

**MINUTES
BREVARD CITY COUNCIL
Regular Meeting
September 19, 2016 – 7:00 PM**

The Brevard City Council met in regular session on Monday, September 19, 2016, at 7:00 p.m. in the Council Chambers of City Hall with Mayor Jimmy Harris presiding.

Present - Mayor Jimmy Harris, Mayor Pro Tem Mac Morrow, Council Members Maurice Jones, Ann Hollingsworth and Gary Daniel

Absent – Council Member Charlie Landreth

Staff Present – City Manager and Finance Director Jim Fatland, City Attorney Mike Pratt, City Clerk Desiree Perry, Planning Director Daniel Cobb, Code Enforcement Officer Paul Ray, Police Chief Phil Harris, Fire Chief Craig Budzinski, Public Works Director David Lutz, Parks and Property Management Director Lynn Goldsmith, Accounting Technician Tom Whitlock, and 17 Brevard Fire Fighters.

Press – Kevin Fuller, Transylvania Times

A. Welcome and Call to Order – Mayor Harris called the meeting to order, welcomed those present and introduced Council members, Manager, Attorney and City Clerk.

Dr. Ephraim Brevard – Monument Dedication on September 24, 2016, in Charlotte, NC. Mayor Harris shared the City of Brevard was named after Dr. Ephraim Brevard, a Revolutionary War colonel and surgeon who drafted the Mecklenberg Declaration of Independence. He and Mayor Pro Tem Morrow will be attending the monument dedication and extended an invitation for others to attend.

B. Invocation – Pastor Ann Duncan, St. Timothy United Methodist Church offered an invocation.

C. Pledge of Allegiance – Mayor Harris led in the Pledge of Allegiance.

D. Certification of Quorum - The City Clerk certified a quorum present.

E. Approval of Agenda – A few guests who desire to attend the Charles Merrill Retirement recognition were not yet in attendance; therefore, Mayor Harris recommended Item G-1 be moved to a later time in the meeting. Mr. Morrow moved, seconded by Mr. Jones, the Agenda be amended as recommended and approved. Motion carried unanimously.

F. Approval of Minutes – Ms. Hollingsworth moved, seconded by Mr. Daniel, the August 15, 2016, meeting minutes be approved as presented. Motion carried unanimously.

H. Public Hearing(s)

H-1. Short Term Rentals. (Public Hearing continued from August 15, 2016, Meeting).

Mayor Harris opened the public hearing at 7:25 P.M.

Mr. Pratt explained just days before the Public Hearing was held on August 15th he and Staff learned legislation was being considered that would prohibit the City's ability to require permitting or registration of Air B&B's and Short Term Rentals. The State has done so {NCGS 160A-424(c)} and therefore, while the City can regulate these uses, it cannot require a permit or registration. The draft ordinance has been amended

by removal of all references to the previously included permit/registration requirement.

Mr. Cobb explained all of the changes to the drafted ordinance were made in response to the changes in NC State Law. All references to require a permit or registration of a Short Term Rental (STR) have been removed; draft ordinance would allow STR's in all districts with the exception of the General Industrial District; no changes to parking ratios; and, amended definition to combine short-term rentals and homestays into a single category.

Public Hearing Public Participation

Ms. Jan Kuba, 273 West Main Street, spoke in favor of short term rentals (STR) and urged Council to vote to allow them as proposed, and, stated she does not feel special off-street parking requirement should be imposed on STR's.

Mr. Bill Christie, 8 Pintail Court. Prior to the start of the meeting Mr. Christie presented to Council members and the Clerk his written request for their consideration to, "...amend line 113 (10.5.G.4.a) to read "except those used for Short-Term Rental and Homestay uses, and those which are subject to...". A complete copy of his written comments and request is included within these Minutes by reference. (Exhibit A.)

Public Hearing Closed - There being no further questions or comments, Mayor Harris closed the hearing at 7:41 PM.

G. Certificates, Awards and Recognition

G-1. Charles Merrill Retirement Recognition - Chief Budzinski, Mayor Harris and Council expressed their appreciation to Charles Merrill for his 38 years of service on the Brevard Fire Department. During his 38 years serving he has held the positions of Firefighter, Lieutenant, Captain, Assistant Chief, Training Officer and Safety Officer. Mr. Merrill was accompanied by his wife, Kathy, son, Jon, along with other family members, friends, and 18 members of the Brevard Fire Department.

Order of Long Leaf Pine - On behalf April Riddle, WNC Aide to Governor McCrory, who could not be in attendance as planned, Chief Budzinski and Mayor Harris presented to Mr. Merrill the Order of Long Leaf Pine for his service on the Fire Department and to the citizens of Brevard.

H. Public Hearing(s) - Continued

H-2. Proposed Code Amendment, Bee Hives. The public hearing was properly advertised on September 5th and 12th, 2016.

Mayor Harris opened the public hearing at 7:51 P.M.

Mr. Cobb presented the staff report and explained the proposed text amendment is recommended in order to be in keeping with recent changes to NC State law specific to the number of hives allowed on a single parcel of land, and, that hives are to be placed at ground level or securely attached to an anchor or stand. {NCGS 106-645(b)(1)(2)} The Planning Board met on August 16, 2016, and recommended approval of the amendments as presented.

Public Hearing Public Participation - None

Public Hearing Closed - There being no further questions or comments, Mayor Harris closed the hearing at 7:57 PM.

H-3. Proposed Code Amendment, Invasive Plant Species. The public hearing was properly advertised on September 5th and 12th, 2016.

Mayor Harris opened the public hearing at 7:57 P.M.

Mr. Cobb presented the staff report. Existing regulations on invasive exotic species are unclear and ambiguous under the current Code of Ordinances, and would be costly and difficult to enforce on private property. Staff recommends adoption of specific language in the Landscaping Chapter of the Unified Development Ordinance prohibiting the introduction of invasive exotic plant species, and encourages the use of landscaping with native plants. The eradication of existing invasive species would be encouraged but not required under the penalty of law. The administrator would be responsible for maintaining a current list of plants and trees commonly accepted to be "invasive exotic species"; site plans for development would continue to be reviewed by the Planning Department for landscape requirements; and, the use of invasive exotic tree and species would be strictly prohibited. The Planning Board met on August 16, 2016, and recommended approval of the amendments as presented.

Public Hearing Public Participation

Ms. Nina Shippen, 67 Hillcrest Avenue, spoke in favor of the proposed amendments. She first extended her appreciation to the City's Street Division for their taking and hauling off her large piles of branches. Explained she is a landscape designer with 11 years of service in Brevard, and she teaches about invasive plant removal at the Arboretum. She extended her appreciation to the City Planning Staff and Planning Board for addressing this important issue. Having read the drafted text amendments, she suggested: (a) Rather than reference the NC Cooperative Extension plant listing in the ordinance, to reference, "A Management Guide for Invasive Plants in Southern Forests," published by the United States Department of Agriculture Forest Services Southern Research Station, as it is applicable to the western North Carolina region and is the source used by the cooperative Extension office; (b) Listing of prohibited species in the draft ordinance are the common names and suggested the specific botanical name also be included; and, (c) Suggested the list be periodically reviewed and updated. She offered to assist Planning Staff by providing them with the botanical names.

Mayor Harris stated he would like for the botanical names to be included and extended his appreciation to Ms. Shippen for her willingness to assist Staff in doing so.

Ms. Jan Kuba, 273 West Main Street, explained as a consumer she may not know if a plant or tree is invasive. Some of the plants mentioned tonight (like periwinkle) are considered to be invasive and yet are still being sold at local stores and nurseries. Questioned what is going to prevent local stores and nurseries from continuing to sell the plants upon the list?

Public Hearing Closed – There being no further questions or comments, Mayor Harris closed the hearing at 8:16 P.M.

I. Public Participation

Mr. Roy Cowan, 95 Cambridge Drive, spoke in opposition to the proposed bypass (West Loop). He stated Brevard loves its churches and one of the bypass options would place a 60' ROW upon the Catholic Church property; proposed cost is astounding; he agrees with the Transylvania Times article that the road is not needed and the money could be better spent elsewhere; lots of letters have been written in opposition to the bypass; properties in Deer Lake have already lost value due to this proposal; and, he urged Council to communicate to NC DOT that we do not want or need the proposed bypass.

Mayor Harris announced Public Input Sessions will be held in the Rogow Room of the Transylvania County Library on September 28th at 10 AM, 2 PM and 6 PM on the subject of the West Loop and encouraged all to attend.

J. Special Presentation

WNC Military History Museum "Operation Armed Forces". Mr. Emmett Casciato, Curator, invited all to come and see the collection of artifacts and exhibits that will honor our military men and women who served from WWI until present. Artifacts such as original newspaper articles, personal items, weaponry, uniforms, medals, etc., will be displayed. Museum will be at the Aethewold Hotel Lobby, 23 South Broad Street, Brevard, beginning October 22nd and ending November 11th, 2016, between 10:00 AM and 5:00 PM.

~~ At 8:33 PM Mayor Harris called for a ten minute break. ~~

K. Consent Agenda and Information - Consent Agenda items are considered routine and are enacted by one motion. Mayor Harris read aloud the eight items listed, and asked if Council desired to remove an item for discussion, or, to add an item(s) to the Consent Agenda. He recommended adding New Business Items M-1 Bee Hives amendment and M-2 Invasive Plant amendment, including the changes as suggested by Ms. Shippen, be added to the Consent Agenda.

Mr. Morrow moved, seconded by Mr. Jones, the Consent Agenda be amended and approved as presented. Discussion: Mr. Daniel reminded the invasive plant species is not limited to those upon the list and, as recommended by Ms. Shippen, the list will need to be revised and updated periodically. Motion carried unanimously.

K-1. Staff Reports:

- a. Parks and Property Management Monthly Report
- b. Public Works Department, July 2016 Report

K-2. Resolution No. 2016-18 A Resolution Authorizing The Purchase Of A Small Strip Of Land From First Citizens Bank For The West Jordan Street Public Parking Lot Improvement

RESOLUTION NO. 2016-18

A RESOLUTION AUTHORIZING THE PURCHASE OF A SMALL STRIP OF LAND FROM FIRST CITIZENS BANK FOR THE WEST JORDAN STREET PUBLIC PARKING LOT IMPROVEMENT

WHEREAS, The City of Brevard owns a parcel of land located at the corner of West Jordan Street, and South Caldwell Street, identified as Transylvania County Parcel Pin 8586-40-7718-000, hereinafter called the parcel; and,

WHEREAS, The City of Brevard has previously approved the construction of a public parking lot off West Jordan Street on the parcel; and,

WHEREAS, The parcel abuts an existing twelve (12) foot public Right of Way on the northeast and a portion on the southeast side as illustrated on the attached Transylvania County Tax Map; and,

WHEREAS, The twelve (12) foot public Right of Way on southeast side does not connect to South Caldwell Street, creating a twelve (12) foot by ninety-one (91) foot strip of land totaling approximately 1,092 square feet, that hinders the full development of the parcel for the public parking lot, hereinafter called the strip of land; and,

WHEREAS, The strip of land is owned by First Citizens Bank and is part of their land identified as Transylvania County Parcel Pin 8586-40-6635-000; and,

Whereas, The City desires to develop the public parking lot to its full potential by purchasing the strip of land from First Citizens Bank; and,

WHEREAS, First Citizens Bank has agreed to sell the City the strip of land for \$7.50 per square foot plus a \$5,000.00 legal fee, for an estimated total amount of \$13,190.00, subject to a survey to determine the exact square footage;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BREVARD, NORTH CAROLINA THAT:

1. The strip of land be purchased from First Citizens Bank with the final purchase price subject to a survey with certified square footage.
2. The City Manager, upon receipt of the completed survey, is authorized to use funds from the parking lot project to purchase the strip of land.
3. The City Manager is authorized to sign appropriate legal instruments for the conveyance of the strip of land from First Citizens Bank to the City of Brevard.
4. The City Manager shall advise the Board periodically on the status of completion of the strip of land.
5. This Resolution shall become effective upon its adoption and approval.

Adopted and approved this 19th day of September 2016.

K-3. Ordinance No. 2016-24 An Ordinance Fixing Compensation And The Other Terms Of Employment For City Manager Jim Fatland

**ORDINANCE NO. 2016-24
AN ORDINANCE FIXING COMPENSATION AND THE OTHER
TERMS OF EMPLOYMENT FOR CITY MANAGER JIM FATLAND**

WHEREAS, in accord with Chapter 2, Article III of the Brevard City Code, the compensation of the City Manager and other terms of his employment are to be fixed by ordinance; and

WHEREAS, Council now desires to set forth the terms of such employment in this Ordinance;

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF BREVARD, NORTH CAROLINA:

Section 1. RATIFICATION OF APPOINTMENT. Mr. Jim Fatland (herein after referred to as the "City Manager") was duly appointed to the Office and position of City Manager of the City of Brevard, effective as interim City Manager on April 1, 2015, and has served since that date, becoming permanent City Manager effective August 17, 2015.

Section 2. SALARY AND BONUS. The City Manager's base annual salary is hereby set at \$121,000.00, which includes a raise in the amount of \$5,000.000, retroactive to July 1, 2016. In addition, the Manager shall receive a one-time bonus in the amount of \$5,000.00, upon enactment of this Ordinance. This Ordinance will be effective until July 1, 2017, unless earlier terminated by Council.

Section 3. EQUIPMENT USE AND ALLOWANCES.

(a) MOTOR VEHICLE MAINTENANCE AND GAS ALLOWANCE. In addition to the City Manager's salary, the City of Brevard has been paying and shall continue to pay to him monthly the sum of \$200.00 as compensation for providing a vehicle for his use in connection with the conduct of his office. This payment shall be designated as a motor vehicle maintenance and gas allowance, and shall be paid in lieu of any reimbursement for actual mileage traveled in the course of the conduct of his office, except as mileage for attending those Professional Growth and Development meetings contemplated in Section 8, and other meetings or events job-related, outside of Transylvania County, which shall be subject to mileage reimbursement at the then-current rate paid by the City.

(b) STANDARD OFFICE EQUIPMENT. The City of Brevard has been providing and shall continue to provide, for the use of the City Manager, all standard and reasonably necessary office equipment, including but not limited to a cell phone and a laptop computer, which shall be provided for business use at no cost to the City Manager.

Section 4. NO RESIDENCE REQUIREMENT. The City Manager shall not be required to reside within the city limits of the City of Brevard or within the Extra-Territorial Jurisdiction of the City, provided that the City Council retains the right to change this requirement upon due notice to the City Manager.

Section 5. ANNUAL EVALUATION. The City Manager's ongoing job performance will be reviewed in 2017 prior to the establishing of the next fiscal year's budget. The evaluation shall include a written report and presentation by City Council to the City Manager.

Section 6. FUTURE INCREASES. The City Manager shall not qualify for or participate in any longevity pay raise or Cost of Living Adjustment (COLA) pay raise plan. Any salary raises will be individually considered by City Council and shall be based on performance, as well as other factors which are deemed relevant by City Council.

Section 7. PERSONNEL POLICY AND BENEFITS.

(a) 401K PLAN CONTRIBUTION. The City of Brevard shall contribute an amount equal to three percent (3%) of the City Manager's salary to his 401K plan, annually.

(b) VACATION. The City Manager shall accrue vacation as per the provisions of Section 7 of the Personnel Policy, but Section 8 thereof shall not apply to him, and he shall be entitled to accumulate 320 vacation hours, instead of the limits imposed on employees pursuant to Section 8 of the Personnel Policy.

(c) OTHER BENEFITS. The City of Brevard Personnel Policy shall not apply to the City Manager. However, the Personnel Policy shall be followed for certain benefits to which he shall be entitled, to wit:

- Health Insurance/Health Savings Account for the City Manager and his family;
- Sick leave and payment therefor;
- Paid holiday schedule;
- Group life insurance, short term disability insurance and dependant life insurance.

Section 8. PROFESSIONAL GROWTH AND DEVELOPMENT. The City Manager shall be permitted, and is encouraged to attend appropriate professional and municipal functions, meetings, conferences, etc., as a legitimate travel expense in accordance with the travel policies of the City. These may include the North Carolina League of Municipalities, the International City Management Association, the North Carolina City and County Management Association, and other professional organizations.

Section 9. COMMUNITY INVOLVEMENT. The City Manager is encouraged to be active and involved in all positive and appropriate facets of the community, including in his discretion, participation in civic organizations, charitable events, speaking engagements and the like. Upon the request of the City Manager, City Council will consider an allowance for participation in civic organizations.

Section 10. STANDARDS FOR BEHAVIOR AND CONDUCT. The City Manager shall at all times, and in all locations, present himself in public and in the presence of others, in such manner as is appropriate to the person who is the primary spokesperson and manager for the City of Brevard. In this regard, his conduct shall at all times be that of a competent, truthful, ethical and moral individual, and shall be beyond reproach. Any conduct in violation of this provision, including but not limited to a criminal misdemeanor or felony conviction of any kind, shall be grounds for immediate dismissal.

Section 11. TERMINATION OF EMPLOYMENT.

(a) VOLUNTARY SEPARATION. In the event that the City Manager voluntarily terminates his employment, no severance of any kind shall be paid by the City of Brevard.

(b) INVOLUNTARY SEPARATION. City Council retains the absolute right to terminate the City Manager's employment at will. In the event that the City Manager's employment is terminated by act of City Council:

(1) He shall receive six (6) months' salary as severance pay in lieu of any other remaining salary. Severance pay shall be terminated immediately upon his acceptance of any other employment. Severance pay may be paid in lump sum or over the regularly scheduled pay days, in the discretion of City Council; and

(2) He shall receive an amount of money designed to allow him to keep his health insurance policy in effect during the six (6) month severance period, or until he becomes

insured by another employer, whichever occurs first. This provision could be fulfilled by continuing him on the current policy, if feasible; or by paying for another policy with similar benefits; or by paying him the funds Council determines to be appropriate to comply with this provision, whichever Council determines to be most appropriate at the time. This provision will be null and void if he is eligible for Medicare upon termination, and shall be voidable as of the date he becomes eligible for Medicare if within the six (6) months severance period.

(3) No other benefits shall be paid or continued in effect following termination except as may be required by law.

Section 12. RATIFICATION AND EFFECTIVE DATE. This Ordinance shall be retroactively effective as of July 1, 2016.

Adopted and approved this the 19th day of September, 2016.

K-4. Ordinance No. 2016-25 An Ordinance Declaring A Road Closure For 34th Halloweenfest

ORDINANCE NO. 2016-25
AN ORDINANCE DECLARING A ROAD CLOSURE FOR 34th HALLOWEENFEST

WHEREAS, Brevard City Council acknowledges a tradition of providing an annual Halloweenfest festival for the pleasure and enjoyment of its citizens and visitors; and,

WHEREAS, Brevard City Council acknowledges this festival provides an opportunity for day-long, family-oriented activities; and,

WHEREAS, Brevard City Council acknowledges this festival requires a portion of Main Street (US Highway 276) and Broad Street (US Highway 64) to be closed for setup, activities, and cleanup; and,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BREVARD, NORTH CAROLINA THAT:

SECTION 01. Pursuant to authority granted by G.S. 20-169, the City of Brevard hereby declares the following temporary road closure during the day and time set forth below on the following described portion of a State Highway System route:

34th Halloweenfest

Date: Saturday, October 29, 2016

Time: 7:00AM – 6:00PM

Route Description: Main Street (US 276) from Caldwell Street to Gaston Street, and Broad Street (US 64) from French Broad Street to Morgan Street.

SECTION 02. This Ordinance shall be in full force and effect from and after the date of its adoption.

Adopted and approved this the 19TH day of September, 2016.

K-5. Ordinance No. 2016-26 An Ordinance Declaring A Road Closure For Twilight Tour Festival

ORDINANCE NO. 2016-26
AN ORDINANCE DECLARING A ROAD CLOSURE FOR TWILIGHT TOUR FESTIVAL

WHEREAS, Brevard City Council acknowledges a tradition of providing an annual Twilight Tour Festival for the pleasure and enjoyment of its citizens and visitors; and,

WHEREAS, Brevard City Council acknowledges this festival provides an opportunity for family-oriented activities; and,

WHEREAS, Brevard City Council acknowledges this festival requires a portion of Main Street (US Highway 276) and Broad Street (US Highway 64) to be closed for setup, activities, and cleanup; and,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BREVARD, NORTH CAROLINA THAT:

SECTION 01. Pursuant to authority granted by G.S. 20-169, the City of Brevard hereby declares the following temporary road closure during the day and times set forth below on the following described portion of a State Highway System route:

Twilight Tour Festival

Date: Saturday, December 3, 2016

Time: 12:30PM – 9:00PM

Route Description: Main Street (US 276) from Caldwell Street to Johnson Street, and Broad Street (US 64) from Probart Street to Morgan Street.

SECTION 02. This Ordinance shall be in full force and effect from and after the date of its adoption.

Adopted and approved this the 19TH day of September, 2016.

K-6. Fire Department Application for FEMA Assistance to Firefighters

Grant – Council approved the Fire Department's request to apply for the 2016 FEMA Assistance to Firefighters Grant Program to replace firefighter self-contained breathing apparatus (SCBA). Requested grant is in the amount of \$350,000. If awarded, the City match of \$17,500 will come from the Fire Department Special Revenue Fund Balance and Staff would prepare a budget amendment.

K-7. Agreement for Purchase of Real Property as 630 Ecusta Road. Council approved an Agreement for Purchase and Sale of Real Property. Property is located at 630 Ecusta Road containing approximately .51 acres. Land is being purchased from Harold and Thelma Siniard. Total purchase price is \$100,000. (Exhibit B)

K-8. (M-1). Ordinance No. 2016-27 An Ordinance Amending Brevard City Code Part II, Chapter 14, Animals And Fowl

**ORDINANCE NO. 2016-27
AN ORDINANCE AMENDING BREVARD CITY CODE
PART II – CHAPTER 14 – ANIMALS AND FOWL**

WHEREAS, the City of Brevard Planning Board and Planning Department Staff have recommended that Brevard City Code, Part II, Chapter 14, Article I, Section 14-9 be amended to update and comply with requirements of North Carolina General Statutes; and,

WHEREAS, Brevard City Council finds that while these proposed amendments are consistent with the City of Brevard Land Use Plan, Comprehensive Plan, and other plans and policies of the City of Brevard; and,

WHEREAS, a public hearing was conducted on Monday, September 19, 2016, by Brevard City Council, and, after hearing all persons wishing to comment, and upon review and consideration of the proposed amendments, it is the desire of the City Council of the City of Brevard that Brevard City Code, Part II, Chapter 14 be amended as outlined in Exhibit A which is included with this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BREVARD, NORTH CAROLINA THAT:

SECTION 01. Brevard City Code, Part II, Chapter 14 is hereby amended as depicted in Exhibit A.

SECTION 02. As to any conflict between this Ordinance and any parts of existing Ordinances, the provisions of this Ordinance shall control.

SECTION 03. If any section, subsection, paragraph, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent

jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

SECTION 04. This Ordinance shall be in full force and effect from and after the date of its adoption.

Adopted and approved this the 19th day of September, 2016.

K-9. (M-2). Ordinance No. 2016-28 An Ordinance Amending The City Of Brevard Code Of Ordinances And Unified Development Ordinance To Prohibit The Introduction Of Invasive Plant Species

ORDINANCE NO. 2016-28
AN ORDINANCE AMENDING THE CITY OF BREVARD CODE OF ORDINANCES
AND UNIFIED DEVELOPMENT ORDINANCE
TO PROHIBIT THE INTRODUCTION OF INVASIVE PLANT SPECIES

WHEREAS, the purpose of nuisance ordinances is to provide for the health, safety, and general welfare of the inhabitants of the city; and,

WHEREAS, the purpose of zoning regulations is to provide a comprehensive plan for the use of land and buildings in conditions of good health and safety and in conditions of orderly community development, these regulations shall apply to all land and structures within the respective zoning district; and,

WHEREAS, the City of Brevard Planning Board unanimously recommended approval on August 16, 2016; and,

WHEREAS, a public hearing was conducted on September 19, 2016, by Brevard City Council, and, after hearing all persons wishing to comment, and upon review and consideration of the proposed amendments, it is the desire of the City Council of the City of Brevard that Brevard City Code, Part II, Chapter 38, and Unified Development Ordinance, Chapter 8, be amended as outlined below; and,

WHEREAS, in accordance with North Carolina General Statute 160A-384, Brevard City Council finds the following:

1) That the proposed amendments are consistent with Element 3 – Environmental Health of the 2015 Comprehensive Plan:

Goals

Through appropriate conservation and preservation measures that protect the health and sustainability of the environment and our abundant natural resources, Brevard will:

- Successfully preserve our woods and water for future generations.
- Promote our world-class natural resources as an asset.
- Prevent development in environmentally sensitive and critical areas.
- Preserve farmland.

2) That the proposed amendments support the 2012 City of Brevard Vision Statement:

Foster economic diversity while enhancing the quality of life in an environmentally friendly way by creating an environment that promotes and encourages businesses, and business owners, attracted to and utilizing our natural assets of woods and water and our cultural/historic assets of music, arts, and outdoor recreation.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BREVARD, NORTH CAROLINA THAT:

Section 1. Brevard City Code, Part II, Chapter 38 is hereby amended as depicted in Exhibit A.

Section 2. Brevard Unified Development Ordinance, Chapter 8 is hereby amended as depicted in Exhibit B.

Section 3. If any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

Section 3. Ordinance shall become effective upon its adoption and approval.

Adopted and approved this the 19th day of September, 2016.

K-10. Correspondence (No Action. Offered as information only.)

- a. Letter of Thanks from Sharing House
- b. West Loop Project Update
- c. North Carolina League of Municipalities, 2016 Annual Conference

L. Unfinished Business – Short Term Rental Ordinance

Mr. Jones moved, seconded by Ms. Hollingsworth, the drafted Short Term Rental Ordinance be sent back to the Planning Board for review and for their recommendation to be brought back to City Council at the annual retreat.

Discussion: Mayor Harris shared it is frustrating for both the citizens and Council as many of the regulations that had been proposed included registration and/or permits which are no longer allowed by State law.

Mr. Daniel shared more discussion is needed, due diligence is important, and the annual workshop/retreat would allow for such a discussion to take place.

Vote on Motion: Motion carried unanimously.

M. New Business – The two new business items were moved to the Consent Agenda and approved.

N. Remarks by Officials / Future Agenda Considerations

Mayor Harris extended his sympathy to the family and friends of Mr. Lloyd Fisher who passed away last night; service is scheduled for this Saturday at 3 PM at the Porter Center. Mayor extended his appreciation to the Manager Mr. Fatland, Mr. Freeman and Engineer Mr. Goforth for their work on the Probart Street project which looks great and has been done very quickly.

Mr. Jones shared some community members have spoken with him about Leob Drive stating that parking should only be allowed on one side of the road because parking on both sides creates problems with trash collection. He asked that Staff look into it.

Ms. Hollingsworth shared Staff has received complaints on a few short term rentals with respect to parking. Council will be revisiting the matter at the Retreat; however, in the meantime, when complaints are received, we need to enforce the current Code.

O. Closed Session – Mayor Harris asked the City Attorney if it would be appropriate for Council to hold closed sessions to discuss matters of property acquisition, potential litigation and a personnel matter. City Attorney advised pursuant to **GS § 143-318.11. (a)(3) (5) (6)** it would be appropriate to convene provided separate closed sessions on the matters are held. Closed sessions will require a separate motion, second and vote to discuss the matter. Council will enter and exit regular session for each closed session.

O-1. Closed Session #1 - At 9:10 p.m. Mr. Jones moved, seconded by Ms. Hollingsworth, Council go into closed session to discuss a property acquisition matter. Motion carried unanimously. (A five minute break was taken to allow Council Chambers to be cleared.)

Council Returned to Regular Session - At 9:23 p.m. Council resumed the meeting in regular session. No official action was taken in closed session and the Minutes of the closed session are authorized to be sealed.

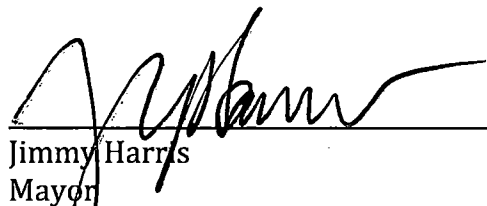
O-2. Closed Session #2 - At 9:23 p.m. Mr. Jones moved, seconded by Mr. Morrow, Council go into closed session to discuss a potential litigation matter.

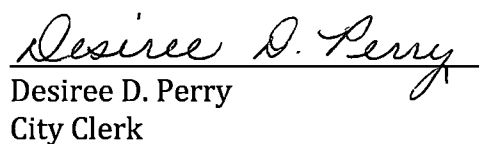
Council Returned to Regular Session - At 10:13 p.m. Council resumed the meeting in regular session. No official action was taken in closed session and the Minutes of the closed session are authorized to be sealed.

O-3. Closed Session #3 - At 10:13 p.m. Council dismissed the City Clerk to hold a closed session to discuss a personnel matter. City Attorney will provide Minutes of the closed session, and will provide to the Clerk the record of Council's return to regular session and actions taken (if any) and adjournment.

Council Returned to Regular Session - At 10:30 p.m. Council resumed the meeting in regular session. Minutes of the closed session are authorized to be sealed.

P. Adjourn - There being no further business, Ms. Hollingsworth moved, seconded by Mr. Daniel, the meeting be adjourned. Motion carried unanimously. Meeting adjourned at 10:30 P.M.


Jimmy Harris
Mayor


Desiree D. Perry
City Clerk

Minutes Approved: October 17, 2016

EXHIBIT A
Minutes Brevard City Council
September 19, 2016

My Name is Bill Christie, and I live at 8 Pintail Court. I want to make a general comment about this ordinance and then review a suggestion I made last month.

I live in a neighborhood that has had a bad experience with a home stay. But despite that bad experience, we do not wish to ban short-term rentals and home stays altogether. This community has always – well, almost always been good at finding compromise solutions that we all can live with. The Council has an opportunity tonight to craft just such a compromise that will allow property owners to benefit financially from these rentals while at the same time protecting the character of the neighborhoods that we all value. As I have listened to others and reviewed our own neighborhood experience, I have come to the conclusion that parking is the principal concrete problem that can disrupt the character and appearance of a neighborhood. Solve that problem, and you will have an ordinance that everyone can live with.

As I mentioned last month, the recommended language in the ordinance is classic double-talk. If you will look at 3.34.B.3 on the first page of the proposed text, you will see that it says, "Parking requirements shall be provided for the type of dwelling unit, per Chapter 10 of this ordinance." The relevant portion of Chapter 10 is in section 10.5.G on the third page of the proposal. This section regulates the location of off-street parking. But if you look at the fine print in section 10.5.G.4, you see that these structures are exempt from the rules: "Single-family and duplex residential structures in GR, RMX and NMX districts, including those used for Short-Term Rental purposes." In other words, the rules require you to conform to Chapter 10, but Chapter 10 says you don't have to conform to the rules. Classic double-talk that makes no sense. (As for Section 2.3(E.2), that just deals with setback requirements for construction. It has nothing to do with parking.)

As written, the draft ordinance does nothing whatsoever to protect a neighborhood from abusive parking practices. People who want to line up cars in their front yard and make it look like a used car lot or a strip shopping center are perfectly free to do so without any regard to the character of the neighborhood. And please don't think that this just won't happen, that people will always respect their neighbors. I know better.

Last month I recommended a simple change in the text that would solve this very real problem. Simply

- Line 113 -

amend line 86 (10.5.G.4.a) to read "except those used for Short-Term Rental and Homestay uses, and those which are subject to . . ."

This change would have no effect on property owners who are simply living in their homes. They would still be exempt from those regulatory provisions. All this says is that *people whose customers bring extra traffic into the neighborhoods would have to provide parking for them in conformity with Chapter 10*. This amendment also clarifies an ambiguity in the proposal since the current text does not mention homestays.

So when you take up this proposal later in the meeting, I hope that some member of the Council will move to amend the proposal as I just suggested. This will help us maintain some control over the appearance of our residential neighborhoods and reflect the kind of reasonable compromise solution that the community can all support.

EXHIBIT B

Minutes Brevard City Council
September 19, 2016 Meeting



AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT, including any and all addenda attached hereto ("Agreement"), is by and between

Transylvania Economic Alliance and/or Assigns

s(n) 501c3 ("Buyer"), and
(Individual or State of formation and type of entity)

Harold and Thelma Siniard

a(n) Individual ("Seller").
(Individual or State of formation and type of entity)

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.

(s) "Property": (Address) 630 Ecusta Road Pisgah Forest, NC 28768
Approximately .51 acres on Ecusta Road

Plat Reference: Lot(s) _____, Block or Section _____, as shown on Plat Book or Slide
at Page(s) _____, Transylvania County, consisting of .51 +/- acres.

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

(For information purposes: (i) the tax parcel number of the Property is: 8597-31-8245-000 ;
and, (ii) some or all of the Property, consisting of approximately .51 +/- acres, is described in Deed Book
225, Page No. 750, Transylvania County.)

together with all buildings and improvements thereon and all fixtures and appurtenances thereto and all personal property, if any, itemized on Exhibit A.

\$ \$100,000.00 (b) "Purchase Price" shall mean the sum of One Hundred Thousand
Dollars,
payable on the following terms:

\$ 20,000.00 (i) "Earnest Money" shall mean Twenty Thousand Dollars
or terms as follows: Paid to Seller, to be applied as part payment of the
Purchase Price of the Property at Closing

Upon this Agreement becoming a contract in accordance with Section 14, the Earnest Money shall be promptly deposited in escrow with Seller (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.

Page 1 of 8



This form jointly approved by:
North Carolina Bar Association
North Carolina Association of REALTORS®, Inc.

Buyer Initials [Signature]

Seller Initials [Signature]

STANDARD FORM 580-T
Revised 7/2013
© 7/2015

State Courts and Associates, 6 East Main Street, NC 28712
Jersey Davis

Produced with xlpForm® by xlpLogic 18570 River Mile Road, Fraser, Michigan 48228

Phone: (828) 777-4005
Fax: (828) 777-4406
www.xlpLogic.com

TEA

☐ ANY EARNST 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. 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 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.

\$ 50,000.00 (v) Cash, balance of Purchase Price, at Closing in the amount of Eighty Thousand Dollars.

Remaining cash balance at closing will be \$30,000.00. Remaining balance of \$50,000.00 will be paid January 2, 2017.
 Buyer Initials JE Seller Initials JS
 Page 2 of 8
 STANDARD FORM 580-T
 Revised 7/2013
 07/2015
 TEA

- (c) **"Closing"** shall mean the date and time of recording of the deed. Closing shall occur on or before
or 120 days after the Contract Date

- (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 first day after the Contract Date and extending through
 through 11:59pm (based upon time at the locale of the Property) on
90 days after the Contract Date

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

- (g) **"Seller's Notice Address"** shall be as follows:
139 Highland Road Brevard, NC 28712

except as same may be changed pursuant to Section 12.

- (h) **"Buyer's Notice Address"** shall be as follows:
147 East Main Street Suite 301 Brevard, NC 28712

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:

Other Conditions:

The sellers preserve the right to enter the property to remove any articles or possessions prior to closing date.

HEV JH H.S.

Buyer Initials JL Seller Initials HEV JH H.S.

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:

Buyer shall pay for preparation of a deed and all other documents necessary to perform Seller's obligations under this Agreement and other Seller costs up to a maximum of \$1,500. 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 (and copies of any documents referenced therein), surveys, soil test reports, environmental surveys or reports, site plans, civil drawings, building plans, maintenance records 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 without exception for mechanics' liens, 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 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.

Buyer Initials JS Seller Initials JS Page 4 of 8

STANDARD FORM 580-T
Revised 7/2013
© 7/2015
TEA

(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.

☐ 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) A list of all Leases shall be set forth on Exhibit B;

(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 therein, 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~~

Buyer Initials JE

Seller Initials JE

Page 8 of 8

STANDARD FORM 580-T

Revised 7/2013

© 7/2015

TEA

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 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 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 such other lien related documentation as shall permit the Property to be conveyed free and clear of any claim for mechanics' liens) 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 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. The invalidity of one or more provisions of this Agreement shall not affect the validity of any other provisions hereof and this Agreement shall be construed and enforced as if such invalid provisions were not included.

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. The parties acknowledge and agree that: (i) the initials lines at the bottom of each page of this Agreement 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 Agreement. 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):

Buyer Initials

Seller Initials

Page 2 of 8

STANDARD FORM 580-T

Revised 7/2013

© 7/2015

TEA

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 per _____.

(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.

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 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.

Section 23. Attorneys Fees: If legal proceedings are instituted to enforce any provision of this Agreement, 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.

☐ **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.

Buyer Initials JL

Seller Initials HB

Page 7 of 8

STANDARD FORM 580-T

Revised 7/2013

© 7/2015

TEA

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:

Individual

Date: _____

Date: _____

Business Entity

Transylvania Economic Alliance
(Name of Entity)
By: [Signature]
Name: Joshua Matthews Hallingre
Title: Executive Director
Date: July 11, 2014

SELLER:

Individual

[Signature]
Harold Siniard
Date: 7-11-16

[Signature]
Thelma Siniard
Date: 7-11-16

Business Entity

(Name of Entity)
By: _____
Name: _____
Title: _____
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.

Harold and Thelma Siniard
(Name of Firm)
Date: 7-11-16
By: [Signature]