

AGENDA

**Personnel/Finance Committee Meeting
Tuesday, March 3, 2015, 9:00 A.M.
Boardroom, 2nd Floor, City Hall**

Committee Members: Chairman Raleigh York Jr., Ron Bratton, Scott Styers

Call to Order

Chairman Raleigh York Jr.

Approval of Minutes

February 3, 2015

- 1. Consideration of CDBG Grant Project Ordinance**
Ennis-Flynt Inc. Building Reuse
- 2. Consideration of Addendum to Hi-Toms Lease Agreement**
- 3. Discussion on Committees**
Revised Volunteer Application
Lake Thom-a-Lex Recreation Authority
Recreation Committee
- 4. Additions/Updates**
- 5. Adjournment**

A quorum of the council may be in attendance and may participate in the discussion, but not vote.

MINUTES

Personnel/Finance Committee Meeting
Tuesday, February 3, 2015, 10:35 A.M.
Boardroom, 2nd Floor, City Hall

PRESENT: Mayor Joe G. Bennett; Council Members: Chairman Raleigh York, Jr.; Ron Bratton; Neal Grimes; Joe Leonard; Joel Pierce; Pat Shelton; Scott Styers; City Manager Kelly Craver; Finance Director Tony Jarrett; Administrative Assistant Pam Galloway; and Sanitation Supervisor Daryl Poole.

Chairman York called the meeting to order. A motion was made by Councilman Styers to approve the minutes; Councilman Bratton seconded. The minutes of November 10, 2014 were approved as presented.

ADDITIONS TO THE AGENDA

Item 1-A – Consideration of Approval of ABC Board Travel and Transportation Expense Policy

Item 1-B – Consideration of 2015 – 2016 Budget Calendar

1. Consideration of General Fund Budget Amendment NCDENR Grant Proceeds

Kelly Craver said the city had been awarded a \$45,000 state grant that will expire if we do not accept it and move forward. Tony Jarrett and Daryl Poole found a way to put the package together financially to execute and make this purchase of a garbage truck happen.

Tony Jarrett explained the details in the backup material which helped him accomplish reaching the goal of \$160,700 needed to purchase the new truck.

Daryl Poole said the truck we are replacing is a 1998 model with 139,909 miles on it. He reported that the truck had mechanical and crank shaft issues among other problems. The sale of the old truck and scrap from another will bring \$10,000 while \$50,000 will come from contingency toward the purchase. In the seventh month of the budget, there will be a remaining balance in the contingency fund of \$93,472.

The request was moved to briefing.

1-A Consideration of Approval of ABC Board Travel and Transportation Expense Policy

Chairman York said this is something Council must approve annually. There is a state ABC Board meeting in addition to a meeting for the store managers and board members as well. Kelly added that there is no change to their travel and transportation expenses policy from last year. They are a sub-unit of the city therefore the state ABC Board requires them to have this policy approved by the board that created them.

This consideration was moved to briefing.

1-B Consideration of Approval of 2015 – 2016 Budget Calendar

Tony Jarrett presented the budget calendar to Council for their approval.

No formal action was necessary.

One small change in the time was made to the May 4th meeting, other than that the calendar looked good to all.

2. Closed Session – Personnel

No action was taken.

3. Additions/Updates

None

4. Adjournment

With no further business to come before committee, the meeting was adjourned.

CITY OF THOMASVILLE
Grant Project Ordinance

BE IT ORDAINED by the Thomasville City Council that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following Grant Project is hereby adopted:

Section 1. The project authorized is the CDBG Ennis-Flint Inc. Building Reuse Grant Project described in the work statement contained in the Grant Agreement between this unit and the North Carolina Department of Commerce and the budget contained herein.

Section 2. The officers of this unit are hereby directed to proceed with the Grant Project within the terms of the funding agreement, the rules and regulations of the North Carolina Department of Commerce and the budget contained herein.

Section 3. The following revenues are anticipated to be available to complete this project:

065-9710-322-0610	CDBG Building Reuse Grant	\$500,000.00
Total		\$500,000.00

Section 4. The following amounts are appropriated for this project:

065-9710-524-7300	Construction Rehabilitation	\$500,000.00
Total		\$500,000.00

Section 5. The Finance Officer is hereby directed to maintain within the Grant Project Fund sufficient specific detailed accounting records to provide the accounting to the grantor agency required by the grant agreement(s) and federal and state regulations.

Section 6. Requests for funds should be made in an orderly and timely manner as funds are obligated and expenses incurred.

Section 7. The Finance Officer is directed to report timely on the financial status of each project element in Section 4 and on the total revenues received or claimed.

Section 8. The Budget Officer is directed to include a detailed analysis of past and future costs and revenues on this Grant Project in every budget submission made to this Council.

Section 9. Copies of this Grant Project Ordinance shall be made available to the Budget Officer and the Finance Officer for direction in carrying out this project.

ADOPTED this 16th day of March, 2015

Mayor

ATTEST:

City Clerk



North Carolina
Department of Commerce

Pat McCrory, Governor
John E. Skvarla III, Secretary

Dr. Patricia Mitchell, CEcD
Assistant Secretary
Rural Economic Development Division

February 17, 2015

The Honorable Joe G. Bennett
City of Thomasville
PO Box 368
Thomasville, NC 27361-0368

Re: Contract Agreement for Grant Number 2015-021-3201-2538; Your Signature and Reply is Requested
Project Title: "Project Sandy/Ennis-Flint Building Reuse Project"

Dear Mayor Bennett:

Enclosed for your review and signature are two complete sets of contract documents required to finalize the grant award from the North Carolina Rural Infrastructure Authority ("Rural Authority"). Below is a description of the documents attached along with an explanation of the signatures required for the Grant Agreement and its Exhibits E, F and G.

Grant Agreement: This document outlines the terms and conditions of the grant ("Grant") from the Rural Authority to the City of Thomasville (the "Governmental Unit"). The highest elected official of the Governmental Unit shall execute the two originals of this document and return one of them to my attention at the address below:

Christopher Philip Cannady
Information Reporting Manager and Contracts Administration
Rural Economic Development Division
4346 Mail Service Center
Raleigh, NC 27699-4346

The Grant Agreement includes Exhibits A through G, which are listed and explained below. Please carefully review the specific conditions outlined in the Grant Agreement as well as its Exhibits.

- Exhibit A – Scope of Project. This document outlines the scope of the renovation/construction project ("Project") that is the subject of the Grant from the Rural Authority to the Governmental Authority and of the loan ("Loan") that the Governmental Unit will make to Ennis Paint, Inc. (the "Owner").
- Exhibit B – Payment Schedule. This document explains the process to request reimbursement of Loan funds and, in turn, Grant funds.
- Exhibit C – Reporting Schedule. This document addresses the required Project reports to Commerce.
- Exhibit D – Closeout Schedule/Job Requirements. The Project requires the maintenance of certain existing jobs and the creation and maintenance of certain new jobs by the "Business." Exhibit D describes the process for reporting the creation and maintenance of such jobs.

Thrive NC

Rural Economic Development Division • 301 North Wilmington Street • 4346 Mail Service Center • Raleigh, North Carolina 27699-4346
Tel: (919) 733-4151
www.nccommerce.com

- Exhibit E – Loan Agreement and Legally Binding Commitment (“LBC”). The LBC outlines the terms and conditions of the Loan. The Governmental Unit shall ensure that its highest elected government official and a duly authorized representative of the Property Owner execute two originals of the LBC in its exact form and shall return one such original to my attention with the one executed original of the Grant Agreement.
- Exhibit F – Promissory Note. This document defines the repayment terms of the LBC in the event of default. The Governmental Unit shall ensure with the Property Owner that every individual or entity that has any ownership interest in the real property which is the subject of the Grant executes two originals of the Promissory Note in its exact form and shall return one such original to my attention with the one executed original of the Grant Agreement
- Exhibit G – Waiver of Confidentiality (“Waiver”). For each Business, the Waiver contains a limited waiver of confidentiality regarding employment information reported to Commerce’s Division of Employment Security. The Governmental Unit shall ensure that an authorized representative of each known Business executes a Waiver and shall return the original of such Waiver to my attention with the one executed original of the Grant Agreement. The Governmental Unit shall also ensure that any additional Business which later becomes involved in the Project executes a Waiver upon its involvement, the original of which the Governmental Unit shall promptly forward to Commerce.

Enclosed is a financial request/reporting form to be used when requesting funds and reporting expenditures. This form may be found on our website: <http://www.nccommerce.com/rd/rural-grants-programs> within the Forms section or by contacting Joyce Spivey at joyce.spivey@nccommerce.com.

Please note the acceptance clause outlined in Paragraph 24 of the Grant Agreement, which states that the Grant may be withdrawn if the above documents are not returned to me within thirty (30) days of your receipt of these materials.

If you have any questions regarding the enclosed documents, please contact me at the number below.

Sincerely,



Christopher Philip Cannady
Information Reporting Manager & Contracts Administration

Enclosure

Thrive NC

Rural Economic Development Grant Agreement, Private Owner
BUILDING REUSE PROGRAM

2015-021-3201-2538

The North Carolina Department of Commerce ("Commerce"), an agency of the State of North Carolina ("State"), enters into this Rural Economic Development Grant Agreement ("Grant Agreement") with the **City of Thomasville** (the "Governmental Unit" and, together with Commerce, the "Parties").

WHEREAS, the North Carolina General Assembly ("General Assembly") has determined that it is the policy of the State to stimulate economic activity and to create new jobs for citizens of the State by providing matching grants or loans to specific local governmental units so as to productively reuse certain buildings and properties or expand rural health care facilities subject to the requirements of N.C.G.S. §§143B-472.127 and .128; and

WHEREAS, under N.C.G.S. §143B-472.128, the General Assembly created the North Carolina Rural Infrastructure Authority ("Rural Authority") to review applications for and, where appropriate, authorize such matching grants or loans, and, under N.C.G.S. §§143B-472.126 and .127, the General Assembly authorized Commerce to administer such grants or loans; and

WHEREAS, pursuant to N.C.G.S. §§143B-472.127 and .128, and based on the terms, conditions and representations in this Grant Agreement's Exhibits A (Scope of Project), Exhibit B (Payment Schedule), Exhibit C (Reporting Schedule), Exhibit D (Closeout Schedule/Job Requirements), Exhibit E (LBC), Exhibit F (Promissory Note) and Exhibit G (Waiver of Confidentiality ("Waiver")), the Rural Authority has approved a grant (the "Grant") to the Governmental Unit; and

WHEREAS, without limitation, the Rural Authority awarded the Grant: (1) based on the application filed by the Governmental Unit and any subsequent materials supporting the application that have been approved of by Commerce in writing, all of which are incorporated by reference herein; (2) based on the representation in the application that **Ennis Paint, Inc.** (the "Owner") owns certain real property located at:

505-515 County Line Road
Thomasville, NC 27360

in **Davidson County**, North Carolina (the "Property"); (3) based on Commerce's Grant requirements and guidelines, which are incorporated herein and which may be amended, modified or supplemented and applied accordingly to this Grant Agreement by Commerce in its sole discretion; and for (4) the creation and retention of certain jobs in the course of completing certain renovations/construction work at the Property (altogether, the "Project," as summarized in Exhibit A to this Grant Agreement).

NOW, THEREFORE, in consideration of the mutual promises and such other valuable consideration as set out herein, the Parties mutually agree to the following terms and conditions:

1. Scope of Program/Agreements to be Executed.
 - (a). As conditions of the Grant Agreement:
 - i. The highest elected official of the Governmental Unit shall execute two originals

- of this Grant Agreement in its exact form (unless Commerce approves of a change to its terms in writing) and shall return one of them to Commerce;
- ii. The Governmental Unit shall ensure that its highest elected official and a duly authorized representative of the Owner execute two originals of the Rural Economic Development Loan Agreement and Legally Binding Commitment (“LBC”) in its exact form (unless Commerce approves of a change to its terms in writing) and shall return one such original to Commerce with the one executed original of the Grant Agreement;
 - iii. The Governmental Unit shall ensure with the Owner that every individual or entity that has any ownership interest in the real property which is the subject of the Project executes two originals of the Promissory Note attached as Exhibit F in its exact form and shall return one such original to Commerce with the one executed originals of the Grant Agreement; and
 - iv. Exhibit A refers to the entity (or entities, as applicable) required to create and maintain certain full-time new jobs (“New Jobs”) to complete the Project as the “Company,” the “Employer” and the “Business” (together and hereinafter, the “Business”). The Governmental Unit shall ensure that an authorized representative of each Business executes a Waiver of Confidentiality (“Waiver”), attached as Exhibit G, and shall return the original of any such Waiver to Commerce with the executed originals of the Grant Agreement. The Governmental Unit shall also ensure that any additional Business which becomes involved in the Project after the Grant Agreement is finalized executes a Waiver upon its involvement, the original of which the Governmental Unit shall promptly forward to Commerce.
- (b). The Governmental Unit shall provide Commerce with any information obtained pursuant to the LBC and allow Commerce to execute any rights of the Governmental Unit under the LBC, including the Governmental Unit’s rights of access, review or monitoring and Commerce’s rights as a third-party beneficiary thereunder.
 - (c). The Governmental Unit shall exercise all of its rights and duties under the LBC in a prudent and timely manner to ensure the use of the Grant funds for the intended purposes and objectives and to preserve the rights of Commerce in this Grant Agreement and the LBC.
 - (d). The LBC specifies how many New Jobs the Business must create and maintain in the performance of the Project and, if the Business fails to do so, those Grant funds that the Owner must repay to the Governmental Unit for return to Commerce or else repay directly to Commerce, upon request and as directed. If such New Jobs are not created or maintained, then the Governmental Unit shall return to Commerce any Grant funds it has not already disbursed to the Owner, make a timely demand for repayment from the Owner and, if such repayment is not forthcoming, initiate and fully litigate legal proceedings against the Owner to recover such repayment.
 - (e). Without limitation, failure by the Governmental Unit to timely demand repayment from and, if necessary, initiate and fully litigate such legal proceedings against the Owner may affect the future consideration of the Governmental Unit for grant programs administered by Commerce. Further, and without limitation, if the Governmental Unit fails to timely initiate legal proceedings against the Owner for such repayment and Commerce elects to do so instead, the Governmental Unit is

responsible and agrees to reimburse Commerce for all litigation costs and reasonable attorneys' fees that Commerce incurs in pursuing repayment.

2. Changes in the Project or Other Conditions.

- (a). A "Project Change" is any material alteration, addition, deletion or expansion of the Project, including (without limitation) material changes to construction or rehabilitation, the terms or conditions of the loan under the LBC ("Loan"), the required number of New Jobs, the matching investment in the Project, any cessation of business by the Owner or any Business and any filing of bankruptcy by the Governmental Unit, the Owner or any Business. There shall be no Project Changes unless expressly approved of by Commerce in a separate, prior written agreement stating, if applicable, the costs and schedule for completing the Project Change.

Notwithstanding the foregoing and wherever referred to in this Grant Agreement, "cessation of business," "ceasing to do business" and "ceases to do business" shall not include (1) ceasing operations to maintain, service or upgrade real or personal property of the Owner, (2) seasonal shutdowns of operations as long as such cessation do not exceed a total of four (4) weeks in any calendar year (excluding time attributable to an event of force majeure as described below) and (3) under the circumstances of for the period of time described in Paragraph 17 below.

- (b). Additionally, the Governmental Unit shall immediately notify Commerce of any change in conditions or local law, or any other event, which may significantly affect its ability to oversee, administer or perform this Grant Agreement, the LBC or the Project. In its sole and unreviewable discretion, Commerce may deem such a change in conditions, local law or other event to constitute a Project Change.

3. Term of Grant Agreement. The effective period of this Grant Agreement shall commence on 1/8/2015 ("Effective Date") and shall terminate on 1/8/2017 unless terminated on an earlier date under the terms of this Grant Agreement (either one of which dates shall constitute the "Termination Date") or unless extended for an express term in writing by the Governmental Unit.

4. Funding. The Rural Authority grants to the Governmental Unit an amount not to exceed \$500,000.00 for expenditures directly relating to the Project. The Governmental Unit hereby represents and warrants that all Grant funds shall be utilized exclusively for the purpose of the Project and consistent with all applicable laws, rules, regulations and requirements, and that the Governmental Unit shall not make or approve of any improper expenditure of Grant funds (including Loan funds). Administrative expenses of the Governmental Unit are not eligible for Grant funding and any such use of Grant funds will violate this Grant Agreement.

5. Independent Status of the Governmental Unit.

- (a). The Governmental Unit is an entity independent from the Rural Authority and Commerce. The Grant Agreement, the LBC, the Project and any actions taken pursuant to them shall not be deemed to create a partnership or joint venture between

or among Commerce, the Rural Authority, the Governmental Unit or any third party (including, without limitation, the Owner or any Business). Nor shall the Grant Agreement, the LBC or the Project be construed to make the Governmental Unit (including its employees, agents, members or officials) or any third party (including, without limitation, the Owner or any Business) employees, agents, members or officials of Commerce or the Rural Authority. Neither the Governmental Unit nor any third party (including, without limitation, the Owner or any Business) shall have the ability to bind Commerce or the Rural Authority to any agreement for payment of goods or services or represent to any person that they have such ability.

- (b). The Governmental Unit shall be responsible for payment of all of its expenses, including rent, office expenses and all forms of compensation to employees. The Governmental Unit shall provide worker's compensation insurance to the extent required for its operations and shall accept full responsibility for payments of unemployment tax or compensation, social security, income taxes, and any other charges, taxes or payroll deductions required by law in connection with its operations, for itself and its employees who are performing work pursuant to this Grant Agreement. All expenses incurred by the Governmental Unit are its sole responsibility, and neither Commerce nor the Rural Authority shall be liable for the payment of any obligations incurred in the performance of the Project.

6. Method of Payment. Commerce shall pay the Grant funds to the Governmental Unit in accordance with the Payment Schedule attached hereto as Exhibit B after receipt of written requests for payment from the Governmental Unit certifying that the conditions for such payment under this Grant Agreement have been met and that the Governmental Unit is entitled to receive the amount so requested and any other documentation that may be required by Commerce.

7. Obligation of Funds. The Governmental Unit shall not obligate Grant funds prior to the Effective Date or subsequent to the Termination Date of this Grant Agreement. All obligations outstanding as of the Termination Date shall be liquidated within thirty days.

8. Project Records.

- (a). The Governmental Unit shall maintain full, accurate and verifiable financial records, supporting documents and all other pertinent data for the Project in such a manner as to clearly identify and document the expenditure of the State funds provided under this Grant Agreement separate from accounts for other awards, monetary contributions or other revenue sources for this Project.
- (b). The Governmental Unit shall retain all financial records, supporting documents and all other pertinent records related to the Project for a period of five (5) years from the Termination Date. In the event such records are audited, all Project records shall be retained beyond the five-year period until the audit is concluded and any and all audit findings have been resolved.

9. Monitoring, Reports and Auditing.

- (a). The Governmental Unit agrees to ensure compliance and provide its assistance with such monitoring and auditing requirements as the State may request, including following the Termination Date of this Grant Agreement. Additionally, the Governmental Unit shall regularly monitor all performance under Grant-supported activities, including activities performed by the Owner and any Business, to ensure that time schedules are being met, New Jobs are being created and maintained and other performance goals are being achieved.
- (b). The Governmental Unit shall furnish Commerce detailed written progress reports according to the time periods specified in Exhibit C or as otherwise requested by Commerce. Such reports should describe the progress made by the Governmental Unit, the Owner and any Business toward achieving the purpose(s) of the Project, including specifically the goals of New Job creation and maintenance. Such descriptions should include the successes and problems encountered during the reporting period. Failure to submit a required report by the scheduled submission date will result in the withholding of any forthcoming payment until Commerce is in receipt of the delinquent report and the report meets with Commerce's approval, in Commerce's sole discretion.
- (c). The Governmental Unit acknowledges and agrees that, with regard to the Grant funds, it will be subject to the audit and reporting requirements prescribed by N.C.G.S §159-34, Local Government Finance Act - Annual Independent Audit; rules and regulations. Such audit and reporting requirements may vary depending upon the amount and source of Grant funding received by the Governmental Unit and are subject to change from time to time. Upon completion, the Governmental Unit shall forward to Commerce one copy of any audited financial statements and accompanying reports generated covering the period between the Effective Date and Termination Date of this Grant Agreement.
- (d). Within thirty (30) days after the Termination Date, the Governmental Unit shall submit a final report to Commerce describing the activities and accomplishments of the Project. The final report shall include a review of performance and activities over the entire Project period. In the final report, the Governmental Unit should describe the Project, how it was implemented, to what degree the established Project objectives were met and the difficulties encountered, what the Project changed and its cost.
- (e). The Governmental Unit grants the State and any of its related agencies, commissions or departments (including, without limitation, Commerce, the North Carolina State Auditor and the North Carolina Office of State Budget and Management) and any of their authorized representatives, at all reasonable times and as often as necessary (including after the Termination Date), access to and the right to inspect, copy, monitor, and examine all of the books, papers, records and other documents relating to the Grant Agreement, the LBC or the Project. Likewise, the Governmental Unit shall ensure that the Owner and any Business provide the same access. In addition, the Governmental Unit agrees to comply at any time, including after the Termination Date, with any requests by the State (including, without limitation, the Rural Authority or Commerce) for other financial and organizational materials to permit the State to comply with its fiscal monitoring responsibilities or to evaluate the short- and long-range impact of its programs.

10. Termination; Availability of Funds.

- (a). If the Governmental Unit fails to fulfill in a timely and proper manner its obligations or violates any of the covenants or stipulations under this Agreement, if the Owner fails to fulfill in a timely and proper manner its obligations or violates any of its covenants or stipulations under the LBC or if any Business fails to fulfill those requirements applicable to it in the LBC, the Governmental Unit agrees that Commerce has the right to terminate this Grant Agreement and/or the LBC by giving, as applicable, the Governmental Unit or the Governmental Unit and the Owner written notice specifying the Termination Date, which Commerce may determine in its sole discretion. Upon such termination, Commerce shall have no responsibility to make additional Grant payments. Upon such termination, the Governmental Unit shall not expend any Grant funds (including Loan funds) without Commerce's express written authorization and shall return all unspent Grant funds to Commerce upon demand.
- (b). The obligations of the Rural Authority and/or Commerce to pay any amounts under this Grant Agreement are contingent upon the availability and continuation of funds for such purpose. If funds for the Grant (and therefore the Loan) become unavailable, the Governmental Unit agrees that Commerce has the right to terminate this Grant Agreement and/or the LBC by giving written notice specifying the Termination Date, which Commerce shall determine in its sole discretion. Upon such termination, the State shall have no responsibility to make additional Grant payments. Further, upon such termination, the Governmental Unit shall not expend any Grant funds (including Loan funds) without Commerce's express written authorization and shall return all unspent Grant funds to Commerce upon demand.

11. Liabilities and Loss. The Governmental Unit hereby agrees to release, indemnify and hold harmless the State (including, without limitation, the Rural Authority and Commerce), and their respective members, officers, directors, employees, agents and attorneys (together, the "Indemnified Parties"), from any claims of third parties (including, without limitation, the Owner and the Business) arising out of any act or omission of the Governmental Unit or any third party (including, without limitation, the Owner and the Business) in connection with the performance of this Grant Agreement, the LBC or the Project, and for all losses arising from their implementation. Without limiting the foregoing, the Governmental Unit hereby releases the Indemnified Parties from, and agrees that such Indemnified Parties are not liable for, and agrees to indemnify and hold harmless the Indemnified Parties against, any and all liability or loss, cost or expense, including, without limitation, reasonable attorneys' fees, fines, penalties and civil judgments, resulting from or arising out of or in connection with or pertaining to, any loss or damage to property or any injury to or death of any person occurring in connection with the Project, or resulting from any defect in the fixtures, machinery, equipment or other property used in connection with the Project or arising out of, pertaining to, or having any connection with, the Project or the financing thereof (whether arising out of acts, omissions, or negligence of the Governmental Unit or of any third party (including, without limitation, the Owner and the Business), or of any of their agents, contractors, servants, employees, licensees, lessees, or assignees), including

any claims and losses accruing to or resulting from any and all subcontractors, material men, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the Project.

12. Governmental Unit Representations and Warranties. The Governmental Unit hereby represents and warrants that:
- (a). The execution and delivery of this Grant Agreement have been duly authorized by all necessary Governmental Unit action and are not in contravention of law or in contravention of the provisions of any indenture agreement or undertaking to which the Governmental Unit is a party or by which it is bound.
 - (b). There is no action, suit proceeding, or investigation at law or in equity or before any court, public board or body pending, or to the knowledge of the Governmental Unit, threatened against or affecting it, the Owner or the Business, that could or might adversely affect the Project or any of the transactions contemplated by this Grant Agreement or the validity or enforceability of this Grant Agreement or the abilities of the Governmental Unit or the Owner to discharge their obligations under this Grant Agreement. If it is subsequently found that an action, suit, proceeding, or investigation did or could threaten or affect the development of the Project, the Governmental Unit shall be liable to Commerce for repayment of the entire amount of the Grant and this Grant Agreement may be terminated by Commerce effective upon notice.
 - (c). No consent or approval is necessary from any governmental authority as a condition to the execution and delivery of this Grant Agreement by the Governmental Unit or the performance of any of its obligations hereunder, or all such requisite governmental consents or approvals have been obtained. The Governmental Unit shall provide Commerce with evidence of the existence of any such necessary consents or approvals at the time of the execution of this Grant Agreement.
 - (d). The Governmental Unit is solvent.
 - (e). A cash match grant, loan or other funding ("Cash Match") equal to the amount of the Loan shall have been unconditionally committed to the Project. The Governmental Unit shall have procured and contributed at least five percent (5%) of this Cash Match, but no part of this 5% contribution can have derived, either directly or indirectly, from any other State or federal source. All Cash Match funds shall be utilized exclusively for the purpose of the Project, and there shall be no improper expenditures of Cash Match funds. All Cash Match funds shall be expended prior to or simultaneously with and at the same rate as the Owner's expenditure of Loan funds.
 - (f). Upon the Governmental Unit's reasonable inquiry of and receipt of supporting evidence from the Owner, both the Owner and any Business are duly authorized to do business under North Carolina law and are not delinquent on any federal, state or local taxes, licenses or fees.

13. Cessation/Termination, Bankruptcy, Dissolution or Insolvency.

- (a). Under the LBC, the Owner agrees at all times to preserve its legal existence, except

that it may merge or consolidate with or into, or sell all or substantially all of its assets to, any entity that expressly undertakes, assumes for itself and agrees in writing to be bound by all of the obligations and undertakings of the Owner contained in the LBC. If the Owner so merges, consolidates or sells its assets without such an undertaking being provided, it agrees in the LBC to repay to the Governmental Unit or Commerce, upon request and as directed, all unspent Loan funds. Further, a merger, consolidation or sale without such an undertaking shall constitute a material default under the LBC, and the Governmental Unit or Commerce may terminate the LBC upon written notice to the Owner and hold the Owner liable for any other repayment provided for under the LBC.

- (b). Other than as provided for in Paragraph 13(a) above, if the Owner or any Business ceases to do business or becomes the subject of any bankruptcy, dissolution or insolvency proceeding prior to the Termination Date, it shall be the sole responsibility of the Governmental Unit to (i) immediately notify Commerce and (ii) pursue any claim for Grant funds owed the State by the Owner or Business, including in any legal proceeding, to obtain the maximum payment allowed by law. To the extent the Governmental Unit fails to pursue repayment of the Grant funds in such a proceeding and obtain the maximum payment allowed by law, and without limitation, the Governmental Unit shall be liable to Commerce for all amounts that should have been awarded to the Unit in the proceeding if it had taken the necessary action (notwithstanding whether such amounts would have actually been paid by the Owner or Business). Alternatively, without limitation, if the Governmental Unit fails to pursue repayment of the Grant funds in such a proceeding and Commerce elects to do so instead, the Governmental Unit is responsible and agrees to reimburse Commerce for all legal costs and reasonable attorneys' fees that Commerce incurs in pursuing repayment.
- (c). If the Governmental Unit fails to provide Commerce notice of the Owner or any Business ceasing to do business or becoming the subject of any bankruptcy, dissolution or insolvency proceeding prior to the Termination Date, it shall constitute a material default under this Grant Agreement. If there is such a cessation or such a proceeding, Commerce may terminate the Grant Agreement upon written notice to the Governmental Unit. If there is such a cessation or such a proceeding, the Governmental Unit agrees that Commerce has the right to terminate this Grant Agreement and/or the LBC by giving, as applicable, the Governmental Unit or the Governmental Unit and the Owner written notice specifying the Termination Date, which Commerce may determine in its sole discretion. Upon such termination, the Governmental Unit, the Owner and any Business shall not expend any Grant or Loan funds without Commerce's express written authorization and shall return all unspent Grant or Loan funds to Commerce upon demand and if permissible under applicable bankruptcy, dissolution or insolvency law.

14. Additional Repayment Requirements and Remedies.

- (a). The repayment requirements and remedies addressed in this Paragraph 14 are in addition to those repayment requirements and other remedies set forth elsewhere in this Grant Agreement, including the requirements to repay unspent Grant funds. No

remedy conferred or reserved by or to the State is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy provided for in this Grant Agreement, or now or hereinafter existing at law, in equity, or by statute, and any such right or power may be exercised from time to time and as often as may be deemed expedient.

- (b). If there is a breach of any of the requirements, covenants or agreements in this Grant Agreement or the LBC, or if there are any representations or warranties which are untrue as to a material fact in this Grant Agreement, the LBC or in relation to the LBC or the Project (including the performance thereof), the Governmental Unit agrees that Commerce has the sole discretion to require repayment from the Governmental Unit of an amount of Grant funds to be determined in Commerce's sole discretion but not to exceed the amount of Grant funds the Governmental Unit has already received under this Grant Agreement. Such requirements, covenants or agreements include but are not limited to Paragraphs 1, 2(a), 4, 10(a), 12 and 13 of this Grant Agreement and include but are not limited to the creation and retention of the New Jobs and the retention of the Baseline Number of jobs under the LBC.
15. No Waiver by the State. Failure of the State (including, without limitation, the Rural Authority and Commerce) at any time to require performance of any term or provision of this Grant Agreement or the LBC shall in no manner affect the rights of the State at a later date to enforce the same or to enforce any future compliance with or performance of any of the terms or provisions hereof. No waiver of the State of any condition or the breach of any term, provision or representation contained in this Grant Agreement or the LBC, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of that or any other term, provision or representation.
16. Waiver of Objections to Timeliness of Legal Action. The Governmental Unit knowingly waives any objections it has or may have to timeliness of any legal action (including any administrative petition or civil action) by the State (including, without limitation, the Rural Authority or Commerce) to enforce its rights under this Grant Agreement. This waiver includes any objections the Governmental Unit may possess based on the statutes of limitations or repose and the doctrines of estoppel or laches.
17. Force Majeure. If (a) during the term of this Grant the real or personal property located on or constituting the Property suffers damage or destruction caused by acts of God, fires, floods, storms, insurrection, riots, acts of the public enemy, national catastrophe, or similar unexpected events, (b) such damage or destruction was not principally caused by the negligence, willful misconduct or violation of applicable law by the Owner, (c) the Owner uses reasonable efforts to repair, or to work around, such damage or destruction reasonably promptly, and (d) as a direct result of such damage or destruction the Owner cannot satisfy the requirements and obligations of Sections 3 of the LBC as and when the LBC requires, then the Owner will be entitled to an extension of time not to exceed sixty (60) days to satisfy the requirements and obligations of Section 3 of the LBC; provided that the Governmental Unit in its sole discretion with respect to the obligations it is owed by the

Owner, may elect to extend that sixty day period to give the Owner additional time to satisfy those requirements.

18. Special Provisions and Conditions.

- (a). Non-discrimination. The Governmental Unit agrees not to discriminate by reason of age, race, religion, color, sex, national origin or disability related to the activities of this Grant Agreement.
- (b). Conflict of Interest. The Governmental Unit shall forward to Commerce along with the executed copies of this Grant Agreement a copy of its policy and any ordinance or resolution it has adopted addressing conflicts of interest that may arise involving the members of the Governmental Unit's governing body and/or any of its employees or officers involved in the Grant, the LBC or the Project. Such policy, ordinance or resolution shall address situations in which any of these individuals may directly or indirectly benefit, other than through receipt of their normal compensation in their capacities as the Governmental Unit's employees, officers or members of its governing body, from the Grant, the LBC or Project, and shall include actions to be taken by the Unit or the individual, or both, to avoid conflicts of interest and the appearance of impropriety. Additionally, the Governmental Unit certifies that, as of the date it executes this Grant Agreement, no such individuals have such a conflict of interest or will directly or indirectly benefit, except in the capacities described above, from the Grant, LBC or Project. Throughout the duration of this Grant Agreement, the LBC and the Project, the Governmental Unit has the duty to promptly inform Commerce of any such conflict of interest or direct or indirect benefit of which it becomes aware.
- (c). Compliance with Laws. The Governmental Unit shall at all times observe and comply with all laws, regulations, codes, rules, ordinances and other requirements (together, "Laws") of the state, federal and local governments which may in any manner affect the performance of the Grant Agreement, the LBC or the Project.
- (d). Non-Assignability. The Governmental Unit shall not assign or transfer any interest in the Agreement without the prior written consent of Commerce; provided, however, that claims for money due to Governmental Unit from Commerce under this Agreement may be assigned to any commercial bank or other financial institution without such approval.
- (e). Personnel. The Governmental Unit represents that it has, or will secure at its own expense, all personnel required to monitor, carry out and perform the scope of services of this Agreement. Such employees shall not be employees of Commerce. Such personnel shall be fully qualified and shall be authorized under state and local law to perform such services.

19. Notice. All notices required or permitted to be delivered hereunder and all communications in respect hereof shall be in writing and shall be deemed given when personally delivered or when deposited in the United States mails, certified, return receipt requested, first class, postage prepaid and addressed as follows:

Rural Economic Development Grant Agreement, Private Owner
BUILDING REUSE PROGRAM

2015-021-3201-2538

If to the Rural Authority or Commerce: Attn: **Hazel Edmond**
North Carolina Department of Commerce
Rural Economic Development Division
301 North Wilmington Street
4346 Mail Service Center
Raleigh, North Carolina 27699-4346

If to the Governmental Unit: Attn: **The Honorable Joe G. Bennett**
City of Thomasville
PO Box 368
Thomasville, NC 27361-0368

or addressed to such other address or to the attention of such other individual as Commerce or the Governmental Unit shall have specified in a notice delivered pursuant to this subsection.

20. Entire Agreement. This Grant Agreement supersedes all prior agreements between or among the Rural Authority and/or Commerce and the Governmental Unit with regard to the Project and expresses their entire understanding with respect to the transactions contemplated herein, and shall not be amended, modified or altered except pursuant to a writing signed by both Commerce and the Governmental Unit.
21. Execution. This Grant Agreement may be executed in one or more counterparts, each of which, when executed, shall be deemed an original, and such counterparts, together, shall constitute one and the same Grant Agreement which shall be sufficiently evidenced by one of such original counterparts.
22. Construction. This Grant Agreement shall be construed and governed by the laws of the State of North Carolina.
23. Severability. Each provision of this Grant Agreement is intended to be severable and, if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect or impair any other provision of this Grant Agreement, but this Grant Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

Rural Economic Development Grant Agreement, Private Owner
BUILDING REUSE PROGRAM

2015-021-3201-2538

24. Acceptance. If the Governmental Unit agrees to the Grant conditions as stated, please return the executed documents specified in Paragraph 1(a). This Grant may be withdrawn if Commerce has not received such documents within thirty (30) days from the date of the cover letter from Commerce to the Governmental accompanying this Grant Agreement and its Exhibits.

IN WITNESSETH WHEREOF, the parties hereto have executed this Grant Agreement as of the date first above written.

City of Thomasville

Signature: Joe G. Bennett [SEAL]

Printed Name: Joe G. Bennett

Title: Mayor - City of Thomasville

Date: 2-20-15

North Carolina Department of Commerce

Signature: Patricia Mitchell [SEAL]

Printed Name: Dr. Patricia Mitchell, CEcD

Title: Assistant Secretary, Rural Development Division

Date: 2-16-15

**EXHIBIT A
SCOPE OF PROJECT**

Project # 2015-021-3201-2538

City of Thomasville
Project Sandy/Ennis-Flint Building Reuse Project

**Rural Economic Development Division
Building Reuse Program
Vacant Building Category Grant**

The City of Thomasville will carry out the terms of this contract as follows:

I. General Project Description

County Tier	2	Total Jobs Proposed in NC:	50
Project Business	Ennis-Flint	Total Proposed Jobs for the Grant:	40
Requested Amount	\$500,000	Baseline Employment:	185
Recommended Amount	\$500,000	Average Annual Wage (Proposed Jobs)	\$32,136
Leverage Amount	\$741,382	% of employer paid health premiums	50%
Total Project cost	\$1,241,382	Total Investment	\$1,241,382

Summary: The City of Thomasville, located in Davidson County, requests assistance to support the reuse of a total of 275,000 sq. ft. located at 505-515 County Line Road. There are multiple buildings that were constructed during the period of 1973-1984 and have been vacant for three years. Ennis-Flint will locate in the buildings to expand their manufacturing operation. The company produces innovative products that include traffic safety markings for road and highway striping, heavy-duty intersections, and custom horizontal surface signage. The proposed project will assist with general renovations and upgrades that include roof repair, natural gas heating, and lighting. The project company has also committed to new job creation for a Community Development Block Grant for Economic Development (CDBG-ED) for a facility in the City of Trinity.

Note: The company's baseline employment level will be set at the greater of 185 or the highest number on the Q3 2014 NCUI101 form. The company previously committed 14 new, full-time jobs plus the 171 baseline employment with the CDBG-ED Program.

Objective:

Grantees and their partners must engage in the activities necessary to develop the project building to accommodate the business needs. All work should be completed according to the eligible costs provided in the application and contractor's cost estimates submitted. All activities must meet or exceed all applicable state and local building code requirements.

II. Project Financing

Financing Source(s)	Amount
Ennis Paint Inc.	\$ 716,382.00
City of Thomasville	25,000.00
NC Department of Commerce	500,000.00
Total Project Financing	\$ 1,241,382.00

EXHIBIT B PAYMENT SCHEDULE

The N.C. Department of Commerce shall make payable to City of Thomasville a sum in the amount of \$500,000.00 as outlined below.

Eligible Expenditures:

Vacant Building Category: within the existing building footprint

Rural Health Care Category: within the existing building, additions and/or new construction

Eligible costs under all funding categories include, but are not limited to: materials and labor to install HVAC, electrical, plumbing, fire alarm/suppression systems, roofing, flooring, carpentry, drywall, paint, etc. This is not an exhaustive list; grantees should contact the Rural Development Division for questions about whether a specific expense is eligible under the program.

The following costs are specifically prohibited under the program and may not be submitted for reimbursement or the matching funds requirement: building purchase, architectural costs, engineering costs, permit fees, surveys, legal fees, machinery & equipment, telephone hardware and software, computer hardware and software, furnishings, paving, fencing, kitchen equipment, refrigeration equipment, etc. This is not an exhaustive list; grantees should contact the Rural Development Division for questions about whether a specific expense is eligible under the program.

Any company in which any project partner has an ownership or management interest in may act as a contractor for the renovation project only if the company holds a valid NC General Contractors license. The relationship must have been disclosed to the Rural Development Division and a copy of the company's license must have been included in the application. Licensed contracting companies owned or operated by any project partner that are used in the renovation project will be required to submit original invoices from the provider for all labor, materials, services and subcontracted work plus proof that those invoices have been paid in full.

Reimbursement Requirements:

The N.C. Department of Commerce will reimburse 50% of eligible expenditures up to the total grant amount upon receipt of the following:

1. A completed financial request form,
2. Proof that the local government has paid its 5% match (first payment request),
3. Copies of eligible project invoices that support the reimbursement request,
4. Evidence that the invoices submitted for reimbursement have been paid-in-full. Evidence of payment includes copies of checks that have cleared the bank, proof of wire transfer or ACH payment, and/or credit card receipts. Invoices paid with cash and those not paid in full will not be reimbursed, and
5. Progress reports must be up to date. See "Exhibit C" of the grant agreement for a reporting schedule specific to your project. Reimbursements will not be made if progress reports are not submitted according to the reporting schedule.

All payment requests must be received by the N.C. Department of Commerce within 30 days of the end of the contract period. Payments are subject to the availability of funds. Payment Request forms can be found under the Grant Applications and Reporting Forms link on our website at www.nccommerce.com.

**EXHIBIT C
REPORTING SCHEDULE**

In accordance with the contractual agreement between City of Thomasville and the N.C. Department of Commerce, progress, final, and audit reports should be submitted according to the following guidelines:

Progress and Final Reports:

Progress reports should be submitted to the Rural Development Division. Refer to the reporting schedule below.

Submit a Final Report to the Rural Development Division when all aspects of the project are complete, including job creation and the 6-month verification period.

Due Date:	Report Due:	Reporting Period:
7/15/15	Progress Report	1/8/15 to 6/30/15
1/15/16	Progress Report	7/1/15 to 12/31/15
7/15/16	Progress Report	1/1/16 to 6/30/16
2/8/17	Final Report	7/1/16 to 1/8/17

Progress/Final Reporting forms can be found under the Grant Applications and Reporting Forms link the N.C. Department of Commerce website at www.nccommerce.com.

Audit Reports:

Due Date:	Report Due:	Reporting Period:
03/31/2016	Audit Report	FYE 6/30/2015
03/31/2017	Audit Report	FYE 6/30/2016
03/31/2018	Audit Report	FYE 6/30/2017

Failure to submit progress and audit reports as required:

1. Will result in non-payment of pay requests,
2. Can result in the immediate termination of the grant,
3. Can result in the demand for immediate repayment of any funds paid by the N.C. Department of Commerce, and
4. Will negatively impact a grantee's ability to get building reuse grants in the future.

EXHIBIT D JOB REPORTING AND CLOSE OUT REQUIREMENTS

Building Reuse and Rural Health Care loans are eligible for forgiveness once the closeout documentation has been submitted and approved by the Rural Grants/Programs Section. It is required that the jobs created must be full-time (at least 35 hours per week), pay at least minimum wage, and the number of created jobs must be above the baseline employment level reported in the application. The baseline employment and new jobs created must be maintained concurrently during the same six-month period.

Job Verification

Grantees should submit the following as evidence of job creation and maintenance:

1. **Job Certification Form**—the grantee and the participating business is required to complete this form that attests to the creation of the number of jobs full-time jobs committed to receive the grant. The form must be signed by the authorized representatives of the participating business and the local government grantee.
2. **NCUI 101 Forms**—the company should submit copies of each company's *Employer's Quarterly Tax and Wage Report* (NCUI 101 form) that have been submitted to the NC Employment Security Commission as evidence of the creation of the required number of full-time jobs. The forms must include the appropriate number of quarters to show that the company maintained the required employment level for six-consecutive months. The employment level reported must meet or exceed the baseline number of employees reported at the time of the application plus the number of new, full-time jobs committed for the grant. The jobs created and the baseline must be maintained concurrently during the same six-month period. If the NCUI 101 forms include employees from other locations in North Carolina, the names of the employees working in the project building should be highlighted. If the NCUI 101 forms include both full and part-time employees an "f" should be written next to the name of each full-time employee and a "p" should be written next to the name of each part-time employee. To be considered full-time, the employee must work at least 35 hours per week and be paid at least minimum wage. Part-time, Full-Time Equivalents (FTE) positions, or contract and consulting jobs will not be considered to meet the terms of the grant. All employee social security numbers must be redacted from the NCUI 101 forms; however, wage data may not be redacted.
3. **Final Report**—grantees must submit the Final Report Form that describes the activities and outcomes of the project.
4. **Photos**—grantees must submit digital photos on CD that show interior and exterior views of the completed renovation project.

Building Reuse Loan Forgiveness and Closeout Requirements

Once all progress reports, the final report, job certification form, NCUI 101 forms, and photos are received and approved by the Rural Grants/Programs Section, the grantee will be notified that the terms of the loan have been met.

All required forms can be found on the Rural Grants/Programs website at www.nccommerce.com/rd

_____ (the "Governmental Unit") enters into this Loan Agreement and Legally Binding Commitment (the "LBC," including the "Loan," defined below with _____ (the "Owner" and, together with the Governmental Unit, the "Parties").

WHEREAS, pursuant to N.C.G.S. §§143B-472.127 and .128, the North Carolina Rural Infrastructure Authority (the "Rural Authority") of the State of North Carolina ("State") has awarded a grant (the "Grant") to the Governmental Unit, and the North Carolina Department of Commerce ("Commerce"), an agency of the State, will administer the Grant; and

WHEREAS, the Grant is memorialized in an agreement (the "Grant Agreement") between Commerce and the Governmental Unit, and the Grant Agreement includes Exhibit A (Scope of Project), Exhibit B (Payment Schedule), Exhibit C (Reporting Schedule), Exhibit D (Closeout Schedule/Job Requirements), Exhibit E (this LBC, which incorporates by reference the Grant Agreement and its other Exhibits), Exhibit F (Promissory Note) and Exhibit G (Waiver of Confidentiality ("Waiver")); and

WHEREAS, without limitation, the Rural Authority awarded the Grant: (1) based on the application filed by the Governmental Unit and any subsequent materials supporting the application that have been approved of by Commerce in writing, all of which are incorporated into the Grant Agreement by reference; (2) based on the representation in the application that the Owner owns certain real property located at:

in _____ County, North Carolina (the "Property"); (3) based on Commerce's Grant requirements and guidelines, which are incorporated herein and which may be amended, modified or supplemented and applied accordingly to the Grant Agreement and this LBC by Commerce in its sole discretion; and for (4) the creation and retention of certain jobs in the course of completing certain renovations/construction work at the Property (altogether, the "Project," as summarized in Exhibit A to this Grant Agreement); and

WHEREAS, the Governmental Unit and the Owner are required to enter into this LBC as a condition of the Governmental Unit loaning the Grant funds to the Owner.

NOW, THEREFORE, in consideration of the mutual promises and such other valuable consideration set out herein, the Parties mutually agree to the following terms and conditions:

1. Third-Party Beneficiary. The Parties agree that the State (including, without limitation,

Commerce and the Rural Authority) is an intended third-party beneficiary of this LBC (including the Loan) and may, at its option, enforce the terms of this LBC or appear as a party in any litigation concerning the LBC.

2. Loan.

- (a) The Governmental Unit hereby loans to the Owner the sum of **\$500,000.00** (the "Loan"), which consists entirely of State Grant funds, to fund the Project. Exhibit A to the Grant Agreement refers to the entity (or entities, as applicable) required to create and maintain certain full-time new jobs, as defined in Paragraph 3(a), to complete the Project under this LBC as the "Company," the "Employer" and the "Business" (together and hereinafter, the "Business"). The Owner specifically acknowledges that: it must repay the Loan in accordance with the terms of this LBC if the Business does not create and maintain the new jobs required by Paragraph 3(a) below; and as evidence of its obligation to repay the Loan, the Owner has executed the Promissory Note, Exhibit F to the Grant Agreement, which the Owner represents, acknowledges and agrees has been signed by every individual or entity that has any ownership interest in the Property and is fully binding on the Owner.
- (b) As conditions of receiving the Loan:
 - i. The highest elected official of the Governmental Unit and a duly authorized representative of the Owner shall execute two originals of the LBC in its exact form (unless Commerce approves of a change to its terms in writing), and the Governmental Unit shall return one such original to Commerce;
 - ii. Every individual or entity that has any ownership interest in the Property shall execute two originals of the Promissory Note in its exact form, and the Governmental Unit shall return one such original to Commerce; and
 - iii. The Owner and the Governmental Unit shall ensure that an authorized representative of each Business executes a Waiver, Exhibit G to the Grant Agreement, and the Governmental Unit shall forward the original of any such Waiver to Commerce.
- (c) The Owner hereby represents and warrants that all Loan funds shall be utilized exclusively for the purpose of the Project and that it shall not make or approve of any improper expenditures of Loan funds.

3. New Job Creation, Maintenance of New Jobs and Baseline Number of Jobs and Verification.

- (a) New Job Creation and Maintenance of New Jobs and Baseline Number of Jobs. A "New Job" shall mean a full-time job (consisting of at least 35 hours per week of employment and eligibility for all benefits generally available for full-time employees of the Business) which is with the Business, is located in North Carolina, has a wage at least equal to the minimum wage, is created and maintained by the Business in order to complete the Project and is over and above the **185** full-time jobs in North Carolina ("Baseline Number") that the Business reported having at the time of the application for the Project. The Owner agrees that the Business shall be required to create and maintain in existence for six (6) consecutive months **40** New Jobs prior to the Termination Date, unless this term is extended pursuant to Paragraph 5. Separate and apart from these New Jobs, the Owner agrees that the Business shall be required

to maintain in existence its Baseline Number of jobs for as long as it takes the Business to create and maintain its required number of New Jobs.

- (b). Verification. When the New Jobs required by Paragraph 3(a) have been created and maintained for six (6) consecutive months, the Owner shall notify the Governmental Unit so that it and/or Commerce can verify their creation and maintenance, as well as the maintenance of the Baseline Number of jobs and the satisfaction of all other conditions and terms of this LBC and the Project. The Owner shall cause any Business to provide to the Governmental Unit and Commerce, or their respective designees, full and complete access to all records of the Business necessary to verify the number and types of jobs created and maintained, the wages paid to employees and all other conditions and terms of this LBC and the Project. Failure of any Business to provide such access upon request shall constitute a material default by the Owner under the terms of this LBC and, in the sole discretion of the Governmental Unit and/or Commerce, may subject the Owner to repayment in an amount calculated under Paragraph 13 below.

4. Changes in the Project or Other Conditions.

- (a). A "Project Change" is any material alteration, addition, deletion or expansion of the Project, including (without limitation) material changes to construction or rehabilitation, the terms or conditions of the loan under the LBC, the required number of New Jobs, the matching investment in the Project, any cessation of business by the Owner or any Business and any filing of bankruptcy by the Owner or any Business. There shall be no Project Changes unless expressly approved of by Commerce and the Governmental Unit in a separate, prior written agreement stating, if applicable, the costs and schedule for completing the Project Change.
- (b). Additionally, the Owner shall immediately notify the Governmental Unit of any change in conditions or local law, or any other event, which may significantly affect the ability of it or any Business to perform the LBC or the Project. In their sole discretion, the Governmental Unit or Commerce may deem such a change in conditions, local law or other event to constitute a Project Change.

5. Term of LBC. The effective period of this LBC shall commence 1/8/2015 ("Effective Date") and shall terminate 1/8/2017 unless terminated on an earlier date under the terms of this LBC (either one of which dates shall constitute the "Termination Date") or unless extended for an express term in writing by the Governmental Unit.

6. Independent Status of the Governmental Unit.

- (a). The State (including, without limitation, the Rural Authority and Commerce) and the Governmental Unit are independent entities from one another and from the Owner and any third party (including, without limitation, any Business). The Grant Agreement, the LBC, the Project and any actions taken pursuant to them shall not be deemed to create a partnership or joint venture between the State and the Governmental Unit or between or among either of them and the Owner or any third party (including, without limitation, any Business). Nor shall the Grant Agreement, the LBC or the Project be construed to make any employees, agents or members of the Owner or any third party (including, without limitation, any Business) into

- employees, agents, members or officials of the Governmental Unit or the State or to make employees, agents, members or officials of the Governmental Unit into employees, agents, members or officials of the State. Neither the Owner nor any third party (including, without limitation, any Business) shall have the ability to bind the Governmental Unit or the State to any agreement for payment of goods or services or represent to any person that they have such ability. Nor shall the Governmental Unit have the ability to bind the State to any agreement for payment of goods or services or represent to any person that it has such ability.
- (b). The Owner and any third party (including, without limitation, any Business) shall be responsible for payment of all their expenses, including rent, office expenses and all forms of compensation to their employees. The Owner and any third parties (including, without limitation, any Business) shall provide worker's compensation insurance to the extent required for their operations and shall accept full responsibility for payments of unemployment tax or compensation, social security, income taxes, and any other charges, taxes or payroll deductions required by law in connection with their operations, for themselves and their employees who are performing work pursuant to this LBC or the Project. All expenses incurred by the Owner or any third party (including, without limitation, any Business) are their sole responsibilities, and neither the Governmental Unit nor the State (including, without limitation, Commerce and the Rural Authority) shall be liable for the payment of any obligations incurred in the performance of the Project.
7. Project Records.
- (a). The Owner shall maintain and cause any Business to maintain full, accurate and verifiable financial records, supporting documents and all other pertinent data for the Project in such a manner as to clearly identify and document the expenditure of the State funds provided under this LBC separate from accounts for other awards, monetary contributions or other revenue sources for this Project.
- (b). The Owner shall retain and cause any Business to retain all financial records, supporting documents and all other pertinent records related to this LBC, the Loan and the Project for a period of five (5) years from the Termination Date. In the event such records are audited, all such records shall be retained beyond the five-year period until the audit is concluded and any and all audit findings have been resolved.
8. Monitoring, Reports and Auditing. The Owner agrees to generate and to cause any Business to generate such reports regarding the LBC or the Project as may be requested by the Governmental Unit or the State (including, without limitation, the Rural Authority or Commerce) in such form as they may request, including after the Termination Date. The Owner further grants and shall cause any Business to grant the Governmental Unit or the State (including any of its agencies, commissions or departments such as Commerce, the North Carolina State Auditor and the North Carolina Office of State Budget and Management) and any of their authorized representatives, at all reasonable times and as often as necessary (including after the Termination Date), access to and the right to inspect, copy, monitor and examine all of the books, papers, records and other documents relating to the LBC or the Project. In addition, the Owner agrees to comply and to cause any Business to comply at any time, including after the Termination Date, with any requests by

the State (including, without limitation, the Rural Authority or Commerce) for other financial and organizational materials to permit the State to comply with its fiscal monitoring responsibilities or to evaluate the short- and long-range impact of its programs.

9. Termination; Availability of Funds.
- (a). If the Owner fails to fulfill in a timely and proper manner its obligations or violates any of its covenants or stipulations under the LBC or if any Business fails to fulfill those requirements applicable to it in the LBC, the Owner agrees that the Governmental Unit or Commerce has the right to terminate the LBC by giving the Owner written notice specifying the Termination Date, which shall be determined by the Governmental Unit or Commerce in their sole discretion. Upon such termination, neither the State nor the Governmental Unit shall have any responsibility to make Loan payments. Further, upon such termination, the Owner shall not expend any Loan funds without the express written authorization of the Governmental Unit and Commerce and shall return all unspent Loan funds to either the Governmental Unit or Commerce, upon request and as directed.
 - (b). If the Governmental Unit fails to fulfill in a timely and proper manner its obligations or violates any of the covenants or stipulations under its Grant Agreement with Commerce, the Owner agrees that Commerce has the right to terminate its Grant Agreement with the Governmental Unit and/or terminate this LBC by giving, as applicable, the Governmental Unit or the Governmental Unit and the Owner written notice specifying the Termination Date, which Commerce may determine in its sole discretion. Upon such termination, neither the State nor the Governmental Unit shall have any responsibility to make Loan payments. Further, upon such termination, the Owner shall not expend any Loan funds without the express written authorization of the Governmental Unit and Commerce and shall return all unspent Loan funds to either the Governmental Unit or Commerce, upon request and as directed.
 - (c). The obligations of the Rural Authority and/or Commerce to pay any Grant funds to the Governmental Unit and for the Governmental Unit to pay any Loan amounts to the Owner under this LBC are contingent upon the availability and continuation of funds for such purpose. If funds for the Grant and therefore the Loan become unavailable, the Owner agrees that either Commerce or the Governmental Unit has the right to terminate this LBC by giving written notice specifying the Termination Date, which either the Governmental Unit or Commerce may determine in their sole discretion. Upon such termination, neither the State nor the Governmental Unit shall have any responsibility to make Loan payments. Further, upon such termination, the Owner shall not expend any Loan funds without the express written authorization of the Governmental Unit and Commerce and shall return all unspent Loan funds to the Governmental Unit or Commerce, upon demand and as directed.
10. Liabilities and Loss. The Owner hereby agrees to release, indemnify and hold harmless the Governmental Unit and the State (including the Rural Authority and Commerce), and their respective members, officers, directors, employees, agents and attorneys (hereinafter collectively referred to as "Indemnified Parties"), from any claims of third parties (including, without limitation, any Business) arising out of any act or omission of the Owner or any third party (including, without limitation, any Business) in connection with

the performance of this LBC or the Project, and for all losses arising from implementation of this LBC or the Project. Without limiting the foregoing, the Owner hereby releases the Indemnified Parties from, and agrees that such Indemnified Parties are not liable for, and agrees to indemnify and hold harmless the Indemnified Parties against, any and all liability or loss, cost or expense, including, without limitation, reasonable attorneys' fees, fines, penalties and civil judgments, resulting from or arising out of or in connection with or pertaining to, any loss or damage to property or any injury to or death of any person occurring in connection with the Project, or resulting from any defect in the fixtures, machinery, equipment or other property used in connection with the Project or arising out of, pertaining to, or having any connection with, the Project or the financing thereof (whether or not arising out of acts, omissions or negligence of the Owner or of any third party (including, without limitation, any Business), or of any of their agents, contractors, servants, employees, licensees, lessees, or assignees), including any claims and losses accruing to or resulting from any and all subcontractors, material men, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the Project.

11. Owner Representations and Warranties. The Owner hereby represents and warrants that:
- (a). The Owner and every Business are duly authorized to do business under North Carolina law and are not delinquent on any federal, state or local taxes, licenses or fees.
 - (b). This LBC has been entered into and executed on behalf of the Owner by an individual with full actual and apparent authority to bind the Owner to the terms hereto, and the execution and delivery of this LBC have been duly authorized by all necessary action, and are not in contravention of law nor in contravention of any certificate of authority, bylaws or other applicable organizational documents of the Owner, nor are they in contravention of the provisions of any indenture, agreement or undertaking to which the Owner is a party or by which it is bound.
 - (c). The Promissory Note has been executed by every individual or entity that has any ownership interest in the Property and is fully binding on the Owner.
 - (d). There is no action, suit, proceeding or investigation at law or in equity before any court, public board or body pending, or, to the Owner's knowledge, threatened against or affecting the Owner, that could or might adversely affect the Project, the creation of the New Jobs or any of the transactions contemplated by this LBC, or the validity or enforceability of this LBC or the Owner's ability to discharge its obligations under this LBC.
 - (e). Upon the Owner's reasonable inquiry of any Business, there is no action, suit, proceeding or investigation at law or in equity before any court, public board or body pending, threatened against or affecting any Business that could or might adversely affect the Project, the creation of the Jobs or any of the transactions contemplated by this LBC or the validity or enforceability of this LBC or the ability of any Business to create the Jobs specified herein.
 - (f). No consent or approval is necessary from any governmental authority as a condition to the execution and delivery of this LBC by the Owner or the performance of any of its obligations hereunder, or else all such requisite governmental consents or approvals have been obtained. The Owner shall provide the Governmental Unit or

Commerce with evidence of the existence of any such necessary consents or approvals at the time of the execution of this LBC.

- (g). The Owner is solvent and has inquired of and received reasonable evidence from any Business of the solvency of that Business.
- (h). A cash match grant, loan or other funding ("Cash Match") equal to the amount of the Loan shall have been unconditionally committed to the Project. The Governmental Unit shall have procured and contributed at least five percent (5%) of this Cash Match, but no part of this 5% contribution can have derived, either directly or indirectly, from any other State or federal source. The Owner hereby represents and warrants that all Cash Match funds shall be utilized exclusively for the purpose of the Project and that it shall not make or approve of improper expenditures of Cash Match funds. The Owner shall expend all Cash Match funds prior to or simultaneously with and at the same rate as its expenditure of Loan funds.

12. Cessation/Termination, Bankruptcy, Dissolution or Insolvency.

- (a). The Owner shall at all times preserve its legal existence, except that it may merge or consolidate with or into or sell all or substantially all of its assets to any entity that expressly undertakes, assumes for itself and agrees in writing to be bound by all of the obligations and undertakings of the Owner contained in this LBC. If the Owner so merges, consolidates or sells its assets without such an undertaking being provided, it agrees to repay to the Governmental Unit or Commerce, upon request and as directed, all unspent Loan funds. Further, any merger, consolidation or sale without such an undertaking shall constitute a material default under this LBC, and the Governmental Unit or Commerce may terminate the LBC upon written notice to the Owner and hold the Owner liable for any other repayment provided for under this LBC.
- (b). Other than as provided for in Paragraph 12(a), if the Owner or any Business ceases to do business or becomes the subject of any bankruptcy, dissolution or insolvency proceeding prior to the Termination Date, the Owner shall give the Governmental Unit immediate notice of the event, shall not expend any Loan funds without the express written authorization of the Governmental Unit and shall return all unspent Loan funds to the Governmental Unit or Commerce, upon demand and as directed and if permissible under applicable bankruptcy, dissolution or insolvency law.
- (c). If the Owner fails to provide the Governmental Unit notice of the Owner or any Business ceasing to do business or becoming the subject of any bankruptcy, dissolution or insolvency proceeding prior to the Termination Date, it shall constitute a material default under this LBC. If there is such a cessation or such a proceeding, the Governmental Unit or Commerce may terminate the LBC upon written notice to the Owner. Upon such termination, the Owner shall not expend any Loan funds without the express written authorization of the Governmental Unit and shall return all unspent Loan funds to the Governmental Unit or Commerce upon demand and as directed and if permissible under applicable bankruptcy, dissolution or insolvency law.
- d). Notwithstanding the foregoing and wherever referred to in this LBC, "ceases to do business" shall not include (1) ceasing operations to maintain, service or upgrade real or personal property of the Owner, (2) season shutdowns of operations as long as such

cessation does not exceed a total of four (4) weeks in any calendar year (excluding time attributable to an event of force majeure as described below) and (3) under the circumstances for the period of time described in Paragraph 22 below.

13. Additional Repayment Requirements and Remedies.

- (a). The repayment requirements and remedies addressed in this Paragraph 13 are in addition to those repayment requirements and other remedies set forth elsewhere in this LBC, including the requirements to repay unspent Loan funds. No remedy conferred or reserved by or to the State or the Governmental Unit is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy provided for in this LBC, or now or hereinafter existing at law, in equity, or by statute, and any such right or power may be exercised from time to time and as often as may be deemed expedient.
- (b). The Owner acknowledges that the Grant by the Rural Authority and the Loan by the Governmental Unit are predicated upon the creation and maintenance of the New Jobs and maintenance of the Baseline Number of jobs required by Paragraph 3(a) and that failure to create and/or maintain them will constitute a material default of this LBC.
 - i. If the Business fails to create and maintain such New Jobs, then the Owner shall repay to the Governmental Unit or Commerce, as directed, an amount equal to the product of (i) \$12,500.00 (the amount of Loan funds divided by the number of New Jobs required to be created in Paragraph 3(a) and (ii) the number of New Jobs required to be created in Paragraph 3(a), minus the number of New Jobs actually created, above the Baseline Number reported, that have been in existence for six (6) consecutive months.
 - ii. Additionally, in the event that the Business fails to maintain its Baseline Number of jobs as required under Paragraph 3(a), the Business shall lose credit for any qualifying New Jobs under this LBC by the same number of jobs that the Baseline Number is short. For example, if the Baseline Number of jobs falls short by three (3) jobs as of the date the Business has created and maintained all required New Jobs, the number of New Jobs deemed created and maintained shall be reduced by three (3). The amount the Business must repay shall then be calculated in accordance with Paragraph 13(b)i.
 - iii. Either Commerce or the Governmental Unit shall notify the Owner in writing of the amount to be repaid and direct the Owner whether to repay such amount to the Governmental Unit for return to Commerce or repay the amount directly to Commerce. All such amounts shall be due immediately upon demand by the Governmental Unit or Commerce. If not paid within thirty (30) days following demand, the unpaid amount due hereunder and under the Promissory Note shall bear interest at the rate of 10% per annum after demand until paid. Upon default in such payment, the Governmental Unit or Commerce may employ an attorney to enforce their respective rights and remedies, and the Owner hereby agrees to pay the legal costs and reasonable attorneys' fees of the Governmental Unit and Commerce plus all other reasonable expenses incurred by such party in exercising any of its rights and remedies upon such defaults.

- (c). If there is a breach of any of the requirements, covenants or agreements in this LBC (including, without limitation, a failure to repay the amount required under Paragraph 13(b) within the time required), or if there are any representations or warranties which are untrue as to a material fact in this LBC or in relation to the LBC or the Project (including the performance thereof), the Owner agrees that the Governmental Unit or Commerce may require repayment from the Owner of an amount of Loan funds to be determined in their sole discretion but not to exceed the amount of Loan funds the Owner has already received under this LBC. Such requirements, covenants or agreements include but are not limited to Paragraphs 2, 3, 4, 9, 11 and 12 of this LBC.
14. No Waiver by Governmental Unit or the State. Failure of the Governmental Unit or the State (including, without limitation, the Rural Authority and Commerce) at any time to require performance of any term or provision of this LBC shall in no manner affect the rights of the Governmental Unit or the State at a later date to enforce the same or to enforce any future compliance with or performance of any of the terms or provisions hereof. No waiver of the Governmental Unit or the State of any condition or the breach of any term, provision or representation contained in this LBC, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of that or any other term, provision or representation.
15. Waiver of Objections to Timeliness of Legal Action. The Owner knowingly waives any objections it has or may have to timeliness of any legal action (including any administrative petition or civil action) by the Governmental Unit or the State (including Commerce) to enforce their rights under this LBC. This waiver includes any objections the Owner may possess based on the statutes of limitations or repose and the doctrines of estoppel or laches.
16. Special Provisions and Conditions.
- (a). Nondiscrimination. The Owner agrees that it will not, and will ensure that the Business will not, discriminate by reason of age, race, religion, color, sex, national origin or disability related to the activities of this LBC or the Project.
- (b). Compliance with Laws. The Owner shall at all times, and shall cause any Business at all times to, observe and comply with all laws, regulations, codes, rules, ordinances and other requirements (together, "Laws") of the state, federal and local governments which may in any manner affect the performance of the LBC or the Project.
- (c). Non-Assignability. The Owner shall not assign or transfer any interest in the LBC without the prior written consent of the Governmental Unit and Commerce; provided however, that claims for money due to the Owner from the Governmental Unit under this LBC may be assigned to any commercial bank or other financial institution without such approval.
- (d). Personnel. The Owner represents that it and any Business have or will secure at their own expense all personnel required to monitor, carry out and perform the scope of services of this LBC and the Project. Such employees shall not be employees of the State (including, without limitation, the Rural Authority or Commerce) or the Governmental Unit. Such personnel shall be fully qualified and shall be authorized under state and local law to perform such services.

17. Notice. All notices required or permitted hereunder and all communications in respect hereof shall be in writing and shall be deemed given when personally delivered or when deposited in the United States Mail, certified, return receipt requested, postage prepaid, and addressed as follows:

If to the Governmental Unit:

Attn: _____

To the Owner:

Attn: _____

or addressed to such other address or to the attention of such other individual as either party above shall specify in a notice pursuant to this subsection.

18. Entire Agreement. This LBC supersedes all prior agreements between the Governmental Unit and the Owner with regard to the Loan and the Project and expresses their entire understanding with respect to the transactions contemplated herein, and shall not be amended, modified or altered except pursuant to a writing signed by both Parties.
19. Execution. This LBC may be executed in one or more counterparts, each of which, when executed, shall be deemed an original, and all such counterparts, together, shall constitute one and the same LBC which shall be sufficiently evidenced by one of such original counterparts.
20. Construction. This LBC shall be construed and governed by the laws of the State of North Carolina.
21. Severability. Each provision of this LBC is intended to be severable and, if any provision of this LBC is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect or impair any other provision of this LBC, but this LBC shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

22. Force Majeure. If (a) during the Grant Term the real or personal property located on or constituting the Property suffers damage or destruction caused by acts of God, fires, floods, storms, insurrection, riots, acts of the public enemy, national catastrophe, or similar unexpected events, (b) such damage or destruction was not principally caused by the negligence, willful misconduct or violation of applicable law by the Owner, (c) the Owner uses reasonable efforts to repair, or to work around, such damage or destruction reasonably promptly, and (d) as a direct result of such damage or destruction the Owner cannot satisfy the requirements and obligations of Sections 3 of this Agreement as and when this Agreement requires, then the Owner will be entitled to an extension of time not to exceed sixty (60) days to satisfy the requirements and obligations of Section 3 of this Agreement; provided that the Governmental Unit in its sole discretion with respect to the obligations it is owed by the Owner, may elect to extend that sixty day period to give the Owner additional time to satisfy those requirements.

IN WITNESS WHEREOF, the parties hereto have executed this LBC as of the date first above written.

Governmental Unit Name: _____

Signature: _____ [SEAL]

Printed Name: _____

Title: _____

Owner Name: _____

Signature: _____ [SEAL]

Printed Name: _____

Title: _____

Limited Waiver of Confidentiality
Unemployment Tax and Wage Records
BUILDING REUSE PROGRAM

EXHIBIT G
2015-021-3201-2538

Name of Taxpayer _____

Address: _____

City: _____ State: _____ Zip: _____ Phone: _____

NC Unemployment Insurance Acct #: _____ Fed Tax ID #: _____

I hereby waive any right to confidentiality, as found in N.C.G.S. 96-4 or otherwise, for the limited purpose of authorizing disclosure of certain information contained in the quarterly unemployment insurance tax records of the above-named taxpayer (hereinafter, "Company") filed with the Division of Employment Security ("DES") of the North Carolina Department of Commerce to the **City of Thomasville** ("Governmental Unit") and to the employees of the Rural Economic Division of the North Carolina Department of Commerce ("Rural Division") and members of the North Carolina Rural Infrastructure Authority ("Rural Authority") for the limited purpose of evaluating the issuance of and, in the event of such issuance, administering and ensuring compliance with, a grant and loan pursuant to N.C.G.S. 143B-472.127 and .128.

I recognize that DES is authorized to provide this information to the public officials of the Governmental Unit, the Rural Division and the Rural Authority in the performance of their public duties and that the verification of employment information for the purpose of administering the grant and loan at issue is within the scope of the public duties of the Governmental Unit, the Rural Division and the Rural Authority. I hereby authorize DES to disclose information contained in the Company's quarterly unemployment insurance tax records (the NCUI-101 or successor form) to the Governmental Unit, the Rural Division and/or the Authority for these purposes.

I recognize that unemployment insurance tax information provided in the aggregate to DES and disclosed to the Governmental Unit, the Rural Division and/or the Authority, and the Company's aggregated tax and wage information provided to or otherwise in possession of the Governmental Unit, the Rural Division and/or the Authority, may be treated as public information. This waiver is not intended to release the Governmental Unit, the Rural Division and/or the Authority from any obligation they may have under North Carolina law to maintain the confidentiality of any and all information which could reveal or permit someone to ascertain the identity of any individual employee or that employee's line item unemployment insurance tax or other tax or wage information.

Signature Chief Financial Officer or Other Authorized Company Official

Print Name

Title

Date

City of Thomasville / Hi Toms Lease Agreement

First Addendum

This Addendum to Lease Agreement, (the "Lease") is made effective as of this ____ day of _____, 2015 by and between the City of Thomasville (herein after referred to as the "City") and the Hi Toms Baseball Club LLC (herein referred to as the Hi Toms).

Recitals

- A. The parties are operating under a lease which was entered into as of April _____, 2014, but have determined to enter into this addendum to incorporate an additional provision to the prior lease.
- B. In all other respects, it is the intent of the parties that the current lease continue as previously agreed.

Now therefore, the parties hereto agree as follows:

In consideration of the mutual covenants and agreements set forth in the prior Lease, and in this addendum, the City and the Hi Toms agree that paragraph 2. Stadium Rental shall be amended to add the following language before the sentence beginning "All additional Hi Toms events... :

The Hi Toms may schedule additional games at the rate of \$75.00 per day without lights and \$125.00 per day with lights.

In all other respects, the current Lease continues as written.

In witness whereof, the parties have hereunto set their hands and seals this ____ day of _____ 2015.

CITY OF THOMASVILLE

Hi Toms Baseball Club LLC

By: _____
Joe Bennett, Mayor

By: _____
Manager

Attest: _____
City Clerk

NORTH CAROLINA

COUNTY OF _____

I, _____, A Notary Public of said County and State, do hereby certify that Joe Bennett personally appeared before me this day and acknowledged that he is Mayor of the City of Thomasville, a body politic, and that he being authorized to do so, executed the foregoing on behalf of the City of Thomasville.

Witness my hand and notarial Seal/Stamp, this the ____ day of _____, 2015.

_____(SEAL)
Notary Public

My Commission Expires: _____

NORTH CAROLINA

COUNTY OF _____

I, the undersigned a Notary Public of the County and State aforesaid, certify that _____ personally came before me this day and acknowledged that he is a Manager of Hi Toms Baseball Club LLC, a limited liability company, and that he, as a Manager, being authorized to do so, executed the foregoing on behalf of the company.

Witness my hand and notarial seal, this the ____ day of _____, 2015.

_____(SEAL)
Notary Public

My Commission Expires: _____

City of Thomasville / Hi Toms Lease Agreement

This Lease Agreement, (the "Lease") is made effective as of this _____ day of April 2014, by and between the City of Thomasville (herein after referred to as the "City") and the Hi Toms Baseball Club LLC (herein referred to as the Hi Toms).

Recitals

- A. The Hi Toms desire to continue their operation in Thomasville and desire to lease the baseball stadium, parking lot, office, concession stands, and stadium storage areas referred to as Finch Field, (herein referred to as the "stadium").
- B. The City and the Hi Toms desire to provide the citizens of Thomasville and other persons the opportunity to attend and view collegiate summer baseball.
- C. The City and the Hi Toms desire to enter into a written agreement to effectuate the above purposes and to set forth in detail their respective rights and obligations in connection with the lease of the stadium by the Hi Toms.
- D. The parties recognize that the City may utilize the premises for other recreation or City Council or Recreation Committee approved purposes during the term of this lease, but that use shall not interfere with the game schedule provided by the Hi Toms.
- E. The Hi Toms agree to indemnify and hold harmless the City of Thomasville for any claim of any person for injury to life, person, or property or for any claim or cause whatsoever not caused by the negligence of the City of Thomasville. (This includes any flying objects leaving the stadium in the course of any activity by the Hi Toms organization)

Now therefore, the parties hereto agree as follows

In consideration of the mutual covenants and agreements set forth in the Lease, and other good and valuable consideration, the City leases to the Hi Toms, and the Hi Toms lease from the City, the Stadium and the site for the primary purpose of collegiate summer baseball and related activities pursuant to the terms and conditions set forth and explained in this Lease.

1. Term of Lease and Option of Hi Toms – The term of this Lease shall be three years commencing on the date of signing.
2. Stadium Rental - The Hi Toms shall pay the City of Thomasville ~~\$12,500.00 for year one, \$13,000 for year two and \$13,500 for year three~~ of the lease, for the use of the stadium, office space, and storage facilities. In addition, the Hi Toms shall also pay all utilities associated with their usage. The Hi Toms shall have exclusive use of the field facility during the Hi Toms scheduled home season games and the 23 dates for their Fall High School League games not inconsistent with Section 11 of this agreement. All additional Hi Toms events outside of the Coastal Plain League and fall league shall be scheduled only with the consent of the Parks & Recreation Department. This annual fee encompasses the exclusive use portion and all Recreation Department approved Hi Toms events and shall be rendered in three equal installments on the 15th of June, 15th of July and the 15th of August.

Rental fee must be received on or within 10 calendar days of the aforementioned due dates. Late fees of 5% of Rental fee apply if payment is not received after 10 calendar days of the due dates.

3. Staffing – The Hi Toms, at its sole expense, shall be responsible for staffing of all stadium, parking lot and related facilities for Hi Toms and Hi Toms sponsored events.
4. Stadium Improvements – Any Capital Improvements undertaken during the term of the lease must have the approval of the City.
5. Concessions and Concession Facilities – The Hi Toms shall have the exclusive right to operate the concessions facilities, including but not limited to, food, candy, drinks and novelty sales for all Hi Toms sponsored events in the Stadium. The Hi Toms Baseball Club is solely responsible for all product costs and staffing. The Hi Toms Baseball Club is solely responsible for obtaining all necessary permits and licenses. Concession equipment and non-attached restaurant equipment purchased by the Hi Toms are the sole property of the Hi Toms Baseball Club and will remain with the club in the event the Hi Toms organization or the City of Thomasville does not renew the two parties stadium agreement. All use of the Hi Toms concession equipment and restaurant facilities by the City of Thomasville or other stadium leasers must be authorized, in advance, by the Hi Toms Baseball Club. The Hi Toms shall maintain and return the concession / restrooms building and equipment to the City of Thomasville in clean and working order. The Hi Toms shall be responsible for damage to City property and equipment due to actions by an employee or agent of the Hi Toms. The Hi Toms shall not permit patrons to bring food, beverages, cans, bottles, coolers, or containers inside the outermost fence of the Finch Field facility.
6. Advertising and Promotion – The Hi Toms shall have certain, *exclusive advertising rights including, but not limited to: outfield fence signage, scoreboard signage, dugout roof signage, grill signage, picnic shelter signage, grass berm signage and concession signage* in designated areas of the Stadium and revenues generated through this advertising as approved by the Director of Parks and Recreation. **The city shall retain advertising and revenue rights in other areas of the Stadium, such as the grandstands and field light poles.** The Hi Toms shall have the exclusive radio and television broadcast rights and privileges for Hi Toms and Coastal Plain League games and all other Hi Toms sponsored events at the Stadium. The Hi Toms shall not place or allow to be placed any advertising on the outside of the Finch Field fence. The Hi Toms shall remove or completely cover any and all beer advertising signs after Hi Toms adult events.
7. Scoreboard, Lights and PA System – The City shall present the Stadium to the Hi Toms 10 days prior to the season with a safe and operational scoreboard, field lights and PA system.
8. Insurance – During the term of this Lease, and any extension thereof, the Hi Toms and its contractors shall obtain and keep in force all necessary insurance, including spectator liability, and product liability.

9. Use of Storage Room and Office – The Hi Toms shall have year-round use of designated storage areas and office space.

10. Responsibilities of Parties

- Prior to the HiToms season opener, the city will deliver the infield/outfield in edged condition.
- During the season, on an as needed basis, the City will mow and maintain all areas outside of the stadium, at the discretion of the Parks Superintendent. The Hi Toms will be responsible for all mowing inside the stadium fence.
- The Hi Toms will clean the restrooms for all events.
- The Hi Toms shall be responsible for ballpark clean up following Hi Toms events including the field, grandstands, under grandstands, roofs and gutters, dugouts, office space, storage space, parking lot, and all areas used by the Hi Toms. The Hi Toms shall be responsible for getting all trash into dumpster. The City will provide dumpster and be responsible for having dumpster emptied as needed.
- Any City equipment used by the Hi Toms shall be properly maintained and secured. Any loss of equipment or damage to equipment shall be replaced or repaired, at the choice of the City, and at the Hi Toms expense.
- The City shall furnish the Hi Toms, during games and practices, the necessary equipment needed to execute these games and practices as follows:
Two sets of Hollywood style bases, batting cage, Score board with lights.
- The Hi Toms will be responsible for the following supplies: Toilet paper, Paper Towels, Trash Bags, lime, paint, and Turface (drying agent).
- The Hi Toms will be responsible for all Pre-game maintenance and field preparation and Turf management as well as in stadium mowing.
- The Hi Toms will be responsible for all stadium utility expenses during the Lease period of May 1 – October 31, (including field lights, concession/restroom building). In addition, the Hi Toms will be responsible for office utilities year round.
- \$75 credit will be applied to Hi Toms electrical usage bill for each two-hour period that field lights are used by another agency. In the event that the light usage exceeds two hours, an additional \$75 credit will be applied.
- The Hi Toms will be responsible for security at all Hi Toms events.

11. Scheduling – During the term of the Lease, the Hi Toms shall work in good faith with other involved parties on scheduling, with Parks and Recreation to serve as liaison. Once the Coastal Plain League schedule is set, no Hi Toms or CPL games will be rescheduled so as to conflict with previously scheduled Recreation Department events once said CPL and Hi Toms events are scheduled and approved by Parks and Recreation.

12. Default or Breach – If either of the parties hereto shall breach any of the covenants herein contained, and shall fail to remedy, or commence to remedy, within ten (10) days after receipt of written notice of such breach from the other party by registered mail, then said party shall have the option to cancel this lease agreement.

13. Transfer – This Lease may be transferred from the Hi Toms to another entity only with written approval from the City. The Hi Toms shall submit the request for any such transfer to the City in writing. In case of approval of such a transfer, the parties to the Lease remain bound by all the conditions and stipulations of this Lease.

14. Entire Agreement – The Lease contains and represents the entire agreement between the City and the Hi Toms Baseball Club.

15. Notices – Any notice required by the City or the Hi Toms by the terms of this Lease, shall be in writing and be deemed given and received on the date of the mailing of such notice in writing to the City or the Hi Toms by registered mail.

16. Sale of Alcohol – The Hi Toms may sell beer subject to the rules and regulations set forth by the North Carolina Alcohol Beverage Commission and North Carolina General Statute 18b – 100 (6), and the City of Thomasville. The Hi Toms Baseball franchise shall be permitted to serve beer at Finch Field for the following Hi Toms sponsored events limited to Hi Toms Coastal Plain League games or professional exhibition or professional regular season games and college games.

17.

In witness whereof, the parties hereto by their duly authorized representatives have executed this Lease as of _____ of April 2014.

Attest: _____

City
By: _____
Name: _____
Title: _____

Witness: _____

Hi Toms Baseball Club LLC
By: _____
Name: _____
Title: _____

**APPLICATION FOR APPOINTMENT
TO A BOARD, COMMITTEE OR COMMISSION
FOR THE CITY OF THOMASVILLE, NC**

The City of Thomasville appreciates your interest in serving on a Board, Committee or Commission and requests that you complete the following application. This application will provide general information based on your interest in serving on a Board of Commission for the Mayor and City Council to consider in making appointments.

Applicant Name: _____ **Date of Application:** ___/___/___

Home Address: _____
Street Address, City, Zip Code

Home Phone: _____ **Business/Other Phone:** _____

FAX Number: _____ **E-Mail Address:** _____

*Questions Regarding Date of Birth, Gender and Race are voluntary. The Personnel/Finance Committee seeks diversity in committees/commissions that reflect the entire community.

***Date of Birth:** ___/___/___ *** Male:** _____ ***Female:** _____ ***Race:** _____

Occupation: _____

Education Background: _____

All members of the City of Thomasville Boards, Committees and Commissions shall be appointed either by the City Council or the Mayor.

Do you reside within the city limits of Thomasville? Yes _____ No _____

Length of residence in Thomasville: _____
Years Months

Please indicate your preferences by number (first choice being "1") and choose no more than three.

City of Thomasville Boards, Committees and Commissions

*Tentative meeting times listed, subject to change

- ___ Chair City Multicultural Committee (4th Thursday of each month at 6:30pm)*
- ___ Davidson County Economic Development Commission (2nd Tuesday each month at Noon)*
- ___ Lake Thom-A-Lex Recreation Authority (as needed)
- ___ Thomasville ABC Board (3rd Tuesday of each month at 10:00am)*
- ___ Thomasville Board of Planning/Adjustment (Last Tuesday of every month at 5:30 pm)*
- ___ Thomasville City Beautification Commission (3rd Thursday of every month at 8:30 am)*
- ___ Thomasville City Cemetery Committee (as needed)
- ___ Thomasville City School Board (1st Tuesday of every month at 6:30 pm)*
- ___ Thomasville Golf Advisory Committee (2nd Monday of every month at Noon)*
- ___ Thomasville Historic Preservation Commission (2nd Tuesday of every month at 5:45 pm)*
- ___ Thomasville Housing Authority (1st Monday every other month at 5:30 pm)*
- ___ Thomasville Recreation Committee (Tuesday falling on 2nd-8th of each month at Noon)*
- ___ Thomasville Tourism Commission (4th Thursday of every month at 8:00 am)*

Please provide a brief statement outlining why you wish to serve on a City of Thomasville Board, Committee or Commission.

Why do you think you would be an asset to this Board, Committee or Commission?

Please list current and previous service to the community, civic clubs, activities and talents.

I hereby certify that this application contains no willful, false or misleading statements and that the information given by me is true and complete to the best of my knowledge and belief. I also understand that, in the event of appointment, any such false or misleading statements may result in my not serving on a board, commission or committee.

I further authorize the City of Thomasville to make any investigation of my personal history, and police and court records through a background check.

I understand this application is subject to the North Carolina Public Records Law (NCGS 132-1) and may be released upon request. Meetings of the appointed boards and committees are subject to the North Carolina Open Meetings Law (NCGS 143-318.10).

Applicant's Signature Required

Date

Signature of Parent or Guardian if
Applicant is a Minor

Date

Please return completed and signed form to:
The City Clerk's Office, Room 101, City Hall, 10 Salem Street, Thomasville, NC 27360
Office: 336-475-4214.....Fax: 336-475-4283

LAKE THOM-A-LEX RECREATION AUTHORITY

On November 8, 2004, City Council approved an agreement between Davidson County and the Cities of Lexington and Thomasville to establish the Lake Thom-A-Lex Recreation Authority, consisting of one current City Council member from each of the Cities of Lexington and Thomasville and one current member of the Davidson County Board of Commissioners. In addition, the elected bodies appoint one citizen, who resides in Davidson County, as members of this Authority, for a total of six members. Members of this authority also constitute the Water Quality Advisory Committee. Members appointed by the City of Lexington may serve two consecutive three-year terms. Meetings are held on an as-needed basis at alternating locations. For more information, contact City of Lexington staff support as listed below.

<u>NAME</u>	<u>DATE APPOINTED</u>	<u>TERM EXPIRES</u>	<u>PHONE</u>
<u>City of Lexington</u>			
0. Lewie Phillips* 109 Country Club Drive Lexington, NC 27292 councilorphillips@lexingtonnc.gov	2013	2014	225-7007 (C) 249-9200 (H)
2. Dr. Leslie Kammire 3314 Ridge Road Lexington, NC 27292 lkammire@wfubmc.edu	2013 2010	2016	731-3098 (H) 403-4198 (C)
<u>City of Thomasville</u>			
1. Scott Styers P. O. Box 368 Thomasville, NC 27361 scott.styers@thomasville-nc.gov	2011	2014	475-4222 (H)
2. Glenn Talbert, Chair 1580 Yokley Road Thomasville, NC 27360	2006	2015	472-3975 (H)
<u>Davidson County</u>			
2. Sam Watford P. O. Box 1067 Lexington, NC 27292 swatford@co.davidson.nc.us	2004	present	242-2200 (W)
2. Joe Craver 332 McGee Road Winston-Salem, NC 27107	2007	present	476-5075 (H)

* On December 9, 2013, Councilor Phillips was appointed to former Councilor McBride as the Council's representative.

CITY STAFF SUPPORT

Roger Spach, Water Resources Superintendent	raspach@lexingtonnc.gov	248-3970
Bruce Davis, Parks and Recreation Director	abdavis@lexingtonnc.gov	248-3960
Alan Carson, City Manager	jacarson@lexingtonnc.gov	248-3910

STATE OF NORTH CAROLINA
DAVIDSON COUNTY

AMENDMENT TO THE
LAKE THOM-A-LEX RECREATION AUTHORITY AGREEMENT
BETWEEN DAVIDSON COUNTY, THE CITY OF THOMASVILLE,
AND THE CITY OF LEXINGTON
FOR THE PURPOSE OF PROVIDING FOR POTENTIAL GREENWAY
DEVELOPMENT SURROUNDING AND ADJACENT TO THE
LAKE THOM-A-LEX PROPERTY

THIS AGREEMENT made and entered into this the 20th day of June, 20 11 by and between Davidson County, sometimes hereinafter referred to as "County," City of Thomasville, sometimes hereinafter referred to as "Thomasville" or jointly with the City of Lexington as "the Cities," and the City of Lexington sometimes hereinafter referred to as "Lexington;"

WITNESSETH:

WHEREAS; "the Cities" and "County" have entered into numerous agreements for the establishment of the Lake Thom-A-Lex Recreation Authority, more specifically, agreements dated as follows: May 1, 2000, February 12, 2002, November 8, 2004, March 23, 2009; and

WHEREAS; a grant has been awarded for funding for greenway development surrounding and adjacent to Lake Thom-A-Lex property; said grant will necessitate additional responsibilities in conjunction with said development;

NOW, THEREFORE, BE IT RESOLVED by the City Councils of the cities of Lexington and Thomasville and the Board of Commissioners of Davidson County acting jointly as follows:

1. That the previously referenced agreements entered into by the parties specifically but not limited to the November 8, 2004 agreement and the March 23, 2009 amendment are to be amended by the addition of the following provisions:
 - a. Davidson County shall act as the lead agency for budget development and management, bookkeeping, and preparation of financial reports for review by the Authority and the elected bodies on a monthly basis. Davidson County will invoice the City of Lexington and the City of Thomasville for their share of the Recreation Authority's expenses on an annual basis beginning July 1st of each fiscal year. On an annual

basis, no later than September 30th, Davidson County will report to the City of Thomasville and City of Lexington the annual Profit/Loss Statement. **Net Profits shall become assets of the Authority.** If the annual Profit/Loss statement indicates an operating loss, the net operating loss shall be deducted from the authority's unreserved fund balance or through assessment of one-third of the loss to each of the three governments involved.

b. **The Authority shall provide oversight and administration of the development of greenways on and immediately adjacent to the Lake Thom-A-Lex property. The Authority shall provide long-term administration and maintenance of these greenways once completed.**

2. Except as amended by this agreement, the previous agreements referred to as agreements dated May 1, 2000, February 12, 2002, November 8, 2004, March 23, 2009 will remain in full force and effect.
3. If there are provisions contained in the prior agreements that conflict with the provisions of this agreement, this agreement will govern.

Adopted this the 13 day of June, 2011.

Attest/SEAL



CITY OF LEXINGTON, NC

John T. Watson, Jr.

Mayor

Angel C. Lieberman

City Clerk

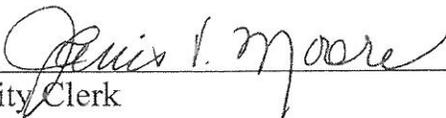
Adopted this the 20th day of June, 2011.

CITY OF THOMASVILLE, NC

Attest/SEAL



Mayor



City Clerk

Adopted this the 24th day of May, 2011.



DAVIDSON COUNTY BOARD OF
COMMISSIONERS, NC



Chairman of Board of Commissioners



County Clerk

Sec. 58-31. - Establishment.

The parks and recreation committee is established as an advisory board with members appointed by the mayor and city council.

(Code 1983, § 13-1; Ord. No. 9-16-02(1))

Sec. 58-32. - Composition of committee; appointment; terms.

The recreation committee shall consist of nine members in total, of whom seven shall be regular members and two shall be ex officio members. All members shall serve with the same duties and powers.

Regular members: One regular member shall be appointed by the mayor and the remaining six regular members shall be appointed by the city council. Members are not required to be residents of the city but should have an interest in the enhancement of the city recreation programs and in the goals of the government of the city as expressed by the policies of the city council as implemented by the city recreation department. The committee shall advise the city council and the parks and recreation department as to public recreation concerns, including but not limited to long-term goals, capital outlay, fees and charges, and programs. The committee shall also recommend to the city council such rules and regulations for the operation of municipal public parks and recreation areas as shall seem appropriate to the committee.

Three of the regular members shall be appointed for a term of one year, three shall be appointed for a term of two years, and one shall be appointed for a term of three years. As the term of each member expires, each new term shall have a duration of three years, but no member shall immediately succeed himself or herself beyond two consecutive terms.

Ex officio members: One of the ex officio members shall be appointed from the membership of the city council and the other shall be a representative of the school system which serves the city. The council representative shall be appointed for a term of one year and the school system representative shall be appointed for a term of three years. No ex officio member shall serve a term of office to exceed six years.

(Code 1983, § 13-2; Ord. of 2-21-00; Ord. of 9-16-02(1))

Sec. 58-33. - Filling of vacancies.

Vacancies on the recreation committee shall be filled for the unexpired terms by the city council.

(Code 1983, § 13-3)

Sec. 58-34. - Compensation of members.

The members of the recreation committee shall serve without compensation.

(Code 1983, § 13-4)

Sec. 58-35. - Officers.

The recreation committee shall appoint from its membership a chairman and such other officers as it may deem necessary for the orderly transaction of its business.

(Code 1983, § 13-5)

Sec. 58-36. - Time and place of meetings.

The recreation committee shall hold regular meetings at such times and places as it may designate.

(Code 1983, § 13-6)

Sec. 58-37. - Rules of procedure.

The recreation committee may adopt bylaws, rules and regulations covering its procedure, not inconsistent with the provisions of state law.

(Code 1983, § 13-7)

Sec. 58-38. - Appointment of director of recreation and other personnel.

The city manager, with the advice of the personnel director and the recreation committee, may appoint and designate a director of recreation who possesses the necessary training and who demonstrates by actual work his or her ability to organize and direct a community recreation system. Such other trained persons as may be necessary in the maintenance and operation of the recreation facilities and system may also be employed.

(Code 1983, § 13-8; Ord. of 9-16-02(1))

Sec. 58-39. - Management of facilities and programs.

The recreation committee shall provide, maintain, operate and supervise the public parks and playgrounds, athletic fields and recreation centers and other recreational facilities owned or controlled by the city or leased or loaned to the recreation committee by the owners thereof. The recreation committee shall have complete supervision of the facilities and activities provided and conducted on or in connection with the parks, playgrounds, athletic fields and recreation centers provided, and shall have the power to conduct any form of recreational or cultural activity.

(Code 1983, § 13-9)

State law reference— Authority to vest operation of parks and recreation system in commission, G.S. 160A-354.

Sec. 58-40. - Additional powers.

Such powers as are now provided by the statutes of the state or by the provisions of this Code and other ordinances of the city relating to the development and operation of recreation systems, parks and playgrounds are hereby vested in the recreation committee, to be exercised by it subject to any and all restrictions contained in such statutes, provisions of this Code and ordinances.

(Code 1983, § 13-10)

Sec. 58-41. - Authority to prescribe rules for operation of facilities.

The recreation committee shall, from time to time, make rules and regulations governing the operation and conduct of the recreational facilities operated by the recreation committee.

(Code 1983, § 13-11)

Sec. 58-42. - Acceptance and use of grants, gifts, etc.

The recreation committee may accept any grant, gift, bequest or donation of any personal property offered for recreational purposes and, with the approval of the city council, may accept any grant, gift or devise of real estate. Any gift, bequest of money or other personal property, grant or devise of real estate shall be held, used and finally disposed of in accordance with the terms or conditions under which such grant, gift or devise is made and accepted.

(Code 1983, § 13-12)

Sec. 58-43. - Receipt and disbursement of funds.

Funds appropriated by the city council and budgeted to the recreation committee shall be disbursed by the director of finance, upon vouchers issued by the recreation committee and within the budget appropriations made. Funds received by the recreation committee from sources other than budget appropriations shall be deposited by the city and disbursed as budget funds are disbursed, except that funds received by gift, bequest or otherwise shall be disbursed in accordance with the terms of such gift or bequest.

(Code 1983, § 13-13)

Sec. 58-44. - Limitation on power to obligate city.

The recreation committee shall have no authority to enter into any contract or incur any obligation binding upon the city other than current obligations or contracts to be fully executed within the then current fiscal year and all within the budget appropriations made by the city council.

(Code 1983, § 13-14)

Sec. 58-45. - Fiscal year.

The fiscal year of the recreation committee shall conform to that of the city.

(Code 1983, § 13-15)

State law reference— Fiscal year established, G.S. 159-8(b).

Sec. 58-46. - Reports to council.

The recreation committee shall make full and complete reports to the city council at such times as the city council may require.

(Code 1983, § 13-16)

Sec. 58-47. - Fees for the operation of municipal public parks and recreation.

The city council, after receiving recommendations from the recreation committee and the recreation staff, shall establish fees for the use of any or all the municipal public parks and recreations areas. Upon establishment by the city council it shall be unlawful for any person to commence using any municipal public parks and recreation areas before payment of the fees except where provided for otherwise in the rules and regulations. Changes in the fees shall become effective ten days succeeding approval by the city council. A copy of the fees shall be filed with the city clerk.

(Ord. of 9-16-02(1))

Sec. 58-48. - Exceptions to the payment of established fees at municipal public parks and recreation areas.

The director of parks of recreation, after advising the parks and recreation committee, and with the concurrence of the city manager, shall have the power to reduce or suspend the payment of established fees for the use of municipal public parks and recreation areas. The restrictions or suspensions of fees and charges may apply to special events or certain community groups for the best recreation and park interest of the city.

(Ord. of 9-16-02(1))

Secs. 58-49—58-60. - Reserved.