Town of Clayton
Board of Adjustment Agenda
Wednesday, November 17, 2021 @ 6:00 PM
Council Chambers

THE TOWN OF CLAYTON WILL FOLLOW GUIDELINES FROM THE CENTERS FOR DISEASE CONTROL AND THE NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES WITH REGARD TO SOCIAL DISTANCING.

THE BOARD OF ADJUSTMENT MEETING WILL BE HELD IN PERSON.

ANY MEMBER OF THE PUBLIC IS INVITED TO THE ATTEND THE MEETING.

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

BELOW PLEASE FIND ADDITIONAL INFORMATION REGARDING PROCEDURES FOR IN-PERSON MEETINGS:

ALL persons attending must wear a mask.
We will be following proper social distancing at all times.
Entrance AND Exit will be main door on Horne Street.
All council or board members will be socially distanced in the council chambers and wearing face masks.*
Staff will be socially distanced and seated within the council chambers. Face masks will be worn.*
Hand sanitizer will be available, both in the lobby and council chambers.
Podium/microphone will be sanitized after each speaker.

***Masks may be lowered when speaking*.**

1. CALL TO ORDER

2. ADJUSTMENT OF THE AGENDA

3. APPROVAL OF MINUTES

a. October 20, 2021 DRAFT Minutes
Board of Adjustment - 20 Oct 2021 - Draft Minutes

POTENTIAL ACTION: Approve / Deny October 20, 2021 Draft Minutes

4. PUBLIC HEARINGS

a. 2021-104-VAR Riverwood Ranch Ph. 1A - 1B & 2A - 2D Steep Slope Variance
Tag #: 16I02026B

Location: Prichard Road, North of Riverwood Athletic Club Planned Development
Staff Report - 2021-104-VAR - RW Ranch Ph 1A - 1B & 2A - 2D Steep Slopes
Staff Report Map - 2021-104-VAR - RW Ranch Steep Slopes
Application 2021-104-VAR Riverwood Ranch Ph 1A-1B, 2A-2D
Project Explanation & Findings 2021-104-VAR Riverwood Ranch Ph 1A-1B, 2A-2D
Owner Consent Form 2021-104-VAR Riverwood Ranch Ph 1A-1B, 2A-2D
Neighborhood meeting letter Riverwood Ranch 1A-2D Variance
Neighborhood Meeting Minutes - RiverwoodRanch_1A-2D Variance
Survey 2021-104-VAR Riverwood Ranch Ph 1A-1B, 2A-2D
Steep Slopes Exhibit 2021-104-VAR Riverwood Ranch Ph 1A-1B, 2A-2D
USACE Preliminary Determination 2021-104-VAR Riverwood Ranch Ph 1A-1B, 2A-2D
Newspaper Notice - 2021-104 -VAR - Riverwood Ranch Steep Slopes Variance
Adjacent Property Letter - 2021-104-VAR - Riverwood Ranch Steep Slopes Variance
Signed Conditions of Approval Riverwood Ranch Variance 10122021
Clayton UDC Section 155.500

POTENTIAL ACTION: Approve / Deny 2021-104-VAR Riverwood Ranch

b. 2021-123-AAI 214 W. Main Street Administrative Appeal
Tag #: 05019006
Location: 214 W. Main Street
Staff Report - 2021-123-AAI -214 W Main St
Staff Report Map
Administrative Appeal Application
Planning Director Administrative Decision Letter
Adjacent Property Owner Letter
April 2020 Zoning Compliance Permit
June 2021 Zoning Compliance Application

POTENTIAL ACTION: Approve / Deny 2021-123-AAI 214 W. Main Street Administrative Appeal

5. OLD BUSINESS

6. NEW BUSINESS

7. ADJOURNMENT

Town of Clayton
Board of Adjustment Minutes
October 20, 2021 @ 6:00 P.M.
Council Chambers

BOARD MEMBERS PRESENT:
Porter Casey
Marty Bizzell
Jim Perricone
John Saluppo
Tom Antoine
Michael Sims

STAFF PRESENT:
Frances Rasberry, Town Attorney
Chrissy Freeman, Clerk to the Board
Ben Howell, Planning Director
Avery Everette, Council Member

BOARD ABSENT:
Bob Satterfield

1 CALL TO ORDER

a)

Board Chair Bizzell called the meeting to order at 6:04 p.m. Board Member Satterfield was absent from this meeting.

2 ADJUSTMENT OF THE AGENDA

3 APPROVAL OF MINUTES

a) August 18, 2021 DRAFT Minutes

ACTION: Adoption of August 18, 2021 Minutes

Motion: Board Member Casey
Second: Board Member Sims
Vote: Unanimous

4 PUBLIC HEARINGS

a) 2021-104-VAR Riverwood Ranch Ph. 1A - 1B & 2A - 2D Steep Slope Variance
Tag # 16I02026B
Location: Pritchard Road, North of Riverwood Athletic Club Planned Development

Planning Director Ben Howell asked to have this item to be continued to the November 17, 2021 Board of Adjustment meeting.

ACTION: 2021-104-VAR Riverwood Ranch Ph. 1A - 1B & 2A - 2D Steep Slope Variance to be continued on November 17, 2021 Board of Adjustment meeting.

Motion: Board Member Perricone
Second: Board Member Sims
Vote: Unanimous

5 NEW BUSINESS

a) Adoption of 2022 Board of Adjustment Meeting Schedule

ACTION: Adoption of 2022 Board of Adjustment Meeting Schedule

Motion: Board Member Sims
Second: Board Member Perricone
Vote: Unanimous

6 OLD BUSINESS

a)

Attorney Rasberry stated he did not have any additional training unless the Board had some questions or concerns to go over. Mr. Perricone asked about the citizens being present when the item was postponed. Mr. Rasberry discussed that all parties were notified and staff could have cancelled before the hearing, but they would need to re-advertise the meeting with the risk of citizens still showing up. The decision was made to make the postponement on record. Anytime you have a court like hearing, it is not unusual to have a postponed item. Evidence is based on the presentation and it is not orderly and appropriate way to get informed on the issue. The Board feels next time a postponement should be handled at staff level.
There was nothing further.

7 ADJOURNMENT

a)

Before adjournment, Planning Director Ben Howell wanted to let the Board know that the Council on Monday night issued a Proclamation of Planning Month. Chair Bizzell welcomed Planning Board Director Ben Howell to the Town.

b)

With there being nothing further, the meeting was adjourned at 6:24 p.m.

Motion: Board Member Sims
Second: Board Member Perricone
Vote: Unanimous

Marty Bizzell, Chair

ATTEST:

Chrissy Freeman
Clerk to the Board

Town of Clayton
Planning Department
111 E. Second Street, Clayton, NC 27520
P.O. Box 879, Clayton, NC 27528
Phone: 919-553-5002
Fax: 919-553-1720

Board of Adjustment
October 20, 2021
November 17, 2021

STAFF REPORT

Application Number: 2021-104-VAR
Project Name: Riverwood Ranch Ph. 1A – 1B & 2A – 2D Steep Slope Variance

Tag #: 16I02026B
Overlay: N/A
Applicant: Hearth Pointe Development, LLC
Owner: Riverwood on the Neuse, LLC
Location: Pritchard Road, North of Riverwood Athletic Club planned development

Public Noticing dates:

- **Sign Posted:** October 6, 2021
- **Newspaper Ad Published:** October 6, 2021 and October 13, 2021
- **Adjacent Property Letters Mailed:** October 7, 2021

Public Hearing Continued from October 20, 2021 to November 17, 2021

REQUEST: The applicant is requesting a variance from the following code section(s):

UDC Section	Requirement	Variance Request
155.500(B)(3) and 155.500(D)(2)	Slopes above 25% of at least 5,000 square feet of contiguous area shall be unoccupied or predominantly unoccupied by buildings or other impervious surfaces.	Allow development of impervious surfaces in areas that are considered to be "steep slopes" and therefore RCAs. Areas of requested variance were submitted as a site plan with subject areas bubbled in pink.

SITE DATA:
Acreage: 41.94
Existing Use: Vacant/Forested

STAFF ANALYSIS AND COMMENTARY:

A variance is being requested for the allowance of impacts to a slope that meets the definition of a "Resource Conservation Area" (RCA) as defined in Section 155.500(B)(3) of the UDC. This request is associated with phases 1A – 1B & 2A – 2D of the Riverwood Ranch planned development subdivision. The applicant is requesting a variance on RCA areas identified on a site plan with pink bubbling. The bubbled areas are related mostly to areas where the RCA overlaps with building areas on proposed lots and streets in the subdivision.

Findings of Fact:

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in absence of the variance, no reasonable use can be made of the property.

Applicant Response:

The language that a Variance is being sought for is vaguely written and is being strictly applied to this development. Riverwood Ranch is a vested project that was originally approved via a Master Plan in 2008 and then again in 2013 by the Town Council. When approved, these phases were granted entitlement for a certain number of single-family units. Over the years, the development of this plan has occurred in phases and steep slopes were never evaluated by the Town as the Town did not start enforcing this section of the UDC until 2020.

The language of the UDC is vague in that it considers any slope above 25% or 5,000 SF of contiguous area to be a Resource Conservation Area. Based on the ordinance, these areas shall be unoccupied or predominately unoccupied by buildings or other impervious surfaces, including roads and parking lots, unless specifically authorized. It does not define what "predominately unoccupied" entails and therefore the only avenue to relief from this section is a Variance from the Board of Adjustment.

This language applies to all steep slopes on a site including those that are not directly connected to any environmentally sensitive areas. For those slopes that are directly connected to streams/wetlands, the ordinance does not take into consideration the distance at which development is occurring in relation to the area. Instead, it is limiting development from occurring in any steep slope area regardless of the relation or distance to streams/wetlands.

In Riverwood Ranch, there are several pockets of steep slopes that are not directly tied to streams/wetlands located on the site. The remaining steep slopes impacted by development are located at least 100' from the stream itself which already is required to include a 50' stream buffer. Strict application of the ordinance is impacting this development as it would create pockets of undeveloped land leading to inefficient layout and circulation, as well as limit development of the units that this project was entitled to by Council prior to the Town's enforcement of this language.

Staff Commentary:

The applicant is suggesting that the hardship from the code on RCA in the UDC is derived from prior approvals not taking into consideration a strict interpretation of the ordinance and therefore they have vested rights to develop under previous approvals. Also, the applicant feels that the intent of the RCA code to protect environmentally sensitive areas is not applicable to the RCA areas that they are requesting a variance for. Areas where there RCA is protecting environmentally sensitive areas are being left alone. Strict application of the ordinance would create

an inefficient layout and circulation as RCA areas overlap with necessary road connections in the proposed subdivision. There was a condition approved with the overall subdivision that states "Resource Conservation Areas shall be protected in perpetuity by a binding legal instrument that is recorded with the deed. The instrument for permanent protection shall include clear restrictions on the use of the resource conservation area. These restrictions shall include all restrictions contained in this section, as well as any further restrictions the applicant chooses to place on the use of the resource conservation areas. Where appropriate, the instrument shall allow for stream or habitat restoration." This condition remains in effect, and all other RCA areas in these phases will be protected in accordance with this condition.

2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

Applicant Response:

The hardship of steep slopes is unique to the property as it is caused by natural topography and environmental features on-site. This hardship is not caused by personal circumstances. While steep slopes can occur on other properties, the overall condition of steep slopes and this ordinance's impact are not common to the neighborhood or general public. Additionally, there are only a few pockets of steep slopes on this site that are directly connected to streams/wetlands and of these areas only one exceeds the 5,000 SF limit.

It is worth noting as well that the master plan that this project is a part of was entitled for a certain number of units prior to the Town enforcing this language in the Unified Development Code. In order to get close to the number of units entitled by Town Council and the project stay viable, a variance is necessary to alleviate the hardship that the new and strict enforcement of this language of the UDC has created.

Staff Commentary:

The steep slopes are caused by the natural topography and environmental features on-site and not by the applicants doing. The applicants design to maximize circulation of traffic and housing units is not feasible without impacting some of the RCA areas.

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

Applicant Response:

The hardship has not resulted from actions taken by the applicant or the property owners. The steep slopes that occur on site are natural topographic features and the recent enforcement/strict application of this section of the Unified Development Code has created a hardship for development in this location. The master plan for Riverwood Ranch was originally approved in 2008 and again in 2013. No conditions of approval were placed upon the development pertaining to this language in the UDC and this code language had not even been enforced by the Town until 2020. For these reasons, it was impossible to know that the Town would limit development in the future based upon this code language. In order to get close to the number of units entitled by Town Council and the project stay viable, a variance is necessary to alleviate the hardship that the new and strict enforcement of this language of the UDC has created.

Staff Commentary:

The applicant feels that the UDC code section on RCA has been more strictly applied since 2020 and is creating a hardship. The projects viability could be greatly impacted by a strict interpretation of the ordinance. Section 155.500 of the UDC was adopted in 2005, but may have not been evenly enforced in the past. There was a condition approved with the overall subdivision that states "Resource Conservation Areas shall be protected in perpetuity by a binding legal instrument that is recorded with the deed. The instrument for permanent protection shall include clear restrictions on the use of the resource conservation area. These restrictions shall include all restrictions contained in this section, as well as any further restrictions the applicant chooses to place on the use of the resource conservation areas. Where appropriate, the instrument shall allow for stream or habitat restoration." This condition remains in effect, and all other RCA areas in these phases will be protected in accordance with this condition.

4. The requested variances are consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

Applicant Response:

The requested variance is consistent with the spirit, purpose, and intent of the ordinance. Public safety is secured and substantial justice is achieved. The intent of the ordinance is to protect environmentally sensitive areas. Development occurring in the areas identified on the plan as steep slopes will not negatively impact these areas on-site. Several pockets of steep slopes shown on the plan are not even directly tied to streams/wetlands. The areas identified that are tied to the streams/wetlands are located at least 100' away, given that the stream requires a 50' buffer and the development occurring is at least another 50' away from the buffered area.

Furthermore, Town staff has acknowledged that the current language is overreaching and is looking to amend the section sometime in the near future. The timeline for this amendment though did not align with our schedule for development, hence the seeking of this Variance request.

Staff Commentary:

The applicant feels as though the intent of the ordinance is met with the design of the subdivision, avoiding RCA areas that are directly tied to streams/wetlands. The applicant has provided at least a 100' buffer from streams and wetland areas. Staff cannot confirm from the plans provided that all development is at least 50' way from buffered areas. Staff is working on potential text amendment options to Section 155.500 of the UDC to clarify or revise the requirements for preservation of environmentally-sensitive areas, such as steep slopes and riparian buffers, but is looking to have additional public engagement prior to presenting the text to the Planning Board and Town Council.

CONSIDERATIONS:

- The Board of Adjustment shall review and make a final decision regarding Variance applications.
- Per UDC requirements, no variance shall be approved unless all of the Findings of Fact are made.

FINDINGS OF FACT:

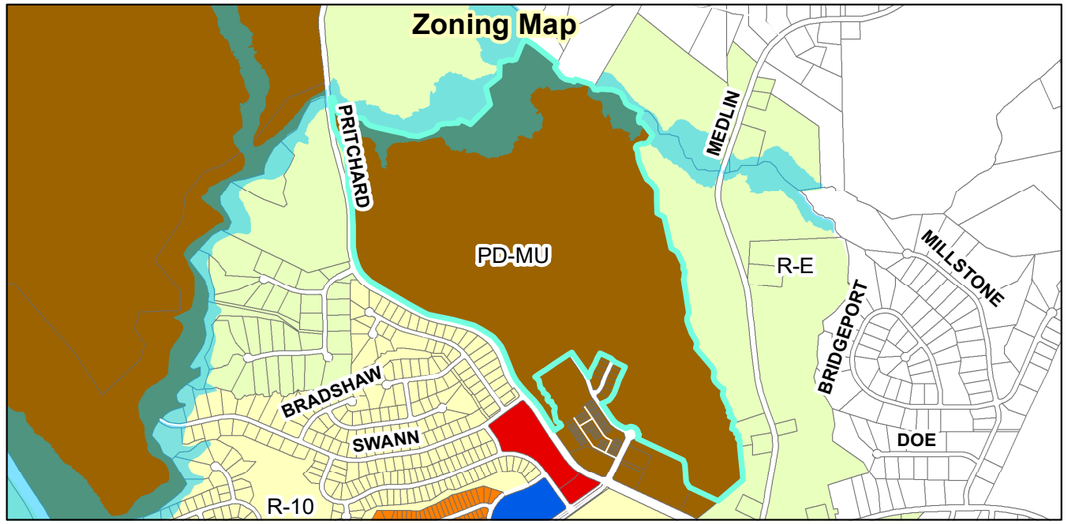
The applicant has addressed the Findings of Fact, as outlined above in this report and included as a part of the application.

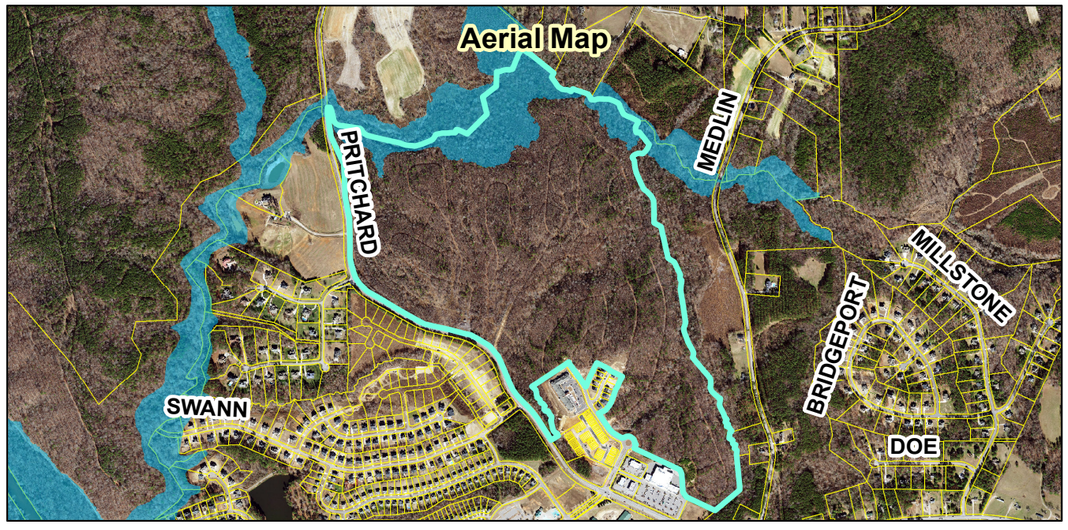
RECOMMENDED CONDITION OF APPROVAL:

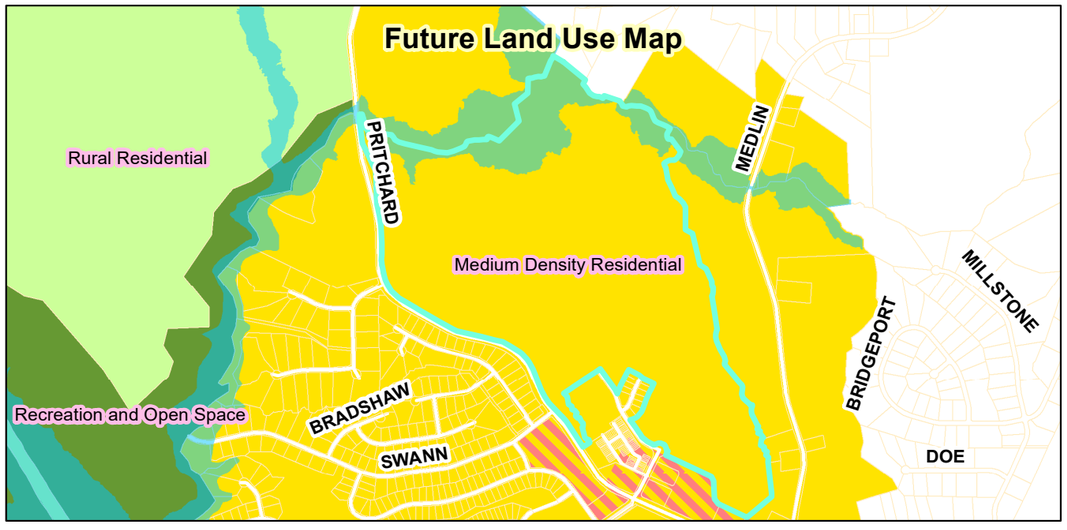
If approved, staff is recommending a condition of approval be placed upon the application. This condition is outlined in an attachment to the staff report. The applicant has reviewed the attachment and is in agreement with the condition proposed by staff.

ATTACHMENTS:

1. Staff Report
2. Staff Report Map
3. Application
4. Project Explanation and Findings
5. Owner Consent Form
6. Neighborhood Meeting Letter and Summary
7. Survey
8. Steep Slopes Exhibit
9. USACE Preliminary Determination
10. Newspaper Ad- public notice
11. Adjacent Property Letter- public notice
12. Recommended Conditions of Approval- Applicant Signed
13. Clayton Unified Development Code Section 155.500







Riverwood Ranch Variance
2021-104-VAR
Request: Variance on RCA areas for construction of lots and roads.

Applicant: Dave DeYoung & Becca Mountz
Property Owners: Riverwood on the Neuse, LLC
Tag #: 16I02026B

Site
100-yr Flood Zone
Thoroughfare Overlay

0 2,500 5,000 Feet

N

Staff Report Map
Prepared by: TOC Planning Department
September 7, 2021

Disclaimer: Town of Clayton assumes no legal responsibility for the quality fo the data represented here.

Document Path: O:\PLANNING\VARIANCE\2021\2021-104-VAR RW Ranch Ph 1A-1B & 2A-2D Steep Slopes\Staff Report Map - 2021-104-VAR - RW Ranch Steep Slopes.mxd

TOWN OF CLAYTON
Planning Department
111 E. Second St., P.O. Box 879
Clayton, NC 27528
Phone: 919-553-5002
Fax: 919-553-1720

VARIANCE APPLICATION COVER SHEET

Name of Project: Riverwood Ranch Ph 1A-1B & 2A-2D Steep Slopes **Date:** 08/20/2021

Applicant Name: Hearth Pointe Development

The following checklist to be completed by applicant:

[X] Pre-application Meeting on: 08/18/2021
[X] Application Review fee
[X] Advertising Fee
[X] Completed Application
[X] Owner's Consent Form
[X] Neighborhood Meeting Letter
[X] Adjacent property Owner's List
[X] Set of Stamped, addressed, empty envelopes for adjacent owner notification
[X] Copy of the plan in PDF on USB

11 plan sets of the following: - Submitted electronically per COVID Protocol

[X] Preliminary plan sheet depicting the variance request
[X] Signed and sealed Boundary Survey

Reviewed by:_____

TOWN OF CLAYTON
Planning Department
111 E. Second St., P.O. Box 879
Clayton, NC 27528
Phone: 919-553-5002
Fax: 919-553-1720

VARIANCE APPLICATION

Application Fee: $250.00
Advertisement Fee: $200.00
Please note if a variance is sought "after the fact", the application fee is $500.00

SITE INFORMATION

Name of Project: Riverwood Ranch Ph 1A-1B & 2A-2D Steep Slopes

Acreage of Property: 41.94 acres included in the subject phases **Zoning District:** PD-R

County Tag #: 16i02026b **NC Pin #:** 177100-10-1755

Address/Location: Located north/east of Stetson Lane off Riverwood Ranch Blvd

Existing Use: Vacant **Proposed Use:** Single-Family

Is project within a Planned Development? ☒ Yes ☐ No **If yes, which:** Riverwood Ranch

Is project within an Overlay District? ☐ Yes ☒ No **If yes, which:** _____

APPLICANT INFORMATION

Name: Hearth Pointe Development - Dave DeYoung & Becca Mountz

Mailing Address: 114 W Main Street Clayton, NC 27520

Phone Number: 919-670-0704 **Fax:** _____

Email Address: Dave@hearthpointe.com & Becca@hearthpointe.com

FOR OFFICE USE ONLY

Date Received:_____ Amount Paid:_____ Permit Number: _____

PROPERTY OWNER INFORMATION

Name: Riverwood on th Neuse, LLC

Mailing Address: 400 Riverwood Drive Clayton, NC 27527

Phone Number: 919-670-0704 **Fax:**

Email Address: Dave@hearthpointe.com

BURDEN OF PROOF / EXPLANATION OF REQUEST

Variance(s) Requested: *List each requested variance. Attach additional pages if necessary.*

Code Section: See attachments for Explanation of Request

Code Requirement: See attachments for Explanation of Request

Variance Sought (*describe specific request*): See attachments for Explanation of Request

Use this section to describe the request. An applicant seeking a variance has the burden of presenting evidence sufficient to allow the Board of Adjustment to reach conclusions for the Required Findings of Fact. Attach additional sheets/pertinent information as necessary.

See attachments for detailed explanation of request.

REQUIRED FINDINGS OF FACT

Section 155.716(F)(2) of the Unified Land Development Code requires applications requesting a Variance to address the following findings. The burden of proof is on the applicant and failure to adequately address the findings may result in denial of the application. Please attach additional pages if necessary.

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

See attached.

2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from person circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance..

See attached.

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

See attached.

4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

See attached.

APPLICANT AFFIDAVIT

I/We, the undersigned, do hereby make application and petition to the Board of Adjustment of the Town of Clayton to approve the subject Variance request. I hereby certify that I have full legal right to request such action and that the statements or information made in any paper or plans submitted herewith are true and correct to the best of my knowledge. I understand this application, related material and all attachments become official records of the Planning Department of the Town of Clayton, North Carolina, and will not be returned.

David DeYoung		8/24/2021
Print Name	***Signature of Applicant***	***Date***

Riverwood Ranch Phases 1A-1B and 2A-2D
Steep Slopes Variance Request
September 1, 2021

Our team is requesting a Variance from Section 155.500(B)(3) and 155.500(D)(2) of the Town's Unified Development Code. Section 155.500(B)(3) designates "slopes above 25% of at least 5,000 square feet of contiguous area" to be Resource Conservation Areas. Per the language of the UDC RCAs shall be unoccupied or predominately unoccupied by buildings or other impervious surfaces. Section 155.500(D)(2) states that RCAs may not include "roads, parking lots and impervious surfaces, except as specifically authorized".

Our team is requesting a Variance from this language to allow the development of impervious surfaces in areas that are considered to be "steep slopes" and therefore RCAs. The areas that the requested variance is applicable to are bubbled in pink on the plan sheet included with this Variance application submittal.

1. ***Unnecessary hardship would result from strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of a variance, no reasonable use can be made of the property.***

   The language that a Variance is being sought for is vaguely written and is being strictly applied to this development. Riverwood Ranch is a vested project that was originally approved via a Master Plan in 2008 and then again in 2013 by the Town Council. When approved, these phases were granted entitlement for a certain number of single-family units. Over the years, the development of this plan has occurred in phases and steep slopes were never evaluated by the Town as the Town did not start enforcing this section of the UDC until 2020.

   The language of the UDC is vague in that it considers any slope above 25% or 5,000 SF of contiguous area to be a Resource Conservation Area. Based on the ordinance, these areas shall be unoccupied or predominately unoccupied by buildings or other impervious surfaces, including roads and parking lots, unless specifically authorized. It does not define what "predominately unoccupied" entails and therefore the only avenue to relief from this section is a Variance from the Board of Adjustment.

   This language applies to all steep slopes on a site including those that are not directly connected to any environmentally sensitive areas. For those slopes that are directly connected to streams/wetlands, the ordinance does not take into consideration the distance at which development is occurring in relation to the area. Instead, it is limiting development from occurring in any steep slope area regardless of the relation or distance to streams/wetlands.

   In Riverwood Ranch, there are several pockets of steep slopes that are not directly tied to streams/wetlands located on the site. The remaining steep slopes impacted by development are located at least 100' from the stream itself which already is required to include a 50' stream buffer. Strict application of the ordinance is impacting this development as it would create pockets of undeveloped land leading to inefficient layout and circulation, as well as limit

development of the units that this project was entitled to by Council prior to the Town's enforcement of this language.

2. **The hardship results for conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.**

   The hardship of steep slopes is unique to the property as it is caused by natural topography and environmental features on-site. This hardship is not caused by personal circumstances. While steep slopes can occur on other properties, the overall condition of steep slopes and this ordinance's impact are not common to the neighborhood or general public. Additionally, there are only a few pockets of steep slopes on this site that are directly connected to streams/wetlands and of these areas only one exceeds the 5,000 SF limit.

   It is worth noting as well that the master plan that this project is a part of was entitled for a certain number of units prior to the Town enforcing this language in the Unified Development Code. In order to get close to the number of units entitled by Town Council and the project stay viable, a variance is necessary to alleviate the hardship that the new and strict enforcement of this language of the UDC has created.

3. **The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-inflicted hardship.**

   The hardship has not resulted from actions taken by the applicant or the property owners. The steep slopes that occur on site are natural topographic features and the recent enforcement/strict application of this section of the Unified Development Code has created a hardship for development in this location. The master plan for Riverwood Ranch was originally approved in 2008 and again in 2013. No conditions of approval were placed upon the development pertaining to this language in the UDC and this code language had not even been enforced by the Town until 2020. For these reasons, it was impossible to know that the Town would limit development in the future based upon this code language. In order to get close to the number of units entitled by Town Council and the project stay viable, a variance is necessary to alleviate the hardship that the new and strict enforcement of this language of the UDC has created.

4. **The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved.**

   The requested variance is consistent with the spirit, purpose, and intent of the ordinance. Public safety is secured and substantial justice is achieved. The intent of the ordinance is to protect environmentally sensitive areas. Development occurring in the areas identified on the plan as steep slopes will not negatively impact these areas on-site. Several pockets of steep slopes shown on the plan are not even directly tied to streams/wetlands. The areas identified that are

tied to the streams/wetlands are located at least 100' away, given that the stream requires a 50' buffer and the development occurring is at least another 50' away from the buffered area.

Furthermore, Town staff has acknowledged that the current language is overreaching and is looking to amend the section sometime in the near future. The timeline for this amendment though did not align with our schedule for development, hence the seeking of this Variance request.

TOWN OF CLAYTON
Planning Department
111 E. Second St., P.O. Box 879
Clayton, NC 27528
Phone: 919-553-5002
Fax: 919-553-1720

OWNER'S CONSENT FORM

Consent is required from the property owner(s) if an agent will act on their behalf. A separate form is required from each owner. Consent is valid for one year from date of notary, unless otherwise specified. All fields must be completed.

Project Name: Riverwood Ranch **Address or PIN #:** 177100-10-1755

AGENT/APPLICANT INFORMATION:

David DeYoung, AICP
(Name - type, print clearly)

114 W. Main Street
(Address)
Clayton NC 27520
(City, State, Zip)

I hereby give **CONSENT** to the above referenced agent/applicant to act on my behalf, to submit applications and all required materials and documents, and to attend and represent me at all meetings and public hearings pertaining to the following processes (***list applicable requests***):

All entitlement processes

Furthermore, I hereby give consent to the party designated above to agree to all terms and conditions which may arise as part of the approval of this application.

I hereby certify that I have authority to execute this consent form as/on behalf of the property owner. I understand that any false, inaccurate or incomplete information provided by me or my agent will result in the denial, revocation or administrative withdrawal of this application, request, approval or permits. I further agree to all terms and conditions which may be imposed as part of the approval of this application.

OWNER AUTHORIZATION:

Riverwood on the Neuse, LLC
(Name - type, print clearly)

(Owner's Signature)

400 Riverwood Drive
(Address)

Clayton NC 27527
(City, State, Zip)

STATE OF NC
COUNTY OF Johnston

Sworn and subscribed before me Danielle J. Lantz, a Notary Public for the above State and County, this the 15th day of February, 2021.

SEAL

DANIELLE J LANTZ NOTARY PUBLIC WAKE COUNTY, NC

Notary Public

My Commission Expires: 3-11-2024

July 2018

HEARTH POINTE
DEVELOPMENT

September 27, 2021

Dear Clayton Area Property Owner:

The purpose of this letter is to notify you of an application filed with the Town of Clayton for a Variance request involving property adjacent to, or in close proximity to, property shown in your ownership by Johnston County tax records. Per Town of Clayton regulations, a Neighborhood Meeting will be held to provide information to area residents about the request. A representative of the applicant will be present to explain their application, answer questions, and solicit comments. The following provides details for the Neighborhood Meeting:

Meeting Date:	October 7, 2021
Meeting Time:	6:00 - 8:00 PM*
Meeting Location:	Virtual Meeting - Use the link below to join!
Type of Application:	Variance
Project Address:	North/East of Stetson Lane, north of Riverwood Ranch Blvd and Food Lion
Property TAG ID:	16i02026b

Project Description: This application pertains to Riverwood Ranch Phases 1A-1B and 2A-2D, which has already been approved to have 202 single-family lots by the Clayton Town Council. These phases of development are a part of the Riverwood Ranch Master Plan which was approved in 2008 and again in 2013, and has been actively under development over the past 13 years. Due to the natural features of this property, our team is requesting a Variance from Section 155.500(B)(3) and 155.500(D)(2) of the Town's Unified Development Code. The language in this section of code states that "slopes above 25% of at least 5,000 square feet of contiguous area" are considered to be Resource Conservation Areas (RCAs). Additionally, all RCAs shall be unoccupied or predominately unoccupied by buildings or other impervious surfaces, including roads, except as specifically authorized. Our team is requesting a Variance from this language to allow development of impervious surfaces to occur in some of these areas in order to proceed with the project as originally approved by the Town Council.

**Please note that if there are no attendees on the call by 6:30 PM then the meeting will be closed. If a neighbor is unable to attend until after 6:30 pm please contact Becca Mountz at becca@hearthpointe.com with the anticipated time to join so that our team can ensure the call remains open.*

Public Meeting: This Variance request will be heard at a public meeting by the Clayton Board of Adjustment. A meeting notice will be sent by the Town notifying adjacent property owners of this meeting date when scheduled. It is anticipated that this application will adhere to the following schedule:

1) Submittal: September 1, 2021
2) Public Hearing/Board of Adjustment: October 20, 2021
3) Adoption of Findings of Fact by the Board of Adjustment: November 17, 2021

HEARTH POINTE
DEVELOPMENT

How to join the meeting: Use the Zoom link below to access the meeting. You can also call in via the phone number provided using the access code.

https://us02web.zoom.us/j/81694986319?pwd=QzhxUm00T0VSTFhwQ0R3VjN3U3MyZz09

Meeting ID: 816 9498 6319
Passcode: 791189
One tap mobile
+19292056099,,81694986319#,,,,*791189# US (New York)
+13017158592,,81694986319#,,,,*791189# US (Washington DC)
Find your local number: https://us02web.zoom.us/u/kcCxDfCFn9

The following documents will be provided at the neighborhood meeting as a part of the presentation:

- A copy of the project application.
- A map that shows the location of the subject property.
- A map, drawing, or other depiction of the areas of steep slopes that a Variance is being requested for.

If you have any questions prior to or after this meeting, you may contact us at 919-813-0123. You may also contact the Town of Clayton Planning Department at 919-553-5002.

Sincerely,

David DeYoung, AICP
Director of Development

Cc: Town of Clayton Planning Department

NEIGHBORHOOD MEETING ATTENDANCE ROSTER

Project: Riverwood Ranch Phases 1A-2D

Application: Variance

Location/Date: Held Via Zoom/Virtually

	NAME	ADDRESS
1	Rebecca Mountz - Hearth Pointe	114 W. Main Street Clayton NC 27520
2	Haley Hogg - Hearth Pointe	114 W. Main Street Clayton NC 27520
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		

NEIGHBORHOOD MEETING SUMMARY FORM

FILL OUT THE FOLLOWING:

Application: Riverwood Ranch Variance Phases 1A-2D

Date of Mailing: 9/27/2021

Date of Meeting: 10/07/2021 Time of Meeting: 6:00 pm

Location of Meeting: Virtually via Zoom

I hereby attest that letters were mailed to the addresses listed on the Adjacent Property Owners List (attached) ten days prior to the Neighborhood Meeting, and that all required information was presented at the Meeting:

Printed Name: Rebecca Mountz Signature:

Meeting Summary/Minutes: *provide a summary of the discussion held at the meeting, including issues raised and any resolution discussed, and any changes made to the application as a result of the meeting.*

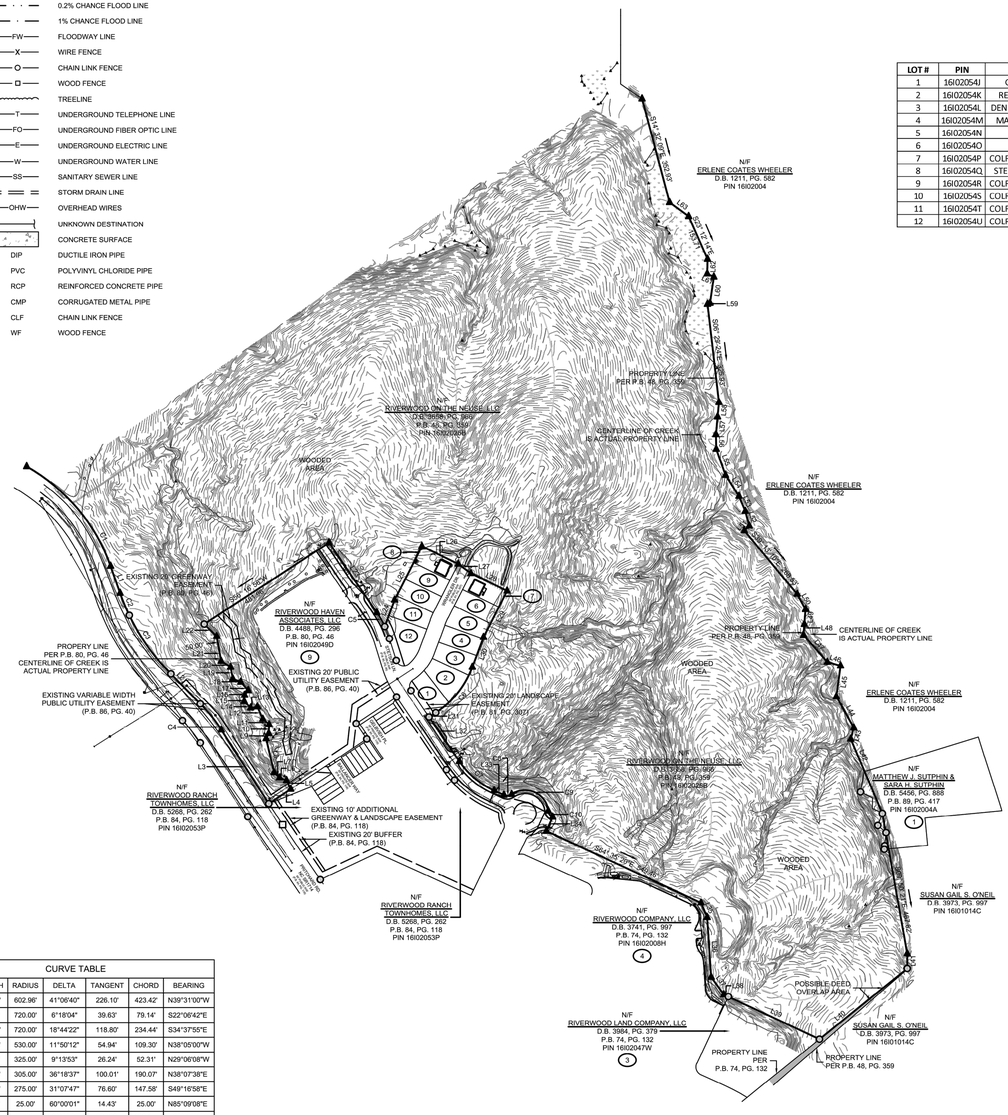
There were no neighbors that attended the neighborhood meeting for this project, however we did speak with a neighbor prior to the meeting and went into more detail on what the variance entailed and the relation to his property which bordered the southeast edge of the parcel involved with the project variance. The meeting opened up for participants at 5:50 pm, no neighbors joined by 6:30 pm so the meeting was ended.

Please write clearly (or submit a typed summary). Use additional sheets if necessary.

LEGEND

EIP	EXISTING IRON PIPE
EIR	EXISTING IRON ROD
EMON	EXISTING CONCRETE MONUMENT
AXLE	EXISTING AXLE
	COMPUTED POINT
	STORM DRAIN FLARED END SECTION
S	SANITARY SEWER MANHOLE
	HYDRANT
WV	WATER VALVE
WM	WATER METER
W	WELL
ICV	IRRIGATION CONTROL VALVE
TPED	TELEPHONE PEDESTAL
CATV	TV PEDESTAL
CWP	COMMUNICATION WITNESS POST
FOWP	FIBER OPTIC WITNESS POST
FO	FIBER OPTIC BOX
EM	ELECTRIC METER
T	ELECTRIC TRANSFORMER
EB	ELECTRIC BOX
	UTILITY POLE
	GUY POLE
	GUY WIRE
	LIGHT POLE
	BOLLARD
	SIGN
MB	MAILBOX

	DECIDUOUS TREE
	EVERGREEN TREE
	BUSH
BZ	BUFFER ZONE
	0.2% CHANCE FLOOD LINE
	1% CHANCE FLOOD LINE
FW	FLOODWAY LINE
X	WIRE FENCE
	CHAIN LINK FENCE
	WOOD FENCE
	TREELINE
T	UNDERGROUND TELEPHONE LINE
FO	UNDERGROUND FIBER OPTIC LINE
E	UNDERGROUND ELECTRIC LINE
W	UNDERGROUND WATER LINE
SS	SANITARY SEWER LINE
	STORM DRAIN LINE
OHW	OVERHEAD WIRES
	UNKNOWN DESTINATION
	CONCRETE SURFACE
DIP	DUCTILE IRON PIPE
PVC	POLYVINYL CHLORIDE PIPE
RCP	REINFORCED CONCRETE PIPE
CMP	CORRUGATED METAL PIPE
CLF	CHAIN LINK FENCE
WF	WOOD FENCE



LOT #	PIN	OWNER	D.B. & PG.	P.B. & PG.	ADDRESS
1	16I02054J	GETULIO & AIDA L. CRESPO	D.B. 4804, PG. 589	P.B. 81, PG. 307	14 WRANGLER DR.
2	16I02054K	RENMORE & STELMORE LESLIE	D.B. 4742, PG. 393	P.B. 81, PG. 307	24 WRANGLER DR.
3	16I02054L	DENNIS G. & ADRIANA E. JIMENEZ	D.B. 4760, PG. 132	P.B. 81, PG. 307	38 WRANGLER DR.
4	16I02054M	MATTHEW & SHAWN A. URBAN	D.B. 4807, PG. 492	P.B. 81, PG. 307	50 WRANGLER DR.
5	16I02054N	JAYSON JIMENEZ	D.B. 5050, PG. 430	P.B. 81, PG. 307	66 WRANGLER DR.
6	16I02054O	JAMES L. CALDWELL	D.B. 4990, PG. 68	P.B. 81, PG. 307	78 WRANGLER DR.
7	16I02054P	COLFIN AH-NORTH AROLINA 2, LLC	D.B. 4789, PG. 618	P.B. 81, PG. 307	90 WRANGLER DR.
8	16I02054Q	STEPHEN M. & KAITLIN KIERNAN	D.B. 4760, PG. 845	P.B. 81, PG. 307	93 WRANGLER DR.
9	16I02054R	COLFIN AH-NORTH AROLINA 2, LLC	D.B. 4789, PG. 620	P.B. 81, PG. 307	81 WRANGLER DR.
10	16I02054S	COLFIN AH-NORTH AROLINA 2, LLC	D.B. 4789, PG. 622	P.B. 81, PG. 307	69 WRANGLER DR.
11	16I02054T	COLFIN AH-NORTH AROLINA 2, LLC	D.B. 4789, PG. 624	P.B. 81, PG. 307	55 WRANGLER DR.
12	16I02054U	COLFIN AH-NORTH AROLINA 2, LLC	D.B. 4789, PG. 626	P.B. 81, PG. 307	31 WRANGLER DR.

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N18°57'40"W	94.05'
L2	N44°00'06"W	136.05'
L3	N32°09'54"W	286.92'
L4	S55°54'15"W	84.92'
L5	S24°39'03"E	31.98'
L6	S68°33'56"E	24.01'
L7	S46°10'51"E	24.67'
L8	S12°46'40"E	114.67'
L9	S26°40'39"W	18.56'
L10	S02°28'12"W	29.22'
L11	S48°17'56"E	27.41'
L12	S22°49'23"E	44.32'
L13	N80°19'15"E	22.14'
L14	S43°49'21"E	29.78'
L15	S03°56'44"W	20.57'
L16	S36°08'19"W	19.25'
L17	S41°04'03"E	36.08'
L18	S67°40'21"E	27.95'
L19	S10°10'18"E	39.06'
L20	S57°01'14"E	36.24'
L21	S09°58'52"E	83.28'
L22	S44°59'43"E	56.50'
L23	S33°43'04"E	276.50'
L24	N19°58'20"E	93.15'
L25	N26°25'46"E	196.84'
L26	S63°34'14"E	130.00'
L27	S53°10'06"E	50.84'
L28	S63°34'14"E	130.00'
L29	S26°25'46"W	170.17'
L30	S19°58'20"W	105.19'
L31	S56°16'57"W	26.07'
L32	S33°43'04"E	175.45'

LINE TABLE		
LINE	BEARING	DISTANCE
L33	S64°50'51"E	34.57'
L34	S23°33'35"W	50.30'
L35	S22°00'54"E	51.68'
L36	S03°45'22"E	197.41'
L37	S35°08'11"E	70.52'
L38	N64°35'20"W	16.02'
L39	S64°35'20"E	324.25'
L40	N50°33'42"E	364.92'
L41	S00°06'00"E	49.38'
L42	S22°33'13"E	264.90'
L43	S14°52'44"W	38.10'
L44	S28°08'41"E	106.75'
L45	S07°40'43"W	101.82'
L46	S73°27'36"E	44.34'
L47	N40°35'07"W	117.43'
L48	N04°24'01"E	35.33'
L49	S04°24'01"W	48.64'
L50	S27°55'50"E	57.46'
L51	S46°29'56"W	22.09'
L52	S14°49'00"E	50.59'
L53	S22°07'26"E	53.39'
L54	S32°05'31"E	81.58'
L55	S19°09'07"E	90.42'
L56	S01°26'52"E	48.19'
L57	S05°20'17"W	59.02'
L58	S05°20'17"W	47.04'
L59	S67°22'56"W	8.83'
L60	S08°11'07"W	86.79'
L61	S64°35'38"E	23.75'
L62	S01°19'30"W	47.45'
L63	S53°23'35"E	76.34'

CURVE TABLE						
CURVE	LENGTH	RADIUS	DELTA	TANGENT	CHORD	BEARING
C1	432.64'	602.96'	41°06'40"	226.10'	423.42'	N39°31'00"W
C2	79.18'	720.00'	6°18'04"	39.63'	79.14'	S22°06'42"E
C3	235.49'	720.00'	18°44'22"	118.80'	234.44'	S34°37'55"E
C4	109.49'	530.00'	11°50'12"	54.94'	109.30'	N38°05'00"W
C5	52.36'	325.00'	9°13'53"	26.24'	52.31'	N29°06'08"W
C6	193.29'	305.00'	36°18'37"	100.01'	190.07'	N38°07'38"E
C7	149.41'	275.00'	31°07'47"	76.60'	147.58'	S49°16'58"E
C8	26.18'	25.00'	60°00'01"	14.43'	25.00'	N85°09'08"E
C9	155.56'	75.00'	118°50'21"	126.92'	129.14'	N65°25'41"W
C10	25.66'	25.00'	58°34'45"	14.02'	24.46'	S35°17'54"E

GENERAL NOTES

1. THIS SURVEY MAP IS INTENDED TO REPRESENT THE EXISTING CONDITIONS/TOPOGRAPHY ON THE PROPERTIES SHOWN HEREON, AND IS NOT A BOUNDARY SURVEY. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT AND THEREFORE ALL ENCUMBRANCES UPON THE PROPERTY MAY NOT BE SHOWN.
2. THE PROPERTY LINES SHOWN HEREON HAVE BEEN CONFIRMED FROM A FIELD SURVEY BY STEWART INC. PROPERTY LINES SHOWN TAKEN FROM REFERENCES SHOWN HEREON.
3. HORIZONTAL DATUM IS NAD 83 (2011) AND VERTICAL DATUM IS NAVD88. BASED ON GPS METHODS USING REAL-TIME KINEMATIC SOLUTIONS FOR THE SURVEY CONTROL POINTS SHOWN HEREON AND TIED TO NORTH CAROLINA GEODETIC SURVEY MONUMENT "MORIAH RESET 2".

   "MORIAH RESET 2"
   N 701370.11'
   E 2146838.92'
   EL 360.75'
4. THE INITIAL STATE PLANE POSITIONS FOR THIS SURVEY WERE SCALED FROM GRID TO GROUND FROM A PROJECT LOCATION OF (TRAV-2) N:709311.58 E:2171595.96, AN ELEVATION OF 288.85, USING A COMBINED FACTOR OF 0.99988797.
5. THIS DRAWING DOES NOT CONFORM TO N.C. GS47-30 AND THEREFORE IS NOT FOR RECORDATION.
6. UTILITIES SHOWN HEREON ARE BASED ON ABOVE-GROUND VISIBLE EVIDENCE AND UTILITY DESIGNATION/MARKING SERVICES PERFORMED BY STEWART INC. AS A PART OF THIS SURVEY. CONTRACTOR SHALL FIELD VERIFY THE LOCATION OF ALL UTILITIES BEFORE COMMENCING CONSTRUCTION.
7. TREES SHOWN HEREON MAY NOT REPRESENT ALL VEGETATION ON THE SUBJECT PROPERTY.
8. THE SUBJECT PROPERTY IS ZONED "PLANNED DEVELOPMENT - MIXED USE" (PER TOWN OF CLAYTON ZONING MAP DATED 04/16/2020).
9. THE SUBJECT PROPERTY LIES IN ZONES X (AREA DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE AND FUTURE CONDITIONS 1% ANNUAL CHANCE FLOODPLAIN). BASED ON THE FLOOD INSURANCE RATE MAP COMMUNITY MAP NUMBERS 3720177000K & 3720177100K DATED 06/20/2018.

I, DUSTIN J. McCARTY, CERTIFY THAT THIS PROJECT WAS COMPLETED UNDER MY DIRECT AND RESPONSIBLE CHARGE FROM AN ACTUAL GROUND SURVEY MADE UNDER MY SUPERVISION; THAT THE IMAGERY AND/OR ORIGINAL DATA WAS OBTAINED ON 07/02/2020; THAT THE SURVEY WAS COMPLETED ON 08/26/2020; THAT CONTOURS SHOWN AS (CONTINUOUS LINES) MAY NOT MEET THE STATED STANDARD; AND ALL COORDINATES ARE BASED ON NAD83(2011).

DocuSigned by:
Dustin J. McCarty 3/17/2021
B7CA5A48EC3471...

DUSTIN J. McCARTY, PLS L-5213

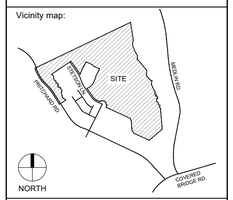
NORTH CAROLINA PROFESSIONAL SEAL L-5213 LAND SURVEYOR DUSTIN J. McCARTY

STEWART
101 WEST MAIN ST.
DURHAM, NC 27701
T 919.380.8750
FIRM LICENSE #: C-1051
www.stewartinc.com
PROJECT #: L20046

Client:
HEARTH POINTE DEVELOPMENT
114 W. MAIN STREET
CLAYTON, NC 27520

Consultants:
ENVIRONMENTAL
KEVIN MARTIN
PH: 919.720.7941
EMAIL: kmartin@sandec.com

Vicinity map:



Seal:
PRELIMINARY - DO NOT USE FOR CONSTRUCTION

0 100 200 400
SCALE: 1"=200'
NORTH

Project:
RIVERWOOD RANCH PHASES 1A-1B & 2A-2D

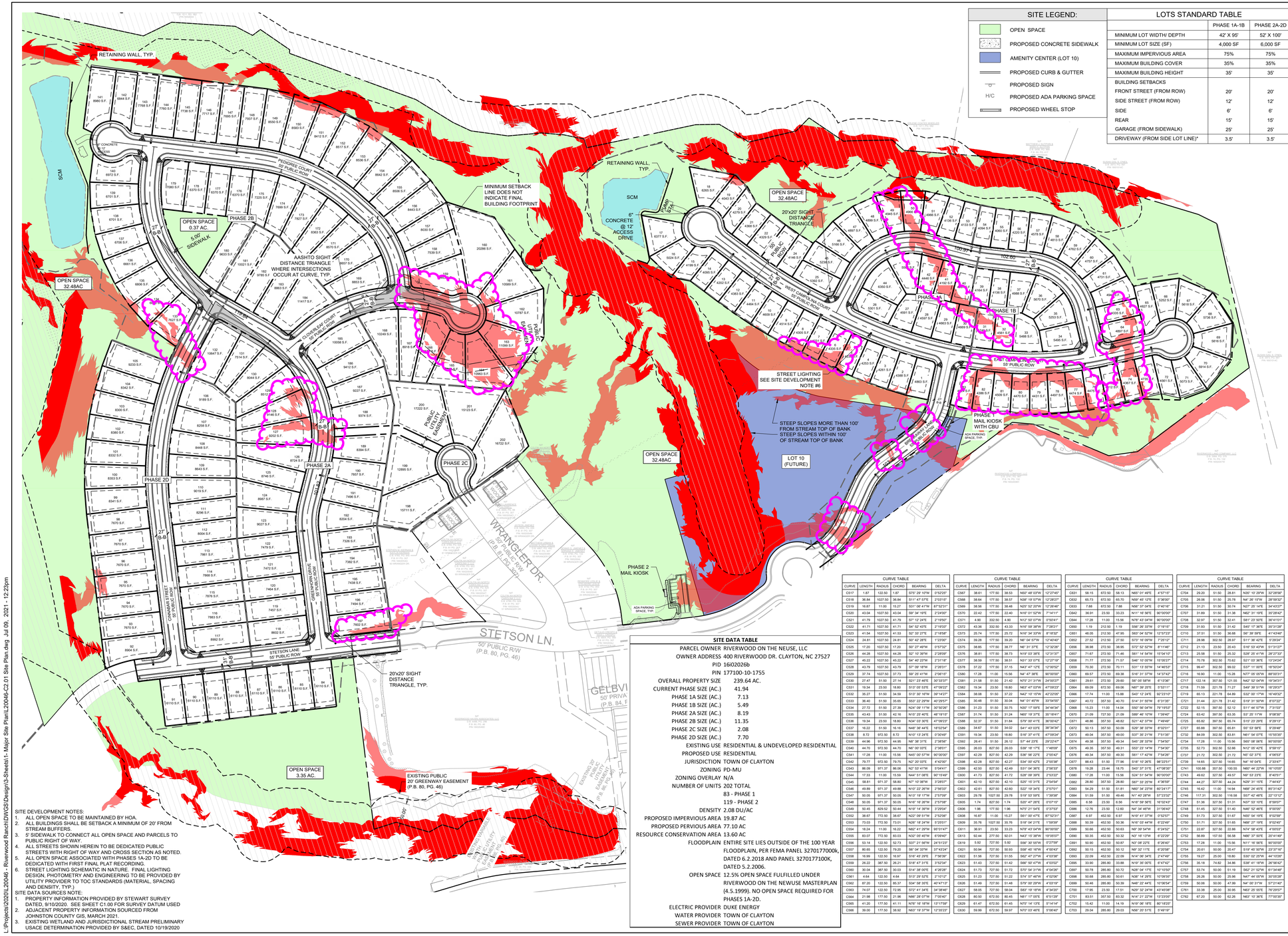
Issued for:
MINOR SUBDIVISION PLAN

No.	Date	Description
----	----	----

Title:
SEALED SURVEY

Project number: L20046 Sheet #:
Issued Date: 02.03.2021
Drawn by: -
Approved by: -
C1.00

L:\Projects\2020\L20046 - Riverwood Ranch\DWGS\Design\3-Sheets\1- Major Site Plan\L20046-C1.00 Sealed Boundary.dwg Jul 09, 2021 - 12:20pm



SITE DEVELOPMENT NOTES:
1. ALL OPEN SPACE TO BE MAINTAINED BY HOA.
2. ALL BUILDINGS SHALL BE SETBACK A MINIMUM OF 20' FROM STREAM BUFFERS.
3. 5' SIDEWALK TO CONNECT ALL OPEN SPACE AND PARCELS TO PUBLIC RIGHT OF WAY.
4. ALL STREETS SHOWN HEREIN TO BE DEDICATED PUBLIC STREETS WITH RIGHT OF WAY AND CROSS SECTION AS NOTED.
5. ALL OPEN SPACE ASSOCIATED WITH PHASES 1A-2D TO BE DEDICATED WITH FIRST FINAL PLAT RECORDING.
6. STREET LIGHTING SCHEMATIC IN NATURE. FINAL LIGHTING DESIGN, PHOTOMETRY AND ENGINEERING TO BE PROVIDED BY UTILITY PROVIDER TO TOC STANDARDS (MATERIAL, SPACING AND DENSITY, TYP.)

SITE DATA SOURCES NOTE:
1. PROPERTY INFORMATION PROVIDED BY STEWART SURVEY DATED, 9/10/2020. SEE SHEET C1.00 FOR SURVEY DATUM USED
2. ADJACENT PROPERTY INFORMATION SOURCED FROM JOHNSTON COUNTY GIS, MARCH 2021.
3. EXISTING WETLAND AND JURISDICTIONAL STREAM PRELIMINARY USACE DETERMINATION PROVIDED BY S&EC, DATED 10/19/2020

L:\Projects\2020\L20046 - Riverwood Ranch\DWGS\Design\3-Sheets\1-Major Site Plan\L20046-C2.01 Site Plan.dwg, Jul 09, 2021 - 12:23pm

SITE LEGEND:

- OPEN SPACE
- PROPOSED CONCRETE SIDEWALK
- AMENITY CENTER (LOT 10)
- PROPOSED CURB & GUTTER
- PROPOSED SIGN
- H/C — PROPOSED ADA PARKING SPACE
- PROPOSED WHEEL STOP

LOTS STANDARD TABLE

	PHASE 1A-1B	PHASE 2A-2D
MINIMUM LOT WIDTH/ DEPTH	42' X 95'	52' X 100'
MINIMUM LOT SIZE (SF)	4,000 SF	6,000 SF
MAXIMUM IMPERVIOUS AREA	75%	75%
MAXIMUM BUILDING COVER	35%	35%
MAXIMUM BUILDING HEIGHT	35'	35'
BUILDING SETBACKS		
FRONT STREET (FROM ROW)	20'	20'
SIDE STREET (FROM ROW)	12'	12'
SIDE	6'	6'
REAR	15'	15'
GARAGE (FROM SIDEWALK)	25'	25'
DRIVEWAY (FROM SIDE LOT LINE)*	3.5'	3.5'

SITE DATA TABLE

PARCEL OWNER	RIVERWOOD ON THE NEUSE, LLC
OWNER ADDRESS	400 RIVERWOOD DR. CLAYTON, NC 27527
PID	16I02026b
PIN	177100-10-1755
OVERALL PROPERTY SIZE	239.64 AC.
CURRENT PHASE SIZE (AC.)	41.94
PHASE 1A SIZE (AC.)	7.13
PHASE 1B SIZE (AC.)	5.49
PHASE 2A SIZE (AC.)	8.19
PHASE 2B SIZE (AC.)	11.35
PHASE 2C SIZE (AC.)	2.08
PHASE 2D SIZE (AC.)	7.70
EXISTING USE	RESIDENTIAL & UNDEVELOPED RESIDENTIAL
PROPOSED USE	RESIDENTIAL
JURISDICTION	TOWN OF CLAYTON
ZONING	PD-MU
ZONING OVERLAY	N/A
NUMBER OF UNITS	202 TOTAL 83 - PHASE 1 119 - PHASE 2
DENSITY	2.08 DU/AC
PROPOSED IMPERVIOUS AREA	19.87 AC
PROPOSED PERVIOUS AREA	77.10 AC
RESOURCE CONSERVATION AREA	13.60 AC
FLOODPLAIN	ENTIRE SITE LIES OUTSIDE OF THE 100 YEAR FLOODPLAIN, PER FEMA PANEL 3270177000k, DATED 6.2.2018 AND PANEL 3270177100K, DATED 5.2.2006.
OPEN SPACE	12.5% OPEN SPACE FULFILLED UNDER RIVERWOOD ON THE NEWUSE MASTERPLAN (4.5.1999). NO OPEN SPACE REQUIRED FOR PHASES 1A-2D.
ELECTRIC PROVIDER	DUKE ENERGY
WATER PROVIDER	TOWN OF CLAYTON
SEWER PROVIDER	TOWN OF CLAYTON

CURVE TABLE

CURVE	LENGTH	RADIUS	CHORD	BEARING	DELTA
C517	1.87	122.50	1.87	S75° 29' 09"W	0°52'29"
C518	36.84	1027.50	36.84	S11° 47' 57"E	2°03'10"
C519	16.87	11.00	15.27	S31° 06' 41"W	87°52'31"
C520	43.04	1027.50	43.04	S9° 34' 19"E	2°24'00"
C521	41.79	1027.50	41.79	S7° 12' 24"E	2°19'50"
C522	41.71	1027.50	41.71	S4° 52' 43"E	2°19'33"
C523	41.54	1027.50	41.53	S2° 33' 27"E	2°18'58"
C524	24.91	1027.50	24.91	S0° 42' 28"E	1°23'50"
C525	17.20	1027.50	17.20	S0° 27' 49"W	0°57'32"
C526	44.28	1027.50	44.28	S2° 10' 39"W	2°28'09"
C527	45.22	1027.50	45.22	S4° 40' 23"W	2°31'16"
C528	43.79	1027.50	43.79	S7° 09' 18"W	2°26'31"
C529	37.74	1027.50	37.73	S9° 25' 41"W	2°06'10"
C530	27.47	51.50	27.14	S21° 23' 46"E	30°33'37"
C531	19.34	23.50	18.80	S13° 26' 53"E	47°09'23"
C532	35.27	51.50	34.59	S13° 30' 16"W	39°14'27"
C533	36.40	51.50	35.65	S53° 22' 29"W	40°29'53"
C534	27.72	51.50	27.30	N24° 09' 11"W	30°50'26"
C535	43.43	51.50	42.16	N15° 23' 40"E	48°19'15"
C536	19.34	23.50	18.80	N34° 03' 30"E	47°09'23"
C537	16.22	51.50	16.16	N48° 36' 44"E	18°02'54"
C538	8.72	972.50	8.72	N10° 12' 24"E	0°30'49"
C539	44.96	972.50	44.95	N9° 36' 31"E	2°38'56"
C540	44.70	972.50	44.70	N6° 09' 03"E	2°38'01"
C541	17.28	11.00	15.56	N45° 00' 57"W	90°00'00"
C542	79.77	972.50	79.75	N2° 20' 07"E	4°42'07"
C543	86.09	971.37	86.06	N2° 53' 41"W	5°04'41"
C544	17.33	11.00	15.59	N44° 51' 08"E	90°15'49"
C545	58.81	971.37	58.80	N7° 10' 08"W	3°28'05"
C546	50.05	971.37	50.05	N10° 12' 18"W	2°57'09"
C547	50.05	971.37	50.05	N13° 18' 17"W	2°57'09"
C548	50.05	971.37	50.05	N16° 16' 26"W	2°57'08"
C549	50.40	829.52	50.44	N19° 14' 39"W	3°29'04"
C550	38.67	772.50	38.67	N21° 20' 01"W	2°52'06"
C553	73.03	772.50	73.01	N26° 18' 24"W	5°25'01"
C554	18.24	11.00	16.22	S82° 41' 29"W	95°01'47"
C555	83.07	772.50	83.03	N32° 05' 40"W	6°09'40"
C556	53.14	122.50	52.73	S37° 21' 56"W	24°51'23"
C557	80.65	122.50	79.20	S6° 04' 33"W	37°43'24"
C558	18.99	122.50	18.97	S16° 45' 23"E	7°56'39"
C559	26.22	387.50	26.21	S18° 47' 31"E	3°52'34"
C560	30.04	387.50	30.03	S14° 38' 05"E	4°26'28"
C561	4.64	122.50	4.64	S13° 29' 52"E	2°10'12"
C562	87.20	122.50	85.37	S34° 58' 35"E	40°47'12"
C563	74.07	122.50	72.95	S72° 41' 34"E	34°38'46"
C564	21.98	177.50	21.96	N86° 28' 07"W	7°05'40"
C565	41.20	177.50	41.11	N76° 18' 18"W	13°17'59"
C566	39.00	177.50	38.92	N63° 19' 37"W	12°35'23"

CURVE TABLE

CURVE	LENGTH	RADIUS	CHORD	BEARING	DELTA
C567	38.81	177.50	38.53	N50° 48' 03"W	12°31'40"
C568	38.64	177.50	38.57	N38° 19' 57"W	12°28'27"
C569	38.56	177.50	38.48	N25° 52' 20"W	12°26'46"
C570	22.42	177.50	22.40	N16° 01' 52"W	7°14'11"
C571	4.90	332.50	4.90	N12° 50' 07"W	0°50'41"
C572	43.36	332.50	43.33	N16° 58' 38"W	7°28'21"
C573	25.74	177.50	25.72	N16° 34' 33"W	8°18'32"
C574	39.20	177.50	39.11	N6° 54' 07"W	12°39'03"
C575	38.85	177.50	38.77	N6° 31' 31"E	12°32'26"
C576	38.81	177.50	38.73	N19° 03' 38"E	12°31'37"
C577	38.59	177.50	38.51	N31° 32' 07"E	12°27'19"
C578	37.22	177.50	37.15	N43° 42' 12"E	12°01'02"
C580	17.28	11.00	15.56	N4° 47' 38"E	90°00'00"
C581	21.58	51.50	21.42	N75° 21' 31"W	24°00'27"
C582	19.34	23.50	18.80	N83° 47' 57"W	47°09'23"
C584	38.08	51.50	37.22	N42° 10' 15"W	42°22'00"
C585	30.48	51.50	30.04	N4° 01' 45"W	33°54'55"
C586	31.23	51.50	30.75	N30° 11' 59"E	34°44'34"
C587	31.74	51.50	31.24	N65° 16' 37"E	35°18'41"
C588	32.37	51.50	31.84	S79° 09' 41"E	36°00'42"
C589	34.67	51.50	34.02	S41° 43' 03"E	38°34'34"
C591	19.34	23.50	18.80	S16° 37' 41"E	47°09'24"
C592	26.41	51.50	26.12	S7° 44' 23"E	29°22'47"
C595	26.03	827.50	26.03	S39° 18' 17"E	1°48'09"
C597	42.29	827.50	42.29	S36° 56' 22"E	2°55'42"
C598	42.28	827.50	42.27	S34° 00' 47"E	2°55'36"
C599	42.50	827.50	42.49	S31° 04' 36"E	2°56'33"
C600	41.73	827.50	41.72	S28° 09' 39"E	2°53'22"
C601	42.10	827.50	42.10	S25° 15' 31"E	2°54'54"
C602	42.61	827.50	42.60	S22° 19' 34"E	2°57'31"
C603	29.78	1027.50	29.78	S19° 53' 59"E	1°39'38"
C605	1.74	827.50	1.74	S20° 47' 26"E	0°07'10"
C606	1.96	177.50	1.96	N75° 21' 14"E	0°37'57"
C607	38.87	827.50	38.87	S34° 05' 47"E	2°41'31"
C609	35.76	1027.50	35.76	S18° 34' 21"E	1°59'39"
C611	36.91	23.50	33.23	S78° 49' 04"W	90°00'00"
C613	92.44	277.50	92.01	N43° 10' 38"W	19°05'07"
C619	5.92	727.50	5.92	S56° 30' 55"W	0°27'59"
C621	50.94	727.50	50.93	S58° 46' 16"W	4°00'43"
C622	51.56	727.50	51.55	S62° 47' 27"W	4°03'36"
C623	51.43	727.50	51.42	S66° 50' 47"W	4°02'57"
C624	51.73	727.50	51.72	S70° 54' 31"W	4°04'26"
C625	51.23	727.50	51.22	S74° 57' 48"W	4°02'06"
C626	51.49	727.50	51.48	S79° 00' 29"W	4°03'19"
C627	58.05	727.50	58.04	S83° 18' 18"W	4°34'20"
C628	80.50	672.50	80.45	N81° 17' 05"E	6°51'29"
C629	61.47	672.50	61.45	N75° 14' 13"E	5°14'14"
C630	59.99	672.50	59.97	N70° 02' 48"E	5°06'40"

CURVE TABLE

CURVE	LENGTH	RADIUS	CHORD	BEARING	DELTA
C631	38.15	672.50	38.13	N65° 01' 49"E	3°15'10"
C632	65.73	672.50	65.70	N59° 46' 12"E	5°36'00"
C633	7.88	672.50	7.88	N56° 37' 04"E	0°40'16"
C642	36.91	23.50	33.23	N11° 16' 56"E	90°00'00"
C644	17.28	11.00	15.56	N76° 49' 04"W	90°00'00"
C650	1.19	212.50	1.19	S56° 26' 33"W	0°19'15"
C651	48.05	212.50	47.95	S63° 04' 52"W	12°57'23"
C652	37.52	212.50	37.50	S72° 14' 59"W	7°18'47"
C656	38.98	272.50	38.95	S72° 52' 52"W	8°11'46"
C657	71.67	272.50	71.46	S81° 14' 54"W	15°04'10"
C658	71.77	272.50	71.57	S46° 10' 05"W	15°05'27"
C659	70.30	272.50	70.11	S31° 03' 50"W	14°46'50"
C660	69.57	272.50	69.38	S16° 31' 37"W	14°37'42"
C661	29.61	272.50	29.60	S6° 05' 58"W	6°13'36"
C664	69.09	672.50	69.06	N87° 38' 20"E	5°53'11"
C666	17.74	11.00	15.88	S43° 12' 24"E	92°23'10"
C667	40.72	357.50	40.70	S14° 31' 55"W	6°31'35"
C668	15.23	11.00	14.04	S50° 56' 04"W	79°19'53"
C670	21.09	727.50	21.09	S89° 46' 10"W	1°39'42"
C671	48.86	357.50	48.82	S21° 42' 37"W	7°49'46"
C672	50.13	357.50	50.09	S29° 38' 35"W	8°02'01"
C673	49.04	357.50	49.00	S37° 35' 21"W	7°51'35"
C674	49.36	357.50	49.34	S45° 28' 56"W	7°54'50"
C675	49.35	357.50	49.31	S53° 21' 14"W	7°54'30"
C676	49.34	357.50	49.30	S61° 11' 42"W	7°54'26"
C677	49.33	357.50	49.31	S68° 57' 07"W	7°54'21"
C678	19.28	23.44	18.75	S43° 37' 31"E	47°08'30"
C680	17.28	11.00	15.56	S24° 51' 54"W	90°00'00"
C682	28.80	357.50	28.80	S81° 33' 25"W	4°36'59"
C683	54.29	51.50	51.81	N62° 24' 45"E	60°24'47"
C684	51.59	51.50	49.46	N1° 40' 28"W	57°23'32"
C685	6.68	23.50	6.66	N18° 58' 56"E	16°17'43"
C686	12.76	23.50	12.60	N4° 34' 46"W	31°06'40"
C687	8.97	452.50	8.97	N16° 41' 37"W	1°21'31"
C688	50.39	452.50	50.36	N16° 05' 44"W	6°22'49"
C689	50.66	452.50	50.63	N9° 39' 54"W	6°24'52"
C690	50.35	452.50	50.32	N3° 16' 13"W	6°22'29"
C691	50.90	452.50	50.87	N3° 08' 22"E	6°26'40"
C692	50.15	452.50	50.12	N9° 32' 11"E	6°20'58"
C693	22.09	452.50	22.09	N14° 06' 34"E	2°47'46"
C695	33.90	285.80	33.88	N19° 38' 00"E	6°47'42"
C697	50.78	285.80	50.72	N28° 04' 17"E	10°10'50"
C698	50.68	285.80	50.61	N38° 14' 29"E	10°09'35"
C699	50.46	285.80	50.39	N48° 22' 44"E	10°06'54"
C700	17.95	23.50	17.51	N29° 32' 24"W	43°46'06"
C701	83.51	357.50	83.32	N14° 21' 22"W	13°23'05"
C702	15.42	11.00	14.19	N19° 08' 18"E	80°18'25"
C703	29.04	286.80	29.03	N56° 20' 51"E	5°48'19"

CURVE TABLE

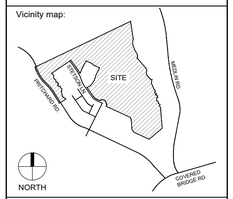
CURVE	LENGTH	RADIUS	CHORD	BEARING	DELTA
C704	29.20	51.50	28.81	N35° 10' 29"W	32°28'58"
C705	26.96	51.50	25.78	N4° 26' 15"W	28°59'32"
C706	31.21	51.50	30.74	N27° 25' 14"E	34°43'27"
C707	31.89	51.50	31.38	N62° 31' 19"E	35°28'42"
C708	32.97	51.50	32.41	S81° 33' 50"E	36°41'01"
C709	31.93	51.50	31.42	S45° 17' 36"E	35°31'28"
C710	37.51	51.50	36.66	S6° 39' 59"E	41°43'48"
C711	28.38	302.50	28.37	S11° 56' 42"E	5°23'24"
C712	21.13	23.50	20.43	S16° 53' 43"W	51°31'27"
C713	25.58	51.50	25.32	S28° 20' 41"W	28°27'33"
C714	70.78	302.50	70.62	S21° 03' 36"E	13°24'24"
C715	99.47	302.50	99.02	S37° 11' 10"E	18°50'24"
C716	16.90	11.00	15.28	N77° 08' 05"W	88°00'31"
C717	122.14	357.50	121.55	N42° 52' 04"W	19°34'31"
C718	71.59	221.78	71.27	S49° 38' 51"W	18°29'37"
C719	65.13	221.78	64.89	S32° 00' 17"W	16°49'32"
C721	31.44	221.78	31.42	S19° 31' 50"W	8°07'22"
C722	52.15	397.50	52.12	S11° 44' 57"W	7°31'03"
C724	63.42	397.50	63.35	S3° 25' 11"W	9°08'36"
C725	65.82	397.50	65.74	S15° 23' 29"E	9°29'13"
C727	65.88	397.50	65.81	S5° 53' 58"E	9°29'48"
C732	84.09	302.50	83.81	N51° 54' 07"E	15°55'35"
C734	17.28	11.00	15.56	S65° 06' 56"E	90°00'00"
C735	52.73	302.50	52.66	N13° 05' 42"E	9°59'10"
C737	21.72	302.50	21.72	N5° 02' 37"E	4°06'52"
C738	14.05	357.50	14.05	N4° 16' 04"E	2°15'47"
C741	100.88	357.50	100.55	N60° 44' 22"W	16°10'09"
C743	49.62	327.50	49.57	N5° 53' 23"E	8°40'51"
C744	44.27	327.50	44.24	N29° 31' 15"E	7°44'43"
C745	14.43	11.00	13.46	N68° 24' 45"E	83°51'42"
C746	117.31	302.50	116.58	S57° 42' 48"E	22°13'12"
C747	51.36	327.50	51.31	N33° 53' 10"E	8°58'37"
C748	51.45	327.50	51.40	N46° 52' 46"E	9°00'00"
C749	51.73	327.50	51.67	N55° 54' 46"E	9°02'59"
C750	51.71	327.50	51.65	N68° 27' 19"E	9°02'40"
C751	22.87	327.50	22.86	N74° 58' 43"E	4°00'03"
C752	66.89	157.50	66.38	N66° 31' 13"E	24°19'47"
C753	17.28	11.00	15.56	N11° 16' 56"E	90°00'00"
C754	20.61	50.00	20.47	S19° 45' 50"W	23°37'16"
C755	19.27	25.00	18.80	S30° 02' 25"W	44°10'26"
C756	35.18	74.82	34.86	S39° 41' 18"W	26°56'42"
C757	53.74	50.00	51.19	S62° 21' 52"W	61°34'48"
C758	26.26	50.00	25.96	N47° 44' 05"W	30°05'28"
C759	50.06	50.00	47.95	N4° 00' 37"W	57°21'40"
C761	33.36	25.00	30.95	N62° 25' 55"E	76°29'31"
C762	67.20	50.00	62.26	N63° 10' 36"E	77°00'30"

STEWART
101 WEST MAIN ST.
DURHAM, NC 27701
T 919.380.8750
FIRM LICENSE #: C-1051
www.stewartinc.com
PROJECT #: L20046

Client:
HEARTH POINTE DEVELOPMENT
114 W. MAIN STREET
CLAYTON, NC 27520

Consultants:
ENVIRONMENTAL
KEVIN MARTIN
PH: 919.720.7941
EMAIL: kmartin@sandec.com

Vicinity map:



Seal:
PRELIMINARY - DO NOT USE FOR CONSTRUCTION

NORTH CAROLINA
REGISTERED LANDSCAPE ARCHITECT
2136
KATIE HANNA TOW
7/9/2021

0 50 100 200
SCALE: 1" = 100'
NORTH

Project:
RIVERWOOD RANCH PHASES 1A-1B & 2A-2D

Issued for:
MINOR SUBDIVISION PLAN

No.	Date	Description
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Title:
SITE PLAN & PRELIMINARY PLAT - OVERALL

Project number: L20046
Issued Date: 02.03.2021
Drawn by: KH
Approved by: MPT
Sheet #: C2.01

U.S. ARMY CORPS OF ENGINEERS
WILMINGTON DISTRICT

Action Id. **SAW-2020-00581** County: **Johnston** U.S.G.S. Quad: **NC- Clayton**

NOTIFICATION OF JURISDICTIONAL DETERMINATION

Requestor:	**Soil & Environmental Consultants, P.A.**
	Steven Ball
Address:	**8412 Falls of Neuse Road**
	Raleigh, North Carolina 27615
Telephone Number:	**919-691-2114**
E-mail:	**sball@sandec.com**

Property Owner:	**Riverwood on the Neuse, LLC**
	Brian Strickland
Address:	**2102 Pritchard Road**
	Clayton, North Carolina 27527
Telephone Number:	**919-550-8086**
E-mail:	**brian.strickland@fredsmithcompany.com**

Size (acres)	**~240**	Nearest Town	**Clayton**
Nearest Waterway	**Neuse River**	River Basin	**Neuse**
USGS HUC	**03020201**	Coordinates	Latitude: **35.699807**
			Longitude: **-78.420587**

Location description: **The project is located north of Pritchard Road, approximately 0.25 mile west of its intersection with Covered Bridge Road in the Town of Clayton, Johnston County, NC.**

Indicate Which of the Following Apply:

A. Preliminary Determination

☒ There appear to be **waters, including wetlands** on the above described project area/property, that may be subject to Section 404 of the Clean Water Act (CWA)(33 USC § 1344) and/or Section 10 of the Rivers and Harbors Act (RHA) (33 USC § 403). The **waters, including wetlands** have been delineated, and the delineation has been verified by the Corps to be sufficiently accurate and reliable. The approximate boundaries of these waters are shown on the enclosed delineation map dated **12/4/2019**. Therefore this preliminary jurisdiction determination may be used in the permit evaluation process, including determining compensatory mitigation. For purposes of computation of impacts, compensatory mitigation requirements, and other resource protection measures, a permit decision made on the basis of a preliminary JD will treat all waters and wetlands that would be affected in any way by the permitted activity on the site as if they are jurisdictional waters of the U.S. This preliminary determination is not an appealable action under the Regulatory Program Administrative Appeal Process (Reference 33 CFR Part 331). However, you may request an approved JD, which is an appealable action, by contacting the Corps district for further instruction.

☐ There appear to be **waters, including wetlands** on the above described project area/property, that may be subject to Section 404 of the Clean Water Act (CWA)(33 USC § 1344) and/or Section 10 of the Rivers and Harbors Act (RHA) (33 USC § 403). However, since the **waters, including wetlands** have not been properly delineated, this preliminary jurisdiction determination may not be used in the permit evaluation process. Without a verified wetland delineation, this preliminary determination is merely an effective presumption of CWA/RHA jurisdiction over all of the **waters, including wetlands** at the project area, which is not sufficiently accurate and reliable to support an enforceable permit decision. We recommend that you have the **waters, including wetlands** on your project area/property delineated. As the Corps may not be able to accomplish this wetland delineation in a timely manner, you may wish to obtain a consultant to conduct a delineation that can be verified by the Corps.

B. Approved Determination

☐ There are Navigable Waters of the United States within the above described project area/property subject to the permit requirements of Section 10 of the Rivers and Harbors Act (RHA) (33 USC § 403) and Section 404 of the Clean Water Act (CWA)(33 USC § 1344). Unless there is a change in law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.

☐ There are **waters, including wetlands**on the above described project area/property subject to the permit requirements of Section 404 of the Clean Water Act (CWA) (33 USC § 1344). Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.

☐ We recommend you have the **waters, including wetlands** on your project area/property delineated. As the Corps may not be able to accomplish this wetland delineation in a timely manner, you may wish to obtain a consultant to conduct a delineation that can be verified by the Corps.

☐ The **waters, including wetlands** on your project area/property have been delineated and the delineation has been verified by the Corps. The approximate boundaries of these waters are shown on the enclosed delineation map dated **DATE**. We strongly suggest you have this delineation surveyed. Upon completion, this survey should be reviewed and verified by the Corps. Once verified, this survey will provide an accurate depiction of all areas subject to CWA jurisdiction on your property which, provided there is no change in the law or our published regulations, may be relied upon for a period not to exceed five years.

☐ The **waters, including wetlands** have been delineated and surveyed and are accurately depicted on the plat signed by the Corps Regulatory Official identified below on**DATE**. Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.

☐ There are no waters of the U.S., to include wetlands, present on the above described project area/property which are subject to the permit requirements of Section 404 of the Clean Water Act (33 USC 1344). Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.

☐ The property is located in one of the 20 Coastal Counties subject to regulation under the Coastal Area Management Act (CAMA). You should contact the Division of Coastal Management in **Morehead City, NC, at (252) 808-2808** to determine their requirements.

Placement of dredged or fill material within waters of the US, including wetlands, without a Department of the Army permit may constitute a violation of Section 301 of the Clean Water Act (33 USC § 1311). Placement of dredged or fill material, construction or placement of structures, or work within navigable waters of the United States without a Department of the Army permit may constitute a violation of Sections 9 and/or 10 of the Rivers and Harbors Act (33 USC § 401 and/or 403). If you have any questions regarding this determination and/or the Corps regulatory program, please contact **Christopher Hopper at (919) 554-4884 (x35) or christopher.d.hopper@usace.army.mil**.

C. Basis For Determination: Basis For Determination: See the preliminary jurisdictional determination form dated 10/19/2020, and the attached Wetland Sketch Map, Riverwood Ranch, dated 12/04/2019.

D. Remarks: None.

E. Attention USDA Program Participants

This delineation/determination has been conducted to identify the limits of Corps' Clean Water Act jurisdiction for the particular site identified in this request. The delineation/determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985. If you or your tenant are USDA Program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service, prior to starting work.

F. Appeals Information **(This information applies only to approved jurisdictional determinations as indicated in B. above)**

This correspondence constitutes an approved jurisdictional determination for the above described site. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and request for appeal (RFA) form. If you request to appeal this determination you must submit a completed RFA form to the following address:

US Army Corps of Engineers
South Atlantic Division
Attn: Phillip Shannin, Review Officer
60 Forsyth Street SW, Room 10M15
Atlanta, Georgia 30303-8801

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by **Not applicable**.
It is not necessary to submit an RFA form to the Division Office if you do not object to the determination in this correspondence.

Corps Regulatory Official: DAILEY.SAMANTHA.J.1387567948 DAILEY.SAMANTHA.J.1387567948 2020.10.19 08:22:41 -04'00'

Date of JD: **10/19/2020** Expiration Date of JD: **Not applicable**

The Wilmington District is committed to providing the highest level of support to the public. To help us ensure we continue to do so, please complete the Customer Satisfaction Survey located at http://corpsmapu.usace.army.mil/cm_apex/f?p=136:4:0

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL		
Applicant: **Soil & Environmental Consultants, P.A., Steven Ball**	File Number: **SAW-2020-00581**	Date: **10/19/2020**

Attached is:		See Section below
☐	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
☐	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
☐	PERMIT DENIAL	C
☐	APPROVED JURISDICTIONAL DETERMINATION	D
☒	**PRELIMINARY JURISDICTIONAL DETERMINATION**	**E**

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at or http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits.aspx or the Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the district engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT
REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)
ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:	
If you have questions regarding this decision and/or the appeal process you may contact: **District Engineer, Wilmington Regulatory Division** **Attn: Christopher Hopper** **Raleigh Regulatory Office** **U.S Army Corps of Engineers** **3331 Heritage Trade Drive, Suite 105** **Wake Forest, North Carolina 27587**	If you only have questions regarding the appeal process you may also contact: Mr. Phillip Shannin, Administrative Appeal Review Officer CESAD-PDO U.S. Army Corps of Engineers, South Atlantic Division 60 Forsyth Street, Room 10M15 Atlanta, Georgia 30303-8801 Phone: (404) 562-5137
RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15-day notice of any site investigation, and will have the opportunity to participate in all site investigations.	
_____ Signature of appellant or agent.	Date: / Telephone number:

For appeals on Initial Proffered Permits send this form to:

District Engineer, Wilmington Regulatory Division, **Attn: Christopher Hopper, 69 Darlington Avenue, Wilmington, North Carolina 28403**

For Permit denials, Proffered Permits and Approved Jurisdictional Determinations send this form to:

Division Engineer, Commander, U.S. Army Engineer Division, South Atlantic, Attn: Mr. Phillip Shannin, Administrative Appeal Officer, CESAD-PDO, 60 Forsyth Street, Room 10M15, Atlanta, Georgia 30303-8801
Phone: (404) 562-5137

PRELIMINARY JURISDICTIONAL DETERMINATION (PJD) FORM

BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR PJD: 10/19/2020

B. NAME AND ADDRESS OF PERSON REQUESTING PJD: Soil & Environmental Consultants, P.A., Steven Ball, 8412 Falls of Neuse Road, Raleigh, North Carolina 27615

C. DISTRICT OFFICE, FILE NAME, AND NUMBER: Wilmington District, Riverwood Ranch, SAW-2020-00581

D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION: The project is located north of Pritchard Road, approximately 0.25 mile west of its intersection with Covered Bridge Road in the Town of Clayton, Johnston County, NC.

(USE THE TABLE BELOW TO DOCUMENT MULTIPLE AQUATIC RESOURCES AND/OR AQUATIC RESOURCES AT DIFFERENT SITES)

State: NC County: Johnston City: Clayton
Center coordinates of site (lat/long in degree decimal format): Latitude: 35.699807 Longitude: -78.420587

Universal Transverse Mercator:

Name of nearest waterbody: Neuse River

E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

☐Office (Desk) Determination. Date:

☐Field Determination. Date(s):

TABLE OF AQUATIC RESOURCES IN REVIEW AREA WHICH "MAY BE" SUBJECT TO REGULATORY JURISDICTION

Site Number	Latitude (decimal degrees)	Longitude (decimal degrees)	Estimated amount of aquatic resources in review area (acreage and linear feet, if applicable	Type of aquatic resources (i.e., wetland vs. non-wetland waters)	Geographic authority to which the aquatic resource "may be" subject (i.e., Section 404 or Section 10/404)
Stream A_Int	35.698619	-78.424202	1178 lf	Non-wetland Waters	Section 404
Stream A_Per	35.701105	-78.422482	1744 lf	Non-wetland Waters	Section 404
Stream B_Int	35.695233	-78.41652	74 lf	Non-wetland Waters	Section 404
Stream B_Per	35.699687	-78.418288	5622 lf	Non-wetland Waters	Section 404
Stream C	35.697018	-78.419651	1163 lf	Non-wetland Waters	Section 404
Stream D	35.696905	-78.41906	388 lf	Non-wetland Waters	Section 404
Stream E	35.698253	-78.419038	89 lf	Non-wetland Waters	Section 404
Stream F	35.698554	-78.418925	99 lf	Non-wetland Waters	Section 404

Stream G	35.695164	-78.416693	157 lf	Non-wetland Waters	Section 404
Stream H	35.696854	-78.423067	48 lf	Non-wetland Waters	Section 404
Wetland W1	35.696804	-78.423142	0.04 ac	Wetland	Section 404
Wetland W2	35.70124	-78.421162	0.24 ac	Wetland	Section 404
Wetland W3	35.702963	-78.419695	0.34 ac	Wetland	Section 404
Wetland W4	35.701682	-78.419001	1.04 ac	Wetland	Section 404
Wetland LW1	35.702702	-78.41977	83 sf	Wetland	Section 404

1. The Corps of Engineers believes that there may be jurisdictional aquatic resources in the review area, and the requestor of this PJD is hereby advised of his or her option to request and obtain an approved JD (AJD) for that review area based on an informed decision after having discussed the various types of JDs and their characteristics and circumstances when they may be appropriate.
2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre- construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an AJD for the activity, the permit applicant is hereby made aware that: (1) the permit applicant has elected to seek a permit authorization based on a PJD, which does not make an official determination of jurisdictional aquatic resources; (2) the applicant has the option to request an AJD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an AJD could possibly result in less compensatory mitigation being required or different special conditions; (3) the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) undertaking any activity in reliance upon the subject permit authorization without requesting an AJD constitutes the applicant's acceptance of the use of the PJD; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a PJD constitutes agreement that all aquatic resources in the review area affected in any way by that activity will be treated as jurisdictional, and waives any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an AJD or a PJD, the JD will be processed as soon as practicable. Further, an AJD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331. If, during an administrative appeal, it becomes appropriate to make an official determination whether geographic jurisdiction exists over aquatic resources in the review area, or to provide an official delineation of jurisdictional aquatic resources in the review area, the Corps will provide an AJD to accomplish that result, as soon as is practicable. This PJD finds that there *"may be"* waters of the U.S. and/or that there *"may be"* navigable waters of the U.S. on the subject review area, and identifies all aquatic features in the review area that could be affected by the proposed activity, based on the following information:

SUPPORTING DATA. Data reviewed for PJD (check all that apply) Checked items are included in the administrative record and are appropriately cited:

☒Maps, plans, plots or plat submitted by or on behalf of the PJD requestor: Steven Ball / Soil and Environmental Consultants, PA
Map: **Wetland Sketch Map Riverwood Ranch**

☒Data sheets prepared/submitted by or on behalf of the PJD requestor. Datasheets:

☒Office concurs with data sheets/delineation report.

☐Office does not concur with data sheets/delineation report. Rationale:_____

☐Data sheets prepared by the Corps:_____

☐Corps navigable waters' study:

☐U.S. Geological Survey Hydrologic Atlas:

☐USGS NHD data:

☐USGS 8 and 12 digit HUC maps:

☒U.S. Geological Survey map(s). Cite scale & quad name: **24K Clayton, NC USGS Quadrangle**

☒Natural Resources Conservation Service Soil Survey. Citation: **Johnston County NC Soils Survey Sheet 1 (1994)**

☐National wetlands inventory map(s). Cite name:

☐State/local wetland inventory map(s):_____

☐FEMA/FIRM maps:

☐100-year Floodplain Elevation is:_____ (National Geodetic Vertical Datum of 1929)

☒Photographs: ☒ Aerial (Name & Date): **Undated NC OneMap aerial image**

or ☐ Other (Name & Date):

☐Previous determination(s). File no. and date of response letter:_____

☐Other information (please specify):

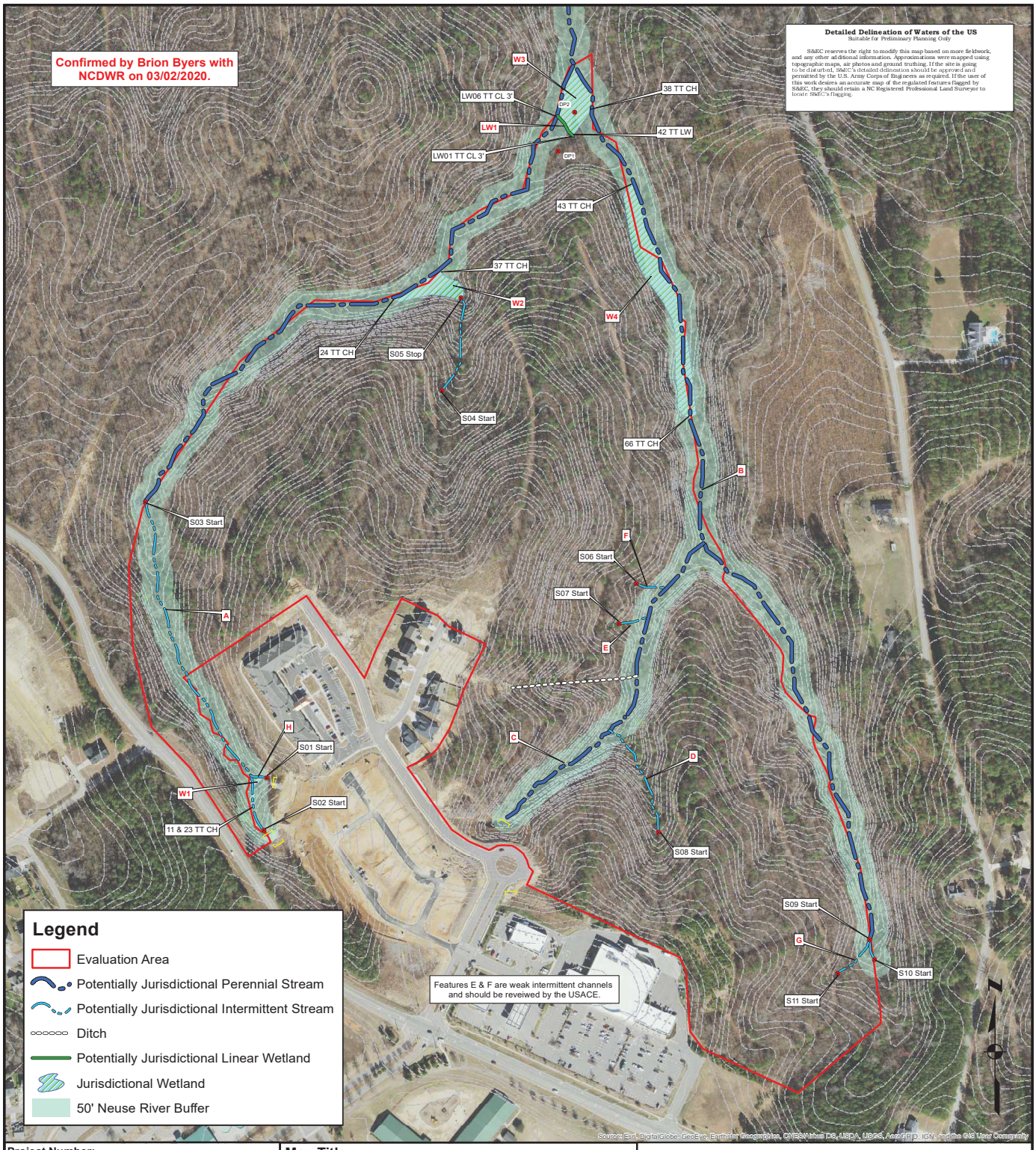
IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.

DAILEY.SAMANTHA.J.13875679 48 DAILEY.SAMANTHA.J.1387567948 2020.10.19 08:22:17 -04'00'

Signature and date of Regulatory staff member completing PJD
10/19/2020

Signature and date of person requesting PJD (REQUIRED, unless obtaining the signature is impracticable) [1]

[1] Districts may establish timeframes for requester to return signed PJD forms. If the requester does not respond within the established time frame, the district may presume concurrence and no additional follow up is necessary prior to finalizing an action.



Project Number:	11224.W9
Project Manager:	SB
Scale:	1" = 200'
Date:	12/04/2019

Map Title: **Wetland Sketch Map**
Riverwood Ranch
Johnston County, NC

Source: **Aerials from NC One Map**

0 200 400 800 Feet

S&EC Soil & Environmental Consultants, PA
8412 Falls of Neuse Road, Suite 104, Raleigh, NC 27615 • Phone: (919) 846-5900 • Fax: (919) 846-9467
sandec.com

Public Notice

In accordance with NC GS 160D-302, the Clayton Board of Adjustment will conduct the following evidentiary hearing on Wednesday, October 20, 2021 at 6:00 PM in the Town Council Chambers in Town Hall, located at 111 E. Second Street:

- **Request for a Variance (File # 2021-104-VAR) from Section 155.500(B) – specifically the prohibition of building impervious surface on a Resource Conservation Area classified as steep slopes above 25% grade of at least 5,000 square feet of contiguous area; TAG numbers: 06I02026B**

During an evidentiary hearing, the Board of Adjustment must make findings of fact based upon sworn testimony and other credible evidence. Citizens may give testimony in an evidentiary hearing after they have taken an oath. This is an open meeting and interested persons are invited to attend.

Ben Howell, Planning Director
919-553-5002

_____

Johnstonian Newspaper

Please advertise on the following dates:
Wednesday, October 6, 2021
Wednesday, October 13, 2021

Affidavit of publication required.

Town of Clayton
Planning Department
111 E. Second Street, Clayton, NC 27520
P.O. Box 879, Clayton, NC 27528
Phone: 919-553-5002
Fax: 919-553-1720

October 6, 2021

NOTICE

SUBJECT:	**Project:**	**2021-104-VAR Riverwood Ranch Ph 1A – 1B & 2A – 2D Variance**
	Address:	**Pritchard Road**
	PIN #:	**16I02026B**
	Applicant:	**Hearth Pointe Development, LLC**

Dear Clayton Area Property Owner:

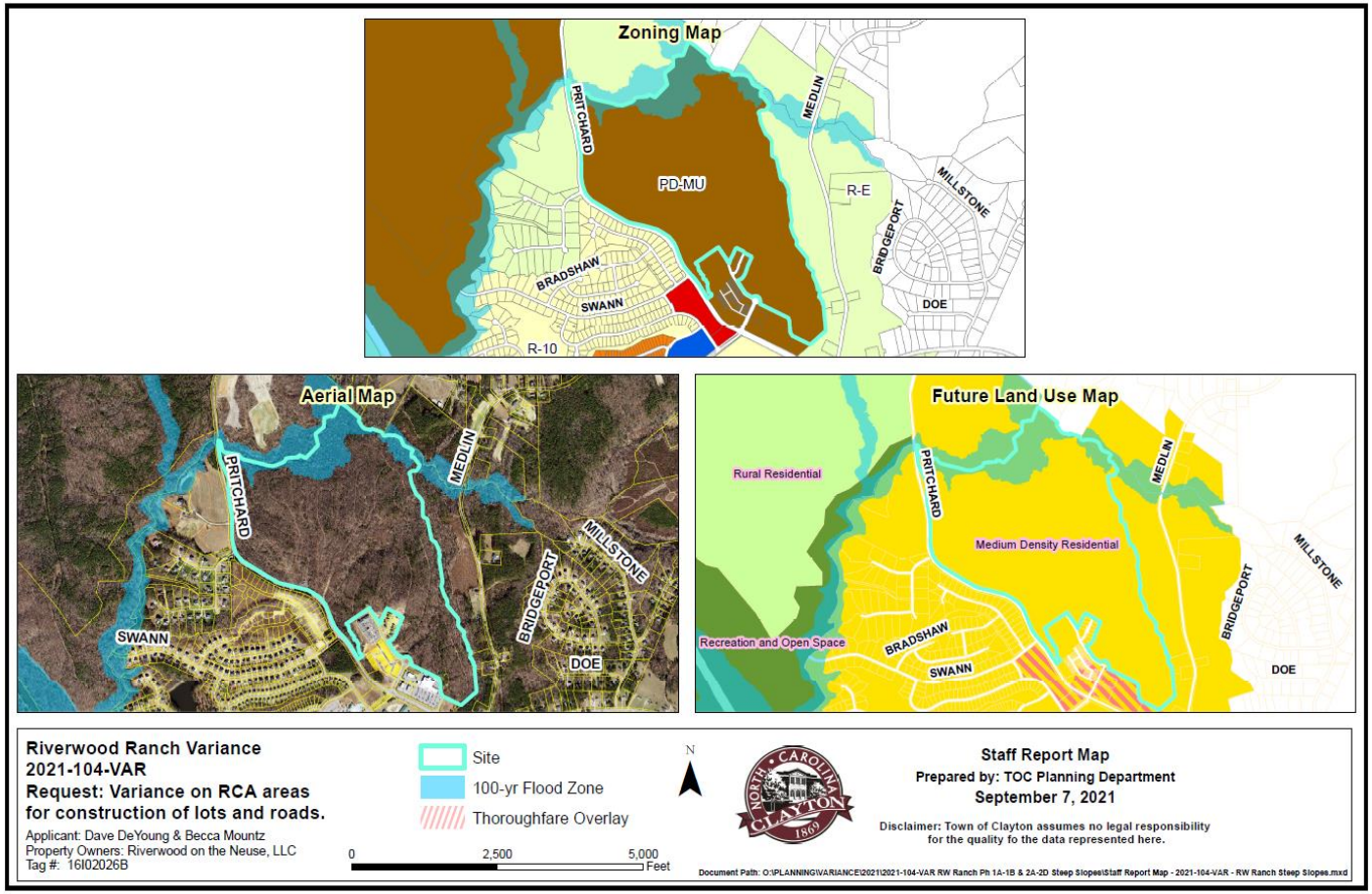
Notice is hereby given that the Clayton Board of Adjustment will hold an evidentiary (quasi-judicial) hearing on **Wednesday, October 20, 2021 at 6:00 PM** at Town Hall, 111 E Second Street, to consider the above referenced Steep Slopes Variance application. The applicant is requesting permission to construct an access road to a proposed subdivision along with additional lots on a restricted Resource Conservation Area regarding steep slopes. The subject property is located on Pritchard Road and Stetson Lane, on the future Riverwood Ranch subdivision property. Please see the map on the back of this letter.

Based upon records in the Johnston County Tax Office, you are the owner of property that is within 100 feet of this request. You are invited to attend this meeting. During an evidentiary (quasi-judicial) hearing, the Board of Adjustment must make findings of fact based upon sworn testimony and other credible evidence. Citizens may give testimony in an evidentiary (quasi-judicial) hearing after they have taken an oath. This is an open meeting and interested persons are invited to attend.

If you should need additional assistance or information, please contact the Planning Department at (919) 553-5002 or email at bhowell@townofclaytonnc.org.

Sincerely,

Ben Howell, AICP, CZO
Planning Director


Zoning Map
PRITCHARD
MEDLIN
PD-MU
R-E
MILLSTONE
BRIDGEPORT
BRADSHAW
SWANN
DOE
R-10
Aerial Map
PRITCHARD
MEDLIN
MILLSTONE
BRIDGEPORT
SWANN
DOE
Future Land Use Map
Rural Residential
PRITCHARD
MEDLN
Medium Density Residential
MILLSTONE
BRIDGEPORT
Recreation and Open Space
BRADSHAW
SWANN
DOE
Riverwood Ranch Variance
2021-104-VAR
Request: Variance on RCA areas
for construction of lots and roads.
Applicant: Dave DeYoung & Becca Mountz
Property Owners: Riverwood on the Neuse, LLC
Tag #: 16I02026B
Site
100-yr Flood Zone
Thoroughfare Overlay
0
2,500
5,000
Feet
N
NORTH CAROLINA
CLAYTON
1869
Staff Report Map
Prepared by: TOC Planning Department
September 7, 2021
Disclaimer: Town of Clayton assumes no legal responsibility
for the quality to the data represented here.
Document Path: O:\PLANNING\VARIANCE\2021\2021-104-VAR RW Ranch Ph 1A-1B & 2A-2D Steep Slopes\Staff Report Map - 2021-104-VAR - RW Ranch Steep Slopes.mxd

Town of Clayton
Planning Department
111 E. Second Street, Clayton, NC 27520
P.O. Box 879, Clayton, NC 27528
Phone: 919-553-5002
Fax: 919-553-1720

October 12, 2021

David DeYoung
Director of Development
Hearth Pointe Development
114 West Main Street
Clayton, NC 27520

Re: 2021-104-VAR Riverwood Ranch Phases 1A-1B, 2A-2D Variance Condition

Mr. DeYoung,

The Town of Clayton Planning staff is recommending to the Board of Adjustment that a condition of approval be placed upon the above referenced application, which proceeds to Board of Adjustment on Wednesday, October 20, 2021. These recommended conditions of approval are outlined on the back of this letter.

Please read through this potential condition of approval, and sign below if you are in agreement with the condition as proposed. If you are not in agreement please respond accordingly in writing. The document will be included in the agenda for Board review.

Thank you.

Sincerely,

Ben Howell, AICP, CZO
Planning Director
Town of Clayton

Recommend Condition of Approval (2021-104-VAR Riverwood Ranch Ph. 1A-1B, 2A-2D):

The Resource Conservation Areas shown on the associated site plan, attachment 3, that are not subject to the variance request shall be protected in perpetuity by a binding legal instrument that is recorded with the deed. The instrument for permanent protection shall include clear restrictions on the use of the resource conservation area. These restrictions shall include all restrictions contained in Section 155.500 of the Clayton Unified Development Code, as well as any further restrictions the applicant chooses to place on the use of the resource conservation areas. Where appropriate, the instrument shall allow for stream and habitat restoration.

APPLICANT AFFIDAVIT

I/We, the undersigned, do herby certify that I have reviewed the recommended conditions of approval and am in agreement with the conditions as they are outlined within this letter.

David DeYoung — *Print Name*

Signature of Applicant

10/12/21 — *Date*

ARTICLE 5: NATURAL RESOURCE PROTECTION

CONTENTS:

§ 155.500 RESOURCE CONSERVATION AREAS 1
§ 155.501 WATERSHED PROTECTION 4
§ 155.502 STREAM BUFFERS 8

§ 155.500 RESOURCE CONSERVATION AREAS

(A) **DEFINED**

(1) All resource conservation areas shall be unoccupied or predominately unoccupied by buildings or other impervious surfaces. Unoccupied or predominately unoccupied by buildings or other impervious surfaces shall mean that not more than 5% of the area of any resource conservation area shall be occupied by such surfaces.

(2) Resource conservation areas shall be identified on plats as being permanently set aside from development, except passive uses pursuant to this Ordinance. No resource conservation area shall be counted towards lot area required by §§ 155.200 through 155.204, with the exceptions for stream buffers pursuant to G.S. §143-214.23A. This shall not preclude the platting of lots in such areas, provided that adequate lot area outside the resource conservation area is provided to meet the minimum lot area requirements of §§ 155.200 through 155.204.

(3) No resource conservation area shall be counted towards the recreation and open space requirements as set forth in §§ 155.200 through 155.204, with the exceptions for stream buffers pursuant to G.S. §143-214.23A, except developed greenway or greenway-access or water-access facilities may be counted provided they are developed to the standards of this Ordinance.

(B) **DETERMINATION OF RESOURCE CONSERVATION AREAS**

The following are considered resource conservation areas and shall be unoccupied or predominately unoccupied by buildings or other impervious surfaces.

(1) The 100-year floodplain

(2) Stream buffer areas

(3) Slopes above 25% of at least 5,000 square feet contiguous area; and

(4) Jurisdictional wetlands under federal law () that meet the definition applied by the United States Army Corps of Engineers.

RESOURCE CONSERVATION AREAS SHOWN ON PLAT

All resource conservation areas shall be shown on any preliminary or final plat approved after January 1, 2006.

(C) **PERMITTED USES OF RESOURCE CONSERVATION AREAS**

Uses of resource conversation areas may include the following:

(1) Conservation areas for natural, archeological or historical resources;

(2) Meadows, woodlands, wetlands, wildlife corridors, game preserves, or similar conservation-oriented areas;

(3) Agriculture, horticulture, silviculture or pasture uses, provided that all applicable best management practices are used to minimize environmental impacts;

(4) Walking or bicycle trails;

(5) Easements for drainage, access, and underground utility lines;

(6) Other conservation-oriented uses compatible with the purposes of this chapter;

(7) Public infrastructure projects and supporting facilities.

(D) **PROHIBITED USES OF RESOURCE CONSERVATION AREAS**

Use of resource conservation areas may not include the following:

(1) L; Stormwater Control Measures

(2) Roads, parking lots and impervious surfaces, except as specifically authorized; and

(3) Golf courses, agricultural and forestry activities not conducted according to accepted best management practices.

(E) **OWNERSHIP AND MAINTENANCE**

(1) **Ownership**

Resource conservation areas shall be accepted and owned by one of the following entities:

(a) Land conservancy or land trust. The responsibility for maintenance shall be borne by a land conservancy or land trust.

(b) Homeowners association. A homeowners association representing residents of the subdivision shall own the resource conservation areas. Membership in the association shall be mandatory and automatic for all homeowners of the subdivision and their

successors. The homeowners' association shall have lien authority to ensure the collection of dues from all members. The responsibility for maintenance shall be borne by the homeowner's association.

(c) Private landowner. A private landowner may retain ownership of the resource conservation areas. The responsibility for maintenance shall be borne by the private landowner.

(2) **Maintenance**

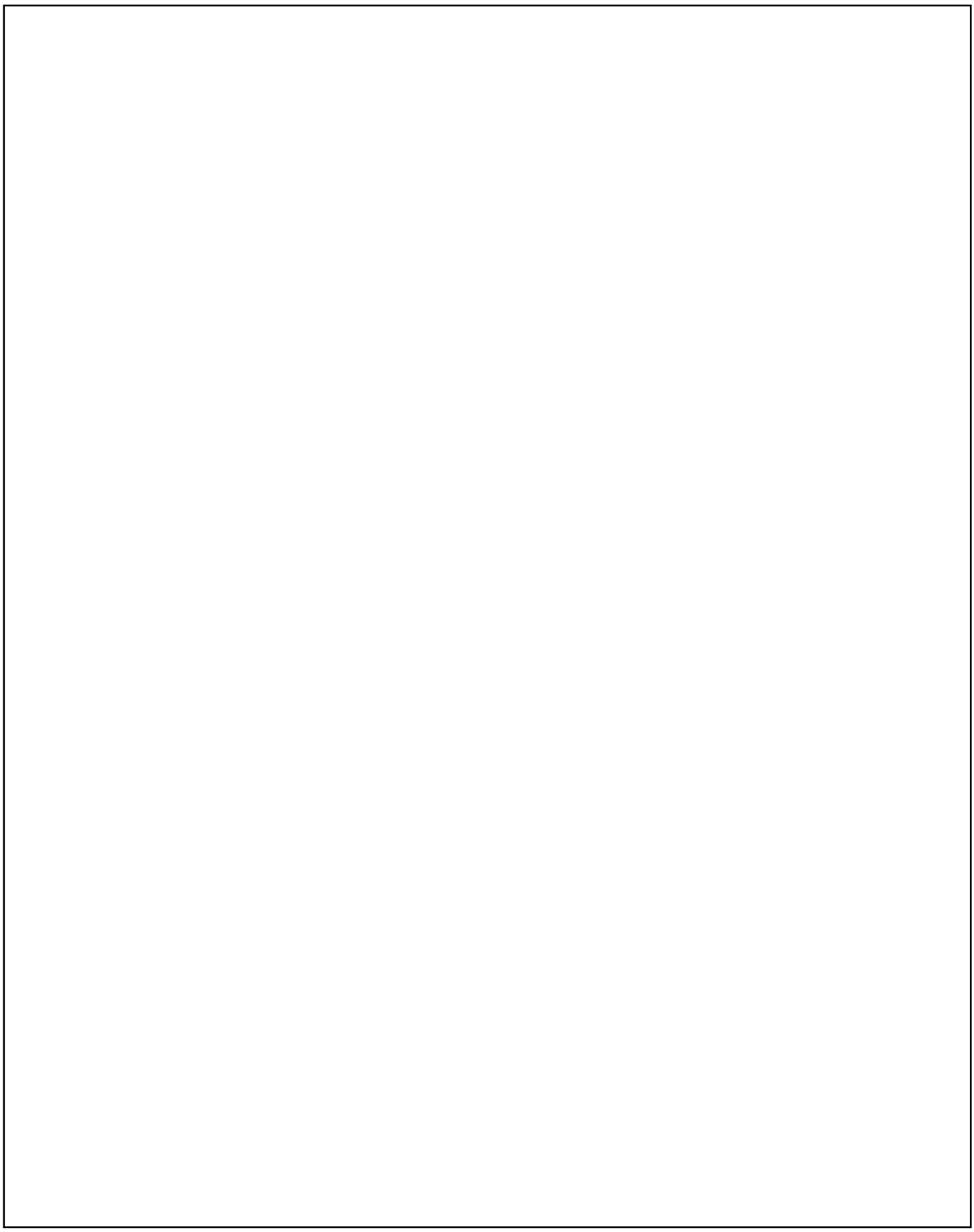
Resource conservation area maintenance is limited to removal of litter, dead tree and plant materials and brush. Natural water courses are to be maintained as free-flowing and devoid of debris. Stream channels shall be maintained so as not to alter floodplain levels. Unless otherwise specified by the Town Council, maintenance is limited to insuring that there exist no hazards, nuisances or unhealthy conditions.

(3) **Legal Instrument for Permanent Protection**

(a) Resource conservation areas shall be protected in perpetuity by a binding legal instrument that is recorded with the deed.

(b) The instrument for permanent protection shall include clear restrictions on the use of the of resource conservation area. These restrictions shall include all restrictions contained in this section, as well as any further restrictions the applicant chooses to place on the use of the resource conservation areas. Where appropriate, the instrument shall allow for stream or habitat restoration.

(Ord. 2005-11-02, passed 11-21-05)



ERROR: undefined
OFFENDING COMMAND:

STACK:

Town of Clayton
Planning Department
111 E. Second Street, Clayton, NC 27520
P.O. Box 879, Clayton, NC 27528
Phone: 919-553-5002
Fax: 919-553-1720

Board of Adjustment
November 17, 2021

STAFF REPORT

Application Number: 2021-123-AAI
Project Name: 214 W. Main Street Administrative Appeal

Tag #: 05019006
Overlay: Downtown Overlay District
Applicant: M. Clayton Rentals, LLC – Marcus C. Burrell (Attorney for Applicant)
Owner: M. Clayton Rentals, LLC
Location: 214 W. Main Street

Date Administrative Decision Letter Mailed: September 15, 2021

Date Administrative Appeal Filed: October 8, 2021

Public Noticing dates:
- **Sign Posted:** October 29, 2021
- **Newspaper Ad Published:** N/A
- **Adjacent Property Letters Mailed:** October 29, 2021

REQUEST: The applicant is appealing the determination by the Planning Director that the subject property lost its nonconforming status and can no longer operate as an automotive tire retail and repair shop.

STAFF ANALYSIS AND COMMENTARY:

Prior to April 2020, the property located at 214 W. Main Street was operating as an automotive tire retail and repair shop, a nonconforming use in the B-1 Zoning District pursuant to the Clayton UDC Section 155.110(D). The Planning Director issued the determination that the automotive tire retail and repair shop at 214 W. Main St. lost its nonconforming use status based on the following timeline:

April 14, 2020: Little Tires (previous occupant/owner) closed their Town Utility Account (information obtained by Town of Clayton Customer Service Dept.).

April 15, 2020: A Zoning Compliance Permit was issued by the Town Planning Department in order that a new property owner (Mohammed Ahmed) could set up utilities for 214 W. Main St. No information was provided at the time about potential use; permit was only issued to allow new utility account to be set up by new property owner.

April 15, 2020 – June 2021: Planning Department has no evidence that an automotive tire retail and repair shop was in operation at 214 W. Main St.

June 2, 2021: Applicant (David Melton) submitted application for Zoning Compliance Permit to Town of Clayton Planning Department for R-City Tires, located at 214 W. Main St.

June 3 – 7, 2021: Planning staff communicated with Applicant, explaining Zoning Compliance Permit could not be issued due to fact that proposed use was not permitted in B-1 Zoning District, and previous nonconforming use had ceased to operate for more than 90 consecutive days or more than 180 calendar days during any 12-month period (UDC Section 155.110 – Nonconformities). Applicant meets in-person (June 7th) with Planning Department staff to discuss options for opening automotive tire retail and repair shop at 214 W. Main St. Planning Staff provided guidance about variance process. No further communication from applicant following this meeting.

August 31, 2021: M. Clayton Rentals, LLC submits a Variance Application to the Town Planning Department. Variance requested from Table of Uses to allow use not permitted in Zoning District.

September 1 – 15, 2021: Planning Director discussed with Board of Adjustment Attorney concerns about Variance being a Use Variance, which is generally not permitted. After discussion with Applicant's attorney, Planning Director issued Administrative Decision Letter on September 15, 2021 stating that the previous automotive tire retail and repair shop lost its nonconforming status, so proposed continuation of use is not permitted in Zoning District.

October 8, 2021: Applicant submitted Administrative Appeal Application and withdrew Variance Application.

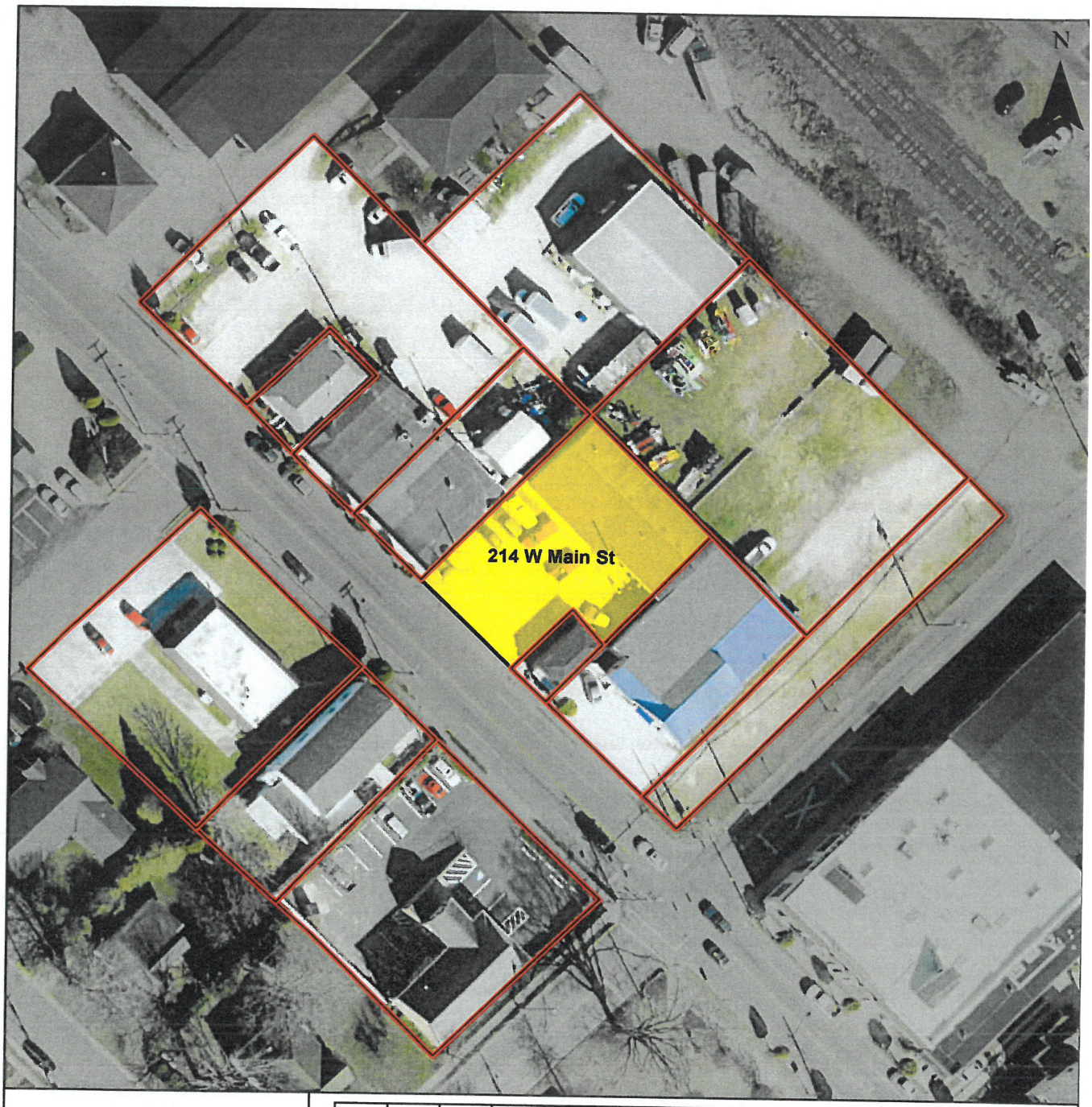
Applicant has provided information in Application stating that property in use and the use was not discontinued.

CONSIDERATIONS:

- The Board of Adjustment may reverse or affirm (wholly or partly) or may modify the order, requirement, decision, or determination appealed from and shall make any order, requirement, decision or determination that in its opinion ought to be made in the case before it. To this end, the Board of Adjustment shall have all the powers of the officer from whom the appeal is taken.
- A motion to reverse, affirm or modify the order, requirement, decision, or determination appealed from shall include, insofar as practicable, a statement of the specific reasons or findings that support the motion.
- If a motion to reverse or modify is not made, or a motion fails to receive a majority vote from Board members eligible to vote, then the appeal shall be denied.
- Any motion to overturn a decision shall state the reasons or findings of fact that support the motion.

ATTACHMENTS:

1. Staff Report
2. Staff Report Map
3. Administrative Appeal Application
4. Planning Director Administrative Decision Letter
5. Adjacent Property Owner Letter
6. April 2020 Zoning Compliance Permit
7. June 2021 Zoning Compliance Permit Application



0 50 100 200 Feet

214 W Main St

Property Map

2021-123-AA

TOWN OF CLAYTON
Planning Department
111 E. Second Street, Clayton, NC 27520
P.O. Box 879, Clayton, NC 27528
Phone: 919-553-5002
Fax: 919-553-1720

ADMINISTRATIVE APPEAL

Pursuant to Article 7, Section 155.717 of the Unified Development Code, an appeal by any person aggrieved by a final order, interpretation or decision of the Planning Director or other administrator of Chapter 155 may be taken to the Board of Adjustment. Administrative appeals must be filed with the Clerk within 30 days of receipt of decision.

The Administrative Appeal application fee is $250.00. All fees are due when the application is submitted.

PROJECT INFORMATION:

Name of Project: 214 W. Main St.
Acreage of Property: 0.196
Parcel ID Number: 166913-03-1328
Tax ID: 05019006
Address: 214 W. Main St., Clayton, NC 27520
Location: Same as address

APPLICANT INFORMATION:

Name: M. Clayton Rentals, LLC; by and through Marcus C. Burrell, Attorney for Applicant
Mailing Address: 2564 Valley Dr., Clayton, NC 27520; P.O. Box 369, Selma, NC 27576
Phone Number: (919) 202-9811 **Fax:** (919) 202-9844
Email Address: marcus@hlgpa.com

TO THE TOWN OF CLAYTON BOARD OF ADJUSTMENT

I, M. Clayton Rentals, LLC (name of applicant) hereby appeal to the Board of Adjustment the following order, requirement, interpretation, or decision:

Applicant is appealing the decision/interpretation of the Planning Director's September 15, 2021 denial of a pre-existing non-conforming use on the subject property.

FOR OFFICE USE ONLY

File Number: 2021-123-AAI Date Received: RECEIVED OCT 06 2021 Amount Paid: $250 Already Paid with application 2021-101 VAR - LB

TOWN OF CLAYTON PLANNING DEPARTMENT

GROUNDS FOR APPEAL

In the space provided below, please present your interpretation of the ordinance provisions in question and state what reasons you have for believing that your interpretation is the correct one. Attach additional sheets if necessary.

M. Clayton Rentals, LLC purchased the property at 214 W. Main St., Clayton, NC (hereinafter the "Property") on April 13, 2020. At the time of purchase, the property was being used as an operational automotive tire retail and repair shop and was a nonconforming use pursuant to Clayton UDC Section 155.110(D). The purchase contract between the parties was executed January 2020, two months before the first confirmed case of Covid-19 in North Carolina. On the date of closing, the State was two weeks into the initial stay-at-home orders issued by Governor Cooper.

Section 155.110(D)(4)(a) of the Clayton UDC, states that, "a nonconforming use that is discontinued, abandoned, or changed to an accessory use for a period of more than 90 consecutive days, or for a total of 180 calendar days during any 12-month period, shall lose its nonconforming status and shall not be re-established or resumed." The Planning Director has issued the staff decision that the use of the business on the Property was discontinued after M. Clayton Rentals, LLC purchased the property and remained discontinued for a period in excess of the prescribed time allotment set forth in Section 155.110(D)(4)(a). The Planning Director, however, has incorrectly interpreted what it means to be "discontinued, abandoned, or changed to an accessory use."

Taking each of these criteria in reverse order, the use of the Property has clearly not been changed to an accessory use or abandoned. The business is essentially the same today as it was prior to closing. Likewise, the business has not been abandoned. M. Clayton Rentals, LLC has actively pursued the ability to operate their business since purchasing the Property. They have never abandoned the Property or the business. That leaves the basis of the decision being that the use was discontinued for more than 90 days or more than 180 days during a 12-month period. According to dictionary.com, "discontinue" means "to put an end to; stop; terminate." It is true that during the stay-at-home orders, as issued by Governor Cooper, M. Clayton Rentals, LLC, like many other business owners, was not able to operate their business in a normal manner. And as the stay-at-home orders continued, and telecommuting increased, the use of cars decreased. M. Clayton Rentals, LLC's business is directly tied to the use of cars. As the use of cars decreased, the need for new tires or tire repair plummeted. Although sales dwindled, M. Clayton Rentals, LLC consistently maintained the utilities for the Property. During the slow business period, M. Clayton Rentals, LLC took the opportunity to improve the business, making repairs to the equipment and cleaning the premises. Although business was slow, the business owners had not "put an end to; stopped; or terminated" the business. As such, the business use has not been discontinued.

Unless a nonconforming use has been "discontinued, abandoned, or changed to an accessory use" it maintains its nonconforming use status. The business located on the Property has not been "discontinued, abandoned, or changed to an accessory use" and should therefore be allowed to immediately resume operations that have been ceased by the decision of the Town and maintain its status as a nonconforming use.

APPLICANT AFFIDAVIT

I/We, the undersigned, do hereby make application and petition to the Board of Adjustment of the Town of Clayton to hear this administrative appeal. I hereby certify that I have full legal right to request such action and that the statements or information made in any paper or plans submitted herewith are true and correct to the best of my knowledge. I understand this application, related material and all attachments become official records of the Planning Department of the Town of Clayton, North Carolina, and will not be returned.

Marcus C Burrell		10/08/2021
Print Name	***Signature of Applicant***	***Date***

MAYOR
Jody L. McLeod

INTERIM TOWN MANAGER
Richard D. Cappola, Jr.

TOWN ATTORNEY
Cauley Pridgen, P.A.

MAYOR PRO TEM
Jason Thompson

COUNCIL MEMBERS
Michael Grannis
Art Holder
Bobby Bunn
Avery Everett

September 15, 2021

M Clayton Rentals, LLC
2564 Valley Drive
Clayton, NC 27520

RE: Zoning Compliance Permit Request (2021-163) for 214 W. Main Street for continuation of a pre-existing nonconforming use as a Vehicle Repair or Service

To Whom it May Concern:

The Town of Clayton Planning Department reviewed your request for a Zoning Compliance Permit to continue a non-conforming use on the above referenced property. Section 155.110(D) of the Town of Clayton Unified Development Code (UDC) states:

Nonconforming use. A nonconforming use is the use of land, buildings, or structures that was lawfully established on a property prior before this chapter was adopted or amended, but does not conform to the use regulations of this chapter.

A Zoning Compliance Permit application was submitted to continue the nonconforming use of the land located at 214 W. Main Street in Clayton on June 2, 2021. Our records show that the previous business owner terminated electrical services as of April 2020, resulting in the Planning Department's determination that the use had been discontinued as of April 2020. Section 155.110(D)(4)(a) of the Clayton UDC states:

Discontinuance or cessation. A nonconforming use that is discontinued, abandoned, or changed to an accessory use for a period of more than 90 consecutive days, or for a total of 180 calendar days during any 12-month period, shall lose its nonconforming status and shall not be re-established or resumed. Any subsequent use in the same location shall be consistent with this chapter.

Based on the determination that the use had been discontinued for a period greater than 90 consecutive days or a total of 180 calendar days during the 12 month period between May 2020 and June 2021, the Zoning Compliance Permit application to continue the nonconforming use was denied on June 4, 2021. In order to re-establish the proposed use on the subject property, the

provisions set forth in the Clayton Unified Development Code must be followed, which may require an application for rezoning the property to an appropriate zoning district and submittal of a site plan.

Pursuant to Section 155.717 of the Clayton Unified Development Code, "*an appeal by any person aggrieved by a final order, interpretation or decision of the Planning Director or other administrator of this Chapter in regard to the provisions of this Chapter may be taken to the Board of Adjustment.*" If you wish to file an Administrative Appeal of this determination that the tire/vehicle repair use at this location was discontinued for more than 90 consecutive days or a total of 180 calendar days between May 2020 and June 2021, and therefore is not eligible to be reestablished, you may do so in accordance with Sections 155.717 of the UDC. As noted in Section 155.717(C), an appeal request shall be filed within 30 days of the date of this letter. Once filed, Town staff will schedule the appeal request to be heard by the Board of Adjustment.

If you have any questions, please contact me at bhowell@townofclaytonnc.org or (919) 359-9364.

Sincerely,

Ben Howell

Ben Howell, AICP, CZO
Planning Director

cc: Marcus C. Burrell, Hewett Law Group, PA, P.O. Box 369, Selma, NC 27576
Dede Bumgarner, CZO, Zoning Administrator/Development Services Supervisor
Town Attorney

Town of Clayton
Planning Department
111 E. Second Street, Clayton, NC 27520
P.O. Box 879, Clayton, NC 27528
Phone: 919-553-5002
Fax: 919-553-1720

October 29, 2021

NOTICE

SUBJECT:	**Project:**	**2021-123-AA**
	Address:	**214 W Main Street**
	TAX ID #:	**05019006**
	Applicant:	**M. Clayton Rentals, LLC by and through Marcus C. Burrell, Attorney at Law for the applicant**

Dear Clayton Area Property Owner:

Notice is hereby given that the Clayton Board of Adjustment will hold an evidentiary (quasi-judicial) hearing on **Wednesday, November 17th, 2021 at 6:00 PM** at Town Hall, 111 E Second Street, to consider the above referenced Administrative Appeal for denial of a zoning compliance to continue a pre-existing non-conforming use on the subject property. The appeal request is from Section 155.110(D)(4)(a) of the Unified Development Code

Based upon records in the Johnston County Tax Office, you are the owner of property that is within 100 feet of this request. You are invited to attend this meeting. During an evidentiary (quasi-judicial) hearing, the Board of Adjustment must make findings of fact based upon sworn testimony and other credible evidence. Citizens may give testimony in an evidentiary (quasi-judicial) hearing after they have taken an oath. This is an open meeting and interested persons are invited to attend.

If you should need additional assistance or information, please contact the Planning Department at (919) 553-5002 or email at bhowell@townofclaytonnc.org.

Sincerely,

Ben Howell, AICP, CZO
Planning Director

Zoning Compliance Permit

Permit Number: 2020-00000109

TOWN OF CLAYTON PLANNING DEPARTMENT
111 EAST SECOND STREET, CLAYTON, NC 27520
P.O. BOX 879, CLAYTON, NC 27528
PHONE: (919)553-5002
FAX: (919)553-1720

ADDRESS: 214 W MAIN ST
Clayton, NC 27520

LOT:

SUBDIVISION: 0

TAG NUMBER: 05019006

PROPERTY OWNER: LITTLE, EDWARD LEE

ISSUED TO: **Mohommad Ahmed**
214 W. Main
CLAYTON. NC, 27520

PERMIT DATE: 4/15/2020

FEE: $50.00

PERMIT EXPIRATION DATE*: 10/12/2020

*Pursuant to Section 155.709 (E) of the Town of Clayton's Unified Development Code, once a Zoning Permit has been issued, all activities pursuant to such permit shall be commenced within six months. If the activities set forth in a Zoning Permit are discontinued for a period of one year or more, the Zoning Permit shall lapse and be of no further force and effect.

No activities authorized by a Zoning Permit shall be performed once that permit has expired.

COMMENTS:

change of utility / Change of Ownership

APPROVED BY:

DATE: 4/15/2020

Called Kathrin Knox - not a permitted use
6-4-21

TOWN OF CLAYTON
Planning Department
111 E. Second Street, Clayton, NC 27520
P.O. Box 879, Clayton, NC 27528
Phone: 919-553-5002
Fax: 919-553-1720

ZONING COMPLIANCE PERMIT

Pursuant to Article 7, Section 155.709 of the Unified Development Code, it is unlawful to move, construct alter or repair (except ordinary repairs) any building or structure (including accessory structures) until the Planning Department has issued a Zoning Permit. Further, it is unlawful to change the type of use of land (including land disturbing activities), change the occupancy of a building, or to extend any use or any lot on which there is a nonconforming use until the Planning Department issues a Zoning Permit for the intended use, including a determination that the proposed used in all respects, conforms with the provisions of the Unified Development Code.

Application Fee: *$50.00. Fees are due at time of submittal.*
Issued Permit: *Once a Zoning Compliance Permit has been issued, all activities pursuant to such permit shall be commenced within six months.*
Expiration: *A Zoning Compliance Permit expires if the permitted activity is discontinued for one (1) year or more.*

ZONING COMPLIANCE PERMIT TYPE

Check all that apply:

- ☐ New Construction
- ☐ Use Change/Up-Fit
- ☐ Mobile Home
- ☑ Change of Utility
- ☐ Fence
- ☐ Structural Addition
- ☐ Accessory Structure
- ☐ Other: _____

APPLICANT/CONTRACTOR INFORMATION

Applicant: David Melton
Mailing Address: 214 West Main St. Clayton, NC.
Phone Number: 919-243-1177 **Fax:**
Contact Person: David Melton
Email Address: R-City Tire's @ G-mail.com

SITE INFORMATION

Development Name: _____ **Lot #:** _____
Address/Location: 214 W Main St Clayton, NC.
Property Owner's Name: H.T.R Commercial LLC Paul Flaherty
Previous Use Description: Little's Tire's
Proposed Use Description: R-city Tire's / "Same"
Business Name: R-city Tires
Brief Description of Request: Utilities

FOR OFFICE USE ONLY

Date Received: 6-2-21 Amount Paid: $50 Permit Number: 2021-163

Paid
C.C.

REQUIRED INFORMATION (*to be submitted with the application*)

The following items must accompany a Zoning Compliance Permit application (if not applicable, check "n/a.")

To be completed by the applicant:			To be completed by staff:		
	Yes	N/A	Yes	No	N/A
1. Permit Review Fee ($50.00 - check or exact amount)	☑				
2. Completed application	☑				
3. Owner's Consent Form *Required if applicant is not the property owner.*	☑	☐			
4. A copy of a current site plan and/or survey to scale which identifies project boundaries and lot dimensions, acreage, structures (size and location), setbacks, parking and circulation, impervious surface area and percentage of lot coverage. **Please note that an incomplete plan will result in a delay in the processing of the permit.** *Required for site improvements (new buildings, decks, pools, fences, etc)*	☐	☐			
5. Approval of the Flood Plain Administrator if the development request will take place within a floodplain.	☐	☐			
6. For mobile homes, list the make, model, year and size (square footage) of home below. Year:_____ Make/Model:_____ Size: _____	☐	☐			
7. Verification of received or current Wastewater Allocation.	☐	☐			

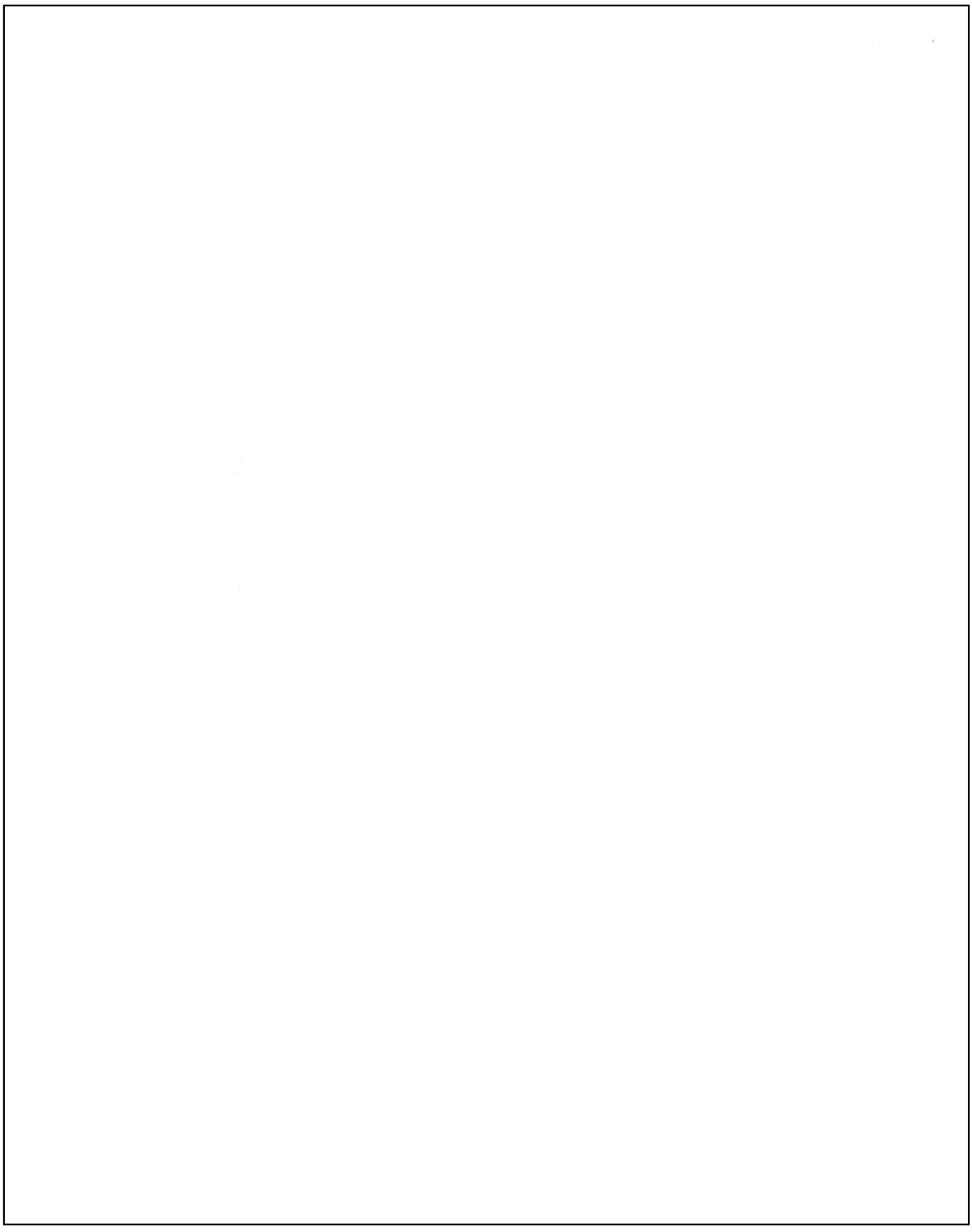
APPLICANT AFFIDAVIT

I/We, the undersigned, do hereby make application and petition to the Planning Department of the Town of Clayton to approve the subject Zoning Compliance Permit. I hereby certify that all activities will be carried out in compliance with the Unified Development Code and understand that violations will result in a Code Enforcement action and fine. I further certify that I have full legal right to request such action and that the statements or information made in any paper or plans submitted herewith are true and correct to the best of my knowledge. I understand this application, related material and all attachments become official records of the Planning Department of the Town of Clayton, North Carolina, and will not be returned.

David Melton
Print Name

Signature of Applicant

6-2-21
Date



STAFF ANALYSIS *(completed by staff)*

Site Plan Application Number:_____ **Approval Date:**_____

	Required	Provided
Lot Size		
Lot Width		
Setbacks:		
Front		
Side		
Rear		
Corner		

	Required	Provided
Building Separation		
% of Lot Coverage		
% of Impervious Surface		
Minimum House Size		
Acreage		
Zoning District		
TAG Number		

Watershed Protection Area? ☐Yes ☐No

Specific Watershed Requirements: _____

Staff Comments: _____

REALTORS® CommercialAlliance

REALTOR® North Carolina Association of REALTORS®

COMMERCIAL LEASE AGREEMENT
(Single Tenant Facility)

(Note: This form is not intended to be used as a Sublease and SHOULD NOT be used in Sublease circumstances)

THIS COMMERCIAL LEASE AGREEMENT, including any and all addenda attached hereto ("Lease"), is by and between **M Clayton Rentals**, a(n) _____ ("Landlord"), (individual *or* State of formation and type of entity) whose address is **208 E. Main Street, Clayton, nc 27520**, and **David Melton**, a(n) _____ ("Tenant"), (individual *or* State of formation and type of entity) whose address is **11590 US Bus Hwy. 70 W., Clayton, NC 27550**

☒ If this box is checked, the obligations of Tenant under this Lease are secured by the guaranty of **David Melton** (name(s) of guarantor(s)) attached hereto and incorporated herein by reference.
(Note: Any guaranty should be prepared by an attorney at law.)

For and in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

PREMISES

1. Landlord leases unto Tenant, and Tenant hereby leases and takes upon the terms and conditions which hereinafter appear, the following described property, including any improvements located thereon (herein after called the "Premises"), to wit:

(Address): **214 W. Main Street, Clayton , NC 27520**

☒ All ☐ A portion of the property in Deed Reference: Book _____, Page No. _____, _____ County; consisting of approximately _____ acres.

Plat Reference: Lot(s) _____, Block or Section _____, as shown on Plat Book or Slide _____ at Page(s) _____, _____ County, consisting of _____ acres.

☐ If this box is checked, Premises shall mean that property described on **Exhibit A** attached hereto and incorporated herewith by reference.

(For information purposes only, the tax parcel number of the Premises is: **NC PIN 166913-03-1328**)

☐ **Occupancy Limitation:** If this box is checked, notwithstanding any greater occupancy of the Premises which may be permitted by any law, statute, ordinance, regulation, rule (including rules enacted pursuant to any private use restrictions), as the same may be amended from time to time, Tenant shall not allow occupancy of the Premises to exceed _____ persons per _____ square feet in the Premises at any one time.

TERM

2. The term of this Lease shall commence on **April 15**, **2021** ("Lease Commencement Date"), and shall end at 11:59 p.m. (based upon the time at the locale of the Premises) on **April 30**, **2022**, unless sooner terminated as herein provided. The first Lease Year Anniversary shall be the date twelve (12) calendar months after the first day of the first full month immediately following the Lease Commencement Date and successive Lease Year Anniversaries shall be the date twelve (12) calendar months from the previous Lease Year Anniversary.

☐ If this box is checked, Tenant shall have the option of renewing this Lease, upon written notice given to Landlord at least _____ days prior to the end of the then expiring term of this Lease, for _____ additional term(s) of _____ years each.

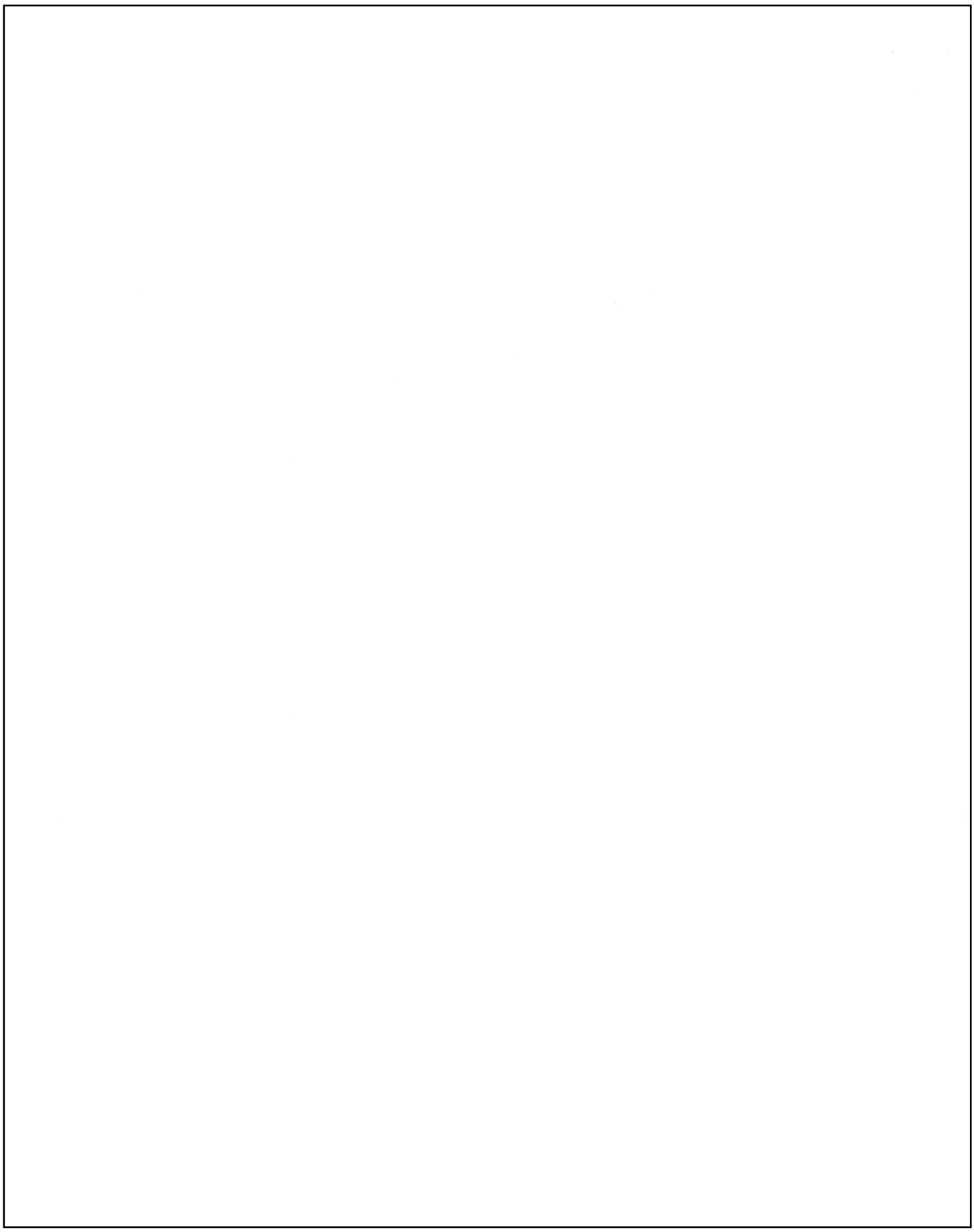
North Carolina Association of REALTORS®, Inc.
REALTOR®

Tenant Initials _____ Landlord Initials _____

EQUAL HOUSING OPPORTUNITY

STANDARD FORM 592-T
Revised 7/2020
© 7/2020

HTR Commercial LLC, 328 East Main Street Clayton NC 27520
Paul Flaherty
Phone: 9197954287 Fax:
Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com
David Melton



☐ If this box is checked, Tenant shall have the option of renewing this Lease, upon written notice given to Landlord at least _____ days prior to the end of the then expiring term of this Lease, for additional term(s) as specified on **Exhibit B.**

☐ **Option to Lease-** If this box is checked, Tenant, upon the payment of the sum of $ _____ (which sum is not rental or security deposit hereunder, but is consideration for this Option to Lease and is non-refundable under any circumstances) shall have a period of _____ days prior to the Lease Commencement Date ("Option Period") in which to inspect the Premises and make inquiry regarding such sign regulations, zoning regulations, utility availability, private restrictions or permits or other regulatory requirements as Tenant may deem appropriate to satisfy itself as to the use of the Premises for Tenant's intended purposes. Tenant shall conduct all such on-site inspections, examinations, inquiries and other review of the Premises in a good and workman like manner, shall repair any damage to the Premises caused by Tenant's entry and on-site inspections and shall conduct same in a manner that does not unreasonably interfere with Landlord's or any tenant's use and enjoyment of the Premises. In that respect, Tenant shall make reasonable efforts to undertake on-site inspections outside of the hours any tenant's business is open to the public and shall give prior notice to the tenant at the Premises of any entry onto the Premises for the purpose of conducting inspections. Upon Landlord's request, Tenant shall provide to Landlord evidence of general liability insurance. Tenant shall also have a right to review and inspect all contracts or other agreements affecting or related directly to the Premises and shall be entitled to review such books and records of Landlord that relate directly to the operation and maintenance of the Premises, provided, however, that Tenant shall not disclose any information regarding the Premises (or any tenant therein) unless required by law and the same shall be regarded as confidential, to any person, except to its attorneys, accountants, lenders and other professional advisors, in which case Tenant shall obtain their agreement to maintain such confidentiality. Tenant assumes all responsibility for the acts of itself, its agents or representatives in exercising its rights under this Option to Lease and agrees to indemnify and hold Seller harmless from any damages resulting therefrom. This indemnification obligation of Tenant shall survive the termination of this Option to Lease or this Lease. Tenant shall, at Tenant's expense, promptly repair any damage to the Premises caused by Tenant's entry and on-site inspections. **IF TENANT CHOOSES NOT TO LEASE THE PREMISES, FOR ANY REASON OR NO REASON, AND PROVIDES WRITTEN NOTICE TO LANDLORD THEREOF PRIOR TO THE EXPIRATION OF THE OPTION PERIOD, THEN THIS LEASE SHALL TERMINATE AND NEITHER PARTY SHALL HAVE ANY FURTHER OBLIGATIONS HEREUNDER AND LANDLORD SHALL RETURN TO TENANT ANY RENTAL OR SECURITY DEPOSIT PAID TO LANDLORD HEREUNDER.** Tenant shall be deemed to have exercised its Option to Lease and to be bound under the terms of this Lease if (i) Tenant shall occupy the Premises prior to the expiration of the Option Period, whereupon the date of occupancy shall be deemed the Lease Commencement Date, or (ii) Tenant shall not provide written notice to Landlord of its termination of this Lease prior to the expiration of the Option Period.

RENTAL

3. Beginning on **April 15, 2021** ("Rent Commencement Date"), Tenant agrees to pay Landlord (or its Agent as directed by Landlord), without notice, demand, deduction or set off, an annual rental of $ **30,000.00**, payable in equal monthly installments of $ **2,500.00**, in advance on the first day of each calendar month during the term hereof. Upon execution of this Lease, Tenant shall pay to Landlord the first monthly installment of rent due hereunder. Rental for any period during the term hereof which is less than one month shall be the pro-rated portion of the monthly installment of rental due, based upon a 30 day month.

☐ If this box is checked, the annual rental payable hereunder (and accordingly the monthly installments) shall be adjusted every _____ Lease Year Anniversary by _____ % over the amount then payable hereunder. In the event renewal of this Lease is provided for in paragraph 2 hereof and effectively exercised by Tenant, the rental adjustments provided herein shall apply to the term of the Lease so renewed, or

☐ If this box is checked, the annual rental payable hereunder (and accordingly the monthly installments) shall be adjusted every _____ Lease Year Anniversary by the greater of: (i) _____ percent (_____ %) over the amount then payable hereunder, or, (ii) the percentage increase (but not any decrease) in the numerical index of the "Consumer Price Index for All Urban Consumers" (1982-84 = 100) published by the Bureau of Labor Statistics of the United States Department of Labor ("CPI") for the immediately preceding twelve (12) month period over the amount then payable hereunder.

☐ If this box is checked, the annual rental payable hereunder (and accordingly the monthly installments) shall be adjusted every _____ Lease Year Anniversary by $ _____ over the amount then payable hereunder. In the event renewal of this Lease is provided for in paragraph 2 hereof and effectively exercised by Tenant, the rental adjustments provided herein shall apply to the term of the Lease so renewed.

☐ If this box is checked, the annual rental payable hereunder (and accordingly the monthly installments) shall be adjusted as provided on **Exhibit B.**

☒ If this box is checked, Tenant shall pay all rental to Landlord's Agent at the following address:
Classic Property Management, 328 E. Main Street, PO Box 133 Clayton NC 27528 or dropbox at 106 N. Lombard Street, suite 100 Clayton NC 27520

Tenant Initials DM Landlord Initials _____

STANDARD FORM 592-T
Revised 7/2020
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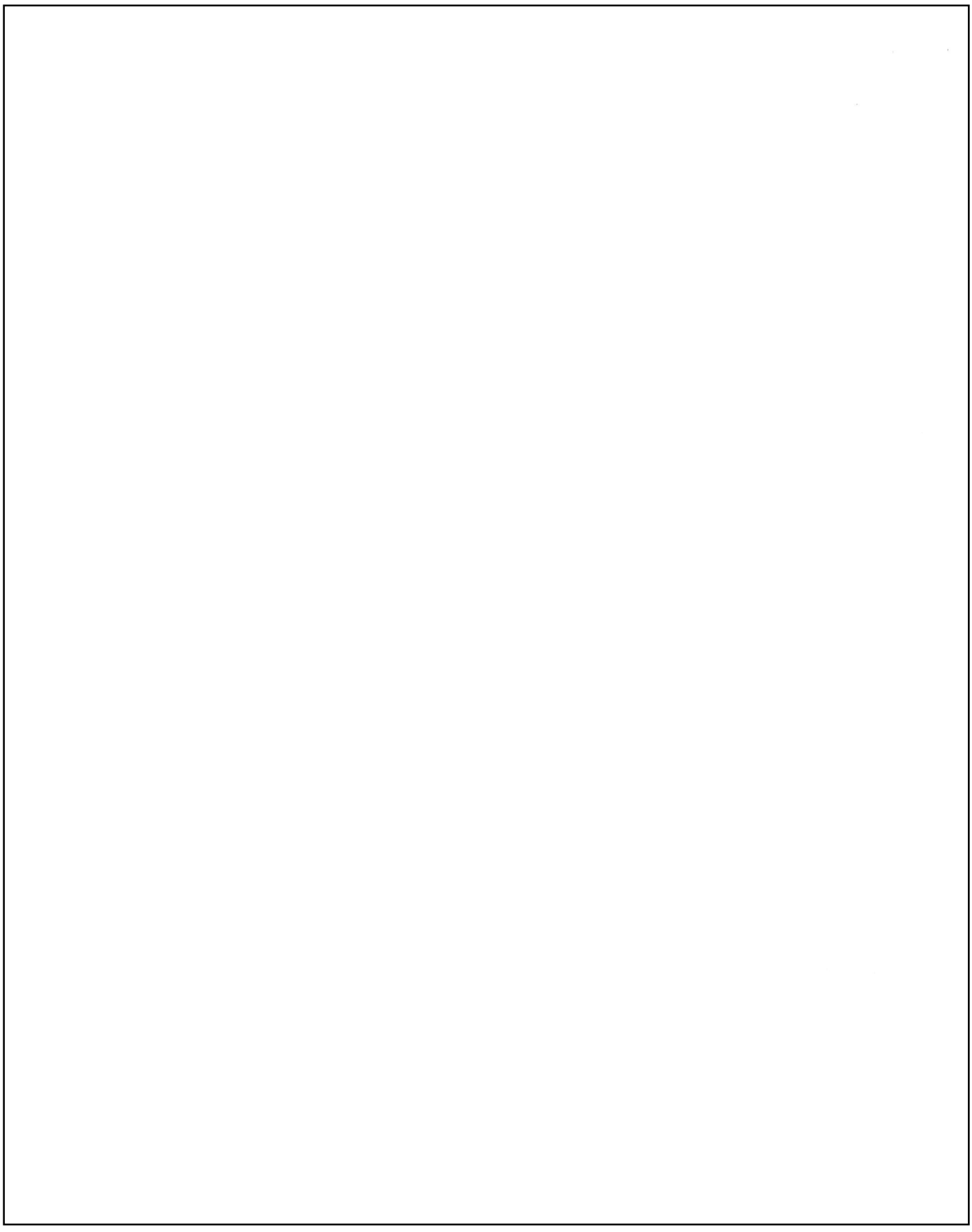
David Melton



LATE CHARGES

4. If Landlord fails to receive full rental payment within 5 days after it becomes due, Tenant shall pay Landlord, as additional rental, a late charge equal to _____ percent _____ (%) of the overdue amount or $ 150.00 whichever is greater, plus any actual bank fees incurred for dishonored payments. The parties agree that such a late charge represents a fair and reasonable estimate of the cost Landlord will incur by reason of such late payment.

SECURITY DEPOSIT

5. Upon the execution of this Lease, Tenant shall deposit with Landlord the sum of $ _____ as a security deposit which shall be held by Landlord as security for the full and faithful performance by Tenant of each and every term, covenant and condition of this Lease. The security deposit does not represent payment of and Tenant shall not presume application of same as payment of the last monthly installment of rental due under this Lease. Landlord shall have no obligation to segregate or otherwise account for the security deposit except as provided in this paragraph 5. If any of the rental or other charges or sums payable by Tenant shall be over-due and unpaid or should payments be made by Landlord on behalf of Tenant, or should Tenant fail to perform any of the terms of this Lease, then Landlord may, at its option, appropriate and apply the security deposit, or so much thereof as may be necessary, to compensate toward the payment of the rents, charges or other sums due from Tenant, or towards any loss, damage or expense sustained by Landlord resulting from such default on the part of the Tenant; and in such event Tenant upon demand shall restore the security deposit to the amount set forth above in this paragraph 5. In the event Tenant furnishes Landlord with proof that all utility bills and other bills of Tenant related to the Premises have been paid through the date of Lease termination, and performs all of Tenant's other obligations under this Lease, the security deposit shall be returned to Tenant within sixty (60) days after the date of the expiration or sooner termination of the term of this Lease and the surrender of the Premises by Tenant in compliance with the provisions of this Lease.

[X] If this box is checked, Agent shall hold the security deposit in trust and shall be entitled to the interest, if any, thereon.

UTILITY BILLS/SERVICE CONTRACTS

6. Landlord and Tenant agree that utility bills and service contracts ("Service Obligations") for the Premises shall be paid by the party indicated below as to each Service Obligation. In each instance, the party undertaking responsibility for payment of a Service Obligation covenants that they will pay the applicable bills prior to delinquency. The responsibility to pay for a Service Obligation shall include all metering, hook-up fees or other miscellaneous charges associated with establishing, installing and maintaining such utility or contract in said party's name. Within thirty (30) days of the Lease Commencement Date, Tenant shall provide Landlord with a copy of any requested Tenant Service Obligation information.

Service Obligation	Landlord	Tenant	Not Applicable
Sewer/Septic		X	
Water		X	
Electric		X	
Gas		X	
Telephone		X	
HVAC (maintenance/service contract)			
Elevator (including phone line)			X
Security System		X	
Fiber Optic			X
Janitor/Cleaning		X	
Trash/Dumpster		X	
Landscaping/Maintenance		X	
Sprinkler System (including phone line)			X
Pest Control		X	
HVAC System		X	

Tenant Initials DM Landlord Initials _____

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Revised 7/2020
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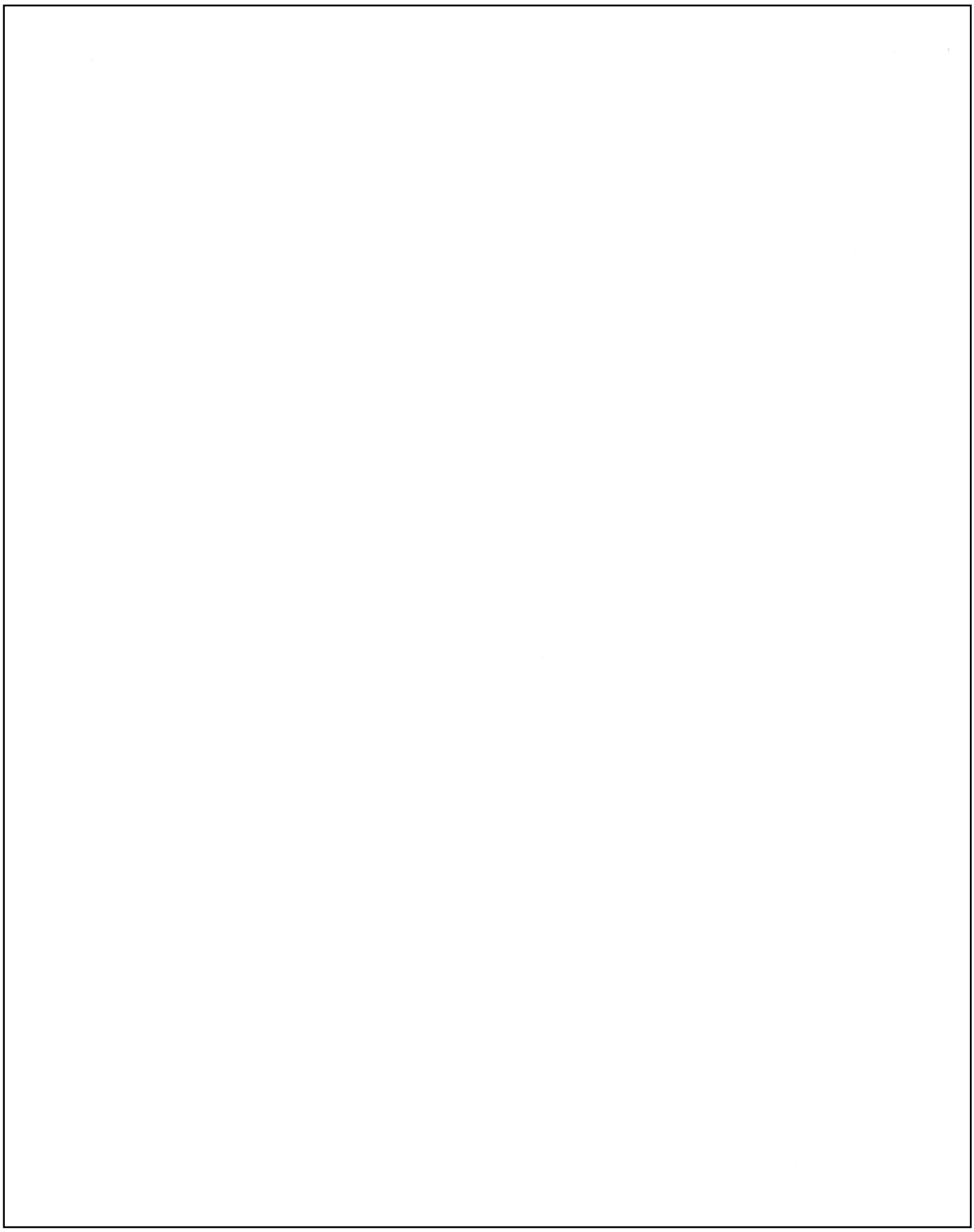
David Melton



Landlord shall not be liable for injury to Tenant's business or loss of income therefrom or for damage that may be sustained by the person, merchandise or personal property of Tenant, its employees, agents, invitees or contractors or any other person in or about the Premises, caused by or resulting from fire, steam, electricity, gas, water or rain, which may leak or flow from or into any part of the Premises, or from the breakage, leakage, obstruction or other defects of any utility installations, air conditioning system or other components of the Premises, except to the extent that such damage or loss is caused by Landlord's gross negligence or willful misconduct. Landlord represents and warrants that the heating, ventilation and air conditioning system(s) and utility installations existing as of the Lease Commencement Date shall be in good order and repair. Subject to the provisions of this paragraph 6, Landlord shall not be liable in damages or otherwise for any discontinuance, failure or interruption of service to the Premises of utilities or the heating, ventilation and air conditioning system(s) and Tenant shall have no right to terminate this Lease or withhold rental because of the same.

RULES AND REGULATIONS

7. ☐ If this box is checked, the rules and regulations attached hereto ("Rules and Regulations") are made a part of this Lease. Tenant agrees to comply with all Rules and Regulations of Landlord in connection with the Premises which are in effect at the time of the execution of the Lease or which may be from time to time promulgated by Landlord in its reasonable discretion, provided notice of such new Rules and Regulations is given to Tenant in writing and the same are not in conflict with the terms and conditions of this Lease.

PERMITTED USES

8. The permitted use of the Premises shall be: **Sale used and new tires** ("Permitted Use"). The Premises shall be used and wholly occupied by Tenant solely for the purposes of conducting the Permitted Use, and the Premises shall not be used for any other purposes unless Tenant obtains Landlord's prior written approval of any change in use. Landlord makes no representation or warranty regarding the suitability of the Premises for or the legality (under zoning or other applicable ordinances) of the Permitted Use for the Premises, provided however, that Landlord does represent that it has no contractual obligations with other parties which will materially interfere with or prohibit the Permitted Use of Tenant at the Premises. At Tenant's sole expense, Tenant shall procure, maintain and make available for Landlord's inspection from time to time any governmental license(s) or permit(s) required for the proper and lawful conduct of Tenant's business in the Premises. Tenant shall not cause or permit any waste to occur in the Premises and shall not overload the floor, or any mechanical, electrical, plumbing or utility systems serving the Premises. Tenant shall keep the Premises, and every part thereof, in a clean and wholesome condition, free from any objectionable noises, loud music, objectionable odors or nuisances.

TAXES AND INSURANCE

(Note: The following box should only be checked if there are no boxes checked below in paragraph 9.)

☒ If this box is checked, Tenant shall have no responsibility to reimburse Landlord for taxes or insurance.

9. Landlord shall pay all taxes (including but not limited to, ad valorem taxes, special assessments and any other governmental charges) on the Premises and shall procure and pay for such commercial general liability, broad form fire and extended and special perils insurance with respect to the Premises as Landlord in its reasonable discretion may deem appropriate. Tenant shall reimburse Landlord for all taxes and insurance as provided herein within fifteen (15) days after receipt of notice from Landlord as to the amount due. Tenant shall be solely responsible for insuring Tenant's personal and business property and for paying any taxes or governmental assessments levied thereon. Tenant shall reimburse Landlord for taxes and insurance during the term of this Lease, and any extension or renewal thereof. **If boxes are checked below, the manner of reimbursement shall be as indicated:**

Taxes

☐ The amount by which all taxes (including but not limited to, ad valorem taxes, special assessments and any other governmental charges) on the Premises for each tax year exceed all taxes on the Premises for the tax year _____; or

☐ All taxes (including but not limited to, ad valorem taxes, special assessments and any other governmental charges) on the Premises for each tax year.

If the final Lease Year of the term fails to coincide with the tax year, then any excess for the tax year during which the term ends shall be reduced by the pro rata part of such tax year beyond the Lease term. If such taxes for the year in which the Lease terminates are not ascertainable before payment of the last month's rental, then the amount of such taxes assessed against the Premises for the previous tax year shall be used as a basis for determining the pro rata share, if any, to be paid by Tenant for that portion of the last Lease Year.

☐ If this box is checked, Tenant shall reimburse Landlord for taxes by paying to Landlord, beginning on the Rent Commencement Date and on the first day of each calendar month during the term hereof, an amount equal to one-

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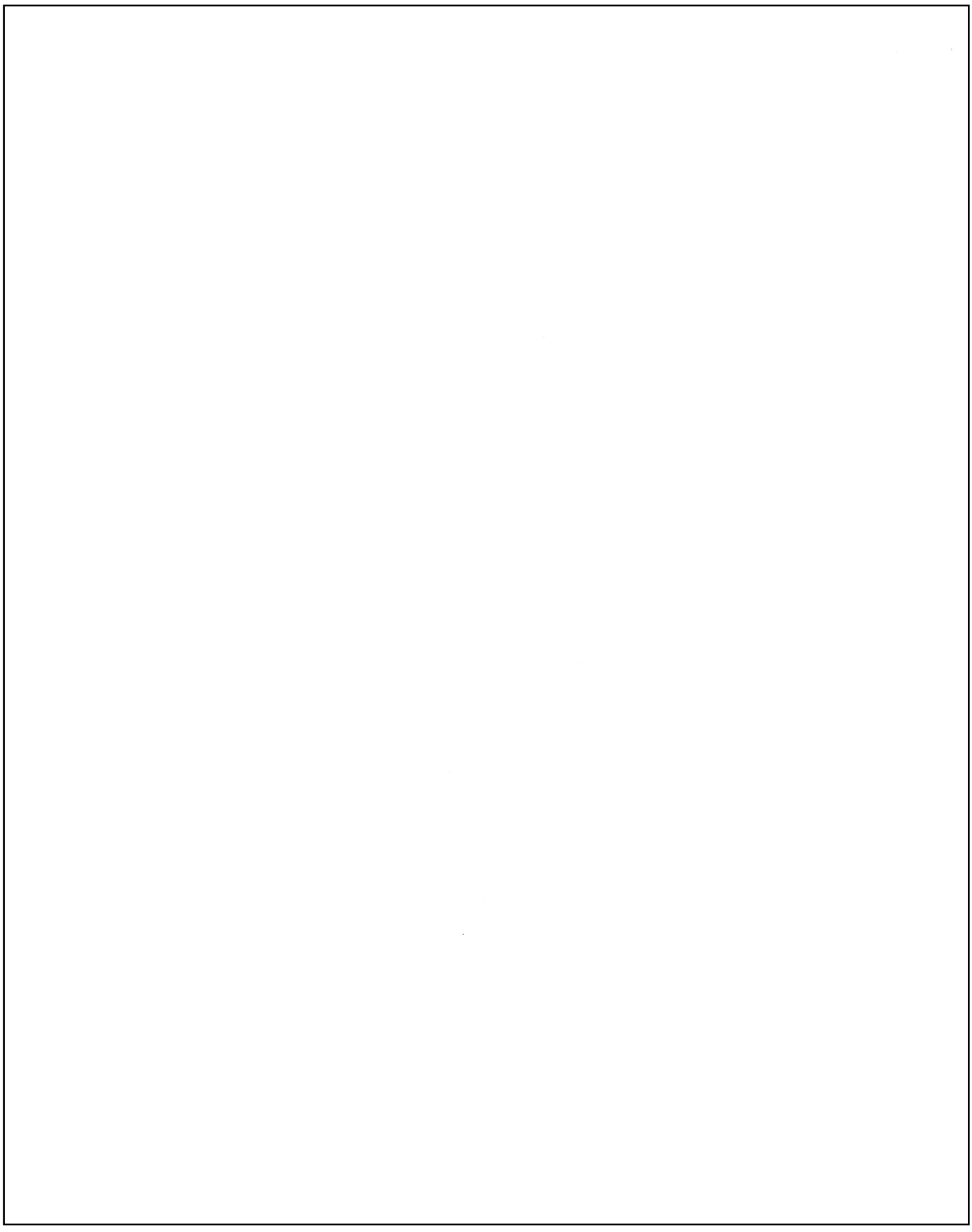

twelfth (1/12) of the then current tax payments for the Premises. Upon receipt of bills, statements or other evidence of taxes due, Landlord shall pay or cause to be paid the taxes. If at any time the reimbursement payments by Tenant hereunder do not equal the amount of taxes paid by Landlord, Tenant shall upon demand pay to Landlord an amount equal to the deficiency or Landlord shall refund to Tenant any overpayment (as applicable) as documented by Landlord. Landlord shall have no obligation to segregate or otherwise account for the tax reimbursements paid hereunder except as provided in this paragraph 9.

Insurance

☐ the excess cost of commercial general liability, broad form fire and extended and special perils insurance with respect to the Premises over the cost of the first year of the Lease term for each subsequent year during the term of this Lease; or

☐ the cost of all commercial general liability, broad form fire and extended and special perils insurance with respect to the Premises.

☐ If this box is checked, Tenant shall reimburse Landlord for insurance by paying to Landlord, beginning on the Rent Commencement Date and on the first day of each calendar month during the term hereof, an amount equal to one-twelfth (1/12) of the then current insurance premiums for the Premises. Upon receipt of bills, statements or other evidence of insurance premiums due, Landlord shall pay or cause to be paid the insurance premiums. If at any time the reimbursement payments by Tenant hereunder do not equal the amount of insurance premiums paid by Landlord, Tenant shall upon demand pay to Landlord an amount equal to the deficiency or Landlord shall refund to Tenant any overpayment (as applicable) as documented by Landlord. Landlord shall have no obligation to segregate or otherwise account for the insurance premium reimbursements paid here under except as provided in this paragraph 9.

Provided however, notwithstanding any provision of the foregoing, that in the event Tenant's use of the Premises results in an increase in the rate of insurance on the Premises, Tenant shall pay to Landlord, upon demand and as additional rental, the amount of any such increase.

INSURANCE; WAIVER; INDEMNITY

10. (a) During the term of this Lease, Tenant shall maintain commercial general liability insurance coverage (occurrence coverage) with broad form contractual liability coverage and with coverage limits of not less than **1,000,000.00** combined single limit, per occurrence, specifically including liquor liability insurance covering consumption of alcoholic beverages by customers of Tenant should Tenant choose to sell alcoholic beverages. Such policy shall insure Tenant's performance of the indemnity provisions of this Lease, but the amount of such insurance shall not limit Tenant's liability nor relieve Tenant of any obligation hereunder. All policies of insurance provided for herein shall name as "additional insureds" Landlord, Landlord's Agent, all mortgagees of Landlord and such other individuals or entities as Landlord may from time to time designate upon written notice to Tenant. Tenant shall provide to Landlord, at least thirty (30) days prior to expiration, certificates of insurance to evidence any renewal or additional insurance procured by Tenant. Tenant shall provide evidence of all insurance required under this Lease to Landlord prior to the Lease Commencement Date.

(b) Landlord (for itself and its insurer) waives any rights, including rights of subrogation, and Tenant (for itself and its insurer) waives any rights, including rights of subrogation, each may have against the other for compensation of any loss or damage occasioned to Landlord or Tenant arising from any risk generally covered by the "all risks" insurance required to be carried by Landlord and Tenant. The foregoing waivers of subrogation shall be operative only so long as available in the State of North Carolina. The foregoing waivers shall be effective whether or not the parties maintain the insurance required to be carried pursuant to this Lease.

(c) Except as otherwise provided in paragraph 10(b), Tenant indemnifies Landlord for damages proximately caused by the negligence or wrongful conduct of Tenant and Tenant's employees, agents, invitees or contractors. Except as otherwise provided in paragraph 10(b), Landlord indemnifies Tenant for damages proximately caused by the negligence or wrongful conduct of Landlord and Landlord's employees, agents, invitees or contractors. The indemnity provisions in this paragraph 10 cover personal injury and property damage and shall bind the employees, agents, invitees or contractors of Landlord and Tenant (as the case may be). The indemnity obligations in this paragraph 10 shall survive the expiration or earlier termination of this Lease.

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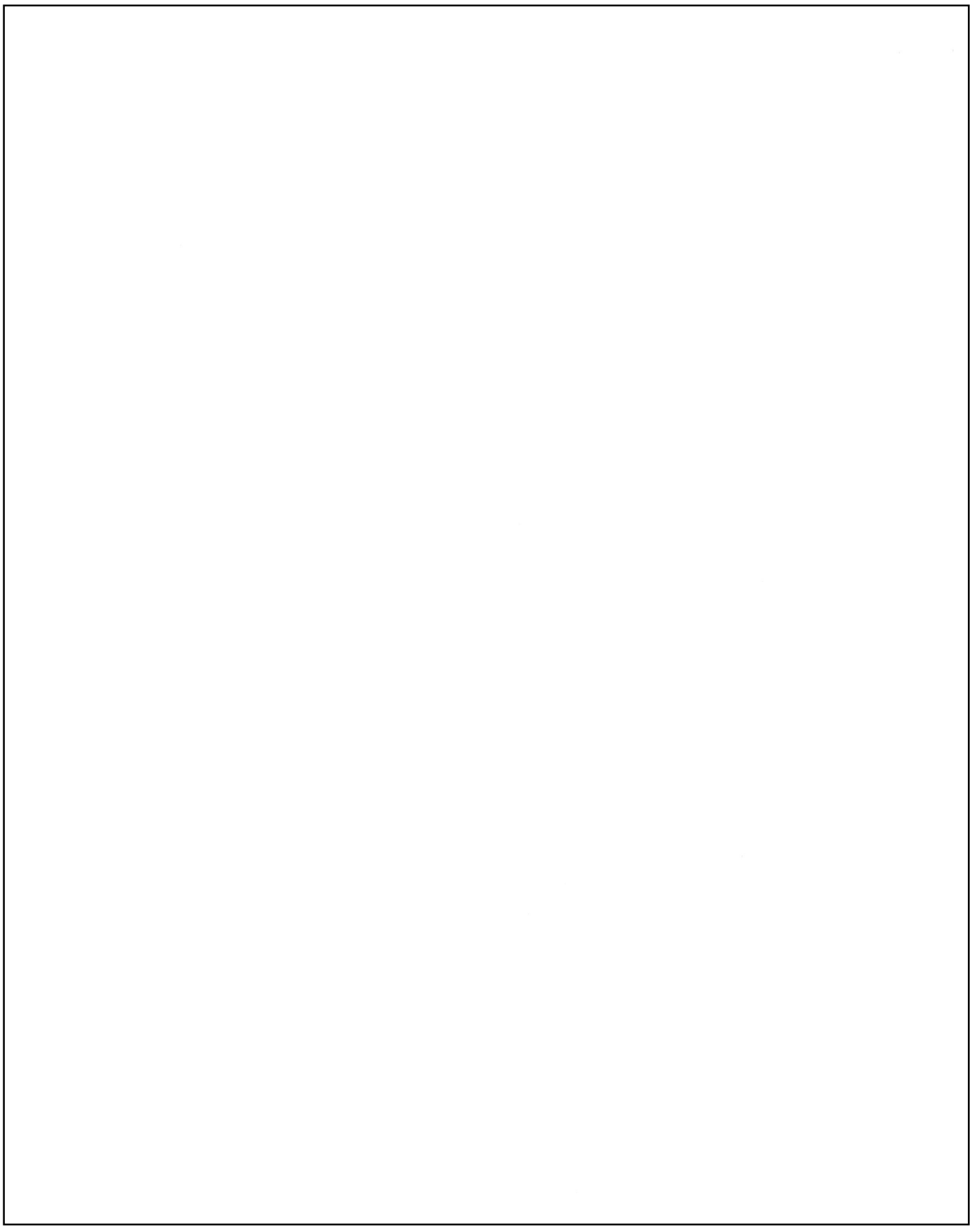

REPAIRS BY LANDLORD

11. Landlord agrees to keep in good repair the roof, foundation, structural supports and exterior walls of the buildings located on the Premises (exclusive of all glass and exclusive of all exterior doors) and, except as may be specifically allocated to Tenant in paragraph 12 herein, Landlord agrees to be responsible for capital replacements on the Premises; provided that Landlord shall not be responsible for repairs or capital replacements rendered necessary by the negligence or intentional wrongful acts of Tenant, its employees, agents, invitees or contractors. Tenant shall promptly report in writing to Landlord any defective condition known to it which Landlord is required to repair or replace and failure to report such conditions shall make Tenant responsible to Landlord for any liability incurred by Landlord by reason of such conditions.

(Note: Should Landlord and Tenant need to further detail the allocation of responsibility hereunder, the Special Stipulations box at the end of the Lease should be checked and such allocation should be specified on an Exhibit B.)

REPAIRS BY TENANT

12. (a) Tenant accepts the Premises in their present condition and as suited for the Permitted Use and Tenant's intended purposes. Tenant, throughout the initial term of this Lease, and any extension or renewal thereof, at its expense, shall maintain in good order and repair the Premises, (except those repairs expressly required to be made by Landlord hereunder), specifically including but not limited to any building and other improvements located thereon, all light bulb and ballast replacements, plumbing fixtures and systems repairs within the Premises and water heater repairs. Tenant further agrees to care for the grounds around the building, including the mowing of grass, care of shrubs and general landscaping. Tenant shall use only licensed contractors for repairs where such license is required. Landlord shall have the right to approve the contract or as to any repairs in excess of $ **1,000.00**.

[X] If this box is checked, Tenant, at its expense, shall maintain the heating, ventilation and air conditioning system(s) ("HVAC Systems") in good order and repair, including but not limited to replacement of parts, compressors, air handling units and heating units. Tenant shall be required to maintain a preventive maintenance contract for the HVAC Systems on terms and with a provider reasonably acceptable to Landlord, which contract shall call for at least semi-annual maintenance, inspection and repair of such HVAC Systems ("HVAC Contract"). Tenant shall provide a copy of the HVAC Contract to Landlord annually. Provided that: (i) Tenant has kept the HVAC Contract in force, and, (ii) Tenant shall have obtained Landlord's prior written approval of the contractor and the repair or replacement expenses for the HVAC Systems, then, for any calendar year, Tenant shall be responsible for the cost of repairing or replacing the HVAC Systems (or any major component thereof) up to $ **1,000.00** per HVAC System with a maximum repair or replacement cost of $ **3,000.00** for all HVAC Systems ("HVAC Cap") in such year. Tenant shall provide Landlord copies of all records related to the servicing, maintenance, repair, and replacement of the HVAC Systems upon the occurrence of any service, maintenance, repair, or replacement of the HVAC Systems. Landlord shall be responsible for paying the repair cost or replacement cost of such HVAC System in excess of the HVAC Cap.

[ ] If this box is checked, Landlord, at its expense, shall maintain the heating, ventilation and air conditioning system(s) ("HVAC Systems") in good order and repair, including but not limited to replacement of parts, compressors, air handling units and heating units. Provided that, Tenant shall reimburse Landlord for the cost of repairing or replacing the HVAC Systems (or any major component thereof) an amount up to $ _____ per HVAC System with a maximum replacement cost of $ _____ for all HVAC Systems ("HVAC Cap") in such year. Landlord shall be responsible for paying the repair cost or replacement cost of such HVAC System in excess of the HVAC Cap. Tenant shall reimburse Landlord for the amount of the HVAC Cap payable hereunder upon the written request of Landlord.

(b) Tenant, Tenant's employees, agents, invitees or contractors shall take no action which may void any manufacturers or installers warranty with relation to the Premises. Tenant shall indemnify and hold Landlord harmless from any liability, claim, demand or cause of action arising on account of Tenant's breach of the provisions of this paragraph 12.

ALTERATIONS

13. Tenant shall not make any alterations, additions, or improvements to the Premises without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Landlord, in connection with Landlord's consent to same, may designate any such alterations, additions, or improvements to the Premises as subject to removal upon the expiration or earlier termination of this Lease, in which case, upon Landlord's written notice to Tenant to remove same at the expiration or earlier termination of this Lease, Tenant shall do so and restore the Premises to the condition that existed prior to such alterations, additions, or improvements being made. Tenant shall promptly remove any alterations, additions, or improvements constructed in violation of this paragraph 13 upon Landlord's written request. All approved alterations, additions, and improvements will be accomplished in a good and workmanlike manner, in conformity with all applicable laws and regulations, and by a contractor approved by Landlord, free of any liens or encumbrances. Tenant has no authority to allow, will not permit, and will indemnify Landlord and hold it harmless from, any contractors', laborers', mechanics', or materialmen's liens, or any other similar liens filed against the Premises in connection with any alterations, additions, or improvements to the Premises.

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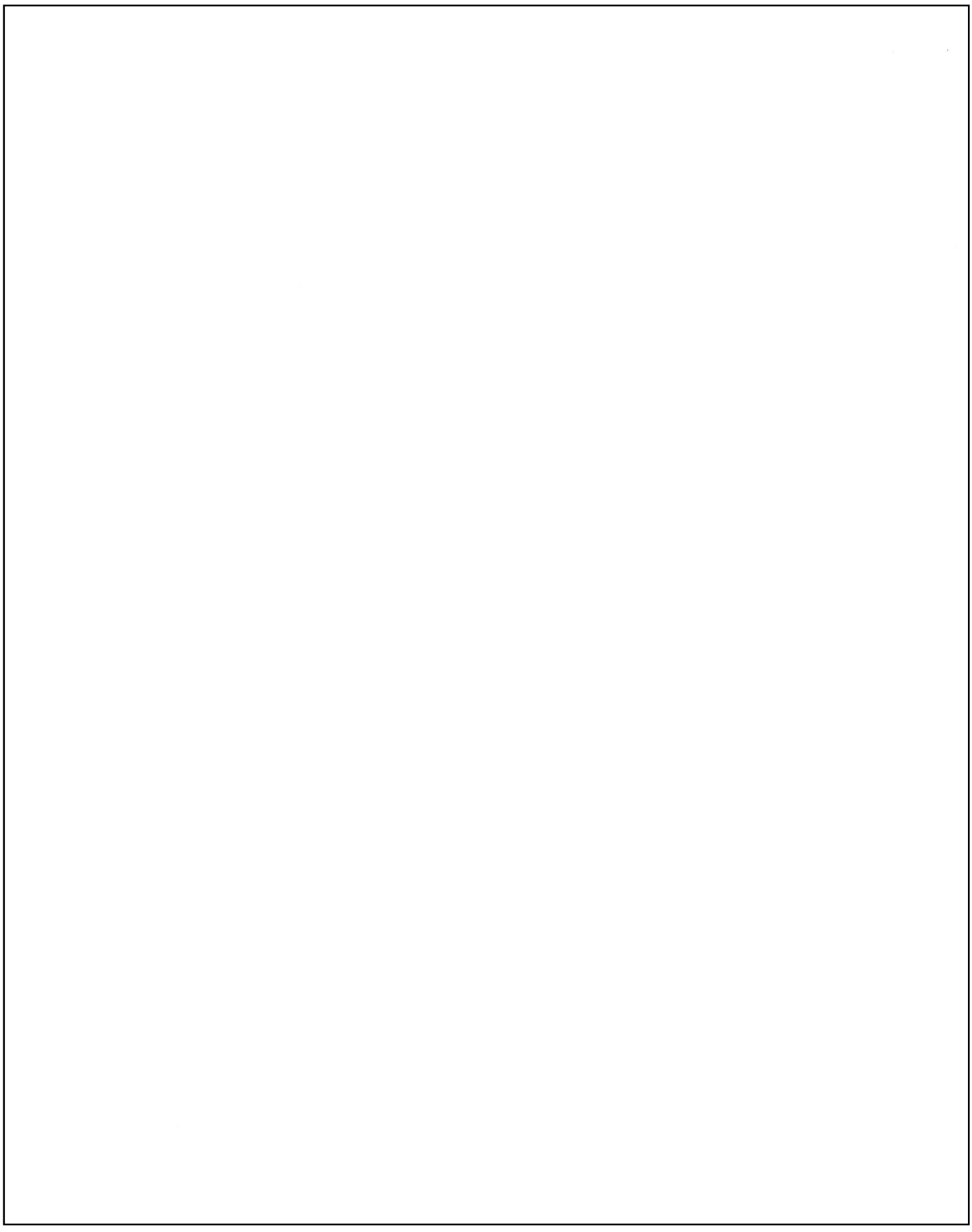

SURRENDERING THE PREMISES

14. Tenant shall schedule its move date with Landlord, in writing, in advance of the expiration or earlier termination of this Lease. Tenant agrees to return the Premises to Landlord at the expiration or earlier termination of this Lease, broom clean and in as good condition and repair as on the Lease Commencement Date, natural wear and tear, damage by storm, fire, lightning, earthquake or other casualty alone excepted. By written notice to Tenant, Landlord may require Tenant to remove any alterations, additions or improvements at the expiration or earlier termination of this Lease (whether or not made with Landlord's consent and whether or not designated via paragraph 13 as subject to removal) and to restore the Premises to its prior condition as of the Lease Commencement Date, all at Tenant's expense. All alterations, additions and improvements which Landlord has not required Tenant to remove shall become Landlord's property and shall be surrendered to Landlord upon the termination of this Lease, except that Tenant may remove any of Tenant's personal property or trade fixtures which can be removed without material damage to the Premises. Tenant shall repair, at Tenant's expense, any damage to the Premises caused by the removal of any such personal property or trade fixtures.
(Note: Should Landlord and Tenant need to further enumerate their intent/understanding as to the status of items or property as fixtures, trade fixtures, or personal property hereunder, the Special Stipulations box at the end of the Lease should be checked and such enumeration should be specified by listing same by category on an Exhibit B.)

DESTRUCTION OF OR DAMAGE TO PREMISES

15. (a) If the Premises are totally destroyed by storm, fire, lightning, earthquake or other casualty, Landlord shall have the right to terminate this Lease on written notice to Tenant within thirty (30) days after such destruction and this Lease shall terminate as of the date of such destruction and rental shall be accounted for as between Landlord and Tenant as of that date.

(b) If the Premises are damaged but not wholly destroyed by any such casualties or if the Landlord does not elect to terminate the Lease under paragraph 15(a) above, Landlord shall commence (or shall cause to be commenced) reconstruction of the Premises within one hundred twenty (120) days after such occurrence and prosecute the same diligently to completion, not to exceed two hundred seventy (270) days from the date upon which Landlord receives applicable permits and insurance proceeds. In the event Landlord shall fail to substantially complete reconstruction of the Premises within said two hundred seventy (270) day period, Tenant's sole remedy shall be to terminate this Lease.

(c) In the event of any casualty at the Premises during the last one (1) year of the Lease Term, Landlord and Tenant each shall have the option to terminate this Lease on written notice to the other of exercise thereof within sixty (60) days after such occurrence.

(d) In the event of reconstruction of the Premises, Tenant shall continue the operation of its business in the Premises during any such period to the extent reasonably practicable from the standpoint of prudent business management, and the obligation of Tenant to pay annual rental and any other sums due under this Lease shall remain in full force and effect during the period of reconstruction. The annual rental and other sums due under this Lease shall be abated proportionately with the degree to which Tenant's use of the Premises is impaired, commencing from the date of destruction and continuing during the period of such reconstruction. Tenant shall not be entitled to any compensation or damages from Landlord for loss of use of the whole or any part of the Premises, Tenant's personal property, or any inconvenience or annoyance occasioned by such damage, reconstruction or replacement.

(e) In the event of the termination of this Lease under any of the provisions of this paragraph 15, both Landlord and Tenant shall be released from any liability or obligation under this Lease arising after the date of termination, except as otherwise provided for in this Lease.

GOVERNMENTAL ORDERS

16. Tenant, at its own expense, agrees to comply with: (a) any law, statute, ordinance, regulation, rule, requirement, order, court decision or procedural requirement of any governmental or quasi-governmental authority having jurisdiction over the Premises; (b) the rules and regulations of any applicable governmental insurance authority or any similar body, relative to the Premises and Tenant's activities therein; (c) provisions of or rules enacted pursuant to any private use restrictions, as the same may be amended from time to time and (d) the Americans with Disabilities Act (42 U.S.C.S. §12101, et seq.) and the regulations and accessibility guidelines enacted pursuant thereto, as the same may be amended from time to time. Landlord and Tenant agree, however, that if in order to comply with such requirements the cost to Tenant shall exceed a sum equal to one (1) year's rent, then Tenant may terminate this Lease by giving written notice of termination to Landlord in accordance with the terms of this Lease, which termination shall become effective sixty (60) days after receipt of such notice and which notice shall eliminate the necessity of compliance with such requirements, unless, within thirty (30) days of receiving such notice, Landlord agrees in writing to be responsible for such compliance, at its own expense, and commences compliance activity, in which case Tenant's notice given hereunder shall not terminate this Lease.

CONDEMNATION

17. (a) If the entire Premises shall be appropriated or taken under the power of eminent domain by any governmental or quasi-governmental authority or under threat of and in lieu of condemnation (hereinafter, "taken" or "taking"), this Lease shall terminate as of the date of such taking, and Landlord and Tenant shall have no further liability or obligation arising under this Lease after such date, except as otherwise provided for in this Lease.

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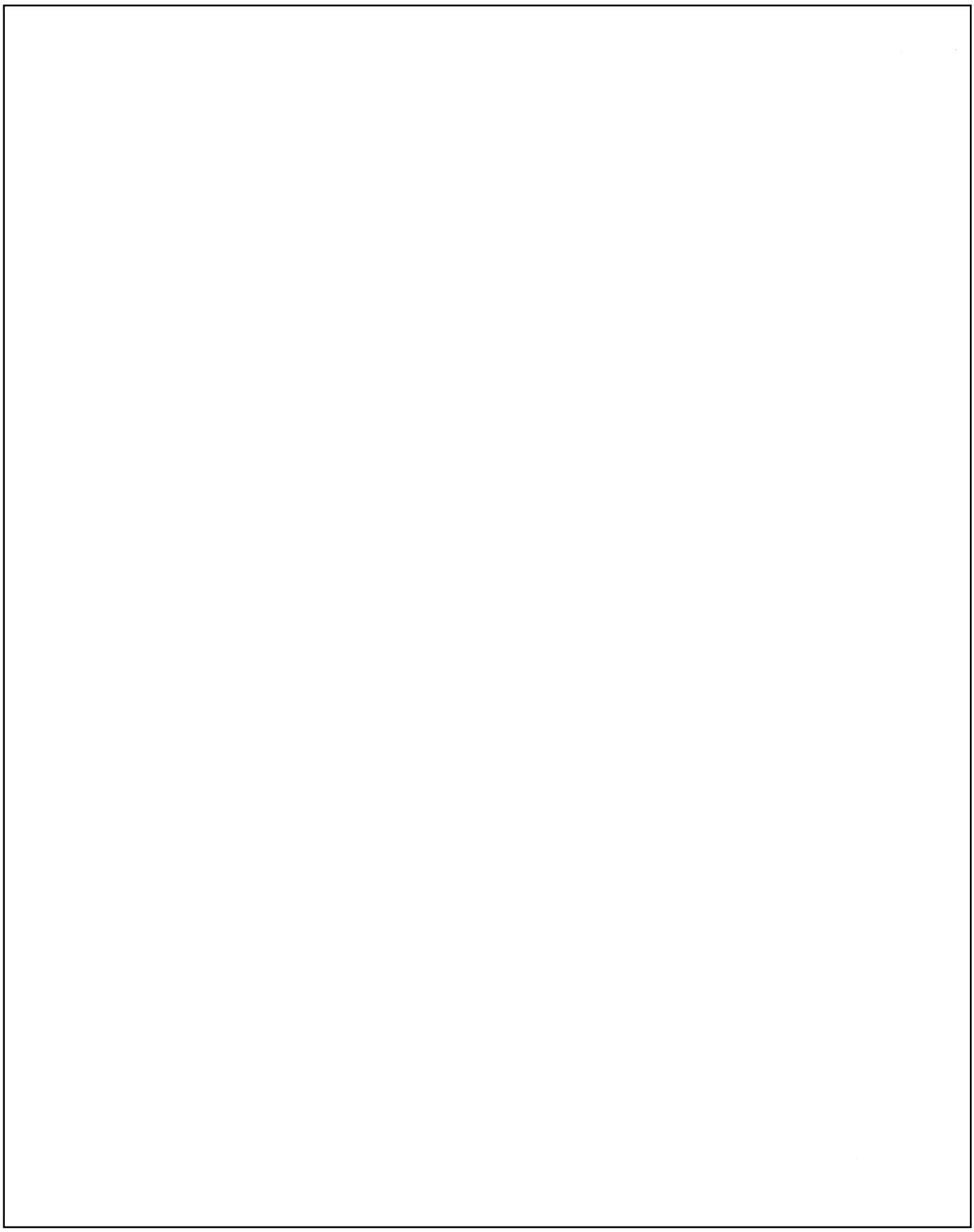

(b) If more than twenty-five percent (25%) of the floor area of any building of the Premises is taken, or if by reason of any taking, regardless of the amount so taken, the remainder of the Premises is not one undivided space or is rendered unusable for the Permitted Use, either Landlord or Tenant shall have the right to terminate this Lease as of the date Tenant is required to vacate the portion of the Premises taken, upon giving notice of such election within thirty (30) days after receipt by Tenant from Landlord of written notice that said Premises have been or will be so taken. In the event of such termination, both Landlord and Tenant shall be released from any liability or obligation under this Lease arising after the date of termination, except as otherwise provided for in this Lease.

(c) Landlord and Tenant, immediately after learning of any taking, shall give notice thereof to each other.

(d) If this Lease is not terminated on account of a taking as provided herein above, then Tenant shall continue to occupy that portion of the Premises not taken and the parties shall proceed as follows: (i) at Landlord's cost and expense and as soon as reasonably possible, Landlord shall restore (or shall cause to be restored) the Premises remaining to a complete unit of like quality and character as existed prior to such appropriation or taking, and (ii) the annual rent provided for in paragraph 3 and other sums due under the Lease shall be reduced on an equitable basis, taking into account the relative values of the portion taken as compared to the portion remaining. Tenant waives any statutory rights of termination that may arise because of any partial taking of the Premises.

(e) Landlord shall be entitled to the entire condemnation award for any taking of the Premises or any part thereof. Tenant's right to receive any amounts separately awarded to Tenant directly from the condemning authority for the taking of its merchandise, personal property, relocation expenses and/or interests in other than the real property taken shall not be affected in any manner by the provisions of this paragraph 17, provided Tenant's award does not reduce or affect Landlord's award and provided further, Tenant shall have no claim for the loss of its leasehold estate.

ASSIGNMENT AND SUBLETTING

18. Tenant shall not assign this Lease or any interest hereunder or sublet the Premises or any part thereof, or permit the use of the Premises by any party other than the Tenant, without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Tenant shall pay to Landlord, concurrently with any request for consent to assignment or sublet, a non-refundable fee of $ _____ as payment to Landlord for its review and processing of the request. In addition, Tenant shall pay to Landlord any legal fees and expenses incurred by Landlord in connection with the proposed assignment or sublet, to the extent such amounts exceed $ _____ . Consent to any assignment or sublease shall not impair this provision and all later assignments or subleases shall be made likewise only on the prior written consent of Landlord. No sublease or assignment by Tenant shall relieve Tenant of any liability hereunder.

EVENTS OF DEFAULT

19. The happening of any one or more of the following events (hereinafter any one of which may be referred to as an "Event of Default") during the term of this Lease, or any renewal or extension thereof, shall constitute a breach of this Lease on the part of the Tenant: (a) Tenant fails to pay when due the rental or any other monetary obligation as provided for herein; (b) Tenant abandons or vacates the Premises; (c) Tenant fails to comply with or abide by and perform any non-monetary obligation imposed upon Tenant under this Lease within thirty (30) days after written notice of such breach; (d) Tenant is adjudicated bankrupt; (e) A permanent receiver is appointed for Tenant's property and such receiver is not removed within sixty (60) days after written notice from Landlord to Tenant to obtain such removal; (f) Tenant, either voluntarily or involuntarily, takes advantage of any debt or relief proceedings under any present or future law, whereby the rent or any part thereof is, or is proposed to be, reduced or payment thereof deferred and such proceeding is not dismissed within sixty (60) days of the filing thereof; (g) Tenant makes an assignment for benefit of creditors; or (h) Tenant's effects are levied upon or attached under process against Tenant, which is not satisfied or dissolved within thirty (30) days after written notice from Landlord to Tenant to obtain satisfaction thereof.

REMEDIES UPON DEFAULT

20. Upon the occurrence of Event of Default, Landlord may pursue any one or more of the following remedies separately or concurrently, without prejudice to any other remedy herein provided or provided by law: (a) Landlord may terminate this Lease by giving written notice to Tenant and upon such termination shall be entitled to recover from Tenant damages as may be permitted under applicable law; or (b) Landlord may terminate this Lease by giving written notice to Tenant and, upon such termination, shall be entitled to recover from the Tenant damages in an amount equal to all rental which is due and all rental which would otherwise have become due throughout the remaining term of this Lease, or any renewal or extension thereof (as if this Lease had not been terminated); or (c) Landlord, as Tenant's agent, without terminating this Lease, may enter upon and rent the Premises, in whole or in part, at the best price obtainable by reasonable effort, without advertisement and by private negotiations and for any term Landlord deems proper, with Tenant being liable to Landlord for the deficiency, if any, between Tenant's rent hereunder and the price obtained by Landlord on reletting, provided however, that Landlord shall not be considered to be under any duty by reason of this provision to take any action to mitigate damages by reason of Tenant's default and expressly shall have no duty to mitigate Tenant's damages. No termination of this Lease prior to the normal ending thereof, by lapse of time or otherwise, shall affect Landlord's right to collect rent for the period prior to termination thereof. Tenant acknowledges and understands that Landlord's acceptance of partial rental will not waive Tenant's breach of this Lease or limit Landlord's rights against Tenant hereunder or Landlord's right to evict Tenant through a summary ejectment proceeding, whether filed before or after Landlord's acceptance of any such partial rental.

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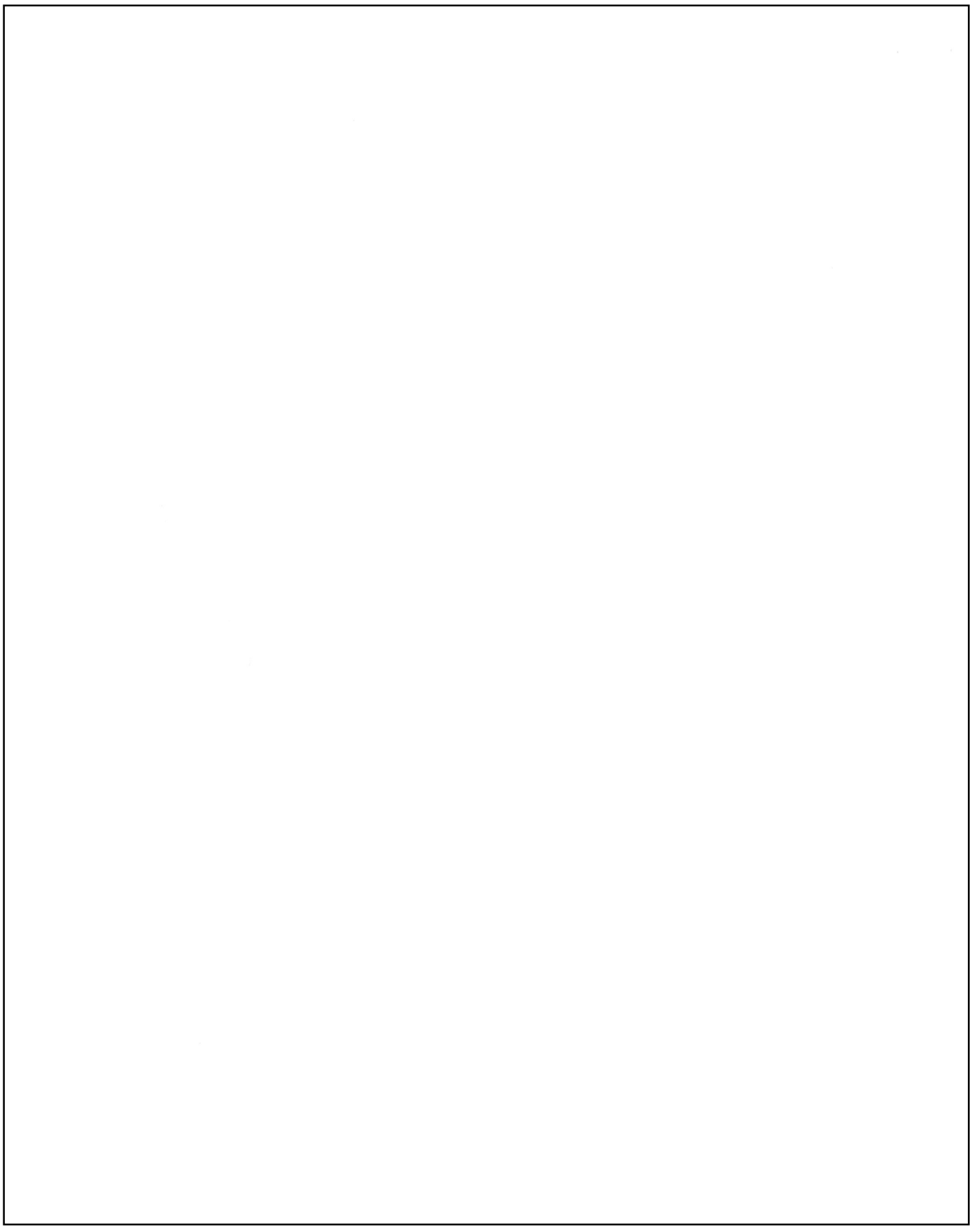

EXTERIOR SIGNS

21. Tenant shall place no signs upon the outside walls, doors or roof of the Premises, except with the express written consent of the Landlord in Landlord's sole discretion. Any consent given by Landlord shall expressly not be a representation of or warranty of any legal entitlement to signage at the Premises. Any and all signs placed on the Premises by Tenant shall be maintained in compliance with governmental rules and regulations governing such signs and Tenant shall be responsible to Landlord for any damage caused by installation, use or maintenance of said signs, and all damage incident to removal thereof.

LANDLORD'S ENTRY OF PREMISES

22. Landlord may advertise the Premises "For Rent" 30 days before the termination of this Lease. Landlord may enter the Premises upon prior notice at reasonable hours to exhibit same to prospective purchasers or tenants, to make repairs required of Landlord under the terms hereof, for reasonable business purposes and otherwise as may be agreed by Landlord and Tenant. Landlord may enter the Premises at any time without prior notice, in the event of an emergency or to make emergency repairs to the Premises. Upon request of Landlord, Tenant shall provide Landlord with a functioning key to the Premises and shall replace such key if the locks to the Premises are changed.

QUIET ENJOYMENT

23. So long as Tenant observes and performs the covenants and agreements contained herein, it shall at all times during the Lease term peacefully and quietly have and enjoy possession of the Premises, subject to the terms hereof.

HOLDING OVER

24. If Tenant remains in possession of the Premises after expiration of the term hereof, Tenant shall be a tenant at sufferance and there shall be no renewal of this Lease by operation of law. In such event, commencing on the date following the date of expiration of the term, the monthly rental payable under Paragraph 3 above shall for each month, or fraction thereof during which Tenant so remains in possession of the Premises, be **twice** the monthly rental otherwise payable under Paragraph 3 above.

ENVIRONMENTAL LAWS

25. (a) Tenant covenants that with respect to any Hazardous Materials (as defined below) it will comply with any and all federal, state or local laws, ordinances, rules, decrees, orders, regulations or court decisions relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about the Premises or soil and ground water conditions, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act, the Hazardous Materials Transportation Act, any other legal requirement concerning hazardous or toxic substances, and any amendments to the foregoing (collectively, all such matters being "Hazardous Materials Requirements"). Tenant shall remove from the Premises, all Hazardous Materials that were placed on the Premises by Tenant or Tenant's employees, agents, invitees or contractors, either after their use by Tenant or upon the expiration or earlier termination of this Lease, incompliance with all Hazardous Materials Requirements.

(b) Tenant shall be responsible for obtaining all necessary permits in connection with its use, storage and disposal of Hazardous Materials, and shall develop and maintain, and where necessary file with the appropriate authorities, all reports, receipts, manifest, filings, lists and invoices covering those Hazardous Materials and Tenant shall provide Landlord with copies of all such items upon request. Tenant shall provide within five (5) days after receipt thereof, copies of all notices, orders, claims or other correspondence from any federal, state or local government or agency alleging any violation of any Hazardous Materials Requirements by Tenant, or related in any manner to Hazardous Materials. In addition, Tenant shall provide Landlord with copies of all responses to such correspondence at the time of the response.

(c) Tenant hereby indemnifies and holds harmless Landlord, its successors and assigns from and against any and all losses, liabilities, damages, injuries, penalties, fines, costs, expenses and claims of any and every kind whatsoever (including attorney's fees and costs) paid, incurred or suffered by, or asserted against Landlord as a result of any claim, demand or judicial or administrative action by any person or entity (including governmental or private entities) for, with respect to, or as a direct or indirect result of, the presence on or under or the escape, seepage, leakage, spillage, discharge, emission or release from the Premises of any Hazardous Materials caused by Tenant or Tenant's employees, agents, invitees or contractors. This indemnity shall also apply to any release of Hazardous Materials caused by a fire or other casualty to the Premises if such Hazardous Materials were stored on the Premises by Tenant, its agents, employees, invitees or successors in interest.

(d) For purposes of this Lease, "Hazardous Materials" means any chemical, compound, material, substance or other matter that: (i) is defined as a hazardous substance, hazardous material or waste, or toxic substance pursuant to any Hazardous Materials Requirements, (ii) is regulated, controlled or governed by any Hazardous Materials Requirements, (iii) is petroleum or a petroleum product, or (iv) is asbestos, formaldehyde, a radioactive material, drug, bacteria, virus, or other injurious or potentially injurious material (by itself or in combination with other materials).

(e) The warranties and indemnities contained in this paragraph 25 shall survive the termination of this Lease.

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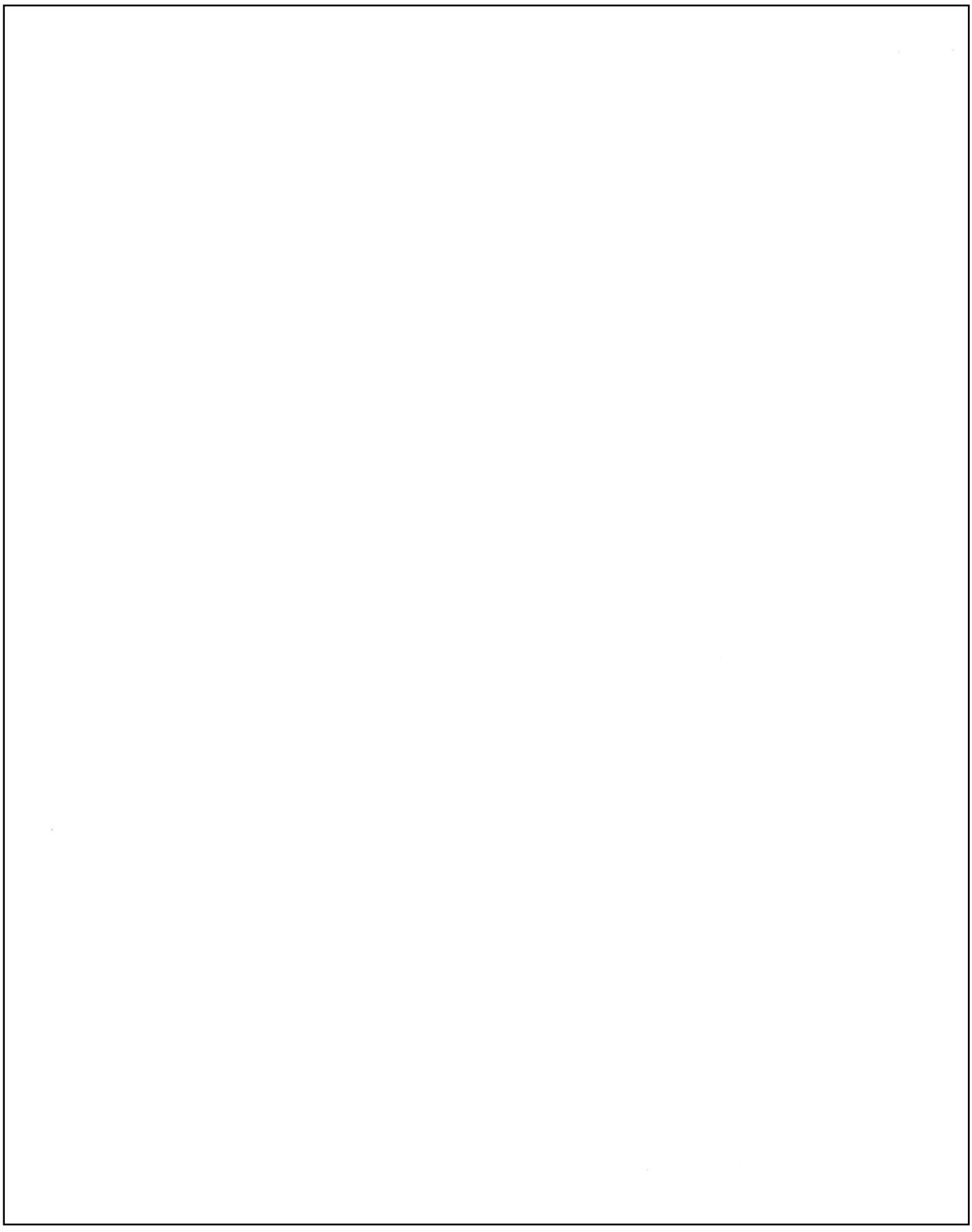

SUBORDINATION; ATTORNMENT; ESTOPPEL

26. (a) This Lease and all of Tenant's rights hereunder are and shall be subject and subordinate to all currently existing and future mortgages affecting the Premises. Within ten (10) days after the receipt of a written request from Landlord or any Landlord mortgagee, Tenant shall confirm such subordination by executing and delivering Landlord and Landlord's mortgagee a recordable subordination agreement and such other documents as may be reasonably requested, in form and content satisfactory to Landlord and Landlord's mortgagee. Provided, however, as a condition to Tenant's obligation to execute and deliver any such subordination agreement, the applicable mortgagee must agree that mortgagee shall not unilaterally, materially alter this Lease and this Lease shall not be divested by foreclosure or other default proceedings thereunder so long as Tenant shall not be in default under the terms of this Lease beyond any applicable cure period set forth herein. Tenant acknowledges that any Landlord mortgagee has the right to subordinate at any time its interest in this Lease and the leasehold estate to that of Tenant, without Tenant's consent.

(b) If Landlord sells, transfers, or conveys its interest in the Premises or this Lease, or if the same is foreclosed judicially or nonjudicially, or otherwise acquired, by a Landlord mortgagee, upon the request of Landlord or Landlord's successor, Tenant shall attorn to said successor, provided said successor accepts the Premises subject to this Lease. Tenant shall, upon the request of Landlord or Landlord's successor, execute an attornment agreement confirming the same, in form and substance acceptable to Landlord or Landlord's successor and Landlord shall thereupon be released and discharged from all its covenants and obligations under this Lease, except those obligations that have accrued prior to such sale, transfer or conveyance; and Tenant agrees to look solely to the successor in interest of Landlord for the performance of those covenants accruing after such sale, transfer or conveyance. Such agreement shall provide, among other things, that said successor shall not be bound by (a) any prepayment of more than one (1) month's rental (except the Security Deposit) or (b) any material amendment of this Lease made after the later of the Lease Commencement Date or the date that such successor's lien or interest first arose, unless said successor shall have consented to such amendment.

(c) Within ten (10) days after request from Landlord, Tenant shall execute and deliver to Landlord an estoppel certificate (to be prepared by Landlord and delivered to Tenant) with appropriate facts then in existence concerning the status of this Lease and Tenant's occupancy, and with any exceptions thereto noted in writing by Tenant. Tenant's failure to execute and deliver the Estoppel Certificate within said ten (10) day period shall be deemed to make conclusive and binding upon Tenant in favor of Landlord and any potential mortgagee or transferee the statements contained in such estoppel certificate without exception.

ABANDONMENT

27. Tenant shall not abandon the Premises at any time during the Lease term. If Tenant shall abandon the Premises or be dispossessed by process of law, any personal property belonging to Tenant and left on the Premises, at the option of Landlord, shall be deemed abandoned, and available to Landlord to use or sell to offset any rent due or any expenses incurred by removing same and restoring the Premises.

NOTICES

28. All notices required or permitted under this Lease shall be in writing and shall be personally delivered or sent by U.S. certified mail, return receipt requested, postage prepaid. Notices to Tenant shall be delivered or sent to the address shown at the beginning of this Lease, except that upon Tenant taking possession of the Premises, then the Premises shall be Tenant's address for such purposes. Notices to Landlord shall be delivered or sent to the address shown at the beginning of this Lease and notices to Agent, if any, shall be delivered or sent to the address set forth in Paragraph 3 hereof. All notices shall be effective upon delivery. Any party may change its notice address upon written notice to the other parties, given as provided herein.

BROKERS

29. Except as expressly provided herein, Tenant and Landlord agree to indemnify and hold each other harmless from any and all claims of brokers, consultants or real estate agents by, through or under the indemnifying party for fees or commissions arising out of the lease of the Property to Tenant. Tenant and Landlord represent and warrant to each other that: (i) except as to the brokers designated below ("Brokers"), they have not employed nor engaged any brokers, consultants or real estate agents to be involved in this transaction and (ii) that the compensation of the Brokers is established by and shall be governed by separate agreements entered into as amongst the Brokers, the Tenant and/or the Landlord.

HTR Commercial LLC ("Listing Agency"),
Paul Flaherty ("Listing Agent" - License # 151867)
Acting as: [X] Landlord's Agent; [ ] Dual Agent
and _____ (Leasing Agency"),
_____ ("Leasing Agent" - License # _____)
Acting as: [ ] Tenant's Agent; [ ] Landlord's (Sub)Agent; [ ] Dual Agent

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Revised 7/2020
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THIS DOCUMENT IS A LEGAL DOCUMENT. EXECUTION OF THIS DOCUMENT HAS LEGAL CONSEQUENCES THAT COULD BE ENFORCEABLE IN A COURT OF LAW. THE NORTH CAROLINA ASSOCIATION OF REALTORS® MAKES NO REPRESENTATIONS CONCERNING THE LEGAL SUFFICIENCY, LEGAL EFFECT OR TAX CONSEQUENCES OF THIS DOCUMENT OR THE TRANSACTION TO WHICH IT RELATES AND RECOMMENDS THAT YOU CONSULT YOUR ATTORNEY.

IN WITNESS WHEREOF, the parties hereto have hereunto caused this Lease to be duly executed.

LANDLORD:

Individual

_____

Date: _____

_____

Date: _____

Business Entity

M Clayton Rentals
(Name of Firm)

By: _____

Title: _____

Date: _____

TENANT:

Individual

_____
David Melton

Date: 4-20-21

_____

Date: _____

Business Entity

_____
(Name of Firm)

By: _____

Title: _____

Date: _____

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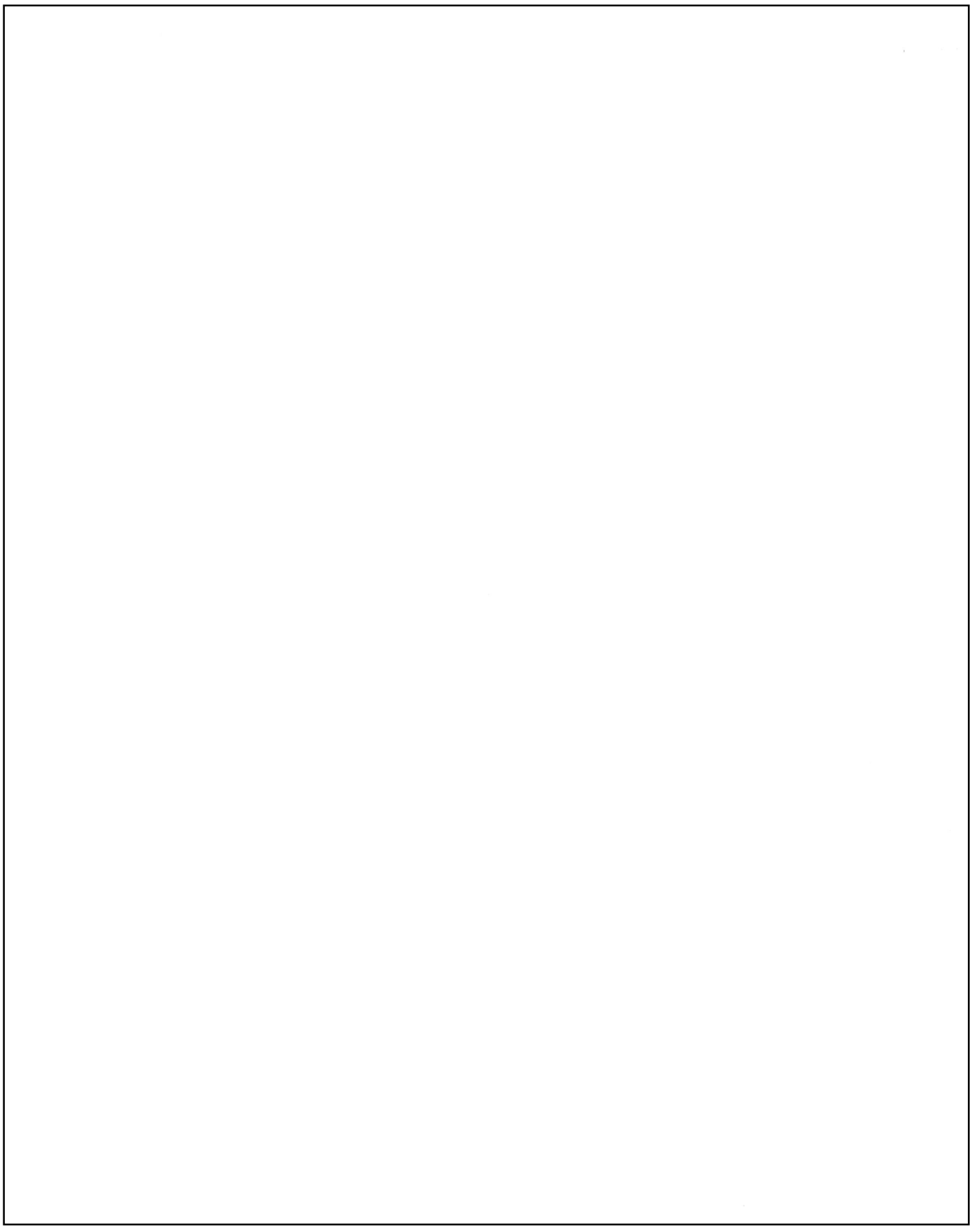
David Melton



GENERAL TERMS

30. (a) "Landlord" as used in this Lease shall include the undersigned, its heirs, representatives, assigns and successors in title to the Premises. "Agent" as used in this Lease shall mean the party designated as same in Paragraph 3, its heirs, representatives, assigns and successors. "Tenant" shall include the undersigned and its heirs, representatives, assigns and successors, and if this Lease shall be validly assigned or sublet, shall include also Tenant's assignees or sublessees as to the Premises covered by such assignment or sublease. "Landlord", "Tenant", and "Agent" include male and female, singular and plural, corporation, partnership or individual, as may fit the particular parties.

(b) No failure of Landlord to exercise any power given Landlord hereunder or to insist upon strict compliance by Tenant of its obligations hereunder and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Landlord's right to demand exact compliance with the terms hereof. All rights, powers and privileges conferred hereunder upon parties hereto shall be cumulative and not restrictive of those given by law.

(c) **Time is of the essence in this Lease.**

(d) This Lease may be executed in one or more counterparts, which taken together, shall constitute one and the same original document. Copies of original signature pages of this Lease may be exchanged via facsimile or e-mail, and any such copies shall constitute originals. This Lease constitutes the sole and entire agreement among the parties hereto and no modification of this Lease shall be binding unless in writing and signed by all parties hereto. The invalidity of one or more provisions of this Lease shall not affect the validity of any other provisions hereof and this Lease shall be construed and enforced as if such invalid provisions were not included.

(e) Each signatory to this Lease represents and warrants that he or she has full authority to sign this Lease and such instruments as may be necessary to effectuate any transaction contemplated by this Lease on behalf of the party for whom he or she signs and that his or her signature binds such party. The parties acknowledge and agree that: (i) the initials lines at the bottom of each page of this Lease are merely evidence of their having reviewed the terms of each page, and (ii) the complete execution of such initials lines shall not be a condition of the effectiveness of this Lease.

(f) Upon request by either Landlord or Tenant, the parties hereto shall execute a short form lease (memorandum of lease) in recordable form, setting forth such provisions hereof (other than the amount of annual rental and other sums due) as either party may wish to incorporate. The cost of recording such memorandum of lease shall be borne by the party requesting execution of same.

(g) If legal proceedings are instituted to enforce any provision of this Lease, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorneys fees and court costs incurred in connection with the proceeding.

SPECIAL STIPULATIONS

☒ If this box is checked, additional terms of this Lease are set forth on **Exhibit B** attached hereto and incorporated herein by reference. **(Note: Under North Carolina law, real estate agents are not permitted to draft lease provisions.)**

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Exhibit B

David Melton will pay $9,000.00 to Mohammed Ahmed for the tires and rims left in the shop at 214 E. Main Street. This will be paid within 90 days. A minimum of $1,000.00 each 30 days period.

Tenant will take possession 4/15/2021 and start paying rent 90 days after opening for business or no later than 8/15/2021. Rent will be prorated. $1,250.00 is due 8/15/2021.

Landlord is responsible for installing a 4 ton HVAC unit into the building. This will not include the shop. Tenant is responsible for annual HVAC maintenance agreement.

Landlord is responsible for Roof.

Landlord will supply LED lights and tenant will have lights installed to code.

Tenant will update bathrooms

Tenant is taking the building as is.

Tenant

Landlord