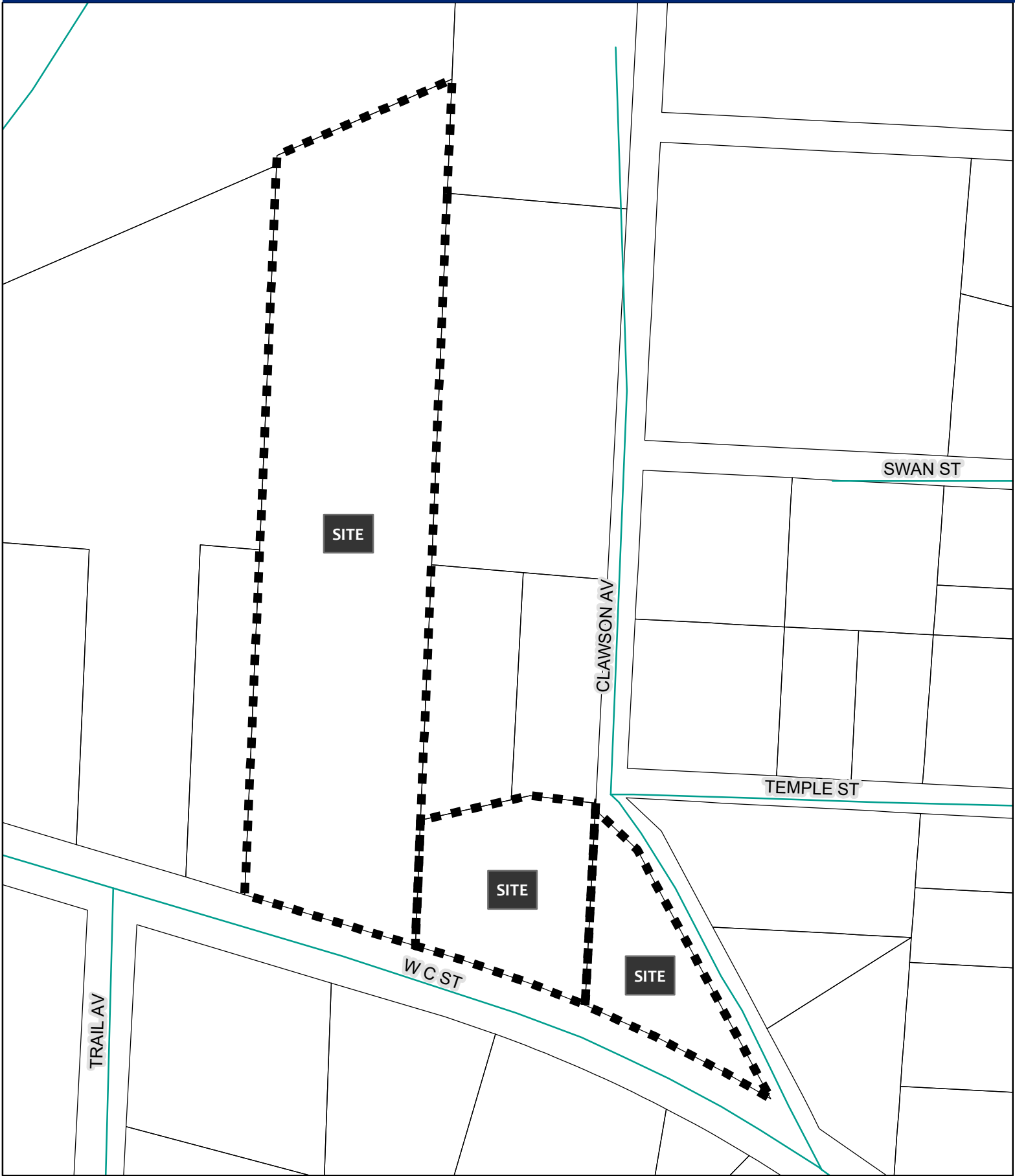


Zoning Map Amendment

Case Number: Z-2018-09

Applicant: Phillip Leroy Gaddy II ; et. al.

PIN: 249C 005; 249C 09501; 249C 095



| OWNER1 | ADDY1 | CITY | STATE | ZIPCODE |
|--------------------------------|-------------------------|------------|-------|------------|
| RANDALL W SHEETS | 403 GADDY ST | KANNAPOLIS | NC | 28081-0000 |
| NIKOLOAS & MARGARET GEORGIU | 902 NANCE ST | KANNAPOLIS | NC | 28083-3851 |
| BRIAN & KIMBERLI ROE | 45315 SUNBROOK LN | LA QUINTA | CA | 92253-4116 |
| PHILLIP GADDY III ETAL | 8420 MOORESVILLE RD | CONCORD | NC | 28027-0000 |
| ROBYN RICHARDSON | 108 CLAWSON ST | KANNAPOLIS | NC | 28081-9551 |
| JONATHAN FOWLER | 2108 TEMPLE ST | KANNAPOLIS | NC | 28081-0000 |
| JEFFREY BASINGER | 907 SAMUEL ADAMS CIR SW | CONCORD | NC | 28027-0136 |
| JAMES & SHERRY FOWLER | 2109 TEMPLE ST | KANNAPOLIS | NC | 28081-9614 |
| BETTIE HARPER | 107 ARLENE AVE | KANNAPOLIS | NC | 28081-9533 |
| LIVING WORD FULL GOSPEL CHURCH | 2106 W C ST | KANNAPOLIS | NC | 28081-9348 |
| SHARON S GADDY | 2120 W C ST | KANNAPOLIS | NC | 28081-9348 |
| TENC INVESTMENTS LLC | 1685 LYERLY RD | MOUNT ULLA | NC | 28125-9696 |
| BRYANT & ABIGAIL BEAVER | 180 CLAWSON AV | KANNAPOLIS | NC | 28081-0000 |
| RANDALL & LORI BEAVER | 150 CLAWSON ST | KANNAPOLIS | NC | 28081-9551 |
| BETHPAGE UNITED METHO TRUSTEES | 109 FELLOWSHIP DR | KANNAPOLIS | NC | 28081-9566 |
| ROBERT STAMEY SR | 2508 JOHNSON ST | KANNAPOLIS | NC | 28081-9145 |
| ROBERT STAMEY | 2609 EARLE ST | KANNAPOLIS | NC | 28081-8893 |
| ROBERT & NANCY STAMEY | 2508 JOHNSON ST | KANNAPOLIS | NC | 28081-9145 |



KANNAPOLIS

CITY COUNCIL

MEETING

PUBLIC HEARING
INFORMATION

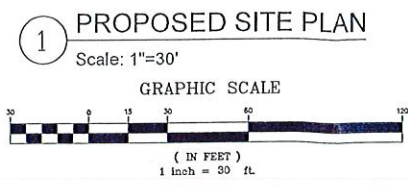
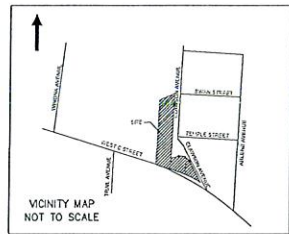
CALL 704-920-4350

CASE # **Z-2018-09**



2122





GENERAL NOTES

A. ALL WORK TO BE DONE IN ACCORDANCE WITH CITY OF KANNAPOLIS, WSACC, MODOT, NCEM/ASR STANDARD SPECIFICATIONS AND PROJECT SPECIFICATIONS. WHEN SPECIFICATIONS ARE IN CONFLICT THE STRICTER SHALL BE HELD.

B. THE SITE PLAN SHALL CONFORM TO THE CITY OF KANNAPOLIS' UNIFORM DEVELOPMENT ORDINANCE, SPECIFICALLY BUT NOT LIMITED TO THE FOLLOWING:

- ARTICLE 4 - ZONING DISTRICTS & DIMENSIONAL REGULATIONS
- ARTICLE 5 - SUPPLEMENTAL USE REGULATIONS
- ARTICLE 7 - LANDSCAPING & BUFFERING
- ARTICLE 8 - OFF STREET PARKING & PRIVATE DRIVEWAY STANDARDS
- ARTICLE 9 - ENVIRONMENTAL CONTROL REGULATIONS
- ARTICLE 10 - SITE DESIGN STANDARDS
- ARTICLE 12 - SIGN REGULATIONS

C. EXISTING VEGETATION TO BE UTILIZED IN PERIMETER BUFFER YARDS. ADDITIONAL LANDSCAPING MAY BE REQUIRED IF EXISTING VEGETATION IS NOT ADEQUATE, AS DETERMINED BY CITY ZONING PERSONNEL.



NORTH EAST ENGINEERING
NC Firm Lic. No. C-2684

41 Edgewood Avenue, NE
Concord, NC 28025
P 704.788.6372
F 704.786.4750
www.nee-pa.com

SITE NOTES

OWNER: PHILLIP L. GADDY II ETAL
8420 MOORSVILLE ROAD
CONCORD, NC 28027

FOR: 249C005
AREA: 4.4 ACRES
DB 1254 PG 868

CURRENT ZONING: O-1
PROPOSED ZONING: C2CU

DIMENSIONAL STANDARDS

- MIN LOT SIZE - 40,000 SF**
- IMPERVIOUS RATIO - 12% BUA**
- MIN STREET FRONTAGE - 30'
- MIN LOT WIDTH - 50'
- MIN LOT DEPTH - 100'
- MAX BUILDING HT - 45'

BUILDING SETBACKS

- FRONT - 10'
- SIDE - N/A
- REAR - N/A

IMPERVIOUS AREA

- EXISTING BUILDINGS & DRIVEWAY - 5892 SF
- PROPOSED DRIVEWAY & PARKING - 10,715 SF
- TOTAL - 11,307 SF (5.8%)

**THIS SITE IS LOCATED IN THE IRISH BUFFALO CREEK-KANNAPOLIS LAKE WS III CA, WHICH LIMITS BUA TO 12% AND MINIMUM LOT SIZE TO 40,000SF

BUFFER YARDS - TYPE 2 (O-1) - 15'

TYPE 3 (O-2) - 30'

BUILDING YARDS

CATEGORY I - 6' MIN. WIDTH

PARKING LOT YARDS

10% NET PARKING LOT AREA = PLANTED AREAS SHALL HAVE ONE SHADE TREE, OR TWO ORNAMENTAL TREES AND EIGHT SHRUBS PER EACH 10 PARKING SPACES.

STREET YARDS

CLASS 4 - 6' MIN. WIDTH


REQUIRED PARKING

AUTOMOBILE REPAIR - 1 SPACE PER 500 SF OF GFA INCLUDING ALL SERVICE AREAS, PLUS 1 PER EMPLOYEE

REQUIRED - 1200 SF/500 SF = 2.4

2 ENDLESS

PROVIDED - 6 SPACES TOTAL W/1 HC VAN ACCESSIBLE SPACE



PHILLIP L. GADDY II
6/14/18

This drawing is the property of NorthEast Engineering, P.A. It is not to be reproduced, copied, or used on any other project without written permission.

Prepared for:

Phillip L. Gaddy II
8420 Moorsville Rd.
Concord, NC 28027

KEYED NOTES

- KEYED NOTES LISTED BELOW ARE REFERENCED FROM THIS PLAN USING THIS SYMBOL: ①
- 24" ASPHALT DRIVEWAY
 - 5 CAR ASPHALT DISPLAY AREA
 - 24" GRAVEL DRIVEWAY
 - ASPHALT PARKING AREA WITH STANDARD PARKING
 - 5' HARD SURFACE WALKWAY
 - 24" GRAVEL DRIVE-UP BAY APRON
 - EXISTING HOUSE
 - EXISTING CARPORT
 - EXISTING SHOP
 - EXISTING BLACKSMITH SHOP
 - EXISTING GRAVEL DRIVEWAY
 - TYPE 2 PERIMETER BUFFER YARD
 - AN OPAQUE WOODEN FENCE IS REQUIRED AND ADDITIONAL LANDSCAPING MAY BE REQUIRED IN THIS AREA DUE TO ADJACENT RESIDENTIAL USE.
 - TYPE 3 PERIMETER BUFFER YARD
 - CLASS 4 STREET YARD BUFFER

Re-Zoning Petition #Z-2018-09
2120 & 2122 WEST C STREET
KANNAPOLIS, NC 28081

PRELIMINARY SITE PLAN

| DATE | REVISION | BY |
|-----------------|----------|----|
| # | | |
| SCALE: 1" = 30' | | |
| DATE: 6/14/18 | | |
| JOB # 2018-099 | | |
| C - 2.0 | | |
| SHEET 2 OF 2 | | |



Complete Neighborhood 1



Character Intent

The Complete Neighborhood 1 Character Area includes primarily existing single-family neighborhoods. These neighborhoods are generally stable and the character should be maintained. There are opportunities to improve and enhance these places over time through retrofits, where supported by the local residents. For example, additional connections may be created with pedestrian easements, dedication, or acquisition. Pocket parks can enhance access to green space, and sidewalks and street trees can improve the streetscape. In some areas, a corner lot may provide an opportunity for small-format retail, like a cafe, shop, or other business that generates limited traffic and can serve the neighborhood.

Opportunities

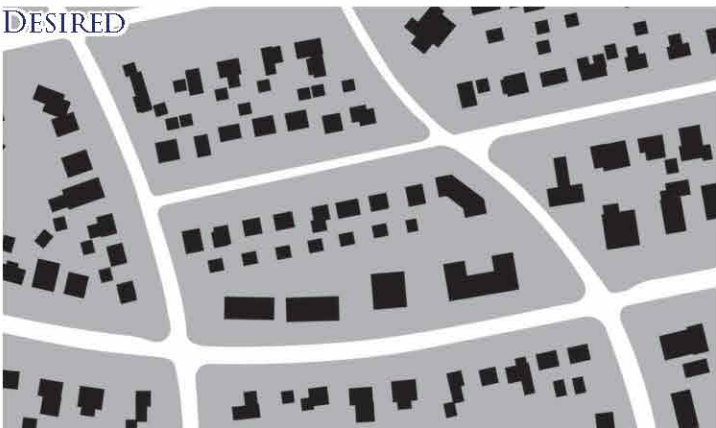
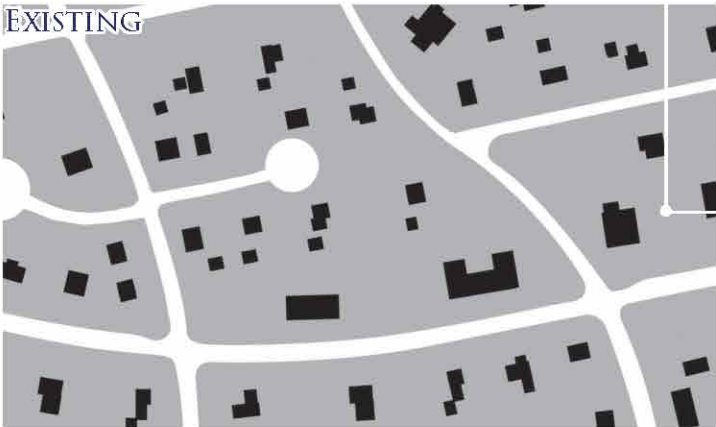
- Sidewalks and greenways
- Neighborhood-serving walkable commercial and civic uses
- Pocket parks
- Use natural features for stormwater management
- Missing middle housing
- Connectivity enhancements to reduce block sizes
- Front porches

Primary Uses

- Single family detached residential
- Single family attached residential
- Civic

Secondary Uses

- Multifamily residential
- Neighborhood-serving retail
- Small format office
- Live-work



Characteristics of Urban Form

| | Existing | Desired |
|----------------------|-------------------------------|--------------------|
| Building Heights | 1 - 3 Stories | 1 - 3 Stories |
| Setbacks | 20 - 40 ft. | 10 - 25 ft. |
| Block Length | 300 - 2400 ft. | 300 - 800 ft. |
| Street Character | Hierarchical, Curvilinear | Enhanced network |
| Parking | Driveways, Garages, On-street | Driveways, Garages |
| Protected Open Space | n/a | 25 percent |
| Residential Density | 2 - 6 units/acre | 2 - 8 units/acre |

**CITY OF KANNPOLIS, NC
PLANNING AND ZONING COMMISSION**

**Minutes of Special Meeting
July 26, 2018**

The Kannapolis Planning and Zoning Commission met on Wednesday, July 26, 2018 at 6:00 PM at City Hall, 401 Laureate Way, Kannapolis, North Carolina.

Commission Members Present: Scott Trott, Vice-Chairman
Alan Overcash
Chris Puckett
David Steele
Jeff Parker
Larry Ensley
William Cranford
Paula Severt

Commission Members Absent: N/A

Visitors: Randall Sheets Kim Roe Robert Richardson
Robyn Richardson Sharon Gaddy Phillip Gaddy
Brittney Haigler Helene Woody Patrick Gaddy

Staff Present: Zachary Gordon, AICP, Planning Director
Gretchen Coperine, AICP, Senior Planner
David Jordon, IT

Recording Secretary: Pam Scaggs

CALL TO ORDER

Vice-Chairman Scott Trott called the meeting to order at 6:00 P.M.

OATH OF OFFICE

Jeff Parker and Larry Ensley were newly appointed to the Planning and Zoning Commission during City Council's June 23, 2018 meeting.

ROLL CALL AND RECOGNITION OF QUORUM

Recording Secretary Pam Scaggs called the roll. The presence of a quorum was recognized.

APPROVAL OF AGENDA

Mr. Trott asked for a motion to approve the Agenda which was made by Mr. Ensley, seconded by Mr. Steele and the motion was unanimously approved.

APPROVAL/CORRECTION OF MINUTES

Hearing no changes or corrections to the Minutes for July 11, 2018, Mr. Trott approved.

Case #Z-2018-09 – Zoning Map Amendment – 2122 West C Street

Senior Planner Gretchen Coperine, gave a PowerPoint presentation regarding Case #Z-2018-09 (Exhibit 1) for a request to rezone approximately 4.3 +/- acres from O-I (Office-Institutional) and RM-2 (Residential Medium Density) to C-2-CZ (General Commercial-Conditional Zoning) to allow for development of a

1 small scale automotive sales establishment. She reminded the Commission that the applicant previously
2 submitted a straight rezoning request at the June 6, 2018 meeting but that the applicant withdrew that request
3 and has resubmitted as a conditional rezoning.
4

5 Ms. Coperine provided background on the request and reviewed Policy Issues for the Commission. She
6 stated that staff finds the request consistent with the Complete Neighborhood 1 Character Area which a
7 large portion of the properties are designated in the *Move Knapolis Forward 2030 Plan* ("2030 Plan")
8 and recommends that if the rezoning is approved, staff is recommending conditions of approval (see Exhibit
9 1). She identified the remainder of the property being within the Rural Edge Character Area, and explained
10 the 2030 Plan is intended as a guide. Ms. Coperine reminded the Commission of the actions requested of
11 them, noted that the agenda packet included letters from neighbors that could not be present for the meeting,
12 read the recommended conditions of approval into the record and made herself available for questions.
13

14 Ms. Coperine responded to questions from Mr. Puckett regarding whether the proposed used car sales could
15 be considered "small neighborhood retail" per the *2030 Comp Plan*. Ms. Coperine stated that with the
16 condition limiting the number of cars displayed for sale to a maximum of 5 cars, the intent of the "small
17 neighborhood retail" is met. They discussed the characteristics and recommended uses for the Complete
18 Neighborhood 1 Character Area.
19

20 Ms. Coperine responded to questions from Mr. Ensley, Mr. Trott, Mr. Parker and Mr. Steele regarding
21 proposed buffers, vegetation, disposal of chemicals, the responsible county for water and sewer services,
22 limited build-upon area due to watershed restrictions, sale of vehicles versus repair of vehicles, junk cars
23 and how conditions of approval are enforced.
24

25 There being no further questions or comments for staff, Mr. Trott opened the Public Hearing.
26

27 Phillip Gaddy, 8420 Mooresville Road, identified himself as the applicant and thanked the Board for
28 scheduling a special meeting to hear his rezoning request. Mr. Gaddy spoke about the history of the land
29 and his love for cars. He indicated that some auto sales will take place on the property, but most of his
30 business will be auto detailing. Mr. Gaddy stated that he does not want the property to look like commercial
31 property and that he values and respects the relationship he has with his neighbors.
32

33 Mr. Gaddy responded to questions from the Commission about whether the auto detailing will be
34 appointment only or if it will be open to the public, the number of expected patrons throughout a normal
35 business day, fencing and water availability.
36

37 Robyn Richardson, 108 Clawson Street, submitted pictures of her property illustrating the proximity of her
38 home to the proposed car detailing business. She indicated that she works from her home and feels trapped
39 due to fumes from auto painting that has been occurring at the subject property. Ms. Richardson voiced
40 concerns regarding safety, noise, paint fumes, adequately capturing pollutants, decreased property value,
41 and the quality of her life. She indicated that she lost 30% of her business due to the work that has already
42 been taking place on the subject property. She asked the Commission to consider her concerns and deny
43 the rezoning request.
44

45 Kim Roe, 2200 West C Street, indicated that she currently lives in California, but that she and her husband
46 purchased the home at 2200 West C Street as a retirement home. She referenced the description of
47 Complete Neighborhood 1 Character Area of the *2030 Plan* and surmised that the proposed business does
48 not fit with the recommended uses. Ms. Roe voiced concerns regarding decreased property values and
49 referenced the EPA Clean Air Act to voice environmental impact concerns. She talked about OSHA
50 requirements for a collection system to collect polluted water.
51

1 Robert Richardson, 2828 Eva Drive, Concord, NC, identified himself as the father of Robyn Richardson
2 and stated that the distance from his daughter's bedroom window to the auto detailing location is 8-ft. He
3 indicated that if the rezoning request is approved, it will change the quality of her life and expressed
4 concerns for his daughter's safety.

5
6 Jonathan Fowler, 2108 Temple Street, indicated that he has been a long-time resident of his current home
7 where he resides with his mother. He voiced concern regarding safety, noise, property value, and pollution.
8 He thanked the Commission for their time.

9
10 Mr. Gaddy responded to questions from the Commission regarding conducting business prior to decision
11 of the rezoning request, painting of vehicles, types of chemicals used for car detailing, and paved surfaces
12 versus gravel surfaces for the auto sales portion of his business.

13
14 Ms. Coperine responded to questions regarding auto sales and contracting in the C-2 zoning district.
15 There being no further questions or comments, Mr. Trott closed the public hearing.

16
17 Mr. Trott asked for a motion to adopt or deny the Statement of Consistency for case Z-2018-09. Mr. Steele
18 made a motion to deny the Statement of Consistency as was presented, which was seconded by Mr. Ensley
19 and the motion was unanimously approved.

20
21 Ms. Coperine advised that the Commission will need to provide findings for a Statement of Inconsistency
22 since they unanimously denied the proposed Statement of Consistency. Mr. Steele indicated that the
23 proposed business is not a small-format retail business and that it will change the atmosphere of the existing
24 environment which contradicts the Complete Neighborhood 1 Character Area description from the 2030
25 Plan. He stated that the proposed conditions are not restrictive enough and there is no plan for water runoff
26 nor storage or disposal of contaminants. Mr. Parker indicated that he concurs with Mr. Steele's findings.

27
28 Mr. Trott asked for a motion to deny the rezoning request for case Z-2018-13 which was made by Mr.
29 Ensley seconded by Mr. Puckett and the motion was unanimously approved.

30
31 **PLANNING DIRECTOR UPDATE**

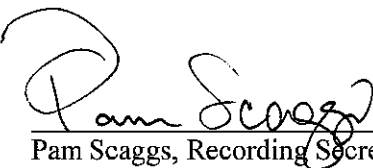
32 Planning Director Zachary Gordon welcomed new Commission members Jeff Parker and Larry Ensley and
33 provided an update on the UDO rewrite process. He informed the Commission that Senior Planner, Ryan
34 Hvittlak moved to Minnesota and that the Planning Department is in the process of receiving applications
35 to fill that open position.

36
37 **OTHER BUSINESS**

38 Mr. Gordon talked about agenda items for the August meeting and responded to questions from
39 Commission members regarding construction activity in the City of Kannapolis.

40
41 **ADJOURN:**

42 There being no further business, questions or comments, the meeting was adjourned by unanimous vote at
43 7:24 PM on Wednesday, July 26, 2018.

44
45
46
47 
48
49

50 Pam Scaggs, Recording Secretary
51 Planning and Zoning Commission


Planning and Zoning Commission



**RESOLUTION TO ADOPT A STATEMENT OF CONSISTENCY
WITH REGARD TO CASE # Z-2018-09**

WHEREAS, Section 160A-383 (2013) of the North Carolina General Statutes specifies that when adopting or rejecting any zoning amendment, the governing board shall also approve a statement describing whether its action is consistent with an adopted comprehensive plan and any other officially adopted plan that is applicable and explain why the action taken is reasonable and in the public interest; and

WHEREAS, Section 3.3.4.2.2 of the Unified Development Ordinance (UDO) delegates final authority to the Planning and Zoning Commission on zoning map amendments subject to an affirmative vote of three-fourths of the Commission members present and not excused from voting, or if there is no appeal of the decision. If there is a denial, an approval by a vote of less than three-fourths, or an appeal of the decision, then only the City Council shall have final decision making authority; and

WHEREAS, at its July 26, 2018 meeting, the Planning and Zoning Commission unanimously denied the request for rezoning and in accordance with Section 3.3.4.2.2 of the UDO, City Council has final decision making authority on this request; and

WHEREAS, on September 24, 2018 City Council conducted a public hearing to consider a request to rezone 2120-2122, and unaddressed parcel on West C Street (Rowan County Parcel Identification Number(s) 249C-005, 249C-095, and 249C-09501) owned by Phillip Gaddy II and Sharon Gaddy, from City of Kannapolis Zoning Designation O-I – Office Institutional and RM-2 – Residential Medium Density to City of Kannapolis Zoning Designation C-2-CZ – General Commercial-Conditional Zoning; and

NOW, THEREFORE BE IT RESOLVED *that the City Council finds this zoning map amendment as presented in Case# Z-2018-09 to be consistent with the goals and policies of the **Move Kannapolis Forward 2030 Comprehensive Plan**, adopted by City Council, which designates this property as being located in a Complete Neighborhood 1 Character Area. A Complete Neighborhood 1 Character Area calls for the existing character of the area to be maintained. The current character of the West C Street Corridor is a mixture of existing single family residential and commercial uses. Staff finds the request for rezoning reasonable and in the public interest with limited commercial uses of this property and appropriate conditions of approval for the subject parcels. The proposed rezoning with conditions of approval is not anticipated to create parking problems or adverse impacts on the environment. Finally, while the area is not served by water and sewer, the project is subject to all Rowan County requirements for well and septic services.*

Adopted this the 24th Day of September, 2018;

Milton D. Hinnant, Mayor
Planning and Zoning Commission

ATTEST:

Bridgette Bell, MMC, NCCMC
City Clerk



RESOLUTION TO ZONE

Case # Z-2018-09 (2120, 2122, and unaddressed parcel on West C Street)

**City of Kannapolis Office Institutional (O-I) Zoning District and City of Kannapolis Residential Medium Density (RM-2) to
City of Kannapolis General Commercial-Conditional Zoning (C-2-CZ) District**

WHEREAS, Section 3.3.4.1 of the City of Kannapolis Unified Development Ordinance specifically delegates authority from the City Council to the Planning and Zoning Commission to take final action on a rezoning petition; and

WHEREAS, Section 3.3.4.2.2 of the City of Kannapolis Unified Development Ordinance subjects this authority to an affirmative vote of three-fourths of the Commission members present and not excused from voting, or if there is no appeal of the decision; and

WHEREAS, the Commission conducted a public hearing on July 26, 2018 for consideration of rezoning petition Case #Z-2018-09 as submitted to the City of Kannapolis Planning Department; and

WHEREAS, at its July 26, 2018 meeting, the Planning and Zoning Commission unanimously denied the request for rezoning and in accordance with Section 3.3.4.2.2 of the UDO, City Council has final decision making authority on this request; and

WHEREAS, the request was to rezone three parcels located at 2120-2122, and unaddressed parcel on West C Street (Rowan County Parcel Identification Number(s) 249C-005, 249C-095, and 249C-09501) owned by Phillip Gaddy II and Sharon Gaddy, from City of Kannapolis Zoning Designation O-I – Office Institutional and RM-2 – Residential Medium Density to City of Kannapolis Zoning Designation C-2 – General Commercial-Conditional Zoning; and

WHEREAS, on September 24, 2018 City Council conducted a public hearing to consider a request to rezone 2120-2122, and unaddressed parcel on West C Street (Rowan County Parcel Identification Number(s) 249C-005, 249C-095, and 249C-09501) owned by Phillip Gaddy II and Sharon Gaddy, from City of Kannapolis Zoning Designation O-I – Office Institutional and RM-2 – Residential Medium Density to City of Kannapolis Zoning Designation C-2-CZ – General Commercial-Conditional Zoning; and

WHEREAS, the City Council has approved the request for rezoning and found it to be consistent with the *Move Kannapolis Forward: 2030 Comprehensive Plan*, reasonable and in the public interest; and

WHEREAS, per Section 3.3.5 of the Kannapolis UDO, the City Council makes the following findings in support and in analysis of the rezoning:

1. The size of the tract in question.

There are three (3) tracts associated with the proposed request for rezoning. In total, these tracts measure approximately 4.4 acres.

2. Does the proposal conform with and further the goals and policies of the Land Use Plan, other adopted plans, and the goals, objectives, and policies of this Ordinance?

A large portion of the subject parcels (i.e., parcel 249C 095, 249C 09501 and the southern portion of parcel 249C 005) is designated as “Complete Neighborhood 1” Character Area in the *Move Kannapolis Forward 2030 Comprehensive Plan*. The Complete Neighborhood 1 Character Area includes primarily existing single-family neighborhoods, which are generally stable and where the character should be maintained. In certain areas, a corner lot may provide a place for small neighborhood serving retail or other business that generates limited traffic.

The remainder of the subject parcels (i.e., the northern portion of parcel 249C 005) is designated as “Rural Edge” Character Area in the *Move Kannapolis Forward 2030 Comprehensive Plan*. This Character Area includes land that is not expected to develop within the planning horizon.

3. Is the proposed rezoning compatible with the surrounding area?

The subject properties are located along West C Street approximately 600 feet east of the ETJ boundary of the City. The surrounding properties are a mixture of larger lot residential with large vacant parcels across West C Street from the site. A small neighborhood serving commercial node is located at West C Street and Rainbow Drive, approximately 700 feet to the east of the subject parcels. The requested rezoning would permit for small scale automotive sales use with a maximum of 5 vehicles on display on the site. The use would also permit for detailing in conjunction with the vehicles for sale.

The site will have landscape buffers along the east and west property lines, with an opaque wooden fence adjacent to the existing residential property to the east of the subject parcel. If the rezoning request is approved, Staff is recommending a 10-foot landscape buffer at the northern property line of parcel 249C 09501 to match the proposed east property line buffer.

4. Will there be adverse effects on the capacity or safety of the portion of street network influenced by the rezoning?

The subject properties are currently accessed from two driveways along West C Street. Any additional curb cuts on West C Street would have to be approved by NCDOT.

5. Will there be parking problems?

The proposed site plan includes five paved spaces for display of vehicles and six spaces for customers. This meets the requirement of 1 space per employee and 1 space per vehicle displayed. The sales of the vehicles will be online.

6. Will there be environmental impacts that the new use will generate, such as excessive storm water runoff, water, air or noise pollution, excessive nighttime lighting, or other nuisances?

The applicant has provided a concept plan. A full site plan will be required to be reviewed and approved prior to the issuance of a Zoning Clearance Permit for the use, should the rezoning request be approved.

With regard to environmental impacts, the site is located in the Kannapolis Lake Critical Area Watershed which limits the maximum built-upon area to 12%. The proposed impervious surface on the site is 8.1% (11,307 sf/approximately 3.2 acres), and will need to comply with all UDO standards with regard to maximum impervious surface.

With regard to lighting, Staff recommends a condition that any new lighting on the site to be installed shall be full cut-off fixtures with all lighting directed away from adjacent properties and from West C Street. The site plan will be reviewed by City staff to ensure the development meets all storm-water requirements.

In addition, staff is recommending that the business hours do not extend beyond 9pm Sunday through Friday and 10pm on Saturdays.

7. Has there been any change of character in the area due to installation of public facilities, other zone changes, new growth trends, deterioration, and development?

The surrounding area has been generally stable in the recent past. A CUP was granted for a self-storage on West C Street and North Arbor Ave. approximately ½ mile east of the subject parcels in October 2017.

8. Is there compliance with the adequate public facilities criteria?

There are no municipal utilities in this portion of the ETJ. A well and septic system would be required from the Rowan County Health Department for any additional water or septic capacity on the site.

9. What are the zoning districts and existing land uses of the surrounding properties?

Property to the north is zoned O-I and RM-2 with predominantly large-lot residential. Property to the south (across West C Street) is zoned O-I and currently vacant. Property to the west is zoned O-I with a vacant retail business on the site. An existing home is located to the east of the site (across Clawson Avenue) and is zoned O-I.

10. Is the subject property suitable for the uses to which it has been restricted under the existing zoning classification?

The subject properties are zoned O-I which would allow for office uses. The O-I designation would not allow for retail uses such as the car lot the applicant is proposing.

11. Is the zoning compatible with the adjacent neighborhood, especially residential neighborhood stability and character?

The West C Street corridor is zoned C-2 east of Rainbow Drive (on the south side of West C Street, across from Arlene Avenue), with O-I from Arlene Avenue west to the ETJ line. The subject parcels are adjacent to the existing O-I district, on the west side Clawson Avenue. There are existing residential and non-residential uses along West C Street, and the subject properties are abutted by residential uses. Staff believes that while small scale retail may be appropriate for this location, more intense commercial uses would need to be appropriately mitigated to ensure compatibility with the adjacent neighborhood.

12. What length of time has the subject property remained vacant as zoned?

The subject property is currently improved with two residences and a garage building.

13. Is there an adequate supply of land available in the subject area and the surrounding community to accommodate the zoning and community needs?

West C Street in the ETJ is predominantly a commercially zoned corridor of either C-2 or O-I. There is a mixture of existing homes and vacant land which could over time be converted to commercial or office uses.

14. Was the existing zoning in error at the time of adoption?

No.

RESOLUTION TO ZONE (Case #Z-2018-09)

City of Kannapolis Office Institutional (O-I) and Residential Medium Density (RM-2) Zoning District to
City of Kannapolis General Commercial-Conditional Zoning (C-2-CZ) District

NOW, THEREFORE BE IT RESOLVED by the Kannapolis City Council that the above referenced property be rezoned City of Kannapolis C-2-CZ (General Commercial-Conditional Zoning) District.

Adopted this the 24th Day of September, 2018

Milton D. Hinnant, Mayor

ATTEST:

Bridgette Bell, MMC, NCCMC
City Clerk

| Item measured | Decibel Reading |
|------------------------|------------------------|
| | |
| Ford F-250 at Idle | 96.5 |
| Air Compressor | 95.8 |
| Shop Vac | 86.7 |
| Pressure Washer | 97.5 |
| Rotary Buffer | 94 |
| Weed Trimmer | 100.2 |
| 18HP Riding Lawn Mower | 102 |
| Car Horn | 95.8 |
| Hair Dryer | 95.6 |
| Sausage Frying | 89.9 |
| Road Noise | 85.0 - 95.0 |

Memorandum

TO: Kannapolis City Council

FROM: Phillip L. Gaddy II

DATE: August 15, 2018

SUBJECT: Rezoning application and hearing of three parcels, 2120 and 2122 West C st. and one unaddressed, from O/I to Conditional C2 in order to establish a small automotive sales and detailing business to serve the surrounding area.

On August 26th a Planning and Zoning hearing was held to discuss the rezoning of three parcels, 2120, 2122 and one unaddressed parcel along West C st. in the ETJ of Kannapolis. This memo is in response to the outcome and responses of this hearing.

Throughout this process I have been given the option many times to accept or reject conditions that could be placed on the potential business and looking through the eyes of the city, community, and neighbors i have chosen every time to agree with the conditions as seen in the staff report. I have no intentions of becoming a disturbance, or nuisance in any way to these entities. Moreover, the goal of my business is to provide needed services to the community that I have been a part of for over 40 years. Therefore I have taken the time to diligently research and address any concerns pertaining to the existence of my business at the aforementioned location.

Hearing the concerns of the neighbors and zoning board I feel it necessary to share some of the facts of my business. First and foremost are the environmental concerns of soil, water, air and noise pollution. As I have been detailing vehicles for over 25 years, I am very in tune with what is required and also what isn't required in the process. I use only equipment and products that you would use personally to detail your own vehicle in your driveway. I have found through the years that it's not about having more powerful product and equipment but knowing how to use quality items to complete the process. Therefore using equipment like an electric pressure washer that only produces 1.5 gallons per minute and no chemical harsher than common household degreaser diluted by 50% ensures that runoff and contamination is virtually eliminated. The average amount of water used per vehicle is between 14-15 gallons for my specific process and therefore could easily be filtered through a collection process

or filter bed. Also worth noting is the condition that the back half of the parcel that the business will operate on labeled Rural Edge will not be considered in the rezoning and will remain as currently designated as to protect the natural resources. Also attached you will find noise level decibel readings of the actual equipment that will be used as well as measurements of common noises we all encounter every day for comparison. All of these readings were taken with the same decimeter at the same distances and photos of each can be provided upon request. Again, due to the fact that all equipment can be purchased at a local home improvement store there were no readings measured higher than the average noise level of road noise, personal lawn mower or full size truck at idle. In addition, the only services tied to air quality are the occasional spraying of black paint to cover wheel wells. My business does not offer or include any body work or vehicle panel painting. These facts along with the mutually agreed conditions presented in the staff report for appearance, lighting, hours of operation, etc. I believe success can be achieved for all parties involved.

Considering the conditions of size and volume of the zoning for the business, it more than fits the Small Format business model as well as Neighborhood-Serving Retail and as the owner these are the two main goals of my business plan. As i look around the community I model after businesses like Johnny's One Stop, operating less than 1 mile away. Johnny has a very successful customer base offering vehicle sales and inspection services all while maintaining an excellent rapport and reputation with the entire community. Looking toward the future as my business grows to the point of needing more sales space, I will look toward a second location for the retail side of the business. This will maintain my commitment to the community, zoning conditions, as well as the Grow Smart goal.

I am committed to my business existing solely to better my community, property and personal reputation. With this goal now and continuously in the future, I have no doubt that I will be a positive feature in the growth of the West C st. corridor and the goal of growing Kannapolis to heights it has never seen before.

Thank you for your time and consideration in this matter!

Phillip Gaddy

September 9, 2018

Good day Ms. Coperine. I would like to share my thoughts on the above mentioned case and to the character of Mr. Gaddy.

While I won't speak to all the various points in the case I will say that there is a need for the business that Mr. Gaddy is seeking to open. He has experience in this business and as a customer I have seen first hand the quality of work that he does.

He would be offering a service that to the best of my knowledge no one else on this side of town is offering.

I would also like to speak to the integrity and professionalism of Mr. Gaddy. I have know this man since he was a baby. I know his mother and hold her and he (his brother and sister as well) in the highest esteem possible. I think your office has already seen the type of personality and professionalism that this young man exhibits. As a former regional manger for the Weyerhaeuser Company, I know the value of a level headed, calm, honest business manager with integrity. Someone that does what he says when he says and makes sure the customer is satisfied can be very hard to find. Mr. Gaddy has been a solid citizen of the community, as well as, a seasoned manager with a very large corporation and offers the community a professional business owner that will be a solid addition that wants to remain a local asset. The way he has handled this matter from the beginning and the patience and professionalism he has shown in my mind only confirms what I have noted.

A man that wants to take his knowledge, experience, work ethic and his reputation and start a business and build it in the Kannapolis area to me represents a win-win scenario. If this young man were running for a political office he would have my vote and my full support because I know he is a man of his word and will do what is right and will hold himself accountable. Is that not what all of the citizens in the Kannapolis area want from our business leaders/owners?

Thank you for your time and any consideration you may give to this endorsement.

Sincerely,
Frank Hyatt

August 31, 2018

To whom it may concern,

I am emailing you today in support of the rezoning of property 2122 West C St, proposed by Phillip Gaddy. The property in consideration has been in our family for over 90 years, has remained unused, and has been sitting stagnant since the death of our father in 2013. With a desire to carry on in the family tradition of small business ownership, Phillip has made it a life long dream to own a small car detailing and sales business, and would like to do so using the family property. He has followed all guidelines and channels provided by the zoning and planning department, and presented all of the requested materials, plans, and conditional requirements associated with starting a small business. Phillip's proposed plan fell directly in line with the "Moving Kannapolis forward 2030" plan as stated by the zoning and planning department. There was no contradiction or opposition by any city planning office officials. Unfortunately the zoning board was influenced by falsehoods and negative emotional statements at the July 26th P and Z hearing. The opposition's statements are false and lack an understanding of what Phillip is proposing. The opposition's claims are an obvious fear of change. Phillip has since used all available local and state resources and regulations to help calm these fears. He has assured the opposition of his honest intent. With his site plan, community meeting initiative, and many answered questions, Phillip has proven all of his claims. I, as well as many others are asking Kannapolis city council to do the right thing and allow Phillip's business to thrive. Allow the Enochville community to thrive, and allow Kannapolis to thrive as you have proposed with the 2030 plan. Approve the 2122 West C St property rezoning.

Thank you for your time and consideration.

Sincerely

Patrick Gaddy

August 31, 2018

Hello, my name is Sharon Gaddy, owner of [2120 West C Street](#), property which is a part of West C zoning project.

Forty five years ago in 1973 I moved to this property as a newly wed. This area known as the "White Hill" section of West C Street was a very commercialized area. I could stand at the end of my driveway and physically see a number of businesses. Toward the Enochville end of West C street, I could see Ola's beauty shop and Clawson's Grocery with gas island. Across the street was a car wash with self service gas island and a barber shop. Looking toward town was Gaddy Bros Plumbing and Heating along with garage and gas island. Next door was Arnold Cook's Grocery with gas island with White Spot across road and Purser's variety with gas island. Two churches as well. So as you can see a very busy commercial area without being zoned commercial.

The project before you would be an asset to this area, serving the community and being supported by the surrounding area as many other small businesses have been for many, many years. The owner of the small business has a business background of managing a 40+ million dollar facility for Lowe's Home Improvement for approximately 10 years with many accolades during that time.

This property would be managed with the utmost finesse and regard for the community and the conditions set forth by this zoning approval!

Thanks for your time and your consideration.

Sharon Gaddy



**City of Kannapolis
City Council Meeting
September 24, 2018
Staff Report**

TO: Mayor and City Council
FROM: Wilmer Melton, III - Director of Public Works
TITLE: Public Hearing - Request to consider withdrawal from dedication a portion of R-O-W known as Eastover Drive located off of Crescent Street

A. Action Requested by City Council

1) Conduct a Public Hearing and, 2) Motion to approve an Order closing the unopened portion of Eastover Drive Right-of-Way located off Crescent Street.

B. Required Votes to Pass Required Action

Majority present at meeting

C. Background

Provided there is no evidence given at the Public Hearing that withdrawing from dedication the unopened portion of Eastover Drive R-O-W located off of Crescent Street is not contrary to the public interest, it is recommended that City Council approve the Order closing the unopened portion of Eastover Drive R-O-W located off of Crescent Street.

The property owner has requested the closure of a portion of R-O-W known as Eastover Drive located off of Crescent Street. All necessary documents have been received. Staff has reviewed all documents and finds no reason to deny the request for closure.

D. Fiscal Considerations

None.

E. Policy Issues

The approval of this recommendation is in keeping with the practice of City Council of vacating easements that are no longer necessary for public use, returning the land to private ownership.

F. Legal Issues

None.

G. Alternative Courses of Action and Recommendation

1. **Motion to approve an Order to Close thereby withdrawing from dedication an unopened portion of Eastover Drive Right-of-Way located off of Crescent Street. (Recommended)**
2. Motion to table item to a future meeting.
3. Take no action.

ATTACHMENTS:

File Name

- ▢ Petition_for_Eastover_Drive_R-O-W_Abandonment.pdf
- ▢ Survey_Plat_of_Eastover_Abandonment.pdf
- ▢ Order_to_Close_Unopened_Portion_of_Eastover_Dr_R-O-W_off_of_Crescent_Street.doc

PETITION FOR STREET OR ALLEY CLOSURE

We, the property owners abutting the alley or street located at between
describe) PIN 5612783191 / pin 5612774963
Planned Eastover Drive, 131 Crescent St Kannapolis

hereby petition the City of Kannapolis to remove from dedication the right of way for the above mentioned alley or street.

NAME

ADDRESS

PHONE #

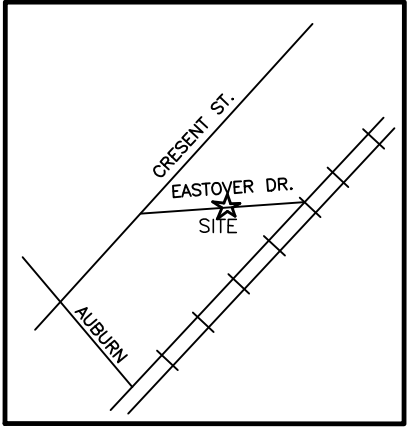
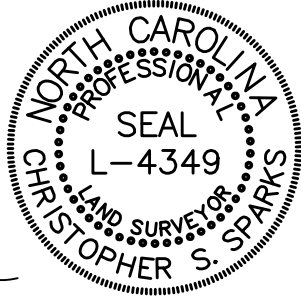
SIGNATURE

Parfi Bukhari 158 LeClime Dr NE 607-9259884 Dr. Khan
Concord NC
28025

SURVEYOR'S CERTIFICATION
I, Christopher S. Sparks certify that this map was drawn by me from an actual survey made by me deed description recorded in Book (see map) Page (see map), etc.) (other); (that the ratio of precision as calculated by latitudes and departures is 1:10,000, that the boundries not surveyed are shown as broken lines plotted from information found in Book _____ Page _____; that this map was prepared in accordance with the standards of practice for land surveying in North Carolina

Witness my hand and seal this 24TH day of May AD 2018.

Christopher Sparks
Professional Land Surveyor
L 4349



NTS VICINITY MAP

- NOTES:
- 1. PROPERTY MAY BE SUBJECT TO RECORDED OR UNRECORDED EASEMENTS
 - 2. NO USGS MONUMENT WITHIN 2000'.
 - 3. The purpose of this map is to abandon the right of way of Eastover Dr. as shown on MB.9 Pg. 11

MB.9 PG.11

PIN#5612783260
SHIFA 1 LLC
DB.12871 PG.126

PIN#5612783191
SHIFA 1 LLC
DB.12871 PG.126

6588 S.F.
0.15 AC.
INSIDE EASEMENT

PIN#5612785329
TRI-VET PROPERTIES
DB.1063 PG.26

PIN#5612786164
KANNAPOLIS GLASS & GLAZING INC.

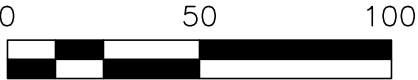
PIN#5612786090
STEVE N BARR
DB.1342 PG.330

PIN#5612774963
SHIFA 1 LLC
DB.12871 PG.126

PROP. 20' PUBLIC S.D.E. LINE TABLE

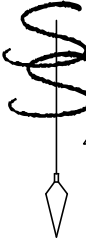
| LINE | BEARING | DISTANCE |
|------|---------------|----------|
| L1 | N 25°12'00" E | 331.28' |
| L2 | N 12°24'00" W | 24.58' |
| L3 | S 12°24'00" E | 8.19' |
| L4 | N 25°12'00" E | 327.49' |
| L5 | N 16°50'00" W | 7.47' |
| L6 | S 16°50'00" E | 22.40' |

SCALE:1"=50'



- LEGEND:
- E.I.P. EXISTING IRON PIN
 - N.I.P. NEW IRON PIN
 - C.P. COMPUTED POINT

REVISIONS:
ADDED 20' PUBLIC S.D.E.



SPARKS
SURVEYING

4485 NEEDMORE RD.
WOODLEAF, N.C. 27054
PHONE(704) 577-8429
F-1064

R/W ABANDONMENT
OF
EASTOVER DR.
KANNAPOLIS NC

NUMBER 4 TWP. CABARRUS COUNTY, N.C.

**CITY COUNCIL
CITY OF KANNAPOLIS
ORDER TO CLOSE**

WHEREAS, pursuant to North Carolina General Statute 160A-299, City Council of the City of Kannapolis has proposed to permanently close an unopened portion of Eastover Drive R-O-W located off of Crescent Street described as a Public Street or alley pursuant to Section 160A-299 of the General Statutes of North Carolina which is more particularly described as:

LEGAL DESCRIPTION

Beginning at a point, the southernmost corner of the Shifa 1 LLC property (PIN #5612783191 Deed Book 12871 Page 126); being the intersection of the eastern right-of-way of Crescent Street and the northwestern right-of-way of Eastover Drive, as shown on Map Book 9 Page 11, being located S16°50'00"E a distance of 217.83' from an existing iron on the eastern right-of-way of Crescent Street, thence along the unopened northwestern right-of-way line of Eastover Drive, with the Shifa 1 LLC southeastern property line N25°12'00"E a distance of 328.44' to a computed point in the centerline of the NCRR; thence with the centerline of the NCRR S12°24'00"E a distance of 49.17' to a computed point; thence leaving said NCRR corridor S25°12'00"W a distance of 322.76' to a computed point on the eastern right-of-way line of Crescent Street; thence with the eastern right-of-way line of Crescent Street N16°50'00"W a distance of 44.81' to a computed point; which is the point of beginning, having an area of 9768.00 square feet, 0.224 acres, according to a survey completed by Sparks Surveying dated March 12, 2018.

WHEREAS, a Public Hearing on the question of such closing was held on September 24, 2018, at which time the plans for such closing were explained and all persons given an opportunity to be heard; and

WHEREAS, notice of said closing was given in accordance with the requirements of law; and

WHEREAS, it has been found to the satisfaction of the City Council after the Public Hearing that closing of the street or public roadway is not contrary to the public interest and that no individual owning property in the vicinity of the street or public roadway or in the subdivision in which it is located would be deprived of reasonable means of ingress or egress to his property.

NOW, THEREFORE, IT IS HEREBY ORDERED by the City Council of the City of Kannapolis as follows:

1. That the unopened portion of Eastover Drive R-O-W located off of Crescent Street as described above, is hereby closed effective immediately.
2. That the City of Kannapolis reserves any and all right, title and interest in and to any utility improvements or easements within any portion of the above described street closed pursuant to this Order.

3. That a certified copy of this Order be filed in the office of the Register of Deeds for Cabarrus County, North Carolina.

Adopted this 24th day of September 2018.

Milton D. Hinnant
Mayor

Attest:

Bridgette Bell, MMC, NCCMC
City Clerk



**City of Kannapolis
City Council Meeting
September 24, 2018
Staff Report**

TO: Mayor and City Council
FROM: Eddie Smith, Deputy City Manager and Walter M. Safrit, City Manager
TITLE: Sports and Entertainment Venue Guaranteed Maximum Price Contract

A. Action Requested by City Council

Motion to authorize the City Manager to execute the Third Amendment to the Contract for Construction Manager at Risk for the construction of the downtown Sports and Entertainment Venue and Infrastructure Projects between City of Kannapolis and Barton Malow Company and to make minor and necessary changes consistent with the intent and scope of the Contract.

B. Required Votes to Pass Required Action

Majority present at meeting

C. Background

The original contract with Barton Malow Company for construction manager at risk services included the scope of both the downtown infrastructure and streetscape project as well as the construction of the Sports and Entertainment Venue (the Ballpark). This amendment establishes the guaranteed maximum price of \$40,112,697 for construction of the Sports and Entertainment Venue. The Barton Malow scope generally includes the structure, all stadium systems, and the playing field.

A summary of the overall project budget is attached (of which the GMP is part). The link to download the full GMP proposal is below:

<https://bartonmalow.box.com/v/SEVGMP092418>

D. Fiscal Considerations

Funding for this project will come from the issuance of Limited Obligation Bonds. The approval for this financing is on the N.C. Local Government Commission's October 2, 2018 meeting. The bonds are scheduled to be issued on October 24, 2018.

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| E. Policy Issues |
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None.

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| F. Legal Issues |
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None.

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| G. Alternative Courses of Action and Recommendation |
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1. **Motion to approve the Sports and Entertainment Venue Guaranteed Maximum Price Agreement and authorize the City Manager to execute and make minor and necessary changes consistent with the intent and scope of the agreement (Recommended).**
2. Table the action to a future meeting.
3. Take no action.

ATTACHMENTS:

File Name

📎 Kannapolis_SEV_Project_Summary_09.24.18.pdf

Project Location: **Downtown Sports & Entertainment Venue**
 Project Location: **Kannapolis, NC**
 Date of Report: **24-Sep-18**
 Gross Building Area: (SF) 162,400
 Enclosed Building Area: (SF) 48,617
 Secondary Unit: (Capacity) 4,930

GMP Estimate

**Barton
Malow**

Project Summary

CITY OF KANNAPOLIS

| | | % of Project Total |
|--|---------------------|-----------------------|
| Baseline Construction Total - BMC GMP Estimate | \$40,112,697 | 77.14% |
| City Provided FF&E / Off-site Improvements* | | |
| Asbestos Survey & Abatement | \$600,000 | 1.15% |
| Fixed Sports Seating | \$479,600 | 0.92% |
| Food Service Equipment & Installation | \$1,377,965 | 2.65% |
| Scoreboard/Ribbon Board/Video Boards | \$1,090,000 | 2.10% |
| Loose Exterior Spectator Seating | \$138,964 | 0.27% |
| Public Artwork | \$100,000 | 0.19% |
| Kids Recreation Area | \$340,000 | 0.65% |
| Team Store & Team Offices Build-out Allowance | \$1,080,798 | 2.08% |
| Subtotal | \$5,207,327 | 10.01% |
| Project Administration* | | |
| A&E Services | \$2,528,000 | 4.86% |
| Financing / Debt Issuance / Legal / Accounting | \$625,000 | 1.20% |
| Project Advisory Services | \$425,000 | 0.82% |
| Owners Contingency | \$2,000,000 | 3.85% |
| Design Contingency | \$500,000 | 0.96% |
| Builder's Risk & Property Insurance | \$50,000 | 0.10% |
| Permits & Fees (0.5% of Baseline Construction) | \$200,563 | 0.39% |
| Third Party Inspections (0.75% of Baseline Construction) | \$300,845 | 0.58% |
| Project Administration & Marketing | \$0 | 0.00% |
| Commissioning | \$50,000 | 0.10% |
| Subtotal | \$6,679,409 | 12.85% |
| Total by City of Kannapolis: | \$51,999,433 | 100.00% |

* Budget values noted above provided and/or confirmed by City of Kannapolis.



**City of Kannapolis
City Council Meeting
September 24, 2018
Staff Report**

TO: Mayor and City Council
FROM: Mike Legg, City Manager and Walter M. Safrit, City Attorney
TITLE: Public Hearing and Resolution Approving Ballpark Development Agreement with Temerity Baseball, LLC

A. Action Requested by City Council

1) Conduct a Public Hearing, and 2) Motion to approve a Resolution adopting Ballpark Development Agreement and authorizing the City Manager to execute and make minor and necessary changes consistent with the intent and scope of the Resolution.

B. Required Votes to Pass Required Action

Majority present at meeting

C. Background

Summary: Establishes that the City will construct a new Ballpark within a certain timeframe, with a certain quality and under certain conditions.

Term: See overall project schedule. Construction is now slated to begin in full without restrictions no later than October 24, 2018 with substantial completion on January 29, 2020.

Highlights:

1. Establishes Conditions to the Agreement. These are things such as verification of team ownership, league approvals of the plans and agreements, execution of the lease and non-relocation agreements, legal options. These have a completion date of October 5. Essentially, if these things are not fully completed by then the City could stop construction on the Ballpark until they are resolved. With what we know now, this scenario is highly unlikely but nevertheless is a good safeguard.
2. Establishes the Ballpark Budget. This is the final Guaranteed Maximum Price budget with provided by Barton Malow Company (\$40,108,430) plus City-funded FF&E (Furniture, Fixtures and Equipment) and site work (\$4,126,529) plus soft costs such as architectural work, financing costs and permitting, team store upfits, and contingency (\$7,760,153). The total budget is \$51,995,113 including a \$2.5 million contingency.

3. Establishes the Ballpark Plans. These are now completed, as are the construction drawings.
4. Establishes the construction schedule. This has been provided by Barton Malow with the substantial completion date of January 29, 2020.
5. Establishes a date for closing of the financing. This will be October 24, 2018.
6. Development Related Memorandum of Understanding. Provides that both City and Team will commit to executing two different MOU's. The first will be a binding MOU that is essentially a revision of the current MOU with Corporate Realty that includes Temerity and is related exclusively to the development of blocks 4 and 5 adjacent to the Ballpark. The second MOU will be a non-binding MOU that simply establishes the City's intent and commitment to engage with Temerity in future development opportunities in the future. These MOUs have not been drafted yet.
7. Late Opening Charges. Establishes that the City will pay the Team late opening charges (liquidated damages) in the amount of \$20,000 per home game (and all other events at the Stadium) beginning June 1, 2020 until the facility is open and ready for use.
8. Use of Current Ballpark. Establishes that if a delay in substantial completion prevents use of the ballpark in 2020, then that baseball season will be played in the current facility and the current lease terms would be extended to December 2020 (including the current City subsidy).
9. Team Store, Ticket Office and Administrative Offices. Establishes that the City will provide these facilities at no cost to the Team in commercial space at or near the intersection of West Avenue and West A Street. The spaces must adhere to minimums established by Minor League Baseball. In the preliminary Corporate Realty plan this equates to 9,036 square feet but the specific size will be determined later. This cost has not been fully identified. Provided that a final partnership is defined with Corporate Realty and Temerity this will be negotiated as part of that agreement. It is anticipated that actual construction of the spaces will be funded as part of the City's financial commitment to that agreement.

If this permanent space is not completed by early 2020, the agreement provides that Team and City will cooperate to establish temporary spaces to serve as this function. For ticketing a temporary space at the ballpark entrance would be easy (nothing more than tables and a tent). The team offices could be located anywhere downtown temporarily (there would be a renovation and upfit cost). The Team Store would need to be as close as possible to the entrance (possibly along West Ave across from the Ballpark entrance). These "back-up" locations need to be defined sometime in the next few weeks. The SAL and MiLB will require this as well.

Additionally, the Ballpark budget includes approximately \$1 million for upfits of these spaces. Finally, some of the \$2.5 million contingency in the Ballpark budget may be utilized for this purpose if necessary.

10. Access. Establishes access for the Team and its agents to the project site during construction.

11. Change Orders. Establishes that change orders may be requested by either City or Team with the requesting party responsible for the cost (if it exceeds the previously budgeted cost).
12. The Lease Agreement is also an appendix to the Development Agreement.

D. Fiscal Considerations

Financial Implications: The planned approach for defining the financial responsibilities for the Ballpark project is described below.

City will be financially responsible for:

1. 100% of the scope included in the Barton Malow (Construction Manager) GMP Agreement. The Barton Malow scope generally includes the structure, all stadium systems, and the playing field.
2. All soft costs. This includes funding for architecture, legal, testing, contingency.
3. All furniture, fixtures and equipment (FF&E) included in the Barton Malow scope. These are generally items that are not necessarily “construction” but typically are secured to the floors, walls, etc. in conjunction with the construction process. Some larger items may not actually be secured but may be mobile.
4. Change Orders Initiated by the City.
5. Certain FF&E expenditures and site expenditures outside of the Barton Malow scope. The City would be responsible for these costs above this amount (and any savings below this amount). These proposed expenditures are included in Exhibit B which is attached to the Development Agreement. The largest of these expenditures include outdoor loose furniture, fixed row seating, video boards, the kitchen equipment (as \$1.4 million allowance to the Team), playground facility, and public art. Currently this total estimate is \$4,126,529. The total City obligation for the Ballpark project stands at \$51,995,113 including a \$2.5 million design and owners contingency.

The Team will be responsible for:

1. FF&E expenditures outside of the Barton Malow scope and not provided by the City. These include all items not included in the City budget described above. Ultimately the Team will be responsible for securing most of the quotes/bids/pricing for many of these items. Alternatively, the Team may decide that certain items are either unnecessary or already owned by the Team in the current facility and can be moved to the new Ballpark. As currently drafted, the Exhibit B establishes who pays for what FF&E items; however, unless it is included in the Project Budget (Barton Malow plus soft costs) or is a City responsibility the City will want some assurance that critical Team-responsible items will be purchased/provided prior to opening day. This is not explicitly provided for in the Agreement but both parties must work together to ensure this occurs.

Ultimately the actual cost estimates or method of acquisition/resolution for Team-responsible FF&E is immaterial to the agreement (in fact, these estimates included in the

Development Agreement). These proposed expenditures are included in Exhibit B which is attached to the Development Agreement. The largest of these expenditures include indoor loose furniture, advertising signage part of the kitchen equipment (split with the City), game day operations, building operations, and certain technology assets. Currently this total estimate is \$2.6 million – but as noted above, the actual cost will be largely controlled by the team.

2. Change Orders initiated by the Team.

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| E. Policy Issues |
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None.

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| F. Legal Issues |
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None.

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| G. Alternative Courses of Action and Recommendation |
|--|

1. **Motion to approve a Resolution adopting Ballpark Development Agreement and authorizing the City Manager to execute and make minor and necessary changes consistent with the intent and scope of the Resolution (Recommended).**
2. Table the action to a future meeting.
3. Take no action.

ATTACHMENTS:

File Name

- ❑ Development_Agreement_-_FINAL.pdf
- ❑ Exhibit_A_to_Development_Agreement_and_Lease_Agreement_City-Intimidators.pdf
- ❑ Exhibit_B_Ballpark_Responsibilities_Final_9-23-18.pdf
- ❑ Resolution_approving_Development_Agreement_with_Temerity_Baseball__LLC.pdf
- ❑ Notice_of_Public_Hearing_Ballpark_Development_Agreement_9-7-2018.pdf

CITY REDRAFT
9/19/18
CLUB REDRAFT
9/17/2018
FOR DISCUSSION ONLY

BALLPARK DEVELOPMENT AGREEMENT

by and between

THE CITY OF KANNAPOLIS, NORTH CAROLINA

and

TEMERITY BASEBALL LLC

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “**Agreement**”) is made and entered into effective as of _____, 2018 (the “**Execution Date**”) by and between the **CITY OF KANNAPOLIS, NORTH CAROLINA**, a North Carolina municipal corporation (“**City**”) and **TEMERITY BASEBALL LLC**, a Delaware limited liability company (“**Club**”). City and Club are sometimes collectively referred to herein as the “**Parties**” and individually as a “**Party**”.

RECITALS

WHEREAS, Club is the owner of a Single A Minor League Baseball franchise granted ~~by the~~ by the South Atlantic League of Professional Baseball Clubs, Inc. (the “**League**”), and the corresponding interests of The National Association of Professional Baseball Leagues, Inc. (the “**NAPBL**”), which does business under the trade name “Minor League Baseball” sometimes abbreviated as “**MiLB**”);

WHEREAS, the City Council of City recognizes the presence of Club and the playing of the home games of Team (as defined herein) in Kannapolis, especially in its downtown area, provides a unique value to City, including generating new jobs, additional revenue sources and economic development and increased tourism for City;

WHEREAS, the NAPBL and the League have required that a new ballpark be constructed as a condition to Club’s ownership of Team and stadium re-location of Team within Kannapolis and City has agreed to finance, own and, through the engagement of professionals and contractors with relevant experience, to design, develop and construct a new, first class, state-of-the-art, natural turf, open-air Minor League Baseball ballpark, Ballpark Dedicated Parking, Team Facilities and related facilities within the Kannapolis downtown area that will serve as the home of the Team and will also host concerts, other sporting events and community-oriented events (the “**Ballpark**”);

WHEREAS, City holds the fee title to the real property described on **Exhibit A** attached hereto and incorporated herein by reference (the “**Real Property**”);

WHEREAS, the City Council of City has determined that the construction of the Ballpark and stadium re-location of the Team within Kannapolis, will serve a public purpose and therefore has adopted a resolution on September 24, 2018, authorizing the City Manager of City to sign this Agreement;

WHEREAS, concurrently with the execution of this Agreement, City and Club plan to enter into (a) that certain Ballpark Lease Agreement (the “**Lease**”) whereby City has agreed to lease to Club and Club has agreed to lease from City, the Ballpark, and (b) that certain Non-Relocation Agreement (the “**Non-Relocation Agreement**”) whereby the Parties agreed to certain restrictions on any relocation of the Team;

WHEREAS, the Parties desire to enter into an agreement that establishes the process and schedule for the design, development and construction of the Ballpark.

AGREEMENTS

NOW, THEREFORE, for and in consideration of the respective covenants and agreements of the Parties herein set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Club, each intending to be legally bound, do hereby agree as follows:

ARTICLE I. GENERAL TERMS

1.1 Definitions and Usage. Unless the context shall otherwise expressly require, capitalized terms used in this Agreement shall have the meanings assigned to them in the Glossary of Defined Terms attached hereto at Appendix A and incorporated herein by reference, which also contains rules as to usage that shall be applicable herein. Terms used but not defined herein shall have the meaning ascribed to such terms in the Lease.

ARTICLE II. REPRESENTATIVES

2.1 City Representative. City hereby designates the City Manager or his designee to be the representative of City (the “**City Representative**”), and the City Manager shall have the right, from time to time, to change the Person who is the City Representative by giving at least five (5) Business Days’ prior written notice to Club thereof. The only functions under this Agreement of City Representative shall be as expressly specified in this Agreement. Any one of the Persons from time to time serving as City Representative shall have the power to bind City in those instances in which this Agreement specifically provides for the Approval, decision, confirmation or determination of City Representative and in no other instances; *provided, however,* that notwithstanding anything in this Agreement to the contrary, City Representative shall not have any right to modify, amend or terminate this Agreement.

2.2 Club Representative. Club hereby designates the LLC Manager to be the representative of Club (the “**Club Representative**”), who shall be authorized to act on behalf of Club under this Agreement. Club shall have the right, from time to time, to change the Person who is the Club Representative by giving at least five (5) Business Days’ prior written notice to City thereof. The only functions under this Agreement of Club Representative shall be as expressly specified in this Agreement. Any written Approval, decision, confirmation or determination hereunder by the Club Representative shall be binding on Club; *provided, however,* that notwithstanding anything in this Agreement to the contrary, the Club Representative shall not have any right to modify, amend or terminate this Agreement.

2.3 Collaborative and Cooperative Process. The Parties intend that the design, development, construction and furnishing of the Ballpark Improvements shall be a cooperative process. The Parties agree that each Representative will have full access to any information

available to City from the CM at Risk, the Project Architect and all other contractors, consultants and other Persons retained in connection with the design, development, construction and furnishing of the Ballpark Improvements. For purposes of participating in the process of managing construction costs and continuing to be involved and informed during the design and construction of the Ballpark Improvements, each Representative will be given a reasonable opportunity to be present at all meetings and briefings with the Owner's Representative, the CM at Risk, the Project Architect and all contractors, consultants and other Persons engaged with regard to the design, development, construction and furnishing of the Ballpark Improvements; provided however, that all contractually required communications (subject to Club receiving notices pursuant to Section 6.4.6), obligations and ultimate authority with respect to the Ballpark, the the Project Architect, the CM at Risk or anyone acting through or on their behalf rests with City as long as the Ballpark is built in accordance with the Minimum Requirements.

ARTICLE III. CONDITIONS TO OBLIGATIONS AND COMMENCEMENT OF CONSTRUCTION

3.1 Conditions to City Obligations. This Agreement shall not be effective with respect to any City obligation hereunder and City shall not be obligated to move forward with any of the terms of this Agreement until the conditions in Section 3.1.1 through Section 3.1.6 (the "**Conditions to City Obligations**") are satisfied. City shall provide written notice to Club when the Conditions to City Obligations are satisfied.

3.1.1 Team. On or before ~~October 5, 2018~~September 24, 2018, the League shall have provided unconditional written confirmation to City that Club is the sole owner of the Team (including all associated franchise rights), which is a member of the League.

3.1.2 League Approvals. On or before ~~October 5, 2018~~September 24, 2018, Club shall have obtained any required League, NAPBL and/or any other baseball required approval or review of the Lease and have provided the unconditional written confirmation of Club Representative affirming that such approvals or reviews have been obtained and no other MiLB approval is required with respect to the Lease. Copies of the league approval will be provided to City.

3.1.3 Lease Execution. On or before ~~October 5, 2018~~September 24, 2018, Club, ~~and on or before October 3, 2018~~, City, shall have signed the Lease.

3.1.4 Non-Relocation Agreement Execution. On or before ~~October 5, 2018~~September 24, 2018, Club and City shall have signed the Non-Relocation Agreement and such agreement will have been acknowledged in writing by the League.

3.1.5 Opinion of Club Counsel. On or before ~~October 5, 2018~~September 24, 2018, City shall have received the Opinion of Club Counsel addressed to City.

3.2 Conditions to Commencement of Construction. City shall not be obligated to commence the Ballpark Improvements Work until the conditions in Section 3.2.3 through Section 3.2.9 (the "**Conditions to Commencement**") are satisfied or waived, such conditions to

be satisfied on or before the respective dates set forth below. City shall provide written notice to Club when the Conditions to Commencement are satisfied and specify such date as the "Construction Commencement Date." City and Club acknowledge and agree that the timeframes within which each of the Conditions to Commencement are to be satisfied shall be implemented in a manner that assures, to the extent commercially reasonable and in accordance with Applicable Law, that City achieves Substantial Completion of the Ballpark Improvements Work on or before the Substantial Completion Deadline (as the same may be extended by an Excusable City Delay Period).

3.2.1 Project Architect. The Project Architect is Populous Architects, PC

3.2.2 Construction Manager at Risk. The Construction Manager at Risk is Barton Malow Company.

3.2.3 Ballpark Construction Contract. City and the CM at Risk have entered into a Ballpark Construction Contract. Any subsequent changes to such documents shall be governed by Section 8.1.

3.2.4 Ballpark Budget. On or before October 1, 2018 and in accordance with all Applicable Laws, City shall prepare or cause to be prepared, with input and the involvement of the Club Representative, the Ballpark Budget. Any subsequent changes to such document shall be governed by Section 5.1.2.

3.2.5 Project Plans. On or before October 1, 2018 and in accordance with all Applicable Laws, the Project Plans shall be Approved by each of the Parties. Any subsequent changes to such documents shall be governed by Section 8.1.

3.2.6 Construction Schedule. On or before October 1, 2018 and in accordance with all Applicable Laws, City shall prepare or cause to be prepared, with input and the involvement of the Club Representative, the Ballpark Construction Schedule. Any subsequent changes to such document shall be governed by Section 5.1.3.

3.2.7 Financing. By ~~October 24, 2018~~October 12, 2018, or as soon thereafter as commercially reasonable and in accordance with all Applicable Laws, the Financing shall have closed and the proceeds thereof shall be available to City to pay the costs of issuance thereof (which are not a part of Ballpark Costs) and the Ballpark Costs.

3.2.8 Governmental Authorizations. As soon as commercially reasonable after the completion and delivery to City of the Project Plans and in accordance with all Applicable Laws, City shall have obtained all Governmental Authorizations necessary to permit commencement of construction of the Ballpark Improvements, including building permits and engineering and land use approvals necessary for the commencement of development and construction of the Ballpark Improvements.

3.2.9 Real Property Acquisition. By October 3, 2018, or as soon thereafter as commercially reasonable and in accordance with all Applicable Laws, the Real Property, or so

much of the Real Property as is necessary to commence operations in accordance with MiLB requirements shall have been acquired by the City.

3.3 Agreement to Consult and Assist. Prior to the Construction Commencement Date, the Representatives shall meet and consult with each other and reasonably assist each other with respect to satisfaction of the Conditions to Commencement.

3.4 Conditions to Club Obligations. This Agreement shall not be effective with respect to any Club obligation hereunder and Club shall not be obligated to move forward with any of the terms of this Agreement unless the conditions in this Section 3.4 (the “**Conditions to Club Obligations**”) are satisfied or waived, such conditions to be satisfied on or before the respective dates set forth below.

3.4.1 Amendment to Memorandum of Understanding. The City and Club are parties to that certain Memorandum of Understanding dated February 26, 2018 (the “**MOU**”), as amended, for the development of the Development (as that term is defined in the MOU). City hereby acknowledges and agrees, within sixty (60) days of the Execution Date hereof, to execute an amendment to the MOU for the development of Blocks 100 and 200 on the west side of West Avenue in downtown Kannapolis, which modifies the obligations set forth therein as binding obligations upon the parties, parties. [THIS PARAGRAPH REMAINS OPEN FOR FURTHER REVIEW BY CITY]

3.4.2 Development Rights Agreement. Notwithstanding anything contained in this Agreement or the Lease to the contrary, within sixty (60) days of the Execution Date hereof, the City ~~and Club~~ acknowledges the intent and commitment to Club and its development partners to establish in good faith a process which will ultimately result in a definitive and binding Development Rights Agreement (“DRA”) for the sequential or simultaneous development of multiple projects within the City Municipal Service District. To that end the Parties shall meet and in good faith negotiate and execute a DRA Development Rights Agreement which shall set forth the rights and obligations of the City, ~~and the Club~~ and its Partners with respect to the development of the real property surrounding and underlying the Ballpark and Ballpark Dedicated Parking, including without limitation, the Municipal Service District as depicted on Exhibit C-1 (the “**Development Rights Agreement**”).

3.4.3 Temporary Office Space. As soon as commercially reasonable but in no event later than thirty (30) days following the Execution Date, City shall make available temporary office space in the Municipal Service District as depicted on Exhibit C-1 for the use by Club until sixty (60) days following the Substantial Completion of the Team Facilities. Such office space shall be provided at no cost or expense to Club and in a location and size as reasonably and mutually agreed upon by the Parties.

3.5 Termination for Failure of Conditions to be Satisfied

3.5.1 Conditions to City Obligations Not Satisfied. If for any reason all of the Conditions to City Obligations have not been fully satisfied (or waived in writing as specifically

authorized by the City Council) by October 1, 2018, as the same may be extended by an Excusable Club Delay Period, then in such event, City may, by written notice to Club, elect to terminate this Agreement.

3.5.2 Conditions to Commencement Not Satisfied. If for any reason the Conditions to Commencement have not been fully satisfied (or waived in writing by City Representative or Club Representative as applicable) on or before the respective dates set forth in Section 3.2 above, as the same may be extended by an Excusable City Delay Period or an Excusable Club Delay Period, as applicable and in accordance with this Agreement, then such failure shall not be construed to be an Event of Default under this Agreement, but in such event, either Club or City may, by written notice to the other Parties, elect to terminate this Agreement.

3.5.3 Effect of Termination. Upon any termination of this Agreement pursuant to this ARTICLE III, the Lease and the Non-Relocation Agreement shall also terminate and the Parties shall have no further rights, obligations or liabilities under such agreements (except pursuant to the provisions of such agreements which expressly survive termination) and the Parties automatically shall be released from any future obligations under this Agreement, the Lease or the Non-Relocation Agreement that arise after the date of termination but shall not be released from any obligations which arise or relate to occurrences prior to the date of termination.

ARTICLE IV. TERM

4.1 Term. The term under this Agreement (the “**Term**”) shall commence at 12:00 a.m. on the day immediately following the Execution Date and shall end on 11:59 p.m. on the date Final Completion occurs as required in Section 5.1.6 hereof.

4.2 Commencement of Construction. The date on which all Conditions to Commencement are satisfied is the “**Construction Commencement Date**”.

ARTICLE V. CERTAIN DEADLINES AND DELIVERABLES

5.1 Deadlines Subsequent to Commencement of Term. Subject to extension as a result of an Excusable Club Delay Period or an Excusable City Delay Period, as appropriate, in accordance with the terms of this Agreement and after the Construction Commencement Date, the Parties shall meet the following deadlines in connection with the following matters:

5.1.1 Scheduled Ballpark Improvements Start Date Milestone. City shall cause the construction (which includes demolition and other site preparation) of the Ballpark Improvements to commence on or before the day that is thirty (30) days after the Construction Commencement Date.

5.1.2 Ballpark Budget. Except to take into account any change orders entered into pursuant to Section 6.10 hereof, City shall not modify the Ballpark Budget in any material

respect without the prior Approval of the Club Representative, such approval not to be unreasonably withheld, conditioned or denied. City will promptly provide Club Representative with notice of any proposed material change to the Ballpark Budget for Club's Approval, such Approval not to be unreasonably withheld, conditioned or denied.

5.1.3 Ballpark Construction Schedule. City will provide Club Representative with notice of any material change to the Ballpark Construction Schedule for Club's Approval, such Approval not to be unreasonably withheld, conditioned or denied.

5.1.4 Notice of Substantial Completion. City shall cause Substantial Completion of the Ballpark Improvements Work to occur on or before the Substantial Completion Deadline. On or before December 15, 2019, City Representative shall provide written notice to Club as to whether City Representative believes (to the best of the knowledge of the City Representative after reasonable inquiry) that the Substantial Completion Deadline will be met.

5.1.5 Punch-list Items. Upon Substantial Completion, City shall provide notice thereof to Club. Club Representative and City Representative shall schedule a time to meet within ten (10) Business Days thereafter to inspect the Ballpark and for Club to prepare a "punch-list" of items that are reasonably required to be completed or repaired prior to Final Completion of the Ballpark.

5.1.6 Final Completion. On or before the date which is ninety (90) days after the Substantial Completion Date, City shall cause Final Completion of the Ballpark Improvements Work to occur (using its commercially reasonable efforts to not unreasonably interfere with Club's business operations at the Ballpark).

5.2 Extension of Substantial Completion Deadline. In the event City fails to achieve Substantial Completion of the Ballpark Improvements Work on or before the Substantial Completion Deadline (as the same may have been extended by any Excusable City Delay Period), City shall have the continuing right and option to extend the Substantial Completion Deadline, as such Substantial Completion Deadline may be extended pursuant to the terms of this Section 5.2 so that City may cause Substantial Completion of the Ballpark Improvements Work to occur, provided each of the following requirements is satisfied:

(a) City must continue to diligently and continuously prosecute the Ballpark Improvements Work (subject to Excusable City Delay) after the original Substantial Completion Deadline (as the same may have been extended by Excusable City Delay).

(b) In the event the Substantial Completion Deadline is extended to a date on or after ~~June 1, 2020~~March 15, 2020, as the same may be extended by an Excusable City Delay Period, so long as this Agreement is in full force and effect and a Club Default does not remain uncured, City shall pay to Club Late Opening Charges (as herein defined), as liquidated damages and not as a penalty and as Club's sole remedy, for each game played in the Lane Street Stadium identified in paragraph 5.2(c) below~~day of delay~~ until Substantial Completion of the Ballpark Improvements Work, ~~in accordance with the~~

~~following schedule (such payments collectively referred to as the “**Late Opening Charges**”): (i) for each day of delay from March 1, 2020 — April 1, 2020, late opening charges in the amount of \$8,000 per day of delay; (ii) for each day of delay from April 2, 2020 — April 15, 2020, late opening charges in the amount of \$16,000 per day of delay; and (iii) for each day of delay from April 16, 2020 until the date that is thirty (30) days following the Substantial Completion of the Ballpark Improvements Work, late opening charges in the amount of \$20,000 per day of delay. At Club’s option, the Late Opening Charges may be payable to Club as either a cash payment or applied to Club’s next installment of Rent or other sums due under the Lease.~~ City and Club agree that because of the difficulty or impossibility of determining Club’s damages as a result of such a delay in Substantial Completion of the Ballpark Improvements Work, the difficulties of proof of loss and the inconvenience or non-feasibility of Club otherwise having a remedy for such failure to achieve Substantial Completion of the Ballpark Improvements Work by the original Substantial Completion Deadline (as the same may have been extended by any Excusable City Delay Period), the Late Opening Charges are a reasonable amount to be paid for such failure.

(c) In the event the Substantial Completion Deadline is extended to a date on or after April 1, 2020, the baseball season for 2020 shall be played at the current stadium and facilities located at Lane Street in the City’s jurisdiction, (“**Lane Street Stadium**”) through the duration of the extension until the date of Substantial Completion of the Ballpark Improvements Work, in accordance with the terms, conditions and provisions of the existing lease dated April 2, 2012, as amended by that First Amendment to Lease dated January 1, 2016 (the “**Lane Street Stadium Lease**”), and assigned to Club on or about [_____, 2018]. ~~In such case, the Parties shall execute an amendment to the Lane Street Stadium to extend the term through December 31, 2020, unless otherwise agreed by the Parties.~~ City will pay costs of field preparation in accordance with League requirements.

(d) The Parties agree to use good faith and commercially reasonable efforts to acquire insurance coverage for the damages sustained by Club in the event of a Substantial Completion Deadline extension and the resulting Late Opening Charges the premiums for which will be paid by City.

5.3 Financing Proceeds. Club acknowledges that City intends to use Financing Proceeds to pay for the Ballpark Costs.

5.3.1 Financing Proceeds Attributable to Tax Exempt Bonds. In the event the Ballpark Costs are less than the Financing Proceeds, then to the extent such remaining Financing Proceeds are attributable to tax exempt bonds or other tax advantaged bonds, such remaining Financing Proceeds shall be used in the following order of priority: (a) first, to purchase any items and/or to perform any work that was included in the Project Plans but later removed as a result of value engineering, as mutually determined by the Parties, (b) second, for capital expenditures to enhance the value of the Ballpark Improvements, as mutually agreed to by the Parties, (c) third, for construction of additional Ballpark parking as mutually agreed to by the Parties, (d) fourth, for deposit into the debt service fund for the tax exempt bonds or tax

advantaged bonds associated with the Financing and used to pay debt service on such bonds; provided however; that in all cases the use of such proceeds for such expenditures will not adversely affect the tax exempt status of such bonds in the reasonable opinion of a nationally recognized Bond Counsel chosen by City.

5.3.2 Financing Proceeds Attributable to Taxable Bonds. In the event the Ballpark Costs are less than the Financing Proceeds, then to the extent such remaining Financing Proceeds are attributable to taxable bonds, such remaining Financing Proceeds shall be used in the following order of priority: (a) first, the first \$100,000 of any such remaining Financing Proceeds shall be deposited into the Capital Improvements Reserve Fund (as such term is defined in the Lease), (b) second, to purchase any items and/or to perform any work that was included in the Project Plans but later removed as a result of value engineering, as mutually determined by the Parties, and (c) third, for capital expenditures to enhance the value of the Ballpark Improvements, as mutually agreed to by the Parties.

ARTICLE VI.

CONSTRUCTION OF BALLPARK IMPROVEMENTS; FF& E; GENERAL WORK REQUIREMENTS

6.1 General Provisions.

6.1.1 Ballpark Improvements. The Ballpark Improvements shall be designed, developed and constructed in accordance with the terms and conditions of this Agreement and all Applicable Laws, and shall diligently and continuously adhere to the Ballpark Construction Schedule (subject to any Excusable City Delay permitted in accordance with the terms of this Agreement).

6.1.2 Team Store, Ticket Office and Administrative Offices. The Parties acknowledge the obligation of City to provide facilities for the team retail store, ticketing, storage and administrative offices ("**Team Facilities**"). City will provide ~~no less than 9,036 square feet of~~ commercial space at or near the intersection of West Avenue and West "A" Street ~~on in buildings currently property currently~~ owned by City in buildings projected to be constructed thereon to accommodate the Team Facilities, which shall be leased to Club without cost ~~for construction. Further negotiations shall be necessitated in the event the Team Facilities are included in the development contemplated by the MOU identified in paragraph 3.4.1 hereinabove or expense to Club for the Term.~~ The square footage allowances for the Team Facilities shall be commensurate with facilities of Comparable Properties and in accordance with any standards imposed by MiLB, NAPBL, Lease or SAL, as may be amended from time to time. ~~As of the Execution Date hereof, the proposed approximate square footage allowances for the Team Facilities are 960 square feet for ticketing, 2,792 square feet for team retail store, 396 square feet for team storage and 4,888 square feet for administrative offices.~~ The Team Facilities will be delivered in warm vanilla shell condition. Upfitting shall be provided by Club at Club's expense. **(Further Discussion Necessary)**

6.2 Club's Access to the Ballpark Improvements. Prior to the Operating Term Commencement Date, Club, its agents, contractors, licensees, and concessionaires shall have the

right of access, for themselves and their authorized representatives, to the Ballpark and all portions thereof for the following purposes: (a) conducting inspections for purposes of determining compliance with this Agreement; and (b) installation of any additional fixtures or equipment Approved by City and not included in the Ballpark Budget. Such access shall be without charge or the commencement of Rent (as defined in the Lease) under the Lease, and at normal construction hours during the construction period, provided Club and all such agents, contractors, licensees, and concessionaires (i) notify City in advance of such proposed entry by any of Club's licensees or concessionaires, (ii) do not hinder or interfere with the construction of the Ballpark Improvements or the activities of City's contractors (including the CM at Risk) and coordinate such work with such activities of City's contractors (including the CM at Risk) to minimize the risk of creating Cost Overruns, (iii) pay all costs of such work, (iv) take such reasonable protective precautions or measures as City or its contractors (including the CM at Risk) may reasonably request, given the stage of the construction of the Ballpark Improvements at the time of such entry and (v) comply with and be subject to the provisions of the Ballpark Construction Contract relating to City's rights to access including providing the insurance required by the terms of the Ballpark Construction Contract (or, if the CM at Risk does not specify the same, then by providing such insurance as City may reasonably request).

6.3 Pre-Existing Site Conditions. Prior to the Operating Term Commencement Date, City shall be responsible for performing or causing to be performed, and for paying the cost of performing as a part of the Ballpark Budget, any and all corrective or remedial actions (including all investigation, monitoring, etc.) required by Applicable Laws with respect to any Pre-Existing Environmental Conditions in accordance with Section 9.2.

6.4 Work Performed.

6.4.1 General Requirements. City shall, at its sole cost and expense (except as otherwise provided in this Agreement), perform or cause the performance of the Ballpark Improvements Work in accordance with and subject to the terms of this Agreement, and City shall promptly and faithfully cause the CM at Risk to perform that portion of the Ballpark Improvements Work to be performed under the Ballpark Construction Contract in accordance with the terms and provisions thereof and keep and perform all of the covenants and conditions contained in the Ballpark Construction Contract to be kept and performed by City; provided, however (i) City shall not be in breach of its obligations in this sentence if its failure to so keep and perform is caused by the failure of Club or its Related Parties to perform their respective obligations under this Agreement and (ii) so long as City is using good faith, diligent efforts to achieve Substantial Completion of the Ballpark Improvements Work, City's liability related to any failure with respect to achieving the Ballpark Construction Schedule, including achieving Substantial Completion of the Ballpark Improvements Work by the Substantial Completion Deadline or any subsequent date, will be solely as set out in Section 6.4.4. City will at all times continually enforce all material obligations of all Persons under the Ballpark Construction Contract and will promptly, after City learns of the same, notify Club of any default by any Person under the Ballpark Construction Contract, and of the remedy or course of action sought by City in response to such default.

6.4.2 Ballpark Construction Contract. The construction management at risk agreement executed by City with respect to the construction of the Ballpark Improvements (the “**Ballpark Construction Contract**”) shall (a) contain a completion guaranty and guaranteed maximum or fixed price for the Final Completion of the Ballpark Improvements Work, (b) cause the CM at Risk to obtain, keep and maintain performance and payment bonds from a Qualified Surety in a total amount equal to one hundred percent (100%) of the costs of the Ballpark Improvements Work, such performance and payment bonds to be held by and firmly bound unto City, and (c) comply with the terms of Section 6.4.5 below.

6.4.3 Record Drawings and Other Documents. Upon Substantial Completion of the Ballpark Improvements Work, City shall furnish to Club (i) three (3) copies of the as-built drawings that the CM at Risk or Architect provides to ~~City pursuant~~City pursuant to their agreement with City; and (ii) three (3) copies of the operating and maintenance data binders supplied by the CM at Risk under the Ballpark Construction Contract.

6.4.4 Remedy for Failure to Achieve Substantial Completion by the Substantial Completion Deadline. City’s liability to Club for City’s failure to achieve Substantial Completion of the Ballpark Improvements Work on or before the Substantial Completion Deadline shall be limited to Club’s right to receive the Late Opening Charges. Notwithstanding anything to the contrary contained in this Agreement, Club shall have no rights or remedies against City, other than the recovery of the Late Opening Charges as set forth in Section 5.2(b) (Club hereby waiving all such rights and remedies, including any and all right to terminate this Agreement and the right to seek any additional type or kind of damages against City for such default), as a result of City’s failure to achieve Substantial Completion of the Ballpark Improvements Work as required by this Agreement so long as City is exercising good faith, diligent efforts to achieve such Substantial Completion of the Ballpark Improvements Work. Nothing in this Section 6.4.4 is intended to limit any damages City may recover from the CM at Risk with regard to a delay in the completion of the Ballpark Improvements Work.

6.4.5 Warranty Claims. City shall take commercially reasonable efforts to enforce all warranty and similar claims with respect to the Ballpark Improvements at City’s cost and expense. Club shall make City aware of any defects or warranty issues which come to its attention with respect to the Ballpark Improvements. City and Club shall cooperate with each other in prosecuting any and all warranty and similar claims, at City’s sole cost and expense, under any and all contracts or other agreements with third parties for the design or construction of the Ballpark.

6.4.6 Construction Cooperation. City will conduct the Ballpark Improvements Work, and require the CM at Risk to conduct the Ballpark Improvements Work, in accordance with the cooperative process described in Section 2.3, including the following:

- (a) instructing the CM at Risk or the Project Architect to provide Club with a duplicate copy of all preliminary drawings or specifications, written notices and other documentation delivered or received by any of them contemporaneously with their delivery to City, including advance notice of any weekly progress meetings and design review meetings; and

(b) allowing Club Representative to attend all meetings with any Persons or Governmental Authority relating to the Ballpark Improvements Work, including weekly progress meetings and design review meetings.

6.5 Cost Overruns. City shall be responsible for any Cost Overruns. The term “**Cost Overruns**” as used in this Agreement shall mean the amount by which Ballpark Costs exceed the Ballpark Budget; *provided*, that, Cost Overruns shall not include such excess costs and expenses (a) to the extent such excess arises out of or is attributable to any cost or expense caused by the request, act or omission of Club, including any requested change order or (b) for which any Party is expressly liable by a provision of this Agreement, in each case, such excess costs and expenses to be paid by the Party responsible therefor.

6.6 Pre-Development Expenses. All Pre-Development Expenses shall be included in the Ballpark Budget and will be paid as part of the Ballpark Costs.

6.7 Design Fees. All Design Fees shall be included in the Ballpark Budget and will be paid as part of the Ballpark Costs.

6.8 FF&E Requirements. **[NOTE: EXHIBIT B REMAINS OPEN AND UNDER REVIEW BY CLUB]** FF&E constitutes a portion of the Ballpark Improvements and are itemized on **Exhibit B**. Items of Personal Property proposed for FF&E shall be consistent with the Quality Standard required in this Agreement. In addition to financial responsibility, **Exhibit B** establishes responsibilities for acquisition, design, construction, installation, and replacement of specific items of FF&E.

6.9 Reports; Audit Rights. City shall provide Club Representative with a monthly report showing amounts funded against the Ballpark Budget. At Final Completion, City shall provide Club with a final, reconciled report certified by the City Representative showing all amounts funded against the Ballpark Budget. Club, at its expense (except as provided below), shall have the right, at any time during the Term of this Agreement to audit the monthly reports and the final, reconciled report produced by City pursuant to this Section 6.9 to confirm City’s compliance with the terms of this Agreement. Any such audit will be commenced and conducted with reasonable promptness, after reasonable notice to City and by an auditor whose fee for such audit is not calculated on a contingent basis.

6.10 Change Orders. The Parties acknowledge and agree that the Project Plans may need to be supplemented, re-ordered and/or revised from time to time during construction through the use of change orders. Either City or Club may request a construction change order by notifying the other Party of such requested modification and the details and estimated costs thereof, which costs shall (i) include, but not be limited to, associated architectural, engineering, CM at Risk and contractor’s fees for the change order and (ii) be the responsibility of the requesting Party to the extent that the requested change order results in an increase in the previously budgeted cost for such item. Accordingly, the Parties agree to cooperate with respect to all proposed modifications. Each change order requested by Club shall be subject to the Approval of City, which shall not be unreasonably withheld, conditioned or delayed. Each

change order requested by City shall be subject to the Approval of Club, which shall not be unreasonably withheld, conditioned or delayed.

ARTICLE VII. DELAYS AND EFFECT OF DELAYS

7.1 Excusable Club Delay. Regardless of the existence or absence of references to Excusable Club Delay elsewhere in this Agreement, any deadline or time period within which Club must fulfill the obligations of Club elsewhere in this Agreement shall each be adjusted as appropriate to include Excusable Club Delay Periods unless otherwise expressly provided in this Agreement to the contrary; *provided* that (i) the obligation to pay amounts as when due pursuant to the terms of this Agreement is not subject to adjustment or extension due to Excusable Club Delay and (ii) Club complies with the requirements of this ARTICLE VII.

With respect to each occurrence of Excusable Club Delay, Club shall, within fifteen (15) Business Days after Club's knowledge of the occurrence of such event of Excusable Club Delay, give notice to City Representative of the event constituting Excusable Club Delay, Club's good faith estimate of the Excusable Club Delay Period resulting therefrom and the basis therefor, Club's good faith estimate of any adjustment resulting therefrom that is to be made to the time for performance, together with reasonable documentation supporting the adjustments proposed. If City Representative believes that the documentation supplied is not sufficient to justify the delay claimed or adjustments proposed, City Representative shall, within [____ days of receipt thereof], give notice to Club of the claimed deficiency and Club shall have a reasonable period of time to more fully document the delay and adjustments claimed. Only one (1) notice from Club shall be required with respect to a continuing Excusable Club Delay, except that Club shall promptly (and in no event less often than every ten (10) Business Days) give notice to City Representative of any further changes in the additional time for performance claimed by reason of the continuing Excusable Club Delay. City Representative shall have the right to challenge Club's assertion of the occurrence of an Excusable Club Delay, or Club's good faith estimate of the Excusable Club Delay Period or changes in the additional time for performance claimed by reason of the Excusable Club Delay if City Representative gives notice to Club within fifteen (15) Business Days after receipt by City Representative of such claim of Excusable Club Delay or notice from Club of further changes to such dates as a result of such Excusable Club Delay, as the case may be (which challenge shall be deemed to have been made if City Representative gives notice to Club of any claimed deficiency in documentation as provided for above in this Section 7.1).

7.2 Excusable City Delay. Regardless of the existence or absence of references to Excusable City Delay elsewhere in this Agreement, any deadline or time period within which City must fulfill the obligations of City in this Agreement shall each be adjusted as appropriate to include Excusable City Delay Periods; *provided* that (i) the obligation to pay amounts when due pursuant to the terms of this Agreement is not subject to adjustment or extension due to Excusable City Delay, and (ii) City complies with the requirements of this ARTICLE VII.

With respect to each occurrence of Excusable City Delay, City Representative shall, within fifteen (15) Business Days after City's knowledge of the occurrence of such event of

Excusable City Delay, give notice to Club of the event constituting Excusable City Delay, City Representative's good faith estimate of the Excusable City Delay Period resulting therefrom and the basis therefor, City Representative's good faith estimate of any adjustment resulting therefrom that is to be made in the time for performance, together with reasonable documentation supporting the adjustments proposed. If Club believes that the documentation supplied is not sufficient to justify the delay claimed or adjustment proposed, Club shall, within five (5) Business Days of receipt thereof, give notice to City Representative of the claimed deficiency and City Representative shall have a reasonable period of time to more fully document the delay and adjustments claimed. Only one (1) notice from City Representative shall be required with respect to a continuing Excusable City Delay, except that City Representative shall promptly (and in no event less often than every ten (10) Business Days) give notice to Club of any further changes in the additional time for performance claimed by reason of the continuing delay. Club shall have the right to challenge City Representative's assertion of the occurrence of an Excusable City Delay, or City Representative's good faith estimate of the Excusable City Delay Period, or changes in the additional time for performance claimed by reason of Excusable City Delay if Club gives notice to City Representative within fifteen (15) Business Days after receipt by Club of such claim of Excusable City Delay or notice from City Representative of further changes to such dates as a result of such Excusable City Delay, as the case may be (which challenge shall be deemed to have been made if Club gives notice to City Representative of any claimed deficiency in documentation as provided for above in this Section 7.2).

7.3 Continued Performance; Exceptions. Upon the occurrence of any Club Delay or City Delay, the Parties shall endeavor to continue to perform their obligations under this Agreement so far as reasonably practicable. Toward that end, Club and City each hereby agrees that it shall make all reasonable efforts to prevent and reduce to a minimum and mitigate the effect of any Club Delay or City Delay occasioned by an Excusable Club Delay or Excusable City Delay, and shall diligently and continuously use its commercially reasonable efforts to ensure resumption of performance of its obligations under this Agreement after the occurrence of any Excusable Club Delay or Excusable City Delay. The Parties shall use and continue to use all commercially reasonable efforts to prevent, avoid, overcome and minimize any City Delay or Club Delay.

ARTICLE VIII.

APPROVALS, CONFIRMATIONS AND NOTICES; DISPUTE RESOLUTION

8.1 Approvals, Confirmations and Notices.

8.1.1 Ballpark Improvements Work. City shall obtain the prior Approval of Club of any Material Change to the Plans for the Ballpark Improvements Work prior to the commencement of any Ballpark Improvements Work that deviates in a material respect from the Plans for the Ballpark Improvements Work, such Approval not to be unreasonably withheld, conditioned or denied.

8.1.2 FF&E Changes. Each Party shall obtain the prior Approval of the other Party of any Material Change to the FF&E Requirements prior to the commencement of any

Ballpark Improvements Work that deviates in any material respect from that required in the FF&E Requirements, such Approval not to be unreasonably withheld, conditioned or denied. Each Party shall obtain the prior Approval of the other Party of the selection of any “allowance” items provided for in the Ballpark Construction Contract prior to the commencement of any Ballpark Improvements Work that includes such allowance items, such Approval not to be unreasonably withheld, conditioned or denied.

8.2 Approvals; Standards.

8.2.1 Review and Approvals or Consent Rights. The provisions of this Section 8.2.1 shall be applicable with respect to all instances in which it is provided under this Agreement that City, City Representative, Club or the Club Representative exercises Review and Approval or Consent Rights (as defined below); *provided, however*, that if the provisions of this Section 8.2.1 specifying time periods for exercise of Review and Approval or Consent Rights shall conflict with other express provisions of this Agreement providing for time periods for exercise of designated Review and Approval or Consent Rights, then the provisions of such other provisions of this Agreement shall control. As used herein, the term “**Review and Approval or Consent Rights**” shall include, without limiting the generality of that term, all instances in which one Party (the “**Submitting Party**”) is permitted or required to submit to the other Party or to the representative of that other Party any document, notice or determination of the Submitting Party and with respect to which the other Party or its representative (the “**Reviewing Party**”) has a right or duty hereunder to review, comment, confirm, Approve, disapprove, dispute or challenge the submission or determination of the Submitting Party.

8.2.2 Standard for Review. Unless this Agreement specifically provides that a Party’s Review and Approval or Consent Rights may be exercised in the sole discretion of the Reviewing Party, then in connection with exercising its Review and Approval or Consent Rights under any provision of this Agreement, and whether or not specifically provided in any such provision, the Reviewing Party covenants and agrees to act in good faith, with due diligence, and in a fair and commercially reasonable manner in its capacity as Reviewing Party with regard to each and all of its Review and Approval or Consent Rights and to not unreasonably withhold, condition or delay its Approval of, consent to or confirmation of any submission or determination. The Reviewing Party shall review the matter submitted in writing and shall give notice within five (5) Business Days to the Submitting Party of the Reviewing Party’s comments including Approval, confirmation, disapproval or failure to confirm, as applicable. Any failure to respond within such five (5) Business Day period shall be deemed to be an approval or confirmation of the matter submitted.

8.2.3 Resubmissions. If the Reviewing Party disapproves or fails to confirm a matter to which this Section 8.2 applies, the Submitting Party shall have the right, within fifteen (15) Business Days after the date the Submitting Party receives notice of such disapproval or failure to confirm, to re-submit the disapproved or not confirmed matter to the Reviewing Party, altered to satisfy the Reviewing Party’s basis for disapproval or failure to confirm. Any resubmission made pursuant to this Section 8.2 shall be subject to Review and Approval or Consent by the Reviewing Party in accordance with the procedures described in this Section 8.2, until such matter is Approved by the Reviewing Party.

8.3 Governmental Rule. The Approval by City or City Representative of any matter submitted to City or City Representative pursuant to this Agreement, which matter is specifically provided herein to be Approved by City or City Representative shall not constitute a replacement or substitute for, or otherwise excuse Club from, such permitting, licensing or approval processes under Applicable Laws; and, conversely, no permit or license so obtained shall constitute a replacement or substitute for, or otherwise excuse Club from, any requirement hereunder for the Approval of City or City Representative.

8.4 Dispute Resolution.

8.4.1 Generally. In the event any dispute, controversy or claim between or among the Parties arises under this Agreement or is related in any way to this Agreement or the relationship of the Parties hereunder (a “**Dispute or Controversy**”), including, but not limited to a Dispute or Controversy relating to the effectiveness, validity, interpretation, implementation, termination, cancellation or enforcement of this Agreement, the Parties shall first attempt in good faith to settle and resolve such Dispute or Controversy by mutual agreement in accordance with this Section. In the event a Dispute or Controversy arises, either Representative shall have the right to notify the other Representative that it has elected to implement the following procedures. Within ten (10) Business Days after delivery of any such notice by one Representative to the other Representative regarding a Dispute or Controversy, the Representatives shall meet at a mutually agreed time and place to attempt, with diligence and in good faith, to resolve and settle the Dispute or Controversy. If a mutual resolution and settlement are not obtained at the meeting of the Representatives, either Representative may contact the City Manager of the City directly to attempt to resolve the Dispute or Controversy. If the Dispute or Controversy is not resolved after the involvement of the City Manager of the City, then City and Club shall cooperate in a commercially reasonable manner to determine if techniques such as mediation or other techniques of alternate dispute resolution might be useful. If a technique is agreed upon, a specific timetable and completion date for implementation shall also be agreed upon. If such technique, timetable or completion date is not agreed upon within thirty (30) days after the notice of the Dispute or Controversy was first delivered, or if no resolution is obtained through such alternative technique, or if no meeting between the Representatives or the City Manager of the City and the Representatives takes place within the sixty (60) day period following delivery of the initial notice, then the matter shall be resolved through arbitration in accordance with the provisions of **Exhibit D.**

8.4.2 Emergency Relief. Notwithstanding any provision of this Agreement to the contrary, either Party may seek injunctive relief or another form of ancillary relief at any time from any court of competent jurisdiction in State of North Carolina in the event that a Dispute or Controversy requires emergency relief before the matter may be resolved under the dispute resolution procedures outlined in Section 8.4.1 above. Notwithstanding the fact that any court of competent jurisdiction may enter an order providing for injunctive or another form of ancillary relief, the Parties expressly agree that such dispute resolution procedures still will govern the ultimate resolution of any portion of the Dispute or Controversy.

**ARTICLE IX.
ENVIRONMENTAL PROVISIONS**

9.1 No Hazardous Materials. Club shall not cause or permit any Hazardous Materials to be generated, used, released, stored or disposed of in or about the Ballpark or the Ballpark Dedicated Parking; *provided, however* that Club and its Related Parties may use, store and dispose of reasonable quantities of Hazardous Materials at the Ballpark as may be reasonably necessary for Club to operate from the Ballpark pursuant to the terms of this Agreement so long as such Hazardous Materials are commonly used, or permitted to be used, by reasonable and prudent Operators in similar circumstances and are stored and disposed of in accordance with industry standards, but in all events in compliance with Environmental Laws.

9.2 City's Remedial Work. City shall be solely responsible for performing or causing to be performed, and for paying the cost of performing, any and all corrective or remedial actions (including all investigation, monitoring, etc.) required by Applicable Law to be performed with respect to any Pre-Existing Environmental Conditions at, in, on or under the Ballpark or the Ballpark Dedicated Parking. Regulated wastes, such as asbestos and industrial wastes shall be properly characterized, manifested and disposed of at an authorized facility.

9.3 Club Release. **WITHOUT LIMITING CLUB'S INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT, CLUB HEREBY RELEASES CITY AND ITS AFFILIATES AND RELATED PARTIES FROM AND AGAINST ANY CLAIMS, DEMANDS, ACTIONS, SUITS, CAUSES OF ACTION, DAMAGES, LIABILITIES, OBLIGATIONS, COSTS AND/OR EXPENSES THAT CLUB MAY HAVE WITH RESPECT TO THE BALLPARK OR THE BALLPARK DEDICATED PARKING AND RESULTING FROM, ARISING UNDER OR RELATED TO ANY ENVIRONMENTAL EVENT ARISING FROM CLUB'S OPERATION OF THE BALLPARK OR BALLPARK DEDICATED PARKING, INCLUDING ANY SUCH CLAIM UNDER ANY ENVIRONMENTAL LAWS, WHETHER UNDER ANY THEORY OF STRICT LIABILITY OR THAT MAY ARISE UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, 42 U.S.C.A. § 9601, ET. SEQ.**

9.4 City Release. **WITHOUT LIMITING CITY'S INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT, CITY HEREBY RELEASES CLUB AND ITS AFFILIATES AND RELATED PARTIES FROM AND AGAINST ANY CLAIMS, DEMANDS, ACTIONS, SUITS, CAUSES OF ACTION, DAMAGES, LIABILITIES, OBLIGATIONS, COSTS AND/OR EXPENSES THAT CITY MAY HAVE WITH RESPECT TO THE BALLPARK OR THE BALLPARK DEDICATED PARKING AND RESULTING FROM, ARISING UNDER OR RELATED TO ANY ENVIRONMENTAL EVENT WHICH IS NOT ATTRIBUTABLE TO CLUB'S OPERATION OF THE BALLPARK OR BALLPARK DEDICATED PARKING, INCLUDING ANY SUCH CLAIM UNDER ANY ENVIRONMENTAL LAWS, WHETHER UNDER ANY THEORY OF STRICT LIABILITY OR THAT MAY ARISE UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, 42 U.S.C.A. § 9601, ET. SEQ.**

ARTICLE X. INSURANCE; INDEMNITY

10.1 Policies Required.

10.1.1 Policies Required During Construction of the Ballpark Improvements Work. At all times during the Ballpark Improvements Work, City will use good faith, commercially reasonable efforts to cause the CM at Risk to keep and maintain the policies of insurance required by the terms and conditions of the Ballpark Construction Contract.

10.1.2 Builders Risk Insurance. Additionally, City shall maintain additional property insurance written on the so-called “Builder’s Risk Completed Value Non-Reporting Form” during any period in which any Ballpark Improvements Work is being performed, the anticipated costs of which exceed \$100,000 in the aggregate, with no coinsurance requirement.

10.2 City Property Insurance. City agrees, at its sole expense, shall obtain and maintain property insurance at all times during the Term of this Agreement, insuring all buildings, Personal Property and structures comprising the Ballpark and Ballpark Improvements against all risk of direct physical loss or damage to the same extent and with the same coverage as other City owned buildings. City may elect to self-insure for any deductibles in said insurance policies. Such insurance coverage may be maintained by any combination of single policies and umbrella policies and shall name Club as an additional insured. Such insurance shall include full replacement value cost coverage if it can be obtained at commercially reasonable terms acceptable to City.

10.3 Indemnity of Club. To the extent allowed by Applicable Law, Club shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, including damage by fire or other casualty) incurred by City, Club or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attorneys’ fees and litigation expenses), arising directly or indirectly out of: (i) Club’s occupancy, use, operation, maintenance and/or repair of the Ballpark, and/or (ii) Club’s performance under this Agreement.

10.4 Indemnity of City. To the extent allowed by Applicable Law, City shall indemnify, hold harmless and defend Club and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, including damage by fire or other casualty) incurred by Club, City or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attorneys’ fees and litigation expenses), arising directly or indirectly out of: (i) City’s occupancy, use, operation, maintenance and/or repair of the Ballpark, and/or (ii) City’s performance under this Agreement.

ARTICLE XI. CONDEMNATION OR CASUALTY

11.1 Condemnation. If all of the Ballpark or the use thereof is taken by power of eminent domain, condemned or sold in lieu of condemnation proceedings, this Agreement shall automatically terminate on the earlier to occur of (i) the date on which title to the Ballpark vests in the condemning authority; or (ii) the date on which City is dispossessed of the Ballpark.

11.1.1 Partial or Temporary Condemnation. If a portion of the Ballpark or the use thereof is taken by power of eminent domain, condemned or sold in lieu of condemnation proceedings and such taking materially affects Club's ability to use or otherwise operate and derive revenue from the Ballpark, Club shall have the right to terminate this Agreement effective as of the earlier to occur of (i) the date on which title to the condemned portion of the Ballpark vests in the condemning authority; or (ii) the date on which City is dispossessed of the portion of the Ballpark, by giving written notice to City within sixty (60) days after Club's receipt of notice of the partial condemnation. If all or a portion of the Ballpark or the use thereof is temporarily condemned, this Agreement shall remain in full force and effect. If a portion of the Ballpark or the use thereof is taken by power of eminent domain, condemned or sold in lieu of condemnation proceedings and Club does not terminate this Agreement pursuant to the terms and conditions of this Section 11.1.1, this Agreement shall be deemed terminated with respect to only the condemned portion of the Ballpark or use thereof.

11.1.2 Award. Each Party shall have the right to seek, at its sole cost and expense, any award to which it might be entitled as a result of any condemnation of all or any portion of the Ballpark or the use thereof. Neither Party shall have any rights to any award made to the other.

11.2 Casualty. If the Ballpark or any portion thereof is damaged or destroyed by Casualty, then neither Party shall have the right to terminate this Agreement and City shall promptly use its best efforts to restore, repair and continue construction of the Ballpark Improvements and the Substantial Completion Date shall be extended by the period of restoration and repair. To that end, City shall use all insurance proceeds available for such purposes. The restoration and repair details shall be undertaken in the same manner involved in the original construction of the Ballpark.

ARTICLE XII. ASSIGNMENT, TRANSFER AND SUBLEASING

12.1 Assignment, Subletting or Transfers by Club. Except as otherwise provided in Section 12.2 below, Club shall not assign, transfer, sublease, license, mortgage, pledge, encumber or otherwise hypothecate (each a "**Transfer**") any right, title, interest or obligation of Club under this Agreement, whether voluntarily, involuntarily, by operation of law or otherwise (including by way of merger or consolidation) without the prior written Approval of City except for an assignment to an Affiliate of Club as long as no continuing Club Default exists. If Club wishes to assign this Agreement to a Person who is not an Affiliate of Club, then Club shall request City's Approval of such assignment which shall not be denied as long as (i) any such

assignment is approved by the League and/or MiLB, (ii) the Ballpark, when completed, will be managed and operated by Club or a “Qualified Operator” as defined in the Lease, (iii) any such assignee must expressly assume any and all obligations of Club under this Agreement, the Lease and agree to be bound by the terms of the Non-Relocation Agreement, and (iv) there is no continuing Club Default and such assignment would not cause a Club Default. Without limiting the foregoing, no assignment hereunder shall affect the enforceability of this Agreement and any assignee shall continue to be bound by the terms hereof and of the Non-Relocation Agreement. Notwithstanding anything to the contrary contained in this Agreement, Club shall not enter into any such Transfer (other than a Use Agreement as described in Section 12.2) without also entering into the same Transfer under the Lease to the same entity unless otherwise agreed in writing by City.

12.2 Use Agreement. Notwithstanding Section 12.1 hereof, Club may enter in to a Use Agreement without City’s prior written Approval *provided that* such Use Agreement (i) is subject and subordinate to this Agreement, and to the rights of City hereunder, and shall expressly so state and (ii) any Improvements made pursuant to such Use Agreement are made in accordance with the Quality Standard.

12.3 Transfer of Majority Interest. As long as there is no existing Club Default, the prior Approval of City will not be required with respect to any Transfer of a Majority Interest of Club or the Ownership Group as long as such Transfer of Majority Interest complies with the following conditions: (i) any such Transfer of Majority Interest is approved by the League and/or MiLB, (ii) the Ballpark, when completed, be managed and operated by Club or a “Qualified Operator” as defined in the Lease, (iii) Club and the Ownership Group will continue to be liable for any and all of their respective obligations under this Agreement and the Lease that arise after the effective date of such Transfer of Majority Interest, (iv) no Club Default is caused by any such Transfer of Majority Interest, (v) Club, the Ownership Group and any new Control Person(s) of Club and the Ownership Group, respectively, will continue to be bound by the terms of the Non-Relocation Agreement, and (vi) to the extent permitted by any applicable confidentiality agreements related to such Transfer of Majority Interest, prior notice of such Transfer of Majority Interest is given to City. All other Transfers of Majority Interest of Club or the Ownership Group will require the prior Approval of City, which shall not be unreasonably withheld, conditioned or delayed. To the extent that Club or the Ownership Group, as applicable, have not otherwise provided notice to City of any Transfer of Majority Interest because of contractual confidentiality provisions or otherwise, Club or the Ownership Group, as applicable, shall provide City with notice of any Transfer of Majority Interest in Club prior to the first to occur of: any public statement by Club or the Ownership Group with respect to such transfer or the closing of such transfer.

12.4 Other Transfers of Ownership Interest. As long as there is no existing Club Default, Transfers of ownership interests in Club or the Ownership Group which do not constitute a Transfer of Majority Interest will not require either City Approval or notice; provided that the aggregate of all such Transfers over the Term does not cause a Transfer of Majority Interest with respect to such entities.

12.5 Transfers by City. City may assign all of its rights and obligations in and to the Ballpark or under this Agreement to a Governmental Authority, a local government entity formed by City or a trustee in connection with the Financing; provided that City remains liable for the City's financial obligations contained herein unless such financial obligations are specifically assumed by any such Governmental Authority.

ARTICLE XIII. REPRESENTATIONS, WARRANTIES AND COVENANTS

13.1 Club's Representations and Warranties. As an inducement to City to enter into this Agreement, Club represents and warrants to City that notwithstanding anything herein to the contrary and as of the Execution Date:

(a) *Organization.* Club is a limited liability company duly organized, validly existing and in good standing under the laws of the State of North Carolina. The business which Club carries on and which it proposes to carry on may be conducted by Club. Club is duly authorized to conduct business as a limited liability company in the State of North Carolina and each other jurisdiction in which the nature of its properties or its activities requires such authorization.

(b) *Authority.* The execution, delivery and performance of this Agreement by Club are within Club's powers, respectively, and have been duly authorized by all necessary action of Club.

(c) *No Conflicts.* Neither the execution and delivery of this Agreement nor the consummation of any of the transactions herein or therein contemplated nor compliance with the terms and provisions hereof or thereof will contravene the organizational documents of Club nor any Applicable Laws to which Club is subject or any judgment, decree, license, order or permit applicable to Club, or will conflict or be inconsistent with, or will result in any breach of any of the terms of the covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of a lien upon any of the property or assets of Club pursuant to the terms of, any indenture, mortgage, deed of trust, agreement or other instrument to which Club is a party or by which Club is bound, or to which Club is subject.

(d) *No Consent.* No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Governmental Authority or regulatory body or third party is required for the execution, delivery and performance by Club of this Agreement.

(e) *Valid and Binding Obligation.* This Agreement is the legal, valid and binding obligation of Club, enforceable against Club in accordance with its terms, except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

(f) *No Pending Litigation, Investigation or Inquiry.* There is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or, to the knowledge of Club, threatened against or affecting Club, which the management of Club in good faith believes that the outcome of which would (a) materially and adversely affect the validity or enforceability of, or the authority or ability of Club under, this Agreement to perform its obligations under this Agreement, or (b) have a material and adverse effect on the consolidated financial condition or results of operations of Club or on the ability of Club to conduct its business as presently conducted or as proposed or contemplated to be conducted (including the operation of the Ballpark).

(g) *Conflict of Interest.* None of Club or any Affiliate of Club nor any of their officers, employees or agents are officials or employees of City.

(h) *Team.* Club is the owner of the Team and holds substantially all of the assets and Governmental Authorizations necessary for the operation of the Team and will continue to own such Team and assets throughout the Term. Club shall take all necessary and appropriate actions to maintain membership of the Team in the League.

(i) Club and the Ownership Group have been represented by independent legal counsel and have had an adequate opportunity to seek advice with respect to all matters of North Carolina law and ordinances and regulations adopted by the City concerning, land use, development projects on City-owned land, leasing of property by the City to private businesses and other matters relating to City procurement and contracting procedures.

13.2 City's Representations and Warranties. As an inducement to Club to enter into this Agreement, City represents and warrants to Club that notwithstanding anything herein to the contrary and as of the Execution Date:

(a) *Organization.* City is a municipal corporation duly organized and validly existing under the laws of the State of North Carolina, with all necessary power and authority to enter into this Agreement and to consummate the transactions herein contemplated.

(b) *Authority.* The execution, delivery and performance of this Agreement by City is within City's powers, respectively, and have been duly authorized by all necessary action of City.

(c) *No Conflicts.* Neither the execution and delivery of this Agreement nor the consummation of any of the transactions herein or therein contemplated nor compliance with the terms and provisions hereof or thereof will contravene any Applicable Laws to which City is subject or any judgment, decree, license, order or permit applicable to City.

(d) *No Consent.* Upon the execution of this Agreement by City, City will have caused all governmental proceedings required to be taken by or on behalf of City to authorize City to make and deliver this Agreement and to perform the covenants, obligations and agreements of City hereunder.

(e) *Valid and Binding Obligation.* This Agreement is the legal, valid and binding obligation of City, enforceable against City in accordance with its terms, except as limited by applicable relief, sovereign immunity, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

(f) *No Pending Litigation, Investigation or Inquiry.* Except as previously disclosed to Club in writing, there is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or, to the knowledge of City, threatened against or affecting City, which City in good faith believes that the outcome of which would (a) materially and adversely affect the validity or enforceability of, or the authority or ability of City under, this Agreement to perform its obligations under this Agreement, or (b) have a material and adverse effect on the consolidated financial condition or results of operations of City or on the ability of City to conduct its business as presently conducted or as proposed or contemplated to be conducted.

(g) *Financing.* City has the legal authority and the financial capacity to proceed with the proposed financing plan, which ultimately may be modified to include other debt obligations issued by or on behalf of City, for the construction and development of the Ballpark.

ARTICLE XIV. DEFAULTS AND REMEDIES

14.1 Events of Default.

14.1.1 Club Default. The occurrence of any of the following shall be an “**Event of Default**” by Club or a “**Club Default**”:

(a) the failure of Club to keep, observe or perform any of the terms, covenants or agreements contained in this Agreement on Club’s part to be kept, performed or observed if: (1) such failure is not remedied by Club within thirty (30) days after notice from City of such default or (2) in the case of any such default which cannot with due diligence and good faith be cured within thirty (30) days, Club fails to commence to cure such default within thirty (30) days after such default, or Club fails to prosecute diligently the cure of such default to completion within such additional period as may be reasonably required to cure such default with diligence and in good faith; it being intended that, in connection with any such default which is not susceptible of being cured with due diligence and in good faith within thirty (30) days but is otherwise reasonably susceptible of cure, the time within which Club is required to cure such default shall be extended for

such additional period as may be necessary for the curing thereof with due diligence and in good faith; *provided, however*, that if such default is not cured within one hundred twenty (120) days after notice from City of such default, (notwithstanding Club's diligent prosecution of curative efforts), then such failure shall constitute an Event of Default under this Agreement;

- (b) the occurrence of an Insolvency Event with respect to Club; or
- (c) a "Club Default" as defined in the Lease shall have occurred and remain uncured.

14.1.2 City Default. The occurrence of the following shall be an "**Event of Default**" by City or a "**City Default**":

- (a) the failure of City to perform or observe any of the obligations, covenants or agreements to be performed or observed by City under this Agreement within thirty (30) days (or such longer period as may be permitted in this Agreement) after notice from Club of such failure, but if such performance or observance cannot reasonably be accomplished within such thirty (30) day period (or such longer period as may be permitted in this Agreement), then no Event of Default shall occur unless City fails to commence such performance or observance within such thirty (30) day period (or such longer period as may be permitted in this Agreement) and fails to diligently prosecute such performance or observance to conclusion thereafter; *provided, however*, that if such performance or observance has not been accomplished within one hundred twenty (120) days after notice from Club to City of such failure (notwithstanding City's diligent prosecution of its curative efforts), then such failure shall constitute an Event of Default hereunder; or
- (b) the occurrence of an Insolvency Event with respect to City.
- (c) a "City Default" as defined in the Lease shall have occurred and remain uncured.

14.2 Remedies. Subject to the provisions of this ARTICLE XIV:

14.2.1 City's Remedies. Subject to this ARTICLE XIV, upon the occurrence of any Club Default, City may, in its sole discretion, pursue any one or more of the following remedies, without any notice or demand whatsoever, other than any notice (including Final Notice) expressly provided in this Agreement:

- (a) City may (but under no circumstance shall be obligated to) terminate this Agreement pursuant to Section 14.2.3;
- (b) City may exercise any and all other remedies available to City at law or in equity or otherwise provided in this Agreement;

provided that notwithstanding the foregoing or anything else herein to the contrary, City's rights under this Section 14.2 shall be subject to the terms and provisions of Section 14.3.

14.2.2 Club's Remedies. Subject to this ARTICLE XIV, upon the occurrence of any City Default, Club may, at its sole discretion, pursue any one or more of the following remedies without any notice or demand whatsoever, other than any notice (including Final Notice) expressly provided in this Agreement:

(a) Club may (but under no circumstance shall be obligated to) terminate this Agreement pursuant to Section 14.2.3;

(b) Club may exercise any and all other remedies available to Club at law or in equity or otherwise provided in this Agreement;

provided that notwithstanding the foregoing or anything else herein to the contrary, Club's rights under this Section 14.2 shall be subject to the terms and provisions of Section 14.3, and the terms and provisions of Section 6.4.4 that limit Club's damages in the event of a delay to achieve Substantial Completion by the Substantial Completion Deadline to the Late Opening Charges.

14.2.3 Right to Terminate. Upon the occurrence of a Club Default or a City Default, the non-defaulting Party, in addition to its other remedies at law or in equity, shall have the right to give the defaulting Party notice (a "**Final Notice**") of the non-defaulting Party's intention to terminate this Agreement after the expiration of a period of thirty (30) days from the date such Final Notice is delivered unless the Event of Default is cured, and upon expiration of such thirty (30) day period, if the Event of Default is not cured, this Agreement shall terminate without liability to the non-defaulting Party. If, however, within such thirty (30) day period the defaulting Party cures such Event of Default, then this Agreement shall not terminate by reason of such Final Notice. Notwithstanding the foregoing, in the event there is an Action or Proceeding pending or commenced between the Parties with respect to the particular Event of Default covered by such Final Notice, the foregoing thirty (30) day period shall be tolled until a final non-appealable judgment or award, as the case may be, is entered with respect to such Action or Proceeding.

14.2.4 Cumulative Remedies. Subject to the provisions of this ARTICLE XIV, each right or remedy of City and Club provided for in this Agreement shall be cumulative of and shall be in addition to every other right or remedy of City or Club provided for in this Agreement, and the exercise or the beginning of the exercise by City or Club of any one or more of the rights or remedies provided for in this Agreement shall not preclude the simultaneous or later exercise by City or Club of any or all other rights or remedies provided for in this Agreement or hereafter existing at law or in equity, by statute or otherwise.

14.3 No Indirect Damages. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER ANY PROVISION OF THIS AGREEMENT OR OTHERWISE FOR LOST PROFITS, INCLUDING LOST OR PROSPECTIVE PROFITS, OR FOR ANY OTHER SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, IN CONTRACT, TORT OR OTHERWISE,

WHETHER OR NOT CAUSED BY OR RESULTING FROM SUCH PARTY'S OWN, SOLE OR CONCURRENT NEGLIGENCE OR THE NEGLIGENCE OF ANY OF ITS AFFILIATES OR RELATED PARTIES; PROVIDED THAT WITHOUT LIMITING THE FOREGOING, THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO CLAIMS OF EACH PARTY ARISING OUT OF THIRD PARTY CLAIMS FOR ANY OF THE FOREGOING.

14.4 Right to Injunction. In addition to the remedies set forth in this ARTICLE XIV, the Parties shall be entitled to seek injunctive relief prohibiting or mandating action by the other Party in connection with an Event of Default and to seek declaratory relief with respect to any matter under this Agreement for which such remedy is available hereunder, at law or in equity. In connection with any such action by a Party, each Party (a) recognizes that City has contributed significant capital costs to the construction of the Ballpark Improvements and related infrastructure, in material part in reliance on the agreements of the other Party contained in this Agreement, and (b) acknowledges and agrees that monetary damages could not be calculated to compensate the other Party for any violation by such Party, its Affiliates or any Related Party of such Party of the covenants, duties and obligations contained in this Agreement. Accordingly, each Party agrees that (i) the other Party may restrain or enjoin any violation as provided above in this Agreement or threatened violation of any covenant, duty or obligation contained in this Agreement without the necessity of posting a bond or other security and without any further showing of irreparable harm, balance of harms, consideration of the public interest or the inadequacy of monetary damages as a remedy, (ii) the administration of an order for injunctive relief would not be impracticable and, in the event of any violation of any covenant, duty or obligation contained in this Agreement the balance of hardships would weigh in favor of entry of injunctive relief, (iii) the other Party may enforce any such covenant, duty or obligation contained in this Agreement through specific performance, and (iv) the other Party may seek injunctive or other form of relief from a court of competent jurisdiction in order to maintain the status quo and enforce the terms of this Agreement on an interim basis pending the outcome of the applicable Dispute or Controversy in connection with this Agreement. Each Party further agrees and irrevocably stipulates that the rights of the other Party to injunctive relief pursuant to this Section 14.4 shall not constitute a "claim" pursuant to Section 101(5) of the United States Bankruptcy Code and shall not be subject to discharge or restraint of any nature in any bankruptcy proceeding involving such Party.

14.5 No Waivers.

14.5.1 General. No failure or delay of any Party, in any one or more instances (i) in exercising any power, right or remedy under this Agreement or (ii) in insisting upon the strict performance by the other Party of such other Party's covenants, obligations or agreements under this Agreement, shall operate as a waiver, discharge or invalidation thereof, nor shall any single or partial exercise of any such right, power or remedy or insistence on strict performance, or any abandonment or discontinuance of steps to enforce such a right, power or remedy or to enforce strict performance, preclude any other or future exercise thereof or insistence thereupon or the exercise of any other right, power or remedy. The covenants, obligations, and agreements of a defaulting Party and the rights and remedies of the other Party upon a default shall continue and remain in full force and effect with respect to any subsequent breach, act or omission.

14.5.2 No Accord and Satisfaction. Without limiting the generality of Section 14.5.1 above, the receipt by City of any amounts due under this Agreement with knowledge of a breach by Club of any covenant, obligation or agreement under this Agreement shall not be deemed or construed to be a waiver of such breach (other than as to the amount received). The payment by Club of any amount due under this Agreement with knowledge of a breach by City of any covenant, obligation or agreement under this Agreement shall not be deemed or construed to be a waiver of such breach. No acceptance by City or Club of a lesser sum than then due shall be deemed to be other than on account of the earliest installment of the amounts due under this Agreement, nor shall any endorsement or statement on any check, or any letter accompanying any check, wire transfer or other payment, be deemed an accord and satisfaction. City and Club may accept a check, wire transfer or other payment without prejudice to its right to recover the balance of such installment or pursue any other remedy provided in this Agreement.

14.5.3 No Waiver of Termination notice. Without limiting the effect of Section 14.5.1 above, the receipt by City of any amount due under this Agreement paid by Club after the termination in any manner of the Term, or after the giving by City of any notice hereunder to effect such termination, shall not, except as otherwise expressly set forth in this Agreement, reinstate, continue or extend the Term, or destroy, or in any manner impair the efficacy of, any such notice of termination as may have been given hereunder by City to Club prior to the receipt of any such amount due under this Agreement or other consideration, unless so agreed to in writing and executed by City. Neither acceptance of the keys nor any other act or thing done by City or by its agents or employees during the Term shall be deemed to be an acceptance of a surrender of the Ballpark, excepting only an agreement in writing executed by City accepting or agreeing to accept such a surrender.

14.6 Effect of Termination. If City or Club elects to terminate this Agreement, as provided herein (whether such termination occurs pursuant to this ARTICLE XIV or any other provision hereof), this Agreement shall, on the effective date of such termination, terminate with respect to all future rights and obligations of performance hereunder by the Parties (except for the rights and obligations herein that expressly are to survive termination hereof). Termination of this Agreement shall not alter the then existing claims, if any, of either Party for breaches of this Agreement occurring prior to such termination and the obligations of the Parties hereto with respect thereto shall survive termination.

ARTICLE XV. GENERAL PROVISIONS

15.1 No Broker's Fees or Commissions. Each Party hereto hereby represents to the other Party hereto that such Party has not created any liability for any broker's fee, broker's or agent's commission, finder's fee or other fee or commission in connection with this Agreement.

15.2 Council Approval. Notwithstanding anything to the contrary set forth in this Agreement, Club recognizes and agrees that any contracts or agreements, or amendments thereto, contemplated to be entered into by City under the terms of this Agreement which are entered into after the date of this Agreement may be subject to the prior Approval of the City

Council, but not Approvals and confirmations expressly permitted in this Agreement to be given by City Representative.

15.3 Non-Appropriation. Notwithstanding any other provision of this Agreement, City's obligation to pay any money to Club under this Agreement is contingent upon an Appropriation of the money by the City Council. City's failure to make an Appropriation is not a Default under this Agreement, but Club, as its sole and exclusive remedy, may terminate this Agreement as a result thereof. City retains all of its sovereign prerogatives and rights as a city under State law with respect to the planning, design, construction, development and operation of the Ballpark.

15.4 Interest on Overdue Obligations. In the event either Party fails to pay the other Party any amount owed by such Party pursuant to the terms of this Agreement on or before the date which is thirty (30) days after the other Party delivers notice to such Party of such failure, then such amount shall bear interest at the Default Rate from the date due until paid. No breach of a Party's obligation to pay the other Party any amount owed by such Party pursuant to the terms of this Agreement shall have been cured unless and until the interest accrued thereon under this Section 15.4 shall have been paid. All payments shall first be applied to the payment of accrued but unpaid interest.

15.5 Employment of Consultants. City shall have the right, at its sole cost and expense unless otherwise expressly provided herein, to employ such consultants as City may deem necessary to assist in the review of any and all plans, specifications, reports, agreements, applications, bonds, statements and other documents and information to be supplied to City by Club under this Agreement and to perform any inspection rights on behalf of City. Club covenants and agrees to reasonably cooperate with such consultants in the same manner as Club is required to cooperate with City pursuant to the terms of this Agreement. Club shall have the right, at its sole cost and expense unless otherwise expressly provided herein, to employ such consultants as Club may deem necessary to assist in the review of any and all plans, specifications, reports, agreements, applications, bonds, statements and other documents and information to be supplied to Club by City under this Agreement and to perform and inspections on behalf of Club. City covenants and agrees to reasonably cooperate with such consultants in the same manner as City is required to cooperate with Club pursuant to the terms of this Agreement.

15.6 Confidential Information. Disclosure of the terms of this Agreement will be governed by North Carolina General Statutes Chapter 132 "Public Records". City shall maintain the confidentiality of any proprietary information, trade secrets or other confidential materials delivered to it pursuant to this Agreement and designated as confidential by the delivering Party (the "Confidential Information"). Provided, however, that Club will provide the basis for any such exclusion from disclosure under Chapter 132. If any of the Club or its Ownership Group (the "Club Parties") believes that any of the Confidential Information is exempt from disclosure they shall specifically identify the Confidential Information as to which the exemption is claimed prior to providing such Confidential Information to the City. Any such claim of exemption shall not be a limitation on the right of the Club Parties to claim exemption for additional or different documents or information at a later time. If any such information forms part of a document that

also contains non-exempt information, and if a request for disclosure is made which reasonably could be viewed as reaching such documents, then the Club Parties shall provide to the City a version thereof from which the Confidential Information that is claimed to be exempt from disclosure has been redacted in order to facilitate the City's response to such request. If the City receives a request with respect to any of the Confidential Information, and the City does not intend to withhold such Confidential Information from disclosure, the City shall (unless prohibited by law or court or other order) promptly notify the Club Parties of such request so that the Club Parties may seek a protective order or other remedy.

15.7 Anti-Discrimination and Diversity. In accordance with Applicable Laws, the Parties, in performing their respective obligations hereunder will not discriminate based on religion, national origin, alienage, color, race, sex, gender identity or expression, sexual orientation, blindness or physical disability. It is the intent of the Parties to encourage local participation, community involvement and diversity in the design, construction, and/or development of the Ballpark.

15.8 Accounting Terms and Determinations. Unless otherwise specified, all accounting terms used in this Agreement shall be interpreted, all determinations with respect to accounting matters thereunder shall be made, and all financial statements and certificates and reports as to financial matters required to be furnished hereunder shall be prepared, in accordance with GAAP.

15.9 Survival. The following terms and provisions of this Agreement shall survive any expiration or termination of this Agreement: Sections 3.4.3 and 5.2, Articles IX, Article XIV and Sections 10.3, 10.4, 15.4, 15.9, 15.13, 15.15, 15.16, and 15.24.

15.10 Severability. If any term or provision of this Agreement, the Lease and the Non-Relocation Agreement or the application thereof to any Person or circumstances, shall to any extent be invalid or unenforceable in any jurisdiction, as to such jurisdiction, the remainder of this Agreement, or the application of such term or provision to the Persons or circumstances other than those as to which such term or provision is held invalid or unenforceable in such jurisdiction, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by Applicable Law, the Parties hereby waive any provision of law that renders any provision thereof prohibited or unenforceable in any respect.

15.11 Entire Agreement; Amendment. This Agreement (including all exhibits attached hereto), together with the Lease and the Non-Relocation Agreement, constitute the entire and exclusive agreement between City and Club with respect to the subject matter contained herein and therein. There are no restrictions, promises, obligations or undertakings between the Parties, other than those set forth or referred to in this Agreement with respect to the subject matter hereof. Neither this Agreement nor any of the terms thereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed

by the Party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought.

15.12 Table of Contents; Headings; Exhibits. The table of contents, if any, and headings, if any, of the various articles, sections and other subdivisions of this Agreement are for convenience of reference only and shall not modify, define or limit any of the terms or provisions of this Agreement. All Appendices and Exhibits attached to this Agreement are incorporated herein by reference in their entirety and made a part hereof for all purposes; *provided, however*, that in the event of a conflict between the terms of the text of this Agreement and any Appendices or Exhibits, the text of this Agreement shall control.

15.13 Parties in Interest; Limitation on Rights of Others. The terms of this Agreement shall be binding upon, and inure to the benefit of, the Parties and their permitted successors and assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any Person (other than the Parties and their permitted successors and assigns and as expressly provided herein) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained therein or any standing or authority to enforce the terms and provisions of this Agreement.

15.14 Counterparts. This Agreement may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. All signatures need not be on the same counterpart.

15.15 Governing Law. **THIS AGREEMENT AND THE ACTIONS OF THE PARTIES SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NORTH CAROLINA NOTWITHSTANDING ANY CHOICE-OF-LAW OR CONFLICT-OF-LAW PRINCIPLE THAT MIGHT DICTATE A DIFFERENT GOVERNING LAW.**

15.16 Proceedings. Any action or proceeding against any Party arising out of or relating to this Agreement, any transaction contemplated hereby or any judgment entered in respect of any thereof must be resolved through the Dispute Resolution procedures as set forth in Section 8.4.1. To the extent that service of process by mail is permitted by Applicable Law, the Parties irrevocably consent to the service of process in any such action or proceeding by the mailing of such process by registered or certified mail, postage prepaid, at its address for notice provided for in this Agreement. The Parties irrevocably agree not to assert any objection that they may ever have to the laying of venue of any such arbitration proceeding in Charlotte, North Carolina, and any claim that any such proceeding brought in any Charlotte, North Carolina has been brought in an inconvenient forum. Each Party agrees not to bring any action, suit or proceeding against the other Party arising out of or relating to this Agreement or any transaction contemplated hereby except in accordance with Section 8.4.1 of this Agreement.

15.17 Limitation to Capacity as City. The Parties acknowledge that all references to “City” herein (which, for the purposes of this provision, shall be deemed to include any references in this Agreement to City as the owner of the fee interest in the Ballpark) shall refer

only to City in its capacity as City under this Agreement. The term “City” and the duties and rights assigned to it under this Agreement, thus exclude any action, omission or duty of City when performing its Governmental Functions. Any action, omission or circumstance arising out of the performance of City’s Governmental Functions may prevent City from performing its obligations under this Agreement and shall not cause or constitute a default by City under this Agreement or give rise to any rights or Claims against City in its capacity as the “City” hereunder, it being acknowledged that Club’s remedies for any injury, damage or other Claim resulting from any such action, omission or circumstances arising out of City’s Governmental Functions shall be governed by the laws and regulations concerning Claims against City as a Governmental Authority. In addition, no setoff, reduction, withhold, deduction or recoupment shall be made in or against any payment due by Club to City under this Agreement as a result of any action or omission of City when performing its Governmental Function.

15.18 Capacity of Persons Acting on Behalf of City. Notwithstanding anything to the contrary in this Agreement, all references in this Agreement to employees, agents, representatives, contractors and the like of City shall refer only to Persons acting in City’s capacity as the “City” hereunder and thus all such references specifically exclude any employees, agents, representatives, contractors and the like acting in connection with the performance of City’s Governmental Functions. Without limiting the foregoing, all police, fire, permitting, regulatory, water and power, health and safety and sanitation employees of City shall be deemed to be acting in connection with the performance of City’s Governmental Functions.

15.19 No Limitation on City’s Governmental Functions. The Parties acknowledge that City is a Governmental Authority in addition to being the owner of the Ballpark, and that no representation, warranty, Approval or agreement in this Agreement by City shall be binding upon, constitute a waiver by or estop City from exercising any of its rights, powers or duties in connection with its Governmental Functions nor will any portion of this Agreement be deemed to waive any immunities granted to City when performing its Governmental Functions, which are provided under Applicable Law. Any consent to jurisdiction by City is only with respect to matters arising in its capacity as a Party to this Agreement and expressly does not constitute a waiver of City’s legal immunity or a consent to jurisdiction for any actions, omissions or circumstances, in each case solely arising out of the performance of City’s Governmental Functions.

15.20 Non-liability of City’s Officials and Club’s Employees. No member of any legislative, executive, or administrative body of, or affiliated with, City or its Affiliates, and no official, agent, employee or representative of City or such body or any of its Affiliates (whether acting in the performance of City’s Governmental Functions or otherwise) shall be personally liable to Club or any Person holding by, through or under Club, for any actions taken in his or her capacity as an official, agent, employee or representative of such Person in the event of any default or breach by City, or for any amount which may become due to Club or any Person holding by, through or under Club, or for any other obligation, under or by reason of this Agreement. No officer, director, shareholder, member, agent, employee or representative of Club or its Affiliates shall be personally liable to City or any Person holding by, through or under City, for any actions taken in his or her capacity as an officer, director, shareholder, agent, employee or representative of such Person in the event of any default or breach by Club, or for

any amount which may become due to City or any Person holding by, through or under City, or for any other obligation, under or by reason of this Agreement.

15.21 Payment on Business Days. If any payment under this Agreement is required to be made on a day other than a Business Day, the date of payment shall be extended to the next Business Day.

15.22 Time. Times set forth in this Agreement for the performance of obligations shall be strictly construed, time being of the essence of this Agreement. All provisions in this Agreement which specify or provide a method to compute a number of days for the performance, delivery, completion or observance by a Party of any action, covenant, agreement, obligation or notice hereunder shall mean and refer to calendar days, unless otherwise expressly provided. However, in the event the date specified or computed under such instrument for the performance, delivery, completion or observance of a covenant, agreement, obligation or notice by either Party, or for the occurrence of any event provided for herein, shall be a day other than a Business Day, then the date for such performance, delivery, completion, observance, or occurrence shall automatically be extended to the next calendar day that is Business Day. All references in this Agreement to times or hours of the day shall refer to Eastern Time.

15.23 Interpretation and Reliance. No presumption will apply in favor of any Party in the interpretation of this Agreement or in the resolution of any ambiguity of any provision hereof.

15.24 Attorneys' Fees. If any Party to this Agreement defaults in the performance of any covenants, obligations or agreements of such Party contained in this Agreement and the other Party hereto places the enforcement of this Agreement, or any part thereof, or the exercise of any other remedy therein provided for such default, in the hands of an attorney who files suit upon the same (either by direct action or counterclaim), the non-prevailing Party shall pay to the prevailing Party its reasonable attorneys' fees and costs of court. In addition to the foregoing award of attorneys' fees to the prevailing Party, the prevailing Party shall be entitled to its attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

15.25 Joint and Several Liability. If Club at any time comprises more than one Person, all such Persons shall be jointly and severally liable for payment of amounts due under this Agreement and for performance of every obligation of Club under this Agreement.

15.26 Relationship of the Parties; No Partnership. The relationship of Club and City under this Agreement is that of independent parties, each acting in its own best interests, and notwithstanding anything in this Agreement to the contrary, neither the obligation to pay City any amounts hereunder or under the Lease nor any other aspect of this Agreement shall create or evidence, nor is it intended to create or evidence, a partnership, joint venture or other business relationship or enterprise between Club and City. As such, City shall have no direct supervision of or obligation to the employees of Club and any communication of employee matters shall be through the Club Representative.

15.27 Non-Merger of Estates. The interests of City and Club in the Ballpark shall at all times be separate and apart, and shall in no event be merged, notwithstanding the fact that this Agreement, or any interest therein, may be held directly or indirectly by or for the account of the Person who shall own the fee title to the Ballpark or any portion thereof; and no such merger of estates shall occur by operation of law, or otherwise, unless and until all Persons at the time having any interest in the Ballpark shall join in the execution of a written instrument effecting such merger of estates.

15.28 Payments by Either Party. All payments required to be made by either Party to the other Party pursuant to the terms of this Agreement shall be paid in such freely transferable coin or currency of the United States as at the time of payment shall be legal tender for the payment of public and private debts at the receiving Party's address as set forth in Appendix B, or at such other address as such Party may specify from time to time in accordance with the terms and conditions of Section 15.29 below. Notwithstanding the provisions of Section 15.29 below and for the purposes of this Agreement, all payments shall be deemed paid and received only when actually received by the other Party and, in the event of payment by check, other than a cashier's check or certified check, shall not be considered to have been actually received in the event of the failure of such check to clear the receiving Party's account.

15.29 Notice. All notices permitted or required to be made hereunder shall be in writing and delivered by hand, overnight courier, certified mail, facsimile or e-mail. Notices shall be deemed given (a) when actually given and received if delivered by hand; (b) one (1) Business Day after delivery to an overnight courier if delivered by an overnight courier; (c) three (3) Business Days after deposit with the United States Postal Service if delivered by certified mail; or (d) when sent if delivered by facsimile or e-mail (as evidenced by facsimile or e-mail confirmation). All such notices shall be addressed to the appropriate Party at the addresses set forth in Appendix B.

15.30 E-Verify. For agreements that include construction or services, employers and their subcontractors 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 Agreement, Club certifies that Club complies with the requirements of the E-Verify program.

[Signature Pages Follows]

[Signature Page to Development Agreement]
[S-1 of 2]

This Agreement is executed to be effective for all purposes as of the Execution Date.

CITY:

CITY OF KANNAPOLIS

By: _____
Michael B. Legg
City Manager

[Signature Page to Development Agreement]
[S-2 of 2]

CLUB:

TEMERITY BASEBALL LLC

By: _____
Name:
Title:

**APPENDIX A
TO
DEVELOPMENT AGREEMENT**

Glossary of Defined Terms

“**Action**” or “**Proceedings**” means any legal action, lawsuit, proceeding, arbitration, investigation by a Governmental Authority, hearing, audit, appeal, administrative proceeding or judicial proceeding.

“**Affiliate**” means, with respect to any specified Person, any other Person who, directly or indirectly, Controls, is under common Control with, or is Controlled by such specified Person.

“**Agreement**” has the meaning given to that term in the introductory paragraph of this Agreement.

“**Applicable Laws**” means any and all laws, ordinances, statutes, regulations, judicial decisions, orders, injunctions, writs, rulings, interpretations, rules, permits or certificates of any court, arbitrator or other Governmental Authority and applicable to the Person or Property in question (including any activities or operations occurring on, under, over, upon, at or from such Property in question). Applicable Laws shall include all City Ordinances, Environmental Laws and any applicable Federal wage requirements. Club acknowledges that there may be certain “Applicable Laws” that apply to the Ballpark as a result of same being owned by City or by a municipal recreational facilities authority organized under the laws of the State of North Carolina.

“**Appropriation**” means with respect to any payment obligation or other monetary obligation of City that may from time to time exist or arise under this Agreement during a fiscal year, the approval and setting aside by City of an adequate amount of funds to satisfy the payment obligation or other monetary obligation of City.

“**Approval**,” “**Approve**” or “**Approved**” means (a) with respect to any item or matter for which the approval of City or City Representative, as the case may be, is required under the terms of this Agreement, the specific approval of such item or matter by City pursuant to a written instrument executed by City or City Representative, as applicable, delivered to Club, and shall not include any implied or imputed approval, and no approval by City or City Representative pursuant to this Agreement shall be deemed to constitute or include any approval required in connection with any Governmental Functions of City, unless such written approval shall so specifically state; (b) with respect to any item or matter for which the approval of Club is required under the terms of the Agreement, the specific approval of such item or matter by Club or the Club Representative, as the case may be, pursuant to a written instrument executed by a duly authorized officer of Club or the Club Representative, as permitted pursuant to the terms of this Agreement, and delivered to City, and shall not include any implied or imputed approval; and (c) with respect to any item or matter for which the approval of any other Person is required under the terms of this Agreement, the specific approval of such item or matter by such Person

pursuant to a written instrument executed by a duly authorized representative of such Person and delivered to City or Club, as applicable, and shall not include any implied or imputed approval.

“Ballpark” has the meaning given to that term in the Recitals.

“Ballpark Budget” means the total budget for all Ballpark Costs (which is currently estimated not to exceed [\$_____] million), broken down in reasonable detail by “hard” and “soft” cost categories, including FF&E, and including separate line items for the amount payable under each of the Ballpark Construction Documents and allowances and contingencies, together with any amendments thereto up to the Substantial Completion Date. The Ballpark Budget shall include a mutually agreed upon contingency in order to protect the interests of the Parties.

“Ballpark Construction Contract” has the meaning set forth in Section 6.4.2.

“Ballpark Construction Documents” means any and all contracts, documents or other instruments entered into by or on behalf of City or any Affiliates thereof for the development, design, construction or furnishing of the Ballpark Improvements, including the Ballpark Construction Contract.

“Ballpark Construction Schedule” means a schedule of critical dates relating to the Ballpark Improvements Work (which dates may be described or set forth as intervals of time from or after the completion or occurrence of the preceding task or event), which schedule shall include the estimated dates for (i) completion of the Project Plans in detail sufficient for satisfaction of all Applicable Laws (including issuance of necessary building permits), (ii) issuance of all Governmental Authorizations and satisfaction of all Applicable Laws prerequisite to commencement of the Ballpark Improvements Work and (iii) Substantial Completion of the Ballpark Improvements Work. The Ballpark Construction Schedule shall be adjusted as appropriate to reflect the delay in the Ballpark Improvements Work resulting from each occurrence of Excusable City Delay in accordance with the provisions of this Agreement.

“Ballpark Costs” means all documented, direct costs incurred or to be incurred by either Party in order in order for City or Club to fulfill its obligations under this Agreement with respect to the Ballpark Improvements Work and to cause Final Completion of the Ballpark Improvements Work, including all infrastructure, demolition, site preparation, any necessary land acquisitions, Pre- Development Expenses, Design Fees and any amounts payable to a third party under any of the Ballpark Construction Documents, but excluding costs of issuance of any Financing.

“Ballpark Improvements” means the Ballpark, the Ballpark Dedicated Parking and the Team Facilities, including the Improvements and Personal Property located on the Real Property and described in the Ballpark Plans for Ballpark Improvements and the FF&E Requirements.

“Ballpark Improvements Work” means the design, development and construction of the Ballpark Improvements (including any associated infrastructure, demolition or site

preparation) in accordance with the terms of this Agreement and as specifically designated in Exhibit “B”.

“Ballpark Dedicated Parking” has the meaning given to that term in Section 5.2 of the Lease.

“Business Day” shall mean a day of the year that is not a Saturday, Sunday, Legal Holiday or a day on which commercial banks are not required or authorized to close in Kannapolis, North Carolina.

“Business Hours” means 9:00 a.m. through 5:00 p.m. on Business Days.

“City” has the meaning set forth in the preamble to this Agreement.

“City Ordinances” means all ordinances and regulations of the City, including, without limitation, all ordinances concerning land use, development projects on City-owned land, leasing of property by the City to private businesses, training and employment of residents of the City, affirmative action, no-strike and labor peace agreements, payment of a living wage and other matters relating to City procurement and contracting procedures and any building codes, fire or life safety codes, development codes, zoning regulations and subdivision regulations, as same may be amended from time to time.

“City Council” means the City Council of the City of Kannapolis, North Carolina.

“City Default” as the meaning set forth in Section 14.1.2.

“City Delay” means any delay by City in achieving any of its deadlines for performance of obligations under this Agreement.

“City Personal Property” means any and all movable equipment, furniture, fixtures and other tangible personal property that are owned by City as of the Operating Term Commencement Date or otherwise purchased as part of Ballpark Costs and located on or within the Ballpark (and that do not constitute fixtures) and can be removed from the Ballpark without damage thereto. The term “City Personal Property” includes any replacements of the City Personal Property.

“City Representative” has the meaning set forth in Section 2.1.

“Claims” shall mean and include any and all actions, causes of action, suits, disputes, controversies, claims, debts, sums of money, offset rights, defenses to payment, agreements, promises, notes, losses, damages and demands of whatsoever nature, known or unknown, whether in contract or in tort, at law or in equity, for money damages or dues, recovery of property, or specific performance, or any other redress or recompense which have accrued or may ever accrue, may have been had, may be now possessed, or may or shall be possessed in the future by or in behalf of any Person against any other Person for, upon, by reason of, on account of, or arising from or out of, or by virtue of, any transaction, event or occurrence, duty or

obligation, indemnification, agreement, promise, warranty, covenant or representation, breach of fiduciary duty, breach of any duty of fair dealing, breach of confidence, breach of funding commitment, undue influence, duress, economic coercion, conflict of interest, negligence, bad faith, malpractice, violations of any Applicable Law, intentional or negligent infliction of mental distress, tortious interference with contractual relations, tortious interference with corporate governance or prospective business advantage, breach of contract, deceptive trade practices, libel, slander, usury, conspiracy, wrongful acceleration of any indebtedness, wrongful foreclosure or attempt to foreclose on any collateral relating to any indebtedness, action or inaction, relationship or activity, service rendered, matter, cause or thing, whatsoever, express or implied.

“Club” has the meaning set forth in the preamble to this Agreement.

“Club Default” has the meaning set forth in Section 14.1.1.

“Club Delay” means any delay by Club in achieving performance of its obligations under this Agreement.

“Club Representative” has the meaning set forth in Section 2.2.

“Club’s Personal Property” means any and all movable equipment, furniture, fixtures and other tangible personal property that are owned by Club or its Subsidiaries and located on or within the Ballpark (including trade fixtures, but not other fixtures) and can be removed from the Ballpark without material damage thereto. The term “Club’s Personal Property” includes any replacements of the Club’s Personal Property.

“Club’s Project Representative” has the meaning set forth in Section 6.7.1.

“CM at Risk” means the Construction Manager At Risk selected by City in accordance with the terms of this Agreement to construct the Ballpark Improvements.

“Comparable Properties” means one or more first-class, Single-A caliber, multi-purpose baseball ballparks (as mutually agreed upon by the Representatives) that (i) have been constructed within five (5) years of the Execution Date, (ii) are generally comparable in size, design and quality of construction to the Minimum Requirements and (iii) are located in the United States. For the purposes of this Agreement, the term “Comparable Properties” shall also include SAL stadiums in Columbia, South Carolina (opened 2016) and North Augusta, South Carolina (opened 2018) Georgia, and the Carolina League stadium in Fayetteville, North Carolina (opening 2019).

“Conditions to City Obligations” has the meaning set-forth in Section 3.1.

“Conditions to Commencement” has the meaning set forth in Section 3.2.

“Construction Commencement Date” has the meaning set forth in Section 4.2.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

“Cost Overruns” has the meaning set forth in Section 6.5.

“Default Rate” means the Prime Rate plus one percent (1%) per annum, not to exceed the Maximum Lawful Rate.

“Design Fees” means the fees paid by City to the Architect, or other design professional for the preparation of plans and specifications for the Ballpark Improvements but shall not include fees relating to FF&E for which designated parties are responsible to provide in accordance with Exhibit “B”.

“Dispute or Controversy” has the meaning set forth in Section 8.4.1.

“Dispute Resolution Procedures” means the dispute resolution procedures set forth in Section 8.4.1.

“Emergency” means any circumstance in which (i) Club, City or the Person in question, as applicable, in good faith believes that immediate action is required in order to safeguard lives, property or the environment against the likelihood of injury, damage or destruction due to an identified threat or (ii) Applicable Laws require that immediate action be taken in order to safeguard lives, property or the environment.

“Encumbrances” means any defects in, easements, covenants, conditions or restrictions affecting, or Liens or other encumbrances on, the title to the Ballpark, whether evidenced by written instrument or otherwise evidenced.

“Environmental Claim” means any Action or Proceeding regarding the Real Property, the Ballpark or the Ballpark Dedicated Parking (i) arising under an Environmental Law or (ii) related to or arising out of an actual or alleged Environmental Event.

“Environmental Event” means the occurrence of any of the following: (i) any noncompliance with an Environmental Law; (ii) an environmental condition requiring responsive action, including an environmental condition at the Ballpark caused by a third party; (iii) any event on, at or from the Real Property, the Ballpark or the Ballpark Dedicated Parking, or related to the operation thereof of such a nature as to require reporting to applicable Governmental Authorities under any Environmental Law; (iv) an emergency environmental condition; (v) the existence or discovery of any escape, seepage, leakage, spillage, emission, discharge or disposal of or other release or any kind of Hazardous Materials on, at or from the Ballpark which may cause a threat or actual injury to human health, the environment, plant or animal life; or (vi) any Environmental Claim, or the filing or imposition of any environmental lien against the Real Property, the Ballpark or the Ballpark Dedicated Parking, because of, resulting from, in connection with, or arising out of any of the matters referred to in clauses (i) through (v) preceding.

“Environmental Law(s)” means any applicable Federal, state or local statute, law (including common law tort law, common law nuisance law and common law in general), rule, regulation, ordinance, code, permit, concession, grant, franchise, license, policy or rule of common law now in effect or adopted in the future, and in each case as may be amended or replaced, and any judicial or administrative interpretation thereof (including any judicial or administrative order, consent decree or judgment) relating to (i) the environment, health, safety or Hazardous Materials, (ii) the storage, handling, emission, discharge, release and use of chemicals and other Hazardous Materials, (iii) the generation, processing, treatment, storage, transport, disposal, investigation, remediation or other management of waste materials of any kind, and (iv) the protection of environmentally sensitive areas, including any federal, state or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, injunction, decree, or rule of common law, and any judicial interpretation of any of the foregoing, which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground or air or water or noise pollution or contamination, and underground or above ground tanks) and shall include without limitation, the Solid Waste Disposal Act, 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§136 et. seq.; and the Emergency Preparedness and Response Community Right-to-Know Act, 42 U.S.C. § 11001; the Endangered Species Act, as amended, 16 U.S.C. §§1531 et seq.; and North Carolina General Statutes and regulations of the Department of Environmental Quality.

“Event of Default” has the meaning set forth in Section 14.1.1 and Section 14.1.2.

“Excusable City Delay” means any City Delay which is caused by or attributable to (but only to the extent of) Force Majeure. No City Delay arising from the failure to make funds available for any purpose shall ever be an Excusable City Delay unless such failure, inability or refusal itself arises directly from, and is based upon, another event or circumstance which is an Excusable City Delay.

“Excusable City Delay Period” means with respect to any particular occurrence of Excusable City Delay, that number of days of delay in the performance by City of its obligations under the Agreement actually resulting from such occurrence of Excusable City Delay.

“Excusable Club Delay” means any Club Delay which is caused by or attributable to (but only to the extent of) Force Majeure. No Club Delay arising from the failure to make funds available for any purpose shall ever be an Excusable Club Delay unless such failure, inability or refusal itself arises directly from, and is based upon, another event or circumstance which is an Excusable Club Delay.

“Excusable Club Delay Period” means with respect to any particular occurrence of an Excusable Club Delay, that number of days of delay in the performance by Club of its obligations hereunder actually resulting from such occurrence of Excusable Club Delay.

“Execution Date” has the meaning set forth in the preamble to the Agreement.

“FF&E” means furniture, fixtures and equipment which are part of the Ballpark Improvements the responsibility for which is specified on Exhibit “B”.

“FF&E Requirements” means the specifications and requirements for the Personal Property to be part of the Ballpark Improvements at Substantial Completion thereof.

“Final Completion” means, with respect to the Ballpark Improvements Work or any component of the Ballpark Improvements Work, (A) the final completion of the design, development, construction, furnishing and all other aspects of such work and Improvements substantially in accordance with the Project Plans or other plans therefor (all of which have been Approved pursuant to the terms of this Agreement, as and if required), all Applicable Laws and all other requirements of this Agreement, including the completion of the punch-list type items referred in Section 5.1.5 and (B) the issuance of all Governmental Authorizations necessary to use, occupy and operate all aspects and areas of the Ballpark Improvements, in accordance with the terms of this Agreement.

“Final Notice” has the meaning set forth in Section 14.2.3.

“Financing” means the issuance, by City, or by an entity issuing on behalf of City, of one or more series of bonds or other debt obligations in an aggregate principal amount such that the net proceeds of such issuance are not less than an amount equal to the Ballpark Budget, including any Ballpark Costs paid by City in advance of such Financing.

“Financing Proceeds” means the cash proceeds of the Financing, net of all costs of issuance associated with the Financing.

“Financial Responsibility” means the obligation to provide payment.

“Force Majeure” means any act that (a) materially and adversely affects the affected Party’s ability to perform the relevant obligations under this Agreement or delays such affected Party’s ability to do so, (b) is beyond the reasonable control of the affected Party, and (c) is not due to the affected Party’s fault or negligence. Subject to the satisfaction of the conditions set forth in (a) through (c) above, Force Majeure shall include: (i) natural phenomena, such as storms, floods, lightning and earthquakes; (ii) wars, civil disturbances, revolts, insurrections, terrorism, sabotage and threats of sabotage or terrorism; (iii) transportation disasters, whether by ocean, rail, land or air; (iv) strikes or other labor disputes including a strike or lockout by MiLB players or umpires; (v) fires; (vi) actions or omissions of a Governmental Authority (including the actions of City in its capacity as a Governmental Authority) that were not voluntarily induced or promoted by the affected Party, or brought about by the breach of its obligations under this Agreement or any Applicable Law; and (vii) failure of either Party to perform any of its

obligations under this Agreement within the time or by the date required pursuant to the terms of this Agreement for the performance thereof; provided, however, that under no circumstances shall Force Majeure include economic hardship.

“GAAP” means generally accepted accounting principles as in effect from time to time in the United States as set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board.

“Governmental Authority” means any Federal, state, local or foreign governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof), including a municipal recreational facilities authority.

“Governmental Authorizations” means all approvals, consents, decisions, authorizations, certificates, confirmations, exemptions, applications, notifications, concessions, acknowledgments, agreements, licenses, permits, import permits, employee visas, environmental permits, decisions, right of ways, and similar items from any Governmental Authority, including a liquor permit from the ABC Commission of the State of North Carolina.

“Governmental Function” means any regulatory, legislative, permitting, zoning, enforcement (including police power), licensing or other functions which City is authorized or required to perform in its capacity as a Governmental Authority in accordance with Applicable Laws. The entering into this Agreement and the performance by City of its obligations under this Agreement shall not be considered a “Governmental Function.”

“Hazardous Materials” means (a) any petroleum or petroleum products, metals, gases, chemical compounds, radioactive materials, asbestos, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls, lead paint, putrescible and infectious materials, and radon gas; (b) any chemicals or substances defined as or included in the definition of “hazardous substances”, “hazardous wastes”, “hazardous materials”, “extremely hazardous wastes”, “restricted hazardous wastes”, “toxic substances”, “toxic pollutants”, “contaminants” or “pollutants”, or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law or Governmental Authority or which is regulated because of its adverse effect or potential adverse effect on health and the environment, including soil and construction debris that may contain any of the materials described in this definition.

“Improvements” means all improvements, structures, buildings and fixtures of any kind whatsoever, whether above or below grade, including buildings, the foundations and footings thereof, utility installations, storage, loading facilities, walkways, driveways, landscaping, signs, site lighting, site grading and earth movement, and all fixtures, plants, apparatus, appliances, furnaces, boilers, machinery, engines, motors, compressors, dynamos, elevators, fittings, piping, connections, conduits, ducts and equipment of every kind and description now or hereafter affixed or attached to any of such buildings, structures or improvements and used or procured for

use in connection with the heating, cooling, lighting, plumbing, ventilating, air conditioning, refrigeration, or general operation of any of such buildings, structures or improvements, and any exterior additions, changes or alterations thereto or replacements or substitutions therefor.

“Insolvency Event” means, with respect to any Person, (a) such Person’s or any of its Subsidiaries’ (i) failure to generally pay its debts as such debts become due, (ii) admitting in writing its inability to pay its debts generally or (iii) making a general assignment for the benefit of creditors; (b) any proceeding being instituted by or against such Person or any of its Subsidiaries (i) seeking to adjudicate it a bankrupt or insolvent, (ii) seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or (iii) seeking the entry of an order for relief or the appointment of a receiver, trustee or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against such Person or any such Subsidiary, any such proceeding shall remain undismissed for a period of ninety (90) days or any of the actions sought in such proceeding shall occur; or (c) such Person’s or any of its Subsidiaries’ taking any corporate action to authorize any of the actions set forth above in this definition.

“Late Opening Charges” means liquidated damages in the cash sum of \$20,000 per home game.

“League” means the South Atlantic League of Professional Baseball Clubs, Inc. or any successor league.

“Lease” has the meaning set forth in the Recitals.

“Legal Holiday” means any day, other than a Saturday or Sunday, on which City’s administrative offices are closed for business.

“Lien” means any mortgage, charge, pledge, lien, privilege, security interest, hypothecation or other encumbrance upon or with respect to any Property or assets or any kind, whether real or personal tangible or intangible, now owned or hereafter acquired.

“Material Change” means (a) as to the Ballpark Improvements, any modification to the Ballpark Improvements so that the Ballpark Improvements will not conform in a material respect to the Plans for Ballpark Improvements previously Approved by City or Club, and (b) as to Personal Property to be a part of the Ballpark Improvements at Substantial Completion thereof, any modification to such Personal Property so that such Personal Property does not conform to the FF&E Requirements previously Approved by City or Club.

“Maximum Lawful Rate” means the maximum non usurious interest rate, if any, that at any time, or from time to time, may be contracted for, taken, reserved, charged or received on any indebtedness or other sum becoming due and owing under this Agreement, under Applicable Laws with respect to the Person entitled to collect such interest and such indebtedness or, to the extent permitted by Applicable Law, under such Applicable Laws which may hereafter be in

effect and which allow a higher maximum nonusurious interest rate than Applicable Laws now allow.

“MiLB” means Minor League Baseball.

“NAPBL” has the meaning given to that term in the Lease.

“Minimum Requirements” means the design and construction of the lease Ballpark in accordance with the design and construction documents.

“Operating Term” means the “Term” as defined in the Lease.

“Operating Term Commencement Date” means the first day of the Operating Term.

“Opinion of Club Counsel” means the opinion of legal counsel to Club and the Ownership Group, in a form reasonably acceptable to City, that (i) Club and any business entity in the Ownership Group are each duly organized, validly existing and in good standing under the law of the jurisdiction in which they are formed, and have duly registered or qualified to transact business in North Carolina if organized under the laws of another jurisdiction, (ii) Club and any business entity in the Ownership Group have duly authorized the execution of this Agreement, the Lease and the Non-Relocation Agreement and the persons signing such agreements on behalf of Club and any business entity in the Ownership Group have the authority to do so; (iii) Club owns all right, title and interest (including the franchise rights) to Team, and (iv) none of Club or any business entity in the Ownership Group’s corporate governance documents or material agreements or contracts binding Club, any business entity in the Ownership Group or Team contain contingencies or conditions precedent to Club’s ownership or continued ownership of Team and/or the ability of Team to play its home games in Kannapolis, North Carolina.

“Parties” or **“Party”** has the meaning set forth in the preamble to this Agreement.

“Person” means any individual, corporation, limited or general partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof or any other form of entity.

“Personal Property” means the items of personal property to be acquired as part of the Ballpark Improvements.

“Plans for Ballpark Improvements” means the plans and specifications for the construction of the Ballpark Improvements prepared by the Project Architect and which shall include the Minimum Requirements.

“Pre-Development Expenses” means third party design, survey, site preparation and/or other pre-construction expenses of City incurred prior to Execution Date, including those of the Preliminary Architect and the Construction Manager at Risk (but excluding legal fees of the Parties).

“Pre-Existing Environmental Conditions” means the Hazardous Materials and other environmental conditions that existed on or under the Ballpark prior to the Operating Term Commencement Date to the extent such have not been caused by or contributed to by Club, its Affiliates or Related Parties.

“Preliminary Architect” means the architect engaged by City prior to the Execution Date to prepare certain preliminary documentation with respect to the Ballpark, including any programming documents and concept plan.

“Prime Rate” means the “prime rate” as published in the “Money Rates” section of The Wall Street Journal; however, if such rate is, at any time during the Term, no longer so published, the “Prime Rate” shall mean the average of the prime interest rates that are announced, from time to time, by the three (3) largest banks (by assets) headquartered in the United States that publish a “prime rate”.

“Project Architect” means a Qualified Design Professional or team of Qualified Design Professionals who will be employed by City in connection with the Ballpark Improvements.

“Project Plans” means collectively, the Plans for Ballpark Improvements and the FF&E Requirements.

“Qualified Design Professional” means an architect that satisfies all of the following criteria: (i) licensed and otherwise in compliance with all applicable Governmental Rules to do business and act as an architect in the State of North Carolina for the type of work proposed to be performed by such architect and (ii) well experienced as an architect in comparable work.

“Qualified Surety” means any surety which has been approved by City and which has an Alfred M. Best Company, Inc. rating of “A” or better and a financial size category of not less than “VIII” (or, if Alfred M. Best Company, Inc. no longer uses such rating system, then the equivalent or most similar ratings under the rating system then in effect, or if Alfred M. Best Company, Inc. is no longer the most widely accepted rater of the financial stability of sureties providing coverage such as that required by this Agreement, then the equivalent or most similar rating under the rating system then in effect of the most widely accepted rater of the financial stability of such insurance companies at the time).

“Quality Standard” means a first-class, state-of-the-art, Single-A caliber, multi-purpose minor league baseball ballpark, comparable, when taken as a whole, to the Comparable Properties.

“Real Property” means the tract of land depicted in **Exhibit A**. In addition to the description of real property attached hereto as **Exhibit A**, the term “Real Property” shall also include any additional real property interests acquired by City and on, over or under which, or pursuant to, the Ballpark is constructed.

“Related Party” or **“Related Parties”** means with respect to any Person, such Person’s partners, directors, officers, shareholders, members, agents, employees, auditors, advisors, consultants, servants, counsel, contractors, subcontractors (of any tier), tenants, subtenants (of any tier), licensees, sublicensees (of any tier), lenders, successors, assigns, legal representatives, elected and appointed officials, volunteers and Affiliates, and for each of the foregoing their respective partners, directors, officers, shareholders, members, agents, employees, auditors, advisors, counsel, consultants, contractors, subcontractors, licensees, sublicensees, tenants, and subtenants.

“Responsible Officer” means with respect to the subject matter of any certificate, representation or warranty of any Person contained in this Agreement, an authorized officer of such Person (or in the case of a partnership, an individual who is a general partner of such Person or such an authorized officer of a general partner of such Person) who, in the normal performance of his operational responsibility, would have knowledge of such matter and the requirements with respect thereto.

“Review and Approval or Consent Rights” has the meaning set forth in Section 8.2.1.

“Reviewing Party” has the meaning set forth in Section 8.2.1.

“Submitting Party” has the meaning set forth in Section 8.2.1.

“Subsidiary” means, for any Person, any corporation, partnership or other entity of which at least a majority of the securities or other ownership interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or other Persons performing similar functions of such corporation, partnership or other entity (irrespective of whether or not at the time securities or other ownership interests of any other class or classes of such corporation, partnership or other entity shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or Controlled by such Person, one or more Subsidiaries of such person, or by such Person and one or more Subsidiaries of such Person.

“Substantial Completion” means, when used with respect to the Ballpark Improvements Work or any component of the Ballpark Improvements Work, the receipt of (i) a certificate of the Project Architect certifying that such Improvements have been completed in accordance with the Project Plans, and (ii) a certificate of occupancy from the City acting in accordance with its Governmental Function that such Improvements are ready for use and occupancy for their intended purposes in accordance with Applicable Law.

“Substantial Completion Date” means the date upon which Substantial Completion of the Ballpark Improvements Work occurs.

“Substantial Completion Deadline” means January ~~15~~29, 2020, as such date may be extended by (i) an Excusable City Delay Period or (ii) Section 5.2, each in accordance with the terms of this Agreement.

“Subtenant” means any Person in possession of any portion of the Ballpark pursuant to a Use Agreement.

“Team” means all rights, title and interest, including franchise rights, in the Single A Minor League Professional Baseball franchise as a member of the South Atlantic League interests in the League and NAPBL and known as of the Execution Date as the “Kannapolis Intimidators” baseball club.

“Team Facilities” has the meaning set forth in Section 6.1.

“Term” has the meaning set forth in Section 4.1.

“Transfer” has the meaning set forth in Section 12.1.

“Transfer of Majority Interest” means, with respect to Club or the Ownership Group, any direct or indirect transfer, sale or other transaction (or related transactions) that results in any Person (other than a current Control Person of Club or an entity in the Ownership Group, as applicable) becoming the beneficial owner, directly or indirectly, of fifty percent (50%) or more of the securities or interests having ordinary voting power for the election of managers, directors or other comparable Controlling body of Club.

“Use Agreement” means a use, license, concession, occupancy or other agreement for the use or occupancy of any designated space or designated facilities within the Ballpark for any Permitted Use (as defined in the Lease), but shall not include any of the foregoing for all or substantially all of the Ballpark or for a period greater than the “Initial Term” as defined in the Lease.

“Warm Vanilla Shell” means a commercial site with a minimally finished interior, with ceilings, lighting, plumbing, heating and cooling (HVAC), interior walls (painted), electrical outlets, rest rooms, and a subfloor ready for final improvements.

Rules as to Usage

The terms defined below have the meanings set forth below for all purposes, and such meanings are equally applicable to both the singular and plural forms of the terms defined.

(1) “Include”, “includes” and “including” shall be deemed to be followed by “, but not limited to,” whether or not they are in fact followed by such words or words of like import.

(2) “Writing”, “written” and comparable terms refer to printing, typing, and other means of reproducing in a visible form.

(3) Any agreement, instrument or Applicable Laws defined or referred to above means such agreement or instrument or Applicable Laws as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of Applicable Laws) by succession of comparable successor Applicable

Laws and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein.

(4) References to a Person are also to its permitted successors and assigns.

(5) Any term defined above by reference to any agreement, instrument or Applicable Laws has such meaning whether or not such agreement, instrument or Applicable Laws are in effect.

(6) “Hereof”, “herein”, “hereunder” and comparable terms refer, unless otherwise expressly indicated, to the entire agreement or instrument in which such terms are used and not to any particular article, section or other subdivision thereof or attachment thereto. References in an instrument to “Article”, “Section”, “Subsection” or another subdivision or to an attachment are, unless the context otherwise requires, to an article, section, subsection or subdivision of or an attachment to such agreement or instrument. All references to exhibits or appendices in any agreement or instrument that is governed by this Appendix are to exhibits or appendices attached to such instrument or agreement.

(7) Pronouns, whenever used in this Agreement and of whatever gender, shall include natural Persons, corporations, limited liability companies, partnerships and associations of every kind and character.

(8) References to any gender include, unless the context otherwise requires, references to all genders.

(9) The word “or” will have the inclusive meaning represented by the phrase “and/or”.

(10) “Shall” and “will” have equal force and effect.

(11) Unless otherwise specified, all references to a specific time of day shall be based upon Eastern Standard Time or Eastern Daylight Time, as applicable, on the date in question in Kannapolis, North Carolina.

(12) References to “\$” or to “dollars” shall mean the lawful currency of the United States of America.

(13) “Not to be unreasonably withheld” when used herein with respect to any Approval shall be deemed to be followed by “, conditioned or delayed” whether or not it is in fact followed by such words or words of like import.

**APPENDIX B
TO
DEVELOPMENT AGREEMENT**

Address for Notices

A. **CITY: CITY OF KANNAPOLIS, NORTH CAROLINA**

All notices to City shall be sent to:

City of Kannapolis
401 Laureate Way
Kannapolis, North Carolina 28081
Attention: City Manager

with copies of all notices to City relating to defaults, remedies or indemnification being sent to:

City of Kannapolis
401 Laureate Way
Kannapolis, North Carolina 28081
Attention: City Attorney

B. **CLUB: TEMERITY BASEBALL LLC**

All notices to Club shall be sent to:

with copies of all notices to Club relating to defaults, remedies or indemnification being sent to:

**EXHIBIT A
TO
DEVELOPMENT AGREEMENT**

Property Description

(Map Attached)

EXHIBIT B
TO
DEVELOPMENT AGREEMENT

Schedule of Financial/Repair/Maintenance/Replacement Responsibility

[NOTE: EXHIBIT B REMAINS OPEN AND UNDER REVIEW BY CLUB]

**EXHIBIT C
TO
DEVELOPMENT AGREEMENT**

Lease

**EXHIBIT C-1
TO
DEVELOPMENT AGREEMENT**

Municipal Service District Map

[Attached]

EXHIBIT D
TO
DEVELOPMENT AGREEMENT

Arbitration

In the event of any Dispute or Controversy among the Parties occurs under a provision of this Agreement which specifies resolution under this **Exhibit D**, such Dispute or Controversy shall be subject to final, binding arbitration in accordance with this **Exhibit D**. The Parties shall not take any action permitted hereunder prior to the date that such Qualified Arbitrator (as herein defined) shall render a decision and City and Club shall each be bound by any such Qualified Arbitrator's decision.

If such technique, timetable or completion date is not agreed upon within thirty (30) days after the notice of the Dispute or Controversy was first delivered, or if no resolution is obtained through such alternative technique, or if no meeting between the Representatives or the City Manager of the City and the Representatives takes place within the sixty (60)-day period following delivery of the initial notice, the Parties shall submit the matter to the Charlotte, North Carolina Regional Office of the American Arbitration Association ("**AAA**") and request AAA to select one person to act as the arbitrator for resolution of this dispute (the "**Qualified Arbitrator**"). The Qualified Arbitrator shall be a qualified and independent person with a minimum of ten (10) years of professional experience in the construction of similar municipal projects and with expertise in the specialty required for understanding and resolving the specific Dispute or Controversy in question.

Within five (5) days after the appointment of the Qualified Arbitrator, each party shall simultaneously submit to the Qualified Arbitrator and exchange with each other (within two (2) hours of such submittal) its respective last, best proposal for resolution of the dispute. The arbitration shall be limited to the sole question of determining which of the two (2) written proposals is to be accepted. The Qualified Arbitrator shall have no authority to compromise between the proposals. The Qualified Arbitrator shall conduct the arbitration proceeding in a mutually agreeable location in Charlotte, North Carolina, and the Qualified Arbitrator shall select to be the single binding decision, one of the two submitted proposals, within five (5) business days after the completion of the arbitration proceeding. The Qualified Arbitrator may not limit, expand or modify the terms of this provision nor award damages in excess of damage limitations contained in the Agreement, and each party waives any claim to such excess damages. The arbitrator will excise from the winning proposal any term that limits, expands or modifies the terms of the Agreement or awards damages in excess of damage limitations contained in the Agreement. The Parties shall share equally in the cost of the Qualified Arbitrator's fees and expenses.

If a party to a dispute fails to appear at any properly noticed arbitration proceeding under this **Exhibit D**, an award may be entered against such party notwithstanding such failure to appear. The arbitration proceeding shall be conducted in as expedited a manner as is then permitted by the AAA commercial arbitration rules (formal or informal). Both the foregoing agreement of the parties to arbitrate any and all such disputes, claims and controversies, and the results,

determinations, findings, judgments and/or awards rendered through any such arbitration shall be final and binding on the parties and may be specifically enforced by legal proceedings in any court of competent jurisdiction.

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Ballpark Perimeter and Acreage



| | EXHIBIT B | | | | |
|-----|---|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| I. | STRUCTURE | | | | |
| 1 | Structural steel/ metal/ concrete/ masonry components | City | City | Cap Ex | City |
| 2 | Roofs | City | City | Cap Ex | City |
| 3 | Sealants/ Caulking/ Waterproofing | City | City | Cap Ex | City |
| 4 | Window and Doors | City | City | Cap Ex | Team |
| 5 | Roads/Concourse Concrete/Walkways | City | City | Cap Ex | City |
| 6 | Casework/ Carpentry/ Millwork/ Cabinetry | City | City | Cap Ex | Team |
| 7 | Drywall/Paint/Wallcovering | City | City | Cap Ex | Team |
| 8 | Flooring | City | City | Cap Ex | Team |
| 9 | Fixed Armchairs/Seating | City | City | Cap Ex | Team |
| | | | | | |
| II. | BALLPARK SYSTEMS | | | | |
| 1 | Plumbing/Fire Sprinkler System | City | City | Cap Ex | Team |
| 2 | Electrical | City | City | Cap Ex | Team |
| 3 | HVAC | City | City | Cap Ex | Team |
| 4 | Fire Monitoring System | City | City | Cap Ex | Team |
| 5 | Landscaping and Irrigation | City | City | Cap Ex | City |
| 6 | Generator | City | City | Cap Ex | Team |
| 7 | Lighting (excludes field lighting) | City | City | Cap Ex | Team |
| 8 | Emergency Lighting | City | City | Cap Ex | Team |
| 9 | Elevators | City | City | Cap Ex | Team |
| 10 | Other electronic signage | City | City | Team | Team |
| 11 | Ballpark Dedicated Parking | City | City | City | City |
| 12 | Concourse Snow Removal | N/A | N/A | N/A | City |
| 13 | General Cleaning, Trash Removal, Recycling | N/A | N/A | N/A | Team |
| 14 | Door, Floor, Wall and Window Cleaning | N/A | N/A | N/A | Team |
| 15 | Annual Systems Inspections and Service Agreements ¹ | N/A | N/A | N/A | Team |

| | EXHIBIT B | | | | |
|------|--|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| | | | | | |
| III. | PLAYING FIELD | | | | |
| 1 | Preparation for games | N/A | N/A | N/A | Team |
| 2 | Grass cutting | N/A | N/A | N/A | Team |
| 3 | Field Sod | City | City | Cap Ex | Team |
| 4 | Field drainage system | City | City | Cap Ex | Team |
| 5 | Field irrigation system | City | City | Cap Ex | Team |
| 6 | Foul ball screen, backstop, foul poles | City | City | Cap Ex | Team |
| 7 | Outfield fence | City | City | Cap Ex | Team |
| 8 | Field sports lighting | City | City | Cap Ex | Team |
| 9 | Field Tarp | Team | Team | Team | Team |
| 10 | Batters Eye | City | City | Cap Ex | Team |
| | | | | | |
| IV. | FURNITURE / SEATING | | | | |
| A. | LOOSE FURNITURE | | | | |
| 1 | Executive Desks | Team | Team | Team | Team |
| 2 | Staff Desks | Team | Team | Team | Team |
| 3 | Reception Desk | Team | Team | Team | Team |
| 4 | Metal Maintenance Desks | Team | Team | Team | Team |
| 5 | Staff Desk Chairs | Team | Team | Team | Team |
| 6 | Executive Chairs | Team | Team | Team | Team |
| 7 | Locker Room Padded Chairs W/Logo | Team | Team | Team | Team |
| 8 | Locker Room Padded Chairs No Logo | Team | Team | Team | Team |
| 9 | Cork Board | Team | Team | Team | Team |
| 10 | Shelving (Office & Storage) | Team | Team | Team | Team |
| 11 | Desk Trash Cans | Team | Team | Team | Team |
| 12 | Tall Office Trash Cans | Team | Team | Team | Team |
| 13 | Tall Safe | Team | Team | Team | Team |
| 14 | Tall Lockable Supply Cabinet | Team | Team | Team | Team |
| 15 | Short Storage Cabinets | Team | Team | Team | Team |
| 16 | Ticket Window Chairs | Team | Team | Team | Team |
| 17 | Bookshelves | Team | Team | Team | Team |
| 18 | Sitting Chairs | Team | Team | Team | Team |
| 19 | Conference Table | Team | Team | Team | Team |

| | EXHIBIT B | | | | |
|----|--|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| 20 | Conference Chairs | Team | Team | Team | Team |
| 21 | End Tables | Team | Team | Team | Team |
| 22 | Large Filing Cabinet | Team | Team | Team | Team |
| 23 | Small Filing Cabinet | Team | Team | Team | Team |
| 24 | Mailbox Wall | Team | Team | Team | Team |
| 25 | Display Cases (Labor Law, Etc) | Team | Team | Team | Team |
| 26 | Small Meeting Table | Team | Team | Team | Team |
| 27 | L-Shape Work Stations | Team | Team | Team | Team |
| 28 | Large Office Dry Erase Boads | Team | Team | Team | Team |
| 29 | Regular Dry Erase Boards | Team | Team | Team | Team |
| 30 | Restroom Wall Cabinet | Team | Team | Team | Team |
| 31 | Logo Wall Clocks | Team | Team | Team | Team |
| 32 | 6' Folding Tables | Team | Team | Team | Team |
| 33 | Wardrobe/Storage Combo | Team | Team | Team | Team |
| 34 | Blue Print Wall Racks | Team | Team | Team | Team |
| 35 | Towel Hooks | Team | Team | Team | Team |
| 36 | Club Style Couches (Suites and Club) | Team | Team | Team | Team |
| 37 | Coffee Table (Suites and Club) | Team | Team | Team | Team |
| 38 | Club Chairs (Suites and Club) | Team | Team | Team | Team |
| 39 | Tall Chairs At Club Windows | Team | Team | Team | Team |
| 40 | Tall Club Trash Cans (Suites and Club) | Team | Team | Team | Team |
| 41 | Tall Cocktail Table for Club | Team | Team | Team | Team |
| 42 | 8-Top Folding Banquet Tables | Team | Team | Team | Team |
| 43 | Folding Banquet Chairs | Team | Team | Team | Team |
| 44 | Art & Graphics for Club | Team | Team | Team | Team |
| | | | | | |
| B. | WINDOW COVERINGS / SHADES / BLINDS | | | | |
| 1 | Visitor Clubhouse | City | City | City | Team |
| 2 | Entry Lobbies & Corridors | City | City | City | Team |
| 3 | Home Clubhouse | City | City | City | Team |
| 4 | Ticket Office | City | City | City | Team |
| 5 | Suites | City | City | City | Team |

| | EXHIBIT B | | | | |
|----|---|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| 6 | Press Box | City | City | City | Team |
| 7 | Administrative Offices | City | City | City | Team |
| 8 | Premium Club | City | City | City | Team |
| | | | | | |
| C. | SPECTATOR SEATING (Non-Fixed/Exterior) | | | | |
| 1 | Folding Chairs | City | City | Cap Ex | Team |
| 2 | Right Field Box: High Top Metal Tables | City | City | Cap Ex | Team |
| 3 | Right Field Box: High Top Metal Chairs | City | City | Cap Ex | Team |
| 4 | Left Field Picnic Tables | City | City | Cap Ex | Team |
| 5 | Party Deck High Top Metal Tables | City | City | Cap Ex | Team |
| 6 | Party Deck High Top Metal Chairs | City | City | Cap Ex | Team |
| 7 | Loge Box Metal Chairs (mix of high and low) | City | City | Cap Ex | Team |
| 8 | Outdoor Bar Seats | City | City | Cap Ex | Team |
| 9 | Site Furnishings (benches, trash cans, bike racks). Outside the facility fence. | City | City | Cap Ex | Team |
| 10 | Site furnishings (inside facility fence) | City | City | Cap Ex | Team |
| 11 | Outside Cigarette Urns | City | City | Cap Ex | Team |
| 12 | Rocking Chairs | Team | Team | Team | Team |
| 13 | Wicker Chairs | Team | Team | Team | Team |
| 14 | Wicker Couches | Team | Team | Team | Team |
| 15 | Wicker Tables | Team | Team | Team | Team |
| 16 | String/Patio Lighting | Team | Team | Team | Team |
| 17 | Space Heaters | Team | Team | Team | Team |
| 18 | Rolling Plant Dividers | Team | Team | Team | Team |
| 19 | Small Ceiling Fans | Team | Team | Team | Team |
| 20 | Concourse Ceiling Fans | City | City | Cap Ex | Team |

| | EXHIBIT B | | | | |
|-----|---|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| | | | | | |
| V. | SIGNAGE & ARTWORK | | | | |
| A. | SIGNAGE | | | | |
| 1 | Advertising Panels, Banners, Fixed Marketing Signage & Graphics | Team | Team | Team | Team |
| 2 | Wayfinding & Code Required Signage | City | City | Cap Ex | Team |
| 3 | Flagpoles | City | City | Cap Ex | Team |
| 4 | Flags | Team | Team | Team | Team |
| 5 | Naming Rights / Marquee Signage | City | City | Cap Ex | Team |
| | | | | | |
| B. | ARTWORK | | | | |
| 1 | Wall Mounted, Hung or Painted Artwork/Photos | Team | Team | Team | Team |
| 2 | Public Artwork (typically ground mounted, free standing) | City | City | City | City |
| | | | | | |
| VI. | FOOD SERVICE / MERCHANDISE / APPLIANCES | | | | |
| A. | FOOD SERVICE EQUIPMENT | | | | |
| 1 | Shelving Unit | City | Team | Team | Team |
| 2 | Walk-In Cooler | City | Team | Cap Ex | Team |
| 3 | Walk-In Cooler Evaporator Coil | City | Team | Cap Ex | Team |
| 6 | Shelving Unit | City | Team | Team | Team |
| 7 | Walk-In Freezer | City | Team | Cap Ex | Team |
| 8 | Walk-In Freezer Evaporator Coil | City | Team | Cap Ex | Team |
| 11 | Shelving Unit | City | Team | Team | Team |
| 12 | Dunnage Rack | City | Team | Team | Team |
| 13 | Walk-In Beer Cooler | City | Team | Cap Ex | Team |
| 14 | Walk-In Beer Evaporator Coil | City | Team | Cap Ex | Team |
| 16 | Beer Keg Rack | City | Team | Cap Ex | Team |
| 17 | Dunnage Rack | City | Team | Team | Team |
| 18 | Remote Refrigeration | City | Team | Cap Ex | Team |
| 21 | Beer System | City | Team | Cap Ex | Team |
| 22 | Bag'n Box Soda System | City | Team | Team | Team |

| | EXHIBIT B | | | | |
|-----|---------------------------------|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| 23 | Co2 Tanks | City | Team | Team | Team |
| 24 | Reach-In Refrigerator | City | Team | Team | Team |
| 26 | Reach-In Freezer | City | Team | Team | Team |
| 27 | Three Compartment Sink | City | Team | Cap Ex | Team |
| 28 | Wall Shelf | City | Team | Cap Ex | Team |
| 31 | Ice Maker | City | Team | Cap Ex | Team |
| 32 | Ice Bin | City | Team | Cap Ex | Team |
| 33 | Water Filter | City | Team | Team | Team |
| 34 | Hand Sink | City | Team | Team | Team |
| 36 | Mop Sink Cabinet | City | Team | Team | Team |
| 37 | Work Table W/Dump Sink | City | Team | Team | Team |
| 38 | Htd. Sandwich Slide | City | Team | Team | Team |
| 41 | Fire Supression System | City | Team | Cap Ex | Team |
| 42 | Exhaust Hood | City | Team | Cap Ex | Team |
| 43 | Char Broiler | City | Team | Team | Team |
| 44 | Flat Top Griddle | City | Team | Team | Team |
| 46 | Fryer Battery | City | Team | Cap Ex | Team |
| 46 | Rerigerated Base Stand | City | Team | Team | Team |
| 47 | Dump Station W/ Heat Lamp | City | Team | Team | Team |
| 48 | Htd. Sandwich Slide | City | Team | team | Team |
| 51 | Work Table | City | Team | Team | Team |
| 52 | Beverage Cooler | City | Team | Team | Team |
| 53 | Concession Back Counter | City | Team | Cap Ex | Team |
| 54 | Popcorn Machine | City | Team | Team | Team |
| 56 | Concession Back Counter | City | Team | Cap Ex | Team |
| 57 | Concession Front Counter | City | Team | Cap Ex | Team |
| 58 | Cup Holder | City | Team | Cap Ex | Team |
| 61 | Hand Sink | City | Team | Cap Ex | Team |
| 62 | Pos Station | City | Team | Team | Team |
| 64 | Soda And Ice Dispenser | City | Team | Team | Team |
| 66 | Beer Dispensing Head | City | Team | Cap Ex | Team |
| 101 | Walk-In Freezer | City | Team | Cap Ex | Team |
| 102 | Walk-In Freezer Evaporator Coil | City | Team | Cap Ex | Team |
| 103 | Pallet | City | Team | Team | Team |

| | EXHIBIT B | | | | |
|-----|--------------------------------|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| 104 | Two Tier Pallet Rack | City | Team | Team | Team |
| 107 | Walk-In Cooler | City | Team | Cap Ex | Team |
| 108 | Walk-In Cooler Evaporator Coil | City | Team | Cap Ex | Team |
| 111 | Pallet | City | Team | Team | Team |
| 112 | Two Tier Pallet Rack | City | Team | Team | Team |
| 113 | Shelving Unit | City | Team | Team | Team |
| 114 | Remote Refrigeration | City | Team | Cap Ex | Team |
| 116 | Drying Rack | City | Team | Team | Team |
| 117 | Three Compartment Sink | City | Team | Cap Ex | Team |
| 118 | Hand Sink | City | Team | Cap Ex | Team |
| 121 | Prep Table With Sink | City | Team | Cap Ex | Team |
| 122 | Pot Filler | City | Team | Team | Team |
| 123 | 60 Qt. Floor Mixer | City | Team | Cap Ex | Team |
| 124 | Prep Table With Sinks | City | Team | Cap Ex | Team |
| 126 | Food Processor | City | Team | Team | Team |
| 127 | Heated Transport Cart | City | Team | Cap Ex | Team |
| 128 | Hand Sink | City | Team | Cap Ex | Team |
| 131 | Mixer Stand | City | Team | Team | Team |
| 132 | 20 Qt. Mixer | City | Team | Team | Team |
| 133 | Mobile Work Table | City | Team | Team | Team |
| 134 | Slicer Stand | City | Team | Team | Team |
| 136 | Food Slicer | City | Team | Team | Team |
| 137 | Exhaust Hood | City | Team | Cap Ex | Team |
| 141 | Anti-Splash Floor Trough | City | Team | Cap Ex | Team |
| 142 | 60 Gal. Tilt Kettle | City | Team | Cap Ex | Team |
| 143 | 40 Gal. Tilt Skillet | City | Team | Cap Ex | Team |
| 144 | Double Combi Oven | City | Team | Cap Ex | Team |
| 146 | Water Filter | City | Team | Team | Team |
| 147 | Double Convection Oven | City | Team | Cap Ex | Team |
| 148 | Reach-In Refrigerator | City | Team | Team | Team |
| 151 | Exhaust Hood | City | Team | Cap Ex | Team |
| 152 | Fire Supression System | City | Team | Cap Ex | Team |
| 153 | Six Burner Range | City | Team | Cap Ex | Team |
| 154 | Char Broiler | City | Team | Team | Team |

| | EXHIBIT B | | | | |
|-----|----------------------------------|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| 156 | Rerigerated Base Stand | City | Team | Team | Team |
| 157 | Flat Top Griddle | City | Team | Team | Team |
| 158 | Fryer Battery | City | Team | Cap Ex | Team |
| 161 | Dump Station W/ Heat Lamp | City | Team | Team | Team |
| 162 | Reach-In Freezer | City | Team | Team | Team |
| 163 | Hand Sink | City | Team | Cap Ex | Team |
| 164 | Chef's Counter | City | Team | Cap Ex | Team |
| 166 | Two Tier Overshelf | City | Team | Cap Ex | Team |
| 167 | Heat Lamp | City | Team | Cap Ex | Team |
| 168 | Sandwich/Salad Prep Refrigerator | City | Team | Team | Team |
| 171 | Hot Food Wells (Halo Heat) | City | Team | Team | Team |
| 172 | Plate Shelf/Pickup Area | City | Team | Cap Ex | Team |
| 173 | Dump/Prep Sink | City | Team | Cap Ex | Team |
| 201 | Pallet | City | Team | Team | Team |
| 202 | Two Tier Pallet Rack | City | Team | Team | Team |
| 203 | Shelving Unit | City | Team | Team | Team |
| 204 | Mop Sink Cabinet | City | Team | Team | Team |
| 206 | Reach-In Freezer | City | Team | Team | Team |
| 207 | Ice Maker | City | Team | Team | Team |
| 208 | Ice Bin | City | Team | Team | Team |
| 211 | Water Filter | City | Team | Team | Team |
| 212 | Three Compartment Sink | City | Team | Cap Ex | Team |
| 213 | Wall Shelf | City | Team | Team | Team |
| 214 | Walk-In Beer Cooler | City | Team | Cap Ex | Team |
| 216 | Walk-In Beer Evaporator Coil | City | Team | Cap Ex | Team |
| 217 | Remote Refrigeration | City | Team | Cap Ex | Team |
| 218 | Dunnage Rack | City | Team | Team | Team |
| 221 | Beer Keg Rack | City | Team | Cap Ex | Team |
| 222 | Beer System | City | Team | Cap Ex | Team |
| 223 | Bag'n Box Soda System | City | Team | Team | Team |
| 224 | Co2 Tanks | City | Team | Team | Team |
| 226 | Prep/Dump Sink | City | Team | Cap Ex | Team |
| 227 | Htd. Sandwich Slide | City | Team | Team | Team |
| 228 | Work Table | City | Team | Team | Team |

| | EXHIBIT B | | | | |
|-----|----------------------------------|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| 231 | Pizza Prep Refrigerator | City | Team | Team | Team |
| 232 | Equipment Stand | City | Team | Team | Team |
| 233 | Double Batch Ventless Pizza Oven | City | Team | Team | Team |
| 234 | Reach-In Refrigerator | City | Team | Team | Team |
| 236 | Half Size Combi Oven (Ventless) | City | Team | Team | Team |
| 237 | Ventless Hood | City | Team | Team | Team |
| 238 | Water Filter | City | Team | Team | Team |
| 241 | Equipment Stand | City | Team | Team | Team |
| 242 | Htd. Sandwich Slide | City | Team | Team | Team |
| 243 | Work Table | City | Team | Team | Team |
| 244 | Hand Sink | City | Team | Cap Ex | Team |
| 246 | Beverage Cooler | City | Team | Team | Team |
| 247 | Concession Back Counter | City | Team | Cap Ex | Team |
| 248 | Popcorn Machine | City | Team | Team | Team |
| 251 | Concession Back Counter | City | Team | Cap Ex | Team |
| 252 | Drop-In Hand Sink | City | Team | Cap Ex | Team |
| 253 | Hand Sink | City | Team | Cap Ex | Team |
| 254 | Pos Station | City | Team | Team | Team |
| 256 | Beer Dispensing Head | City | Team | Cap Ex | Team |
| 257 | Soda And Ice Dispenser | City | Team | Team | Team |
| 258 | Cup Holder | City | Team | Cap Ex | Team |
| 261 | Concession Front Counter | City | Team | Cap Ex | Team |
| 271 | Hand Sink | City | Team | Cap Ex | Team |
| 272 | Pos Station | City | Team | Team | Team |
| 273 | Front Counter | City | Team | Cap Ex | Team |
| 278 | Reach-In Refrigerator | City | Team | Team | Team |
| 281 | Heated Transport Cart | City | Team | Team | Team |
| 301 | Portable Pos Counter | City | Team | Team | Team |
| 302 | Pos Station | City | Team | Team | Team |
| 303 | Shelving Unit | City | Team | Cap Ex | Team |
| 304 | Drain Trough | City | Team | Cap Ex | Team |
| 305 | Cabinet With Storage | City | Team | Team | Team |
| 308 | Dunnage Rack | City | Team | Team | Team |
| 311 | Hand Sink | City | Team | Cap Ex | Team |

| | EXHIBIT B | | | | |
|------|------------------------------|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| 312 | Co2 Tanks | City | Team | Team | Team |
| 313 | Walk-In Beer Cooler | City | Team | Cap Ex | Team |
| 314 | Walk-In Beer Evaporator Coil | City | Team | Cap Ex | Team |
| 316 | Remote Refrigeration | City | Team | Cap Ex | Team |
| 318 | Desk | City | Team | Team | Team |
| 401 | Bar Counter | City | Team | Cap Ex | Team |
| 402 | Bar Die | City | Team | Cap Ex | Team |
| 403 | Hand Sink | City | Team | Cap Ex | Team |
| 404 | Blender Station | City | Team | Team | Team |
| 406 | Bar Blender | City | Team | Team | Team |
| 407 | Cocktail Station | City | Team | Team | Team |
| 408 | Single Speed Rail | City | Team | Team | Team |
| 411 | Soda Gun Module | City | Team | Team | Team |
| 412 | Trash Module | City | Team | Team | Team |
| 413 | Pos Cabinet | City | Team | Cap Ex | Team |
| 414 | Pos Station | City | Team | Team | Team |
| 416 | Bottle Cooler | City | Team | Team | Team |
| 418 | Four Compartment Sink | City | Team | Cap Ex | Team |
| 422 | Corner Drainboard | City | Team | Team | Team |
| 423 | Keg Refrigerator | City | Team | Team | Team |
| 424 | Beer Dispenser | City | Team | Team | Team |
| 425 | Water Heater | City | Team | Team | Team |
| 426 | Underbar Cabinet | City | Team | Cap Ex | Team |
| 427 | Bag'n Box Soda System | City | Team | Team | Team |
| 428 | Underbar Cabinet | City | Team | Cap Ex | Team |
| 1001 | Heated Transport Cart | City | Team | Team | Team |
| 1002 | Ice Maker | City | Team | Team | Team |
| 1003 | Ice Bin | City | Team | Team | Team |
| 1004 | Water Filter | City | Team | Team | Team |
| 1007 | Shelving Unit | City | Team | Team | Team |
| 1008 | Mop Sink Cabinet | City | Team | Team | Team |
| 1012 | Three Compartment Sink | City | Team | Cap Ex | Team |
| 1013 | Wall Shelf | City | Team | Team | Team |
| 1014 | Hand Sink | City | Team | Cap Ex | Team |

| | EXHIBIT B | | | | |
|------|--------------------------------------|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| 1016 | Mobile Work Table | City | Team | Team | Team |
| 1018 | Beverage Counter With Sink | City | Team | Cap Ex | Team |
| 1021 | Coffee Brewer | City | Team | Team | Team |
| 1022 | Walk-In Cooler | City | Team | Cap Ex | Team |
| 1023 | Walk-In Cooler Evaporator Coil | City | Team | Cap Ex | Team |
| 1024 | Shelving Unit | City | Team | Team | Team |
| 1026 | Sheet Pan Rack | City | Team | Team | Team |
| 1027 | Security Cabinet | City | Team | Team | Team |
| 1031 | Bag'n Box Soda System | City | Team | Team | Team |
| 1032 | Co2 Tanks | City | Team | Team | Team |
| 1037 | Dunnage Rack | City | Team | Team | Team |
| 1041 | Remote Refrigeration | City | Team | Cap Ex | Team |
| 1101 | Bar Counter (42" High) | City | Team | Cap Ex | Team |
| 1102 | Bar Die | City | Team | Cap Ex | Team |
| 1103 | Hand Sink | City | Team | Cap Ex | Team |
| 1104 | Blender Station | City | Team | Team | Team |
| 1106 | Bar Blender | City | Team | Team | Team |
| 1107 | Soda Gun Module | City | Team | Team | Team |
| 1108 | Cocktail Station | City | Team | Team | Team |
| 1111 | Single Speed Rail | City | Team | Team | Team |
| 1112 | Trash Module | City | Team | Team | Team |
| 1114 | Beer Bottle Cooler | City | Team | Team | Team |
| 1116 | Underbar Dry Storage | City | Team | Team | Team |
| 1117 | Three Compartment Sink | City | Team | Cap Ex | Team |
| 1118 | Pos Station | City | Team | Cap Ex | Team |
| 1121 | Back Bar Cooler | City | Team | Cap Ex | Team |
| 1122 | Back Bar Cooler | City | Team | Cap Ex | Team |
| 1123 | Back Bar Counter (42" High) | City | Team | Cap Ex | Team |
| 1124 | Delivery and Set in Place | City | Team | N/A | N/A |
| 1200 | Portable Food & Beverage Carts | City | Team | Team | Team |
| 1202 | Portable Hot Boxes | City | Team | Team | Team |
| 1203 | Condiment Carts | City | Team | Team | Team |
| 1204 | Smallwares (utensils, glasses, etc.) | City | Team | Team | Team |
| 1205 | Menu Boards | City | Team | Cap Ex | Team |

| | EXHIBIT B | | | | |
|------|------------------------------------|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| 1206 | Grease Trap (1) 20,000 gallon tank | City | City | Cap Ex | Team |
| 1207 | Equipment Cleaning and Maintenance | N/A | N/A | N/A | Team |
| | | | | | |
| B. | MERCHANDISE EQUIPMENT | | | | |
| 1 | Tensa-Barriers | Team | Team | Team | Team |
| 2 | Storage Shelving | Team | Team | Team | Team |
| 3 | Branding Signage | Team | Team | Team | Team |
| 4 | Slatwall | Team | Team | Team | Team |
| 5 | Pedestal | Team | Team | Team | Team |
| 6 | Large Display Case | Team | Team | Team | Team |
| 7 | Medium Display Case | Team | Team | Team | Team |
| 8 | Multi-use deep basket (Ctn Of 6) | Team | Team | Team | Team |
| 9 | Hangers, Shelves, Etc. | Team | Team | Team | Team |
| 10 | Cap Holder Tower | Team | Team | Team | Team |
| 11 | Cap Shelf | Team | Team | Team | Team |
| 12 | Gridwall Cap Holder(Ctn Of 6)Blk | Team | Team | Team | Team |
| 13 | Sales Rolling Rack | Team | Team | Team | Team |
| 14 | Clothing Display Racks | Team | Team | Team | Team |
| 15 | Mannequins | Team | Team | Team | Team |
| 16 | Regular Fabric Tagging Tool | Team | Team | Team | Team |
| 17 | Replacement Needle Set | Team | Team | Team | Team |
| 18 | Rectangular Size Markers | Team | Team | Team | Team |
| 19 | 17" Adult Clear Hangars (100ea.) | Team | Team | Team | Team |
| 20 | Cash-Out Counter | Team | Team | Team | Team |
| 21 | 8' Step Ladder | Team | Team | Team | Team |
| 22 | 3 Full Length Mirrors | Team | Team | Team | Team |
| | | | | | |
| C. | MATERIAL HANDLING EQUIPMENT | | | | |
| 1 | Food Service Handling Equipment | Team | Team | Team | Team |
| 2 | Merchandise Handling Equipment | Team | Team | Team | Team |
| | | | | | |

| | EXHIBIT B | | | | |
|------|---|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| D. | RESIDENTIAL APPLIANCES (ice makers, coffee makers, microwaves, small & full-size refrigerators, stove/ovens) | | | | |
| 1 | Field Maintenance Locker | Team | Team | Team | Team |
| 2 | Visitor Clubhouse | Team | Team | Team | Team |
| 3 | Umpire Locker | Team | Team | Team | Team |
| 4 | Home Clubhouse | Team | Team | Team | Team |
| 5 | First Aid | Team | Team | Team | Team |
| 6 | Ticket Office | Team | Team | Team | Team |
| 7 | Suites | Team | Team | Team | Team |
| 8 | Press Box | Team | Team | Team | Team |
| 9 | Premium Club | Team | Team | Team | Team |
| 10 | Administrative Offices | Team | Team | Team | Team |
| | | | | | |
| VII. | GAME DAY OPERATIONS/ACCESS CONTROL | | | | |
| A. | CROWD CONTROL EQUIPMENT | | | | |
| 1 | Crowd Control Barriers (Bike Racks) | Team | Team | Team | Team |
| 2 | Walk-thru Metal Detectors (w/ power) | Team | Team | Team | Team |
| 3 | Wand Metal Detectors | Team | Team | Team | Team |
| 4 | Tensa-Barriers | Team | Team | Team | Team |
| 5 | 2-way Radios / Chargers | Team | Team | Team | Team |
| 6 | Camera for Incident Documentation | Team | Team | Team | Team |
| 7 | Bullhorns | Team | Team | Team | Team |
| 8 | Golf Carts | Team | Team | Team | Team |
| | | | | | |
| B. | PLAYGROUND EQUIPMENT | | | | |
| 1 | Playground Equipment/Splashpad | City | City | Cap Ex | City |
| | | | | | |
| C. | | | | | |

| | EXHIBIT B | | | | |
|----|---------------------------------------|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| | This section intentionally left blank | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| D. | BANQUET EVENT EQUIPMENT | | | | |
| 1 | Movable folding chair carts | Team | Team | Team | Team |
| 2 | Pipe and drape | Team | Team | Team | Team |
| 3 | Table skirting | Team | Team | Team | Team |
| 4 | Carpet sections | Team | Team | Team | Team |
| 5 | Portable press conference lighting | Team | Team | Team | Team |
| 6 | Photographer's ladder | Team | Team | Team | Team |
| 7 | Portable sound system | Team | Team | Team | Team |
| 8 | Portable video projector | Team | Team | Team | Team |
| 9 | Portable projection screen | Team | Team | Team | Team |
| 10 | Portable podium | Team | Team | Team | Team |
| 11 | Portable platform | Team | Team | Team | Team |
| 12 | Portable dance floor | Team | Team | Team | Team |
| 13 | Storage Shelving | Team | Team | Team | Team |
| | | | | | |
| E. | SAFETY / FIRST AID EQUIPMENT | | | | |
| 1 | Fire Extinguishers | City | City | City | Team |
| 2 | Eye Wash Stations | City | City | Cap Ex | Team |
| 3 | Wheel Chairs | Team | Team | Team | Team |
| 4 | Heavy Duty Transport Stretcher | Team | Team | Team | Team |
| 5 | Small Equipment and Supplies | Team | Team | Team | Team |
| 6 | Medical Golf Cart | Team | Team | Team | Team |
| 7 | Portable Medtronic LifePak AEDs | Team | Team | Team | Team |
| 8 | Blood-born Pathogen Containers | Team | Team | Team | Team |
| 9 | Back Boards w/ neck brace | Team | Team | Team | Team |
| 10 | Beds | Team | Team | Team | Team |
| 11 | Curtain System | Team | Team | Team | Team |

| | EXHIBIT B | | | | |
|-------|---|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| 12 | Portable Fans | Team | Team | Team | Team |
| 13 | Plastic Water Coolers (Gatorade-type) | Team | Team | Team | Team |
| 14 | Epi-Pens - Adult | Team | Team | Team | Team |
| 15 | Epi-Pens - Pediatric | Team | Team | Team | Team |
| 16 | Oxygen Regulator | Team | Team | Team | Team |
| 17 | Oxygen Cylinder - Aluminum | Team | Team | Team | Team |
| 18 | Jump/Oxygen Bag | Team | Team | Team | Team |
| 19 | Sharps Container w/ wall mount | Team | Team | Team | Team |
| 20 | Personnel Vest | Team | Team | Team | Team |
| 21 | Basket Stretcher | Team | Team | Team | Team |
| 22 | Rechargeable Lantern | Team | Team | Team | Team |
| 23 | Suction | Team | Team | Team | Team |
| 24 | Stairchair | Team | Team | Team | Team |
| 25 | Cervical Collar - Adult & Pediatric | Team | Team | Team | Team |
| 26 | Restraint Straps | Team | Team | Team | Team |
| 27 | Tool Cart (EMS Supplies) | Team | Team | Team | Team |
| | | | | | |
| VIII. | BUILDING OPERATIONS | | | | |
| A. | JANITORIAL EQUIPMENT | | | | |
| 1 | Cleaning Equipment (scrubbers, etc.) | Team | Team | Team | Team |
| 2 | Cleaning Tools (mops, brooms, etc.) | Team | Team | Team | Team |
| 3 | Storage Shelving | Team | Team | Team | Team |
| 4 | Cleaning Supplies | Team | Team | Team | Team |
| 5 | Walk-off Mats | Team | Team | Team | Team |
| 6 | Trash / Recycling Containers (Small) | Team | Team | Team | Team |
| 7 | Trash / Recycling Containers (Large - one cubic yard) | Team | Team | Team | Team |
| 8 | Trash Compactor / Dumpster | Team | Team | Team | Team |
| 9 | Recycling Compactor / Dumpster | Team | Team | Team | Team |
| 10 | Cardboard Bailer | Team | Team | Team | Team |

| | EXHIBIT B | | | | |
|-----------|---|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| 11 | Rolling Cleaning Supply Carts | Team | Team | Team | Team |
| 12 | Vaccum Cleaners | Team | Team | Team | Team |
| 13 | Steam Vaccum | Team | Team | Team | Team |
| 14 | Mop Buckets | Team | Team | Team | Team |
| 15 | Mops | Team | Team | Team | Team |
| 16 | Mop Heads | Team | Team | Team | Team |
| 17 | Broom/Dust Pan Sets | Team | Team | Team | Team |
| 18 | Push Brooms | Team | Team | Team | Team |
| 19 | Waste Receptacles (32 Gallon) | Team | Team | Team | Team |
| | | | | | |
| B. | TOILET ROOM EQUIPMENT | | | | |
| 1 | Toilet Partitions | City | City | Cap Ex | Team |
| 2 | Toilet Accessories | City | City | Team | Team |
| 3 | Deodorizer Systems | Team | Team | Team | Team |
| 4 | Baby Changing Stations | City | City | Team | Team |
| | | | | | |
| C. | BUILDING MAINTENANCE EQUIPMENT | | | | |
| 1 | Equipment (work carts, lifts, etc.) | Team | Team | Team | Team |
| 2 | Shop Buildout | Team | Team | Team | Team |
| 3 | Tools (large) | Team | Team | Team | Team |
| 4 | Tools (small) | Team | Team | Team | Team |
| 5 | Storage Shelving | Team | Team | Team | Team |
| 6 | Metal Fuel Storage Cabinet | Team | Team | Team | Team |
| 7 | Self propelled mower | Team | Team | Team | Team |
| 8 | Gas grass trimmer | Team | Team | Team | Team |
| 9 | Power her | Team | Team | Team | Team |
| 10 | Power her rotating nozzle | Team | Team | Team | Team |
| 11 | Hoses | Team | Team | Team | Team |

| | EXHIBIT B | | | | |
|-----------|--|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| 12 | Nozzles for Hoses | Team | Team | Team | Team |
| 13 | Wrenches | Team | Team | Team | Team |
| 14 | Socket Set | Team | Team | Team | Team |
| 15 | Vise | Team | Team | Team | Team |
| 16 | Pipe wrench | Team | Team | Team | Team |
| 17 | Plumbing wrenches | Team | Team | Team | Team |
| 18 | Tool Chest | Team | Team | Team | Team |
| 19 | Drill electric 3/4" hd | Team | Team | Team | Team |
| 20 | Drill cordless 18v | Team | Team | Team | Team |
| 21 | 1/2" electric drill | Team | Team | Team | Team |
| 22 | Drill set /ss bits | Team | Team | Team | Team |
| 23 | Misc wood bits/screw bits | Team | Team | Team | Team |
| 24 | Drill Wood Bit set | Team | Team | Team | Team |
| 25 | Jigsaw and blade set | Team | Team | Team | Team |
| 26 | Workbench and storage benches | Team | Team | Team | Team |
| 27 | Storage Cabinets | Team | Team | Team | Team |
| 28 | Paint/plumbing/carpentry/misc supplies | Team | Team | Team | Team |
| 29 | Shop Vac | Team | Team | Team | Team |
| 30 | Shelving (hand built) for misc storage rooms | Team | Team | Team | Team |
| 31 | Recip Saw | Team | Team | Team | Team |
| 32 | Air compressor with attachments | Team | Team | Team | Team |
| | | | | | |
| D. | FIELD MAINTENANCE EQUIPMENT | | | | |
| 1 | Equipment (mowers, tractors, etc.) | Team | Team | Team | Team |
| 2 | Shop Buildout | Team | Team | Team | Team |
| 3 | Tools (large) | Team | Team | Team | Team |

| | EXHIBIT B | | | | |
|-----|---|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| 4 | Tools (small) | Team | Team | Team | Team |
| 5 | Storage Shelving | Team | Team | Team | Team |
| | | | | | |
| IX. | TEAM / ADMINISTRATIVE | | | | |
| A. | GAME EQUIPMENT | | | | |
| 1 | Batting/Pitching Tunnel Netting (2) | City | City | Team | Team |
| 2 | Batting/Pitching Tunnel Equipment | Team | Team | Team | Team |
| 3 | Bases, Homeplates, Pitching Rubbers | City | City | Team | Team |
| 4 | Field Wall Padding (does not include advertising) | City | City | Cap Ex | Team |
| 5 | Dugout Benches, Helmet Storage, Bat Racks | City | City | Cap Ex | Team |
| 6 | Batting Cage L Screens | Team | Team | Team | Team |
| 7 | Field L Screens | Team | Team | Team | Team |
| 8 | Field Base Screens | Team | Team | Team | Team |
| 9 | Field Batting Practice Cage | Team | Team | Team | Team |
| | | | | | |
| B. | CLUBHOUSE EQUIPMENT | | | | |
| 1 | Training Equipment (whirlpool, x-ray, etc.) | Team | Team | Team | Team |
| 2 | Conditioning & Weight Equipment | Team | Team | Team | Team |
| 3 | Entertainment (video games, etc.) | Team | Team | Team | Team |
| 4 | 85-pound Washer/Extractor | Team | Team | Team | Team |
| 5 | 120-pound Tumbler | Team | Team | Team | Team |
| 6 | Shop Vacs | Team | Team | Team | Team |
| 7 | Bulk Rolling Laundry Baskets | Team | Team | Team | Team |
| 8 | Large Dry Erase Boards | Team | Team | Team | Team |
| | | | | | |
| C. | ADMINISTRATIVE EQUIPMENT | | | | |
| 1 | Personal Computers / Laptops | Team | Team | Team | Team |
| 2 | Server/Rack/Switch/Firewall | Team | Team | Team | Team |

| | EXHIBIT B | | | | |
|----|--|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| 3 | Copier / Printers / Scanners | Team | Team | Team | Team |
| 4 | Mail Equipment | Team | Team | Team | Team |
| 5 | Power Strips | Team | Team | Team | Team |
| 6 | Software | Team | Team | Team | Team |
| 7 | Shredders | Team | Team | Team | Team |
| 8 | Paper Trimming Boards | Team | Team | Team | Team |
| 9 | Laminating Machine | Team | Team | Team | Team |
| 10 | Bill Counting Machines | Team | Team | Team | Team |
| 11 | Heavy Duty Staplers | Team | Team | Team | Team |
| 12 | Label Maker | Team | Team | Team | Team |
| 13 | Cork Board | Team | Team | Team | Team |
| 14 | Time Clock (Payroll) | Team | Team | Team | Team |
| | | | | | |
| X. | TECHNOLOGY | | | | |
| 1 | Main Video/Scoreboard (25'x50')+Ribbon Boards | City | City | Cap Ex | Team |
| 2 | Video Production Equipment | City | City | Cap Ex | Team |
| 3 | In-game Production Cameras | City | City | Cap Ex | Team |
| 4 | Broadcast Cabling | City | City | Cap Ex | Team |
| 5 | Bowl Sound System incl. Public Address | City | City | Cap Ex | Team |
| 6 | Tele/Data Network Pathways | City | City | Cap Ex | Team |
| 7 | Telephone System (50 phones) | Team | Team | Team | Team |
| 8 | IPTV/Tele/Data Cabling | City | City | Cap Ex | Team |
| 9 | Televisions | City | City | Cap Ex | Team |
| 10 | Access Control System/Security System | City | City | Cap Ex | Team |
| 11 | Wi-Fi (facility-wide) | Team | Team | Cap Ex | Team |
| 12 | DAS (cell signal amplifier) | Team | Team | Cap Ex | Team |

| | EXHIBIT B | | | | |
|------------|---|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| 13 | Point of Sale System | Team | Team | Team | Team |
| 14 | Video Coaching System | Team | Team | Team | Team |
| 15 | Ticketing System | Team | Team | Team | Team |
| 16 | ATM's | Team | Team | Team | Team |
| 17 | Audio/Visual Equipment (projectors, etc.) | Team | Team | Team | Team |
| 18 | UPS / Battery Back-up Systems | Team | Team | Team | Team |
| 19 | Camera Platforms | Team | Team | Team | Team |
| | | | | | |
| XI. | Construction Manager FF&E Fees | | | | |
| 1 | Indirect Markup of BMC Scope FF&E | City | | | |
| | | | | | |
| | Totals | | | | |

City = City of Kannapolis

Team = Intimidators Baseball Club, LLC/South Atlantic League/New Ownership Group

BMC = Barton Malow Company (Project Construction Manager)

¹ Inspections Required: (a) Fire Panel - annually, (b) Sprinkler Systems- annually, (c) Fire Pumps, Backflow domestic - annually, (d) Kitchen Hoods - annually, (e) Elevators per NC Dept of Labor Requirements, (f) Fire and Security Monitoring, (g) HVAC (exhaust fans, cooling towers, chillers, etc.) - quarterly, (h) Pest Control - monthly, (i) Generator - semi-annually, (j) UPS - semi-annually, (k) Grease Traps - annually, (l) Ice makers- semi-annually, (m) Window cleaning - semi-annually, (n) Partition walls - semi-annually, (o) Flooring - quarterly.

**RESOLUTION APPROVING THE EXECUTION OF THE
DEVELOPMENT AGREEMENT BY AND BETWEEN
THE CITY OF KANNAPOLIS AND TEMERITY BASEBALL, LLC**

WHEREAS, North Carolina General Statutes Chapter 160A, Article 19, Part 8, authorizes municipalities to engage in appropriations and expenditures of funds for community development programs and activities for the restoration or preservation of blighted, deteriorated, undeveloped or inappropriately developed properties for sound community development and growth; and

WHEREAS, the North Carolina General Statutes also authorize cities to engage in capital projects in the City's central business district to further the revitalization of such areas; and

WHEREAS, construction of a city-own Sports and Entertainment Venue (the 'Project') will meet the objections stated in this Resolution; and

WHEREAS, North Carolina General Statutes §160A-457.4 and §160A-458.3 authorizes the City to convey interests in property owned by it in connection with a downtown development project; and

WHEREAS, the City has determined that it is in its best interest to enter into a Development Agreement (the "Agreement") with an appropriate and fiscally sound entity as a partner for the construction and operation of the Project; and

WHEREAS, City finds that agreements and premises exchanged between the parties as contained in the Agreement and as identified in this Resolution will have a significant effect on the revitalization of its central business district; and

WHEREAS, on September 24, 2018, the City held a duly advertised public hearing to receive public comment on the proposed Agreement.

NOW, THEREFORE, BE IT RESOLVED:

Section 1. Council Findings. Council finds that pursuant to North Carolina General Statutes §160A-457(4) and §160A-458.3 as follows:

1. In accordance with North Carolina General Statutes §160A-457(4) §160A-458.3(d) the City owns the Property as set out in the Agreement;
2. Construction of the Project on the Property for the Project will have a significant effect on the revitalization of the City's central business district;
3. The Project is a capital project in the City's central business district which will contain both public and private facilities subject to such agreements and covenants as deemed necessary to protect the public interest and to promote the public purpose of the conveyance;

4. The City Council has determined that it is in the best interest of the City to enter into the Agreement with Temerity Baseball, LLC as a partner to construct and operate the Project;

5. The terms of the Agreement with Temerity are sufficient to ensure they will meet the needs of the City and those needs are met at a reasonable price;

6. The fair lease value of the property has been determined as set out in the Agreement;

7. The City duly advertised the public hearing and took public comment on the same;

8. The Agreement complies with North Carolina General Statutes § 160A-458.3 and 160A-457.

Section 2. Adoption of Instruments. The City Council hereby approves and adopts the Development Agreement between the City and Temerity Baseball, LLC, copies of which have been made available to the City Council and to the public prior to the public hearing.

Section 3. Authorization of Manager to Execute the Instruments. The City Council hereby authorizes the City Manager to execute and deliver the Agreement, including any and all necessary documents and instruments to effectuate the intent of the aforementioned Agreement. Further, the City Manager, or his designee, in accordance with his assigned responsibilities is hereby authorized to deliver, publish, file and record such documents, instruments, notices and records and to take such other actions that shall be necessary or desirable to accomplish the purposes of this Resolution. Further, the City Manager is allowed to make minor modifications, corrections and clerical revisions as may be necessary and consistent with the intent of this Resolution.

Section 4. Effective Date. This resolution is effective on the date of this adoption.

Milton D. Hinnant, Mayor

Bridgette Bell, MMC, NCCMC
City Clerk



NOTICE OF PUBLIC HEARING

NOTICE IS GIVEN that the Kannapolis City Council (“City Council”) will conduct a public hearing relating to the City of Kannapolis (“City”) entering into a Ballpark Development Agreement (“Development Agreement”) pursuant to North Carolina General Statutes Sections 160A-457 and 160A-458.3 with Intimidators Baseball Club, LLC, or an associated affiliate or alternate entity (hereinafter “Club”). Pursuant to the Development Agreement the City intends to construct a public development project on certain unimproved real property consisting of approximately 4.94 acres, located at the southwest intersection of Laureate Way and Oak Avenue in the City’s Central Business District (“Property”). The Development Agreement relates to a downtown development project known as the Sports and Entertainment Venue (“Venue”) for the purpose of (i) improving economic development of the community, (ii) promoting residential housing construction, (iii) providing recreational facilities to support the needs of the surrounding community, and (iv) continuing the positive impact and significant effect of the revitalization of downtown Kannapolis North Carolina. The Venue will serve as the home field for the Club’s professional baseball team.

Among other provisions, the Development Agreement identifies conditions to the City’s obligations, establishes a City commitment to commence and complete construction on a defined schedule and budget, identifies and describes project plans for the facility, and establishes responsibilities for capital improvements, fixtures and personal property acquisition. The City Council intends to approve the Development Agreements following the public hearing.

A copy of the proposed Development Agreement, including attachments, will be available for public inspection at the office of the City Manager, located in City Hall, 401 Laureate Way, Kannapolis, North Carolina 28081, during regular business hours.

The City Council intends to accept public input and vote on the Development Agreement following the public hearing.

The hearing will be held in the City Council Chambers located at City Hall, 401 Laureate Way, Kannapolis, North Carolina 28081, beginning at or after 6:00 p.m. on September 24, 2018. At the time and place fixed for this public hearing, the City will discuss the terms of the Development and related documents and the City Council will receive public comments.

Bridgette Bell, City Clerk
City of Kannapolis
North Carolina

PUBLISH SEPTEMBER 7 & 14, 2018



**City of Kannapolis
City Council Meeting
September 24, 2018
Staff Report**

TO: Mayor and City Council
FROM: Mike Legg, City Manager and Walter M. Safrit, City Attorney
TITLE: Public Hearing and Resolution Approving Ballpark Lease Agreement with Temerity Baseball, LLC

A. Action Requested by City Council

1) Conduct a Public Hearing, and 2) Motion to adopt the Resolution approving the Ballpark Lease Agreement and authorize the City Manager to execute and make minor and necessary changes consistent with the intent and scope of the Resolution (*Mike Legg, City Manager and Walter M. Safrit, City Attorney*)

B. Required Votes to Pass Required Action

Majority present at meeting

C. Background

Summary: Agreement is for the long term lease of the City-owned Ballpark with provisions for various uses, standards and expectations. It defines control of the facility, revenues beneficiaries, expenditure responsibilities, and applicable rental fees. It also establishes the parties responsible for the maintenance and upkeep of the facility.

Term: 30 years. No options/extensions. The thinking here is that 30 years is a very long time. All initial debt will be retired 10 years prior. However the addition 10 years helps the City with its financing approvals. If additional financial commitments (i.e., major renovations) are made after the first 20 years, the lease probably will be renegotiated to establish a new a new term and new set of obligations for both parties. Regardless, it is anticipated that negotiations would start around year 27 to determine if a new/extended lease is an interest of both parties.

Highlights:

1. Suite to the City. Establishes that the Team will provide a single suite at no charge to the City and provide tickets to this suite at no charge for all events managed by the Team (unless an outside event promoter requires payment).
2. Employee Night. Establishes a City Employee Night with the Team providing up to 250 free tickets to the City.

3. Team Controls Ballpark. Establishes that the Team controls use of the Ballpark generally (for baseball and non- baseball events managed by the Team).
4. City Use of Ballpark. Establishes that the City can use the Ballpark for eight (8) City Sponsored events per year (City paying team for any cost occurred), subject to scheduling and availability. This has been changed from five in the original agreement at the request of the Cabarrus County Convention and Visitors Bureau which is considering providing some level of supplemental funding to the City to help meet the debt obligations.
5. Concessions. Provides that the Team can sell concessions/merchandise at City Sponsored events but must share 25% percent of proceeds with the City. If the Team elects to not sell concessions at a City Sponsored event, the City may do so after reaching an agreement with the Team.
6. Public Use of Ballpark. Provides that at all other times (outside of Baseball Events or City Sponsored Events) the public will have access to the Ballpark during a predetermined time period daily (to eat meals, relax, walk the concourse, use the steps for exercise, use the playground equipment/splash pad, etc.). The thinking is that when full-time Team staff are at the Ballpark it will be open to the public with no direct involvement from the City. For all other times, City staff will be assigned to monitor its use while open. Generally, the facility will be closed after dark absent a City or Team event. It is assumed this includes access to restroom facilities (likely not all restrooms). A separate operating agreement may be necessary in the future to address this more specifically.
7. Revenue Streams for Baseball. Establishes that all revenue streams will be controlled and retained by the Team for Baseball Events and the same will be true for City Sponsored Events. See concessions/merchandising exception above.
8. Prohibited Uses. Establishes prohibited uses in and around the Ballpark (drug sales, loud music, public nuisances, etc.)
9. Development Surrounding Ballpark. Provides that the City can develop property adjacent to and surrounding the Ballpark provided that it does not negatively impact baseball events and operations.
10. Establishes 50 Dedicated Ballpark Parking Spaces (25 team, 25 staff). There are currently no dedicated spaces being proposed as part of the Ballpark project itself. The solutions will obviously be offsite. Currently it is likely that these spaces will be scattered in and around downtown (in adjacent planned parking decks or a portion of the City Hall parking lot). It is possible that the final plans for the initial private development will include more ballpark parking but this is not guaranteed and will certainly not be finalized before the facility is completed.
11. Team Maintains Facility. Provides generally that the Team will maintain the facility (routine maintenance and repairs). An attachment currently in draft form (Exhibit B) is a critical document as it will formally define these responsibilities.
12. Utilities. Provides that the Team and City will equally share the costs for electricity and natural gas for the facility. City will pay for all water and sewer costs.

13. City Inspections. Provides that City can perform periodic inspections of the facility as deemed necessary.
14. Capital Reserve Fund. Establishes a Capital Improvement Reserve Fund ("Cap Ex" Fund). A portion of the rental rate will go into the Fund and the City will also provide funding. The City has proposed an amount described below.
15. Capital Improvements. Establishes a process for creating a Capital Improvement Plan and defines how Cap Ex funds are expended.
16. Naming Rights and Advertising Controls. Establishes standards/restrictions regarding naming rights, sponsorships and advertising (exclusive revenue to the Team). These are both content limits and aesthetic standards.
17. First Class Operation. Establishes that Team will provide adequate, professional and first class level of concessions for all events. While the City prefers that the Team secure a qualified third party concessionaire to provide this service, the lease does not mandate this. It instead focuses on quality and competence as the benchmarks.

D. Fiscal Considerations

The agreement establishes a fixed rental rate. The following are the proposed financial terms of the lease:

Lease Terms. Team makes lease payments to the City of \$450,000 for the first three years; then the lease payments increase by \$35,000 every three years thereafter. This schedule results in a total of \$18,225,000 in payments over the lease term. \$100,000 of each of the annual lease payments will be deposited into a Cap Ex Fund to provide funding for short- and long-term capital improvements.

Capital Expenditure (Cap Ex) Fund. The City will match the team funded annual \$100,000 Cap Ex amount with an annual deposit of \$100,000 to the Cap Ex Fund (from separate sources). This will result in a total of \$200,000 going into the Cap Ex Fund annually which seems to be an appropriate amount. The agreement also includes a provision that permits the Team to delay its contributions to the Cap Ex Fund for the first five years at its own discretion with two conditions: 1) all Cap Ex expenditures in the first five years up to the amount of the total deferral are paid for by the team, and 2) by the start of year six the fund is made whole (less any Team Cap Ex expenditures occurring in the first five years).

To establish the Cap Ex Fund, at the end of the construction period and prior to opening day of the first season, the City will deposit the greater of \$100,000 or 25% of the City's remaining Ballpark project contingency into the Cap Ex Fund.

E. Policy Issues

None.

F. Legal Issues

None.

G. Alternative Courses of Action and Recommendation

1. **Motion to adopt the Resolution approving the Ballpark Lease Agreement with Temerity Baseball, LLC and authorize the City Manager to execute and make minor and necessary changes consistent with the intent and scope of the Resolution(Recommended).**
2. Table the item to a future meeting.
3. Take no action.

ATTACHMENTS:

File Name

- ☐ Lease_Agreement_-_FINAL.pdf
- ☐ Exhibit_B_Ballpark_Responsibilities_Final_9-23-18.pdf
- ☐ EXHIBIT_C_-_September_23__2018.pdf
- ☐ EXHIBIT_C_-1_to_Lease_City-Intimidators.pdf
- ☐ Resolution_Approving_Execution_Of_Lease_Agreement_(City-____)____9-13-18.pdf
- ☐ Notice_of_Public_Hearing_Stadium_Lease_9-7-2018.pdf

CITY REDRAFT

9/20/18

TENANT REDRAFT

9/17/18

FOR DISCUSSION ONLY

BALLPARK LEASE AGREEMENT

BY AND BETWEEN

THE CITY OF KANNAPOLIS, NORTH CAROLINA

as Landlord

AND

TEMERITY BASEBALL LLC

as Tenant

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BALLPARK LEASE AGREEMENT

This BALLPARK LEASE AGREEMENT, (this “**Agreement**”) is made to be effective as of the ____ day of _____, 2018 (the “**Effective Date**”), by and between the City of Kannapolis, a North Carolina municipal corporation (the “**City**”), and Temerity Baseball LLC, a Delaware limited liability company (“**Tenant**” or “**Team**”). City and Tenant are sometimes collectively referred to herein as the “**Parties**” and individually as a “**Party**”.

RECITALS

WHEREAS, Tenant is the owner of a Class A (sometimes referred to herein as “**Single A**”) Minor League Baseball (sometimes referred to as “**MiLB**”) franchise granted by the South Atlantic League of Professional Baseball Clubs or any successor MiLB league (“**SAL**”); and the corresponding interest of the National Association of Professional Baseball Leagues, Inc. (the “**NAPBL**”, which does business under the trade name “Minor League Baseball” sometimes abbreviated as “MiLB”).

WHEREAS, City holds fee title to the real property described on **Exhibit A** attached hereto and incorporated herein (the “**Real Property**”).

WHEREAS, pursuant to a Resolution adopted and approved by the City Council of the City of Kannapolis on September 24, 2018, the City Manager of City is authorized to sign this Agreement.

WHEREAS, City and Tenant have entered into (a) that certain Ballpark Development Agreement (the “**Development Agreement**”) dated _____, 2018, whereby City has agreed to finance, own, design, develop and construct a new, first class, state-of-the-art, natural turf, open-air MiLB ballpark and related facilities (and together with the Real Property, the “**Ballpark**”), and (b) that certain Non-Relocation Agreement (the “**Non-Relocation Agreement**”) dated effective of even date herewith, whereby the parties thereto agreed to certain restrictions on relocation of the Team (as defined below).

WHEREAS, City has agreed to lease to Tenant, and Tenant has agreed to lease from City, the Ballpark and certain Ballpark parking as more particularly described herein.

NOW THEREFORE, in consideration of the foregoing, the terms and conditions hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I. DEFINITIONS

Unless the context shall otherwise expressly require, capitalized terms used in this Agreement shall have the following meanings:

“Action or Proceeding” means any legal action, lawsuit, proceeding, arbitration, investigation by a Governmental Authority, hearing, audit, appeal, administrative proceeding or judicial proceeding.

“Affiliate” means, with respect to any specified Person, any other Person who, directly or indirectly, Controls, is under common Control with, or is Controlled by such specified Person.

“Agreement” has the meaning given to that term in the introductory paragraph of this Agreement.

“Applicable Law(s)” means any and all laws, ordinances, statutes, regulations, judicial decisions, orders, injunctions, writs, rulings, interpretations, rules, permits or certificates of any court, arbitrator or other Governmental Authority and applicable to the Person or Property in question (including any activities or operations occurring on, under, over, upon, at or from such Property in question). Applicable Laws shall include all (i) City Ordinances, (ii) Environmental Laws and (iii) any applicable Federal wage requirements.

“Appropriation” means with respect to any payment obligation or other monetary obligation of City that may from time to time exist or arise under this Agreement during a fiscal year, the approval and setting aside by City of an adequate amount of funds to satisfy the payment obligation or other monetary obligation of City.

“Approval” **“Approve”** or **“Approved”** means (a) with respect to any item or matter for which the approval of City or City Representative, as the case may be, is required under the terms of this Agreement, the specific approval of such item or matter by City pursuant to a written instrument executed by City or City Representative, as applicable, delivered to Tenant, and shall not include any implied or imputed approval, and no approval by City or City Representative pursuant to this Agreement shall be deemed to constitute or include any approval required in connection with any Governmental Functions of City, unless such written approval shall so specifically state; (b) with respect to any item or matter for which the approval of Tenant is required under the terms of the Agreement, the specific approval of such item or matter by Tenant or Tenant Representative, as the case may be, pursuant to a written instrument executed by a duly authorized officer of Tenant or Tenant Representative, as permitted pursuant to the terms of this Agreement, and delivered to City, and shall not include any implied or imputed approval; and (c) with respect to any item or matter for which the approval of any other Person is required under the terms of this Agreement, the specific approval of such item or matter by such Person pursuant to a written instrument executed by a duly authorized representative of such Person and delivered to City or Tenant, as applicable, and shall not include any implied or imputed approval.

“Approved Capital Improvement” means (i) any Capital Improvement that has been identified within the Capital Improvements Plan or any amendment, modification or update thereof or (ii) any Maintenance Item Approved by Tenant Representative and City Representative pursuant to Section 7.3 and, if such Capital Improvement requires an Appropriation, the Approval of the City Council.

“Ballpark” has the meaning given to that term in the Recitals, and shall include, without limitation, the Team Facilities as that term is defined in the Development Agreement.

“Ballpark Budget” has the meaning given to that term in the Development Agreement.

“Ballpark Dedicated Parking” has the meaning given to that term in Section 5.2 hereof.

“Ballpark Events” has the meaning given to that term in Section 4.1 hereof.

“Ballpark Standard” means the operation, maintenance and repair of the Ballpark and Ballpark Dedicated Parking on a full-service basis in a manner consistent with the standards of operations, maintenance and operating and maintenance plans that a Qualified Operator, in accordance with MiLB and SAL requirements, would reasonably be expected to undertake and follow for the operation, maintenance and repair of a Comparable Property.

“Baseball Season” means each annual baseball season during the Term running from March 1 through September 30 of the applicable calendar year and includes, and may be modified from time to time by Tenant to include, all pre-season games, regular season games and playoff games.

“Business Day” means a day of the year that is not a Saturday, Sunday, Legal Holiday or a day on which commercial banks are not required to close in Kannapolis, North Carolina.

“Cap Ex” means the Capital Improvements Reserve Fund.

“Capital Improvements” means any work (including all design, architectural, engineering and construction work, together with all labor, supplies, materials, equipment and costs of permits and approvals of Governmental Authorities) that is customarily capitalized under GAAP and is reasonably necessary to repair, restore, refurbish, replace or improve (in each case, in a manner that extends the useful life thereof and is performed to ensure that the Ballpark remains a safe, attractive and first class facility comparable to the Comparable Properties, ordinary wear and tear excepted) any facility, structure, Personal Property or other component of the Ballpark or the Ballpark Dedicated Parking, if such work is necessitated by:

(a) any material defects in design, construction or installation of the Ballpark; and/or the Ballpark Dedicated Parking;

(b) Physical Obsolescence;

(c) requirements imposed by Major League Baseball, NAPBL and/or the SAL as applicable to the Ballpark;

(d) requirements imposed by Applicable Laws;

(e) requirements or recommendations of any insurance carrier insuring any portion of the Ballpark or the Ballpark Dedicated Parking;

(f) requirements of any manufacturer, supplier or installer of any component, system or equipment at the Ballpark or the Ballpark Dedicated Parking stipulated in the operating manuals therefor;

(g) the then-current Capital Improvements Plan; or

(h) any other Capital Improvements mutually agreed upon by City and Tenant.

The term Capital Improvements shall not include any Routine Maintenance.

“Capital Improvements Plan” has the meaning given to that term in Section 7.3 hereof and shall address, among other things, any applicable Economic and Technological Obsolescence issues.

“Capital Improvements Reserve Fund” has the meaning given to that term in Section 7.2 hereof.

“Casualty” means, with respect to the Ballpark or the Ballpark Dedicated Parking, physical damage, physical destruction or other property casualty resulting from any fire or any other Force Majeure Event or other sudden, unexpected or unusual cause.

“City” has the meaning given to that term in the introductory paragraph of this Agreement.

“City Council” means the City Council of the City of Kannapolis, North Carolina.

“City Default” has the meaning given to that term in Section 10.3 hereof.

“City Ordinances” means all ordinances and regulations of the City, including, without limitation, all ordinances concerning land use, development projects on City-owned land, leasing of property by the City to private businesses, training and employment of residents of the City, affirmative action, no-strike and labor peace agreements, payment of a living wage and other matters relating to City procurement and contracting procedures and any building codes, fire or life safety codes, development codes, zoning regulations and subdivision regulations, as same may be amended from time to time.

“City Personal Property” means any and all movable equipment, furniture, and other tangible personal property that are owned by City as of the Commencement Date or otherwise purchased as part of the Ballpark Improvements designated on **Exhibit B** under the “Financial Responsibility” column or as Capital Improvements and located on or within the Ballpark or the Ballpark Dedicated Parking (and that do not constitute fixtures) and can be removed from the Ballpark without damage thereto. The term “City Personal Property” includes any replacements of City Personal Property by City or otherwise. Replacement of City Personal Property shall be performed as shown on **Exhibit B**.

“City Representative” has the meaning given to that term in Section 2.1 hereof.

“City Sponsored Events” has the meaning given to that term in Section 4.3 hereof.

“City Suite” has the meaning given to that term in Section 3.7 hereof.

“City Suite License Agreement” has the meaning given to that term in Section 3.7 hereof.

“Commencement Date” means the date of the latest to occur: (i) the issuance of a certificate of occupancy with respect to the Ballpark (as per the Plans for Ballpark Improvements) or (ii) possession of the Leasehold Estate has been tendered to Tenant by City but in no event later than February 1, 2020.

“Comparable Properties” means one or more first-class, Single-A caliber, multi-purpose baseball ballparks (as mutually agreed upon by the Representatives) that (i) have been constructed within five (5) years of the Commencement Date, (ii) are generally comparable in size, design and quality of construction to the Minimum Requirements and (iii) are located in the United States. For the purposes of this Agreement, the term “Comparable Properties” shall also include SAL stadiums in Columbia, South Carolina (opened 2016) and North Augusta, [South Carolina \(opened 2018\)](#)~~Georgia~~, and the Carolina League stadium in Fayetteville, North Carolina (opening 2019).

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

“Concessions” means any and all food and beverage (both alcoholic and non-alcoholic) products and services required or appropriate for, and sold or provided anywhere at the Ballpark for any and all Ballpark Events, whether through fixed or portable stands, machines or vendors, including without limitation, (i) by Tenant, (ii) in accordance with any Concessions Agreement or (iii) by any third party (without regard to whether such party has entered into a Concessions Agreement).

“Concessions Agreement” means any agreement for the management and operation of Concessions that may be entered into by Tenant from time to time during the term of this Agreement.

“Confidential Information” has the meaning given to that term in Section 23.11 hereof.

“Default Rate” means the “prime rate” as published in the “Money Rates” section of *The Wall Street Journal*, plus one (1) percentage point; however, if such rate is, at any time during the Term, no longer so published, the “Default Rate” shall mean the average of the prime interest rates that are announced, from time to time, by the three (3) largest banks (by assets) headquartered in the United States that publish a “prime rate,” plus one (1) percentage point. In

no event shall the Default Rate be in excess of the maximum interest rate allowed by applicable law.

“Development Agreement” has the meaning given to that term in the Recitals.

“Development Rights” has the meaning given to that term in Section 4.7 hereof.

“Economic and Technological Obsolescence” means any Personal Property or other facility, component, structure or surface of the Ballpark that is not then currently state-of-the-art, and includes without limitation any such property, improvements and/or structures that have become outdated due to technological advances, whether or not the same is Physically Obsolete.

“Effective Date” has the meaning given to that term in the introductory paragraph of this Agreement.

“Emergency Condition” has the meaning given to that term in Section 7.5 hereof.

“Encumbrances” means any defects in, easements, covenants, conditions or restrictions affecting, or Liens or other encumbrances on, the title to the Ballpark or the Ballpark Dedicated Parking, whether evidenced by written instrument or otherwise evidenced.

“Environmental Claim” means any Action or Proceeding regarding the Real Property, the Ballpark or the Ballpark Dedicated Parking (i) arising under an Environmental Law or (ii) related to or arising out of an actual or alleged Environmental Event.

“Environmental Event” means the occurrence of any of the following: (i) any noncompliance with an Environmental Law; (ii) an environmental condition requiring responsive action, including an environmental condition at the Ballpark caused by a third party; (iii) any event on, at or from the Real Property, the Ballpark or the Ballpark Dedicated Parking, or related to the operation thereof of such a nature as to require reporting to applicable Governmental Authorities under any Environmental Law; (iv) an emergency environmental condition; (v) the existence or discovery of any escape, seepage, leakage, spillage, emission, discharge or disposal of or other release or any kind of Hazardous Materials on, at or from the Ballpark which may cause a threat or actual injury to human health, the environment, plant or animal life; or (vi) any Environmental Claim, or the filing or imposition of any environmental lien against the Real Property, the Ballpark or the Ballpark Dedicated Parking, because of, resulting from, in connection with, or arising out of any of the matters referred to in clauses (i) through (v) preceding.

“Environmental Law(s)” means any applicable Federal, state or local statute, law (including common law tort law, common law nuisance law and common law in general), rule, regulation, ordinance, code, permit, concession, grant, franchise, license, policy or rule of common law now in effect or adopted in the future, and in each case as may be amended or replaced, and any judicial or administrative interpretation thereof (including any judicial or administrative order, consent decree or judgment) relating to (i) the environment, health, safety or Hazardous Materials, (ii) the storage, handling, emission, discharge, release and use of chemicals and other Hazardous Materials, (iii) the generation, processing, treatment, storage, transport,

disposal, investigation, remediation or other management of waste materials of any kind, and (iv) the protection of environmentally sensitive areas, including any federal, state or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, injunction, decree, or rule of common law, and any judicial interpretation of any of the foregoing, which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground or air or water or noise pollution or contamination, and underground or above ground tanks) and shall include without limitation, the Solid Waste Disposal Act, 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§136 et. seq.; and the Emergency Preparedness and Response Community Right-to-Know Act, 42 U.S.C. § 11001the Endangered Species Act, as amended, 16 U.S.C. §§1531 et seq.; and North Carolina General Statutes and regulations of the Department of Environmental Quality.

“Event” means any Ballpark Event or City Sponsored Event.

“Excusable City Delay” means any City delay that is caused by or attributable to (but only to the extent of) a Force Majeure Event. No City delay arising from the failure to make funds available for any purpose shall ever be an Excusable City Delay unless such failure, inability or refusal itself arises directly from, and is based upon, another event or circumstance which is a Force Majeure Event.

“Excusable Tenant Delay” means any Tenant delay that is caused by or attributable to (but only to the extent of) a Force Majeure Event. No Tenant delay arising from the failure to make funds available for any purpose shall ever be an Excusable Tenant Delay unless such failure, inability or refusal itself arises directly from, and is based upon, another event or circumstance which is a Force Majeure Event.

“Financial Responsibility” means the obligation to provide payment.

“Financing” means the issuance, by City, or a local government corporation formed by City, of one or more series of bonds or other debt obligations, the net proceeds of which are used to pay for the costs of design, construction and development of the Ballpark and/or Ballpark Dedicated Parking.

“Force Majeure Event” means any act that (a) materially and adversely affects the affected Party’s ability to perform the relevant obligations under this Agreement or delays such affected Party’s ability to do so, (b) is beyond the reasonable control of the affected Party, and (c) is not due to the affected Party’s fault or negligence. Subject to the satisfaction of the conditions set forth in (a) through (c) above, a Force Majeure Event shall include: (i) natural phenomena, such as storms, floods, lightning and earthquakes; (ii) wars, civil disturbances, revolts, insurrections, terrorism, sabotage and threats of sabotage or terrorism; (iii) transportation disasters, whether by ocean, rail, land or air; (iv) strikes, lockouts or other labor disputes,

including a strike or lockout by MiLB players or umpires; (v) fires; (vi) actions or omissions of a Governmental Authority (including the actions of City in its capacity as a Governmental Authority) that were not voluntarily induced or promoted by the affected Party, or brought about by the breach of its obligations under this Agreement or any Applicable Law; (vii) title disputes; and (viii) third party litigation; *provided, however*, that under no circumstances shall a Force Majeure Event include economic hardship.

“GAAP” means generally accepted accounting principles as in effect from time to time in the United States as set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board.

“Governmental Authority” means any Federal, state, local or foreign governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof), including a local government corporation.

“Governmental Authorizations” means all approvals, consents, decisions, authorizations, certificates, confirmations, exemptions, applications, notifications, concessions, acknowledgments, agreements, licenses, permits, import permits, employee visas, environmental permits, decisions, right of ways, and similar items from any Governmental Authority, including an ABC license from the North Carolina ABC Commission.

“Governmental Function” means any regulatory, legislative, permitting, zoning, enforcement (including police power), licensing or other functions which City is authorized or required to perform in its capacity as a Governmental Authority in accordance with Applicable Laws. The entering into this Agreement and the performance by City of its obligations under this Agreement shall not be considered a “Governmental Function.”

“Hazardous Materials” means (a) any petroleum or petroleum products, metals, gases, chemical compounds, radioactive materials, asbestos, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls, lead paint, putrescible and infectious materials, and radon gas; (b) any chemicals or substances defined as or included in the definition of “hazardous substances”, “hazardous wastes”, “hazardous materials”, “extremely hazardous wastes”, “restricted hazardous wastes”, “toxic substances”, “toxic pollutants”, “contaminants” or “pollutants”, or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law or Governmental Authority or which is regulated because of its adverse effect or potential adverse effect on health and the environment, including soil and construction debris that may contain any of the materials described in this definition. Fireworks and similar entertainment-related functions shall not be deemed “hazardous” hereunder so long as used and stored in compliance with State and local laws and regulations.

“Improvements Arbitrator” has the meaning given to that term in Section 7.6 hereof.

“Insolvency Event” means, with respect to any Person, (a) such Person’s or any of its subsidiaries’ (i) failure to generally pay its debts as such debts become due, (ii) admitting in writing its inability to pay its debts generally or (iii) making a general assignment for the benefit of creditors; (b) any proceeding being instituted by or against such Person or any of its subsidiaries (i) seeking to adjudicate it a bankrupt or insolvent, (ii) seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or (iii) seeking the entry of an order for relief or the appointment of a receiver, trustee or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against such Person or any such subsidiary, any such proceeding shall remain undismissed for a period of ninety (90) days or any of the actions sought in such proceeding shall occur; or (c) such Person’s or any of its subsidiaries’ taking any corporate action to authorize any of the actions set forth above in this definition.

“Lease Expiration Date” means the date of termination of this Agreement at the conclusion of the Term or sooner pursuant to any applicable provision hereof.

“Leasehold Estate” has the meaning given to that term in Section 3.1 hereof.

“Leasehold Mortgage” means any mortgage, deed of trust or other instrument in the nature thereof which encumbers any of Tenant’s rights, titles and interests in and to use the Ballpark or the Ballpark Dedicated Parking (but not City’s real property interest in the Ballpark or the Ballpark Dedicated Parking), including, without limiting the generality of the foregoing, its right to use and occupy the Ballpark or the Ballpark Dedicated Parking and all of its rights, titles and interests, if any, in and to any and all improvements to the Ballpark or Ballpark Dedicated Parking.

“Legal Holiday” means any day, other than a Saturday or Sunday, on which City’s administrative offices are closed for business.

“Lien” means any mortgage, charge, pledge, lien, privilege, security interest, hypothecation or other encumbrance upon or with respect to any property or assets or any kind, whether real or personal, tangible or intangible, now owned or hereafter acquired.

“Maintenance Items” means those items of Routine Maintenance set forth on **Exhibit B** attached hereto under the column entitled “Maintenance & Repair” and the respective responsibility for Routine Maintenance allocated between the City and Tenant”.

“Management Agreement” has the meaning given to that term in Section 4.6 hereof.

“Merchandise” means any goods (other than food or beverage) sold anywhere at the Ballpark, including without limitation, (i) by Tenant, (ii) in accordance with any Merchandise Agreement or (iii) by any third party (without regard to whether such party has entered into a Merchandise Agreement).

“Merchandise Agreement” means any agreement for the management and operation of Merchandise that may be entered into by Tenant from time to time during the term of this Agreement.

“MiLB” means Minor League Baseball™.

“NAPBL” has the meaning given to that term in the Recitals.

“Non-Relocation Agreement” has the meaning given to that term in the Recitals.

“Offsite Parking” means and includes the public and privately operated surface parking.

“Operator” has the meaning given to that term in Section 4.6 hereof.

“Ownership Group” means and includes such persons or entities recognized as owners by the South Atlantic League.

“Party” or **“Parties”** means a party or the parties, respectively, to this Agreement.

“Permitted Exceptions” means (i) those certain Encumbrances upon and/or exceptions to the title to the Ballpark or the Ballpark Dedicated Parking that are referenced and/or described on **Exhibit A** attached hereto and (ii) the Reservations and all rights to use the Ballpark and the Ballpark Dedicated Parking pursuant thereto.

“Person” means any individual, corporation, limited or general partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof or any other form of entity.

“Physically Obsolete” or **“Physical Obsolescence”** means any Personal Property or other facility, component, structure or surface of the Ballpark or the Ballpark Dedicated Parking that does not comply with Applicable Laws or has become dysfunctional due to defects in design, materials or workmanship or ordinary wear and tear other than as a result of Tenant’s failure to perform its maintenance obligations under this Agreement. For purposes of determining Physical Obsolescence or Physically Obsolete, any Personal Property or other facility, component, structure or surface of the Ballpark or the Ballpark Dedicated Parking shall be deemed dysfunctional if such has deteriorated to a degree that cannot be remedied through Routine Maintenance (including replacement necessitated by repeated breakdown of a component despite efforts to repair or restore it short of replacement).

“Prohibited Messages” has the meaning given to that term in Section 15.2 hereof.

“Prohibited Use” has the meaning given to that term in Section 4.5 hereof.

“Proposed Capital Improvements Contract” has the meaning given to that term in Section 7.4 hereof.

“Qualified Operator” means a nationally recognized multi-purpose project operator (or, if its parent company has and continues to unconditionally guarantee the full payment and performance of all of such multi-purpose project operator’s obligations under or in connection with the Management Agreement, such parent company meets) that (a) as of the effective date of the Management Agreement then in effect, operates, on a full-service basis, either directly or through its subsidiaries at least two (2) facilities that are comparable (or superior) to the Comparable Properties, the Ballpark, Major League Baseball parks or other facilities acceptable to City; and (b) an Insolvency Event with respect to such multi-purpose project operator or, in the case of the foregoing guaranty, its parent company does not exist. Additionally, an Affiliate of any entity meeting the foregoing criteria that it is going to be an Operator shall be a Qualified Operator, provided that the applicable entity meeting the foregoing criteria becomes or remains liable for the obligations of the “Operator” under any Management Agreement.

“Real Property” has the meaning given to that term in the Recitals. In addition to the description of real property attached hereto as **Exhibit A**, the term “Real Property” shall also include any additional real property interests acquired by City and on, over or under which, or pursuant to, the Ballpark is constructed.

“Related Party” or **“Related Parties”** means with respect to any Person, such Person’s partners, directors, officers, shareholders, members, agents, employees, consultants, counsel, contractors, subcontractors (of any tier), tenants, subtenants (of any tier), licensees, sublicensees (of any tier), lenders, successors, assigns, legal representatives, elected and appointed officials, and Affiliates.

“Rent” means the consideration paid pursuant to Section 3.6 or as otherwise required in this Agreement for the use and occupancy of the Ballpark each year being the cash sum as set out on **Exhibit C** attached hereto. **“Representative”** means each of City Representative and Tenant Representative or both collectively if used in the plural.

“Reservations” has the meaning given to that term in Section 3.3 hereof.

“Routine Maintenance” means all work (including all labor, supplies, materials and equipment) that is of a routine nature and is reasonably necessary for the cleaning and routine care of and preventative maintenance and repair for any property, structures, surfaces, facilities, fixtures, equipment, furnishings, improvements and components that form any part of the Ballpark in a manner reasonably consistent with the standards at other Comparable Facilities; provided however, Routine Maintenance shall not include items designated as the responsibility of City on **Exhibit B** or Capital Improvements. Routine Maintenance shall include the following, together with such other Routine Maintenance described in Section 6.1 hereof and those repair and maintenance items identified on **Exhibit B** attached hereto: (i) preventative or routine maintenance that is stipulated in the operating manuals for the Ballpark; (ii) periodic testing of building systems, such as mechanical, card-key security, fire alarm, lighting and sound systems; (iii) ongoing trash removal; (iv) routine maintenance procedures for heating, ventilation and air-conditioning, plumbing, electrical, roof and structural systems and vertical lift systems (e.g., escalators and elevators); (v) painting or application of protective materials; (vi) cleaning prior to,

during and following, and necessary as a direct result of, all Events (other than any work required to be performed by City for any City Sponsored Events) at the Ballpark; and (vii) routine changing of light bulbs, ballasts, fuses and circuit breakers as they fail in normal use.

“SAL” has the meaning given to that term in the Recitals.

“Tax Proceeding” means any audit, examination, investigation, action, suit, claim, assessment, appeal, request for adjustment, or other administrative or judicial proceeding relating to the payment of any taxes described in this Agreement.

“Team” means all rights, title and interest, including franchise rights, in the Single A Minor League Professional Baseball franchise granted by the League and known as of the Effective Date as the “Kannapolis Intimidators” baseball club.

“Team Ballpark Event” means any Ballpark Event directly involving the Team, including home games of the Team.

“Tenant” has the meaning given to that term in the introductory paragraph of this Agreement and may also be referred to as “Team”.

“Tenant Default” has the meaning given to that term in Section 10.1 hereof.

“Tenant Personal Property” means any and all movable equipment, furniture, and other tangible personal property that are owned by Tenant as of the Commencement Date or otherwise purchased as part of the Ballpark Improvements designated on **Exhibit B** under the “Financial Responsibility” column or as Capital Improvements and located on or within the Ballpark or the Ballpark Dedicated Parking (and that do not constitute fixtures) and can be removed from the Ballpark without material damage thereto. The term “Tenant Personal Property” includes any replacements of Tenant Personal Property by Tenant or otherwise. Replacement of Tenant Personal Property shall be performed as shown on **Exhibit B**.

“Tenant Representative” has the meaning given to that term in Section 2.2 hereof.

“Term” means the lease term as provided in Section 3.4 hereof.

“Transfer of Majority Interest” means, with respect to Tenant or its parent company, any direct or indirect transfer, sale or other transaction (or related transactions) that results in any Person (other than a current Control Person of Tenant or its parent company, as applicable) becoming the beneficial owner, directly or indirectly, of fifty percent (50%) or more of the securities or interests having ordinary voting power for the election of managers, directors or other comparable Controlling body of Tenant or its parent company, as applicable.

“Use Agreement” means a use, sublease, license, concession, occupancy or other agreement for the use or occupancy of any designated space or designated facilities within the Ballpark for any Permitted Use, but shall not include any of the foregoing for all or substantially all of the Ballpark or for a period greater than the then remaining Term.

ARTICLE II. CITY AND TENANT REPRESENTATIVES

2.1 City Representative. City hereby designates the City Manager of City or his/her designee to be the representative of City (the “**City Representative**”), and City shall have the right, from time to time, to change the Person who is City Representative by giving at least ten (10) days’ prior written notice to Tenant thereof. The only functions under this Agreement of City Representative shall be as expressly specified in this Agreement. Any one of the Persons from time to time serving as City Representative, acting alone and without the joinder of the other persons then serving as City Representative, shall have the power to bind City in those instances in which this Agreement specifically provides for the approval, decision, confirmation or determination of City Representative and in no other instances; *provided, however*, that notwithstanding anything in this Agreement to the contrary, City Representative shall not have any unilateral right to modify, amend or terminate this Agreement.

2.2 Tenant Representative. Tenant hereby designates its LLC Manager to be the representative of Tenant (the “**Tenant Representative**”), who shall be authorized to act on behalf of Tenant under this Agreement. Tenant shall have the right, from time to time, to change the Person who is Tenant Representative by giving at least ten (10) days’ prior written notice to City thereof. Any written approval, decision, confirmation or determination hereunder by Tenant Representative shall be binding on Tenant; *provided, however*, that notwithstanding anything in this Agreement to the contrary, Tenant Representative shall not have any unilateral right to modify, amend or terminate this Agreement.

ARTICLE III. LEASEHOLD ESTATE TERM; RENT; FEES; CITY SUITE

3.1 Grant of Leasehold Estate. In consideration of and pursuant to the covenants, agreements and conditions set forth herein, City does hereby lease, let, demise and rent unto Tenant, and Tenant does hereby rent and lease from City, on and subject to the terms, conditions and provisions of this Agreement, the Ballpark, the Ballpark Dedicated Parking, and City Personal Property, together with all other rights, titles and interests granted to Tenant under this Agreement (collectively, the “**Leasehold Estate**”) for the Term set forth herein.

3.2 Delivery of Possession. On the Commencement Date, City will deliver to Tenant possession and occupancy of the Leasehold Estate subject only to (i) the Permitted Exceptions, (ii) the rights and reservations of City under this Agreement including the Reservations and (iii) all Applicable Laws. Subject to Tenant’s rights to access the Ballpark pursuant to the Development Agreement, Tenant shall not have the right to use or occupy any part of the Real Property, the Ballpark, the Ballpark Dedicated Parking or City Personal Property prior to the Commencement Date.

3.3 Reservation. Notwithstanding anything in this Agreement to the contrary, City hereby reserves (and the Leasehold Estate shall not include) the following with respect to the Ballpark and the Ballpark Dedicated Parking (the “**Reservations”**):

(a) the right of City to install on, under, over or below the Ballpark and the Ballpark Dedicated Parking any and all utilities and appurtenances related thereto that it deems reasonably necessary; provided, however, that (1) the location and construction of same shall not materially interfere with the operation, or materially change the aesthetics, of the Ballpark by Tenant or the use of the Ballpark Dedicated Parking by Tenant, each pursuant to the terms of this Agreement and (2) Tenant shall have no obligation to maintain same after construction by City; and

(b) for the benefit of City, the exclusive right to any natural resources in on and under the Ballpark or the Ballpark Dedicated Parking, including all oil, coal, natural gas and other hydrocarbons, minerals, aggregates and geothermal resources as well as a right to grant leases or to conduct and undertake surface or subsurface extraction of same; provided, however, that no extraction of such natural resources shall (1) be inconsistent or incompatible with the rights or privileges of Tenant under this Agreement, (2) be permitted on the playing surface of the Ballpark or (3) adversely affect the use or surface of, or undermine the support of, the Ballpark or the Ballpark Dedicated Parking.

3.4 Term. Subject to the terms and conditions hereof, City hereby leases the Ballpark to Tenant for a period commencing on the Commencement Date and ending on September 30 (or such later date as is reasonably necessary to accommodate any Team Ballpark Events (e.g., playoff games)) of that year in which the thirtieth (30th) full Baseball Season after the Commencement Date has occurred (the “**Term”**), unless sooner terminated by law or pursuant to the terms and conditions of this Agreement.

3.5 Renewal Option. There are no options granted herein for renewal of this Lease.

3.6 Rent.

(a) In consideration of the use and occupancy of the Ballpark by Tenant, and the costs incurred or to be incurred by City to construct the Ballpark, beginning on the Commencement Date, Tenant hereby agrees to pay to City the Rent as set forth in **Exhibit C** in two equal, semi-annual installment payments which aggregate the total amount of Rent to be paid for the applicable year, subject to the Rent Reduction set forth in Section 3.6(b) below. Such payments to be made (A) during the first year of the Term, (i) August 15, 2020 and (ii) the following February 15; and (B) for every year of the Term each August 15 and February 15 thereafter, as applicable. If this Agreement terminates on a day other than the anniversary of the Commencement Date, the Rent for such partial year shall be proportionately reduced and the remaining Rent shall be payable, or the excess portion of Rent previously paid shall be refunded, as applicable, on such date of termination of this Agreement.

(b) Notwithstanding the foregoing, Rent shall be reduced by ten percent (10%) for the remainder of the Term when \$100,000,000 in private investment (measured by the

greater of either the appraised or assessed value) is achieved within the Municipal Service District of Kannapolis as represented on **Exhibit C-1**, and further reduced by an additional five percent (5%) beginning in the year following each additional \$50,000,000 in private investment (measured by the greater of either the appraised or assessed value) achieved within the Municipal Service District of Kannapolis represented on **Exhibit C-1** thereafter (such reductions collectively referred to as the “**Rent Reduction**”). **(Further Discussion Necessary)**

3.7 City Suite. Tenant shall enter into an agreement with City (a “**City Suite License Agreement**”) no later than five (5) Business Days after the Commencement Date under which Tenant grants City a license during the Term to use a suite in the Ballpark (the “**City Suite**”). The City Suite will be used by City and any Affiliate of City for promotional and economic development activities and for other public and civic purposes during events at the Ballpark, but shall not be subleased so as to compete with Tenant’s suite licensing at the Ballpark. The City Suite License Agreement shall grant the same privileges to City, and be on the same terms and conditions, as Tenant or the Operator grants to the majority of third-Persons for other similarly located suites in the Ballpark, except that, although City shall be obligated to pay for costs and expenses in connection with its use of the City Suite, including without limitation its share of food and beverage costs, service charges, telephone expenses, maintenance and repair costs and other charges imposed on the majority of suite users for services, costs and expenses, City shall not be obligated to pay (a) to acquire the City Suite, (b) any annual rent with respect thereto or (c) for tickets to any Ballpark Events, except if Team is required to pay a promoter for any such tickets. Tenant shall use commercially reasonable efforts to remove the City Suite from the manifest for all events at the Ballpark. City shall be entitled to the number of tickets to any event in the Ballpark equal to the sum of the number of fixed seats and bar seats in the City Suite. Parking passes will be provided to City at no charge for events at the Ballpark in the same proportion and on the same terms that other third Person suite holders in similarly located suites have parking rights.

3.8 City Employee Nights. Twice during each Baseball Season (unless otherwise agreed by Tenant and City) throughout the Term, Tenant shall accommodate a “City Employee Night” at two (2) mutually agreed upon regular season home games of the Team (each, a “**City Employee Night**”). Tenant shall provide City, at City’s option, with up to two hundred fifty (250) general admission tickets for each City Employee Night without cost, to be distributed by City to its employees, their families and guests. In no event shall tickets so provided be sold or subjected to a charge or fee by City. Tenant shall use commercially reasonable efforts to provide tickets in contiguous sections and/or blocks of at least fifty (50) fixed stadium chairs (but in all cases subject to then-current availability). Notwithstanding anything to the contrary contained in this Section 3.8, the location of the tickets described herein shall be at Tenant’s reasonable discretion, and shall be subject to account inventory availability and demand.

ARTICLE IV.
USE OF THE STADIUM; REVENUE

4.1 Ballpark Events. Except for City Sponsored Events, Tenant shall be entitled to the exclusive use of all or any portion of the Ballpark and the City Personal Property and the Ballpark Dedicated Parking for all (a) home games (including pre-season, regular season and playoff games) of the Team, (b) practices of the Team, (c) concerts and other entertainment events, (d) meetings and banquets, (e) soccer, football, lacrosse, baseball (e.g., high school and college) and other sporting events, (f) community-oriented events, (g) any other for profit events, (h) reasonable periods before and after the events described in subsections (a)-(g) hereof, for field protection, recovery and repair and event move-ins/move-outs, (i) Routine Maintenance and Capital Improvements, and (j) for any other lawful purpose that is not a Prohibited Use (collectively, the “**Ballpark Events**”).

4.2 Scheduling.

(a) Notwithstanding anything to the contrary contained in this Agreement, Tenant shall have absolute priority for use of all or any portion of the Ballpark for any and all Ballpark Events, including without limitation all pre-season, regular season and playoff games of the Team. Subject to the foregoing, City and Tenant acknowledge that within the framework established by this Section 4.2 and Section 4.3 below, the scheduling of City Sponsored Events at the Ballpark will be a cooperative endeavor, and City and Tenant each agree to recognize and, in good faith, accommodate City with respect to the scheduling of up to eight (8) City Sponsored Events per year.

(b) Tenant shall use reasonable efforts to provide City with an updated schedule of Ballpark Events on a continuous basis throughout the Term and promptly upon a request by the City.

(c) It is understood by the Parties that the SAL typically publishes the final baseball schedule for each calendar year prior to December of the preceding calendar year. Tenant shall distribute to City the final schedule within five (5) Business Days after it is received by Tenant.

4.3 City Sponsored Events

(a) Subject to availability based on Tenant’s priority use of the Ballpark described in this Agreement, City shall be entitled to use of the public areas of the Ballpark for up to eight (8) dates in each calendar year for (i) civic-oriented, community not-for-profit or educational events such as City ceremonies, conferences, conventions, meetings and training sessions, for the benefit of City and (ii) other events primarily sponsored or promoted by City, which do not conflict or compete with Ballpark Events (the “**City Sponsored Events**”), each with the prior written consent of Tenant which may not be unreasonably withheld, delayed, conditioned or denied. The City shall not attempt to schedule and shall not be authorized to use the Ballpark for any Ballpark Events, as described in Section 4.1, without the prior written consent of Tenant, which may be withheld in its sole discretion. The City shall observe and honor

all products and service exclusivity and other sponsorship, advertising and naming rights arrangements entered into by Tenant with respect to the Ballpark and the Team to the extent that such arrangements would be applicable to City Sponsored Events.

(b) Subject to the terms and conditions of Section 4.2 above and this Section 4.3, City shall notify Tenant in writing of City's intent to hold a City Sponsored Event at the Ballpark, which notice shall be given not less than thirty (30) days prior to the proposed City Sponsored Event and shall include a full and complete written description of that event. City shall not attempt to schedule a City Sponsored Event during any Baseball Season until the final schedule for such Baseball Season is published. Notwithstanding anything to the contrary contained herein, and for the avoidance of doubt, if Tenant has previously scheduled an event at the Ballpark on the date of a City Sponsored Event requested by City, Tenant shall have no obligation to make the Ballpark available to City on such date. Tenant shall have no obligation to reschedule a Ballpark Event.

(c) During any City Sponsored Event, Tenant shall, in its sole discretion, have the option of selling Concessions and/or Merchandise, whether through the use of a Concessions Agreement, Merchandise Agreement or otherwise, and Tenant shall be entitled to receive and retain all revenue generated therefrom as described in Section 4.4 hereof; *provided, however*, that Tenant shall pay twenty-five percent (25%) of the net revenue from Concessions and Merchandise for all City Sponsored Events to the City. If Tenant does not make such an election and City wishes to provide for the sale and provision of Concessions and/or Merchandise at the Ballpark for City Sponsored Events, City must negotiate an agreement for the sale of Concessions and/or Merchandise, as applicable, at City Sponsored Events with the then-existing concessionaires, merchandisers and vendors under contract to provide and sell Concessions and Merchandise at the Ballpark pursuant to a Concessions Agreement or Merchandise Agreement, as applicable.

(d) After each City Sponsored Event, City shall re-deliver the Ballpark to Tenant with any waste, damage, breakage, wear, theft, littering or other harm caused by the City, its contractors or invitees, or trespassers taking advantage of entrances to the Ballpark being relatively unsecured as a result of the City Sponsored Event having been cleaned, repaired, and restored, at a minimum, in full compliance with the Ballpark Standard. Without limiting the foregoing, after each City Sponsored Event, City shall be responsible for the timely restoration of all portions of the field at the Ballpark to its immediately pre-existing condition and, at a minimum, to the official standards of the NAPBL, as may be amended from time to time. City and Tenant, shall, from time to time as appropriate during the Term, cooperate and confer in good faith to develop and modify procedures and standards to be implemented by City for City Sponsored Events to ensure that all portions of the field at the Ballpark are adequately protected during the preparation for, and the holding of, City Sponsored Events so that the field meets, or can be timely restored to, the official standards of the NAPBL, as may be amended from time to time, after each City Sponsored Event.

(e) City shall be entitled to the "rent-free" use of the Ballpark for City Sponsored Events; provided, however, that for any City Sponsored Event, City shall be solely responsible for all actual costs and expenses associated with such event that are over and above

the costs to maintain and operate the Ballpark had there been no such City Sponsored Event. City shall pay Tenant for the actual additional costs and expenses associated with such a City Sponsored Event within thirty (30) days after receipt of a reasonably detailed invoice from Tenant, including reasonable back-up documentation as requested by City.

(f) Tenant acknowledges that one of the primary reasons for City's financial and other commitments to build the Ballpark and enter into this Agreement was for the betterment of the community and provide ways to enhance public enjoyment and use of downtown amenities. Therefore, the City and Tenant agree that the general public will have access to the Ballpark, unless further restricted at the request of City for public safety, nuisance or cost reasons, every date from one hour after sunrise to one hour prior to sunset on such dates that do not conflict with Tenant's scheduled use for Ballpark Events ("**Public Use Hours**"). Staffing for Public Use Hours shall be agreed upon by Landlord and Tenant, and City shall be fully responsible for the staffing, cleaning, repair and restoration during Public Use Hours, which expenses shall be at the sole cost and expense of City.

4.4 Revenue.

(a) Except as otherwise expressly provided by the terms of this Agreement, including Section 4.4(b) below, Tenant shall be entitled to receive and retain all revenues generated from the Team and/or at the Ballpark, including, without limitation, all revenues from Events, ticket sales, the Ballpark Dedicated Parking, Concessions, Merchandise, suite, loge box and club seat rentals, interior and exterior Ballpark advertising and signage, sponsorships, any and all naming rights and other advertising, sales of broadcast and telecast rights, internet rights, league expansion fees and team fundraising, and any other sources of revenue, in each case subject to applicable sales, use, admission, stamp or excise taxes, if any, imposed by the United States or the State of North Carolina, which shall be, as between the City and the Tenant, the sole responsibility of the Tenant to pay.

(b) City shall be entitled to receive and retain all revenues generated from ticket sales and, subject to Section 4.3(a), event-specific advertising and sponsorship, for City Sponsored Events and City's share of Concessions and Merchandise described in Section 4.3(c), in each case subject to applicable sales, use, admission, stamp or excise taxes, if any, imposed by the United States or the State of North Carolina, which shall be, as between the City and the Tenant, the sole responsibility of the City to pay.

4.5 Prohibited Uses.

Tenant shall not use, or permit the use of, the Ballpark or the Ballpark Dedicated Parking for any other, different or additional purpose that is not a Ballpark Event or other use expressly permitted hereunder without first obtaining the Approval of City Representative. Tenant agrees that the Ballpark Events are subject to compliance with all Applicable Laws at any time applicable to the use, occupancy or operation of the Ballpark and the Ballpark Dedicated Parking and that nothing in this Agreement shall constitute or be deemed to constitute a waiver by City of the performance of its Governmental Functions or of any such Applicable Laws or of the duty of Tenant to comply with such Applicable Laws. Notwithstanding the use of the Ballpark for

Ballpark Events, but as may be otherwise Approved or modified by City Representative from time to time, Tenant agrees that it shall not (collectively, the “**Prohibited Uses**”):

(a) Create, cause, maintain or permit any public or private nuisance in, on or about the Ballpark or the Ballpark Dedicated Parking;

(b) Use or allow the Ballpark or the Ballpark Dedicated Parking to be used for the sale or display of any pornographic material or material which is obscene or politically, racially or religiously offensive under standards set forth in any Applicable Laws, or operate or allow any Person to operate in, on or about the Ballpark any store or other facility, a principal or significant portion of the business of which is an “adult establishment”, as such term is defined in the Kannapolis Zoning Regulations, as same may be amended from time to time during the Term;

(c) Use or allow the Ballpark or the Ballpark Dedicated Parking to be used for any purpose that is violative of Applicable Laws;

(d) Use or allow the Ballpark or the Ballpark Dedicated Parking to be used for the sale of paraphernalia or other equipment or apparatus which is used primarily in connection with the taking or use of illegal drugs (or their equivalent);

(e) Use or permit the Ballpark or the Ballpark Dedicated Parking to be used for the public or private sale of guns and other weapons, ammunition, fireworks, or explosives; provided, however, the Team shall be permitted to use fireworks in accordance with all Applicable Laws provided, that the Team shall have first obtained all necessary Government Authorizations therefor (and the City shall not oppose the Team’s application for any such Government Authorizations).

(f) Use any portion of the Ballpark or the Ballpark Dedicated Parking, other than portions designated for same inside the Ballpark building, for storage;

(g) Operate any speakers or amplified music near or on any exterior portions of the Ballpark or in the Ballpark Dedicated Parking other than during Ballpark Events (including reasonable periods before and after), without the Approval of City Representative (but specifically excluding any pre-event sound checks for Ballpark Events and reasonable testing of the Ballpark sound facilities) which approval shall not be unreasonably withheld, conditioned or delayed; or

(h) Use or permit the use of the Ballpark or the Ballpark Dedicated Parking as a casino (or other establishment in which gambling is permitted or games of chance are operated), a massage parlor or a tanning parlor or any other use prohibited by the City Unified Development Ordinance.

The provisions of this Section 4.5 shall inure to the benefit of, and be enforceable by, City and its successors and assigns. No other Person, including any guest or patron of the Ballpark or the Ballpark Dedicated Parking, shall have any right to enforce the prohibitions as to the Prohibited Uses.

4.6 Operator. During the Term, Tenant shall be the initial Person who, on a day-to-day basis, is responsible for the operation and policies of the Ballpark and the Ballpark Dedicated Parking and who operates the Ballpark and the Ballpark Dedicated Parking in accordance with the Ballpark Standard (the “**Operator**”). Prior to engaging a third party that is not an Affiliate of Tenant to act as Operator and operate the Ballpark and/or the Ballpark Dedicated Parking, Tenant shall request City Representative’s Approval, which request shall include the form of Management Agreement to be executed in connection therewith. City Representative shall respond to any such request within fifteen (15) days after receipt thereof, and any City Representative’s Approval shall not be unreasonably withheld, conditioned or delayed so long as any such third party Operator is a Qualified Operator. Notwithstanding the foregoing, an Operator that is solely operating the Ballpark Dedicated Parking shall not be required to be a Qualified Operator. In all instances, each management agreement with a third party Operator shall (i) require the Operator to comply with the terms of this Agreement as to the use and operation of the Ballpark and the Ballpark Dedicated Parking, (ii) provide that City shall be a third party beneficiary and permitted assignee thereof and (iii) not be modified or amended in any material respect without the prior written Approval of City, which Approval shall not unreasonably be withheld, conditioned or delayed. Each such management agreement with a third party Operator of the Ballpark and the Ballpark Dedicated Parking shall be referred to herein as a “**Management Agreement**.” Each Management Agreement shall be subject to City Representative’s prior Approval, such Approval not to be unreasonably withheld, conditioned or delayed. If given, such Approval shall be provided no later than fifteen (15) days after such request is made by Tenant.

4.7 Development Around Ballpark. The Parties acknowledge and agree that City owns the real property around and underlying the Ballpark and the Ballpark Dedicated Parking. Tenant further acknowledges and agrees that City maintains exclusive control and development rights over such real property (the “**Development Rights**”); *provided, however*, that City shall not exercise or allow any third party to exercise, the Development Rights in a manner that prevents Tenant from using the Ballpark for the Team Ballpark Events as provided in this Agreement. Notwithstanding anything contained herein to the contrary, as set forth in Section 3.4 of the Development Agreement, to the extent permitted by law and in accordance with North Carolina redevelopment statutes, the Parties shall enter into a Development Rights Agreement which shall fully set forth the rights and obligations of City and Tenant with respect to future development of the real property surrounding and underlying the Ballpark and the Ballpark Dedicated Parking, including without limitation the Municipal Service District as represented on **Exhibit C-1**.

ARTICLE V. PARKING

5.1 Generally. The Parties acknowledge and agree that parking for the Ballpark is critical to the long term operating and financial viability of the Team and the Ballpark. Periodically, as determined by the Representatives, the Representatives shall meet in good faith to develop and implement a strategic plan to address parking for the Ballpark. It is the intent of the Parties that the strategic plan will include a plan to maximize the number of parking spaces within

the area located one-half (1/2) mile from the outside perimeter of the Ballpark (in every direction), including existing and new garage and surface parking spaces, and on-street metered parking spaces. The strategic plan shall also include ingress and egress plans, directional signage and access to Ballpark patrons to Offsite Parking.

5.2 Ballpark Dedicated Parking Spaces. Beginning on the Commencement Date, City shall make available fifty (50) parking spaces at the parking areas to be chosen or provided by City and approved by Tenant for the use by Tenant (and, including without limitation, Tenant's guests, employees, patrons, concessionaires, merchandisers, vendors and staff, and members of the Team) one half being available at any time on a year round basis and one half available at any time but only during the baseball season and for Ballpark Events (the "**Ballpark Dedicated Parking Spaces**").

5.3 Ballpark Dedicated Parking. Notwithstanding anything herein to the contrary, beginning on the Commencement Date and during the Term, City shall provide parking at the levels and in locations mutually agreed upon by the Representatives and as shown on **Exhibit E** for the use by Tenant (and, including without limitation, Tenant's guests, employees, patrons, concessionaires, merchandisers, vendors and staff, and members of the Team) and the public at no cost to Tenant for Ballpark Events (such parking, along with the Ballpark Dedicated Parking Spaces collectively referred to as "**Ballpark Dedicated Parking**"). Any changes or modifications to the Ballpark Dedicated Parking shall be subject to the reasonable approval of the Representatives.

ARTICLE VI. OPERATION; ROUTINE MAINTENANCE; UTILITIES

6.1 Tenant's Operation of the Ballpark. Except as otherwise provided in this Agreement, Tenant shall be responsible for all aspects of operating the Ballpark (including the sale of Concessions and Merchandise directly or through a Concessions Agreement or Merchandise Agreement) and the Routine Maintenance of the Ballpark and shall be responsible for all operating expenses and costs for the Ballpark, including all direct or indirect expenses associated with the Team or Ballpark Events, and the provision of adequate, qualified and sufficient personnel to perform the duties and obligations of Tenant under this Lease, including public address announcers, scoreboard operators, ticket sellers and takers, Concessions and Merchandise personnel, ushers, first aid and security personnel, groundskeepers and cleaning and maintenance personnel and other personnel necessary for the proper and safe operation of the Ballpark.

6.2 Routine Maintenance. [**NOTE: EXHIBIT B REMAINS OPEN AND SUBJECT TO TENANT's REVIEW**] Without limiting the generality of the preceding sentence, Tenant shall, throughout the Term, at its own expense and, except for items designated as the responsibility of City on **Exhibit B**, at no cost or expense to City, and in compliance with this Agreement and Applicable Laws:

(a) Perform all Routine Maintenance and otherwise keep and maintain, or cause to be kept and maintained, the Ballpark and all Personal Property located within the

Ballpark, excluding those which are designated as the responsibility of City on **Exhibit B**, in good repair, order and condition so that the Ballpark may be operated in accordance with the Ballpark Standard, but in all events in a manner consistent with manufacturers' recommendations, any applicable Casualty or other insurance requirements and as reasonably necessary to avoid or repair waste or damage to any of the foregoing and in compliance with Applicable Laws;

(b) Promptly make, or cause to be made, all reasonably necessary routine repairs, interior and exterior, foreseen as well as unforeseen, to the Ballpark , excluding those which are designated as the responsibility of City on **Exhibit B** to keep the foregoing clean, in good working order and condition so that that the Ballpark may be operated in accordance with the Ballpark Standard and so that the Ballpark may be operated in compliance with all Applicable Laws; and

(c) Undertake the specific repair and maintenance responsibilities identified as being Tenant's responsibility on **Exhibit B** attached hereto; provided, that to the extent that **Exhibit B** is in conflict with any other provision of this Agreement with respect to such responsibilities, **Exhibit B** shall control; and

(d) Perform such maintenance and repair activities required in this Article VI in a safe, clean, attractive and first class manner comparable to that of the Comparable Properties and in accordance with Ballpark Standard.

6.3 Compliance with Applicable Laws.

(a) Tenant may perform such operation, maintenance and repair activities itself or hire contractors or managers to perform all or any portion of the same in compliance with all Applicable Laws. Without limiting the foregoing, if Tenant elects to hire a third party facility management firm other than an Affiliate of Tenant to perform any such activities, Tenant shall follow the procedure set for in Section 4.6 hereof. For the avoidance of doubt, Tenant shall not be required to seek prior approval from City for any concessionaires, merchandisers or other vendors for the Ballpark.

(b) Tenant agrees to do all things reasonably necessary to conduct its affairs and carry on its business and operations in such a manner as to comply in all material respects with any and all Applicable Laws and to duly observe and conform to all valid orders, regulations, or requirements of any Governmental Authority relative to the conduct of its business and its operation of the Ballpark.

(c) Tenant, or the concessionaires, merchandisers and/or vendors for the Ballpark, as appropriate, shall be responsible for obtaining all necessary Governmental Authorizations for operation of the Ballpark, including, but not limited to, licenses and permits to sell food, beverages and alcohol, and City hereby agrees to cooperate with Tenant to the extent necessary to obtain the Governmental Authorizations.

6.4 Security and Staff. Tenant, in its reasonable discretion, shall provide at its sole cost and expense all interior Ballpark security, emergency medical and other necessary staff

inside the Ballpark at a level of service appropriate for the applicable Ballpark Event and consistent with the Ballpark Standard. City, in its reasonable discretion, shall provide at its sole cost and expense (using City employees or contract services, as determined by City) all customary police, traffic control, fire prevention, emergency medical, street cleaning and street trash removal (but not including the Ballpark) and other similar City-provided services, outside and in the general vicinity of the Ballpark, at a level of service consistent with the Ballpark Standard. If City in its sole discretion determines that an emergency public safety issue exists at any Event, City shall have the right to provide additional police or emergency staffing for such Event at City's cost. The Representatives shall meet from time to time to update each other on staffing needs for scheduled Events.

6.5 Utilities. Except as otherwise provided in this Agreement, and beginning on the Commencement Date the Parties shall be responsible for Ballpark utilities as follows:

(i) Tenant shall be responsible for contracting for all gas and electric service to the Ballpark during the Term; provided, however, Tenant and City shall share equally in the payment of cost and fees thereof.

(ii) Tenant shall be responsible for contracting and paying costs and fees for all other utilities to the Ballpark during the Term, including without limitation, telephone, cable television and other communications, and internet services.

(iii) City shall be responsible for contracting and paying for all water and sewer costs at the Ballpark.

(iv) In the event City requests field lighting of the Ballpark on dates without Ballpark Events, City shall reimburse Tenant for the electric service for such field lighting on those dates within thirty (30) days after receipt of a reasonably detailed invoice from Tenant.

6.6 City Inspections; Evaluation of Tenant. Upon reasonable prior written notice to Tenant, City Representative shall be permitted to conduct periodic inspections of the Ballpark to evaluate Tenant's compliance with its obligations under this Article VI. Tenant (or Tenant's representatives) shall be permitted to attend any such inspections.

6.7 Improvements by Tenant. Tenant shall be permitted to make additions or improvements to the Ballpark, at its sole cost and expense, subject to City Representative consent which may not be unreasonably withheld or delayed and as long as such additions or improvements are required to meet the Ballpark Standard. Tenant shall provide the City Representative with prior notice of such proposed improvements and keep the City Representative reasonably advised of the status of such improvements throughout their construction. All other additions or improvements to the Ballpark shall be approved by City in its reasonable discretion, such approval shall not be unreasonably withheld, conditioned or delayed.

6.8 Tenant Personal Property. Tenant Personal Property shall remain the property of Tenant during the Term. Tenant, its assignees, concessionaires, merchandisers or vendors shall be entitled to remove Tenant Personal Property from time to time during the Term and through the Lease Expiration Date.

ARTICLE VII. CAPITAL IMPROVEMENTS AND CAPITAL REPLACEMENT ITEMS

7.1 Responsibility. Subject to the terms and conditions of this Article VII, Tenant shall be responsible for undertaking completion of all Capital Improvements and Capital Replacement at the Ballpark during the Term in order to ensure that the Ballpark continues to meet the Ballpark Standard, ordinary wear and tear excepted. Costs and expenses for Capital Improvements, Installation, Maintenance, Repair and Replacement shall be the Financial Responsibility as allocated among the Capital Improvements Reserve Fund, City or Tenant on Exhibit B or as set forth in the Capital Improvement Plan developed in accordance with Section 7.3.

7.2 Capital Improvements Reserve Fund. On or before the Commencement Date, the City shall establish a capital improvements reserve fund (the "**Capital Improvements Reserve Fund**"), which shall be used solely for the funding of Approved Capital Improvements as provided in this Article VII in order to ensure that the Ballpark continues to meet the Ballpark Standard, ordinary wear and tear excepted. The Capital Improvements Reserve Fund shall be subject to the following conditions:

(a) The Capital Improvements Reserve Fund shall be deposited in a federally-insured, interest-bearing account with a financial institution mutually approved by the Representatives.

(b) The Capital Improvements Reserve Fund shall be funded as follows:

- (i) The City shall deposit a sum which is the greater of \$100,000 or 25% of the excess funds remaining from the Project Budget for the Ballpark construction upon opening day of the 2020 Baseball Season together with any unused portion of the Owner's Contingency;
- (ii) The City shall contribute the sum of \$100,000 from each aggregate annual payment of Rent received from Tenant into the Capital Improvements Reserve Fund beginning March 15, 2021 and no later than March 15 of each year of the Term thereafter~~no later than September 15 of each year of the Term;~~
- (iii) The City will contribute the additional sum of \$100,000 annually no later than ~~September~~March 15 of each year of the Term; and
- (iv) City and Tenant shall deposit sums sufficient to satisfy their

respective Financial Responsibility for Capital Improvements and Capital Replacement costs allocated between City and Tenant on Exhibit B or as set forth in the Capital Improvement Plan within thirty days following acceptance and approval of a bid item in Section 7.4.

(c) All interest earned on the Capital Improvements Fund shall become a part of the Capital Improvements Reserve Fund.

(d) Notwithstanding the provisions of Section 7.2(b), Tenant shall have the option and right as it deems appropriate and desirable and in its sole and absolute discretion to defer contributions to the Capital Improvements Reserve Fund during each first five (5) years of the Term, the first year being the year of the Commencement Date; provided, however, on or before the beginning of the sixth (6th) year of the Term, all deferred contributions to the Capital Improvements Reserve Fund, less any contributions actually made shall then be paid so that City and Tenant shall have contributed equal sums.

(e) Nothing herein shall be deemed to relieve Tenant of its financial or performance responsibility for acquisition, design, installation, maintenance, repair and replacement of Capital Improvements set out on Exhibit B.

7.3 Capital Improvements Plan. Not later than eighteen (18) months following the Commencement Date, the Representatives shall meet and jointly develop and Approve a rolling five (5) year Capital Improvements plan which, at a minimum, will specifically address each of the capital replacement items identified on Exhibit B attached hereto which Financial Responsibility is allocated between the City and Tenant and any other anticipated Capital Improvements and set forth an estimated schedule and cost and expense for such Capital Improvements (when so Approved, the “**Capital Improvement Plan**”). The Representatives shall meet no less often than once a year thereafter to revisit, modify, as appropriate, and Approve the Capital Improvements Plan, and determine when and whether any additional Capital Improvements or Maintenance Items are reasonably required to maintain the Ballpark Standard. To the extent that any modifications, amendments or updates to the Capital Improvements Plan require an Appropriation in excess of amounts then contained within the Capital Improvements Reserve Fund, such modification, amendment or update shall also be submitted to the City Council for its Approval of the Appropriation prior to them becoming effective. City and Tenant agree to act reasonably in agreeing on and implementing the Capital Improvements Plan. Any failure of City and Tenant to agree on and Approve a Capital Improvements Plan or any modifications, amendments or updates thereto shall not affect the obligations of the Parties with respect to Capital Improvements or Maintenance Items which have previously been Approved.

7.4 Undertaking of Approved Capital Improvements. Prior to undertaking an Approved Capital Improvement, Tenant shall obtain at least three (3) bids from unaffiliated third parties for completion of such Capital Improvement, (unless otherwise agreed in writing by the Parties) which bids shall comply with Applicable Laws and City Ordinances, and submit such bids, together with Tenant's recommendation for acceptance of one of such bids, to the City

Representative (the "**Proposed Capital Improvements Contract**"). The City Representative shall have fifteen (15) days to approve or reject the recommended Proposed Capital Improvements Contract and, if the City Representative fails to respond to Tenant within such fifteen (15) day period, Tenant's recommendation shall be deemed approved and Tenant may proceed with the proposed Capital Improvement subject, if necessary, to the Approval by the City Council of any necessary Appropriation.

7.5 Emergency Conditions. Notwithstanding the foregoing, in the event that either Tenant or the City determines that a condition exists at the Ballpark that would jeopardize the health, safety and welfare of attendees of Events at the Ballpark or that would render the Ballpark unusable for Events if not cured within an expedited timeframe and such condition could only be cured through Capital Improvements (an "**Emergency Condition**"), then such Party may request an expedited review of a Proposed Capital Improvement to cure such condition by providing notice to the other Party detailing the basis for the determination that such condition constitutes an Emergency Condition, the Proposed Capital Improvement necessary to cure such Emergency Condition and a good faith estimate of the timeframe in which the Proposed Capital Improvement must be approved by the Representatives with respect to the Emergency Condition as promptly as practicable in light of the Emergency Condition.

7.6 Improvements Arbitrator. In the event the Representatives cannot agree on the need for a particular Capital Improvement in the Capital Improvement Plan, the Parties shall submit the disagreement to arbitration by a mutually agreed upon unaffiliated architect, building engineer or other person skilled and experienced in MiLB stadium management and maintenance (the "**Improvements Arbitrator**") to determine whether the proposed Capital Improvement is necessary for the maintenance of the Ballpark in accordance with the Ballpark Standard. The Parties shall provide such information to the Improvements Arbitrator as may be reasonably requested by the Improvements Arbitrator who shall make a determination within three (3) weeks from the date the dispute is submitted to arbitration. If the Improvements Arbitrator determines that the proposed Capital Improvement is necessary for the maintenance of the Ballpark in accordance with the Ballpark Standard, then such proposed Capital Improvement shall be an Approved Capital Improvement subject, however, to the Approval of the City Council if an Appropriation is required with respect thereto. The determination of the Improvements Arbitrator shall be final and binding on the parties. Tenant and City shall share equally in the costs and expense of the Improvements Arbitrator.

7.7 Completion of Authorized Capital Improvements. Tenant shall commence any Approved Capital Improvements pursuant to Approved Improvements Contracts promptly upon Approval thereof in accordance with Section 7.4, but in any event within ninety (90) days. Should Tenant fail to commence such Authorized Capital Improvement within such ninety (90) day period, then the City shall provide notice to Tenant that the City intends to pursue completion of such Authorized Capital Improvement and if Tenant then fails to commence such Authorized Capital Improvement within thirty (30) days after receipt of such notice, City shall be entitled to pursue completion of such Authorized Capital Improvement without further notice to Tenant. Tenant shall use commercially reasonable efforts to time and organize all repair activities in such a manner as to facilitate Ballpark Events and City Sponsored Events to the extent feasible, and, Tenant agrees to consult with the City on all such Tenant decisions

regarding the completion of any Approved Capital Improvement.

7.8 Funding of Capital Improvements. Tenant may utilize any and all funds available in the Capital Improvements Reserve Fund as, when and to the extent such funds are available for payments due with respect to Approved Capital Improvements, it being understood that amounts to be contributed to the Capital Improvements Reserve Fund pursuant to Section 7.2 above may not be available at the time of such Capital Improvements, in which case Tenant will be responsible for paying any such amounts directly. If Tenant funds or pays for an Authorized Capital Improvement pursuant to an Authorized Improvements Contract, which is not Tenant's Financial Responsibility, from its own funds, then Tenant shall be entitled to reimbursement from the Capital Improvements Reserve Fund for actual costs incurred by Tenant, promptly upon presentation of evidence thereof to the City, if, when and to the extent such funds become available from the Capital Improvements Reserve Fund; provided, however, that Tenant shall not be entitled to reimbursement of costs that would have been incurred by Tenant in the absence of such Authorized Capital Improvement (e.g. overhead costs, including salaried employees of Tenant). Tenant acknowledges and agrees that it shall not be entitled to utilize funds from the Capital Improvements Reserve Fund or to reimbursement from the Capital Improvements Reserve Fund for Capital Improvements that are not Approved Capital Improvements.

7.9 Excess Funds. In the event that this Agreement is not renewed beyond the Term pursuant to Section 3.5, any funds remaining in the Capital Improvements Reserve Fund at the end of the Term shall be distributed equally to the City and Tenant.

ARTICLE VIII. TAXES

8.1 Tenant Payment of Taxes. Tenant shall be responsible for the payment of any taxes legally imposed, assessed or levied against Tenant's Personal Property and the Leasehold Estate and for the payment of any excise taxes legally imposed, assessed or levied against Tenant on account of tickets, parking, Concessions or Merchandise, and similar sales or transactions related to Tenant's use or occupancy of the Ballpark or any Ballpark Event.

8.2 Ad Valorem Taxes. City and Tenant intend that the Real Property, the Ballpark, the Ballpark Dedicated Parking, and the Leasehold Estate of Tenant hereunder (for so long as the Ballpark and the Ballpark Dedicated Parking are owned by City or other Governmental Authority) presently are and shall continue to be exempt from real estate ad valorem taxes ("**Property Taxes**") as exempt properties under the applicable provisions of the North Carolina General Statutes and other Applicable Laws. Tenant is authorized to assert, insist upon, continue, and restate this joint intent to any agency, forum, or court having jurisdiction and at which the question may arise or be presented, and City, at the request and sole expense of Tenant, shall jointly take and pursue such lawful actions with Tenant, including, if necessary, judicial actions, as may be available and appropriate, to protect and defend the Ballpark, the Ballpark Dedicated Parking, and the Leasehold Estate of Tenant against the levy, assessment or collection of Property Taxes by any Governmental Authority asserting the power to levy, assess, and collect such taxes under Applicable Law. In the event that such Property Taxes are assessed against the Real

Property, the Ballpark, the Ballpark Dedicated Parking or the Leasehold Estate of Tenant hereunder, then Tenant shall pay such Property Taxes before they become delinquent, subject to Tenant's right of contest as provided in this Agreement, and the aggregate of such Property Taxes owing and paid to City as a governmental taxing entity, but not to other taxing jurisdictions, throughout the Term shall be promptly refunded by City to Tenant as permitted by law.

8.3 Joinder of City Not Required. City shall not be required to join in any Tax Proceeding or other Action or Proceeding referred to in this Section unless required by Applicable Law in order to make such Action or Proceeding effective, in which event any such Action or Proceeding may be taken by Tenant in the name of but without expense to City, and **TENANT HEREBY AGREES TO INDEMNIFY, DEFEND AND HOLD CITY HARMLESS FROM ALL COSTS, FEES, EXPENSES, CLAIMS, LOSSES OR DAMAGES BY REASON OF, IN CONNECTION WITH, OR IN ACCOUNT OF, GROWING OUT OF, RESULTING FROM, ANY SUCH ACTION OR PROCEEDING.** To the extent such cooperation is required by the applicable Governmental Authority for such Tax Proceeding, City shall cooperate in any such Tax Proceeding as reasonably requested by Tenant, at Tenant's sole cost and expense, whether or not City is joined pursuant thereto, and City agrees to take no action that would be materially adverse to Tenant in any such Tax Proceeding where Tenant seeks to reduce its obligation to pay such Property Taxes.

8.4 No City Obligations. Except for costs that City has specifically agreed to pay pursuant to the express terms of this Agreement, (i) City shall not be required to make any expenditure, incur any obligation or incur any liability of any kind whatsoever in connection with this Agreement, the Ballpark, the Ballpark Dedicated Parking or any Property Taxes and (ii) it is expressly understood and agreed that this is a completely net lease intended to assure City the Rent herein reserved on an absolutely net basis, except as otherwise provided in this Agreement.

8.5 No Target Taxes. Notwithstanding anything herein to the contrary, City shall not impose, or agree to be imposed, any targeted or special taxes, fees or assessments on (a) Offsite Parking during any Ballpark Events, or (b) the Ballpark, the Ballpark Dedicated Parking, the Ballpark Dedicated Paved Parking the Team or Ballpark Events, including, without limitation, special district taxes, fees or assessments.

ARTICLE IX. INSURANCE; INDEMNITY

9.1 Insurance. [NOTE: UNDER REVIEW BY TENANT]

(a) Tenant shall, at its sole expense, obtain and maintain during the Term, a Commercial General Liability Policy and Auto Liability Policy of Insurance (for owned, hired and non-owned vehicles of Tenant) which will adequately and sufficiently protect City and Tenant, their agents, representatives and servants from losses arising directly or indirectly from Tenant's and City's use of the Ballpark and Ballpark Dedicated Parking. City shall be named on the insurance certificate(s) as an additional insured party and Tenant shall use commercially reasonable efforts for the umbrella coverage to follow form to include City as an additional insured. Unless otherwise agreed by City Representative and Tenant Representative in writing,

the Commercial General Liability Policy of Insurance shall include the following coverage: (i) commercial general liability, ONE MILLION DOLLARS (\$1,000,000) per occurrence, including fire, products/completed operations, broad form contractual liability, broad form property damage liability, host legal liquor liability and dram shop liability; (ii) TEN THOUSAND DOLLARS (\$10,000) for medical payments per each occurrence; (iii) General Aggregate, TWO MILLION DOLLARS (\$2,000,000), (iv) Products/Completed Operations - Aggregate, TWO MILLION DOLLARS (\$2,000,000), (v) Personal and Advertising Injury, ONE MILLION DOLLARS (\$1,000,000), (vi) Fire Legal Liability, ONE MILLION DOLLARS (\$1,000,000), (vii) commercial umbrella liability policy, TEN MILLION DOLLARS (\$10,000,000) per occurrence/annual aggregate, including host legal liquor liability and dram shop liability in the umbrella policy (which in the alternative, may be carried by third party concessionaires through a respective Concessions Agreement); (iv) workers' compensation (statutory benefits coverage A) plus employers liability, in the amounts of FIVE HUNDRED THOUSAND (\$500,000) per employee per accident, FIVE HUNDRED THOUSAND (\$500,000) per employee per disease and FIVE HUNDRED THOUSAND (\$500,000) policy aggregate. Such policies shall also include business interruption coverage similar in nature to such coverages in place at Comparable Properties; so long as such business interruption coverage is available at reasonable cost. In the event that at any time City shall determine that such coverage is inadequate when compared to the Comparable Properties, then City may require additional coverage within its reasonable discretion. This clause is in no way intended to limit the liability of Tenant or City under this clause and its hold harmless provisions running towards City or Tenant, but is only to be considered as a guideline for minimum amounts of insurance that shall be carried in the amounts required herein.

(b) City agrees, at its sole expense, to obtain and maintain at all times during the Term of this Agreement, Landlord Liability insurance and property insurance insuring all buildings and structures comprising the Ballpark (including, without limitation, the Ballpark Improvements) and Ballpark Dedicated Parking against all risk of direct physical loss or damage to the same extent and with the same coverage as other City owned buildings such as City Hall. City may elect to self-insure for any deductibles in said insurance policies and any deductibles shall have caps not to exceed \$25,000 for liability and \$50,000 for property coverage. Such insurance coverage may be maintained by any combination of single policies and umbrella policies and shall name Tenant as an additional insured. Such property insurance shall include full replacement value cost coverage acceptable to City.

(c) Additionally, City shall provide or cause its construction manager or general contractor constructing the Ballpark and Ballpark Dedicated Parking to maintain additional property insurance written on the so-called "**Builder's Risk Completed Value Non-Reporting Form**" during any period in which any Capital Improvements work being made to the Premises, the anticipated costs of which exceed \$100,000 in the aggregate, with no coinsurance requirement, and containing a provision granting the insured permission to complete and adding the City as the loss payee for such insurance.

(d) All insurance policies of Tenant or City required hereunder (including endorsements thereto) shall (i) be issued by insurance companies authorized to do business in the State of North Carolina, and rated "**A-VII**" or better by A.M. Best Company (or equivalent); (ii)

name the other party and, to the extent communicated to Tenant or City, as applicable, in writing, any other party reasonably required by such party, as “additional insureds” for the Commercial General Liability Policy of Insurance (and for any other insurance policies required to be maintained hereunder for which “additional insured” coverage is required); (iii) be in a form reasonably satisfactory to the other party; (iv) be noncontributing with, and apply only as primary and not as excess to, any other insurance available to the applicable party (to the extent such provision is reasonably available); (v) contain a provision that a party and all additional insureds shall be entitled to recovery under the policy for any loss occasioned to such party by reason of the negligence of the other party or its respective agents, employees or representatives; and (vi) require the insurer to notify Tenant and City, in writing, not less than thirty (30) days prior to any cancellation or termination thereof, except in the event of non-payment of premium in which case the notice period shall be not less than ten (10) days, to the extent the insurer agrees to provide such notices.

(e) Prior to the issuance of the use and occupancy permit for the Ballpark, the certificates of insurance verifying the existence of the insurance coverage required in the above paragraphs shall be made available to City and Tenant. Each of City and Tenant shall from time to time upon reasonable request by the other party provide updated certificates of insurance evidencing that all insurance required hereunder is in place and fully paid for in advance.

(f) Each of Tenant and City shall timely pay all premiums due for all insurance policies required hereunder and shall not do anything at the Ballpark that would impair or invalidate any material obligations of any insurer thereunder. If either Tenant or City fails to obtain and pay for any of the insurance policies required hereunder, and such failure continues for ten (10) days after written notice thereof from the non-defaulting party, then, in addition to all other rights and remedies of the non-defaulting party, the non-defaulting party shall have the right, but not the obligation, to secure the appropriate insurance policies. Any amounts paid by the non-defaulting party in connection with obtaining such insurance shall be immediately due and payable from the defaulting party, and the defaulting party shall pay all such amounts to the non-defaulting party upon demand therefor, together with interest at the Default Rate.

9.2 Waiver of Subrogation. It is the intent of the Parties that the risk of loss or damage arising out of or relating to this Agreement should be borne by insurance to the extent of available coverage. Accordingly, City and Tenant waive all rights against each other (and against the agents, employees, representatives and/or insurers of the other) for any loss or damage to any building, structure, or other tangible property, or any resulting loss of income, covered by property insurance or losses under worker’s compensation laws and benefits, even though such loss or damage might have been occasioned by the negligence of such other party (its agents, employees and/or representatives); provided, however, that: (a) this waiver of rights shall only be applicable to the extent of insurance proceeds actually paid to the party suffering such loss or damage; and (b) this waiver of rights shall in no way diminish the indemnity obligations of City or Tenant as set forth in Section 9.3 below. Tenant and City shall give written notice of the terms of this mutual waiver of rights to their respective insurers and shall have their insurance policies endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of this waiver of rights.

9.3 Indemnity.

(a) To the extent allowed by Applicable Law, Tenant shall, and does hereby, indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, including damage by fire or other casualty) incurred by City, Tenant or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attorneys' fees and litigation expenses), arising directly or indirectly out of: (i) Tenant's occupancy, use, operation, maintenance and/or repair of the Ballpark, and/or (ii) Tenant's performance under this Agreement.

(b) To the extent allowed by Applicable Law, City shall, and does hereby, indemnify, hold harmless and defend Tenant and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, including damage by fire or other casualty) incurred by Tenant, City or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attorneys' fees and litigation expenses), arising directly or indirectly out of: (i) City's occupancy, use, operation, maintenance and/or repair of the Ballpark, and/or (ii) City's performance under this Agreement.

(c) City and Tenant's respective obligations contained in this Section 9.3 shall survive expiration or termination of this Agreement.

ARTICLE X. LOSS OF FACILITIES

10.1 Condemnation.

(a) If all of the Ballpark or the use thereof is taken by power of eminent domain, condemned or sold in lieu of condemnation proceedings, this Agreement shall automatically terminate on the earlier to occur of (i) the date on which title to the Ballpark vests in the condemning authority; or (ii) the date on which Tenant is dispossessed of the Ballpark. Except as otherwise required by issues of public safety in the exercise of its Governmental Function, City shall not exercise its power of eminent domain on all or any portion of the Leasehold Estate.

(b) If a portion of the Ballpark or the use thereof is taken by power of eminent domain, condemned or sold in lieu of condemnation proceedings and such taking materially affects Tenant's ability to use or otherwise operate and derive revenue from the Ballpark as reasonably determined by Tenant, Tenant shall have the right to terminate this Agreement effective as of the earlier to occur of (i) the date on which title to the condemned portion of the Ballpark vests in the condemning authority; or (ii) the date on which Tenant is dispossessed of the portion of the Ballpark, by giving written notice to City within sixty (60) days after Tenant's receipt of notice of the partial condemnation.

(c) If a portion of the Ballpark or the use thereof is taken by power of eminent domain, condemned or sold in lieu of condemnation proceedings and Tenant does not terminate this Agreement pursuant to the terms and conditions of Section 10.1(b) above: (i) this Agreement shall be deemed terminated with respect to only the condemned portion of the Ballpark or use thereof; (ii) Tenant's Rent obligations shall be equitably reduced, as reasonably determined by the Representatives in good faith, taking into account Tenant's prior use of the condemned portion of the Ballpark and the potential of such portion to generate revenue for Tenant based upon attendance over the previous three (3) year period; and (iii) City shall, at its sole cost and expense, promptly make any Capital Improvements that the Representatives deem reasonably necessary as a result of such condemnation.

(d) Each of Tenant and City shall have the right to seek, at its sole cost and expense, any award to which it might be entitled as a result of any condemnation of all or any portion of the Ballpark or the use thereof. Neither Tenant nor City shall have any rights to any award made to the other.

(e) If all or a portion of the Ballpark or the use thereof is temporarily condemned, this Agreement shall remain in full force and effect, but Tenant's Rent obligations shall be equitably reduced or abated, as reasonably determined by the Representatives in good faith, taking into account Tenant's prior use of the condemned portion of the Ballpark and the potential of such portion to generate revenue for Tenant based upon attendance over the previous three (3) year period.

10.2 Casualty Damage to the Ballpark.

(a) If, at any time during the Term, the Ballpark or any part thereof shall be damaged or destroyed by Casualty, then Tenant shall promptly secure the area of damage or destruction to safeguard against injury to Persons or property.

(b) If the Ballpark or any portion thereof is damaged or destroyed by Casualty, then neither Tenant nor City, subject to Section 10.2(d) below, shall have the right to terminate this Agreement and City shall promptly use commercially reasonable efforts to restore and repair the Ballpark to a condition substantially similar to that prior to such Casualty and the Term shall be extended by the period of restoration and repair. To that end, City shall use all insurance proceeds available for such purposes. The restoration and repair details shall be undertaken in the same manner involved in the original construction of the Ballpark.

(c) During any period that the Ballpark is totally unusable by Tenant due to Casualty, the Rent, and any other obligations hereunder, shall abate for each day during the period of restoration and repair. If only a portion of the Ballpark is rendered unusable by the Casualty, the Rent shall be equitably reduced, as reasonably determined by the Representatives in good faith, taking into account Tenant's prior use of the condemned portion of the Ballpark and the potential of such portion to generate revenue for Tenant based upon attendance over the previous three (3) year period.

(d) If the Ballpark or any portion thereof is damaged or destroyed by Casualty and such damage or destruction (i) causes the Ballpark to be unusable by Tenant for Team Ballpark Events, and (ii) such unusable condition cannot be remedied within twelve (12) months after the date of such Casualty (as reasonably determined by City's construction consultants), then, either (i) Tenant or (ii) City if such Casualty takes place within twenty-four (24) months of the Lease Expiration Date, shall have the right to terminate this Agreement.

(e) Notwithstanding anything in this Section to the contrary, in the event any Casualty to the Ballpark or the Ballpark Dedicated Parking is caused by the willful misconduct of Tenant, Operator, or any of the respective Related Parties of such Persons, Tenant shall be responsible for such damage (to the extent the same is not covered by insurance), the Rent shall not abate and Tenant shall promptly use commercially reasonable efforts to restore and repair the Ballpark to a condition substantially similar to that prior to such damage or destruction.

ARTICLE XI. DEFAULTS AND REMEDIES

11.1 Default by Tenant.

(a) An event of default by Tenant (a "**Tenant Default**") shall be deemed to have occurred under this Agreement if:

(i) Tenant fails to make any payment of Rent as it falls due and which failure is not cured within ten (10) Business Days after written notice to Tenant of such failure;

(ii) The failure of Tenant to cause the Ballpark and the Ballpark Dedicated Parking to be operated as required by this Agreement within thirty (30) Business Days after City gives notice to Tenant of such failure (or such longer period as may be reasonably necessary to effect such cure, if such cure cannot be effected within such thirty (30) day period using reasonable efforts);

(iii) The failure of Tenant to cause the Ballpark and the Ballpark Dedicated Parking to be operated in accordance with the requirements of the Ballpark Standard or Article VI within sixty (60) Business Days after City gives notice to Tenant of such failure (or such longer period as may be reasonably necessary to effect such cure, if such cure cannot be effected within such sixty (60) day period using reasonable efforts);

(iv) Tenant fails to observe or to perform any other material obligation, condition or covenant on its part to be performed or observed in accordance with this Agreement and such failure remains uncured for more than sixty (60) Business Days after Tenant's receipt of written notice of such failure from City (or such longer period as may be reasonably necessary to effect such cure, if such cure cannot be effected within such sixty (60) day period using reasonable efforts);

(v) Tenant fails to observe or perform any obligation or covenant on its part to be performed or observed under the Ballpark Development Agreement and/or the Non-

Relocation Agreement and any such default is not cured within any applicable notice or grace period;

(vi) A “Club Default” or “Event of Default” as defined in the Development Agreement shall have occurred and remained uncured;

(vii) An Insolvency Event has occurred with respect to Tenant; or

(viii) Substantially all of Tenant’s assets are levied upon by virtue of a writ of court of competent jurisdiction.

11.2 City’s Remedies. Subject to this Section 11.2, upon the occurrence of any Tenant Default, City may, in its sole discretion, pursue any one or more of the following remedies, in addition to any other remedies available to City at law or in equity or as otherwise specified in this Agreement, after delivery of written notice to Tenant:

(i) City may (but under no circumstance shall be obligated to) terminate this Agreement and upon such termination City may forthwith reenter and repossess the Ballpark and the Ballpark Dedicated Parking by entry, forcible entry or detainer suit or otherwise, without demand or further notice of any kind and be entitled to recover, as damages under this Agreement, a sum of money equal to the total of (i) the reasonable cost of recovering the Ballpark, (ii) the reasonable cost of removing and storing Tenant’s Personal Property or any other occupant’s Property, (iii) the unpaid Rent and any other sums accrued hereunder at the date of termination and (iv) any increase in insurance premiums caused by the vacancy of the Ballpark. In the event City shall elect to terminate this Agreement, City shall at once have all the rights of reentry upon the Ballpark, without becoming liable for damages or guilty of trespass.

(ii) City may (but under no circumstance shall be obligated to) terminate Tenant’s right of occupancy of all or any part of the Ballpark and the Ballpark Dedicated Parking and reenter and repossess the Ballpark and the Ballpark Dedicated Parking by entry, forcible entry or detainer suit or otherwise, without demand or further notice of any kind to Tenant and without terminating this Agreement, without acceptance of surrender of possession of the Ballpark or the Ballpark Dedicated Parking, and without becoming liable for damages or guilty of trespass, in which event City shall make commercially reasonable efforts to relet the Ballpark and the Ballpark Dedicated Parking or any part thereof for the account of Tenant for a period equal to or lesser or greater than the remainder of the Term on whatever terms and conditions City, in City’s sole but reasonable discretion, deems advisable. Tenant shall be liable for and shall pay to City all Rent payable by Tenant under this Agreement plus an amount equal to (i) the reasonable cost of recovering possession of the Ballpark and the Ballpark Dedicated Parking, (ii) the reasonable cost of removing and storing any of Tenant’s or any other occupant’s property left on the Ballpark and the Ballpark Dedicated Parking after reentry, (iii) the cost of any increase in insurance premiums caused by the termination of possession of the Ballpark and the Ballpark Dedicated Parking and (iv) the reasonable cost of any repairs, changes, alterations or additions necessary for reletting, all reduced by any sums received by City through any reletting of the Ballpark and the Ballpark Dedicated Parking and/or any decreases in insurance premiums resulting from the termination of possession of the Ballpark and the Ballpark Dedicated Parking;

provided, however, that in no event shall Tenant be entitled to any excess of any sums obtained by reletting over and above Rent provided in this Agreement to be paid by Tenant to City. For the purpose of such reletting, City is authorized to make any repairs, changes, alterations or additions in or to the Ballpark and the Ballpark Dedicated Parking that may be necessary. City may sue to recover any sums falling due under the terms of this Section 11.2 from time to time. No reletting shall be construed as an election on the part of City to terminate this Agreement unless a written notice of such intention is given to Tenant by City. Notwithstanding any such reletting without termination, City may at any time thereafter elect to terminate this Agreement for such Tenant Default and exercise any of its rights under Article X of this Agreement.

(iii) City may (but under no circumstance shall be obligated to) enter upon the Ballpark and the Ballpark Dedicated Parking and do whatever Tenant is obligated to do under the terms on this Agreement, including taking all reasonable steps necessary to maintain and preserve the Ballpark; and Tenant agrees to reimburse City on demand for any expenses which City may incur in effecting compliance with Tenant's obligations under this Agreement (other than expenses of actually operating a business as opposed to maintenance, repair and restoration) plus interest at the Default Rate, and Tenant further agrees that City shall not be liable for any damages resulting to Tenant from such action. No action taken by City under this Section 11.2 shall relieve Tenant from any of its obligations under this Agreement or from any consequences or liabilities arising from the failure to perform such obligations.

If City should terminate this Agreement in accordance with Section 11.2, Tenant shall assign to City any and all right, title and interest in any contracts entered into by Tenant for supplies, services, concessionaires, merchandisers or other vendors, or other similar agreements necessary for the daily operation of the Ballpark (other than those contracts with an Affiliate of Tenant).

11.3 Default by City.

(a) An event of default by City (a "**City Default**") shall be deemed to have occurred under this Agreement if:

(i) City fails to perform or observe any material obligation or condition on its part to be performed or observed in accordance with this Agreement, including without limitation City's obligations to provide municipal services and parking and to be responsible for Capital Improvements, as more particularly described herein, and such failure remains uncured for more than sixty (60) Business Days after City's receipt of written notice of such failure from Tenant (or such longer period as may be reasonably required to effect such cure if such cure cannot be effected within such sixty (60) day period using reasonable efforts);

(ii) City fails to observe or perform any obligation or covenant on its part to be performed or observed under the Ballpark Development Agreement and/or the Non-Relocation Agreement and any such default is not cured within any applicable notice or grace period;

(iii) A "City Default" or "Event of Default" as defined in the Development Agreement shall have occurred and remained uncured; or

(iv) An Insolvency Event has occurred with respect to City.

(b) Upon the occurrence of a City Default, Tenant shall be entitled to seek all rights and remedies available to it at law, or in equity, including, but not limited to, the right to: (i) seek monetary damages; (ii) terminate this Agreement; and (iii) cure such default on behalf of City and bill City for all reasonable costs incurred by Tenant (including attorneys' fees) to affect such cure.

11.4 Remedies Cumulative. Except as expressly limited in this Article X, the remedies described herein are cumulative and are not intended to be exclusive of any other remedies to which the Parties may be entitled at law or in equity. The failure of a Party to (a) insist in any one or more instances upon the strict performance or observance of any of the obligations or conditions of this Agreement by the other Parties; or (b) exercise any remedy contained herein for any nonperformance or nonobservance of any obligation or condition by the other Parties shall not be considered a waiver of such Party's rights to later insist upon performance or observance or to exercise its remedies. Additionally, the exercise or commencement of the exercise of any right or remedy by a Party shall not preclude the simultaneous or later exercise of any or all other rights and remedies available to such Party.

11.5 No Indirect Damages. IN NO EVENT SHALL ANY OF THE PARTIES BE LIABLE TO THE OTHER PARTIES UNDER ANY PROVISION OF THIS AGREEMENT OR OTHERWISE FOR LOST PROFITS, INCLUDING LOST OR PROSPECTIVE PROFITS, OR FOR ANY OTHER SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, IN CONTRACT, TORT OR OTHERWISE, WHETHER OR NOT CAUSED BY OR RESULTING FROM SUCH PARTY'S OWN, SOLE OR CONCURRENT NEGLIGENCE OR THE NEGLIGENCE OF ANY OF ITS AFFILIATES OR RELATED PARTIES; PROVIDED THAT (I) THE FOREGOING SHALL NOT APPLY TO ANY RENT (OR ANY CLAIMS THEREFOR) AND (II) WITHOUT LIMITING THE FOREGOING, THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO CLAIMS OF EACH PARTY ARISING OUT OF THIRD PARTY CLAIMS FOR ANY OF THE FOREGOING.

11.6 No Waivers. No failure or delay of any Party, in any one or more instances (i) in exercising any power, right or remedy under this Agreement or (ii) in insisting upon the strict performance by the other Party of such other Party's covenants, obligations or agreements under this Agreement, shall operate as a waiver, discharge or invalidation thereof, nor shall any single or partial exercise of any such right, power or remedy or insistence on strict performance, or any abandonment or discontinuance of steps to enforce such a right, power or remedy or to enforce strict performance, preclude any other or future exercise thereof or insistence thereupon or the exercise of any other right, power or remedy. The covenants, obligations, and agreements of a defaulting Party and the rights and remedies of the other Party upon a default shall continue and remain in full force and effect with respect to any subsequent breach, act or omission.

11.7 No Accord and Satisfaction. Without limiting the generality of Section 11.5 above, the receipt by City of the Rent with knowledge of a breach by Tenant of any covenant,

obligation or agreement under this Agreement shall not be deemed or construed to be a waiver of such breach (other than as to the Rent received). The payment by Tenant of the Rent with knowledge of a breach by City of any covenant, obligation or agreement under this Agreement shall not be deemed or construed to be a waiver of such breach. No acceptance by City or Tenant of a lesser sum than then due shall be deemed to be other than on account of the earliest installment of the amounts due under this Agreement, nor shall any endorsement or statement on any check, or any letter accompanying any check, wire transfer or other payment, be deemed an accord and satisfaction. City and Tenant may accept a check, wire transfer or other payment without prejudice to its right to recover the balance of such installment or pursue any other remedy provided in this Agreement.

11.8 Commercial Transaction. TENANT ACKNOWLEDGES THAT THIS LEASE IS A COMMERCIAL TRANSACTION AND HEREBY WAIVES ANY AND ALL RIGHTS TO NOTICE AND HEARING, UNDER NORTH CAROLINA PREJUDGMENT REMEDIES PURSUANT TO CHAPTER 1 ARTICLE 35 OF THE NORTH CAROLINA GENERAL STATUTES IN CONNECTION WITH ANY SUIT BROUGHT UNDER ANY OF THE PROVISIONS OF THIS LEASE. TENANT DOES HEREBY AGREE THAT AN ATTACHMENT AND/OR GARNISHMENT MAY ISSUE AGAINST TENANT UPON THE COMMENCEMENT OF A LAWSUIT, WITHOUT ANY NOTICE OR HEARING TO DETERMINE WHETHER OR NOT THERE IS PROBABLE CAUSE TO SUSTAIN THE VALIDITY OF CITY'S CLAIM. TENANT MAY REQUEST A HEARING AT ANY TIME AFTER A PREJUDGMENT REMEDY HAS BEEN ISSUED.

ARTICLE XII. DISPUTE RESOLUTION

12.1 Generally. In the event any dispute, controversy or claim between or among the Parties arises under this Agreement or is related in any way to this Agreement or the relationship of the Parties thereunder (a "Dispute or Controversy"), including, but not limited to a Dispute or Controversy relating to the effectiveness, validity, interpretation, implementation, termination, cancellation or enforcement of this Agreement, the Parties shall first attempt in good faith to settle and resolve such Dispute or Controversy by mutual agreement in accordance with this Article. In the event a Dispute or Controversy arises, either Representative shall have the right to notify the other Representative that it has elected to implement the following procedures. Within thirty (30) days after delivery of any such notice by one Representative to the other Representative regarding a Dispute or Controversy, the Representatives shall meet at a mutually agreed time and place to attempt, with diligence and in good faith, to resolve and settle the Dispute or Controversy. If a mutual resolution and settlement are not obtained at the meeting of the Representatives, then City and Tenant shall cooperate in a commercially reasonable manner to determine if techniques such as mediation or other techniques of alternate dispute resolution might be useful. If a technique is agreed upon, a specific timetable and completion date for implementation shall also be agreed upon. If such technique, timetable or completion date is not agreed upon within sixty (60) days after the notice of the Dispute or Controversy was first delivered, or if no resolution is obtained through such alternative technique, or if no meeting between the Representatives takes place within the forty-five (45)-day period following delivery of the initial notice, then the matter shall be resolved through arbitration in accordance with the provisions of Exhibit F.

12.2 Emergency Relief. Notwithstanding any provision of this Agreement to the contrary, each of the Parties may seek injunctive relief or another form of ancillary relief at any time from any court of competent jurisdiction in the State of North Carolina in the event that a Dispute or Controversy requires emergency relief before the matter may be resolved under the dispute resolution procedures outlined in Section 12.1 above. Notwithstanding the fact that any court of competent jurisdiction may enter an order providing for injunctive or another form of ancillary relief, the Parties expressly agree that such dispute resolution procedures still will govern the ultimate resolution of any portion of the Dispute or Controversy.

ARTICLE XIII. SALE OF OWNERSHIP INTERESTS

13.1 Transfer of Majority Interest. The prior Approval of City will not be required with respect to any Transfer of a Majority Interest of Tenant or its parent company as long as such Transfer of Majority Interest complies with the following conditions: (i) there is no existing Tenant Default as to this Agreement, (ii) any such Transfer of Majority Interest is approved by the SAL and/or MiLB, (iii) the Ballpark will continue to be managed and operated by Tenant or a Qualified Operator, (iv) Tenant and its Ownership Group will continue to be liable for any and all of their respective obligations under this Agreement and the Development Agreement that arise after the effective date of such Transfer of Majority Interest, (v) no Tenant Default is caused by any such Transfer of Majority Interest, (vi) Tenant, its Ownership Group and any new Control Person(s) of Tenant and its Ownership Group, respectively, will continue to be bound by the terms of the Non-Relocation Agreement, and (vii) to the extent permitted by any applicable confidentiality agreements related to such Transfer of Majority Interest, prior notice of such Transfer of Majority Interest is given to City. All other Transfers of Majority Interest of Tenant or its Ownership Group will require the prior Approval of City, which shall not be unreasonably withheld, conditioned or delayed. To the extent that Tenant or its Ownership Group, as applicable, have not otherwise provided notice to City of any Transfer of Majority Interest because of contractual confidentiality provisions or otherwise, Tenant or its Ownership Group, as applicable, shall provide City with notice of any Transfer of Majority Interest in Tenant prior to the first to occur of: any public statement by Tenant or its Ownership Group with respect to such transfer or the closing of such transfer.

13.2 Other Transfers. Transfers of ownership interests in Tenant or its Ownership Group which do not constitute a Transfer of Majority Interest will not require either City Approval or notice; provided that the aggregate of all such transfers over the Term does not cause a Transfer of Majority Interest with respect to such entities.

13.3 Continuing Enforceability. Without limiting the foregoing, no transfer of ownership interests in Tenant or its Ownership Group shall affect the enforceability of this Agreement and Tenant and its Ownership Group shall continue to be bound by the terms hereof.

**ARTICLE XIV.
ASSIGNMENT AND SUBLETTING**

14.1 Assignment by Tenant. The Leasehold Estate and/or Tenant's interest in this Agreement may not be assigned without the prior Approval of City except for an assignment to an Affiliate of Tenant as long as no continuing Tenant Default exists. If Tenant wishes to assign this Agreement to a Person who is not an Affiliate of Tenant, then Tenant shall request City's Approval of such assignment which shall not be unreasonably withheld, conditioned or delayed, as long as (i) any such assignment is approved by the SAL and/or MiLB, (ii) the Ballpark will continue to be managed and operated by Tenant or a Qualified Operator, (iii) any such assignee must expressly assume any and all obligations of Tenant under this Agreement, the Development Agreement and agree to be bound by the terms of the Non-Relocation Agreement, and (iv) there is no continuing Tenant Default hereunder. Without limiting the foregoing, no assignment hereunder shall affect the enforceability of this Agreement and any assignee shall continue to be bound by the terms hereof and of the Non-Relocation Agreement.

14.2 Assignment by City. City may assign all of its rights and obligations under this Agreement to a Governmental Authority or a local government corporation formed by City or a trustee in connection with the Financing; provided that such assignee expressly assumes any and all obligations of City under this Agreement and City remains liable for the City's financial obligations contained herein unless such financial obligations are specifically assumed by any such Governmental Authority.

14.3 No Sublease. Tenant may not sublease all or any portion of its interest in the Ballpark or the Ballpark Dedicated Parking except for an assignment to an Affiliate of Tenant in accordance with Section 14.1 or in connection with a Use Agreement.

**ARTICLE XV.
NAMING AND ADVERTISING RIGHTS; BROADCASTING RIGHTS; PREMIUM
SEATING; CONCESSIONS AND MERCHANDISE**

15.1 Contracting Generally. Tenant shall have the exclusive right to and shall be solely responsible for identifying and entering into third party contracts with all concessionaires, merchandisers and other vendors for the Ballpark.

15.2 Naming Rights. Tenant shall have the exclusive right to name, or contract with a naming sponsor for, all or any part of the Ballpark, from time to time during the Term and to receive and retain all revenues throughout the Term from such naming rights, and to install permanent signage and displays related thereto in, on and about any portion of the Ballpark, including without limitation, Ballpark outfield fences and walls, structures erected above fences and walls, scoreboards, video boards, pedestrian walkway and concourse areas outside and inside the Ballpark and concession, merchandise and catering areas; provided that such naming shall not (a) include racial epithets, barbarisms, obscenities, names relating to any tobacco products, sexually-oriented businesses or enterprises or containing any overt political or religious reference (b) otherwise reasonably cause embarrassment or disparagement to City or (c) include the name

of another political subdivision or Governmental Authority, excepting the State of North Carolina (collectively the “**Prohibited Messages**”).

15.3 Tenant Sponsorships and Advertising. Tenant shall have the exclusive right to (a) all sponsorship revenues of every kind throughout the Term, and (b) sell, contract for, and retain all revenues throughout the Term from advertising, promotional, and pouring rights of every kind in, on or about the interior of the Ballpark, and to install permanent signage and displays related thereto in, on and about any portion of the interior of the Ballpark, including without limitation, Ballpark outfield fences and walls, structures erected above fences and walls, Ballpark façade, scoreboards, video boards, pedestrian walkway and concourse areas and inside the Ballpark and concession and catering areas and other areas within the Ballpark as determined by Tenant; provided that no such signage or displays shall include any Prohibited Messages. Any signage on the exterior of the Ballpark is subject to City sign code provisions.

15.4 Broadcasting Rights. Subject to the rights of MiLB and Major League Baseball, Tenant has the exclusive right to (a) all broadcasting or reports of Ballpark Events during the Term, including without limitation, radio, television, cable, internet and other media broadcasts, whether currently existing or developed during the Term, and (b) all revenues derived therefrom. Tenant has the right to exercise such right at such times and in such manner as it considers appropriate, as determined in Tenant’s sole discretion.

15.5 Premium Seating, Concessions and Merchandise. Subject to the provisions of Sections 3.7 and 3.8 hereof, Tenant has the exclusive right to contract for, market, sell and retain all revenue from the sale of and fees and payments associated with (i) all premium seating at the Ballpark (e.g., luxury suites, boxes and club seats), and (ii) Concessions and Merchandise at the Ballpark.

15.6 Concessions Requirements. Tenant covenants and agrees to meet, and require any third parties selling Concessions under a Concession Agreement to meet, the following requirements and standards with respect to Concessions during the Term:

(a) Tenant shall provide adequate, professional and first-class levels of Concessions service at the Ballpark for all Ballpark Events and City Sponsored Events at which Tenant has elected to sell Concessions meeting or exceeding the Comparable Properties and Ballpark Standards.

(b) Tenant shall comply, and require any third parties selling Concessions under a Concession Agreement to comply, with all Applicable Laws and obtain all Governmental Authorizations necessary for the sale of Concessions, and City hereby agrees to cooperate with Tenant to the extent necessary to obtain the Governmental Authorizations.

(c) Tenant shall operate and maintain all Concession areas of the Ballpark and all Concessions equipment, fixtures and facilities in a neat, clean, sanitary and safe condition.

(d) Tenant shall provide fresh, sanitary and wholesome food and beverages meeting an excellent standard of quality and purity and shall provide “healthy eating” menu options.

(e) Tenant shall sell beverages in paper or plastic cups or plastic bottles and not sell beverages in glass bottles; provided, that beverages may be sold in glass bottles in luxury suites, sky-boxes and other restricted access areas of the Ballpark if adequate measures are employed to prevent the removal of glass bottles from such areas to other areas of the Ballpark.

(f) Tenant shall, to the extent practicable, use biodegradable containers and packaging in connection with the sale of Concessions.

(g) Tenant will provide recycling bins for public disposal.

15.7 Alcoholic Beverage Permit. Tenant shall (either on its own behalf, through Operator, or through a related entity acceptable to City) obtain and maintain in good standing at its expense throughout the Term hereof, an alcoholic beverage permit sufficient for use at all Ballpark Events as required by Applicable Laws. The City shall assist ~~and expedite~~, as appropriate, in Tenant’s acquisition of a full liquor license applicable to appropriate areas within the Ballpark.

ARTICLE XVI.

COVENANTS, REPRESENTATIONS AND WARRANTIES OF TENANT AND CITY

16.1 Tenant Covenants. Tenant, and its successors or assigns, covenants that during the Term (or such shorter period as provided herein):

(a) Tenant shall assure that the Team plays all preseason, regular season and postseason home games at the Ballpark; provided that the Team shall be authorized to play no more than one (1) neutral site baseball home game each Baseball Season as directed and approved by NAPBL, SAL, MiLB and/or the Commissioner of Major League Baseball, as applicable.

(b) Tenant shall use commercially reasonable efforts to ensure that the pricing of tickets for Team Ballpark Events will be in amounts that provide an affordable recreational activity in City and provide attractive and meaningful programs designed to keep home games affordable for families in the City, including special programs for seniors and children during each year of the Term;

(c) Tenant shall endeavor to provide attractive and meaningful programs that are designed to promote baseball and baseball programs within the City, including clinics, instructional events and Team appearances;

(d) As more particularly described in the Non-Relocation Agreement, Tenant shall not relocate the Team or the home territory of the Team outside of City limits of Kannapolis, North Carolina during the Term;

(e) The Team shall include the name “Kannapolis” as part of the Team’s name;

(f) At all times during the Term and in connection with any activity under this Agreement or with respect to the Ballpark, Tenant shall comply with the requirements of all Applicable Laws;

(g) At all times during the Term, Tenant shall obtain and maintain all Governmental Authorizations necessary for the use and occupancy of the Ballpark and the Ballpark Dedicated Parking in accordance with the terms of this Agreement, and City hereby agrees to cooperate with Tenant to the extent necessary to obtain the Governmental Authorizations; and

(h) At all time during the Term, Tenant shall comply with, and any contractor under any Concession Agreement, Management Agreement, Merchandise Agreement or other similar agreement to comply with, all Applicable Laws, including City Ordinances.

16.2 Tenant’s Representations and Warranties. As an inducement to City to enter into this Agreement, Tenant represents and warrants to City that notwithstanding anything herein to the contrary and as of the Effective Date:

(a) Tenant is a limited liability company duly organized, validly existing and in good standing under the laws of the State of North Carolina. The business which Tenant carries on and which it proposes to carry on may be conducted by Tenant. Tenant is duly authorized to conduct business as a limited liability company in the State of North Carolina and each other jurisdiction in which the nature of its properties or its activities requires such authorization.

(b) The execution, delivery and performance of this Agreement by Tenant are within Tenant’s powers, and have been duly authorized by all necessary action of Tenant.

(c) Neither the execution and delivery of this Agreement nor the consummation of any of the transactions herein or therein contemplated nor compliance with the terms and provisions hereof or thereof will contravene the organizational documents of Tenant nor any Applicable Laws to which Tenant is subject or any judgment, decree, license, order or permit applicable to Tenant, or will conflict or be inconsistent with, or will result in any breach of any of the terms of the covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of a lien upon any of the property or assets of Tenant pursuant to the terms of, any indenture, mortgage, deed of trust, agreement or other instrument to which Tenant is a party or by which Tenant is bound, or to which Tenant is subject.

(d) No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Governmental Authority or regulatory body or third party is required for the execution, delivery and performance by Tenant of this Agreement except as specified in Section 23.12 hereof.

(e) This Agreement is the legal, valid and binding obligation of Tenant, enforceable against Tenant in accordance with its terms, except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

(f) There is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or, to the knowledge of Tenant, threatened against or affecting Tenant, which the management of Tenant in good faith believes that the outcome of which would (a) materially and adversely affect the validity or enforceability of, or the authority or ability of Tenant under, this Agreement to perform their respective obligations under this Agreement, or (b) have a material and adverse effect on the consolidated financial condition or results of operations of Tenant or on the ability of Tenant to conduct its business as presently conducted or as proposed or contemplated to be conducted (including the operation of the Ballpark).

(g) Neither Tenant, any member of the Ownership Group, any Affiliate of Tenant nor any of their respective principals, owners, officers, employees or agents, or members of their immediate families, are officials, consultants or employees of City.

(h) [NOTE: OPEN] Tenant is the owner of all rights (including associated franchise rights), title and interest in the Team, as unconditionally confirmed by the League, and holds substantially all of the assets and Governmental Authorizations necessary for the operation of the Team and the Ballpark and will continue to own such Team and assets throughout the Term unless transferred pursuant to the terms of Articles XII or XIII hereof. During the Term, Tenant shall take all necessary and appropriate actions to maintain membership of the Team in the SAL.

(i) Tenant and the Ownership Group have been represented by independent legal counsel and have had an adequate opportunity to seek advice with respect to all matters of Applicable Law and City Ordinances, including, without limitation, those laws, ordinances and regulations concerning land use, development projects on City-owned land, leasing of property by the City to private businesses, training and employment of residents of the City, affirmative action, no-strike and labor peace agreements, payment of a living wage and other matters relating to City procurement and contracting procedures.

16.3 City Covenants. City, and its successors or assigns, covenants that during the Term:

(a) City shall not offer any financial incentives to or assist in establishing or locating any other professional or summer collegiate baseball franchise (or any other professional sports franchise that would use the Ballpark without the written consent of Tenant) within City. As used in this section “financial incentives” includes without limitation, cash payments, tax abatements, transferring interests in real estate or personal property, loans, guarantees, or any other form of financial accommodations.

(b) The Parties agree that the above restrictions are necessary to allow this transaction to be economically viable for the Parties, and that without these restrictions, the Parties would not be able to accomplish the goal of bringing a Single A Minor League baseball franchise to City for the benefit of the public.

16.4 City's Representations and Warranties. As an inducement to Tenant to enter into this Agreement, City represents and warrants to Tenant that notwithstanding anything herein to the contrary and as of the Effective Date:

(a) City is a municipal corporation duly formed and validly existing under the laws of the State of North Carolina, with all necessary power and authority to enter into this Agreement and to consummate the transactions herein contemplated;

(b) The execution, delivery and performance of this Agreement by City is within City's powers, respectively, and have been duly authorized by all necessary action of City;

(c) Neither the execution and delivery of this Agreement nor the consummation of any of the transactions herein or therein contemplated nor compliance with the terms and provisions hereof or thereof will contravene any Applicable Laws to which City is subject or any judgment, decree, license, order or permit applicable to City;

(d) Upon the execution of this Agreement by City, City will have caused all governmental proceedings required to be taken by or on behalf of City to authorize City to make and deliver this Agreement and to perform the covenants, obligations and agreements of City hereunder;

(e) This Agreement is the legal, valid and binding obligation of City, enforceable against City in accordance with its terms, except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time; and

(f) Except as previously disclosed to Tenant in writing, there is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or, to the knowledge of City, threatened against or affecting City, of which City in good faith believes that the outcome would materially and adversely affect the validity or enforceability of, or the authority of City under, this Agreement to perform its obligations under this Agreement.

16.5 Governmental Rule. No Approvals by City or City Representative under this Agreement shall relieve or release Tenant from any Applicable Laws or City Ordinances relating to the operation or occupancy of the Ballpark (including Applicable Laws that are procedural, as well as or rather than, substantive in nature). The Approval by City or City Representative of any matter submitted to City or City Representative pursuant to this Agreement, which matter is specifically provided herein to be Approved by City or City Representative shall not constitute a replacement or substitute for, or otherwise excuse Tenant from, such permitting, licensing or

approval processes under Applicable Laws; and, conversely, no permit or license so obtained shall constitute a replacement or substitute for, or otherwise excuse Tenant from, any requirement hereunder for the Approval of City or City Representative.

ARTICLE XVII. QUIET ENJOYMENT

City covenants that, subject to the terms and conditions of this Agreement, Tenant shall peaceably and quietly have, hold and enjoy the Leasehold Estate and have the right to use the Leasehold Estate in accordance with the terms hereof during the Term. City represents that as of the Effective Date there are no, and as of the Commencement Date there will be no, Liens, judgments or claims to the Ballpark that will affect Tenant's right to occupy and enjoy the Ballpark except for those utility easements and other matters listed in **Exhibit A** attached hereto.

ARTICLE XVIII. GENERAL PROVISIONS

18.1 Leasehold Mortgages Prohibited. Neither Tenant nor any of its successors or assigns shall have the right to grant a Leasehold Mortgage.

18.2 No Broker's Fees or Commissions. Each Party hereto hereby represents to the other Parties hereto that such Party has not created any liability for any broker's fee, broker's or agent's commission, finder's fee or other fee or commission in connection with this Agreement.

18.3 Council Approval. Notwithstanding anything to the contrary set forth in this Agreement, Tenant recognizes and agrees that any contracts or agreements, or amendments thereto, contemplated to be entered into by City under the terms of this Agreement which are entered into after the date of this Agreement will be subject to the prior Approval of the City Council, but not Approvals and confirmations expressly permitted in this Agreement to be given by City Representative.

18.4 Recording of Memorandum of Lease. Tenant may file of record a Memorandum of Lease in the form attached hereto as **Exhibit D** in the Register of Deeds of Cabarrus County North Carolina upon the Commencement Date. Upon the Lease Expiration Date, Tenant shall execute such instruments reasonably requested by City in recordable form which are sufficient to release of record any rights or interests of Tenant in and to the Ballpark or the Leasehold Estate.

18.5 Compliance with Applicable Laws and Permitted Exceptions. Tenant shall, (a) throughout the Term and within the time periods permitted by Applicable Law, comply or cause compliance with all Applicable Laws applicable to the Ballpark and the Ballpark Dedicated Parking, including any applicable to the manner of use or the maintenance, repair or condition of the Ballpark or the Ballpark Dedicated Parking or any activities or operations conducted in or about the Ballpark or the Ballpark Dedicated Parking and (b) throughout the Term, comply or cause compliance with the Permitted Exceptions, but with respect to each of the foregoing,

Tenant shall not be responsible for any failure to comply with Applicable Law or the Permitted Exceptions to the extent caused by City or its Affiliates. Tenant shall, however, have the right to contest the validity or application of any Applicable Law, and if Tenant promptly contests and if compliance therewith may legally be held in abeyance during such contest, Tenant may postpone compliance until the final determination of such contest, *provided* that such contest is prosecuted with due diligence and that Tenant shall not so postpone compliance therewith in such a manner as to, or if doing so would (i) impair the structural integrity of the Ballpark or the Ballpark Dedicated Parking, (ii) during such contest, subject City to any fine or penalty or to prosecution for a criminal act, or expose City to any civil liability or (iii) cause the Ballpark or the Ballpark Dedicated Parking to be condemned or vacated; provided that a Lien against the Ballpark or the Ballpark Dedicated Parking shall not be imposed by reason of such noncompliance. Tenant shall give City reasonable notice (which in no event shall be less than thirty (30) days) of its intent to carry on such contest, specifying the Applicable Law that Tenant proposes to contest, the name of counsel representing Tenant in such contest and the Excusable Tenant Delay, if any, that such contest will cause in any repair, alteration or improvement of the Ballpark or the Ballpark Dedicated Parking.

18.6 No City Obligations. Except for costs that City has specifically agreed to pay pursuant to the express terms of this Agreement, (i) City shall not be required to make any expenditure, incur any obligation or incur any liability of any kind whatsoever in connection with this Agreement, the Ballpark or the Ballpark Dedicated Parking and (ii) it is expressly understood and agreed that this is a completely net lease intended to assure City the Rent herein reserved on an absolutely net basis, except as otherwise provided in this Agreement.

18.7 Tenant's Obligations for Payment of Rent; No Termination. Except as otherwise expressly provided in this Agreement, no happening, event, occurrence or situation during the Term, whether foreseen or unforeseen and howsoever extraordinary or beyond the contemplation of the Parties, shall relieve Tenant from its liabilities to pay Rent or the amounts of any other of its obligations under this Agreement or permit Tenant to terminate this Agreement.

18.8 Access to Ballpark and Ballpark Dedicated Parking by City. Without limiting City's rights with respect to the Reservations, City shall have the right of access and entry, without charges or fees and with reasonable notice to Tenant, for itself and its authorized representatives, to the Ballpark and the Ballpark Dedicated Parking at all times, for the purposes of (a) assuring compliance by Tenant with its obligations under this Agreement, including, without limitation, its obligations with respect to Routine Maintenance (b) performing or undertaking any rights or obligations of City under this Agreement and (c) showing the Ballpark and the Ballpark Dedicated Parking to prospective tenants during the last twelve (12) months of the Term; *provided, however*, that in all instances such access and entry shall be conducted in a manner so as to minimize interference with Tenant's use and operation of the Ballpark and the Ballpark Dedicated Parking then being conducted by Tenant pursuant to the terms of this Agreement.

18.9 Permit and Fast Tracking. The City shall assist, as appropriate, in "fast-tracking" permitting, and in providing and clearances to assist in the timely completion of each phase of the Ballpark and Ballpark Dedicated Parking. City shall work cooperatively with Club to obtain

such building permits, noise and light ordinance permits and/or clearances as necessary and in obtaining such other permits and clearances as may be required in order to complete the Ballpark and Ballpark Dedicated Parking as contemplated hereunder.

18.10 Subordination, Attornment, Non Disturbance and Estoppel Certificates.

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

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

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

ARTICLE XIX. SURRENDER OF POSSESSION; HOLDING OVER

19.1 Surrender of Possession. Tenant shall, on or before the Lease Expiration Date, peaceably and quietly leave, surrender and yield up to City the Ballpark and the Ballpark Dedicated Parking free of subtenancies (including any Subtenants), and in a clean condition and free of debris or as otherwise provided for in this Agreement, subject to the terms of Article X hereof.

19.2 Removal of Tenant's Personal Property.

(a) *Tenant's Obligation to Remove.* All Tenant Personal Property installed, placed or used in the operation of the Ballpark throughout the Term shall be deemed to be the property of Tenant. All such Tenant's Personal Property shall be removed by Tenant within thirty (30) calendar days after the Lease Expiration Date, provided that Tenant shall promptly repair any damage to the Ballpark and the Ballpark Dedicated Parking caused by such removal.

(b) *City's Right to Remove.* Any Tenant Personal Property which shall remain in the Ballpark and the Ballpark Dedicated Parking for thirty (30) days after the Lease Expiration Date may, at the option of City, be deemed to have been abandoned by Tenant and either may be retained by City as its Property or be disposed of, without accountability, in such manner as City Representative may determine necessary, desirable or appropriate, and Tenant, upon demand, shall pay the reasonable cost of such disposal, together with interest thereon at the Default Rate from the date such costs were incurred until reimbursed by Tenant, together with reasonable outside counsel's fees, charges and costs.

19.3 Holding Over. In the case of any holding over or possession by Tenant after the Lease Expiration Date without the Approval of City, Tenant shall pay City rent at one hundred fifty percent (150%) of the Rent that would have been applicable during such period of time had this Agreement been in effect. Further, in the event Tenant shall hold over beyond any date for surrender of the Ballpark and the Ballpark Dedicated Parking set forth in City's written notice demanding possession thereof, Tenant shall reimburse City for all actual expenses and losses incurred by City by reason of City's inability to deliver possession of the Ballpark to a successor tenant, together with interest on such expenses and losses at the Default Rate from the date such expenses are incurred until reimbursed by Tenant, together with City's reasonable actual, third-party outside counsel's fees, charges and costs. The acceptance of Rent under this Section 19.3 by City shall not constitute an extension of the Term of this Agreement or afford Tenant any right to possession of the Ballpark and the Ballpark Dedicated Parking beyond any date through which such Rent shall have been paid by Tenant and accepted by City. Such Rent shall be due to City for the period of such holding over, whether or not City is seeking to evict Tenant; and, unless City otherwise then agrees in writing, such holding over shall be, and shall be deemed and construed to be, without the Approval of City, whether or not City has accepted any sum due pursuant to this Section 19.3.

ARTICLE XX. FORCE MAJEURE EVENT AND EFFECT OF DELAYS

20.1 Excusable Tenant Delay. Regardless of the existence or absence of references to Excusable Tenant Delay elsewhere in this Agreement, any deadline or time period within which Tenant must fulfill the obligations of Tenant elsewhere in this Agreement shall each be adjusted as appropriate to include that number of days of delay in the performance by Tenant of its obligations hereunder actually resulting from such Excusable Tenant Delay, unless otherwise expressly provided in this Agreement to the contrary; *provided* that (i) the obligation to pay Rent as and when due pursuant to the terms of this Agreement is not subject to adjustment or extension due to Excusable Tenant Delay unless otherwise expressly provided herein to the contrary and (ii)

Tenant complies with the requirements of this Article XX. Notwithstanding anything to the contrary contained in this Section 20.1, in no event shall an Excusable Tenant Delay and/or Force Majeure Event exceed ninety (90) days in the aggregate.

With respect to each occurrence of Excusable Tenant Delay, Tenant shall, within fifteen (15) Business Days of Tenant's knowledge of the occurrence of such event of Excusable Tenant Delay, give written notice to City Representative of the event constituting Excusable Tenant Delay, Tenant's good faith estimate of the Excusable Tenant Delay Period resulting therefrom and the basis therefor, Tenant's good faith estimate of any adjustment resulting therefrom that is to be made to the time for performance, together with reasonable documentation supporting the adjustments proposed. If City Representative believes that the documentation supplied is not sufficient to justify the delay claimed or adjustments proposed, City Representative shall give written notice to Tenant of the claimed deficiency and Tenant shall have a reasonable period of time to more fully document the delay and adjustments claimed. Only one (1) notice from Tenant shall be required with respect to a continuing Excusable Tenant Delay, except that Tenant shall promptly (and in no event less often every thirty (30) days) give notice to City Representative of any further changes in the additional time for performance claimed by reason of the continuing delay. City Representative shall have the right to challenge Tenant's assertion of the occurrence of an Excusable Tenant Delay, Tenant's good faith estimate of the Excusable Tenant Delay Period or changes in the additional time for performance claimed by reason of the Excusable Tenant Delay if City Representative sends notice to Tenant within thirty (30) days after receipt by City Representative of such claim of Excusable Tenant Delay or notice from Tenant of further changes to such dates as a result of such usable Tenant Delay, as the case may be (which challenge shall be deemed to have been made if City Representative gives notice to Tenant of any claimed deficiency in documentation as provided for above in this Section 20.1).

20.2 Excusable City Delay. Regardless of the existence or absence of references to Excusable City Delay elsewhere in this Agreement, any deadline or time period within which City must fulfill the obligations of City in this Agreement shall each be adjusted as appropriate to include that number of days of delay in the performance by City of its Obligations hereunder actually resulting from such Excusable City Delay; provided that (i) the obligation to pay amounts when due pursuant to the terms of this Agreement is not subject to adjustment or extension due to Excusable City Delay unless otherwise expressly provided herein to the contrary and (ii) the City complies with the requirements of this Article XX. Notwithstanding anything to the contrary contained in this Section 20.2, in no event shall an Excusable Tenant Delay and/or Force Majeure Event exceed ninety (90) days in the aggregate

With respect to each occurrence of Excusable City Delay, City Representative shall, within fifteen (15) Business Days after City's knowledge of the occurrence of such event of Excusable City Delay, give notice to Tenant of the event constituting Excusable City Delay, City Representative's good faith estimate of the Excusable City delay period resulting therefrom and the basis therefor, City representative's good faith estimate of any adjustment resulting therefrom that is to be made in time for performance, together with reasonable documentation supporting the adjustments proposed. If Tenant believes that the documentation supplied is not sufficient to justify the delay claimed or adjustment proposed, Tenant shall give notice to City Representative of the claimed deficiency and City Representative shall have a reasonable period of time to more

fully document the delay and adjustments claimed. Only one (1) notice from City Representative shall be required with respect to a continuing Excusable City Delay, except that City representative shall promptly (and in no event less often than every thirty (30) days) give notice to City Representative of any further changes in the additional time for performance claimed by reason of the continuing delay. Tenant's Representative shall have the right to challenge City's assertion of the occurrence of an Excusable City Delay, or City Representative's good faith estimate of the Excusable City Delay Period, or changes in the additional time for performance claimed by reason of Excusable City Delay if Tenant gives notice to City Representative within thirty (30) days after receipt by Tenant of such claim of Excusable City Delay or notice from City Representative of further changes to such dates as a result of such Excusable City Delay, as the case may be (which challenge shall be deemed to have been made if Tenant gives notice to City Representative of any claimed deficiency in documentation as provided for above in this Section 20.2).

20.3 Continued Performance; Exceptions. Upon the occurrence of any Tenant delay or City delay, the Parties shall endeavor to continue to perform their obligations under this Agreement so far as reasonably practicable. Toward that end, Tenant and City each hereby agrees that it shall make all reasonable efforts to prevent and reduce to a minimum and mitigate the effect of any Tenant delay or City delay occasioned by an Excusable Tenant Delay or Excusable City Delay, and shall diligently and continuously use its commercially reasonable efforts to ensure resumption of performance of its obligations under this Agreement after the occurrence of any Excusable Tenant Delay or Excusable City Delay. The Parties shall use and continue to use all commercially reasonable efforts to prevent, avoid, overcome and minimize any City delay or Tenant delay.

ARTICLE XXI. ENVIRONMENTAL PROVISIONS

21.1 Remedial Work and Hazardous Materials. From and after the Commencement Date, Tenant shall be responsible for performing or causing to be performed, and for paying the cost of performing, any and all corrective or remedial actions (including all investigation, monitoring, etc.) required by Applicable Law to be performed with respect to any Environmental Event at, in, on or under the Ballpark and the Ballpark Dedicated Parking occurring from and after the Commencement Date and arising from Tenant's operation of the Ballpark or Ballpark Dedicated Parking ("**Tenant's Remedial Work**"). City shall be responsible for performing or causing to be performed, and for paying the cost of performing, any and all corrective or remedial actions (including all investigation, monitoring, etc.) required by Applicable Law to be performed with respect to any Environmental Event at, in, on or under the Ballpark or the Ballpark Dedicated Parking which are not attributable to Tenant's operation of the Ballpark or Ballpark Dedicated Parking ("**City's Remedial Work**"). Prior to undertaking any Tenant's Remedial Work, Tenant shall obtain the Approval of City Representative of the steps Tenant proposes to take with respect to any Tenant's Remedial Work and Tenant shall select, subject to the Approval of City Representative, an independent environmental consultant or engineer to oversee Tenant's Remedial Work. Regulated wastes, such as asbestos and industrial wastes shall be properly characterized, manifested and disposed of at an authorized facility. Tenant shall not cause or permit any Hazardous Materials to be generated, used, released, stored or disposed of in or about

the Ballpark or the Ballpark Dedicated Parking; *provided, however* that Tenant and its Related Parties may use, store and dispose of reasonable quantities of Hazardous Materials at the Ballpark as may be reasonably necessary for Tenant to operate from the Ballpark pursuant to the terms of this Agreement so long as such Hazardous Materials are commonly used, or permitted to be used, by reasonable and prudent Operators in similar circumstances and are stored and disposed of in accordance with industry standards, but in all events in compliance with Environmental Laws. Upon the Lease Expiration Date, Tenant shall surrender the Ballpark to City in the condition required by Tenant's Remedial Work and in compliance with Applicable Laws. During the Term, Tenant shall give City immediate oral and follow-up written notice within seventy-two (72) hours of any actual or threatened Environmental Event. Tenant shall cure such Environmental Event (provided same is the responsibility of Tenant to cure in accordance with the provisions of this Section 21.1) in accordance with all Environmental Laws to the reasonable satisfaction of City and any Governmental Authority and such cure shall be deemed part of Tenant's Remedial Work. Upon any Environmental Event, in addition to all other rights available to City under this Agreement, at law or in equity, City shall have the right, but not the obligation, at its option (i) to require Tenant, at its sole cost and expense, to address and remedy such Environmental Event, in which event City shall have the right to Approve any actions taken by Tenant to address and remedy the Environmental Event or (ii) if Tenant has failed to commence action to address and remedy the Environmental Event within a reasonable time after notice is given to City, and such failure continues for thirty (30) days after written notice thereof from City to Tenant, to perform, at Tenant's sole cost and expense, any lawful action necessary to address and remedy the same, in which event Tenant shall pay the costs thereof to City, together with interest thereon at the Default Rate until paid, within ten (10) days after written demand therefor.

21.2 Tenant Release. WITHOUT LIMITING TENANT'S INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT, TENANT HEREBY RELEASES CITY AND ITS AFFILIATES AND RELATED PARTIES FROM AND AGAINST ANY CLAIMS, DEMANDS, ACTIONS, SUITS, CAUSES OF ACTION, DAMAGES, LIABILITIES, OBLIGATIONS, COSTS AND/OR EXPENSES THAT TENANT MAY HAVE WITH RESPECT TO THE BALLPARK OR THE BALLPARK DEDICATED PARKING AND RESULTING FROM, ARISING UNDER OR RELATED TO ANY ENVIRONMENTAL EVENT WITHIN THE SCOPE OF TENANT'S REMEDIAL WORK, INCLUDING ANY SUCH CLAIM UNDER ANY ENVIRONMENTAL LAWS, WHETHER UNDER ANY THEORY OF STRICT LIABILITY OR THAT MAY ARISE UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, 42 U.S.C.A. § 9601, ET. SEQ., AND NORTH CAROLINA GENERAL STATUTES AND REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY.

21.3 City Release. WITHOUT LIMITING CITY'S INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT, CITY HEREBY RELEASES TENANT AND ITS AFFILIATES AND RELATED PARTIES FROM AND AGAINST ANY CLAIMS, DEMANDS, ACTIONS, SUITS, CAUSES OF ACTION, DAMAGES, LIABILITIES, OBLIGATIONS, COSTS AND/OR EXPENSES THAT CITY MAY HAVE WITH RESPECT TO THE BALLPARK OR THE BALLPARK DEDICATED PARKING AND RESULTING FROM, ARISING UNDER OR RELATED TO ANY ENVIRONMENTAL

EVENT WITHIN THE SCOPE OF CITY'S REMEDIAL WORK, INCLUDING ANY SUCH CLAIM UNDER ANY ENVIRONMENTAL LAWS, WHETHER UNDER ANY THEORY OF STRICT LIABILITY OR THAT MAY ARISE UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, 42 U.S.C.A. § 9601, ET. SEQ., AND NORTH CAROLINA GENERAL STATUTES AND REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY.

**ARTICLE XXII.
NOTICES**

All notices permitted or required to be made hereunder shall be in writing and delivered by hand, overnight courier, certified mail, facsimile or e-mail. Notices shall be deemed given (a) when actually given and received if delivered by hand; (b) one (1) Business Day after delivery to an overnight courier if delivered by an overnight courier; (c) three (3) Business Days after deposit with the United States Postal Service if delivered by certified mail; or (d) when sent if delivered by facsimile or e-mail (as evidenced by facsimile or e-mail confirmation). All such notices shall be addressed to the appropriate Party as follows:

If to City:

All notices to City shall be sent to:

City of Kannapolis
401 Laureate Way
Kannapolis, North Carolina 28081
Attention: City Manager

with copies of all notices to City relating to defaults, remedies or indemnification being sent to:

City of Kannapolis
401 Laureate Way
Kannapolis, North Carolina 28081
Attention: City Attorney

If to Tenant:

Temerity Baseball LLC

Kannapolis, North Carolina 28081
Attention: President

and

Temerity Baseball LLC
1255 23rd Street NW, Suite 550
Washington, DC 20037
Attention: Michael Sandler, Principal

And a copy to:
Cooley LLP
11951 Freedom Drive, Suite 1400
Reston, Virginia 20190
Attn: John G. Lavoie, Esq.

Each Party may from time to time designate a different address for notices by giving notice to that effect to the other Parties in accordance with the terms and conditions of this Article XXII.

ARTICLE XXIII. MISCELLANEOUS

23.1 Partial Invalidity. If any Section of this Agreement or its application to any Party or circumstance shall be determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement or the application of such Section to persons or circumstances, other than those as to which it is so determined invalid or enforceable to any extent, shall not be affected thereby, and each Section hereof shall be valid and enforceable to the fullest extent permitted by law.

23.2 Obligations of City and Tenant. The obligations and undertakings of City and Tenant under or in accordance with this Agreement are and shall be the obligations solely of City and Tenant. Except as otherwise expressly stated herein, no recourse shall be had, whether in contract, in tort or otherwise against any officer, director, employee, agent, member, volunteer or representative of City or Tenant in his or her individual capacity on account of any obligation or undertaking of or any act or omission by City or Tenant under or pursuant to this Agreement.

23.3 Time of the Essence. Time is of the essence with respect to all Sections of this Agreement.

23.4 Successors and Assigns. This Agreement and all terms and conditions contained herein shall inure to the benefit and be binding upon the successors and permitted assigns of the Parties.

23.5 Entire Agreement. This Agreement (including all exhibits attached hereto), together with the Development Agreement and the Non-Relocation Agreement, constitute the entire and exclusive agreement between City and Tenant with respect to the subject matter contained herein. There are no restrictions, promises, obligations or undertakings between the Parties, other than those set forth or referred to in this Agreement with respect to the subject matter hereof.

23.6 Table of Contents; Headings; Exhibits. The table of contents, if any, and headings, if any, of the various articles, sections and other subdivisions of this Agreement are for convenience of reference only and shall not modify, define or limit any of the terms or provisions of this Agreement. All Appendices and Exhibits attached to this Agreement are incorporated herein by reference in their entirety and made a part hereof for all purposes; *provided, however*, that in the event of a conflict between the terms of the text of this Agreement and any Appendices or Exhibits, the text of this Agreement shall control.

23.7 Anti-Discrimination. In accordance with Applicable Laws, the Parties, in forming their respective obligations hereunder will not discriminate based on religion, national origin, alienage, color, race, sex, gender identity or expression, sexual orientation, blindness or physical disability.

23.8 Non-Appropriation. Notwithstanding any other provision of this Agreement, City's obligation to pay any money to Tenant under this Agreement is contingent upon an Appropriation of the money by the City Council. City's failure to make an Appropriation is not a Default under this Agreement, but Tenant, as its sole and exclusive remedies for such failure, may terminate this Agreement as a result thereof.

23.9 Attorney's Fees. If any Party to this Agreement defaults in the performance of any covenants, obligations or agreements of such Party contained in this Agreement and the other Party hereto places the enforcement of this Agreement, or any part thereof, or the exercise of any other remedy therein provided for such default, in the hands of an attorney who files suit upon the same (either by direct action or counterclaim), the non-prevailing Party shall pay to the prevailing Party its reasonable attorneys' fees and costs of court. In addition to the foregoing award of attorneys' fees to the prevailing Party, the prevailing Party shall be entitled to its reasonable attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

23.10 Nondisturbance. It is understood by the Parties that City has obtained or anticipates obtaining financing for the construction costs for the Ballpark and other related City expenses. City agrees that the Leasehold Estate shall not be disturbed by any creditors, bondholders, underwriters, trustees or other third parties related to the financing during the Term, except upon the occurrence of a Tenant Default.

23.11 Confidential Information. Disclosure of the terms of this Agreement will be governed by the North Carolina General Statutes Chapter 132 "Public Records". City shall maintain the confidentiality of any proprietary information, trade secrets or other confidential materials delivered to it pursuant to this Agreement and designated as confidential by the delivering Party (the "**Confidential Information**"); provided, however, that Tenant will provide the basis for any such exclusion from disclosure under Chapter 132. If any of the Club or its Ownership Group (the "**Club Parties**") believes that any of the Confidential Information is exempt from disclosure, they shall specifically identify the Confidential Information as to which the exemption is claimed prior to providing such Confidential Information to the City. Any such

claim of exemption shall not be a limitation on the right of the Club Parties to claim exemption for additional or different documents or information at a later time. If any such information forms part of a document that also contains non-exempt information, and if a request for disclosure is made which reasonably could be viewed as reaching such documents, then the Club Parties shall provide to the City a version thereof from which the Confidential Information that is claimed to be exempt from disclosure has been redacted in order to facilitate the City's response to such request. If the City receives a request with respect to any of the Confidential Information, and the City does not intend to withhold such Confidential Information from disclosure, the City shall (unless prohibited by law or court or other order) promptly notify the Club Parties of such request so that the Club Parties may seek a protective order or other remedy.

23.12 Review by NAPBL, SAL and/or MLB. The Parties acknowledge and agree that one or more of the NAPBL, SAL and the Commissioner of Major League Baseball may be required or permitted, pursuant to the Team's franchise agreement or related agreements, constitutions, bylaws, rules or regulations, to review and approve this Agreement. To the extent one or more of such parties has the right to approve this Agreement (or any provision thereof), Tenant shall promptly and diligently pursue such approval. In the event any such third party exercises or threatens to exercise any right it may have to withhold its approval of this Agreement, then City and Tenant shall use commercially reasonable efforts to cooperate in good faith with such third party(s) to amend this Agreement as may be necessary to obtain such approval. If, despite the Parties' cooperation and commercially reasonable efforts, the Parties are not able to amend the Agreement as required to obtain approval from the NAPBL, SAL and/or the commissioner of Major League Baseball, as set forth above, then this Agreement shall be rescinded. Any such approval shall be obtained prior to the Construction Commencement Date.

23.13 Counterparts. This Agreement may be executed in counterparts, each of which when executed and delivered will be deemed an original, and all of which together will constitute one instrument.

23.14 Governing Law. **THIS AGREEMENT AND THE ACTIONS OF THE PARTIES SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NORTH CAROLINA (EXCLUDING PRINCIPLES OF CONFLICT OF LAWS).** In the event of any proceedings regarding this Agreement, the Parties agree that the venue shall be arbitration in Charlotte, North Carolina as set forth in **Exhibit F**.

23.15 Limitation to Capacity as City. The Parties acknowledge that all references to "City" herein (which, for the purposes of this provision, shall be deemed to include any references in this Agreement to City as the owner of the fee or other real property interest in the Ballpark) shall refer only to City in its capacity as City under this Agreement. The term "City" and the duties and rights assigned to it under this Agreement, thus exclude any action, omission or duty of City of Kannapolis, North Carolina when performing its Governmental Functions. Any action, omission or circumstance arising out of the performance of City's Governmental Functions may prevent City from performing its obligations under this Agreement and shall not cause or constitute a default by City under this Agreement or give rise to any rights or claims against City in its capacity as the "City" hereunder, it being acknowledged that Tenant's remedies for any

injury, damage or other claim resulting from any such action, omission or circumstances arising out of City's Governmental Functions shall be governed by the laws and regulations concerning claims against City as a Governmental Authority. In addition, except as otherwise expressly provided herein, no setoff, reduction, withhold, deduction or recoupment shall be made in or against any payment due by Tenant to City under this Agreement as a result of any action or omission of City when performing its Governmental Function.

23.16 Capacity of Persons Acting on Behalf of City. Notwithstanding anything to the contrary in this Agreement, all references in this Agreement to employees, agents, representatives, contractors and the like of City shall refer only to Persons acting in City's capacity as the "City" hereunder and thus all such references specifically exclude any employees, agents, representatives, contractors and the like acting in connection with the performance of City's Governmental Functions. Without limiting the foregoing, all police, fire, permitting, regulatory, water and power, health and safety and sanitation employees of City shall be deemed to be acting in connection with the performance of City's Governmental Functions.

23.17 No Limitation on City's Governmental Functions. The Parties acknowledge that City is a Governmental Authority in addition to being the owner of the Ballpark, and that no representation, warranty, Approval or agreement in this Agreement by City shall be binding upon, constitute a waiver by or estop City from exercising any of its rights, powers or duties in connection with its Governmental Functions nor will any portion of this Agreement be deemed to waive any immunities granted to City when performing its Governmental Functions, which are provided under Applicable Law. Any consent to jurisdiction by City is only with respect to matters arising in its capacity as a Party to this Agreement and expressly does not constitute a waiver of City's legal immunity or a consent to jurisdiction for any actions, omissions or circumstances, in each case solely arising out of the performance of City's Governmental Functions.

23.18 Non-Liability of City's Officials and Tenant's Employees. No member of any legislative, executive, or administrative body of, or affiliated with, City or its Affiliates, and no official, agent, employee or representative of City or such body or any of its Affiliates (whether acting in the performance of City's Governmental Functions or otherwise) shall be personally liable to Tenant or any Person holding by, through or under Tenant, for any actions taken in his or her capacity as an official, agent, employee or representative of such Person in the event of any default or breach by City, or for any amount which may become due to Tenant or any Person holding by, through or under Tenant, or for any other obligation, under or by reason of this Agreement. No officer, director, shareholder, member, agent, employee or representative of Tenant or its Affiliates shall be personally liable to City or any Person holding by, through or under City, for any actions taken in his or her capacity as an officer, director, shareholder, agent, employee or representative of such Person in the event of any default or breach by Tenant, or for any amount which may become due to City or any Person holding by, through or under City, or for any other obligation, under or by reason of this Agreement.

23.19 Payment on Business Days. If any payment under this Agreement is required to be made on a day other than a Business Day, the date of payment shall be extended to the next Business Day.

23.20 Joint and Several Liability. If Tenant at any time comprises more than one Person, all such Persons shall be jointly and severally liable for payment of Rent and for performance of every obligation of Tenant under this Agreement.

23.21 Relationship of the Parties; No Partnership. The relationship of Tenant and City under this Agreement is that of independent parties, each acting in its own best interests, and notwithstanding anything in this Agreement to the contrary, neither the obligation to pay City any amounts due hereunder nor any other aspect of this Agreement shall create or evidence, nor is it intended to create or evidence, a partnership, joint venture or other business relationship or enterprise between Tenant and City. As such, City shall have no direct supervision of or obligation to the employees of Tenant and any communication of employee matters shall be through Tenant Representative.

23.22 Non-Merger of Estates. The interests of City and Tenant in the Ballpark shall at all times be separate and apart, and shall in no event be merged, notwithstanding the fact that this Agreement or the Leasehold Estate created hereby, or any interest therein, may be held directly or indirectly by or for the account of the Person who shall own the fee title to the Ballpark or any portion thereof; and no such merger of estates shall occur by operation of law, or otherwise, unless and until all Persons at the time having any interest in the Ballpark shall join in the execution of a written instrument effecting such merger of estates.

23.23 Covenants Running with the Estates in Land. The Parties covenant and agree that all of the conditions, covenants, agreements, rights, privileges, obligations, duties, specifications and recitals contained in this Agreement, except as otherwise expressly stated herein, shall be construed as covenants running with title to the Ballpark, the Ballpark Dedicated Parking and the Leasehold Estate, respectively, which shall extend to, inure to the benefit of and bind, City and Tenant, and their permitted successors and assigns, to the same extent as if such successors and assigns were named as original parties to this Agreement, such that this Agreement shall always bind the owner and holder of any fee or leasehold interest in or to the Ballpark, the Ballpark Dedicated Parking or any portion thereof, and shall bind predecessors thereof except as otherwise expressly provided herein.

23.24 Audits. The books and records of each Party pertaining to any obligation of such Party under the terms of this Agreement shall be available for the purpose of the other Parties undertaking reasonable examinations, from time to time, upon reasonable prior written notice; provided however, that (a) any Confidential Information reviewed as a part of such examination shall be reviewed in such a manner such that it remains confidential and (b) City shall have no right to examine any financial information of Tenant which does not directly relate to Ticket Fees. The Parties' respective rights to examine such books and records shall survive termination of this Agreement for a period of one year past the Lease Expiration Date.

23.25 Survival of Existing Claims. Termination of this Agreement shall not alter any existing claim of any Party for breaches of this Agreement occurring prior to such termination and the obligations of the Parties hereto with respect to such existing claims shall survive termination.

23.26 E-Verify. For agreements that include construction or services, employers and their subcontractors 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 Agreement, Tenant certifies that Tenant complies with the requirements of the E-Verify program.

[Signatures and acknowledgements appear on following pages]

[Signature Page to Lease Agreement]
[S-1 of 2]

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Effective Date.

CITY OF KANNAPOLIS (“CITY”)

By: _____
Michael B. Legg
City Manager

Date: _____

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

Eric Davis
Finance Director

TEMERITY BASEBALL LLC (“TENANT”)

By: _____

Manager

Date: _____

EXHIBIT A

PROPERTY DESCRIPTION

(Map Attached)

EXHIBIT B

**SCHEDULE OF FINANCIAL/REPAIR/MAINTENANCE/REPLACEMENT
RESPONSIBILITY**

[NOTE: EXHIBIT B REMAINS OPEN AND UNDER REVIEW BY TENANT]

EXHIBIT C

RENT SCHEDULE

[Attached]

EXHIBIT C-1

MUNICIPAL SERVICE DISTRICT MAP

[Attached]

EXHIBIT D

FORM OF MEMORANDUM OF LEASE

MEMORANDUM OF LEASE

THIS MEMORANDUM covers a certain Ballpark Lease Agreement (“**Lease**”) for land and rights appurtenant thereto located in the City of Kannapolis, North Carolina described on **Exhibit A** attached hereto and made part hereof (the “**Premises**”).

Pursuant to North Carolina General Statutes §47-118, the following information is provided with respect to the Lease:

| | |
|----------------------------------|--|
| <u>LANDLORD:</u> | City of Kannapolis 401 Laureate Way Kannapolis, North Carolina 28081 Attention: City Manager |
| <u>TENANT:</u> | Temerity Baseball LLC 1255 23 rd Street NW, Suite 550 Washington, DC 20037 Attention: Michael Sandler, Principal |
| <u>DATE OF EXECUTION:</u> | As of _____, 2018 |
| <u>TERM:</u> | Thirty (30) years |
| <u>COMMENCEMENT DATE:</u> | _____, 2018 |
| <u>TERMINATION:</u> | _____, 20__ |
| <u>OPTION TO EXTEND:</u> | None |
| <u>LEASE IS FILED AT:</u> | Kannapolis City Clerk 401 Laureate Way Kannapolis, North Carolina 28081 |

IN WITNESS WHEREOF the parties hereto have caused this Memorandum of Lease to be executed as of the ____ day of _____, 201 .

In the presence of:

LANDLORD:

By: _____

Michael B. Legg
City Manager

_____, 20__.

STATE OF NORTH CAROLINA

COUNTY OF _____

Personally appeared Michael B. Legg, City Manager of City of Kannapolis, signer and sealer of the foregoing instrument, who acknowledged the same to be his free act and deed and the free act and deed of said Michael B. Legg, before me.

Notary Public

My commission expires: _____

TENANT:

By: _____

Name: _____

Title: _____

_____, 20__.

STATE OF NORTH CAROLINA

COUNTY OF _____

Personally appeared _____, _____ of _____, signer and sealer of the foregoing instrument, who acknowledged the same to be his free act and deed and the free act and deed of said _____, before me.

Notary Public

My commission expires: _____

Exhibit A
To Memorandum of Lease

EXHIBIT E

BALLPARK DEDICATED PARKING

[OPEN: TO BE ATTACHED]

EXHIBIT F

ARBITRATION PROCEDURE

In the event of any Dispute or Controversy among the Parties occurs under a provision of this Agreement which specifies resolution under this **Exhibit F**, such Dispute or Controversy shall be subject to final, binding arbitration in accordance with the procedures set forth herein. The Parties shall not take any action permitted hereunder prior to the date that such Qualified Arbitrator (as herein defined) shall render a decision and City and Club shall each be bound by any such Qualified Arbitrator's decision.

If such technique, timetable or completion date is not agreed upon within thirty (30) days after the notice of the Dispute or Controversy was first delivered, or if no resolution is obtained through such alternative technique, or if no meeting between the Representatives or the City Manager of the City and the Representatives takes place within the sixty (60)-day period following delivery of the initial notice, the Parties shall submit the matter to the Charlotte, North Carolina Regional Office of the American Arbitration Association ("**AAA**") and request AAA to select one person to act as the arbitrator for resolution of this dispute (the "**Qualified Arbitrator**"). The Qualified Arbitrator shall be a retired federal or state judge with expertise in the specialty required for understanding and resolving the specific Dispute or Controversy in question.

Within five (5) days after the appointment of the Qualified Arbitrator, each party shall simultaneously submit to the Qualified Arbitrator and exchange with each other (within two (2) hours of such submittal) its respective last, best proposal for resolution of the dispute. The arbitration shall be limited to the sole question of determining which of the two (2) written proposals is to be accepted. The Qualified Arbitrator shall have no authority to compromise between the proposals. The Qualified Arbitrator shall conduct the arbitration proceeding in a mutually agreeable location in Charlotte, North Carolina, and the Qualified Arbitrator shall select to be the single binding decision, one of the two submitted proposals, within five (5) business days after the completion of the arbitration proceeding. The Qualified Arbitrator may not limit, expand or modify the terms of this provision nor award damages in excess of damage limitations contained in the Agreement, and each party waives any claim to such excess damages. The arbitrator will excise from the winning proposal any term that limits, expands or modifies the terms of the Agreement or awards damages in excess of damage limitations contained in the Agreement. The Parties shall share equally in the cost of the Qualified Arbitrator's fees and expenses.

If a party to a dispute fails to appear at any properly noticed arbitration proceeding under this **Exhibit F**, an award may be entered against such party notwithstanding such failure to appear. The arbitration proceeding shall be conducted in as expedited a manner as is then permitted by the AAA commercial arbitration rules (formal or informal). Both the foregoing agreement of the parties to arbitrate any and all such disputes, claims and controversies, and the results, determinations, findings, judgments and/or awards rendered through any such arbitration shall be final and binding on the parties and may be specifically enforced by legal proceedings in any court of competent jurisdiction.

| | EXHIBIT B | | | | |
|-----|---|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| I. | STRUCTURE | | | | |
| 1 | Structural steel/ metal/ concrete/ masonry components | City | City | Cap Ex | City |
| 2 | Roofs | City | City | Cap Ex | City |
| 3 | Sealants/ Caulking/ Waterproofing | City | City | Cap Ex | City |
| 4 | Window and Doors | City | City | Cap Ex | Team |
| 5 | Roads/Concourse Concrete/Walkways | City | City | Cap Ex | City |
| 6 | Casework/ Carpentry/ Millwork/ Cabinetry | City | City | Cap Ex | Team |
| 7 | Drywall/Paint/Wallcovering | City | City | Cap Ex | Team |
| 8 | Flooring | City | City | Cap Ex | Team |
| 9 | Fixed Armchairs/Seating | City | City | Cap Ex | Team |
| | | | | | |
| II. | BALLPARK SYSTEMS | | | | |
| 1 | Plumbing/Fire Sprinkler System | City | City | Cap Ex | Team |
| 2 | Electrical | City | City | Cap Ex | Team |
| 3 | HVAC | City | City | Cap Ex | Team |
| 4 | Fire Monitoring System | City | City | Cap Ex | Team |
| 5 | Landscaping and Irrigation | City | City | Cap Ex | City |
| 6 | Generator | City | City | Cap Ex | Team |
| 7 | Lighting (excludes field lighting) | City | City | Cap Ex | Team |
| 8 | Emergency Lighting | City | City | Cap Ex | Team |
| 9 | Elevators | City | City | Cap Ex | Team |
| 10 | Other electronic signage | City | City | Team | Team |
| 11 | Ballpark Dedicated Parking | City | City | City | City |
| 12 | Concourse Snow Removal | N/A | N/A | N/A | City |
| 13 | General Cleaning, Trash Removal, Recycling | N/A | N/A | N/A | Team |
| 14 | Door, Floor, Wall and Window Cleaning | N/A | N/A | N/A | Team |
| 15 | Annual Systems Inspections and Service Agreements ¹ | N/A | N/A | N/A | Team |

| | EXHIBIT B | | | | |
|------|--|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| | | | | | |
| III. | PLAYING FIELD | | | | |
| 1 | Preparation for games | N/A | N/A | N/A | Team |
| 2 | Grass cutting | N/A | N/A | N/A | Team |
| 3 | Field Sod | City | City | Cap Ex | Team |
| 4 | Field drainage system | City | City | Cap Ex | Team |
| 5 | Field irrigation system | City | City | Cap Ex | Team |
| 6 | Foul ball screen, backstop, foul poles | City | City | Cap Ex | Team |
| 7 | Outfield fence | City | City | Cap Ex | Team |
| 8 | Field sports lighting | City | City | Cap Ex | Team |
| 9 | Field Tarp | Team | Team | Team | Team |
| 10 | Batters Eye | City | City | Cap Ex | Team |
| | | | | | |
| IV. | FURNITURE / SEATING | | | | |
| A. | LOOSE FURNITURE | | | | |
| 1 | Executive Desks | Team | Team | Team | Team |
| 2 | Staff Desks | Team | Team | Team | Team |
| 3 | Reception Desk | Team | Team | Team | Team |
| 4 | Metal Maintenance Desks | Team | Team | Team | Team |
| 5 | Staff Desk Chairs | Team | Team | Team | Team |
| 6 | Executive Chairs | Team | Team | Team | Team |
| 7 | Locker Room Padded Chairs W/Logo | Team | Team | Team | Team |
| 8 | Locker Room Padded Chairs No Logo | Team | Team | Team | Team |
| 9 | Cork Board | Team | Team | Team | Team |
| 10 | Shelving (Office & Storage) | Team | Team | Team | Team |
| 11 | Desk Trash Cans | Team | Team | Team | Team |
| 12 | Tall Office Trash Cans | Team | Team | Team | Team |
| 13 | Tall Safe | Team | Team | Team | Team |
| 14 | Tall Lockable Supply Cabinet | Team | Team | Team | Team |
| 15 | Short Storage Cabinets | Team | Team | Team | Team |
| 16 | Ticket Window Chairs | Team | Team | Team | Team |
| 17 | Bookshelves | Team | Team | Team | Team |
| 18 | Sitting Chairs | Team | Team | Team | Team |
| 19 | Conference Table | Team | Team | Team | Team |

| | EXHIBIT B | | | | |
|----|--|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| 20 | Conference Chairs | Team | Team | Team | Team |
| 21 | End Tables | Team | Team | Team | Team |
| 22 | Large Filing Cabinet | Team | Team | Team | Team |
| 23 | Small Filing Cabinet | Team | Team | Team | Team |
| 24 | Mailbox Wall | Team | Team | Team | Team |
| 25 | Display Cases (Labor Law, Etc) | Team | Team | Team | Team |
| 26 | Small Meeting Table | Team | Team | Team | Team |
| 27 | L-Shape Work Stations | Team | Team | Team | Team |
| 28 | Large Office Dry Erase Boads | Team | Team | Team | Team |
| 29 | Regular Dry Erase Boards | Team | Team | Team | Team |
| 30 | Restroom Wall Cabinet | Team | Team | Team | Team |
| 31 | Logo Wall Clocks | Team | Team | Team | Team |
| 32 | 6' Folding Tables | Team | Team | Team | Team |
| 33 | Wardrobe/Storage Combo | Team | Team | Team | Team |
| 34 | Blue Print Wall Racks | Team | Team | Team | Team |
| 35 | Towel Hooks | Team | Team | Team | Team |
| 36 | Club Style Couches (Suites and Club) | Team | Team | Team | Team |
| 37 | Coffee Table (Suites and Club) | Team | Team | Team | Team |
| 38 | Club Chairs (Suites and Club) | Team | Team | Team | Team |
| 39 | Tall Chairs At Club Windows | Team | Team | Team | Team |
| 40 | Tall Club Trash Cans (Suites and Club) | Team | Team | Team | Team |
| 41 | Tall Cocktail Table for Club | Team | Team | Team | Team |
| 42 | 8-Top Folding Banquet Tables | Team | Team | Team | Team |
| 43 | Folding Banquet Chairs | Team | Team | Team | Team |
| 44 | Art & Graphics for Club | Team | Team | Team | Team |
| | | | | | |
| B. | WINDOW COVERINGS / SHADES / BLINDS | | | | |
| 1 | Visitor Clubhouse | City | City | City | Team |
| 2 | Entry Lobbies & Corridors | City | City | City | Team |
| 3 | Home Clubhouse | City | City | City | Team |
| 4 | Ticket Office | City | City | City | Team |
| 5 | Suites | City | City | City | Team |

| | EXHIBIT B | | | | |
|----|---|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| 6 | Press Box | City | City | City | Team |
| 7 | Administrative Offices | City | City | City | Team |
| 8 | Premium Club | City | City | City | Team |
| | | | | | |
| C. | SPECTATOR SEATING (Non-Fixed/Exterior) | | | | |
| 1 | Folding Chairs | City | City | Cap Ex | Team |
| 2 | Right Field Box: High Top Metal Tables | City | City | Cap Ex | Team |
| 3 | Right Field Box: High Top Metal Chairs | City | City | Cap Ex | Team |
| 4 | Left Field Picnic Tables | City | City | Cap Ex | Team |
| 5 | Party Deck High Top Metal Tables | City | City | Cap Ex | Team |
| 6 | Party Deck High Top Metal Chairs | City | City | Cap Ex | Team |
| 7 | Loge Box Metal Chairs (mix of high and low) | City | City | Cap Ex | Team |
| 8 | Outdoor Bar Seats | City | City | Cap Ex | Team |
| 9 | Site Furnishings (benches, trash cans, bike racks). Outside the facility fence. | City | City | Cap Ex | Team |
| 10 | Site furnishings (inside facility fence) | City | City | Cap Ex | Team |
| 11 | Outside Cigarette Urns | City | City | Cap Ex | Team |
| 12 | Rocking Chairs | Team | Team | Team | Team |
| 13 | Wicker Chairs | Team | Team | Team | Team |
| 14 | Wicker Couches | Team | Team | Team | Team |
| 15 | Wicker Tables | Team | Team | Team | Team |
| 16 | String/Patio Lighting | Team | Team | Team | Team |
| 17 | Space Heaters | Team | Team | Team | Team |
| 18 | Rolling Plant Dividers | Team | Team | Team | Team |
| 19 | Small Ceiling Fans | Team | Team | Team | Team |
| 20 | Concourse Ceiling Fans | City | City | Cap Ex | Team |

| | EXHIBIT B | | | | |
|-----|---|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| | | | | | |
| V. | SIGNAGE & ARTWORK | | | | |
| A. | SIGNAGE | | | | |
| 1 | Advertising Panels, Banners, Fixed Marketing Signage & Graphics | Team | Team | Team | Team |
| 2 | Wayfinding & Code Required Signage | City | City | Cap Ex | Team |
| 3 | Flagpoles | City | City | Cap Ex | Team |
| 4 | Flags | Team | Team | Team | Team |
| 5 | Naming Rights / Marquee Signage | City | City | Cap Ex | Team |
| | | | | | |
| B. | ARTWORK | | | | |
| 1 | Wall Mounted, Hung or Painted Artwork/Photos | Team | Team | Team | Team |
| 2 | Public Artwork (typically ground mounted, free standing) | City | City | City | City |
| | | | | | |
| VI. | FOOD SERVICE / MERCHANDISE / APPLIANCES | | | | |
| A. | FOOD SERVICE EQUIPMENT | | | | |
| 1 | Shelving Unit | City | Team | Team | Team |
| 2 | Walk-In Cooler | City | Team | Cap Ex | Team |
| 3 | Walk-In Cooler Evaporator Coil | City | Team | Cap Ex | Team |
| 6 | Shelving Unit | City | Team | Team | Team |
| 7 | Walk-In Freezer | City | Team | Cap Ex | Team |
| 8 | Walk-In Freezer Evaporator Coil | City | Team | Cap Ex | Team |
| 11 | Shelving Unit | City | Team | Team | Team |
| 12 | Dunnage Rack | City | Team | Team | Team |
| 13 | Walk-In Beer Cooler | City | Team | Cap Ex | Team |
| 14 | Walk-In Beer Evaporator Coil | City | Team | Cap Ex | Team |
| 16 | Beer Keg Rack | City | Team | Cap Ex | Team |
| 17 | Dunnage Rack | City | Team | Team | Team |
| 18 | Remote Refrigeration | City | Team | Cap Ex | Team |
| 21 | Beer System | City | Team | Cap Ex | Team |
| 22 | Bag'n Box Soda System | City | Team | Team | Team |

| | EXHIBIT B | | | | |
|-----|---------------------------------|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| 23 | Co2 Tanks | City | Team | Team | Team |
| 24 | Reach-In Refrigerator | City | Team | Team | Team |
| 26 | Reach-In Freezer | City | Team | Team | Team |
| 27 | Three Compartment Sink | City | Team | Cap Ex | Team |
| 28 | Wall Shelf | City | Team | Cap Ex | Team |
| 31 | Ice Maker | City | Team | Cap Ex | Team |
| 32 | Ice Bin | City | Team | Cap Ex | Team |
| 33 | Water Filter | City | Team | Team | Team |
| 34 | Hand Sink | City | Team | Team | Team |
| 36 | Mop Sink Cabinet | City | Team | Team | Team |
| 37 | Work Table W/Dump Sink | City | Team | Team | Team |
| 38 | Htd. Sandwich Slide | City | Team | Team | Team |
| 41 | Fire Supression System | City | Team | Cap Ex | Team |
| 42 | Exhaust Hood | City | Team | Cap Ex | Team |
| 43 | Char Broiler | City | Team | Team | Team |
| 44 | Flat Top Griddle | City | Team | Team | Team |
| 46 | Fryer Battery | City | Team | Cap Ex | Team |
| 46 | Rerigerated Base Stand | City | Team | Team | Team |
| 47 | Dump Station W/ Heat Lamp | City | Team | Team | Team |
| 48 | Htd. Sandwich Slide | City | Team | team | Team |
| 51 | Work Table | City | Team | Team | Team |
| 52 | Beverage Cooler | City | Team | Team | Team |
| 53 | Concession Back Counter | City | Team | Cap Ex | Team |
| 54 | Popcorn Machine | City | Team | Team | Team |
| 56 | Concession Back Counter | City | Team | Cap Ex | Team |
| 57 | Concession Front Counter | City | Team | Cap Ex | Team |
| 58 | Cup Holder | City | Team | Cap Ex | Team |
| 61 | Hand Sink | City | Team | Cap Ex | Team |
| 62 | Pos Station | City | Team | Team | Team |
| 64 | Soda And Ice Dispenser | City | Team | Team | Team |
| 66 | Beer Dispensing Head | City | Team | Cap Ex | Team |
| 101 | Walk-In Freezer | City | Team | Cap Ex | Team |
| 102 | Walk-In Freezer Evaporator Coil | City | Team | Cap Ex | Team |
| 103 | Pallet | City | Team | Team | Team |

| | EXHIBIT B | | | | |
|-----|--------------------------------|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| 104 | Two Tier Pallet Rack | City | Team | Team | Team |
| 107 | Walk-In Cooler | City | Team | Cap Ex | Team |
| 108 | Walk-In Cooler Evaporator Coil | City | Team | Cap Ex | Team |
| 111 | Pallet | City | Team | Team | Team |
| 112 | Two Tier Pallet Rack | City | Team | Team | Team |
| 113 | Shelving Unit | City | Team | Team | Team |
| 114 | Remote Refrigeration | City | Team | Cap Ex | Team |
| 116 | Drying Rack | City | Team | Team | Team |
| 117 | Three Compartment Sink | City | Team | Cap Ex | Team |
| 118 | Hand Sink | City | Team | Cap Ex | Team |
| 121 | Prep Table With Sink | City | Team | Cap Ex | Team |
| 122 | Pot Filler | City | Team | Team | Team |
| 123 | 60 Qt. Floor Mixer | City | Team | Cap Ex | Team |
| 124 | Prep Table With Sinks | City | Team | Cap Ex | Team |
| 126 | Food Processor | City | Team | Team | Team |
| 127 | Heated Transport Cart | City | Team | Cap Ex | Team |
| 128 | Hand Sink | City | Team | Cap Ex | Team |
| 131 | Mixer Stand | City | Team | Team | Team |
| 132 | 20 Qt. Mixer | City | Team | Team | Team |
| 133 | Mobile Work Table | City | Team | Team | Team |
| 134 | Slicer Stand | City | Team | Team | Team |
| 136 | Food Slicer | City | Team | Team | Team |
| 137 | Exhaust Hood | City | Team | Cap Ex | Team |
| 141 | Anti-Splash Floor Trough | City | Team | Cap Ex | Team |
| 142 | 60 Gal. Tilt Kettle | City | Team | Cap Ex | Team |
| 143 | 40 Gal. Tilt Skillet | City | Team | Cap Ex | Team |
| 144 | Double Combi Oven | City | Team | Cap Ex | Team |
| 146 | Water Filter | City | Team | Team | Team |
| 147 | Double Convection Oven | City | Team | Cap Ex | Team |
| 148 | Reach-In Refrigerator | City | Team | Team | Team |
| 151 | Exhaust Hood | City | Team | Cap Ex | Team |
| 152 | Fire Supression System | City | Team | Cap Ex | Team |
| 153 | Six Burner Range | City | Team | Cap Ex | Team |
| 154 | Char Broiler | City | Team | Team | Team |

| | EXHIBIT B | | | | |
|-----|----------------------------------|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| 156 | Rerigerated Base Stand | City | Team | Team | Team |
| 157 | Flat Top Griddle | City | Team | Team | Team |
| 158 | Fryer Battery | City | Team | Cap Ex | Team |
| 161 | Dump Station W/ Heat Lamp | City | Team | Team | Team |
| 162 | Reach-In Freezer | City | Team | Team | Team |
| 163 | Hand Sink | City | Team | Cap Ex | Team |
| 164 | Chef's Counter | City | Team | Cap Ex | Team |
| 166 | Two Tier Overshelf | City | Team | Cap Ex | Team |
| 167 | Heat Lamp | City | Team | Cap Ex | Team |
| 168 | Sandwich/Salad Prep Refrigerator | City | Team | Team | Team |
| 171 | Hot Food Wells (Halo Heat) | City | Team | Team | Team |
| 172 | Plate Shelf/Pickup Area | City | Team | Cap Ex | Team |
| 173 | Dump/Prep Sink | City | Team | Cap Ex | Team |
| 201 | Pallet | City | Team | Team | Team |
| 202 | Two Tier Pallet Rack | City | Team | Team | Team |
| 203 | Shelving Unit | City | Team | Team | Team |
| 204 | Mop Sink Cabinet | City | Team | Team | Team |
| 206 | Reach-In Freezer | City | Team | Team | Team |
| 207 | Ice Maker | City | Team | Team | Team |
| 208 | Ice Bin | City | Team | Team | Team |
| 211 | Water Filter | City | Team | Team | Team |
| 212 | Three Compartment Sink | City | Team | Cap Ex | Team |
| 213 | Wall Shelf | City | Team | Team | Team |
| 214 | Walk-In Beer Cooler | City | Team | Cap Ex | Team |
| 216 | Walk-In Beer Evaporator Coil | City | Team | Cap Ex | Team |
| 217 | Remote Refrigeration | City | Team | Cap Ex | Team |
| 218 | Dunnage Rack | City | Team | Team | Team |
| 221 | Beer Keg Rack | City | Team | Cap Ex | Team |
| 222 | Beer System | City | Team | Cap Ex | Team |
| 223 | Bag'n Box Soda System | City | Team | Team | Team |
| 224 | Co2 Tanks | City | Team | Team | Team |
| 226 | Prep/Dump Sink | City | Team | Cap Ex | Team |
| 227 | Htd. Sandwich Slide | City | Team | Team | Team |
| 228 | Work Table | City | Team | Team | Team |

| | EXHIBIT B | | | | |
|-----|----------------------------------|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| 231 | Pizza Prep Refrigerator | City | Team | Team | Team |
| 232 | Equipment Stand | City | Team | Team | Team |
| 233 | Double Batch Ventless Pizza Oven | City | Team | Team | Team |
| 234 | Reach-In Refrigerator | City | Team | Team | Team |
| 236 | Half Size Combi Oven (Ventless) | City | Team | Team | Team |
| 237 | Ventless Hood | City | Team | Team | Team |
| 238 | Water Filter | City | Team | Team | Team |
| 241 | Equipment Stand | City | Team | Team | Team |
| 242 | Htd. Sandwich Slide | City | Team | Team | Team |
| 243 | Work Table | City | Team | Team | Team |
| 244 | Hand Sink | City | Team | Cap Ex | Team |
| 246 | Beverage Cooler | City | Team | Team | Team |
| 247 | Concession Back Counter | City | Team | Cap Ex | Team |
| 248 | Popcorn Machine | City | Team | Team | Team |
| 251 | Concession Back Counter | City | Team | Cap Ex | Team |
| 252 | Drop-In Hand Sink | City | Team | Cap Ex | Team |
| 253 | Hand Sink | City | Team | Cap Ex | Team |
| 254 | Pos Station | City | Team | Team | Team |
| 256 | Beer Dispensing Head | City | Team | Cap Ex | Team |
| 257 | Soda And Ice Dispenser | City | Team | Team | Team |
| 258 | Cup Holder | City | Team | Cap Ex | Team |
| 261 | Concession Front Counter | City | Team | Cap Ex | Team |
| 271 | Hand Sink | City | Team | Cap Ex | Team |
| 272 | Pos Station | City | Team | Team | Team |
| 273 | Front Counter | City | Team | Cap Ex | Team |
| 278 | Reach-In Refrigerator | City | Team | Team | Team |
| 281 | Heated Transport Cart | City | Team | Team | Team |
| 301 | Portable Pos Counter | City | Team | Team | Team |
| 302 | Pos Station | City | Team | Team | Team |
| 303 | Shelving Unit | City | Team | Cap Ex | Team |
| 304 | Drain Trough | City | Team | Cap Ex | Team |
| 305 | Cabinet With Storage | City | Team | Team | Team |
| 308 | Dunnage Rack | City | Team | Team | Team |
| 311 | Hand Sink | City | Team | Cap Ex | Team |

| | EXHIBIT B | | | | |
|------|------------------------------|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| 312 | Co2 Tanks | City | Team | Team | Team |
| 313 | Walk-In Beer Cooler | City | Team | Cap Ex | Team |
| 314 | Walk-In Beer Evaporator Coil | City | Team | Cap Ex | Team |
| 316 | Remote Refrigeration | City | Team | Cap Ex | Team |
| 318 | Desk | City | Team | Team | Team |
| 401 | Bar Counter | City | Team | Cap Ex | Team |
| 402 | Bar Die | City | Team | Cap Ex | Team |
| 403 | Hand Sink | City | Team | Cap Ex | Team |
| 404 | Blender Station | City | Team | Team | Team |
| 406 | Bar Blender | City | Team | Team | Team |
| 407 | Cocktail Station | City | Team | Team | Team |
| 408 | Single Speed Rail | City | Team | Team | Team |
| 411 | Soda Gun Module | City | Team | Team | Team |
| 412 | Trash Module | City | Team | Team | Team |
| 413 | Pos Cabinet | City | Team | Cap Ex | Team |
| 414 | Pos Station | City | Team | Team | Team |
| 416 | Bottle Cooler | City | Team | Team | Team |
| 418 | Four Compartment Sink | City | Team | Cap Ex | Team |
| 422 | Corner Drainboard | City | Team | Team | Team |
| 423 | Keg Refrigerator | City | Team | Team | Team |
| 424 | Beer Dispenser | City | Team | Team | Team |
| 425 | Water Heater | City | Team | Team | Team |
| 426 | Underbar Cabinet | City | Team | Cap Ex | Team |
| 427 | Bag'n Box Soda System | City | Team | Team | Team |
| 428 | Underbar Cabinet | City | Team | Cap Ex | Team |
| 1001 | Heated Transport Cart | City | Team | Team | Team |
| 1002 | Ice Maker | City | Team | Team | Team |
| 1003 | Ice Bin | City | Team | Team | Team |
| 1004 | Water Filter | City | Team | Team | Team |
| 1007 | Shelving Unit | City | Team | Team | Team |
| 1008 | Mop Sink Cabinet | City | Team | Team | Team |
| 1012 | Three Compartment Sink | City | Team | Cap Ex | Team |
| 1013 | Wall Shelf | City | Team | Team | Team |
| 1014 | Hand Sink | City | Team | Cap Ex | Team |

| | EXHIBIT B | | | | |
|------|--------------------------------------|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| 1016 | Mobile Work Table | City | Team | Team | Team |
| 1018 | Beverage Counter With Sink | City | Team | Cap Ex | Team |
| 1021 | Coffee Brewer | City | Team | Team | Team |
| 1022 | Walk-In Cooler | City | Team | Cap Ex | Team |
| 1023 | Walk-In Cooler Evaporator Coil | City | Team | Cap Ex | Team |
| 1024 | Shelving Unit | City | Team | Team | Team |
| 1026 | Sheet Pan Rack | City | Team | Team | Team |
| 1027 | Security Cabinet | City | Team | Team | Team |
| 1031 | Bag'n Box Soda System | City | Team | Team | Team |
| 1032 | Co2 Tanks | City | Team | Team | Team |
| 1037 | Dunnage Rack | City | Team | Team | Team |
| 1041 | Remote Refrigeration | City | Team | Cap Ex | Team |
| 1101 | Bar Counter (42" High) | City | Team | Cap Ex | Team |
| 1102 | Bar Die | City | Team | Cap Ex | Team |
| 1103 | Hand Sink | City | Team | Cap Ex | Team |
| 1104 | Blender Station | City | Team | Team | Team |
| 1106 | Bar Blender | City | Team | Team | Team |
| 1107 | Soda Gun Module | City | Team | Team | Team |
| 1108 | Cocktail Station | City | Team | Team | Team |
| 1111 | Single Speed Rail | City | Team | Team | Team |
| 1112 | Trash Module | City | Team | Team | Team |
| 1114 | Beer Bottle Cooler | City | Team | Team | Team |
| 1116 | Underbar Dry Storage | City | Team | Team | Team |
| 1117 | Three Compartment Sink | City | Team | Cap Ex | Team |
| 1118 | Pos Station | City | Team | Cap Ex | Team |
| 1121 | Back Bar Cooler | City | Team | Cap Ex | Team |
| 1122 | Back Bar Cooler | City | Team | Cap Ex | Team |
| 1123 | Back Bar Counter (42" High) | City | Team | Cap Ex | Team |
| 1124 | Delivery and Set in Place | City | Team | N/A | N/A |
| 1200 | Portable Food & Beverage Carts | City | Team | Team | Team |
| 1202 | Portable Hot Boxes | City | Team | Team | Team |
| 1203 | Condiment Carts | City | Team | Team | Team |
| 1204 | Smallwares (utensils, glasses, etc.) | City | Team | Team | Team |
| 1205 | Menu Boards | City | Team | Cap Ex | Team |

| | EXHIBIT B | | | | |
|------|------------------------------------|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| 1206 | Grease Trap (1) 20,000 gallon tank | City | City | Cap Ex | Team |
| 1207 | Equipment Cleaning and Maintenance | N/A | N/A | N/A | Team |
| | | | | | |
| B. | MERCHANDISE EQUIPMENT | | | | |
| 1 | Tensa-Barriers | Team | Team | Team | Team |
| 2 | Storage Shelving | Team | Team | Team | Team |
| 3 | Branding Signage | Team | Team | Team | Team |
| 4 | Slatwall | Team | Team | Team | Team |
| 5 | Pedestal | Team | Team | Team | Team |
| 6 | Large Display Case | Team | Team | Team | Team |
| 7 | Medium Display Case | Team | Team | Team | Team |
| 8 | Multi-use deep basket (Ctn Of 6) | Team | Team | Team | Team |
| 9 | Hangers, Shelves, Etc. | Team | Team | Team | Team |
| 10 | Cap Holder Tower | Team | Team | Team | Team |
| 11 | Cap Shelf | Team | Team | Team | Team |
| 12 | Gridwall Cap Holder(Ctn Of 6)Blk | Team | Team | Team | Team |
| 13 | Sales Rolling Rack | Team | Team | Team | Team |
| 14 | Clothing Display Racks | Team | Team | Team | Team |
| 15 | Mannequins | Team | Team | Team | Team |
| 16 | Regular Fabric Tagging Tool | Team | Team | Team | Team |
| 17 | Replacement Needle Set | Team | Team | Team | Team |
| 18 | Rectangular Size Markers | Team | Team | Team | Team |
| 19 | 17" Adult Clear Hangars (100ea.) | Team | Team | Team | Team |
| 20 | Cash-Out Counter | Team | Team | Team | Team |
| 21 | 8' Step Ladder | Team | Team | Team | Team |
| 22 | 3 Full Length Mirrors | Team | Team | Team | Team |
| | | | | | |
| C. | MATERIAL HANDLING EQUIPMENT | | | | |
| 1 | Food Service Handling Equipment | Team | Team | Team | Team |
| 2 | Merchandise Handling Equipment | Team | Team | Team | Team |
| | | | | | |

| | EXHIBIT B | | | | |
|------|---|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| D. | RESIDENTIAL APPLIANCES (ice makers, coffee makers, microwaves, small & full-size refrigerators, stove/ovens) | | | | |
| 1 | Field Maintenance Locker | Team | Team | Team | Team |
| 2 | Visitor Clubhouse | Team | Team | Team | Team |
| 3 | Umpire Locker | Team | Team | Team | Team |
| 4 | Home Clubhouse | Team | Team | Team | Team |
| 5 | First Aid | Team | Team | Team | Team |
| 6 | Ticket Office | Team | Team | Team | Team |
| 7 | Suites | Team | Team | Team | Team |
| 8 | Press Box | Team | Team | Team | Team |
| 9 | Premium Club | Team | Team | Team | Team |
| 10 | Administrative Offices | Team | Team | Team | Team |
| | | | | | |
| VII. | GAME DAY OPERATIONS/ACCESS CONTROL | | | | |
| A. | CROWD CONTROL EQUIPMENT | | | | |
| 1 | Crowd Control Barriers (Bike Racks) | Team | Team | Team | Team |
| 2 | Walk-thru Metal Detectors (w/ power) | Team | Team | Team | Team |
| 3 | Wand Metal Detectors | Team | Team | Team | Team |
| 4 | Tensa-Barriers | Team | Team | Team | Team |
| 5 | 2-way Radios / Chargers | Team | Team | Team | Team |
| 6 | Camera for Incident Documentation | Team | Team | Team | Team |
| 7 | Bullhorns | Team | Team | Team | Team |
| 8 | Golf Carts | Team | Team | Team | Team |
| | | | | | |
| B. | PLAYGROUND EQUIPMENT | | | | |
| 1 | Playground Equipment/Splashpad | City | City | Cap Ex | City |
| | | | | | |
| C. | | | | | |

| | EXHIBIT B | | | | |
|----|---------------------------------------|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| | This section intentionally left blank | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| D. | BANQUET EVENT EQUIPMENT | | | | |
| 1 | Movable folding chair carts | Team | Team | Team | Team |
| 2 | Pipe and drape | Team | Team | Team | Team |
| 3 | Table skirting | Team | Team | Team | Team |
| 4 | Carpet sections | Team | Team | Team | Team |
| 5 | Portable press conference lighting | Team | Team | Team | Team |
| 6 | Photographer's ladder | Team | Team | Team | Team |
| 7 | Portable sound system | Team | Team | Team | Team |
| 8 | Portable video projector | Team | Team | Team | Team |
| 9 | Portable projection screen | Team | Team | Team | Team |
| 10 | Portable podium | Team | Team | Team | Team |
| 11 | Portable platform | Team | Team | Team | Team |
| 12 | Portable dance floor | Team | Team | Team | Team |
| 13 | Storage Shelving | Team | Team | Team | Team |
| | | | | | |
| E. | SAFETY / FIRST AID EQUIPMENT | | | | |
| 1 | Fire Extinguishers | City | City | City | Team |
| 2 | Eye Wash Stations | City | City | Cap Ex | Team |
| 3 | Wheel Chairs | Team | Team | Team | Team |
| 4 | Heavy Duty Transport Stretcher | Team | Team | Team | Team |
| 5 | Small Equipment and Supplies | Team | Team | Team | Team |
| 6 | Medical Golf Cart | Team | Team | Team | Team |
| 7 | Portable Medtronic LifePak AEDs | Team | Team | Team | Team |
| 8 | Blood-born Pathogen Containers | Team | Team | Team | Team |
| 9 | Back Boards w/ neck brace | Team | Team | Team | Team |
| 10 | Beds | Team | Team | Team | Team |
| 11 | Curtain System | Team | Team | Team | Team |

| | EXHIBIT B | | | | |
|-------|---|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| 12 | Portable Fans | Team | Team | Team | Team |
| 13 | Plastic Water Coolers (Gatorade-type) | Team | Team | Team | Team |
| 14 | Epi-Pens - Adult | Team | Team | Team | Team |
| 15 | Epi-Pens - Pediatric | Team | Team | Team | Team |
| 16 | Oxygen Regulator | Team | Team | Team | Team |
| 17 | Oxygen Cylinder - Aluminum | Team | Team | Team | Team |
| 18 | Jump/Oxygen Bag | Team | Team | Team | Team |
| 19 | Sharps Container w/ wall mount | Team | Team | Team | Team |
| 20 | Personnel Vest | Team | Team | Team | Team |
| 21 | Basket Stretcher | Team | Team | Team | Team |
| 22 | Rechargeable Lantern | Team | Team | Team | Team |
| 23 | Suction | Team | Team | Team | Team |
| 24 | Stairchair | Team | Team | Team | Team |
| 25 | Cervical Collar - Adult & Pediatric | Team | Team | Team | Team |
| 26 | Restraint Straps | Team | Team | Team | Team |
| 27 | Tool Cart (EMS Supplies) | Team | Team | Team | Team |
| | | | | | |
| VIII. | BUILDING OPERATIONS | | | | |
| A. | JANITORIAL EQUIPMENT | | | | |
| 1 | Cleaning Equipment (scrubbers, etc.) | Team | Team | Team | Team |
| 2 | Cleaning Tools (mops, brooms, etc.) | Team | Team | Team | Team |
| 3 | Storage Shelving | Team | Team | Team | Team |
| 4 | Cleaning Supplies | Team | Team | Team | Team |
| 5 | Walk-off Mats | Team | Team | Team | Team |
| 6 | Trash / Recycling Containers (Small) | Team | Team | Team | Team |
| 7 | Trash / Recycling Containers (Large - one cubic yard) | Team | Team | Team | Team |
| 8 | Trash Compactor / Dumpster | Team | Team | Team | Team |
| 9 | Recycling Compactor / Dumpster | Team | Team | Team | Team |
| 10 | Cardboard Bailer | Team | Team | Team | Team |

| | EXHIBIT B | | | | |
|-----------|---|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| 11 | Rolling Cleaning Supply Carts | Team | Team | Team | Team |
| 12 | Vaccum Cleaners | Team | Team | Team | Team |
| 13 | Steam Vaccum | Team | Team | Team | Team |
| 14 | Mop Buckets | Team | Team | Team | Team |
| 15 | Mops | Team | Team | Team | Team |
| 16 | Mop Heads | Team | Team | Team | Team |
| 17 | Broom/Dust Pan Sets | Team | Team | Team | Team |
| 18 | Push Brooms | Team | Team | Team | Team |
| 19 | Waste Receptacles (32 Gallon) | Team | Team | Team | Team |
| | | | | | |
| B. | TOILET ROOM EQUIPMENT | | | | |
| 1 | Toilet Partitions | City | City | Cap Ex | Team |
| 2 | Toilet Accessories | City | City | Team | Team |
| 3 | Deodorizer Systems | Team | Team | Team | Team |
| 4 | Baby Changing Stations | City | City | Team | Team |
| | | | | | |
| C. | BUILDING MAINTENANCE EQUIPMENT | | | | |
| 1 | Equipment (work carts, lifts, etc.) | Team | Team | Team | Team |
| 2 | Shop Buildout | Team | Team | Team | Team |
| 3 | Tools (large) | Team | Team | Team | Team |
| 4 | Tools (small) | Team | Team | Team | Team |
| 5 | Storage Shelving | Team | Team | Team | Team |
| 6 | Metal Fuel Storage Cabinet | Team | Team | Team | Team |
| 7 | Self propelled mower | Team | Team | Team | Team |
| 8 | Gas grass trimmer | Team | Team | Team | Team |
| 9 | Power her | Team | Team | Team | Team |
| 10 | Power her rotating nozzle | Team | Team | Team | Team |
| 11 | Hoses | Team | Team | Team | Team |

| | EXHIBIT B | | | | |
|-----------|--|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| 12 | Nozzles for Hoses | Team | Team | Team | Team |
| 13 | Wrenches | Team | Team | Team | Team |
| 14 | Socket Set | Team | Team | Team | Team |
| 15 | Vise | Team | Team | Team | Team |
| 16 | Pipe wrench | Team | Team | Team | Team |
| 17 | Plumbing wrenches | Team | Team | Team | Team |
| 18 | Tool Chest | Team | Team | Team | Team |
| 19 | Drill electric 3/4" hd | Team | Team | Team | Team |
| 20 | Drill cordless 18v | Team | Team | Team | Team |
| 21 | 1/2" electric drill | Team | Team | Team | Team |
| 22 | Drill set /ss bits | Team | Team | Team | Team |
| 23 | Misc wood bits/screw bits | Team | Team | Team | Team |
| 24 | Drill Wood Bit set | Team | Team | Team | Team |
| 25 | Jigsaw and blade set | Team | Team | Team | Team |
| 26 | Workbench and storage benches | Team | Team | Team | Team |
| 27 | Storage Cabinets | Team | Team | Team | Team |
| 28 | Paint/plumbing/carpentry/misc supplies | Team | Team | Team | Team |
| 29 | Shop Vac | Team | Team | Team | Team |
| 30 | Shelving (hand built) for misc storage rooms | Team | Team | Team | Team |
| 31 | Recip Saw | Team | Team | Team | Team |
| 32 | Air compressor with attachments | Team | Team | Team | Team |
| | | | | | |
| D. | FIELD MAINTENANCE EQUIPMENT | | | | |
| 1 | Equipment (mowers, tractors, etc.) | Team | Team | Team | Team |
| 2 | Shop Buildout | Team | Team | Team | Team |
| 3 | Tools (large) | Team | Team | Team | Team |

| | EXHIBIT B | | | | |
|-----|---|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| 4 | Tools (small) | Team | Team | Team | Team |
| 5 | Storage Shelving | Team | Team | Team | Team |
| | | | | | |
| IX. | TEAM / ADMINISTRATIVE | | | | |
| A. | GAME EQUIPMENT | | | | |
| 1 | Batting/Pitching Tunnel Netting (2) | City | City | Team | Team |
| 2 | Batting/Pitching Tunnel Equipment | Team | Team | Team | Team |
| 3 | Bases, Homeplates, Pitching Rubbers | City | City | Team | Team |
| 4 | Field Wall Padding (does not include advertising) | City | City | Cap Ex | Team |
| 5 | Dugout Benches, Helmet Storage, Bat Racks | City | City | Cap Ex | Team |
| 6 | Batting Cage L Screens | Team | Team | Team | Team |
| 7 | Field L Screens | Team | Team | Team | Team |
| 8 | Field Base Screens | Team | Team | Team | Team |
| 9 | Field Batting Practice Cage | Team | Team | Team | Team |
| | | | | | |
| B. | CLUBHOUSE EQUIPMENT | | | | |
| 1 | Training Equipment (whirlpool, x-ray, etc.) | Team | Team | Team | Team |
| 2 | Conditioning & Weight Equipment | Team | Team | Team | Team |
| 3 | Entertainment (video games, etc.) | Team | Team | Team | Team |
| 4 | 85-pound Washer/Extractor | Team | Team | Team | Team |
| 5 | 120-pound Tumbler | Team | Team | Team | Team |
| 6 | Shop Vacs | Team | Team | Team | Team |
| 7 | Bulk Rolling Laundry Baskets | Team | Team | Team | Team |
| 8 | Large Dry Erase Boards | Team | Team | Team | Team |
| | | | | | |
| C. | ADMINISTRATIVE EQUIPMENT | | | | |
| 1 | Personal Computers / Laptops | Team | Team | Team | Team |
| 2 | Server/Rack/Switch/Firewall | Team | Team | Team | Team |

| | EXHIBIT B | | | | |
|----|--|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| 3 | Copier / Printers / Scanners | Team | Team | Team | Team |
| 4 | Mail Equipment | Team | Team | Team | Team |
| 5 | Power Strips | Team | Team | Team | Team |
| 6 | Software | Team | Team | Team | Team |
| 7 | Shredders | Team | Team | Team | Team |
| 8 | Paper Trimming Boards | Team | Team | Team | Team |
| 9 | Laminating Machine | Team | Team | Team | Team |
| 10 | Bill Counting Machines | Team | Team | Team | Team |
| 11 | Heavy Duty Staplers | Team | Team | Team | Team |
| 12 | Label Maker | Team | Team | Team | Team |
| 13 | Cork Board | Team | Team | Team | Team |
| 14 | Time Clock (Payroll) | Team | Team | Team | Team |
| | | | | | |
| X. | TECHNOLOGY | | | | |
| 1 | Main Video/Scoreboard (25'x50')+Ribbon Boards | City | City | Cap Ex | Team |
| 2 | Video Production Equipment | City | City | Cap Ex | Team |
| 3 | In-game Production Cameras | City | City | Cap Ex | Team |
| 4 | Broadcast Cabling | City | City | Cap Ex | Team |
| 5 | Bowl Sound System incl. Public Address | City | City | Cap Ex | Team |
| 6 | Tele/Data Network Pathways | City | City | Cap Ex | Team |
| 7 | Telephone System (50 phones) | Team | Team | Team | Team |
| 8 | IPTV/Tele/Data Cabling | City | City | Cap Ex | Team |
| 9 | Televisions | City | City | Cap Ex | Team |
| 10 | Access Control System/Security System | City | City | Cap Ex | Team |
| 11 | Wi-Fi (facility-wide) | Team | Team | Cap Ex | Team |
| 12 | DAS (cell signal amplifier) | Team | Team | Cap Ex | Team |

| | EXHIBIT B | | | | |
|------------|---|-----------------------------|--|-------------|-------------------------|
| # | | Financial Responsibility | Design, Construction & Install Responsibility | Replacement | Maintenance & Repair |
| | LOCATION / ITEM DESCRIPTION | | | | |
| 13 | Point of Sale System | Team | Team | Team | Team |
| 14 | Video Coaching System | Team | Team | Team | Team |
| 15 | Ticketing System | Team | Team | Team | Team |
| 16 | ATM's | Team | Team | Team | Team |
| 17 | Audio/Visual Equipment (projectors, etc.) | Team | Team | Team | Team |
| 18 | UPS / Battery Back-up Systems | Team | Team | Team | Team |
| 19 | Camera Platforms | Team | Team | Team | Team |
| | | | | | |
| XI. | Construction Manager FF&E Fees | | | | |
| 1 | Indirect Markup of BMC Scope FF&E | City | | | |
| | | | | | |
| | Totals | | | | |

City = City of Kannapolis

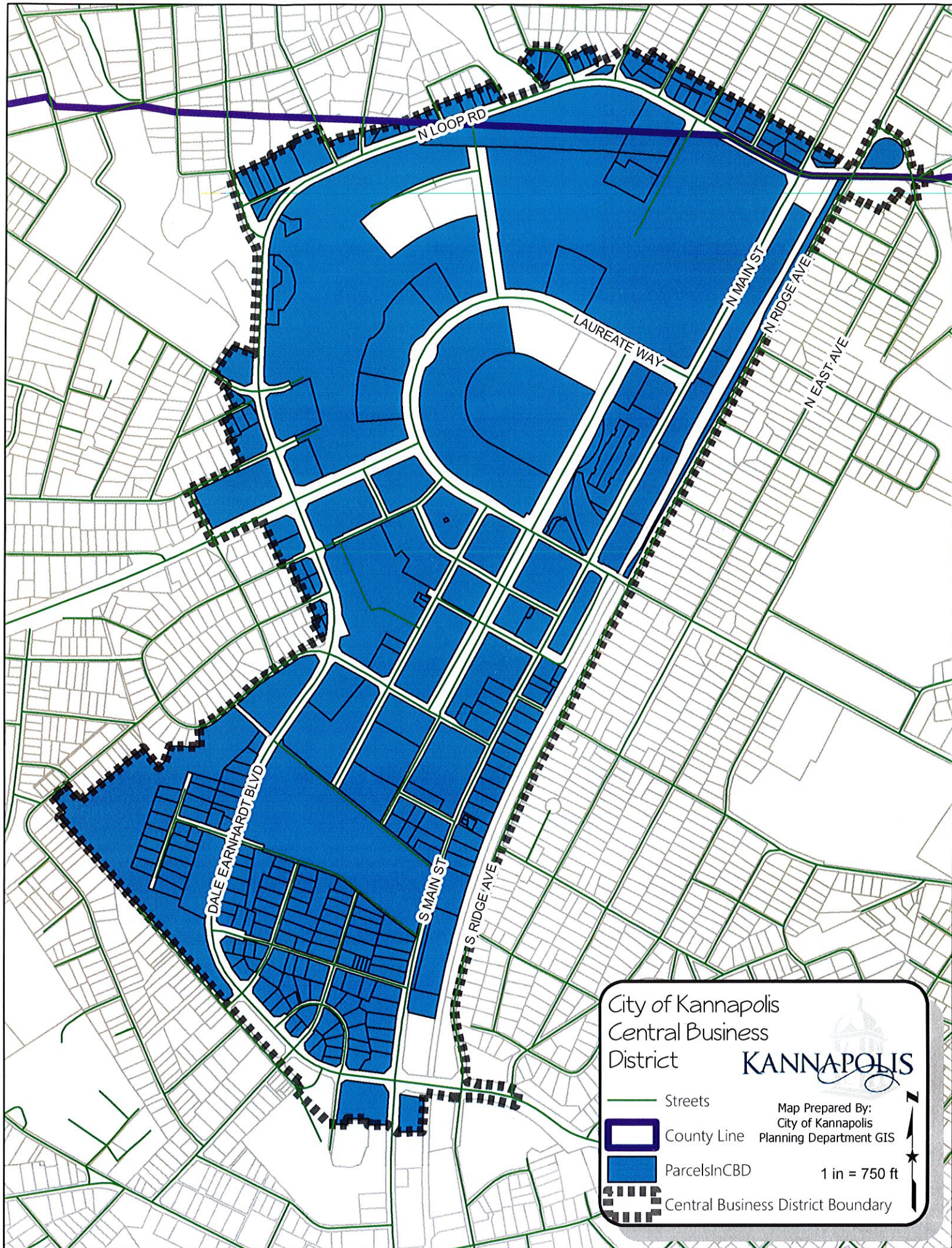
Team = Intimidators Baseball Club, LLC/South Atlantic League/New Ownership Group

BMC = Barton Malow Company (Project Construction Manager)

¹ Inspections Required: (a) Fire Panel - annually, (b) Sprinkler Systems- annually, (c) Fire Pumps, Backflow domestic - annually, (d) Kitchen Hoods - annually, (e) Elevators per NC Dept of Labor Requirements, (f) Fire and Security Monitoring, (g) HVAC (exhaust fans, cooling towers, chillers, etc.) - quarterly, (h) Pest Control - monthly, (i) Generator - semi-annually, (j) UPS - semi-annually, (k) Grease Traps - annually, (l) Ice makers- semi-annually, (m) Window cleaning - semi-annually, (n) Partition walls - semi-annually, (o) Flooring - quarterly.

EXHIBIT C - LEASE PAYMENT SCHEDULE

| Fiscal Year | Year | Lease Amount | 15-Aug | 15-Feb |
|--------------------|-------------|---------------------|---------------|---------------|
| 2019 | - | - | - | - |
| 2020 | - | - | - | - |
| 2021 | 1 | \$450,000 | \$225,000 | \$225,000 |
| 2022 | 2 | \$450,000 | \$225,000 | \$225,000 |
| 2023 | 3 | \$450,000 | \$225,000 | \$225,000 |
| 2024 | 4 | \$485,000 | \$242,500 | \$242,500 |
| 2025 | 5 | \$485,000 | \$242,500 | \$242,500 |
| 2026 | 6 | \$485,000 | \$242,500 | \$242,500 |
| 2027 | 7 | \$520,000 | \$260,000 | \$260,000 |
| 2028 | 8 | \$520,000 | \$260,000 | \$260,000 |
| 2029 | 9 | \$520,000 | \$260,000 | \$260,000 |
| 2030 | 10 | \$555,000 | \$277,500 | \$277,500 |
| 2031 | 11 | \$555,000 | \$277,500 | \$277,500 |
| 2032 | 12 | \$555,000 | \$277,500 | \$277,500 |
| 2033 | 13 | \$590,000 | \$295,000 | \$295,000 |
| 2034 | 14 | \$590,000 | \$295,000 | \$295,000 |
| 2035 | 15 | \$590,000 | \$295,000 | \$295,000 |
| 2036 | 16 | \$625,000 | \$312,500 | \$312,500 |
| 2037 | 17 | \$625,000 | \$312,500 | \$312,500 |
| 2038 | 18 | \$625,000 | \$312,500 | \$312,500 |
| 2039 | 19 | \$660,000 | \$330,000 | \$330,000 |
| 2040 | 20 | \$660,000 | \$330,000 | \$330,000 |
| 2041 | 21 | \$660,000 | \$330,000 | \$330,000 |
| 2042 | 22 | \$695,000 | \$347,500 | \$347,500 |
| 2043 | 23 | \$695,000 | \$347,500 | \$347,500 |
| 2044 | 24 | \$695,000 | \$347,500 | \$347,500 |
| 2045 | 25 | \$730,000 | \$365,000 | \$365,000 |
| 2046 | 26 | \$730,000 | \$365,000 | \$365,000 |
| 2047 | 27 | \$730,000 | \$365,000 | \$365,000 |
| 2048 | 28 | \$765,000 | \$382,500 | \$382,500 |
| 2049 | 29 | \$765,000 | \$382,500 | \$382,500 |
| 2050 | 30 | \$765,000 | \$382,500 | \$382,500 |



**RESOLUTION APPROVING THE EXECUTION OF THE
LEASE AGREEMENT BY AND BETWEEN
THE CITY OF KANNAPOLIS AND TEMERITY BASEBALL, LLC**

WHEREAS, North Carolina General Statutes Chapter 160A, Article 19, Part 8, authorizes municipalities to engage in appropriations and expenditures of funds for community development programs and activities for the restoration or preservation of blighted, deteriorated, undeveloped or inappropriately developed properties for sound community development and growth; and

WHEREAS, the North Carolina General Statutes also authorize cities to engage in capital projects in the City's central business district to further the revitalization of such areas; and

WHEREAS, the operation of a city-owned Sports and Entertainment Venue (the "Project") will meet the objections stated in this Resolution; and

WHEREAS, North Carolina General Statutes §160A-457.4 and §160A-458.3 authorizes the City to convey interests in property owned by it in connection with a downtown development project; and

WHEREAS, pursuant to North Carolina General Statutes § 160A-458.3(d)(e) the City has determined and finds that the Property is leased at its fair rental value; and

WHEREAS, the City finds that the conveyance of the property interests contained in the Agreement and as identified in this Resolution will have a significant effect on the revitalization of its central business district; and

WHEREAS, the project, resulting from the conveyance of the property interest will contain both public and private facilities subject to such agreements and covenants as may be deemed necessary to protect the public interest and to promote the public purpose of the conveyance; and

WHEREAS, on September 24, 2018, the City held a duly advertised public hearing and receive public comment on the proposed Agreements.

NOW, THEREFORE, BE IT RESOLVED:

Section 1. Council Findings. Council finds that pursuant to North Carolina General Statutes §160A-457(4) and §160A-458.3 as follows:

1. In accordance with North Carolina General Statutes §160A-457(4) §160A-458.3(d) the City owns and acquired the property as set out in the Agreement;

2. The construction of the Project on the Property will have a significant effect on the revitalization of the City's central business district;

3. The Project is a capital project in the City's central business district which will contain both public and private facilities subject to such agreements and covenants as deemed necessary to protect the public interest and to promote the public purpose of the conveyance;

4. The City Council has determined that Temerity Baseball, LLC, is an appropriate and fiscally sound entity as a tenant to operate the Project;

5. The City Council has determined that it is in the best interests of the City to enter into the Lease attached hereto;

6. The terms of the Agreement are sufficient to ensure they will meet the needs of the City and those needs are met at a reasonable price;

7. The fair lease value of the Property has been determined as set out in the Agreement;

8. The City duly noticed the public hearing and took public comment on the same;

9. The Agreement complies with North Carolina General Statutes § 160A-458.3 and 160A-457.

Section 2. Adoption of Instruments. The City Council hereby approves and adopts the Lease Agreement between the City and Temerity Baseball, LLC, copies of which have been made available to the City Council and to the public prior to the public hearing.

Section 3. Authorization of Manager to Execute the Instruments. The City Council hereby authorizes the City Manager to execute and deliver the Agreement, including any and all necessary documents and instruments to effectuate the intent of the aforementioned Agreement. Further, the City Manager, or his designee, in accordance with his assigned responsibilities is hereby authorized to deliver, publish, file and record such documents, instruments, notices and records and to take such other actions that shall be necessary or desirable to accomplish the purposes of this Resolution. Further, the City Manager is allowed to make minor modifications, corrections and clerical revisions as may be necessary and consistent with the intent of this Resolution.

Section 4. Effective Date. This resolution is effective on the date of this adoption.

Milton D. Hinnant, Mayor

Bridgette Bell, MMC, NCCMC
City Clerk



NOTICE OF PUBLIC HEARING

NOTICE IS GIVEN that the Kannapolis City Council (“City Council”) will conduct a public hearing relating to the City of Kannapolis (“City”) entering into a Lease Agreement (“Lease”) pursuant to North Carolina General Statutes Sections 160A-457 and 160A-458.3 with Intimidators Baseball Club, LLC, or an associated affiliate or alternate entity (hereinafter “Club”). Pursuant to the Lease the City intends to convey leasehold property interests to Club in certain unimproved real property consisting of approximately 4.94 acres, located at the southwest intersection of Laureate Way and Oak Avenue in the City’s Central Business District (“Property”). The Lease relates to a downtown development project known as the Sports and Entertainment Venue (“Venue”) for the purpose of (i) improving economic development of the community, (ii) promoting residential housing construction, (iii) providing recreational facilities to support the needs of the surrounding community, and (iv) continuing the positive impact and significant effect of the revitalization of downtown Kannapolis North Carolina. The Venue will serve as the home field for the Club’s professional baseball team.

The City proposes to convey a leasehold interest in the Property to Club at market rent of \$450,000 annually on an increasing basis thereafter for thirty years. Rent concessions may be allowed in the event significant economic development is created in the area surrounding the Venue. The lease also requires Club to contribute approximately \$2.6 million in capital improvements and personal property. Among other provisions, the Lease provides for a Capital Fund for future repairs and improvements to which both the City and the Club contribute, reserves the City’s right to use the Venue for City events and general public access and states responsibilities for operation of the Venue. The City Council intends to approve the conveyance following the public hearing.

A copy of the proposed Lease, including attachments, will be available for public inspection at the office of the City Manager, located in City Hall, 401 Laureate Way, Kannapolis, North Carolina 28081, during regular business hours.

The City Council intends to accept public input and vote on the Lease including the conveyance of the leasehold interest in Property following the public hearing.

The hearing will be held in the City Council Chambers located at City Hall, 401 Laureate Way, Kannapolis, North Carolina 28081, beginning at or after 6:00 p.m. on September 24, 2018. At the time and place fixed for this public hearing, the City will discuss the terms of the Lease and related documents and the City Council will receive public comments.

Bridgette Bell, City Clerk
City of Kannapolis
North Carolina

PUBLISH SEPTEMBER 7 & 14, 2018



**City of Kannapolis
City Council Meeting
September 24, 2018
Staff Report**

TO: Mayor and City Council
FROM: Mike Legg, City Manager and Walter M. Safrit, City Attorney
TITLE: Resolution Approving Non-Relocation Agreement with Temerity Baseball, LLC

A. Action Requested by City Council

Motion to adopt a Resolution to approve a Non-Relocation Agreement with Temerity Baseball, LLC and authorizing the City Manager to execute and make minor and necessary changes consistent with the intent and scope of the Resolution.

B. Required Votes to Pass Required Action

Majority present at meeting

C. Background

Summary: This document sets expectations that the Team will continuously maintain and operate the new Ballpark (Sports and Entertainment Venue) as its home field for the duration of the Ballpark Lease Agreement.

Term: Same as Ballpark Lease Agreement, less 3 years.

Highlights:

1. Default Remedies. Provides legal remedies to a default of the Agreement.
 2. Right to Purchase Team. City has the right to purchase the Team at fair market value (or find suitable buyers) should the Team attempt to relocate in violation of the agreement (subject to SAL and MiLB approval).
 3. Kannapolis Name. Provides that the Team must continually use the name "Kannapolis" as part of the Team's name.
 4. Relocation Process Start. Certain relocation activities can occur three (3) years prior to the lease expiration.
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| D. Fiscal Considerations |
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None

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| E. Policy Issues |
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None

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| F. Legal Issues |
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None

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| G. Alternative Courses of Action and Recommendation |
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1. **Motion to adopt a Resolution approving Non-Relocation Agreement with Temerity Baseball, LLC (Recommended)**
2. Amend and then approve the Resolution
3. Table action to a future meeting
4. Take no action

ATTACHMENTS:

File Name

- ☐ Resolution_Approving_Execution_Of_Non-Relocation_Agreement_(9-14-18).doc
- ☐ Non-Relocation_Agreement_(City-Intimidators_Baseball_Club)With_Changes__8-29-18.pdf

**RESOLUTION APPROVING THE EXECUTION OF THE
NON-RELOCATION AGREEMENT BY AND BETWEEN
THE CITY OF KANNAPOLIS AND TEMERITY BASEBALL, LLC**

WHEREAS, North Carolina General Statutes Chapter 160A, Article 19, Part 8, authorizes municipalities to engage in appropriations and expenditures of funds for community development programs and activities for the restoration or preservation of blighted, deteriorated, undeveloped or inappropriately developed properties for sound community development and growth; and

WHEREAS, the North Carolina General Statutes also authorize cities to engage in capital projects in the City's central business district to further the revitalization of such areas; and

WHEREAS, the City has entertained the presence of a professional baseball team (the "Team") for 25 years which has garnered a faithful following of dedicated home-team baseball fans; and

WHEREAS, the operation of a city-owned Sports and Entertainment Venue (the "Project") as the new home field for the Kannapolis baseball team will meet the objections stated in the statutes and in this Resolution; and

WHEREAS, a partial motivation for the City Council to consider building a Sports and Entertainment Venue in the central city area was to grow and enhance the entertainment value of the current baseball team within the greater community area; and

WHEREAS, the prospect of a long-term presence of the current team is significant and vital for the successful economic benefits to the City certainly including but not limited to the defraying the debt incurred to construct the Project; and

WHEREAS, fundamental to the success of the Project is for the Team and City enter into a long-term agreement to guaranteeing the Team's presence to play its games in the City; and

WHEREAS, the City and Team propose to enter into the Baseball Non-Relocation Agreement, a copy of which is attached hereto to memorialize each parties' expectations and commitment to continuously maintain and operate the new Sports and Entertainment Venue at the home field during the duration of the Baseball Lease Agreement contemporaneously executed with this Agreement.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Baseball Non-Relocation Agreement is in the best interests of the citizens of this City and all baseball fans in the greater Kannapolis community.

2. The City Council hereby authorizes the City Manager to execute and deliver the Agreement, including any and all necessary documents and instruments to effectuate the intent of the aforementioned Agreement. Further, the City Manager, or his designee, in accordance with his assigned responsibilities is hereby authorized to deliver, publish, file and record such documents, instruments, notices and records and to take such other actions that shall be necessary or desirable to accomplish the purposes of this Resolution. Further, the City Manager is allowed to make minor modifications, corrections and clerical revisions as may be necessary and consistent with the intent of this Resolution.
3. The Non-Relocation Agreement between the City and Temerity Baseball, LLC is hereby approved and adopted.

This Resolution is effective on the date of this adoption.

Milton D. Hinnant, Mayor

Bridgette Bell, MMC, NCCMC
City Clerk

**DRAFT OF:
August 29, 2018
FOR DISCUSSION ONLY**

NON-RELOCATION AGREEMENT

by and between

THE CITY OF KANNAPOLIS, NORTH CAROLINA

and

INTIMIDATORS BASEBALL CLUB, LLC

NON-RELOCATION AGREEMENT

This Non-Relocation Agreement (this “**Agreement**”) is made and entered into as of this ____ day of _____, 2018, by and between the **CITY OF KANNAPOLIS**, a North Carolina municipal corporation (the “**City**”) and Intimidators Baseball Club, LLC, a North Carolina limited liability company (the “**Club**”).

Recitals

A. The Club is the owner of a Single A Minor League Baseball franchise granted by the South Atlantic League (“SAL”) and the corresponding interests of The National Association of Professional Baseball Leagues, Inc. (“NAPBL”).

B. Concurrently with the execution of this Agreement, the City and Club plan to enter into (a) that certain Ballpark Development Agreement (the “**Development Agreement**”), whereby City has agreed to finance, own, design, develop and construct a new, first class, state-of-the-art, natural turf, open-air Minor League Baseball ballpark in the downtown area of the City and as more specifically described in the Development Agreement (the “**Ballpark**”), and (b) that certain Ballpark Lease Agreement (the “**Lease**”) whereby the City has agreed to lease to Club and Club has agreed to lease from the City, the Ballpark.

C. As a material inducement to the City to enter into the Development Agreement and the Lease, the Club has agreed to enter into this Agreement to assure that the Club will continuously maintain and operate the Ballpark as home field to the Team (as defined herein) on the terms and conditions set forth herein.

NOW, THEREFORE, for valuable consideration and for the mutual covenants and agreements contained herein, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Definitions and Usage. Unless the context shall otherwise expressly require, capitalized terms used in this Agreement shall have the meanings assigned to them in this Section. The City and the Club are sometimes collectively referred to herein as the “**Parties**” and individually as a “**Party**”. Terms used but not defined herein have the meanings ascribed to such terms in the Lease.

“**Ballpark**” has the meaning given to that term in the recitals to this Agreement.

“**Ballpark Agreements**” means collectively this Agreement, the Lease and the Development Agreement.

“**Bankruptcy Code**” has the meaning set forth in Section 5.2 hereof.

“City” has the meaning given to that term in the introductory paragraph of this Agreement.

“City Purchase Notice” has the meaning set forth in Section 4.1 hereof.

“Club” has the meaning given to that term in the introductory paragraph of this Agreement.

“Commencement Date” means the date of the latest to occur: (i) City’s issuance of a certificate of occupancy with respect to the Ballpark or (ii) possession of the Leasehold Estate has been tendered to Tenant by City under the terms of the Lease.

“Development Agreement” has the meaning given to that term in the recitals to this Agreement.

“SAL” means the South Atlantic League of Professional Baseball Clubs, Inc. or any successor league.

“Evidence of an Attempted Relocation” means reasonably verifiable third party evidence received by the City of the Club’s violation of the Non-Relocation Covenants, or attempted relocation of the Team in violation of such covenants, which is presented to the Club by the City and not promptly denied in writing by the Club.

“Final Notice” has the meaning set forth in Section 5.5 hereof.

“Final Order” has the meaning set forth in Section 5.5 hereof.

“Lease” has the meaning given to that term in the recitals to this Agreement.

“Minor League Baseball” means collectively the South Atlantic League, the NAPBL, any successor entities and any other baseball organizations, including Major League Baseball, which govern Team operations, the Club’s baseball operations and/or the regulation of minor league franchises.

“NAPBL” means the National Association of Professional Baseball Leagues, Inc. or any successor entities.

“Non-Relocation Covenants” means the covenants of the Club set forth in Section 2 hereof.

“Non-Relocation Default” means any violation of the Non-Relocation Covenants.

“Non-Relocation Term” means the period commencing with the Commencement Date and ending on the termination of this Agreement pursuant to Section 5.5 of this Agreement.

“Team” means all rights, title and interest, including franchise rights, in the Single A Minor League Professional Baseball franchise granted by the NAPBL and the corresponding interests in the SAL and currently known as of the date hereof as the Kannapolis Intimidators baseball club.

2. Non-Relocation Covenants. The Club covenant and agree that throughout the Non-Relocation Term:

(a) the Club and the Team shall maintain their principal place of business in the City;

(b) the Club shall (i) maintain its Minor League Baseball franchise in the City, (ii) maintain its Minor League Baseball franchise in good standing with Minor League Baseball, (iii) hold, maintain and defend the right of the Team to play baseball as a member of the SAL in the Ballpark as its home stadium and (iv) use reasonable efforts to oppose the adoption of any Minor League Baseball rule or regulation that would cause the Club or the Team to be unable to comply with any of the terms of this Agreement;

(c) the Team shall play all of its regular season, playoff and championship home games at the Ballpark, except as expressly permitted by Section 3 below;

(d) the Club will not (i) cause, nor, to the extent within their respective powers, permit to occur, nor enter into or participate in any negotiations or discussions with, or apply for or seek approval from, any third parties, including Minor League Baseball, with respect to any agreement, legislation or financing that contemplates, or would be reasonably likely to result in, any action that would contravene or result in the contravention of Sections 2(a) through 2(c) hereof or (ii) issue any announcement of its intent to seek such approval or cause such action; and

(e) the Club shall not enter into any contract or agreement, or make any request or application to Minor League Baseball, to (i) relocate the Club’s franchise outside of the City or (ii) play any regular season or playoff home game in any location other than the Ballpark except as expressly permitted by Section 3 below, provided that the Club may take the actions otherwise prohibited in Sections 2(d) or 2(e) during the last three (3) years of the Term of the Lease in connection with any proposed relocation or playing of home games that would not occur until the conclusion of the Term. The Club shall notify the City promptly after entering into any such contract or agreement, or making any such request or application.

3. Permitted Exceptions to Home Game Covenant.

3.1 Notwithstanding Section 2(c) above, the Team shall be permitted to play what would otherwise be a home game at a location other than the Ballpark, up to one (1) time in any single Baseball Season, as permitted or requested by Minor League Baseball.

3.2 If the Commencement Date occurs during a Baseball Season after one-half of the Team's regular season games have been played, the covenants in Section 2(c) shall not apply with respect to that season, and the covenants in Section 2(c) shall not become effective until the start of the succeeding Baseball Season.

3.3 Without limiting the generality of any other provision of this Agreement, the covenants of the Club provided in Section 2(c) shall not apply (i) to any playoff or championship games mandated by the SAL to be played at a neutral site as long as such requirement is generally applicable to all SAL teams; and (ii) if the City Representative consents in writing to any action(s) otherwise prohibited under such section.

4. Right of Purchase.

4.1 If the Club or any of its respective owners or permitted successors and assigns attempts, directly or indirectly, to, or does, relocate the Team in violation of any provision of this Non-Relocation Agreement, the City shall have the right to purchase, or identify a qualified potential purchaser to purchase, the Team (and all associated Team operations) at fair market value (as determined pursuant to Section 4.2), subject to the approval of Minor League Baseball. Such right must be exercised, if at all, by the City delivering written notice ("**City Purchase Notice**") to Club within 30 Business Days after the later to occur of (i) Evidence of An Attempted Relocation or (ii) actual relocation in violation of the Non-Relocation Covenants.

4.2 Fair market value shall be determined by an independent valuation expert (retained in accordance with Applicable Law and at the expense of the City and the Club equally) that has substantial experience valuing sports franchises/assets and that is reasonably acceptable to the City and the Club. If the City and the Club cannot mutually agree on a sports valuation expert within 10 Business Days after Club receives the City Purchase Notice, Club and City shall, promptly and at their own respective expense, retain one sports valuation expert each and the two sports valuation experts shall select a third sports valuation expert (whose expense shall be shared equally between Club and City). Each of the three sports evaluation experts will then make their own independent determination of the fair market value of the Team. Each of the sports valuation experts shall be instructed to complete their evaluations within 30 days after the last of such experts being retained. The Club and the City shall cooperate fully with each of the sports valuation experts and provide them reasonable access to Team books and records as necessary to assist such experts in their evaluations. The purchase price for the Team (and associated Team operations) shall be equal to (i) the fair market value determined by the sports valuation expert if only one is mutually agreed to and retained by the City and the Club or (ii) the average of the fair market values determined by the three sports valuation experts.

4.3 Subject to the provisions of this Section, if the City gives the City Purchase Notice, the Club shall sell the Team (and associated Team operations) either to the City or the qualified potential purchaser, as applicable, at a price equal to the fair

market value determined by the independent valuation expert(s). If the City gives the City Purchase Notice, it or the identified, qualified potential purchaser shall proceed promptly and with due diligence to seek all necessary Minor League Baseball or Major League Baseball approvals to purchase the Team and proceed promptly and with due diligence to close such purchase. City acknowledges that time is of the essence with respect to the closing of the purchase of the Team, and City shall use commercially reasonable efforts to close such purchase within 90 days after fair market value is determined pursuant to Section 4.2 hereof.

5. Remedies.

5.1 Non-Relocation Default. Upon the occurrence of a Non-Relocation Default, the City shall have the option to pursue any one or more of the remedies set forth in Section 5.2, Section 5.3 or Section 5.4 that may be applicable. Upon the occurrence of any other breach or misrepresentation in this Agreement by the Club, the City shall have the option to pursue any one or more of the remedies set forth in Section 5.3 or Section 5.4.

5.2 Declaratory or Injunctive Relief. Upon the occurrence of a Non-Relocation Default, the City shall be entitled to seek injunctive relief prohibiting or mandating action by the Club in accordance with, or declaratory relief with respect to, the Non-Relocation Covenants. In addition, the Club: (a) acknowledge that the Non-Relocation Covenants are an essential part of the bargain and consideration of the Ballpark Agreements and are necessary to protect the business and goodwill of the City; (b) recognize that the Ballpark is being constructed and certain debt is being incurred by the City to permit the Team's home games to be played in the Ballpark during the Non-Relocation Term; (c) recognize that having the Team play its home games in the Ballpark throughout the Non-Relocation Term provides a unique value to the City, including generating new jobs, additional revenue sources and economic development and increased tourism for the City; and (d) acknowledge and agree that any breach by the Club of the Non-Relocation Covenants shall cause definitive, imminent, irreparable, and continual harm to the City and that damages for a default under such Non-Relocation Covenants cannot be estimated with any degree of certainty and that monetary damages cannot fairly or adequately compensate the City for a breach of such Non-Relocation Covenants. Accordingly, the Club agrees that, in the event of any of the actual or threatened breach by the Club of any one of the Non-Relocation Covenants (i) the City shall be entitled to seek and obtain, a temporary restraining order, together with temporary, preliminary and permanent injunctive or other equitable relief, from any court of competent jurisdiction, to restrain or enjoin any actual or threatened breach by the Club of any Non-Relocation Covenant without the necessity of posting a bond or other security and without any further showing of irreparable harm, balance of harms, consideration of the public interest or the inadequacy of monetary damages as a remedy, (ii) the administration of an order for injunctive relief would not be impractical and, in the event of any breach of any Non-Relocation Covenant by the Club, the balance of hardships would weigh in favor of entry of injunctive relief, and (iii) the City may enforce any Non-Relocation Covenant contained in this Agreement through specific

performance. The Parties hereby agree and irrevocably stipulate that (x) the rights of the City to injunctive relief pursuant to this Non-Relocation Agreement shall not constitute a “claim” pursuant to section 101(5) of the United States Bankruptcy Code (the “**Bankruptcy Code**”) and shall not be subject to discharge or restraint of any nature in any bankruptcy proceeding involving the Club, (y) this Agreement is not an “executory contract” as contemplated by section 365 of the Bankruptcy Code, and (z) action(s) taken by the City pursuant to this Section 5.2 shall not in any way prejudice any other rights or remedies that the City may have under this Agreement, the other Ballpark Agreements or at law or in equity if a court of competent jurisdiction fails to provide injunctive or other equitable relief prohibiting the Club’s violation of the Non-Relocation Covenants.

5.3 Specific Performance. NOTWITHSTANDING ANY OF THE FOREGOING, THE CLUB AND THE TEAM ACKNOWLEDGES THAT THE GAMES PLAYED BY A SINGLE A BASEBALL TEAM ARE UNIQUE AND PLAYED WITH PARTICULAR SKILL SUCH THAT THERE IS NO SUBSTITUTE THEREFOR. BASED ON THE FOREGOING, THE CLUB AND THE TEAM ACKNOWLEDGE THAT THE DAMAGES SUFFERED BY THE CITY FOR A BREACH OF ANY OF THE NON-RELOCATION COVENANTS CANNOT BE ESTIMATED WITH ANY DEGREE OF CERTAINTY AND THAT THE MONETARY DAMAGES CANNOT FAIRLY AND ADEQUATELY COMPENSATE THE CITY FOR A BREACH OF SAID COVENANTS. THEREFORE, THE CLUB AND THE TEAM AGREE THAT THE CITY SHALL HAVE THE RIGHT, IN ADDITION TO ANY OTHER APPLICABLE RIGHTS OR REMEDIES (INCLUDING ANY RIGHTS OR REMEDIES UNDER THIS AGREEMENT OR AT LAW OR AT EQUITY), TO COMPEL THE CLUB AND THE TEAM TO COMPLY WITH THE AFORESAID COVENANTS BY APPROPRIATE SPECIFIC PERFORMANCE, INJUNCTIVE OR EQUITABLE PROCEEDINGS. NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, NO CURE PERIOD PROVIDED FOR IN THIS AGREEMENT SHALL BE A CONDITION TO THE RIGHT TO OBTAIN SUCH SPECIFIC PERFORMANCE, OTHER INJUNCTIVE RELIEF OR ANY COURT ORDER ENFORCING PERFORMANCE OF THIS AGREEMENT.

5.4 Actual Damages. In the event of any breach of or misrepresentation in this Agreement by the Club (other than a Non-Relocation Default subject to the remedies set forth in Section 5.2 or Section 5.3), or in the event of a Non-Relocation Default for which, notwithstanding the intent of the Parties, the City is unable to obtain the relief set forth in Section 5.2 or Section 5.3, the City shall have the right (i) to institute any and all proceedings or claims permitted by law or equity to recover any and all amounts necessary to compensate the City for all damages proximately caused by the Club’s or the Company’s breach under this Agreement; and (ii) to institute any and all proceedings or claims permitted by law or equity to compel specific performance with respect to the Club’s or the Company’s obligations under this Agreement and one or more actions to seek and obtain a temporary restraining order, together with such other temporary, preliminary and permanent injunctive or other equitable relief, from any court of competent jurisdiction capable of issuing or granting such relief, to compel the Club to

comply with or refrain or cease from breaching or violating the terms, covenants and conditions of this Agreement

5.5 Termination.

(a) In the event a court of competent jurisdiction determines, in a final and non-appealable order, that the Club has breached any of the Non-Relocation Covenants (a “**Final Order**”), the City shall have the right, but not the obligation, to give to the Club written notice (a “**Final Notice**”) of its intention to terminate this Agreement and all other Ballpark Agreements. After the expiration of a period of thirty (30) days from the date such Final Notice is given, unless the default is cured, this Agreement and the other Ballpark Agreements may, at the sole option of the City, be terminated without liability to the City and without further written notice to the Club. If, however, within such thirty (30) day period, the Non-Relocation Default is cured, then this Agreement and the other Ballpark Agreements shall not terminate by reason of such Final Notice.

(b) This Agreement, and all obligations of the Parties under this Agreement, shall terminate without further action by, or liability to, any Party upon the expiration or termination of the Lease for any reason expressly permitted under the Lease other than a Tenant Default; provided that upon a termination of the Lease by the City upon the entry of a Final Order that the Club has breached one or more of the Non-Relocation Covenants, this Agreement shall only terminate as provided in Section 5.5(a) above. For the avoidance of doubt, the Club shall remain bound by, and shall not be relieved of, their respective obligations under this Agreement upon a termination by the City of the Lease due to a breach of the Non-Relocation Covenants unless a Final Notice is given in accordance with Section 5.5(a).

(c) Except for the provisions of this Agreement that are expressly intended to survive termination, including those set forth in Sections 5.5(b) and 5.5(d) hereof, in the event of a termination of this Agreement and the other Ballpark Agreements under this Section 5.5, then all obligations of the Parties under this Agreement and such other Ballpark Agreements shall also automatically terminate.

(d) Termination of this Agreement and the other Ballpark Agreements shall not alter any existing claim of any Party for breaches of this Agreement or the other Ballpark Agreements occurring prior to such termination and the obligations of the Parties thereto with respect to such existing claims shall survive termination, including, without limitation, the obligations under Sections 5.1, 5.2, 5.3 and 5.4 hereof.

5.6 Cumulative Remedies. Each right or remedy of the City provided for herein shall be cumulative of and shall be in addition to every other right or remedy of

the City provided for in this Agreement, and the exercise (or the beginning of the exercise) by the City of any one or more of the rights or remedies provided for in this Agreement, shall not preclude the simultaneous or later exercise by the City of any or all other rights or remedies provided for in this Agreement or any other Ballpark Agreement or hereafter existing at law or in equity, by statute or otherwise; provided however, in the event the City, or a qualified purchaser identified by the City, purchases the Team in accordance with Section 4 hereof, the City's claims for actual damages under Section 5.4 for any breach of the Non-Relocation Covenants by the Club shall be limited to the fees and expenses of third party attorneys or other professionals retained by the City to enforce such Section 4 and/or the other terms of this Agreement and to consummate the sale of the Team.

6. Indemnification by the Club. To the extent allowed by Applicable Law, the Club shall indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, including damage by fire or other casualty) incurred by the City, the Club or any other Person, and from any and all claims, demands and actions in law or equity (including reasonable attorneys' fees and litigation expenses), arising directly or indirectly out of this Agreement.

7. Change of Name. The Club shall change the name of the Team to include the name "Kannapolis" as part of the Team's name prior to the Commencement Date and shall continue to use that geographical reference in the Team name for the Term of the Lease, including any Renewal Option Period.

8. Governing Law; Venue. THIS AGREEMENT AND THE ACTIONS OF THE PARTIES SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NORTH CAROLINA NOTWITHSTANDING ANY CHOICE-OF-LAW OR CONFLICT-OF-LAW PRINCIPLE THAT MIGHT DICTATE A DIFFERENT GOVERNING LAW. Venue for any judicial, administrative or other action to enforce or construe any term of this Agreement or arising from or relating to this Agreement shall be exclusively in the State of North Carolina. Each Party irrevocably agrees, consents and submits to jurisdiction and venue in the federal and state courts located in the State of North Carolina, regarding any judicial, administrative or other action to enforce or construe any term of this Agreement or arising from or relating to this Agreement. Each Party hereby waives all defenses based upon *forum non conveniens*, improper venue, or personal jurisdiction in any such action.

9. Interpretation. The headings of sections and paragraphs in this Agreement are for convenience only and shall not be construed in any way to limit or define the content, scope or intent of the provisions hereof. As used in this Agreement, the singular shall include the plural, and masculine, feminine and neuter pronouns shall be fully interchangeable where the context so requires. If any provision of this Agreement, or any paragraph, sentence, clause, phrase or word, or the application thereof, in any circumstances, is adjudicated by a court of competent jurisdiction to be invalid, the validity of the remainder of this Agreement shall be

construed as if such invalid part were never included herein. Time is of the essence of this Agreement.

10. Entire Agreement; Waiver. This Agreement and the other Ballpark Agreements contain the sole and entire agreement among the Parties and their Affiliates with respect to their subject matter, are fully integrated, and supersede all prior written or oral agreements among them relating to that subject matter. This Agreement may not be modified, amended or waived except by a written instrument signed by each of the Parties affected thereby, and approved by the City Council of City if signed by the City. Waiver by any Party of any breach of any provision of this Agreement shall not be considered as or constitute a continuing waiver or a waiver of any other breach of the same or other provision of this Agreement.

11. Representations and Warranties. The Club hereby represents and warrants to the City as follows:

(a) the execution, delivery and performance by the Club of this Agreement have been duly authorized by all necessary limited liability company action, and do not and will not contravene or conflict with (i) the limited liability company agreement of the Club, (ii) any provision of the Club's Professional Baseball Agreement and any other Minor League Baseball rules or regulations with respect to the location of the Team or the subject matter hereof; (iii) any law, order, rule, regulation, writ, injunction or decree now in effect of any government, governmental instrumentality or court having jurisdiction over the Club, or (iv) any loan agreement or other contractual restriction binding on or affecting the Club or any of its property or assets, except where any of the foregoing could not reasonably be expected to have a material adverse effect on the Club;

(b) this Agreement is a legal, valid and binding obligation of the Club enforceable against such Parties in accordance with its terms;

(c) except as disclosed in writing to the City, there is no action, proceeding or investigation pending or, to the knowledge of the Club, threatened or affecting the Club, which may adversely affect the ability of the Club to fulfill and perform their respective obligations and other undertakings under this Agreement. The Club is not in default with respect to any judgment, order, injunction or decree of any Governmental Authority which is in any respect material to the transactions contemplated in and by this Agreement;

(d) the Club is a limited liability company duly formed, validly existing, and in good standing under the laws of the State of North Carolina;

(e) the Club is a member in good standing of Minor League Baseball and is in compliance in all material respects with all applicable Baseball Rules and Regulations which are relevant to this Agreement; and

(f) the Club has full power and legal right to execute and deliver this Agreement and to perform and observe the provisions of this Agreement.

12. Assignment. The obligations of the Club under this Agreement may not be assigned without prior Approval of the City. With respect to a proposed assignment by the Club to an Affiliate of the Club, such prior Approval of the City may be withheld in the City's sole discretion. With respect to a proposed assignment by the Club to a Person who is not an Affiliate of the Club, such prior Approval of the City shall not be unreasonably withheld as long as all of the Leasehold Estate (as defined in the Lease) is being assigned to the same Person in accordance with Section 13.1 of the Lease and the Club is not default under the terms of this Agreement, the Lease or the Development Agreement. Any attempt to make an assignment in violation of this provision shall be a material default under this Agreement and any attempted assignment in violation of this provision shall be null and void.

13. Notices. All notices permitted or required to be made hereunder shall be in writing and delivered by hand, overnight courier, certified mail, facsimile or e-mail. Notices shall be deemed given (a) when actually given and received if delivered by hand; (b) one (1) Business Day after delivery to an overnight courier if delivered by an overnight courier; (c) three (3) Business Days after deposit with the United States Postal Service if delivered by certified mail; or (d) when sent if delivered by facsimile or e-mail (as evidenced by facsimile or e-mail confirmation). All such notices shall be addressed to the appropriate Party as follows:

To the City: City of Kannapolis
 401 Laureate Way
 Kannapolis, North Carolina 28081
 Attention: City Manager

with a copy to: City of Kannapolis
 401 Laureate Way
 Kannapolis, North Carolina 28081
 Attention: City Attorney

To the Club: Intimidators Baseball Club, LLC

 Kannapolis, North Carolina 28081
 Attention: President

with a copy to: Intimidators Baseball Club, LLC

 Attention: _____

Either Party may from time to time designate a different address for notices by giving notice to that effect to the other Party in accordance with the terms and conditions of this Section.

14. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under Applicable Law, but if any provision of this Agreement is held to be prohibited by or invalid under Applicable Law, the Parties shall, to the extent possible, negotiate a revised provision which (a) complies with Applicable Law, (b) does not alter any of the substantive rights, obligations or liabilities of any party under this Agreement or any other Ballpark Agreement, and (c) confers upon the Parties the benefits intended to be conferred by the invalid provision; and the remaining provisions of this Agreement, if capable of substantial performance, shall be enforced as if this Agreement was entered into without the invalid provision.

15. Attorneys' Fees. If any Party to this Agreement defaults in the performance of any covenants, obligations or agreements of such Party contained in this Agreement and another Party hereto places the enforcement of this Agreement, or any part thereof, or the exercise of any other remedy therein provided for such default, in the hands of an attorney who files suit upon the same (either by direct action or counterclaim), the non-prevailing Party shall pay to the prevailing Party its reasonable attorneys' fees and costs of court. In addition to the foregoing award of attorneys' fees to the prevailing Party, the prevailing Party shall be entitled to its attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

16. Force Majeure. If any Party shall be delayed in the performance of any obligation hereunder as a result of a Force Majeure Event, then the performance of such obligation shall be extended by the length of such delay. In response to and during any delay caused by a Force Majeure Event, the Parties shall at all times act diligently and in good faith to bring about the termination or removal of the Force Majeure Event as promptly as reasonably possible and any party seeking an excuse of performance due to such Force Majeure Event shall work diligently and in good faith to reduce or eliminate any damage, cost or delay caused by such Force Majeure Event.

17. Counterparts. If this Agreement is executed in several counterparts, each of those counterparts shall be deemed an original, and all of them together shall constitute one and the same instrument.

[Signature Page to Non-Relocation Agreement]

CITY:

CITY OF KANNAPOLIS

By:_____

Michael B. Legg
City Manager

CLUB:

INTIMIDATORS BASEBALL CLUB, LLC

By:_____

Name:

Title:



**City of Kannapolis
City Council Meeting
September 24, 2018
Staff Report**

TO: Mayor and City Council
FROM: Eric Davis, Finance Director
TITLE: Resolution Approving Amendments to an Installment Financing Contract and a Deed of Trust

A. Action Requested by City Council

Motion to adopt a Resolution Approving Amendments to an Installment Financing Contract and a Deed of Trust.

B. Required Votes to Pass Required Action

Majority present at meeting

C. Background

This Resolution is the final action required by City Council in order to issue Limited Obligation Bonds in an amount not to exceed \$52 million for the construction of the Sports and Entertainment Venue (SEV). The City expects to receive Local Government Commission (LGC) approval on October 2, 2018. A tentative bond sale date has been scheduled for October 24, 2018. At that point in time, the City will have funds in hand to complete the construction of the SEV.

This Resolution is very similar to the Resolution that was adopted in August. The City of Kannapolis has met all of the legal requirements for the debt issuance process. Most importantly in this process was a public hearing on the matter. At the public hearing in August, no one spoke either in favor or against the issuance of debt for the construction of the SEV.

D. Fiscal Considerations

Approval of this Resolution will direct staff to complete the debt issuance process in an amount not to exceed \$52 million for the Sports and Entertainment Venue (SEV).

E. Policy Issues

None.

F. Legal Issues

Approving this document is a requirement in the debt issuance process.

G. Alternative Courses of Action and Recommendation

1. **Motion to adopt a Resolution approving amendments to an Installment Financing Contract and a Deed of Trust (Recommended)**
2. Table action to a future meeting.
3. Do not adopt Resolution.

ATTACHMENTS:

File Name

- ❑ Approving_Resolution_-_Kannapolis_2018C_LOBs_(stadium)_-_rev_to_v1.DOC
- ❑ Second_Notice_of_Extension_of_Deed_of_Trust_-_Kannapolis_2018C_LOB_(stadium).DOC
- ❑ Third_Supplement_to_Indenture_of_Trust_-_City_of_Kannapolis_2018C_LOB__(stadium)_-_rev_to_v1.DOC

EXTRACTS FROM MINUTES OF CITY COUNCIL

* * *

A Regular Meeting of the City Council of the City of Kannapolis, North Carolina was duly held at in the City Hall Council Chambers, 401 Laureate Way in Kannapolis, North Carolina, the regular place of meeting, at 6:00 p.m. on September 24, 2018:

Members Present:

Members Absent:

* * * * *
* * *

Councilmember _____ introduced the following resolution, a summary of which had been provided to each Councilmember, copy of which was available with the City Council and which was read by title:

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KANNAPOLIS, NORTH CAROLINA, APPROVING AMENDMENTS TO AN INSTALLMENT FINANCING CONTRACT AND A DEED OF TRUST AND THE DELIVERY THEREOF AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS

WHEREAS, the City of Kannapolis, North Carolina (the “City”) is a validly existing municipal corporation existing as such under and by virtue of the Constitution, statutes and laws of the State of North Carolina (the “State”);

WHEREAS, the City has the power, pursuant to the General Statutes of North Carolina to (1) purchase real and personal property, (2) enter into installment contracts in order to finance or refinance the purchase of real and personal property used, or to be used, for public purposes, and (3) grant a security interest in some or all of the property purchased to secure repayment of the purchase price;

WHEREAS, the City has previously executed and delivered (1) an Installment Financing Contract dated as of August 1, 2014 (the “2014 Contract”), between the Kannapolis Capital Corporation (the “Corporation”) and the City to finance the capital costs of acquiring, constructing, equipping and furnishing the city hall and law enforcement center located in the City’s downtown on the campus of the North Carolina Research Center (“2014 Project”), (2) an amendment to the 2014 Contract (the “Amendment Number One”) between the Corporation and the City to finance improvements to the property owned by the City located at 489 North Cannon Boulevard to provide for the use by the community college and other general enhancements and infrastructure improvements in the City’s downtown (the “Phase I Projects”) and (3) an amendment to the 2014 Contract (the “Amendment Number Two”) between the Corporation and the City to finance the replacement of Fire Station #2 to be located on the site of the existing fire station on Richard Avenue and Fire Station #3 to be located at the intersection of Old Earnhardt Road and Concord Lake Road (the “Phase II Projects”);

WHEREAS, in order to secure its obligations under the 2014 Contract, the First Amendment and the Second Amendment, the City granted a Deed of Trust, Security Agreement and Fixture Filing dated as of August 1, 2014 (the “*2014 Deed of Trust*”), on the real property on which the 2014 Project is located and the improvements thereon, and a Notice of Extension of Deed of Trust to Additional Property dated as of April 1, 2018 (the “*First Notice of Extension*”), extending the lien of the 2014 Deed of Trust to include the real property on which the Phase II Projects will be located and the improvements thereon;

WHEREAS, the City Council of the City (the “*City Council*”) has determined that it is in the best interest of the City to continue with additional projects related to the revitalization of the City’s downtown area to finance the construction, equipping and furnishing of a sports and entertainment facility to be used primarily for minor league baseball to be located in City’s downtown (the “*Phase III Project*”);

WHEREAS, the City will enter into Amendment Number Three to the Installment Financing Contract (the “*Amendment Number Three*” and collectively with the 2014 Contract, Amendment Number One and Amendment Number Two, the “*Contract*”) to proceed with financing the Phase III Project;

WHEREAS, the City Council hereby determines to further amend and extend the Deed of Trust to the real property on which the Phase III Project will be located and the improvements thereon to further secure its obligations under the Contract under a Second Notice of Extension of Deed of Trust to Additional Property (the “*Second Notice of Extension*” and collectively with the 2014 Deed of Trust and the First Notice of Extension, the “*Deed of Trust*”);

WHEREAS, the Corporation will issue its Taxable Limited Obligation Bonds (City of Kannapolis, North Carolina) (the “*Bonds*”) in an aggregate principal amount not to exceed \$52,000,000, evidencing proportionate undivided interests in rights to receive certain Revenues (as defined in the 2014 Contract) pursuant to the Contract;

WHEREAS, in connection with the sale of the Bonds by the Corporation to Robert W. Baird & Co. Incorporated and PNC Capital Markets LLC (the “*Underwriters*”), the Corporation will enter into a Bond Purchase Agreement (the “*Purchase Agreement*”) among the City, the Corporation and the Underwriters;

WHEREAS, there have been described to the City Council the forms of the following documents (collectively, the “*Instruments*”), copies of which have been made available to the City Council, which the City Council proposes to approve, enter into and deliver, as applicable, to effectuate the proposed installment financing:

- (1) Amendment Number Three;
- (2) the Second Notice of Extension;
- (3) Supplemental Indenture, Number 3 dated as of November 1, 2018 (the “*Third Supplement*”) between the Corporation and U.S. Bank National Association, as trustee, under which the Bonds will be executed and delivered; and
- (4) the Purchase Agreement;

WHEREAS, to make an offering and sale of the Bonds, there will be prepared a Preliminary Official Statement with respect to the Bonds (the “*Preliminary Official Statement*”), a draft thereof having been presented to the City Council, and a final Official Statement relating to the Preliminary Official

Statement (together with the Preliminary Official Statement, the “*Official Statement*”), which Official Statement will contain certain information regarding the City;

WHEREAS, it appears that each of the Instruments and the Preliminary Official Statement is in an appropriate form and is an appropriate instrument for the purposes intended;

WHEREAS, a public hearing on the 2014 Contract after publication of a notice with respect to such public hearing was held on September 23, 2013, a public hearing on Amendment Number One and Amendment Number Two and the projects financed thereby after publication of a notice with respect to such public hearing was held on December 11, 2017 and a public hearing on Amendment Number Three and the Phase III Project to be financed thereby after publication of a notice with respect to such public hearing was held on August 27, 2018;

WHEREAS, the City has filed an application to the LGC for approval of Amendment Number Three;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KANNAPOLIS, NORTH CAROLINA, AS FOLLOWS:

Section 1. Ratification of Instruments. All actions of the Mayor, the City, the City Manager, the Deputy City Manager, the Finance Director, the City Attorney, the City Clerk and their respective designees (collectively, the “*Authorized Officers*”), whether previously or hereinafter taken, in effectuating the proposed financing are hereby approved, ratified and authorized pursuant to and in accordance with the transactions contemplated by the Instruments.

Section 2. Authorization of the Official Statement. The form, terms and content of the Preliminary Official Statement are in all respects authorized, approved and confirmed, and the use of the Preliminary Official Statement and of the final Official Statement by the Underwriters in connection with the sale of the Bonds is hereby in all respects authorized, approved and confirmed. The City Manager, the Deputy City Manager and the Finance Director, individually or collectively, are hereby authorized and directed to deliver, on behalf of the City, the Official Statement in substantially such form, with such changes, insertions and omissions as he or she may approve.

Section 3. Authorization to Execute Amendment Number Three. The City hereby approves the financing of the Phase III Project in accordance with the terms of the Contract, which will be a valid, legal and binding obligation of the City in accordance with its terms. The form and content of Amendment Number Three are hereby in all respects authorized, approved and confirmed, and the Authorized Officers are hereby authorized, empowered and directed, individually and collectively, to execute and deliver Amendment Number Three, including necessary counterparts, in substantially the form and content made available to the City Council, but with such changes, modifications, additions or deletions therein as they deem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of the City’s approval of any and all changes, modifications, additions or deletions therein from the form and content of Amendment Number Three made available to the City Council. From and after the execution and delivery of Amendment Number Three, the Authorized Officers are hereby authorized, empowered and directed, individually and collectively, to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of Amendment Number Three as executed and the Contract generally.

Section 4. Authorization to Execute the Second Notice of Extension. The City approves the form and content of the Second Notice of Extension, and the Second Notice of Extension is in all respects authorized, approved and confirmed. The Authorized Officers are hereby authorized, empowered and directed, individually and collectively, to execute and deliver the Second Notice of

Extension, including necessary counterparts, in substantially the form and content made available to the City Council, but with such changes, modifications, additions or deletions therein as they deem necessary, desirable or appropriate. Execution by the Authorized Officers, individually or collectively, constitutes conclusive evidence of the City's approval of any and all such changes, modifications, additions or deletions therein from the form and content of the Second Notice of Extension made available to the City Council, and from and after the execution and delivery of the Second Notice of Extension, the Authorized Officers are hereby authorized, empowered and directed, individually and collectively, to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Second Notice of Extension as executed and the Deed of Trust generally.

Section 5. Purchase Agreement. That the form and content of the Purchase Agreement shall be and the same hereby are in all respects authorized, approved and confirmed, and the Authorized Officers, individually and collectively, shall be and they hereby are authorized, empowered and directed to execute and deliver the Purchase Agreement, including necessary counterparts, in substantially the form and content made available to the City Council, but with such changes, modifications, additions or deletions therein as shall to them seem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of the City's approval of any and all changes, modifications, additions or deletions therein from the form and content of the Purchase Agreement made available to the City Council, and that from and after the execution and delivery of the Purchase Agreement, the Authorized Officers, individually and collectively, are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Purchase Agreement as executed.

Section 6. City Representative. The Authorized Officers, individually and collectively, are hereby designated as the City's representative to act on behalf of the City in connection with the transactions contemplated by the Instruments and the Preliminary Official Statement, and the Authorized Officers, individually and collectively, are authorized to proceed with the financing of the Phase III Project in accordance with the Instruments and to seek opinions as a matter of law from the City Attorney, which the City Attorney is authorized to furnish on behalf of the City, and opinions of law from such other attorneys for all documents contemplated hereby as required by law. The City's representative and/or designee or designees are in all respects authorized on behalf of the City to supply all information pertaining to the City for use in the Official Statement and the transactions contemplated by the Instruments or the Preliminary Official Statement. The City's representatives or their respective designees are hereby authorized, empowered and directed, individually and collectively, to do any and all other acts and to execute any and all other documents, which they, in their discretion, deem necessary and appropriate to consummate the transactions contemplated by the Instruments or the Preliminary Official Statement or as they deem necessary or appropriate to implement and carry out the intent and purposes of this Resolution.

Section 7. Severability. If any section, phrase or provision of this Resolution is for any reason declared to be invalid, such declaration will not affect the validity of the remainder of the sections, phrases or provisions of this Resolution.

Section 8. Repealer. All motions, orders, resolutions and parts thereof, in conflict herewith are hereby repealed.

Section 9. Effective Date. This Resolution is effective on the date of its adoption.

STATE OF NORTH CAROLINA)
) SS:
CITY OF KANNAPOLIS)

I, *Bridgette Bell*, City Clerk of the City of Kannapolis, North Carolina, ***DO HEREBY CERTIFY*** that the foregoing is a true and exact copy of a resolution entitled “**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KANNAPOLIS, NORTH CAROLINA, APPROVING AMENDMENTS TO AN INSTALLMENT FINANCING CONTRACT AND A DEED OF TRUST AND THE DELIVERY THEREOF AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS**” adopted by the City Council of the City of Kannapolis, North Carolina, at a meeting held on the 24th day of September, 2018.

WITNESS my hand and the corporate seal of the City of Kannapolis, North Carolina, this the ____ day of _____, 2018.

[Seal]

Bridgette Bell
City Clerk
City of Kannapolis, North Carolina

Prepared by:
Scott E. Leo, Esq.
Parker Poe Adams & Bernstein LLP
401 S. Tryon Street, Suite 3000
Charlotte, North Carolina 28202

Return to:
Walter M. Safrit, II, Esq.
City Attorney, City of Kannapolis
401 Laureate Way
Kannapolis, North Carolina 28081

STATE OF NORTH CAROLINA
COUNTY OF CABARRUS

**SECOND NOTICE OF EXTENSION
OF DEED OF TRUST TO ADDITIONAL PROPERTY**

THIS SECOND NOTICE OF EXTENSION (this “*Notice*”) is given as of the 1st day of November, 2018, by the **CITY OF KANNAPOLIS, NORTH CAROLINA** (hereinafter called the “*Grantor*”), a municipal corporation, whose address is 401 Laureate Way, Kannapolis, North Carolina 28081 (the “*Grantor*”), to **PATRICK L. TEAGUE**, as trustee (hereinafter referred to as the “*Trustee*”), for the benefit of **KANNAPOLIS CAPITAL CORPORATION**, a nonprofit corporation duly created, existing and in good standing under the laws of the State of North Carolina, whose address is 401 Laureate Way, Kannapolis, North Carolina 28081 (the “*Corporation*,” and together with its successors and assigns, the “*Beneficiary*”);

W I T N E S S E T H:

WHEREAS, the Grantor previously executed and delivered to the Trustee for the benefit of the Beneficiary a Deed of Trust, Security Agreement and Fixture Filing dated as of August 1, 2014 (the “*2014 Deed of Trust*”), which Deed of Trust was duly recorded in Book 11081, Page 0080 of the office of the Register of Deeds, Cabarrus County, North Carolina (the “*Registry*”), encumbering the Mortgaged Property (as such term is defined in the 2014 Deed of Trust) and securing the Indebtedness (as defined in the Deed of Trust), which includes future advances which may be made from time to time under the Contract (as defined below);

WHEREAS, the Grantor previously executed and delivered to the Trustee for the benefit of the Beneficiary a Notice of Extension of Deed of Trust to Additional Property dated as of April 1, 2018 (the “*First Notice of Extension*”), which was duly recorded in Book 12957, Page 0089 of the office of the Register of Deeds, Cabarrus County, North Carolina (the “*Registry*”), adding the Additional Mortgaged

Property (as such term is defined in the First Notice of Extension) to the Mortgaged Property securing the Indebtedness;

WHEREAS, the Grantor and the Corporation have entered into an Installment Financing Contract dated as of August 1, 2014 (the “*2014 Contract*”), Amendment Number One to the Installment Financing Contract dated as of January 15, 2018 (the “*First Contract Amendment*”) and Amendment Number Two to the Installment Financing Contract dated as of April 1, 2018 (the “*Second Contract Amendment*”), pursuant to which (1) the Corporation has agreed to advance certain funds to enable the Grantor to pay finance certain capital projects; and (2) the Grantor has agreed to make the Installment Payments (as defined in the Contract) to the Corporation;

WHEREAS, the Grantor and the Corporation are entering into Amendment Number Three to the Installment Financing Contract dated as of November 1, 2018 (the “*Third Contract Amendment*” and together with the 2014 Contract, the First Contract Amendment, the Second Contract Amendment and as may be further amended, the “*Contract*”) pursuant to which the Corporation has agreed to advance certain funds to enable the Grantor to finance additional capital projects;

WHEREAS, the Corporation has assigned substantially all of its rights under the Contract to U.S. Bank National Association pursuant to an Indenture of Trust dated as of August 1, 2014 (the “*2014 Indenture*”) between the Corporation and U.S. Bank National Association, as bond trustee (the “*Bond Trustee*”), as supplemented and amended by Supplemental Indenture, Number 1 dated as of January 15, 2018 (the “*First Supplement*”) between the Corporation and the Bond Trustee, and Supplemental Indenture, Number 2 dated as of April 1, 2018 (the “*Second Supplement*”) between the Corporation and the Bond Trustee, under which limited obligation bonds, evidencing proportionate undivided interests in rights to receive certain Revenues (as defined in the Contract) under the Contract have been executed, delivered and sold;

WHEREAS, the Corporation will be entering into Supplemental Indenture, Number 3 dated as of November 1, 2018 (the “*Third Supplement*” and together with the 2014 Indenture, the First Supplement, the Second Supplement and as may be further supplemented, the “*Indenture*”) with the Bond Trustee under which additional limited obligation bonds (collectively the bonds executed and delivered under the Indenture are the “*Bonds*”) will be executed, delivered and sold to assist the Grantor with financing additional capital projects;

WHEREAS, for the purposes of this Notice, the term Beneficiary includes all interests whatsoever of the Corporation and the Bond Trustee, as assignee of the Corporation, under, by, and through the Deed of Trust and the obligations secured by the Deed of Trust; and

WHEREAS, the Grantor was and is the owner of the real property described in the Deed of Trust; and

WHEREAS, the Deed of Trust contains an “*after acquired property*” clause; and

WHEREAS, the Grantor is also the owner of the Additional Mortgaged Property (as defined below); and

WHEREAS, in connection with the execution and delivery of Additional Bonds (as defined in the Indenture) and to further secure the Grantor’s obligations under the Contract, the Grantor and the Beneficiary have agreed that the lien of the Deed of Trust be extended, modified and spread to cover and create a lien on not only the Mortgaged Property, as previously extended, but also on the Additional Mortgaged Property, so that together the Deed of Trust shall constitute in law one mortgage and a single

lien on the Additional Mortgaged Property and the Mortgaged Property, as previously extended, securing the Indebtedness; and

WHEREAS, the Deed of Trust may be modified without the consent of the bondholders in accordance with Section 9.4 of the 2014 Indenture to add improvements acquired in accordance with the Contract, the Deed of Trust and the 2014 Indenture and to execute and deliver Additional Bonds as provided in the 2014 Indenture; and

WHEREAS, the Grantor acknowledges that this Notice confers a substantial benefit on it and is supported by good and valuable consideration.

NOW THEREFORE, in consideration of the Indebtedness of the Grantor to the Beneficiary, the recitals set forth above (which are an integral part of this Notice and are not mere recitals), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. The foregoing recitals are true and correct.
2. The Grantor has hereby given, granted, bargained and sold, and by these presents does give, grant, bargain, sell and convey unto the Trustee, its heirs, successors and assigns, with power of sale, the following property (collectively, the "*Additional Mortgaged Property*"):

(a) The real property lying and being in Cabarrus County, North Carolina and described below in the legal description attached as an exhibit hereto (hereinafter referred to as the "*Additional Land*"):

SEE EXHIBIT A ATTACHED HERETO FOR ADDITIONAL LAND
DESCRIPTION, WHICH EXHIBIT A IS INCORPORATED HEREIN BY
REFERENCE.

(b) All buildings, structures, additions and improvements of every nature whatsoever now or hereafter situated on or about the Additional Land (the "*Additional Improvements*").

(c) All gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, carpeting and other floor coverings, fire extinguishers and any other safety equipment required by governmental regulation or law, washers, dryers, water heaters, mirrors, mantels, air conditioning apparatus, refrigerating plants, refrigerators, cooking apparatus and appurtenances, window screens, awnings and storm sashes and other machinery, equipment or other tangible personal property, which are or shall be so attached to the Additional Improvements, including all extensions, additions, improvements, betterments, renewals, replacements and substitutions, or proceeds from a permitted sale of any of the foregoing, as to be deemed to be fixtures under North Carolina law (collectively, the "*Additional Fixtures*") and accessions to the Additional Land and a part of the Additional Mortgaged Property as between the parties hereto and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the Indebtedness (as defined in the Deed of Trust). The location of the collateral described in this paragraph is also the location of the Additional Land, and the record owner of the Additional Land is the Grantor.

(d) All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter located on the Additional Land or under or above the same or any part or parcel thereof, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversion and reversions, remainder and remainders, whatsoever, in any way belonging, relating or appertaining to the Additional Mortgaged Property or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Grantor.

(e) All leases affecting the Additional Mortgaged Property or any part thereof and all income, rents and issues of the Additional Mortgaged Property and the Additional Improvements now or hereafter located thereon from time to time accruing (including without limitation all payments under leases or tenancies, proceeds of insurance, condemnation payments, tenant security deposits whether held by the Grantor or in a trust account, and escrow funds), and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of the Grantor of, in and to the same; reserving only the right to the Grantor to collect and apply the same (other than insurance proceeds and condemnation payments) so long as the Grantor is not in Default hereunder.

The foregoing grant is given as security for the Indebtedness and is subject to all the terms and conditions as set forth in the Deed of Trust which is incorporated herein by reference.

3. The term Mortgaged Property as defined in the Deed of Trust, and as previously extended under the First Notice of Extension, is hereby amended to include the Additional Mortgaged Property, and the lien of the Deed of Trust is hereby extended, modified and spread to cover and include the Grantor's rights in the Additional Mortgaged Property and the Mortgaged Property so as to constitute a single lien on the Additional Mortgaged Property and the Mortgaged Property.

4. All references to the Mortgaged Property, the Land, the Improvements, the Fixtures and the Permitted Encumbrances in the Deed of Trust shall hereinafter be deemed to include the Additional Mortgaged Property, the Additional Land, the Additional Improvements, the Additional Fixtures and the Additional Permitted Encumbrances (as defined below), respectively.

5. The Grantor hereby agrees that all terms, representations, warranties, covenants and agreements contained in the Deed of Trust shall hereinafter be deemed to apply to the Mortgaged Property and the Additional Mortgaged Property.

6. The Grantor ratifies and confirms the lien and security interests of the Deed of Trust on the Mortgaged Property, as previously extended under the First Notice of Extension, the Additional Mortgaged Property and in any and all property, real, personal or mixed, tangible or intangible, and fixtures now or hereafter acquired by the Grantor and encumbered by the Deed of Trust, and the Grantor transfers, assigns and grants to the Beneficiary the benefit of a lien on and security interest in all such property now owned or hereafter acquired as security for the Indebtedness.

7. The Grantor hereby covenants, represents and warrants that the Grantor has good and clear record and marketable title in fee to the Additional Mortgaged Property, subject to the Permitted Encumbrances (as defined in the Deed of Trust) and the permitted encumbrances set forth on Exhibit B to this Notice (collectively, the "*Additional Permitted Encumbrances*").

8. The Grantor hereby represents and warrants that it has good right and lawful authority to provide this Notice and to mortgage and convey the Additional Mortgaged Property, as provided herein.

9. This Notice is binding on and inures to the benefit of the successors and assigns of the parties hereto.

10. Except as specifically modified herein, the terms and conditions of the Deed of Trust remain in full force and effect as executed. Nothing herein contained in any way impairs the Deed of Trust and the First Notice of Extension or alters, waives, annuls, varies or affects any provision, condition or covenant therein, except as herein provided, nor affects or impairs any rights, powers or remedies thereunder provided.

11. This Notice does not constitute a novation of the Indebtedness but is intended to be, and constitutes, only an extension, amendment and modification of the Deed of Trust for the purposes specifically noted herein.

12. Nothing contained herein constitutes a waiver, release, or limitation of any right, remedy, privilege, or default under the Deed of Trust.

13. The execution hereof by the Beneficiary is for the sole purpose of evidencing its consent hereto as required by N.C. Gen. Stat. §47-20.5.

14. This Notice is executed subject to the Additional Permitted Encumbrances.

15. The filing of this Notice constitutes a financing statement and fixture filing for all purposes of N.C. Gen. Stat. §25-9-502 with respect to the Additional Fixtures and any portion of the Additional Mortgaged Property that may become fixtures or personalty and for which the filing of a financing statement in the Registry is required. The addresses of the Secured Party (the Beneficiary) and the Debtor (the Grantor) are set forth in this Notice.

[Signatures Begin on Following Page]

IN WITNESS WHEREOF, the Grantor has caused this Second Notice of Extension to be executed the day and year first above written.

CITY OF KANNAPOLIS, NORTH CAROLINA

By: _____
Michael B. Legg
City Manager

STATE OF NORTH CAROLINA)
)
COUNTY OF _____)

I, a Notary Public of the County and State aforesaid, certify that Michael B. Legg (the “Signatory”) personally came before me this day and acknowledged that he is the City Manager of the City of Kannapolis, North Carolina and that he, as City Manager, in such capacity and being authorized to do so, executed the foregoing instrument on behalf of the City of Kannapolis, North Carolina.

I certify that the Signatory personally appeared before me this day, and
(check one of the following and mark through all blank lines or spaces)
_____ (I have personal knowledge of the identity of the Signatory); or
_____ (I have seen satisfactory evidence of the Signatory’s identity, by a current state or federal identification with the Signatory’s photograph in the form of:
(check one of the following and mark through all blank lines or spaces)
_____ a driver’s license or
_____ in the form of _____); or
_____ (a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

WITNESS my hand and official stamp or seal, this the _____ day of _____, 2018.

Notary Public

Print: Name: _____
[**Note:** Notary Public must sign exactly as on notary seal]

My Commission Expires: _____
☞ [NOTARY SEAL] **(MUST BE FULLY LEGIBLE)**

[COUNTERPART SIGNATURE PAGE TO SECOND NOTICE OF EXTENSION OF DEED OF TRUST TO
ADDITIONAL PROPERTY DATED AS OF NOVEMBER 1, 2018]

BENEFICIARY:

U.S. BANK NATIONAL ASSOCIATION, as Bond Trustee

By: _____
Assistant Vice President

STATE OF NORTH CAROLINA)
)
COUNTY OF MECKLENBURG)

I, a Notary Public of the County and State aforesaid, certify that Lisa Moorehead (the “*Signatory*”) personally came before me this day and acknowledged that she is the Assistant Vice President of U.S. Bank National Association, a national banking association, as Bond Trustee, and that she, in such capacity and being authorized to do so, executed the foregoing on behalf of the association in such capacity.

I certify that the Signatory personally appeared before me this day, and
(*check one of the following*)

_____ (I have personal knowledge of the identity of the Signatory); **or**
_____ (I have seen satisfactory evidence of the Signatory’s identity, by a current state or
federal identification with the Signatory’s photograph in the form of:
(*check one of the following*)
____ a driver's license *or*
____ in the form of _____); **or**
_____ (a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that he voluntarily signed the foregoing instrument for the purpose stated and in the capacity indicated.

Witness my hand and official stamp or seal this _____ day of _____, 2018.

Notary Public

Print: Name: _____
[**Note:** *Notary Public must sign exactly as on notary seal*]

My Commission Expires: _____
☞ [NOTARY SEAL] **(MUST BE FULLY LEGIBLE)**

PATRICK L. TEAGUE, as Deed of Trust Trustee

My Commission Expires: _____
 ➡ [NOTARY SEAL] (MUST BE FULLY LEGIBLE)

EXHIBIT A

Description of Additional Land

EXHIBIT B

ADDITIONAL PERMITTED ENCUMBRANCES

“Additional Permitted Encumbrances” means, with respect to the Additional Mortgaged Property, as of any particular time: (a) the Deed of Trust and the First Notice of Extension; (b) the Contract, as it may be amended from time to time, and any encumbrances with respect to the Mortgaged Property permitted therein; (c) the Indenture; (d) utility, access and other easements and rights of way, restrictions and exceptions which exist of record as of the closing date and date which do not interfere with or impair the intended use of the Mortgaged Property; and (e) any other encumbrances described in Schedule B to the title insurance commitment Number [] dated November [], 2018 issued by First American Title Insurance Company, which commitment is incorporated herein by this reference, pursuant to which such title insurance company will issue the title insurance policy as required by Section 5.5 of the Contract.

[Lease with bball team?]

KANNAPOLIS CAPITAL CORPORATION

and

U.S. BANK NATIONAL ASSOCIATION,

as Trustee

SUPPLEMENTAL INDENTURE, NUMBER 3

Dated as of
November 1, 2018

**SUPPLEMENTAL INDENTURE, NUMBER 3
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SUPPLEMENTAL INDENTURE, NUMBER 3

THIS SUPPLEMENTAL INDENTURE, NUMBER 3 dated as of November 1, 2018 (together with any supplements and amendments hereto made in accordance herewith, this “*Third Supplement*”), is between the **KANNAPOLIS CAPITAL CORPORATION** (the “*Corporation*”), a nonprofit corporation duly created and existing under the laws of the State of North Carolina, and **U.S. BANK NATIONAL ASSOCIATION**, as trustee (the “*Trustee*”), being authorized to accept and execute trusts of the character herein set out under and by virtue of the laws of the State of North Carolina (the “*State*”).

WITNESSETH:

WHEREAS, the Corporation has previously entered into an Indenture of Trust dated as of August 1, 2014, between the Trustee and the Corporation, (the “*2014 Indenture*”), Supplemental Indenture, Number 1 dated as of January 15, 2018, between the Trustee and the Corporation, (the “*First Supplement*”) and Supplemental Indenture, Number 2 dated as of April 1, 2018, between the Trustee and the Corporation, (the “*Second Supplement*”) under which the Corporation has executed and delivered Limited Obligation Bonds to finance projects for the benefit of the City of Kannapolis, North Carolina (the “*City*”);

WHEREAS, the Corporation proposes to execute and deliver a series limited obligation bonds (the “*2018C Bonds*”), designated as Additional Bonds under the 2014 Indenture and this Third Supplement, to assist the City in financing the costs of the construction, equipping and furnishing of a sports and entertainment facility to be located in City’s downtown and the execution and delivery of the 2018C Bonds;

WHEREAS, this Third Supplement supplements the 2014 Indenture for the purpose of executing and delivering the 2018C Bonds and assisting the City in undertaking the project described above;

NOW THEREFORE, in addition to the rights, titles and interests granted by the Corporation to the Trustee in the 2014 Indenture, the First Supplement and the Second Supplement, the Corporation, in consideration of the mutual covenants and agreements contained in the 2014 Indenture, the First Supplement, the Second Supplement and in this Third Supplement and for the benefit of the Owners, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, in order to further secure the payment of the principal, premium, if any, and interest with respect to all Bonds at any time Outstanding under the Indenture, according to their tenor and effect, and to secure the performance and observance of all the covenants and conditions in the Bonds and contained in the Indenture, and to declare the terms and conditions on and subject to which the Bonds are executed and delivered and secured, has executed and delivered the Indenture and has granted, warranted, aliened, remised, released, conveyed, assigned, pledged, set over and confirmed, and by these presents does grant, warrant, alien, remise, release, convey, assign, sell, set over and confirm unto the Trustee, and to its successors and assigns forever, all rights, title and interest of the Corporation in Amendment Number Three to the Installment Financing Contract dated as of November 1, 2018, between the Corporation and the City;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein it is agreed as follows:

ARTICLE I DEFINITIONS

Capitalized, undefined terms used herein have the meaning assigned to them in the 2014 Contract, the Third Contract Amendment and the 2014 Indenture. In addition, the following words and terms used herein have the meanings set forth below:

“*First Supplement*” means the Supplemental Indenture, Number 1 dated as of January 15, 2018, between the Corporation and the Trustee.

“*Indenture*” means, collectively, the 2014 Indenture, the First Supplement, the Second Supplement, the Third Supplement and any amendments or supplements adopted in accordance with the terms thereof.

“*Interest Payment Date*” means, with respect to the 2018C Bonds, each April 1 and October 1, beginning April 1, 2019.

“*Record Date*” means the 15th day of the month immediately preceding each Interest Payment Date.

“*Second Supplement*” means the Supplemental Indenture, Number 2 dated as of April 1, 2018, between the Corporation and the Trustee.

“*Third Supplement*” means this Supplemental Indenture, Number 3 dated as of November 1, 2018, between the Corporation and the Trustee.

“*2018C Bonds*” means the Limited Obligation Bonds (City of Kannapolis, North Carolina), Series 2018C, Evidencing Proportionate Undivided Interests in Rights to Receive Revenues Pursuant to the Contract, to be executed and delivered under this Third Supplement and the 2014 Indenture, the details of which are described in Section 2.4 hereof and in Sections 2.3, 2.4, 2.5, 2.8, 2.9 and 2.10 of the 2014 Indenture.

“*2018C Construction Account*” means the account by that name created in the Acquisition and Construction Fund under this Third Supplement.

“*2014 Indenture*” means the Indenture of Trust dated as of August 1, 2014 between the Corporation and the Trustee.

ARTICLE II THE 2018C BONDS

Section 2.1 Authorized Amount of 2018C Bonds. No 2018C Bonds may be executed and delivered under the provisions of this Third Supplement and the 2014 Indenture except in accordance with this Article. The total principal amount of 2018C Bonds that may be executed and delivered is hereby expressly limited to \$[Par Amount], except as provided in Sections 2.9 and 2.11 of the 2014 Indenture.

Section 2.2 General Terms of 2018C Bonds. The 2018C Bonds are Additional Bonds and shall be executed, sold and delivered hereunder and under the 2014 Indenture and shall constitute a proportionate undivided interest in the rights to receive Revenues under the Contract. The 2018C Bonds will be designated “*Limited Obligation Bonds (City of Kannapolis, North Carolina), Series 2018C,*

Evidencing Proportionate Undivided Interests in Rights to Receive Revenues Pursuant to an Installment Financing Contract between the Kannapolis Capital Corporation and the City of Kannapolis, North Carolina.” The 2018C Bonds will be numbered from R-1 upwards and will be substantially in the form set forth in Exhibit A with such appropriate variations, omissions and insertions as are permitted or required by this Third Supplement. The 2018C Bonds will be executed and delivered as fully registered bonds in denominations of \$5,000 or any integral multiple thereof.

Section 2.3 Delivery of 2018C Bonds. Before the delivery by the Trustee of the 2018C Bonds, the items required under Section 2.11 of the 2014 Indenture must be filed with the Trustee.

Section 2.4 Details of 2018C Bonds; Payment.

(a) The 2018C Bonds will mature on April 1 of the years and in the amounts and will bear interest (computed on the basis of a 360-day year of twelve 30-day months) as follows:

| <u>YEAR OF MATURITY</u> | <u>PRINCIPAL AMOUNT</u> | <u>INTEREST RATE</u> | <u>YEAR OF MATURITY</u> | <u>PRINCIPAL AMOUNT</u> | <u>INTEREST RATE</u> |
|-----------------------------|-----------------------------|--------------------------|-----------------------------|-----------------------------|--------------------------|
|-----------------------------|-----------------------------|--------------------------|-----------------------------|-----------------------------|--------------------------|

(b) Both the principal and the interest with respect to the 2018C Bonds and any premiums on the prepayment thereof prior to maturity are payable in any lawful coin or currency of the United States of America which on the respective dates of payment thereof is legal tender for the payment of public and private debts. Each 2018C Bond shall bear interest until its principal sum has been paid, but if such 2018C Bond has matured or has been called for prepayment and the prepayment date has occurred and funds are available for the payment thereof in full in accordance with the terms of the 2014 Indenture and this Third Supplement, such 2018C Bond shall then cease to bear interest as of the maturity date or prepayment date. The 2018C Bonds will be dated as of their date of execution and delivery, except that 2018C Bonds executed and delivered in exchange for or on the registration of transfer of 2018C Bonds will be dated as of the Interest Payment Date preceding the day of authentication thereof, unless (1) the date of such authentication precedes March 15, 2019, in which case they will be dated as of date of their execution and delivery, (2) it is authenticated after March 15 or September 15 (each, a “Record Date”) and before the following Interest Payment Date, in which event interest with respect thereto will be payable from such following Interest Payment Date or (3) the date of such authentication is an Interest Payment Date to which interest with respect to the 2018C Bonds has been paid in full or duly provided for in accordance with the terms of this Third Supplement and the 2014 Indenture, in which case they will be dated as of such Interest Payment Date; except that if, as shown by the records of the Trustee, interest with respect to the 2018C Bonds is in default, 2018C Bonds executed and delivered in exchange for or on registration of transfer of 2018C Bonds will be dated as of the date to which interest on the 2018C Bonds has been paid in full. If no interest has been paid on the 2018C Bonds, 2018C Bonds executed and delivered in exchange for or on the registration of transfer of 2018C Bonds will be dated as of their execution and delivery.

(c) The 2018C Bonds will be delivered by means of a book-entry system with no physical distribution of definitive 2018C Bonds made to the public. One definitive 2018C Bond for each maturity (and for each different interest rate, if applicable) is to be delivered to The Depository Trust Company, New York, New York (“DTC”), held by the Trustee. A book-entry system will be employed, evidencing ownership of the 2018C Bonds in the denomination of \$5,000 or integral multiples thereof, with transfers of beneficial ownership effected on the records of DTC and its participants (the “DTC Participants”) pursuant to rules and procedures established by DTC.

Each DTC Participant will be credited in the records of DTC with the amount of such DTC Participant’s interest in the 2018C Bonds. Beneficial ownership interests in the 2018C Bonds may be purchased by or through DTC Participants. The holders of these beneficial ownership interests are hereinafter referred to as the “Beneficial Owners.” The Beneficial Owners will not receive definitive 2018C Bonds representing their beneficial ownership interests. The ownership interests of each Beneficial Owner will be recorded through the records of the DTC Participant from which such Beneficial Owner purchased its 2018C Bonds. Transfers of ownership interests in the 2018C Bonds will be accomplished by book entries made by DTC and, in turn, by DTC Participants acting on behalf of Beneficial Owners. SO LONG AS CEDE & CO., AS NOMINEE FOR DTC, IS THE REGISTERED OWNER OF THE 2018C BONDS, THE TRUSTEE SHALL TREAT CEDE & CO. AS THE ONLY OWNER OF THE 2018C BONDS FOR ALL PURPOSES UNDER THE 2014 INDENTURE AND THIS THIRD SUPPLEMENT, INCLUDING RECEIPT OF ALL PRINCIPAL AND PREMIUM, IF ANY, AND INTEREST ON THE 2018C BONDS, RECEIPT OF NOTICES, VOTING AND REQUESTING OR DIRECTING THE TRUSTEE TO TAKE OR NOT TO TAKE, OR CONSENTING TO, CERTAIN ACTIONS UNDER THE 2014 INDENTURE OR THIS THIRD SUPPLEMENT.

Notwithstanding the provisions of paragraph (d) below, payments of principal, interest and premium, if any, with respect to the 2018C Bonds, so long as DTC is the only Owner of the 2018C Bonds, will be paid by the Trustee directly to DTC or its nominee, as provided in the Blanket Letter of Representation from the City to DTC (the “Letter of Representation”). DTC will remit such payments to DTC Participants, and such payments thereafter will be paid by DTC Participants to the Beneficial Owners. The Trustee and the City are not and will not be responsible or liable for payment by DTC or DTC Participants, for sending transaction statements or for maintaining, supervising or reviewing records maintained by DTC or DTC Participants.

If DTC determines not to continue to act as securities depository for the 2018C Bonds and a successor securities depository is not identified to replace DTC, the City will cause fully registered definitive 2018C Bonds to be delivered to DTC. The City may decide to discontinue use of the system of book-entry only transfers through DTC in accordance with DTC’s rules and, in that event, the City will cause fully registered definitive 2018C Bonds to be delivered in accordance with DTC’s rules and procedures.

THE CITY, THE CORPORATION AND THE TRUSTEE HAVE NO RESPONSIBILITY OR OBLIGATION WITH RESPECT TO (1) THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC OR ANY DTC PARTICIPANT; (2) THE PAYMENT BY DTC OR ANY DTC PARTICIPANT OF ANY AMOUNT DUE TO ANY BENEFICIAL OWNER IN RESPECT OF THE PRINCIPAL OF AND PREMIUM, IF ANY, AND INTEREST ON THE 2018C BONDS; (3) THE DELIVERY OR TIMELINESS OF DELIVERY BY DTC OR ANY DTC PARTICIPANT OF ANY NOTICE DUE TO ANY BENEFICIAL OWNER WHICH IS REQUIRED OR PERMITTED UNDER THE TERMS OF THE CONTRACT, THE 2014 INDENTURE OR THIS THIRD SUPPLEMENT TO BE GIVEN TO OWNERS; (4) THE SELECTION OF BENEFICIAL OWNERS TO RECEIVE PAYMENTS IN THE EVENT OF ANY PARTIAL PREPAYMENT OF THE 2018C BONDS; OR (5) ANY CONSENT GIVEN OR OTHER ACTION TAKEN BY DTC OR ITS NOMINEE, AS OWNER.

(d) The 2018C Bonds and any premiums on the prepayment thereof prior to maturity are payable at the designated corporate trust office of the Trustee on presentation and surrender. Interest with respect to the 2018C Bonds will be paid by the Trustee by check or draft mailed on the Interest Payment Date to each Owner as its name and address appear on the register kept by the Trustee at the close of business on the Record Date. At the written request of any Owner of at least \$1,000,000 in aggregate principal amount of the 2018C Bonds, principal and interest may be payable by wire transfer at the address specified in writing by the Owner by the Record Date. As long as Cede & Co. or another DTC nominee is the registered owner of the 2018C Bonds, the Trustee shall make all payments with respect to the 2018C Bonds by wire transfer in immediately available funds. CUSIP number identification with appropriate dollar amounts for each CUSIP number shall accompany all payments of principal of, premium, if any, and interest on any 2018C Bonds, whether by check or by wire transfer.

ARTICLE III

CREATION OF ACCOUNTS; APPLICATION OF PROCEEDS OF 2018C BONDS

Section 3.1 *Creation of Accounts.* An account within the Acquisition and Construction Fund is created and established with the Trustee to be designated the “*2018C Construction Account.*”

Section 3.2. *Application of Proceeds.* On the date of execution and delivery of the 2018C Bonds, from the proceeds of the 2018C Bonds, the Corporation will cause \$[Amount] (equal to the principal amount of the 2018C Bonds, plus net original issue premium of \$[Amount], less underwriters’ discount of \$[Amount]) to be deposited in the 2018C Construction Account of the Acquisition and Construction Fund. The Trustee shall disburse funds from the 2018C Construction Account of the Acquisition and Construction Fund to pay Costs of Acquisition and Construction on receipt of a requisition, the form of which is attached to the Third Contract Amendment as Exhibit A. Funds in the 2018C Construction Account will be invested in accordance with Article III of the 2014 Indenture.

The balance, if any, remaining in the 2018C Construction Account on completion of the 2018 Phase III Project, (i) may be applied by the Trustee for any purpose permitted by applicable law as directed in writing to the Trustee by a City Representative or (ii) absent the delivery of such direction to the Trustee, will be deposited to the Bond Fund and applied to the future Installment Payments coming due under the Contract with respect to the 2018C Bonds in the order of their due date.

ARTICLE IV

PREPAYMENT OF 2018C BONDS

Section 4.1 *Prepayment Dates and Prices.*

(a) ***Optional Prepayment.*** The 2018C Bonds maturing on or before April 1, 20[] are not subject to optional call and prepayment before maturity. The 2018C Bonds maturing after April 1, 20[] may be prepaid before their maturities, at the option of the City, from any funds that may be available for such purpose, either in whole or in part on any date on or after April 1, 20[] at a prepayment price equal to 100% of the principal amount of 2018C Bonds to be so prepaid together with accrued interest to the date fixed for prepayment, if any, without premium.

(b) **General.** When 2018C Bonds are prepaid in part under Section 4.1(a), the schedule of Installment Payments set forth in the Contract is to be recalculated as necessary by the Trustee in the manner required by Section 3.7 of the 2014 Indenture.

The Trustee shall pay to the Owners of 2018C Bonds so prepaid the amounts due on their respective 2018C Bonds at the designated corporate trust office of the Trustee on presentation and surrender of the 2018C Bonds; provided, however, that, if prepaid in part, the 2018C Bonds may be prepaid only in multiples of \$5,000.

(c) **Mandatory Sinking Fund Redemption.** [Insert terms if needed]

Section 4.2. Notice of Prepayment; Selection. Notice of prepayment identifying the 2018C Bonds or portions thereof to be prepaid shall be given by the Trustee in writing not less than 30 days nor more than 60 days before the date fixed for prepayment by first-class mail, postage prepaid (registered or certified mail or such other delivery as permitted by DTC's rules and procedures in the case of notice to DTC) (1) to DTC or its nominee or to the then-existing securities depositories, or (2) if DTC or its nominee or another securities depository is no longer the Owner of the 2018C Bonds, to the then-registered Owners of the 2018C Bonds to be prepaid at their addresses appearing on the registration books maintained by the Trustee, (3) to the Local Government Commission of North Carolina, and (4) to the Municipal Securities Rule Making Board (the "MSRB") in an electronic format as prescribed by the MSRB.

Notwithstanding the foregoing, (1) if notice is properly given, the failure to receive an appropriate notice shall not affect the validity of the proceedings for such prepayment, (2) the failure to give any such notice or any defect therein shall not affect the validity of the proceedings for the prepayment of the 2018C Bonds or portions thereof with respect to which notice was correctly given, and (3) the failure to give any such notice to the parties described in clauses (2), (3) and (4) in the preceding paragraph, or any defect therein, shall not affect the validity of any proceedings for the prepayment of the 2018C Bonds.

Notice of prepayment shall specify, as applicable, (1) that the 2018C Bonds or a designated portion thereof are to be prepaid, (2) the CUSIP numbers of the 2018C Bond or 2018C Bonds to be prepaid (unless all 2018C Bonds are being prepaid), (3) the prepayment date, (4) the prepayment price, (5) the prepayment agent's name and address, (6) the date of original execution and delivery date of the 2018C Bonds, (7) the interest rate with respect to the 2018C Bond, (8) the maturity date of the 2018C Bond and (9) if a prepayment in part, called amounts for prepaid 2018C Bonds.

Any notice mailed as provided in this Section is conclusively presumed to have been duly given, whether or not the Owner receives the notice.

If at the time of mailing of notice of prepayment there has not been deposited with the Trustee money sufficient to prepay all the 2018C Bonds or portions thereof called for prepayment, which money is or will be available for prepayment of 2018C Bonds, such notice will state that it is conditional on the deposit of the prepayment money with the Trustee not later than the opening of business on the prepayment date, and such notice is of no effect unless such money is so deposited.

In the case of any partial prepayment of 2018C Bonds, the City will select the maturity or maturities of the 2018C Bonds to be prepaid and DTC will select the 2018C Bonds within the same maturity pursuant to its rules and procedures or, if the book-entry system with DTC or any other securities depository has been discontinued, the Trustee will select the 2018C Bonds to be prepaid by lot in such manner as the Trustee in its sole discretion may deem appropriate. For this purpose, each

authorized denomination of principal amount represented by any 2018C Bond will be considered a separate 2018C Bond for purposes of selecting the 2018C Bonds to be prepaid.

Section 4.3. Prepayments. Before the date fixed for prepayment, funds shall be deposited with the Trustee to pay, and the Trustee is hereby authorized and directed to apply such funds to the payment of, the 2018C Bonds or portions thereof called, together with accrued interest thereon to the prepayment date and any required premium. On the giving of notice and the deposit of such funds for prepayment pursuant to this Third Supplement (which, in the case of prepayment under Section 3.1(a) above, may be less than the full principal amount of the Outstanding 2018C Bonds and accrued interest thereon to the prepayment date), interest with respect to the 2018C Bonds or portions thereof thus called shall no longer accrue after the date fixed for prepayment.

The 2018C Bonds or portions thereof called for prepayment are due and payable on the prepayment date at the prepayment price, together with accrued interest thereon to the prepayment date and any applicable prepayment premium. If any required notice of prepayment has been given and money sufficient to pay the prepayment price, together with accrued interest thereon to the prepayment date and any required prepayment premium, has been deposited with the Trustee, the 2018C Bonds or portions thereof so called for prepayment cease to be entitled to any benefit or security under the Indenture and the Owners of such 2018C Bonds have no rights in respect of such 2018C Bonds or portions thereof so called for prepayment except to receive payment of the prepayment price and accrued interest to the prepayment date from such funds held by the Trustee.

Anything in the Indenture to the contrary notwithstanding, if an Event of Default occurs and is continuing, there will be no prepayment of less than all of the 2018C Bonds Outstanding.

Section 4.4. Cancellation. All 2018C Bonds which have been prepaid are not to be redelivered but are to be canceled and burned or otherwise destroyed by the Trustee in accordance with Section 2.10 of the 2014 Indenture.

Section 4.5. Delivery of New 2018C Bonds On Partial Prepayment of 2018C Bonds. On surrender and cancellation of the 2018C Bonds called for prepayment in part only, a new 2018C Bond or 2018C Bonds of the maturity and interest rate and in authorized denominations, in an aggregate principal amount equal to the unprepaid portion thereof, is to be executed on behalf of the Corporation and authenticated and delivered by the Trustee. The City shall pay the expenses of such execution, authentication, delivery and exchange as Additional Payments under the Contract.

ARTICLE V MISCELLANEOUS

Section 5.1. Parties Interested Herein. Nothing in this Third Supplement expressed or implied is intended or will be construed to confer on, or to give to any person other than the City, the Trustee, the Corporation and the Owner, any right, remedy or claim under or by reason of this Third Supplement or any covenant, condition or stipulation hereof and all the covenants, stipulations, promises and agreements in this Third Supplement contained by and on behalf of the Corporation or the Trustee will be for the sole and exclusive benefit of the City, the Trustee, the Corporation and the Owners.

Section 5.2. Titles, Headings, Captions, Etc. The titles, captions and headings of the articles, sections and subdivisions of this Third Supplement have been inserted for convenience of reference only and will in no way modify or restrict any of the terms or provisions hereof.

Section 5.3. Severability. If any provision of this Third Supplement is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof. If any one or more of the provisions provided in this Third Supplement is construed to be invalid or unenforceable, the parties hereto shall, in the alternative, agree to replace such provision with a lawful provision which most nearly approximates the provision held to be invalid or unenforceable.

Section 5.4. Governing Law. This Third Supplement is governed by and to be construed in accordance with the laws and constitution of the State of North Carolina.

Section 5.5. Execution in Counterparts. This Third Supplement may be executed in several counterparts, each of which is an original and all of which constitute but one and the same instrument.

Section 5.6. Full Force and Effect. Except as supplemented by this Third Supplement, all provisions of the 2014 Indenture remain in full force and effect.

Section 5.7 Consent of Initial Purchaser, Underwriter or Remarketing Agent. Any person that holds any 2018C Bond or Bond issued hereafter as an Owner, including an initial purchaser, underwriter or remarketing agent that holds such obligation with an intent to sell or distribute such obligation in the future, shall be deemed to be the Owner of such obligation for the purpose of giving any consent required under Article IX of the 2014 Indenture, including any consent to an amendment or supplemental indenture that adversely affects the interests of other Owners. Notwithstanding anything herein or in the 2014 Indenture to the contrary, neither the City, the Corporation nor any initial purchaser, underwriter or remarketing agent providing its consent to an amendment or supplemental indenture pursuant to Article IX of the 2014 Indenture shall be required to provide any prior notice or other documentation regarding such amendment or supplemental indenture to any Owner of any Bond.

Section 5.8. E-Verify. The Trustee understands that “E-Verify” is a federal program operated by the United States 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 in accordance with Section 64-25(5) of the General Statutes of North Carolina, as amended. The Trustee uses E-Verify to verify the work authorization of its employees in accordance with Section 64-26(a) of the General Statutes of North Carolina, as amended. The Trustee will require that any subcontractor that it uses in connection with the transactions contemplated by this Series Indenture certify to such subcontractor's compliance with E-Verify.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Corporation and the Trustee have caused this Supplemental Indenture, Number 3, to be executed in their respective names, all as of the date first above written.

KANNAPOLIS CAPITAL CORPORATION

By: _____
Michael B. Legg
President

[COUNTERPART SIGNATURE PAGE TO SUPPLEMENTAL INDENTURE, NUMBER 3]

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____
Lisa M. Moorehead
Assistant Vice President

EXHIBIT A

FORM OF 2018C BONDS

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UNITED STATES OF AMERICA
STATE OF NORTH CAROLINA

**LIMITED OBLIGATION BOND
(CITY OF KANNAPOLIS, NORTH CAROLINA), SERIES 2018C
EVIDENCING A PROPORTIONATE UNDIVIDED INTEREST IN RIGHTS TO RECEIVE
REVENUES PURSUANT TO AN INSTALLMENT FINANCING CONTRACT
BETWEEN KANNAPOLIS CAPITAL CORPORATION AND THE
CITY OF KANNAPOLIS, NORTH CAROLINA**

| INTEREST RATE | MATURITY DATE | DATED DATE | CUSIP |
|---------------|---------------|------------|-------|
| | April 1, | , 2018 | |

REGISTERED OWNER: CEDE & CO.

PRINCIPAL SUM: DOLLARS

THIS CERTIFIES THAT THE REGISTERED OWNER (named above), or registered assigns, has a proportionate undivided interest in rights to receive certain revenues pursuant to a certain Installment Financing Contract dated as of August 1, 2014, (the “2014 Contract”), between KANNAPOLIS CAPITAL CORPORATION (the “Corporation”) and the CITY OF KANNAPOLIS, NORTH CAROLINA, a North Carolina municipal corporation (the “City”), as amended by Amendment Number One to the Installment Financing Contract dated as of January 15, 2018 (the “First Contract Amendment”) between the Corporation and the City, and as further amended by Amendment Number Two to the Installment Financing Contract dated as of April 1, 2018 (the “Second Contract Amendment”) between the City and the Corporation and as further amended by Amendment Number Three to the Installment Financing Contract dated as of November 1, 2018 (the “Third Contract Amendment” and together with the 2014 Contract, the First Contract Amendment and the Second Contract Amendment, the “Contract”) between the City and the Corporation. The interest of the Owner of this Limited Obligation Bond, Series 2018C (this “2018C Bonds”) is secured as provided in the Indenture of Trust dated as of August 1, 2014 (the “2014 Indenture”), between the Corporation and U.S. Bank National Association, as trustee (the “Trustee”), as supplemented and amended by Supplemental Indenture, Number 1 dated as of January 15, 2018 (the “First Supplement”) between the Corporation and the Trustee, and as further supplemented and amended by Supplemental Indenture, Number 2 dated as of April 1, 2018 (the “Second Supplement”) between the Corporation and the Trustee and as further supplemented and amended by Supplemental Indenture, Number 3 dated as of November 1, 2018 (the “Third Supplement” and together with the 2014 Indenture, the First Supplement and the Second Supplement, the “Indenture”) between the Corporation and the Trustee for the registered owner of the 2018C Bonds (the “Owner”), by which the rights (with certain exceptions) of the Corporation, under the Contract, have been assigned by the Corporation to the Trustee for the benefit of the Owner. Pursuant to the Contract and the Indenture, the Owner hereof is entitled to receive, solely out of and to the extent available from the sources hereinafter identified, on the

Maturity Date stated above (or earlier as hereinafter provided), the Principal Sum stated above, and interest thereon from the Dated Date (shown above) at the interest rate per annum stated above, payable commencing on April 1, 2019, and semiannually thereafter on October 1 and April 1 in each year until payment in full of such Principal Sum. Principal with respect to this 2018C Bond is payable in lawful money of the United States of America at the designated corporate trust office of the Trustee located in Charlotte, North Carolina, or that of its successor; and interest with respect to this 2018C Bond is payable to the Owner hereof by check or draft of the Trustee, or its successor, to be mailed to such Owner at his or her address as it last appears in the registration books kept by the Trustee. Notwithstanding the foregoing, so long as Cede & Co. is the registered Owner of this 2018C Bond, the principal and interest with respect to this 2018C Bond shall be paid by wire transfer in immediately available funds on each principal payment date and interest payment date. Interest with respect to the Bonds will be paid by the Trustee by check mailed on the Interest Payment Date to each Owner as its name and address appear on the register kept by the Trustee at the close on the fifteenth day (whether or not a Business Day) of the month next preceding an Interest Payment Date.

The 2018C Bonds will be delivered by means of a book-entry system with no physical distribution of 2018C Bonds made to the public. One 2018C Bond for each maturity will be executed and delivered to The Depository Trust Company, New York, New York ("*DTC*"), and immobilized in its custody. A book-entry system will be employed, evidencing ownership of the 2018C Bonds in principal amounts in the denomination of \$5,000 or any integral multiple thereof, with transfers of beneficial ownership effected on the records of DTC and its participants pursuant to rules and procedures established by DTC. While DTC or its nominee is the registered owner of this 2018C Bond, payments of principal and interest will be made to DTC or its nominee in accordance with existing arrangements by wire transfer in immediately available funds. The City and the Trustee will not be responsible or liable for maintaining, supervising, or reviewing the records maintained by DTC, its participants or persons acting through such participants.

If (a) DTC determines not to continue to act as securities depository for the 2018C Bonds or (b) the City determines that the continuation of the book entry system of evidence and transfer of ownership of the 2018C Bonds would adversely affect the interests of the City or the beneficial owners of the 2018C Bonds, the City will discontinue the book entry system with DTC. If the City fails to identify another qualified securities depository to replace DTC, the Trustee will authenticate and deliver replacement 2018C Bonds in the form of fully registered bonds in accordance with DTC rules and procedures.

The City, the Corporation, and the Trustee do not have any responsibility or obligations with respect to (a) the accuracy of any records maintained by DTC; (b) the payment by DTC of any amount due to any beneficial owners in respect of the principal and interest with respect to the 2018C Bonds; (c) the delivery or timeliness of delivery by DTC of any notice which is required or permitted under the terms of the Contract or Indenture to be given to Owners; (d) the selection of Owners to receive payments in the event of any partial prepayment of the 2018C Bonds; or (e) any consent given or other action taken by DTC, or its nominee.

This 2018C Bonds is an Additional Bond executed, sold and delivered under the Indenture. EACH 2018C BOND EVIDENCES A PROPORTIONATE UNDIVIDED INTEREST IN THE RIGHT TO RECEIVE CERTAIN REVENUES UNDER THE CONTRACT. THE OBLIGATION OF THE CITY TO MAKE INSTALLMENT PAYMENTS AND ADDITIONAL PAYMENTS IS A LIMITED OBLIGATION OF THE CITY, PAYABLE SOLELY FROM CURRENTLY BUDGETED APPROPRIATIONS OF THE CITY; DOES NOT CONSTITUTE A GENERAL OBLIGATION OR OTHER INDEBTEDNESS OF THE CITY WITHIN THE MEANING OF THE CONSTITUTION OF THE STATE OF NORTH CAROLINA; AND DOES NOT CONSTITUTE A DIRECT OR INDIRECT PLEDGE OF THE FAITH AND CREDIT OR TAXING POWER OF THE CITY WITHIN THE MEANING OF THE CONSTITUTION OF THE STATE OF NORTH CAROLINA.

Limited Obligation Bonds (the "*Prior Bonds*") have been executed and delivered under the Indenture to finance certain facilities on behalf of the City, including, among other things, the acquisition, construction, equipping and furnishing of a city hall and law enforcement center located on the campus of the North Carolina Research Center, improvements to the property owned by the City located at 489 North Cannon Boulevard to provide for the use by the community college, other general enhancements and infrastructure improvements in the City's downtown and the replacement of two fire stations. The Outstanding Prior Bonds evidence proportionate undivided interests in rights to receive Revenues (as defined in the 2014 Contract) pursuant to the Contract. This 2018C Bonds is executed and delivered pursuant to the Indenture to pay the costs of the construction, equipping and furnishing of a sports and entertainment facility to be located in City's downtown and the execution and delivery of the 2018C Bonds. This 2018C Bonds, the Prior Bonds and any Additional Bonds that may be executed and delivered under the Indenture are parity obligations under the Indenture.

Under the Contract, the Corporation has agreed to advance to the City the Purchase Price (as defined in the Contract), the proceeds from which will be used to finance the Project, and the City has agreed to pay directly to the Trustee semiannual payments (the "*Installment Payments*") in repayment of the Purchase Price, the proceeds of which are required by the Indenture to be distributed by the Trustee to the payment of the principal, premium, if any, and interest with respect to the Bonds, including the 2018C Bonds. In addition to the Installment Payments, the City has agreed to make certain other payments (the "*Additional Payments*") sufficient to pay the fees and expenses of the Trustee and the Corporation and other expenses required to be paid by the City under the Contract. The City has covenanted in the Contract to pay the Installment Payments and the Additional Payments as they become due, and executed and delivered as security for that payment obligation the Deed of Trust and Security Agreement dated as of August 1, 2014 (the "*Deed of Trust*") from the City to the Deed of Trust trustee named therein (the "*Deed of Trust Trustee*") for the benefit of the Corporation with respect to the Mortgaged Property (as defined in the Contract) including a prior notice of extension of the Deed of Trust in conjunction with the issuance of Prior Bonds and a notice of extension of the Deed of Trust in conjunction with the issuance of the 2018C Bonds. If the Contract is terminated by reason of an Event of Default (as defined in the Contract), the principal amount of the Bonds, including this 2018C Bonds, and the interest with respect thereto will be payable from such money, if any, as may be available for such purpose, including any money received by the Trustee from the sale, lease, sublease or other disposition of the Mortgaged Property pursuant to the Deed of Trust. The Contract may also be terminated if the City exercises its option to prepay in full the Purchase Price. If the City prepays the Purchase Price in full, the proceeds thereof are required to be used to pay the principal, premium, if any, and interest with respect to the Bonds as provided in the Contract. Reference is hereby made to the Contract and the Indenture for a description of the rights, duties and obligations of the City, the Corporation, the Trustee and the Owners, the terms on which the 2018C Bonds is secured, the terms and conditions on which the 2018C Bonds will be deemed to be paid at or before maturity or prepayment of the 2018C Bonds on the making of provision for the full or partial payment thereof, and the rights of the Owners on the occurrence of an Event of Default. All capitalized, undefined terms used herein have the meanings ascribed thereto in the Contract and the Indenture.

Subject to the execution and delivery of any Additional Bonds in accordance with the Indenture, if the City pays all Installment Payments due under the Contract, and otherwise complies with its obligations under the Contract, the Indenture and the Contract provide that the Trustee shall release the lien of the Indenture.

The 2018C Bonds are executed and delivered solely as fully registered bonds without coupons in denominations of \$5,000 and any integral multiple thereof.

This 2018C Bond is transferable by the Owner hereof in person or by his or her attorney duly authorized in writing on the registration books kept at the designated corporate trust office of the Trustee on surrender of this 2018C Bond together with a duly executed written instrument of transfer satisfactory to the Trustee. On such transfer, a new fully registered 2018C Bond or Bonds without coupons of the same maturity, of authorized denomination or denominations, for the same aggregate principal amount, will be executed and delivered to the transferee in exchange herefor, all on payment of the charges and subject to the terms and conditions set forth in the Indenture. The Trustee shall deem the person in whose name this 2018C Bond is registered as the absolute owner hereof, whether or not this 2018C Bond shall be overdue, for the purpose of receiving payment and for all other purposes, and neither the County nor the Trustee shall be affected by any notice to the contrary.

The 2018C Bonds maturing on or before April 1, 20[] are not subject to optional call and prepayment before maturity. The 2018C Bonds maturing after April 1, 20[] may be prepaid before their maturities, at the option of the City, from any funds that may be available for such purpose, either in whole or in part on any date on or after April 1, 20[] at a prepayment price equal to 100% of the principal amount of 2018C Bonds to be so prepaid together with accrued interest to the date fixed for prepayment, if any, without premium.

[Insert mandatory sinking fund redemption provisions, if applicable]

In the case of any partial prepayment of 2018C Bonds, the City will select the maturity or maturities of the 2018C Bonds to be prepaid and DTC will select the 2018C Bonds within the same maturity pursuant to its rules and procedures or, if the book-entry system with DTC or any other securities depository has been discontinued, the Trustee will select the 2018C Bonds to be prepaid by lot in such manner as the Trustee in its sole discretion may deem appropriate.

On the giving of notice and the deposit of such funds for prepayment pursuant to the Third Supplement, interest with respect to the 2018C Bonds or portions thereof thus called shall no longer accrue after the date fixed for prepayment. The 2018C Bonds or portions thereof called for prepayment are due and payable on the prepayment date at the prepayment price, together with accrued interest thereon to the prepayment date and any applicable prepayment premium. If any required notice of prepayment has been given and money sufficient to pay the prepayment price, together with accrued interest thereon to the prepayment date and any required prepayment premium, has been deposited with the Trustee, the 2018C Bonds or portions thereof so called for prepayment cease to be entitled to any benefit or security under the Indenture and the Owners of such 2018C Bonds have no rights in respect of such 2018C Bonds or portions thereof so called for prepayment except to receive payment of the prepayment price and accrued interest to the prepayment date from such funds held by the Trustee.

The Indenture permits amendments thereto and to the Contract and the Deed of Trust on the agreement of the Corporation and the Trustee and with the approval of the Owners of not less than a majority or, in certain instances, 100% in aggregate principal amount of the Bonds at the time Outstanding. The Indenture also contains provisions permitting the Corporation and the Trustee to enter into amendments to the Indenture and the Contract without the consent of the Owners of the Bonds for certain purposes.

Any consent or request by the Owner of this 2018C Bond is conclusive and binding on such Owner and on all future Owners of this 2018C Bond and of any Bond executed and delivered on the transfer of this 2018C Bond, whether or not notation of such consent or request is made on this 2018C Bond.

This 2018C Bond is executed and delivered with the intent that the laws of the State of North Carolina shall govern its legality, validity, enforceability and construction.

This 2018C Bond is not entitled to any right or benefit under the Indenture, or valid or obligatory for any purposes until this 2018C Bond has been authenticated by the execution by the Trustee, or its successors as Trustee, of the certificate of authentication inscribed hereon.

IN WITNESS WHEREOF, the KANNAPOLIS CAPITAL CORPORATION has caused this 2018C Bonds to be executed with the manual or facsimile signature of its President and its corporate seal or a facsimile thereof to be impressed or imprinted hereon and attested with the manual or facsimile signature of its Secretary, all as of the Dated Date set forth above.

KANNAPOLIS CAPITAL CORPORATION

By: _____ [SEAL]
Michael B. Legg
President

Attest:

Eric Davis
Secretary

CERTIFICATE OF AUTHENTICATION

This is one of the Limited Obligation Bonds, Series 2018C evidencing a proportionate undivided interest in rights to receive Revenues pursuant to the within-mentioned Contract and Indenture.

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

Dated: November __, 2018

By: _____
Assistant Vice President

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

(Please print or typewrite Name and Address,
including Zip Code, and Federal Taxpayer Identification or
Social Security Number of Assignee)

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints

Attorney to register the transfer of the within Bond on the books kept for registration thereof, with full
power of substitution in the premises.

Dated: _____

Signature guaranteed by:

NOTICE: Signature must be guaranteed by a Participant in the Securities Transfer Agent Medallion Program (“*Stamp*”) or similar program.

NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within Bond in every particular, without alteration, enlargement or any change whatever.

TRANSFER FEE MAY BE REQUIRED



**City of Kannapolis
City Council Meeting
September 24, 2018
Staff Report**

TO: Mayor and City Council
FROM: Eric Davis, Finance Director
TITLE: Budget Ordinance Amendment

A. Action Requested by City Council

Motion to approve an Ordinance amending the Budget in the amount of \$46,000,000.

B. Required Votes to Pass Required Action

C. Background

D. Fiscal Considerations

E. Policy Issues

F. Legal Issues

G. Alternative Courses of Action and Recommendation

ATTACHMENTS:

File Name

□ Budget_Amendment_#19-9_\$46_000_000.pdf

CITY OF KANNAPOLIS, NORTH CAROLINA
ORDINANCE AMENDING THE SPORTS & ENTERTAINMENT COMPLEX
CAPITAL PROJECT ORDINANCE
Amendment #19-9

BE IT ORDAINED by the City Council of the City of Kannapolis, North Carolina meeting in open session this 24th day of September 2018, that the following amendment to the Sports & Entertainment Complex Capital Project Ordinance for the City of Kannapolis, North Carolina is hereby adopted:

FUND 810: SPORTS & ENTERTAINMENT COMPLEX

SECTION I: Increase Fund Revenue Estimate as follows:

Increase funds from Debt Proceeds (81095-39000) \$ 46,000,000

SECTION II: Increase Fund Expenditures as follows:

Capital Outlay (81000-59200) \$ 46,000,000

This Ordinance is approved and adopted this 24th day of September, 2018.

Milton D. Hinnant, Mayor

ATTEST:

Bridgette Bell, MMC, NCCMC
City Clerk



**City of Kannapolis
City Council Meeting
September 24, 2018
Staff Report**

TO: Mayor and City Council
FROM: Eric Davis, Finance Director
TITLE: Resolution declaring the intent of the City to reimburse itself for capital expenditures

A. Action Requested by City Council

Motion to approve a Resolution Declaring the Intent of the City to Reimburse Itself for Capital Expenditures incurred in connection with the Proceeds of Certain Tax-Exempt Obligations to be issued.

B. Required Votes to Pass Required Action

C. Background

D. Fiscal Considerations

E. Policy Issues

F. Legal Issues

G. Alternative Courses of Action and Recommendation

ATTACHMENTS:

File Name

▢ Resolution_declaring_the_intent.pdf

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

WHEREAS, the City Council of the City of Kannapolis (the "*City*") has determined that it is in the best interest of the City to construct a Sports and Entertainment Venue (the "*Project*");

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

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

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

Section 1. ***Official Declaration of Intent.*** The City presently intends, and reasonably expects, to reimburse itself for the Original Expenditures incurred and paid by the City on or after the date occurring 60 days prior to the date of adoption of this Resolution from a portion of the proceeds of the Bonds. The City reasonably expects to issue the Bonds to finance all or a portion of the costs of the Project and the maximum principal amount of Bonds expected to be issued by the City to pay for all or a portion of the costs of the Project is \$ 52,000,000.

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

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

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

Adopted this 24th day of September, 2018.

Milton D. Hinnant, Mayor

Attest:

Bridgette Bell, MMC, NCCMC
City Clerk



**City of Kannapolis
City Council Meeting
September 24, 2018
Staff Report**

TO: Mayor and City Council
FROM: Mike Legg, City Manager and Walter M. Safrit, II, City Attorney
TITLE: Public Hearing on Third Amendment to the Master Development Agreement with Kannapolis Master Venture, LLC

A. Action Requested by City Council

1) Conduct a Public Hearing, and 2) Motion to approve the Resolution authorizing the City Manager to execute the Third Amendment to the Master Development Agreement with Kannapolis Master Venture, LLC.

B. Required Votes to Pass Required Action

Majority present at meeting

C. Background

After a brief delay in working through various project financing issues, the Demonstration Project is now ready to proceed. The Demonstration Project is one of the first steps in revitalizing downtown Kannapolis. The \$72 million project will include 275 residential units in a multi-story building, renovated historic buildings, new street level retail, a new hotel and a City funded and owned 417 space parking garage embedded in the development. The development site is nearly 4 acres of land bound by Main Street, B Street, Vance Avenue and West Avenue. The developer will purchase the land from the City, construct the entire project and the City will purchase the parking garage.

The developer, Lansing Melbourne Group (LMG) is based in Fort Lauderdale and has completed projects across the United States including Hyatt hotels, Verizon and Hewitt Packard facilities. LMG will develop the property in Kannapolis under the name Kannapolis Master Ventures, LLC.

The amendments to the current Master Development Agreement include the following new provisions:

1. City to Purchase Parking Garage upon Completion. Kannapolis Master Venture, LLC ("KMV" often referred to as "LMG") will fund and construct the parking deck with its own funds. City and KMV will execute a purchase agreement prior to the real estate closing providing that the City will

acquire the completed parking garage at the agreed upon purchase price. The purchase agreement will provide for the purchase of the parking garage at the final price when the entire mixed use structure is completed and the condominium unit is created for the parking garage. The City will secure LGC approval for permanent financing of the garage purchase prior to closing on the completed parking garage about two years from now. LGC approval is not a condition of execution of the purchase agreement or closing on the real estate.

2. Parking Garage Purchase Price. The purchase agreement provides for a purchase price of \$14,363,062. The purchase price will be a not-to-exceed amount that reflects the current budget. Below are the latest garage construction pricing calculations. KMV's carrying cost (the cost of funds in interest and fees) has been added to the calculation. A 5.5% interest rate is used. If the City were to fund the garage from the beginning of construction (the current agreement) then the City's would pay its own financing and interest costs. This construction window is very conservative – it shouldn't take the full 26 months contemplated.

The purchase agreement will provide that the City will receive an interest credit (\$1,960 per day) if the parking garage closing occurs sooner than the 26 months. The abatement and demolition budget will be included in the pre-development budget (see description in the related City Council Agenda item). The value to this amendment is the elimination of substantial risk which appears to be a good approach for the City. Finally, at closing on the garage, the City will receive a credit for any remaining unspent contingency, any unspent legal fees and any unspent costs of borrowing.

| | |
|---|---------------------|
| 5/16/18 Parking Garage Budget (including demolition of existing bldgs.) | \$11,091,667 |
| Design and Permitting Fees | \$656,856 |
| Developer Fee (LMG and DFI) | \$587,426 |
| Sub Total | \$12,335,949 |
| Contingency 2% | \$246,161 |
| Sub Total | \$12,582,070 |
| Financing Costs, Points, Legal Fees | \$251,641 |
| Sub Total: Amount to Finance | \$12,833,711 |
| Interest Cost (5.5%x26 months) | \$1,529,351 |
| Grant Total: Garage Purchase Price | \$14,363,062 |

At closing for the real estate (in December 2018), KMV will reimburse the City for its predevelopment expenses, including the demolition costs and design fees. Together this totals \$1,117,590.71. A detail of these costs is included with this summary.

3. Parking Garage Construction Deposit. At closing, the City will place \$1.2 million in escrow to serve as a security to protect KMV from a potential default by the City for not completing the purchase of the finished parking deck. This is the sole purpose of the funds. They will not be used for actual parking deck construction costs. Appropriate default provisions will be included in the purchase agreement. Upon the parking deck purchase, the escrow account will be closed and all funds (including interest earned) will apply to the purchase price (or will otherwise accrue

to the City).

4. Real Estate Purchase Price. KMV will pay the full purchase price of \$1,640,000 (including the previously planned City-financed portion of \$340,000). This closing will be subject to KMV demonstrating financing commitments to the satisfaction of the City. The security requirement for the previously financed amount has been removed.

5. Real Estate Closing. City and KMV will close on the real estate transfer no later than December 14, 2018 with an extension of 14 days available for either party. An additional extension of up to 60 days may be exercised, if agreed to by both parties. The closing will be contingent upon certain conditions including: the payment of \$1,640,000, evidence of the buyer's financing as determined by the City, and the conveyance of the property via a defeasible estate with a reversionary interest and appropriate conditions. Closing could occur sooner than December 14th if all conditions are met.

6. Non-Performance by KMV. Non-performance provisions are included in the MDA amendments. Full mobilization and construction of the parking deck and mixed use structure must commence within 30 days of closing with 30 additional days to cure the default (i.e., if construction does not start). If the property closing is December 14th this would mean construction has to begin by February 14, 2018 without penalty. After this 60 day default period, the City's remedy will be the reversion of the property interest back to the City at the original purchase price less reasonable costs incurred by the City. If KMV defaults prior to closing (i.e., does not close due to not completing pre-closing requirements) then the City would receive \$750,000 in damages from KMV as well as the completed project design plans.

Schedule

Schedule

9/24/18

City Council approval of MDA amendments and approval a Change Order to the pre-development agreement for contractor mobilization and demolition of existing buildings.

12/14/18

Deadline for KMV to complete demolition of existing buildings (part of the amended pre-development agreement)

12/14/18

Deadline for KMV to close on the real estate transfer. Subject to proof of financing.

2/14/19

Projected deadline for KMV to begin construction on the parking deck/mixed use structure. After this date, if construction has not started – the City can start property reacquisition procedures. The specific date for these actions depends on actual real estate closing date.

D. Fiscal Considerations

See background section above.

E. Policy Issues

None.

F. Legal Issues

None.

G. Alternative Courses of Action and Recommendation

1. **Motion to approve the Resolution authorizing the City Manager to execute the Third Amendment to the Master Development Agreement with Kannapolis Master Venture, LLC (Recommended).**
2. Motion to table to a future meeting.
3. Take no action. This might have a negative impact on the project moving forward.

ATTACHMENTS:

File Name

- ❑ Resolution_approving_Amendment_and_Execution_of_Master_Development_Agreement_with_KMV.pdf
- ❑ Third_Amendment_to_Contract_For_Construction_Manager_(City-Barton_Malow)_(9-24-18).pdf
- ❑ Kannapolis_SEV_Project_Summary_09.24.18.pdf
- ❑ rev_v2_Kannapolis_KMV_-_Public_Hearing_Notice_9-7-18_FINAL.pdf
- ❑ Aerial.JPG
- ❑ V2_1.JPG
- ❑ V6.JPG
- ❑ V2_2.JPG

**RESOLUTION APPROVING THE AMENDMENT AND EXECUTION OF
THE MASTER DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF KANNAPOLIS AND
KANNAPOLIS MASTER VENTURE, LLC**

WHEREAS, North Carolina General Statutes, Chapter 160A, Article 19, Part 8, authorizes municipalities to engage in appropriations and expend funds for community development programs and activities for restoration or preservation of blighted, deteriorated, undeveloped or inappropriately developed properties for sound community development and growth; and

WHEREAS, North Carolina municipalities are encouraged to acquire such properties for public purposes or community development projects with redevelopers for residential, recreational, commercial or other uses for the general benefit of its citizens; and

WHEREAS, the Kannapolis City Council adopted a Master Development for Downtown Kannapolis on July 25, 2016 setting forth a vision for the City's central business district and engaged a redeveloper to create a downtown development project intended to achieve one or more of the goals contained in the Master Development Plan, which endeavor resulted in the proposed Master Development Agreement between the City and Kannapolis Master Venture, LLC; and

WHEREAS, the City Council, held a public hearing concerning the Master Development Agreement in accordance with statutory requirements and by Resolution #_____ dated January 23, 2017, adopted the Master Development Agreement, a copy of which is attached hereto; and

WHEREAS the City Council has held another public hearing concerning proposed amendments to the Master Development Agreement and has fully complied with statutory requirements governing amendments to development agreements; and

WHEREAS the City Council, by this resolution, seeks to amend the Master Development Agreement in accordance with the terms and conditions contained in the Amended Master Development Agreement, a copy of which is attached hereto; and

WHEREAS, the City Council, held a public hearing concerning the Amended Master Development Agreement and having satisfied the statutory requirements, the City Council proposes to adopt the Amended Master Development Agreement and the project contemplated therein shall be implemented as amended.

NOW, THEREFORE, BE IT RESOLVED, that the Master Development Agreement dated January 23, 2017, by and between the City of Kannapolis and Kannapolis Master Venture, LLC, is hereby amended and adopted, as amended; and

BE IT FURTHER RESOLVED, that the City Manager is authorized to execute the Amended Master Development Agreement, including the Garage Unit Purchase and Sale Agreement, and all other instruments and agreement necessary to consummate this Master Development Agreement on behalf of the City subject to the correction of clerical, typographical and other non-substantive changes, or modifications as may be necessary, desirable and consistent with the intent of this Resolution.

Adopted this the __ day of September, 2018.

Milton D. Hinnant, Mayor

ATTEST:

Bridgette Bell, MMC, NCCMC
City Clerk

**THIRD AMENDMENT TO THE
CONTRACT FOR CONSTRUCTION MANAGER AT RISK
FOR THE CONSTRUCTION OF
THE DOWNTOWN SPORTS AND ENTERTAINMENT VENUE
AND INFRASTRUCTURE PROJECTS
BETWEEN CITY OF KANNAPOLIS, OWNER AND
BARTON MALOW COMPANY
CONSTRUCTION MANAGER AT RISK**

Pursuant to Articles 2.2 and 5.2 of the Standard Form Agreement between Owner and Construction Manager as Contractor (AIA Document A133-2009) dated April 13, 2017 (the "Contract") the Owner and Construction Manager hereby amend the Contract to establish a Guaranteed Maximum Price and Contract Time for the Downtown Sports and Entertainment Venue Component work as set forth below. The Downtown Sports and Entertainment Venue Component consists of the following Work, more specifically defined in the Contract Documents: earthwork, demolition, concrete, structural steel, exterior façade systems, interior finishes, mechanical systems, electrical and low voltage systems, plumbing systems, fire protection systems, sports lighting, playing field, landscaping

**ARTICLE 1 – GUARANTEED MAXIMUM PRICE
(DOWNTOWN SPORTS AND ENTERTAINMENT VENUE COMPONENT)**

The Construction Manager's Guaranteed Maximum Price ("GMP") for the Downtown Sports and Entertainment Venue Component of the Downtown Sports and Entertainment Venue and Infrastructure Project (the "Project"), including the estimated Cost of Work, as defined in the Contract, and the Construction Manager's Fee, as therein defined, is:

\$39,943,697

This GMP is an amount that that Contract Sum for the Downtown Sports and Entertainment Venue Component shall not exceed, subject to additions and deductions by Change Order as provided in the Contract Documents. This GMP is for the performance of the Work for the Downtown Sports and Entertainment Venue Component of the Project in accordance with the Contract Documents and the following additional documents incorporated herein by reference as the basis for the proposal in accordance with Article 2.2.1 and 2.2.3;

1. A list of the Drawings and Specifications, including all Addenda thereto, and the Contract Conditions;
2. A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.3.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
3. A statement of the proposed Guaranteed Maximum Price for the Downtown Sports and Entertainment Venue Component, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, and Construction Manager's contingency, Construction Manager's Fee and all other relevant items.
4. Change Order dated September 24, 2018. (Attached)
5. Barton Malow Company GMP proposal for the Downtown Sports and Entertainment Venue Component dated September 24, 2018.
6. The date by which Owner must accept the Guaranteed Maximum Price for the Downtown Sports and Entertainment Venue is October 8, 2018, or the effective date.

ARTICLE 2 – CONTRACT TIME

The Date of Substantial Completion for the Downtown Sports and Entertainment Venue Component shall be January 31, 2020.

IN WITNESS WHEREOF the parties hereto have executed this Second Amendment the ____ day of October, 2018.

CITY OF KANNAPOLIS

By: _____
Michael B. Legg, City Manager

Date: _____

BARTON MALOW COMPANY

By: _____
Name: _____
Title: _____

Date: _____

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

Eric Davis
Finance Director
City of Kannapolis

Date: _____

Project Location: **Downtown Sports & Entertainment Venue**
 Project Location: **Kannapolis, NC**
 Date of Report: **24-Sep-18**
 Gross Building Area: (SF) 162,400
 Enclosed Building Area: (SF) 48,617
 Secondary Unit: (Capacity) 4,930

GMP Estimate

**Barton
Malow**

Project Summary

CITY OF KANNAPOLIS

| | | % of Project Total |
|--|---------------------|-----------------------|
| Baseline Construction Total - BMC GMP Estimate | \$40,112,697 | 77.14% |
| City Provided FF&E / Off-site Improvements* | | |
| Asbestos Survey & Abatement | \$600,000 | 1.15% |
| Fixed Sports Seating | \$479,600 | 0.92% |
| Food Service Equipment & Installation | \$1,377,965 | 2.65% |
| Scoreboard/Ribbon Board/Video Boards | \$1,090,000 | 2.10% |
| Loose Exterior Spectator Seating | \$138,964 | 0.27% |
| Public Artwork | \$100,000 | 0.19% |
| Kids Recreation Area | \$340,000 | 0.65% |
| Team Store & Team Offices Build-out Allowance | \$1,080,798 | 2.08% |
| Subtotal | \$5,207,327 | 10.01% |
| Project Administration* | | |
| A&E Services | \$2,528,000 | 4.86% |
| Financing / Debt Issuance / Legal / Accounting | \$625,000 | 1.20% |
| Project Advisory Services | \$425,000 | 0.82% |
| Owners Contingency | \$2,000,000 | 3.85% |
| Design Contingency | \$500,000 | 0.96% |
| Builder's Risk & Property Insurance | \$50,000 | 0.10% |
| Permits & Fees (0.5% of Baseline Construction) | \$200,563 | 0.39% |
| Third Party Inspections (0.75% of Baseline Construction) | \$300,845 | 0.58% |
| Project Administration & Marketing | \$0 | 0.00% |
| Commissioning | \$50,000 | 0.10% |
| Subtotal | \$6,679,409 | 12.85% |
| Total by City of Kannapolis: | \$51,999,433 | 100.00% |

* Budget values noted above provided and/or confirmed by City of Kannapolis.



NOTICE OF PUBLIC HEARING

NOTICE IS GIVEN that the Kannapolis City Council (“City Council”) will conduct a public hearing relating to the City of Kannapolis (“City”) entering into amendments to the Master Development Agreement (“Agreement”) previously approved by the City Council on January 23, 2017, pursuant to North Carolina General Statutes §§ 160A-457, and 160A-458.3 with Kannapolis Master Venture, LLC or an associated affiliate (hereinafter, “KMV”). Pursuant to the Agreement, the City intends to convey to KMV certain unimproved real property consisting of approximately 3.81 acres, comprised of Cabarrus County Tax Parcel Numbers:

56136904880000; 56136913010000; 56136902640000; 56136901270000; and 56135981640000,

located in the City’s Central Business District (“Property”). The Agreement provides for the conveyance of the Property, including all buildings and related improvements, together with all rights, title, privileges, and easements appurtenant to the land, including without limitation, all of the City’s rights, title, and interest in and to land underlying and the airspace overlaying any public or private ways or streets crossing or abutting said real property as bounded by S. Main Street, Vance Street, West Avenue, and West B Street, as a downtown development (“Project”) for the purpose of (i) improving economic development of the community, (ii) promoting residential housing construction, (iii) providing parking to support the needs of the surrounding community, and (iv) continuing the positive impact and significant effect on the revitalization of downtown Kannapolis, North Carolina. Following construction of the Project, KMV shall subdivide the Property and convey to the City, in fee simple, the parking garage structure and the land upon which the parking garage sits. KMV will retain certain air rights above the parking garage to accommodate residential housing.

The City proposes to convey said Property to KMV for its appraised market value of \$1,640,000, and the City intends to approve the conveyance following the public hearing. The City will demolish certain existing buildings on the Property prior to the conveyance.

In addition, as a part of the downtown development project, KMV intends to construct a 400-space public parking garage which will be conveyed to the City for a guaranteed maximum price currently estimated to be \$12,582,669. The City will lease or license 275 parking spaces in the parking garage to KMV. Per the terms of a Garage Parking Agreement, the City will charge KMV a parking rate as determined by the City Council. Following the public hearing, the City also intends to approve a license or lease to KMV for its use, certain reserved parking spaces in the parking garage.

A copy of the proposed Agreement, including amendments and attachments will be available for public inspection at the office of the City Manager, located in City Hall, 401 Laureate Way, Kannapolis, North Carolina 28081, during regular business hours.

The City Council intends to accept public input and vote on the conveyance of the real property and the license for use of the reserved parking spaces following the public hearing. The vote may delegate to the City Manager the authority to make minor changes to the Agreements during the course of the Project.

The hearing will be held in the City Council Chambers located at City Hall, 401 Laureate Way, Kannapolis, North Carolina 28081, beginning at or after 6:00 p.m. on September 24, 2018. At the time and place fixed for this public hearing, the City will discuss the terms of the Master Development Agreement as amended and related documents and the City Council will receive public comment on the Agreement.

Bridgette Bell, City Clerk
City of Kannapolis
North Carolina

PUBLISH SEPTEMBER 7 & 14, 2018











**City of Kannapolis
City Council Meeting
September 24, 2018
Staff Report**

TO: Mayor and City Council
FROM: Mike Legg, City Manager
TITLE: Change Order for additional Pre-Development Work on the Demonstration Project

A. Action Requested by City Council

Motion to authorize the City Manager to execute a change order to the Demonstration Project Parking Garage Construction Agreement to facilitate additional pre-development scope of services including mobilization, existing building demolition, and site fencing.

B. Required Votes to Pass Required Action

Majority present at meeting

C. Background

The funding authorized by this action will support the acceleration of initial work on the Demonstration Project, specifically related to construction of the parking garage and demolition of existing buildings. It will be paid back to the City upon completion then rolled into the long term financing of the parking garage.

KMV will commence with mobilization and demolition of existing buildings using pre-development agreement funding (City funds – same as the current MDA) as soon as the pre-development budget change order is approved. In doing so, demolition is planned to begin within the next few weeks with a substantial completion date of December 14, 2018. The change order will include \$334,960 for abatement and demolition. The remainder of the funds will be for contractor mobilization, general conditions (overhead), developer and contractor fees, and insurance. Some of these costs are actually the start-up funds for construction of the parking garage. Some of the funds are a pro rata share for the demolition phase as compared to the larger parking garage construction project.

D. Fiscal Considerations

The total amount of the change order is \$489,222.41.

| |
|-------------------------|
| E. Policy Issues |
|-------------------------|

None.

| |
|------------------------|
| F. Legal Issues |
|------------------------|

None.

| |
|--|
| G. Alternative Courses of Action and Recommendation |
|--|

1. **Motion to authorize the City Manager to execute a change order to the Demonstration Project Parking Garage Construction Agreement to facilitate additional pre-development scope of services including mobilization, existing building demolition, and site fencing. (Recommended).**
2. Table the action to a future meeting.
3. Take no action.

ATTACHMENTS:

File Name

- ❏ change_order_detail_9_24_18.pdf
- ❏ KMV-City_Pre_Development_Agreement_Change_Order_1.pdf

Pass Through Agreement**Change Order 1 Detail****Pricing for Demolition and Demonstration Project Mobilization**

| Item | Vendor | Original | Change Order #1 | Revised Total |
|------------------------------|---------------|---------------------|----------------------------|--------------------------|
| Design Fee (schematic to CD) | Built Form | \$393,446.00 | | \$393,446.00 |
| Permit Allowance | City/County | \$75,000.00 | | \$75,000.00 |
| Asbestos and Env Survey | Undetermined | \$10,000.00 | | \$10,000.00 |
| Mobilization | Kaufman Lynn | | \$50,000.00 | \$50,000.00 |
| Demolition | Kaufman Lynn | | \$334,960.00 | \$334,960.00 |
| General Conditions | Kaufman Lynn | | \$45,109.09 | \$45,109.09 |
| Insurance | Kaufman Lynn | | \$5,375.86 | \$5,375.86 |
| General Contractor Fee | Kaufman Lynn | \$20,000.00 | \$26,126.70 | \$46,126.70 |
| Bond | Kaufman Lynn | | \$4,354.45 | \$4,354.45 |
| Preconstruction Services | Undetermined | \$50,000.00 | | \$50,000.00 |
| Contingency | Undetermined | \$50,000.00 | | \$50,000.00 |
| Developer Fee | KMV | \$23,937.84 | \$18,637.04 | \$42,574.88 |
| Developer Fee | DFI | \$5,984.46 | \$4,659.26 | \$10,643.72 |
| Grand Total | | \$628,368.30 | \$489,222.41 | \$1,117,590.71 |



AIA® Document G701™ – 2017

Change Order

PROJECT: (Name and address)
@THECENTER Parking Facility

200 West Avenue
Kannapolis, NC

OWNER: (Name and address)
City of Kannapolis, North Carolina
401 Laureat Way
Kannapolis, NC 28081
Attn: Mike Legg, City Manager

CONTRACT INFORMATION:
Contract For: General Construction of
Parking Garage
Date: April 26, 2017

ARCHITECT: (Name and address)
Built Form

935 W. Chestnut Street, Suite 520
Chicago, Illinois 60642

CHANGE ORDER INFORMATION:
Change Order Number: 001

Date: September 24, 2018

CONTRACTOR: (Name and address)
Kannapolis Master Venture, LLC

2420 E. Sunrise Blvd, #90
Fort Lauderdale, FL 33304

THE CONTRACT IS CHANGED AS FOLLOWS:

(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits. Also include agreed upon adjustments attributable to executed Construction Change Directives.)

Add to the pre development scope of services mobilization, demolition, site fencing and associated insurances and bonds to remove existing buildings from the demonstration project site per the attached schedule of values.

| | | |
|--|----|--------------|
| The original Contract Sum was | \$ | 628,368.30 |
| The net change by previously authorized Change Orders | \$ | 0.00 |
| The Contract Sum prior to this Change Order was | \$ | 628,368.30 |
| The Contract Sum will be increased by this Change Order in the amount of | \$ | 489,222.41 |
| The new Contract Sum including this Change Order will be | \$ | 1,117,590.71 |

The Contract Time will be increased by Zero (0) days.

The new date of Substantial Completion will be 12/14/18 (demolition)

NOTE: This Change Order does not include adjustments to the Contract Sum or Guaranteed Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

Built Form, LLC

ARCHITECT: (Firm name)

SIGNATURE

Bob Bistry, Principal

PRINTED NAME AND TITLE

DATE

Kannapolis Master Venture, LLC

CONTRACTOR: (Firm name)

SIGNATURE

Peter Flotz, Managing Member

PRINTED NAME AND TITLE

DATE

City of Kannapolis

OWNER: (Firm name)

SIGNATURE

Mike Legg, City Manager

PRINTED NAME AND TITLE

DATE

Pass Through Agreement
Change Order 1 Detail
Pricing for Demolition and Demonstration Project Mobilization

| Item | Vendor | Original | Change Order #1 | Revised Total |
|------------------------------|--------------|---------------------|---------------------|-----------------------|
| Design Fee (schematic to CD) | Built Form | \$393,446.00 | | \$393,446.00 |
| Permit Allowance | City/County | \$75,000.00 | | \$75,000.00 |
| Asbestos and Env Survey | Undetermined | \$10,000.00 | | \$10,000.00 |
| Mobilization | Kaufman Lynn | | \$50,000.00 | \$50,000.00 |
| Demolition | Kaufman Lynn | | \$334,960.00 | \$334,960.00 |
| General Conditions | Kaufman Lynn | | \$45,109.09 | \$45,109.09 |
| Insurance | Kaufman Lynn | | \$5,375.86 | \$5,375.86 |
| General Contractor Fee | Kaufman Lynn | \$20,000.00 | \$26,126.70 | \$46,126.70 |
| Bond | Kaufman Lynn | | \$4,354.45 | \$4,354.45 |
| Preconstruction Services | Undetermined | \$50,000.00 | | \$50,000.00 |
| Contingency | Undetermined | \$50,000.00 | | \$50,000.00 |
| Developer Fee | KMV | \$23,937.84 | \$18,637.04 | \$42,574.88 |
| Developer Fee | DFI | \$5,984.46 | \$4,659.26 | \$10,643.72 |
| Grand Total | | \$628,368.30 | \$489,222.41 | \$1,117,590.71 |



**City of Kannapolis
City Council Meeting
September 24, 2018
Staff Report**

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

A. Action Requested by City Council

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

MOTION TO ADJOURN

B. Required Votes to Pass Required Action

C. Background

D. Fiscal Considerations

E. Policy Issues

F. Legal Issues

G. Alternative Courses of Action and Recommendation

ATTACHMENTS:

File Name

No Attachments Available