

Ashe County

Planning Department

Staff Report

3/12/2019

RE: ADAP Lease of Family Central

Summary:

ADAP is currently looking for a permanent home in Jefferson or West Jefferson. During this process they will need temporary space as they move out of their building in Lansing and into a new location. To meet that need, they have asked to lease approximately 2,000 square feet at Family Central, located off of the commercial kitchen and adjoining the WCC Cosmetology School.

The lease will be for 6 months, starting July 1, with an opportunity to renew the lease for an additional 3 months as needed. They have requested to lease 1,953 sq/ft at \$7.32 per sq/ft. For the 6 month period, this will be a total lease of \$7,147.98.

Attachments:

1. Draft lease



Ashe County Planning Department
150 Government Cir, Suite 2400
Jefferson, NC 28640

STATE OF NORTH CAROLINA

LEASE

COUNTY OF ASHE

This Lease is made and entered into as of this 1st day of June 2018 by and between Ashe County Government (hereinafter "Lessor"), and Mt. Jefferson Child Development Center, Inc. (hereinafter "Lessee").

RECITALS/STATEMENT OF PURPOSE

Lessor is the management entity of certain structures located at 626 Ashe Central School Road; Jefferson, North Carolina (the "Building"), and the land on which they are located, which together are referred to as the "Property." Lessee has agreed to lease a portion of the building, which portion shall be referred to herein as the "Premises," and the purpose of this Lease is to set forth the terms and conditions of such agreement.

The portion of the building, which constitutes the Premises, is considered the 1,953 net square feet of office, classroom, laundry, and kitchen space.

NOW, THEREFORE, in consideration of the Premises as set forth in the Recitals/Statement of Purpose above and the mutual covenants and agreements hereinafter set forth, the parties do hereby agree as follows:

1. Leased Premises. Lessor leases to Lessee and Lessee leases from Lessor the Premises. Lessee shall also have the right to use in common with Lessor and other lessees common areas within and without the Building such as rest rooms, hallways, conference room, community center, sidewalks and similar spaces. Use of the conference room and community center is based upon reservation on a first-come, first-served basis. Services and utilities including electricity, heating & air conditioning, water & sewer,, fire alarms, snow removal and common yard annex

maintenance.. The leased space includes the shop annex (1,656 sq/ft) and the main office (297 sq/ft) highlighted in attachments A & B.

2. Term and Option to Renew. The term of this Lease shall begin on July 1, 2019 and shall end at midnight on, December 31, 2019. Lessee shall have the option to renew this Lease on a three month basis on the same conditions as herein set forth. Lessee shall give written notice of its desire to renew this initial Lease by providing Lessor written notice at least thirty (30) days before the end of the initial Lease.

3. Rent. As rental for the Premises during the initial contract term, Lessee shall pay Lessor the full twelve-month rental amount of \$7,147.98 (calculated by 1,953 square feet at \$7.32 rental rate per square foot) in equal monthly payments of \$ 1,191.33. This agreed upon rate is a discount from the standard lease rate for the premise of \$9.15 per square feet. Lessee shall pay Lessor the discounted rental of \$1,191.33 amount in twelve equal monthly payments on or before the first day of each month.

4. Late Payment. If any payment due hereunder from Lessee to Lessor remains unpaid ten (10) days after said payment is due, the amount of such unpaid rent or other payment shall be increased by a late charge to be paid to Lessor by Lessee in an amount equal to four percent (4%) of the amount of the delinquent payment. It is agreed that such late charge shall not be deemed to be a penalty, it being understood between the parties that late payments shall result in additional administrative expense which is difficult and impractical to ascertain and that such late charge is a reasonable estimate of the loss and expense to be suffered by Lessor as a result of such late payment by Lessee.

If any sum due Lessor by Lessee hereunder shall not be paid within thirty (30) days of its due date, then in such case, in addition to the late charges provided for hereinabove, such rent or other sum shall bear interest beginning on the thirty-first (31st) day after its due date at the rate of eight percent (8%) per annum.

If any sum due Lessor by Lessee hereunder is collected by or through an attorney at law, Lessee agrees to pay Landlord's actual and reasonable attorneys' fees incurred with respect thereto not in excess of ten percent (10%), or if the laws of the State of North Carolina in effect at the time of such collection limit the amount so payable as attorneys' fees, then the maximum percentage not in excess of ten percent (10%) allowed by such laws, of the amount so collected.

Nothing herein shall relieve Lessee of the obligations to pay any sums due on or before the date on which any such payment is due, nor in any way limit Lessor's remedies under this lease or at law in the event said payment is unpaid after it is due. Failure to pay amounts due hereunder within ten (10) days after they are due shall constitute a default of this lease.

5. Signage. Lessee shall obtain Lessor's express written approval of any signage, which Lessee desires to erect on the Property, and upon obtaining such approval said signage shall be erected at the sole cost of Lessee. Signage shall not include hand-written material and shall be erected in such outdoor locations expressly approved by the Lessor.

6. Lessor's Services. Lessor shall be responsible for:

a. Upkeep and Maintenance. Upkeep and maintenance of the building and its common or public fixtures, appurtenances, systems, and facilities in good working order and repair, and for all interior and exterior structural and roof repairs as and when needed, and repair and replacement of all building materials, fixtures and equipment required for the normal use of the Premises by Lessee; provided, however, that the cost of any such repairs required as a result of the negligence or willful act of Lessee, its licensees, agents, servants, and employees shall be borne by Lessee and shall be payable upon notification by Lessor.

b. Cleaning and Janitorial. All cleaning and janitorial services for all common areas within the building, such as public rest rooms, stairways, meeting room/dining area and the like shall be the responsibility of the lessor. Lessor shall cause such cleaning and janitorial services to be performed on a regular and reoccurring basis, including the

removal of refuse and rubbish, so as to keep the Premises and the common areas in first-class condition at all times.

7. Lessee's Responsibilities. Lessee shall be responsible for:

a. Liability Insurance. Maintenance of comprehensive, general, and public liability insurance for the Lessee and its use of the Premises and common areas within and immediately bordering the Premises for personal injury and property damage in an amount and with coverage satisfactory to and approved by Lessor. Liability insurance coverage shall be sufficient to cover the Lessee's activities while utilizing the Premises.

b. Evidence of Insurance. Providing Lessor with certificates evidencing the coverages of all insurance policies carried by Lessee, upon request of the Lessor.

8. Lessee Unfitting. Any improvements or decorations installed by Lessee shall be at the sole cost of Lessee and shall become the property of Lessor at the termination of this Lease, provided, however, that all furniture, fixtures and equipment installed by Lessee in the leased Premises shall remain the personal property of Lessee. Lessee shall be entitled to remove such furniture, fixtures and equipment along with the remainder of its personal property at the expiration of the term of this Lease or any extension thereof.

9. Lessor's Liability. It is agreed that Lessor shall not be liable and is hereby expressly relieved from liability for injury, loss or damage to the person or property of Lessee in or about the Premises, or its agents, employees, visitors or any person claiming by or through Lessee caused by leaks, or air conditioning equipment, imperfect wiring or construction, by snow, ice or other elements, or by any other Lessee of the Building, or by theft or pilferage, or by any other thing whatsoever, unless caused by willful default of Lessor, or for any damages caused by interruption or failure of any of the services referred to in Paragraphs 5 and 7 nor shall any deduction or rebate be claimed or allowed in the rent hereby reserved by reason of such interruption or failure of the services so referred to in said paragraphs, unless caused by willful default of Lessor. Lessee shall give to Lessor prompt written notice of any accident to, or default

in, the plumbing, electrical wiring, or heating and air conditioning systems, which shall be remedied by Lessor with reasonable diligence.

10. Care of Premises. The Lessee agrees to take good care of the Premises, fixtures, and appurtenances and to suffer no waste or injury thereto, and that it will pay for all repairs to the Premises, fixtures, and appurtenances by the fault of Lessee, its agents, clients, employees, licensees, invitees or guest. At the end of the term, Lessee will surrender the Premises in as good condition as Lessee obtained same at the commencement of the term, reasonable wear and tear expected.

11. Alterations. The Lessee will not, without Lessor's prior written consent, make any alterations, additions to, or improvements in the Premises, and all such alterations, additions, or improvements made by Lessee, except only movable office furniture, fixtures, and equipment, shall become the property of Lessor at the termination of this lease or the occupancy of the Premises. Lessee will not deface nor permit the defacing of any part of the Premises or the building and will not do or suffer anything to be done on the Premises, which will increase the rate of fire or other hazard insurance on the Building. Lessor hereby provides written consent to to Lessee to:

12. Destruction or Damage. In case of partial damage by fire or other casualty to the Building in which the Premises are located, and such damage is not caused by the negligence or default of Lessee or Lessee's agents, servants, employees, licensees, invitees, guest or visitors, Lessor shall repair the damage with reasonable diligence after notice thereof. In the event of the total destruction of the Building or in the event that the Building be so damaged that Lessor determines to tear down, rebuild or reconstruct the Building, then Lessee agrees that this Lease shall terminate and that Lessee shall surrender the Premises and the rent shall be paid up to the time of such surrender. In the event of partial destruction to the Premises, and Lessor determines to repair said damage without terminating the Lease, there shall be an apportioned abatement of the rent until such damage has been repaired. No claim or compensation shall be made to Lessee of loss, damage, inconvenience, or annoyance arising from the necessity of repairing any portion of the Building, however such necessity may occur. Notwithstanding the foregoing, if during the

term of this Lease the Premises are damaged by fire or other casualty so that the same are rendered unfit for occupancy for the purposes for which they are leased and cannot be repaired within a 90-day period from the date of such casualty, the Lessee shall have the right to terminate this Lease and upon such termination this lease will become null and void and neither party will be under any further obligation to the other.

13. Condemnation. If during the term of this lease or the renewal thereof, the whole of the Premises, or such portion thereof as will make the Premises unusable for the purpose leased, be condemned by public use, then, in either event, the term hereby granted shall cease and come to an end as of the date of the vesting of title in such public authority, or when possession is given to such public authority, whichever event last occurs. Upon such occurrence the rent shall be apportioned as of such date any prepaid rent shall be returned to the Lessee. The Lessor shall be entitled to the entire award for such taking. If a portion of the Premises is taken or condemned by public authority for public use so as not to make the remaining portion of the Premises unusable for the purposes leased, this Lease will not be terminated but shall continue. In such case, the rent shall be equitably and fairly reduced or abated for the remainder of the term in proportion the amount of Premises taken. In no event shall the Lessor be liable to the Lessee for any business interruption or diminution in the use or for the value of any unexpired term of the Lease.

14. Holding Over. Any holding over after expiration of the term hereof without the consent of Lessor shall be construed to create a tenancy from month to month, and such tenancy shall otherwise be subject to the terms and conditions set forth in this Lease, provided, upon giving Lessee ten (10) days written notice, Lessor may terminate such month to month tenancy.

15. Rules and Regulations. In consideration of the covenants contained in this Lease, both the Lessor and the Lessee agree to abide by the rules and regulations attached hereto and made a part hereof. Further, the Lessee agrees to abide by such further rules and regulations or amendments and modifications thereof, as may from time to time be made by Lessor, and deemed by it to be necessary for the safety, care, cleanliness and economical management of the Premises, and for the preservation or good order therein. Any failure on the part of Lessee, his

servants, employees, agents and visitors to comply with each and every term with this lease or with any of said rules and regulations shall, at Lessor's option, work a forfeiture of this lease and of all rights of Lessee hereunder; and thereupon Lessor, its agents or attorneys shall have the right to re-enter the Premises and remove Lessee there from, and to take all necessary steps to collect any rent due hereunder up to the time of said forfeiture or cancellations.

16. Subordination. This lease is subject to and subordinate to all security liens, mortgages and deeds of trust which may now or hereafter affect the Premises or the Building, or the real property upon which said Building is located, and to all renewals, modifications, consolidations, replacements, and extensions thereof. The Lessee shall execute promptly any certificate or other form of instrument in confirmation of such subordination that Lessor may request.

17. Notices. For the purpose of notice or demand, the respective parties shall be served by certified or registered mail, receipt requested, addressed to the Lessee or to the Lessor, at their respective office addresses as set forth below.

Lessor:

Adam Stumb, Interim County Manager
Ashe County Government
150 Government Circle Suite 2500
Jefferson, NC 28640
336.846.5501
Fax: 336.846.5516
administration@ashecountygov.com

Lessee:

Michael Maybee President CEO
Watauga Opportunities Inc.
DBA Ashe Opportunities
PO Box 2330
Boone NC 28607
828-264-5008
Fax: 828-264-5006
mmaybee@woiworks.org
Michael Maybee President CEO

18. Rights. The rights of Lessor under this lease agreement shall be cumulative, and failure on the part of Lessor to exercise promptly any right given thereunder shall not operate to forfeit any of said rights.

19. Binding Effect. All rights and liabilities herein given to or imposed on either of the parties hereto shall extend to their heirs, executors, administrators, successors, and assigns, except that an assignee of Lessor's interest in the lease for security purposes shall not be liable for the performance of Lessor's obligations unless and until such assignee becomes the owner of

the building, and then only for as long as such assignee is such owner. If Lessor sells or otherwise disposes of the Building containing the Premises, then in that event, the Lessor herein shall be relieved of all rights and obligations under this lease, the same being assumed by the grantee of the herein named Lessor.

20. Quiet Enjoyment. Subject to the terms, conditions and covenants of this Lease, Lessor agrees the Lessee shall peaceably have, hold, and enjoy the Premises, without hindrance or molestation by Lessor.

21. Lessee's Default. Upon the happening of any event of default, Lessor may enter the Premises and expel the Lessee therefrom without prejudice to other remedies. The following shall constitute events of default under this Lease:

- a. The failure of Lessee to pay when due any sums payable under this Lease.
- b. The failure of Lessee to fully and promptly perform any act required of it in the performance of this lease or to otherwise comply with any term, covenant or provision hereof.

22. Use, Assignment and Lease. Lessee covenants and agrees that it will not sell, convey, sublease, transfer or assign this lease or any part hereof, or any rights created hereby without the prior written consent of the Lessor, which would thereby create a leasehold right to the Premises by any third party. Lessee shall not use or permit any person to use the Premises or any portion thereof for any purpose other than offices or the assumed purpose for the rented space. Lessee will not use the Premises for any purpose in violation of any law, municipal ordinance or regulation, and upon any material breach of these provisions the Lessor may at its option declare a default pursuant to Paragraph 22 hereof.

23. Indemnity. Lessee agrees to indemnify and hold harmless the Lessor from and against all claims and demands of third parties, including but not limited to, claims and demands for death or personal injuries, or for property damages, arising out of the use or occupancy of the Premises by Lessee or out of any other acts or omissions of the Lessee.

24. Lessee's Personal Property. Lessee shall keep its own personal property and trade fixtures in the Premises and Building and the personal property leased by Lessee from Lessor as referred to in Paragraph 1 insured with "all risks" insurance in an amount to cover one hundred percent (100%) of the replacement cost of the said property and fixtures. Lessee agrees that all personal property in the Premises shall be and remain at Lessee's sole risk, and Lessor shall not be liable for any damages to, or loss of such personal property arising from any acts of negligence of any persons or from fire and flood or from the leaking of the roof or from the bursting, leaking, or overflowing of water sewer or stream pipes or from any other cause whatsoever.

25. Coordination of Use of Certain Areas. The meeting rooms are subject to scheduling for usage by Lessor and other tenants of the building. Therefore, Lessee and Lessor shall communicate with each other in order to coordinate such usage, it being understood that such usage by Lessor and other tenants shall occur in such a fashion as to minimize interference with or disruption of Lessee's operations.

26. Lessor's Default. Lessor's failure to perform or observe any of its Lease obligations after a period of thirty (30) days or the additional time, if any, that is reasonably necessary to promptly and diligently cure the failure after receiving notice from Lessee, is a default. The notice shall be in writing and give in reasonable detail the nature and extent of the failure and identify the Lease provision(s) containing the obligation(s). If Lessor commits a default, Lessee may pursue any remedies given to Lessee in this Lease or under the law.

Notwithstanding anything to the contrary contained in this Lease, it is specifically understood and agreed that the liability of the Lessor hereunder shall be limited to the equity of the Lessor in the Property in the event of a breach or the failure of Lessor to perform any of the terms, covenants, conditions and agreements of this Lease to be performed by Lessor. In furtherance of the foregoing, the Lessee hereby agrees that any judgment it may obtain against Lessor as a result of the breach of this Lease as aforesaid shall be enforceable solely against the Lessor's interest in the Property.

27. Lessor's Access. Lessor and Lessee agree that Lessor may periodically inspect and enter the Premises, at reasonable times, for the purpose of fulfilling Lessor's responsibilities under this Lease and to insure Lessee's compliance with the terms and conditions set forth in this Lease.

28. Additional Terms. Any additional terms of this Lease shall be set forth in an Addendum attached hereto as Exhibit A. If there is no such Addendum attached, then there are no additional terms.

29. Entire Agreement. This is the entire agreement between the parties hereto and there are no terms, covenants, or conditions not specifically set forth herein. This Lease shall not be altered, changed, or modified in any respect except by amendment in writing executed by both parties hereto.

30. IN WITNESS WHEREOF, the parties here to have hereunto executed this Lease the day and year first above written in duplicate originals.

LESSOR:

Adam Stumb, mInterim County Manager
Ashe County Government
150 Government Circle Suite 2500
Jefferson, NC 28640

LESSEE:

Michael Maybee, President CEO
Watauga Opportunities Inc.
DBA Ashe Opportunities
PO Box 2330
Boone NC 28607

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit A

RULES AND REGULATIONS

- (a) The entrances, corridors, passages, and stairways shall be under the control of the Lessor and shall not be obstructed, nor used by the Lessee for any purpose other than ingress and egress to and from the Premises.
- (b) The Lessee shall neither place nor permit to be placed any signs, advertisements, notices in or upon any part of the Building, except on the doors to the Premises, and all such doorway signs shall be approved by the Lessor. All signs not approved in writing by the Lessor shall be subject to removal without notice.
- (c) The Lessee shall not put up, nor operate, any engine, boiler, dynamo, or machinery of any kind nor carry on any mechanical or dangerous business in the Premises, nor place any explosive therein, nor use any kerosene or oils, or burning fluids in the Premises.
- (d) If Lessee shall desire a safe for depositing valuables and securities the Lessor shall have the right to prescribe its weight, size and proper position.
- (e) No nails are to be driven in walls without permission of Lessor, and the Premises are not to be defaced in any way. No boring for wires or other purpose is to be done, and no change in electric fixtures or other appurtenances of Premises is to be made, without the consent of Lessor.
- (f) If the Lessee desires telephonic, electronic or computer connections, the Lessor will direct electricians as to where and how the wires are to be introduced, and without such written directions no boring for wires will be permitted.
- (g) The Premises shall not be used in any way to damage the reputation of the Building; and the Lessee shall not disturb, nor permit the disturbance of, other lessees by the use of musical instruments (with the exception of the approved music curriculum), or any unseemly noises, nor by any interference whatsoever; and nothing shall be placed or permitted upon the outside windowsills.
- (h) No person or persons, other than employees of the Building, shall be employed by the Lessee for the purpose of cleaning or taking care of the Premises without the written consent of the Lessor. Any person or persons employed by the Lessee (with the written consent of the Lessor) shall be subject to, and under the control and direction of, the Lessor in the use of the Building and its facilities.

(i) The Lessor shall have the right to exclude or reject from the Building animals of every kind, birds, bicycles, and all canvassers and other people who conduct themselves in such a manner as to be, in the judgment of the Lessor, an annoyance to the lessees or a detriment to the Building.

(j) No additional locks shall be placed upon any doors of the Premises, without first obtaining the written consent of the Lessor. Lessee shall provide a list of those individuals who are permitted to have keys to the Lessee's space and to common areas, such as the front door. It is the Lessee's responsibility to collect keys from former employees and others in possession of keys. Lessee shall not duplicate any key whatsoever provided by the Lessor. Upon termination of this lease, the Lessee shall surrender all keys to the Premises and of the Building.

(k) All persons entering the Building between the hours of 6:00 p.m. and 5:30 a.m. Monday through Friday, or at any time on Saturdays, Sundays or holidays, may be required to identify themselves by registration or otherwise to establish their rights to enter or leave the Building.

(l) Lessee shall have a non-exclusive right to use of all walkways, driveways and parking areas for Lessee and Lessee's employees, clients and customers, if deemed necessary by Lessor.

(m) The rest rooms shall not be used for any purpose other than those for which they were constructed, and no sweepings, rubbish, rags, or other injurious substances shall be thrown therein. The cost of repair of any damage resulting from such misuse or abuse shall be borne by the Lessee by whom or by whose employees it shall be caused.

(n) Lessor may follow winter hours of operation for the purpose of unlocking the front door and related activities according to closures announced by the Ashe County Board of Education. Lessee understands that certain services may not be available on winter days when the Lessor does not require employees to go to work. A decision by the Lessor such as this will not affect the daily child care operation of the Lessee.

(o) Lessor reserves the right to restrict access to the server room. To gain access, Lessee must provide two days' notice and be accompanied by Lessor's designated vendor.

(p) The Lessor shall have the right to make such other and further reasonable rules and regulations as, in the judgment of the Lessor, may from time to time be needed for the safety, care and cleanliness of the Premises and the Building, and for the preservation of good order and safety of the lessees, their employees, customers, and clients.