

**MEMORANDUM OF UNDERSTANDING BETWEEN WARREN WILSON COLLEGE AND THE COUNTY OF
BUNCOMBE FOR USE OF SWIMMING FACILITIES**

THIS MEMORANDUM OF UNDERSTANDING is made and entered into this 7th day of March, 2017, by and between Warren Wilson College (sometimes herein "Warren Wilson" or "College") and Buncombe County, North Carolina (sometimes herein "County").

W I T N E S S E T H

- WHEREAS, Warren Wilson in Swannanoa is the country's only liberal arts college with a national student body and integrated work and service programs;
- WHEREAS, this educational experience includes an athletic program intended to offer the college community the opportunity to participate in a wide variety of sports activities at the individual, intramural, club, and varsity level;
- WHEREAS, Warren Wilson boasts men's and women's varsity swim teams as well as a student body swim club, and the College has a long history of offering neighboring community organizations and the public opportunities to use its swim facilities throughout the year, however, the aquatic center located in the DeVries Athletic Center including the 25-yard indoor swimming pool is currently closed indefinitely;
- WHEREAS, at this time the County needs access to a year-round indoor swimming pool on a mutually agreeable schedule which would allow exclusive use for County purposes at certain specific times as well as other non-exclusive uses at times designated by the College;
- WHEREAS, pursuant to N.C. Gen. Stat. § 153A-444, the County may establish recreational programs for its citizens;
- WHEREAS, pursuant to N.C. Gen. Stat. § 153A-11 and § 153A-449, the County may contract with private entities to carry out any public purpose the County is authorized by law to engage in;
- WHEREAS, the County is willing to contribute \$300,000 toward the renovations needed for the swimming pool in exchange for such uses by the County; and
- WHEREAS, Warren Wilson is willing to accommodate the County's request for such uses of its pool upon completion of the renovations and payments and/or contributions by County as set forth above.

NOW THEREFORE, the parties hereto, for and in consideration of the promises and covenants contained herein agree to enter into this Memorandum of Understanding as follows:

1. The Recitals set forth above, along with the definitions of certain terms, are incorporated herein by reference as if fully restated.

2. Warren Wilson will cause engineering and architectural services to be completed for design and construction of renovations needed for the indoor swimming pool, and then proceed to the management of the construction phase of the renovations to completion.

3. Warren Wilson will use its best efforts to have such swimming pool renovations completed by not later than February 1, 2018.

4. County will appropriate \$300,000 for these swimming pool renovations, and payment or contribution of such funds will be made to Warren Wilson at such time as 100% of the project is completed and all withheld funds have been released to the project contractors as certified by the project architect.

5. Prior to the completion date of the renovations set forth above, Warren Wilson and County will establish a mutually agreeable schedule which will allow exclusive use for County purposes of the renovated swimming pool at certain specific times as well as other non-exclusive uses at times designated by the College. County and community users will include:

- Owen High School swimming team
- Asheville Christian Academy High School swimming team
- Black Mountain swim club
- Asheville masters swimming
- Special Olympics of North Carolina
- Local police academy student training
- Buncombe County Public Safety training
- Kayak sessions, including Team River Runner veteran's group
- SCUBA classes and re-certifications
- Scouting troops
- Community swim lessons and use for local youths

This schedule will be set and fixed on a seasonal basis to fit the needs of Warren Wilson and the community. All County and community users may be charged no more than a nominal fee for pool time. The schedule may be modified by the parties from time to time as reasonably necessary.

6. Insurance and Indemnity. The Parties shall at all times indemnify, defend, and save the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or inaction of its obligations under this Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

7. Entire Agreement. This Agreement contains the entire agreement between the Parties and supersedes and replaces any and all prior or contemporaneous agreements or understandings, written or oral, with regard to the matters set forth herein. The terms of this Agreement are contractual and not merely a recital. This Agreement may not be altered or amended except by an amendment in writing duly executed by the Parties.

8. Invalid Provision to Affect no Others. If any provisions of this Agreement is held, determined or adjudicated to be invalid, unenforceable or void for any reason, each such provision shall be severed from the remaining provisions of this Agreement and shall not affect the validity and enforceability of such remaining provisions.

9. This Agreement may only be modified by the written consent of the Parties.

10. The individual signatories below have the expressed and implied authority on behalf of their respective Boards to execute this Agreement. The Parties may execute this Agreement in separate counterparts and the execution of a copy shall have the same effect as the execution of an original. Such execution may be by facsimile or PDF attachment to an email.

[Signature Pages Follow]

WITNESS WHEREOF, the Parties hereto have executed this instrument as of the day and year written below.

WARREN WILSON COLLEGE

By: _____

Date

Attest:

By: _____

Date

COUNTY OF BUNCOMBE

By: _____
Brownie Newman, Chair

Date

Attest:

By: _____
Kathy Hughes,
Clerk to the Board

Date