ORDINANCE #22-03:

AN ORDINANCE AMENDING THE ORDINANCE APPROPRIATING FUNDS FOR OPERATIONS OF THE VILLAGE OF PINEHURST FOR FISCAL YEAR 2022, REGARDING REVENUES AND EXPENDITURES OF THE GENERAL FUND FOR THE VILLAGE OF PINEHURST, NORTH CAROLINA (FIRETRUCK ENGINE REPLACEMENT)

THAT WHEREAS, the engine in the 2013 KME firetruck was damaged due to coolant leaking into the cylinder and causing deterioration; and

WHEREAS, after the Village referred the truck to two Cummins motor authorized mechanics for diagnosis, the recommendation was to install a remanufactured engine; and

WHEREAS, funds were appropriated in the FY 2022 Budget to install pedestrian facilities and a portion is available to fund this engine replacement;

NOW, THEREFORE, BE IT RESOLVED by the Village Council of the Village of Pinehurst, North Carolina, in the regular meeting assembled this 8th day of March, 2022, as follows:

SECTION 1. To amend the FY 2022 General Fund budget with regard to revenues and expenditures, the revenue and expenditure accounts are to be changed as follows:

Account No.	Account Name	Debit	Credit
10-00-960-5902	Fleet-Vehicle Repairs & Maintenance	$ 52,000	
10-00-960-3560	Fleet-Charges to Other Departments		$ 52,000
10-10-320-5903	Fire-Fleet ISF Charges	52,000	
10-20-420-7700	S&G-Capital Outlay: Infrastructure		52,000

SECTION 2. Copies of this budget amendment shall be furnished to the Village Clerk, Village Manager, and Financial Services Director for their direction and implementation.

THIS ORDINANCE passed and adopted this 8th day of March, 2022.

VILLAGE OF PINEHURST
VILLAGE COUNCIL

(Municipal Seal)

By: ______________________________
John C. Strickland, Mayor

Attest:

____
Kelly Chance, Village Clerk

Approved as to Form:

____
Michael J. Newman, Village Attorney

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

VILLAGE COUNCIL
MINUTES FOR REGULAR MEETING OF FEBRUARY 22, 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, February 22, 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 17 attendees, including 7 staff and 1 press

1. **Call to Order.**
Mayor Strickland called the Village Council meeting to order.

2. **Invocation and Pledge of Allegiance.**
Invocation given by Rev. Tudor-Foley

3. **Reports:**
Village Manager
- Mr. Jeff Sanborn reported we are still working on clean-up following the ice-storms and if residents have debris they want picked up, they are encouraged to reach out using MyVOP. He reported Barnhill Construction is almost complete with the patching of Village streets and will begin resurfacing soon.

Village Council
- Mayor Strickland reported we received the National Park Service draft report today, which is called study #2, which will be posted to the Village website. He stated at 11:am and 4:30 pm, next Tuesday, there will be a public forum time with the National Park Service to provide a time for questions from the public. Mayor Strickland stated this will be helpful to the Village of Pinehurst going forward. He noted that on March 4th, we will kick off at 11:00 a.m. the Olmsted 200th Anniversary Celebration with a lecture in the Assembly Hall, sponsored by the Women of the Pines and stated you can register for the event on the Women of the Pines website.
- Councilmember Morgan had no report.
- Councilmember Hogeman had no report.
- Councilmember Morgan had no report.

- Mayor Pro Tem Pizzella had no report.
- Councilmember Boesch reported she participated in an Olmsted Open-Discussion zoom meeting and she is enjoying learning more about Olmsted's influence. She noted she did share a proclamation that the Village could present in honor of Olmsted. Councilmember Boesch also passed a thank you along to Jeff Batton, Assistant Village Manager, and Mike Apke for their quick response in picking up some special request for debris pickup.

4. 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.
- February 8, 2022, Council Regular Meeting
- February 8, 2022, Council Work Session

B. Consider Resolution 22-04 Adopting the 2021 Local Government Agencies General Records Retention and Disposition Schedule.

End of Consent Agenda.
Upon a motion by Councilmember Hogeman, seconded by Councilmember Morgan, Council unanimously approved the Consent agenda by a vote of 5-0.

5. Discuss and Consider Resolution #22-05 Amending the Village Policy Regarding Term Limits for Appointed Boards and Commissions

Doug Willardson, Assistant Village Manager of Administration, stated staff is reviewing existing Village Council policies to determine updates or recommended changes. He reported staff recently reviewed the Village's established Council policy regarding term limits for appointees to Village boards and commissions. He stated staff recommend two minor adjustments. First, that the policy be updated to include the Historical Preservation Commission. And second, that the name of the Community Appearance Commission be updated to the Beautification Committee. These minor changes will make the term limits policy consistent with the other governing documents of these Boards or Commissions.

Mr. Willardson recommended we make all the boards follow a three-year term. Mayor Strickland stated he would like to see this as a two-year term with a three-year consecutive maximum. Councilmember Boesch stated she likes the two-year term since this is a volunteer board. Councilmember Morgan stated he agrees that a two-year term is normal. Mayor Strickland stated he would like to see the Planning and Zoning Board and the Board of Adjustment separated again like it was previously. Councilmember Morgan stated he would like to have more of a discussion about this before deciding.

Upon a motion by Councilmember Boesch, seconded by Mayor Pro Tem Pizzella, Council unanimously approved Resolution #22-05, amending the Village Policy regarding term limits for Appointed Boards and Commissions as drafted, with the exception of modifying the Board of Adjustment to limit it to three consecutive terms of two-years each, by a vote of 5-0.

6. Presentation of Mid-Year Financial Projections and Budget Amendment.

Brooke Hunter, Finance Director, presented Council with the Mid-Year Financial Projections and budget amendment. Ms. Hunter stated, based upon my review of the quarterly financial statements through the end of December and discussions with Senior Management and Department Heads. She reported she formulated the estimate of the Village's projected year-end financial results. She stated at this time, her estimate is that the Village's expenditures will exceed its revenues at year-end by approximately \$172,000. She noted although this is a loss, it is important to recall that we originally planned to use \$871,000 of fund balance in FY 2022 when the budget was adopted. She stated several revenues have exceeded our projections this fiscal year and the projected expenditures include a large reappropriation of approximately \$1.4 million related to purchases and projects that were incomplete as of June 30, 2021 and continued into FY 2022.

Ms. Hunter stated the total fund balance for the General Fund at the beginning of this fiscal year was $13,289,000. She stated she is projecting that fund balance will decrease to $13,116,000 by the close of this fiscal year. She noted this estimate will leave the ending fund balance for the General Fund at 51% of budgeted expenditures. This percentage is above the policy minimum and positions the Village well to address initiatives identified in the FY 2023 Village Council Strategic Planning Retreat.

Ms. Hunter stated when evaluating our projected actual amounts compared to the current budget, she identified several of the more significant items that have deviated from our original budget projections. She stated staff proposes the Village revise the budget estimates for these items to bring the budgeted amounts closer to expected levels. She reported the proposed changes are:

<u>Revenues</u>

1. We project motor vehicle property tax revenues to be slightly higher than originally anticipated. These projections are based on the taxes collected to date. We recommend increasing motor vehicle tax revenues by $31,000.
2. Actual local option sales taxes and their related hold harmless reimbursements have been significantly higher than anticipated due to a variety of factors, including the collection of sales taxes on online purchases. As such, these revenues are projected to be higher than budgeted. We recommend increasing sales taxes by $630,000 and the hold harmless reimbursements by $140,000.
3. Miscellaneous revenue is higher than projected primarily due to a one-time easement payment from Verizon, as well as the sale of surplus items that are not capital assets. An increase of $11,000 is recommended for this revenue source.
4. Upon adoption of the FY 2022 North Carolina state budget in November, the NC Department of Transportation (NC DOT) Powell Bill program funding was significantly increased. In FY 2021, Powell Bill funding was reduced due to constraints surrounding COVID-19. This year's allocation restored, and surpassed, pre-COVID Powell Bill program funding levels. We received approximately $103,000 more than originally anticipated, thus we recommend increasing revenue by this amount.
5. Facility rental revenues are higher than expected this year. This is due to more park rentals and increased use of our athletic fields. An increase of $24,000 is recommended for this revenue.
6. Fair Barn rentals and reservations have returned to pre-pandemic levels, and revenues through the second quarter are comparable to the same period in FYs 2019 and 2020. After reviewing actual collections, staff expects to end the year near $225,000, or $38,500 higher than the budgeted figure.
7. We received several significant insurance reimbursements for damaged vehicles this year. We recommend increasing our revenue estimate by $65,000 and increasing the related expenditure budgets, as mentioned below.
8. ABC revenues are higher than expected this year. An increase of $20,000 is recommended for ABC revenue on mixed beverages and an increase of $50,000 for ABC revenue on counter sales.
9. When developing the FY 2022 budget, the Village originally anticipated assuming responsibility for Given Memorial Library and Tufts Archives in October. The Village and the Library Board continued conversations and established a final transfer date by April 15, 2022. As such, we recommend the following revenue adjustments to reflect this date change: reduce archives book and photo sales by $13,000, Roast Office rental income by $10,800, event income by $52,500, donations by $112,300, and endowment income by $37,500. We also recommend decreasing operating expenditures as mentioned below.

<u>Expenditures</u>

1. In Human Resources, $50,000 was originally appropriated for salary market adjustments. When the market adjustments for FY 2022 were implemented, it was determined that they could be absorbed within the affected departments due to various position changes and temporary vacancies. We are recommending removing the $50,000 appropriation from the budget.
2. In Solid Waste, we request increasing the contracted services expenditure budget by $35,000 to cover increased contracted yard debris clean-up services after multiple winter storms.
3. In Community Development, we request increasing the departmental supplies budget by $6,500 to purchase additional logo merchandise inventory to sell at the Welcome Center. During the FY 2022 budget process, we increased our revenue projection for logo merchandise sales, but did not increase the expenditure budget to purchase additional items. Revenue is in line with our projections so far this year.
4. In the Library & Archives Department, operating expenditures will begin approximately six months later than originally expected. As such, we recommend decreasing salaries and Page 3 benefits accounts by $89,000, departmental supplies by $5,000, collection expenses by $8,000, events expenses by $15,000, and rentals by $20,000.

5. In Fleet Maintenance, we recommend increasing the vehicle repairs and maintenance account by $65,000 for significant repairs performed on various vehicles this year. Several of these repairs were reimbursed by insurance proceeds as mentioned earlier. The related Fire, Solid Waste, Recreation, Harness Track, and Planning Department allocation accounts have been adjusted accordingly.
6. In Buildings & Grounds, we recommend reducing the maintenance account by $20,000, as library operating expenditures are approximately six months less than originally anticipated. The related Library & Archives Department allocation account has been adjusted accordingly.

Ms. Hunter stated in total, these adjustments will decrease the Village's FY 2022 Budget by $100,500 and will reduce fund balance appropriated by $986,900. She stated adopting the above adjustments within the revenue and expenditure accounts will enable the Village to prepare more accurate budget estimates for the next fiscal year and maintain statutory compliance required by the Local Government Budget and Fiscal Control Act. She noted as we enter the strategic planning and budgeting season, the Village is well positioned to carry out the objectives in our Strategic Operating Plan.

Councilmember Boesch stated this is good that we do this adjustment mid-year, which she notes we are not required to do according to State legislations. Mayor Strickland asked Ms. Hunter if we will need to use some of the fund balance this year. Ms. Hunter stated that we look at the roll-over funds, which we expect to spend this year. She reported after using this we are only looking at the $172,000 loss to cover some of the big items.

Upon a motion by Councilmember Hogeman, seconded by Mayor Pro Tem Pizzella, Council unanimously approved Ordinance #22-02 amending the ordinance appropriating funds for operations of the Village of Pinehurst, regarding revenues and expenditures of the general fund mid-year budget adjustments by a vote of 5-0.

7. Q2 Update on the Status of the FY2022 Strategic Operating Plan Implementation.

Matthew McKirahan presented an update on the status of the FY2022 Strategic Operating Plan Implementation for the Second Quarter (Q2). He stated we have 18 of the 20 items (IAPs) started and are in progress, with the 2 being contingent on other IAP's.

Mayor Pro Tem Pizzella asked why we have not begun updating the Pinehurst Development Ordinance. Mr. Burich stated it is due in some part to the need for more staffing that can concentrate on this. Councilmember Hogeman stated she would rather see us have someone in-house do this then give it to a consultant. Village Manager Sanborn stated we currently have two (2) planning staff positions we are trying to fill and have been struggling to find candidates. Councilmember Boesch stated we need to remember that Planning is short on staff and resources, and this makes it hard for staff to prioritize.

Mayor Pro Tem Pizzella stated maybe we need to look at the most one-off codes that we really need to look at and start there. Village Manager Sanborn stated the difficulty comes with this project in that the whole PDO must work together and working on one-offs could leave some gaps. Mr. Burich stated sub-division regulations is one item that needs a lot of attention. He stated another is signage and we need to remember that, like the buffer ordinance, these individual items take a lot of time. Mr. Burich stated what staff really needs is guidance from Council on the contents, not the writing it and framework. Mr. Sanborn stated that these topics are all challenging because Council must work with many different voices from the community and balancing what is most important.

Councilmember Morgan stated we do not have to decide on issues of whether to use a consultant or not but should be more focused on taking what the staff brings to us and making decisions and providing input from that information.

Councilmember Morgan asked if any of the projects that are not on scheduled going to create any risk or harm to the Village. Mr. Sanborn stated the Small Area Plan and some of these projects are going to create delays in other projects we want to assume, but they are not going to cause harm. Councilmember Morgan asked if there were any adjustments to the plans that would help to accomplish what we are trying to do. Mr. Sanborn stated there are not. Mayor Pro Tem Pizzella stated we need to do a better job as a Council to direct staff on what we need to do to move this forward.

8. Other Business.

No other business was brought forward.

9. Comments from Attendees.

- Carol Coates shared comments put forth by a letter written to Council by Jeffrey Heintz. Ms. Coates stated the letter expressed concern that the most serious and immediate issue the Village faces is Short Term Rentals. She noted Mr. Heintz asserted his property rights are as sacred as those of the absentee owners who have made businesses out of private, single-family homes in residential areas. Ms. Coates stated the letter points to the Village's years of inaction as the reason for the hundreds of STRs that would be grandfathered as pre-existing nonconforming uses under any new prohibitory legislation.
- Bob Coates shared more comments put forth by the letter written to Council by Jeffrey Heintz. Mr. Coates read suggestions for Council, written by Mr. Heintz. These suggestions included: Conduct Based Regulation, Permitting, and Zoning Regulations. He stated Mr. Heintz suggested Council move forward on resolving the issue of Short-Term Rentals before Pinehurst is eviscerated by STRs.
- Steve Saye addressed Council as an individual who has been offering short-term rentals for over 16 years. Mr. Saye noted the many positives he has experienced and stated he feels both sides can come to good terms on this divisive issue. Mr. Saye noted that short-term rentals are vital to Pinehurst's success as a golf destination. He noted this area could not host the U.S. Kids Golf Championship or the U.S. Opens without short-term rentals. Mr. Saye reported that in 2014, 340,000 people attended the U.S. Open and he sees this number increasing with the back-to-back U.S. Open and Women's Open Golf Championships slated in 2029.

10. Motion to Adjourn.

Upon a motion by Mayor Pro Tem Pizzella, seconded by Councilmember Hogeman, Council unanimously approved to adjourn the regular meeting by a vote of 5-0 at 6:21 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.
Mission: Promote, enhance, and sustain the quality of life for residents, businesses, and visitors.
Values: Service, Initiative, Teamwork, and Improvement

VILLAGE COUNCIL
MINUTES FOR WORK SESSION OF FEBRUARY 22, 2022
ASSEMBLY HALL
395 MAGNOLIA ROAD
PINEHURST, NORTH CAROLINA

IMMEDIATELY FOLLOWING THE REGULAR MEETING

The Pinehurst Village Council held a work session at 6:28 p.m., Tuesday, February 22, 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 9 attendees, including 4 staff and 1 press.

1. **Call to Order.**
   Mayor John Strickland, called the Council work session to order.

2. **Short-Term Rental Discussion.**
   Darryn Burich, Planning and Inspections Director, stated this item is intended to continue discussion from the Council's Work Session on February 8, relative to possible approaches to short-term rentals. He stated building off the work session discussion, staff has developed an overarching goal and policy objectives to meet that goal. He noted Council directed staff to develop an initial list of draft policy objectives from which Council could decide how to proceed further relative to short-term rentals. He noted that the steps that could be used to drafting regulations pertaining to short-term rentals were to first, gather information; second, define Planning Objectives; third, draft regulations; and fourth, make revisions as needed.

   Mr. Burich stated as we continue to gather information relative to the numbers of STRs, staff has also developed an initial list of policy objectives from which regulations or policy responses can be crafted. He stated these are meant to be a starting point for those discussions and to craft policy objectives there needs to be an overarching goal. He noted staff is proposing the goal be: to maintain the quality of life in our residential neighborhoods and ensure that the impact of short-term rental properties is as similar as is practically possible to the impact of long-term residential properties.

   Councilmember Hogeman stated she is not happy with the overarching goal. Council Boesch stated a lot of these complaints are quality of life issues and she noted in the 2019 Comprehensive plan it states we are to evaluate options to address the impacts of short-term rentals. She stated she doesn't know how we accomplish this. Mr. Burich stated these will be individually looked at as we go through this process. Councilmember Boesch stated shouldn't we ensure we are applying this to everyone. Village Manager Sanborn stated we do want to have a framework that applies to all. Councilmember Boesch stated a lot of the complaints may be issues we need to create ordinances for, and others may be simply some we have already that we need to enforce.

   Councilmember Hogeman stated there are nuisance ordinances in existence that we can apply to residents, commercial, and to short-term establishments, but this does not address the entire problem. She stated with a short-term rental, there are extra people staying there that you wouldn't get in a residential dwelling. Councilmember Hogeman stated she is interested in seeing more noise ordinances, how many bedrooms are allowed, how much parking is allowed, and other standards set through a permitting system. She stated these would be in place for the safety of the transient occupant and the neighbor.

Councilmember Morgan stated we need to remember we are only working on the goal and not trying to write the policies. Village Manager Sanborn stated we can change the wording in the goal to say "the Village" instead of communities which allows for more defined work to come later.

Mr. Burich stated the goal recognizes that short term rentals exist in neighborhoods but seeks to equalize their impact with that of traditional owner-occupied residences. He stated this recognizes that some of the stated issues and concerns regarding short-term rentals are not exclusive to that use but also exists with owner and long-term renter occupied dwellings. He stated neither should impact quality of life in neighborhoods. Mr. Burich presented the following objectives, drafted as a response to some common concerns that have been raised regarding short term rentals:

<u>Policy Objectives and Indicators of Success:</u>
1. Traditional neighborhoods remain predominantly occupied by long-term residents and don't create the appearance or 'feel' of tourist destinations.
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.
4. Ensure that any regulation, or non-regulation, of short-term rentals does not negatively impact the quality of life of other residents in our neighborhoods.
5. Short term rental properties do not have occupancy numbers that exceed what is appropriate for the size of the house and parking spaces included on the property.
6. 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 unattractive for future use as traditional residential properties. ***Council suggested changing the word "unattractive" to say, "less suitable".***
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 safety of short-term renters.
10. To the extent possible, regulation of short-term rentals is accomplished thru standards that apply to the whole Village.
11. Reduce tensions between short-term rental property owners and their neighbors.

Mr. Burich stated the next step is to begin drafting solutions, with Council help. Villager Manager Sanborn stated it would be helpful for Mr. Burich to come back to Council with an outline on how we will proceed forward, without getting into a lot of depth. This would provide a draft framework for Council to use when moving into the next step which would include pulling other stakeholders in to provide some input. Councilmember Morgan noted that we need to again remember that what we plan is legal, enforceable, and protects both the property owners' rights and the renters.

3. Discuss Results of the Survey for Walkway Construction

Doug Willardson, Assistant Village Manager of Administration, presented Council with the results of a survey conducted for walkway construction for FY2022. He noted opinions were solicited from residents in the Pine Vista Drive area and along McKenzie Road, regarding their support and desire for walkways along their street. He reported overall, the results were very supportive of constructing walkways along these two roads. He noted stone screenings were the surface material of choice along McKenzie Road, while stone screenings and concrete had similar levels of support along Pine Vista Drive.

Mr. Willardson stated the goal of constructing sidewalks in the Village is intended to enhance the quality of life, make interconnections with other sidewalks/trails, place them in neighborhoods where they are desired, build them with the least amount of obtrusiveness to abutting yards, and maintain the charm of the neighborhood. He noted the FY2022 construction budget is $400,000.

Mr. Willardson stated the survey directly focused on residents on Pine Vista Drive and McKenzie Road and asked questions such as: do you support construction of new walkways; what is the likelihood of your using the new walkway; and what construction materials do you prefer (screenings, asphalt, or concrete). Mr. Willardson reported 80% of Pine Vista residents responded with the preferences of having a walkway on the north (odd-numbered) side of the road and only two of 14 homes were opposed to the walkway on this side of the street.

Mr. Willardson reported 75% of McKenzie Road residents responded with a preference for walkways on the even-numbered side of the road (on the right if traveling from Linden Road to the Arboretum). He noted no respondents were opposed to the walkway on this side of the street. Mr. Willardson stated staff recommends a public meeting with these neighborhoods be held in early March.

Following this meeting, he stated Council would have the opportunity to confirm the selection of these roads at the March 22nd Council Meeting. He noted the last step would be to direct the engineer to prioritize stone screenings but noting the final materials would be based on topography and limits imposed by this. Mr. Willardson stated a tentative completion of the sidewalks would be around August 2022 or into FY2023.

4. Other Work Session Business.

- No other work session business was discussed.

5. Potential Future Agenda Items.

- Councilmember Hogeman stated focus area 5 is still a topic of interest.

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.

7. 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.

8. 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 9:15 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 OF PINEHURST
VILLAGE COUNCIL
CLOSED SESSION-FEBRUARY 22, 2022

ASSEMBLY HALL
395 MAGNOLIA ROAD
PINEHURST, NORTH CAROLINA

MINUTES

At a work session of the Pinehurst Village Council held at 8:15 p.m., Tuesday, February 22, 2022 in Assembly Hall of Village Hall, 395 Magnolia Road, Pinehurst, North Carolina, Councilmember Boesch moved to go into 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 the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease The motion was seconded by Councilmember Hogeman and carried unanimously, by a vote of 5-0.

The following people 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. Jeff Sanborn, Village Manager
Mr. Jeff Batton, Assistant Village Manager
Mr. Doug Willardson, Assistant Village Manager

MAYOR STRICKLAND CALLED THE MEETING TO ORDER.
Councilmembers discussed potential acquisition of property from the Pinehurst Resort for a parking facility. Councilmembers discussed a potential lease or acquisition of the Given Outpost/Post Office building. Lastly, Councilmembers discussed potential ways to approach the County of Moore about potential acquisition of the water tanks located in Village Place.

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

Respectfully Submitted,

Kelly Chance
Village Clerk

ASSET AND SERVICE TRANSFER AGREEMENT

This Asset and Service Transfer Agreement (this "Agreement") is entered into effective as of _______________, 2021 (the "Effective Date"), among GIVEN MEMORIAL LIBRARY INC., a North Carolina corporation having an office at 150 Cherokee Road, Pinehurst, NC (the "Corporation"), and the VILLAGE OF PINEHURST, a North Carolina incorporated municipality having an office at 395 Magnolia Road, Pinehurst, NC (the "Village"). The Corporation and the Village are each referred to herein as a "Party" and, collectively, as the "Parties".

RECITALS

A. Corporation owns and operates a library in the Village of Pinehurst, including library-related real and personal property and activities conducted by Corporation in connection with the library (the "Given Memorial Library" or the "Library") and Corporation also operates an archive of historic materials in the Village of Pinehurst and owns the real property and some of the personal property used in the archives (the "Tufts Archives" or the "Archives"). The Given Memorial Library and the Tufts Archives are collectively referred to as the "Facilities" and "Services". The Facilities and Services are located upon parcels of real property at 150 Cherokee Road, Pinehurst, North Carolina 28374 (collectively, the "Premises").

B. Corporation also operates a used bookshop in rented premises (the Old Post Office Building) at a separate location. Net profits from the bookshop have been used to support the Given Memorial Library.

C. Corporation also separately owns and manages an endowment fund with a current value of approximately $-2.8- million which has in the past assisted in the funding for the Facilities, the Services, and the Premises.

On and subject to the terms and conditions in this Agreement, and as authorized by N.C. Gen. Stat. § 153A-263, *et. seq*., the Corporation has agreed to transfer and convey various assets owned by the Corporation to the Village in consideration of the commitments made to the Corporation by the Village as hereinafter set forth.

The Parties agree as follows:

AGREEMENT

1. Definitions. Definitions of certain terms used in this Agreement are contained on Appendix A.

2. Transferred Assets. Subject to the terms and conditions set forth in this Agreement, on the future date agreed to by the parties (but not later than April 15, 2022), the Corporation will transfer and convey ownership of the Premises and those other assets owned by the Corporation to the Village as set forth in detail on Schedule 1 hereof (the "Transferred Assets").

3. Excluded Assets. Notwithstanding anything to the contrary contained in this Agreement, the property, assets, and rights set forth on Schedule 2 hereof which are used in or

related to the Library or the Archives will be retained by the Corporation (the "Excluded Assets") as the sole and separate property of the Corporation subsequent to the date the Transferred Assets are transferred to the Village and are specifically excluded from the transfer contemplated by this Agreement and will not be received by, or otherwise transferred to, the Village as part of this Agreement.

4. The Endowment. The Corporation is the sole owner of an endowment which includes assets with an approximate value of $2.8 million as of the date of this Agreement, as such amount may increase or decrease from time to time as contemplated herein (the "Endowment"). The Endowment will remain the sole property of the Corporation subsequent to the transfer of the Transferred Assets subject to the restrictions contained in Schedule 3 hereof.

5. Assumed Liabilities. On the terms and subject to the conditions set forth in this Agreement, the Village will assume and agree to pay, perform, and discharge only the Liabilities of Corporation (collectively the "Assumed Liabilities") set forth on Schedule 4 hereof, and no other Liabilities. The Village will assume all rights, obligations and interests of the Corporation in respect of the contracts listed on Schedule 5 (the "Assumed Contracts").

6. Excluded Liabilities. Other than the Assumed Liabilities and Assumed Contracts, Corporation will pay, perform, discharge, and satisfy timely and in full, and the Village will not assume, perform, or discharge, any Liability of Corporation, whether or not arising before, on, or after, or maturing before, on, or after, the Transfer Date (collectively, the "Excluded Liabilities").

7. Transfer and Conveyance of Assets. Subject to the terms and conditions of this Agreement and in reliance on the mutual covenants set forth herein, the Corporation will transfer and convey ownership of the Transferred Assets , other than the Excluded Assets, to the Village subject to the following conditions precedent:

(a) The Village will have a due diligence period through October 15, 2021 to inspect the Transferred Assets (the "Due Diligence Period"). The Village may terminate this agreement for any reason or no reason during this due diligence period. Otherwise, the Village will advise the Corporation in writing that it will accept all the Transferred Assets in an "AS IS, WHERE IS WITH ALL FAULTS" condition with no warranties being made by the Corporation of any nature (other than its warranty of ownership of the Transferred Assets) and specifically excluding any warranties of fitness for a particular purpose.

(b) The Village, prior to completion of its due diligence period, has approved, adopted, and presented to Corporation (i) a Resolution (#21-10) adopted by the Village Council on June 8, 2021, and attached to this Agreement as Schedule 6, whereby the Village committed $1 million of the Village's fund balance to paying the cost of enhancement of the Facilities, Library Services and Premises. Anticipated purposes for that $1 million include: (1) appropriations of $275,000 for ADA compliance upgrades and $50,000 for Internet fiber to the library as part of the fiscal year 2022 Village Budget Ordinance; (2) $400,000 for design and engineering costs as part of the fiscal year 2022 Budget Ordinance to fund the creation of the Library Expansion Capital Fund to begin design planning no later than the second half of fiscal year 2022; and (3) the balance of unspent funds from this $1 million total sum will remain on the financial statements as Committed Fund Balance until the Village Council approves a resolution or ordinance to use the funds for future library enhancement projects; and (ii) and Corporation acknowledges that Resolution #21-10 has been fully executed by the Village and contains terms which are reasonably satisfactory to the Corporation.

8. Village's Operation of the Library Facilities and Library Services. Upon transfer of the Transferred Assets, the Village will own, operate, and manage all the Transferred Assets as a public library, as authorized by N.C. Gen. Stat. § 153A-263, et. seq., and in a manner which it deems best serves the interests of the residents of the Village of Pinehurst, North Carolina with respect to the Library and the Archives.

9. Future of the Library and Archives:

(a) Within six (6) months after the Transferred Assets are transferred to the Village, the Village will undertake to do the following things: determine a strategic framework to embark on improvements to the existing Premises, consistent with all applicable legal requirements and long-term plans, which the Village determines will best serve the residents of Pinehurst, North Carolina; and initiate planning for a potential expansion of the library and archives facilities and services, with the following general expectations:

i. the Village, using its best efforts, will explore the implications on its National Historic Landmark designation on any future expansion of the Premises which the Village determines will best serve the residents of Pinehurst;

ii. the Village will explore potential partnerships with the USGA and Pinehurst Resort for the Tufts Archives;

iii. the Village will determine utilization of the expansion, as well as its location, scope, size, and estimated budget;

iv. the Village will identify temporary relocation requirements during an expansion that continues to serve residents while the Premises are in transition;

v. the Village will seek ways to best expand and house the Given Memorial Library, the Tufts Archives, and the current collection of approximately 17,000 library books and archival materials;

vi. the Village will begin design planning no later than the second half of fiscal year 2022;

vii. the Village will begin capital funding upon finalizing a design plan no later than fiscal year 2023 and complete capital accrual in fiscal year 2024; and

viii. the Village will begin construction of facility expansion after the 2024 U.S. Open.

(b) All of the references in this Section 9 to the Village's future operation of, improvements to and expansion of the Library and Archives are based upon the Village's good faith intentions as of the date of this Agreement, and none of the references constitute promises or contractual obligations to the Corporation..

10. Old Post Office Building:

Upon the Transfer Date, the Village will assume the lease for the Old Post Office Building located at 95 Cherokee Road, Pinehurst, and continue the sublease for the Roast Office concurrent with the 10-year lease that expires in 2025. Corporation will operate the Given Book Shop located therein for as long as both the Corporation and the Village agree that it is necessary or beneficial. Any profits from the book shop will be given to the Village to support the Library and Archives.

11. Certain Covenants of the Corporation:

(a) On the date mutually agreed to be the effective date of the Corporation's transfer of the Transferred Assets to the Village as determined pursuant to Section 2 above, (the " Transfer Date"), the Corporation agrees to transfer and convey the Transferred Assets to the Village at no cost and pursuant to the terms of this Agreement.

(b) Between the Effective Date and the Transfer Date, the Corporation will cooperate with the Village's employees and agents during the due diligence process; will encourage Ms. Audrey Moriarty to become a Village of Pinehurst employee, and will encourage other current employees of Corporation to apply to become Village of Pinehurst employees in related roles.

(c) (c) After the Transfer Date, the Corporation will continue to manage the Endowment according to the terms of Schedule 3. The Corporation will organize and lead a capital campaign to raise funds exclusively for the expansion of the Library and Archives referred to in Section 9. The Corporation will, consistent with all applicable federal and state law, engage in fundraising efforts and other customary philanthropic activities suitable for an all-volunteer organization to promote, encourage and receive charitable donations which donations (less fundraising expenses) will be deposited in the Endowment or paid over to the Village for purposes of supporting the Library and Archives, subject in each case to the donors' instructions, if any. The Corporation will amend its Articles of Incorporation and Bylaws to reflect the Corporation's purposes and activities subsequent to the Transfer Date including that upon the dissolution of the Corporation, the assets then owned by the Corporation shall either be transferred to the Village of Pinehurst subject to the restrictions of the Schedule 3 hereof and provided the transfer to the Village constitutes a charitable contribution under Section 170(c)(1) of the Internal Revenue Code, or transferred to a non-profit corporation who shall be required to manage the Endowment pursuant to the terms of Schedule 3 for the benefit of the Village, in its operation of the Library and Archives.

(d) (d) Corporation's yearly Endowment support payable to the Village may be withdrawn only in three (3) circumstances: (1) the completion of the process for considering expansion of the Library and the Archives does not occur in accordance with each of the provisions of Section 9 (a) (i-vii) hereof; (2) if the actual construction or expansion of the library facilities does not begin by July 1, 2025 in accordancc with the proposed design; or (3) within 15 years after the Transfer Date, the Transferred Assets are not used for the purpose of providing library and/or archives services, unless new or renovated facilities are constructed elsewhere in accordance with the approved design. Provided, however, that if the Corporation's yearly endowment support is ever withdrawn for any of the 3 reasons set forth above, the Village will retroactively receive those previously withheld funds if the provisions are thereafter later met.

12. Certain Covenants of the Village:

(a) After the Transfer Date, and for a period of fifteen (15) years thereafter, the Village must use the Transferred Assets for the purpose of providing library and/or archive services unless new facilities are built elsewhere to provide expanded library and archives services. Upon the expiration of this 15-year period, there shall exist no restriction upon the manner in which the Village uses the Transferred Assets which were imposed on the Transferred Assets by the Corporation.

(b) The name of the Library (whether or not it continues to operate on the Premises) shall always include in a prominent manner the word "Given ".

(c) The name of the Archives shall always include in a prominent manner the word "Tufts".

(d) The Village will honor the various naming rights awarded in the past by the Corporation to various donors, such as "The Eric Nelson Room".

(g) If the Village creates a Library Board pursuant to NCGS 153A-266, Corporation members may apply for open board seats.

13. Corporation's Transfer Date Deliveries. On the Transfer Date, Corporation will deliver, or cause to be delivered, to the Village:

(a) Possession of and fee simple title to the Transferred.

(b) A duly executed copy of the Commemoration of Transfer of Assets document contained in Exhibit A.

14. The Village's Transfer Date Deliveries. On or before the Transfer Date, the Village will deliver, or cause to be delivered, to Corporation:

(a) A duly executed copy of the Commemoration of Transfer of Assets document contained in Exhibit A.

15. Conditions Precedent to the Transfer of Assets.

(a) Conditions Precedent to the Village's Obligations. The obligation of the Village to complete the transactions contemplated by this Agreement is subject to the fulfillment (or written waiver by the Village), before or on the Contribution Date, of each of the following conditions:

i. Corporation will have made the deliveries required under Section 13;

ii. Corporation will have received copies, acceptable to the Village in form and substance, of all material consents, waivers, amendments, modifications, approvals, authorizations, Permits, and licenses that are required to be obtained by Corporation to effectuate this Agreement and to transfer the Transferred Assets to the Village, including all Third-Party Consents, and will have delivered copies to the Village;

iii. The Village will have received a certificate executed by a duly authorized officer of Corporation, in form and substance reasonably satisfactory to the Village, certifying (A) the fulfillment of the conditions set forth in this Section 15(a), (B) that attached thereto are true, complete, and correct copies of the resolutions of the Board of Directors of Corporation authorizing the execution, delivery, and performance of this Agreement and each other document delivered pursuant to this Agreement, and the transactions contemplated by this Agreement, in each case as are then in full force and effect, and (C) that attached thereto is a true, complete, and correct copy of a certificate of good standing for Corporation issued by the Secretary of State of the State of North Carolina;

iv. all representations made by Corporation in this Agreement, or in any other transaction document to which Corporation is a party were true in all material respects (except for such representations that contain a materiality qualifier, which representations as so qualified will be true in all respects) as of the Effective Date, and will be true in all material respects as of the Transfer Date as though such representations and warranties had been made on and as of the Transfer Date;

(b) Conditions Precedent to the Corporation's Obligations. The obligation of the Corporation to complete the contribution of the Transferred Assets contemplated by this Agreement is subject to the fulfillment of each of the following conditions:

i. The Village's Due Diligence Period: Expiration of the Village's Due Diligence Period and the Village's continued interest in completing the transfer of the Transferred Assets by the Corporation to the Village and compliance by the Village of its obligations set forth in Section 7 hereof.

16. Representations of Corporation. Corporation represents to the Village that the statements contained in this Section 16 are true and correct as of the Effective Date and as of the Transfer Date:

(a) Organization; Authority; Binding Effect. Corporation is a non-profit corporation, duly organized, validly existing, and in good standing under the laws of the State of North Carolina. Corporation has all necessary corporate capacity, authority, and power to execute and deliver this Agreement and each other transaction document to which Corporation is a party, and to consummate the transactions contemplated hereby and thereby, and has taken all action required to be taken by it to authorize the execution, delivery, and performance of this Agreement and each of the other transaction documents to which Corporation is a party. Corporation has all necessary power and authority to own, possess, and operate the Library Facilities, the Library Services, the Tufts Archives, and the Premises. This Agreement has been duly executed and delivered by Corporation and constitutes a valid and binding obligation of Corporation, enforceable against Corporation in accordance with its terms. As of the Transfer Date, each of the other transaction documents to which Corporation is a party will have been duly executed and delivered by Corporation and will constitute valid and binding obligations of Corporation, enforceable against Corporation in accordance with its terms.

(b) Absence of Certain Conflicts. Neither the execution and delivery of this Agreement or the other transaction documents, nor the consummation of the transactions contemplated hereby and thereby, will do any of the following:

i. conflict with or result in a breach of any provision of the organizational documents of Corporation or resolutions adopted by the Board of Trustees of Corporation;

ii. result in (A) the imposition or creation of any Encumbrance upon or with respect to any Transferred Asset, or (B) a default (or give rise to any right of termination, cancellation, or acceleration), with or without notice or lapse of time, under any Permit or Assumed Contract;

iii. require Corporation to obtain any Third-Party Consent, including any consent, approval, authorization, or permit of, or make any filing with or provide any notification to, any Governmental Authority; or

iv. violate any judgment, decree, order, or injunction binding upon Corporation, or any Law applicable to Corporation, and/or the Assets.

(c) Transferred Assets. Corporation has, and will transfer and convey to the Village on the Transfer Date, good and marketable title to the Transferred Assets, free and clear of all Encumbrances or other material defects in title.

(d) Tax Matters. Corporation has timely filed or caused to be timely filed all federal and state income Tax returns and all other material Tax returns that it was required to file. All such Tax returns are true, complete, and accurate in all material respects and, as so filed, disclose all Taxes required to be paid for the periods covered. All Taxes due and owing by Corporation (whether or not shown on any Tax return) have been paid.

(e) Intellectual Property. All intellectual property consistent with the definition in Appendix A which is owned by the Corporation and is transferrable will transfer to the Village.

17. Additional Agreements.

(a) Access and Investigation. During the Due Diligence Period and up to the Transfer Date, Corporation will allow the Village and its representatives reasonable access, at times and dates mutually agreed upon by the Village and Corporation, to the Premises, and to Corporation's books, records, personnel, contracts, Permits, and other documents and data, so long as the Village exercises such rights of access in a manner that does not unreasonably interfere with the operations of the Library and Archives and until after the Transfer Date such information is not subject to the any "freedom of information" request directed to the Village.

(b) Conduct or Practice Before the Transfer Date. From the date hereof until the Transfer Date, the Corporation will continue to operate the Library and the Archives in their ordinary and customary manner.

(c) Risk of Loss. Corporation assumes all risk of destruction, loss, or damage due to fire or other casualty up to the Transfer Date, and Corporation agrees to maintain all current policies of insurance for such hazards until the Transfer Date. If this destruction, loss, or damage is such that the Transferred Assets are substantially damaged or destroyed, then the Village will have the right to terminate this Agreement upon written notice to the Corporation. If the destruction, loss, or damage is such that the Transferred Assets are substantially damaged or destroyed, and the Village chooses to continue this agreement, then in that event the Corporation shall assign to the Village all insurance proceeds.

(d) Further Assurances. Corporation agrees, at the request of the Village, at any time and from time to time after the Effective Date, to promptly execute and deliver all such further documents, and promptly to take and forbear from all such action, as may be reasonably necessary or appropriate in order more effectively to confirm or carry out the provisions of this Agreement.

18. Transfer Taxes. The Village and the Corporation acknowledge and agree that no transfer taxes will be due with respect to the transfer of the Transferred Assets by the Corporation to the Village.

19. Termination.

(a) Events of Termination. This Agreement may be terminated at any time before the Contribution Date:

i. by the mutual written consent of the Parties;

ii. by the Village by written notice to Corporation at any time prior to the expiration of the Village's Due Diligence Period referenced above for any or no reason;

iii. in accordance with the terms hereof.

20. Miscellaneous.

(a) Notices. All notices required or permitted to be given under this Agreement will be in writing. Notices may be served by certified or registered mail, postage paid with return receipt requested; by private courier, prepaid; by email, facsimile, or other telecommunication device capable of transmitting or creating a written record; or personally. Mailed notices will be deemed delivered upon receipt or, if later, three days after mailing, properly addressed. Couriered notices will be deemed delivered on the date that the courier warrants that delivery will occur. Faxed, emailed, or other telecommunicated notices will be deemed delivered when receipt is either confirmed by confirming transmission equipment or acknowledged by the addressee or its office. Personal delivery will be effective when accomplished. Unless a Party changes its address by giving notice to the other Party as provided herein, notices will be delivered to the Parties at addresses and numbers set forth on the signature page.

(b) Interpretation. All pronouns will be deemed to refer to masculine, feminine, or neuter, singular or plural, as the identity of the person or persons require.

Section and other headings contained in this Agreement are for reference purposes only. The words "includes" and "including" are deemed to be followed by the phrase "without limitation." The term "person" includes individuals, corporations, partnerships, limited liability companies, associations, and all other natural and legal persons. Each party has had the opportunity to have this Agreement reviewed by their attorneys. Therefore, no rule of construction or interpretation that disfavors the party drafting this Agreement or any of its provisions will apply to the interpretation of this Agreement. Instead, this Agreement will be interpreted according to the fair meaning of its terms.

(c) Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of North Carolina, without regard to its choice of law principles.

(d) Severability. Any provision of this Agreement that is deemed invalid or unenforceable will be ineffective to the extent of such invalidity or unenforceability, without rendering invalid or unenforceable the remaining provisions of this Agreement.

(e) Integration; Amendment. This Agreement constitutes the entire agreement of the Parties relating to the subject matter of this Agreement. There are no promises, terms, conditions, obligations, or warranties other than those contained in this Agreement. This Agreement supersedes all prior communications, representations, or agreements, verbal or written, among the Parties relating to the subject matter of this Agreement, including that certain letter of intent executed by the Village and Corporation. This Agreement may not be amended except in writing executed by the Parties.

(f) Assignment; Binding Effect. Neither Party may assign this Agreement, in whole or in part, without the express written consent of the other Party. This Agreement will bind and inure to the benefit of, and be enforceable by, the Parties and their respective successors and permitted assigns.

(g) Counterparts; Signatures. This Agreement may be signed in counterparts. Each counterpart will be considered an original, and all of them, taken together, will constitute a single agreement. Electronically transmitted signatures (such as PDF) will be deemed original signatures for all purposes under this Agreement. This Agreement may be delivered electronically, and any such delivery will have the same effect as physical delivery of a signed original.

(h) Attachments. The exhibits, schedules, and appendices referenced in this Agreement are part of this Agreement.

(The remainder of this page has intentionally been left blank; signature page follows)

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

CORPORATION:

GIVEN MEMORIAL LIBRARY.

By: ______________________________
Name: Stuart L. Mills
Title: Chair

Notice:
Address:
Address:
Attn:
Facsimile: ______________________
Email: __________________________

THE VILLAGE:

VILLAGE OF PINEHURST.

By: ______________________________
Name: John C. Strickland
Title: Mayor

Notice:
395 Magnolia Road
Pinehurst, NC 28374
Attn: Village Manager
Facsimile: ______________________
Email: __________________________

APPENDIX A

Defined Terms

1. Definitions. The following terms, when used in this Agreement, will have the following meanings:

(a) "Asset" and "Assets" mean any and all property owned by the Corporation and having value, including but not limited to, current assets, fixed assets, tangible and intangible assets, operating and non-operating assets, cash, checking accounts, savings accounts, accounts receivable, inventory, buildings, machinery, equipment, computers, supplies, furniture, webpages, and Library Facilities and Services. "Asset" and "Assets" shall not mean or include any Excluded Assets, or the Corporation's Endowment.

(b) "Encumbrance" means any charge, claim, community or other marital property interest, condition, equitable interest, lien, option, pledge, security interest, mortgage, right of way, easement, encroachment, servitude, right of first option, right of first refusal, or similar restriction, including any restriction on use, voting (in the case of any security or equity interest), transfer, receipt of income, or exercise of any other attribute of ownership.

(c) "Excluded Liabilities" means those liabilities of the Corporation as of the Transfer Date which are not part of the Assumed Liabilities listed on Schedule 4 hereof and which include but are not limited to the payment of the PPP Loan to the extent such loan is not forgiven by the Small Business Administration , those expenses of the Corporation for salaries, utility bills, insurance and similar items which relate to periods of time prior to the Transfer Date and for those expenses of the Corporation for tax and legal services incurred in connection with this Agreement.

(d) "Governmental Authority" means any federal, state, local, or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations, or orders of such organization or authority have the force of Law), or any arbitrator, court, or tribunal of competent jurisdiction..

(e) "Intellectual Property" means any and all of the following and similar intangible property and related proprietary rights, interests, and protections, however arising, pursuant to the Laws of any jurisdiction throughout the world: (i) trademarks, service marks, trade names, brand names, logos, trade dress, and other proprietary indicia of goods and services, whether registered, unregistered, or arising by Law, and all registrations and applications for registration of such trademarks, including intent-to-use applications, and all issuances, extensions and renewals of such registrations and applications; (ii) internet domain names, whether or not they constitute trademarks, registered in any generic top level domain by any authorized private registrar or Governmental Authority; (iii) original works of authorship in any medium of expression, whether or not published, including all copyrights (whether registered, unregistered or arising by Law), all registrations and applications for registration of such copyrights, and all issuances, extensions, and renewals of such registrations and applications; (iv) confidential information, formulas, designs, devices, technology, know-how, research and development, inventions, methods, processes, compositions, and other trade secrets, whether or not patentable; and (v) patented and patentable designs and inventions, all design, plant and utility patents, letters patent, utility models, pending patent applications and provisional applications and all issuances, divisions, continuations, continuations-in-part, reissues, extensions, reexaminations, and renewals of such patents and applications.

(f) "Law" or "Laws" means any statute, rule, common law, ordinance, regulation, order, writ, judgment, injunction, decree, determination, or award enacted or promulgated or followed by a Governmental Authority.

(g) "Liability" means any debt, obligation, duty, or liability of any nature (including any unknown, undisclosed, unmatured, unaccrued, unasserted, contingent, indirect, conditional, implied, vicarious, derivative, joint, several, or secondary liability).

(h) "Library Facilities" and "Library Services" collectively mean and includes, without limitation, books, plates, pictures, engravings, maps, magazines, pamphlets, newspapers, manuscripts, films, transparencies, microforms, recordings, or other specimens, works of literature, or objects of art, historical significance, or curiosity, and all amenities, properties, apparatuses, implements, instruments and equipment customarily used to preserve, store, organize, display, and make accessible such materials for public use and enjoyment.

(i) "Permits" means any permit, license, approval, certification, endorsement, or qualification of any Governmental Authority or any other person or entity.

(j) "Premises," or "the Premises," means all of that real property currently owned by Corporation, and all fixtures and improvements upon said real property, as more particularly described in the following recordings of the Moore County Registry: Parcel # 99000481 and Parcel #99000482; Book 270, Page 360; Book 379 Page 52; Book 498, Page 614; Book 15, Page 648; Map Book 1, Page 30; and Plat Cabinet 15, Slide 648. All such real property and fixtures are located at 150 Cherokee Road, Pinehurst, North Carolina.

(k) "Taxes" means (i) any federal, state, local, and foreign taxes, charges, fees, levies, imposts, duties, and other similar assessments or charges of any kind whatsoever imposed by any Governmental Authority, including income taxes (whether imposed on or measured by net income, gross income, income as specially defined, earnings, profits, or selected items of income, earnings, or profits), capital taxes, gross receipts taxes, environmental taxes, sales taxes, use taxes, value added taxes, goods and services taxes, transfer taxes, franchise taxes, license taxes, withholding taxes or other withholding obligations, payroll taxes, employment taxes, excise taxes, severance taxes, social security premiums, workers' compensation premiums, employment insurance or compensation premiums, stamp taxes, occupation taxes, premium taxes, ad valorem taxes, property taxes, windfall profits taxes, alternative or add-on minimum taxes, and customs duties, together with all interest, penalties, fines, additions to tax, or other amounts imposed with respect to the foregoing; (ii) any Liability for any amounts of the type described in clause (i) as a result of being or ceasing to be a member of any tax group (including any Liability under Treasury Regulation Section 1.1502-6 or any comparable provision of state, local, or foreign law); and (iii) any Liability for any amounts of the type described in clause (i) or (ii) arising under contract, by operation of law, by reason of being a successor or transferee, or otherwise.

(l) Transferred Assets," or "the Transferred Assets," collectively means all Assets being transferred and conveyed from Corporation to the Village under this Agreement except the Excluded Assets defined in Section 2 hereof.

SCHEDULE 1

Transferred Assets

All assets belonging to the Corporation and not listed in Schedule 2 will be transferred. These assets include, but are not limited to:

1. Building, improvements and property contained in Parcel ID 99000481/PIN 856209062391.
2. Property within Parcel ID 99000482/PIN 856209062243
3. All furniture, fixtures and equipment owned by the Corporation contained in the building included in asset 1 above.
4. All library and archive collections owned by the Corporation contained in the building included in asset 1 above, including any collections that may qualify as intellectual property.
5. All furniture, fixtures and equipment used for library programming in the Old Post Office building (Parcel ID 00029526/PIN 855212967100)

SCHEDULE 2

Excluded Assets

i) The Endowment (as defined in Schedule 3)

ii) Assets belonging to the Tin Whistles (custodial responsibilities for these assets will transfer to the Village of Pinehurst, but ownership will remain with the Tin Whistles)

iii) Used books collection and all furniture, fixtures, and equipment used for the sale of used books in the Old Post Office Building.

iii) Any cash on hand or in bank accounts as of the Transfer Date. Such cash may be used to discharge the transaction costs incurred in connection with this Agreement, and/or to discharge any Excluded Liabilities, but the remaining balance of such cash up to $75,000.00, less $20,000 which the Corporation shall keep as initial working capital, shall be returned to the Village no later than six months after the Transfer Date.

SCHEDULE 3

Terms Relating to the Endowment

The term "Endowment" refers to all the funds held by the Corporation at Vanguard on the Effective Date, the balance in such accounts at the opening of the financial markets on the Effective Date being $_________ (refer to the attached pages printed from the Vanguard website on the Effective Date).

1. From the Effective Date to the Transfer Date:

   (a) The Endowment funds will remain invested at Vanguard or any other similar accounts as the Corporation deems advisable.

   (b) During such period, funds may only be released from the Endowment for purposes of supporting operations of the Library and Archives.

   (c) The Corporation will report to the Village (with supporting documentation from Vanguard) the balance in the Endowment as of the Transfer Date.

2. After the Transfer Date:

   (a) The remaining balance in the Endowment, and any future principal, income and contributions (less any losses or permitted expenses), shall be managed by the Corporation, which shall have complete discretion over investment of such funds.

   (b) Withdrawals from the Endowment may only be made for the following purposes:

      i. To pay reasonable expenses associated with maintaining the Endowment, including expenses associated with maintaining the corporate existence and non-profit status of the Corporation, with fundraising for the Endowment including licenses fees required for fundraising activities, with Directors and Officers liability insurance premiums, with fees for accountants and bookkeepers and other normal and customary fees and expenses incurred by the Corporation in accordance with the terms herein as such expenses relate to the Library and the Archives.

      ii. To make payments to the Village for support of the Library and Archives (the "Endowment Payments").

      iii. To pay the Excluded Liabilities of the Corporation.

      iv. The annual cost to operate the Book Shop not covered by the Village or by income from the operation of the Book Shop.

      v. Sufficient funds to repay the outstanding PPP Loan in the event some or all of such loan balance is not forgiven by the Small Business Administration.

(c) The Corporation will make Endowment Payments to the Village as follows:

i. During each of the Village's fiscal years, the Corporation will make annual Endowment Payments to the Village equal to 4% of the Average Balance. The Average Balance is the average of the actual balance in the Endowment at the beginning of such fiscal year and the two preceding fiscal years. Such payments to the Village will be used for the provisions of services to the Library and the Archives.

ii. During each of the Village's fiscal years, the Corporation may (but will not be required to) make additional Endowment Payments to the Village for purposes of supporting the Library and Archives on its own initiative or at the request of the Village.

(d) Within 5 months of the end of each of the Corporation's fiscal years, the Corporation will prepare a report to the Village Manager describing the investment performance of the endowment and detailing the withdrawals from the Endowment and how such withdrawals were applied in such fiscal year, including a calculation of the Average Balance.

SCHEDULE 4

Assumed Liabilities

NONE

SCHEDULE 5

Assumed Contracts

1. Lease for Old Post Office

2. Sublease with Mark Elliot to allow operation of the Roast Office

3. ATCOM Business Technology VOIP Managed Services Agreement dated November 11, 2020.

4. Canon Lease Agreement for copiers.

5. Two (2) Tri County Business Machines, Inc. Maintenance Agreement for Canon copiers.

6. Central Security Services, Inc. Security System .Monitoring Contract.

7. Fields Plumbing & Heating Co., Inc. contract for routine HVAC systems seasonal cleaning.

SCHEDULE 6

[JD Notes; SM Notes]
JUNE 8, 2021 RESOLUTION OF THE VILLAGE OF PINEHURST (#21-10)

RESOLUTION #21-10:

A RESOLUTION TO COMMIT A PORTION OF FUND BALANCE IN THE GENERAL FUND (GIVEN MEMORIAL LIBRARY & TUFTS ARCHIVES BUILDING AND OPERATIONAL IMPROVEMENTS).

THAT WHEREAS, the Governmental Accounting Standards Board (GASB) has issued Statement No. 54 establishing a hierarchy clarifying the constraints that govern how a government entity can use amounts reported as fund balance; and

WHEREAS, the Village Council is the highest level of decision-making authority, and has the authority to commit, assign, or evaluate existing fund balance classifications and identify the intended uses of committed or assigned funds; and

WHEREAS, the committed fund balance classification reflects amounts subject to internal constraints self-imposed by the Village Council; and

WHEREAS, once the committed fund balance constraints are imposed, it requires the constraint to be removed by the Village Council prior to redirecting the funds for other purposes; and

WHEREAS, the Village Council and the Given Memorial Library/Tufts Archives Board signed a non-binding agreement on March 1, 2021 outlining the future they see for the library and archives; and

WHEREAS, in accordance with the proposed actions and commitments outlined in the initial agreement, the Village Council has determined it will commit $1,000,000 of General Fund fund balance for the year ending June 30, 2021 for the purpose of funding improvements to the existing Given Memorial Library & Tufts Archives building and other operational improvements.

NOW, THEREFORE, BE IT RESOLVED by the Village Council of the Village of Pinehurst, North Carolina, in regular meeting assembled this 8th day of June, 2021, as follows:

SECTION 1. In accordance with the provisions of GASB 54, Village Council hereby commits $1,000,000 of General Fund fund balance as of June 30, 2021 for improvements to the existing Given Memorial Library & Tufts Archives building and other operational improvements within that, as indicated by the committed fund balance classification, cannot be used for any purpose other than directed above, unless the Village Council adopts another resolution or ordinance to remove or change the constraint.

THIS RESOLUTION passed and adopted this 8th day of June, 2021.

VILLAGE OF PINEHURST
CORPORATE
SEAL
NORTH CAROLINA

VILLAGE OF PINEHURST
VILLAGE COUNCIL

By: ______________________
John C. Strickland, Mayor

Attest:

____
Kelly Chance, Village Clerk

Approved as to Form:

____
Michael J. Newman, Village Attorney

EXHIBIT A

Form of Commemoration

COMMEMORATION OF TRANSFER OF ASSETS

This Commemoration of Transfer of Assets (dated June ___, 2021, is executed and delivered by GIVEN MEMORIAL LIBRARY ("Corporation"), to the VILLAGE OF PINEHURST ("the Village"), a North Carolina municipal corporation, pursuant to the Asset and Service Transfer Agreement, dated _______, 2021, among Corporation and the Village. All capitalized terms used but not defined in this Commemoration of Transfer of Assets have the meanings assigned to them in the Asset and Service Transfer Agreement.

The parties agree as follows:

1. Transfer and Assignment. Corporation transfers, assigns, and conveys to the Village all of its right, title, and interest in and to the Transferred Assets, free and clear of all Encumbrances.

2. North Carolina Law. This Commemoration of Transfer of Assets is executed and delivered in and will be construed under the substantive law of the State of North Carolina, without regard to its conflict of laws provisions.

CORPORATION: GIVEN MEMORIAL LIBRARY

By: ______________________________
Name:
Title:

ACKNOWLEDGMENT OF ACCEPTANCE OF

TRANSFERRED ASSETS

BY VILLAGE OF PINEHURST

By: ______________________

Mayor Village of Pinehurst

This ___ day of ____. 2021.

AMENDMENT TO ASSET AND SERVICE TRANSFER AGREEMENT

The Village of Pinehurst ("Village") and the Given Memorial Library Inc. ("Corporation"), each previously executed and agreed to that 14 September 2021 "Asset and Service Transfer Agreement" (the "Agreement"). Paragraph 10 of the Agreement had generally contemplated that the Village would assume the Corporation's lease of the Old Post Office Building. The Village and the Corporation each agree that since the execution of the Agreement, unforeseen circumstances have arisen which now make it impracticable for the Village to assume that lease. Therefore, and as authorized by paragraph 20 (e) of the Agreement, the Village and the Corporation now desire to amend paragraph 10 the Agreement, for the purpose of preserving and ensuring the continuity of library services for the public use.

Accordingly, the Village and the Corporation each agree that, pursuant to this Amendment, the content of Paragraph 10 of the Agreement should be and hereby is deleted in its entirety, and is replaced with the following amended language:

10. Old Post Office Building.

Upon the Transfer Date, the Corporation will continue with its existing lease for the Old Post Office Building (the "Premises") through the end of lease term, 31 July 2024. After the Transfer Date and through the end of the lease term, the Village (a) shall reimburse the Corporation each month beginning one (1) month after the Transfer Date for the monthly lease payment the Corporation made to its landlord and the monthly utility obligations for the Premises paid by the Corporation; and (b) shall provide general and regular maintenance for the interior and exterior of the Premises at the Village's own expense.

Corporation will continue to pay the lease and utilities obligations until one of these three conditions is met: (a) the Village negotiates a new lease with the property owners; (b) the Village purchases the Old Post Office Building from the property owners; or (c) the Given Book Shop has been removed from the building and the Village has no further use of the building relative to accommodating expansion and renovation of the library and archives services. Corporation will operate the Given Book Shop located therein for as long as

both the Corporation and the Village agree that it is necessary or beneficial. After the Transfer Date, any profits from the Book Shop together with the monthly lease payments from The Roast Office which is the Corporation's subtenant for a portion of the Premises will be given to the Village to support the Library and Archives. Corporation shall be obligated to remove the Book Store from the Old Post Office Building no later than 31 December 2023.

In addition, the Village and the Corporation have agreed (a) that the Transfer Date set forth in Section 2 of the Agreement will occur no later than April 18, 2022, rather than April 15, 2022, as currently stated and (b) that the Corporation will be allowed to retain $35,000 as working capital rather than $20,000 currently set forth in Schedule 2 iii) of the Agreement.

IN WITNESS WHEREOF, the Parties have executed this Amendment to the Agreement,

this the __ day of ____________, 2022.

CORPORATION	THE VILLAGE
(Signature) 2/21/22	(Signature)