

2. In paragraph 13 of Ferguson's Counterclaims, Ferguson alleges "[t]hat, on or about September 5, 2001, Plaintiff Jones and Defendant entered into a second document which conveyed a fee simple future interest in the Dairy Farm from Plaintiff Jones (hereinafter referred to as the 'Future Interest Instrument')." Ferguson further alleges that "[t]his Future Interest Instrument is attached to the Complaint as a portion of Exhibit C, and Defendant adopts that exhibit as his own by this reference."

3. Exhibit C of the Complaint consists of nine (9) pages and three (3) separate instruments titled "Lease Agreement", "General Agreement", and "Notice of Lease" respectively ("Exhibit C").

4. Ferguson fails to explain in the Counterclaim which pages or parts of Exhibit C are included in his definition of the "Lease Agreement" and which pages or parts are included in his definition of the "Future Interest Instrument".

5. Ferguson uses the defined terms "Lease Agreement" and "Future Interest Instrument" throughout his Counterclaim.

6. Identification by Ferguson of which specific pages or parts of Exhibit C constitute the "Lease Agreement" and the "Future Interest Instrument", as these terms are used in the Counterclaim, is essential to the Plaintiffs' ability to accurately respond to Ferguson's Counterclaim.

7. Ferguson's allegations that the "Lease Agreement" and the "Future Interest Instrument" are contained in "portions of Exhibit C" are so vague and ambiguous that Plaintiffs cannot reasonably be required to frame a responsive pleading.

WHEREFORE, Plaintiffs pray the Court for an Order requiring Ferguson to file a more definite statement providing Plaintiffs with specificity as to which pages or parts of Exhibit C are

included in his definition of the "Lease Agreement" and which pages or parts of Exhibit C are included in his definition of the "Future Interest Instrument".

Respectfully submitted, this the 15 day of May, 2008.

By: T. Michael Jordan  
T. Michael Jordan  
NC Bar No. 6697  
154 N. Main Street, Suite 1  
Professional Building  
Waynesville, NC 28786

Attorneys for the Plaintiff, William Lucius Jones, by his  
Guardian, Sam Underwood

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: Leon M. Killian  
Leon M. Killian  
NC Bar No. 2526  
E-Mail: chip.killian@nelsonmullins.com  
Reed J. Hollander  
NC Bar No. 23405  
E-Mail: reed.hollander@nelsonmullins.com  
4140 Parklake Avenue / GlenLake One  
Second Floor  
Raleigh, NC 27612  
(919) 877-3800

Attorneys for the Plaintiff, Haywood County, North Carolina

CERTIFICATE OF SERVICE

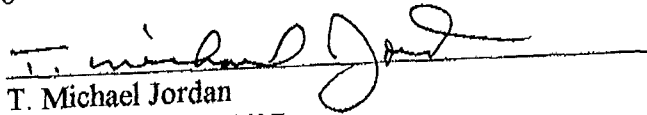
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MAY 14 PM 2:12

The undersigned hereby certifies that he has served a copy of the foregoing document upon counsel of record by mailing a true copy thereof, through the United States Mail, first class, postage prepaid, on this the 15<sup>th</sup> day of May, 2008, and addressed as follows:

Jeff D. Jones  
232 North Main Street  
Waynesville, NC 28786

BY \_\_\_\_\_

Russell L. McLean, III  
244 North Main Street  
Waynesville, NC 28786



T. Michael Jordan  
N. C. State Bar #6697  
154 N. Main Street, Suite 1  
Professional Building  
Waynesville, NC 28786

STATE OF NORTH CAROLINA  
COUNTY OF HAYWOOD  
HAYWOOD COUNTY, NORTH  
CAROLINA and WILLIAM LUCIUS  
JONES, by his guardian, SAM  
UNDERWOOD,

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
File No. 08 CVD 51

FILED  
08 APR 18 AM 11:07  
HAYWOOD COUNTY C.S.C.

Plaintiffs,

v.

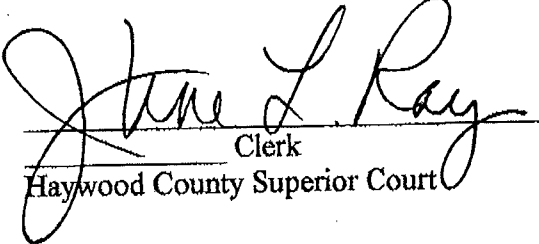
GREGORY TODD FERGUSON,

Defendant.

**ORDER GRANTING PLAINTIFFS' MOTION FOR EXTENSION OF TIME**

Based on good cause shown, the undersigned hereby orders that Plaintiffs Haywood County, North Carolina's and William Lucius Jones, by his guardian, Sam Underwood's (collectively, the "Plaintiffs") motion for extension of time to answer the counterclaims is hereby GRANTED. Plaintiffs shall file and serve their replies to Defendant's counterclaims on or before May 22, 2008.

SO ORDERED, this 18 day of April, 2008.

  
Clerk  
Haywood County Superior Court

STATE OF NORTH CAROLINA FILED

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION

COUNTY OF HAYWOOD 08 APR 18 AM 11:03

File No. 08 CVD 51

HAYWOOD COUNTY, NORTH )  
CAROLINA and WILLIAM LUCIUS )  
JONES, by his guardian, SAM )  
UNDERWOOD, )

Plaintiffs, )

v. )

GREGORY TODD FERGUSON, )

Defendant. )

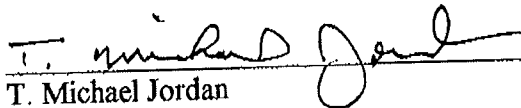
**PLAINTIFFS' MOTION FOR EXTENSION OF TIME**

Pursuant to Rule 6(b) of the North Carolina Rules of Civil Procedure, Plaintiffs Haywood County, North Carolina and William Lucius Jones, by his guardian, Sam Underwood (collectively, the "Plaintiffs"), by and through its undersigned attorneys, come now and request that the Court enter an Order extending the time within which they may answer or otherwise respond to Defendant's Counterclaim. In support of this request, Plaintiffs show unto the Court the following:

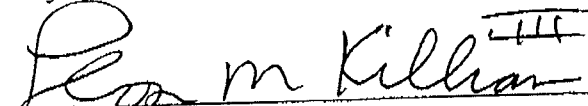
1. On March 20, 2008, Plaintiffs were served with Defendant's Answer and Counterclaims.
2. The time for Plaintiffs to reply to the Counterclaims has not yet expired.
3. This motion is made in good faith and not for the purpose of delay.

WHEREFORE, Plaintiffs request that this Court enter an Order extending the time for Plaintiffs in this action to answer or otherwise respond to the Counterclaim up to and including May 22, 2008.

Respectfully submitted, this the 18<sup>th</sup> day of April, 2008.



T. Michael Jordan  
N.C. State Bar # 6697  
154 N. Main Street, Suite 1  
Professional Building  
Waynesville, NC 28786



Leon M. Killian, III  
N.C. State Bar # 2526  
Reed J. Hollander  
NC State Bar # 23405  
NELSON MULLINS RILEY & SCARBOROUGH LLP  
4140 Parklake Avenue / GlenLake One  
Second Floor  
Post Office Box 30519 (27622-0519)  
Raleigh, NC 27612  
Attorneys for Plaintiff Haywood County, North Carolina

**CERTIFICATE OF SERVICE**

FILED

The undersigned hereby certifies that the foregoing Plaintiffs' Motion for Extension of Time was this day served upon the below-named counsel and parties by hand delivery to:

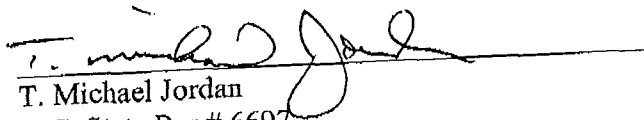
WAYNESVILLE COUNTY C.S.C.

Russell L. McLean, III  
244 North Main Street  
Waynesville, NC 28786  
Attorney for Defendant

BY \_\_\_\_\_

Jeff D. Jones  
232 North Main Street  
Waynesville, NC 28786  
Attorney for Defendant

This 18th day of April, 2008.



T. Michael Jordan  
N.C. State Bar # 6697  
154 N. Main Street, Suite 1  
Professional Building  
Waynesville, NC 28786

STATE OF NORTH CAROLINA  
COUNTY OF HAYWOOD

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
File No. 08 CVD 51

HAYWOOD COUNTY, NORTH )  
CAROLINA and WILLIAM LUCIUS )  
JONES, by his guardian, SAM )  
UNDERWOOD, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
GREGORY TODD FERGUSON, )  
 )  
Defendant. )

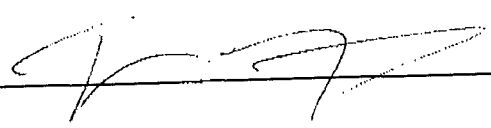
**CERTIFICATE OF SERVICE**

27  
HAYWOOD COUNTY, N.C.  
MAR 20 AM 9:46  
11 11 11

The undersigned hereby certifies that Defendant's: (1) Motion to Transfer to Superior Court Division; (2) Answer, Counterclaims, & Demand for Trial By Jury; and (3) this Certificate of Service was served upon Plaintiffs by depositing a copy of the same in a postpaid and properly-addressed wrapper in a post office or official depository under the exclusive care and custody of the United State Postal Service this the 20<sup>th</sup> day of March, 2008, addressed as follows:

T. Michael Jordan  
Attorney for Plaintiff Jones  
154 North Main Street, Suite 1  
Waynesville, North Carolina 28786

Leon M. Killian, III  
Reed J. Hollander  
Attorneys for Plaintiff Haywood County  
Nelson Mullins Riley & Scarborough, LLP  
Glen Lake One  
4140 Parklake Avenue, Suite 200  
Raleigh, North Carolina 27612





STATE OF NORTH CAROLINA  
COUNTY OF HAYWOOD

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
File No. 08 CVD 51

HAYWOOD COUNTY, NORTH )  
CAROLINA and WILLIAM LUCIUS )  
JONES, by his guardian, SAM )  
UNDERWOOD, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
GREGORY TODD FERGUSON, )  
 )  
Defendant. )

**ANSWER, COUNTERCLAIMS,  
& DEMAND FOR TRIAL BY JURY**

FILED  
MAR 11 09  
HAYWOOD COUNTY, C.S.C.  
OR

COMES NOW Defendant, by and through counsel, and, without waiving Defendant's objection to this matter remaining in the District Court Division (see previously-filed Motion to Transfer to Superior Court Division), hereby answers Plaintiffs' Verified Complaint for Declaratory Judgment (hereinafter referred to as the "Complaint") as follows:

1. Paragraph 1 of the Complaint is admitted.
2. Paragraph 2 of the Complaint is admitted.
3. Paragraph 3 of the Complaint is admitted.
4. Paragraph 4 of the Complaint is admitted.
5. With respect to Paragraph 5 of the Complaint, Defendant is without sufficient knowledge to admit or deny the allegations contained therein, and so Defendant denies the same.
6. Paragraph 6 of the Complaint is admitted.
7. Paragraph 7 of the Complaint is admitted.
8. Paragraph 8 of the Complaint is admitted.

9. Paragraph 9 of the Complaint is admitted, except that it is specifically denied that District Court is the proper division for this action. This matter should be transferred to Haywood County Superior Court.

10. Paragraph 10 of the Complaint correctly identifies the real property in question. The balance of paragraph 10 is denied.

11. With respect to Paragraph 11 of the Complaint, it is admitted that Plaintiff Jones conveyed, or attempted to convey, by and through Sam Underwood, some interest of some sort in the Property (as that term is defined in the Complaint) to Plaintiff Haywood County. The balance of paragraph 11 is denied.

12. Paragraph 12 of the Complaint is denied.

13. Paragraph 13 of the Complaint is denied.

14. Paragraph 14 of the Complaint is speculative and does not require a response and, accordingly, it is denied.

15. Paragraph 15 of the Complaint is admitted except that the Lease Agreement ends at Page 208 in Book 502, and a separate and distinct instrument appears at Book 502, Page 209 and continues through and including Page 211. It is specifically denied that the instrument appearing at Pages 209 through 211 is a part of the Lease Agreement.

16. With respect to Paragraph 16 of the Complaint, the Lease Agreement speaks for itself. No response is necessary for paragraph 16 and, accordingly, it is denied.

17. With respect to Paragraph 17 of the Complaint, it is admitted that the subject matter of the Lease Agreement was the Property (as that term is defined in the Complaint). The balance of paragraph 17 is denied.

18. Paragraph 18 of the Complaint is denied.

19. With respect to Paragraph 19 of the Complaint, the Lease Agreement speaks for itself. No response is necessary for paragraph 19 and, accordingly, it is denied.

20. With respect to Paragraph 20 of the Complaint, the Lease Agreement speaks for itself. No response is necessary for paragraph 20 and, accordingly, it

is denied.

21. Paragraph 21 of the Complaint is denied in that Plaintiff Jones told Defendant not to pay the rent.

22. With respect to Paragraph 22 of the Complaint, the court file numbered 02 CVM 198 speaks for itself. No response is necessary for paragraph 22 and, accordingly, it is denied.

23. With respect to Paragraph 23 of the Complaint, the court file numbered 02 CVM 198 speaks for itself. No response is necessary for paragraph 23 and, accordingly, it is denied.

24. Paragraph 24 of the Complaint is admitted.

25. Paragraph 25 of the Complaint is admitted.

26. With respect to Paragraph 26 of the Complaint, it calls for a legal conclusion and, accordingly, it does not require a response and is therefore denied.

27. Paragraph 27 of the Complaint is denied.

28. Paragraph 28 of the Complaint is denied.

29. With respect to Paragraph 29 of the Complaint, Defendant restates his previous answers to the allegations contained in paragraphs 1 through 28 as though fully set forth herein.

30. Paragraph 30 of the Complaint is denied.

31. Paragraph 31 of the Complaint does not require a response and, accordingly, it is denied.

32. That any allegation not specifically admitted in the Complaint is hereby expressly denied by Defendant.

**COUNTERCLAIMS**  
**Parties and Jurisdiction**

1. That, pursuant to N.C. Gen. Stat. §153A-10, Plaintiff Haywood County is a county of the State of North Carolina.

2. That, pursuant to N.C. Gen. Stat. §153A-11, the inhabitants of Haywood County are a body politic and corporate.

3. That, pursuant to N.C. Gen. Stat. §153A-11, §153A-158, and §153A-176, Haywood County is vested with the right to sue and be sued and the right to acquire, hold, and dispose of real property, among other various rights, powers, and duties conferred by law.

4. That Plaintiff William Lucius Jones is an individual human being who is a resident and citizen of Haywood County, North Carolina, and has been so at all relevant times with respect to this action.

5. That Sam Underwood is an individual human being who is a resident and citizen of Haywood County, North Carolina, and has been so at all relevant times with respect to this action.

6. That Defendant is an individual human being who is a resident and citizen of Haywood County, North Carolina, and has been so at all relevant times with respect to this action.

7. That, upon information and belief and on or about May 16, 2003, Plaintiff Jones was declared incompetent in file number 03 SP 120 (filed with Haywood County Clerk of Superior Court).

8. That, upon information and belief and on or about June 24, 2003, Sam Underwood was appointed as the guardian over the estate of Plaintiff Jones in file number 03 E 219 (filed with Haywood County Clerk of Superior Court).

9. That, upon information and belief and on or about April 26, 1945, Plaintiff Jones become the owner of certain real property located in Haywood County, North Carolina and more particularly described at Will Book 6, Page 431 in the Haywood County Registry (hereinafter referred to as the "Dairy Farm" and which is the identical property described in Exhibit A of the Complaint).

10. That the Court has jurisdiction over the persons and subject matter of this action, and venue properly lies in Haywood County, North Carolina.

**COUNTERCLAIMS**  
**General Factual Allegations**

11. That the prior paragraphs are incorporated herein by this reference as

though fully set forth below.

12. That, on or about September 5, 2001, Plaintiff Jones and Defendant entered into a document entitled "Lease Agreement" whereby Defendant renewed a lease of the Dairy Farm from Plaintiff Jones (hereinafter referred to as the "Lease Agreement"). This Lease Agreement is attached to the Complaint as a portion of Exhibit C, and Defendant adopts that exhibit as his own by this reference.

13. That, on or about September 5, 2001, Plaintiff Jones and Defendant entered into a second document which conveyed a fee simple future interest in the Dairy Farm from Plaintiff Jones to Defendant (hereinafter referred to as the "Future Interest Instrument"). This Future Interest Instrument is also attached to the Complaint as a portion of Exhibit C, and Defendant adopts that exhibit as his own by this reference.

14. That, on or about September 13, 2001, both the Lease Agreement and the Future Interest Instrument documents were recorded in the Haywood County Registry commencing at Book 502, Page 203.

15. That, upon information and belief, the Lease Agreement became frustrated due to alleged violations of EPA regulations (relating to the operation of the Dairy Farm as a dairy farm), and Defendant vacated the Dairy Farm.

16. That the Lease Agreement and the Future Interest Instrument are distinct and separate instruments by their own terms.

17. That, on or about August 30, 2007, Plaintiff Jones and Plaintiff Haywood County entered into a North Carolina Non-Warranty Deed which purportedly conveyed approximately 22 acres of the Dairy Farm to Plaintiff Haywood County (hereinafter referred to as the "22-Acre Portion" of the Dairy Farm). This North Carolina Non-Warranty Deed is attached to the Complaint as Exhibit B, and Defendant adopts that exhibit as his own by this reference. Any reference herein to the "Dairy Farm" includes this 22-Acre Portion.

18. That, on or about August 31, 2007, this North Carolina Non-Warranty Deed was recorded in the Haywood County Registry commencing at Book 715, Page 657.

19. That Defendant's interest in the Dairy Farm consists of a fee simple estate in the form of a future possessory interest created by Plaintiff Jones and conveyed to Defendant in the Future Interest Instrument.

20. That Defendant's interest in the Dairy Farm is an indefeasibly vested remainder inasmuch as it was conveyed to a born and ascertainable person (*i.e.*, Defendant) and this future interest is not subject to a condition precedent other than the natural expiration of the prior estate, to wit: the imminent death of Plaintiff Jones.

**COUNTERCLAIM I**  
**Declaratory Judgment**

21. That the prior paragraphs are incorporated herein by this reference as though fully set forth below.

22. That an actual controversy exists among the parties as to the nature and extent of any and all interests of the parties in the Dairy Farm, including the 22-Acre Portion thereof.

23. That, pursuant to N.C. Gen. Stat. §1-253 *et seq.*, the Court is empowered to declare the rights and interests of all parties in the Dairy Farm, including the 22-Acre Portion, and the parties are in need of certainty with respect to this real property issue.

**COUNTERCLAIM II**  
**Action to Establish Validity of Deed**

24. That the prior paragraphs are incorporated herein by this reference as though fully set forth below.

25. That the Future Interest Instrument is in fact a real property deed inasmuch as it identifies the parties, the subject real property, the interest to be conveyed, contains general warranty language, and runs with the land.

26. That the Future Interest Instrument satisfies the Statute of Frauds.

27. That the Future Interest Instrument was duly executed by Plaintiff Jones and properly acknowledged by Plaintiff Jones before an official authorized by law to take such acknowledgments.

28. That the Future Interest Instrument was delivered to Defendant, who accepted the same.

29. That Future Interest Instrument was properly recorded, and Plaintiff

Haywood County thereby had notice of what it was purchasing on August 30, 2007.

30. That the Future Interest Instrument conveyed to Defendant a fee simple estate in the form of a future possessory interest in the Dairy Farm, to wit: a indefeasibly vested remainder.

31. That the Future Interest Instrument created a life estate in the Dairy Farm for the benefit of Plaintiff Jones, which life estate is measured by the life span of Plaintiff Jones.

32. That Plaintiff Haywood County can only take what Plaintiff Jones can convey, and so Plaintiff Haywood County has a life estate in that portion of the Dairy Farm measured by the life span of Plaintiff Jones.

**COUNTERCLAIM III**  
**Action to Quiet Title**

33. That the prior paragraphs are incorporated herein by this reference as though fully set forth below.

34. That Plaintiff Haywood County's claim in the 22-Acre Portion of the Dairy Farm is not valid either in law or in fact in that Plaintiff Haywood County does not have title in fee simple as claimed in the Complaint or as stated in the August 30, 2007 North Carolina Non-Warranty Deed.

35. That Plaintiff Haywood County's claim to an estate or interest in the 22-Acre Portion of the Dairy Farm is adverse to Defendant, and it is a cloud upon Defendant's interest and title to the 22-Acre Portion of the Dairy Farm.

**COUNTERCLAIM IV**  
**Reformation of North Carolina Non-Warranty Deed**

36. That the prior paragraphs are incorporated herein by this reference as though fully set forth below.

37. That the August 30, 2007 North Carolina Non-Warranty Deed in fact and in law only conveys a life estate to Plaintiff Haywood County.

38. That Plaintiff Jones, by and through his guardian, Sam Underwood, knew or should have known of Defendant's interest in the Dairy Farm.

39. That Plaintiff Haywood County knew or should have known of Defendant's interest in the Dairy Farm.

40. That, upon information and belief, Plaintiffs entered into the August 30, 2007 North Carolina Non-Warranty Deed with the actual or constructive knowledge that said deed could only convey a life estate to Plaintiff Haywood County and yet proceeded to close the transaction by an instrument purporting to convey an interest in fee simple.

41. That, upon information and belief and by closing the transaction, Plaintiffs were mutually mistaken as to what interest could be conveyed or, in the alternative, one or both Plaintiffs knowingly misrepresented the state and marketability of the title of the Dairy Farm and proceeded to close the transaction with the intent to deceive one another and/or Defendant, and either Plaintiff and/or Defendant was actually deceived and relied to their detriment.

42. That this North Carolina Non-Warranty Deed should be reformed to show what it actually conveys (to wit: a life estate measured by the life span of Plaintiff Jones) and not what it purports to convey.

**COUNTERCLAIM V**  
**Constructive/Resulting Trust**

43. That the prior paragraphs are incorporated herein by this reference as though fully set forth below.

44. Plaintiff Haywood County gained some sort of interest in the 22-Acre Portion of the Dairy Farm by way of the August 30, 2007 Non-Warranty Deed.

45. Plaintiff Haywood County would be unjustly enriched if it was permitted to retain its purported interest in the 22-Acre Portion.

46. The conduct of Plaintiff Haywood County, Plaintiff Jones, and/or Sam Underwood has deprived Defendant of a beneficial interest in the 22-Acre Portion of the Dairy Farm to which Defendant is entitled.

**COUNTERCLAIM VI**  
**Breach of Contract**

47. That the prior paragraphs are incorporated herein by this reference as though fully set forth below.



48. That, in the alternative, the Future Interest Instrument is a contract to create a will or codicil, whereby Plaintiff Jones agreed to will and devise the Dairy Farm to Defendant upon his death for consideration.

49. That, by conveying the 22-Acre Portion of the Dairy Farm to Plaintiff Haywood County, Plaintiff Jones has substantially and materially breached the terms and conditions of the Future Interest Instrument.

50. That, as a result of this breach, Defendant has suffered damages in excess of \$10,000.00 in that the tax value of the Dairy Farm is in excess of \$700,000.00 and the 22-Acre Portion sold for more than \$1,100,000.00.

### DEMAND FOR A TRIAL BY JURY

51. Pursuant to N.C. Gen. Stat. §1-1A, Rule 38, Defendant hereby demands a trial to a jury for all triable issues of fact.

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WHEREFORE, Defendant respectfully prays the Court to:

1. Enter a declaratory judgment that the Future Interest Instrument is in fact a deed;
2. Enter an Order that this deed is valid and properly recorded, thereby giving notice to Plaintiff Haywood County;
3. Enter an Order that this deed conveys to Defendant an indefeasibly vested remainder in the Dairy Farm;
4. Enter an Order that the "sale" of the 22-Acre portion to Plaintiff Haywood County is void or, in the alternative, only conveys a life estate measured by the life span of Plaintiff Jones;
5. Enter an Order that , upon the death of Plaintiff Jones, Defendant takes all of the Dairy Farm in fee simple;
6. Enter an Order quieting the title to the 22-Acre Portion of the Dairy Farm in Defendant's favor;
7. Enter an Order reforming the August 30, 2007 Non-Warranty Deed to correctly state that a life estate was conveyed instead of a fee simple estate;

8. Enter an Order that imposes a constructive or resulting trust upon the Dairy Farm and/or the 22-Acre Portion thereof for the benefit of Defendant.

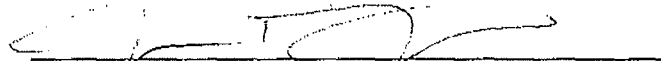
9. Enter an Order that, in the alternative, the Future Interest Instrument is a binding and legal contract between Plaintiff Jones and Defendant;

10. Enter an Order that, in the event it is a contract, Plaintiff Jones substantially and materially breached the same and thereby caused damage and injury to Defendant in an amount to be determined at trial, but, in any event, said amount is in excess of \$10,000.00;

11. Tax the costs of this action, including reasonable attorneys' fees, to the Plaintiffs, jointly and severally; and

12. Grant such other and further relief as the Court deems just and appropriate.

DATED this 19<sup>th</sup> day of March, 2008.



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JEFF D. JONES, 27914  
Attorney for Defendant  
232 North Main Street  
Waynesville, North Carolina 28786  
Tel: (828) 452-2220


RUSSELL L. MCLEAN, III, 7220  
Attorney for Defendant  
244 North Main Street  
Waynesville, North Carolina 28786  
Tel: (828) 452-2896

STATE OF NORTH CAROLINA  
COUNTY OF HAYWOOD

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
File No. 08 CVD 51

HAYWOOD COUNTY, NORTH )  
CAROLINA and WILLIAM LUCIUS )  
JONES, by his guardian, SAM )  
UNDERWOOD, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
GREGORY TODD FERGUSON, )  
 )  
Defendant. )

**MOTION TO TRANSFER  
TO SUPERIOR COURT DIVISION**

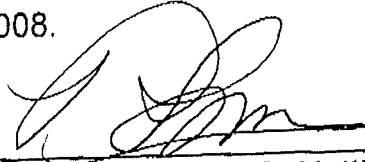
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HAYWOOD COUNTY C.S.C.  
BY 

COMES NOW Defendant, by and through counsel and in a pre-answer filing, and hereby respectfully moves the Court to transfer the above-captioned action from the District Court Division to the Superior Court Division and, as grounds therefore, states as follows:

1. Plaintiffs' Verified Complaint for Declaratory Judgment (hereinafter referred to as the "Complaint") is an action for a declaratory judgment affecting Defendant's interest in a 207 +/- acres parcel of land with a tax value of over \$700,000.00.
2. Moreover, upon information and belief, Plaintiff Jones conveyed or attempted to convey some sort of interest in a 22-acre portion of this real property to Plaintiff Haywood County for more than \$1,100,000.00 in August of 2007.
3. Pursuant to N.C. Gen. Stat. §7A-243, the District Court Division is improper as the value of the real property and, consequently, the amount in controversy, exceeds \$10,000.00. Accordingly, the proper division is in the Superior Court Division.
4. Pursuant to N.C. Gen. Stat. §1A-1, Rule 12(b)(3), Defendant may, at his option, file this Motion prior to filing or serving his Answer or other responsive pleadings.

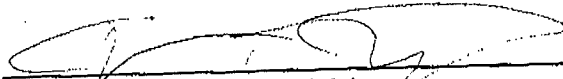
WHEREFORE, Defendant respectfully moves that this matter be forthwith transferred to the Superior Court Division of the 30<sup>th</sup> Judicial District in the General Court of Justice.

DATED this 19<sup>th</sup> day of March, 2008.



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RUSSELL L. MCLEAN, III, 7220  
Attorney for Defendant  
244 North Main Street  
Waynesville, North Carolina 28786  
Tel: (828) 452-2896



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JEFF D. JONES, 27914  
Attorney for Defendant  
232 North Main Street  
Waynesville, North Carolina 28786  
Tel: (828) 452-2220

FILED  
08 FEB 15 AM 9:50  
DISTRICT COURT DIVISION

STATE OF NORTH CAROLINA      IN THE GENERAL COURT OF JUSTICE  
COUNTY OF HAYWOOD      HAYWOOD COUNTY C.S.C. File No. 08 CVD 51

HAYWOOD COUNTY, NORTH )  
CAROLINA and WILLIAM LUCIUS )  
JONES, BY HIS GUARDIAN, SAM )  
UNDERWOOD )  
    Plaintiffs, )  
v. )  
GREGORY TODD FERGUSON, )  
    Defendant. )

**ORDER GRANTING  
DEFENDANT'S MOTION FOR  
ENLARGEMENT OF TIME**

---

UPON Defendant's Motion for Enlargement of Time to Answer Complaint, and it appearing to the Court that the time to file and serve a responsive pleading has not yet expired, and upon finding good cause has been shown,

IT IS THEREFORE ORDERED that Defendant shall have up to and including **March 19, 2008** to file an Answer and other responsive pleadings in this matter.

DATED this 15<sup>th</sup> day of February, 2008.

*WTT Martha M...*  
\_\_\_\_\_  
CLERK OF SUPERIOR COURT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing order was served upon counsel for the Plaintiffs by depositing the same enclosed in a postpaid and properly-addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service on this 15 day of February, 2008 and by faxing copy of same to counsel for the Plaintiffs.

*Bryan J. Ferguson*  
\_\_\_\_\_

FILED

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE  
08 FEB 15 AM 9:42 DISTRICT COURT DIVISION  
COUNTY OF HAYWOOD HAYWOOD COUNTY C.S.C. File No. 08 CVD 51

HAYWOOD COUNTY, NORTH )  
CAROLINA and WILLIAM LUCIUS )  
JONES, BY HIS GUARDIAN, SAM )  
UNDERWOOD )  
Plaintiffs, )  
v. )  
GREGORY TODD FERGUSON, )  
Defendant. )

**MOTION FOR  
ENLARGEMENT OF TIME  
TO ANSWER COMPLAINT**

COMES NOW Defendant, pursuant to N.C. Gen. Stat. §1A-1, Rule 6(b), and hereby moves the Court for an enlargement of time to file and serve his Answer and other responsive pleadings and, as grounds therefore, states as follows:

1. On January 14, 2008, Plaintiffs filed their Complaint and Summons in this matter.
2. On January 19, 2008, Defendant was served with the Complaint and Summons.
3. Pursuant to N.C. Gen. Stat. §1A-1, Rule 12(a)(1), Defendant's Answer or other responsive pleadings are due February 18, 2008 by 5:00 p.m.
4. The time to answer the Complaint or to file other responsive pleadings has not expired as of the date of filing of this Motion.
5. Defendant needs more time to hire counsel, prepare an answer, and investigate possible counterclaims.
6. Plaintiffs would not be prejudiced by an enlargement of time in which Defendant may file his Answer or other responsive pleadings.

WHEREFORE, Defendant respectfully requests that, pursuant to N.C. Gen. Stat. §1A-1, Rule 6(b), the Court:

1. Enlarge the time to file an Answer and other responsive pleadings for an additional thirty (30) days, up to and including **March 19, 2008**; and

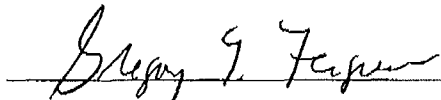
2. And such other and further relief that the Court deems just and appropriate.

DATED this 15 day of February, 2008.

  
\_\_\_\_\_  
GREGORY/TODD FERGUSON

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing notice, filing, or pleading was served upon counsel for the Plaintiffs by depositing the same enclosed in a postpaid and properly-addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service on this 15 day of February, 2008 and also by faxing a copy of same to counsel for the Plaintiffs.

  
\_\_\_\_\_

20080123

File No. **SCV 00051**

**STATE OF NORTH CAROLINA**

HAYWOOD County

2008 JAN 14 AM 11:16

In The General Court Of Justice  
 District  Superior Court Division

Name Of Plaintiff  
Haywood Co., NC & William Lucius Jones, by  
his Guardian, Sam Underwood.  
Address 1  
Glen Lake One, Suite 200, 4140 Parklake Ave.  
Raleigh, NC 27612  
~~Address 2~~  
154 North Main Street, Suite 7, Waynesville  
NC, 28786

HAYWOOD COUNTY, C.S.C.  
**CIVIL SUMMONS**  
 ALIAS AND PLURIES SUMMONS  
G.S. 1A-1, Rules 3, 4  
Date Original Summons Issued  
Date(s) Subsequent Summons(es) Issued

**VERSUS**

Name Of Defendant(s)  
GREGORY TODD FERGUSON

**To Each Of The Defendant(s) Named Below:**

Name And Address Of Defendant 1  
GREGORY TODD FERGUSON  
3131 RABBIT SKIN ROAD  
WAYNESVILLE, NC 28786  
or  
P.O. Box 1976  
Maggie Valley, NC 28751

Name And Address Of Defendant 2  
**RECEIVED**  
JAN 14 2008  
BY:

**A Civil Action Has Been Commenced Against You!**

You are notified to appear and answer the complaint of the plaintiff as follows:  
1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and  
2. File the original of the written answer with the Clerk of Superior Court of the county named above.  
If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (If None, Address Of Plaintiff)  
Leon M. Killian, III, Glen Lake One, Suite 200, 4140 Parklake Ave. Raleigh, NC 27612  
T. Michael Jordan, 154 N. Main Street, Suite One, Waynesville, NC 28786

Date Issued 01/14/08 Time 11:16  AM  PM  
Signature *Rebecca Taylor*  
 Deputy CSC  Assistant CSC  Clerk Of Superior Court

**ENDORSEMENT**

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement Time  AM  PM  
Signature  
 Deputy CSC  Assistant CSC  Clerk Of Superior Court

**NOTE TO PARTIES:** Many counties have **MANDATORY ARBITRATION** programs in which most cases where the amount in controversy is \$15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.



RETURN OF SERVICE

I certify that this Summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

Date Served 1-19-2008	Time Served 8:15 <input checked="" type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant Greg T. Ferguson
--------------------------	--	---------------------------------------

- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

Other manner of service (specify)

Defendant WAS NOT served for the following reason:

DEFENDANT 2

Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
-------------	--	-------------------

- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

Other manner of service (specify)

Defendant WAS NOT served for the following reason.

200 JAN 22 AM 11:45  
 HAYWARD COUNTY, CALIF.  
 2008

Service Fee Paid \$	Signature Of Deputy Sheriff Making Return <i>[Signature]</i>
Date Received 1-19-2008	Name Of Sheriff (Type Or Print) B. T. Akanda
Date Of Return 1-19-2008	County Of Sheriff Hayward

STATE OF NORTH CAROLINA  
COUNTY OF HAYWOOD

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
08 CVD **8CV 00051**

HAYWOOD COUNTY, NORTH  
CAROLINA and WILLIAM LUCIUS  
JONES, BY HIS GUARDIAN, SAM  
UNDERWOOD

Plaintiffs,

vs.

GREGORY TODD FERGUSON

Defendant.

**VERIFIED COMPLAINT FOR  
DECLARATORY JUDGMENT**

FILED  
JUL 14 2008  
CLERK OF COURT  
DISTRICT COURT  
HAYWOOD COUNTY  
N.C.

NOW COME the Plaintiffs Haywood County, North Carolina ("Haywood County"), and William Lucius Jones, incompetent, by the guardian of his estate, Sam Underwood ("Jones"), by and through their respective undersigned counsel, and for their Verified Complaint against Gregory Todd Ferguson ("Ferguson"), state as follows:

**PARTIES AND JURISDICTION**

1. Plaintiff Haywood County is a county under N.C. Gen. Stat. § 153A-10 and by virtue of N.C. Gen. Stat. § 153A-11 brings this action.
2. William Lucius Jones is an individual residing in Haywood County.
3. On or about May 16, 2003, Jones was adjudicated incompetent.
4. On or about June 24, 2003, Sam Underwood was duly appointed as the guardian of the estate of William Lucius Jones.
5. Sam Underwood brings this action solely in his capacity as guardian of the estate of William Lucius Jones and not in his individual capacity.
6. Upon information and belief, Defendant Ferguson is an individual residing in Haywood County.

7. All of the events and activities complained of herein occurred in Haywood County, North Carolina.

8. The real property which is the subject of this matter is located in Haywood County, North Carolina.

9. Jurisdiction and venue are proper in the District Court of Haywood County, North Carolina.

### FACTUAL ALLEGATIONS

10. At all times relevant to this matter, prior to August 30, 2007, Jones was the fee simple owner of a parcel of real property comprising approximately 200 acres, more or less, and located in Haywood County. This parcel of property is more particularly described as set forth in Exhibit A (hereinafter, the "Property")

11. On August 30, 2007, Jones sold approximately 22 acres of the Property to Haywood County in fee simple, pursuant to a judicial sale. See Non-Warranty Deed attached hereto as Exhibit B.

12. From August 30, 2007 to the present, Haywood County continues to own the approximately 22 acres of property it acquired from Jones in fee simple.

13. From August 30, 2007 to the present, Jones continues to own in fee simple the remaining portion of the Property not sold to Haywood County, consisting of approximately 180 acres of land.

14. Sam Underwood, as Guardian of the Estate of Jones, may have need in the future to sell additional portions of the Property in order to provide for Jones' care and maintenance.

15. On or about September 13, 2001, a document styled "Lease Agreement" was indexed and recorded at Book 502, Page 203 of the Haywood County Registry and appears in its entirety at

Book 502, Pages 203 through 211 (hereinafter, the "Lease Agreement"). A copy of the Lease Agreement is attached hereto as **Exhibit C**.

16. The Lease Agreement purports to have been entered into by and between Jones as Owner or Lessor and Ferguson as Tenant or Lessee, on or about September 5, 2001.

17. The rights and obligations of the parties to the Lease Agreement all relate to and affect the Property which is the subject of this action.

18. Book 502, Page 209 of the Lease Agreement purports to require that Jones convey the Property to Ferguson upon Jones' death, by means of a will.

19. However, Book 502, Page 205 of the Lease Agreement provides "11) DEFAULT OR BREACH. Each of the following events shall constitute a default or breach of this lease by Tenant: (A) If Tenant shall fail to pay Owner any rent or additional rent when the rent shall become due and shall not make the payment within fifteen (15) days after notice thereof by Owner to Tenant ... [or] (C) If Tenant shall vacate or abandon the leased premises."

20. In the event of a default under the Lease Agreement, it provides at Book 502, Page 205 that "Owner shall have the right to cancel and terminate this lease, as well as all of the right, title, and interest or [sic] Tenant hereunder, by giving the Tenant not less than fifteen (15) days' notice of the cancellation and termination...."

21. Ferguson failed to pay rent as required by the Lease Agreement.

22. After Ferguson failed to pay rent as required by the Lease Agreement, Jones brought an action to evict Ferguson from the Property. See Haywood County Case No. 02 CVM 198.

23. On April 12, 2002, Ferguson was ordered ejected from the Property for failure to pay rent and was ordered to pay nine months' back rent to Jones. See Judgment in Action for Summary Ejectment, attached hereto as **Exhibit D**.

26. As Ferguson breached his obligations under the Lease Agreement by failing to pay rent and by vacating the premises, Jones was within his contractual rights to terminate the lease and to cancel all of Ferguson's right, title and interest under the Lease Agreement.

27. To the extent Ferguson at any time held any right, title or interest in the Property, which is specifically denied, then Ferguson no longer holds and does not now hold any right, title or interest in the Property.

28. The ownership of Plaintiffs in their respective portions of the Property is free and unencumbered by any right, title, interest or claims of Ferguson.

**CLAIM FOR RELIEF**  
**(DECLARATORY JUDGMENT)**

29. The Plaintiffs restate the allegations set forth in paragraphs 1 through 28 as if fully set forth herein.

30. As Defendant does not have any present or future interest, contingent or otherwise, in the Property, Plaintiffs seek a declaratory judgment in order to clarify the public record regarding the status of their ownership of the Property.

31. Pursuant to N.C. Gen. Stat. § 1-253 and Rule 57 of the North Carolina Rules of Civil Procedure, the Plaintiffs request that this Court enter a declaratory judgment decreeing that:

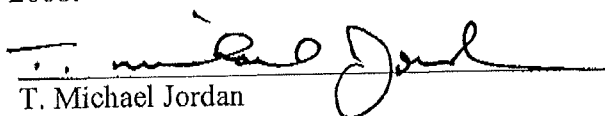
- A. Defendant has no present or future right, title or interest to the Property under the Lease Agreement or otherwise; and

B. The ownership of Plaintiffs in their respective portions of the Property is free and unencumbered by any right, title, interest or claims of Defendant.

WHEREAS, the Plaintiffs pray that this Court enter a declaratory judgment:

1. that Defendant has no present or future right, title or interest to the Property under the Lease Agreement or otherwise;
2. that the ownership of Plaintiffs in their respective portions of the Property is free and unencumbered by any right, title, interest or claims of Defendant; and
3. granting the Plaintiffs such other and further relief as the Court deems just and proper.

This the 4th day of January, 2008.



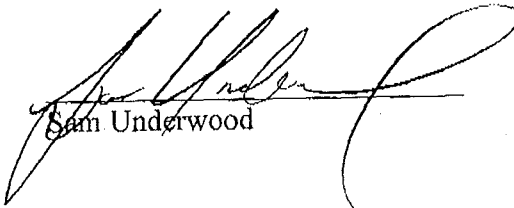
T. Michael Jordan  
N. C State Bar No.: 6697  
154 N. Main Street, Suite 1  
Professional Building  
Waynesville, NC 28786  
Attorney for the Plaintiff, William Lucius  
Jones, by his Guardian, Sam Underwood

By: 

Leon M. Killian, III  
N.C. State Bar No.: 2526  
Reed J. Hollander  
N.C. State Bar No.: 23405  
Nelson Mullins Riley & Scarborough, L.L.P.  
Glen Lake One  
Suite 200  
4140 Parklake Avenue  
Raleigh, NC 27612  
Attorneys for the Plaintiff Haywood County,  
North Carolina

VERIFICATION

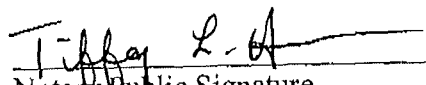
Sam Underwood, being first duly sworn, deposes and says that he has read the VERIFIED COMPLAINT filed in this action and is acquainted with all of the facts and circumstances stated therein; that the same are true of his own knowledge except as to those matters and things stated and alleged upon information and belief, and as to those matters and things he believes them to be true.

  
Sam Underwood

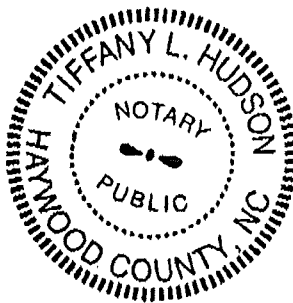
HAYWOOD COUNTY  
NORTH CAROLINA

Sworn to and subscribed before me this day by Sam Underwood.

Date: 1/4/08

  
Notary Public Signature

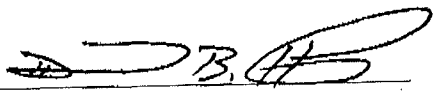
Tiffany L. Hudson  
Notary Public Printed Name



My Commission expires:  
Aug. 21, 2010

VERIFICATION

DAVID B. COTTEN being first duly sworn, deposes and says that [she/he] is the COUNTY MANAGER for Haywood County, North Carolina; that [s/he] has read the VERIFIED COMPLAINT filed in this action and is acquainted with all of the facts and circumstances stated therein; that the same are true of [his/her] own knowledge except as to those matters and things stated and alleged upon information and belief, and as to those matters and things [she/he] believes them to be true.

  
[NAME]

HAYWOOD COUNTY  
NORTH CAROLINA

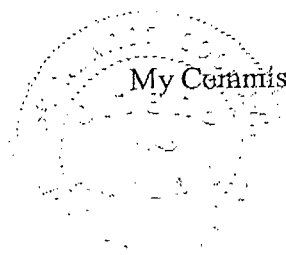
Sworn to and subscribed before me this day by Zondra Robinson  
[NAME]

Date: 11/8/08

Zondra Robinson  
Notary Public Signature

Zondra Robinson  
Notary Public Printed Name

My Commission expires: 11/24/09





Being all of the land and improvements situate thereon owned by Plaintiff, William Lucius Jones in Ivy Hill Township, Haywood County, North Carolina, Haywood County parcel identification number 8607-42-6868, including the real property described in the following instruments:

1. Warranty deed from C. A. Campbell and wife, Margaret F. Campbell to L. H. Bramlett and T. R. Bramlett, dated June 30, 1927, and recorded in Deed Book 75, page 184, Haywood County Registry.

2. Warranty deed from Mabel J. Gill (widow of Joe H. Gill, deceased) to L. H. Bramlett, dated February 13, 1945, and recorded in Deed Book 122, page 637, Haywood County Registry.

3. Last Will and Testament of L. H. Bramlett, dated April 26, 1945, found of record in Will Book 6, page 431, in the Office of the Clerk of Court of Haywood County.

EXHIBIT "A"

TRANSFER MADE ON RECORD

Date 8-31-07

By SD  
8607-42-9859



**2007666051**  
HAYWOOD CO, NC FEE \$23.00  
STATE OF NC REAL ESTATE EXTX  
\$2230.00

PRESENTED & RECORDED:  
08-31-2007 11:37:27 AM  
AMY R. MURRAY  
REGISTER OF DEEDS  
BY AMY MURRAY  
REGISTER OF DEEDS  
BK: RB 715  
PG: 657-660

**HAYWOOD COUNTY TAX CERTIFICATION**

There are no delinquent taxes due that are a lien against parcel number(s) 8607-42-9859  
David B. Francis, Haywood County Tax Collector  
Date: 8/31/07 By: [Signature]

Excise Tax \$2,230.00

Tax Lot No. 8607-42-9859 Parcel Identifier No. \_\_\_\_\_  
Verified by \_\_\_\_\_ County on the \_\_\_\_\_ day of \_\_\_\_\_, 20  
by \_\_\_\_\_

Mail after recording to Leon M. Killian, P.O. Box 30519, Raleigh, NC 27622-0519  
This instrument was prepared by William I. Miller  
Brief Description for the index 22.091 acres Jonathan Creek

**NORTH CAROLINA NON-WARRANTY DEED**

THIS DEED made August 30, 2007, by and between

**GRANTOR**

WILLIAM LUCIUS JONES, by and through  
SAM M. UNDERWOOD, the duly appointed and  
Acting Guardian of the Estate of WILLIAM  
LUCIUS JONES, an incompetent adult

**GRANTEE**

HAYWOOD COUNTY,  
a body politic (a subdivision of the State of North  
Carolina), whose address is:  
215 N. Main Street  
Waynesville, NC 28786

Enter in appropriate block for each party: name, address, and, if appropriate, character of entity, e.g., corporation or partnership.

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in Ivy Hill Township, Haywood County, North Carolina and more particularly described as follows:

See Exhibit A attached hereto and made a part hereof by reference incorporated herein as if fully set forth.

Exhibit B

This deed is made pursuant to an Order of Confirmation executed by the Clerk of Superior Court of Haywood County and executed by the Senior Resident Superior Court Judge for Judicial District 30-B in the matter of the Real Property of William Lucius Jones File No. 07-SP-135 where in SAM M. UNDERWOOD was authorized by the Clerk of Superior Court on May 1, 2007, to make the sale of the property described herein; that the sale was duly advertised for sale, that the sale was by public auction on June 2, 2007, that the final high bidder was Haywood County at the sum of \$1,114,921.50.

The property hereinabove described was acquired by Grantor by instrument recorded in Book \_\_\_\_\_ page \_\_\_\_\_.

A map showing the above described property is recorded in Book \_\_\_\_\_, page \_\_\_\_\_.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

The Grantor makes no warranty, express or implied, as to title to the property hereinabove described. IN WITNESS WHEREOF, the Grantor has caused this instrument to be duly executed and delivered.

\_\_\_\_\_  
(Entity Name)

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
WILLIAM LUCIUS JONES (SEAL)

\_\_\_\_\_  
By: Sam M. Underwood  
Guardian of the Estate of William  
Lucius Jones, Incompetent (SEAL)

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(SEAL)

State of North Carolina - County of HAYWOOD

I, the undersigned Notary Public of the County and State aforesaid, certify that SAM M. UNDERWOOD, Guradian of the Estate of William Lucius Jones, Incompetent, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purpose therein expressed. Witness my hand and Notarial stamp or seal this 20<sup>th</sup> day of AUGUST, 2007.

My Commission Expires: 08-02-2011  
\_\_\_\_\_  
Notary Public

William I. Millar  
Notary Public  
Haywood County, NC

State of North Carolina - County of \_\_\_\_\_

I, the undersigned Notary Public of the County and State aforesaid, certify that \_\_\_\_\_ personally came before me this day and acknowledged that he/she is the \_\_\_\_\_ of \_\_\_\_\_, a North Carolina or \_\_\_\_\_ corporation/limited liability company/general partnership/limited partnership (strike through the inapplicable), and that by authority duly given and as the act of such entity, he/she signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and Notarial stamp or seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My Commission Expires: \_\_\_\_\_  
\_\_\_\_\_  
Notary Public

Exhibit B

State of North Carolina - County of \_\_\_\_\_

I, the undersigned Notary Public of the County and State aforesaid, certify that

Witness my hand and Notarial stamp or seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My Commission Expires: \_\_\_\_\_

Notary Public

The foregoing \_\_\_\_\_ Certificate(s) of \_\_\_\_\_ is/are certified to be correct.

This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

Register of Deeds for \_\_\_\_\_ County  
By: \_\_\_\_\_ Deputy/Assistant - Register of Deeds

**HAYWOOD COUNTY  
NORTH CAROLINA****LEASE AGREEMENT**

**THIS LEASE** is made this the 5th day of September, 2001, between Gregory Todd Ferguson, herein referred to as "Tenant", and William Lucius Jones, herein referred to as "Owner" (the designations Owner and Tenant shall include the parties, their heirs, successors and assigns. As used herein, the singular shall include the plural and gender shall be interchangeable.)

**IN CONSIDERATION** of the mutual covenants contained herein, the parties agree as follows:

- 1) **SUBJECT AND PURPOSE.** Owner leases the buildings, dairy equipment, and approximately 207 acres of land located in Jonathan Township, Haywood County, North Carolina, that property acquired by Owner in Will Book 6, Page 431 of the Haywood County Registry, to Tenant for Tenant's use as an operating farm.
- 2) **TERM AND RENT.** Owner leases the above premises for a term of twelve (12) years, commencing June 15, 2001, and terminating on June 15, 2013 at 1:00 o'clock P.M. or sooner as provided herein, at the annual rental of Eleven Thousand dollars (\$11,000.00) payable in equal monthly installments of Nine Hundred Sixteen Dollars and Sixty Six Cents (\$916.66) in advance on the twentieth (20th) day of each month for that month's rental, during the term of this lease. All rental payments shall be made to owner at 106 Timothy Lane, Waynesville, North Carolina 28786.
- 3) **ADDITIONAL RENT.** All taxes, charges, costs and expenses that Tenant agrees to pay hereunder together with all interest and penalties that may accrue thereon and all other costs that Owner may suffer by reason of any failure by Tenant to comply with the terms of this lease shall be deemed to be additional rent, and, in the event of nonpayment, Owner shall have all the rights and remedies as herein provided for failure to pay rent.
- 4) **ALTERATIONS, ADDITIONS AND IMPROVEMENTS.** Subject to the limitations that no substantial portion of the building on the leased premises shall be demolished or removed by Tenant without the prior written consent of Owner, Tenant may at any time during the lease term, at his own expense, make any alterations to the leased premises and the building. Alterations shall be performed in a workmanlike manner and shall not weaken or impair the structural length, or lessen the value, of the building on the premises, or change the purposes for which the building, or any part thereof, may be used.  
  
All alterations on or in the leased premises at the commencement of the term, and that may be erected or installed during the term, shall become part of the leased premises and the sole property of Owner. All moveable trade fixtures installed by Tenant shall be and remain the property of Tenant.
- 5) **REPAIRS.** Tenant shall at all times during the lease and at his own cost and

expense, repair, replace, and maintain in a good, safe and substantial condition, all buildings and any improvements, additions, and alterations thereto, on the leased premises, and shall use all reasonable precaution to prevent waste, damage, or injury to the leased premises.

- 6) **TAXES.** Owner shall be responsible for all taxes on said property.
- 7) **UTILITIES.** All applications and connections for necessary utility services on the leased premises shall be made in the name of the Tenant only, and Tenant shall be responsible for sewer, water, gas, electricity, and telephone services.
- 8) **INSURANCE.** During the term of the lease and for any further time that Tenant shall hold the leased premises, Tenant shall obtain and maintain at his expense the following types and amount of insurance.
  - a) **FIRE INSURANCE.** Tenant shall keep all building, improvements, and equipment on the leased premises, including all alterations, additions, and improvements, insured against loss or damage by fire. The insurance shall be in an amount sufficient to prevent Owner and Tenant from becoming co-insurers under provisions of applicable policies of insurance, but in any event in an amount not less than 100% of the full insurable value of the leased premises, including the cost of excavation of foundations.
  - b) **PERSONAL INJURY AND PROPERTY DAMAGE INSURANCE.** Insurance against liability for bodily injury and property damage and machinery insurance, all to be in amounts and in forms of insurance policies as may from time to time be required by Owner, shall be provided by Tenant.
  - c) **OTHER INSURANCE.** Tenant shall provide and keep in force other insurance in amounts that may from time to time be required by Owner against other insurable hazards as are commonly insured against for the type of business activity that Tenant will conduct.
- 9) **UNLAWFUL OR DANGEROUS ACTIVITY.** Tenant shall neither use nor occupy the leased premises or any part thereof for any unlawful, disreputable, or ultrahazardous business purpose nor operate or conduct his business in a manner constituting a nuisance of any kind. Tenant shall immediately, on discovery of any unlawful, disreputable, or ultrahazardous use, take action to halt such activity.
- 10) **INDEMNITY.** Tenant shall indemnify Owner against all expenses, liabilities, and claims of every kind, including reasonable counsel fees, by or on behalf of any person or entity arising out of either (1) a failure by Tenant to perform any of the terms or conditions of this lease, (2) any injury or damage happening on or about the leased premises, (3) failure to comply with any law of any governmental authority, or (4) any mechanic's lien or security interest filed against the leased premises or equipment, materials, or alterations of buildings or improvements thereon.

11) **DEFAULT OR BREACH.** Each of the following events shall constitute a default or breach of this lease by Tenant:

- (A) If Tenant shall fail to pay Owner any rent or additional rent when the rent shall become due and shall not make the payment within fifteen (15) days after notice thereof by Owner to Tenant.
- (B) If Tenant shall fail to perform or comply with any of the conditions of this lease and if the nonperformance shall continue for a period of fifteen (15) days after notice thereof by Owner to Tenant or, if the performance cannot be reasonably had within the fifteen (15) day period, Tenant shall not in good faith have commenced performance with the fifteen (15) day period and shall not diligently proceed to completion of performance.
- (C) If Tenant shall vacate or abandon the leased premises.

12) **EFFECT OF DEFAULT.** In the event of any default hereunder, as set forth in Paragraph Eleven, the rights of Owner shall be as follows:

- (a) Owner shall have the right to cancel and terminate this lease, as well as all of the right, title, and interest or Tenant hereunder, by giving the Tenant not less than fifteen (15) days' notice of the cancellation and termination. On expiration of the time fixed in the notice, this lease and the right, title and interest of Tenant hereunder, shall terminate in the same manner and with the same force and effect, except as to Tenant's liability, as if the date fixed in the notice of cancellation and termination were the end of the term herein originally determined.
- (b) Owner may elect, but shall not be obligated, to make any payment required of Tenant herein or comply with any agreement, term, or condition required hereby to be performed by Tenant, and Owner shall have the right to enter the leased premises for the purpose of correcting or remedying any such default and to remain until the default has been corrected or remedied, by an expenditure for the correction by Owner shall not be deemed to waive or release the default of Tenant or the right of Owner to take any action as may be otherwise permissible hereunder in the case of any default.

13) **DESTRUCTION OF PREMISES.** In the event of a partial or total destruction of the leased premises during the term from any cause, Tenant shall forthwith repair the same. Any destruction of the leased premises during the term from any cause, Tenant shall forthwith repair the same. Any destruction shall neither null or void this lease.

14) **CONDEMNATION.** Rights and duties in the event of condemnation are as follows:

- a) If the whole or the leased premises shall be taken or condemned by any competent

authority for any public or quasi-public use or purpose, this lease shall cease and terminate as of the date on which title shall vest thereby in that authority, and the rent reserved hereunder shall be apportioned and paid up to that date.

- b) If only a portion of the leased premises shall be taken or condemned, this lease and the term hereof shall not cease or terminate.
- c) In the event of any taking or condemnation in whole or in part, the entire resulting award of consequential damages shall belong to Tenant. Owner assigns to Tenant all his right, title and interest in any and all such awards.
- d) In the event of a partial taking, Tenant, at Tenant's expense, shall promptly proceed to restore the remainder of the building on the leased premises to a self-contained architectural unit.

15) **ACCESS TO PREMISES; SIGNS POSTED BY OWNER.** Tenant shall permit Owner, or his agents, to enter the leased premises at all reasonable hours to inspect the premises or make repairs that Tenant may neglect or refuse to make in accordance with the provisions of this lease, and also to show the premises to prospective buyers.

16) **EASEMENTS, AGREEMENTS, OR ENCUMBRANCES.** The parties shall be bound by all existing easements, agreements, and encumbrances of record relating to the leased premises, and Owner shall not be liable to Tenant for any damages resulting from any action taken by a holder of an interest pursuant to the rights of that holder thereunder.

17) **QUIET ENJOYMENT.** Owner warrants that Tenant shall be granted peaceable and quiet enjoyment of the leased premises free from any eviction or interference by Owner if Tenant pays the rent and other charges provided herein, and otherwise fully and punctually performs the terms and conditions imposed on Tenant.

18) **LIABILITY OF OWNER.** Tenant shall be in exclusive control and possession of the leased premises, and Owner shall not be liable for any injury or damages to any property or to any person on or about the leased premises nor for any injury or damage to any property of Tenant. The provisions herein permitting Owner to enter and inspect the leased premises are made to insure that Tenant is in compliance with the terms and conditions hereof and makes repairs that Tenant has failed to make. Owner shall not be liable to Tenant for any entry on the premises for inspection purposes.

19) **REPRESENTATIONS BY OWNER.** At the commencement of the term, Tenant shall accept the buildings and improvements and any equipment in their existing condition and state of repair, and Tenant agrees that no representations, statements, or warranties, express or implied, have been made by or on behalf of Owner in respect thereto except as contained in the provisions of this lease, and Owner shall in no event be liable for any latent defects.

20) **WAIVERS.** The failure of Owner to insist on a strict performance of any of the



terms and conditions hereof shall be deemed a waiver of the rights or remedies that Owner may have regarding that specific instance only, and shall not be deemed a waiver of any subsequent breach or default in any terms and conditions.

21) NOTICE. All notices to be given with respect to this lease shall be in writing. Each notice shall be sent by certified mail, postage prepaid and return receipt requested, to the party to be notified as follows:

Owner: William Lucius Jones  
106 Timothy Lane  
Waynesville NC 28786

Tenant: Gregory Todd Ferguson  
Post Office Box 1976  
Maggie Valley, NC 28751

and also to be mailed to:

Gregory Todd Ferguson  
3131 Rabbit Skin Road  
Waynesville, NC 28785

Every notice shall be deemed to have been given at the time it shall be deposited in the United States mails in the manner prescribed herein. Nothing contained herein shall be construed to preclude personal service of any notice in the manner prescribed for personal service of a summons or other legal process.

22) ASSIGNMENT, MORTGAGE, OR SUBLEASE. Neither Tenant nor his successors or assigns shall assign, mortgage, pledge, or encumber this lease or sublet the leased premises in whole or in part, or permit the premises to be used or occupied by others, nor shall this lease be assigned or transferred by operation of law, without the prior consent in writing of Owner in each instance.

23) SURRENDER OF POSSESSION. Tenant shall, on the last day of the term, or on earlier termination and forfeiture of the lease, peaceably and quietly surrender and deliver the leased premises to Owner free of subtenancies, including all buildings, additions, and improvements constructed or placed thereon by Tenant, including trade fixtures, all in good condition and repair.

24) REMEDIES OF OWNER.

a) In the event of a breach or threatened breach by Tenant of any of the terms or conditions hereof, Owner shall have the right of injunction to restrain Tenant and the right to invoke any remedy allowed by law or in equity, as if the specific remedies of indemnity or reimbursement were not provided herein.

b) The rights and remedies given to Owner in this lease are distinct, separate and cumulative, and no one of them, whether or not exercised by Owner, shall be deemed to be in exclusion of any of the others herein, by law, or by equity provided.

25) TOTAL AGREEMENT, APPLICABLE TO SUCCESSORS. This lease contains the entire agreement between the parties and cannot be changed or terminated except by a written instrument subsequently execute by the parties hereto. This lease and the terms and conditions hereof apply to and are binding on the heirs, legal representatives, successors, and assigns of both parties.

IN WITNESS WHEREOF, the parties have set their hands and seals this the 5 of ~~June~~ Sept, 2001.

William Lucius Jones  
William Lucius Jones, Owner

Gregory Todd Ferguson  
Gregory Todd Ferguson, Tenant

Sworn to and subscribed before me this the 5<sup>th</sup> day of September, 2001.

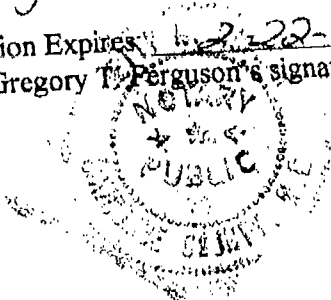
C. Colleen Williamson, Notary Public

My Commission Expires: 09-21-2003

Subscribed before me this the 10 day of Septmeber, 2001.

Betty A. Walker, Notary Public

My Commission Expires: 12-22-05  
(Notarizing Gregory T. Ferguson's signature)



BE IT KNOWN, for value received, the undersigned William Lucius Jones of 106 Timothy Lane, Waynesville, North Carolina 28786 hereby unconditionally and irrevocably assigns and transfers full ownership upon my (William Lucius Jones) death unto Gregory Todd Ferguson for the purpose of a farm to be handed down to his child (at the time of signing one living child Colton Wyatt Ferguson) and to their heirs to remain farm property, not to be sold or mortgaged, etc. of 3131 Rabbit Skin Road, Waynesville, North Carolina 28786, (alternate mailing address Post Office Box 1976, Maggie Valley, NC 28751) all rights, titles and interest in and to the following: The real property described in the Lease Agreement between William Lucius Jones and Gregory Todd Ferguson executed the 5 day of ~~August~~<sup>Sept.</sup>, 2001 which is presently leased by Gregory Todd Ferguson until June 15, 2013 at 1:00 o'clock P.M. This property is located on Jonathan Creek Road, Waynesville, N.C. 28786.

The undersigned fully warrants that he, William Lucius Jones is the sole owner and has full rights and authority to enter into this agreement and that the rights and benefits assigned hereunder are free and clear of any lien, encumbrance, adverse claim or interest by any third party.

This Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.

This Agreement was entered while I, William Lucius Jones, was in my sound mind and body.

This Agreement shall be enforced under the laws of the State of North Carolina.

Executed this the 5 day of ~~August~~<sup>Sept.</sup>, 2001.

Sworn to and subscribed before me this the 10 day of September, 2001

Notary Public Beth A. White  
My Commission Expires: 2-27-05

Lessee: Gregory Todd Ferguson

Owner: William Lucius Jones

X William Lucius Jones

Gregory J. Ferguson

Sworn to and subscribed before me this the 5th day of Sept., 2001.

Notary Public: C. Colleen Williams My commission expires: 09-21-2003

No.	<input type="checkbox"/> Additional Plaintiff(s)

No.	<input type="checkbox"/> Additional Defendant(s)	<input type="checkbox"/> Third Party Defendant(s)	Summons Submitted
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No

*Plaintiff(s) Against Whom Counterclaim Asserted*

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*Defendant(s) Against Whom Crossclaim Asserted*

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\*Do not use this form on SP's, M's, R's, Divorces, Estates or Passports (per JLR).

Haywood County Clerk of Superior Court  
CIVIL RECEIPTING

08 CVD 51  
File Number

Payor Name: Ferguson, Gregory, J.  
(Party to Case) last name first name m.i.

Payee Name: J. Michael Jordan  
(Pd by: attorney, interested party, etc.)

Abstract (Judgment) Number

Book Page

Flag for VCAP = YES

FILING FEES:

- CVSC Superior \$ \_\_\_\_\_
- CVDC District \$ 89.00
- Appeal to Superior (21120) \$ 15.00
- CVMC Small Claim \$ \_\_\_\_\_
- Appeal to District (21220 - \$11.00 & 22220 - \$4.00) \$ 15.00

SERVICE FEES:

EXECUTION  and/or  POSSESSION  
(when writ of possession is on a monetary judgment)  
 21430 \$ \_\_\_\_\_

SHERIFF (22515) \$ \_\_\_\_\_

MISCELLANEOUS FEES:

- MISC FILING FEE (21435) \$ \_\_\_\_\_
- COPY (21410) \$ \_\_\_\_\_
- CONFESS JUDGMENT (21400) \$ \_\_\_\_\_
- ARBITRATION APPEAL (24310) \$ 100.00
- CIVIL BONDS (26210) \$ \_\_\_\_\_
- OUT OF STATE ATTY (24625) \$ \* 200.00
- \* plus Out of State Bar Fee (24626) \$ \* 25.00
- TRANSCRIPTS (21440) \$ \_\_\_\_\_
- RENT BOND (26220) \$ \_\_\_\_\_
- \_\_\_\_\_ \$ \_\_\_\_\_
- OTHER ACCOUNT # \_\_\_\_\_ \$ \_\_\_\_\_

JUDGMENT PAYMENT:

(Abstracted) 26115 \$ \_\_\_\_\_  
\*  Full  Appointment Fee  
\*  Partial

\*Return file to below listed Civil Clerk.

BOND FORFEITURE (22800) \$ \_\_\_\_\_  
Service & Execution (26115) \$ 40.00

Reviewed By: Roy

Flag for VCAP = NO

FILING FEES:

- E/EO Estates/Estates Other \$ \_\_\_\_\_
- SP Special Proceedings \$ \_\_\_\_\_
- R Registrations \$ \_\_\_\_\_
- CDDC Divorce/Disp. Home \$ \_\_\_\_\_
- DIVB Divorce/Bed & Bd. \$ \_\_\_\_\_
- M Miscellaneous Judgments \$ \_\_\_\_\_
- Claim of Liens
- ESC
- IRS
- State Tax

SERVICE FEES:

EXECUTION  and/or  POSSESSION  
(when writ of possession is on a non-monetary judgment  
or old book and page is in existence)  
 21400 \$ \_\_\_\_\_

SHERIFF (22515) \$ \_\_\_\_\_

MISCELLANEOUS FEES:

- MISC FILING FEE (21400) \$ \_\_\_\_\_
- COPY (21410) \$ \_\_\_\_\_
- CONFESS JUDGMENT (21400) \$ \_\_\_\_\_
- PURGE PAYMENT (26410) \$ \_\_\_\_\_
- ALIMONY PAYMENT (26420) \$ \_\_\_\_\_
- CIVIL BONDS (26210) \$ \_\_\_\_\_
- CONDEMNATION (26130) \$ \_\_\_\_\_
- CIVIL TRUST RECEIPT (26310) \$ \_\_\_\_\_
- ARBITRATION FEES (24311) \$ \_\_\_\_\_
- \*Only if CVD
- MEDIATION (24315) \$ \_\_\_\_\_
- VISA, REGISTRATION, PASS-PORTS, ETC. (21400) \$ \_\_\_\_\_
- Misc. Other: \$ \_\_\_\_\_

JUDGMENT PAYMENT:

(Old Docketed) 26110 \$ \_\_\_\_\_  
\*  Full  
\*  Partial Book \_\_\_\_\_ Page \_\_\_\_\_

CLAIM OF LIEN (26600) \$ \_\_\_\_\_  
(not tax or ESC)  
 JUDGMENT ATTY FEE (24610) \$ \_\_\_\_\_

\*Return file to Bookkeeping.

Date: 01/14/08

Monroe A. Miller, Jr.  
2200 Camp Branch Road  
Waynesville, NC 28786

FEB 8 2019

HAYWOOD COUNTY CLERK OF COURT

L142798 02/08/19 11:37:26

PAYOR: MILLER, MONROE  
PAYEE: COPY OF FILE 09CV551  
CASE#: VCAP:N  
CITA#:

21410 COPY FEES	77.00
TOTAL PAID	77.00
CC TENDERED	77.00
CHANGE	.00

6147 ID C43BCB

\*\*\*CREDIT CARD FEES NOT INCLUDED.\*\*\*  
\*SEE CREDIT CARD RECEIPT FOR FEES.\*\*\*

