

TUESDAY, OCTOBER 16, 2012
TOWN OF SAWMILLS REGULAR COUNCIL MEETING
6:00 PM

COUNCIL PRESENT

Bob Gibbs
Trena McRary Kirby
Donnie Potter
Joe Wesson
Jeff Wilson
Johnny Wilson

STAFF PRESENT

Seth Eckard
Susan Nagle
Henry Morphis

CALL TO ORDER: Mayor Bob Gibbs called the meeting to order.

INVOCATION: Pastor David Woods gave the invocation.

PLEDGE OF ALLEGIANCE: Mayor Gibbs led the Pledge of Allegiance.

ADOPT AGENDA: Mayor Gibbs asked for a motion to adopt the agenda.

Trena McRary Kirby made a motion, and Donnie Potter seconded, to adopt the agenda. All were in favor.

APPROVE SEPTEMBER 18, 2012 REGULAR MEETING MINUTES: Mayor Gibbs asked for a motion to approve the September 18, 2012 regular meeting minutes.

Joe Wesson made a motion, and Donnie Potter seconded, to approve the minutes. All were in favor.

PUBLIC COMMENT: Mayor Gibbs asked if anyone wished to speak during public comment.

No one wished to speak.

RECOGNITIONS:

YARD OF THE MONTH WINNERS: Mayor Bob Gibbs announced Dennis and Pearl Setzer, from the 28630 zip code, and Michael and Wendy Smith, from the 28638 zip code, as the October Yard of the Month winners. Mayor Gibbs presented Mrs. Setzer with a certificate and stated that since Mr. and Mrs. Smith were not present, their certificate would be available at the Town Hall for pick up.

No Council action was required.

RECYCLE REWARDS WINNER: Town Administrator Seth Eckard announced Burl and Nancy Earp as the October Recycle Rewards winner. Administrator Eckard stated a credit of twenty-eight dollar (\$28.00) would be added to Mr. and Mrs. Earp's sanitation bill and their certificate would be available at the Town Hall for pick up.

No Council action was required.

FINANCIAL MATTERS:

ADOPT PROPOSED RESOLUTION FOR UNDESIGNATED FUND BALANCE: Finance Officer Karen Clontz stated the enclosed resolution establishes authorization to insure Council maintains the undesignated fund balance at, or above 33%, of projected operating expenses. That percentage amount represents about four months of operating expense which would cover costs should an emergency arise.

Donnie Potter made a motion, and Joe Wesson seconded, to adopt the Resolution for Undesignated Fund Balance. All were in favor.

ADOPT PROPOSED RESOLUTION FOR THE NC DEBT SETOFF PROGRAM AND PROPOSED AGREEMENT WITH THE NORTH CAROLINA LGC: Finance Officer Karen Clontz stated the enclosed resolution and agreement with the NC Local Government Commission (NCLGC) is for the Debt Setoff Clearinghouse Program. The Debt Setoff Program allows the Clearinghouse to collect any unpaid utility bills or legal debts owed to the Town in the amount of fifty dollars (\$50.00) or more. The money owed along with administrative fees would come from a person's State income tax refund.

Trena McRary Kirby made a motion, and Donnie Potter seconded, to adopt the resolution for the NC Debt Setoff Program and Agreement with the NCLGC. All were in favor.

PUBLIC HEARING: ADOPT PROPOSED RESOLUTION FOR A CDBG FUNDING APPLICATION:

OPEN PUBLIC HEARING: Mayor Gibbs asked for a motion to open the public hearing.

Donnie Potter made a motion, and Joe Wesson seconded, to open the public hearing. All were in favor.

STAFF RECOMMENDATIONS: Mayor Bob Gibbs introduced Sherry Long with the WPCOG (Western Piedmont Council of Governments).

Sherry stated that The Haystation, LLC, located in the Town, and the WPCOG have been working together on a Rural Center Grant. There are also some CDBG (Community Development Block Grant) funds available for job creations.

John Pritchard, owner and CEO of The Haystation, LLC has requested the Town apply for CDBG funds in the amount of \$250,000.00 on behalf of The Haystation, LLC. The grant provides \$25,000.00 for every new job created, which may be used for a variety of activities including the purchase of equipment. There would be liens put against any equipment purchased until ten jobs have been created. Once the ten jobs have been created the liens would be forgiven and any equipment purchased would then belong to The Haystation, LLC.

PUBLIC COMMENT: Mayor Gibbs asked if anyone wished to speak on the proposed Resolution for a CDBG Funding Application.

No one wished to speak.

CLOSE PUBLIC HEARING: Mayor Gibbs asked for a motion to close the public hearing.

Donnie Potter made a motion, and Johnny Wilson seconded, to close the public hearing. All were in favor.

COUNCIL ACTION: Joe Wesson made a motion, and Donnie Potter seconded, to adopt a Resolution for a CDBG Funding Application. All were in favor.

DISCUSSION:

ADOPT PROPOSED AGREEMENT WITH THE HAYSTATION, LLC: The enclosed Job Creation Agreement states The Haystation, LLC must create ten jobs, which should be maintained for at least a six-month period. The jobs would be monitored through unemployment records and 70% of all people hired must be low to moderate income.

Donnie Potter made a motion, and Joe Wesson seconded, to adopt the agreement with The Haystation, LLC. All were in favor.

ADOPT PROPOSED RESOLUTION ADOPTING THE MUNICIPAL RECORDS RETENTION AND DISPOSITION SCHEDULE: The enclosed resolution is to adopt the Municipal Records Retention and Disposition Schedule, as updated by the North Carolina Department of Cultural Resources, in accordance with the provisions of Chapters 121 and 132 of the North Carolina General Statutes. A copy of which is on file in the office of the Town Clerk.

Jeff Wilson made a motion, and Donnie Potter seconded, to adopt the Resolution to Adopt the Municipal Records Retention and Disposition Schedule as updated. All were in favor.

ADOPT PROPOSED FLOOD DAMAGE PREVENTION ORDINANCE AND INTERLOCAL AGREEMENT WITH CALDWELL COUNTY: The previously adopted Flood Damage Prevention Ordinance and Interlocal agreement with Caldwell County did not include provisions that state the County will **only administer** the Town's Flood Damage Prevention Ordinance. Therefore, FEMA (Federal Emergency Management Agency) has requested the Town adopt the enclosed ordinance and Interlocal agreement with those provisions.

Trena McRary Kirby made a motion, and Johnny Wilson seconded, to adopt the Flood Damage Prevention Ordinance as well as an Interlocal Agreement with Caldwell County. All were in favor.

ADOPT PROPOSED RESOLUTION OF INTENT FOR AN APPLICATION TO PARTICIPATE IN THE NATIONAL FLOOD INSURANCE PROGRAM: The enclosed Resolution of Intent for an Application to Participate in the National Flood Insurance Program will need to be adopted upon approval of the Flood Damage Prevention Ordinance and Interlocal agreement with Caldwell County.

Joe Wesson made a motion, and Jeff Wilson seconded, to adopt a Resolution of Intent for an Application to participate in the National Flood Insurance Program. All were in favor.

PUBLIC WORKS:

ADOPT PROPOSED WIRELESS COMMUNICATIONS AGREEMENT WITH UTILITY SERVICE COMMUNICATIONS CO., INC.: The enclosed Wireless Communications Agreement states that Utility Service Communications Co., Inc. will market the Towns water tower for lease by cell phone companies. The Town could receive up to 70% of the revenue generated from the lease.

Trena McRary Kirby made a motion, and Donnie Potter seconded, to adopt the wireless communications agreement with Utility Service Communications Co., Inc. All were in favor.

PLANNING MATTERS:

RECOMMENDATIONS FOR ALTERNATE BOARD OF ADJUSTMENT MEMBERS: Mayor Gibbs asked Council if anyone had any recommendations for two Board of Adjustment members to serve as alternates. One member would reside inside the Town limits and one member would reside within the Town's ETJ (Extra-Territorial Jurisdiction).

Mr. Reid Lingerfelt, who resides inside the Town limits, and Mr. Walter Moore, who resides within the ETJ (Extra-Territorial Jurisdiction) of the Town, have both filled out an application to serve as alternate members. There were no recommendations from Council.

Donnie Potter made a motion, and Joe Wesson seconded, to appoint Mr. Lingerfelt and Mr. Moore to serve on the Board of Adjustment as alternate members. All were in favor.

PUBLIC COMMENT: Mayor Gibbs asked if anyone wished to speak during public comment.

No one wished to speak.

UPDATES:

ADMINISTRATOR'S REPORT: Town Administrator Seth Eckard made the following announcements:

- The annual Veterans Day Observance Ceremony will be held at the Sawmills Veterans Memorial Park located on Waterworks Road on Saturday, November 10th at 10:30 am.
- Some of the Council members and staff will attend the NCLM (North Carolina League of Municipalities) in Charlotte on October 22nd and 23rd.
- Members from the UFO (Unifour Flying Objects) Club held their first workday today with Public Works. The early part of October was spent in the planning stages, putting in surveying tape to mark the fairways. Club members made paths today and will hold another workday in the next day or two.
- The Christmas parade will be held on Saturday, December 1st at 10:00 am.
- The Town will hold their 1st annual Christmas tree lighting ceremony in the Farmers Market field on Tuesday, December 4th at 6:30 pm.
- If anyone is looking for things to do in Sawmills, there is Zombie Paintball at Marx Industries and the Horror Fields across the Street, there is a Pumpkin Patch at the Wilson Farm.

COUNCIL COMMENT: Mayor Gibbs made the following announcements:

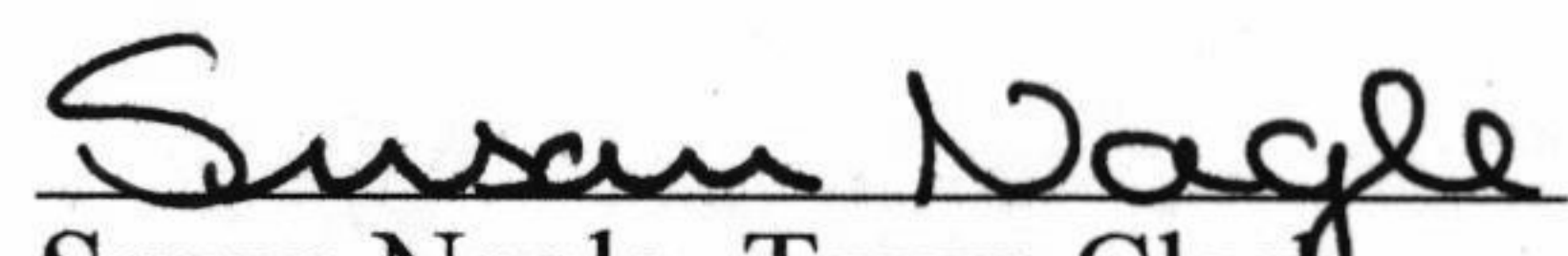
- The Veterans Day ceremony will include a guest speaker, a performance by a choir, a performance of the National Anthem, the Honor Guard, a twenty-one gun salute, and taps will be played with lunch served at the conclusion.
- The Sawmills Farmers Market will have an antique tractor show on October 30th and the kids may wear their costumes and trick or treat.
- The Sawmills Volunteer Fire and Rescue Department will hold their annual Ham Day fundraiser on Saturday, November 3rd from 6:00 am - 2:00 pm.

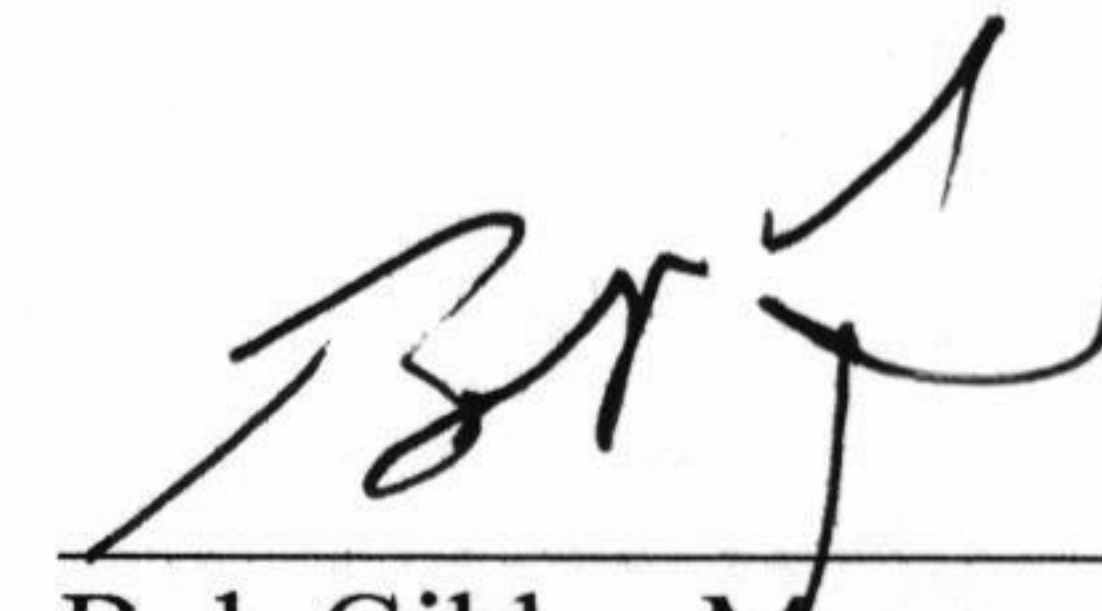
Mayor Gibbs asked if anyone on the Council wished to speak.

Councilwoman Trena McRary Kirby thanked everyone for coming to the Council meeting encourages everyone to attend.

ADJOURN: Mayor Gibbs asked for a motion to adjourn.

Jeff Wilson made a motion, and Joe Wesson seconded, to adjourn the meeting. All were in favor.


Susan Nagle, Town Clerk


Bob Gibbs, Mayor



MAYOR
Bob Gibbs

TOWN ADMINISTRATOR
Seth Eckard

**TOWN
COUNCIL**

Johnny Wilson, Mayor Pro-Tem
Trena McRary Kirby
Donnie Potter
Joe Wesson
Jeff Wilson

Town of Sawmills 4076 US Highway 321-A * Sawmills NC * (828)396-7903 * (828)396-8955 fax

**TOWN COUNCIL
TOWN OF SAWMILLS**

**A RESOLUTION OF THE TOWN COUNCIL
OF THE TOWN OF SAWMILLS, NORTH CAROLINA
ESTABLISHING AUTHORIZATION
TO INSURE MAINTENANCE OF THE
UNDESIGNATED FUND BALANCE AT OR ABOVE 33% OF
PROJECTED OPERATING EXPENSES**

WHEREAS, the Town Council of the Town of Sawmills, North Carolina recognizes the vital importance of sound financial management; and

WHEREAS, one of the primary keys to financial security is the maintenance of an adequate fund balance in the General Fund.

NOW, THEREFORE, BE IT RESOLVED, that the Undesignated Fund Balance of the Town's General Fund shall not fall below 33% of the total projected operating expenses as authorized by the governing body prior to the beginning of upcoming fiscal years.

BE IT FURTHER RESOLVED, that if the Undesignated Fund Balance of the Town's General Fund should be projected to fall below the above referenced amount, during upcoming fiscal years, then the Town Council shall establish a proposed tax rate that will insure maintenance of the Undesignated Fund Balance at or above 33% of projected operating expenses.

Unanimously adopted this 16th day of October, 2012.

TOWN OF SAWMILLS

By: _____

Mayor

ATTEST

Susan Nagle
Town Clerk





MAYOR
Bob Gibbs

TOWN ADMINISTRATOR
Seth Eckard

**TOWN
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TOWN OF SAWMILLS

Resolution adopting the NC Local Government Debt Setoff Program

Whereas, NCGS Chapter 105A, Setoff Debt Collection Act, authorizes the North Carolina Department of Revenue to cooperate in identifying debtors who owe money to qualifying local agencies and who are due refunds from the Department of Revenue; and

Whereas, the law authorizes the setting off of certain debts owed to qualifying local agencies against tax refunds; and

Whereas, the North Carolina Association of County Commissioners and the North Carolina League of Municipalities have jointly established a clearinghouse to submit debts on behalf of the Local Agency of the Town of Sawmills as defined in G.S 105A -2 (6), effective October 16, 2012 and thereafter as provided by law;

Now Therefore, be it Resolved by the Local Agency of the Town of Sawmills will participate in the debt setoff program and hereby designates the Finance Officer as the person to hold hearings and conduct necessary proceedings.

The Mayor, Town Administrator and Finance Officer are hereby authorized to execute such documents and agreements as necessary to participate in the debt setoff program.

Adopted by the **Town of Sawmills Town Council** on the 16th day of October, 2012.

Bob Gibbs, Mayor

ATTEST:

Susan Nagle, Town Clerk

**Memorandum of Understanding and Agreement
NC Local Government Debt Setoff Clearinghouse Program**

This agreement is entered into this 16th day of OCTOBER, 2012 by and between the TOWN OF SAWMILLS ("CLAIMANT AGENCY") and the North Carolina League of Municipalities and the North Carolina Association of County Commissioners acting as the North Carolina Local Government Debt Setoff Clearinghouse ("CLEARINGHOUSE")

RECITALS

WHEREAS, the Setoff Debt Collection Act, ("ACT"), Article I of Chapter 105A of the North Carolina General Statutes, authorized the North Carolina Department of Revenue ("DEPARTMENT"), and claimant agencies to cooperate in identifying debtors who owe money to the State or to a qualifying local agency and who qualify for State income tax refunds; and established procedures for setting off against any refund the sum of any debt owed to the State or local government; and

WHEREAS, pursuant to NCGS 105A-3, CLEARINGHOUSE has registered with DEPARTMENT to submit delinquent debts on behalf of a local agency and has thereby become authorized to submit delinquent debts on behalf of a local agency under the ACT; and

WHEREAS, CLAIMANT AGENCY is a local agency authorized to submit a debt owed to it pursuant to the ACT; and

WHEREAS, CLAIMANT AGENCY desires to enter into this agreement with CLEARINGHOUSE in order to participate under the Setoff Debt Collection Act to increase the collection rate of delinquent debts owed to CLAIMANT AGENCY; and

WHEREAS, CLEARINGHOUSE has agreed to submit delinquent debts on behalf of CLAIMANT AGENCY.

NOW THEREFORE, in consideration of the mutual covenants and agreements, terms and conditions contained herein, CLAIMANT AGENCY and CLEARINGHOUSE mutually agree as follows:

TERM/TERMINATION

This memorandum of understanding and agreement shall remain and continue in full force and effect from year to year unless modified or terminated in writing by either party upon 90 days written notice to the other party. Upon termination of this agreement all sums due and owing from either party to the other shall remain a lawful obligation of the party and be due and payable. CLEARINGHOUSE will erase all claimant data files from its debt setoff system upon termination.

II. REPRESENTATIONS AND OBLIGATIONS OF CLAIMANT AGENCY

A. CLAIMANT AGENCY hereby designates, appoints, and authorizes CLEARINGHOUSE to process delinquent debts to be submitted to Department. For purposes of the Debt Setoff Clearinghouse Program, "DELINQUENT DEBT" is defined to mean:

- (i) a single account or monetary obligation which is at least \$50 owed by a debtor to a claimant agency; or,
- (ii) a group of accounts or single monetary obligations, each of which is less than \$50, that have been combined to total at least \$50, owed by the same debtor to a claimant agency; or,
- (iii) a combination of two or more accounts or monetary obligations, one of which is at least \$50 and the remainder of which when added together equal less than \$50, owed by the same debtor to a claimant agency.

Each account or monetary obligation may have accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for the sum. To become a delinquent debt a period of 60 days must have elapsed between the time CLAIMANT AGENCY declares all of the applicable accounts or monetary obligations delinquent and the date the delinquent debt is submitted to CLEARINGHOUSE for collection.

B. CLAIMANT AGENCY shall comply with the provisions of the ACT prior to the submission of a debt to CLEARINGHOUSE for setoff and shall provide CLEARINGHOUSE the date of compliance with its debt submission file.

C. CLAIMANT AGENCY shall, upon execution of this agreement file a "participation form" with CLEARINGHOUSE designating a debt setoff coordinator and a debt setoff contact. Such participation form shall be updated on an annual basis and at any time there is a change in the information provided thereon. CLEARINGHOUSE shall administratively provide participation forms, as needed, for use by CLAIMANT AGENCY. The debt setoff coordinator shall be the designated local government employee authorized to receive notices and communication from CLEARINGHOUSE to insure that the requirements of this agreement and the requirements of the Act are met. The debt setoff coordinator shall supply CLEARINGHOUSE with any and all information that in the opinion of CLEARINGHOUSE is necessary for the proper implementation of this agreement. The debt setoff contact will receive all referrals from debtors.

D. CLAIMANT AGENCY shall use a file specified by CLEARINGHOUSE to prepare "debt files" and adjustments to debt files that CLAIMANT AGENCY certifies to CLEARINGHOUSE are owed to CLAIMANT AGENCY and that CLAIMANT AGENCY desires to have CLEARINGHOUSE submit to DEPARTMENT for setoff as shown on a document to be administratively supplied by CLEARINGHOUSE entitled "File Layouts for Submission of Debts from CLAIMANT AGENCY to CLEARINGHOUSE." If, in the opinion of CLEARINGHOUSE, changes to the file format are necessary to carry out this program, CLEARINGHOUSE shall timely notify the CLAIMANT AGENCY. The CLAIMANT AGENCY covenants and agrees that it shall immediately implement any changes required by CLEARINGHOUSE. Data file structure will mirror requirements of DEPARTMENT

but may include other fields such as date of debt cancellation. CLEARINGHOUSE will organize capability of date and time stamping debt for priority setting.

- E. CLAIMANT AGENCY shall transmit a debt file to CLEARINGHOUSE in a method and format acceptable to CLEARINGHOUSE. CLAIMANT AGENCY may choose one of three methods for data transmission: (1) customized software application provided by CLEARINGHOUSE; (2) file transfer protocol; and (3) hardcopy documents (hardcopy will require payment of costs of data entry services).
- F. CLAIMANT AGENCY shall comply with the notice and hearing procedures set forth in G.S. 105A-5 prior to the submission of a debt file to CLEARINGHOUSE. Debt files must be received on or before Friday at 5:00 p.m. in order to be included in the following week's submissions by CLEARINGHOUSE to DEPARTMENT.
- G. CLAIMANT AGENCY shall, after a debt file has been submitted to CLEARINGHOUSE, advise CLEARINGHOUSE of any debtor repayment or protests and instructions to delete or reduce a delinquent debt by submitting a new debt file by close of business on the day the repayment or protest and instructions to delete or reduce a delinquent debt is received.

III. REPRESENTATIONS AND OBLIGATIONS OF CLEARINGHOUSE

- A. CLEARINGHOUSE shall, upon receipt of CLAIMANT AGENCY'S debt file, compile the information and submit the data to the DEPARTMENT on Monday of each week.
- B. CLEARINGHOUSE shall remit to the CLAIMANT AGENCY funds received from DEPARTMENT within a reasonable time from the date of receipt from DEPARTMENT. Thereafter, CLEARINGHOUSE shall provide the CLAIMANT AGENCY an accounting of funds collected which will include the name of the debtor, the debtor's social security number, and the amount of the debt setoff as shown on the "File Layout for Submission of Debts from CLAIMANT AGENCY to CLEARINGHOUSE."
- C. CLEARINGHOUSE will provide CLAIMANT AGENCY an entity version of the application software system, which will allow CLAIMANT AGENCY to do its own in-house data entry for transfer to CLEARINGHOUSE. CLEARINGHOUSE will provide free upgrades of the application software periodically, as needed. The entity version of the application system will provide both a comprehensive online help system and a written Installation/Set-up user's guide. A Pentium class computer with Windows 95 or above is required by CLAIMANT AGENCY using the application software system.
- D. CLEARINGHOUSE will provide a licensed copy of PKWARE'S PKZIP to CLAIMANT AGENCY. This software provides for compression and encryption for the security of the data to be sent to CLEARINGHOUSE. CLEARINGHOUSE will also compress and encrypt the data using PKZIP before returning the data to CLAIMANT AGENCY.

- E. CLEARINGHOUSE will provide a toll free telephone number for use by CLAIMANT AGENCY to receive technical support and provide information on the use of software applications and the processing of debts for submission to DEPARTMENT. Technical support and information shall be available from 8:00 a.m. until 5:00 p.m. EST, Monday through Friday, excluding holidays. Voice mail and e-mail access shall also be provided as a part of the support/information response system.
- F. CLEARINGHOUSE will provide, at no cost to CLAIMANT AGENCY, technical support to CLAIMANT AGENCY, including site visits when advisable or appropriate. CLEARINGHOUSE will provide a first-level of support by telephone to attempt to diagnose the problems. However, if first-level support is unsuccessful, an on-site visit will be made within four (4) business days.
- G. CLEARINGHOUSE will provide, at no cost to CLAIMANT AGENCY, a training seminar of one to two days each year for CLAIMANT AGENCY'S staff on the use of the debt setoff application system.

IV. UNDERSTANDING OF PARTIES

- A. To recover the costs incurred by DEPARTMENT in collecting debts, it imposes a collection assistance fee on each debt collected through setoff. DEPARTMENT must collect this fee as part of the debt and retain it. To recover the costs incurred by claimant agencies in submitting debts for collection, a local collection assistance fee of \$15 dollars is imposed on each delinquent debt submitted to DEPARTMENT and collected through set off. DEPARTMENT must collect this fee as part of the debt and remit it to CLEARINGHOUSE. If CLAIMANT AGENCY is due a refund of more that \$50 dollars, DEPARTMENT sets the tax refund off in the amount of the delinquent debt plus its collection assistance fees and the local collection assistance fee. If DEPARTMENT is able to collect only part of a debt through setoff, its collection assistance fee has priority over the local collection assistance fee and over the remainder of the delinquent debt. The local collection assistance fee has priority over the remainder of the delinquent debt.
- B. DEPARTMENT has priority over all other claimant agencies whenever it is a competing agency for a refund. State agencies have priority over local agencies. When multiple claims among local agencies are submitted for setoff to CLEARINGHOUSE, the claims have priority based on the date and time each local agency requested CLEARINGHOUSE to submit debts on its behalf. The date and time of submission of the debt file shall constitute the date and time to establish the priority. CLEARINGHOUSE shall use submission receipt date and time of original file for priority date and time of specific debt. Additions to a delinquent debt through accrued interest and/or penalties will not change the priority date. Any "new" delinquent debt for same CLAIMANT AGENCY will have a new submission date and time, including new debts for a previously submitted debtor. A delinquent debt submitted to CLEARINGHOUSE that has been reduced, by setoff or otherwise, to an amount of less than \$50 may lose its existing priority. If such delinquent debt is thereafter combined with a future delinquent debt submission for the same debtor and thereby becomes eligible for setoff, it shall be treated as a part of the "new" debt and shall be assigned priority based on the future submission. If such delinquent debt,

through the addition of interest or penalties, is thereafter increased to an amount of at least \$50 and thereby becomes eligible for set off, such debt shall retain its original priority.

- C. CLEARINGHOUSE shall not accept a debt file that is not prepared as specified by CLEARINGHOUSE or where a period of 60 days has not elapsed between the time the CLAIMANT AGENCY declares the debt delinquent and the date the delinquent debt is submitted to CLEARINGHOUSE for collection. CLEARINGHOUSE agrees to submit delinquent debts to Department; provided, however the CLAIMANT AGENCY is solely responsible for complying with the ACT, specifically including the notice and hearing provisions and other requirements of the act.
- D. The CLAIMANT AGENCY acknowledges that CLAIMANT AGENCY is responsible for the notice and hearing requirements of the ACT. CLAIMANT AGENCY affirms to CLEARINGHOUSE that it will comply with the ACT, specifically including the notice and hearing provisions required by the ACT prior to the submission of a delinquent debt to CLEARINGHOUSE for setoff.
- E. Successful interception funds will be disbursed through Capital Management of the Carolinas (Capital Management), the agency that oversees administration of the North Carolina Capital Management Trust. CLAIMANT AGENCY shall have an account with Capital Management prior to the submission of a delinquent debt to CLEARINGHOUSE and shall retain said account for as long as this agreement shall be in full force and effect.

V. COMPENSATION

- A. CLEARINGHOUSE shall receive as compensation for its services the \$15 local collection assistance fee that is imposed by DEPARTMENT on each delinquent debt that is submitted by CLEARINGHOUSE and collected through a successful interception. "SUCCESSFUL INTERCEPTION" is defined to mean the DEPARTMENT matched all or a portion of a debt submitted by CLEARINGHOUSE against a State tax refund for interception and payment towards a delinquent debt owed to CLAIMANT AGENCY.
- B. CLAIMANT AGENCY, by the execution of this agreement, authorizes CLEARINGHOUSE to retain the \$15 local collection assistance fee imposed on each delinquent debt for each successful interception. CLAIMANT AGENCY further authorizes CLEARINGHOUSE to retain the local collection assistance fee collected by it in the event CLAIMANT AGENCY is required, by statute or otherwise, to return to a debtor funds that have been set off by DEPARTMENT.
- C. CLAIMANT AGENCY may not combine individual delinquent debts of at least \$50 each by delinquent debtor name and social security number for submission to CLEARINGHOUSE. Multiple debts of less than \$50 owned by the same debtor to a claimant agency, and one debt of less than \$50 and a debt of at least \$50 may be combined to meet the \$50 threshold and thereby constitute a delinquent debt which may be submitted to CLEARINGHOUSE.

- D. Existing submitted delinquent debts may be adjusted upwards for interest, fees etc., and will retain their original priority order, but not a later new delinquent debt, even if from the same debtor. New debts will be date stamped by CLEARINGHOUSE with the later submission date.
- E. In the event of partial payment of a delinquent debt, the CLAIMANT AGENCY may continue to submit the balance of the debt, if \$50 or more, as a part of subsequent data files. If the delinquent debt is reduced to an amount of less than \$50, it may be combined with a future delinquent debt submission for the same debtor, and will be treated as a part of the "new" delinquent debt for purposes of priority and imposition of the local collection assistance fee.

VI. INDEMNIFICATION/REIMBURSEMENT

CLAIMANT AGENCY fully understands and warrants to CLEARINGHOUSE that by submission of any delinquent debt submitted to CLEARINGHOUSE for setoff CLAIMANT AGENCY has complied with all of the provisions of the ACT and this agreement. The CLAIMANT AGENCY shall hold CLEARINGHOUSE free and harmless and shall indemnify CLEARINGHOUSE against any and all damages, claims, of action, injuries, actions, liability, or proceedings arising from the failure of CLAIMANT AGENCY to so perform. CLAIMANT AGENCY shall be responsible for the repayment of any sums received by it, including interest, penalties and court costs, to a debtor in the event a court of competent jurisdiction rules that said repayment is due to a debtor or debtors.

VII. NOTICE

Any notice required to be given under this Agreement shall be sent by certified or registered mail postage prepaid to: ADMINISTRATOR SETH ECKARD (debt setoff coordinator) 4076 US HWY 321-A SAWMILLS, NC 28630 (local agency) and NCLM, P.O.B. 3069, Raleigh, NC 27602-3069 and NCACC, 215 N. Dawson St Raleigh, NC 27603, in the case of CLEARINGHOUSE.

VIII. ASSIGNMENT

This Agreement is not assignable by either party.

IX. CONFIDENTIAL INFORMATION

In the course of performance of this Agreement, the parties may find it necessary to disclose to the other party certain confidential information ("Confidential Information"). Confidential Information includes, but is not limited to, information relating to the parties' employees, trade secrets, customers, vendors, finances, operations, products, and other business information. The following terms apply to Confidential Information: (i) the non-disclosing party shall treat as confidential and use the same degree of care as it employs in the protection of its own similar confidential information, but in no event less than a reasonable degree of care; and, (ii) the non-disclosing party will only use the information in connection with its business dealings with the disclosing party, and shall

disclose information only to employees or contractors having a need to know and who agree to be bound by the terms of this Section, unless otherwise authorized in writing by the disclosing party. Information shall not be subject to these terms if: (i) it is in the public domain at the time of disclosure, or enters the public domain without breach of this Agreement; (ii) it is known to the non-disclosing party prior to the disclosure, or it is independently developed by the non-disclosing party; (iii) it is obtained by non-disclosing party in good faith from a third party not under obligation of secrecy to the disclosing party; or, (iv) it is the subject of a court or government agency order to disclose, provided the non-disclosing party gives prompt notice to the disclosing party to allow the disclosing party to contest such order. The obligations set forth in this Section survive termination, rescission, non-renewal or expiration of this Agreement.

All information, including but not limited to printed, written, oral or computer-formatted information, which CLEARINGHOUSE may gain access to during the course of the performance of this Agreement shall be the property of CLAIMANT AGENCY, shall be held in the strictest confidence, and shall be used solely for the business purposes that are the subject of this Agreement. CLEARINGHOUSE shall maintain confidentiality of such information not only during the course of the performance of this Agreement, but following its termination.

X. MISCELLANEOUS

- A. This Agreement represents the full and final understanding of the parties with respect to the subject matter described herein and supersedes any and all prior agreements or understandings, written or oral, express or implied. This Agreement may be modified or amended only by a written statement signed by both parties.
- B. The laws of the State of North Carolina shall govern the terms and conditions of this Agreement. Should any dispute arise between the parties concerning any matter under this Agreement, such disputes shall be submitted to binding arbitration before the American Arbitration Association, in accordance with applicable rules.
- C. CLAIMANT AGENCY shall enter into no other contract for similar services with any other entity so long as this Agreement remains in effect.

- D. The CLAIMANT AGENCY shall be identified and contacted as follows:

Type of Agency (Check appropriate type)

- ☐ a. A county, to the extent it is not considered a State agency.
- ☒ b. A municipality.
- ☐ c. A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.
- ☐ d. A regional joint agency created by interlocal agreement under Article 20 of Chapter 160A of the General Statutes between two or more counties, cities, or both.
- ☐ e. A public health authority created under Part 1B of Article 2 of Chapter 130A of the General Statutes.
- ☐ f. A metropolitan sewerage district created under Article 5 of Chapter 162A of the General Statutes.
- ☐ g. A sanitary district created under Part 2 of Article 2 of Chapter 130A of the General Statutes.

Name of Agency: TOWN OF SAWMILLS

Director/Chief Exec Officer, etc.: ADMINISTRATOR SETH ECKARD

Address: 4074 US HIGHWAY 321-A

City: SAWMILLS Zip: 28630

Email Address: SECKARD@TOWNOFSAWMILLS.COM

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and date first above written, all by authority of their respective governing bodies.

TOWN OF SAWMILLS

(Local Agency)

By: [Signature]

(Authorizing Official)

Attest: [Signature]

(Clerk)



NORTH CAROLINA LOCAL GOVERNMENT
DEBT SETOFF CLEARINGHOUSE

By: _____

S. Ellis Hankins, Executive Director
NC League of Municipalities

By: _____

David F. Thompson, Executive Director
NC Association of County Commissioners

This instrument has been preaudited in the manner
required by the Local Government Budget
and Fiscal Control Act.

[Signature]
(Finance Officer)



MAYOR
Bob Gibbs

TOWN ADMINISTRATOR
Seth Eckard

**TOWN
COUNCIL**

Johnny Wilson, Mayor Pro-Tem
Trena McRary Kirby
Donnie Potter
Joe Wesson
Jeff Wilson

Town of Sawmills 4076 US Highway 321-A * Sawmills NC * (828)396-7903 * (828)396-8955 fax

**RESOLUTION FOR THE TOWN OF SAWMILLS
APPLICATION FOR COMMUNITY DEVELOPMENT BLOCK
GRANT FUNDING FOR THE SMALL BUSINESS
ENTREPRENEURIAL PROJECT**

WHEREAS, the Town of Sawmills Town Council has previously indicated its desire to assist in economic development efforts for small businesses/entrepreneurs within the County; and,

WHEREAS, THE Town of Sawmills Town Council has held two public hearings concerning the proposed application for Community Development Block Grant funding to benefit The Haystation, LLC;

WHEREAS, THE Town of Sawmills Town Council wishes the Town to pursue a formal application for Community Development Block Grant funding to benefit The Haystation, LLC; and the business will invest monies in the amount of \$122,592 (33% of the \$250,000 grant request) into the project as committed to in the application.

WHEREAS, THE Town of Sawmills Town Council certifies it will meet all federal regulatory and statutory requirements of the State of North Carolina Community Development Block Grant Program,

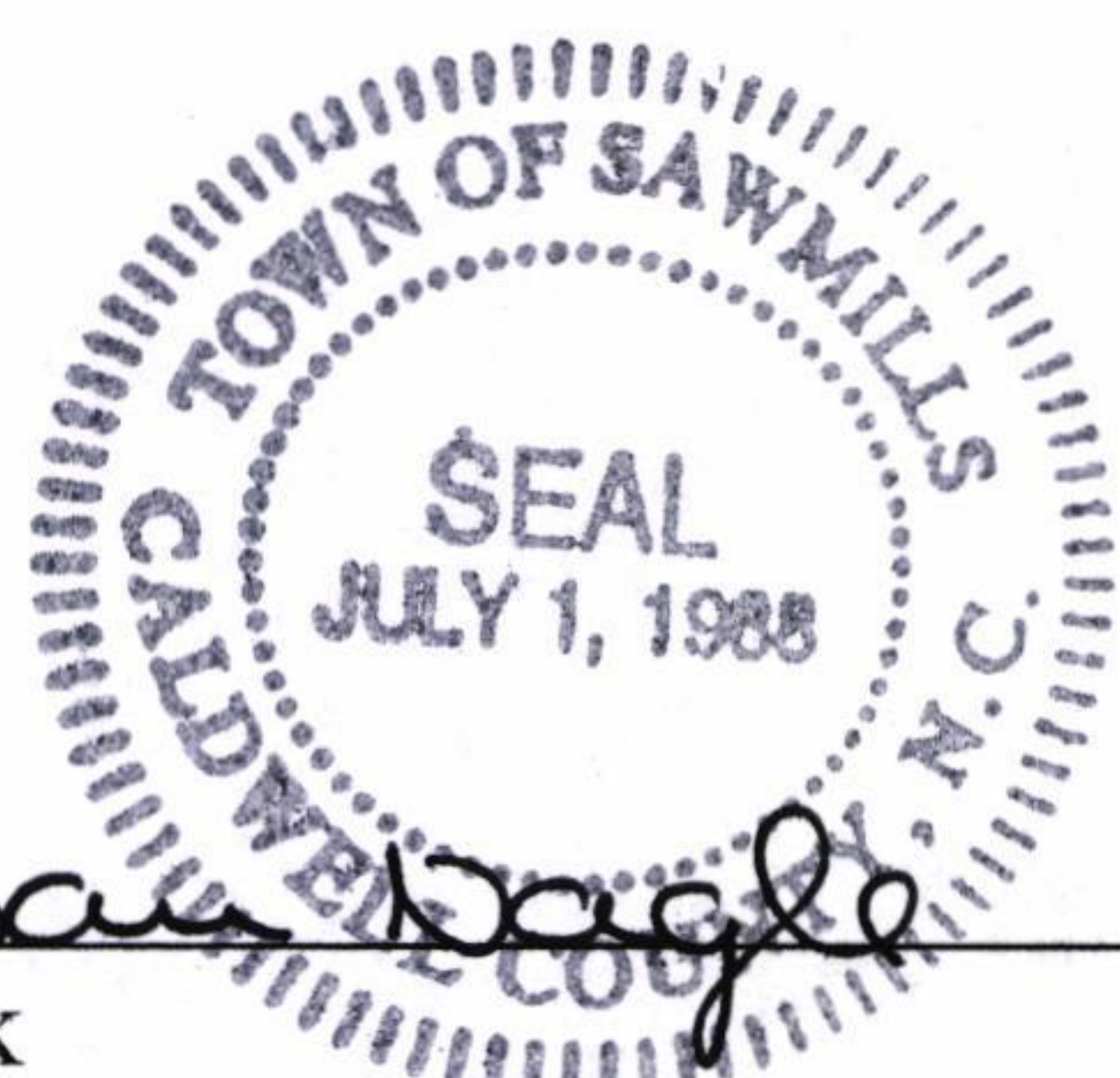
NOW, THEREFORE BE IT RESOLVED, by the Town Council that the Town of Sawmills is authorized to submit a formal application to the North Carolina Department of Commerce for approval of a Community Development Block Grant for Small Business & Entrepreneurial Assistance to the benefit of The Haystation, LLC.

Adopted this the 16th day of OCTOBER, 2012 in Sawmills, North Carolina.



Mayor

ATTEST:




Town Clerk

LEGALLY BINDING COMMITMENT-CREATING JOBS

STATE OF NORTH CAROLINA

TOWN OF SAWMILLS

THE HAYSTATION, LLC.

JOB CREATION AGREEMENT

THIS AGREEMENT (the "Agreement") is entered into as of the 16th day of OCTOBER, 2012 by and between The Haystation, LLC., a corporation authorized to transact business within the State of North Carolina (hereinafter referred to as the "Corporation") and the Town of Sawmills, North Carolina (hereinafter referred to as the "Applicant"). This Agreement will not become effective until all conditions placed upon the Applicant's funding approval are satisfied and funds are released by the Department of Commerce (hereinafter "DOC") pursuant to a Community Development Block Grant (hereinafter "CDBG") with the Applicant.

WITNESSETH

WHEREAS, the Applicant anticipates receiving a CDBG for Program Year 2012 from the DOC in the amount of \$250,000 for the project entitled ***Town of Sawmills The Haystation, LLC. Small Business Entrepreneurial Grant***, this grant will be used primarily to benefit low to moderate-income persons by financing activities under the Small Business and Entrepreneurial Assistance Grant project (the "Project") to be undertaken by the Applicant and the Corporation.

NOW, THEREFORE, in consideration of the promised and the mutual covenants and promises set forth herein, the Corporation and the Applicant hereby agree as follows:

I. AGREED ACTIONS

A. The Corporation shall execute its responsibilities as identified in the Corporation's narrative exhibits and the employment profiles contained in the Applicant's CDBG application to DOC. Those exhibits and commitments are incorporated herein by reference, as if set out in full. The Corporation agrees to create the jobs and complete the Project hiring's in a timely manner. The Corporation currently has continuing operations in the Town that employ twenty-two (22) full-time and (2) part-time people and the Corporation commits to employ ten (10) additional people by October 31, 2014.

The Corporation can request DOC verify the creation of the additional jobs stated above prior to October 31, 2014, and release the Corporation from further job creation documentation. In addition, the Corporation commits to employ persons whose household income is within low to moderate-income limits in seventy percent (70%) of all jobs stated above at the Corporation's Facility. The Corporation agrees that if it fails to create and maintain ten (10) new jobs prior to October 31, 2014 or verified by DOC, it will reimburse the Applicant for \$25,000, for each job not created.

The Corporation also agrees that if at the end of the grant agreement the number of prior low to moderate-income people employed at the Facility falls below fifty one percent (51%) of the total employment at the Facility, the entire grant amount will be due and payable to DOC by the Applicant. The Applicant's liability under this Agreement shall not exceed the dollar amount of the grant made by the Department of Commerce. If unforeseen calamity, an Act of God, or financial disaster is the cause of action under this section of the Agreement, the Corporation and the Applicant may appeal to DOC for an extraordinary modification of this responsibility. Such modification shall be at the discretion of the Secretary of the Department of Commerce. The requirement that persons of low to moderate income must hold a minimum of fifty-one percent (51%) of all jobs created cannot be waived.

B. Each party shall keep and maintain books, records, and other documents relating directly to the receipt and disbursement of grant funds and fulfillment of this Agreement.

C. Each party agrees that any duly authorized representative of the Applicant, DOC, the United States Department of Housing and Urban Development, and the Comptroller General of the United States shall, at all reasonable times, have access to and the right to inspect, copy, audit, and examine all of the books, records, and other documents relating to the grant and the fulfillment of the Agreement for a period of five (5) years following the completion of all close-out procedures respecting the CDBG funds, and the final settlement and conclusion of all issues arising out of the CDBG funds.

D. Notwithstanding anything herein to the contrary, the parties hereto acknowledge the due execution of the CDBG Grant Agreement between the Applicant and DOC and agree that any conflict between the provisions, requirements, duties, or obligations of this Agreement and the CDBG Grant Agreement shall be resolved in favor of the CDBG Grant Agreement.

II. ENFORCEMENT

A. If at the end of the approved project period the Corporation has failed to create the full number of job positions and low to moderate-income job positions presented in Agreed Actions Section I of this Agreement, or to incur the full level of private investment committed to in its grant application, as provided above, then the Corporation will pay to the Applicant an amount calculated in the manner set out in Section I-A of this Agreement.

III. PUBLIC RECORDS LAW

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed under Seal as of the date first above written.

The Haystation, LLC. (Corporation)



Owner, The Haystation, LLC.

Susan Neale (SEAL)
Clerk JULY 1, 1968 (SEAL)



OCTOBER 16, 2012
Date

Date _____



MAYOR
Bob Gibbs

TOWN ADMINISTRATOR
Seth Eckard

**TOWN
COUNCIL**

Johnny Wilson, Mayor Pro-Tem
Trena McRary Kirby
Donnie Potter
Joe Wesson
Jeff Wilson

Town of Sawmills 4076 US Highway 321-A * Sawmills NC * (828)396-7903 * (828)396-8955 fax

**STATE OF NORTH CAROLINA
COUNTY OF CALDWELL**

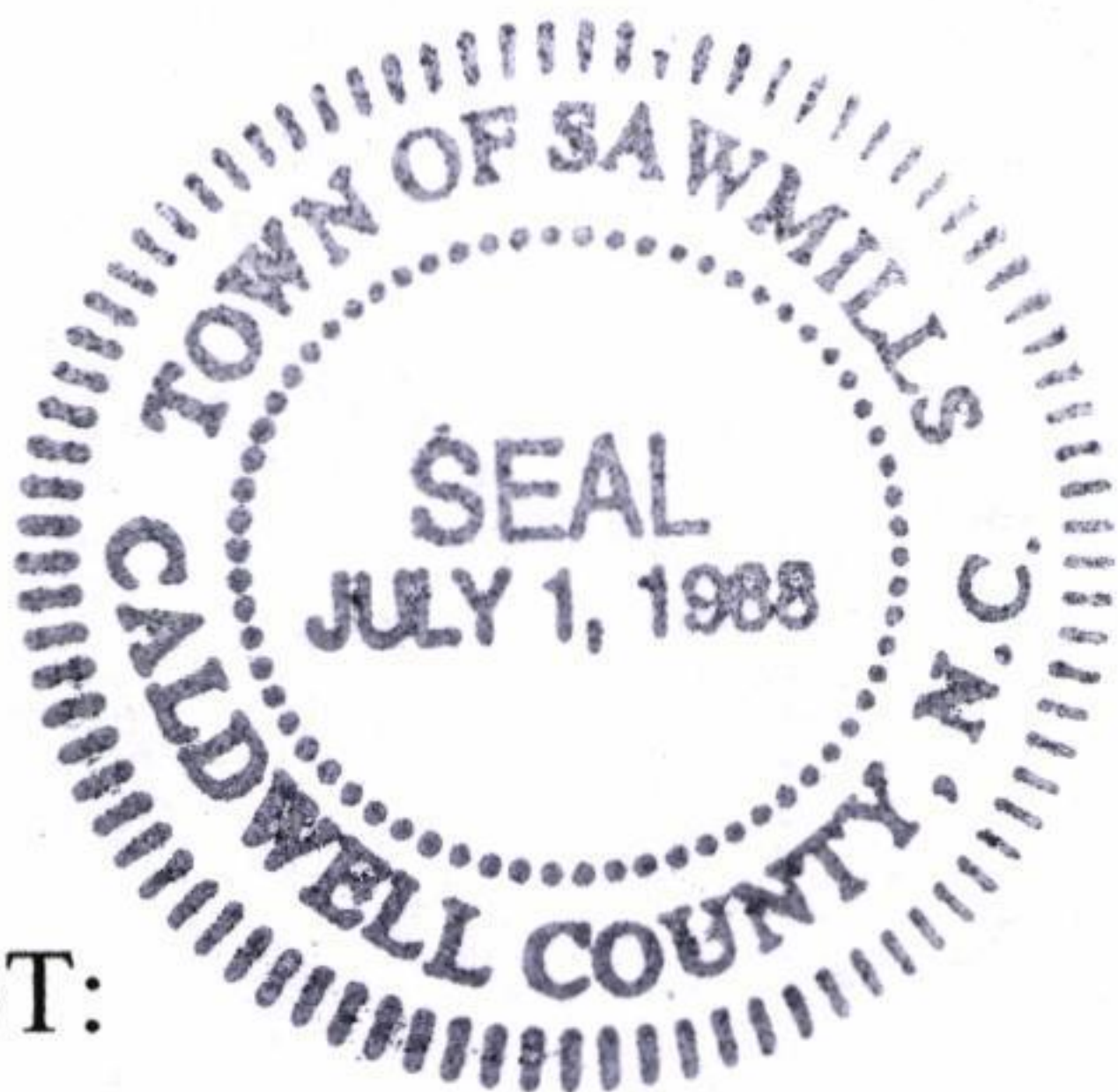
**TOWN COUNCIL
TOWN OF SAWMILLS, NORTH CAROLINA**

**RESOLUTION ADOPTING THE MUNICIPAL RECORDS
RETENTION AND DISPOSITION SCHEDULE**

NOW THEREFORE BE IT RESOLVED, by the Sawmills Town Council that the Council adopts the North Carolina Municipal Records Retention and Disposition Schedule, as updated by the North Carolina Department of Cultural Resources in accordance with the provision of Chapters 121 and 132 of the General Statutes of North Carolina, dated September 10, 2012, a copy of which is on file in the office of the Town Clerk.

NOW THEREFORE BE IT FURTHER RESOLVED, this schedule is to remain in effect from the date of approval until it is reviewed and updated.

Adopted this the 16th day of OCTOBER, 2012.



ATTEST:

Susan Nagle
Susan Nagle, Town Clerk

Bob Gibbs
Bob Gibbs, Mayor

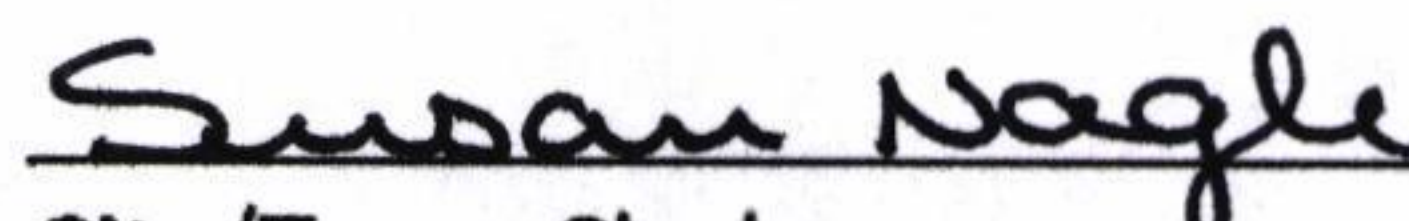
MUNICIPAL Records Retention and Disposition Schedule

The records retention and disposition schedule and retention periods governing the records series listed herein are hereby approved. In accordance with the provision of Chapters 121 and 132 of the *General Statutes of North Carolina*, it is agreed that the records do not and will not have further use or value for official business, research, or reference purposes after the respective retention periods specified herein and are authorized to be destroyed or otherwise disposed of by the agency or official having custody of them without further reference to or approval of either party to this agreement. However, records subject to audit or those legally required for ongoing official proceedings must be retained until released from such audits or official proceedings, notwithstanding the instructions of this schedule. ***Public records including electronic records not listed in this schedule are not authorized to be destroyed.***

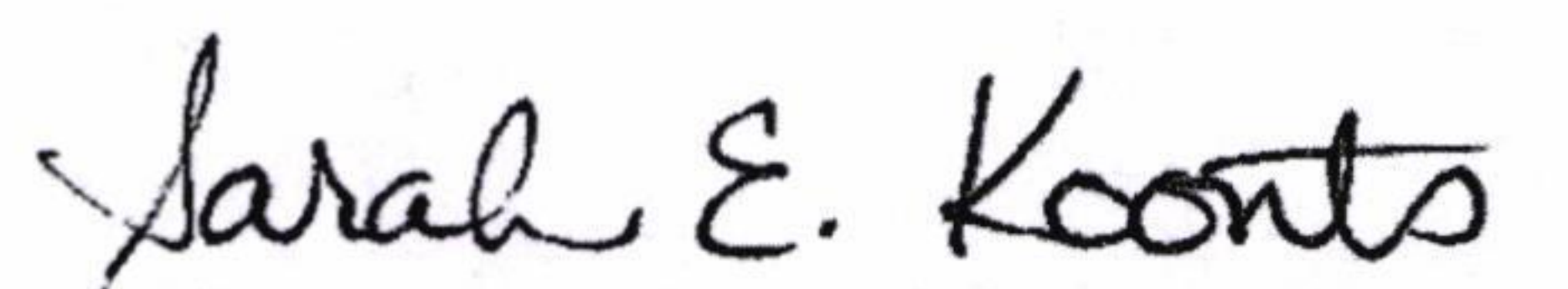
This local government agency and the Department of Cultural Resources agree that certain records series possess only brief administrative, fiscal, legal, research, and reference value. These records series have been designated by retention periods which allow these records to be destroyed when "*administrative value ends.*" The local government agency hereby agrees that it will establish and enforce internal policies setting minimum retention periods for the records that Cultural Resources has scheduled with the disposition instruction "*destroy when administrative value ends.*" If a municipality does not establish internal policies and retention periods, the municipality is not complying with the provisions of this retention schedule and is not authorized by the Department of Cultural Resources to destroy the records with the disposition instruction "*destroy when administrative value ends.*"

It is further agreed that these records may not be destroyed prior to the time periods stated; however, for sufficient reason they may be retained for longer periods. This schedule is to remain in effect from the date of approval until it is reviewed and updated.

APPROVAL RECOMMENDED

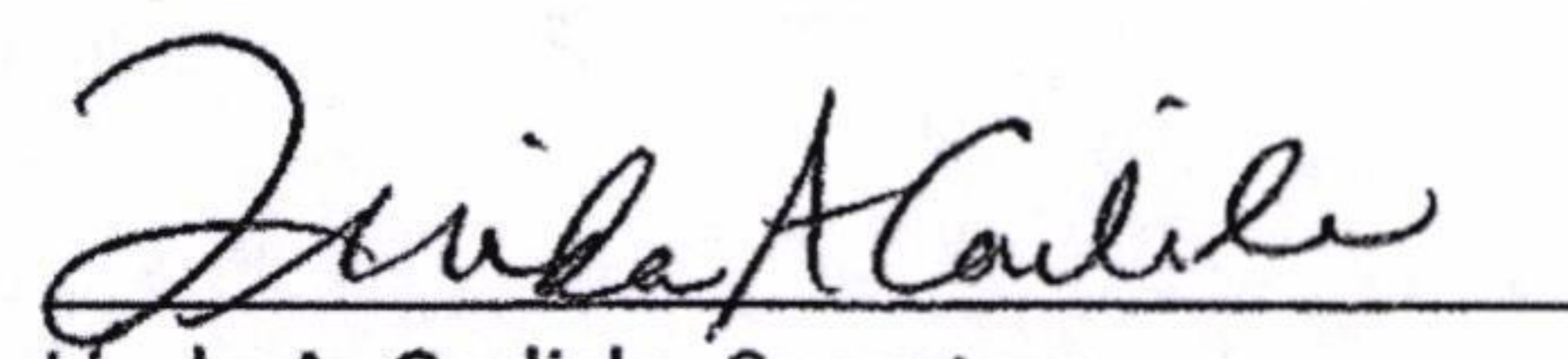

City/Town Clerk


Chief Administrative Officer/
City Manager


Sarah E. Koonts, Director
Division of Archives and Records

APPROVED


Mayor


Linda A. Carlisle, Secretary
Department of Cultural Resources

Municipality: TOWN OF SAWMILLS

September 10, 2012

The Town of Sawmills
Flood Damage Prevention Ordinance

ARTICLE 1. STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES.

SECTION A. STATUTORY AUTHORIZATION.

The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Parts 3, 5, and 8 of Article 19 of Chapter 160A; and Article 8 of Chapter 160A of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare.

Therefore, the Town Council of the Town of Sawmills, North Carolina, does ordain as follows:

SECTION B. FINDINGS OF FACT.

- (1) The flood prone areas within the jurisdiction of the Town of Sawmills are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- (2) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

SECTION C. STATEMENT OF PURPOSE.

It is the purpose of this ordinance to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

- (1) restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;
- (2) require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
- (3) control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
- (4) control filling, grading, dredging, and all other development that may increase erosion or flood damage; and
- (5) prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards to other lands.

SECTION D. OBJECTIVES.

The objectives of this ordinance are to:

- (1) protect human life, safety, and health;
- (2) minimize expenditure of public money for costly flood control projects;
- (3) minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) minimize prolonged business losses and interruptions;

- (5) minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas;
- (6) help maintain a stable tax base by providing for the sound use and development of flood prone areas; and
- (7) ensure that potential buyers are aware that property is in a Special Flood Hazard Area.

ARTICLE 2. DEFINITIONS.

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

“Accessory Structure (Appurtenant Structure)” means a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

“Addition (to an existing building)” means an extension or increase in the floor area or height of a building or structure.

“Appeal” means a request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance.

“Area of Shallow Flooding” means a designated Zone AO on a community's Flood Insurance Rate Map (FIRM) with base flood depths determined to be from one (1) to three (3) feet. These areas are located where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

“Area of Special Flood Hazard” see “Special Flood Hazard Area (SFHA)”.

“Base Flood” means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

“Base Flood Elevation (BFE)” means a determination of the water surface elevations of the base flood as published in the Flood Insurance Study. When the BFE has not been provided in a “Special Flood Hazard Area”, it may be obtained from engineering studies available from a Federal, State, or other source using FEMA approved engineering methodologies. This elevation, when combined with the “Freeboard”, establishes the “Regulatory Flood Protection Elevation”.

“Basement” means any area of the building having its floor subgrade (below ground level) on all sides.

“Building” see “Structure”.

“Chemical Storage Facility” means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

“Development” means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

“Disposal” means, as defined in NCGS 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

“Elevated Building” means a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

“Encroachment” means the advance or infringement of uses, fill, excavation, buildings, structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

“Existing Manufactured Home Park or Manufactured Home Subdivision” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete

pads) was completed before the initial effective date of the floodplain management regulations adopted by the community.

“Flood” or “Flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) the overflow of inland or tidal waters; and/or
- (2) the unusual and rapid accumulation of runoff of surface waters from any source.

“Flood Boundary and Floodway Map (FBFM)” means an official map of a community, issued by the Federal Emergency Management Agency, on which the Special Flood Hazard Areas and the floodways are delineated. This official map is a supplement to and shall be used in conjunction with the Flood Insurance Rate Map (FIRM).

“Flood Hazard Boundary Map (FHBM)” means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the Special Flood Hazard Areas have been defined as Zone A.

“Flood Insurance” means the insurance coverage provided under the National Flood Insurance Program.

“Flood Insurance Rate Map (FIRM)” means an official map of a community, issued by the Federal Emergency Management Agency, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

“Flood Insurance Study (FIS)” means an examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in a community issued by the Federal Emergency Management Agency. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.

“Flood Prone Area” see “Floodplain”

“Flood Zone” means a geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

“Floodplain” means any land area susceptible to being inundated by water from any source.

“Floodplain Administrator” is the individual appointed to administer and enforce the floodplain management regulations.

“Floodplain Development Permit” means any type of permit that is required in conformance with the provisions of this ordinance, prior to the commencement of any development activity.

“Floodplain Management” means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

“Floodplain Management Regulations” means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power. This term describes Federal, State or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

“Floodproofing” means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.

“Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

“Freeboard” means the height added to the Base Flood Elevation (BFE) to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge openings, and the hydrological effect of urbanization of the watershed. The Base Flood Elevation (BFE) plus the freeboard establishes the “Regulatory Flood Protection Elevation”.

“Functionally Dependent Facility” means a facility which cannot be used for its intended purpose unless it is located in close

proximity to water, limited to a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

“Hazardous Waste Management Facility” means, as defined in NCGS 130A, Article 9, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

“Highest Adjacent Grade (HAG)” means the highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

“Historic Structure” means any structure that is:

- (a) listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;
- (b) certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (c) individually listed on a local inventory of historic landmarks in communities with a “Certified Local Government (CLG) Program”; or
- (d) certified as contributing to the historical significance of a historic district designated by a community with a “Certified Local Government (CLG) Program”.

Certified Local Government (CLG) Programs are approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

“Lowest Adjacent Grade (LAG)” means the elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building.

“Lowest Floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

“Manufactured Home” means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term “manufactured home” does not include a “recreational vehicle”.

“Manufactured Home Park or Subdivision” means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

“Market Value” means the building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal; replacement cost depreciated for age of building and quality of construction (Actual Cash Value); or adjusted tax assessed values.

“Mean Sea Level” means, for purposes of this ordinance, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which Base Flood Elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.

“New Construction” means structures for which the “start of construction” commenced on or after the effective date of the initial floodplain management regulations and includes any subsequent improvements to such structures.

“Non-Encroachment Area” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in the Flood Insurance Study report.

“Post-FIRM” means construction or other development for which the “start of construction” occurred on or after the effective date of the initial Flood Insurance Rate Map.

“Pre-FIRM” means construction or other development for which the “start of construction” occurred before the effective date of the initial Flood Insurance Rate Map.

“Principally Above Ground” means that at least 51% of the actual cash value of the structure is above ground.

“Public Safety” and/or “Nuisance” means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

“Recreational Vehicle (RV)” means a vehicle, which is:

- (a) built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) designed to be self-propelled or permanently towable by a light duty truck; and
- (d) designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

“Reference Level” is the top of the lowest floor for structures within Special Flood Hazard Areas designated as Zone A1-A30, AE, A, A99 or AO.

“Regulatory Flood Protection Elevation” means the “Base Flood Elevation” plus the “Freeboard”. In “Special Flood Hazard Areas” where Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE plus one (1) foot of freeboard. In “Special Flood Hazard Areas” where no BFE has been established, this elevation shall be at least one (1) foot above the highest adjacent grade.

“Remedy a Violation” means to bring the structure or other development into compliance with State and community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

“Riverine” means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

“Salvage Yard” means any non-residential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery.

“Solid Waste Disposal Facility” means any facility involved in the disposal of solid waste, as defined in NCGS 130A-290(a)(35).

“Solid Waste Disposal Site” means, as defined in NCGS 130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

“Special Flood Hazard Area (SFHA)” means the land in the floodplain subject to a one percent (1%) or greater chance of being flooded in any given year, as determined in Article 3, Section B of this ordinance.

“Start of Construction” includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

“Structure” means a walled and roofed building, a manufactured home, or a gas, liquid, or liquefied gas storage tank that is principally above ground.

"Substantial Damage" means damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of "substantial improvement". Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

"Substantial Improvement" means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period for which the cost equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

- (a) any correction of existing violations of State or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (b) any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

"Variance" is a grant of relief from the requirements of this ordinance.

"Violation" means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Articles 4 and 5 is presumed to be in violation until such time as that documentation is provided.

"Water Surface Elevation (WSE)" means the height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of riverine areas.

"Watercourse" means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

ARTICLE 3. GENERAL PROVISIONS.

SECTION A. LANDS TO WHICH THIS ORDINANCE APPLIES.

This ordinance shall apply to all Special Flood Hazard Areas within the jurisdiction, including Extra-Territorial Jurisdictions (ETJs), of the Town of Sawmills.

SECTION B. BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS.

The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) for Caldwell County dated July 7, 2009, and its accompanying Flood Insurance Rate Map Panels (2754K, 2755J, 2756J, 2764K, 2765J, 2766J, 2775J, & 2776J), which are adopted by reference and declared to be a part of this ordinance.

The initial Flood Insurance Rate Maps are as follows for the jurisdictional areas at the initial date:
Caldwell County Unincorporated Area, dated August 16, 1988
The Town of Sawmills, dated August 16, 1988

SECTION C. ESTABLISHMENT OF FLOODPLAIN DEVELOPMENT PERMIT.

A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities within Special Flood Hazard Areas determined in accordance with the provisions of Article 3, Section B of this ordinance.

SECTION D. COMPLIANCE.

No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this ordinance and other applicable regulations.

SECTION E. ABROGATION AND GREATER RESTRICTIONS.

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

SECTION F. INTERPRETATION.

In the interpretation and application of this ordinance, all provisions shall be:

- (a) considered as minimum requirements;
- (b) liberally construed in favor of the governing body; and
- (c) deemed neither to limit nor repeal any other powers granted under State statutes.

SECTION G. WARNING AND DISCLAIMER OF LIABILITY.

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the Town of Sawmills or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

SECTION H. PENALTIES FOR VIOLATION.

Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$50.00 or imprisoned for not more than thirty (30) days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town of Sawmills from taking such other lawful action as is necessary to prevent or remedy any violation.

ARTICLE 4. ADMINISTRATION.

SECTION A. DESIGNATION OF FLOODPLAIN ADMINISTRATOR.

The Mayor or designee, hereinafter referred to as the "Floodplain Administrator", is hereby appointed to administer and implement the provisions of this ordinance.

SECTION B. FLOODPLAIN DEVELOPMENT APPLICATION, PERMIT AND CERTIFICATION REQUIREMENTS.

(1) **Application Requirements.** Application for a Floodplain Development Permit shall be made to the Floodplain Administrator prior to any development activities located within Special Flood Hazard Areas. The following items shall be presented to the Floodplain Administrator to apply for a floodplain development permit:

- (a) A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
 - (i) the nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;

- (ii) the boundary of the Special Flood Hazard Area as delineated on the FIRM or other flood map as determined in Article 3, Section B, or a statement that the entire lot is within the Special Flood Hazard Area;
 - (iii) flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in Article 3, Section B;
 - (iv) the boundary of the floodway(s) or non-encroachment area(s) as determined in Article 3, Section B;
 - (v) the Base Flood Elevation (BFE) where provided as set forth in Article 3, Section B; Article 4, Section C; or Article 5, Section D;
 - (vi) the old and new location of any watercourse that will be altered or relocated as a result of proposed development; and
 - (vii) the certification of the plot plan by a registered land surveyor or professional engineer.
- (b) Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area including but not limited to:
- (i) Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;
 - (ii) Elevation in relation to mean sea level to which any non-residential structure in Zone AE, A or AO will be floodproofed; and
 - (iii) Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed.
- (c) If floodproofing, a Floodproofing Certificate (FEMA Form 81-65) with supporting data, an operational plan, and an inspection and maintenance plan that include, but are not limited to, installation, exercise, and maintenance of floodproofing measures.
- (d) A Foundation Plan, drawn to scale,, which shall include details of the proposed foundation system to ensure all provisions of this ordinance are met. These details include but are not limited to:
- (i) The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls); and
 - (ii) Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with Article 5, Section B(4)(c) when solid foundation perimeter walls are used in Zones A, AO, AE, and A1-30.
- (e) Usage details of any enclosed areas below the lowest floor.
- (f) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.
- (g) Certification that all other Local, State and Federal permits required prior to floodplain development permit issuance have been received.
- (h) Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure that the provisions of Article 5, Section B, subsections (6) and (7) of this ordinance are met.
- (i) A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

(2) **Permit Requirements.** The Floodplain Development Permit shall include, but not be limited to:

- (a) A description of the development to be permitted under the floodplain development permit.
- (b) The Special Flood Hazard Area determination for the proposed development in accordance with available data specified in Article 3, Section B.
- (c) The Regulatory Flood Protection Elevation required for the reference level and all attendant utilities.
- (d) The Regulatory Flood Protection Elevation required for the protection of all public utilities.
- (e) All certification submittal requirements with timelines.
- (f) A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse, as applicable.
- (g) The flood openings requirements, if in Zones A, AO, AE or A1-30.

(3) **Certification Requirements.**

(a) Elevation Certificates

- (i) An Elevation Certificate (FEMA Form 81-31) is required after the reference level is established. Within seven (7) calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to mean sea level. Any work done within the seven (7) day calendar period and prior to submission of the certification shall be at the permit holder's risk. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a stop-work order for the project.
- (ii) A final as-built Elevation Certificate (FEMA Form 81-31) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

(b) Floodproofing Certificate

If non-residential floodproofing is used to meet the Regulatory Flood Protection Elevation requirements, a Floodproofing Certificate (FEMA Form 81-65), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to mean sea level. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

- (c) If a manufactured home is placed within Zone A, AO, AE, or A1-30 and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required in accordance with the provisions of Article 5, Section B(3)(b).
- (d) If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.
- (e) Certification Exemptions. The following structures, if located within Zone A, AO, AE or A1-30, are exempt from the elevation/floodproofing certification requirements specified in items (a) and (b) of this subsection:
 - (i) Recreational Vehicles meeting requirements of Article 5, Section B(6)(a);
 - (ii) Temporary Structures meeting requirements of Article 5, Section B(7); and
 - (iii) Accessory Structures less than 150 square feet meeting requirements of Article 5, Section B(8).

SECTION C. DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR.

The Floodplain Administrator shall perform, but not be limited to, the following duties:

- (1) Review all floodplain development applications and issue permits for all proposed development within Special Flood Hazard Areas to assure that the requirements of this ordinance have been satisfied.
- (2) Review all proposed development within Special Flood Hazard Areas to assure that all necessary Local, State and Federal permits have been received.
- (3) Notify adjacent communities and the North Carolina Department of Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).
- (4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained.
- (5) Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of Article 5, Section F are met.
- (6) Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with the provisions of Article 4, Section B(3).
- (7) Obtain actual elevation (in relation to mean sea level) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions of Article 4, Section B(3).
- (8) Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with the provisions of Article 4, Section B(3).
- (9) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the provisions of Article 4, Section B(3) and Article 5, Section B(2).
- (10) Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas, floodways, or non-encroachment areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.
- (11) When Base Flood Elevation (BFE) data has not been provided in accordance with the provisions of Article 3, Section B, obtain, review, and reasonably utilize any BFE data, along with floodway data or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to Article 5, Section D(2)(b), in

order to administer the provisions of this ordinance.

- (12) When Base Flood Elevation (BFE) data is provided but no floodway or non-encroachment area data has been provided in accordance with the provisions of Article 3, Section B, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this ordinance.
- (13) When the lowest floor and the lowest adjacent grade of a structure or the lowest ground elevation of a parcel in a Special Flood Hazard Area is above the Base Flood Elevation (BFE), advise the property owner of the option to apply for a Letter of Map Amendment (LOMA) from FEMA. Maintain a copy of the LOMA issued by FEMA in the floodplain development permit file.
- (14) Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.
- (15) Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the Floodplain Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the Floodplain Administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.
- (16) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.
- (17) Revoke floodplain development permits as required. The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.
- (18) Make periodic inspections throughout the Special Flood Hazard Areas within the jurisdiction of the community. The Floodplain Administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.
- (19) Follow through with corrective procedures of Article 4, Section D.
- (20) Review, provide input, and make recommendations for variance requests.
- (21) Maintain a current map repository to include, but not limited to, the FIS Report, FIRM and other official flood maps and studies adopted in accordance with the provisions of Article 3, Section B of this ordinance, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs.
- (22) Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-Fs) and Letters of Map Revision (LOMRs).

SECTION D. CORRECTIVE PROCEDURES.

- (1) Violations to be Corrected: When the Floodplain Administrator finds violations of applicable State and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.

- (2) **Actions in Event of Failure to Take Corrective Action:** If the owner of a building or property shall fail to take prompt corrective action, the Floodplain Administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:
- (a) that the building or property is in violation of the floodplain management regulations;
 - (b) that a hearing will be held before the Floodplain Administrator at a designated place and time, not later than ten (10) days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
 - (c) that following the hearing, the Floodplain Administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as applicable.
- (3) **Order to Take Corrective Action:** If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of the Flood Damage Prevention Ordinance, he or she shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) calendar days, nor more than one-hundred-eighty (180) calendar days. Where the Floodplain Administrator finds that there is imminent danger to life or other property, he or she may order that corrective action be taken in such lesser period as may be feasible.
- (4) **Appeal:** Any owner who has received an order to take corrective action may appeal the order to the local elected governing body by giving notice of appeal in writing to the Floodplain Administrator and the clerk within ten (10) days following issuance of the final order. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.
- (5) **Failure to Comply with Order:** If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a misdemeanor and shall be punished at the discretion of the court.

SECTION E. VARIANCE PROCEDURES.

- (1) The Board of Adjustment as established by the Town of Sawmills, hereinafter referred to as the "appeal board", shall hear and decide requests for variances from the requirements of this ordinance.
- (2) Any person aggrieved by the decision of the appeal board may appeal such decision to the Court, as provided in Chapter 7A of the North Carolina General Statutes.
- (3) Variances may be issued for:
- (a) the repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;
 - (b) functionally dependent facilities if determined to meet the definition as stated in Article 2 of this ordinance, provided provisions of Article 4, Section E(9)(b), (c), and (e) have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or
 - (c) any other type of development, provided it meets the requirements of this Section.
- (4) In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:
- (a) the danger that materials may be swept onto other lands to the injury of others;
 - (b) the danger to life and property due to flooding or erosion damage;
 - (c) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the

individual owner;

- (d) the importance of the services provided by the proposed facility to the community;
 - (e) the necessity to the facility of a waterfront location as defined under Article 2 of this ordinance as a functionally dependent facility, where applicable;
 - (f) the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - (g) the compatibility of the proposed use with existing and anticipated development;
 - (h) the relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - (i) the safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (j) the expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - (k) the costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
- (5) A written report addressing each of the above factors shall be submitted with the application for a variance.
- (6) Upon consideration of the factors listed above and the purposes of this ordinance, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this ordinance.
- (7) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and that such construction below the BFE increases risks to life and property, and that the issuance of a variance to construct a structure below the BFE will result in increased premium rates for flood insurance up to \$25 per \$100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.
- (8) The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.
- (9) Conditions for Variances:
- (a) Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.
 - (b) Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.
 - (c) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (d) Variances shall only be issued prior to development permit approval.
 - (e) Variances shall only be issued upon:
 - (i) a showing of good and sufficient cause;
 - (ii) a determination that failure to grant the variance would result in exceptional hardship; and
 - (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

- (10) A variance may be issued for solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in Special Flood Hazard Areas provided that all of the following conditions are met.
- (a) The use serves a critical need in the community.
 - (b) No feasible location exists for the use outside the Special Flood Hazard Area.
 - (c) The reference level of any structure is elevated or floodproofed to at least the Regulatory Flood Protection Elevation.
 - (d) The use complies with all other applicable Federal, State and local laws.
 - (e) The Town of Sawmills has notified the Secretary of the North Carolina Department of Public Safety of its intention to grant a variance at least thirty (30) calendar days prior to granting the variance.

ARTICLE 5. PROVISIONS FOR FLOOD HAZARD REDUCTION.

SECTION A. GENERAL STANDARDS.

In all Special Flood Hazard Areas the following provisions are required:

- (1) All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.
- (2) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (3) All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.
- (4) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding to the Regulatory Flood Protection Elevation. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, hot water heaters, and electric outlets/switches.
- (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into flood waters.
- (7) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- (8) Any alteration, repair, reconstruction, or improvements to a structure, which is in compliance with the provisions of this ordinance, shall meet the requirements of "new construction" as contained in this ordinance.
- (9) Nothing in this ordinance shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this ordinance and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the Regulatory Flood Protection Elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance.
- (10) New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by variance as specified in Article 4, Section E(10). A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater

treatment facility may be located in a Special Flood Hazard Area only if the structure or tank is either elevated or floodproofed to at least the Regulatory Flood Protection Elevation and certified in accordance with the provisions of Article 4, Section B(3).

- (11) All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.
- (12) All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (13) All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- (14) All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
- (15) When a structure is partially located in a Special Flood Hazard Area, the entire structure shall meet the requirements for new construction and substantial improvements.
- (16) When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest Base Flood Elevation (BFE) shall apply.

SECTION B. SPECIFIC STANDARDS.

In all Special Flood Hazard Areas where Base Flood Elevation (BFE) data has been provided, as set forth in Article 3, Section B, or Article 5, Section D, the following provisions, in addition to the provisions of Article 5, Section A, are required:

- (1) Residential Construction. New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Article 2 of this ordinance.
- (2) Non-Residential Construction. New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Article 2 of this ordinance. Structures located in A, AE, AO, and A1-30 Zones may be floodproofed to the Regulatory Flood Protection Elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the Regulatory Flood Protection Elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the floodproofing standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in Article 4, Section B(3), along with the operational plan and the inspection and maintenance plan.
- (3) Manufactured Homes.
 - (a) New and replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the Regulatory Flood Protection Elevation, as defined in Article 2 of this ordinance.
 - (b) Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the State of North Carolina Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to NCGS 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis thirty-six (36) inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above thirty-six (36) inches in height, an engineering certification is required.

- (c) All enclosures or skirting below the lowest floor shall meet the requirements of Article 5, Section B(4).
 - (d) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the Floodplain Administrator and the local Emergency Management Coordinator.
- (4) Elevated Buildings. Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor:
- (a) shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;
 - (b) shall be constructed entirely of flood resistant materials at least to the Regulatory Flood Protection Elevation; and
 - (c) shall include, in Zones A, AO, AE, and A1-30, flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:
 - (i) A minimum of two flood openings on different sides of each enclosed area subject to flooding;
 - (ii) The total net area of all flood openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding;
 - (iii) If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
 - (iv) The bottom of all required flood openings shall be no higher than one (1) foot above the adjacent grade;
 - (v) Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and
 - (vi) Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.
- (5) Additions/Improvements.
- (a) Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
 - (i) not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.
 - (ii) a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
 - (b) Additions to post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.
 - (c) Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

- (i) not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.
 - (ii) a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
- (6) Recreational Vehicles. Recreational vehicles shall either:
 - (a) be on site for fewer than 180 consecutive days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions); or
 - (b) meet all the requirements for new construction.
- (7) Temporary Non-Residential Structures. Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the Floodplain Administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the Floodplain Administrator for review and written approval:
 - (a) a specified time period for which the temporary use will be permitted. Time specified may not exceed three (3) months, renewable up to one (1) year;
 - (b) the name, address, and phone number of the individual responsible for the removal of the temporary structure;
 - (c) the time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
 - (d) a copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and
 - (e) designation, accompanied by documentation, of a location outside the Special Flood Hazard Area, to which the temporary structure will be moved.
- (8) Accessory Structures. When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area, the following criteria shall be met:
 - (a) Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
 - (b) Accessory structures shall not be temperature-controlled;
 - (c) Accessory structures shall be designed to have low flood damage potential;
 - (d) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
 - (e) Accessory structures shall be firmly anchored in accordance with the provisions of Article 5, Section A(1);
 - (f) All service facilities such as electrical shall be installed in accordance with the provisions of Article 5, Section A(4); and
 - (g) Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below Regulatory Flood Protection Elevation in conformance with the provisions of Article 5, Section B(4)(c).

An accessory structure with a footprint less than 150 square feet that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with Article 4, Section B(3).

SECTION C. RESERVED.

SECTION D. STANDARDS FOR FLOODPLAINS WITHOUT ESTABLISHED BASE FLOOD ELEVATIONS.

Within the Special Flood Hazard Areas designated as Approximate Zone A and established in Article 3, Section B, where no Base Flood Elevation (BFE) data has been provided by FEMA, the following provisions, in addition to the provisions of Article 5, Section A, shall apply:

- (1) No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of twenty (20) feet each side from top of bank or five times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (2) The BFE used in determining the Regulatory Flood Protection Elevation shall be determined based on the following criteria:
 - (a) When Base Flood Elevation (BFE) data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this ordinance and shall be elevated or floodproofed in accordance with standards in Article 5, Sections A and B.
 - (b) When floodway or non-encroachment data is available from a Federal, State, or other source, all new construction and substantial improvements within floodway and non-encroachment areas shall also comply with the requirements of Article 5, Sections B and F.
 - (c) All subdivision, manufactured home park and other development proposals shall provide Base Flood Elevation (BFE) data if development is greater than five (5) acres or has more than fifty (50) lots/manufactured home sites. Such Base Flood Elevation (BFE) data shall be adopted by reference in accordance with Article 3, Section B and utilized in implementing this ordinance.
 - (d) When Base Flood Elevation (BFE) data is not available from a Federal, State, or other source as outlined above, the reference level shall be elevated or floodproofed (nonresidential) to or above the Regulatory Flood Protection Elevation, as defined in Article 2. All other applicable provisions of Article 5, Section B shall also apply.

SECTION E. STANDARDS FOR RIVERINE FLOODPLAINS WITH BASE FLOOD ELEVATIONS BUT WITHOUT ESTABLISHED FLOODWAYS OR NON-ENCROACHMENT AREAS.

Along rivers and streams where Base Flood Elevation (BFE) data is provided by FEMA or is available from another source but neither floodway nor non-encroachment areas are identified for a Special Flood Hazard Area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:

- (1) Standards of Article 5, Sections A and B; and
- (2) Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community.

SECTION F. FLOODWAYS AND NON-ENCROACHMENT AREAS.

Areas designated as floodways or non-encroachment areas are located within the Special Flood Hazard Areas established in Article 3, Section B. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in Article 5, Sections A and B, shall apply to all development within such areas:

- (1) No encroachments, including fill, new construction, substantial improvements and other developments shall be

permitted unless:

- (a) it is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the Floodplain Administrator prior to issuance of floodplain development permit, or
 - (b) a Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained upon completion of the proposed encroachment.
- (2) If Article 5, Section F(1) is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this ordinance.
- (3) No manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or subdivision, provided the following provisions are met:
- (a) the anchoring and the elevation standards of Article 5, Section B(3); and
 - (b) the no encroachment standard of Article 5, Section F(1).

ARTICLE 6. LEGAL STATUS PROVISIONS.

SECTION A. RESERVED.

SECTION B. RESERVED.

SECTION C. SEVERABILITY.

If any section, clause, sentence, or phrase of the Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.

SECTION D. EFFECTIVE DATE.

This ordinance shall become effective upon adoption.

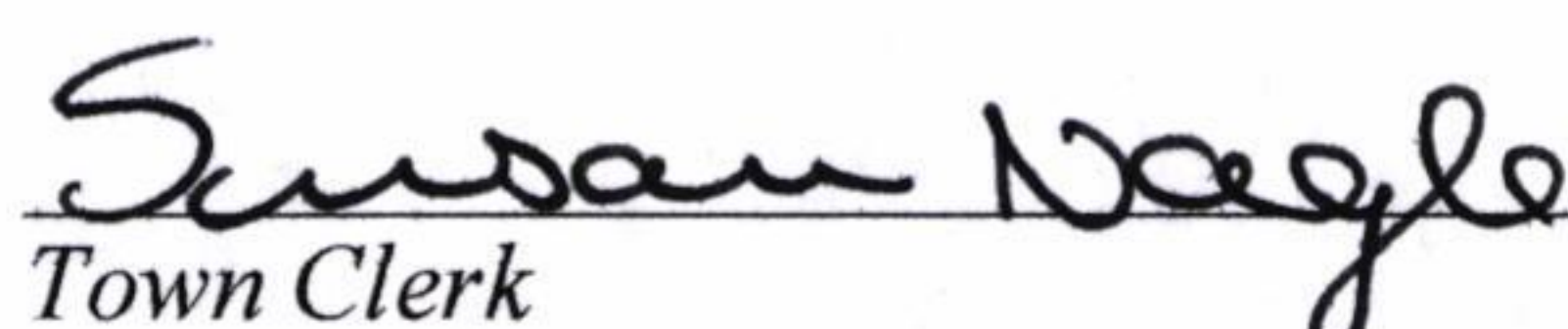
SECTION E. ADOPTION CERTIFICATION.

I hereby certify that this is a true and correct copy of the Flood Damage Prevention Ordinance as adopted by the Town Council of the Town of Sawmills, North Carolina, on the 16th day of OCTOBER, 2012.

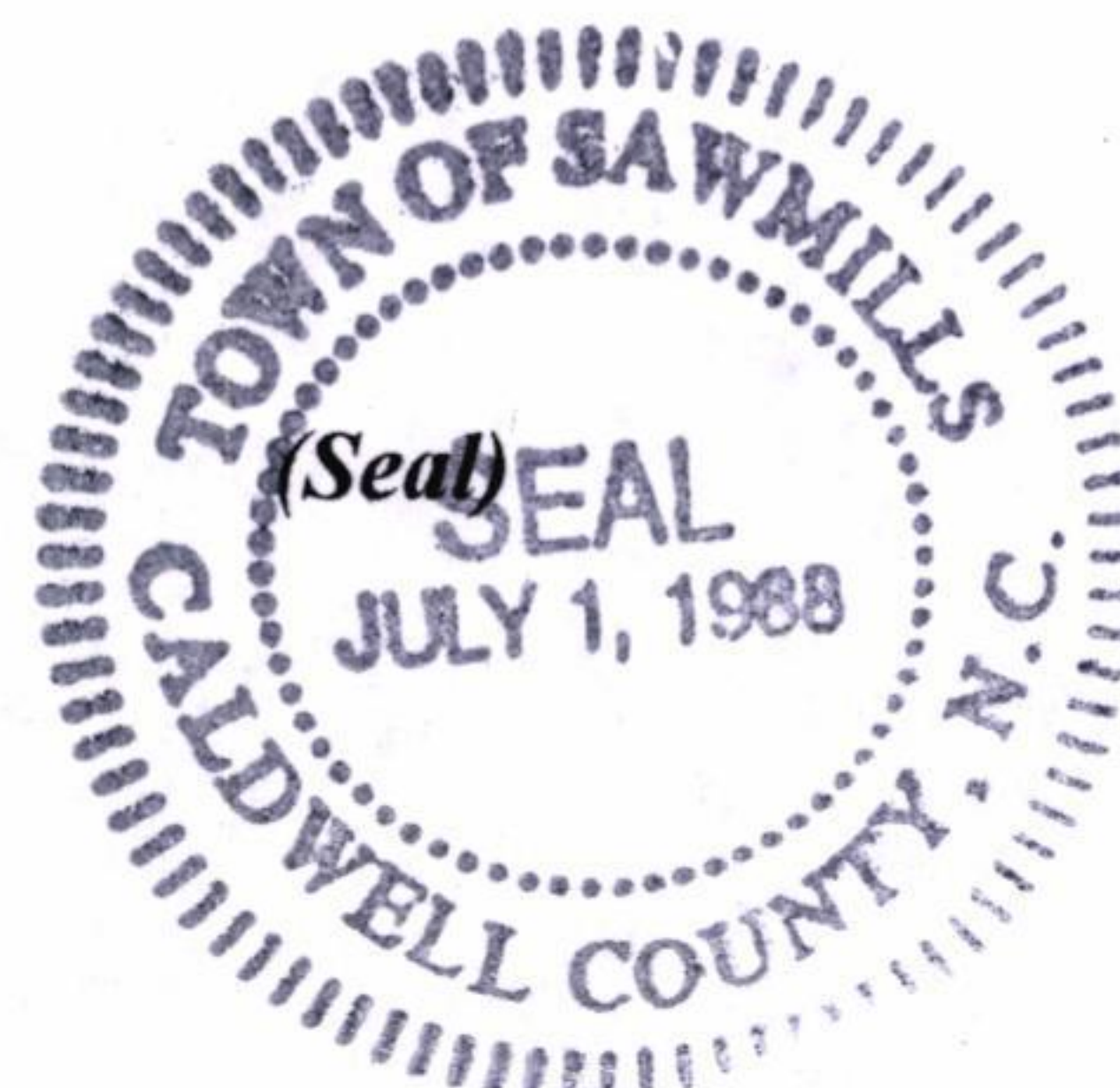
WITNESS my hand and the official seal of the Town of Sawmills, this the 16th day of OCTOBER, 2012.



Mayor



Town Clerk



**Interlocal Agreement Between Caldwell County
And
The Town of Sawmills**

This resolution/agreement, made and entered into this the 16th day of OCTOBER, 2012, by and between the Town of Sawmills, a municipal corporation organized and existing pursuant to the laws of the State of North Carolina, Party of the First Part and hereinafter referred to as the TOWN and Caldwell County, a political subdivision of the State of North Carolina established and operating pursuant to the laws of the State of North Carolina, Party of the Second Part and hereinafter referred to as the COUNTY;

WITNESSETH:

WHEREAS, the TOWN and the COUNTY, pursuant to the authority granted by the North Carolina General Statutes 160A-461, hereby covenant and agree as follows:

1. That the TOWN hereby contracts with the COUNTY to use the services of the Caldwell County Planning Department of the COUNTY to administer the TOWN'S Flood Damage Prevention Ordinance within the corporate limits and extra-territorial jurisdiction of the TOWN.
2. That the services of the Caldwell County Planning Department shall be performed at no cost to the TOWN. However, should any claims arise out of the services provided by the COUNTY under this agreement, the TOWN agrees to indemnify and hold the COUNTY, its employees, agents and contractors harmless from any and all claims for liability, loss, injury, damages to persons or property, costs or attorney's fees resulting from any action brought against Caldwell County, its employees, agents, contractors and Commissioners arising as a result of these services performed on behalf of the TOWN that are the subject matter of this Agreement.
3. That all fees and charges associated with administering the Flood Damage Prevention Ordinance as adopted by the Board of County Commissioners, shall be collected by the COUNTY, shall be the sole property of the COUNTY, and no part thereof shall be payable to the TOWN.
4. That all development to take place within the TOWN's corporate limits or extra-territorial jurisdiction shall be subject to the rules and regulations set forth in the aforementioned Flood Damage Prevention Ordinance. No building permits shall be issued for any property until the flood zone is determined and the necessary building standards are met. If the property is located within the Special Flood Hazard Area and if the structure is to be constructed within the flood hazard area, preliminary and final elevation certificates will be required.
5. That the Caldwell County Planning Department will use every effort to enforce the Flood Damage Prevention Ordinance, except that if any civil or criminal action becomes necessary, the TOWN shall bring any legal action as may be required to effectively enforce said Ordinance, upon written notice from the Caldwell County Planning Department of such violations.

6. That this Agreement shall continue until such time as either the TOWN or COUNTY resolves to discontinue the Agreement and presents six (6) months written notice to the other party of said termination or upon mutual agreement of both parties.
7. This Agreement may only be modified in writing and executed by both parties.
8. That the effective date of this Interlocal Agreement shall be OCTOBER 16, 2012.

IN WITNESS WHEREOF, the Town of Sawmills has caused this Agreement to be signed in its name by its Mayor, attested by its Clerk, and its Official Seal to be hereunto affixed, and Caldwell County has caused this agreement to be signed in its name by the Chair of the Board of Commissioners and attested by the Clerk of its Board and its Official Seal to be hereunto affixed, the day and year first above written.

TOWN OF SAWMILLS

By [Signature], Mayor

ATTEST

Susan Nagle, Clerk



CALDWELL COUNTY

By _____, Chair, Board of Commissioners

ATTEST _____, Clerk



MAYOR
Bob Gibbs

TOWN ADMINISTRATOR
Seth Eckard

**TOWN
COUNCIL**

Johnny Wilson, Mayor Pro-Tem
Trena McRary Kirby
Donnie Potter
Joe Wesson
Jeff Wilson

Town of Sawmills 4076 US Highway 321-A * Sawmills NC * (828)396-7903 * (828)396-8955 fax

**STATE OF NORTH CAROLINA
COUNTY OF CALDWELL**

**TOWN COUNCIL
TOWN OF SAWMILLS, NORTH CAROLINA
Resolution of Intent**

WHEREAS, certain areas of the Town of Sawmills are subject to periodic flooding or flood-related erosion, causing serious damages to properties within these areas; and

WHEREAS, relief is available in the form of Federally guaranteed flood insurance as authorized by the National Flood Insurance Act of 1968; and

WHEREAS, the Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Parts 3, 5, and 8 of Article 19 of Chapter 160A; and Article 8 of Chapter 160A of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, it is the intent of this BOARD to require the recognition and evaluation of flood or flood-related erosion hazards in all official actions relating to the land use, building construction repair and remodeling in areas having these hazards;

NOW, THEREFORE, BE IT RESOLVED, that this BOARD hereby:

Assures the Federal Insurance Administration (FIA) that it will enact as necessary and maintain in force in those areas having flood or flood-related erosion hazards adequate land use and control measures with effective enforcement provisions consistent with the criteria set forth in Parts 59, 60 and 65 of the National Flood Insurance Program Regulations (44 CFR); and

Vests the Mayor or designee with the responsibility, authority, and the means to:

- (a) Assist the FIA Administrator, as requested, in delineation of the limits of the area having special flood or flood-related erosion hazards.
- (b) Provide such information as the FIA Administrator may request concerning present uses and occupancy of the floodplain or flood-related erosion areas.
- (c) Cooperate with Federal, State and local agencies and private firms which undertake to study, survey, map, and identify floodplain or flood-related erosion areas, and cooperate with neighboring communities with respect to management of adjoining floodplain and/or flood-related erosion areas in order to prevent aggravation of existing hazards.

- (d) Upon occurrence, notify the FIA Administrator in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce floodplain management regulations for a particular area. In order that all Flood Hazard Boundary Maps (FHBM) and Flood Insurance Rate Maps (FIRMs) accurately represent the community's boundaries, include within such notification a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished floodplain management regulatory authority.

Appoints the Mayor or designee to maintain for public inspection and to furnish upon request, for the determination of applicable flood insurance risk premium rates within all areas having special flood hazards identified on a FHBM or FIRMs, any certificates of flood-proofing, and information on the elevation (in relation to mean sea level) of the level of the lowest floor (including basement) of all new or substantially improved structures, and include whether or not such structures contain a basement, and if the structure has been floodproofed.

Agrees to take such other official action as may be reasonably necessary to carry out the objective of the program.

Adopted on this the 16th day of OCTOBER, 2012

By: [Signature]
[Signature]
[Signature]
[Signature]
[Signature]

(Signatures of Governing Board)

Certified by: Susan Nagle

Date: OCTOBER 16, 2012



DEPARTMENT OF HOMELAND SECURITY
FEDERAL EMERGENCY MANAGEMENT AGENCY
**APPLICATION FOR PARTICIPATION IN THE NATIONAL FLOOD
INSURANCE PROGRAM**

O.M.B. NO. 1660-0004
Expires March 31, 2011

PAPERWORK BURDEN DISCLOSURE NOTICE

Public reporting burden for this form is estimated to average 4 hours per response. The burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing, and submitting the form. You are not required to submit to this collection of information unless it displays a valid OMB control number. Send comments regarding the accuracy of the burden estimate and any suggestions for reducing the burden to: Information Collections Management, Department of Homeland Security, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, and Paperwork Reduction Project (1660-0004). **NOTE: Do not send your completed form to this address.**

1. APPLICANT COMMUNITY NAME (City, town, etc.) Sawmills, Town of	DATE OCTOBER 16, 2012
---	--------------------------

COUNTY, STATE
Caldwell County, North Carolina

2. COMMUNITY OFFICIAL - CHIEF EXECUTIVE OFFICER (CEO) Mayor	E-MAIL ADDRESS Bgibbs@townofsawmills.com	TELEPHONE NO. (Include area code) 828-396-7903
--	---	---

ADDRESS (Street or box no. city, state, zip code)
4076 US Highway 321-A, Sawmills, NC 28630

3. PROGRAM COORDINATOR (Official, if different from above, with overall responsibility for implementing program)	E-MAIL ADDRESS	TELEPHONE NO. (Include area code)
--	----------------	-----------------------------------

ADDRESS (Street or box no., city, state, zip code)

LOCATION OF COMMUNITY REPOSITORY FOR PUBLIC INSPECTION OF NFIP MAPS

Town Hall

ADDRESS
4076 US Highway 321-A, Sawmills, NC 28630

5. ESTIMATES FOR THOSE AREAS PRONE TO FLOOD AND/OR MUDSLIDE AS OF THE DATE OF THIS APPLICATION

AREA IN ACRES	POPULATION	NO. OF 1-4 FAMILYSTRUCTURES	NO. OF ALL OTHER STRUCTURES
30	300	45	0

6. ESTIMATES OF TOTALS IN ENTIRE COMMUNITY

POPULATION	NO. OF 1-4 FAMILYSTRUCTURES	NO. OF ALL OTHER STRUCTURES
5091	1800	150

7. FOR FEMA REGIONAL USE ONLY

1. FEMA REGIONAL OFFICE	2. NAME OF CONTACT	3. TELEPHONE NO.
-------------------------	--------------------	------------------

4. LEVEL OF 44 CFR 60.3 REGULATION ADOPTED (Check one)

☐ 60.3 ☐ 60.3(b) ☐ 60.3(c) ☐ 60.3(d) ☐ 60.3(e)

5. CHECK APPROPRIATE BOX:

☐ EMERGENCY PHASE ☐ REGULAR PHASE

IF REGULAR PROGRAM, SPECIFY FIRM INDEX DATE. IF USING ANOTHER COMMUNITY'S FIRM, GIVE COMMUNITY NAME, CID, FIRM INDEX DATE AND MAP PANEL NUMBER DEPICTING COMMUNITY

STATE OF NORTH CAROLINA

CALDWELL COUNTY

WIRELESS COMMUNICATIONS MANAGEMENT AGREEMENT

THIS WIRELESS COMMUNICATIONS MANAGEMENT AGREEMENT (hereinafter, the "Agreement"), made and entered into this 16th day of OCTOBER, 2012, by and between **THE TOWN OF SAWMILLS**, (hereinafter, the "Owner"), whose principal office address, described on Exhibit "A", and **UTILITY SERVICE COMMUNICATIONS CO., INC.**, whose principal office address is 535 General Courtney Hodges Boulevard, Post Office Box 1350, Perry, Georgia 31069 (hereinafter, the "Manager").

WITNESSETH:

WHEREAS, Owner is the owner of certain Water Tank(s) and Real Property ("Tank and Site") described on Exhibit "A" attached hereto, (hereinafter, the "Site"); and

WHEREAS, Owner desires to retain Manager to exclusively market and manage all revenue generating co-locations at the Site. Manager agrees to manage the marketing, agreement negotiations, installation, and ongoing management of all revenue generating antenna co-locations at the Site (the "Duties"), all on the terms, conditions, and provisions herein contained.

NOW, THEREFORE, Owner and Manager hereby agree as follows:

1. Exclusive Appointment of Manager. Owner hereby appoints Manager to carry out the Duties, provided that Manager shall serve only in the capacity of an independent contractor and neither party shall have any right to incur any indebtedness on behalf of the other party. Manager shall have exclusive right and authority to manage and carry out all Duties for the Site as well as the Services enumerated herein below. Owner shall not permit any licensee the use of the Site to install any type of communications equipment or antennas, except the Owner or other unit of its local government.
2. Services. In order for the Manager to effectively carry out the Duties, the Manager shall perform the following services (herein, the "Services"):
 - a. Manager shall have the exclusive right to market and license the Site on a local and national level;

- b. Manager may choose wireless carriers, at its sole discretion, to ensure that the Tank is not damaged and the life of the Tank is not compromised, and the Owner's maintenance fees are not increased due to co-location, provided Tank(s) are in Utility Service Co., Inc.'s Maintenance Program.
 - c. Negotiate and enter into licensing agreements with potential wireless carriers for antenna space on the tank and ground equipment space. The primary goals of the negotiations shall be the maximization of income to the Owner and the preservation of the Tank and its contents.
 - d. Ensure structural analysis of the Tank is performed and provide copies of any and all reports to Owner. Review and approve installation designs prior to any installations of the Tank, and provide copies to Owner for prior written approval with appropriate insurance certificates of all contractors and sub-contractors.
 - e. Provide billing and collection of fees associated with License Agreements, ensure that payments are made in connection with the co-location, and provide necessary accounting and reporting services.
 - f. Provide current certificates of insurance coverage to the Owner.
 - g. Provide a Site Safety Plan with a copy to Owner for each Site with carriers, updating as needed to meet local, state and federal requirements.
 - h. Provide ongoing management and administration by monitoring and implementing required practices and procedures.
3. Revenue. As compensation, the Manager shall pay to the Owner seventy percent (70%) of the Gross Annual Site Fee Receipts (GASFR) within sixty (60) days following the end of each calendar year. The cost for services, equipment, hardware, structures, etc., will not affect the site fee due the Owner. Manager shall provide an annual audit to the Owner according to the terms and conditions as set forth on Exhibit "B" attached hereto.
4. Owners Representation. Owner hereby represents and warrants that Owner has good and marketable title and interest to the Site so as to have full authority to enter into and execute this Agreement. Owner further warrants: (i) that there are no deeds to secure debt, deeds of trust, mortgages, liens or judgments encumbering the Site and no restrictive covenants or other encumbrances on the title to the Site that would prevent Manager from utilizing the Site for the uses intended by the Manager as set forth in this Agreement; (ii) that Tank and Site is compliant with all regulatory agencies; and (iii) that the Tank and the real property on which it is located do not have any hazardous materials in or on the Site.

5. Ingress / Egress. Owner grants and warrants Manager, its agents, and licensees free and unrestricted access to its ground equipment on the Tank Site and any privately held roads leading to the Site, at all times. Owner grants and warrants Manager, its agents, and licensees reasonable access to climb the Tank after providing advanced notice to the Owner. Owner need not be present for the Manager, its agents and licensees to access the Site or Tank.
6. Term and Termination. The term of this Agreement shall be ten (10) years ("Initial Term") from the date above with two (2) additional five (5) year renewal periods ("Renewal Terms"). The Renewal Terms shall commence automatically without further action on the part of the Owner or Manager; provided, however, that Owner may terminate at the expiration of any Renewal Term by giving the Manager written notice not less than thirty (30) days prior to the expiration of the then current term. At the expiration of the Initial Term and/or Renewal Terms, this Agreement will be automatically extended for the remaining term of any existing License Agreement(s). The Owner may terminate this Agreement if the Manager violates one or more of its terms. If the Owner deems that the Manager has violated such terms, then Owner shall give written notice describing the default and granting the Manager thirty (30) days to cure the default, except in the case of monetary default, which must be cured within ten (10) days. If the Manager fails to substantially cure the default within thirty (30) or ten (10) days of receipt of the notice, as the case may be, the Owner may terminate this Agreement. The Manager may terminate this Agreement at any time with one hundred eighty (180) days advanced written notice to the Owner.
7. Maintenance. Owner is responsible for the maintenance of the Tank and the upkeep of the Site, except for any damage caused by Manager or its agents, contractors or invitees.
8. Indemnities. The Manager agrees to indemnify and holds the Owner harmless for any liability incurred in connection with the services rendered under this "Agreement as more particularly set forth on Exhibit "B" attached hereto.
9. Condemnation. If notice is given to Owner that the Site will be condemned by any legally constituted public authority, then Owner shall promptly notify Manager of such taking or condemnation. If the whole of the Tank, or such portion thereof as will make the Tank unusable by Manager for the purposes herein described is condemned by any legally constituted public authority, then this Agreement, and the term hereby granted, shall terminate and expire at such time as possession thereof is taken by the public authority, and site fees shall be accounted for as between Owner and Manager as of that date. However, nothing in this paragraph shall be construed to limit or adversely affect Manager's right to seek an award of compensation from any public authority that is seeking condemnation proceeding for the taking of Manager's interest hereunder or for the taking of Manager's and/or Licensee's improvements, fixtures, equipment or personal property.

10. Assignment. This Agreement shall bind and remain in force to the benefit of the parties, their legal representatives, successors and assigns, including, without limitation, a successor by merger. In the event of any assignment, the assignee shall succeed to all of the rights, interests and obligations of Owner contained herein.
11. Security Interest. It is the express intent of the parties to this Agreement that Owner shall have no lien or security interest whatsoever in any personal property of the Manager or its Licensees except as otherwise provided by law.
12. Modification. This Agreement may be modified only by a written addendum signed by Owner and Manager.
13. Governing Law. This Agreement shall be governed by the laws of North Carolina.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate as of the day and year first above set forth.

MANAGER:

Utility Service Communications Co., Inc.

By: _____

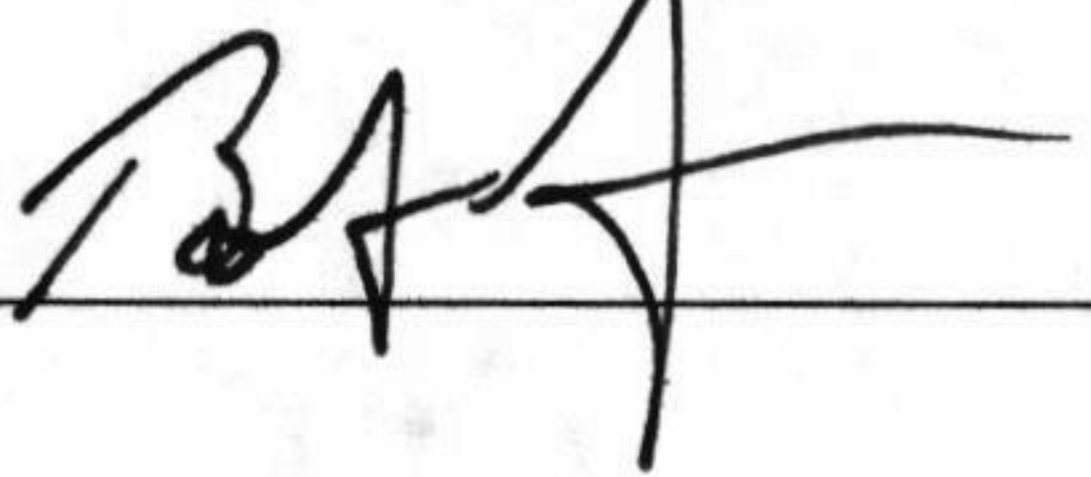
Title

Date

Witness

OWNER:

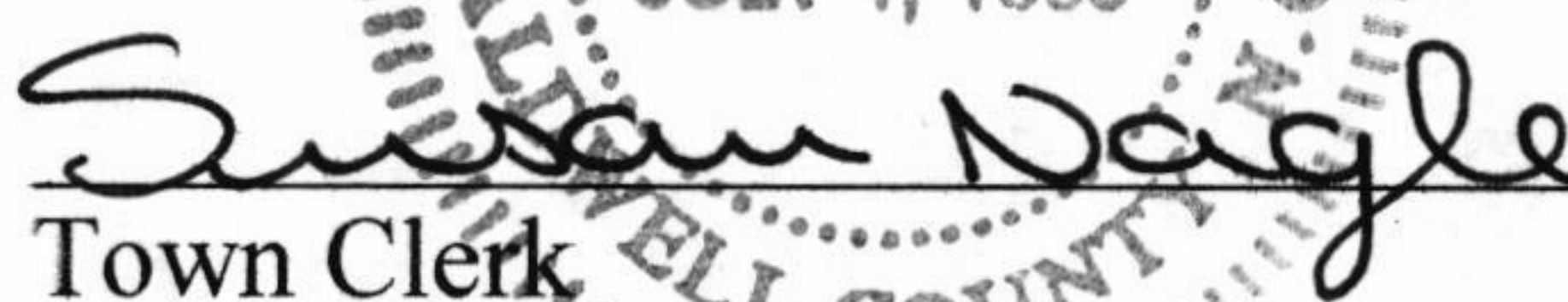
THE TOWN OF SAWMILLS

By: 

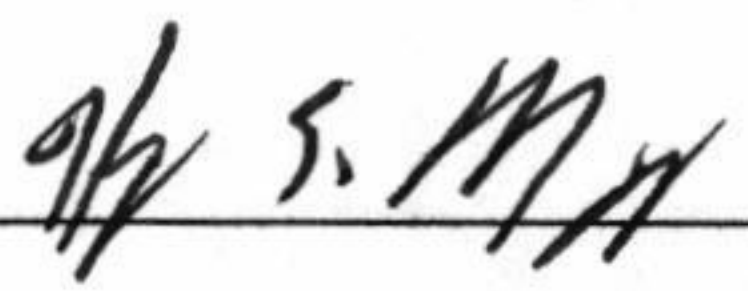
Mayor
Title

OCTOBER 16, 2012
Date

ATTEST:



Town Clerk

Approved as to Form:

By: Terry M Taylor by 
Town Attorney

WIRELESS COMMUNICATIONS MANAGEMENT AGREEMENT

Exhibit "A"

TANK OWNER INFORMATION

Name of Tank Owner, Physical and Mailing Address:

Name: _____

E-Mail: _____

Tank Owner Contact: _____

Phone #: _____ Fax #: _____

TANK SITE INFORMATION

Tank Address (911): _____

Style and Capacity: _____

Tank Height: _____ Elevation: _____ Year Built: _____

Coordinates: Latitude _____ Longitude _____

Are any Carrier's antenna currently installed on this tank? Yes _____ No _____

Are any City, County or other antennas installed on this tank? Yes _____ No _____

Tank Address (911): _____

Style and Capacity: _____

Tank Height: _____ Elevation: _____ Year Built: _____

Coordinates: Latitude _____ Longitude _____

Are any Carrier's antenna currently installed on this tank? Yes _____ No _____

Are any City, County or other antennas installed on this tank? Yes _____ No _____

TANK SITE INFORMATION

Tank Address (911): _____

Style and Capacity: _____

Tank Height: _____ Elevation: _____ Year Built: _____

Coordinates: Latitude _____ Longitude _____

Are any Carrier's antenna currently installed on this tank? Yes _____ No _____

Are any City, County or other antennas installed on this tank? Yes _____ No _____

Tank Address (911): _____

Style and Capacity: _____

Tank Height: _____ Elevation: _____ Year Built: _____

Coordinates: Latitude _____ Longitude _____

Are any Carrier's antenna currently installed on this tank? Yes _____ No _____

Are any City, County or other antennas installed on this tank? Yes _____ No _____

Tank Address (911): _____

Style and Capacity: _____

Tank Height: _____ Elevation: _____ Year Built: _____

Coordinates: Latitude _____ Longitude _____

Are any Carrier's antenna currently installed on this tank? Yes _____ No _____

Are any City, County or other antennas installed on this tank? Yes _____ No _____

WIRELESS COMMUNICATIONS MANAGEMENT AGREEMENT

EXHIBIT "B"

ADDITIONAL TERMS AND CONDITIONS

Manager agrees that neither they nor any person, agent, contractor, employee, invitee or guest shall make any alterations or modifications or construct any improvements on the property described on Exhibit "A" without first submitting the Plans and Specifications for such work and receiving the Town's approval for such work.

The Manager hereby agrees that the Town shall not be held liable for any delays, failures, or accidents which affect any of the services to the Property described on Exhibit "A", including but not limited to, any electricity or any other service.

The Manager agrees that they will, at their expense, comply with all laws, regulations, ordinances and requirements of all municipal, state and federal authorities that are effective during the terms of this Agreement.

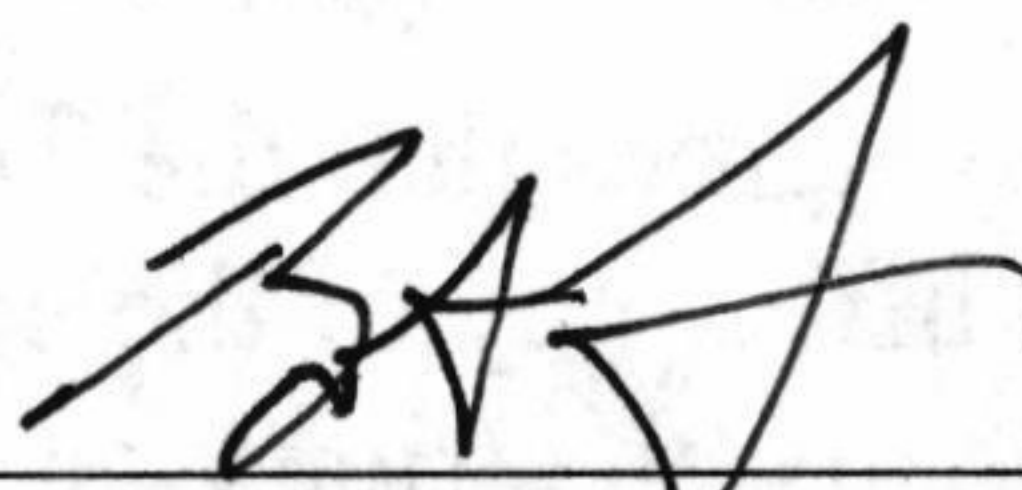
Manager hereby agrees to indemnify, defend (with legal counsel satisfactory to Town) reimburse and hold Town harmless from for and against all suits, actions, claims, costs, damages, liabilities and expenses including attorney's fees and court costs arising from or out of or in connection with (I) any act or omission of Manager or any of Manager's employees, agents, contractors, invitees or guests, or (ii) any default by Manager under the terms of this Agreement; (iii) the use or occupancy of the Property or for any injury or damage to persons or property to the extent that any such damage or injury may be incidental to or arise out of or cause or be approximately or remotely wholly or partially by any act, omission, negligence or misconduct on the part of Manager or Manager's employees, agents, contractors, invitees or guests, or when any such injury or damage is the result of any violation by Manager or Manager's employees, agents, contractors, invitees or guests under any law, ordinance or governmental order of any kind.

Audit and Responsibilities. Manager agrees to provide, no less than annually, to the Town Administrator, copies of all signed contracts or documents regarding to the use of the Site for which the Manager has either contracted with or received any fees regarding the placement of improvements on the Property of the Town of Sawmills. The Manager agrees to provide backup documentation upon request of the Town Auditor sufficient to satisfy the Town Auditor that the information submitted is accurate and represents the total gross proceeds received by Manager regarding the Property. In the event that the Town Auditor discovers any undisputed discrepancies or any undisputed inaccuracies in the reports submitted by the Manager, the Manager agrees to pay said additional amounts owed within ten (10) days of Notice of Receipt of a letter from the Town requesting payment in full.

Manager hereby agrees that as a condition precedent to use of the Premises TOWN may, in its sole discretion as determined by its Town Administrator, require proof of insurance in the form of a certificate that shows adequate insurance coverage for the purposes of use of the Premises and shows TOWN as an additional insured under the terms of the policy.

In the event any of the Terms of this Addendum conflict with the main body of the Agreement, the Terms of this Addendum shall control.

TOWN OF SAWMILLS

BY: 

Bob Gibbs, Mayor

UTILITY SERVICE COMMUNICATIONS
CO. INC.

BY: _____