

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: 2 November 2009

SUBJECT: Lease with Henderson County Partnership for Economic Development, Inc.

ATTACHMENT(S): Draft lease

SUMMARY OF REQUEST:

Attached is a draft document leasing a part of the premises at the former Carnegie library (until recently leased to the Greater Hendersonville Chamber of Commerce) to the Henderson County Partnership for Economic Development, Inc.

County staff will be present and prepared if requested to give further information on this matter.

BOARD ACTION REQUESTED:

Lease approval.

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

I move the Board approve the draft lease with Henderson County Partnership for Economic Development, Inc.

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

LEASE AGREEMENT

THIS LEASE AGREEMENT, made and entered into this the _____ day of _____, 2009, and effective 1 December 2009, by and between **HENDERSON COUNTY**, hereinafter "the Lessor" and **THE HENDERSON COUNTY PARTNERSHIP FOR ECONOMIC DEVELOPMENT, INC.**, hereinafter "the Lessee";

WITNESSETH:

WHEREAS the Lessee desires to lease, and the Lessor desires to let, the space more particularly described below for operation by the Lessee as its office and headquarters; and,

WHEREAS the parties hereto have mutually agreed to the terms of this Lease Agreement as hereinafter set out;

NOW THEREFORE in consideration of the premises and the promises and covenants contained in the terms and conditions hereinafter set forth, Lessor does hereby rent, lease, and demise unto Lessee for and during the term and under the terms and conditions hereinafter set forth those premises or office space, with all rights, privileges, and appurtenances thereto belonging, lying, and being in the City of Hendersonville, County of Henderson, North Carolina, and more particularly described as follows:

BEING approximately the upper floor (hereinafter "Suite 1") of those premises owned by the Lessor and located at 330 North King Street, Hendersonville, Henderson County, North Carolina, plus the non-exclusive use of the common rest rooms and kitchen of such premises located on the lower floor thereof.

TERMS AND CONDITIONS

1. **TERM.** The Lessee shall have said lease premises for a term of five (5) years and seven months; commencing on the 1st day of December 2009 or as soon thereafter as possession of the leased premises is ceded to Lessee, and terminating on the 30th day of June, 2015. Either party must give the other party written notice of the termination of this lease by not later than 30 June 2014. Should no such notice be timely given, then this lease shall be automatically renewed for a term of one year. This automatic renewal shall further occur from year to year, on the terms stated hereinbelow, unless at least one year's written notice of non-renewal is given.

Notwithstanding the term hereof and effective date of this Lease, the Lessee shall be allowed entry into the premises for purposes of evaluation and renovation (so long as the same is approved by the Lessor, which approval shall not be unreasonably withheld) prior to 1 December 2009.

2. **INITIAL ANNUAL RENT.** The Lessee shall pay to the Lessor as rental for said premises the annual sum of Seventeen Thousand Dollars (\$17,000.00), payable quarter-annually, with each installment due within five (5) days of the Lessee receiving each quarter-annual installment of its budget appropriation from the Lessor. This annual rent shall be modified annually each July by the same amount as the increase or decrease in the United States Bureau of Labor Consumer Price Index for Urban Consumers ("CPI") calculated as of the end of the month of April prior the July modification. However, the first such modification shall not be occur or be effective until July, 2011. No annual increase hereunder shall exceed three percent (3%). It is anticipated that

the Lessor's annual appropriation to the Lessee will be modified in like amount with the annual rent increase or decrease.

3. INCLUDED AMENITIES. The Lessor shall furnish to the Lessee during the lease term at Lessor's sole cost and to the satisfaction of the Lessee the following:
 - a. Lessor to provide required fire extinguishers and servicing, pest control, and outside trash disposal including provision for the handling of recyclable items such as aluminum cans, cardboard, and paper;
 - b. No utilities;
 - c. Lessor expressly does not covenant that the leased premises are accessible to persons with disabilities.
4. MAINTENANCE. During the Lease term, the Lessor shall keep the leased premises in good repair and tenantable condition, to the end that all facilities are kept in an operative condition. The Lessor reserves the right to enter and inspect the leased premises at reasonable times, and to make necessary repairs to the premises.
5. UTILITIES. Lessee shall pay to the Lessor an additional monthly payment representing one-half of all utilities payments for the structure located at 330 North King Street, Hendersonville, North Carolina.
6. CONDITION OF LEASED PREMISES. It is understood and agreed that Lessee has had a reasonable opportunity to inspect the leased premises, and that the leased premises are in a condition satisfactory to the Lessee.
7. ADDITION OF STRUCTURES OR FIXTURES. The Lessee shall have the right during the existence of this lease, with the Lessor's prior consent, to make alterations, attach fixtures, and erect additions, structures, or signs in or upon the leased premises. Such fixtures, additions, structures, or signs so placed in or upon or attached to the leased premises under this lease or any prior lease of which this lease is an extension or renewal shall be and shall become the property of the Lessor at the termination of this lease or any renewal or extension thereof.
8. DAMAGE TO PREMISES. If the said premises be destroyed by fire or other casualty, without fault of the Lessee, this lease shall immediately terminate and the rent shall be apportioned to the time of the damage. In case of partial destruction or damage by fire or other casualty without fault of the Lessee, so as to render the premises untenable in whole or in part, there shall be an apportionment of the rent until the damage has been repaired. During such period of repair, Lessee shall have the right to obtain similar office space at the expense of the Lessee or the Lessee may terminate the lease by giving fifteen (15) days written notice to the Lessor.
9. INSURANCE. The Lessor shall obtain and maintain casualty insurance insuring the building containing the leased premises (but not the contents thereof), and shall have the Lessee named as an additional insured on such insurance. The Lessee shall obtain and maintain casualty insurance insuring its contents located or to be located in the leased premises, and shall have the Lessor named as an additional insured on such insurance.
10. DAMAGES. Lessor shall be liable to Lessee for any loss or damages suffered by Lessee which are a direct result of the failure of Lessor to perform an act required by this lease, and provided that Lessor could reasonably have complied with said requirement.

11. **TERMINATION OF LEASE.** Upon termination of this lease, the Lessee will peaceably surrender the leased premises in as good order and condition as when received, reasonable use, and wear and damage by fire, war, riots, insurrection, public calamity, by the elements, by act of God or by circumstances over which Lessee had no control or for which Lessor is responsible pursuant to this lease, excepted. The Lessee shall have no duty to remove any improvement or fixture place by it on the premises or to restore any portion of the premises altered by it. In the event Lessee elects to remove his improvements or fixtures and such removal causes damage or injury to the demised premises, Lessee will repair only to the extent of any such damage or injury.

12. **NOTICES.** All notices herein provided to be given or which may be given by either party to the other shall be deemed to have been fully given when made in writing and deposited in the United States mail, certified, and postage prepaid and addressed as follows:

LESSOR	LESSEE
c/o County Attorney 1 Historic Courthouse Square, Suite 5 Hendersonville, NC 28792	330 North King Street, Suite 1 Hendersonville, NC 28792

Nothing herein contained shall preclude the giving of such notice by personal service. The address to which notices shall be mailed as aforesaid to either party may be changed by written notice.

13. **ASSIGNMENT.** The Lessee shall not assign this lease without written consent of the Lessor, which shall not be unreasonably withheld but shall have the right to sublet the leased premises.

14. **FREE FROM ADVERSE CLAIMS.** The Lessor agrees that the Lessee upon keeping and performing the covenants and agreements herein contained shall at all times during the existence of this lease peaceably and quietly have, hold, and enjoy the leased premises free from the adverse claims of any person.

15. **WAIVER, MODIFICATION, CANCELLATION.** The failure of either party to insist in any instance upon strict performance of any of the terms and conditions herein set forth shall not be construed as a waiver of the same in any other instance. No modification of any provision hereof and no cancellation or surrender hereof shall be valid unless in writing and signed and agreed to by both parties.

16. **RELIANCE ON FUNDING.** The parties to this lease agree and understand that the continuation of this Lease Agreement for the term set forth herein or any extension or renewal thereof, is dependent upon and subject to the appropriation, allocation, or availability of funds for this purpose to the agency of the Lessee responsible for payment of said rental. The parties to this lease also agree that in the event the agency of the Lessee or that body responsible for the appropriation of said funds, in its sole discretion, determines in view of its total local office operations that available funding for the payments of rents is insufficient to continue the operation of its local office on the premises leased herein, the Lessee may choose to terminate the lease agreement set forth herein by giving Lessor written notice of said termination and the lease agreement shall terminate immediately without any further liability to Lessee.

In witness hereof, all parties have caused this Lease Agreement to be duly approved, and to be executed in duplicate, each to have the force and effect of an original.

HENDERSON COUNTY

BY: _____
William Moyer, Chairman
Henderson County Board of Commissioners

Attest: (County Seal)

Teresa Wilson, Clerk to the Board

(Corporate Seal)

THE HENDERSON COUNTY PARTNERSHIP FOR ECONOMIC DEVELOPMENT, INC.

BY: _____
President

Attest:

Secretary

(Corporate Seal)