

**MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
November 13, 2018**

CALL TO ORDER

A regular meeting of the Boone Town Council was called to order on Tuesday, November 13, 2018 at 6:00 p.m. in the Council Chambers located at 1500 Blowing Rock Road. Mayor Rennie Brantz presided. Council members present were Mayor Pro-Tem Loretta Clawson, Lynne Mason, Sam Furgieue, Connie Ulmer and Marshall Ashcraft. Staff present were Town Manager John Ward, Town Clerk Nicole Worley, Public Works Director Rick Miller, Police Chief Dana Crawford, Fire Chief Jimmy Isaacs, Planning Director Jane Shook and Planner Marty Little. Town Attorney Allison Meade was also in attendance.

ANNOUNCEMENTS

Mayor Brantz welcomed all in attendance and asked anyone who wished to speak during public comment to please use the sign-up sheet.

Town Manager John Ward noted that the Touchdown Boone event scheduled for Friday, November 16th had been cancelled due to incoming snow and ice.

TENTATIVE AGENDA ADOPTION

Town Manager John Ward stated that he had no additions or deletions to the agenda. Mr. Furgieue stated that regarding the R3 and R4 properties presentation, he believed a time limit should be placed on the night's agenda to allow for Council to review the properties one by one, and then add an agenda item on Thursday's agenda and all meetings in the future until all properties have been discussed one by one. Ms. Mason suggested that the Planning Commission should be involved in the discussion of these properties. Mr. Furgieue disagreed, stating that the Planning Commission would have a say in the matter if there was direction from Council to re-zone properties. He added that he believed that since Council members were the Town's elected officials, that they should make the initial determination and that any resistance from property owners would be on the Council. Mayor Brantz suggested that he believed one meeting devoted to the discussion of these properties would be the most efficient, with Mr. Furgieue stating that he did not have an objection to addressing the properties all during one meeting, as long as they were each discussed individually. Ms. Meade suggested that Council amend the agenda to move discussion of this presentation to the final topic under Council Matters and that Council use whatever time was left before the meeting deadline to discuss as many properties as possible. Mr. Furgieue stated that he believed this matter to be a high priority, noting that the biggest conflicts he had ever witnessed in his time living in Boone arose from incompatible development invading neighborhoods. He continued to say that he would like to dedicate a certain amount of time during each Council meeting to the topic, then if there was additional time at the end of the meeting, discussion could be continued. Mr. Furgieue made a motion that Council begin review of the individual properties referenced in the R3 & R4 presentation during the November 15, 2018 Town Council meeting and that an hour be dedicated to the discussion of this topic in every regular Town Council meeting moving forward until each property in the presentation has been discussed. If there is additional time left over at the end of future regular Town Council meetings, that discussions continue until all properties have been discussed. Mayor Pro-Tem Clawson seconded the motion. Mr. Ward asked whether staff needed to prioritize agenda items in order to allow for an hour each meeting to discuss the properties in question. Mr. Furgieue stated that if items needed to be bumped in order to allow an hour for discussion, then items should be bumped and noted that he was worried about delaying the discussion of these properties until spring of 2019 since it may not be the most opportune time for Council to engage in discussion of a controversial issue. Ms. Mason proposed that Council schedule a meeting in the next month so that the matter could be given careful consideration. Mr. Furgieue stated he would be willing to withdraw his motion until discussion reached Item No. 8 under Council Matters (Approval of Meeting Dates for the FY 2019-2020 Planning Retreat), but he would be surprised if Council was able to meet again before the end of the year due to the number of meetings already scheduled. Council Member Furgieue withdrew his previous motion. Mr. Furgieue made a second motion that the scheduling of discussions regarding the R3 & R4 properties referenced in the presentation prepared by the Planning Department be added to Item No. 8 under Council Matters (Approval of Meeting Dates for the FY 2019-2020 Planning Retreat). Council Member Mason seconded this motion.

VOTE: Aye: All
 Nay: None

Upon a motion by Council Member Furgieue, seconded by Council Member Mason, Council moved to approve the tentative agenda as amended.

VOTE: Aye: All
 Nay: None

PUBLIC COMMENT

There was no one signed up to speak during the Public Comment period.

REQUESTED APPEARANCES

WATAUGA COUNTY - REQUEST FOR BUILDING PERMIT FOR DUGOUT REMODELING

County Manager Deron Geouque presented a request to Council to allow the County to obtain a building permit for the remodeling of dugouts at the softball fields located off of Hunting Hills Drive. Mr. Geouque explained that the request came before Council pursuant to language contained in the agreement between the Town and the County and that there would be no cost to the Town for this construction. Upon a motion by Mayor Pro-Tem Clawson, seconded by Council Member Furguele, Council voted to approve this request as presented.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Loretta Clawson, Mayor Pro-Tem
SECONDER:	Sam Furguele, Council Member
AYES:	Mason, Clawson, Furguele, Ulmer, Ashcraft

APPROVAL OF ITEMS ON CONSENT AGENDA

Council Member Mason asked that Item No. 1 on the Consent Agenda be removed and discussed as the first item under Council Matters. Council Member Furguele made a motion, which was seconded by Mayor Pro-Tem Clawson, to approve the following items on the Consent Agenda:

1. Minutes - October 16, 2018 Regular Town Council Meeting
2. Easements for Storm Water Utility Maintenance

VOTE: Aye: All
 Nay: None

COUNCIL MATTERS

Council Member Mason made a motion that the minutes for the October 10, 2018 special Town Council meeting be amended to strike the term "DFI" from the direction given to staff from Council. Council Member Furguele seconded the motion.

VOTE: Aye: All
 Nay: None

CONSIDERATION OF CASE PL02068-110118 TEMPORARY COLLEGE UDO TEXT AMENDMENT

Planning Director Jane Shook noted that the Town Attorney had some concerns with this UDO text amendment that could be attributed to the fact that there was not a full understanding of how the space was to be used by the University. Ms. Meade noted that she had concerns with defining the use as presented as a temporary use. She gave examples of other uses which were defined as temporary uses which included construction trailers, yard sales, and special cell towers erected during emergencies and stated that she did not believe this particular use qualified as a temporary use and that she was unaware of any other use that was handled in this manner. Council Member Ashcraft asked how this situation differed from past instances of the University being allowed to use industrial-zoned space, to which Ms. Meade responded that in certain instances in the past when the University was allowed to use industrial space, it was because there was a pressing need with a legitimate,

temporary end-in-sight use. After brief discussion regarding the requirement of a special use permit for temporary university-operated community enterprise, Council Member Ashcraft made a motion to direct staff to make the following revisions to the text presented:

- Section 15.70 College or University-Operated Community Enterprise was created
- Addition of the word "alone" at the end of subsection A2 to read: "The organization operating the community enterprise shall clearly demonstrate that the enterprise is dedicated to meeting the civic, cultural, or informational needs of the community as a whole as opposed to the needs of the college or university *alone*".
- Make the words "college" and "university" improper throughout the text
- Make clear that the only offices which would be allowed are ones that serve the temporary community enterprise itself
- Amend language in subsection A4 to make clear that no Temporary Community Enterprise could be located within 500 (or 1000) feet of another lot containing the same use
- Remove the term "temporary" throughout the text
- Remove the term "substantial" in subsection A2
- Strike subsection A3
- Strike parenthesis in subsection A4
- Strike subsection A7

Council Member Mason seconded the motion.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Marshall Ashcraft, Council Member
SECONDER:	Lynne Mason, Council Member
AYES:	Mason, Clawson, Furguele, Ulmer, Ashcraft

CONSIDERATION OF ENCROACHMENT AGREEMENT - 191 STADIUM DRIVE

Public Works Director Rick Miller presented an Encroachment Agreement for Town-owned property located at 191 Stadium Drive in order to allow Appalachian State University to install a high-pressure steam line, pumped condensate line, storm drain line, storm drain inlet, water lines and sidewalk at no cost to the Town. Council Member Fugieule made a motion, which was seconded by Mayor Pro-Tem Clawson to approve the encroachment agreement as presented.

STATE OF NORTH CAROLINA

COUNTY OF WATAUGA

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT is made and entered into this the ____ day of November, 2018, by and between the TOWN OF BOONE ("Town"), and APPALACHIAN STATE UNIVERSITY ("Encroacher").

W-I-T-N-E-S-S-E-T-H

THAT WHEREAS, Encroacher desires to encroach on public land (being public sidewalks and a public street hereinafter referred to as the "public land") located at 191 Stadium Drive located in the Town of Boone, North Carolina with the following encroaching facilities: High Pressure Steam Line, Pumped Condensate Line, Storm Drain Line, Storm Drain Inlet, Water Line, and Sidewalk as further shown for illustration purpose on the attached Exhibit A (hereinafter referred to as the "encroaching facility"); and

WHEREAS, it is to the material advantage of Encroacher to effect this encroachment, and the Town, in the exercise of authority conferred upon it by statute and ordinance, is willing to permit the encroaching facility on public land as specifically described in the foregoing paragraph (hereinafter, "encroachment"), subject to the conditions of this agreement;

NOW, THEREFORE, IT IS AGREED that the Town hereby grants to Encroacher the right and privilege to make this encroachment upon the following conditions, to wit:

A. That Encroacher, intending to bind itself, its successors and assigns and hereby obligating itself, its successors, and its assigns, agrees that it will:

1. comply with all pertinent provisions of the North Carolina State Building Code, the Town of Boone Unified Development Ordinance and Town of Boone Municipal Code, and such other applicable laws, regulations and ordinances;
2. install and maintain the encroaching facility in such safe and proper condition that it will not interfere with or endanger travel upon said public land, nor obstruct nor interfere with the proper maintenance thereof;
3. reimburse the Town for the costs incurred for any repairs or maintenance to its roadways, sidewalks and other structures resulting from the installation and existence of the encroaching facility;
4. promptly remove or alter the encroaching facility in order to conform to the requirements of the Town, without any cost to the Town, if at any time the Town shall require the removal of or changes in the location of the encroaching facility;

5. provide during construction and any subsequent maintenance proper signs, signal lights, flagmen and/or other warning devices, as necessary or as requested by the Town's Director of Public Works or his or her designee, for the protection of the public and in the case of encroachment into a street right of way, in conformance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways and amendments or supplements thereto;
 6. to the extent permitted by North Carolina law, indemnify and hold harmless the Town, its officers, agents and employees from and against any claims, losses, liabilities or damages arising out of or resulting from construction and maintenance of the encroaching facility, as well as from and against any and all claims, demands, suits, causes of action, or other assertion of responsibility, however denominated, for personal injury, death, or damage to property arising out of or in any way related to the encroachment or encroaching facility; *provided*, that notwithstanding any other provision of this Agreement, the liability of the University, as an agent of the State of North Carolina, for any injury or damage arising out of this Agreement or the University's performance thereof is subject to the limitations of the North Carolina State Tort Claims Act, NCGS § 143-291, et seq, ("Act");
 7. require its contractor(s) who are installing or constructing the encroaching facility to add the Town as an additional insured on the contractor's general liability policy, requiring the insurance carrier to give the Town at least 10 days notice of cancellation or reduction of coverage, and provide to the Town evidence of such coverage at least 10 days prior to the beginning of installation or construction.
- B. Encroacher, intending to bind itself, its successors and assigns and hereby obligating itself, its successors, and its assigns, agrees to the following additional terms:
1. The Town will assume no responsibility for any damage that may be caused to the encroaching facility as the Town carries out its construction and maintenance operations.
 2. Encroacher agrees to restore all areas disturbed during installation and maintenance to the satisfaction of the Town. Encroacher shall comply with all applicable rules and regulations of the North Carolina Sedimentation Control Commission, the Town of Boone Unified Development Ordinance and all other applicable laws and regulations relating to pollution prevention and control. When any installation or maintenance operation disturbs the ground surface and the existing ground cover, Encroacher agrees to remove and replace the sod or otherwise reestablish the grass cover to meet the satisfaction of the Town. Encroacher shall comply with all pertinent ordinances, rule, regulations and laws, and failure to do so shall be a basis for revocation of this encroachment agreement by the Town.

3. Encroacher agrees to assume the actual cost of any inspection of the work considered to be necessary by the Town.
4. Encroacher agrees to have available at the encroaching site, at all times during construction, a copy of this agreement showing evidence of approval by the Town. The Town reserves the right to stop all work unless evidence of approval can be shown.
5. If the work referred to in this agreement is being performed on a public street open to traffic, Encroacher agrees to give written notice of when work will begin to the Town.
6. In the case of noncompliance with the terms of this agreement by Encroacher, the Town reserves the right to stop all work until the encroaching facility has been brought into compliance or removed from the right of way at no cost to the Town.
7. The parties agree that this agreement shall become void if actual construction of the work contemplated herein is not begun within one (1) year from the date of this agreement unless written waiver is secured by Encroacher from the Town.
8. The Town expressly reserves the unrestricted right to require Encroacher to change the location of or to remove the encroaching facility described herein at no expense to Town.
9. Encroacher shall obtain permits as necessary from the Town's Planning & Inspection Department.
10. By making this agreement, the Town does not guarantee in any way the extent or sufficiency of its right-of-ways. Encroacher is responsible for verifying all right-of-way on Town roads.
11. Town may, in its discretion, record this agreement with the Watauga County Register of Deeds.

IN WITNESS WHEREOF, each of the parties to this agreement has caused the same to be executed effective as of the day and year first above written.

[signatures follow on next pages]

Appalachian State University (Encroacher):

The foregoing instrument is approved, this ____ day of _____, 201__.

By: _____
Sheri Everts, Chancellor

Attested By: _____ (SEAL)
Witness

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

I, a Notary Public of the County and State aforesaid, certify that _____ personally appeared before me this day and acknowledged that she is the Chancellor of Appalachian State University and that she signs this instrument by authority duly given on behalf of the State of North Carolina.

Witness my hand and official stamp or seal, this ____ day of _____, 201__.

Notary Public

Printed Name of Notary Public

My Commission Expires: _____

PRESENTATION OF R3 & R4 PROPERTIES

Planning Director Jane Shook presented Council with the department's presentation on vacant R3 & R4 zoned properties and noted that the tax codes available were inconsistent, so staff did the best they could with the information available to them. She added that she had high confidence that the dimensions of the tracts were accurate and that photos were current. Mayor Brantz inquired as to whether many of the lots were too small to build on, to which Ms. Shook responded that there were regulations that could allow building on a non-conforming lot size. Mr. Furgiuele stated that he believed that 5,000 square feet was too small for a multi-family project. Ms. Shook stated that many jurisdictions faced the same issues as Boone on multi-family development and that every jurisdiction handled the issue differently. Mr. Furgiuele stated that in looking through the presentation, he believed some parcels should be re-zoned to R1, some that may be suitable for a cottage-housing district, and there were some properties which might be best rezoned as B3. He added that he believed it to be important to examine each property one-by-one in the order established in the presentation to see if there was consensus regarding the zoning designation among Council on each parcel. Mayor Brantz asked

whether property owners would be given an opportunity to voice their opinions on potential re-zonings. Mr. Furguele stated that property owners would have the opportunity to voice their opinions if Council voted to re-zone their property. Ms. Shook noted that Council-initiated re-zonings had not taken place in her time with the Town. Mr. Furguele stated that the Town's highest priority should be to protect low density neighborhoods and that this was an opportunity to do so. He suggested that a new district be created for cottage housing. Upon a motion by Council Member Furguele, seconded by Mayor Pro-Tem Clawson, Council voted to hold discussion of the R3 & R4 properties presentation until the scheduling of the FY2019-2020 Planning Retreat and at the end of tonight's meeting, if time allows, that discussion could begin before entering into closed session.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Sam Furguele, Council Member
SECONDER:	Loretta Clawson, Mayor Pro-Tem
AYES:	Mason, Clawson, Furguele, Ulmer, Ashcraft

CONSIDERATION OF PRELIMINARY REPORT: COTTAGE HOUSING RESEARCH

Planning Director Jane Shook presented the department's report on cottage housing. Mr. Furguele began discussion by stating that affordable, cottage-style housing should be allowed by right, that a new zoning district should be created to accommodate this use and that the notion of having transitional zones in this district should be entertained. He added that in looking at the density standards presented, the R4 district should be eliminated and R2 should be adjusted to allow for a lot size of at least half an acre and suggested that set-backs requirements be put into place on the new zoning district. Mr. Furguele proposed that a maximum house size be established of approximately 800-1,000 square feet and that properties should be surveyed and divided into separate properties. He added that he believed parking should be individual to each home and that while the development may start out with common ownership among parcels, that the parcels would eventually be divided and with individual ownership. Ms. Shook suggested that Council establish a minimum lot and footprint size for the home, but allow for a second story option. Ms. Mason stated that she believed it to be important to provide housing for working families that need affordable, mid-sized homes and that most of the new housing construction has been high-end, which excluded many workforce families. Mr. Furguele stated that cottage housing would only be a step in the process and noted that feedback from the Affordable Housing Task Force indicated that community members wanted their own single-family homes with their own yards, property and driveway. When asked about offering incentives, Ms. Meade stated that one model she found during her research on the topic offered affordable housing bonuses. Mr. Furguele stated that the Town should establish a new district - potentially R5 - before allowing cottage housing into other districts and added that cluster development could be allowed within the R3 district. Ms. Mason stated that Boone did a good job at offering high-end and student housing, but that there was a whole spectrum of people still looking for housing. Mr. Furguele stated that he has heard many people say that they would rather live just outside the Town limits and not have to pay Town and County taxes and noted that the taxes on smaller homes and lots would be less which would serve as an incentive for people to buy and/or build on these lots. It was the consensus of Council to direct staff to move forward with research and draft language for a new zoning district to accommodate this use, individual lots with a minimum and maximum size and set-backs of 6-10 feet. Ms. Meade noted that during her research she had come across a model with cottage and compact single family houses and that the approach was that the homes were allowed as a cluster development in certain places, such as properties adjacent to residential. Ms. Mason asked that members recognize that this step was just a piece of what needed to be done to help solve the housing problem in Boone for middle-class working families. Ms. Meade asked for clarification that only this type of housing would be allowed in a newly-created R5 zoning district, or if other traditional single-family housing would be allowed also. Mr. Furguele stated that just cottage-style housing should be allowed due to the small lot size. Ms. Meade expressed her concern that this type of development could constitute spot zoning, with Mr. Furguele disagreeing. Upon a motion by Mayor Pro-Tem Clawson, seconded by Council Member Ulmer, Council voted to continue this discussion until the November 15, 2018 regular Town Council meeting to allow members time to review the information sent to them by the Town Attorney.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Loretta Clawson, Mayor Pro-Tem
SECONDER:	Connie Ulmer, Council Member
AYES:	Mason, Clawson, Furgiuele, Ulmer, Ashcraft

PROPOSAL REGARDING NOTICE OF WATER REQUESTS

Mayor Brantz declared a break at 8:39 p.m. Council reconvened at 8:49 p.m.

Council Member Furgiuele presented his request and made a motion that advance notice be sent to all surrounding property owners when a water request involved a public hearing. Mayor Pro-Tem Clawson seconded the motion. Town Manager John Ward asked since this requirement would have impacts on staff time and on the budget, that Council hear from Public Works Director Rick Miller before a vote was taken. Mr. Furgiuele asked Planning Director Jane Shook how many notices the Planning Department mailed out for rezoning requests, with Ms. Shook stating that as few as four have been mailed out and as many as forty. Mr. Miller noted that in order to meet this new requirement, the water request process would now be extended to a 45-60 day process and that he anticipated complaints on the increased time-frame from applicants. After brief discussion on how previous water requests were handled, Ms. Mason added that it needed to be made clear that applicants know they have the choice to proceed with annexation prior to making a request for services. Mr. Furgiuele noted that he would rather applicants annex first if not for the cost issue.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Sam Furgiuele, Council Member
SECONDER:	Loretta Clawson, Mayor Pro-Tem
AYES:	Mason, Clawson, Furgiuele, Ulmer, Ashcraft

CONSIDERATION OF CASE PL01808-082218 SELECTION OF BOA/PC CHAIR & VICE-CHAIR UDO TEXT AMENDMENT

Planning Director Jane Shook presented Case PL01808-082218 Selection of BOA/PC Chair and Vice-Chair UDO Amendment for consideration and outlined the additional requests made by the Planning Commission which are outlined below.

1. That the Chair and Vice-Chair would be selected in two phases, with the first phase consisting of the Planning Commission reviewing applications, then having discussion and voting on the applications. Once this step is complete, and through an internal procedure to be determined at a later date, the Planning Commission would make a recommendation to Council regarding the Chair and Vice-Chair for the coming one-year term, with a similar procedure recommended for the Board of Adjustment.

2. Council would review the recommendation given by the commission and voting would take place.

Mr. Furgiuele expressed concern that the minutes from the October 22, 2018 indicated that the current Planning Commission Chairperson could not commit to upholding the Comprehensive Plan and stated that he believed this fact demonstrated that Council needed to be more careful about how board chairs are chosen. He added that he understood that the Chairperson was saying that the Comprehensive Plan needed to be updated, but that by the same token, the plan needed to be upheld while the Town had one, and that he was disturbed by her attitude. Council Member Ashcraft stated that he did not read the Chairperson's remarks in the same way and that he did not believe the Planning Commission's request was unreasonable. He added that he appreciated the commission for putting thought into the matter. Ms. Shook and Town Attorney Allison Meade clarified that they did not believe the comments were meant the way Mr. Furgiuele was interpreting them, with Ms. Meade reminding Council to remember the limit of meeting minutes and that they were not to be taken as a literal reflection of what the Chairperson was trying to reflect. Mr. Furgiuele stated that the current process allowed board chairs to be chosen by default and that Council had the right to make sure potential board chairs understood the gravity of the positions they held. Town Manager John Ward noted that there were discrepancies between the UDO and the Town Code regarding the power of committees and that amendments should be made in order to maintain

consistency between the two documents. Discussion ensued regarding the application process, with Mr. Furgiuele noting that he hoped the Town Attorney would meet with applicants along with Ms. Shook in order to address legal aspects of the position. Upon a motion by Council Member Furgiuele, seconded by Mayor Pro-Tem Clawson, Council voted to draft proposed language that would effectuate the most recent recommendations by the Planning Commission.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Sam Furgiuele, Council Member
SECONDER:	Loretta Clawson, Mayor Pro-Tem
AYES:	Mason, Clawson, Furgiuele, Ulmer, Ashcraft

REQUEST FOR INPUT AND APPROVAL OF MEETING DATES FOR THE FY2019/2020 BUDGET PREPARATION SCHEDULE

Town Manager John Ward presented his request for input on meeting dates for the FY2019-20 budget schedule. After brief discussion, it was the consensus of Council to have committee requests funneled through department heads and heard on January 23, with Council deliberations taking place on January 31. Council Member Mason made a motion to schedule budget workshops on January 23 and 31, 2019 from 9:00 a.m. - 5:00 p.m. at Council Chambers, and the budget retreat on May 28 and 30, 2019 from 9:00 a.m. - 5:00 p.m. at Council Chambers. Council Member Furgiuele seconded the motion. Mr. Ward then asked for input on priority budget items to allow staff to work on supportive information in time for budget discussions. Mayor Brantz stated that he would like to move ahead with the Town's solar conversion. Mr. Furgiuele stated that the Town should take seriously the need to convert to renewable energy and the proposal by Harvard Ayers to convert the Town's fleet to electric vehicles with charging stations. He added that the recent proposal from New River and NTE was not enough and that the Town needed to be aggressive in its approach to converting to renewable energy. Mr. Furgiuele further stated that this cause was the only thing he would consider raising taxes over. Council Member Ashcraft added that his main budgetary concerns included a carbon reduction plan and working with the County and/or Watauga County School Board to put a School Resource Officer at Hardin Park and to provide a modest raise for all staff, with potentially larger raises to public safety employees. Mr. Furgiuele suggested that the time had come to consider a stipend for employees who move into or live inside Town limits and that he would rather see a fund for this set up as opposed to employee raises across the board. He added that the amount of the proposed stipend was debatable, but even a couple hundred dollars more a month would be encouragement for people to live inside Town limits. Mr. Ward noted that if approved, a fund large enough to account for employees moving into Town limits or being hired would have to be set aside. He reminded Council that during last year's workshop, Council mentioned a desire to have a minimum pay rate that was more in line with the State guidelines. Mr. Furgiuele stated that option should be considered and that he would like to see parking enforcement come under the Town. Mr. Furgiuele asked to see an actual cost of bringing parking in-house and added that he was disturbed that McLaurin Parking may have been engaged in unfair and deceptive trade practices. He continued to state that he saw parking employees as employees of the Town and that they should be making a reasonable wage as well. Ms. Mason stated that she would like to see projections on the cost of new Town facilities and the resale value of current Town facilities. Mr. Furgiuele asked that Council consider Harvard Ayers' proposal and that Dr. Ayers believed there was the potential for funding from private and public sources if Council made the commitment to abide by his plan. Mr. Furgiuele stated that he believed the time had come that the Town should explore the creation of a full-time attorney position and added that the Town was spending a lot of money in legal fees and was putting many things on the Town Attorney's plate, but there were many things that were not getting done. Mr. Furgiuele inquired about Council's interest in further exploring a new MSD storm water district, with Mr. Ward answering that Council's previous direction was to wait until the Army Corps of Engineers had finished their study and to use their input to determine the new MSD.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Lynne Mason, Council Member
SECONDER:	Sam Furgiuele, Council Member
AYES:	Mason, Clawson, Furgiuele, Ulmer, Ashcraft

APPROVAL OF MEETING DATES FOR THE FY 2019/2020 PLANNING RETREAT

Town Manager John Ward presented a request for input on meeting dates for the FY2019-20 Planning Retreat and asked whether the revision of the Comprehensive Plan should be delayed further in order to allow time for discussions on the R3 and R4 properties presentation. Mr. Furgiuele stated that Council should move forward with zoning discussions. Council Member Ashcraft agreed, stating that the zoning presentation and Comprehensive Plan update deserved a high priority. Council Member Mason made a motion, which was seconded by Council Member Furgiuele to schedule the FY 2019-20 Planning Retreat on March 5 and 6, 2019 from 9:00 a.m. - 5:00 p.m. at Council Chambers.

VOTE: Aye: All
Nay: None

Mr. Ward suggested that Council consider devoting the regular meeting on December 18 to regular business and devoting the regular meeting on December 20 to R3 and R4 discussions, then to continue with smaller, one hour blocks during following meetings. It was the consensus of Council to accept this suggestion. Council Member Mason made a motion, which was seconded by Council Member Furgiuele to schedule April 10, 2019 as needed for a planning-related special meeting from 9:00 a.m. -5:00 p.m. at Council Chambers. Ms. Mason also asked that Council try to incorporate affordable housing discussions into one of the planning meetings.

VOTE: Aye: All
Nay: None

DISCLOSURE OF SETTLEMENT AGREEMENTS

Town Attorney Allison Meade presented the following Settlement Agreements for disclosure:

NORTH CAROLINA**SETTLEMENT AGREEMENT AND RELEASE****WATAUGA COUNTY**

This settlement agreement and release ("Agreement") is made effective as of September __, 2018 by and between THE STANDARD AT BOONE, LLC ("Claimant") and Town of Boone ("Town") (each sometimes being referred to as a "party" and collectively being referred to as the "parties").

WITNESSETH

WHEREAS, in prior years the Town assessed what were termed "availability fees" for water and sewer service pursuant to Town Ordinance 11-01 and Town Code Chapter 50, section 113;

WHEREAS, Claimant believes that the availability fees assessed by the Town were unlawful impact fees under the North Carolina Supreme Court's ruling in *Quality Built Homes Inc. v. Town of Carthage*, 369 N.C. 15, 789 S.E.2d 454 (2016), and that it therefore has a claim against the Town for payments for availability fees made by Claimant to the Town in the amount of \$77,386.71 on or about July 11-14, 2014 and in the amount of \$696,480.39 on or about December 11-16, 2016 (the "Payments");

WHEREAS, the parties seek to resolve all claims related to the Payments and avoid the expense and uncertainty of litigation;

NOW THEREFORE, in contemplation of the foregoing recitals, and in consideration of the mutual agreements and covenants in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows.

TERMS AND CONDITIONS

1. Town will pay to Claimant the sum of seven-hundred, sixty-nine thousand, five hundred seventy-nine dollars and ninety-two cents (\$769,579.92), which sum is inclusive of interest at 6% compounded annually to and including August 31, 2018, with interest to be added at the per diem rate of \$126.50 per day calculated to the date Town delivers payment (in the form of a check) to Claimant's attorney, Jim Deal.

2. Town will deliver the aforesaid payment on or before September 14, 2018. Claimant directs that the Town's check be made to "The Standard at Boone, LLC."

3. No later than 3 business days following execution of this Agreement, Claimant will provide to Town (care of the Town Attorney) a completed federal form W-9 for the entity to whom the foregoing payment is to be made for tax reporting purposes.

4. Claimant fully and completely releases, remises, acquits, and forever discharges the Town from any and all past, present, or future claims, actions, demands, lawsuits, rights, liabilities, damages, penalties, losses, indebtedness, obligations, attorney's fees, interest, expenses, costs, and causes of action—whether in law, equity, or otherwise, whether known or unknown, and whether brought in court, arbitration, or administrative, governmental, or regulatory proceedings, or in any other forum—arising from or in any way related to the Payments.

5. Claimant represents that it has not assigned, sold, or otherwise transferred or disposed of any interest in any of the claims released under this Agreement.

6. This Agreement settles disputed claims. No party admits liability or responsibility for any claims covered by the Agreement, and nothing in this Agreement will ever be used against a party as, or deemed by any person to constitute, an admission of liability.

7. This Agreement will not be construed against the party preparing it but will be construed as if it were prepared jointly by all affected persons and entities. Any uncertainty or ambiguity will not be interpreted against any person or entity.

8. This Agreement may not be amended, modified, or supplemented, except in writing duly executed and delivered by both parties to this Agreement.

9. This Agreement constitutes the full and complete agreement of the parties concerning the subject matter of the Agreement, and there are no covenants, conditions, or terms other than those expressly set forth in this Agreement.

10. The parties agree to take all actions reasonably necessary to effectuate the terms and purpose of this Agreement.

11. This Agreement may be executed by duplicate counterparts, each of which will be deemed an original, and which taken together will constitute one Agreement. Delivery of the counterpart may be accomplished by either party by use of fax or email submission, and delivery by those methods will have the same binding effect as delivery of an original copy.

12. The parties execute this Agreement voluntarily. Each party to this Agreement has read and understands the Agreement's effects and executes this Agreement of their own free will. Further, the parties agree that they enter into this Agreement upon the advice of counsel. Accordingly, the Agreement will not be construed for or against any party but rather will be given a fair and reasonable interpretation based on the Agreement's plain language.

13. If any portion or portions of this Agreement are deemed unenforceable as against public policy or otherwise, then the remainder of this Agreement will be enforced as though those unenforceable portions had not been included (unless doing so would cause this Agreement to fail its essential purpose).

14. This Agreement will be binding upon and inure to the benefit of each of the parties and their legal representatives, successors, and assigns.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the date indicated below.

THE STANDARD AT BOONE, LLC

By:  (SEAL)

Print name and title: W. Christopher Hart,
Authorized Signatory

Date: September 6, 2018

TOWN OF BOONE

By: _____ (SEAL)
John Ward, Town Manager

Date: _____

NORTH CAROLINA

SETTLEMENT AGREEMENT AND RELEASE

WATAUGA COUNTY

This settlement agreement and release ("Agreement") is made effective as of September __, 2018 by and between HARROD AP, LLC ("Claimant") and Town of Boone ("Town") (each sometimes being referred to as a "party" and collectively being referred to as the "parties").

WITNESSETH

WHEREAS, in prior years the Town assessed what were termed "availability fees" for water and sewer service pursuant to Town Ordinance 11-01 and Town Code Chapter 50, section 113;

WHEREAS, Claimant believes that the availability fees assessed by the Town were unlawful impact fees under the North Carolina Supreme Court's ruling in *Quality Built Homes Inc. v. Town of Carthage*, 369 N.C. 15, 789 S.E.2d 454 (2016), and that it therefore has a claim against the Town for payments for availability fees made by Claimant to the Town in the amount of \$52,561.00 on or about March 20, 2015 and in the amount of \$52,561.00 on or about February 22, 2016 (the "Payments");

WHEREAS, the parties seek to resolve all claims related to the Payments and avoid the expense and uncertainty of litigation;

NOW THEREFORE, in contemplation of the foregoing recitals, and in consideration of the mutual agreements and covenants in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows.

TERMS AND CONDITIONS

1. Town will pay to Claimant the sum of one hundred and twenty-five thousand, two hundred dollars and forty-three cents (\$125,200.43), which sum is inclusive of interest at 6% compounded annually to and including August 31, 2018, with interest to be added at the per diem rate of \$23.11 per day calculated to the date Town delivers payment (in the form of a check) to Claimant's attorney, Jim Deal.
2. Town will deliver the aforesaid payment on or before September 14, 2018. Claimant directs that the Town's check be made to "Harrod AP, LLC."
3. No later than 3 business days following execution of this Agreement, Claimant will provide to Town (care of the Town Attorney) a completed federal form W-9 for the entity to whom the foregoing payment is to be made for tax reporting purposes.
4. Claimant fully and completely releases, remises, acquits, and forever discharges the Town from any and all past, present, or future claims, actions, demands, lawsuits, rights, liabilities, damages, penalties, losses, indebtedness, obligations, attorney's fees, interest, expenses, costs, and causes of action—whether in law, equity, or otherwise, whether known or unknown, and whether brought in court, arbitration, or administrative, governmental, or regulatory proceedings, or in any other forum—arising from or in any way related to the Payments.
5. Claimant represents that it has not assigned, sold, or otherwise transferred or disposed of any interest in any of the claims released under this Agreement.

6. This Agreement settles disputed claims. No party admits liability or responsibility for any claims covered by the Agreement, and nothing in this Agreement will ever be used against a party as, or deemed by any person to constitute, an admission of liability.

7. This Agreement will not be construed against the party preparing it but will be construed as if it were prepared jointly by all affected persons and entities. Any uncertainty or ambiguity will not be interpreted against any person or entity.

8. This Agreement may not be amended, modified, or supplemented, except in writing duly executed and delivered by both parties to this Agreement.

9. This Agreement constitutes the full and complete agreement of the parties concerning the subject matter of the Agreement, and there are no covenants, conditions, or terms other than those expressly set forth in this Agreement.

10. The parties agree to take all actions reasonably necessary to effectuate the terms and purpose of this Agreement.

11. This Agreement may be executed by duplicate counterparts, each of which will be deemed an original, and which taken together will constitute one Agreement. Delivery of the counterpart may be accomplished by either party by use of fax or email submission, and delivery by those methods will have the same binding effect as delivery of an original copy.

12. The parties execute this Agreement voluntarily. Each party to this Agreement has read and understands the Agreement's effects and executes this Agreement of their own free will. Further, the parties agree that they enter into this Agreement upon the advice of counsel. Accordingly, the Agreement will not be construed for or against any party but rather will be given a fair and reasonable interpretation based on the Agreement's plain language.

13. If any portion or portions of this Agreement are deemed unenforceable as against public policy or otherwise, then the remainder of this Agreement will be enforced as though those unenforceable portions had not been included (unless doing so would cause this Agreement to fail its essential purpose).

14. This Agreement will be binding upon and inure to the benefit of each of the parties and their legal representatives, successors, and assigns.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the date indicated below.

HARROD AP, LLC

By:  (SEAL)
Print name and title

Date: 9/17/2018

TOWN OF BOONE

By: _____ (SEAL)
John Ward, Town Manager

Date: _____

NORTH CAROLINA**SETTLEMENT AGREEMENT AND RELEASE****WATAUGA COUNTY**

10 This settlement agreement and release ("Agreement") is made effective as of September 10, 2018 by and between HOWARD STREET VENTURES, LLC. ("Claimant") and Town of Boone ("Town") (each sometimes being referred to as a "party" and collectively being referred to as the "parties").

WITNESSETH

WHEREAS, in prior years the Town assessed what were termed "availability fees" for water and sewer service pursuant to Town Ordinance 11-01 and Town Code Chapter 50, section 113;

WHEREAS, Claimant believes that the availability fees assessed by the Town were unlawful impact fees under the North Carolina Supreme Court's ruling in *Quality Built Homes Inc. v. Town of Carthage*, 369 N.C. 15, 789 S.E.2d 454 (2016), and that it therefore has a claim against the Town for a payment for availability fees made by Claimant to the Town in the amount of \$24,035.55 on or about the September 29, 2016 (the "Payment");

WHEREAS, the parties seek to resolve all claims related to the Payment and avoid the expense and uncertainty of litigation;

NOW THEREFORE, in contemplation of the foregoing recitals, and in consideration of the mutual agreements and covenants in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows.

TERMS AND CONDITIONS

1. Town will pay to Claimant the sum of twenty-six thousand, eight-hundred and eighty-four dollars and 89 cents (\$26,884.89), which sum is inclusive of interest at 6% compounded annually to and including August 31, 2018, with interest to be added at the per diem rate of \$9.11 per day calculated to the date Town delivers payment (in the form of a check) to Claimant's attorney, Jim Deal.
2. Town will deliver the aforesaid payment on or before September 14, 2018. Claimant directs that the Town's check be made to "King Construction of Boone, Inc."
3. No later than 3 business days following execution of this Agreement, Claimant will provide to Town (care of the Town Attorney) a completed federal form W-9 for the entity to whom the foregoing payment is to be made for tax reporting purposes.
4. Claimant fully and completely releases, remises, acquits, and forever discharges the Town from any and all past, present, or future claims, actions, demands, lawsuits, rights, liabilities, damages, penalties, losses, indebtedness, obligations, attorney's fees, interest, expenses, costs, and causes of action—whether in law, equity, or otherwise, whether known or unknown, and whether brought in court, arbitration, or administrative, governmental, or regulatory proceedings, or in any other forum—arising from or in any way related to the Payments.
5. Claimant represents that it has not assigned, sold, or otherwise transferred or disposed of any interest in any of the claims released under this Agreement.

6. This Agreement settles disputed claims. No party admits liability or responsibility for any claims covered by the Agreement, and nothing in this Agreement will ever be used against a party as, or deemed by any person to constitute, an admission of liability.

7. This Agreement will not be construed against the party preparing it but will be construed as if it were prepared jointly by all affected persons and entities. Any uncertainty or ambiguity will not be interpreted against any person or entity.

8. This Agreement may not be amended, modified, or supplemented, except in writing duly executed and delivered by both parties to this Agreement.

9. This Agreement constitutes the full and complete agreement of the parties concerning the subject matter of the Agreement, and there are no covenants, conditions, or terms other than those expressly set forth in this Agreement.

10. The parties agree to take all actions reasonably necessary to effectuate the terms and purpose of this Agreement.

11. This Agreement may be executed by duplicate counterparts, each of which will be deemed an original, and which taken together will constitute one Agreement. Delivery of the counterpart may be accomplished by either party by use of fax or email submission, and delivery by those methods will have the same binding effect as delivery of an original copy.

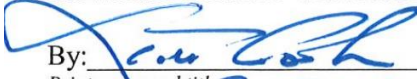
12. The parties execute this Agreement voluntarily. Each party to this Agreement has read and understands the Agreement's effects and executes this Agreement of their own free will. Further, the parties agree that they enter into this Agreement upon the advice of counsel. Accordingly, the Agreement will not be construed for or against any party but rather will be given a fair and reasonable interpretation based on the Agreement's plain language.

13. If any portion or portions of this Agreement are deemed unenforceable as against public policy or otherwise, then the remainder of this Agreement will be enforced as though those unenforceable portions had not been included (unless doing so would cause this Agreement to fail its essential purpose).

14. This Agreement will be binding upon and inure to the benefit of each of the parties and their legal representatives, successors, and assigns.

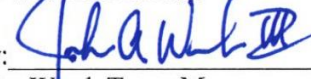
IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the date indicated below.

HOWARD STREET VENTURES, LLC

By:  (SEAL)
Print name and title: SCOTT COOK MANAGER

Date: 9/10/18

TOWN OF BOONE

By:  (SEAL)
John Ward, Town Manager

Date: 9/10/2018

NORTH CAROLINA

SETTLEMENT AGREEMENT AND RELEASE

WATAUGA COUNTY

10. This settlement agreement and release ("Agreement") is made effective as of September 10, 2018 by and between CLEMENT BLOWING ROCK ROAD, LLC. ("Claimant") and Town of Boone ("Town") (each sometimes being referred to as a "party" and collectively being referred to as the "parties").

WITNESSETH

WHEREAS, in prior years the Town assessed what were termed "availability fees" for water and sewer service pursuant to Town Ordinance 11-01 and Town Code Chapter 50, section 113;

WHEREAS, Claimant believes that the availability fees assessed by the Town were unlawful impact fees under the North Carolina Supreme Court's ruling in *Quality Built Homes Inc. v. Town of Carthage*, 369 N.C. 15, 789 S.E.2d 454 (2016), and that it therefore has a claim against the Town for a payment for availability fees made by Claimant to the Town in the amount of \$22,275.00 on or about the December 31, 2015 (the "Payment");

WHEREAS, the parties seek to resolve all claims related to the Payment and avoid the expense and uncertainty of litigation;

NOW THEREFORE, in contemplation of the foregoing recitals, and in consideration of the mutual agreements and covenants in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows.

TERMS AND CONDITIONS

1. Town will pay to Claimant the sum of twenty-six thousand, thirty-two dollars and six cents (\$26,032.06), which sum is inclusive of interest at 6% compounded annually to and including August 31, 2018, with interest to be added at the per diem rate of \$4.28 per day calculated to the date Town delivers payment (in the form of a check) to Claimant's attorney, Jim Deal.

2. Town will deliver the aforesaid payment on or before September 14, 2018. Claimant directs that the Town's check be made to "Clement Blowing Rock Road, LLC."

3. No later than 3 business days following execution of this Agreement, Claimant will provide to Town (care of the Town Attorney) a completed federal form W-9 for the entity to whom the foregoing payment is to be made for tax reporting purposes.

4. Claimant fully and completely releases, remises, acquits, and forever discharges the Town from any and all past, present, or future claims, actions, demands, lawsuits, rights, liabilities, damages, penalties, losses, indebtedness, obligations, attorney's fees, interest, expenses, costs, and causes of action—whether in law, equity, or otherwise, whether known or unknown, and whether brought in court, arbitration, or administrative, governmental, or regulatory proceedings, or in any other forum—arising from or in any way related to the Payment.

5. Claimant represents that it has not assigned, sold, or otherwise transferred or disposed of any interest in any of the claims released under this Agreement.

6. This Agreement settles disputed claims. No party admits liability or responsibility for any claims covered by the Agreement, and nothing in this Agreement will ever be used against a party as, or deemed by any person to constitute, an admission of liability.

7. This Agreement will not be construed against the party preparing it but will be construed as if it were prepared jointly by all affected persons and entities. Any uncertainty or ambiguity will not be interpreted against any person or entity.

8. This Agreement may not be amended, modified, or supplemented, except in writing duly executed and delivered by both parties to this Agreement.

9. This Agreement constitutes the full and complete agreement of the parties concerning the subject matter of the Agreement, and there are no covenants, conditions, or terms other than those expressly set forth in this Agreement.

10. The parties agree to take all actions reasonably necessary to effectuate the terms and purpose of this Agreement.

11. This Agreement may be executed by duplicate counterparts, each of which will be deemed an original, and which taken together will constitute one Agreement. Delivery of the counterpart may be accomplished by either party by use of fax or email submission, and delivery by those methods will have the same binding effect as delivery of an original copy.

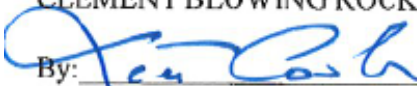
12. The parties execute this Agreement voluntarily. Each party to this Agreement has read and understands the Agreement's effects and executes this Agreement of their own free will. Further, the parties agree that they enter into this Agreement upon the advice of counsel. Accordingly, the Agreement will not be construed for or against any party but rather will be given a fair and reasonable interpretation based on the Agreement's plain language.

13. If any portion or portions of this Agreement are deemed unenforceable as against public policy or otherwise, then the remainder of this Agreement will be enforced as though those unenforceable portions had not been included (unless doing so would cause this Agreement to fail its essential purpose).

14. This Agreement will be binding upon and inure to the benefit of each of the parties and their legal representatives, successors, and assigns.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the date indicated below.

CLEMENT BLOWING ROCK ROAD, LLC

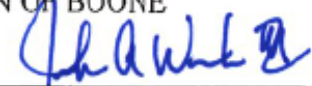
By:  (SEAL)

Print name and title:

Scott Cook MEMBER

Date: 9/6/18 MANAGER

TOWN OF BOONE

By:  (SEAL)

John Ward, Town Manager

Date: 9/10/2018

NORTH CAROLINA

SETTLEMENT AGREEMENT AND RELEASE

WATAUGA COUNTY

10 This settlement agreement and release ("Agreement") is made effective as of September 10, 2018 by and between CLEMENT BLOWING ROCK ROAD, LLC. ("Claimant") and Town of Boone ("Town") (each sometimes being referred to as a "party" and collectively being referred to as the "parties").

WITNESSETH

WHEREAS, in prior years the Town assessed what were termed "availability fees" for water and sewer service pursuant to Town Ordinance 11-01 and Town Code Chapter 50, section 113;

WHEREAS, Claimant believes that the availability fees assessed by the Town were unlawful impact fees under the North Carolina Supreme Court's ruling in *Quality Built Homes Inc. v. Town of Carthage*, 369 N.C. 15, 789 S.E.2d 454 (2016), and that it therefore has a claim against the Town for a payment for availability fees made by Claimant to the Town in the amount of \$22,275.00 on or about the December 31, 2015 (the "Payment");

WHEREAS, the parties seek to resolve all claims related to the Payment and avoid the expense and uncertainty of litigation;

NOW THEREFORE, in contemplation of the foregoing recitals, and in consideration of the mutual agreements and covenants in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows.

TERMS AND CONDITIONS

1. Town will pay to Claimant the sum of twenty-six thousand, thirty-two dollars and six cents (\$26,032.06), which sum is inclusive of interest at 6% compounded annually to and including August 31, 2018, with interest to be added at the per diem rate of \$4.28 per day calculated to the date Town delivers payment (in the form of a check) to Claimant's attorney, Jim Deal.
2. Town will deliver the aforesaid payment on or before September 14, 2018. Claimant directs that the Town's check be made to "Clement Blowing Rock Road, LLC."
3. No later than 3 business days following execution of this Agreement, Claimant will provide to Town (care of the Town Attorney) a completed federal form W-9 for the entity to whom the foregoing payment is to be made for tax reporting purposes.
4. Claimant fully and completely releases, remises, acquits, and forever discharges the Town from any and all past, present, or future claims, actions, demands, lawsuits, rights, liabilities, damages, penalties, losses, indebtedness, obligations, attorney's fees, interest, expenses, costs, and causes of action—whether in law, equity, or otherwise, whether known or unknown, and whether brought in court, arbitration, or administrative, governmental, or regulatory proceedings, or in any other forum—arising from or in any way related to the Payment.
5. Claimant represents that it has not assigned, sold, or otherwise transferred or disposed of any interest in any of the claims released under this Agreement.

6. This Agreement settles disputed claims. No party admits liability or responsibility for any claims covered by the Agreement, and nothing in this Agreement will ever be used against a party as, or deemed by any person to constitute, an admission of liability.

7. This Agreement will not be construed against the party preparing it but will be construed as if it were prepared jointly by all affected persons and entities. Any uncertainty or ambiguity will not be interpreted against any person or entity.

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13. If any portion or portions of this Agreement are deemed unenforceable as against public policy or otherwise, then the remainder of this Agreement will be enforced as though those unenforceable portions had not been included (unless doing so would cause this Agreement to fail its essential purpose).

14. This Agreement will be binding upon and inure to the benefit of each of the parties and their legal representatives, successors, and assigns.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the date indicated below.

CLEMENT BLOWING ROCK ROAD, LLC

By: Scott Cook (SEAL)
Print name and title: MEMBER MANAGER

Date: 9/6/18

TOWN OF BOONE

By: John Ward (SEAL)
John Ward, Town Manager

Date: 9/10/2018

NORTH CAROLINA

SETTLEMENT AGREEMENT AND RELEASE

WATAUGA COUNTY

10. This settlement agreement and release ("Agreement") is made effective as of September 10, 2018 by and between CLEMENT BLOWING ROCK ROAD, LLC, KING CONSTRUCTION OF BOONE, INC., and THE WINKLER ORGANIZATION, INC. (collectively, "Claimant") and Town of Boone ("Town") (each sometimes being referred to as a "party" and collectively being referred to as the "parties").

WITNESSETH

WHEREAS, in prior years the Town assessed what were termed "availability fees" for water and sewer service pursuant to Town Ordinance 11-01 and Town Code Chapter 50, section 113;

WHEREAS, Claimant believes that the availability fees assessed by the Town were unlawful impact fees under the North Carolina Supreme Court's ruling in *Quality Built Homes Inc. v. Town of Carthage*, 369 N.C. 15, 789 S.E.2d 454 (2016), and that it therefore has a claim against the Town for payments for availability fees made by Claimant to the Town with the first payment being made in the amount of \$5,256.72 on or about the 18th day of November, 2014 and the last payment being made in the amount of \$46,354.28 on or about the 6th day of August, 2015 (the "Payments");

WHEREAS, the parties seek to resolve all claims related to the Payments and avoid the expense and uncertainty of litigation;

NOW THEREFORE, in contemplation of the foregoing recitals, and in consideration of the mutual agreements and covenants in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows.

TERMS AND CONDITIONS

1. Town will pay to Claimant the sum of fifty-five thousand, four-hundred thirty-five dollars and fifty-seven cents (\$55,435.57), which sum is inclusive of interest at 6% compounded annually to and including August 31, 2018, with interest to be added at the per diem rate of \$9.11 per day calculated to the date Town delivers payment (in the form of a check) to Claimant's attorney, Jim Deal.

2. Town will deliver the aforesaid payment on or before September 14, 2018. Claimant directs that the Town's check be made to "Clement Blowing Rock Road, LLC."

3. No later than 3 business days following execution of this Agreement, Claimant will provide to Town (care of the Town Attorney) a completed federal form W-9 for the entity to whom the foregoing payment is to be made for tax reporting purposes.

4. Claimant fully and completely releases, remises, acquits, and forever discharges the Town from any and all past, present, or future claims, actions, demands, lawsuits, rights, liabilities, damages, penalties, losses, indebtedness, obligations, attorney's fees, interest, expenses, costs, and causes of action—whether in law, equity, or otherwise, whether known or unknown, and whether

brought in court, arbitration, or administrative, governmental, or regulatory proceedings, or in any other forum—arising from or in any way related to the Payments.

5. Claimant represents that it has not assigned, sold, or otherwise transferred or disposed of any interest in any of the claims released under this Agreement.

6. This Agreement settles disputed claims. No party admits liability or responsibility for any claims covered by the Agreement, and nothing in this Agreement will ever be used against a party as, or deemed by any person to constitute, an admission of liability.

7. This Agreement will not be construed against the party preparing it but will be construed as if it were prepared jointly by all affected persons and entities. Any uncertainty or ambiguity will not be interpreted against any person or entity.

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14. This Agreement will be binding upon and inure to the benefit of each of the parties and their legal representatives, successors, and assigns.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the date indicated below.

CLEMENT BLOWING ROCK ROAD, LLC

By: [Signature] (SEAL)

Print name and title:

Scott Cook MEMBER MANAGER

Date: 9/6/18

TOWN OF BOONE

By: [Signature] (SEAL)

John Ward, Town Manager

Date: 9/10/2018

KING CONSTRUCTION OF BOONE, INC

By: [Signature] (SEAL)

Print name and title:

Scott Cook SECRETARY

Date: 9/6/18

THE WINKLER ORGANIZATION, INC.

By: [Signature] (SEAL)

Print name and title:

Scott Cook MANAGER

Date: 9/6/18

NORTH CAROLINA

SETTLEMENT AGREEMENT AND RELEASE

WATAUGA COUNTY

10 This settlement agreement and release ("Agreement") is made effective as of September 10, 2018 by and between CLEMENT BLOWING ROCK ROAD, LLC, KING CONSTRUCTION OF BOONE, INC., and THE WINKLER ORGANIZATION, INC. (collectively, "Claimant") and Town of Boone ("Town") (each sometimes being referred to as a "party" and collectively being referred to as the "parties").

WITNESSETH

WHEREAS, in prior years the Town assessed what were termed "availability fees" for water and sewer service pursuant to Town Ordinance 11-01 and Town Code Chapter 50, section 113;

WHEREAS, Claimant believes that the availability fees assessed by the Town were unlawful impact fees under the North Carolina Supreme Court's ruling in *Quality Built Homes Inc. v. Town of Carthage*, 369 N.C. 15, 789 S.E.2d 454 (2016), and that it therefore has a claim against the Town for payments for availability fees made by Claimant to the Town with the first payment being made in the amount of \$5,256.72 on or about the 18th day of November, 2014 and the last payment being made in the amount of \$46,354.28 on or about the 6th day of August, 2015 (the "Payments");

WHEREAS, the parties seek to resolve all claims related to the Payments and avoid the expense and uncertainty of litigation;

NOW THEREFORE, in contemplation of the foregoing recitals, and in consideration of the mutual agreements and covenants in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows.

TERMS AND CONDITIONS

1. Town will pay to Claimant the sum of fifty-five thousand, four-hundred thirty-five dollars and fifty-seven cents (\$55,435.57), which sum is inclusive of interest at 6% compounded annually to and including August 31, 2018, with interest to be added at the per diem rate of \$9.11 per day calculated to the date Town delivers payment (in the form of a check) to Claimant's attorney, Jim Deal.

2. Town will deliver the aforesaid payment on or before September 14, 2018. Claimant directs that the Town's check be made to "Clement Blowing Rock Road, LLC."

3. No later than 3 business days following execution of this Agreement, Claimant will provide to Town (care of the Town Attorney) a completed federal form W-9 for the entity to whom the foregoing payment is to be made for tax reporting purposes.

4. Claimant fully and completely releases, remises, acquits, and forever discharges the Town from any and all past, present, or future claims, actions, demands, lawsuits, rights, liabilities, damages, penalties, losses, indebtedness, obligations, attorney's fees, interest, expenses, costs, and causes of action—whether in law, equity, or otherwise, whether known or unknown, and whether

brought in court, arbitration, or administrative, governmental, or regulatory proceedings, or in any other forum—arising from or in any way related to the Payments.

5. Claimant represents that it has not assigned, sold, or otherwise transferred or disposed of any interest in any of the claims released under this Agreement.

6. This Agreement settles disputed claims. No party admits liability or responsibility for any claims covered by the Agreement, and nothing in this Agreement will ever be used against a party as, or deemed by any person to constitute, an admission of liability.

7. This Agreement will not be construed against the party preparing it but will be construed as if it were prepared jointly by all affected persons and entities. Any uncertainty or ambiguity will not be interpreted against any person or entity.

8. This Agreement may not be amended, modified, or supplemented, except in writing duly executed and delivered by both parties to this Agreement.

9. This Agreement constitutes the full and complete agreement of the parties concerning the subject matter of the Agreement, and there are no covenants, conditions, or terms other than those expressly set forth in this Agreement.

10. The parties agree to take all actions reasonably necessary to effectuate the terms and purpose of this Agreement.

11. This Agreement may be executed by duplicate counterparts, each of which will be deemed an original, and which taken together will constitute one Agreement. Delivery of the counterpart may be accomplished by either party by use of fax or email submission, and delivery by those methods will have the same binding effect as delivery of an original copy.

12. The parties execute this Agreement voluntarily. Each party to this Agreement has read and understands the Agreement's effects and executes this Agreement of their own free will. Further, the parties agree that they enter into this Agreement upon the advice of counsel. Accordingly, the Agreement will not be construed for or against any party but rather will be given a fair and reasonable interpretation based on the Agreement's plain language.

13. If any portion or portions of this Agreement are deemed unenforceable as against public policy or otherwise, then the remainder of this Agreement will be enforced as though those unenforceable portions had not been included (unless doing so would cause this Agreement to fail its essential purpose).

14. This Agreement will be binding upon and inure to the benefit of each of the parties and their legal representatives, successors, and assigns.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the date indicated below.

CLEMENT BLOWING ROCK ROAD, LLC

By: [Signature] (SEAL)
Print name and title:
Scott Cook MEMBER MANAGER
Date: 9/6/18

TOWN OF BOONE

By: [Signature] (SEAL)
John Ward, Town Manager

Date: 9/10/2018

KING CONSTRUCTION OF BOONE, INC

By: [Signature] (SEAL)
Print name and title:
Scott Cook SECRETARY
Date: 9/6/18

THE WINKLER ORGANIZATION, INC.

By: [Signature] (SEAL)
Print name and title:
Scott Cook MANAGER
Date: 9/6/18

ADJOURNMENT

Upon a motion by Mayor Pro-Tem Clawson, seconded by Council Member Mason, Council voted to adjourn the meeting at 10:50 p.m.

VOTE: Aye: All
 Nay: None

Nicole Worley, Town Clerk

Rennie Brantz, Mayor