

**REGULAR MEETING  
ASHEBORO CITY COUNCIL  
CITY COUNCIL CHAMBER, MUNICIPAL BUILDING  
THURSDAY, DECEMBER 10, 2015  
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 city staff members present:

David H. Smith            ) – Mayor presiding  
  
Talmadge S. Baker        )  
Clark R. Bell             )  
Edward J. Burks         )  
Linda H. Carter         ) – Council Members Present  
Walker B. Moffitt        )  
Katie L. Snuggs         )  
Charles A. Swiers        )

John N. Ogburn, III, City Manager  
D. Jason Cheek, Police Captain  
Holly H. Doerr, CMC, NCCMC, City Clerk/Paralegal  
David J. Hutchins, Public Works Director  
Michael L. Leonard, P.E., City Engineer  
Trevor L. Nuttall, Community Development Director  
Deborah P. Reaves, Finance Director  
Michael D. Rhoney, P.E., Water Resources Director  
Jeffrey C. Sugg, City Attorney

**I.        Pre-Organizational Phase of the Meeting:**

**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 for private prayer or meditation, Mayor Smith asked everyone to stand and say the pledge of allegiance.

**3.        Consent agenda.**

Upon motion by Mr. Burks and seconded by Mr. Baker, Council voted unanimously to approve/adopt the following consent agenda items.

**(a)       The minutes of the city council’s meeting on November 5, 2015.**

**(b)       Acknowledgement of the receipt from the Asheboro ABC Board of the board’s meeting minutes for October 5, 2015.**

The minutes of the meeting held by the Asheboro ABC Board on October 5, 2015 have been received by the city clerk, distributed to the mayor and members of the city council for review, and are on file and available for inspection in the city clerk’s office.

**(c)       Acknowledgement of the receipt from the Randolph County Board of Elections of a copy of the abstract of votes in the municipal general election held on November 3, 2015.**

A copy of the abstract of votes is on file in the city clerk’s office. The candidates who won election to the Asheboro City Council, in alphabetical order, were Edward J. Burks, Jane H. Redding, and Charles A. Swiers.

**4. Reopening of a legislative zoning hearing for Zoning Case No. RZ-15-09 that was continued from the regular November council meeting to consider the application by Michael Foley and Margie M. Trogdon to rezone property located at 1801, 1827, and 1831 South Fayetteville Street from Medium-Density Residential (R10) and Conditional Use General Commercial (CU-B2) to General Commercial (B2).**

Mayor Smith opened the public hearing on the following request.

The requested rezoning pertains to a total of approximately 4.05 acres of land found in two parcels located along South Fayetteville Street. Approximately 2.19 acres of land located at 1801 South Fayetteville Street is a portion of a parcel of land owned by Michael Foley. This parcel of land is identified by Randolph County Parcel Identification Number 7750737415. The remaining 1.86 acres of land located at 1827 and 1831 South Fayetteville Street is owned by Margie M. Trogdon and James P. Trogdon and is more specifically identified by Randolph County Parcel Identification Number 7750733691.

Mr. Nuttall utilized a visual presentation to summarize the request by Margie Trogdon and Michael Foley to rezone the above-described property from its current combination of CU-B2 (Conditional Use General Commercial) and R10 (Medium-Density Residential) zoning to B2 (General Commercial) zoning.

The staff report noted the following:

1. The property is located outside of the city limits. City water and sewer are available to the existing structures. New development proposed to connect to city services will require the entire tax parcel(s) to be annexed.
2. South Fayetteville Street is a state-maintained major thoroughfare. Foster Street is a state-maintained road.
3. The existing B2 zoning on both parcels currently extends approximately 220 feet to 250 feet from the public right-of-way into the property.
4. The portion of the property located at 1827 South Fayetteville Street that is zoned B2 was previously used for a small child day care center and for single-family residential purposes. A separate structure on the property (1831 South Fayetteville Street) has been removed.
5. South Fayetteville Street consists of primarily commercial uses, with some industrial uses on the west side of the corridor. Residential uses (primarily single-family with some two- and multi-family dwellings) are to the east of the subject property.
6. The intent of the B2 district is "to serve the convenience goods, shoppers goods retail and service needs of the motoring public, both local and transient. This district should always be located with access directly to minor thoroughfares or higher classification streets, but never local residential streets."

The Planning Board concurred with the following analysis from the Community Development staff and recommended approval of the requested rezoning.

"Several factors support the B2 (General Commercial) rezoning request. The Land Development Plan proposed land use map designates the property for commercial use. Much of the property is currently zoned B2 or CU-B2 (Conditional Use General Commercial) and has a history of non-residential use.

The property is located along South Fayetteville Street, which the Central Small Area Plan acknowledges is suited for commercial development. Furthermore, designating the property with one zoning district (B2) will allow greater flexibility to develop the property while buffer/screening requirements will ensure any potential negative impacts to adjoining residential properties are mitigated."

There being no comments and no opposition from the public, Mayor Smith transitioned to the deliberative phase of the hearing.

Upon motion by Mr. Bell and seconded by Ms. Carter, Council voted unanimously to approve the requested rezoning and adopted, with a combined motion, the recommendation/analysis of the Community Development Division staff and the Planning Board along with adopting, as its own, the following consistency statement that was initially proposed in the staff report:

After considering the above factors (the excerpt from the staff report that is quoted above), the General Commercial (B2) designation is in the public interest by allowing a reasonable use of the property and ensuring consistency with the Land Development Plan.

A copy of the visual presentation utilized by Mr. Nuttall is on file in the city clerk's office.

**II. Organizational Phase of the Meeting:**

Prior to the administration of the oaths of office to the candidates elected to new 4-year terms of office, Mr. Baker was given an opportunity to address his family members and the citizens in attendance along with the members of the city council. Mr. Baker thanked everyone for their support and allowing him to serve the City of Asheboro as a city council member for the past 24 years.

In addition to expressing his gratitude and warm wishes, Mayor Smith presented Mr. Baker with a commemorative pottery plate in honor of his service to the City of Asheboro.

**5. Administration of the Oaths of Office:**

City Clerk Holly H. Doerr administered to the oath of office to the following council members.

**(a) Edward J. Burks**

**OATH OF COUNCIL MEMBER**

STATE OF NORTH CAROLINA  
COUNTY OF RANDOLPH  
CITY OF ASHEBORO

I, Edward J. Burks, do solemnly swear that I will support, defend, and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge and perform the duties of my office as Council Member for the City of Asheboro, on which I am about to enter, according to my best skill and ability; so help me, God.

\_\_\_\_\_  
/s/Edward J. Burks  
Edward J. Burks

Sworn to and subscribed before me this 10<sup>th</sup> day of December, 2015.

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

**(b) Jane H. Redding**

**OATH OF COUNCIL MEMBER**

STATE OF NORTH CAROLINA  
COUNTY OF RANDOLPH  
CITY OF ASHEBORO

I, Jane H. Redding, do solemnly swear that I will support, defend, and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge and perform the duties of my office as Council Member for the City of Asheboro, on which I am about to enter, according to my best skill and ability; so help me, God.

\_\_\_\_\_  
/s/Jane H. Redding  
Jane H. Redding

Sworn to and subscribed before me this 10<sup>th</sup> day of December, 2015.

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

(c) Charles A. Swiers

**OATH OF COUNCIL MEMBER**

STATE OF NORTH CAROLINA  
COUNTY OF RANDOLPH  
CITY OF ASHEBORO

I, Charles A. Swiers, do solemnly swear that I will support, defend, and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge and perform the duties of my office as Council Member for the City of Asheboro, on which I am about to enter, according to my best skill and ability; so help me, God.

\_\_\_\_\_  
/s/Charles A. Swiers  
Charles A. Swiers

Sworn to and subscribed before me this 10<sup>th</sup> day of December, 2015.

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

**6. Election of Mayor Pro Tempore.**

After the oaths of office were administered to Council Members Burks, Redding, and Swiers, the Council turned its attention to the election of a Mayor Pro Tempore. Mr. Bell nominated Mr. Walker B. Moffitt for election as Mayor Pro Tempore, and Mr. Swiers seconded this nomination. Mayor Smith asked if there was agreement to elect Mr. Moffitt as Mayor Pro Tempore by acclamation, and Mr. Bell and Mr. Swiers agreed to so move and second. This motion to close nominations and elect Walker B. Moffitt as Mayor Pro Tempore by acclamation was approved unanimously by Council Members Bell, Burks, Carter, Moffitt, Redding, Snuggs, and Swiers.

**7. Committee appointments:**

**(a) Appointments by Mayor**

Mayor Smith presented a proposed resolution with a list of appointments to council committees.

**(b) Council adoption of the list of appointments.**

Upon motion by Mr. Bell and seconded by Mr. Burks, Council voted unanimously to adopt, without alteration, the resolution introduced by Mayor Smith. Council Members Bell, Burks, Carter, Moffitt, Redding, Snuggs, and Swiers voted to concur with the mayoral appointments by approving the following resolution:

**RESOLUTION NUMBER** 37 RES 12-15

**CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA**

**A RESOLUTION OF CONCURRENCE WITH THE COMMITTEE APPOINTMENTS MADE BY  
MAYOR DAVID H. SMITH**

**WHEREAS**, the Code of Asheboro (hereinafter referred to as the "Code") authorizes the Mayor to appoint Council Members to the various committees listed in Section 31.02 of the Code as well as to other committees established by and organized in accordance with Resolutions adopted by the City Council independent of the committee framework established in the Code; and

**WHEREAS**, the appointment of individuals to such committees is to take place during the organizational meeting that follows the municipal general election; and

**WHEREAS**, Section 31.02 of the Code provides that the above-referenced committee appointments are subject to the approval of the Council; and



III. Post-Organizational Phase of the Meeting:

REGULAR MEETING  
NEWLY ORGANIZED ASHEBORO CITY COUNCIL  
COUNCIL CHAMBER, MUNICIPAL BUILDING  
THURSDAY, DECEMBER 10, 2015

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David H. Smith ) – Mayor Presiding  
Clark R. Bell )  
Edward J. Burks )  
Linda H. Carter )  
Walker B. Moffitt ) – Council Members Present  
Jane H. Redding )  
Katie L. Snuggs )  
Charles A. Swiers )

1. **Community Development Items: [Item No. 8 on the original Combined Agenda for December 10, 2015.]**

- (a) **Consideration of a resolution in support of the naming of a section of N.C. Highway 49 in honor of former Mayor Pro Tempore Talmadge S. Baker, including authorization to submit the resolution and accompanying documentation to the North Carolina Department of Transportation for review.**

Mr. Nuttall presented and recommended adoption, by reference, of a resolution titled Request to Name a Portion of North Carolina Highway 49 within the Asheboro Corporate Limits in Honor of the Honorable Talmadge S. Baker in Recognition of his Commitment to Improving the Region's Transportation Infrastructure.

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

**38 RES 12-15**

**REQUEST TO NAME A PORTION OF NORTH CAROLINA HIGHWAY 49 WITHIN THE ASHEBORO CORPORATE LIMITS IN HONOR OF THE HONORABLE TALMADGE S. BAKER IN RECOGNITION OF HIS COMMITMENT TO IMPROVING THE REGION'S TRANSPORTATION INFRASTRUCTURE**

**WHEREAS**, the Asheboro/Randolph Chamber of Commerce and the City of Asheboro would like to honor the dedicated service of The Honorable Talmadge S. Baker towards improving transportation infrastructure in the City of Asheboro and Randolph County; and

**WHEREAS**, due to Mr. Baker's tireless efforts campaigning for transportation investments in Randolph County highways during well over a decade of service on the Technical Advisory Committee of the region's Rural Planning Organization (PTRPO) and I-73/I-74/I-75 Corridor Association, Randolph County possesses an efficient and effective transportation network; and

**WHEREAS**, with Mr. Baker's leadership as Chairman of the PTRPO's Technical Advisory Committee, numerous projects important to the economic viability of Randolph County, the City of Asheboro and the Piedmont Triad region have been included in State Transportation Improvement Programs; and

**WHEREAS**, due to Mr. Baker's commitment to work with his colleagues on the Technical Advisory Committee and officials from the North Carolina Department of Transportation, U-5813, a project to reconstruct the US Highway 64 and NC Highway 49 interchange, is included in the 2016-2025 State Transportation Improvement Program;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Asheboro, North Carolina that the North Carolina Department of Transportation respectfully is requested to consider naming North Carolina Highway 49 from the city's southwestern corporate limits to the highway's intersection with United States Highway 64 in honor of Mr. Talmadge S. Baker.

This resolution was adopted by the Asheboro City Council in open session during a regular meeting that was

held on the 10<sup>th</sup> day of December, 2016.

/s/David H. Smith  
David H. Smith, Mayor  
City of Asheboro, North Carolina

ATTEST:

/s/Holly H. Doerr  
Holly H. Doerr, CMC, NCCMC, City Clerk  
City of Asheboro, North Carolina

**(b) Subdivision Case No. SUB-15-01: Final Plat for Section II, Phase III of Olde Towne Village**

Mr. Nuttall presented the final plat for Section II, Phase III of Olde Towne Village. Olde Towne Village, LLC requested the approval of a subdivision plat showing three (3) lots plus common area and a future development area. The three Planned Unit Development lots have an average lot size of 3,815 square feet and are located at the southern terminus of Olde Towne Parkway.

In addition to the 12-acre future development area, the plat submitted for approval pertains to approximately 6.03 acres of land. If approved, the submitted plat will result in the recordation of an additional 134 feet of public right-of-way along Olde Towne Parkway, ending in a cul-de-sac.

During his presentation, Mr. Nuttall noted that the Community Development Division staff and the Planning Board recommended granting the request with the following comments/conditions:

1. As-built drawings and engineering certification of water and sewer lines have been submitted as required.
2. As permitted by, and in accordance with, the Subdivision Ordinance, uncompleted improvements must be guaranteed. An estimate for these uncompleted improvements has been submitted as required.
3. HOA documents (including prohibition of recreational vehicles) must be recorded with the final plat.

Upon motion by Mr. Swiers and second by Mr. Moffitt, Council voted unanimously to approve the plat request with the conditions that required guarantees must be provided and the HOA documents must be recorded with the final subdivision plat for Section II, Phase III of the Olde Towne Village subdivision.

**(c) A legislative hearing on proposed amendments to Article X of the Asheboro Subdivision Ordinance concerning the pending expiration of provisions for street trees.**

Mayor Smith opened the public hearing on the following request.

Mr. Nuttall presented an overview of the Community Development Division staff's proposed amendment to Article X of the Subdivision Ordinance pertaining to street trees within Planned Unit Developments. In 2008, the Subdivision Ordinance was amended to provide for the inclusion of street trees within Planned Unit Developments. Article X, Section IV, Subsection F of the Subdivision Ordinance contains an expiration or sunset clause of December 31, 2015. This street tree provision was originally set to expire on December 31, 2010, and the expiration date was subsequently extended to December 31, 2012 and again until December 31, 2015. Due to economic conditions, the program has not had an opportunity to be fully tested to determine its feasibility, and the Community Development Division staff recommends extending the life of this street tree regulation to December 31, 2018.

When the Planning Board received the staff's analysis during the board's December 2015 meeting, the Planning Board Members voted to recommend approval of the proposed extension to December 31, 2018.

There being no comments and no opposition from the public, Mayor Smith transitioned to the deliberative phase of the hearing.

Upon motion by Mr. Burks and seconded by Mr. Bell, Council voted unanimously to approve the staff's proposed amendment to the City of Asheboro Subdivision Ordinance.

A copy of the visual presentation utilized by Mr. Nuttall is on file in the city clerk's office.

**(d) A report on the continuing code enforcement activities related to 436 West Salisbury Street.**

Mr. Nuttall briefly updated the council members on the on-going code enforcement activities related to 436 West Salisbury Street in Asheboro. A hearing has been held, and the hearing officer ordered the structure located on the property to be repaired or demolished. Further actions will be taken as necessary. No action was taken by the Council.

**(e) Update on the status of proposed zoning ordinance amendments, including planned revisions to sign regulations as a result of a recent U.S. Supreme Court decision.**

Mr. Nuttall informed the council members of on-going ordinance updates that are in various stages of development. No action was taken by the Council.

**2. A proposed ordinance setting the Asheboro City Council schedule for regular meetings during the 2016 calendar year. [Item No. 9 on the original Combined Agenda for December 10, 2015.]**

Mayor Smith introduced an ordinance setting the dates for regular meetings of the Asheboro City Council during the 2016 calendar year.

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

**ORDINANCE NUMBER** \_\_\_\_\_ 26 ORD 12-15 \_\_\_\_\_

**CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA**

**AN ORDINANCE SETTING THE DATES FOR REGULAR MEETINGS OF THE ASHEBORO CITY COUNCIL DURING THE 2016 CALENDAR YEAR**

**WHEREAS**, Section 31.04(A) of the Code of Asheboro provides that the "City Council shall hold a regular meeting on Thursday after the first Monday of each month;" and

**WHEREAS**, in an effort to avoid reasonably foreseeable scheduling conflicts with the Independence Day and Labor Day holidays, the members of the Asheboro City Council have decided to reschedule the Council's regular meetings in July 2016 and September 2016;

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

**Section 1.** The regular meeting of the Asheboro City Council in July 2016 shall be held in the Council Chamber at Asheboro City Hall, with a beginning time of 7:00 p.m., on the 14<sup>th</sup> day of July, 2016.

**Section 2.** The regular meeting of the Asheboro City Council in September 2016 shall be held in the Council Chamber at Asheboro City Hall, with a beginning time of 7:00 p.m., on the 15<sup>th</sup> day of September, 2016.

**Section 3.** For purposes of clarity, the schedule for regular meetings of the Asheboro City Council during the 2016 calendar year is as follows:

<b><u>Month</u></b>	<b><u>Meeting Date</u></b>
January	7 <sup>th</sup>
February	4 <sup>th</sup>
March	10 <sup>th</sup>
April	7 <sup>th</sup>
May	5 <sup>th</sup>
June	9 <sup>th</sup>
July	14 <sup>th</sup>

August	4 <sup>th</sup>
September	15 <sup>th</sup>
October	6 <sup>th</sup>
November	10 <sup>th</sup>
December	8 <sup>th</sup>

**Section 4.** All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed to the extent that such ordinances conflict with the intent of the Asheboro City Council to hold its regular meetings in accordance with the schedule found in Section 3 of this Ordinance. With the exception of rescheduling the Asheboro City Council's regular meetings in July and September 2016, the provisions of Section 31.04 of the Code of Asheboro remain in full force and effect.

**Section 5.** This Ordinance shall become effective upon adoption and shall sunset on December 31, 2016.

This Ordinance was adopted in open session during a regular meeting of the Asheboro City Council that was held on the 10<sup>th</sup> day of December, 2015.

/s/David H. Smith  
David H. Smith, Mayor  
City of Asheboro, North Carolina

ATTEST:

/s/Holly H. Doerr  
Holly H. Doerr, CMC, NCCMC, City Clerk  
City of Asheboro, North Carolina

**3. Presentation of an ordinance to amend the Water and Sewer Systems Improvement Fund. [Item No. 10 on the original Combined Agenda for December 10, 2015.]**

Ms. Reaves presented and recommended adoption, by reference, of an ordinance to amend the Water and Sewer System Improvement Fund.

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

**27 ORD 12-15**

**ORDINANCE TO AMEND THE WATER AND SEWER SYSTEMS IMPROVEMENT FUND (#70)  
FY 2015-2016**

WHEREAS, in June 2014, the City Council approved a Water & Sewer Capital Improvement Plan and one of the improvements identified in this plan was replacement of filters, originally installed in 1986, at the Water Treatment Plant. In addition to replacing filters that have been operating past their useful life, this project involved removing filter media down to the ceramic tile drains, drain inspection and replacement as needed, installation of an air scour filter wash system to replace the existing filter sweep system and the addition of blowers for the air scour system, and;

WHEREAS, the City of Asheboro submitted final documentation for a request for funding to the Department of Environmental Quality (DEQ) in June 2015 and the Local Government Commission approved the debt request in July 2015, and

WHEREAS, the City of Asheboro City Council approved the contract for the project (project # WIF-1887) on May 7, 2015, and;

WHEREAS, the project will be funded by a DWSRF loan in the amount up to \$2,082,070 at a 0% interest with no local match from the City of Asheboro, and;

WHEREAS, the Water and Sewer Systems Improvement Project Fund budget needs to be amended to account for this projects revenues and expenditures, and;

WHEREAS, the City Council of the City of Asheboro desires to amend the budget as required by law and to be in compliance with all generally accepted accounting principles.

THEREFORE, BE IT ORDAINED by the City Council of the City of Asheboro, North Carolina

Section 1: That the following revenue line items are changed:

<u>Account</u>	<u>Revenue Description</u>	<u>Increase</u>
70-380-0001	DWSRF Loan	1,335,239

Section 2: That the following Expense line items are changed:

<u>Account</u>	<u>Expense Description</u>	<u>Increase</u>
70-880-0001	Construction Cost	962,176
70-880-0002	Contingency	48,109
70-880-0003	Filter Repair & Painting	188,000
70-880-0004	Design	26,000
70-880-0005	Construction Administration	13,500
70-880-0006	Construction Observation	9,000
70-880-0007	Engineering Services	47,700
70-880-0008	Funding Administration	13,500
70-880-0009	Closing Fee	26,182
70-880-0010	Miscellaneous (legal, testing, etc.)	1,072
	Total	1,335,239

Adopted this the 10th day of December, 2015.

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

ATTEST:

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

4. **Request for approval of a resolution authorizing a new Fixed Based Operator Lease Agreement between the City of Asheboro and Cardinal Air, LLC for a period of three (3) years beginning January 1, 2016, with an option for an automatic renewal for an additional three (3) year term. [Item No. 11 on the original Combined Agenda for December 10, 2015.]**

Mr. Leonard presented and recommended adoption, by reference, of a Resolution Approving the Fixed Based Operator Lease Agreement at the Asheboro Regional Airport.

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

**RESOLUTION NUMBER** 39 ORD 12-15

**CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA**

**RESOLUTION APPROVING THE FIXED BASE OPERATOR LEASE AGREEMENT AT THE ASHEBORO REGIONAL AIRPORT**

**WHEREAS**, Section 160A-272 of the North Carolina General Statutes, as amended by the local modification found in Chapter 867 of the 1989 (Reg. Sess., 1990) Session Laws of North Carolina, authorizes the City Council of the City of Asheboro to lease, in relation to the operation of the Asheboro Regional Airport, city-owned property located at said airport for a maximum lease term of 30 years so long as the property will not be needed by the municipality during the term of the lease; and

**WHEREAS**, effective December 31, 2015, the existing fixed base operator lease agreement with Cardinal Air, LLC ("Cardinal Air") at the Asheboro Regional Airport will expire; and

**WHEREAS**, during a meeting held on October 20, 2015, the Asheboro Airport Authority recommended executing a new fixed base operator lease agreement with Cardinal Air for an initial 3-year term that will commence at 12:01 a.m. on January 1, 2016, and will expire at midnight on December 31, 2018; provided, however, the proposed agreement will automatically renew for one additional 3-year renewal term upon the same terms and conditions unless either the city or Cardinal Air notifies the other party in writing of the intent not to renew the agreement at least 60 calendar days prior to the expiration of the initial lease term; and



the notice of non-renewal shall be deemed to be proper and effective when such notice is given in accordance with the notice provisions found in this Agreement's Article XV, Paragraph C. If the Lessee fails to surrender the demised premises upon the early termination or expiration of the Agreement, there shall be no renewal of this Agreement or exercise of an option by operation of law.

## **ARTICLE II LEASED PREMISES**

Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor the following described improvements that are identified and shown on Schedule "C" (Amended October 2013), which is attached hereto as EXHIBIT 1 and incorporated herein by reference, (the "Premises") together with the right of ingress and egress for both vehicles and aircraft:

1. "T" Hangars: Two 8-unit "T" hangars shown on Schedule "C."

2. Maintenance Building: Shown on Schedule "C."

3. FBO Administration Building (Terminal Building): The entire FBO Administration Building shown on Schedule "C," which includes the FBO office, manager's office, training room on the south side of the building, lounge, conference room, restrooms, and snack area. The lounge, conference room, restrooms, and snack area must be open to the public during normal operating hours.

4. Avgas and Jet Fuel Facilities.

5. North Apron: Shown on Schedule "C."

6. South Apron: Shown on Schedule "C."

## **ARTICLE III RIGHTS AND OBLIGATIONS OF LESSEE**

**A. Required Services.** Lessee is hereby granted the non-exclusive privilege to engage in, and Lessee agrees to engage in, the business of providing fixed base operation services as hereinafter identified, at the Airport every day during the hours of 8 A.M. until sunset or 8 P.M., whichever occurs first, with only fuel sales required on Sunday and national holidays. Services required of the Lessee shall be as follows:

1. Lessee is to operate and provide management of all the Premises and the public and other non-commercial facilities on the Airport premises for the public and the Lessor in return for the use of the leased facilities. The leased facilities are described in Article II. The public facilities include the runway, taxiways, runway and taxiway lighting, REIL, NDB, PAPI, AWOS, auto parking area, access road, windsock, and area lighting. In the terminal building, the public facilities include the lobby, restrooms, vending/snack area, and conference room. Other non-commercial facilities shall include existing and future hangars or facilities not intended for commercial use and not leased to another tenant, and not part of the leased or public property. Operation by the Lessee includes maintaining clean facilities and providing operational maintenance.

2. Lessee is to provide a UNICOM radio station (The City reserves the right to license the UNICOM in its own name with access to be provided to the UNICOM for one or more lessees).

3. The Lessee will monitor the NDB and AWOS on monitors provided by the Lessor.

4. The Lessee will file and rescind NOTAMS as required.

5. The Lessee will provide repair and maintenance services for based and transient aircraft. Lessee agrees to maintain and provide, directly or by sublease, aircraft engine, airframe, and avionics maintenance and repair services within Federal Aviation Administration (the "FAA") rules and regulations, and the Lessee further agrees to observe and be responsible for all environmental regulations relative to all of its operations. The Lessor reserves the right to approve or disapprove with or without cause all sublease agreements prior to execution of the agreements.

6. The Lessee is to provide sales of avionic, airframe, and engine parts and instruments and accessories.

7. The Lessee is to provide aircraft rental and flight instruction.

8. The Lessee will provide ramp service, including sale and into plane delivery of aviation gas and jet fuel, lubricants, and other related aviation products.

9. The Lessee will provide apron servicing of and assistance to aircraft, including itinerant parking, storage, and tie down service, for both based and itinerant aircraft upon or within facilities leased to Lessee or aircraft parking areas designated by Lessor.

10. The Lessee will observe and enforce the "Rules and Regulations" of the Asheboro Regional Airport.

Lessee acknowledges that, with the exception of activities in the maintenance building, no right or privilege has been granted which would operate to prevent any person, firm, or corporation operating aircraft at the Airport from personally performing service on the individual's or entity's own aircraft or with the individual or entity's own regular employees, including maintenance and repair services.

**B. Authorized and Prohibited Services.** In addition to the services required to be provided by Lessee pursuant to Paragraph A above, Lessee is authorized but not required to provide the following services and to engage in the following activities:

1. Ramp service at the Main Terminal or other Airport locations; loading and unloading of non-air carrier passengers, baggage, mail, and freight; and providing of ramp equipment, aircraft cleaning, and other services for other persons or firms.

2. Special flight services, including, without limitation, aerial sight-seeing, aerial advertising, and aerial photography.

3. The sale of new and used aircraft.

4. Aircraft charter operations; said operations may be conducted by Lessee or a subcontractor of Lessee.

5. The Lessee may use the snack area in the terminal building for drink and snack machines and microwave, toaster, coffee pot, or similar device(s). A restaurant is not permitted. No business use is permitted in the lobby.

6. The Lessee is authorized to use the conference room in the terminal building for business purposes, provided that the public is given priority use.

**C. Operating Standards.** In providing any of the required and/or authorized services or activities specified in this Agreement, Lessee shall operate for the use and benefit of the public and shall meet or exceed the following standards:

1. Lessee shall furnish service on a fair, reasonable, and non-discriminatory basis to all users of the Airport. Lessee shall furnish good, prompt, and efficient service that is adequate to meet all reasonable and customary demands for its services at the Airport. Lessee shall charge fair, reasonable, and non-discriminatory prices for each unit of sale or service; provided, however, that Lessee may be allowed to give reasonable discounts, rebates, or similar types of price reductions to volume purchasers so long as such discounts are not provided on the basis of a prohibited Constitutional or statutory factor or in violation of federal, state, or local public policy.

2. Lessee shall select and appoint a manager of its operations at the Airport. The manager shall be qualified, experienced, and vested with full power and authority to act in the name of Lessee with respect to the method, manner, and conduct of the operation of the fixed base services to be provided under this Agreement. The manager shall be available at the Airport during regular business hours and, during the manager's absence, a duly authorized subordinate shall be in charge and available at the Airport to provide usual and customary services then normally available.

3. Lessee shall provide, at its sole expense, a sufficient number of employees to provide effectively and efficiently the services required or authorized under the terms and conditions of this Agreement.

4. Lessee shall control the conduct, demeanor, and appearance of its employees, who shall be trained by Lessee and who shall possess such technical qualifications and hold such certificates of qualification as may be required in order to carry out assigned duties. It shall be the responsibility of Lessee to maintain supervision over its employees and to assure a high standard of service to customers of Lessee.

5. Lessee shall meet in a timely manner all expenses and payments in connection with its lease of the Premises (except as noted in Article IV) and the rights and privileges herein granted, including sales taxes, permit fees, and license fees.

6. Lessee shall comply with all federal, state, and local laws, rules, and regulations which may apply to the conduct of the business contemplated, including by way of illustration and without limitation rules and regulations promulgated by Lessor, and Lessee shall keep in effect and post in a prominent place all necessary and/or required licenses or permits.

7. Lessee shall be responsible for the maintenance and repair of the Premises (except as noted in Article IV) and shall keep and maintain the Premises in good condition, order, and repair, and Lessee shall surrender the same upon the expiration of this Agreement in the condition in which they

are required to be kept, reasonable wear and tear and damage by the elements not caused by Lessee's negligence excepted.

8. It is expressly understood and agreed that, in providing required and authorized services pursuant to this Agreement, Lessee shall have the right to choose, in its sole discretion, its vendors and suppliers.

**D. Signs.** During the term of this Agreement, Lessee shall have the right, at its expense, to place in or on the Premises a sign or signs identifying Lessee and its products and services. Said sign or signs shall be of a size, shape, and design, and at a location or locations approved by Lessor. Any and all such signs must conform to any overall directional graphics or sign program or ordinance established by Lessor. Lessor's approval shall not be withheld unreasonably. Notwithstanding any other provision of this Agreement, said sign(s) shall remain the property of Lessee. Lessee shall remove, at its expense, all lettering, signs, and placards so erected on the Premises at the expiration of this Agreement.

**E. Non-Exclusive Right.** It is not the intent of this Agreement to grant to Lessee the exclusive right to provide any or all of the services described in this article at any time during the term of this Agreement. Lessor reserves the right, at its sole discretion, to grant others certain rights and privileges at the Airport which are identical in part or in whole to those granted to Lessee. However, Lessor does covenant and agree that:

1. It shall enforce all minimum operating standards or requirements for all aeronautical endeavors and activities conducted at the Airport;

2. Any other operator of aeronautical endeavors or activities will not be permitted to operate on the Airport under rates, terms, or conditions which are more favorable than those set forth in this Agreement; and

3. Lessor will not permit the conduct of any aeronautical endeavor or activity at the Airport except under an approved lease or operating agreement.

#### **ARTICLE IV APPURTENANT PRIVILEGES**

**A. Use of Airport Facilities.** Subject to the right of the Lessor, consistent with Article V of this Agreement, to close or limit access to one or more areas on the airport grounds in order to accommodate maintenance, renovation, and/or construction activities, Lessee shall be entitled, in common with others so authorized, to the use of all facilities and improvements of a public nature which now are or may hereafter be connected with or appurtenant to the Airport, including the use of landing areas, runways, taxiways, navigational aids, terminal facilities and aircraft parking areas designated by Lessor, auto parking, and roadways.

**B. Maintenance and Operation of Airport Facilities.** The duties and responsibilities of the Lessor for maintenance and expenditures concerning assets of the Asheboro Regional Airport are outlined as follows:

1. The Lessor will provide structural maintenance on buildings, the runway, taxiway, ramp areas, and the Premises. In addition, the Lessor will provide grass mowing services for the airport grounds and will provide, on paved areas only, snow removal services; provided, however, snow removal on city-maintained streets, wherever they may be located, shall receive the highest priority.

2. The Lessor will provide maintenance and calibration of the NDB, rotating beacon, REILS, and PAPI.

3. The Lessor will provide electricity for operation of the runway and taxiway lighting, REIL, windsock, rotating beacon, NDB, and outside area lighting.

4. The Lessor will provide potable water and sanitary sewer services for the terminal and east maintenance hangar.

5. The Lessor will provide and pay operational costs for outside public phone service.

6. Specific duties and responsibilities of the Lessor and the Lessee for the maintenance, operation, and expenditures concerning assets of the Asheboro Regional Airport are itemized as follows:

<u>ASSET</u>	<u>LESSEE</u>	<u>LESSOR</u>
Airfield	Manages; Post NOTAMS	Pays Maintenance & Mowing
Runway/Lighting	Manages; Replaces Lamps	Pays Lamps, Maintenance,

Windsock	Manages; Replaces Lamps/Sock	Pays Maintenance, Lamps,
NDB/AWOS Monitors	Manages/Monitors	Pays Maintenance & NDB/
Light Beacon	Manages	Pays Maintenance & Electricity
Apron-North	Manages; Receives Full Rent; Provides Tie Down Ropes (Rental Rate to be Approved by Asheboro Airport Authority)	Pays Maintenance; Removes Snow
Fuel Facilities	Rent Free Use; Monitors Fuel On Daily Basis; Provides Operational Maintenance (Filters, Quality Control, and Clean-up); Pays 5% Of Gross Receipts from Flowage Fee to Lessor when Sales Exceed 150,000 Gallons in a Calendar Year	Provides Facility Maintenance; Receives 5% of Gross Receipts from Flowage Fee When Sales Exceed 150,000 Gallons in a Calendar Year
Terminal/Furn.	Rent Free Use of Office, Training Room, & Manager's Office; Pays Operational Maintenance Costs	Pays Structural Maintenance Costs; Pays Electric Bill
Parking Lot	Manages; FBO Rental Car Use	Provides Maintenance; Removes Snow
Water System	Uses Free of Charge	Operates the Municipal Water Supply & Distribution System
Sewer System	Uses Free of Charge	Operates the Municipal Sanitary Sewer System
T Hangars (16)	Manages; Receives Full Rent; Provides Tie Down Ropes (Rental Rate to be Approved by Asheboro Airport Authority)	Pays Structural Maintenance
Maint. Hangar - East	Uses for Business Rent Free	Pays Structural Maintenance; Pays Heat & Electricity
Maint. Hangar - West	Uses for Business Rent Free	Pays Structural Maintenance; Pays Heat & Electricity
Air Compressor	Pays All Maintenance	No Obligation to Replace
Roads	Manages; Common Use	Pays Maintenance; Removes Snow
Area Lighting	Manages; Calls for Maintenance	Pays for Service
Public Phone	Manages; Calls for Maintenance	Pays for Service
UNICOM	Furnishes & Operates	Reserves Access by Others
Apron South	Manages; Receives Full Rent; (Rental Rate to be Approved by Asheboro Airport Authority)	Reserves Right to Lease to Removes Snow
Other Non-Commercial Hangars or Facilities Existing and Those Developed in the Future	Manages, Subject to City Lease Agreement(s)	Subject to City Lease Agreement(s)
Fuel Truck	Provides Gas for Truck; Provides Operational Maint.	Provides Truck; Provides Maint. Service for Truck

	of Fueling Equipment (Filters, Quality Control, & Clean-Up)	& Repair of Equipment
Trash Containers	Free Use of Containers; Monitors & Limits Unauthorized Use	Provides Containers; Empties Containers & Pays for Trash Disposal

**C. Aerial Approaches.** Lessor reserves the right to take any action it considers necessary to protect the aerial approaches to the Airport against obstruction together with the right to prevent Lessee from erecting, or permitting to be erected, any building or other structure on or adjacent to the Airport which, in the sole opinion of Lessor, would limit the usefulness of the Airport or constitute a hazard to aircraft.

**D. Non-Competition.** Lessor shall not engage directly or indirectly in any of the activities described in Paragraphs A and B of Article III of this Agreement.

## ARTICLE V LEASEHOLD IMPROVEMENTS

Lessee is not required to construct any facilities or improvements under this Agreement. Lessor has the right to close runway, taxiway, and apron areas for repair or new construction for limited times. Lessee agrees to allow new construction to be performed in a cost efficient manner, and Lessor agrees to negotiate in good faith a reasonable payment to Lessee for loss of use of the facilities due to such construction.

At its option, the Lessor may assume ownership of any leasehold improvements constructed by Lessee upon Lessee's abandonment of the facilities at the termination of this Agreement.

## ARTICLE VI PAYMENTS

**A. Fees.** In consideration of the rights and privileges granted by this Agreement, Lessee agrees to pay to Lessor during the term of this Agreement the following:

After the threshold amount of 150,000 gallons of aviation fuel is sold by Lessee in a calendar year, the Lessee shall pay an amount equal to five percent (5%) of gross fuel sales dollars as a fuel flowage fee on all aviation fuel dispensed by Lessee on the premises. Payments shall be made on or before the 10th day of each month for fuel dispensed during the prior month.

**B. Delinquency Charge.** A delinquency charge of one percent (1%) per month shall be added to payments required by Paragraph A above that are rendered more than ten (10) days delinquent.

**C. Place of Payment.** All payments due Lessor from Lessee shall be delivered to the City of Asheboro Finance Department, 146 N. Church Street, P.O. Box 1106, Asheboro, NC 27204-1106.

**D. Renegotiation of Rent.** The Lessee is given the authority to change hangar rents at its discretion but with the approval of the Asheboro Airport Authority. Such approval shall not be unreasonably withheld.

**E. Records.** Lessee shall maintain and provide accurate records of retail fuel sales, hangar and tie-down rentals, and itemized adjusted gross receipts derived under this Agreement for a period of three years from the date the record is made. Such records shall be maintained according to generally accepted accounting principles. Lessor or its duly authorized representatives shall have the right at all reasonable times during business hours to inspect the books, records, and receipts of Lessee, and to verify Lessee's fuel sales, hangar and tie-down rentals, and adjusted gross receipts.

**F. Annual Statement.** Within 90 days after the end of each calendar year, Lessee shall furnish to Lessor a statement of fuel sales along with hangar and tie-down rentals generated during the preceding calendar year. The statement referenced in the preceding sentence shall be prepared by an independent CPA and certified by an officer of Lessee as to the correctness of the statement. Lessor reserves the right to audit said statement and Lessee's books and records, including examination of the general ledger and all other supporting material, at any reasonable time during business hours for the purpose of verifying the reported fuel sales, hangar and tie-down rentals, and total business year operation.

If the audit establishes that Lessee has understated or overstated fuel sales and/or the hangar and tie-down rentals collected by five percent (5%) or more, the entire expense of said audit shall be borne by Lessee. Any additional payment due from Lessee shall forthwith be paid to Lessor, with interest thereon at one percent (1%) per month from the date such amount originally became payable to Lessor. Any overpayment by Lessee shall be credited against further payments due to Lessor. Either party may refer the results of the audit for resolution in accordance with Paragraph G below.

**G. Disputes.** In the event that any dispute may arise as to fuel sales and/or hangar and tie-down rentals collected, the amount claimed due by Lessor shall be submitted to a certified public accountant, agreeable to both parties, who shall determine the rights of the parties hereunder in conformity with generally accepted accounting principles. The fees due said accountant for such services shall be paid by the unsuccessful party, or in the event the determination is partially in favor of each party, the fee shall be borne equally by the parties.

#### **ARTICLE VII UTILITIES**

Lessee shall have the right to use the utility service facilities as located on the Premises at the commencement of this Agreement. The Lessee shall pay the cost for any improvements or extensions of the utility service facilities desired by the Lessee.

#### **ARTICLE VIII INSURANCE**

**A. Required Insurance.** Lessee shall obtain and maintain continuously in effect at all times during the term of this Agreement, at Lessee's sole expense, the following insurance:

1. Comprehensive general liability insurance, including products, completed operations, and contractual liability, in the minimum amount of \$1,000,000 to protect Lessor against any and all liability by reason of Lessee's conduct incident to the use of the Premises, liability resulting from any accident occurring on or about the roads, driveways, or other public places, including runways and taxiways, used by Lessee at the Airport, or liability caused by or arising out of any wrongful act or omission of Lessee;

2. Fuel operations coverage in the minimum amount of \$10,000,000;

3. Hangar keeper's insurance in the minimum amount of \$100,000/\$250,000;

4. Auto liability insurance in the minimum amount of \$1,000,000, if vehicles are registered in Lessee's name; and

5. Workers' compensation coverage that, at a minimum, complies with North Carolina statutory requirements is also required of the Lessee.

The insurance specified in A.1 through A.4, above, shall name Lessor and the Asheboro Airport Authority as additional insureds.

**B. Notice.** Lessor agrees to notify Lessee in writing as soon as practicable of any claim, demand, or action arising out of an occurrence covered hereunder of which Lessor has knowledge, and to cooperate with Lessee in the investigation and defense thereof.

#### **ARTICLE IX INDEMNIFICATION**

To the extent not covered by insurance carried in favor of Lessor, Lessee shall indemnify and hold harmless Lessor from and against any and all claims, demands, suits, judgments, cost, and expenses asserted by any person or persons, including agents or employees of Lessor or Lessee, by reason of death or injury to persons or loss or damage to property resulting from Lessee's operations or anything done or omitted by Lessee under this Agreement except to the extent that such claims, demands, suits, judgments, costs, and expenses may be attributed to the acts or omissions of Lessor or its agents or employees.

To the extent not covered by insurance carried in favor of Lessee, Lessor shall indemnify and hold harmless Lessee from and against any and all claims, demands, suits, judgments, cost, and expenses asserted by any person or persons, including agents or employees of Lessee or Lessor, by reason of death or injury to persons or loss or damage to property resulting from Lessor's operations or anything done or omitted by Lessor under this Agreement except to the extent that such claims, demands, suits, judgments, costs, and expenses may be attributed to the acts or omissions of Lessee or its agents or employees.

The City of Asheboro agrees to indemnify the Lessee and its principals against all environmental liabilities existing prior to the effective date of this Agreement and to indemnify the Lessee and its principals against future environmental liabilities not caused by the Lessee or one of its principals, agents, or employees.

#### **ARTICLE X**

## **LESSEE AS INDEPENDENT CONTRACTOR**

In conducting its business hereunder, Lessee acts as an independent contractor and not as an agent of Lessor. The selection, retention, assignment, direction, and payment of Lessee's employees shall be the sole responsibility of Lessee, and Lessor shall not attempt to exercise any control over the daily performance of duties by Lessee's employees.

## **ARTICLE XI ASSIGNMENT**

This Agreement, or any part thereof, may not be assigned, transferred, or subleased by Lessee, by process or operation of law, or in any other manner whatsoever, without the prior written consent of Lessor, which consent shall not be withheld unreasonably.

## **ARTICLE XII NON-DISCRIMINATION**

Notwithstanding any other or inconsistent provision of this Agreement, during the performance of this Agreement, Lessee, for itself, its heirs, personal representatives, successors in interest and assigns, as part of the consideration for this Agreement, does hereby covenant and agree, as a covenant running with the land, that;

A. No person on the grounds of race, color, religion, sex, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of the Premises.

B. In the construction of any improvement(s) on, over, or under the Premises, and the furnishing of services therein or thereon, no person on the grounds of race, color, religion, sex, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.

C. Lessee shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

D. In the event of breach of any of the above non-discrimination covenants, Lessor shall have the right to terminate this Agreement and to reenter and repossess the Premises and hold the same as if said Agreement had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 have been followed and completed, including expiration of appeal rights.

## **ARTICLE XIII REQUIREMENTS OF THE UNITED STATES**

This Agreement shall be subject and subordinate to the provisions of any existing or future agreement between Lessor and the United States, or any agency thereof, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development or operation of the Airport; provided, however, that Lessor shall, to the extent permitted by law, use its best efforts to cause any such agreements to include provisions protecting and preserving the rights of Lessee in and to the Premises and to compensation for the taking thereof, interference therewith and damage thereto, caused by such agreement or by actions of Lessor or the United States pursuant thereto.

## **ARTICLE XIV DEFAULT AND TERMINATION**

**A. Termination by Lessee.** This Agreement shall be subject to termination by Lessee in the event of any one or more of the following events:

1. The abandonment of the Airport as an airport or airfield for any type, class, or category of aircraft.

2. The default by Lessor in the performance of any of the terms, covenants, or conditions of this Agreement, and the failure of Lessor to remedy or undertake to remedy to Lessee's satisfaction such default for a period of 30 days after receipt of notice from Lessee to remedy the same.

3. Damage to or destruction of all or a material part of the Premises or Airport facilities necessary to the operation of Lessee's business.

4. The lawful assumption by the United States, or any authorized agency thereof, of the operation, control, or use of the Airport, or any substantial part or parts thereof, in such a manner as to restrict substantially Lessee from conducting business operations for a period in excess of 90 days.

**B. Termination by Lessor.** This Agreement shall be subject to termination by Lessor in the event of any one or more of the following events:

1. The default by Lessee in the performance of any of the terms, covenants, or conditions of this Agreement, and the failure of Lessee to remedy or undertake to remedy to Lessor's satisfaction such default for a period of 30 days after receipt of notice from Lessor to remedy the same.

2. Lessee files a voluntary petition in bankruptcy, including a reorganization plan, makes a general or other assignment for the benefit of creditors, is adjudicated as bankrupt, or if a receiver is appointed for the property or affairs of Lessee and such receivership is not vacated within 30 days after the appointment of such receiver.

3. In addition to all other remedies at law, the Lessor is expressly granted all rights and procedures authorized by Chapter 42 of the North Carolina General Statutes to obtain possession of the premises upon default.

**C. Exercise.** Exercise of the rights of termination set forth in Paragraphs A and B above shall be by notice to the other party within 30 days following knowledge of the event giving rise to the termination.

**D. Removal of Property.** Upon termination of this Agreement for any reason, Lessee, at its sole expense, shall remove from the Premises all signs, trade fixtures, furnishings, personal property, equipment, and materials which Lessee was permitted to install or maintain under the rights granted herein. If Lessee shall fail to do so within 30 days, then Lessor may cause such removal or restoration at Lessee's expense, and Lessee agrees to pay Lessor such expense promptly upon receipt of a proper invoice therefore.

**E. Causes of Breach; Waiver.**

1. Neither party shall be held to be in breach of this Agreement because of any failure to perform any of its obligations hereunder if said failure is due to any cause for which it is not responsible and over which it has no control; provided, however, that the foregoing provision shall not apply to failures by Lessee to pay fees, rents, or other charges to Lessor.

2. The waiver of any breach, violation, or default in or with respect to the performance or observance of the covenants and conditions contained herein shall not be taken to constitute a waiver of any such subsequent breach, violation, or default in or with respect to the same or any other covenant or condition hereof.

**ARTICLE XV  
MISCELLANEOUS PROVISIONS**

**A. Entire Agreement.** This Agreement constitutes the entire understanding between the parties, and as of its effective date, supersedes all prior or independent agreements between the parties covering the subject matter hereof. Any change or modification hereof must be in writing signed by both parties.

**B. Severability.** If a provision hereof shall be finally declared void or illegal by any court or administrative agency having jurisdiction, the entire Agreement shall not be void, but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the parties.

**C. Notice.** Any notice given by one party to the other in connection with this Agreement shall be in writing and shall be sent by certified mail, return receipt requested, with postage fees prepaid. Notice shall be deemed to have been received on the date of receipt as shown on the return receipt. Any such notice shall be addressed as follows:

1. If the Lessor is recipient of the notice, the notice shall be addressed as follows:

John N. Ogburn, III, City Manager  
City of Asheboro  
146 N. Church Street  
PO Box 1106  
Asheboro, NC 27204-1106

2. If Lessee is the recipient of the notice, the notice shall be addressed as follows:

Cardinal Air, LLC  
2222 Pilots View Road  
Asheboro, NC 27205

**D. Headings.** The headings used in this Agreement are intended for convenience of reference only and do not define or limit the scope or meaning of any provision of this Agreement.

**E. Governing Law.** This Agreement is to be construed in accordance with the laws of the State of North Carolina.

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

**LESSOR: City of Asheboro**

By: \_\_\_\_\_  
David H. Smith, Mayor  
City of Asheboro, North Carolina

ATTEST:

\_\_\_\_\_  
Holly H. Doerr, CMC, NCCMC, City Clerk  
City of Asheboro, North Carolina

**LESSEE: Cardinal Air, LLC**

By: \_\_\_\_\_  
Karen McCraw, Member-Manager

[Exhibit 1 that is referenced in the lease agreement is on file and available for inspection in the city clerk's office.]

**5. Public comment period. [Item No. 12 on the original Combined Agenda for December 10, 2015.]**

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

In the absence of any comments, Mayor Smith closed the public comment period.

**6. Water Resources Division Items: [Item No. 13 on the original Combined Agenda for December 10, 2015.]**

**(a) Presentation of bids received for the roof replacement project at the water treatment plant along with a request for the award of a contract to Allied Roofing.**

Mr. Rhoney presented the bid tabulation for the City of Asheboro W.L. Brown Water Treatment Plant Roof Replacement Project. Three (3) bids were received on November 24, 2015. The three (3) bids are as follows:

<u>Contractor</u>	<u>Bid</u>	<u>E-Verify Affidavit</u>
Allied Roofing Company, Inc. 744 Park Center Drive Kernersville, NC 27284	\$58,000.00	Yes
BIRS, Inc. 207 Robbins Street Greensboro, NC 27406	\$63,248.00	Yes
McRae Roofing, Inc. 2147 N. Fayetteville Street Asheboro, NC 27203	\$58,430.00	No

The bid submitted by Allied Roofing Company, Inc. was the lowest responsive and responsible bid at \$58,000.00, and Mr. Rhoney recommended that a contract should be awarded to the company. After some discussion and upon motion by Ms. Carter and seconded by Mr. Sweirs, Council voted unanimously to award the contract to Allied Roofing Company, Inc. in the amount of \$58,000.00.

A copy of the above-referenced bid tabulation is on file in the City Clerk's office.

**(b) Request for final approval of the proposed water purchase agreement between the City of Asheboro and the City of Randleman.**

Mr. Rhoney presented and recommended adoption, by reference, of a resolution approving a water purchase agreement with the City of Randleman.

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

**RESOLUTION NUMBER** \_\_\_\_\_ 40 RES 12-15 \_\_\_\_\_

**CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA**

**APPROVAL OF A WATER PURCHASE AGREEMENT WITH THE CITY OF RANDLEMAN**

**WHEREAS**, due to the expiration of a municipal water agreement, which was dated August 10, 1995, between the City of Asheboro ("Asheboro") and the City of Randleman ("Randleman"), the municipal officials for the two cities have entered into discussions designed to produce a new agreement that will benefit both of the municipalities; and

**WHEREAS**, Randleman currently has an operational need in certain areas of its jurisdiction to purchase water from Asheboro; and

**WHEREAS**, Asheboro owns and operates a public water supply and distribution system that, in accordance with generally accepted standards for a water utility, is deemed to have adequate capacity to meet the needs of the current and projected water users served directly by Asheboro in addition to delivering the quantity of water that would be beneficial to Randleman; and

**WHEREAS**, the professional staffs for the two municipalities have reduced to writing a Water Purchase Agreement (the "Agreement") that the respective professional staffs believe would be mutually beneficial; and

**WHEREAS**, the Agreement drafted by the professional staffs is attached to this Resolution as "ATTACHMENT A" and is incorporated into this Resolution by reference as if copied fully herein; and

**WHEREAS**, Randleman's governing board has, by resolution, approved the terms and conditions of the Agreement; and

**WHEREAS**, the Asheboro City Council concurs with the recommendation of Asheboro's city manager and water resources director to approve the Agreement;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Asheboro, North Carolina that the terms and conditions of the Agreement are hereby approved; and

**BE IT FURTHER RESOLVED** by the City Council of the City of Asheboro, North Carolina that Mayor Smith, the city clerk, and any other municipal official needed to conclude this contractual arrangement are hereby authorized to execute and deliver to Randleman on behalf of Asheboro all documents and instruments necessary to carry into full force and effect the approved water purchase agreement so long as such documents and instruments are conform to the legal instrument found in ATTACHMENT A.

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 December, 2015.

\_\_\_\_\_  
/s/David H. Smith  
David H. Smith, Mayor  
City of Asheboro, North Carolina

ATTEST:

\_\_\_\_\_  
/s/Holly H. Doerr  
Holly H. Doerr, CMC, NCCMC, City Clerk  
City of Asheboro, North Carolina

**ATTACHMENT A**

**STATE OF NORTH CAROLINA**

**WATER PURCHASE AGREEMENT**

**COUNTY OF RANDOLPH**

This Agreement (hereafter referred to as the "AGREEMENT") is made and entered into by and between the CITY OF ASHEBORO, NORTH CAROLINA, a North Carolina municipal corporation located wholly in Randolph County, (this party shall be hereafter referred to as "ASHEBORO"), and the CITY OF RANDLEMAN, NORTH CAROLINA, a North Carolina municipal corporation located wholly in Randolph County, (this party shall be hereafter referred to as "RANDLEMAN").

**RECITALS**

**WHEREAS**, this AGREEMENT replaces the prior municipal water agreement, which was dated August 10, 1995, between ASHEBORO and RANDLEMAN; and

**WHEREAS**, ASHEBORO owns and operates a public water supply and distribution system that, in accordance with generally accepted standards for a water utility, is deemed to have adequate capacity to meet the needs of the current and projected water users served directly by ASHEBORO in addition to delivering the quantity of water to be supplied to RANDLEMAN under the terms and conditions of this AGREEMENT; and

**WHEREAS**, the Asheboro City Council has, by Resolution, approved the terms and conditions of this AGREEMENT along with authorizing the execution and delivery of this legal instrument to RANDLEMAN; and

**WHEREAS**, the Randleman Board of Aldermen has, by Resolution, approved the terms and conditions of this AGREEMENT along with authorizing the execution and delivery of this legal instrument to ASHEBORO.

**WITNESSETH:**

**NOW, THEREFORE**, in consideration of the fee structure set forth below and the other mutual promises contained herein, ASHEBORO and RANDLEMAN agree as follows:

**Section 1.      Delivery of Water**

- 1.01 During the term of this AGREEMENT, and subject to the limitations specified herein, ASHEBORO agrees to furnish to RANDLEMAN at the points of delivery, which are identified in the attached EXHIBIT 1, potable treated water in such quantity as may be required by RANDLEMAN.
- 1.02 The water delivered by ASHEBORO in accordance with Section 1.01 of this AGREEMENT shall meet, at the points of delivery, the applicable purity and clean water standards, as such standards may be set from time to time, by federal and/or state regulatory acts and bodies. Notwithstanding any other provision in this AGREEMENT, the parties mutually agree that ASHEBORO shall not be held responsible for the quality of water found beyond the above-referenced points of delivery.
- 1.03 ASHEBORO and RANDLEMAN mutually agree that Section 1.01 of this AGREEMENT shall not be interpreted or construed in a manner that requires ASHEBORO to provide any quantity of water that exceeds the operational capabilities, for any reason and at any specific point in time, of ASHEBORO'S water supply and distribution system.
- 1.04 The water supplied by ASHEBORO to RANDLEMAN is to be supplied at the pressure available at the points of delivery.
- 1.05 ASHEBORO will, at all times, use its best efforts to maintain and operate its public water supply and distribution system in accordance with all applicable regulatory standards and industry best practices. However, the parties agree that service interruptions are possible in spite of such best efforts. By way of illustration and not limitation, failures of water supply or pressure can occur due to breaks in water supply lines, equipment or power failure, criminal acts impacting the public water supply and distribution infrastructure, extended drought, catastrophic weather events such as hurricanes or tornados, earthquakes, flood, fire, the extended use of water to fight fire(s), or other catastrophic events. In the case of the occurrence of any of the events identified in the preceding list of emergency events or similar emergency occurrences that disrupt the operations of ASHEBORO'S public water supply and distribution system, ASHEBORO shall be excused from providing water to RANDLEMAN, and RANDLEMAN shall be excused from purchasing the minimum daily quantity of water specified in this AGREEMENT. The said period of time during

which the parties are mutually excused from the obligations to supply and purchase water shall be strictly limited to the number of days, or parts thereof, necessary to restore service. In the event ASHEBORO is unable to furnish the amount of water requested by RANDLEMAN due to any of the matters set forth herein, ASHEBORO will not be held responsible for damages arising therefrom.

- 1.06 If ASHEBORO activates any or all of the emergency water management procedures/measures authorized by the Code of Asheboro, RANDLEMAN shall contemporaneously activate its own emergency water management procedures/measures that are, at a minimum, as restrictive and effective in water conservation as the measures implemented by ASHEBORO. If RANDLEMAN fails for any reason to implement such water management measures, ASHEBORO shall be excused from providing water to RANDLEMAN and will be authorized under the terms of this AGREEMENT to suspend water service to RANDLEMAN for the duration of the time period during which ASHEBORO'S emergency water management measures are activated and RANDLEMAN fails to implement its own emergency water management measures as required by this AGREEMENT. During such a water supply suspension period as described in the immediately preceding sentence, RANDLEMAN shall be excused from purchasing the minimum daily quantity of water otherwise required by this AGREEMENT. As soon as the emergency water management measures are fully terminated by ASHEBORO, the water supply and payment obligations imposed on ASHEBORO and RANDLEMAN by this AGREEMENT in non-emergency situations shall once again be in full force and effect.
- 1.07 RANDLEMAN agrees to be invoiced/billed and to pay at the rate established by this AGREEMENT for a minimum of 125,000 gallons of water per day with no set maximum usage.
- 1.08 ASHEBORO will not reserve or guarantee for RANDLEMAN any capacity in the W. L. Brown Water Treatment Plant.

**Section 2. Term of Agreement**

- 2.01 Subject to the limitations stated herein, the term of this AGREEMENT shall be a term of 10 years. The term of the AGREEMENT shall commence at 12:01 a.m. on January 1, 2016, and the AGREEMENT shall expire by its own terms at midnight on December 31, 2025.
- 2.02 If either of the parties to this AGREEMENT breach any provisions or covenants of the said contract, the non-breaching party shall give notice of such breach to the party alleged to have committed the breach of contract. If such breach remains uncured for a period of 30 days, the AGREEMENT may be terminated at the option of the non-breaching party. The notice specified by this Section shall be given in the manner provided for notices in Section 5.04.

**Section 3. Charges for the Purchase of Water**

- 3.01 ASHEBORO will invoice/bill RANDLEMAN on a monthly basis for water supplied under this AGREEMENT, and RANDLEMAN will pay the invoiced/billed amount(s) in full with good funds within 30 calendar days of the receipt of such invoices/bills.
- 3.02 The amount of the monthly invoices/bills from ASHEBORO for the quantity of water supplied at the points of delivery shall be calculated by using a water billing rate that is calculated as 68% of the rate charged by ASHEBORO to its Inside Consumers per 100 cubic feet, or portion thereof, of water. As used herein, the term "Inside Consumers" refers to users of ASHEBORO'S public water supply and distribution system that are located within the city limits of ASHEBORO.
- 3.03 During the term of this AGREEMENT, water bills for Inside Consumers may increase or decrease. With each increase or decrease for Inside Consumers, the amount of the charge for water supplied under the terms and conditions of this AGREEMENT shall be adjusted to reflect the changes implemented for Inside Consumers. Throughout the term of this AGREEMENT, regardless of the amount of any increase or decrease in charges for Inside Consumers, RANDLEMAN'S monthly bill for water supplied pursuant to this AGREEMENT will be calculated by using a rate equal to sixty-eight percent (68%) of the rate charged to Inside Consumers.
- 3.04 There will be no adjustments of invoices/billings for water usage, excess or otherwise, attributable in whole or in part to leaks or similar issues with the infrastructure maintained by RANDLEMAN.
- 3.05 Consumption by the fire service(s) of water beyond the points of delivery shall not serve as a basis for adjustments of the invoices/billings for water usage by RANDLEMAN.
- 3.06 RANDLEMAN shall keep all sums it collects from sales to water users located on the RANDLEMAN side of the points of delivery. RANDLEMAN shall also keep all sums it collects from service connections to RANDLEMAN'S lines on the RANDLEMAN side of the points of delivery.
- 3.07 Subject to the exceptions specified within this AGREEMENT, and regardless of the amount of water actually metered at the points of delivery, RANDLEMAN shall pay as a minimum monthly

charge a sum that is no less than the amount that would have been billed if 125,000 gallons of water had passed through the meters at the points of delivery.

**Section 4. Water Distribution and Service to Third Parties**

- 4.01 The furnishing of water services to others by ASHEBORO and RANDLEMAN shall be in accordance with each party's ordinances, rules, and regulations within their respective jurisdictions. If a situation should arise where the areas of control for the contracting parties' respective water and sewer utilities overlap, the most restrictive provision(s) of the applicable ordinances, rules, or regulations shall control.
- 4.02 RANDLEMAN shall not provide water to any user on the ASHEBORO side of the points of delivery. Water service on the ASHEBORO side of the points of delivery will be provided by ASHEBORO.
- 4.03 RANDLEMAN shall be responsible for all maintenance of the water main on the RANDLEMAN side of the points of delivery. ASHEBORO shall be responsible for all maintenance of the water main on the ASHEBORO side of the points of delivery. Additionally, ASHEBORO shall be responsible for all maintenance of the water meters and vaults at the points of delivery.
- 4.04 ASHEBORO shall be solely responsible for maintenance of all infrastructure serving users who are considered customers of the ASHEBORO Water and Sewer Fund. RANDLEMAN shall be solely responsible for maintenance of all infrastructure serving users who are considered customers of the RANDLEMAN Water and Sewer Fund.
- 4.05 For the purpose of interpreting Section 4.05 of the AGREEMENT, the term "line of division" is the EXHIBIT "A" LINE shown on the two sheets of a map dated January 19, 1995, and revised August 6, 1998, which are attached to the ASHEBORO – RANDLEMAN JOINT ANNEXATION AGREEMENT as EXHIBIT "A." Notwithstanding any other provision in this AGREEMENT, in the event only one contracting party's water lines extend to an area along the line of division, or in the event a water user's property extends along each side of the line of division, ASHEBORO and RANDLEMAN may informally agree to permit a single party to provide water services to such area or such user(s).

**Section 5. Miscellaneous Provisions**

- 5.01 Each party agrees to perform such acts as may be reasonably necessary to carry out the provisions of this AGREEMENT.
- 5.02 Both ASHEBORO and RANDLEMAN 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.
- 5.03 This AGREEMENT supersedes all prior agreements between the parties pertaining to the subject matter addressed herein. This AGREEMENT, and any exhibits attached hereto, embodies the entire contract 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. The provisions of this AGREEMENT may not be amended, deleted, or modified, in whole or in part, without the express written consent of all parties to this AGREEMENT. Any such written agreement to amend, delete, or modify the terms and conditions found herein shall be executed with the same formality used to execute this AGREEMENT.
- 5.04 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:

ASHEBORO: Asheboro City Manager  
Post Office Box 1106  
Asheboro, North Carolina 27204-1106

With copy to: Jeffrey C. Sugg, Asheboro City Attorney  
Post Office Box 1106  
Asheboro, North Carolina 27204-1106

RANDLEMAN: Randleman City Manager  
204 South Main Street  
Randleman, North Carolina 27317

With copy to: Robert E. Wilhoit, Randleman City Attorney  
350 North Cox Street, Suite 10  
Asheboro, North Carolina 27203

- 5.05 This AGREEMENT shall be subject to and governed by the laws of the State of North Carolina.
- 5.06 Whenever appropriate in this AGREEMENT, personal pronouns shall be deemed to include other genders and the singular to include the plural, if applicable.
- 5.07 No written waiver by any party at any time of any breach of any provision of this AGREEMENT shall be deemed to be a waiver of a breach of any other provision herein or a consent to any subsequent breach of the same or any other provision. 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 to be 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.
- 5.08 The various rights, powers, and remedies herein contained and reserved to either party 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.
- 5.09 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.
- 5.10 Time shall be of the essence of this AGREEMENT and each and every term and condition thereof.
- 5.11 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.
- 5.12 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-day (business day) prior written notice to the other party hereto.

**IN WITNESS WHEREOF**, the parties hereto acting under the authority of their respective governing bodies, have caused this AGREEMENT to be duly executed as indicated below.

**CITY OF ASHEBORO**

CITY SEAL

By: \_\_\_\_\_  
David H. Smith, Mayor  
City of Asheboro, North Carolina

ATTEST:

\_\_\_\_\_  
Holly H. Doerr, CMC, NCCMC, City Clerk  
City of Asheboro, North Carolina

**CITY OF RANDLEMAN**

CITY SEAL

By: \_\_\_\_\_  
Clarence R. Jernigan, Mayor  
City of Randleman, North Carolina

ATTEST:

\_\_\_\_\_  
Melody R. Hancock, CMC, NCCMC, City Clerk  
City of Randleman, North Carolina

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
Finance Officer

[Exhibit 1 that is referenced in the preceding agreement is on file and available for inspection in the city clerk's office.]

**7. Request for approval of a proposed commercial lease agreement between Dixie Drive Development, LLC and the city in order to locate a kiosk along Dixie Drive for the water billing department. [Item No. 14 on the original Combined Agenda for December 10, 2015.]**

Ms. Reaves presented and recommended adoption, by reference, of a resolution approving a lease agreement with Dixie Drive Development, LLC for a utility payment kiosk pad and drive thru lane at 405 East Dixie Drive.

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

**RESOLUTION NUMBER** 41 RES 12-15

**CITY COUNCIL OF THE CITY OF ASHEBORO, NORTH CAROLINA**

**APPROVAL OF A LEASE AGREEMENT WITH DIXIE DRIVE DEVELOPMENT, LLC FOR A UTILITY PAYMENT KIOSK PAD AND DRIVE THRU LANE AT 405 EAST DIXIE DRIVE**

**WHEREAS**, the city manager and finance director engage in an on-going review process in an effort to improve customer satisfaction with the city's utility billing and collections operations; and

**WHEREAS**, in furtherance of this effort to improve utility billing and collections operations, the city manager and finance director have recommended the establishment of a second utility payment kiosk at a location other than on the premises of the municipal building at 146 North Church Street; and

**WHEREAS**, a kiosk pad and drive thru lane well suited for the operation of a second utility payment kiosk has been located at 405 East Dixie Drive; and

**WHEREAS**, proposed terms and conditions for the rental of the said kiosk pad and drive thru lane are attached to this Resolution in the form of a legal instrument identified as ATTACHMENT A, which is hereby incorporated into this Resolution by reference as if copied fully herein; and

**WHEREAS**, the city manager and finance director have recommended proceeding with securing the Dixie Drive kiosk pad and drive thru lane in accordance with the leasing terms and conditions found in ATTACHMENT A; and

**WHEREAS**, the Asheboro City Council has concluded that entry into the proposed lease agreement is beneficial to the long-term interests of the municipal corporation and the customers of its water and sewer utility;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Asheboro, North Carolina that the establishment of a utility payment kiosk and drive thru lane at 405 East Dixie Drive is hereby approved; and

**BE IT FURTHER RESOLVED** by the City Council of the City of Asheboro, North Carolina that City Manager John N. Ogburn, III is hereby authorized to execute on behalf of the City of Asheboro all documents and instruments necessary to carry into full force and effect the approved leasing arrangement so long as such a contractual relationship is consistent with the material terms found in ATTACHMENT A.

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 December, 2015.

/s/David H. Smith  
David H. Smith, Mayor  
City of Asheboro, North Carolina

ATTEST:

/s/Holly H. Doerr  
Holly H. Doerr, CMC, NCCMC, City Clerk  
City of Asheboro, North Carolina

