Town of Clayton
Regular Town Council Meeting Agenda
Monday, February 6, 2023 at 6:00 PM
Council Chambers, Town Hall
111 E. Second Street

THE PUBLIC MAY VIEW THE LIVE COUNCIL MEETING ON THE TOWN'S YOUTUBE CHANNEL: https://www.youtube.com/TownofClaytonNC

1. CALL TO ORDER

a. Call to Order

b. Pledge of Allegiance

c. Invocation

2. ADJUSTMENT OF THE AGENDA

a. Approval of Agenda

POTENTIAL ACTION: Approve or Adjust the Agenda

3. CONSENT AGENDA

(Items on the consent agenda are considered routine in nature or have been thoroughly discussed at previous meetings. Any member of the Council may request to have an item removed from the consent agenda for further discussion.)

a. Minutes
- January 17, 2023 - Work Session
- January 17, 2023 - Regular Session
- January 17, 2023 - Closed Session

Presenter: Heidi Holland, Town Clerk
January 17, 2023 - Work Session
January 17, 2023 - Regular Session

b. Sole Source (Town Vehicles)
Presenter: Shaun Mizell, Procurement Manager
Sole Source for Town Vehicles

c. Resolution To Accept Streets Into the Town Of Clayton Street System For Maintenance – Riverwood Athletic Club, Phases 2B-3, Payton Drive, Perimeter Tract C (Manning & Collinsworth), Phase 5A, 5B1, & 5B2
Presenter: Jonathan K. Jacobs, PE, CFM - Assistant Engineering Director
Resolution #2023-04

d. Rules and Regulations For Conduct in the Library
Presenter: Joy Garretson
RULES AND REGULATIONS FOR CONDUCT IN THE LIBRARY

POTENTIAL ACTION: Approve Consent Agenda as Presented

4. ADMINISTRATIVE ITEMS

5. INTRODUCTIONS AND SPECIAL PRESENTATIONS

a. Awarding of Service Firearm and Badge

- Neal Johnson, Police Officer

Presenter: Greg Tart, Police Chief

Resolution #2023-05

POTENTIAL ACTION: Approval of Resolution #2023-05

b. Year and Month of the Trail

Mayor McLeod To Read

Presenter: Emily Beddingfield, Parks and Recreation Advisory Board Chair
Christy Thompson, DDA Advisory Board Chair
Julie Curran, Library Advisory Board Chair
Joy Garretson, Library Director
Scott Barnard, Parks and Recreation Director
Patrick Pierce, Economic Development Director
Ben Howell, Planning Director

Year and Month of the Trail - Parks + Recreation - Pdf

6. PUBLIC HEARINGS

a. Project Life Dust Development Agreement

(Continued from January 17, 2023 Regular Meeting)

Presenter: Patrick Pierce, Economic Development Director

Cover

Development Agreement FINAL

POTENTIAL ACTION: Motion to Continue to March 6, 2023 Regular Meeting

b. FY '23-24 Budget - Public Input

Presenter: Rich Cappola, Town Manager

Budget Hearing Advertisement

POTENTIAL ACTION: Receive Public Comment

7. OLD BUSINESS

8. NEW BUSINESS

9. STAFF REPORTS

a. Town Manager

b. Town Attorney

c. Town Clerk

d. Other Staff

10. OTHER BUSINESS

a. Informal Discussion & Public Comment

- Individuals have three (3) minutes to address the Town Council.
- Groups will designate a spokesperson. Spokesperson will have five (5) minutes to address the Town Council.

b. Council Comments

11. CLOSED SESSION

12. ADJOURNMENT

a. Adjourn

POTENTIAL ACTION: Motion to Adjourn

Town of Clayton
Town Council Work Session Minutes
Tuesday, January 17, 2023 at 3:00 PM
Rotary Room, Town Hall
111. E. Second Street

Council Present:
Mayor Pro Tem Jason Thompson
Council Member Andria Archer
Council Member Avery Everett
Council Member Michael Sims
Council Member Porter Casey

Council Absent:
Mayor Jody McLeod

Staff Present:
Rich Cappola, Town Manager
Dolores Gill, Deputy Town Manager
Lee Barbee, Interim Deputy Town Manager/Fire Chief
Heidi Holland, Town Clerk
Robert McKie, Finance Director
Michelle Snyder, Executive Assistant to Town Manager
Ben Howell, Planning Director

1 CALL TO ORDER

a) Mayor Pro Tem Thompson called the meeting to order at 3:05 p.m.

2 APPROVAL OF AGENDA

a) Mr. Cappola adjusted the agenda to include:

ADD: 3b. Downtown Lighting Discussion

Approval of Agenda as Presented

RESULT:	**CARRIED 5-0**
MOVER:	Porter Casey
SECONDER:	Andria Archer
YES:	Jason Thompson, Andria Archer, Avery Everett, Michael Sims, and Porter Casey
NO:	None

3 ITEMS FOR DISCUSSION

a)
- Mid-year budget review and recommendations discussion
  - Overview of current status (rev. vs. exp.)
  - Recommendations for changes (personnel, Equipment, etc.)
- Spring Retreat Planning
  - Topics
  - Format
  - logistics
- FY24 Budget
  - Requests for consideration

- **Budget Calendar and process review**
- **Budget survey additions/subtractions**

Presenter: **Rich Cappola, Town Manager**

Mr. McKie shared a snapshot of the Fund balance at the end of FY 2022. Total fund balance was about $25 million dollars, a $1.96 million increase from previous year. He went into detail on the fund balance line items. He stated we have a little over 1 million dollars reserved for our CIP projects. Town policy states we must have a minimum of 20% available. The operational target is 30% which only gives us $270,000 to work with. With the 2% increase, the intent was to get us back on the 20% target.

Shared was the budget process calendar. At the February 6, 2023, Council meeting, there will be an Initial Public Hearing and the launch of the FY23-24 Budget Survey. On February 8, 2023, departments would be required to turn in their budget requests. Any changes to comprehensive list of fees and CIP are due February 6-8, 2023.

Shared was the Mid-Year Snapshot for the General Fund. He stated $4.7 million is needed to balance the budget.

For salaries and benefits, he took all open positions unfilled and made assumption we would fill for half a year. Also added were four additional positions for an SRO. Firefighter positions are included in there as well as a couple positions in finance. This also reflects the impact of implementation of paying class study.

There was discussion on the impact of fuel surcharges. He stated in the miscellaneous category, we have gone from negative to positive.

Mr. Cappola stated with the sale of pre-treatment facility, the land value is $2.2 million from the appraiser. That transfer ran through the Water & Sewer fund, but the land was purchased with General Fund dollars. $2.25 million of that money was transferred back to the Water & Sewer fund.

There was discussion in the last 5 years, we have lost more park land than we have gained. The Town is trying to figure out what to do with Legend Park. Powhatan has been sold and soccer fields are out of our inventory. There was discussion on taking proceeds from land purchase from Economic Development opportunities and pairing those dollars together to find properties for Park & Rec. Between Municipal Park, East Community and Community Center master plan, we can move forward and figure out how much land is needed.

Council Member Everett asked if there is a way we could make sure we are not losing park land? Mayor Pro Tem Thompson stated Legend Park is not good land to do something long-term. It is a good idea for the Town to create a policy, so we don't lose ground. Mr. Cappola stated we could look at land surrounding current parks to see if we can pull in a few acres. There was further discussion on the issues with Legend Park. We can't build anything on

top of it structurally. The Town is trying to keep the rolling hills so we can at least have a walking trail. The parking lot may be able to remain a parking lot for the trailhead. Council Member Everett stated we should look into that since Town is still spending money on it.

Mr. McKie stated the sales tax is still strong. We could see an increase of upwards of $400,00 - $500,000 depending on how this will transpire. Sales tax budget for 2023 was south of $8 million. If we see sales tax tracking 5% higher than the budget, we would be at $400,000. The prior year, we were 16% higher. The estimate is conservative. Distribution comes from the State, it is county tax. Our district and County are based on ad valorem, we benefit because we have the largest tax base in Johnston County.

Shared was the Mid-Year Snapshot for the Water & Sewer Fund. Mr. McKie stated $6.5 million would be coming in from Copper District. He stated last year in the budget, one line item had been missed but is offsetting impact. He stated we have retired the USDA debt and had savings in that, the payoff turned out to be a little less than expected. Black & Veatch would be kicking off the rate study and we would get their recommendations back by end of February. Mr. Cappola stated we have a lot more certainty going into the model, we have actual costs. Mr. McKie stated we sold bonds on November 7, 2022, and he has been monitoring rates since then. We are very fortunate on the day bonds were sold; we had a favorable interest rate. This helped us with a higher bond premium.

There was discussion on becoming creative with recruiting staff. We are having challenges on filling positions. There are not enough people to keep up with growth. There was discussion on the Wastewater Treatment Facility, we would need to double the amount of staff in 2.5 years when it opens. We want to get them in and acclimated to the Town and be part of the start up with the facility. The new facility would be 24-hour shifts. Council Member Sims asked what the methods are we use now for job postings. Mr. Cappola stated Linkedin, Indeed, and our website. Council Member Sims asked why we don't go to job fairs where we can have career days. Mayor Pro Tem Thompson stated we have local presence, but we need to be dialed in more and look further out. There was lengthy discussion on career ladders, salaries, training and utilizing interns. Mr. Cappola stated the summer of 2023, we would have 5 interns coming on board.

Shared was the Mid-Year Snapshot for the Electric Fund. He stated we thought we would need to borrow $3.3 million but are now showing less than half a million. He has met with Allen Turnage and Ethan Poppe to firm the number up and would be monitoring this number. Discussion on pushing projects to next year or see if we can bundle finance package now. He stated it would not be cost effective to borrow a half of million dollars.

TC Budget Amendments

- SBWRF contract Award
- Mass comm. system
- Building Improvement for FS1 & FS2

- **USDA Loans Retired**
- **Main Street LAPP Project**
- **Supplanted ARPA Monies for Copper District Infrastructure**
- **School Resource Officers**

This sums up the budge amendments that council has authorized.

Operation Budget Considerations

- **Cybersecurity Enhancements**
- **Staffing –Evergreen Solutions Organizational Study**
- **Implementation of Rate Model Recommendations**
- **Debt Affordability & Capacity Analysis –GF CIP**
- **Rolling Stock Acquisitions (Vehicle Replacement Plan)**
- **Realignment of Budgets for Crucial Projects**
- **Conversion to Clariti Permitting & Licensing Software**
- **Future Property Acquisitions**
- **Advancing Paving Projects**

Final Observations

- **Town of Clayton maintains a healthy reserve fund.**
- **Sales tax revenues remain strong (5.5% higher than budget; 15.8% higher than prior year).**
- **Water & Sewer System Rated: Moody's -Aa3; S&P -AA-.**
- **Capital Projects and Programs included in the Capital Improvement Plan remain a priority for successful completion.**
- **Mid-Year Budget adjustments reflect a vibrant, growing town and organization.**
- **Ongoing recruitment of quality, professional staff.**
-

Mr. Cappola stated at the next Council meeting, they would bring forth budget adjustment. Ms. Gill stated a survey was sent out with a couple questions to Council. Mr. Cappola asked if there is any topic Council would like to discuss at the Spring Retreat to let us know.

b) Downtown Lighting Discussion
Presenter: **Ben Howell, Planning Director**

There was discussion on the letter that was sent out to Downtown owners that have lights in their businesses that are in violation. A courtesy reminder was sent out. A list of these business owners were provided. Mayor Pro Tem Thompson stated a lot of our ordinances need revising. He stated the Code Enforcement Officer is just doing his job. The ordinance is set up where it could be challenged. Council Member Casey asked if we should get Patrick Pierce or Planning to look at surrounding town's ordinances to craft a new ordinance for the Town. Mr. Cappola stated if changing the ordinance is a path Council would like to go, this process could begin.

Ben Howell stated Chad Meadows with CodeWright Planners, LLC, is in the process of looking at this. He stated they have had discussion, and Mr. Meadows is discussing moving this subject into the lighting section and not in

the sign section. We need to be careful with changing the language with what we would allow and what are we against. We need to let these Downtown businesses that are in violation know they still need to take their items down, but that Council is revisiting this ordinance. It was suggested for Economic Development and Planning to meet with these citizens. Mayor Pro Tem Thompson suggested to host a meeting to receive feedback to gather information to bring back to Council. Council Member Sims stated if we give citizens some buy in of the process, they would feel involved and this would have a good outcome. Mr. Howell stated citizens need to understand the difference between the string lighting and what is allowed. There was discussion on educating the public on what the difference between the different lights stated in the ordinance.

Mayor Pro Tem Thompson stated this needs to be a quick resolution. Patrick Pierce and Ben Howell could work together and create a game plan together.

Attorney Cauley stated if this would be suspended very long, Council action would be advised. Mayor Pro Tem Thompson stated we are not looking to prolong this.

4 ADJOURNMENT

a) Adjourn

With nothing further, the meeting was adjourned at 5:18 p.m.

Motion to Adjourn

RESULT:	**CARRIED 5-0**
MOVER:	Andria Archer
SECONDER:	Porter Casey
YES:	Andria Archer, Porter Casey, Jason Thompson, Avery Everett, and Michael Sims
NO:	None

Duly adopted this the 6th day of February, 2023, while in regular session.

Jody L. McLeod
Mayor

ATTEST:

Heidi Holland, CMC, NCCMC
Town Clerk

Town of Clayton
Regular Town Council Meeting Minutes
Tuesday, January 17, 2023 at 6:00 PM
Council Chambers, Town Hall
111 E. Second Street

Council Present:
Mayor Pro Tem Jason Thompson
Council Member Porter Casey
Council Member Avery Everett
Council Member Andria Archer
Council Member Michael Sims

Council Absent:
Mayor Jody McLeod

Staff Present:
Rich Cappola, Town Manager
Jim Cauley, Town Attorney
Dolores Gill, Deputy Town Manager
Lee Barbee, Interim Deputy Town Manager/Fire Chief
Heidi Holland, Town Clerk
Robert McKie, Finance Director
Greg Tart, Police Chief
Jonathan Jacobs, Assistant Engineering Director
Joshua Baird, Engineering Director
Nathanael Shelton, Communications Officer
Ben Howell, Planning Director
John Mack, IT Director
Drew Mallory, Information Services
Trey Mitchell, Information Services

1. CALL TO ORDER

a. Call to Order

Mayor Pro Tem Thompson called the meeting to order at 6:01 p.m.

b. Pledge of Allegiance

Mayor Pro Tem Thompson led the Pledge of Allegiance.

c. Invocation

Mayor Pro Tem Thompson provided the Invocation.

2. ADJUSTMENT OF THE AGENDA

a. Approval of Agenda

Mr. Cappola adjusted the agenda to add:

ADD:
6b. Project Life Dust Development Agreement
Presenter: Patrick Pierce, Economic Development Director

11a. Closed Session to Discuss Economic Development NCGS 143-318.11(a)(4)

Approve or Adjustment of Agenda

RESULT:	**CARRIED 5-0**
MOVER:	Avery Everett
SECONDER:	Andria Archer
YES:	Jason Thompson, Porter Casey, Avery Everett, Andria Archer, and Michael Sims
NO:	None

3. CONSENT AGENDA

a. Minutes
- December 19, 2022 - Regular Session
- January 3, 2023 - Work Session
- January 3, 2023 - Regular Session

Presenter: Heidi Holland, Town Clerk

b. Amended Policy and Procedures for Appointments to Advisory Boards
Presenter: Heidi Holland, Town Clerk

Approve Consent Agenda as Presented

RESULT:	**CARRIED 5-0**
MOVER:	Avery Everett
SECONDER:	Andria Archer
YES:	Jason Thompson, Porter Casey, Avery Everett, Andria Archer, and Michael Sims
NO:	None

4. ADMINISTRATIVE ITEMS

5. INTRODUCTIONS AND SPECIAL PRESENTATIONS

a. Employee Introductions
- Drew Mallory, Information Services
- Trey Mitchell, Information Services

Presenter: John Mack, IT Director

Mr. Mack introduced two new Information Services employees. Drew Mallory was with VC3 and is now with the Town. Mr. Mallory stated he is pleased to join the team. Trey Mitchell is joining us from the Town of Garner. Mr. Mitchell stated it is a pleasure to be here. Mayor Pro Tem Thompson and Council welcomed them.

b. Student Art Month Proclamation
Mayor Pro Tem Thompson to Present to Susan Johnson
Presenter: Mayor Pro Tem Thompson

Mayor Pro Tem Thompson read the Student Art Month Proclamation into the record. Susan Johnson, of The Woman's Club of Clayton, provided history of

the Student Art Month and information on the Student Art Show, which would be held February 9, 2023, at The Clayton Center. Mayor Pro Tem Thompson presented the Proclamation to Ms. Johnson.

c. Black History Month Proclamation
***Presenter:* Mayor Pro Tem Thompson**

Mayor Pro Tem Thompson read the Proclamation for Black History Month into the record.

6. PUBLIC HEARINGS

a. 2022-158-CZM Clayton Village Center Conditional Zoning District
***Presenter:* Ben Howell, Planning Director**

Mr. Howell stated this request is to rezone properties from R-E and B-3 to Conditional Zoning Mixed Use District located on US 70 Business near Wildwood Drive. This request is for 234 multi-family units and 5,100 feet of commercial space with a density of 20.65 units/acre. The property size is 12.39 acres. Shared was the overall master plan. There is a condition requiring an additional space. The proposed use is mixed use of apartments and commercial. Access would be off US 70 Business and Wildwood Drive with the Town providing water, sewer and electric. There is a condition that has been proposed, since being heard by the Planning Board, to increase the non-residential space to 10,000-15,000 sq. ft. and to also increase maximum building height for 2 buildings to 65’ to allow for four stories. A revised traffic generation information and a TIA would be required to address the increase in the non-residential space, which is also a condition.

Transportation Improvements include:

- **US 70 Business/Site Access 1: Construct a 100-foot-long eastbound right-turn lane**
- **US 70 Business/Hardee Lane: Extend existing eastbound U-Turn Lane with full-width storage to 300 feet**
- **Wildwood Drive: Improve to provide (at a minimum) 11-foot-wide travel lane, curb-and-gutter, sidewalk along frontage**
- **Additional road/intersection improvements may be required by NCDOT through Driveway Permit Process**

Stormwater, Water, Sewer, Electricity

- **Project will comply with Town of Clayton Stormwater Ordinance**
- **Public Water available on US 70 Business and Wildwood Drive**
- **Existing Public Sewer Gravity and Force Main located on-site**
- **Electric service available from Town of Clayton**

The development would have a 15’ wide Type C landscaping buffer and based on discussion and a request by the Planning Board, a 6’ tall wood fence would be provided as opaque screening between the Phase 2 retail property and adjoining property. There was specifically a request for a fence for that location. There would also be a thoroughfare buffer along US 70 Business and

interior landscaping would meet the unified development code requirements. Discussed were the architectural standards which include two or more material types to be used as well as aesthetic and modern color schemes.

The proposed development is not consistent with the 2045 Growth Plan. This plan calls for this area to be employment center and medium density residential. This proposed development may provide a transition from residential uses to commercial industrial uses along US 70. The applicant is proposing to connect public water and extend public sewer to serve the development. Discussed were the capacity of adequate public facilities and services which is included in the Master Plan Narrative located in the agenda packet. No adverse effect on adjoining property owners and no on property owner/small group will benefit to detriment of general public. Mr. Howell discussed the Master Plan Approval Criteria, which is included in the Master Plan Narrative located in the agenda packet. Town Council shall consider recommendation of the Planning Board and Planning Director, and staff's recommendation. The Planning Board found the project to be inconsistent with 2045 Growth Plan and recommended the Statement of Reasonableness found at the end of the presentation.

Mr. Howell read through each of the Conditions of Approval. These are provided in the agenda packet. Condition 15 is an added condition relating to the additional commercial uses and they shall meet the UDC parking standards, but also, they seek a reduction in the number of required parking spaces. Council Member Everett stated if it is not consistent with the growth plan, why are we pushing forward? Mr. Howell stated the growth plan is just one consideration when reviewing rezonings and the growth plan is only a guiding document and does not have the stance of law. That is where the UDC is the law. Council Member Sims asked which building would have the additional 5,000 sq. ft. Mr. Howell stated this would be in building 1 or 3. Council Member Casey mentioned the 6' tall fence, he asked to see the location of that. Mr. Howell shared this information on the site plan. Council Member Casey stated on the master application, there are 10' buffers in certain areas. Mr. Howell stated the code requirement is a 15' Type C landscape buffer, the developer originally proposed a smaller buffer but through the review process, that was increased. Council Member Casey stated we usually vote on sewer capacity; he asked the timing for this project. Joshua Baird stated the wastewater resolution does have a time in it so the flow could be accepted based on infrastructure improvements that are being done. The timing is at the point where the Town will sign and execute sewer extension permits which usually goes along at the end of the construction drawing phase which is January 1, 2024.

Council Member Casey stated we get questions on development fees from the Community, what type of fees are we looking at? Mr. Baird stated the project would be subject to system development fees on top of cost of meters. Council Member Sims stated according to the requirements, the parking would change for the commercial? Mr. Howell stated potentially. Non-residential and residential have different parking requirements, that would be looked at once the total square footage is determined.

Mayor Pro Tem Thompson stated this has been noted as a public hearing and asked if there was anyone wishing to speak. Mayor Pro Tem Thompson asked Attorney Cauley to stated what the Council's burden is when handling a legislative process. Attorney Cauley stated you are to exercise good zoning judgement and make a decision based on your discretion not on evidentiary findings.

Toby Coleman with Smith Anderson was present on behalf of the owner. He stated he would like to note this is an interesting area. This site is within 2 miles of 3 of the major employers in Clayton and Johnston County, Novo Nordisk, Grifols and Caterpillar. He stated even though this does not comply with the growth plan, the project makes sense. This site is an opportunity for mix of commercial and residential land uses to support major Employment Center. It is located on 40 but backs up onto more residential. Mr. Coleman addressed Council Member Sims' question and stated building one would have the additional square footage with commercial on the first floor and apartments above. Shared were recommended improvements to mitigate traffic impact. He stated this site would mainly be served by 70 and would be a right in and right out. Wildwood is a right in and right out as well. The two mitigation factors that have been recommended both by DOT and the Town is a new turn in lane into the site right-hand and extending the U-turn lane at Hardee Road. The Town has also asked, and has been provided in the conditions, that the frontage of Wildwood Drive would be expanded.

Architectural requirements would be a mix of material types, front facades shall be at least 25% masonry and higher-quality architectural style shingles shall be used. Retail building requirements would conceptually be the same. Council Member Sims asked to speak to the traffic engineer, he asked about the increase of traffic for that area. He asked if this would double because of the square footage. Traffic Engineer, Jeff Hochanadel of Timmons Engineering, stated it would not, it goes by an equation, you plug in the numbers. He stated in the morning it would increase by 5 in the AM and 47 for the PM hours. He stated the morning does not change much. Mr. Coleman stated if you look at the trip generation study, when you look at the number of units, it says 324 and the study was based on 90 more units than what would be developed. This would be a significant decrease. Council Member Sims asked what the building was initially to be used for, Mr. Hochanadel said multi-family units. Council Member Sims commented, so we should be fine as far as traffic? Mr. Hochanadel stated this site would not increase traffic beyond the threshold.

Mayor Pro Tem Thompson asked about the left U-turn headed eastbound, do you think there is adequate space for someone to right out of the complex, cross over all the lanes of Hwy 70 to get to the left land to make a U-turn, he asked if that is realistic? Mr. Hochanadel stated, yes during off-peak hours.

Mayor Pro Tem Thompson asked if there were any other questions for the applicant.

Mr. Coleman stated there is no avoiding the fact of issues on Hwy 70. In the full

traffic analysis, there is a section that looks at just the traffic that would be generated by this project. The big issue is eastbound left-hand turns off of 70 onto 42, this site would not impact those.

Mayor Pro Tem Thompson stated this has been noted as a public hearing. He asked if anyone wished to speak.

Jessica Hedrick, 9439 US 70, she stated her property is directly connected to this. She shared pictures with Council of the concerns that she has with this development being built. She discussed telephone poles in her yard that is her concern. She stated when these are switched over to the Town power, what does this mean for her? She stated no one has reached out to them. She stated they built a 15' fence but how would the power lines be corrected. She discussed contractors cutting her internet and power lines and she was without both for two weeks. No one has reached out to her to let her know how her property would be affected. They are currently a Duke Energy customer. Mayor Pro Tem Thompson asked if they have addressed any of these issues with Duke? She stated Duke told them to contact the Town. She discussed the issues with plumbing as well. John Hedrick stated he would like to know what their impact would be from the new commercial usage. Also, has a question of transportation portion of this. They discussed how the left turn traffic is a nightmare.

Mayor Pro Tem Thompson asked if there was anyone wishing to speak. With no one wishing to speak, this was turned over to Council for their deliberation.

Council Member Archer stated she would like to address the citizens that just spoke. She understands this could be a stressful situation, to get to the issue of the power and utilities, normally those things do get worked out. She stated these are apartments, there is not a Class A, B, or C in regard to this. For the commercial uses, there is a fence proposal along that area of the property. In terms of the traffic, we must rely on the studies provided. The inconsistencies with the 2045 growth plan, in the staff report, there were a few factors that staff did go through. She stated factor 1 for the approval criteria, is dealing with the fact the application lines up with plans and polices. She stated we can not rely on the Growth Plan all the time. For factor 2, this addresses suitability. That is taking into consideration current zoning, use on adjacent properties. If you look at the area around this application, you have a mix of commercial and residential identical to what's proposed in the application. She stated she agrees this serves as a transition.

Council Member Everett stated with the inconsistencies with the growth plan, it's important. The Community had their involvement to create this plan. If this is something that needs to be changed, we need to look into that. He feels sticking to the plan is what we should be doing. Council Member Sims stated Mr. and Mrs. Hedrick owe an answer from someone. Someone should assure them that whatever happens, they would be taken care of. He would like someone to step up and state they would help this couple. He stated he has issues with the traffic. He stated he is happy to see commercial going in but envisioned that end of 70 would become our other gateway. He stated he does

not know if this is necessarily the commercial, we are looking for.

Council Member Casey discussed his concern of the U-turn at Hardee Lane. As Clayton continues to grow, having to pass those lanes to get to the left lane is going to be an issue. He stated down the road, maybe a stop light could be justified. Council Member Sims asked Mr. Hochanadel what it would take to install a traffic light. Mr. Hochanadel stated to warrant a traffic signal, there are federal guidelines that need to be met and this is a lengthy process. Mayor Pro Tem Thompson stated he agrees with Council Member Sims, he thinks this is a good project, not sure this is a good place for it. He has serious concerns with traffic and school capacity. He stated he feels like when we make decisions that affect the community, it affects the school systems. The inconvenience of the citizens losing utilities is a big concern and as a Town we should do and can do better. We have an obligation that we don't negatively impact others.

Council Member Archer stated this is a lot to think about. She stated we could table this and come back to see if there could be additional conditions or information. She stated she is in favor of approval but does hear the concerns. Council Member Casey stated traffic is an issue, but he is not sure tabling this would resolve anything. Council Member Sims suggested to add a condition that would ensure the Hedrick's would be taken care of. Mr. Coleman stated they would be open to do what they could, but it sounds like a Duke Energy line that needs to be moved and that they would require the applicant to move it. If there is a distribution line on the property that goes to their property, Duke does not want to lose the customer so they would make the applicant move the line. He stated they are willing to do anything necessary to make sure citizens are not disturbed. He asked if this would be a better subject for a zoning condition or private agreement. Attorney Cauley stated a general agreement with the concept which is a prerequisite for putting that as a condition or private covenant. He suggests imposing a condition in some form. Mr. Coleman stated if Council thinks that is the best way to go, he would not urge a vote if Council felt it could be denied.

He clarified that the request is an added condition stating if we cut off your line or at any point, we cause a power or internet interruption, we will fix it or otherwise make you whole. Council Member Sims stated he is fine with that. Mr. Coleman stated he would have to speak with his client about that. Council Member Sims asked should this be tabled to look more into the traffic study? Mr. Coleman said the issue with a TIA after the fact, they put in a language that says the Town and DOT would look at anything the DOT requires and would be put into place. Council Member Archer stated it doesn't sound like anything could be figured out about an additional condition regarding the electricity on the adjacent property. Mr. Coleman stated he has received approval from the applicant to include the additional condition to state "if the developer/property owner causes any interruptions of power to this particular property or other utility services, they will promptly fix it or otherwise make the owners whole for any impacts that may result from that." Ms. Hedrick stated she would like to know she could call a Council Member and it would be taken care of immediately.

Joshua Baird spoke on the wastewater resolution. He stated the request for this development is for 61,353 gallons per day. He stated this resolution is different than what was in the agenda packet, that is due to the increase in the retail.

Approval of Ordinance #2023-01-01

Approved with Statement of Reasonableness and Consistency and with an additional condition to read "if the developer/property owner causes any interruptions of power to this particular property or other utility services, they will promptly fix it or otherwise make the owners whole for any impacts that may result from that."

RESULT:	**CARRIED 4-1**
MOVER:	Andria Archer
SECONDER:	Michael Sims
YES:	Jason Thompson, Porter Casey, Andria Archer, and Michael Sims
NO:	Avery Everett

Wastewater Resolution #2023-03

RESULT:	**CARRIED 5-0**
MOVER:	Andria Archer
SECONDER:	Avery Everett
YES:	Jason Thompson, Porter Casey, Avery Everett, Andria Archer, and Michael Sims
NO:	None

b. Project Life Dust Development Agreement
(Continued to the February 6, 2023 Regular Meeting)
Presenter: Patrick Pierce, Economic Development Director

This item was opened, and a motion was made to continue to the February 6, 2023 Regular Meeting.

Continue to February 6, 2023

RESULT:	**CARRIED 5-0**
MOVER:	Andria Archer
SECONDER:	Avery Everett
YES:	Jason Thompson, Porter Casey, Avery Everett, Andria Archer, and Michael Sims
NO:	None

7. OLD BUSINESS

8. NEW BUSINESS

9. STAFF REPORTS

a. **Town Manager**
- **Mt. Olive College Agreement**
- **Tuition Reimbursement Policy**

Mr. Cappola stated the last executed agreement for the Wastewater Treatment Facility has been signed. The current contract puts the completion somewhere mid-2025. The feasibility report for The Greater Triangle Commuter Rail is now available. The website to access that study is www.readyforrailnc.com. Paul Reiser will be at The Clayton Center on Friday, January 20, 2023.

He stated a couple meetings back there was discussion on bringing back fireworks to the Town. We were able to improve the MOU with the County regarding utilizing their facility for fireworks. Since then, there has been a team internally on the Emergency Management side reviewing how we could create that event while trying to maintain the Square-to-Square Festival. He stated this all comes down to a staffing issue to have those on the same day. The proposal to Council for consideration would be to move Square to Square to be more of a kickoff to the Summer in May and have fireworks July 1st. He stated trying to finalize the contract with the fireworks vendor now.

He recognized Neil Johnson from the Police Department. This is his last Council meeting as he would be retiring February 1st. He congratulated Mr. Johnson on his years of service and keeping us protected at the Council meetings.

He is happy to announce an MOU with the University of Mount Olive that would allow Town staff to be able to receive reduced tuition between 10-30% depending upon the program. Also, in reviewing benefits to offer staff, the policy for tuition reimbursement has been updated based on availability of funding within the budget. The Town would now allow up to $2,000 a year in reimbursement for staff that have an approved tuition reimbursement program.

b. **Town Attorney**

c. **Town Clerk**

d. **Other Staff**

10. OTHER BUSINESS

a. **Informal Discussion & Public Comment**
- **Individuals have three (3) minutes to address the Town Council.**
- **Groups will designate a spokesperson. Spokesperson will have five (5) minutes to address the Town Council.**

b. **Council Comments**

Council Member Sims stated he would like to suggest to the Town Manager for the Town to have their own Traffic Engineer, he stated the traffic needs to be figured out. He stated whoever comes before the Council to speak about a project states the traffic will be fine, when the traffic is getting worse. There

are issues with the current process.

He stated as we continue to approve these developments, he has a concern about the water allocation. He understands Joshua Baird, Engineering Director, is keeping track of this but he feels there needs to be a conversation had.

Mr. Cappola stated, as far as a TIA, that is something the Town could certainly look into and that is being reviewed as part of the overall UDO. We can prioritize that and bring back different models that could improve the process. In regard to the Wastewater, we have a complex model as far as tracking the flows particularly between now and 2025. He stated staff is staying on top of this. He has heard from some developers that their production would be slowing down over the next year or so but would revive at some point. There has been a strategy to those approvals with regards to the timing to how many units for each of those developments to try to regulate.

Mayor Pro Tem Thompson stated he agrees with Council Member Sims. He agrees we do need our own traffic engineer. When a developer comes in they are looking at their project but not the impact of the developer to the Town as a whole. He feels there is a better way to do things.

11. CLOSED SESSION

a.

Closed Session to discuss Economic Development Opportunity Pursuant to NCGS 143-318.11(a)(4)

Move to Go Into Closed Session at 7:44 p.m.

RESULT:	**CARRIED 5-0**
MOVER:	Andria Archer
SECONDER:	Porter Casey
YES:	Jason Thompson, Porter Casey, Avery Everett, Andria Archer, and Michael Sims
NO:	None

Move To Return to Open Session at 8:42 p.m.

RESULT:	**CARRIED 5-0**
MOVER:	Andria Archer
SECONDER:	Michael Sims
YES:	Jason Thompson, Porter Casey, Avery Everett, Andria Archer, and Michael Sims
NO:	None

12. ADJOURNMENT

a. Adjourn

With nothing further, the meeting was adjourned at 8:43 p.m.

Motion to Adjourn

RESULT:	**CARRIED 5-0**
MOVER:	**Porter Casey**
SECONDER:	**Andria Archer**
YES:	**Jason Thompson, Porter Casey, Avery Everett, Andria Archer, and Michael Sims**
NO:	**None**

Duly adopted this the 6th day of February, 2023, while in regular session.

Jody L. McLeod
Mayor

ATTEST:

Heidi L. Holland, CMC, NCCMC
Town Clerk

Town Council Agenda Cover Sheet

Meeting Date
February 6, 2023

Agenda Location
Consent Agenda

Item Title
Sole Source Exemption - Performance or Price Competition is not available.

Presenter:
Shaun Mizell, Procurement, Contracts and MWBE Manager

Summary/Description
Town Procurement Manager with Town Staff to maintain Town Fleet and Emergency Vehicles, by attempting to use the Exceptions to Bid below:

- GS 143-129€ (9) State Contract 070A – Fleet Vehicles (Passenger, Truck, Van, SUV, & Law Enforcement).
- GS 143-129€ (3) Group Purchasing Program HGACBUY Contract for Fire Service Apparatus (FS12-19) and Sourcewell Contract (110421-ALT) for Electric Bucket Trucks.

Town Procurement Manager reached out to the individual contract managers and was told due to the supply chain shortage and delivery times there wasn't inventory and there would be a wait time on procuring vehicles for up to one year or longer.

The State Procurement Officer advised The Town Procurement Manager to use Bid Exception GS 143-129€ (6) Sole Source as an alternative until the State and HGAC contract can provide the requested vehicles.

The Procurement Manager, Fleet Management and Staff after lengthy discussions are proposing to procure Town Fleet using the Sole Source Exception. Staff determined this was the best course of action during these unprecedented times. This would allow staff to seek vehicles available at Contract price from contractors not on State or Cooperative Contracts who had inventory on the lot. This exception would only be used until State and HGAC contract vendors are able to honor the contracts and fulfill the needs of the Town.

Requested Action
Approval

Funding Source (If Applicable):
N/A

Cost: **N/A** **Yes** ☐ **No** ☒

Additional Documents to be Included in Agenda Packet

Meeting Timeline
Click or tap here to enter text.

Regular Town Council Meeting
Agenda Cover Sheet

Meeting Date	Agenda Location
February 6, 2023	CONSENT AGENDA

Item Title

RESOLUTION TO ACCEPT STREETS INTO THE TOWN OF CLAYTON STREET SYSTEM FOR MAINTENANCE – RIVERWOOD ATHLETIC CLUB, PHASES 2B-3, PAYTON DRIVE, PERIMETER TRACT C (MANNING & COLLINSWORTH), PHASE 5A, 5B1, & 5B2.

Presenter(s)

Jonathan K. Jacobs, PE, CFM - Assistant Engineering Director

Suggested Action

Adoption of Resolution

Strategic Priorities Alignment

☐	☐	☐	☐	☐	☐	☐	☐
Think Clayton (Administrative)	Think Arts & Culture	Think Downtown	Think Economic Development	Think Land Use & Housing	Think Mobility	Think Parks, Recreation & Natural Resources	Think Public Services & Infrastructure

Public Hearing: No

If Approved, Will Document Require Recordation? No

Does This Item Require a Communication Plan?

☐ Public Hearing (Required by GS)
☐ Public Hearing (Not Required by GS)
☐ Newspaper Notice (Required by GS)
☐ Newspaper Notice (Not Required by GS)
☐ Public Forum/Input Session
☐ Press Release
☐ E-News Distribution
☐ Website

☐ Social Media	☐ Survey
☐ Special Mailing	☒ None Required

Summary

Streets and rights-of-way sections, which are to be assumed for maintenance by the Town of Clayton, are required to be designed and built according to the Town of Clayton Manual of Standards, Specifications, and Design. Having met this criteria through both inspection of the construction process and upon warranty expiration, Engineering staff hereby recommends acceptance of the subject streets into the Town's network. Upon Council action of final acceptance, the subject streets will be fully maintained by the Town and are eligible for funding through NCDOT's Powell Bill Program.

Recommendation

Acceptance of resolution.

Funding Source

N/A

Corresponding Documentation

RWAC_Street Final Acceptance Resolution_Phases 5B, 5B1, B2, 2B-3, Perimter Tract C, Payton Drive_DRAFT_1-12-23

Meeting Timeline

N/A

Submitted By: Chris Rowland, Engineering

Reviewed By:

Jonathan Jacobs, Assistant Engineering Director	Approved - Jan 30 2023
Joshua Baird, Engineering Director	Approved - Jan 31 2023
Heidi Holland, Town Clerk	Approved - Jan 31 2023

Resolution # 2023-04

RESOLUTION TO ACCEPT STREETS INTO THE TOWN OF CLAYTON STREET SYSTEM FOR MAINTENANCE – RIVERWOOD ATHLETIC CLUB, PHASES 2B-3, PAYTON DRIVE, PERIMETER TRACT C (MANNING & COLLINSWORTH), PHASE 5A, 5B1, & 5B2

WHEREAS, streets and right-of-way are required to be designed and built according to the Town of Clayton Manual of Standards, Specifications and Design; and

WHEREAS, approval by the Town of Clayton Town Council is necessary for eligibility for receiving funding from the NCDOT's Powell Bill Program.

WHEREAS, the street segments listed below were placed under a five-year warranty period for to monitor for construction deficiencies, which has subsequently expired: and

WHEREAS, Town of Clayton Engineering staff has inspected the street segments referenced below on and recommends final acceptance by Town Council for maintenance by the Town; and

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Clayton, North Carolina accept this list of streets and right-of-way into the Town of Clayton Street System.

SUBDIVISION	STREET NAME	BEGINNING DESCRIPTION	END DESCRIPTION	LENGTH
RWAC, Phase2B-3	Chamberlain Drive	Phase Line 2B	Houston Lane	0.11
RWAC, Phase2B-3	Houston Lane	Chamberlain Drive	Phase Line 2B-2	0.04
RWAC Perimeter Tract C	Manning Drive	Athletic Club Blvd	Collinsworth Drive	0.23
RWAC Perimeter Tract C	Collinsworth Drive	Athletic Club Blvd	Phase Line 3A-1	0.08
RWAC, Phase 5A	Marino Place	Manning Drive	Phase Line 5B2	0.13
RWAC, Phase 5B1	Hutson Lane	Manning Drive	Phase Line 5B2	0.10
RWAC, Phase 5B2	Hutson Lane	Phase Line 5B1	Marino Place	0.09
RWAC, Phase 5B2	Marino Place	Phase Line 5A	End CDS	0.09
RWAC	Payton Drive	Athletic Club Blvd	Property Line	0.3
			TOTAL	**1.17 MI**

Duly adopted this the 20th day of February 2023.

Jody L. McLeod

Mayor

ATTEST:

Heidi L. Holland, CMC, NCCMC
Town Clerk

Regular Town Council Meeting
Agenda Cover Sheet

Meeting Date	**Agenda Location**
February 6, 2023	CONSENT AGENDA

Item Title

RULES AND REGULATIONS FOR CONDUCT IN THE LIBRARY

Presenter(s)

Joy Garretson

Suggested Action

Place on Consent Agenda

Strategic Priorities Alignment

☒	☐	☐	☐	☐	☐	☐	☐
Think Clayton (Administrative)	**Think Arts & Culture**	**Think Downtown**	**Think Economic Development**	**Think Land Use & Housing**	**Think Mobility**	**Think Parks, Recreation & Natural Resources**	**Think Public Services & Infrastructure**

Public Hearing: No

Applicable General Statute Number: NA

If Approved, Will Document Require Recordation? No

Does This Item Require a Communication Plan?

☐ Public Hearing (Required by GS)
☐ Newspaper Notice (Required by GS)
☐ Public Forum/Input Session
☐ E-News Distribution
☐ Public Hearing (Not Required by GS)
☐ Newspaper Notice (Not Required by GS)
☐ Press Release
☐ Website

☐ Social Media
☐ Special Mailing
☐ Survey
☒ None Required

Updates Since Previous Presentation

NA

Summary

The library has updated and renamed its Disruptive Patron Policy. Our new Rules and Regulations for Conduct in the Library is a policy that sets clear parameters for patron behavior, ensuring the best library experience for library patrons and staff. The Library Advisory Board approved and adopted this updated policy at its regular meeting on Thursday, January 19, 2023.

Background/History

The library's Disruptive Patron Policy was adopted by the Library Advisory Board in 2016. As part of a routine policy review, staff updated the policy and renamed it to focus on positive guidelines for behavior.

Recommendation

Approve on consent agenda.

Funding Source

N/A

Cost

No

Corresponding Documentation

Rules and Regulations for Conduct in the LIbrary 01302023

Meeting Timeline

Consent Agenda

Submitted By: Joy Garretson, Library

Reviewed By:

Rich Cappola, Town Manager — Approved - Feb 01 2023
Heidi Holland, Town Clerk — Approved - Feb 01 2023

TOWN OF CLAYTON

Rules and Regulations for Conduct in the Library

The mission of the Hocutt-Ellington Memorial Library ("Library") is to be a welcoming space for building community and connecting people to ideas and resources. Library staff prioritize the comfort and safety of patrons, volunteers, and staff, and the protection of Town property. Disruptive behavior is defined as any patron behavior that interferes with the normal operation of the Library, or which unreasonably interferes with another patron's ability to use the Library.

The public is required to comply with all Library policies, including the following rules and regulations, which have been recommended by the Library Advisory Board and adopted by the Clayton Town Council.

1. **Noise**. Creating loud, unreasonable, and/or disturbing noises by persons, electronic devices, or cell phones is not allowed. Cell phone ringers should be silenced. Cell phone or other electronic conversations must be kept at a level that does not interfere with the Library experience of other patrons. Patrons may be asked to step outside in cases of prolonged disruption.

2. **Personal Conduct.** Disorderly conduct of any kind is not allowed. Alcohol and illegal drugs may not be possessed or consumed on Library property. Sleeping that interferes with other patrons or with staff activity is not allowed. Selling and/or soliciting of any kind is not permitted. Inappropriate conduct, aggressive behavior, or harassment of other Library patrons will not be tolerated.

Blocking aisles, doorways, restrooms, or walkways by people or property (including power cords) is prohibited.

Shirt and shoes must be worn at all times. Personal hygiene that constitutes a nuisance to other Library patrons and employees is not permitted.

3. **Personal Property.** Leaving personal property unattended is prohibited. All property must be within sight of the owner. Library staff are not responsible for the belongings of persons in the Library. With the exception of baby strollers, large objects, such as carts or bicycles, may not be brought into Library facilities.

3. **Smoking.** Tobacco use of any kind is prohibited **in any Town of Clayton owned facility,** including all libraries.

4. **Children**. Children under the age of 10 and any person in need of supervision must be attended by a responsible adult at all times. Children up to the age of 17 must not be left at the Library after closing time. Seating in the children's area is prioritized for children and caregivers. No photographs should be taken of children without the express consent of the caregiver.

5. **Food**. Food and beverages may be consumed in the Library only in designated areas. Liquids should have lids.

6. **Animals**. Only service or assistance animals may be brought into the building. Any service or assistance animals causing a disruption may be asked to leave the Library.

7. **Restrooms.** Library materials should not be taken into restrooms. Restrooms should be utilized in a manner that does not impede use by other patrons and employees.

8. **Library Property.** Furniture should not be moved or rearranged without prior permission from Library staff. Mistreatment or destruction of any Town property—including Library facilities, furniture, and materials—is not allowed. Skateboarding is not allowed on Library property.

9. **Library Staff.** The harassment and/or ill-treatment of any Library employee, volunteer, or representative will not be tolerated. Examples include--but are not limited to—aggressive behavior, sexual advances, inappropriate conversations, stalking behavior, threats, etc.

10. **Illegal Conduct or Activities.** Any other illegal acts or conduct in violation of Federal, State, or local law, ordinance, or regulation including G.S.14-208.18 (Sex offender unlawfully on premises) is not permitted. Carrying weapons of any type with the exception of those allowed under NC General Statutes is not permitted.

Failure to comply with the Library's rules or any other Town policies may result in temporary or permanent exclusion from the Library and/or in arrest. Any behavior not specifically addressed in this document, but deemed a public hazard, safety violation, disruption, or nuisance is also subject to the following penalties and actions at the discretion of Library management. The order of these penalties and actions may differentiate based on the severity of the violation.

> **Warnings.** When a violation of these regulations is observed by any Library staff member, they will address the occurrence and provide a copy of this document upon request. Three warnings regarding disruptive behavior will require more severe action by Library management.
>
> **Temporary Ban.** Individuals causing multiple or significant disruptions may be asked to leave the Library for a day or other length of time deemed appropriate by Library management. This will include the individual's Library card flagged as inactive for the designated length of time.
>
> **Contact of Law Enforcement.** For individuals who refuse to comply with these rules and directives of the Library and its staff, or in other circumstances as appropriate, law enforcement may be called to assist in removing the individual.
>
> **Permanent Ban.** Prolonged or extreme behavior that violates Library policies and regulations may result in a permanent ban from the Library. The individual banned will be sent a letter as official notice thereof. Law enforcement will be informed, and any attempt by the individual to return to the Library will constitute trespassing.

Any disputes of these regulations or actions may be addressed with the Library Director. Appeal of a ban may be taken within ten (10) days and, if accompanied by a written statement setting forth the basis for the appeal, will be reviewed by the Library Advisory Board. The decision of the Library Advisory Board shall be final.

Resolution #2023-05

Resolution

AWARDING BADGE AND SERVICE WEAPON TO RETIRING POLICE OFFICER

WHEREAS NCGS § 20-187.2 provides that retiring members of municipal law enforcement agencies may receive, at the time of their retirement, the badge worn or carried by them during their service with the municipality; and

WHEREAS NCGS § 20-187.2 further provides that the governing body of the municipal law enforcement agency may, in its discretion, award to a retiring member the service weapon of such retiring member; and

WHEREAS Officer Neal Johnson began his law enforcement career with the Dunn Police Department in December 1992. Officer Johnson began working with the Clayton Police Department in August of 2010. He has served as a Patrol Officer, Parks/Trail Officer, Community Police Officer, School Resource Officer, Firearms Instructor and Armorer, along with many other duties with the Clayton Police Department. His effective retirement date is February 1, 2023, with 30 years of service as a law enforcement officer. He has served the Town of Clayton for over 12 years.

NOW, THEREFORE, BE IT RESOLVED by the Clayton Town Council that the badge and service weapon worn and/or carried by Officer Neal Johnson be awarded to him on his retirement.

Duly adopted this the 6th day of February 2023 while in regular session.

Jody McLeod
Mayor

ATTEST:

Heidi Holland, CMC,
Town Clerk

Regular Town Council Meeting
Agenda Cover Sheet

Meeting Date	Agenda Location
February 6, 2023	INTRODUCTIONS AND SPECIAL PRESENTATIONS

Item Title

Year and Month of the Trail

Presenter(s)

Emily Beddingfield, Parks and Recreation Advisory Board Chair Christy Thompson, DDA Advisory Board Chair Julie Curran, Library Advisory Board Chair Joy Garretson, Library Director Scott Barnard, Parks and Recreation Director Patrick Pierce, Economic Development Director Ben Howell, Planning Director

Suggested Action

Introduction/Recognition

Strategic Priorities Alignment

☒	☒	☒	☒	☒	☒	☒	☒
Think Clayton (Administrative)	**Think Arts & Culture**	**Think Downtown**	**Think Economic Development**	**Think Land Use & Housing**	**Think Mobility**	**Think Parks, Recreation & Natural Resources**	**Think Public Services & Infrastructure**

Public Hearing: No

If Approved, Will Document Require Recordation? No

Does This Item Require a Communication Plan?

☐ Public Hearing (Required by GS)
☐ Newspaper Notice (Required by GS)
☐ Public Forum/Input Session
☐ Public Hearing (Not Required by GS)
☐ Newspaper Notice (Not Required by GS)
☒ Press Release

☐ E-News Distribution
☐ Social Media
☐ Special Mailing
☐ Website
☐ Survey
☐ None Required

Summary

2023 YEAR OF THE TRAIL PROCLAMATION

WHEREAS, The Town of Clayton's natural beauty is critical to its residents' quality of life, health, and economic wellbeing; and
WHEREAS, the trails that span across our community are an integral part of the recreational and transportation possibilities of our area and promote an enjoyment of scenic beauty by our residents and our visitors; and
WHEREAS, the parks, greenways, trails and natural areas in our community are welcoming to all and provide a common ground for people of all ages, abilities and backgrounds to access our rich and diverse natural, cultural, and historic resources; and
WHEREAS, The Town of Clayton's natural assets and resources are integral to disaster recovery and resiliency to climate change for future generations; and
WHEREAS, The Town of Clayton's nature trails vary from The Mountains to Sea Trail and East Coast Greenway to mountain bike single-track; and
WHEREAS, trails offer quality-of-life benefits to all as expressions of local community character and pride, as outdoor workshops for science education, as tools for economic revitalization, as free resources for healthy recreation, as accessible alternative transportation, and as sites for social and cultural events; and
WHEREAS, The Town of Clayton is actively working become known a trail town; and
WHEREAS, the North Carolina General Assembly designated 2023 as the Year of the Trail in North Carolina to promote and celebrate the state's extensive network of trails that showcase our state's beauty, vibrancy and culture; and
WHEREAS, North Carolina is known as the "Great Trails State;"
NOW, THEREFORE, I, Mayor Jody McLeod, do hereby proclaim 2023 as "THE YEAR OF THE TRAIL" and May 2023 "The Month of the Trail" in Clayton, North Carolina, and commend its observance to all people.

Background/History

The NC General Assembly has designated 2023 the "Year of the Trail". Clayton is blessed to have many trails including both a State Trail in the Mountains to the Sea Trail and the East Coast Greenway running through our downtown. We are home to some of the region's best mountain biking through our partnership with the Triangle Land Conservancy as well as many hiking trails in parks and other natural areas. Perhaps our greatest asset is the connections these trails provide from our parks to our library and downtown. Few communities in the nation have these and so much more connected by both state and national trails. Clayton trails connect our residents and visitors to where they live, work, and play.

Many communities across the state are seeking a declaration of 2023 as the Year of the Trail. We would like to take it a step further and request that Clayton Town Council additionally declare May 2023, the Month of the Trail. In partnership and cooperation, the Parks, Library, Planning and Economic Development Departments, with support, leadership, and volunteers from their respective advisory boards will shine a bright light on the trails and trail use with events in the month of May. Events will include guided hikes, movies, a 5k and more.

Funding Source

N/A

Cost

N/A

Corresponding Documentation

Year and Month of the Trail - Parks + Recreation

Submitted By: Scott Barnard, Parks + Recreation

Reviewed By:

Rich Cappola, Town Manager	Approved - Jan 30 2023
Heidi Holland, Town Clerk	Approved - Jan 31 2023

2023 YEAR OF THE TRAIL PROCLAMATION

WHEREAS, The Town of Clayton's natural beauty is critical to its residents' quality of life, health, and economic wellbeing; and

WHEREAS, the trails that span across our community are an integral part of the recreational and transportation possibilities of our area and promote an enjoyment of scenic beauty by our residents and our visitors; and

WHEREAS, the parks, greenways, trails and natural areas in our community are welcoming to all and provide a common ground for people of all ages, abilities and backgrounds to access our rich and diverse natural, cultural, and historic resources; and

WHEREAS, The Town of Clayton's natural assets and resources are integral to disaster recovery and resiliency to climate change for future generations; and

WHEREAS, The Town of Clayton's nature trails vary from The Mountains to Sea Trail and East Coast Greenway to mountain bike single-track; and

WHEREAS, trails offer quality-of-life benefits to all as expressions of local community character and pride, as outdoor workshops for science education, as tools for economic revitalization, as free resources for healthy recreation, as accessible alternative transportation, and as sites for social and cultural events; and

WHEREAS, The Town of Clayton is actively working become known a trail town; and

WHEREAS, the North Carolina General Assembly designated 2023 as the Year of the Trail in North Carolina to promote and celebrate the state's extensive network of trails that showcase our state's beauty, vibrancy and culture; and

WHEREAS, North Carolina is known as the "Great Trails State;"

NOW, THEREFORE, I, Mayor Jody McLeod, do hereby proclaim 2023 as "THE YEAR OF THE TRAIL" and May 2023 "The Month of the Trail" in Clayton, North Carolina, and commend its observance to all people.

Duly adopted this the 6th day of February, 2023 while in regular session.

____
Jody L. McLeod
Mayor

ATTEST

____
Heidi L. Holland, CMC, NCCMC
Town Clerk

Town Council Agenda Cover Sheet

Meeting Date
January 17, 2023

Agenda Location
New Business

Item Title
Project Life Dust Economic Development Agreement

Presenter: Patrick Pierce, Economic Development Director
Stan Wendzel, BioRealty

Summary/Description

The proposed Economic Development Agreement would develop a 67.10 acre Town-owned parcel of land at the intersection of Little Creek Church Road and Ranch Rd (NC PIN 166814-42-8880) currently identified as Employment Center in the Town's 2045 Comprehensive Plan.

The developer, BioRealty, would build up to three speculative industrial buildings suited for biopharma and life science users, totaling over 400,000 sq ft at full build out. The developer will purchase at fair market value portions of the parcel in up to three phases. An Economic Development Incentive Grant is included as part of this agreement.

Requested Action
Approval

Funding Source (If Applicable):
General Fund

Cost: N/A **Yes** ☒ **No** ☐

Additional Documents to be Included in Agenda Packet
Economic Development Agreement

Meeting Timeline
Click or tap here to enter text.

ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT (the "**Agreement**") is dated as of _______________, 2022 (the "**Effective Date**"), by and among [___________], a [________] limited liability company ("**Developer**"), and the TOWN OF CLAYTON, NORTH CAROLINA, a municipal corporation of the State of North Carolina (the "**Town**"). Each of Developer and the Town is sometimes referred to herein individually as a "**Party**" and together as the "**Parties**."

RECITALS

A. The Town is the fee simple owner of certain real property comprising approximately 67.10 acres of unimproved land further described as NC PIN 166814-42-8880, Johnston County Tax ID 05H04046H, located at the intersection of Ranch Road and Little Creek Church Road in Clayton, North Carolina, as described on Exhibit A attached hereto (the "**Development Parcel**").

B. The Town has selected the Developer as the exclusive developer of biomanufacturing space at the Development Parcel, and the Developer has agreed to acquire and develop the Development Parcel in multiple phases, and to make certain infrastructure improvements on and around the Development Parcel, and the Town has agreed to provide certain economic incentives and benefits in connection with the development of the Development Parcel, all as more particularly described herein (collectively, the "**Development Project**").

C. The initial phase of the Development Project is the acquisition and development of the portion of the Development Parcel identified as "Site 1" on the preliminary site layout attached hereto as Exhibit B (the "**Preliminary Site Layout**"). Following Developer's acquisition of Site 1, Developer will have the option to acquire and develop "Site 2" and "Site 3", each as shown on the Preliminary Site Layout, in two (2) additional phases, on the same terms and conditions described herein.

D. It is the mutual understanding of the Parties that contemporaneously with the execution of this Agreement, Johnston County, North Carolina ("Johnston County") will include the Development Parcel in its Speculative Building Assistance Program and Developer will enter into an Economic Development Incentive Grant and Qualified Building lease (the "Short-Term Lease") with Johnston County.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as set forth below. The foregoing Recitals are hereby incorporated into and made a substantive part of this Agreement. Attached to this Agreement as Schedule 1 are certain definitions, including many of the capitalized terms used in this Agreement, and rules of construction, the terms of which form part of this Agreement.

PART 1: PRE-DEVELOPMENT REQUIREMENTS

1. **Subdivision of the Property.**

1.1 Subdivision. The Development Parcel will be subdivided (the "**Subdivision**"), substantially in accordance with the Preliminary Site Layout, into three (3) legal lots (each a "**Site**"), to be designated on the Final Subdivision Plat and referred to herein as "**Site 1**", "**Site 2**" and "**Site 3**".

1.2 Subdivision Process. The Parties have approved the Preliminary Site Layout. Developer shall be responsible, at Developer's sole cost and expense, for pursuing and obtaining all required governmental approvals for the Subdivision of the Development Parcel substantially in accordance with the Preliminary Site Layout. Any material changes to the Preliminary Site Layout shall require the approval of the Parties, which approval shall not be unreasonably withheld, conditioned or delayed. The Parties shall reasonably cooperate with Developer's efforts to pursue and obtain all required governmental approvals for the Subdivision of the Development Parcel, including making any required changes to the subdivision application, and preparing and approving any exhibits or additional plans required in connection with the subdivision application. The Town, as owner of the Development Parcel, shall sign and submit the final subdivision application that has been approved by all Parties. The final approved subdivision plat for the Subdivision of the Development Parcel is referred to herein as the "**Final Subdivision Plat**."

1.3 Subdivided Parcels. Upon completion of the Subdivision (as evidenced by recordation of the Final Subdivision Plat), "Site 1" shall mean and refer to Site 1 as shown on the Final Subdivision Plat; "Site 2" shall mean and refer to Site 2 as shown on the Final Subdivision Plat; and "Site 3" shall mean and refer to Site 3 as shown on the Final Subdivision Plat.

1.4 Alternative Division Process**.** Upon mutual agreement between Parties, the Town may pursue alternative methods to divide the property into the three sites as described above, such as an Exempt Plat. The Developer would then only need to submit an easement and utility plat prior to building permit submittal.

2. **Economic Development Incentive Grant**. The Town agrees to provide to Developer an Economic Development Incentive Grant as described in this Section (the "**Town EDIG**"). The Town EDIG will apply separately to each Site and will be calculated separately for each Site.

2.1 Grant Funds. The amount of the Town EDIG will be equal to fifty percent (50%) of (a) the Town's portion of the ad valorem property taxes (including land, improvements, outbuildings and/or extra features, and personal property) (the "Ad Valorem Taxes") for each Site upon completion of the development contemplated by this Agreement on the Site, less (b) the Town's portion of the pre-construction Ad Valorem Taxes attributable to the Site (each as determined by the Johnston County Tax Administrator using uniform appraisal and assessment standards pursuant to Chapter 105, Article 13 of the North Carolina General Statutes). The calculation of the Grant Funds shall not be based upon any portion of Ad Valorem Taxes paid which represent (i) interest or penalties, (ii) fire, insurance or service district ad valorem taxes, (iii) or any other charge, fee or assessment other than the Town's primary general revenue ad valorem property tax.

2.2 Term of Grant. The term of the Town EDIG shall be_for a period of seven (7) years from the date of completion of a Qualified Building on each Site as it pertains to that particular Site as more particularly described below:

2.2.1 The term for the Site 1 grant shall run for seven (7) years from the date of the completion of a Qualified Building on Site 1.

2.2.2 The term for the Site 2 grant shall run for seven (7) years from the date of the completion of a Qualified Building on Site 2.

2.2.3 The term for the Site 3 grant shall run for seven (7) years from the date of the completion of a Qualified Building on Site 3.

2.3 Valuation of Site. The post-construction tax value of a Site shall be determined on January 1 following the issuance of a Certificate of Occupancy for a Qualified Building on the Site.

2.4 Developer Obligations.

2.4.1 Developer shall comply with all terms and conditions of this Agreement including all development requirements for the Development Parcel and the Pump Station as further defined herein.

2.4.2 Developer shall comply with all laws, rules, regulations, and requirements including (without limitation) all Federal, State, and local laws and regulations, North Carolina and local building codes, regulations and ordinances, all State and Federal Environmental regulations and codes.

2.4.3 Developer shall submit evidence of the completion of a Qualified Building on each Site prior to any disbursement of Grant Funds.

2.4.4 Developer agrees for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, national origin, religion, sex, marital status or ancestry, in the use of the Grant funds.

2.4.5 Developer shall pay all Town and County Ad Valorem Taxes, assessments, special assessments or other property taxes, fees and costs as assessed by the Town and/or County when due.

2.5 Disbursement of Grant Funds. The Town EDIG is a reimbursement grant which will be paid upon confirmation of payment of Ad Valorem Taxes as described herein and confirmation of compliances with the terms and conditions of this Agreement.

2.5.1 Developer shall submit to Town in writing evidence of payment of the Ad Valorem Taxes and a request for disbursement of Grant Funds. Developer shall submit back-up/supporting documentation for all Grant Funds requested, in form and content satisfactory to Grantor and as Grantor may request, for Grantor to review and approve prior to disbursement.

2.5.2 Town shall have thirty (30) days from the date of the request for disbursement of Grant Funds to review all submitted documentation and to process payment to Developer.

2.6 Default. If Developer is in Default under this Agreement, the Town EDIG shall terminate immediately and the Town shall have no further obligation to make payments to Developer under the Town EDIG. If such Default is cured by Developer in accordance with this Agreement, the Town EDIG shall be reinstated, and all obligations of the Town and Developer shall continue as of the date of the cure.

2.7 No Assignment; Non-transferable. In no event shall the Town EDIG be assigned or transferred from Developer to a third party or entity. The Town shall have no obligation to make the payments contemplated herein to any party other than Developer.

PART 2: PURCHASE AND SALE OF THE PROPERTY

3. **Purchase and Sale.** Developer hereby agrees to purchase from the Town, and the Town agrees to sell to Developer, fee simple title to "Site 1", as shown on the Preliminary Site Layout (the "**Property**"), on the terms and conditions set forth herein and subject to the deed covenants in Exhibit C attached hereto and incorporated here in ("Deed Covenants"). Upon completion of the Subdivision, the legal description of the Property will be automatically replaced with the legal description of Site 1 as shown on the Final Subdivision Plat for all purposes under this Agreement. The "Property" includes all buildings and other structures and improvements located on Site 1, if any, and all Other Rights and Interests (as defined on Schedule 1) appurtenant thereto. For purposes of this Agreement, the terms and provisions of this Agreement related to the purchase and sale of the Property, and the rights and obligations of the Parties related to the purchase and sale of the Property, are referred to herein as the "**Purchase Agreement**."

4. **Purchase Price.** The Purchase Price ("**Purchase Price**") for the Property shall be THIRTY-ONE THOUSAND FIVE HUNDRED DOLLARS ($31,500) PER ACRE, to be calculated based on the acreage shown on the Final Subdivision Plat, subject to the adjustments, prorations and credits hereinafter provided, paid as follows:

4.1 Deposit. The "**Deposit**" shall comprise the Initial Deposit and the Additional Deposit, and any portion thereof that is held by the Escrow Agent from time to time.

4.1.1 Within three (3) Business Days following the Effective Date, Developer shall deliver TEN THOUSAND DOLLARS ($10,000) (the "**Initial Deposit**") to the Escrow Agent to be held as an earnest money deposit under this Agreement.

4.1.2 Within three (3) Business Days following delivery of a Closing Election Notice pursuant to Section 5.3 below, Developer shall deliver an additional TEN THOUSAND DOLLARS ($10,000) (the "**Additional Deposit**") to the Escrow Agent to be held as an additional earnest money deposit under this Agreement.

The Deposit, and any portion thereof, shall be held in escrow pursuant to a separate escrow agreement, and disbursed in accordance with the terms hereof. All interest earned on the Deposit shall be deemed to be part of the Deposit and shall accrue to the benefit of Developer and shall be either applied to the Purchase Price or refunded to Developer, unless the Deposit becomes payable to the Town pursuant to Section 111, in which event the interest earned on the Deposit shall accrue to the benefit of the Town.

4.2 Payment at Closing. At the consummation of the purchase and sale transaction as contemplated by Section 3 above (the "**Closing**"), Developer shall pay the Purchase Price, by wire transfer in immediately available funds, less the applicable Deposit and subject to adjustments and apportionments as set forth herein.

5. **Developer's Due Diligence; Termination Right.**

5.1 Delivery of Documents. Within five (5) Business Days after the Effective Date of this Agreement, the Town shall deliver to Developer complete copies of all documents and materials in the Town's possession and control regarding the ownership, use, condition, legal status, maintenance and operation of the Property (collectively, "**Due Diligence Materials**"), including without limitation (a) a preliminary title report for the Property, (b) the Town's most recent environmental site assessment for the Property and (b) the items listed on Schedule 5.1 attached hereto, to the extent they are in the Town's possession or control and are applicable to the Property. If any such materials come into the possession or control of Town after the initial delivery of the Due Diligence Materials, the Town shall promptly deliver such materials to Developer. Upon delivery of the Due Diligence Materials, the Town shall provide a written certification that it has complied with the requirements of this Section 5.1 (the "**Due Diligence Certificate**").

5.2 Pre-Closing Access. At any time while this Agreement is in effect, Developer, its agents, contractors, and representatives may enter upon the Development Parcel to perform inspections and tests of the Development Parcel, including surveys and environmental studies. Before entering upon the Development Parcel, Developer shall require that any contractor or agent entering the Property on behalf of Developer carries commercial general liability insurance coverage in an amount not less than $1,000,000 for damage or injury to persons or property caused by the activities of such entrant on the Development Parcel, which insurance coverage shall include the Town as an additional insured. Unless otherwise agreed upon, Developer shall repair any damage to the Development Parcel caused by any such tests or investigations, and indemnify, defend and hold the Town harmless from any and all liabilities, claims, costs and expenses resulting therefrom as well as from any and all costs, expenses, losses, claims or liabilities incurred by the Town as the result of the entry upon the Property by Developer or Developer's agents, contractors, or representatives pursuant to this Section. Notwithstanding anything to the contrary in this Agreement, such obligation to indemnify and hold the Town harmless shall survive Closing or any termination of this Agreement. Notwithstanding anything to the contrary contained herein, Developer will have no liability or responsibility or indemnity obligations for environmental damage or liability caused by Developer's discovery of an existing condition at the Development Parcel.

5.3 Due Diligence Period; Termination Right. The term "**Due Diligence Period**," as used herein, shall mean the period beginning on the later to occur of (a) the Effective Date or (b) the date of the Due Diligence Certificate, and ending at 11:59 p.m. Eastern Time on the date that is ninety (90) days after such date. Unless Developer, by written notice to the Town delivered prior to the expiration of the Due Diligence Period, affirmatively elects to waive the Due Diligence Period and to proceed to the Closing on the Property (the "**Closing Election Notice**"), then the Purchase Agreement shall be terminated as of the expiration of the Due Diligence Period (except those provisions that expressly survive termination), whereupon the Deposit shall be promptly returned to Developer by Escrow Agent. If Developer delivers a Closing Election Notice, the contingency provided for in this Section 5.3 no longer shall be applicable, and the Purchase Agreement shall continue in full force and effect.

5.4 Extension of Due Diligence Period. Notwithstanding the foregoing, if the Subdivision Condition and the Rezoning Condition (each as defined below) have not been satisfied by the scheduled expiration of the Due Diligence Period, then the Due Diligence Period shall be automatically extended until the date that is three (3) Business Days after the satisfaction of the Subdivision Condition and the Rezoning Condition, whichever is later.

In addition, the Due Diligence Period shall be automatically extended on a day-for-day basis for any period in which a force majeure event or the actions or inactions of the Town or their respective agents, contractors or employees delay, interfere with or prevent Developer from undertaking its due diligence investigations, provided that Developer provides written notice of any such delay at least five (5) days prior to the expiration of the Due Diligence Period, which notice shall specify the number of days of delay.

6. **<u>Title and Survey</u>.**

6.1 <u>Developer's Title Review</u>. Developer may obtain, at its sole cost and expense, (a) a title insurance commitment for the Property (the "**Title Commitment**") to be issued to Developer by a title insurance company selected by Developer in its sole discretion (the "**Title Company**") and (b) an ALTA/NSPS Land Title Survey of the Property (the "**Survey**"). Developer shall, promptly upon receipt, provide copies of the Title Commitment and Survey to the Town. Developer shall have until the date that is forty-five (45) days after the Effective Date to approve or disapprove matters disclosed in the Title Commitment or Survey and to give written notice ("**Developer's Title Notice**") to the Town of any disapproval thereof, such disapproval to be in Developer's sole discretion, indicating in reasonable detail the nature and reasons for Developer's objection. Failure to give timely notice of disapproval in a Developer's Title Notice shall constitute Developer's approval of all such matters disclosed in the Title Commitment and the Survey.

6.2 <u>Town's Cure</u>. If Developer delivers a Developer's Title Notice, the Town may elect (but shall have no obligation) to attempt to cure any disapproved matter. Within ten (10) Business Days after receiving Developer's Title Notice (the "**Town's Title Response Period**"), the Town shall notify Developer if the Town intends to attempt to effectuate such cure. Any such cure must be reasonably satisfactory to Developer and the Title Company, and completion of the cure shall be a condition to Developer's obligation to proceed to the Closing on the Property. If prior to the expiration of the Town's Title Response Period, Town fails to give such notice of its intention to attempt to effectuate such cure, or declines to cure any such matter, or if such proposed cure is not reasonably satisfactory to Developer and the Title Company, then within ten (10) Business Days after the expiration of the Town's Title Response Period, Developer may terminate the Purchase Agreement by notice to the Town, in which case the Deposit shall be promptly returned to Developer by Escrow Agent. If the Town declines to cure any matter or fails to respond to Developer's Title Notice, and Developer does not terminate this Agreement within ten (10) Business Days after the expiration of the Town's Title Response Period, then Developer shall be deemed to have waived objection to any such Title Commitment or Survey matter and agreed to accept title subject thereto, without reduction in the Purchase Price.

6.3 <u>Permitted Exceptions</u>. Any matters appearing in the Title Commitment or the Survey for the Property that are not timely objected to by Developer in a Developer's Title Notice pursuant this <u>Section 6</u>, or for which objection is subsequently waived (or deemed waived) by Developer, shall be "**Permitted Exceptions**". Notwithstanding anything to the contrary in this <u>Section 6</u>, the Town shall be obligated to remove, before or at Closing, all Liens on the Property, including without limitation, deeds of trust, mortgages, financing statements, mechanics' liens, tax liens, judgments or other monetary obligations encumbering the Property (other than the lien for ad valorem property taxes not yet delinquent), and Developer shall have no obligation hereunder to object to such items in order to obligate the Town to remove such items.

6.4 <u>Additional Title Defects</u>. Regardless of whether Developer shall have delivered a Developer's Title Notice under the foregoing provisions of this Agreement, Developer may at or before Closing further notify the Town in writing of any defects in title arising between the effective date of the Title Commitment and the Closing Date (an "**Additional Developer's Title Notice**"). For any title or survey matters set forth in an Additional Developer's Title Notice, the Town shall have the same obligations and Developer shall have the same rights as those that apply to matters raised in a Developer's Title Notice, as described in <u>Section 6.2</u> above. The Town shall not, so long as this Agreement remains in effect, alter or encumber in any way the Town's title to the Property. Developer, however, shall have the right at any time to waive any objections to the status of title and thereby to preserve this Agreement in effect.

7. **Conditions Precedent to Closing.**

7.1 Conditions Precedent to Developer's Obligations. Notwithstanding anything to the contrary contained herein, Developer's obligations to proceed to the Closing on the Property is expressly conditioned on the satisfaction at or before the time of Closing hereunder, or at or before such earlier time as may be expressly stated below, of each of the following conditions (any one or more of which may be waived in writing in whole or in part by Developer, at Developer's option):

7.1.1 Developer's Investment Committee. Developer's Investment Committee shall have approved the acquisition of the Property by during the Due Diligence Period, provided that Developer's delivery of a Closing Election Notice shall indicate such approval.

7.1.2 Final Subdivision. The Final Subdivision Plat shall have been approved by the Parties and all required governmental authorities, and all applicable appeal periods with regard to such approval shall have expired, and the Final Subdivision Plat shall have been recorded with the Johnston County Register of Deeds (the "**Subdivision Condition**").

7.1.3 Zoning Change. The Development Parcel shall have been rezoned from the current R-E zoning to I-1 Light Industrial or similar zoning if zoning titles change (the "**Rezoning**"), and the Rezoning shall have been approved by all required governmental authorities, and all applicable appeal periods with regard to such approval shall have expired (the "**Rezoning Condition**").

7.1.4 Site Plan Approval. Developer shall have received final approval of Developer's site plan for the development of the Property, and all applicable appeal periods with regard to such approval shall have expired (the "**Site Plan Approval Condition**").

7.1.5 Cure of Title Matters. Any title or survey defects that that the Town shall have elected to cure pursuant to Section 6.2 above shall be cured prior to or at the Closing.

7.1.6 Accuracy of Representations. All of the representations and warranties of the Town contained in this Agreement shall have been true and correct in all material respects when made, and shall be true and correct in all material respects on the date of Closing with the same effect as if made on and as of such date.

7.1.7 Performance. The Town shall have performed, observed and complied with all material covenants, agreements and conditions required by this Agreement to be performed, observed and complied with on its part prior to or as of Closing hereunder.

7.1.8 Condition of the Property. The condition of the Property must be substantially the same as the condition of the Property at the Effective Date (subject to the provisions of Section 12).

7.1.9 Title. Title to the Property shall be in the condition required under Section 6 herein, and not subject to any encumbrances other than the Permitted Exceptions.

7.2 Failure of Conditions. If all of the foregoing conditions precedent to Developer's obligations set forth in Section 7.1 are not satisfied by the Closing Date, then Developer, in its sole discretion, shall have the option, exercisable by written notice to Town at or prior to Closing Date, of (a) waiving any unsatisfied condition precedent, with no deduction from or adjustment of the Purchase Price, or (b) declining to proceed to Closing. In the latter event, except as expressly set forth herein, the Deposit shall be promptly returned to Developer and all obligations, liabilities and rights of the Parties under the Purchase Agreement shall terminate, except those that expressly survive termination.

8. **Operation of Property and Pre-Closing Activities.**

8.1 Operations. During the term of this Agreement, the Town shall hold, operate and maintain the Development Parcel in the ordinary course of business and in a manner generally consistent with the manner in which Town has held the Development Parcel prior to the date hereof, and Town shall not create, cause or allow any Liens or encumbrances on the Development Parcel.

8.2 Leases. During the term of this Agreement, Town shall not enter into any Leases for all or any portion of the Development Parcel.

8.3 Sales Discussions. During the term of this Agreement, Town will not market the Property or the Development Parcel or any portion thereof, with or without a broker, for sale or lease to any purchaser other than the Developer, nor solicit any offers or enter into any discussions to sell or lease or sublease the Property or the Development Parcel or any portion thereof, nor accept any offers to sell or lease the Property or the Development Parcel or any portion thereof.

8.4 Alterations. During the term of this Agreement, except for repairs in the ordinary course of business, and the Town Infrastructure Improvements described herein, the Town will not make any material alterations to the Property or the Development Parcel without the prior written consent of Developer.

8.5 Cooperation. During the term of this Agreement, the Town will cooperate with Developer to obtain all required permits and approvals for Developer's acquisition and development of the Property.

9. **Closing.**

9.1 Closing Date. The closing of the purchase and sale of the Property (the "**Closing**") shall occur on the date that is thirty (30) days after the later to occur of (a) Developer's delivery of the Closing Election Notice, or (b) satisfaction of the Site Plan Approval Condition for the Property, or such earlier date as the Town and Developer may mutually agree (the "**Closing Date**"); provided, however, that under no circumstances shall Closing Date occur more than thirty six (36) months after the Effective Date (the "**Outside Closing Date**"). The occurrence of the Closing shall be subject to the satisfaction or waiver of all of Developer's conditions precedent to Closing as set forth in Section 7.1. Unless the Town and Developer elect otherwise, the Closing shall be an escrow closing, with the Town and Developer depositing all closing funds and documents in escrow with the Title Company for disbursement and distribution once all the Town and Developer agree that the conditions to Closing have been satisfied.

9.2 Town's Closing Deliveries. The Town shall deliver or cause to be delivered to Developer, on or before the Closing Date, the following instruments and documents with respect to the Property, duly executed and acknowledged by the Town to the extent required, the delivery of each of which shall be a condition to Closing:

(a) A Special Warranty Deed ("**Deed**"), substantially in the form attached hereto as Exhibit D, conveying fee simple title in the Property subject only to the Permitted Encumbrances and Deed Covenants and Restrictions;

(b) Customary title affidavits and indemnities as may be reasonably required by the Title Company to delete the standard exceptions from the Title Commitment (other than those related to the Survey) and to allow the Title Company to issue a title insurance policy with an effective date as of the Closing Date;

(c) A closing settlement statement ("**Settlement Statement**");

(d) Any and all other documents, certificates or affidavits as Developer or Title Company may reasonably require to consummate the transactions contemplated by this Agreement.

9.3 Developer's Closing Deliveries. Developer shall deliver or cause to be delivered to Town, on or before the Closing Date, duly executed and acknowledged by Developer to the extent required, the following instruments and documents, the delivery of each of which shall be a condition to Closing:

(a) The balance of the Purchase Price, less the Deposit, and subject to apportionments, credits and adjustments as provided in this Agreement;

(b) Such affidavits and other assurances, including proof of Developer's organization, good standing, and authorization to enter into this transaction as may be required by the Title Company; and

(c) The Settlement Statement; and

(d) Any and all other documents, certificates or affidavits as the Town or Title Company may reasonably require to consummate the transactions contemplated by this Agreement.

10. **Adjustments, Allocations and Prorations.**

10.1 Transaction Expenses.

10.1.1 Each Party will pay all its own expenses incurred in connection with this Agreement and the transactions contemplated hereby, including, without limitation, (a) all costs and expenses stated herein to be borne by a Party, (b) all costs related to inspections, physical examinations, and other due diligence matters, and (c) all of their respective accounting, legal and appraisal fees.

10.1.2 Developer, in addition to its other expenses, shall pay at Closing, (a) the cost of the Survey, (b) title insurance premiums and costs, (c) the fees, costs and expenses of the Escrow Agent, if any, and (d) any deed excise tax payable on the recording of the Deed and the transfer of the Property.

10.1.3 The Town, in addition to its other expenses, shall pay at Closing (a) all recording fees incident to the recording of the Deed for the Property; (b) all recording fees and taxes incident to the recording of any instruments to discharge or remove encumbrances required to be removed by the terms hereof; and (c) any transfer taxes payable on the recording of the Deed and the transfer of the Property.

10.2 Apportionments. All items of income and expense with respect to the Property shall be prorated on a per diem basis as of the Closing Date, including all real estate taxes, charges and assessments affecting the Property. Utilities, including water, sewer, electric and gas, shall be prorated based upon the last reading of meters prior to the Closing. The Town shall endeavor to obtain meter readings on the day before the Closing Date, and if such readings are obtained, there shall be no proration of such items. Town shall pay at Closing the bills therefor for the period ending on the day preceding the Closing Date, and Developer shall pay the bills therefor for the period subsequent thereto.

11. **Acquisition Default and Remedies.**

11.1 Developer's Default. If Developer fails to perform its obligations under this Agreement with respect to the acquisition of the Property, or breaches any of its covenants, conditions or agreements under this Agreement with respect to the acquisition of the Property (a "**Developer Acquisition Default**"), then as the Town's sole and exclusive remedy for such default, the Town shall be entitled to terminate the Purchase Agreement by written notice to Developer and retain the Deposit, plus all interest earned thereon, as liquidated damages (and not as a penalty) in lieu of, and as full compensation for, all other rights or claims of Town against Developer by reason of such Developer Acquisition Default. Thereupon the Purchase Agreement shall terminate and the parties shall be relieved of all further obligations and liabilities under the Purchase Agreement, except as expressly set forth herein. Developer and Town acknowledge and agree that actual damages in the event of a Developer Acquisition Default would be difficult or impossible to determine, and that the Deposit represents a reasonable estimate of such damages. Notwithstanding the foregoing, in addition to the foregoing remedies, if Developer (i) intentionally or willfully breaches the terms of this Agreement related to the sale of the Property in a manner that interferes with Town's exercise of its remedies under the Purchase Agreement (ii) commits fraud or makes an intentional material misrepresentation with respect to the Property or the sale of the Property as contemplated by this Agreement, (iii) intentionally or willfully refuses to Close when all conditions to Closing have been satisfied, then Town shall have all rights and remedies available at law or equity, including the right to seek monetary damages but not to exceed the transaction costs actually incurred in entering into and pursuing this Agreement.

11.2 Town's Default. If the Town fails to perform its obligations under this Agreement with respect to the sale of the Property in accordance with the terms of this Agreement, or breaches any of its covenants, conditions or agreements under this Agreement with respect to the sale of the Property (a "**Town Acquisition Default**"), Developer shall have the right, as Developer's sole remedy, to (a) obtain specific performance of its right to acquire the Property pursuant to the Purchase Agreement, or (b) terminate the Purchase Agreement by written notice to the Town, in which event the Deposit shall be promptly returned to Developer, and thereafter no Party shall have any further rights, liabilities or obligations hereunder except as otherwise expressly provided herein. Notwithstanding the foregoing, in addition to the foregoing remedies, if Town (i) intentionally or willfully breaches the terms of this Agreement related to the sale of the Property in a manner that interferes with Developer's exercise of its remedies under the Purchase Agreement (including any actions that make the remedy of specific performance unavailable to Developer), (ii) commits fraud or makes an intentional material misrepresentation with respect to the Property or the sale of the Property as contemplated by this Agreement, (iii) intentionally or willfully refuses to deliver the Deed when all conditions to Closing have been satisfied, then Developer shall have all rights and remedies available at law or equity, including the right to seek monetary damages but not to exceed the transaction costs actually incurred in entering into and pursuing this Agreement.

12. **<u>Damage or Destruction; Condemnation; Insurance</u>.**

12.1 <u>Major Casualty Event</u>. If at any time prior to the date of Closing (a) there is damage or destruction to the Property by fire or other casualty that would cost in excess of Five Hundred Thousand Dollars ($500,000) to repair, or (b) all or any material portion of the Property is condemned or taken by eminent domain proceedings by any public authority (each of the foregoing a "**Major Casualty Event**"), then, at Developer's option, the Purchase Agreement shall terminate upon written notice from Developer to the Town delivered within the earlier of thirty (30) days after such Major Casualty Event or prior to the Closing, and the Deposit shall be returned to Developer, and except as expressly set forth herein, neither Party shall have any further liability or obligation to the other hereunder. In the event that the Major Casualty Event occurs within thirty (30) days of the Closing, the Closing Date shall be extended to a date that is thirty (30) days after the Major Casualty Event.

12.2 <u>Other Casualty Events</u>. If there is a casualty or condemnation event affecting the Property during the term of this Agreement that is not a Major Casualty Event, then Developer shall have no right to terminate the Purchase Agreement on account of such event, but at the Town's discretion either (a) the Town shall restore any such damage to substantially the condition that existed as of the Effective Date, or (b) Developer shall be entitled to the payments and assignments set forth in the following paragraph.

12.3 <u>Assignment of Proceeds</u>. If there is any damage or destruction or condemnation or taking for which Developer is not entitled to terminate the Purchase Agreement, or in the event of a Major Casualty Event following which Developer elects not to terminate the Purchase Agreement, then (a) in the case of a taking, all condemnation proceeds paid or payable to the Town, and all rights thereto, shall belong to Developer and shall be paid over and assigned to Developer at Closing; and (b) in the case of a casualty, Town shall assign to Developer all rights to any insurance proceeds paid or payable under the applicable insurance policies, less any costs of collection and any sums expended in restoration, and shall pay the deductible to Developer at the Closing.

<u>PART 3: DEVELOPMENT OF THE PROPERTY</u>

13. **<u>Development of Infrastructure Improvements</u>.**

13.1 <u>Town's Infrastructure Improvements</u>. Subject to Closing, the Town shall be responsible for completing the following infrastructure improvements (the "**Town Infrastructure Improvements**") at its sole cost and expense:

13.1.1 Road improvements consistent with the NCDOT Ranch Road Extension (U-6223), as shown on <u>Exhibit E-1</u> attached hereto (the "**Infrastructure Plan**") but excluding the scope of work that is included in the "Developer Road Improvements" described below.

13.1.2 Extension of electrical service to the Development Parcel, unless a) Developer notifies the Town that the Town will not be the electrical service provider to the Development Parcel, or b) the Town is found not to have the right to serve the site as it is within the territory of another services provider.

13.1.3 Landscaping and structuring of the entryway for the Development Parcel, including the construction of two (2) monument signs at the entryway to the Development Parcel, as shown on the Infrastructure Plan.

13.2 Developer's Infrastructure Improvements. Subject to Closing, the Developer shall be responsible for completing the following infrastructure improvements (the "**Developer Infrastructure Improvements**") at its sole cost and expense:

13.2.1 Construction of a new sanitary sewer pump station and associated infrastructure serving the Development Parcel as shown on the Infrastructure Plan, and according to the specifications set forth on the Infrastructure Plan (the "**Pump Station**"). The Pump Station shall be constructed on property owned by the Town, as more particularly identified as a portion of NC PIN 166800-41-7347, Johnston County Parcel ID 05E99020X (the "Pump Station Parcel"). The Pump Station Parcel is outside of the Development Parcel and shall be subdivided by the Town prior to the commencement of construction of the Pump Station. Associated infrastructure, at a minimum, shall include a 8" public gravity sewer extension along the entire eastern property line of the Development Parcel, parallel to the stream, a downstream force main, associated infrastructure to provide a connection between the Pump Station and the existing Little Creek Wastewater Reclamation Facility and all required underlying public utility easements. The Pump Station and associated infrastructure shall be designed to accommodate future expansion to meet the demand of the overall drainage basin and meet the requirements set forth by the Town's Manual of Standards, Specifications, and Design at time of permitting in accordance with the Technical Memorandum dated August 7, 2020 and attached hereto as Exhibit E-2.

13.2.2 Road improvements to the portions of Little Creek Church Road and Ranch Road adjacent to the Development Parcel, as shown on the Infrastructure Plan (the "**Developer Road Improvements**").

13.3 Phasing of Infrastructure Improvements. The Town Infrastructure Improvements and the Developer Infrastructure Improvements will be performed in phases according to the schedule attached hereto as Exhibit E-3 (the "**Infrastructure Schedule**"). During the Due Diligence Period with respect to Site 1, Developer shall be responsible for verifying the construction costs of the Developer Infrastructure Improvements, including (i) performing all required engineering studies and preparing construction plans for the Developer Infrastructure Improvements; (ii) preparing bid packages and soliciting bids from qualified contractors; and (iii) negotiating construction contracts for the completion of the Developer Infrastructure Improvements; provided, however, that Developer shall only be required to commence construction of the Developer Infrastructure Improvements in accordance with the Infrastructure Schedule. Developer shall be solely responsible for planning, designing, financing, and constructing the Developer Infrastructure Improvements.

13.4 Construction of Developer Infrastructure Improvements. Developer agrees to plan, design, permit and construct the Developer Infrastructure Improvements as long as this Agreement remains in effect. If this Agreement is terminated for any reason, then Developer shall have no further obligation with respect to the Developer Infrastructure Improvements. Upon completion, the Developer Infrastructure Improvements will be dedicated to the appropriate public entity as directed by the Town and will thereafter be owned and maintained by said public entity. As long as this Agreement remains in effect, Developer will pay all expenses required to plan, design, permit and construct the Developer Infrastructure Improvements, including without limitation legal fees, engineering and design costs, permitting expenses, and construction costs and overhead (all costs incurred by Developer in connection with performing the Developer Infrastructure Improvements are referred to herein as the "**Developer Infrastructure Expenses**"). If this Agreement is terminated for any reason, Developer shall pay all Developer Infrastructure Expense incurred through the date of termination of the Agreement.

14. **Development of Buildings.**

14.1 Defined Terms.

14.1.1 A "**Qualified Building**" shall mean a biomanufacturing building shell constructed on a Site that satisfies the requirements set forth on Exhibit F attached hereto.

14.1.1 A "**Qualified Disposition** shall mean (i) a Qualified Lease of a Building; (ii) a fee simple conveyance of a Building and Site to an unaffiliated third-party buyer; (iii) a fee simple conveyance of a Site to an unaffiliated third-party buyer; or (iv) a ground lease of a Site to an unaffiliated third-party ground lessee.

14.1.2 A "**Qualified Disposition Agreement**" shall mean (i) a Qualified Lease of a Building; (ii) a purchase and sale agreement for the fee simple conveyance of a Building and Site to a unaffiliated third-party buyer; (iii) a purchase and sale agreement for the fee simple conveyance of a Site to a unaffiliated third-party buyer; or (iv) a ground lease of a Site to an unaffiliated third-party ground lessee. A Qualified Disposition Agreement shall be considered effective only when (a) it has been fully executed by all parties thereto; and (b) any "due diligence" or "option" period that provides for a discretionary termination right has expired or been waived.

14.1.3 A "**Qualified Lease**" shall mean a lease of all the rentable space of a Qualified Building, but excluding a lease entered into under the Johnston County Speculative Building Assistance Program.

14.2 Construction. Following Developer's acquisition of a Site, Developer shall be responsible for constructing a Qualified Building at the Site at Developer's sole cost and expense. Except as expressly set forth herein, Developer shall be solely responsible for planning, designing, financing, constructing and operating a Qualified Building at the Site. Construction of the Qualified Building shall commence within thirty (30) days following the later to occur of (a) the Closing on the Site, or (b) Developer's receipt of a building permit and all other required permits and approvals for construction of the Qualified Building.

14.3 Utilities. Developer shall be responsible, at Developer's sole cost and expense, for the provision of all utility services to each Site that is developed by Developer, with the exception of electrical service that is provided by the Town pursuant to Section 13.1.2 above.

15. **Marketing of the Development Parcel.**

15.1 Town Marketing Responsibilities. The Town, at its sole cost and expense, will lead the marketing efforts for the Development Parcel, and will provide a quarterly update on marketing efforts to Developer and Johnston County.

15.2 Developer Marketing Responsibilities. Developer, at its sole cost and expense, will lead and coordinate all communication efforts with prospective and existing users of a Qualified Building. Developer will cooperate and coordinate with the Town on all marketing efforts.

16. **Default and Remedies.**

16.1 Default by Developer. If Developer defaults in its performance of any obligation under this Agreement (excluding any Developer Acquisition Default) and such default continues for a period of sixty (60) days after written notice from the Town (which cure period shall be extended with respect to any default that is not reasonably susceptible to cure within such 60-day period, provided that Developer has commenced its cure within such 60-day period and is diligently pursuing completion), then the Town may, as its sole and exclusive remedy hereunder, terminate this Agreement, and/or pursue any other remedies available at law or equity.

16.2 Default by Town. If the Town defaults in its performance of any obligation under this Agreement (excluding any Town Acquisition Default) and such default continues for a period of sixty (60) days after written notice from the Developer (which cure period shall be extended with respect to any default that is not reasonably susceptible to cure within such 60-day period, provided that the party in default has commenced its cure within such 60-day period and is diligently pursuing completion), then Developer may terminate this Agreement, and/or pursue any other remedies available at law or equity.

PART 4: ACQUISITION AND DEVELOPMENT OF ADDITIONAL PHASES

17. Option to Acquire Site 2 and Site 3.

17.1 Grant of Option. The Town hereby grants to Developer the exclusive right and option (the "**Option**") to acquire and develop Site 2 and Site 3 (each an "**Option Parcel**"), on the terms and conditions set forth herein.

17.2 Option Period. The "**Option Period**" shall be (a) with respect to Site 2, a period of ninety (90) days after the closing of a Qualified Disposition for Site 1; and (b) with respect to Site 3, a period of ninety (90) days after the closing of a Qualified Disposition for Site 2. Developer may exercise the Option with respect to an Option Parcel only by delivering written notice of Developer's exercise of the Option (the "**Option Exercise Notice**") during the applicable Option Period. Notwithstanding the foregoing, Developer may elect to accelerate the Option Period with respect to either or both of Site 2 and/or Site 3 at any time by providing written notice to the Town that Developer elects to waive the requirement of a closing of a Qualified Disposition with respect to either or both of Site 2 and/or Site 3, in which case the Option Period for the applicable Site or Sites shall begin upon delivery of such written notice.

17.3 Terms and Conditions of Option. Developer's acquisition of an Option Parcel pursuant to the Option shall be on the same terms and conditions as Developer's acquisition of Site 1, including the Purchase Price (calculated on the same per-acre basis), the Deposit, the Due Diligence Period and the Closing Election Notice, the conditions to Closing, and all other terms and conditions of Part 2 of this Agreement, as though the applicable Option Parcel were the "Property" for all purposes thereunder, and the date of the Option Exercise Notice were the "Effective Date" for all purposes thereunder.

17.4 Development Obligations. If Developer acquires an Option Parcel pursuant to the Option, then the requirements of Section 14 regarding the development of a Qualified Building shall apply to the Option Parcel as though the applicable Option Parcel were the "Property" for all purposes thereunder.

17.5 Termination of Option. If Developer fails to provide the Option Exercise Notice during the Option Period for Site 2, then the Option shall be terminated for Site 2 and Site 3 and the parties shall execute a termination of option to be recorded in the Johnston County Register of Deeds. If Developer fails to provide an Option Exercise Notice during the Option Period for Site 3, then the Option shall terminate for Site 3 and the parties shall execute a termination of option to be recorded in the

Johnston County Register of Deeds. The Option shall be terminated with respect to all Option Parcels eighty-one (81) months from the Effective Date of this Agreement.

17.6 Memorandum of Option. Developer may record a memorandum of the Option in the form attached hereto as Exhibit G. The Town agrees to cooperate in the execution of such memorandum of Option.

PART 5: REPRESENTATIONS AND WARRANTIES

18. **Representations and Warranties.**

18.1 Representations and Warranties of the Town. In addition to any other representations and warranties of the Town set forth herein, the following constitute representations and warranties of the Town. The following representations and warranties are made as of the date hereof, and shall be true, correct and complete in all material respects as of the Closing Date with respect to each Site:

18.1.1 Authority. This Agreement and all agreements, instruments and documents herein provided to be executed by the Town are, and on the Closing Date will be, duly authorized, executed and delivered by and binding upon the Town. The Town has the authority to enter into this Agreement and consummate the transactions herein provided without the consent or joinder of any other party.

18.1.2 Enforceability. This Agreement is, and all of the documents to be delivered by the Town hereunder, will be binding and legal obligations of the Town, enforceable against the Town in accordance with their respective terms.

18.1.3 No Conflict. The execution and delivery of this Agreement and the documents to be executed in connection herewith and the consummation of the transactions contemplated hereby and thereby, except as otherwise provided herein, do not require the consent or approval of any third party or, to the Town's knowledge, any governmental authority, nor shall such execution and delivery result in a breach or violation of any Applicable Law, or conflict with, breach, result in a default (or an event which with notice and passage of time or both will constitute a default) under, or violate any contract or agreement to which the Town is a party or by which it or the Development Parcel is bound.

18.1.4 No Litigation. There is no action, suit or proceeding pending, or, to the Town's knowledge, threatened against the Town, the Development Parcel, or any portion thereof that relates to or arises out of the use, ownership or operation of the Development Parcel, or arising out of this Agreement or the transactions contemplated hereby. in any court or before or by any federal, state, county or municipal department, commission, board, bureau or agency or other governmental instrumentality.

18.1.5 No Leases. There are no leases, licenses or other agreements regarding use or occupancy of space at the Development Parcel ("**Leases**") now in effect.

18.1.6 No Condemnation. Except as expressly set forth herein, the Town has received no written notice of any pending condemnation, eminent domain, or similar proceedings or actions pending or threatened with regard to the Development Parcel.

18.1.7 Hazardous Materials. The Town has delivered or made available to Developer copies of the environmental reports listed on Schedule 18.1.7 (the "**Environmental Reports**"). The Environmental Reports include all of the environmental reports relating to the Development Parcel that were prepared for the Town or at the Town's request, or that are in the Town's possession or control.

Subject to the information contained in the Environmental Reports, the Town has not received written notice from any person or entity of any violation of any Environmental Laws or the presence of Hazardous Materials at the Development Parcel. To the best of the Town's actual knowledge, the Town has not acted in violation of any Environmental Laws in the handling or disposal of Hazardous Materials at the Development Parcel.

18.1.8 Special Assessments. Except as otherwise expressly disclosed in the Title Commitment, to the Town's knowledge, the Development Parcel is not subject to any proposed special assessment or any special assessment lien arising as a result of any works or improvements completed, installed or contemplated at or before Closing.

18.1.9 Exclusive Agreement. No person, firm or entity claiming by or through the Town has any rights in or rights to acquire all or any part of the Development Parcel, and there is no outstanding agreement or option to sell all or any part of the Development Parcel, including any purchase options, rights of first refusal or first offer, "lease to own" agreements, installment contracts, or similar arrangements, other than as set forth in this Agreement.

18.2 Representations and Warranties of Developer. In addition to any other representations and warranties of Developer set forth herein, the following constitute representations and warranties of Developer, and all of the foregoing and following representations and warranties are made as of the date hereof and shall be true, correct and complete as of the Closing Date with respect to each Site:

18.2.1 Authority. Developer is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of [__________]. This Agreement and all agreements, instruments and documents herein provided to be executed by the Developer are, and on the Closing Date will be, duly authorized, executed and delivered by and binding upon the Developer. The Developer has the authority to enter into this Agreement and consummate the transactions herein provided without the consent or joinder of any other party.

18.2.2 Enforceability. This Agreement is, and all of the documents to be delivered by the Developer hereunder, will be binding and legal obligations of the Developer, enforceable against the Developer in accordance with their respective terms.

18.2.3 No Conflict. The execution and delivery of this Agreement and the documents to be executed in connection herewith and the consummation of the transactions contemplated hereby and thereby, except as otherwise provided herein, do not require the consent or approval of any third party or, to the Developer's knowledge, any governmental authority, nor shall such execution and delivery result in a breach or violation of any Applicable Law, or conflict with, breach, result in a default (or an event which with notice and passage of time or both will constitute a default) under, or violate any contract or agreement to which the Developer is a party.

18.2.4 No Litigation. There is no material action, suit or proceeding pending or, to the best of its knowledge, threatened against or affecting Developer or arising out of this Agreement or the transactions contemplated hereby.

PART 6: ADDITIONAL PROVISIONS

19. **Confidentiality.** The Parties agree to keep all the terms of this Agreement, including all time periods set forth herein, confidential. It is mutually understood that the terms and conditions or any components of this Agreement are intended for the exclusive consideration of the Parties and are not to be shared in any way with individuals or entities other than the Parties, their counsel, accountants, or financial advisors without the express written consent of the other Parties. Each Party may disclose the existence of a "strategic alliance," "public-private partnership," or "life science developer / master developer relationship" relating to the Development Parcel; however, no Party will issue a press release or other publicity or communication to the general public concerning the Parties' relationship or concerning a user or potential user of any Building without the other Parties' prior written approval, unless such disclosure is required by Applicable Law. Notwithstanding any other provision hereof to the contrary, all confidential information received by the Town shall be subject to North Carolina General Statutes Chapter 132, the North Carolina Public Records Act.

20. **Exclusivity.** While this Agreement is in effect, Developer shall be the exclusive life science developer for the Development Parcel, and the Town shall (i) not actively solicit or negotiate with any other developer for the purpose of serving as a life science developer for the Development Parcel, (ii) not permit any life science speculative development by any other developer at the Development Parcel and (iii) obtain Developer's approval before entering into any new contracts, or renewing, modifying or extending any current contract which may (a) adversely impact the life science development potential of the Development Parcel or (b) materially affect the Town's intent or ability to achieve the objectives of the Town and Developer under this Agreement.

21. **Assignment.** Developer may not assign or transfer all or any portion of its rights or obligations under this Agreement to any other individual, entity or other person without the consent thereto by Town; provided, however, that Developer may assign or transfer such rights and obligations to one or more Affiliates of Developer, without Town's consent, but with prior notice to Town. For the avoidance of doubt, Developer may assign the right to acquire and take title to each Site to one or more Affiliates of Developer. Upon and following such assignment, Developer shall not be released, and shall remain jointly and severally liable for all obligations of Developer under this Agreement.

22. **Miscellaneous.**

22.1 Notices. All notices and other communications provided for herein shall be in writing with a copy sent by electronic mail and shall be sent to the address set forth below (or such other address as a Party may hereafter designate for itself by notice to the other Parties as required hereby) of the Party for whom such notice or communication is intended:

If to Developer:

[___________]
c/o BioRealty, Inc.
[___________]
[___________]
Attn: Stan Wendzel
Email: stan@biorealty.com

With a copy to:	Ballard Spahr LLP 111 S. Calvert St., 27th Floor Baltimore, MD 21202 Attn: Eben Hansel, Esq. Email: hansele@ballardspahr.com
If to the Town:	Town of Clayton 111 East Second Street Clayton, NC 27520 Attn: Rich Cappola, Town Manager Email: rcappola@townofclaytonnc.org
With a copy to:	Cauley Pridgen, PA 2500 Nash St N, Ste C Wilson, NC 27896 Attn: James P. Cauley, III, Town Attorney Email: jcauley@cauleypridgen.com

Any such notice or communication shall be sufficient if sent by (a) personal delivery, (b) reputable overnight delivery service such as UPS or Federal Express, with proof of delivery, (c) United States registered or certified mail, postage prepaid, return receipt requested, or (d) electronic mail, provided that a hard copy shall be simultaneously sent by one of the methods set forth in clauses (a)-(c) above. Such notice or other communication shall be deemed given (i) upon receipt if hand delivered or delivered by electronic mail; (ii) one (1) Business Day after tendering to an overnight delivery service, or (c) three (3) Business Days after mailing if by registered or certified mail. Notice of change of address shall be given by written notice in the manner detailed in this Section.

22.2 Brokers. Each Party hereto each represents and warrants to the other that it has not dealt with any broker or agent in connection with this transaction. Each Party hereby indemnifies, defends and holds harmless the other Parties from all loss, cost and expense (including reasonable attorneys' fees) arising out of a breach of its representation or undertaking set forth in this Section 22.2. The provisions of this Section 22.2 shall survive Closing or the termination of this Agreement. Notwithstanding the foregoing, Developer shall have the right to engage brokers in connection with the marketing of the Development Parcel or any Site for lease or sale, provided that Developer shall be responsible for any commissions due to such brokers pursuant to separate brokerage agreements.

22.3 Time of the Essence. Time is of the essence of each and every provision of this Agreement.

22.4 Time Periods. If any event or deadline required by this Agreement is to occur on a day that is not a Business Day in the State of North Carolina, then the event shall be deemed to occur on the next Business Day following the date for the event or deadline determined by this Agreement.

22.5 Headings. The headings preceding the text of the paragraphs and subparagraphs hereof are inserted solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

22.6 Waiver of Jury Trial. THE PARTIES HEREBY KNOWINGLY AND VOLUNTARILY, AND IRREVOCABLY WAIVE THEIR RIGHT TO A TRIAL BY JURY AND

AGREE THAT ANY DISPUTE ARISING UNDER THIS AGREEMENT SHALL BE DECIDED SOLELY BY A JUDGE (WITHOUT THE USE OF A JURY) SITTING IN A COURT OF COMPETENT JURISDICTION. THIS JURY TRIAL WAIVER PROVISION SHALL SURVIVE THE CLOSING OR THE TERMINATION OF THIS AGREEMENT.

22.7 Choice of Law and Forum. This Agreement shall be deemed made in Johnston County, North Carolina. This Agreement shall be governed by and construed in accordance with the laws of North Carolina. Except for any cause of action for which a federal court has exclusive jurisdiction, the exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice in Johnston County. Such actions shall neither be commenced in nor removed to federal court. This Section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this Section.

22.8 Recording. Except as expressly provided herein, neither this Agreement nor any memorandum hereof shall be recorded in any public records.

22.9 Counterparts. This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

22.10 Schedules and Exhibits. All Schedules and Exhibits which are referred to herein and which are either (a) attached hereto or (b) bound separately and initialed by the Parties are expressly made and constitute a part of this Agreement.

22.11 Survival. Unless otherwise expressly stated in this Agreement, each of the warranties and representations of the Parties shall survive the Closing and delivery of the deed and other closing documents by Town to Developer, and shall not be deemed to have merged therewith; provided, however, that any suit or action for breach of any of the representations or warranties set forth herein must be commenced within one (1) year after the Closing or any claim based thereon shall be deemed irrevocably waived.

22.12 Submission not an Offer or Option. The submission of this Agreement or a summary of some or all of its provisions for examination or negotiation by Developer or Town does not constitute an offer by Town or Developer to enter into an agreement to sell or purchase the Property, and neither Party shall have any obligation to purchase or to sell, as applicable, until this Agreement is signed by both Parties, in which event it shall be binding on both Parties thereafter.

22.13 Entire Agreement; Amendments. This Agreement and all Schedules and Exhibits attached hereto set forth all of the promises, covenants, agreements, conditions and undertakings between the Parties hereto with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written, except as contained herein. This Agreement may not be changed orally but only by an agreement in writing, duly executed by or on behalf of the Party or Parties against whom enforcement of any waiver, change, modification, consent or discharge is sought.

22.14 Limitation on Liability. Notwithstanding any other provision hereof to the contrary, none of the affiliates, shareholders, officers, members, partners, directors, managers, beneficiaries, trustees, employees and agents of any Party will have any personal liability hereunder. In no event will any deficiency judgment or any money judgment of any kind be sought or obtained against same.

22.15 No Waiver of Governmental Authority or Discretion. Nothing in this Agreement shall be construed to bind, estop, direct, limit, or impair the future regulatory, legislative, or governmental discretion of the Town in a manner not permitted by law. The Town shall not incur any liability to Developer for any losses or damages it may incur as a result of or in connection with the Town exercise or performance of its regulatory, legislative, or governmental powers or functions, or any judicial determination regarding such exercise or performance, provided the Town ~~and the County~~ shall be contractually bound by the terms of this Agreement.

22.16 Immunity Not Waived. The Town does not intend to waive its sovereign immunity by reason of this Agreement; provided, however, that the Town acknowledges and agrees that by entering into this Agreement, governmental immunity shall not be a valid defense to a breach of contract claim brought hereunder.

22.17 Release of Information. The Parties acknowledge that this Agreement and related documents provided by Developer are subject to disclosure under the North Carolina Public Records Act, N.C.G.S. § 132-1 et seq. (the "**Act**"), except for information that is excluded from the disclosure requirements of the Act pursuant to N.C.G.S. § 132-1.2. The Developer acknowledges that it has been informed by the Town that the Town is required by North Carolina law to disclose "Public Records" as the term is defined by North Carolina General Statutes § 132-1, upon request. All information disclosed to the Town by the Developer which is subject to that definition and whose disclosure is not otherwise protected by law will be released by the Town upon request as provided by North Carolina General Statutes § 132-6. The Town may withhold from disclosure confidential records as defined by North Carolina General Statutes § 132-1.2. The Developer acknowledges that it has read and is familiar with the Town obligations of public disclosure of documents and the definitions of confidential documents as contained in Chapter 132 of the North Carolina General Statutes. In order to prevent the disclosure of the information identified by the Developer as a trade secret or as "confidential" pursuant to North Carolina General Statutes § 132.1.2, each of the Town shall, if it receives a request for disclosure of such information, notify the Developer of such request. The Developer will defend any claims or disputes arising from efforts of others to cause such trade secrets to be disclosed as a public record, if it so chooses. The Developer acknowledges that this disclosure of the Town or Johnston County's public records requirements is given pursuant to North Carolina General Statutes § 132-1.11(b) and agrees that such disclosure is full and sufficient to the satisfaction of the Developer. The Parties agree that this Section will survive the termination of the Agreement. Nothing in this Agreement precludes either party from discussing the terms of this Agreement or its work product with its attorneys, accountants, consultants, contractors, or potential lenders or investors, or prevents the holding of public Town Council meetings in compliance with applicable laws.

22.18 IN NO EVENT SHALL ANY PARTY BE LIABLE TO THE OTHER PARTIES (OR TO ANY THIRD PARTY, WHETHER OR NOT CLAIMING THROUGH SUCH OTHER PARTY) FOR INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER).

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have executed this Development Agreement as of the date and year first above written.

DEVELOPER:

[____________], LLC,
a [___________] limited liability company

By: ___________________________________
Name:
Title:

TOWN:

TOWN OF CLAYTON, NORTH CAROLINA,
a municipal corporation of the State of North Carolina

By: ___________________________________
Rich Cappola, Town Manager

PRE-AUDIT CERTIFICATION

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

____
Robert McKie, Town of Clayton Finance Director

[Development Agreement - Signature Page]

List of Schedules and Exhibits

Schedule 1	-	Definitions and Rules of Construction
Schedule 5.1	-	Due Diligence Materials
Schedule 18.1.7	-	Environmental Reports
Exhibit A	-	Legal Description of the Development Parcel
Exhibit B	-	Preliminary Site Layout
Exhibit C		Deed Covenants and Restrictions
Exhibit D	-	Form of Warranty Deed
Exhibit E-1	-	Infrastructure Plan
Exhibit E-2	-	Technical Memorandum
Exhibit E-3	-	Infrastructure Schedule
Exhibit F	-	Qualified Building Requirements
Exhibit G	-	Form of Memorandum of Option

SCHEDULE 1

Definitions and Rules of Construction

1.1 As used in the Purchase and Sale Agreement to which this Schedule 1 is attached, the following terms have the following meanings:

"**Affiliate**" means with respect to any Person, a Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person. The term "control" (including correlative terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting security, ability to elect directors to such Person's board of directors or similar governing body, by contract or otherwise.

"**Applicable Law(s)**" means any law, rule, statute, regulation, ordinance, determination of an arbitrator, order of a court or determination, advisory opinion, order, guideline, finding or requirement of any other Government Entity, as amended, supplemented and in effect from time to time, in each case applicable to and binding upon such Person or any of its properties or to which such Person or any of its properties is subject, either individually or jointly with another Person or Persons.

"**Business Day**" shall mean a day that is not a Saturday, Sunday, or a federal, state or Town holiday in Clayton, North Carolina.

"**Control**" "**controlled by**" and "**under common control**" are all defined in the definition of Affiliate.

"**Environmental Laws**" means any law referred to in the definition of Hazardous Materials, as such law may be amended from time to time, and all rules and regulations of any Government Entity having jurisdiction, published pursuant thereto or promulgated thereunder.

"**Escrow Agent**" shall mean Chicago Title Insurance Company, or another national title insurance company selected by Developer to hold the Deposit in escrow in accordance with this Agreement.

"**Government Entity**" means any federal, state, municipal, county or city government, and any court or tribunal or administrative, governmental, quasi-governmental or regulatory body, agency, commission, division, department, public body or other authority, or any political subdivision thereof.

"**Hazardous Materials**" mean any substance determined to be hazardous, dangerous, polluting, or contaminating and regulated by Applicable Law, including (a) any "hazardous substance," as defined in (i) Section 9601 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("**CERCLA**"), as codified in 42 U.S.C. sections 9601 et seq. (including but not limited to those amendments thereto made by the Superfund Amendments and Reauthorization Act of 1986 ("**SARA**")), (ii) the Resource Conservation and Recovery Act ("**RCRA**"), as codified in 42 U.S.C. sections 6901 et seq., (iii) the Federal Water Pollution Control Act (the Clean Water Act) ("**CWA**"), as codified in 33 U.S.C. sections 1251 et seq., (iv) the Clean Air Act ("**CAA**"), as codified in 42 U.S.C sections 7401 et seq., (v) the Toxic Substances Control Act ("**TSCA**"), as codified in 15 U.S.C. sections 2601 et seq., and (vi) any and all federal, state or other local laws, regulations, statutes or products, environmentally dangerous condition or dangerous asbestos condition, and anything included within the meanings of the term "Hazardous Materials," "Pollutants" or "Contaminants" given such term in CERCLA, SARA, RCRA, CWA, CAA and TSCA and under the laws of the State of North Carolina respecting environmentally hazardous materials. Also included as "**Hazardous Materials**" shall be any petroleum product, all hazardous or toxic substances, wastes or substances, and any substances which because of their quantitated concentration, chemical composition, or active, flammable, explosive, infectious or other characteristics, constitute or may reasonably be expected to constitute or contribute to a danger or hazard to public health, safety or welfare or to the environment.

"**Lease**" means any lease, license or occupancy agreement, written or unwritten, granting any tenancy or right to use or occupy all or any portion of the Property.

"**Lien**" means any mortgage, deed of trust, security deed, lien, judgment, pledge, conditional sales contract, security interest, past-due taxes, past-due assessments, or similar encumbrance against the Property of a monetary nature.

"**Other Rights and Interests**" means any other interest of the Town in and to the Property, or pertaining thereto, including, but not limited to, all of the right, title, and interest of the Town in and to the following:

(a) All contract rights, Leases, and assignable warranties relating to the ownership of the Property;

(b) All Permits and other governmental approvals related to the Property;

(c) All plans and specifications pertaining to any improvements and in the Town's possession or control, and the use thereof;

(d) All appurtenant and reciprocal easement agreements and parking agreements;

(e) Any award made or to be made in lieu of any of the Town's interests to be conveyed, including, but not limited to, any award or payment made or to be made (a) for any taking in any condemnation proceeding of land lying in the bed of any street, road, highway, or avenue, open or proposed, in front of or adjoining all or any part of the Property, (b) for damage to the Property, or any part thereof by reason of change of grade or closing of any such street, road, highway, or avenue, and (c) for any taking in a condemnation proceeding;

(f) All environmental reports and soils reports for the Property and engineering studies relating to the Property, together with all written communications and documents relating to such reports;

(g) All oil, gas and mineral rights relating to the Property.

(h) All appurtenant rights and interests with respect to the Property, including without limitation (i) easements and rights of way; (ii) rights in and to land underlying any highways, streets, railroads, and other public or private rights of way on or adjacent to the Property, and rights of access thereto; (iii) rights in and to strips and gores of land within or adjoining any such tract or parcel; (iv) air rights, excess floor area rights and other transferable development rights belonging to or useable with respect to any such parcel; (v) rights to utility connections and hook ups; (vi) water rights; (vii) riparian rights; and (viii) any other rights which the Town may have in or with respect to land adjoining any such tract or parcel (including adjacent streets, alleys and rights of way and any land which is separated from any such tract or parcel only by public alley, street, or other right of way).

"**Permits**" means all licenses, permits, certificates of occupancy, approvals, and authorizations used in or relating to or required by a Government Entity or by any applicable law, code, or regulation in connection with the ownership, occupancy, maintenance, repair, or operation of any part of the Property.

"**Person**" means an individual, corporation, partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, real estate investment trust, government or any agency or political subdivision thereof, or any other form of entity.

1.2 Other Definitions. Any other term to which meaning is expressly given in this Agreement shall have such meaning.

1.3 Rules of Construction.

1.3.1 Except as specifically provided, any approval, consent, permission or submittal or authorization contemplated under this Agreement shall require that such approval, consent, permission, submittal or authorization shall be given in advance and in writing and any consent, approval, permission or authorization shall apply only in the instance given.

1.3.2 Except as specifically provided, any and all approvals, consents, permission or authorization contemplated in this Agreement shall not be unreasonably withheld, delayed or conditioned and shall be subject to any reasonable conditions contained in the consent or approval given.

1.3.3 Except as specifically provided, the exercise of discretion contemplated in this Agreement shall mean discretion reasonably exercised.

1.3.4 A term defined in this Agreement which means or refers to an agreement, writing or statute shall mean and refer to that agreement, writing or statute as amended, modified, substituted for or replaced from time to time, but only as permitted under and in accordance with this Agreement, if applicable.

1.3.5 A term defined in this Agreement which means or refers to real or tangible personal property shall mean and refer to renewals or replacements, or substitutions therefor, but only as permitted under and in accordance with this Agreement, if applicable, provided however, that if at any time any portion of that property becomes no longer subject to this Agreement, the defined term shall mean and refer to so much of the property in question as remains subject to this Agreement.

1.3.6 The use of "his" or "her" is not intended to be gender-specific, and use of either or both terms is intended to incorporate the other, if applicable.

1.4 Severability. No determination by any court, governmental or administrative body or agency or otherwise that any provision of this Agreement or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or unenforceability of (a) any such provision, or (b) such provision in any circumstance not controlled by such determination. Each such provision shall remain valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with, Applicable Law.

SCHEDULE 5.1

Due Diligence Materials

1. All surveys, maps, and drawings of all or any portion of the Property, including, but not limited to, site plans, final specifications, as-built surveys, as-built plans;
2. All subdivision, master drainage, infrastructure, engineering and other plans of all or any portion of the Property;
3. Any flood maps and notices and other materials related to flood risk; information regarding any flood insurance claims filed; and a narrative description of any flood events occurring during the Town's ownership of the Property;
4. All development approvals, proof of entitlements and concurrency and vested rights certificates pertaining to all or any portion of the Property;
5. Any and all Permits issued by any Government Entity for the Property or related to the operation of any business on the Property;
6. All governmental notices in any manner adversely affecting all or any part of the Property;
7. All title policies and title instruments in the Town's possession pertaining to all or any part of the Property;
8. Any and all agreements with any company providing utilities, including, but not limited to, gas, electricity, and water, to all or any portion of the Property;
9. Copies of all Leases currently in effect, if any;
10. All agreements with brokers, leasing agents and management agents and all agreements with adjoining or adjacent property owners, that are in effect or will survive the Closing;
11. Copies of real estate and personal property tax statements for the Property for the most recent year available, and copies of all notices of revised assessment or valuation for the Property;
12. The most recent bills for taxes, bonds, betterments and assessments;
13. Copies of any agreements or other documents relating to (A) the reduction of property taxes for any period applicable after the Closing, (B) the provision of infrastructure improvements for the benefit of the Property, (C) the handling of traffic impacts from the Property, and (D) the financing of improvements to or for the benefit of the Property, including tax-increment financing;
14. Any and all existing environmental reports for the Property in the Town's possession or control;
15. Copies of insurance policies relating to the Property and the operation of any business on the Property; and
16. Such other documentation as the Town has in its possession or control regarding the use, ownership, legal status, maintenance and operation of the Property.

SCHEDULE 18.1.7

Environmental Reports

1. Phase I Environmental Site Assessment – Massey Tract, Clayton, Johnston County, North Carolina. GeoTechnologies Project No. 1-14-0430-EA

EXHIBIT A

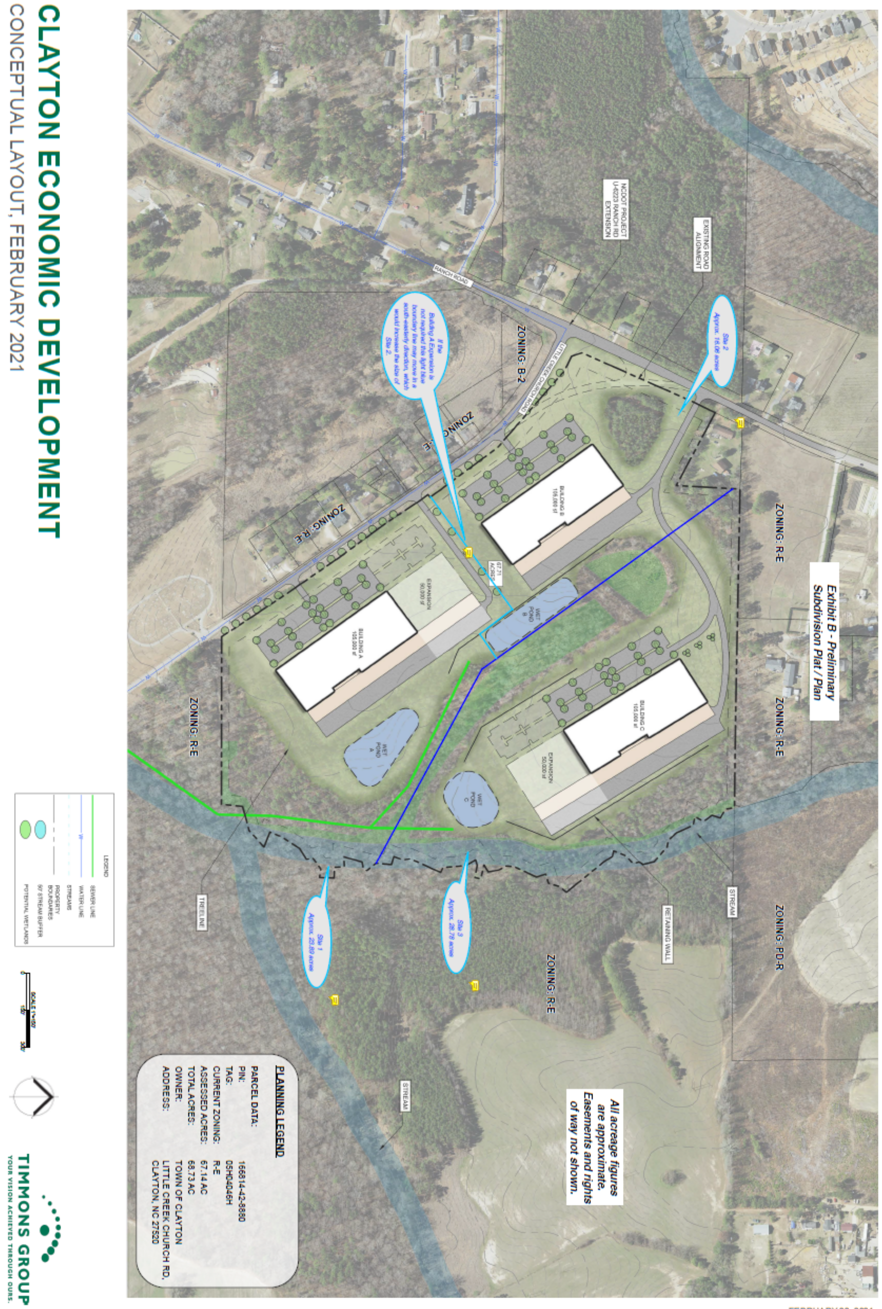
Legal Description of the Development Parcel

PIN: 166814-42-8880
Parcel ID: 05-H-04-046-H
Little Creek Church Road

Being all of that 67.137-acre tract of land as shown on that plat recorded in Plat Book 80, Page 89, Johnston County Registry, and being the same property described in that Deed recorded in Book 4466, Page 324, Johnston County Registry.

EXHIBIT B

Preliminary Site Layout



<u>Exhibit C</u>

Deed Covenants and Restrictions

1. The Property herein conveyed shall be used for the industrial use of the development of a Bioscience Industrial Park and such other uses including laboratory research, research and development and other light industrial uses as further defined in and operated in accordance with an Economic Development Agreement dated ________, 2022_ (*collectively*, the “Project”) and other ancillary uses. This restriction is to run with the land and shall be binding on all parties and all persons claiming under them for a period of ten (10) years from _______, 202_ unless sooner terminated in writing and recorded in the Register of Deeds.

2. The Grantee, or its successor, assign, or the party in possession of the Property, shall obtain all building permits for the Project on or before the expiration of twenty-four months from the date of the recording of this Deed (the "Permit Deadline").

3. In the event that the Grantee, or its successor, assign or the party in possession of the Property, should (i) fail to meet the Permit Deadline, Grantee does hereby grant and convey to Grantor the option to purchase the Property in accordance with the terms hereof (the “Repurchase Option”).

   Grantor shall have forty-five (45) days from the Permit Deadline, in which to notify Grantee of Grantor’s intent to exercise the Repurchase Option (the “Option Exercise Date”) at the same sale price paid by Grantee in the conveyance of the Property to Grantee and, in the event of such timely response, the closing of the purchase and sale of the Property shall take place within 90 days of the Option Exercise Date. In the event that timely Notice is not given by Grantor to Grantee, Grantor shall be deemed to have elected not to exercise the applicable Repurchase Option hereunder. The Repurchase Option shall expire and be of no further force or effect once Grantee has obtained all building permits for the Project, and at such time, at Grantee or its successor or assign's request, Grantor shall execute an acknowledgment in recordable form memorializing that the Repurchase Option has expired.

4. <u>Approval of Conveyance.</u> In the event that Grantee desires to sell or convey the Property to an unrelated third party prior the Permit Date Grantee shall obtain Grantor's prior consent, which shall not be unreasonably withheld, conditioned, or delayed. Grantor shall provide notice to Grantee of its consent to the conveyance or disapproval of the conveyance, as the case may be, within forty-five (45) days from the date in which Grantor received notice of Grantee's desire to sell or convey the Property. In the event that timely notice is not given by Grantor to Grantee, Grantor shall be deemed to have approved the conveyance, and Grantee shall be free to sell and convey the Property to such third party.

5. The Grantee, its successors and assigns, agree that the Property is conveyed “as is” as it relates to the Property's physical condition, and without any recourse as against Grantor for the environmental condition of the Property. The Grantee acknowledges that the

Grantor makes no representations or express or implied warranties as to the suitability of the Property for the Grantee's intended uses.

6. Enforcement shall be by proceedings at law or in equity against any person, firm or corporation violating or attempting to violate any covenant, either to restrain such violation or attempted violation or to recover damages.

7. The invalidation of any one of these covenants by judgment or court order shall in no way affect any of the remaining provisions, and all other provisions herein shall remain in full force and effect.

8. All notices, demands and/or consents provided for in this Agreement shall be in writing with a copy sent by electronic mail and shall be delivered to the parties hereto by hand, by certified United States Mail with postage pre-paid and return receipt requested. Such notices shall be deemed to have been served on the date of hand delivery, or on the date mailed as required herein. All such notices and communications shall be addressed to Grantor and to Grantee at the addresses provided by the parties in the Economic Development Agreement.

EXHIBIT D

Form of Warranty Deed

Prepared by : Kelly V. Chase, Cauley Pridgen, P.A., 2500 Nash Street N, Ste C, Wilson, NC 27896

Delinquent taxes, if any, to be paid by the closing attorney to the county tax collector upon disbursement of closing proceeds.

STATE OF NORTH CAROLINA
COUNTY OF JOHNSTON

SPECIAL WARRANTY DEED
Portion of PIN: 166814-42-8880
Portion of PARCEL ID:
05-H-04-046-H

Excise Tax: $0.00

THIS DEED, made and entered into this ___ day of ____, 202_, by and between Town of Clayton, hereinafter "Grantor", whose mailing address is 111 East Second Street, Clayton, NC 27520, to _________________________, hereinafter "Grantee", whose mailing address is _______________________________________;

W I T N E S S E T H :

FOR AND IN CONSIDERATION of $1.00 and other good and valuable consideration made to Grantor by the Grantee, the receipt of which is hereby acknowledged, the Grantor has bargained and sold, and does hereby bargain, sell and convey unto the Grantee, its successors and assigns, in fee simple, that certain parcel or tract of land lying and being situate in the Town of Clayton, Johnston County, North Carolina, located at Little Creek Church Road, Portion of PIN 166814-42-8880, Portion of Parcel ID 05-H-04-046-H and more particularly described in EXHIBIT A attached hereto and incorporated herein by reference.

This Conveyance is expressly subject to the Permitted Exceptions on EXHIBIT B, and those additional Deed Covenants and Restrictions as shown on EXHIBIT C.

The property hereinabove described was acquired by Grantor by instrument recorded in Book 4490 Page 0198 of the Johnston County Registry.

None of the property herein conveyed includes the primary residence of the Grantor.

TO HAVE AND TO HOLD the aforesaid parcel or tract of land, together with the privileges and appurtenances thereunto belonging or in anywise appertaining, unto the said Grantee, its successors and assigns.

FOR THE CONSIDERATION AFORESAID, the Grantor, for itself, its successors and/or assigns, hereby covenants to and with the Grantee, its successors and assigns, that the Grantor has done nothing to impair such title as Grantor received and that the Grantor does warrant and will forever defend the title thereto against the lawful claims of any and all persons claiming by, under or through Grantor.

IN WITNESS, WHEREOF, the Town of Clayton has caused this deed and agreement to be executed in its corporate name by its Mayor, attested by its Clerk, and its corporate seal to be hereunto affixed, this the day and year first above written.

TOWN OF CLAYTON

By: ___________________________________

Jody McLeod, Mayor

ATTEST:

____

Heidi Holland, Deputy Town Clerk

(CORPORATE SEAL)

STATE OF NORTH CAROLINA
COUNTY OF JOHNSTON

I, ____________________________, a Notary Public in and for said County and State, certify that Heidi Holland, personally came before me this day and acknowledged that she is the Deputy Town Clerk of the Town of Clayton, a municipal corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Mayor, sealed with its corporate seal and attested by herself as its Deputy Clerk.

Witness my hand and Notarial Seal, this ____ day of ____________, 202_.

____

Notary Public

My Commission Expires: _____________
(SEAL)

Exhibit A - Deed

Legal Description

PORTION OF PIN: 166814-42-8880
Parcel ID: 05-H-04-046-H
Little Creek Church Road

<u>SITE 1 -- To be determined by subdivision plat.</u>

Exhibit B - Deed
Permitted Exceptions

1. Utility easements of record;
2. Unviolated restrictive covenants that do not materially affect the value or utility of the property; and
3. Ad valorem taxes for the year of closing.

Note: Under the Purchase Agreement there may be additional Permitted Exceptions mutually agreed to by the parties.

Exhibit C - Deed
Deed Covenants and Restrictions

1. The Property herein conveyed shall be used for the industrial use of the development of a Bioscience Industrial Park and such other uses including laboratory research, research and development and other light industrial uses as further defined in and operated in accordance with an Economic Development Agreement dated ________, 2022_ (*collectively*, the "Project") and other ancillary uses. This restriction is to run with the land and shall be binding on all parties and all persons claiming under them for a period of ten (10) years from _______, 202_ unless sooner terminated in writing and recorded in the Register of Deeds.
2. The Grantee, or its successor, assign, or the party in possession of the Property, shall obtain all building permits for the Project on or before the expiration of twenty-four months from the date of the recording of this Deed (the "Permit Deadline").

3. In the event that the Grantee, or its successor, assign or the party in possession of the Property, should (i) fail to meet the Permit Deadline, Grantee does hereby grant and convey to Grantor the option to purchase the Property in accordance with the terms hereof (the "Repurchase Option").

   Grantor shall have forty-five (45) days from the Permit Deadline, in which to notify Grantee of Grantor's intent to exercise the Repurchase Option (the "Option Exercise Date") at the same sale price paid by Grantee in the conveyance of the Property to Grantee and, in the event of such timely response, the closing of the purchase and sale of the Property shall take place within 90 days of the Option Exercise Date. In the event that timely Notice is not given by Grantor to Grantee, Grantor shall be deemed to have elected not to exercise the applicable Repurchase Option hereunder. The Repurchase Option shall expire and be of no further force or effect once Grantee has obtained all building permits for the Project, and at such time, at Grantee or its successor or assign's request, Grantor shall execute an acknowledgment in recordable form memorializing that the Repurchase Option has expired.

4. <u>Approval of Conveyance.</u> In the event that Grantee desires to sell or convey the Property to an unrelated third party prior the Permit Date Grantee shall obtain Grantor's prior consent, which shall not be unreasonably withheld, conditioned, or delayed. Grantor shall provide notice to Grantee of its consent to the conveyance or disapproval of the conveyance, as the case may be, within forty-five (45) days from the date in which Grantor received notice of Grantee's desire to sell or convey the Property. In the event that timely notice is not given by Grantor to Grantee, Grantor shall be deemed to have approved the conveyance, and Grantee shall be free to sell and convey the Property to such third party.

5. The Grantee, its successors and assigns, agree that the Property is conveyed “as is” as it relates to the Property's physical condition, and without any recourse as against Grantor for the environmental condition of the Property. The Grantee acknowledges that the Grantor makes no representations or express or implied warranties as to the suitability of the Property for the Grantee’s intended uses.

6. Enforcement shall be by proceedings at law or in equity against any person, firm or corporation violating or attempting to violate any covenant, either to restrain such violation or attempted violation or to recover damages.

7. The invalidation of any one of these covenants by judgment or court order shall in no way affect any of the remaining provisions, and all other provisions herein shall remain in full force and effect.

8. All notices, demands and/or consents provided for in this Agreement shall be in writing with a copy sent by electronic mail and shall be delivered to the parties hereto by hand, by certified United States Mail with postage pre-paid and return receipt requested. Such notices shall be deemed to have been served on the date of hand delivery, or on the date mailed as required herein. All such notices and communications shall be addressed to Grantor and to Grantee at the addresses provided by the parties in the Economic Development Agreement.

EXHIBIT E-1

Infrastructure Plan

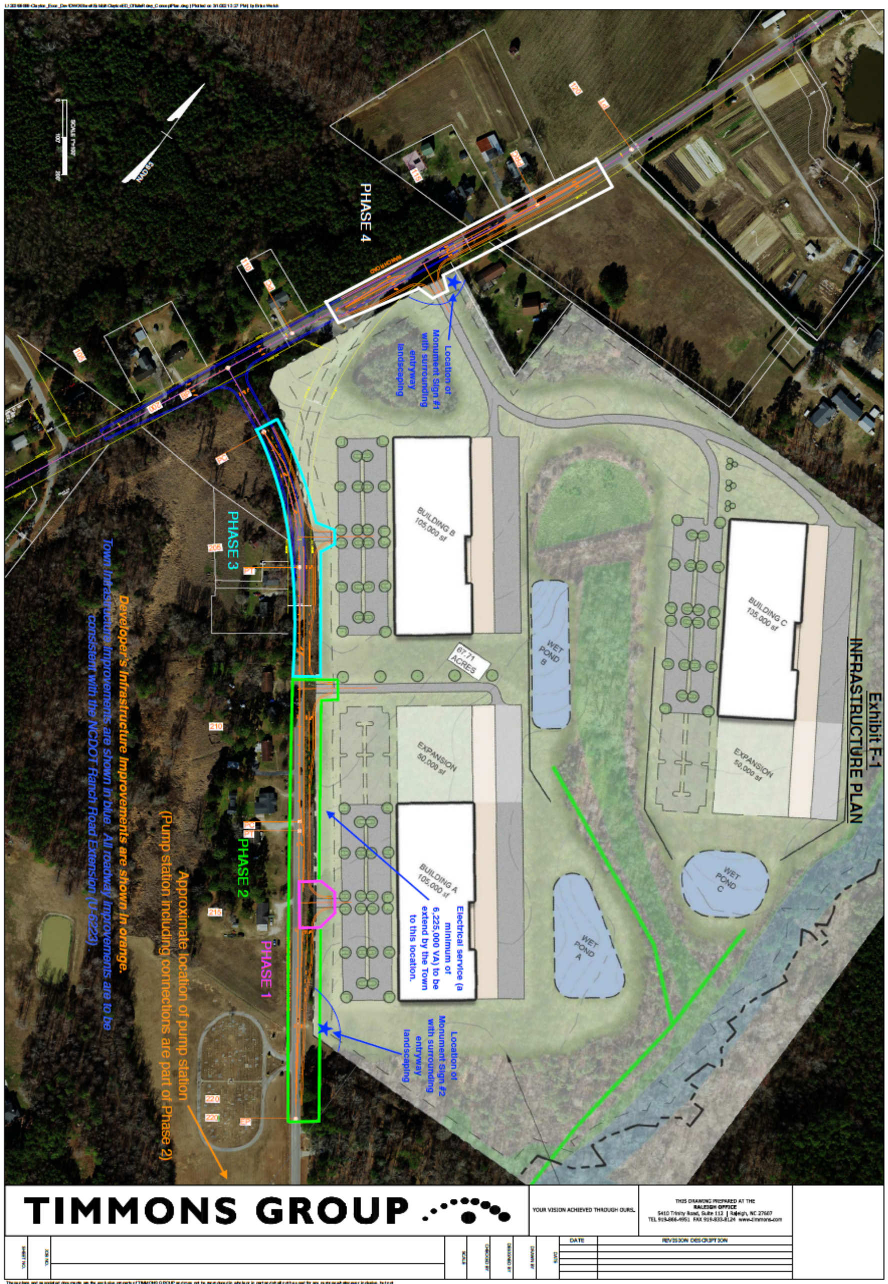


EXHIBIT E-2

Technical Memorandum dated August 7, 2020

EXHIBIT E-3

Infrastructure Schedule

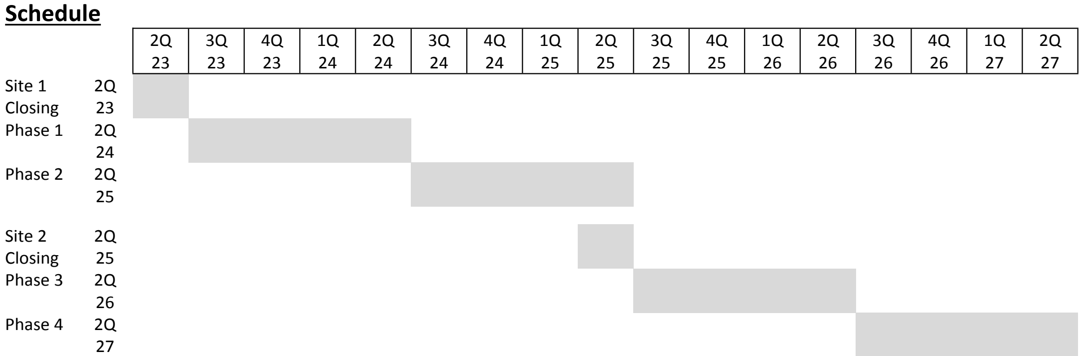
Phase 1 represents the Infrastructure Improvements that are to be completed on or before construction completion of the Building A shell. This phase consists of all Town Infrastructure Improvements and the Developer's Infrastructure Improvements shown on the Infrastructure Plan as included in Phase 1.

Phase 2 represents the Developer's Infrastructure Improvements that are to be completed on or before completion and fit out of Building A (i.e. Prior to obtaining a Certificate of Occupancy for Building A) and are denoted on the Infrastructure Plan as Phase 2.

Phase 3 represents the Developer's Infrastructure Improvements that are to be completed on or before construction completion of the Building B shell and are denoted on the Infrastructure Plan as Phase 3.

Phase 4 represents the Developer's Infrastructure Improvements that are to be completed on or before completion and fit out of Building B (i.e. Prior to obtaining a Certificate of Occupancy for Building B and are denoted on the Infrastructure Plan as Phase 4.

Preliminary Schedule



Note: All dates are estimates, are based on a 4Q22 execution of the Development Agreement, and assume 10-12 months for completion of a building shell and 12 months for completion of a building fit out. Actual timelines will vary.

EXHIBIT F

Qualified Building Requirements

Building Type: Single-story, concrete tilt-up, delivered in a cold, dark, shell condition

Building Size: 100,000 square feet, with two of the three buildings being expandable up to 150,000 square feet.

Intended Users: Single-occupant, biopharmaceutical manufacturing users, including biotechnology, pharmaceutical and contract development, and manufacturing organizations (“CDMOs”).

Parking: Initially .5 parking spaces per 1,000 square feet but with parking expandable to 2.5 parking spaces per 1,000 square feet of first floor space once a user is identified.

Concrete Floor: There will be a perimeter foundation and concrete floor slab under the office/admin designated areas; otherwise, there will be no concrete floor to more easily accommodate the specialized drainage and slab designs of most biopharma users.

EXHIBIT G

Form of Memorandum of Option

STATE OF NORTH CAROLINA

COUNTY OF JOHNSTON

MEMORANDUM OF OPTION

PIN: 166814-42-8880
PARCEL ID: 05-H-04-046-H

THIS MEMORANDUM OF OPTION (this "**Memorandum**") made and entered into this ___ day of _________, 20__ (the "**Effective Date**"), by TOWN OF CLAYTON, NORTH CAROLINA, a municipal corporation of the State of North Carolina (the "**Town**"), in favor of [__________], a [________] limited liability company (the "**Developer**").

W I T N E S S E T H :

WHEREAS, the Town owns that certain property comprising approximately 67.10 acres of unimproved land further described as Johnston County Tax ID 05H04046H, located at the intersection of Ranch Road and Little Creek Church Road in Clayton, Johnston County, North Carolina, as more particularly described on Exhibit A attached hereto (the "**Property**"); and

WHEREAS, the Town and Development have entered into an Economic Development Agreement dated [__________] (the "**Development Agreement**") which grants the Developer an option to purchase certain portions of the Property on the terms and conditions set forth therein;

WHEREAS, pursuant to the terms of the Development Agreement, the Town intends to subdivide the Property to create three (3) legal lots, and to convey one (1) such lot to Developer pursuant to the terms of the Development Agreement, and thereafter the Property that is subject to this Memorandum shall comprise the two remaining lots (each a "**Parcel**");

NOW, THEREFORE, in consideration of the sum of $1.00 and other good and valuable consideration, the receipt of which is hereby acknowledged, the Town does hereby give and grant to the Developer the right and option to purchase each Parcel of the Property upon the terms and conditions more specifically stated in the Development Agreement.

This Memorandum shall automatically expire on [the date that is eighty-one (81) months after the Effective Date of the Development Agreement].[1] This Memorandum shall automatically expire and be deemed of no further force and effect upon the expiration or earlier termination of the Development Agreement. Developer hereby agrees that upon the expiration or earlier termination of the Development Agreement, the Town is hereby authorized to execute and record in the public records a notice that the Development Agreement has so expired or terminated and that this Memorandum is of no further force or effect.

The provisions set forth in the Development Agreement between the parties hereto of even date are hereby incorporated in this Memorandum.

[Remainder of page intentionally left blank]

[1] NTD: Expiration date of option is a statutory requirement.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum on the day and year first above written.

<u>TOWN</u>:

TOWN OF CLAYTON

By: ________________________________
Jody McLeod, Mayor

ATTEST:

____
Heidi Holland, Deputy Town Clerk

(CORPORATE SEAL)

STATE OF NORTH CAROLINA
COUNTY OF JOHNSTON

I, ___________________________, a Notary Public in and for said County and State, certify that Heidi Holland, personally came before me this day and acknowledged that she is the Deputy Town Clerk of the Town of Clayton, a municipal corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Mayor, sealed with its corporate seal and attested by herself as its Deputy Clerk.

Witness my hand and Notarial Seal, this ____ day of ____________, 202_.

____
Notary Public

My Commission Expires: _____________
(SEAL)

DEVELOPER:

[____________], LLC,
a [__________] limited liability company

By: ________________________
Name:
Title:

STATE OF _______________

COUNTY OF _____________

I certify that the following person(s), either being personally known to me or proven by satisfactory evidence, personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: ______________________, _________________(title) of [____________], LLC, a [__________] limited liability company, being authorized to do so, and having executed the foregoing on behalf of the corporation.

Date: ____________________

____
_____________________________(Printed name)
Notary Public

My Commission Expires: _______________

EXHIBIT A – Memorandum of Option

Legal Description of Property

PIN: 166814-42-8880
Parcel ID: 05-H-04-046-H
Little Creek Church Road

Being all of that 67.137-acre tract of land as shown on that plat recorded in Plat Book 80, Page 89, Johnston County Registry, and being the same property described in that Deed recorded in Book 4466, Page 324, Johnston County Registry.

PUBLIC NOTICE

In accordance with NC GS 159-12(b), the Clayton Town Council will hold a public hearing on Monday, February 6, 2023 at 6:00 PM at Town Hall, 111 East Second Street, to receive public comment on the upcoming 2023-2024 fiscal year budget for the Town of Clayton.

This is an open meeting and citizens are invited to attend.

Heidi L. Holland, CMC, NCCMC, Town Clerk
919-553-5002

Please advertise on the following date:

January 25, 2023
February 1, 2023

Affidavit of publication required.