

GRANT AGREEMENT SUMMARY

This is a summary of certain terms of the attached Grant Agreement and is incorporated into the Grant Agreement:

Grantor:

The Grantor is the Buncombe County Tourism Development Authority, a public authority

Grantee:

The Grantee is _____, a _____
The Grantee's notice information for Section 6.09 of the Grant Agreement is:

Grant Amount:

The Grant Amount is _____ and 00/100 Dollars (\$_____.00)

Project:

The Project is the _____ as more fully described in Exhibit B.

Project Property:

The Project Property is the approximately _____ acre parcel with the address of _____ and the tax PIN of _____.

The Grantee has the right to occupy the Project Property because the Grantee:

- Owns the Project Property.
- Leases the Project Property pursuant to the Lease between the Grantee and _____ dated _____.
- Other: _____

Effective Date:

The Effective Date of the Agreement is January 15, 2015.

Annual Report:

The Annual Report is a report that must be made by the Grantee to the Grantor by January 15 of each year during the Term starting in 2016. The Annual Report must contain the information required by the Grant Agreement.

Commencement Date:

The Commencement Date is the date when construction of the Project has commenced (as reasonably determined by Grantor in its sole discretion) and must be on or before _____ (the "Commencement Date Deadline"). The Grantee will include, as applicable, the expected and the actual Commencement Date in its Annual Report.

Completion Date:

The Completion Date is the date when a certificate of occupancy for the Project is issued by the governmental authority having jurisdiction of the Project/construction of the Project has been completed (as reasonably determined by the Grantor in its sole discretion) and must be on or before _____ (the “Completion Date Deadline”). The Grantee will include, as applicable, the expected and the actual Completion Date in its Annual Report.

Projected Room Nights:

The Projected Room Nights were calculated with the Grantor’s room night calculator using the information provided by the Grantee in its Application and are as follows for each period described below:

Period	Increase in Room Nights
From the Completion Date to the first anniversary of the Completion Date	
From the first anniversary of the Completion Date to the second anniversary of the Completion Date	
From the second anniversary of the Completion Date to the third anniversary of the Completion Date	

Recognition Requirements:

Pursuant to Section 3.09 of the Grant Agreement the Grantee must recognize the Grant made by Grantor by:

- (a) From the Effective Date, acknowledging the Grantor when announcing sponsors or donors of the Project and in printed or on-site donor lists, fundraising materials and press releases, in all cases as approved in advance by Grantor;
- (b) From the Effective Date, including a reciprocal link to www.ExploreAsheville.com on any websites for the Grantee and/or the Project;
- (c) Within sixty days of the Completion Date, completing Asheville Convention & Visitors Bureau orientation to ensure employees and/or volunteers of Grantee understand and are able to deliver the Asheville Area Destination Brand Promise;
- (d) Within ninety (90) days of the Completion Date, creating permanent signage on the Project Property that recognizes the tourism and lodging community and the Grantor for the Grant, as approved in advance by the Grantor;
- (e) Always providing Grantor-supplied Official Asheville Travel Guides to guests; and
- (f) For the two years after the Effective Date, participating in each of Grantor’s Tourism Product Development Fund applicant information forums.

Group Room Sourcing

Pursuant to Section 3.11 of the Grant Agreement the Grantee must source in-bound groups requiring 10 rooms or more per night for meetings/conventions/events through the Asheville CVB Group Sales Department.

Performance Bond

Pursuant to Section 1.03 of the Grant Agreement in order to request a disbursement the Grantee must submit to Grantor a Disbursement Report that contains, among other requirements, copies of a fully signed construction agreement that requires performance and payment bonds.

GRANT AGREEMENT

This GRANT AGREEMENT (the “Agreement”) is entered into as of the Effective Date between the Grantor and the Grantee. Each of the Grantor and the Grantee is a “Party” and collectively they are the “Parties”.

Whereas, pursuant to the North Carolina Session Law 2001-162, the Grantor created a Tourism Product Development Fund for the purpose of providing financial assistance for capital tourism projects in order to significantly increase patronage of lodging facilities in Buncombe County;

Whereas, the Grantee has submitted the application attached hereto and incorporated herein as Exhibit A (the “Application”) to the Grantor requesting partial funding for the construction of the Project (as defined below);

Whereas, the Grantor believes that the Project would be expected to significantly increase patronage of lodging facilities in Buncombe County and therefore wishes to provide partial funding for the Project as described in and subject to the terms and conditions of this Agreement.

In consideration of the mutual covenants and agreements herein contained, the Parties covenant and agree as follows:

ARTICLE I

THE GRANT

1.01 The Project. The Project is described in Exhibit B. The Project is located at the Project Property. The Project is expected to increase the patronage of lodging facilities in Buncombe County, North Carolina by the Projected Room Nights.

1.02 The Grant. Subject to the terms and conditions set forth herein, the Grantor agrees to make a grant to Grantee in the Grant Amount to partially fund the Project (the “Grant”). The Grant will be disbursed as described below. The Grant may only be used for capital costs for the construction of the Project. Notwithstanding anything herein to the contrary, the Grantee agrees and acknowledges that all of the Grantor’s obligations under this Agreement, including its obligation to disburse the Grant, are contingent upon the distribution to Grantor from Buncombe County of sufficient funds to allow the Grantor to make the Grant.

1.03 Disbursements. The Grant will be disbursed as follows:

- (a) The Grant will be disbursed in three equal disbursements each of which will be in the amount of one-third of the Grant Amount.

- (b) The first disbursement may be requested when the Project is one-third complete; the second disbursement may be requested when the Project is two-third complete and the final payment may be requested when the Project is fully complete. To request a disbursement, the Grantee must submit to Grantor a disbursement report (“Disbursement Report”). Each Disbursement Report must contain the following:
- (i) Copies of the fully signed contract for construction of the Project with a properly licensed general contractor (the “Contractor”) that specifies a maximum price for the Project and requires performance and payment bonds for the Project (the “Construction Contract”), and any amendments to the Construction Contract or material change orders;
 - (ii) Copies of the Contractor’s budget for construction of the Project (the “Construction Budget”), and any material changes to the Construction Budget;
 - (iii) Copies of the Contractor’s timeline for the Project (the “Project Timeline”), and any material changes to the Project Timeline;
 - (iv) Copies of evidence of other funds needed to complete the Project including account statements that show available cash in a separate checking account, cancelled checks from funders, commitment letters from granting organizations, and evidence of any other funds to be used for the Project (the “Other Funds Documents”), and any material changes to or additions of Other Funds Documents;
 - (v) Copies of any signed commitment letter or closing statement from any lending institutions and any deeds of trust, uniform commercial code financing statements or other instruments or liens encumbering the Grantee, the Project, the Project Property or any property of the Grantee related to the Project (collectively, the “Loan Documents”), and any material changes to or additions of Loan Documents;
 - (vi) Copies of Grantee’s most recent annual financial statements and unaudited interim financial statements for the then-current year to date, each of which should be certified by an officer of the Grantee (the “Grantee’s Financials”);
 - (vii) Copies of the professional design plans and specifications of the Project as described in Exhibit C (the “Plans and Specifications”), and any material changes to the Plans and Specifications;
 - (viii) Copies of all required permits for construction (the “Permits”); and
 - (ix) A certification from the Grantee of the following as of the date the Disbursement Report: (A) of the percentage completion of the Project; (B) that the representations and warranties of the Grantee contained in this Agreement are true and correct in all material respects; (C) that there is no Default or Event of Default under this Agreement; and (D) if requested in advance by Grantor, evidence of remaining funds needed to complete the Project.

If a copy of a document (other than the Certification) has been submitted in a previous Disbursement Report, reference can be made to that Disbursement Report in lieu of providing another copy of the document. The Grantor reserves the right to require reasonable additional information in its sole discretion as a condition to any disbursement. Also, as a condition to making the final disbursement, the Grantor must have received a certificate of occupancy for the Project issued by the governmental authority having jurisdiction over the Project and the Grantor must approve (in its sole discretion) that the Project is fully complete, with no warranty or punchlist items to be resolved, and open to the public.

- (c) Each disbursement is conditioned upon receipt by Grantor of a complete Disbursement Report with all required information and approval by Grantor (in the Grantor's sole discretion) of the information in the Disbursement Report.
- (d) If all conditions described in this Agreement are met, the Grantor will disburse to Grantee on or before thirty days after its receipt of each complete Disbursement Report one third of the Grant Amount. The Grantor will mail a check in the amount of each disbursement to the Grantee at the Grantee's notice address unless Grantor receives notice prior to mailing a disbursement from Grantee that Grantee will pick up the disbursement check at the Grantor's notice address.

1.04 Term. The term of this Agreement will commence on the Effective Date and continue for four years after the Completion Date (as noted in the applicable Annual Report and approved by the Grantor) unless terminated earlier according to the terms of this Agreement.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

The Grantee represents and warrants to the Grantor that:

2.01 Existence, Qualification and Power. The Grantee (a) is duly organized, validly existing and in good standing under the laws of its state of formation, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to own its assets, carry on its business and execute, deliver and perform its obligations under this Agreement.

2.02 Authorization; No Contravention. The execution, delivery and performance by the Grantee of this Agreement, has been duly authorized by all necessary action, and does not (a) contravene the terms of the Grantee's organizational documents; (b) conflict with or result in any breach or contravention of, or the creation of any lien under any contract to which the Grantee is a party, including any lease or other agreement

related to the Project Property, or any material order, injunction, writ or decree of any governmental authority or any arbitral award to which the Grantee is subject; (c) violate any law in any material respect; or (d) result in a material limitation on any licenses, permits or other approvals applicable to the business, operations or properties of the Grantee.

2.03 Binding Effect. This Agreement has been duly executed and delivered by the Grantee. This Agreement constitutes a legal, valid and binding obligation of the Grantee, enforceable against the Grantee in accordance with its terms, except as enforceability may be limited by applicable bankruptcy law or by equitable principles relating to enforceability.

2.04 The Project. The Project is located at the Project Property in Buncombe County, North Carolina and is expected to significantly increase patronage of lodging facilities in Buncombe County, North Carolina. Grantee is the fee simple owner of the Project Property, has a valid leasehold interest in the Project Property, or otherwise has the right to possess the Project Property and to construct the Project on the Project Property. No third party consents, including but not limited to the consent of any landlord or other landowner, are required to be obtained by Grantee to commence or complete the Project.

2.05 Disclosure. Neither the Application, nor any accompanying or additional information or materials submitted to the Grantor relating to the Project, including the representations and warranties in this Agreement, contain any material misstatement of fact or omit to state any material fact regarding the Grantee or the Project.

2.06 No Material Adverse Change. Since the date of the Application, there have been no material adverse change to the Grantee or the Project.

ARTICLE III

AFFIRMATIVE COVENANTS

During the Term of this Agreement, the Grantee must:

3.01 Annual Reports. Deliver Annual Reports to the Grantor via the methods described in Section 6.09 that include:

- (a) During the period between the Effective Date and the Completion Date, a description of the visitor tracking methods in place, marketing plan, and copies of survey instruments to be used for data collection;
- (b) The expected or, if the Project has been commenced, actual Commencement Date;
- (c) The expected or, if the Project has been completed, actual Completion

Date;

(c) After the Completion Date, a description of the visitor tracking methods in place, copies of survey instruments used for data collection, and actual room nights for the first three years after the Completion Date; and

(d) A certification from the Grantee of the following as of the date the Annual Report: (i) that the representations and warranties of the Grantee contained in this Agreement are true and correct in all material respects; and (ii) that there is no Default or Event of Default under this Agreement;

3.02 Notices. Promptly (and in any event within five business days) notify the Grantor in writing of: (a) the occurrence of any Default or Event of Default; (b) any litigation, lien, demand, claim, notice, investigation or proceeding threatened against or affecting the Grantee or the Project; (c) any loss, damage or destruction to the Project; or (d) anything that could reasonably be expected to have a material adverse effect on the Project or the Grantee's ability to complete the Project. Each such notice must specify any portions of this Agreement which have breached and must set forth details of the reason for giving the notice and state what action the Grantee has taken and proposes to take with respect thereto.

3.03 Maintenance of Project. Maintain, preserve and protect the Project and obtain building risk insurance.

3.04 Compliance with Laws, Etc. Comply with the requirements of all laws, and obtain and maintain in good standing all required licenses, permits, authorizations and approvals of each governmental authority necessary to the conduct of its business or the Project.

3.05 Books and Records. Maintain and cause any contractors to maintain proper books of record and account, in which full, true and correct entries consistently applied must be made of all financial transactions and matters involving the Project.

3.06 Inspection Rights. Permit representatives and independent contractors of the Grantor to visit and inspect the Project and to discuss the Project and the Grantee's business with its directors and officers, all at such reasonable times during normal business hours, upon reasonable advance notice; provided, however, that when a Default or an Event of Default exists the Grantor (or any of its representatives or independent contractors) may do any of the foregoing at any time during normal business hours and without advance notice.

3.07 Use of Grant. Use the Grant disbursements only for capital costs of the construction of the Project.

3.08 Commencement and Completion of Project. Cause the Commence Date to be prior to the Commencement Date Deadline and cause the Completion Date to be prior to the Completion Date Deadline.

3.09 Recognition of Grantor. Recognize the Grant made by Grantor by:

(a) From the Effective Date, acknowledging the Grantor when announcing sponsors or donors of the Project and in printed or on-site donor lists, fundraising materials and press releases, in all cases as approved in advance by Grantor;

(b) From the Effective Date, including a reciprocal link to www.ExploreAsheville.com on any websites for the Grantee and/or the Project;

(c) Within sixty days of the Completion Date, completing Asheville Convention & Visitors Bureau orientation to ensure employees and/or volunteers of Grantee understand and are able to deliver the Asheville Area Destination Brand Promise;

(d) Within ninety (90) days of the Completion Date, creating permanent signage on the Project Property that recognizes the tourism and lodging community and the Grantor for the Grant, as approved in advance by the Grantor;

(e) Always providing Grantor-supplied Official Asheville Travel Guides to guests; and

(f) For the two years after the Effective Date, participating in each of Grantor's Tourism Product Development Fund applicant information forums.

3.10 Projected Room Nights. Use its best efforts to have actual room nights that meet the Projected Room Nights, but if after any Annual Report is submitted the actual room nights fail to meet the Projected Room Nights, if requested by the Grantor the Grantee agrees to, at its sole cost:

(a) Complete a marketing audit to assess current marketing activities, media plans, marketing communications, visitor data, and visitor data collection methodology; and

(b) Upon completion of the audit, establish a strategic plan for improving marketing activities to achieve the Projected Room Nights.

3.11 Sourcing of Group Rooms. Source in-bound groups requiring 10 rooms or more per night for meetings/conventions/events through the Asheville CVB Group Sales Department.

ARTICLE IV

NEGATIVE COVENANTS

During the Term of this Agreement, Grantee will not:

4.01 Fundamental Changes. Merge, dissolve, liquidate, consolidate with or into another entity; dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) or all or substantially all of the assets related to the Project; or materially change ownership or management.

4.02 Change in Nature of Business. Engage in any material line of business substantially different from those lines of business conducted by the Grantee on the Effective Date.

4.03 Change in Project. Alter, change, modify, add to or decrease the Project or its scope in any material way without the prior written consent of the Grantor.

4.04 Defaults. Breach or default or take any action that could lead to a breach or default or termination of this Agreement, any lease or other agreement related to the Project Property, any agreements to be submitted in a Disbursement Report or any other agreements related to the Project.

4.05 Adverse Actions. Allow any of the following to occur:

(a) Actual or threatened litigation, liens, demands, claims, notices, investigations or proceedings against or affecting the Grantee or the Project;

(b) Loss, damage or destruction to the Project; or

(c) Anything that could reasonably be expected to have a material adverse effect on the Project or the Grantee's ability to complete the Project.

ARTICLE V

EVENTS OF DEFAULT AND REMEDIES

5.01 Events of Default. The occurrence of any of the following constitutes an Event of Default:

(a) Grantee breaches or fails to perform or observe any covenant or agreement contained in this Agreement;

(b) Grantee institutes or consents to the institution of any proceeding under any bankruptcy or insolvency laws, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator,

liquidator, rehabilitator or similar officer is appointed without the application or consent of the Grantee; or

(c) Grantor reasonably determines: (i) it is unlikely that the Project can be completed; (ii) the Project will not be completed in accordance with the description of the Project in Exhibit B; or (iii) the Project will not significantly increase patronage of lodging facilities in Buncombe County, North Carolina.

5.02 Remedies Upon Event of Default. If any Event of Default occurs, the Grantor may take any one or more of the following actions:

(a) Terminate this Agreement;

(b) If all or any portion of the Grant Amount has not yet been disbursed, delay all remaining disbursements of the Grant Amount and require the Grantee to present a Project update to the Grantor during its next funding cycle and/or cancel the remaining disbursements and terminate this Agreement;

(c) If any portion of the Grant Amount has been disbursed, send notice to the Grantee requiring it to repay the amount disbursed to the Grantor within thirty days; and/or

(d) exercise on behalf of itself all rights and remedies available to it under this Agreement and applicable law;

provided, however, that notwithstanding anything herein to the contrary, upon the occurrence of an actual or deemed entry of an order for relief with respect to the Grantee under the Bankruptcy Code of the United States, the obligation of the Grantor to make any remaining disbursements will automatically terminate, without further act of the Grantor.

5.03 Termination. At the end of the Term of this Agreement, the Grantor may require the Grantee to provide to the Grantor copies of all of its records regarding the Grant and the Project.

ARTICLE VI

MISCELLANEOUS

6.01 Open Meetings and Public Records. The Grantee acknowledges and agrees that the Grantor is subject to the requirements regarding “public records” under all applicable statutes, regulations and other laws. All information disclosed to the Grantor which is a public record may be disclosed by the Grantor if requested. **GRANTOR IS NOT AND WILL NOT BE LIABLE FOR ANY DAMAGES ARISING FROM THE RELEASE OF OR USE BY OTHERS OF ANY INFORMATION OR OTHER MATERIALS OBTAINED THROUGH GRANTOR.**

6.02 Attorney Costs, Expenses and Taxes. Each of Grantor and Grantee will remain liable for and pay its own fees and expenses, including legal, accounting, taxes, and any other fees, incurred in connection with the Project and this Agreement. In the event of any dispute regarding this Agreement, the prevailing Party will be entitled to recover reasonable attorneys' fees and other costs incurred, in addition to any relief to which such Party may be entitled.

6.03 Nonliability of Grantor. The relationship between the Grantee and the Grantor is solely that of grantor and grantee. The Grantor does not have any fiduciary relationship with or duty to the Grantee arising out of or in connection with this Agreement. The Grantor does not undertake any responsibility to the Grantee to review or inform the Grantee of any matter in connection with Project. The Grantee agrees that the Grantor will not be liable to the Grantee for liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements (including attorneys' fees and other reasonable costs) of any kind or nature whatsoever suffered by the Grantee in connection with, arising out of, or in any way related to this Agreement or the Project, or any act, omission or event occurring in connection therewith. **NO PARTY WILL HAVE ANY LIABILITY WITH RESPECT TO, AND EACH PARTY HEREBY WAIVES, RELEASES AND AGREES NOT TO SUE FOR, ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES.**

6.04 Indemnification by the Grantee. The Grantee agrees to indemnify and hold harmless the Grantor and its affiliates, directors, officers, employees, counsel, trustees, advisors, and agents from and against any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements (including attorneys' fees and other reasonable costs) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnitee in any way relating to or arising out of or in connection with this Agreement or the Project.

6.05 Integration; Counterparts; Amendment; Waiver; Severability. This Agreement, including the attached Summary, recitals, and attached Exhibits, comprises the complete and integrated agreement of the Parties on the subject matter hereof and supersedes all prior agreements, written or oral, on such subject matter. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. No amendment, consent or waiver of any provision of this Agreement, and no consent to any departure by the Grantee therefrom, will be effective unless in writing signed by the Grantor and the Grantee, and any such waiver or consent will be effective only in the specific instance and for the specific purpose for which given. No failure by the Grantor to exercise, and no delay by the Grantor in exercising, any right, remedy, power or privilege hereunder will operate as a waiver thereof; nor will any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. If any provision of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Agreement will not be affected or impaired.

6.06 Survival of Representations and Warranties. All representations and warranties made hereunder will survive the execution and delivery hereof and thereof. Such representations and warranties have been and will be relied upon by the Grantor, and will continue in full force and effect until the end of the Term.

6.07 Governing Law; Venue. This Agreement will be governed by and construed in accordance with the substantive laws of North Carolina without regard to its conflict of laws provisions. Any legal action, suit or proceeding brought by either Party arising out of this Agreement must be brought in a state or federal court in the County of Buncombe, North Carolina, which will be the sole and exclusive venue for any such action, suit or proceeding.

6.08 Successors and Assigns; No Third Party Rights. The provisions of this Agreement are binding upon and inure to the benefit of the Parties and their permitted successors and assigns; provided, however, that the Grantee may not assign or otherwise transfer the Grant or any of its rights, benefits or obligations hereunder. Nothing herein is intended or may be construed to confer upon or give any person other than the Grantor and the Grantee or their permitted successors and assigns, any legal or equitable rights, remedies or claims under or by reason of this Agreement.

6.09 Notices, Reports, and Other Communications; Consents. All notices, reports, and other communications provided for or required by this Agreement must be in writing and must be sent via a nationally recognized delivery service such as FedEx or UPS or hand delivered to the applicable address:

if to the Grantor: Buncombe County Tourism Development Authority
 36 Montford Avenue
 Asheville, NC 28801
 Attention: Stephanie Pace Brown

if to the Grantee: As described in the attached Summary

All such notices, reports, and other communications will be deemed to be given or made upon receipt by the relevant Party. Grantor may withhold any requested consent in its sole discretion.

6.10 Further Cooperation. At the request of Grantor, Grantee agrees to cooperate fully, to promptly execute any and all supplementary documents, and to promptly take all additional actions that may be necessary to give full force and effect to the terms of this Agreement.

[SIGNATURE PAGE TO FOLLOW]

Name of Grantee
Draft dated __/__/__ or FINAL date __/__/__

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

GRANTOR:

BUNCOMBE COUNTY TOURISM
DEVELOPMENT AUTHORITY

By: _____
Name: _____
Title: _____

GRANTEE:

By: _____
Name: _____
Title: _____

EXHIBIT A
APPLICATION

[Application is attached]

EXHIBIT B
THE PROJECT

Description of the Project: _____

The contents of this Exhibit B may be updated, revised or amended by inserting a new Exhibit B signed by the Grantor and Grantee in place of the current Exhibit B. If documents, such as plans and specifications, construction contracts or other such documents are prepared after the Effective Date, the Grantee agrees to provide all such documents to the Grantor and upon the request of the Grantor to sign an updated Exhibit B including such documents.