

# REQUEST FOR BOARD ACTION

## HENDERSON COUNTY

### BOARD OF COMMISSIONERS

**MEETING DATE:** 19 April 2006

**SUBJECT:** Lease with Henderson County Historic Courthouse Corporation

**ATTACHMENT(S):** Draft lease agreed to by the corporation

**SUMMARY OF REQUEST:**

This lease was drafted by the County Attorney's office. It provides that the leased premises will be used for a "museum and historical exhibition space" (as defined in Paragraph B.4.) only. The terms have been agreed to by the Henderson County Historic Courthouse Corporation board.

**BOARD ACTION REQUESTED:**

Further direction and approval/disapproval of this draft lease is requested. County staff will present further information on this matter.

If the Board is so inclined, the following motion is suggested to approve the draft lease:

***I move that the Board approve the lease as drafted and present the same for execution to the Henderson County Historic Courthouse Corporation Board of Directors.***

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

## LEASE AGREEMENT

THIS LEASE AGREEMENT is made on the date and year set forth below by and between Henderson County, a body politic and corporate of the State of North Carolina ("Landlord"), and Henderson County Historic Courthouse Corporation, a North Carolina not-for-profit corporation ("Tenant").

### A. Statement of Facts and Circumstances

1. The Landlord is the owner of the former Henderson County Courthouse, located between First and Second Avenues and between Main and Church Streets in the City of Hendersonville, North Carolina.

2. The Landlord intends to renovate the former Henderson County Courthouse and its annex facing First Avenue, and construct an addition to the same (the former Courthouse, its annex and the addition collectively, "the Building").

3. The Tenant was formed as a non-for-profit corporation under the laws of North Carolina, in order to assist in the maintenance or operation of the Building, and exists as a corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code of the United States.

4. The Tenant desires to operate an educational, cultural and historical museum and exhibit space within the Building, upon certain terms and conditions.

5. The Landlord desires that the Tenant operate such a museum and exhibit space within the building, upon certain terms and conditions.

6. The Landlord and the Tenant have reached an agreement on the terms of a lease of space within the building, as reflected herein.

### B. Statement of Agreement

**FOR** the sum of One Dollar (\$1.00) in hand paid, and for other good, valuable and sufficient consideration, including the promises and covenants contained herein, the Landlord and the Tenant agree as follows:

1. **TERM.** The term of this Lease Agreement (hereinafter called "Term") shall be for a period of fifty (50) years, to commence on the Commencement Date, and shall terminate at 5:00 p.m. fifty (50) years after the Commencement Date (or if the Commencement Date is not the first day of a month, then fifty (50) years after the last day of the month in which the Commencement Date occurs).

2. **COMMENCEMENT DATE.** Upon Landlord's request, Tenant shall execute and deliver a written statement in recordable form, substantially in the form of Exhibit "2" hereto, which is incorporated herein by reference, specifying the Commencement Date of the Lease Term, such date to be after the date of substantial completion of the improvements to the Demised Premises as certified by the Landlord's architect.

3. **RENT.** No rent or other cost, other than the strict compliance with the terms hereof, shall be due the Landlord by the Tenant.

4. **USE OF DEMISED PREMISES.** The Tenant shall use the Demised Premises (as defined herein) as a museum and historical exhibition space and for no other purpose, on the following terms:

a. As used herein, the term "museum and historical exhibition space" means the offering for public display galleries, displays, artifacts, collections, archives, libraries, demonstrations, performances and other similar exhibitions relating to the history, culture, heritage, and the story of the founding, settlement and

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development of Henderson County, the State of North Carolina, and the United States, up to the present. Such museum will collect, preserve, research, exhibit and interpret a collection of historical and cultural artifacts. It will serve the inhabitants of Henderson County and the surrounding area by carrying out these functions and by its emphasis on special activities at the museum. For the purposes hereof, this term may also include the operation of a retail establishment, to cover not more than twenty percent (20%) of the total square footage of the Demised Premises (not including any common areas), with all profits from such retail establishment to be used to assist in the funding of the museum, so long as as the same is consistent with regulations established pursuant to Section 501(c)(3) of the Internal Revenue Code.

b. No signs (other than those approved by the Landlord, which approval will not be unreasonably withheld), unsightly objects or nuisances shall be erected, placed or permitted to remain on the Demised Premises nor shall the Demised Premises be used in any way or for any purpose which may endanger the health or safety of or unreasonably disturb any other occupants of the Building.

c. The Tenant shall have sufficient staff (whether employed by the Tenant or volunteer) necessary to meet the needs of patrons of the museum (but not less than one person) present during all periods of operation of the museum and historical exhibition space.

d. The Tenant shall maintain exhibitions and displays on a rotational basis, such that a new display is exhibited at least annually.

e. The portion of the Demised Premises operated as a museum and historical exhibition space shall be open to the public at least three business days per week, from 10:00 a.m. until 5:00 p.m., during each business week not including a Henderson County holiday. The portion of the Demised premises operated as a museum and historical exhibition space shall not be open to the public more than five business days per week, from 8:30 a.m. until 5:00 p.m., without the express written permission of the Landlord. This permission shall not be unreasonably withheld so long as reasonable advance notice is given and no substantial additional cost is incurred by the Landlord.

f. The Tenant shall maintain the Demised Premises in a clean, neat and orderly condition.

g. No structure or additions of any character shall be placed upon or made to the Demised Premises without the written approval of the Landlord.

h. All garbage and refuse from the individual units shall be deposited with care in closed garbage containers or receptacles to be kept at all times in the space provided therefor.

i. No noxious, offensive or unlawful use or activity shall be carried on, in or upon any part of the Demised Premises herein leased nor shall anything be done therein tending to cause embarrassment, discomfort, annoyance or nuisance to any other occupants of the Building or the Landlord.

j. The Tenant shall not allow any loitering or soliciting on any part of the Demised Premises.

5. **DEMISED PREMISES.** The Landlord hereby leases to the Tenant, subject to the terms and conditions hereinafter expressed, and the Tenant hereby accepts as Tenant of the Landlord that certain space located within the former (1905-1994) Henderson County Courthouse (occupying the city block between First Avenue and Second Avenue and between Main Street and Church Street in the City of Hendersonville, North Carolina), which is indicated on the attached pages comprising Exhibit 1 (shown as the area shaded in the color yellow on the "First Floor" and on the "Gallery Level", which Exhibit 1 is incorporated herein by reference) (hereinafter referred to as the "Demised Premises).

6. **COMMON AREAS.** The Tenant, its invitees and employees shall have the right, in common with others, to use all stairways, elevators, halls, toilets and sanitary facilities, and all other general common facilities contained in the Building, and all sidewalks, delivery areas, and other appurtenances (not including parking areas unless specifically designated) to the Building (such areas being hereinafter referred to as the "Common Areas").

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7. CONSTRUCTION OF IMPROVEMENTS. The Landlord shall, at its sole expense, perform all work and furnish all materials needed to complete construction of the Demised Premises in accordance with the Contract for Construction attached as Schedule "2" and incorporated herein. The Demised Premises shall be delivered in an "AS IS" condition. The Tenant shall, at its sole expense, perform all other construction work to the Demised Premises, other than that as described in the Contract for Construction, necessary for the use and occupancy of Tenant in the Demised Premises.

8. ADDITIONS AND IMPROVEMENTS BY TENANT. The Tenant may, with the prior written approval of the Landlord, make alterations, additions and improvements upon the Premises as desired, with the right to remove the same upon termination of this Lease, or any renewal or extension thereof; provided, however, that the Premises are left in as good a state as when received, reasonable wear and tear and damage by fire or other casualty excepted. Failure to remove such improvements, additions and alterations shall not be deemed a holding over under the terms of this Lease, but shall be deemed an abandonment of the improvements, additions and alterations, and the Tenant shall incur no costs for the removal thereof.

9. ACCEPTANCE OF DEMISED PREMISES. The Tenant acknowledges that the act of taking possession of the Demised Premises shall constitute acceptance thereof and conclusive evidence that the Tenant has inspected and examined the entire Demised Premises and utility installations and that the same were, and are, in good and satisfactory condition.

10. UTILITIES AND SERVICES. The Landlord agrees, at its sole cost and expense, to:

a. Operate the heating and cooling equipment in the Common Areas of the Building to maintain the Demised Premises at reasonable temperatures, Sundays and holidays excepted.

b. Provide janitorial service to the Common Areas.

c. Keep and maintain the Building and Common Areas in a first class condition.

d. Commence removal of snow and ice within twenty-four (24) hours after snowfall or ice accumulation if during business hours, and within a reasonable time if during non business hours. This shall include, without limitation, the salting of walks and parking areas(s) and any other prudent safety measures for the protection of Tenant's employees and invitees.

e. Adequately light the Building and Common Areas and provide and replace lamps and related equipment when necessary.

f. Provide hot and cold water and sanitary and toilet facilities and supplies in the Common Areas of the Building for use by the Tenant, its employees and invitees in common with other tenants and their respective employees and invitees.

g. Furnish the Demised Premises with facilities for electric current for lighting, normal office use, heating, air conditioning and office machines, such as duplicating and word processing equipment and computer terminals and specifically including video equipment.

11. PUBLIC LIABILITY AND FIRE INSURANCE. The Tenant agrees, at its sole cost and expense, as follows:

a. The Tenant shall maintain through the term of this Lease a policy of comprehensive general liability insurance with combined single limit coverage of not less than Two Million Dollars (\$2,000,000) per occurrence. The Tenant shall cause the insurer to name Landlord as an added insured.

b. The Landlord shall keep the Building (excluding the Tenant's contents in the Demised Premises) insured against loss by fire and all of the risks and perils of fire insurance upon property comparable to the Building, in an amount equal to and not less than the full replacement value thereof.

c. The Tenant shall bear the expense for any insurance on the Tenant's fixtures and personal property located on the Demised Premises.

d. The Landlord and the Tenant hereby agree on behalf of themselves, and all others under them, including any insurer, to waive all claims against each other, including their rights of subrogation, for loss or damage to the Demised Premises, the Building and the common areas arising out of losses insured against by their fire and extended coverage policies, including without limitation, vandalism, malicious mischief and sprinkler leakage, and if necessary, agree to obtain such a waiver from any insurer. The Tenant agrees to exonerate, protect, indemnify and hold the Landlord harmless from and against any and all losses, damages, claims, suits or actions, judgments and costs arising out of any injury to or death of persons or damage to property on or about the Demised Premises caused by the negligent or willful acts or omissions of the Tenant's respective employees, agents, contractors, representatives or licensees, except for matters caused by the negligence or willful act of the the Landlord's employees, agents, contractors or representatives or invitees, and from any material breach by the Tenant of its obligations under the Lease directly causing such damage. The Landlord agrees to exonerate, protect, indemnify and hold the Tenant harmless from and against any and all losses, damages, claims, suits or actions, judgments and costs arising out of any injury to or death of persons or damage to property on or about the Building and/or the common areas caused by the negligent or willful acts or omissions of the Landlord's respective employees, agents, contractors, representatives or licensees, except for matters caused by the negligence or willful act of the Tenant's employees, agents, contractors or representatives, and from any material breach by Landlord of its obligations under the Lease directly causing such damage.

12. DAMAGE BY FIRE OR OTHER CASUALTY. If (a) the Demised Premises are totally destroyed by fire or other casualty, or (b) the Demised Premises are destroyed or damaged by fire or other casualty to such an extent that such damage cannot be repaired within 30 days following such destruction or damage ("Major Damage"), then the Landlord may by written notice given as provided below, terminate this Lease. If the Demised Premises are destroyed or damaged by fire or other casualty but only to an extent that such destruction or damage can be restored or repaired within thirty (30) days following such damage ("Minor Damage"), then the Landlord shall not have an option to terminate because of such damage or destruction and this Lease shall continue in full force and effect. If, notwithstanding total destruction or Major Damage, the Landlord elects not to terminate or if only Minor Damage occurs, then the Landlord shall promptly restore the Demised Premises to substantially the same conditions as they were in immediately prior to the destruction; provided that the Landlord shall only be obligated to restore if available insurance proceeds will be sufficient for such restoration. In the event available proceeds and funds are not sufficient, this Lease shall terminate. In the case of total destruction or Major Damage, the Landlord shall exercise its option to terminate, if at all, by notifying Tenant of its election to terminate this Lease within seven (7) days of the Landlord's receiving notice that 30 days (or longer) will be required for restoration or repair. If during the period of repair or restoration the Tenant reasonably is required to close its operations during repairs, rent shall not abate while so closed, and Landlord shall in such case not have liability for any business delay losses claimed by Tenant.

13. MAINTENANCE AND REPAIRS. The Landlord shall keep the exterior supporting walls, foundations, roof, and sprinkler system (if any) of the Demised Premises in good repair. Except for the Landlord's maintenance responsibilities as provided above, the Tenant shall, at the Tenant's expense, keep the Demised Premises (interior and exterior including all glass) and appurtenances thereto in good order, condition and repair and in a clean, pleasant, sightly, sanitary and safe condition. If the Tenant fails to do so Landlord may perform these duties with the Tenant hereby agreeing to reimburse the Landlord within ten (10) days from request.

14. RULES AND REGULATIONS. The Tenant agrees as follows:

a. Any sign installed in the Premises shall be installed by the Landlord in such manner, character and style as the Landlord may approve in writing; except signs which are not visible from outside the Premises;

b. The Tenant shall not obstruct, or house for storage, or for any purpose other than ingress and egress, the sidewalks, entrances, passages, courts, corridors, vestibules, halls, elevators and stairways of the Building.

c. The Tenant shall not make any noise or odor in the Building or Site outside the Premises which is objectionable to the other occupants, and shall not create or maintain a nuisance thereon, and shall not disturb, solicit or canvass any occupant of the Building, and shall not do any act tending to injure the reputation of the Building.

d. The Tenant shall not install any musical instrument or equipment in the Building or any antennas, aerial wires or other equipment inside or outside the Building, without, in each and every instance, prior approval in writing by the Landlord. The use thereof, if permitted, shall be subject to control by the Landlord to the end that others shall not be disturbed or annoyed.

e. The Tenant shall not waste water in any manner whatsoever including without limitation the tying, wedging or otherwise fastening open, of any faucet.

f. No additional locks or similar devices shall be attached to any door. No keys for any door other than those provided by the Landlord shall be made. Upon termination of this Lease or of the Tenant's possession, the Tenant shall surrender all keys of the Premises and shall make known to the Landlord the explanation of all combination locks on safes, cabinets and vaults.

g. The Tenant shall be responsible for the locking of doors in and to the Premises. Any damage resulting from neglect of this clause shall be paid by the Tenant.

h. If the Tenant desires telegraphic, telephonic, burglar alarm or signal service, the Landlord will, upon request, direct where and how connections and all wiring for such service shall be introduced and run. Without such directions, no boring, cutting or installation of wires or cables is permitted.

i. Shades, draperies or other forms of inside window covering, must be of such shape, color and material as are approved by the Landlord.

j. The Tenant shall not overload any floor or any other structural component of the Building or the Site. Safes, furniture and all large articles shall be brought through the Building and into the Premises at such times and in such manner as the Landlord shall direct and at the Tenant's sole risk and responsibility. The Tenant shall list all furniture, equipment and similar articles to be removed from the Building and the list must be approved at the Office of the Building or by a designated person before any such articles can be removed.

k. The Tenant shall not place or allow anything too near the glass of partitions, doors, or windows of the Premises which would be unsightly from the exterior of the Building, public halls or corridors.

l. The Tenant shall not install in the Premises any equipment which uses an extraordinary amount of electricity (not otherwise contemplated herein) without the advance written consent of Landlord. The Tenant shall ascertain from the Landlord the maximum amount of electrical current which can safely be used in the Premises, taking into account the capacity of the electric wiring in the Building and the Premises and the needs of other occupants of the Building and shall not use more than such safe capacity.

#### 15. ASSIGNMENT OR SUBLETTING.

a. The Tenant shall not, without the Landlord's prior written consent which may be withheld in the Landlord's sole and absolute discretion: (i) assign, hypothecate, mortgage, encumber, or convey this Lease or any interest under it; (ii) allow any transfer thereof of any lien upon the Tenant's interest by operation of law; or (iii) sublet the Demised Premises in whole or in part. A transfer of a controlling interest in the Tenant shall be deemed an assignment of this Lease. Prior to any sublease or assignment, the Tenant shall first notify the Landlord in writing of its election to sublease all or a portion of the Demised Premises or to assign this Lease or any interest thereunder, such notice to include a copy of the proposed sublease or assignment. At anytime within fifteen (15) days after service of said notice, the Landlord shall notify the Tenant of its consent or refusal to consent thereto.

b. The use for which the Demised Premises may be sublet shall be only for such use as is permitted in this Lease.

c. Any assignment or subletting shall not release the Tenant of its liability under this Lease or permit any subsequent assignment, subletting or other prohibited act, unless specifically provided in such consent.

16. DEFAULT/REMEDIES.

a. If one or more of the following events (herein called "Events of Default") shall occur:

i. If the Tenant shall fail to keep or perform or abide by any other requirement, terms, condition, covenant, or agreement of this Lease, and such default shall continue for a period of ten (10) days after notice to the Tenant of default; or

ii. If the Tenant shall file a petition in bankruptcy or take or consent to any other action seeking any such judicial decree, or shall file any debtor proceeding or a petition for an arrangement, or shall make any assignment for the benefit of his creditors; or

iii. If the Tenant's interest in this Lease or the Demised Premises shall be subjected to any attachment, levy, or sale pursuant to any order or decree entered against the Tenant in any legal proceeding, and such order or decree shall not be vacated within 15 days of entry thereof; or

iv. If the Tenant shall vacate or abandon the Demised Premises

then Tenant shall be in default of its obligations under the terms of this Lease.

b. In the event that any such Event of Default shall occur, the Landlord, without declaring a termination of this Lease (which right is, however, unconditionally and absolutely reserved), may at its election pursue any one or more of the following remedies in addition to any other remedies available to the Landlord at law, in equity, or pursuant to the terms of this Lease:

i. The Landlord shall have the right to continue this Lease in full force and effect, and the right to enter the Demised Premises without notice to vacate (any right to which is hereby waived by the Tenant) and terminate the Tenant's possession and right to possess the Demised Premises and relet the same, including without limitation to the right to change any or all locks on the Demised Premises, all without being liable for forcible entry, trespass or other tort.

ii. The Landlord shall have the right to terminate without notice to vacate (any right to which is hereby waived by the Tenant) this Lease and the Tenant's rights to possession of the Demised Premises at any time, and re-enter the Demised Premises.

iii. The Landlord with or without terminating this Lease may immediately or at any other time thereafter re-enter the Demised Premises and cure any event of default and/or correct or repair any conditions which shall constitute a failure on the Tenant's part to perform any obligation to be performed by it under this Lease, and the Tenant shall pay the Landlord on demand any and all costs or expenses paid or incurred by the Landlord in making any such cure, correction or repair.

c. No course of dealing between the Landlord and the Tenant or any delay on the part of the Landlord in exercising any rights it may have under this Lease shall operate as a waiver of any of the rights of the Landlord hereunder, nor shall any waiver of a prior default operate as a waiver of any subsequent default or defaults, and no express waiver shall affect any condition, covenant, rule or regulation other than the one specified in such waiver and that one only for the time and in the manner specifically stated.

d. If the Tenant shall default in the performance of any covenant or condition in this Lease required to be performed by the Tenant, the Landlord may, after ten (10) days written notice to the Tenant, or without notice if, in the Landlord's opinion, an emergency exists, perform such covenant or condition for the account

and at the expenses of the Tenant, and the Tenant shall reimburse the Landlord for the amount of such expenses.

17. SUBORDINATION TO MORTGAGES. This Lease Agreement and the rights of the Tenant are subordinate to and shall be subordinate to the lien of any mortgage, deed of trust or certificate of participation (hereinafter called Mortgage) whether such Mortgage is currently a lien on the Demised Premises or hereafter becomes a lien on the Demised Premises and no further agreements or documents shall be required to render this Lease and the Tenant's rights subordinate to such Mortgage. In the event any proceedings are brought for foreclosure of any mortgage on the Demised Premises, the Tenant will attorn to the purchaser at the foreclosure sale and recognize such purchaser as the Landlord provided purchaser agrees not to disturb the Tenant's possession so long as the Tenant is not in default under the terms of this Lease. The Tenant shall execute at the Landlord's request, and within five (5) days thereof, instruments evidencing the subordinate position of this Lease, and as often as reasonably requested shall sign estoppel certificates setting forth: the date the Tenant accepted possession; that the Tenant occupies the Demised Premises; the termination date of its Lease; whether or not the Tenant has knowledge of any default or breach by the Landlord; and that this Lease is in full force and effect except as to modifications or amendments thereto, copies of each of which shall be attached to the certificate. The Tenant shall agree to give the Landlord's mortgagee notice of and a reasonable opportunity to cure any Landlord default, and to accept such cure if effected by the Landlord's mortgagee, and further shall agree to permit such mortgagee (or the purchaser at any foreclosure sale) on acquiring title to become substitute Landlord with liability only for such Landlord obligations as accrue after title is so acquired. This provision shall apply to any and all existing mortgages and deeds of trust, as well as any and all mortgages or deeds of trust to be entered into during the term of this Lease, or any renewal or extension thereof. At the Tenant's request and at the Tenant's expense, the Landlord shall endeavor to obtain for the Tenant a non-disturbance agreement in recordable form providing in substance that the Tenant's tenancy shall not be disturbed nor affected by any default under the Mortgage provided that the Tenant is not in default under any of the terms, conditions and covenants hereof.

18. NOTICE AND WRITTEN CONSENTS. All notices and written consents required under this Lease shall be in writing and shall be deemed properly served posted by certified United States mail, postage prepaid, return receipt requested, addressed to the party to whom directed at the following address or at such other address as may be from time to time designated in writing:

To Landlord: Henderson County Manager  
100 North King Street  
Hendersonville, North Carolina 28792

To Tenant:

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 by the postal authorities. Notices shall be deemed served upon posting. Any notice given herein by personal delivery shall be deemed delivered when received.

19. MEMORANDUM OF LEASE: This Lease may not be recorded, however, the parties hereto agree to execute and at the option of the parties, record promptly following such execution a memorandum hereof in the form attached hereto as Exhibit "3" and made a part hereof.

20. INSPECTION. The Landlord shall have the right, either itself or through its authorized agents, to enter the Demised Premises at all reasonable times to: examine same; allow inspection by mortgagees; and make such repairs, alterations or changes as Landlord deems necessary. Notwithstanding anything to the contrary herein, any access given to the Landlord or the Landlord's authorized agents to enter the Demised Premises shall be subject to the Tenant's confidentiality and security rules and regulations and shall be made only upon reasonable prior notice to the Tenant and during regular business hours unless the Tenant otherwise consents. The Tenant reserves the right to accompany the Landlord at all times during any entry by the Landlord.

21. MISCELLANEOUS CLAUSES:

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a. **CONDITION OF DEMISED PREMISES UPON TERMINATION.** Upon the termination of this Lease Agreement, the Tenant shall return the Demised Premises to the Landlord substantially in the same condition as received, ordinary wear and tear and approved improvements excepted.

b. **SURRENDER OF PREMISES.** Upon termination, the Tenant shall surrender the Premises in the same condition as the Commencement Date, reasonable wear and tear and loss due to casualty and condemnation excepted, and shall surrender all keys for the Premises to the Landlord. The Tenant must remove all its trade fixtures and personal property and, if requested, any other installation, alterations or improvements made by the Tenant and shall repair any damage caused thereby.

c. **WAIVER.** No failure by the Landlord to exercise any rights hereunder to which the Landlord may be entitled shall be deemed a waiver of the Landlord's right to subsequently exercise same. The Tenant shall gain no rights nor become vested with any power to remain in default under the terms hereof by virtue of the Landlord's failure to timely assert his rights.

d. **LAW APPLICABLE.** This lease is entered into in North Carolina and shall be construed under the laws, statutes and ordinances of such jurisdiction.

e. **SEVERABILITY.** The provisions hereof are independent covenants and should any provision or provisions contained in this Lease be declared by a court or other tribunal of competent jurisdiction to be void, unenforceable or illegal, then such provision or provisions shall be severable and the remaining provisions hereof shall remain at Landlord's option in full force and effect.

f. **BINDING EFFECT AND COMPLETE TERMS.** The terms, covenants, conditions and agreements herein contained shall be binding upon and inure to the benefit of and shall be enforceable by the Landlord and the Tenant and by their respective successors and assigns. All negotiations and agreements of the Landlord and the Tenant are merged herein. No modification hereof or other purported agreement of the parties shall be enforceable unless the same is in writing and signed by the Landlord and the Tenant.

g. **CONSTRUCTION OF LEASE.** This Lease shall not be construed more strictly against either party regardless of which party is responsible for the preparation of same. Highlighted language shall be of no greater or lesser force and effect than the remainder of this Lease. Any stricken language shall be treated as though it did not exist.

h. **AUTHORITY.** If Tenant is a corporation, the individual(s) executing this Lease warrants that they have full authority to execute and to bind the Tenant to its terms and conditions pursuant to a current resolution of the Tenant's Board of Directors.

i. **TENANT STATUS.** The Tenant shall at all times maintain its status as an active North Carolina non-profit corporation, and as a corporation existing pursuant to Section 501(c)(3) of the Internal Revenue Code and all applicable regulations adopted thereunder. Further, the Tenant shall at all times maintain in its charter a provision that, should it dissolve, any and all net proceeds remaining after payment of any outstanding indebtedness shall be the property of Henderson County.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed in their names, this the \_\_\_\_\_ day of \_\_\_\_\_, 2006.

HENDERSON COUNTY

By: \_\_\_\_\_  
WILLIAM L. MOYER, Chairman  
Henderson County Board of Commissioners

Witness:

\_\_\_\_\_  
Secretary to the Henderson County Board of Commissioners

HENDERSON COUNTY HISTORIC COURTHOUSE CORPORATION

By: \_\_\_\_\_  
GEORGE JONES, President

Witness:

\_\_\_\_\_  
Secretary

Exhibit 2

NORTH CAROLINA

HENDERSON COUNTY

AGREEMENT

COMMENCEMENT

THIS COMMENCEMENT AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 200\_ by and between Henderson County, a body politic and corporate of the State of North Carolina (hereinafter "Landlord"), and Henderson County Historic Courthouse Corporation, a North Carolina not-for-profit corporation (hereinafter "Tenant").

W I T N E S S E T H :

WHEREAS, Landlord and Tenant have entered into a lease, a short form memorandum of which has been recorded in the Henderson County Registry, covering a part of the premises located within the block bounded by First Avenue, Second Avenue, Main Street and Church Street in the City of Hendersonville, North Carolina;; and

WHEREAS, said lease provided for the execution and recording of a Commencement Agreement establishing the actual date of the commencement and expiration of the term of said lease.

NOW, THEREFORE, the parties hereto have agreed as follows:

The term of the lease referred to above actually commenced on \_\_\_\_\_, 200\_. The initial term of said lease shall terminate on \_\_\_\_\_.

IN WITNESS WHEREOF, the parties hereto have executed this Commencement Agreement as of the day and year above written.