

**MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
December 14, 2022**

CALL TO ORDER

A regular meeting of the Boone Town Council was called to order at 9:00 a.m. on December 14, 2022 at the Town Council Chambers located at 1500 Blowing Rock Road in Boone. Mayor Tim Futrelle presided. Council members present included Mayor Pro-Tem Edie Tugman, Todd Carter, Virginia Roseman, Dalton George, and Becca Nenow (remote). Town staff present included Town Manager Amy Davis (remote), Town Clerk Nicole Harmon, Public Works Director Rick Miller, Planning Director Jane Shook, Fire Chief Jimmy Isaacs, Police Chief Andy Le Beau, Sustainability and Special Projects Manager George Santucci, Cultural Resources Director Mark Freed, and Deputy Public Works Director Todd Moody. Town Attorney Allison Meade was also in attendance.

MOMENT OF SILENCE

PUBLIC COMMENT

Ben Williamson, Sarah Davis, Justin Haber, and Diane Blanks, all of Boone, spoke in favor of the Junaluska project later on the agenda.

Amber Bateman of the Watauga County Arts Council thanked the Boone Police Department for including the local artistic community in the new police car design project. She also gave an update on the public arts committee by noting that a policy is now in review and anticipated that the committee would meet next week. Ms. Bateman indicated that the committee was working with the DBDA and Economic Development Commission and would plan to give an update to Council in January.

ANNOUNCEMENTS

Mayor Futrelle announced the following board vacancies:

BOARD OF ADJUSTMENT

Two regular positions, One alternate position

COMMUNITY APPEARANCE COMMISSION

One regular position

CULTURAL RESOURCES ADVISORY BOARD

Two regular positions, One student position

HISTORIC PRESERVATION COMMISSION

One student position

HUMAN RELATIONS COMMITTEE

Four Positions

SUSTAINABILITY COMMITTEE

One student position

Sgt. Candance Burlingame was recognized for her achievements in receiving the Dogwood Award.

TENTATIVE AGENDA ADOPTION

Upon a motion by Mayor Pro-Tem Tugman, seconded by Mr. George, Council voted unanimously to approve the agenda as presented.

REQUESTED APPEARANCES

JORDAN SELLERS - BLUE RIDGE CONSERVANCY

Town Clerk Nicole Harmon

RESOLUTION OF APPRECIATION

WHEREAS, Wanda Short will retire from the Town of Boone, North Carolina as of December 27, 2022; and,

WHEREAS, she served the citizens of Boone as a Utility Billing Customer Service Representative from August 30, 2004, until August 1, 2005, as a Senior Customer Service Representative from August 1, 2005, until August 28, 2006, and as an Accounting Technician from August 28, 2006, until December 27, 2022 with great distinction, and;

WHEREAS, she has always shown great dedication and genuine concern for the citizens of the town, town employees, and Town Council; and,

WHEREAS, she has been an honest, loyal, and committed public servant to the town.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Boone, North Carolina, hereby expresses their sincere appreciation and gratitude to Wanda Short for her contributions to the Town of Boone.

BE IT FURTHER RESOLVED that the Town Council extends to Wanda Short and her family blessings for good health and best wishes for the future.

Adopted by unanimous vote of the Town Council on the 14th day of December 2022.

Mayor Tim Futrelle

ATTEST:

Town Clerk Nicole Harmon

RESOLUTION

**TOWN OF BOONE, NORTH CAROLINA
TOWN OF BOONE ECOSYSTEM RESTORATION – HABITAT RESTORATION PROJECT
DESIGN AND CONSTRUCTION PROJECT
WATAUGA COUNTY, NORTH CAROLINA**

A RESOLUTION AUTHORIZING PARTICIPATION AND RATIFYING PRIOR PARTICIPATION OF THE TOWN OF BOONE, WATAUGA COUNTY, NORTH CAROLINA, WITH THE DEPARTMENT OF THE ARMY, CORPS OF ENGINEERS, AND THE APPALACHIAN STATE UNIVERSITY, FOR THE DESIGN AND CONSTRUCTION OF THE TOWN OF BOONE ECOSYSTEM RESTORATION – HABITAT RESTORATION PROJECT, AND AUTHORIZING THE MAYOR OF THE TOWN OF BOONE, NORTH CAROLINA AND OTHER TOWN OF BOONE, NORTH CAROLINA OFFICIALS, TO ACT FOR AND ON BEHALF OF THE TOWN OF BOONE, NORTH CAROLINA, IN EXECUTING,

ACCEPTING, OR OTHERWISE APPROVING ALL DOCUMENTS, AGREEMENTS, INSTRUMENTS, OR OTHER NECESSARY PAPERS REQUIRED BY THE DEPARTMENT OF THE ARMY TO IMPLEMENT SAID PARTICIPATION IN THE PROJECT.

BE IT RESOLVED by the Town of Boone, Watauga County, North Carolina, that:

Section 1: The Town of Boone, North Carolina authorizes its Mayor, by and through its authorized officers and officials, to participate with the Department of the Army, Corps of Engineers, and the Appalachian State University, in the design and construction of the Town of Boone Ecosystem Restoration – Habitat Restoration Project, Section 206 of the Water Resources Development Act of 1996, as amended, which project is located in Watauga County, North Carolina.

Section 2: The Mayor of the Town of Boone, North Carolina, and other appropriate Town of Boone, North Carolina officials, including the Town of Boone's Attorney, are authorized to execute on behalf of the Town of Boone, Watauga County, North Carolina, all documents necessary to implement participation by the Town of Boone, North Carolina, in the design and construction of the Town of Boone Ecosystem Restoration – Habitat Restoration Project, being the design and construction of an aquatic ecosystem restoration project in the Town of Boone, Watauga County, North Carolina, in conjunction with the Department of the Army, Corps of Engineers, including but not limited to the Project Partnership Agreement between the Department of the Army, the Appalachian State University, and the Town of Boone, North Carolina, for the design and construction of the Town of Boone Ecosystem Restoration – Habitat Restoration Project, that provides, among other things, that the Town of Boone, North Carolina shall:

a. Provide without cost to the United States Government all lands, easements, and rights-of-way, including suitable borrow and dredge material disposal areas, all modifications, relocations, and alterations of structures, including but not limited to buildings, utilities, including relocations of on-site underground utilities, roads, bridges, sewers, and water supply facilities, and repair or replacement of all intakes, drains, and appurtenant facilities necessary for the construction, operation, and maintenance of the Project;

b. Hold and save the United States Government free from damages due to the construction, operation, and maintenance of the Project, exclusive of damages due to the fault or negligence of the United States Government or its contractors;

c. Operate, maintain, replace, and rehabilitate the Project upon completion, and as constructed, in accordance with the regulations or directions by the Secretary of the Army and all without cost to the United States Government;

d. Pay its percentage share of total project costs as required by The Water Resources Development Act of 1986, (Public Law 99-662), as amended, and by the Project Partnership Agreement;

e. Prevent obstruction of or encroachment on the Project that would reduce the level of protection it affords or that would hinder operation and maintenance thereof; AND

f. Comply with the provisions of the Uniform Relocations Assistance and Real Property Acquisitions Policies Act of 1970, Public Law 91-646, approved 2 January 1971; and Section 221, Public Law 91-611, approved 31 December 1970, as amended.

Section 3: The Town of Boone hereby approves and ratifies all prior participation and acts of the Town of Boone, North Carolina, by and through its officials, with the Department of the Army, Corps of Engineers, in relationship to said Project.

Section 4: The Mayor of the Town of Boone, North Carolina and other appropriate Town of Boone, North Carolina officials are hereby authorized to purchase, or otherwise acquire from private property owners, in the name of the Town of Boone, North Carolina, and in accordance with said Agreement, any and all interests in real property necessary for the construction, operation, and maintenance of the property.

State Trail will serve to educate the public on the need for land conservation, the importance of biodiversity, what makes a healthy ecosystem, and Leave No Trace principles;

Whereas pursuing the completion of the Northern Peaks State Trail will provide incentives and opportunities to conserve and protect additional ecologically important lands in the Amphibolite Mountains; and

Whereas it is understood, given the scale, sensitivity, and complexity of building a trail such as this, it will be a long-term undertaking that will include separate segments that will eventually connect, and the route of the trail is likely to change as opportunities and challenges arise;

Now, therefore, be it resolved by the Boone Town Council, North Carolina, as follows:

1. The Town of Boone hereby adopts and endorses the Northern Peaks State Trail;
2. The Town of Boone acknowledges that the Northern Peaks State Trail does not advocate the use of eminent domain by local jurisdictions, and the Town of Boone will not use this or any other method to acquire land for the trail network from unwilling property owners; and
3. The adoption and endorsement of the Northern Peaks State Trail means the Town of Boone will support efforts to build the trail but does not imply a commitment to funding by the Boone Town Council for implementing the Trail.

Adopted unanimously this the ____ day of December 2022.

Tim Futrelle, Mayor

ATTEST:

_____(SEAL)
Nicole Harmon, Clerk

STATE OF NORTH CAROLINA

LICENSE

COUNTY OF WATAUGA

THIS LICENSE is granted this ____ day of _____, 2022, by the Town of Boone, a North Carolina Municipal Corporation, hereinafter referred to as "Licensor," to the Watauga County Farmer's Market, Inc., a North Carolina corporation, hereinafter referred to as "Licensee," collectively referred to as the "parties." Licensee has signed this License to signify that it understands and agrees to its limitations and requirements. The term "Licensee" shall include, but is not limited to, Licensee's officers, agents, employees, participants, patrons, invitees and contractors.

1. **Express Limitations:** This license is not intended to restrict in any way Licensor's use of the premises or Licensor's access to any part of the premises as it sees fit, including, but not limited to inspection to determine compliance by Licensee with the limitations and requirements of this License; maintenance, repair, alterations to the premises; safety inspections of any and all improvements as Licensor may deem necessary; and use of the premises as it sees fit.
2. **License Area:** As detailed on Attachment "A," attached hereto and incorporated by reference herein, Licensee shall be entitled to the use of the described portions of Daniel Boone Park, that certain piece, parcel or lot of land situated, lying and being in Boone Township, Watauga County, North Carolina, and the described improvements thereto, hereinafter collectively referred to as "the License area," during the times described therein, for the purposes provided herein.
3. **Term:** As described in more detail at Attachment A, which is incorporated herein by reference, this License authorizes uses by Licensee for three separate periods of time in connection with two different areas:

The first two periods, (i) April 1, 2023 through and including November 25, 2023 and (ii) April 6, 2024 to and including November 30, 2024, are for exclusive use of the Upper Parking Lot at Daniel Boone Park, excluding six parking spaces reserved for the Southern Appalachian Historical Association, Inc., and non-exclusive use of the lower lot, excluding four parking spaces reserved for the Daniel Boone Native Gardens, each Saturday during the term of the License between the hours of 6:00 a.m. and 2:00 p.m.

The third period, from January 1, 2023 and ending and including December 31, 2024, is for exclusive use of the "Storage Shed" located in the center of the Farmer's Market, in the Kid's Zone area.

The licensed uses are subject to all conditions and terms specified herein and in Attachment "A."

Subsequent licenses may be issued for additional periods of time and upon such terms as may be provided.

4. **Scope of License:**

- A. The license area may be used by Licensee for the primary purposes of:
 - i. Operating of a farmer's market for the display and retail sales of agricultural products, food, crafts and similar items by members of Licensee; and
 - ii. Sales of prepared food from food trucks operated by members of Licensee, subject to the conditions stated in Attachment "A".
 - iii. Tastings of wine and beer and sales of sealed containers of beer, wine, and hard cider, subject to the conditions stated in Attachment "A" and the maintenance of appropriate host liquor liability insurance as set forth at paragraph 17.
- B. This license includes and authorizes other and secondary activities conducted in association with the allowed uses as well as the use of such other and secondary facilities which are integral and necessary to support the authorized uses, so long as they are integral to the approved uses or constitute only an incidental and insubstantial part of the total activity; they are commonly associated with the use; and they are confined to the License areas and terms of use authorized in Attachment "A". Associated support activities shall include use of the parking lot in appropriate locations during appropriate times and use of restrooms on the property, as further described in Attachment "A".
- C. Any specific uses beyond the primary ones listed are permitted only with the advance written approval of the Town Manager or his or her designee (hereinafter, "Town Manager"). As used in this agreement, "written approval" includes approval communicated via email.
- D. When not in use by Licensee during the term and at the conclusion of each authorized period permitted by this license, Licensee shall properly:
 - i. Clean and make safe all structures to which it is entitled to only non-exclusive use;
 - ii. Clean, secure and make safe all structures to which it is entitled to exclusive use; and
 - iii. Remove any portable structures, or, if they do not interfere with potential use by other licensees, secure and make them safe.
 - iv. For purposes of this section, the term "make safe" shall include remediation of hazards which do not involve alterations of facilities or repair work which requires a permit or an expert to perform; and removal of litter, debris, scrap materials, junk, trash, and other items which could cause injury to a person, promote rodent infestation, or the like.
 - v. For purposes of this section, "clean" shall mean restoring all interior and exterior surfaces and floors of structures and facilities to a condition of cleanliness and sanitation which will allow a subsequent or intermittent licensee to utilize the structure and facilities with no more than a minimal amount of cleaning.
- E. Licensee shall not use or knowingly permit any part of the license area to be used for any purpose

which violates any law, and Licensee shall familiarize itself and comply with all Town ordinances, including the Town's "Noise Control" ordinance, and the North Carolina State Building Code.

- F. Licensee acknowledges that Licensor may authorize other Licensees to use portions of the license area in ways which do not unduly interfere with Licensee's licensed use and that Licensor shall be the sole arbiter of what constitutes undue interference. Licensor itself may also use, as it deems appropriate, any portion of the License area.
 - G. During an emergency, as determined by Licensor, Licensor may utilize the License area to its full extent even if it substantially interferes with this License.
 - H. Licensee will take no action(s) which are in any way inconsistent with Licensor's ownership interest in the property.
 - I. Licensee will take no action(s) which is not in accordance with the procedures mandated by its duly adopted by-laws.
 - J. **Restrooms:** It is specifically agreed and acknowledged that while Licensee shall have use of the restroom facilities located in the license area as set forth at Attachment A, said restroom facilities may be insufficient for the needs of Licensee and its customers and vendors, whether because of inadequate number of facilities or inoperability of the facilities or both. Licensee agrees that it will at its expense provide portable toilets if and to the extent reasonably necessary to provide adequate toilet facilities to serve its use (including the needs of its customers and vendors) of the licensed area. Furthermore, Licensor shall have no responsibility under this license to ensure or maintain the operability of the restrooms that are located in the licensed area.
5. **Rules for Operation:** In addition to any rules adopted by Licensor for the use of the License area, which rules shall be effective when adopted even if they are adopted during the term of this license, Licensee shall have the right to promulgate such rules and regulations as it may deem appropriate for the behavior of its employees, participants, patrons and invitees during its authorized use of the License area so long as they are not inconsistent with any rules promulgated by Licensor and are otherwise consistent with this License. Licensee shall provide Licensor with a copy of its rules and regulations, if any, sufficiently prior to their effective date to be kept on file with the signed copy of this license agreement.
6. **Licensing Fee:** For purposes of this License, the license fee has been waived.
7. **Utilities:** Licensee shall be responsible for paying directly or reimbursing Licensor all utility costs incurred in connection with its use of the license area. If more than one licensee is authorized to use all or a portion of the license area concurrently, Licensor may apportion these costs in an equitable way in proportion to the relative use of the license area by different licensees, and Licensee shall promptly reimburse Licensor for its share of these costs. Should Licensee fail to pay its share of utility costs within the time set by Licensor, this License shall terminate. To the extent Licensee's use of the Licensed area is exclusive and the utilities used relative to that exclusive use can be placed in an account in Licensee's name by the relevant utility company, Licensor may require that Licensee obtain such utility service in its own name. If Licensee obtains utility service in its name, it must keep its account in good standing and notify Licensor immediately if it receives any notice of the possible disconnection of service or if service is actually disconnected.
8. **Maintenance:** During and after its use of the License area, Licensee shall provide all maintenance necessary to keep and restore the license area to a good and sanitary condition as the result of its use. Such maintenance shall be performed as often as necessary to insure that any other licensee authorized to use the license area will find the license area in a sanitary and orderly state. For purposes of this section, "maintenance" shall include collection and removal of trash, garbage, and litter, regular cleaning of facilities and structures, which should be cleaned after every event, and other activities required to conserve the condition of the property while minimizing wear and tear. Should Licensee fail to properly maintain the License area, Licensor may terminate the License or itself provide maintenance, but if Licensor provides such maintenance, it will be at the expense of Licensee, which shall promptly reimburse Licensor for its expenses in doing so.
9. **Repairs:** Licensee must notify Licensor, in writing, of any and all conditions in need of correction or repair which it discovers, whatever the origin of the conditions (caused by Licensee, its employees, contractors, invitees, or others). Licensee shall make no repairs, and no person or entity will be hired to evaluate,

assess or undertake any repairs without first notifying Licensor in writing, at least ten days in advance, of Licensee's intention to evaluate, assess, undertake or make such repairs, or in the event of an emergency, without first notifying Licensor by telephone at (828) 268-6200 of the condition and repairs contemplated. Repairs may only be performed by Licensee with express authorization of the Town Manager. Any repairs made to the license area shall be done in a workmanlike manner and shall become the property of Licensor. In making any authorized repairs, Licensee shall comply with the North Carolina State Building Code, as applicable, all ordinances of the Town of Boone and Watauga County, as pertinent, and all relevant federal and state laws relating to its operation of a facility and enterprise open to the public, and to its use of paid employees therein. Should Licensee be given permission to make repairs to the License area, for repairs requiring skilled workers, such as electrical repairs, plumbing repairs, structural repairs, and the like, Licensee shall only employ appropriately licensed workers to make the repairs. If Licensor itself undertakes needed repairs of conditions which are the result of Licensee's failure to discharge its maintenance responsibility; Licensee's negligence; an intentional act of destruction by Licensee's participants, employees, patrons, invitees, agents or contractors; or other breach of its responsibilities under this License; Licensee shall be responsible for reimbursing Licensor the cost of such repairs, and its failure to promptly reimburse Licensor shall constitute a basis for the termination of this License. For purposes of this section, "repairs" shall refer to fixing something which has been damaged, broken, or is not working correctly, so that it is in good condition and working properly.

10. **Alterations:** Licensee agrees to neither make nor arrange for any alterations to the license area without the advance written approval of Licensor. Should any alterations be approved by Licensor, they shall be done in a workmanlike manner, and they shall become the property of Licensor. Should Licensee be given permission to make alterations to the License area, for alterations requiring skilled workers, such as electrical installations, plumbing installations, construction activities, and the like, Licensee shall only employ appropriately licensed workers to make the alterations. In making any alterations, Licensee shall comply with the North Carolina State Building Code, as applicable, all ordinances of the Town of Boone and Watauga County, as pertinent, and all other relevant Federal and State laws. For purposes of this section, "alterations" includes, but is not limited to: removal of vegetation, other than weeds removed as part of normal maintenance, permanent modification of any existing structures, and construction of new structures.
11. **Compliance with Laws:** In particular, and not by way of exclusion, in any and all its actions and activities, Licensee will comply and hereby certifies its compliance with the Americans with Disabilities Act, as amended, Title VII of the Civil Rights Act of 1964, as amended, the Fair Labor Standards Act, as amended, the Occupational and Health Safety Act, as amended, the North Carolina Employment Security Act, as amended, and the North Carolina Worker's Compensation Act, as amended, to the extent each such law applies to Licensee or any of its activities. Should Licensee's corporate status be revoked by the North Carolina Secretary of State, this license shall immediately terminate. Licensee commits that it will act in accordance with all laws related to its status as a North Carolina Corporation.
12. **Keys and Locks:** Licensee must provide duplicate keys to all structures in the License area to Licensor at the inception of this License. Should Licensee change any of the locks or add any locks to any of the doors, windows or other locked feature of the License area, Licensee shall, at its own expense, immediately provide duplicate keys to all such locks to Licensor. At the end of the License, Licensee shall return or turn over all keys which relate to the License area to Licensor.
13. **Information Required to be Furnished:** Licensee shall provide Licensor with its current by-laws at any time requested. Within ten days of any change, Licensee shall provide to Licensor any change to its by-laws, shall notify Licensor of any change to its management staff, and at the execution of this license and any time such composition changes, shall advise Licensor of the names and addresses of each member of its board of directors.
14. **Termination or Expiration:** This license is terminable at will by either party. Upon termination or expiration of this license, Licensee shall remove its personal property from the license area and shall surrender the license area to Licensor in good order and repair, reasonable wear and tear excepted.
15. **Abandoned Property:** Following the termination or expiration of this license, any property left by Licensee on the license area shall be considered abandoned and may be retained by or disposed of by Licensor as it sees fit. However, Licensee shall have a ten day period following the termination of this lease to remove any building(s) which it owns. Thereafter, such building(s) will be deemed donated to Licensor. Licensee shall not leave, place, or store any personal property unrelated to the scope of the License in the License area, and any such property shall be considered abandoned and may be disposed of

by Licensor.

16. **Waiver and Exculpation, Indemnification:** Licensor shall not be liable for, and Licensee hereby waives all claims against Licensor for damage to its property, or for injury, illness or death of any person in, upon or about the License area arising from any act or neglect of Licensee or caused to or suffered by any person using the license area pursuant to Licensee's authority. Licensee shall indemnify, defend, protect and hold harmless Licensor from and against any and all claims, actions, loss, cost, damage, expense, and liability associated with personal injury, damage to property, or any other matter arising out of any occurrence in, upon, or at the License area, or associated with any act or omission of the Licensee, or associated with Licensee's use, occupancy or activities in the license area or access thereto by Licensee; provided, however, that the foregoing indemnity shall not be applicable to claims arising by reason of the gross neglect or willful misconduct of the Licensor. In the event that the Licensor is made a party to any litigation brought against the Licensee or by reason of or related to the Licensee's use or occupancy of the License area, the Licensee shall defend, protect and hold harmless the Licensor from any and all liability that may result therefrom, including Licensor's costs in defending itself against any claim, action, litigation or other assertion of liability.
17. **Insurance:** Licensee shall provide and maintain insurance coverage against loss, destruction, or other damage to its property located on the License area, as well as against all risks for which Licensee is required to indemnify and hold Licensor harmless, which includes injury or death of third parties and damage to the property of third parties, as more fully set out in paragraph 16. Licensee's liability insurance coverage shall provide coverage for personal injury or bodily harm occurring during the term of the license, whensoever the claim is made, in an amount no less than two million dollars (\$2,000,000.00) per occurrence, and shall insure against injuries or damages which occur as a result of Licensee's operations. Licensee shall also maintain insurance coverage for damage which Licensee itself may cause to the real or personal property of Licensor on account of Licensee's failure to discharge its maintenance responsibility; Licensee's negligence; or an intentional act of destruction by Licensee's participants, employees, patrons, invitees, agents, or contractors. In addition, if alcohol is served for consumption at the licensed area, Licensee or its vendor(s) shall maintain appropriate host liquor liability insurance in the amount of at least one-million dollars (\$1,000,000.00).

Licensor shall be named as an additional insured on every liability insurance policy of Licensee relating to the license area. Certificates of insurance for each policy required to be obtained by Licensee in compliance with this paragraph shall be filed and maintained with Licensor. Upon request, Licensee shall provide the insurance policies to Licensor for its review. Licensee shall immediately advise Licensor of any injury, damage, or assertion of claim or litigation that may result in a claim of liability against Licensor.
18. **Modification of License:** There shall be no modification of this License unless the modification is in writing and signed by both parties; provided, however, that Licensor has the right to modify the License unilaterally as it may determine necessary in its sole discretion, such modification to take effect 30 days following written notice to Licensee unless Licensor, in its discretion, determines that the modification must go into effect immediately upon or at some earlier time following notice of the same to Licensee.
19. **Assignments:** This license may not be assigned.
20. **Not a Lease or Estate:** The parties agree and acknowledge that in no event shall this License constitute a lease or grant or create any leasehold estate or other estate in the License area. This license is intended and shall be construed as granting a License or right of use in the License area, and Licensee's use and occupancy of the license area shall not be deemed to be a tenancy under the laws of North Carolina, and Licensee shall not enjoy, and hereby waives, any protections afforded tenants under federal, state, or local laws or regulations. Furthermore, the parties expressly disavow that this instrument creates any contractual responsibilities on the part of the Licensor.
21. **Governing Law:** This license shall be governed by and construed in accordance with the laws of the State of North Carolina. Venue concerning any dispute regarding this license shall be in Watauga County, North Carolina.
22. **Severability:** If any provision of this license or the application thereof to any person or circumstance shall, for any reason and to any extent, be held invalid or unenforceable, that provision shall be severed, and the remainder of this license and the application of that provision to other persons or circumstances shall not be affected, but rather shall be enforced to the extent permitted by law.

23. **Parties' Relationship:** Nothing contained in this License shall be deemed or construed by the parties or by any third party to create the relationship of principal and agent, employer and employee, or of partnership or joint venture or of any association whatsoever between Licensor and Licensee other than as is contained herein, it being expressly understood and agreed that none of the provisions contained in this license nor any act or acts of the parties hereto shall be deemed to create any relationship between Licensor and Licensee other than the relationship of a Licensor and Licensee.
24. **Waiver:** Licensor's failure to strictly enforce its rights under this license shall not constitute a waiver of such rights.
25. **Entire Agreement:** This License contains all of the terms and conditions concerning the licensing and use of the License area by Licensee. There are no oral terms or conditions agreed to by the parties which are not contained in this License. Licensor has not made and is not making, and Licensee, in executing and delivering this License, is not relying upon any warranties, representations, promises or statements, except those that are expressly set forth in this License. All prior verbal agreements previously made by and/or between the parties, if not contained herein, are hereby expressly null and void, and insofar as such prior agreements and understandings between the parties are included herein, the same have merged into this License, which alone fully and completely expresses the current terms of this License.
26. **Execution:** Licensee represents and warrants that all necessary authorizations and approvals required for execution and performance of this License have been given and that the undersigned individual is duly authorized to execute this License and bind the Licensee to the conditions set forth.
27. **Notices:** All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, to the following addresses:
- If to **Licensor**, to: Amy Davis
Town Manager
Town of Boone
P.O. Drawer 192
Boone, NC 28607
- If to **Licensee**, to: Chair, Board of Directors
Watauga County Farmer's Market, Inc.
P.O. Box 2177
Boone, NC 28607
28. **Execution in counterparts:** This license agreement may be executed in separate counterparts, all of which together shall constitute and be effective as an original.

IN WITNESS WHEREOF, the **Licensor** and **Licensee** have executed this Lease Agreement in duplicate originals, and agree to all of the terms and conditions set forth above, the day and year first above written.

Town of Boone, Licenser

Tim Futrelle, Mayor

Attest: _____ (Seal)
Town Clerk, Town of Boone

Watauga County Farmer's Market, Inc. , Licensee, by

President

Attest: _____ (Seal)
Secretary, Watauga County Farmer's Market, Inc.

ATTACHMENT “A”

1. The License area shall consist of the exclusive use of the Upper Parking Lot at Daniel Boone Park, excluding six parking spaces reserved for the Southern Appalachian Historical Association, Inc., and non-exclusive use of the lower lot, excluding four parking spaces reserved for the Daniel Boone Native Gardens, each Saturday during the term of the License between the hours of 6:00 a.m. and 2:00 p.m., and subject to the following conditions and limitations:
 - a. Non-exclusive use of the restrooms, along with ingress, egress and regress to them during Licensee’s hours of operation during the periods April 2, 2023 – November 25, 2023 and April 6, 2024 – November 30, 2024 with the following conditions:
 - i. Licensee shall assume responsibility for the opening, closing, cleaning, stocking and monitoring of the restrooms before, during and after each use. Restrooms should be cleaned, stocked, and made available for use by another Licensee after every use.
 - ii. Additional periods may be authorized by Licensor based on the determination that the restrooms can function properly in cold weather.
 - b. Non-exclusive access to a shared refuse facility on site, if it agrees to equitably share the cost of the same, as determined by Licensor.
 - c. Participants and patrons of the farmer’s market may not park in such a manner as to interfere with emergency access to the License area or other areas accessed through the License area, and upon request by Licensor or law enforcement or fire protection officer that participants or vehicles be relocated or rearranged, Licensee will ensure that its participants and patrons promptly honor the request.
 - d. Food trucks may be included in the operation of the Farmer’s market. The location(s) of food trucks must be approved by the Town of Boone Manager, or her designee, and Fire Marshall prior to their operation, and they must have all required permits and inspections.
 - e. Tastings and sales of beer, hard cider and wine shall be limited to vendor area of the licensed area. No open containers of any kind are permitted in parking areas.
 - f. Licensee and each winery, cidery or brewery will abide by all applicable regulations and laws, including but not necessarily limited to those of the Town of Boone and the NC ABC Commission
 - g. No more than three breweries, microbreweries, or wineries combined may offer samples or sales at the farmer’s market per day.
2. For the period of January 1, 2023 – December 31, 2024: Exclusive use of the “Storage Shed” located in the center of the Farmer’s Market, in the Kid’s Zone area.
3. Volunteer “clean-up” or “work” days may be allowed subject to the conditions and limitations of this agreement and with the advance approval of the Town Manager.

COUNCIL MATTERS**PRESENT RESEARCH & DISCUSS SOCIAL WORK PROGRAM**

Chief Le Beau, along with Sgt. Kat Eller and Intern Katherine Magee gave a presentation regarding a proposed social work program. A complete copy of the presentation may be viewed online at

http://boonenc.igmm2.com/Citizens/Detail_Meeting.aspx?ID=3492. After the presentation, Chief Le Beau asked representatives from the Mediation and Restorative Justice Center and Watauga LEAD to give a presentation in January on their respective resources. Mr. George noted that he wanted the Town to continue an internship program no matter how Council chose to proceed. Mayor Pro-Tem Tugman thanked staff for bringing new empathy to a difficult issue. Ms. Roseman stated that this was a positive move for the community. Mr. Carter stated that he appreciated staff's research and noted that funding was a priority. Mr. George suggested that a Resolution of Appreciation be presented in January for Katherine Magee.

Mayor Futrelle declared a break at 10:52 a.m. The meeting resumed at 11:16 a.m.

REQUEST FOR STAFF TO RESEARCH & MAKE RECOMMENDATIONS REGARDING GREAT TRAILS STATE COALITION

Ms. Nenow presented her request to staff to research and make recommendations regarding the Great Trails State Coalition. Following brief discussion, Ms. Roseman made a motion to support the project at the \$1,000 level, with Ms. Nenow acting as the Town of Boone representative. Mr. George seconded the motion, which carried unanimously.

CONSIDERATION OF CASES HEARD AT NOVEMBER 28, 2022 PUBLIC HEARING

Case PL05918-072222 Watauga County Jail Local Historic Landmark Designation

Upon a motion by Mr. George, seconded by Ms. Roseman, Council voted unanimously that the proposed amendment to the Town's zoning map is consistent with the Town's Comprehensive Plan and any other adopted plans of the Town that are applicable because the amendment is consistent with the policies stated in the meeting packet.

Ms. Roseman made a second motion to approve Ordinance PL05918-072222 to the Town's Zoning Map and believes approval to designate the property as a local historic landmark is reasonable and in the public interest because it preserves one of Boone's historical locations for future use. Mr. George seconded the motion, which carried unanimously.

Case PL6130-100422 & PL6131-100422 Dinh, Tim Trong General Use Zoning Map Amendment

Upon a motion by Mr. George, seconded by Ms. Roseman, Council voted unanimously that the proposed amendment to the Town's zoning map is consistent with the Town's Comprehensive Plan and any other adopted plans of the Town that are applicable because the amendment is consistent with the policies stated in the meeting packet.

Ms. Roseman made a second motion to approve Ordinance PL06130-100422/PL6131-100422 and that approval is reasonable and in the public interest because it allows proper R1 growth within the Boone corridor and allows proper use of a parcel as one unit. Mr. George seconded the motion, which carried unanimously.

Case PL06142-101122 - Junaluska Neighborhood Conservation District Overlay

Upon a motion by Mr. George, seconded by Ms. Roseman, Council voted unanimously that the proposed amendment to the Town's zoning map is consistent with the Town's Comprehensive Plan and any other adopted plans of the Town that are applicable because the amendment is consistent with: Comprehensive Plan policies 2.3.3 (A), 2.1.1 (A), 2.3.2 (D), and 2.3.3 (F).

Ms. Roseman made a second motion to approve Ordinance PL06142-101122 and believes approval is reasonable and in the public interest because it preserves a piece of Boone's history and culture as one of the oldest Appalachian African American communities.

Case PL06245-110922 Single-and-Two-Family Nonconforming Use Exception UDO Text Amendment

Upon a motion by Mr. George, seconded by Mayor Pro-Tem Tugman, Council voted unanimously that the proposed amendment to the Town's zoning map is consistent with the Town's Comprehensive Plan and any other adopted plans of the Town that are applicable because the amendment is consistent with the policies stated in the meeting packet.

Ms. Roseman made a second motion to approve Ordinance PL06245-110922 and believes approval is reasonable and in the public interest because it brings conformity of a uniform section back into districts. Mr. George seconded the motion, which carried unanimously.

DIRECTION TO TOWN ATTORNEY REGARDING INCLUSIONARY ZONING

It was the consensus of Council to direct the Town Attorney to research and present an inclusionary zoning policy that was reflective of Boone's resources and abilities in implementation.

RECAP OF CRAB MEETING DISCUSSION OF PROPOSED TOWN OF BOONE 1872 AWARD

After Mr. Freed's recap of the Cultural Resources Advisory Board meeting discussion regarding the proposed 1872 award Mr. George suggested that the Cultural Resources Advisory Board pick the winners of the award, and suggested that three awards be given per year. He noted that he did not want this award to go to public servants but to community members. Mr. Carter suggested that two individuals and one organization be granted the award each year. It was the consensus of Council that applications would be released in January, with plaques presented at the 2023 Boonerang event, and that Mr. Freed would report back after the next CRAB meeting.

REQUEST FOR SCHEDULING DATE FOR MARKER CEREMONY & ROAD CLOSURE FOR COUNCILL'S STORE HISTORIC MARKER

Upon a motion by Ms. Roseman, seconded by Mr. George, Council voted unanimously to schedule the ceremony and road closure for the Council's Store Historic Marker designation event on January 23, 2023 at 1 p.m. as presented in the meeting packet.

DISCUSSION OF DRAFT 2023-2024 SAHA LICENSE AGREEMENT

Mr. Freed presented a draft license agreement between the Town of Boone and SAHA, and noted a proposed extension at the beginning and end of the agreement. Since Mr. Freed was unaware of the reasoning for the extension, Ms. Meade suggested that Mr. Freed come back to Council in January with additional information about the extension before Council voted on the agreement. She noted that the current lease expires at the end of December 2022, but that would not pose a problem since the organization was not doing anything that would require the lease to be in effect. Mayor Pro-Tem Tugman asked that Mr. Freed request a SAHA representative to attend the January meeting as well.

DISCUSSION OF POSSIBLE NEW NONDISCRIMINATION ORDINANCE

Ms. Meade presented Council with a proposed new nondiscrimination ordinance per a form drafted by NC Equality and adopted by numerous other North Carolina municipalities. The draft included a number of possible enforcement alternatives. Ms. Meade suggested that Council start with the narrower housing option and the narrower enforcement option (potential injunctive action by the Town and voluntary conciliation by the Human Relations Commission). Mr. Carter suggested, and it was the consensus of Council, that Ms. Meade come back to Council in January with a proposed nondiscrimination ordinance using the information listed in her proposed option number two, with the ordinance going into effect on June 1, 2023, in honor of Pride Month and to allow time to communicate with businesses.

Mayor Futrelle declared a break at 12:35 p.m. The meeting resumed at 12:45 p.m.

DISCUSSION REGARDING 2023 MEETING SCHEDULE

Lengthy discussion was held regarding the 2023 meeting schedule, with the consensus of Council being that meetings would take place on the second and fourth Wednesday of each month beginning at 2:00 p.m. A work session will be held from 2:00-4:00 p.m., followed by public comment and council matters from 4:00 p.m. - 9:00 p.m. or until the last item has been completed. The second meeting will begin at 4:00 p.m. and will be reserved for any matter believed to generate increased public participation. If there are no matters scheduled for this agenda, this meeting will be cancelled. Both meetings will take place at Council Chambers and the new schedule will begin in January. The annual meeting notice should be amended to reflect this change, and should be announced to the public.

CONSIDERATION OF ANNUAL MEETING NOTICE

SCHEDULING OF ANNUAL BUDGET WORKSHOP

It was the consensus of Council to hold the annual budget workshop on Friday, February 10, 2023 beginning at 9 a.m. at Town Council Chambers.

SCHEDULING OF 2023 PLANNING RETREAT

It was the consensus of Council to schedule the annual planning retreat on January 31, 2023 at 9:00 a.m. at Town Council Chambers. Ms. Shook requested that the Community Appearance Commission not meet until after the planning retreat so as not to repeat work unnecessarily.

APPOINTMENT TO DBDA

Mr. George nominated Megan Kevorkian to serve on the Downtown Boone Development Association. Hearing no further nominations, Mayor Futrelle called for a vote:

Vote: Aye: All
 Nay: None

Megan's term will expire on December 14, 2025.

TOWN MANAGER UPDATE

Ms. Davis congratulated Sgt. Burlingame on her recent Dogwood award, and welcomed grant writer Michelle Brown.

BOARD LIAISON REPORT

Ms. Nenow indicated that the Sustainability Committee had recently discussed board composition. Mayor Pro-Tem Tugman noted that the DBDA was working on a street vendor policy. She expressed some concern about a vendor who was selling hot donuts during the parade. Ms. Meade suggested that at this time, the only thing that could be done in this situation was to call the health department. Mr. Carter announced the AppalCART's new real time dynamic messaging system and indicated that they would be accepting bids through February. Mayor Futrelle stated that the High Country COG was working with NCDOT for the funding of local multimodal projects. He announced that the TDA was able to fund Cultural Resources for Boonerang, Antlers and Acorns, and noted a recent Imagine Watauga presentation. Mayor Pro-Tem Tugman suggested staff look at the armory deed with regards to how the property reverts after the expiration of the lease. Mr. Freed noted that CRAB pleased to move to an ad-hoc schedule.

COMPREHENSIVE PLAN WORK SESSION

It was the consensus of Council to table this item until the planning retreat.

CLOSED SESSION

Upon a motion by Mr. George, seconded by Mayor Pro-Tem Tugman, Council voted unanimously to enter into closed session at 1:28 p.m.

1. Pursuant to N.C. Gen. Stat. § 143-318.11(a)(1), to review, approve and seal closed session minutes from Council's prior closed session(s).
2. Pursuant to N.C. Gen. Stat. § 143-318.11(a)(3), to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the Town Council and obtain legal advice, consider and/or give instructions to the attorney concerning one or more potential legal claims.
3. Pursuant to N.C. Gen. Stat. § 143-318.11(a)(3), to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the Town Council and obtain legal advice, consider and/or give instructions to the attorney concerning the lawsuit involving Watauga County relating to the local sales tax.

Upon a motion by Mr. Carter, seconded by Mr. George, Council voted to exit closed session at 2:44 p.m.

ADJOURNMENT

The meeting was adjourned at approximately 1:30 p.m.

Nicole Harmon, Town Clerk

Tim Futrelle, Mayor