



**Executive Committee
March 28, 2018 – 11:00am
Land of Sky Regional Council
339 New Leicester Highway, Suite 140, Asheville, NC 28806**

AGENDA

I. Call to Order

II. Consent Agenda

Consent Agenda items are considered routine and noncontroversial in nature, and are considered and approved by a single motion and vote. If any member of the Executive Committee requests an item be removed from the Consent Agenda for separate consideration and action, that item will be placed under the Business, Discussion and Updates section of the agenda.

- A. February 28, 2018 Executive Committee Minutes
- B. Family Caregiver Support Program Funding Agreement with CarePartners
- C. Appointment of Madison County Delegates to the Senior Tar Heel Legislature
- D. Voluntary Dismissal as Party in Morgan Suit (Mountain Mobility) – For Information/No Action Required

III. Business, Discussion and Updates

- A. Lease-Purchase Agreement with Buncombe County
- B. Draft Policies
 - 1. Overtime/Compensatory Time Policy
 - 2. Travel Policy for Non-Exempt Employees
 - 3. Exempt Employees Pay Deduction Policy
 - 4. Independent Contractor Policy
- C. Meeting Schedule for Executive Committee and Board of Delegates
- D. Executive Director Performance and Organization Improvement

IV. Other Items

V. Adjournment

Agenda Item(s): II, A, B, C, D
Title(s): Consent Agenda
Responsible Staff: Justin Hembree, Executive Director

Attachment(s): Filing for Voluntary Dismissal without Prejudice (Morgan Case)
Certification of Service

Recommended Action(s): Approval of the Consent Agenda

Suggested Motion(s): Move to approve the Consent Agenda

Background (Item A): **February 28, 2018 Executive Committee Meeting Minutes** – The minutes for the February 28, 2018 Executive Committee are attached. Approval of the Consent Agenda will approve the minutes.

Background (Item B): **Family Caregiver Support Program Funding Agreement with CarePartners** – The Family Caregiver Support Program (FCSP) contracts with agencies to provide and coordinate support services for family caregivers in Buncombe, Henderson, Madison and Transylvania Counties. The FCSP has contracted with service providers for this purpose since 2001. The Council receives a combination of federal and state funding for FCSP services under Title III E of the Older Americans Act.

The FCSP has used CarePartners in the past as a service provider. The following amounts are proposed as part of this agenda item:

CarePartners Adult Day Services	\$4,000
CarePartners Pardee	\$3,000
CarePartners Transylvania County	\$3,000

Approval of the Consent Agenda will authorize staff to enter in a funding agreements in the amounts noted above for the provision of FCSP services and, if necessary, authorize staff to amend previous agreements with CarePartners to comply with and changes in Federal and/or State requirements to ensure all FY 2017-18 funds are expended.

Background (Item C): **Appointment of Madison County Delegates to the Senior Tar Heel Legislature** – Each of North Carolina's 100 counties is entitled to one Primary Delegate and one Alternate Delegate for the Senior Tar Heel Legislature. All delegates must be at 60 years of age and be residents of their respective counties. The local Area Agency on Aging is responsible for the selection of delegates in our region working closely with the counties for their input and suggestions.

On March 13, 2018, the Madison County Commissioners voted unanimously to recommend Jan Lounsbury, Primary Delegate, and Sherrye Perry, Alternate Delegate, to the Senior Tar Heel Legislature.

Approval of the Consent Agenda will appoint Jan Lounsbury as Madison County's Primary Delegate and Sherrye Perry as Madison County's Alternate Delegate to the Senior Tar Heel Legislature.

Background (Item D):

Voluntary Dismissal as Party in Morgan Suit (Mountain Mobility) – In 2017, the Council, along with Buncombe County and McDonald Transit, were named in a lawsuit filed by William Morgan. The suit centered solely on an incident associated with the operations of Mountain Mobility. Since the Council, through a contract with Buncombe County, is only responsible for Mountain Mobility's administrative functions, our legal counsel (provided under the Council's liability insurance) argued that the Council should be dismissed as a defendant in the case.

Notice was recently received that the plaintiff had filled a voluntary dismissal of the Council. A copy of the filling documents are attached. The Council was dismissed as a defendant without prejudice. "Without prejudice" means that the Council can be reinstated as a defendant if the plaintiff chooses to do so. Legal counsel feels this is unlikely, but will monitor the case for the next year.

This item is for informational purposes only and no action is recommended or required.

Agenda Item(s): III, A
Title(s): Lease-Purchase Agreement with Buncombe County
Responsible Staff: Justin Hembree, Executive Director
Vickie Thomas, Finance Director

Attachment(s): Proposed Lease-Purchase Amendment
Attachment A
Attachment B
Attachment C
2008 Lease-Purchase Agreement

Recommended Action(s): **IF AMENDMENT CONTENTS ARE AGREEABLE** – Approve Second Amendment of Lease and Purchase Agreement of Commercial Real Property between Buncombe County and Land of Sky Regional Council and authorize the Executive Director to execute the Amendment document(s).

OR

IF REVIEW IS CONTINUING/ISSUES ARE UNRESOLVED – Authorize, after questions/issues are addressed, the Chair and/or the Executive Director to agree to Second Amendment of Lease and Purchase Agreement of Commercial Real Property between Buncombe County and Land of Sky Regional Council and authorize the Executive Director to execute the Amendment document(s).

Suggested Motion(s): **IF AMENDMENT CONTENTS ARE AGREEABLE** – Move to approve Second Amendment of Lease and Purchase Agreement of Commercial Real Property between Buncombe County and Land of Sky Regional Council and authorize the Executive Director to execute the Amendment document(s).

OR

IF REVIEW IS CONTINUING/ISSUES ARE UNRESOLVED – Move to authorize, after questions/issues are addressed, the Chair and/or the Executive Director to agree to Second Amendment of Lease and Purchase Agreement of Commercial Real Property between Buncombe County and Land of Sky Regional Council and authorize the Executive Director to execute the Amendment document(s).

Background: Buncombe County recently submitted a proposed amendment to the lease-purchase agreement for the Council's office building. Attached is the proposed amendment, the proposed amendment attachments and the original 2008 lease-purchase agreement.

Upon first review of the proposal, staff felt the amendment was very close to what is needed. However, after further examination, several questions surfaced and a few items of concern were noted. These primarily relate to the manner in which square footage of the Council's building is calculated and, in turn, the portion of common area maintenance costs the Council will be responsible for paying. Staff also has questions related to some of the insurance/liability and financing cost provisions in the proposed amendment.

These items are being presented to Buncombe County staff. The Council's legal staff is reviewing the proposed amendment, with special focus on the insurance/liability sections. Furthermore, the Council's auditor and insurance provider are reviewing the proposed amendment.

Staff hopes to have questions answered and issues resolved in short order. A complete overview of the proposed amendment, including the information presented in the Executive Director's March 19 email along with any other agreed upon/recommended modifications, will be presented during the March 28 meeting. In the meantime, staff will provide updates as progress proceeds with this item.

Agenda Item(s): III, B
Title(s): Draft Policies
Responsible Staff: Justin Hembree, Executive Director

Attachment(s): Overtime/Compensatory Time Policy
Travel Policy for Non-Exempt Employees
Exempt Employees Pay Deduction Policy
Independent Contractor Policy

Recommended Action(s): No recommended action at this time. Action will be requested once review of draft policies is complete.

Suggested Motion(s): No suggested motion(s) at this time. Action will be requested once review of draft policies is complete.

Background: As a result of the Executive Committee's performance review of the Executive Director, it was noted that three policies related to the Fair Labor Standards Act (FLSA) and one related to Internal Revenue Service (IRS) regulations should be enacted. Based on recommendations from legal counsel, the following policies were drafted and are attached:

Overtime/Compensatory Time Policy
Travel Policy for Non-Exempt Employees
Exempt Employees Pay Deduction Policy
Independent Contractor Policy

The purpose of these policies is twofold. First and foremost, they are intended to ensure the Council's compliance with FLSA and IRS regulations. Second, they are intended to create clear, straightforward Council policy for the issues addressed in each of the policies.

These draft policies have been forwarded to legal counsel for review and comment. The Council's Leadership Team has also been provided copies of the policies for review and comment. Although action is not recommended at this time, the Executive Committee will be requested to adopt the policies once reviews are completed and edits are made to the draft policies.

Agenda Item(s): III, C
Title(s): Meeting Schedule for Executive Committee and Board of Delegates
Responsible Staff: Justin Hembree, Executive Director

Attachment(s): None

Recommended Action(s): If appropriate, recommend changing the meeting schedule for the Executive Committee from in-person meetings every other month and call-in meetings every other month to in-person meetings every month. If appropriate, recommend changing the meeting schedule for the Board of Delegates from every other month to every month.

Suggested Motion(s): Move to hold in-person Executive Committee meeting each month and to hold Board of Delegates meetings each month, based on the Council's traditional meeting schedule.

Background: Chair Harris has requested the Executive Committee consider changing meeting schedules back to every month for both the Executive Committee and Board of Delegates. This is to ensure a higher level of engagement with the Executive Committee and Board of Delegates as the Executive Director moves forward with performance improvement activities.

Agenda Item(s): III, D
Title(s): Executive Director and Organization Performance Improvement
Responsible Staff: Justin Hembree, Executive Director

Attachment(s): None

Recommended Action(s): No recommended action at this time. However, the Executive Committee may choose to take action/provide direction.

Suggested Motion(s): No suggested motion(s) at this time. However, the Executive Committee may choose to take action/provide director.

Background: As a result of the Executive Committee's performance review of the Executive Director, steps have been taken and are being planned to improve the performance of the Executive Director and the Council as a whole.

The Executive Director will provide an activity update. This update will include items related the following areas:

- Leadership Team and Staff Relations
- Personnel Policies and Procedures
- Human Resources
- Member Government Relations and Outreach

**Executive Committee Meeting
March 28, 2018**

ATTACHMENTS

February 28, 2018 Executive Committee Meeting Minutes

Filing for Voluntary Dismissal without Prejudice (Morgan Case)

Certification of Service

Proposed Lease-Purchase Agreement

Attachment A

Attachment B

Attachment C

2008 Lease-Purchase Agreement

Draft Overtime/Compensatory Time Policy

Draft Travel Policy for Non-Exempt Employees

Draft Exempt Employees Pay Deduction Policy

Draft Independent Contractor Policy

**Land of Sky Regional Council
Executive Committee
February 28, 2018**

Minutes

Land of Sky Regional Council's Executive Committee held a meeting on February 28, 2018 at the Law Offices of Roberts & Stevens, P.A. located in Asheville, NC. Present for the meeting were Chairman Larry Harris (Presiding), Charles Dickens, and John Mitchell, and Patrick Fitzsimmons. Land of Sky staff present included Justin Hembree, Danna Stansbury, and Zia Rifkin (Recording). William (Billy) Clarke, Attorney, and Jackie Grant of Roberts & Stevens, P.A. were present as well.

Call to Order – Chairman Harris called the meeting to order at approximately 11:00am.

Approval of Consent Agenda – The Consent Agenda, including items A. December 6, 2017 Executive Committee meeting minutes; and B. Appointment of Donald Streb as the Alternate to the Senior Tarheels Legislature for Henderson County were recommended for approval.

Patrick Fitzsimmons moved to approve the Consent Agenda as presented. Charles Dickens seconded and the motion carried as all were in favor.

New Business, Discussion & Updates

Lease Update/Audit Contract Extension

Justin Hembree shared that one of the things that not having a lease with Buncombe County has done is to hold up the organization's audit. He reminded committee members that the organization had a significant downsizing in 2014 when LOSRC gave Suite 130 back to the County. During that time, there was discussion regarding longer-term facility needs of Council, including growing the Non-Emergency Medicaid Transportation (NEMT) Call Center. He continued that discussion also occurred with the county about being part of the county's leaseholders and other county-owned sites that may work for the organization. He communicated that he and Vickie Thomas met with the County Attorney and Finance Director to discuss the lease, including the percentage of utility payments that LOSRC would make to the county; and more importantly, that as long as there is a lease agreement in place with the county, LOSRC dues may not be raised on the county. Justin Hembree shared that dues and the lease agreement are two different things and the hope is to not include that stipulation in the new lease. He communicated that there would be a pro-rated lease going forward, once an agreement is reached with the county.

Discussion occurred regarding whether the organization has budgeted for outstanding lease and utility payments with the county, which Justin Hembree affirmed was the case. He also communicated that the full amount of funding that LOSRC was paying when it had both suites (130 and 140) has been held back.

Discussion occurred regarding whether the auditors have accrued those funds that would be paid to the county when a lease is signed and Justin Hembree shared that LOSRC has its own amortization schedule, which can be used by the auditors to close out the audit. He shared that by the March Executive Committee meeting, an updated, proposed draft lease should be available for review. The plan is to have a capitalized lease with a long-term purchase agreement. Justin Hembree noted that there was conversation at one time, that LOSRC would switch from a lease purchase to an operating lease; to do that, though, Council would need an agreement with the county to settle out the equity with the organization.

Justin Hembree communicated that the audit contract with Cannon & Company, LLC needs to be extended through March 31, 2018.

Discussion occurred regarding that the lease purchase is only for Suite 140 as Suite 130 was returned to the county a few years back. Justin Hembree communicated that when Suite 130 was returned to the county, the county provided upgrades to LOSRC offices (Suite 140), which included renovating the space for the NEMT Call Center and moving the reception area, among other upgrades.

Patrick Fitzsimmons moved to approve extending the audit contract with Cannon & Company through March 31, 2018. John Mitchell seconded and the motion carried without further discussion.

Upcoming Annual Meeting & Elections

Justin Hembree shared that the March Board of Delegates meeting has traditionally been when Officer Elections are held. He communicated that he would be reaching out to Delegates to provide some information and to request volunteers for a nominating committee.

Discussion occurred regarding the process underway (for the Executive Director's evaluation process) and George Goosmann communicated the importance of the Board's current leadership continuing for the purpose of continuity. Chairman Harris shared that if everyone is agreeable, a recommendation may be presented at the March Board of Delegates meeting that the current Executive Committee members would continue for another year of service in the best interest of the organization and that the Officer Elections would be moved to a later date.

Information only- no action required.

FY 17/18 Budget Amendment #2

Justin Hembree shared that the proposed Budget Amendment #2, totaling \$139,730, brings funding into LOS for Aging Services (\$17,689), Workforce Development (\$74,288), Economic and Community Development (ECD) (\$38,059) and General Services (\$15,000). Volunteer Services has realized a reduction in funding (-\$5,306) for the Senior Companion Program's Home and Community Care Block Grant (HCCBG), which provides funding for Volunteers in the program to assist seniors aging in place in their homes throughout the four-county region. He communicated that funding in the amount of \$15,000 is being added to General Services to provide monies for the engagement of Roberts & Stevens, P.A. to allow Council to receive legal services from Attorney, William (Billy) Clarke.

George Goosmann moved to approve Budget Amendment #2 as presented. Charles Dickens seconded and the motion carried without further discussion.

Closed Session

George Goosmann moved to enter Closed Session for discussion of a personnel matter. Patrick Fitzsimmons seconded and the Executive Committee entered closed session.

Continuation of Annual Meeting and Officer Elections Discussion

Upon leaving closed session, the Executive Committee continued its discussion of postponing the annual meeting/election of officers.

George Goosmann moved to postpone Officer Elections (that were scheduled for the March meeting of the Board) in order to provide continuity in the supervision by the Executive Committee of the Executive Director. John Mitchell seconded the motion, which was approved unanimously upon a vote.

Adjournment

Chairman Harris adjourned the meeting, as there was no further business.

STATE OF NORTH CAROLINA **FILED** IN THE GENERAL COURT OF JUSTICE
COUNTY OF BUNCOMBE SUPERIOR COURT DIVISION
FILE NO.: 17 CVS 532

2018 MAR -2 A 11: 36

WILLIAM JaVan MORGAN,)
BUNCOMBE CO., C.S.C.)

Plaintiff,)

v.)

PAUL SHELTON, individually,)
MOUNTAIN MOBILITY,)
LAND OF SKY REGIONAL COUNCIL,)
BUNCOMBE COUNTY, and)
McDONALD TRANSIT ASSOCIATES, INC.)


Defendants.)

**VOLUNTARY DISMISSAL
WITHOUT PREJUDICE
AS TO LAND OF SKY
REGIONAL COUNCIL ONLY**

NOW COMES the Plaintiff, by and through the undersigned attorney of record, and voluntarily dismisses this action without prejudice as to Land of Sky Regional Council only pursuant to Rule 41 of the North Carolina Rules of Civil Procedure. The action pending as to the remaining named Defendants is not dismissed.

This the 27th day of February, 2018.

GRIMES TEICH ANDERSON, LLP
Attorney for the Plaintiff



Scott M. Anderson
NC Bar # 17263
535 College Street
Asheville, NC 28801
(828) 251-0800

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served the foregoing *Voluntary Dismissal Without Prejudice* in the above-captioned action upon all other parties to this cause by depositing a copy hereof, postage prepaid, in the United States Mail, properly addressed to all parties as follows:

Mr. Michael Haigler
Dean & Gibson, PLLC
Attorney for Defendants Shelton, Mountain Mobility, Buncombe County and McDonald Transit
301 S. McDowell St, Suite 900
Charlotte, NC 28204

Mr. Andrew Santaniello
Attorney for Land of Sky Regional Council
Clawson & Staubes, LLC
756 Tyvola Rd, Ste 130
Charlotte, NC 28217

This the 28th day of February, 2018.

GRIMES TEICH ANDERSON, LLP
Attorneys for Plaintiff

by: 

Scott M. Anderson
NC Bar No.: 17263
535 College Street
Asheville, NC 28801
(828) 251-0800

**Second Amendment to Lease and Purchase
of Commercial Real Property**

This Second Amendment to the Lease and Purchase of Commercial Real Property made and entered into this _____, 20____ (hereinafter sometimes "Amendment") by and between **BUNCOMBE COUNTY**, a body politic and corporate of the State of North Carolina (hereinafter sometimes "County") and **LAND OF SKY REGIONAL COUNCIL**, a regional planning commission (hereinafter sometimes "LOS"), County and LOS are hereinafter sometimes referred to collectively as the "Parties."

WITNESSETH:

Whereas, on or about January 8, 2008, County and LOS did enter into and execute a Lease and Purchase of Commercial Real Property (hereinafter sometimes "Lease" or "Agreement") for all of what is now or formerly known as Unit 4 of the Leicester Crossing Center; said Unit 4 being 17,676 square feet of the approximately 32,000 square foot building and improvements together with pro-rata parking (hereinafter sometimes "Premises");

Whereas, on or about July 1, 2011, the Parties amended the Lease as follows:

Paragraph A.1 of the Lease and all hand written changes was amended as follows:

1. Term of Lease. The term of the Lease shall begin on January 1, 2008, and end at 12:59:59 p.m. on December 31, 2034, or when the debt service on the \$2,179,410.50 is paid in full by LAND OF SKY, whichever shall first occur.

Paragraph A.2.iii was added as follows:

- iii. LAND OF SKY is excused from paying principle and interest payments for 2011. Said excused payments shall be made up in 2034. LAND OF SKY shall begin making regular rental payment in accordance with Section A.2.ii. for 2012.

Whereas, there has been a lapse in payment as the Parties have been in discussions concerning this Lease;

Whereas, County and LOS desire to enter into this Second Amendment to Lease and Purchase of Commercial Real Property.

NOW THEREFORE, County and LOS, for valuable consideration each to the other paid, the receipt and sufficiency of which is hereby acknowledged, agree to modify the Lease as follows:

1. The Fourth Unnumbered Paragraph, which begins: "The 'Premises...'" is deleted in its entirety and replaced with the following:

The "Premises" subject to this Lease is all of the area shown on the attached **Exhibit A** shaded in pink and being 14,864 square feet of the approximately 32,000 square foot building and improvements together with pro-rata parking.

2. Paragraph 2 of Section A of the is deleted in its entirety and replaced with the following:

2. Rental Provisions.

- i. **Rent.** LOS and County hereby agree that on or before _____, 2018, LOS shall pay to County \$307,145.10 (plus applicable Common Area and Maintenance (hereinafter "CAM")) fees for the first half of calendar year 2018 as calculated below in Subsection (a) of this Amendment, which shall constitute payment in full of back rent owed to LESSOR by LESSEE for the Premises subject to this Agreement for calendar years 2016 and 2017 and the first bi-annual payment of rent hereunder. Subsequent payments of rents for the Premises shall be in the manner and amounts listed in the Future Minimum Lease Payments for Lease Obligations and the Amortization Schedule, which is attached hereto as **Exhibit B**, and the Future Minimum Lease Payments for Lease Obligations, which is attached hereto as **Exhibit C**, and due on or before the first day of June and December of each calendar during the lease term.

Commented [BF1]: Question for Tim - Is this amount still correct?

Commented [BF2]: Are the attached (PDFs in email) still accurate?

- a **Common Area Maintenance Fees and Dues.** LOS agrees to pay the County CAM Fees in the following amounts:

Water Usage	63% of annual water utility cost
Sprinkler Service Contract	\$174 Annually
Roof replacement, maintenance, repair, etc.	58% of any and all such costs
Exterior Wall replacement, maintenance, repair, etc.	58% of any and all such costs
Sewer fees, maintenance, repair, etc.	63% of any and all such costs
HVAC/Heating/Cooling replacement, maintenance, repair, etc.	58% of any and all such costs
Parking Lot Maintenance, Replacement, and/or Repair	58% of any and all such costs

Commented [BF3]: Re Billy's Comment, per our General Services Director LOS has:
 63% of the water-consuming fixtures and 58% of the square footage.
 Recurring annual costs are as follows:
 • Sprinkler System Service Contract: \$300
 • Water Utility: \$13,200

Commented [BF4]: All changed to 58% per Gen Serv Dir comment above.

- ii. **Rental Payments.** All rental payments, unless otherwise designated in writing, are to be made to County at PO Box 7526, Asheville, NC 28802. If LOS shall mail rental payment, it shall do so in advance allowing ample time for delivery of each rental payment to County, so the rental payment will be received in hand on or before the day designated in Subparagraph i above. LOS may also pay the rent via wire transfer or other means, so long as LOS receives the same on or before the day designated in Subparagraph i. above.
- iii. **Utilities.** LOS shall, during the lease term, pay and be responsible for all utilities that are specific to the Premises, including but not limited to, telephone and other communication utilities, electricity, gas, and garbage service. County shall not be in any way be responsible for the interruption of utility services.
- iv. **Safe and Sanitary Conditions.** LOS shall not permit, allow or cause any act or deed to be performed upon, in or about the Premises which shall cause or be likely to cause injury to any person or the Premises, particularly to the building or improvements located thereon, or to buildings, improvements, parking areas, sidewalks or pavement, if any, adjoining the Premises. LOS shall at all times keep the Premises in a neat and orderly conditions, and shall keep the Premises and the entryways, parking areas, sidewalks and delivery area used primarily by it, clean and free from rubbish, dirt, pests, snow, and ice.

- 3. Paragraph 9 of Section A is deleted in its entirety.
- 4. Paragraph 10 of Section A is deleted in its entirety and replaced with the following:

10. Insurance and Liability.

i. Insurance.

- a. If any building or improvement situated on the Premises is damaged by fire or other casualty resulting from any act or negligence of LOS or any of LOS's agents, employees or invitees, rent shall not be diminished or abated while such damages are under repair, and LOS shall be responsible for the costs of repair not covered by insurance, if any, including payment of County's self-insured retention limits.
- b. LOS shall be responsible, at its own expense, for fire and extended coverage insurance on all of its personal property, including removable trade fixtures, located in or on the Premises. LOS will provide County with a certificate of insurance evidencing this coverage.
- c. LOS shall, at its own expense, maintain a policy or policies of comprehensive general liability insurance with respect to the Premises and activities on the Premises with a minimum limit of \$1,000,000 and a \$3,000,000 general aggregate. County shall be listed as an additional

insured on this policy. LOS shall provide County with a certificate of insurance evidencing this coverage.

- d. LOS shall maintain Workers' Compensation insurance in compliance with all applicable statutes. The policy shall also provide Employer's Liability coverage with limits of not less than \$500,000 Bodily Injury each accident, \$500,000 Bodily Injury by disease, policy limit, and \$500,000 Bodily Injury by disease, each employee. LOS will provide County with a certificate of insurance evidencing this coverage.
- e. LOS shall, upon execution of this Lease and annually thereafter, provide County with current Certificates of Insurance evidencing LOS's compliance with this section. All insurance shall be procured from reputable insurers authorized to do business in North Carolina. LOS shall obtain the agreement of LOS's insurers to notify County that a policy is due to expire at least thirty (30) days prior to such expiration.
- f. **Insurance Rate Increase Due to LESSEE Activities.** If, during the lease term, as the result of any act or neglect of LOS, its invitees, agents, employees or representatives, or the nature of the business conducted in or on the Premises by LOS, the fire insurance rate upon the Premises or the building shall be increased over the rate existing as of the original date of this Lease, LOS on demand shall pay to County, as additional rent, a sum equal to one-twelfth of the annual cost of the increase of such insurance for each month in which this lease is in effect after the effective date of such increase.
- g. **Governmental Immunity.** Nothing in this section is intended to affect or abrogate Buncombe County's governmental immunity.
- h. **Untenantability.** If the Premises are made untenantable by fire or other casualty, as determined by the County in its sole discretion, the County may elect to terminate this Lease as of the date of the fire or casualty by notice to the other party within sixty (60) days after that date; provided that if the Premises can be rendered habitable within sixty (60) days (or if the delay beyond said sixty (60) days is due to the action, or failure to act by LOS) LOS may not terminate this Lease under this provision. In the event that neither party elects to terminate the Lease, then County shall proceed with all due diligence to repair, restore or rehabilitate the Building and the Premises at County's expense, in which event this Lease shall not terminate.

In the event the Lease is not terminated pursuant to this provision, rent shall abate on a per diem basis during the period of untenantability. In the event of the termination of this Lease pursuant to this Section, rent shall be apportioned on a per diem basis and paid to the date of the fire or other

casualty. In the event that the Premises are partially damaged by fire or other casualty but are not made wholly untenable, then County shall, except during the last year of the term hereof, proceed with all due diligence to repair and restore the Premises and the rent shall abate in proportion to the untenability of the Premises during the period of restoration. If a portion of the Premises are made untenable as aforesaid during the last year of the term hereof, County shall have the right to terminate this Lease as of the date of the fire or other casualty by giving written notice thereof to LOS within thirty (30) days after the date of fire or other casualty, in which event the rent shall be apportioned on a per diem basis and paid to the date of such fire or other casualty.

ii. Waiver of Claims.

To the extent not prohibited by law, LOS releases County, its agents and employees and their successors and assigns from, and waives all claims for, damage or injury to person or property sustained by LOS its successors and assigns resulting from the Premises or any equipment or appurtenance becoming out of repair, or resulting from any accident in or about the Premises or resulting directly or indirectly from any act or neglect of any LOS or occupant of the Premises, or of any other person, excepting only County, its agents and employees. This Section shall include but not be limited to, the flooding of basements or other subsurface areas, and to damage caused by refrigerators, sprinkling devices, air-conditioning and/or electrical equipment, water, snow, frost, steam, excessive heat or cold, falling plaster, broken glass, sewage, gas, odors or noise, or the bursting or leaking of pipes or plumbing fixtures, and shall apply equally whether any such damage results from the act or neglect of County or of other occupants or servants in the Building or of any other person, and whether such damage be caused or result from anything or circumstance above mentioned or referred to, or any other thing or circumstance whether of a like nature or of a wholly different nature. If any such damage, or injury whether to the Premises or any part thereof, or whether to County or to others in the Building, results from any act or neglect of LOS, its employees, agents, invitees and customers, LESSEE shall be liable therefor and County may, at County's option, repair such damage and LOS shall, upon demand by County, reimburse County forthwith for the total cost of such repairs. LOS shall not be liable for any damage caused by its act or neglect if County has recovered the full amount of the damage from insurance and the insurance company has waived its right of subrogation against LOS. The parties hereto agree to use their best efforts to have any and all fire, extended coverage or any and all material damage insurance which may be carried pursuant to Section 13 hereof endorsed with the following subrogation clause: "This insurance shall not be invalidated should the insured waive prior to a loss any or all right of recovery against any party for loss occurring to the property described herein." Each party hereto hereby

waives all claims for recovery from the other party for any loss or damage to any of its property insured under valid and collectible insurance policies to the extent of any recovery collectible under such insurance.

Nothing in this section is intended to affect or abrogate Buncombe County's governmental immunity.

iii. Indemnity.

LOS shall indemnify, defend, and hold harmless the County and its subsidiaries, divisions, officers, directors and employees from all liability, loss, costs, claims, damages, expenses, attorney fees, judgments and awards arising or claimed to have arisen, from any injury caused by, or allegedly caused by, either in whole or in part, any act or omission of LOS or any employee, agent or assign of LOS. LOS shall indemnify the County in all instances except where the County is primarily negligent through an act or omission. Nothing herein shall be construed as a waiver on the part of the County to any defense of any claim, including, but not limited to the defense of governmental immunity. The County's obligations under this paragraph shall be limited to the extent and manner of recovery pursuant to the County's self-insured claim policies and North Carolina law.

5. Section B is deleted in its entirety and replaced with the following:

- i. **B. OPTION TO PURCHASE PREMISES.** Provided that LOS is and has continuously been in compliance with the provisions of the Lease, LOS shall have the option to purchase from County and County shall sell to LOS the Premises, AS IS and in its then current condition, subject to the following covenants, terms and conditions:
 - a. **Exercise Option.** LOS shall have the right to exercise this option to purchase at any time after the execution of this Amendment and before December 31, 2034. Closing shall occur within one hundred and eighty (180) days after notification to exercise option to purchase.
 - b. **Fixtures.** The following items, if any, are included in the purchase of the Premises free of liens: signage Specific to Premises, interior walls, any built-in appliances, light fixtures, ceiling fans, attached floor coverings, door screens, interior doors, awnings, antennas, energy systems specific to Premises, and any items attached or affixed to the Premises, including but limited to the attached items set forth in Exhibit A.
 - c. **Purchase Price.** The purchase price for the Premises shall be \$1,609,393.28 (one million, six hundred and nine thousand, three hundred and ninety three dollars and twenty eight cents). The price shall be paid in cash or equivalent at closing. Rents paid hereunder shall be deducted from

Commented [BF5]: Correct?

the purchase price.

- d. Declaration of Condominium:** Within thirty (30) days of receipt of written notice of the intent of LOS to exercise said option to purchase County shall prepare and file a declaration of condominium clearly defining the areas of the Property located at 339 New Leicester Highway, Asheville, North Carolina 28806 to be subject to the North Carolina Condominium Act, the common areas, percentage ownership in common elements of each unit, formula providing for pro rata contributions for common area maintenance of the condominium, and other matters necessary and appropriate to establish rights and responsibilities of condominium ownership and common area maintenance.
- e. Conditions.**
 - 1. Title will be delivered at closing by a NON-WARRANTY DEED.
 - 2. All Deeds of Trust, liens and other charges against the Premises will be paid and satisfied by County prior to or at closing so that cancellation may be promptly obtained following closing. County will remain obligated to obtain any such cancellations following closing.
- f. Closing Expenses.** County shall pay for preparation of the Deed and all other documents necessary to perform County's obligations under this Option, and for excise tax (revenue stamps) required by law. LOS shall pay for recording the Deed and recording of all instruments required to secure the purchase price unpaid at closing. Each party shall be responsible for all attorney's fees incurred by such party.
- g. Closing.** The "closing" shall be defined as the date and time of recording of the Deed. All parties agree to execute any and all documents and papers necessary in connection with closing and transfer of title on or before sixty (60) days following the termination of lease terms, at a place and time designated by LOS. The Deed is to be made to LOS, unless otherwise directed by LOS.

6. Paragraph 17 of Section C is deleted in its entirety.

If there is any conflict between this Amendment and the Lease, the provisions of this Amendment shall prevail.

IN WITNESS WHEREOF, the parties hereby make, agree, and execute this Second Amendment to Lease and Purchase of Commercial Real Property by the below signatures of duly authorized officials or agents:

County of Buncombe

Land of Sky Regional Council

By: _____

By: _____

Its: _____

Its: _____

On: _____

On: _____

This Instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act

By: _____
Tim Flora, Finance Director

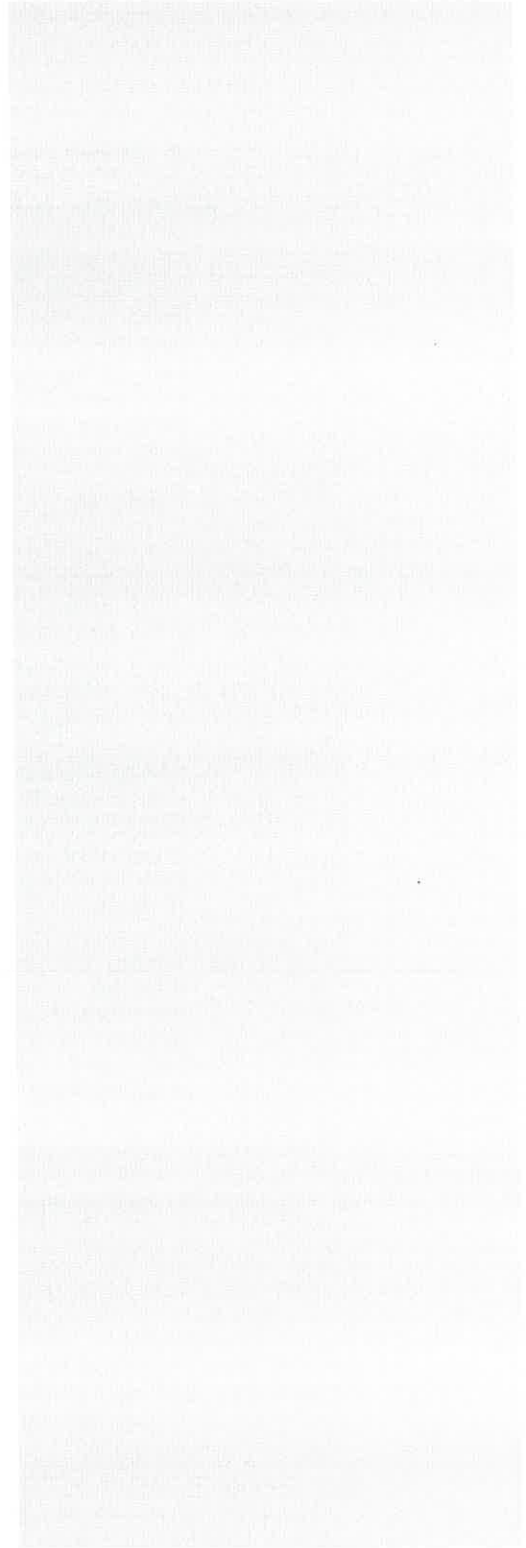


Exhibit A

Exhibit B

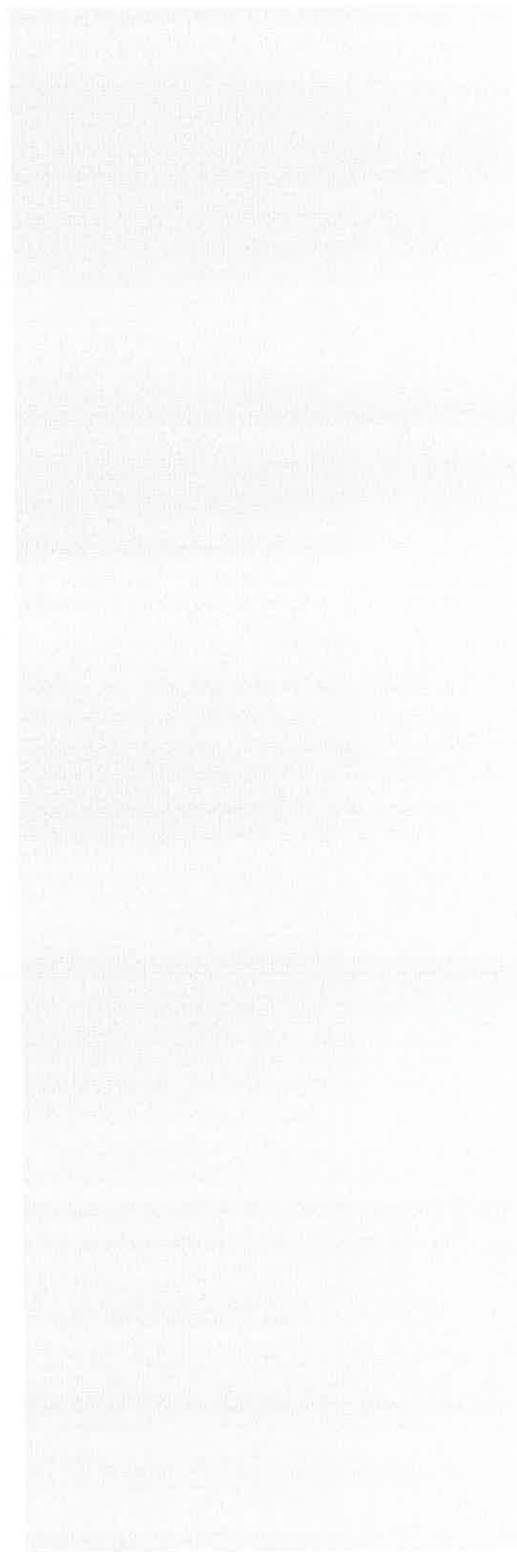


Exhibit C

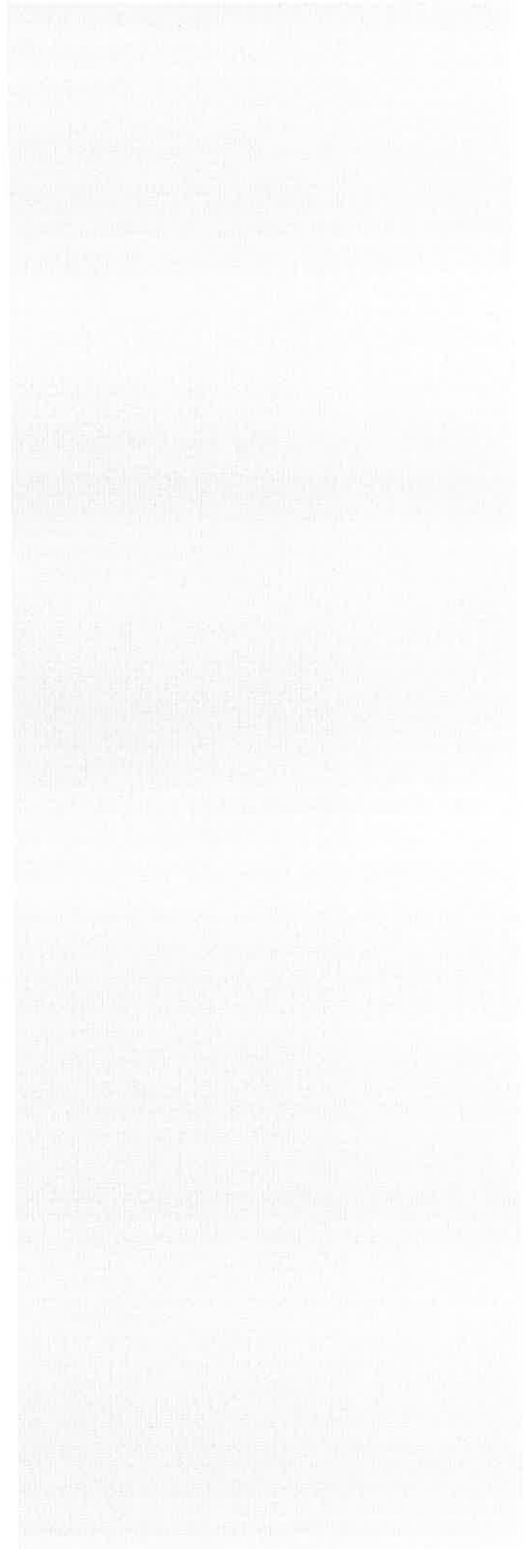


EXHIBIT B

Land of Sky Regional Council County Note Payable						
Compound Period:		Semiannual				
Nominal Annual Rate:		4.150%				
CASH FLOW DATA						
	Event	Date	Amount	Number	Period	End Date
1	Loan	6/30/2015	1,609,393.28	1		
2	Payment	12/31/2015	61,429.02	38	Semiannual	6/30/2034
3	Payment	12/31/2034	12,152.56	1		
AMORTIZATION SCHEDULE - Normal Amortization						
	Date	Payment	Interest	Principal	Balance	
Loan	6/30/2015				1,609,393.28	
2015 Totals		0.00	0.00	0.00		
1	12/31/2015	61,429.02	33,394.91	28,034.11	1,581,359.17	
2	6/30/2016	61,429.02	32,813.20	28,615.82	1,552,743.35	
2016 Totals		122,858.04	66,208.11	56,649.93		
3	12/31/2016	61,429.02	32,219.42	29,209.60	1,523,533.75	
4	6/30/2017	61,429.02	31,613.33	29,815.69	1,493,718.06	
2017 Totals		122,858.04	63,832.75	59,025.29		
5	12/31/2017	61,429.02	30,994.65	30,434.37	1,463,283.69	
6	6/30/2018	61,429.02	30,363.14	31,065.88	1,432,217.81	
2018 Totals		122,858.04	61,357.79	61,500.25		
7	12/31/2018	61,429.02	29,718.52	31,710.50	1,400,507.31	
8	6/30/2019	61,429.02	29,060.53	32,368.49	1,368,138.82	
2019 Totals		122,858.04	58,779.05	64,078.99		
9	12/31/2019	61,429.02	28,388.88	33,040.14	1,335,098.68	
10	6/30/2020	61,429.02	27,703.30	33,725.72	1,301,372.96	
2020 Totals		122,858.04	56,092.18	66,765.86		
11	12/31/2020	61,429.02	27,003.49	34,425.53	1,266,947.43	
12	6/30/2021	61,429.02	26,289.16	35,139.86	1,231,807.57	
2021 Totals		122,858.04	53,292.65	69,565.39		
13	12/31/2021	61,429.02	25,560.01	35,869.01	1,195,938.56	
14	6/30/2022	61,429.02	24,815.73	36,613.29	1,159,325.27	
2022 Totals		122,858.04	50,375.74	72,482.30		
15	12/31/2022	61,429.02	24,056.00	37,373.02	1,121,952.25	
16	6/30/2023	61,429.02	23,280.51	38,148.51	1,083,803.74	
2023 Totals		122,858.04	47,336.51	75,521.53		
17	12/31/2023	61,429.02	22,488.93	38,940.09	1,044,863.65	

	Date	Payment	Interest	Principal	Balance
18	6/30/2024	61,429.02	21,680.92	39,748.10	1,005,115.55
2024 Totals		122,858.04	44,169.85	78,688.19	
19	12/31/2024	61,429.02	20,856.15	40,572.87	964,542.68
20	6/30/2025	61,429.02	20,014.26	41,414.76	923,127.92
2025 Totals		122,858.04	40,870.41	81,987.63	
21	12/31/2025	61,429.02	19,154.90	42,274.12	880,853.80
22	6/30/2026	61,429.02	18,277.72	43,151.30	837,702.50
2026 Totals		122,858.04	37,432.62	85,425.42	
23	12/31/2026	61,429.02	17,382.33	44,046.69	793,655.81
24	6/30/2027	61,429.02	16,468.36	44,960.66	748,695.15
2027 Totals		122,858.04	33,850.69	89,007.35	
25	12/31/2027	61,429.02	15,535.42	45,893.60	702,801.55
26	6/30/2028	61,429.02	14,583.13	46,845.89	655,955.66
2028 Totals		122,858.04	30,118.55	92,739.49	
27	12/31/2028	61,429.02	13,611.08	47,817.94	608,137.72
28	6/30/2029	61,429.02	12,618.86	48,810.16	559,327.56
2029 Totals		122,858.04	26,229.94	96,628.10	
29	12/31/2029	61,429.02	11,606.05	49,822.97	509,504.59
30	6/30/2030	61,429.02	10,572.22	50,856.80	458,647.79
2030 Totals		122,858.04	22,178.27	100,679.77	
31	12/31/2030	61,429.02	9,516.94	51,912.08	406,735.71
32	6/30/2031	61,429.02	8,439.77	52,989.25	353,746.46
2031 Totals		122,858.04	17,956.71	104,901.33	
33	12/31/2031	61,429.02	7,340.24	54,088.78	299,657.68
34	6/30/2032	61,429.02	6,217.90	55,211.12	244,446.56
2032 Totals		122,858.04	13,558.14	109,299.90	
35	12/31/2032	61,429.02	5,072.27	56,356.75	188,089.81
36	6/30/2033	61,429.02	3,902.86	57,526.16	130,563.65
2033 Totals		122,858.04	8,975.13	113,882.91	
37	12/31/2033	61,429.02	2,709.20	58,719.82	71,843.83
38	6/30/2034	61,429.02	1,490.76	59,938.26	11,905.57
2034 Totals		122,858.04	4,199.96	118,658.08	
39	12/31/2034	12,152.56	246.99	11,905.57	0.00
2035 Totals		12,152.56	246.99	11,905.57	
Grand Totals		2,346,455.32	737,062.04	1,609,393.28	
Last interest amount decreased by 0.05 due to rounding.					

EXHIBIT C

Land of Sky Regional Council County Note Payable
June 30 2015

2/28/2018 3:28 PM Page 1

Future minimum lease payments for lease obligations :

Fiscal Year Ending <u>June 30,</u>	<u>Payment</u>	<u>Interest</u>	<u>Principal</u>
2016	\$ 122,858	\$ 66,208	\$ 56,650
2017	122,858	63,833	59,025
2018	122,858	61,358	61,500
2019	122,858	58,779	64,079
2020	122,858	56,092	66,766
2021	122,858	53,293	69,565
2022	122,858	50,376	72,482
2023	122,858	47,337	75,522
2024	122,858	44,170	78,688
2025	122,858	40,870	81,988
2026	122,858	37,433	85,425
2027	122,858	33,851	89,007
2028	122,858	30,119	92,739
2029	122,858	26,230	96,628
2030	122,858	22,178	100,680
2031	122,858	17,957	104,901
2032	122,858	13,558	109,300
2033	122,858	8,975	113,883
2034	122,858	4,200	118,658
2035	<u>12,153</u>	<u>247</u>	<u>11,906</u>
Total obligations	<u><u>\$ 2,346,455</u></u>	<u><u>\$ 737,062</u></u>	<u><u>\$ 1,609,393</u></u>

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

AGREEMENT FOR LEASE AND
PURCHASE OF COMMERCIAL REAL
PROPERTY

THIS AGREEMENT FOR LEASE AND PURCHASE OF COMMERCIAL REAL PROPERTY (referred to herein as the "Agreement"), is made and entered into this ____ day of January, 2008 by and between **BUNCOMBE COUNTY**, a body politic and corporation (referred to herein collectively as "BUNCOMBE"), and **LAND OF SKY REGIONAL COUNCIL**, a regional planning commission (referred to herein as "LAND OF SKY").

BUNCOMBE is the owner of a certain tract or parcel of land being all of that portion of Tract 2 conveyed to BUNCOMBE by deed recorded in Deed Book 4509, at Page 1775 of the Buncombe County Registry and located at 339 New Leicester Highway, Asheville, North Carolina 28806; and the building and improvements located at said 339 New Leicester Highway contains approximately 32,000 square feet with parking in what is now or formerly known as Leicester Crossing Center (referred to herein as the "Property").

BUNCOMBE desires to lease certain Premises being a portion of said Leicester Crossing Center to LAND OF SKY, and LAND OF SKY desires to lease such Premises from BUNCOMBE for the term, at the rental and upon the covenants, conditions and provisions herein set forth. Following the term of the lease, LAND OF SKY desires to purchase and BUNCOMBE desires to sell the Premises at the purchase price and upon the covenants, conditions and provisions herein set forth.

The "Premises" subject to this Agreement is all of what is now or formerly known as Unit 4 of the Leicester Crossing Center; said Unit 4 being 17,676 square feet of the approximately 32,000 square foot building and improvements together with pro-rata parking which was conveyed to BUNCOMBE as set forth above; it being understood by the parties hereto that the Premises subject to this Agreement represents 55.3% of the total square footage of the building and improvements located at 339 New Leicester Highway and purchased by BUNCOMBE as described above.

NOW THEREFORE, in consideration of the mutual promises herein contained, and other good and valuable consideration, it is agreed:

A. **LEASE OF PREMISES.** LAND OF SKY shall lease the Premises from BUNCOMBE (the "Lease"), subject to the following terms and conditions:

1. **Term of Lease.** The term of the Lease shall begin on January 1, 2008 and end at 12:59:59 p.m. on December 31, 2033, or when the debt service on the \$2,179,410.50 is paid in full by LAND OF SKY, whichever shall first occur.

2. **Rent.** LAND OF SKY and BUNCOMBE hereby agree that the rent for the Premises subject to this Agreement shall be 55.3% of the cost to BUNCOMBE of the said improvements located at said 339 New Leicester Highway and currently owned by BUNCOMBE. During the term of this Agreement, LAND OF SKY shall pay rent as follows:

i. Beginning February 1, 2008, LAND OF SKY shall pay rent in the amount of the debt service on that portion of the current interim financing securing BUNCOMBE's purchase of this Property and other county business attributable to the LAND OF SKY leasehold space, or \$2,179,410.50, as set forth in the attached schedule. Payments shall be due on or before fifteen (15) days prior to the August 7, 2008 and February 1, 2009 due dates as set forth in the attached Interim Financing amortization; and

ii. After February 1, 2009, LAND OF SKY shall pay rent based on the balance due on the original debt service on that portion of the permanent financing attributable to the LAND OF SKY leasehold space as a portion of the total space available for rent or occupancy at 339 New Leicester Highway. Such rental payments shall continue to be due on or before fifteen (15) days prior to due date of debt service payment dates dependent on the rate received by BUNCOMBE when it issues its debt and in accordance with the amortization prepared when the permanent financing is closed.

3. Late Charges. Other remedies for non-payment notwithstanding, any amount due under any provision of the Lease (including, without limitation, rents, costs, charges, additional rents, or reimbursements) which is not paid by LAND OF SKY within ten (10) days after the due date as herein provided, shall be subject to a late charge equal to the greater of two percent (2%) of the amount due or twenty-five dollars (\$25.00), which shall be deemed additional rent. The late charge is due and payable at the end of the tenth day after the original unpaid amount is due and payable as herein provided. Any amount due under any provision of the Lease which is not paid within thirty (30) days after the date due, shall accrue interest from the due date at the highest legal rate, not to exceed eighteen percent (18%), until paid in full, which interest shall be deemed additional rent.

4. Use. LAND OF SKY shall use the Premises for the purpose of operating a office/business. LAND OF SKY shall make no other use of the Premises without the prior written consent of BUNCOMBE. LAND OF SKY shall not use the Premises for the purposes of storing, manufacturing or selling any explosives, flammables or other inherently dangerous substance, chemical, thing or device.

5. Sublease. LAND-OF-SKY may sublease portions of the premises provided same is used solely as professional office space. All terms and conditions of this lease agreement between BUNCOMBE and LAND-OF-SKY remain the sole responsibility of LAND-OF-SKY to ensure compliance with these conditions and cannot be assigned to a sublessor. It is understood that no portion of the leased premises may be subleased without the prior written permission of Buncombe, which permission will not be unreasonably withheld.

6. Repairs and Maintenance During Lease Term. During the Lease term, LAND OF SKY shall, at LAND OF SKY's expense, maintain and make all necessary repairs to the Premises, including, but not limited to floors, doors and windows, interior and exterior walls, ceilings, roof, roof coverings (including flashing and gutters), heating, ventilation, air-conditioning, plumbing, electrical and mechanical equipment and systems, structural components (including foundations, columns, floors, walls, ceilings and roofs), crawl space and attic ventilation systems (if any).

7. **Alterations and Improvements.** LAND OF SKY, at LAND OF SKY's expense, shall have the right, upon BUNCOMBE's written consent, which shall not be unreasonably withheld or delayed, to remodel, redecorate, and make additions, improvements and replacements of and to all or any part of the Premises from time to time as LAND OF SKY may deem desirable, provided that the same are made in a workmanlike manner and utilizing good quality materials. LAND OF SKY shall have the right to place and install personal property, trade fixtures, equipment and other temporary installations in and upon the Premises, and fasten the same to the premises. All personal property, equipment, machinery, trade fixtures and temporary installations, whether acquired by LAND OF SKY at the commencement of the Lease term or placed or installed on the Premises by LAND OF SKY thereafter, shall remain LAND OF SKY's property free and clear of any claim by BUNCOMBE. LAND OF SKY shall have the right to remove the same at any time during the term of this Lease provided that all damage to the Premises caused by such removal shall be repaired by LAND OF SKY at LAND OF SKY's expense.

8. **Property Taxes.** LAND OF SKY agrees to pay applicable all real estate taxes, personal property taxes and assessments of every nature assessed against the Premises and Improvements occupied by LAND OF SKY, as well as be responsible for the payment of any ad valorem or other taxes assessed against any stored goods or any contents placed on the Premises by LAND OF SKY or any of its subtenants or on any machinery, equipment, fixtures, or rolling stock located thereon.

Upon receipt of any such tax or governmental or private assessment statement by BUNCOMBE, BUNCOMBE shall promptly deliver the same to LAND OF SKY. LAND OF SKY shall pay any such tax or assessment on or before the later of the following dates: (a) ten (10) days prior to the date on which such tax or assessment becomes delinquent, or (b) thirty (30) days following his receipt of such statement from BUNCOMBE or directly from the taxing authority. All such taxes and assessments shall be deemed additional rent hereunder.

* { 9. **Common Area Maintenance Fees and Dues.** Buncombe County agrees that no common area maintenance fees will be charged to LAND OF SKY. BUNCOMBE's annual membership dues paid to LAND OF SKY REGIONAL COUNCIL will be held at the current 2008 fiscal year level of \$122,341 until the debt service on the \$2,179,410.50 is paid in full by LAND OF SKY. Future increases in BUNCOMBE's allocated assessment of its dues paid to LAND OF SKY REGIONAL COUNCIL will be recorded as common area maintenance expense in the LAND OF SKY financial records.

10. **Insurance.**

* { a. If any building or improvement situated on the Premises is damaged by fire or other casualty resulting from any act or negligence of LAND OF SKY or any of LAND OF SKY's agents, employees or invitees, rent shall not be diminished or abated while such damages are under repair, and LAND OF SKY shall be responsible for the costs of repair not covered by insurance, if any.

b. BUNCOMBE may maintain, at BUNCOMBE's expense, fire and extended coverage insurance on all buildings and improvements situated on the Property in an amount equal to

the replacement value of all buildings and improvement situated on the Property. LAND OF SKY shall be responsible, at its own expense, for fire and extended coverage insurance on all of its personal property, including removable trade fixtures, located in or on the Premises.

c. LAND OF SKY shall, at its own expense, maintain a policy or policies of comprehensive general liability insurance with respect to activities on the Property with the premiums thereon fully paid on or before due date, issued by and binding upon some insurance company which has at least a B+ rating or equivalent rating by any recognized national rating organization, such insurance to afford minimum protection of not less than \$1,000,000 combined single limit coverage of bodily injury, property damage or combination thereof.

BUNCOMBE shall be listed as an additional insured on LAND OF SKY's policy or policies of comprehensive general liability insurance, and LAND OF SKY shall, upon written request, provide BUNCOMBE with current Certificates of Insurance evidencing LAND OF SKY's compliance with this Paragraph. LAND OF SKY shall obtain the agreement of LAND OF SKY's insurers to notify BUNCOMBE that a policy is due to expire at least ten (10) days prior to such expiration.

d. The parties release each other, and their respective authorized representatives, from any claims for damage to any person or to the Property and the personal property, improvements, and alterations of either BUNCOMBE or LAND OF SKY in or on the Premises that are caused by or result from risks actually insured against under any insurance policies carried by the parties pursuant to the terms of this Lease and in force at the time of any such damage. Each party shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against either party in connection with any damage covered by any policy. Neither party shall be liable to the other for any damage caused by fire or any of the risks insured against under any insurance policy required by this Lease which is in force at the time of such damage.

11. Signs. Following BUNCOMBE's written consent, which shall not be unreasonably withheld or delayed, LAND OF SKY shall have the right to place on the Property, at locations selected by LAND OF SKY, any signs which are permitted by applicable zoning ordinances and private restrictions. BUNCOMBE may refuse consent to any proposed signage that is in BUNCOMBE's opinion too large, deceptive, unattractive or otherwise inconsistent with or inappropriate to the Property. BUNCOMBE shall cooperate with LAND OF SKY in obtaining any necessary permission from governmental authorities or adjoining owners and occupants for LAND OF SKY to place or construct the foregoing signs. LAND OF SKY shall repair all damage to the Premises resulting from the removal of signs installed by LAND OF SKY.

12 Entry. BUNCOMBE shall have the right to enter upon the Premises at reasonable hours to inspect the same, provided BUNCOMBE shall not thereby unreasonably interfere with LAND OF SKY's business on the Premises.

13. Default. If default shall at any time be made by LAND OF SKY in the payment of rent when due to BUNCOMBE as herein provided, and if said default shall continue for fifteen (15) days after written notice thereof shall have been given to LAND OF SKY by BUNCOMBE, or if default shall be made in any of the other covenants or conditions to be kept, observed and performed

by LAND OF SKY, and such default shall continue for thirty (30) days after notice thereof in writing to LAND OF SKY by BUNCOMBE without correction thereof then having been commenced and thereafter diligently prosecuted, BUNCOMBE may declare the term of this Lease ended and terminated by giving LAND OF SKY written notice of such intention, and if possession of the Premises is not surrendered, BUNCOMBE may reenter said premises and said reentry shall not constitute a breach of the peace. In the event BUNCOMBE terminates this Lease pursuant to this paragraph, LAND OF SKY shall be liable to BUNCOMBE for the remaining rent that would have been due for the unexpired term of the Lease notwithstanding such termination. BUNCOMBE shall have, in addition to the remedy above provided, any other right or remedy available to BUNCOMBE on account of any LAND OF SKY default, either in law or equity. BUNCOMBE shall use reasonable efforts to mitigate its damages.

14. Covenants of BUNCOMBE. BUNCOMBE covenants and warrants that upon performance by LAND OF SKY of its obligations hereunder, BUNCOMBE will keep and maintain LAND OF SKY in exclusive, quiet, peaceable and undisturbed and uninterrupted possession of the Premises during the term of this Lease.

15. Compliance with Law. LAND OF SKY shall comply with all laws, orders, ordinances and other public requirements now or hereafter pertaining to LAND OF SKY's use of the Premises.

B. PURCHASE OF PREMISES. Upon expiration of the Lease term, LAND OF SKY shall have the option to purchase from BUNCOMBE and BUNCOMBE shall sell the LAND OF SKY the Premises, AS IS and in its then current condition, subject to the following covenants, terms and conditions:

1. Purchase Price. The stated purchase price for the Premises shall be \$500.00 and shall be paid in cash or equivalent at closing.

2. Fixtures. The following items, if any, are included in the purchase of the Premises free of liens: parking areas, roof, signage, outside walls, any built-in appliances, light fixtures, ceiling fans, attached floor coverings, window hardware, window and door screens, storm windows, doors, awnings, antennas, burglar/fire/smoke alarms, energy systems, outdoor plants and trees (other than in moveable containers), storage buildings, mailboxes, and any items attached or affixed to the Premises.

3. Conditions. The following shall be conditions to LAND OF SKY's obligation to complete the closing:

a. There must be no restriction, easement, zoning or other governmental regulation that would prevent the reasonable use of the Premises for a commercial enterprise.

b. The Premises must be in substantially the same or better condition at closing as of the date of this Agreement, with the exception of reasonable wear and tear and any damage caused by the act, failure to act or negligence of LAND OF SKY or its employees, agents or invitees, including any damages caused by LAND OF SKY's failure to maintain and repair the Premises as provided in paragraph 5 of Section A above.

c. All Deeds of Trust, liens and other charges against the Property must be paid and satisfied by BUNCOMBE prior to or at closing so that cancellation may be promptly obtained

following closing. BUNCOMBE shall remain obligated to obtain any such cancellations following closing.

d. Title must be delivered at closing by a SPECIAL WARRANTY DEED, and must be fee simple marketable title, free of all encumbrances except: utility easements approved by LAND OF SKY and in place at the time this Agreement is executed. The Premises must have legal access to a public right-of-way.

e. Water and sewer must be available to the Premises.

f. That all warranties and representations of BUNCOMBE made herein are true and correct as of the date of closing, except with respect to any immaterial matters or any matters as to which the action or inaction of LAND OF SKY, or LAND OF SKY's employees, agents and invitees following the commencement of the Lease term have caused such warranties or misrepresentations to become untrue or incorrect.

4. Closing Expenses. BUNCOMBE shall pay for preparation of the Deed and all other documents necessary to perform BUNCOMBE's obligations under this Contract, and for excise tax (revenue stamps) required by law. LAND OF SKY shall pay for recording the Deed and recording of all instruments required to secure the purchase price unpaid at closing. Each party shall be responsible for all attorney's fees incurred by such party.

5. Evidence of Title. BUNCOMBE agrees to use its best efforts to deliver to LAND OF SKY as soon as reasonably possible after the acceptance of this Contract, copies of all title information in possession of or available to BUNCOMBE, including but not limited to: title insurance policies, attorney's opinion on title, surveys, covenants, deeds, notes and deeds of trust and easements relating to the Property. LAND OF SKY may order a title commitment covering the title to the Property for at least thirty (30) years prior to the date of this Contract. If the commitment discloses any defects in title (other than liens or encumbrances of a definite or ascertainable amount which may be paid at closing from the proceeds due BUNCOMBE), LAND OF SKY shall notify BUNCOMBE of such defects, and BUNCOMBE shall (a) have thirty (30) days to cure such defects or (b) notify LAND OF SKY that BUNCOMBE does not intend to cure such defects. If BUNCOMBE elects not to cure such defects, LAND OF SKY shall have the option of either accepting the title to the Premises with such defects, or terminating its obligation to purchase the Premises pursuant to this Agreement and receiving a refund of the Earnest Money, if any.

6. Labor and Material. BUNCOMBE shall furnish at closing an affidavit and indemnification agreement in form satisfactory to LAND OF SKY showing that all labor and materials, if any, furnished to the Premises within one hundred twenty (120) days prior to the date of closing have been paid for and agreeing to indemnify LAND OF SKY, LAND OF SKY's title company, and LAND OF SKY's lender, if any, against all loss from any cause or claim arising therefrom.

7. Environmental. BUNCOMBE represents and warrants that it has no knowledge of any contamination of the Property from any hazardous or toxic wastes or substances that may have been disposed of or stored on neighboring tracts, and BUNCOMBE has no reason to suspect that any such use or disposal occurred prior to BUNCOMBE's ownership of the Property.

8. Closing. The "closing" shall be defined as the date and time of recording of the Deed. All parties agree to execute any and all documents and papers necessary in connection with closing and transfer of title on or before fifteen days following the termination of Lease Terms, at a place and time designated by LAND OF SKY. The Deed is to be made to LAND OF SKY REGIONAL COUNCIL, unless otherwise directed by LAND-OF-SKY.

9. Adverse Information and Compliance with Laws.

a. BUNCOMBE has no knowledge of (i) any condemnation or assessment affecting or contemplated with respect to the Premises; (ii) actions, suits or proceedings pending or threatened against the Premises; or (iii) changes contemplated in the applicable laws, ordinances or restrictions affecting the Premises.

b. BUNCOMBE has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions pertaining to or affecting the Premises, BUNCOMBE's performance of this Agreement will not result in the breach of, constitute a default under, or result in the imposition of any lien or encumbrance upon the Premises under any agreement or other instrument to which BUNCOMBE is a party or by which BUNCOMBE or the Premises is bound, and there are no legal actions, suits or other legal or administrative proceedings pending or, to the knowledge of BUNCOMBE, threatened against the Premises, and BUNCOMBE is not aware of any facts which might result in any such action, suit or other proceeding.

c. There is no significant adverse fact or condition known to BUNCOMBE relating to the Premises or its intended use by LAND OF SKY which has not been specifically disclosed in writing by BUNCOMBE to LAND OF SKY.

10. BUNCOMBE WARRANTIES. BUNCOMBE hereby warrants that (a) BUNCOMBE is vested with the fee simple title to the Premises; (b) BUNCOMBE has the full right and authority to sell the Premises; (c) there are no applicable zoning laws, Deed restrictions, or other covenants, restrictions, agreements, liens, or encumbrances affecting the Premises which would be violated or restrict the occupancy, if any, and use of the Premises by LAND OF SKY; and (d) the existing certificate of occupancy permits the use contemplated by LAND OF SKY.

C. GENERAL PROVISIONS.

1. Possession. Possession of the Premises shall be delivered to LAND OF SKY at the commencement of the Lease term.

2. Condemnation. If, prior to the closing, any legally, constituted authority condemns the building situated on the Property or such part thereof which shall make the Premises materially unsuitable for LAND OF SKY's use, this Agreement shall terminate when the public authority takes possession, and BUNCOMBE and LAND OF SKY shall account for rental as of that date. LAND OF SKY shall have a pro-rata right in or to any portion of the condemnation award for the Property by the condemning authority.

3. Damage or Destruction. Subject to paragraph 8.a. of Section A. above, if prior to closing the Premises or any part thereof shall be damaged by fire or other casualty, and LAND OF SKY shall give prompt written notice thereof to BUNCOMBE. BUNCOMBE may elect:

(a) to terminate this Agreement as of the date of the fire or other casualty, by notice to LAND OF SKY within sixty (60) days after the date of such notice; or

(b) proceed with reasonable diligence to repair or cause to be repaired the Property so damaged, and if the Property, or any part thereof, shall be rendered untenable by reason of such damage, the Rent, or an amount thereof apportioned according to the area of the Property so rendered untenable, shall be abated for the period from the date of such damage to the date when the damage shall have been repaired as aforesaid; provided, however, that if BUNCOMBE

or any mortgagee of the Property shall be unable to collect the insurance proceeds (including lease insurance proceeds) applicable to such damage because of some negligent act or omission on the part of LAND OF SKY, or any employee, licensee or invitee of LAND OF SKY, the cost of repairing such damage shall be paid by LAND OF SKY and there shall be no abatement of Rent so long as BUNCOMBE is using its best efforts to repair the damage. BUNCOMBE shall not be liable for any inconvenience or annoyance to LAND OF SKY or injury to the business of LAND OF SKY resulting in any way from such damage or the repair thereof. In no event shall BUNCOMBE be required to repair any damage to the Building not covered by BUNCOMBE's insurance on the Building.

(c) Option to Terminate Lease: If the Building shall be so damaged by such fire or other casualty that substantial alteration or reconstruction of the Building shall, in BUNCOMBE's sole opinion, be required (whether or not the Premises shall have been damaged by such fire or other casualty), then BUNCOMBE may, at its option, terminate the lease and the term and estate hereby granted, by notifying LAND OF SKY in writing of such termination within sixty (60) days after the date of such damage.

If BUNCOMBE shall give notice of termination pursuant to any event set forth above, the Lease and the term and estate hereby granted shall expire as of the date of such termination with the same effect as if that were the date hereinafter set for the expiration of the term of this Agreement, and the Tenant shall pay the pro rated amount of the Rent to the date of such termination whereupon all rental obligation of LAND OF SKY shall be deemed paid in full. LAND OF SKY shall be relieved from paying rent and other charges during any portion of the Lease term that buildings and improvement situated on the Premises are inoperable or unfit for occupancy, or use, in whole or in part, for LAND OF SKY's purpose.

4. **Risk:** All personal property placed in the Property shall be at the risk of LAND OF SKY or the owner thereof, and BUNCOMBE shall not be liable for any damage to said personal property, or to LAND OF SKY arising from the bursting of pipes, or leaking of water or steam pipes, or from any act of negligence of LAND OF SKY, or any other occupant of the Building or of any other person whomsoever, nor from the leaking of the roof, nor from the leaking or overflowing of water or sewer pipes, or from heating or plumbing fixtures, or from the handling of electric wires or fixtures, or from any other cause whatsoever, except for causes arising from the negligent acts or omissions of BUNCOMBE, except as otherwise herein provided. LAND OF SKY understands that BUNCOMBE will not carry insurance of any kind on LAND OF SKY's furniture or furnishings or on any fixture or equipment removable by LAND OF SKY under the provisions of this Lease, and that BUNCOMBE shall not be obligated to repair any damage thereto or replace the same. LAND OF SKY may, at the expiration or earlier termination of this Agreement, remove all personal property and movable trade fixtures which LAND OF SKY has placed in the Property, provided LAND OF SKY repairs all damages to the Premises caused by such removal.

In addition, BUNCOMBE shall not be liable for any property stolen or taken from the Property by any person or persons, except any agent, servant, or employee of BUNCOMBE.

5. **Notice.** Any notice required or permitted under this Agreement shall be deemed sufficiently given or served if sent by United States certified mail, return receipt requested, addressed as follows:

If to BUNCOMBE to: County of Buncombe
c/o County Manager
205 College Street, Suite 300
Asheville, NC 28801

If to LAND OF SKY to: LAND OF SKY REGIONAL COUNCIL
339 New Leicester Highway, Suite 140
Asheville, NC 28806

BUNCOMBE and LAND OF SKY shall each have the right from time to time to change the place notice is to be given under this paragraph by written notice thereof to the other party.

6. **Waiver.** No waiver of any default of BUNCOMBE or LAND OF SKY hereunder shall be implied from any omission to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by BUNCOMBE or LAND OF SKY shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

7. **Headings.** The headings used in this Agreement are for convenience of the parties only and shall not be considered in interpreting the meaning of any provisions of this Agreement.

8. **Applicable Law.** This Agreement shall be construed in accordance with the laws of the State of North Carolina, and any suit by or between the Parties shall be brought in the appropriate division of the General Courts of Justice of Buncombe County.

9. **Assignment.** The rights and obligations of LAND OF SKY under this Agreement may not be assigned by LAND OF SKY without the written consent of BUNCOMBE and which consent may be withheld for any reason.

10. **Consent.** If any provision of this Agreement requires the consent of either party, such party may withhold or delay its consent with respect to any matter in its sole and absolute discretion, unless otherwise specifically provided herein.

11. **Parties.** This Agreement shall be binding upon and inure to the benefit of the parties, and their heirs, successors and assigns. As used herein, words in the singular include the plural and the masculine includes the feminine and neuter genders, as appropriate.

12. **Survival** If any provision of this Agreement which, by its nature and effect, is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

13. Entire Agreement. This Agreement contains the entire agreement of the parties and there are no representations, inducements or other provisions other than those expressed herein. All changes, additions or deletions hereto must be in writing and signed by all parties.

14. Accord and Satisfaction. No payment by LAND OF SKY or receipt by BUNCOMBE of a lesser amount than the entire required rental amount as set forth herein shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and BUNCOMBE may accept such check or payment without prejudice to BUNCOMBE's right to recover the balance of such rent or pursue any other remedy in this Agreement.

15. Execution. This Agreement shall only become a binding contract when signed by both LAND OF SKY and BUNCOMBE. This Agreement may be signed in multiple originals, all of which together shall constitute one and the same instrument, with the signed original being retained by each party.

16. Construction. The parties agree that this Agreement has been negotiated in an arms length transaction, and the provisions set forth herein are not to be construed against the party who drafted this Agreement.

17. Indemnification. LAND OF SKY hereby agrees to indemnify and hold BUNCOMBE harmless from any and all claims, damages, liabilities or expenses arising out of (a) LAND OF SKY's use of the leased premises or common area, (b) any and all claims arising from any breach or default in the performance of any obligation of LAND OF SKY, (c) any act, omission or negligence of LAND OF SKY, its agents or employees. LAND OF SKY further releases BUNCOMBE from liability for any damages sustained by LAND OF SKY or any other person claiming by, through or under LAND OF SKY due to the leases premises, common area, or any part thereof or any appurtenances thereto becoming out of repair, or due to the happening of any accident, including, but not limited to, any damage caused by water, snow, windstorm, tornado, gas, steam, electrical wiring, sprinkler system, plumbing, heating and air conditioning apparatus and from any acts or omissions of co-tenants or other occupants of the said land and improvements located at 339 New Leicester Highway.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year set forth below.

{Signatures on Following Pages}

BUNCOMBE COUNTY

By: _____
Nathan Ramsey, Chairman

ATTEST:

Kathy Hughes, Clerk to the Board

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

I, _____, Notary Public for said County and State, has personal knowledge of the identity of Kathy Hughes, and hereby certifies that said Kathy Hughes, Clerk to the Board, personally appeared before me this day and acknowledged that she is Clerk to the Board of Commissioners of County of Buncombe and that Nathan Ramsey is the Chairman of the Board of Commissioners of Buncombe County, and that by authority duly given and as the act of the County of Buncombe, the foregoing instrument was signed in its name by said Chairman, sealed with its official seal, and voluntarily attested to by herself as its Clerk as the act and deed of the County of Buncombe, all by authority duly given by its governing body.

Witness my hand and notarial seal, this the ___ day of May, 2008.

Notary Public

My Commission Expires:

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

Donna Clark, Finance Officer.

LAND OF SKY REGIONAL COUNCIL

5-28-08
Date

Eddie Fox (Seal)
BY: Eddie Fox, Chairman

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

I, Avelina B. Merrill, a Notary Public of the County and State aforesaid, certify that Eddie Fox personally appeared before me this day and acknowledged that he is the Chairman of Land of Sky Regional Council, a regional planning commission of the State of North Carolina, and that he, as Chairman, being authorized to do so, voluntarily executed the foregoing instrument on behalf of Land of Sky Regional Council, as its act and deed.

Witness my hand and notarial seal, this the 28th day of May, 2008.

Avelina B. Merrill
Notary Public

My Commission Expires:

April 29, 2009

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

Peggy Barnes 5/28/08
Finance Officer,
Land of Sky Regional Council

**Land of Sky Regional Council
Overtime/Compensatory Time Policy**

Objective

To establish Land of Sky Regional Council's (LOSRC or the Council) policy for the compensation of overtime to non-exempt (overtime eligible) employees in accordance with the Fair Labor Standards Act (FLSA) and reaffirm the Council's good faith to comply with all related provisions contained in the FLSA.

Policy Statement

LOSRC has established this Overtime/Compensatory Time Policy to comply with applicable federal law governing accrual and use of overtime and compensatory time (comp time). The Council will follow FLSA requirements to determine whether each employee is designated as exempt or non-exempt from earning overtime. In general, employees in executive, administrative and professional jobs are exempt. All other employees are non-exempt.

Overtime, Compensatory Time, Workweek

All overtime-eligible employees will be compensated at the rate of time and one-half for all hours worked over 40 in one workweek. Vacation, sick leave, paid holidays and other paid leave does not count toward hours worked. Compensation will take the form of either time and one-half pay or comp time. Comp time is paid time off at the rate of one and one-half hours off for each hour of overtime worked.

LOSRC's workweek begins at 12:00:00midnight on Saturday and ends at 11:59:59 on Friday.

The employee's supervisor must approve overtime hours in advance. An employee who works overtime without prior approval will be compensated, but may be subject to disciplinary action.

Overtime earned will be paid at the rate of time and one-half on the next regularly scheduled payroll date, unless the employee and her or his supervisor mutually agree **in advance** that overtime will be banked as comp time in lieu of payment. This advance agreement is included as Attachment A. Attachment A should be included with the employee's timesheet record for the workweek during which overtime is worked.

The maximum comp time accumulation is 40 hours. Employees may request and use comp time in the same manner as with other leave requests.

All comp time will be marked as such on official timesheets, both when it is earned and when it is used. The Finance Department will account for compensatory time at the hourly rate the employee is earning at that time.

Requirement to Work Overtime

All employees, in all departments, are required to work overtime as requested by their supervisors as a condition of continued employment. Refusal to work overtime may result in disciplinary action. Supervisors will make reasonable efforts to balance the personal needs of their employees when assigning overtime work.

ATTACHMENT A

Land of Sky Regional Council

Compensatory Time in Lieu of Overtime Instructions

The agreement form must be signed by the employee and supervisor and dated **before** the extra hours are worked.

Attach the completed and signed agreement to the timesheet.

The extra hours must show on the timesheet. Then show the calculation for 1.5 x the number of extra hours in the period.

Comp time in lieu of overtime only applies to hours worked over 40 in a workweek. A workweek runs from 12:00:00midnight on Saturday through 11:59:59pm on Friday.

Compensatory Time Agreement

I understand that my position is covered under the Fair Labor Standards Act (FLSA). I also understand that I am eligible to receive overtime pay at one and one-half times my current rate of pay, **OR**, in lieu thereof, to receive paid time off at the rate of one and one-half hours off for each hour of employment for which overtime compensation is required.

I voluntarily waive my right to overtime pay for compensation of overtime worked in the workweek ending _____ (Date) and elect, in lieu thereof, to receive compensatory time, which time will accrue and be credited to payroll records as compensatory time.

I acknowledge that I may use accrued compensatory time as paid time off in the same manner as other types of leave per LOSRC policies and procedures.

Employee Signature

Date

Supervisor Signature

Date

**THIS FORM MUST BE ATTACHED TO THE TIMESHEET THAT
INCLUDES THE EXTRA HOURS WORKED**

**Land of Sky Regional Council
Travel Policy for Non-Exempt Employees**

Objective

To set forth Land of Sky Regional Council's (LOSRC or the Council) policy for compliance with the Fair Labor Standards Act (FLSA) travel rules for non-exempt employees.

Policy Statement

Some non-exempt LOSRC employees are required to travel in the United States. This policy states the pay rules that apply to non-exempt employees when traveling on Council business. Employees in positions classified as non-exempt under the FLSA are eligible for compensation for the time they spend traveling. The compensation an employee receives depends on the kind of travel and whether the travel takes place within normal working hours.

Normal Hours Defined

Normal work hours, for the purposes of this policy, are defined as 8:00am to 5:00pm. This definition applies to normal workdays (Monday through Friday) and to weekends (Saturday and Sunday).

Travel Time Defined

Travel time is defined as including the time the employee arrives at the airport to the time the employee reaches her or his destination. The destination is either a hotel or a worksite (if the employee travels directly from the airport to work). If the employee is traveling home from a worksite, the destination is the airport of final arrival.

If an employee is traveling by air and no flights are available from Asheville Regional Airport, travel between the employee's residence and the airport is considered travel time and is eligible for compensation in accordance with the guidelines below.

Travel time between home and work or between a hotel and a worksite is considered normal commuting time and is not eligible for compensation.

If an employee requests a specific travel itinerary or mode of transportation that is different from the one authorized by the Council, only the estimated travel time associated with the itinerary and mode of transportation authorized by the Council will be eligible for compensation.

Travel Time within Normal Work Hours

Any portion of authorized travel time that takes place within normal work hours (defined as 8:00am to 5:00pm) on any day of the week, including Saturday and Sunday, is treated as work hours. Travel time within normal work hours will be paid at the employee's regular hourly rate and will be factored into overtime calculations, if any.

When an employee travels between two or more time zones, the time zone associated with the point of departure should be used to determine whether the travel falls within normal work hours.

Travel Time Outside of Normal Work Hours

Any portion of authorized travel time that takes place outside of normal work hours is considered to be outside work hour travel time.

When a non-exempt employee is required to travel as a passenger in an automobile, plane or any other mode of transportation outside of normal work hours, she or he will be compensated at one-half of her or his regular hourly rate for that portion of travel time that takes place outside of normal work hours. Unlike work hours, outside travel hours are not factored into overtime calculations.

When an employee travels between two or more time zones, the time zone associated with the point of departure should be used to determine whether the travel falls outside of normal work hours.

Automobile Travel Time

All authorized travel time spent driving an automobile (as the driver, not as a passenger) is treated as work hours, regardless of whether the travel takes place within normal work hours or outside normal work hours. An employee will receive her or his regular hourly rate for all travel time spent as the driver of an automobile. This time will be factored into overtime calculations, if any.

Travel as a passenger in an automobile is not automatically treated as work hours. Travel as a passenger in an automobile is treated the same as all other forms of travel, and compensation depends on whether the travel time takes place within normal work hours.

If an employee drives an automobile as a matter of personal preference when an authorized flight or other travel modes are available, and the travel time by car would exceed that of the authorized mode, only the estimated travel time associated with the authorized mode will be eligible for compensation.

Calculating and Reporting Travel Time

Employees are responsible for accurately tracking, calculating and recording travel time on their timesheets in accordance with this policy.

Meal times should be deducted from all travel time.

If an employee requests a specific travel itinerary or mode that is different from the one authorized, only the estimated travel time associated with the authorized schedule, route and mode of transportation should be reported on the timesheet.

**Land of Sky Regional Council
Exempt Employees Pay Deductions Policy**

Objective

To establish Land of Sky Regional Council's (LOSRC or the Council) policy prohibiting improper pay deductions and identify permissible pay deductions for work absences specified in the Fair Labor Standards Act (FLSA) to include a reporting procedure for employees who feel that improper deductions have been made; provide for reimbursement to employees for any improper deductions; and reaffirm the Council's good faith commitment to comply with all related provisions contained in the FLSA.

Policy Statement

It is LOSRC's policy to comply with the salary basis requirements of the FLSA. Therefore, the Council prohibits all supervisors, department heads and senior leadership from making improper deductions from the salaries of exempt employees. Employees should be aware of this policy and that LOSRC does not allow deductions that violate the FLSA.

FLSA

The FLSA is a federal law that requires that most employees in the United States be paid at least the federal minimum wage for all hours worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional or outside sales employees. Certain technology-related employees are also exempt. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the FLSA regulations.

Salary Basis Requirement

Being paid on a salary basis means an employee regularly receives a predetermined amount of compensation each pay period. The predetermined amount cannot be reduced because of variations in the quality or quantity of the employee's work. Subject to the exceptions listed below, an exempt employee must receive the full salary for any workweek in which the employee performs any work, regardless of the number of days or hours worked. Exempt employees do not need to be paid for any workweek in which they perform no work. If an employer makes deductions from an exempt employee's predetermined salary (i.e., because of operating requirements of the employer), the employee is not paid on a salary basis. If the employee is ready, willing and able to work, deductions may not be made for time when work is not available.

Permissible Deductions from Pay

Deductions from an exempt employee's pay for work absences are permissible under the following circumstances:

- The employee is absent from work for one or more full days for personal reasons other than sickness or disability

- The employee is absent from work for one or more full days due to sickness or disability if the deduction is made in accordance with the Council's policy or practice of providing compensation for salary lost due to illness
- The employee is absent for personal reasons or because of illness or injury for one or more full days when leave is not used or has been exhausted
- The employee is absent due to a budget-required furlough
- The employee receives an unpaid disciplinary suspension of one or more full days imposed in good faith for workplace conduct rules

In addition, LOSRC is not required to pay the full salary in the first or last week of employment.

Employee Responsibility

LOSRC makes every effort to ensure its employees are paid correctly. Occasionally, however, inadvertent mistakes can happen. When mistakes happen and are called to the Council's attention, necessary corrections will be made. All employees should review their pay studs when received to make sure they are correct. If an employee believes a mistake has occurred, or if there are any questions, the employee should use the reporting procedure outlined below.

Reporting Procedure

If an employee believes that an improper deduction has been made to her or his salary, this information should be immediately reported to the employee's supervisor and the Finance Department. Any complaint will be resolved within a reasonable time given all the facts and circumstances. If an investigation reveals that an employee was subjected to an improper deduction from pay, she or he will be reimbursed, and the Council will take whatever action is deemed necessary to ensure compliance with the salary basis test in the future.

**Land of Sky Regional Council
Independent Contractor Policy**

Objective

To ensure Land of Sky Regional Council (LOSRC or the Council) complies with all applicable federal and state laws relative to the use of independent contractors.

Policy Statement

It is the practice of LOSRC to hire individuals as full-time and part-time employees for its regular workforce and to meet any short-term labor needs by hiring temporary employees. On rare occasions, in order for the Council to meet objectives, it may be necessary to consult with experts in a particular field and to engage individuals for specific periods and/or specific assignments to provide short-term expertise. The use of such individuals should be the exception and not the rule.

An independent contractor is not intended to be a substitute for a regular or a temporary employee. A LOSRC employee is not eligible to perform work as an independent contractor during the same calendar year in which she or he works as a LOSRC employee.

This policy defines the criteria to qualify as an independent contractor, and sets out how independent contractors must be paid in order for the Council to remain compliant with the Department of Labor (DOL), the Internal Revenue Service (IRS) and other state and federal regulatory agencies. Payments to independent contractors are processed through the Council's accounts payable process, not through the payroll process.

Definitions

Employee – For purposes of this policy, an employee is a worker who is hired through LOSRC recruitment and selection procedures, and is paid under an IRS Form W-2.

Independent Contractor – For purposes of this policy, an independent contractor is an individual who provides services to the Council and is not an employee; namely, a person who is paid under an IRS Form 1099. More specifically, it is a worker who: (a) is engaged in an independently established profession or business, (b) provides a service outside the Council's usual course of business and (c) is free from LOSRC's control or direction when providing services. The criteria for determining whether a worker is an independent contractor or employee is provided below.

Criteria for Identifying Independent Contractors

Federal law and other relevant regulations require LOSRC to properly classify its workers as either employees or independent contractors. Federal regulations identify the steps, documents and processes necessary to ensure proper classification of and subsequent payment to independent contractors.

An independent contractor is an individual who meets all of the following criteria:

- Renders a service to the Council for a specified amount for a specified result
- Is engaged in an independently established profession or business (offers similar services to the general public on a consistent basis)

- Provides service outside of the Council's usual course of business
- Is not currently paid through Council payroll and has not been paid through Council payroll within the current calendar year
- Provides services through a written contract
- Is free from Council control or direction when providing services

Required Procedure – How to Identify and Engage an Independent Contractor

The following procedure is a required component of this policy, and the steps a department head must take in order to properly identify and engage with an independent contractor. At any time during this process, the department head should consult with the Executive Director and/or Finance Director if they need assistance.

Step 1 – The department head sends a Service Provider Questionnaire (Attachment A) to the potential service provider to complete and return with supporting documentation.

Step 2 – The department head then completes the Independent Contractor Determination Checklist (Attachment B) using information provided in the completed Service Provider Questionnaire.

Step 3 – After completion of the Independent Contractor Determination Checklist, the department head meets with the Executive Director and Finance Director to review the Service Provider Questionnaire, Independent Contractor Determination Checklist and relevant federal regulations. Based on this meeting, a determination will be made as to the status of the service provider, employee or independent contractor. If needed, the Executive Director and Finance Director will seek expert counsel to assist in making a final determination.

Step 4 – If it is determined the service provider is an independent contractor, the department head forwards the service provider a proposed contract for services.

**ATATCHMENT A
Service Provider Questionnaire**

Cover Letter (Should be placed on LOSRC Letterhead)

Dear Service Provider,

I am sending this information to you as a potential vendor who may provide service to Land of Sky Regional Council. Please complete the service provider questionnaire below, which is required to satisfy federal requirements for engaging an independent contractor. Additional information may be required after submitting your completed questionnaire.

Please return the completed service provider questionnaire by email to:

Name: _____
Title: _____
Email: _____

If Land of Sky Regional Council engages you as an independent contractor, the following must occur prior to the services being performed:

- You will receive a contract for services which must be signed and returned
- Depending on the nature of services provided, you may be required to provide proof of insurance
- Land of Sky Regional Council will issue a purchase order for the services

Upon completion of services, submit your invoice to:

Land of Sky Regional Council
Accounts Payable
339 New Leicester Highway, Suite 140
Asheville, NC 28806

If you have any questions, please contact me.

Sincerely,

Name
Title

Service Provider Questionnaire

Service Provider Information

Name: _____

DBA: _____

Briefly describe the nature of the services you perform.

Are you currently or have you been at any time in the last five years an officer, director or employee of Land of Sky Regional Council? If yes, please explain.

Are you an immediate family member of an officer, director or employee of Land of Sky? If yes, please explain.

Will you require the use of any Land of Sky facilities, equipment or materials to provide your services? If yes, please explain.

Will you require training from Land of Sky Regional Council to provide your services? If yes, please explain.

Is your business located in your home or do you have an office away from your home?

How do you advertise your services? (Check all that apply)

_____ Word of Mouth

_____ Publications

_____ Websites

_____ Other (Explain)

List publication names and web addresses, if applicable.

Did you receive an IRS Form 1099 for performing services last year? If yes, provide the name and contact phone number for your three major customers, other than Land of Sky Regional Council, during the last 12 months.

Percentage wise, how much of your total working time do you expect to devote to all Land of Sky Regional Council business in the next 12 months?

How many hours per week do you expect to devote to all Land of Sky Regional Council Business in the next 12 months?

Service Provider Attestation and Certification

Check one:

_____ I am a citizen of the United States or a permanent resident (green card).

_____ I am a foreign national and understand that payments made to me may be subject applicable tax withholdings.

I am not an officer, director, employee or otherwise affiliated with Land of Sky Regional Council.

I understand that if I accept employment at Land of Sky Regional Council in the future, I will cease to be considered an independent contractor.

If Land of Sky Regional Council hires me as an independent contractor, I understand that I am responsible for taxes, insurance coverage and business expenses, and that I am not eligible for any employer-provided benefits.

Signature: _____ Date: _____

Name: _____ Title: _____

Company Name or DBA: _____

Tax ID Number/SSN: _____

Phone Number: _____ Email: _____

ATATCHMENT B
Independent Contractor Determination Checklist

Service Provider Information

Company Name or DBA: _____

Individual Name: _____

Tax ID Number/SSN: _____

US Citizen or Permanent Resident?

_____ Yes

_____ No

Former Land of Sky employee?

_____ Yes

_____ No

If a former employee, will the individual be performing services in substantially similar capacity or under the similar direction and control as when they were an employee?

_____ Yes (Stop and pay as an employee)

_____ No (Continue)

_____ N/A

Mistakenly classifying an employee as an independent contractor can result in significant fines and penalties. There are 20 factors used by the IRS to determine whether there is enough control over a worker to be an employee. Though these rules are intended only as a guide (the IRS says the importance of each factor depends on the individual circumstances), they should be helpful in determining whether there is enough control to show an employer-employee relationship.

If you answer "Yes" to all of the first four questions, you are probably dealing with an independent contractor. "Yes" to any of questions five through 20 means you are probably dealing with an employee.

Answer yes or no to each of the following questions:

1. **Profit or loss.** Can the worker make a profit or suffer a loss as a result of the work, aside from the money earned from LOSRC? (This should involve real economic risk-not just the risk of not being paid.)

_____ Yes

_____ No

2. **Investment.** Does the worker have an investment in the equipment and facilities used to do the work? (The greater the investment, the more likely independent contractor status.)

_____ Yes

_____ No

3. **Works for more than one firm.** Does the person work for more than one company at a time? (This tends to indicate independent contractor status, but is not conclusive since employees can also work for more than one employer.)

_____ Yes

_____ No

4. **Services offered to the general public.** Does the worker offer services to the general public?

_____ Yes

_____ No

5. **Instructions.** Does LOSRC have the right to give the worker instructions about when, where and how to work? (This shows control over the worker.)

_____ Yes

_____ No

6. **Training.** Does LOSRC train the worker to do the job in a particular way? (Independent contractors are already trained.)

_____ Yes

_____ No

7. **Integration.** Are the worker's services so important to LOSRC that they have become a necessary part of the Council's operations? (This may show that the worker is subject to your control.)

_____ Yes

_____ No

8. **Services rendered personally.** Must the worker provide the services personally, as opposed to delegating tasks to someone else? (This indicates that LOSRC is interested in the methods employed, and not just the results.)

_____ Yes

_____ No

9. **Hiring assistants.** Does LOSRC hire, supervise, and pay the worker's assistants? (Independent contractors hire and pay their own staff.)

_____ Yes

_____ No

10. **Continuing relationship.** Is there an ongoing relationship between the worker and LOSRC? (A relationship can be considered ongoing if services are performed frequently, but irregularly.)

_____ Yes

_____ No

11. **Work hours.** Does LOSRC set the worker's hours? (Independent contractors are masters of their own time.)

_____ Yes

_____ No

12. **Full-time work.** Must the worker spend all of her or his time on LOSRC work? (Independent contractors choose when and where they will work.)

_____ Yes

_____ No

13. **Work done on premises.** Must the individual work on LOSRC premises, or does LOSRC control the route or location where the work must be performed? (Answering no does not by itself mean independent contractor status.)

_____ Yes

_____ No

14. **Sequence.** Does LOSRC have the right to determine the order in which services are performed? (This shows control over the worker)

_____ Yes

_____ No

15. **Reports.** Must the worker give LOSRC reports accounting for her or his actions? (This may show lack of independence)

_____ Yes

_____ No

16. **Pay Schedules.** Does LOSRC pay the worker by hour, week, or month? (Independent contractors are generally paid by the job or commission, although by industry practice, some are paid by the hour.)

_____ Yes

_____ No

17. **Expenses.** Does LOSRC pay the worker's business or travel costs? (This tends to show control.)

_____ Yes

_____ No

18. **Tools and materials.** Does LOSRC provide the worker with equipment, tools or materials?
(Independent contractors generally supply the materials for the job and use their own tools and equipment.)

_____ Yes

_____ No

19. **Right to fire.** Can LOSRC fire the worker? (An independent contractor cannot be fired without subjecting you to the risk of breach of contract lawsuit.)

_____ Yes

_____ No

20. **Worker's right to quit.** Can the worker quit at any time, without incurring liability? (An independent contractor has a legal obligation to complete the contract.)

_____ Yes

_____ No

