

**REGULAR MEETING  
ASHEBORO CITY COUNCIL  
COUNCIL CHAMBER, MUNICIPAL BUILDING  
THURSDAY, NOVEMBER 4, 2010  
7:00 p.m.**

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This being the time and place for a regular meeting of the City Council, a meeting was held with the following officials and members present:

David H. Smith            ) – Mayor Presiding

Talmadge S. Baker        )  
Clark R. Bell             )  
Edward J. Burks          )  
Stuart B. Fountain       ) – Council Members Present  
Michael W. Hunter        )  
Walker B. Moffitt         )

Linda H. Carter           ) – Council Member Absent

John N. Ogburn, III, City Manager  
Dumont Bunker, P.E., City Engineer  
Richard L. Cox, Jr., Community Planning and Development Department Intern  
Holly H. Doerr, CMC, City Clerk/Senior Legal Assistant  
John L. Evans, Senior Planner  
Casandra M. Fletcher, Marketing Specialist  
Justin T. Luck, Planner  
R. Reynolds Neely, Jr., Community Development Director  
Deborah P. Reaves, Finance Director  
Michael D. Rhoney, Water Resources Director  
Jeffrey C. Sugg, City Attorney  
Sanford A. Vuncannon, Jr., Police Captain

**1. Call to order.**

A quorum thus being present, Mayor Smith called the meeting to order for the transaction of business, and business was transacted as follows.

**2. Silent prayer and pledge of allegiance.**

After a moment of silence was observed in order to allow silent prayer or meditation, Mayor Smith asked everyone to stand and repeat the pledge of allegiance.

**3. Appearance and recognition of guests and citizens.**

Mayor Smith welcomed everyone in attendance and noted that Council Member Linda H. Carter was absent for health care reasons.

**4. Presentation by Mr. Paul Rawls, Chairman of the North Carolina Water Pollution Control System Operators Certification Commission.**

Mr. Paul Rawls, Chairman of the North Carolina Water Pollution Control System Operators Certification Commission, presented the Wilbur E. Long, Jr. Operator of the Year Award to Mr. John Stake, the city's Wastewater Treatment Plant Chief Operator. This award recognizes a properly certified Wastewater Treatment Plant Operator who has exhibited outstanding knowledge and innovation in the continuing operation of a wastewater treatment facility, who has contributed his time and efforts toward the training, education, and general upgrading of the Wastewater Treatment Plant Operator, or who has devised, discovered or invented devices or techniques which enhance the science of plant operation. Mr. Stake was specifically praised for his continuing efforts to utilize innovative ideas to streamline the treatment process.

**5. Consent Agenda:**

Upon motion by Dr. Fountain and seconded by Mr. Bell, Council voted unanimously to approve the following consent agenda items.

- (a) The minutes of the special meeting of the City Council that was held on September 23, 2010.**

- (b) **The minutes of the regular meeting of the City Council that was held on October 7, 2010.**
- (c) **The findings of fact, conclusions of law, and order for the special use permit issued under file number SUP-10-04.**

Case No. SUP-10-04  
City Council  
City of Asheboro

IN THE MATTER OF THE APPLICATION OF CARILLON ASSISTED LIVING FOR A SPECIAL USE  
PERMIT ALLOWING A CONGREGATE LIVING FACILITY

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING THE REQUESTED SPECIAL  
USE PERMIT

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THIS MATTER came before the Asheboro City Council (hereinafter referred to as the "Council") for hearing during a regular meeting of the Council that was held on September 9, 2010. Having considered all competent evidence and argument, the Council, on the basis of competent, material, and substantial evidence, does hereby make the following:

FINDINGS OF FACT

1. Carillon Assisted Living, which is listed in Randolph County's on-line tax records as NHP Carillon LLC # 4388, (hereinafter referred to as the "Applicant") has properly submitted an application for a Special Use Permit that would allow a land use classified by the Asheboro Zoning Ordinance as a Congregate Living Facility
2. The parcel of land for which authorization for a congregare living facility is sought contains approximately 4.53 acres of land and is more specifically identified by Randolph County Parcel Identification Number 7669473765. This parcel of land (hereinafter referred to as the "Zoning Lot") is located within the corporate limits of the City of Asheboro at 2925 Zoo Parkway and is owned by the Applicant.
3. The existing land use on the Zoning Lot is a use recognized by the Asheboro Zoning Ordinance as a Congregate Living Facility. The surrounding land uses are as follows: residential use to the north, undeveloped land (city-owned land that is the site of the proposed Zoo City Park) to the east, a mixture of residential and institutional use is found to the south, and a mixture of undeveloped land and residential land use is found to the west.
4. The Zoning Lot is located in an R40 (low-density residential) zoning district.
5. A Congregate Living Facility land use is permitted in an R40 zoning district with the issuance by the Council of a Special Use Permit.
6. The Zoning Lot is located in an area that is designated on the Growth Strategy Map as a Primary Growth area, and this area is identified on the Proposed Land Development Plan Map as Low Density Residential.
7. The Zoning Lot is located along Zoo Parkway (NC 159), which is a state-maintained major thoroughfare.
8. The Applicant is already running a Congregate Living Facility on the Zoning Lot and is seeking this permit in order to add sixteen (16) rooms with a total of thirty-two (32) additional beds to the existing facility for the care of Alzheimer patients.
9. Uncontroverted testimony offered during the hearing of this matter established that the design of the proposed addition has been driven by the need to accommodate state licensure criteria and accepted best practices for offering care for Alzheimer patients.
10. The Zoning Lot's configuration and the location of the existing facility on the lot precluded the addition of facilities designed to meet the unique needs of an Alzheimer patient care unit without the benefit of a variance from the regulations of the zoning ordinance. Such a variance was granted by the City of Asheboro Board of Adjustment under planning department file number BOA-10-02. With the earlier granting of this variance by the Board of Adjustment, the site plan submitted by the Applicant for the hearing in front of the Council did comply with the requirements of the Asheboro Zoning Ordinance.

11. Uncontroverted testimony was offered in support of the contention that a need exists in Randolph County for additional beds to accommodate Alzheimer patients and their families.

12. Including rooms for patients and other areas to help the patients with their needs, the total size of the proposed addition to the existing Congregate Living Facility will be eleven thousand nine hundred ninety-eight (11,998) square feet with a total of twenty (20) rooms.

13. No evidence was introduced to indicate that the proposed addition will have any significant impact on the existing traffic volume and patterns found on Zoo Parkway.

14. The Applicant's representative offered uncontroverted testimony that the proposed addition would not be injurious to the value of surrounding parcels of land.

15. The application, plans, and testimony provided by the Applicant do not indicate the existence of any materials or design characteristics that pose an inherent or abnormal risk to the public health and safety.

16. No evidence was presented in opposition to the Applicant's request for a Special Use Permit.

Based on the foregoing findings of fact, the Council makes the following:

#### CONCLUSIONS OF LAW

1. The Council has concluded that the requested Special Use Permit will not materially endanger the public health or safety if the proposed land use is located where proposed and developed according to the plan as submitted and approved.

2. The evidence received during the public hearing established that the proposed land use does meet all of the required conditions and specifications of the Asheboro Zoning Ordinance.

3. The evidence presented during the course of the hearing of this matter established that the proposed land use will not substantially injure the value of the adjoining or abutting property.

4. The location and character of the Applicant's proposed land use if developed according to the plan as submitted and approved will be in harmony with the area in which it is to be located and in general conformity with the plan of development of Asheboro and its environs.

Based on the above-recited findings of fact and conclusions of law, the Council hereby enters the following:

#### ORDER

Carillon Assisted Living is hereby issued a Special Use Permit that authorizes on the Zoning Lot a land use recognized by the Asheboro Zoning Ordinance as a Congregate Living Facility. The site plan submitted and approved during the hearing of this matter on September 9, 2010, is hereby approved and adopted as part of this permit. The issuance of this permit and its continuing validity is hereby made expressly contingent upon the Applicant, and its successors and assigns, complying at all times with the applicable provisions of the Asheboro Zoning Ordinance, including without limitation the site plan approved by this Order.

These findings, conclusions, and order were adopted by the Asheboro City Council in open session during a regular meeting held on the 4<sup>th</sup> day of November, 2010.

s/ David H. Smith  
David H. Smith, Mayor

ATTEST:

s/ Holly H. Doerr  
Holly H. Doerr, City Clerk

**(d) The findings of fact, conclusions of law, and order for the conditional use permit issued under file number CUP-10-04.**

Case No. CUP-10-14  
City Council  
City of Asheboro

IN THE MATTER OF THE APPLICATION OF GLENN KING FOR A CONDITIONAL USE PERMIT  
ALLOWING AN OFFICE DEVELOPMENT WITH MULTIPLE USES

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER DENYING THE REQUESTED  
CONDITIONAL USE PERMIT

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THIS MATTER came before the Asheboro City Council (hereinafter referred to as the "Council") for hearing during a regular meeting of the Council that was held on September 9, 2010. Having considered all competent evidence and argument, the Council, on the basis of competent, material, and substantial evidence, does hereby make the following:

FINDINGS OF FACT

1. Mr. Glenn King (hereinafter referred to as the "Applicant") properly filed an application with the City of Asheboro Planning Department for a legislative rezoning of approximately 2.897 acres of land that, if approved, would place the property in a CU-O&I zoning district, which is also known as a conditional use office and institutional zoning district. When the Applicant applied for this legislative rezoning, he also filed an application for a Conditional Use Permit that would allow the use of this land for an office development with multiple uses.

2. The land upon which the Applicant wishes to construct an office development with multiple uses is located at 1000 Park Drive, is owned by B & G Properties, and is more specifically identified by Randolph County Parcel Identification Numbers 7751484500 and 7751484515.

3. The said land (hereinafter referred to as the "Zoning Lot") is currently located in low-density residential zoning district known as an R-15 zoning district.

4. The city's growth strategy map identifies this area as adjacent developed, and the proposed land development plan map designates the area as suburban residential.

5. The Asheboro Zoning Ordinance does not permit an office development with multiple uses in an R-15 zoning district, but such a land use is permitted in an O&I zoning district.

6. Prior to formally evaluating the evidence submitted in support of the requested Conditional Use Permit, the Council concurred with the planning department staff's analysis of the application in relation to the city's adopted comprehensive land development plan and denied the Applicant's request to place the Zoning Lot in a Conditional Use O&I zoning district. As of the date of these findings, the Zoning Lot remains in an R-15 low-density residential zoning district.

7. Section 1102 of the Asheboro Zoning Ordinance provides that a "Conditional Use Permit" is a "permit required to be issued by the Asheboro City Council which establishes permitted uses within a Conditional Use District and sets forth conditions."

8. Section 1013.2 of the Asheboro Zoning Ordinance provides as follows:

In considering an application for a Conditional Use Permit, the City Council, (sic) shall give due regard that the purpose and intent of this ordinance shall be served, public safety and welfare secured and substantial justice done. If the City Council should find, after a public hearing, that the proposed Conditional Use Permit should not be granted, such proposed permit shall be denied. Specifically the following general standards shall be met:

1. *That the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved.*
2. *That the use meets all required conditions and specifications.*
3. *That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity, and*
4. *That the location and character of the use if developed according to the plan as submitted and approved will be in harmony with the area in which it is to be located and in general conformity with the plan of development of Asheboro and its environs.*

The City Council shall make these general findings based upon substantial evidence contained in its proceedings. It shall be the responsibility of the

applicant to present evidence in the form of testimony, exhibits, documents, models, plans and the like to support the application for approval of a Special Use (sic).

Based on the foregoing findings of fact, the Council hereby enters the following:

CONCLUSIONS OF LAW

1. The Asheboro Zoning Ordinance does not permit the Council to issue a Conditional Use Permit that purports to authorize a land use on a lot or parcel of land that is not located in a conditional use zoning district. The Council is only authorized to issue a Conditional Use Permit, with all of its encumbrances upon the land uses that may occur on a lot or parcel of land that is subject to the permit, when the said lot or parcel of land is located within a conditional use district.

2. The Council cannot approve the Applicant's request for a Conditional Use Permit because the Zoning Lot is located within an R-15 low-density residential zoning district that prohibits office developments with multiple uses. In the absence of a conditional use zoning district with an underlying zoning district that permits the requested land use, a Conditional Use Permit cannot be issued.

Based on the above-recited findings of fact and conclusions of law, the Council hereby enters the following:

ORDER

The application filed by Glenn King for a Conditional Use Permit authorizing an office development with multiple uses on the Zoning Lot is hereby denied.

The above-stated findings, conclusions, and order were adopted by the Asheboro City Council in open session during a regular meeting held on the 4<sup>th</sup> day of November, 2010.

s/ David H. Smith  
David H. Smith, Mayor

ATTEST:

s/ Holly H. Doerr  
Holly H. Doerr, City Clerk

**(e) A request by the Randolph County Veteran's Council to temporarily close Church Street from Hoover Street to West Kivett Street, Sunset Avenue from Church Street to Fayetteville Street, Fayetteville Street from Academy Street to Salisbury Street, and Worth Street from Fayetteville Street to Cox Street for a Veteran's Day Parade from 4:00 p.m. to 5:00 p.m. on November 11, 2010.**

[A map of the approved parade route is on file in the City Clerk's office.]

**(f) A request by Ryan O'Hara to temporarily close certain streets for a Courage for Cancer 5K run from 7:00 a.m. to 2:00 p.m. on November 6, 2010.**

[A map of the approved 5K course is on file in the City Clerk's office.]

**(g) A request from Asheboro/Randolph Chamber of Commerce to temporarily close West Kivett Street between South Fayetteville Street and South Church Street, South Church Street from Sunset Avenue to West Walker Avenue, Sunset Avenue from Church Street east to Fayetteville Street, and South Fayetteville Street from Salisbury Street to Kivett Street for the annual Christmas parade at 7:00 p.m. on Friday, December 3, 2010.**

[A map of the approved parade route is on file in the City Clerk's office.]

**(h) A request from Asheboro/Randolph Chamber of Commerce Downtown Development Committee to temporarily close Sunset Avenue from Park Street to Fayetteville Street and Church Street from West Academy Street to Hoover Street on December 10, 2010, from 5:30 p.m. to 10:00 p.m. for a downtown "Christmas on Sunset" street festival.**

[A map of the approved location for the street festival is on file in the City Clerk's office.]

- (i) **A resolution authorizing the publication of notice of the Council's intent to renew the Asheboro Regional Airport Fixed Base Operator Lease Agreement between the City of Asheboro and Cardinal Air, LLC for a period of five (5) years beginning January 1, 2011, as recommended by the Asheboro Airport Authority.**

**48 RES 11-10**

**RESOLUTION AUTHORIZING PUBLICATION OF NOTICE OF THE ASHEBORO CITY COUNCIL'S INTENT TO RENEW THE FIXED BASE OPERATOR LEASE AGREEMENT AT THE ASHEBORO REGIONAL AIRPORT**

**WHEREAS**, Section 160A-272 of the North Carolina General Statutes provides, in pertinent part, as follows:

Any property owned by a city may be leased or rented for such terms and upon such conditions as the council may determine, but not for longer than 10 years ... and only if the council determines that the property will not be needed by the city for the term of the lease; and

**WHEREAS**, Section 160A-272 of the North Carolina General Statutes further provides, in pertinent part, as follows: "Property may be rented or leased only pursuant to a resolution of the council authorizing the execution of the lease or rental agreement adopted at a regular council meeting upon 10 days' public notice;" and

**WHEREAS**, during its meeting on October 19, 2010, the Asheboro Airport Authority recommended the renewal for a term of five (5) years, beginning on January 1, 2011, of the Fixed Base Operator Lease Agreement with Cardinal Air, LLC at the Asheboro Regional Airport; and

**WHEREAS**, the Asheboro City Council concurs with the Asheboro Airport Authority's recommendation.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Asheboro, North Carolina that the city clerk shall prepare and have published, in accordance with Section 160A-272 of the North Carolina General Statutes, a notice of the city council's intent to authorize, during its next regular meeting on December 9, 2010, the execution of the recommended Fixed Base Operator Lease Agreement with Cardinal Air, LLC.

This resolution was adopted by the Asheboro City Council in open session during a regular meeting of the city council that was held on the 4<sup>th</sup> day of November, 2010.

s/ David H. Smith  
David H. Smith, Mayor

ATTEST:

s/ Holly H. Doerr  
Holly H. Doerr, City Clerk

- (j) **The recordation of a Sight Easement Plat at the Register of Deeds for the Asheboro Public Library Parking Improvement Project driveway located on North Cox Street (SR 2327) as required by the North Carolina Department of Transportation.**
- (k) **The acceptance of the apparent lowest responsive, responsible bid to supply a front loading refuse truck that was submitted by Carolina Environmental Systems, in the amount of \$211,911.00 (without use tax).**

[A copy of the bid summary submitted to the Council by the City Engineer is on file in the City Clerk's office.]

- (l) **Ordinances submitted by the city finance department:**

- (a) **Ordinance to amend the General Fund FY 2010-2011.**

**52 ORD 11-10**

**ORDINANCE TO AMEND THE GENERAL FUND FY 2010-2011**

WHEREAS, on August 5, 2010, the City Council of the City of Asheboro was presented with an economic development project for the expansion of a local precision parts manufacturer, Allen Precision, and;

WHEREAS, Allen Precision's project would result in an investment of approximately \$2 million dollars to construct a 50,000 sq ft manufacturing facility, invest another \$800,000 in new equipment and hire 14 new employees over a two year period, and;

WHEREAS, Allen Precision was seeking funding thru a Community Development Block Grant, a Rural Center Economic Development Grant, and the North Carolina Industrial Development Fund with a small required matching donation of \$10,975 from both the City of Asheboro and Randolph County, and;

WHEREAS, the City Council authorized the City of Asheboro to support Allen Precision's effort and apply for the various grants on their behalf, and;

WHEREAS, the City of Asheboro has already been approved for the industrial development fund grant, and is expecting formal approval of the other two grants within the next few weeks, and;

WHEREAS, the budget as adopted requires amendment to be in compliance with all generally accepted accounting principles, and;

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA:

Section 1: That the following Revenue line item be increased:

<u>Account #</u>	<u>Revenue Description</u>	<u>Increase</u>	<u>Amended Total Appropriation</u>
10-399-0000	Fund Balance Appropriation	10,975	1,059,796

Section 2: That the following Expense line item be increased:

<u>Account #</u>	<u>Expense Description</u>	<u>Increase</u>	<u>Amended Budget</u>
10-610-7200	Contribution to Economic Development Fund	10,975	385,975

Adopted this the 4th day of November 2010.

s/ David H. Smith  
David H. Smith, Mayor

ATTEST:

s/ Holly H. Doerr  
Holly H Doerr, City Clerk

**(b) Ordinance to amend Economic Development Fund FY 2010-2011.**

**53 ORD 11-10**

**ORDINANCE TO AMEND THE ECONOMIC DEVELOPMENT FUND FY 2010-2011**

WHEREAS, on August 5, 2010, the City Council of the City of Asheboro was presented with an economic development project for the expansion of a local precision parts manufacturer, Allen Precision, and;

WHEREAS, Allen Precision's project would result in an investment of approximately \$2 million dollars to construct a 50,000 sq ft manufacturing facility, invest another \$800,000 in new equipment and hire 14 new employees over a two year period, and;

WHEREAS, Allen Precision was seeking funding thru a Community Development Block Grant, a Rural Center Economic Development Grant, and the North Carolina Industrial Development Fund with a small required matching donation of \$10,975 from both the City of Asheboro and Randolph County, and;

WHEREAS, the City Council authorized the City of Asheboro to support Allen Precision's effort and apply for the various grants on their behalf, and;

WHEREAS, the City of Asheboro has already been approved for the industrial development fund grant, and is expecting formal approval of the other two grants within the next few weeks, and;

WHEREAS, the City of Asheboro is ready to set up the financial accounting infrastructure to manage the revenues and expenses relating to this project, and;

WHEREAS, the budget as adopted requires amendment to be in compliance with all generally accepted accounting principles, and;

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA:

Section 1: That the following Revenue line item be increased:

<u>Account #</u>	<u>Revenue Description</u>	<u>Increase</u>	<u>Amended Budget</u>
72-300-0000	Rural Economic Dev. Center Inc.	140,000	140,000
72-300-0001	Community Dev. Block Grant	154,360	154,360
72-300-0002	Industrial Development Fund	130,095	130,095
72-300-0003	COA GF contribution	10,975	10,975
72-300-0004	Randolph County	<u>10,975</u>	10,975
		\$446,405	

Section 2: That the following Expense line item be increased:

<u>Account #</u>	<u>Expense Description</u>	<u>Increase</u>	<u>Amended Budget</u>
72-900-0000	Permits	2,000	2,000
72-900-0001	Cul-de-sac	30,000	30,000
72-900-0002	Engineering	30,500	30,500
72-900-0003	Environmental Assessment / admin	7,405	7,405
72-900-0004	Water Improvements	179,499	179,499
72-900-0005	Sewer Improvements	<u>197,001</u>	197,001
		\$446,405	

Adopted this the 4th day of November 2010.

s/ David H. Smith  
David H. Smith, Mayor

ATTEST:

s/ Holly H. Doerr  
Holly H Doerr, City Clerk

(m) **An ordinance regulating parking on the premises of Randolph Bank at 1532 North Fayetteville Street.**

**54 ORD 11-10**

**AN ORDINANCE REGULATING PARKING IN THE PUBLIC VEHICULAR AREA OF RANDOLPH BANK AT 1532 NORTH FAYETTEVILLE STREET**

**WHEREAS**, Section 160A-301(d) of the North Carolina General Statutes provides that the city council may, by ordinance, prohibit the stopping, standing, or parking of vehicles during any specified hours in a privately owned public vehicular area when the owner or person in general charge and control of such an area requests in writing that such an ordinance be adopted; and

**WHEREAS**, Section 71.05 of the Code of Asheboro provides as follows:

§ 71.05 POSTING OF NO PARKING AREAS ON PRIVATE PROPERTY.

(A) *Parking in violation of signs prohibited.* No person shall stop, leave standing, or park a motor vehicle in the area specified in this section in violation of posted signs, when signs are placed, erected or installed giving notice that stopping, standing or parking is regulated, prohibited, or prohibited during certain hours, in that space or area.

(B) *Locations designated.* The following locations are designated as "no parking" spaces: (Area and time of parking restrictions to be described--Schedule 17 of § 72.02).

(C) *Cost of signs.* The cost of erecting or installing signs, and the cost of all necessary signs as determine(d) by the Chief of Police shall be paid for by the individual requesting regulations.

(D) *Enforcement.* The provisions of this section shall be enforceable in the same manner and in accordance with G.S. § 14-4. (citations omitted); and

**WHEREAS**, Randolph Bank has a branch office located at 1532 North Fayetteville Street in Asheboro; and

**WHEREAS**, Ms. Alice Cook, who is employed by Randolph Bank as a vice president, has submitted a written request, with subsequent verbal clarification and supplementation, for the Asheboro City Council to prohibit the parking of vehicles in the bank's public vehicular area at 1532 North Fayetteville Street between the hours of 9:00 o'clock p.m. and 6:00 o'clock a.m. on Friday, Saturday, and Sunday of each week.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Asheboro as follows:

**Section 1.** Pursuant to Section 160A-301(d) of the North Carolina General Statutes and Section 71.05 of the Code of Asheboro, the stopping, standing, or parking of vehicles within and upon the public vehicular area owned by Randolph Bank at its branch office located at 1532 North Fayetteville Street is hereby prohibited between the hours of 9:00 o'clock p.m. and 6:00 o'clock a.m. on Friday, Saturday, and Sunday of each week.

**Section 2.** The number and type of signs necessary to lawfully implement the provisions of this ordinance shall be erected and/or installed in a manner to be determined by the Chief of Police or his designee, and the entirety of the cost of erecting and/or installing the signs deemed necessary by the Chief of Police or his designee shall be the responsibility of Randolph Bank. The cost of installing the requisite signage shall be determined in accordance with the standard fees charged by the City of Asheboro Public Works Division for such signage, and this signage shall not be installed until payment has been received in full.

**Section 3.** The city clerk shall enter a description in Schedule 17 of Section 72.02 of the Code of Asheboro of the time of the parking restrictions imposed by this ordinance and a description of the public vehicular area subject to said parking restrictions.

**Section 4.** This ordinance shall become effective upon adoption.

This ordinance was adopted by the Asheboro City Council in open session during a regular meeting held on the 4<sup>th</sup> day of November, 2010.

s/ David H. Smith  
David H. Smith, Mayor

ATTEST:

s/ Holly H. Doerr  
Holly H. Doerr, City Clerk

(n) **Acknowledgment of the receipt from the Asheboro ABC Board of the minutes of the local ABC board's meetings on September 7, 2010 and October 11, 2010.**

[Copies of the minutes transmitted to the Council by the Asheboro ABC Board are on file in the City Clerk's office.]

(o) **An ordinance clarifying the regulations pertaining to the removal of empty garbage containers under Section 51.18 of the Code of Asheboro.**

55 ORD 11-10

**AN ORDINANCE AMENDING CHAPTER 51 OF THE CODE OF ASHEBORO**

**WHEREAS**, Chapter 51 of the Code of Asheboro prescribes general regulations pertaining to the operation of the city's sanitation department and the maintenance of environmental health in the City of Asheboro; and

**WHEREAS**, the text of Section 51.18 of the Code of Asheboro pertaining to the removal of containers from a position adjacent to a street or sidewalk after the collection of solid waste/recyclables needs to be clarified in order to specify that a customer's obligation to remove a container from the collection point has not been completed for purposes of compliance with the Code of Asheboro until the container is placed entirely outside of the public right-of-way.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Asheboro as follows:

**Section 1.** Section 51.18 of the Code of Asheboro is hereby rewritten to provide as follows:

**§ 51.18 REMOVAL OF EMPTY CONTAINERS.**

(A) Solid waste containers and containers for recyclable materials that have been placed adjacent to any street or sidewalk for collection shall be removed from their position adjacent to the street or sidewalk after a collection service, city-operated or otherwise, has collected the contents of such containers. The removal of such a container from its position adjacent to the street or sidewalk shall occur before the end of the calendar day on which the contents of the container were physically collected.

(B) When a container is placed adjacent to a street or sidewalk in violation of § 51.17 and/or is not removed in accordance with the provisions of subsection (A) of this Section, the following enforcement actions shall be taken by city personnel designated by the City Manager:

(1) Upon discovery of a violation, city personnel shall make an on-site notification of the violation by means of placing a door hanger, or some equivalent form of notification, at the structure for which the improperly placed container is designated. This notification shall describe the nature of the violation and advise the recipient that this violation must be abated within five (5) business days of the date of the notice.

(2) If the violation is not corrected within the time period prescribed by the initial notice of violation, a second notice of violation shall be transmitted to the offending party or parties. This second notice of violation shall state that the continuing violation must be abated within five (5) business days of the date of the notice in order to avoid an interruption in the solid waste removal and/or curbside recycling service. Two methods of delivery shall be used in order to provide the second notice of violation. A second door hanger, or some equivalent form of notification, shall be posted on the premises where the violation is occurring and a written notice of violation shall be mailed to the owner of the premises as determined by an examination of the county tax records. The written notice to the property owner shall be transmitted via the United States Postal Service as registered or certified mail.

(3) Upon the expiration of the time period specified in the second notice of violation, any container located adjacent to the street or sidewalk in violation of this Section shall be removed from the premises by city employees. The city's sanitation department shall retain any container removed from service as a consequence of a violation of this Section until a service fee of sixty and no/100 dollars (\$60.00) is paid to the City of Asheboro for each container that has to be moved by the city. This fee is to serve as reimbursement for the costs incurred by the city to remove and store the improperly placed container(s). During the time that a container is held by the city pursuant to this Section, the city's sanitation department shall not provide service to the location from which any containers were removed unless a container appropriate for the materials to be collected is on-site and placed in the proper location.

(4) After city employees have removed a container designated for solid waste collection from a location pursuant to this Section, the container designated for recyclable materials shall not be utilized for the disposition of solid waste materials that are ineligible for collection as recyclables. Any such use of a container designated for the collection of recyclable materials is strictly prohibited and shall result in city employees removing an improperly used recyclables container without further notice. Once removed from a site, such a container will not be returned to the site and the corresponding curbside-recycling service will be suspended until a service fee of sixty and no/100 dollars (\$60.00) is paid to the City of Asheboro for each container that has to be moved by the city.

(C) For the purpose of evaluating whether the placement of a container constitutes a violation of this Section, a container shall not be deemed to have been removed from its position adjacent to the street or sidewalk after a collection service, city-operated or otherwise, has collected the contents of the container unless the entirety of the container in question is located outside of the public right-of-way.

**Section 2.** All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed.

**Section 3.** This ordinance shall take effect and be in force from and after December 1, 2010.

This ordinance was adopted by the Asheboro City Council in open session during a regular meeting that was held on the 4<sup>th</sup> day of November, 2010.

s/ David H. Smith  
David H. Smith, Mayor

ATTEST:

s/ Holly H. Doerr  
Holly H. Doerr, City Clerk

**6. Community Development Items:**

- (a) **RZ-10-19: Request to rezone from M (Mercantile) to O&I (Office and Institutional).**  
The property of Carolina Bank is located on the east side of North Carolina Highway 42 North at the intersection with Thomas Street and consists of approximately 1.81 acres of land. Randolph County Parcel Identification Number 7761412301 more specifically identifies the property.

Mayor Smith opened the public hearing on the following request.

Mr. Neely presented the staff's analysis of the request by Carolina Bank to rezone the above-referenced property from M (Mercantile) to O&I (Office and Institutional). The Planning Board recommended approval of the requested rezoning because the Board concurred with the analysis provided by the planning department staff. The staff's analysis is as follows:

"Although the Land Development (Plan) designates the property as urban residential, several factors support the request. Recent rezoning to Mercantile (M) recognizes the increasing transitional nature of this location. The property is also located on a major thoroughfare and is adjacent to a mix of non-residential land uses. The Office and Institutional zoning district serves as a transition between the B2 General Commercial uses further to the south and surrounding residential areas in the same way the current Mercantile (M) district serves as a transition.

Considering all of these factors, staff believes that granting the rezoning is generally within the public interest in allowing a reasonable use of the property."

Mr. H.R. Gallimore of ReMax Central Realty presented comments in support of the requested rezoning.

There being no further comments, Mayor Smith closed the public hearing.

Upon motion by Dr. Fountain and seconded by Mr. Burks, Council followed the recommendation of the Planning Board and voted unanimously to approve the requested rezoning.

- (b) **RZ-10-20: Request for technical amendments to the Asheboro Zoning Ordinance.**  
An application filed by the City of Asheboro to amend Article 200, Article 300A, Table 400-1, Article 500, Article 600, and Article 1100 of the Asheboro Zoning Ordinance.

Mayor Smith opened the public hearing on the following request.

Mr. Neely presented an overview of the Planning Department staff's proposed amendments to the Asheboro Zoning Ordinance. In essence, these technical amendments are proposed to address the following issues:

- a. Zoning districts where agricultural tourism facilities are permitted (consistent with the districts in which agricultural uses are permitted).
- b. Classification of a health/fitness center
- c. Performance standards in residential and industrial zoning districts related to permissible noise decibel (dB) levels. The amendments are proposed to be consistent with the amendments recently adopted in commercial zoning districts.
- d. Mechanical equipment (such as solar panels and wind turbines) used for alternative energy generation.

- e. The distinction between real estate signs and general advertising signs and also clarify instances when a banner type sign may be utilized as a real estate sign.

A copy of the exact text of the proposed amendments is on file in the City Clerk's office.

The Planning Board concurred with the following Planning Department staff's analysis:

"Staff believes addressing these issues will add clarity to the Zoning Ordinance, and that the amendments are consistent with the Land Development Plan, and generally within the public interest in supporting reasonable use of property."

Based on their approval of this analysis, the Planning Board recommended approval of the proposed text amendments.

There being no further comments and no opposition, Mayor Smith closed the public hearing.

Upon motion by Mr. Burks and seconded by Mr. Baker, Council followed the recommendations of the Planning Department Staff and Planning Board and voted unanimously to approve the proposed amendments to the Asheboro Zoning Ordinance.

**(c) SUP-10-05: Request for Special Use Permit for an Agricultural Tourism Facility.**

The property of Randy C. Purvis and Pamela Needham Purvis is located at 1008 Hub Morris Road and consists of approximately 9.72 acres of land. Randolph County Parcel Identification Number 7763511812 more specifically identifies the property.

Mayor Smith opened the public hearing on the following request.

Mr. Neely was sworn in and presented the Staff's analysis of the request by Mr. Randy C. Purvis for a Special Use Permit for an Agricultural Tourism Facility. During his presentation, Mr. Neely noted the following:

"After the City Council hearing concerning SUP-10-05 on September 9, 2010, it was determined that the adopted permitted districts for agricultural tourism failed to include all intended zoning districts for this use. Staff is proposing technical amendments (RZ-10-20) to address this situation by permitting agricultural tourism facilities with a Special Use Permit in all districts in which agricultural uses are also permitted."

Additionally, Mr. Neely reported that all previous testimony, including, but not limited to the testimony presented for the four (4) standard tests that was presented during the public hearing for this case on September 9, 2010, remains applicable. Thus, based on the previous approval of technical amendments (RZ-10-20), the site plan submitted for this case at the September 9, 2010 public hearing now meets the requirements of the Asheboro Zoning Ordinance.

There being no further comments and no opposition from the public, Mayor Smith closed the public hearing.

Upon motion by Mr. Baker and seconded by Mr. Hunter, Council voted unanimously to approve the requested Special Use Permit. The issuance of this Special Use Permit was based on the four (4) standard tests being met.

The formal findings of fact, conclusions of law, and order granting the Special Use Permit will be entered by the Council during regular session on December 9, 2010. This order will reflect certain conditions imposed upon this permit as a consequence of the testimony presented during the hearing of this matter.

**(d) Historic Preservation:**

**(i) Discussion of the economic benefits associated with the designation of a community such as the Greystone community as a National Register of Historic Places District.**

Mr. Luck utilized a power point presentation to discuss with the Council the economic benefits associated with the designation of a community such as the Greystone community as a National Register of Historic Places District. Likewise, Mr. Cox utilized a power point presentation in order to give an example of an older home, located at 609 Holly Street in Asheboro, that is in the process of being renovated. A similar presentation is scheduled for the Greystone community at a later date.

A copy of the power point presentation utilized by Mr. Luck and Mr. Cox is on file in the City Clerk's office.

The Mayor and Council expressed general support for informing citizens of this option.

**(ii) Consideration of a contract with M. Ruth Little of Longleaf Historic Resources to complete the application for placement of the Sunset Theatre on the National Register of Historic Properties.**

Mr. Luck presented and recommended approval of the above-referenced contract with M. Ruth Little of Longleaf Historic Resources. This contract specifies that the nomination paperwork for the placement of the Sunset Theatre on the National Register of Historic Places is to be completed by the consultant for a fee that does not exceed \$1,956.50

Upon motion by Mr. Bell and seconded by Dr. Fountain, Council voted unanimously to approve the above-referenced contract.

[A copy of the approved contract is on file in the City Clerk's office.]

**(e) Economic Development:**

**(i) Consideration of a resolution authorizing the execution of a grant agreement between the City of Asheboro and the North Carolina Department of Commerce for funding from the Industrial Development Fund for the Allen Precision Industries economic development project.**

Ms. Fletcher presented and recommended adoption, by reference, of the aforementioned resolution.

Upon motion by Mr. Moffitt and seconded by Mr. Burks, Council voted unanimously to adopt the following resolution by reference.

**49 RES 11-10**

**RESOLUTION AUTHORIZING THE EXECUTION OF A GRANT AGREEMENT WITH THE NORTH CAROLINA DEPARTMENT OF COMMERCE**

**WHEREAS**, the Asheboro City Council has previously indicated its desire to assist in economic development efforts within the City; and

**WHEREAS**, the Asheboro City Council has received notice from the North Carolina Department of Commerce of the award of an Industrial Development Fund grant in the amount of one hundred thirty thousand ninety-five and no/100 dollars (\$130,095.00) to assist in upgrading water and sewer infrastructure as well as relocating a cul-de-sac in furtherance of the Allen Precision Industries Economic Development Project; and

**WHEREAS**, in order to meet one of the conditions placed upon the grant, the city must execute a grant agreement with the North Carolina Department of Commerce; and

**WHEREAS**, the proposed grant agreement is attached hereto as EXHIBIT 1 and is hereby incorporated into this resolution by reference as if copied fully herein; and

**WHEREAS**, the Asheboro City Council has determined that it is in the best interest of the municipal corporation and its citizens to comply with the conditions attached to this Industrial Development Fund grant and to move forward with the Allen Precision Industries Economic Development Project.

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Asheboro, North Carolina that the mayor is authorized to execute the attached grant agreement on behalf of the City of Asheboro.

This resolution was duly adopted by the Asheboro City Council in open session during a regular meeting held on the 4<sup>th</sup> day of November, 2010.

s/ David H. Smith  
David H. Smith, Mayor

ATTEST:

s/ Holly H. Doerr  
Holly H. Doerr, City Clerk

[Exhibit 1 that is referred to in the above resolution is attached to the original resolution on file in the City Clerk's office.]

**(ii) Resolution of intent to close an additional portion of Veterans Loop Road on the site of the proposed Allen Precision Industries economic development project.**

Mr. Bunker presented and recommended adoption, by reference, of the aforementioned resolution.

Upon motion by Mr. Baker and seconded by Mr. Bell, Council voted unanimously to adopt the following resolution by reference.

**50 RES 11-10**

**RESOLUTION OF INTENT TO PERMANENTLY CLOSE A SECTION OF THE PUBLIC RIGHT-OF-WAY FOR VETERANS LOOP ROAD**

**WHEREAS**, Section 160A-299 of the North Carolina General Statutes prescribes the procedure to be followed by a city in order to permanently close a street or alley; and

**WHEREAS**, the parties with an ownership interest in the economic development project involving Allen Precision Industries have informed the City of Asheboro that the permanent closure of an additional section of public right-of-way for Veterans Loop Road would have a positive impact on the project without creating any hardships for the property owners not involved in the economic development project; and

**WHEREAS**, the City Council of the City of Asheboro has determined that it is advisable to formally consider the permanent closure of the section of Veterans Loop Road described in section 1 of this resolution; and

**WHEREAS**, in order to consider the permanent closure of a public street in accordance with Section 160A-299 of the North Carolina General Statutes, the city council must adopt a resolution declaring the governing board's intent to permanently close a described street or section of the street and set a date for a public hearing on the question of the proposed permanent street closure.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Asheboro as follows:

**Section 1.** It is the intent of the City Council of the City of Asheboro to permanently close a section of irrevocably dedicated right-of-way for Veterans Loop Road that is currently located within the corporate limits of the City of Asheboro and is more particularly described as follows:

Cedar Grove Township, Randolph County, North Carolina:

BEGINNING at a calculated point in the western margin of the public right-of-way for Veterans Loop Road in the vicinity of the western terminus of the existing road and located by means of the North Carolina Coordinate System at the coordinates of North 697,244.05 feet and East 1,752,093.81 feet (NAD 83); thence from the said beginning point along the western margin of the right-of-way for Veterans Loop Road the following course and distance: South 01 degree 29 minutes 52 seconds East 82.13 feet to a point not set; thence in a northeasterly direction along the arc of a curve with a radius of 60.00 feet a chord bearing and distance of North 88 degrees 32 minutes 39 seconds East 59.99 feet to a point not set in the eastern margin of the public right-of-way for Veterans Loop Road; thence along the eastern margin of the public right-of-way for Veterans Loop Road North 01 degree 32 minutes 17 seconds West 106.73 feet to a point not set; thence in a southwesterly direction along the arc of a curve with a radius of 60.00 feet a chord bearing and distance of South 65 degrees 53 minutes 07 seconds West 64.92 feet to the point and place of the BEGINNING, and being all of that certain 0.128 of an acre (5,581 square feet) of land, more or less, encompassed by the preceding metes and bounds description, specifically including the right-of-way for the above-described section of Veterans Loop Road. The right-of-way to be permanently closed is shown on the plat of survey referenced below.

This description is in accordance with a plat of survey entitled "ROAD CLOSING FOR THAYER, THAYER, & NEELY" that was drawn under the supervision of Joshua A. Montazeri, a Professional Land Surveyor with

registration number L-4781. This plat of survey, which is identified as Project # S-1056 and is dated October 18, 2010, is hereby incorporated into this resolution by reference as if copied fully herein.

**Section 2.** A public hearing on the question of the proposed permanent closure of the above-described section of the irrevocably dedicated right-of-way for Veterans Loop Road is hereby called and is to be held during the regular meeting of the City Council of the City of Asheboro that begins at 7:00 p.m. on December 9, 2010, in the Council Chamber of the City of Asheboro Municipal Building, which is located at 146 North Church Street in Asheboro. At this public hearing, any person may be heard on the question of whether the intended permanent closure of the above-described section of right-of-way for Veterans Loop Road would be detrimental to the public interest or the property rights of any individual.

**Section 3.** The city clerk is hereby directed to cause the publication of this Resolution of Intent in *The Courier-Tribune*, a newspaper of general circulation in the City of Asheboro and Randolph County, once a week for four (4) successive weeks prior to the above-referenced public hearing.

**Section 4.** The city clerk is further directed to transmit a copy of this Resolution of Intent by registered or certified mail to each owner of property adjoining Veterans Loop Road. The identity of the property owners is to be determined on the basis of the Randolph County Tax Department's records.

**Section 5.** The city clerk is further directed to cause the prominent posting of this Resolution of Intent in a minimum of two (2) locations along the above-described section of Veterans Loop Road.

This Resolution of Intent was adopted in open session during a regular meeting of the Asheboro City Council that was held on the 4<sup>th</sup> day of November, 2010.

s/ David H. Smith  
David H. Smith, Mayor

ATTEST:

s/ Holly H. Doerr  
Holly H. Doerr, City Clerk

**7. Consideration of a petition received from Richard C. and Mildred B. Shaw requesting contiguous annexation of 0.154 of an acre of land located at 530 Glovinia Street.**

Mayor Smith opened the public hearing on the request for contiguous annexation of 0.154 of an acre of land located at 530 Glovinia Street.

There being no comments and no opposition from the public, Mayor Smith closed the public hearing

Mr. Bunker presented and recommended adoption, by reference, of an ordinance to extend the corporate limits of the City of Asheboro.

Upon motion by Mr. Hunter and seconded by Mr. Burks, Council voted unanimously to adopt the following ordinance by reference.

**Ordinance Number 56 ORD 11-10**  
**ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE**  
**CITY OF ASHEBORO, NORTH CAROLINA**  
**(A Total of 0.154 of an Acre of Land Located at 530 Glovinia Street)**

**WHEREAS**, pursuant to Section 160A-31 of the North Carolina General Statutes, a petition for annexation into the corporate limits of the City of Asheboro of the territory described in Section 1 of this ordinance was presented to the Asheboro City Council on October 7, 2010; and

**WHEREAS**, this petition for annexation was signed by the owners of all of the real property located within the area for which annexation was requested; and

**WHEREAS**, by means of a duly adopted resolution, the Asheboro City Council directed the City Clerk of the City of Asheboro to investigate the sufficiency of the petition, and the clerk has certified the sufficiency of the said petition; and

**WHEREAS**, pursuant to instructions received from the Asheboro City Council, notice was published to the public on the 14<sup>th</sup> day of October, 2010, in *The Courier-Tribune*, a newspaper having general circulation in the City of Asheboro, setting forth that a public hearing would be held during the Asheboro City Council's regular meeting at 7:00 o'clock p.m. on the 4<sup>th</sup> day of November, 2010, at the

City of Asheboro Municipal Building, to consider the adoption of an ordinance annexing the said area to the City of Asheboro; and

**WHEREAS**, the said public hearing was in fact held on the 4<sup>th</sup> day of November, 2010; and

**WHEREAS**, the Asheboro City Council has determined that the petition meets the requirements of Section 160A-31 of the North Carolina General Statutes.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Asheboro, North Carolina as follows:

**Section 1.** By virtue of the authority granted in the North Carolina General Statutes, Chapter 160A, Article 4A, Part 1, the following described area is hereby annexed and made part of the City of Asheboro, North Carolina:

Asheboro Township, Randolph County, North Carolina:

BEGINNING on the northern boundary line, which is also the proposed primary corporate limits line for the City of Asheboro, of the Richard C. Shaw and wife, Mildred B. Shaw property described as Tract Two in Deed Book 1666, Page 1442, Randolph County Public Registry at ~~the~~ existing iron rod that is located by means of the North Carolina Coordinate System at the coordinates of North 715,335.909 feet and East 1,763,567.466 feet (NAD 27); thence from the said beginning point following the proposed primary corporate limits line for the City of Asheboro along the above-described boundary line North 83 degrees 26 minutes 59 seconds East 1.31 feet to a point not set in a trash pile; thence continuing to follow the proposed corporate limits line along the Woodrow P. Liles property described in Deed Book 2140, Page 836, Randolph County Public Registry the following course and distance: South 03 degrees 26 minutes 57 seconds West 50.24 feet to a 1" existing iron pipe set in the existing primary corporate limits line; thence along the existing primary corporate limits line for the City of Asheboro the following courses and distances: South 83 degrees 19 minutes 57 seconds West 114.54 feet to a new iron rod; thence South 83 degrees 19 minutes 57 seconds West 1.18 feet to a point not set; thence South 83 degrees 19 minutes 57 seconds West 10.11 feet to a point not set; thence continuing along the existing primary corporate limits line North 19 degrees 00 minutes 40 seconds West 50.94 feet to a point not set; thence North 83 degrees 26 minutes 59 seconds East 8.06 feet along the proposed primary corporate limits line to a new iron rod; thence continuing to follow the proposed primary corporate limits by going along the Melvin B. Marley property described in Deed Book 1727, Page 2830, Randolph County Public Registry the following course and distance: North 83 degrees 26 minutes 59 seconds East 136.18 feet to the point and place of BEGINNING, and containing 6,731 square feet (0.154 acres) of land, more or less, to be annexed.

The above-listed description is in accordance with a plat of survey entitled "ANNEXATION SURVEY FOR THE CITY OF ASHEBORO." This plat was drawn under the supervision of Jerry A. King, Professional Land Surveyor with Registration Number L-3373, from an actual survey made under his supervision. The said plat is dated September 27, 2010, and the job number listed on the plat is 6030 S 10.

**Section 2.** Upon and after November 4, 2010, the above-described territory and its citizens and property shall be subject to all debts, laws, ordinances, and regulations in force in the City of Asheboro and shall be entitled to the same privileges and benefits as other parts of the City of Asheboro. Said territory shall be subject to municipal taxes according to Section 160A-58.10 of the North Carolina General Statutes.

**Section 3.** The Mayor of the City of Asheboro shall cause to be recorded in the office of the Register of Deeds of Randolph County, North Carolina, and in the office of the Secretary of State of North Carolina at Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1 above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the Randolph County Board of Elections, as required by Section 163-288.1 of the North Carolina General Statutes.

**Section 4.** All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed.

**Section 5.** This ordinance shall be in full force and effect upon and after the 4<sup>th</sup> day of November, 2010.

This ordinance was adopted by the Asheboro City Council in open session during a regular meeting held on the 4<sup>th</sup> day of November, 2010.

s/ David H. Smith  
David H. Smith, Mayor

ATTEST:

s/ Holly H. Doerr  
Holly H. Doerr, City Clerk

Approved as to form:

s/ Jeffrey C. Sugg  
Jeffrey C. Sugg, City Attorney

**8. Public Comment Period.**

There being no comments from the public, Mayor Smith closed the public comment period.

**9. Taxicab Franchise:**

**(a) Consideration of a resolution setting a public hearing on the question of renewing the taxicab franchise for Red Bird Cab, LLC.**

Mr. Sugg reported that the current franchise for Red Bird Cab, LLC expires in December and that Red Bird Cab, LLC has submitted an application for renewal of its certificate of convenience and necessity to operate four (4) taxicabs along with proof of financial responsibility. Additionally, Mr. Sugg presented and recommended adoption, by reference, of a resolution setting a public hearing on the question of renewing the taxicab franchise for Red Bird Cab, LLC. Upon motion by Mr. Bell and seconded by Dr. Fountain, Council voted unanimously to adopt the following resolution by reference.

**51 RES 11-10**

**RESOLUTION AUTHORIZING A PUBLIC HEARING ON THE QUESTION OF RENEWING THE TAXICAB FRANCHISE GRANTED TO RED BIRD CAB, LLC**

**WHEREAS**, Red Bird Cab, LLC, which has an office in Asheboro at 833 W. Salisbury Street, operates a taxicab service within the corporate limits of the City of Asheboro pursuant to an existing Certificate of Convenience and Necessity; and

**WHEREAS**, Red Bird Cab, LLC's franchise expires on December 8, 2010, and the taxicab service must properly renew its Certificate of Convenience and Necessity from the City of Asheboro in order to lawfully continue to operate taxicabs within the jurisdiction of the City of Asheboro; and

**WHEREAS**, Section 114.17 of the Code of Asheboro provides that applications to renew a taxicab franchise shall be filed annually and a public hearing on the renewal application may be conducted in the same manner as provided for the original application for a Certificate of Convenience and Necessity; and

**WHEREAS**, the Asheboro City Council has concluded that a properly noticed public hearing is the best means to acquire information as to whether Red Bird Cab, LLC provides taxicab service within the City of Asheboro in a manner that furthers the public's convenience and satisfactorily addresses the public necessity for the operation of quality taxicab services within the city.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Asheboro that, prior to the second and final vote on the franchise ordinance for Red Bird Cab, LLC, a public hearing shall be held on December 9, 2010, on the question of the requested renewal of a Certificate of Convenience and Necessity; and

**BE IT FURTHER RESOLVED** that the city clerk is hereby instructed to give notice of the said public hearing in accordance with Section 114.12 of the Code of Asheboro.

This resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 4<sup>th</sup> day of November, 2010.

s/ David H. Smith  
David H. Smith, Mayor

ATTEST:

\_\_\_\_\_  
s/ Holly H. Doerr  
Holly H. Doerr, City Clerk

**(b) First reading of an ordinance granting a Certificate of Convenience and Necessity to Red Bird Cab, LLC for the operation of taxicabs.**

Mr. Sugg presented and recommended adoption, by reference, of the first reading of an ordinance granting a renewal of a certificate of convenience and necessity to Red Bird Cab, LLC to operate four (4) taxicabs within the City of Asheboro. The second reading of this ordinance will be presented to the Council during its regular meeting on December 9, 2010.

Upon motion by Mr. Bell and seconded by Dr. Fountain, Council voted unanimously to adopt the first reading of the following ordinance.

**AN ORDINANCE GRANTING A RENEWAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO RED BIRD CAB, LLC**

**WHEREAS**, Red Bird Cab, LLC, which has an office in Asheboro at 833 W. Salisbury Street, operates a taxicab service within the corporate limits of the City of Asheboro pursuant to an existing Certificate of Convenience and Necessity; and

**WHEREAS**, Red Bird Cab, LLC's franchise expires on December 8, 2010, and the limited liability company must properly renew its Certificate of Convenience and Necessity in order to lawfully continue to operate taxicabs within the jurisdiction of the City of Asheboro; and

**WHEREAS**, the available evidence indicates that Red Bird Cab, LLC is providing taxicab service within the City of Asheboro in a manner that furthers the public's convenience and addresses the public necessity for the operation of adequate taxicab services within the city.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Asheboro as follows:

**Section 1.** A renewed Certificate of Convenience and Necessity to operate four (4) taxicabs upon and over the streets of the City of Asheboro is hereby granted to Red Bird Cab, LLC (hereinafter referred to as the "Grantee").

**Section 2.** This franchise is granted for a term of one (1) year from and after the 9<sup>th</sup> day of December, 2010. Thereafter, applications for renewals shall be filed annually in accordance with the Code of Asheboro.

**Section 3.** This franchise is granted upon the following specific conditions and requirements:

- (a) Prior to the effective date of this ordinance, the Grantee shall furnish to the City Clerk of the City of Asheboro a list showing the make, model, and vehicle identification number of each taxicab to be operated pursuant to this franchise.
- (b) Prior to the effective date of this ordinance, the Grantee shall furnish to the City Clerk of the City of Asheboro a certificate of insurance from an insurance carrier duly authorized to do business in the State of North Carolina evidencing that insurance coverage for the taxicabs referenced in subsection (a) of this ordinance is in effect in an amount that complies with Section 114.14 of the Code of Asheboro for the duration of the Certificate of Convenience and Necessity issued pursuant to this ordinance.
- (c) The Grantee shall otherwise comply with all applicable laws and regulations pertaining to the operation of taxicabs in the City of Asheboro, specifically including without limitation Chapter 114 of the Code of Asheboro.

**Section 4.** If a conflict is discovered between the provisions of this ordinance granting a Certificate of Convenience and Necessity to Red Bird Cab, LLC and Chapter 114 of the Code of Asheboro, the provisions found in Chapter 114 of the Code of Asheboro shall control.

**Section 5.** This ordinance shall be deemed to have been finally adopted by the Asheboro City Council after receiving approval at two (2) regular meetings of the council.

This ordinance was approved by the Asheboro City Council for the first time in open session during a regular meeting held on the 4<sup>th</sup> day of November, 2010.

This ordinance was approved by the Asheboro City Council for the second time in open session during a regular meeting held on the 9<sup>th</sup> day of December, 2010.

\_\_\_\_\_  
David H. Smith, Mayor

ATTEST:

\_\_\_\_\_  
Holly H. Doerr, City Clerk

**CERTIFICATION**

I, Holly H. Doerr, City Clerk for the City of Asheboro, North Carolina, do hereby certify that the ordinance granting a renewal of a Certificate of Convenience and Necessity to Red Bird Cab, LLC to operate four (4) taxicabs was duly passed by the City Council of the City of Asheboro after a first reading on the 4<sup>th</sup> day of November, 2010, and after a second reading on the 9<sup>th</sup> day of December, 2010.

WITNESS my hand and seal, this the \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Holly H. Doerr, City Clerk

**10. Resolution of intent to close a portion of Birkhead Street that crosses the railroad tracks as requested by the North Carolina Department of Transportation Rail Division Engineering and Safety Branch.**

Mr. Bunker presented and recommended adoption, by reference, of the above-referenced resolution.

Upon motion by Mr. Bell and seconded by Mr. Hunter, Council voted unanimously to adopt the following resolution by reference.

**52 RES 11-10**

**RESOLUTION OF INTENT TO PERMANENTLY CLOSE A SECTION OF THE PUBLIC RIGHT-OF-WAY FOR BIRKHEAD STREET**

**WHEREAS**, Section 160A-299 of the North Carolina General Statutes prescribes the procedure to be followed by a city in order to permanently close a street or alley; and

**WHEREAS**, the Engineering and Safety Branch of the North Carolina Department of Transportation's Rail Division has requested the permanent closure of the section of the 50-foot wide public right-of-way for Birkhead Street that crosses the Norfolk Southern Railway tracks; and

**WHEREAS**, the City Council of the City of Asheboro has determined that it is advisable to formally consider the permanent closure of the section of Birkhead Street described in section 1 of this resolution; and

**WHEREAS**, in order to consider the permanent closure of a public street in accordance with Section 160A-299 of the North Carolina General Statutes, the city council must adopt a resolution declaring the governing board's intent to permanently close a described street or section of the street and set a date for a public hearing on the question of the proposed permanent street closure.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Asheboro as follows:

**Section 1.** It is the intent of the City Council of the City of Asheboro to permanently close a section of the 50-foot wide irrevocably dedicated public right-of-way for Birkhead Street that is located within the corporate limits of the City of Asheboro and is more particularly described as follows:

Asheboro Township, Randolph County, North Carolina:

BEGINNING at a new iron rod set in the southern margin of the 50-foot wide public right-of-way for Birkhead Street in the vicinity of the area where the street crosses the Norfolk Southern Railway tracks, the said new iron rod is located the following courses and distances from NCDOT GPS Monument Y4808J-1: South 68 degrees 16 minutes 40 seconds East 249.68 feet to a point set with rebar; thence North 05 degrees 08 minutes 19 seconds East 98.47 feet to a point not set in the southern margin of the public right-of-way for Birkhead Street; thence North 85 degrees 33 minutes 27 seconds West 17.79 feet along the southern margin of the public right-of-way for Birkhead Street to a P-K nail; thence continuing along the southern margin of the public right-of-way for Birkhead Street North 85 degrees 33 minutes 27 seconds

West 77.42 feet to the new iron rod that is the beginning point for this metes and bounds description (NCDOT GPS Monument Y4808J-1 is located by means of the North Carolina Coordinate System at the coordinates of North 709,535.588 feet and East 1,757,511.018 feet (NAD 83)); thence from the said beginning point along the southern margin of the public right-of-way for Birkhead Street North 85 degrees 33 minutes 27 seconds West 98.61 feet to a P-K nail; thence across the Norfolk Southern Railway tracks in a northwesterly direction along the arc of a curve with a radius of 356.9719 feet and an arc length of 38.09 feet a chord bearing and distance of North 88 degrees 36 minutes 51 seconds West 38.07 feet to a new iron rod; thence continuing along the southern margin of the public right-of-way for Birkhead Street South 88 degrees 19 minutes 44 seconds West 2.72 feet to a new iron rod; thence North 03 degrees 52 minutes 59 seconds West 50.04 feet across Birkhead Street to a new iron rod set in the northern margin of the public right-of-way for Birkhead Street; thence North 88 degrees 19 minutes 44 seconds East 4.65 feet to a new iron rod; thence across the Norfolk Southern Railway tracks in a southeasterly direction along the arc of a curve with a radius of 406.9719 feet and an arc length of 43.43 feet a chord bearing and distance of South 88 degrees 36 minutes 51 seconds East 43.41 feet to a new iron rod; thence continuing along the northern margin of the public right-of-way for Birkhead Street the following course and distance: South 85 degrees 33 minutes 27 seconds East 98.61 feet to a new iron rod; thence across Birkhead Street in a southwesterly direction along the arc of a curve with a radius of 45.0000 feet and an arc length of 53.01 feet a chord bearing and distance of South 04 degrees 26 minutes 33 seconds West 50.00 feet to the point and place of the BEGINNING, and being all of that certain 0.158 of an acre (6,895 square feet) of land, more or less, encompassed by the preceding metes and bounds description, specifically including the public right-of-way for the above-described section of Birkhead Street. The right-of-way to be permanently closed is shown on the plat of survey referenced below.

This description is in accordance with a plat of survey entitled "SURVEY OF PROPOSED CLOSING OF A PORTION OF BIRKHEAD STREET" that was drawn under the supervision of Andrew Michael Smith, a Professional Land Surveyor with registration number L-3784. This plat of survey, which is dated October 14, 2010, is hereby incorporated into this resolution by reference as if copied fully herein.

**Section 2.** A public hearing on the question of the proposed permanent closure of the above-described section of the irrevocably dedicated public right-of-way for Birkhead Street is hereby called and is to be held during the regular meeting of the City Council of the City of Asheboro that begins at 7:00 p.m. on December 9, 2010, in the Council Chamber of the City of Asheboro Municipal Building, which is located at 146 North Church Street in Asheboro. At this public hearing, any person may be heard on the question of whether the intended permanent closure of the above-described section of public right-of-way for Birkhead Street would be detrimental to the public interest or the property rights of any individual.

**Section 3.** The city clerk is hereby directed to cause the publication of this Resolution of Intent in *The Courier-Tribune*, a newspaper of general circulation in the City of Asheboro and Randolph County, once a week for four (4) successive weeks prior to the above-referenced public hearing.

**Section 4.** The city clerk is further directed to transmit a copy of this Resolution of Intent by registered or certified mail to each owner of property adjoining Birkhead Street. The identity of the property owners is to be determined on the basis of the Randolph County Tax Department's records.

**Section 5.** The city clerk is further directed to cause the prominent posting of this Resolution of Intent in a minimum of two (2) locations along the above-described section of Birkhead Street.

This Resolution of Intent was adopted in open session during a regular meeting of the Asheboro City Council that was held on the 4<sup>th</sup> day of November, 2010.

s/ David H. Smith  
David H. Smith, Mayor

ATTEST:

s/ Holly H. Doerr  
Holly H. Doerr, City Clerk

**11. Sunset Theatre Capital Campaign:**

**(a) Notification of the receipt of a grant from the Marion Stedman Covington Foundation.**

Mayor Smith reported that the city has received a letter from the Marion Stedman Covington Foundation awarding the city a grant in the amount of \$50,000.00 to be paid over two (2) years in support of the renovation of the Sunset Theatre. In order to receive payment of the awarded grant, the city must accept the terms of the award by executing a Grant Agreement Form with the foundation.

**(b) Authorization to execute a grant agreement with the Marion Stedman Covington Foundation.**

Upon motion by Dr. Fountain and seconded by Mr. Baker, Council voted unanimously to authorize the execution of a grant agreement with the Marion Stedman Covington Foundation.

A copy of the approved grant agreement is on file in the City Clerk's office.

**12. Consideration of the renewal of an existing lease agreement with Fairway Outdoor Advertising.**

Mr. Sugg presented and recommended adoption, by reference, of a resolution approving a lease agreement between the City of Asheboro and Fairway Outdoor Advertising.

Mr. Baker moved to adopt the following resolution by reference. Mr. Burks seconded the motion. Council Members Baker, Bell, Burks, Hunter, and Moffitt voted in favor of the motion. Dr. Fountain voted no.

**53 RES 11-10**

**RESOLUTION APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF ASHEBORO AND FAIRWAY OUTDOOR ADVERTISING**

**WHEREAS**, the City of Asheboro (hereinafter referred to as the "City") owns a certain parcel of land located along United States Highway 220 Business South at McCranford Road and upon which is located an outdoor advertising structure titled to Fairway Outdoor Advertising, a division of MCC Outdoor, LLC (hereinafter referred to as "Fairway"); and

**WHEREAS**, Fairway wishes to continue leasing from the City the portion of the above-described premises needed to maintain the existing outdoor advertising structure; and

**WHEREAS**, Section 160A-272 of the North Carolina General Statutes provides that property owned by the City may be leased to a tenant if the desired property will not be needed by the City for the term of the lease; and

**WHEREAS**, notice of the city council's intent to consider a resolution authorizing a new lease agreement with Fairway with an annual rental rate of one thousand five hundred and no/100 dollars (\$1,500.00) and a lease term that expires on January 31, 2013 was published in *The Courier-Tribune* on October 14, 2010; and

**WHEREAS**, the specific premises encumbered by the proposed lease agreement with Fairway will not be needed by the City during the term of the lease.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Asheboro as follows:

**Section 1.** The proposed lease agreement attached to this resolution as "EXHIBIT 1" and incorporated herein by reference is hereby approved.

**Section 2.** The Mayor and City Clerk of the City of Asheboro are hereby authorized and directed to execute any and all documents and instruments necessary to carry into full force and effect the said lease agreement.

This resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 4<sup>th</sup> day of November, 2010.

\_\_\_\_\_  
s/ David H. Smith  
David H. Smith, Mayor

ATTEST:

\_\_\_\_\_  
s/ Holly H. Doerr  
Holly H. Doerr, City Clerk

**EXHIBIT 1**

**STATE OF NORTH CAROLINA**

**LEASE AGREEMENT  
(Lease No. G53A)**

**COUNTY OF RANDOLPH**

THIS AGREEMENT is made this the \_\_\_\_ day of \_\_\_\_\_, 2010, by and between **THE CITY OF ASHEBORO**, a North Carolina municipal corporation with its principal office located in Randolph County, North Carolina, (hereinafter referred to as the "Lessor") and **FAIRWAY OUTDOOR ADVERTISING**, a Division of MCC OUTDOOR, LLC, (hereinafter referred to as the "Lessee").

**WITNESSETH:**

1. Lease of Property. Lessor hereby leases to Lessee, subject to the terms and conditions hereinafter expressed, and Lessee hereby accepts as tenant of the Lessor that minimal portion of the Lessor's real property located along United States Highway 220 Business South at McCranford Road necessary to maintain one (1) existing outdoor advertising structure with sufficient access to allow Lessee to service and maintain the said structure.

2. Term of Lease. The term of this lease shall be deemed to commence on February 1, 2011 (hereinafter referred to as the "Commencement Date"), and shall terminate at midnight on January 31, 2013. Subject to the provisions found below pertaining to the removal of improvements, Lessee may not remain within the premises after the day of lease expiration without the Lessor's written approval.

3. Rent. During the term of this lease, the Lessee shall pay to the Lessor, without previous demand, setoff, or deduction, an annual rent of One Thousand Five Hundred and no/100 dollars (\$1,500.00) in lawful money of the United States. The entirety of the annual rental amount specified in the immediately preceding sentence shall be due and payable in advance of the Commencement Date and the anniversary date thereof. All rental payments shall be paid to the Lessor or its authorized agent at the address set out in the Notice paragraph below or at such other place as may be designated by the Lessor from time to time. Delivery and payment of rent shall be deemed made only upon receipt of the applicable rent payment at the address of the Lessor set out in the Notice paragraph below; placing a rent payment in the mail shall not constitute delivery or payment of the rent.

4. Termination.

- (a) If Lessee should fail to pay any rental or other amounts payable under this agreement when due, or if Lessee should fail to perform any other of the covenants, terms, or conditions of this agreement, prior to exercising any rights or remedies against Lessee on account thereof, Lessor shall first provide Lessee with written notice of the failure and provide Lessee with a thirty (30) calendar day period to cure such failure. Lessee agrees and covenants that, upon such notification of a violation or breach of the terms and conditions of this agreement, it shall immediately and diligently undertake to correct any such condition. Lessee must, without delay or excuse, absolutely correct the defect or violation on or before the exact date specified by Lessor. When the Lessee's failure to perform pertains to the failure to make a scheduled payment to the Lessor, the Lessee shall, in addition to any other remedy available to Lessor, pay a late fee equal to five percent (5%) of any installment of rent that is not received within ten (10) calendar days of its due date. In the event the failure to perform or comply with any term and condition of this agreement is not cured by Lessee within the above-referenced thirty (30) calendar day period to cure or within any other time period specified by Lessor in its written notice of the breach or failure to perform, whichever is later, the Lessor may, at its option, terminate this agreement immediately. Upon such termination, this agreement shall become null and void, and Lessor and Lessee shall have no further obligations to each other, other than Lessee's obligation to remove its property as hereinafter provided.
- (b) Any continuing violation or breach by Lessor of any of the terms and conditions of this agreement shall be grounds for termination of this agreement by Lessee upon thirty (30) calendar days written notice to Lessor.

5. Indemnification. Lessee agrees to indemnify, defend, and hold harmless Lessor and its elected and appointed officials, employees, agents, and servants, in both their official and individual capacities, from and against any and all injury, loss, damage, or liability (or any claims in respect of the

foregoing), costs, or expenses (including reasonable attorneys' fees and court costs) directly or indirectly caused by Lessee, its officers, representatives, agents, contractors, and employees. However, Lessee shall not indemnify or save harmless the Lessor from such claims or damages as may be attributed to the acts or omissions of the Lessor and its officers, representatives, agents, contractors, and employees.

6. Warranties. Lessor and Lessee each acknowledge and represent that it is duly organized, validly existing, and in good standing and has the right, power, and authority to enter into this Agreement and bind itself hereto through the official set forth below as signatory for the party. Furthermore, Lessor covenants that it will not permit any adjoining premises that are owned or controlled by Lessor to be used for advertising purposes, and Lessor will not permit any officer, employee, agent, or contractor of the Lessor to materially and intentionally obstruct the sign(s) on Lessee's outdoor advertising structure. In the event of any transfer of Lessor's interest in the above-described premises, Lessor agrees to promptly give Lessee notice of such transfer and to deliver to Lessor's transferee written notice of the existence of this lease and a copy thereof.

7. Removal of Improvements. Title to all improvements constructed or installed by Lessee on the demised premises shall remain in Lessee and all improvements constructed or installed by Lessee shall at all times be and remain the property of Lessee. Upon the expiration or termination of this agreement, the Lessee shall, within a reasonable period not to exceed ninety (90) calendar days, remove all improvements, fixtures, and personal property constructed or installed on the Lessor's premises by Lessee and shall restore the Lessor's premises to its original condition, reasonable wear and tear and casualty not caused by the Lessee excepted. Nothing contained herein shall be interpreted to grant permission to Lessee to holdover or to deprive the Lessor of any rights and remedies with respect thereto.

8. Condemnation. In the event of condemnation or direct purchase sale to a governmental agency while this lease is operative, Lessee agrees to make no claim to any proceeds due to Lessor as a result of the condemnation, but retains a right to pursue compensation due it as a result of the taking, and Lessor agrees to take no action inconsistent with Lessee's rights herein stated.

9. Cancellation of Lease. If the view of the premises or outdoor advertising structure erected thereon is partially or wholly obstructed, or its advertising value impaired or diminished by reduced vehicular circulation, or other construction or use of such signs is prevented or restricted by law, or any permits to build are denied, the Lessee may immediately, at its option, cancel this lease and receive all rent paid for the unexpired term hereof by giving the Lessor notice in writing of such obstruction, impairment, prevention, or restriction of use.

10. Maintenance. Lessee will be responsible for maintaining its outdoor advertising structure in a reasonable and safe state of repair.

11. Hazardous Substances. Lessee shall not introduce or use on the premises any substance, chemical, or waste that is identified as hazardous, toxic, dangerous, or unlawful in any applicable federal, state, or local law or regulation.

12. Prohibited Advertising. There shall be no political, alcohol, adult, or family morals advertising on this billboard.

13. Governing Law. This agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. Venue for any litigation shall be in Randolph County, North Carolina.

14. Notices. Except as specifically provided elsewhere in this lease agreement, all notices, requests, demands, and communications hereunder must be given in writing and shall be deemed validly given on the date when deposited in the United States mail as certified or registered mail, return receipt requested, and addressed as follows:

**LESSOR:** City Manager  
City of Asheboro  
Post Office Box 1106  
Asheboro, North Carolina 27204-1106

**LESSEE:** Fairway Outdoor Advertising  
1920 West Lee Street  
Greensboro, North Carolina 27403

15. Miscellaneous Provisions.

(a) *Written Modification.* This lease agreement cannot be modified except by a written modification executed by Lessor and Lessee in the same manner as this agreement is executed.

(b) *Gender/Plurals.* Whenever appropriate in this agreement, personal pronouns shall be deemed to include other genders and the singular to include the plural, if applicable.

- (c) *Integrated Agreement.* This lease agreement embodies the entire agreement between the parties in connection with this transaction, and there are no oral or parol agreements, representations, or inducements existing between the parties relating to this transaction that are not expressly set forth herein and covered hereby.
- (d) *Parties Not Joint Venturers.* Nothing contained herein shall be construed to place the parties in the relationship of partners or joint venturers, and neither party shall have the power to obligate or bind the other party in any manner whatsoever.
- (e) *Waiver of Breach Not Deemed Waiver of Subsequent Breach.* No written waiver by any party at any time of any breach of any other provision of this agreement shall be deemed a waiver of a breach of any provision herein or a consent to any subsequent breach of the same or any other provisions. If any action by any party shall require the consent or approval of another party, such consent or approval of such action on any occasion shall not be deemed a consent to or approval of such action on any subsequent occasion or a consent to or approval of any other action on the same or any subsequent occasion.
- (f) *Enumerated Rights Shall Not Be Deemed To Be Exclusive Remedies.* The various rights, powers, and remedies herein contained and reserved to either Lessor or Lessee shall not be considered as exclusive of any other right, power, or remedy, but the same shall be construed as cumulative and shall be in addition to every other right, power, or remedy now or hereafter existing at law, in equity, or by statute. No delay or omission of a party to exercise any right, power, or remedy arising from any omission, neglect, or default of the other party shall impair any such right, power, or remedy nor shall any such delay or omission be construed as a waiver of any such default or be construed as acquiescence therein.
- (g) *Captions Are Merely Informative.* The captions and section numbers appearing in this agreement are inserted only as a matter of convenience and do not define, limit, construe, or describe the scope of such paragraphs or sections of this agreement or in any way affect this agreement.
- (h) *Time Is of the Essence.* Time shall be of the essence under this lease agreement and each and every term and condition thereof.
- (i) *Multiple Counterparts.* This agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and it shall not be necessary in making proof of this agreement to produce or account for more than one such fully-executed counterpart.
- (j) *Product of Mutual Negotiation.* Both Lessor and Lessee acknowledge and stipulate that this lease agreement is the product of mutual negotiation and bargaining. As such, the doctrine of construction against the drafter shall have no application to this agreement.
- (k) *Agreement Is Not Executory.* Each of the parties agrees that this agreement is not an executory contract subject to assumption as defined by the Bankruptcy Code. The parties further specifically acknowledge that this provision was critical to the agreement and was bargained for and part of the consideration for the agreement.
- (l) *Severability.* If any term or condition of this agreement is found to be unenforceable by a court of competent jurisdiction, the remaining terms and conditions shall remain binding upon the parties as though said unenforceable provision was not contained herein. However, if the invalid, illegal, or unenforceable provision materially affects this agreement, then the agreement may be terminated by either party on ten (10) business days prior written notice to the other party hereto.
- (m) *Interpretation.* Unless otherwise specified, the use of the term "including" will be interpreted to mean "including but not limited to."
- (n) *Estoppel.* Either party will, at any time upon twenty (20) business days prior written notice from the other, execute, acknowledge, and deliver to the other a statement in writing (i) certifying that this agreement is unmodified and in full force and effect, or if modified, stating the nature of such modification and certifying that this agreement, as modified, is in full force and effect; (ii) certifying the date to which the rent and other charges are paid in advance, if any; and (iii) acknowledging that there are not, to such party's knowledge, any uncured defaults on the part of the other party hereunder, or specifying such defaults if any are claimed.
- (o) *No Electronic Signature/No Option.* The submission of this lease agreement to any party for examination or consideration does not constitute an offer, reservation of, or option for the premises based on the terms set forth herein. This agreement will become effective as an

agreement only upon the handwritten legal execution, acknowledgment, and delivery hereof by Lessor and Lessee.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first above written.

**LESSOR:**

**THE CITY OF ASHEBORO,  
a North Carolina Municipal Corporation**

By: \_\_\_\_\_  
David H. Smith, Mayor

ATTEST:

\_\_\_\_\_  
Holly H. Doerr, City Clerk

**LESSEE:**

**FAIRWAY OUTDOOR ADVERTISING,  
a Division of MCC OUTDOOR, LLC**

By: \_\_\_\_\_  
Its General Manager

By: \_\_\_\_\_  
Its Leasing Agent

**13. Notification of a special meeting of the city council for a workshop on Tuesday, November 9, 2010 at 5:30 p.m. in the Council Chamber located in Asheboro City Hall.**

Mayor Smith announced that there will be a special meeting of the Asheboro City Council on Tuesday, November 9, 2010 at 5:30 p.m. in the Council Chamber.

**With the general consent of the Council, Mayor Smith moved agenda item number 16 to immediately follow agenda item number 13.**

**14. Upcoming events: [Agenda Item Number 16]**

- The Courage for Cancer 5K Run is scheduled for November 6, 2010 at 7:00 a.m.
- The Veterans Day Parade is scheduled for November 11, 2010 at 4:00 p.m.
- The SCORE luncheon is scheduled for November 18, 2010 at 12:00 p.m.
- The annual Christmas parade is scheduled for December 3, 2010 at 7:00 p.m.
- "Christmas on Sunset" is scheduled for December 10, 2010 at 5:30 p.m.

**15. Consideration of a request to go into closed session pursuant to Section 143-318.11(a)(4) of the North Carolina General Statutes in order to discuss an economic development project. [Agenda Item Number 14]**

Mayor Smith entertained a motion to go into closed session pursuant to the statutory provisions found in Section 143-318.11(a)(4) of the North Carolina General Statutes in order to discuss an economic development project.

Upon motion by Dr. Fountain and seconded by Mr. Baker, Council voted unanimously to go into closed session.

**16. Consideration of setting a date for a joint public hearing with the Randolph County Board of Commissioners on the question of an economic development project. [Agenda Item Number 15]**

After returning to open session, Mr. Bell moved to set the date for a joint public hearing on the question of an economic development project with the Randolph County Board of Commissioners for November 16, 2010 at 6:00 p.m. Mr. Burks seconded the motion, and the Council voted unanimously to set the date for a joint public hearing on November 16, 2010. Council Members Baker, Bell, Burks, Fountain, Hunter, and Moffitt voted in favor of the motion. Said public hearing will be held in the Commissioners' Meeting Room at the Randolph County Office Building located at 725 McDowell Road, Asheboro, North Carolina 27205.

There being no further business, the meeting was adjourned at 8:43 p.m.

s/ Holly H. Doerr  
Holly H. Doerr, CMC, City Clerk

s/ David H. Smith  
David H. Smith, Mayor