

MEMORANDUM OF UNDERSTANDING BETWEEN
THE TOWN OF BOILING SPRINGS, NORTH CAROLINA
AND
CLEVELAND COUNTY, NORTH CAROLINA
AND
GARDNER-WEBB UNIVERSITY

THIS MEMORANDUM OF UNDERSTANDING (hereinafter “Memorandum”) made and entered into this _____ day of 2022, by and between the **Town of Boiling Springs (“Town”)**, a **North Carolina municipal corporation**, the **County of Cleveland North Carolina (“County”)**, a **North Carolina County government**, and **Gardner-Webb University (“University”)**, a **private university**, recognizes the mutual advantage of the creation of a coordinated effort to support the Town, County and University goals and to state their intention to cooperate in accordance with the below-stated objectives.

I. OVERVIEW

Each party wishes to promote economic development and business recruitment in Boiling Springs and Cleveland County. As such, each party wishes to participate in Retail Academy, a training course offered by **Retail Strategies (“Firm”)**, a Birmingham, AL corporation; the details of which are attached hereto as “Appendix A.”

II. RESPONSIBILITIES OF EACH PARTY

- A. Sharing of Costs.** Each party will contribute to the cost of the training as described below:
 - 1. The Town will contribute twenty-five (25) percent of the cost.
 - 2. The University will contribute twenty-five (25) percent of the cost.
 - 3. The County will contribute fifty (50) percent of the cost.
- B.** The Town will serve as the point of contact with the Firm.
- C.** Each party will be responsible for the costs associated with travel to and from the training provided by the Firm.

III. PROCESS FOR SHARING OF COSTS

- A.** The Town will receive invoices from the Firm and, upon approval, pay such invoices.
- B.** After paying an invoice to the Firm, the Town will send the invoice, Town approval, and evidence of payment to the University and County for reimbursement.
- C.** Upon receipt of such reimbursement request, the University and County shall pay to the Town their respective percentage shares of the invoice pursuant to section II above.

IV. MISCELLANEOUS

- A. Amendments.** This MOU may be amended by written consent of all parties, and all amendments shall be attached to this MOU.

- B. Termination.** This MOU may be terminated by any party on ten (10) days' written notice to the other parties.
- C. Information Sharing.** In addition to facilitating participation of County and University employees in the Retail Academy referenced in Exhibit A, the City shall share with the County and the University all Research, Analysis, Materials, and any other information provided to the City by the Firm.
- D. Employee Participants.** The parties agree that one (1) City employee, two (2) County employees; and one (1) University employee shall be allowed to participate in the Retail Academy.

IN WITNESS WHEREOF, the Parties to this non-binding Memorandum of Understanding have affixed their signatures:

FOR THE TOWN OF BOILING
SPRINGS:

FOR CLEVELAND COUNTY:

Justin Longino, Town Manager
Town of Boiling Springs

Brian Epley, County Manager
Cleveland County

I certify that this instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act:

I certify that this instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act:

Rhonda W. Allen, CPA
Finance Director

Lucas Jackson
Finance Director

Approved as to form and content:

John Schweppe, III
Boiling Springs Town Attorney

William M. Downs, President
Gardner-Webb University

APPENDIX A

AGREEMENT TO PROVIDE CONSULTING SERVICES

This Agreement to Provide Consulting Services (this "Agreement") sets forth the mutual understanding of (the "Client") the Town of Boiling Springs, North Carolina and Retail Strategies, LLC, an Alabama limited liability company (the "Consultant") on this _____ day of _____ 2022 (the "Execution Date"), for the provision of professional consulting services as more fully set forth below.

RECITALS:

The Consultant possesses a high degree of professional skill and experience and is a unique provider of professional consulting services in retail recruitment.

The Client desires to hire the Consultant to provide professional consulting services because of its professional skill and experience.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements set forth in this Agreement, the Client and the Consultant, intending to be legally bound, do hereby agree as follows:

1. **CONSULTING SERVICES.** The Consultant agrees to provide the following professional services to the Client as detailed in Exhibit A (a copy of which is attached hereto and incorporated herein by reference) (the "Services"):

2. **TERM.** The Consultant's engagement and provision of Services will commence upon the Execution Date as set forth above. The Consultant's engagement and this Agreement will terminate automatically on the first anniversary of the Execution Date (the "Term") unless earlier terminated as provided in Section 6 below. At the end of the Term, the Client, acting by and through the Client Representative, may extend the Term at its option for successive one-year periods on such terms and conditions as the Client Representative, acting for and on behalf of the Client, and the Consultant may agree upon in writing.

3. **CONSULTING FEE.**
 - A. **Consulting Fee.** In consideration for providing the Services, the Client agrees to pay the Consultant a consulting fee (the "Consulting Fee") in an amount equal to \$25,000. The Consulting Fee will be paid in installments of immediately available funds as follows:

Contract Period	Payment Date	Payment Amount
Year One	Upon Execution	\$8,334
Year One	Upon Commencement of Retail Academy	\$8,333
Year One	End of Year One	\$8,333

B. **Payment Default.** If the Client fails to pay any portion of the Consulting Fee on the requisite payment date, the Consultant will immediately cease all Services identified in Exhibit A.

4. CLIENT INFORMATION AND ACCESS.

A. To the extent permitted by law, the Client will provide the Consultant with access to relevant personnel, facilities, records, reports, and other information (including any information specified in the Consultant’s proposal to the Client) accessible by the Client that the Consultant may reasonably request from time-to-time during the Term. The Client acknowledges and agrees that the Consultant’s scheduled delivery of the Services is dependent upon the timely access to such personnel, facilities, records, reports and other requested information.

B. To facilitate such access and Consultant’s delivery of the Services, the Client designates the Town Manager (the “Client Representative”), currently Justin Longino. The Client Representative will serve as the primary liaison between the Consultant and the Client. The Client Representative will have responsibility for regular communications between the Client and the Consultant, including providing updates in a timely manner through Basecamp. The Client Representative’s communications to the Consultant will include information regarding retail growth and development, such as actual and prospective business openings and closings, changes in economic drivers (e.g., significant increases or decreases in workforce of major employers, school enrollments, housing or healthcare services) and changes in the ownership of targeted real estate (e.g., transfers of real estate or changes in the finances of ownership). The Client Representative will also be responsible for disseminating updates relative to consultants’ activities related to scope of work to members of local stakeholder groups of the Client (e.g. City Council, Economic Development Boards, and Chamber of Commerce etc.).

C. The Client hereby authorizes the Client Representative (i) to act on behalf of the Client in the day-to-day administration and operation of this Agreement and the arrangements it contemplates and (ii) to execute and deliver on behalf of the Client, such notices, approvals, consents, instruments, amendments or other documents as may be necessary or desirable to facilitate or assist the Consultant with the provision of the Services.

5. INTELLECTUAL PROPERTY. As part of the Services, the Consultant will prepare periodic and final reports including demographic and other research reports that will become the property of the Client upon delivery from the Consultant. Any other reports, memoranda, electronic mail, facsimile transmissions, or other written documents prepared or used by the Consultants in connection with the Services will remain the property of the Consultant. With the Consultant’s prior permission, the Client may use other information provided by the Consultant, such as specifics related to retailers, developers, site information or other “confidential

information” for internal purposes while taking reasonable steps to so limit the use of such materials and maintain its confidentiality.

6. TERMINATION.

- A. **By the Client At-Will.** The Client may terminate this Agreement at any time for any or no reason upon delivery of 30 days prior written notice to the Consultant. Any portion of the Consulting Fee paid prior to such termination of this Agreement is earned when paid and nonrefundable.
- B. **By the Client Upon the Consultant’s Default.** The Client may notify the Consultant within 90 days of the day that the Client knows or should have known that the Consultant breached this Agreement. The Consultant will have 30 days following receipt of such notice to cure any alleged breach. If the Consultant fails to cure any alleged breach within that 30-day period, then the Client may terminate this Agreement. Within 30 days of such termination of this Agreement, the Consultant will refund a pro-rata portion of the installment of the Consulting Fee previously paid for the contract period during which such termination occurs based upon the number of days remaining in such contract period and will deliver to the Client any work that has been completed up to the point of termination.
- C. **By the Consultant At-Will.** The Consultant may terminate this Agreement at any time for any or no reason upon delivery of 30 days prior written notice to the Client. Within 30 days of such termination of this Agreement, the Consultant will issue a full refund. If work has already been completed, the Consultant will deliver to the Client a copy of all such content and will refund a pro-rata portion of the installment of the Consulting Fee previously paid for the period during which such termination occurs based upon work remaining.
- D. **By the Consultant Upon the Client’s Default.** The Consultant may notify the Client within 90 days of the day that the Consultant knows or should have known that the Client breached this Agreement. The Client will have 30 days following receipt of such notice to cure any alleged breach. If the Client fails to cure any alleged breach within that 30-day period, then the Consultant may terminate this Agreement. Any portion of the Consulting Fee paid prior to such termination of this Agreement is earned when paid and nonrefundable. The Consultant will deliver to the Client any work that has been completed up to the point of termination.

7. NOTICES. Any notice or communication in connection with this Agreement will be in writing and either delivered personally, sent by certified or registered mail, postage prepaid, delivered by a recognized overnight courier service, or transmitted via facsimile or other electronic transmission, addressed as follows:

Client: Town of Boiling Springs, North Carolina
114 E College Avenue
Boiling Springs, NC 28017
Email: justin.longino@boilingspringsnc.net
Attention: Justin Longino, Town Manager

Consultant: Retail Strategies, LLC
2200 Magnolia Ave. South, Suite 100
Birmingham, AL 35205
Email: sleara@retailstrategies.com
Fax: (205) 313-3677
Attention: Stephen P. Leara, Esq – EVP | General Counsel

or to such other address as may be furnished in writing by either party in the preceding manner. Notice shall be deemed to have been properly given for all purposes: (i) if sent by a nationally recognized overnight carrier for next business day delivery, on the first business day following deposit of such notice with such carrier, (ii) if personally delivered, on the actual date of delivery, (iii) if sent by certified U.S. Mail, return receipt requested postage prepaid, on the third business day following the date of mailing, or (iv) if sent by facsimile or email of a PDF document (with confirmation of transmission), then on the actual date of delivery if sent prior to 5 p.m. Central Time, and on the next business day if sent after such time.

8. INDEPENDENT CONTRACTOR. The Consultant, in its capacity as a professional consultant to the Client, is and will be at all times an independent contractor. The Consultant does not have the express, implied or apparent authority either (A) to act as the Client’s agent or legal representative or (B) to legally bind the Client, its officers, agents or employees.

9. STANDARD TERMS.

- A. **Affiliated Services:** Client acknowledges that affiliates of consultant act in the capacity of a real estate brokerage service business and may earn fees for services including brokerage, development, leasing and management fees in the performance of such affiliates services which may encompass a portion of the Project. In no event will the Client be responsible for any such fees, to the extent they are earned pursuant to this paragraph.
- B. **Applicable Laws:** The Consultant will abide by all laws, rules and regulations applicable to the provision of the Services in accordance with North Carolina law.
- C. **Insurance:** The Consultant will carry all employee insurance necessary to comply with applicable state and federal laws.
- D. **Third Party Beneficiaries:** This Agreement is for the sole benefit of the parties to this Agreement and their permitted successors and assigns. Nothing in this Agreement, whether express or implied, is intended to or will confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

- E. **Publicity:** The Client agrees that the Consultant may, from time-to-time, use the Client's name, logo and other identifying information on the Consultant's website and in marketing and sales materials.
- F. **Entire Agreement:** This Agreement, together with any exhibits or amendments hereto, constitutes the entire agreement of the parties, as a complete and final integration thereof with respect to its subject matter. Any prior written or oral understandings and agreements between the parties are merged into this Agreement, which alone fully and completely expresses their understanding. No representation, warranty, or covenant made by any party which is not contained in this Agreement or expressly referred to herein has been relied on by any party in entering into this Agreement.
- G. **Further Assurances:** Each party hereby agrees to perform any further acts and to execute and deliver any documents which may be reasonably necessary to carry out the provisions of this Agreement.
- H. **Force Majeure:** Neither party to this Agreement will hold the other party responsible for damages or delay in performance caused by acts of God, strikes, lockouts or other circumstances beyond the reasonable control of the other or the other party's employees, agents or contractors.
- I. **Limitation on Liability; Sole Remedy:** Each party's liability to the other party arising out of or related to this Agreement or the Services will not exceed the amount of the Consulting Fee. The Client's sole remedy in the event of any alleged breach of this Agreement by the Consultant will be the notice, cure, and refund provisions of Section 6(B) of this Agreement.
- J. **Amendment in Writing:** This Agreement may not be amended, modified, altered, changed, terminated, or waived in any respect whatsoever, except by a further agreement in writing, properly executed by a duly authorized officer of the Consultant and the Client Representative, acting for and on behalf of the Client.
- K. **Binding Effect:** This Agreement will bind the parties and their respective successors and assigns. If any provision in this Agreement will be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.
- L. **Captions:** The captions of this Agreement are for convenience and reference only, are not a part of this Agreement and in no way define, describe, extend, or limit the scope or intent of this Agreement.
- M. **Construction:** This Agreement will be construed in its entirety according to its plain meaning and will not be construed against the party who provided or drafted it.
- N. **Prohibition on Assignment:** No party to this Agreement may assign its interests or obligations hereunder without the written consent of the other party obtained in advance of any such assignment. No such assignment will in any manner whatsoever relieve any party from its obligations and duties hereunder and such assigning party will in all respects remain liable hereunder irrespective of such assignment.
- O. **Waiver:** Non-enforcement of any provision of this Agreement by either party will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remaining terms and conditions of this Agreement.

- P. **Survival:** Section 5 and Section 9(H) will survive termination of this Agreement.
- Q. **Counterparts; Electronic Transmission:** This Agreement may be executed in counterparts, each of which will be deemed to be an original, and such counterparts will, together, constitute and be one and the same instrument. A signed copy of this Agreement delivered by telecopy, electronic transmission or other similar means will be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Client and the Consultant have caused this Agreement to be executed by their duly authorized officers to be effective as of the Executed Date.

CLIENT:

TOWN OF BOILING SPRINGS, NC

By: _____

Name:

Title:

Date:

CONSULTANT:

RETAIL STRATEGIES, LLC

By: _____

Name:

Title:

Date:

EXHIBIT A

RETAIL ACADEMY

This section outlines what Retail Strategies (the “consultant”) will provide to Boiling Springs, North Carolina (the “client”). Subject to the terms and conditions of the Agreement and Client’s good faith participation, the below work will be completed no later than one (1) year after execution of the Agreement.

A. RESEARCH

1. Identification of priority retail categories for recruitment and/or local expansion
2. Retail Prospect List- Identification of at minimum 10 retail prospects to be targeted for recruitment
3. Contact Information for Retail Prospects
4. Retail Site Selection Criteria for retail prospects
5. Mobile Data Collection from major retail node
6. Retail Gap Analysis for trade area (i.e. leakage and surplus)
7. Peer Market Identification and Trade Area Comparison Analysis
8. Peer Market Retailer Void Analysis
9. Custom demographic research – historical, current, and projected demographics – to include market trade areas by political boundaries, radius/drive times, and custom trade area Identification of retail trade area using political boundaries, drive times and radii and custom boundary geographies.
10. Consumer Spending Patterns and Behavior Report
11. Tapestry Lifestyle Segmentation Analysis – psychographic profile of trade area

B. REAL ESTATE ANALYSIS

1. Retail Real Estate Analysis identifying 5+ real estate sites performed by licensed retail real estate professionals
2. Create Aerial imagery of trade area(s) with traffic counts
3. Identify Target Zones for short- and long-term retail development
4. Property Catalog

C. MARKETING MATERIALS

1. Development of customized marketing guide
2. Customized Retail Recruitment Plan

D. RETAIL ACADEMY

1. Access to Retail Academy: ONLINE Education Course and Resource Library for all participants
2. One (1) Retail Academy Workshop, totaling six (6) hours in Birmingham, AL
3. Industry overview from Commercial Real Estate professionals
4. Quarterly 1:1 virtual meeting to discuss progress