

File Copy

STATE OF NORTH CAROLINA
CITY OF BUNCOMBE

LEASE AGREEMENT

THIS AGREEMENT is entered into this 20 day of June, 2012, by and between the City of Asheville, a North Carolina municipal corporation organized and existing under the laws of the State of North Carolina (hereinafter "City"), and RiverLink, Inc., a North Carolina non-profit corporation (hereinafter "RiverLink")

WITNESSETH:

WHEREAS, the City owns property at 706 Riverside Drive measuring approximately 0.46 acres (hereinafter called the "Property"); and

WHEREAS, RiverLink is a regional non-profit spearheading the economic and environmental revitalization of the French Broad River; and

WHEREAS, RiverLink has an interest in providing river recreation opportunities, access and site beautification at the subject property; and

WHEREAS, the City and RiverLink desire to set forth the terms and conditions of this Agreement;

NOW, THEREFORE, for and in consideration of the promises and mutual covenants herein contained, the parties agree as follows:

A. Use Terms.

1. Purpose. RiverLink shall use the Property for the purpose of public parking, landscape improvements, and river access in accordance with **Exhibit A**, attached and incorporated herein by reference.
2. Rental. The Lease Fee is \$1.00 per year payable on or before each anniversary date of this Lease. All payments shall be made directly to the City of Asheville.
3. Improvements.
 - a) RiverLink shall have the right to improve the property with parking improvements and landscaping improvements in accordance with local, state and federal ordinance and regulations, with respect to all existing water, electrical, sewer, railroad and roadway easements. The design and construction of the parking lot improvements will be the responsibility of RiverLink. Development plans and final drawings of the lot, any associated structures including landscaping plans, must however be submitted to and approved by the City prior to the initiation of any work. No additional improvements will be permitted without the express approval of the City.
 - b) At the expiration or termination of this Lease or renewals thereof, the City may require RiverLink to remove, at its expense

and within a reasonable time, any improvements and the parking lot constructed on the premises by RiverLink. Any improvements not removed within 30-days after the request of the City shall become the property of and owned by the City. RiverLink further agrees it will, at the expiration or termination of this Lease or any renewals thereof, surrender the Leased Premises in as good as condition as at the beginning of the term, reasonable wear and tear and damage by the elements, fire, or casualty excepted. This agreement specifically includes cleaning up the premises of any debris, trash, building scraps, etc. in addition to any other restorations, repairs or work necessary.

4. River Access: Prior to the installation of public river access improvements, such as a boat dock or launch point, Riverlink shall submit detailed plans and specifications to the City for approval; such approval shall not be unreasonably withheld or delayed. RiverLink shall be responsible for obtaining all of the associated certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any Federal, State or Local authorities.
5. Greenway Reservation. Riverlink and the City acknowledge that the French Broad Greenway may impact this property during the term of this lease. The City reserves the right to design, construct and utilize a greenway corridor through the subject Property.
6. Operations and Care of Premises. RiverLink shall operate the Property as a public parking lot and public access to the French Broad River. RiverLink further agrees to make this parking lot and access available at no charge. By occupancy of the property, RiverLink acknowledges that it has inspected the Premises and agrees to accept as they now exist with no obligation on the part of the City to make any improvements thereto. RiverLink shall at all times keep the Property in a neat and orderly condition free of trash and debris.
7. Maintenance. All Maintenance of the Property and any improvements shall be the responsibility of RiverLink.
8. Utilities. RiverLink shall be responsible for the furnishing, installation, maintenance, replacement, and repair of any and all utilities at the Property which RiverLink may require.
9. Signage. The City shall be responsible for placing signage on the property for public parking and park use, in accordance with the adopted park regulations, acknowledging the partnership and ongoing maintenance by RiverLink. The City shall install said signage within 45 days of the completion of parking lot improvements.
10. Term. Subject to earlier termination as set forth in this Lease, the term of the Lease shall be for a period of SIXTY months commencing on the _____ 1, 2012, and terminating on _____ 30, 2017 (the "Term").

RiverLink shall have the option to renew this Lease for one (1) additional and successive five-year term (the "renewal term") by giving the City written notice of intent to do so at least thirty (30) days prior to the end of the then-current term and said renewal term shall be upon the same terms and conditions set forth in this Lease. RiverLink shall remain in possession of the Property at the expiration of this Lease or any Renewal Term without a written agreement, such tenancy shall be deemed a month-to-month tenancy under the same terms and conditions of this Lease.

B. Insurance.

The work performed under this Agreement has been classified as a standard risk profile. RiverLink agrees to keep and maintain for the duration of this Agreement including but not limited to \$1 million commercial general liability, \$1 million automobile liability, statutory workers compensation, and 500/500/500 employers liability. RiverLink shall furnish the City with certificates of insurance for each type of insurance described herein, with the City named as an additional insured on all coverages, except worker's compensation. In the event of cancellation, substantial changes or nonrenewal, RiverLink and the insurance carrier shall give the City at least thirty (30) days prior written notice. No work shall be performed by RiverLink until RiverLink has furnished to the City the above referenced certificates of insurance, in a form suitable to the City. In the event the Certificate of Liability Insurance includes a disclaimer, RiverLink shall cause his Insurer to issue a Form CG20 10, or other Additional Insured Amendatory Endorsement showing City of Asheville as Additional Insured. Nothing herein shall be construed as a waiver on the part of the City to any defense of any claim, including, but not limited to the defense of governmental immunity.

C. Railroad. RiverLink acknowledges the Leased Property is directly adjacent to a Norfolk Southern Railroad line. It is the sole responsibility of RiverLink to communicate and cooperate with Norfolk Southern to minimize the public safety risks associated with pedestrian and automobile traffic across the active line.

D. Hold Harmless and Indemnification. RiverLink shall indemnify, defend and hold harmless the City, its subsidiaries, divisions, officers, agents, directors, and employees from and against any and all liability, loss, costs, claims, damages, expenses, reasonable attorney fees, judgments and awards arising or claimed to have arisen, from any injury or property damage, caused by, or allegedly caused by, either in whole or in part, any act or omission of RiverLink, its employees, directors, officers, volunteers, agents or assigns. This provision is not applicable to any claim arising out of or related to any active or primary negligence or willful misconduct of the City, its officers, employees, or agents.

RiverLink shall comply with the provisions of the Americans with Disabilities Act and all rules and regulations promulgated thereunder. RiverLink hereby agrees to indemnify the City from and against all claims, suits, damages, costs, losses and expenses in any manner arising out of or connected with the failure of the RiverLink, its, agents, successors, assigns, officers, volunteers or employees, to comply with the provisions of the ADA or the rules and regulations promulgated thereunder.

E. **Termination.** This Agreement may be terminated for any reason by either party, with one hundred and eighty (180) days prior written notice, with the exception that if there is a breach of the terms of this Agreement, termination may be exercised with thirty (30) days prior written notice. Notice shall be served under this contract by registered mail, certified mail or by other means.

F. **Ownership of 706 Riverside Drive.** This Agreement shall operate as long as the City owns and controls the Property, but nothing herein shall be construed to limit the City's ability to sell or otherwise dispose of said property as permitted by law.

G. **Assignment.** RiverLink shall not transfer or assign all or any interest in this Lease without the prior written consent of the City.

H. **Permits.** RiverLink shall be responsible for obtaining all necessary permits and insuring compliance with all applicable Federal, State, and local government regulations.

I. **Damages.** RiverLink will be liable for all damage to the Property during RiverLink use and shall be repaired or replaced by RiverLink. Normal wear and tear excepted.

J. **Amendments.** This Agreement constitutes the entire agreement with attached Exhibits between the City and RiverLink. This agreement may not be amended or assigned without the written consent of both parties.

K. **Compliance with Laws.** RiverLink shall comply with all state, federal or local laws, or ordinances, codes, rules or regulations governing performance of this Agreement. RiverLink shall provide a Drug-Free Workplace during the performance of this Agreement.

L. **Notices.** In the event either party hereunder desires or is required to provide any notice to the other party, the party desiring or requiring to provide such notice shall provide it in writing, by hand delivery or regular United States mail, postage prepaid, to the other party at the address listed below:

The City: Gary Jackson, City Manager
City of Asheville
PO Box 7148
Asheville, NC 28802

If to RiverLink: Karen Cragolin, Executive Director
RiverLink, Inc.
PO Box 15488
Asheville, NC 28813-0488

M. **Governing Law.** This Agreement is entered into North Carolina and shall be construed under the statutes and laws of North Carolina.

N. **Severability.** Should any provision(s) contained in this Agreement be declared by a court of competent jurisdiction to be void, unenforceable or illegal, such provision or provisions shall be severable and the remaining provisions hereof shall remain in full force and effect.

Signed and agreed to as of the day and year first written above.

Attest to:

RiverLink, Inc.

Eather Carney
Secretary
(Corporate Seal)

By: Karen Z. Cragnolin
Executive Director

Magdalen Boulleson
City Clerk

CITY OF ASHEVILLE

By: Jim Bellamy
City Manager Mayor

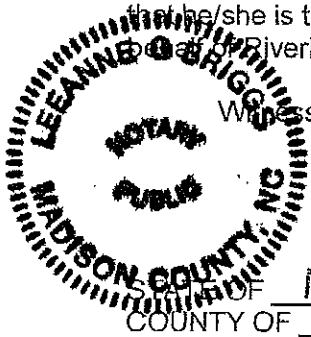
STATE OF North Carolina
COUNTY OF Madison

I, Leanne G. Briggs Notary Public of the County and State, do hereby certify that Karen Z. Cragnolin, personally came before me this day and acknowledged that he/she is the Executive Director of RiverLink, Inc. and acknowledged, on behalf of RiverLink, Inc., the due execution of the foregoing instrument.

Witness my hand and notarial seal this 7th day of June, 2012.

Leanne G. Briggs
Notary Public

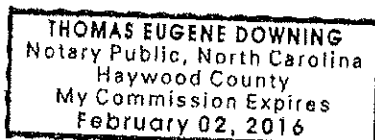
My Commission Expires: 4-5-2016



STATE OF North Carolina
COUNTY OF Haywood

I, Notary Public of the County and State aforesaid certify that Magdalen Boulleson, personally came before me this day and acknowledged that she is the City Clerk of the City of Asheville, a municipal corporation, and that by authority duly given and as the act of the corporation the foregoing instrument was signed in its name by its City Manager and attested by herself as its City Clerk.

Witness my hand and notarial seal this 20th day of June, 2012



Thomas Eugene Downing
Notary Public

My Commission Expires: 2-2-2016

EXHIBIT A

Public Parking

Public River Access

Landscaping