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TO: Buncombe County Commissioners

FROM: Robert Deutsch, County Attorney

SUBJECT: Pack Place Leases

The City of Asheville (“City”) owns the Pack Place real estate (“Pack Place”) which has been under a “bulk” lease to Pack Place Education, Arts, & Science Center, Inc. (“PPEASC”) since 1988. PPEASC in turn subleased the Pack Place spaces to the individual tenants such as Asheville Art Museum (“AAM”), Diana Wortham Theater (“DWT”), Health Adventure (“HA”), and Coburn Earth Science Museum (“CESM”). The sub-tenant organizations and PPEASC entered into an operating agreement between themselves on common issues of the overall operation of Pack Place. The bulk lease expired on July 31, 2014. The City had previously notified PPEASC that PPEASC is in breach of the repair and maintenance obligations in the bulk lease.

After much negotiation, the City, AAM, DWT, and CESM have changed the structure from the “bulk leases” to individual direct leases between the City and AAM, the City and DWT, and the City and CESM (“Direct Leases”). I am informed that only CESM has signed its direct lease, and that the other two are pending negotiation of some final terms. The following is a summary of the terms of the three Direct Leases:

Asheville Art Museum

Premises leased: Space currently occupied by AAM.

Term: 30 years, with two renewal options of ten years each.

Rental Rate: Nominal fee and additional consideration in the form of major renovations to be undertaken by AAM and capital maintenance contributions. Tenant responsible for ordinary care and maintenance and utilities within its exclusive and controlled areas. Tenant to contribute a pro-rata amount for maintenance and utilities of Pack Place Center shared areas.

Capital Maintenance: Beginning in the fiscal year starting July 1, 2015, AAM to make payments into City fund for capital maintenance of Pack Place Center. Annual amounts are \$21,000, \$25,200, \$29,400, \$33,600 and \$37,800. Payments will be re-evaluated every five years, or at the conclusion of proposed AAM renovations, based on conditions existing at the time. Payments will be suspended for three years during construction of proposed AAM renovations.

Commencement of Construction: Before beginning construction, AAM must obtain all permits, prepare an ingress/egress plan that complies with State Building and Fire Safety Codes, and provide evidence satisfactory to the City Manager that financing has been obtained to carry out AAM renovations, such conditions to be met on or before December 31, 2018.

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Separation changes: AAM must pay the cost of all capital repair and maintenance of Pack Place Center necessary to ensure compliance with fire and safety codes, and ADA, up to a cap of \$250,000. This compliance provision includes fire code compliance sprinkler installation in the Arcade Breezeway to Biltmore Avenue, and installation of an elevator from the DWT lower lobby level to the Pack Square level DWT lobby. The cap is indexed from 2014 to the PPI set by the Associated General Contractors of America, and does not apply to repair and maintenance caused by any change in the North Carolina Building Code, or any federal law or regulation, not in effect at the time the parties enter into the lease.

AAM must fund and perform relocation of the Pack Place Historic Interpretive Exhibit, at a cost sufficient to create a newly designed, interactive display that meets the approval of the State Historic Preservation Office ("SHPO"), not to exceed \$25,000.

AAM must pay DWT the sum of \$47,000 for office relocation and upfit expenses for space currently occupied by Colburn Earth Science Museum. In the event DWT is required to relocate its offices before August 1, 2015 due to construction, the City agrees to provide comparable office space to DWT from the 121st day after AAM makes payment of \$47,000 to DWT up to August 1, 2015.

Colburn Earth Science Museum

Premises leased: Space currently occupied by Colburn.

Term: August 1, 2014 to June 7, 2015.

Rental Rate: \$1450 per month beginning January 1, 2015. Tenant responsible for ordinary care and maintenance and utilities within its exclusive and controlled areas.

Diana Wortham Theatre

Premises leased: Space currently occupied by Diana Wortham Theatre and primary exhibit space currently occupied by Colburn.

Term: 30 years, with two renewal options of ten years each. Colburn space may be occupied after June 7, 2015.

Rental Rate: Nominal fee and additional consideration in the form of capital maintenance contributions. Tenant responsible for ordinary care and maintenance and utilities within its exclusive and controlled areas. Tenant to contribute a pro-rata amount for maintenance and utilities of Pack Place Center shared areas.

Capital Maintenance: Beginning in the fiscal year starting July 1, 2015, Diana Wortham Theatre to make annual payments to the City of \$15,000, \$18,000, \$21,000, \$24,000 and \$27,000. The annual payments are calculated based on the square footage leased and will be adjusted upward based on additional space made available upon termination of Colburn lease.

Office Relocation: Permanent Diana Wortham Theatre offices will be relocated into the space vacated by Colburn. Diana Wortham Theatre will receive a sum of \$47,000 for office relocation and upfit expenses from AAM. In the event Diana Wortham Theatre is required to relocate its offices prior to August 1, 2015, due to construction, the City agrees to provide comparable office space to Diana Wortham Theatre during the interim period.

