

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: 5 November 2007

SUBJECT: New lease for Chamber of Commerce

ATTACHMENT(S): Draft lease

SUMMARY OF REQUEST:

County Manager Wyatt and representatives of the Greater Hendersonville Chamber of Commerce negotiated a new three-year. The Chamber has occupied the old Public Library building on King Street under a lease signed effective 1 February 1988, expiring 1 February 2008.

During the negotiations, the Chamber and County Manager Wyatt obtained two market appraisals for the fair rental value of the structure. Under the terms of the proposal, the Chamber would pay $\frac{1}{4}$ of the market rent the first year, $\frac{1}{2}$ the market rent the second year, and the full market rent the final year. However, the Chamber would have the option to terminate the lease upon ninety (90) days written notice.

County staff will present further information on this matter.

BOARD ACTION REQUESTED:

Consideration of the lease.

If the Board is so inclined, the following motion is suggested:

I move that the Board approve the draft lease with the Greater Hendersonville Chamber of Commerce, and authorize the Chairman, the County Manager, the County Attorney and other county staff to execute the lease.

DRAFT

LEASE AGREEMENT

THIS LEASE AGREEMENT ("LEASE AGREEMENT") is made and entered into this ____ day of December, 2007, by and between Landlord and Tenant.

1. Certain Definitions. The following definitions and specifications shall apply in this Lease Agreement:

- a) Landlord: County of Henderson, North Carolina
- b) Tenant: Greater Hendersonville Chamber of Commerce
- c) Tenant's Notice Address: 330 North King Street, Hendersonville, NC 28792
- d) Demised Premises: The structure located at 330 North King Street, Hendersonville, North Carolina, as such structure may hereafter be expanded, renovated or improved, together with any other rentable separate or connected structure that may hereafter be constructed on the land described in Deed Book 79, at Page 415, and in Deed Book 361, at Page 188, both of the Henderson County, North Carolina, Registry.
- e) Term: Three (3) years beginning 1 February 2008. However, the Tenant can terminate this lease upon giving at least ninety (90) days written notice to the Landlord of a specified termination date, after which the Tenant will have no further liability under this lease so long as the Tenant has complied with its obligations hereunder at the termination of this agreement.
- f) Rent
 - (1) For the year 1 February 2008 through 11:59 p.m. on 31 January 2009, the annual rent shall be Eight Thousand Two Hundred Eighty-Eight Dollars and Twenty-Five Cents (\$8,288.25), payable in twelve equal monthly installments, the first of which is due on or before 1 February 2008, and the first day of each month thereafter.
 - (2) For the year 1 February 2009 through 11:59 p.m. on 31 January 2010, the annual rent shall be Sixteen Thousand Five Hundred Seventy-Six Dollars and Fifty Cents (\$16,576.50), payable in twelve equal monthly installments, the first of which is due on or before 1 February 2009, and the first day of each month thereafter.
 - (3) For the year 1 February 2010 through 11:59 p.m. on 31 January 2011, the annual rent shall be Thirty-Three Thousand One Hundred Fifty-Three Dollars (\$33,150.00), payable in twelve equal monthly installments, the first of which is due on or before 1 February January 2010, with subsequent installments due on or before the first day of each month thereafter.

2. Lease of Premises. Landlord, in consideration of the covenants and agreements to be performed by Tenant, and upon the terms and conditions hereinafter stated, does hereby rent and lease to Tenant, and Tenant does hereby rent and lease from Landlord, the Demised Premises.

3. Rent. (a) Tenant shall pay to Landlord as rent, in legal tender of the United States, in the manner hereinafter provided, Annual Rent specified in Article 1.f) above, which shall be payable in equal monthly installments of one-twelfth of the Annual Rent in advance on the first day of every calendar month from and after the Rental Commencement Date and throughout the remainder of the Lease Term. A prorated monthly installment shall be paid in advance for any fraction of a month if the Rental Commencement Date shall occur on any day other than the first day of a calendar month or the Term shall be terminated or shall expire on any day other than the last day of any month. (b) All payments of rent and other payments to be made to the Landlord shall be made on a timely basis, with timeliness determined by the date of receipt at Landlord's Address designated in Article 1(a) above or at such other place as Landlord may designate from time to time in writing.

4. Services to be Provided by Tenant. Tenant shall pay for all its own services which it requires for its purposes. Landlord shall have no responsibility for continuation or quality of utilities service or of any service.
5. Use. Tenant shall have the right to use and occupy the Demised Premises as its headquarters. In addition, the Demised Premises shall be used only in accordance with all applicable laws, ordinances, rules and regulations of governmental authorities. Tenant agrees not to disturb other tenants in the Building. If Tenant continues to disturb other tenants in the Building after Landlord gives Tenant written notice of such disturbance and requests Tenant to cease from such disturbance, and if Tenant does not cease from such disturbance immediately effective upon receipt of such notice from Landlord, then Tenant will be in default, and the Landlord has the option of terminating Tenant's Lease immediately whereupon Tenant shall vacate Premises immediately upon Landlord's written notice. Landlord may determine in Landlord's reasonable discretion if Tenant's activities constitute a disturbance under this lease.
6. Maintenance by Tenant. Tenant shall perform or obtain all necessary maintenance on the Demised Premises.
7. Insurance. (a) Landlord shall carry at its sole expense and during the Term fire and extended coverage insurance insuring Landlord's interest in the Building and the improvements thereto, such insurance coverage to be in an amount equal to the full replacement value of the Building and improvements thereto, as such may increase from time to time. (b) Tenant shall carry during the Term one or more policies of insurance, insuring the Tenant, Landlord and any other person reasonably designated by Landlord against any and all liability for injury to, or death of, a person or persons, or for damage to property as follows:
 - (i) general liability coverage insuring Tenant, Landlord and any other person reasonably designated by Landlord against any and all liability for injury to or death of a person or persons or for damage to property occasioned by or arising out of construction work on the Demised Premises by a contractor hired by it, or arising out of the condition, use, or occupancy of the Demised Premises, or in any way occasioned by or arising out of the activities of its agents, contractors, employees, guests, or licensees in the Demised Premises, such policy or its policies to have combined single limit of not less than \$2,000,000.00; and
 - (ii) umbrella liability coverage insuring Tenant, Landlord, and any other person reasonably designated by Landlord, which policy shall not be in the amount of less than \$2,000,000.00, with such coverage to be secondary to the coverage afforded by the general liability policy or policies referred to in subsection (i) above.
8. Default. (a) The following events shall be deemed to be events of default by Tenant under this Lease Agreement: if (i) Tenant shall fail to pay within 5 days of when due, any installment of rent or any other charge or assessment against Tenant pursuant to the terms hereof, and shall fail to cure sure nonpayment within ten (10) days after written notice of such default shall have been given to Tenant; provided, however, that if Tenant shall default in the payment of any installment of rent or any other charge or assessment against Tenant pursuant to the terms hereof and any such default shall be repeated more than twice during any period of twelve months, notwithstanding that such default shall have been cured within the period after notice as above provided, any further similar default shall be deemed to be deliberate and the Landlord thereafter may pursue its remedies for default under this Article without affording to the Tenant an opportunity to cure such default; (ii) Tenant shall fail to comply in any material respect with any term, provision, covenant or warranty by Tenant under this Lease Agreement, other than the payment of the rent or any other charge or assessment payable by Tenant, and shall not cure such failure within thirty (30) days after written notice thereof to Tenant, unless such matter cannot reasonably be cured within thirty (30) days, in which event Tenant shall not be in default so long as

Tenant undertakes such cure within thirty (30) days and completes such cure in a timely and diligent manner thereafter; (iii) Tenant shall abandon or vacate all or any portion of the Demised Premises or fail to take possession thereof as provided in this Lease Agreement; or (iv) Tenant shall do or permit to be done anything which creates a lien upon the Demised Premises that is not released or bonded off within thirty (30) days after Tenant receives notice thereof.

Upon the occurrence of any of the aforesaid events of default, Landlord shall have the option to pursue any one or more of the following remedies upon notice to the Tenant: (i) terminate this Lease Agreement, in which event Tenant shall immediately surrender the Demised Premises to Landlord and if Tenant fails to do so, Landlord may without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Demised Premises and expel or remove Tenant and any other person who may be occupying said Demised Premises or any part thereof, without being liable for prosecution or any claim of damages therefore with respect to any reasonable action taken by Landlord; Tenant hereby agreeing to pay Landlord on demand an amount equal to together with the Landlord's reasonable expenses, including without limitation, reasonable attorneys' fees, at hourly rates customarily charged, that the Landlord may incur in terminating this Lease Agreement and recovering the amounts due under this clause; (ii) enter upon and take possession of the Demised Premises and expel or remove Tenant and any other person who may be occupying said Demised Premises or any part thereof, without being liable for prosecution or any claim of damages therefore with respect to any reasonable action taken by Landlord, and, if Landlord so elects, make such alterations, redecoration and repairs as, in Landlord's reasonable judgment, may be necessary to relet the Demised Premises, and relet the Demised Premises on such terms as Landlord may reasonably deem advisable, without advertisement, and by private negotiations, and receive the rent therefore, Tenant hereby agreeing to pay to Landlord the Deficiency, if any, between all rent reserved hereunder and the rent obtained by Landlord upon re-letting, if any, for each month of the period that otherwise would have constituted the balance of the Term hereunder; and Tenant hereby agrees to pay such deficiency in monthly installments on the rent due dates specified in this Lease Agreement, and any suit or proceeding brought to collect the deficiency for any month, either during the Term or after any termination thereof, shall not prejudice or preclude in any way the rights of the Landlord to collect the deficiency for any subsequent month by a similar suit or proceeding; and Tenant shall be liable for Landlord's reasonable expenses in restoring the Demised Premises and all reasonable costs incident to such re-letting, including broker's commissions; or (iii) enter upon the Demised Premises by force if necessary, without being liable for prosecution or any claim of damages for any reasonable actions taken by Landlord, and do whatever Tenant is obligated to do under the terms of this Lease Agreement; and Tenant agrees to reimburse Landlord on demand for any reasonable expenses including, without limitation, reasonable attorneys' fees at hourly rates customarily charges which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease Agreement and Tenant further agrees that Landlord shall not be liable for any damages resulting to Tenant from such reasonable action, whether caused by negligence of Landlord or otherwise, unless caused by the gross negligence or willful wanton misconduct of Landlord. b. Pursuit of any of the foregoing remedies by Landlord shall not preclude pursuit of any other remedy herein provided or any other remedy provided by law or at equity, nor shall pursuit of any remedy herein provided constitute an election of remedies, thereby excluding the later election of an alternate remedy, or a forfeiture or waiver of any rent or other charges and assessments payable by Tenant and due to Landlord hereunder or of any damages accruing to Landlord by reason of violation of any of the terms, covenants, warranties and provisions herein contained. No action taken by or on behalf of Landlord shall be construed to be an acceptance of surrender of this Lease Agreement other than express written statement to such effect signed by Landlord. 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. In determining the amount of loss or damage which Landlord may suffer by reason of termination of this Lease Agreement or the deficiency arising by reason of any reletting of the Demised Premises by Landlord as above provided, allowance shall be made for the reasonable expense of repossession. Tenant further agrees that Landlord may obtain an order for summary ejectment from any court of competent jurisdiction without prejudice to Landlord's rights to otherwise collect Rent from Tenant. All rights and remedies of Landlord are cumulative, and the exercise of any one shall not be an election excluding Landlord at any other time from exercise of a different or inconsistent remedy. No exercise by

Landlord of any right or remedy granted herein shall constitute or effect a termination of this Lease unless Landlord shall so elect by written notice delivered to Tenant. No waiver by Landlord or any covenant or condition shall be deemed to imply or constitute a further waiver of the same at a later time, and acceptance of rent by Landlord, even with knowledge of a default by Tenant, shall not constitute a waiver of such default.

9. Waiver of Breach; Cumulative Rights. No waiver by either party of any breach of the covenants, warranties, agreements, provisions, or conditions contained in this Lease Agreement shall be construed as a waiver of said covenant, warranty, provision agreement or condition or of any subsequent breach thereof, and if any breach shall occur and afterwards be compromised, settled or adjusted, this Lease Agreement shall continue in full force and effect as if no breach had occurred. All rights, powers and privileges conferred hereunder upon the parties hereto shall be cumulative to, but restrictive of, or in lieu of those conferred by law.
10. Assignment – Sublease. Tenant may not encumber this Lease, and may not assign this Lease, sublet any part or all of the Demised Premises other than to an affiliate of Tenant. Any assignment or sublease to which Landlord may consent (one consent not being any basis to contend that Landlord should consent to a further change) shall not relieve Tenant of its obligations hereunder. In no event shall this Lease be assignable by operation of any law, and Tenant's rights hereunder may not become, and shall not be listed by Tenant as an asset under any bankruptcy, insolvency or reorganization proceedings. Tenant is not, may not become, and shall never represent itself to be an agent of Landlord, and Tenant expressly recognizes that Landlord's title is paramount, and that it can do nothing to affect or impair Landlord's title.
11. Destruction. (a) If the Demised Premises are damaged by fire or other casualty, Landlord shall use its best efforts to have the same repaired or rebuilt as speedily as practical under the circumstances, unless this Lease Agreement is terminated as provided in Subparagraph (b) of this Article, and during the period required for restoration, a just and proportionate part of rent and all other charges reserved hereunder shall be abated until the Demised Premises are repaired or rebuilt. (b) 1. If the Demised Premises are (i) damaged to such an extent that repairs cannot reasonably be completed within one hundred twenty (120) days after the date of after the casualty or (ii) damaged or destroyed as a result of a risk which is not insured under standard fire insurance policies with extended coverage endorsement, or (iii) damaged or destroyed during the last six (6) months of the Lease Term and Tenant does not exercise any option to renew this Lease for a succeeding term, then and in any such event Landlord or Tenant may at either party's option terminate this Lease Agreement by notice in writing to the other party within sixty (60) days after the date of such occurrence. Unless Landlord or Tenant elects to terminate this Lease Agreement as hereinabove provided, this Lease Agreement will remain in full force and effect and Landlord shall repair such damage at its expense as expeditiously as possible under the circumstances. 2. If the Landlord should elect or be obligated pursuant to subparagraph (a) above to repair or rebuild because of any damage or destruction, such obligation shall be limited to the original Demised Premises. If the cost of performing such repairs exceeds the actual proceeds of insurance paid or payable to Landlord (or that would have been payable had Landlord maintained the coverage under Article 16 of this Lease) on account of such casualty, Landlord may terminate this Lease Agreement unless Tenant, within fifteen (15) days after demand therefore, deposits with Landlord a sum of money sufficient to pay the difference between the cost of repair and the proceeds of the insurance available for such purpose. 3. In no event shall Landlord be liable for any loss damage sustained by Tenant by reason of casualties mentioned hereinabove or any other accidental casualty not caused by negligent act or omission of Landlord. 4. If Landlord should elect or be obligated pursuant to subparagraph (a) above to repair or rebuild because of any damage or destruction, and such repair or rebuilding is not substantially completed with one hundred eighty (180) days after the date of the casualty, the Tenant may elect terminate this Lease Agreement by notice in writing to the other party within fifteen (15) days after the date of such occurrence.
12. Removal of Fixtures, Equipment and Effects. Tenant shall, upon expiration or termination of the Lease Term or any renewal thereof, remove all personalty, trade fixtures and equipment which it has placed upon the Demised Premises, and Tenant shall restore the Demised Premises to the condition

immediately preceding the time of installation thereof, reasonable wear and tear, damage by fire or other casualty and repairs the Landlord is required to make hereunder, excepted.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the day and year first above written.

Landlord: County of Henderson

By: _____ Date _____
Chairman, Board of Commissioners

Witness:

_____ Date _____
Secretary to the Board

Tenant: Greater Hendersonville Chamber of Commerce

By: _____ Date _____
Executive Director

Witness

_____ Date _____
Secretary