

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: December 5, 2005

SUBJECT: Property Lease

ATTACHMENTS: Yes

SUMMARY OF REQUEST:

Henderson County has leased the property next to Broadpointe Business Park to Wayne Carland for several years. Mr. Carland is again interested in renewing this lease. This is the property donated to the County piece by piece when property is sold to businesses at the Park.

COUNTY MANAGER'S RECOMMENDATION/BOARD ACTION REQUIRED:

Staff recommends that the Board authorize the lease.

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

LEASE

THIS LEASE, made and entered into as of the 1st day of January, 2006, by and between Henderson County, having an address of 100 North King Street, Hendersonville, North Carolina, 28792, hereinafter referred to as "Lessor", and Carland Farms, Inc., having an address of 516 North Mills River Road, Horse Shoe, NC 28742, hereinafter referred to as "Lessee",

W I T N E S S E T H :

That the Lessor for and in consideration of the rents, covenants and agreements to be paid, kept and performed by the Lessee as hereinafter provided, have lease and rented unto the Lessee, and the Lessee has rented from the Lessor that following described real property, located in Henderson County North Carolina:

Being all of that tillable land on that tract of land shown as Tract "C" on that plat entitled, "Plat of Survey for Broadpointe Center", dated November 1996, recorded on Plat Slide 2295 of the Henderson County Registry. Tract "C" as shown on the Plat of Survey for Broadpointe Center consists of 27.82 acres. It is estimated that the tillable land, located within the boundaries of said Tract "C" is approximately +/- 26.2 acres. Tract "C" is hereafter referred to as the "Leased Premises".

TO HAVE AND TO HOLD said Leased Premises unto the Lessee upon the following conditions:

1. The term of this Lease shall commence on January 1, 2005, or the date that this Lease is fully and properly executed, whichever is later, and shall expire December 31, 2005.
2. The Lessee agrees to pay Lessor the sum of \$1,834.00, as annual rental, which said annual rental shall be paid in full by January 31, 2005. Failure to pay said lease amount by the stated date will be grounds for immediate termination of the Lease by the Lessor without notice to the Lessee.
3. The Leased Premises shall be used solely for conducting thereon farming operations during the term of this Lease, and Lessee covenants and agrees to follow good farming practices to the end that any damage to the Lease Premises or soil by reason of erosion or otherwise shall be minimized. Hunting of any kind is expressly prohibited on the Leased Premises.
4. Lessee covenants and agrees, at its expense, to keep the drainage ditches presently located on the Leased Premises clear and unobstructed throughout the term of the Lease, and at the expiration of this Lease to surrender the Leased Premises in a good condition as the same shall be at the commencement of said term; provided, however, that in the event it becomes necessary to make any permanent improvements on the Leased Premises such as repairs to

underground drainage or the cutting or retraining of hedge row the same shall be done at the Lessee's expense, but subject to the approval of the Lessor.

5. It is agreed that no building, house, barns or other structures are included in the Leased Premises.
6. This Lease may not be assigned; additionally, the Leased Premises may not be subleased.
7. Lessee understands and agrees that the Leased Premises have been donated to Lessor for future use as a public park. Lessee agrees that Lessee will do nothing that will prohibit the future use of the Lease Premises as a public park.
8. Lessor makes no covenant of quiet enjoyment to Lessee with respect to the Leased Premises; however, Lessor agrees not to unreasonably interfere with Lessee's ability to conduct farming operations on the Leased Premises, except as may be connected with the installation of the public sewer across any portion of the Leased Premises. It is understood and agreed that the Lessor or their agents shall not be responsible for any damage to crops or farming operations of Lessee due to the installation of public sewer. The Lessor will notify Lessee thirty (30) days in advance of the installation of public sewer.
9. Lessee agrees to indemnify and save Lessor harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury or damage to property occurring in or about, or arising out of, the demised premises, or occasioned wholly or in part by any act or omission of Lessee, his agents, licensees, concessionaires, customers or employees.
10. Lessee shall at Lessee's own expense comply with all rules, regulations, and requirements of the State, Federal, or Local Governments, or any of the departments or bureaus thereof applicable to the Leased Premises, including but not limited to regulations for the prevention or abatement of nuisances or other grievances arising out of the manner of the occupancy of said premises during said term.
11. Lessor or Lessor's agents or other representative shall have the right to enter upon the Leased Premises at all reasonable hours for the purpose of examining the same.
12. With respect to any pollutants, contaminants, chemicals, or industrial toxic or hazardous substance or material defined as such in (or for purposes of) all applicable environmental laws, rules, regulations and ordinances now or hereafter in effect, hereafter "Environmental Laws", including without limitation, any waste constituents coming within the definition or list of hazardous substances in 40 C.F.R. Section 261.1 through 261.33, as may be amended or renumbered, hereinafter "Hazardous Material", Lessee represents, warrants and covenants as follows:

- (A) The Lessee agrees to indemnify and hold harmless the Lessor (and its directors, officers, and employees), from and against any and all losses, liabilities, damages, injuries, interest, deficiencies, fines, penalties, costs, expenses, attorneys' fees and disbursements, and costs of investigation and cleanup, including, without limitation, claims, suits and proceedings by federal, state, county and local governmental authorities with respect to, or as a direct or indirect result of (i) the presence on or under or the escape, seepage, leakage, spillage, discharge, emission, discharging or releasing from the property of any Hazardous Material, if such occurs during the term of the Lease, (ii) any other environmental pollution, including, without limitation, any contaminant, waste, irritant or pollutant, discharged into or otherwise contained in the environment at or adjacent to the property if such occurs during the term of the Lease, (iii) noncompliance relating to the Lessee's farming operations or business, or the property with any "Environmental Law or any other federal, state, or local statute, law, ordinance, rule, regulation, order or decree, or (iv) the inaccuracy, misrepresentation or violation or default of or under any matter set forth in this section, unless any such loss, liability, damage, or injury or the like is directly caused by negligent act of the Lessor.
- (B) Neither the Lessor, nor to the best knowledge of the Lessor, nor the Lessee, nor to the best knowledge of the Lessee, any other person or entity, has received any notice of (i) the happening of any event involving the misuse, spill, discharge or cleanup of any Hazardous Material affecting the Lessor or the Leased Premises, or (ii) any complaint, order, citation, notice, claim of contribution or claim for payment with regard to any Hazardous Material, the violation or alleged violation of any Environmental Law or for injury to the environment or human health from any person, including without limitation, the United States Environmental Protection Agency, and if any party receives any such notice, then such party will give, within five (5) business days, oral and written notice of same to the other party;
- (C) The Lessor shall have the right, but not the obligation, to enter onto the property or to take such other actions as it reasonably deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any of the events described in paragraph (A) which, if true, could result in an order, suit or other action against the Lessor affecting any part of the Leased Premises by any governmental agency or otherwise which, in the sole opinion of the Lessor, could jeopardize the Lessor's interest in the Leased Premises. All costs and expenses incurred by the Lessor in the exercise of any such right shall be payable by the Lessee upon demand; and

- (D) In the event Lessor has reasonable suspicion that any of the events described in Section (A) have occurred, the Lessee shall, promptly upon the written request of the Lessor, provide the Lessor, at the Lessee's expense, with an environmental site assessment, environmental audit report or other report, satisfactory to the Lessor, prepared by an environmental engineering firm acceptable to the Lessor, to assess with a reasonable degree of certainty the presence or absence of any Hazardous Material, the potential costs in connection with the abatement, cleanup, removal or monitoring of any Hazardous Material found on, under, at or within the property and/or the compliance by the Lessee with the covenants contained in this Section.
13. Lessee shall conduct the farming operations at Lessee's own risk, and Lessor makes no guarantees, representations, or warranties with respect to the suitability of the Leased Premises for conducting farming operations.
14. Lessee agrees to not conduct any activities that would create or constitute a public or private nuisance upon the Leased Premises. Lessee agrees to promptly respond to any complaints that may be received by Lessee, or by the Lessor, with respect to any activities conducted by or on behalf of Lessee on the Leased Premises from anyone owning property adjacent to the Leased Premises. Lessee shall be required to notify Lessor of any such complaints received, and Lessee's response to any such complaints.
15. If there be any default made in the stipulations, agreements, and covenants contained herein, and if the Lessee fails to comply with all the provisions of this Lease, then it shall be lawful for the Lessor to reenter the Leased Premises, to repossess and take possession of the same.
16. It is further understood and agreed that the stipulations, agreements, and covenants contained herein are binding upon the parties hereto and their respective successors and assigns.

IN TESTIMONY WHEREOF, each of said parties has caused these presents to be duly executed and approved in duplicates, each to have the force and effect of an original as of the date first written hereinabove.

CARLAND FARMS, INC., LESSEE

BY: _____
Wayne S. Carland, President

ATTEST:

[CORPORATE SEAL]

Carolyn G. Carland, Secretary

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

I, _____, Notary Public for said County and State, certify that Carolyn G. Carland, personally came before me this day and acknowledged that she is Secretary to Wayne S. Carland, and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by herself as its Secretary.

Witness my hand and official seal, this the _____ day of _____, 2005.
(Official Seal)

My commission expires: _____
Notary Public

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HENDERSON COUNTY, LESSOR

BY: _____
David E. Nicholson, County Manager

ATTEST:

[OFFICIAL SEAL]

Elizabeth W. Corn
Clerk to the Board

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

I _____, Notary Public for said County and State, certify that Elizabeth W. Corn personally came before me this day and acknowledged that she is the Clerk to the Board of Commissioners of Henderson County, a body corporate and politic and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its County Manager, sealed with its corporate seal, and attested by herself as its Clerk.

Witness my hand and official seal, this the _____ day of _____, 2005.

(Official Seal)

Notary Public

My commission expires: _____