



**VILLAGE COUNCIL
AGENDA FOR REGULAR MEETING OF APRIL 26, 2022
ASSEMBLY HALL
395 MAGNOLIA ROAD
PINEHURST, NORTH CAROLINA
4:30 PM**

1. Call to Order.

2. Reports:

Manager

Council

3. Motion to Approve Consent Agenda.

All items listed below are considered routine or have been discussed at length in previous meetings and will be enacted by one motion. No separate discussion will be held unless requested by a member of the Village Council.

A. Approval of Village Council Meeting Minutes

April 12, 2022 Council Regular Meeting

April 12, 2022 Council Work Session

April 12, 2022 Council Closed Session

End of Consent Agenda.

4. Discuss and Consider Harness Track Lease Renewals

5. Discuss and Consider Final FY22 Walkway Construction Locations

6. Other Business.

7. Comments from Attendees.

8. Motion to Adjourn.

Vision: The Village of Pinehurst is a charming, vibrant community which reflects our rich history and traditions.

Mission: Promote, enhance, and sustain the quality of life for residents, businesses, and visitors.

Values: Service, Initiative, Teamwork, and Improvement.



**COUNCIL
ADDITIONAL AGENDA DETAILS:**

ATTACHMENTS:

Description

- ▣ 2022 Village Council Key Partners & Collaborators



Council Member to Report	Partners & Collaborators
John Strickland	Convention and Visitors Bureau
	FirstHealth
	*Moore County, NC - Rotating
	Moore County Transportation Committee
	NCDOT/TARPO
	*Neighborhood Advisory Committee - Rotating
	*North Carolina - Rotating
	Partners in Progress
	Pinehurst Resort
Patrick Pizzella	*Moore County, NC - Rotating
	NCDOT/TARPO
	*Neighborhood Advisory Committee - Rotating
	*North Carolina - Rotating
	Partners in Progress
	Tri-Cities Work Group (Pinehurst, So. Pines, Aberdeen)
Jane Hogeman	Beautification Committee
	Chamber of Commerce
	*Moore County, NC - Rotating
	*Neighborhood Advisory Committee - Rotating
	*North Carolina - Rotating
	Pinehurst Business Partners
	Tri-Cities Work Group (Pinehurst, So. Pines, Aberdeen)
Lydia Boesch	Bicycle and Pedestrian Advisory Committee
	Convention and Visitors Bureau
	*Moore County, NC - Rotating
	*Neighborhood Advisory Committee - Rotating
	*North Carolina - Rotating
Jeff Morgan	FirstHealth
	*Moore County, NC - Rotating
	Moore County Schools
	*Neighborhood Advisory Committee - Rotating
	*North Carolina - Rotating
	Triangle J. COG



APPROVAL OF VILLAGE COUNCIL MEETING MINUTES
ADDITIONAL AGENDA DETAILS:

April 12, 2022 Council Regular Meeting
April 12, 2022 Council Work Session
April 12, 2022 Council Closed Session

FROM:

Kelly Chance

CC:

Jeff Sanborn

DATE OF MEMO:

4/20/2022

MEMO DETAILS:

Attached are the draft minutes from the April 12th Council Regular Meeting, Work Session, and Closed Session for Council consideration and approval.

ATTACHMENTS:

Description

- April 12, 2022 Council Regular Minutes (draft)
- April 12, 2022 Council Work Session Minutes (draft)



**VILLAGE COUNCIL
MINUTES FOR REGULAR MEETING OF APRIL 12, 2022
ASSEMBLY HALL
395 MAGNOLIA ROAD
PINEHURST, NORTH CAROLINA
4:30 PM**

The Pinehurst Village Council held a Regular Meeting at 4:30 p.m., Tuesday, April 12, 2022 in the Assembly Hall of Pinehurst Village Hall, 395 Magnolia Road, Pinehurst, North Carolina.

The following were in attendance in Assembly Hall:

Mr. John C. Strickland, Mayor
Mr. Patrick Pizzella, Mayor Pro Tem
Ms. Lydia Boesch, Councilmember
Mr. Jeff Morgan, Councilmember
Ms. Jane Hogeman, Councilmember
Mr. Jeffrey M. Sanborn, Village Manager
Ms. Kelly Chance, Village Clerk

And approximately 83 attendees, including 7 staff and 1 press

1. Call to Order.

Mayor Strickland called the Village Council meeting to order.

2. Reports:

Village Manager

- Mr. Jeff Sanborn reported the Given Memorial Library "Next Chapter" celebration will be on Monday the 18th in celebration of the first day the Village of Pinehurst is solely responsible for the delivery of Library and Archives services to our village. He noted the celebration will begin at one o'clock and there will be a gift for the first 120 folks that show up for that event. Mr. Sanborn reported the Village is expanding upon a shop small event we host around the Thanksgiving timeframe every year. He noted we will be hosting one in the spring from the 24th of April through the seventh of May, with folks that shop in our small village shops downtown can drop off their receipt in the Welcome Center, enter a drawing for a prize basket, and be eligible for other prizes. Mr. Sanborn reported a third event will be a cleanup effort in two different locations on April 26th, with starting points at the Fair Barn and the Community Center. He noted the start time will be 10:00 a.m.

Village Council

- Mayor Strickland reported the Village held the Volunteer appreciation luncheon and employee Champions Club appreciation last week. He noted he and some of the Council members and Jeff Sanborn attended a lunch at the Pinehurst Woman's Exchange as special guest and we sent our thankyou to the Woman's Club for being a valuable part of our community and fulfilling a major need here. Mayor Strickland reported Staff, Council, and others had a follow up phone call with the National Park Service on the Integrity and Condition Study of the National Landmark Territory of Pinehurst. He noted this call was a follow up to a report and discussions with some of the residents, earlier in the month of March, to discuss some of their recommendations. He stated they received some clarifications and the relationship between the Park Service and the Village continues to be on a very strong basis. Mayor Strickland reported the Village held the matinee races over the weekend and

noted the track and the harness community are very important to our community. He noted from feedback from owners of the horses that are here and the trainers that they find our track conditions to be excellent, as well as the overall condition of the facilities that we supply to them. He stated we are always looking at ways to improve those in the future and hope that we might gain even more representation from the trainers and owners who bring their horses south in the wintertime to train before they leave us in May and go back up to race in the Midwest.

Mayor Strickland reported the Village continues to celebrate the 100th Anniversary of the Woman's Exchange, the 200th Anniversary of the birth of Frederick Law Olmsted, and the 150th Anniversary of the birth of Donald Ross. He noted that Village staff have been in touch with our elected representatives to have them read into the record of the state of North Carolina on the one hand and the US Congress on the other, recommendations and recognitions of these two gentlemen who made such a difference in Pinehurst. Mayor Strickland stated he was provided the document that was read into record by our Representative Jamie Boles, and we thank him for doing this.

- Councilmember Boesch reported she received two statements that Congressman Richard Hudson read into the US Congress last week, one honoring the life and legacy of Frederick Law Olmsted and the other honoring Donald Ross, which she will give to the Village Clerk so they will go into the record. Councilmember Boesch stated there will be a meeting next Tuesday at 6:30 pm for the community to look at putting walkways in along Pine Vista between Linden Road and Burning Tree and on McKenzie from Linden Road over to Rassie Wicker. She reported the CVB Board of Directors met last week and reported out that North Carolina is now the fifth most visited state in the US. She noted the top 100 golf courses in NC story was in the Pilot this week and stated 16 of the 100 best were in Moore County in the Sand Hills area, with Pinehurst Number 2 ranking second. Councilmember Boesch reported the CVB is sponsoring an event called Sandhills Pour Tour, in which Seven Breweries are participating. She noted you can go to any of these breweries and pick up a booklet, get it stamped, and after you have all seven stamps, you go to the CVB and get a commemorative mug.
- Mayor Pro Tem Pizzella reported Mayor Strickland got to participate in the Matinee races around the track over the weekend and although his horse did not win, he represented the Village well. He thanked the residents for the large crowd of participation at tonight's meeting and he continues to encourage civic engagement and participation. He reported due to the recommendation of the mayor, and the approval of the Mayor's of Foxfire and Southern Pines, he has been appointed to be the Moore County Municipal representative on the Triangle Area Rural Planning Organization, known as TOPO.
- Councilmember Hogeman had nothing to report.
- Councilmember Morgan reported he met on March 23rd with the Triangle J Council of Governments and there is a RDU funding letter writing campaign that is occurring for those that are interested in joining. He reported they are trying to build some infrastructure on their website. Councilmember Morgan stated the joint office of Energy and Transportation is looking at electric vehicles and infrastructure updates, talking about different types of infrastructure and interior type of grants that are available for us, more specifically for electric vehicle hookups. He noted part of this process is looking at different routes that people frequently go to, and Pinehurst is certainly a popular site for many folks in the North Carolina area.

3. Motion to Approve Consent Agenda.

All items listed below are considered routine or have been discussed at length in previous meetings and will be enacted by one motion. No separate discussion will be held unless requested by a member of the Village Council.

A. Approval of Village Council Meeting Minutes.

- March 22, 2022, Council Regular Meeting
- March 22, 2022, Council Work Session

B. Budget Amendments Report

End of Consent Agenda.

Upon a motion by Councilmember Boesch, seconded by Mayor Pro Tem Pizzella, Council unanimously approved the Consent agenda by a vote of 5-0.

4. FY2023 Strategic Operating Plan Preview

Jeff Sanborn, Village Manager, presented Council with a preview of the FY2023 Strategic Operating Plan. Mr. Sanborn stated during the strategic retreat, Council identified based on the work staff did, three areas of focus and those are managing development to protect the Village character, supporting the business community, and providing a safe and effective multimodal transportation system. He noted some of the key information looked at to arrive at these areas of focus were the performance gaps we have when we compare ourselves to other communities, areas that our community notes in our annual Community Survey are dissatisfactory, and strategic challenges and opportunities that were identified as part of that strategic retreat process.

Mr. Sanborn reported on eight initial action plans that align with the strategic objectives on our balanced scorecard. He noted that staff was able to easily accommodate all the things identified in the strategic retreat with the exceptions of adding a third fire station and potential ladder truck to our fire department. Mr. Sanborn stated in FY2026, if we do design work for the additional fire station 93, that will cost about \$400,000 and then in FY2027, there would be the starting of a debt service of \$167,000 associated with building this facility in 2027. He noted there would not be added expenses associated with this such as staffing as this would occur in the outlying years on top of the debt service.

Mr. Sanborn reported under the next strategic objective of managing development to protect the Village character, relocation of public services complex to allow for redevelopment of Village place was put in there because it is necessary to accommodate what is anticipated for the small area plan for Village Place and Rattlesnake Trail. He noted the current public services complex really doesn't do much about creating the right character for our downtown environment and so it would probably be better in that regard to relocate the complex to some other place. He stated in FY2023 there is a potential property acquisition showing for that purpose. He noted in FY2024 then, design work would begin, with no designated build date declared.

Mr. Sanborn reported about updating the Planning Development Ordinance, there is already budgeted for this current fiscal year at \$200,000, so that money will roll forward into this next Fiscal Year. He reported that due to some timing issues, staff feels it is realistic to start the potential Carriage House Parking facility after the US Open, so that is where design work shows up, in FY2025, with construction beginning in FY2026.

Mr. Sanborn stated the last area of focus of providing a safe and effective multimodal transportation plan, shows to be accomplished in FY2024, with the creation of this plan, at a cost of \$100,000. He noted in answer to the problem of significant pressure on our current ball fields, during the strategic retreat, Council discussed putting synthetic turf on the fields to accommodate more traffic throughout the years, and so this is what staff has recommended. He noted the plan shows in FY2023, 1.2 million is designated for the big baseball/softball field and then in FY2025, you will see the small baseball softball field and then in the intervening years there are offsets to the operating expense associated with it.

Mr. Sanborn stated regarding providing library and archive services, we are under contract to do just that, and we anticipate through a fundraising campaign led by the Given Tufts Organization, that we may get as much as a million dollars to kickstart the effort. He noted we would have it built in 2025.

Mayor Pro Tem Pizzella stated Council needs to keep in mind that the Public Services Complex is vital to whatever we are going to do in the Village Place and so that should be priority. He stated he sees nothing that comes close to what's important to the overall resolution to the Village Place and our development than that of moving the Public Services Complex.

Councilmember Hogeman inquired about the priority level of the ladder track purchase. Mr. Sanborn noted we have a mutual aid agreement with Southern Pines and Aberdeen, who both have ladder trucks due to having more commercial development. He stated this doesn't mean it would not be advantageous to have our own to increase response time, especially with the uptick in multistory fires and the increased need in the Medical District due to the development of multistory buildings. Mr. Sanborn stated he thinks this item is something that needs to be studied further, which is why they did not disclude the fire station or the ladder truck from the options for funding as public safety items.

Mr. Sanborn reported some of the other items included in the preview are a birdie designed to look at document imaging to be done in FY2023, evaluating ways to automate employee timekeeping, fire inspections process evaluation, trash return pickup evaluation,

whether or not to insource our road patching services, and in 2024, we have a plan to do a little bit of work on recruitment hiring processes.

Mr. Sanborn reported the American Rescue Plan funding we received, \$5.3 million, that we have access to for over a two-year period, appears to be best allocated to paying salaries and benefits, according to advice from state officials and the UNC School of Government folks. He noted this would tie up the already allocated budget funds to be spent on other priority items. Mr. Sanborn stated overall, staff recommends to not include the third fire station and the ladder truck at this time and in a year, reevaluate the need when we have more knowledge about inflation and the effect on property valuations in the area.

5. Discuss and Consider Flag and Lamp Post Banner Policy.

Jeff Batton, Assistant Village Manager stated this item is a continuation of a discussion with Council at the last Council Work Session held on March 22, 2022 about establishing a policy for Flag etiquette and Lamp Post Banner usage at Village of Pinehurst facilities. Since the work session, Kelly Chance has included recommendations made by Councilmembers and so staff is here today seeking approval of Resolutions 22-07 establishing a Flag and Lamp Post Banner Policy for the Village of Pinehurst.

Kelly Chance reported the policy includes recommendations that the US flag will be flown in the primary position with the North Carolina State flag flown directly under on all Village of Pinehurst flag posts with a few noted exceptions. She noted during Fire Prevention week, at the fire station only, a commemorative flag or the Thin Red Line flag may be flown in lieu of the NC State flag, and during Police Memorial week, at the Police station only, a memorial flag or the Thin Blue Line flag may be flown in lieu of the NC State flag. Ms. Chance noted the only other exception is that at Canon Park, the U.S. Flag will be always flown in the primary position with the POW flag in secondary position in lieu of the NC State flag.

Ms. Chance stated the last part of the policy refers to consideration of requests to post commemorative items on Village post around the town. She noted Council's direction was to not allow any approvals of this requests unless the event is sponsored directly by the Village, or the Village serves as a co-sponsor to the event. She noted the policy also defines the responsibility of cost for creation of the proposed banners and the cost for putting up and taking down the banners as that of the requesting party.

Upon a motion by Councilmember Morgan, seconded by Mayor Pro Tem Pizzella, Council unanimously approved Resolution 22-07 establishing a Flag and Lamp Post Banner Policy for the Village of Pinehurst, by a vote of 5-0.

6. Other Business.

No other business was discussed.

7. Comments from Attendees.

- Marianne Wydra, 95 Canter Lane, addressed Council about Short-Term Rentals legality with the Village of Pinehurst Development Ordinances
- Carolyn Langston, 10 McDonald Road E, addressed Council about nuisance issues with a neighboring short-term rental
- Linda Guerra, 15 McQueen Rd, addressed Council about nuisance issues with a neighboring short-term rental
- Jake Sutherland, 120 Market Square, addressed Council in support of short-term rentals and acknowledged the many realtors in the Assembly Hall also in person to show their support
- Representative speaking for Brian Kennedy, 145 Dundee Rd, addressed Council in support of short-term rentals
- Nicholas Cino, 5 Piedmont Lane, addressed Council in support of short-term rentals and encouraged the nuisance issues be resolved using existing ordinances and creation of relevant ordinances.
- Bob Coates, 21 Edinburgh Ln, addressed Council on short-term rentals and perceived violation with the Village PDO
- Jeri Board, 3 McDonald Pl, addressed Council on her support of both short-term rentals and residents being held to the same standard of conduct versus developing a separate set for short-term rentals only
- Beata LeRine, 315 Buelah Hill Road N., addressed Council in support of short-term rentals as a STR owner

- John Webster, 140 McKenzie Rd W, addressed Council about the proposed 5-year plan, potential debt, increased tax rates, and opposition to short-term rentals
- Samantha Cole, 50 Lost Tree, addressed Council in support of short-term rentals as a STR owner
- Marcus Lerose, addressed Council in support of short-term rentals
- Don Hunter, 110 Highland Road in Southern Pines, addressed Council as COO of the Country Club in NC. He expressed his support of short-term rentals and suggested the continuation of calls that are nuisance related be taken care of by the Police
- Cindy Kennedy, addressed Council in support of short-term rentals
- Alan Torppa, 125 Turtle Point, addressed Council about nuisance issue with a neighboring short-term rental
- Kathy Rose, 8500 Vida Drive, addressed Council in support of short-term rentals as a realtor
- Layne Fuller, addressed Council in support of short-term rentals and property rights
- Phillip Sounia, 629 Bedford Circle, addressed Council with the suggestion that Council hire a mediator to help with the short-term rental issue
- Donna Outen, Morganton Rd, addressed Council in support of short-term rentals as a STR owner
- Jeff Heintz, 25 Lake Forest Drive SW, addressed Council in opposition to short-term rentals and to hiring a mediator, and on the proposed Neighborhood Advisory Committee policy
- Elizabeth Fisher, 15 Carolina Vista Drive, addressed Council about nuisances with short-term rentals and drunk golfers and theft
- Jim Fisher, 15 Carolina Vista Drive, addressed Council about needed ordinances to control short-term rentals, but acknowledged they were needed for economic elements.
- Mark Caulfield, 340 West Delaware, Southern Pines, addressed Council about property rights, fairness, and appropriate regulation of short-term rentals.
- Jacob Kirby, 15 Middlebury, addressed Council in support of the economic element of short-term rentals for property owners and their rights to invest in an alternative source of income.
- Brandon Goodman, 155 East Indiana Avenue, Southern Pines, addressed Council in support of short-term rentals and for nuisances to be dealt with by enforceable ordinances that exist.

8. Motion to Adjourn.

Upon a motion by Councilmember Hogeman, seconded by Mayor Pro Tem Pizzella, Council unanimously approved to adjourn the regular meeting by a vote of 5-0 at 7:30 p.m.

Respectfully Submitted,

Kelly Chance,
Village Clerk

A videotape of this meeting is located on the Village website: www.vopnc.org

Vision: The Village of Pinehurst is a charming, vibrant community, which reflects our rich history and traditions.

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**VILLAGE COUNCIL
MINUTES FOR WORK SESSION OF APRIL 12, 2022
ASSEMBLY HALL
395 MAGNOLIA ROAD
PINEHURST, NORTH CAROLINA**

IMMEDIATELY FOLLOWING THE REGULAR MEETING

The Pinehurst Village Council held a work session at 7:37 p.m., Tuesday, April 12, 2022, in the Assembly Hall of Pinehurst Village Hall, 395 Magnolia Road, Pinehurst, North Carolina.

The follow were in attendance:

Mr. John C. Strickland, Mayor
Mr. Patrick Pizzella, Mayor Pro Tem
Ms. Lydia Boesch, Councilmember
Mr. Jeffrey Morgan, Councilmember
Ms. Jane Hogeman, Councilmember
Mr. Jeffrey M. Sanborn, Village Manager
Ms. Kelly Chance, Village Clerk

And approximately 14 attendees, including 5 staff and 1 press.

1. Call to Order.

Mayor John Strickland, called the Council work session to order.

2. NAC Geographic Framework Discussion.

Jeff Sanborn, Village Manager, presented Council with a geographic framework for use for NAC representation. He stated as we work toward crafting a policy aimed at improving the effectiveness of the Neighborhood Advisory Committee, staff has drafted a geographic neighborhood framework for consideration. To do this, we started with the known geographic framework of the various neighborhoods in Pinehurst that have some form of effective organization and communications. Then, we attempted to filled in the remainder of Village with roughly equivalent sized 'neighborhoods'. In some cases, these roughly equivalent sized areas include smaller existing neighborhoods that have some form of HOA/POA organization. In other cases, the proposed framework adds a small grouping of residences within the geographic responsibility of an existing, large, organized neighborhood. An example of this is the inclusion of Spring Lake Hills Condominiums with No. 6.

Mr. Sanborn stated Neighborhood number 21 on the attached map is a suggested alternative approach. Within the proposed East Lake Pinehurst Neighborhood, there are several, organized, condominium developments along Highway 5. Neighborhood number 21 would pull those condominium developments out of East Lake Pinehurst and lump them together as a grouping of residential properties that have a more common set of interests. This approach might also allow for the inclusion of Spring Lake Hills, Fairways Townhomes, LaForet and other small developments that don't necessarily fit well within another neighborhood.

Mr. Sanborn stated pending Council consensus on a geographic framework, we can move forward with the following policy development and implementation actions:

1. Examine how current NAC membership fits this construct.
2. Identify neighborhoods needing a representative.
3. Identify neighborhoods with redundant representation and develop approach to resolving redundancy.
4. Develop approach to phasing in term limits, if adopted

5. Draft and adopt policy document.
6. Advertise for candidates, interview candidates, and pursue Council appointment of new members.
7. On-board members.
8. Develop communications plan for building neighborhood 'membership' distribution lists in the unorganized neighborhoods.
9. Staff and committee members collaborate to build improved neighborhood communications tools and approaches.

Mr. Sanborn noted that one correction was that Windsway Farms listed under Neighborhood 20 is now Abington Square. Mayor Pro Tem Pizzella suggested the removal of the neighborhood addressed as 21. Group of Condo Developments as a stand-alone item. Mr. Sanborn noted a couple of oddities that staff had to determine where the best fit would be to include, but noted staff felt the current framework provided the best option. Councilmember Hogeman suggested she would like to see all the various ETJ areas included. Mayor directed Mr. Sanborn to present this information to the Neighborhood Advisory Committee at their next scheduled meeting for feedback.

3. Discussion on Short-term Rentals

Darryn Burich, Planning & Inspections Director, presented Council with Short term rental regulatory and policy responses as a continuation of the work and discussion on short-term rentals. Mr. Burich reminded Council of the overall Policy objectives and Indicators of Success Council agreed upon:

1. Traditional neighborhoods retain their character and remain predominantly occupied by long-term residents.
2. Short term rental uses do not adversely impact property values in our neighborhoods.
3. Short term rental properties are not used as 'party houses' or for large events. Or short-term rental properties do not create nuisances in the neighborhood by being used frequently for events and parties.
4. Minimize the negative impact of short-term rentals on the quality of life of long-term residents in the Village's neighborhoods.
5. Short term rental properties should not have occupancy numbers that exceed what is appropriate for the size of the house and parking spaces included on the property.
6. Overnight parking for short term rental properties does not significantly congest residential streets.
7. Short-term rental properties are not modified in ways that make them difficult to transition back for use as traditional owner-occupied residential properties.
8. Minimize public nuisance behaviors such as noise and trash that are often associated with short-term rentals without creating significant additional work for police and code enforcement staff.
9. Help to ensure health and safety of the occupants of short-term rental units.
10. To the extent possible, regulation of short-term rentals is accomplished thru standards that apply to the whole Village understanding that some regulations will apply only to short term rental uses.
11. Reduce tensions between short-term rental property owners and their neighbors

Mr. Burich provided Council with a presentation broken down by Objectives and options for each objective, including pros and cons for each option. He did make note that one of the two issues that have been brought up by citizens. He stated one is the provision in our PDO that says that if it's not expressly prohibited, or allowed than it is expressly prohibited, or words to that effect. He noted soon after that our current PTO was adopted, and we learned from the courts that that is not legal. He stated the courts have found that this type of framework for permitted uses is not appropriate and in fact, if something is going to be prohibited, it must be expressly prohibited.

Mr. Burich stated that while our PDO says that is true, but it's something that we cannot enforce, and we have known that for at least the last six or seven years. He stated the second issue is about interpretation of the language and our PDO and there are folks in the community that feel very passionately and strongly that the language says that because this is a commercial use (STRs) it is not allowed in a residential neighborhood. He stated again we get some help from the courts on this one. The courts have made it very clear that in every case where the language of our ordinances is subject to interpretation, we are obligated to interpret our ordinances in the light that is most favorable to the applicant or the property owner who was affected. He stated he would observe that since this ordinance was adopted in 2014, we haven't interpreted it to say that short-term rentals are or are not permitted.

Mr. Burich stated the Wilmington Case states clearly, we cannot do permits or registrations or require anything like that, but we can pursue other avenues. Councilmember Boesch stated that Council should be careful because this case could be appealed, and the decision could be reversed so we should perhaps allow time to see what happens. Mayor Strickland stated he recommends we move forward with the work since, just as easily, the case may not go to appeal. Councilmember Boesch also stated she is not certain that we know what the solution is since we are not even entirely clear on what the true exact problems are we are trying to address. She noted that if a nuisance occurs once, does that make it severe and do we know what kind of resources are going to be required to resolve these problems.

Mr. Burich asked Council members to take a closer look at the options supplied and choose individually which options seem to resonate and staff will continue to work from Council's guidance and suggestions.

4. Other Work Session Business.

- Mayor Pro Tem Pizzella requested some sort of document that would outline potential future agenda items based on recurring agenda items from the past several years. Ms. Chance will work on compiling this document.

5. Potential Future Agenda Items.

- No potential future agenda items were discussed.

6. Motion to Recess the Work Session and Enter Closed Session

Upon a motion by Councilmember Boesch, seconded by Councilmember Hogeman, Council unanimously approved to recess the work session and enter into a closed session pursuant to NCGS §143-318.11(a)(5)(i) to establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease, by a vote of 5-0.9:21 pm

7. Closed Session

8. Motion to adjourn the Closed Session and Re-enter the Work Session.

Upon a motion by Mayor Pro Tem Pizzella, seconded by Councilmember Morgan, Council unanimously to adjourn the closed session and re-enter the work session, by a vote of 5-0.

9. Motion to Adjourn.

Upon a motion by Councilmember Boesch, seconded by Councilmember Hogeman, Council unanimously approved to adjourn the work session, by a vote 5-0, at 10:00 p.m.

Respectfully Submitted,

Kelly Chance,
Village Clerk

A videotape of this meeting is located on the Village website: www.vopnc.org

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**DISCUSS AND CONSIDER HARNESS TRACK LEASE RENEWALS
ADDITIONAL AGENDA DETAILS:**

FROM:

Mark Wagner

CC:

Jeff Sanborn

DATE OF MEMO:

4/7/2022

MEMO DETAILS:

Staff has updated lease agreements to consider for renewal at the Harness Track Restaurant and Tack Shop respectively.

The renewal period would be for 60 months beginning on July 1, 2022 and running through June 30, 2027. The proposed leases contain provisions relating to the 2024 US Open Championship dates and restricted use for tenants from June 9-16, 2024 as the entire Harness Track property is under lease to the USGA during those times.

All operational expenses associated with both leases are covered by the respective tenant, and we are proposing a 4.7% increase in monthly rent for FY2023 based on the annual average consumer price index percentage change for the prior calendar year.

Staff is seeking Council approval on the terms prior to presenting them to the tenants for renewal.

Thank you.

ATTACHMENTS:

Description

- ☐ Tack Shop Lease
- ☐ Track Restaurant Lease

STATE OF NORTH CAROLINA

COUNTY OF MOORE

LEASE AGREEMENT

THIS LEASE AGREEMENT, made as of this 1st day of July 2022, between the Village of Pinehurst, a Body Corporate and Politic in Moore County, North Carolina (hereinafter referred to as "Landlord") and "Wayne and Janet Rasmussen doing business as The Country Saddler" (hereinafter referred to as "Tenant").

W I T N E S S E T H

That, subject to the terms and conditions hereinafter set forth, the Landlord does hereby demise and let and the Tenant does hereby rent and hire from the Landlord, the Tack Shop (hereinafter referred to as the "Premises").

TO HAVE AND TO HOLD the said Premises, together with all privileges and appurtenances thereunto belonging, unto the said Tenant, upon the terms and conditions hereinafter set forth:

1. TERM. The term of this Lease shall be for a period of sixty (60) months, commencing on July 1st, 2022, and ending on June 30th, 2027, at midnight. If an option to extend this Lease is not offered by the Landlord at the time and in the manner provided herein, Tenant shall have no right in or to the Premises after June 30th, 2027, at midnight. Should either party have reason to terminate the lease agreement prior to the terms contained herein, a minimum of sixty (60) day's written notice should be provided to the other party of their intention to terminate early.

2. RENTAL.

(a). **Basic Rent.** The Tenant covenants and agrees to pay the Landlord during the initial term of this lease an annual basic rent of **\$ 5,796.00** payable in 12 monthly installments of \$483.00 per month. Landlord reserves the right to increase the rent by the annual average consumer price index percentage change for the prior calendar year. Rental fees are due from the Tenant to the Landlord by the 5th day of each month.

(b). **Other Normal Items.** Taxes, assessments, charges, costs and expenses that Tenant assumes or agrees to pay hereunder, together with all interest and penalties that may accrue thereon in the event of the failure of the Tenant to pay those items and all other damages, costs, expenses, and sums that Landlord may suffer or incur or that may become due by reason of any default of Tenant or failure by Tenant to comply with the terms and conditions of this Lease, including reasonable fees occurred by Landlord based upon prevailing hourly charges in connection with the enforcement of this Lease, shall be deemed to be a proper charge and, in writing, Landlord shall have all the rights and remedies as herein provided under default.

3. COVENANT OF TITLE AND QUIET POSSESSION. Subject to the terms, provisions and conditions herein set forth, the Landlord covenants, represents, warrants and agrees that Tenant, its permitted successors and assigns, shall have and enjoy the Premises during the term hereof free from adverse claims of any and all other persons whomsoever.

4. USE OF PREMISES. The Premises shall be used for the sole purpose of operating a Tack Shop together with purposes incidental or related thereto. All other usages by Tenant of any part of the Premises must first be approved in writing by Landlord. Tenant will make no unlawful or offensive use of the Premises and will comply with all laws, ordinances, and regulations of duly constituted governmental authorities.

(a). Tenant agrees to suspend business operations during the 2024 United States Open for the week of the Championship beginning on June 9, 2024, through June 16, 2024, or the completion of the Championship. Landlord will reduce the monthly rental amount on a prorated basis accordingly for the month of June 2024.

5. ACCEPTANCE OF PREMISES. Tenant accepts the Premises in an "as is" condition and Landlord makes no representations or warranties regarding the condition of the Premises.

6. ALTERATION AND IMPROVMENTS. The Tenant shall have the right and privilege any time during the term of this Lease to make, at its own expense, such minor interior changes, improvements and alterations to the Premises as the Tenant may desire; provided, however, the Tenant shall not make any material or structural changes to the Premises without the prior written consent of the Landlord, and such alterations so made shall be made at the sole cost and expense of the Tenant. Any exterior improvements and alterations desired must be submitted to Landlord for written approval. Any and all interior and exterior improvements and alterations are also subject to approval by the Village Planning and Inspections Department and/or Pinehurst Historic Preservation Commission. Any improvements and alterations made without seeking all required approval could be grounds for eviction. Upon the termination or expiration of this Lease, all the said improvements shall remain in the Premises and become the

sole property of the Landlord, and the Tenant will take any and all action and sign any and all documents reasonably required by the Landlord to effect or confirm the Landlord's ownership of said improvements.

Alterations and improvements, that are deemed necessary and/or desirable by the Landlord, may be eligible for a credit of 50% of the improvement's value toward the basic rent. The Landlord will make the sole determination as to whether a credit on rent would be applied. In such instances, the Landlord reserves the right to apply the credited amount over a period of up to twelve (12) months.

7. FIXTURES. The Tenant may, during the term of this Lease, remove from the Premises all trade fixtures which the Tenant may have installed at its own expense in the said Premises, or otherwise acquires, provided that Tenant is not in default under any of the terms and conditions of this Lease and provided further that the same can be removed without injury to the Premises. Tenant shall repair any damages to the Premises caused by the removal of such trade fixtures. No trade fixture shall be removed unless the Landlord has previously given its written consent prior to its installation confirming that such item is a trade fixture. In the event no such written confirmation is obtained from the Landlord by the Tenant prior to installation, then such improvement shall be conclusively deemed an alteration or improvement under Paragraph 6 above. Trade fixtures presently on the premises consist of all benches, bins, cabinets, shelves and sewing machines.

8. UTILITIES/MISCELLANEOUS SERVICES. All applications and connections for necessary utility services, including, but not limited to gas, water, fuel, electricity, telephone service and other utilities used by it in connection with the said Premises shall be made in the name of the Tenant only and Tenant shall be solely responsible and liable for such utility charges as they become due.

9. DAMAGE OR DESTRUCTION BY FIRE OR OTHER CASUALTY. In the event of damage to the Premises by fire or other casualty or act of God, the Tenant shall give immediate notice thereof to Landlord who shall, except as provided below, have the damage to the Premises repaired with reasonable speed at the Landlord's expense, due allowance being made for reasonable delay which may arise by reason of adjustment of losses under insurance policies on the part of the Landlord and/or Tenant or any other cause beyond the Landlord's control, and to the extent that the Premises are rendered untenable, the rent shall proportionately abate; provided, however, that if the damage to the Premises shall be so extensive that the Landlord shall in its sole discretion decide not to repair or rebuild, this Lease, at the option of the Landlord, shall be terminated upon written request to the Tenant, and the rent, in such cases, shall be paid to or adjusted as of the date of such damages and in such case the Tenant shall thereupon vacate the Premises and surrender the same to the Landlord.

10. INDEMNIFICATION AND LIABILITY INSURANCE. The Landlord shall not be liable for any damage to property or person by reason of the Tenant's use or occupancy of the Premises, and the Tenant agrees to save the Landlord harmless from and against all claims, suits, actions, and the cost and expense thereof, including attorney's fees, arising out of any property damage or personal injury whatsoever occurring in or on the Premises. The Tenant further specifically agrees that it will procure and keep in force at its expense commercial liability insurance in an amount of not less than \$500,000 per occurrence. Tenant will cause a certification of insurance to be furnished to Landlord evidencing such coverage and said policy shall provide that said insurance may not be canceled without written notice to Landlord at least thirty (30) days prior to cancellation.

11. PROPERTY INSURANCE AND TAXES. Landlord shall keep the building of which the Premises are a part insured against loss or damage by fire or other casualty to the extent of the full insurable value thereof, excluding fixtures, improvements, alterations and changes made by Tenant. All insurance proceeds collected shall be used toward the full compliance with the obligations of Landlord set forth herein relating to the duty of Landlord to maintain the Premises in good repair. Tenant, at its sole cost and expense, shall keep all property and interests in property owned by Tenant located on or in the Premises insured for the benefit of Tenant in such amount and to such extent as Tenant determines desirable against loss or damage by fire and against other risks of a similar or dissimilar nature as are or shall customarily covered with respect to said property.

12. TAXES AND FEES. Landlord shall pay all ad valorem taxes which may be assessed, levied or charges against the Premises by governmental authorities, and the Tenant shall pay all operating license fees for the conduct of its business, and all ad valorem taxes, assessments and other governmental or public charges assessed, levied or charged against its personal property, trade fixtures, inventory, stock, or merchandise and other property owned by Tenant.

13. MAINTENANCE AND REPAIR. During the term of this Lease, the Landlord shall maintain, keep and repair at its own expense, the roof and exterior walls of the building, but Tenant shall give Landlord seven (7) days written notice of needed repairs and Landlord shall have a reasonable time thereafter to make them. Except for the roof and exterior walls, the Tenant shall keep and maintain the Premises, in as good order and condition and state of repair as the same is or may be put by Landlord, ordinary wear and tear excepted, and Tenant shall repair, restore and replace the same when necessary to so keep and maintain the Premises, all at Tenant's sole expense. Tenant further agrees that it is satisfied with the physical condition of the Premises and that its taking possession of same is conclusive evidence of the same in good order and repair, and Tenant agrees that no representation as to the condition of repair has been made. It is understood and agreed, however, that any repairs estimated to cost more than \$1,000.00 shall be considered a major repair, and the cost of same shall be borne by Landlord as funds are available.

14. SURRENDER OF POSSESSION. Upon the termination or expiration of this Lease the Tenant shall surrender the Premises to Landlord in good order and condition and state of repair, ordinary wear and tear excepted.

15. WAIVER OF SUBROGATION. Landlord and Tenant, each for itself and its personal representatives, successors and assigns, covenants and agrees with the other that no claim shall be made, and that no suit or action, either at law or in equity, shall be brought by either party, or by any person, firm or corporation claiming by, through or under Landlord or Tenant, their heirs, personal representatives, successors, subleases or assigns, against the other, or their officers, agents, employees, successors, subleases, or assigns for any loss cost or damage to the Premises, or the building in which the Premises are situated or any improvements or other property located thereon, caused by or resulting from fire, explosion or other casualty of whatsoever nature maintained on the Premises or the contents thereof. All policies of insurance carried and maintained pursuant to this Lease shall contain or be endorsed to contain a provision whereby the insured there under waives or is permitted to waive prior to loss, all rights of subrogation against either Landlord or Tenant.

16. SIGNS. Tenant shall not erect, affix or display any awnings, signs or advertisements on the windows or exterior of the Premises without Landlord's written consent and the consent of any necessary governmental authorities.

17. SUBORDINATION. This Lease is subject and subordination to all deeds of trust which may now or hereafter affect such Lease or the real property on which the Premises are located and form a part, and to all renewals, modifications, consolidations, replacements or extensions thereof. This clause shall be self-operative, and no further instrument of subordination shall be required by any mortgage or holder of any deed of trust, and in confirmation of such subordination, Tenant shall execute promptly any certificate that Landlord may request. Tenant hereby constitutes and appoints Landlord the Tenant's Attorney - in - Fact to execute any such certificate on behalf of Tenant.

18. HOLDING OVER. In the event Tenant remains in possession after the expiration date of this Lease without the execution of a new Lease, the Tenant shall not acquire any right, title or interest in or to the Premises, and in such event, the Tenant shall occupy the Premises as a tenant month - to - month at the last effective rent rate, but both Landlord and Tenant shall otherwise be subject to all of the conditions, provisions and obligations of this Lease insofar as the same shall be applicable.

19. INSOLVENCY OF TENANT. In the event a receiver is appointed to take possession of the assets of the Tenant, or a general assignment for the benefit of creditors of Tenant is made, or any action is taken against or allowed to be taken by Tenant under any bankruptcy act or Tenant becomes insolvent, then upon election of the Landlord, this Lease shall cease and terminate upon ten (10) days written notice by Landlord to Tenant.

20. DEFAULT. This Lease is made upon the condition that the Tenant shall punctually and faithfully perform all of the covenants and agreements by it to be performed as herein set forth, and if any of the following events shall occur, to wit:

(a) Any installation of rent above referred to, or any other sums required to be paid by the Tenant hereunder, or any part thereof shall at any time be in arrears and unpaid by the specified due date and time;

(b) There may be default on the part of the Tenant in the observance or performance of any of the other covenants, agreements or conditions of this Lease, on the part of the Tenant to be kept or performed.

Then and in such event it shall be lawful for the Landlord, at its option, to declare the said term ended and to enter into the Premises or any part thereof, either with or without process of law, and expel the said Tenant, or any person or persons occupying the Premises, using such force as may be necessary to do so and so to repossess and enjoy the Premises as in Landlord's former estate all without prejudice to any other legal remedy Landlord may have on account of such default. Should the said term at any time be ended by the election of the Landlord, under the terms and conditions hereof, or in any other manner, the Tenant covenants and agrees to surrender and deliver up the said Premises and property peaceably to the Landlord immediately upon the termination of the said term. In the event Landlord determines Tenant is in Default of this agreement, written notice will be provided giving Tenant ten (10) days to vacate the facility.

21. RIGHT OF ENTRY. Landlord's representative shall have the right to enter the Premises at all reasonable hours to examine same and make such alterations and repairs as may be desired and may during the last ninety (90) day period of the term of the Lease, or any extension or renewal thereof, show same to prospective tenants at all reasonable hours and shall permit the usual notices of "For Rent" or "For Sale" to be placed on the Premises and to remain thereon without hindrance or molestation.

22. ASSIGNMENT AND SUBLETTING. Tenant may not assign or transfer this lease or any estate, interest or benefit thereof or sublet the Premises or any part or parts thereof. Landlord shall have the absolute right to assign this Lease without receiving the consent of Tenant, and Tenant shall be obligate to any such assignee of Landlord under the terms and provisions of this Lease as if Tenant had initially entered into this Lease Agreement with such assignee.

23. NOTICES. Any notice provided herein shall be deemed to have been served sufficiently if the same shall be in writing and either hand delivered to the addressee designated below or marked via registered or certified mail, return receipt requested, addressed as follows:

AS TO LANDLORD: 395 Magnolia Road,
Pinehurst, NC 28374

AS TO THE TENANT: PO Box 5322
Pinehurst, NC 28374

Either of the parties hereto may change the address to which notices are to be sent by giving notice to the other party of such change of address as provided in this Paragraph.

24. PARAGRAPH HEADINGS, ETC. The paragraph headings throughout this instrument are for convenience and reference only, and words contained therein shall in no way be held to explain, modify, simplify or aid in the interpretation, construction or meaning of the provisions of this Lease. Whenever used herein, a pronoun in the neutral gender shall include the masculine and feminine gender and the singular, the plural unless the context clearly indicates otherwise.

25. LEASE BINDING ON HEIRS, ETC. It is further hereby expressly agreed and understood that all covenants and agreements herein made shall extend to and be binding upon the parties hereto and their respective heirs, personal representatives, successors and permitted assigns, and that no modification of this Lease shall be binding unless evidenced by an agreement in writing signed by both the Landlord and the Tenant.

26. ENTIRE AGREEMENT. This Agreement contains the entire agreement among the parties hereto with respect to the subject matter hereof and sets forth all of the representations and warranties of the parties hereto with respect to the subject matter hereof and supersedes any and all prior or contemporaneous oral or written agreements, representations, warranties or understanding with respect to the subject matter hereof.

27. IDENTITY OF INTEREST. The execution of this Lease or the performance of any act pursuant to the provisions hereof shall not be deemed or construed to have the effect of creating between the Landlord and Tenant the relationship of principal and agent or of a partnership or joint venture and the relationship between them shall be only that of Landlord and Tenant.

28. CONTROLLING LAW. This agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

IN WITNESS WHEREOF, each party hereunto set its hand and seal or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal hereunto affixed by authority of its Board of Directors, in duplicate originals, as of the day and year first above written.

LANDLORD:

Village of Pinehurst

By: _____
John Strickland, Mayor

ATTEST:

By: _____
Kelly Chance, Village Clerk

TENANT:

Tenant

Federal ID # _____
Social Security # _____

**STATE OF NORTH CAROLINA
COUNTY OF MOORE**

LEASE AGREEMENT

W I T N E S S E T H

THIS LEASE AGREEMENT, made as of this 1st day of July 2022, between the Village of Pinehurst, a Body Corporate and Politic in Moore County, North Carolina (hereinafter referred to as "Landlord") and Tracy Cormier, (hereinafter referred to as "Tenant").

In consideration of the rent to be paid, the mutual covenants and agreement contained herein, and of other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged by both parties, that, subject to the terms and conditions hereinafter set forth, the Landlord does hereby demise and let and the Tenant does hereby rent and hire from the Landlord, the Pinehurst Track Restaurant located at 200 Beulah Hill Church Road South, Village of Pinehurst, NC (hereinafter referred to as the "Premises"), for the term set forth, at the rent stated, and which Premises shall be used and occupied by Tenant only for the uses permitted, and upon all terms, covenants, and conditions set forth below.

1. TERM. The term of this lease shall be for a period of sixty (60) months, commencing on July 1, 2022, and ending on June 30, 2027. Tenant represents and warrants that there is no undisclosed principal and that the Tenant is and will be Tracy Cormier only and no other person or entity.

2. RENTAL.

(a) **Basic Rent.** The Tenant covenants and agrees to pay the Landlord during the first twelve-month period an annual basic rent of \$7,596.00 payable in 12 monthly installments of \$633.00 per month in advance on or before the fifth day of each month. Landlord reserves the right to increase the rent by the annual average consumer price index percentage change for the prior calendar year. A late fee of 10% of the basic rent will be charged for payment received after the fifth of each month. Alterations and improvements may be made to the structure at Tenant's expense only in accordance with the procedures noted in item six of this Lease. Alterations and improvements, that are deemed necessary and/or desirable by the Landlord, may be eligible for a credit of 50% of the improvement's value toward the basic rent. The Landlord will make the sole determination as to whether a credit on rent would be applied. In such instances, the Landlord reserves the right to apply the credited amount over a period of up to thirty-six months.

(b). **Other Normal Items.** Taxes, assessments, charges, costs and expenses that Tenant assumes or agrees to pay hereunder, together with all interest and penalties that may accrue thereon in the event of the failure of the Tenant to pay those items and all other damages, costs, expenses and sums that Landlord may suffer or incur or that may become due by reason of any default of Tenant or failure by Tenant to comply with the terms and conditions of this lease, including reasonable attorney fees incurred by Landlord based upon prevailing hourly charges in connection with the enforcement of this Lease, shall be deemed to be a prior charge and, in the event of non-payment within thirty (30) days upon demand in writing, Landlord shall have all the rights and remedies as herein provided under default.

3. COVENANT OF TITLE AND QUIET POSSESSION. Subject to the terms, provisions and conditions herein set forth, the Landlord covenants, represents, warrants and agrees that Tenant shall have and enjoy the Premises during the term hereof free from adverse claims of any and all other persons whomsoever.

4. USE OF PREMISES.

(a). Landlord guarantees that Tenant may use the spaces in front and adjacent to the Restaurant for parking for Tenant's customers and that access to Route #5 for Tenant's customers will remain open unless circumstances beyond the control of Landlord occur. For certain special events parking may be limited or relocated.

(b). The sole and exclusive use of the Premises use for the operation of a Non-Franchise Restaurant for the

preparation and sale of meals on the Premises. As used herein, the term Franchise means a National, Regional or Local Franchise food operation, as for example, a McDonalds, Hardees or Vito's Pizza operation.

(c). Tenant agrees to have restaurant open for business at least Tuesday through Sunday from September 1 through June 1, excluding holidays and days closed for repair or maintenance.

(d). Other uses by Tenant or any part of the Premises must first be authorized in writing by Landlord.

(e). Video games, pinball machines and pool tables are strictly prohibited.

(f). Tenant may apply for a wine and beer license and serve beer and wine only with the sale of food. Draft beer, liquor by the drink, advertising mentioning alcohol, selling beer "to go" and alcohol specials are all strictly prohibited.

(g). Tenant agrees to suspend business operations at 11:00am annually on the date of the Spring Matinee Races. The specific date of the Spring Matinee Races will be determined each year during the term of the lease in conjunction with the Pinehurst Driving and Training Club.

(f). Tenant agrees to suspend business operations during the 2024 United States Open for the week of the Championship beginning on June 9, 2024, through June 16, 2024, or the completion of the Championship. Landlord will reduce the monthly rental amount on a prorated basis accordingly for the month of June 2024.

5. ACCEPTANCE OF PREMISES. Tenant accepts the Premises in an "as is" condition and Landlord makes no representations or warranties regarding the condition of the Premises. Repairs and improvements, however, will be made by Landlord as time and funds permit.

6. ALTERATION AND IMPROVEMENTS. The Tenant shall have the right and privilege at any time during the term of this Lease to make, at its own expense, such minor changes, improvements and alterations to the Premises as the Tenant may desire; provided however, the Tenant shall not make any material or structural changes to the Premises without the prior written consent of the Landlord, and such alterations so made shall be made at the sole cost and expense of the Tenant. Upon the termination or expiration of this Lease, all the said improvements shall remain in the Premises and become the sole property of the Landlord, and the Tenant will take any and all action and sign any and all documents reasonably required by the Landlord to effect or confirm the Landlord's ownership of said improvements.

Landlord reserves the right to terminate Lease without penalty at anytime Federal, State, or Local mandates require the Landlord to invest four times the monthly rent for building improvements or repairs.

7. FIXTURES. The Tenant may, during the term of this Lease, remove from the Premises all trade fixtures which the Tenant may have installed at its own expense in the said Premises, or otherwise acquired, provided the Tenant is not in default under any of the terms and conditions of this Lease and provided further that the same can be removed without injury to the Premises. Tenant shall repair any damages to the Premises caused by the removal of such trade fixtures. No trade fixture shall be removed unless the Landlord has previously given its written consent prior to its installation confirming that such item is a trade fixture. In the event no such written confirmation is obtained from the Landlord by the Tenant prior to installation, then such improvement shall be conclusively deemed an alteration or improvement under Paragraph 6 above.

8. UTILITIES/MISCELLANEOUS SERVICES. All applications and connections for necessary utility services, including but not limited to gas, water, fuel, electricity, telephone service and other utilities used by it in connection with the said Premises shall be made in the name of the Tenant only and Tenant shall be solely responsible and liable for such utility charges as they become due.

9. DAMAGE OR DESTRUCTION BY FIRE OR ACT OF GOD. In the event of damage to the Premises by fire or act of God, the Tenant shall give immediate notice thereof to Landlord who shall, except as provided below, have the damage to the Premises repaired with reasonable speed at the Landlord expense, due allowance being made for reasonable delay that may arise by reasons of adjustment of losses under insurance policies on the part of the Landlord and/or Tenant or any other cause beyond the

Landlord's control, and to the extent that the Premises are rendered untenable, the rent shall proportionately abate; provided, however that if the damage to the Premises shall be so extensive that the Landlord shall in its sole discretion decide not to repair or rebuild, this Lease, at the option of the Landlord, shall be terminated upon written notice to the Tenant, and the rent in such case, shall be paid to or adjusted as of the date of such damage, and in such case the Tenant shall thereupon vacate the Premises and surrender the same to the Landlord.

10. INDEMNIFICATION AND LIABILITY INSURANCE. The Landlord shall not be liable for any damage to property or person by reason of the Tenant's use or occupancy of the Premises and the Tenant agrees to save Landlord harmless from and against all claims, suits, demands, actions, and the cost and expense thereof, including attorneys' fees, arising out of any property damage or personal injury whatsoever occurring in or on the Premises. The Tenant further specifically agrees that it will procure and keep in force at its expense, Commercial General Liability Insurance in an amount not less than \$1,000,000.00 per occurrence, and Alcoholic Beverage Liability Insurance in an amount no less than \$1,000,000.00 per occurrence, which policy or policies of insurance shall show Landlord as an additional insured as Landlord's interest may appear. Tenant will cause a certificate of insurance to be furnished to Landlord evidencing such coverage and said policy shall provide that said insurance may not be canceled without written notice to Landlord at least thirty (30) days prior to any cancellation.

11. PROPERTY INSURANCE, LICENSES AND TAXES. Landlord shall keep the building of which the Premises are a part insured against loss or damage by fire or other casualty to the extent of the full insurable value thereof, excluding fixtures, improvements, alterations, and changes made by the Tenant. All insurance proceeds collected shall be used toward the full compliance with the obligations of Landlord set forth herein relating to the duty of Landlord to maintain the Premises in good repair. Tenant, at its sole cost and expense, shall keep all property and interests in property owned by Tenant located on or in the Premises insured for the benefit of Tenant in such amount and to such extent as Tenant determines desirable against loss or damage by fire and against such other risks of a similar or dissimilar nature as are or shall be customarily covered with respect to said property. Landlord shall pay all ad valorem taxes which may be assessed, levied or charged against the Premises by governmental authorities, and the Tenant shall pay all operating license fees for the conduct of its business, and all ad valorem taxes, assessments and other governmental or public charges assessed, levied or charged against its personal property, trade fixtures, inventory, stock or merchandise and other property owned by Tenant.

12. MAINTENANCE AND REPAIRS. During the term of this Lease, the Landlord shall maintain, keep and repair at its own expense, the roof, exterior walls (excluding glass), hot water heater, heating and cooling systems, electrical and plumbing systems, and the exterior grounds of the building, but Tenant shall give Landlord seven (7) days written notice of needed repairs and Landlord shall have a reasonable time thereafter to make them. Except for the roof and exterior walls (excluding glass), hot water heater, heating and cooling systems, electrical and plumbing systems, and the exterior grounds of the building, but the Tenant shall keep and maintain the Premises, including hood system in as good order and condition and state of repair as the same is or may be put by Landlord, ordinary wear and tear excepted, and Tenant shall repair and maintain the Premises, all at Tenant's sole expense. Landlord shall provide monthly pest control service. Tenant further agrees that it is satisfied with the physical condition of the Premises and that its taking possession of same is conclusive evidence of the receipt of same in good order and repair, and Tenant agrees that no representation as to the condition of repair has been made. Tenant further agrees to keep the exterior free of debris, trash, or equipment.

13. SURRENDER OF POSSESSION. Upon the termination or expiration of this Lease the Tenant shall surrender the Premises to Landlord in good order and condition and state of repair, ordinary wear and tear excepted.

14. WAIVER OF SUBROGATION. Landlord and Tenant, each for itself and its personal representatives, successors and assigns, covenants and agrees with the other that no claim shall be made and no suit or action, either at law or in equity, shall be brought by either, through or under the Landlord or Tenant, their heirs, personal representatives, successors, sub lessees or assigns, against the other or their officers, agents, employees, successors, sub lessees or assigns, for any loss, cost or damage to the Premises, or the building in which the Premises are situated, or any improvement or other property located thereon, caused by or resulting from fire, explosion or other casualty of whatsoever maintained on the Premises or the contents thereof. All policies of insurance carried and maintained pursuant to this Lease shall contain or be endorsed to contain provision whereby the insured hereunder waives or is permitted to waive, prior to loss, all rights of subrogation against either Landlord or Tenant.

15. SIGNS. Tenant shall not erect, affix, or display any awnings, signs or advertisements on the windows or

exterior of the Premises without Landlord's written consent and the consent of any necessary governmental authorities.

16. SUBORDINATION. This Lease is subject and subordinate to all deeds of trust which may now or hereafter affect such Lease of the real property on which the Premises are located and form a part, and to all renewals, modifications, consolidations, replacements, or extensions thereof. This clause shall be self-operative, and no further instrument of subordination shall be required by any mortgage or holder of any deed of trust, and in confirmation of such subordination, Tenant shall execute promptly any certificate that Landlord may request. Tenant hereby constitutes and appoints Landlord the Tenant's Attorney - in - Fact to execute any such certificate or certificates on behalf of Tenant.

17. HOLDING OVER. In the event Tenant remains in possession after the expiration of this Lease without the execution of a new Lease, the Tenant shall not acquire any right, title, or interest in or to the Premises, and in such event, the Tenant shall occupy the Premises as a Tenant from month - to - month at the last effective rent rate, but both Landlord and Tenant shall otherwise be subject to all of the conditions, provisions and obligations of this Lease insofar as the same shall be applicable.

18. INSOLVENCY OF TENANT. If a receiver is appointed to take possession of the assets of the Tenant, or a general assignment for the benefit of creditors of Tenant is made, or any action is taken against or allowed to be taken by Tenant under bankruptcy act or Tenant becomes insolvent, then upon election of the Landlord, this Lease shall cease and terminate upon ten (10) days written notice by Landlord to Tenant.

19. DEFAULT. This Lease is made upon the condition that the Tenant shall punctually and faithfully perform all the covenants and agreements by it to be performed as herein set forth, and if any of the following events shall occur, to wit:

(a) Any installment of rent above referred to, or any other sums required to be paid by the Tenant hereunder, or any part thereof shall at any time be in arrears and unpaid for thirty (30) days after its due date.

(b) There be any default on the part of the Tenant in the observance or performance of any of the other covenants, agreements or conditions of this Lease, on the part of the Tenant to be kept or performed, and said default shall continue for a period of twenty (20) days after written notice thereof is given by Landlord to Tenant.

Then and in such event it shall be lawful for the Landlord, at its option, to declare the said term ended and to enter into the Premises or any part thereof, either with or without process of law, and expel the said Tenant, or any person or persons occupying the Premises, using such force as may be necessary to do so, and so to repossess and enjoy the Premises as in the Landlord's former estate, all without prejudice to any other legal remedy Landlord may have on account of such default. Should said term of any time be ended by the election of the Landlord under the terms of and conditions hereof, or in any other manner, the Tenant covenants and agrees to surrender and deliver up the said Premises and property peaceable to the Landlord immediately upon the termination of the said term.

20. RIGHT OF ENTRY. Landlord's representative shall have the right to enter the Premises at all reasonable hours to examine same and make such alterations and repairs as may be desired and may during the ninety (90) day period of the term of this lease, or any extension or renewal thereof, show same to prospective Tenants at all reasonable hours and shall permit the usual notices of "For Rent" or "For Sale" to be placed on the Premises and to remain thereon without hindrance or molestation.

21. ASSIGNMENT AND SUBLETTING. Tenant may not assign or transfer this Lease of any estate, interest, or benefit thereof or sublet the Premises or any part or parts thereof. Landlord shall have the absolute right to assign this Lease without receiving the consent of the Tenant, and Tenant shall be obligated to any such assignee of Landlord under the term and provisions of this Lease as it Tenant had initially entered into this Lease Agreement with such assignee.

22. NOTICES. Any notice provided herein shall be deemed to have been served sufficiently if the same shall be in writing and either hand delivered to the addressee designated below or mailed via registered or certified mail, return receipt requested addressed as follows:

AS TO LANDLORD: 395 Magnolia Road
Pinehurst, NC 28374

AS TO TENANT: P.O. Box 3474, Pinehurst, NC 28374

Either of the parties hereto may change the address to which notices are to be sent by giving notice to the other party of such change of address as provided in this Paragraph.

23. PARAGRAPH HEADINGS, ETC. The paragraph headings throughout this instrument are for convenience and reference only, and words contained therein shall in no way be held to explain, modify, simplify or aid in the interpretation, construction or meaning of the provisions of this Lease. Whenever used herein, a pronoun in the neutral gender shall include the masculine and feminine gender and the singular, the plural unless the context clearly indicates otherwise.

24. LEASE BIND ON HEIRS, ETC. It is further hereby expressly agreed and understood that all covenants and agreements herein made shall extend to and be binding upon the parties hereto and their respective heirs, personal representatives, successors and permitted assigns, and that no modification of this Lease shall be binding unless evidenced by an agreement in writing signed by both the Landlord and the Tenant.

25. ENTIRE AGREEMENT. This Agreement contains the entire agreement among the parties hereto with respect to the subject matter hereto and sets forth all of the representatives and warranties of the parties hereto with respect to the subject matter hereof and supersedes any and all prior or contemporaneous oral and written agreements, representations, warranties or understandings with respect to the subject matter hereof.

26. IDENTITY OF INTEREST. The execution of this Lease or the performance of any act pursuant to the provisions hereof shall not be deemed or construed to have the effect of creating between the Landlord and Tenant the relationship of principal between them be only that of Landlord and Tenant.

27. CONTROLLING LAW. This agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

IN WITNESS WHEREOF, each party has hereunto set its hand and seal or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal hereunto affixed by authority of its Board of Directors, in duplicate originals, as the day and year first above written.

LANDLORD:

Village of Pinehurst

By: _____
John Strickland, Mayor

ATTEST:

By: _____
Kelly Chance, Village Clerk

TENANT:

Tracy Cormier

Federal ID # _____
Social Security # _____



**DISCUSS AND CONSIDER FINAL FY22 WALKWAY CONSTRUCTION
LOCATIONS
ADDITIONAL AGENDA DETAILS:**

ATTACHMENTS:

Description

▣ Sidewalk Location Memo

Memo

To: Village Council
From: Doug Willardson
CC: Village Managers
Date: April 21, 2022
Re: FY2022 Walkway Construction Locations

As you are aware, earlier this year staff surveyed residents on Pine Vista Drive and McKenzie Road regarding their views of walkways and walkway construction materials. The information was very valuable in helping us determine where to place new walkways in the Village. The results are included below.

Pine Vista Results: 80% response rate

Question	Average Score
Support construction of new walkways?	4.0 Agree
Likelihood of using new walkway?	4.33 Likely
Construction materials: Screenings	3.3 Neutral
Construction materials: Asphalt	2.6 Neutral
Construction materials: Concrete	3.1 Neutral

McKenzie Road Results: 78% response rate

Question	Average Score
Support construction of new walkways?	4.6 Strongly Agree
Likelihood of using new walkway?	4.6 Very Likely
Construction materials: Screenings	4.5 Strongly
Construction materials: Asphalt	2.1 Disapprove
Construction materials: Concrete	2.1 Disapprove

As can be seen from the survey results, new walkways were popular along both streets. McKenzie Road residents strongly preferred a stone screenings walkway while the construction material preference for Pine Vista Drive was more evenly split among all three options. Based the question of preference of your side/other side of the street, the Pine Vista Drive walkway should be on the odd-numbered (north) side of the road. The McKenzie Road preference would be on the on the even-numbered side of the road (on the right if traveling from Linden Road to the Arboretum).

This information was sent to residents living along Pine Vista Drive and McKenzie Road along with a request to provide the Village with any comments. Additionally, residents were invited to attend a public meeting where they could further express their feelings about the project. The public meeting was not well attended with only two households represented, but an additional five households contacted the Village outside of the meeting. All of the comments received were overwhelmingly positive. There are minor concerns regarding storm water, construction materials, etc., but the consensus is strongly in favor of the walkways.

I recommend that Council direct staff to continue the design and construction process for walkways in these two areas with screenings as the preferred construction material where topographically possible. A high-level, aggressive timeline has been included below. As the design process moves forward, staff will continue to keep residents informed of the proposed walkways that abut their property and how it may affect any improvements in the Village Right-of-Way. We are excited to further improve the quality of life in these neighborhoods.

Finalize street locations	April 2022
Solicit & award engineering contract	May 2022
Complete design	June 2022
Solicit & award construction contract	July 2022
Notice to proceed	August 2022
Completion	September 2022