

**MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
December 15, 2016**

CALL TO ORDER

A regular meeting of the Boone Town Council was called to order at 5:30 p.m. Thursday, Dec. 15, 2016, in the Council Chambers located at 1500 Blowing Rock Road. Mayor Pro Tem Lynne Mason presided. Council members present were Loretta Clawson, Charlotte Mizelle, Jennifer Teague and Jeannine Underdown Collins. Town Attorney Allison Meade was in attendance. Staff present were Town Manager John Ward, Town Clerk Christine Pope, Police Chief Dana Crawford, Public Works Director Rick Miller, Cultural Resources Director Pilar Fotta, Interim Planning Director Jane Shook, Urban Design Specialist Brian Johnson, Finance Director Amy Davis and Human Resources Director Peri Moretz.

ANNOUNCEMENTS

VOLUNTEER APPRECIATION AND RECOGNITION - CAMERON LIPPARD

Mayor Pro Tem Mason presented Cameron Lippard with a resolution of volunteer appreciation and recognition for his time served on the Planning Commission.

PRESENTATION OF TREE CITY AWARDS

The U.S. Forest Service presented the Town with the 23rd Tree City USA Award and 12th Tree City Growth Award.

PRESENTATION OF AWARD

The U.S. Army Corps of Engineers presented Assistant Town Manager Jim Byrne with the Commander's Award for Public Service.

TENTATIVE AGENDA ADOPTION

Town Manager John Ward noted there were no additions to the agenda, but asked Council to consider moving Item 8.F. - Case 20160566 Farm Bureau to be the first item under Council Matters due to the number of people in attendance to hear this matter.

ADOPTION OF AGENDA

Upon a motion by Council Member Teague, seconded by Council Member Clawson, Council moved to adopt the tentative agenda with the amendment to move Item 8.F. to the beginning of Council Matters.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Jennifer Teague, Council Member
SECONDER:	Loretta Clawson, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

PUBLIC HEARING

ANNEXATION OF TOWN-OWNED PROPERTY

Mayor Pro Tem Lynne Mason opened the public hearing on the annexation of Town-owned property at 5:46 p.m. There was no one signed up to speak. Town Manager John Ward noted the public hearing is a required step before Council can take action to annex the recently purchased, Town-owned property located on US Hwy. 421 S. Totaling 53.827 acres. With no further comments, Mayor Pro Tem Mason closed the hearing at 5:48 p.m.

HOWARD STREET CONCEPT PLAN

Mayor Pro Tem Mason opened a public hearing on the Howard Street Concept Plan at 5:49 p.m.

Diane Blanks of 357 Green Street stated she hoped that as Council plans Howard Street they give thought to reversing the direction of traffic due to the number of vehicles that will be leaving the soon-to-be constructed Winkler parking deck at the corner of Howard Street and Water Street.

Town Manager John Ward provided a summary of the concept plan, noting that the Town will be moving into the construction drawings phase, which will take approximately six to seven months to complete. Mr. Ward stated he would set up the plans in Town Hall and encourage people, especially those who are downtown, to stop by to view.

With no further comments, Mayor Pro Tem Mason closed the hearing at 5:59 p.m.

PUBLIC COMMENT

Carson Sailer, Clyde Burleson and Skip Greene, on behalf of the Southern Appalachian Historical Association, thanked Council for their support this year.

Will Gandy of 151 Sheridan Avenue spoke against the rezoning of property on State Farm Road (Case 20160566), stating it would set a precedent in the neighborhood.

Diane Blanks of 357 Green Street spoke in support of the request to rezone the Green Street neighborhood from R2 to R1A (Case 20160734) stating it would protect the neighborhood.

Kathryn Thomas of 127 Sheridan Avenue spoke against the rezoning of property on State Farm Road (Case 20160566) stating she wants the quality of life in the neighborhood to stay the way it is. Ms. Thomas also read a letter from Joan McLaughlin of 229 VFW Drive asking that Council protect the integrity of the older, residential neighborhoods in Boone.

Cathy LaMarre of 156 Olancho Avenue stated she supports creating a neighborhood conservation district for the Beverly Heights area, but not the rezoning of property on State Farm Road (Case 20160566).

Phillip Bruch of 149 VFW Drive spoke regarding the request to rezone property on State Farm Road (Case 20160566) stating it would set a bad precedent and he wanted the neighborhoods protected.

Ben Miller of 190 Beverly Heights Avenue encouraged Council to approve the neighborhood conservation district for his area, but since the neighborhood does not have the privilege of being a gated community, asked Council to not rezone the Farthing property (Case 20160566) and keep the neighborhood as is.

Judy Miller of 190 Beverly Heights Avenue stated there was a meeting in her home to talk to the neighbors and how they feel regarding the rezoning of the property on State Farm Road (Case 20160566) and there was 100 percent certainty that the homeowners from her house to the top of the hill were all opposed to the rezoning as it would be devastation to the neighborhood.

David Johnson of 125 Cypress Pointe spoke regarding the Green Street rezoning (Case 20160734), and asked that his parcel be removed from the proposed area to be rezoned and let it remain R2.

Hunter Coffey spoke in favor of rezoning the property on State Farm Road (Case 20160566). He stated the property is not the same in nature as those in the Beverly Heights neighborhood as it is on a busy road. He added that Farm Bureau Insurance is a small-town, small business and would be a buffer between State Farm Road and the neighborhoods.

REQUESTED APPEARANCES

HARVARD AYERS - REQUEST FOR APPROVAL OF CLEAN ENERGY RESOLUTION

Harvard Ayers appeared before Council to request they approve a resolution supporting a North Carolina goal of 100 percent clean energy by 2050 and the creation of green jobs. Mayor Pro Tem Mason asked if Council would like to amend the agenda to take action on this resolution. Upon a motion by Council Member Mizelle, seconded by Council Member Clawson, Council moved to add this item to Council Matters in order to take action.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Charlotte Mizelle, Council Member
SECONDER:	Loretta Clawson, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

CONSENT AGENDA ADOPTION

Upon a motion by Council Member Teague, seconded by Council Member Underdown Collins, Council moved to adopt the consent agenda.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Jennifer Teague, Council Member
SECONDER:	Jeannine Underdown Collins, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

TOWN COUNCIL - SPECIAL MEETING - NOV 7, 2016 5:35 PM

TOWN COUNCIL - WORKSHOP/RETREAT - NOV 15, 2016 8:30 AM

TOWN COUNCIL - REGULAR MEETING - NOV 17, 2016 5:30 PM

TOWN COUNCIL/PLANNING COMMISSION - PUBLIC HEARING - NOV 28, 2016 5:30 PM

APPROVAL OF RESOLUTION OF VOLUNTEER APPRECIATION AND RECOGNITION - CAMERON LIPPARD

RESOLUTION OF VOLUNTEER APPRECIATION AND RECOGNITION

WHEREAS, Cameron Lippard has served this community well in numerous capacities during his time volunteering on the Town of Boone's Planning Commission; and,

WHEREAS, Cameron Lippard's service to the Town of Boone shows exemplary dedication to the best interest and betterment of the community; and,

WHEREAS, through the performance of his duties and responsibilities as a member of the Planning Commission, he has made excellent and constructive contributions to our Town; and,

WHEREAS, he has earned the admiration and high regard of those with whom he has come into contact and the affection of his fellow public servants.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Boone, North Carolina does hereby express our sincere appreciation and thanks, as well as that of our citizens to Cameron Lippard with sincere best wishes for continued success and many happy years ahead.

Adopted by unanimous vote of the Town Council on the 15th day of December, 2016.

Mayor Rennie Brantz

ATTEST:

Town Clerk Christine Pope

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE 281)

APPROVAL OF RESOLUTION FIXING DATE OF PUBLIC HEARING - BROWN OF BOONE III, LLC ANNEXATION

**RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION OF ANNEXATION
PURSUANT TO G.S. 160A-31
(Brown of Boone III, LLC)**

WHEREAS, a petition requesting annexation of the area described herein has been received; and

WHEREAS, the Town Council has by resolution directed the Town Clerk to investigate the sufficiency of the petition; and

WHEREAS, certification by the Town Clerk as to the sufficiency of the petition has been made;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Boone, North Carolina that:

Section 1. A public hearing on the question of annexation of the area described herein will be held at Council Chambers at 5:30 p.m. on January 19, 2017.

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

A 4.600 acre tract being that portion of Book of Records 1489, Page 412 lying on the south side of New Highway US 421 (project 6.759003T) being surveyed by me, Frank Lee Hayes PLS 1 – 1488, on August 10, 2015 as: BEGINNING on an existing half inch rebar, a corner to a Watauga County tract (BoR 40, Page 755) in the northern line of a second Watauga County tract (DB 252, Page 739), and having NCGS NAD '83 coordinates of N = 910,179.13 and E=1,224,176.92; THENCE from the beginning and with the Watauga County property line North 71 degrees 29 minutes 30 seconds West 645.31 feet to an existing 5/8 inch rebar, a Makovich properties corner; THENCE with the Makovich line North 71 degrees 29 minutes 30 seconds West 234.11 feet to a 5/8 inch rebar set in the DOT line; THENCE with said line North 83 degrees 46 minutes 15 seconds East 73.15 feet to a 5/8 rebar set; THENCE with the same North 71 degrees 46 minutes 15 seconds EAST 136.16 feet to a concrete DOT monument; THENCE with the same NORTH 83 degrees 46 minutes 15 seconds East 446.72 feet to a concrete monument; THENCE with the same South 77 degrees 22 minutes 05 seconds East 392.91 feet to an existing half inch rebar at a fence corner, a Watauga County property corner; THENCE with the Watauga County property line South 33 degrees 35 minutes 30 seconds West 350.08 feet to the BEGINNING; being described with bearings and distances relative to the North Carolina Grid System (combined grid factor is 0.99986915).

Section 3. Notice of the public hearing shall be published in the Watauga Democrat, a

newspaper having general circulation in the Town of Boone, at least ten (10) days prior to the date of the public hearing.

ATTEST:

Mayor

Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE 282)

ADOPTION OF ORDINANCE - ANNEXATION OF TOWN-OWNED PROPERTY

Ordinance #16-07

**AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE
TOWN OF BOONE, NORTH CAROLINA
(Town of Boone)**

WHEREAS, the Town Council of the Town of Boone has passed a resolution pursuant to G.S. 160A-31 to annex the area described below; and,

WHEREAS, a public hearing on the question of this annexation was held at Council Chambers located at 1500 Blowing Rock Road at 5:30 p.m. on December 15, 2016, after due notice by publication in the *Watauga Democrat*, a newspaper having general circulation in the Town, on December 4, 2016; and,

WHEREAS, the Town Council does hereby find as a fact the Town-owned property proposed for annexation meets the requirements of G.S. 160A-31; and,

WHEREAS, the Town Council further finds that the public health, safety and welfare of the Town and of the territory proposed for annexation will be best served by annexing the territory described herein.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Boone, North Carolina, that:

Section 1. By virtue of the authority granted by G.S. 160A-31, the following described territory is hereby annexed and made part of the Town of Boone as of December 15, 2016:

Being all of that 53.827-acre tract as shown on survey entitled, "Recombination Survey for Town of Boone," prepared by AB Christie Surveyors, PLS, dated May 26, 2016, and recorded in Map Book 25, Page 229, Watauga County, North Carolina, Public Registry, to which plat reference is hereby made for a more complete description of said tract.

Section 2. Upon and after December 15, 2016, the above described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the Town of Boone and shall be entitled to the same privileges and benefits as other parts of the Town of Boone. Said territory shall be subject to municipal taxes according to G.S. 160A-58.10.

Section 3. The Mayor of the Town of Boone shall cause to be recorded in the office of Register of Deeds of Watauga County, and in the office of the Secretary of State at Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1 above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the Watauga County Board of Elections, as required by G.S. 163-288.1.

Adopted this the 15th day of December, 2016.

ATTEST:

Mayor

Town Clerk

(ORDINANCE TO BE TYPED IN BOOK 4, PAGES 94-95)

APPROVAL OF CHANGE ORDER - NEW MARKET WATER STORAGE TANK REHABILITATION

APPROVAL OF AMENDED TOWN CODE 10.99 (GENERAL PENALTY)

§ 10.99 GENERAL PENALTY.

This provision applies to any violation of this code of ordinances except to the extent that another provision in a chapter of this code specifically provides for an additional or alternative penalty and/or remedy for violation of that chapter.

(A) Unless otherwise specifically provided, violation of any provision of this code of ordinances shall not constitute a criminal infraction, but shall subject the offender to a civil penalty in the amount of \$100, to be recovered by the town. Violators shall be issued written notice of the violation which must be paid within 72 hours after receipt of the notice. If the violator does not pay the penalty within 72 hours, the town may recover the penalty, and all subsequently accruing penalties, in a civil action.

(B) Each day's continuing violation of any ordinance provision shall be a separate and distinct offense.

(C) Notwithstanding division (A) above, all ordinances may also be enforced by appropriate equitable remedies issuing from a court of competent jurisdiction.

(D) Unless otherwise specifically provided herein, any person who violates a town ordinance regulating the operation or parking of vehicles shall be responsible for an infraction and shall be required to pay a penalty of up to \$50.

(E) If any section of this ordinance is held to be invalid or unenforceable, all other sections shall nevertheless continue in full force and effect.

(F) In the event it is necessary for the town to institute a civil action to collect a civil penalty for the violation of any provision of any town ordinance, the offender shall pay all court costs, including filing fees, fees for service of process, and other expenses incurred in the litigation, such as costs of depositions, copying expenses and charges, and reasonable attorney's fees incurred by the town.

(Ord. 13-01, passed 1-15-2013; Ord. passed 7-23-2015)

Statutory reference:

Enforcement of ordinances, see G.S. § 160A-175

REQUEST TO SEND PLANNED DEVELOPMENT ZONING MAP AMENDMENT TO PUBLIC HEARING - KING & COLLEGE, LLC

APPROVAL OF DANIEL BOONE PARK LICENSE AGREEMENTS

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

LICENSE

THIS License is granted effective the 15th day of December, 2016, by the Town of Boone, a North Carolina Municipal Corporation, hereinafter referred to as “Licensor,” to the Southern Appalachian Historical Association, Inc., a North Carolina non-profit 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 as relevant within the context of the succeeding paragraphs.

1. **Express Limitations:** This License is not intended to restrict in any way Licensor’s use of the premises, nor 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 in Attachment “A,” attached hereto and incorporated by reference herein, Licensee shall be entitled to the use of the described portions of the park previously referred to as “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 in Attachment “A” and herein for the purposes provided herein.
3. **Term:** This License authorizes the described uses by Licensee for the period commencing and including January 1, 2017 and ending and including December 31, 2018, as specified in Attachment “A”, with use authorized in particular portions of the License area only for the purposes and periods indicated, which in certain instances is less than the full term. As this is the first iteration of this license in which the term has been extended from one to two years, and because both parties are exploring potential other uses of the license areas in the future, the parties agree that on or about one year following the effective date of this license, upon the request of either party, they will meet to discuss and reassess the license terms. 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 an outdoor theater for the preparation and presentation of the outdoor dramas, “Horn in the West,” and a “Children’s Show” of currently unspecified content; and performances by musicians and entertainers as more specifically described in “Attachment A”. The operation of the Boone Heritage Festival or additional events may also be permitted upon coordination with the Cultural Resources Department, who maintains the Daniel Boone Park Master Event Calendar, to ensure that there are no user conflicts or violations of current licenses and/or lease agreements, and upon written approval by the Town Manager or his or her designee (hereinafter, simply “Town Manager”). As used in this agreement, “written approval” includes approval communicated via email.
 - ii. Displaying and maintaining the cabins, contents of the cabins and related surroundings constituting the “Hickory Ridge Living History Museum,” to the extent authorized in “Attachment A”. The parties stipulating that the historical buildings comprising this facility and the personal property contained in the buildings are the property of Licensee.

- 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, time periods, and terms of use authorized in "Attachment A". Associated support activities shall include use of the parking lot in appropriate locations during appropriate times, as further specified in Attachment "A", use of the bathrooms, operation of concession stands during performances, and storage of Licensee's personal property in the locations 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.
- 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;
 - 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, but is not limited to: (i) remediation of hazards other than those that would require alterations (as defined at paragraph 10) or repairs subject to paragraph 9 below; and (ii) 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.
- 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 is 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.

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 a signed copy of this document.
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 License 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 the License area in a good and sanitary condition and to restore said good and sanitary condition following any use by Licensee. 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 (i) collection and removal of trash, garbage, and litter, regular cleaning of facilities and structures, including bathrooms, which are to be cleaned after every performance and event, and (ii) such other action as is required to conserve the condition of the property while minimizing wear and tear, including but not limited to protecting water lines from freezing during periods of cold weather by maintaining heat and/or running water as needed. Should Licensee fail to properly maintain the License area, Licensor may terminate the License or itself provide the 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:**
 - A. *Cabins at Hickory Ridge Living History Museum:* Licensee shall have all obligation for repairing the cabins that it owns; provided, however, that Licensee shall provide at least 48 hours advance notice of any planned repairs (except in cases of emergency repairs) to the Cultural Resources Director to help avoid possible conflicts with other users of the Licensed area.
 - B. *Repairs on the Licensed premises:* Upon discovery thereof, Licensee must immediately notify Licensor in writing of any and all conditions on the Licensed premises in need of correction or repair, whatever the origin of the conditions (i.e., whether caused by Licensee, its employees, contractors, invitees, or others). Licensee shall make no repairs nor hire any person or entity to evaluate, assess or undertake any repairs without first notifying the Town Manager in writing and providing a minimum of 48 business hours advance notice of Licensee's intention to evaluate, assess or undertake or make such repairs, or in the event of an emergency, without first notifying the Town Manager by telephone at (828) 268-6200 of the condition and repairs contemplated. Repairs may only be performed by Licensee or by any person acting at the direction of the Licensee with express authorization of the Town Manager. It is the intent of the parties that the Town of Boone shall be responsible for carrying out necessary repairs to the Licensed premises

except with respect to repairs needed for electrical, mechanical or other fixtures that are used exclusively by SAHA.

In making any repairs, including repairs to Hickory Ridge Living History Museum and repairs authorized by the Town Manager under the preceding paragraph, Licensee shall ensure that all repair work is completed in a workmanlike manner and complies 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. Licensee shall only employ appropriately licensed workers as required by law to make the repairs.

In the event repairs are necessary as the result of (i) Licensee's failure to discharge its maintenance responsibilities or any other breach of its responsibilities under this License, (ii) Licensee's negligence, or (iii) an intentional act of destruction by Licensee's participants, employees, patrons, invitees, agents or contractors, Licensee shall reimburse 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, "repair" 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:** Except as to alterations to the cabins of Hickory Ridge Living History Museum, 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, or should it make alterations to the cabins of Hickory Ridge Living History Museum, 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, modification or improvement of any existing structures or electrical, plumbing, or mechanical systems, 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 Safety and Health 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, or should the Licensee's non-profit status be revoked by the United States Internal Revenue Service or otherwise, this License shall immediately terminate. Licensee commits that it will act in accordance with all laws related to its status as a non-profit 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. Licensor will not enter any of the buildings exclusively the property of the Licensee without the permission of the Licensee except in the event of an emergency.
13. **Information Required to be Furnished:** Licensee shall provide Licensor with a current copy of all Authorized Key-Holders, Management Staff and emergency contact, and a primary and secondary designee for contact as well as its current by-laws to be kept on file with a signed copy of this

license. Within ten days of any change, Licensee shall provide to Licensor any change to its management staff, or designated contacts 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 of this license for any reason or upon its expiration, 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, and shall remain liable to Licensor for any and all expenses chargeable to Licensee under this agreement, including but not limited to electric utility charges and repair costs that are Licensee's responsibility hereunder.
15. **Abandoned Property:** Following the termination or expiration of this License, any property left by Licensee in 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 one hundred twenty (120) day period following the termination of this License to remove any building(s) which it owns, including the cabins of Hickory Ridge Living Homestead Museum, unless extended by the Council. The buildings owned by Licensee are listed and pictured in "Exhibit C", attached hereto and incorporated by reference herein. 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, losses, costs, damages, expenses, 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 negligence or willful misconduct of 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; provided, however, that Licensor shall have the right to retain legal counsel of its choosing at its sole discretion.
17. **Insurance:** Licensee shall provide and maintain insurance coverage against loss, destruction, or other damage to property located in 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. Upon request, Licensee shall provide the aforesaid insurance policies to Licensor for its review. 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. 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.
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 License:** 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: John Ward
Town Manager
Town of Boone
P.O. Drawer 192
Boone, NC 28607

If to **Licensee**, to: Clyde Burleson, Registered Agent
Southern Appalachian Historical Association
P.O. Box 295
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 License in duplicate originals, and agree to all of the terms and conditions set forth above, the day and year first above written.

[signatures on following page]

Town of Boone, Licensor

Rennie Brantz, Mayor

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

Southern Appalachian Historical Association, Inc., Licensee, by

Clyde Burleson, Chair Board of Directors

Attest: _____(Seal)
Vice Chair Board of Directors

STATE OF NORTH CAROLINA

LICENSE

COUNTY OF WATAUGA

THIS LICENSE is granted this 15th day of December, 2016, 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:** This License authorizes the described uses by Licensee for two separate periods, the first period commencing and including May 6, 2017 and ending and including November 25, 2017, the second period commencing and including May 5, 2018 and ending and including November 24, 2018, as specified 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 two 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.
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: John Ward
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, Licensor

Rennie Brantz, 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 1:00 p.m., 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 May 6 – October 15, 2017 and May 5 – October 27, 2018 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. No more than two 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 Fire Marshall prior to their operation, and they must have all required permits and inspections. Additional food trucks may be considered if requested.
 - 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. 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.
-

STATE OF NORTH CAROLINA

LICENSE

COUNTY OF WATAUGA

THIS LICENSE is granted this 15th day of December, 2016, by the Town of Boone, a North Carolina Municipal Corporation, hereinafter referred to as "Licensor," to We Can So You Can, Inc., a North Carolina nonprofit 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, nor 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," and shown on Attachment "B" 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:** This License authorizes the described uses by Licensee on Saturday, January 21, 2017, as specified in Attachment "A". Additional dates for preparation or clean up may authorized by written approval of the Town Manager or his or her designee. As used in this agreement, "written approval" includes approval communicated via email.
4. **Scope of License:**
 - A. The license area may be used by Licensee for the primary purposes of: hosting the 2017 Boone Town Rail Jam
 - 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.
 - D. Following use, 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.
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; Consideration to Licensor:** For purposes of this License, the license fee has been waived. In consideration of Licensor granting this license and waiving the fee, Licensee agrees that (i) the Town will be granted all rights and privileges as a main sponsor of the event being hosted; and (ii) Licensee will donate to the Town, for the repair, maintenance, and/or improvement of the Daniel Boone Park, the net proceeds raised from the event, by which is meant gross revenues less all expenses including reasonable overhead. Because the parties anticipate future cooperation on the same or similar events and both desire this to be a mutual learning experience, following the event Licensee will share with Licensor’s Cultural Resources Director such information as is reasonably necessary to understand the net proceeds calculation, including gross revenues, the nature and amount of expenses, and its overhead charges.
7. **Utilities:** Licensee shall not be obliged to reimburse Licensor for utility costs.
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, cleaning of facilities and structures, 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 Boone 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:** Not applicable.
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, upon request 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 event insurance coverage, including general liability and host liquor liability insurance, in an amount of no less than one-million dollars (\$1,000,000.00), against all risks for which Licensee is required to indemnify and hold Licensor harmless, including but not limited to personal injury, bodily harm, or death of third parties and damage to the property of third parties as more fully set out in paragraph 16, as well as damage which Licensee, its participants, employees, patrons, invitees, agents, or contractors may cause to the real or personal property of Licensor. 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 aforesaid insurance policies to Licensor for its review. Licensee shall immediately advise Licensor of any injury, damage, or assertion of claim or litigation that arises from the event, regardless of whether it may result in a claim of liability against Licensor.
18. **Modification of License:** There shall be no modification of this License by Licensee unless the modification is in writing and signed by both parties; provided, however, that. Licensor retains has the right to modify the License unilaterally as it may determine necessary with notice and cause. 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: John Ward
Town Manager
Town of Boone
P.O. Drawer 192
Boone, NC 28607

If to **Licensee**, to: Sean Spiegelman
182 Kalmia Lane
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, Licensor

Rennie Brantz, Mayor

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

We Can So You Can, Inc., Licensee, by

Sean Spiegelman, President

Attest: _____ (Seal)
Secretary

ATTACHMENT "A"

1. The License area shall consist of the outdoor Structures, Grounds, and Parking Lots at Daniel Boone Park as shown in "Attachment B", on Saturday, January 21, 2017 beginning at 6:00 a.m., and extending through 10:00 p.m., excluding six parking spaces in the upper parking lot reserved for the Southern Appalachian Historical Association, Inc., and four spaces in the lower parking lot reserved for the Daniel Boone Native Gardens. Additional dates for preparation or clean up may authorized by written approval of the Town Manager or his or her designee.

Licensee agrees that it will prevent participants and patrons from parking in such a manner as to interfere with access to the recycling facilities or emergency access to the License area or other areas accessed through the License area. Licensee will ensure that its participants and patrons promptly honor any request by any law enforcement officer, fire official, and/or any representative of Licensor that vehicles be moved.

2. Licensee is responsible for the cleaning the walkways, paths, and stage areas before, during, and after the event.
3. Licensee will provide trash containers for the event, and will provide for the removal of all trash and trash receptacles at the conclusion of the event.
4. Licensee is responsible for securing all necessary permits and scheduling all applicable inspections.
5. Food trucks may be incorporated into this event, but their location(s) must be approved by the Town of Boone Fire Marshall prior to their operation, and they must have all required permits and inspections, including but not necessarily limited to those required by the Watauga County Health Department.
6. Licensee and its vendors will abide by all applicable rules, regulations and laws, including but not limited to those of the Town of Boone and the NC ABC Commission.
7. Wine, beer and/or hard cider may be sold and served, but only at such location(s) as are approved in advance by the Town Manager or his or her designee.

APPROVAL OF BUDGET AMENDMENT - PUBLIC WORKS

Description:	Account Number:	To:	From:
Community Appearance	010-600-405-525100	\$4,095	
Revenues	010-000-000-489900		(\$4,095)

APPROVAL OF BUDGET AMENDMENTS

Description:	Account Number:	To:	From:
Maintenance Vehicles	010-500-300-525301	\$1,411	
Miscellaneous Revenue	010-000-000-489900		(\$1,411)
Maintenance & Repairs Building & Grounds	010-408-000-525101	\$2,825	
Miscellaneous Revenue	010-000-000-489900		(\$2,825)
Public Safety Vehicle Equipment	010-500-300-516400	\$1,500	
Miscellaneous Revenue	010-000-000-489900		(\$1,500)

Maintenance – Vehicles	010-500-300-525301	\$1,052	
Miscellaneous Revenue	010-000-000-489900		(\$1,052)
Street Maintenance – Miscellaneous	010-600-401-519900	\$273	
Miscellaneous Revenue	010-000-000-489900		(\$273)

COUNCIL MATTERS

CONSIDERATION OF CASE 20160566 FARM BUREAU CONDITIONAL DISTRICT ZONING MAP AMENDMENT

Mayor Pro Tem Mason declared a break at 6:49 p.m. Council reconvened at 7 p.m.

Hunter Coffey, on behalf of Watauga County Farm Bureau Insurance, filed a Planning Permit Application for a Conditional District Zoning Map Amendment to rezone 135 and 169 State Farm Road from B3 General Business and R1 Single-Family Residential to Conditional District B3 General Business subject to a site specific development plan for Use 11.19 Other Business or Professional Office.

Interim Planning Director Jane Shook provided a summary of the request as well as of the Planning Commission special meeting held Wednesday, Dec. 14. Discussion ensued regarding the Unified Development Ordinance requirement for a 25-foot buffer, or instead, an opaque fence at least 15 feet back. Ms. Shook noted that due to the topography, the applicant is unable to do the 25-foot buffer and opted to do the 15 feet with an opaque fence as well as evergreens for additional buffer. Brief discussed ensued regarding the Millers maintaining access to the right-of-way behind their property, to which the applicant agreed, as well as the possibility of a berm; however, due to trees the applicant is trying to preserve, the applicant did not believe a berm would be possible.

MOTION TO REOPEN PUBLIC HEARING

Upon a motion by Council Member Teague, seconded by Council Member Underdown Collins, Council moved to reopen the public hearing at 7:11 p.m.

Ben Miller voiced his concern with the protection of the Townsend's half of the street through a quit claim deed, noting it seemed a proposed berm would be on the Townsend's property. Town Attorney Allison Meade advised that any approval of permits is premised on assumption that the applicant has the required legal rights, and the Town is not involved in determining property rights as it would be a matter between private property owners.

Ms. Shook noted that when reducing a buffer, it also reduces the number of plant materials used.

With no further comments, Mayor Pro Tem Mason closed the public hearing at 7:17 p.m.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Jennifer Teague, Council Member
SECONDER:	Jeannine Underdown Collins, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

CASE 20160566 VOTE #1

Council Member Underdown Collins stated she felt the lots fronting State Farm Road should be used for quiet commercial office growth, and would be a good transition and proactive step to help a neighborhood and protect it. Council Member Clawson voiced her support of residential neighborhoods and stated she did not support the

proposed rezoning. Council Member Teague stated she believed the rezoning would be in the best interest of the neighborhood, and if denied, something worse might move into the location. Council Member Mizelle stated Farm Bureau has been a good neighbor, and thinks the rezoning is a safe way to protect the neighborhood by ensuring a quiet, weekday-only neighbor buffering the neighborhood from State Farm Road. Council Member Mason stated this was a well-established neighborhood, and she could not support the rezoning request without the neighborhood's support.

Council Member Clawson moved that the proposed amendment to the Town's zoning map is not consistent with the Town's Comprehensive Plan and other applicable adopted plans of the Town which relate to this application because she believed the wishes of the neighborhood should take precedent. Mayor Pro Tem Mason seconded the motion.

RESULT:	DEFEATED [2 TO 3]
MOVER:	Loretta Clawson, Council Member
SECONDER:	Lynne Mason, Mayor Pro Tem
AYES:	Mason, Clawson
NAYS:	Mizelle, Teague, Collins

CASE 20160566 VOTE #2

Council Member Clawson moved to deny the proposed amendment to the Town's zoning map and believe denial is reasonable and in the public interest because it would follow the wishes of the neighborhood. Mayor Pro Tem Mason seconded the motion.

RESULT:	DEFEATED [2 TO 3]
MOVER:	Loretta Clawson, Council Member
SECONDER:	Lynne Mason, Mayor Pro Tem
AYES:	Mason, Clawson
NAYS:	Mizelle, Teague, Collins

CASE 20160566 VOTE #3

Upon a motion by Council Member Underdown Collins, seconded by Council Member Teague, Council moved that the proposed amendment to the Town's zoning map is consistent with the Town's Comprehensive Plan and other applicable adopted plans of the Town which relate to this application because this property is located in the G2 Urban Neighborhood sector, the property is a neighborhood scaled commercial use, property would provide an appropriate transition between higher intensity commercial use and existing lower density neighborhoods in alignment with the G2 sector in the Boone 2030 Land Use Plan.

RESULT:	APPROVED [3 TO 2]
MOVER:	Jeannine Underdown Collins, Council Member
SECONDER:	Jennifer Teague, Council Member
AYES:	Mizelle, Teague, Collins
NAYS:	Mason, Clawson

CASE 20160566 VOTE #4

Council Member Underdown Collins moved that the applicant has demonstrated a site plan in which strong buffers are provided around the property including the preservation of existing tree canopy to the extent possible. Additionally, the applicant must preserve the trees and design the driveway to still have access, and it is a special zoning district (conditional district) which prevents redevelopment or change-of-use without going back through the public review process and this particular use and the associated hours of operation, we as a

Council, three members of Council, deem suitable and appropriate for a transition area between other major commercial uses and corridors and the traditional neighborhoods. The recommendation of approval includes the following conditions:

1. Where there is a conflict between the application information and the plans (site plans and architectural plans bearing a received date of Sept. 9), the plans shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
2. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.
3. Final plans and permit applications shall be submitted that are in compliance with the provisions of the UDO and other provisions of the Town Code.
4. The applicant shall install a hedge row of evergreens or whatever is applicable along the eastern property line.

Council Member Teague seconded the motion. Mayor Pro Tem Mason noted the format needed to introduce the motion. Town Attorney Allison Meade advised Council Member Underdown Collins that she could amend her motion to indicate that rezoning is reasonable and in the public interest on the grounds cited and subject to the conditions listed in the motion. Mayor Pro Tem Mason asked for clarification and to be on the record that the applicant is agreeing to all of the conditions and noted the buffer zone is still ambiguous. Council Member Underdown Collins noted the condition could indicate the applicant must investigate the possibility of a 25-foot buffer or something comparable. Interim Planning Director Jane Shook confirmed that the applicant has agreed to provide evergreens along the eastern property boundary. Town Attorney Allison Meade added that it was her understanding from the discussion that the applicant has agreed to provide access to the Millers to the driveway behind their house, and the applicant has already agreed to investigate the buffer with the understanding that the UDO would allow them to proceed with the 15-foot minimum buffer and fence.

Brief discussion ensued regarding preservation of trees, the UDO requirements for buffer zones, the height of the fence and evergreens on the eastern property line. Ms. Meade suggested the three Council members determine if they will accept the Planning Commission's recommended conditions or would like to negotiate new conditions. Council Member Underdown Collins stated she'd like to add a condition regarding the Miller's access to the driveway which was not part of the Planning Commission's conditions. Ms. Meade suggested Council Member Underdown Collins reread her motion adding the condition regarding the driveway access. Council Member Mizelle asked that a condition be set that, wherever possible, the applicant increase the buffer area up to 25 feet.

Council Member Underdown Collins moved that the proposed amendment to the Town's zoning map is consistent with the Town's Comprehensive Plan and other applicable adopted plans of the Town which relate to this application because the applicant has demonstrated a site plan in which strong buffers are provided around the property including the preservation of existing tree canopy to the extent possible. The site design moves one of the driveway accesses further up State Farm Road improving traffic at that intersection, and improves ingress and egress for the entire site. The access to the property doesn't interfere with any neighborhood roads and the architecture of the structure is compatible with our area. This special zoning district (conditional district) prevents redevelopment or change-of-use without going back through the public review process and this particular use and the associated hours of operation, we as part of the Town Council deem suitable and appropriate for a transition area between other major commercial uses and corridors and the traditional neighborhoods. Our recommendation of this approval includes the following conditions:

1. Where there is a conflict between the application information and the plans (site plans and architectural plans bearing a received date of Sept. 9), the plans shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
2. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.

3. Final plans and permit applications shall be submitted that are in compliance with the provisions of the UDO and other provisions of the Town Code.
4. The applicant shall install a hedge row of evergreens along the eastern property line.
5. The applicant shall allow access to the Miller's driveway open to Farm Bureau parking lot as shown on the "as built" site plan.

Mayor Pro Tem Mason asked if Council Member Underdown Collins would accept a condition that the applicant explore a 25-foot buffer wherever possible. Council Member Underdown Collins accepted the additional condition to her motion. Council Member Clawson asked what the height of the additional evergreens planted would be along the Townsend's property line, stating she'd like to see a set height requirement added as a condition. . Ms. Meade recommended that since the motion being considered has become unclear, the motion be withdrawn and a new motion made after discussing the landscaping. Council Member Underdown Collins withdrew her motion.

Discussion ensued regarding an appropriate height requirement for the evergreens with Urban Design Specialist Brian Johnson recommending the evergreens be between 10 and 12 feet. Council agreed this would be an appropriate height condition. Ms. Meade confirmed with the applicant that they would agree to this condition.

Upon a motion by Council Member Underdown Collins, seconded by Council Member Teague, Council moved to approve the proposed amendment to the Town's zoning map and believe approval is reasonable and in the public's best interest because the applicant has demonstrated a site plan in which strong buffers are provided around the property including the preservation of existing tree canopy to the extent possible. The site design moves one of the driveway accesses further up State Farm Road improving traffic at that intersection, and also improves ingress and egress for the entire site. The access to the property doesn't interfere with any of the neighborhood roads and the architecture of the structure is compatible with our area. This special zoning district (conditional district) prevents redevelopment or change-of-use without going back through the public review process and this particular use and the associated hours of operation, we as a portion of this Council deem suitable and appropriate for a transition area between other major commercial uses and corridors and the traditional neighborhoods. Our recommendation of this approval includes the following conditions:

1. Where there is a conflict between the application information and the plans (site plans and architectural plans bearing a received date of Sept. 9), the plans shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
2. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.
3. Final plans and permit applications shall be submitted that are in compliance with the provisions of the UDO and other provisions of the Town Code.
4. The applicant shall install a hedge row of evergreens along the eastern property line.
5. The applicant shall allow access to the Miller's lower driveway into the Farm Bureau parking lot as shown on the "as built" site plan.
6. The evergreens buffer must be 10 to 12 feet tall.

RESULT:	APPROVED [3 TO 2]
MOVER:	Jeannine Underdown Collins, Council Member
SECONDER:	Jennifer Teague, Council Member
AYES:	Mizelle, Teague, Collins
NAYS:	Mason, Clawson

SCHEDULING OF SPECIAL MEETING WITH JUNALUSKA COMMUNITY - WATAUGA COUNTY LAND TRUST PROJECT

Mayor Pro Tem Mason stated she spoke with Lynn Patterson from the Junaluska Community who suggested a special meeting to discuss the proposed Watauga County Land Trust project. Upon a motion by Council

Member Clawson, seconded by Council Member Underdown Collins, Council moved to schedule a special meeting for Wednesday, Dec. 28, 2016, at 6:30 p.m. at the Boone Mennonite Brethren Church in order to meet with the Junaluska Community to discuss the proposed Watauga County Land Trust project and for dialogue with Council on other issues.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Loretta Clawson, Council Member
SECONDER:	Jeannine Underdown Collins, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

REQUEST FOR NOMINEES FOR WATAUGA COUNTY RECREATION COMMISSION

Town Manager John Ward noted the Town had received a letter from Stephen Poulos of Watauga County Parks and Recreation requesting that the Town submit two nominees for upcoming vacancies on the County's Recreation Commission. Council Member Underdown Collins nominated West Eppley for reappointment to this commission. Council noted that they'd like to place this item on the January regular meeting agenda to give them time to find a second nominee.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Jeannine Underdown Collins, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

CONSIDERATION OF CASES HEARD AT NOVEMBER PUBLIC HEARING

CONSIDERATION OF CASE 20160735 BEVERLY HEIGHTS/VFW NCD GENERAL USE MAP AMENDMENT

At the request of neighbors, the Town initiated a general use zoning map amendment to apply a Neighborhood Conservation Overlay District to 35 properties in the neighborhood off of Beverly Heights Avenue and VFW Drive.

CASE 20160735 VOTE #1

Upon a motion by Mayor Pro Tem Mason, seconded by Council Member Clawson, Council moved that the proposed amendment to the Town's zoning map is consistent with the Town's Comprehensive Plan and other applicable adopted plans of the Town which relate to this application because the protection and rehabilitation of viable neighborhoods shall be encouraged to ensure their continued existence as a major housing source and as a reflection of the area's image as an attractive, highly livable community.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Lynne Mason, Mayor Pro Tem
SECONDER:	Loretta Clawson, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

CASE 20160735 VOTE #2

Upon a motion by Mayor Pro Tem Mason, seconded by Council Member Clawson, Council moved to approve the proposed amendment to the Town's zoning map and believe approval is reasonable and in the public interest because the Neighborhood Conservation Districts are established as overlay districts to stabilize and maintain a suitable low-density living environment for family life.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Lynne Mason, Mayor Pro Tem
SECONDER:	Loretta Clawson, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

CONSIDERATION OF CASE 20160734 GREEN STREET R2 TO R1A/NCD GENERAL USE MAP AMENDMENT

At the request of neighbors, the Town initiated a general use zoning map amendment to rezone 22 properties located along Green Street and Old Bristol Road from R2 Two-Family Residential to R1A Single Family with Accessory Apartment and Neighborhood Conservation Overlay District. Interim Planning Director Jane Shook noted that the Planning Commission chose to vote separately on the rezoning and the neighborhood conservation district designation, and voted to not approve the rezoning for reasons noted in the recommendation for denial. Council was in consensus to separate their votes on this case as well, voting on the neighborhood conservation district designation first.

CASE 20160734 NCD DESIGNATION VOTE #1

Upon a motion by Mayor Pro Tem Mason, seconded by Council Member Clawson, Council moved that the proposed amendment to the Town's zoning map is consistent with the Town's Comprehensive Plan and other applicable adopted plans of the Town which relate to this application because the protection and rehabilitation of viable neighborhoods shall be encouraged to ensure their continued existence as a major housing source and as a reflection of the area's image as an attractive, highly livable community.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Lynne Mason, Mayor Pro Tem
SECONDER:	Loretta Clawson, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

CASE 20160734 NCD DESIGNATION VOTE #2

Upon a motion by Mayor Pro Tem Mason, seconded by Council Member Clawson, Council moved to approve the proposed amendment to the Town's zoning map and believe approval is reasonable and in the public interest because Neighborhood Conservation Districts are established as overlay districts to stabilize and maintain a suitable low-density living environment for family life.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Lynne Mason, Mayor Pro Tem
SECONDER:	Loretta Clawson, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

MOTION TO REOPEN PUBLIC HEARING

Following questions by Council, Interim Planning Director Jane Shook confirmed that current uses would be grandfathered in if the rezoning is approved. She added that the Planning Commission felt the current zoning of R2 was appropriate. Brief discussion ensued regarding the historical rezoning of this area and the property owners who asked that their parcels not be considered for rezoning. Council Member Teague voiced her concern with approving a rezoning when only eight of the 22 property owners in the proposed rezoning area provided express approval and consent of the rezoning. Upon a motion by Council Member Underdown Collins, seconded by Council Member Clawson, Council moved to reopen the public hearing on this matter at 8:18 p.m.

Diane Blanks stated she just wanted to rezone the homes where the homeowners live.

Sally Reynolds stated the neighborhood is surrounded by student rentals, mostly with absentee landlords, but all were originally single family homes.

Town Attorney Allison Meade suggested tabling the vote on this item until January in order to allow staff time to map out only those homeowners who wish to be rezoned to R1A.

Diane Brown stated there have been zoning signs up, but no one has shown up to the meetings except for two to say they don't want the change. She added that the homeowners did not reach out to the other property owners to sign the petition, because they were only trying to rezone their homes.

Ms. Shook explained that the original action taken by Council was to proceed with rezoning the neighborhood, which was why staff encompassed the entire neighborhood area.

RESULT:	APPROVED [4 TO 1]
MOVER:	Jeannine Underdown Collins, Council Member
SECONDER:	Loretta Clawson, Council Member
AYES:	Mason, Clawson, Mizelle, Collins
NAYS:	Teague

CASE 20160734 REZONING R2 TO R1A VOTE #1

Upon a motion by Mayor Pro Tem Mason, seconded by Council Member Clawson, Council moved that the proposed amendment to the Town's zoning map is consistent with the Town's Comprehensive Plan and other applicable adopted plans of the Town which relate to this application because the protection and rehabilitation of viable neighborhoods shall be encouraged to ensure their continued existence as a major housing source and as a reflection of the area's image as an attractive, highly livable community.

RESULT:	APPROVED [4 TO 1]
MOVER:	Lynne Mason, Mayor Pro Tem
SECONDER:	Loretta Clawson, Council Member
AYES:	Mason, Clawson, Mizelle, Collins
NAYS:	Teague

CASE 20160734 REZONING R2 TO R1A VOTE #2

Upon a motion by Mayor Pro Tem Mason, seconded by Council Member Clawson, Council moved to approve the proposed amendment to the Town's zoning map and believe approval is reasonable and in the public interest because the Single-Family Residential with Accessory Dwelling District is established to provide a low-density living area consisting of single-family dwellings with or without subordinate, accessory dwellings; the regulations for this district are intended to maintain the essential character of a single-family neighborhood but allow for the establishment of accessory dwellings which are clearly subordinate to the single-family dwelling; the regulations for this district are designed to secure for the persons who reside there a comfortable, healthy, safe, aesthetically pleasing and pleasant environment in which to live, sheltered from incompatible and disruptive activities that properly belong in nonresidential districts; and, this also helps support affordable housing options with the accessory housing option.

RESULT:	APPROVED [4 TO 1]
MOVER:	Lynne Mason, Mayor Pro Tem
SECONDER:	Loretta Clawson, Council Member
AYES:	Mason, Clawson, Mizelle, Collins
NAYS:	Teague

CONSIDERATION OF CASE 20160742 NEIGHBORHOOD CONSERVATION DISTRICT UDO TEXT AMENDMENT

At the Nov. 15, 2016, Planning Retreat, Council directed that modifications to the UDO be made in regards to intensity and use within UDO Article 15 District Uses and UDO Article 16 District Standards. Amendments may also be made to other articles to conform them to changes made in these articles.

CASE 20160742 VOTE #1

Upon a motion by Mayor Pro Tem Mason, seconded by Council Member Underdown Collins, Council moved that the proposed amendment to the Town's zoning ordinance is consistent with the Town's Comprehensive Plan and other applicable adopted plans of the Town which relate to this application because it provides for a more streamlined process to make map amendments associated with Neighborhood Conservation Districts.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Lynne Mason, Mayor Pro Tem
SECONDER:	Jeannine Underdown Collins, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

CASE 20160742 VOTE #2

Upon a motion by Mayor Pro Tem Mason, seconded by Council Member Underdown Collins, Council moved to approve the proposed amendment to the Town's zoning ordinance and believe approval is reasonable and in the public interest because it adds clarity to Neighborhood Conservation District language in the Unified Development Ordinance.

§ 14.09 NEIGHBORHOOD CONSERVATION DISTRICTS.

14.09.01 Neighborhood Conservation Districts are established as overlay districts to stabilize and maintain a suitable low-density living environment for family life.

14.09.02 Neighborhood Conservation Districts shall be depicted on the Town's Zoning Map, which will be posted at the Town's Planning and Inspections Department and on the Town of Boone's website.

The following Neighborhood Conservation Districts are hereby established:

— A. Blanwood Drive. The limits of the district are depicted on the Neighborhood Conservation District overlay zoning map and include all or portions of Oak Street, Windy Drive, Horn in the West Drive and Skyview Drive.

— B. Forrest Hills Drive. The limits of the district are depicted on the Neighborhood Conservation District overlay zoning map.

— C. Grand Boulevard. The limits of the district are depicted on the Neighborhood Conservation District overlay zoning map and include all or portions of Grand Boulevard, Orchard Street and Iris Lane.

— D. Grandview Heights. The limits of the district are depicted on the Neighborhood Conservation District overlay zoning map and include all or portions of West Grandview Heights, Russell Drive and Poplar Grove Road.

— E. Stadium Drive. The limits of the district are depicted on the Neighborhood Conservation District overlay zoning map and include all or portions of Hemlock Drive, Ferncliff Road, Tanglewood, Hawthorne Lane, Hope Drive, and Spring Street.

— F. Queen Street. The limits of the district are depicted on the Neighborhood Conservation District overlay zoning map and include all or portions of Queen Street, Gladys Street and Charles Street.

14.09.03 The requirements of all rental property within Neighborhood Conservation Districts shall be as follows:

A. All tenants of rental property must complete and file a residential parking registration form with the Administrator. Tenants must provide personal identification, vehicle registration, and proof of residency within a designated Neighborhood Conservation District.

B. Tenants meeting eligibility requirements will be issued parking stickers for their vehicle(s) for the appropriate neighborhood district which must be permanently attached to eligible vehicles. Annual renewal and nominal fees are required.

C. No more than two unrelated persons per dwelling unit will be issued parking stickers.

D. Owners of rental property residing more than 50 miles from Boone must designate in writing a local managing agent residing within Watauga County that will be responsible for all matters concerning occupancy of such rental property, and must provide the Administrator with the agent's name, address and telephone number.

E. Owners or local managing agents of rental property must notify tenants of applicable Neighborhood Conservation District requirements.

(Ord. passed 12-16-2013)

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Lynne Mason, Mayor Pro Tem
SECONDER:	Jeannine Underdown Collins, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

CONSIDERATION OF UDO TEXT AMENDMENTS TO SEND TO NEXT PUBLIC HEARING REGARDING PLANNING COMMISSION AND BOARD OF ADJUSTMENT

Town Attorney Allison Meade presented information to Council regarding the current UDO requirements for a quorum of the Planning Commission and Board of Adjustment as well as the calculation for the number of extraterritorial jurisdiction members. Ms. Meade provided comparisons between the Town's current membership numbers to those of other towns across the state.

Following discussion, Council was in consensus to allow Ms. Meade to draft proposed amendments to the UDO regarding the Planning Commission to allow for a 9-member board with an appropriate proportion of ETJ members, and amendments to the UDO regarding the Board of Adjustment to allow for a five-member board (four resident, one ETJ, with all five attending all meetings) and alternates with a 1:1 ratio. Ms. Meade confirmed that until the transition to a five-member board is complete, ETJ members on the Board of Adjustment will remain as separate than resident for the purpose of determining attendance requirements. Additionally, Council was in consensus to allow Ms. Meade to make revisions that reflect a quorum for both boards to be the majority of membership minus vacant seats as is the norm and to hold off on considering any new applications for the currently vacant seats on these boards that may no longer be needed until after this matter is settled.

RESULT:	CONSENSUS
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CONSIDERATION OF BOND ORDER AND RESOLUTIONS - GENERAL OBLIGATION AND REVENUE BONDS

Town Manager John Ward presented three documents pertaining to the raw water intake project for Council's consideration and approval. He stated the Local Government Commission unanimously approved the financing for the project the previous Friday. Upon a motion by Council Member Mizelle, seconded by Council Member Underdown Collins, Council moved to approve the following three documents:

RESOLUTION OF THE TOWN COUNCIL OF THE

**TOWN OF BOONE, NORTH CAROLINA, PROVIDING FOR THE ISSUANCE OF
\$25,000,000 GENERAL OBLIGATION WATER SYSTEM BOND ANTICIPATION NOTES**

WHEREAS, the Bond Order hereinafter-described has taken effect approving the issuance of \$25,000,000 General Obligation Water System Bonds (the “*Bonds*”);

WHEREAS, the Town Council of the Town of Boone, North Carolina (the “*Town*”), has determined that it is in the Town’s best interest to issue \$25,000,000 General Obligation Water System Bond Anticipation Notes authorized under the Bond Order to finance the cost of acquiring, constructing and equipping facilities for the Town’s potable water supply for which the Bonds were approved as permitted by Section 159-161 of the General Statutes of North Carolina, as amended;

NOW, THEREFORE, BE IT ORDERED by the Town Council of the Town of Boone, North Carolina (the “*Town Council*”), as follows:

1. For purposes of this Resolution, the following words will have the meanings ascribed to them below:

“*Bid for Notes*” means the Bid for Notes submitted to the Local Government Commission of North Carolina by the winning bidder selected to purchase the Notes.

“*Bond Order*” means the Bond Order authorizing the Bonds adopted by the Town Council on August 21, 2008 and effective on approval by a majority of the voters who voted thereon at a special referendum duly called and held on November 4, 2008 and extended pursuant to a resolution adopted by the Town Council on November 20, 2014.

“*Notes*” means the Town’s \$25,000,000 General Obligation Water System Bond Anticipation Notes.

2. The Town shall issue the Notes in an aggregate principal amount not to exceed \$25,000,000.

3. The Notes are being issued to provide funds to pay the capital costs of acquiring, constructing and equipping facilities for the Town’s potable water supply (the “*Project*”) pursuant to and in accordance with the Bond Order.

4. The Notes shall be dated their date of issuance and shall mature and bear interest payable at maturity of the Notes in accordance with the Bid for Notes.

5. The Notes shall be numbered “R-1” and upward. The Notes shall bear interest from its date at a rate or rates which shall be hereafter determined upon the sale thereof computed on the basis of a 360-day year of twelve 30-day months. The Notes will be issued in denominations of \$100,000 or integral multiples of \$1,000 in excess thereof.

6. The Notes shall be registered as to principal and interest and the Town’s Finance Officer is directed to maintain the registration records with respect thereto. The Notes shall bear the original or facsimile signatures of the Mayor and the Town Clerk. An original or facsimile of the seal of the Town shall be imprinted on the Notes.

7. The determination of the rate of interest on the Notes will be made in accordance with the Bid for Notes.

8. The Notes will be issued in registered form to the owner thereof or may be issued by means of a book-entry system, in accordance with the Bid for Notes. If issued in book-entry system, one note certificate will be issued to The Depository Trust Company, New York, New York (“*DTC*”), and immobilized in its custody. A book-entry system will be employed, evidencing ownership of the Notes in principal amounts of \$5,000 or integral multiples thereof, with transfers of beneficial ownership effected on the records of DTC and its participants pursuant to rules and procedures established by DTC. If issued by means of a book-entry

system, principal of and interest on the Notes will be payable to DTC in immediately available funds on the maturity date. The Town will not be responsible or liable for maintaining, supervising or reviewing the records maintained by DTC, its participants or persons acting through such participants. If not issued by means of a book-entry system, the principal of and interest on the Notes will be payable to the owners of the Notes upon presentation and surrender of the Notes to the paying agent for the Notes at the offices of the paying agent indicated on the Bid for Notes on the maturity date of the Notes.

If (a) DTC determines not to continue to act as securities depository for the Notes or (b) the Town representative determines that the continuation of the book-entry system of evidence and transfer of ownership of the Notes would adversely affect the interests of the beneficial owners of the Notes, the Town will discontinue the book-entry system with DTC in accordance the DTC's rules and procedures. If the Town fails to identify another qualified securities depository to replace DTC, the Town will authenticate and deliver replacement notes in the form of fully registered certificates.

9. The Notes are not subject to payment prior to maturity.

10. The Notes and the provisions for the registration of the Notes and for the approval of the Notes by the Secretary of the Local Government Commission of North Carolina shall be in substantially the form set forth in Appendix A.

11. The Town covenants to take such action as may be required in the opinion of nationally recognized bond counsel to cause the Notes and all actions of the Town with respect to the proceeds thereof to comply with Internal Revenue Code of 1986, as amended (the "*Code*"). In particular, the Town covenants as follows:

(a) At least one of the following two conditions will be satisfied: (i) less than 10% of the proceeds of the Notes reduced by costs of issuance will be used directly or indirectly in the business of a person other than a state or local governmental unit or (ii) less than 10% of the principal or interest on the Notes will be (under the terms of such issue or any underlying arrangement) directly or indirectly (A) secured by an interest in property used or to be used in a private business or by any interest in payments made with respect to such property or (B) derived from payments made with respect to property, or borrowed money, used or to be used in a private business;

(b) Less than 5% of the proceeds of the Notes reduced by costs of issuance will be used by nongovernmental persons for a use unrelated to the purposes for which the Notes were issued;

(c) It will not loan directly or indirectly more than 5% of the Notes proceeds to nongovernmental persons;

(d) It has not and will not enter into any management contract with respect to the facilities financed with the proceeds of the Notes unless it obtains an opinion of nationally recognized bond counsel that such management contract will not impair the exclusion from a recipient's gross income for federal income tax purposes of the interest on the Notes;

(e) The Town acknowledges that the continued exclusion of interest on the Notes from a recipient's gross income for federal income tax purposes depends, in part, upon compliance with the arbitrage limitations imposed by Section 148 of the Code. The Town covenants to comply with all the requirements of Section 148 of the Code, including the rebate requirements, and it shall not permit at any time any of the proceeds of the Notes or other funds of the Town to be used, directly or indirectly, to acquire any asset or obligation, the acquisition of which would cause the Notes to be "*arbitrage bonds*" for purposes of Section 148 of the Code;

(f) The Notes are not and shall not be “*federally guaranteed*” as defined in Section 149(b) of the Code;

(g) The Town covenants to file or cause to be filed Form 8038G in accordance with Section 149(e) of the Code.

12. Actions taken by officials of the Town to select paying and transfer agents, and a bond registrar, or alternate or successor agents and registrars pursuant to Section 159E-8 of the Registered Public Obligations Act, Chapter 159E of the General Statutes of North Carolina, are hereby authorized and approved.

13. The Local Government Commission of North Carolina is hereby requested to sell the Notes through a competitive sale to the bidder whose bid results in the lowest interest cost to the Town, determined by the Local Government Commission of North Carolina.

14. The form and content of the Offering Information and Bid Form with respect to the Notes are in all respects authorized, approved and ratified.

15. The Mayor, the Town Manager, the Finance Officer, the Town Attorney and the Town Clerk are hereby authorized and directed to cause the Notes to be prepared and, when it shall have been duly sold by the Local Government Commission, to execute the Notes and to turn the Notes over to the registrar and transfer agent of the Town for delivery to the purchaser or purchasers to whom they may be sold by the Local Government Commission of North Carolina.

16. The Mayor, the Town Manager, the Finance Officer, the Town Attorney and the Town Clerk are authorized and directed to execute and deliver for and on behalf of the Town any and all additional certificates, documents, opinions or other papers and perform all other acts as may be required by the documents contemplated hereinabove or as may be deemed necessary or appropriate in order to implement and carry out the intent and purposes of this Resolution.

17. This Resolution may be amended or supplemented, from time to time, without the consent of the holder of the Notes if in the opinion of nationally recognized bond counsel, such amendment or supplement would not adversely affect the interests of the holder of the Notes and would not cause the interest on the Notes to be included in the gross income of a recipient thereof for federal income tax purposes. This Resolution may be amended or supplemented with the consent of the holders of a majority in aggregate principal amount of the outstanding Notes, exclusive of Notes, if any, owned by the Town, but a modification or amendment may not, without the express consent of any holder of Notes affected, reduce the principal amount of any Notes, reduce the interest rate payable on it, extend its maturity or the times for paying interest, change the monetary medium in which principal and interest is payable, or reduce the percentage of consent required for amendment or modification.

Any act done pursuant to a modification or amendment consented to by the holder of the Notes is binding on all holders of the Notes and will not be deemed an infringement of any of the provisions of this Resolution, whatever the character of the act may be, and may be done and performed as fully and freely as if expressly permitted by the terms of this Resolution, and after consent has been given, no holder of a Note has any right or interest to object to the action, to question its propriety or to enjoin or restrain the Town from taking any action pursuant to a modification or amendment.

If the Town proposes an amendment or supplemental resolution to this Resolution requiring the consent of the holder of the Notes, the Town shall cause notice of the proposed amendment to be sent to the holder of the Notes by first-class mail, postage prepaid, to the address of such holder as it appears on the registration books; but the failure to receive such notice by mail by any holder, or any defect in the mailing thereof, will not affect the validity of any proceedings pursuant hereto. Such notice shall briefly set forth the nature of the proposed amendment and shall state that copies thereof are on file in the office of the Town Clerk for inspection by the holder of the Notes. If, within 60 days or such longer period as shall be prescribed by the

Town following the giving of such notice, the holder has consented to the proposed amendment, the amendment will be effective as of the date stated in the notice.

18. The proceeds of the Notes received by the Town shall be deposited in a separate account of the Town designated by the Finance Officer of the Town and applied to pay the costs of issuance of the Notes and the costs of the Project.

ATTEST:

Mayor Rennie Brantz

Town Clerk Christine Pope

APPENDIX A
(Form of Note)

No. R-1

\$25,000,000

**UNITED STATES OF AMERICA
STATE OF NORTH CAROLINA
TOWN OF BOONE, NORTH CAROLINA
GENERAL OBLIGATION WATER SYSTEM BOND ANTICIPATION NOTE**

INTEREST

<u>RATE</u>	<u>MATURITY DATE</u>	<u>DATED DATE</u>	<u>CUSIP</u>
%			

REGISTERED OWNER:

PRINCIPAL SUM: TWENTY FIVE MILLION DOLLARS

THE TOWN OF BOONE, NORTH CAROLINA (the “Town”) acknowledges itself indebted and for value received hereby promises to pay to the Registered Owner named above, on the Maturity Date specified above, upon surrender hereof, the Principal Sum shown above and to pay to the Registered Owner hereof interest thereon from the date of this Note until it shall mature at the Interest Rate per annum specified above, payable on the Maturity Date specified above. Principal of and interest on this Note are payable in immediately available funds to the Registered Owner and is payable in U.S. dollars on the Maturity Date.

This Note is issued in accordance with the Registered Public Obligations Act, Chapter 159E of the General Statutes of North Carolina, and pursuant to The Local Government Bond Act and a bond order adopted by the Town Council of the Town on August 21, 2008 and effective on approval by a majority of the voters who voted thereon at a special referendum duly called and held on November 4, 2008 and extended pursuant to a resolution adopted by the Town Council of the Town on November 20, 2014. The Note is issued to provide funds to pay costs of acquiring, constructing and equipping facilities for the Town’s potable water supply.

The Note is not subject to payment prior to maturity.

It is hereby certified and recited that all conditions, acts and things required by the Constitution or statutes of the State of North Carolina to exist, be performed or happen precedent to or in the issuance of this Note, exist, have been performed and have happened, and that the amount of this Note, together with all other

indebtedness of the District, is within every debt and other limit prescribed by said Constitution or statutes. The faith and credit of the Town are hereby pledged to the punctual payment of the principal of and interest on this Note in accordance with its terms.

This Note shall not be valid or become obligatory for any purpose until the certification hereon shall have been signed by an authorized representative of the Local Government Commission of North Carolina.

IN WITNESS WHEREOF, the Town has caused this Note to bear the original or facsimile of the signatures of the Mayor of the Town and the Town Clerk and an original or facsimile of the seal of the Town to be imprinted hereon and this Note to be dated as of the dated date set forth above.

(SEAL)

Christine Pope
Town Clerk

Rennie Brantz
Mayor

Date of Execution: _____

The issue hereof has been approved under the provisions of The Local Government Bond Act.

GREG C. GASKINS
Secretary of the Local Government Commission

FORM OF ASSIGNMENT

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

(Please print or typewrite Name and Address,
including Zip Code, and Federal Taxpayer Identification or
Social Security Number of Assignee)

the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints

Attorney to register the transfer of the within Note on the books kept for registration thereof,
with full power of substitution in the premises.

Dated: _____

Signature guaranteed by:

NOTICE: Signature must be guaranteed by a Participant in the Securities Transfer Agent Medallion Program (“STAMP”) or similar program.

NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within Note in every particular, without alteration, enlargement or any change whatever.

TRANSFER FEE MAY BE REQUIRED

(RESOLUTION TO BE TYPED IN BOOK 3, PAGES 283-288)

BOND ORDER AUTHORIZING THE ISSUANCE OF WATER AND SEWER SYSTEM REVENUE BONDS OF THE TOWN OF BOONE, NORTH CAROLINA TO PROVIDE FUNDS TO MAKE CERTAIN IMPROVEMENTS TO THE WATER AND SEWER SYSTEM OF THE TOWN OF BOONE, NORTH CAROLINA; PROVIDING FOR THE ISSUANCE OF REVENUE BONDS; PROVIDING FOR THE COLLECTION OF SERVICE CHARGES FOR THE USE OF THE WATER AND SEWER SYSTEM; PROVIDING FOR THE CREATION OF CERTAIN SPECIAL FUNDS; PLEDGING TO THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE REVENUE BONDS CERTAIN REVENUES OF THE WATER AND SEWER SYSTEM; SETTING FORTH THE RIGHTS AND REMEDIES OF OWNERS; AND SETTING FORTH THE DETAILS OF CERTAIN RELATED MATTERS.

WHEREAS, the Town of Boone, North Carolina (the “Town”) is authorized by The State and Local Government Revenue Bond Act, General Statutes of North Carolina, Section 159-80 *et seq.* (the “Act”), to issue, subject to the approval of the Local Government Commission of North Carolina, at one time or from time to time revenue bonds and revenue refunding bonds of the Town for the purposes as specified in the Act; and

WHEREAS, the Town desires to finance the cost of acquiring, constructing and equipping facilities for the Town’s potable water supply (the “Project”);

WHEREAS, the Local Government Commission of North Carolina has approved the application of the Town for the issuance of revenue bonds in an amount not exceeding \$7,456,000 to finance the cost of the Project, and, in connection therewith, to issue its bond anticipation notes to be repaid with the proceeds of such bonds;

NOW THEREFORE, BE IT ORDERED BY THE TOWN COUNCIL OF THE TOWN OF BOONE, NORTH CAROLINA:

**ARTICLE I
GENERAL PROVISIONS AND DEFINITIONS**

Section 1.01. **Contract with Holders.** In consideration of the purchase and acceptance of the Bonds by those who hold them from time to time, the provisions of this Bond Order constitute a contract between the Town and the Holders from time to time of the Bonds; and the covenants and agreements herein set forth to be performed by or on behalf of the Town are for the equal benefit, protection and security of the Holders of any and all of the Bonds so issued or to be issued, without preference, priority or distinction as to lien or otherwise, except as otherwise hereinafter provided, of any one Bond over any other Bond by reason of priority in the issue, sale or negotiation thereof, or otherwise.

Section 1.02. **Definitions.** The following words and terms as used in this Bond Order have the following meanings, unless some other meaning is manifestly intended:

“Act” means The State and Local Government Revenue Bond Act, constituting Article 5 of Chapter 159 of the General Statutes of North Carolina, as amended.

“Additional Bonds” means the Bonds referred to in Article III.

“Annual Budget” means any budget or amended budget of Operating Expenses adopted or in effect pursuant to Section 7.08.

“Auditors” means the independent firm of certified public accountants that is employed by the Town to audit the Town’s books and accounts at the end of each Fiscal Year.

“Bond” or *“Bonds”* means any bond or bonds authorized by this Bond Order or a supplement to this Bond Order, and includes the Initial Bonds and any Additional Bonds issued in accordance with this Bond Order, as well as any bond anticipation note or notes authorized and issued pursuant to Article II.

“Bondholder” or *“Holder”* or any similar term, when used with reference to a Bond or Bonds means any person who is the registered owner of any outstanding Bond or Bonds.

“Bond Order” means this Bond Order, together with all orders amendatory hereof and all orders supplemental hereto as herein permitted.

“Bond Registrar” means the Finance Director or any successor as appointed by the Town.

“Clerk” means the Town Clerk of the Town or the officer succeeding to or exercising his or her principal functions and duties.

“Commission” means the Local Government Commission of North Carolina (or its authorized representative).

“Commission Secretary” means the Secretary of the Commission or his or her designated assistant.

“Consultants” means an independent engineer or engineering firm or consultants otherwise experienced in matters relating to water and sewer revenue bonds at the time employed by the Town under the provisions of Sections 5.01 and 7.02 to perform the functions and duties imposed on the Consultants by this Bond Order.

“Counsel” means an attorney or firm of attorneys selected by the Town.

“Debt Service Fund” means the fund or account so designated by Section 5.02.

“Debt Service Requirement” means, with respect to Bonds in any Fiscal Year, the sum of (a) the amount required to pay the interest on the Bonds then outstanding which is payable in such Fiscal Year and (b) the amount required to pay the principal of the Bonds then outstanding which is payable in such Fiscal Year, the computation of such amount to be based on the assumption that (a) the Bonds at the time outstanding will be retired according to their stated maturities or mandatory redemption requirements, (b) any bond anticipation notes issued pursuant to this Bond Order and maturing during such Fiscal Year will be refunded with Additional Bonds such that the principal amount of such bond anticipation notes is not due and payable by the Town in such Fiscal Year and (c) if the Bonds bear interest at a variable rate, the rate is the maximum rate established in the applicable Series Resolution.

“Debt Service Reserve Fund” means the account so designated by Section 5.02.

“Debt Service Reserve Fund Requirement” means an amount equal to the maximum Debt Service Requirement for any Fiscal Year, calculated as if all outstanding Bonds were a part of the same series.

“Depository” means any bank or trust company duly authorized under the laws of the United States of America or the State to engage in the banking business within the State and designated by the Town or the Town Manager, as a depository of money under the provisions of this Bond Order.

“Finance Director” means the finance officer of the Town or the officer succeeding to or exercising his or her principal functions and duties.

“Fiscal Year” means the period of 12 months commencing on July 1 of any year and ending on June 30 of the following year, or any such other annual period permitted by State law.

“General Reserve Account” means the account of the Debt Service Reserve Fund created under Section 5.02 of this Bond Order

“Identifiable Bondholder” means any Holder who has filed with the Bond Registrar a request in writing setting forth such Holder’s name and address and the particular reports, notices or other documents which the Holder desires to receive and which is to be mailed to the Holder under the provisions of this Bond Order.

“Initial Bonds” means the Bonds authorized under Section 2.01 of this Bond Order.

“Mayor” means the presiding officer of the Town or the officer succeeding to or exercising his principal functions and duties.

“Net Revenues” means the Revenues received by the Town during any period less the Operating Expenses for such Fiscal Year.

“Operating Expenses” means the Town’s reasonable and necessary current expenses of maintaining, repairing and operating the System, according to GAAP except as adjusted herein, including, without limiting the generality of the foregoing, all administrative, general and commercial expenses, insurance and surety bond premiums, payments for the billing and collection of Service Charges, architectural and engineering expenses, fees and expenses of the Bond Registrar and the Bond Registrar, legal expenses, any taxes which may be lawfully imposed on the Town or its income or operations or the property under its control, ordinary and current rentals of equipment or other property, usual expenses of maintenance and repair, and any other current expenses required to be paid by the Town under the provisions of this Bond Order or by law, all to the extent properly and directly attributable to the System, but not including any reserves for operation, maintenance or repair or any allowance for depreciation, amortization, interest or similar charges.

“Project” means Project as defined in the preamble to this Bond Order or any additions thereto as described in a Series Resolution.

“Qualified Investments” means any investments of political subdivisions of the State permitted under Section 159-30 of the General Statutes of North Carolina, as amended, or any successor provision.

“Revenue Fund” means the account so designated by Section 5.02.

“Revenues” means all income received by the Town from, in connection with, or as a result of, its ownership or operation of the System, according to GAAP except as adjusted herein, including all money received in payment of rates, fees and other charges for the use of and for the services furnished by the System and investment income, but excluding the proceeds of any borrowing for payment of the costs of, or grants or donations intended for, specific System Improvements.

“Series Resolution” means the resolution of the Town providing for the issuance of any Additional Bonds and fixing the details thereof.

“*Service Charges*” means rates, fees and charges, including service, connection and other charges, for the use of, and for the services and facilities furnished or to be furnished by the System, as prescribed or fixed by the Town.

“*State*” means the State of North Carolina.

“*State Treasurer*” means the Treasurer of the State of North Carolina or her designated assistant.

“*Subordinate Obligations*” means indebtedness the terms of which shall provide that it be subordinate and junior in right of payment to the prior payments in full of the Bonds. For purposes of this Bond Order, obligations or debt instruments issued to the State as part of the State Revolving Loan Program or State Clean Water Bond Program are deemed to be Subordinate Obligations. Any Subordinate Obligations shall include a provision prohibiting acceleration thereof while any Bonds are Outstanding hereunder.

“*Surplus Fund*” means the account so designated by Section 5.02.

“*System*” means the water and sewer systems of the Town.

“*System Improvements*” means any construction, reconstruction, improvement, enlargement, betterment or extension of the System, including all plants, works, instrumentalities and properties used or useful in treating, pumping and distributing water or wastewater.

“*Town*” means the Town of Boone, North Carolina.

“*Town Representative*” means the Town Manager, Finance Director or any other person or persons designated to act on behalf of the Town by written certificate of the Town signed by the Mayor and furnished to the Bond Registrar and the Depositary containing the specimen signature of such person or persons.

“*Trustee*” means the Trustee with respect to the Bonds as identified in any Series Resolution.

“*USDA*” means United States of America, United States Department of Agriculture, Rural Development.

“*USDA Reserve Account*” means the account of the Debt Service Reserve Fund created under Section 5.02 of this Bond Order.

Words of the masculine gender include correlative words of the feminine and neuter genders. Unless the context otherwise indicates, the words “*bond*”, “*owner*”, “*Holder*” and “*person*” includes corporations and associations, including public bodies, as well as natural persons.

ARTICLE II AUTHORIZATION OF PROJECT AND INITIAL BONDS; TERMS, EXECUTION, AUTHENTICATION, DELIVERY AND REGISTRATION OF BONDS

Section 2.01. ***Authorization of Project and Initial Bonds.*** The Town shall issue, in accordance with and pursuant to the Act and this Bond Order one negotiable bond in an aggregate principal amount not exceeding \$7,456,000 for the purpose of providing funds, together with other available funds, to finance the cost of the Project.

Section 2.02. ***Character of Bonds.*** The Bonds are special obligations of the Town payable solely from Net Revenues.

Section 2.03. ***Terms of Bonds.*** The Bonds are issuable as fully registered bonds. The Bonds are to be dated, bear interest until their payment, such interest to the maturity thereof being payable at such rate or rates and at such time or times, and are stated to mature (subject to the right of prior redemption) at such times as set forth in the Resolution providing for the issuance of the Bonds. Both principal of and interest on the Bonds are

to be paid by check mailed or wire transfer sent to the Holder thereof except that interest payments are to be made to the person shown as owner on the registration books on the 15th day of the month preceding each interest payment date (whether or not such 15th day is a business day). Each Bond is payable with respect to principal, redemption premium if any, and interest, in any coin or currency of the United States of America which, at the respective dates of payment thereof, is legal tender for the payment of public and private debts.

The Bonds are redeemable before their respective maturities as provided in Article IV and as additionally provided in the Resolution providing for the issuance of the Bonds.

Section 2.04. **Execution of Bonds.** Each Bond is to be executed in the name of the Town by manual or facsimile signatures of the Mayor and the Clerk and have impressed or printed thereon the official seal of the Town or a facsimile thereof; provided, however, that at least one manual signature must appear on each Bond (which may be the signature of the Commission Secretary's certificate). Any Bond may be signed, sealed or attested on behalf of the Town by any person who, at the date of such act, holds the proper office, notwithstanding that at the date of such Bond or the date of delivery thereof such person did not hold such office. If an officer who has signed or sealed any of the Bonds ceases to be such officer of the Town before the Bonds so signed or sealed have been delivered, such Bonds may nevertheless be delivered as herein provided as if the person who so signed or sealed such Bonds had not ceased to be such officer.

Section 2.05. **Registration and Transfer of Bonds.** The Town shall cause books for the registration of and for the registration of transfers of the Bonds as provided in this Bond Order to be kept by the Bond Registrar. The transfer of any Bond must be registered on the books kept for the registration of and registration of transfers of Bonds on surrender thereof to the Bond Registrar together with an assignment duly executed by the Holder or his attorney or legal representative in such form as is satisfactory to the Bond Registrar. On any such registration of transfer, the Town shall execute and the Bond Registrar shall authenticate and deliver in exchange for such Bond a new Bond of the same series registered in the name of the transferee in an aggregate principal amount equal to the unpaid principal amount of such Bond, having maturities corresponding to the principal installments of such Bond and bearing interest at the same rate. In no event will the Bond Registrar transfer the Bonds to any person other than a bank, an insurance company or a similar financial institution unless the Commission has previously approved such transfer.

When the Bonds are transferred hereunder, the Town shall execute, the Bond Registrar shall authenticate and deliver at the earliest practicable time Bonds in accordance with the provisions of this Bond Order. The Town and the Bond Registrar may make a charge for every such transfer of Bonds sufficient to reimburse them for any tax or other governmental charge required to be paid with respect to such transfer. Neither the Town nor the Bond Registrar is required to make any such registration of transfer of Bonds during the 15 days immediately preceding an interest payment date on the Bonds or in the case of any proposed redemption of Bonds, immediately preceding the date of mailing of notice of such redemption, or after such Bond or any portion thereof has been selected for redemption.

Section 2.06. **Ownership of Bonds.** As to any Bond, the person in whose name the same is registered is deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal of and the interest on any such Bond will be made only to the Holder thereof or his legal representative. All such payments are valid and effectual to satisfy and discharge the liability on such Bond including the interest thereon to the extent of the sum or sums so paid.

Section 2.07. **Mutilated, Destroyed, Stolen or Lost Bonds.** If an outstanding Bond becomes mutilated or be destroyed, stolen or lost, the Town may prepare and cause to be executed, authenticated and delivered a new Bond of like tenor, number and amount as the Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond and on surrender of such mutilated Bond or in lieu of and substitution for the Bond destroyed, stolen or lost, on the owner furnishing to the satisfaction of the Bond Registrar, the Commission and the Town evidence that such Bond has been destroyed, stolen or lost, proof of the ownership thereof, a surety Bond or other indemnification instrument in twice the face amount of the Bond or in such other amount required by applicable law, payment of the cost of preparing and issuing any new Bonds, including the reasonable expenses and charges of the Town and the Bond Registrar in connection therewith and evidence of

compliance with such other reasonable regulations as the Bond Registrar and Town may prescribe. All Bonds surrendered hereunder are to be surrendered to the Bond Registrar and cancelled. All Bonds issued in accordance with this Section are to be signed by the Mayor and the Clerk who are in office at the time and contain a recital to the effect that they are issued in exchange for or in place of certain Bonds and are to be deemed a part of the same series as such Bonds.

Section 2.08. ***Authentication of Initial Bonds.*** The Initial Bonds are to be executed substantially in the manner hereinabove set forth and are to be deposited with the Bond Registrar for authentication, but before or simultaneously with the authentication by the Bond Registrar and delivery of the Initial Bonds by the State Treasurer there must be filed with the Bond Registrar the following:

- (a) a copy, certified by the Clerk to be a true and correct copy, of this Bond Order prescribing the details of the Initial Bonds, including form, maturities and redemption provisions;
- (b) a certificate of the Commission showing the award of the Initial Bonds and specifying the interest rate or rates thereof; and
- (c) an opinion of Counsel to the effect that the issuance of the Initial Bonds has been duly authorized.

No Bond is valid or obligatory for any purpose unless authenticated by the Bond Registrar.

When the documents mentioned in clauses (a) to (c), inclusive, of this Section have been filed with the Bond Registrar and when the Initial Bonds have been executed and authenticated as required by this Bond Order, the Bond Registrar shall authenticate and deliver the Initial Bonds to or on the order of the purchasers thereof, but only on payment to the State Treasurer of the purchase price of the Initial Bonds. The Bond Registrar is entitled to rely on the foregoing certificates with respect to the matters contained therein.

Section 2.09. ***Approval of Issuance and Sale of Initial Bonds.*** None of the Initial Bonds may be issued unless they are approved and sold by the Commission and until the Commission Secretary has endorsed thereon a certificate evidencing approval in accordance with the provisions of the Act.

Section 2.10. ***Issuance of Revenue Bond Anticipation Notes.*** The Town is authorized to issue, in anticipation of the receipt of the net proceeds of any Bonds, water and sewer system revenue bond anticipation notes for the purpose of providing funds to pay the cost of the Project or any System Improvements. The payment of the principal of, redemption premium, if any, and interest on such notes shall be secured by a pledge, charge and lien upon the proceeds of any Bonds, if and when issued, and by the pledge of the Net Revenues pursuant to Section 5.03. All covenants, obligations and agreements of the Town contained in this Bond Order shall be deemed to be covenants, obligations and agreements of the Town with the Holders of any notes hereafter issued.

ARTICLE III ADDITIONAL BONDS

Section 3.01. ***Refunding of Outstanding Bonds.*** The Town may, to the extent permitted by the Act and the provisions of this Section, issue, from time to time, Additional Bonds which are payable from the same funds as previously issued Bonds for the purpose of refunding all or any portion of the Initial Bonds or any Additional Bonds. Except as to any difference in the maturities thereof or in the rate or rates of interest or the provisions for redemption, such refunding obligations will be on a parity with and be entitled to the same benefit and security of this Bond Order as other Bonds. The Bond Registrar may not authenticate and deliver any Additional Bonds for this purpose unless theretofore or simultaneously therewith there has been filed with the Bond Registrar the following:

- (a) a copy, certified by the Clerk to be a true and correct copy, of the Series Resolution authorizing the issuance of the Additional Bonds and prescribing the details thereof;

- (b) a certificate of the Commission showing the award of the Additional Bonds and specifying the interest rate or rates thereof;
- (c) a copy, certified by the Clerk to be a true and correct copy, of the resolution (which may be incorporated in the Series Resolution) of the Town directing the authentication of the Additional Bonds and the delivery thereof to or on the order of the purchasers therein named on payment of the purchase price therein set forth;
- (d) an opinion of Counsel to the effect that the issuance of the Additional Bonds has been duly authorized and that all conditions precedent to the delivery of the Additional Bonds have been fulfilled and further stating that the Town is in compliance with all covenants and undertakings in connection with all outstanding Bonds; and
- (e) such documents as the Bond Register, the Town or the Commission require to evidence that provision has been satisfactorily made for the redemption of the Bonds to be refunded and the extent to which the net debt service on such new bonds is less than the debt service on the Bonds to be refunded would have been but for the refunding.

When the documents mentioned in clauses (a) to (e), inclusive, of this Section have been filed with the Bond Registrar and when the Additional Bonds have been executed and authenticated as required by this Bond Order, the Bond Registrar shall deliver said Additional Bonds to or on the order of the purchasers thereof, but only on payment to the State Treasurer of the purchase price of said Additional Bonds.

Section 3.02. ***Financing of System Improvements.*** The Town may, to the extent permitted by the Act and the provisions of this Section, issue, from time to time, Additional Bonds which are payable from the same funds as previously issued Bonds for the purpose of financing System Improvements. Except as to any difference in the maturities thereof or in the rate or rates of interest or the provisions for redemption, such obligations will be on a parity with and be entitled to the same benefit and security of this Bond Order as all other Bonds. The Bond Registrar may not authenticate and deliver any Additional Bonds for this purpose unless theretofore or simultaneously therewith there has been filed with the Bond Registrar, the following:

- (a) a copy, certified by the Clerk to be a true and correct copy, of the Series Resolution authorizing the issuance of the Additional Bonds and prescribing the details thereof and providing that the System Improvements to be financed with the proceeds thereof are thereby made a part of the System and that the revenues of such System Improvements are thereby pledged to the Additional Bonds and as additional security for the outstanding Bonds;
- (b) a certificate of the Commission showing the award of said Additional Bonds and specifying the interest rate or rates thereof;
- (c) a copy, certified by the Clerk to be a true and correct copy, of the resolution (which may be incorporated in the Series Resolution) of the Town directing the authentication of said Additional Bonds and the delivery thereof to or on the order of the purchasers therein named on payment of the purchase price therein set forth;
- (d) an opinion of Counsel to the effect that the issuance of said Additional Bonds has been duly authorized and that all conditions precedent to the delivery of said Additional Bonds have been fulfilled and further stating that the Town is in compliance with all covenants and undertakings in connection with all outstanding Bonds;
- (e) a certificate, signed by the Town Representative stating that all payments required by Section 5.05 into the Debt Service Fund and into the Debt Service Reserve Fund before the beginning of the month during which the Additional Bonds are issued have been made;

- (f) a certificate, signed by the Town Representative, stating that the Net Revenues for each of the two complete Fiscal Years next preceding the issuance of the proposed Additional Bonds were equal to at least 110% of the Debt Service Requirement for such Fiscal Year, 100% of the amount necessary to pay annual debt service obligations on Subordinated Indebtedness, if any, and 100% of the amount necessary to meet annual debt service obligations coming due in that Fiscal Year with respect to the Town's general obligation bonds and installment financing obligations, if any, used to finance System Improvements; and
- (g) a statement, signed by the Town Representative, to the effect that the estimated Net Revenues for the first two Fiscal Years following the Fiscal Year in which the Improvements being financed will be placed in service will be at least 110% of the Debt Service Requirement for such Fiscal Year on all outstanding Bonds, including the proposed Additional Bonds, 100% of the amount necessary to pay annual debt service obligations on Subordinated Indebtedness, if any, and 100% of the amount necessary to meet annual debt service obligations coming due in that Fiscal Year with respect to the Town's general obligation bonds and installment financing obligations, if any, used to finance System Improvements.

Section 3.03. **Approval by Local Government Commission.** Additional Bonds may not be issued unless they are approved and sold by the Commission and until the Commission Secretary has endorsed thereon a certificate evidencing approval in accordance with the Act.

Section 3.04. **Waiver of Additional Bonds Limitations.** The limitations hereinabove set forth with respect to the issuance of Additional Bonds may be waived or modified by the written consent of Holders owning 60% or more of the outstanding Bonds and with the consent of the Commission.

ARTICLE IV REDEMPTION OF BONDS BEFORE MATURITY

Section 4.01. **Terms and Conditions.** The Bonds, and the respective installments of principal corresponding thereto, are subject to redemption, both in whole and in part, at such times and prices, as may be provided by the Series Resolution authorizing the issuance of such Bonds.

Section 4.02. **Notice of Redemption and Prepayment.** When the Town elects to redeem Bonds, notice thereof, stating the redemption date and place of payment and identifying the Bonds by reference to their numbers and further stating that on such redemption date there will become due and payable on each Bond so to be redeemed the principal thereof and the redemption premium, if any, together with the interest accrued to the redemption date and that from and after such date interest thereon ceases to accrue, must be given as set forth in the applicable Series Resolution authorizing the issuance of such Bonds.

Section 4.03. **Payment of Redeemed Bonds.** Notice having been given in the manner provided, the Bonds so called for redemption are due and payable on the redemption date so designated at the redemption price set forth in said notice. On presentation and surrender of the Bonds so called for redemption at the place of payment specified in said notice, together with a written instrument of transfer satisfactory to the Bond Registrar, duly executed by the Holder or his duly authorized attorney, such Bonds are to be paid at the aforementioned redemption price. If part but not all of an outstanding bond is selected for redemption, the Holder thereof or his attorney or legal representative shall present and surrender such Bond to the Bond Registrar for payment of the applicable redemption price and the Town shall execute and the Bond Registrar shall authenticate and deliver to or on the order of such Holder or his legal representative, without charge therefor, for the unredeemed portion of the principal amount of the Bond so surrendered, a registered Bond of the same series and maturity, bearing interest at the same rate and of any authorized denomination.

If, on the redemption date, money for payment of the redemption price of all the Bonds to be redeemed is available therefor at the place of payment specified in the notice of redemption, then from and after the redemption date, the Bonds or the installments of principal thereof so called for redemption cease to bear

interest. All money held for the redemption of particular Bond or for the prepayment of particular installments thereof is to be held in trust for the account of the Holders of the Bonds so to be redeemed or prepaid.

If said money is not so available on the redemption date, the Bonds will continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption.

Section 4.04. ***Cancellation of Redeemed Bonds.*** All Bonds redeemed before maturity are to be cancelled forthwith.

ARTICLE V REVENUES AND FUNDS

Section 5.01. ***Rates and Charges.*** The Town covenants and agrees that, subject to any applicable requirements of law or regulations, it will fix Service Charges and from time to time to revise such Service Charges in such manner that the Net Revenues for each Fiscal Year shall not be less than 110% of the Debt Service Requirement for such Fiscal Year and not less than 100% of the amount necessary to meet annual debt service obligations coming due in that Fiscal Year with respect to Subordinate Obligations and Town general obligation bonds and the Town's installment financing obligations used to finance System Improvements, if any.

The Town covenants that it will not reduce the Service Charges unless the Revenues after any such reduction of Service Charges will, in the opinion of the Consultants, be not less in each subsequent Fiscal Year than the total of the amounts referred to in subdivision (c) of this Section and further that it will not reduce the Service Charges unless:

- (a) all deposits have been made to the credit of the Debt Service Fund or with respect to debt service which are required by this Article to have been made before the time of such reduction; .
- (b) the amount then on deposit to the credit of the Debt Service Reserve Fund is not less than the Debt Service Reserve Fund Requirement;
- (c) the total amount of the Revenues during the preceding Fiscal Year has been not less than the total of the following:
 - (1) the Operating Expenses during the current Fiscal Year as shown by the Annual Budget for such Fiscal Year, and
 - (2) 110% of the maximum Debt Service Requirement for any Fiscal Year thereafter; and
 - (3) 100% of the amount necessary to pay annual debt service obligations coming due in that Fiscal Year with respect to Subordinate Obligations and any Town general obligation bonds or installment financing obligations used to finance System Improvements.
- (d) the Revenues after any such reduction of Service Charges will, in the opinion of the Consultants, be not less in the then current Fiscal Year and in each subsequent Fiscal Year than the total of the amounts referred to in subdivision (c) of this Section.

Forthwith on the adoption of any revision of the Service Charges, the Town will cause certified copies thereof to be filed with the Consultants and the Commission and mailed, on request, to each Identifiable Bondholder.

The Town further covenants that if the Revenues in any Fiscal Year are less than the total amount set forth in the first paragraph of this Section, the Town will immediately request the Consultants to make their

recommendations regarding revision of the schedule of Service Charges and improvements in the operation of or services rendered by the System, and copies of such request and of the recommendations of the Consultants must be filed with the Commission and mailed by the Clerk, on request, to each Identifiable Bondholder.

Anything in this Bond Order to the contrary notwithstanding, if the Town substantially complies with all the recommendations of the Consultants respecting the schedule of Service Charges and improvements in the operation of or services rendered by the System, it will not constitute an event of default under this Bond Order if the Net Revenues are less than the amount set forth in the first paragraph of the Section, but sufficient to meet the Debt Service Requirement.

Section 5.02. **Creation of Funds and Accounts.** There are hereby designated or created and designated the following special funds and accounts: (a) Town of Boone, North Carolina Water and Sewer System Revenue Fund which is the account maintained for water and sewer funds within the Town's Water and Sewer Fund (hereinafter called the "*Revenue Fund*"); (b) Town of Boone, North Carolina Water and Sewer System Debt Service Fund which is the debt payment account maintained for water debt within the Town's Water and Sewer Fund (hereinafter called the "*Debt Service Fund*"); (c) Town of Boone, North Carolina Water and Sewer System Debt Service Reserve Fund which is the account for this purpose in the Town's Water and Sewer Fund (hereinafter called the "*Debt Service Reserve Fund*"); and (d) Town of Boone, North Carolina Water and Sewer System Surplus Fund (hereinafter called the "*Surplus Fund*"). Within the Debt Service Reserve Fund, there is hereby designated a *USDA Reserve Account* and a *General Reserve Account*. The money in each Fund and Account is to be held by the Town in trust with a Depository and applied as hereinafter provided in this Article. Each Fund and Account is to be maintained as long as any of the Bonds are outstanding.

Section 5.03. **Pledge of Net Revenues.** The Town hereby pledges the Net Revenues to secure the payment of the principal of, redemption premium, if any, and interest on the Bonds. The Revenues, as received by the Town, are immediately subject to the lien of this pledge without any physical delivery thereof or further act and the lien of this pledge has priority over any or all other obligations and liabilities of the Town, including Subordinate Obligations, any general obligation bonds or installment financing obligations, or notes issued in anticipation thereof, heretofore or hereafter issued by the Town for the purpose of providing water and sewer systems or facilities and the lien of this pledge is valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Town irrespective of whether such parties have notice thereof.

Section 5.04. **Application of Revenues Received by the Town.** All Revenues collected by or on behalf of the Town are to be deposited by the Town as soon as practicable following the receipt thereof and held by the Depository in the Revenue Fund. The Town shall pay from the money in the Revenue Fund, among other things, Operating Expenses in accordance with the Annual Budget, Debt Service Requirements with respect to the Bonds in each Fiscal Year, and the purchase or redemption price of the Bonds. The Town shall also deposit to the credit of a special account established with the Depository an amount in each month equal to the deposits to the Debt Service Reserve Fund required pursuant to Section 5.05(b).

Section 5.05. **Withdrawals from the Revenue Fund.**

(a) All Revenues collected by or on behalf of the Town shall be deposited by the Town with one or more Depositories as soon as practicable following the receipt thereof and held in the Revenue Fund. The Town shall withdraw and transfer or expend moneys held in the Revenue Fund only for the purposes and in the manner set forth in this Section.

(b) Operating Expenses shall be paid by the Town from, and shall be a first charge and lien against, the Revenue Fund. The Operating Expenses shall be paid from amounts held in the Revenue Fund as the same become due and payable in conformity with the applicable budgetary and payment procedures of the Town.

(c) The Town shall, after payment of such Operating Expenses then due and payable, withdraw from the Revenue Fund the amount necessary to make the following payments or deposits in the following manner and order:

(i) On or before the 5th day before each interest and principal payment date, to the credit of the Debt Service Fund, an amount equal to the amount required on the next payment date to pay the interest on and principal of the Bonds due on such date;

(ii) with respect to the Initial Bonds, on or before the 5th day before each principal payment date, to the credit of the USDA Reserve Account of the Debt Service Reserve Fund, until the amount on deposit therein is equal to the Debt Service Reserve Fund Requirement, an amount equal to 1/10 of the Debt Service Reserve Requirement;

(iii) with respect to any Additional Bonds, on or before the 5th day before each principal payment date, unless otherwise specified in the Series Resolution, to the credit of the General Reserve Account of the Debt Service Reserve Fund, until the amount on deposit therein is equal to the Debt Service Reserve Fund Requirement, an amount equal to 1/10 of the Debt Service Reserve Requirement; and

(iv) to the credit of the Surplus Fund the balance, if any, remaining after making the deposits under clauses (a), (b) and (c) above;

Provided, however, that if the amount so deposited to the credit of any Fund mentioned shall be less than the required amount, the requirement therefor shall nevertheless be cumulative and the amount of any deficiency shall be added to the amount otherwise required to be deposited to the credit of such Fund thereafter until such time as such deficiency shall be made up.

Section 5.06. ***Application of Money in Debt Service Fund.*** All money in the Debt Service Fund is to be held in trust for the payment of the principal of and the interest on the Bonds, and no amount is to be withdrawn from or paid out of the Debt Service Fund except as provided herein. The Town shall, from time to time, withdraw from the Debt Service Fund and (1) remit by mail or wire transfer to the Holder of each Bond the amount required to pay interest on such Bond as such interest becomes due, and (2) set aside in trust an amount equal to the amount of, and for the sole and exclusive purpose of thereafter to pay the principal of all Bonds as such principal becomes due.

Section 5.07. ***Application of Money in Debt Service Reserve Fund.*** Money held for the credit of the USDA Reserve Account of the Debt Service Reserve Fund is to be used for the purpose of paying interest on the Initial Bonds and maturing principal of Initial Bonds whenever and to the extent that the money held for the credit of the Debt Service Fund is insufficient for such purpose and for any other expenses with the consent of USDA. Money held for the credit of the General Reserve Account of the Debt Service Reserve Fund is to be used for the purpose of paying interest on the Additional Bonds and maturing principal of the Additional Bonds whenever and to the extent that the money held for the credit of the Debt Service Fund is insufficient for such purpose. Any money so withdrawn from such Fund is to be restored from available money in the Revenue Fund, subject to the same conditions as are prescribed for deposits to the credit of such Fund under the provisions of Section 5.05. When the money held for the credit of the Debt Service Reserve Fund exceeds the requirement for such Fund under the provisions of clause (b) of Section 5.05, such excess may be transferred by the credit of the Surplus Fund.

Section 5.08. ***Application of Surplus Fund.*** If the amount available in the Revenue Fund is or has been insufficient to make required payments for Operating Expenses or for the Debt Service Fund or the Debt Service Reserve Fund, the Town shall withdraw from the Surplus Fund, to the extent the money therein is available, and pay into the Revenue Fund, such amount as is required to remedy such deficiency. Money held for the credit of the Surplus Fund and not at the time required to be so withdrawn from the Surplus Fund may be withdrawn and applied by the Town, without accounting therefor to the Holders, for any lawful purpose, including, without limitation, to pay debt service on general obligation indebtedness of the Town.

Section 5.09. ***Unclaimed Money.*** All money which the Town has withdrawn from the Debt Service Fund and Debt Service Reserve Fund or has received from any other source and set aside for the purpose of paying any of the Bonds hereby secured, either at the maturity thereof or on call for redemption is to be held in

trust for the respective Holders of such Bonds. Any money which is set aside and which remains unclaimed by the Holders of such Bonds for the period of three years after the date on which such Bonds have become payable will be treated as abandoned property pursuant to the provisions of Article 3 of Chapter 116B of the North Carolina General Statutes, and the Town shall report and remit this property to the State Treasurer according to the requirements of Article 3 of Chapter 116B of the North Carolina General Statutes. Thereafter the Holders of such Bonds shall look only to the State Treasurer for payment and then only to the extent of the amounts so received without any interest thereon, and the Town will have no responsibility with respect to such money.

Section 5.10. **Cancellation.** All Bonds paid, redeemed or purchased either at or before maturity, will, at the direction of the Town, be delivered to the Bond Registrar or to the Town when such payment, redemption or purchase is made and such Bonds must then be cancelled. The Bond Registrar shall destroy all Bonds cancelled under this Bond Order. The Bond Registrar shall execute a certificate in duplicate describing the Bonds so destroyed, one executed certificate to be filed with the Town and the second to be retained by the Bond Registrar.

ARTICLE VI SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS

Section 6.01. **Security for Deposits.** All money deposited with the Town or any other Depository designated by the Town hereunder in excess of the amount guaranteed by the Federal Deposit Insurance Corporation or other Federal agency is to be continuously secured, for the benefit of the Town and the Holders of the Bonds, in such manner as may then be required or permitted by applicable State or Federal laws and regulations regarding the security for, or granting a preference in the case of, the deposit of trust funds, including applicable regulations of the Commission.

Section 6.02. **Investment of Funds.** Money held for the credit of the Revenue Fund, the Debt Service Fund and the Surplus Fund must, as nearly as may be practicable, be continuously invested and reinvested in Qualified Investments which mature or which are subject to redemption by the holder thereof at the option of such holder not later than the respective dates when the money held for the credit of each such Fund or Account is required for the purposes intended. Money held for the credit of the Debt Service Reserve Fund must, as nearly as may be practicable, be continuously invested and reinvested in Qualified Investments which mature or which are subject to redemption by the holder thereof at the option of such holder not later than three years after the date of such investment. Obligations and certificates of deposit purchased as investments of money in any such Fund or Account are at all times to be part of such Fund or Account, and the interest accruing thereon and any profit realized therefrom is to be credited to such Fund or Account, and any loss resulting therefrom is to be charged to such Fund or Account. The Town shall sell at the best price obtainable or present for redemption any obligations so purchased whenever it is necessary so to do in order to provide money to meet any payment or transfer from any such Fund or Account. Neither the Town nor the Town Representative is liable or responsible for any loss resulting from any such investment. For the purpose of determining the amount on deposit to the credit of any such Fund or Account, obligations in which money in such Fund or Account have been invested are to be valued at the lower of cost or market.

ARTICLE VII PARTICULAR COVENANTS

Section 7.01. **Payment of Bonds and Observance of Covenants.** The Town covenants that it will promptly pay the principal of and the interest on every Bond issued under the provisions of this Bond Order at the places, on the dates and in the manner provided herein and in said Bonds and any premium required for the retirement of the Bonds by purchase or redemption, according to the true intent and meaning thereof. Except as in this Bond Order otherwise provided, the principal, interest and premiums are payable solely from Net Revenues, which are hereby pledged to the payment thereof in the manner and to the extent hereinabove particularly specified, and nothing in the Bonds or in this Bond Order is to be construed as obligating the Town to pay the Bonds or the interest thereon except from Net Revenues or as pledging the faith and credit of the Town or as obligating the Town, directly or indirectly or contingently, to levy or to pledge any form of *ad*

valorem tax whatever therefor. The Town covenants that it will faithfully do and perform and at all times fully observe any and all covenants, undertakings, stipulations and provisions contained herein or in the Bonds.

Section 7.02. ***Construction of Project and System Improvements.*** The Town covenants that it will forthwith diligently proceed to complete the Project and any System Improvements in accordance with plans and specifications which have been approved by the Consultants and in conformity with law and all requirements of all governmental authorities having jurisdiction thereover, and that it will complete such construction with all expedition practicable.

The Town further covenants and agrees that it will require each person, firm or corporation with whom it may contract for labor or materials in connection with the construction of the Project or any System Improvements to furnish a performance bond as required by law to insure completion and performance of such contract, or, in lieu thereof, to deposit with the Depositary marketable securities having a market value equal to the amount of such contract and eligible as security for the deposit of trust funds under regulations of the Comptroller of the Currency of the United States, and to carry such workmen's compensation or employers' liability insurance as may be required by law and such builders, risk insurance, if any, as may be required by the Consultants. The Town further covenants and agrees that in the event of any default under any such contract and the failure of the surety to complete the contract, the proceeds of any such performance bond or securities will forthwith, on receipt of such proceeds, be applied toward the completion of the contract in connection with which such performance bond or securities have been furnished.

Section 7.03. ***Operation and Maintenance of System.*** The Town covenants that it shall at all times operate the System properly and in a sound and economical manner, and shall maintain, preserve and keep the same properly or cause the same to be so maintained, preserved and kept, with the appurtenances and every part and parcel thereof, in good repair, working order and condition, and shall from time to time make or cause to be made, all necessary and proper repairs, replacements and renewals so that at all times the operation of the System may be properly and advantageously conducted.

Section 7.04. ***Rules, Regulations and Other Details.*** The Town covenants that it shall establish and shall enforce reasonable rules and regulations governing the operation, use and services of the System and that all compensations, salaries, fees and wages paid by the Town in connection with the maintenance, repair and operation of the System shall be reasonable. The Town shall observe and perform or shall cause to be observed and performed all of the terms and conditions contained in the Act, and shall comply with all valid acts, rules, regulations, orders and directions of any legislative, executive, administrative or judicial body applicable to the System or the Town.

The Town further covenants that:

- (a) it may require the owner, tenant or occupant of each lot or parcel of land within the Town who is obligated to pay rates, fees or charges for the services and facilities furnished by the System to make a reasonable deposit with the Town in advance to insure the payment of such rates, fees or charges and to be subject to application to the payment thereof if and when delinquent;
- (b) if any rates, fees or charges for the services and facilities furnished by the System are not be paid within 30 days after they become due and payable, the Town shall at the expiration of such 30-day period disconnect the premises from the System, and the Town may proceed to recover by appropriate legal action the amount of any such delinquent rates, fees or charges;
- (c) it will not render, or cause to be rendered, any free services of any nature by the System nor will preferential rates be established for users of the same class; and

- (d) to the extent legally allowed, it will not consent to the furnishing of, or permit any person whatsoever to furnish, water and sewer services within the Town except in those municipalities which on the date of adoption of the Bond Order operate their own water and sewer systems or in areas wherein the System is unable economically to serve the occupants and properties.

Section 7.05. ***Payment of Lawful Charges.*** The Town covenants that, from Revenues, it will pay all taxes and assessments or other municipal or governmental charges lawfully levied or assessed on or in respect of the System or on any part and that, from such Revenues, it will pay or cause to be discharged, or will make adequate provision to satisfy and discharge, within 60 days after they accrue, all lawful claims and demands for labor, materials, supplies or other objects which, if unpaid, might by law become a lien on the System or any part thereof or on such Revenues; provided, however, that nothing in this Section contained requires the Town to pay or cause to be discharged, or make provision for, any such lien or charge so long as the validity thereof is contested in good faith and by appropriate legal proceedings.

Section 7.06. ***Insurance and Reconstruction.*** The Town covenants that it will obtain and maintain insurance, with reasonable terms, conditions, provisions and costs, which the Town Representative determines will afford adequate protection against such risks as are customarily insured against in connection with the operation of water and sewer systems of type and size comparable to the System. All such insurance policies are to be carried in an insurance company or companies authorized and qualified under the laws of the State to assume the risks thereof.

The proceeds of all such insurance covering damage to or destruction of the System are to be deposited with the Town and be available for and, to the extent necessary, be applied to the repair, replacement or reconstruction of the damaged or destroyed property, and be paid out in the manner determined by the Town. If such proceeds are more than sufficient for such purpose, the balance remaining are to be deposited to the credit of the Surplus Fund. If such proceeds are insufficient for such purpose, the deficiency may be supplied out of any money in the Surplus Fund. The proceeds of all insurance covering loss of Revenues are to be deposited to the credit of the Revenue Fund.

Section 7.07. ***Annual Budget of Operating Expenses.*** The Town covenants that it shall develop an Annual Budget for each Fiscal Year consistent with the budget preparation schedule set forth in the State's applicable fiscal control statutes. If for any reason the Town has not adopted the Annual Budget before the first day of any Fiscal Year, the budget for the preceding Fiscal Year will, until the adoption of the Annual Budget, be deemed to be in force.

The Town may at any time adopt an amended or supplemental Annual Budget for the remainder of the then current Fiscal Year, but no such amended or supplemental budget is effective until it is approved in the manner hereinbefore prescribed for the Annual Budget.

The Town covenants that the Operating Expenses incurred in any Fiscal Year will not exceed the reasonable and necessary amount thereof, and that it will not expend any amount or incur any obligations for maintenance, repair and operation in excess of the amounts provided for Operating Expenses in the appropriate budget. Nothing in this Section contained limits the amount which the Town may expend for Operating Expenses in any Fiscal Year, but any amounts expended therefor in excess of the appropriate budget are received by the Town from some source other than Revenues and the Town may not make any reimbursement therefor from such Revenues.

Section 7.08. ***Records, Books and Audits.*** The Town covenants that it will keep each of the funds of the System separate from all other funds of the Town and that it will keep accurate records and accounts of all items of cost and of all expenditures relating to the System and of the Revenues collected and the application of such Revenues. Such records and accounts must at all times during normal business hours be open to the inspection of the Commission and the Holders of the Bonds.

The Town further covenants that promptly after the close of each Fiscal Year it will cause an audit to be made of its books and accounts relating to the System by a firm of independent certified public accountants to be chosen by the Town and will cause an annual report of operations of the System to be prepared, such annual report to cover the matters usually contained in annual reports for similar systems. Within a reasonable time thereafter, the Clerk shall mail reports of each such audit and copies of each such annual report to the Commission and each Identifiable Bondholder, and, on request, to the Consultants. Each such audit report must be in accordance with generally accepted accounting principles and set forth in respect of the preceding Fiscal Year, among other matters, the Revenues and Operating Expenses of the System, all deposits or transfers to the credit of and all withdrawals from each special fund created hereunder, the amounts on deposit at the end of such Fiscal Year to the credit of each such special fund including the details of any investment thereof, a balance sheet and also the findings of such certified public accountants whether the money received by the Town under this Bond Order has been applied in accordance with this Bond Order, whether any obligations for Operating Expenses were incurred in excess of the amounts appropriated in the Annual Budget and whether the Town is in default in the performance of any of the covenants contained in Article V.

The Town will file with the Commission within 180 days of the end of the fiscal year a certificate signed by the Finance Director stating (1) whether there existed at the end of such fiscal year any violation of any covenant or agreement of the Town contained in this Bond Order, including any supplement or amendment and (2) whether at any time during the fiscal year any Event of Default, as defined herein, occurred or is occurring and, if so, the nature of such Event of Default.

The audit must include a calculation of compliance for the fiscal year with the rate covenant set forth in Section 5.01.

Section 7.09. ***Encumbrance; Additions to the System.*** The Town may create or permit to be created a lien on the System in order to secure the certain long-term debt obligations as long as the Town Representative certifies at the time of the creation of the lien that (i) loss of the property secured by the lien will not materially adversely affect the ability of the Town to meet its financial obligations under this Bond Order, including the ability of the Town to meet any of the covenants and (ii) the current value of all parts of the System subject to a lien securing all long-term debt obligations, including property which may be added to the System as a result of the delivery of the long-term debt obligations, does not exceed 20% of the net capital assets of the System. The Town will not otherwise create or permit to be created any lien or charge on the System. The Town will pay or cause to be discharged or make provisions to satisfy and discharge, within 60 days after the same accrues, all claims and demands for labor, materials, supplies or other items which, if unpaid, might by law become a lien on the System or the Net Revenues on a parity with the lien of the Bonds, except for the liens permitted by this Section. The Town need not pay or cause to be discharged or make provision for any lien or charge as long as the validity thereof is being contested in good faith by appropriate legal proceedings.

The Town may add to the System another enterprise operation if (1) a Consultant certifies that the projected Revenues of the System as it will exist after the proposed addition for each of the two Fiscal Years subsequent to the year in which the addition is expected to be completed are projected to satisfy the requirements of Section 5.01, (2) an opinion of Bond Counsel to the effect that the addition will not adversely affect the federal income tax treatment of the Interest on the Bonds and (3) written consent from the Holders and the LGC to such addition.

Section 7.10. ***Creation of Liens.*** The Town covenants that it will not create or permit to be created any charge or lien on the Net Revenues ranking equally with or prior to the charge or lien on the Net Revenues of the Bonds issued and secured hereunder unless otherwise required by applicable law.

Section 7.11. ***Instruments of Further Assurance.*** The Town covenants that at any and all times it shall, so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver all and every such further orders, resolutions, acts, conveyances, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting and confirming all and singular the rights, Revenues and other funds hereby pledged or intended so to be, or which the Town may hereafter become bound to pledge or as may be reasonable and required to carry out the purposes of this Bond Order and comply with the Act. The Town

further covenants that it shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of the Net Revenues and all the rights of the Holders against all claims and demands of all persons whomsoever.

ARTICLE VIII DEFAULTS AND REMEDIES

Section 8.01. ***Events of Default.*** Each of the following events is hereby declared an “event of default;” that is to say, if:

- (a) payment of the principal and premium, if any, of any of the Bonds is not made when it becomes due and payable, either at maturity or by proceedings for redemption or otherwise; or
- (b) payment of any installment of interest is not made when it becomes due; or
- (c) the Town is rendered incapable of fulfilling its obligations hereunder; or
- (d) any substantial part of the System, necessary for its efficient operation, is destroyed or damaged and is not promptly repaired, replaced or reconstructed (whether such failure promptly to repair, replace or reconstruct is occasioned by the impracticability of such repair replacement or reconstruction or the lack of funds therefor or any other reason); or
- (e) an order or decree is entered, with the consent or acquiescence of the Town, appointing a receiver or receivers of the System or of the Revenues, or if such order or decree, having been entered without the consent or acquiescence of the Town is not vacated or discharged or stayed on appeal within 60 days after the entry thereof; or
- (f) any proceeding is instituted, with the consent or acquiescence of the Town, for the purpose of effecting a composition between the Town and its creditors or for the purpose of adjusting the claims of such creditors, pursuant to any federal or state statute now or hereafter enacted, if the claims of such creditors are under any circumstances payable out of Revenues; or
- (g) the Town defaults in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Bonds or in this Bond Order on the part of the Town to be performed, and such default continues for 30 days after written notice specifying such default and requiring it be remedied has been given to the Town by the Holders of not less than 20% in principal amount of the Bonds then outstanding.

Section 8.02. ***Bonds Declared Due and Payable.*** On the happening and continuance of any event of default specified in Section 8.01, then and in every such case the Holders of a majority in principal amount of the Bonds then outstanding may, by a notice in writing to the Town, declare the principal of all of the Bonds then outstanding (if not then due and payable) to be due and payable immediately, and on such declaration the same shall become and be immediately due and payable, anything contained in the Bonds or in this Bond Order to the contrary notwithstanding; provided, however, that if at any time after the principal of the Bonds has been so declared to be due and payable, and before the entry of final judgment or decree in any suit, action or proceeding instituted on account of such default, or before the completion of the enforcement of any other remedy under this Bond Order, money becomes available to pay the principal of all matured Bonds and all arrears of interest, if any, on all the Bonds then outstanding (except the principal of any Bonds not then due by their terms and the interest accrued on such Bonds since the last interest payment date), and all other amounts then payable by the Town hereunder have been paid or a sum sufficient to pay the same has been deposited with a Depositary, and every other default in the observance or performance of any covenant, condition or agreement contained in the Bonds or in this Bond Order (other than a default in the payment of the principal of such Bonds then due only because of a declaration under this Section), has been remedied to the satisfaction of the Holders, then and in every such case the Holders may, and on the written request of the Holders of a majority in principal

amount of the Bonds not then due by their terms and then outstanding shall, by written notice to the Town, rescind and annul such declaration and its consequences, but no such rescission or annulment shall extend to or affect any subsequent default or impair any right consequent thereon.

Section 8.03. ***Additional Remedies.*** On the happening and continuance of any event of default specified in Section 8.01, then and in every case the Holders may proceed to protect and enforce their rights hereunder and under the laws of the State, including the Act, by such suits, actions or special proceedings in equity or at law, either for the specific performance of any covenant or agreement contained herein or in aid or execution of any power herein granted or for the enforcement of any proper legal or equitable remedy, as the Holders deem most effectual to protect and enforce such rights.

Section 8.04. ***No Remedy Exclusive.*** No remedy herein conferred on or reserved to the Holders is intended to be exclusive of any other remedy or remedies, and each and every such remedy is cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 8.05. ***Waiver of Default.*** No delay or omission of the Holders of the Bonds to exercise any right or power accruing on any default impairs any such right or power or is to be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Article to the Holders of the Bonds, respectively, may be exercised from time to time and as often as may be deemed expedient.

The Holders of a majority of the Bonds may waive any default which has been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted by it under this Bond Order or before the completion of the enforcement of any other remedy under this Bond Order, but no such waiver shall extend to or affect any other existing or any subsequent default or defaults or impair any rights or remedies consequent thereon.

Section 8.06. ***Notice of Default.*** The Town shall mail to the Commission and to the Holder of each Bond then outstanding written notice of the occurrence of any event of default set forth in Section 8.01 within 30 days after the Town has notice that any such event of default has occurred.

ARTICLE IX THE TRUSTEE

Section 9.01. ***Designation of Trustee.*** The Town may at any time, with the approval of the Commission, appoint a Trustee to administer the provisions of this Bond Order and may adopt such supplements to this Bond Order as are necessary or desirable to effectuate such appointment.

ARTICLE X SUPPLEMENTAL ORDERS

Section 10.01. ***Without Consent of Holders.*** The Town may amend this Bond Order in any respect before the delivery of the Initial Bonds.

The Town may from time to time and at any time following delivery of the Initial Bonds, adopt such orders supplemental hereto as are not inconsistent with the terms and provisions hereof (which supplemental orders shall thereafter form a part hereof) and all of which are not materially adverse to bondholders:

- (a) to cure any ambiguity or formal defect or omission or to correct any inconsistent provisions in this Bond Order or in any supplemental order, or
- (b) to grant to or confer on the Holders any additional rights, remedies, powers, Town or security that may lawfully be granted to or conferred on the Holders, or

- (c) to add to the conditions, limitations and restrictions on the issuance of Bonds under the provisions of this Bond Order other conditions, limitations and restrictions thereafter to be observed, or
- (d) to add to the covenants and agreements of the Town in this Bond Order other covenants and agreements thereafter to be observed by the Town or to surrender any right or power herein reserved to or conferred on the Town.

At least 30 days before the adoption of any supplemental order for any of the purposes set forth in the immediately preceding paragraph of this Section, the Bond Registrar, at the expense of the Town, shall cause a notice of the proposed adoption of such supplemental order to be mailed, postage prepaid, to the owner of each Bond at the address appearing on the registration books and to the Commission. Such notice shall briefly set forth the nature of the proposed supplemental order and shall state that copies thereof are on file at the principal office of the Bond Registrar for inspection by all Holders.

Section 10.02. ***With Consent of Holders.*** Subject to the terms and provisions contained in this Section, and not otherwise, the Holders of not less than a majority in aggregate principal amount of the Bonds then outstanding have the right, from time to time following delivery of any Bonds, anything contained in this Bond Order to the contrary notwithstanding, to consent to and approve the adoption, of such order or orders supplemental hereto as are deemed necessary or desirable by the Town for the purpose of modifying, altering, amending, adding to or rescinding, in particular, any of the terms or provisions contained in this Bond Order or in any supplemental order; provided, however, that nothing herein contained permits, or may be construed as permitting, (a) an extension of the maturity of the principal of or the interest on any Bond issued hereunder without the consent of the Holder of such Bond, or (b) a reduction in the principal amount of any Bond or the redemption premium or the rate of interest thereon without the consent of the Holder of such Bond, or (c) the creation of a lien on or a pledge of Revenues other than the lien and pledge created by this Bond Order without the consent of the Holders of all Bonds outstanding, or (d) a preference or priority of any Bond over any other Bond without the consent of the Holders of all Bonds outstanding or (e) a reduction in the aggregate principal amount of the Bonds required for consent to such supplemental order without the consent of the Holders of all Bonds outstanding and the consent of the Commission.

Section 10.03. ***Obtaining Consent of Holders.*** If at any time the Town shall determine that it is necessary or desirable to adopt any supplemental order for any of the purposes of Section 10.02, the Bond Registrar, at the expense of the Town, shall cause notice of the proposed adoption of such supplemental order to be mailed, postage prepaid, to each Holder of Bonds at the addresses appearing on the registration books and to the Commission. Such notice shall briefly set forth the nature of the proposed supplemental order and shall state that copies thereof are on file at the principal corporate trust office of the Bond Registrar for inspection by all Holders. The Bond Registrar is not, however, subject to any liability to any Holder by reason of its failure to cause the notice required by this Section to be mailed and any such failure does not affect the validity of such supplemental order when consented to and approved as provided in this Section.

Whenever, within one year after the date of the first mailing of such notice, the Town shall deliver to the Bond Registrar an instrument or instruments in writing purporting to be executed by the Holders of not less than a majority in aggregate principal amount of the Bonds then outstanding, which instrument or instruments shall refer to the proposed supplemental order described in such notice and shall specifically consent to and approve the adoption thereof in substantially the form of the copy thereof referred to in such notice and such amendment has been approved by the Commission, then, but not otherwise, the Town may adopt such supplemental order in substantially such form, without liability or responsibility to any Holder of any Bond, whether or not such Holder has consented thereto.

If the Holders of not less than a majority in aggregate principal amount of the Bonds outstanding at the time of the adoption of such supplemental order have consented to and approved the adoption thereof as herein provided, no Holder of any Bond has any right to object to the adoption of such supplemental order, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the

propriety of the adoption thereof, or to enjoin or restrain the Town from adopting the same or from taking any action pursuant to the provisions thereof.

On the adoption of any supplemental order pursuant to the provisions of this Section, this Bond Order is deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Bond Order of the Town, the Bond Registrar and all Holders of Bonds then outstanding will thereafter be determined, exercised and enforced in all respects under the provisions of this Bond Order as so modified and amended.

Bonds owned or held by or for the account of the Town will not be deemed outstanding and will be excluded for the purpose of any consent or any calculation provided for in this Article.

Bonds delivered after the effective date of any action taken as in this Article provided may bear a notation by endorsement or otherwise in form approved by the Town and Bond Registrar as to such action. If the Town and Bond Registrar so determine, new Bonds modified to conform to any such action are to be prepared, authenticated and delivered to the Holder of any Bond then outstanding without cost to such Holder in exchange for and on surrender of such outstanding Bonds.

Section 10.04. ***Unanimous Consent of Holders.*** Notwithstanding anything contained in the foregoing provisions of this Article, the terms and provisions of this Bond Order or any order supplemental hereto and the rights and obligations of the Town and of the Holders of the Bonds may be modified or amended in any respect on the adoption by the Town of an order to that effect, approved by the Bond Registrar, and the filing with the Town of the written consent of Holders of all the Bonds. No notice to Holders is required.

ARTICLE XI MISCELLANEOUS PROVISIONS

Section 11.01. ***Discharge of Bond Order.*** If, when the Bonds secured hereby have become due and payable in accordance with their terms or have been duly called for redemption and the whole amount of the principal and the interest and premium, if any, so due and payable on all of the Bonds then outstanding is paid, then the right, title and interest of the Holders of the Bonds secured hereby in the Revenues and funds mentioned in this Bond Order ceases, terminates and becomes void, and the Town, in such case, may apply any and all balances remaining in any funds to any lawful purpose of the Town as the Town determines; otherwise this Bond Order continues and remains in full force and effect.

Section 11.02. ***Payments When Funds are Insufficient.*** Anything in this Bond Order to the contrary notwithstanding, if money is insufficient to pay the interest on or the principal of the Bonds as they become due and payable (either by their terms or by acceleration of maturities), all money in the Debt Service Fund and Debt Service Reserve Fund, together with any money then available or thereafter becoming available for such purpose, is to be applied as follows:

Unless the principal of all the Bonds has become or has been declared due and payable, all such money is to be applied

first: to the payment to the persons entitled thereto of all installments of interest then due, in the order of the maturity of the installments of such interest, and if the amount available is not sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds;

second: to the payment to the persons entitled thereto of the unpaid principal of any of the Bonds which has become due (other than Bonds called for redemption for the payment of which money is held pursuant to the provisions of this Bond Order), in the order of their due dates, with interest on such Bonds from the respective dates on

which they became due, and, if the amount available is not sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment ratably, according to the amount of principal due on such date, to the persons entitled thereto without any discrimination or preference; and

third: to the payment of the interest on and the principal of the Bonds, to the purchase and retirement of Bonds and to the redemption of Bonds, all in accordance with the provisions of Article IV.

If the principal of all the Bonds has become due or has been declared due and payable, all such money is to be applied to the payment of the principal and interest then due and unpaid on the Bonds without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds.

If the principal of all of the Bonds has been declared due and payable and if such declaration is thereafter rescinded and annulled, then the money then remaining in and thereafter accruing to the Debt Service Fund and the Debt Service Reserve Fund is to be applied in accordance with the provisions of paragraph (a) of this Section.

Section 11.03. ***Effect of Town's Undertakings.*** All of the covenants, stipulations, obligations and agreements contained in this Bond Order are covenants, stipulations, obligations and agreements of the Town and of the Town to the full extent authorized or permitted by law, and all such covenants, stipulations, obligations and agreements are binding on the successor or successors thereof from time to time, and on any officer, board, commission, Town, agency or instrumentality to whom or to which any power or duty affecting such covenants, stipulations, obligations and agreements is transferred by or in accordance with law.

The Town has the right to enter into a contract with any public or private agency for the maintenance, operation and improvement of the System for such periods of time and under such terms and conditions which are not inconsistent with the provisions of this Bond Order as the Town determines to be in the best interests of the Town and of the Holders of Bonds issued pursuant to this Bond Order.

Section 11.04. ***Notices.*** Any notice, demand, direction, request or other instrument authorized or required by this Bond Order to be given to or filed with the Town or the Bond Registrar is to be deemed to have been sufficiently given or filed for all purposes of this Bond Order if and when sent by registered mail, return receipt requested to the Town, if addressed to Town Hall, Finance Department, PO Drawer 192, Boone, North Carolina 28607; to the Bond Registrar, if addressed to the address set forth in the applicable Series Resolution; and to the Commission, if addressed to the Commission Secretary, Local Government Commission, 3200 Atlantic Avenue, Raleigh, North Carolina 27604.

Section 11.05. ***Execution of Instruments by Holders and Proof of Ownership of Bonds.*** Any request, direction, consent or other instrument in writing required or permitted by this Bond Order to be signed or executed by Holders may be in any number of concurrent instruments of similar tenor and may be signed or executed by such Holders in person or by agent appointed by an instrument in writing. Proof of the execution of any such instrument and of the ownership of Bonds is sufficient for any purpose of this Bond Order, and is conclusive in favor of the Bond Registrar with regard to any action taken by it under such instrument, if in accordance with the registration books.

Any request or consent of the Holder of any Bond binds every future Holder of the same Bond in respect of anything done by the Bond Registrar in pursuance of such request or consent.

Section 11.06. ***Parties Interested Herein.*** Except as herein otherwise expressly provided, nothing in this Bond Order expressed or implied is intended or to be construed to confer on any person, firm or corporation other than the Town, the Bond Registrar and the Holders of the Bonds issued under and secured by this Bond

Order any right, remedy or claim, legal or equitable, under or by reason of this Bond Order or any provision hereof, this Bond Order and all its provisions being intended to be and being for the sole and exclusive benefit of the parties hereto and the Holders from time to time of the Bonds issued hereunder.

Section 11.07. **Limited Obligations on Bonds.** Nothing in the Bonds or in this Bond Order is to be construed as pledging either the faith and credit or the taxing power of the Town for their payment, or to create any debt against the Town, or as conveying or mortgaging the System or any part thereof.

Section 11.08. **No Recourse Against Members, Officers or Employees of Town or Local Government Commission of North Carolina.** No recourse under, or upon, any statement, obligation, covenant or agreement contained in this Bond Order, or in any Bond or bond anticipation note hereby secured, or in any document or certification whatsoever, or under any judgment obtained against the Town or the Local Government Commission of North Carolina, or by the enforcement of any assessment, or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, shall be had against any member, officer or employee of the Town or the Local Government Commission of North Carolina, either directly or through the Town for the payment for or to, the Town or the Local Government Commission of North Carolina or any receiver of either of them, or for, or to, any owner or holder of Bonds or bond anticipation notes or otherwise, of any sum that may be due and unpaid upon any such Bond or bond anticipation note. Any and all personal liability of every nature, whether at common law or in equity or by statute or by constitution or otherwise, of any such member, officer or employee to respond by reason of any act or omission on his or her part or otherwise, for the payment for, or to, the Town or the Local Government Commission of North Carolina or any receiver of either of them, or for, or to, any owner or holder of Bonds, bond anticipation notes or otherwise, of any sum that may remain due and unpaid upon the Bonds or bond anticipation notes hereby secured or any of them, is hereby expressly waived and released as an express condition of, and in consideration for, the adoption of this Bond Order and the issuance of the Bonds.

Section 11.09. **Severability of Invalid Provisions.** If any one or more of the provisions of this Bond Order or of the Bonds issued hereunder are held to be illegal or valid, such illegality or invalidity does not affect any other provision of this Bond Order or of the Bonds, but this Bond Order and the Bonds are to be construed and enforced as if such illegal or invalid provision had not been contained therein. If any covenant, stipulation, obligation or agreement contained in the Bonds or in this Bond Order is held to be in violation of law, then such covenant, stipulation, obligation or agreement will be deemed to be the covenant, stipulation, obligation or agreement of the Town to the full extent permitted by law.

Section 11.10. **Issuance of Subordinate Obligations and Expenditures for System Improvements.** Nothing in this Bond Order express or implied is to be construed as preventing the Town from financing System Improvements by the issuance of obligations which are not secured under the provisions of this Bond Order or from making expenditures for System Improvements from money received by the Town solely for such purpose. The obligations of the Town described in records maintained by the Bond Registrar represent Subordinate Obligations of the System.

Section 11.11. **Applicable Law.** This Bond Order is adopted with the intent that the laws of the State govern its construction.

Section 11.12. **Headings, etc.** Any headings preceding the texts hereof and any table of contents or marginal notes appended to copies hereof, are solely for convenience of reference and do not constitute a part of this Bond Order nor affect its meaning, construction or effect.

Section 11.13. **Officers of the Town.** The officers and agents of the Town are hereby authorized and directed to do all the acts and things required of them by the Bonds and this Bond Order for the full, punctual and complete performance of all of the terms, covenants, provisions and agreements contained in the Bonds and this Bond Order.

Section 11.14. ***Inconsistent Matters.*** All orders and resolutions and parts thereof, which are in conflict or inconsistent with any provisions of this Bond Order are hereby repealed and declared to be inapplicable to the provisions of this Bond Order.

Section 11.15. ***Effective Date.*** This Bond Order is effective immediately on its adoption.

ATTEST:

Mayor Rennie Brantz

Town Clerk Christine Pope

(RESOLUTION TO BE TYPED IN BOOK 3, PAGES 289-306)

**RESOLUTION OF
THE TOWN COUNCIL OF THE TOWN OF BOONE, NORTH CAROLINA
PROVIDING FOR THE ISSUANCE OF A
\$7,456,000 WATER AND SEWER REVENUE BOND ANTICIPATION NOTE
OF THE TOWN OF BOONE, NORTH CAROLINA**

WHEREAS, the Bond Order hereinafter described was approved on December 15, 2016 and is in force and effect approving the issuance of water and sewer revenue bonds of the Town of Boone, North Carolina (the “Town”);

WHEREAS, the Town desires to finance the cost of acquiring, constructing and equipping facilities for the Town’s potable water supply (the “*Project*”) as permitted by Section 159-161 of the General Statutes of North Carolina, as amended;

WHEREAS, the Town desires to finance a portion of the Project through the issuance of \$7,456,000 Water and Sewer Revenue Bonds (the “*Bonds*”), which are Initial Bonds under the Bond Order, and will initially finance the Project through the issuance of Notes (as defined herein);

WHEREAS, the United States of America has agreed to purchase the Bonds in the aggregate principal amount of \$7,456,000 after completion of the Project, all of the proceeds of which will be applied to the repayment of the principal amount of the Note;

WHEREAS, the Local Government Commission of North Carolina (the “*LGC*”) has approved the application of the Town for approval of the Bonds as required by Section 159-85 of the General Statutes of North Carolina, as amended, and the issuance and private sale of the Bonds at its December 9, 2016 meeting;

WHEREAS, the LGC approved the issuance and competitive sale of the Notes under the provisions of Article 9 of Chapter 159 of the General Statutes of North Carolina, as amended, at its December 9, 2016 meeting.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Boone, North Carolina (the “*Town Council*”), as follows:

1. For purposes of this Resolution, the following words have the meanings ascribed to them below:

“*Bid for Notes*” means the Bid for Notes submitted to the Local Government Commission of North Carolina by the winning bidder selected to purchase the Notes.

“*Bond Order*” means the Bond Order authorizing the Bonds adopted by the Town Council on December 15, 2016 and effective thereon.

“*Notes*” means the Town’s \$7,456,000 Water and Sewer Revenue Bond Anticipation Notes.

“*Town*” means the Town of Boone, North Carolina, and its successors or assigns.

“*Town Council*” means the Town Council of the Town.

2. The Town shall issue its Notes in the total aggregate principal amount not to exceed \$7,456,000.

3. The Notes are being issued to provide funds to pay a portion of the funding to finance the cost of acquiring, constructing and equipping facilities for the Town’s potable water supply (the “*Project*”) in anticipation of receiving the net proceeds of the Bonds pursuant to and in accordance with the Bond Order.

4. The Notes shall be dated their date of issuance and shall mature and bear interest payable at maturity of the Notes in accordance with the Bid for Notes.

5. The Notes shall be numbered “R-1” and upward. The Notes shall bear interest from its date at a rate or rates which shall be hereafter determined upon the sale thereof computed on the basis of a 360-day year of twelve 30-day months. The Notes will be issued in denominations of \$100,000 or integral multiples of \$1,000 in excess thereof.

6. The Notes shall be registered as to principal and interest and the Town’s Finance Officer is directed to maintain the registration records with respect thereto. The Notes shall bear the original or facsimile signatures of the Mayor and the Town Clerk. An original or facsimile of the seal of the Town shall be imprinted on the Notes.

7. The determination of the rate of interest on the Notes will be made in accordance with the Bid for Notes.

8. The Notes will be issued in registered form to the owner thereof or may be issued by means of a book-entry system, in accordance with the Bid for Notes. If issued in book-entry system, one note certificate will be issued to The Depository Trust Company, New York, New York (“*DTC*”), and immobilized in its custody. A book-entry system will be employed, evidencing ownership of the Notes in principal amounts of \$5,000 or integral multiples thereof, with transfers of beneficial ownership effected on the records of DTC and its participants pursuant to rules and procedures established by DTC. If issued by means of a book-entry system, principal of and interest on the Notes will be payable to DTC in immediately available funds on the maturity date. The Town will not be responsible or liable for maintaining, supervising or reviewing the records maintained by DTC, its participants or persons acting through such participants. If not issued by means of a book-entry system, the principal of and interest on the Notes will be payable to the owners of the Notes upon presentation and surrender of the Notes to the paying agent for the Notes at the offices of the paying agent indicated on the Bid for Notes on the maturity date of the Notes.

If (a) DTC determines not to continue to act as securities depository for the Notes or (b) the Town representative determines that the continuation of the book-entry system of evidence and transfer of ownership of the Notes would adversely affect the interests of the beneficial owners of the Notes, the Town will discontinue the book-entry system with DTC in accordance the DTC’s rules and procedures. If the Town fails to identify another qualified securities depository to replace DTC, the Town will authenticate and deliver replacement notes in the form of fully registered certificates.

9. The Notes are not subject to payment prior to maturity.

10. Actions taken by officials of the Town to select paying and transfer agents, and a bond registrar, or alternate or successor agents and registrars pursuant to Section 159E-8 of the Registered Public Obligations Act, Chapter 159E of the General Statutes of North Carolina, are hereby authorized and approved.

11. The Local Government Commission of North Carolina is hereby requested to sell the Notes through a competitive sale to the bidder whose bid results in the lowest interest cost to the Town, determined by the Local Government Commission of North Carolina.

12. The form and content of the Offering Information and Bid Form with respect to the Notes are in all respects authorized, approved and ratified.

13. The Notes, which shall be in the form attached hereto as Exhibit A, shall bear the original or facsimile signatures of the Mayor of the Town and the Town Clerk. An original or facsimile of the seal of the Town is to be imprinted on the Notes.

14. Unless otherwise changed by a certificate delivered at closing by the Finance Director, the proceeds of the Notes shall be deposited into an account to be held by the Town. The moneys held in such account shall be used to pay the costs of the Project or costs incurred in connection with the issuance of the Notes. Funds in such account shall be invested by the Town in compliance with Section 159-30 of the North Carolina General Statutes, as amended, with interest earnings to be applied to the costs of the Project.

15. The Mayor, the Town Manager, the Finance Officer, the Town Attorney and the Town Clerk are hereby authorized and directed to cause the Notes to be prepared and, when it shall have been duly sold by the Local Government Commission, to execute the Notes and to turn the Notes over to the registrar and transfer agent of the Town for delivery to the purchaser or purchasers to whom they may be sold by the Local Government Commission of North Carolina.

16. The Mayor, the Town Manager, the Finance Officer, the Town Attorney and the Town Clerk are authorized and directed to execute and deliver for and on behalf of the Town any and all additional certificates, documents, opinions or other papers and perform all other acts as may be required by the documents contemplated hereinabove or as may be deemed necessary or appropriate in order to implement and carry out the intent and purposes of this Resolution.

17. This Resolution may be amended or supplemented, from time to time, without the consent of the holder of the Notes if in the opinion of nationally recognized bond counsel, such amendment or supplement would not adversely affect the interests of the holder of the Notes and would not cause the interest on the Notes to be included in the gross income of a recipient thereof for federal income tax purposes. This Resolution may be amended or supplemented with the consent of the holders of a majority in aggregate principal amount of the outstanding Notes, exclusive of Notes, if any, owned by the Town, but a modification or amendment may not, without the express consent of any holder of Notes affected, reduce the principal amount of any Notes, reduce the interest rate payable on it, extend its maturity or the times for paying interest, change the monetary medium in which principal and interest is payable, or reduce the percentage of consent required for amendment or modification.

Any act done pursuant to a modification or amendment consented to by the holder of the Notes is binding on all holders of the Notes and will not be deemed an infringement of any of the provisions of this Resolution, whatever the character of the act may be, and may be done and performed as fully and freely as if expressly permitted by the terms of this Resolution, and after consent has been given, no holder of a Note has any right or interest to object to the action, to question its propriety or to enjoin or restrain the Town from taking any action pursuant to a modification or amendment.

If the Town proposes an amendment or supplemental resolution to this Resolution requiring the consent of the holder of the Notes, the Town shall cause notice of the proposed amendment to be sent to the holder of the Notes by first-class mail, postage prepaid, to the address of such holder as it appears on the

registration books; but the failure to receive such notice by mail by any holder, or any defect in the mailing thereof, will not affect the validity of any proceedings pursuant hereto. Such notice shall briefly set forth the nature of the proposed amendment and shall state that copies thereof are on file in the office of the Town Clerk for inspection by the holder of the Notes. If, within 60 days or such longer period as shall be prescribed by the Town following the giving of such notice, the holder has consented to the proposed amendment, the amendment will be effective as of the date stated in the notice.

READ, APPROVED AND ADOPTED this 15th day of December, 2016.

ATTEST:

Mayor Rennie Brantz

Town Clerk Christine Pope

EXHIBIT A
(Form of Note)

No. R-1

\$7,456,000

UNITED STATES OF AMERICA
STATE OF NORTH CAROLINA
TOWN OF BOONE, NORTH CAROLINA
WATER AND SEWER REVENUE BOND ANTICIPATION NOTE

INTEREST
RATE
%

MATURITY DATE

DATED DATE

CUSIP

REGISTERED OWNER:

PRINCIPAL SUM: SEVEN MILLION FOUR HUNDRED FIFTY-SIX THOUSAND DOLLARS

TOWN OF BOONE, NORTH CAROLINA (the “Town”) acknowledges itself indebted and for value received hereby promises to pay to the Owner named above, on the Maturity Date specified above, on surrender hereof, the Principal Sum shown above and to pay to the Owner hereof interest thereon from the date of this Note at the Interest Rate per annum specified above calculated on the basis of a 360-day year consisting of twelve 30-day months, on the Maturity Date. Principal of and interest on this Note is payable in immediately available funds and is payable in U.S. dollars to the Owner of the Note.

This Note is issued pursuant to and in accordance with Article 5 and Article 9 of Chapter 159 of the General Statutes of North Carolina, both as amended, a bond order (the “*Bond Order*”) adopted by the Town Council of the Town on December 15, 2016 and effective thereon and a resolution adopted by the Town Council of the Town on December 15, 2016 (the “*Note Resolution*”). This Note is issued in anticipation of the receipt of the proceeds of the sale of a like amount of the Town’s Water and Sewer System Revenue Bonds, and the proceeds hereof shall be used to pay a portion of the cost of the Project (as defined in the Bond Order).

The Note is a special obligation of the Town payable solely from the Net Revenues (as defined in the Bond Order) and from the proceeds of said Water and Sewer System Revenue Bonds of the Town. Neither the credit nor the taxing power of the Town is pledged for the payment of this Note and no holder of this Note has

the right to compel exercise of the taxing power by the Town or the forfeiture of any of the Town's property in connection with any default hereon. Reference is hereby made to the Bond Order and the Note Resolution and to all amendments and supplements thereto for a description of the provisions, among others, respecting the nature and extent of the security, the rights, duties and obligations of the Town, the rights of the holder of this Note and the terms upon which this Note is issued and secured.

It is hereby certified and recited that all conditions, acts and things required by the Constitution or statutes of the State of North Carolina to exist, be performed or happen precedent to or in the issuance of this Note, exist, have been performed and have happened, and that the amount of this Note, together with all other indebtedness of the Town, is within every debt and other limit prescribed by said Constitution or statutes.

This Note is not valid or obligatory for any purpose until the certification hereon has been signed by an authorized representative of the Local Government Commission of North Carolina.

IN WITNESS WHEREOF, the Town has caused this Note to bear the original or facsimile of the signatures of the Mayor of the Town and the Town Clerk and an original or facsimile of the seal of the Town to be imprinted hereon.

(SEAL)

TOWN CLERK

Date of Execution: _____

MAYOR

The issue hereof has been approved under the provisions of The Local Government Bond Act.

GREG C. GASKINS
Secretary of the Local Government Commission

FORM OF ASSIGNMENT
ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

(Please print or typewrite Name and Address,
including Zip Code, and Federal Taxpayer Identification or
Social Security Number of Assignee)

the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints

Attorney to register the transfer of the within Note on the books kept for registration thereof,
with full power of substitution in the premises.

Dated: _____

Signature guaranteed by:

NOTICE: Signature must be guaranteed by a Participant in the Securities Transfer Agent Medallion Program (“STAMP”) or similar program.

NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within Note in every particular, without alteration, enlargement or any change whatever.

TRANSFER FEE MAY BE REQUIRED

(RESOLUTION TO BE TYPED IN BOOK 3, PAGES 307-312)

RESULT:	ADOPTED [4 TO 1]
MOVER:	Charlotte Mizelle, Council Member
SECONDER:	Jeannine Underdown Collins, Council Member
AYES:	Mason, Mizelle, Teague, Collins
NAYS:	Clawson

TOWN MANAGER UPDATE

Town Manager John Ward updated Council on upcoming construction projects, leaf pick-up, Christmas tree pick-up, upcoming events and holiday office closings, and notified Council that per recommendation by the public works director, Stage 2 Water Restrictions will be lifted and the Town will revert back to Stage 1 Water Restrictions.

Following a question regarding the Town's holiday office closing schedule by Council Member Teague, it was the consensus of Council to allow Town staff to also have Tuesday, Dec. 27 off for the holidays.

ANNOUNCEMENT OF BOARD VACANCIES

Mayor Pro Tem Mason announced the following new vacancies to be advertised in addition to those currently listed:

Board of Adjustment:

1. Becky Gosky has resigned from her alternate resident position. This term will expire June 30, 2017.

Planning Commission:

1. Cameron Lippard has resigned from his ETJ position. This term will expire June 30, 2019.
2. Susan McCracken has resigned from her resident position effective Jan. 1, 2017. This term will expire June 30, 2018.

Water Use Committee:

1. Amy Adams' position is set to expire Feb. 20, 2017.

APPOINTMENT TO BOARD OF ADJUSTMENT

Council was in consensus to delay making decisions regarding appointments to this board until the UDO text amendment for Board of Adjustment membership is addressed.

APPOINTMENTS TO SUSTAINABILITY, ECONOMICS AND ENVIRONMENT COMMITTEE

C. GENTRY NOMINATION

Council Member Clawson nominated Christian Gentry to serve on this committee. Council Member Underdown Collins seconded the nomination.

Mr. Gentry's term will expire Dec. 15, 2019.

RESULT:	APPROVED [UNANIMOUS]
SECONDER:	Loretta Clawson, Jeannine Underdown Collins
AYES:	Mason, Clawson, Mizelle, Teague, Collins

Q. DAVID NOMINATION

Council Member Teague nominated Quint David for reappointment to this committee. Council Member Underdown Collins seconded the nomination.

Mr. David's term will expire Jan. 21, 2020.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Jennifer Teague, Council Member
SECONDER:	Jeannine Underdown Collins, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

HARVARD AYERS - REQUEST FOR APPROVAL OF CLEAN ENERGY RESOLUTION

Upon a motion by Council Member Underdown Collins, seconded by Council Member Clawson, Council moved to approve the following resolution:

RESOLUTION OF THE BOONE TOWN COUNCIL SUPPORTING A STATE GOAL OF 100% CLEAN ENERGY BY 2050 AND THE CREATION OF GREEN JOBS

Whereas, climate change has increased the global average surface temperature by 1.00 degrees Celsius (1.8 degrees Fahrenheit) since 1880;

Whereas, climate change is expected to increasingly impact North Carolina's temperatures, precipitation and sea level with harmful consequences in coming years;

Whereas, climate change and global average temperature increases are primarily due to human-caused fossil fuels emissions, including coal, oil and natural gas, according to the United Nations Intergovernmental Panel on Climate Change, National Academy of Science, American Meteorological Society, United States Environmental Protection Agency, United States Department of Defense, and numerous other leading scientific, academic and governmental authorities both in the United States and internationally;

Whereas, a final agreement of the United Nations Conference of Parties (COP21), which included the United States and a total of 195 nations, was reached in Paris, France on December 12, 2015, that states the aim is to "holding the increase in the global average temperature to well below 2 degrees Celsius above preindustrial levels and pursuing efforts to limit the temperature increase to 1.5 degrees Celsius above preindustrial levels" and entered into force on November 4, 2016;

Whereas, scientists have concluded the concentration of carbon dioxide, the leading greenhouse gas, in the Earth's atmosphere is currently and consistently over 400 parts per million (ppm) and will likely stay above this level for the indefinite future for the first time in millions of years;

Whereas, sixteen of the seventeen hottest years on record have occurred in the twenty-first century and 2016 is the hottest year on record;

Whereas, an increase in the global average temperature, if not stopped, will have major adverse impacts on both the natural and human-made environments due to longer, more intense heat waves, prolonged droughts, rising sea levels, ocean acidification, and more intense and frequent extreme weather events;

Whereas, these physical effects are expected to lead to water scarcity, food insecurity, increasing numbers of refugees, increased poverty, and mass extinctions of species;

Whereas, studies completed by the International Monetary Fund (IMF), the Risky Business Project, Duke University, and others point to the severe economic costs of climate change and continuing use of fossil fuel, estimating billions of dollars a year in costs nationally and trillions globally;

Whereas, leading economists, policy experts, and business leaders conclude that transitioning to a clean energy economy available for all would create millions of green jobs nationally, improve our living standards, and boost economic growth in coming years;

Whereas, low-income communities and communities of color in North Carolina and the United States are inordinately exposed to pollution, that causes serious health problems such as cancer and asthma, from fossil fuels, including the dirtiest coal-fired power plants which produce coal ash, are disproportionately located in communities of color;

Whereas, a Stanford University and University of California-Davis study concludes the United States energy supply could be based entirely on renewable energy by the year 2050 using current technologies and 80% renewable energy by 2030 while creating numerous green jobs;

Whereas, municipalities, organizations, businesses, and academic institutions throughout the world have set a goal to achieve carbon or climate neutrality by 2050 or earlier;

Whereas, over 600 American colleges and universities have made a commitment to reduce greenhouse gases, including Appalachian State University, Blue Ridge Community College, Carteret Community College, Catawba College, Central Carolina Community College, Davidson College, Duke University, Elizabeth City State University, Fayetteville State University, Guilford College, North Carolina Central University, Queens University of Charlotte, Southeastern Community College, University of North Carolina at Chapel Hill, University of North Carolina at Charlotte, University of North Carolina at Greensboro, University of North Carolina at Pembroke, Wake Technical Community College, and Warren Wilson College;

Whereas, North Carolina installed 1,140 MW of solar electric capacity in 2015, ranking it second nationally; nearly \$1.7 billion was invested on solar installations in North Carolina, a 159% increase over the previous year; there are currently more than 200 solar companies at work throughout the value chain in North Carolina of which five are in Boone, the state companies employing some 6,000 people; North Carolina ranks third in the nation in installed solar capacity, enough to power 260,000 homes; and solar photovoltaic system prices in the U.S. have dropped by 66% since 2010;

Whereas, North Carolina has more offshore wind energy potential than any Atlantic state;

Whereas, the Intergovernmental Panel on Climate Change Fifth Assessment Report recommended a global goal of achieving near zero greenhouse gas emissions or below, which is necessary to stabilize the global average temperature to avoid climate catastrophe.

NOW, THEREFORE, BE IT RESOLVED by the Boone Town Council that it endorses the following:

SECTION 1. The State of North Carolina and the United States shall establish a transition from a fossil fuel-based economy to a 100% clean renewable energy for all energy sectors-based economy, by December 31, 2050 to avoid climate catastrophe, to promote job creation and economic growth, and to protect the Earth for current and future generations from climate catastrophe.

SECTION 2. This resolution is effective upon adoption.

This the 15th day of December, 2016.

ATTEST:

Rennie Brantz, Mayor

Christine Pope, Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE 279-280)

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Jeannine Underdown Collins, Council Member
SECONDER:	Loretta Clawson, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

CLOSED SESSION

MOTION TO ENTER

Upon a motion by Council Member Teague, seconded by Council Member Underdown Collins, Council moved to enter closed session at 9:07 p.m. to hear the following items:

1. Pursuant to N.C.G.S. 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 consider and give instructions to the attorney concerning a claim involving William Doyle Church, et al.
2. Pursuant to N.C.G.S. 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 consider and give instructions to the attorney concerning a claim involving LMSP, LLC.
3. Pursuant to N.C.G.S. 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 consider and give instructions to the attorney concerning various potential claims involving the Town of Boone.
4. Pursuant to N.C.G.S. 143-318.11(a)(5)(I), to establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the Town in negotiating the price and other material terms of a contract or proposed contract for the acquisition of real property for Watauga County PIN 2900-69-6380-000 (Virginia N. Lewis).

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Jennifer Teague, Council Member
SECONDER:	Jeannine Underdown Collins, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

MOTION TO EXIT

Upon a motion by Council Member Teague, seconded by Council Member Underdown Collins, Council moved to exit closed session at 10:20 p.m.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Jennifer Teague, Council Member
SECONDER:	Jeannine Underdown Collins, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

POSSIBLE ACTION FOLLOWING CLOSED SESSION

APPROVAL OF AMENDED TOWN CODE CHAPTER 73 (TOWING AND BOOTING)

Upon a motion by Council Member Underdown Collins, seconded by Council Member Teague, Council moved to approve Chapter 73: Towing and Booting with additional revisions reduced to writing that evening. Copies of the draft revised ordinance with additional revisions were provided to Council members.

Council Member Teague stated booting does not actually free up the parking space that is being trespassed upon, adding that the current revisions by the Council were the final effort to allow booting companies to continue with their work in a way that serves the needs of private property owners and is not contrary to the welfare of town residents and visitors. Ms. Teague added that if this revision does not serve the intended purposes, it is her belief that Council will need to look again at the issue and consider banning the practice of booting in its entirety.

Mayor Pro Tem Mason stated her biggest concern was with the point to free up a parking space, because if a car is booted and rebooted, it does not free up a spot. Council then voted unanimously to approve the revisions to the ordinance. Council Member Underdown Collins moved to adjourn the meeting. However, Attorney Nathan Miller objected that the additional revisions were not read for the record.

Whereupon Town Attorney Allison Meade then reviewed aloud the additional revisions made to the draft that was published with the agenda. Upon a motion by Council Member Underdown Collins, seconded by Council Member Teague, Council moved to approve Chapter 73: Towing and Booting with additional revisions reduced to writing that evening.

CHAPTER 73: TOWING & BOOTING

Section

- 73.01 Definitions
- 73.02 Authority for and scope of chapter
- 73.03 Advance notice of trespass towing or booting required
- 73.04 Trespass towing practices
- 73.05 Booting practices
- 73.06 Notice of fees
- 73.07 Receipts
- 73.08 Complaint information
- 73.09 Compliance dates
- 73.10 Restrictions related to certain criminal convictions
- 73.99 Penalty

§ 73.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BOOT means a wheel lock or any other instrument that is attached to a motor vehicle in order to immobilize it. As context requires, *BOOTING* can include any or all of the activities involved in controlling unauthorized parking by means of immobilization of a vehicle, including but not limited to applying a boot, monitoring

parking lots for unauthorized vehicles, and/or demanding or accepting payment to remove a boot. *IMMOBILIZATION* may be used interchangeably with *BOOTING* herein.

BOOTING SERVICE means and includes any person or entity that engages in, or that owns or operates a business that engages in, the booting of motor vehicles for compensation.

ESTABLISHMENT means the use of a structure for a commercial purpose.

MOTOR VEHICLE means a Class A, B, or C motor vehicle as defined in G.S. 20-4.01(23).

PRIVATE PARKING LOT. Any privately-owned area created, designated or used for the parking of two or more vehicles. As used herein, private parking lot does not include driveways, garages or other parking areas or yards of single-family or duplex residences.

TOWING COMPANY means and includes any person or entity that engages in, or that owns or operates a business that engages in, the towing of motor vehicles for compensation.

TRESSPASS TOW means to tow a motor vehicle that is parked on a private parking lot without the property owner's or agent's consent without the consent of the motor vehicle's owner or operator, i.e., a non-consensual tow.

§ 73.02 AUTHORITY FOR AND SCOPE OF CHAPTER.

(A) This Chapter is enacted in furtherance of the Town's authority to define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the town, as granted per G.S. §160A-174, and its authority to regulate and license occupations, businesses and trades, and prohibit those that may be inimical to the public health, welfare, safety, order, or convenience, as granted per G.S. §160A-194(a).

(B) This Chapter is applicable to any trespass tow or booting that takes place for compensation in a private parking lot in the town limits, except as provided at subsection (D) of this section.

(C) No towing company may engage in any trespass tow from a private parking lot in the town limits or charge any fee in connection therewith, and no booting service may immobilize a vehicle in a private parking lot in the town limits or charge any fee in connection therewith, unless the trespass tow or booting complies with all requirements of this Chapter.

(D) This chapter is not intended to limit, modify or abrogate (i) the authority of police, fire department or other public officers to direct the towing or immobilization of a motor vehicle as authorized by other provisions of the Town Code or state law; (ii) the towing of vehicles encroaching into areas clearly designated as fire lanes; or (iii) a property owner's right to tow vehicles blocking clearly designated areas of ingress and/or egress or right to tow vehicles blocking access to a dumpster so long as signage conspicuously warns that a vehicle blocking access to the dumpster is subject to towing.

(E) This chapter does not limit other legal remedies that a property owner may have against a person trespassing on private property, but only applies to and limits the use of trespass towing and booting as specified herein.

§ 73.03 ADVANCE NOTICE OF TRESPASS TOWING OR BOOTING REQUIRED.

It shall be unlawful for any person or entity to authorize, direct, engage in, or contract for trespass towing or booting in a private parking lot unless advance notice is given as follows:

(A) The parking lot has one or more warning signs posted ~~in at such~~ locations and ~~at~~ heights so ~~that at least one sign is as to provide a~~ conspicuous ~~to and easily read by the driver~~ warning to drivers of ~~a vehicle both (i) when the driver is entering the vehicles who are not familiar with that parking lot, and (ii) when the driver exits the vehicle that the lot is private and that unauthorized vehicles will be towed or exits the parking lot as a pedestrian booted.~~

(1) Each sign shall be no smaller than four square feet and no larger than six square feet, with a white background and red letters, printed in fonts that can easily be read by a person of ordinary vision, and shall contain the following information, as applicable:

a. That the parking lot is a private parking lot and that unauthorized vehicles will be towed or immobilized and subject to a fine/fee for removal of the boot, e.g., "Private Parking Lot - Towing Enforced" or "Private Parking Lot – Unauthorized Vehicles Will Be Immobilized and Fined"; or "Parking for Customers Only – Towing Enforced," or "Parking for Residents Only – Unauthorized Vehicles Will Be Immobilized and Fined ," or similar phrasing.

b. The name and telephone number of the towing company and/or booting service that enforces parking in that lot.

(2) If applicable, the following information must be contained either on the warning sign(s) required per the preceding subsection (A)(1) or on separate sign(s) attached immediately adjacent on the same post or structure:

a. If the parking lot serves a shopping center, mall, or office building, then at the option of the property owner or lessor either (i) the name of the shopping center or mall or office building or (ii) the names of all businesses within that shopping center or mall or office building, and a warning that parking is authorized only for persons patronizing that shopping center or mall or office building.

b. If the parking lot serves multiple locations (other than a shopping center or mall or office building), the name of every establishment served by the parking lot and a warning that parking is authorized only for persons patronizing one of those establishments.

(3) There shall be a minimum of one warning sign for each vehicular entrance to the parking lot ~~placed so as to be conspicuous to and easily read by the driver of a vehicle when the driver is entering the parking lot, and there shall be~~ and such other signs as are required so that an ordinary driver who is not familiar with that parking lot is warned by the signage upon entering the parking lot, exiting his or her vehicle, ~~and/or~~ upon exiting the parking lot as a pedestrian that the lot is private and that unauthorized vehicles are subject to towing or booting.

(4) One or more police officers designated by the Chief of Police (the "liaison officer") shall direct and approve the number and placement of warning signs in his or her reasonable discretion to ensure that signs are conspicuous to ~~and easily read by~~ warn vehicle drivers as specified per ~~(A) above~~ the foregoing provisions of this subsection (A). If the property owner or lessee disagrees with the direction provided by the liaison officer, the owner or lessee may appeal to the Chief of Police. The determination of the Chief of Police shall be final and non-appealable.

(5) If one or more credible complaints are received by the Police Department from any person to the effect that the warning signs posted on a parking lot are not sufficiently conspicuous as required per this subsection (A), the liaison officer shall re-consider the sign layout and may require the re-location of signs or the installation of new signs.

(B) As an alternative to the signage required per (A) above, the parking lot may have a sign at every parking space within the lot as to which parking is to be enforced, each such sign being posted in a conspicuous location facing the parking space, no smaller than 120 square inches, with a white background and red letters, identifying the space as private property, and warning that unauthorized vehicles will be towed or booted (for example, "Private Parking - Towing Enforced"). In addition, the name and telephone number of the towing company or booting service must be posted either (i) on each sign facing the individual parking spaces, or (ii) on at least one other sign, no smaller than four square feet and no larger than six square feet, placed in a conspicuous location in the parking lot.

(C) As an alternative to the signage required per (A) or (B) above, a trespass tow is authorized where a weather-proof (e.g., laminated) written notice, not less than 8.5" x 11", is placed on the front driver's side windshield and/or the driver's window of the car, affixed in manner that will not mar the vehicle but will insure that the notice will not blow away, at least eight (8) hours prior to the trespass towing of the vehicle, which notice contains all of the following information on both sides of the notice in large, easily readable type: (i) that the parking lot is a private parking lot and unauthorized vehicles will be towed; (ii) the name and telephone number of the towing company and location where any towed vehicle is taken; (iii) the towing charges imposed by the towing company; (iv) the amount of any storage charges related to the storage by the towing company of the vehicle, and the terms and conditions for the imposition of storage charges; and (v) the time and date that the notice has been placed on the vehicle and the time and date as of which the vehicle will become subject to towing.

(D) Once an owner or operator of a vehicle has been notified of unauthorized use pursuant to the immediately preceding subsection (C), it shall be unnecessary for the person authorizing, directing, engaging in, or contracting for the trespass tow to give any further notification should there be any future unauthorized parking of the same vehicle at the same parking lot, and upon its discovery, the vehicle may be immediately towed.

§ 73.04 TRESPASS TOWING PRACTICES.

(A) An occupied vehicle may not be towed or attached to a towing vehicle.

(B) A towing company may not attempt to impede or block an occupied vehicle from being removed from a parking lot by its owner or operator.

(C) A towing company must accept at least two nationally- recognized credit cards (such as MasterCard or Visa) and any debit card in payment for any fees charged in connection with a trespass tow.

(D) Whenever a towing company is attempting a trespass tow but the vehicle has not yet been removed from the parking lot, and the owner or operator of the vehicle appears and states a desire that the vehicle not be towed, the towing company shall release the vehicle to the owner or operator upon the payment of its noticed fees and charges.

(E) A towing service engaged in a trespass tow shall, upon request of the owner or operator of the motor vehicle, permit the owner or operator access to the trespass vehicle for the purpose of retrieving personal property from the vehicle. If personal items are removed from the motor vehicle by the towing service, then upon request those items will be returned to the owner or operator.

(F) A towing company that engages in a trespass tow shall, prior to or immediately upon removing the vehicle from the private parking lot, report to the Boone Police Department by telephone to its non-emergency number the fact that a vehicle is to be towed and shall provide a description of the vehicle including make, color, and license tag number, the parking lot from which it is to be towed, and the place it is to be stored.

(G) For six hours immediately following a trespass tow and during the next business day, the towing company must respond within one-half hour to a telephone call from the vehicle's owner or operator to the contact number provided by the towing company. During its response call, upon the request of the operator or owner of the towed vehicle, the towing company must make arrangements for the release of the vehicle upon the full payment of fees.

(1) The towing company must arrange for and allow the full payment of fees within one-half hour of responding to a call from the owner or operator of the vehicle. If the towing company is located more than ten miles from the location from which the vehicle was towed, and the owner or operator has requested the opportunity and indicated a willingness to pay the fees, but states an inability to obtain transportation to the location of the vehicle, the company must travel to the location of the operator or owner of the towed vehicle to allow the full payment of fees to be made. The towing company may charge an additional fee for this service.

(2) The towing company must arrange for the release of the towed vehicle within one hour of payment. If the vehicle is more than ten miles from the location from which it was towed, the company must return the vehicle to the public street nearest the location from which the vehicle was towed within one hour of payment. The towing company may charge an additional fee for this service.

(H) No storage fee may be charged for days when the towing company is not open during the full normal business hours of at least 9:00 a.m. to 4:00 p.m. for the recovery of a trespass towed vehicle. A towing company that is not open for the recovery of a towed vehicle 24 hours a day shall not charge a storage fee for the storage of the towed vehicle until at least one full business day (no less than 24 hours) has elapsed from the time the towing company is next open for the recovery of a towed vehicle after the towing.

§ 73.05 BOOTING PRACTICES

(A) An occupied vehicle may not be booted.

(B) A booting service may not attempt to impede or block an occupied vehicle that has not yet been booted from being removed from a parking lot by its owner or operator.

(C) A booting service must accept at least two nationally-recognized credit cards (such as MasterCard or Visa) and any debit card in payment for any and all fees charged in connection with booting.

(D) No person may engage in booting until he or she has obtained an identification badge from the town. Identification badges shall be issued for a single calendar year and must be renewed annually. In order to obtain an identification badge from the town, the applicant must: (i) provide a certified copy of the applicant's criminal record in North Carolina from the Watauga County Clerk of Superior Court; (ii) fully complete an application, on a form provided by the town, disclosing his or her name, address, telephone number, date of birth, gender, company affiliation, if any, physical location of affiliated company, and status as an employee or independent contractor of the company, by stating whether and by whom income taxes and FICA taxes are withheld from his or her pay; and (iii) disclose and certify, under oath, any and all criminal convictions described at §73.10 below. An identification badge may not be issued to a person who has been convicted as described at §73.10.

A person engaged in booting must display on his or her person at all times the picture identification badge issued by the town. The identification must be plainly visible, either attached to the exterior clothing or on a lanyard hanging around the neck. Upon request, the person engaged in booting must allow the operator or owner of the vehicle which has been immobilized to examine and copy any information from the identification

badge. In addition, a person engaged in booting must wear clothing that identifies in a manner that is conspicuous and easily readable to other persons with whom that persons engages the name of the business for whom that person works and includes in either the name of the business or otherwise a description of the parking control device or method used, e.g., "ABC Wheel-lock Company." The letters on such insignia shall be no less than 3/4 inches in height. ~~Notwithstanding any other provision of this chapter, booting service personnel must comply with the foregoing mandate that they wear clothing identifying themselves by January 1, 2017.~~

(E) Any vehicle used in connection with booting must have insignia on both the operator's door and the front passenger door ~~or a vehicle-top-mounted sign~~ that identifies the company with which the attendant is employed or associated by name, ~~address~~ and telephone number and includes either in the name of the company or otherwise a description of the parking control device or method utilized, e.g., "ABC Wheel-lock Company." All letters on such insignia shall be no less than three (3) inches in height; *provided*, that notwithstanding any other provision of this chapter, vehicle insignia must comply with this 3" minimum requirement when new insignia is purchased, when insignia is replaced, or by June 30, 2017, whichever occurs earlier.

(F) After immobilizing a vehicle, the booting service must place a weather-proof (e.g., laminated) notice on the driver's side windshield and/or the driver's side window of the car, affixed in manner that will not mar the vehicle but will insure that the notice will not blow away. This notice must be brightly colored (e.g., yellow or orange), a minimum of 8.5" x 11", and contain the following information, all of which shall be in a large, plainly readable type: (i) in capital letters: "YOUR VEHICLE HAS BEEN WHEEL-LOCKED BECAUSE IT WAS PARKED IN A PRIVATE LOT WITHOUT AUTHORIZATION. DO NOT DRIVE THIS VEHICLE OR YOU MAY DAMAGE YOUR CAR AND THE WHEEL LOCK"; (ii) all fees that may be charged prior to release of the vehicle; (iii) that all fees may be paid by cash, credit card or debit card; and (iv) a telephone number to call to have the wheel lock removed. The fees that may be charged must be specifically and precisely disclosed; that is, the notice may not refer to minimum or maximum fees or a range of fees.

(G) A booting service must arrange to respond to a telephone call from the owner or operator of an immobilized vehicle within no more than 15 minutes.

(H) A booting service must make a reasonable effort to release the immobilized vehicle within 30 minutes of responding to the telephone call from the owner or operator of an immobilized vehicle.

(I) After a vehicle is booted, it shall be unlawful for any person to authorize, direct or contract for the trespass towing of that vehicle for a period of at least eight hours following such booting. Once a boot has been applied, the vehicle subsequently may be trespassed towed after the vehicle has been booted for at least eight (8) hours, so long as the requirements of either §73.03(A) or § 73.03(C) are met as to that trespass tow.

(J) A booting company may not charge more than one boot removal fee for the booting of a particular vehicle in a particular instance, and may not charge a higher removal fee based solely on the length of time that a boot has been attached to a vehicle; *provided, however*, that this provision is not intended to prevent a booting service from charging additional fees for separate and additional services, such as a service call to meet an owner or operator of a vehicle to remove a boot where the owner or operator does not appear and has to be rescheduled.

(K) Should the Town receive and verify three or more unrelated and credible complaints within any three-month period asserting the failure of a booting service to respond within 15 minutes to telephone contact by the owners or operators of immobilized vehicles and to arrange the vehicles' release within 30 minutes thereafter, it shall be presumptively concluded that the booting service does not have the capacity to respond within the required times. Thereafter for the following 12 month period, a duly authorized person must be on duty and present in the parking lot at all times when any vehicle is booted, and the person must remain on the property until the owner or operator of the vehicle returns, with the ability to remove the boot upon payment of fees. After the 12 month period, the booting service shall not be required to maintain a duly authorized person at all times in parking lots where vehicles are booted, unless and until such time as the Town again receives and verifies three or more complaints as set forth in the first sentence of this paragraph.

§73.06 NOTICE OF FEES AND PAYMENT OPTIONS; FEES TO BE REASONABLE

(A) With respect to every trespass tow or booting subject to this Chapter, plain and conspicuous notice must be given to the owner or operator of the vehicle (i) as to any fee that may be charged in connection with the trespass tow or booting, including storage and any other fee or charge of any nature; and (ii) that credit and debit cards may be used for payment of any and all such fees. Fees must be specifically and precisely disclosed; the notice may not refer to minimum or maximum fees or a range of fees. Notice may be given:

- (1) On the parking lot warning sign(s) to be posted as provided at section §73.03(A) or §73.03(B)(ii) above, or on separate sign(s) attached to the same sign post or immediately adjacent on the same structure; or
- (2) On the weather-resistant notices to be attached to the vehicle's windshield as provided at sections §73.03(C) or §73.05(F) above, in the same or a larger type size than that used for the other information provided in the notice; or
- (3) On the vehicle insignia on the towing vehicle or booting service vehicle, provided that such vehicle is easily viewable by the owner or operator of the vehicle when arrangements are being made for payment of the towing or booting fees; or
- (4) In large, easily-readable type on a pre-printed schedule of fees, not less than 8.5" x 11", provided to the owner or operator of the vehicle prior to the payment of fees.

(B) Any towing company engaged in trespass towing shall post in a conspicuous location at its place(s) of business and in size sufficient to be easily read a schedule of fees that states, at a minimum, its consensual towing fee(s), its trespass towing fee, its daily storage fee and its hours of operation. The schedule of fees shall be posted in a location(s) so that a person may obtain the information at times when the towing company is not open for business.

(C) Any towing company or booting service engaged in activities subject to this Chapter must provide a schedule of all its fees and charges to the Police Department, and such schedule of fees must be kept current at all times. Fees must be specifically and precisely disclosed; the required schedule of fees may not refer to minimum or maximum fees or to a range of fees.

(D) A towing company or booting service may not assess any fee or other charge in connection with a trespass tow or booting that is not both (i) publicly noticed as required per (A) and (B) above and (ii) set forth in a schedule of fees and charges that has been on file with the Police Department for at least 24 hours prior to the assessment of the fee. In the case of any discrepancy in the amount of a fee or other charge noticed by posting in any manner provided at (A) above or provided to the Police Department on a schedule of fees, only the lowest fee or other charge so noticed may be charged.

(E) Any fee charged in connection with a trespass tow or booting regulated under this Chapter must be reasonable in relation to the cost of providing the service or item, inclusive of reasonable overhead and profit.

§73.07 RECEIPTS

Upon receiving payment for a trespass tow or release of a boot, and whether requested or not, the towing company or booting service shall prepare a receipt and offer a copy of the receipt to the person providing payment. The receipt shall provide in legible print (i) a breakdown of individual fees charged; (ii) the total amount paid and method of payment; (iii) the name of the person accepting the payment; (iv) a clear and accurate reason for the towing or booting and the date, place and time of the towing or booting; and (v) the appeals process, if any, provided to contest the tow or booting. The towing company or booting service shall maintain copies of these receipts on file for at least 12 months and shall provide copies to the Police Department upon request.

§73.08 COMPLAINT INFORMATION

Any person who pays for a trespass tow or booting subject to this Chapter must be provided, in an easily readable and conspicuous format, the name and telephone number of the property owner, lessor, or property manager to whom complaints about the trespass tow or booting may be directed. The person or company to whom complaints are to be directed may not be a towing company, booting service, or any employee, representative, officer, agent or affiliate thereof. The aforesaid information may be provided by any of the following methods:

- (1) On the parking lot warning sign(s) to be posted as provided at section §73.03(A) or §73.03(B)(ii) above, or on a separate sign attached to the same sign post or immediately adjacent on the same structure; or
- (2) On separate sign(s) posted on the property, so long as said sign(s) are conspicuous to a person who has parked in the parking lot at issue.
- (2) On a weather-resistant notice attached to the vehicle's windshield as provided at sections §73.03(C) or §73.05(F) above, in the same or a larger type size than that used for the other information provided in the notice; or
- (3) In large, easily-readable type on a pre-printed notice, not less than 8.5" x 11", provided to the owner or operator of the vehicle prior to the payment of fees.

§ 73.09 COMPLIANCE DATES.

— This Chapter, as amended, shall be effective as of February 1, 2017. All parts of this Chapter, as amended, are mandatory as of the effective date ~~of amendment~~ except as follows:

(A) The mandate that signs contain red lettering against a white background is required when any required sign is replaced, or December 31, 2016, whichever is earlier.

(B) The mandate per section §73.03(A) that warning sign number and locations be reviewed and approved by the liaison officer shall be effective immediately for any private parking lot that was not in compliance with the requirements of this Chapter (as then effective) as of October 1, 2016. As to any private parking lot that was in compliance as of October 1, 2016, the property owner or his agent shall consult with, obtain the review and approval of liaison officer for a sign layout plan, and come into compliance with the approved sign plan no later than June 30, 2017.

§ 73.10 RESTRICTIONS RELATED TO CERTAIN CRIMINAL CONVICTIONS

(A) A person may not engage in trespass towing or booting activities in the town limits involving direct interaction with the public:

(1) for a period of two years following conviction within any five-year period of any two criminal infractions (felony and/or misdemeanor) arising from a violation of, or related to activities governed by, this Chapter, or

(2) for a period of two years following conviction of any manner of assault related to a trespass tow or booting within the town.

(B) A person may not engage in trespass towing or booting activities in the town limits involving direct interaction with the public if, within the prior ten years, that person has been convicted in any jurisdiction for any one or more of the following crimes: assaults or threats; homicide; sexual assault; crimes against nature, incest, indecent exposure and related offenses; kidnapping, larceny, possession of stolen goods, embezzlement and related offenses; robbery, extortion and related offenses; burglary and breaking and entering; felony fraud, false pretenses and related offenses involving financial transactions; and weapons offenses.

§ 73.99 PENALTY.

The provisions of §10.99 apply to violations of this chapter except as specifically provided otherwise in this section.

(A) Per G.S. § 14-4(a), any person who violates this chapter shall be guilty of a Class 3 misdemeanor and subject to a fine of up to \$500 for each violation.

(B) Any person who violates this chapter shall be subject to a civil penalty in the amount of \$100. In the event there is more than one violation within any one-year period, then the civil penalty shall be increased for each additional violation over one during such period, as follows.

Second offense within one year: \$250.00

Third offense within one year: \$500.00

Fourth offense within one year: \$750.00

Fifth and any subsequent offense within one year: \$1,000.00

Once the one year period has run from the first violation, the next violation shall be considered to be a first violation for the purposes of establishing a new one year period.

(C) This chapter may also be enforced by an appropriate equitable action.

(D) Per G.S. § 160A-175(f), any one, all, or any combination of the foregoing penalties and remedies may be used to enforce this chapter.

RESULT:	ADOPTED AS AMENDED [UNANIMOUS]
MOVER:	Jeannine Underdown Collins, Council Member
SECONDER:	Jennifer Teague, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

ADJOURNMENT

MOTION TO ADJOURN

Upon a motion by Council Member Underdown Collins, seconded by Council Member Clawson, Council moved to adjourn the meeting at 10:35 p.m.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Jeannine Underdown Collins, Council Member
SECONDER:	Lynne Mason, Mayor Pro Tem
AYES:	Mason, Clawson, Mizelle, Teague, Collins

Christine Pope, Town Clerk

Rennie Brantz, Mayor