

TUESDAY, FEBRUARY 15, 2022
TOWN OF SAWMILLS REGULAR COUNCIL MEETING
6:00 PM

COUNCIL PRESENT

Mayor Johnnie Greene
Mayor Pro Tem Clay Wilson
Keith Warren
Melissa Curtis

STAFF PRESENT

Chase Winebarger
Julie A Good
Terry Taylor
Tanner Greene

COUNCIL ABSENT

Joe Wesson
Rebecca Johnson

CALL TO ORDER: Mayor Johnnie Greene called the meeting to order at approximately 6:04pm.

INVOCATION: Councilman Keith Warren gave the invocation.

PLEDGE OF ALLEGIANCE: Mayor Johnnie Greene led the Pledge of Allegiance.

ADOPT AGENDA: Mayor Johnnie Greene asked for a motion to adopt the February 15, 2022 Agenda.

Melissa Curtis made a motion, and Clay Wilson seconded, to adopt the February 15, 2022 Agenda. All were in favor.

APPROVE FEBRUARY 8, 2022 REGULAR MEETING MINUTES: Mayor Johnnie Greene asked for a motion to approve the February 8, 2022 regular meeting minutes.

Clay Wilson made a motion, and Keith Warren seconded, to approve the February 8, 2022 regular meeting minutes. All were in favor.

APPROVE FEBRUARY 8, 2022 CLOSED SESSION MINUTES: Mayor Johnnie Greene asked for a motion to approve the February 8, 2022 closed session minutes.

Melissa Curtis made a motion, and Clay Wilson seconded, to approve the February 8, 2022 closed session minutes. All were in favor.

APPROVE FEBRUARY 8, 2022 BUDGET RETREAT MINUTES: Mayor Johnnie Greene asked for a motion to approve the February 8, 2022 budget retreat minutes.

Clay Wilson made a motion, and Melissa Curtis seconded, to approve the February 8, 2022 budget retreat minutes. All were in favor.

PUBLIC COMMENT: Mayor Johnnie Greene asked if anyone had any questions or comments at this time.

No one wished to speak

RECOGNITIONS:

RECYCLE REWARDS WINNER: Mayor Johnnie Greene announced Sandra Helton, as the February Recycle Rewards winner. A credit of thirty-two dollars (\$32.00) will be added to the current sanitation bill.

No Council action was required.

PLANNING:

CALL FOR PUBLIC HEARING FOR TEXT AMENDMENTS: Mayor Johnnie Greene stated that Municipalities are required to remove criminal (misdemeanor) language within their Town Codes, Zoning and Subdivision Ordinances specifically listed within senate bill 300 (SB300). The proposed amendments will affect the following sections of the Town of Sawmills Town Code:

Section 50.99 (Public Works penalties)

Section 113.99 (Junkyard penalties)

Section 153.999 (Zoning Ordinance)

Section 152.999 (Subdivision Ordinance)

Section 154.19 (Dwellings not in compliance)

Section 154.54 (Housing standards)

The Town Council must hold a public hearing in order to change ordinance language.

Clay Wilson made a motion, and Keith Warren seconded, to call for a public hearing for the proposed text amendment on March 15, 2022 at 6:00pm during the regularly scheduled March meeting. All were in favor.

PUBLIC COMMENT: Mayor Pro Tem Clay Wilson asked if anyone had any questions or comments at this time.

No one wished to speak.

UPDATES:

DECEMBER CODE ENFORCEMENT REPORT: Town Planner Dustin Millsaps stated that there are thirteen (13) code enforcement cases open:

- Wiley Fletcher, 2502 Crest Ln, Rubbish and Zoning Violation. Town Planner Dustin Millsaps stated that on November 23, 2021, a NOV letter was sent for rubbish being located sporadically on the property, as well as a zoning violation for the accessory buildings located on the property. Town Planner Dustin Millsaps stated that as of December 3, 2021, there had been no progress., Town Planner Dustin Millsaps stated that on February 8, 2022 the trash has been picked up out of the yard but it is not completely finished. Town Planner Dustin Millsaps stated that a final letter will be issued;
- Steven Killian, 4801 Helton Rd, Rubbish. Town Planner Dustin Millsaps stated that a NOV letter, along with a copy of the Town's trash pick up policy, was sent for rubbish sitting at the road. Town Planner Dustin Millsaps stated that as of December 3, 2021, rubbish had not been picked up but it seems that the rubbish has been covered with tarps. Town Planner Dustin Millsaps stated that a final letter will be issued;
- David and Ashley Hoyle, 2465 Granville Dr, Rubbish. Town Planner Dustin Millsaps stated that on November 23, 2021, a NOV letter was sent. Town Planner Dustin Millsaps stated that as of December 3, 2021, it looks like there has been more rubbish added. Town Planner Dustin Millsaps stated that on February 8, 2022, there were more rubbish added, along with a tent that is now located on the property. Town Planner Dustin Millsaps stated that a final letter will be issued;
- Parker Cox, 2527 Sigmon Dr, Rubbish. Town Planner Dustin Millsaps stated that on November 23, 2021, a NOV letter was sent. Town Planner Dustin Millsaps stated that as of December 3, 2021, the it has started to be cleaned, but there is still a substantial amount of rubbish remaining. Town Planner Dustin Millsaps stated that the property has been cleaned a little, but not enough to make a difference. Town Planner Dustin Millsaps stated the a final letter will be issued;
- Gary Hicks, 2520 Sigmon Dr, Rubbish. Town Planner Dustin Millsaps stated that on November 23, 2021, a NOV letter was sent fpr dilapidated amd structures on the property. Town Planner Dustin Millsaps stated that the NOV letter was returned to the Town on November 27, 2021. Town Planner Dustin Millsaps stated that he is trying to find different avenues to get the NOV letter to the right person;
- Charles J. and Candis S. Hagaman, 1910 Leah Dr. #13, Rubbish. Town Planner Dustin Millsaps stated that on October 29, 2021, he received a complaint from Public Works regarding various different properties on Leah Drive, some of which encroach on Town property. Town Planner Dustin Millsaps stated that there was a NOV letter sent out. Town Planner Dustin Millsaps stated that he went by the property on November 9, 2021 and there has been no progress on the issue. Interim Town Planner Alison Adams stated that she spoke to someone on December 15, 2021 and was informed that they were hauling a trailer load off on December 16, 2021 and the remaining debris

will be taken care of shortly. Town Planner Dustin Millsaps stated that as of February 8, 2022, the property has not been cleaned. Town Planner Dustin Millsaps stated that a final letter will be issued;

- Linda G. Wartko, 5299 Lakewood Dr., Rubbish. Town Planner Dustin Millsaps stated that on October 29, 2021, he received a complaint for stacks of newspapers and junk piled up around the yard. Town Planner Dustin Millsaps stated that he went by the home and observed numerous debris from the road in front, on the sides and all around the home and sent a NOV letter out. Town Planner Dustin Millsaps stated that he went to the address on November 9, 2021 and there has been no progress on the issues. Town Planner Dustin Millsaps stated that he went by the property on December 3, 2021, and the problem still persists, if not worse, and it seems that the newspapers have been covered with newspapers and leaves. Town Planner Dustin Millsaps stated that as of February 8, 2022 the newspapers have been moved to the back of the house and a pile at the street. Town Planner Dustin Millsaps stated that a final letter will be issued;
- Ronald B and Cynthia H Herman, 4126 Shoun Dr. Rubbish. Town Planner Dustin Millsaps stated that he received a complaint and a NOV letter was sent out on September 28, 2021 for many different rubbish items in the yard (lawn mowers, appliances, etc.). Town Planner Dustin Millsaps stated that he went by the property on October 12, 2021 and the problem has started to be addressed, however, not completely. Town Planner Dustin Millsaps stated that he went by the property on November 9, 2021, and it looks that the property is almost completely clean. Town Planner Dustin Millsaps stated that he went by the property on December 3, 2021, and the tenants seem to have accumulated more rubbish in the yard again. Town Planner Dustin Millsaps stated that as of February 8, 2022, the problem has gotten worse. Town Planner Dustin Millsaps stated that a final letter will be issued;
- Teresa Annas Compton, 4486 Sawmills School Road. Abandoned Mobile Home/Garbage and Rubbish. Town Planner Dustin Millsaps stated he received a complaint on January 13, 2020. Town Planner Dustin Millsaps stated that a NOV letter was sent out on January 23, 2020 with a deadline of February 10, 2020. Town Planner Dustin Millsaps stated that the trailer is not finished and located on the same property as the Compton house that the Town abated in 2018. Town Planner Dustin Millsaps stated that staff will investigate and work with attorney for possible courses of abatement. Town Planner Dustin Millsaps stated that one (1) of Ms. Compton's sons is scheduled to meet with staff in late February to work towards getting the property in his name and get the property cleaned up. Town Planner Dustin Millsaps stated that staff has been waiting for Ms. Compton's son to schedule a time to come in and speak with staff regarding this property. Town Planner Dustin Millsaps stated that he went by the property on September 10, 2020 and the property is still in same condition with extremely high grass and would recommend demolition. Town Planner Dustin Millsaps stated that he has been in contact with Town Attorney Terry Taylor and former Town Planner to get all the evidence for this property. Town Planner Dustin Millsaps stated that on February 19, 2021, the title search process had been started with Town Attorney Terry Taylor. Town Planner Dustin Millsaps stated that on March 11, 2021, there were three (3) heirs found from the title search process and

letters had been sent out to all three (3) heirs. Town Planner Dustin Millsaps stated that as of May 11, 2021, fines have started to occur on this property. Town Planner Dustin Millsaps stated that as of June 10, 2021, all information on this case has been handed over to Town Attorney Terry Taylor to explore all options that are left to close this case. Town Planner Dustin Millsaps stated that as of October 12, 2021 Town Attorney Terry Taylor is still engaged in the legal process of trying to find heirs to the property;

- Edith Shatley, 2512 Crest Ln, Rubbish and Zoning Violation. Town Planner Dustin Millsaps stated that on November 23, 2021, a NOV letter was sent for rubbish and unpermitted accessory buildings, also of people living in a tent in the front yard. Town Planner Dustin Millsaps stated that as of December 3, 2021, there had been no progress on the issues. Town Planner Dustin Millsaps stated that as of February 8, 2022, there has been no progress on the issues;
- Greene Properties, LLC, 4811 Helton Rd, Rubbish. Town Planner Dustin Millsaps stated that on November 23, 2021, a NOV letter, along with a copy of the Town's trash pick up policy, was sent for rubbish sitting at the road. Town Planner Dustin Millsaps stated that as of December 3, 2021, the issue has been resolved;
- Charles J. and Candis S. Hagaman, 1910 Leah Dr. #12, Rubbish. Town Planner Dustin Millsaps stated that on October 29, 2021, he received a complaint from Public Works regarding various different properties on Leah Drive, some of which encroach on Town property. Town Planner Dustin Millsaps stated that there was a NOV letter sent out. Town Planner Dustin Millsaps stated that he went by the property on November 9, 2021 and there has been some progress on the issue. Town Planner Dustin Millsaps stated that on December 3, 2021, all of the debris has been cleaned, the only issue remaining is an old car that is neither the tenant's car nor the property owner. Town Planner Dustin Millsaps stated that property owner will need to get an attorney to have the car removed;
- Jose A Montes and Ana C Robles, 4321 Cherokee Ct. Rubbish. Town Planner Dustin Millsaps stated that he received a complaint and a NOV letter was sent out on October 5, 2021 for overgrown grass as well as rubbish all around the yard. Town Planner Dustin Millsaps stated that he went by the property on October 12, 2021, and November 9, 2021 and the problem still exists. Town Planner Dustin Millsaps stated that he recently learned that the property is in foreclosure;
- Charles J. and Candis S. Hagaman, 1910 Leah Dr. #19, Rubbish. Town Planner Dustin Millsaps stated that on October 29, 2021, he received a complaint from Public Works regarding various different properties on Leah Drive, some of which encroach on Town property. Town Planner Dustin Millsaps stated that there was a NOV letter sent out. Town Planner Dustin Millsaps stated that he went by the property on November 9, 2021 and the issue has been resolved.

No Council action was required.

TOWN MANAGER UPDATES: Town Manager Chase Winebarger stated that he gave all

his updates at the February 8, 2022 meeting.

COUNCIL COMMENTS:

Keith Warren wanted to thank everyone for coming to the meeting.

CLOSED SESSION PURSUANT TO N.C.G.S. §143.318-11(A)(3): Mayor Johnnie Greene asked for a motion to go into closed session.

Clay Wilson made a motion, and Keith Warren seconded, to go into closed session pursuant to N.C.G.S. § 143.318-11(a)(3) at approximately 6:09pm. All were in favor.

Clay Wilson made a motion, and Keith Warren seconded, to come out of closed session at approximately 6:37pm. All were in favor.

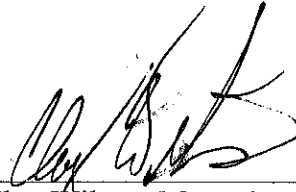
BUDGET AMENDMENT AND ACQUISITION: Mayor Johnnie Greene stated that Council had advised staff to move ahead with the purchase of acreage, buildings and clean-up costs to not to exceed the amount of one hundred fifteen thousand dollars (\$115,000.00). This amount will need to be moved from the General Fund and Community Development into the Capital Outlay Fund, Contractors-Code Enforcement and Contingencies through a budget amendment.

Clay Wilson made a motion, and Melissa Curtis seconded, to approve the Budget Amendment for the total amount of one hundred fifteen thousand dollars (\$115,000.00) and first acquisition of the property portion in accordance with the Settlement Agreement and Contract attached hereto. The amount of the Budget Amendment will need to be moved from the General Fund and Community Development into the Capital Outlay Fund, Contractors-Code Enforcement and Contingencies. All were in favor.

COUNCIL ADJOURN: Mayor Johnnie Greene asked for a motion to adjourn.

Melissa Curtis made a motion, and Clay Wilson seconded, to adjourn the meeting. All were in favor.

The meeting was adjourned at approximately 6:39pm.


Clay Wilson, Mayor Pro Tem


Julie A. Good, Town Clerk



- Draft -

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made and entered into this the 1 day of February, 2022 by and between the State of North Carolina on relation of the County of Caldwell, North Carolina (hereinafter "State of NC"), Dustin C. Chester (hereinafter "D. Chester"), and Charlene P. Chester (hereinafter "C. Chester") (State of NC, D. Chester, and C. Chester are referred to hereinafter collectively as the "Parties").

WITNESSETH

WHEREAS, D. Chester and C. Chester are the owners in interest of the Property, located at 4110 Ardmore Lane, Hudson, Caldwell County, North Carolina (the "Property"). The Property is described in the Deeds duly recorded in the Deed Book 1202, Page 1550 and Book ~~2048~~, Page ~~857~~ in the Office of the Caldwell County Register of Deeds and referenced as Caldwell County Parcel ID 03 41 2 7, 03 41 2 7A, and 03 41 2 7B.

WHEREAS, on December 17, 2021, the State of NC notified D. Chester and C. Chester formally that the State of NC contended that the ownership of the Property constituted a public nuisance.

WHEREAS, D. Chester and C. Chester deny that they or any of their invitees had prior knowledge of or acquiesced in or participated in any activities on the Property described herein that might constitute a public nuisance.

WHEREAS, the Parties, recognizing the expense and uncertainty of litigation, desire to compromise and settle any and all disputes arising out of or in any way connected with the matters above and issues involved in the above-described civil action;

THEREFORE, in consideration of the following terms and conditions, and other good and valuable consideration, the receipt and sufficiency of which are specifically acknowledged, the Parties agree as follows:

1. Cessation of Alleged Nuisance Activities. D. Chester and C. Chester agree to use the good faith efforts outlined herein to abate the alleged nuisance upon the Property, together with and including all buildings and improvements thereon. Further, D. Chester and C. Chester agree that they shall not participate in maintaining a nuisance on the Property.

2. Transfer of Ownership Interest. D. Chester and C. Chester agree to sign a binding contract to sell their individual interest in the Property to the Town of Sawmills, a North Carolina Municipal Corporation. All parties understand that a portion of the Property cannot be sold until the Estate of Charles Ronald Chester is administered.

3. Limitations on Occupancy. D. Chester and C. Chester agree that immediately upon the signing of this Agreement that no person other than

themselves and their respective significant other (Laura Mauney and Robert Gilbert) are to occupy any building or appurtenant curtilage of the Property. D. Chester and C. Chester agree to sign a limited real estate power of attorney simultaneously with the signing of this agreement in which they authorize the Sheriff of Caldwell County or his designees to enforce trespass laws with respect to the property. Said limited power of attorney is not revocable until the ownership of the complete property is transferred.

4. Requirement of Surrender. Within thirty (30) days of the execution of this Agreement, D. Chester and C. Chester agree to vacate the Property and to remove any and all items of personal property. Failure to remove any and all personal property within the specified time aforementioned, shall constitute a forfeiture of said personal property.

5. Criminal Activity. D. Chester and C. Chester agree that so long as they shall remain on the property, they shall not commit, nor allow others to commit any criminal activity on the property.

6. Performance of Sections 1 through 5, above shall be consideration for the State of NC not pursuing a Chapter 19 Nuisance Abatement action against D. Chester and C. Chester, and any non-compliance of Sections 1 through 5 by D. Chester and C. Chester, shall be considered a breach of this Agreement and the State of NC shall have the right to exercise and all legal recourse related to this Property.

7. The State of North Carolina on relation of the County of Caldwell, North Carolina, for themselves, their representatives, officers, directors, boards, shareholders, employees, agents, contractors, subcontractors, affiliates, attorneys, successors, and assigns, hereby release and forever discharge and, by these presents, do release and discharge D. Chester and C. Chester, their representatives, officers, directors, boards, shareholders, employees, agents, contractors, subcontractors, affiliates, attorneys, successors, and assigns ("Released Parties"), from any and all claims, demands, rights, damages, causes of action, costs, losses or expenses, economic and non-economic losses, indemnification and contribution, and/or liabilities of whatever nature that arise out of or in any way relate to the alleged public nuisance described above, whether known or unknown, whether foreseen or unforeseen, whether pled or not pled in the dispute described above, and whether accrued or not yet accrued, including any liability or responsibility that either D. Chester or C. Chester may have arising out of the alleged public nuisance, or in any matter related thereto, from the beginning of time until this date; *subject to the provisions herein and the transfer of the Property.* This Settlement Agreement and Release shall be binding upon all of the Parties and their heirs and assigns, and shall inure to the benefit of all of the Parties and their successors, assigns, affiliates, agents, employees and legal representatives.

8. Any notices required herein shall be addressed to D. Chester and C. Chester at each of the following:

Dustin C. Chester
(828) 726-4849

2823 Twin Meadows Drive, Hudson, NC 28632

Charlene P. Chester
(252) 868-8113

Charlenechester3@gmail.com
2754 Fairwood Drive, Hudson, NC 28632

9. The above recitations are material terms of this Agreement and are made a part hereof and are not mere recitals.

10. The Parties agree to the following miscellaneous provisions:

- a. The Parties agree to execute any and all documents necessary to effectuate the terms of this Agreement.
- b. The Parties agree that should any of the Parties hereafter discover facts different from or in addition to those matters and things set forth above or which are currently known or currently believed by the Parties to be true, this Agreement shall nevertheless be and remain in full force and effect in all respects.
- c. This Agreement constitutes the entire agreement of the Parties and shall not be modified in any manner, except by written instrument signed by both parties.
- d. The performance of any of the terms set forth herein shall not be construed as an admission of liability on the part of any party hereto.
- e. The provisions of this Agreement shall inure to the benefit of and shall be binding upon the Parties hereto and their respective successors and assigns, as may be applicable.
- f. The Parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors, and counsel so desired.
- g. The Parties warrant and represent that they are represented by counsel of their choosing and that this Agreement is a result of negotiations between the Parties, as a result of the foregoing, no presumption shall be created in favor for or against any Party with respect to the interpretation of any term or provision of this Agreement as a result of the fact that this Agreement was prepared by or on behalf of one of the Parties or their counsel.
- h. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future law, said provision shall be fully severable. This Agreement shall be construed and enforced as if

said illegal, invalid or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and be unaffected by said illegal, invalid or unenforceable provision or by its severance from this agreement. Furthermore, in lieu of said illegal, invalid or unenforceable provision, there shall be automatically added to this Agreement a substitute provision as similar in terms to the severed provision as may be possible and yet remain legal, valid and enforceable.

- i. Each party shall pay their own costs and attorney fees.
- j. This Agreement shall be governed and interpreted by the laws of the State of North Carolina and in the event of any dispute regarding this Agreement, the Parties agree that Caldwell County, North Carolina shall be the proper venue.

[SIGNATURES ON FOLLOWING PAGES]

AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT, including any and all addenda attached hereto ("Agreement"), is by and between TOWN OF SAWMILLS, a North Carolina Municipal Corporation ("Buyer") and CHARLENE P. CHESTER, Single and DUSTIN C. CHESTER, Single (collectively "Seller").

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:

Section 1. Terms and Definitions: The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

(a) **"Property Description":** (Address/Legal description/Parcel ID No.)

4110 Ardmore Lane, Hudson, NC 28638

PIN: 2766-66-7200 / Parcel ID No. 03-41-2-7

Plat Reference: Deed Book 275 at Page 242, Caldwell County Registry.

☐ If this box is checked, "Property" shall mean that property described attached hereto and incorporated herewith by reference.

Sale is "As Is", "Where Is", with all faults.

\$ 12,600⁰⁰ (b) **"Purchase Price"** shall mean the sum of _____ /100 Dollars.

payable on the following terms:

\$500.00

(i) **"Earnest Money"** shall mean Five Hundred and No/100 Dollars.

or terms as follows: _____

Upon this Agreement becoming a contract in accordance with Section 14, the Earnest Money shall be made payable to Terry M. Taylor Trust Account and promptly deposited in escrow with Terry M. Taylor, Esquire, Young, Morphis, Bach & Taylor, LLP (name of person/entity with whom deposited), to be applied as part payment of the Purchase Price of the Property at Closing, or disbursed as agreed upon under the provisions of Section 10 herein.

☐ ANY EARNEST MONEY DEPOSITED BY BUYER IN A TRUST ACCOUNT MAY BE PLACED IN AN INTEREST BEARING TRUST ACCOUNT, AND: (check only ONE box)

☐ ANY INTEREST EARNED THEREON SHALL BE APPLIED AS PART PAYMENT OF THE PURCHASE PRICE OF THE PROPERTY AT CLOSING, OR DISBURSED AS AGREED UPON UNDER THE PROVISIONS OF SECTION 10 HEREIN. (Buyer's Taxpayer Identification Number is: _____)

☐ ANY INTEREST EARNED THEREON SHALL BELONG TO THE ACCOUNT HOLDER IN CONSIDERATION OF THE EXPENSES INCURRED BY MAINTAINING SUCH ACCOUNT AND RECORDS ASSOCIATED THEREWITH.

\$N/A

(ii) **Proceeds of a new loan** in the amount of _____ Dollars for a term of _____ years, with an amortization period not to exceed _____ years, at an interest rate not to exceed _____ % per annum with mortgage loan discount points not to exceed _____ % of the loan amount, or such other terms as may be set forth on Exhibit B if applicable. Buyer shall pay all costs associated with any such loan.

\$N/A

(iii) **Delivery of a promissory note** secured by a deed of trust, said promissory note in the amount of _____ Dollars being payable over a term of _____ years, with an amortization period of _____ years, payable in monthly installments of principal, together with accrued interest on the outstanding principal balance at the rate

Buyer Initials _____ Seller Initial CPC DCC

of _____ percent (_____ %) per annum in the amount of \$ _____, with the first principal payment beginning on the first day of the month next succeeding the date of Closing, or such other terms as may be set forth on Exhibit B. At any time, the promissory note may be prepaid in whole or in part without penalty and without further interest on the amounts prepaid from the date of such prepayment. (NOTE: In the event of Buyer's subsequent default upon a promissory note and deed of trust given hereunder, Seller's remedies may be limited to foreclosure of the Property. If the deed of trust given hereunder is subordinated to senior financing, the material terms of such financing must be set forth on Exhibit B. If such senior financing is subsequently foreclosed, the Seller may have no remedy to recover under the note.)

\$N/A _____

(iv) **Assumption** of that unpaid obligation of Seller secured by a deed of trust on the Property, such obligation having an outstanding principal balance of \$ _____ and evidenced by a note bearing interest at the rate of _____ percent (_____ %) per annum, and a current payment amount of \$ _____. The obligations of Buyer under this Agreement are conditioned upon Buyer being able to assume the existing loan described above. If such assumption requires the lender's approval, Buyer agrees to use its best efforts to secure such approval and to advise Seller immediately upon receipt of the lender's decision. Approval must be granted on or before _____. On or before this date, Buyer has the right to terminate this Agreement for failure to be able to assume the loan described above by delivering to Seller written notice of termination by the above date, *time being of the essence*. If Buyer delivers such notice, this Agreement shall be null and void and Earnest Money shall be refunded to Buyer. If Buyer fails to deliver such notice, then Buyer will be deemed to have waived the loan condition. Unless provided otherwise in Section 3 hereof, Buyer shall pay all fees and costs associated with any such assumption, including any assumption fee charged by the lender. At or before Closing, Seller shall assign to Buyer all interest of Seller in any current reserves or escrows held by the lender, any property management company and/or Seller, including but not limited to any tenant improvement reserves, leasing commission reserves, security deposits and operating or capital reserves for which Seller shall be credited said amounts at Closing

\$ 12,100⁰⁰

(v) **Cash**, balance of Purchase Price, at Closing in the amount of _____ and _____/100 Dollars.

- (c) "**Closing**" shall mean the date and time of recording of the deed. Closing shall occur on or before ten (10) days after Examination Period.
- (d) "**Contract Date**" means the date this Agreement has been fully executed by both Buyer and Seller.
- (e) "**Examination Period**" shall mean the period beginning on the Contract Date and extending through the thirty (30) days _____ such that a clear Title Insurance Commitment can be obtained, whichever is required for sale. **TIME IS OF THE ESSENCE AS TO THE EXAMINATION PERIOD.**
- (f) "**Broker(s)**" shall mean:

N/A ("Listing Agency"),

_____ ("Listing Agent" - License # _____)

Acting as: ☐ Seller's Agent; ☐ Dual Agent

and N/A ("Selling Agency"),

_____ ("Selling Agent" - License # _____)

Acting as: ☐ Buyer's Agent; ☐ Seller's (Sub)Agent; ☐ Dual Agent

Buyer Initials _____ Seller Initials CP DCC

(g) **"Seller's Notice Address"** shall be as follows:

c/o Angela Clark, Attorney
Clark & Clark, P.A.
205 Ridge Street, NW
Lenoir, NC 28645

except as same may be changed pursuant to Section 12.

(h) **"Buyer's Notice Address"** shall be as follows:

Town of Sawmills
4076 US Hwy. 321A
Sawmills, NC 28630

except as same may be changed pursuant to Section 12.

- ☐ (i) If this block is marked, additional terms of this Agreement 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 conditions or contingencies to this Agreement.)

Section 2. Sale of Property and Payment of Purchase Price: Seller agrees to sell and Buyer agrees to buy the Property for the Purchase Price.

Section 3. Proration of Expenses and Payment of Costs: Seller and Buyer agree that all property taxes (on a calendar year basis), leases, rents, mortgage payments and utilities or any other assumed liabilities as detailed on attached Exhibit B, if any, shall be prorated as of the date of Closing. Seller shall pay for preparation of a deed and all other documents necessary to perform Seller's obligations under this Agreement, excise tax (revenue stamps), any deferred or rollback taxes, and other conveyance fees or taxes required by law, and the following:

Buyer shall pay recording costs, costs of any title search, title insurance, survey, the cost of any inspections or investigations undertaken by Buyer under this Agreement and the following:

Each party shall pay its own attorney's fees.

Section 4. Deliveries: Seller agrees to use best efforts to deliver to Buyer as soon as reasonably possible after the Contract Date copies of all information relating to the Property in possession of or available to Seller, including but not limited to: title insurance policies, surveys and copies of all presently effective warranties or service contracts related to the Property. Seller authorizes (1) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney's file to Buyer and both Buyer's and Seller's agents and attorneys; and (2) the Property's title insurer or its agent to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to Buyer and both Buyer's and Seller's agents and attorneys. If Buyer does not consummate the Closing for any reason other than Seller default, then Buyer shall return to Seller all materials delivered by Seller to Buyer pursuant to this Section 4 (or Section 7, if applicable), if any, and shall, upon Seller's request, provide to Seller copies of (subject to the ownership and copyright interests of the preparer thereof) any and all studies, reports, surveys and other information relating directly to the Property prepared by or at the request of Buyer, its employees and agents, and shall deliver to Seller, upon the release of the Earnest Money, copies of all of the foregoing without any warranty or representation by Buyer as to the contents, accuracy or correctness thereof.

Section 5. Evidence of Title: Seller agrees to convey fee simple marketable and insurable title to the Property free and clear of all liens, encumbrances and defects of title other than: (a) zoning ordinances affecting the Property, (b) Leases (if applicable) and (c) matters of record existing at the Contract Date that are not objected to by Buyer prior to the end of the Examination Period ("Permitted Exceptions"); provided that Seller shall be required to satisfy, at or prior to Closing, any encumbrances that may be satisfied by the payment of a fixed sum of money, such as deeds of trust, mortgages or statutory liens. Seller shall not enter into or record any instrument that affects the Property (or any personal property listed on Exhibit A) after the Contract Date without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed.

Section 6. Conditions: This Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly

Buyer Initials _____ Seller Initials AC DCC

conditioned upon fulfillment (or waiver by Buyer, whether explicit or implied) of the following conditions:

(a) **New Loan:** The Buyer must be able to obtain the loan, if any, referenced in Section 1(b)(ii). Buyer must be able to obtain a firm commitment for this loan on or before N/A, effective through the date of Closing. Buyer agrees to use its best efforts to secure such commitment and to advise Seller immediately upon receipt of lender's decision. On or before the above date, Buyer has the right to terminate this Agreement for failure to obtain the loan referenced in Section 1(b)(ii) by delivering to Seller written notice of termination by the above date, *time being of the essence*. If Buyer delivers such notice, this Agreement shall be null and void and Earnest Money shall be refunded to Buyer. If Buyer fails to deliver such notice, then Buyer will be deemed to have waived the loan condition. Notwithstanding the foregoing, after the above date, Seller may request in writing from Buyer a copy of the commitment letter. If Buyer fails to provide Seller a copy of the commitment letter within five (5) days of receipt of Seller's request, then Seller may terminate this Agreement by written notice to Buyer at any time thereafter, provided Seller has not then received a copy of the commitment letter, and Buyer shall receive a return of Earnest Money.

(b) **Qualification for Financing:** If Buyer is to assume any indebtedness in connection with payment of the Purchase Price, Buyer agrees to use its best efforts to qualify for the assumption. Should Buyer fail to qualify, Buyer shall notify Seller in writing immediately upon lender's decision, whereupon this Agreement shall terminate, and Buyer shall receive a return of Earnest Money.

(c) **Title Examination:** After the Contract Date, Buyer shall, at Buyer's expense, cause a title examination to be made of the Property before the end of the Examination Period. In the event that such title examination shall show that Seller's title is not fee simple marketable and insurable, subject only to Permitted Exceptions, then Buyer shall promptly notify Seller in writing of all such title defects and exceptions, in no case later than the end of the Examination Period, and Seller shall have thirty (30) days to cure said noticed defects. If Seller does not cure the defects or objections within thirty (30) days of notice thereof, then Buyer may terminate this Agreement and receive a return of Earnest Money (notwithstanding that the Examination Period may have expired). If Buyer is to purchase title insurance, the insuring company must be licensed to do business in the state in which the Property is located. Title to the Property must be insurable at regular rates, subject only to standard exceptions and Permitted Exceptions.

(d) **Same Condition:** If the Property is not in substantially the same condition at Closing as of the date of the offer, reasonable wear and tear excepted, then the Buyer may (i) terminate this Agreement and receive a return of the Earnest Money or (ii) proceed to Closing whereupon Buyer shall be entitled to receive, in addition to the Property, any of the Seller's insurance proceeds payable on account of the damage or destruction applicable to the Property.

(e) **Inspections:** Buyer, its agents or representatives, at Buyer's expense and at reasonable times during normal business hours, shall have the right to enter upon the Property for the purpose of inspecting, examining, performing soil boring and other testing, conducting timber cruises, and surveying the Property. Buyer shall conduct all such on-site inspections, examinations, soil boring and other testing, timber cruises and surveying of the Property in a good and workmanlike manner, shall repair any damage to the Property caused by Buyer's entry and on-site inspections and shall conduct same in a manner that does not unreasonably interfere with Seller's or any tenant's use and enjoyment of the Property. In that respect, Buyer 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 any tenants of any entry onto any tenant's portion of the Property for the purpose of conducting inspections. Upon Seller's request, Buyer shall provide to Seller evidence of general liability insurance. Buyer shall also have a right to review and inspect all contracts or other agreements affecting or related directly to the Property and shall be entitled to review such books and records of Seller that relate directly to the operation and maintenance of the Property, provided, however, that Buyer shall not disclose any information regarding this Property (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 Buyer shall obtain their agreement to maintain such confidentiality. Buyer assumes all responsibility for the acts of itself, its agents or representatives in exercising its rights under this Section 6(e) and agrees to indemnify and hold Seller harmless from any damages resulting therefrom. This indemnification obligation of Buyer shall survive the Closing or earlier termination of this Agreement. Buyer shall, at Buyer's expense, promptly repair any damage to the Property caused by Buyer's entry and on-site inspections. Except as provided in Section 6(c) above, Buyer shall have from the Contract Date through the end of the Examination Period to perform the above inspections, examinations and testing. **IF BUYER CHOOSES NOT TO PURCHASE THE PROPERTY, FOR ANY REASON OR NO REASON, AND PROVIDES WRITTEN NOTICE TO SELLER THEREOF PRIOR TO THE EXPIRATION OF THE EXAMINATION PERIOD, THEN THIS AGREEMENT SHALL TERMINATE, AND BUYER SHALL RECEIVE A RETURN OF THE EARNEST MONEY.**

Section 7. Leases (Check one of the following, as applicable):

☒ If this box is checked, Seller affirmatively represents and warrants that there are no Leases (as hereinafter defined) affecting the Property.

Buyer Initials _____

Seller Initials opc DCC

☐ If this box is checked, Seller discloses that there are one or more leases affecting the Property (oral or written, recorded or not - "Leases") and the following provisions are hereby made a part of this Agreement.

(a) All Leases shall be itemized on Exhibit B, if any;

(b) Seller shall deliver copies of any Leases to Buyer pursuant to Section 4 as if the Leases were listed therein;

(c) Seller represents and warrants that as of the Contract Date there are no current defaults (or any existing situation which, with the passage of time, or the giving of notice, or both, or at the election of either landlord or tenant could constitute a default) either by Seller, as landlord, or by any tenant under any Lease ("Lease Default"). In the event there is any Lease Default as of the Contract Date, Seller agrees to provide Buyer with a detailed description of the situation in accordance with Section 4. Seller agrees not to commit a Lease Default as Landlord after the Contract Date, and agrees further to notify Buyer immediately in the event a Lease Default arises or is claimed, asserted or threatened to be asserted by either Seller or a tenant under the Lease.

(d) In addition to the conditions provided in Section 6 of this Agreement, this Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon the assignment of Seller's interest in any Lease to Buyer in form and content acceptable to Buyer (with tenant's written consent and acknowledgement, if required under the Lease), and Seller agrees to use its best efforts to effect such assignment. Any assignment required under this Section 7 shall be required to be delivered at or before Closing by Seller in addition to those deliveries required under Section 11 of this Agreement.

(e) Seller agrees to deliver an assignment of any Lease at or before Closing, with any security deposits held by Seller under any Leases to be transferred or credited to Buyer at or before Closing. Seller also agrees to execute and deliver (and work diligently to obtain any tenant signatures necessary for same) any estoppel certificates and subordination, nondisturbance and attornment agreements in such form as Buyer may reasonably request.

Section 8. Environmental: Seller represents and warrants that it has no actual knowledge of the presence or disposal, except as in accordance with applicable law, within the buildings or on the Property of hazardous or toxic waste or substances, which are defined as those substances, materials, and wastes, including, but not limited to, those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR Part 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302.4) and amendments thereto, or such substances, materials and wastes, which are or become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a Hazardous Substance pursuant to Section 311 of the Clean Water Act of 1977 (33 U.S.C. §1321) or listed pursuant to Section 307 of the Clean Water Act of 1977 (33 U.S.C. §1317), (v) defined as a hazardous waste pursuant to Section 1004 of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6903) or (vi) defined as a hazardous substance pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601). Seller has no actual knowledge of any contamination of the Property from such substances as may have been disposed of or stored on neighboring tracts.

Section 9. Risk of Loss/Damage/Repair: Until Closing, the risk of loss or damage to the Property, except as otherwise provided herein, shall be borne by Seller. Except as to maintaining the Property in its same condition, Seller shall have no responsibility for the repair of the Property, including any improvements, unless the parties hereto agree in writing.

Section 10. Earnest Money Disbursement: In the event that any of the conditions hereto are not satisfied, or in the event Buyer does not determine the property to be suitable for any reason whatsoever during the Examination Period, the initial earnest money deposit will be returned by Buyer, or in the event of a breach of this Agreement by Seller, then the Earnest Money shall be returned to Buyer, but such return shall not affect any other remedies available to Buyer for such breach. In the event this offer is accepted and Buyer breaches this Agreement, then the Earnest Money shall be forfeited, but such forfeiture shall not affect any other remedies available to Seller for such breach. NOTE: In the event of a dispute between Seller and Buyer over the return or forfeiture of Earnest Money held in escrow by a licensed real estate broker, the broker is required by state law to retain said Earnest Money in its trust or escrow account until it has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction, or alternatively, the party holding the Earnest Money may deposit the disputed monies with the appropriate clerk of court in accordance with the provisions of N.C.G.S. §93A-12.

Section 11. Closing: At or before Closing, Seller shall deliver to Buyer a ~~general warranty~~ ^{Quit Claim} deed unless otherwise specified on Exhibit B and other documents customarily executed or delivered by a seller in similar transactions, including without limitation, a bill of sale for any personalty listed on Exhibit A, an owner's affidavit, lien waiver forms and a non-foreign status affidavit (pursuant to the Foreign Investment in Real Property Tax Act), and Buyer shall pay to Seller the Purchase Price. At Closing, the Earnest Money shall be applied as part of the Purchase Price. The Closing shall be conducted by Buyer's attorney or handled in such other manner as the Buyer Initials _____ Seller Initials CAC DCC

parties hereto may mutually agree in writing. Possession shall be delivered at Closing, unless otherwise agreed herein. The Purchase Price and other funds to be disbursed pursuant to this Agreement shall not be disbursed until Closing has taken place.

Section 12. Notices: Unless otherwise provided herein, all notices and other communications which may be or are required to be given or made by any party to the other in connection herewith shall be in writing and shall be deemed to have been properly given and received on the date delivered in person or deposited in the United States mail, registered or certified, return receipt requested, to the addresses set out in Section 1(g) as to Seller and in Section 1(h) as to Buyer, or at such other addresses as specified by written notice delivered in accordance herewith.

Section 13. Entire Agreement: This Agreement constitutes the sole and entire agreement among the parties hereto and no modification of this Agreement shall be binding unless in writing and signed by all parties hereto.

Section 14. Enforceability: This Agreement shall become a contract when signed by both Buyer and Seller and such signing is communicated to both parties; it being expressly agreed that the notice described in Section 12 is not required for effective communication for the purposes of this Section 14. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns and their personal representatives.

Section 15. Adverse Information and Compliance with Laws:

(a) **Seller Knowledge:** Seller has no actual knowledge of (i) condemnation(s) affecting or contemplated with respect to the Property; (ii) actions, suits or proceedings pending or threatened against the Property; (iii) changes contemplated in any applicable laws, ordinances or restrictions affecting the Property; or (iv) governmental special assessments, either pending or confirmed, for sidewalk, paving, water, sewer, or other improvements on or adjoining the Property, and no pending or confirmed owners' association special assessments, except as follows (Insert "None" or the identification of any matters relating to (i) through (iv) above, if any):

None.

Note: For purposes of this Agreement, a "confirmed" special assessment is defined as an assessment that has been approved by a governmental agency or an owners' association for the purpose(s) stated, whether or not it is fully payable at time of closing. A "pending" special assessment is defined as an assessment that is under formal consideration by a governing body. Seller shall pay all owners' association assessments and all governmental assessments confirmed as of the date of Closing, if any, and Buyer shall take title subject to all pending assessments disclosed by Seller herein, if any.

Seller represents that the regular owners' association dues, if any, are \$ N/A

(b) **Compliance:** To Seller's actual knowledge, (i) Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions pertaining to or affecting the Property; (ii) performance of the Agreement will not result in the breach of, constitute any default under or result in the imposition of any lien or encumbrance upon the Property under any agreement or other instrument to which Seller is a party or by which Seller or the Property is bound; and (iii) there are no legal actions, suits or other legal or administrative proceedings pending or threatened against the Property, and Seller is not aware of any facts which might result in any such action, suit or other proceeding.

Section 16. Survival of Representations and Warranties: All representations, warranties, covenants and agreements made by the parties hereto shall survive the Closing and delivery of the deed. Seller shall, at or within six (6) months after the Closing, and without further consideration, execute, acknowledge and deliver to Buyer such other documents and instruments, and take such other action as Buyer may reasonably request or as may be necessary to more effectively transfer to Buyer the Property described herein in accordance with this Agreement.

Section 17. Applicable Law: This Agreement shall be construed under the laws of the state in which the Property is located. This form has only been approved for use in North Carolina.

Section 18. Assignment: This Agreement is freely assignable unless otherwise expressly provided on Exhibit B, if applicable.

Section 19. Tax-Deferred Exchange: In the event Buyer or Seller desires to effect a tax-deferred exchange in connection with the conveyance of the Property, Buyer and Seller agree to cooperate in effecting such exchange; provided, however, that the exchanging party shall be responsible for all additional costs associated with such exchange, and provided further, that a non-exchanging party shall not assume any additional liability with respect to such tax-deferred exchange. Seller and Buyer shall execute such additional documents, at no cost to the non-exchanging party, as shall be required to give effect to this provision.

Section 20. Memorandum of Contract: Upon request by either party, the parties hereto shall execute a memorandum of contract in Buyer Initials _____ Seller Initials SPC DCC

recordable form setting forth such provisions hereof (other than the Purchase Price and other sums due) as either party may wish to incorporate. Such memorandum of contract shall contain a statement that it automatically terminates and the Property is released from any effect thereby as of a specific date to be stated in the memorandum (which specific date shall be no later than the date of Closing). The cost of recording such memorandum of contract shall be borne by the party requesting execution of same.

Section 21. Authority: Each signatory to this Agreement represents and warrants that he or she has full authority to sign this Agreement and such instruments as may be necessary to effectuate any transaction contemplated by this Agreement on behalf of the party for whom he or she signs and that his or her signature binds such party.

Section 22. Brokers: Except as expressly provided herein, Buyer and Seller 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 sale of the Property to Buyer. Buyer and Seller represent and warrant to each other that: (i) except as to the Brokers designated under Section 1(f) of this Agreement, 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 Buyer and/or the Seller.

☐ **EIFS/SYNTHETIC STUCCO:** If the adjacent box is checked, Seller discloses that the Property has been clad previously (either in whole or in part) with an "exterior insulating and finishing system" commonly known as "EIFS" or "synthetic stucco". Seller makes no representations or warranties regarding such system and Buyer is advised to make its own independent determinations with respect to conditions related to or occasioned by the existence of such materials at the Property.

THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. AND THE NORTH CAROLINA BAR ASSOCIATION MAKE NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION. IF YOU DO NOT UNDERSTAND THIS FORM OR FEEL THAT IT DOES NOT PROVIDE FOR YOUR LEGAL NEEDS, YOU SHOULD CONSULT A NORTH CAROLINA REAL ESTATE ATTORNEY BEFORE YOU SIGN IT.

Buyer Initials _____

Seller Initials

JP *DCC*

BUYER:

Business Entity

TOWN OF SAWMILLS

By: _____
Johnnie Greene, Mayor

Date: _____

SELLER:

Charlene P. Chester (SEAL)
Charlene P. Chester

Dustin C. Chester (SEAL)
Dustin C. Chester

Date: _____

The undersigned hereby acknowledges receipt of the Earnest Money set forth herein and agrees to hold said Earnest Money in accordance with the terms hereof.

Terry M. Taylor, Attorney for Young, Morphis, Bach & Taylor, LLP

Date: _____

By: _____

Buyer Initials _____

Seller Initials

JP DCC