

Regular Session, April 4, 2011, 9:30 a.m.  
Catawba County Board of Commissioners

**Appointments**

Industrial Facilities & Pollution Control Financing Authority	65	04/04/11
Dangerous Dog Appellate Board	65	04/04/11
Nursing and Rest Home Advisory Board	65	04/04/11

**Economic Development Corporation**

Incentives for Fairmont Designs, Inc.	66	04/04/11
---------------------------------------	----	----------

**Juvenile Crime Prevention Council (JCPC)**

Funding Plan	73	04/04/11
--------------	----	----------

**Presentations**

Public Information Officer Dave Hardin – Recipient of the NC3C Chris Coulson Memorial Award	65	04/04/11
Certificate of Commendation to CVCC – Quality Enhancement Plan	65	04/04/11
Weapon and Badge to Retiring Deputy Shull	65	04/04/11
Weapon and Badge to Retiring Deputy Saunders	65	04/04/11
Pink Heals Tour – Hickory Fire Department	66	04/04/11

**Proclamations**

Public Health Month	65	04/04/11
Child Abuse Prevention Month	66	04/04/11

**Public Comments for Items Not on the Agenda**

Author Michael Barrick – Presentation of Book to Board	65	04/04/11
--	----	----------

**Resolution**

Incentives for Fairmont Design, Inc.	66	04/04/11
--------------------------------------	----	----------

**Sheriff's Office**

Weapon and Badge to Retiring Deputy Shull	65	04/04/11
Weapon and Badge to Retiring Deputy Saunders	65	04/04/11

The Catawba County Board of Commissioners met in regular session on Monday, April 4, 2011 at 9:30 a.m. in the Robert E. Hibbits Meeting Room of the 1924 Courthouse, 30 North College Avenue, Newton, North Carolina.

Present were Chair Katherine W. Barnes, Vice-Chair Lynn M. Lail and Commissioners Barbara G. Beatty Dan Hunsucker and Randy Isenhower.

Also present were County Manager J. Thomas Lundy, Assistant County Manager Lee Worsley, Assistant County Manager Dewey Harris, County Attorney Debra Bechtel, Deputy County Attorney Anne Marie Pease and County Clerk Barbara Morris.

1. Chair Katherine W. Barnes called the meeting to order at 9:30 a.m.
2. Vice-Chair Lynn M. Lail led the Pledge of Allegiance to the Flag.
3. Commissioner Randy Isenhower offered the invocation.
4. Commissioner Dan Hunsucker made a motion to approve the minutes of the Regular Meeting of March 21, 2011. The motion carried unanimously.

5. Recognition of Special Guests: Chair Barnes welcomed all present. Chair Barnes at a later point in the meeting recognized Reporter Rob Eastwood.
6. Public Comments for Items Not on the Agenda:  
Author Michael Barrick presented Board Members with copies of Exceptional Care, A Century Strong, A Mission of Mercy and Healing, which is a history of Frye Regional Medical Center. Mr. Barrick thanked the Board for its service to the community and commitment to civic involvement. Chair Barnes thanked Mr. Barrick for the book, and commended Frye Regional Medical Center for its service to the community.
7. Appointments:  
Commissioner Hunsucker recommended the appointment of Mr. Ben Gibbs for a first term on the Industrial Facilities & Pollution Control Financing Authority to fill the vacancy caused by the expiration of Philip Null's term. Mr. Gibbs' term will expire March 31, 2017. Commissioner Hunsucker also recommended the appointment of Butch Williams and Carl Luckadoo for first terms on the Dangerous Dog Appellate Board. These appointments will expire February 2, 2014 and replace Reverend Purdy who did not wish to be reappointed and Dr. Mitchell-Ardrey who is being considered for the contract vet position with the County. Vice-Chair Lail recommended the appointment of June Martin, Barbara Myers and Becky Good for first terms on the Nursing and Rest Home Advisory Board. These terms will expire April 3, 2012.

These recommendations came in the form of a motion, which carried unanimously.

8. Presentations:  
Chair Barnes asked that all Board members join her at the podium for presentations:
  - a. Chair Barnes commended Catawba County Public Information Officer Dave Hardin as the recipient of the prestigious North Carolina City & County Communicators (NC3C) Chris Coulson Memorial Award. NC3C is dedicated to the professional development and networking of local governmental communications professionals. Formed in March 2007 by 27 professional communicators, it has since grown to more 60 members across the state. As the recipient of this award, Mr. Hardin was recognized for his passion for making a difference in the profession and in the lives of citizens, for his character, career and service which represents the highest standards, and his belief that citizens need to be given information about their local government in as many different venues as possible. Mr. Hardin thanked the Board for the recognition and stated that while he had been named recipient of the award, he believed the County, the Board and the Staff were deserving of the award and he was just part of that team.
  - b. The Board presented Catawba Valley Community College (CVCC) President Dr. Garrett Hinshaw with a Certificate of Commendation noting the recognition by the Southern Association of Colleges and Schools' Commission on Colleges of CVCC's Quality Enhancement Plan, which the Commission deemed a success, with particular strength in the area of assessment. Chair Barnes noted that the College's Business and Industry Training Program had also recently received similar recognition.
  - c. Under North Carolina General Statute 20-187.2, the Board declared Sheriff's Deputy Terry Shull's service sidearm and badge as surplus and presented Deputy Shull with these items in honor of his retirement after 30 years in law enforcement. Deputy Shull's retirement will be effective May 1, 2011.
  - d. Under North Carolina General Statute 20-187.2, the Board declared Sheriff's Deputy J. Michael Saunders' service sidearm and badge as surplus and presented Deputy Saunders with these items in honor of his retirement after over twenty-three years in law enforcement. Deputy Saunders' retirement will be effective May 1, 2011.
  - e. Commissioner Hunsucker presented Public Health Director Doug Urand with a proclamation declaring April as Public Health Month to recognize 131 years of public health service to the residents of North Carolina and the efforts of public health departments to control and eliminate infectious

disease, improve environmental sanitation and promote healthy lifestyle practices, which have resulted in improved health status and increased life expectancy for North Carolina residents.

f. The Board heard a presentation from the Hickory Fire Department on the Pink Heals Tour which will come to Catawba County in September 2011. The tour brings “Guardians of the Ribbon”, dressed in pink fire suits and traveling in pink fire trucks, across the country to spread awareness and support for all women and their fight against cancer.

Chair Barnes noted that a Child Abuse Prevention Month Proclamation had been presented on behalf of the Board at an event on April 1, 2011.

9. Departmental Reports:

A. Economic Development Corporation.

Julie Pruett from the Catawba County Economic Development Corporation presented a request for Board approval of incentives for Fairmont Designs, Inc. in the form of a \$25,000 grant (payable after 200 jobs are created and \$1.5 million is invested) to be used for increased productivity and efficiency measures, or equipment relocation and building up-fit costs. The jobs must be created and maintained for a minimum of 36 months after receipt of the grant or the grant must be repaid. Fairmont Designs is purchasing the 215,500 square foot former Thomasville Furniture building in Hickory. It plans to create 200 new jobs paying a total average wage of \$30,189 per year. A minimum of 60 of those jobs must pay above the county average wage of \$34,216. The schedule for job creation is 60 jobs in 2011, 60 in 2012, 45 in 2013 and 35 in 2014. Fairmont Designs plans to invest \$1.5 million in machinery and equipment by December 31, 2012. This \$1.5 million combined with the \$1.3 million purchase price of the real property equates to a \$2.8 million total investment in the community.

Fairmont Designs, headquartered in Buena Park, California, began its search for existing buildings east of the Mississippi. The company has a showroom at the High Point Furniture Market, is familiar with High Point, and narrowed its focus to near High Point and Hickory in North Carolina and its existing distribution center in Tennessee. The primary reason for the location is to establish an East Coast manufacturing operation to better serve existing customers and establish new customers with a more local presence. Fairmont Designs has 25 years of expertise in manufacturing home furnishings and furnishings for the hospitality and health care industry. It currently owns and operates four factories with 2.5 million square feet and employs 4,500 people worldwide, with a headquarters and manufacturing facility in California and the distribution center in Tennessee. It is a member of the Sustainable Furniture Council and is committed to eco-friendly business practices. It plans to institute “lean manufacturing” which improves the flow of work, causing waste reduction to occur thereby improving quality and reducing production time and costs, at the Hickory facility.

These incentives will be based on an economic development agreement which requires Fairmont Designs to meet minimum thresholds of investment in machinery and equipment (\$1.5 million by 2012) and job creation (200 by 2014) prior to any incentive payment by the County. Repayment of the incentives will be required should the investment and/or job creation amounts not be sustained.

Commissioner Hunsucker made a motion to approve the incentive agreement and the related resolution. The motion carried unanimously. The following resolution and agreement apply:

Resolution No. 2011-

Resolution Authorizing Economic Development Incentives for Fairmont Designs, Inc.

**WHEREAS**, Fairmont Designs, Inc. (herein referred to as “the Company”) requested incentives to cause investments equal to or exceeding \$1,500,000 in the Company’s Hickory facility by December 31, 2012, and the creation and maintenance of 200 jobs by December 31, 2014, with a requirement to not hire anyone without a minimum of a high school diploma for anyone 25 years of age or below,

and that the average wage of at least 60 of these jobs will be at or above the average wage in Catawba County as determined annually by the North Carolina Department of Commerce.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Commissioners of Catawba County, North Carolina, as follows:

The Board of Commissioners approves an economic grant equal to \$25,000 payable after all jobs and investment are created. This project will create 200 jobs and an investment of a minimum of \$1,500,000 which will qualify for ad valorem tax purposes. This grant will be a maximum of \$25,000 to be used to reimburse the Companies' expenditures as eligible under North Carolina General Statute 158-7.1. The Board of Commissioners also directs the County to execute a contract and any necessary resolutions or addenda between the Companies and the County under these terms and conditions and authorizes the Chair to execute these documents.

This the 4<sup>th</sup> day of April, 2011.

**Prepared by: Debra Bechtel, Catawba County Attorney  
P.O. Box 389, Newton, North Carolina 28658**

**D. STATE OF NORTH CAROLINA ECONOMIC DEVELOPMENT AGREEMENT**  
**COUNTY OF CATAWBA**

This **JOINT ECONOMIC DEVELOPMENT AGREEMENT** (this "Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2011, by and between **Catawba County**, (the "County") a North Carolina Body Politic Corporate in Nature, having a mailing address of **P.O. Box 389, Newton, North Carolina 28658**, and **Fairmont Designs, Inc.** ("Fairmont Designs"), a California corporation registered with the State of California and having a mailing address of 207 20<sup>th</sup> Street SE, Hickory, NC 28602. All material transactions regarding this Agreement shall be deemed to have occurred in Catawba County, North Carolina.

**WITNESSETH:**

**WHEREAS, the County is desirous of fostering economic development within its boundaries; and**

WHEREAS, North Carolina General Statutes (NCGS) 158-7.1(a) authorizes the County to make appropriations for the purpose of aiding and encouraging the location of business enterprises and industrial and commercial plants in or near its boundaries; and

WHEREAS, Fairmont Designs is a California corporation, registered with the State of California, lawfully authorized to do business within the State of North Carolina; and

WHEREAS, Fairmont Designs is engaged in manufacturing upholstered furniture within the meaning of NCGS 158-7.1; and

WHEREAS, Fairmont Designs intends to purchase an existing building and up-fit the building to accommodate manufacturing operations (the "Property") within the limits of the County at 207 20<sup>th</sup> Street SE, Hickory, NC, Parcel ID numbers 371207783652 and 371207791023 for the purpose of converting such improvements into Fairmont Design's manufacturing operations of residential upholstery furniture (the "Facility"); and

WHEREAS, in order to engage in such enterprise, Fairmont Designs intends to improve (or cause to be improved) the existing building located on the Property and acquire and/or relocate

equipment, and install the same in the Facility; and undertake such other work as may be appropriate to accomplish the improvement described herein (collectively, the "Improvements"); and

WHEREAS, the total investment in the community including real and personal property is expected to be in excess of Two Million Eight Hundred Thousand Dollars (\$2,800,000); and

WHEREAS, Fairmont Designs anticipates that the total expense of the Improvements, including the up-fit cost of the Property and the Facility inclusive of any costs of machinery, equipment and fixtures, during the Improvement Period, as defined below, will equal or exceed One Million Five Hundred Thousand (\$1,500,000) Dollars and the Improvements are expected to increase the tax base of the County by a related amount; and

WHEREAS, as a result of the Improvements, the facility is expected to create a minimum of 200 jobs of which at least sixty (60) jobs will be equal to or exceed the average wage requirement under the North Carolina Department of Commerce; and

WHEREAS, in an effort to encourage and maintain the highest educational attainment, Fairmont Designs will enroll and actively participate in Education Matters program; and, for this and future projects, will agree to require a minimum of a high school diploma for anyone 25 years of age or below and a high school diploma or GED for anyone 25 years of age or above; and

WHEREAS, as an inducement to Fairmont Designs, and to assist Fairmont Designs in connection with the increased productivity and efficiency measures, Property and Improvements, the County is willing to appropriate and expend County funds to provide certain economic development incentives for the creation of jobs, as provided in this Agreement, all such appropriations and expenditures to be made pursuant to the terms and conditions of this Agreement and NCGS 158-7.1(a); and

WHEREAS, the County has approved the appropriation and expenditure as hereinafter set forth for the specific purpose of making economic development grants based on the value of the property improvement, jobs created and the Improvements to be made; and

WHEREAS, Fairmont Designs, acknowledges that but for the County's provision of economic development grants, it would not have agreed to enter into this enterprise; and

WHEREAS, Fairmont Designs is expected to be a community-oriented company and intends to participate in philanthropy, community events and programs intended to increase the health and happiness of its employees and the greater community as a whole; and

WHEREAS, Fairmont Designs is encouraged, to the reasonable extent possible, to purchase local services and supplies, such as, but not limited to, locally produced products, local hotel, motel and hospitality services, local building and construction services, and other products and services; and

WHEREAS, in consideration of these economic development incentives, Fairmont Designs agrees to comply with the covenants and conditions binding upon it as set forth in this Agreement; and

WHEREAS, the parties are desirous of reducing their agreement to written form;

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

The County and Fairmont Designs agree that this Agreement shall apply only with respect to Improvements undertaken or payments for such Improvements by Fairmont Designs between February 15, 2011 and December 31, 2012 (the "Improvement Period") unless, after appropriate notice and public hearing as required by law, if any, the parties shall agree in writing to extend the

same. In no event shall the amounts established herein be increased due to any extension of time for fulfillment of the terms and conditions of this Agreement.

1. This Agreement is executed subject to the fulfillment, on or before April 30, 2011, of each of the following conditions precedent, except to the extent that Fairmont Designs may, in its absolute discretion, waive one or more thereof in whole or in part:

1.1 The County shall deliver to Fairmont Designs an Opinion of Counsel for the County, in form and substance reasonably satisfactory to Fairmont Designs, that this Agreement has been duly authorized, executed and delivered by the County;

1.2 The County shall deliver to Fairmont Designs, in form and substance reasonably satisfactory to Fairmont Designs, evidence in the form of a Resolution or Resolutions, or official minutes, of the County authorizing the economic development incentives set forth in this Agreement; and

1.3 The County shall deliver to Fairmont Designs an Opinion of Counsel for the County, in form and substance reasonably satisfactory to Fairmont Designs, stating that this Agreement complies with the terms and requirements of NCGS 158-7.1(a) and is binding upon and enforceable against the County with its terms.

County agrees to use its best efforts to cause such conditions to be satisfied on or before April 30, 2011.

2. This Agreement is executed subject to the fulfillment, on or before April 30, 2011, of each of the following conditions precedent, except to the extent that the County may, in its absolute discretion, waive one or more thereof in whole or in part:

2.1 Fairmont Designs shall have purchased the property located at 207 20<sup>th</sup> Street SE, Hickory, NC, Parcel ID numbers 371207783652 and 371207791025.

2.2 Fairmont Designs shall deliver to the County a certificate confirming that it has purchased the Property and that the construction, and/or installation of the Improvements will result in the creation, maintenance and availability of a minimum of 200 new net jobs prior to December 31, 2014 and that 60 of those jobs will pay wages that are equal to or above the average wage requirement in Catawba County under the North Carolina Department of Commerce. Job requirements will include a minimum of a high school diploma for anyone 25 years of age or below and a high school diploma or GED for anyone 25 years of age or above as outlined by Education Matters. Fairmont Designs affirms understanding of, and agrees to comply with, the Calendar of Responsibilities as outlined in Exhibit "A". Such certificate shall be in the form or substantially in the form of the certificate attached to this Agreement as Exhibit "A".

2.3 An Opinion of Counsel for Fairmont Designs, in form and substance reasonably satisfactory to the County, that this Agreement has been duly authorized, executed and delivered by Fairmont Designs; and

2.4 An Opinion of Counsel for Fairmont Designs, in form and substance reasonably satisfactory to the County, stating that this Agreement is binding upon and enforceable against Fairmont Designs, in North Carolina, in accordance with its terms.

Fairmont Designs agrees to use its best efforts to cause such conditions to be satisfied on or before April 30, 2011.

3. In order to induce the County to enter into this Agreement and to appropriate and expend monies for payment of economic development incentives pursuant to this Agreement, Fairmont Designs represents and warrants to the County that as of the execution date hereof:

3.1 It is a corporate company duly organized and existing under the laws of the State of California, has a place of business within the State of North Carolina, and is in good standing and authorized to do business in the State of North Carolina;

3.2 It has the corporate power and authority to own its properties and assets and to carry on its business as now being conducted and has the corporate power and authority to execute and perform this Agreement;

3.3 This Agreement (i) is the valid and binding instrument and agreement of Fairmont Designs, enforceable against Fairmont Designs in accordance with its terms; (ii) does not violate any order of any court or other agency of government binding on Fairmont Designs, the charter documents or operating agreement of Fairmont Designs or any provision of any indenture, agreement or other instrument to which Fairmont Designs is a party; and (iii) does not conflict with, result in a breach of, or constitute an event of default, or an event which, with notice or lapse of time, or both, would constitute an event of default, under any indenture, agreement or other instrument to which Fairmont Designs is a party;

3.4 There is no suit, claim, action or litigation pending, or to the best knowledge of Fairmont Designs threatened, relating to the Improvements, the use of the Improvements for their intended purpose, or any other matter contained herein;

3.5 To the best of Fairmont Designs' knowledge, there is no impediment to the use of the Property for the purposes contemplated by this Agreement.

3.6 Fairmont Designs is not engaged in a business that would be exempt from property taxes.

4. Subject to satisfaction of the conditions set forth in Sections 1, 2 and 3 above, Fairmont Designs covenants and agrees with the County that in consideration of the appropriation and expenditure by the County of such economic development incentives, Fairmont Designs shall make investments to the Property and Improvements during the Investment period. Cumulative expenditures are in addition to the purchase price of the building and property and will meet or exceed One Million Five Hundred Thousand (\$1,500,000) Dollars by December 31, 2012, all of which will qualify and result in additional value for ad valorem tax purposes as determined by the Catawba County tax office. Fairmont Designs further covenants and agrees it will maintain in place, in good condition said Improvements through December 31, 2017. The parties understand and agree that the minimum investment of \$1,500,000 and the maintenance of that investment through December 31, 2017 is a material term of this Agreement.

5. Also subject to satisfaction of the conditions set forth in Sections 1, 2 and 3 above, Fairmont Designs covenants and agrees with the County that in consideration of the appropriation and expenditure by the County of such economic development incentives, Fairmont Designs shall create a minimum of two hundred (200) new jobs by December 31, 2014. Fairmont Designs shall maintain and continue to make available the 200 jobs through December 31, 2017. The parties understand and agree that the minimum number of 200 jobs and the maintenance of those jobs through December 31, 2017 is a material term of this Agreement.

6. Payment of economic development incentives will be made as provided in this Section 6. Economic development incentives in the amount of twenty-five thousand (\$25,000) dollars will be paid by the County to Fairmont Designs upon hiring of a minimum of 200 new jobs and investing a minimum of one million five hundred thousand dollars \$1,500,000. In no event will the payments by the County exceed twenty-five thousand (\$25,000) dollars. Fairmont Designs will create 200 jobs by December 31, 2014 and hold these jobs in place for a minimum of 36 additional months or all incentives must be repaid to the County. Certification will be provided to the County by Fairmont Designs in the form or substantially in the form of the certificate attached hereto as Exhibit B. Certification will include cost of improvements made to the date of such certification with proof of taxes paid by Fairmont Designs and verification that Fairmont Designs has created and maintained jobs, including average wages, as outlined in the schedule required by this Section 6. The County will, within sixty (60) days after receipt of certification, pay to Fairmont Designs an economic development incentive payment. No incentive will be paid to Fairmont Designs if they should fail to create and maintain aforementioned job requirements or investment minimums as previously set forth. No incentive will be paid by the County after the twenty-five thousand (\$25,000) dollar payment pursuant to this Agreement, but nothing in this Agreement precludes the County and Fairmont Designs from entering into a subsequent agreement pertaining to other economic development incentives. Fairmont Designs shall furnish to the County on or before March 5th of each calendar year, following and corresponding to the previous July 1st when taxes are billed, the certification required by this Section 6 and proof of payment of all applicable taxes. If requested, Fairmont Designs shall provide the County, at the County's expense, independent certification as to such expenditures and number of existing jobs.

7. Notwithstanding the provisions of Paragraph 8, in the event Fairmont Designs is unable to meet the requirements of Paragraphs 4, 5 and 6 as a result of (i) an event of force majeure, including but not limited to fires, explosions, acts of God, acts of public enemy, insurrections, riots, terrorism, embargoes, labor disputes, including strikes, lockouts and job actions, or boycotts; (ii) the inability to obtain the governmental permits or approvals (including zoning) necessary for the acquisition of the land or undertaking and operating the Improvements after a good faith effort to obtain same has been made; (iii) shortages of materials or energy; (iv) changes in laws; or (v) other causes beyond the control of and arising without the fault or negligence of Fairmont Designs; then, in such event, the improvement period shall be extended for a period equal to the delay caused by any of the foregoing events so long as Fairmont Designs shall (a) have furnished the County on a timely basis, upon the occurrence of such event, a notice thereof, and (b) take all commercially reasonable steps necessary to relieve the effect of such event and to resume completion of the Improvements.

8. It shall be an Event of Default if any one or more of the following events shall occur for any reason whatsoever (and whether such occurrence shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

a. If Fairmont Designs, except in the event of force majeure, shall commit a material breach of a material covenant or obligation hereunder (including without limitation, the obligation to meet the investment goals and maintaining the minimum number (200) of newly created jobs as set forth herein) and such breach shall continue for a period of sixty (60) or more days following the receipt of written notice from the County;

b. If the Fairmont Designs fail to timely file Exhibit A, or Exhibit B on or before March 5 of each year, following and corresponding to the previous July 1<sup>st</sup> when taxes are billed, and any qualifying incentive would be due to Fairmont Designs, this shall be deemed a breach of the Agreement and, notwithstanding Section 9, below, the sole remedy will be that County will not owe Fairmont Designs any incentive that may have otherwise been due had that filing properly been made;

c. If any material representation, warranty or other statement of fact contained in this Agreement or in any writing, certificate, report or statement furnished by Fairmont Designs to the County in connection with the transaction described in this Agreement, shall be false or misleading in any material respect when given;

d. If Fairmont Designs shall be unable to pay its debts generally as they become due; files a petition to take advantage of any insolvency statute; makes an assignment for the benefit of creditors; commences a proceeding for the appointment of a receiver, trustee, liquidator or conservator of itself or of the whole or any substantial part of its property; files a petition or answer seeking reorganization or arrangement of similar relief under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state;

e. If a Court of competent jurisdiction shall enter an order, judgment, or decree appointing a custodian, receiver, trustee, liquidator, or conservator of Fairmont Designs or of the whole or any substantial part of its properties, or approve a petition filed against Fairmont Designs seeking reorganization or arrangement of similar relief under the federal bankruptcy laws or any other applicable law or statute; or if, under the provisions of any other law for the relief or aid of debtors, a court of competent jurisdiction shall assume custody or control of Fairmont Designs or of the whole or any substantial part of its properties or

f. If Fairmont Designs shall allow its taxable assets, employment (minimum 200 jobs) and average wage amounts to fall below the minimum values agreed upon in this Agreement, as each of the same pertain to the Facility contemplated by this Agreement;

9. Remedy: If an Event of Default occurs, the obligation of the County as set out herein shall terminate, and Fairmont Designs shall immediately refund to the County all economic development incentive payments paid to Fairmont Designs prior to the date of the Event of Default plus interest at the rate of prime plus one percent (1%). The date the prime interest rate shall be determined shall be the date the County sends to Fairmont Designs notice of the Event of Default.

10. Both Fairmont Designs and the County acknowledge that any and all monies appropriated and expended by the County for economic development incentives, as provided in this Agreement, are for a bona fide public purpose and are expended in good faith reliance on NCGS 158-7.1. In the event a Court of competent jurisdiction, after final appeal, rules in a lawsuit to which either Fairmont Designs or the County is a party, that all monies expended by the County pursuant to this Agreement were not offered and accepted in good faith and pursuant to and in compliance with NCGS 158-7.1 and, further, that such monies must be repaid, Fairmont Design will make such repayment. In the event one or more lawsuits are brought against the County or any County elected official, officer, agent or employee, or Fairmont Designs, challenging the legality of this Agreement, then the County and Fairmont Designs shall exercise their best efforts to defend against any and all such lawsuits. In any event, if Fairmont Designs is required to repay funds to the County pursuant to this Section 9, the benefit of this Agreement to Fairmont Designs will have been lost and all further obligations of Fairmont Designs hereunder shall terminate.

11. All notices, certificates or other communications required or permitted to be given or served hereunder shall be deemed given or served in accordance with the provisions of this Agreement if the notice is (i) mailed in a sealed wrapper and is deposited in the United States mail, certified mail, return receipt requested, postage prepaid, or (ii) deposited with a national overnight courier service that retains receipts for its deliveries, properly addressed as follows:

Catawba County:           Catawba County  
100-A S.W. Blvd.  
Newton, NC 28658  
Attn: J. Thomas Lundy, County Manager

Copy to:                   Catawba County Attorney's Office  
100-A S.W. Blvd.  
Newton, NC 28658  
Attn: Debra Bechtel, County Attorney

Company:                   Fairmont Designs, Inc.  
207 20<sup>th</sup> Street SE  
Hickory, NC 28602

Attn: Paul Saviki

Catawba County or Fairmont Designs may, by notice given to the other, designate any further or different addresses to which notices, certificates, requests or other communications shall be sent.

12. This Agreement shall inure to the benefit of, and is binding upon, Catawba County and Fairmont Designs and their respective successors and assigns. However, neither this Agreement, nor any rights, privileges, or claims created by this Agreement may be transferred by Fairmont Designs without the prior, written approval of the County, which approval will not be unreasonably withheld, conditioned or delayed.

13. Except as otherwise provided in this Agreement, this Agreement may not be amended, changed, modified or altered except by written agreement of the parties.

14. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions of this Agreement.

15. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such fully-executed counterpart.

16. This Agreement is governed by and shall be construed in accordance with the laws of the State of North Carolina, venue in Catawba County.

17. The term of this Agreement shall commence on the date of execution and expire upon payment by the County of all payments due to Fairmont Designs hereunder, unless earlier terminated as provided herein.

18. Both Fairmont Designs and Catawba County acknowledge and stipulate that this Agreement is the product of mutual negotiation and bargaining and that it has been drafted by Counsel for both Fairmont Designs and Catawba County. As such, the doctrine of construction against the drafter shall have no application to this Agreement.

Executed the date first set forth above.

B. Juvenile Crime Prevention Council (JCPC):

In the absence of Budget Manager Jennifer Mace and JCPC Staff Member Debbie Bradley, County Manager J. Thomas Lundy presented the Board with a request to approve the 2011-2012 Funding Plan for the Catawba County Juvenile Crime Prevention Council (JCPC), as recommended by the JCPC, the Catawba County Budget Manager and in keeping with the priorities approved by the Board of Commissioners at its December 20, 2010 meeting. The JCPC is an organization established by the State of North Carolina's Department of Juvenile Justice. Membership is determined mostly by the State statute establishing the JCPC. Representatives are those involved with youth. The Council exists to identify risks of youth in the community, prevent crime among at-risk youth, review court data and identify needed programs to provide intervention and prevention. Funding is allocated by the State through the Department of Juvenile Justice and Delinquency Prevention Program (DJJDP), then is distributed to the County, and then to programs. Every year, there is a process the JCPC must follow that begins with prioritizing risks and needs, with the final step being approval of a funding plan. The priorities are determined in the fall/early winter, with approval of the funding plan occurring in the spring. The Council identifies risk factors based on court data, develops a list of priorities to address these risk factors and the Board of Commissioners is asked to approve the priorities, which it did on December 20, 2010. The JCPC then advertises for programs to submit proposals to address risk factors. Responses are reviewed and a funding plan is recommended which is subject to the State of North Carolina budget. The funding plan does not require any Catawba County funding.

The priorities approved by the Board at its December 20, 2010 meeting were as follows: (1) Mental Health assessment and treatment; (2) substance abuse assessment and treatment; (3) Residential; (4) Restitution/community service; (5) Mentoring; (6) Mediation; (7) Parenting Skills, and (8) Sexual abuse intervention services.

The proposed funding plan is as follows:

- \$12,750 to JCPC for administrative costs
- \$18,587 to the Conflict Resolution Center for mediation and conflict resolution services
- \$152,823 to Corner House I and II for group home care
- \$65,114 to Family Net for psychological assessments, counseling, sex offender treatment or cognitive behavior, and substance abuse assessment and treatment
- \$23,441 to Parenting Network for family building skills
- \$42,158 to Project Challenge for restitution/community service and life skills training

As stated previously, the funding plan does not require any Catawba County funding and is subject to the State budget.

Commissioner Isenhower asked how these figures compared to what was received from the State last year and Mr. Lundy indicated they decreased by 5%. Chair Barnes noted that this funding from the State had continually decreased each year since they had started funding the JCPC. A question was raised as to the origin of funds listed under "other funds" in the amount of \$244,000 and staff was instructed to advise the Board when this was determined.

Commissioner Isenhower made a motion to approve the proposed funding as stated above. The motion carried unanimously.

10. Other Items of Business: None.
11. Attorney's Report: None.
12. Manager's Report: None.
13. Adjournment: The meeting adjourned at 10:10 a.m.

---

Katherine W. Barnes, Chair  
Catawba County Board of Commissioners

---

Barbara E. Morris  
County Clerk