

THE BOARD OF COMMISSIONERS OF THE COUNTY OF CRAVEN MET IN REGULAR SESSION IN THE COMMISSIONERS' ROOM OF THE CRAVEN COUNTY ADMINISTRATION BUILDING, 406 CRAVEN STREET, NEW BERN, NORTH CAROLINA, ON MONDAY, AUGUST 20, 2007. THE MEETING CONVENED AT 8:30 A.M.

MEMBERS PRESENT:

- Chairman Johnnie Sampson, Jr.
- Vice Chairman Jason R. Jones
- Commissioner Lee Kyle Allen
- Commissioner Theron McCabe
- Commissioner Perry L. Morris
- Commissioner M. Renée Sisk
- Commissioner Steve Tyson

STAFF PRESENT:

- Harold Blizzard, County Manager
- Ray H. Moser, Assistant County Manager
- Richard F. Hemphill, County Finance Officer
- Gwendolyn M. Bryan, Clerk to the Board
- James R. Sugg, County Attorney

Following an invocation by Commissioner Sampson and the Pledge of Allegiance, Commissioner Sisk moved to approve minutes of August 6, 2007 regular session, seconded by Commissioner McCabe and unanimously carried.

CONSENT AGENDA

Tax Releases and Refund

Craven County Tax Administrator, Ronnie Antry, submitted the following tax releases and one refund for the Board's approval. Commissioner Morris moved for their approval, as presented, seconded by Commissioner McCabe and unanimously carried in a roll call vote.

Credits

TAXPAYER NAME	TICKET #	AMOUNT
ANGE, LOYD HOWARD BUILDING RAZED 7-15-2005	2007-0001320	\$84.30
B AND B ENTERPRISES COMPANY FORECLOSURE – LIEN EXTINGUISHED	2007-0002061	\$23.79
BANK ONE NATIONAL ASSOCIATION DOUBLE BILLED WITH ACCT #202300	2007-0090111	\$113.96
BLOUNT, WILMA JEANETTE CORRECTING APPRAISAL ERROR – WILL BE REBILLED	2007-0005046	\$455.07
BLT PERFORMANCE PROPERTIES LLC CORRECTING APPRAISAL ERROR – WILL BE REBILLED	2007-0005057	\$5,998.30
BOYD, BRIAN ROSS DOUBLE BILLED AS REAL AND PERSONAL ON SAME ACCT.	2007-0005566	\$92.20
BROWN, BRUCE FORECLOSURE – LIEN EXTINGUISHED	2007-0006577	\$11.90
BROWN, DAVID DOUBLE LISTED WITH ACCT #70586	2007-0006609	\$38.05

BRYANT, ELLEN CORRECTING APPRAISAL ERROR – WILL BE REBILLED	2007-0007210	\$36.74
COWARD, MARANDA RAE DOUBLE BILLED WITH ACCT #40677	2007-0012181	\$187.56
DANIELS, ERIK A & ERIN M CORRECTING APPRAISAL ERROR – WILL BE REBILLED	2007-0013452	\$54.79
DAYTON HUDSON CORPORATION CORRECTING APPRAISAL ERROR	2007-0014224	\$23,454.50
DILLAHUNT, NORRIS JR & METTERS CORRECTING APPRAISAL ERROR – WILL BE REBILLED	2007-0014890	\$2,002.23
DUNN, ALEX R & HARGETT, VONKIS DOUBLE LISTED WITH ACCT #65600	2007-0015974	\$109.08
EATMON, CHARLES & PATRICIA EAT CORRECTING APPRAISAL ERROR – WILL BE REBILLED	2007-0016342	\$726.72
EVANS, CHARMAIN NORFLEET & MOBILE HOME REPO IN 2006	2007-0017369	\$36.00
HART, CHRISTY CAROL BILLED IN ERROR FOR MULTIPLE YEARS	2007-0090120	\$2,494.71
HART, CHRISTY CAROL BILLED IN ERROR FOR MULTIPLE YEARS	2006-0091668	\$2,396.59
HART, CHRISTY CAROL DID NOT OWN 01/01/2006	2006-0091609	\$430.93
HEATH, ALTON DECEASED – SCE REMOVED-BEING REBILLED	2007-0090156	\$10.00
KEYS, L L FORECLOSURE – LIEN EXTINGUISHED	2007-0030979	\$45.20
LOFTIN, BEULAH FORECLOSURE – LIEN EXTINGUISHED	2007-0034046	\$33.21
MILLER SAWS & SUPPLIES INC. LATE LISTING CHARGED IN ERROR	2007-0037920	\$19.93
PEARSON, JAMES C FORECLOSURE – LIEN EXTINGUISHED	2007-0043104	\$61.61
PRO DEV XXII LLC CORRECTING APPRAISAL ERROR – WILL BE REBILLED	2007-0044803	\$60.84
SABRE, SEAN MICHAEL NOT LOCATED IN CRAVEN CO 01/01/06	2006-0046524	\$53.07
SMALL, WESLEY S & CHRISTINE B DOUBLE BILLED ON ACCT #6609115	2007-0050255	\$36.00
UNKNOWN OWNER FORECLOSURE – LIEN EXTINGUISHED	2007-0055999	\$28.55

VAIL, FRANK HRS FORECLOSURE – LIEN EXTINGUISHED	2007-0056124	\$21.41
VINCENT, GERAGHTY MARINE DID NOT OWN 01/01/2007	2007-0056504	\$81.31
VINCENT, MYRA SCE FOR 2007 REMOVED IN ERROR	2007-0056508	\$160.26
31 – CREDIT MEMO (S)		\$39,358.81

Refund

LOVELACE, WILLIAM & ASHLIN INCORRECT SITUS-SHOULD BE 7G – WILL BE REBILLED	2005-0032819	\$1,010.79
1 – REFUND	\$1,010.79	

Health Fee Charges

The Board was requested to approve the following fee changes for certain services provided in the Health Department’s clinical services. These fee adjustments became necessary to maintain the requirement that charges be equal to or higher than the Medicaid rate to assure full payment by DMA. Commissioner Morris moved to approve the following fee changes, as recommended by the Board of Health, seconded by Commissioner McCabe and unanimously carried in a roll call vote.

Fee Increase Recommended:

<u>Procedure Code/Description</u>	<u>Current Rate</u>	<u>Medicaid Rate</u>	<u>Proposed Rate</u>
<u>Child Health</u>			
J0530/LA Bicillin 0.6	\$11.30	\$12.31	\$13.00
J0540/LA Bicillin 1.2	\$22.17	\$24.12	\$25.00
10140/I&D Hematoma	\$88.00	\$117.09	\$118.00
12031/Layered closure body 0-2.5 cm	\$154.00	\$157.17	\$158.00
12032/Layered closure body 1.5-7.5 cm	\$212.00	\$220.13	\$221.00
<u>Child Health Immunization</u>			
90633/Hepatitis A-Age 2-18 (Flat Fee)	\$17.00	\$22.09	\$23.00
<u>Adult Health Immunization</u>			
90632/Hepatitis A-Adult (Flat Fee)	\$25.00	\$42.86	\$43.00
90732/Pneumococcal (Flat Fee)	\$20.00	\$24.57	\$25.00
90733/Memomune Vaccine (Flat Fee)	\$62.11	\$82.66	\$83.00
<u>Adult Health</u>			
90746/Hep B Vaccine Adult (Flat Fee)	\$55.00	\$56.96	\$57.00
***Charge for students or health professionals will increase from \$35.00 to \$37.00			
<u>All Clinics</u>			
90471/Vaccine Admin 1	\$13.00	\$16.67	\$17.00
<u>Dental</u>			
D0250/Extraoral First Film	\$15.00	\$16.81	\$17.00
D0260/Extraoral Each Add Film	\$8.00	\$13.94	\$14.00
D2390/Resin-Base Composite Crown-Ant	\$73.00	\$156.00	\$156.00
D7210/Surgical Extraction	\$85.00	\$100.00	\$100.00
D7250/Surgical Removal-Residual Root	\$62.00	\$111.00	\$111.00
D7270/Tooth Reimplantment, Accident	\$126.00	\$197.50	\$198.00
D7310/Alveoplasty w/Extraction Per Quad/	\$40.00	\$92.00	\$92.00
D9110/Palliative Treatment	\$23.00	\$34.85	\$35.00

West Craven Park Grading Contract

Recreation Director, Jan Parker, recommended that the Board award the contract for grading and seeding work for the 64.42 acres at the West Craven Park site to the lowest bidder – Jimmie L. Morris & Sons, Inc. for \$103,050. Commissioner Morris moved to

award the contract to Jimmie L. Morris & Sons, Inc. for \$103,050. as recommended, seconded by Commissioner McCabe and unanimously carried in a roll call vote.

Budget Amendments

Craven County Finance Officer, Rick Hemphill, submitted the following budget amendments for the Board’s approval. Commissioner Morris moved for their approval, seconded by Commissioner McCabe and unanimously carried in a roll call vote.

Cooperative Extension – SHIP

REVENUES	AMOUNT	EXPENDITURES	AMOUNT
101-4207-349-55-00 SHIP	\$5,000.00	101-4207-420-32-40 Other Supplies	\$1,650.00
		101-4207-420-24-0 Meeting expenses	\$1,000.00
		101-4207-420-73-21 Mac Book 2.16 Hz Intel Core 2 duo Protection Oland for MacBook Espon S3 Digital LCD Projector	\$2,350.00
TOTAL	\$5,000.00	TOTAL	\$5,000.00

Justification: Contract approved by the Department of Insurance to supplement the Senior’s Health Insurance Information Program (SHIP).

Health/Hospice Telemonitoring

101-6503-399-08-00 Carryover Balance	\$4,959.00	101-6503-440-40-00 Contractual Services	\$4,959.00
TOTAL	\$4,959.00	TOTAL	\$4,959.00

Justification: When budget was originally submitted, it was unknown that all matching fund money would not be expended by fiscal year end. Matching funds are from Craven County Health Department Foundation and are required for the USDA Grant totaling \$50,370.00.

Health/Bates Foundation (YMCA)

101-6609-399-08-00 Carryover Balance	\$5,378.00	101-6609-440-40-00 Contractual Services	\$5,378.00
TOTAL	\$5,378.00	TOTAL	\$5,378.00

Justification: When budget was originally submitted, it was unknown that all Bates Foundation Grant money would not be expended by fiscal year end. We were awarded an additional \$4,000 grant this year for the YMCA Water Safety Program.

All funds will be expended in September to pay for Water Safety Program. Funds will cover cost of transportation by bus and cost of using the YMCA pool.

DSS 7291 Mandated

101-7291-349-19-00 Income Maint. Overhead	\$17,542.00	101-7201-450-40-50 Contr. Employees	\$17,542.00
TOTAL	\$17,542.00	TOTAL	\$17,542.00

Justification: Funds received to offset expense of Low Income Energy Assistance Program temporary workers.

DSS 7291 Mandated

101-7291-349-32-00	\$30,674.00	101-7291-450-23-04	\$30,674.00
Energy CIP, CP&L		CIP	
TOTAL	\$30,674.00	TOTAL	\$30,674.00

Justification: Second allocation has been received for the Crisis Intervention Program. There is no County match, funds are 100% Federal.

TAX APPEAL – ZACHARY TAYLOR

Mr. Taylor appealed to the Board for tax relief on a matter which involved a new sixty day rule relative to application deadlines for Use Value on a property which he transferred. He stated that he was not aware of the new rule and that he had proceeded according to the manner in which he had made application and paid taxes on the subject property each year. He sought to be allowed to file a late application. Chief Appraiser, Glen Jones, asserted that it is not the County’s responsibility to notify all participants in the Use Value Program of legislative changes, and that some of the responsibility lies with the program participants to keep abreast of the rules. Commissioner Morris stated the opinion that Mr. Taylor qualifies for a late application ruling and moved that a late application ruling be applied, seconded by Commissioner Jones. During the discussion, Commissioners Allen and Sampson recalled similar appeals which had been denied by the Board because there was no authority to honor the appeals. They both cautioned that to do otherwise in this case would be a breach of the Board’s practice and would establish a new and dangerous precedent. Tax Administrator, Ronnie Antry, explained that the late application provision of the statute applies only to the calendar year in which the tax was due, which in this case was 2006. The application, however, was made in 2007. County Attorney, Jim Sugg, when asked for an opinion, stated that he would need to research the issue in order to give a solid opinion. Commissioner Allen provided a substitute motion, seconded by Commissioner Sampson, that consideration of the matter be deferred to allow the Attorney to conduct his research. The motion carried with six (6) “Ayes”, there being one (1) “Nay” from Commissioner McCabe.

SMART START PRESENTATION

The Executive Director of Smart Start, Patricia Purnell, presented to the Board members a Community Resource Guide for Craven County Families with Young Families, which is being distributed throughout the community.

CONVENTION CENTER REPORT

Convention Center Director, Sandy Chamberlin, provided the annual report for the Convention Center and the Convention and Visitors Bureau. She stated that the Convention Center is outperforming the Coopers and Lybrand Study and that Craven County has experienced a 24.3% increase in visitor spending since the County took over the Convention and Visitors Center. She stated that she could guarantee 50% increase this year over last year’s performance.

PUBLIC HEARING

At 9:20 a.m. the Chairman called for a public hearing, as advertised, to consider a resolution and accompanying performance grant agreement with Wirthwein/North Carolina Technical Plastics. He explained that the total amount of the performance grant being contemplated is \$75,000; however, \$45,000 has been secured through third party grants. He further explained that there would be proportionate decreases in the grant funds distributed for shortfalls in the specified areas of performance.

At 9:25 a.m. Commissioner Tyson moved to open the public hearing, seconded by Commissioner Allen. There were no speakers from the public and Commissioner Sisk moved to close the public hearing, seconded by Commissioner McCabe and unanimously

carried. Commissioner Allen moved to approve the following resolution and agreement, seconded by Commissioner Sisk and unanimously carried in a roll call vote.

WHEREAS, Craven County (hereinafter "County") has determined that County has historically suffered a degree of economic and fiscal distress which can be remedied in part by the expansion of industries currently located in County and the location of new industries in County; and,

WHEREAS, citizens in County have an average wage level that is below average state wage levels, and the unemployment rate of County, although slightly below the state unemployment rate and equal to the national unemployment rate, is unacceptably high, deficiencies which can be remedied in part by the expansion and location of industries in County. Furthermore, the average weekly wage paid by private industries in County is \$575.00 as most recently determined by the North Carolina Employment Security Commission (said Commission no longer publishing a statistic determining the median average wage for all insured industries in any county), said weekly wage amount being much less than the state average weekly wage of \$717.00 paid by private industries; and,

WHEREAS, the expansion and location of industries in County will benefit County and its citizens by increasing and diversifying both the personal property and real property ad valorem tax bases which will increase tax revenue, and resulting ancillary economic activity will increase sales tax revenues, all of which will make available to County more funds with which to improve the general health, safety and welfare of County's citizens; by providing a greater number of jobs in the private sector with higher salaries and better benefits than are now available to citizens of County in the private sector; by stimulating secondary economic activity which is directly beneficial to County and its citizens, including residential real estate development and the expansion of existing services and businesses; by increasing and improving the infrastructure of County; by increasing the economic opportunity available to County's citizens and by improving the general technical training of County's workforce; and,

WHEREAS, WIRTHWEIN NORTH CAROLINA L.P. and CAROLINA TECHNICAL PLASTICS CORP. (hereinafter "Wirthwein"), which manufactures plastic products, intends to expand its manufacturing facilities located in Craven County by constructing a new manufacturing facility valued at \$1,500,000.00 and installing machinery, equipment and miscellaneous business personal property therefore valued at \$3,500,000.00, and projects to employ 50 additional workers at its expanded facility at an expected weekly average wage of \$600 for 2008, \$612 for 2009 and \$620 for 2010 and each year thereafter, rates above the average rate paid to other similar employees in County. Wirthwein's proposed operations will aid tremendously in remedying the previously identified economic and fiscal distresses suffered by County and its citizens; and,

WHEREAS, County has determined that in an effort to encourage the location of other industries within County and to reward Wirthwein for Wirthwein's intended investment in County, County should agree to reward Wirthwein for its expansion by granting an Economic Development Performance Grant Agreement (hereinafter "Agreement") to Wirthwein; and,

WHEREAS, pursuant to N.C. Gen. Stat. § 158-7.1(a), local governments, including County, are authorized:

[T]o make appropriations for the purposes of aiding and encouraging the location of manufacturing enterprises, making industrial surveys and locating industrial and commercial plants in or near such city or in the county; encouraging the building of railroads or other purposes which, in the discretion of the governing body of the city or of the county commissioners of the county, will increase the population, taxable property, agricultural industries and business prospects of any city or county. These appropriations may be funded by the levy of property taxes pursuant to [G.S. 153A-149](#) and [160A-](#)

209 and by the allocation of other revenues whose use is not otherwise restricted by law.

Moreover, County has determined that the probable hourly average wage to be paid by Wirthwein to its new employees to be employed at the expanded facility hereinabove described is \$15.00 in 2008, \$15.30 in 2009 and \$15.50 in 2010 and each year thereafter, for a weekly average hourly wage of \$600 in 2008, \$612 in 2009 and \$620 in 2010 and each year thereafter, which are rates above County’s weekly average hourly wage, as determined by both the N.C. Employment Security Commission and Department of Commerce; and,

WHEREAS, County has determined that the Agreement will stimulate the local economy, promote business, and result in the creation of a substantial number of jobs that pay at or above the average wage currently available in County; and,

WHEREAS, on August 20, 2007 and after proper public notice, pursuant to N.C. Gen. Stat. § 158-7.1 the Board of Commissioners for County held a public hearing concerning its intent to grant to Wirthwein the Agreement; and,

WHEREAS, the Board of Commissioners of County does desire to grant to Wirthwein the Agreement, and does further desire that this RESOLUTION serves as a memorial of the actions taken by the Board of Commissioners on this matter.

Now, therefore, be it resolved as follows:

1. That the Economic Development Performance Grant Agreement attached hereto and incorporated herein by reference as Exhibit “A” be executed by County at such appropriate time to be determined by counsel to County.
2. That, pursuant to said Agreement, County execute and deliver such documents and instruments as may be necessary in the opinion of counsel to County to accomplish the purposes of said Agreement.
3. That the Chairman, Clerk to the Board, Manager and such other officers and agents of County are hereby authorized to execute any and all documents necessary in the opinion of counsel to County to effectuate any of the transactions contemplated herein.
4. That this RESOLUTION be entered in the official minutes of the Board of Commissioners of County and that the Clerk to the Board certify copies of this RESOLUTION as may be necessary in the opinion of counsel to County.

This the 20th day of August, 2007.

THIS ECONOMIC DEVELOPMENT PERFORMANCE GRANT AGREEMENT made and entered into this _____ day of _____, 2007, by and between **CRAVEN COUNTY**, a body politic and corporate, and **WIRTHWEIN NORTH CAROLINA L.P.**, a North Carolina limited partnership, and **CAROLINA TECHNICAL PLASTICS CORP.**, a North Carolina corporation authorized to conduct business in the State of North Carolina, is as follows:

WITNESSETH:

For and in consideration of the execution and delivery of this Agreement, the Parties agree:

ARTICLE I
Definitions

Certain terms having specific definitions are used in this Agreement, and these terms and definitions, unless the context clearly indicates to the contrary, are as set forth in this Article. The defined terms appearing in this Article are set forth in exact form as they appear between the quotation marks. When the same term is used in this Agreement with the meaning as assigned herein, it shall appear in the identical capitalized form. Otherwise, the meaning shall be as used in the context of the sentence in which it appears and not necessarily that as defined herein.

1.1 "Agreement" – means and refers to this Economic Development Performance Grant Agreement.

1.2 "Assessor" – means and refers to County's assessor as the same from time to time is duly constituted and appointed pursuant to the laws of the State of North Carolina.

1.3 "Wirthwein" – means and refers to collectively Wirthwein North Carolina L.P. and Carolina Technical Plastics Corp.

1.4 "Capital Investment" – means and refers to the real property, buildings, manufacturing equipment and other miscellaneous business personal property located at the Site, currently valued on the Tax Rolls at \$2,832,430.00 in the case of real property and improvements located thereon and \$5,384,884.00 in the case of miscellaneous business personal property.

1.5 "County" – means and refers to Craven County, a body politic and corporate.

1.6 "Effective Date" – means and refers to January 1, 2008.

1.7 "Facility" – means and refers to Wirthwein's manufacturing facility located at the Site.

1.8 "Parties" – means and refers to County and Wirthwein collectively.

1.9 "Performance Incentive" – means and refers to any payment due for any Year from County to Wirthwein under Section 5.1 of this Agreement.

1.10 "Site" – means and refers to that certain real property owned by WNC as described in deed recorded in Book 1983, Page 301 in the Office of the Register of Deeds of Craven County, North Carolina.

1.11 "Tax Rolls" – means and refers to County's records relating to the assessment and collection of real property and personal property ad valorem taxes, as said records may from time to time be constituted, calculated and determined in accordance with the laws of the State of North Carolina.

1.12 "Year" – means and refers to any calendar year during the term of this Agreement.

1.13 "WNC" – means and refers to Wirthwein North Carolina L.P.

1.14 "CTP" – means and refers to Carolina Technical Plastics Corp.

ARTICLE II

Recitals

2.1 County has determined that County has historically suffered a degree of economic and fiscal distress which can be remedied in part by the expansion of industries currently located in County.

2.2 Citizens in County have an average wage level that is below average state wage levels, and the unemployment rate of County, although slightly below the state unemployment rate and equal to the national unemployment rate, is unacceptably high, deficiencies which can be remedied in part by the expansion of industries in County.

2.3 The expansion of industries located in County will benefit County and its citizens by increasing and diversifying both the personal property and real property ad valorem tax bases and thus tax revenue and by increasing sales tax revenue in the area, all of which will make available to County more funds with which to improve the general health, safety and welfare of County's citizens; by providing a greater number of jobs in the private sector with higher salaries and better benefits than are now available to citizens of County in the private sector; by stimulating secondary economic activity which is directly beneficial to County and its citizens, including residential real estate development and the expansion of existing services and businesses; by increasing and improving the infrastructure of County; by increasing the economic opportunity available to County's citizens and by improving the general technical training of County's workforce.

2.4 Wirthwein intends to increase its Capital Investment located at the Site by expanding its Facility and adding additional personal property utilized in conjunction with its current operations, and projects to employ additional workers at the Site. Wirthwein's proposed expanded operations and employment will aid tremendously in remedying the previously identified economic and fiscal distresses suffered by County and its citizens.

2.5 Wirthwein desires to make its additional Capital Investment and additional employment located at the Site, an expansion which will necessarily benefit County and its citizens by further remediating several of the economic and fiscal distresses discussed above.

2.6 Pursuant to N.C. Gen. Stat. § 158-7.1, local governments, including County, are authorized:

[T]o make appropriations for the purposes of aiding and encouraging the location of manufacturing enterprises, making industrial surveys and locating industrial and commercial plants in or near such city or in the county; encouraging the building of railroads or other purposes which, in the discretion of the governing body of the city or of the county commissioners of the county, will increase the population, taxable property, agricultural industries and business prospects of any city or county. These appropriations may be funded by the levy of property taxes pursuant to [G.S. 153A-149](#) and [160A-209](#) and by the allocation of other revenues whose use is not otherwise restricted by law.

2.7 In an effort to reward and encourage Wirthwein’s expansion and similar expansions of other industries, County does desire to extend to Wirthwein Performance Incentives, provided that Wirthwein meets the parameters herein specified. Moreover, County has determined that the agreements herein will necessarily result in an overall economic effect many times greater than the value of the agreements specified herein.

2.08 Accordingly, Wirthwein and County do hereby desire to execute this Agreement to memorialize Wirthwein’s goals for expansion of the Capital Investment and employment at the Site and County’s monetary rewards to Wirthwein should Wirthwein meet these expansion goals.

ARTICLE III
Term of the Agreement

The term of this Agreement shall be a period of time beginning on the Effective Date and ending December 31, 2016.

ARTICLE IV
Responsibilities of Wirthwein

As consideration for the execution and delivery of this Agreement, Wirthwein agrees to:

4.1 Increase its Capital Investment at the Site and increase employment at the Site per Year as follows:

to	Additions to	Net Increase
Year	Capital Investment	No. of Employment
	Positions	
2008	\$3,000,000	19
2009	\$1,000,000	17
2010	\$1,000,000	14
Total:	\$5,000,000	50

Additions in Capital Investment shall be the amount of addition, if any, of the value of Wirthwein’s Capital Investment, as determined in Article VI, over and above the values existing on January 1 of each Year. Increases in employment shall be net yearly additions to total number of employment positions over and above employment positions existing on January 1 of each Year.

4.2 To provide to County within thirty (30) days of January 1 of each Year information concerning the prior Year’s addition of employment positions, including but not limited to the description of the new position, the names of new employees filling new employment positions, the titles or job descriptions of new employees and employment positions, the dates of hire of new employees and the expected hourly or yearly salaries of new employment positions and the employees filling those positions, and to supplement said information as may be reasonably requested by County. In addition and in order to establish a baseline for the measurement of employment position increases, to provide to County

during the initial Year of this Agreement information concerning the number of employment positions and the hourly or yearly salaries of those positions both as existing on January 1, 2007.

4.3 To timely and fully pay any and all ad valorem taxes assessed against Wirthwein, as said taxes may be from time to time levied against Wirthwein by any governmental authority as shown on the Tax Rolls of County, including but not limited to County or the City of New Bern, and to comply with any and all requirements imposed by law for the listing and/or reporting of information pertaining to ad valorem taxes, provided that for purposes of this Agreement the payment of ad valorem taxes shall not be considered timely unless such taxes are paid in full prior to the date a penalty is assessed for taxes due and owing in such Year.

4.4 In the event that Wirthwein, during the term of this Agreement, closes the Facility located at the Site, Wirthwein shall refund to County any Performance Incentives paid by County under Section 5.1.

4.5 Upon the issuance of a certificate of occupancy for the building to be constructed by Wirthwein hereunder, to promptly remove the temporary building constructed by Wirthwein at the Site without prior approval of the Craven County Industrial Park Governing Committee as required under the restrictive covenants for the Craven County Industrial Park and rules and regulations promulgated thereunder.

4.6 To comply in all respects with any and all federal, state and local laws, rules, regulations and ordinances governing any improvements to be made at the Site, and to furthermore comply in all respects with the restrictive covenants for the Craven County Industrial Park and rules and regulations promulgated thereunder.

4.7 Upon the execution and delivery of this Agreement, to reimburse County the sum of \$2,500.00 as legal fees and costs incurred by County for the preparation and finalization of this Agreement.

ARTICLE V

Responsibilities of County

As consideration for the execution and delivery of this Agreement, County agrees to:

5.1 Provided that Wirthwein has complied in all respects with Article IV for any Year, and subject to Article VII, pay to Wirthwein as Performance Incentives for each subject Year an amount equal to .0008 of Wirthwein's additional Capital Investment over and above that existing as of January 1, 2008, in a total aggregate amount not to exceed \$30,200.00.

5.2 Recognizing that County has applied for and expects to be awarded certain grants from third parties regarding Wirthwein's expansion of its Facility, to pay to Wirthwein the sum of \$45,000 upon the issuance of a certificate of occupancy for the expanded facility. County's obligations under this paragraph 5.2 are expressly conditioned upon the receipt by County of grant approvals, and payment thereof, in the amount of \$45,000 by third parties.

5.3 Other than the obligations set forth in this Agreement, County shall have no other obligations of any type under this Agreement, and in no event shall County be obligated to make Performance Incentive payments during the term of this agreement totaling more than \$30,200.00.

ARTICLE VI

Determination and Timing of Payments

The Parties agree that the following shall control the determination and timing of any Performance Incentive due under this Agreement:

6.1 Whether Wirthwein has met its Capital Investment addition objective for any one Year shall be determined by reference to the amount of addition, if any, of the value of Wirthwein's Capital Investment made by Wirthwein as the same is reflected on the Tax Rolls of County as of January of the next Year. For purposes of this Agreement, the assessed value for ad valorem tax purposes as shown on the Tax Rolls of County shall control, regardless of any other values that may be supplied or generated by Wirthwein. For purposes of this Agreement, increases in assessed values for ad valorem tax purposes caused

by or resulting from periodic County-wide revaluations required under state law shall not be considered in determining whether Wirthwein has made any Capital Investment for any Year hereunder.

6.2 Whether Wirthwein has met its employment position increase objective for any one Year shall be determined in accordance with the certification provided by Wirthwein to County in accordance with Section 4.2, provided that for any new employment position to be counted toward Wirthwein's employment position increase objective for any one Year, the average weekly wage of all new employment positions created by Wirthwein at the Site (or otherwise in County) must be at least \$600.00 for 2008, \$612 for 2009 and \$620 for 2010 and each Year thereafter and all such employees filling those new employment positions must be employed as full time employees eligible to qualify for any and all employment related benefits routinely provided by Wirthwein to its employees, including, for example, medical insurance, profit sharing/401(k) plans, disability insurance and the like. Acknowledging that Wirthwein initiated its employment position increase plans before the Effective Date of this Agreement, Wirthwein and County agree that Wirthwein may count those new employee positions added during calendar year 2007 to Wirthwein's employment position increase goals hereunder.

6.3 For any Year for which County owes Wirthwein a Performance Incentive, County shall make such payment within thirty (30) days of December 31 of the following year.

6.4 Recognizing that Wirthwein and County previously entered into an Economic Development Performance Grant Agreement in December of 2002 which is still effective between the Parties, County and Wirthwein agree that any Capital Investment addition and employment position increase credited to Wirthwein under this Agreement shall not also be credited to Wirthwein under said prior agreement, and the parties do furthermore agree that said prior agreement is hereby deemed amended to effectuate the provisions of this section 6.4.

ARTICLE VII

Reduction in Performance Grant Payments

7.1 The Parties agree that any Performance Incentive due hereunder from County to Wirthwein shall be reduced for any Year in which Wirthwein fails to achieve its employment position increase goal, as defined in Section 4.1, by that percentage that the actual net employment position increase bears to the intended net employment position increase for such Year. Moreover, should Wirthwein decrease its number of employees at the Site after 2010 to less than 120, Performance Incentives due hereunder from County to Wirthwein for 2010 and subsequent Years shall be reduced for any such Year in which Wirthwein's total employment is less than 120 by that percentage that the actual employment bears to the intended employment of at least 120 employees.

7.2 Wirthwein and County specifically agree and acknowledge that in no event shall County's total obligation to pay Performance Incentives under this Agreement exceed \$30,200.00, even in the event that Wirthwein exceeds the Capital Investment and employment goals set forth herein.

ARTICLE VIII

Termination

8.1 **Mutual Termination:** This Agreement may not be terminated by either party except as provided herein or by a written agreement signed by both parties.

8.2 **Insolvency of Wirthwein:** County shall have the right, in its discretion, to declare the Agreement terminated, if (1) by the order of a court of competent jurisdiction, a receiver, liquidator, custodian or trustee of Wirthwein, or of a major part of its property, shall be appointed and the order shall not have been discharged within sixty (60) days, or if, by decree of such a court, Wirthwein shall be adjudicated insolvent or a major part of its property shall have been sequestered and such decree shall have continued undischarged and unstayed for sixty (60) days after the entry thereof, or if a petition to reorganize Wirthwein pursuant to the Federal Bankruptcy Code or any other similar statute applicable to Wirthwein, as now or hereinafter in effect, shall be filed against Wirthwein and such petition shall not be dismissed within sixty (60) days after such filing, or Wirthwein shall be adjudicated bankrupt or shall file a petition in voluntary bankruptcy under any provision of

any bankruptcy law or shall consent to the filing of any bankruptcy or reorganization petition against it under any such law; or (2) Wirthwein shall make an assignment for the benefit of its creditors, shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of it or of a major part of its property.

8.3 Default: In the event Wirthwein fails to perform its obligations under this Agreement in any material respects, County may terminate this Agreement as a result of such failure by giving Wirthwein thirty (30) days prior written notification; provided, however, Wirthwein shall have said thirty (30) days to cure such material failure to perform and upon such cure any notice of terminations shall be void. Recognizing County's rights in this Agreement if Wirthwein fails to achieve the Capital Investment and/or the jobs and employment set forth in this Agreement, Wirthwein shall not be in default if it fails to achieve such Capital Investment and/or jobs and employment. In the event County fails to perform its obligations under this Agreement in any material respects, WNC and Wirthwein may terminate this Agreement as a result of such failure by giving County thirty (30) days prior written notification; provided, however, County shall have said thirty (30) days to cure such material failure to perform and upon such cure any notice of terminations shall be void.

ARTICLE IX

Miscellaneous

9.1 Audits and Examination of Records: County reserves the right to request Wirthwein to submit to an annual detailed audit by County or its designated agent concerning the Wirthwein operational records involved in the performance of this Agreement. County's expenses in performing such audit shall be County's sole responsibility. In the event that County conducts such an audit, any and all records or other information produced by Wirthwein for the purposes of such audit shall be, to the extent allowed under applicable law, considered by County as confidential and not subject to disclosure to the general public.

9.2 Amendment: This Agreement may not be modified or amended except by subsequent written agreement authorized by each party and signed by authorized representatives of both parties.

9.3 Severability: If any of the provisions of this Agreement shall be held by a court of competent jurisdiction to be unconstitutional or unenforceable, the decision of such court shall not affect or impair any of the remaining provisions of this Agreement, and the parties shall, to the extent necessary, take such actions as are necessary to correct any such unconstitutional or unenforceable provision. It is hereby declared to be the intent of the parties to this Agreement that this Agreement would have been approved and executed had such an unconstitutional or unenforceable provision been excluded therefrom.

9.4 Entire Agreement: This document contains the entire Agreement between the Parties, and no statement, oral or written, made by either party or agent of either party that is not contained in this Agreement shall be valid or binding.

9.5 Remedies: This Agreement shall be enforceable by the Parties hereto by all remedies available at law or in equity, including but not limited to specific performance. Failure or delay to exercise any right, remedy or privilege hereunder shall not operate as a waiver of such right, remedy or privilege nor prevent subsequent enforcement thereof.

9.6 Covenant of Further Assurances: County and Wirthwein agree that from and after the date of execution hereof, each will, upon the request of the other, execute and deliver such other documents and instruments and take such other actions as may be reasonably required to carry out the purpose and intent of this Agreement. County and Wirthwein each agree to pay the attorney fees of their respective counsel in connection with the transactions contemplated by this Agreement.

9.7 Assignment: No assignment, delegation, transfer, or novation of this Agreement or any part thereof shall be made unless approved by both County and Wirthwein; provided, WNC and/or CTP may assign and transfer this Agreement and its rights and duties hereunder to an affiliate of WNC and/or CTP or to a person or entity that acquires operating control of the facility to be located at the Site, without approval by the County.

9.8 Multiple Originals: This Agreement shall be executed by the parties hereto in duplicate originals, each of which, when executed, shall constitute one and the same Agreement and one of which shall be retained by each party.

9.9 Governing Law: This Agreement shall be governed in accordance with the laws of the State of North Carolina and, as applicable, the laws of the United States of America.

9.10 Performance Review: County and Wirthwein shall meet at least once yearly for the review of the obligations under Agreement, at a time and place later determined by County and Wirthwein to be mutually satisfactory.

9.11 Confidentiality: Wirthwein agrees that the terms and conditions of this Agreement shall be held in the strictest of confidence and shall not, except with the prior approval of the County, in any manner be shared with or disseminated to parties who are not Parties to this Agreement, except Wirthwein may share the terms and conditions with their advisors, for enforcement and defense of rights and duties hereunder, and as required by law.

ARTICLE X
Notices

Any notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed given (a) as of the date it is delivered by hand; or (b) two days after it is mailed first class U.S. Mail, postage prepaid return receipt requested, to the applicable parties at the addresses listed below or later specified in writing or sent for next business day delivery, shipping prepaid, return receipt requested, by a national courier service, to the applicable parties occupying the positions indicated at the addresses listed below. Any party may change its notice information by giving notice under this Article.

- County:** Craven County Board of Commissioners
C/o Mr. Harold Blizzard
406 Craven Street
New Bern, NC 28560

- With copies to:** Craven County Economic Development Commission
C/o Mr. James T. Davis, III
100 Industrial Drive
New Bern, North Carolina 28562

- County Attorney
Mr. Arey W. Grady, III
Sumrell, Sugg, Carmichael, Hicks & Hart, P.A.
Post Office Drawer 889
New Bern, North Carolina 28563-0889

- Wirthwein:** Carolina Technical Plastics Corp.
Attn.: Mr. Martin J. Kean
901 Industrial Drive
New Bern, North Carolina 28562

- With copies to:** Albert E. Guarnieri
Parker Poe Adams & Bernstein LLP
Three Wachovia Center
401 S. Tryon Street, Suite 3000
Charlotte, North Carolina 28202-1935

IN WITNESS HEREOF, the parties hereto have executed this Agreement in duplicate originals the day and year first above written.

DANGEROUS DOG ORDINANCE

Animal Control Officer, Kathryn Smith, presented amendments to the Dangerous Dog Ordinance proposed by the Health Board as highlighted in the following copy. Commissioner Allen moved to approve the amendments, seconded by Commissioner Sisk and unanimously carried. (Amendments in underlined italics)

**Dangerous Dog Ordinance
Craven County
1998
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Definitions

1. DOG means any member of the CANIDAE family, or any hybrids of such Canidae, thereof, including but not limited to wolf hybrids, which are a cross between a wolf or a wolf hybrid and a domestic dog (*Canis familiaris*).
2. WOLF means any canine classified as *Canis lupis* or *Canis rufus*.
3. WOLF HYBRID means any canine which has a wolf ancestor within the previous four (4) generations. This definition shall include a wolf or wolf hybrid as either a sire or dam, grandsire or dam, great-grandsire/dam or great-great grandsire/dam. An animal shall also be considered a WOLF HYBRID if it has been represented by its owner as having wolf ancestry.
4. BEHAVIOR
Three categories of behavior are defined as follows:
 - A. **Vicious Dog:** Is one which, when unprovoked, inflicts severe injury on a human being.
 - B. **Dangerous Dog:** Is one which, when unprovoked, engages in any behavior that requires a defensive action by any person to prevent bodily injury when the person and the animal are off the property of the owner or keeper.

Is one which, when unprovoked, bites a person causing less severe injury than that defined as “severe” or,

Is one which has been trained in attack methods or,

Is one which has been trained or is kept primarily or in part for the purpose of fighting, or any dog trained for fighting.

C. **Potentially Dangerous Dog:** Is one which causes any person being chased or approached by the dog to reasonably believe that the animal will cause physical harm to the person when off the property of the owner or keeper or,

Is one which when off the property of its owner or keeper of the animal has killed, seriously bitten, inflicted injury or otherwise caused injury by attacking a domestic animal when the dog was unprovoked by the actions of the other animal.

5. **SEVERE INJURY:** Means any physical injury to a human being that results in muscle tears, disfiguring lacerations, multiple sutures, corrective surgery, cosmetic surgery, broken bones or hospitalization; either individually or in any combination thereof.

6. **OWNER:** Any person or entity that has possessory rights of the dog. Owner means any person handling, keeping, possessing, harboring, maintaining or having the care, custody or control of the dog except licensed veterinarian clinics, animal control shelters, or licensed boarding kennels. Minor children are not to be considered owners. The parent(s), legal guardian or person(s) acting in Loco Parentis will be considered owner, and as such will be considered the individual responsible for the dog.

7. **WITHOUT PROVOCATION:** Means that the dog was not teased, tormented, abused, threatened, chased, or in any other way set upon or antagonized.

This also means that the animal was not coming to the aid or defense of a person not engaged in illegal or criminal activity and who was not using the dog as a means of carrying out such activity.

8. **DIRECT CONTROL:** Means that a dog is within sight or hearing of the owner and will respond instantly to the commands or signals to “come”, “sit”, or “stay”.

A. **COME:** Means that the dog shall immediately leave the position where it is located and return to its owner:

B. **SIT:** Means that the dog shall immediately cease movement in any direction and assume a sitting position;

C. **STAY:** Means that the dog shall immediately cease movement in any direction and remain at the spot in which the command was heeded until released by its owner.

9. **ATTACK TRAINED:** Means any dog that has been specifically trained by a person to take a command to attack or injure a person or animal, or any dog that has been specially trained or disciplined or conditioned to protect persons or property.

Attack trained does NOT include dogs possessed and used by law enforcement or military in performance of official duties.

10. **PROVOCATION OR LOCATION OF ATTACK IRRELEVANT:** Any dog that causes a person’s death by attacking, biting or mauling the person, regardless of whether the dog was provoked and regardless of where the incident resulting in the person’s death occurred.

11. **TETHERING/TIE-OUT** Cable or chain will be used for **TETHERING** and will be of sufficient quality and strength to restrain the dog. A tethered dog will be muzzled at all times. Tether will not exceed twenty (20) feet in length. Tethering is permitted only for dogs of Dangerous or Potentially Dangerous designation. Tether will be attached to a collar or harness designed specifically for the control of dogs. Dogs declared VICIOUS are not permitted to be tethered at any time.

Dogs Declared Vicious

No dog declared “*vicious*” may be offered for sale, given away, traded or placed for adoption. The owner of a dog so designated shall notify the county authority, in writing, within two (2) working days of any change in residence of the owner and dog, giving the correct new address and physical location of same. Owner of a dog so declared will retain possession of the dog until the dog dies, is destroyed or surrendered to county authority for disposal. When the dog dies or is destroyed, the owner will immediately notify the county authority of the death of the animal so that proper identification can be made by reading of the tattoo or electronic implant.

The declaration of *Vicious* will carry with it certain and specific conditions not necessarily the same as those restrictions of dogs declared *Dangerous or potentially dangerous*.

A dog determined to be a *vicious* dog may be destroyed by the county authority when it is found, after proceedings conducted to determine same, that the release of the dog would create a significant threat to the public health, safety and welfare. If it is determined by the Appellate Board that a dog found to be *vicious* shall not be destroyed, the judicial authority shall impose conditions upon the ownership of the dog that protect the health, safety and welfare of the public.

The owner of a dog declared *vicious* may be prohibited from owning, possessing, controlling, or having custody of any dog for a period of up to three (3) years if found, after proceedings that ownership or possessing of a dog by that person would create a significant threat to the public health, safety and welfare.

If it is determined that a dog so declared as *Vicious* shall not be destroyed, the judicial authority may impose additional conditions to protect the public health, safety and welfare; such as, but not limited to:

Mandated housing in a secure enclosure.

A secure enclosure is:

1. **OUTDOORS:** The primary enclosure for said dog will be set inside a protective fence, at least 4 feet, but no more than 6 feet from the primary enclosure, the fence and gate will be constructed of 9 gauge chain link, at least 6 feet in height, with a padlocked gate. The gate must be securely closed, even when the owner is inside the primary enclosure to effect care/cleaning.

The primary enclosure will be constructed of 9 gauge chain link, at least 6 feet in height and a minimum of 10 feet by 10 feet square, with a concrete floor anchored to the fencing. Anchoring may be accomplished either by burying the fence or by installing anchors to the bottom rail of the fence so as to preclude the escape of the dog. The top area of the pen will be totally enclosed, including the protective fence, with chain link of a minimum gauge of 11.5, so anchored to the side walls of the pen/protective fence to preclude the escape of the animal by climbing. All support uprights, top and bottom rails and all hardware needed to erect pen and perimeter fence to be of such grade as to properly support weight of said fencing. The gate to the primary enclosure will be padlocked and must be securely closed, even when the owner is inside the pen to effect cleaning of the pen and care of the dog.

A dog house, sufficiently sized to accommodate the dog will be available at all times to the dog to protect it from the elements of nature. Said shelter will be kept in good repair and kept in a clean manner.

2. **INDOORS:** If the dog is housed in a residence all or part of the time, the residence windows and doors will be secured so as to prevent the dog’s escape.

3. **INSIDE OTHER BUILDING/STRUCTURE:** If the dog is housed in an outbuilding, garage, storage shed, or other structure the building will be so secured as to prevent the dog's escape. Ventilation will be provided by manner of windows or other openings to provide adequate air exchange to prevent the overheating of said outbuilding, said openings to be secured so as to prevent the dog's escape.

The *vicious* dog is not permitted to be unconfined on the owner's property without a muzzle, regardless of whether in the presence of the owner or others. The muzzle will be properly fitted so as not to restrict the breathing or vision of the dog and not to cause harm by abrading or cutting into the skin. Tethering is not permitted for dogs declared vicious.

When off the property, in the accompaniment of the owner or other responsible adult, the dog will be secured by a leash no longer than 4 feet. The leash will be attached to a collar or harness. Both leash and collar or harness must be manufactured specifically for the control of dogs. Said dog will be muzzled at all times.

Adequate food will be provided at least one time in every 24 hours, at all times fresh potable water will be available in a container so placed as to prevent spillage or being soiled by excrement/urine or debris in a location available to the dog.

A surety bond or a policy of liability insurance issued by a surety company or insurance company authorized to conduct business in this state in a form acceptable to the county in the sum of \$500,000, payable to any persons injured by said dog, insuring the owner for any personal injuries inflicted by the dog will be carried by the owner of the dog and will remain in effect until cancellation of said bond or insurance is authorized by county authority upon satisfactory proof being offered as to the death of the dog.

Posting of the property and perimeter fencing will be in such a manner as to warn any and all persons, including children, of the presence of a *vicious* dog. Said signs will be placed in such a manner as to be visible from the common entrance(s) to the property, specifically the driveway, but not limited to that point. Said signs must be visible from all property lines on the property, and must be specifically placed on all sides of the perimeter fence.

Surgical spaying or neutering will be required on any dog declared *vicious*. Such altering will be performed by any veterinarian licensed to practice in the State of North Carolina. Said surgery will be performed within seven (7) days of declaration and before the owner is permitted to reclaim the animal. All fees will be paid in full by the owner to the satisfaction of the veterinarian prior to release.

Permanent identification of the dog will be by tattoo inside the thigh, or by electronic implant; cost of said tattoo/implant will be paid by the owner of the dog. The owner is required to allow and assist county authority in viewing the tattoo or reading the implant at such times as deemed reasonable, or at such time the identification of the dog is in question, either by county authority or by a complaint filed by any third party and upon declaration by the owner of the death of said animal.

Behavioral evaluation of said dog may be required by the Appellate Board to be performed by a person recognized in the field of animal behavior and the findings of said evaluation will be made a permanent record in the owner/dogs file. Cost of such evaluation will be borne by the owner of the dog and paid to the satisfaction of the individual performing the evaluation regardless of the outcome of any hearing or appeal.

All restrictions regarding the containment, identification and behavioral evaluation of a dog declared as *vicious* must be completed to the satisfaction of the county authority before the dog will be released to the custody of the owner.

Any fees incurred for boarding or maintaining said dog while in the custody of the animal shelter, veterinarian clinic or other boarding facility will be paid by the owner prior to the dog's release regardless of the findings of the Appellate Board or appellate review.

A prorated permit fee of \$500 will be paid yearly to the designated county authority by the owner of the dog so declared *vicious*. Fee will then be paid at the beginning of each fiscal year and will be retained by the county authority and not forfeited at the end of any fiscal year. Fees are for maintenance of records, inspections and any other such duties as may be required to oversee the specific dog in question. This fee is in addition to any surety bond or insurance required to be carried by the owner.

Dangerous or Potentially Dangerous Dog

A *dangerous or potentially dangerous* dog will be housed in a secure enclosure. A secure enclosure is one which is:

1. Outdoors, padlocked, with a concrete bottom, so constructed as to prevent the dog from escaping under the fence and with a secure wire top, so as to preclude the animal from escaping over the top of the fence. The fencing will be kept in good repair at all times to prevent the escape of the dog.

All outdoor pens will be at least 6 feet in height, and at least 10 feet in width and 10 feet in length. Any other structure so used to confine the animal will be of similar size to prevent inhumane containment. All pens, structures and confinement areas will be inspected as necessary by the designated county authority.

Adequate food will be provided at least one time in every 24 hours, at all times fresh potable water will be available in a container so placed as to prevent spillage or being soiled by excrement/urine or debris in a location available to the dog.

A dog house, sufficiently sized to accommodate the dog will be available at all times to the dog to protect it from the elements of nature. Said shelter will be kept in good repair and kept in a clean manner.

The property will be posted with clearly visible warning signs adequate to inform the public, including children, of the presence of a *dangerous or potentially dangerous* dog and placed on the property as designated by the appropriate county authority including, but not limited to, the pen and curtilage.

2. INDOORS: If the dog is housed in a residence all or part of the time, the residence windows and doors will be secured so as to prevent the dog's escape.
3. INSIDE OTHER BUILDING/STRUCTURE: If the dog is housed in an outbuilding, garage, storage shed, or other structure the building will be so secured as to prevent the dog's escape. Ventilation will be provided by manner of windows or other openings to provide adequate air exchange to prevent the overheating of said outbuilding, said openings to be secured so as to prevent the dog's escape.

The *dangerous or potentially dangerous* dog is not permitted to be unconfined on the owner's property without a muzzle, regardless of whether in the presence of its owner or others. The muzzle will be properly fitted so as not to restrict the breathing or vision of the dog and not to cause harm by abrading or cutting into the skin. *Tethering, except in the presence of the owner or other responsible adult, is not permitted. A tethered dog will be muzzled at all times.*

When off the property, in the accompaniment of the owner or other responsible adult, the dog will be secured by a leash no longer than 4 feet. The leash will be attached to a collar or harness. Both leash and collar or harness must be manufactured specifically for the control of dogs. The dog will be muzzled at all times.

Permanent Identification of Declared Dogs Required

Any dog declared *dangerous or potentially dangerous* will be permanently identified by means of a tattoo located on the inside thigh or by an electronic implant. The cost of said tattoo/implant will be paid by the owner of the dog. The owner is hereby required to

allow and assist the county authority responsible for overseeing the *dangerous dog ordinance* in viewing the tattoo or reading the electronic implant at such times as deemed reasonable or at such time the identification of the animal is in question, either by county authority or by complaint filed by any third party.

Obedience Training/Behavior Modification May be Required

As a condition of registration and findings of the board responsible for declaration of dangerousness or potential dangerousness of said dog certain obedience classes/training may be required at the discretion of said board.

OBEDIENCE CLASSES OR TRAINING: If so required by the Appellate Board as a condition of release from the designation “*Dangerous or potentially dangerous*”, obedience classes or training shall be obtained from a certified/licensed dog trainer specializing in behavior modification and standardized training procedures recognized by The American Kennel Club or other recognized dog club. Successful completion of the training by both the owner and the dog will be required as a condition of release from said designation. All costs of said training will be borne by the owner of the dog and will be paid in full to the satisfaction of the trainer.

Release From Status of Declaration of Dangerous or Potentially Dangerous

If after 36 months there are no additional instances of the declared behavior, the dog shall be removed from the list of *dangerous or potentially dangerous* dogs. The dog may, but is not required to be, removed from the list of *dangerous or potentially dangerous* dogs prior to the expiration of the 36 month period if the owner or keeper demonstrates to the county authority’s satisfaction that changes in circumstances or measures taken by the owner or keeper, such as training of the dog, have mitigated the risk to public safety.

If, however, within 6 months following removal from the list of *dangerous or potentially dangerous*, the dog exhibits any of the behaviors that resulted in the original declaration, or any other behavior that would result in the declaration of *dangerous or potentially dangerous* the dog automatically, with no right of appeal will be declared *dangerous* and will be subject to all the restrictions and constraints as defined for the remainder of the dog’s life. Any applicable fees, permit registrations, surety bond or insurance would be reinstated for the continued inspections by the designated county authority.

Exceptions to Declaration

No dog may be declared *vicious, dangerous or potentially dangerous* when being used by certified law enforcement officer(s) in carrying out the official duties of that office.

No dog may be declared *dangerous or potentially dangerous* if any injury or damage is sustained by a person who, at the time of sustaining the injury or damage was committing a willful trespass or other tort upon the premises occupied by the owner or keeper of the dog, or was teasing, tormenting, abusing or assaulting the dog, or was committing or attempting to commit a crime.

No dog may be declared *dangerous or potentially dangerous* if the dog was protecting or defending a person within the immediate vicinity of the dog from an unjustified attack or assault.

No dog may be declared *potentially dangerous* if an injury or damage was sustained by a domestic animal which at the time of the injury or damage was teasing, tormenting, baiting, abusing or assaulting the dog.

No dog may be declared *potentially dangerous* if the injury or damage to a domestic animal was sustained while the dog was working as a hunting dog, herding dog, or predator control dog on the property of, or under the control of its owner or keeper, and the damage or injury was to a species or type of animal appropriate to the work of the dog.

Permit Fees and Registration of Dogs Declared Potentially Dangerous, Dangerous or Vicious

PERMIT FEES: Owners of *dangerous or potentially dangerous* dogs will be assessed a prorated annual fee of \$100 payable at the beginning of the fiscal year to be retained by the county authority responsible for the oversight of the *dangerous dog ordinance*. These fees are in addition to any surety bond or liability insurance so required for *dangerous dogs*.

Fees are to be paid at the time the owner or keeper has agreed to the designation or the court or hearing entity has determined the designation applies to the dog.

The fees are renewable each year thereafter at the onset of the fiscal year for the county.

Owners of *vicious* dogs are required to pay a yearly permit fee of \$500 payable at the beginning of each fiscal year. The first year or any part thereof will be in the amount of \$500, renewable each year thereafter at the onset of the fiscal year for the county. This fee is in addition to any surety bond or liability insurance so required.

Fees are in addition to any other licensing, registration, taxing or other costs assessed by any local government agency in regulating or permitting dogs.

No dog declared *vicious* will be released from that designation. Only dogs declared *dangerous* or *potentially dangerous* may be released upon satisfactory evidence presented as stated in RELEASE FROM STATUS OF DECLARATION.

No dog declared *dangerous or potentially dangerous* may be given away, sold, traded or placed for adoption. Owner of a dog so declared will retain possession of the dog until the dog dies, is destroyed or surrendered to county authority for disposal.

~~REGISTRATION: No person may own a *dangerous or potentially dangerous* dog unless the dog is registered as provided by this ordinance.~~

~~The county will charge the owner an annual fee to obtain and maintain a certificate of registration for a dog under this section. Said fees will be retained by county authority responsible for inspection of premises and confinement quarters of said *dangerous or potentially dangerous* dog.~~

~~The county shall issue a certificate of registration to the owner of a *dangerous or potentially dangerous* dog if the owner presents sufficient evidence that:~~

- ~~1. A secure enclosure exists for a *potentially dangerous or dangerous* dog and a posting of the premises has been effected.~~
2. The owner of a *dangerous dog* will, in addition to the secure enclosure and signage, be required to provide a surety bond issued by a surety company authorized to conduct business in this state in a form acceptable to the county in the sum of at least \$50,000, payable to any person injured by the dog, or a policy of liability insurance issued by an insurance company authorized to conduct business in this state in the amount of at least \$50,000, insuring the owner for any personal injuries inflicted by a dog declared dangerous.

Liability for Dog Bites

1. The owner of a dog which bites a person when the person is in or on a public place is liable for damages suffered by the person bitten, regardless of the prior behavior of the dog or the owner's knowledge of its behavior.
2. Nothing in this section shall permit the bringing of an action for damages against any governmental agency using a dog in military or police work if the bite occurred while

the dog was defending itself from a harassing or provoking act, or assisting an employee of the agency in any of the following:

- a) In the apprehension or holding of a suspect where the employee has a reasonable suspicion of the suspect's involvement in criminal activity.
- b) In the investigation of a crime or a possible crime.
- c) In the execution of a warrant.
- d) In the defense of a peace officer or another person.

Paragraph 2 of this section will not apply in any case where the victim of the bite was not a party to, nor a participant in, nor suspected to be a party to or a participant in, the act that prompted the use of the dog in military or police work.

Paragraph 2 of this section will apply only where a governmental agency using a dog in military or police work has adopted a written policy on the necessary and appropriate use of a dog for the police or military work enumerated in paragraph 2 of this section.

Certain Dogs May be Killed

Subject to provisions of containment, a dog that has been declared *vicious*, *dangerous* or *potentially dangerous* that is chasing or approaching in a menacing fashion or in an apparent attitude of attack, that attempts to bite or otherwise endanger, or that kills or injures a person or an animal that is the property of another person can be killed at the time of that chasing, approaching, attempt, killing or injury.

If, in attempting to kill such a dog, a person wounds it, that person shall not be liable to prosecution under the penal laws which govern cruelty to animals nor is that person civilly liable for the death or injury of that dog.

The owner of said dog is liable in damages for any injury, death of another animal or loss to a person or property that is caused by the dog unless the injury, death or loss was caused to the person or property of an individual who, at the time, was committing or attempting to commit a criminal offense against any person or was teasing, tormenting or abusing the dog on the owner's property.

Any dog, regardless of declaration of dangerousness or potential dangerousness or viciousness, that has killed a human being, regardless of the location or provocation will be immediately seized by county authority and humanely destroyed. If humane capture of the dog cannot be effected, the dog may be destroyed on site by any person or persons without prosecution for cruelty to animals or civil liability for such action. The owner of the dog shall be held fully responsible for its actions.

Disposition of Dangerous or Potentially Dangerous Dogs

All *potentially dangerous* and *dangerous* dogs so declared shall be properly licensed if applicable and vaccinated. The permitting authority shall include the *dangerous or potentially dangerous* designation in the registration records of the dog, in areas where Registration of Dogs is required, either after the owner or keeper of the dog has agreed to the designation or the court or hearing entity has determined the designation applies to the dog. Fees may be levied in addition to any applicable licensing fees to provide for the costs of maintaining the records of the dog and for inspections of the premises where the dog is housed, and for periodic inspection of the dog.

A *dangerous or potentially dangerous* dog shall at all times be maintained, housed, kept or otherwise restrained as outlined in this ordinance.

The owner of a dog so designated shall notify the county authority, in writing, within two (2) working days of any change in residence of the owner and dog, giving the correct new address and physical location of same. If the dog dies, or is humanely destroyed by

persons authorized to do same, the owner will immediately notify the county authority of the death of the animal so that proper identification can be made by reading of the tattoo or the electronic implant.

Notification of Determination

Upon receiving a report of a *vicious, dangerous* or *potentially dangerous* dog, the officer assigned to that report shall make such investigations and inquiries with regard to such report as may be necessary to carry out the provisions of this article.

When an assigned officer classifies a dog as *vicious, dangerous* or *potentially dangerous* that person shall notify the dog's owner in writing of that determination, by certified mail to the owner's last known address. SUCH NOTICE SHALL BE COMPLETE UPON ITS MAILING. *In circumstances where mail is returned by the USPS as unclaimed or unable to deliver the Sheriff or other Process Server may be used in an attempt to notify the Owner.*

Such notice shall include the findings of the investigation, the reason for the determination, a description of the type of dog(s) involved and the procedures for filing an appeal if such an appeal is granted.

Appellate filing fees will be \$50 per appeal/per dog, payable to the county authority responsible for hearing the appeal.

Procedure for Declaration

The county authority responsible for ANIMAL CONTROL will designate a person or persons to determine a dog's status. It also will designate a separate group of persons to hear any appeal.

If the dog falls under the definition of *dangerous* or *potentially dangerous*, the owner has the right of appeal.

Once either decision has been made the owner must follow all state laws and county ordinances dealing with *dangerous*, or *potentially dangerous* dogs until all appeals have been exhausted and a final decision rendered. If no appeal is requested or the owner fails to appeal, then the decision is final.

The appellate board shall consist of a veterinarian licensed to practice in the State of North Carolina, a professional dog obedience trainer ~~with accredited animal behavior training~~ at least 10 years of teaching experience and/or membership in a nationally recognized Dog Trainers Association such as, but not limited to the National Association of Pet Dog Trainers and another person selected by the Board of Health. Such persons will serve as an "appointee" on a yearly basis. No financial remuneration will be paid for their service.

Notice of appeal shall be completed by filing a written objection with the appellate board within three (3) business days after receiving written notice. The appellant's filing fees will be included with the Notice of appeal. The appellate board shall schedule a hearing within ten (10) business days of the filing of the appeal. Until the appeal is final, the dog must be controlled and confined pursuant to the ordinance requirements for the specific designation of that dog. Any appeal from the final decision of such appellate board will be submitted to the superior court by filing notice of appeal and a petition for review within ten (10) days of the final decision of the appellate board.

Appeals from rulings of the appellate board will be heard in superior court. The appeal shall be heard de novo before a superior court judge sitting in Craven County in accordance with NCGS 67-4.1 Subsection C.

In the case of a *vicious* dog, the animal must be housed at an animal shelter, veterinarian clinic or licensed boarding kennel in Craven County until all decisions are final. Fees or charges for such boarding will be paid by the owner prior to the release of the dog. In cases when the determination of the board is that the animal will be humanely euthanized, the owner will still be charged the daily board fee for housing the animal in addition to euthanasia fees and disposal fees, if applicable.

Within seven (7) days after a *vicious, dangerous* or *potentially dangerous* dog determination becomes final, the owner must have the animal tattooed with an identification number and have that number registered with a nationally recognized registry body or have the animal implanted with an electronic identification micro-chip and have that micro-chip duly registered. All containment areas and the placement of mandated signs will be inspected by the authorized county authority. Approval or disapproval is the county authority's responsibility.

An owner who violates any part of this ordinance in a willful or grossly negligent manner shall forfeit all rights of ownership of the dog and upon a final determination of such violation the dog may be humanely euthanized by a licensed veterinarian or other person so trained. The person or board responsible for determining that the dog is *vicious, dangerous* or *potentially dangerous* shall determine whether the owner's violation was willful or grossly negligent. The person or board must notify the owner in writing, giving the reason for the determination, before they may euthanize the dog. The owner may appeal the determination by filing written objections and paying the appellate filing fee to the appellate board within three (3) business days of receipt of the notice. The appellate board shall schedule a hearing within ten (10) days of filing of objections. Any appeal from the final decision of such appellate board shall be taken to the superior court by filing notice of appeal and a petition for review within ten (10) days of the final decision of the appellate board.

Appeals from rulings of the appellate board shall be heard in superior court. The appeal shall be heard de novo before a superior court judge sitting in the county in which the appellate board whose ruling is being appealed is located in accordance with NCGS 67-4.1 Subsection C.

Maximum Penalty Per Day for Violation of This Ordinance (Additional charges may be forthcoming under NCGS 67-4.)

1. *A violation of any portion of this Article subjects the offender to a maximum Criminal penalty of five hundred dollars (\$500.00) as provided under NCGS 14.4(a) for each day a violation exists.*
2. A violation of this ordinance subjects the offender to civil penalty of \$500 for each day a violation exists. Those sums may be recovered by the County in a civil action in the nature of debt if the offender does not pay within 20 days of notification of a violation. Following receipt of notification of a violation pursuant to this section, an offender commits an additional and separate offence for each day the offender fails remedy of said violation in accordance with this ordinance.
3. *A violation subjects the offender to a civil penalty to be recovered by the County in civil action in the nature of Debt if the offender does not pay the penalty within 20 days after being cited for violation of [this] ordinance.*
4. This ordinance may also be enforced by application for appropriate injunction, order of abatement or such other equitable relief as may be appropriate under North Carolina General Statute § 153A-123 or similar provision.

AIRPORT MATTERS

County Manager, Harold Blizzard, presented a request on behalf of Craven Regional Airport that the Airport be allowed to accept an FAA grant in the amount of \$1,956,038. The grant is to be used to fund a project which includes: land acquisition (Hall property),

beacon installations, improvements to runways 4 and 22, snow removal equipment, airport rescue and firefighting equipment, ramp patrol vehicle, and windsocks. Commissioner Allen moved to accept the grant and authorize the Chairman to sign the grant documents, seconded by Commissioner Jones and unanimously carried.

APPOINTMENTS – CRIMINAL JUSTICE ADVISORY BOARD

The Board received a list of nominees, as follows, for appointment to the Criminal Justice Advisory Board. Commissioner Allen moved to accept the list, seconded by Commissioner Sisk. Commissioner Allen indicated that his motion was contingent upon the Chairman and the Manager agreeing to stay on this Board. The motion carried unanimously.

Craven County Criminal Justice Advisory Board Fiscal year 07-08

The Honorable Benjamin G. Alford – Superior Court Judge
 Mr. Clement Brown – Neuse River Sentencing Services
 Mr. Mark Best – Craven Community College
 Sheriff Jerry Monette – Craven County Sheriff's Dept.
 The Honorable James Ragan – Member at Large
 Chairman Johnnie Samspon – Craven County Board of Commissioners
 Mr. Dan Potter – Craven County Defense Bar
 Ms. Lexanne Huffman – Administrative Office of the Courts
 Mr. Malcolm Reid Chitty, Jr., Board Chair – NC Division of Community Corrections
 Mr. Harold Blizzard – Craven County Manager
 Ms. Jan Cahoon – Craven County Clerk of Superior Court
 Ms. Candy Sfetsos – TASC
 Ms. Lynn Holt

COUNTY ATTORNEY'S REPORT

North Carolina Preservation Agreement

County Attorney, Jim Sugg, presented the agreement which has been signed by North Carolina Preservation for advertising and negotiating the sale of the St. Luke's Building. He advised the Board that the document was ready for the Chairman's signature. He stated that in addition to advertising, North Carolina Preservation would seek an appropriate buyer for the Board's approval, starting negotiations at \$1,750,000.00. He stated that North Carolina Preservation would have one year to find a suitable buyer and at the end of the year the County could choose to renegotiate with North Carolina Preservation to continue or to terminate the relationship. Commissioner Jones moved to go forward with execution of the agreement, seconded by Commissioner McCabe and unanimously carried.

1101 Main Street

The County was requested to relinquish its interest in the property jointly held by the City of New Bern and Craven County located at 1101 Main Street. The County's interest in the property totals \$5,007.76. The City has agreed to transfer the property to the Neuse River Community Development Corporation. Commissioner Sisk moved to relinquish the County's interest in 1101 Main Street to the City of New Bern, and to authorize the Chairman to execute the documents. Commissioner Morris seconded the motion, which carried unanimously.

COUNTY MANAGER'S REPORT

County Manager, Harold Blizzard, reported on the status of the construction contract for the judicial center. He reported that negotiations continued until the afternoon of August 16 to reduce the construction costs; however, the final numbers for recommendation have not been produced. He requested that the contractor extend his pricing from August 20,

which was the last day of the sixty day period for maintaining the original price quote, to August 24. He reported that he had received unofficial information that the contractor had agreed to extend the pricing for another four (4) days to allow for continued negotiations, and asked that the Board consider recessing to Friday, August 24 at the end of the meeting in order to hear a recommendation at that time. The consensus of the Board was to reconvene at 10:00 a.m. on Friday, August 24 after recessing this meeting.

COMMISSIONERS' REPORTS

Commissioner Sisk introduced Eagle Scout Candidate McGraw and welcomed him to the meeting.

Commissioner McCabe spoke again concerning the conditions of roads in his district.

Commissioner Allen announced the Havelock Chili Festival on October 20 and remarked about the barge in Scott's Creek; however, he stated that he would not like to see the County spend money to dispose of the barge.

Commissioner Jones reported on haulers that he has witnessed dropping trash from their loads along the roads on the way to the landfill. He asked that staff consult with haulers to remedy this situation.

At 10:00 a.m. Commissioner Jones moved to recess to reconvene at 10:00 a.m. on Friday, August 24, seconded by Commissioner McCabe and unanimously carried.

Chairman Johnnie Sampson, Jr.
Craven County Board of Commissioners

Gwendolyn M. Bryan, Clerk to the Board