

**TENTATIVE AGENDA & MEETING NOTICE
BOARD OF COUNTY COMMISSIONERS**

**TUESDAY, JULY 12, 2011
5:00 P.M.**

**WATAUGA COUNTY ADMINISTRATION BUILDING
COMMISSIONERS' BOARD ROOM**

<u>TIME</u>	<u>NO.</u>	<u>TOPIC</u>	<u>PAGE</u>
5:00	1	CALL REGULAR MEETING TO ORDER	
	2	APPROVAL OF THE FOLLOWING MINUTES: June 28, 2011, Regular Meeting & Closed Session	1
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5:05	4	PROPOSED CONTRACT FOR LIVE SCAN MACHINE MAINTENANCE AND SUPPORT – CAPTAIN JEFF VIRGINIA	15
5:10	5	PROPOSED LEASE AGREEMENT FOR CHILD SUPPORT ENFORCEMENT OFFICE – MR. JIM ATKINSON	33
5:15	6	REQUEST TO PARTICIPATE IN THE EXXONMOBILE FOUNDATION VOLUNTEER INVOLVEMENT PROGRAM – MS. ANGIE BOITNOTTE	45
5:20	7	TAX MATTERS – MR. TOM PITTS	
		A. Monthly Collections Report	53
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5:25	8	WATAUGA OPPORTUNITIES, INC., LOAN WAIVER REQUEST – MR. JOE FURMAN	73
5:30	9	EMERGENCY MANAGEMENT MATTERS – MR. STEVE SUDDERTH	
		A. Proposed Software Agreement with C3 Applications, LLC	77
		B. Proposed Lease with CB Radio, Inc., for FM Antenna Placement on Buckeye Mountain Pole	91
5:35	10	DISCUSSION OF OFFERS FROM LINCOLN HARRIS AND MILLER PROPERTIES, INC. – MR. DERON GEOUQUE	95
5:50	11	MISCELLANEOUS ADMINISTRATIVE MATTERS – MR. DERON GEOUQUE	
		A. Appointment of Voting Delegate at the North Carolina Association of County Commissioners' (NCACC) Annual Conference	167
		B. Announcements	171
5:55	12	BREAK	
6:00	13	PUBLIC HEARING TO ALLOW CITIZEN COMMENT ON PROPOSED AMENDMENTS TO THE WATAUGA COUNTY ANIMAL CARE AND CONTROL ORDINANCE	179

<u>TIME</u>	<u>NO.</u>	<u>TOPIC</u>	<u>PAGE</u>
7:00	14	PUBLIC COMMENT	201
8:00	15	BREAK	
8:05	16	CLOSED SESSION Attorney/Client Matters – G. S. 143-318.11(a)(3)	203
8:15	17	ADJOURN	

AGENDA ITEM 2:

Approval of the Minutes

June 28, 2011, Regular Meeting

June 28, 2011, Closed Session

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MINUTES

WATAUGA COUNTY BOARD OF COMMISSIONERS
TUESDAY, JUNE 28, 2011

The Watauga County Board of Commissioners held a regular meeting on Tuesday, June 28, 2011, at 5:00 P.M. in the Commissioners' Board Room of the Watauga County Administration Building, Boone, North Carolina.

PRESENT: Nathan A. Miller, Chairman
David Blust, Vice-Chairman
Jim Deal, Commissioner
Tim Futrelle, Commissioner
Vince Gable, Commissioner
Four Eggers, County Attorney
Robert E. Nelson, Jr., County Manager
Deron Geouque, Deputy County Manager
Anita J. Fogle, Clerk to the Board

Chairman Miller called the meeting to order at 5:06 P.M.

Vice-Chairman Blust opened the meeting with a prayer and Commissioner Gable led the Pledge of Allegiance.

APPROVAL OF MINUTES

Chairman Miller called for additions and/or corrections to the June 7, 2011, regular and closed session minutes.

Commissioner Gable, seconded by Vice-Chairman Blust, moved to approve the June 7, 2011, regular meeting minutes as presented.

VOTE: Aye-5
Nay-0

By consensus, the Board agreed to table consideration of the June 7, 2011, closed session minutes until after closed session to allow for review of proposed amendments.

APPROVAL OF AGENDA

Chairman Miller called for additions and/or corrections to the June 28, 2011, agenda.

Chairman Miller stated that the following items had been requested for addition to the agenda: a Drug Treatment Court Funding Request and an Emergency Management Grant Application Request both under Miscellaneous Administrative Matters; and the addition of a presentation immediately following the approval of the agenda.

Vice-Chairman Blust, seconded by Commissioner Gable, moved to approve the June 28, 2011, agenda as amended.

VOTE: Aye-5
Nay-0

PRESENTATION OF RESOLUTION TO HONOR COUNTY MANAGER ROBERT E. "ROCKY" NELSON, JR.

Chairman Miller read a resolution honoring County Manager Nelson, upon his retirement, for his 34 years of service to Watauga County.

Commissioner Deal, seconded by Commissioner Gable, moved to adopt the resolution as presented.

VOTE: Aye-5
Nay-0

BOARD OF EDUCATION REQUEST FOR SET ASIDE FUNDS

Ms. Deborah Miller, Board of Education Chair, and Ms. Ly Marze, Watauga County Schools' Finance Director, requested that the County release \$360,000 in funds that were placed in contingency in the Fiscal Year 2012 County Budget. Ms. Marze stated that the transferred funds would be allocated to current expenses to offset the gap left by the State funding shortfall.

After brief discussion, Commissioner Deal, seconded by Commissioner Futrelle, moved to release \$360,000 to the Board of Education to be used for current expenses in the FY 2011-2012 budget as requested.

VOTE: Aye-5
Nay-0

FINANCE MATTERS

A. Budget Amendments – Ms. Margaret Pierce reviewed the following budget amendments:

<u>Account #</u>	<u>Description</u>	<u>Debit</u>	<u>Credit</u>
103300-345000	Elderly & Disabled Transportation Assist.	\$4,500	
105890-469846	Elderly & Disabled Trans. Grant – WOI		\$4,500
143300-345000	Elderly & Disabled Transportation Assist.		\$4,500
145310-469845	Elderly & Disabled Transportation Grant	\$4,500	

The amendment reallocated Elderly and Disabled Transportation grant funds per the Program's request. Funds would be transferred to match the needs of the program.

<u>Account #</u>	<u>Description</u>	<u>Debit</u>	<u>Credit</u>
293270-312009	Occupancy Tax Revenue		\$37,500
294140-449900	Administrative Fee	\$375	
294140-469900	Payment to the Watauga County TDA	\$37,125	

The amendment recognized additional occupancy tax revenues estimates above budgeted amount and payment due to Watauga County District U Tourism Development Authority and Watauga County for statutory administrative collection fees.

<u>Account #</u>	<u>Description</u>	<u>Debit</u>	<u>Credit</u>
103341-349201	Watauga Naturally Conference Fees		\$2,686
104920-463000	Economic Development	\$2,686	

The amendment recognized sponsorships, fees paid by attendees, and grant revenue received to offset expenditures for the Watauga Naturally Conference hosted by the Watauga County Economic Development Commission.

<u>Account #</u>	<u>Description</u>	<u>Debit</u>	<u>Credit</u>
103300-341200	NCACC Wellness Grant		\$5,000
104199-449902	NCACC Wellness Grant	\$5,000	

The amendment recognized grant funds received from the North Carolina Association of County Commissioners (NCACC) to promote employee health and wellness.

<u>Account #</u>	<u>Description</u>	<u>Debit</u>	<u>Credit</u>
103991-399101	Fund Balance Appropriation		\$399,276
104199-418300	Retirees Post-Employment Costs	\$399,276	

The amendment transferred funds for the Irrevocable Trust Agreement for post-employment benefits currently held in the reserved fund balance.

<u>Account #</u>	<u>Description</u>	<u>Debit</u>	<u>Credit</u>
103839-384000	Donations		\$322,755
104287-457001	Capital Outlay - Building	\$322,755	

The amendment recognized donations of partial construction costs for the bathroom building at Brookshire Soccer. Appalachian State University paid for the bulk of the construction and then donated the building to the County for public use.

<u>Account #</u>	<u>Description</u>	<u>Debit</u>	<u>Credit</u>
103839-384000	Donations		\$75,000
104283-457000	Capital Outlay - Land	\$75,000	

The amendment recognized the donation of land for a park area off Hwy 321 at the Old Watauga River Road.

Vice-Chairman Blust, seconded by Commissioner Gable, moved to approve the budget amendments as presented by Ms. Pierce.

VOTE: Aye-5
Nay-0

B. Proposed Resolution and Agreement for Deposit Accounts – Ms. Pierce presented agreements from BB&T and RBC financial institutions, authorizing the accounts, and the accompanying signature cards which designated signatory authority. The signatory designation was required due to the retirement of County Manager Nelson. Mr. Nelson's name was to be removed from the accounts and Deron Geouque, as incoming County Manager, was to be added effective July 1, 2011.

Commissioner Deal, seconded by Commissioner Gable, moved to approve the BB&T and RBC agreements and signatory designations as presented by Ms. Pierce, effective July 1, 2011.

VOTE: Aye-5
Nay-0

REQUEST TO SCHEDULE A PUBLIC HEARING TO ALLOW COMMENT ON PROPOSED AMENDMENTS TO THE WATAUGA COUNTY ANIMAL CARE & CONTROL ORDINANCE

Deputy County Manager Geouque stated that, due to the pending agreement with the Watauga Humane Society for care of animals as processed by the Watauga County Animal Care and Control Department, changes to the Animal Care and Control Ordinance were necessary. The Deputy County Manager presented the proposed amendments to the ordinance, including a request from Sheriff Hagaman, and requested a public hearing be scheduled on July 12, 2011, to allow public comment on the proposed changes.

Commissioner Deal, seconded by Commissioner Futrelle, moved to schedule a public hearing to begin at 6:00 P.M. during the July 12, 2011, regular meeting.

VOTE: Aye-5
Nay-0

PROPOSED OFFER TO PURCHASE OLD HIGH SCHOOL PROPERTY

County Manager Nelson presented an offer to purchase the old high school property. The offer, from Miller Properties, Inc., was in the amount of \$10,000,000. Several contingencies were contained in the offer including an expiration date of August 3, 2011; a high water reserve; and a request for County and Town taxes to be forgiven for five years.

County Attorney Eggers stated that the North Carolina Constitution did not allow tax abatements.

Commissioner Deal, seconded by Commissioner Gable, moved to reject the offer submitted by Miller Properties, Inc., as currently written.

VOTE: Aye-5
Nay-0

County Manager Nelson stated that Lincoln Harris was awaiting a response to their offer on the same property which was to be forthcoming upon the County receiving the appraisal of said property sometime around the first of July.

Chairman Miller directed the County Manager to add, for discussion and further review, the Lincoln Harris and Miller Properties, Inc., offers to the July 12, 2011, regular meeting agenda.

MISCELLANEOUS ADMINISTRATIVE MATTERS

A. Discussion of License Plate Agency Lease – County Manager Nelson stated that, during discussions regarding Courthouse security, the relocation of several County services and departments had been considered. As a part of the reorganization of space, it could be possible for the License Plate Agency to move into County-owned space.

County Attorney Eggers stated that the current lease with Vetro Holdings, Inc., for the License Plate Agency office space would automatically renew for an additional two years without a ninety-day notice of cancellation. With the lease due to expire October 2, 2011, the County would need to notify Vetro Holdings, Inc., by July 1, 2011, if the County planned to relocate the License Plate Agency prior to October 2013. The County Attorney reported that Mr. Vetro had indicated that he would entertain a month-to-month lease after the October 2nd expiration if the space was not otherwise committed for occupancy.

Commissioner Gable also requested official recusal from discussion of this item as he had a vested interest in the property currently being leased from Vetro Holdings, Inc.

Commissioner Deal, seconded by Commissioner Miller, moved to allow Commissioner Gable to formally abstain from discussions and actions taken regarding the County lease with Vetro Holdings, Inc.

VOTE: Aye-5
Nay-0

County Manager Nelson stated that Mr. Joe Furman, Director of Planning and Inspections, was willing to consolidate office space due to the downturn in the economy and the fact that fewer inspectors were currently employed. The County Manager stated that this would allow for the possibility of moving the License Plate Agency into the West Annex building. However, in accordance with the NC Division of Motor Vehicles contract which allows for the County's operation of the License Plate Agency, State approval of the location and the dedication of ten parking spaces were required.

Vice-Chairman Blust, seconded by Commissioner Deal, moved to direct the County Attorney to give an official notice of cancellation, by July 1, 2011, to Vetro Holdings, Inc., for the office space currently occupied by the License Plate Agency.

VOTE: Aye-4(Miller, Blust, Deal, Futrelle)
Nay-0
Abstain-1(Gable)

B. Discussion Regarding Use of Space in the Appalachian Enterprise Center – County Manager Nelson stated that previous discussions regarding a Courthouse security plan involved the Sheriff's request to relocate his Civil Division to the Courthouse. In order to allow that move, discussion had been held regarding the use of some of the space at the Appalachian Enterprise Center for County offices.

The County Attorney has reviewed the County's lease with the Committee of 100 for the Appalachian Enterprise Center (AEC) and indicated that the lease could be cancelled with a six-month notice. Watauga County Economic Development Commission had submitted a letter advocating for continued use of this building as an incubator for small businesses.

By consensus, the Board agreed to schedule a work session for July 13, 2011, from 4:00 P.M. to 6:00 P.M. in the Commissioners Conference Room to allow for the review of space needs for County departments.

C. Appointment of the Watauga County Tax Assessor/Administrator/Collector – County Manager Nelson stated that the Tax Administrator was completing a four-year term on June 30, 2011. The Tax Administrator could be reappointed for a four-year term. The Manager recommended the re-appointment of Mr. Kelvin Byrd for a four-year term at an annual salary of \$99,571.55 beginning July 1, 2011.

Commissioner Gable, seconded by Vice-Chairman Blust, moved to reappoint Kelvin Byrd as the Watauga County Tax Administrator for a four-year term and an annual salary of \$99,571.55 to be effective July 1, 2011.

VOTE: Aye-5
Nay-0

D. Boards and Commissions – County Manager Nelson stated that Bethel Elementary School had nominated Daniel Lawrence to serve as their representative on the Watauga County Recreation Commission.

Vice-Chairman Blust, seconded by Commissioner Gable, moved to waive the first reading and appoint Daniel Lawrence to the Watauga County Recreation Commission as the Bethel Elementary School representative.

VOTE: Aye-5
Nay-0

E. Announcements – County Manager Nelson announced the Town of Boone's Independence Day celebration schedule.

County Manager Nelson announced that Avery County had invited the Board to attend its 100th Year Anniversary celebration scheduled for Saturday, July 30, 2011, at 11:00 A.M.

County Manager Nelson announced that the North Carolina Association of County Commissioners' (NCACC) 104th Annual Conference was scheduled for August 18-21, 2011, in Concord with the deadline for early registration, at a reduced rate, being July 22nd.

County Manager Nelson announced that Watauga County ranked 7th in the State in recycling totals for Fiscal Year 2010.

F. Drug Treatment Court Funding Request – Mr. Charlie Byrd, Assistant DA, spoke in support of Drug Treatment Court program. Mr. Byrd stated that the program identified high risk individuals and gave them the option of attending Drug Treatment Court or being locked up. Mr. Byrd stated the local Drug Treatment Court has had 59 participants which offered many success stories including the fact that none of the program graduates had been charged with new crimes.

Ms. Melissa Johnson with Mediation and Restorative Justice Center, Inc., stated that State funding for the Drug Treatment Court program had been cut. Ms. Johnson stated that the Mediation Center was willing to house the Drug Treatment Court position and associated functions; therefore, Ms. Johnson requested \$35,000 in County funding to cover the costs associated with the program and personnel for one year. The funding would allow for time to submit applications for grants that were available to fund the program.

Commissioner Gable, seconded by Commissioner Futrelle, moved to allocate \$35,000, from the County's Administrative Contingency Fund, to Mediation and Restorative Justice Center, Inc., to be used for the Drug Treatment Court program.

VOTE: Aye-5
Nay-0

County Manager Nelson stated that Mediation and Restorative Justice Center, Inc., should submit the same forms to his office as required by other non-profit organizations requesting County funding.

G. Emergency Management Grant Application Request – Mr. Steve Sudderth stated that the County had the opportunity to apply for a grant to fund an active shooter exercise with no required local match or costs to the County. The grant was through North Carolina Emergency Management and the estimated cost associated with the exercise was approximately \$26,708.80.

Commissioner Deal, seconded by Commissioner Gable, moved to authorize the grant application to North Carolina Emergency Management for the active shooter exercise as presented by Mr. Sudderth with no cost to Watauga County.

VOTE: Aye-5
Nay-0

PUBLIC HEARING TO ALLOW CITIZEN COMMENT ON PROPOSED WATAUGA COUNTY WATERSHED PROTECTION ZONING ORDINANCE AMENDMENTS

Chairman Miller stated that a public hearing had been scheduled to allow citizen comment on proposed amendments to the Watauga County Watershed Protection Zoning Ordinance.

Chairman Miller declared the public hearing open at 6:14 P.M.

Mr. Joe Furman, Planning and Inspections Director, reviewed the proposed amendments to the ordinance. As shown below, the word "may" replaced with "shall" and the General Statute reference was removed as it no longer was a verbatim excerpt due to the General Statute having been amended since the original adoption of the ordinance

"Section 104. Applicability To Agricultural Uses.

~~These regulations may~~ ***This ordinance shall*** not affect bona fide farms, but any use of farm property for nonfarm purposes is subject to the regulations. Bona fide farm purposes include the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural produce having a domestic or foreign market. (NCGS 153A-340)"

Mr. Furman also stated that, if adopted, the amended ordinance was subject to approval by the North Carolina Department of Environment and Natural Resources.

There being no public comment, Chairman Miller declared the public hearing closed at 6:16 P.M.

Commissioner Deal, seconded by Vice-Chairman Blust, moved to adopt the Watauga County Watershed Protection Zoning Ordinance as amended.

VOTE: Aye-5
Nay-0

PUBLIC COMMENT

There was no public comment; however, Commissioners made the following comments:

Chairman Miller stated that he was disappointed in the Town of Boone's action regarding Extra-Territorial Jurisdiction (ETJ) representative appointments to the Town's Planning Commission and Board of Adjustment. Chairman Miller stated that he was looking at different

options and requested that Deputy County Manager Geouque provide relevant information regarding changing sales tax revenue distribution to determine a course of action.

Commissioner Gable agreed with Chairman Miller and asked the County Attorney to research to see if options were available for the County to challenge the Town's actions. Commissioner Gable also stated that the County was challenged in the tax base and asked the County Attorney to explore legal actions.

Commissioner Deal requested that the Board of Commissioners ask to meet with representatives of the Town of Boone for civil discourse to bridge the divide prior to legal action. Commissioner Deal stated he did not agree with the Town's actions either; however, he hoped that both Boards would make attempts to settle the dispute as both would be spending citizens' money if battling over the issue.

Commissioner Gable stated that he and Chairman Miller attended the Town of Boone's public hearing regarding their change in procedure for the appointment of ETJ representatives and the Town was not receptive at all; however, he was willing to meet with Town representatives prior to taking action.

Vice-Chairman Blust agreed that the Board should meet and discuss the issue with the Boone Town Council.

Commissioner Futrelle stated that all Board members wanted resolution and needed mediation and, therefore, asked the Deputy County Manager to schedule a joint meeting with the Boone Town Council.

Commissioner Deal suggested using a facilitator possibly from the UNC School of Government for the joint meeting as had been done in the past when the Town and County had differing opinions.

Chairman Miller stated that he was not opposed to mediation, but still wanted to know the options available to the County.

By consensus, the Board agreed to direct the Deputy County Manager to contact the Town Manager to see if the Boone Town Council was willing to meet with the County regarding the issue of ETJ representative appointments to the Town of Boone Boards and Commissions with a facilitator present.

CLOSED SESSION

At 6:26 P.M., Commissioner Deal, seconded by Vice-Chairman Blust, moved to enter Closed Session to discuss Attorney/Client Matters, per G. S. 143-318.11(a)(3).

VOTE: Aye-5
Nay-0

Vice-Chairman Blust, seconded by Commissioner Gable, moved to resume the open meeting at 6:56 P.M.

VOTE: Aye-5
Nay-0

ACTION AFTER CLOSED SESSION

Vice-Chairman Blust, seconded by Chairman Miller, moved to approve the June 7, 2011, closed session minutes as amended.

VOTE: Aye-5
Nay-0

ADJOURN

Chairman Miller adjourned the meeting at 6:57 P.M.

Nathan A. Miller, Chairman

ATTEST:

Anita J. Fogle, Clerk to the Board

AGENDA ITEM 3:

Approval of the July 12, 2011, Agenda

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AGENDA ITEM 4:

Proposed Contract for Live Scan Machine Maintenance and Support

MANAGER'S COMMENTS:

Captain Virginia will present a maintenance contract for the two (2) Live Scan (fingerprint) machines currently in operation at the Sheriff's Office. Funds are available in the Sheriff's budget to cover the \$8,241 expense. Captain Virginia will be available to answer questions. Board action is requested, contingent upon the County Attorney's review of the contract.

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WATAUGA COUNTY SHERIFF'S OFFICE
Sheriff Len D. Hagaman Jr.
184 Hodges Gap Rd.
Boone, NC. 28607
828-264-3761

MEMORANDUM

Date: July 1, 2011
To: Mr. Deron Geoque
From: Captain Jeff Virginia *JV*
Reference: MorphoTrak contracts

Mr. Geoque,

Would you please place the two (2) attached contracts for the two (2) Live Scan machines that we have on the next agenda for the Board of Commissioners for review and approval?

I will be available if needed to present them.

Jeff

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MAINTENANCE AND SUPPORT AGREEMENT

MorphoTrak, Inc., ("MorphoTrak" or "Seller") having a principal place of business at 113 South Columbus Street, 4th Floor, Alexandria, VA 22314, and Watauga County Sheriff's Office ("Customer"), having a place of business at 184 Hodges Gap Road, Boone, NC 28607, enter into this Maintenance and Support Agreement ("Agreement"), pursuant to which Customer will purchase and Seller will sell the maintenance and support services as described below and in the attached exhibits. Seller and Customer may be referred to individually as "party" and collectively as "parties."

For good and valuable consideration, the parties agree as follows.

Section 1. EXHIBITS

The Exhibits listed below are incorporated into and made a part of this Agreement. In interpreting this Agreement and resolving any ambiguities, the main body of this Agreement will take precedence over the Exhibits and any inconsistency between the Exhibits will be resolved in the order in which they are listed below.

Exhibit A	"Description of Covered Products"
Exhibit B	"Support Plan"
Exhibit C	"Support Plan Options and Pricing Worksheet"
Exhibit D	"Billable Rates"

Section 2. DEFINITIONS

"Equipment" means the physical hardware purchased by Customer from Seller pursuant to a separate System Agreement, Products Agreement, or other form of agreement.

"MorphoTrak" means MorphoTrak, Inc.

"MorphoTrak Software" means Software that MorphoTrak or Seller owns. The term includes Product Releases, Standard Releases, and Supplemental Releases.

"Non-MorphoTrak Software" means Software that a party other than MorphoTrak or Seller owns.

"Optional Technical Support Services" means fee-based technical support services that are not covered as part of the standard Technical Support Services.

"Patch" means a specific change to the Software that does not require a Release.

"Principal Period of Maintenance" or "PPM" means the specified days, and times during the days, that maintenance and support services will be provided under this Agreement. The PPM selected by Customer is indicated in the Support Plan Options and Pricing Worksheet.

"Products" means the Equipment (if applicable as indicated in the Description of Covered Products) and Software provided by Seller.

"Releases" means an Update or Upgrade to the MorphoTrak Software and are characterized as "Supplemental Releases," "Standard Releases," or "Product Releases." A "Supplemental Release" is defined as a minor release of MorphoTrak Software that contains primarily error corrections to an existing Standard Release and may contain limited improvements that do not affect the overall structure of the MorphoTrak Software. Depending on Customer's specific configuration, a Supplemental Release might not be applicable. Supplemental Releases are identified by the third digit of the three-digit release number, shown here as underlined: "1.2.3". A

"Standard Release" is defined as a major release of MorphoTrak Software that contains product enhancements and improvements, such as new databases, modifications to databases, or new servers. A Standard Release may involve file and database conversions, System configuration changes, hardware changes, additional training, on-site installation, and System downtime. Standard Releases are identified by the second digit of the three-digit release number, shown here as underlined: "1.2.3". A "Product Release" is defined as a major release of MorphoTrak Software considered to be the next generation of an existing product or a new product offering. Product Releases are identified by the first digit of the three-digit release number, shown here as underlined: "1.2.3". If a question arises as to whether a Product offering is a Standard Release or a Product Release, MorphoTrak's opinion will prevail, provided that MorphoTrak treats the Product offering as a new Product or feature for its end user customers generally.

"Residual Error" means a software malfunction or a programming, coding, or syntax error that causes the Software to fail to conform to the Specifications.

"Services" means those maintenance and support services described in the Support Plan and provided under this Agreement.

"Software" means the MorphoTrak Software and Non-MorphoTrak Software that is furnished with the System or Equipment.

"Specifications" means the design, form, functionality, or performance requirements described in published descriptions of the Software, and if also applicable, in any modifications to the published specifications as expressly agreed to in writing by the parties.

"Standard Business Day" means Monday through Friday, 8:00 a.m. to 5:00 p.m. local time, excluding established MorphoTrak holidays.

"Standard Business Hour" means a sixty (60) minute period of time within a Standard Business Day(s).

"Start Date" means the date upon which this Agreement begins. The Start Date is specified in the Support Plan Options and Pricing Worksheet.

"System" means the Products and services provided by Seller as a system as more fully described in the Technical and Implementation Documents attached as exhibits to a System Agreement between Customer and Seller (or MorphoTrak).

"Technical Support Services" means the remote telephonic support provided by Seller on a standard and centralized basis concerning the Products, including diagnostic services and troubleshooting to assist Customer in ascertaining the nature of a problem being experienced by the Customer, minor assistance concerning the use of the Software (including advising or assisting the Customer in attempting data/database recovery, database set up, client-server advice), and assistance or advice on installation of Releases provided under this Agreement.

"Update" means a Supplemental Release or a Standard Release.

"Upgrade" means a Product Release.

Section 3. SCOPE AND TERM OF SERVICES

3.1. In accordance with the provisions of this Agreement and in consideration of the payment by Customer of the price for the Services, Seller will provide to Customer the Services in accordance with Customer's selections as indicated in the Support Plan Options and Pricing Worksheet, and such Services will apply only to the Products described in the Description of Covered Products.

3.2. Unless the Support Plan Options and Pricing Worksheet expressly provides to the contrary, the term of this Agreement is one (1) year, beginning on the Start Date. This annual maintenance and support period will automatically renew upon the anniversary date for successive one (1) year periods unless either party notifies the other of its intention to not renew the Agreement (in whole or part) not less than thirty (30) days before the anniversary date or this Agreement is terminated for default by a party.

3.3. This Agreement covers all copies of the specified Software listed in the Description of Covered Products that are licensed by Seller to Customer. If the price for Services is based upon a per unit fee, such price will be calculated on the total number of units of the Software that are licensed to Customer as of the beginning of the annual maintenance and support period. If, during an annual maintenance and support period, Customer acquires additional units of the Software that is covered by this Agreement, the price for maintenance and support services for those additional units will be calculated and added to the total price either (1) if and when the annual maintenance and support period is renewed or (2) immediately when Customer acquires the additional units, as MorphoTrak determines. Seller may adjust the price of the maintenance and support services effective as of a renewal if it provides to Customer notice of the price adjustment at least forty-five (45) days before the expiration of the annual maintenance and support period. If Customer notifies Seller of its intention not to renew this Agreement as permitted by Section 3.2 and later wishes to reinstate this Agreement, it may do so with Seller's consent provided (a) Customer pays to Seller the amount that it would have paid if Customer had kept this Agreement current, (b) Customer ensures that all applicable Equipment is in good operating conditions at the time of reinstatement, and (c) all copies of the specified Software listed in the Description of Covered Products are covered.

3.4. When Seller performs Services at the location of installed Products, Customer agrees to provide to Seller, at no charge, a non-hazardous environment for work with shelter, heat, light, and power, and with full and free access to the covered Products. Customer will provide all information pertaining to the hardware and software with which the Products are interfacing to enable Seller to perform its obligations under this Agreement.

3.5. All Customer requests for covered Services will be made initially with the call intake center identified in the Support Plan Options and Pricing Worksheet.

3.6. Seller will provide to Customer Technical Support Services and Releases as follows:

3.6.1. Seller will provide unlimited Technical Support Services and correction of Residual Errors during the PPM in accordance with the exhibits. The level of Technical Support depends upon the Customer's selection as indicated in the Support Plan Options and Pricing Worksheet. Any Technical Support Services that are performed by Seller outside the contracted PPM and any Residual Error corrections that are outside the scope shall be billed at the then current hourly rates. Technical Support Services will be to investigate specifics about the functioning of covered Products to determine whether there is a defect in the Product and will not be used in lieu of training on the covered Products.

3.6.2. Unless otherwise stated in paragraph 3.6.3 or if the Support Plan Options and Pricing Worksheet expressly provides to the contrary, Seller will provide to Customer without additional license fees an available Supplemental or Standard Release after receipt of a request from Customer, but Customer must pay for any installation or other services and any necessary Equipment or third party software provided by Seller in connection with such Supplemental or Standard Release. Any services will be performed in accordance with a mutually agreed schedule.

3.6.3 Seller will provide to Customer an available Product Release after receipt of a request from Customer, but Customer must pay for all additional license fees, any installation or other services, and any necessary Equipment provided by Seller in connection with such Product Release. Any services will be performed in accordance with a mutually agreed schedule.

3.6.4. Seller does not warrant that a Release will meet Customer's particular requirement, operate in the combinations that Customer will select for use, be uninterrupted or error-free, be backward compatible, or that all errors will be corrected. Full compatibility of a Release with the capabilities and functions of earlier versions of the Software may not be technically feasible. If it is technically feasible, services to integrate these capabilities and functions to the updated or upgraded version of the Software may be purchased at Customer's request on a time and materials basis at Seller's then current rates for professional services.

3.6.5. Seller's responsibilities under this Agreement to provide Technical Support Services shall be limited to the current Standard Release plus the two (2) prior Standard Releases (collectively referred to in this section as "Covered Standard Releases."). Notwithstanding the preceding sentence, Seller will provide Technical Support Services for a Severity Level 1 or 2 error concerning a Standard Release that precedes the Covered Standard Releases unless such error has been corrected by a Covered Standard Release (in which case Customer shall install the Standard Release that fixes the reported error or terminate this Agreement as to the applicable Software).

3.7. The maintenance and support Services described in this Agreement are the only covered services. Unless Optional Technical Support Services are purchased, these Services specifically exclude and Seller shall not be responsible for:

~~3.7.1. Any service work required due to incorrect or faulty operational conditions, including but not limited to Equipment not connected directly to an electric surge protector, or not properly maintained in accordance with the manufacturer's guidelines.~~

3.7.2. The repair or replacement of Products or parts resulting from failure of the Customer's facilities, Customer's personal property and/or devices connected to the System (or interconnected to devices) whether or not installed by Seller's representatives.

3.7.3. The repair or replacement of Equipment that has become defective or damaged due to physical or chemical misuse or abuse, Customer's negligence, or from causes such as lightning, power surges, or liquids.

3.7.4. Any transmission medium, such as telephone lines, computer networks, or the worldwide web, or for Equipment malfunction caused by such transmission medium.

3.7.5. Accessories, custom or Special Products; modified units; or modified Software.

3.7.6. The repair or replacement of parts resulting from the tampering by persons unauthorized by Seller or the failure of the System due to extraordinary uses.

3.7.7. Operation and/or functionality of Customer's personal property, equipment, and/or peripherals and any application software not provided by Seller.

3.7.8. Services for any replacement of Products or parts directly related to the removal, relocation, or reinstallation of the System or any System component.

3.7.9. Services to diagnose technical issues caused by the installation of unauthorized components or misuse of the System.

3.7.10. Services to diagnose malfunctions or inoperability of the Software caused by changes, additions, enhancements, or modifications in the Customer's platform or in the Software.

3.7.11. Services to correct errors found to be caused by Customer-supplied data, machines, or operator failure.

3.7.12. Operational supplies, including but not limited to, printer paper, printer ribbons, toner, photographic paper, magnetic tapes and any supplies in addition to that delivered with the System; battery replacement for uninterruptible power supply (UPS); office furniture including chairs or workstations.

3.7.13. Third-party software unless specifically listed on the Description of Covered Products.

3.7.14. Support of any interface(s) beyond Seller-provided port or cable, or any services that are necessary because third party hardware, software or supplies fail to conform to the specifications concerning the Products.

3.7.15. Services related to customer's failure to back up its data or failure to use an UPS system to protect against power interruptions.

3.7.16. Any design consultation such as, but not limited to, configuration analysis, consultation with Customer's third-party provider(s), and System analysis for modifications or Upgrades or Updates which are not directly related to a Residual Error report.

3.8. The Customer hereby agrees to:

3.8.1. Maintain any and all electrical and physical environments in accordance with the System manufacturer's specifications.

3.8.2. Provide standard industry precautions (e.g. back-up files) ensuring database security, per Seller's recommended backup procedures.

3.8.3. Ensure System accessibility, which includes physical access to buildings as well as remote electronic access. Remote access can be stipulated and scheduled with customer; however, remote access is required and will not be substituted with on-site visits if access is not allowed or available.

3.8.4. Appoint one or more qualified employees to perform System Administration duties, including acting as a primary point of contact to Seller's Customer Support organization for reporting and verifying problems, and performing System backup. At least one member of the System Administrators group should have completed Seller's End-User training and System Administrator training (if available). The combined skills of this System Administrators group should include proficiency with: the Products, the system platform upon which the Products operate, the operating system, database administration, network capabilities such as backing up,

updating, adding, and deleting System and user information, and the client, server and stand alone personal computer hardware. The System Administrator shall follow the Residual Error reporting process described herein and make all reasonable efforts to duplicate and verify problems and assign a Severity Level according to definitions provided herein. Customer agrees to use reasonable efforts to ensure that all problems are reported and verified by the System Administrator before reporting them to Seller. Customer shall assist Seller in determining that errors are not the product of the operation of an external system, data links between system, or network administration issues. If a Severity Level 1 or 2 Residual Error occurs, any Customer representative may contact Seller's Customer Support Center by telephone, but the System Administrator must follow up with Seller's Customer Support as soon as practical thereafter.

3.9. In performing repairs under this Agreement, Seller may use parts that are not newly manufactured but which are warranted to be equivalent to new in performance. Parts replaced by Seller shall become Seller's property.

3.10 Customer shall permit and cooperate with Seller so that Seller may periodically conduct audits of Customer's records and operations pertinent to the Services, Products, and usage of application and data base management software. If the results of any such audit indicate that price has been understated, Seller may correct the price and immediately invoice Customer for the difference (as well as any unpaid but owing license fees). Seller will limit the number of audits to no more than one (1) per year except Seller may conduct quarterly audits if a prior audit indicated the price had been understated.

3.11. If Customer replaces, upgrades, or modifies equipment, or replaces, upgrades, or modifies hardware or software that interfaces with the covered Products, Seller will have the right to adjust the price for the Services to the appropriate current price for the new configuration.

3.12 Customer shall agree not to attempt or apply any update(s), alteration(s), or change(s) to the database software without the prior approval of the Seller.

Section 4. RIGHT TO SUBCONTRACT AND ASSIGN

Seller may assign its rights and obligations under this Agreement and may subcontract any portion of Seller's performance called for by this Agreement.

Section 5. PRICING, PAYMENT AND TERMS

5.1 Prices in United States dollars are shown in the Support Plan Options and Pricing Worksheet. Unless this exhibit expressly provides to the contrary, the price is payable annually in advance. Seller will provide to Customer an invoice, and Customer will make payments to Seller within twenty (20) days after the date of each invoice. During the term of this Agreement, Customer will make payments when due in the form of a check, cashier's check, or wire transfer drawn on a United States financial institution.

5.2. Overdue invoices will bear simple interest at the rate of ten percent (10%) per annum, unless such rate exceeds the maximum allowed by law, in which case it will be reduced to the maximum allowable rate.

5.3 If Customer requests, Seller may provide services outside the scope of this Agreement or after the termination or expiration of this Agreement and Customer agrees to pay for those services. These terms and conditions and the prices in effect at the time such services are rendered will apply to those services.

5.4 Price(s) are exclusive of any taxes, duties, export or customs fees, including Value Added Tax or any other similar assessments imposed upon Seller. If such charges are imposed

upon Seller, Customer shall reimburse Seller upon receipt of proper documentation of such assessments.

Section 6. LIMITATION OF LIABILITY

This limitation of liability provision shall apply notwithstanding any contrary provision in this Agreement. Except for personal injury or death, Seller's (including any of its affiliated companies) total liability arising from this Agreement will be limited to the direct damages recoverable under law, but not to exceed the price of the maintenance and support services being provided for one (1) year under this Agreement. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT SELLER (INCLUDING ANY OF ITS AFFILIATED COMPANIES) WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT, THE SALE OR USE OF THE SYSTEM, EQUIPMENT OR SOFTWARE, OR THE PERFORMANCE OF SERVICES BY SELLER PURSUANT TO THIS AGREEMENT. This limitation of liability will survive the expiration or termination of this Agreement. No action for breach of this Agreement or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of such cause of action, except for money due upon an open account.

Section 7. DEFAULT/TERMINATION

7.1. If MorphoTrak breaches a material obligation under this Agreement (unless Customer or a Force Majeure causes such failure of performance), Customer may consider MorphoTrak to be in default. If Customer asserts a default, it will give MorphoTrak written and detailed notice of the default. MorphoTrak will have thirty (30) days thereafter either to dispute the assertion or provide a written plan to cure the default that is acceptable to Customer. If MorphoTrak provides a cure plan, it will begin implementing the cure plan immediately after receipt of Customer's approval of the plan.

7.2. If Customer breaches a material obligation under this Agreement (unless MorphoTrak or a Force Majeure causes such failure of performance); if Customer breaches a material obligation under the Software License Agreement that governs the Software covered by this Agreement; or if Customer fails to pay any amount when due under this Agreement, indicates that it is unable to pay any amount when due, indicates it is unable to pay its debts generally as they become due, files a voluntary petition under bankruptcy law, or fails to have dismissed within ninety (90) days any involuntary petition under bankruptcy law, MorphoTrak may consider Customer to be in default. If MorphoTrak asserts a default, it will give Customer written and detailed notice of the default and Customer will have thirty (30) days thereafter to (i) dispute the assertion, (ii) cure any monetary default (including interest), or (iii) provide a written plan to cure the default that is acceptable to MorphoTrak. If Customer provides a cure plan, it will begin implementing the cure plan immediately after receipt of MorphoTrak's approval of the plan.

7.3. If a defaulting party fails to cure the default as provided above in Sections 7.1 or 7.2, unless otherwise agreed in writing, the non-defaulting party may terminate any unfulfilled portion of this Agreement and may pursue any legal or equitable remedies available to it subject to the provisions of Section 6 above.

7.4. Upon the expiration or earlier termination of this Agreement, Customer and Seller shall immediately deliver to the other Party, as the disclosing Party, all Confidential Information of the other, including all copies thereof, which the other Party previously provided to it in furtherance of this Agreement. Confidential Information shall include: (a) proprietary materials and information regarding technical plans; (b) any and all other information, of whatever type and in whatever medium including data, developments, trade secrets and improvements, that is disclosed by

Seller to Customer in connection with this Agreement; (c) all geographic information system, address, telephone, or like records and data provided by Customer to Seller in connection with this Agreement that is required by law to be held confidential.

Section 8. GENERAL TERMS AND CONDITIONS

8.1. Notices required under this Agreement to be given by one party to the other must be in writing and either delivered in person or sent to the address shown below by certified mail, return receipt requested and postage prepaid (or by a recognized courier service), or by facsimile with correct answerback received, and shall be effective upon receipt.

Customer: <u>Watauga County Sheriff's Office</u>	Seller: <u>MorphoTrak, Inc.</u>
Attn: <u>Captain Jeff Virginia</u>	Attn: <u>Law Department</u>
<u>184 Hodges Gap Road</u>	<u>33405 8th Avenue South.</u>
<u>Boone, NC 28607</u>	<u>Federal Way, WA 98003</u>
<u>Phone(828) -264-3761</u>	<u>Phone: (253)383-3617 Fax: (253)591-8856</u>

8.2. Neither party will be liable for its non-performance or delayed performance if caused by an event, circumstance, or act of a third party that is beyond such party's reasonable control.

8.3. Failure or delay by either party to exercise any right or power under this Agreement will not operate as a waiver of such right or power. For a waiver to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power shall not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power.

8.4. Customer may not assign any of its rights under this Agreement without MorphoTrak's prior written consent.

8.5. This Agreement, including the exhibits, constitutes the entire agreement of the parties regarding the covered maintenance and support services and supersedes all prior and concurrent agreements and understandings, whether written or oral, related to the services performed. Neither this Agreement nor the Exhibits may not be altered, amended, or modified except by a written agreement signed by authorized representatives of both parties. Customer agrees to reference this Agreement on all purchase orders issued in furtherance of this Agreement. Neither party will be bound by any terms contained in Customer's purchase orders, acknowledgements, or other writings (even if attached to this Agreement).

8.6. This Agreement will be governed by the laws of the United States to the extent that they apply and otherwise by the laws of the State to which the Products are shipped if Licensee is a sovereign government entity or the laws of the State of Delaware if Licensee is not a sovereign government entity.

Section 9. CERTIFICATION DISCLAIMER

Seller specifically disclaims all certifications regarding the manner in which Seller conducts its business or performs its obligations under this Agreement, unless such certifications have been expressly accepted and signed by an authorized signatory of Seller.

Section 10. COMPLIANCE WITH APPLICABLE LAWS

The Parties shall at all times comply with all applicable regulations, licenses and orders of their respective countries relating to or in any way affecting this Agreement and the performance by the Parties of this Agreement. Each Party, at its own expense, shall obtain any approval or permit required in the performance of its obligations. Neither Seller nor any of its employees is an agent or representative of Customer.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the day and year first written above.

MorphoTrak, Inc.:

By: _____

Name: _____

Title: _____

Date: _____

Watauga County Sheriff's Office:

By: _____

Name: _____

Title: _____

Date: _____

Exhibit A DESCRIPTION OF COVERED PRODUCTS

MAINTENANCE AND SUPPORT AGREEMENT NO. SA 003580-000
CUSTOMER: Watauga County Sheriff's Office

The following table lists the Products under maintenance coverage:

<i>Product</i>	<i>Description</i>	<i>Node Name</i>	<i>Qty</i>
LSS-R	LiveScan Ruggedized Station	NCNL30	1
Printer	Lexmark Printer	NCNX30	1

MAINTENANCE AND SUPPORT AGREEMENT NO. SA 003580-000
Exhibit B SUPPORT PLAN

This Support Plan is a Statement of Work that provides a description of the support to be performed.

1. **Services Provided.** The Services provided are based on the Severity Levels as defined herein. Each Severity Level defines the actions that will be taken by Seller for Response Time, Target Resolution Time, and Resolution Procedure for reported errors. Because of the urgency involved, Response Times for Severity Levels 1 and 2 are based upon voice contact by Customer, as opposed to written contact by facsimile or letter. Resolution Procedures are based upon Seller's procedures for Service as described below.

SEVERITY LEVEL	DEFINITION	RESPONSE TIME	TARGET RESOLUTION TIME
1	Total System Failure - occurs when the System is not functioning and there is no workaround; such as a Central Server is down or when the workflow of an entire agency is not functioning.	Telephone conference within 1 hour of initial voice notification	Resolve within 24 hours of initial notification
2	Critical Failure - Critical process failure occurs when a crucial element in the System that does not prohibit continuance of basic operations is not functioning and there is usually no suitable workaround. Note that this may not be applicable to intermittent problems.	Telephone conference within 3 Standard Business Hours of initial voice notification	Resolve within 7 Standard Business Days of initial notification
3	Non-Critical Failure - Non-Critical part or component failure occurs when a System component is not functioning, but the System is still useable for its intended purpose, or there is a reasonable workaround.	Telephone conference within 6 Standard Business Hours of initial notification	Resolve within 180 days in a Seller-determined Patch or Release.
4	Inconvenience - An inconvenience occurs when System causes a minor disruption in the way tasks are performed but does not stop workflow.	Telephone conference within 2 Standard Business Days of initial notification	At Seller's discretion, may be in a future Release.
5	Customer request for an enhancement to System functionality is the responsibility of Seller's Product Management.	Determined by Seller's Product Management.	If accepted by Seller's Product Management, a release date will be provided with a fee schedule, when appropriate.

1.1 **Reporting a Problem.** Customer shall assign an initial Severity Level for each error reported, either verbally or in writing, based upon the definitions listed above. Because of the urgency involved, Severity Level 1 or 2 problems must be reported verbally to the Seller's call intake center. Seller will notify the Customer if Seller makes any changes in Severity Level (up or down) of any Customer-reported problem.

1.2 **Seller Response.** Seller will use best efforts to provide Customer with a resolution within the appropriate Target Resolution Time and in accordance with the assigned Severity Level when Customer allows timely access to the System and Seller diagnostics indicate that a Residual Error is present in the Software. Target Resolution Times may not apply if an error cannot be reproduced on a regular basis on either Seller's or Customer's Systems. Should Customer report an error that Seller cannot reproduce, Seller may enable a detail error capture/logging process to monitor the System. If Seller is unable to correct the reported Residual Error within the specified Target Resolution Time, Seller will escalate its procedure and assign such personnel or designee to correct such Residual Error promptly. Should Seller, in its sole discretion, determine that such Residual Error is not present in its Release, Seller will verify: (a) the Software operates in conformity to the System Specifications, (b) the Software is being used in a manner for which it was intended or designed, and (c) the Software is used only with approved

hardware or software. The Target Resolution Time shall not commence until such time as the verification procedures are completed.

1.3 Error Correction Status Report. Seller will provide verbal status reports on Severity Level 1 and 2 Residual Errors. Written status reports on outstanding Residual Errors will be provided to System Administrator on a monthly basis.

2. Customer Responsibility.

2.1 Customer is responsible for running any installed anti-virus software.

2.2 Operating System ("OS") Upgrades. Unless otherwise stated herein, Customer is responsible for any OS upgrades to its System. Before installing any OS upgrade, Customer should contact Seller to verify that a given OS upgrade is appropriate.

3. Seller Responsibility.

3.1 Anti-virus software. At Customer's request, Seller will make every reasonable effort to test and verify specific anti-virus, anti-worm, or anti-hacker patches against a replication of Customer's application. Seller will respond to any reported problem as an escalated support call.

3.2 Customer Notifications. Seller shall provide access to (a) Field Changes; (b) Customer Alert Bulletins; and (c) hardware and firmware updates, as released and if applicable.

3.3 Account Reviews. Seller shall provide annual account reviews to include (a) service history of site; (b) downtime analysis; and (c) service trend analysis.

3.4 Remote Installation. At Customer's request, Seller will provide remote installation advice or assistance for Updates.

3.5 Software Release Compatibility. At Customer's request, Seller will provide: (a) current list of compatible hardware operating system releases, if applicable; and (b) a list of Seller's Software Supplemental or Standard Releases

3.6 On-Site Correction. Unless otherwise stated herein, all suspected Residual Errors will be investigated and corrected from Seller's facilities. Seller shall decide whether on-site correction of any Residual Error is required and will take appropriate action.

4. Compliance to Local, County, State and/or Federal Mandated Changes. *(Applies to Software and interfaces to those Products)* Unless otherwise stated herein, compliance to local, county, state and/or federally mandated changes, including but not limited to IBR, UCR, ECARS, NCIC and state interfaces are not part of the covered Services.

(The below listed terms are applicable only when the Maintenance and Support Agreement includes (a) Equipment which is shown on the Description of Covered Products, Exhibit A to the Maintenance.)

5. On-site Product Technical Support Services. Seller shall furnish labor and parts required due to normal wear to restore the Equipment to good operating condition.

5.1 Seller Response. Seller will provide telephone and on-site response to Central Site, defined as the Customer's primary data processing facility, and Remote Site, defined as any site outside the Central Site, as shown in Support Plan Options and Pricing Worksheet.

5.2 At Customer's request, Seller shall provide continuous effort to repair a reported problem beyond the PPM. Provided Customer gives Seller access to the Equipment before the end of the PPM, Seller shall extend a two (2) hour grace period beyond PPM at no charge. Following this grace period, any additional on-site labor support shall be invoiced on a time and material basis at Seller's then current rates for professional services.

**Exhibit C
SUPPORT PLAN OPTIONS AND PRICING WORKSHEET**

Maintenance and Support Agreement # 003580-000
 New Term Effective Start 10/1/11

Date June 1, 2011
 End 6/30/12

CUSTOMER: Address (1): Address (2): CITY, STATE, ZIP CODE:	Watauga County Sheriff's Office 184 Hodges Gap Road Boone, NC 28607	BILLING AGENCY: Address (1): Address (2): CITY, STATE, ZIP CODE:	SAME
CONTACT NAME: CONTACT TITLE TELEPHONE: FAX: Email:	Captain Jeff Virginia 828-565-7612 Jeff.virginia@watgov.org	CONTACT NAME: CONTACT TITLE TELEPHONE: FAX: Email:	

For support on products below, please contact Customer Support at (800) 734-6241 or email at cscenter@morphotrak.com.
 AFIS System LiveScan™ Station Printrak™ BIS System

STANDARD SUPPORT	ANNUAL FEE
<input checked="" type="checkbox"/> Advantage – Software Support ♦ 8 a.m. – 5 p.m. Monday to Friday PPM ♦ Supplemental Releases & Updates ♦ Software Customer Alert Bulletins ♦ Unlimited Telephone Support ♦ Standard Releases & Updates ♦ Telephone Response: 2 Hour ♦ Remote Dial-In Analysis ♦ Automatic Call Escalation	\$ 3,497.00
STANDARD SUPPORT TOTAL	\$ 3,497.00

SUPPORT OPTIONS	ANNUAL FEE
<input checked="" type="checkbox"/> On-Site Hardware Support ♦ 8 a.m. – 5 p.m. Monday-Friday PPM ♦ Defective Parts Replacement ♦ Hardware Service Reporting ♦ Next day PPM On-site Response ♦ Escalation Support ♦ Product Repair ♦ Hardware Vendor Liaison ♦ Hardware Customer Alert Bulletins ♦ Equipment Inventory Detail Management	\$ Included
<input checked="" type="checkbox"/> Parts Support ♦ Parts Ordered & Shipped Next Business Day ♦ Parts Customer Alert Bulletins ♦ If customer is providing their own on-site hardware support, the following applies: * Customer Orders & Replaces Parts * Telephone Technical Support for Parts Replacement Available	\$ Included
<input type="checkbox"/> UPLIFTS ♦ Increase PPM to _____ ♦ Increase Response Time to _____	\$ N/A \$ N/A
SUPPORT OPTIONS TOTAL	\$ Included as checked

THIRD PARTY SUPPORT	ANNUAL FEE
<input type="checkbox"/> THIRD PARTY VENDOR NAME: ♦ TERM DATE: ♦ COVERAGE:	\$ N/A
THIRD PARTY SUPPORT TOTAL	\$ N/A

USERS CONFERENCE – NORTH AMERICA	ANNUAL FEE
<input type="checkbox"/> Users Conference Attendance (\$2,950 per Attendee) Year _____ Number Attendees Requested _____ • Registration fee • Hotel accommodations • Roundtrip travel for event • Daily meal allowance	\$ N/A
USERS CONFERENCE TOTAL	\$ N/A

OTHER AVAILABLE OPTIONS	ANNUAL FEE
<input type="checkbox"/> LiveScan 3000 Prism Protection \$1,500 unit/year – Covers labor and material fee for replacement of one (1) prism per year <input type="checkbox"/> Other:	\$ N/A \$ N/A
OTHER AVAILABLE OPTIONS TOTAL	\$ N/A

Prepared by: *Rosario Hernandez, 714-238-2071, rosario.hernandez@morphotrak.com*
SUPPORT TOTAL * \$ 3,947.00
USERS CONFERENCE TOTAL \$ N/A
FULL TERM FEE GRAND TOTAL(10/1/11-6/30/12)* \$ 3,947.00
**Exclusive of taxes if applicable*

PLEASE PROVIDE A COPY OF YOUR CURRENT TAX EXEMPTION CERTIFICATE (if applicable)

Exhibit D

CURRENT BILLABLE RATES

MAINTENANCE AND SUPPORT AGREEMENT NO. 003580-000

CUSTOMER: Watauga County Sheriff's Office

The following are Seller's current billable rates, subject to an annual change.

COVERAGE HOURS (PPM)	BILLABLE RATES (Outside the scope of a current Maintenance and Support Agreement)
8 a.m.-5 p.m. M-F (local time)	\$160 per hour, 2 hours minimum
After 5 p.m., Saturday, Sunday, Seller Holidays	\$240 per hour, 2 hours minimum

COVERAGE HOURS (PPM)	BILLABLE RATES (WITHOUT AN AGREEMENT)
8 a.m.-5 p.m. M-F (local time)	\$320 per hour, 2 hours minimum
After 5 p.m., Saturday, Sunday, Seller Holidays	\$480 per hour, 2 hours minimum

AGENDA ITEM 5:

Proposed Lease Agreement for Child Support Enforcement Office

MANAGER'S COMMENTS:

Mr. Jim Atkinson will present a proposed lease for space currently used for the Child Support Enforcement Office. The initial lease was for \$22,200 annually. Mr. Eggers was informed that after July 1, 2011, the County would not require the amount of space currently used as Avery County was no longer partnering with the County for Child Support Enforcement. Mr. Eggers offered to reduce the annual lease to \$18,057.24, or a cost savings of \$4,142.76. The plan is for the Department of Social Services to implement the Northwoods scanning software which will reduce the amount of filing space required and allow the Child Support Enforcement Office to be housed onsite. Board action is requested, contingent upon the County Attorney's review of the lease.

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**NORTH CAROLINA
WATAUGA COUNTY**

LEASE AGREEMENT

THIS LEASE AGREEMENT is made this 28th day of June, 2011, by and between SHADLINE LIMITED PARTNERSHIP, a North Carolina Limited Partnership (hereinafter referred to as "Landlord") and WATAUGA COUNTY (NC), (hereinafter referred to as "Tenant").

Note: This lease, when executed, replaces and supercedes the renewal agreement (dated March 11, 2011) between Landlord and Tenant which extended the original lease (dated April 28, 2010) of the premises.

In consideration of the mutual covenants and agreements herein set forth, Landlord and Tenant, each intending to be bound legally, covenant and agree as follows:

LEASED PREMISES

Landlord hereby leases to Tenant, and Tenant takes from Landlord, for the time and upon the terms and conditions hereinafter set forth the following property located in the City of Boone, Watauga County, North Carolina:

That portion of a certain building located at and designated as UNIT 103 of BUILDING 100 of SHADOWLINE OFFICE PARK; 400 Shadowline Drive; Boone, North Carolina; containing approximately 1,468 square feet of private office space and adjoining common area, all of which is a portion of the square footage of the building presently being constructed by Landlord, together with the non-exclusive right to use all adjoining parking areas, driveways, sidewalks, road (public and private), and means of ingress and egress, insofar as Landlord has the power to lease or license the use thereof. The above described property hereby leased to Tenant is hereinafter referred to as "the leased premises" or the "Demised Premises."

TERMS AND CONDITIONS OF LEASE

The leased premises is leased and accepted, and Tenant shall have and hold the leased premises, upon the following terms and conditions:

1. Term. The term of this lease shall commence on JULY 1, 2011, and shall continue thereafter until JUNE 30, 2012.

2. **Base Annual Rent.** Tenant shall pay to Landlord rent for each year during the term of this lease at a rate of \$18,057.24, per year, payable in equal monthly installments of \$1,504.77, in advance on or before the 5th day of each and every calendar month (Such rent is hereinafter referred to as "Base Annual Rent") The Base Annual Rent shall be paid by Tenant in lawful money of the United States at such place or places as Landlord may from time to time designate.

3. **Use.** The lease premises shall be used by Tenant for the operation of STANDARD OFFICE SPACE only, subject to the following:

(a) **Nuisances and Hazards.** Tenant shall not permit the use of the leased premises in any manner which shall be unlawful or shall constitute a nuisance or a hazard; or shall in any way hinder the normal conducting of business of other tenants in the Shadowline Office Park complex.

(b) **Governmental Regulations.** Tenant shall comply with all applicable laws, ordinances, orders and regulations prescribed by lawful authority relating to the leased premises, including (but not limited to) those concerning cleanliness, safety, occupancy and use of the leased premises.

(c) **Other Restrictions.** Tenant shall at all times keep the interior of the leased premises in a reasonably neat and orderly condition and shall keep the entry ways and delivery ways adjoining the leased premises reasonable clean and free from debris.

4. **Utilities and Services.** Landlord will furnish and pay for water/sewer service to the premises. Tenant will pay charges made for electrical service (including prorated common area electrical service), telephone service (included prorated emergency elevator phone service), janitorial service (including prorated common area janitorial service), light bulb/tube replacement (including prorated replacement of common area light bulbs), and other such services that Tenant may require. Landlord shall be entitled to temporarily stop the heating, air conditioning and lighting systems at any time Landlord deems it necessary for the purpose of making repairs or improvements or as a result of matters beyond Landlord's control, including (but not limited to) strikes, lockouts, accidents or other causes which in the opinion of Landlord necessitate stoppage of such services, and Tenant shall not be entitled to or claim any damage as a result of such stoppage nor shall the term of this lease be affected thereby. However, Landlord will make every effort to notify Tenant of the need for such stoppages if at all possible.

During the term of this lease, Landlord will maintain the plumbing, heating, air conditioning, electrical and lighting systems in good working order. Provided, however, that Landlord shall not be liable for loss or damage to any property of Tenant entrusted to employees of Landlord nor for the loss of any property of Tenant by theft or otherwise nor shall Landlord be liable for any injury of damage to persons or property sustained in or about the leased premises by Tenant, Tenant's employees, invitees or others due to the negligence or willful conduct of any tenant in the leased premises, or any other

person except for the employees and agents of Landlord acting within the scope and course of their employment. Landlord shall not be liable for any loss or damage to Tenant resulting from falling plaster, gas, electricity, rain, snow or water which may leak from any part of the leased premises or from the pipes, appliances or plumbing in the building in which the leased premises are located.

5. **Repairs and Alterations.** The following provisions shall govern repairs and alterations:

(a) **Repairs.** Landlord shall have the duty to keep the roof, the exterior and supporting walls, and other structural portions of the leased premises in good repair. Tenant shall keep the interior of the leased premises in good repair. This obligation shall include (but is not limited to) all interior painting, floor maintenance, and repair of all hardware and trade fixtures.

(b) **Alterations.** Alterations to the leased premises (including, but not limited to, interior or exterior lighting or plumbing fixtures, steps, partitions, walls, fences, shades, awnings or structural additions) shall be made only with the consent of the Landlord and under his control and supervision. However, consent shall not be unreasonably withheld in case of minor alterations to conform the leased premises to use as a STANDARD OFFICE. Tenant shall bear the cost of any alterations, improvements, or other renovations which are made for his convenience or preference.

(c) **Parking and Service Areas.** Landlord shall keep in good repair any parking or service areas which he may provide for tenants in leased premises.

(d) **Tenant's Neglect.** Subject to the provisions set forth in the following sentence, Tenant shall pay for the cost of any repairs or damage resulting from the negligence or the wrongful acts of his employees, representatives or visitors. However, and notwithstanding any other provision of this lease to the contrary, Landlord and Tenant and all parties claiming under them agree and discharge each other from all claims and liabilities arising from or caused by any hazard covered by insurance on the leased premises, or covered by insurance in connection with the property owned or activities conducted on the leased premises, regardless of the cause of the damage or loss, provided that such cause does not prevent payment of insurance proceeds to Landlord or Tenant under the provisions of the applicable policy.

6. **Trade and Other Fixtures.** Tenant may install or cause to be installed such equipment and trade or other fixtures as are reasonably necessary for Tenant's use of the leased premises. Such equipment and trade or other fixtures shall remain personal property and title thereto shall continue in the owner thereof, regardless of the manner in which such equipment and trade or other fixtures are subject to a lien or title retention instrument, the holder of any such lien or title retention instrument shall have the right and be entitled to enforce the same as stated therein.

7. **Fire and Other Casualty.** In the event of total destruction of the leased premises by fire or other casualty, this lease shall terminate and Tenant shall

be liable for rent only up to the time of such destruction. In the event of partial destruction of the leased premises, which renders them unsuitable or partially unsuitable for Tenant's business, Landlord shall repair and restore the leased premises as expeditiously as practicable; and, if Landlord fails to do so within a period of ninety (90) days after such partial destruction, Tenant may at his option terminate this lease any time within thirty (30) days thereafter. During any period of partial destruction and until the leased premises have been repaired and restored, there shall be an abatement of the rental proportionate to the part of the building area rendered unsuitable for tenant's business. In applying the provisions of this paragraph, the term "total destruction" shall mean destruction which reasonably requires more than ninety (90) days to repair or restore, and the term "partial destruction" shall mean destruction which would reasonably require a lesser period.

8. Insurance. Landlord shall maintain and keep in force adequate hazard and liability insurance for the building in which the leased premises are located. Tenant shall maintain insurance in accordance with the provisions of sub-paragraphs (a) and (b) of this paragraph, and Tenant shall indemnify Landlord in accordance with the provisions of sub-paragraph (c).

(a) Property Insurance. Tenant shall hold Landlord harmless for loss or damage by fire with regard to all of Tenant's furniture, fixtures, and equipment about or within the leased premises. If, as the result of any act or neglect of Tenant, its employees, representatives, or visitors, or of the manner in which business is conducted at the leased premises, the fire and extended coverage insurance rate thereon shall be increased over the rate existing at the beginning of the term of this lease, Tenant on demand shall pay to Landlord as additional rent a sum equal to any such increase.

(b) Liability Insurance. Tenant shall provide and keep in force for the protection of the general public and Landlord liability insurance against claims for bodily injury or death upon or near the leased premises and the sidewalks, streets and service and parking areas adjacent thereto to the extent of not less than \$500,000.00 in respect to bodily injuries or death to any one person and to the extent of not less than \$500,000.00 for bodily injuries or death to any number of persons arising out of one accident or disaster and property damage with limits of not less than \$100,000.00. Tenant shall furnish Landlord with satisfactory evidence of such insurance within thirty (30) days of the execution of this lease.

(c) Indemnity. Tenant shall hold Landlord harmless from any damages, loss or expenses resulting from the negligent, unlawful or willful acts or omissions of Tenant's employees, representatives, patrons or visitors or from Tenant's failure to perform any obligation imposed upon it by law or by the provisions of this lease.

9. Eminent Domain. In the event the whole of the leased premises are taken under the power of eminent domain or conveyed under threat of condemnation proceedings, or if only a part of the leased premises are so taken or conveyed and Tenant shall determine in his sole judgment that the remainder is

inadequate or unsatisfactory for his purposes, then in either event, this lease shall terminate effective as of the date Tenant is required to give up the right to occupy or use any part of the leased premises. The termination of this lease as above provided shall not operate to deprive Tenant of the right to make claim against the condemning authority for any damages suffered by Tenant. In the event of only a partial taking under such power, which does not materially render the leased premises unsuitable for Tenant's use, this lease shall not terminate, but there shall be an equitable abatement of the rent proportionate to the part of the leased premises taken under such power. In the event of any total or partial taking under such power, either Landlord or Tenant shall be privileged to pursue any action or remedy with reference thereto and shall be respectively entitled to such awards or damages as may be allowed as their interest may appear.

10. **Assignment and Subletting.** Upon the written consent of Landlord, Tenant shall be allowed to assign the leased premises. It is acknowledged by the parties that Landlord shall have the right to require, in his discretion, that Tenant guarantee the payment of rent in any assignment, regardless of the financial status of the prospective assignee. In exercising his discretion with reference to Tenant's requested assignment, Landlord, upon Tenant's agreeing to guarantee the rental of the leased premises as above provided, shall not unreasonably withhold his giving written consent to such assignment. At the written request of Tenant, Landlord shall give Landlord's best efforts to assist Tenant in finding a suitable sub-tenant to assume Tenant's responsibility under the terms of this Lease Agreement.

11. **Landlord Warranties.** With the exception of mortgages or deeds of trust duly recorded and enforceable against the leased premises, Landlord represents and warrants to Tenant that he has the right to lease the leased premises on the term and conditions set forth herein, that the same is subject to no leases, tenancies, agreements, zoning ordinances, encumbrances, liens, restrictions and defects in title affecting the leased premises or the rights granted Tenant in this lease, and that Tenant shall peaceably and quietly hold and enjoy the leased premises for the term of this lease as long as Tenant shall faithfully perform his obligations hereunder. In the event of a zoning change, change of local ordinance or law or other form of governmental regulations which prevents Tenant from using and enjoying the leased premises for the purposes specified in paragraph 3, Landlord shall release Tenant from his obligations under this lease as of and following the date of such change.

12. **Landlord Mortgages.** At the option of Landlord, this lease shall be subordinated to the lien of any mortgage or deed of trust (hereinafter called mortgage) which Landlord may place on the leased premises or the building located thereon. Upon Landlord's request, Tenant shall execute any instrument which may be required to effectuate such a subordination, provided however, Landlord shall first have delivered to Tenant an agreement in recordable form signed by the mortgagee providing in substance that, as long as Tenant shall discharge his obligation under this lease: (a) occupancy shall not be disturbed; (b) this lease shall not be affected by any default under the mortgage; (c) in the

event of foreclosure of the mortgage, the rights of Tenant shall survive; and (d) this lease shall continue in full force and effect. If Tenant is notified of Landlord's assignment of this lease as security for a mortgage loan, and of the name and address of the mortgagee or trustee, Tenant shall not terminate or cancel this lease for any default on the part of Landlord without first:

(a) giving notice of his intention to do so to such mortgagee or trustee, the notice to describe in reasonable detail the nature and extent of the default; and (b) affording such mortgagee or trustee a reasonable opportunity to perform on behalf of Landlord his obligations under this lease.

13. Liens. Landlord agrees to send written notice to Tenant within thirty (30) days if any litigation is commenced against Landlord which might result in the creation of a lien against the leased premises and Landlord shall further notify Tenant in writing within thirty (30) days if and when any judgments are levied or filed against the leased premises. Landlord shall permit no liens or encumbrances upon the premises which may affect Tenant's use of the leased premises without Tenant's prior written consent. Tenant shall permit no liens to be placed upon the leased premises resulting from his use thereof, and shall remove any such liens within thirty (30) days after notice thereof by Landlord to Tenant.

14. Default. As used in this lease, the term "event of default" shall mean any of the following: (a) Tenant's failure to make payment of any rental installment within ten (10) days after same is due and payable, following Landlord's giving ten (10) days written notice to Tenant; (b) Tenant's failure to fulfill any other obligations imposed upon him by this lease, following Landlord's giving ten (10) days written notice of such default to Tenant; (c) Tenant becomes bankrupt, makes an assignment for benefit of creditors or becomes insolvent; or (d) a receiver is appointed for Tenant or Tenant's leasehold interest hereunder or property used in connection therewith shall be taken on execution. Upon the happening of an "event of default," Landlord, at his option, may (a) terminate this lease; (b) if default consists in whole or in part of Tenant's failure to expend funds, Landlord may make the necessary expenditures for the account of Tenant who shall reimburse Landlord therefore with interest at the rate of 12% per annum from the date of the expenditure; or (c) terminate Tenant's right to possession of the leased premises without terminating the term of this lease. Upon termination of this lease for any reason or upon termination of the Tenant's right of possession as provided above, Tenant shall promptly surrender possession to Landlord and vacate the leased premises, and Landlord may reenter the leased premises and expel the Tenant or any one claiming under the Tenant and remove the property of any of them without notice, formal claim or process, Landlord being absolved of any liability or claim for damages in doing anything reasonably necessary or appropriate in connection therewith. If Landlord elects to terminate Tenant's right of possession without terminating the term of this lease, Landlord may, at his option, lease or sublet all or any part of the leased premises on such terms and conditions as Landlord may elect and collect from Tenant any balance remaining due on the rent or other obligations payable by Tenant under this lease. It is expressly understood and agreed that the provisions of this

paragraph shall not be construed to limit or impair any other right, claim or remedy to which Landlord may be entitled by law in case of Tenant default.

15. Telephone System: Tenant and Landlord agree that with respect to the telephone system (electronics and handsets, etc.) present within the leased premises, that Tenant shall be responsible for any repairs to the system which are necessary during the term of this lease. At the end of this lease, the telephone system (electronics, handsets, etc.) shall remain within the premises and shall become the property of Landlord.

16. Entry of Landlord. Landlord may, at all reasonable times, enter the leased premises: (a) to inspect or protect the leased premises; (b) to effect compliance with any law, order or regulation of any lawful authority or with the provisions of this lease; (c) to exhibit the leased premises to prospective tenants, purchasers or other persons; and (d) to alter or otherwise prepare the leased premises for reoccupancy at any time after Tenant has vacated the leased premises. No authorized entry by Landlord shall constitute an eviction of Tenant or a deprivation of his rights, alter the obligation of Landlord, or create any right in Landlord adverse to Tenant's interests hereunder.

17. Waiver. All rights, powers and privileges conferred upon the parties hereunder shall be cumulative and not restrictive of those given by law. No failure of either party to exercise any power given hereunder, or to insist upon strict compliance by the other party of any obligation hereunder, and no custom or practice of the parties in variance of the terms hereof, shall constitute a waiver of the right of either party to demand exact compliance with the terms hereof at a later date.

18. Notice. All notices to be given hereunder shall be deemed to be properly given if they are addressed to the Tenant at 814 West King Street; Boone, North Carolina 28607, or addressed to the Landlord at Post Office Box 1970; Boone, North Carolina 28607, or such other address as either party from time to time may designate to the other in writing for such purpose. All notices shall be in writing and shall be mailed by certified mail in a postage paid envelope.

19. Holding Over by Tenant. Tenant shall not acquire any right or interest in the leased premises by remaining in possession after termination of this lease. During any such period of holding over, Tenant shall be a Tenant by will subject to all the obligations imposed upon it by this lease.

20. Construction of Lease. This lease shall be construed according to the laws of North Carolina. In the absence of a specific provision to the contrary, the party upon whom an obligation is imposed by this lease shall perform the obligation at his own expense. Paragraph headings relating to the content of the particular paragraphs are inserted only for the purpose of convenience and are not to be construed as parts of the particular paragraphs to which they refer. This lease contains a complete expression of the agreement between the parties and there are no promises, representations, or inducements except such as are herein provided; this agreement may not be added to or

modified in any way except by a written agreement signed by the party or parties charged with the obligations set forth herein.

21. Memorandum of Lease. Upon the request of either party, the other party will in good faith cooperate in the execution of a recordable instrument describing the parties, the leased premises, the basic terms of this lease and such other portions hereof as either party may desire to be included in such instrument.

22. Binding Effect. All rights and liabilities given to or imposed upon either of the parties by this lease shall benefit and bind their respective legal representatives, successors, heirs and assigns.

IN WITNESS WHEREOF, Landlord and Tenant have each caused these presents to be duly executed the day and year first above written.

Signed and acknowledged in
presence of:

WATAUGA COUNTY

as to Tenant

(Tenant)

SHADLINE LIMITED PARTNERSHIP

as to Landlord

(Landlord)

**NORTH CAROLINA
WATAUGA COUNTY**

BEFORE ME, a Notary Public in and for said County and State, personally appeared _____, who acknowledged that he did sign the foregoing instrument.

**IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Boone, North Carolina, this _____ day of _____,
_____.**

NOTARY PUBLIC

My commission expires: _____

BEFORE ME, a Notary Public in and for said County and State, personally appeared Graydon P. Eggers, Managing General Partner of SHADLINE LIMITED PARTNERSHIP, who acknowledged that he did sign the foregoing instrument.

**IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Boone, North Carolina, this _____ day of _____,
_____.**

NOTARY PUBLIC

My commission expires: _____

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AGENDA ITEM 6:

Request to Participate in the ExxonMobile Foundation Volunteer Involvement Program

MANAGER'S COMMENTS:

Ms. Angie Boitnotte will request approval to apply for funds from the ExxonMobil Foundation. This Foundation encourages employees, retirees, and other eligible volunteers by providing contributions on their behalf for time and talent donated to charitable organizations. The Western Watauga Community Center utilizes two such volunteers who assist with the Home-Delivered Meals program. The two participants request that the funds received on their behalf be used at the Center. Ms. Boitnotte will be present for discussion and questions. Board approval is requested to apply for the grants to be used at the Western Watauga Community Center.

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Watauga County Project on Aging

132 Poplar Grove Connector, Suite A • Boone, North Carolina 28607
Website: www.wataugacounty.org/aging angie.boitnotte@ncmail.net
Telephone 828-265-8090 Fax 828-264-2060 TTY 1-800-735-2962 Voice 1-800-735-8262 or 711

MEMORANDUM

TO: Deron Geouque, County Manager

FROM: Angie Boitnotte, Director

DATE: June 30, 2011

SUBJ: Request for Board of Commissioners' Consideration: Acceptance of Funds from the ExxonMobil Foundation

The ExxonMobil Foundation Volunteer Involvement Program (VIP) is funded by ExxonMobil Foundation, which is the primary philanthropic arm of Exxon Mobil Corporation. The Volunteer Involvement Program seeks to encourage employees, retirees, and other eligible participants to actively contribute their time and talent to charitable organizations by providing contributions on their behalf. The intent of the program is to encourage volunteerism to worthwhile charitable activities in the community, rather than provide large sums of money to organizations. A \$500 grant can be awarded to a charitable, nonprofit organization after an eligible participant (employee, retiree, surviving spouse, or director) volunteers at least 20 hours of their time to the organization during a calendar year. Each eligible participant may apply for four individual grants per calendar year. An organization can receive a maximum of \$5,000 per calendar year of Individual Volunteer Grants. Eligible organizations must be charitable and recognized as tax exempt by the Internal Revenue Service under Section 501(c)(3) of the Internal Revenue Service Code and have an Employer Identification Number (EIN), or be an instrumentality of a state or local government under IRC Section 170(c)(1).

The Project on Aging has two volunteers who deliver home delivered meals from the WWCC and are eligible to participate in the ExxonMobil Foundation VIP Program. If awarded funds through the program, they would like the funds to be used at the WWCC.

I plan to be present for discussion and questions.



Western Watauga Community Center

1081 Old Hwy 421 Sugar Grove, NC 28679
Project on Aging Website: www.wataugacounty.org/aging
Telephone 828-297-5195 Fax 828-297-7805

June 20, 2011

TO: Angie Boitnotte, Director
Watauga County Project on Aging
132 Poplar Grove Conn., Suite A
Boone, NC 28607
(828)265-8090
(828)264-2060 (fax)
Angie.Boitnotte@watgov.org

Tony and Judy Lutkus are Home delivered meals and Senior center volunteers at the Western Watauga Community Center.

They are eligible to apply for grants through the the VIP program. They would like the grant to be awarded to this facility/ agency if we are qualified. It could be used to fund some needs here in the senior Center.

The enclosed documents are for review to determine if we are qualified, and if so, approval by the county.

Thank you,

Toni Wait

Toni Wait
Senior Center Director
Western Watauga Community Center
1081 Old US Hwy 421
Sugar Grove, NC 28679
phone: 828-297-5195
Fax: 828-297-7805
Email: toni.wait@watgov.org

ExxonMobil Foundation

Volunteer Involvement Program (VIP) Guidelines

Effective January 1, 2007

Initiated in 1996, the Volunteer Involvement Program is funded by ExxonMobil Foundation, the primary philanthropic arm of Exxon Mobil Corporation. The Volunteer Involvement Program seeks to encourage employees, retirees, and other eligible participants to actively contribute their time and talent to charitable organizations by providing contributions on their behalf. The intent of this program is to encourage volunteerism to worthwhile charitable activities in the community, rather than to provide large sums of money to organizations. ExxonMobil Foundation is committed to supporting charitable activities that: advance education or science; combat community deterioration and juvenile delinquency; relieve the poor, the distressed, or the underprivileged; lessen neighborhood tensions; lessen the burdens of government; eliminate prejudice and discrimination; and defend human and civil rights secured by law.

General Guidelines

The Volunteer Involvement Program is designed for employees, retirees, and other eligible participants who volunteer in the community on an individual or Team basis. A \$500 grant can be awarded to a charitable, nonprofit organization after an eligible participant or Team volunteers at least 20 hours of their time to the organization during a calendar year. Interpretation, application, and administration of the VIP program, which can be suspended, changed, revised, or terminated at any time, shall be determined by ExxonMobil Foundation, and its decision shall be final.

Individual Volunteer Grant Guidelines

Each eligible participant (employee, retiree, surviving spouse, or director) may apply for four individual grants per calendar year. These grants may be for the same or separate organizations, provided 20 hours of work is performed for each grant. An organization may receive a maximum of \$5,000 per calendar year of Individual Volunteer Grants, in addition to the \$10,000 maximum for Team Grants.

Although spouses and children may participate as part of the four individual grants per employee or retiree per year, hours may not be combined. All application forms must be completed by the employee, retiree, surviving spouse, or director. A separate application must be completed for each \$500 grant request.

Team Volunteer Grant Guidelines

A team of at least five eligible participants who volunteer for a combined total of at least 20 hours on a specific project may

apply for a Team VIP Grant. A project is a specifically defined work activity that requires multiple volunteers working together at the same location at the same time. A project may have a duration of one day or may be a reoccurring project such as a team working together on the activity once a month. A project that requires more than one team and generates more than one \$500 VIP grant is subject to prior review by Public Affairs (for contacts, check www.easymatch.com/exxonmobil or call ExxonMobil Matching Gifts). An organization may receive a maximum of \$10,000 per calendar year in Team Volunteer Grants, in addition to the \$5,000 maximum for Individual Volunteer Grants.

Eligible Applicants

The following are eligible to participate:

- Regular employees of Exxon Mobil Corporation or its affiliates that operate in the United States;
- Retirees from the above companies or Exxon Corporation;
- Spouses and dependent children ages 12-25 of employees and retirees referred to above (spouses and children participate in the Individual VIP as part of the four individual grants per employee or retiree per year);
- Surviving spouses of deceased employees and retirees of the above companies or Exxon Corporation;
- Present and former outside directors of Exxon Mobil Corporation.
- Non-U.S. payroll employees are eligible while on assignment in the U.S. with Exxon Mobil Corporation consolidated affiliates.

Note: Retirees of Mobil Corporation are not eligible for this program, but may apply for a grant through the Mobil Retiree Volunteer Program.

Eligible Organizations

Eligible organizations must be charitable and recognized as tax exempt by the Internal Revenue Service under Section 501(c)(3) of the Internal Revenue Service Code and have an Employer Identification Number (EIN), or be an instrumentality of a state or local government under IRC Section 170(c)(1). Public charities are included, but private foundations are excluded.

Eligible organizations include those providing:

- Disaster relief and emergency services;
- Community assistance including food, shelter and clothing;
- Assistance to the disabled and underprivileged;
- Youth empowerment and a chance at a brighter future;
- Family crisis services and programs;
- Senior citizens with a better quality of life;
- Health care, health volunteer services, and cure for diseases;

- Cultural organizations including arts, museums, cultural and historical societies, performing arts, public broadcasting, etc.;
- Civic services including volunteer fire departments, emergency management, community centers and services, and libraries;
- Youth activities (age 18 and under);
- Parks, nature centers, botanic gardens;
- K-12 education (accredited private and public schools) and supporting organizations such as PTA;
- Colleges and universities;
- Educational tutoring and mentoring;
- Environmental programs including biodiversity, conservation, and preservation of endangered species and habitats; and
- Humane societies, animal shelters, SPCA, etc.

Ineligible Organizations

Ineligible organizations include those not recognized as charitable and tax exempt by the Internal Revenue Service under Section 501(c)(3) of the Internal Revenue Service Code or an instrumentality of a state or local government under IRC Section 170(c)(1). Further, organizations whose primary mission does not meet the charitable definition for VIP purposes are ineligible.

Ineligible organizations include:

- Political organizations;
- Churches, synagogues, etc., insofar as the activities are religious (church-sponsored accredited schools are eligible);
- Organizations with limited constituencies, such as sororities, fraternities, alumni associations, business leagues, foreign language and social clubs, and veteran's groups;
- Organizations that represent a conflict of interest for employees or the Company, or may involve the Company in controversial issues;
- Non-accredited K-12 schools or school districts;
- K-12 booster clubs or similar organizations (supporting athletics, band, cheerleading, drill team, choir, etc.) whose purpose is other than to support the school's educational objectives;
- Hobby and other civic clubs, including genealogical societies, garden clubs, sportsmen clubs, participatory sports, etc.; and
- Private foundations.

Volunteer Activities

The purpose of the Volunteer Involvement Program is to encourage charitable volunteerism in the community rather than simply contribute large sums of money to non-profit organizations. Volunteer service, activities and projects should be consistent with our pledge to be a good corporate citizen and support important societal goals including education, health and human services, and the environment.

Volunteer activities for organizations where the volunteer or anyone in the volunteer's family is a member or receives any direct benefit of more than nominal value in return for the grant are ineligible for a VIP grant. It is the policy of ExxonMobil that employees and retir-

ees avoid any actual or apparent conflict of interest between their own personal interests and the interests of the Foundation. Any questions regarding conflicts of interest should be discussed with the employee's supervisor, or referred to ExxonMobil Foundation.

Volunteer efforts at K-12 schools, colleges, or universities should support academics and meet the definition of charitable for VIP purposes. Volunteer efforts supporting extracurricular activities (including concessions, carnivals, student chaperoning, athletics, band, cheerleading, etc.) are ineligible for VIP. Office and classroom assistance and PTA activities are eligible, as long as the effort does not benefit extracurricular activities.

Volunteer efforts associated with fundraising events may qualify for a VIP grant provided participation is open to the general public; the event is planned, organized, and sponsored by the non-profit organization; and ExxonMobil volunteers are only assisting with the work necessary to put on the fundraising project, such as staffing of a registration table, serving of refreshments, event clean-up, etc. The time that a person spends raising donations or walking in a walk-a-thon, riding in a bike-a-thon, etc. does not constitute volunteer work for the purposes of VIP.

Application Procedure

Upon completing 20 hours of volunteer service, the eligible participant should complete Part A of the application form and send the form to the charitable organization. The organization completes Part B and then returns the application to the following:

Volunteer Involvement Program
ExxonMobil Matching Gift Programs
P.O. Box 7288
Princeton, NJ 08543-7288

All payments will be issued on a quarterly basis. Application deadlines are as follows:

First Quarter - March 15
Second Quarter - June 15
Third Quarter - September 15
Fourth Quarter - December 15

Payments for all VIP grants will be consolidated into one check and mailed directly to the recipient organization approximately one month after the application deadline. A summary listing identifying all volunteers will be included with the payment. Volunteers will receive a quarterly notification that their volunteer grants have been paid.

Applications must be received by March 15 to receive payment for the previous calendar year's efforts. Volunteer hours may not be carried over from year to year.

If you have questions or wish to check on the status of your application, please call ExxonMobil Matching Gifts toll free at (877) 807-0204, or email exxonmobil@easymatch.com.

Electronic applications are available at:
www.easymatch.com/exxonmobil

Individual Grant Application 2007 Volunteer Involvement Program

COMPANY USE ONLY

ExxonMobil Foundation

Reference No. _____
(To be completed by ExxonMobil)

Part A - To be completed by volunteer and forwarded to charitable organization for verification of volunteer activity. Submit one application per \$500 grant requested. (Note: If volunteer is spouse or child, application must include name and signature of employee/retiree.)

Name _____ Personnel Number _____

- Employee
 Surviving spouse

- Retiree
 Director

Note: Although spouses and children may participate as part of the four individual grants per employee or retiree per calendar year, hours may not be combined.

Volunteer's Name (If different from above) _____ Application Date _____
 Spouse Child - List age _____

Mailing Address _____ E-mail address _____

City _____ State _____ Zip _____

Work Phone () _____ Home Phone () _____

ExxonMobil Organization _____ Work Location _____
(Example: Upstream - ExxonMobil Production Company)

Calendar Year of Volunteer Service _____ (Please submit one application per \$500 grant requested).

Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours	Hours
JAN _____	FEB _____	MAR _____	APR _____	MAY _____	JUN _____				
Hours	Hours	Hours	Hours	Hours	Hours	Hours	TOTAL	Hours	
JUL _____	AUG _____	SEP _____	OCT _____	NOV _____	DEC _____				

Name of Non-profit Organization to Receive Grant _____

Describe Volunteer's Activities _____

CERTIFICATION BY THE VOLUNTEER I certify that at the time of this volunteer work I qualify as an eligible employee, retiree, surviving spouse, or director. I also certify that this volunteer work meets all of the conditions stated in the attached guidelines, including the stipulation that neither I nor any member of my family nor any individual designated by me has received or will accept any direct benefit of more than nominal monetary value in return for or as a result of this volunteer work or the grant provided by the Foundation.

Signature of Employee/Retiree _____ Date _____

Part B - To be completed by the recipient organization. (Please type or print)

Name _____ Title _____ Date _____

Name of Organization _____ Phone () _____

Mailing Address _____

City _____ State _____ Zip _____

Fax _____ E-Mail Address _____ Website Address _____

Organization's Nine (9) Digit Employer I.D. No. [Attach copy of 501(c)(3)] _____

Brief Description of Organization's Purpose (Attach brochure if available) _____

I certify that the above volunteer services have been received and that the grant will be used to support the primary objectives of this organization which is classified as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code, or an instrumentality of a state or local government under IRC Section 170(c)(1).

Signature of Authorized Officer _____ Date _____

999-0274B
January 2007

Team Grant Application 2007 Volunteer Involvement Program

COMPANY USE ONLY

ExxonMobil Foundation

Reference No. _____
(To be completed by ExxonMobil)

Part A - List ExxonMobil employee/retiree/spouse/children team volunteers and personnel numbers.*
(Please type or print and use another sheet of paper if necessary.)

Team Contact Name _____ Personnel Number _____
 Employee Retiree
 Surviving spouse Director

E-mail Address _____ Application Date _____

Mailing Address _____

City _____ State _____ Zip _____

Work Phone () _____ Home Phone () _____

ExxonMobil Organization _____ Work Location _____
(Example: Upstream - ExxonMobil Production Company)

* Volunteer Name _____ Personnel Number _____

Name of Organization _____

Date(s) of Project _____ Combined Hours (20 minimum required) _____

Description of Project _____

If this project required more than one team and will generate more than one \$500 Team Grant, prior approval MUST be obtained from Public Affairs. Attach pre-notification form with Public Affairs endorsement (for contacts, check www.easymatch.com/exxonmobil). Use attachment to list all Team Members (include Volunteer Name, Personnel Number, and hours each individual volunteer served).

CERTIFICATION BY THE VOLUNTEER I certify that at the time of this volunteer work I qualify as an eligible employee, retiree, surviving spouse, or director. I also certify that this volunteer work meets all of the conditions stated in the attached guidelines, including the stipulation that neither I nor any member of my family nor any individual designated by me has received or will accept any direct benefit of more than nominal monetary value in return for or as a result of this volunteer work or the grant provided by the Foundation.

Team Contact Signature _____ Date _____

*If volunteer is a spouse/child, enter the personnel number of the employee/retiree

Part B - To be completed by the recipient organization. (Please type or print)

Name _____ Title _____ Date _____

Name of Organization _____ Phone () _____

Mailing Address _____

City _____ State _____ Zip _____

Fax _____ E-Mail Address _____ Website Address _____

Organization's Nine (9) Digit Employer I.D. No. [Attach copy of 501(c)(3)] _____

Brief Description of Organization's Purpose (Attach brochure if available) _____

I certify that the above volunteer services have been received and that the grant will be used to support the primary objectives of this organization which is classified as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code, or an instrumentality of a state or local government under IRC Section 170(c)(1).

Signature of Authorized Officer _____ Date _____

AGENDA ITEM 7:

Tax Matters

A. Monthly Collections Report

MANAGER'S COMMENTS:

Mr. Tom Pitts with the Watauga County Tax Department will present the monthly collections report and be available for questions and discussion. No Board action is required as the report is for your information only.

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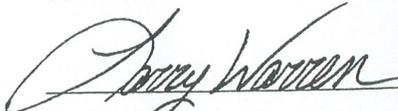
Monthly Collections Report

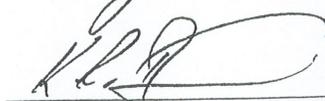
WATAUGA COUNTY

Bank deposits of the following amounts have been made and credited to the account of Watauga County. The reported totals do not include small shortages and overages reported to the Watauga County Finance Officer

Monthly Report JUNE 2011

	<u>Current Month</u> <u>Collections</u>	<u>Current Month</u> <u>Percentage</u>	<u>Current FY</u> <u>Collections</u>	<u>Current FY</u> <u>Percentage</u>	<u>Previous FY</u> <u>Percentage</u>
<u>General County</u>					
Taxes 2010	\$ 210,355.14	0.73%	\$27,279,343.02	97.33%	97.42%
Prior Year Taxes	36,024.16				
Solid Waste	9,523.73	0.37%	1,814,415.66	97.29%	97.31%
Green Box Fees	3,118.33	0.44%	495,995.50	96.59%	96.64%
Total County Funds	\$ 259,021.36		\$29,589,754.18		
<u>Fire Districts</u>					
Foscoe Fire	\$ 3,734.76	0.75%	\$ 445,826.29	97.54%	97.72%
Boone Fire	8,917.11	1.12%	581,325.29	96.85%	95.95%
Beaver Dam Fire	910.16	0.75%	106,669.49	95.99%	97.09%
Stewart Simmons Fire	791.81	0.44%	156,536.86	94.75%	97.78%
Zionville Fire	1,758.14	1.13%	103,959.99	94.99%	96.55%
Cove Creek Fire	2,735.21	0.96%	216,209.08	96.30%	96.06%
Shawneehaw Fire	1,228.04	1.00%	89,374.16	96.20%	96.83%
Meat Camp Fire	1,129.89	0.78%	119,906.47	96.87%	96.72%
Deep Gap Fire	1,345.41	0.60%	172,904.18	95.57%	96.62%
Todd Fire	311.51	0.50%	43,305.25	97.95%	97.73%
Blowing Rock Fire	2,700.31	0.53%	457,749.09	98.05%	97.77%
M.C. Creston Fire	57.18	0.87%	3,131.76	86.61%	89.89%
Foscoe Service District	215.39	0.29%	66,249.45	96.70%	97.64%
Beech Mtn Service Dist	39.66	2.14%	1,750.55	99.85%	99.91%
Cove Creek Service Dist	0.00	0.00%	301.10	100.00%	100.00%
Shawneehaw Service Dis	17.40	0.29%	5,172.44	96.60%	98.42%
Blowing Rock Contract	N/A	N/A	N/A	N/A	N/A
Total Fire Districts	\$ 25,891.98		\$ 2,570,371.45		
<u>Towns</u>					
Boone	\$ 52,854.33	0.88%	\$ 4,919,388.75	97.94%	98.22%
Municipal Services	233.05	0.19%	116,277.50	98.15%	99.05%
Blowing Rock	2,626.09	5.53%	42,643.53	91.93%	95.49%
Beech	2,027.23	5.59%	33,049.55	91.16%	92.18%
Seven Devils	674.55	6.76%	9,048.32	90.14%	86.79%
Boone MV Fee	1,077.79	6.92%	12,856.90	83.24%	N/A
Total Town Taxes	\$ 59,493.04		\$ 5,133,264.55		
Total Amount Collected	\$ 344,406.38		\$37,293,390.18		

 Tax Collections Director

 Tax Administrator

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AGENDA ITEM 7:

Tax Matters

B. Refunds and Releases

MANAGER'S COMMENTS:

Mr. Pitts will present the Refunds and Releases Report. Board action is required to accept the Refunds and Releases Report.

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COMMISSIONER'S REPORT FOR 06/01/11 - 06/30/11
 RELEASES SUBMITTED 07/01/11

PAGE 1

 Good Pickin'
 Run Date : 06/30/11

Releases ***

Taxpayer	Taxbill	Control#	Code	Amount	Reason
1538164 VAUGHN, KEVIN WAYNE	10VZWF7919	17648	G01 F01	0.94 0.15	SOLD VEHICLE
1650966 PALERMO, SHARRON WHITE	10VAAK4311	17650	G01 F02	82.88 10.59	DEALERSHIP TITLED VEHICLE INCORRECTLY NEVER OWNED BY CUSTOMER
1642292 LEFEBVRE, ANDREW JOSEPH	09VTA38563	17651	G01 F02	9.73 1.24	OVERLAPPING TAGS INS HEARING
1640877 CORNELL, DAVID S CORNELL, MARISA G	10VXV7445	17652	G01 F04	3.39 0.54	OVERLAPPING TAGS
1563845 COOPER, CLAUDE EVERETTE JR COOPER, LOUISE DICKERT	10VXPS6990	17653	G01 F11	10.59 1.69	SOLD VEHICLE TURN IN TAG
1649967 METCALF, GREGORY EDWARD	10VZYX8792	17654	G01 F02	13.02 1.66	TURN IN TAG
1641576 HOLLARS, PASSIONS NICHOLE	09VYWY7747	17655	G01 F09	34.52 3.31	DOUBLE BILL
1651016 SHULTZ, CARL WAYNE	10VBY80781	17656	G01 F01	6.51 1.04	TURN IN TAG
1568629 JOHNSON, HENRY LYNN	10VXSL5653	17658	G01 F08	5.39 0.86	TURN IN TAG
1649091 BOEDFELD, STEVEN EDWARD BOEDFELD, JENNIFER DAWN S	10VZNR5890	17659	G01 C02	7.52 8.88	ADJ FOR SALE PRICE
1623092 GARDNER, ERIC WILLIAM	10VWPY1334	17660	G01 F10	21.16 3.38	MOVED TO HAWII
1592073 BRYAN, JENNIFER WATSON BRYAN, ANTHONY WAYNE	05VJENNY73	17663	G01 F12	16.63 1.43	TURN IN TAG
1649819 BROWN, SANDRA RODRIGUEZ	10VZWF9700	17664	G01 F09	0.47 0.05	TURN IN TAG
1649707 SQUIRES, PATRICIA STRICKLAND	10VBL90930	17665	G01 F12	4.57 0.73	LIVES IN COLUMBUS CTY
1588322 CLINE, TOMMIE WILLOUGHBY	10VVRJ7161	17666	G01 F12	15.23 2.43	SOLD VEHICLE
1403294 REECE, KAYLENE ELIZABETH	10A1994393586000	17667	G01 F06	35.68 5.70	INCORRECT ACREAGE

Releases ***

Taxpayer	Taxbill	Control#	Code	Amount	Reason
1403294 REECE, KAYLENE ELIZABETH	09A1994393586000	17668	G01 F06	35.68 5.70	INCORRECT ACREAGE
1403294 REECE, KAYLENE ELIZABETH	08A1994393586000	17669	G01 F06	35.68 5.70	INCORRECT ACREAGE
1403294 REECE, KAYLENE ELIZABETH	07A1994393586000	17670	G01 F06	35.68 5.70	INCORRECT ACREAGE
1403294 REECE, KAYLENE ELIZABETH	06A1994393586000	17671	G01 F06	35.68 5.70	INCORRECT ACREAGE
1403294 REECE, KAYLENE ELIZABETH	05A1994393586000	17672	G01 F06	45.03 5.70	INCORRECT ACREAGE
1635236 COFFEY, JENNIFER DIANE	10VZRW5964	17673	G01 F12	36.90 5.90	TURN IN TAG
1609929 FLOYD, TONI W	10VPPF9297	17675	G01 CF2 C02	45.48 5.00 53.76	TURN IN TAG
1650368 BOONE, RICHARD EARL	10VDV3242	17676	G01 F01	12.33 1.97	BILLED AND PAID AVERY CO
1642319 MILLER, CHRISTOPHER LEE	09VYXS2967	17677	G01 F05	1.64 0.26	VEHICLE SOLD
1593708 CORUM, CHADWICK ANTHONY	10VYRV8393	17678	G01 F06	7.06 1.13	TAG TURNED IN
1608922 WALLACH, DANA EVAN	10VVWL9619	17679	G01 F09	10.24 0.98	SOLD VEHICLE
1620596 OSBORNE, DANNY LEE	10VXPS7385	17681	G01 F06	21.43 3.42	OVERLAPPING TAGS INSURANCE
1646721 MILTON, JEAN ESTER	10VYRX7415.1	17683	G01 C02	1.34 1.58	RELEASE PER KRB
1552337 WASHBURN, DIANE LYNN	10VXPY1591	17684	G01 F10	18.18 2.90	TAG TURNED IN
1616382 PEPPER, SUSAN GRAHAM	10VSPX7504	17685	G01 F09	7.24 0.69	TAG TURNED IN
1585562 MATHESON, RALPH JUNIOR	10VYRW1058	17686	G01 F07	2.41 0.39	TURN IN TAG

Releases ***

Taxpayer	Taxbill	Control#	Code	Amount	Reason
1624843 SUMMERS, KIMBERLY ANN	10V8728SM	17687	G01	19.47	TURN IN TAG
			C03	17.42	
1607414 MUNDAY, TRINITY ANN	09VZRK3056	17688	G01	18.03	TAG TURNED IN
			FS1	2.88	
1569376 FOREST AT CRESTWOOD INC	10A1899700455000	17689	G01	1,668.60	COMMON AREA
			F12	266.55	
1569376 FOREST AT CRESTWOOD INC	09A1899700455000	17690	G01	1,668.60	COMMON AREA
			F12	266.55	
			A0	3.00	
1569376 FOREST AT CRESTWOOD INC	08A1899700455000	17691	G01	1,668.60	COMMON AREA
			F01	266.55	
			A0	3.00	
1606890 RILEY, ELIZABETH KNUPP RILEY, MARIAN AUBREY	10VAAF1103	17692	G01	3.98	BODY COND AND MILEAGE
			F01	0.64	
1650197 HARRISON, MICHAEL LAFAYET HARRISON, LESLIE MICHELLE	10VBZ30224	17693	G01	0.94	LIVES IN CALDWELL
			F10	0.15	
1622297 MCCARTHY, TIMOTHY MARK	10V2T5871	17696	G01	2.14	TURN IN TAG
			C02	2.53	
1620395 FARTHING, JOHN MICHAEL	10VYTB7139	17698	G01	10.69	TURN IN TAG
			F04	1.71	
1649157 EAN HOLDINGS LLC	10VAAZ3749	17702	G01	93.90	RENTAL
			F02	12.00	
1649157 EAN HOLDINGS LLC	10VAAY5228	17703	G01	93.90	RENTAL
			F02	12.00	
1649157 EAN HOLDINGS LLC	10VAAY5227	17704	G01	77.75	RENTAL
			F02	9.94	
1649157 EAN HOLDINGS LLC	10VAAY5222	17705	G01	109.55	RENTAL
			F02	14.00	
1640626 MILLER, MEGHANN ELIZABETH	10VTA38583	17707	G01	21.94	OVERLAPPING TAGS
			F11	3.51	
1647379 CONNEXION TECHNOLOGIES CAPITOL BROADBAND LLC	10A1647379.99.1	17708	G01	1,695.95	LOCATED IN WILKES COUNTY
			F05	270.92	

Good Pickin'
Run Date : 06/30/11

COMMISSIONER'S REPORT FOR 06/01/11 - 06/30/11
RELEASES SUBMITTED 07/01/11

COMRPT.WGA
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Releases ***

Releases Summary

Code	Amount
A0	6.00
C02	66.75
C03	17.42
CF2	5.00
F01	270.35
F02	61.43
F04	2.25
F05	271.18
F06	38.75
F07	0.39
F08	0.86
F09	5.03
F10	6.43
F11	5.20
F12	543.59
FS1	2.88
G01	7,774.27
=====	
TOTAL	9,077.78
RELEASES	

REFUND TOTALS BY YEARS

Refunds ***

Exp.	Taxbill	Control#	Code	Amount	Reason
516604	MATHESON, CHAD L MATHESON, AMANDA	10VVYN9330	17649	G01 2.34 F06 0.37	SOLD VEHICLE
598701	GURGANUS, JULIE EPPS GURGANUS, CECIL RANSOM	10VXVJ1104	17657	G01 4.70 F11 0.75	TURN IN TAG
548162	WINKELMANN, ASHLEY ARMFIELD	10VRYK5761	17662	G01 13.53 C03 12.11	TURN IN TAG
335629	STUBER, JOHN E	10V3N3962	17680	G01 0.94 F10 0.15	INCORRECT VALUE
649224	HONDA LEASE TRUST	10VYZC6149	17682	G01 47.26 F02 6.04	SHOULD HAVE BEEN BILLED MCDOWELL OLD FORT
605951	ROA, GUILLERMO DANIEL	10VSYC6886	17694	G01 8.61 F02 1.10	TURN IN TAG
637965	WALLS, KRISTEN ANNE ELLEN	10VWYT8746	17697	G01 4.20 F02 0.54	TURN IN TAG
637761	HALLMAN, ANNE SPEED	10VXZJ9405	17699	G01 1.52 C02 1.80	TURN IN TAG
543151	BOONE, JOYCE M BOONE, MICHAEL T	10VYZS8794	17700	G01 16.80 F09 1.61	TAG TURNED IN
626911	HERRING, WILLIAM ARTHUR III HERRING, DISA MAST	10VWWX3754	17701	G01 3.88 F07 0.62	TURN IN TAG
649162	ELLIS, GEORGE FRANCIS ELLIS, LORRAINE MARIE	10VZWF8858	17706	G01 29.38 F12 4.69	TAG TURNED IN
551100	HUSKINS, JACK THOMAS III	10VWNY4125	17709	G01 5.88 F10 0.94	TAG TURNED IN

Good Pickin'
Run Date : 06/30/11

COMMISSIONER'S REPORT FOR 06/01/11 - 06/30/11
REFUNDS SUBMITTED 07/01/11

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Refunds ***

Refunds Summary

Code	Amount
C02	1.80
C03	12.11
F02	7.68
F06	0.37
F07	0.62
F09	1.61
F10	1.09
F11	0.75
F12	4.69
G01	139.04
=====	
TOTAL	169.76
REFUNDS	

REFUND TOTALS BY YEARS

C0210	1.80
C0310	12.11
F0210	7.68
F0610	0.37
F0710	0.62
F0910	1.61
F1010	1.09
F1110	0.75
F1210	4.69
G0110	139.04

AGENDA ITEM 7:

Tax Matters

C. Surplus Property Sale Request

MANAGER'S COMMENTS:

Mr. Pitts will present two properties (Hound Ears Section 7/Lots 19 & 20) that have gone through the upset bid process which concluded with a ten day period in which no upset bids were received for either property. Ms. Elaine Richards holds the current high offer of \$6,140 per lot for a total of \$12,280. The Board may accept or reject the bids as presented. Should the Board reject the bids, the upset bid process would begin again. The Board may accept the bids which would finalize the sale of the property, contingent upon the County Attorney drafting and executing the appropriate documents. Staff seeks direction from the Board.

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WATAUGA COUNTY TAX ADMINISTRATION

Courthouse, Suite 21 – 842 West King Street – Boone, NC 28607 – (828) 265-8036
FAX (828) 265-8140

MEMORANDUM



TO: Deron Geouque
FROM: Kelvin R. Byrd 
SUBJECT: County Surplus Property Lot 19/Lot 20 Sec 7 Hound Ears
DATE: 07/06/11

The 2 County owned properties at Hound Ears now has offers with no upset bids. The last upset bid offer is at \$6,140 per lot. The current high offer has been made by Elaine Richards of Blowing Rock. All advertising has been completed for the potential upset bid for the property. The board must approve the final high bid before the sale of the property is closed. Please include this on the boards next agenda.

PUBLIC NOTICE
SALE OF COUNTY PROPERTY

Offers as listed in the chart below have been submitted for the purchase of certain properties as listed below owned by the County of Watauga. The properties will be sold individually, will be sold "as is", and the County makes no representations concerning the property except as set forth herein.

Parcel ID	Property Description	Acre	Current High Offer Made By:	Amount of Offer	Minimum Amount of Upset Bid Required
1889-97-9259-000	Hound Ears Lot 19, Section 7	.295	Elaine Richards Blowing Rock, NC	\$6,140	\$6,497
1889-97-8363-000	Hound Ears Lot 20, Section 7	.334	Elaine Richards Blowing Rock, NC	\$6,140	\$6,497

Persons wishing to upset any of the above offers shall submit a sealed bid with their offer to the office of the County Manager, Suite 205, Watauga County Administration Building, 814 West King Street, Suite 205, Boone, North Carolina, by 3:00 p.m., Monday, June 27, 2011. At that time the Clerk to the Board of Commissioners shall open the bids, if any.

A qualifying higher upset bid is one that raises the existing offer to an amount not less than the amount listed in the above chart and which fully conforms to the requirements in the Resolution the Board of Commissioners adopted March 15, 2011, on file with the Clerk to the Board, which is incorporated herein by reference. The Resolution may also be viewed on the County's website at <http://www.wataugacounty.org>.

A qualifying higher bid must be accompanied by a deposit in the amount of five percent (5%) of the bid; the deposit must be made in cash, cashier's check, or certified check. The County will return the deposit on any bid not accepted, and will return the deposit on an offer subject to upset if a qualifying higher bid is received. The County will return the deposit of the final high bidder at closing.

The Buyer must pay cash at closing.

The Board of Commissioners must approve the final high offer before the sale is closed, which it will consider doing at its next regular meeting after the final upset bid period has passed. The County reserves the right to withdraw the property from sale at any time before the final high bid is accepted and the right to reject, at any time, all bids.

Further information regarding the upset bid process may be obtained at the office of the County Manager, Suite 205, Watauga County Administration Building, 814 West King Street, Boone, North Carolina, and further information regarding the individual properties may be obtained from the Tax Administrator, Room 121, Watauga County Courthouse, 842 West King Street, Boone, North Carolina, during normal business hours.

AGENDA ITEM 7:

Tax Matters

D. Request for Appointment of Plat Review Officers

MANAGER'S COMMENTS:

Mr. Pitts will present a resolution which, if adopted, will appoint Ms. Marilyn Osborne and Ms. Tracy Yates, both current Tax Department employees, as Plat Review Officers. Due to the recent retirement of an employee, Mr. Pitts is currently the only designated Plat Review Officer in the County. Adopting the proposed resolution will give Ms. Osborne and Ms. Yates the authority to review plats prior to recording, and to determine if the plats meet statutory requirements for recording. Board action is requested to adopt the resolution.

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WATAUGA COUNTY TAX ADMINISTRATION

Courthouse, Suite 21 – 842 West King Street – Boone, NC 28607 – (828) 265-8036
FAX (828) 265-8140

MEMORANDUM

TO: Deron Geouque
FROM: Kelvin R. Byrd *KRB*
SUBJECT: Plat Review Officers
DATE: 07/06/11



The Land Records section of the Tax Admin. Department needs to have 2 additional review officers approved by the board. Review officers are required to sign the document before the recording of the plat in the Register of Deeds. After the retirement of Carolyn Hodges we have been reduced to having Tom Pitts as the only Review Officer. The request is for Marilyn Osborne and Tracy Yates to be added to the list of staff that can sign the document. Tom Pitts will be on hand to answer any questions that may arise. A resolution is required to accept these 2 individuals.

STATE OF NORTH CAROLINA

DRAFT

COUNTY OF WATAUGA

**RESOLUTION OF THE WATAUGA COUNTY BOARD OF COMMISSIONERS
TERMINATING/APPOINTING PLAT REVIEW OFFICERS**

WHEREAS, North Carolina General Statute 47-30.2 transfers from the Register of Deeds to a Review Officer the responsibility for reviewing land plats to determine whether they meet recording requirements; and

WHEREAS, North Carolina General Statute 47-30.2 requires the Board of Commissioners to, by resolution, appoint one or more persons as the Review Officer(s); and

WHEREAS, the person(s) appointed should “if reasonably feasible be certified as a property mapper pursuant to General Statute 147-54.4;” and

WHEREAS, upon the retirement of Carolyn R. Hodges, Watauga County currently has one certified Review Officer, Tom Pitts, on staff; and

WHEREAS, Marilyn M. Osborne and Tracy F. Yates are or will be certified property mappers currently employed in the Watauga County Tax Department.

NOW THEREFORE, BE IT RESOLVED that the Watauga County Board of Commissioners hereby removes Carolyn R. Hodges from her duties as Review Officer, upon her termination of employment with Watauga County; and

BE IT FURTHER RESOLVED that the Board appoints Marilyn M. Osborne and Tracy F. Yates of the Watauga County Tax Administration Department as Review Officers; and

BE IT FURTHER RESOLVED that the officer(s) shall review all plats (except as exempted by the statute) prior to recording, and determine if the plats meet statutory requirements for recording.

ADOPTED this the 12th day of July, 2011

Nathan A. Miller, Chairman
Watauga County Board of Commissioners

ATTEST:

Anita J. Fogle, Clerk to the Board

AGENDA ITEM 8:

Watauga Opportunities, Inc., Request for Loan Payment Waiver

MANAGER'S COMMENTS:

Mr. Joe Furman will present a request from Watauga Opportunities, Inc., to waive their final \$10,000 loan payment to the County. In 2005, Watauga Opportunities entered into an agreement with Watauga County to loan or grant \$50,000 for upgrades to their facility. The loan was to be repaid in \$10,000 increments; however, if the agreed upon number of jobs were created and maintained, the annual installment was to be forgiven. Mr. Maybee has furnished documentation to the Economic Development Commission (EDC) that the appropriate number of jobs were maintained this past fiscal year. Board approval is requested.

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**WATAUGA
OPPORTUNITIES, INC.**
ENABLING SELF-RELIANCE THROUGH EMPLOYMENT

June 27, 2011

Joe Furman
Watauga County Office of Economic Development
P.O. Box 404
Boone, NC 28607

Dear Joe,

I am writing you once again regarding the \$50,000 Economic Development loan from the Watauga County Commission to Watauga Opportunities which was initiated in July 2005 and modified in July 2006. As you know, the terms of this loan call for 5 annual installments of \$10,000 starting in July 1, 2007. These \$10,000 installments are to be waived/converted to a grant each year that Watauga Opportunities is able to maintain the 10 FTE jobs created. I am pleased to inform you that for year end June 30, 2011 Watauga Opportunities was able to maintain 12 FTE jobs created, paying an average of \$11.64 per hour, allowing for the waiver/conversion to grant of the 2011 \$10,000 payment. This conversion is the final installment of the \$50,000 EDC loan.

I would like to take this opportunity to thank you and the Commissioners for supporting Watauga Opportunities Economic Development efforts. This support has allowed us to expand our capacity for both current and future growth opportunities.

As you know as part of MCMP, this past year Watauga Opportunities applied for and received a Golden Leaf grant to fund 50% of a 4,000 square foot building expansion of our controlled environment medical manufacturing space. This new space has allowed for the acquisition of new medical contracts and the hiring of medical manufacturing employees. With the addition of new medical manufacturing machinery this summer/fall, we expect even further employment growth in the medical area for the coming year. I would also like to remind the Commissioners that Watauga Opportunities' annual local economic impact as determined year end 2008 is \$2.87 million.

I will continue to keep you updated on economic development issues involving Watauga Opportunities. Please contact me with any questions or comments.

Sincerely,

Michael Maybee
President/CEO

AGENDA ITEM 9:

Emergency Management Matters

A. Proposed Software Agreement with C3 Applications, LLC

MANAGER'S COMMENTS:

Mr. Steve Sudderth will present a maintenance agreement from C3 Applications for the County's Emergency Operations Center and Fire Marshal software. The agreement is for five years at a cost of \$1 per year. Mr. Sudderth will be available for any questions. The County Attorney has already reviewed the agreement. Board action is requested.

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C₃ Applications

391 Raleigh Wilson Road
Vilas, North Carolina 28692
919.518.9728

C₃ Applications, LLC MAINTENANCE AGREEMENT

THIS MAINTENANCE AGREEMENT (the "Agreement") is made this day by and between C₃ Applications, a North Carolina Limited Liability Company ("C₃ Applications") and Watauga County, North Carolina Office of Emergency Management, herein know as the Licensee.

RECITALS

WHEREAS, C₃ Applications manufactures and markets application software designed to assist emergency managers and planners in government agencies and industries in managing emergencies, disasters and catastrophes (the "Software"); and

WHEREAS, Licensee desires to obtain a maintenance contract for the Software and C₃ Applications is willing to grant Licensee an agreement for a term of 5 years in which C₃ Applications will maintain the Software subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual premises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Definitions

1.1 "Agreement" means this Software Maintenance Agreement, including any schedules attached hereto.

1.2 "Documentation" means any and all product information or written or electronic versions of user manuals and/or reference manuals that may be provided by C₃ Applications to Licensee from time to time for use in connection with Software.

1.3 "Software" means the C₃ Applications Software described in more detail in Schedule A attached hereto, along with accompanying Documentation.

1.4 "Specifications" means the specifications for the Software contained in the Documentation.

2. Grant of License

2.1 License. Subject to the terms and conditions hereof, C₃ Applications hereby grants to Licensee and Licensee accepts from C₃ Applications, a non-exclusive, non-transferable right and license to use the Software in perpetuity as discussed in the meeting on October 22, 2009 where a C₃ Applications gave Watauga County full rights to utilize the software as long as the intellectual property rights to the software code

are held by C₃ Applications. Licensee accepts all terms and conditions of third party software, where applicable.

2.2 Prohibited Uses.

2.2.1 Licensee will not in any way transfer the Software or Documentation to a third party, loan or rent access to the Software or Documentation or otherwise copy or merge the Software or Documentation, in whole or in part, except as expressly permitted in this Agreement. Licensee agrees not to use the Software or Documentation to provide emergency, disaster or catastrophe management or planning services for the benefit of any person or entity not a party to this Agreement and not otherwise affiliated with the contracting entity that is licensed to use the Software, without the prior written consent of C₃ Applications.

2.2.2 Licensee will not copy, modify, decompile, disassemble, reverse engineer or translate the Software, or copy, reduce, modify or translate the Documentation, and Licensee will not remove or alter any proprietary notices, labels or marks on the Software or Documentation. If Licensee violates any of the terms of this Section 2.2, this Agreement shall automatically and immediately terminate. Such termination is to be in addition to and not in lieu of any criminal, civil or other remedies available to C₃ Applications.

2.3 C₃ Applications reserves all rights to duplicate, copy, modify, make derivative works and issue further licenses to the Software and the Documentation.

2.4 Licensee shall designate one primary contact person with whom C₃ Applications shall deal with in matters pertaining to this Agreement.

3. Deliverables

3.1 Deliverables. The Licensee already has a copy of the software in their possession, therefore, there are no deliverables other than the maintenance of the software as described in Section 9 of this agreement.

3.2 Bundled Software. The Software as delivered may be bundled with Third Party software as required by C₃ Applications.

4. Ownership

4.1 Software and Modifications. The Software is a proprietary product owned by C₃ Applications and is protected by United States copyright laws. Except for the limited rights specifically granted to Licensee under this Agreement, C₃ Applications retains all right, title and interest, including all intellectual property rights, to the Software.

5. Payment

5.1 Initial Maintenance Fee. In consideration of the grant to Licensee to use the Software as provided hereunder, Licensee shall pay to C₃ Applications an initial, non-refundable maintenance and support fee at \$1 a year with an initial 5 year term. The initial license fee paid by Licensee entitles Licensee to use the software system, access to customer support, maintenance and any upgrades which C₃ Applications may make available from time to time for a period of one calendar year from the date of initial notification to the customer via electronic mail, to the primary contact as described in Section 2.4 of this document, that the web application has been configured for the Licensee's use.

5.2 **Taxes.** The Initial License Fee is net of any national, federal, state, province, municipal or other government excise, sales, use, occupational or like taxes, duties, customs or penalties now in force or enacted in the future, and may be increased by such amount that C₃ Applications is required to collect and pay based on this transaction. Licensee will pursue or obtain any certificate of exemption or similar document or proceeding if any effort is to be made to exempt this transaction from such obligation.

6. Audit

6.1 C₃ Applications shall have the right to audit Licensee and any third party having copies of the Software and Documentation at our discretion during normal business hours to ensure Licensee and such other parties are using the Software and related Documentation in accordance with, and not in violation of, any terms of the license granted by this Agreement. C₃ Applications may contact any such third party to conduct the audit as provided herein.

7. Testing, Supervision; Security

7.1 Licensee agrees that before its use of the Software, Licensee will test the Software for ninety (90) days sufficiently to assure that the Software functions adequately for Licensee's intended emergency management usage. Licensee and not C₃ Applications, will be responsible at all times for Licensee's management of any incident, natural or man-made, that may impact Licensee or fall under Licensee's jurisdiction. Licensee shall further be responsible for all persons and entities who utilize the Software, for maintenance of proper machine configuration, back-up plans, security, insurance, and other activities necessary to enable Licensee to utilize the Software effectively. Licensee agrees to restrict access to the Software to those personnel with a legitimate need for such access, by means of password protection and other effective techniques, and to use appropriate safeguards of issued passwords. C₃ Applications will coordinate access levels with the contact person listed in Section 2.4 to determine which functional areas should be granted various levels of access within the Software. Any consequences of a breach in security is the responsibility of the Licensee.

8. Training

8.1 C₃ Applications may provide training on the software at an additional expense.

8.2 Licensee shall be responsible for all costs and expenses of all trainees and trainers including room, board and transportation, as specified in Schedule A, while attending the training.

9. Support Services

9.1 For a period of one (5) years from the date of this Maintenance Agreement, C₃ Applications will provide annual support services ("Support") to the Licensee. To continue Support beyond the initial five (5) year period, Licensee must pay C₃ Applications an annual renewal fee prior to the expiration of the preceding sixty (60) month period for Support to continue to be provided. Prices and services for Support Services are subject to change. Any such changes made within the sixty (60) month period of agreement will be effective upon renewal.

10. Maintenance Services

10.1 For a period of five (5) years from the date of initial notification in Section 5.1, C₃ Applications will provide annual maintenance services ("Maintenance") to the Licensee as described in Schedule A. To obtain Support beyond the initial five (5) year period, Licensee must pay C₃ Applications an annual renewal fee prior to expiration of the preceding sixty (60) month period for maintenance to continue to be provided. Prices for Support Services are subject to change. Any such changes made within the sixty (60) month period of agreement will be effective upon renewal.

10.2 "Maintenance" for the software includes all updates and upgrades of the Software and updated Documentation that may be developed by C₃ Applications in its sole discretion and made available to C₃ Applications' comparable licensees during the relevant sixty (60) month period. All such updates and upgrades shall be considered Software and Documentation for the purposes of this Agreement. Any third party products integrated with C₃ Applications' product may not be included as part of upgrade but offered as optional/fee-based upgrades.

10.3 In order to remotely provide maintenance as described in this section, the Watauga County Information Technology Department will have to provide David Hancock (dhancock@c3applications.com) with all Identification Files ("*.id") that were on his Watauga County computer as of his last day of work in Watauga County. As well, TCP port 1352 will have to be opened on the county firewall at address that links to <https://em.watgov.org> (currently 152.31.128.44). This is the Lotus Domino port that controls replication and provides for maintenance services. In addition, to remotely test Depiction Mapping services, mail ports 110 and 25 shall be opened as well.

11. Consulting Services

11.1 At Licensee's option, Licensee may retain C₃ Applications in order to provide additional consulting services to Licensee in the areas of systems analysis, development, conversion, customization, or in developing modules or enhancements to the Software (the "Consulting Services"). The Consulting Services will be provided at C₃ Applications' then customary hourly rates, which are subject to change at C₃ Applications' sole discretion, or pursuant to written agreements entered into between Licensee and C₃ Applications.

11.2 With respect to all Consulting Services, the Parties agree that C₃ Applications provides such Consulting Services as an independent contractor and shall own any and all work product created or developed as a result of providing Consulting Services to Licensee, including, without limitation, any source code, scripts or subroutines. The work product of such Consulting Services shall be considered Software and Documentation for the purposes of this Agreement. C₃ Applications will grant Licensee a non-exclusive license to use all work product(s) provided in conjunction with any Consulting Services.

12. Representations and Warranties

12.1 Representations and Warranties of C₃ Applications. C₃ Applications represent and warrants that:

12.1.1 Title. C₃ Applications has all right, title and interest in and to the Software and the right to enter into and grant the license rights to Licensee as set forth in this Agreement. C₃ Applications has the right and does grant Licensee the right to use all third party software incorporated into the Software delivered to Licensee pursuant to this Agreement, as long as it is used in accordance with that third party software's

licensing agreement.

12.1.2 Viruses. C₃ Applications has used reasonable commercial efforts to ensure that the Software delivered to Licensee under this Agreement does not contain any "viruses" that would materially affect Licensee's ability to use the Software.

12.1.3 Function. C₃ Applications does not warrant that the functions of the Software will meet Licensee's requirements or that the operation of the Software will be either error free or appear precisely as described in the documentation. Licensee is responsible for configuring and inputting data into the Software to achieve Licensee's intended results and for the use and results obtained from the Software. The Software is to be used with the computer hardware and operating system for which it is designed, and in accordance with the Documentation and Specifications. Any misuse or unauthorized modification of the software voids this warranty.

12.1.4 No Infringement. To the best of C₃ Applications knowledge, the Software, when used in accordance with any Documentation and Specifications, does not infringe, breach or constitute a misappropriation of the intellectual property or other proprietary or contractual rights of any third party.

12.2 DISCLAIMER OF OTHER WARRANTIES. EXCEPT AS SPECIFICALLY STATED IN THIS SECTION 12, THE SOFTWARE IS PROVIDED AND LICENSED "AS IS" WITHOUT WARRANTY OF ANY KIND. THE WARRANTIES IN THIS SECTION 12 ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING, BUT WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

12.3 Representations and Warranties of Licensee. Licensee represents and warrants that:

12.3.1 Licensee is authorized to enter into this Agreement and comply with the obligations provided herein.

13. Indemnity and Limitation of Liability

13.1 By C₃ Applications.

13.1.1 C₃ Applications shall, at its own expense, defend, indemnify and hold harmless Licensee from and against any claim that the Software infringes any copyright, trade secret, patent or other intellectual property right of any third party and will pay any costs, damages and reasonable attorney fees finally awarded against Licensee as a result of any such claim, provided that (i) Licensee gives C₃ Applications prompt written notice of any such claim, (ii) C₃ Applications has the right to control the defense or settlement of such claim, and (iii) Licensee cooperates in the defense or settlement of such claim. The foregoing indemnification does not extend to any claim arising out of any use of the Software other than as permitted under this Agreement or any enhancement or modification of the Software commissioned or approved by Licensee or any enhancement or modification of the Software by anyone other than C₃ Applications or any use of the Software with any other software, hardware, operating environment or system other than as contemplated herein, or any problems, defects or failures not caused by C₃ Applications.

13.1.2 If C₃ Applications receives any notice or threat of a claim or demand or if Licensee's use of the Software shall be prevented by injunction, or if C₃ Applications otherwise determines, C₃ Applications may at its option and expense, procure for Licensee the right to continued use of the Software as provided

hereunder; modify the Software so that it is no longer infringing; replace the Software with software of equal or superior functional capability; or terminate this Agreement and refund the remaining prorated License Fee to Licensee.

13.1.3 This Section 13 states C₃ Applications' entire liability and Licensee's exclusive remedies for proprietary rights infringement. In no event shall C₃ Applications liability exceed the total amount paid by Licensee to C₃ Applications.

13.1.4 LIMITATION OF LIABILITY. IN NO EVENT SHALL C₃ APPLICATIONS HAVE ANY LIABILITY TO LICENSEE OR ANY OTHER PARTY, WHETHER BASED ON CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), WARRANTY OR ANY OTHER LEGAL OR EQUITABLE GROUND FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, AND IN NO EVENT WILL C₃ APPLICATIONS' LIABILITY EXCEED THE AMOUNT OF THE LICENSE FEE PAID BY LICENSEE UNDER THIS AGREEMENT.

13.2 By Licensee.

13.2.1 Licensee shall, at its own expense, defend, indemnify and hold harmless C₃ Applications from and against any claim arising from its activities involving use of the Software, including without limitation any claim arising out of use of the Software during any emergency or disaster, and will pay any costs, damages and reasonable attorney fees finally awarded against C₃ Applications as a result of any such claim, provided that (i) C₃ Applications gives Licensee prompt written notice of any such claim, (ii) Licensee has the right to control the defense or settlement of such claim, and (iii) C₃ Applications cooperates in the defense or settlement of such claim. The foregoing indemnification does not extend to any claim covered by C₃ Applications indemnification obligations as provided above.

13.2.2 Licensee shall be responsible for all personal injury and property damage claims arising out of or relating to the use of the Software. Licensee agrees to defend and hold C₃ Applications harmless from and against any and all claims of personnel injury or property damage, including attorney's fees and other costs and expenses of defending such claims, arising out of Licensee's use, misuse or failure to use Software in connection with any man made or natural events, including without limitation, any allegations that the Software was a contributing cause to any such injury or damage.

14. **Confidentiality**

14.1 Confidential Information. Licensee acknowledges that the Software, including without limitation all source code, object code, flow charts and Documentation, and related information disclosed to or learned by Licensee, are confidential and proprietary materials of C₃ Applications (herein "Confidential Information"). Licensee acknowledges that C₃ Applications Confidential Information is of great value to C₃ Applications and that its value is derived in large part from its confidentiality.

14.2 Treatment. All such Confidential Information shall be kept and maintained in confidence by Licensee and shall not be used or copied except as specifically permitted herein. Confidential Information shall not be disclosed other than to employees having a need to know and who are required to carry out the use permitted by this Agreement, and Confidential Information shall not be disclosed to third parties without C₃ Applications prior written consent. Licensee shall enter into appropriate written agreements with all persons having access to the Confidential Information requiring them to comply with the terms of this Section 14. Licensee shall adopt and maintain other procedures reasonably calculated to protect such Confidential Information.

14.3 Exclusions. The Confidential Information shall not include information which Licensee can conclusively establish (i) was in its possession at the time of disclosure as shown by its written business records; (ii) prior to the time of disclosure, was part of the public domain without the act or omission of Licensee or its agents or contractors; (iii) is disclosed to the Licensee by a third party not under a legal obligation to maintain the confidentiality of such information; or (iv) was independently developed by Licensee without reference to the Confidential Information as shown by Licensee's written business records. Licensee may disclose Confidential Information in accordance with judicial or other governmental order, provided that Licensee shall provide C₃ Applications with reasonable prior written notice of such order and shall comply with any applicable protective order or an equivalent thereof.

14.4 Equitable Relief. In recognition of the unique and proprietary nature of the Confidential Information, Licensee agrees that C₃ Applications remedies at law for breach of Licensee's obligations under this Section 14 are inadequate and C₃ Applications will, in the event of such breach, be entitled to equitable relief, including without limitation injunctive relief and specific performance without the requirement to post bond, in addition to any other remedies provided hereunder or available at law.

15. Term and Termination

15.1 Term. This agreement shall commence on the date of execution and will continue in full force and effect until terminated by either party as provided below.

15.2 Termination. Either party may terminate this Agreement in the event of a material breach by the other party hereto which continues after sixty (60) days written notice of said breach (which notice shall, in reasonable detail, specify the nature of the breach) by the non-defaulting party to the defaulting party. In the event of breach of the provisions of Sections 2.2, 5.1 or 10, C₃ Applications may, at its option, terminate this Agreement immediately upon written notice to Licensee.

15.3 Effect of Termination. In the event of termination of this Agreement by either party, the license granted to Licensee pursuant to Section 2 regarding perpetual use shall remain in place.

15.4 Termination of Distributor. This license is granted by C₃ Applications to Licensee and shall not be affected by any termination of C₃ Applications relationship with any distributor which has had direct dealings with Licensee.

16. Notices

16.1 Notices. Any notice required or permitted to be given under the terms of this Agreement shall be in writing and given by personal delivery, reputable courier or overnight delivery service, or sent by United States registered mail, postage prepaid, to C₃ Applications, LLC; 391 Raleigh Wilson Road, Vilas, NC 28692.

17. General

17.1 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, USA, excluding that body of law applicable to choice of law principles and excluding the United Nations Convention on Contracts for the International Sale of Goods and any legislation implementing such Convention, if otherwise applicable. In the event of a dispute under this Agreement, Licensee consents to the personal jurisdiction of the courts of the State of North Carolina or the

federal courts for the State of North Carolina.

17.2 Survival. The provisions of Sections 2.2, 4, 12.2, 13, 14 and 15.3 shall survive any expiration or termination of this Agreement.

17.3 Enforceability. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, illegal or unenforceable, such provision or part thereof which renders the provision valid, legal and enforceable, shall be severed from the Agreement and the other provisions or the remaining parts of that provision shall remain in full force and effect.

17.4 Entire Agreement. This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties hereto with respect to the subject matter hereof. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, expressed, implied or statutory, between the parties other than as expressly set forth in this Agreement. This Agreement can only be modified by a written agreement signed by both parties. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of the Settlement Agreement or any provisions hereof.

17.5 Remedies. The remedies expressly stated in this Agreement shall be in addition to and not in substitution for those generally available at law or in equity, except as limited by the terms of this Agreement.

17.6 Waiver. No waiver of any provision of this Agreement by a party shall be enforceable against that party unless it is in writing and signed by an authorized officer of that party.

17.7 Assignment. Licensee may not assign, transfer its rights or sub-license this Agreement or any rights granted hereunder without the prior written consent of C₃ Applications, which consent shall not be unreasonably withheld. C₃ Applications may assign this Agreement or any rights hereunder, including without limitation its rights to license payments, to any related entity or to a purchaser of all or substantially all of its assets or to a successor corporation in the event of a merger or other reorganization in which it is not the surviving entity.

17.8 Counterparts. This agreement may be executed simultaneously if two or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute but one and the same instrument.

17.9 Export Control Restrictions. The License agreement and any technical information, Software and Documentation supplied during the term of the License Agreement, is made subject to any restrictions concerning the export of products or technical data from the United States of America which may be imposed upon C₃ Applications or Licensee from time to time by the Government of the United States of America. Furthermore, Licensee agrees that at no time, either during the term of this License Agreement or thereafter, will Licensee knowingly export, directly or indirectly, any United States source technical data acquired from C₃ Applications under this License Agreement or any direct products of that technical data to any country for which the United States Government or any agency thereof at the time of the export requires export license or other governmental approval, without first obtaining that license or approval when required by applicable United States law.

IN WITNESS WHEREOF, the parties hereto by their duly authorized representatives have executed this Agreement as of the date first above written.

LICENSEE:

C3 Applications LLC

By: _____

By: _____

Name: Nathan A. Miller

Name: David Hancock

Title: Chairman, Board of Commissioners

Title: Managing Partner

Date: _____

Date: _____

WATAUGA COUNTY

ATTEST:

Anita J. Fogle, Clerk to the Board

SCHEDULE A

PURCHASED ICSolution SOFTWARE SUPPORT

Watauga County Pricing Schedule

QTY	DESCRIPTION	EXTENDED PRICE
	<i>ICSolution Maintenance</i> C₃ Applications	
5	Annual Support and Maintenance @ \$1.00 per year	\$5.00
TOTAL (Excluding any applicable taxes):		\$5.00

SCHEDULE B

SUPPORT

Support consists of telephone assistance to Licensee which answers technical questions relating to installation and use of the C₃ Applications Software only (not including third-party software and hardware). Only those product modifications completed by C₃ Applications, or otherwise authorized by C₃ Applications in writing to customer, are supported.

Telephone assistance is available during C₃ Applications regular business hours, 9:00 AM to 5:00 PM Eastern Standard Time or via pager/cell phone after these working hours (24 hours per day, 7 days per week). Normal response time to receive a reply from Customer Service is 4 hours or less during the week and within 6 hours on weekends.

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AGENDA ITEM 9:

Emergency Management Matters

**B. Proposed Lease with CB Radio, Inc., for FM Antenna Placement on
Buckeye Mountain Pole**

MANAGER'S COMMENTS:

Mr. Steve Sudderth, Fire Marshal/Emergency Management Coordinator, will present a request from CB Radio, Inc., dba WBEJ, for placement of an FM antenna on the County's old communication telephone pole on Buckeye Mountain. Mr. Don Crisp, with WBEJ, has agreed to pay \$500 per month, for three months, to lease the space and has agreed to transfer the electric meter into his name. If approved, you may wish to direct the County Attorney to prepare the proper documentation required for the lease. Direction from the Board is requested.

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July 12, 2011
Agenda

Deron Geouque

From: Steve.Sudderth
Sent: Friday, July 01, 2011 3:06 PM
To: Deron Geouque
Cc: Joe Furman; Jeff Virginia; Len.Hagaman; kellyeboo@webtv.net
Subject: FW: temporary fm antenna on pole

Mr. Geouque
I would like to request that we submit for approval by the Watauga County Commissioners at their next meeting a lease with CB Radio INC. The term of the lease will be for three months, and located on the old communications telephone pole on Buckeye Mtn. Mr. Crisp has agreed to pay \$500.00 per month and to transfer the electric meter into their cooperate name.
Would you like me to contact Mr. Eggers to develop the proper lease agreement to have for your review before the Commissioners meeting?

Steve Sudderth
Fire Marshal

From: Don Crisp [mailto:kellyeboo@webtv.net]
Sent: Friday, July 01, 2011 11:57 AM
To: Steve.Sudderth
Subject: temporary fm antenna on pole

Hello Steve,

Could you send me an agreement to sign, (even though I don't have exact dates), so I can send you first month rent on the pole on Buckeye Mountain. Do you have the coordinates of the pole we could use for our application, and the closest thing you have to street or road address for mapping purposes.
As I told you , this will be a low-power FM signal, which will re-broadcast a radio station from tri=cities for a period of two to three months.

Your contract will be with CB Radio inc. dba WBEJ, located in Elizabethton Tn., at 510 Broad street. I am president of CB Radio inc.

We will provide you with a letter from our engineer concerning interference, as relates to your frequencies.

Thank you for your help in this matter.

Don Crisp.....WBEJ RADIO

410 352 5703

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AGENDA ITEM 10:

Discussion of Offers from Lincoln Harris Investments, LLC, and Miller Properties, Inc.

MANAGER'S COMMENTS:

Time has been reserved to allow for further discussion of the recent purchase offers received for the old high school property.

The offer from Lincoln Harris Investments, LLC, in the amount of \$7,000,000 was presented at the May 3, 2011, Board meeting and stipulated that the County remove all structures currently on the property.

The offer from Miller Properties, Inc., in the amount of \$10,000,000 was presented at the June 28, 2011, Board meeting. The proposal contains several contingencies including an expiration date of August 3, 2011; a high water reserve; and a request for County and Town taxes to be forgiven for five years. At that meeting, the County Attorney stated that the North Carolina Constitution did not allow tax abatements.

An appraisal was ordered for the property and received at the end of June. Lincoln Harris is awaiting a response to their offer after the Board reviews the appraisal. The Miller Properties offer was rejected "as currently written" at the June 28th meeting. You may wish to consult the County Attorney, in either open or closed session, with legal questions as related to the offers or appraisal.

Staff seeks direction from the Board.

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***Watauga High School
Redevelopment Plan***

Boone, North Carolina

Prepared By:



**LINCOLN
HARRIS**

**David M. Connor
Vice President
Lincoln Harris
4140 Parklake Avenue, Suite 100
Raleigh, NC 27612
919.645.6968 (direct line)
919.840.0240 (fax)
dconnor@lincolnharris.com**

WATAUGA HIGH SCHOOL REDEVELOPMENT PLAN

TABLE OF CONTENTS

I. Letter of Intent

II. Site Plan & Aerials

- *Color Renderings*
- *Various Site Plan versions*

III. Site Work Estimates

IV. Geotech Report

V. Budget Summary

**LETTER OF INTENT AGREEMENT
FOR PURCHASE AND SALE OF REAL ESTATE**

PROPERTY: Approximately 74.68 acres, comprised of six parcels located on NC Hwy 105 in Boone NC with the following parcel ID numbers and corresponding acreage:

<u>PIN #</u>	<u>Acreage</u>
2910-02-7724-000	39.50
2910-01-5763-000	19.93
2910-13-4202-000	6.01
2910-13-0228-000	1.20
2900-92-7413-000	1.31
2910-11-0378-000	6.73

SELLER: Watauga County

PURCHASER: Lincoln Harris Investments LLC or its assigns

PURCHASE PRICE: \$7,000,000

EARNEST MONEY: \$50,000 upon execution of the Purchase and Sale Agreement for the Initial Due Diligence Period; \$10,000 for each Due Diligence Period extension, as described below.

\$50,000 for the Traffic Impact Analysis (TIA) Period; \$10,000 for each TIA extension, as described below.

\$50,000 for the Zoning and Site Plan Approval Period and \$10,000 for each Zoning and Site Plan Approval Period extension, as described below.

All Earnest Money to be held by Investors Title Company with any interest earned thereon to be credited to the Purchaser; all earnest money shall be refundable until Purchaser has satisfied or waived all of the Conditions to Closing listed below; all Earnest Money shall be credited against the Purchase Price.

INITIAL DUE DILIGENCE PERIOD: Purchaser shall have 90 days beginning upon the execution of a purchase agreement to research title, survey, soil and environmental conditions of the property. Purchaser shall have the option to extend the Initial Due Diligence Period for two (2) periods of 30 days each.

TRAFFIC IMPACT ANALYSIS PERIOD: Purchaser shall have 120 days from the expiration of the Due Diligence Period to obtain, and submit the Traffic Impact Analysis to the Town of Boone and NC Department of Transportation. Purchaser shall have the right to extend this period by two (2) periods of 30 days each.

ZONING AND SITE PLAN APPROVAL PERIOD: Purchaser shall have 180 days from the expiration of the Traffic Impact Analysis Period to obtain zoning and site plan approval necessary for Purchaser's intended use of the Property. Purchaser shall have the right to extend this period

by two (2) periods of 30 days each.

The Traffic Impact Analysis Period and the Zoning and Site Plan Approval Period shall be collectively referred to as the Approval Periods.

CLOSING:

Thirty (30) days following expiration of the Zoning and Site Plan Approval Period, or any extensions thereof, and satisfaction or waiver by Purchaser of the Conditions to Closing listed below.

Note: The timing listed above for the TIA, Zoning and Site Plan Approval periods are estimates based on our experience working with other municipalities. Purchaser shall work with the Seller and the Town of Boone to expedite the timing for rezoning and site plan approval where appropriate.

CONDITIONS TO CLOSING:

1. Seller shall deliver unencumbered, marketable and insurable title at Closing.
2. Seller shall present the site at Closing in a condition free of any environmental contamination.
3. Prior to closing, Seller shall demolish all structures on the Property, including all asphalt, curb & gutter. All masonry and asphalt suitable for construction fill shall be ground and left on site. All other demolition material shall be removed from the site.
4. Zoning or re-zoning necessary for Purchaser's intended use.
5. Site Plan approval from Town of Boone necessary for Purchaser's intended use.
6. Real estate committee approval of the project and proposed business terms (satisfactory to Purchaser) of a lease, ground lease or pad sale by Anchor Tenants A and B as shown on the attached site plan.

TERMINATION OF CONTRACT:

Purchaser may terminate the contract for any reason during the Due Diligence Period or the Approval Periods, and shall receive a full refund of its Earnest Money Deposits, with any interest earned credited to the Purchaser. Should the Purchaser terminate the contract following the expiration of the Due Diligence Period and Approval Periods and satisfaction of or waiver of the Conditions to Closing, Seller shall retain all earnest money Deposits, with any interest earned credited to the Seller. Notwithstanding the forgoing, should Purchaser terminate the contract due to one or more of the Conditions to Closing not being satisfied or waived by Purchaser, Seller shall have a reasonable time in which to satisfy those conditions. Ultimately, if one or more of the conditions can not be satisfied, either party may terminate the contract, and Purchaser shall receive a full refund of the Earnest Money Deposit, and any interest earned.

DEFAULT:

This will be a standard earnest money contract; Seller shall be

entitled to retain all Earnest Money on deposit upon a default by Purchaser as Seller's liquidated damages; Purchaser's remedies shall include specific performance upon Seller default.

COMMISSION:

Purchaser is represented by Daniel Godwin of Webber Hodges & Godwin Commercial Real Estate Services, LLC and Les Pearce of Dillon Commercial Real Estate. A fee of 5% of the purchase price shall be paid to Purchaser's Broker by the Seller in cash at closing.

The parties hereto shall amend this Agreement through the execution of a purchase agreement reflecting the above terms and other reasonable and necessary terms.

PURCHASER:

Lincoln Harris Investments LLC

**By: Lincoln Harris LLC, a
Delaware Limited Liability Company,
its Manager**

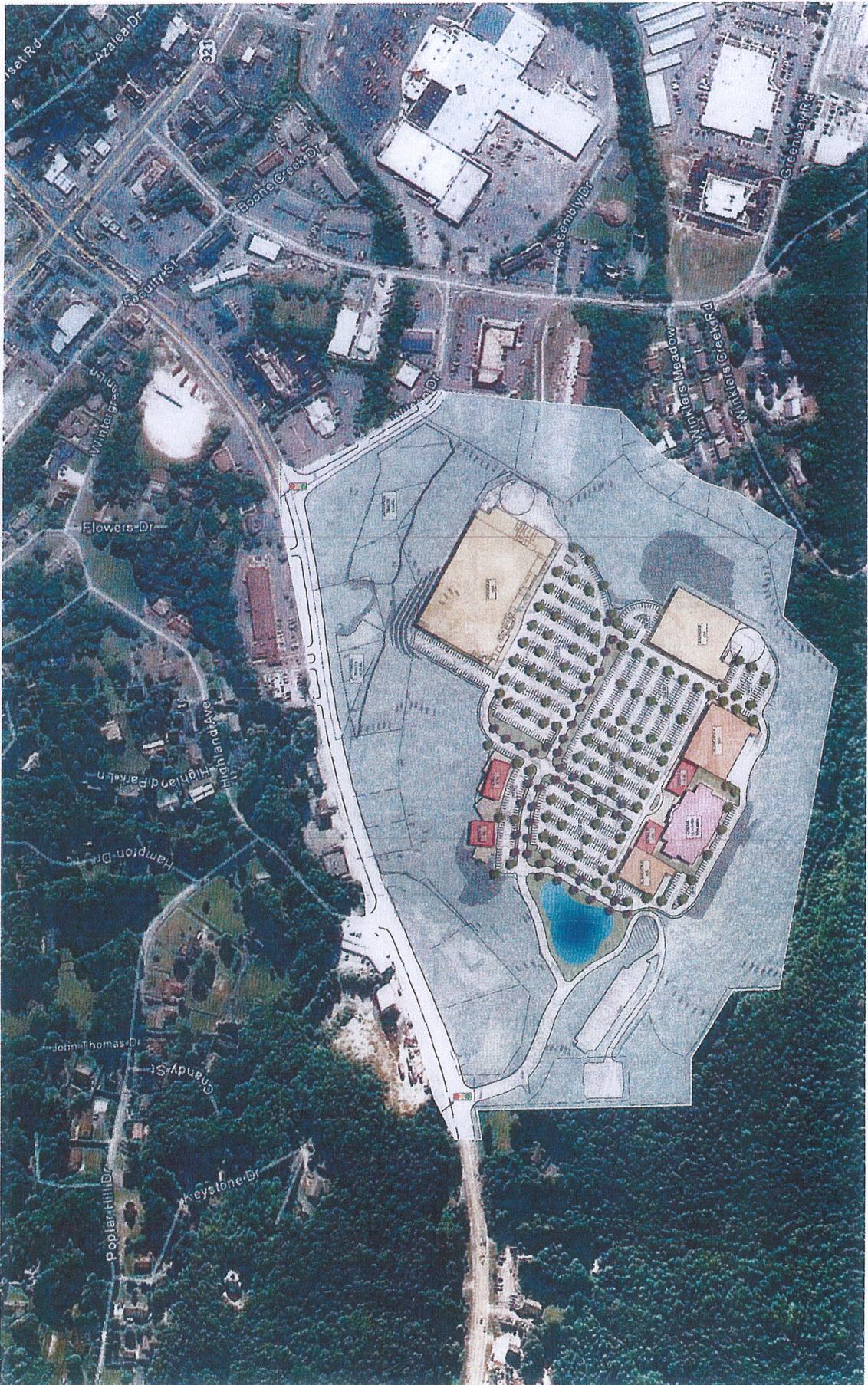
SELLER:

Watauga County

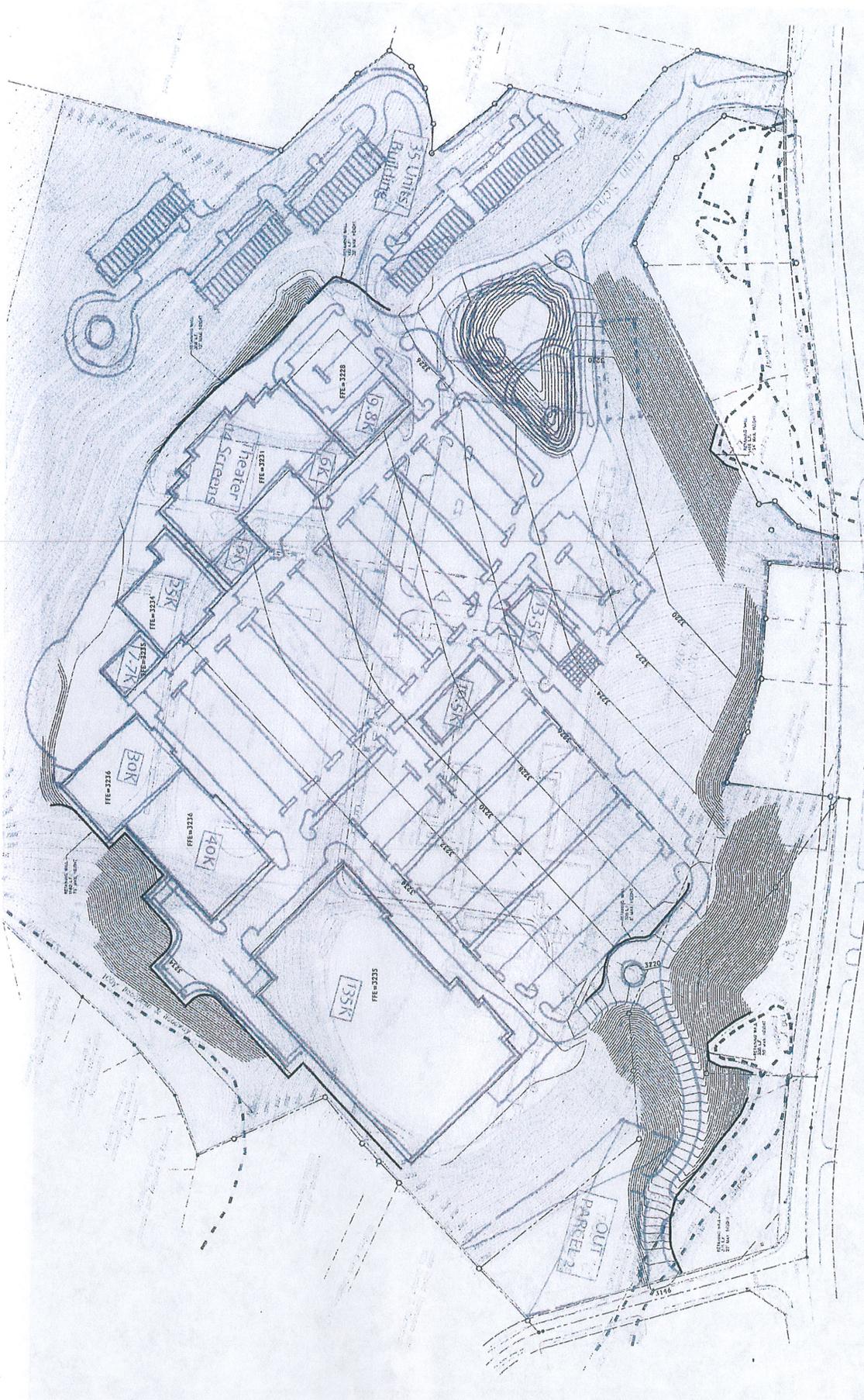
**By: _____
Its: _____
Dated: _____**

**By: The Harris Group of the Carolinas,
A North Carolina corporation, its Manager**

**By: _____
Name: _____
Title: _____
Dated: _____**



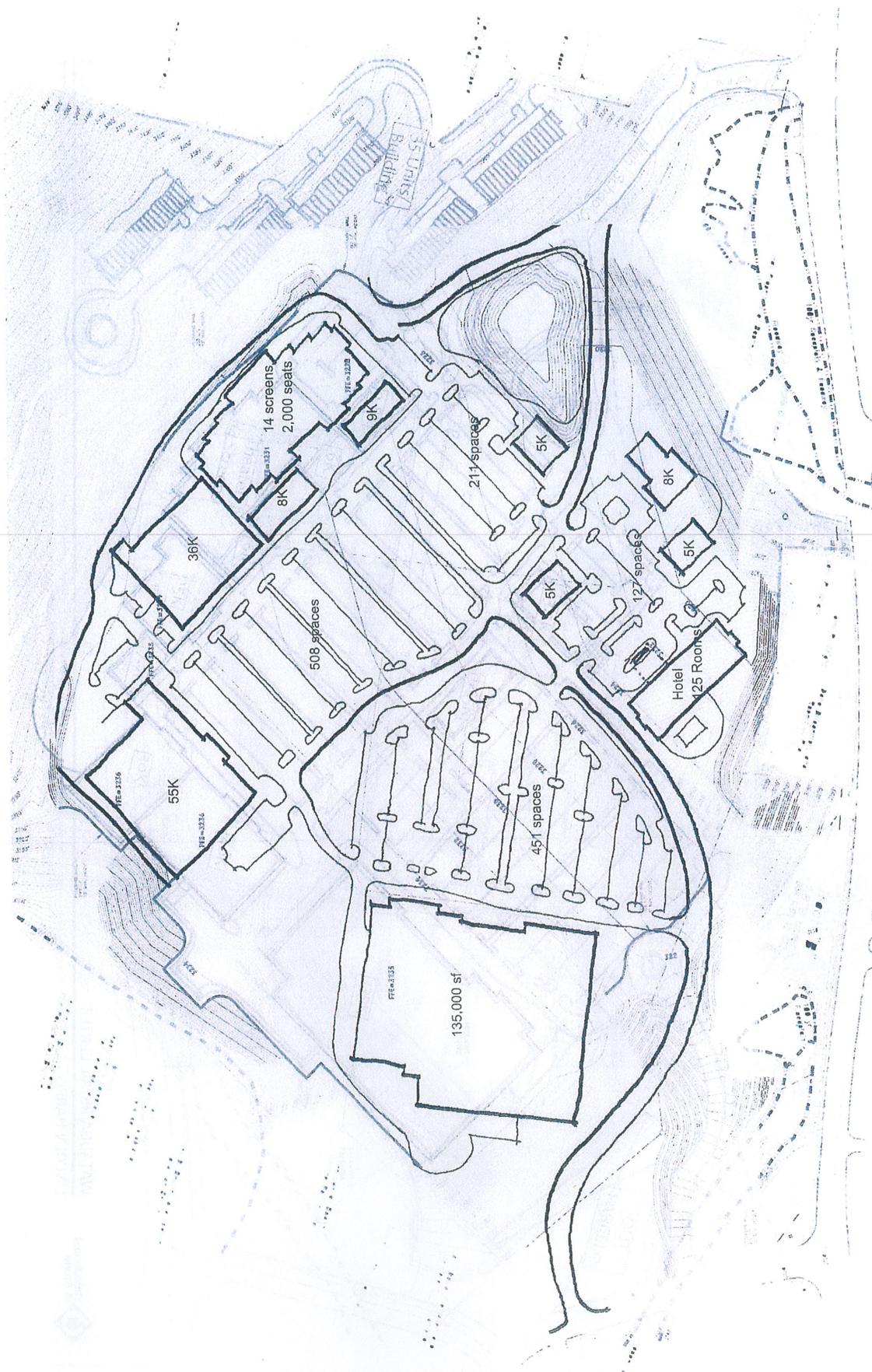




CONCEPTUAL GRADING PLAN
 Project No. 0405 Issued 12.22.10

WATAUGA RETAIL CENTER
LINCOLN HARRIS

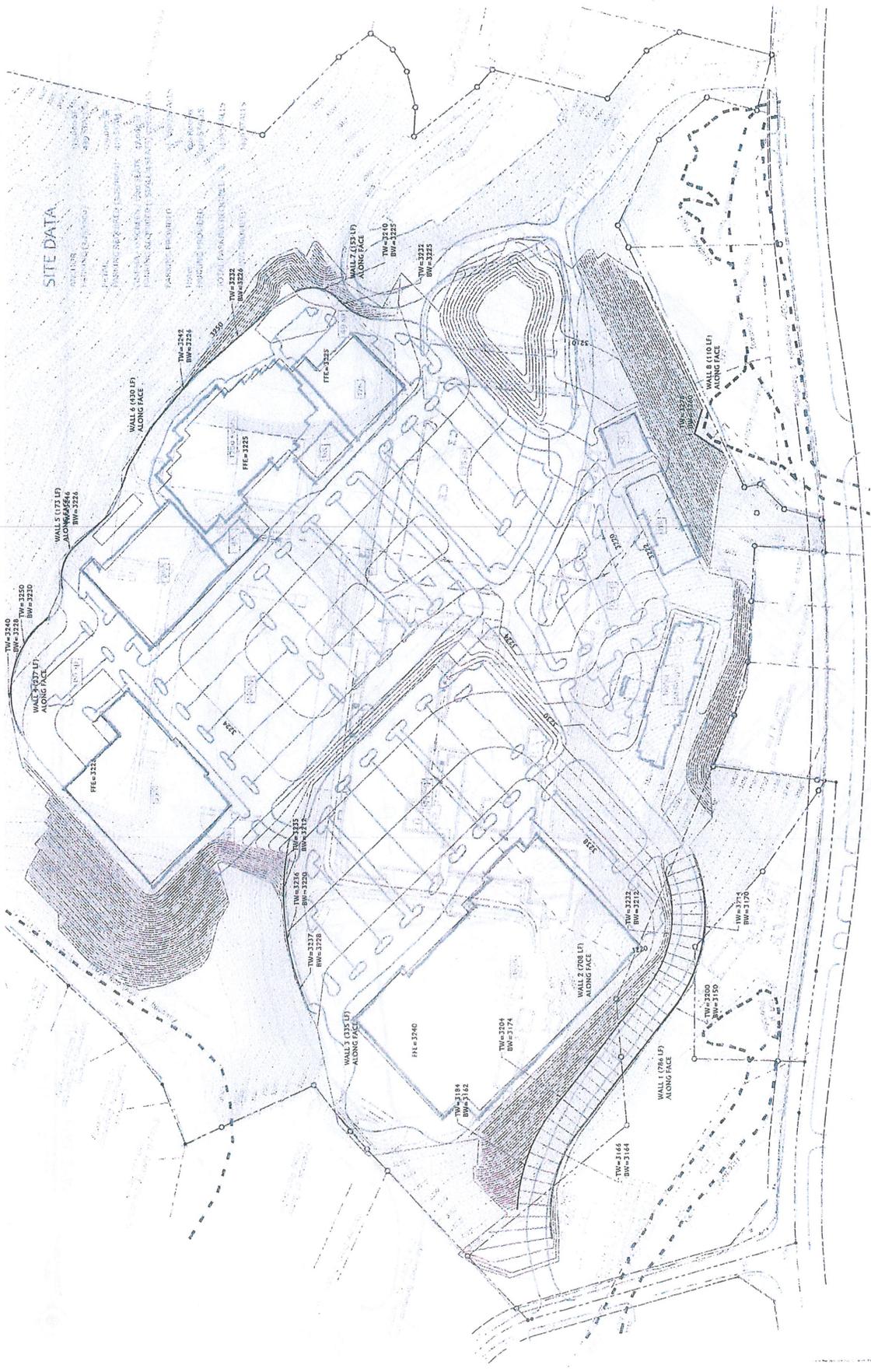




CONCEPTUAL GRADING PLAN
 Project No. 4045 Issued 12.22.10

WATAUGA RETAIL CENTER
 LINCOLN HARRIS





WATAUGA RETAIL CENTER
LINCOLN HARRIS

CONCEPTUAL GRADING PLAN - LAYOUT 2
 Project No. 4045 Issued: 02.14.11





Watauga Retail

April 6, 2011

Revised Site Package Budget - based on Condeptual Grading Plan dated 3/8/2011

Mobilization/Clearing/Layout	1 LS	\$ 264,700	\$ 264,700
Building Demolition	1 LS	\$ 1,213,839	\$ 1,213,839
Earthwork	1 LS	\$ 1,576,050	\$ 1,576,050
Rock Excavation	90000 CY	\$ 9.75	\$ 877,500
Erosion Control	1 LS	\$ 191,200	\$ 191,200
Retaining Walls	1 LS	\$ 930,000	\$ 930,000
Storm Drainage	1 LS	\$ 377,400	\$ 377,400
Roof Drain Piping	2000 LF	\$ 12	\$ 24,000
BMP Retention - Plantings	1 LS	\$ 100,000	\$ 100,000
Water Distribution	1 ALLOW	\$ 306,000	\$ 306,000
Sanitary Sewer	1 ALLOW	\$ 153,000	\$ 153,000
Trench Rock Allowance	2000 CY	\$ 75	\$ 150,000
Asphalt/Curb & Gutter	1 LS	\$ 2,082,150	\$ 2,082,150
Guardrail	1 LS	\$ 21,500	\$ 21,500
Traffic Signal	2 EA	\$ 125,000	\$ 250,000
Landscaping	1 LS	\$ 150,000	\$ 150,000
Fencing	1 LS	\$ 100,000	\$ 100,000
Hardscaping	1 LS	\$ 300,000	\$ 300,000
Site Lighting	75 EA	\$ 3,500	\$ 262,500
TOTAL			\$ 9,329,839

Our grading contractor has indicated that he feels there is a potential to minimize or eliminate some of the walls (specifically A, D, E, G, H & I). This could generate a savings of up to \$100,000.



Watauga Retail
January 24, 2011
Site Package Budget - as Designed

Construction Entrance	2 EA	1500	\$	3,000
Erosion Control/Tree Protec	6000 LF	3.25	\$	19,500
Inlet Protection	1 LS	5000	\$	5,000
Rip Rap	1 LS	10000	\$	10,000
Temporary Seeding	15 AC	1500	\$	22,500
Clear & Grub	16 AC	4500	\$	72,000
Strip Topsoil	24529 CY	3	\$	73,587
Building Demolition	1 LS	1213839	\$	1,213,839
Site Cut/Fill	242200 CY	2	\$	484,400
Rock Excavation	100000 CY	20	\$	2,000,000
Import Soil	323824 CY	14	\$	4,533,536
Crushed Debris as Fill	5000 CY	2	\$	10,000
Fine Grade	1 LS	102950	\$	102,950
Backfill Walls	35000 CY	14	\$	490,000
Respread Topsoil	9884 CY	2	\$	19,768
Waste Topsoil	14645 CY	2	\$	29,290
Retaining Walls	27550 SF	15.95	\$	439,423
Retaining Walls	42610 SF	20.9	\$	890,549
Storm Piping (GT 24")	4000 LF	40	\$	160,000
Storm Piping (LT 24")	2000 LF	25	\$	50,000
Storm Structure	40 EA	2000	\$	80,000
Roof Drain Piping	2000 LF	12	\$	24,000
BMP Retention Pond	1 LS	500000	\$	500,000
Water Distribution	1 ALLOW	250000	\$	250,000
Sanitary Sewer	1 ALLOW	110000	\$	110,000
Asphalt Paving - HD	32580 SY	37.4	\$	1,218,492
Asphalt Paving - LD	48759 SY	26.4	\$	1,287,238

Asphalt Paving - to MultiFam	12135 SY	26.4	\$	320,364
Curb & Gutter	22500 LF	12.1	\$	272,250
Curb & Gutter - to MultiFam	2826 LF	12.1	\$	34,195
Striping & Signage	1 LS	55000	\$	55,000
Traffic Signal	2 EA	125000	\$	250,000
Landscaping	1 LS	150000	\$	150,000
Fence & Guard Rail	1 LS	150000	\$	150,000
Hardscaping	1 LS	200000	\$	200,000
Site Lighting	75 EA	3500	\$	262,500
TOTAL			\$	15,793,380



Watauga Retail
January 24, 2011
Site Package Budget - Balanced Site

Construction Entrance	2 EA	1500	\$	3,000
Erosion Control/Tree Protec	6000 LF	3.25	\$	19,500
Inlet Protection	1 LS	5000	\$	5,000
Rip Rap	1 LS	10000	\$	10,000
Temporary Seeding	15 AC	1500	\$	22,500
Clear & Grub	16 AC	4500	\$	72,000
Strip Topsoil	24529 CY	3	\$	73,587
<hr/>				
Building Demolition	1 LS	1213839	\$	1,213,839
Site Cut	325000 CY	3	\$	975,000
Rock Excavation	300000 CY	17	\$	5,100,000
Site Fill	625000 CY	3	\$	1,875,000
Fine Grade	103333 SY	1.15	\$	118,833
Backfill Walls	38986 CY	6.5	\$	253,409
Respread Topsoil	9884 CY	3	\$	29,652
Waste Topsoil	14645 CY	3	\$	43,935
Retaining Walls	81608 SF	15	\$	1,224,120
Storm Piping (GT 24")	4000 LF	40	\$	160,000
Storm Piping (LT 24")	2000 LF	25	\$	50,000
Storm Structure	40 EA	2000	\$	80,000
Roof Drain Piping	2000 LF	12	\$	24,000
BMP Retention Pond	1 LS	500000	\$	500,000
Water Distribution	5800 LF	45	\$	261,000
Fire Hydrant	10 EA	5000	\$	50,000
Fire Service to Bldgs	16 EA	5000	\$	80,000
Domestic Service to Bldgs	16 EA	2500	\$	40,000
Sanitary Sewer Piping	5800 LF	35	\$	203,000
Sewer Structures	20 EA	2500	\$	50,000
Sewer Svc to Bldg	16 EA	2000	\$	32,000

Asphalt Paving	93474 SY	20	\$	1,869,480
Curb & Gutter	25368 LF	12	\$	304,416
Striping & Signage	1 LS	25000	\$	25,000
Traffic Signal	2 EA	125000	\$	250,000
Landscaping	1 LS	150000	\$	150,000
Hardscaping	1 LS	200000	\$	200,000
Site Lighting	75 EA	3500	\$	262,500
TOTAL			\$	15,630,771



Demolition, Site And Selective ♦ Asbestos, Lead Paint And Mold Abatement

November 23, 2010

Mr. Gray Talley
Shelco, Inc.
3201 Beechleaf Court, Suite 401
Raleigh, NC 27604

Dear Mr. Talley:

SUBJECT: Asbestos/Demolition -- Old Watauga High School, Boone, NC

We are pleased to submit the following quotation for the above referenced project. It is in compliance with all federal, state and local regulations.

Scope of Work:

Remove and dispose of ACM flooring and roof drain insulation as outlined in AHERA Management Plan for Watauga High School detailing what is currently remaining (20,000 SF flooring -- 8 Each RD Fittings). Demolish and dispose of all above ground structures located on the property and miscellaneous debris. All block, brick and concrete to be crushed and left stockpiled on site for future use. All other debris to be disposed within a certified landfill. Lot to be left rough grade.

Price Quotation:

(One Million Two Hundred Thirteen Thousand Eight Hundred Thirty Nine Dollars)
\$1,213,839

Exclude: Utility disconnect/capping, underground utilities, erosion control, asphalt/concrete parking lots, trees/shrubbery, curb/gutter and Freon evacuation.

*Payment Terms -- Net 30 days from invoice date.

*Quote is valid for 60 days.

This quotation is inclusive of all labor, material, supervision, insurance, permits, disposal and third party air monitoring/inspection.



Demolition, Site And Selective ♦ Asbestos, Lead Paint And Mold Abatement

If further information is needed, please contact me.

Sincerely,

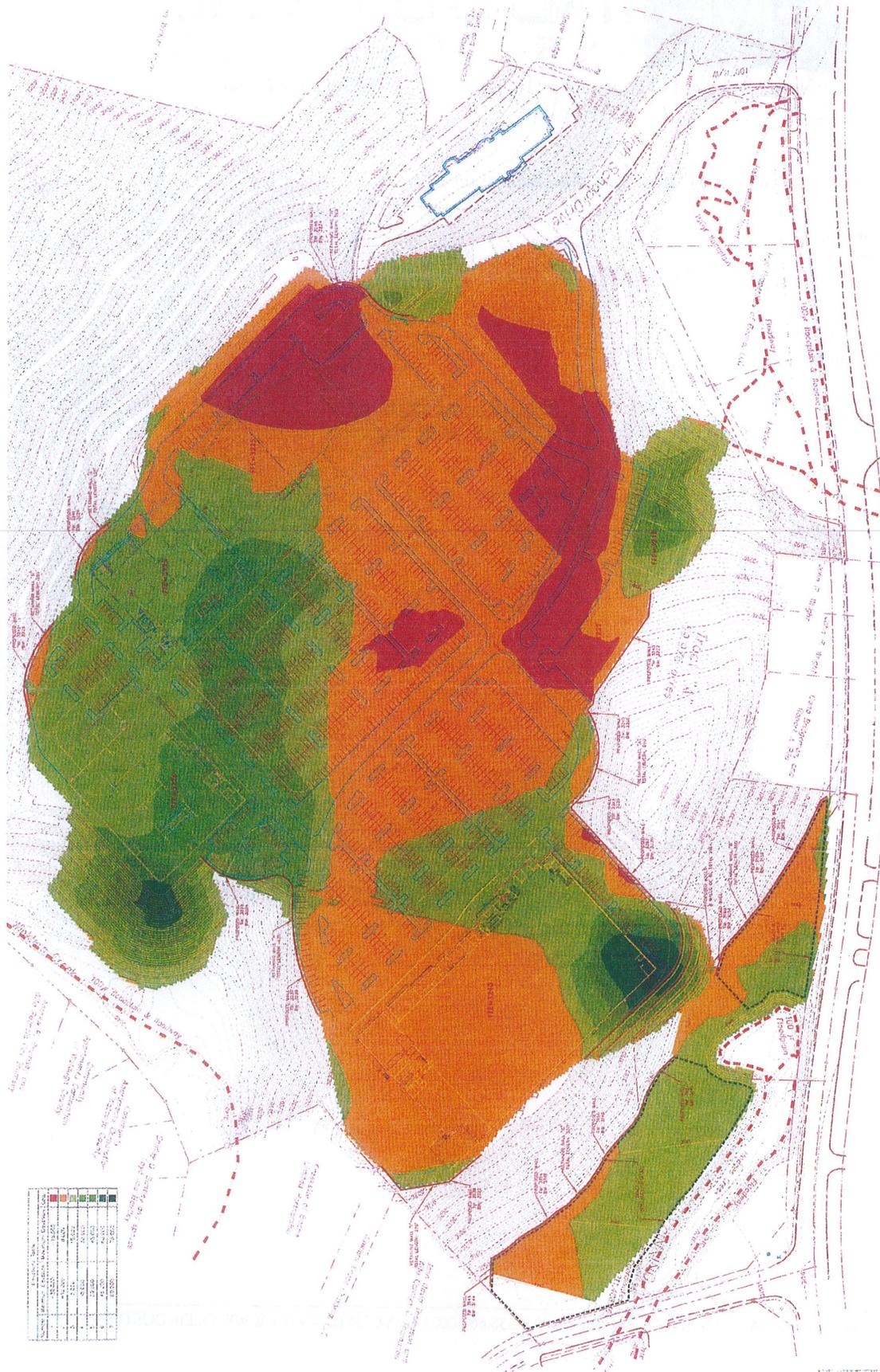
James Hamm (Sem)

James Hamm
President

JH/sem

Please Sign and Return
Acceptance of Proposal

Date: _____



Symbol	Description
Green	Existing Vegetation
Orange	Proposed Grading
Red	Cut/Fill Analysis
Blue	Proposed Paved Areas
Black	Proposed Grading
White	Existing Grading
Yellow	Proposed Grading
Purple	Proposed Grading
Light Green	Proposed Grading
Light Orange	Proposed Grading
Light Red	Proposed Grading
Light Blue	Proposed Grading
Light Yellow	Proposed Grading
Light Purple	Proposed Grading
Light Green	Proposed Grading
Light Orange	Proposed Grading
Light Red	Proposed Grading
Light Blue	Proposed Grading
Light Yellow	Proposed Grading
Light Purple	Proposed Grading



WATAUGA RETAIL CENTER
LINCOLN HARRIS

CONCEPTUAL GRADING PLAN - CUT/FILL ANALYSIS
Project No. 4045 Issued 01.06.11



**REPORT OF PRELIMINARY
GEOTECHNICAL EXPLORATION**

For the

PROPOSED WATAUGA RETAIL CENTER

Boone, North Carolina

Prepared For:

Andrew Wagner
LINCOLN HARRIS
4140 Parklake Avenue
Suite 100
Raleigh, North Carolina 27612

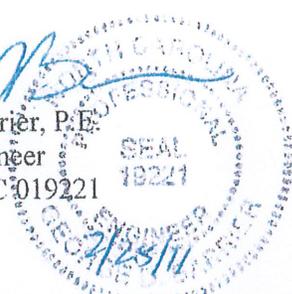
Prepared By:

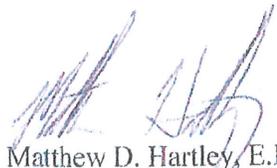
UNIFOUR ENGINEERING & TESTING LABORATORIES, P.C.
PO Box 2067
Hickory, North Carolina 28603

Date: February 25, 2011

Unifour Project No. 3647


George D. Barrier, P.E.
Principal Engineer
Registered, NC 019221




Matthew D. Hartley, E.I.
Project Engineer



2019 1st Avenue SW • Hickory, North Carolina 28601
P.O. Box 2067 • Hickory, NC 28603 • (P) 828.256.3000 (F) 828.256.6921

Engineering & Testing Laboratories, PC

TABLE OF CONTENTS

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APPENDIX

Figure 1: Boring Location Sketch
Test Boring Reports
Unified Soil Classification System
Terminology Sheet
ASFE Insert

1.0 INTRODUCTION

UNIFOUR ENGINEERING & TESTING LABORATORIES, P.C. (Unifour) has completed a geotechnical exploration for the proposed development of a commercial tract located at 400 High School Drive in Boone, Watauga County, North Carolina. The exploration was performed in general accordance with Unifour's proposal to Lincoln Harris.

From information and generalized site sketches prepared by ColeJenest & Stone, provided by you, it is our understanding that you propose to improve the existing site with the new construction of a combined retail facility of a large box retail combined with several smaller retail box and strip spaces and the grading and roadway improvements needed to accommodate the site's planned uses.

You originally presented Unifour with an electronic file representing a conceptual site plan, prepared by ColeJenest & Stone and dated 12/22/10, orienting the proposed development for the site. Two revised site sketches have been presented to us since authorization to proceed with the exploration. All findings and recommendations presented within this report are based on the plans as presented to us and the facts, conditions, and circumstances existing at the time of the exploration and are intended for the Client's needs as indicated herein. Unifour can assume no responsibility for site conditions or activities outside the scope of inquiry. We cannot warrant the accuracy of the information within the report that was furnished or supplied by others.

Professional judgment, principles and practices were adhered to during the performance of the work described within this report. The services rendered were in accordance with the proposal accepted by the Client. This report is written exclusively for the use and information of our Client and the Client's assignees. It is not intended for the use of a third party without consent of the aforementioned Client and Unifour.

2.0 SCOPE OF SERVICES

The purpose of the geotechnical exploration was to characterize the site's generalized subsurface conditions. The scope of services included observation of the site's surface conditions, drilling soil test borings, performance of limited geotechnical laboratory testing, evaluating the data and the preparation of this engineering report.

Fourteen soil test borings (including four offset borings) were drilled across the site for evaluation of general soil conditions and exploration of possible bedrock. The borings were advanced into the ground using a tracked drill rig with hollow-stem augers. The approximate test boring locations are outlined in the attached Boring Location Sketch (Figure 1). Due to multiple revisions of the site plan, Figure 1 should be used for reference only.

At regular depth intervals in each boring performed by the drill rig, the soil was sampled and tested using the Standard Penetration Test procedure as described in ASTM Method D-1586. In this test a standard 2-inch diameter split barrel sampler is driven into the soil with blows of a 140-pound hammer falling 30 inches. The number of hammer blows required to drive the sample barrel 12 inches, after seating 6 inches, is designated the Standard Penetration Resistance, or 'N-value', in units of blows per foot (bpf); this value can be correlated to soil density and strength when properly evaluated. The field data is presented in the attached *Test Boring Report* included in the Appendix.

A geotechnical engineer examined the soil samples recovered from the split barrel sampler and from the hand auger borings and an estimated Unified Soil Classification System (USCS) designation was assigned to each soil type encountered. The attached Logs of Test Borings show the soil descriptions, estimated USCS designations, soil penetration test results, and other pertinent information recorded during the drilling and lab data as applicable. Each boring was checked at the completion of the field exploration for

indications of groundwater presence and the boreholes were backfilled with drill tailings prior to demobilizing.

The stratification of the soils, as shown on the boring logs, represents general soil conditions present in each actual borehole and conditions may vary between the boring locations. Lines of demarcation represent the approximate boundary between soil types but transitions may be gradual.

Soil samples collected in the field and evaluated in the laboratory are kept for 60 days and then discarded unless otherwise requested.

3.0 SITE AND SUBSURFACE SOIL CONDITIONS

This section outlines the findings of the site reconnaissance and subsurface exploration.

3.1 Site Conditions

As discussed in the introduction of this report, the project area is a commercial tract with intended development consisting of the new construction of a combined retail facility of a large box retail combined with several smaller retail box and strip spaces and the grading and roadway improvements needed to accommodate the site's planned uses.

The subject property is currently occupied by a vacant high school and associated buildings, parking areas and sports facilities. The property maps on Watauga County GIS topography show the portion of the site for the proposed new facilities as having an elevation change of approximately 150 feet of relief from its highest point to its lowest. The highest elevation on the portion of the site for the proposed new facilities is located at the top a hill at the approximate center of the north end of the site and the lowest elevation on the portion of the site for the proposed new facilities is located at the northeast corner of the property at the

proposed stream crossing accessing the site off of Wilson Drive. The aforementioned stream runs across the northeast corner of the site and flows in the general direction of northwest to southeast.

3.2 Regional Geology

The site is located in the Blue Ridge Belt of North Carolina. The soils in the Blue Ridge Belt consist mainly of residuum with underlying saprolites weathered from the parent bedrock, which can be found in both weathered and un-weathered states. Although the surficial materials normally retain the structure of the original parent bedrock, they typically have a much lower density and exhibit strengths and other engineering properties typical of soil. In a mature weathering profile of the Blue Ridge Belt, the soils are generally found to be finer grained at the surface where more extensive weathering has occurred. The particle size of the soils generally becomes more granular with increasing depth and gradually changes first to weathered and finally to un-weathered parent bedrock. The mineral composition of the parent rock and the environment in which weathering occurs largely control the resulting soil's engineering characteristics. Published geologic information indicates that the site is underlain by bedrock comprised of biotite granitic gneiss.

The upper soils along drainage features and in flood plain areas are often water-deposited (alluvial) materials that have been eroded and washed down from adjacent higher ground. These alluvial soils are usually soft and compressible, having never been consolidated by pressures in excess of their present overburden. While no alluvial soils were encountered at the boring locations drilled by this exploration, it is anticipated that some localized deposits may exist within the various drainage features and lower elevations on the site.

3.3 Subsurface Soil Conditions

Based on cuttings observed and, a "topsoil" thickness of 0 to 6 inches can be expected. "Topsoil" is defined for this report as being surficial soils estimated to contain organic

materials such as root mat and vegetative debris at or in excess of 5% by weight of soil. Local conditions such as elevation, vegetation density, historic clearing or timbering, past grading, etc. can affect overall topsoil depths. In general, the uppermost 1 foot of existing soils are loose due to heavy root matting and historical disturbances both naturally and man-made. Borings B-3, B-3A, B-5 and B-6 were performed in existing parking areas. All four borings performed in existing parking areas contained 3 inches of asphalt at the surface underlain by 4 inches of gravel.

The generalized soil profile as encountered by our borings performed in residual soils consists of loose to very dense sandy silts (ML) and silty sands (SM) within the uppermost 1 to 30 feet underlain by partially weathered rock (PWR). Three of the borings, B-2, B-6, and B-10, encountered possible fill material up to a maximum depth of 34 feet below the existing grade. The fill soils encountered consisted of very loose to medium dense sandy silts (ML) and silty sands (SM). Wood debris and organics were noted at various depths in borings B-2 and B-6. In addition to the wood debris and organics noted, a fragment of asphalt was obtained in Sample 3 from boring B-6. No deleterious materials were noted in the possible fill soils encountered in boring B-10. All of the borings were terminated in residual material or in hard auger refusal material prior to reaching planned drilling depths. Groundwater was not encountered by any of our borings. All borings were backfilled prior to demobilizing from the site.

Auger refusal can be used as an indication of the possible presence of weathered rock or intact bedrock. In general, materials that result in refusal to auger advancement are generally considered representative of subgrade conditions that most likely cannot be excavated with conventional equipment such as backhoe excavators, dozers or scrapers, but might require additional excavation effort such as specialized ripping, hammering or blasting. Ten of the boring locations drilled by conventional drill rig advancement encountered refusal materials prior to achieving planned termination depths. Residual material hard enough (N=100 blows per foot or better) to be designated partially weathered

rock (PWR) was encountered in boring locations B-1, B-3, B-3A, B-5, B-6, B-7, B-8, B-8A, B-8B and B-8C at depths ranging from 1 to 38 feet. Borings B-3A, B-8A, B-8B and B-8C were drilled as 10 to 20 feet offsets to their original boring locations due to very shallow encounter with refusal materials.

4.0 GEOTECHNICAL RECOMMENDATIONS

The following geotechnical recommendations are based upon the project information, site observations and field exploration data described in this report.

4.1 Foundation Planning Recommendations

Based on these results of our drilling and exploration efforts, Unifour concludes that generally site bearing and subsurface soil conditions are suitable for building pads and roadway and parking lot subgrades the support of the proposed new structures at this planned development using conventional shallow spread footings cast in excavated foundation areas. This is provided that after further evaluation of the in-place fill soil has been determined that the existing conditions are generally suitable to support the proposed new building pads.

4.2 Site Preparation and Grading

The subgrade preparation should be planned to consist of stripping all topsoil and root mat from the expansion area. Based on our observations, the majority of the stripping efforts should be on the order of 12 inches. Deeper undercutting may be required if unsuitable soil is encountered. We do not anticipate appreciable undercutting of residual soils based on our testing. However, a large percentage of the site does show signs of slight to significant past fill activities. For this reason, both the stripping efforts described here should be observed closely by the geotechnical engineer. We recommend planning the earthwork and clearing

be extended a minimum of 10 ft beyond the expansion limits. Stripping limits should be extended an additional 1 ft for each foot of fill required at the expansion's exterior edge.

4.3 Engineered Fill

All fill used for raising site grade or for replacement of material that is undercut should be planned to be uniformly compacted in thin lifts using structurally suitable fill materials.

The residual soils encountered in the borings appear suitable for use as fill material. The fill soils encountered in the borings may also be used at engineered fill given the fact that any deleterious material (wood debris, organics) would be removed prior to placement. Depending on their moisture content at the time of placement, drying or wetting may be required to obtain proper compaction.

In site areas where several feet (greater than 10 feet) of structural fill are planned to be placed to achieve proposed grades, we recommend that construction be delayed to allow time for the underlying soils and fill to "settle out" as they adjust to the overlying weight of materials. In the deepest fill areas over residuum, a period of 2 to 3 weeks may be required for these adjustments to sufficiently occur. Settlement monitoring can be performed to track any settlements that occur during this time and possibly lessen this wait period.

5.0 FOLLOW-UP SERVICES

Once you have had opportunity to review our preliminary report and incorporate information gathered into your initial design efforts, it will be necessary to complete a more comprehensive geotechnical exploration and design process so that design details can be finalized, optimal site grade separation mechanisms (e.g.-retaining walls versus reinforced slopes, etc.) can be selected and designed, and so that detailed structure foundation support issues such as specific foundation bearing conditions, potential fill embankment/foundation

settlement potential, and optimal structural fill placement recommendations can be made. Unifour will be able to provide you with a detailed scope of work for final design geotechnical services as more details become available on site planning, structural loading requirements, and grade separation needs.

6.0 CLOSURE

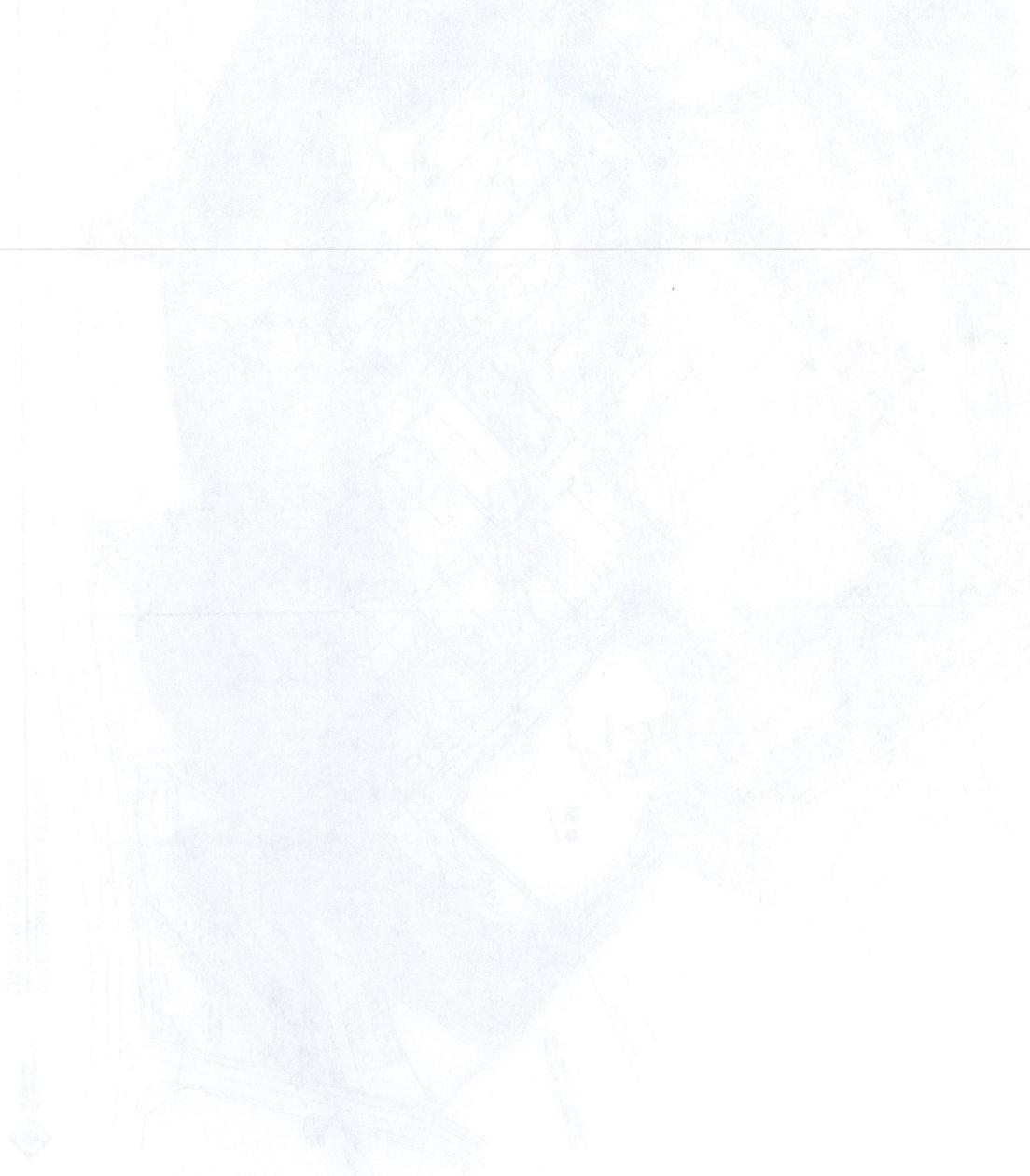
This report has been prepared for the exclusive use of Lincoln Harris and their designers for the specific application to the project previously discussed. Our conclusions and recommendations have been rendered using generally accepted standards of geotechnical engineering practice in the State of North Carolina. No other warranty is expressed or implied. This company is not responsible for the conclusions, opinions, or recommendations of others based on these data.

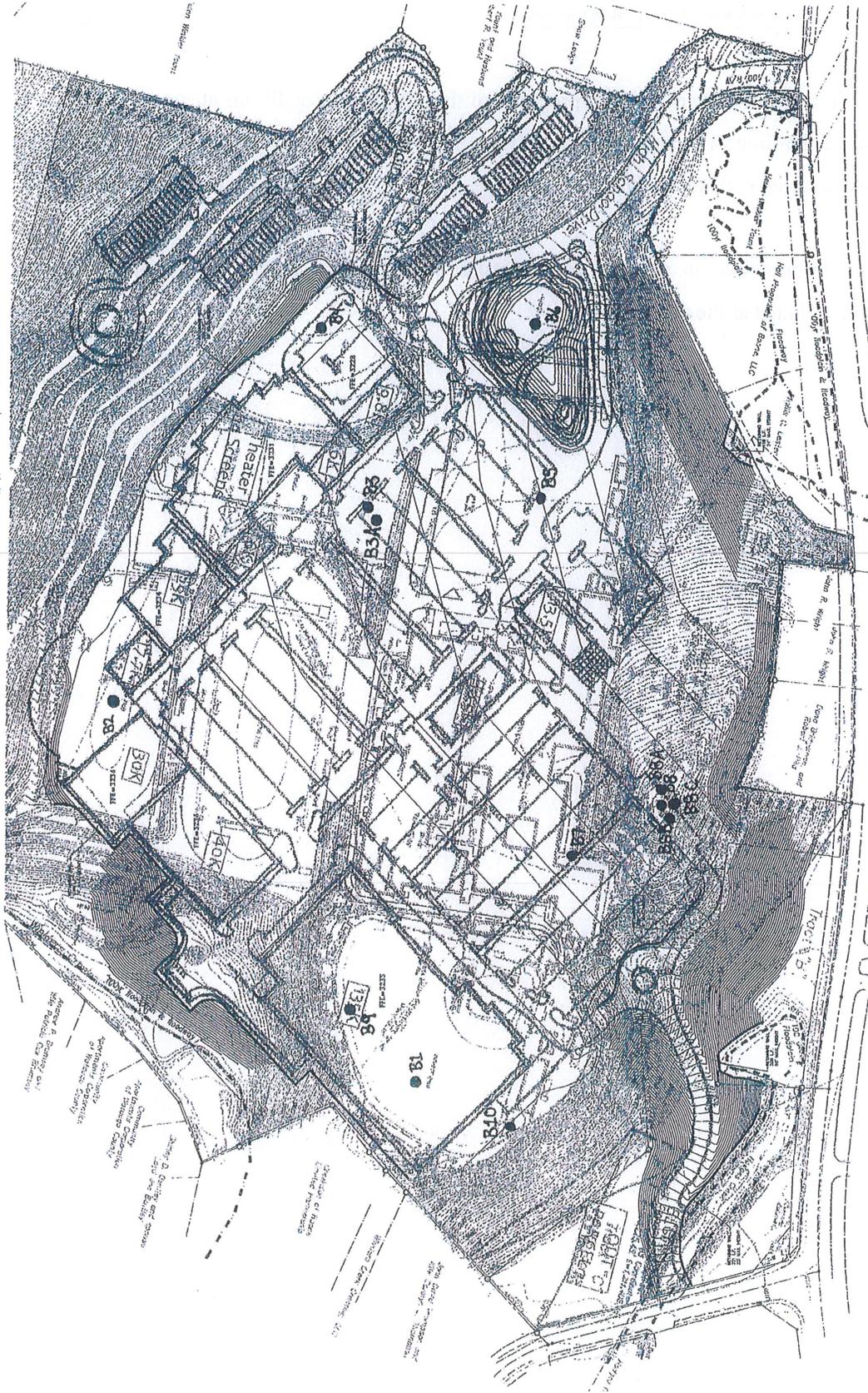
Our conclusions and recommendations are based on the preliminary plans and information furnished to us, the data obtained from the previously described subsurface exploration, and our past experience. They do not reflect variations in the subsurface conditions, which are likely to exist between our borings and in unexplored areas of the site due to the inherent variability of the subsurface conditions in this geologic region. If such variations become apparent during construction, it will be necessary to re-evaluate our conclusions and recommendations based upon our on-site observations of the conditions.

The scope of our services does not include any environmental assessments or investigations for the possible presence of hazardous or toxic materials in the soil, groundwater or surface water within or in the general vicinity of the site studied. Any statements made in this report or shown on the test boring logs regarding unusual subsurface conditions and/or composition, odor, staining, origin or other characteristics of the surface and/or subsurface materials are strictly for the information of our client and may or may not be indicative of an environmental problem.

The Boring Records present our interpretation of the subsurface conditions at specific boring locations at the time of our exploration. The stratification lines represent the approximate boundary between soil types. The actual transitions may be more gradual than implied.

For more information on the use and limitations of this report, please read the ASFE document included at the end of this report.





CONCEPTUAL GRADING PLAN
 Project No. 1015 Revised 12.22.10

WATAUGA RETAIL CENTER
LINCOLN HARRIS



PROJECT: Watauga Retail Center
CLIENT: Lincoln Harris

FILE NO. : 3647
SHEET NO. : 1 of 1
LOCATION : See Figure 1
DEPTH: 35.0 FT
ELEVATION :
DATE START: February 18, 2011
DATE FINISH: February 18, 2011
DRILLER : Carolina Test Borings
INSPECTOR: Matthew Hartley

DEPTH TO GROUNDWATER
DATE TIME H2O
STANDARD PENETRATION TEST DATA
SAMPLING PROTOCOL
SPT DPT

2/18 Comp. Dry
Blows per 6 inch increment
SPT N-value, bpf
TYPE:
SIZE I.D.:
HAMMER WT:
HAMMER FALL:
splt sp
-
-
1-7/8"
-
-
140#
-
-
30"
-
-

DEPTH (FT) SAMPLE NO. DEPTH INTERVAL
MOIST. (%)
-200 (%)

FIELD CLASSIFICATION AND REMARKS

DEPTH (FT)	SAMPLE NO.	DEPTH INTERVAL	Blows per 6 inch increment	SPT N-value, bpf	MOIST. (%)	-200 (%)	FIELD CLASSIFICATION AND REMARKS
							6" (+/-) Topsoil
5	1	1-2.5	4-4-5	9	20.2		FILL - Yellowish brown silty SAND (SM) with rock fragments
10	2	8.5-10	5-6-5	11	16.6		FILL - Mottled light brown and gray silty SAND (SM) with rock fragments, trace organics
15							
20	3	18.5-20	1-2-1	3	29.5		FILL - Mottled gray, brown and yellowish red sandy SILT (ML) with rock and wood fragments
25							
30	4	28.5-30	1-2-2	4	22.7		FILL - Mottled gray and light brown sandy SILT (ML) with rock fragments, trace organics
35	5	33.5-35	3-4-4	8	22.4		RESIDUUM - Gray sandy SILT, trace rock fragments Caved depth at 26.5 feet.

BLOWS/FT	DENSITY	BLOWS/FT	CONSISTENCY	SAMPLER IDENTIFICATION
0-4	Very loose	0-2	Very Soft	DPT -----DIRECT PUSH
4-10	Loose	2-4	Soft	SPT -----SPLIT SPOON
10-30	Compact/M. Dense	4-8	Firm	T -----THIN WALL TUBE
30-50	Dense	8-15	Stiff	U -----UNDISTURBED PISTON
50+	Very Dense	15-30	Very Stiff	

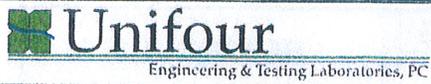
**TEST BORING
REPORT**

BORING B-3

PROJECT: Watauga Retail Center
CLIENT: Lincoln Harris

FILE NO. : 3647
SHEET NO. : 1 of 1
LOCATION : See Figure 1
DEPTH: 2.0 FT
ELEVATION :
DATE START: February 18, 2011
DATE FINISH: February 18, 2011
DRILLER : Carolina Test Borings
INSPECTOR: Matthew Hartley

DEPTH TO GROUNDWATER			STANDARD PENETRATION TEST DATA		SAMPLING PROTOCOL				FIELD CLASSIFICATION AND REMARKS	
DATE	TIME	H2O	Blows per 6 inch increment	SPT N-value, bpf	TYPE:	SPT	DPT		MOIST. (%)	-200 (%)
2/18	Comp.	Dry			SIZE I.D.:	spl sp	-	-		
					HAMMER WT:	1-7/8"	-	-		
					HAMMER FALL:	140#	-	-		
						30"	-	-		
DEPTH (FT)	SAMPLE NO.	DEPTH INTERVAL								
	1	1-1.2	50/2"	50/2"	6.0					3" Asphalt, 4" Gravel RESIDUUM - PWR [sampled as brown-gray sand]
5										Auger refusal encountered on apparent rock structure. Caved depth at 2.0 feet.
10										
15										
20										
25										
30										
35										
BLOWS/FT			DENSITY		BLOWS/FT		CONSISTENCY		SAMPLER IDENTIFICATION	
0-4			Very loose		0-2		Very Soft		DPT ----DIRECT PUSH	
4-10			Loose		2-4		Soft		SPT ----SPLIT SPOON	
10-30			Compact/M. Dense		4-8		Firm		T ----THIN WALL TUBE	
30-50			Dense		8-15		Stiff		U ----UNDISTURBED PISTON	
50+			Very Dense		15-30		Very Stiff			



TEST BORING REPORT

BORING B-3A

PROJECT: Watauga Retail Center
 CLIENT: Lincoln Harris

FILE NO. : 3647
 SHEET NO. : 1 of 1
 LOCATION : 10 FT NE of B-3
 DEPTH: 3.2 FT
 ELEVATION :
 DATE START: February 18, 2011
 DATE FINISH: February 18, 2011
 DRILLER : Carolina Test Borings
 INSPECTOR: Matthew Hartley

DEPTH TO GROUNDWATER			STANDARD PENETRATION TEST DATA		SAMPLING PROTOCOL				FIELD CLASSIFICATION AND REMARKS
DATE	TIME	H2O	Blows per 6 inch increment	SPT N-value, bpf	TYPE:	SPT	DPT		
2/18	Comp.	Dry			SIZE I.D.:	splt sp	-	-	
					HAMMER WT:	1-7/8"	-	-	
					HAMMER FALL:	140#	-	-	
						30"	-	-	
DEPTH (FT)	SAMPLE NO.	DEPTH INTERVAL			MOIST. (%)	-200 (%)			
							3" Asphalt, 4" Gravel		
							Auger probe without sampling.		
5	1	3-3.2	50/2"	50/2"	7.6		RESIDUUM - PWR [sampled as grayish brown silty sand]		
10							Auger refusal encountered on apparent rock structure. Caved depth at 3.0 feet.		
15									
20									
25									
30									
35									

BLOWS/FT	DENSITY	BLOWS/FT	CONSISTENCY	SAMPLER IDENTIFICATION
0-4	Very loose	0-2	Very Soft	DPT ----DIRECT PUSH
4-10	Loose	2-4	Soft	SPT ----SPLIT SPOON
10-30	Compact/M. Dense	4-8	Firm	T ----THIN WALL TUBE
30-50	Dense	8-15	Stiff	U ----UNDISTURBED PISTON
50+	Very Dense	15-30	Very Stiff	



TEST BORING REPORT

BORING B-4

PROJECT: Watauga Retail Center
 CLIENT: Lincoln Harris

FILE NO. : 3647
 SHEET NO. : 1 of 1
 LOCATION : See Figure 1
 DEPTH: 30.0 FT
 ELEVATION :
 DATE START: February 18, 2011
 DATE FINISH: February 18, 2011
 DRILLER : Carolina Test Borings
 INSPECTOR: Matthew Hartley

DEPTH TO GROUNDWATER			STANDARD PENETRATION TEST DATA		SAMPLING PROTOCOL			FIELD CLASSIFICATION AND REMARKS
DATE	TIME	H2O	Blows per 6 inch increment	SPT N-value, bpf	TYPE: SIZE I.D.: HAMMER WT: HAMMER FALL:	SPT	DPT	
2/18	Comp.	Dry				spl	sp	
						1-7/8"	-	-
						140#	-	-
						30"	-	-
DEPTH (FT)	SAMPLE NO.	DEPTH INTERVAL			MOIST. (%)	-200 (%)		
5	1	1-2.5	8-13-17	30	17.4		RESIDUUM - Yellowish brown silty fine SAND (SM)	
10	2	8.5-10	2-2-3	5	41.2			
15								
20	3	18.5-20	4-8-9	17	26.2		Mottled yellowish brown and black fine sandy SILT (ML)	
25								
30	4	28.5-30	4-5-10	15	36.1			
35							Caved depth at 27.0 feet.	
BLOWS/FT		DENSITY		BLOWS/FT		CONSISTENCY		SAMPLER IDENTIFICATION
0-4	Very loose	0-2	Very Soft					DPT ----DIRECT PUSH
4-10	Loose	2-4	Soft					SPT ----SPLIT SPOON
10-30	Compact/M. Dense	4-8	Firm					T ----THIN WALL TUBE
30-50	Dense	8-15	Stiff					U ----UNDISTURBED PISTON
50+	Very Dense	15-30	Very Stiff					



TEST BORING REPORT

BORING B-5

PROJECT: Watauga Retail Center
CLIENT: Lincoln Harris

FILE NO. : 3647
SHEET NO. : 1 of 1
LOCATION : See Figure 1
DEPTH: 8.8 FT
ELEVATION :
DATE START: February 19, 2011
DATE FINISH: February 19, 2011
DRILLER : Carolina Test Borings
INSPECTOR: Matthew Hartley

DEPTH TO GROUNDWATER			STANDARD PENETRATION TEST DATA		SAMPLING PROTOCOL			FIELD CLASSIFICATION AND REMARKS
DATE	TIME	H2O	Blows per 6 inch increment	SPT N-value, bpf	TYPE:	SPT	DPT	
2/19	Comp.	Dry				spl sp	-	
DEPTH (FT)	SAMPLE NO.	DEPTH INTERVAL			MOIST. (%)	-200 (%)		
	1	1-2.5	12-12-13	25	18.8			3" Asphalt, 4" Gravel
5								RESIDUUM - Dark brown fine sandy SILT (ML)
	2	8-8.8	11-50/4"	50/4"	12.0			PWR [sampled as gray sand with silt]
10								Auger refusal encountered on apparent rock structure. Caved depth at 8.0 feet.
15								
20								
25								
30								
35								

BLOWS/FT	DENSITY	BLOWS/FT	CONSISTENCY	SAMPLER IDENTIFICATION
0-4	Very loose	0-2	Very Soft	DPT -----DIRECT PUSH
4-10	Loose	2-4	Soft	SPT -----SPLIT SPOON
10-30	Compact/M. Dense	4-8	Firm	T -----THIN WALL TUBE
30-50	Dense	8-15	Stiff	U -----UNDISTURBED PISTON
50+	Very Dense	15-30	Very Stiff	

**TEST BORING
REPORT**

BORING B-6

PROJECT: Watauga Retail Center
CLIENT: Lincoln Harris

FILE NO. : 3647
SHEET NO. : 1 of 2
LOCATION : See Figure 1
DEPTH: 40.0 FT
ELEVATION :
DATE START: February 19, 2011
DATE FINISH: February 19, 2011
DRILLER : Carolina Test Borings
INSPECTOR: Matthew Hartley

DEPTH TO GROUNDWATER			STANDARD PENETRATION TEST DATA		SAMPLING PROTOCOL			FIELD CLASSIFICATION AND REMARKS			
DATE	TIME	H2O	Blows per 6 inch increment	SPT N-value, bpf	TYPE: SIZE I.D.: HAMMER WT: HAMMER FALL:	SPT	DPT		MOIST. (%)	-200 (%)	
2/19	Comp.	Dry				spl	sp	-			
						1-7/8"	-	-			
						140#	-	-			
						30"	-	-			
DEPTH (FT)	SAMPLE NO.	DEPTH INTERVAL									
5	1	1-2.5	2-3-3	6	21.9						3" Asphalt, 4" Gravel FILL - Yellowish brown silty SAND (SM) with rock fragments
10	2	8.5-10	3-4-6	10	16.1						NOTE: Wood fragments obtained in Sample 2. FILL - Mottled gray and yellowish red silty SAND (SM) with rock fragments
20	3	18.5-20	5-4-3	7	24.1						NOTE: Asphalt fragment obtained in Sample 3. FILL - Black to dark gray sandy SILT (ML) with wood fragments
30	4	28.5-30	3-6-6	12	53.1						FILL - Black to dark gray sandy SILT (ML) with wood fragments
35											RESIDUUM - Dark yellowish brown silty SAND (SM)
BLOWS/FT			DENSITY			BLOWS/FT		CONSISTENCY		SAMPLER IDENTIFICATION	
0-4			Very loose			0-2		Very Soft		DPT -----DIRECT PUSH	
4-10			Loose			2-4		Soft		SPT -----SPLIT SPOON	
10-30			Compact/M. Dense			4-8		Firm		T -----THIN WALL TUBE	
30-50			Dense			8-15		Stiff		U -----UNDISTURBED PISTON	
50+			Very Dense			15-30		Very Stiff			

TEST BORING REPORT

BORING B-6

PROJECT: Watauga Retail Center
 CLIENT: Lincoln Harris

FILE NO. : 3647
 SHEET NO. : 2 of 2
 LOCATION : See Figure 1
 DEPTH: 40.0 FT
 ELEVATION :
 DATE START: February 19, 2011
 DATE FINISH: February 19, 2011
 DRILLER : Carolina Test Borings
 INSPECTOR: Matthew Hartley

DEPTH TO GROUNDWATER			STANDARD PENETRATION TEST DATA		SAMPLING PROTOCOL			FIELD CLASSIFICATION AND REMARKS
DATE	TIME	H2O	Blows per 6 inch increment	SPT N-value, bpf	TYPE:	SPT	DPT	
2/19	Comp.	Dry			splt sp	-	-	
					SIZE I.D.:	1-7/8"	-	-
					HAMMER WT:	140#	-	-
					HAMMER FALL:	30"	-	-
DEPTH (FT)	SAMPLE NO.	DEPTH INTERVAL	MOIST. (%)	-200 (%)				
40	5	38.5-39.2	32-50/2"	50/2"	14.2			RESIDUUM - Dark yellowish brown silty SAND (SM) PWR [sampled as mottled dark yellowish brown and grayish brown silty sand]
45								Caved depth at 36.0 feet.
50								
55								
60								
65								
70								

BLOWS/FT	DENSITY	BLOWS/FT	CONSISTENCY	SAMPLER IDENTIFICATION
0-4	Very loose	0-2	Very Soft	DPT -----DIRECT PUSH
4-10	Loose	2-4	Soft	SPT -----SPLIT SPOON
10-30	Compact/M. Dense	4-8	Firm	T -----THIN WALL TUBE
30-50	Dense	8-15	Stiff	U -----UNDISTURBED PISTON
50+	Very Dense	15-30	Very Stiff	



TEST BORING REPORT

BORING B-7

PROJECT: Watauga Retail Center
 CLIENT: Lincoln Harris

FILE NO. : 3647
 SHEET NO. : 1 of 1
 LOCATION : See Figure 1
 DEPTH: 5.0 FT
 ELEVATION :
 DATE START: February 19, 2011
 DATE FINISH: February 19, 2011
 DRILLER : Carolina Test Borings
 INSPECTOR: Matthew Hartley

DEPTH TO GROUNDWATER			STANDARD PENETRATION TEST DATA		SAMPLING PROTOCOL			FIELD CLASSIFICATION AND REMARKS
DATE	TIME	H2O	Blows per 6 inch increment	SPT N-value, bpf	TYPE:	SPT	DPT	
2/19	Comp.	Dry			SIZE I.D.:	splt sp	-	
					HAMMER WT:	140#	-	
					HAMMER FALL:	30"	-	
DEPTH (FT)	SAMPLE NO.	DEPTH INTERVAL	MOIST. (%)	-200 (%)				
					6" (+/-) Topsoil			
	1	1-2.5	5-6-7	13	20.6	RESIDUUM - Mottled gray and yellowish brown silty fine SAND (SM)		
5	2	3.5-4.2	33-50/2"	50/2"	7.2	PWR [sampled as mottled gray and yellowish brown silty sand]		
10						Auger refusal encountered on apparent rock structure. Caved depth at 3.5 feet.		
15								
20								
25								
30								
35								
BLOWS/FT		DENSITY		BLOWS/FT		CONSISTENCY		SAMPLER IDENTIFICATION
0-4	Very loose	0-2	Very Soft					DPT ----DIRECT PUSH
4-10	Loose	2-4	Soft					SPT ----SPLIT SPOON
10-30	Compact/M. Dense	4-8	Firm					T ----THIN WALL TUBE
30-50	Dense	8-15	Stiff					U ----UNDISTURBED PISTON
50+	Very Dense	15-30	Very Stiff					

PROJECT: Watauga Retail Center
 CLIENT: Lincoln Harris

FILE NO. : 3647
 SHEET NO. : 1 of 1
 LOCATION : See Figure 1
 DEPTH: 4.0 FT
 ELEVATION :
 DATE START: February 17, 2011
 DATE FINISH: February 17, 2011
 DRILLER : Matthew Hartley
 INSPECTOR: Matthew Hartley

DEPTH TO GROUNDWATER			STANDARD PENETRATION TEST DATA		SAMPLING PROTOCOL			FIELD CLASSIFICATION AND REMARKS
DATE	TIME	H2O	Blows per 6 inch increment	SPT N-value, bpf	TYPE:	SPT	DPT	
2/17	Comp.	Dry					SIZE I.D.:	spt sp
					HAMMER WT:	1-7/8"	-	
					HAMMER FALL:	140#	-	
						30"	-	
DEPTH (FT)	SAMPLE NO.	DEPTH INTERVAL			MOIST. (%)	-200 (%)		
							3" (+/-) Topsoil	
							RESIDUUM - Light brown silty SAND (SM)	
5							Auger refusal encountered on apparent rock structure. Caved depth at 4.0 feet.	
10								
15								
20								
25								
30								
35								

BLOWS/FT	DENSITY	BLOWS/FT	CONSISTENCY	SAMPLER IDENTIFICATION
0-4	Very loose	0-2	Very Soft	DPT ----DIRECT PUSH
4-10	Loose	2-4	Soft	SPT ----SPLIT SPOON
10-30	Compact/M. Dense	4-8	Firm	T ----THIN WALL TUBE
30-50	Dense	8-15	Stiff	U ----UNDISTURBED PISTON
50+	Very Dense	15-30	Very Stiff	

TEST BORING REPORT

BORING B-8B

PROJECT: Watauga Retail Center
 CLIENT: Lincoln Harris

FILE NO. : 3647
 SHEET NO. : 1 of 1
 LOCATION : 20 FT NE of B-8
 DEPTH: 6.0 FT
 ELEVATION :
 DATE START: February 18, 2011
 DATE FINISH: February 18, 2011
 DRILLER : Vick Nichols
 INSPECTOR: Matthew Hartley

DEPTH TO GROUNDWATER			STANDARD PENETRATION TEST DATA		SAMPLING PROTOCOL				FIELD CLASSIFICATION AND REMARKS
DATE	TIME	H2O	Blows per 6 inch increment	SPT N-value, bpf	TYPE:	SPT	DPT		
2/18	Comp.	Dry			SIZE I.D.:	spl	sp	-	
DEPTH (FT)	SAMPLE NO.	DEPTH INTERVAL			HAMMER WT:	140#	-	-	
					HAMMER FALL:	30"	-	-	
					MOIST. (%)	-200 (%)			
5									Auger probe without sampling.
5									RESIDUUM - Light brown silty SAND (SM)
10									Auger refusal encountered on apparent rock structure. Caved depth at 6.0 feet.
15									
20									
25									
30									
35									

BLOWS/FT	DENSITY	BLOWS/FT	CONSISTENCY	SAMPLER IDENTIFICATION
0-4	Very loose	0-2	Very Soft	DPT -----DIRECT PUSH
4-10	Loose	2-4	Soft	SPT -----SPLIT SPOON
10-30	Compact/M. Dense	4-8	Firm	T -----THIN WALL TUBE
30-50	Dense	8-15	Stiff	U -----UNDISTURBED PISTON
50+	Very Dense	15-30	Very Stiff	



TEST BORING REPORT

BORING B-8C

PROJECT: Watauga Retail Center
 CLIENT: Lincoln Harris

FILE NO. : 3647
 SHEET NO. : 1 of 1
 LOCATION : 20 FT NORTH of B-8
 DEPTH: 13.0 FT
 ELEVATION :
 DATE START: February 18, 2011
 DATE FINISH: February 18, 2011
 DRILLER : Vick Nichols
 INSPECTOR: Matthew Hartley

DEPTH TO GROUNDWATER			STANDARD PENETRATION TEST DATA		SAMPLING PROTOCOL				FIELD CLASSIFICATION AND REMARKS
DATE	TIME	H2O	Blows per 6 inch increment	SPT N-value, bpf	TYPE:	SPT	DPT		
2/18	Comp.	Dry			SIZE I.D.:	split sp	-	-	
					HAMMER WT:	140#	-	-	
					HAMMER FALL:	30"	-	-	
DEPTH (FT)	SAMPLE NO.	DEPTH INTERVAL			MOIST. (%)	-200 (%)			
							Auger probe without sampling.		
5							RESIDUUM - Light brown silty SAND (SM)		
10							PWR [sampled as light brown silty sand]		
15							Caved depth at 13.0 feet.		
20									
25									
30									
35									
BLOWS/FT		DENSITY		BLOWS/FT		CONSISTENCY		SAMPLER IDENTIFICATION	
0-4		Very loose		0-2		Very Soft		DPT ----DIRECT PUSH	
4-10		Loose		2-4		Soft		SPT ----SPLIT SPOON	
10-30		Compact/M. Dense		4-8		Firm		T ----THIN WALL TUBE	
30-50		Dense		8-15		Stiff		U ----UNDISTURBED PISTON	
50+		Very Dense		15-30		Very Stiff			

PROJECT: Watauga Retail Center
 CLIENT: Lincoln Harris

FILE NO. : 3647
 SHEET NO. : 1 of 1
 LOCATION : See Figure 1
 DEPTH: 10.0 FT
 ELEVATION :
 DATE START: February 18, 2011
 DATE FINISH: February 18, 2011
 DRILLER : Carolina Test Borings
 INSPECTOR: Matthew Hartley

DEPTH TO GROUNDWATER			STANDARD PENETRATION TEST DATA		SAMPLING PROTOCOL				FIELD CLASSIFICATION AND REMARKS
DATE	TIME	H2O	Blows per 6 inch Increment	SPT N-value, bpf	TYPE: SIZE I.D.: HAMMER WT: HAMMER FALL:	SPT		DPT	
2/18	Comp.	Dry				spl	sp	-	
DEPTH (FT)	SAMPLE NO.	DEPTH INTERVAL			MOIST. (%)	-200 (%)			
5	1	1-2.5	5-4-3	7	13.7			6" (+/-) Topsoil	
								RESIDUUM - Yellowish brown silty SAND (SM) with rock fragments	
10	2	8.5-10	19-26-31	57	14.4			Mottled yellowish brown and black fine silty SAND (SM)	
15								Caved depth at 7.5 feet.	
20									
25									
30									
35									

BLOWS/FT	DENSITY	BLOWS/FT	CONSISTENCY	SAMPLER IDENTIFICATION
0-4	Very loose	0-2	Very Soft	DPT ----DIRECT PUSH
4-10	Loose	2-4	Soft	SPT ----SPLIT SPOON
10-30	Compact/M. Dense	4-8	Firm	T ----THIN WALL TUBE
30-50	Dense	8-15	Stiff	U ----UNDISTURBED PISTON
50+	Very Dense	15-30	Very Stiff	

TEST BORING REPORT

BORING B-10

PROJECT: Watauga Retail Center
 CLIENT: Lincoln Harris

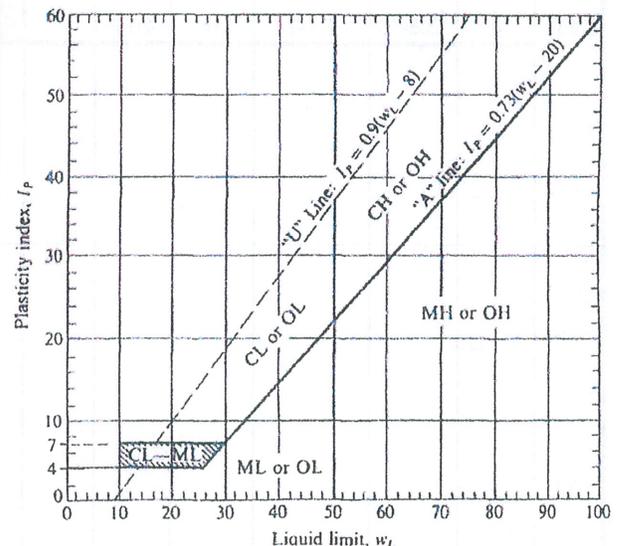
FILE NO. : 3647
 SHEET NO. : 1 of 1
 LOCATION : See Figure 1
 DEPTH: 15.0 FT
 ELEVATION :
 DATE START: February 18, 2011
 DATE FINISH: February 18, 2011
 DRILLER : Carolina Test Borings
 INSPECTOR: Matthew Hartley

DEPTH TO GROUNDWATER			STANDARD PENETRATION TEST DATA		SAMPLING PROTOCOL				FIELD CLASSIFICATION AND REMARKS	
DATE	TIME	H2O	Blows per 6 inch increment	SPT N-value, bpf	TYPE:	SPT	DPT		MOIST. (%)	-200 (%)
2/18	Comp.	Dry			SIZE I.D.:	spl sp	-	-		
					HAMMER WT:	1-7/8"	-	-		
					HAMMER FALL:	140#	-	-		
						30"	-	-		
DEPTH (FT)	SAMPLE NO.	DEPTH INTERVAL								
	1	1-2.5	4-4-4	8	13.9					POSSIBLE FILL - Mottled gray and yellow silty SAND (SM) with rock fragments
5	2	3.5-5	2-3-2	5	22.3					POSSIBLE FILL - Mottled brown and gray silty SAND (SM) with rock fragments
10	3	8.5-10	2-3-2	5	18.9					RESIDUUM - Light yellowish brown silty SAND (SM) with rock fragments
15	4	13.5-15	7-7-7	14	20.9					Light brown to dark yellowish brown fine sandy SILT (ML)
20										Caved depth at 12.5 feet.
25										
30										
35										

BLOWS/FT	DENSITY	BLOWS/FT	CONSISTENCY	SAMPLER IDENTIFICATION
0-4	Very loose	0-2	Very Soft	DPT -----DIRECT PUSH
4-10	Loose	2-4	Soft	SPT -----SPLIT SPOON
10-30	Compact/M. Dense	4-8	Firm	T -----THIN WALL TUBE
30-50	Dense	8-15	Stiff	U -----UNDISTURBED PISTON
50+	Very Dense	15-30	Very Stiff	

Major Divisions		Group Symbols	Typical Names	Laboratory Classification Criteria			
Coarse-Grained Soils (More than half of the material is larger than No. 200 sieve size)	Gravels (More than half of coarse fraction is larger than No. 4 sieves size)	Clean Gravels (Little or no fines)	GW	Well graded gravels, gravel-sand mixtures, little or no fines	$C_u = D_{60}/D_{10}$ greater than 4 $C_c = (D_{30})^2 / (D_{10} \times D_{60})$ between 1 and 3		
		GP	Poorly graded gravels, gravel-sand mixtures, little or no fines	Not meeting all gradation requirements for GW			
		Gravels with fines	GM ^a	d u	Silty Gravels, gravel-sand-silt mixtures	Atterberg limits below "A" line or P.I. less than 4	Above "A" line with P.I. between 4 and 7 are borderline cases requiring use of dual symbols
			GC	Clayey Gravels, gravel-sand-clay mixtures	Atterberg limits above "A" line with P.I. greater than 7		
	Sands (More than half of coarse fraction is smaller than No. 4 sieve size)	Clean Sands (Little or no fines)	SW	Well-graded sands, gravelly sands, little or no fines	$C_u = D_{60}/D_{10}$ greater than 6 $C_c = (D_{30})^2 / (D_{10} \times D_{60})$ between 1 and 3		
			SP	Poorly graded sands, gravelly sands, little or no fines		Not meeting all gradation requirements for SW	
		Sands with fines	SM ^a	d u	Silty sands, sand-silt mixtures	Atterberg limits below "A" line or P.I. less than 4	Limits plotting in hatched zone with P.I. between 4 and 7 are borderline cases requiring use of dual symbols
			SC	Clayey sands, sand-clay mixtures	Atterberg limits above "A" line with P.I. greater than 7		
		Fine-Grained Soils (More than half of material is smaller than No. 200 sieve)	Silt and Clays (Liquid Limit less than 50)	ML	Inorganic silts and very fine sands, rock flour, silty or clayey fine sands, or clayey silts with slight plasticity		
				CL	Inorganic clays of low to medium plasticity, gravelly clays, sandy clays, silty clays, lean clays		
OL	Organic silts and organic silty clays of low plasticity						
Silt and Clays (Liquid Limit greater than 50)	MH		Inorganic silts, micaceous or diatomaceous fine sandy or silty soils, elastic silts				
	CH		Inorganic clays of high plasticity, fat clays				
	OH		Organic clays of medium to high plasticity, organic silts				
Highly Organic Soils	Pt		Peat and other highly organic soils				

Determine percentages of sand and gravel from grain size curve depending on the percentage of the fines (fraction smaller than No. 200 sieve size).
 Coarse grained soils are classified as follows:
 Less than 5% GW, GP, SW, SP
 More than 5% GM, GC, SM, SC
 5 to 12% Borderline cases requiring dual symbols^b



Reference: Winterkorn & Fang, 1975 (ASTM D-2487)

^aDivision of GM and SM groups into subdivision of d and u are for road and airfields only. Subdivision is based on Atterberg limits; suffix d used when L.L. is 28 or less and the P.I. is 6 or less; the suffix u is used when L.L. is greater than 28.
^bBorderline classifications, used for soils possessing characteristics of two groups, are designated by combinations of group symbols. For example: GW-GC, well-graded gravel-sand mixture with clay binder.



UNIFIED SOIL CLASSIFICATION SYSTEM

TEST BORING RECORD TERMINOLOGY

The subsurface conditions encountered during drilling are reported on a field test boring record by the driller. The record contains information concerning the boring method, samples attempted and recovered, indications of the presence of coarse gravel, cobbles, etc., and observations of groundwater. It also contains the driller's interpretation of the soil conditions between samples. Therefore, these boring records contain both factual and interpretive information. The field boring records are kept on file.

After the drilling is completed, the field and project personnel classify the soil and prepared the final boring records which are used for evaluations and recommendations. The following terms are used on the records:

RELATIVE DENSITY OF COHESIONLESS SOILS FROM STANDARD PENETRATION TEST

Very Loose	0 - 4 BPF
Loose	5 - 10 BPF
Firm	11- 20 BPF
Very Firm	21-30 BPF
Dense	31- 50 BPF
Very Dense	50+ BPF

(BPF = blows per foot, ASTM D-1586)

CONSISTENCY OF COHESIVE SOILS FROM STANDARD PENETRATION TEST

Very Soft	0 - 1 BPF
Soft	2 - 4 BPF
Firm	5 - 8 BPF
Stiff	9 - 15 BPF
Very Stiff	16 - 30 BPF
Hard	31+ BPF

ESTIMATED RELATIVE MOISTURE CONDITION

Dry	- Under 5% Moisture
Moist	- Under optimum compaction moisture content
Wet	- Over optimum compaction moisture content
Very Wet	- Saturated or Nearly Saturate

RELATIVE PROPORTIONS

A trace	0 - 5%
Little	6 - 15%
With	16 - 30%
And	31 - 50%

RELATIVE HARDNESS OF ROCK

Very Soft	Pieces 1 inch or more in thickness can be broken by finger pressure; can be scratched readily by a fingernail.
Soft	May be broken with fingers and gouged with pick.
Moderately Hard	Moderate blow of hammer required to break sample.
Hard	Hard blow of hammer required to break sample.
Very Hard	Several hard blows of hammer required to break sample.

PARTICLE SIZE IDENTIFICATION

Cobbles	Over 3"
Gravel	
Coarse	3" to ¾ inch
Fine	¾ inch to No. 4 sieve
Sand	
Coarse	No. 4 to No. 10 sieves
Medium	No. 10 to No. 40 sieves
Fine	No. 40 to No. 200 sieves
Fines (clay or silt)	Below No. 200 sieve

RELATIVE QUALITY OF ROCK CORES

Very Poor	RQD* = 0 - 25%
Poor	25- 50%
Fair	50- 75%
Good	75- 90%
Excellent	90-100%

$$\text{Recovery} = \frac{\text{Total length of core recovered}}{\text{Length of core run}}$$

$$*\text{RQD} = \frac{\text{Total of core pieces at least 4" long}}{\text{Length of core run}}$$

UNIFOUR
the art of engineering

Important Information About Your Geotechnical Engineering Report

Subsurface problems are a principal cause of construction delays, cost overruns, claims, and disputes.

The following information is provided to help you manage your risks.

Geotechnical Services Are Performed for Specific Purposes, Persons, and Projects

Geotechnical engineers structure their services to meet the specific needs of their clients. A geotechnical engineering study conducted for a civil engineer may not fulfill the needs of a construction contractor or even another civil engineer. Because each geotechnical engineering study is unique, each geotechnical engineering report is unique, prepared *solely* for the client. *No one except you* should rely on your geotechnical engineering report without first conferring with the geotechnical engineer who prepared it. *And no one—not even you*—should apply the report for any purpose or project except the one originally contemplated.

A Geotechnical Engineering Report Is Based on A Unique Set of Project-Specific Factors

Geotechnical engineers consider a number of unique, project-specific factors when establishing the scope of a study. Typical factors include: the client's goals, objectives, and risk management preferences; the general nature of the structure involved, its size, and configuration; the location of the structure on the site; and other planned or existing site improvements, such as access roads, parking lots, and underground utilities. Unless the geotechnical engineer who conducted the study specifically indicates otherwise, *do not rely on a geotechnical engineering report* that was:

- not prepared for you,
- not prepared for your project,
- not prepared for the specific site explored, or
- completed before important project changes were made.

Typical changes that can erode the reliability of an existing geotechnical engineering report include those that affect:

- the function of the proposed structure, as when it's changed from a parking garage to an office building, or from a light industrial plant to a refrigerated warehouse,

- elevation, configuration, location, orientation, or weight of the proposed structure,
- composition of the design team, or
- project ownership.

As a general rule, *always* inform your geotechnical engineer of project changes—even minor ones—and request an assessment of their impact. *Geotechnical engineers cannot accept responsibility or liability for problems that occur because their reports do not consider developments of which they were not informed.*

Subsurface Conditions Can Change

A geotechnical engineering report is based on conditions that existed at the time the study was performed. *Do not rely on a geotechnical engineering report* whose adequacy may have been affected by: the passage of time; by man-made events, such as construction on or adjacent to the site; or by natural events, such as floods, earthquakes, or groundwater fluctuations. *Always* contact the geotechnical engineer before applying the report to determine if it is still reliable. A minor amount of additional testing or analysis could prevent major problems.

Most Geotechnical Findings Are Professional Opinions

Site exploration identifies subsurface conditions *only* at those points where subsurface tests are conducted or samples are taken. Geotechnical engineers review field and laboratory data and then apply their professional judgment to render an *opinion* about subsurface conditions throughout the site. Actual subsurface conditions may differ—sometimes significantly—from those indicated in your report. Retaining the geotechnical engineer who developed your report to provide construction observation is the most effective method of managing the risks associated with unanticipated conditions.

A Report's Recommendations Are *Not* Final

Do not overrely on the construction recommendations included in your report. *Those recommendations are not final*, because geotechnical engineers develop them principally from judgment and opinion. Geotechnical engineers can finalize their recommendations only by observing actual subsurface conditions revealed during construction. *The geotechnical engineer who developed your report cannot assume responsibility or liability for the report's recommendations if that engineer does not perform construction observation.*

A Geotechnical Engineering Report Is Subject To Misinterpretation

Other design team members' misinterpretation of geotechnical engineering reports has resulted in costly problems. Lower that risk by having your geotechnical engineer confer with appropriate members of the design team after submitting the report. Also retain your geotechnical engineer to review pertinent elements of the design team's plans and specifications. Contractors can also misinterpret a geotechnical engineering report. Reduce that risk by having your geotechnical engineer participate in prebid and preconstruction conferences, and by providing construction observation.

Do Not Redraw the Engineer's Logs

Geotechnical engineers prepare final boring and testing logs based upon their interpretation of field logs and laboratory data. To prevent errors or omissions, the logs included in a geotechnical engineering report should *never* be redrawn for inclusion in architectural or other design drawings. Only photographic or electronic reproduction is acceptable, *but recognize that separating logs from the report can elevate risk.*

Give Contractors a Complete Report and Guidance

Some owners and design professionals mistakenly believe they can make contractors liable for unanticipated subsurface conditions by limiting what they provide for bid preparation. To help prevent costly problems, give contractors the complete geotechnical engineering report, *but* preface it with a clearly written letter of transmittal. In that letter, advise contractors that the report was not prepared for purposes of bid development and that the

report's accuracy is limited; encourage them to confer with the geotechnical engineer who prepared the report (a modest fee may be required) and/or to conduct additional study to obtain the specific types of information they need or prefer. A prebid conference can also be valuable. *Be sure contractors have sufficient time to perform additional study.* Only then might you be in a position to give contractors the best information available to you, while requiring them to at least share some of the financial responsibilities stemming from unanticipated conditions.

Read Responsibility Provisions Closely

Some clients, design professionals, and contractors do not recognize that geotechnical engineering is far less exact than other engineering disciplines. This lack of understanding has created unrealistic expectations that have led to disappointments, claims, and disputes. To help reduce such risks, geotechnical engineers commonly include a variety of explanatory provisions in their reports. Sometimes labeled "limitations", many of these provisions indicate where geotechnical engineers' responsibilities begin and end, to help others recognize their own responsibilities and risks. *Read these provisions closely.* Ask questions. Your geotechnical engineer should respond fully and frankly.

Geoenvironmental Concerns Are Not Covered

The equipment, techniques, and personnel used to perform a *geoenvironmental* study differ significantly from those used to perform a *geotechnical* study. For that reason, a geotechnical engineering report does not usually relate any geoenvironmental findings, conclusions, or recommendations; e.g., about the likelihood of encountering underground storage tanks or regulated contaminants. *Unanticipated environmental problems have led to numerous project failures.* If you have not yet obtained your own geoenvironmental information, ask your geotechnical consultant for risk management guidance. *Do not rely on an environmental report prepared for someone else.*

Rely on Your Geotechnical Engineer for Additional Assistance

Membership in ASFE exposes geotechnical engineers to a wide array of risk management techniques that can be of genuine benefit for everyone involved with a construction project. Confer with your ASFE-member geotechnical engineer for more information.

ASFE PROFESSIONAL FIRMS PRACTICING IN THE GEOSCIENCES

8811 Colesville Road Suite G106 Silver Spring, MD 20910
Telephone: 301-565-2733 Facsimile: 301-589-2017
email: info@asfe.org www.asfe.org

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IIGER06983.5M

**Watauga County High School redevelopment
Budget Summary 25-Apr-11**

Square Feet	SF
Anchor A	136,000
Shop A	6,000
Shop B	6,300
Shop C	7,800
Shop D	8,000
Anchor B	55,000
Junior A	36,000
Theatre	50,000
Junior B	17,000
	322,100

GLA excluding Anchor A 186,100

Hard Costs	Square Feet	Cost PSF (building specific)	Cost PSF (total GLA)	Total Cost	Notes
Land			\$ 21.73	\$ 7,000,000	
Site work (see additional note below)			\$ 25.20	\$ 8,116,000	Grading, water, sanitary sewer, storm sewer, parking lot, curb, gutter, lighting & landscaping
rezoning / pursuit costs			\$ 1.27	\$ 410,000	
Anchor A (pad sale)				\$ -	Cost to deliver building pad is included in site work
Retail Shops A, B, C, D	28,100	\$ 92.35	\$ 8.06	\$ 2,595,000	
Anchor B (Ground Lease)				\$ -	Cost to deliver building pad is included in site work
Junior Anchors A & B	53,000	\$ 79.00	\$ 13.00	\$ 4,187,000	
Theater	50,000	\$ 113.00	\$ 17.54	\$ 5,650,000	
Design			\$ 4.21	\$ 1,355,000	Architect & mechanical engineering, civil engineering, traffic engineering, survey, geotech
Offsite road work				\$ 350,000	
Permitting & Impact Fees				\$ 75,000	
Building signage & graphics			\$ 0.08	\$ 25,000	
Monument sign			\$ 0.23	\$ 75,000	
Contingency			\$ 5.43	\$ 1,750,000	
Total Hard Costs			\$ 96.75	\$ 31,588,000	
Soft Costs					
Tenant Improvements	28,100	\$ 28.83	\$ 2.51	\$ 810,000	Shops A, B, C & D only. Jr Anchors assumed to be turnkey delivery
Commissions			\$ 5.36	\$ 1,725,000	
Legal			\$ 0.93	\$ 300,000	
construction Loan Fee			\$ 0.43	\$ 140,000	includes lenders legal and appraisal
Construction Interest			\$ 3.73	\$ 1,200,000	
Marketing			\$ 0.08	\$ 25,000	
Development Fee			\$ 2.33	\$ 750,000	3% of hard costs, excluding
			\$ 15.37	\$ 4,950,000	
Total Project Costs			\$ 113.44	\$ 36,538,000	

Financial Projections	Square Feet	Cost PSF (total GLA)	Total Cost	Notes
Projected land sales			\$ 8,500,000	
Net Project Costs after land sales		\$ 150.66	\$ 28,038,000	Cost per square foot excludes anchor A due to projected land sale
Required return on net costs			10.00%	
Required NOI		\$ 15.07	\$ 2,803,800	NOI per square foot excludes anchor A due to projected land sale
Projected NOI		\$ 14.67	\$ 2,730,000	NOI per square foot excludes anchor A due to projected land sale
Projected return on cost			9.74%	

Site Work: The site work estimate was obtained by Shelco Inc and was provided by Taylor & Murphy of Asheville. A soil report generated by UNIFOUR engineering was provided to both Shelco and Taylor & Murphy. Site & Grading Plans: The Site and grading Plans were provided by ORA Architecture and Cole Jenest & Stone Civil Engineers. Both plans utilized the soil report to minimize rock excavation.



AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT, including any and all addenda attached hereto ("Agreement"), is by and between
Miller Properties, Inc , and/or assigns

a(n) Corporation ("Buyer"), and
(individual or State of formation and type of entity)
Watauga County, a North Carolina corporate body politic chartered by the State of North Carolina

a(n) n/a ("Seller").
(individual or State of formation and type of entity)

FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH HEREIN AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. Terms and Definitions: The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

(a) "**Property**": (Address)
400 High School Drive and Located on N.C. Highway 105 in Boone, NC 28607.
Also see Exhibit A attached hereto.

Plat Reference: Lot(s) n/a, Block or Section n/a, as shown on Plat Book or Slide
n/a at Page(s) n/a, n/a County, consisting of 74.942 acres.

If this box is checked, "Property" shall mean that property described on Exhibit A attached hereto and incorporated herewith by reference,

(For information purposes: (i) the tax parcel number of the Property is: See Exhibit A attached hereto; and,
(ii) some or all of the Property, consisting of approximately n/a acres, is described in Deed Book n/a,
Page No. n/a, n/a County.)

together with all buildings and improvements thereon and all fixtures and appurtenances thereto and all personal property, if any, itemized on Exhibit A.

\$ 10,000,000.00 (b) "**Purchase Price**" shall mean the sum of ten million Dollars,

payable on the following terms:

\$ 500,000.00 (i) "**Earnest Money**" shall mean five hundred thousand Dollars

or terms as follows:

made in accordance with the terms and provisions of Exhibit B.

Upon this Agreement becoming a contract in accordance with Section 14, the Earnest Money shall be promptly deposited in escrow with As required by North Carolina Statute 160A-269 (name of person/entity with whom deposited), to be applied as part payment of the Purchase Price of the Property at Closing, or disbursed as agreed upon under the provisions of Section 10 herein.



IN AN INTEREST BEARING TRUST ACCOUNT, AND: (check only ONE box)

ANY INTEREST EARNED THEREON SHALL BE APPLIED AS PART PAYMENT OF THE PURCHASE PRICE OF THE PROPERTY AT CLOSING, OR DISBURSED AS AGREED UPON UNDER THE PROVISIONS OF SECTION 10 HEREIN. (Buyers Taxpayer Identification Number is: 56-1648405)

ANY INTEREST EARNED THEREON SHALL BELONG TO THE ACCOUNT HOLDER IN CONSIDERATION OF THE EXPENSES INCURRED BY MAINTAINING SUCH ACCOUNT AND RECORDS ASSOCIATED THEREWITH.

\$ n/a (ii) **Proceeds of a new loan** in the amount of n/a Dollars for a term of n/a years, with an amortization period not to exceed n/a years, at an interest rate not to exceed n/a % per annum with mortgage loan discount points not to exceed n/a % of the loan amount, or such other terms as may be set forth on **Exhibit B**. Buyer shall pay all costs associated with any such loan.

\$ n/a (iii) **Delivery of a promissory note** secured by a deed of trust, said promissory note in the amount of n/a Dollars being payable over term of n/a years, with an amortization period of n/a years, payable in monthly installments of principal, together with accrued interest on the outstanding principal balance at the rate of n/a percent (n/a %) per annum in the amount of \$ n/a , with the first principal payment beginning on the first day of the month next succeeding the date of Closing, or such other terms as may be set forth on **Exhibit B**. At any time, the promissory note may be prepaid in whole or in part without penalty and without further interest on the amounts prepaid from the date of such prepayment. (NOTE: In the event of Buyer's subsequent default upon a promissory note and deed of trust given hereunder, Seller's remedies may be limited to foreclosure of the Property. If the deed of trust given hereunder is subordinated to senior financing, the material terms of such financing must be set forth on **Exhibit B**. If such senior financing is subsequently foreclosed, the Seller may have no remedy to recover under the note.)

\$ n/a (iv) **Assumption** of that unpaid obligation of Seller secured by a deed of trust on the Property, such obligation having an outstanding principal balance of \$ n/a and evidenced by a note bearing interest at the rate of n/a percent (n/a %) per annum, and a current payment amount of \$ n/a . The obligations of Buyer under this Agreement are conditioned upon Buyer being able to assume the existing loan described above. If such assumption requires the lender's approval, Buyer agrees to use its best efforts to secure such approval and to advise Seller immediately upon receipt of the lender's decision. Approval must be granted on or before n/a .
~~On or before this date, Buyer has the right to terminate this Agreement for failure to be able to assume the loan described above by delivering to Seller written notice of termination by the above date, time being of the essence.~~ If Buyer delivers such notice, this Agreement shall be null and void and Earnest Money shall be refunded to Buyer. If Buyer fails to deliver such notice, then Buyer will be deemed to have waived the loan condition. Unless provided otherwise in Section 3 hereof, Buyer shall pay all fees and costs associated with any such assumption, including any assumption fee charged by the lender. At or before Closing, Seller shall assign to Buyer all interest of Seller in any current reserves or escrows held by the lender, any property management company and/or Seller, including but not limited to any tenant improvement reserves, leasing commission reserves, security deposits and operating or capital reserves for which Seller shall be credited said amounts at Closing.

\$ 9,500,000.00 (v) **Cash, balance of Purchase Price**, at Closing in the amount of nine million five hundred thousand Dollars.

(c) "**Closing**" shall mean the date and time of recording of the deed. Closing shall occur on or before n/a or not later than 180 days following the end of the "Examination Period".

(d) "**Contract Date**" means the date this Agreement has been fully executed by both Buyer and Seller.

(e) **"Examination Period"** shall mean the period beginning on the Contract Date and extending through See Exhibit B attached hereto.

TIME IS OF THE ESSENCE AS TO THE EXAMINATION PERIOD.

(f) **"Broker(s)"** shall mean:
n/a ("Listing Agency"),
n/a ("Listing Agent" - License # n/a)
Acting as: Seller's Agent; Dual Agent
and Miller Properties, Inc. ("Selling Agency"),
Rick Miller ("Selling Agent" - License # 112051)
Acting as: Buyer's Agent; Seller's (Sub)Agent; Dual Agent

(g) **"Seller's Notice Address"** shall be as follows:
Nathan A. Miller, Chairman
814 West King Street Suite 205
Boone, NC 28607

except as same may be changed pursuant to Section 12.

(h) **"Buyer's Notice Address"** shall be as follows:
P.O. Box 3018 Boone, NC 28607

except as same may be changed pursuant to Section 12.

(i) If this block is marked, additional terms of this Agreement are set forth on **Exhibit B** attached hereto and incorporated herein by reference. (Note: Under North Carolina law, real estate agents are not permitted to draft conditions or contingencies to this Agreement.)

Section 2. Sale of Property and Payment of Purchase Price: Seller agrees to sell and Buyer agrees to buy the Property for the Purchase Price.

Section 3. Proration of Expenses and Payment of Costs: Seller and Buyer agree that all property taxes (on a calendar year basis), leases, rents, mortgage payments and utilities or any other assumed liabilities as detailed on attached **Exhibit B**, if any, shall be prorated as of the date of Closing. Seller shall pay for preparation of a deed and all other documents necessary to perform Seller's obligations under this Agreement, excise tax (revenue stamps), any deferred or rollback taxes, and other conveyance fees or taxes required by law, and the following:

n/a
Buyer shall pay recording costs, costs of any title search, title insurance, ~~survey~~, the cost of any inspections or investigations undertaken by Buyer under this Agreement and the following:

n/a
Each party shall pay its own attorney's fees.

Section 4. Deliveries: Seller agrees to use best efforts to deliver to Buyer as soon as reasonably possible after the Contract Date copies of all information relating to the Property in possession of or available to Seller, including but not limited to: title insurance policies, surveys and copies of all presently effective warranties or service contracts related to the Property. Seller authorizes (1) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney's file to Buyer and both Buyer's and Seller's agents and attorneys; and (2) the Property's title insurer or its agent to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to Buyer and both Buyer's and Seller's agents and attorneys. If Buyer does not consummate the Closing for any reason other than Seller default, then Buyer shall return to Seller all materials delivered by Seller to Buyer pursuant to this Section 4 (or Section 7, if applicable), if any, and shall, upon Seller's request, provide to Seller copies of (subject to the ownership and copyright interests of the preparer thereof) any and all studies, reports, surveys and other information relating directly to the Property prepared by or at the request of Buyer, its employees and agents, and shall deliver to Seller, upon the release of the Earnest Money, copies of all of the foregoing without any warranty or representation by Buyer as to the contents, accuracy or correctness thereof. | | | | |

Section 5. Evidence of Title: Seller agrees to convey fee simple marketable and insurable title to the Property free and clear of all liens, encumbrances and defects of title other than: (a) zoning ordinances affecting the Property, (b) Leases (if applicable) and (c) matters of record existing at the Contract Date that are not objected to by Buyer prior to the end of the Examination Period ("Permitted Exceptions"); provided that Seller shall be required to satisfy, at or prior to Closing, any encumbrances that may be satisfied by the

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PREPARED BY: Rick Miller, Broker

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Buyer Initials ML

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Seller Initials _____

payment of a fixed sum of money, such as deeds of trust, mortgages or statutory liens. Seller shall not enter into or record any instrument that affects the Property (or any personal property listed on Exhibit A) after the Contract Date without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed.

Section 6. Conditions: This Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon fulfillment (or waiver by Buyer, whether explicit or implied) of the following conditions:

(a) **New Loan:** The Buyer must be able to obtain the loan, if any, referenced in Section 1(b)(i). Buyer must be able to obtain a firm commitment for this loan on or before n/a, effective through the date of Closing. Buyer agrees to use its best efforts to secure such commitment and to advise Seller immediately upon receipt of lender's decision. On or before the above date, Buyer has the right to terminate this Agreement for failure to obtain the loan referenced in Section 1(b)(i) by delivering to Seller written notice of termination by the above date, *time being of the essence*. If Buyer delivers such notice, this Agreement shall be null and void and Earnest Money shall be refunded to Buyer. If Buyer fails to deliver such notice, then Buyer will be deemed to have waived the loan condition. Notwithstanding the foregoing, after the above date, Seller may request in writing from Buyer a copy of the commitment letter. If Buyer fails to provide Seller a copy of the commitment letter within five (5) days of receipt of Seller's request, then Seller may terminate this Agreement by written notice to Buyer at any time thereafter, provided Seller has not then received a copy of the commitment letter, and Buyer shall receive a return of Earnest Money.

(b) **Qualification for Financing:** If Buyer is to assume any indebtedness in connection with payment of the Purchase Price, Buyer agrees to use its best efforts to qualify for the assumption. Should Buyer fail to qualify, Buyer shall notify Seller in writing immediately upon lender's decision, whereupon this Agreement shall terminate, and Buyer shall receive a return of Earnest Money.

(c) **Title Examination:** After the Contract Date, Buyer shall, at Buyer's expense, cause a title examination to be made of the Property before the end of the Examination Period. In the event that such title examination shall show that Seller's title is not fee simple marketable and insurable, subject only to Permitted Exceptions, then Buyer shall promptly notify Seller in writing of all such title defects and exceptions, in no case later than the end of the Examination Period, and Seller shall have thirty (30) days to cure said noticed defects. If Seller does not cure the defects or objections within thirty (30) days of notice thereof, then Buyer may terminate this Agreement and receive a return of Earnest Money (notwithstanding that the Examination Period may have expired). If Buyer is to purchase title insurance, the insuring company must be licensed to do business in the state in which the Property is located. Title to the Property must be insurable at regular rates, subject only to standard exceptions and Permitted Exceptions.

(d) **Same Condition:** If the Property is not in substantially the same condition at Closing as of the date of the offer, reasonable wear and tear excepted, then the Buyer may (i) terminate this Agreement and receive a return of the Earnest Money or (ii) proceed to Closing whereupon Buyer shall be entitled to receive, in addition to the Property, any of the Seller's insurance proceeds payable on account of the damage or destruction applicable to the Property.

(e) **Inspections:** Buyer, its agents or representatives, at Buyer's expense and at reasonable times during normal business hours, shall have the right to enter upon the Property for the purpose of inspecting, examining, performing soil boring and other testing, conducting timber cruises, and surveying the Property. Buyer shall conduct all such on-site inspections, examinations, soil boring and other testing, timber cruises and surveying of the Property in a good and workmanlike manner, shall repair any damage to the Property caused by Buyer's entry and on-site inspections and shall conduct same in a manner that does not unreasonably interfere with Seller's or any tenant's use and enjoyment of the Property. In that respect, Buyer shall make reasonable efforts to undertake on-site inspections outside of the hours any tenant's business is open to the public and shall give prior notice to any tenants of any entry onto any tenant's portion of the Property for the purpose of conducting inspections. Upon Seller's request, Buyer shall provide to Seller evidence of general liability insurance. Buyer shall also have a right to review and inspect all contracts or other agreements affecting or related directly to the Property and shall be entitled to review such books and records of Seller that relate directly to the operation and maintenance of the Property, provided, however, that Buyer shall not disclose any information regarding this Property (or any tenant therein) unless required by law and the same shall be regarded as confidential, to any person, except to its attorneys, accountants, lenders and other professional advisors, in which case Buyer shall obtain their agreement to maintain such confidentiality. Buyer assumes all responsibility for the acts of itself, its agents or representatives in exercising its rights under this Section 6(e) and agrees to indemnify and hold Seller harmless from any damages resulting therefrom. This indemnification obligation of Buyer shall survive the Closing or earlier termination of this Agreement. Buyer shall, at Buyer's expense, promptly repair any damage to the Property caused by Buyer's entry and on-site inspections. Except as provided in Section 6(c) above, Buyer shall have from the Contract Date through the end of the Examination Period to perform the above inspections, examinations and testing. **IF BUYER CHOOSES NOT TO PURCHASE THE PROPERTY, FOR ANY REASON OR NO REASON, AND PROVIDES WRITTEN NOTICE TO SELLER THEREOF PRIOR TO THE EXPIRATION OF THE EXAMINATION PERIOD, THEN THIS AGREEMENT SHALL TERMINATE, AND BUYER SHALL RECEIVE A RETURN OF THE EARNEST MONEY.**

Section 7. Leases (Check one of the following, as applicable):

If this box is checked, Seller affirmatively represents and warrants that there are no Leases (as hereinafter defined) affecting the

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Buyer Initials RM

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Seller Initials _____

Property.

If this box is checked, Seller discloses that there are one or more leases affecting the Property (oral or written, recorded or not - "Leases") and the following provisions are hereby made a part of this Agreement.

(a) All Leases shall be itemized on **Exhibit B**;

(b) Seller shall deliver copies of any Leases to Buyer pursuant to Section 4 as if the Leases were listed therein;

(c) Seller represents and warrants that as of the Contract Date there are no current defaults (or any existing situation which, with the passage of time, or the giving of notice, or both, or at the election of either landlord or tenant could constitute a default) either by Seller, as landlord, or by any tenant under any Lease ("Lease Default"). In the event there is any Lease Default as of the Contract Date, Seller agrees to provide Buyer with a detailed description of the situation in accordance with Section 4. Seller agrees not to commit a Lease Default as Landlord after the Contract Date, and agrees further to notify Buyer immediately in the event a Lease Default arises or is claimed, asserted or threatened to be asserted by either Seller or a tenant under the Lease.

(d) In addition to the conditions provided in Section 6 of this Agreement, this Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon the assignment of Seller's interest in any Lease to Buyer in form and content acceptable to Buyer (with tenant's written consent and acknowledgement, if required under the Lease), and Seller agrees to use its best efforts to effect such assignment. Any assignment required under this Section 7 shall be required to be delivered at or before Closing by Seller in addition to those deliveries required under Section 11 of this Agreement.

(e) Seller agrees to deliver an assignment of any Lease at or before Closing, with any security deposits held by Seller under any Leases to be transferred or credited to Buyer at or before Closing. Seller also agrees to execute and deliver (and work diligently to obtain any tenant signatures necessary for same) any estoppel certificates and subordination, nondisturbance and attornment agreements in such form as Buyer may reasonably request.

Section 8. Environmental: Seller represents and warrants that it has no actual knowledge of the presence or disposal, except as in accordance with applicable law, within the buildings or on the Property of hazardous or toxic waste or substances, which are defined as those substances, materials, and wastes, including, but not limited to, those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR Part 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302.4) and amendments thereto, or such substances, materials and wastes, which are or become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a Hazardous Substance pursuant to Section 311 of the Clean Water Act of 1977 (33 U.S.C. §1321) or listed pursuant to Section 307 of the Clean Water Act of 1977 (33 U.S.C. §1317), (v) defined as a hazardous waste pursuant to Section 1004 of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6903) or (vi) defined as a hazardous substance pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601). Seller has no actual knowledge of any contamination of the Property from such substances as may have been disposed of or stored on neighboring tracts.

~~**Section 9. Risk of Loss/Damage/Repair:** Until Closing, the risk of loss or damage to the Property, except as otherwise provided herein, shall be borne by Seller. Except as to maintaining the Property in its same condition, Seller shall have no responsibility for the repair of the Property, including any improvements, unless the parties hereto agree in writing.~~

Section 10. Earnest Money Disbursement: In the event that any of the conditions hereto are not satisfied, or in the event of a breach of this Agreement by Seller, then the Earnest Money shall be returned to Buyer, but such return shall not affect any other remedies available to Buyer for such breach. In the event this offer is accepted and Buyer breaches this Agreement, then the Earnest Money shall be forfeited, but such forfeiture shall not affect any other remedies available to Seller for such breach. NOTE: In the event of a dispute between Seller and Buyer over the return or forfeiture of Earnest Money held in escrow by a licensed real estate broker, the broker is required by state law to retain said Earnest Money in its trust or escrow account until it has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction, or alternatively, the party holding the Earnest Money may deposit the disputed monies with the appropriate clerk of court in accordance with the provisions of N.C.G.S. §93A-12.

Section 11. Closing: At or before Closing, Seller shall deliver to Buyer a general warranty deed unless otherwise specified on Exhibit B and other documents customarily executed or delivered by a seller in similar transactions, including without limitation, a bill of sale for any personalty listed on Exhibit A, an owner's affidavit, lien waiver forms and a non-foreign status affidavit (pursuant to the Foreign Investment in Real Property Tax Act), and Buyer shall pay to Seller the Purchase Price. At Closing, the Earnest Money shall be applied as part of the Purchase Price. The Closing shall be conducted by Buyer's attorney or handled in such other manner as the parties hereto may mutually agree in writing. Possession shall be delivered at Closing, unless otherwise agreed herein. The Purchase Price and other funds to be disbursed pursuant to this Agreement shall not be disbursed until Closing has taken place.

This document is jointly approved by: North Carolina Bar Association and North Carolina Association of REALTORS®, Inc.
PREPARED BY: Rick Miller, Broker

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Buyer Initials RM

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Seller Initials _____

Section 12. Notices: Unless otherwise provided herein, all notices and other communications which may be or are required to be given or made by any party to the other in connection herewith shall be in writing and shall be deemed to have been properly given and received on the date delivered in person or deposited in the United States mail, registered or certified, return receipt requested, to the addresses set out in Section 1(g) as to Seller and in Section 1(h) as to Buyer, or at such other addresses as specified by written notice delivered in accordance herewith.

Section 13. Entire Agreement: This Agreement constitutes the sole and entire agreement among the parties hereto and no modification of this Agreement shall be binding unless in writing and signed by all parties hereto.

Section 14. Enforceability: This Agreement shall become a contract when signed by both Buyer and Seller and such signing is communicated to both parties; it being expressly agreed that the notice described in Section 12 is not required for effective communication for the purposes of this Section 14. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns and their personal representatives.

Section 15. Adverse Information and Compliance with Laws:

(a) **Seller Knowledge:** Seller has no actual knowledge of (i) condemnation(s) affecting or contemplated with respect to the Property; (ii) actions, suits or proceedings pending or threatened against the Property; (iii) changes contemplated in any applicable laws, ordinances or restrictions affecting the Property; or (iv) governmental special assessments, either pending or confirmed, for sidewalk, paving, water, sewer, or other improvements on or adjoining the Property, and no pending or confirmed owners' association special assessments, except as follows (Insert "None" or the identification of any matters relating to (i) through (iv) above, if any):
none

Note: For purposes of this Agreement, a "confirmed" special assessment is defined as an assessment that has been approved by a governmental agency or an owners' association for the purpose(s) stated, whether or not it is fully payable at time of closing. A "pending" special assessment is defined as an assessment that is under formal consideration by a governing body. Seller shall pay all owners' association assessments and all governmental assessments confirmed as of the date of Closing, if any, and Buyer shall take title subject to all pending assessments disclosed by Seller herein, if any.

Seller represents that the regular owners' association dues, if any, are \$ n/a per n/a.

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

Section 16. Survival of Representations and Warranties: All representations, warranties, covenants and agreements made by the parties hereto shall survive the Closing and delivery of the deed. Seller shall, at or within six (6) months after the Closing, and without further consideration, execute, acknowledge and deliver to Buyer such other documents and instruments, and take such other action as Buyer may reasonably request or as may be necessary to more effectively transfer to Buyer the Property described herein in accordance with this Agreement.

Section 17. Applicable Law: This Agreement shall be construed under the laws of the state in which the Property is located. This form has only been approved for use in North Carolina.

Section 18. Assignment: This Agreement is freely assignable unless otherwise expressly provided on Exhibit B.

Section 19. Tax-Deferred Exchange: In the event Buyer or Seller desires to effect a tax-deferred exchange in connection with the conveyance of the Property, Buyer and Seller agree to cooperate in effecting such exchange; provided, however, that the exchanging party shall be responsible for all additional costs associated with such exchange, and provided further, that a non-exchanging party shall not assume any additional liability with respect to such tax-deferred exchange. Seller and Buyer shall execute such additional documents, at no cost to the non-exchanging party, as shall be required to give effect to this provision.

Section 20. Memorandum of Contract: Upon request by either party, the parties hereto shall execute a memorandum of contract in recordable form setting forth such provisions hereof (other than the Purchase Price and other sums due) as either party may wish to incorporate. Such memorandum of contract shall contain a statement that it automatically terminates and the Property is released from any effect thereby as of a specific date to be stated in the memorandum (which specific date shall be no later than the date of Closing). The cost of recording such memorandum of contract shall be borne by the party requesting execution of same.

This form jointly approved by: North Carolina Bar Association and North Carolina Association of REALTORS®, Inc.
PREPARED BY: Rick Miller, Broker

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Buyer Initials LM

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Seller Initials _____

Section 21. Authority: Each signatory to this Agreement represents and warrants that he or she has full authority to sign this Agreement and such instruments as may be necessary to effectuate any transaction contemplated by this Agreement on behalf of the party for whom he or she signs and that his or her signature binds such party.

Section 22. Brokers: Except as expressly provided herein, Buyer and Seller agree to indemnify and hold each other harmless from any all claims of brokers, consultants or real estate agents by, through or under the indemnifying party for fees or commissions arising of the sale of the Property to Buyer. Buyer and Seller represent and warrant to each other that: (i) except as to the Brokers designated under Section 1(f) of this Agreement, they have not employed nor engaged any brokers, consultants or real estate agents to be involved in this transaction and (ii) that the compensation of the Brokers is established by and shall be governed by separate agreements entered into as amongst the Brokers, the Buyer and/or the Seller.

EIFS/SYNTHETIC STUCCO: If the adjacent box is checked, Seller discloses that the Property has been clad previously (either in whole or in part) with an "exterior insulating and finishing system" commonly known as "EIFS" or "synthetic stucco". Seller makes no representations or warranties regarding such system and Buyer is advised to make its own independent determinations with respect to conditions related to or occasioned by the existence of such materials at the Property.

THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. AND THE NORTH CAROLINA BAR ASSOCIATION MAKE NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION. IF YOU DO NOT UNDERSTAND THIS FORM OR FEEL THAT IT DOES NOT PROVIDE FOR YOUR LEGAL NEEDS, YOU SHOULD CONSULT A NORTH CAROLINA REAL ESTATE ATTORNEY BEFORE YOU SIGN IT.

Miller Properties, Inc. and/or assigns

BUYER

By: President

DATE

6/9/2011

Watauga County, a North Carolina corporate body politic chartered by the State of North Carolina

By: _____

DATE

By: Nathan A. Miller, Chairman of the Watauga County Board of County Commissioners

Date: _____

The undersigned hereby acknowledges receipt of the Earnest Money set forth herein and agrees to hold said Earnest Money in accordance with the terms hereof.

(Name of Firm)

Date: _____ By: _____

EXHIBIT A
AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY
BY AND BETWEEN
MILLER PROPERTIES, INC. AND/OR ASSIGNS AS BUYER AND
WATAUGA COUNTY, A NORTH CAROLINA BODY POLITIC CHARTERED BY
THE STATE OF NORTH CAROLINA AS SELLER

Parcel ID numbers: 2910-02-7724-000, 2910-03-2114-000, 2910-13-4202-000, 2910-13-0228-000, 2910-01-5763-000, 2910-11-0378-000 and 2900-92-7413-000, as recorded in Watauga County. Also including all improvements and all appurtenant equipment.

IN THE EVENT OF A CONFLICT BETWEEN THIS EXHIBIT A AND THE AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY TO WHICH IT IS ATTACHED, THIS EXHIBIT A SHALL CONTROL.

Buyer RM

Seller _____

EXHIBIT B
AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY
BY AND BETWEEN
MILLER PROPERTIES, INC. AND/OR ASSIGNS AS BUYER AND
WATAUGA COUNTY, A NORTH CAROLINA BODY POLITIC CHARTERED BY THE
STATE OF NORTH CAROLINA AS SELLER

1. Seller acknowledges that the principal of Miller Properties, Inc., Rick Miller is a licensed North Carolina Real Estate Broker. The intent of this purchase is to use, lease, develop or resale the property.
2. "Earnest Money", Buyer agrees that within five business days following Buyer receiving from Seller this Agreement For Purchase and Sale of Real Property fully executed, Buyer shall make an earnest money deposit in the amount of five (5%) of the Purchase price. This earnest money deposit shall be governed in accordance with Section 1(b)(i) and all other applicable provisions of the Agreement. Notwithstanding any contrary provisions contained in this Agreement, The earnest money must be placed in an interest bearing Trust Account, and all interest earned thereon shall belong to the Buyer or Buyer's assigns.
3. "Examination Period" shall end 180 business days following the Buyer receiving from Seller this Agreement For Purchase and Sale of Real Property fully executed and Buyer receiving written notice of all required conditions satisfied, all documents and information from Seller as provided for in this Agreement For Purchase and Sale of Real Property. Business days are defined as Monday through Friday, excluding weekends and 2011 and 2012 federal holidays.
4. As a condition of this Agreement, it is understood that the Seller shall at Seller's expense provide to Buyer as soon as possible after the date of execution of this Agreement For Purchase and Sale of Real Property, a current ALTA Survey and Surveyor's report showing all parcels and improvements, also all studies, maps, plans, reports, or other documents relating to the Property prepared by or at the request of Seller, including, but not limited to, appraisals, traffic studies, environmental studies, and soil boring data and testing documents.
5. It is understood and agreed between the parties that the Buyer may apply during the Examination Period to the Town of Boone or other appropriate governmental agency for a re-zoning of all property which is the subject of this Agreement For Purchase and Sale of Real Property to a B-3 zoning designation or including but not limited to Special Use Permits, Building Permits and DOT Permits. In connection with all applications for re-zoning, or other necessary permits the existence of the subject Agreement For Purchase and Sale of Real Property may be disclosed as required by the governing authorities. Buyer shall have the sole and exclusive right to modify, amend, defer or withdraw any and all applications as it sees fit in its sole discretion. Seller shall cooperate with Buyer in executing applications for public hearings, permits, or other approvals as deemed reasonably necessary by Buyer or the appropriate governmental agencies in order to obtain the requisite re-zoning or any other permit approval. The parties acknowledge that all zoning applications may be filed in the name of Seller but shall be at the expense of Buyer.

Buyer

RM

Seller

6. It is understood and agreed between the parties that the Examination Period provided for in this Agreement For Purchase and Sale of Real Property may be extended for an additional period of 60 business days in order that Buyer may obtain from the Town of Boone a site specific development plan for the Property as such term is defined by the North Carolina General Statutes, and such other permit as may be required by applicable governmental authorities as a condition of proceeding with the development of the property. In addition, in the event Buyer has not obtained from the Town of Boone or other applicable governmental authorities the necessary permits within the 60 business days extension, Buyer shall be entitled to one additional 30 business days extension in order to obtain such permits. The sole basis for obtaining an extension or extensions of the Examination Period as described in this paragraph shall be to obtain the site specific development plan, and/or land development plan and building permits in order to obtain five (5) year vested rights on the Property, and any and all other inspections and examinations of the subject property not completed.
7. Notwithstanding any contrary provisions contained in this Agreement For Purchase and Sale of Real Property, Seller agrees that Buyer shall be entitled to assign this Agreement For Purchase and Sale of Real Property to a third party at Buyer's sole discretion without Seller's consent. In the event such an assignment is made, the Assignee of the Agreement For Purchase and Sale of Real Property shall assume all rights and obligations hereunder and Buyer shall be relieved of all obligations under the terms and provisions of this Agreement.
8. Any brokerage fees or commissions payable in connection with this Agreement for Purchase and Sale of Real Property shall be paid by Seller. Buyer shall not be obligated to pay any brokerage fees or commissions in connection with this Agreement for Purchase and Sale of Real Property.
9. As a condition of this Agreement, it is understood and agreed that the previous capacity of 365,367 gallons per month (impact) for water and sewer serving the subject property shall be reinstated to the subject property, as soon as possible after the date of execution of this Agreement For Purchase and Sale of Real Property at Seller's expense.
10. As a condition of this Agreement, it is understood and agreed that the traffic light previously located at the intersection of Highway 105 and High School Drive serving the subject property shall be reinstalled and functioning in the same manner, as soon as possible after the date of execution of this Agreement For Purchase and Sale of Real Property at Seller's expense.
11. As a condition of this Agreement, it is understood and agreed that the Seller shall at Seller's expense provide to Buyer confirmation that Watauga County and the Town of Boone have agreed to grant a tax abatement on the subject property including all current and future improvements for a period of five (5) years from the day of closing.
12. This offer shall expire unless this Agreement For Purchase and Sale of Real Property is fully executed by both Buyer and Seller; and delivered to Buyer on or before 5:00 P.M. August 3, 2011, or until withdrawn by Buyer, whichever occurs first, **TIME IS OF THE ESSENCE WITH REGARD TO SAID TIME AND DATE.**

Buyer RM

Seller _____

13. IN THE EVENT OF A CONFLICT BETWEEN THIS EXHIBIT B AND THE AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY TO WHICH IT IS ATTACHED, THIS EXHIBIT B SHALL CONTROL.

REALTOR WITH REAL ESTATE LICENSE

...the realtor shall be deemed to have accepted the terms and conditions of this agreement and shall be bound by the same...

SELLER

...I, the undersigned, hereby agree to sell the above described property to the buyer named herein...

BUYERS

...I, the undersigned, hereby agree to purchase the above described property from the seller named herein...

Buyer [Signature]

Seller _____

WORKING WITH REAL ESTATE AGENTS

NOTE: Effective July 1, 2001, in every real estate sales transaction, a real estate agent shall, at first substantial contact directly with a prospective buyer or seller, provide the prospective buyer or seller with the following information [NC Real Estate Commission Rule 21 NCAC 58A.0104(c)].

When buying or selling real estate, you may find it helpful to have a real estate agent assist you. Real estate agents can provide many useful services and work with you in different ways. In some real estate transactions, the agents work for the seller. In others, the seller and buyer may each have agents. And sometimes the same agents work for both the buyer and the seller. It is important for you to know whether an agent is working for you as **your** agent or simply working **with** you while acting as an agent of the other party.

This brochure addresses the various types of working relationships that may be available to you. It should help you decide which relationship you want to have with a real estate agent. It will also give you useful information about the various services real estate agents can provide buyers and sellers, and it will help explain how real estate agents are paid.

SELLERS

Seller's Agent

If you are selling real estate, you may want to "list" your property for sale with a real estate firm. If so, you will sign a "listing agreement" authorizing the firm and its agents to represent you in your dealings with buyers as your *seller's agent*. You may also be asked to allow agents from other firms to help find a buyer for your property.

Be sure to read and understand the listing agreement before you sign it.

Duties to Seller: The listing firm and its agents must • promote your best interests • be loyal to you • follow your lawful instructions • provide you with all material facts that could influence your decisions • use reasonable skill, care and diligence, and • account for all monies they handle for you. Once you have signed the listing agreement, the firm and its agents may not give any confidential information about you to prospective buyers or their agents without your permission so long as they represent you. **But until you sign the listing agreement, you should avoid telling the listing agent anything you would not want a buyer to know.**

Services and Compensation: To help you sell your property, the listing firm and its agents will offer to perform a number of services for you. These may include • helping you price your property • advertising and marketing your property • giving you all required property disclosure forms for you to complete • negotiating for you the best possible price and terms • reviewing all written offers with you and • otherwise promoting your interests.

For representing you and helping you sell your property, you will pay the listing firm a sales commission or fee. The listing agreement must state the amount or method for determining the commission or fee and whether you will allow the firm to share its commission with agents representing the buyer.

Dual Agent

You may even permit the listing firm and its agents to represent you **and** a buyer at the same time. This "dual agency relationship" is most likely to happen if an agent with your listing firm is working as a *buyer's agent* with someone who wants to purchase your property. ~~If this occurs and you have not already agreed to a dual agency relationship in your listing agreement, your listing agent will ask you to sign a separate agreement or document permitting the agent to act as agent for both you and the buyer.~~

It may be difficult for a *dual agent* to advance the interests of both the buyer and seller. Nevertheless, a *dual agent* must treat buyers and sellers fairly and equally. Although the *dual agent* owes them the same duties, buyers and sellers can prohibit *dual agents* from divulging **certain** confidential information about them to the other party.

Some firms also offer a form of dual agency called "designated agency" where one agent in the firm represents the seller and another agent represents the buyer. This option (when available) may allow each "designated agent" to more fully represent each party.

If you choose the "dual agency" option, remember that since a dual agent's loyalty is divided between parties with competing interests, it is especially important that you have a clear understanding of • what your relationship is with the *dual agent* and • what the agent will be doing for you in the transaction.

BUYERS

When buying real estate, you may have several choices as to how you want a real estate firm and its agents to work with you. For example, you may want them to represent only you (as a **buyer's agent**). You may be willing for them to represent both you and the seller at the same time (as a **dual agent**). Or you may agree to let them represent only the seller (**seller's agent** or **subagent**). Some agents will offer you a choice of these services. Others may not.

Buyer's Agent

Duties to Buyer: If the real estate firm and its agents represent you, they must • promote your best interests • be loyal to you • follow your lawful instructions • provide you with all material facts that could influence your decisions • use reasonable skill, care and diligence, and • account for all monies they handle for you. Once you have agreed (either orally or in writing) for the firm and its agents to be your *buyer's agent*, they may not give any confidential information about you to sellers or their agents without your permission so



PREPARED BY: Rick Miller, Broker

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long as they represent you. But **until you make this agreement with your buyer's agent, you should avoid telling the agent anything you would not want a seller to know.**

Unwritten Agreements: To make sure that you and the real estate firm have a clear understanding of what your relationship will be and what the firm will do for you, you may want to have a written agreement. However, some firms may be willing to represent and assist you for a time as a *buyer's agent* without a written agreement. But if you decide to make an offer to purchase a particular property, the agent must obtain a written agency agreement. If you do not sign it, the agent can no longer represent and assist you and is no longer required to keep information about you confidential. Furthermore, if you later purchase the property through an agent with another firm, the agent who first showed you the property may seek compensation from the other firm.

Be sure to read and understand any agency agreement before you sign it.

Services and Compensation: Whether you have a written or unwritten agreement, a *buyer's agent* will perform a number of services for you. These may include helping you • find a suitable property • arrange financing • learn more about the property and • otherwise promote your best interests. If you have a **written** agency agreement, the agent can also help you prepare and submit a written offer to the seller.

A *buyer's agent* can be compensated in different ways. For example, you can pay the agent out of your own pocket. Or the agent may seek compensation from the seller or listing agent first, but require you to pay if the listing agent refuses. Whatever the case, be sure your compensation arrangement with your *buyer's agent* is spelled out in a buyer agency agreement before you make an offer to purchase property and that you carefully read and understand the compensation provision.

Dual Agent

You may permit an agent or firm to represent you **and** the seller at the same time. This "dual agency relationship" is most likely to happen if you become interested in a property listed with your *buyer's agent* or the agent's firm. If this occurs and you have not already agreed to a dual agency relationship in your (written or oral) buyer agency agreement, your *buyer's agent* will ask you to sign a separate agreement or document permitting him or her to act as agent for both you and the seller. It may be difficult for a *dual agent* to advance the interests of both the buyer and seller. Nevertheless, a *dual agent* must treat buyers and sellers fairly and equally. Although the *dual agent* owes them the same duties, buyers and sellers can prohibit *dual agents* from divulging **certain** confidential information about them to the other party.

Some firms also offer a form of dual agency called "designated agency" where one agent in the firm represents the seller and another agent represents the buyer. This option (when available) may allow each "designated agent" to more fully represent each party.

If you choose the "dual agency" option, remember that since a *dual agent's* loyalty is divided between parties with competing interests, it is especially important that you have a clear understanding of • what your relationship is with the *dual agent* and • what the agent will be doing for you in the transaction. This can best be accomplished by putting the agreement in writing at the earliest possible time.

Seller's Agent Working With a Buyer

If the real estate agent or firm that you contact does not offer *buyer agency* or you do not want them to act as your *buyer agent*, you can still work with the firm and its agents. However, they will be acting as the *seller's agent* (or "subagent"). The agent can still help you find and purchase property and provide many of the same services as a *buyer's agent*. The agent must be fair with you and provide you with any "material facts" (such as a leaky roof) about properties.

But remember, the agent represents the seller - not you - and therefore must try to obtain for the seller the best possible price and terms for the seller's property. Furthermore, a *seller's agent* is required to give the seller any information about you (even personal, financial or confidential information) that would help the seller in the sale of his or her property. Agents must tell you *in writing* if they are *seller's agents* before you say anything that can help the seller. But **until you are sure that an agent is not a seller's agent, you should avoid saying anything you do not want a seller to know.**

Sellers' agents are compensated by the sellers.

FOR BUYER/SELLER

This is not a contract

6-9-2011

Date

Miller Properties, Inc.

Firm Name

Rick Miller

Agent Name

112051

License Number

Disclosure of Seller Subagency

(Complete, if applicable)

When showing you property and assisting you in the purchase of a property, the above agent and firm will represent the SELLER. For more information, see "Seller's Agent Working with a Buyer" in the brochure.

Agent's Initials Acknowledging Disclosure: RM

The North Carolina Real Estate Commission
P.O. Box 17100 • Raleigh, North Carolina 27619-7100

PREPARED BY: Rick Miller, Broker

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WORKING WITH REAL ESTATE AGENTS

Agents must retain this acknowledgment for their files.

This is not a contract

signing, I acknowledge that the agent names below furnished a copy of this brochure and reviewed it with me.

Watauga County, North Carolina corporate body politic chartered by the State of North Carolina

SELLER

DATE

6/10/11

By: Nathan A. Miller, Chairman of the Watauga County Board of County Commissioners

Miller Properties, Inc.

Firm Name

Rick Miller 112051

Agent Name and License Number

Disclosure of Seller Subagency (Complete, if applicable)

When showing you property and assisting you in the purchase of a property, the above agent and firm will represent the SELLER. For more information, see "Seller's Agent Working with a Buyer" in the brochure.

Buyer's Initials Acknowledging Disclosure: full



REALTOR® North Carolina Association
of REALTORS®

DISCLOSURE AND FEE AGREEMENT FOR NON-LISTED PROPERTY
SALE

This Agreement is entered into by and between:

Watauga County, a North Carolina corporate body politic chartered by the State of North Carolina

("Seller"), and Miller Properties, Inc.

("Firm").

(Name of Firm)

RECITALS:

A. Seller is the owner of the property commonly known as:

400 High School Drive and Located on N.C. Highway 105 in Boone, NC 28607.

Also see Exhibit A attached hereto.

("Property").

B. Firm has advised Seller of Firm's general company policy regarding agency. Seller has received and read the North Carolina Real Estate Commission's "Working with Real Estate Agents" publication (NCAR Standard Form 520) and understands that Firm will be acting as:

a Seller's Agent

a Buyer's Agent

with respect to:

Miller Properties, Inc. and/or assigns

("Buyer") who would like to see the Property.

any prospect Firm registers with Seller as evidenced by a registration document (either a CONFIRMATION OF AGENCY RELATIONSHIP AND REGISTRATION STATEMENT - NCAR Form 510 or substantially similar registration document) provided by Firm to Seller prior to showing the Property. For the purposes of this Agreement, any such registered prospect is referred to as "Buyer".

Accordingly, the parties agree as follows:

1. **FEE.** When Seller accepts an unconditional offer from Buyer or when all conditions have been met following the Seller's acceptance of a conditional offer from Buyer, then Seller shall pay Firm a fee equal to five percent (5 %) of the gross sales price of the Property, or the sum of n/a (\$ n/a), whichever is greater. Seller shall pay the fee to Firm in cash or by bank check. Gross sales price includes any and all consideration received or receivable, in whatever form, by Seller including, but not limited to, the assumption or release of existing liabilities. Seller shall pay the fee upon delivery of the deed or other evidence of transfer of title or interest; provided, however, if the transaction involves an installment contract, then Seller shall pay the fee upon the signing of such installment contract. In the event of any breach by Seller, Seller's successors or assigns, of any contract of purchase and sale, it is understood and agreed that the fee remains earned and payable upon notice given by Seller to Buyer of Seller's intent not to proceed with such sale, notwithstanding the basis of such intent not to proceed. In the event Seller contributes or conveys the Property or any interest therein to a joint venture, partnership or other business entity or executes an exchange, the fee shall be calculated on the fair market value of the Property or interest therein contributed, conveyed, transferred or exchanged and is payable at the time of the contribution, conveyance, transfer or exchange. If Seller is a partnership, corporation or other business entity, and an interest in the partnership, corporation or other business entity is transferred, whether by merger, outright purchase or otherwise, in lieu of a sale of the Property, and applicable law does not prohibit the payment of a fee or commission in connection with such sale or transfer, the fee shall be calculated on the fair market value of the Property, rather than the gross sales price, multiplied by the percentage of interest so transferred, and shall be paid by Seller at the time of the transfer.



PREPARED BY: Rick Miller, Broker

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Page 1 of 2

Seller _____

60 days after the expiration of this agreement, Seller directly or indirectly sells or agrees to sell the Property to Buyer, then Seller shall pay Firm the same commission to which it would have been entitled had the sale been made during the term of this agreement.

3. **LEASE PROTECTION PROVISION.** In the event that the Property is leased to Buyer during the term hereof, it is acknowledged that a commission shall be nonetheless earned by Firm upon execution of such lease agreement. The parties agree to in good faith in determining that the commission is an amount reasonable in this area for the type of Property.

4. **PARTIES AND BENEFIT.** This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns and their personal representatives. Seller agrees that at any time during the term of this Agreement, Firm may either assign Firm's rights and responsibilities hereunder to another real estate agency, or transfer to another person or entity all or part of the ownership of Firm's real estate agency, and that in the event of any such assignment or transfer, this Agreement shall continue in full force and effect; provided, that any assignee or transferee must be licensed to engage in the business of real estate brokerage in the State of North Carolina. In the event of any such assignment or transfer, Seller may terminate this Agreement without cause on thirty (30) days' prior written notice to the assignee or transferee of Seller's intent to terminate this Agreement.

THE AGENT SHALL CONDUCT ALL BROKERAGE ACTIVITIES IN REGARD TO THIS AGREEMENT WITHOUT RESPECT TO THE RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, HANDICAP OR FAMILIAL STATUS OF ANY PARTY OR PROSPECTIVE PARTY TO THE AGREEMENT.

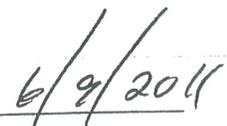
THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. MAKES NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION.

Watauga County, a North Carolina corporate body politic chartered by the State of North Carolina
SELLER _____ DATE _____
By: Nathan A. Miller, Chairman of the Watauga County Board of County Commissioners

il: n/a _____

Miller Properties, Inc.
P.O. Box 3018
Boone, NC 28607
Phone: 828-262-3830, Fax: 828-262-1832

By: 
Signature Rick Miller


Date

Individual license #: 112051

E-mail: n/a

EXHIBIT A
DISCLOSURE AND FEE AGREEMENT FOR NON-LISTED PROPERTY SALE
BY AND BETWEEN
MILLER PROPERTIES, INC., BUYER'S AGENT AND
WATAUGA COUNTY, A NORTH CAROLINA BODY POLITIC CHARTERED BY
THE STATE OF NORTH CAROLINA AS SELLER

Parcel ID numbers: 2910-02-7724-000, 2910-03-2114-000, 2910-13-4202-000, 2910-13-0228-000, 2910-01-5763-000, 2910-11-0378-000 and 2900-92-7413-000, as recorded in Watauga County. Also including all improvements and all appurtenant equipment.

Firm Rep. 

Seller _____

AGENDA ITEM 11:

Miscellaneous Administrative Matters

A. Appointment of Voting Delegate at the North Carolina Association of County Commissioners' (NCACC) Annual Conference

MANAGER'S COMMENTS:

The North Carolina Association of County Commissioners' (NCACC) Annual Conference is scheduled for August 18-21, 2011, at the Embassy Suites Resort Hotel and Concord Convention Center in Cabarrus County. If you wish to attend, please inform Anita who will submit your registration and reserve your accommodations.

Each county in attendance is required to select a voting member for representation at the annual business meeting which is conducted as a part of the conference. Submission of the voting delegate is due August 12, 2011. Board direction is requested.

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Anita Fogle

From: Todd McGee [todd.mcgee@ncacc.org]
Date: Thursday, June 30, 2011 10:35 AM
To: County Clerks
Subject: NCACC Annual Conference voting delegate form
Attachments: Voting delegate form.doc

Clerks,

Attached is the voting delegate form for the upcoming NCACC Annual Conference, which will be held Aug. 18-21 in Cabarrus County. It needs to be filled out and returned to Sheila Sammons by Aug. 12.

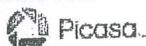
Also, I need to know if you have any commissioners who will reach 20 years of service this year, or did so last year, so that we may recognize them during the annual President's Banquet, which will be held Saturday, Aug. 20. We recognized the following commissioners last year:

Jim Harrell, Surry
 Beatrice Hill, Harnett
 Billy King, Cumberland
 Harry Foy, Franklin
 Robert T. Reives, Lee

Thanks,



Todd McGee
 Communications Director
 North Carolina Association of County Commissioners
 Phone (919) 715-7336 | Fax (919) 733-1065
www.ncacc.org
www.welcometoyourcounty.org



Designation of Voting Delegates to NCACC Annual Conference

I, _____, hereby certify that I am the duly designated voting delegate for _____ County at the 104th Annual Conference of the North Carolina Association of County Commissioners to be held in Cabarrus County, N.C., on August 18-21, 2011.

Signed: _____

Title: _____

Article VI, Section 2 of our Constitution provides:

“On all questions, including the election of officers, each county represented shall be entitled to one vote, which shall be the majority expression of the delegates of that county. The vote of any county in good standing may be cast by any one of its county commissioners who is present at the time the vote is taken; provided, if no commissioner be present, such vote may be cast by another county official, elected or appointed, who holds elective office or an appointed position in the county whose vote is being cast and who is formally designated by the board of county commissioners. These provisions shall likewise govern district meetings of the Association. A county in good standing is defined as one which has paid the current year's dues.”

Please return this form to Sheila Sammons by: **Friday, August 12, 2011:**

NCACC
215 N. Dawson St.
Raleigh, NC 27603
Fax: (919) 733-1065
sheila.sammons@ncacc.org

AGENDA ITEM 11:

Miscellaneous Administrative Matters

B. Announcements

MANAGER'S COMMENTS:

Avery County has invited the Board to attend its 100th Year Anniversary celebration scheduled for Saturday, July 30, 2011, at 11:00 A.M. If you plan to attend, please inform Anita so that she may RSVP on your behalf.

The North Carolina Association of County Commissioners' (NCACC) 104th Annual Conference is scheduled for August 18-21, 2011, in Concord. The deadline for early registration, at a reduced rate, is July 22. If you plan to attend, please inform Anita so that she may RSVP on your behalf.

A work session has been scheduled for July 13, 2011, at 4:00 P.M. to review space needs for County departments. The work session will be held in the Commissioners' Conference Room on the first floor of the Watauga County Administration Building.

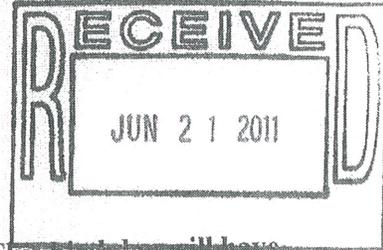
Due to the changes in the Board's regular meeting schedule for July, the next regular meeting of the Board of Commissioners is scheduled for Tuesday, August 2, 2011, beginning at 8:00 A.M.

AGENDA ITEM 12:

Break



June 6, 2011



Avery County is celebrating its 100th birthday in 2011. This birthday will have many events surrounding the celebration which is to be held the last weekend in July, 2011. The 100 days of summer are the primary focus for the Centennial Coalition with special events through out the summer. Avery is the 100th North Carolina County formed.

Celebration events begin on Friday, July 29, 2011 with an antique car show and sock hop; Saturday, July 30th is the main day with a parade through the Town of Newland, followed by a program in front of the Courthouse. Sunday July 31st is open for more religion centered events.

The Program Committee is inviting you to be our guest on Saturday, July 30th at 11:00 AM. You will be recognized for your part in the history of Avery County and special seating for you has been arranged.

Thank you,

Mary B. (Daniels) Calloway, Chairman
Lisa F. Daniels
Martha J. Hicks

Program Committee
Avery Centennial

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NORTH CAROLINA ASSOCIATION OF COUNTY COMMISSIONERS

ANNUAL CONFERENCE



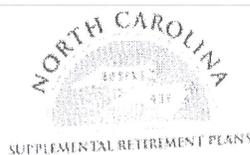
SPONSORS

The NCACC thanks its sponsors for the 2011 Annual Conference:

Conference-wide sponsor



Gold sponsors



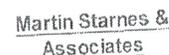
Silver sponsors



Bronze sponsors



Sponsors



Sponsorship opportunities

Exhibit Show information

NCACC
215 N. Dawson St.
Raleigh, NC 27603

Albert Coates Local
Government Center
Phone: (919) 715-2893
Fax: (919) 733-1065

Quorum Center
Phone: (919) 719-1100
Fax: (919) 719-1101

E-mail:
ncacc@ncacc.org

The NCACC's 104th Annual Conference will be held Aug. 18-21 at the Embassy Suites Resort Hotel and Concord Convention Center in Cabarrus County.

- Registration form (PDF)
- Registration information, cancelations, refunds, etc.

Latest news

Annual Conference keeps its 'YouthVoice'

The boys (and girls) are back in town this August for the Association's 104th Annual Conference. For the second consecutive year, the NCACC is partnering with 4-H Youth Development and N.C. Cooperative Extension to sponsor a youth summit – YouthVoice 2011 – to encourage and provide support for effective partnerships between youth and county governments. Through 4-H, each county is invited to send a youth representative to the Annual Conference, which will be held Aug. 18-21 at the Embassy Suites Resort Hotel and Concord Convention Center in Cabarrus County.

- Click here for more information.

More news

Conference theme: Ready to move your county ahead?

Annual Conference promises lessons in economy, finance and leadership to help counties overcome

Keynote speaker: What does Census data mean for N.C.'s future?

James H. Johnson Jr. is the William Rand Kenan Jr. Distinguished Professor of Strategy and Entrepreneurship at UNC-Chapel Hill and has long been studying North Carolina's demographic trends. He will appear as a general session speaker at the NCACC's 2011 Annual Conference and will discuss what the 2010 Census says about North Carolina.

Pre-Conference Seminar: Get to the Bottom Line!

County officials can attest to the fact that being responsible for public funds is no



game. The School of Government, however, has developed just that – a game – that helps players understand the challenges facing county governments and gives them hands-on experience making tough budget decisions.

Poster seminar to focus on 'overcoming challenges'

The NCACC will host a poster presentation seminar during the 104th Annual Conference relating to the "Overcoming Challenges" theme. The posters are graphic portrayals of a program or project, using color, photos, graphs and charts to provide information. The deadline to apply is Aug. 8.

TENTATIVE AGENDA

Time	Event
Thursday, Aug. 18	
9 a.m. – 3 p.m.	County Invitational Golf Tournament
10 a.m. – 2 p.m.	<u>Pre-Conference Seminar: "Bottom Line!"</u>
2 – 5:30 p.m.	<u>Exhibit Show</u> open
2:30 – 4:30 p.m.	Ethics training seminar
6 – 7:30 p.m.	Opening Reception in Exhibit Hall
Friday, Aug. 19	
8 – 10 a.m.	<u>Opening General Session</u> – keynote address by Dr. James H. Johnson on "Six Disruptive Trends"
8 a.m. – 2 p.m.	<u>Poster seminars on Overcoming Challenges</u>
10 a.m. – 2 p.m.	<u>Exhibit Show</u> open
10:45 a.m. – noon	Workshop Block I
Noon – 1:30 p.m.	Lunch in Exhibit Hall
1:15 – 2:30 p.m.	Workshop Block II
2:45 – 4 p.m.	Workshop Block III
5:30 – 9:30 p.m.	Horn O' Plenty: A Locally Sourced Food Exposition at the Cabarrus Arena and Event Center
8:30 – 11 p.m.	<u>YouthVoice 2011</u> sessions
Saturday, Aug. 20	
8:15 – 8:45 a.m.	District caucuses
9 – 10:15 a.m.	Workshop Block IV
10:30 – 11:30 a.m.	<u>Second General Session</u> – plenary address by Neil Howe on "A New Season of History"
2 – 4:30 p.m.	Business Session
5:30 – 9 p.m.	President's Reception and Banquet, and entertainment
Sunday, Aug. 21	
9:30 – 10:30 a.m.	Closing Session

WORKSHOP GRID (TENTATIVE)

Track:	Leadership	Economy	Finance
Block I: Aug. 19, 10:45 a.m. - noon	Reapportionment, Redistricting & the 2010 Census - Bob Joyce	Sustaining Collaboration from Start to Finish - Rick Morse	Is Reval a 4-Letter Word? - Chris McLaughlin, Ken Joyner
Block II:	Leadership		

Aug. 19, 1:15 - 2:30 p.m.	Lessons from N.C. History - James Leloudis, Sally Green	Human Capital: Bridges Out of Poverty - Michael Dames	Better Health, Healthier Bottom Line - Sarah Langer, David Chenowith, Evan Sloan
Block III: Aug. 19, 2:45 - 4 p.m.	Leadership Lessons from N.C. History, Part II - Leloudis, Green	Public Finance Options for Economic Development - Patrick Byker, Vance Holloman, Tom Lee	Operation Hometown Heroes: What Counties Can Do to Support Veterans, Service Members and Their Families
Block IV: Aug. 20, 9 - 10:15 a.m.	Social Networking: Can You Hear Me Now?	Going Local: Building a Deep Economy in Cabarrus County - John Day	Blue Ridge Mall v NC Property Tax Commission

Coverage of previous conferences: [2010](#) | [2009](#) | [2008](#) | [2007](#) | [2006](#) | [2005](#)

2011 NCACC Annual Conference **Registration Form**

RETURN FORM BY Aug. 4, 2011 Mail to: NCACC, 215 N. Dawson St., Raleigh, NC 27603 Fax to: (919) 715-2121

Registration

	COST	QUANTITY	TOTAL
Early registration: all others (postmarked by July 22)	\$ 169	1	\$ _____
Regular registration (postmarked between July 23 - Aug. 4)	\$ 199	1	\$ _____
On-site registration	\$ 249	1	\$ _____
One-day registration (county officials/Associate Members only)	\$ 99	1 (Fri. or Sat.)	\$ _____
Corporate registration	\$ 300	1	\$ _____
Pre-Conference Seminar: "Bottom Line!"	\$ 95	1	\$ _____

Meal/Event Tickets

Opening Reception	Free for delegates	N/A	
Spouse/Guest	\$ 15	_____	\$ _____
Horn O' Plenty	\$ 25	_____	\$ _____
Children 2-16	\$ 15	_____	\$ _____
NCABCO Awards Luncheon	\$ 28	_____	\$ _____
President's Annual Banquet	\$ 30	_____	\$ _____
Check if vegetarian banquet meal desired <input type="checkbox"/>			

County Invitational Golf Tournament

Attendees/sponsors/exhibitors only. Fee includes golf and lunch.	\$55	_____	\$ _____
Handicap (must include): _____	<input type="checkbox"/> Yes, I will need transportation		

If you have preferred playing partners (please make sure they have registered to play), list names on a separate sheet of paper or on the back of this form.

TOTAL AMOUNT: \$ _____

Information

Name (as you want it to appear on your badge): _____

County or organization: _____

Title: _____ Phone number: _____

Please note any special accommodation/meal needs: _____

Payment Options

___ Check made out to NCACC enclosed for total ___ Charge to credit card VISA MasterCard

Credit card number: _____ Expiration date: _____

Name on card: _____ Billing zip code: _____

Signature: _____ Date: _____

Email (for receipt of payment): _____

AGENDA ITEM 13:

Public Hearing to Allow Citizen Comment on Proposed Amendments to the Watauga County Animal Care and Control Ordinance

MANAGER'S COMMENTS:

A public hearing has been scheduled to allow citizen comment on proposed amendments to the Watauga County Animal Care and Control Ordinance which are included in your packet. Also included in your packet is an additional amendment as requested by Sheriff Hagaman. After the public hearing, the Board may choose to adopt the Ordinance, to be effective August 1, 2011, or set a time to further review proposed amendments. Direction from the Board is requested.

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WATAUGA COUNTY ANIMAL CARE AND CONTROL ORDINANCE

SECTION I. AGENCY AUTHORITY AND RESPONSIBILITY

There is hereby created a Department of Animal Care and Control for Watauga County (herein referred to as Department) with resources and personnel as authorized by the Board of County Commissioners. The Department shall be supervised by the County Manager or his designee subject to the general control and direction of the Board of County Commissioners.

1A. Responsibilities of Animal Care and Control Department

- 1. The Department, along with other law enforcement agencies, is hereby empowered to enforce all North Carolina laws and Watauga County ordinances pertaining to domestic dogs and cats and other pets unless otherwise specified herein. The Animal Care and Control Officers shall be empowered to issue notices or civil citations for violations of these ordinances and laws.
2. The Department will enforce all North Carolina laws and Watauga County ordinances pertaining to rabies control.
3. The Department will enforce the Watauga County Ordinance regulating wild and dangerous animals.
4. The Department is responsible for the investigation of all reported animal bites, for enforcing the quarantine of any animal involved in or suspected of having rabies, and for reporting investigation results to the District Health Director as soon as practicable.
5. The Department will investigate cruelty, abuse or neglect cases involving animals and record the results of the investigation.
6. The Department will be responsible for the seizure and impoundment, where necessary, of any animal in Watauga County involved in a violation of this ordinance.
7. Animal Care and Control Officers will patrol the County area as necessary to monitor compliance with this ordinance.
8. The Animal Care and Control Officers shall keep the following records:
a. Bite cases, rabies suspects, complaints, violations, citations issued and related

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9.
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b.

investigations.

b. All fees collected for violations.

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1B. Definitions

1. ABANDON: To forsake, desert or give up an animal previously under the custody or possession of a person without having secured another owner or custodian or by failing to make reasonable arrangements for adequate care.
2. ADEQUATE FOOD: The provision at suitable intervals, not to exceed 24 hours, of a quantity of wholesome foodstuff suitable for the species and age, sufficient to maintain the animal's health and well-being. Food will be provided in a suitable and sanitary container.
3. ADEQUATE WATER: Constant access to a supply of water that is clean, fresh and visibly free of debris and organic material, provided in a sanitary manner or provided at suitable intervals (not to exceed 24 hours) for the species.
4. ANIMAL CARE AND CONTROL OFFICER: An employee of the County designated by the County Manager to administer and enforce local and state Animal Control regulations as prescribed by the Watauga County Board of Commissioners and the State of North Carolina. Animal Care and Control Officer may include the deputies of the Watauga County Sheriff's Office.
5. ANIMAL: All living vertebrates, domestic and non-domestic, not to include humans.
6. ANIMAL CARE AND CONTROL FACILITY: Any premises designated by the County for the purpose of impounding and caring for animals in accordance with the provisions of this ordinance.
7. ANIMAL SHELTER: Any private or public facility, either non-profit or for hire, that houses, boards, or maintains any domestic animals for adoptions, rescue, rehabilitation or research within the County.
8. CHIEF ANIMAL CARE AND CONTROL OFFICER: The person who, under the County's personnel policy, is responsible for the management of the Animal Care and Control program, including enforcement of County and State laws pertaining to animal and rabies control, and the supervision of all employees in the Animal Care and Control Department. The Chief Animal Care and Control Officer is under the direct supervision of the Operations Services Director.
9. DANGEROUS DOG: A dog that:
 - a. Without provocation has killed or inflicted severe injury on a person; or

Deleted: Deputy County Manager

- b. Is determined by Animal Care and Control personnel to be potentially dangerous due to the dog having exhibited one or more of the behaviors stated under "Potentially Dangerous Dog" (NCGS 67-4.1(2)); or
 - c. Is determined to be "Any dog owned or harbored primarily or in part for the purpose of dog fighting, or any dog trained for dog fighting" (NCGS 67-4.1).
10. HEALTH DIRECTOR: Director of the Appalachian District Health Department.
 11. HYBRID: Any animal that is in part wild, regardless of percentage.
 12. KEEPER: A person having custody of an animal, or who keeps or harbors an animal, or who knowingly permits an animal to remain on any premises occupied or controlled by such person, for a period of 5 or more days.
 13. KENNEL: Any premises wherein any person, firm or organization boards, lets for hire, trains for fee, breeds, buys or sells animals.
 14. OWNER: A person having the legal property rights to an animal.
 15. POTENTIALLY DANGEROUS ANIMAL: An animal that has been determined to have:
 - a. Inflicted a bite on a person that resulted in any of the following: broken bones; disfiguring lacerations; injuries requiring cosmetic surgery or hospitalization; or other medical care.
 - b. Killed or inflicted severe injury upon a domestic animal, when not on the owner's real property.
 - c. Approached a person (if the person was not trespassing on the owner's property) in a vicious or terrorizing manner in an apparent attitude of attack. (NCGS 67-4.1)
 16. PUBLIC NUISANCE: Any animal that damages private or public property; interferes with or attacks a person or other animal; chases, snaps at, or harasses pedestrians, livestock, bicyclists or vehicles; by virtue of number is offensive or dangerous to public health, safety and/or welfare; or is diseased.
 17. RABIES EXPOSURE: A human or other animal bitten by or that comes in contact with the saliva or nervous tissue of an animal suspected of or known to have rabies.
 18. RESTRAINT OF A DANGEROUS OR POTENTIALLY DANGEROUS ANIMAL: An animal that is confined in a securely enclosed and locked pen or other structure designed to restrain the animal or an animal which is securely

restrained and muzzled when outside of said pen or structure. Tethering a dog does not meet the restraint requirements of this section and is not considered adequate physical control.

19. SHELTER: A place provided for animals of a specific breed that provides sufficient cover from adverse weather; adequate warmth from severe cold weather; and sufficient space for the animal to move around, stand or lie down; and is deemed appropriate by an Animal Care and Control Officer.
20. STRAY: Any at-large dog or cat that has no known owner or keeper.
21. TRESPASSER: A person who has wrongfully invaded the property owned by another person.
22. WILD ANIMAL: Any living member of the animal kingdom including those born or raised in captivity except the following: human beings; domestic dogs (excluding hybrids with wolves, coyotes, or jackals); domestic cats (excluding hybrids with ocelots or marga); farm animals; rodents and hybrid animals that are part wild; and captive bred species of common cage birds. Wildlife, other than as indicated by the Watauga County Wild and Dangerous Animals Ordinance, is controlled by North Carolina State Wildlife Officers.

SECTION II. CITIZEN REQUIREMENTS

2A. Vaccination of Dogs, Cats and Other Pets

1. It shall be unlawful for any owner or keeper to fail to provide a current vaccination against rabies (hydrophabis) for any dog, ferret, or cat three (3) months of age or older. Any animal adopted or redeemed through Watauga Humane Society, that does not have a current rabies certificate of vaccination shall be required to be vaccinated within 72 hours at the owner's expense. Should it be found necessary under special circumstances by the District Health Director or the Board of County Commissioners to prevent a threatened or existing epidemic, the owner or keeper of certain livestock shall also be required to have those animals vaccinated. It shall be unlawful for any owner or keeper to fail to provide current vaccination against rabies for these other animals.
2. A rabies vaccination shall be current for a dog or cat once the rabies vaccine has been administered by a veterinarian or state-certified inoculator and a 21 day period has passed after vaccination. If a second dose is given 12 months after the first, the rabies vaccination is then current for 3 years. This is subject to the guidelines of the North Carolina Department of Health Services.
3. All rabies vaccines shall be administered by a licensed veterinary service or a certified rabies vaccinator.

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4. Boarding facilities, animal shelters, pet shops, and kennels within Watauga County shall comply with the requirements of this section.

2B. Vaccination Tag and Certificate

1. The certified vaccinator shall issue a rabies tag stamped with a certificate number and year of issue; upon vaccination, a written certificate of vaccination shall be issued to the owner or keeper of the dog or cat vaccinated.
2. It shall be unlawful for an owner or keeper to fail to provide a dog with a collar or harness to which a current rabies tag may be attached. A collar or harness with an attached rabies tag must be worn at all times with the following exceptions:
 - a. Confinement in an enclosure on owner's premises
 - b. Animal shows
 - c. Obedience trials
 - d. Tracking tests
 - e. Field trials
 - f. Training schools or events sanctioned by a recognized organization
 - g. Supervised hunting

NOTE: Cats are not required to display a rabies vaccination tag, as long as written evidence of inoculation can be furnished to the Animal Care and Control Officer.

3. All dogs, cats or other animals requiring vaccination against rabies that are shipped or otherwise brought into Watauga County (except for exhibition purposes where the animal is confined and vaccinated within one (1) week of entry) shall remain confined for three (3) weeks after vaccination unless accompanied by a certificate issued by a licensed veterinarian that the animal is free from rabies, has not been exposed, and has received a proper dose of rabies vaccine not more than twelve (12) months prior to the date of issuing the certificate.
4. It shall be unlawful for any person to use a rabies vaccination tag or written certificate for any animal other than the animal for which the tag or certificate was issued.
5. Dogs, cats, and other pets without current rabies tags are subject to impoundment.
 - a. After impoundment, animals will be handled in accordance with Section V, 5C of this ordinance.

2C. Identification Tags for Dogs & Cats

1. It is the purpose of this section to provide a means of identifying the owner of a dog or cat in Watauga County.
2. It shall be unlawful for any dog or cat owner or keeper to fail to provide their dog or cat with an identification tag and to take such action as necessary to ensure that the identification tag is worn by the animal on a collar at all times except for the circumstances cited in Section II, 2B, (2) a-g of this ordinance.
3. The identification tag shall display the owner's contact information, i.e. owner's name, address, and telephone number where the owner can be contacted.
 - a. In lieu of a collar tag, the owner or keeper may choose to micro-chip a dog or cat.
4. Dogs and cats are subject to impoundment if a dog or cat is found not wearing a visible identification tag.
 - a. Dogs or cats that are found to be micro-chipped will be returned to the owner without charge if redeemed within a 24 hour period.

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2D. Prohibition against giveaways in public places

It shall be unlawful to display any animal in a public place for the purpose of selling or giving the animal away. This section does not apply to the display of animals by and within a pet shop or commercial kennel.

Only Watauga County 501(c)(3) Nonprofit animal welfare organizations may display animals for adoption in a public place.

In such case any animal made available for adoption must be spayed or neutered, and if four months of age or older must be accompanied by a certificate verifying that the animal has been vaccinated to protect it from the rabies virus by a veterinarian licensed to practice in the State of North Carolina.

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SECTION III. RABIES AND ANIMAL BITE MANAGEMENT

3A. Animal Bites

Bite reports shall include, but not be limited to, the following: name, age and sex of the victim; precise location of wound and treatment required; circumstances leading up to and the scene of the bite; and name, description, and owner of the animal inflicting the bite.

1. When a person has been bitten by an animal, it shall be the duty of such person (or legal parent or guardian if such person is a minor) to notify the Department immediately and provide all information necessary to complete a bite report. The owner or keeper of said animal shall immediately secure and confine said animal until Animal Care and Control Officers can ascertain current rabies vaccination and determine and designate a place for the animal to be quarantined for a period of ten (10) days. It shall be the duty of every physician, or other medical personnel, to report all known or suspected bite cases to the Department within twenty-four (24) hours and provide appropriate information as required by the Department.
2. If the owner or keeper of an animal that has bitten a person or animal refuses to confine the animal as required by this ordinance or NCGS 130a-196 or fails to provide a current rabies vaccination certificate, the Department may order seizure of said animal and its confinement for not less than ten (10) days in such place as designated by the Department at the owner's expense.
3. Law enforcement agencies investigating animal bites shall report all bites immediately to the Department and provide the appropriate information as required by the Department.
4. In cases where the animal owner or keeper is unknown, the animal shall be kept for the supervised confinement period at the Watauga Humane Society.
5. Badly wounded, diseased, or suffering animals suspected of having rabies may be humanely destroyed and the head forwarded to the Division of Health Services for diagnosis.
6. Failure of the animal owner or keeper to comply with this section may result in a \$100.00 civil penalty for each violation.

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3B. Destruction or Confinement of Animal Bitten by a Known Rabid Animal

Animals that do not have a current and valid rabies vaccination which are bitten by a known rabid animal shall immediately be destroyed unless the owner or keeper agrees to strict isolation of the animal at a veterinarian hospital for a period of six (6) months at the owner's expense. If the animal has a current rabies vaccination, the animal shall be immediately re-vaccinated at the expense of the owner or keeper and returned to said person. This booster vaccination shall be given within 72 hours of the bite.

3C. Unlawful Killing or Releasing of Certain Animals

It shall be unlawful for any person, except Animal Care and Control Officers (as stated in Section III, 3A), to kill or release any animal under rabies observation. An animal which has been placed under rabies observation by the Department shall not be removed from the quarantine area specifically designated by the Animal Care and Control Officer

without written permission from the District Health Director supplied in advance to the Animal Care and Control Officer.

3D. Dogs or Cats Brought into Watauga County

Any dog, ferret or cat brought into Watauga County must have a valid rabies vaccination prior to entering the County. Otherwise, the dog or cat must be confined and given a rabies vaccination within one (1) week and remain confined for three (3) additional weeks. Failure to comply with the above requirements will result in a civil penalty of \$100.00, criminal charges or both.

3E. Post-Mortem Diagnosis

1. If an animal dies while under observation for rabies, the head of such animal shall be submitted to the Department for shipment to the laboratory section of the North Carolina Division of Health Services for rabies diagnosis.
2. The carcass of any animal suspected of dying of rabies that has bitten a person or another animal shall be surrendered to the Department for shipment to the laboratory section of the North Carolina Division of Health Services.

3F. Wildlife Bites

1. Any person bitten by a wild animal suspected of rabies shall report all information as required in Section III, 3A of this ordinance. The wild animal, if obtained, shall be released to the Department for shipment to the North Carolina Division of Health Services for diagnosis.
2. Any animal without a valid rabies vaccination bitten by a wild animal shall be treated as stated in Section III, 3B of this ordinance in the event the wild animal cannot be contained or captured for rabies diagnosis.

3G. Area-wide Emergency Quarantine

1. When reports indicate a positive diagnosis for rabies where human lives may be endangered, the District Health Director may declare an area-wide quarantine. During such quarantines, the District Health Director may authorize appropriate agencies to seize any animal requiring vaccination and found running at large in Watauga County until the quarantine is lifted. During the quarantine period, the District Health Director shall be empowered to provide a program of mass immunization by the establishment of temporary emergency rabies vaccination facilities.
2. In the event of additional positive rabies cases during the quarantine period, the District Health Director may extend the quarantine period at his/her discretion.

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SECTION IV. CRUELTY TO ANIMALS

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4A. Torture of an Animal

It shall be unlawful for any person to molest, torture, torment, deprive of necessary sustenance, cruelly beat, needlessly mutilate or kill, wound, injure, poison, abandon or subject to conditions detrimental to health or general welfare any animal, or to cause or procure such action. The words "torture" and "torment" shall be held to include every act, omission or neglect whereby unjustifiable physical pain, suffering or death is caused or permitted. Such terms shall not be construed to prohibit lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission; nor to prohibit the Department, veterinarians or duly authorized persons from destroying dangerous, unwanted, or injured animals in a humane manner.

4B. Shelter

It shall be unlawful for any owner or keeper to fail to provide an animal with proper shelter that provides protection from the weather and is sufficient and comfortable, with the opportunity for vigorous daily exercise. Veterinary care shall be provided when and if necessary to prevent suffering and to ensure that the animal is in good health.

4C. Closed Vehicles

It shall be unlawful for any person to leave an animal within a closed car, truck, or other vehicle for such duration or at such temperatures as an Animal Care and Control Officer shall, in his/her sole discretion, deem to be harmful or potentially harmful to the animal.

4D. Chaining

It shall be unlawful for any person to leave an animal unaccompanied on a chain or cable that is less than 8 feet in length. All chains/cables must be equipped with a swivel.

4E. Hit by Vehicle

Any person injuring or killing an animal by striking it with a motor vehicle of any type shall make every reasonable attempt to notify the owner or keeper of said animal and shall notify the Department as soon as possible.

4F. Abandonment

Any person being the owner or keeper, or having charge or custody of an animal, who willingly and without justifiable excuse abandons the animal is guilty of a misdemeanor punishable as provided by a fine of up to \$500.00 (NCGS 14-361.1).

4G. **Violations**

Violations of Section IV, 4A or 4B shall, at the discretion of the investigating officer, result in a civil penalty of up to \$100.00, or criminal charges, or both.

SECTION V. ANIMAL MANAGEMENT

5A. **Confinement and Control of Dangerous Domestic Animals**

Special preventative measures shall be taken by Animal Care and Control Officers for the confinement and control of dangerous domestic animals upon consideration of the following factors:

1. a. The presence of a victim or potential victim that in the opinion of the Department is unable to defend themselves, such as children, elderly, or handicapped.
- b. Prior attack-dog training or aggression training.
- c. Threat or open display of attack by an animal.
- d. Prior history of harm to humans or other animals.

The Department shall have the authority as promulgated under NCGS 67-4.5 130A-200 to require appropriate and specific preventative measures, including impoundment, to ensure public safety. Such preventive measures may be required at the discretion of authorized personnel during the investigation of a dangerous animal complaint or subsequent display of dangerous animal behavior by the animal within the jurisdiction of Watauga County.

2. The employees of the Department and any other Watauga County employee appointed by the County Manager or his designee shall determine if an animal is "dangerous" or "potentially dangerous." The person making such determination will notify the owner or keeper in writing and cite the reason for the determination.
 - a. A dangerous or potentially dangerous animal determination will be made upon receipt of a written, detailed complaint and investigation by the Department of Animal Care and Control.
3. Dangerous dog:
 - a. A dangerous dog is an animal that:
 1. Has killed or inflicted severe injury on a person.

2. Is determined, by the person or board designated by County authority to be responsible for Animal Control, to be potentially dangerous because the dog has engaged in behaviors listed in subdivision (b) of this subsection.
 3. Is determined to be a dog owned or harbored primarily or in part for the purpose of dog fighting or a dog trained for dog fighting.
- b. Potentially dangerous dog means a dog that the person or board designated by the County authority responsible for Animal Control determines to have:
1. Inflicted a bite on a person that resulted in broken bones, disfiguring lacerations, cosmetic surgery or hospitalization.
 2. Killed or inflicted severe injury on a domestic animal when not on the owner's property.
 3. Approached a person, when not on the owner's property, in a vicious or terrorizing manner in an apparent attitude of attack.
- c. Special preventative measures may be taken by the Animal Care and Control Officers for any dog deemed dangerous or potentially dangerous.

1. Any dog determined to be potentially dangerous shall be delivered within 24 hours to the Watauga Humane Society, and there it shall be held until a secure fenced area a minimum of 6 feet high, 10 feet long and 10 feet wide, with the fencing set in the ground in such a way that the dog can not dig out, is erected. The enclosure will be inspected by the Animal Care and Control Department before the dog is released. The owner will pay all boarding fees and fines applicable. This enclosure shall be completed and the dog claimed within 10 days or the dog will be destroyed.
2. The owner will post the entrance of the property where the potentially dangerous dog is kept with a sign that is legible from the road or sidewalk with notification that a potentially dangerous dog is kept on the property.
3. It shall be unlawful for any owner to:
 - a. Leave a potentially dangerous dog unaccompanied on the owner's real property unless the dog is confined indoors or inside a secure enclosure.
 - b. Permit a potentially dangerous dog to go outside the secure enclosure unless the dog is leashed and muzzled or is otherwise securely restrained.

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- c. Transfer ownership of a potentially dangerous dog without having notified the Animal Care and Control Department in writing 10 days prior to the transfer of ownership. The person receiving ownership of the dog shall have a secure enclosure prior to taking possession of the dog.
 - d. Transfer ownership of a potentially dangerous dog without having notified in writing the person taking ownership of the dog regarding the dog's dangerous behavior and the determination of the dog as potentially dangerous.
- 4. The Board of County Commissioners shall appoint an appeals board to review "dangerous" or "potentially dangerous" designations upon request of the owner or keeper. The Board of County Commissioners shall specify the number, qualifications, length of term, and compensation, if any, for the Appeals Board. Owners shall have three (3) days from the time of notification that the dog has been deemed dangerous to file an appeal in writing with the Appeals Board stating the reasons why such a designation is unwarranted. The Appeals Board will schedule a hearing within ten (10) days of the filing. The designation of an animal as "dangerous" shall be upheld unless overturned by the Appeals Board. Any appeal of the Appeals Board's final decision will be filed with the Superior Court, pursuant to NCGS 67-4.1(c).
- 5. Animals deemed "dangerous" or "potentially dangerous" that are found to be in violation of prescribed confinement shall be subject to apprehension or seizure and impoundment at the Animal Care and Control facility at the owner's expense until released by a court of competent jurisdiction or may be humanely destroyed in accordance with Section V, 5F of this ordinance. In addition, the owner of the animal will be subject to a civil penalty of \$100.00.
- 6. Wild and Dangerous Animals
 - a. It shall be unlawful for any person to keep an inherently dangerous animal within Watauga County. The Animal Care and Control Officer shall order removal of any inherently dangerous animal owned or harbored by anyone in Watauga County.
 - b. It shall be unlawful for any person, other than licensed sanctuaries, to own or harbor any wild animal. The Animal Care and Control Officer shall order the removal of any wild animal owned or harbored by anyone in Watauga County.
 - c. See also ordinance regulating wild and dangerous animals (exotics).

5B. Public Nuisance

1. An animal or group of animals shall be considered a public nuisance if:
 - a. Animal(s) damage private or public property.
 - b. Animal(s) chase, snap at, or harass pedestrians, livestock, bicyclists, vehicles or other animals when not on the owner's property.
 - c. By virtue of number, animal(s) are offensive or dangerous to public health, safety and welfare.
 - d. Animal(s) are diseased and are therefore dangerous to public health.
 - e. Animal(s) are maintained in an unsanitary environment which results in offensive odors or is dangerous to the animal or to public health, safety and welfare, or if there is a failure to maintain a condition of good order and cleanliness that reduces the probability of the transmission of disease.
 - f. Animal (s) are maintained in such a manner and location that animal waste can accumulate and run off onto another person's property.
2. The owner or keeper of the animal causing damage to the property of another, either private or public, shall be responsible for such damages and costs.
3. After it is determined by the Department that a nuisance violation has occurred, the owner or keeper will be provided written notification of such violation and be required to abate the nuisance within 72 hours from the time of notification. Abatement includes restraining the animal to the owner or keeper's property by whatever means necessary or leashing and accompanying the animal if off of the owner's property.
4. Upon receipt of two (2) written, detailed and signed complaints that an owner or keeper's animal is a nuisance as defined in this ordinance, the Department shall notify the owner or keeper of the offending animal that a complaint has been received and that an investigation has been initiated. A valid complaint shall consist of, but not be limited to, the following: eyewitness account of the animal's actions and behavior, specifying date, time and location of the incident (s), conditions leading up to the incident(s), and the signature of the eyewitness. If the investigation reveals that an animal is a public nuisance in accordance with Section V, 5B, (1), the owner will be notified in writing of the determination and advised that the animal must be secured on the owner's property by whatever means necessary.
5. If any person receiving notice in the manner herein described shall fail or refuse to abate the nuisance within the specified time upon the issuance of such order, the Animal Care and Control Officer or Sheriff may cause the animal(s) in question to be apprehended and impounded in accordance with the provisions of this ordinance.

6. If investigation reveals that a violation has occurred and the owner or keeper is unknown, the animal may be apprehended and kept at the Watauga Humane Society. The notice and order shall be posted at the Watauga Humane Society and on the Watauga County Courthouse bulletin board. In the event the owner or keeper remains unknown after a forty-eight (48) hour posting period, the animal can be impounded or humanely destroyed.
7. It shall be unlawful for an owner or keeper to permit an animal(s) to create a public nuisance or to maintain a public nuisance created by any animal(s).
8. Any person who receives notice of an animal being declared a public nuisance may, within ten (10) business days of the date the notice was received, submit a written appeal to the County Manager. The appeal notice shall specifically state the reasons for the appeal with a copy of the public nuisance notice attached thereto. The Chief Animal Care and Control Officer shall schedule a hearing and notify the appellant: The County Manager shall render a decision upholding, denying, or modifying the public nuisance notice. Accrual and imposition of the civil penalties shall be stayed pending the decision; however, there will be no stay for equitable remedies available to the County. If the decision of the Animal Care and Control Officer is affirmed, accrual and imposition shall resume.

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5C. Impoundment

1. Any animal may be impounded at the Watauga Humane Society facility for a minimum of seventy-two (72) hours if it appears to be:
 - a. Lost, stray, or abandoned
 - b. In violation of this ordinance.
2. Reasonable effort shall be made to identify and notify the owner or keeper of the animal that the animal has been impounded and where it may be redeemed. Animals not redeemed within seventy-two (72) hours of notification to the owner or keeper may be placed for adoption or euthanized.
3. Impoundment of an animal shall not relieve the owner or keeper from any penalty imposed for violation of this ordinance.
4. Any animal impounded, confiscated or turned in that cannot be adequately housed at the Watauga Humane Society (e.g., horses, cattle, etc.) may be housed at a proper location at the expense of the owner or keeper.

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5D. Stray Animals

1. It shall be unlawful for any person in Watauga County to knowingly and

intentionally harbor, keep in possession by confinement, or otherwise allow an animal(s) to remain on his/her property, unless the person has, within seventy-two (72) hours from the time such animal came into his/her possession, notified the Animal Care and Control Department. The Animal Care and Control Department shall log the animal's description, location and name of keeper.

2. It shall be unlawful to refuse to surrender any such stray to the Animal Care and Control Department on demand.

5E. Release of Animals in Animal Care and Control Custody

It shall be unlawful for any person to release or cause to be released any animal in the custody of the Department without proper authorization. This includes any animal impounded at the Watauga Humane Society, in a Animal Care and Control vehicle or caught in a safe trap.

5F. Humane Destruction of Animals

1. Notwithstanding any other provision of this ordinance, an animal that cannot be seized by reasonable means and has been deemed dangerous (vicious), stray, or a public nuisance, or an animal causing a threat to public safety or other animals, may be humanely destroyed at the discretion of the Animal Care and Control Department.
2. Notwithstanding any other provision of this ordinance, any animal seized or impounded that is badly wounded, diseased (not a rabies suspect), or unweaned; is not displaying any identification; and cannot be identified after reasonable inquiry may be destroyed immediately in a humane manner. If the animal has identification, the Watauga Humane Society, shall attempt to notify the owner or keeper of the situation. If the owner or keeper cannot be readily reached, the Watauga Humane Society, in consultation with a veterinarian, will use its discretion whether or not the suffering animal should be destroyed in a humane manner.
3. At the end of the minimum time period of 72 hours, unclaimed animals shall be deemed abandoned and may be disposed of in a humane manner.

5G. Confiscated Animals With Medical Needs

Any animal that is confiscated as a result of a court order or taken as evidence in an Animal Care and Control investigation and that requires medical attention or medication shall be held at the Watauga Humane Society, until all bills are paid by the owner or keeper. After 72 hours of finalization of court action, animals can be adopted out or humanely destroyed.

SECTION VI. ANIMAL CARE AND CONTROL FACILITY OPERATIONS

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6A. Facility

The Department shall contract with the Watauga Humane Society to operate a facility for the purpose of providing safe and sanitary confinement of animals received or seized within Watauga County. The facility shall be maintained in accordance with all applicable rules and regulations.

6B. Redemption of an Animal

The owner or keeper of an impounded animal may redeem the animal and regain possession by complying with all applicable provisions of this ordinance, showing proof of rabies vaccination, and paying appropriate fees and fines. Animals that are brought in by the public which are properly tagged shall be returned to the owner or keeper without charge if redeemed within a 24 hour period.

6C. Redemption or Adoption of an Animal Without Rabies Vaccination

1. Persons adopting or redeeming an animal from the Watauga Humane Society, without a valid rabies vaccination shall obtain a rabies vaccination within 72 hours and notify the Animal Care and Control Department of the tag number and name of the vaccinating veterinarian.
2. All person(s) adopting or redeeming a dog or cat will be required to purchase or obtain an identification tag or have the animal micro_chipped.
3. Any animal surrendered by its owner in accordance with Departmental procedures may be immediately placed for adoption. Impounded animals will be placed at the discretion of the Department after expiration of the prescribed impoundment period.
4. During periods of emergency rabies quarantine, no animal without a current rabies vaccination shall be adopted without written permission from the District Health Director.
5. Payment for all veterinary services will be the responsibility of the owner or keeper.
6. After a seventy-two (72) hour waiting period, allowing for time to locate the animal's owner, the dog or cat can be adopted out or humanely destroyed.

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SECTION VII. VIOLATIONS, ENFORCEMENT AND PENALTIES

7A. Violations

1. The violation of any provision of this ordinance shall be a misdemeanor as provided in NCGS 14.4(a).

2. Each day's violation of this ordinance is a separate offense. Payment of a fine imposed in criminal proceedings pursuant to this section does not relieve a person of the liability for penalties or fees imposed under this ordinance.
3. Enforcement of this ordinance may be made by appropriate equitable remedy, injunction, or order of abatement issuing from a court of competent jurisdiction pursuant to NCGS 153A-123 (d) and (e).
4. A violation of this ordinance may also subject the offender to the civil penalties hereinafter set forth:
 - a. Such civil penalties may be recovered by Watauga County in a civil action or may be collected in such other amounts as prescribed herein within the prescribed time following the issuance of notice for such violation.
 - b. Such notice shall:
 1. State upon its face the amount of the penalty to be paid within seventy-two (72) hours from the issuance of the notice and the late fee (\$1.00 per day) if paid more than seventy-two (72) hours after its issuance.
 2. Notify such offender that a failure to pay the penalties within the prescribed time shall subject such offender to a civil action for the stated penalty plus an additional penalty in the amount of \$25.00, together with the cost of the action to be taken by the court.
 3. Further provide that such offender may answer the notice by mailing stated penalty to the Department at its mailing address, or by making payment to the Department at the appropriate address, and that upon payment such case or claim and right of action by Watauga County will be deemed compromised and settled.
 4. State that penalties must be paid within seventy-two (72) hours from the issuance of the notice and, if settlement is not received within the seventy-two (72) hours, court action shall be filed for collection of such penalty.
 - c. The Department is authorized to accept payment in full and final settlement of the penalty and, for any and all claims that Watauga County may have, to enforce civil action.
 - d. The notice of violation referred to herein may be delivered in person, mailed to the offender at the last known address, or affixed to the door of the offender's residence.

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7B. Penalties

1. The civil penalty for any and each individual violation of this ordinance is \$50.00 for the first offense, \$100.00 for the second offense, and \$150.00 for the third offense. If an offense is committed by the same animal for a fourth time, the animal may be confiscated and disposed of at the Chief Animal Care and Control Officer's discretion. If the animal in question is deemed to be a danger to the community, said animal may be confiscated before the fourth offense.
2. In addition to the penalty prescribed in Section VII, 7B(1) above, a \$1.00 per day penalty shall be imposed in all those cases in which the above penalty has not been paid within the authorized seventy-two (72) hour period.
3. Should it become necessary to institute a civil action to collect any penalty hereunder, the violation shall be subject to an additional penalty of \$25.00, together with the cost of the action to be taken by the court.
4. All penalties paid to the Department or an authorized agent recovered in a civil action as herein provided shall be remitted to the General Fund of Watauga County.

7C. Enforcement

1. Animal Care and Control Officers or other Watauga County employees so designated by the County Manager shall be empowered to enforce the provisions of this ordinance.
2. It shall be unlawful for any person(s) to interfere with, hinder or molest the employees of the Department and its officers, while in the performance of their duties as stated in this ordinance, or to release any animal in the custody thereof, except as specifically provided herein.
3. Animal Care and Control Officers shall be empowered to utilize firearms or tranquilizer guns for the purpose of control of wild, diseased and dangerous animals.
4. Any questions regarding the policies of this ordinance shall be answered at the discretion of the Chief Animal Care and Control Officer.

SECTION VIII. SEVERABILITY

If any section or part of this ordinance should be held legally invalid for any reason, such determination shall not affect the remaining sections or parts, and to that end the provisions of this ordinance are severable.

ARTICLE IX. REPEAL

This ordinance replaces, in its entirety, the existing ordinance entitled Watauga County Animal Care and Control Ordinance, adopted August 18, 2009. The previous ordinance shall be repealed

as of the effective date of this ordinance.

SECTION X. EFFECTIVE DATE

This ordinance shall become enforceable and effective on the 1st 18th day of September, 2011.

ADOPTED this the _____ day of _____, 2011. August, 2009.

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Nathan A. Miller, Chairman
Watauga County Board of Commissioners

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ATTEST:

[seal]

Anita J. Fogle, Clerk to the Board

Deron Geouque

From: Len.Hagaman
Sent: Monday, June 27, 2011 1:56 PM
To: Deron Geouque
Subject: BCC - Item 6 - "REQUEST A PUBLIC HEARING...ANIMAL CARE AND CONTROL"

Ref: BCC Agenda Item 6 - "REQUEST A PUBLIC HEARING...ANIMAL CARE AND CONTROL"

Deron Geouque,

In reviewing the proposed "Watauga County Animal Care and Control Ordinance," I would please request that under "Definitions," the wording found in Section 1, specifically "1B – Definitions" uses the term in IP 4..."Animal Care and Control Officer: An employee of the County designated by the County Manager to administer and enforce local and state Animal Control regulations as prescribed by the Watauga County Board of Commissioners and the State of North Carolina. Animal Care and Control Officer may included the deputies of the Watauga County Sheriff's Office." That the last sentence, "**Animal Care and Control Officer may included the deputies of the Watauga County Sheriff's Office,**" be removed as we do not have the training and equipment to humanely address some animal care issues, particularly any method beyond the use of a firearm to dispatch an animal who is in distress.

LDH, WCSO

AGENDA ITEM 14:

Public Comment

MANAGER'S COMMENTS:

Time has been reserved to allow citizen comment to address the Board for any area of interest or concern.

AGENDA ITEM 15:

Break

AGENDA ITEM 16:

Closed Session

MANAGER'S COMMENTS:

Attorney/Client Matters – G. S. 143-318.11(a)(3)

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