

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: 2 February 2009

SUBJECT: Renewal of leases (Carland Farms, Inc.; Blue Ridge Amateur Radio Club)

ATTACHMENT(S): Draft leases

SUMMARY OF REQUEST:

The County has had two fairly long-standing leases for the use of County property:

- 1) The first is with Carland Farms, Inc., for farm property located along the French Broad River, and otherwise completely surrounded by Mr. Carland's property. The value of this lease was calculated for previous years by the Tax Assessor's office, based on the average rental value for farm property. This proposed lease is at that same rent.
- 2) The second is for the monthly use of a part of the Stoney Mountain Center by the Blue Ridge Amateur Radio Club. This rent has not changed in a number of years.

County staff will be present and prepared if requested to give further information on this matter.

BOARD ACTION REQUESTED:

Review and approval of 2009 leases.

If the Board is so inclined, the following motion is suggested:

I move that the Board approve the draft leases for Carland Farms, Inc., and the Blue Ridge Amateur Radio Club.

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

LEASE

THIS LEASE, made and entered into effective the 1st day of January, 2009, by and between Henderson County, having an address of 1 Historic Courthouse Plaza, Suite 5, 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",

WITNESSETH :

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, 2009, or the date that this Lease is fully and properly executed, whichever is later, and shall expire December 31, 2009.
2. The Lessee agrees to pay Lessor the sum of \$1,950.00, as annual rental, which said annual rental shall be paid in full by February 15, 2009. 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: _____
President

ATTEST:

[CORPORATE SEAL]

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 for Carland Farms, Inc., 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 _____, 200 .
(Official Seal)

My commission expires:

Notary Public

HENDERSON COUNTY, LESSOR

BY: _____
County Manager

ATTEST:

[OFFICIAL SEAL]

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 Henderson County, 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 _____, 200 .

(Official Seal)

Notary Public

My commission expires: _____

STATE OF NORTH CAROLINA

LEASE

COUNTY OF HENDERSON

THIS LEASE, made this the _____ day of _____, 2009, by and between Henderson County, a body politic and corporate, having it's principal office and place of business in Henderson County, 1 Historic Courthouse Plaza, Suite 5, Hendersonville, North Carolina 28792, hereinafter called the "Owner," and Blue Ridge Amateur Radio Club, (BRARC), a North Carolina nonprofit agency having it's principal office and place of business in Henderson County, 802 Stoney Mountain Road, Hendersonville, North Carolina 28739, hereinafter called the "Tenant";

WITNESSETH:

The Owner hereby demises and lets, and the Tenant hereby rents and hires, from the Owner the following described premises and office space being situated in the Stoney Mountain Activity Center, located at 802 Stoney Mountain Road, Hendersonville, NC 28739:

Being and consisting of the exclusive use of Room # 5, hereinafter "Office Space" or (Radio Room), the exclusive use of Room # 9, hereinafter "Storage Room", the nonexclusive use of Room # 10, hereinafter "Meeting Room", and the nonexclusive use of the AKitchen@, all being a part of the Stoney Mountain Activity Center, located at the address stated above, the Storage Room and Office Space being located in the East Wing.

To have and to hold the same and the privileges and appurtenances thereunto in anywise appertaining to the said Tenant, and to be used by it, the said Tenant, for the purpose of carrying on and conducting a central office location and meeting space for Tenant, and if space is available at the times needed, meeting space in the Meeting Room for groups of BRARC members and other Amateur Radio Operators who are planning, training or participating in Emergency or Disaster situations or drills in the capacity of, but not limited to; Amateur Radio Emergency Services, (ARES); Radio Amateur Communication Emergency Services (RACES) and Sky Warn, and/or for such other purposes as are usual and customary in the conduct of such a Radio Club and for no other purpose or purposes.

It is stipulated and agreed that Owner demises and lets the Office Space, Storage Room, Meeting Room and Kitchen in accordance with the terms of this Lease to the Tenant for and in consideration of the sum of one dollar (\$1.00), the receipt of which is hereby acknowledged, and other good and valuable consideration consisting of the provision of public communication services to the Henderson County Office of Emergency Management, and alternative and supplementary sources of Emergency Communications, during states of emergencies, during

damage assessment and during power and communication failures, hereinafter "Emergency Public Services".

It is further stipulated and agreed:

1. That the Tenant will provide the Emergency Public Services as stated in the above manner. In the event of failure on the part of the Tenant to provide the Emergency Public Services in accordance with the terms of this Lease, the Owner may forthwith take possession of the property hereby leased.
2. That this Lease shall remain in full force and effect for a term of one (1) year, beginning February 3, 2009, and continuing until February 2, 2010.
3. That this Lease may be terminated by either the Owner or the Tenant by providing thirty (30) days advance written notice to the other party.
4. That the Tenant shall take good care of the premises hereby leased or demised and the appurtenances thereof, and at the end or other expiration of the term of this Lease shall deliver up said premises in good order or condition, ordinary wear and tear excepted.
5. That the Tenant shall not make any alterations, additions or improvements in the premises hereby leased and demised without first obtaining from the Owner its written consent, and that all alterations, additions or improvements made by the Tenant during the course of its occupancy or the term of his lease shall inure to the benefit of and be the property of the Owner upon the termination and end of this Lease, and such alternations, additions, and improvements shall be surrendered with the premises when the same are surrendered by the Tenant to the Owner.
6. That the Tenant, at its own cost and expense, shall comply with all laws, rules, regulations, and requirements of State, Federal, and local governmental agencies applicable to the leased or demised premises for the prevention or abatement of nuisances or other grievances arising out of the manner of the occupancy of said premises during said term, and that the said Tenant shall moreover comply with all rules and regulations of the Owner with respect to the management and use of the Stoney Mountain Activity Center Building.
7. That the Tenant agrees that the Owner and its agent or other representative shall have the right to enter upon the premises hereby leased or demised, or any part thereof, at all reasonable hours for the purpose of examining the same.

8. That the Tenant shall not assign this Lease nor relet the premises or any part thereof without the Owner's consent in writing, or occupy or use or permit or suffer to be occupied or used the premises hereby leased or demised for any business or purpose deemed disreputable in any manner, or for any purpose or purposes other than the purpose or purposes designated above. Any levy or sale by way of lawful execution or other legal process or any transfer or sale in bankruptcy or insolvency or under compulsory procedure of law shall be deemed an assignment within the meaning and terms of this Lease.

9. That if the premises hereby leased or demised shall become vacant during the term hereinbefore provided at any time, the Owner or its legally authorized representative may reenter the premises either by force or otherwise without being liable for prosecution therefore and relet the said premises as the agent or representative of the said Tenant.

10. That in case of any damage or injury to the demised premises or the Stoney Mountain Activity Center, said damage or injury being caused by the carelessness, negligence, or improper conduct on the part of the said Tenant, its agents, invitees, licensees, members, or employees, then the said Tenant shall cause the said damage or injury to be repaired at its own cost and expense.

11. If, during the term of this Lease, the demised premises shall be or become damaged by fire or by the elements, such damage shall be repaired by the Owner, unless the damage to said premises hereby leased or demised be so great that the same cannot be repaired with reasonable diligence so as to be fit for occupancy within thirty (30) days from the date of the damage, when, in such event, the said premises are so repaired as to be fit and ready for occupancy by the Tenant, and in such event the tenancy of the premises hereby leased or demised shall not be terminated but shall remain in force and effect under and by virtue of the terms and conditions of this Lease, unless the damage done to the premises hereby leased shall be so great as to make it impossible to repair the premises within a period of thirty (30) days, in which case the Tenant shall have the option of vacating the premises hereby leased or demised and of bringing to an end and termination this Lease, provided however, that the said Tenant shall not have such option and shall not be allowed to be relieved from the obligations of this Lease if the damage done to the premises shall in anywise be caused by the contributory negligence or act of the Tenant or its agents or employees.

12. That the Owner shall supply the leased or demised premises with heat adequate reasonably and properly to heat the same during the period of the year when it is necessary to heat the leased or demised premises.

13. That the Owner shall supply water for the use of the occupants of the leased premises and for the use of the Tenant during the term of this Lease in sufficient and reasonable amounts.

14. That the Owner does agree to furnish any electricity for lighting or other purposes to the Tenant as required by it in connection with the use of the leased or demised premises.

15. That the Owner does agree to furnish maintenance and routine repairs for purposes of the Tenant as required by it in connection with the use of the leased or demised premises. Tenant will be responsible for damages done to the premises in anywise caused by the negligence or act of the Tenant or its agents, invitees, licensees, members or employees.

16. Tenant will be issued keys to get into the Stoney Mountain Activity Center and to open the Office Space and Storage Room and Meeting Room. If at anytime Tenant is in the building after normal business hours, or if at anytime Tenant is the last one to leave the building, Tenant shall be responsible for locking all exterior doors of the Stoney Mountain Activity Center. Tenant shall not duplicate any keys. Tenant shall return all keys when the Lease has ended. In the event Tenant loses any key issued to Tenant, Tenant shall reimburse the County the actual costs incurred by the County in changing the locks to the exterior doors. Tenant shall assume full responsibility for keys issued to Tenant under this Lease.

17. Tenant shall have the right to place five (5) radio antennas on the grounds of Stoney Mountain Activity Center, one of which may be a tower. If a tower is erected it will be mounted in a cement slab, (the location of which to be approved by the Henderson County Recreation Director). Wiring will be run to the building in the most unobtrusive manner. Wiring within the building to the Office Space and the Storage Room will be concealed. Installation means and methods will be subject to Owner=s approval.

18. Tenant shall have the right to use the bathroom facilities located in the East Wing of the Stoney Mountain Activity Center.

19. At all times that Tenant, its agents, members, invitees, licensees, or employees are present within the Stoney Mountain Activity Center, they shall restrict their activities to the East Wing of the Stoney Mountain Activity Center, Meeting Room and the Kitchen and shall not access other parts of the building.

20. Tenant shall be responsible for coordinating and reserving the use of the Meeting Room with the Henderson County Recreation Department on behalf of Tenant, its

agents, members, invitees, licensees, or employees prior to using the Meeting Room. Tenant shall be allowed to conduct all-night training sessions four (4) times a year using the Meeting Room, provided prior approval has been secured from the Henderson County Parks and Recreation Department in accordance with this Paragraph. Notwithstanding the above, Tenant shall be allowed to use the Office Space and Storage Room at Tenant's convenience during or after normal business hours.

21. Any and all electrical equipment, radio equipment, and electrical appliances shall be turned off when Tenant is not in the Stoney Mountain Activity Center. Further all electrical equipment, radio equipment and electrical appliances shall be properly ground in accordance with the National Electric Code.

22. Tenant shall be responsible for assisting the Henderson County Recreation Department in keeping the Meeting Room and the Kitchen clean and organized, and for keeping the portions of the Stoney Mountain Activity Center used or accessed by the Tenant, its agents, employees, members, invitees, or licensees, clean and neat.

23. Owner, its agents, and employees shall have no responsibility for, nor any liability associated with, at law or in equity, any equipment or antennas owned or operated, or placed on or about the premises of the Stoney Mountain Activity Center by Tenant, Tenant's members, agents, employees, invitees, or licensees, nor for any damage to any of said equipment or antennas. To this end, Tenant shall be required to carry renter's insurance for liability, property damage, and bodily injury in an amount not less than \$500,000.00 aggregate per occurrence. Owner shall be named as an additional insured on said policy(ies).

24. That the Owner hereby agrees that the Tenant, upon providing Emergency Public Services as hereinbefore stipulated and performing all of the stipulations, agreements, and covenants, shall and may peaceably and quietly have, hold, and enjoy said premises during said term, free from the adverse claims of any person, firm, or corporation, except that noise from normal operations of the Landfill, shall not be a breach of this Lease by the Owner, and that the Owner will pay all taxes and assessments that shall be lawfully levied upon the same except such taxes as those for which the Tenant shall, under the law, be primarily liable.

25. That if there be any default made in the stipulations, agreements, and covenants herein contained, and if the Tenant fails to comply with all the provisions of this Lease, then it shall be lawful for the Owner to give a thirty (30) days notice to reenter the premises hereby leased or demised, to repossess and take possession of the same, and to use, enjoy, or relet the same as if this Lease had not been entered into.

And it is further understood and agreed that the stipulations, agreements, and covenants herein contained are binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, each of said parties has caused these presents to be duly executed, the day and year first above written; this Lease being executed in duplicate originals, one of which is retained by each of the parties.

HENDERSON COUNTY

BY: _____
William Moyer, Chairman
Henderson County Board of Commissioners

ATTEST:

[OFFICIAL SEAL]

Elizabeth W. Corn
Clerk to the Board

BLUE RIDGE AMATEUR RADIO CLUB

BY _____
President

ATTEST:

[OFFICIAL SEAL]

Secretary

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 _____, 2004.

(Official Seal)

Notary Public

My commission expires: _____

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

I _____ Notary Public for said County and State, certify that _____ personally came before me this day and acknowledged that he is the Secretary of Blue Ridge Amateur Radio Club, a North Carolina nonprofit corporation, 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 himself as its Secretary.

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

(Official Seal)

Notary Public

My commission expires: _____