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Catawba County Board of Commissioners

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The Catawba County Board of Commissioners met in regular session on Monday, October 6, 2014 at 9:15 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 Randy Isenhower and Commissioners Dan Hunsucker, Lynn M. Lail and Barbara G. Beatty.

Also present were County Manager J. Thomas Lundy, Assistant County Manager Dewey Harris, County Attorney Debra Bechtel, and County Clerk Barbara Morris. Assistant County Manager Mary Furtado was absent.

1. Chair Katherine W. Barnes called the meeting to order at 9:15 a.m., noting the meeting was starting at an earlier time, after such time changed had been duly noticed, so that the Board Members could attend the Catawba Valley Furniture Academy Open House.
2. Commissioner Dan Hunsucker led the Pledge of Allegiance to the Flag.
3. Chair Barnes offered the invocation.
4. Commissioner Hunsucker made a motion to approve the minutes from the Board's Regular Meeting of September 8, 2014. The motion carried unanimously.
5. Recognition of Special Guests: Vice-Chair Isenhower welcomed everyone and recognized Conover Town Councilman Bruce Eckard. Later in the meeting, Chair Barnes recognized two commissioner candidates, Charlotte Williams and Ed Ide, and noted that both she and Commissioner Isenhower were also candidates.
6. Public Comments for Items Not on the Agenda:
Ed Ide came forward and suggested the Board consider holding public hearings in the evenings when working people and those with child care responsibilities could attend. County Manager J. Thomas Lundy clarified that the Board consistently made an effort to conduct public hearings at its evening meetings for this exact purpose but the public hearing regarding the proposed Schedule of Values, Standards, and Rules for Catawba County's 2015 Revaluation scheduled for this day meeting was due to North Carolina General Statute scheduling requirements.
7. Presentation:
Hickory Conover Tourism Development Authority Chairman Bruce Eckard and Bebe Leitch, CEO of the Metro Convention and Visitor Bureau presented a resolution from the Hickory-Conover Tourism Development Authority commending the Board for its continued efforts to confirm the mission and goal of the Authority to promote travel and tourism in the area. The following resolution applies:

**RESOLUTION IN SUPPORT OF THE COUNTY OF CATAWBA'S
EFFORTS TO PROMOTE AND SUPPORT THE
HICKORY-CONOVER TOURISM DEVELOPMENT AUTHORITY**

THAT, WHEREAS, Senate Bill 896 was enacted by the General Assembly of North Carolina during the 1985 Session (Short Session 1986) and ratified as the 1985 Session Laws Chapter 929;

WHEREAS, the provisions of the 1985 Session Law-Chapter 929 the City of Conover and the City of Hickory by joint resolutions levied a room occupancy tourism tax;

THAT, WHEREAS, the City of Hickory and the City of Conover authorized the acquisition and improvement of the Hickory Metro Convention Center in 1998 and the occupancy tax proceeds were used to make lease payments which in turn provided for the payment of the original construction and improvement of the Convention Center.

THAT, WHEREAS, in 2004 the Board of Commissioners of the County of Catawba, the City Council of the City of Hickory, North Carolina, and the City Council of the City of Conover adopted joint resolutions approving Hickory's expansion and improvement of the Hickory Metro Convention Center, and amending the Lease to Hickory-Conover Tourism Development Authority to provide for the expansion of the Convention Center, provide for the co-location of the Catawba County Economic Development Corporation with the Convention and Visitors Bureau to coordinate with nearby facilities including the higher Metro Education Centers, the Catawba County Chamber of Commerce, the Western Piedmont Council of Governments and various other client services such as hotels/ motels and dining; and

WHEREAS, the Hickory Metro Convention Center has served as a focal point for Western North Carolina business and industry as has been suggested by Foresight, Future Forward, Priority One and other

regional studies and plans.

WHEREAS, the Hickory-Conover Tourism Development Authority and the operations of the Convention Center have been a key economic engine providing an economic benefit to the entire Catawba Valley region for more than sixteen (16) years since the facility first opened. Revenue generated from events held at the Convention Center in fiscal year 2013/14 amounted to \$6,900,000 with 86,233 tourist attending events at the facility.

WHEREAS, the Hickory-Conover Tourism Development Authority is greatly appreciative for the efforts of the County Commissioners for the County of Catawba in providing its support in many ways including but not limited to an annual contribution to the ongoing efforts of the Hickory-Conover Tourism Development Authority staff to promote tourism in the Catawba Valley region.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Hickory-Conover Tourism Development Authority does hereby recognize and commend the County of Catawba for its continued efforts to confirm the mission and goal of the Hickory-Conover Tourism Development Authority to promote travel and tourism in the area, and to recognize that the Convention Center is truly an economic engine and its effects are far reaching in both during a sound and stable economy.

This the _____ day of _____, 2014.

HICKORY-CONOVER TOURISM
DEVELOPMENT AUTHORITY

- 8. Consent Agenda:
County Manager J. Thomas Lundy presented the following six items under the consent agenda:
 - a. A request for the Board to accept grant funds in the amount of \$9,842 from the U.S. Department of Justice, State Criminal Alien Assistance Program (SCAAP). There are no matching funds required for this award that is 100% Federally funded. The SCAAP is a formula based grant program that provides agencies with reimbursement for some of the costs associated with incarcerating undocumented criminal aliens who have committed serious crimes in the U.S. The goal of this program is to enhance public safety in communities throughout the nation. Catawba County was one of only 857 (out of 3,140) eligible local entities across the U.S. that successfully applied for these dollars.

These grant funds are based on individuals held in the Newton Detention Center and those held for Catawba County at the Burke-Catawba District Confinement Facility during fiscal year 2012/2013. Funds under this program can be used for correctional purposes only. Staff has determined the best application will be for medical services in the jail. This expense is unpredictable during the year as it is dependant on the inmates' presented medical conditions. The need fluctuates as the population changes. The following appropriations apply:

SUPPLEMENTAL APPROPRIATION

Revenue

110-220050-620385	\$9,842
State Criminal Alien Assistance Program (SCAAP)	

Appropriation:

110-220050-856300	\$9,842
Medical Services	

b. A request for the Board to adopt a resolution to retire drug interdiction K-9 dog "Jak" and transfer ownership of Jak to his handler, Dennis Smith, a Deputy Sheriff Investigator. Jak has performed his duties faithfully and diligently. He is 9 years old, has arthritis in his knees and spine and is no longer physically able to perform as a drug interdiction K-9 dog. Jak was specifically trained in certain law enforcement procedures and may behave unpredictably and possibly in an aggressive manner as a result of such training; therefore, he presents a risk to the health and safety of the general public if presented for sale to or adoption by citizens unfamiliar with the specialized training Jak received. Such risk to public health and safety is not present when a K-9 dog is transferred to the care and keeping of his or her handler. This will allow Jak to retire to a familiar environment in the care of his handler who is very familiar with his training and would transfer Jak in a manner that does not endanger public health and safety. The resolution, pursuant to North Carolina General Statute 160A-266(d), will allow the Sheriff's Office to retire and transfer ownership of Jak to Deputy Smith, upon the deputy's accepting custody of the dog and assuming all liability and responsibility for the care of the animal for the remainder of his life. The following resolution applies:

RESOLUTION 2014-

**AUTHORIZING THE RETIREMENT OF
K-9 DOG "JAK"**

WHEREAS, Jak, a drug interdiction K-9 dog and his handler, Dennis Smith, Deputy Sheriff Investigator, have been a great benefit to Catawba County for 9 years; and

WHEREAS, Jak has arthritis in his knees and spine and is no longer physically able to perform as a drug interdiction K-9 dog; and

WHEREAS, Jak was specifically trained in certain law enforcement procedures which may cause him to behave unpredictably and perhaps in an aggressive manner as a result of such training and presents a risk to the general public health and safety if presented for sale to or adoption by the general public; and

WHEREAS, such risk is not present when Jak is transferred to the care and keeping of his handler Dennis Smith; and

WHEREAS, the Board of Commissioners finds that Jak should be retired and ownership transferred to Dennis Smith due to the additional training and responsibility which is required; and

WHEREAS, NCGS 160A-266(d) permits the Board of Commissioners to authorize the transfer of ownership of Jak to Dennis Smith upon Dennis Smith accepting custody of the dog and assuming all liability and responsibility for the care of the animal for the remainder of its life.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Commissioners authorizes the transfer of ownership of K-9 dog Jak to Deputy Dennis Smith effective October 7, 2014.

This the _____ day of October 2014.

c. A request for the Board to adopt a resolution designating Emergency Services Director Bryan Blanton and Emergency Management Coordinator Karyn Yaussy as Primary and Secondary Agents, respectively, for a Mitigation Grant from the North Carolina Division of Emergency Management, Hazard Mitigation Section. Catawba County is eligible to obtain mitigation grant funding because of the July 27, 2013, flooding and resulting Presidential Major Disaster Declaration for Public Assistance known as DR-4153. The State of North Carolina has been awarded federal Department of Homeland Security Mitigation Grant monies to fund projects that reduce overall disaster risks for people and property and reliance on disaster recovery funds. Eligible activities include: acquiring property (i.e. structures and land) for open space conversion; relocating public or private structures; elevating existing public or private structures to avoid flooding; retrofitting structures (e.g., storm shutters, hurricane clips, bracing systems) to meet or exceed applicable

building codes; and conducting hydrologic and hydraulic studies/analyses, engineering studies and drainage studies related to a mitigation project. Typically, these types of mitigation projects have a 25% non-Federal cost share. In this case the State of North Carolina will be paying the entire cost-share.

Hazard mitigation actions are taken to reduce or eliminate the long-term risk to life and property from a variety of hazards. Mitigation can occur before, during and after a disaster. It has been shown that mitigation is most effective when based on a comprehensive, long-term plan developed before a disaster occurs. Catawba County's mitigation planning efforts began as early as 2001 and the County has had an approved Multi-Jurisdictional Natural Hazard Mitigation Plan since 2004. This plan was updated in 2009 and a 2014 update is currently under review by the Federal Emergency Management Agency.

In order to be eligible to participate in the Department of Homeland Security Pre-Disaster Mitigation Grant program, Catawba County must maintain a current Multi-Jurisdictional Hazard Mitigation Plan. In addition, mitigation projects must be consistent with one or more specific mitigation goals in the current plan. For example, in the 2009 plan update, Catawba County identified the goal to "Pursue acquisition and elevation of flood prone structures and properties to eliminate or reduce the impact from flood hazards." The proposed mitigation project involves the voluntary acquisition or elevation of five residential properties in Catawba County.

Designation of County Primary and Secondary agents assures prompt and efficient filing of applications and documents for federal or state assistance related to hazard mitigation projects. This was the first of two requests Emergency Services will be making before the mitigation projects can begin. Once FEMA approves the mitigation grant application, the Board will receive a second report requesting a supplemental appropriation for hazard mitigation grant projects to be funded by a Department of Homeland Security Pre-Disaster Mitigation Grant.

d. A request for approval of two amendments to the County Personnel Code. The first amendment, in Section 153, Conditional Offer of Employment, removes a statement regarding the pre-employment screening process that is inconsistent with the current practice. The second amendment, in Section 167, Reduction in Force, addresses the inappropriate use of the term "part-time."

Conditional Offer of Employment - This section of the Personnel Code outlines the procedures the Human Resources Department follows regarding background checks of applicants for County employment. The current wording in this section states that "additional tests" of applicants, beyond what is required for all positions in the County, must be completed before a final offer of employment is extended. In actual practice, once a conditional offer of employment is made to an applicant, staff conducts a variety of background checks, depending on the position being filled. All applicants must pass a criminal background check and pre-employment drug screening test; other applicants may be required to pass a credit check, driving record check or a pre-employment physical. Once these background checks are satisfactorily completed, a final offer of employment is extended to the applicant. For positions where verification of an educational degree or fingerprinting is required, an applicant is not required to provide these in advance of the final offer. These verifications generally take several weeks to process. Waiting on these verifications before the final offer is extended would result in an unnecessary delay in filling job vacancies. Further, because the interview and qualification process is robust and includes structured team interviews and multiple reference checks, obtaining these verifications after the final offer has been made has not resulted in negative outcomes.

Reduction in Force – The County's Reduction in Force procedure provides a greater level of protection for employees who have obtained property rights in their positions (by completing their probationary period of employment) than for those employees who do not have property rights in their positions. Employees who do not have property rights in their positions include hourly, temporary, or probationary employees; these employees may be terminated at any time with no due process requirements. When the Personnel Code was revised in 2012, the definition section was

updated to clarify the difference between an hourly employee with no property rights and a part-time employee (with property rights). However, the Reduction in Force section addressing the various categories of employees was not updated. The use of the term "part-time" in this section should be "hourly," indicating that, in the event a Reduction in Force was necessary, any hourly, temporary or probationary employee would be terminated before a permanent employee (with property rights).

The following ordinances apply:

Ordinance No. 2014 – 08

BE IT ORDAINED that the Catawba County Code of Ordinances, Chapter 28 Personnel, Section 28-153 Conditional Offer of Employment, be amended to read as follows:

Sec. 28-153. - Conditional offer of employment.

In order to protect citizens of the County and their properties, the procedures in this subsection are established on applicants for all positions in County government.

1) The Human Resources Director shall conduct a criminal background investigation of any final candidate for a County government position, and it shall be a precondition of employment that an applicant for a position shall provide all necessary personal identification, including Social Security number and driver's license, if available, so that a thorough search may be made of local, state and/or national criminal records to determine if the applicant has a history of criminal convictions.

2) An evaluation of any crime for purposes of employment shall take into account the nature and the circumstances of the offense and the timeframe of the offense as they relate to the essential job functions for the position.

3) Employment with the County may require that additional tests or investigations be conducted, after making a conditional offer of employment. Such additional tests or investigations are determined by the position being filled, and may include, but are not necessarily limited to the following: drivers' license record checks, credit checks, educational degree verification and finger printing.

4) All final candidates for County employment shall be required to undergo and pass a drug screening. All final candidates for Department Of Transportation positions shall undergo and pass a blood alcohol and drug screening.

5) Once an applicant is extended a conditional offer of employment, the applicant may be required to undergo an examination for fitness for duty. The appropriate test shall be based on bona fide occupational qualifications. Unsatisfactory results from such testing shall result in the conditional offer of employment being withdrawn.

6) The County reserves the right to consider all results and withdraw any offer of conditional employment based on the results obtained.

(Ord. No. 2003-19, 10-6-2003)

This the 6th day of October, 2014.

Ordinance No. 2014-09

BE IT ORDAINED that the Catawba County Code of Ordinances, Chapter 28 Personnel, Section 28-167 Reduction in Force, be amended to read as follows:

Sec. 28-167. - Reduction in force.

1) If a reduction in force becomes necessary for the County, either for lack of funds, revenues or lack of available work, the following procedures shall be followed:

- a) Consideration of organizational needs of the County and the affected department.
- b) A determination shall be made about which position the department can best do without.
- c) If there is more than one position in a department that could be abolished, the value of an individual's performance to the department shall be considered.
- d) All other considerations set forth herein being equal, length of service shall be considered, but shall not be the controlling consideration.
- e) No permanent employee shall be separated while there are hourly, temporary or probationary employees serving in the same class within the same department, unless the permanent employee is not willing to transfer or accept reassignment, or unless the permanent employee does not have the knowledge or skills required to perform the work of the alternate position within the same class within a reasonable period of orientation or training such that would be given to a new employee.
- f) Employees shall be given at least three weeks' written notice of a reduction in force.
- g) A permanent employee who is separated due to a reduction in force shall have the right to appeal in accordance with the grievance procedure, to ensure that reduction-in-force procedures were followed. Permanent employees under the Department of Social Services and Public Health shall have a further right to appeal to the Office of Administrative Hearings.

2) Reduction in force criteria must be approved by the County Manager before implementing the reduction in force.

(Ord. No. 2003-19, 10-6-2003; Ord. No. 2009-04, 4-6-2009)

This the 6th day of October, 2014.

e. A request for approval of a budget revision to account for pass-through 911 funds for the cities of Hickory and Newton. The North Carolina 911 Board approved a funding method in December 2010 for distributing funds to primary Public Safety Answering Points, or PSAPs, which includes the County's 911 Communication Center. The distribution amount is based on data collected for the most recent five years of approved eligible expenditures of each primary PSAP. Catawba County received \$513,604 in fiscal year 2013-14 to support its 911 center.

On January 21, 2014, the 911 Board adopted the Secondary PSAP Funding Committee's recommendations to include an additional allocation from the NC 911 Board to secondary PSAPs, effective July 1, 2014. There are two eligible secondary PSAPs in Catawba County, in Hickory and Newton. Police chiefs from both cities approached County staff earlier this year asking for the County's support in receiving this additional funding. At its September 2014 meeting, the NC 911 Board approved pass-through funding for Hickory and Newton to be used for authorized 911 expenditures in the amount of \$58,711 and \$11,809, respectively. These funds would be received by the County in addition to the funds for the primary PSAP, which will not be affected by the

secondary PSAP funds. One of the requirements is that the new funds must flow through the County (primary PSAP) on a monthly basis and be followed with an annual report summarizing authorized expenditures. This report will be submitted in conjunction with the County's annual 911 report. The 911 Board also requires the execution of an interlocal agreement between the primary and secondary PSAP detailing the terms and conditions associated with 911 funds used by the secondary PSAP. The following appropriations apply:

Supplemental Appropriation:

202-280100-631628	Secondary PSAP – Hickory	\$58,711
202-280100-631629	Secondary PSAP – Newton	\$11,809
202-280100-861010	Secondary PSAP – Hickory	\$58,711
202-280100-861100	Secondary PSAP - Newton	\$11,809

f. A request for the Board to approve a revised lease with Blue Ridge Biofuels of Asheville, North Carolina. In May, 2014 the Board approved a lease for the Biodiesel Production Facility with Blue Ridge Biofuels. In May, Blue Ridge Biofuels' Director indicated the lease was fine, so it was submitted to the Board for approval. However, neither Blue Ridge's board nor its attorney had approved the lease. The lease approved by Blue Ridge Biofuels' board had a few minor changes from the earlier version, as follows: (1) Section 2.2 Termination, the earlier version provided a two year written notice, or if the County gave a one year notice it was required to pay the company's relocation expenses. The current version requires Blue Ridge to provide twelve months notice and the County to provide sixty months notice. Given the investment the company is making in Catawba County, this is essential to Blue Ridge and staff believes it is appropriate; (2) Section 3.3 Service Charge, the earlier version was silent while the current version provides the County with the ability to add a service charge for any late rent payments; (3) Section 5.3 Hazardous Materials, provides much better detail and protection for County; and (4), the earlier version referred to "Lessor" and "Lessee" while the new version uses the terms "Landlord" and "Tenant". The following revised lease applies:

STATE OF NORTH CAROLINA

LEASE AGREEMENT

COUNTY OF CATAWBA

THIS LEASE AGREEMENT, (the "Lease" or "Lease Agreement") is made and entered into to be effective the ___ day of _____, 2014 by and between Catawba County, a political subdivision of the State of North Carolina ("Landlord"), and Blue Ridge Biofuels, LLC, a North Carolina limited liability company, ("Tenant"); Landlord and Tenant being sometimes hereinafter collectively referred to as the "Parties", and singularly as a "Party".

WITNESSETH:

WHEREAS, Landlord is the owner of that certain parcel of real property and improvements located thereon located at 3961 Rocky Ford Road, Newton, North Carolina (the "Property" or "EcoComplex"); and,

WHEREAS, Tenant desires to lease that portion of the Property identified as the Premises on Exhibit A attached hereto and incorporated herein by reference from the Landlord, and the Landlord desires to lease the Premises to the Tenant, upon the terms and conditions contained herein;

NOW, THEREFORE, for and in consideration of the premises, the payment of Rent (as such term is defined herein), the mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Demise of Premises:**

1.1 **Premises, Possession:** Landlord does hereby demise and lease unto Tenant and Tenant does hereby lease from Landlord the Premises, subject to the terms and conditions contained herein. Landlord further grants to Tenant the non-exclusive right to use the easements, licenses, and other rights regarding access to the Premises which are lawfully owned by the Landlord for the purposes of ingress, egress, and regress by the Tenant, which rights of access and use shall be appurtenant to this Lease for so long as this Lease shall remain in effect. The Tenant shall have possession of the Premises on the 2nd day of November 2014 for purposes of commencing Tenant Improvements as contemplated herein. The Parties acknowledge and agree that with the exception of payment of Rent, all terms and conditions set forth herein shall apply upon Landlord's delivery of possession of the Premises to Tenant.

2. **Term, Termination:**

2.1 **Term.** The Term of this Lease shall be for a period of twenty (20) years, commencing on the 1st day of January, 2015 (the "Commencement Date"), and terminating on the 31st day of December, 2034, unless earlier terminated as provided herein. A "Lease Year" shall be defined as the twelve month period commencing on the Commencement Date and ending on the last day of the calendar month immediately preceding each anniversary of the Commencement Date.

2.2 **Termination.** Notwithstanding anything contained herein to the contrary, Tenant shall have the right, but not the obligation, to terminate this Lease at any time during the Term by providing the Landlord twelve (12) months advance written Notice of such termination. Landlord shall have the right, but not the obligation, to terminate this Lease at any time during the Term by providing the Tenant sixty (60) months advance written Notice of such termination. Notwithstanding the foregoing, in the event of a change in any applicable State or Federal law or regulation which necessitates the termination of this Lease, either Landlord or Tenant may terminate this Lease upon written Notice to the other.

3. **Rents:**

3.1 **Rent:** Rent during the first two (2) Lease Years of the Term shall be an annual rent of Six Thousand and no/100s Dollars (\$6,000.00) ("Base Rent"), which Base Rent shall be payable in equal monthly installments of Five Hundred and no/100s Dollars (\$500.00) each. The first Base Rent installment shall be due and payable on the Commencement Date. Following the second anniversary of the Commencement Date, Base Rent shall be adjusted annually on each successive anniversary of the Commencement Date based upon the aggregate increase, in the Consumer Price Index for the preceding Lease Year. For purposes of this Paragraph, the Consumer Price Index shall be "All Urban Consumers, South Region, All Items" annual average, or if CPI is no longer published or reasonably available, an equivalent successor index measuring the cost of living in the Southeast region of the United States.

3.2 **Rent Payments:** All Rent payments, unless otherwise designated in writing, are to be made to Landlord, C/o Director of Utilities and Engineering, P.O. Box 389, Newton, North Carolina. Tenant agrees to mail all Rent payments in advance allowing ample time for delivery of each Rent payment to Landlord, so it will receive the Rent payment in hand on or before the first day of each calendar month during the Term.

3.3 **Service Charge:** Rent payments are due and payable on or before the 1st day of each month. In the event Rent is not received by Tenant within the time provided, a service charge of five percent (5%) shall be added to all past due amounts.

3.4 **Biodiesel Supply as Additional Consideration.** In addition to Rent payable hereunder, Tenant agrees that during the Term, it shall supply the Landlord with blended biodiesel in the amounts and otherwise in accordance with Exhibit B attached hereto and incorporated herein by reference.

4. **Utilities:**

Tenant shall pay for all telephone, electricity, gas, water/sewer, storm-water fees, garbage service and all other utilities in connection with the Premises, if any. Landlord shall permit Tenant to use existing Internet service within the Leased Premises without charge to Tenant.

5. **Use:**

5.1 **General Use:** The Premises shall be used by Tenant for the manufacture and sale of biodiesel, blended fuel products, and ancillary byproducts, and shall not be used for any other purpose without the prior written consent of the Landlord, which consent shall not be unreasonably withheld or delayed.

5.2 **Signage:** Tenant may erect or permit the erection of any outside or protruding signs or media only with the prior approval of Landlord, which shall not be unreasonably withheld. Provided, however, that said signage shall comply with all applicable rules and regulations of the State of North Carolina and County of Catawba. This provision includes, but is not limited to, all signs (advertising, general or other), fixtures, draperies, and other ornamental and functional pieces which may be observed from the outside of the Premises.

5.3 **Hazardous Materials:** Tenant covenants and agrees that it shall not dispose of, discharge or release on or about the Premises any hazardous waste, hazardous substances, hazardous materials, toxic substances, hazardous air pollutants or toxic pollutants, hereinafter referred to as "Hazardous Materials", as those terms are used in the Resource Conservation and Recovery Act, The Comprehensive Environmental Response, Compensation and Liability Act, The Hazardous Materials Transportation Act, The Toxic Substance Control Act, The Clean Air Act and The Clean Water Act, and any and all amendments thereto, or any regulation promulgated pursuant thereto, or in any applicable federal, state or local law, regulation, or ordinance; and further Tenant shall properly dispose of all Hazardous Materials off the Premises consistent with all federal, state, and local laws, regulations, and ordinances. Tenant further covenants and agrees to indemnify and hold harmless Landlord from any and all losses, including all costs, expenses, other claims including attorney's fees, which Landlord incurs due to any improper disposal, release, storage, or otherwise dealing with such Hazardous Materials by Tenant. Landlord covenants and agrees to indemnify and hold harmless Tenant from any and all losses, including all costs, expenses, other claims including attorney's fees, which Tenant incurs due to any improper disposal, release, storage, or otherwise dealing with such Hazardous Materials within the Premises prior to the Commencement Date or following the termination of this Lease for any hazardous materials Landlord brings onto the Leased Premises. These indemnities shall survive the termination of this Lease. Attached hereto as Exhibit C, is a list identifying those Hazardous Materials (the "Hazardous Materials List") which shall be stored or used by Tenant in connection with its business operations within the Premises. The Hazardous Materials List shall be updated by Tenant during the Term to reflect a material change in the Hazardous Materials used by Tenant in connection with its business operations. A "material change" triggering an updated list includes the addition or deletion of a Hazardous Material or an increase or decrease of 10% or more of the quantity of a Hazardous Material stored by Tenant within the Premises.

5.4 **Parking, Parking Areas:** The Tenant and Tenant's employees and business invitees may park in the designated parking areas within the Premises during Tenant's normal business hours.

5.5 **General Conditions:** This Lease is made by Landlord and accepted by Tenant subject to the following:

- (a) Any state of facts that an accurate survey or inspection would show.
- (b) Any presently existing defect of title, easement, or right of way.

- (c) All zoning regulations affecting the Premises now or hereafter in force.
- (d) Restrictive Covenants and party wall agreements of record.
- (e) Encroachment of the Premises on any street or on adjacent property.
- (f) Projection of any portion of the Premises or equipment in or under any abutting street and the right of any governmental authority to require the removal thereof.
- (g) All ordinances, statutes, and regulations, and any presently existing violations thereof, whether or not of record.
- (h) The existing condition and state of repair of the Premises on the Commencement Date.

6. **Condition, Maintenance and Alterations:**

6.1 Acceptance of Premises: Tenant acknowledges with the exception of the Landlord's Work to be completed by Landlord following the Tenant's taking possession of the Premises in accordance with Exhibit D attached hereto and incorporated herein by reference, the act of taking possession of the Premises shall constitute conclusive evidence Tenant has inspected and examined the Premises and utility installations and the same are in good and satisfactory condition. The parties acknowledge that the Tenant's use of the Premises will require Tenant to make certain repairs, replacements, alterations, and improvements to the Premises at Tenant's sole cost and expense as provided in this Lease.

6.2 Structural Additions, Alterations or Improvements: Tenant shall not be permitted to make structural or other modifications or improvements to the Premises without prior approval in writing by Landlord, which shall not be unreasonably withheld. Provided all such improvements are approved by Landlord and made by Tenant, they shall become the property of Landlord at the termination of the within Lease thereof, unless otherwise hereinafter agreed upon by the parties in writing. Tenant agrees to pay and save harmless Landlord from any and all liens which might be placed against the Premises by persons, firms or corporation making repairs or improvements not expressly contracted for by Landlord. Tenant shall provide to Landlord adequate plans, specifications, construction drawings, and other information (and any changes thereto) necessary to reasonably inform the Landlord of the nature and extent of the work to be performed by Tenant or its contractors on the Premises.

6.3 Condition of Premises and Repairs:

(a) Except as otherwise provided herein, Tenant shall, at Tenant's own expense, keep, maintain and replace the Premises and all parts and systems thereof including all utility installations and equipment in order that all of them be and remain in good maintenance, replacement and repair, properly painted and decorated. All repairs, maintenance and replacements shall be performed by or for Tenant in a prompt, workmanlike manner, shall be promptly paid for by Tenant and no liens shall be allowed to attach either to the Premises or Tenant's interest therein.

(b) Landlord shall, at Landlord's own expense, keep maintain, repair, and replace the outside walls, structural elements, and the roof of the building located on the Premises, and all subsurface conditions, landscaping, sidewalks, parking areas and other paved areas within the Premises.

6.4 Maintenance: Tenant shall not permit, allow or cause any act or deed to be performed in or about the Premises, in the building, or sidewalk or adjoining pavement, which shall cause or be likely to cause injury to any person on the Premises, or any property on the Premises or the Premises. Tenant shall at all times keep the Premises in a neat, orderly condition and shall keep entryways, and delivery areas adjoining Premises clean and free from rubbish or obstruction.

6.5 Breakage: Tenant covenants and agrees to replace and repair any broken doors or windows in the Premises at its cost and expense except when damaged by Landlord or its agents.

6.6 Trade Fixtures: Tenant shall be permitted to install trade fixtures on the Premises without necessity of consent by Landlord and shall be permitted to remove the same upon the expiration of this Lease provided Tenant is not in default and returns the Premises to the same condition in which it existed at the time of original acceptance, reasonable wear and tear excepted.

6.7 Inspection: Landlord and its agents shall have the right at all reasonable times to enter upon and inspect the Premises upon reasonable advance notice to Tenant.

6.8 Condition of Premises Upon Termination: Upon the termination of this Lease, Tenant shall return the Premises to Landlord substantially in the same condition as accepted, loss by fire or other casualty and reasonable wear and tear excepted.

7. **Assignment and Subletting**:

7.1 By Tenant: Tenant shall not have the right to assign this Lease, nor sublet the Premises or any portion thereof without the prior written consent of Landlord, which may be withheld, delayed or conditioned in the sole discretion of the Landlord. Notwithstanding the foregoing, the Parties acknowledge and agree that Tenant shall use its best efforts to sublet a portion of the Premises to Appalachian State University ("ASU"), or an entity identified by ASU for purposes of such Tenancy, upon such terms and conditions as Tenant and ASU may determine.

7.2 Transfer of Landlord's Interest: In the event of the sale, assignment or transfer by Landlord of its interest in the Premises or in the Lease (other than a collateral assignment to secure a debt of Landlord) to a successor in interest who expressly assumes the obligations of Landlord hereunder, Landlord shall thereupon be released except such obligations as shall have accrued prior to any such sale, assignment or transfer; and Tenant agrees to look solely to such successor in interest of Landlord for performance of such obligations. Landlord's assignment of the Lease or of any or all of its rights herein shall in no manner affect Tenant's obligations hereunder. Tenant shall thereafter attorn and look to such assignee, as Landlord, provided Tenant has received written notice of such assignment of Landlord's interest. In the event of any assignment by Landlord of its interest in this Lease, or the Rents payable hereunder, conditional in nature or otherwise, which assignment is made to or held by a bank, trust company or insurance company holding a Mortgage or being the beneficiary under a Deed of Trust on the Premises, Tenant agrees the execution thereof by Landlord, and the acceptance thereof by such holder or beneficiary shall never be deemed an assumption by such holder or beneficiary of any of the obligations of Landlord hereunder, unless such holder or beneficiary shall, by written notice sent to Tenant, specifically otherwise elect.

7.3 Transfer of Rights to Receive Rent: Landlord shall have the right, without selling its fee interest in the Premises or assigning its interest in the Premises or assigning its interest in this Lease to assign from time to time the whole Rent at any time payable hereunder to persons, firms, corporations, trust or other entities designated by Landlord in written notice to Tenant and in any such case Tenant shall pay the Rent subject to the terms of this Lease to Landlord as designee at the address set forth in any such notice for the period covered by such assignment.

7.4 Estoppel Certificate: Within ten (10) days after request therefore by Landlord or if upon any sale, assignment or other transfer of the Premises by Landlord, an estoppel certificate shall be required from Tenant, Tenant shall deliver in recordable form a statement to any proposed transferee, or to Landlord, certifying any facts that are then true with respect to this Lease Agreement, including, without limitation (if such be the case), that this Lease Agreement is in full force and effect, that Tenant is in possession, that Tenant had commenced the payment of the Rent, and that there are no defenses or offsets to the Lease Agreement claimed by Tenant.

7.5 Attornment: Tenant covenants and agrees that if by reason of any default under any obligation of the Landlord secured by the Premises or if the Landlord shall sell, assign, or transfer in

any manner its fee ownership of the Premises or Landlord's rights under this Lease terminate, Tenant shall attorn to the then holder of the Tenant's rights to the Premises or this Lease and will recognize such holder as the Tenant's Landlord under this Lease. Tenant, in consideration of the foregoing, waives the provision of any statute or rule of law now or hereafter in effect which may give or purport to give Tenant any right of election to terminate this Lease or to surrender possession of the Premises demised hereby in the event any proceeding is brought by the Landlord under any such underlying lease to terminate the same, and agrees that the rights and obligations of Tenant hereunder shall not be affected in any manner whatsoever by any such proceedings or actions.

8. **Insurance, Liability, Indemnity and Casualty:**

8.1 **Insurance:** Landlord shall carry, at Landlord's expense, All Risk insurance with fire and extended coverage insuring against loss or damage to the buildings and/or other improvements on the Premises to the maximum, full replacement cost. Tenant shall carry, at Tenant's expense, All Risk insurance with fire and extended coverage insuring against loss or damage to Tenant's furnishings, fixtures, inventory, equipment and other property situated or placed upon, in or about the Premises to the maximum, full replacement cost, insurable value thereof with a deductible amount as determined by Tenant. All insurance required hereby shall be kept in force during the entire Term.

8.2 **Landlord Not Liable for Damages:** Tenant agrees Landlord will not be responsible to Tenant for damages or injuries to Tenant, or to the Premises, by virtue of broken water pipes, leaks from sprinkler or heating/air conditioning system(s), if any, or from the roof or by virtue of earthquakes, riots, windstorms, overflow of water from surface drainage, rains, water, fire or by any elements or Acts of God, or by the neglect of any person or persons, except where the same shall arise based upon the negligent act or omission of Landlord, its agents, employees, or contractors. Notwithstanding the foregoing, Landlord covenants to indemnify, defend, and hold Tenant harmless from the claims, penalties or demands of any and all persons, firms and corporations for personal injury or damage to property arising out of or in connection with Landlord's use and occupancy of the Premises as contemplated herein, and the Landlord's use and occupancy, and the use and occupancy by those other than the Tenant, of the EcoComplex.

8.3 **Hold Harmless Clause and Public Liability Insurance:** Tenant covenants to indemnify, defend, and hold Landlord harmless from the claims, penalties or demands of any and all persons, firms and corporations for personal injury or damage to property arising out of or in connection with Tenant's use and occupancy of the Premises. Tenant shall maintain and carry, at all times during the Term hereof, public liability insurance with a company authorized to do business in North Carolina with a rating of AAA or better as determined by A. M. Best and Company, in the minimum amount of One Million dollars (\$1,000,000) single limit and Two Million dollars (\$2,000,000.00) aggregate, bodily injury, death and property damages. Tenant shall deliver to Landlord memorandum policies of such coverage with companies reasonably satisfactory to Landlord and naming Landlord as an additional insured therein. Additionally, Tenant shall maintain at all times during the Term hereof, business automobile insurance in the minimum amount of One Million dollars (\$1,000,000.00) per occurrence combined single limit for bodily injury and property damage liability. The business automobile insurance policy must include the MCS-90 endorsement. Landlord must be named as an additional insured under Tenant's automobile and general liability insurance.

8.4 **Workers' Compensation:** Tenant shall obtain, at its own expense, workers' compensation insurance in accordance with the laws of North Carolina. The workers' compensation policy must contain a waiver of subrogation in favor of Landlord.

8.5 **Fire or Casualty:** If the Premises shall be damaged or destroyed by fire or other casualty to the extent it would require in excess of ninety (90) days from the date of such fire or other casualty to repair or reconstruct the Premises, then either Party shall have the right to cancel this Lease Agreement upon written Notice to the other, given not more than thirty (30) days following the date

of the event giving rise to such termination. If such fire or other casualty requires less than ninety (90) days to repair or reconstruct the Premises, Landlord agrees to promptly effect such repairs or reconstruction and during such time as repairs or reconstruction are being made, the Rents hereinabove agreed upon shall be abated to the extent and in the proportion the Premises are untenable for the normal use thereof by Tenant, provided the abatement of Rents shall become effective at such time as Tenant makes the Premises available to the Landlord to effect such repairs or reconstruction.

8.6 Waiver of Subrogation: Neither Landlord nor Tenant nor anyone claiming by, through, under or in their behalf shall have any claim, right of action or right of subrogation one against the other for or based upon any loss or damage caused by fire, explosion or other casualty relating to the Premises or property herein or the building in which the Premises are located, whether such fire, explosion or other casualty shall arise from the negligence of Landlord or Tenant, their respective agents or employees, customers or otherwise.

8.7 General: All insurance put forth to satisfy requirements contained in Sections 8.1 through 8.6 shall require the insurer to provide a minimum of sixty (60) days notice to Landlord of any material change in coverage, cancellation, or non-renewal. Upon Landlord's request, Tenant shall provide certificates of insurance to Landlord as evidence of the insurance required hereunder.

9. **Taxes:**

The Parties acknowledge and agree that because the Premises is owned by a political subdivision of the State of North Carolina, that no ad valorem real property taxes shall be assessed against the Premises. In the event of a transfer of ownership from Landlord to a third party, or otherwise, resulting in the assessment of taxes against the Premises, then Landlord, or Landlord's successor in interest, shall pay all taxes and assessments of every nature assessed against the Premises. Tenant shall be responsible for the payment of any ad valorem or other personal property taxes assessed against any stored goods or any contents placed on the Premises or on any machinery, equipment, or fixtures, located thereon which are owned by Tenant.

10. **Condemnation:**

In the event the whole or any substantial part of the Premises, such that the Premises is are not reasonably usable by Tenant, shall be taken by public authority under the power of eminent domain, Tenant shall have the option to terminate the within Lease Agreement, but notwithstanding whether Tenant exercised such option the Term and Rents specified herein shall terminate as to the part of the Premises taken, effective as of the date possession thereof shall be required to be delivered pursuant to the final agreement, order, judgment or decree entered in the exercise of such power. All damages or awards for such taking shall be payable in full to Landlord and shall be the property of Landlord including, but not limited to, any sums paid or payable as compensation for loss of value of the leasehold or loss of the fee of any part of the Premises.

11. **Mortgage of Premises:**

11.1 Subordination to Mortgages: At the option of Landlord this Lease shall be subordinated to the lien of any mortgage or deed of trust, hereinafter referred to as "Mortgage", which Landlord may at any time place on the Premises and Tenant shall execute any instrument which may be required to effectuate such subordination. At Tenant's request, and at Tenant's expense, Landlord shall endeavor to deliver to Tenant a recordable agreement signed by the mortgagee providing in substance that as long as Tenant shall discharge its obligations under this Lease, the tenancy shall not be disturbed and shall not be affected by any default under the mortgage, and in the event of foreclosure, the rights of Tenant shall survive and the Lease shall continue in full force and effect, including any Term, if any, contained herein.

11.2 Notice and Right to Cure: If Landlord shall notify Tenant of the placing of any Mortgage or Deed of Trust against the Premises, Tenant agrees in the event of any act or omission by Landlord

or any other occurrence which would give Tenant the right to terminate this Lease, to claim a partial or total eviction, or to reduce any Rent payments hereunder, Tenant shall not exercise any such rights (a) until it has notified in writing by Certified Mail, Return Receipt Requested, the holder of any such Mortgage or the beneficiary under any such deed of trust which at the time shall be a lien on the Premises and of which it has notice of such act or omission, (b) until a reasonable period, not exceeding sixty (60) days, for commencing the remedying of such act or omission shall have elapsed following the giving of such notice, and (c) Landlord or such holder or beneficiary, with reasonable diligence shall not have so commenced and continued to remedy such act or omission or cause the same to be remedied.

12. **Default:**

12.1 **Event of Default:** Any one or all of the following events shall constitute an Event of Default hereunder:

(a) if Tenant, or any successor or assignee of Tenant which is in possession of the Premises, shall file a petition in Bankruptcy or insolvency or for reorganization under any bankruptcy act, or shall voluntarily take advantage of any such act by answer or otherwise, or shall make an assignment for the benefit of creditors;

(b) if involuntary proceedings under any bankruptcy law or insolvency act or receivership action shall be instituted against Tenant, or if any receiver or trustee shall be appointed for all, or substantially all, of the property of Tenant, and such proceedings shall not be dismissed or the receivership or trusteeship vacated within sixty (60) days after the institution or appointment;

(c) if Tenant shall fail to pay any Rent or other sum due from it to Landlord or any other party in strict accordance with the provisions of this Lease, and if such failure shall continue for a period of fifteen (15) days after written notice thereof from Landlord to Tenant. For the purposes hereof, all sums due from Tenant to Landlord shall constitute Rent whether denominated as Rents or otherwise elsewhere herein;

(d) if Tenant shall fail to fully perform or comply with all of the conditions or covenants of this Lease, and if the nonperformance or failure shall continue for a period of thirty (30) days after written notice thereof by Landlord to Tenant or, if the performance cannot be reasonably completed within the thirty (30) day period, the Tenant shall not in good faith have commenced performance within the thirty (30) day period and shall not have diligently proceeded to completion of performance;

(e) if Tenant shall vacate or abandon the Premises; or

(f) if any interest of Tenant in this Lease or the Premises shall be transferred, levied upon, assigned, or shall pass to or evolve to any other person, firm or corporation, whether voluntarily or involuntarily, except as herein permitted.

12.2 **Remedies:** Upon the occurrence of any Event of Default as set forth above, Landlord shall have the right, at its option, to utilize any one or more of the following remedies:

(a) Landlord shall have the right to cancel and terminate this Lease, as well as all of the right, title and interest of the Tenant hereunder by giving to Tenant notice of such cancellation at the Premises, whereupon, this Lease and all right, title and interest of the Tenant hereunder shall terminate and the Tenant shall have no further rights under this Lease; but such cancellation shall not serve to release or discharge Tenant from any liability to Landlord; and/or

(b) Landlord may elect, but shall not be obligated, to make any payment required of Tenant herein or to correct any condition required to be corrected by Tenant, or comply with any agreement, term or condition required hereby to be performed by Tenant, and Landlord shall have the right to enter the Premises for the purpose of correcting or remedying such condition or default and remain on the Premises until the complete correction of such condition, however, no expenditure for any

correction by Landlord on behalf of Tenant shall be deemed to waive or release Tenant's breach hereof, Landlord shall retain all rights to proceed against Tenant as set forth herein and Tenant shall be liable for all costs incurred by Landlord; and/or

(c) Landlord may reenter the Premises immediately with or without order of Court without being guilty of trespassing and remove the property and personnel of Tenant and store such property in a public warehouse or at any such other location selected by Landlord, all at the sole expense of Tenant. After such reentry, Landlord shall have the right to terminate this Lease by giving notice of termination to Tenant, but without such notice, the reentry by Landlord shall not terminate this Lease. Upon termination, Landlord may recover from Tenant all damages resulting from Tenant's breach, including but not limited to the cost of recovery of the Premises and placing them in satisfactory condition, the value of the balance of this Lease over the reasonable rental value of the Premises for the remainder of the Term, all of which sums shall be immediately and payable to Landlord; and,

(d) Landlord may rent the Premises or any part thereof for any term with or without terminating the Lease, and at such rentals and upon such other terms as Landlord may elect, and to alter and repair the Premises as Landlord shall deem necessary. The duties and liabilities of the parties if the Premises are relet as provided herein shall be as follows:

1. In addition to Tenant's liability to Landlord for the breach of the Lease, Tenant shall be liable for all expenses of reletting, including brokers, or finder's fees and such reasonable attorney's fees as Landlord may incur, for alterations and repairs made, for the difference between the rent received by Landlord and as provided under this Lease;

2. Landlord shall have the right, but shall not be required to apply the rent received from reletting the Premises (a) to reduce the indebtedness of Tenant to Landlord under the Lease, not including the indebtedness for Rent, (b) to the expenses of reletting and alterations and repairs made, (c) to Rents due under this Lease, or (d) to payment of future Rent under this Lease as it becomes due;

3. If the new lessee does not pay a rental installment promptly to Landlord, and the rental installment has been credited in advance of payment to the indebtedness of Tenant other than Rent, or if rentals from the new lessee have been otherwise applied by the Landlord as provided for herein and during any rental installment period for less than the rental payable for the corresponding installment period under this Lease, Tenant shall pay Landlord the deficiency, separately, from each rental installment deficiency period and before the end of that period. Landlord may at any time after a reletting terminate the Lease for the breach on which Landlord has based the reentry or subsequently relet the Premises.

(e) In no event shall Landlord's termination of this Lease Agreement or Tenant's right to possession of the Premises abrogate Tenant's agreement to pay Rent and additional charges due hereunder for the Term hereof.

(f) All of the rights and remedies provided by law to a Landlord with defaulting Tenant including all such money damages as Landlord shall be entitled pursuant to the law of damages.

12.3 Costs and Attorney's Fees: Upon any breach hereof by Tenant, regardless of whether such breach is, or becomes, an Event of Default, Landlord shall be reimbursed by Tenant for any and all costs including clean-up charges, damages and repair charges and attorney's fees incurred by Landlord in connection with such breach and including service charges and all real estate commissions on all applicable payments for services rendered and interest at twelve percent (12%) per annum from date due until paid.

13. General Matters:

13.1 Holding Over: In the event Tenant remains in possession of the Premises after expiration of this Lease, including any exercised Term, if any, without mutual written agreement to the contrary, Tenant shall not acquire any right, title or interest in or to the Premises, and in such event, Tenant shall occupy the Premises as a Tenant from month to month, with Rent equal to one hundred fifty percent (150%) of the Rent amount prior to expiration of the Term, and otherwise be subject to all of the conditions, provisions and obligations of this Lease insofar as the same shall be applicable.

13.2 Covenants of Title and Quiet Enjoyment: Landlord warrants that it is the sole owner of the Premises; it has the right to enter into this Lease; that on paying Rent and keeping and performing the agreements and covenants contained herein, Tenant shall have quiet and peaceable possession of the Premises during the term hereof, free from interruption or disturbance by Landlord or others.

13.3 Memorandum of Lease: The Parties agree to execute a Memorandum of Lease for recording purposes if requested by any one of the Parties hereto, to be prepared and recorded at the expense of the requesting Party.

13.4 Notices: All notices required under this Lease shall be deemed to be properly served and shall be only served when posted by Certified United States Mail, Postage Prepaid, Return Receipt Requested, addressed to the party to whom directed at the address herein set forth or at such other address as may from time to time be designated in writing:

TO LANDLORD:

TO TENANT:

To Landlord at the address set forth
for delivery of Rent.

To Tenant at the Premises

13.5 Applicable Law: This Lease is entered into in the State of North Carolina and shall be construed according to its laws, statutes and ordinances.

13.6 Venue: The parties covenant and agree that to the extent by law permitted the proper venue of any civil action brought concerning this Lease Agreement or any portion hereof shall be in Catawba County, North Carolina.

13.7 Effect of Waiver or Forbearance: No waiver by Landlord of any breach by Tenant of any of its obligations, agreements or covenants hereunder shall be a waiver of any subsequent breach or of any other obligation, agreement or covenant, nor shall any forbearance by Landlord to seek a remedy for any breach by Tenant be a waiver by Landlord of its rights and remedies with respect to such or any subsequent breach.

13.8 Release: At the final termination of this Lease, Tenant shall, if requested by Landlord, execute and deliver to Landlord an appropriate release in form proper for recording of all Tenant's interest in the Premises.

13.9 Severability: If any provision of this Lease shall to any extent be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each other provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

13.10 Interpretation: The captions and table of contents, if any, used in this Lease are for convenience only and do not in any way limit or amplify the terms or provisions hereof. Feminine or neuter pronouns shall be substituted for those of the masculine form, and the plural may be substituted for the singular number in any place or places herein in which the context may require such substitution or substitutions.

13.11 Successors and Assigns: The covenants and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors,

administrators, legal representatives, successors and assigns, provided nothing herein shall be construed to permit a transfer or assignment expressly prohibited by the terms of this Lease.

13.12 Entire Agreement: The within agreement, including all those agreements incorporated herein by reference, constitutes the entire agreement by and between the parties hereto, both parties acknowledging the absence of any other representations not herein contained, and shall not be modified or otherwise amended except by written agreement subsequently entered into.

13.13 Force Majeure: In the event the Landlord or Tenant shall be delayed, hindered in, or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrections, the act, failure to act or default of the other party, war, fire, water, windstorm, or other reason beyond their control, the performance of such act shall be excused for the period of delay and the period of performance of any act shall be extended for a period equivalent to the period of delay.

13.14 Construction: This Lease shall not be construed more strictly against either party regardless of which party is responsible for the preparation of the same.

13.15 Time: Time is of the essence in regard to each and every term, covenant and condition of this Lease.

13.16 Landlord use of Premises: The Tenant agrees to reasonably cooperate with Landlord to permit Landlord access to the Premises from time to time during the Term for the purpose of conducting educational tours of the Premises and Tenant's biodiesel production facilities. Tenant further agrees to reasonably cooperate with Landlord to permit Landlord to utilize the lobby and conference rooms located within the Premises for holding meetings from time to time. Provided, however, that all such use and access by Landlord shall not unreasonably interfere with Tenant's business operations within the Premises. Landlord shall coordinate all such use in advance. Tenant shall have the right to deny access to any group or individual when, in the discretion of Tenant, such access would be detrimental to the business operations of Tenant.

13.17 Production Reports. Upon Landlord's request, but no more frequently than once each calendar quarter during the Term, Tenant shall provide Landlord with reports identifying the volume of biodiesel and ancillary products produced by Tenant within the Premises. The Parties acknowledge and agree that such reports are to be used by Landlord in connection with its promotion of the EcoComplex, and the identification of the renewable energy being produced and research being conducted therein. The Parties further acknowledge and agree that except as specifically provided herein, the Tenant has no production requirements, or limits, in connection with its business operations within the Premises, and that the reporting set forth in the Paragraph 13.17 shall not be construed so as to create such a production minimum or limit.

13.18 Biodiesel Supply to other Catawba County Fleets. Upon the request by other Landlord controlled fleets, including without limitation Catawba County Schools, Newton Conover City Schools, and Hickory City Schools, Tenant will offer pricing discounts which are similar to those provided to the Landlord as set forth herein, subject to delivery charges and such other terms and conditions as the Tenant and such other fleet owners may otherwise agree.

IN WITNESS WHEREOF, the Parties have caused this Lease Agreement to be executed by their duly authorized officers the day and year first above written.

LANDLORD:

Catawba County

By: _____

Katherine W. Barnes, Chairman

TENANT:

Blue Ridge Biofuels, LLC,
a North Carolina limited liability company

By: _____
Woodrow Eaton, General Manager

Chair Barnes asked if any Commissioner wished for an item to be broken out of the Consent Agenda for individual consideration. None were requested. Commissioner Beatty made a motion to approve the consent agenda. The motion carried unanimously. Commissioner Beatty then thanked Deputy Smith for the care of K-9 dog Jak.

9. Appointments:
Commissioner Beatty and the Board of Trustees of Catawba Valley Medical Center recommended the appointment of Mr. Jearald Leonhard for an unexpired term to succeed Mr. Jay Reardon on the Catawba Valley Medical Center Board of Trustees. His term will expire on December 31, 2015. This recommendation came in the form of a motion, which carried unanimously.
10. Public Hearing:
Tax Administrator Mark Logan came forward and requested the Board hold a public hearing to receive citizen comments on the proposed Schedule of Values, Standards, and Rules for Catawba County's 2015 Revaluation as prescribed by North Carolina General Statute 105-317. Pursuant to a resolution adopted by the Board on October 3, 2011, Catawba County's next countywide revaluation will become effective on January 1, 2015. Catawba County has approximately 87,000 separate parcels of land which are required by State law to be appraised at 100% of market value as of the effective revaluation date. To that end, Catawba County staff has worked for many months analyzing data derived from real estate sales, building cost data, and income and expense statements from income producing properties in the County. This has culminated in the formulation of the proposed Schedule of Values, Standards, and Rules to be utilized to generate market value appraisals for all real property in Catawba County.

The Schedule of Values is a set of standards and rules that are used as an appraisal manual by the County appraisal staff to assure properties are valued in an accurate and consistent manner. The schedule contains information on methods used to determine land and building values based on criteria such as location, age, type of construction, zoning, income potential, cost, etc.

Also included in the proposed Schedule of Values is a special schedule for appraising eligible agricultural, horticultural, and forest land at its "present use" value. This schedule is a statewide schedule formulated by the North Carolina Department of Revenue. Properties whose owners qualify for "present use" assessment will receive two values: a market value mandated by law and a "present use" value.

Adoption of the proposed Schedule of Values is an important step in the revaluation process. Because of its importance, the Machinery Act of North Carolina requires the Board to only adopt it after holding a public hearing and then publicizing that it has done so. After the adoption, property owners will have 30 days to challenge the Schedule of Values by appeal to the North Carolina State Property Tax Commission.

In accordance with North Carolina General Statute 105-317(c), the proposed Schedule of Values was formally presented to the Board at its September 8, 2014, meeting. The Board notified the public on September 9, 2014, through newspapers of general circulation, that it had received the proposed Schedule of Values and that it is open for inspection at the Assessor's office. The notice

also informed the public that a public hearing would be held on October 6, 2014, at 9:30 a.m., in the Robert E. Hibbitts Meeting Room of the 1924 Courthouse.

Staff recommended a vote for formal adoption occur at the October 20, 2014, Board of Commissioners meeting at the 1924 Courthouse at 30 North College Avenue in Newton. Afterwards, a newspaper notice must be published stating that the Schedule of Values has been adopted and that property owners have 30 days from the date of the first publication to challenge the Schedule of Values by appeal to the North Carolina State Property Tax Commission on grounds that the Schedule of Values does not adhere to the appropriate statutory valuation standard (that it will produce values that are too high, too low, or inconsistent). The North Carolina State Property Tax Commission has the power to order the Board of Commissioners to revise the Schedule of Values if it does not adhere to the statutory valuation standard. The North Carolina State Property Tax Commission's decision may be appealed to the North Carolina Court of Appeals. Assuming an October 20, 2014, adoption by the Board of Commissioners, property owners will have until Wednesday, November 19, 2014, to challenge the Schedule of Values.

Chair Barnes opened the public hearing, noting it had been duly advertised. No one came forward to speak and Chair Barnes closed the public hearing. Commissioner Hunsucker clarified, with the assistance of Mr. Logan, that to be eligible for the Present Use Value Program, a farmer had to generate three years of income from farming the land before he could qualify for the Present Use Value exemption. He also pointed out that when leaving the program, up to four years of the deferred taxes had to be paid.

Chair Barnes noted that the Board would take action on the adoption of the Schedule at its October 20, 2014 meeting.

11. Other Items of Business:

Assistant County Manager Dewey Harris and Social Services Director John Eller presented a request for Board approval of the following proposed 2015-16 Long Session Legislative Goals for consideration by the North Carolina Association of County Commissioners (NCACC): 1) Support the expansion of sales tax options and flexibility for North Carolina counties; 2) Oppose the State shifting or cutting money from federal and state block grants (TANF, SSBG, & CCDBG) for mandated services; 3) Support State aid to public libraries by eliminating special provisions that distribute funding outside of the established equitable formula developed by the State Library Commission; 4) Support for broadband expansion; 5) Support the ban of Rhesus Macaque monkeys; 6) Support amending North Carolina General Statute 132-1(b) to address the public records law as it relates to non-North Carolina businesses/citizens; and 7) Support legislation to stimulate economic development activities including incentive programs, workforce development, and job creation programs.

In addition to these above goals, the following was proposed as a guiding principle for NCACC's intergovernmental relations committee, working with the Executive Branch regarding economic development: *Work with the Executive Branch to strengthen the partnership between the State and Counties to ensure there are the correct tools and internal processes in place to provide seamless delivery of economic development programs, including job recruitment and workforce development training opportunities.*

Chair Barnes explained that these were not the Legislative Goals adopted by the Board of Commissioners in January of each year but those that it wanted the North Carolina Association of County Commissioners to consider for inclusion in the goals adopted by the Association. Commissioner Lail made a motion to approve these goals for submission to the NCACC. The motion carried unanimously.

12. Attorney's Report: None.

13. Manager's Report: None.

14. Adjournment. Commissioner Beatty made a motion to adjourn at 9:47 a.m. The motion carried unanimously and the meeting adjourned.

Katherine W. Barnes, Chair
Catawba County Board of Commissioners

Barbara E. Morris
County Clerk