#### CITY OF NEW BERN BOARD OF ALDERMEN MEETING JULY 25, 2023 – 6:00 P.M. CITY HALL COURTROOM 300 POLLOCK STREET

- Meeting opened by Mayor Odham. Prayer Coordinated by Alderman Kinsey. Pledge of Allegiance.
- Roll Call.
- Approve Agenda.

#### Consent Agenda

- Consider Adopting a Resolution Calling for a Public Hearing on an Amendment to Sections 15-416, 15-417, and 15-423(d) of the Land Use Ordinance.
- 5. Consider Approving a Proclamation for Celebrate Shelter Pet Day.
- Approve Minutes.

\*\*\*\*\*\*

- Presentation by Old North State League to Use Kafer Park for Summer College Baseball.
- Consider Adopting a Resolution Approving the 2023 Water Shortage Response Plan.
- Consider Adopting a Resolution Authorizing the Mayor to Execute a Real Estate Purchase and Sale Agreement with Weyerhaeuser Company for Land for New Electric Substation.
- Consider Adopting a Resolution Authorizing the Mayor to Execute a Letter of Agreement with Weyerhaeuser for Easement Rights.
- 11. Consider Adopting an Ordinance Amending the 2019 Electric Improvements Fund.
- 12. Appointment(s).
- 13. Attorney's Report.
- 14. City Manager's Report.
  - New Business.
  - Closed Session.
  - 17. Adjourn.

#### Aldermen

Rick Prill Hazel B. Royal Robert V. Aster Johnnie Ray Kinsey Barbara J. Best Robert Brinson, Jr.



300 Pollock Street, P.O. Box 1129 New Bern, NC 28563-1129 (252) 636-4000 Jeffrey T. Odham
Mayor
Foster Hughes
City Manager
Brenda E. Blanco
City Clerk
Kimberly A Ostrom
Director of Finance

Memo to: Mayor and Board of Aldermen

From: Foster Hughes, City Manager

Date: July 20, 2023

Re: July 25, 2023 Agenda Explanations

- Meeting opened by Mayor Jeffrey T. Odham. Prayer Coordinated by Alderman Kinsey. Pledge of Allegiance.
- Roll Call.
- Approve Agenda.

#### Consent Agenda

 Consider Adopting a Resolution Calling for a Public Hearing on an Amendment to Sections 15-416, 15-417, and 15-423(d) of the Land Use Ordinance.

Staff is requesting a public hearing be called for August 08, 2023 to consider an amendment to the Land Use Ordinance. The amendment will correct a single-digit typographical error in Section 15-423(d) and will replace language that was inadvertently omitted during modifications to accommodate NCGS 160D. A memo from Jessica Rhue, Director of Development Services, is attached along with a red-lined copy of the proposed amendment.

5. Consider Approving a Proclamation for Celebrate Shelter Pet Day.

Jo Anna Kloster has requested a proclamation recognizing Celebrate Shelter Pay Day.

6. Approve Minutes.

Draft minutes from the June 27, 2023 closed session and July 11, 2023 regular meeting are provided for review and approval.

\*\*\*\*\*\*\*

#### Presentation by Old North State League to Use Kafer Park for Summer College Baseball.

(Ward 1) Alec Allred, Co-Founder of Old North State League, will share a PowerPoint presentation about the league and its interest in leasing Kafer Park for their collegiate summer baseball league.

#### Consider Adopting a Resolution Approving the 2023 Water Shortage Response Plan.

Pursuant to NC General Statutes, the City must update its Water Shortage Response Plans every five years. New Bern's plan has been updated, approved by the NC Department of Environmental Quality, and is ready for adoption by the Board. A memo from Jordan Hughes, Director of Water Resources, is attached.

#### Consider Adopting a Resolution Authorizing the Mayor to Execute a Real Estate Purchase and Sale Agreement with Weyerhaeuser Company for Land for New Electric Substation.

In preparation of constructing a new substation and interconnect to the bulk electric system, land acquisition is necessary. The proposed agreement represents the purchase of 6 acres from Weyerhaeuser at a cost of \$15,000 per acre for a total purchase price of \$90,000. The cost of the purchase will be expensed from previously established electric project funds. A memo from Charlie Bauschard, Director of Public Utilities, is attached.

#### Consider Adopting a Resolution Authorizing the Mayor to Execute a Letter of Agreement with Weyerhaeuser for Easement Rights.

In relation to the previous item, easements are necessary to connect the new substation to the Duke transmission system as well as provide new interconnects to the electric distribution system. A total of 22.983 acres is necessary at a cost of \$9,798.55 per acre for a full purchase price of \$225,200. The Board is asked to consider adopting a resolution that authorizes the Mayor to sign a letter of agreement with Weyerhaeuser for the needed easements. A memo from Mr. Bauschard is attached.

# 11. Consider Adopting an Ordinance Amending the 2019 Electric Improvements Fund.

The ordinance amends the 2019 Electric Improvements Project Fund to recognize a \$87,183 reduction in appropriation from the Golden Leaf grant. Golden Leaf approved \$320,000 in funding for the Utilities Disaster Recovery and Resiliency Project. The project has been completed and expenditures reimbursed in the amount of \$232,817. Since the grant has been closed, the budget needs to be reduced by the difference. A memo from Kim Ostrom, Director of Finance, is attached.

#### 12. Appointment(s).

- a) Alderman Royal is requested to make an appointment to fill the seat held by Peter Dillon on the Board of Adjustment. Mr. Dillon resigned due to relocating out of state. The new appointee will fill the remainder of his term which expires on June 30, 2025.
- b) Kathleen Marty's term on the Board of Adjustment expired June 30, 2023. The Board is asked to consider reappointing Ms. Marty or make new appointment to serve the three-year term. This appointment is open to the Mayor or any Alderman.
- c) Raymond Layton's term on the Planning and Zoning Board expired June 30, 2023, and he is ineligible for reappointment. Alderman Kinsey is asked to make a new appointment to fill Seat 4 for a three-year term.
- d) Pat Dougherty's term on the Planning and Zoning Board expired June 30, 2023, and he is ineligible for reappointment. Alderman Brinson is asked to make a new appointment to fill Seat 6 for a three-year term.
- e) Tharesa Lee resigned from the Redevelopment Commission effective July 5, 2023, which is before her term expiration on August 14, 2023. Tabari Wallace's term will also expire on August 14, 2023. The Board is asked to consider the reappointment of Mr. Wallace and discuss the previously identified candidates for Mrs. Lee's seat. Appointments to this Board are open to the Mayor or any Alderman.
- 13. Attorney's Report.
- 14. City Manager's Report.
- New Business.
- Closed Session.
- 17. Adjourn.

#### **AGENDA ITEM COVER SHEET**



Agenda Item Title:

Consider Adopting a Resolution Calling for a Public Hearing on Amendments to Sections 15-416, 15-417, and 15-423(d) of the Land Use Ordinance.

3	District)  Person Submitting Item: Jessie Rhue, Director of Development Services  Date of Public Hearing: 8/8/2023	
Services		
⊠Yes□No		
15-423(d) "Qua amendments re modifications v inadvertently le	cts a single-digit typographical error in Section asi-judicial procedures". In addition, these text place language that previously existed before were done to accommodate NCGS160D and were off out and modifies the standard for determining back in the Historic District.	
Adopt Resolution		
Memo, Resolution, Redline version of text amendments, Planning and Zoning Board consistency statements.		
] Yes □No		
	15-423(d) "Qua amendments re modifications v inadvertently le a front yard set Adopt Resoluti	

If this requires an expenditure, has it been budgeted and are funds available

and certified by the Finance Director? □Yes □ No

**Additional Notes:** 

Cost of Agenda Item:



#### MEMORANDUM

TO: Mayor Jeffrey Odham, City of New Bern Board of Aldermen

FROM: Jessica F. Rhue, Director Development Services

**DATE:** July 14, 2023

SUBJECT: Consider Adopting a Resolution Calling for a Public Hearing on

Amendments to Sections 15-416, 15-417, and 15-423(d) of the Land Use

Ordinance.

The Board is requested to Consider Adopting a Resolution to Call for a Public Hearing to take place on August 8, 2023, at the July 25, 2023, meeting, on a text amendment to Appendix A Land Use of the New Bern Code of Ordinances, Article XXI New Bern Historic District.

On December 13, 2022, the Board of Aldermen adopted a text amendment that was crafted to conform with updated state planning statutes. Two sections of this article of the Land Use Ordinance, Sections 15-416 and 15-417, were inadvertently removed when that change was made, and the proposed amendment would restore the two missing sections. Additionally, the proposed amendment corrects an inadvertent error in Section 15-423(d) of this code that references "170D" but should reference "160D of the NC General Statutes."

In the process of restoring the inadvertently removed sections, this text amendment also proposes to modify the previous version of Section 15-416. This is the section related to the front setback for buildings in the historic district. Historically this setback has been confusing with a complicated calculation. The proposed Section 15-416 would simply this calculation for a more practical application. These revisions are included in the backup information.

The City of New Bern Historic Preservation Commission (HPC) discussed and unanimously recommended approval of this text amendment at their June 21, 2023, meeting.

The City of New Bern Planning & Zoning Board discussed and unanimously recommended approval of this text amendment at their July 5, 2023, meeting. The proposed amendment was found to be consistent with the City of New Bern 2010 Regional Land Use plan and the 2022 City of New Bern Land Use Plan Update.

Please contact Matt Schelly at (252) 639-7583 or <u>schellym@newbernnc.gov</u> should you have questions or need additional information.

#### RESOLUTION CALLING FOR PUBLIC HEARING

WHEREAS, the Board of Aldermen of the City of New Bern desires to conduct a public hearing to receive public comments on amending Sections 15-416, 15-417, and 15-423(d) of Article XXI. "New Bern Historic District" of Appendix A "Land Use" of the Code of Ordinances, of the City of New Bern.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

That a public hearing will be conducted by the Board of Aldermen of the City of New Bern on Tuesday, August 8, 2023, in the City Hall Courtroom at 6:00 p.m., or as soon thereafter as the matter may be reached, on amending Sections 15-416, 15-417, and 15-423(d) of Article XXI. "New Bern Historic District" of Appendix A "Land Use" of the Code of Ordinances, of the City of New Bern. All interested parties will be given an opportunity to be heard:

ADOPTED THIS THE 25th DAY OF JULY 2023.

	JEFFERY T. ODHAM, MAYOR	
BRENDA E. BLANCO, CITY CLERK		

# AN ORDINANCE TO AMEND ARTICLE XXI. "NEW BERN HISTORIC DISTRICT" OF APPENDIX A "LAND USE" OF THE CODE OF ORDINANCES OF THE CITY OF NEW BERN

THAT WHEREAS, the Board of Aldermen Notice of Public Hearing was published in accordance with G.S. 160D-601 in the <u>Sun Journal</u>, a local newspaper, once a week for two (2) successive weeks, said notice having been published the first time not less than ten (10) days nor more than twenty-five (25) days prior to the date of such hearing; and

WHEREAS, the Planning and Zoning Board of the City of New Bern unanimously recommends that certain amendments be made to Article XXI. "New Bern Historic District" of Appendix A "Land Use" of the Code of Ordinances of the City of New Bern; and

WHEREAS, the Historic Preservation Commission and the City's development services staff further recommends approval of said proposed amendments; and

WHEREAS, in accordance with the provisions of the North Carolina General Statute 160D-605, the Board of Aldermen does hereby find and determine that the adoption of ordinance is consistent with the adopted land use plan and other city plans, and that the adoption of the ordinance is reasonable and in the public interest due to its consistency with the land use plan and other city plans, and as a result, its furtherance of the goals and objectives of the land use plan; and

WHEREAS, the said public meeting was actually conducted at 6:00 p.m. on \_\_\_\_\_\_\_,
2023, wherein a reasonable opportunity was given to all those in attendance to speak either in favor
or against the said change or to make relevant comments; and

WHEREAS, the Board of Alderman of the City of New Bern deems it advisable and in the public interest to effect said revisions to Article XXI. "New Bern Historic District" of Appendix A "Land Use" of the Code of Ordinances of the City of New Bern.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

SECTION 1. That Article XXI. "New Bern Historic District" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by adding Section 15-416. "Required conformity to dimensional regulations; exceptions." as follows:

#### "Section 15-416. Required conformity to dimensional regulations; exceptions.

Buildings and structures within the historic district shall observe the dimensional and other regulations of the city's zoning ordinances, except as follows:

- (a) Front yard setbacks shall be within a zone established by the minimum and maximum setbacks of the existing contributing structures on the same side both sides of the block under consideration as of the date of the application for a certificate of appropriateness. Where less than three contributing structures are situate on the same side of the block under construction, the applicable front setback shall be the zone established by the minimum and maximum setbacks of the existing contributing structures on the same side of the street of the nearest adjoining blocks within the same zoning district where three contributing structures are situate. If only one adjoining block lies within the same zoning district as the property under construction, or if only one adjoining block has three contributing structures, only such adjoining block shall be used to determine the minimum and maximum setbacks of the existing contributing structures. If there are no qualifying adjoining blocks, the front yard setbacks shall be within a zone established by the minimum and maximum setbacks of the existing contributing structures across the street of the block under construction as of the date of the application for a certificate of appropriateness, and if there are less than three contributing structures across the street, then all structures across the street shall be considered.
- (b) The minimum side yard setback shall be:
  - (1) For residential uses, five feet, or less as provided in section 15-123; or
  - (2) For all other uses, the applicable side yards shall be those prescribed by the city zoning ordinance for that particular zoning classification.
- (c) Rear yard. Rear yards will be the resultant ground remaining from setback, side yard, and lot coverage requirements, but shall be no less than six feet in depth.
- (d) Lot coverage. Lot coverage for residential uses shall not exceed 60 percent of the total lot area.
- (e) All setbacks, lot coverage ratios and other zoning requirements specific to an application for a certificate of appropriateness shall be determined by the zoning administrator or his designee, and provided to the commission prior to the consideration of a certificate of appropriateness as a written opinion of the zoning administrator."

<u>SECTION 2</u>. That Article XXI. "New Bern Historic District" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by adding Section 15-417. "Off-street parking." as follows:

#### "Section 15-417. Off-street parking.

Where the commission, in considering an application for a certificate of appropriateness, shall find that the number of off-street parking spaces required by the zoning regulations for a building or structure for which a building permit is requested would render the building incongruous with the historic aspects of the district, it shall recommend to the board of adjustment a waiver, in part or in whole, of off-street parking requirements. The board of adjustment may authorize a lesser number of off-street parking spaces, provided:

 The board finds that the lesser number of off-street parking spaces will not create problems due to increased on-street parking; and

#### REDLINE VERSION

(2) No threat to public safety is thereby created.

SECTION 3. That Article XXI. "New Bern Historic District" of Appendix A "Land Use" of the Code of Ordinance of the City of New Bern be and the same is hereby amended by deleting subsection (d) of Section 15-423. "Application procedures." and inserting in its stead the following:

"Sectio	n 15-423. Application procedure	es.
decision		ess are quasi-judicial and shall follow the procedures of
"		
	SECTION 4. This ordinance shall	be effective from and after the date of its adoption.
	ADOPTED THIS DAY OF	, 2023.
		JEFFREY T. ODHAM, MAYOR
BRENI	DA E. BLANCO, CITY CLERK	



300 Pollock Street, P.O. Box 1129 New Bern, NC 28563-1129 (252) 636-4000

# CONSISTENCY STATEMENT Case: Sections 15-423(d) amdendment.

Whereas, the City of New Bern Planning and Zoning Board has reviewed potential modifications to Section 15-423(d) and finds the proposed changes to be consistent with the 2022 Land Use Plan Update and 2010 Land Use Plan;

NOW, THEREFORE BE IT RESOLVED, by the City of New Bern Planning and Zoning Board that the proposed zoning ordinance text amendment and presented documentation are found to be consistent with the City's 2022 Land Use Plan Update and 2010 Land Use Plan; and are determined to be reasonable and in the public interest.

Adopted this the 5th day of July, 2023

Seth Laughlin, Secretary to the Board

Brad Jefferson, Chairman



300 Pollock Street, P.O. Box 1129 New Bern, NC 28563-1129 (252) 636-4000

# CONSISTENCY STATEMENT Case: Sections 15-416 & 15-417 amdendments.

Whereas, the City of New Bern Planning and Zoning Board has reviewed potential modifications to Sections 15-416 & 15-417 and finds the proposed changes to be consistent with the 2022 Land Use Plan Update and 2010 Land Use Plan;

NOW, THEREFORE BE IT RESOLVED, by the City of New Bern Planning and Zoning Board that the proposed zoning ordinance text amendments and presented documentation are found to be consistent with the City's 2022 Land Use Plan Update and 2010 Land Use Plan; and are determined to be reasonable and in the public interest.

Adopted this the 5th day of July, 2023

Brad Jefferson, Chairman

Seth Laughlin, Secretary to the Board

### AGENDA ITEM COVER SHEET



Agenda Item Title: Proclamation for Celebrate Shelter Pet Day

Date of Meeting: 7/25/2023		Ward # if applicable:		
Department: City Clerk		Person Submitting Item: Brenda Blanco		
Call for Public Hearing: □Yes⊠No		Date of Public Hearing:		
Explanation of Item:		er requested a proclamation recognizing the owing Thanksgiving as Celebrate Shelter Pet		
Actions Needed by Board:	Consider approving the proclamation			
Backup Attached:	Proclamation			
Is item time sensitive?	Yes □No			
Cost of Agenda Item: \$0 If this requires an expen	diture, has it l	been budgeted and are funds available		
and certified by the Fina	nce Director?	☐Yes ☐ No		

**Additional Notes:** 



WHEREAS, Celebrate Shelter Pet Day is celebrated across the nation each year on the Thursday after Thanksgiving; and

**WHEREAS**, the City of New Bern recognizes that Celebrate Shelter Pet Day raises awareness for tens of thousands of pets and animals that are needing adoption from pet shelters, animal rescue organizations, and rehabilitation centers; and

WHEREAS, our community recognizes that more than 6 million pets end up in need of a loving home every year in the United States; and

**WHEREAS**, animal shelter and animal rescue employees in our community work tirelessly to help pets in need, and volunteers in our community help support pets in need through donations of time and funds; and

WHEREAS, law enforcement agencies, veterinarians, and other community organizations collaborate with animal shelters and animal rescue organizations to educate the public on the proper care of animals, reunite lost pets with their families, and help to protect the welfare of helpless animals; and

WHEREAS, our community recognizes the benefits of pets that provide companionship and comfort; and

WHEREAS, in recognition of November's Celebrate Shelter Pet Day campaign, New Bern joins the Humane Society of the United States and other animal welfare groups in raising awareness through education and motivating individuals to find their next dog or cat at local shelters and rescues.

NOW THEREFORE, I, Jeffrey T. Odham, Mayor of the City of New Bern, on behalf of the New Bern Board of Aldermen do hereby proclaim that the Thursday following Thanksgiving shall annually be observed as

#### CELEBRATE SHELTER PET DAY

in the City of New Bern and encourage all citizens to support and consider adopting from its local shelter.

**IN WITNESS WHEREOF,** I have hereunto set my hand and affixed the Seal of the City of New Bern this the 25<sup>th</sup> day of July in the Year of Our Lord Two Thousand and Twenty-Three.

JEFFREY T. ODHAM, MAYOR

City Hall • New Bern, NC 28563 • (252) 636-4000

### **AGENDA ITEM COVER SHEET**



### **Agenda Item Title:**

Presentation by representatives from the Old North State League regarding their interest in bringing an expansion collegiate summer baseball team to New Bern.

Date of Meeting: 7/25/2023		Ward # if applicable: 1		
Department: Administration  Call for Public Hearing: □Yes⊠No		Person Submitting Item: Foster Hughes, City Manager		
		Date of Public Hearing:		
Explanation of Item:	Alec Allred, with the Old North State League, will make a presentation regarding their interest in bringing their collegiate summer baseball league to New Bern. The league is interested in entering into a lease agreement for use of Kafer Park.			
Actions Needed by Board:	Provide direction to Manager on negotiating a lease contract for the use of Kafer Park.			
Backup Attached:	Memo, Powerpoint Presentation			
Is item time sensitive?	□Yes □No			
Cost of Agenda Item:				
		been budgeted and are funds available ☐ Yes ☐ No		

**Additional Notes:** 

#### Aldermen

Rick Prill Hazel B. Royal Robert V. Aster Johnnie Ray Kinsey Barbara J. Best Robert Brinson, Jr.



300 Pollock Street, P.O. Box 1129 New Bern, NC 28563-1129 (252) 636-4000 Jeffrey T. Odham
Mayor
Foster Hughes
City Manager
Brenda E. Blanco
City Clerk
Kimberly A. Ostrom
Director of Finance

To: Mayor and Board of Aldermen

From: Foster Hughes, City Manager

Date: May 17, 2023

Subject: Presentation by representatives from the Old North State League regarding

their interest in bringing an expansion collegiate summer baseball team to

New Bern

#### **Background Information:**

Alec Allred, with the Old North State League, approached the City Manager a few months ago to discuss the possibility of bringing an expansion summer collegiate summer baseball team to New Bern. The Manager and Director of Parks and Recreation met with him to review available city facilities.

After researching the area and city facilities, Mr. Allred will present his request to the governing board. The league is interested in entering into a lease agreement for use of Kafer Park

#### Recommendation:

Authorize the City Manager to negotiate a lease contract for the use of Kafer Park.

# ONSL & THE CITY OF NEW BERN

COLLEGE SUMMER BASEBALL IN 2024

1

# THE OLD NORTH STATE LEAGUE



- · A collegiate summer baseball league based entirely out of North Carolina
- There are 16 teams in the Old North State League making it the 4th largest league of its kind in the country
- Current teams in the ONSL that are in the Eastern North Carolina region
  - Jacksonville
  - · Elizabeth City
  - Brunswick County
  - Kinston
- · The season runs from late May to the end of July
- · Teams have a year round operation and presence in their community
- Dozens of former players have gone on to play professional baseball
- Old North State League teams typically play a 40-45 game schedule with 20-25 home games each season

#### **PHOTOS**



TRAMWAY PARK - HOME OF THE SANFORD SPINNERS



BOGEY BALLPARK - HOME OF THE SANDHILLS BOGEYS

3

#### PHOTOS



JP RIDDLE STADIUM - HOME OF THE FAYETTEVILLE CHUTES



JACK HUGHES BALLPARK - HOME OF THE PINEVILLE PORCUPINES



BERKELEY MILLS BALLPARK - HOME OF THE HENDERSONVILLE HONEYCRISPS

# WE WANT TO COME TO NEW BERN



- · Ideal population for an ONSL market
- · New Bern is a tourist destination
- · Historic Area
- Historic Kafer Park fits league goals to renovate old ballparks for communities
- Baseball Rich community and history
- · Fills a geographical void in the ONSL
- · Ability to establish local rivalries with Kinston and Jacksonville

5

# Kafer Park

- · Ideal location near downtown
- · The ballpark is well known by citizens
- The Ballpark has a rich history of high level baseball being played there
- It's got a great foundation that New Bern Baseball can build off of.
- · A historic ballpark with needed renovations



#### PREVIOUS BALLPARK RENOVATION PROJECTS COMPLETED BY NEW BERN BASEBALL OWNERS





CRAVEN STADIUM - RAMSEUR, NC FALL OF 2014









7

PREVIOUS BALLPARK CONSTRUCTION PROJECTS COMPLETED BY NEW BERN BASEBALL OWNERS



BOGEY BALLPARK - PINEHURST, NC SPRING OF 2022





BOGEY BALLPARK - PINEHURST, NC SUMMER OF 2022

# PLANS AND INITIATIVES

- Hire a local General Manager with a pulse on the community
- Work with Parks & Rec as a community partner to help with initiatives
- Get involved with County School system and their initiatives
- Renovate Kafer Park
- Create a year-round experience at Kafer Park through collegiate summer baseball games, tournaments, concerts, and other events
- Drive economic revenue to other local businesses

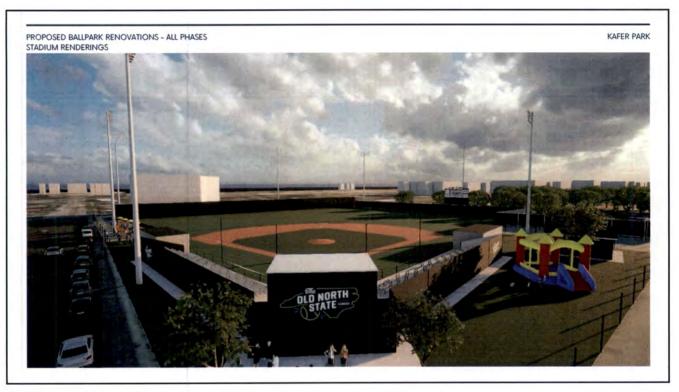
9

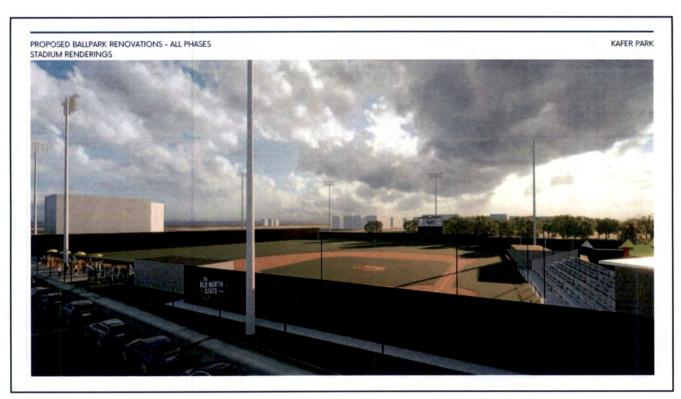
# NEW BERN BASEBALL CONTRIBUTION

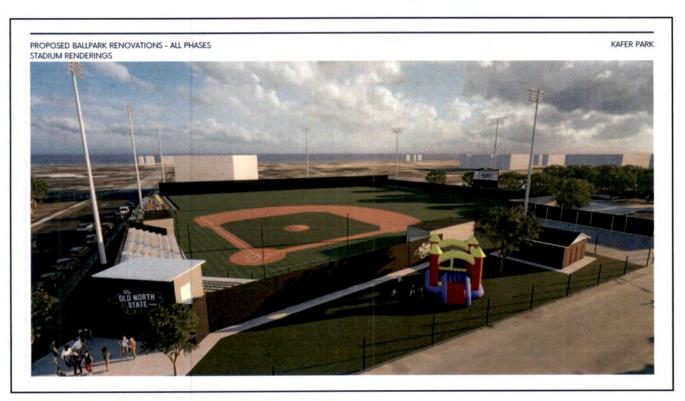
- The estimated cost of New Bern Baseball's Investment is between S250k -S350k
- These include the following items that should be completed by the 2024 season
  - Expanded Dugouts (\$25,000 \$35,000)
  - Refurbished Playing Surface (\$10,000 \$15,000)
  - Speaker System (\$4,000 \$5,000)
  - Bullpens (\$10,000 \$15,000)
  - New Backstop (\$25,000 \$35,000)
  - Extended Outfield Fence in Center Field (\$25,000 \$35,000)
  - Beer Patio (\$10,000 \$15,000)
  - Grandstand Seating (\$150,000 \$175,000)

# CITY OF NEW BERN CONTRIBUTION

- · In exchange for this investment, we are asking for the following:
  - o a 10 year lease at S1 a year for 365 day control
  - o Permission to sell beer with the proper permits
  - · Ability to control advertising at the ballpark year-round
    - Including the naming rights of structures around the park including but not limited to:
      - Dugouts
      - Concession Stand
      - Grandstand
      - · New Bern Baseball will NOT rename Kafer Park
  - A separate lease that coincides with the ballpark lease for the concession stand to ease the ability to receive food and beer permits
  - · Authorization to rent field to other entities
  - Authorization to install baseball technology such as but not limited to:
    - Trackman, Live Stream Cameras, Rapsodo
  - A Non-compete with New Bern Baseball to not enter into an agreement with another baseball team that could be deemed as competition.















# CONCLUDING THOUGHTS

- In the initial 10 year lease before the exercised option, that puts a value of the year round lease at \$25,000 -\$35,000 a year in trade off for our investment in the venue.
  - For reference on the numbers above, Grainger Stadium, home of the Down East Wood Ducks pay a yearly fee of \$60k for a ballpark worth over \$10m.
- · New Bern Baseball will take over all utilities at the park
- New Bern Baseball will maintain partnership with the Adult Baseball League.
- · New Bern Baseball will begin games at 6:00 PM to avoid noise ordinance
- New Bern Baseball and the City of New Bern will work together to provide the City any dates they need to utilize the field throughout the year
- · This investment is our belief in New Bern and its viability to host a successful sports entertainment venture.
- The City of New Bern will have a partner in New Bern Baseball that will help with city initiatives, and drive economic revenue to the town through overnight stays, gas station fill ups, eating at restaurants, and much more.
- We will look to be a year round partner and have a year round presence to host more than just college baseball
  games each year. We will work to utilize the ballpark all year and drive people to New Bern.

### AGENDA ITEM COVER SHEET

Ward # if applicable: N/A



**Agenda Item Title:** 

Date of Meeting: 7/25/2023

Approve Resolution Adopting the 2023 City of New Bern Water Shortage Response Plan

Department: Water Resources  Call for Public Hearing: □Yes⊠No		Person Submitting Item: Jordan Hughes	
		Date of Public Hearing: N/A	
Explanation of Item:	Shortage Respo New Bern has b	tues require that water systems update their Water nse Plans (WSRP) every five years. The WSRP for een updated, the plan has been approved by w needs to be adopted by the Board.	
Actions Needed by Board:	Approve Resolution Adopting the 2023 City of New Bern Wate Shortage Response Plan		
Backup Attached:	Memo from Jordan Hughes, copy of the 2023 WSRP, a copy of the letter from NCDEQ approving the plan and draft resolution for adopting the plan.		
Is item time sensitive?		the meeting? □Yes ☒ No	
Cost of Agenda Item: \$		ine meeting. Lifes 23 110	
	nditure, has it	been budgeted and are funds available ☐ Yes ☐ No	

**Additional Notes:** 



Department of Water Resources 527 NC Highway 55 West, P.O. Box 1129 New Bern, NC 28563 (252) 639-7527

#### **MEMORANDUM**

TO: Mayor and Board of Aldermen

FROM: Jordan B. Hughes P.E., Director of Water Resources

**DATE:** July 12, 2023

SUBJECT: Recommendation to Adopt the 2023 Water Shortage Response Plan

#### **Background Information:**

Pursuant to NC General Statute 143-355.2 (a) the City of New Bern has recently completed and submitted the 2023 Water Shortage Response Plan (WSRP) to the North Carolina Department of Environmental Quality (NCDEQ) for review. The NCDEQ Division of Water Resources has recently completed their review of the information contained in the City of New Bern's 2023 WSRP and has indicated that the plan is complete and contains all of the information needed to satisfy the requirements of NCGS 143-355.

The final step in achieving compliance with NCGS 143-355.2 (a) is to have the 2023 WSRP adopted by the New Bern Board of Aldermen.

#### Recommendation:

To fully comply with the NCDEQ requirements as outlined in NCGS 143-355.2 (a), staff is recommending adoption the 2023 WSRP as approved by NCDEQ.

Attached please find the 2023 WSRP, a copy of the letter from NCDEQ approving the 2023 WSRP and a draft resolution for adopting the plan.

Please contact me if there are any questions or if additional information should be required.

#### RESOLUTION FOR APPROVING WATER SHORTAGE RESPONSE PLAN

THAT WHEREAS, North Carolina General Statute 143-355 (I) requires that each unit of local government that provides public water service and each large community water system shall develop and implement water conservation measures to respond to drought or other water shortage conditions as set out in a Water Shortage Response Plan and submitted to the Department for review and approval; and

WHEREAS, as required by the statute and in the interests of sound local planning, a Water Shortage Response Plan for the City of New Bern has been developed and submitted to the City of New Bern Board of Aldermen for approval; and

WHEREAS, the City of New Bern Board of Aldermen finds that the Water Shortage Response Plan is in accordance with the provisions of North Carolina General Statute 143-355 (I) and that it will provide appropriate guidance for the future management of water supplies for the City of New Bern, as well as useful information to the Department of Environmental Quality for the development of a state water supply plan as required by statute;

NOW, THEREFORE, BE IT RESOLVED by the City of New Bern Board of Aldermen that the Water Shortage Response Plan entitled, City of New Bern Water Shortage Response Plan dated May 2023, a copy of which is attached hereto and incorporated herein by reference, is hereby approved and shall be submitted to the Department of Environmental Quality, Division of Water Resources; and

BE IT FURTHER RESOLVED that the City of New Bern Board of Aldermen intends that this plan shall be revised to reflect changes in relevant data and projections at least once every five years or as otherwise requested by the Department, in accordance with the statute and sound planning practice.

ADOPTED THIS 25th DAY OF JULY, 2023.

BRENDA E. BLANCO, CITY CLERK

	JEFFREY T. ODHAM, MAYOR
--	-------------------------

#### New Bern Water Shortage Response Plan City of New Bern, North Carolina May 2023

The procedures herein are written to reduce potable water demand and supplement existing drinking water supplies whenever existing water supply sources are inadequate to meet current demands for potable water.

#### I. Authorization

The New Bern City Manager shall enact the following water shortage response provisions whenever the trigger conditions outlined in Section IV are met. In his absence, the New Bern Director of Water Resources will assume this role.

Mr. Foster Hughes New Bern City Manager Phone: (252) 639-2700

E-mail: hughesf@newbernnc.gov

Mr. Jordan B. Hughes, PE City of New Bern Director of Water

Resources

Phone: (252) 639-7527

E-mail: hughesi@newbernnc.gov

#### II. Notification

The following notification methods will be used to inform water system employees and customers of a water shortage declaration: employee e-mail announcements, notices at municipal buildings, notices in water bills and on the City of New Bern website homepage (http://www.newbernnc.gov). Required water shortage response measures will be communicated through *The Sun Journal*, PSA announcements on local radio and cable stations, and on the City of New Bern website. Declaration of emergency water restrictions or water rationing will be communicated to all customers by telephone.

#### III. Levels of Response

Five levels of water shortage response are outlined in the table below. The five levels of water shortage response are: voluntary reductions, mandatory reductions I and II, emergency reductions and water rationing. A detailed description of each response level and corresponding water reduction measures follow below.

Stage	Response	Description	
1	Voluntary Reductions	Water users are encouraged to reduce their water use and improve water use efficiency; however, no penalties apply for noncompliance. Water supply conditions indicate a potential for shortage.	
2	Mandatory Reductions I	Water users must abide required water use reduction and efficiency measures; penalties apply for noncompliance. Water supply conditions are significantly lower than the seasonal norm and water shortage conditions are expected to persist.	
3	Mandatory Reductions II	Same as in Stage 2	
4	Emergency Reductions	Water supply conditions are substantially diminished and pose an imminent threat to human health or environmental integrity.	
5	Water Rationing	Water supply conditions are substantially diminished and remaining supplies must be allocated to preserve human health and environmental integrity.	

In Stage 1, Voluntary Reductions, all water users will be asked to reduce their normal water use by 5%. Customer education and outreach programs will encourage water conservation and efficiency measures including: irrigating landscapes a maximum of one inch per week; preventing water waste, runoff and watering impervious surfaces; watering plants deeply to encourage root growth; washing only full loads in clothes and dishwashers; using spring-loaded nozzles on garden hoses; and identifying and repairing all water leaks.

In Stage 2, Mandatory Reductions I, all customers are expected to reduce their water use by 10% in comparison to their previous month's water bill. In addition to continuing to encourage all voluntary reduction actions, the following restrictions apply: irrigation is limited to a half inch per week between 8PM and 8AM; outdoor use of drinking water for washing impervious surfaces is prohibited; and all testing and training purposes requiring drinking water (e.g. fire protection) will be limited.

In Stage 3, Mandatory Reductions II, customers must continue actions from all previous stages and further reduce water use by 20% compared to their previous month's water bill. All non-essential uses of drinking water are banned and garden and landscape irrigation must be reduced to the minimum amount necessary for survival. Additionally, in Stage 3, a drought surcharge of 1.5 times the normal water rate applies.

In Stage 4, Emergency Reductions, customers must continue all actions from previous stages and further reduce their water use by 25% compared to their previous month's water bill. A ban on all use of drinking water except to protect public health and safety is implemented and drought surcharges increase to 2 times the normal water rate.

The goal of Stage 5, Water Rationing, is to provide drinking water to protect public health (e.g. residences, residential health care facilities and correctional facilities). In Stage 5, all customers are only permitted to use water at the minimum required for public health protection. Firefighting is the only allowable outdoor water use and pickup locations for distributing potable water will be announced according to New Bern's Emergency Response Plan. Drought surcharges increase to 5 times the normal water rate.

#### IV. Triggers

The City of New Bern's water source is groundwater. The following measurements of well pumping times and well levels in relationship to pump intake levels trigger entry into corresponding water restriction stages.

Stage	Well Operating Conditions			
1	Pumping Time >10 hrs 20% reduction in seasonal normal distance from static water level and pump intake 20% increase pumping time for same output			
2	Pumping Time >12 hrs 40% reduction in distance from static water level and pump intake 40% increase pumping time for same output			
3	Pumping Time >14 hrs 60% reduction in distance from static water level and pump intake 60% increase pumping time for same output			
4	Pumping Time >20 hrs 80% reduction in distance from static water level and pump intake			
5	Water level at pump intake elevation			

#### Return to Normal

When water shortage conditions have abated and the situation is returning to normal, water conservation measures employed during each phase should be decreased in reverse order of implementation. Permanent measures directed toward long-term monitoring and conservation should be implemented or continued so that the community will be in a better position to prevent shortages and respond to recurring water shortage conditions.

#### Enforcement

The provisions of the water shortage response plan will be enforced by City of New Bern Water Resources department and police personnel. Violators may be reported on the City's Phone line. Citations are assessed according to the following schedule depending on the number of prior violations and current level of water shortage.

Water Shortage Level	First Violation	Second Violation	Third Violation
Voluntary Reductions	N/A	N/A	N/A
Mandatory Reductions (Stages 2 and 3)	Warning	\$250	Discontinuation of Service
Emergency Reductions	\$250	Discontinuation of Service	Discontinuation of Service
Water Rationing	\$500	Discontinuation of Service	Discontinuation of Service

Drought surcharge rates are effective in Stages 3, 4 and 5.

#### VI. Public Comment

Customers will have multiple opportunities to comment on the provisions of the water shortage response plan. First, a draft plan will be will be available at City Hall for customers to view. A notice will be included in customer water bill notifying them of such. Also a draft plan will be published in *The New Bern Sun Journal* and on the City of New Bern website. Notice will be printed in all customer water bills to collect comments on the draft. All subsequent revisions to the draft plan will be published at least 30 days prior to an adoption vote by New Bern's Board of Aldermen.

#### VII. Variance Protocols

Applications for water use variance requests are available from the City of New Bern website and City Hall. All applications must be submitted to the City Hall for review by the City Manager or his designee. A decision to approve or deny individual variance requests will be determined within two weeks of submittal after careful consideration of the following criteria: impact on water demand, expected duration, alternative source options, social and economic importance, purpose (i.e. necessary use of drinking water) and the prevention of structural damage.

#### VIII. Effectiveness

The effectiveness of the New Bern water shortage response plan will be determined by comparing the stated water conservation goals with observed water use reduction data. Other factors to be considered include frequency of plan activation, any problem periods without activation, total number of violation citations, desired reductions attained and evaluation of demand reductions compared to the previous year's seasonal data.

#### IX. Revision

The water shortage response plan will be reviewed and revised as needed to adapt to new circumstances affecting water supply and demand, following implementation of emergency restrictions, and at a minimum of every five years in conjunction with the updating of our Local Water Supply Plan. Further, a water shortage response planning work group will review procedures following each emergency or rationing stage to recommend any necessary improvements to the plan to New Bern's Board of Aldermen. The City of New Bern Director of Water Resources is responsible for initiating all subsequent revisions.

ROY COOPER Governor ELIZABETH S. BISER vetary ruCHARD E. ROGERS, JR. Director



June 21, 2023

Jordan B. Hughes, P.E. City Engineer City of New Bern P.O. Box 1129 New Bern, NC 28563-1129

> Subject: WSRP Meets Minimum Criteria New Bern Water System

PWSID#: 04-25-010 Craven County

Dear Mr. Hughes,

This letter is to notify you that our staff has reviewed the information contained in the Water Shortage Response Plan (WSRP) update submitted by your office. Since all the required information is complete, the WSRP for the **New Bern water system** hereby meets the minimum criteria established in North Carolina General Statute 143-355.2 (a) and 15A NCAC 02E. 0607.

The Water Shortage Response Plan must next be adopted by your water system's governing board; a model WSRP resolution is available online on the right side of the Local Water Supply Plan page at: <a href="https://www.ncwater.org/WUDC/app/LWSP/learn.php">https://www.ncwater.org/WUDC/app/LWSP/learn.php</a>. Once adopted, a copy of the signed resolution must be submitted to Linwood Peele, Water Supply Planning Branch Supervisor, at the address printed at the bottom of this letter or by e-mail to the review engineer shown below. Please note, the WSRP cannot be considered compliant with the requirements of NCGS 143-355(I) until an adopted resolution is received by the Division.

Please be advised that the review process for Water Shortage Response Plans is separate from the review process for your Local Water Supply Plan (LWSP). If you have submitted your LWSP but haven't already been contacted by the Division, you will receive notification as soon as the review of your LWSP is complete.

Thank you very much for your efforts to provide your customers with a safe and reliable supply of drinking water. We look forward to continuing to work with you in these efforts. Please contact your review engineer, Louis Murray, at <a href="mailto:louis.murray@deq.nc.gov">louis.murray@deq.nc.gov</a> or 919-707-9017, or Linwood Peele at <a href="linwood.peele@deq.nc.gov">linwood.peele@deq.nc.gov</a> or (919) 707-9024, if we can be of further assistance.

Sincerely,

Karen Higgins, Planning Section Chief Division of Water Resources, NCDEQ



# **AGENDA ITEM COVER SHEET**



**Agenda Item Title:** 

Resolution Authorizing Real Estate Purchase and Sale Agreement between the City of New Bern and Weyerhaeuser Company

Date of Meeting: 7/25/2023  Department: Public Utilities  Call for Public Hearing: □Yes⊠No		Ward # if applicable: N/A  Person Submitting Item: Charles Bauschard  Date of Public Hearing: N/A						
					Explanation of Item:	Purchase land necessary for the construction of a new electric substation and interconnect to the bulk electric system.  Execution by Mayor Odham		
					Actions Needed by Board:			
Backup Attached:	Memo, Location Map, Purchase Agreement, Resolution							
Is item time sensitive?	MVas □Na							
		he meeting?   Yes   No						
Cost of Agenda Item:	N/A							
	nditure, has it l	been budgeted and are funds available						

Additional Notes: N/A



210 Kale Road, P.O. Box 1129 New Bern, NC 28563-1129

TO: Mayor Odham, Board of Aldermen

FROM: Charles D. Bauschard, Director of Public Utilities

COPIES: Foster Hughes, City Manager; File

SUBJECT: Request to Execute Real Estate Purchase and Sale Agreement

**DATE:** July 14, 2023

Staff requests consideration towards executing a real estate purchase and sale agreement for land necessary to construct a new interconnect to the bulk electric system and a new electric substation. A total of 6 acres is necessary at a cost of \$15,000 per acre for a total purchase price of \$90,000. The cost is consistent with a professional appraisal provided by Realty Services of Eastern Carolina which valued the land at \$12,516 - \$19,303 per acre.

As separate agreement will follow in effort to acquire necessary property easements to connect the new substation to the Duke transmission system as well as provide new interconnects to the electric distribution system. A location map is attached.

Cost will be expensed from previously established electric project funds and is consistent with the Electric System Long Range Study that was completed in 2019 and the Electric System Capacity Improvement Project that was established in May of 2021. Where the project provides modernized system improvements that benefit grid resiliency and the rerouting of power to distressed areas, ensures continued economic growth by proving capacity for future loads, and delivers the ability to reroute power safely to perform system inspections, testing and maintenance.

## RESOLUTION

BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

That the Real Estate Purchase and Sale Agreement between the City of New Bern and Weyerhaeuser Company, a copy of which is attached hereto and incorporated herein by reference, be and the same is hereby approved, and the Mayor is hereby authorized and directed to execute the same for and on behalf of the City.

ADOPTED THIS 25th DAY OF JULY, 2023.

JEFFREY T. ODHAM, MAYOR

BRENDA E. BLANCO, CITY CLERK

## REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (the "Agreement") is made and entered into by and between WEYERHAEUSER COMPANY, a Washington corporation, whose address is 220 Occidental Avenue South, Seattle, Washington 98104, hereinafter called the "Seller," and City of New Bern, a political subdivision of the State of North Carolina, whose address is 300 Pollock Street, New Bern, NC 28560, hereinafter called the "Buyer." As used herein, the "Effective Date" of this Agreement shall mean the last date of signature by either Seller or Buyer, as indicated beneath their signatures below.

1. <u>Conveyance</u> In consideration of the mutual covenants contained herein, Seller agrees to sell and convey and Buyer agrees to purchase and take title to, upon the terms herein set forth, all that tract or parcel of real estate containing approximately acres, more or less, located in Craven County, North Carolina, and being more particularly described and/or depicted on Exhibit A attached hereto and made a part hereof ("Property"), which is to be legally described in accordance with Section 2(c) below.

## 2. Purchase Price and Payment

- (a) The total purchase price for the Property ("Purchase Price"), shall be the result of multiplying \$15,000.00 by the number of acres or fraction thereof within the Property as determined by the survey described in Section 2(c) herein, excluding any acreage shown on such survey lying within public road rights-of-way(s) not owned in fee by Seller. Buyer has paid the sum of \$0.00 as earnest money ("Earnest Money") to be held and applied as partial payment of the Purchase Price at the Closing. The balance of the Purchase Price shall be paid in immediately available funds via electronic funds (wire) transfer at or before the Closing.
- (b) Unless otherwise provided for by the parties, the Earnest Money shall be deposited with the Seller's Broker (as defined in Section 13), who will hold and disburse the Earnest Money in accordance with the terms and provisions of this Agreement.
- (c) Prior to the Closing, Buyer shall obtain at its expense an accurate boundary survey of the Property, which boundary survey must meet the following requirements:
- i. the survey must be prepared by a licensed surveyor, registered in the State in which the Property is located, who is reasonably acceptable to Seller;
  - ii. the survey must be signed and sealed by the surveyor
- iii. the survey must show on the face thereof the GPS coordinates for the Point of Beginning;
  - iv. the survey must certify to and show on the face thereof the total

number of acres contained within the boundaries of the Property; and

v. the survey shall open and establish the newly surveyed property lines on the ground according to Seller's specifications (paint and chops) as follows: along the boundary lines of the Property that are contiguous to Seller's remaining property, the surveyor must scrape and paint line and witness trees or set six (6) foot online metal posts where trees are not available at a distance of every 75 feet. The scrape should be a minimum of six (6) inches at least five (5) to seven (7) feet high from ground level and the trees should be painted by brush with Nelson boundary marking paint in the color specified by Seller. The surveyor shall also mark bearing trees (minimum of 2) for any new witness corner set.

As soon as possible upon completion of the survey, but no later than two weeks prior to Closing, Buyer shall provide Seller with a proposed legal description of the Property in Word format, two (2) copies of the original survey drawings and a digital copy of the survey in "PDF" format and, if available, spatial data in a CAD ".dwg" file in a defined coordinate system such as State Plane NAD83 or other ESRI format (shape file, feature class, etc.). Seller shall have the right to review and approve of, object to, or comment on the prepared survey and legal description before Closing. If Seller objects to or comments on the survey or legal description, the parties shall work together in good faith to resolve the same. Upon approval of the survey by the parties, the legal description to be used in the Deed shall be based on the agreed upon survey and the computation of the total number of acres contained within the Property shall be in accordance with said survey.

- 3. <u>Disclaimer & Waiver</u> The sale of the Property hereunder shall be subject to the disclaimers, waivers and releases set forth in this Section 3, all of which shall survive Closing or any earlier termination of this Agreement.
- Any documents, cruises, compilations, timber inventories, surveys, plans, specifications, reports and studies made available to Buyer by Seller, its affiliates, Seller's Broker, or any of their employees, agents or representatives (collectively the "Seller Parties"), and any answers to questions or other information about the Property given by any of the Seller Parties to Buyer or its agents and representatives (whether oral or in writing), are provided as information only. Seller has not made, does not make, and has not authorized anyone else to make any representation or warranty as to: (i) the existence or non-existence of access to or from the Property or any portion thereof; (ii) the number of acres in the Property; (iii) the volume, type, condition or quality of timber on the Property or logging conditions or feasibility; (iv) the location of the Property or any portion thereof within any floodplain, flood prone area, watershed or the designation of any portion of the Property as "wetlands"; (v) the volume, condition or quality of minerals on the Property; (vi) the availability of railroad, water, sewer, electrical, gas or other utility services; (vii) the environmental conditions or requirements of the Property or any land near the Property; (viii) the presence or absence of wildlife including threatened or endangered species on or near the Property; (ix) the stability of soils; (x) the condition of any building structure or improvements on the Property; (xi) the suitability or fitness of the Property for any development, construction, or any other purpose; (xii) the current or

projected income or expenses of the Property; (xiii) the transferability of any current forestland or other special tax designation; (xiv) the accuracy, sufficiency, or completeness of any documents, reports, studies, or other information (whether written or oral) provided by any Seller Party; or (xv) any other matters related to the Property. SELLER HEREBY EXPRESSLY DISCLAIMS AND NEGATES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THE CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, INCLUDING WITHOUT LIMITATION ANY WARRANTY RELATING TO THE CONDITION OF THE PROPERTY, ITS SUITABILITY FOR BUYER'S PURPOSES OR THE STATUS OF THE PROPERTY'S MAINTENANCE OR OPERATION. SELLER DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES THAT THE PROPERTY MAY BE USED FOR ANY PURPOSE WHATSOEVER.

- (b) Buyer expressly acknowledges that: (i) Seller Parties have not made any representations or warranties whatsoever concerning the Property or any matters pertaining to the Property; and (ii) in entering into this Agreement, Buyer is not relying on any such representations or warranties.
- (c) Buyer has examined and inspected or shall fully examine and inspect the Property and become thoroughly familiar with the title, condition, status and suitability of all aspects of the Property. Unless Buyer terminates this Agreement by reason of any right to do so under this Agreement, Buyer is willing to and Buyer shall purchase the Property and Seller shall sell the Property "AS IS, WHERE IS, with all faults" at the Closing.
- (d) To the fullest extent permitted by law, Buyer for itself and its successors and assigns hereby waives and releases all Seller Parties from any and all contractual, statutory, common law, and/or other liabilities, obligations, claims or causes of action, known or unknown, that Buyer or its successors and assigns may be entitled to assert against the Seller Parties arising in whole or in part out of, or relating or connected in any way to, the condition of the Property including, but not limited to, any such liabilities, obligations, claims or causes of action based in whole or in part upon any applicable federal, state or local environmental law, rule or regulation or the environmental condition of the Property.

## 4. Buyer's Inspection Period

(a) Buyer and Buyer's agents and representatives shall have the right, from the Effective Date until Closing, to go on the Property at reasonable times to make any reports, inspections and feasibility studies that Buyer wishes concerning the Property; provided that Buyer shall not conduct any invasive testing, including without limitation, any so-called Phase II Environmental Assessment, on the Property without Seller's prior written consent. All access to the Property hereunder shall be coordinated with Seller in advance and all such access made shall be at the sole risk of the entering party. All feasibility activities conducted hereunder shall be made at Buyer's sole cost and in full compliance with all federal, state, and local laws. Buyer

hereby covenants and agrees to indemnify, defend, and hold Seller harmless from and against any and all loss, liability, costs, claims, damages, demands, actions, causes of action and suits caused by or arising out of the exercise of the rights under this paragraph by Buyer or its agents or representatives, or the failure of Buyer or its agents or representatives to adhere to the requirements in this paragraph, or any permitting or related activities of Buyer or its agents or representatives concerning the Property. Buyer acknowledges that the foregoing covenant contained in this paragraph shall survive the termination of this Agreement.

- (b) For a period of 30 days following the Effective Date ("Buyer's Inspection Period"), Buyer may elect to not purchase the Property based on the results of its inspections or for any other reason. If Buyer notifies Seller in writing of its election to not purchase the Property prior to expiration of Buyer's Inspection Period, then this Agreement shall terminate, Seller's Broker shall refund the Earnest Money to Buyer, and, except as expressly provided to the contrary in this Agreement, Seller and Buyer shall have no further rights, duties, obligations or liabilities under this Agreement. In the event of such termination, if Seller requests, Buyer shall promptly furnish Seller with copies of all reports and studies relating to the Property conducted by or for Buyer, which obligation shall survive termination.
- (c) In the event that Buyer does not give notice to Seller in accordance with the provisions above of Buyer's election to terminate this Agreement, then Buyer shall be deemed to have waived such right and this Agreement shall continue in full force and effect.
- 5. Closing The consummation of the purchase and sale transaction contemplated herein (the "Closing") shall take place at a mutually agreeable location at or before 10:00 a.m. (local time) on 8/15/2023 (the "Closing Date"). The wire transfer for the Purchase Price must be initiated by noon (local time) on the Closing Date, and the Deed may not be recorded nor may Buyer take possession of the Property until such wire transfer has been initiated. Seller may extend the Closing Date for up to ninety (90) days, provided that Seller provides Buyer notice ten (10) days in advance of such extension.
- 6. <u>Deed of Conveyance</u> At Closing, Seller shall deliver a Special Warranty Deed conveying to Buyer title to the Property, containing the disclaimer and release provisions contained in Section 3 and the Mineral Reservation described in Special Provisions, if any, and warranting title against the claims of all persons claiming by, through or under Seller, but against none other (the "Deed"); the conveyance and the foregoing warranty being subject to the following (collectively, the "Permitted Exceptions" to said warranty):
- (a) liens for taxes, assessments and other governmental charges which are not yet due and payable as of the Closing;
- (b) all land use (including environmental and wetlands), building and zoning laws, regulations, codes and ordinances affecting the Property;
- (c) any rights of the United States of America, the State in which the Property is located or others in the use and continuous flow of any brooks, streams or other

natural water courses or water bodies within, crossing or abutting the Property, including, without limitation, riparian rights and navigational servitudes;

- (d) title to that portion of the Property, if any, lying below the mean high water mark (as such mean high water mark may change from time to time) of abutting tidal waters:
- (e) any claim or dispute caused by or arising from the indefinite location of any creek, river, stream, slough, or other body of water within or around the Property, or any shifts or changes in the course of any of the same (whether before or after the date hereof), or any changes in the boundaries of the Property resulting from accretion or avulsion;
- all easements, rights-of-way, licenses and other encumbrances or matters of record affecting the Property;
- (g) all existing public and private roads and streets and all railroad and utility lines, pipelines, service lines and facilities;
- (h) all encroachments, overlaps, boundary line disputes, shortages in area, parties in possession, cemeteries and burial grounds and other matters not of record which would be disclosed by an accurate survey or inspection of the Property, including any survey prepared in connection with this transaction;
- (i) all mining claims and all prior reservations or conveyances of mineral rights or mineral leases of every kind and character;
- (j) all Indian tribal codes and regulations and all Indian treaty and aboriginal rights and claims, including without limitation, easements or equitable servitudes;
- (k) any loss or claim due to lack of access to any portion of the Property; and
- and any loss or claim due to any indefiniteness or uncertainty in the legal description of the Property.
- 7. <u>Title Search</u> Buyer shall bear the expense of searching title and the full cost of any title insurance premiums including extended coverage or endorsements, if any. Buyer shall have 30 business days from the Effective Date in which to search title to the Property and in which to furnish Seller with a written statement of any title objections other than the Permitted Exceptions. If Buyer fails to timely submit such written statement of title objections, then Buyer is deemed to have accepted any title defects and shall proceed to Closing. If Seller is unable or unwilling to cure the objections, Buyer may elect to either: (a) terminate this Agreement by written notice to Seller, whereupon any Earnest Money paid shall be refunded to Buyer and, except as expressly provided to the contrary in this Agreement, Seller and Buyer shall have no further rights, duties, obligations or liabilities under this Agreement, or (b) Buyer may waive such defects and proceed to the Closing without a reduction in the Purchase Price. If Buyer makes no such election by the Closing Date, Buyer shall be deemed to have chosen option (b) above.
- 8. <u>Tax Designation</u> Buyer acknowledges that the Property may have a current designation as forestland or other special tax classification based upon its current use ("Tax Designation"). Buyer agrees to purchase the Property subject to the provisions, conditions, and

restrictions of the Tax Designation and to continue the Tax Designation of the Property. Buyer agrees to take any further actions and to prepare any additional plans and reports at Buyer's expense, as may be required to continue the Tax Designation to Buyer on or after Closing. If Buyer decides to remove, or fails to continue, the Tax Designation of the Property, any resulting tax, rollback tax, compensating tax, interest or penalty associated with the withdrawal, or failure to continue, the Tax Designation of the Property (collectively, "Removal Fees") shall be Buyer's sole responsibility and expense. Buyer shall indemnify Seller from and against any and all such Removal Fees. Buyer acknowledges that the covenant contained in this paragraph shall survive the Closing and not be merged in the Deed.

9. Prorations, Expenses & Property Taxes All real estate ad valorem taxes for the calendar year of Closing shall be prorated as of the Closing Date and paid or credited at the Closing. Seller shall prepare the Deed, based on Seller's standard form. Buyer shall pay for any state, county, and local property transfer taxes. Buyer shall pay escrow fees and closing costs, as well as all recording costs. Buyer shall pay when due (and indemnify and hold Seller harmless from) all taxes, assessments and penalties (including any which may be attributable or allocable to periods prior to the Closing) resulting from any change made or caused by Buyer in the use or classification of the Property after the Closing. The party responsible for payment of property taxes agrees to pay the current year's tax bill in full on or before the due date. In the event that the non-responsible party receives the tax bill, that party agrees to forward it to the other party for payment. The parties agree that no refunds will be issued for incorrectly paid tax bills by either party unless an error is made and the aggrieved party makes a written request for refund within twelve months of the Closing Date.

## 10. Closing Instruments

- (a) Seller shall deliver to escrow for Closing the following on or before the Closing Date:
  - (i) Seller's standard Deed in accordance with Section 6 above;
  - (ii) Seller's standard owner's affidavit;
  - (iii) Seller's FIRTPA certificate; and
  - (iv) A signed settlement statement.
- (b) Buyer shall deliver to escrow for Closing the following on or before the Closing Date:
  - The balance of the Purchase Price and any other amounts due under this Agreement;
  - (ii) Any other such documentation as may be required under this Agreement; and
  - (iii) Such other documentation as may be reasonably required to close the transaction, including, without limitation, a signed settlement statement, any required transfer tax form, and escrow instructions.

- 11. <u>Hunting/Recreational Rights</u> Hunting leases, recreational leases and/or recreational permits (if any) covering the Property will be terminated with respect to the Property effective as of the Closing Date or as soon thereafter as practical, provided that the lessee of any such lease or permit will have thirty (30) days following termination of any such lease or permit to remove deer stands, other hunt club equipment, or other personal property from the Property. Buyer acknowledges the foregoing, shall permit such lessees to access the Property after Closing for such purposes, and shall release Seller from all liability associated with such access. This paragraph shall survive Closing.
- 22. Casualty Loss In the event of a material loss or damage to the Property, which occurs prior to Closing, or if any material portion of the Property has been taken by condemnation or eminent domain proceedings (or deed in lieu thereof), Buyer may, at its option, elect to (a) terminate this Agreement and receive a return of the Earnest Money, if Buyer notifies Seller in writing of its election within fifteen (15) days from the date Buyer receives notice of the casualty or condemnation; or (b) Buyer shall consummate the transaction and receive an assignment of all proceeds of insurance or condemnation awards attributable to such damage or taking, less reimbursement to Seller of the reasonable costs it incurred in procuring such proceeds or awards. At Closing, Buyer assumes all hazards of damage to or destruction of the Property or improvements hereafter placed thereon, and of the taking of the Property or any part thereof for public use; and agrees that no such damage, destruction or taking shall constitute a failure of consideration. For purposes of this paragraph, "material" shall mean a diminution in value of the Property in excess of 10% of the Purchase Price.
- 13. Real Estate Commission Other than representing Seller ("Seller's Broker"), Buyer and Seller each represent and warrant to the other that there are no other brokers, agents or finders, licensed or otherwise has been engaged by it, respectively, in connection with the transaction contemplated by this Agreement. In the event of any such claim for broker's, agent's or finder's fee or commission in connection with the negotiation, execution or consummation of this transaction, the party upon whose alleged statement, representation or agreement such claim or liability arises shall indemnify, hold harmless and defend the other party from and against such claim and liability, including without limitation, reasonable attorney's fees and court costs. Buyer and Seller acknowledge that the representations and warranties contained in this paragraph shall survive any early termination of this Agreement and the Closing and shall not be merged in the Deed.
- 14. <u>Default</u> If, for any reason whatsoever, Seller shall be unable to deliver title in accordance with this Agreement or Seller otherwise defaults hereunder, Buyer may elect to either: (a) terminate the Agreement upon notice given to Seller, whereupon the Earnest Money shall be returned to Buyer and neither party shall have any further rights or obligations under this Agreement, except those that expressly survive termination, or (b) waive such default and proceed to Closing (which Buyer shall be deemed to have done if it proceeds to close without making an election). In all cases, Seller's liability shall be limited to the return of the Earnest Money. In the event of default by Buyer, Seller may elect to terminate this Agreement upon

notice given to Buyer, in which case Buyer agrees that Seller shall retain the Earnest Money as liquidated damages as Seller's sole remedy; provided that the foregoing shall not limit Seller's remedies regarding any indemnity or other obligations of Buyer that by their terms expressly survive termination. Seller and Buyer agree that the Earnest Money is a reasonable amount for liquidated damages sustained by Seller upon default by Buyer because of the uncertainty in ascertaining actual damages. Further, if Seller elects to terminate hereunder, then upon any request made by Seller, Buyer shall furnish Seller with copies of all reports and studies relating to the Property conducted by or for Buyer (which obligation shall survive). In no event shall Seller be liable to Buyer for any punitive, consequential, incidental, indirect or special damages arising out of this Agreement or any breach thereof, including but not limited to loss of use, lost profits or revenue, whether or not such loss or damage is based on contract, warranty, negligence or otherwise.

- 15. Exchange Each party, at its election, may assign its rights and obligations under this Agreement in order to effectuate a like-kind exchange of property under Section 1031 of the Internal Revenue Code 1986 as amended, so long as notice of such exchange is given to the other party at least ten (10) business days before Closing. Each party agrees to reasonably assist and reasonably cooperate with other party in any such exchange at no additional cost, expense or liability to the party providing assistance. Subject to the foregoing, Buyer and Seller further agree to execute any and all documents as are reasonably necessary in connection with any such exchange.
- 16. Notices Any notice required or permitted to be given hereunder shall be in writing and shall be deemed properly given if, (i) personally delivered, (ii) sent by overnight courier service, (iii) sent by first class certified or registered mail, return receipt requested, with postage prepaid, or (iv) dispatched by electronic mail (email) transmission (accompanied with reasonable evidence of receipt of transmission) to the parties' addresses set forth below. Either party may change such address for notice. All notices which are so addressed and paid for shall be deemed delivered when personally delivered; or, if sent by overnight courier, the next business day following deposit with such courier; or, if mailed, on the earlier of receipt or three (3) business days after deposit thereof in the U.S. mail; or if sent via email, the date upon which such email was transmitted, provided the sender of such email notice receives confirmation of receipt from the recipient via return email or another acceptable notice method. Notices shall be addressed as follows:

If to Seller: Weyerhaeuser Company

Attn: Alissa Cale

PO Box 787, Plymouth, NC 27962

Telephone: 252-791-3215

Email: Alissa.cale@weyerhaeuser.com

With a Copy to: Weyerhaeuser Company

220 Occidental Avenue South

Seattle, WA 98104

Attn: Senior Legal Counsel

If to Buyer: City of New Bern

Attn: Scott Davis

209 Pollock Street, New Bern, NC 28560

Telephone:252-262-7056 Email: msd@dhwlegal.com

- 17. Actions of Seller Seller agrees and covenants that upon and following the execution of this Agreement and until Closing of the purchase contemplated herein (or any earlier termination of this Agreement), Seller shall not, without the prior written consent of Buyer, cut timber (other than hazardous trees), convey timber rights, grant easements, leases, rights-of-way or servitudes, or grant or convey any portion of the Property, or in any way encumber the Property in a manner inconsistent with the rights and interests to be acquired by Buyer.
- 18. <u>Subdivision</u> If necessary, at Buyer's expense, Seller shall reasonably cooperate with Buyer to cause the Property to be legally subdivided and segregated from the balance of the Seller's property prior to Closing, and Buyer, with Seller's cooperation, shall process through the appropriate governmental agencies any and all subdivision and/or platting required to convey the Property.
- 19. <u>Attorneys' Fees</u> If either party hereto is required to retain an attorney to enforce any provision of this Agreement, whether or not a legal proceeding is commenced, the substantially prevailing party shall be entitled to reasonable attorneys' fees regardless of whether at trial, on appeal, in any bankruptcy proceeding, in an arbitration or without resort to suit.
- 20. <u>Invalidity</u> In the event any portion of this Agreement should be held to be invalid by any court of competent jurisdiction, such holding shall not affect the remaining provisions hereof unless the court's ruling includes a determination that the principal purpose and intent of this Agreement are thereby defeated.
- 21. Waiver of Jury Trial EXCEPT AS PROHIBITED BY LAW, EACH PARTY HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION (ACTION, PROCEEDING OR COUNTERCLAIM) DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, ANY DOCUMENT OR AGREEMENT ENTERED INTO IN CONNECTION HEREWITH AND ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY.

- 22. <u>Legal Relationships</u> The parties to this Agreement execute the same solely as a Seller and Buyer. No partnership, joint venture or joint undertaking shall be construed from these presents, and except as herein specifically provided, neither party shall have the right to make any representation for, act on behalf of, or be liable for the debts of the other. All terms, covenants and conditions to be observed and performed by either of the parties hereto shall be joint and several if entered into by more than one person on behalf of such party, and a default by any one or more of such persons shall be deemed a default on the part of the party with whom said person or persons are identified. No third party is intended to be benefited by this Agreement.
- Agreement, in whole, provided that: (a) Buyer shall give Seller written notice of the assignment at least fifteen (15) business days prior to Closing; and (b) Buyer shall pay any additional escrow fees, Closing costs, or other expenses incurred as a result of any such assignment(s). The notice shall specify the name, address and phone number of the assignee and shall include a copy of the assignment. If Buyer makes an assignment of this Agreement, Buyer shall not be relieved of any obligations or liabilities hereunder. The rights and obligations of Seller and Buyer shall inure to the benefit of and be binding upon their respective estates, heirs, executors, administrators, successors, successors-in-trust and assigns.
- 24. <u>Time of Performance</u> Time is of the essence of this Agreement and whenever a date or time is set forth in this Agreement, the same has been entered into and formed a part of the consideration for this Agreement. Any time period in this Agreement that ends on a Saturday, Sunday, or legal holiday at the federal or local level where the Property is located shall extend to the next business day. "Business day" shall mean any day that is not a Saturday, Sunday, or legal holiday at the federal or local level above. No party shall be liable hereunder for any failure or delay due to acts of God, terrorism, wars, labor disputes, government shutdowns, or any similar factor beyond the reasonable control of such party, for the duration of such delay. The foregoing shall not apply to any inability to pay any sum.
  - 25. Possession Possession of the Property shall be granted to Buyer at the Closing.
- **Cooperation** Each of the parties shall perform all such other reasonable acts and things and execute such other and further reasonable documents as may be necessary to carry out the intent and purposes of this Agreement; provided, however, that the foregoing shall not obligate either party to expend additional sums or to incur additional liabilities.
- 27. <u>Paragraph Headings</u> The word or words appearing at the commencement of paragraphs and subparagraphs of this Agreement are included only as a guide to the contents thereof and are not to be considered as controlling, enlarging or restricting the language or meaning of those paragraphs or subparagraphs.

- 28. <u>Interpretation</u> Both parties have reviewed this Agreement and each party has had the opportunity to consult with independent counsel with respect to the terms hereof and has done so to the extent that such party desired. No stricter construction or interpretation of the terms hereof shall be applied against either party as the drafter hereof.
- 29. <u>Counterparts</u>; <u>Electronic Signatures</u> This Agreement may be executed in counterparts, each of which shall be deemed to be an original instrument. All such counterparts together shall constitute a fully executed Agreement. Signature and acknowledgment pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one document. In addition, the parties agree that this Agreement may be executed electronically and that electronic (email) counterparts of this Agreement shall be deemed for all purposes as an original. The parties agree to deliver counterparts of this Agreement containing original signatures if requested as soon as possible.
- 30. Organization and Authority Seller and Buyer represent and warrant to the other that (a) each has the full right, power and authority to execute this Agreement and perform their respective obligations under this Agreement, and (b) the execution and delivery of this Agreement has been duly authorized, and no further action or approval is required to cause this Agreement to be valid, binding and enforceable against the respective party in accordance with its terms.
- 31. <u>No Survival</u> Unless expressly stated otherwise in this Agreement, or unless the context of any particular situation clearly dictates otherwise, all terms and conditions of this Agreement shall be deemed merged into the Deed and shall not survive Closing.
- 32. <u>Use of Name</u> Buyer acknowledges and agrees that the name "Weyerhaeuser" (or any variation thereof) shall not be used by Buyer, or its assigns, in any way or on any activities conducted by or on behalf of Buyer, including advertisements.
- 33. <u>Complete Agreement</u> This Agreement contains the entire agreement of the parties with respect to the subject matters hereof and there are no representations, inducements or other provisions other than those expressed in writing herein.
- 34. <u>Amendment</u> This Agreement may not be modified or amended except by the written agreement of the parties.
- 35. <u>No Personal Liability</u> No officer, director, shareholder, manager, member, employee or partner of Buyer or Seller shall have any personal liability with respect to this Agreement whatsoever.
- 36. Offer and Acceptance This instrument shall be regarded as an offer by Buyer ("Offer") which shall remain open for acceptance by Seller and subject to certain internal

corporate reviews and approvals. Upon acceptance of this Offer by Seller, the resulting agreement shall be binding upon the parties.

- 37. Governing Law This Agreement shall be construed and enforced in accordance with the law of the State of North Carolina.
- 38. <u>Public Roads</u> Buyer acknowledges and accepts that roads which may exist leading to the Property may not be public roadways and therefore may not be maintained by a governmental authority and/or may not be open for use by the public or use by Buyer. Buyer shall be solely responsible for investigating access to the Property.
- 39. **OFAC** None of the funds to be used for payment by Buyer of the Purchase Price will be subject to 18 U.S.C. §§ 1956-1957 (Laundering of Money Instruments), 18 U.S.C. §§ 981-986 (Federal Asset Forfeiture), 18 U.S.C. §§ 881 (Drug Property Seizure), Executive Order Number 13224 on Terrorism Financing, effective September 24, 2001, or the United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107-56 (the "USA Patriot Act"). Buyer certifies that neither Buyer nor any person owning an interest in Buyer, is or will become a person or entity with whom U.S. persons are restricted from doing business with under the regulations of the Office of Foreign Asset Control ("OFAC") of the Department of Treasury (including those named on OFAC's Specially Designated and Blocked Persons list) or under any statute. executive order (including the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), the USA Patriot Act, or other governmental action, nor has Buyer previously been indicted for or convicted of any USA Patriot Act offenses. Buyer hereby agrees to defend, indemnify, and hold harmless Seller from and against any and all claims, damages, losses, risks, liabilities, and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing certification. This certification and agreement to indemnify, hold harmless, and defend Seller shall survive Closing or any termination of this Agreement.
- 40. Covenant Buyer acknowledges that the Property conveyed herein is or may be adjacent to or near Seller's or its affiliates' timberlands and may be subject to conditions resulting from Seller's or its affiliates' commercial forestry operations and mineral operations on said adjacent or nearby lands. Such operations include management and harvesting of timber, disposal of slash (including, without limitation, slash burning and other controlled burning), reforestation, application of chemicals, road construction and maintenance, transportation of forest products, and other accepted and customary forest management activities, and commercial exploitation of mineral resources, including all methods of developing, producing, extracting or removing mineral resources therefrom, all conducted in accordance with federal and state laws. Said forest management activities and mineral operations ordinarily and necessarily produce noise, dust, smoke, appearance and other conditions which may conflict with Buyer's use of the Property. Buyer, its heirs, successors and assigns hereby waive all common law rights to object to normal, necessary and non-negligent forest management activities and mineral operations

legally conducted on Seller's or its affiliates' adjacent property or nearby property. Buyer, its heirs, successors and assigns will not object to the legal application of chemicals, including, without limitation, pesticides and herbicides, on Seller's or its affiliates' adjacent or nearby property. It is intended and agreed this covenant shall be hereafter a part of the Deed described in Section 6 above, and of the public record and forever remain a covenant with the Property now or hereafter adjacently acquired by Buyer, and any party acquiring an interest in said Property shall be bound by the terms of the covenant.

#### 41. Intentionally Omitted

- 42. <u>Special Provisions</u> The parties acknowledge this Section contains special provisions for this transaction. If any inconsistency exists between the terms of this Section below and the general terms of this Agreement, the terms of this Section shall prevail to the extent of such inconsistency.
  - A. Simultaneously with the Closing of the transaction contemplated by this Agreement, the parties shall enter into two Transmission and Distribution Line Easement Agreements, which shall be separately negotiated, wherein Seller will grant to Buyer certain easement rights in Craven County, North Carolina (the "Simultaneous Agreements"). The execution and recording of the Simultaneous Agreements is a condition precedent to Seller's obligation to close under this Agreement. If the execution and recording of the Simultaneous Agreements fails to occur for any reason this Agreement shall terminate and neither party shall have any remaining rights or obligations, other than those that expressly survive the termination of this Agreement, and the Earnest Money shall be refunded to the Buyer. In no event shall the transaction contemplated under this Agreement close without the simultaneous execution and recording of the Simultaneous Agreements.

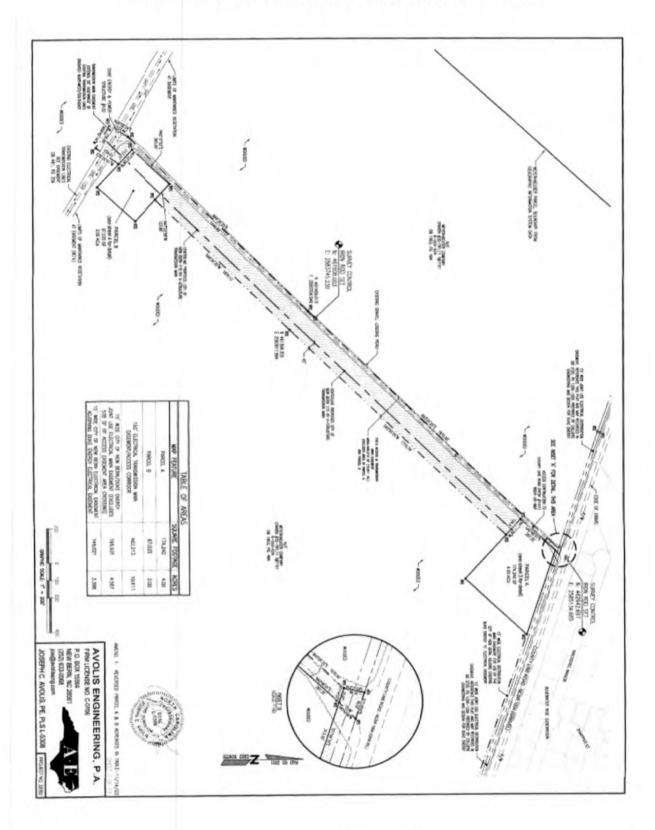
Buyer:		
CITY OF NEW BERN		
By:  Jeffrey T. Odham, Mayor		
Date of Execution:		

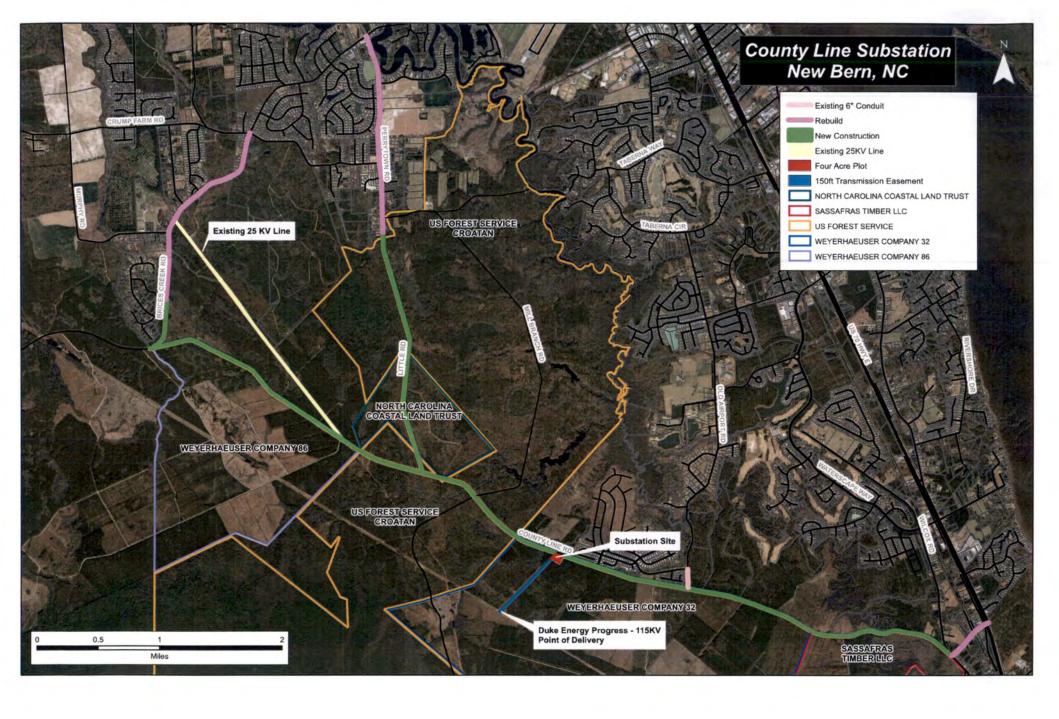
forth beneath their signature below.

IN WITNESS, WHEREOF, each party has executed this Agreement as of the date set

forth beneath their signature be	elow.	
Seller:		
Weyerhaeuser Company		
By:		
Name:		
Title:		
Date of Execution:		

IN WITNESS, WHEREOF, each party has executed this Agreement as of the date set





# **AGENDA ITEM COVER SHEET**



Agenda Item Title:
Resolution Authorizing Easement Agreement between the City of New Bern and Weyerhaeuser Company

Date of Meeting: 7/25/2023		ward # II applicable: N/A		
Department: Public Utilities  Call for Public Hearing: □Yes⊠No		Person Submitting Item: Charles Bauschard  Date of Public Hearing: N/A		
Explanation of Item:	Purchase easements necessary to interconnect the new electric substation to the bulk electric system as well as the electric distribution system.			
Actions Needed by Board:	Execution by Mayor Odham			
Backup Attached:	Memo, Location Map, Purchase Agreement, Resolution			
Is item time sensitive?	<b>⊠Yes</b> □No			
Will there be advocates	s/opponents at t	he meeting?  \Begin{aligned} \		
Cost of Agenda Item:				
If this requires an expe and certified by the Fir		been budgeted and are funds available ⊠Yes □ No		

Additional Notes: N/A



TO: Mayor Odham, Board of Aldermen

FROM: Charles D. Bauschard, Director of Public Utilities

COPIES: Foster Hughes, City Manager; File

SUBJECT: Request to Execute; Real Estate Purchase and Sale Agreement

DATE: July 20, 2023

Staff requests consideration towards executing an easement purchase agreement necessary to construct a new interconnects to the bulk electric system, new electric substation and the electric distribution system. A total of 22.983 acres is necessary at a cost of \$9,798.55 per acre for a total purchase price of \$225,200. The cost is consistent with other recently purchased easements. A location map is attached.

Cost will be expensed from previously established electric project funds and is consistent with the Electric System Long Range Study that was completed in 2019 and the Electric System Capacity Improvement Project that was established in May of 2021. Where the project provides modernized system improvements that benefit grid resiliency and the rerouting of power to distressed areas, ensures continued economic growth by proving capacity for future loads, and delivers the ability to reroute power safely to perform system inspections, testing and maintenance.

## RESOLUTION

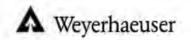
#### BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

That the letter agreement between the City of New Bern and Weyerhaeuser Company, a copy of which is attached hereto and incorporated herein by reference, be and the same is hereby approved, and the Mayor is hereby authorized and directed to execute the same for and on behalf of the City.

ADOPTED THIS 25th DAY OF JULY, 2023.

JEFFREY T. ODHAM, MAYOR

BRENDA E. BLANCO, CITY CLERK





Seattle HQ • 220 Occidental Ave. S. • Seattle, WA 98104

July 20, 2023

City of New Bern Attn: Scott Davis 209 Pollock Street New Bern, NC 28560

Dear Mr. Davis,

Subject: Transmission and Distribution Line Easement Agreements – Weyerhaeuser/City of New Bern - Craven County, NC

The purpose of this Letter is to memorialize the agreement between Weyerhaeuser Company, a Washington corporation ("Weyerhaeuser"), and the City of New Bern, a political subdivision of the State of North Carolina ("Grantee"), regarding certain easement rights which are to be granted by Weyerhaeuser to Grantee pursuant to the terms of this Letter.

Simultaneously with the Closing of a certain Real Estate Purchase and Sale Agreement between Weyerhaeuser and Grantee whereby Grantee will purchase certain real property in Craven County, North Carolina (the "Purchase and Sale Agreement"), Weyerhaeuser agrees to enter into Transmission and Distribution Line Easement Agreements with Grantee, which shall be substantially in the form attached here as Exhibit A (the "Easements").

The Closing of the Purchase and Sale Agreement is a condition precedent to Weyerhaeuser's obligation to enter into the Easements. In no event shall Weyerhaeuser enter into the Easements without the simultaneous Closing of the Purchase and Sale Agreement.

In consideration of the rights to be granted to Grantee in the Easements, Grantee hereby agrees to pay to Weyerhaeuser the amount of TWO HUNDRED TWENTY-FIVE THOUSAND TWO HUNDRED AND NO/100 DOLLARS (\$225,200.00).

Upon mutual agreement and execution of this letter and receipt of the above described payment, Weyerhaeuser will execute and deliver the signed Easements to you.

Regards,

Diane Meyers Vice President

[Grantee signature appears on following page.]

7/20/23 Page 2	
CITY OF NEW BERN	
By: Jeffrey T. Odham, Mayor	
Date of Execution:	

Enclosure(s): Exhibit A - Easements

#### THIS INSTRUMENT PREPARED BY:

Weyerhaeuser Company 220 Occidental Avenue South Seattle, Washington 98104

#### AFTER RECORDING RETURN TO:

Weyerhaeuser Company Land Title Dept. HQ7 220 Occidental Avenue South Seattle, Washington 98104

STATE OF NORTH CAROLINA	)
	)
COUNTY OF CRAVEN	)

### TRANSMISSION AND DISTRIBUTION LINE EASEMENT AGREEMENT

This Transmission a	and Distribution L	ine Easement	Agreement (this	s "Agreement"),
is effective as of the	day of	, 20 ,	(the "Effective	e Date") by and
between WEYERHAEUS	ER COMPANY	, a Washingt	on corporation,	with a mailing
address of 220 Occidental				
CITY OF NEW BERN,	a political subdiv	ision of the S	State of North	Carolina, with a
mailing address of	a market a se	("Grantee").	Weyerhaeuser	and Grantee are
sometimes referred to herei	n individually as a	a "Party" and	collectively as	the "Parties".

#### RECITALS

Weyerhaeuser owns certain real property located in Craven County, North Carolina, and more particularly described in the attached Exhibit A (the "Weyerhaeuser Property").

Grantee desires to obtain from Weyerhaeuser, and Weyerhaeuser desires to grant Grantee, a perpetual, non-exclusive easement over a certain portion of the Weyerhaeuser Property that allows Grantee to install, maintain, and remove overhead transmission and distributions lines, and underground distribution lines traversing the Weyerhaeuser Property pursuant to the terms and conditions contained in this Agreement.

Page 1 of 18

#### AGREEMENT

NOW, THEREFORE, in consideration of TEN and NO/100 DOLLARS (\$10.00), and the mutual covenants of the Parties set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

- 1. Grant of Easement. Subject to the terms hereof, Weyerhaeuser, for and in consideration of the strict observance of, and compliance with, the terms and conditions set forth in this Agreement, hereby grants to Grantee a perpetual, personal, non-exclusive distribution line easement being fifteen (15) feet wide and two (2) miles long over a portion of the Weyerhaeuser Property, as described on attached Exhibit A, and located as shown on that certain Electrical Easement Survey for City of New Bern dated October 28, 2022, and recorded June 12, 2023 at Book J, page 56G, Craven County Registry (the "Easement Area").
- 2. Grantee's Use of Premises Outside of Easement Area. Grantor further grants to Grantee, its successors and assigns, the right to enter upon the Premises outside of the Easement Area for the following purposes and uses:
- (a) to cut, at any time and from time to time, in Grantee's discretion, any tree located outside the Easement Area the length of which tree plus five (5) feet equals or exceeds the distance from the base of such tree to the nearest overhead facility or to a point on the ground directly underneath the nearest overhead facility ("Danger Trees"), and to cut and remove any limb or any part thereof from any tree standing outside of the Easement Area when such limb or part thereof protrudes or is likely to protrude into the Easement Area.
- (b) to gain access to the Easement Area and Danger Trees at any time and from time to time by vehicles, equipment, and pedestrians, provided that Grantee's use of the Premises outside of the Easement Area shall be confined to then-existing streets, roads, and driveways.
- 3. **Purpose.** The easement granted hereunder is conveyed by Weyerhaeuser to Grantee for the purpose to construct, reconstruct, replace, rebuild, enlarge, modify, remove, inspect, repair, maintain, operate, and use within the Easement Area multiple lines for transporting electrical energy and for the internal telecommunications and data uses of Grantee, its successors and assigns, which lines may consist of single or multiple rows of poles (at appropriate intervals and without limitation as to number) and related footings and foundations; crossarms; insulators; above ground and/or underground conductors, static wires, grounds, cables, conduits, electronic equipment, and other appurtenant apparatus, fixtures, hardware, and appliances (collectively, the "Line"); and guy wires and anchors inside and outside the Easement Area to support Grantee's overhead facilities at angle points.

- 4. Permittees. Weyerhaeuser, its subsidiaries and affiliates, and all of their respective employees, agents, contractors, licensees, lessees, invitees, and assigns are sometimes referred to herein collectively as the "Weyerhaeuser Permittees". Grantee's employees, agents, contractors, licensees, lessees, invitees, and assigns are sometimes referred to herein collectively as the "Grantee Permittees".
- 5. Ingress and Egress. Grantee and Grantee Permittees shall at all times have access to and from the Line over and across those portions of the Easement Area and the Weyerhaeuser Roads reasonably required for Grantee to exercise all of the rights herein granted.
- 6. **Reservation of Rights.** Weyerhaeuser reserves for itself and the Weyerhaeuser Permittees the right at all times for any purpose to use, cross, re-cross, maintain, patrol and repair the Easement Area in any manner that will not unreasonably interfere with the rights of Grantee.

### 7. Non-Exclusive Easement; Third Parties.

- a. Weyerhaeuser may grant to third parties, including without limitation Weyerhaeuser Permittees, upon such terms as it chooses, any or all of the rights reserved by it herein; provided, that use by such party shall be subject to the terms and conditions of this Agreement and shall not unreasonably interfere with the rights granted Grantee hereunder.
- Grantee acknowledges and agrees that it will be liable and responsible for all
  of the acts and omissions of Grantee Permittees under this Agreement.

## 8. Operating Standards.

- a. Installation and Maintenance of the Line. Grantee shall give Weyerhaeuser notice 24 hours prior to commencing construction, re-construction, maintenance, repair, replacement, or removal of any of the Line except for emergency situations wherein Grantee will notify Weyerhaeuser as soon as possible. Grantee and Grantee Permittees shall follow all directions from Weyerhaeuser regarding safety while such work is ongoing and shall not interfere with or prevent Weyerhaeuser operations.
- b. Location of the Line. The Line clearances shall be consistent with the National Electrical Safety Code (NESC).

- c. Location and Depth of Utility Line/Markers. Where possible, the Line shall be located in the up-slope ditch line area of the road right of way. The Line shall be buried at a minimum depth of four (4) feet, measured from the top of the Line to the ground surface of the ditch line. In addition, the Line shall go around existing structures (for example, culverts), keeping a minimum two-foot (2') clearance between the Line and the structure. The location of the Line shall be marked by intervisible, above ground markers no more than five hundred (500) feet apart. Where the Line crosses a road, Grantee shall place markers on both sides of the road to show the location of the crossing.
- d. Trees, Brush or other Vegetation. Grantee shall have the right to remove brush and undergrowth from the Easement Area as is reasonably necessary for the enjoyment of the rights and privileges herein granted; provided that in the exercise of this right, Grantee shall not permit: (i) any trees, tops, limbs, brush, undergrowth or other similar debris, hereinafter called "debris," to fall or be placed in any stream or (ii) any accumulations of debris which might at some later date result in blocking or lowering the quality of the water in a stream; provided further, that the right of way shall at all times be maintained in a clean and orderly condition. Grantee will not damage, remove, or trim trees without the prior consent of Weverhaeuser. Grantee at its sole cost and expense shall clean up or otherwise dispose of all slashings and debris created by Grantee and/or Grantee Permittees on the Easement Area as soon as practicable, and in such manner and at such times as provided by law and approved by Weyerhaeuser. Grantee shall not place any debris of any kind on the Weverhaeuser Property adjacent to the Easement Area; nor shall Grantee place any hazardous material or substance of any kind on the Weyerhaeuser Property or in any body of water adjacent to or in the vicinity of the Weyerhaeuser Property. Grantee acknowledges and agrees that it shall not under any circumstances use or allow to be used any product containing glyphosate on the Easement Area.
- e. Repair of Damage. Immediately upon completion of the installation, maintenance, repair, replacement or removal of the Line, Grantee shall, at its sole expense, repair, compact and patch any damaged portions of the Weyerhaeuser Roads, including but not limited to the road, road surface, drainage and other road facilities, and restore any other portions of the Weyerhaeuser Property damaged by Grantee's and/or Grantee Permittees' activities. Grantee shall leave the Weyerhaeuser Property in a condition equal to, or better than, that existing at the time such installation, maintenance, repair, replacement or removal commenced. Following completion of the construction, re-construction, repair, maintenance, or removal of the Line, Weyerhaeuser and Grantee shall inspect the Easement Area; Grantee shall immediately remedy any damage which may have occurred thereupon to the satisfaction of Weyerhaeuser. Grantee shall promptly repair all damage to fences and other operational property on Weyerhaeuser Property resulting from Grantee's and/or Grantee Permittees' activities hereunder. Prior to commencing any activities that would necessitate temporary road closures, Grantee shall contact Weyerhaeuser to schedule such

activities and road closures so as to minimize any adverse impact on Weyerhaeuser's operations.

9. **Assumption of Risk.** The Weyerhaeuser Property is used for logging, forestry, and industrial operations, and is maintained only to standards required for such use. Weyerhaeuser makes no representations as to the present or future condition of the Weyerhaeuser Property or the nature or condition of, or traffic on, any roads or trails, and Grantee assumes all risks of personal injury or property damage to Weyerhaeuser, Grantee, Grantee Permittees, Weyerhaeuser Permittees, any other third parties, and to the employees, representatives, invitees or contractors of any of them, in connection with the exercise of rights hereunder.

## 10. Grantee's Responsibilities. Grantee shall:

- a. Take all reasonable precaution to prevent unauthorized persons from entering the Easement Area or tampering with the Lines;
- b. Keep all existing gates, and any that may be installed on Weyerhaeuser roads in the future, closed and locked; provided, however, that the Parties may, from time to time, leave gates (if any) on Weyerhaeuser roads open for reasonable extended periods during regular business hours in order to facilitate active timber harvest and other commercial operations of the Parties;
  - Not drive with excessive speed upon Weyerhaeuser roads;
- Immediately report to Weyerhaeuser any dangerous or defective condition with respect to any portion of the Easement Area;
- e. Comply, and ensure that Grantee Permittees comply, with all applicable local, state and federal laws, rules and regulations (collectively, "Applicable Laws") with respect to the installation, maintenance and use of the Line and the Easement Area, as well as all rules and responsibilities set forth herein;
- f. Comply, and ensure that Grantee Permittees comply, with all reasonable rules, regulations, and restrictions that Weyerhaeuser may, from time to time, promulgate in its sole and absolute discretion, including (without limitation) restrictions on weight, speed, and use during adverse weather or fire conditions reasonably necessary to protect Weyerhaeuser land, roads, and timber;

- g. Ensure that any exercise of rights under this Agreement by Grantee and/or Grantee Permittees shall not unreasonably obstruct, interfere with or prevent the use and enjoyment of the Weyerhaeuser Property (including but not limited to the Easement Area) by Weyerhaeuser and/or Weyerhaeuser Permittees; and
- h. Change the location and installation of the Line at its own expense whenever requested to do so by Weyerhaeuser, in Weyerhaeuser's sole and absolute discretion, due to interference with Weyerhaeuser's use of its lands. Such change by Grantee shall take place within ninety (90) days of Weyerhaeuser's request.
- 11. **Timber**. Grantee shall not sever or damage any timber on the Weyerhaeuser Property or outside of the Easement Area, except as identified as Danger Tree.
- Indemnity. Grantee shall defend, indemnify, and hold harmless Weyerhaeuser, 12. Weyerhaeuser Permittees, their respective subsidiaries and affiliates, and all of their directors, officers, employees, contractors, lessees, licensees, and agents for, from and against all claims, demands, judgments, assessments, damages, penalties, fines, costs, liabilities or losses, including without limitation sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees (collectively "claims") arising from any act or omission of Grantee and/or Grantee Permittees under this Agreement or otherwise arising in connection with Grantee's and/or Grantee Permittees' activities on or around the Line, Easement Area, or other land owned, controlled, or leased by Weyerhaeuser or its subsidiaries, or affiliates, except to the extent such claims are directly caused by Weyerhaeuser's sole negligence. This indemnity includes, without limitation, any claims for: injury to or death of persons; damage to property; timber trespass; nuisance; mechanics' and materialmen's liens; workers' compensation and unemployment taxes; fines and penalties; release of hazardous substances, including without limitation petroleum products and chlorinated solvents, and claims arising from Grantee's and/or Grantee Permittees' activities hereunder. Grantee shall take all steps needed to keep the Weyerhaeuser Property free of liens arising from Grantee's and/or Grantee Permittees' activities, and Grantee shall promptly obtain or bond the release of any such liens that may be filed. This indemnity shall survive the termination or expiration of this Agreement.
- 13. Release of Claims/Liability. Grantee expressly releases Weyerhaeuser from any and all claims for damage to the Easement Area, Line, and other personal property of Grantee pursuant to the rights granted herein arising from any operation of Weyerhaeuser on its said lands; provided, that in the conduct of any such operation, Weyerhaeuser shall use reasonable care to avoid causing such damage, it being expressly understood that this provision does not release Weyerhaeuser from any claim for damages caused by its negligence. Weyerhaeuser does not assume any liability for damages or injuries caused by or resulting from acts or omissions by anyone other than Weyerhaeuser employees. This provision shall survive the expiration or termination of this Agreement.

- 14. Assumption of Liability. In the exercise of the rights granted hereunder to Grantee, Grantee shall make every effort to avoid damage to timber on the Weyerhaeuser Property and any other property of Weyerhaeuser adjacent to the Easement Area. Grantee shall be liable and hereby covenants to pay for all loss or damage to the Weyerhaeuser Property and any other property of Weyerhaeuser which is caused by or results from any act or omission to act of Grantee and/or Grantee Permittees in the construction, operation, maintenance or repair of the Line and/or Easement Area.
- 15. Insurance. Before commencing any activities under this Agreement, Grantee shall, at its own cost and expense, secure a policy or policies of insurance, and, during the term of this Agreement, maintain such insurance, in a form, and with companies with at least an A.M. Best Rating of A VIII or better (or in the absence of an A.M. Best Rating, insurance companies acceptable to Weyerhaeuser), insuring against liability resulting from or attributable to the activities of Grantee and/or Grantee Permittees, with such policies providing the following minimum coverages:
- Commercial general liability insurance with a combined single limit of not less 15.1 than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate for bodily injury and property damage, including coverage for: operations and completed operations; independent contractors; blanket contractual liability (including liability assumed under the indemnification paragraph of this Agreement); explosion; collapse; and underground damage if blasting or excavation is to be done; and automobile liability insurance covering owned, hired and non-owned vehicles (including the "pollution from autos endorsement"). The policies shall by endorsement name Weyerhaeuser and its subsidiaries and affiliates as additional insureds with respect to the performance of this Agreement. These coverages shall be primary, exclusive of any coverage carried by Weyerhaeuser, and shall be exhausted first notwithstanding that Weyerhaeuser may have other valid and collectible insurance covering the same risk. Nothing herein contained shall limit Grantee's liability to Weverhaeuser as to the scope or the amount of the insurance coverage. Termination of the certificate of insurance will cause this Agreement to automatically terminate. termination. Grantee shall provide a statement in recordable form evidencing such termination.
- 15.2 State or private industrial accident insurance covering Grantee and all of its employees which shall fully comply with State and Federal Employment and Workers' Compensation laws.
- 15.3 Employer's liability insurance covering Grantee and all of its employees having limits of One Million Dollars (\$1,000,000).

15.4 Coverages in this Section 15 may be reviewed by Weyerhaeuser and revised in Weyerhaeuser's reasonable discretion from time to time, as dictated by economic or legal considerations, or to conform to the applicable prevailing insurance requirements, and Weyerhaeuser reserves the right to make reasonable changes to the amounts and types of insurance limits and policies required under this Agreement.

On or before mutual execution of this Agreement, Grantee shall deliver to Weyerhaeuser certificates from Grantee's insurance carrier evidencing the coverages described herein along with copies of the applicable endorsements, and shall provide such further evidence to Weyerhaeuser which shall establish that the industrial insurance required pursuant to subsections 15.2 and 15.3 has been secured. The policies required under this Section 14 shall not be terminated, reduced or changed without Grantee providing at least thirty (30) days prior written notice to Weyerhaeuser.

- 16. Taxes and Assessments. Grantee shall reimburse Weyerhaeuser, when invoiced, for any taxes or assessments of any kind levied against Weyerhaeuser lands by reason of the Line or the use thereof or this Agreement.
- 17. **Assignment.** This Agreement shall be freely assignable by Weyerhaeuser in its sole and absolute discretion. Grantee shall not assign or transfer (including by merger, operation of law, or otherwise), any of its rights under this Agreement without the prior written consent of Weyerhaeuser, which consent shall not be unreasonably withheld.
- 18. Liability for Loss or Damage. Grantee shall be liable to Weyerhaeuser for, and hereby covenants to pay for, all loss or damage to any Weyerhaeuser property, real, personal, or otherwise, caused by or resulting from Grantee's and/or Grantee Permittees' exercise of rights hereunder. This provision shall survive the expiration or termination of this Agreement.
- 19. Title. Weyerhaeuser does not warrant the title to the land traversed by the Easement Area and shall have no liability of any kind or nature to Grantee in the event of failure of said title.
- 20. Land Uses and Practices. Grantee recognizes that the Weyerhaeuser Property and Weyerhaeuser's other lands in the area are managed for commercial forestry, including without limitation logging, slash burning, other fire control, silvicultural site preparation, forest roads, aerial and ground application of forest chemicals, and other silvicultural practices which often create noise, dust, visual impacts and other alterations of the forest environment. In conducting such operations, Weyerhaeuser will comply with all laws and regulations applying in commercial forest areas.

- Environmental Matters. Grantee and Grantee Permittees are prohibited from 21. managing, using, transporting, generating, and disposing of any Hazardous Substance in violation of Environmental Laws or substances deemed illegal under Applicable Laws on the Easement Area, roads, or Weyerhaeuser Property. For purposes of this Agreement, the term "Environmental Laws" means any federal, state, local law, statute, ordinance, regulation or order and all amendments thereto pertaining to human health, environmental conditions, or Hazardous Substances applicable to the Weyerhaeuser Property, including (without limitation) the Endangered Species Act, 16 U.S.C. § 1531-1544 (1998) and any Amendments thereto (the "ESA"). For purposes of this Agreement, the term "Hazardous Substance" shall mean any hazardous or toxic substances, materials or wastes, or pollutants or contaminants as defined, listed or regulated by any Environmental Laws or by common law decision including, without limitation, chlorinated solvents; petroleum products or byproducts; asbestos; and polychlorinated biphenyl. In addition to all other indemnities set forth herein, Grantee shall save, protect, defend, indemnify, and hold harmless Weyerhaeuser, its property and Weyerhaeuser Permittees, from and against any and all loss, expense, or liability (including reasonable attorney cost. the reasonable costs of repairs and improvements necessary to return the Easement other lands owned, leased, or controlled Area, the roads, the property or any by Weyerhaeuser to the physical condition existing prior to Grantee and/or Grantee Permittees undertaking any activity related to any Hazardous Substance to the extent arising out of or attributable to Grantee's and/or Grantee Permittees' use, manufacture, storage, release, or disposal of a Hazardous Substance or other illegal substance thereupon in violation of Applicable Laws, including (without limitation) Environmental Laws. This provision shall survive the expiration or earlier termination of this Agreement.
- 22. **Improvements**. Grantee shall not make any improvements to the Easement Area or the Line without the prior written consent of Weyerhaeuser, which consent shall not be unreasonably withheld, conditioned, or delayed. All improvements to the Easement Area and Line shall be made at the sole cost and expense of the Grantee. Any improvements made by Grantee shall be the exclusive property of Weyerhaeuser upon termination of this Agreement.
- 23. **Fire Suppression and Control.** Grantee and Grantee Permittees shall comply with all laws and regulations pertaining to fire protection and suppression and take every possible precaution to prevent fires from igniting on the Weyerhaeuser Property or spreading onto other lands. In case of fire, Grantee shall immediately notify Weyerhaeuser and appropriate government agencies and shall make every effort to suppress or contain the fire. Grantee shall indemnify, defend and reimburse Weyerhaeuser for all damages and claims (including loss or damage of timber, and fire suppression costs) resulting from fires caused by Grantee's and/or Grantee Permittees' activities, even if not attributable to the negligence.

- 24. Successors and Assigns. The rights and obligations herein shall inure to the benefit of and be binding upon the respective heirs, devisees, successors and assigns of the Parties.
- 25. **Prior Rights**. This grant and all rights hereunder are subject to all liens, easements, servitudes, rights of way, oil, gas, and mineral leases, and all other grants or reservations, both recorded and apparent, affecting the Weyerhaeuser Property. By this grant, Weyerhaeuser grants no greater rights than it is permitted to grant in view of such encumbrances.
- Termination/Restoration. If for a period of three (3) years Grantee shall cease to 26. use, or preserve for prospective future use, the Easement Area or any portion thereof, for the purposes herein granted, this Agreement shall terminate. Should Grantee fail to complete construction of the Line contemplated herein within three (3) years of mutual execution of this Agreement, then this grant shall immediately terminate and upon such termination Grantee shall provide Weyerhaeuser with a recordable release of the easement rights herein granted. Weyerhaeuser may also terminate this Agreement for breach by Grantee of any terms or obligations contained in this Agreement or, in its discretion, suspend all rights of Grantee under this Agreement until the breach has been cured. Upon termination of this Agreement Grantee shall cease all business operations and vacate and surrender the Easement Area. Grantee shall surrender the Easement Area in as good, or better, condition as upon commencement of this Agreement at Grantees sole expense. Upon termination, Grantee and Weyerhaeuser shall meet to discuss the restoration requirements which may include the removal of all personal or other property of Grantee from the Easement Area. Grantee shall leave all existing roads and crossings in a condition suitable to Weyerhaeuser, in Weverhaeuser's sole discretion, for truck traffic and equipment use. All restoration shall be done at Grantee's sole expense unless otherwise agreed in writing by Weyerhaeuser.
- 27. Severability; Relation to Existing Law. If any provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to either Party. Upon any such determination, the Parties shall negotiate in good faith to modify this Agreement so as to affect the original intent of the Parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible. Notwithstanding any other provision of this Agreement, the invalidation of any provision herein relating to the Parties' remedies shall not be interpreted to prevent an injured Party from seeking actual damages. If subsequent to the date of this Agreement valid State or Federal laws or regulations governing the relationship between Weyerhaeuser and Grantee take effect, this Agreement shall be considered to incorporate such laws or regulations so long as they shall be effective, and any provision of this Agreement in conflict therewith shall during such period be void.

- 28. Waiver. No failure of either Party to exercise any power given hereunder or to insist upon strict compliance with any obligations specified herein, and no custom or practice at variance with the terms hereof, shall constitute a waiver of any Party's right to demand strict compliance with the terms hereof; provided, however, that any Party may, at its sole option, waive any requirement, covenant or condition herein established for the benefit of such Party without affecting any of the other provisions of this Agreement.
- 29. **Subordination**. Any mortgage or deed of trust affecting any portion of the Easement Area shall at all times be subject and subordinate to the terms and conditions of this Agreement, and any party foreclosing any such mortgage or deed of trust, or acquiring title by deed in lieu of foreclosure or trustee's sale, shall acquire title subject to all the terms and conditions of this Agreement.
- 30. Entire Agreement; Construction. This Agreement sets forth the entire and complete agreement between the Parties with respect to the subject matter hereof. Any prior agreements, commitments, or representations, express or implied, between the Parties are superseded by this Agreement. This Agreement may be altered, amended, or repealed only by a written instrument executed by both Parties. No provisions of this Agreement shall be construed against or interpreted to the disadvantage of any Party hereto by any court or governmental or jurisdictional authority by reason of such Party having been deemed to have structured, written, drafted or dictated such provisions. The Recitals to this Agreement and the Exhibits attached to this Agreement are incorporated herein by this reference. The captions and headings of this Agreement are for convenience only and shall not define, limit, or describe the applicability, scope, meaning, or intent of any provision of this Agreement. Capitalized terms which are defined in the recitals hereof shall have the meaning given.
- 31. Attorneys' Fees. In the event any arbitration, action, suit or legal proceeding is instituted by either Party to this Agreement, the prevailing Party shall be entitled to recover from the non-prevailing Party both reasonable attorney fees and reasonable expert witness fees as determined by the court or arbitration panel, both at trial and on appeal or review and in bankruptcy, whether or not the matter in dispute involves an issue peculiar to federal bankruptcy law. Attorney fees and expert witness fees shall be in addition to other costs and disbursements allowed by law. "Prevailing Party" shall be determined by the arbitrator, or any court, as the true prevailing party (not statutorily prevailing party) after taking into consideration any settlement offers made by the Parties and the number and importance of issues to be determined.
- 32. **Survival.** Upon the expiration or termination of this Agreement, all provisions of the Agreement that, by their nature, would continue beyond the termination, cancellation, or expiration of the Agreement will so continue and survive.

- Disputes. If disputes arise under this Agreement, the Parties will first attempt to 33. negotiate a solution through the following process: (a) the initiating Party will present a written explanation of the dispute and the remedy requested; (b) within 14 business days after receiving such a statement, the other Party will respond by either agreeing to the requested remedy, counter-proposing a different remedy, or explaining why the issue does not justify any remedy; and (c) if the matter is not settled within 10 days after the response is received by the initiating Party, the dispute shall be settled by binding arbitration. If the Parties are not able to promptly agree on an arbitrator and the arbitration rules to be used, the initiating Party may offer a list of at least 5 candidates for arbitrator and the arbitration rules each candidate would use if selected, and the responding Party will choose the arbitrator from that list. Each candidate must have at least 15 years of real estate and timberlands law experience and special training or experience in arbitration of business disputes. The arbitration award shall be final and binding on the Parties and judgment on any award may be enforced in any court having jurisdiction thereof.
- Notices. All notices required or permitted to be given hereunder, or given in regard to this Agreement by one Party to the other, shall be in writing and the same shall be given and be deemed to have been served, given and received (i) if delivered by hand, when delivered in person, (ii) if sent by reputable overnight courier (such as Federal Express or UPS), on the next business day following the date on which the notice was sent, or (iii) if mailed, when placed in the United States mail, postage pre-paid, by certified mail, return receipt requested, addressed to the Party at the address hereinafter specified. Any Party may change its address for notices by giving five (5) days advance written notice to the other Party hereto in the manner provided for herein. Until changed in the manner provided herein, the Parties' respective addresses are as follows:

Land Use Manager 1785-B Weyerhaeuser Road Vanceboro, NC 28586
Weyerhaeuser Company Law Dept. HQ7 220 Occidental Avenue South Seattle, WA 98104
City of New Bern

35. Governing Law; Venue. This Agreement shall be governed by, and construed in accordance with, the laws of the State of North Carolina. In addition, the Parties agree that in the event of any dispute concerning this Agreement, venue for any cause of action arising out of, or having to do with, this Agreement shall be, and is, in State or Federal Court serving the county in which the Easement Area is located. The Parties waive any right to a claim of forum non conveniens.

[Signatures appear on the following page]

IN WITNESS WHEREOF, this Agreement is executed on the date of the acknowledgment below but shall be effective for all purposes as of the Effective Date.

TWO WITNESSES TO EACH SIGNATURE:	WEYERHAEUSER COMPANY
	By:
Print Name:	Print Name:
	Title:
Print Name:	
STATE OF WASHINGTON )	
On this day of to	, 20, before me personally appeared me known to be the
foregoing instrument, and acknowledg deed of said corporation, for the uses	me known to be the  Y, the corporation that executed the within and ged said instrument to be the free and voluntary act and and purposes therein mentioned, and on oath stated instrument and that the seal affixed is the corporate
IN WITNESS WHEREOF, I h seal the day and year first above ment	have hereunto set my hand and affixed my official ioned.
	Notary Public in and for the State of Washington
	Printed Name:
	Residing at:
	My appointment expires:

IN WITNESS WHEREOF, this Agreement is executed on the date of the acknowledgment below but shall be effective for all purposes as of the Effective Date.

TWO WITNESSES	
TO GRANTEE'S SIGNATURE:	CITY OF NEW BERN
	Ву:
Print Name:	Print Name:
	Title:
Print Name:	
STATE OF)	
COUNTY OF	
	, 20, before me personally appeared
of , the co	rporation that executed the within and foregoing
instrument, and acknowledged said instrument	rument to be the free and voluntary act and deed of ses therein mentioned, and on oath stated that s/he is
IN WITNESS WHEREOF, I have seal the day and year first above mention	we hereunto set my hand and affixed my official ned.
	Notary Public in and for the State of My appointment expires:

#### EXHIBIT A

The Weyerhaeuser Property Craven County, North Carolina

#### Tract 1:

Lying and being situate in No. 7 Township, Craven County, and in Pollocksville Township, Jones County, South of Trent River and lying along Island Creek, bounded on the North by the lands of the United States (Croatan Ranger District, North Carolina National Forest), heirs of Moses Green, Solomon Franks, Riegel Paper Corporation, Hardison, Ann Benton, Andrew Murphy, and Roscoe Gaskins; on the East by the lands of Mrs. J. D. Williams Sr., and the United States; on the South by lands of the United States, Joel H. Davis, and North Carolina Pulp Company; on the West by lands of North Carolina Pulp Company and International Paper Company. For a more complete description reference is hereby made to survey and map entitled "Island Creek Tract" which is recorded in Jones County Registry and made a part hereof and said tract is more fully described as follows:

Beginning at a concrete monument on the South side of the Pollocksville Road 0.73 chains from center line, said point being 1.3 miles Southwest of the bridge over Brice's Creek and being further identified as Corner No. 1 on map above referred to, and runs thence with Mrs. J. D. Williams' line South 16° 27' West 18.12 chains to an iron pipe filled with concrete, Corner No. 2, marked gum pointers in a small pond; runs thence South 73° 28' East 13.64 chains to an iron pipe filled with concrete, with pine pointers, Corner No. 3; runs thence South 4° 22' West 18.46 chains to an iron pipe filled with concrete, Corner No. 4; runs thence North 78° 01' East 13.57 chains to an iron pipe filled with concrete and having gum pointers by a gum pond, Corner No. 5; runs thence South 4° 22' West 48.84 chains to an iron pipe on the edge of a longleaf pine ridge, Corner No. 6; runs thence North 64° 39' East 6.33 chains to an iron pipe filled with concrete, in a pine flat, Corner No. 7; runs thence South 49° 04' West 20.20 chains, crossing a longleaf pine ridge and a deep pond to an iron pipe filled with concrete, Corner No. 8; runs thence South 34° 16' East 19.77 chains through a deep gum and cypress pond to an iron pipe filled with concrete and U.S.D.A. Class A corner, No. 203, Corner No. 9; runs thence North 5° 09' East 31.95 chains across a longleaf ridge and pine flat crossing a small pond to an iron pipe filled with concrete, Corner No. 10, this being a corner of lands of the United States Foy Tract in the line of Mrs. J. D. Williams' property; runs thence South 32° 06' East 48.16 chains, with the U.S. Foy tract and another tract belonging to Mrs. J. D. Williams, to an iron pipe filled with concrete, Corner No. 11; runs thence South 3° 45' East 24.42 chains to an iron pope filled with concrete, Corner No. 12; runs thence South 39° 13' West 16.00 chains, crossing a gum pond to an iron pipe filled with concrete, Corner No. 13; runs thence South 11° 30' East 15.72 chains to a stake in he U. S line of Tract No. 62-a, Corner No. 14, said corner being on the northeast side of the Riverdale Road and also a corner of the Williams land in the line of the U.S. Tract No. 62a; runs thence with the line of the U. S. Tract No. 62-a, South 49° 24' West 60.33 chains to a stake and old pointers, a corner of lands belonging to Joel H. Davis; runs thence South 51°

49' East 23.77 chains to an iron pipe filled with concrete, Corner No. 15; runs thence North 61° 47' West 22.00 chains to an iron pipe filled with concrete, Corner No. 16, in a cane brake; runs thence with the lines of U.S Tract No. 4-a and No. 35, South 71° 11' West 125.25 chains to U.S.D.A. Class A corner, No. 169, at the edge of a pond, Corner No. 17; thence with the line of Tract No. 35, South 5° 43' West 6.90 chains to an iron pipe with pine pointers, Corner No. 18; runs thence North 83° 52' West 15.13 chains to an iron pipe with pine pointers, Corner No. 19; runs thence South 72° 06' West 18.51 chains to an iron pipe with pine pointers, Corner No. 20; runs thence North 26° 33' East 8.20 chains, crossing a pond, to an iron pipe, Corner No. 21; runs thence North 84° 02' West 50.99 chains (passing at 41,00 chains U. S. Tract 35, corner in said line) to an iron pipe, Corner No. 22, a corner of N. C. Pulp Company's "Rowland Lumber Co. Tract"; runs thence North 5° 43' East 24.46 chains to a U.S.D.A. Class A corner, No. 160-1, Corner No. 23; runs thence South 84° 17' East 15.21 chains to a lightwood stake at the run of "Jumping Run", Corner No. 24; thence down and with "Jumping Run" to "Island Creek"; thence down and with "Island Creek" to an iron pipe filled with concrete, in the west edge of the run, Corner No. 25 (for complete description of courses and distances see Map "24 to 25"); thence with N. C. Pulp Company's line North 84° 40' West 87.30 chains to U.S.D.A. Class A corner, No. 152, Corner No. 26 at the run of "Long Branch", this also being a corner of International Paper Company's "W. A. Kime Tract": thence with the International Paper Company's line, down and with the run of "Long Branch" (for courses and distances see Map "26 to 27") to the center line of the Pollocksville-James City Road, a corner of lands of the United States, Tract No. 62-b, Corner No. 27; thence with said road the following courses and distances: South 89° 55' East 12.13 chains, North 72° 35' East 12.71 chains, North 59° 35' East 22.00 chains, North 36° 30' East 13.23 chains, North 51° 26' East 10.72 chains, North 69° 43' East 13.58 chains, North 78° 07' East 5.76 chains, East 14.05 chains to an iron pipe on the south side of the bridge at the run of "Island Creek", Corner No. 28; thence up and with the run of "Island Creek" to Corner No. 29, an iron pipe filled with concrete and a U.S.D.A. Class A corner, No. 160 (for complete courses and distances see Map "28 to 29"), this being a corner of the land owned by the heirs of Moses Green and located on the East bank of said creek; runs thence with the Green line South 83° 41' East 17.28 chains to an iron pipe filled with concrete and a marle rock, Corner No. 30; runs thence North 11° 50' East 63.28 chains to a stake at the corner of an old fence and cultivated fields with hickory and cedar pointers, Corner No. 31; runs thence with the Green and Franks line South 73° 58' East 54.37 chains to an iron pipe filled with concrete. Corner No. 32; runs thence North 3° 50' West 49.64 chains to a marle rock on the South side of the Pollocksville-James City Road, Corner No. 33; runs thence North 5° 01' West 43.84 chains with Riegel Paper Corporations "Luby Hardison Tract", to an iron pipe filled with concrete and an iron bar, Corner No. 34; thence with the Hardison lines South 86° 19' East 17.15 chains to an iron pipe filled with concrete and an iron bar, Corner No. 35; thence South 0° 25' East 9.01 chains to an iron pipe filled with concrete, Corner No. 36; thence North 80° 00' East 19.98 chains to an iron pipe filled with concrete, Corner No. 37; thence North 2° 47' East 8.54 chains to an iron pipe in the center of an old public road, Corner No. 38; thence with the old public road North 59° 32' East 4.12 chains, North 27°

07' East 9.25 chains to the center line of the existing paved road, Corner No. 39; runs thence with the Loop Road, South 86° 19' East 5.76 chains; North 64° 37' East 7.80 chains (crossing Reedy Branch, the Craven-Jones County line) to a point in the center line of the road; thence North 7° 48' East 3.25 chains to a point in the center line of said Loop Road, where the Ann Benton lot line intersects said center line 0.46 chains from Corner No. 40; thence with the lines of the Benton lot, South 6° 30' West 3.41 chains to an iron pipe and bar, Corner No. 41; South 89° 45' West 3.18 chains to an iron pipe and bar, Corner No. 42; thence North 10° 30' East 3.25 chains to the center line of the Loop Road, passing Corner No. 43, an iron pipe and bar, at 2.80 chains; thence along the Loop Road South 86° 36' East 9.98 chains to a point in the center line of the Loop Road, Andrew Murphy's corner, Corner No. 44; thence South 5° 03' West 8.00 chains to an iron pipe filled with concrete in an old ditch, Corner No. 45; thence with an old ditch North 80° 46" East 6.87 chains to an iron pipe filled with concrete, Corner No. 46; thence with another of the Murphy lines, North 3° 34' West 6.34 chains to the center line of the Loop Road, Corner No. 47; runs thence with the Loop Road South 83° 09' East 9.03 chains to a point at which it intersects the Pollocksville-James City Road: runs thence the following courses and distances with said Pollocksville-James City Road: North 11° 34' East 2.53 chains; North 36° 17' East 15.31 chains; North 56° 41' East 25.65 chains; North 80° 56' East 9.65 chains; North 68° 58' East 5.37 chains to a point in the center line of said road, thence South 16° 27' West 0.73 chains to the point of beginning. The foregoing tracts of land are the same as contained in deed dated the 4th of June 1959, from Wimsatt Pulp & Paper Company, Inc., to Halifax Timber Company of record in Book 582, page 178 of the Craven County Public Registry and also of record in Book 130 Page 145 of the Jones County Public Registry

#### Tract 2:

Beginning at a stone, which is located on the Pollocksville-New Bern Road, the same being the northwestern corner of Champion International Paper Company (Halifax Timber Company, Inc.), Johnson & Wimsatt (Island Creek Tract) and run thence from said stone North 3° 2" West 40 feet to the center line of the New Bern-Pollocksville Road; thence running form the center line of said road and along the line of the aforesaid Johnson-Wimsatt (Island Creek Tract) South 3° 2' East 3316.3 feet to an iron pipe and lightwood stake in the line of the land now or formerly owned by Champion International Paper Company; thence running North 73° 58' West 445.5 feet to a corner in the line of Lot No. 2 of the Solomon Franks Division; thence along and with the line of said division North 3° 24' West 3013.0 feet to the center line of said Pollocksville-New Bern Road, point "A" on the map hereinafter referred to; thence running from Point "A", an iron in the center line of said road to Point "B" along the center line of said Pollocksville-New Bern road North 63° 50' East 45.8 feet; North 65° 40' East 254.0 feet and North 73° 00' East 166.0 feet to the point of beginning, and identified on a map which bears the legend: "Halifax Timber Company Inc. Elmer Lee Franks Tract Pollocksville Township, Jones County, N.C. Cale: 1" = 600' survey by William H. Utley, Registered Land Survey L-636 April, 1965"

## THIS INSTRUMENT PREPARED BY:

Weyerhaeuser Company 220 Occidental Avenue South Seattle, Washington 98104

## AFTER RECORDING RETURN TO:

Weyerhaeuser Company Land Title Dept. HQ7 220 Occidental Avenue South Seattle, Washington 98104

STATE OF NORTH CAROLINA	)
	)
COUNTY OF CRAVEN	)

# TRANSMISSION AND DISTRIBUTION LINE EASEMENT AGREEMENT

This Transmission	and Distribution L	ine Easement.	Agreement (this	"Agreement"),
is effective as of the	day of	, 20 ,	(the "Effective	Date") by and
between WEYERHAEUS	SER COMPANY	, a Washingto	on corporation,	with a mailing
address of 220 Occidenta	l Avenue South,	Seattle, WA	98104 ("Weye	rhaeuser"), and
CITY OF NEW BERN,	a political subdiv	vision of the S	State of North	Carolina, with a
mailing address of		("Grantee").	Weyerhaeuser	and Grantee are
sometimes referred to here	in individually as	a "Party" and	collectively as t	he "Parties".

#### RECITALS

Weyerhaeuser owns certain real property located in Craven County, North Carolina, and more particularly described in the attached Exhibit A (the "Weyerhaeuser Property").

Grantee desires to obtain from Weyerhaeuser, and Weyerhaeuser desires to grant Grantee, a perpetual, non-exclusive easement over a certain portion of the Weyerhaeuser Property that allows Grantee to install, maintain, and remove overhead transmission and distributions lines, and underground distribution lines traversing the Weyerhaeuser Property pursuant to the terms and conditions contained in this Agreement.

#### AGREEMENT

NOW, THEREFORE, in consideration of TEN and NO/100 DOLLARS (\$10.00), and the mutual covenants of the Parties set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

- 1. **Grant of Easement.** Subject to the terms hereof, Weyerhaeuser, for and in consideration of the strict observance of, and compliance with, the terms and conditions set forth in this Agreement, hereby grants to Grantee: (a) a perpetual, personal, non-exclusive distribution line easement being fifteen (15) feet wide and two (2) miles long; (b) a perpetual, personal, non-exclusive distribution line easement being thirty (30) feet wide and 1.4 miles long; and (c) perpetual, personal, non-exclusive transmission and distributions lines being one hundred fifty (150) feet wide and .58 miles long over a portion of the Weyerhaeuser Property, as described on attached Exhibit A, and located as shown on that certain Electrical Parcel & Easement Surveys for City of New Bern dated September 26, 2022, and recorded June 12, 2023, at Book J, Page 55B, Craven County Registry (the "Easement Area").
- 2. Grantee's Use of Premises Outside of Easement Area. Grantor further grants to Grantee, its successors and assigns, the right to enter upon the Premises outside of the Easement Area for the following purposes and uses:
- (a) to cut, at any time and from time to time, in Grantee's discretion, any tree located outside the Easement Area the length of which tree plus five (5) feet equals or exceeds the distance from the base of such tree to the nearest overhead facility or to a point on the ground directly underneath the nearest overhead facility ("Danger Trees"), and to cut and remove any limb or any part thereof from any tree standing outside of the Easement Area when such limb or part thereof protrudes or is likely to protrude into the Easement Area.
- (b) to gain access to the Easement Area and Danger Trees at any time and from time to time by vehicles, equipment, and pedestrians, provided that Grantee's use of the Premises outside of the Easement Area shall be confined to then-existing streets, roads, and driveways.
- 3. Purpose. The easement granted hereunder is conveyed by Weyerhaeuser to Grantee for the purpose to construct, reconstruct, replace, rebuild, enlarge, modify, remove, inspect, repair, maintain, operate, and use within the Easement Area multiple lines for transporting electrical energy and for the internal telecommunications and data uses of Grantee, its successors and assigns, which lines may consist of single or multiple rows of poles (at appropriate intervals and without limitation as to number) and related footings and foundations; crossarms; insulators; above ground and/or underground conductors, static wires, grounds, cables, conduits, electronic equipment, and other appurtenant apparatus, fixtures, hardware, and appliances (collectively, the "Line"); and guy wires and anchors

inside and outside the Easement Area to support Grantee's overhead facilities at angle points.

- 4. Permittees. Weyerhaeuser, its subsidiaries and affiliates, and all of their respective employees, agents, contractors, licensees, lessees, invitees, and assigns are sometimes referred to herein collectively as the "Weyerhaeuser Permittees". Grantee's employees, agents, contractors, licensees, lessees, invitees, and assigns are sometimes referred to herein collectively as the "Grantee Permittees".
- 5. Ingress and Egress. Grantee and Grantee Permittees shall at all times have access to and from the Line over and across those portions of the Easement Area and the Weyerhaeuser Roads reasonably required for Grantee to exercise all of the rights herein granted.
- 6. **Reservation of Rights.** Weyerhaeuser reserves for itself and the Weyerhaeuser Permittees the right at all times for any purpose to use, cross, re-cross, maintain, patrol and repair the Easement Area in any manner that will not unreasonably interfere with the rights of Grantee.

## 7. Non-Exclusive Easement; Third Parties.

- a. Weyerhaeuser may grant to third parties, including without limitation Weyerhaeuser Permittees, upon such terms as it chooses, any or all of the rights reserved by it herein; provided, that use by such party shall be subject to the terms and conditions of this Agreement and shall not unreasonably interfere with the rights granted Grantee hereunder.
- Grantee acknowledges and agrees that it will be liable and responsible for all
  of the acts and omissions of Grantee Permittees under this Agreement.

## Operating Standards.

- a. Installation and Maintenance of the Line. Grantee shall give Weyerhaeuser notice 24 hours prior to commencing construction, re-construction, maintenance, repair, replacement, or removal of any of the Line except for emergency situations wherein Grantee will notify Weyerhaeuser as soon as possible. Grantee and Grantee Permittees shall follow all directions from Weyerhaeuser regarding safety while such work is ongoing and shall not interfere with or prevent Weyerhaeuser operations.
- b. Location of the Line. The Line clearances shall be consistent with the National Electrical Safety Code (NESC).

- c. Location and Depth of Utility Line/Markers. Where possible, the Line shall be located in the up-slope ditch line area of the road right of way. The Line shall be buried at a minimum depth of four (4) feet, measured from the top of the Line to the ground surface of the ditch line. In addition, the Line shall go around existing structures (for example, culverts), keeping a minimum two-foot (2') clearance between the Line and the structure. The location of the Line shall be marked by intervisible, above ground markers no more than five hundred (500) feet apart. Where the Line crosses a road, Grantee shall place markers on both sides of the road to show the location of the crossing
- d. Trees, Brush or other Vegetation. Grantee shall have the right to remove brush and undergrowth from the Easement Area as is reasonably necessary for the enjoyment of the rights and privileges herein granted; provided that in the exercise of this right, Grantee shall not permit: (i) any trees, tops, limbs, brush, undergrowth or other similar debris, hereinafter called "debris," to fall or be placed in any stream or (ii) any accumulations of debris which might at some later date result in blocking or lowering the quality of the water in a stream; provided further, that the right of way shall at all times be maintained in a clean and orderly condition. Grantee will not damage, remove, or trim trees without the prior consent of Weyerhaeuser. Grantee at its sole cost and expense shall clean up or otherwise dispose of all slashings and debris created by Grantee and/or Grantee Permittees on the Easement Area as soon as practicable, and in such manner and at such times as provided by law and approved by Weyerhaeuser. Grantee shall not place any debris of any kind on the Weyerhaeuser Property adjacent to the Easement Area; nor shall Grantee place any hazardous material or substance of any kind on the Weyerhaeuser Property or in any body of water adjacent to or in the vicinity of the Weyerhaeuser Property. Grantee acknowledges and agrees that it shall not under any circumstances use or allow to be used any product containing glyphosate on the Easement Area.
- Repair of Damage. Immediately upon completion of the installation, maintenance, repair, replacement or removal of the Line, Grantee shall, at its sole expense, repair, compact and patch any damaged portions of the Weyerhaeuser Roads, including but not limited to the road, road surface, drainage and other road facilities, and restore any other portions of the Weyerhaeuser Property damaged by Grantee's and/or Grantee Permittees' activities. Grantee shall leave the Weyerhaeuser Property in a condition equal to, or better than, that existing at the time such installation, maintenance, repair, replacement or removal Following completion of the construction, re-construction, repair, commenced. maintenance, or removal of the Line, Weyerhaeuser and Grantee shall inspect the Easement Area: Grantee shall immediately remedy any damage which may have occurred thereupon to the satisfaction of Weyerhaeuser. Grantee shall promptly repair all damage to fences and other operational property on Weyerhaeuser Property resulting from Grantee's and/or Grantee Permittees' activities hereunder. Prior to commencing any activities that would necessitate temporary road closures, Grantee shall contact Weyerhaeuser to schedule such activities and road closures so as to minimize any adverse impact on Weyerhaeuser's operations.

9. Assumption of Risk. The Weyerhaeuser Property is used for logging, forestry, and industrial operations, and is maintained only to standards required for such use. Weyerhaeuser makes no representations as to the present or future condition of the Weyerhaeuser Property or the nature or condition of, or traffic on, any roads or trails, and Grantee assumes all risks of personal injury or property damage to Weyerhaeuser, Grantee, Grantee Permittees, Weyerhaeuser Permittees, any other third parties, and to the employees, representatives, invitees or contractors of any of them, in connection with the exercise of rights hereunder.

# Grantee's Responsibilities. Grantee shall;

- a. Take all reasonable precaution to prevent unauthorized persons from entering the Easement Area or tampering with the Lines;
- b. Keep all existing gates, and any that may be installed on Weyerhaeuser roads in the future, closed and locked; provided, however, that the Parties may, from time to time, leave gates (if any) on Weyerhaeuser roads open for reasonable extended periods during regular business hours in order to facilitate active timber harvest and other commercial operations of the Parties:
  - Not drive with excessive speed upon Weyerhaeuser roads;
- Immediately report to Weyerhaeuser any dangerous or defective condition with respect to any portion of the Easement Area;
- e. Comply, and ensure that Grantee Permittees comply, with all applicable local, state and federal laws, rules and regulations (collectively, "Applicable Laws") with respect to the installation, maintenance and use of the Line and the Easement Area, as well as all rules and responsibilities set forth herein;
- f. Comply, and ensure that Grantee Permittees comply, with all reasonable rules, regulations, and restrictions that Weyerhaeuser may, from time to time, promulgate in its sole and absolute discretion, including (without limitation) restrictions on weight, speed, and use during adverse weather or fire conditions reasonably necessary to protect Weyerhaeuser land, roads, and timber;
- g. Ensure that any exercise of rights under this Agreement by Grantee and/or Grantee Permittees shall not unreasonably obstruct, interfere with or prevent the use and enjoyment of the Weyerhaeuser Property (including but not limited to the Easement Area) by Weyerhaeuser and/or Weyerhaeuser Permittees; and

- h. Change the location and installation of the Line at its own expense whenever requested to do so by Weyerhaeuser, in Weyerhaeuser's sole and absolute discretion, due to interference with Weyerhaeuser's use of its lands. Such change by Grantee shall take place within ninety (90) days of Weyerhaeuser's request.
- 11. **Timber**. Grantee shall not sever or damage any timber on the Weyerhaeuser Property or outside of the Easement Area, except as identified as Danger Tree.
- Indemnity. Grantee shall defend, indemnify, and hold harmless Weyerhaeuser, Weyerhaeuser Permittees, their respective subsidiaries and affiliates, and all of their directors, officers, employees, contractors, lessees, licensees, and agents for, from and against all claims, demands, judgments, assessments, damages, penalties, fines, costs, liabilities or losses, including without limitation sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees (collectively "claims") arising from any act or omission of Grantee and/or Grantee Permittees under this Agreement or otherwise arising in connection with Grantee's and/or Grantee Permittees' activities on or around the Line, Easement Area, or other land owned, controlled, or leased by Weyerhaeuser or its subsidiaries, or affiliates, except to the extent such claims are directly caused by Weyerhaeuser's sole negligence. This indemnity includes, without limitation, any claims for: injury to or death of persons; damage to property; timber trespass; nuisance; mechanics' and materialmen's liens; workers' compensation and unemployment taxes; fines and penalties; release of hazardous substances, including without limitation petroleum products and chlorinated solvents, and claims arising from Grantee's and/or Grantee Permittees' activities hereunder. Grantee shall take all steps needed to keep the Weyerhaeuser Property free of liens arising from Grantee's and/or Grantee Permittees' activities, and Grantee shall promptly obtain or bond the release of any such liens that may be filed. This indemnity shall survive the termination or expiration of this Agreement.
- 13. Release of Claims/Liability. Grantee expressly releases Weyerhaeuser from any and all claims for damage to the Easement Area, Line, and other personal property of Grantee pursuant to the rights granted herein arising from any operation of Weyerhaeuser on its said lands; provided, that in the conduct of any such operation, Weyerhaeuser shall use reasonable care to avoid causing such damage, it being expressly understood that this provision does not release Weyerhaeuser from any claim for damages caused by its negligence. Weyerhaeuser does not assume any liability for damages or injuries caused by or resulting from acts or omissions by anyone other than Weyerhaeuser employees. This provision shall survive the expiration or termination of this Agreement.

- 14. Assumption of Liability. In the exercise of the rights granted hereunder to Grantee, Grantee shall make every effort to avoid damage to timber on the Weyerhaeuser Property and any other property of Weyerhaeuser adjacent to the Easement Area. Grantee shall be liable and hereby covenants to pay for all loss or damage to the Weyerhaeuser Property and any other property of Weyerhaeuser which is caused by or results from any act or omission to act of Grantee and/or Grantee Permittees in the construction, operation, maintenance or repair of the Line and/or Easement Area.
- 15. **Insurance.** Before commencing any activities under this Agreement, Grantee shall, at its own cost and expense, secure a policy or policies of insurance, and, during the term of this Agreement, maintain such insurance, in a form, and with companies with at least an A.M. Best Rating of A VIII or better (or in the absence of an A.M. Best Rating, insurance companies acceptable to Weyerhaeuser), insuring against liability resulting from or attributable to the activities of Grantee and/or Grantee Permittees, with such policies providing the following minimum coverages:
- Commercial general liability insurance with a combined single limit of not less 15.1 than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate for bodily injury and property damage, including coverage for: operations and completed operations; independent contractors; blanket contractual liability (including liability assumed under the indemnification paragraph of this Agreement); explosion; collapse; and underground damage if blasting or excavation is to be done; and automobile liability insurance covering owned, hired and non-owned vehicles (including the "pollution from autos endorsement"). The policies shall by endorsement name Weyerhaeuser and its subsidiaries and affiliates as additional insureds with respect to the performance of this Agreement. These coverages shall be primary, exclusive of any coverage carried by Weverhaeuser, and shall be exhausted first notwithstanding that Weverhaeuser may have other valid and collectible insurance covering the same risk. Nothing herein contained shall limit Grantee's liability to Weverhaeuser as to the scope or the amount of the insurance coverage. Termination of the certificate of insurance will cause this Agreement to automatically terminate. termination. Grantee shall provide a statement in recordable form evidencing such termination.
- 15.2 State or private industrial accident insurance covering Grantee and all of its employees which shall fully comply with State and Federal Employment and Workers' Compensation laws.
- 15.3 Employer's liability insurance covering Grantee and all of its employees having limits of One Million Dollars (\$1,000,000).
- 15.4 Coverages in this Section 15 may be reviewed by Weyerhaeuser and revised in Weyerhaeuser's reasonable discretion from time to time, as dictated by economic or legal considerations, or to conform to the applicable prevailing insurance requirements, and Weyerhaeuser reserves the right to make reasonable changes to the amounts and types of

insurance limits and policies required under this Agreement.

On or before mutual execution of this Agreement, Grantee shall deliver to Weyerhaeuser certificates from Grantee's insurance carrier evidencing the coverages described herein along with copies of the applicable endorsements, and shall provide such further evidence to Weyerhaeuser which shall establish that the industrial insurance required pursuant to subsections 15.2 and 15.3 has been secured. The policies required under this Section 14 shall not be terminated, reduced or changed without Grantee providing at least thirty (30) days prior written notice to Weyerhaeuser.

- 16. Taxes and Assessments. Grantee shall reimburse Weyerhaeuser, when invoiced, for any taxes or assessments of any kind levied against Weyerhaeuser lands by reason of the Line or the use thereof or this Agreement.
- 17. **Assignment.** This Agreement shall be freely assignable by Weyerhaeuser in its sole and absolute discretion. Grantee shall not assign or transfer (including by merger, operation of law, or otherwise), any of its rights under this Agreement without the prior written consent of Weyerhaeuser, which consent shall not be unreasonably withheld.
- 18. Liability for Loss or Damage. Grantee shall be liable to Weyerhaeuser for, and hereby covenants to pay for, all loss or damage to any Weyerhaeuser property, real, personal, or otherwise, caused by or resulting from Grantee's and/or Grantee Permittees' exercise of rights hereunder. This provision shall survive the expiration or termination of this Agreement.
- 19. Title. Weyerhaeuser does not warrant the title to the land traversed by the Easement Area and shall have no liability of any kind or nature to Grantee in the event of failure of said title.
- 20. Land Uses and Practices. Grantee recognizes that the Weyerhaeuser Property and Weyerhaeuser's other lands in the area are managed for commercial forestry, including without limitation logging, slash burning, other fire control, silvicultural site preparation, forest roads, aerial and ground application of forest chemicals, and other silvicultural practices which often create noise, dust, visual impacts and other alterations of the forest environment. In conducting such operations, Weyerhaeuser will comply with all laws and regulations applying in commercial forest areas.

- Environmental Matters. Grantee and Grantee Permittees are prohibited from 21. managing, using, transporting, generating, and disposing of any Hazardous Substance in violation of Environmental Laws or substances deemed illegal under Applicable Laws on the Easement Area, roads, or Weyerhaeuser Property. For purposes of this Agreement, the term "Environmental Laws" means any federal, state, local law, statute, ordinance, regulation or order and all amendments thereto pertaining to human health, environmental conditions, or Hazardous Substances applicable to the Weyerhaeuser Property, including (without limitation) the Endangered Species Act, 16 U.S.C. § 1531-1544 (1998) and any Amendments thereto (the "ESA"). For purposes of this Agreement, the term "Hazardous Substance" shall mean any hazardous or toxic substances, materials or wastes, or pollutants or contaminants as defined, listed or regulated by any Environmental Laws or by common law decision including, without limitation, chlorinated solvents; petroleum products or byproducts; asbestos; and polychlorinated biphenyl. In addition to all other indemnities set forth herein, Grantee shall save, protect, defend, indemnify, and hold harmless Weyerhaeuser, its property and Weyerhaeuser Permittees, from and against any and all loss. or liability (including reasonable attorney cost, expense. the reasonable costs of repairs and improvements necessary to return the Easement Area, the roads, the property or any other lands owned, leased, or controlled by Weyerhaeuser to the physical condition existing prior to Grantee and/or Grantee Permittees undertaking any activity related to any Hazardous Substance to the extent arising out of or attributable to Grantee's and/or Grantee Permittees' use, manufacture, storage, release, or disposal of a Hazardous Substance or other illegal substance thereupon in violation of Applicable Laws, including (without limitation) Environmental Laws. This provision shall survive the expiration or earlier termination of this Agreement.
- 22. **Improvements**. Grantee shall not make any improvements to the Easement Area or the Line without the prior written consent of Weyerhaeuser, which consent shall not be unreasonably withheld, conditioned, or delayed. All improvements to the Easement Area and Line shall be made at the sole cost and expense of the Grantee. Any improvements made by Grantee shall be the exclusive property of Weyerhaeuser upon termination of this Agreement.
- 23. Fire Suppression and Control. Grantee and Grantee Permittees shall comply with all laws and regulations pertaining to fire protection and suppression and take every possible precaution to prevent fires from igniting on the Weyerhaeuser Property or spreading onto other lands. In case of fire, Grantee shall immediately notify Weyerhaeuser and appropriate government agencies and shall make every effort to suppress or contain the fire. Grantee shall indemnify, defend and reimburse Weyerhaeuser for all damages and claims (including loss or damage of timber, and fire suppression costs) resulting from fires caused by Grantee's and/or Grantee Permittees' activities, even if not attributable to the negligence.
- 24. Successors and Assigns. The rights and obligations herein shall inure to the benefit of and be binding upon the respective heirs, devisees, successors and assigns of the Parties.

- 25. **Prior Rights**. This grant and all rights hereunder are subject to all liens, easements, servitudes, rights of way, oil, gas, and mineral leases, and all other grants or reservations, both recorded and apparent, affecting the Weyerhaeuser Property. By this grant, Weyerhaeuser grants no greater rights than it is permitted to grant in view of such encumbrances.
- 26. Termination/Restoration. If for a period of three (3) years Grantee shall cease to use, or preserve for prospective future use, the Easement Area or any portion thereof, for the purposes herein granted, this Agreement shall terminate. Should Grantee fail to complete construction of the Line contemplated herein within three (3) years of mutual execution of this Agreement, then this grant shall immediately terminate and upon such termination Grantee shall provide Weyerhaeuser with a recordable release of the easement rights herein granted. Weverhaeuser may also terminate this Agreement for breach by Grantee of any terms or obligations contained in this Agreement or, in its discretion, suspend all rights of Grantee under this Agreement until the breach has been cured. Upon termination of this Agreement Grantee shall cease all business operations and vacate and surrender the Easement Area. Grantee shall surrender the Easement Area in as good, or better, condition as upon commencement of this Agreement at Grantees sole expense. Upon termination, Grantee and Weyerhaeuser shall meet to discuss the restoration requirements which may include the removal of all personal or other property of Grantee from the Easement Area. Grantee shall leave all existing roads and crossings in a condition suitable to Weyerhaeuser, in Weyerhaeuser's sole discretion, for truck traffic and equipment use. All restoration shall be done at Grantee's sole expense unless otherwise agreed in writing by Weyerhaeuser.
- 27. Severability; Relation to Existing Law. If any provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to either Party. Upon any such determination, the Parties shall negotiate in good faith to modify this Agreement so as to affect the original intent of the Parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible. Notwithstanding any other provision of this Agreement, the invalidation of any provision herein relating to the Parties' remedies shall not be interpreted to prevent an injured Party from seeking actual damages. If subsequent to the date of this Agreement valid State or Federal laws or regulations governing the relationship between Weyerhaeuser and Grantee take effect, this Agreement shall be considered to incorporate such laws or regulations so long as they shall be effective, and any provision of this Agreement in conflict therewith shall during such period be void.

- 28. Waiver. No failure of either Party to exercise any power given hereunder or to insist upon strict compliance with any obligations specified herein, and no custom or practice at variance with the terms hereof, shall constitute a waiver of any Party's right to demand strict compliance with the terms hereof; provided, however, that any Party may, at its sole option, waive any requirement, covenant or condition herein established for the benefit of such Party without affecting any of the other provisions of this Agreement.
- 29. Subordination. Any mortgage or deed of trust affecting any portion of the Easement Area shall at all times be subject and subordinate to the terms and conditions of this Agreement, and any party foreclosing any such mortgage or deed of trust, or acquiring title by deed in lieu of foreclosure or trustee's sale, shall acquire title subject to all the terms and conditions of this Agreement.
- 30. Entire Agreement; Construction. This Agreement sets forth the entire and complete agreement between the Parties with respect to the subject matter hereof. Any prior agreements, commitments, or representations, express or implied, between the Parties are superseded by this Agreement. This Agreement may be altered, amended, or repealed only by a written instrument executed by both Parties. No provisions of this Agreement shall be construed against or interpreted to the disadvantage of any Party hereto by any court or governmental or jurisdictional authority by reason of such Party having been deemed to have structured, written, drafted or dictated such provisions. The Recitals to this Agreement and the Exhibits attached to this Agreement are incorporated herein by this reference. The captions and headings of this Agreement are for convenience only and shall not define, limit, or describe the applicability, scope, meaning, or intent of any provision of this Agreement. Capitalized terms which are defined in the recitals hereof shall have the meaning given.
- 31. Attorneys' Fees. In the event any arbitration, action, suit or legal proceeding is instituted by either Party to this Agreement, the prevailing Party shall be entitled to recover from the non-prevailing Party both reasonable attorney fees and reasonable expert witness fees as determined by the court or arbitration panel, both at trial and on appeal or review and in bankruptcy, whether or not the matter in dispute involves an issue peculiar to federal bankruptcy law. Attorney fees and expert witness fees shall be in addition to other costs and disbursements allowed by law. "Prevailing Party" shall be determined by the arbitrator, or any court, as the true prevailing party (not statutorily prevailing party) after taking into consideration any settlement offers made by the Parties and the number and importance of issues to be determined.
- 32. Survival. Upon the expiration or termination of this Agreement, all provisions of the Agreement that, by their nature, would continue beyond the termination, cancellation, or expiration of the Agreement will so continue and survive.

- 33. **Disputes.** If disputes arise under this Agreement, the Parties will first attempt to negotiate a solution through the following process: (a) the initiating Party will present a written explanation of the dispute and the remedy requested; (b) within 14 business days after receiving such a statement, the other Party will respond by either agreeing to the requested remedy, counter-proposing a different remedy, or explaining why the issue does not justify any remedy; and (c) if the matter is not settled within 10 days after the response is received by the initiating Party, the dispute shall be settled by binding arbitration. If the Parties are not able to promptly agree on an arbitrator and the arbitration rules to be used, the initiating Party may offer a list of at least 5 candidates for arbitrator and the arbitration rules each candidate would use if selected, and the responding Party will choose the arbitrator from that list. Each candidate must have at least 15 years of real estate and timberlands law experience and special training or experience in arbitration of business disputes. The arbitration award shall be final and binding on the Parties and judgment on any award may be enforced in any court having jurisdiction thereof.
- Notices. All notices required or permitted to be given hereunder, or given in regard to this Agreement by one Party to the other, shall be in writing and the same shall be given and be deemed to have been served, given and received (i) if delivered by hand, when delivered in person, (ii) if sent by reputable overnight courier (such as Federal Express or UPS), on the next business day following the date on which the notice was sent, or (iii) if mailed, when placed in the United States mail, postage pre-paid, by certified mail, return receipt requested, addressed to the Party at the address hereinafter specified. Any Party may change its address for notices by giving five (5) days advance written notice to the other Party hereto in the manner provided for herein. Until changed in the manner provided herein, the Parties' respective addresses are as follows:

If to Weyerhaeuser:	Weyerhaeuser Company
	Land Use Manager
	1785-B Weyerhaeuser Road
	Vanceboro, NC 28586
With a copy to:	Weyerhaeuser Company
	Law Dept. HQ7
	220 Occidental Avenue South
	Seattle, WA 98104
If to Grantee:	City of New Bern

35. Governing Law; Venue. This Agreement shall be governed by, and construed in accordance with, the laws of the State of North Carolina. In addition, the Parties agree that in the event of any dispute concerning this Agreement, venue for any cause of action arising out of, or having to do with, this Agreement shall be, and is, in State or Federal Court serving the county in which the Easement Area is located. The Parties waive any right to a claim of forum non conveniens.

[Signatures appear on the following page]

IN WITNESS WHEREOF, this Agreement is executed on the date of the acknowledgment below but shall be effective for all purposes as of the Effective Date.

EACH SIGNATURE:	WEYERHAEUSER COMPANY
	By:
Print Name:	Print Name:
	Title:
Print Name:	-
STATE OF WASHINGTON )	
COUNTY OF KING )	
On this day of	, 20_, before me personally appeared me known to be the,
of WEYERHAEUSER COMPAN foregoing instrument, and acknowledged deed of said corporation, for the uses	IV, the corporation that executed the within and ged said instrument to be the free and voluntary act and s and purposes therein mentioned, and on oath stated instrument and that the seal affixed is the corporate
IN WITNESS WHEREOF, I h seal the day and year first above ment	have hereunto set my hand and affixed my official cioned.
	Notary Public in and for the State of
	Washington

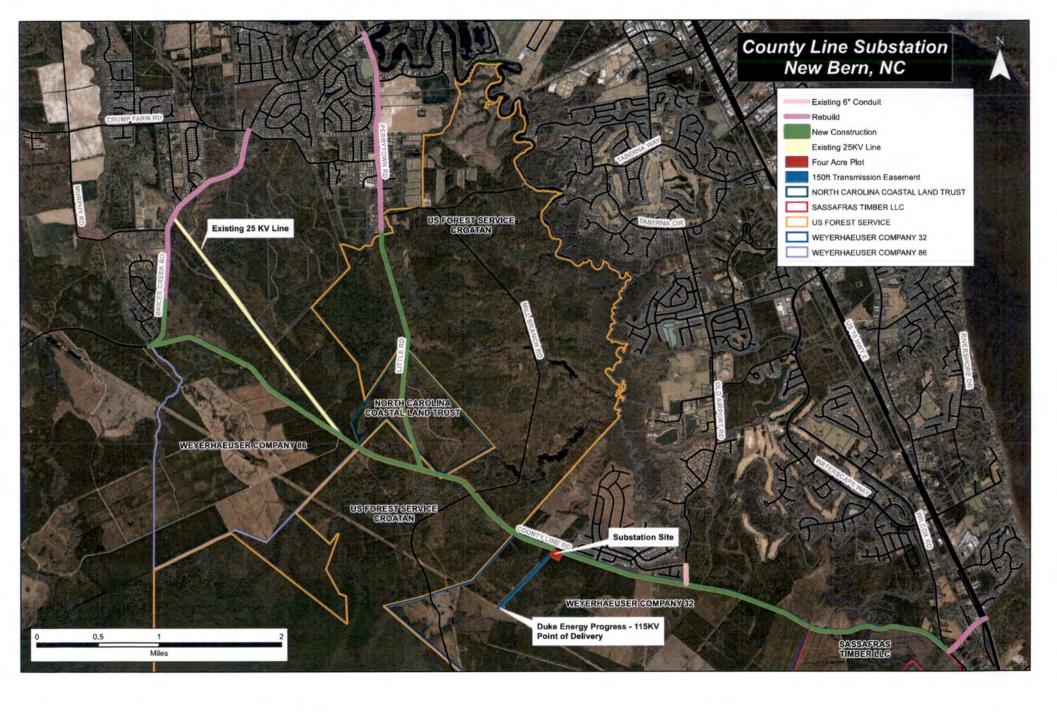
IN WITNESS WHEREOF, this Agreement is executed on the date of the acknowledgment below but shall be effective for all purposes as of the Effective Date.

TWO WITNESSES	
TO GRANTEE'S SIGNATURE:	CITY OF NEW BERN
	Ву:
Print Name:	
	Title:
Print Name:	
STATE OF)	
COUNTY OF	
On this day of	, 20, before me personally appeared
to n	ne known to be the
instrument, and acknowledged said inst	rument to be the free and voluntary act and deed of ses therein mentioned, and on oath stated that s/he is
IN WITNESS WHEREOF, I has seal the day and year first above mention	we hereunto set my hand and affixed my official ned.
	Notary Public in and for the State of My appointment expires:

## **EXHIBIT A**

The Weyerhaeuser Property Craven County, North Carolina

Beginning at a concrete monument, the same being a corner of the United States Government's Croatan National Forest, and the same being on the north side of the Pollocksville-Riverdale Road, running with said Forest's lines, North 46° 45' East, 78.36 chains to a railroad iron corner; thence North 48° 30' East, 19.74 chains to a concrete monument on Brice's Creek; thence running down Brice's Creek 44.27 chains to Lee's Branch; thence up Lee's Branch 63.05 chains to a railroad iron, corner of Arthur Cahoon; thence with his line North 5° 30' East 28.44 chains to a railroad iron, corner of the Francisco Brothers; thence with said Brother's line South 86° 15' East, 42.90 chains to a railroad iron, J. M. Wilcox corner; thence with his lines as follows: South 5° 15' West 13.50 chains to an iron marker; South 50° 15' West 27.37 chains to a concrete monument near the side of a new road; thence with the northern edge of the right of way of said road South 48° East, 81 chains to a concrete monument; thence North 49° 45' East 4.56 chains to an iron marker on the western edge of the A. and N. C. Railroad right of way; thence with said right of way South 19° East 11.29 chains to an iron marker, Aleck Pelham's corner; thence with his lines as follows: South 26° 15' West 3.25 chains to an iron marker on the western edge of the new road's right of way; thence with said right of way South 11° East 12.12 chains to an iron marker; thence South 46° 15' West 2.21 chains to an iron marker; thence South 15° East 42.37 chains to a concrete monument, Mary Watson's corner; thence with her line South 87° West 22.23 chains to a railroad iron corner on the south side of Chapel Branch; running thence down run of said branch 39.78 chains to Brice's Creek; thence up Brice's Creek 377.50 chains to Briany Branch; thence up the run of said branch 85 chains to a railroad iron corner, a corner of the U. S. Government's Croatan National Forest; thence with said Government's lines as follows: North 15° West 15.23 chains to a railroad iron corner, South 60° 30' West 22.50 chains to a railroad iron corner, North 52° 15' West 27.49 chains to a railroad iron corner; thence South 39° West 8.71 chains to a railroad iron corner; thence North 44° 45' West 82.50 chains to a railroad iron corner in a pocosin; thence North 78° 15' East 59.90 chains to a railroad iron corner; thence North 48° East 42.88 chains to the first station



# **AGENDA ITEM COVER SHEET**



Agenda Item Title: Consider Adopting an Amendment to the 2019 Electric Improvements Project Fund

Date of Meeting: 07/25/2023  Department: Finance  Call for Public Hearing: □Yes⊠No		Person Submitting Item: Kim Ostrom, Director of Finance	
			The audinous
Explanation of Item:	The ordinance amends the 2019 Electric Improvements Project Fund to reduce grant revenues and expenditures		
Actions Needed by Board:			
Backup Attached: Memo, Ordin		ance Amendment	
Is item time sensitive?	<b>V</b> os □No		
Will there be advocates	s/opponents at t	he meeting?   Yes   No	
Cost of Agenda Item:			
If this requires an expe and certified by the Fin		been budgeted and are funds available □Yes □ No	

**Additional Notes:** 

Rick Prill Hazel B. Royal Robert V. Aster Johnnie Ray Kinsey Barbara J. Best Robert Brinson, Jr.



300 Pollock Street, P.O. Box 1129 New Bern, NC 28563-1129 (252) 636-4000 Jeffrey T. Odham
Mayor
Foster Hughes
City Manager
Brenda E. Blanco
City Clerk
Kimberly A. Ostrom
Director of Finance

TO: City Manager, Honorable Mayor and Members of the Board of Aldermen

FROM: Kim Ostrom - Finance Director

DATE: July 14, 2023

RE: Amendment to the 2019 Electric Improvements Project Fund

# Background Information

The Golden LEAF Foundation approved funding for the Utilities Disaster Recovery and Resiliency Project in the amount of \$320,000 in June 2020. The project was completed in April 2022 and the grantor approved reimbursement of expenditures in the amount of \$232,817.

The grantor has closed the grant; therefore, the budget needs to be reduced by \$87,183 for revenues and expenditures.

## Requested Action

The Board considers adopting the enclosed budget ordinance amendment at its meeting on July 25, 2023.

# AMENDMENT TO THE CAPITAL PROJECT ORDINANCE 2019 ELECTRIC IMPROVEMENTS PROJECT FUND

## BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEW BERN:

Section 1. That Section 3 of the 2019 Electric Improvements Project Fund Ordinance adopted on March 26, 2019 is hereby amended to recognize the reduction in appropriation from the Golden Leaf grant as follows:

Decrease: Electric Improvements \$87,183

Section 2. That Section 4 of the 2019 Electric Improvements Project Fund Ordinance adopted on March 26, 2019 is hereby amended to recognize the reduction in revenue from the Golden Leaf grant as follows:

Decrease: Golden Leaf grant \$87,183

Section 3. This amendment shall become effective upon adoption.

ADOPTED THIS 25TH DAY OF JULY, 2023

JEFFREY T. ODHAM, MAYOR

BRENDA E. BLANCO, CITY CLERK

Rick Prill Hazel B. Royal Robert V. Aster Johnnie Ray Kinsey Barbara J. Best Robert Brinson, Jr.



(252) 636-4000

Jeffrey T. Odham
Mayor
Foster Hughes
City Manager
Brenda E. Blanco
City Clerk
Kimberly A. Ostrom
Director of Finance

# Memorandum

TO:

Alderman Hazel Royal

FROM:

Brenda Blanco, City Clerk

DATE:

June 08, 2023

SUBJECT:

Appointment to Board of Adjustment

Peter Dillon has resigned from the Board of Adjustment as he is moving out of state. A new appointment is needed to fill the remainder of his term, which expires on June 30, 2025.

/beb

Rick Prill Hazel B. Royal Robert V. Aster Johnnie Ray Kinsey Barbara J. Best Robert Brinson, Jr.



(252) 636-4000

Jeffrey T. Odham
Mayor
Foster Hughes
City Manager
Brenda E. Blanco
City Clerk
Kimberly A. Ostrom
Director of Finance

# Memorandum

TO:

Mayor and Board of Aldermen

FROM:

Brenda Blanco, City Clerk

DATE:

June 16, 2023

SUBJECT:

Appointments to Board of Adjustment

Mike Duffy and Kathleen Marty's terms on the Board of Adjustment will expire June 30, 2023. Both serve as alternates on this board, and both are eligible for reappointment to a three-year term. Appointments/reappointments to these seats can be made by the Mayor or any Alderman.

/beb

Rick Prill Hazel B. Royal Robert V. Aster Johnnie Ray Kinsey Barbara J. Best Robert Brinson, Jr.



(252) 636-4000

Jeffrey T. Odham
Mayor
Foster Hughes
City Manager
Brenda E. Blanco
City Clerk
Kimberly A. Ostrom
Director of Finance

## Memorandum

TO:

Alderman Johnnie Ray Kinsey

FROM:

Brenda Blanco, City Clerk

DATE:

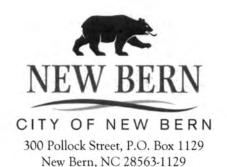
June 16, 2023

SUBJECT:

Appointment to Planning and Zoning Board

Raymond Layton's term on the Planning and Zoning Board will expire June 30, 2023. He is ineligible for reappointment. You are asked to make a new appointment to fill Seat 4 for a three-year term that will expire on June 30, 2026.

Rick Prill Hazel B. Royal Robert V. Aster Johnnie Ray Kinsey Barbara J. Best Robert Brinson, Jr.



(252) 636-4000

Jeffrey T. Odham
Mayor
Foster Hughes
City Manager
Brenda E. Blanco
City Clerk
Kimberly A. Ostrom
Director of Finance

# Memorandum

TO:

Alderman Robert Brinson

FROM:

Brenda Blanco, City Clerk

DATE:

June 16, 2023

SUBJECT:

Appointment to Planning and Zoning Board

Pat Dougherty's term on the Planning and Zoning Board will expire June 30, 2023. He is ineligible for reappointment. You are asked to make a new appointment to fill Seat 6 for a three-year term that will expire on June 30, 2026.

Rick Prill Hazel B. Royal Robert V. Aster Johnnie Ray Kinsey Barbara J. Best Robert Brinson, Jr.



300 Pollock Street, P.O. Box 1129 New Bern, NC 28563-1129 (252) 636-4000 Jeffrey T. Odham
Mayor
Foster Hughes
City Manager
Brenda E. Blanco
City Clerk
Kimberly A. Ostrom
Director of Finance

# Memorandum

TO:

Mayor and Board of Aldermen

FROM:

Brenda Blanco, City Clerk

DATE:

June 16, 2023

SUBJECT:

Appointments to the Redevelopment Commission

Tharesa Lee has resigned from the Redevelopment Commission effective July 5, 2023. Her term is scheduled to expire August 14, 2023, so it is desirous for the Board to wait until August to fill the seat. Additionally, Tabari Wallace's term will expire on August 14, 2023. He is eligible for reappointment, if that is your desire. Both seats are for a five-year term.