

State of North Carolina

Minutes

County of Madison

The Madison County Board of Commissioners met in regular session on Tuesday, December 08, 2015 at 7:00 p.m. at A-B Tech, Madison Campus, Marshall, NC.

In attendance were Chairman Wayne Brigman, Vice-Chairman Clayton Rice, Commissioner Bill Briggs, Commissioner Norris Gentry, Commissioner Matt Wechtel, County Manager Forrest Gilliam, Attorney Donny Laws and Clerk Darlyne Rhinehart.

The meeting was called to order at 7:00 p.m. Chairman Brigman turned the meeting over to Attorney Laws to conduct the organization of the Board.

I.

Attorney Laws opened the floor for nominations for Chairman. Commissioner Gentry nominated Commissioner Brigman. Commissioner Briggs nominated Commissioner Wechtel. Attorney Laws closed the nominations. Commissioner Brigman was elected Chairman by a majority vote. Voting for Commissioner Brigman were Commissioner Rice, Commissioner Gentry, and Commissioner Brigman. Voting for Commissioner Wechtel were Commissioner Briggs and Commissioner Wechtel. The election for Chairman was closed.

Attorney Laws turned the meeting back over to Chairman Brigman.

Chairman Brigman opened the floor for nominations for Vice-Chairman. Commissioner Briggs nominated Commissioner Wechtel. Commissioner Rice nominated Commissioner Gentry. Chairman Brigman closed the nominations. Voting for Commissioner Wechtel were Commissioner Briggs and Commissioner Wechtel. Voting for Commissioner Gentry were Commissioner Rice, Chairman Brigman and Commissioner Gentry. Commissioner Gentry was elected by a majority vote. The election for Vice-Chairman was closed.

Chairman Brigman opened the floor for nominations for County Attorney. Commissioner Gentry nominated Donny Laws. Chairman Brigman closed the nominations. Attorney Laws was appointed by a unanimous vote of the Board.

Chairman Brigman opened the floor for nominations for Clerk. Commissioner Rice nominated Darlyne Rhinehart. Chairman Brigman closed the nominations. Darlyne Rhinehart was appointed Clerk by a unanimous vote of the Board.

Upon motion from Commissioner Gentry, seconded by Commissioner Rice, the Board voted unanimously to approve the Sheriff's Bond.

Upon motion from Commissioner Wechtel, seconded by Commissioner Gentry, the Board voted unanimously to approve the 2016 Meeting Schedule of the Board of Commissioners.

Upon motion from Commissioner Wechtel, seconded by Commissioner Rice, the Board voted unanimously to approve the 2016 Holiday Schedule.

II.

Upon motion from Commissioner Gentry, seconded by Commissioner Wechtel, the Board voted unanimously to approve the agenda with the following additions/changes:

- 5. b. Donny Laws – Resolution/Financing Agreement
- 9. c. County Property
- 9. d. General Update
- 9. e. Scott Greer- Pre-Disaster Mitigation Program
- 10. f. Sheriff's Department - Automobile
- 11. Personnel

III.

Upon motion from Commissioner Wechtel, seconded by Commissioner Gentry, the Board voted unanimously to approve the minutes of the November 10, 2015 meeting.

Upon motion from Commissioner Gentry, seconded by Commissioner Wechtel, the Board voted unanimously to approve the minutes of the November 12, 2015 meeting.

Upon motion from Commissioner Wechtel, seconded by Commissioner Gentry, the Board voted unanimously to approve the minutes of the November 30, 2015 meeting.

IV.

No public comment was received.

V.

Upon request from Dr. Ron Wilcox, Superintendent of Schools, and upon motion from Commissioner Rice, seconded by Commissioner Gentry, the Board voted unanimously to approve Dr. Wilcox's request for 40/42 funds in the amount of \$400,000.00.

VI.

Upon recommendation from Attorney Laws, and upon motion from Commissioner Gentry, seconded by Commissioner Rice, the Board voted unanimously to approve a resolution authorizing the filing of an application for approval of an installment financing agreement authorized by North Carolina General Statute 160A-20 and making certain findings required by North Carolina General Statute 159-151. This resolution is a preliminary action required by the Local Government Commission as a part of the application process to pursue the financing of construction and capital improvements within the school system.

VII.

Upon recommendation from Melanie Morgan, Library Director, and upon motion from Commissioner Wechtel, seconded by Commissioner Rice, the Board voted unanimously to appoint Beth Detweiler to the Library Board of Trustees-Marshall, and John Graeter to the Library Board of Trustees-Hot Springs.

Upon motion from Commissioner Rice, seconded by Commissioner Wechtel, the Board voted unanimously to approve Mrs. Morgan's request to advertise for three substitute circulation assistants' positions.

VIII.

Upon recommendation from Regina Sams, Community Services Director, and upon motion from Commissioner Gentry, seconded by Commissioner Rice, the Board voted unanimously to approve the Senior Center General Purpose Funding Agreement between the County and the Land of Sky Regional Council for fiscal year 2015-2016.

Upon recommendation from Regina Sams, and upon motion from Commissioner Rice, seconded by Commissioner Gentry, the Board voted unanimously to approve Linda Franklin as Meal Site Manager at the Laurel Nutrition Site.

IX.

Forrest Gilliam, County Manager on behalf of Tammy Cody, Health Director, presented a Services Contract between the Madison County Public Health Department and Cynthia Yancey, M.D. Funding for this position is through a Rural Health Grant.

Upon motion from Commissioner Gentry, seconded by Commissioner Rice, the Board voted unanimously to approve the Services Contract as presented.

X.

Upon recommendation from Forrest Gilliam, County Manager, and upon motion from Commissioner Wechtel, seconded by Commissioner Gentry, the Board voted unanimously to approve the re-naming of the Inspections and Zoning Office to Development Services. Development Services includes Economic Development, Permits and Inspections, and Planning and Zoning.

Upon motion from Commissioner Wechtel, seconded by Commissioner Gentry, the Board voted unanimously to approve a Resolution authorizing execution of a lease agreement between Madison County and Rick Bailey for use of County property.

Upon motion from Commissioner Wechtel, seconded by Commissioner Gentry, the Board voted unanimously to approve a Resolution authorizing execution of a lease agreement between Madison County and Plaza Burger for use of County property.

Upon motion from Commissioner Wechtel, seconded by Commissioner Rice, the Board voted unanimously to approve a temporary lease with Clifton Metcalf for the use of County property at the

Dec. 8, 2015

Greater Ivy Community Center to assist with a stream restoration project funded by the Natural Resources Conservation Service.

Mr. Gilliam informed the Board that he was in receipt of an offer for purchase of the old jail in the amount of \$70,000.00. Upon motion from Commissioner Gentry, seconded by Commissioner Rice, the Board voted unanimously to table this item to the January meeting.

Mr. Gilliam also informed the Board that Sara Nichols has accepted the position of County Planner and would begin those duties on March 1, 2016.

Mr. Gilliam updated the Board regarding a November Interstate 26 Connector public hearing that was hosted in November by the Department of Transportation. Commissioner Wechtel spoke at the hearing on behalf of Madison County. The online public comment period closes on December 16.

Mr. Gilliam updated the Board regarding the recent announcement of 27 additional jobs at Madison Manufacturing in Hot Springs; efforts to improve the quality of online streaming of Board meetings; the retirement of Mr. Jim Huff as Solid Waste Director and timeline for filling the position; and the status of the courthouse renovation project, for which informal bids for repairs continue to be solicited and efforts are being made to accommodate the need to reposition boiler piping in order for structural repairs to the building to be completed.

Upon motion from Commissioner Wechtel, seconded by Commissioner Gentry, the Board voted unanimously to approve the Supplemental Pre-Disaster Mitigation (PDM) Program Agreement (Contract Renewal) between the State of North Carolina, Department of Public Safety, Division of Emergency Management and Madison County. The termination date of the agreement is June 1, 2016 unless terminated earlier.

X.

Darlyne Rhinehart, Finance Officer, submitted the November Financial Reports.

Upon motion from Commissioner Gentry, seconded by Commissioner Rice, the Board voted unanimously to approve Budget Amendment #05.

Chairman Brigman opened the floor for nominations to the Board of Adjustment. Commissioner Gentry nominated Darlyne Rhinehart. Commissioner Rice nominated Karen Kiehna. Chairman Brigman closed the nominations. By unanimous vote Darlyne Rhinehart and Karen Kiehna were elected to the Board of Adjustment.

Chairman Brigman opened the floor for nominations to the Planning Board. Commissioner Gentry nominated David Caldwell, Alan Wyatt and Mary Rice. Chairman Brigman closed the nominations. By unanimous vote David Caldwell, Alan Wyatt and Mary Rice were elected to the Planning Board.

There were no nominations to the Nursing Adult Care Home Board.

Chairman Brigman opened the floor for nominations to the Juvenile Crime Prevention Council. Commissioner Gentry nominated Tom Field and Barbara Sims. Chairman Brigman closed the nominations. By unanimous vote Tom Field and Barbara Sims were elected to the Juvenile Crime Prevention Council.

Upon motion from Commissioner Wechtel, seconded by Commissioner Rice, the Board voted unanimously to accept the recommendations of Johnny Kirkpatrick and Cheri Nadol to the Spring Creek Firemen's Relief Fund Board.

Upon motion from Commissioner Rice, seconded by Commissioner Gentry, the Board voted unanimously to accept the recommendations of Dean Rigsby, Jimmie Ramsey, and Nicky Joe Fowler as Fire Commissioners for the Walnut Fire Department.

Upon motion from Commissioner Gentry, seconded by Commissioner Rice, the Board voted unanimously to approve a capitalization threshold of \$5,000 for any individual item.

Upon motion from Commissioner Gentry, seconded by Commissioner Rice, the Board voted unanimously to approve the November property tax releases/refunds/vehicle releases.

XI.

Upon recommendation from Forrest Gilliam, County Manager, and upon motion from Commissioner Gentry, seconded by Commissioner Rice, the Board voted unanimously to approve the request by the Sheriff's Department to purchase of a new vehicle as a replacement for one that recently reached the end of its useful life. Funding for the vehicle will come from a one-time payment of \$20,000 resulting from the recent signing of a new contract between the Sheriff's Office and Securis Services as well as \$18,159.02 from funds that were budgeted in the Sheriff's Office for part-time contract help to assist with the evidence room.

XII.

Upon motion from Commissioner Gentry, seconded by Commissioner Rice, the Board voted unanimously to enter into closed session to discuss legal and personnel matters.

XIII.

Upon motion from Commissioner Gentry, seconded by Commissioner Rice, the Board voted unanimously to return to open session.

Upon motion from Commissioner Rice, seconded by Commissioner Gentry, the Board voted unanimously to approve the advertising of one part-time nutrition driver and two part-time transportation drivers Madison County Transportation Authority and to approve Dee Heinmuller for the position of Social Worker II with Community Services.

Upon motion from Commissioner Gentry, seconded by Commissioner Rice, the Board voted unanimously to adjourn.

This the 8th day of December, 2015.

MADISON COUNTY

BY: Wayne Brigman
Wayne Brigman, Chairman
Board of Commissioners

ATTEST:

Darlyne Rhinehart
Darlyne Rhinehart, Clerk

November 2015 Property Releases for December 2015 Meeting

NAME	County	Fire	Disposal fee	Late list fee's	Int	TOTALS	REASON
Allen, Johnnie	\$230.01	\$39.81	\$131.00			\$400.82	granted elderly exemption
Ball, Mark			\$160.00			\$160.00	per solid waste no water
Bear River Lodge	\$1,115.74	\$64.37				\$1,180.11	made exempt used by HOA
Burrell, Adam			\$160.00			\$160.00	per solid waste no water
Burris, W.P	\$26.00					\$26.00	barn taxed on ma 2962 2015 bill
Burris, W.P	\$26.00					\$26.00	barn taxed on ma 2962 2014 bill
Burris, W.P	\$26.00					\$26.00	barn taxed on ma 2962 2013 bill
Clements, Betty			\$160.00			\$160.00	per solid waste no power
Edwards, Charles			\$160.00			\$160.00	per solid waste no power
Edwards, Jerry			\$160.00			\$160.00	per solid waste no water
Ensley, J.D	\$226.27	\$30.46	\$131.00			\$387.73	granted elderly exemption
Fender, Harley			\$160.00			\$160.00	per solid waste no water
Fowler, Chester			\$160.00			\$160.00	per solid waste no water
Franklin, Jancer	\$20.80	\$1.20				\$22.00	SWMH is storage only
Gosnell, Tammy	\$48.20	\$8.34				\$56.54	DWMH is in Yancey County
Gunter, Gaston	\$130.00	\$7.50	\$131.00			\$131.00	granted elderly exemption
Hicks, Catherine			\$160.00			\$137.50	granted elderly exemption
Holt, Fred	\$234.00	\$31.50	\$131.00			\$160.00	per solid waste
Jurek, Pamela	\$1,875.26	\$206.01			\$416.26	\$396.50	granted veterans exemption
Massey, Charles	\$130.00	\$15.00	\$131.00			\$2,497.53	appealed value released this bill & discovered on new value
Maxwell, Gerald			\$160.00			\$276.00	granted elderly exemption
Payne, Irma			\$160.00			\$160.00	per solid waste no water
Radcliff, Alice			\$160.00			\$160.00	per solid waste no water
Roberts, Jimmy	\$43.72					\$43.72	adj land value per deed and plat
Shelton, Robbie	\$130.00	\$7.50	\$131.00			\$268.50	granted elderly exemption
Shelton, Robbie			\$160.00			\$160.00	per solid waste older house
Sprinkle, Pamela	\$130.00	\$22.50	\$131.00			\$283.50	granted disabled exemption
Treadway, A.E	\$582.57	\$67.22				\$649.79	per sourt order AE doesn't own belongs to George Sawyer
Wasmer, Michael			\$160.00			\$160.00	per solid waste no water
Wyatt, Larry			\$160.00			\$160.00	charged for 1 more then they should have been
TOTALS	\$4,974.57	\$501.41	\$3,157.00	\$0.00	\$416.26	\$9,049.24	

November 2015 Refunus for December 2015 Meeting

NAME	County	City	Fire	Disposal fee	Late list fee's	Int	TOTALS	REASON
Boone, Ernest	\$1,537.84		\$177.45				\$1,715.29	DWMH taxed under acct 3821
Gosnell, Tammy	\$74.20		\$9.99		\$8.42		\$92.61	was charged for a DWMH but should've been a SWMH
Wallin, Haynes	\$130.00			\$131.00			\$261.00	granted elderly exemption
TOTALS	\$1,742.04	\$0.00	\$187.44	\$131.00	\$8.42	\$0.00	\$2,068.90	

November 2015 Vehicle Releases for December 2015 Meeting

NAME	County	City	Fire	Interest	TOTALS	REASON
Hicks, Geneva	\$18.31		\$2.94		\$21.25	2011 bill taxpayer billed twice per collections
TOTALS	\$18.31	\$0.00	\$2.94	\$0.00	\$21.25	

**RESOLUTION AUTHORIZING EXECUTION OF
A LEASE AGREEMENT BETWEEN MADISON COUNTY
AND PLAZA BURGER PARLOR, INC.
FOR USE OF COUNTY OWNED PROPERTY**

WHEREAS, Madison County owns a certain tract or parcel of land containing approximately 5,000 square feet previously occupied by Kerr Drug and Flick Video and now occupied by the Plaza Burger Parlor located in the Madison Plaza Shopping Center, Highway 25, Marshall, North Carolina; and

WHEREAS, on 10 November 2015 the Madison County Board of County Commissioners Resolved their intent to enter into a lease of such property to the Plaza Burger Parlor, Inc., for a period commencing on 1 January 2016 ending 31 December 2018 at an monthly lease payment of \$1,150.00 per month; and

WHEREAS, the County staff reports that the County does not have a need for the property for County purposes during the term of the proposed new lease and recommends that the Board of County Commissioners authorize the execution of the lease; and

WHEREAS, public notice of this proposed lease was published at least ten days prior to this meeting date, pursuant to the provisions of NC Gen. Stat. 160A-272.

NOW THEREFORE, BE IT HEREBY RESOLVED that the Madison County Board of Commissioners hereby determines that the property described above which is the subject of the proposed lease agreement with the Plaza Burger Parlor, Inc. will not be needed for county purposes during the term of the proposed lease.

BE IT FURTHER RESOLVED that a public notice has been published pursuant to the provisions of NC Gen. Stat. 160A-272 announcing the Board's intent to authorize the lease at its 8 December 2015 regular meeting, describing the property to be leased, and stating the annual lease payments.

BE IT FURTHER RESOLVED that the Chairman or County Manager and the Clerk to the Board are hereby authorized to execute a Lease Agreement of the above described property, with the Plaza Burger Parlor, Inc., on behalf of Madison County, subject to a pre-audit certificate thereon by the County Finance Officer, if applicable. The original proposed Lease Agreement being attached hereto and incorporated herein by reference.

Adopted this the 8th day of December 2015.



Hon. WAYNE BRIGMAN, Chairman
Madison County Board of Commissioners

ATTEST:



Clerk
Madison County Board of Commissioners

(SEAL)

**RESOLUTION AUTHORIZING EXECUTION OF
A LEASE AGREEMENT BETWEEN MADISON COUNTY
AND CLIFTON METCALF
FOR USE OF COUNTY OWNED PROPERTY**

WHEREAS, Madison County owns a certain tract or parcel of land commonly known as the Beech Glen Community Center in Mars Hill, North Carolina; and

WHEREAS, on 13 October 2015 the Madison County Board of County Commissioners Resolved their intent to enter into a lease of such property to Clifton Metcalf for the purposes of providing streambed and stream bank restoration and stabilization of said property, for a period commencing on 1 September 2015 ending 30 September 2017 at a monthly lease payment of \$0.00 per month; and

WHEREAS, the County staff reports that the County does not have a need for the property for County purposes during the term of the proposed new lease and recommends that the Board of County Commissioners authorize the execution of the lease; and

WHEREAS, public notice of this proposed lease was published at least ten days prior to this meeting date, pursuant to the provisions of NC Gen. Stat. 160A-272.

NOW THEREFORE, BE IT HEREBY RESOLVED that the Madison County Board of Commissioners hereby determines that the property described above which is the subject of the proposed lease agreement with Clifton Metcalf will not be needed for county purposes during the term of the proposed lease.

BE IT FURTHER RESOLVED that a public notice has been published pursuant to the provisions of NC Gen. Stat. 160A-272 announcing the Board's intent to authorize the lease at its 8 December 2015 regular meeting, describing the property to be leased, and stating the annual lease payments.

BE IT FURTHER RESOLVED that the Chairman or County Manager and the Clerk to the Board are hereby authorized to execute a Lease Agreement of the above described property, with Clifton Metcalf, on behalf of Madison County, subject to a pre-audit certificate thereon by the County Finance Officer, if applicable. The original proposed Lease Agreement being attached hereto and incorporated herein by reference.

Adopted this the 8th day of December 2015.



Hon. WAYNE BRIGMAN, Chairman
Madison County Board of Commissioners

ATTEST:



Clerk
Madison County Board of Commissioners

(SEAL)

**RESOLUTION AUTHORIZING EXECUTION OF
A LEASE AGREEMENT BETWEEN MADISON COUNTY
AND RICK BAILEY
FOR USE OF COUNTY OWNED PROPERTY**

WHEREAS, Madison County owns a certain tract or parcel of land containing approximately 4,500 square feet now occupied by the Napa Auto Parts store located in the Madison Plaza Shopping Center, Highway 25, Marshall, North Carolina; and

WHEREAS, on 10 November 2015 the Madison County Board of County Commissioners Resolved their intent to enter into a lease of such property to Rick Bailey, for a period commencing on 1 January 2016 ending 31 December 2018 at an monthly lease payment of \$1,000.00 per month; and

WHEREAS, the County staff reports that the County does not have a need for the property for County purposes during the term of the proposed new lease and recommends that the Board of County Commissioners authorize the execution of the lease; and

WHEREAS, public notice of this proposed lease was published at least ten days prior to this meeting date, pursuant to the provisions of NC Gen. Stat. 160A-272.

NOW THEREFORE, BE IT HEREBY RESOLVED that the Madison County Board of Commissioners hereby determines that the property described above which is the subject of the proposed lease agreement with Rick Bailey will not be needed for county purposes during the term of the proposed lease.

BE IT FURTHER RESOLVED that a public notice has been published pursuant to the provisions of NC Gen. Stat. 160A-272 announcing the Board's intent to authorize the lease at its 8 December 2015 regular meeting, describing the property to be leased, and stating the annual lease payments.

BE IT FURTHER RESOLVED that the Chairman or County Manager and the Clerk to the Board are hereby authorized to execute a Lease Agreement of the above described property, with Rick Bailey, on behalf of Madison County, subject to a pre-audit certificate thereon by the County Finance Officer, if applicable. The original proposed Lease Agreement being attached hereto and incorporated herein by reference.

Adopted this the 8th day of December 2015.


Hon. WAYNE BRIGMAN, Chairman
Madison County Board of Commissioners

ATTEST:


Clerk
Madison County Board of Commissioners

(SEAL)

THIS LEASE AGREEMENT is made and entered into on this the day and year first above written, by and between, **MADISON COUNTY, a Body Politic and Corporate of the State of North Carolina**, hereinafter referred to as Lessor, and **RICK BAILEY**, hereinafter referred to as Lessee; thus

WITNESSETH

THAT WHEREAS the Lessor is a political subdivision of the State of North Carolina and is the owner of the herein below demised premises; and

WHEREAS the Lessor has determined that that the demised premises will not be needed by the Lessor during the term of this Lease and desires to lease the demised premises as allowed by NC Gen. Stat. 160A-272; and

NOW THEREFORE, in consideration of the mutual benefits given and received by the parties hereto, the receipt of which is hereby acknowledged, the Lessor does hereby let and lease unto the Lessee the demised premises upon the following terms and provisions:

- 1) Term: The term of this Lease shall be for thirty-six (36) months commencing on 1 January 2016 and terminating on 31 December 2018.
- 2) Basic Rent: Rents hereunder shall be payable as follows: All payments shall be made on or before the first day of each calendar month over the term of this Lease and shall be in an amount of \$1,000.00 per month.
- 3) Demised Premises: The Premises shall be those premises containing approximately 4,500 square feet now occupied by the Napa Auto Parts store located in the Madison Plaza Shopping Center, Highway 25, Marshall, North Carolina. The Lessee shall have common use of the sidewalks, parking lot, and maneuvering areas with other tenants of the shopping plaza provided that the Lessee cooperates with other tenants in keeping the common area clean and clear and free of hazards, trash, litter and other debris.
- 4) Covenants Regarding Use of Property and Indemnification: The Demised Premises shall be used only for the purposes of operating an auto parts store. The Lessee will keep and maintain and comply with all ordinances, laws and regulations of authorities regarding the use of the property. The Lessee does hereby further covenant and agree to and with the Lessor that it shall indemnify the Lessor against and shall hold the Lessor harmless from any and all liability which it may or might incur as a result of any damages at law or in equity as to the loss of person or property which might incur by reason of the Lessee's occupation of the demised premises or the acts or omissions

of the Lessee, its employees, agents, and/or invitees. The Lessee further agrees that the Lessee will not permit the sale or consumption of alcoholic beverages upon the demised premises and that the Lessee will permit no activities to occur upon the demised premises which would constitute a public nuisance or interfere with the orderly conduct of business by other Lessees at the Madison Plaza Shopping Center.

- 5) Covenant of Title and Quiet Enjoyment: The Lessor covenants and warrants to the Lessee that the Lessor has full right and lawful authority to enter into this Lease for the term hereof and that provided the Lessee is not in default hereunder, Lessee's quiet and peaceable enjoyment of the premises shall not be disturbed by anyone claiming through the Lessor.
- 6) Inspection: The Lessor shall have the right at all times to enter and inspect the demised premises upon reasonable notice to Lessee.
- 7) Insurance: The parties hereto do hereby covenant and agree that the Lessor has and shall maintain upon the demised premises insurance against loss from fire and hazard. The Lessee covenants to and with the Lessor that it shall maintain a policy of general liability insurance in the amount of \$1,000,000 per occurrence which shall insure against damage or loss to person or property pertaining to the use of the demised premises by the Lessee, specifically naming the Lessor as an additional loss-payee on any such policy of insurance. The Lessee further covenants to and with the Lessor that it shall main adequate insurance coverage upon any and all personal property, chattels, and inventory and products on hand so as to insure the same against damage or loss from fire or hazard.
- 8) Responsibilities of Lessee: The Lessee shall be responsible for any and all damages which occur on or about the facility as a result of its negligence; to make no additions or alterations to the facility without the express prior written approval of the Lessor; to keep the premises in as good condition, including routine maintenance and cleaning, and to return the premises to the Lessor at the termination of this agreement in as good a condition as it was received at the commencement hereof, ordinary wear and tear excepted.
- 9) Fire or Casualty: If the building or the demised premises or any portion thereof shall be damaged or destroyed by fire or other casualty, the Lessor or Lessee shall have the right to terminate this Lease effective as of the date of such damage or destruction. If the Lessor and Lessee do not elect to terminate this Lease, then the rentals shall abate during the period of reconstruction.
- 10) Assignment or Subletting: The Lessee shall not have the right to assign this Lease or to sublet the demised premises in whole or in part, without the prior written consent of the Lessor.
- 11) Default and Termination:

a) Each and every one and all of the following events shall constitute an event of default:

- i) If the Lessee fails to pay any sum due from it in strict accordance with the provisions of this Lease, and does not make such payment within five days of such payment being due as herein provided. For the purposes hereof all sum due from the Lessee shall constitute rentals whether denominated as rentals or otherwise elsewhere herein.
- ii) If the Lessee fails to fully perform and comply with each and every condition and covenant of this Lease Agreement and such failure of performance continues for a period of fifteen days after notice thereof.
- iii) If the Lessee vacates or abandons the demised premises.

b) Upon the occurrence of any event of default as set forth herein above, the Lessor shall have the right, at its option, to utilize any one or more of the following rights:

i) To cancel and terminate this Lease Agreement and all interests of the Lessee hereunder by giving notice of such cancellation and termination not less than ten days prior to the effective date of such termination. Upon the expiration of such ten day period, the Lessee shall have no further rights under this Lease Agreement.

ii) To re-let the demised premises or any part thereof for any term, with or without terminating the Lease, and at such rentals and on such other terms as the Lessor may elect, and to alter and repair the premises as the Lessor shall deem necessary.

iii) All other rights and remedies provided by law to Lessor with a defaulting Lessee, including all such money damages as the Lessor shall be entitled pursuant to the law of damages.

c) In the event of any conflict between any of the provisions hereof regarding the amount of time that must elapse without cure after notice of breach before the same constitutes an event of default, then the provisions establishing the greatest amount of time to cure after notice shall prevail

12) Binding Effect & Complete Terms: The terms, covenants, conditions, and agreements herein contained shall be binding upon and inure to the benefit of and shall be enforceable by the Lessor and the Lessee and by their respective heirs, successors, and assigns. All negotiations and agreements of the Lessor and the Lessee are merged herein. No modification hereof or other purported agreement of the parties

shall be enforceable unless the same is in writing and signed by the Lessor and Lessee.

- 13) Construction of Lease: This lease shall not be construed more strictly against either party regardless of which party is responsible for the preparation of the same.
- 14) Maintenance and Utility Costs: Except for damages resulting from negligence of the Lessee as set forth herein above the Lessor and Lessee shall be responsible for maintenance and utility costs as set forth below.
 - a. The Lessor shall be responsible for the maintenance of the structural integrity of the demised premises, including specifically masonry walls, concrete floors, foundation and roof.
 - b. The Lessee shall be responsible for ordinary maintenance and preventative care for the electrical, plumbing and HVAC systems serving the demised premises for all such expenses up to and including \$500.00. For all expenses exceeding the sum of \$500.00 the Lessor shall be responsible for 75% of the costs of such repairs and the Lessee shall be responsible for 25% of the costs of such repairs.
 - c. The Lessee shall be responsible for all utility costs to the demised premises, including specifically water, gas, electricity, fuel, telephone, internet, and other similar services.
 - d. The Lessor shall pay for the costs of all snow removal to the common area and the Lessee shall reimburse the Lessor on a pro rata basis for the costs of snow removal based on the square footage of the demised premises (4,500) as compared to the square footage of all of the buildings in the plaza shopping center.
- 15) Taxes: The demised premises are owned by the Lessor and no ad valorem taxes are due and payable on the demised premises. The Lessee shall be responsible for and timely pay all taxes due on all business personal property located upon the demised premises.
- 16) Waiver: No failure by the Lessor to exercise any rights hereunder to which the Lessor may be entitled shall be deemed a waiver of the Lessor's right to subsequently exercise the same. The Lessee shall gain no rights nor become vested with any power to remain in default under the terms hereof by virtue of the Lessor's failure to timely assert its rights. No acceleration of rentals, regardless of how often occurring, which the Lessor chooses to ignore by thereafter accepting rental or other performance by the Lessee shall constitute a waiver of the right to thereafter accelerate rentals.
- 17) Notices: All notices required by this Agreement shall be forwarded to:

Lessee:

Lessor:

Notices, demands, and requests which shall be served upon the Lessor and Lessee in the manner aforesaid shall be deemed sufficiently served or given for all purposes hereunder.

- 18) Integration Clause: Any stipulations, representations, or agreements, parol or written, made prior to or contemporaneously with this Agreement, shall have no legal or equitable consequences, and the only agreement made and binding on the parties hereto is contained herein and it is the complete and total integration of the intent and understanding of the Lessor and Lessee.
- 19) Statutory Authorization: That as stated herein above this Lease is made and entered into pursuant to NCGS 160A-272 and the authority to enter into this Lease has been appropriately delegated by Resolution duly adopted and appearing in the minutes of the Madison County Board of County Commissioners, with all applicable notices having been properly published.

IN TESTIMONY WHEREOF the parties hereto have hereunto set their hands and have affixed their respective seals on this the day and year first above written.

MADISON COUNTY, a Body Politic and Corporate of the State of North Carolina, Lessor

By: Wayne Bingham
Title: Chair, Board of Commissioners

Attest:

By: Darlene Rhinehart
Clerk to the Board

Rick Bailey (SEAL)
RICK BAILEY, Lessee

(SEAL)

MADISON COUNTY
NORTH CAROLINA
CLERK OF SUPERIOR COURT
DARLENE RHINEHART
100 N. MAIN ST.
MADISON, NC 27042