

**REGULAR MEETING  
ASHEBORO CITY COUNCIL  
CITY COUNCIL CHAMBER, MUNICIPAL BUILDING  
THURSDAY, JANUARY 10, 2013  
7:00 p.m.**

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

David H. Smith            ) – Mayor Presiding  
  
Talmadge S. Baker        )  
Clark R. Bell             )  
Edward J. Burks         )  
Linda H. Carter         ) – Council Members Present  
Michael W. Hunter       )  
Walker B. Moffitt       )  
Charles A. Swiers        )

John N. Ogburn, III, City Manager  
Dumont Bunker, P.E., City Engineer  
Holly H. Doerr, CMC, NCCMC, City Clerk/Paralegal  
T. Myers Johnson, Human Resources Director  
Justin T. Luck, Zoning Administrator/Planner  
Ralph W. Norton, Assistant Chief of Police  
Trevor L. Nuttall, Community Development Director  
Deborah P. Reaves, Finance Director  
Jeffrey C. Sugg, City Attorney  
Kermit D. Williamson, Environmental Services Superintendent  
Rickey D. Wilson, Chief of Police

**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. The annual report from Ms. Bonnie Renfro, President of the Randolph County Economic Development Corporation.**

Ms. Bonnie Renfro, President of the Randolph County Economic Development Corporation presented the corporation's annual report for 2012. Throughout the year, approximately 358 new jobs were created with a new capital investment of approximately \$ 28,100,000.00. A copy of the annual report presented by Ms. Renfro is on file in the City Clerk's office.

Additionally, the Council received a written "Community Profile" and a "2012 Existing Business Report – Asheboro" along with comments from Mr. Kevin Franklin, Existing Business and Industry Coordinator.

**4. Presentation of fiscal year-end audit report by Mr. Steve Hackett, CPA with the firm of Maxton McDowell, CPA.**

Mayor Smith announced that Mr. Hackett was unable to attend the meeting due to illness, and the fiscal year-end audit report will be heard at a later date.

**5. Employee Retirements:**

**(a) MSG Donnie Hill, Asheboro Police Department, retiring after 27 years of service.**

Chief Wilson presented Master Police Sergeant Donald Raeford Hill with a plaque that included his badge as a token of gratitude for his loyal service to the City of Asheboro as a police officer from August 12, 1985 until November 1, 2012. Additionally, Chief Wilson presented Sergeant Hill with his service side arm that he carried at the time of his retirement along with a retirement plaque on behalf of the City of Asheboro.

**(b) CPT Junior Vuncannon, Asheboro Police Department, retiring after 27 years of service.**

Chief Wilson presented Captain Sanford Allen Vuncannon, Jr. with a plaque that included his badge as a token of gratitude for his loyal service to the City of Asheboro as a police officer from September 4, 1985 until January 1, 2013. Additionally, Chief Wilson presented Captain Vuncannon with his service side arm that he carried at the time of his retirement along with a retirement plaque on behalf of the City of Asheboro.

**6. Consent agenda:**

Upon motion by Mr. Burks and seconded by Ms. Carter, Council voted unanimously to approve the following consent agenda items:

- (a) The minutes of the City Council's regular meeting on December 6, 2012.**
- (b) The findings of fact, conclusions of law, and order pertaining to the Special Use Permit issued under Case No. SUP-12-03.**

Case No. SUP-12-03  
City Council  
City of Asheboro

IN THE MATTER OF THE APPLICATION FOR A SPECIAL USE PERMIT  
AUTHORIZING THE REPAIR OF A LEGAL NONCONFORMING  
MCDONALD'S SIGN AT 773 WEST DIXIE DRIVE  
  
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 a properly advertised quasi-judicial hearing conducted during a regular meeting of the Council that was held on December 6, 2012. Having considered all competent evidence and argument, the Council, on the basis of competent, material, and substantial evidence, does hereby enter the following:

FINDINGS OF FACT

1. The Special Use Permit sought under this case number has been requested in order to allow McDonald's Corporation to proceed with repairing/improving an approximately 56-foot free-standing sign that identifies with a traditional corporate logo/trademark the McDonald's store located at 773 West Dixie Drive in Asheboro.
2. The lot upon which the sign in question is located (hereinafter referred to as the "Zoning Lot") is approximately 3.3 acres in size, is owned by Joan R. Hurley and Wanda R. Lindsay, and is more specifically identified by Randolph County Parcel Identification Number 7750455636.
3. The real property owners, McDonald's Corporation, and the sign company, Sign World, Inc., that started the Special Use Permit application for McDonald's Corporation are collectively in support of the granting of the requested Special Use Permit. Since the sign to be repaired is a sign that supports the corporation's restaurant at 773 West Dixie Drive, McDonald's Corporation will be deemed to be the applicant for this Special Use Permit.
4. With this application, the Applicant is not requesting authorization to take any action other than work on the existing legal nonconforming 56-foot high free-standing sign that is located on the Zoning Lot.
5. The existing free-standing sign, which is fifty-six feet (56') in height, is a legal nonconforming sign because the sign was lawfully erected prior to the imposition of the current maximum sign height of thirty feet (30').
6. The actual work to be performed on the sign, which displays the name "McDonald's" and depicts the golden arches, consists of removing the footing and steel pole supporting the sign and then installing a new footing and pole structure. The existing sign will then be re-erected on the new support structure at the same height as before and approximately five feet (5') further from the public right-of-way line than was previously the case. There will be no change in the face of the sign. This work will be performed in accordance with plans approved by an engineer.
7. Jerry McKenzie, President of Sign World, Inc., offered uncontroverted testimony that McDonald's Corporation wants work performed on the sign because the corporation wants to make sure the sign is compliant with the current standards. The existing sign has a wind load of sixty (60) to

seventy (70) miles per hour. The new standard for such a sign is now a wind load of ninety (90) miles per hour.

8. A portion of the Zoning Lot is zoned R7.5 (Medium-Density Residential). However, the commercial activities on the lot and the sign for which repair work is proposed are located within the portion of the lot that is zoned B2 (General Commercial).

9. The surrounding land uses are commercial uses to the north and west, while commercial and multi-family land uses are located to the east. Single-family residential land use is located to the south.

10. The growth strategy map identifies the area in which the Zoning Lot is located as a primary growth area and the proposed land development plan map designates the area as commercial.

11. Section 516(b) of the Asheboro Zoning Ordinance provides, "All signs except those specifically addressed below that do not conform to this Article (this reference is to Article 500 that regulates signs) shall be considered as nonconforming and regulated according to Article 800." Section 516(b)3. goes on to provide, "Alteration: See section 803.6."

12. Section 803.6 of the Asheboro Zoning Ordinance provides as follows:

Minor repairs to and routine maintenance of property not required by the partial or total destruction of a structure (see 803.8) where non-conforming situations exist are permitted and encouraged. Except for single-family residential structures (including mobile homes), if the estimated costs of the renovation work exceeds 10 percent of the appraised value of the structure, the work may be done only after issuance of a Special Use Permit by the City Council. The Council shall issue the permit if it finds that the work will not result in violation of any other paragraphs of this subsection (particularly part 803.5) or make the property more incompatible with the surrounding neighborhood.

13. Section 803.5 of the Asheboro Zoning Ordinance provides as follows:

Physical alteration of structures or the placement of new structures on open land are unlawful if they result in:

A. An increase in the total amount of space devoted to a nonconforming use;

B. Greater nonconformity with respect to dimensional restrictions such as yard requirements, height limitations, or density requirements; or

C. The enclosure of previously unenclosed areas, even though those areas were previously used in connection with the nonconforming activity. An area is unenclosed unless at least 75 percent of the perimeter of the area is marked by a permanently constructed wall or fence.

14. The Applicant has submitted a statement indicating that the cost of the work to be performed on the sign in question equals approximately 40.9 percent of the sign's value.

15. The Community Development Division Director, Mr. Trevor Nuttall, testified that the proposal, specifically including site plan, submitted by the Applicant for consideration by the Council has been reviewed by the city's planners and found, pending the proper issuance of the requested Special Use Permit, to be compliant with the specifications of the Asheboro Zoning Ordinance.

16. A certified real estate appraiser, Neil C. Gustafson, MAI, offered uncontroverted testimony and entered into the record a written expert opinion. This written opinion stated, in part, as follows:

Therefore, based on my experience and my review of the proposed new replacement foundation and pole for the existing sign, I have concluded that the proposed replacement foundation and pole will not injure the value of the adjoining or abutting properties. In addition, because this proposed foundation and pole replaces a foundation and pole of an existing sign, it will maintain the existing harmony of the area. Finally, because the replacement foundation and pole is for an existing sign, it will not make the property more incompatible with the surrounding neighborhood.

17. No testimony was offered in opposition to the requested Special Use Permit.

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

CONCLUSIONS OF LAW

1. When an applicant has produced competent, material, and substantial evidence tending to establish the existence of the facts and conditions that the ordinance requires for the issuance of a Special Use Permit, prima facie the applicant is entitled to the permit. A denial of the permit has to be based upon findings contra that are supported by competent, substantial, and material evidence appearing in the record.

2. In this case, the Applicant has properly submitted an application for a Special Use Permit authorizing the repair of a legal nonconforming sign.

3. The site plan submitted by the Applicant complies with the applicable requirements of the Asheboro Zoning Ordinance, and there is no evidence to suggest that the proposed repair work will have any negative impact on the Zoning Lot or the surrounding parcels of land. Furthermore, the Council has specifically concluded that the proposed work will not result in the violation of Section 803 of the Asheboro Zoning Ordinance or make the Zoning Lot more incompatible with the surrounding neighborhood.

4. On the basis of the evidence presented during the hearing of this matter, the Council has concluded that the proposed repair work satisfies the four (4) general standards for the granting of a Special Use Permit. More specifically, the proposed work will not materially endanger the public health or safety, meets all required conditions and specifications of the zoning ordinance, will not substantially injure the value of adjoining or abutting property, and will be in harmony with the area in which the sign is located and is in general conformity with Asheboro's plan of development.

5. Given the conformance of the submitted site plan with the requirements of the Asheboro Zoning Ordinance, and the totality of the evidence submitted by the Applicant during the hearing of this matter, the Applicant is to be issued a Special Use Permit authorizing the work specified in the application for this Special Use Permit.

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

ORDER

A Special Use Permit authorizing the above-described repair work/improvements on the 56-foot high legal nonconforming sign located on the Zoning Lot is hereby issued to the Applicant and the Applicant's successors and assigns. This Special Use Permit shall be valid so long as, and only so long as, the Applicant, and its successors and assigns, conduct the approved work in compliance with this permit, the site plan reviewed and approved during the hearing of this case, and all applicable provisions of the Asheboro Zoning Ordinance. This Special Use Permit only applies to repair of the nonconforming sign. All uses permitted by the Asheboro Zoning Ordinance in the B2 zoning district shall continue to be permitted. All other development activities subject to administrative staff review shall not require further review by the Council.

These findings, conclusions, and order were adopted by the Asheboro City Council in open session during a regular meeting of the Council that was held on January 10, 2013.

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

ATTEST:

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

**(c) Acknowledgement of the receipt of the minutes of the Asheboro ABC Board's meeting on November 5, 2012.**

[A copy of the above-referenced minutes is on file in the City Clerk's office.]

**7. Old Business: Continuation of a public hearing and final action on the question of the renewal of Red Bird Cab, LLC's taxicab franchise.**

Mayor Smith reopened the public hearing on the application by Red Bird Cab, LLC to renew its taxicab franchise. This public hearing was initially opened on December 6, 2012.

With the permission of the Mayor, Mr. Sugg asked those in attendance if anyone was present to speak on behalf of Red Bird Cab, LLC. No one from Red Bird Cab, LLC was present, and there

were no comments from the public in regards to this taxicab franchise application submitted by Red Bird Cab, LLC.

Mr. Sugg reported that subsequent to the council's regular December meeting, no one from Red Bird Cab, LLC has been in contact with city staff in regards to the unresolved issues pertaining to the limited liability company's status with the Secretary of State's office. In light these unresolved questions and the absence of any company representatives, Mr. Sugg recommended, during this second reading of the taxicab franchise ordinance, the denial of the requested franchise renewal.

Upon motion by Mr. Bell and seconded by Mr. Baker, Council voted unanimously to deny the application submitted by Red Bird Cab, LLC for a renewal of its taxicab franchise.

**8. Community Development Division Items:**

**(a) Legislative Hearing on Zoning Case RZ-13-01: A request to rezone property (Randolph County Parcel Identification No. 7763073009) located on North Fayetteville Street from R10 (Medium-Density Residential) to I1 (Light Industrial).**

Mayor Smith opened the public hearing on the following request.

The requested rezoning pertains to approximately 0.35 acres of land owned by J.L. Richardson and located on the east side of North Fayetteville Street, between 2434 and 2450 North Fayetteville Street. This property is more specifically identified by Randolph County Parcel Identification Number 7763073009.

Mr. Nuttall presented the Community Development Division staff's analysis of the request by Ronald Dale Morris to rezone the above-described property from R10 (Medium-Density Residential) to I1 (Light Industrial).

The staff report noted that the area in which the property is located is characterized by a mix of uses including commercial and industrial uses to the north, south, and west, while residential uses are to the east. The Planning Board concurred with the following Community Development Division staff's analysis and recommended approval of the requested rezoning:

"Although the Land Development Plan Proposed Land Use map designates the property as commercial, the I1 (Light Industrial) can also serve as an appropriate transitional district between the General Industrial (I2) district and the Medium Density residential (R10) district due to elimination of some of the heavier industrial uses that are permitted in the I2 district.

Additionally, the Northeast Small Area plan encourages accommodation and expansion of industrial uses, which is consistent with the rezoning request."

Mr. Ronald Morris was available to answer questions.

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

Upon motion by Mr. Bell and seconded by Mr. Moffitt, Council voted unanimously to adopt the recommendation/analysis of the Community Development Division staff and the Planning Board and approved the requested rezoning as well as adopting the following consistency statement:

In consideration of the above factors, the zoning map amendment will allow a reasonable use of the property and ensure consistency with the Land Development Plan.

**(b) Quasi-Judicial Public Hearing on Zoning Case SUP-13-01: A request for a Special Use Permit authorizing a non-conforming use and situations at 928 and 930 South Fayetteville Street.**

Mayor Smith opened the public hearing on the following request.

The property that is referred to in this public hearing (the zoning lot) is located at 928 and 930 South Fayetteville Street and contains approximately 3.2 acres of land. Randolph County Parcel Identification Numbers 7750786677, 7750795093, 7750786358, and 7750785663 more specifically identify the property.

Mr. Nuttall was placed under oath and presented the Community Development Division staff's analysis of the Applicant's request including the submitted site plan. The Christian United Outreach Center (the Applicant) requested a Special Use Permit allowing a combination of a legal non-conforming use and a conforming use, along with the continuation of certain non-conforming

situations, when the Applicant undertakes a land use on the zoning lot that is identified in the Asheboro Zoning Ordinance as a "personal services" use.

The existing structure to be used by the Applicant was formerly part of a new automobile dealership. A separate structure was used for a body shop that was part of the dealership's operations.

The body shop is still in operation on the zoning lot. When the auto dealership ceased operations, the body shop became a legal non-conforming use under the Asheboro Zoning Ordinance (ordinance labels the body shop as a major motor vehicle repair use).

The combination of the Applicant's proposed conforming use (personal services) in one building and the continuation of a legal non-conforming use (major motor vehicle repair) in another building, along with the continuation of other non-conforming situations such as the absence of conforming off-street parking landscaping, on the zoning lot must be authorized by a Special Use Permit.

On behalf of the Applicant, Mr. Ben Morgan, Esq. was placed under oath and addressed the standards prescribed by the Asheboro Zoning Ordinance for the issuance of the requested Special Use Permit. Additionally, Mr. Jerry Hill, Executive Director of the Christian United Outreach Center (CUOC) was placed under oath and presented comments in support of the request.

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

Upon motion by Mr. Bell, and seconded by Ms. Carter, Council voted unanimously to approve the requested Special Use Permit.

The formal findings of fact, conclusions of law, and order for this Special Use Permit will be entered by the Council in regular session on February 7, 2013. This order will reflect specific conditions imposed upon this permit as a consequence of the testimony presented during the public hearing.

**(c) Consideration of an ordinance amending Chapter 34 (Departments, Boards, and Commissions) of the Code of Asheboro to reflect the recent changes in the boundaries of the city's extraterritorial planning jurisdiction.**

Mr. Nuttall presented and recommended adoption, by reference of an ordinance to amend Chapter 34 of the Code of Asheboro to conform the chapter's provisions with the recent changes in the boundaries of the city's extraterritorial planning jurisdiction.

During the discussion of this proposed ordinance, members of the Council expressed concern about the aspect of the proposed ordinance that facilitated the transition of the Planning Board's membership from the extraterritorial planning jurisdiction representatives who reside in the area recently released from the city's jurisdiction to members who reside in the current extraterritorial planning jurisdiction area. As of the date of this meeting, none of the extraterritorial planning representatives reside within the boundaries established for the city's extraterritorial planning jurisdiction effective January 1, 2013.

The methodology for the transition contained within the proposed ordinance relies upon allowing the current Planning Board representatives from the extraterritorial area to serve the remainder of their current terms of office and use the expiration dates for these terms as the dates to replace the current appointees with individuals who reside within the city's redefined extraterritorial area. This process would result in members who do not reside within the corporate limits or the redefined extraterritorial area continuing to serve on the City of Asheboro until January 2017.

This length of time for representatives who live in an area that is not subject to city land use regulations to continue to make recommendations and decisions on behalf of individuals who are subject to city land use regulations was troubling to the Council. The Council ultimately decided to adopt the proposed ordinance as a temporary fix, but the Council also wants city staff to explore legal options and inquire with the Planning Board members in an effort to formulate an improved transition plan for the Council's consideration.

Upon motion by Mr. Bell and seconded by Ms. Carter, the Council adopted the following ordinance and directed city staff to report back to the Council during the regular March meeting about the status of the collaborative efforts with the Planning Board to craft a better transition plan for the Council's consideration. Council Members Baker, Bell, Burks, Carter, Hunter, and Swiers voted in favor of the motion. Council Member Moffitt voted no.

**AN ORDINANCE TO AMEND CHAPTER 34 OF THE CODE OF ASHEBORO**

**WHEREAS**, consistent with the authority granted to the city by virtue of Chapter 160A (Cities and Towns), Article 19 (Planning and Regulation of Development) of the North Carolina General Statutes, the Asheboro City Council, after giving proper notice and conducting a public hearing over the course of two (2) regular meetings, adopted Ordinance Number 36 ORD 12-12 during a regular meeting of the governing board that was held on December 6, 2012; and

**WHEREAS**, pursuant to the adoption of Ordinance Number 36 ORD 12-12, which was entitled "AN ORDINANCE DEFINING THE BOUNDARY OF THE EXTRATERRITORIAL PLANNING JURISDICTION OF THE CITY OF ASHEBORO," the extraterritorial planning jurisdiction boundary line shown on a map entitled "City of Asheboro 2012 Revised Extra-Territorial Planning Jurisdiction Area," which consisted of seven (7) sheets collectively prepared under Job No. 12030 by Thomas Scaramastra, Professional Land Surveyor with License No. L-4221, was approved and adopted, effective January 1, 2013, as the official boundary line for the extraterritorial planning jurisdiction of the City of Asheboro; and

**WHEREAS**, the said map entitled "City of Asheboro 2012 Revised Extra-Territorial Planning Jurisdiction Area" has been recorded in the Office of the Randolph County Register of Deeds in Plat Book 135, Pages 28-34; and

**WHEREAS**, by virtue of the adoption of this new extraterritorial planning jurisdiction boundary line that became effective January 1, 2013, a substantial amount of territory previously located within the City of Asheboro extraterritorial planning jurisdiction was released from the city's jurisdiction; and

**WHEREAS**, the relinquishment of this territory from the city's jurisdiction impacts the continuing validity of certain provisions within the Code of Asheboro pertaining to the authority and membership of the City of Asheboro Planning Board in connection with the city's extraterritorial planning jurisdiction; and

**WHEREAS**, on the basis of recommendations received from city staff members, the City Council has concluded that Sections 34.50, 34.51, and 34.52 of the Code of Asheboro should be updated to conform with the legislative action previously taken by the City Council by virtue of the adoption of Ordinance Number 36 ORD 12-12 on December 6, 2012;

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

**Section 1.** Section 34.50 of the Code of Asheboro is hereby rewritten to provide as follows:

**§ 34.50 DEFINITION.**

For the purpose of this subchapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

**AREA.** The city and its environs, including the extraterritorial area as is shown on the map entitled "~~Boundaries of Extraterritorial Jurisdiction – City of Asheboro,~~" such map bearing the date of June 8, 1972, and any amendments thereto "City of Asheboro 2012 Revised Extra-Territorial Planning Jurisdiction Area" and recorded in the Office of the Randolph County Register of Deeds in Plat Book 135, Pages 28-34.

**Section 2.** Section 34.51 of the Code of Asheboro is hereby rewritten to provide as follows:

**§ 34.51 CREATION; COMPOSITION AND MEMBERSHIP.**

(A) Pursuant to article 19 of chapter 160A of the General Statutes of North Carolina, there is hereby created a Planning Board, which shall consist of ten members, five of whom shall be residents of the city and five of whom shall be residents of the extraterritorial area as is shown on the map entitled "~~Boundaries of Extraterritorial Jurisdiction – City of Asheboro,~~" such map bearing the date of June 8, 1972, and any amendments thereto; provided, that the Planning Board hereby created shall be considered as a continuation of the Planning Board heretofore created and consisting only of five residents of the city "City of Asheboro 2012 Revised Extra-Territorial Planning Jurisdiction Area" and recorded in the Office of the Randolph County Register of Deeds in Plat Book 135, Pages 28-34. Notwithstanding the preceding residency requirements, any member of the Planning Board who, as of January 10, 2013, is serving on the board as a representative of the extraterritorial area and no longer resides in the said area may nonetheless serve the remainder of his or her current term of office, and no more, if the sole reason for the board member's noncompliance with the residency requirement is the City Council's adoption of the new boundary line for the extraterritorial area that became effective on January 1, 2013.

(B) All members of the Planning Board shall have equal rights, privileges and duties with the other members in all matters, wherever they might arise.

(C) The Planning Board may exercise the powers granted by this Code and other ordinances and by article 19 of chapter 160A of the General Statutes of North Carolina, within the city and within the extraterritorial area as is shown on the map entitled "~~Boundaries of Extraterritorial Jurisdiction - City of Asheboro,~~" such map bearing the date of June 8, 1972, and any amendments thereto "City of Asheboro 2012 Revised Extra-Territorial Planning Jurisdiction Area" and recorded in the Office of the Randolph County Register of Deeds in Plat Book 135, Pages 28-34.

**Section 3.** Section 34.52 of the Code of Asheboro is hereby rewritten to provide as follows:

**§ 34.52 APPOINTMENT AND TERM; VACANCIES; ATTENDANCE; COMPENSATION.**

(A) Members of the Planning Board shall be appointed for a term of five years and until their successors are appointed and qualify, and, to provide overlapping terms, two members shall be appointed each year during the month of January. Of the two annual appointees, one shall be a resident of the city and one shall be a resident of the extraterritorial area as is shown on the map entitled "~~Boundaries of Extraterritorial Jurisdiction - City of Asheboro,~~" such map bearing the date of June 8, 1972, and any amendments thereto "City of Asheboro 2012 Revised Extra-Territorial Planning Jurisdiction Area" and recorded in the Office of the Randolph County Register of Deeds in Plat Book 135, Pages 28-34. Notwithstanding the preceding residency requirements, any member of the Planning Board who, as of January 10, 2013, is serving on the board as a representative of the extraterritorial area and no longer resides in the said area may nonetheless serve the remainder of his or her current term of office, and no more, if the sole reason for the board member's noncompliance with the residency requirement is the City Council's adoption of the new boundary line for the extraterritorial area that became effective on January 1, 2013.

(B) Members of the Planning Board who are residents of the city shall be appointed by the City Council. Members of the Planning Board who are residents of the extraterritorial area as is shown on the map entitled "~~Boundaries of Extraterritorial Jurisdiction - City of Asheboro,~~" such map bearing the date of June 8, 1972, and any amendments thereto, "City of Asheboro 2012 Revised Extra-Territorial Planning Jurisdiction Area" and recorded in the Office of the Randolph County Register of Deeds in Plat Book 135, Pages 28-34 shall be appointed by the Randolph County Board of County Commissioners; provided, that in the event such Board of County Commissioners fails to make any appointment provided for in this section within 90 days after the receipt of a resolution from the City Council requesting that such appointment be made, the City Council may thereupon make such appointment.

(C) Vacancies occurring for reasons other than expiration of terms shall be filled as they occur for the period of the unexpired term.

(D) Faithful attendance at the meetings of the Planning Board is considered a prerequisite for the maintenance of membership on the Board.

(E) On and after April 1, 2009, each member of the Planning Board shall receive a stipend of \$100 for each month that the member actively serves on the Planning Board. In order to be deemed to be actively serving on the Planning Board during any specific month, a member of the Board must attend, at a minimum, the regular Planning Board meeting scheduled for the month for which the monthly stipend is to be paid. The actual disbursement of the monthly stipends for Planning Board members shall be made according to a schedule to be developed by the City of Asheboro Finance Department in accordance with the Department's normal business practices. Irrespective of the number of special meetings that may be held during any specific month, the amount of the monthly stipend for Planning Board members shall not exceed \$100.

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

**Section 5.** This ordinance shall take effect and be in force from and after the date of its adoption.

This ordinance was adopted in open session during a regular meeting of the Asheboro City Council that was held on January 10, 2013.

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

ATTEST:

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

9. **Consideration of the low bid received on December 20, 2012 from HD Supply Waterworks, Inc. of Greensboro, North Carolina to supply 2,400 radio read water meters for \$447,600.00 (not including sales tax), and approval of a resolution awarding the procurement contract to HD Supply contingent on approval of the award by the North Carolina Department of Environmental and Natural Resources – Public Water Supply Section (NCDENR – PWS).**

Mr. Bunker, the City Engineer, reported that bids were received at City Hall on December 20, 2012 for an Automatic Meter Read System – Meter Procurement for 2,400 radio read water meters for the City of Asheboro. In a written DISCUSSION OF BIDS report prepared by Mr. John C. Grey, P.E., of The Wooten Company, three vendors submitted proposals ranging from \$447,600.00 to \$501,600.00, with the lowest responsive responsible bid in the amount of \$447,600.00 from HD Supply Waterworks, Inc. The report noted that this project is to be funded from the Drinking Water State Revolving Fund, which is administered by the NCDENR Public Water Supply Section.

Based on the information included in its discussion, The Wooten Company recommended the award of the Meter Procurement for Automatic Meter Read System to HD Supply Waterworks, Inc. Therefore, Mr. Bunker presented and recommended adoption, by reference, of a resolution of the City of Asheboro awarding, subject to a contingency, a purchase contract to HD Supply Waterworks, Inc.

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

[A copy of the written DISCUSSION OF BIDS report is on file in the City Clerk's office.]

**01 RES 1-13**

**A RESOLUTION OF THE ASHEBORO CITY COUNCIL AWARDING, SUBJECT TO A CONTINGENCY,  
A PURCHASE CONTRACT TO HD SUPPLY WATERWORKS, INC.**

**WHEREAS**, the City of Asheboro has undertaken a project entitled "Meter Procurement for Automatic Meter Read System" with funding from a Drinking Water State Revolving Fund loan (WIF-1718) that is administered by the Public Water Supply Section of the North Carolina Department of Environment and Natural Resources (hereinafter referred to as the "PWS"); and

**WHEREAS**, in furtherance of this project, the City of Asheboro undertook a formal bid process for the procurement of two thousand four hundred (2,400) radio read water meters; and

**WHEREAS**, in response to the request for bids, HD Supply Waterworks, Inc. submitted, on December 20, 2012, the lowest responsive, responsible bid in the amount of four hundred forty-seven thousand six hundred and no hundredths dollars (\$447,600.00); and

**WHEREAS**, the bids received in response to the request for bids are summarized in a report submitted to the City of Asheboro by John C. Grey, P.E. of The Wooten Company; and

**WHEREAS**, in the conclusion of this summary of the submitted bids, The Wooten Company recommended that the contract for the procurement of the specified meters be awarded to HD Supply Waterworks, Inc.;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Asheboro, North Carolina that the contract for the purchase of the two thousand four hundred (2,400) radio read water meters specified in the request for bids is awarded, contingent on the receipt of approval of this award from the PWS, to HD Supply Waterworks, Inc. for a contract price of four hundred forty-seven thousand six hundred and no hundredths dollars (\$447,600.00); and

**BE IT FURTHER RESOLVED** that, if approval of this award is received from the PWS, the City Manager is hereby authorized to execute, in accordance with the applicable laws and the city's standard contracting policies, a contract with HD Supply Waterworks, Inc. for the said meters.

This Resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 10<sup>th</sup> day of January, 2013.

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

ATTEST:

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

**10. Airport Items:**

- (a) Approval of a resolution requesting state aid to the Asheboro Regional Airport in the aviation element of the Transportation Improvement Program for FY 2014-2018.**

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.

**02 RES 1-13**

**RESOLUTION APPROVING REQUESTS FOR STATE AID TO THE ASHEBORO REGIONAL AIRPORT IN THE AVIATION ELEMENT OF THE TRANSPORTATION IMPROVEMENT PROGRAM BY THE CITY COUNCIL OF THE CITY OF ASHEBORO**

WHEREAS, the North Carolina Department of Transportation Division of Aviation has requested that the City of Asheboro submit a list of projects for the Aviation Element of the FY 2014-2018 Transportation Improvement Program; and

WHEREAS, the City of Asheboro has prepared a list titled "ASHEBORO REGIONAL AIRPORT TRANSPORTATION IMPROVEMENT PROGRAM (TIP) 2014-2018 PROJECT LISTING" incorporated herein by reference to modify previously submitted requests.

NOW, THEREFORE, BE IT RESOLVED that the Asheboro City Council has reviewed the referenced TIP submission, and that the City Council hereby formally approves the submission of these requests for State Aid to Airports and for the State Block Grant Program where applicable.

Adopted in regular session on this 10<sup>th</sup> day of January, 2013.

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

ATTEST:

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

- (b) Approval of a resolution authorizing the city manager to enter into an agreement for airport safety/maintenance projects (five year term).**

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

Upon motion by Mr. Hunter and seconded by Ms. Carter, Council voted unanimously to adopt, by reference, the following resolution that was prescribed by the North Carolina Department of Transportation to be in the following form:

**03 RES 1-13**

**RESOLUTION FOR SPONSOR**

A motion was made by Council Member Hunter and seconded by Council Member Carter for the adoption of the following resolution, upon being put to a vote it was duly adopted:

**THAT WHEREAS** City of Asheboro (hereinafter referred to as "Sponsor") has requested the North Carolina Department of Transportation (hereinafter referred to as "Department") to provide and oversee safety improvements on the operational surfaces of the Asheboro Regional Airport; and

**WHEREAS**, the Department has agreed to provide safety improvement services as defined in Paragraph 1 of this Agreement in accordance with the provisions of North Carolina General Statute 63.

**NOW THEREFORE, BE IT AND IS HEREBY RESOLVED**, that the \_\_\_\_\_ City Manager of the Sponsor be and he is hereby authorized and empowered to enter into an Agreement with the Department, thereby binding the Sponsor to fulfillment of its obligation as incurred under this resolution and its Agreement with the Department.

This resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 10<sup>th</sup> day of January 2013.

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

ATTEST:

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

11. **Consideration of a resolution per G.S. 143-64.32 exempting the City of Asheboro from the advertisement/qualification based selection procedure to contract with Summey Engineering Associates, PLLC of Asheboro, NC to provide engineering services for the structural rehabilitation of the covered stadium at McCrary Ball Park, for the budget amount of \$30,315.00.**

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

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

**04 RES 11-13**

**ASHEBORO CITY COUNCIL RESOLUTION EXEMPTING THE MCCRARY  
BALL PARK STADIUM REHABILITATION PROJECT FROM THE  
PROVISIONS OF CHAPTER 143, ARTICLE 3D OF THE  
NORTH CAROLINA GENERAL STATUTES**

**WHEREAS**, Section 143-64.31 of Chapter 143, Article 3D of the North Carolina General Statutes provides in pertinent part as follows:

It is the public policy of this State and all public subdivisions and Local Governmental Units thereof . . . to announce all requirements for architectural, engineering, surveying, and construction management at risk services, to select firms qualified to provide such services on the basis of demonstrated competence and qualification for the type of professional services required without regard to fee other than unit price information at this stage, and thereafter to negotiate a contract for those services at a fair and reasonable fee with the best qualified firm; and

**WHEREAS**, Section 143-64.32 of the North Carolina General Statutes provides in pertinent part as follows:

Units of local government . . . may in writing exempt particular projects from the provisions of this Article (Article 3D) in the case of:

- (a) Proposed projects where an estimated professional fee is in an amount less than thirty thousand dollars (\$30,000), or
- (b) Other particular projects exempted in the sole discretion of . . . the unit of local government, stating the reasons therefore and the circumstances attendant thereto; and

**WHEREAS**, the City of Asheboro Cultural and Recreation Services Division, in consultation with the City of Asheboro Engineering Department, has concluded that a project to rehabilitate the covered stadium at McCrary Ball Park is a current need of the city; and

**WHEREAS**, the services of a structural engineer are required for the successful completion of the rehabilitation of the covered stadium at McCrary Ball Park; and

**WHEREAS**, Summey Engineering Associates, PLLC has a structural engineer who is situated so as to provide a timely response when engineering services are needed at the project site; and

**WHEREAS**, the said engineer at Summey Engineering Associates, PLLC has previously demonstrated skill and competence in the field of structural engineering; and

**WHEREAS**, on the basis of demonstrated competence and responsiveness, the city's professional staff has recommended the utilization of Summey Engineering Associates, PLLC to provide the engineering services needed to undertake and complete the McCrary Ball Park Stadium Rehabilitation Project;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Asheboro that the McCrary Ball Park Stadium Rehabilitation Project is hereby exempted from the provisions of Article 3D of Chapter 143 of the North Carolina General Statutes on the basis of the demonstrated responsiveness and competence in the field of structural engineering found at Summey Engineering Associates, PLLC; and

**BE IT FURTHER RESOLVED** that the City Manager is hereby authorized to execute, in accordance with the applicable laws and the city's standard contracting policies, a contract with Summey Engineering Associates, PLLC for the provision of the engineering services needed to successfully complete the McCrary Ball Park Stadium Rehabilitation Project for a budgeted professional services fee amount of thirty thousand three hundred fifteen and no hundredths dollars (\$30,315.00).

This resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 10<sup>th</sup> day of January, 2013.

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

ATTEST:

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

- 12. Approval of Change Orders #1, 2, and 3 on the Sunset Theatre Renovations Project (Rehab Builders, Inc.) increasing the contract amount by \$12,322.00 to \$1,648,197.00, and increasing the contract time by 30 calendar days to June 27, 2013, for structural modifications required by the structural engineer based on conditions apparent after demolition, and an additional door required to isolate the second floor above the book store.**

Mr. Bunker presented and recommended adoption, by reference, of the Change Order Nos. 1, 2, and 3 on the Sunset Theatre Renovation Project with Contractor Rehab Builders, Inc. increasing the contract amount by a total of \$12,322.00 to \$1,648,197.00 and the contract time by 30 calendar days to June 27, 2013. These changes are made to contract documents in order to:

1. Provide structural modifications to support the floor of the former barber shop as recommended by the structural engineer based on conditions apparent after demolition of adjacent walls and flooring; and
2. Add door to stairs behind bookstore (Building 3) to provide security and reduce heating and cooling loss to second floor; and
3. Provide structural modifications to footing of existing steel column in lobby as recommended by structural engineer based on conditions apparent after demolition of adjacent wall.

Upon motion by Mr. Bell and seconded by Mr. Moffitt, Council voted unanimously to approve all of the above-referenced Change Orders by reference.

[Copies of the change orders are on file in the City Clerk's office.]

- 13. Public comment period.**

Mayor Smith opened the floor for comments from the public, and none were offered.

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

**14. Boards, Commissions, and Authority Appointments:**

**(a) Council action on filling vacancy on the Asheboro Airport Authority (seat vacated by the retirement of Mr. Ed Dunn).**

- (i) Mr. Ogburn reported to the Council that members of the Asheboro Airport Authority serve three (3) year terms, and that Chairman Steve Knight, Dr. James M. Rich, and Mr. Curtis Williams have volunteered to serve for another three (3) year term beginning on February 4, 2013 until February 4, 2016.

Upon motion by Mr. Bell and seconded by Mr. Burks, Council voted unanimously to reappoint, Chairman Knight, Dr. Rich, and Mr. Williams to serve another three (3) year term on the Asheboro Airport Authority beginning February 4, 2013 until February 4, 2016.

- (ii) Additionally, Mr. Ogburn reported to the Council that the City Clerk has received applications/interest forms from Mr. Keith G. Hodgin, Jr. and Mr. Murray S. (Skip) Marsh, Jr. in order to fill the vacancy on the Asheboro Airport Authority created by the retirement of Mr. Ed Dunn. Council action was needed to appoint one of these individuals to fill the vacant seat, which term expires on February 4, 2013, because the Authority is at the minimum number required for a quorum, and the Authority meets on January 15, 2013.

By means of a combined motion, the Council selected Mr. Murray S. (Skip) Marsh, Jr. to fill the short term and longer term vacancy created by the retirement of Mr. Ed Dunn. Upon motion by Mr. Moffitt and seconded by Mr. Swiers, the Council appointed Mr. Marsh to serve the remainder of the unexpired term that ends on February 4, 2013, and appointed Mr. Marsh to serve a full 3-year term from February 4, 2013 until February 4, 2016. Council Members Baker, Bell, Burks, Carter, Hunter, Moffitt, and Swiers voted in favor of the motion.

**(b) Retirement of Mr. John McGlohon from the Asheboro Airport Authority.**

Mr. Ogburn announced that on December 26, 2012, Mr. John McGlohon announced his retirement from the Asheboro Airport Authority.

**(c) Council action on filling the vacancy on the Asheboro Airport Authority (seat vacated by the retirement of Mr. John McGlohon).**

Mr. Ogburn discussed with the Council Members their options for filling the vacancy created by Mr. McGlohon's retirement. The vacancy can be posted for additional applications in accordance with the standard policy for vacancies on city boards, commissions, and committees, or an appointment could be made from the current applicant pool.

Mr. Moffitt moved to post the vacancy for additional applications in accordance with the Council's adopted policy for considering appointments to city boards, commissions, and committees. Ms. Carter seconded the motion. Council Members Baker, Bell, Burks, Carter, Hunter, Moffitt, and Swiers voted in favor of the motion. The vacancy on the Asheboro Airport Authority will be posted and applications accepted by the City Clerk until 5:00 p.m. on February 6, 2013.

**(d) Appointment of Council Member Mr. Eddie Burks and Ms. Debbie Reaves, Finance Director to the Asheboro Board of the North Carolina Firefighters Relief Fund.**

Mr. Ogburn reported that staff recommends that Council Member Eddie Burks be appointed to the local board of trustees for the North Carolina Firefighters Relief Fund for a one year term beginning January 1, 2013 until January 1, 2014 and that Ms. Debbie Reaves, Finance Director be appointed for a two year term beginning January 1, 2013 until January 1, 2015. This would create staggered terms and a January appointment schedule as prescribed in the North Carolina General Statutes.

Upon motion by Mr. Bell and seconded by Ms. Carter, Council voted unanimously to appoint Council Member Burks and Ms. Reaves to the local Firefighters' Relief Fund Board of Trustees for the above-stated terms of office.

**(e) Council action to forward the name of Mr. David Henderson to the Randolph County Commissioners as a recommendation for appointment to the Asheboro Planning board as a representative from the city's extraterritorial jurisdiction area.**

Mr. Ogburn reported that the Asheboro Code of Ordinances specifies that each January, two (2) members of the Planning Board are to be appointed to 5-year terms of office.

The city currently needs a representative from the extraterritorial planning area to serve a full 5-year term on the board. Mr. David Henderson, who is a registered forester, lives within the recently redrawn boundaries of the city's extraterritorial area, and he has agreed, if appointed to serve on the Planning Board.

Upon motion by Mr. Bell and seconded by Mr. Burks, Council voted unanimously to forward Mr. Henderson's name to the Randolph County Board of County Commissioner's with a favorable recommendation for appointment to the Asheboro Board as a representative from the city's extraterritorial jurisdiction area. If appointed by the county commissioners, Mr. Henderson would serve a 5-year term of January 1, 2013 until January 1, 2018.

**(f) Council action on naming a city resident to fill the vacancy on the Asheboro Planning Board (seat vacated by the retirement of Mr. Frank Havens).**

Mr. Ogburn highlighted that Mr. Frank Havens has retired from the Asheboro Planning Board, and that the City Clerk has received applications/interest forms from the following individuals (city residents) who are interested in serving on the Planning Board:

1. Ritchie A. Buffkin,
2. Michael S. Moore,
3. Kenneth L. Powell,
4. Ronald D. Powell,
5. Phillip Skeen, and
6. Wayne D. Thomas.

Mr. Ogburn discussed with the Council Members the adopted policy of either appointing an individual from this list or sending these names to the Planning Board for review. If the list is reviewed by the Planning Board, then the Board must recommend at least two (2) names to the Council for final Council action.

Mr. Bell moved to send the above-listed names to the Planning Board for review, and recommendations to the Council. Ms. Carter seconded the motion. Council Members Baker, Bell, Burks, Carter, Hunter, Moffitt, and Swiers voted in favor of the motion.

**(g) Reappointment of Mr. David Whitaker to the Asheboro Planning Board.**

Mr. Ogburn announced that Mr. David Whitaker has agreed to serve another five (5) year term on the Planning Board beginning January 1, 2013 until January 1, 2018.

Upon motion by Swiers and seconded by Mr. Bell, Council voted unanimously to reappoint Mr. David Whitaker to the Asheboro Planning Board for another five (5) year term beginning on January 1, 2013 until January 1, 2018.

**15. Personnel Items:**

**(a) Announcement of Building Inspection, Fire Inspections, and Code Enforcement in new ETJ.**

Mr. Johnson announced that the Community Development Division will now be able to address all building inspection, fire inspection, and code enforcement issues within the city's revised extraterritorial planning jurisdiction.

**(b) Announcement of enrollment of Fire Inspector Tony Fruitt in the Basic Law Enforcement Training Program at Randolph Community College.**

Mr. Johnson announced that Mr. Tony Fruitt, Fire Inspector, has enrolled in the Basic Law Enforcement Training Program (BLET) at Randolph Community College. Upon Mr. Fruitt's completion of the BLET program, he will be able to assist the City of Asheboro's police department and fire department in arson investigations. This program will allow him to be a sworn reserve police officer.

**(c) Announcement of acceptance of CPT Jody Williams, APD into the FBI National Academy, Quantico, Virginia (October 2013 Class).**

Mr. Johnson announced that Captain Jody Williams of the Asheboro Police Department has been accepted into the October 2013 class of the FBI National Academy at Quantico, Virginia.

- (d) **Announcement of acceptance of Mr. John Ogburn, City Manager, into the ICMA Senior Executive Institute at The University of Virginia, Colgate Darden School of Business (May 4 – May 11, 2013).**

Mr. Johnson announced that Mr. Ogburn has been accepted into the ICMA Senior Executive Institute at The University of Virginia, Colgate Darden School of Business.

- (e) **Announcement of MPO Casey Critchfield as 2012 Police Officer of the Year.**

Mr. Johnson announced that Master Police Officer Casey Critchfield is the 2012 Police Officer of the Year for the Asheboro Police Department.

16. **Consideration of proposed lease agreements:**

- (a) **10-year lease agreement with FMO Real Estate, LLC, which is a subsidiary of Fairway Outdoor Advertising, LLC.**

Mr. Sugg presented and recommended adoption, by reference, of a resolution approving a 10-year lease agreement between the City of Asheboro and FMO Real Estate, LLC, which is a subsidiary of Fairway Outdoor Advertising, LLC.

After some discussion about the possibility of some day utilizing a billboard for the city's messaging, the Council voted to continue the existing leasing relationship negotiated between city staff and Fairway. Upon motion by Mr. Swiers and seconded by Mr. Hunter, Council Members Baker, Bell, Burks, Carter, Hunter, and Swiers voted to adopt the following resolution by reference. Mr. Moffitt voted no.

05 RES 1-13

**RESOLUTION APPROVING A LEASE AGREEMENT BETWEEN  
THE CITY OF ASHEBORO AND FMO REAL ESTATE, LLC**

**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 owned by FMO Real Estate, LLC, a Delaware limited liability company that is a subsidiary of Fairway Outdoor Advertising, 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**, on December 28, 2012, notice was published in *The Courier-Tribune* of the Asheboro City Council's intent to consider, during its regular meeting on January 10, 2013, authorizing a new 10-year lease with Fairway at an annual rental rate of \$1,700.00 for years 1 and 2 of the lease with the annual rental rate increasing by \$100.00 each year thereafter; 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 is hereby authorized to execute on behalf of the City 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 10<sup>th</sup> day of January, 2013.

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

ATTEST:

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

**EXHIBIT 1**

**STATE OF NORTH CAROLINA**

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

**COUNTY OF RANDOLPH**

**THIS AGREEMENT** is made this the \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the **CITY OF ASHEBORO**, a North Carolina municipal corporation with its principal office located at 146 North Church Street, Post Office Box 1106, Asheboro, North Carolina 27204-1106, (hereinafter referred to as the "Lessor") and **FMO REAL ESTATE, LLC**, a Delaware limited liability company that is a subsidiary of Fairway Outdoor Advertising, LLC and is authorized to conduct business in North Carolina with an office located at 1920 West Lee Street, Greensboro, North Carolina 27403, (hereinafter referred to as the "Tenant").

**WITNESSETH:**

**1. Lease of Property.** Lessor hereby leases to Tenant, subject to the terms and conditions hereinafter expressed, and Tenant 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 Tenant to service and maintain the said structure. The parcel of land upon which the existing outdoor advertising structure is located is identified by Randolph County Parcel Identification Number 7659537270, and the entire parcel of land, not just the demised portion, is described in Deed Book 1522, Page 269, Randolph County Public Registry.

**2. Term of Lease.** The term of this lease shall be deemed to commence on February 1, 2013 (hereinafter referred to as the "Commencement Date"), and shall terminate at midnight on January 31, 2023. Subject to the provisions found below pertaining to the removal of improvements, Tenant 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 Tenant shall pay to the Lessor, without previous demand, setoff, or deduction, the following annual rental payments in lawful money of the United States:

- a. The annual rental for lease year one (February 1, 2013 to January 31, 2014) is due on or before February 1, 2013, and the amount of this first annual rental payment shall be one thousand seven hundred and no hundredths dollars (\$1,700.00);
- b. The annual rental for lease year two (February 1, 2014 to January 31, 2015) is due on or before February 1, 2014, and the amount of this second annual rental payment shall be one thousand seven hundred and no hundredths dollars (\$1,700.00);
- c. The annual rental for lease year three (February 1, 2015 to January 31, 2016) is due on or before February 1, 2015, and the amount of this third annual rental payment shall be one thousand eight hundred and no hundredths dollars (\$1,800.00);
- d. The annual rental for lease year four (February 1, 2016 to January 31, 2017) is due on or before February 1, 2016, and the amount of this fourth annual rental payment shall be one thousand nine hundred and no hundredths dollars (\$1,900.00);
- e. The annual rental for lease year five (February 1, 2017 to January 31, 2018) is due on or before February 1, 2017, and the amount of this fifth annual rental payment shall be two thousand and no hundredths dollars (\$2,000.00);
- f. The annual rental for lease year six (February 1, 2018 to January 31, 2019) is due on or before February 1, 2018, and the amount of this sixth annual rental payment shall be two thousand one hundred and no hundredths dollars (\$2,100.00);
- g. The annual rental for lease year seven (February 1, 2019 to January 31, 2020) is due on or before February 1, 2019, and the amount of this seventh annual rental payment shall be two thousand two hundred and no hundredths dollars (\$2,200.00);
- h. The annual rental for lease year eight (February 1, 2020 to January 31, 2021) is on or before February 1, 2020, and the amount of this eighth annual rental payment shall be two thousand three hundred and no hundredths dollars (\$2,300.00);

- i. The annual rental for lease year nine (February 1, 2021 to January 31, 2022) is due on or before February 1, 2021, and the amount of this ninth annual rental payment shall be two thousand four hundred and no hundredths dollars (\$2,400.00); and
- j. The annual rental for lease year ten (February 1, 2022 to January 31, 2023) is due on or before February 1, 2022, and the payment for this tenth annual rent payment shall be two thousand five hundred and no hundredths dollars (\$2,500.00).

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 in writing by the Lessor from time to time. Payment of rent shall be deemed made only upon actual receipt of the applicable rent payment at the address designated in writing by the Lessor. Notwithstanding any other provision in this Agreement, the placement of a rent payment in the mail or in the care of some other form of delivery service shall not constitute payment of the rent to the Lessor.

#### **4. Termination.**

- a. If the Tenant should fail to pay any rental or other amounts payable under this Agreement when due, or if the Tenant should fail to perform any other of the covenants, terms, or conditions of this Agreement, prior to exercising any rights or remedies against Tenant on account thereof, Lessor shall first provide the Tenant with written notice of the failure and provide the Tenant with a thirty (30) calendar day period to cure such failure. Tenant 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. Tenant must, without delay or excuse, absolutely correct the defect or violation on or before the exact date specified by Lessor. When the Tenant's failure to perform pertains to the failure to make a scheduled payment to the Lessor, the Tenant 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 the Tenant 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 Tenant shall have no further obligations to each other, other than Tenant'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 Tenant upon thirty (30) calendar days written notice to Lessor.

**5. Indemnification.** Tenant 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 Tenant, its officers, managers, employees, representatives, agents, and contractors. However, Tenant 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 elected and appointed officials, employees, representatives, agents, and contractors.

**6. Warranties.** Lessor and Tenant 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 Tenant's outdoor advertising structure. In the event of any transfer of Lessor's interest in the above-described premises, Lessor agrees to promptly give Tenant 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 Tenant on the demised premises shall remain in Tenant and all improvements constructed or installed by Tenant shall at all times be and remain the property of the Tenant. Upon the expiration or termination of this Agreement, the Tenant 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 the Tenant and shall restore the Lessor's premises to its original condition, reasonable wear and tear and casualty not caused by the Tenant excepted. Nothing contained herein shall be interpreted to grant permission to Tenant 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, Tenant 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 the Tenant'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 Tenant 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.** The Tenant shall maintain, and bears the exclusive financial responsibility for maintaining, its outdoor advertising structure in a reasonable and safe state of repair that meets generally accepted industry standards.

11. **Hazardous Substances.** The Tenant 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 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

**TENANT:** FMO Real Estate, LLC  
1920 West Lee Street  
Greensboro, North Carolina 27403

15. **Miscellaneous Provisions.**

- (a) *Written Modification.* This Agreement cannot be modified except by a written modification executed by Lessor and Tenant 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 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 Tenant 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 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 Tenant acknowledge and stipulate that this 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 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 Tenant.

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

**LESSOR:**

**CITY OF ASHEBORO,  
a North Carolina municipal corporation**

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

ATTEST:

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

**COUNTY OF RANDOLPH**

I hereby certify that I am a Notary Public of the County and State aforesaid, and I do hereby further certify that Holly H. Doerr, who is personally known to me, voluntarily and personally appeared before me this day and acknowledged that she is the City Clerk for the City of Asheboro and that, by authority duly given, the Mayor of the City of Asheboro voluntarily executed the foregoing instrument on behalf of the city for the purposes stated therein, Ms. Doerr sealed the instrument with the municipal seal, and she attested the instrument in her official capacity as City Clerk.

**WITNESS** my hand and notarial stamp or seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
(Printed or Typed Name of Notary Public)

My commission expires:

\_\_\_\_\_

**TENANT:**

**FMO REAL ESTATE, LLC,  
a Delaware limited liability company that is a  
subsidiary of Fairway Outdoor Advertising, LLC**

By: \_\_\_\_\_  
Signature of Tenant's Authorized Representative

\_\_\_\_\_  
Title of Tenant's Authorized Representative

**STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_**

I hereby certify that I am a Notary Public of the County and State aforesaid, and I do hereby further certify that \_\_\_\_\_, who is personally known to me, voluntarily and personally appeared before me this day and acknowledged that he/she \_\_\_\_\_ for FMO Real Estate, LLC, a Delaware limited liability company, and that, being duly authorized to do so, he/she voluntarily executed the foregoing instrument on behalf of the said limited liability company for the purposes stated therein.

**WITNESS** my hand and notarial stamp or seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
(Printed or Typed Name of Notary Public)

My commission expires:

\_\_\_\_\_

**(b) 10-year lease agreement with SprintCom, Inc.**

Mr. Sugg presented and recommended adoption, by reference, of a resolution to approve a 10-year lease agreement between the City of Asheboro and SprintCom, Inc.

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

**RESOLUTION APPROVING A LEASE AGREEMENT BETWEEN  
THE CITY OF ASHEBORO AND SPRINTCOM, INC.**

**WHEREAS**, the City of Asheboro (hereinafter referred to as the "City") owns two (2) parcels of land on South Church Street that are identified by Randolph County Parcel Identification Numbers 7751619869 and 7751710819, the said real property is more particularly described in Deed Book 208, Page 376 and Deed Book 210, Page 133, Randolph County Registry; and

**WHEREAS**, an elevated water tank that is owned and operated by the City is located upon the premises described in the immediately preceding paragraph (said premises shall be hereinafter referred to as the "Water Tank Premises"); and

**WHEREAS**, SprintCom, Inc., a Kansas corporation authorized to conduct business in North Carolina, (hereinafter referred to as "SprintCom") has expressed its desire to the City to continue to lease a portion of the Water Tank Premises for the purpose of maintaining and operating a personal communications service system facility on the premises; 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**, on December 28, 2012, notice was published in *The Courier-Tribune* of the Asheboro City Council's intent to consider, during its regular meeting on January 10, 2013, a resolution authorizing the lease of the requested space to SprintCom; and

**WHEREAS**, the City Council of the City of Asheboro has determined that the portion of the Water Tank Premises that SprintCom wishes to lease will not be needed by the City during the term of the lease; and

**WHEREAS**, the proposed lease agreement between the City and SprintCom is attached to this Resolution as EXHIBIT 1 and is hereby incorporated into this Resolution by reference as if copied fully herein;

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

**Section 1.** The proposed lease agreement with SprintCom, which is attached to this resolution as EXHIBIT 1, is hereby approved.

**Section 2.** The Mayor is hereby authorized to execute on behalf of the City any and all documents and instruments necessary to carry into full force and effect the lease agreement attached hereto as EXHIBIT 1.

This Resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 10<sup>th</sup> day of January, 2013.

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

ATTEST:

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

**EXHIBIT 1**

**STATE OF NORTH CAROLINA**

**LEASE AGREEMENT FOR PLACEMENT OF  
ELECTRONIC COMMUNICATIONS EQUIPMENT**

**COUNTY OF RANDOLPH**

**THIS AGREEMENT** (hereinafter referred to as the "Agreement") is made on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the CITY OF ASHEBORO, a North Carolina municipal corporation with its principal office located in Randolph County, North Carolina and a mailing address of Post Office Box 1106, Asheboro, North Carolina 27204-1106, (hereinafter referred to as the "Lessor") and SPRINTCOM, INC., a Kansas corporation authorized to do business in North

Carolina with a principal office and mailing address of 6391 Sprint Parkway, Mailstop KSOPHT0101-22650, Overland Park, Kansas 66251-2650, (hereinafter referred to as the "Lessee").

**WITNESSETH:**

In consideration of the monthly rental fees set forth below and the other mutual promises contained herein, the parties agree as follows:

1. Lease of Property. Lessor hereby leases to Lessee, and Lessee accepts a lease area of 150 square feet, more or less, within 2 parcels of land that are identified by Randolph County Parcel Identification Numbers 7751619869 and 7751710819 and are described, respectively, in Deed Book 208, Page 376 and Deed Book 210, Page 133, Randolph County Registry. The said parcels of land, and the improvements located upon them, (hereinafter referred to as the "Water Tank Premises") are commonly referred to as the City of Asheboro elevated water tank located at 252 South Church Street, Asheboro, North Carolina 27203.

The approximately 150-square foot lease area (hereinafter referred to as the "Demised Premises") consists of such space on the Lessor's elevated water tank and such ground space adjacent thereto as is minimally needed to allow the Lessee to install, remove, replace, modify, maintain, refurbish, upgrade, and operate, at the sole expense of the Lessee, a personal communications service system facility ("PCS"), including, without limitation, the antenna tower or pole, utility lines, transmission lines, air conditioned equipment shelter(s), electronic equipment, antennas, coax, microwave dishes, a power generator and generator pad, and related fixtures. The Demised Premises are depicted with more specificity on the plat of survey that is attached to this Agreement as Exhibit A, and the said Exhibit A is hereby incorporated into this Agreement by reference as if copied fully herein.

Subject to the restriction that Lessee and any and all of its employees, agents, contractors, and any other representatives shall notify the on-duty personnel at the City of Asheboro Water Treatment Plant at (336) 626-1215 prior to entering upon the Water Tank Premises and shall be escorted or accompanied by an authorized representative of the Lessor when entering upon the Water Tank Premises, said lease shall also be deemed to include the grant of a nonexclusive easement during the term of this Agreement for ingress and egress onto the Water Tank Premises by the Lessee and its employees, agents, contractors, and any other representatives 24 hours a day, 7 days a week.

Prior to the modification of the existing PCS in any form or to any degree, Lessee shall submit drawings of the proposed modification(s) to the Lessor for review by the Lessor's Water Resources Division and/or the Lessor's consultant to determine the compatibility of the proposed modification(s) with the operation and maintenance of the Water Tank Premises as part of the Lessor's infrastructure. Such drawings shall include, at a minimum and without limitation, (i) a certified engineering report that clearly identifies the distance from the Lessee's antennas in which the maximum radio frequency exposure limits will be exceeded for workers engaged in painting, repairing, or servicing the water tank; and (ii) plans for noise abatement, with supporting data, to ensure any future modifications that generate noise, specifically including without limitation the installation and operation of a power generator, do not create levels of noise that exceed the limits prescribed by the applicable laws and regulations, specifically including by way of illustration and not limitation the City of Asheboro Zoning Ordinance.

The Lessee must receive prior express written approval from the Lessor's City Manager, City Engineer, or Water Resources Director prior to beginning or continuing any construction; site preparation, alteration, or improvement; equipment installation; or maintenance, replacement, and/or repair work on the Demised Premises. The Lessor shall not withhold approval for any such work unless the Lessor has a good faith basis for believing that the proposed modification(s) to the existing PCS will interfere with or be detrimental to the use and enjoyment of residential dwellings contiguous with the Water Tank Premises and/or will interfere with or be detrimental to the use of the Water Tank Premises by the Lessor and/or third party lessees.

Any damage to the Water Tank Premises that is caused by the Lessee's installation, construction, maintenance, operation, repair, replacement, and upgrade activities on the Demised Premises shall be immediately repaired by the Lessee. Lessee shall comply with all applicable governmental laws, statutes, ordinances, rules, and regulations relating to the use of the Demised Premises in particular and the Water Tank Premises in general. In order to receive the required approval from the Lessor, all future modifications of the Demised Premises by the Lessee shall be made at the sole expense of the Lessee and shall include, but not be limited to, the designing, painting, and/or staining of all cables, antennas, wiring, fixtures, and any and all other types of equipment so that such future modifications are reasonably compatible, both functionally and aesthetically, with the improvements located on the Water Tank Premises as of the Commencement Date of this Agreement. Lessee shall maintain its PCS facilities in a good and safe operating condition. At the termination of this Agreement's Term, Lessee will return the Water Tank Premises to its original condition, less normal wear and tear and any casualty not caused by the Lessee, within 90 calendar days of said date of termination.

2. Term of Lease. The initial lease term shall be a term of five (5) years, commencing upon the "Commencement Date" of the lease. Said "Commencement Date" is hereby defined as January 20,

2013. The initial lease term shall terminate on the last day of the month in which the fifth (5<sup>th</sup>) annual anniversary of the Commencement Date occurs. Subject to the terms and conditions found herein, this Agreement will automatically renew for one (1) additional five (5) year term (the "Extension Term") upon the same terms and conditions unless either the Lessor or Lessee notifies the other party in writing of the intent not to renew this Agreement at least sixty (60) calendar days prior to the expiration of the existing term. The initial term of this Agreement and the Extension Term are collectively referred to as the "Term."

At the expiration or earlier termination of the Term, the Lessee shall surrender the Demised Premises to the Lessor in as good condition as when received, ordinary wear and tear excepted, and consistent with any applicable provisions found elsewhere in this Agreement. If Lessee fails to surrender the Demised Premises upon the expiration or earlier termination of the Term, there shall be no renewal of this Agreement or exercise of an option by operation of law.

3. Rental Rate. The rental payments that shall be paid by Lessee to Lessor pursuant to this Agreement are as follows:

- a. Beginning on the Commencement Date and throughout the initial term of this Agreement, the Lessee will pay to the Lessor a monthly rental payment of two thousand six hundred and no hundredths dollars (\$2,600.00).
- b. Commencing on the first day of the Extension Term and throughout the entirety of the Extension Term of this Agreement, the Lessee will pay to the Lessor a monthly rental payment of two thousand nine hundred ninety and no hundredths dollars (\$2,990.00).

Throughout the Term of this Agreement, the rental payments specified above shall be delivered to the Lessor at the address listed above on or before the fifth (5<sup>th</sup>) day of each calendar month in advance. Rent will be prorated for any partial month.

4. Approvals. To the degree permitted by law, Lessor shall cooperate with Lessee in its efforts to obtain and maintain in effect all certificates, permits, licenses, and other approvals required by governmental authorities for Lessee's use of the Demised Premises in accordance with Section 1 of this Agreement. If any previously issued certificate, permit, license, or approval is cancelled, expires, lapses, or is otherwise withdrawn or terminated by the applicable governmental authority, then Lessee shall have the right to terminate this Agreement upon notice to the Lessor and without penalty.

5. Utilities. Lessee shall make arrangements for the provision of all utilities necessary for the operation of its equipment and facilities. Any and all costs and expenses associated with such provision of utilities shall be at the Lessee's sole cost and expense. Such utilities shall be metered separately from those of the Lessor and shall not unreasonably interfere with Lessor's use of the Water Tank Premises.

6. Termination.

- (a) If Lessee fails to pay any rental or other amounts payable under this Agreement when due, or if Lessee fails to perform any of the other 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 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 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 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 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. In addition, the Lessor may order the Demised Premises closed immediately when any condition exists on the Water Tank Premises that an agency of the city, county, state, or federal government, which is charged with public health and safety responsibilities, deems to constitute a threat to health or safety.
- (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 30 calendar days written notice to Lessor.
- (c) Upon written notice to the Lessor, the Lessee may terminate this Agreement if Lessee is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court, or other governmental authority necessary for the construction or operation of the Lessee's communications facility as now and hereafter intended by Lessee or if the Lessee

determines in its sole discretion that the cost of obtaining or retaining the same is commercially unreasonable.

- (d) Upon 60 calendar days prior written notice, the Lessee may terminate this Agreement without cause so long as Lessee pays Lessor a termination fee equal to three (3) months rent at the then current monthly rental rate.

7. Insurance. At a minimum, Lessee shall carry during the Term of this Agreement, at the sole cost and expense of the Lessee, the following insurance:

- (a) Commercial general liability insurance with a minimum limit of liability of two million and no hundredths dollars (\$2,000,000.00) combined single limit for bodily injury or death/property damage arising out of any one occurrence.  
(b) Workers' compensation insurance as required by law.

Lessee shall annually furnish the Lessor with a certificate of such insurance. The commercial general liability shall provide that Lessor is a separate, additional insured under said policy or policies and that said policy or policies shall not be cancelled or materially modified except upon 30 calendar days advance written notice to Lessor. This Agreement shall automatically be terminated without notice at any time upon termination or lapse of insurance coverage hereunder. Termination pursuant to this paragraph shall take precedence and supersede any other paragraph establishing the Term of this Agreement or requiring notice and/or an opportunity to cure a breach. The insurance limits in this paragraph shall in no way act or be deemed to define or limit the right of the Lessor to recover damages, expenses, or losses for injuries or property damage sustained by Lessor as a consequence of Lessee's violation or breach of any provision of this Agreement.

8. Interference. Subsequent to the Commencement Date of this Agreement, the Lessee shall not make any modifications of any type or to any degree on the Demised Premises that disturb the communications configurations, equipment, and frequencies in existence on the Water Tank Premises as of the Commencement Date of this Agreement. Lessee's activities, operations, and equipment shall not interfere with the Lessor's operation, maintenance, and repair of the Water Tank Premises, including, without limitation, the water tank itself and its lighting system. Effective as of the Commencement Date of this Agreement, Lessee agrees to install equipment only of types and generating frequencies that will not cause interference to transmissions or signals from Lessor and third parties present on the Water Tank Premises as of the Commencement Date of this Agreement. Furthermore, Lessee's equipment shall comply with all noninterference rules of the Federal Communications Commission.

In the event Lessee fails to comply with above-stated non-interference provisions, Lessee shall take all steps necessary to correct and eliminate the interference. If such interference cannot be eliminated within 48 hours of Lessee's receipt of written notice from the Lessor of the existence of such interference, Lessee shall temporarily disconnect the electric power and shut down the equipment (except for intermittent operation for the purpose of testing after performing maintenance, repair, modification, replacement, or other action taken for the purpose of correcting such interference). If such interference is not corrected within 30 days after receipt by Lessee of the written notice of the existence of the interference, Lessee agrees to either remove its noncompliant equipment from the Demised Premises, or this Agreement shall terminate as if by expiration and all of the Lessee's PCS facilities shall be removed as provided herein.

During the term of this Agreement, Lessor shall place in subsequent lease agreements pertaining to the Water Tank Premises similar restrictions upon interference with Lessee's frequencies. If Lessor fails to cure the cause of any such interference within 45 days of Lessor's receipt from Lessee of written notice of such interference, Lessee may terminate this Agreement without penalty and remove its equipment.

Lessee shall be responsible for the testing needed to confirm that any and all future modifications to the Demised Premises proposed by the Lessee are compatible with the communications facilities in existence on Lessor's Water Tank Premises as of the Commencement Date of this Agreement and that no interference will exist between the various communications equipment and frequencies located on said premises. Lessee hereby expressly acknowledges and accepts that Lessor has multiple third party lessees using communications equipment and frequencies located on the water tank and the adjoining premises. Furthermore, Lessee hereby expressly acknowledges and accepts that Lessor reserves the right to enter into new antenna and communications facilities leases in the future. Lessor will use reasonable efforts to require any new lessee to abide by provisions similar to this paragraph but will not be liable for monetary damages or equitable relief for interference caused by existing or future communications equipment or frequencies used on Lessor's premises.

9. Indemnification. Lessee agrees to indemnify, defend, and hold harmless Lessor and its elected and appointed officials, employees, contractors, agents, and representatives 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) caused by Lessee, its officers, employees, contractors, agents, and representatives. 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, employees, contractors, agents, and representatives.

Lessor agrees to indemnify, defend, and hold harmless Lessee and its officials, employees, contractors, agents, and representatives 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) caused by Lessor and its officers, employees, contractors, agents, and representatives. However, Lessor shall not indemnify or save harmless the Lessee from such claims or damages as may be attributed to the acts or omissions of the Lessee and its officers, employees, contractors, agents, and representatives.

Each party shall give the other party hereto prompt and timely notice of any claim or suit instituted, which in any way, directly or indirectly, contingently or otherwise, affects or might affect the other party, provided however, such notice shall not be a precondition to indemnification hereunder. The rights granted by this section of the Agreement shall not limit, restrict, impair, or inhibit the rights of the Lessor under any other section or paragraph of this Agreement.

10. 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 party set forth as signatory for the party below. Lessor's execution and performance of this Agreement will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on the Lessor.

11. 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, regardless of whether such improvements are attached or affixed to the Lessor's water tank and adjoining premises. Upon the expiration or termination of this Agreement, the Lessee shall, within a reasonable period not to exceed 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. If such removal causes Lessee to remain on the premises after the expiration or termination of this Agreement, Lessee shall pay rent at the then existing monthly rate until such time as the removal is completed. Such payment shall not be construed as an agreement to continue the leasing relationship and shall in no way limit any other remedy available to the Lessor for recovery of the property or damages related thereto.

12. Quiet Enjoyment. Lessor covenants that Lessee, on paying the rental and performing the covenants, terms, and conditions required of Lessee and contained herein, shall peaceably and quietly have, hold, and enjoy the leasehold estate granted to Lessee by virtue of this Agreement, subject to Lessor's continuous, primary, and overriding right to use the Water Tank Premises as a vital component in the public water supply system.

13. Assignment/Sublease. Lessee does have the right to assign this Agreement or sublease the area leased to the Lessee, and its rights herein, in whole or in part, without the Lessor's consent.

14. Condemnation. In the event the Lessor receives notification of any condemnation proceedings affecting the Demised Premises, Lessor will provide notice of the proceeding to Lessee within 48 hours. If a condemning authority takes all of the Water Tank Premises, or a portion sufficient in Lessee's reasonable determination to render the Demised Premises unsuitable for Lessee, this Agreement will terminate as of the date the title vests in the condemning authority. The parties to this Agreement will each be entitled to pursue their own separate awards in the condemnation proceedings, which for Lessee will include, where applicable, the value of the communications facilities, moving expenses, prepaid rent, and business dislocation expenses, provided that any award to Lessee will not diminish Lessor's recovery. Lessee will be entitled to reimbursement for any prepaid rent on a pro rata basis.

15. Casualty. Lessor will provide notice to Lessee of any casualty affecting the Demised Premises within 48 hours of the casualty. If any part of the Water Tank Premises is damaged by fire or other casualty so as to render, in Lessor's or Lessee's determination, the Demised Premises unsuitable for continued use, then either party may terminate this Agreement by providing written notice to the other party, which termination will be effective as of the date of such damage or destruction. Upon such termination, Lessee will be reimbursed for any prepaid rent on a pro rata basis, but Lessor shall not be obligated to provide any other form of monetary relief, compensation, and/or damages to Lessee as a result of such casualty that rendered the Demised Premises unsuitable for use.

16. Waiver of Lessor's Liens. Lessor waives any and all lien rights it may have, statutory or otherwise, concerning the Lessee's communications facilities or any portion thereof. Lessee's communication facilities shall be deemed to be personal property for purposes of this Agreement regardless of whether any portion is deemed real or personal property under applicable law. Lessor consents to Lessee's right to remove all or any portion of the Lessee's communications facilities from time to time in Lessee's sole discretion.

17. Waiver of Liability. With the exception of any loss or damage caused by the negligence or willful misconduct of one of the parties to this Agreement, neither Lessor nor Lessee shall be responsible or liable to the other party to this Agreement for any loss or damage arising from any claim

to the extent such loss or damage is attributable to any acts or omissions of other users of the Water Tank Premises, acts of vandalism, structural failures, power failures, or other destruction or damage to the Water Tank Premises.

18. Subordination. If the Water Tank Premises become encumbered by a deed to secure a debt, mortgage, or other security interest, Lessor will make a good faith effort to provide promptly to Lessee a mutually agreeable Subordination, Non-Disturbance, and Attornment Agreement.

19. Maintenance. Lessee will be responsible for repairing and maintaining Lessee's communication facilities and any other improvements installed by Lessee on the Demised Premises in a proper operating and reasonably safe condition; provided, however, if any such repair or maintenance is required due directly to negligent or malicious acts of the Lessor or its elected and appointed officials, employees, contractors, and representatives, the Lessor shall reimburse Lessee for the reasonable costs incurred by Lessee to restore the damaged areas to the condition which existed immediately prior thereto. Lessor represents and warrants that its operation of the Water Tank Premises, exclusive of Lessee's facilities, meets and will be maintained in accordance with all applicable laws, rules, and regulations, including, without limitation, rules and regulations of the Federal Communications Commission, Federal Aviation Administration, and all applicable local codes and regulations. With the exception of Lessee's facilities, including without limitation the Lessee's antennae and associated equipment, and any additional costs, maintenance or otherwise, that are directly or indirectly attributable to the acts or omissions of the Lessee, the Lessor shall bear the costs of maintaining the Water Tank Premises.

The Lessee shall provide the Lessor with a telephone number that shall function as a point of contact that can be effectively utilized 24 hours a day, 7 days a week whenever the Lessor needs to contact a representative of the Lessee that is authorized to and capable of turning off the Lessee's transmitter(s). The authorized representative referenced in the immediately preceding sentence shall promptly comply with the Lessor's request to turn off the Lessee's transmitter(s) when and only for so long as it is strictly necessary, as judged by the appropriate industry, trade, or professional standards, for employees, contractors, or agents of the Lessor to approach, for maintenance, water quality, or safety purposes, the zone specified in the certified engineering report referenced in Section 1 of this Agreement as a restricted area due to the excessive levels of radio frequency exposure that employees, contractors, or agents would encounter in the restricted area. The rights granted by this section of the Agreement shall not limit, restrict, impair, or inhibit the rights of the Lessor under any other section or paragraph of this Agreement.

20. Hazardous Substances. Lessor represents that it has no knowledge of any substance, chemical, or waste on the Water Tank Premises that is identified as hazardous, toxic, or dangerous in any applicable federal, state, or local law or regulation. Lessee will not introduce or use any such substance on the premises in violation of any applicable law.

21. Governing Law. This Agreement shall be governed and interpreted by, and construed in accordance with the laws of the State of North Carolina. Venue for any state trial court litigation shall be in Randolph County, North Carolina, and the venue for any federal trial court litigation shall be in the Middle District of North Carolina.

22. Notices. Except as specifically provided elsewhere in this 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 of Asheboro  
Attn: City Manager  
Post Office Box 1106  
Asheboro, North Carolina 27204-1106

**LESSEE:** SprintCom, Inc.  
Sprint/Nextel Property Services  
Site ID: GB03XC357-B  
Mailstop KSOPHT0101-Z2650  
6391 Sprint Parkway  
Overland Park, KS 66251-2650

With a copy to: Sprint/Nextel Law Department  
Attn: Real Estate Attorney  
Site ID: GB03XC357-B  
Mailstop KSOPHT0101-Z2020  
6391 Sprint Parkway  
Overland Park, KS 66251-2020

23. Bind and Benefit. The terms and conditions contained in this Agreement shall constitute covenants running with the land and shall bind and inure to the benefit of the parties and their respective heirs, executors, administrators, successors and assigns.

24. Waivers and Disclaimers; Memorandum of Lease. At the request of Lessee or Lessee's lenders, Lessor shall execute such documents as are reasonably requested by Lessee from time to time for the purpose of releasing, waiving, or disclaiming any interest of Lessor in and to the equipment of Lessee. In addition to the foregoing, at Lessee's request and expense (including reimbursement of reasonable out-of-pocket expenses incurred by Lessor hereunder), Lessor agrees to execute a memorandum of lease in a form suitable for recording and acceptable to Lessor and Lessee. Lessee agrees to provide Lessor with a certified copy of any such memorandum following any recordation of the same.

25. Miscellaneous Provisions.

- (p) *Written Modification.* This Agreement cannot be modified except by a written modification executed by Lessor and Lessee in the same manner as this Agreement is executed.
- (q) *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.
- (r) *Integrated Agreement.* This Agreement, and any exhibits attached hereto, 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 which are not expressly set forth herein and covered hereby.
- (s) *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.
- (t) *Waiver of Breach Not Deemed Waiver of Subsequent Breach.* No written waiver by any party at any time of any breach of any provision of this Agreement shall be deemed a waiver of a breach of any other 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.
- (u) *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.
- (v) *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.
- (w) *Time Is of the Essence.* Time shall be of the essence of this Agreement and each and every term and condition thereof.
- (x) *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.
- (y) *Product of Mutual Negotiation.* Both Lessor and Lessee acknowledge and stipulate that this Agreement is the product of mutual negotiation and bargaining and that counsel has drafted it for both Lessor and Lessee. As such, the doctrine of construction against the drafter shall have no application to this Agreement.
- (z) *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 is critical to the Agreement and was bargained for and part of the consideration for the Agreement.
- (aa) *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 10 business days prior written notice to the other party hereto.

(bb) *Interpretation.* Unless otherwise specified, the use of the term "including" will be interpreted to mean "including but not limited to."

(cc) *No Electronic Signature/No Option.* The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of, or option for the Water Tank 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, CMC, City Clerk

**STATE OF NORTH CAROLINA  
COUNTY OF RANDOLPH**

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, do hereby certify that Holly H. Doerr, who is personally known to me, voluntarily and personally appeared before me this day and acknowledged that she is the City Clerk for the City of Asheboro and that, by authority duly given, the Mayor of the City of Asheboro voluntarily executed the foregoing instrument on behalf of the city for the purposes stated therein, Ms. Doerr sealed the instrument with the municipal seal, and she attested the instrument as the City Clerk.

**WITNESS** my hand and notarial stamp or seal, this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
(Printed or Typed Name of Notary Public)

My commission expires:  
\_\_\_\_\_

**LESSEE:**

**SPRINTCOM, INC.,  
a Kansas corporation**

By: \_\_\_\_\_  
Signature of Authorized Corporate Officer

Nathan Olson  
Typed Name of Authorized Corporate Officer

Authorized Representative  
Title of Authorized Corporate Officer

STATE OF KANSAS            )  
  ) ss:  
COUNTY OF JOHNSON        )

Acknowledgment by Corporation  
Pursuant to Uniform Acknowledgment Act

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_,  
by \_\_\_\_\_ on behalf of SprintCom, Inc., a Kansas corporation.

In witness whereof I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

[A copy of the map referenced as Exhibit A in the lease agreement with SprintCom, Inc. is on file in the City Clerk's office.]

**17. Notification of a special meeting to be held at 4:00 p.m. on Thursday, January 31, 2013 to tour the Sunset Theatre Project.**

Mayor Smith announced that there will be a special meeting of the City Council on Thursday, January 31, 2013 at 4:00 p.m. to tour the Sunset Theatre. Council Members will need to meet at the Cultural and Recreation Services building located on Sunset Avenue at 4:00 p.m.

**18. Discussion of items not on the agenda.**

- January 18, 2013 - Asheboro/Randolph Chamber of Commerce Annual Meeting
- January 21, 2013 – Dr. Martin Luther King, Jr. Celebration
- January 21, 2013 – City Offices will be closed.

There being no further business, the meeting was adjourned at 9:25 p.m.

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

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