



**Wrightsville Beach Board of Alderman
REGULAR MEETING**

5:30 PM WEDNESDAY, OCTOBER 9, 2024
Wrightsville Beach Town Hall Council Chambers
321 Causeway Drive, Wrightsville Beach, NC

AGENDA (ALL ITEMS ARE FOR DISCUSSION AND POSSIBLE ACTION)

1. Call to Order

2. Pledge of Allegiance

3. Invocation

4. Public Comments

Notes on Comment Period: Each speaker is asked to limit comments to 3-5 minutes. Citizens should sign up at Town Hall by 5:00 p.m. the day of the meeting. The Board is interested in hearing your concerns, but speakers should not expect Board action or deliberation on subject matter brought up during the Public Comment segment. Topics requiring further investigation will be referred to the appropriate Town officials or staff and may be scheduled for a future agenda.

5. Consent Agenda

Notes on Consent Agenda: All items on the Consent Agenda are considered routine, to be enacted by one motion without discussion. If a member of the Governing Body requests discussion of an item, the item will be removed from the Consent Agenda and considered separately.

- a. Approval of the minutes of the 9-12-24 regular meeting.
- b. Acknowledgement of previously approved special events for November.
- c. Approval of lease agreement with North Carolina Holiday Flotilla.
- d. Approval of Budget Ordinance (2024) 637-B funding salary and benefit costs for new Town Manager.

6. Presentations--None.

7. Public Hearing

- a. Conduct a public hearing and consider adoption of Ordinance (2024) 1862 removing the requirement in the Town's UDO for the Planning Board to review Special Use Permit applications.

8. Regular Agenda--None.

9. Other Items and Reports

CITIZENS WITH DISABILITIES REQUIRING SPECIAL NEEDS TO ACCESS THE SERVICES OR PUBLIC MEETINGS OF WRIGHTSVILLE BEACH GOVERNMENT SHOULD CONTACT THE TOWN MANAGER'S OFFICE FIVE DAYS PRIOR TO THE MEETING BY CALLING (910) 256-7900.

BOARD OF ALDERMEN MINUTES

SEPTEMBER 12, 2024, 5:30PM

TOWN HALL COUNCIL CHAMBERS, 321 CAUSEWAY DRIVE, WRIGHTSVILLE BEACH

The meeting was called to order at 5:30pm by Mayor Mills. After the Pledge of Allegiance, the invocation was provided by David Haley, Associate Minister, Wrightsville Beach Baptist Church. The following were present:

Board of Aldermen

F. Darryl Mills, Mayor
Hank Miller, Mayor Pro-tem
Jeff DeGroote, Alderman
Ken Dull, Alderman
Vivian (Zeke) Partin, Alderman

Staff

Tony Wilson, Acting Town Manager
Lance G. Heater, Town Clerk
Brian E. Edes, Town Attorney
Brian Murray, Finance Officer
Katie Ryan, Recreation Programs Supervisor
Matt Holland, Acting Fire Chief
Jason Bishop, Acting Police Chief
Robert O'Quinn, Town Planner

Upon motion by Miller, seconded by Partin and carried unanimously, the Board approved an amendment to the order of items in the printed agenda.

CONSIDER APPROVAL OF AN EMPLOYMENT AGREEMENT FOR THE NEW TOWN MANAGER AND ANNOUNCEMENT OF THE APPOINTMENT

Mills stated that the Town had been in the process of recruiting and hiring a new Town Manager for approximately 8 months. Mills expressed, on behalf of the Board, his gratitude for the excellent job that had been done by Acting Town Manager Wilson. Mills stated that the Board had engaged the services of Developmental Associates to assist in the selection process, and that after an extremely competitive process, the Board was prepared to approve an employment agreement with Haynes Brigman to be the new Town Manager, effective October 7, 2024. Upon motion by Miller, seconded by Partin and carried unanimously, the Board approved the Employment Agreement. Mills introduced Haynes Brigman, who introduced himself and thanked the Board for the opportunity to serve the Town.

PRESENTATION

The Board recognized the Wrightsville Beach Ocean Rescue Team for their 4th consecutive first place finish in the South Atlantic Lifesaving Association Regional Championships held in Myrtle Beach, SC and their 3rd place finish in their division in the US Lifesaving Association National Championships held in South Padre Island, TX. Acting Fire Chief Holland stated that the purpose of the competitions were: 1) to sustain and uplift employee morale; 2) to stimulate personal interest in rescue skill training; and 3) to acquaint the general public with water safety procedures and skills used daily by professional lifeguards to advance public safety at the beach. The Board expressed their appreciation to the Ocean Rescue Team for their service to the community.

PUBLIC COMMENTS

Mike Edmonds, 601 N. Channel Dr., thanked the Board for the allowance of residential hang tag parking on Jack Parker Blvd. and asked that such parking be allowed on the west end of Salisbury Street during the week (non-holiday times), stating that there were plenty of available spaces on weekdays and that this would be a benefit for residents which would not cause a significant loss of revenue for the Town.

Sue Bullock reported on Chamber of Commerce activities during the year, noting that the Visitor Center was open and staffed 7 days per week from 10-3, with 5 days per week funded by TDA funds and 2 days funded by the Chamber. Bullock also described the process of development of a tourism master plan that was ongoing and would include a survey of area residents.

Neal Braggi, 4 W. Henderson St., summarized research he had conducted regarding the use of the robotic “BeBot” machine for beach cleaning, for which special event permits were included on the Consent Agenda. Braggi questioned the proposed use of the machine, stating that there was insufficient research on the possible negative effects of its use and the claimed benefits of its use. Braggi urged the Board to obtain answers to the questions he had raised prior to approving the special event permit requests.

Janice McCarthy, of the WB Sea Turtle Project, also questioned the use of the BeBot machine due to the reasons cited by Braggi as well as the possible unknown effects on sea turtle and bird nesting.

Susan Royder, of the WB Sea Turtle Project, spoke against the use of the BeBot machine for the reasons noted by Braggi and McCarthy and also noted that the machine was noisy and collected more shells than trash.

Tom Conley, 716 S. Lumina, stated that a sailboat had been moored in the middle of Banks Channel for approximately 6 months, with no lighting. Conley said that this constituted a danger to nighttime boating. Conley also suggested lowering the speed limit at the end of Waynick Ave. due to safety concerns.

CONSENT AGENDA

Upon motion by Miller, seconded by Partin and carried unanimously, the Consent Agenda, with the exception of Item c, was approved. It consisted of the following: 1) approval of the open and closed session minutes of the 8-2-24 and 8-5-24 special called meetings and the 8-8-24 regular meeting; 2) approval of recurring special events as recommended by the Parks & Recreation Advisory Committee; 3) acknowledgment of previously-approved special events for October; 4) acceptance of a grant from United Community Bank for the Fire Department and approval of Budget Ordinance (2024) 634-B appropriating funds for the purchase of rescue tubes; 5) approval of Tourism Development Authority funding requests and Budget Ordinance (2024) 635-B; 6) approval of Resolution (2024) 2341 designating New Hanover County as the direct payor for shares of local funding for coastal storm damage reduction maintenance projects; 7) approval of a lease agreement with Shore Acres Company for access to and operation of Well Number 8; 8) approval of a lease agreement with Sprout Yoga & Art for Kids; 9) approval of an agreement with E&V Communications for interim public information services; and 10) approval of the Application to Sell for the 2025 Town of Wrightsville Beach Farmers' Market.

Regarding Item c, approval of special event permit applications for monthly beach sweeps from October 2024 through April 2025 with Keep New Hanover Beautiful's Bebot beach cleaning robot, as recommended by the Parks & Recreation Advisory Committee, the consensus of the Board was that the request be deferred pending further discussions with the Town regarding the concerns which had been expressed at the meeting and by others regarding the use of the machine.

PRESENTATION

The Board heard a presentation regarding the NCClass Investment Pool and considered approval of Resolution (2024) 2340 authorizing the establishment of the account and authorizing the Finance Officer to make periodic deposits into the account. Murray stated that the Town currently had two investment vehicles – a ladder bond portfolio with First Citizens Bank with a value of approximately \$16 million, and a portfolio with North Carolina Capital Management Trust (NCCMT) with a value of approximately \$30 million. Murray said NCCLASS is an investment pool

created for North Carolina units of local government. Pooled funds are invested only in instruments that approved by NC General Statutes. Murray further noted that the NCCLASS portfolio has generally been outperforming the NCCMT portfolio by about 20 basis points, and has a management fee of about 5 basis points less than NCCMT. Adding a .25% yield would equate to an additional about \$2,500 in interest earnings per million dollars invested. Justin Wycoff, of Public Trust Advisors, made a presentation to the Board of the features of the investment pool and responded to questions from the Board. The Board took the matter under advisement and took no action on the Resolution.

PUBLIC HEARING

The Board considered conducting a public hearing and approval of Ordinance (2024) 1861 amending Section 155.7.10 Fences and Walls, of the Town Code. O'Quinn stated that this was a staff-initiated text amendment to Section 155.7.10, Fences and Walls. O'Quinn stated that prior to the 2012 ordinance update, commercial fences were permitted to reach a height of eight feet, serving as a critical buffer between commercial and residential districts. In areas where commercial properties operate continuously, such as hotels, the additional fence height helped minimize noise and disturbances for nearby residents. During the review of the 2012 ordinance revision, staff noted that the maximum allowable height for commercial fences was reduced from eight feet to six feet. This change has prompted discussions regarding its impact on buffering capabilities and noise containment between commercial and residential areas. Additionally, businesses have raised concerns about the decreased effectiveness of their perimeter fences as sound barriers and privacy screens. O'Quinn reported that at the July 9, 2024 Planning Board meeting, the board proposed giving adjacent homeowners the option to install an eight-foot-high fence along the property line of a commercial property, allowing homeowners to initiate additional screening if the commercial owner does not. In response to a question from Dull, O'Quinn stated that there were no design standards applied to commercial district fencing, however, he planned to bring that issue to the Planning Board in the future.

The Mayor declared the public hearing open at 6:37pm. There being no persons present who wished to speak on the matter, the Mayor declared the public hearing closed.

Upon motion by Partin, seconded by Dull and unanimous vote, Ordinance (2024) 1861 was adopted, along with the statement of consistency.

CONSIDER APPROVAL OF THE TRANSFER OF WATER AND SEWER RESERVE FUNDS TO THE CAPE FEAR PUBLIC UTILITY AUTHORITY, AS OUTLINED IN THE UTILITY CONSOLIDATION AGREEMENT, THROUGH APPROVAL OF BUDGET ORDINANCE (2024) 636-B

Murray stated that the request was to transfer a total of \$3,447,000 to the CFPUA in order to fund projects during the transition period prior to actual transfer of the system, which is scheduled to occur in September 2025. Murray noted that the funds transfer was included in the merger agreement with the CFPUA. All funds transferred are to be used for the Town's system and would be separately accounted for by the CFPUA. Upon motion by Miller, seconded by DeGroote and carried unanimously, Budget Ordinance (2024) 636-B was adopted.

OTHER ITEMS AND REPORTS

- A. Alderman DeGroote:** 1) congratulated Haynes Brigman on his appointment; 2) congratulated Ocean Rescue for their achievements; 3) concurred with the comments from Tom Conley regarding the unlighted sailboat; and 4) noted issues with congestion at the State boat ramp and a proposal to add floating docks.
- B. Alderman Partin:** 1) stated that 9/17/24 marked the 237th anniversary of the drafting of the U.S. Constitution and that, on behalf of the Mayor, she would be attending a celebration held

by the Daughters of the American Revolution and presenting a proclamation; 2) congratulated Haynes Brigman; 3) attended the TDA Board meeting on 8/28 and reported that ROT collections were up 5.6% over the previous year; 4) the TDA Board would be developing a 10-year tourism master plan, with an input session to be held the week of 9/16, which she would be attending; and 5) noted the 9/11 remembrance event held at the Public Safety Building.

- C. **Alderman Dull:** 1) stated that the Board wanted to create a culture of excellence in the Town and the hiring of Brigman was in line with that mission; and 2) asked Wilson, Fay and Murray for an update on the CFPUA merger, in which Wilson noted that a committee would be formed to facilitate the transition; Fay noted that he had been having weekly meetings with the CFPUA operations manager, Matt Tribbett, with regard to transition issues; Murray detailed his work with CFPUA regarding billing issues.
- D. **Mayor Pro Tem Miller:** 1) stated that the MPO would be moving into their new facility soon; 2) noted that there was opposition to the proposed Eastwood Road flyover project at Military Cutoff and asked anyone who was similarly opposed to submit emails to NCDOT; 3) noted the Bridge Replacement Committee was scheduled to meet the following week; 4) stated that Trillium had agreed to provide a new handicap swing for the WB Park in 2025 and that the proposal would be reviewed by the P&R Advisory Committee; and 5) expressed appreciation to Town staff and Wilson in particular for their efforts during the Town Manager transition process.
- E. **Town Attorney Edes:** welcomed Brigman as new Town Manager and expressed appreciation to Wilson.
- F. **Town Clerk Heater:** nothing to report.
- G. **Acting Town Manager Wilson:** expressed appreciation to the Board and staff for their support in his role as Acting Town Manager.
- H. **Mayor Mills:** 1) expressed appreciation to Wilson and welcomed Brigman; 2) noted pending legislation regarding Mason's Inlet which was being supported by the lobbyist working with the Port, Waterway and Beach Commission; and 3) responded to Mike Edmonds' request under public comments, noting that the expansion of residential hang tag parking could be an issue with regard to the agreement between the Corps of Engineers and the Town regarding beach nourishment in that the agreement required that a certain number of parking spaces be made available for public parking at all times.

Upon motion by Miller, seconded by DeGroote and carried unanimously, the Board rescheduled its October Board meeting to October 9, beginning at 5:30pm.

There being no further business, the meeting was adjourned at 7:07pm.

Respectfully submitted,

Lance G. Heater, Town Clerk

APPROVED SPECIAL EVENTS November 2024

Distribution List:

Matt Holland, WBFD
Dave Baker, Ocean Rescue
Sam Proffitt, WBFD
Robert Pugh, WBFD
Jason Bishop, WBPD
James Lowe, WBPD
Brian Neague, WBPD
Daniel Gaither, WBPD
Jordan Smith, WBPD

Bill Fay, Public Works
Evan Morigerato, Public Works
Chris Bannerman, Public Works
Stephen Avante, Public Works
Danny Floyd, Public Works
Tony Wilson, Planning & Parks
Katie Ryan, Parks & Rec
Shannon Slocum, Park Ranger
Scott Sprenger, Park Ranger

Haynes Brigman, Town Manager
WB Marketing Advisory Committee
Wrightsville Beach Museum
Josh Yates, Pivot Parking
Board of Aldermen
SVM Janitorial Solutions
Hannah Almeter, Wilmington CVB
Parks & Rec Advisory Committee

FOR PARKING PURPOSES: Highlighted Events are reservations/events in WB Park.

Bold print indicates event is pending BOA approval.

Indicates event requiring a road closure.

EVENT DATE	TIME	NUMBER OF PARTICIPANTS	ACTIVITY	NAME	LOCATION	Vehicle on Beach Permit
Fri 11/1	2:00 pm – 6:00 pm	42	Wedding	Martin	Beach strand at JM Pier	EVENT CANCELLED
Sat 11/2	6:30 am - 12:00 pm	1000	Walk to End Alzheimer's	Prosise	WB Park and Loop	
Sun 11/3	10:45 am - 12:15 pm	65	AA Meeting	Living Sober Group	Fran Russ Recreation Center (parking at FM field)	
Mon 11/4	8:00 am - 1:00 pm	800	WB Farmers' Market	WBPR	Overflow parking field	
Fri 11/8	8:00 - 11:00 am	50	Veteran's Day Memorial	HIGC	WB Park Event Stage (Meeting at 8:00 / Ceremony at 9:00 am)	
Sat 11/9	6:00 am - 6:00 pm	100	East Coast Surf Shop Shootout	Carrillo	Beach strand at Holiday Inn Resort	
Sun 11/10 rain date	6:00 am - 6:00 pm	100	East Coast Surf Shop Shootout	Carrillo	Beach strand at Holiday Inn Resort	
Sun 11/10	10:45 am - 12:15 pm	65	AA Meeting	Living Sober Group	Fran Russ Recreation Center (parking at FM field)	
Mon 11/11	8:00 am - 1:00 pm	800	WB Farmers' Market	WBPR	Overflow parking field	
Mon 11/11	8:00 am - 11:00 am	24	Wedding	Dutton	Beach strand at access 43	
Sat 11/16	12:00 pm - 6:00 pm	50	Wedding	Mincher	Island Drive Park	
Sat 11/16	11:00 am - 5:00 pm	30	Child's birthday party	Cavazos	WB Park Shelter #2	
Sun 11/17	10:45 am - 12:15 pm	65	AA Meeting	Living Sober Group	Fran Russ Recreation Center (parking at FM field)	
Mon 11/18	8:00 am - 1:00 pm	800	WB Farmers' Market	WBPR	Overflow parking field	

APPROVED SPECIAL EVENTS November 2024

Sun 11/24	10:45 am - 12:15 pm	65	AA Meeting	Living Sober Group	Fran Russ Recreation Center (parking at FM field)	
Mon 11/25	8:00 am - 1:00 pm	800	WB Farmers' Market	WBPR	Overflow parking field	
Thurs 11/28	5:00 am - 11:00 am	3500	Turkey Trot	Hackman	WB Park and Loop	
Fri 11/29	5:30 - 7:30 pm	500	Santa Visit and Tree Lighting	WBPR	Town Hall	
Sat 11/30	7:30 am - 6:00 pm	100	WBLA Surf Contest	O'Donnell	Beach strand at JM Pier (access 4 alt location)	
Sat 11/30	10:00 am - 4:00 pm 6:00 - 9:00 pm	1500/ 20,000	Flotilla Day in the Park / Boat Parade	NC Holiday Flotilla	WB Park / Banks Channel	

* indicates vehicle on beach permit issued to L&L Tent Rentals, Beach Side Occasions, ETC. Party Rentals, Sweet Water Bamboo, or other rental business



Town of Wrightsville Beach
North Carolina
321 Causeway Drive
Wrightsville Beach, North Carolina 28480
Ph: 910-256-7900

MEMORANDUM

To: Mayor Mills and Board of Aldermen

From: Brian Murray, Finance Officer

Subject: Leases for Town Properties

Date: October 9, 2024

Background: Town staff is currently working with attorney Jerry Mannen to create new leases for tenants of Town-owned properties whose lease terms have ended. These tenants are currently leasing their respective properties on a month-to-month basis per the conditions of the lease. The goal is to get active leases in place for all properties, and in the future begin the renewal process 90 days prior to lease term end, so that tenants are always operating under a current lease. These leases all have a term end date of 6/30/25 to correspond with the end date of the fiscal year. 90 days prior to fiscal year-end Town staff will attempt to renew these leases for additional one-year periods.

The NC Holiday Flotilla board currently leases the property at 10A Sea Water Lane, otherwise known as the former Wrightsville Beach Fire Department dormitory. They use this space for storage and for administrative functions. The NC Holiday Flotilla board has reviewed the updated lease and agreed to terms, and Town staff would recommend approving this lease for execution at the October board meeting.

Requested Action: Authorize the Town Manager to execute lease with NC Holiday Flotilla.

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

LEASE AGREEMENT

THIS LEASE AGREEMENT (hereinafter referred to as the "Lease"), made and entered into effective October 1, 2024 (the "Effective Date"), by and between **TOWN OF WRIGHTSVILLE BEACH NC**, a municipal corporation (hereinafter referred to as "Landlord" or "Town") and **NORTH CAROLINA HOLIDAY FLOTILLA AT WRIGHTSVILLE BEACH, INC.**, a North Carolina nonprofit corporation (hereinafter referred to as "Tenant").

W I T N E S S E T H:

THAT WHEREAS, Landlord has agreed to lease to Tenant and Tenant has agreed to take and rent from Landlord certain real property as described herein which shall be used by Tenant for its intended use as hereinafter set forth; and

WHEREAS, the parties have agreed to the following terms and conditions of this Lease:

1. LEASED PREMISES. The real property and building which is the subject of this Lease is a portion of that property and building and being one-half of the building which is known generally as the former Wrightsville Beach Fire Department dormitory located at 10A Sea Water Lane, in the Wrightsville Beach Town Hall Complex as described in Exhibits A and B attached hereto and incorporated herein by reference (the "Leased Premises" or "Premises").

2. TERM. The term of this Lease shall be for a period of nine (9) months, with such Lease commencing on October 1, 2024, (the "Commencement Date") and continuing through June 30, 2025, unless earlier terminated as provided herein.

Subject to the approval of Landlord's Board of Alderman, provided this Lease is still in full force and effect and there has been no event of default by Tenant, Tenant shall have option to renew the Lease for three (3) one (1) year terms (each a "Renewal Term") upon the same terms and conditions, except for Rent or Additional Rent which shall be mutually agreed upon by Landlord and Tenant. Tenant shall provide Landlord with no less than one hundred twenty (120) days written notice before the expiration of this Lease or Renewal Term as the case may be, of Tenant's exercise of the then applicable option. Notwithstanding anything contained herein to the contrary, Tenant's right and option to renew the Lease and the amount of Rent and Additional Rent to be paid during any Renewal Term are contingent upon the approval of Landlord's Board of Aldermen.

3. RENT. Rent shall include monthly base rent and additional rent (if applicable) as set forth herein. Additional Rent shall mean all sums due from Tenant pursuant to the Lease other than Base Rent. Rent shall commence on the Commencement Date. Thereafter, Rent will be due and payable in advance on the first day of each month during the Term. If Rent is not paid in full on or before the tenth of the month, the Tenant will be in default of this Lease and subject to the Landlord's remedies in the Event of Default.

The monthly Base Rent during the Term of the Lease shall be \$300.00 per month.

If Tenant fails to make any payment of Rent or any other sum on or before the date that is ten (10) days after such payment is due and payable (without regard to any separate grace period specified), then in addition to any other requirements in this Lease, Tenant shall pay to Landlord a late charge equal to the greater of (i) \$25.00 per month for each month that the amounts due remain unpaid or (ii) ten percent (10.00%) of the amount of the overdue amount.

In the event any check, bank draft, or negotiable instrument given for any payment under this Lease shall be dishonored at any time or for reason not attributable to Landlord, Landlord shall be entitled, in addition to any other remedy that may be available, to recover from Tenant the bad check fee charged by Landlord by Landlord's bank.

4. USE. The Premises shall be used by Tenant only for administrative/office use including the storage of goods, materials and supplies (the "Permitted Use"). In addition, the Premises shall at all times be used in accordance with all applicable laws, ordinances and regulations of governmental authorities. Landlord makes no representation or warranty regarding the suitability of the Premises for the Permitted Use. At Tenant's sole expense, Tenant shall procure, maintain and make available for Landlord's inspection from time to time any governmental license(s) or permit(s) required for the lawful conduct of Tenant's business in the Premises.

Tenant shall not cause or permit any waste to occur in or on the Premises and shall not overload the floor, or any mechanical, electrical, plumbing or utility systems serving the Premises. Tenant shall keep the Premises and every part thereof, in a clean and wholesome condition, free from any objectionable noises, loud music, objectionable odors or nuisances.

Nothing contained in this Lease, by express statement or by implication shall be deemed to grant Tenant a broader right to use and occupy the Premises other than the limited right of use and occupancy expressly stated as the Permitted Use. Notwithstanding the foregoing, Tenant may use the Leased Premises for such other purposes as may be expressly approved in writing by Landlord.

5. INTENTIONALLY OMITTED.

6. ACCEPTANCE OF PREMISES. Neither the Landlord nor its agents have made any representations with respect to the Premises, the building(s) of which the Premises is a part, the land upon which it is erected, or the Tenant's business at the Premises (including, without limitation, any representations regarding the Permitted Use) except as expressly set forth herein or as may be agreed to, in writing, by both parties, and no rights, easements, or licenses are acquired by Tenant by implication or otherwise except as expressly set forth in the provisions of this Lease. The taking of possession of the Premises by Tenant shall be conclusive evidence that the Tenant accepts the same "AS IS WHERE IS", that all obligations imposed upon Landlord under this Lease relating to the condition and delivery of the Premises by Landlord have been fully performed and that the Premises were in good condition at the time possession was taken, except such items as may be agreed upon in writing, by both parties prior to Tenant taking exclusive possession. Landlord makes no warranties or other representations (express, implied or otherwise) with respect

to the Premises, the Buildings, grounds, the Property or Tenant's Permitted Use including without limitation a warranty of merchantability or a warranty of fitness for a particular purpose.

7. IDENTITY OF INTEREST AND USE OF TOWN'S NAME. The execution of this Agreement or the performance of any act pursuant hereto shall not be construed as creating between Landlord and Tenant the relationship of principal and agent, partnership or joint venture and the relationship between them is only that of Landlord and Tenant. Furthermore the parties expressly acknowledge and agree that Landlord is in no way involved in the business operations (hereinafter "Operations") of Tenant including those conducted upon the Leased Premises and that Tenant is solely and singularly responsible for all facets of its Operation(s) wherever occurring including by way of illustration and not limitation, referrals, selection of participants, staff, and volunteers, enrollment, curriculum, scheduling, transportation, training, safety rules, discipline policies and actions, accounting, employment practices and policies, payroll, and auditing. Tenant shall not use the Landlord's name in connection with its use of the Premises as permitted herein or in any correspondence, solicitation, advertising or other information disseminated by Tenant without the prior written consent of Landlord. In amplification of the foregoing, Tenant shall in no way communicate in any manner that Tenant is affiliated, associated, endorsed or any way officially connected with Landlord and the relationship between Tenant and Landlord is solely that of Landlord and Tenant.

8. IMPROVEMENTS AND ALTERATIONS. During the term hereof, Tenant may not make alterations, additions or improvements (collectively hereinafter referred to as "Alterations") to the Leased Premises unless such alterations are approved in writing in advance by Landlord. Tenant shall pay for such approved alterations and shall indemnify and save Landlord harmless from any claims that may arise resulting from lien claims or notices of claims of lien from any contractors or subcontractors employed by Tenant to provide materials and labor for such Alterations. Any such Alterations shall at the option of Landlord attach to the real estate and become a part of the Leased Premises for the benefit of Landlord upon termination of this Lease. In the event Landlord requires removal of the Alterations, Landlord shall provide Tenant with written notice to remove the Alterations at the expiration or earlier termination of the Lease, and Tenant shall do so and restore the Premises to the condition that existed prior to such alterations, additions or improvements being made.

Any work performed by Tenant in the Premises shall be done in a good and workmanlike manner. Tenant shall not at any time permit any work to be performed on the Premises except by duly licensed contractors, each of whom must carry general public liability insurance, certificates of which shall be furnished to Landlord.

9. MAINTENANCE AND REPAIRS. Tenant shall maintain, at its sole cost and expense, the Premises (including if permitted any Alterations thereto) specifically including but not limited to the building upon which the Premises is a part, and shall keep the Premises in a good state of repair during the term hereof returning the Premises to Landlord upon termination or cancellation of this Lease in good and usable condition, normal wear and tear and Acts of God excepted. Provided, however, notwithstanding the foregoing, Landlord agrees to keep in good repair the roof, foundation, structural supports, exterior walls, plumbing, and HVAC system of the building upon which the Premises, is a part (exclusive of Tenant's personal property) unless said repairs are

occasioned by the negligence of willful act of Tenant or its agents, employees, or contractors, in which event such repairs shall be made by Tenant, subject to credit for amounts actually received by Landlord under any insurance policy. Tenant shall promptly report in writing to Landlord any defective condition known to it which Landlord is required to repair or replace and failure to report such condition(s) shall make Tenant responsible to Landlord for any liability incurred by reason of such condition(s). Notwithstanding the foregoing, should Landlord's responsibility for repair and maintenance of the Premises or the building of which the Premises is a part exceed the sum of five thousand and no/100 (\$5,000.00) dollars in aggregate for any Lease Year Landlord in its sole discretion may elect to terminate the Lease in lieu of expending such monies for such repair and/or maintenance.

10. UTILITIES. Not Applicable.

11. TAXES AND ASSESSMENTS. To the extent applicable, if Tenant's occupancy of the Premises results in the imposition of any ad valorem taxes levied against the Premises, or any other governmental charges charged against the Premises during the term hereof related to Tenant's use of the Premises, Tenant shall be responsible for payment of such taxes. Tenant shall be responsible for listing its furniture, furnishings, equipment and other personal property used on the Premises for ad valorem tax purposes and attending to the timely payment of the taxes assessed on such items. Notwithstanding the foregoing, Tenant shall promptly upon demand reimburse Landlord for any additional tax or assessment charged reason of Tenant's Permitted Use.

12. INSURANCE; WAIVER; INDEMNITY. Landlord shall maintain property, fire, general liability insurance, and extended coverage insurance covering the Premises and the building of which the Premises is a part. Tenant shall pay to Landlord as Additional Rent one hundred ten and 92/100 (\$110.92) dollars per month contemporaneous with its monthly Rent towards the cost of Landlord's insurance with respect to the Premises. Notwithstanding the foregoing, Tenant shall pay one hundred \$100.00% percent of the excess cost, if any, in Landlord's insurance for the Premises in the event Tenant's use or Permitted Use of the Premises results in any increase in rate of insurance on the Premises.

Tenant shall, at its expense, obtain and maintain during the Lease Term policies of: (1) broad form commercial general liability insurance (written on an occurrence basis and including an endorsement for personal injury), and comprehensive automobile liability insurance covering automobiles owned, leased or operated by Tenant if any. Such commercial general liability insurance policy shall protect against any liability which arises from any occurrence on or about the Premises or which arises from any matter against which Tenant is required to indemnify Landlord pursuant to this Lease; provided, however, the limits of said insurance shall not limit the liability of Tenant hereunder; (2) all risk property insurance insuring one hundred percent (100%) of the full replacement cost of all alterations, inventory, fixtures, equipment, personal property, floor coverings, and furnishings installed in and located on the Premises; (3) worker's compensation insurance, if required, with a minimum limit as required by law; and, (4) such other insurance in such amounts as Landlord may reasonably require from time to time. All such policies shall name Landlord, its managing agent and the holder of each applicable mortgage or deed of trust, as additional named insureds or loss payees thereunder. As of the date hereof, such

commercial general liability insurance shall be in the minimum amount of not less than one hundred thousand (\$100,000.00) Dollars combined single limit, per occurrence, provided Landlord may require the amounts to be increased to be consistent with then current insurance standards for similar properties, with commercially reasonable deductibles.

Insurance required by Tenant hereunder shall: (i) be issued by a company which is licensed to do business in the State of North Carolina and otherwise acceptable to Landlord in its reasonable discretion; (ii) provide that the insurer thereunder waives all right of recovery by way of subrogation against Landlord, its members, managers, agents, employees, and representatives, in connection with any loss or damage covered by such policy; (iii) be primary and non-contributory; and (iv) contain an endorsement prohibiting cancellation, failure to renew, reduction of amount of insurance or change in coverage without the insurer's first giving Landlord at least thirty (30) days' prior written notice (by certified or registered mail, return receipt requested) of such proposed action. No such policy shall contain any deductible provision except as otherwise approved in writing by Landlord. Tenant shall deliver a certificate of such insurance (and, upon request, copies of all required insurance policies) to Landlord on or before the Tenant takes possession of the Premises and at least annually thereafter. If Tenant shall fail to procure and maintain said insurance Landlord may, but shall not be required to, procure and maintain the same, and the cost thereof with interest thereon at the Default Rate shall become due and payable as Additional Rent to Landlord together with Tenant's next installment of Base Rent.

Landlord (for itself and its insurer) waives any rights, including rights of subrogation, and Tenant (for itself and its insurer) waives any rights, including rights of subrogation, each may have against the other for compensation of any loss or damage occasioned to Landlord or Tenant arising from any risk generally covered by any "all risks" insurance carried or required to be carried by Landlord and/or Tenant hereunder. The foregoing waivers shall be effective whether or not the parties maintain the insurance required to be carried pursuant to this Lease but shall be operative only so long as related policy endorsements are available in the State of North Carolina.

Except as otherwise provided in this Section 12, Tenant shall indemnify, defend and hold harmless Landlord, from and against any and all claims, damages, liabilities or expenses arising out of or from (i) Tenant's use of the Premises or from any activity, work or things done, permitted or suffered by Tenant in or about the Premises, the building of which the Premises is a part and/or the Property, except to the extent directly caused by Landlord, and (ii) the negligence or willful misconduct of Tenant, its officers, directors, employees, agents, invitees and contractors, including in each case all costs, reasonable attorney's fees, or expenses from liabilities incurred in the defense of any such claim or any action or proceeding brought thereon.

Except as otherwise provided in this Section 12 and the other limitations on liability contained in this Lease, Landlord shall indemnify, defend and hold harmless Tenant, from and against any and all claims or losses arising from the gross negligence or willful misconduct of Landlord, its agents, employees and contractors, and from and against all costs, reasonable attorney's fees, or expenses from liabilities incurred in the defense of any such claim or any action or proceeding brought thereon.

13. CONDITION OF PREMISES AT END OF TERM; HOLD OVER. At the expiration or early termination of this Lease, Tenant shall return the Premises to the Landlord in the same condition as existed on the Commencement Date, excepting only normal wear and tear and acts of God. In the event of Tenant's holding over after the termination of this Lease for whatever reason or expiration of the Term of this Lease, thereafter the tenancy shall be month to month in absence of a written agreement to the contrary; provided, however, that such hold over period shall not exceed twelve (12) months. During the hold over period, the Base Rent shall be 150% of the then current Base Rent and shall be payable on a monthly basis on the first day of each month.

14. EQUIPMENT AND FIXTURES. Tenant shall have the right to keep, store and use its personal property, equipment, fixtures and supplies owned by it on the Premises and such property shall remain the property of Tenant. Tenant shall have the right to remove same from the Premises upon termination of this Lease providing that any repairs required to the Premises as a result of such removal shall be paid by Tenant. Any of Tenant's property remaining in the Premises upon the expiration or earlier termination of the Lease shall be deemed abandoned and become the property of the Landlord, and Landlord may dispose of any such deemed abandoned property in any manner in which Landlord sees fit.

15. ASSIGNMENT AND SUBLETTING. Tenant may not assign or transfer this Lease or any estate interest or benefit thereof or sublet the Premises or any part or parts thereof without the prior written consent of Landlord. Consent by Landlord to any assignment or subletting shall not constitute a waiver or release of any rights of Landlord against Tenant hereunder and Tenant shall remain primarily liable hereunder. Notwithstanding anything contained herein to the contrary, Landlord approves the sublease of space within the Premises to The Wrightsville Beach Foundation.

16. DAMAGE OR DESTRUCTION BY FIRE OR OTHER CASUALTY. In the event that the Premises or any portion thereof is totally destroyed by fire or other casualty or Act of God, then this Lease Agreement shall terminate as of the time of such destruction without action on the part of either the Landlord or the Tenant. In this event, both Landlord and Tenant shall be released from any liability or obligation under this Lease arising after the date of termination, except as otherwise provided for in this Lease.

In the event that the Premises or any portion thereof is partially damaged by fire, other casualty or Act of God, the Landlord in its sole discretion shall have the option to terminate this Lease by notifying Tenant as hereinafter provided in the section entitled, "Notices." Such notice shall be mailed within thirty (30) days after the date of such damage. In the event Landlord elects to not terminate this Lease, Landlord shall proceed to restore the Premises to substantially the same condition as it was immediately prior to the destruction; provided that Landlord shall be obligated to restore the Premises only if available insurance proceeds will be sufficient for such restoration. During the restoration period Rent shall be equitably adjusted and prorated in the proportion which the area of unusable lease space bears to the total Premises. Except as expressly provided herein, Landlord in no event shall have any liability to Tenant for any cost, expense, or damage, including but not limited to business delay losses claimed by Tenant or a replacement leased space, arising out of the damage and/or restoration to the Premises.

Nothing contained herein shall require or impose any obligation upon Landlord to reconstruct or repair the Premises on account of any such casualties or damage. In the event Landlord elects not to complete repairs or reconstruction of the Premises, Tenant's sole remedy shall be to terminate this Lease and both Landlord and Tenant shall be released from any further liability or obligation under this Lease.

17. DEFAULT; REMEDIES.

(a) *Defaults.* The occurrence of any one or more of the following events shall constitute an Event of Default and breach of this Lease by Tenant:

(i) The failure by Tenant to make any payment of Rent or any other payment required to be made by Tenant hereunder within ten (10) days of its due date;

(ii) The making by Tenant of any general assignment for the benefit of creditors; Tenant becoming a "debtor" as defined in 11 U.S.C. Section 101 or any successor statute thereto (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days); the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days;

(iii) Tenant ceases to be a 501(C)(4) or similar nonprofit organization whose mission benefits the citizens of Wrightsville Beach, North Carolina. Tenant must submit annual financial statements to Landlord for approval prior to the Commencement Date.; or

(iv) The failure by Tenant to observe or perform any of the other covenants, conditions or provisions of this Lease to be observed or performed by Tenant within thirty (30) days after written notice of such failure (provided such thirty (30) day cure period shall be decreased or dispensed with, as reasonably required, in cases of emergency).

Notwithstanding the foregoing provisions, Tenant shall not be entitled to any notice and cure period in connection with Tenant's obligation to vacate the Premises at the end of the Lease Term.

(b) *Remedies.* Should Tenant be in default as specified in this Section, Landlord may exercise any one or more of the following rights without further notice or demand of any kind to Tenant or any other person, except as required by applicable legal requirements:

(i) Landlord may terminate this Lease and Tenant's right to possession of the Premises and reenter the Premises, take possession thereof and remove all persons therefrom, following which Tenant shall have no further claim thereon or hereunder;

(ii) Without terminating this Lease and the obligations of Tenant hereunder, Landlord may terminate Tenant's right to possession of the Premises and reenter the Premises and occupy the whole or any part thereof;

(iii) enter upon the Premises or take such other actions as are necessary to cure such Tenant default, and Tenant agrees to reimburse Landlord on demand for any reasonable expense Landlord incurs in effecting compliance with Tenant's obligations under this Lease, and Tenant further agrees that Landlord shall not be liable for any damages resulting to Tenant from such action; and

(iv) exercise all other remedies and seek all damages available to Landlord at law or in equity, including, without limitation, injunctive relief of all varieties.

In the event of an elected termination of this Lease, whether before or after reentry, or retaking of possession of the Premises by Landlord without termination of this Lease, Landlord may recover from Tenant damages, including the costs of recovering the Premises and Landlord's reasonable attorneys' fees (to the extent recoverable under Legal Requirements), and Tenant shall remain liable to Landlord for the total Base Rent and Additional Rent which would have been payable by Tenant hereunder for the remainder of the Lease Term (which total Base Rent and Additional Rent may at Landlord's election be accelerated and recoverable as damages in a lump sum) less the rentals actually received from any reletting or, at Landlord's election, less the reasonable rental value of the Premises for the remainder of the Lease Term.

In the event Landlord elects to re-enter or take possession of the Premises after Tenant's default, Tenant hereby waives notice of such re-entry or repossession and of Landlord's intent to re-enter or retake possession. Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in Rent, expel or remove Tenant and any other person who may be occupying said Premises or any part thereof. All of Landlord's remedies under this Lease shall be cumulative and not exclusive. Forbearance by Landlord to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default or an election of remedies. The receipt by Landlord of any Rent or any other sums with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly Rent herein stipulated shall be deemed to be other than a payment on account of the earliest stipulated Rent, nor shall any endorsement or statement on any payment or letter accompanying any payment be deemed an accord and satisfaction, and Landlord may accept such payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided in this Lease. Should Landlord reenter the Premises under the provisions of this Section, Landlord shall not be deemed to have terminated this Lease or to have accepted surrender thereof by any such reentry unless Landlord notifies Tenant in writing that it has elected to terminate this Lease.

18. HAZARDOUS SUBSTANCES. Tenant shall not generate, store, transport, treat, dispose of or use on the Premises hazardous or toxic substances or wastes as defined under any applicable legal requirements ("Hazardous Substances"), except only in accordance with all legal requirements, and then only Tenant's proper and lawful use and disposal of Hazardous Substances

normally and customarily used by Tenants for the Permitted Use shall be permitted without a violation of this Section 18. Tenant acknowledges and agrees that in no event will Landlord have any liability for any remediation or cleanup costs (or other compliance costs) in connection with the presence of any Hazardous Substances on the Premises caused by Tenant. Tenant agrees to indemnify, defend and hold Landlord harmless from any claims, judgments, damages, penalties, fines, costs, liabilities or losses, including reasonable attorneys' fees, consultant fees, and expert witness fees, which arise from the Tenant's breach of its representations, agreements and warranties as contained in this Section 18, and this obligation of Tenant shall survive the expiration or earlier termination of this Lease. This indemnity shall also apply to any release of Hazardous Materials caused by a fire or other casualty to the Premises if such Hazardous Materials were stored on the Premises by Tenant, its agents, employees, invitees or successors in interest.

19. CONDITIONS PRECEDENT. This Lease is subject to the following conditions precedent (any of which may be waived in whole or in part in writing by Landlord) which must be satisfied by Tenant prior to taking possession of the Leased Premises:

(i) Tenant shall provide to Landlord certificates of insurance in a form reasonably satisfactory to Landlord in accordance with the provisions of Section 12 above;

(ii) Tenant shall provide to Landlord copies of its nonprofit status, charter and final statements; and,

(iii) Approval of the Lease by the Board of Alderman for the Town of Wrightsville Beach.

20. NOTICES. Notices which Landlord or Tenant are required or desire to give the other shall be deemed sufficiently given or rendered if in writing such notice is delivered personally, sent via facsimile or other electronic means, sent by nationally recognized courier service providing written confirmation of delivery, or sent by certified or registered mail, postage prepaid, to the address listed below above or as later designated in writing by such party. Any notice given herein by personal delivery shall be deemed delivered when received. Any properly addressed notice given herein by certified or registered mail shall be deemed delivered when the return receipt therefor is signed, or refusal to accept the mailing by the addressee is noted thereon, or inability to deliver to addressee as noted thereon. Any notice given by nationally recognized courier service shall be deemed delivered upon confirmation of delivery by the courier service. Notice via facsimile or other electronic means shall be deemed delivered upon delivery by confirmed electronic or facsimile transmission if received by the recipient before 5:00 p.m. local time on a business day in Wilmington, North Carolina, and if not, then the next business day. Notice by overnight delivery service shall be deemed delivered when written confirmation of delivery is obtained. Notices shall be addressed as follows:

As to Landlord:
Town of Wrightsville Beach
Post Office Box 626
Wrightsville Beach, NC 28480
Email: bmurray@towb.org
Email: twilson@towb.org

As to Tenant:
North Carolina Holiday Flotilla
at Wrightsville Beach, Inc.
PO Box 713
Wrightsville Beach, NC 28480
Email: 11boyd@gmail.com

Fax: 910-256-7910

Fax: _____

The address of both Landlord and Tenant and the name of the person to whose attention a notice shall be directed may be changed from time to time by either party giving notice to the other.

21. AMENDMENT. This instrument contains the entire understanding and agreement by and between the parties hereto and all prior or contemporaneous oral or written agreements or instruments are merged herein and no amendment to this lease shall be effective unless same is in writing and signed by the parties hereto.

22. SUCCESSORS AND ASSIGNS. All rights and privileges provided for hereunder shall inure to the benefit of the successors and assigns of the parties hereto.

23. LAW APPLICABLE. This Lease Agreement shall be construed and interpreted under and governed by the laws of the State of North Carolina.

24. RIGHT OF ENTRY. Landlord's representative shall have the right to enter the Premises at all reasonable hours including during Hours of Operation to examine same and make such alterations and repairs as it is bound to make hereunder.

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

26. CONDEMNATION. If a substantial portion of the Premises shall be at any time during the term hereof lawfully taken for any public or quasi-public use under any statute or by right of eminent domain, then and in that event, then this Lease shall terminate as of the day possession shall be taken by the condemning authority. Landlord shall be entitled to the entire condemnation award for any taking of the Premises or any part thereof. Tenant's right to receive any amounts separately awarded to Tenant directly from the condemning authority for taking of its merchandise, personal property, relocation expenses or interests in other than the real property taken shall not be affected in any manner by the provisions of this Section 30, provided Tenant's award does not reduce or affect Landlord's award and provided further Tenant shall have no claim for the loss of its leasehold estate.

27. GOVERNMENTAL ORDERS. Tenant, at its own expense, agrees to comply with: (a) any law, statute, ordinance, regulation, rule, requirement, order, court decision or procedural requirement of any governmental or quasi-governmental authority having jurisdiction over the Premises, (b) the rules and regulations of any applicable governmental insurance authority or any

similar body relative to the Premises, the Permitted Use, and Tenant's activities therein, (c) provisions of or rules enacted pursuant to any private use restrictions, as the same may be amended from time to time; and, (d) the Americans with Disabilities Act of 1990 (the "ADA") and the regulations and accessibility guidelines enacted thereto as the same may be amended from time to time. Tenant agrees to assume sole responsibility for confirming Tenant's accommodations, facilities, and services to the requirements of the ADA. Tenant shall hold Landlord harmless, indemnify and defend Landlord from any and all claims or violations resulting from Tenant's violation of the ADA whether such violation is unintentional or intentional.

28. EXTERIOR SIGN. Tenant shall place no sign(s) upon the Premises, the building of which the Premises is part nor the outside area(s) except with the express written consent of the Landlord. Any Landlord approved sign shall be constructed and maintained in compliance with governmental rules and regulations governing such signs and Tenant shall be responsible to Landlord for any damage caused by the installation, use or maintenance of said sign(s) and all damage incident to the removal thereof. Notwithstanding anything herein to the contrary, any permitted signage shall be subject to local zoning or building ordinances and shall not be a representation or warranty of any legal entitlement to signage at the Premises.

29. PARKING. Tenant shall be entitled to the exclusive use of two (2) parking spaces located directly in front of the Premises which are marked "Reserved for NC Holiday Flotilla". All automobile parking areas, driveways, entrances, exits, and other facilities in or near the Premises shall at all times be subject to the control and management by Landlord (without recourse or liability to Landlord), and Landlord shall have the right from time to time to establish, modify and enforce reasonable rules and regulations with respect to all such facilities and areas.

30. QUIET ENJOYMENT. Provided Tenant pays the Rent and performs and observes all of the other covenants and conditions to be performed and observed by it hereunder, Tenant shall at all times during the Term hereof have the peaceable and quiet enjoyment of the Premises without interference from Landlord or any person claiming through Landlord.

31. BROKERAGE. Each of Landlord and Tenant represents and warrants to the other that neither it nor its agents have dealt with any real estate broker in connection with this Lease. Each of Landlord and Tenant shall indemnify, defend, protect and hold the other party harmless from and against any and all claims and losses which the indemnified party may incur by reason of any claim of or liability to any broker, finder or like agent arising out of any dealings claimed to have occurred between the indemnifying party and the claimant in connection with this Lease, and/or the above representation being false.

32. GENERAL CONDITIONS. This Lease is made by Landlord and accepted by Tenant subject to the following:

- (a) Any state of facts that an accurate survey or inspection would show;
- (b) Any presently existing easement, covenant, encumbrance, restriction, mortgage or deed of trust, agreement or lien affecting the Premises; and,
- (c) All zoning and building regulations affecting the Premises now or hereafter in force.

33. TENANT'S REPRESENTATIONS AND WARRANTIES. Tenant represents and warrants and covenants with Landlord as follow:

(a) Organization and Good Standing. Tenant is a non-profit corporation validly existing and in good standing under the laws of the State of North Carolina and is qualified to transact business in North Carolina.

(b) Authorization and Enforceability. Tenant has full corporate power and authority to make, execute, deliver and perform, as applicable, this Lease and the other documents and agreements executed and delivered by Tenant pursuant to this Lease and the execution, delivery and performance of this Lease and the other documents and agreements executed and delivered, as applicable, by Tenant pursuant to this Lease have been duly authorized by all necessary corporate action on the part of Tenant. This Lease has been duly executed and delivered by Tenant and constitutes the legal, valid and binding obligation of Tenant enforceable against Tenant in accordance with its terms.

(c) No Violation of Laws or Agreements. The execution, delivery and performance of this Lease by Tenant does not (i) violate, to the knowledge of Tenant, any legal requirements applicable to Tenant, its business, properties or assets, (ii) violate any judgment, order, writ or decree of any court or other tribunal applicable to Tenant, or (iii) violate any of the provisions of the organizational or governing documents of Tenant.

(d) Litigation. There are no actions, suits, proceedings or investigations pending or threatened, at law or in equity, before or by any federal, state, municipal or other governmental instrumentality which involve the possibility of any judgment or liability against the Tenant which, if adversely decided or resolved, would have a material adverse effect on Tenant, its business, properties or assets, the consummation of the transactions contemplated by this Lease or on the Tenant's execution, delivery and performance of its obligations under this Lease.

34. MISCELLEANOUS. The invalidity of any portion of this Lease shall not have any effect on the balance thereof. Should Landlord or Tenant institute any legal proceedings against the other for breach of any provisions herein contained, the prevailing party in such action shall in addition be entitled to recover its costs and expenses from the losing party including its reasonable attorney's fees. This Lease shall be binding upon the respective parties hereto, and upon their heirs, successors and permitted assigns. This Lease supersedes and cancels all prior negotiations between the parties, and any changes hereto must be in writing signed by both parties. This Lease may be executed in two (2) or more counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute but one and the same instrument. All obligations and liabilities of Tenant which accrued before the expiration or other termination of this Lease, and all such obligations and liabilities which by their nature or under the circumstances can only be, or by the provisions of this Lease may be, performed after such expiration or other termination, shall survive the expiration or other termination of this Lease, and without limiting the generality of the foregoing, the rights and obligations of the parties with respect

to any indemnity under this Lease, and with respect to any Rent and other amounts payable under this Lease, shall survive the expiration or other termination of this Lease. Time is of the essence with respect to all dates and times for Tenant's performance set forth in this Lease. If a party is delayed or prevented from performing any of its obligations under this Lease due to any cause beyond such party's reasonable control, then the time for performance of the affected obligation shall be excused for the period of the delay and extended for a period equivalent to the period of such delay, interruption or prevention, provided this shall not apply to any monetary obligations of Tenant hereunder.

[THE REST OF THIS PAGE IS LEFT INTENTIONALLY BLANK;
SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, Landlord and Tenant have caused this instrument to be executed by its duly authorized officers, all as of the day and year first above written.

LANDLORD:

Town of Wrightsville Beach

By: _____
Name: _____
Title: _____

TENANT:

North Carolina Holiday Flotilla at Wrightsville Beach, Inc.

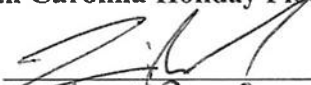
By:  _____
Name: Len Boyd
Title: Chairman

EXHIBIT A

The Premises

Being that lot and one-half of the building located at 10A Shearwater Street, Wrightsville Beach, North Carolina 28480 and being more commonly known as the former Wrightsville Beach Fire Department Dormitory.



Town of Wrightsville Beach
North Carolina
321 Causeway Drive
Wrightsville Beach, NC 28480
910-256-7900

To: Mayor Mills and Board of Aldermen
From: Brian Murray, Finance Officer
Subject: Ordinance (2024) 637-B
Date: October 9, 2024

Background: The following budget ordinance appropriates additional funds in the FY24/25 budget to coincide with the new Town Manager contract. Funds are allocated for salary, allowances, health insurance, taxes, pension, and 401k contributions. There are also additional funds appropriated in the planning department budget for the aforementioned costs associated with the acting Town Manager.

Requested Action: Approve Budget Ordinance (2024) 637-B.

TOWN OF WRIGHTSVILLE BEACH, NORTH CAROLINA
ORDINANCE NO. (2024) 637-B
FISCAL YEAR 2024/2025

BE IT ORDAINED by the Board of Aldermen of the Town of Wrightsville Beach, North Carolina, that the following amendment be made to the annual budget ordinance for the fiscal year ending June 30, 2025:

Section I. To amend the General Fund (Fund 10) for unanticipated/unbudgeted expenses during FY 2025, the Town's General Fund (Fund 10) accounts are to be amended as follows:

<u>Account No.</u>		<u>Debit</u>	<u>Credit</u>
10-4120-0000	Salaries & Wages	10,000	
10-4120-3100	Travel & Training	9,000	
10-4120-1100	Group Insurance	6,000	
10-4120-3200	Cell Phone	500	
10-4120-0900	FICA Tax Expense	2,000	
10-4120-1000	Retirement	1,500	
10-4120-1010	401K Contributions	1,000	
10-4900-0000	Salaries & Wages	15,000	
10-4900-0900	FICA Tax Expense	1,500	
10-4900-1000	Retirement	2,000	
10-4900-1010	401K Contributions	1,000	
10-3991	Appropriated Fund Balance		49,500

Section II. Copies of this Budget Ordinance No. (2024) 637-B shall be furnished to the Town Clerk, the Budget Officer and the Finance Officer, and shall be available for public inspection and audit.

Adopted this 9th day of October, 2024.

DARRYL MILLS
Mayor

ATTEST:

LANCE HEATER
Town Clerk

Seal



September 20, 2024

Memorandum

To: Mayor Mills and Board of Aldermen
From: Robert O'Quinn, Planner
Re: §155.4.5 Special Use Permits
Cc: Haynes Brigman, Town Manager
Tony Wilson, Director of Planning and Inspections

Summary

The proposed text amendment revises the existing sections of the ordinance **155.4.5 Special Use Permits**) related to the Planning Board review of Special Use Permits. The amendment removes the requirement in the Town's UDO for the Planning Board to review Special Use Permit application.

Background:

Advisory Role vs. Quasi-Judicial Function: The advisory role of a Planning Board is focused on policy guidance and recommendations rather than fact-finding and legal determinations. Reviewing SUPs requires making decisions based on legal criteria and evidence presented during hearings, which goes beyond the advisory capacity of the Planning Board.

Preservation of Impartiality: Because the Planning Board advises on policy and future planning, engaging in quasi-judicial matters could blur the line between making policy recommendations and evaluating individual applications on their legal merits. The quasi-judicial process demands an impartial review based strictly on evidence presented during the hearing, which isn't within the Planning Board's purview.

Clear Separation of Functions: Chapter 160D emphasizes the need for clear distinctions between different governmental functions: legislative (making and amending laws), quasi-judicial (applying laws to specific cases), and advisory (giving recommendations). Allowing the Planning Board to take on quasi-judicial duties like reviewing SUPs undermines this separation, potentially leading to procedural confusion or conflicts of interest.

Legal and Procedural Risks: If an advisory board reviews an SUP application and makes recommendations or decisions without following proper quasi-judicial procedures, it could lead to legal challenges. Any evidence-based decision must follow strict due process requirements, including witness testimony, cross-examination, and findings of fact, which are not typically within the scope of an advisory board.

Request:

Consider the proposed changes to Section 155.4.5 Special Use Permits.



TOWN OF WRIGHTSVILLE BEACH
PLANNING & INSPECTIONS ▪ 321 CAUSEWAY DRIVE ▪ P.O. BOX 626
WRIGHTSVILLE BEACH, N.C. 28480 ▪ 910-256-7937



Public Notice:

The legal advertisement announcing the October 9, 2024 Board of Aldermen meeting concerning the Text amendment ran on September 25, 2024 in the Wilmington Star News.

Staff Recommendation:

Staff recommends that the Board of Aldermen approve the text amendment 155.4.5.

Attachments:

1. Planning Board Statement of Consistency
2. Ordinance
3. Strikethrough/Underline



Statement of Consistency

Management Goal: Promote the appropriate balance between private property rights, economic development, environmental protection, and community cohesiveness.

Planning Objectives: Policies that promote an attractive community, a high quality of life, and a unique sense of place while mitigating risks to public health, safety, and welfare.

Implementing Actions Land Use Compatibility

1. The Town encourages the improvement, preservation, and enhancement of the Town's neighborhoods.

ORDINANCE NO. (2024) 1862

Board of Aldermen
Town of Wrightsville Beach, North Carolina
Date: October 9, 2024

AN ORDINANCE OF THE BOARD OF ALDERMEN OF THE TOWN OF WRIGHTSVILLE BEACH, NORTH CAROLINA AMENDING SECTION 155.4.5 OF THE CODE OF ORDINANCES, TOWN OF WRIGHTSVILLE BEACH, NORTH CAROLINA

The Board of Aldermen of the Town of Wrightsville Beach, North Carolina, doth ordain:

1. That Section 155.4.5 of the Code of Ordinances, Town of Wrightsville Beach, is hereby amended by removing Planning Board Review and Comments from the Special Use Permit procedure, by deleting section 155.4.5.3 subsections (B), (C), and (D) which will read as follows:

“155.4.5.3 Technical Review Procedure

All applications for a special use permit, including required site plans, shall follow the technical review procedure ([Article 155.3](#), Part II) before being submitted to the Board of Aldermen for consideration. The UDO Administrator shall forward any comments received during the technical review process to the Board of Aldermen.”

and

“155.4.5.4 Board of Aldermen Action.

(A) Special use permits are quasi-judicial decisions approved by a simple majority vote of the Board of Aldermen. Quasi-judicial decisions must be conducted in accordance with subsections [155.4.4.5](#) through [155.4.4.12](#). For the purposes of this section, vacant positions on the Board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the Board" for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

(B) Once the comments of the Technical Review Committee have been made the Board of Aldermen shall hold an evidentiary hearing to consider the application at its next regularly scheduled meeting. A quorum of the Board of Aldermen is required for this hearing. Notice of the evidentiary hearing shall be as specified in subsection [155.4.4.6](#). In addition, notice shall be given to other potentially interested persons by publishing a notice one time in a newspaper having general circulation in the area not less than ten nor more than 25 days prior to the evidentiary hearing.”

2. If this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given separate effect and to that end the provisions of this ordinance are declared to be severable.

3. Any ordinance or any part of the ordinance in conflict with this Ordinance, to the extent of such conflict, is hereby repealed.

4. This Ordinance is adopted in the interest of public health, safety and general welfare of the inhabitants of the Town of Wrightsville Beach, North Carolina, and shall be in full force and effect from and after its adoption.

This Ordinance adopted this 9th day of October, 2024.

F. Darryl Mills, Mayor

ATTEST:

Lance Heater, Town Clerk

(SEAL)

APPROVED AS TO FORM:

Town Attorney

Section 155.4.5 Special Use Permits.

155.4.5.1 Purpose and Applicability. This Ordinance provides for a number of uses to be located by right in each general zoning district subject to the use meeting certain area, height, yard, and off-street parking and loading requirements. In addition to these uses, this Ordinance allows some uses to be allowed in these districts as a special use subject to issuance of a special use permit by the Board of Aldermen. The purpose of special use permits is to ensure that uses would be compatible with surrounding development and in keeping with the purposes of the general zoning district in which the uses are located and would meet other criteria as set forth in this section. All special use permits require some form of a site plan as outlined in Section [155.5.3](#).

155.4.5.2 Application Process/Completeness.

(A) The deadline for which a special use permit application shall be filed with the UDO Administrator is the first business day of the month in the month prior to the meeting at which the application will be heard. Permit application forms shall be provided by the UDO Administrator.

In the course of evaluating the proposed special use, the Board of Aldermen may request additional information from the applicant. A request for any additional information may stay any further consideration of the application by the Board of Aldermen.

(B) No application shall be deemed complete unless it contains or is accompanied by a site plan drawn to scale which complies with the requirements contained in Section [155.5.3](#) and a fee, in accordance with a fee schedule approved by the Board of Aldermen for the submittal of special use permit applications.

(C) One hard copy and one digital copy of an application, and all attachments and maps, for a special use permit shall, be submitted to the UDO Administrator.

155.4.5.3 Technical Review Procedure/~~Planning Board Review and Comment.~~

(A) All applications for a special use permit, including required site plans, shall follow the technical review procedure ([Article 155.3](#), Part II) before being submitted to the ~~Planning Board~~[Board of Aldermen](#) for ~~review and comment~~[consideration](#). The UDO Administrator shall forward any comments received during the technical review process to the ~~Planning Board of~~[Aldermen](#).

~~(B) The Planning Board may, in its review, suggest reasonable conditions to the location, nature, and extent of the proposed use and its relationship to surrounding properties, parking areas, driveways, pedestrian and vehicular circulation systems, screening and landscaping, timing of development, and any other conditions the Board may find appropriate. The conditions may include dedication of any rights of way or easements for streets, water, sewer, or other public utilities necessary to serve the proposed development.~~

~~—(C) The Planning Board shall forward its recommendation to the Board of Aldermen within 30 days of reviewing the application. If a recommendation is not made within 30 days, the application shall be forwarded to the Board of Aldermen without a recommendation from the Planning Board.~~

~~—(D) Review of the special use application by the Planning Board shall not be a quasi-judicial procedure. The Planning Board meeting shall serve only as a preliminary review for the applicant. Per N.C.G.S. § 160D-301(b)(6), the Board of Alderman shall not consider any recommendation from the Planning Board during the evidentiary hearing.~~

155.4.5.4 Board of Aldermen Action.

(A) Special use permits are quasi-judicial decisions approved by a simple majority vote of the Board of Aldermen. Quasi-judicial decisions must be conducted in accordance with subsections [155.4.4.5](#) through [155.4.4.12](#). For the purposes of this section, vacant positions on the Board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the Board" for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

(B) Once the comments of the ~~Planning Board~~[Technical Review Committee](#) have been made, ~~or the 30-day period elapses without a recommendation~~, the Board of Aldermen shall hold an evidentiary hearing to consider the application at its next regularly scheduled meeting. A quorum of the Board of Aldermen is required for this hearing. Notice of the evidentiary hearing shall be as specified in subsection [155.4.4.6](#). In addition, notice shall be given to other potentially interested persons by publishing a notice one time in a newspaper having general circulation in the area not less than ten nor more than 25 days prior to the evidentiary hearing.

(C) In approving an application for a special use permit in accordance with the principles, conditions, safeguards, and procedures specified herein, the Board of Aldermen may impose reasonable and appropriate conditions and safeguards upon the approval. Conditions and safeguards imposed under this subsection shall not include requirements for which the local government does not have authority under statute to regulate. In no instance shall any of these conditions be less restrictive than any requirements which would pertain to that particular development found elsewhere in a similar zoning district.

(D) The applicant has the burden of producing competent, material and substantial evidence tending to establish the facts and conditions which subsection [155.4.5.4](#)(E) below requires.

(E) The Board of Aldermen shall issue a special use permit if it has evaluated an application through a quasi-judicial process and determined that:

(1) The establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, or general welfare.

(2) The special use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor diminish or impair property values within the neighborhood.

(3) The establishment of the special use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.

(4) The exterior architectural appeal and functional plan of any proposed structure will not be so at variance with either the exterior architectural appeal and functional plan of the structures already constructed or in the course of construction in the immediate neighborhood or the character of the applicable district, as to cause a substantial depreciation in the property values within the neighborhood.

(5) Adequate utilities, access roads, drainage, parking, or necessary facilities have been or are being provided.

(6) Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.

(7) The special use shall, in all other respects, conform to all the applicable regulations of the district in which it is located.

(8) Public access shall be provided in accordance with the recommendations of the town's land use plan and access plan or the present amount of public access and public parking as exists within the town now. If any recommendations are found to conflict, the system requiring the greatest quantity and quality of public access, including parking, shall govern.

(9) The proposed use shall be consistent with recommendations and policy statements as described in the adopted land use plan.

(F) *Conditions and Guarantees.* Prior to the granting of any special use, the Board of Aldermen may require, conditions and restrictions upon the establishment, location, construction, maintenance, and operation of the special use as is deemed necessary for the protection of the public interest and to secure compliance with the standards and requirements specified above. In all cases in which special uses are granted, the Board of Aldermen shall require the applicant or land owner's written consent to the conditions as evidence and guarantee that the conditions required in connection therewith are being and will be complied with.

155.4.5.5 Effect of Approval. If an application for a special use permit is approved by the Board of Aldermen, the owner of the property shall have the ability to develop the use in accordance with the stipulations contained in the special use permit, or develop any other use listed as a permitted use for the general zoning district in which it is located.

155.4.5.6 Binding Effect. Any special use permit so authorized shall be binding to the property included in the permit unless subsequently changed or amended by the Board of Aldermen.

155.4.5.7 Record. Any special use permit issued by the Board of Aldermen shall require recordation with the New Hanover County Register of Deeds within 90 days of its approval.

155.4.5.8 Certificate of Occupancy. No certificate of occupancy for a use listed as a special use shall be issued for any building or land use on a piece of property which has received a special use permit for the particular use unless the building is constructed or used, or the land is developed or used, in conformity with the special use permit approved by the Board of Aldermen. In the event that only a segment of a proposed development has been approved, the certificate of occupancy shall be issued only for that portion of the development constructed or used as approved.

155.4.5.9 Change in Special Use Permit. An application to materially change a special use permit once it has been issued must follow the same procedure as the original approval and first be submitted, reviewed, and approved in accordance with subsections [155.4.5.3](#) and [155.4.5.4](#), including payment of a fee in accordance with the fee schedule approved by the Board of Aldermen.

155.4.5.10 Implementation of Special Use Permit. A special use permit, after approval by the Board of Aldermen shall expire one year after the approval date if work has not commenced or in the case of a change of occupancy the business has not opened; however, it may be, on request, continued in effect for a period not to exceed an additional one year by the UDO Administrator. No further extension shall be added except on approval of the Board of Aldermen. If such use or business is discontinued for a period of 12 months, the special use permit shall expire. Any expiration as noted or any violation of the conditions stated on the permit shall be considered unlawful and the special use permit may be repealed through the same hearing process and procedure as the original approval. The applicant will be required to submit a new special use application to the appropriate agencies for consideration and the previously approved special use permit shall become null and void.

(Ord. 1695, passed 11-8-12; Am. Ord. 1838, passed 3-10-22)

Section 155.4.6 Rehearings.

When an application involving a quasi-judicial procedure/petition is denied by the Board of Aldermen or Board of Adjustment, reapplication involving the same property, or portions of the same property, may not be submitted unless the petitioner can demonstrate a substantial change in the proposed use, conditions governing the use of the property, or conditions surrounding the property itself.

(Ord. 1695, passed 11-8-12; Am. Ord. 1838, passed 3-10-22)

Section 155.4.7 Appeals of Quasi-Judicial Decisions.

Any person or persons, jointly or severally, aggrieved by any quasi-judicial decision of the Board of Aldermen or Board of Adjustment, any taxpayer, or any officer, department, board or

bureau of the jurisdiction of this Ordinance may, within 30 days after the filing of the decision in the office of said Board, but not thereafter, present to the Clerk of the Superior Court, a petition duly verified setting forth that such decision is illegal, in whole or in part, specifying the ground of illegality, whereupon such decision of said Board shall be subject to review by certiorari as provided by law.

(Ord. 1695, passed 11-8-12; Am. Ord. 1838, passed 3-10-22)