

STATE OF NORTH CAROLINA
COUNTY OF CABARRUS

ECONOMIC DEVELOPMENT
GRANT AGREEMENT
(Project "Burgundy")

This ECONOMIC DEVELOPMENT GRANT AGREEMENT (the "Agreement") is made and entered as of the _____ day of _____, 2016, by and between CABARRUS COUNTY, a body politic and political subdivision of the State of North Carolina ("County"), and PROJECT BURGUNDY APPLICANT, a corporation.

RECITALS

1. Project Burgundy Applicant is considering locating a 86,700 square foot manufacturing facility in the County (the "Facility") by constructing new facilities in the County and installing furniture, fixtures and equipment in the Facility at an estimated cost of at least Forty Million Dollars (\$40,000,000.00) (collectively referred to as "New Investment").

2. The County has previously adopted an Industrial Development Grant Program (the "Program"), a copy of which is attached as Exhibit A and incorporated by reference, the public purpose of which is to encourage economic growth and development within the County.

3. Cabarrus Economic Development, Inc. (the "EDC") has reviewed the Project Burgundy application for inclusion in the Program and EDC's overview is attached as Exhibit B and incorporated by reference.

4. Project Burgundy Applicant has determined that location of its manufacturing facility on a 33.26 acre tract owned by the County adjacent to the Aberdeen Western Railroad near Wallace Road near the Town of Midland, North Carolina (the "Site") in the County is a suitable location for the placement of the Facility and the New Investment.

5. Project Burgundy Applicant has determined that it will employ approximately 49 employees within two (2) years at the Facility, with a probable average annual wage of \$53,963.00.

6. To induce Project Burgundy Applicant to locate the New Investment in the Facility at the Site and to assist Project Burgundy Applicant in that activity, the County has offered incentives to Project Burgundy Applicant generally consistent with the Program, but with a special arrangement relative to purchase of the underlying real estate.

In consideration of the mutual promises set forth in this Agreement and other good and valuable considerations, the receipt and sufficiency of which are acknowledged by the parties, the County and Project Burgundy Applicant agree as follows:

COVENANTS, TERMS and CONDITIONS

1. Tax Grants. Pursuant to the Program, as modified, the County shall in accordance with and as provided by this Agreement, pay to Project Burgundy Applicant an economic development grant (the “Grants”) as follows:

(a) For a period of five (5) consecutive years, the County shall make a grant to Project Burgundy Applicant on an amount equal to 85 percent of the increase in property tax paid by Project Burgundy Applicant on the actual assessed ad valorem tax value increase occasioned by construction and equipment installation of the New Investment in the Facility at the Site;

Project Burgundy Applicant may elect the initial year in which the Grants identified in Paragraph 1(a) and shall commence and shall so notify the County in writing; provided that the initial Grant year shall commence no later than twelve (12) months after the qualifying equipment or construction has been released from an in-process stage to a fully-operational stage.

(b) In addition, the County agrees to convey to Project Burgundy Applicant the Site, which is owned by the County, at a price of \$10,000.00 per acre, which Site is valued at from \$13,000.00 to \$15,800.00 per acre. Such Site shall be conveyed on the conditions specified by N.C. Gen. Stat. §158-7.1(d2) and shall be completed prior to the commencement of construction of the Facility.

The process of assessment of the tax value of the New Investment, the calculation of the Grant amounts and the payment of the Grants are more particularly described in the Program, which provisions are part of this Agreement. The County hereby confirms that it has approved the application of the Program as modified to the Facility and has authorized the Grants and other terms of this Agreement. The County and Project Burgundy Applicant further confirm that this Agreement constitutes the “formal agreement” required under the Program and that the terms of this Agreement and those contained in the attached description of the Program shall govern the application of the Program to the Facility, except as specifically modified herein. Project Burgundy Applicant agrees to forward to the EDC and the County Manager, at the time it makes its annual property tax payments, a copy of the property tax payment receipt, which must be requested from the Tax Collector and the Cabarrus County Tax Assessor’s statement (the “Assessor’s Statement”) of the valuation of the New Investment located at the Facility. The Assessor’s Statement may be issued only after:

(a) Project Burgundy Applicant has completed the Assessor's questionnaire and other substantiating corroborating documentation identified in the Program to the satisfaction of the Assessor; and

(b) The Assessor has had the reasonable opportunity to review, evaluate and verify a value for the New Investment.

The County agrees that the Grant payments pursuant to Paragraph 1(a) to be made to Project Burgundy Applicant during the respective term will be made within thirty (30) days after payment by Project Burgundy Applicant of all property taxes due to the County and the delivery of the Assessor's Statement. These are conditions precedent to any Grant payment.

2. State Incentives. The County agrees to assist Project Burgundy Applicant in obtaining any incentives, grants and programs that may be or become available from the State of North Carolina; however, the County shall not be responsible for obtaining or paying any State incentives to Project Burgundy Applicant, except as otherwise provided by law.

3. Validity of Incentives. As stated in the Program, no change in the Program after the date of this Agreement shall apply to the provisions of this Agreement or to the New Investment or the Facility (as it may be expanded or modified) unless otherwise agreed to in writing by the County and Project Burgundy Applicant. In the event one or more lawsuits or other proceedings are brought against the County or any County elected official challenging the legality of this Agreement or any provision, the County shall defend against any and all such lawsuits or other proceedings, including appealing any adverse judgment to the highest appellate court of the State of North Carolina. In the event that any of the economic development Grants or other agreements of the County are determined to be invalid, the County agrees that it will, to the extent permitted by law, provide Project Burgundy Applicant with incentives of substantially equal value pursuant to one or more replacement economic development grant programs.

4. Noncompliance by Project Burgundy Applicant. Project Burgundy Applicant acknowledges that at any time during the period that a Grant is paid or is to be paid to Project Burgundy Applicant by County, if Project Burgundy Applicant has (a) failed or fails to make or maintain the New Investment, (b) failed or fails to timely provide and maintain the jobs at the average wage represented to the EDC and the County; (c) fails to continue in business a fully operational Facility or (d) fails to comply with State law, any provision of this Agreement or any provision of the Program applicable to this Agreement, then Project Burgundy Applicant shall be in default of this Agreement. In any such event, the County may at its option terminate this Agreement and no further Grants shall be paid to Project Burgundy Applicant and any Grants paid to Project Burgundy Applicant shall be immediately repaid to the County. Notwithstanding the foregoing, if Project Burgundy Applicant fails to construct the Facility within two (2) years of the date of this Agreement, Project Burgundy Applicant will reconvey the Site to the County.

5. Miscellaneous.

a) Project Burgundy Applicant acknowledges and understands that all the applicable provisions of the Program are considered enforceable parts of this Agreement and that it must comply with all such provisions in order to be eligible for and remain eligible for the Grants.

b) This Agreement and the Grants provided by it may not be assigned by Project Burgundy Applicant without the prior written consent of County.

c) Notices. All notices, certificates or other communications required by or made pursuant to this Agreement shall be sufficiently given and shall be deemed given when delivered or mailed by registered or certified mail, postage prepaid or sent by facsimile (confirmed by the party providing notice) as follows:

The County: Michael K. Downs
County Manager
Cabarrus County
65 Church Street, SE
Post Office Box 707
Concord, North Carolina 28026
Facsimile Number: (704) 920-2820
Telephone Number: (704) 920-2100
E-Mail: mkdowns@cabarruscounty.us

Copy to: Richard M. Koch
County Attorney
3220-201 Prosperity Church Road
Charlotte, North Carolina 28269
Facsimile Number: (704) 503-5707
Telephone Number: (704) 503-5700
E-Mail kochlaw@CTC.net

Grantee: Project Burgundy Applicant

The County or Project Burgundy Applicant may, by advance written notice, designate any further or different addresses to which notices, certificates, requests or other communications shall be sent.

(d) Binding Effect. This Agreement shall inure to the benefit of and is binding upon the County and Project Burgundy Applicant and their respective successors and assigns.

(e) Amendments, Changes and Modifications. Except as otherwise provided in this Agreement, this Agreement may not be amended, change, modified or altered except by written agreement signed by both parties.

(f) Severability. If any court or competent jurisdiction holds any provision of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

(g) Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such fully-executed counterpart.

(h) Governing Law. This Agreement is governed by and shall be construed in accordance with the laws of the State of North Carolina, without regard to conflict of law principles.

(i) Captions. The captions or headings used throughout this Agreement are for convenience only and in no way define, or describe the scope or intent of any provision of this Agreement.

(j) Confidentiality. Project Burgundy Applicant and the County acknowledge that certain Exhibits to this Agreement, and/or other information provided by Project Burgundy Applicant pursuant to this Agreement, may contain Project Burgundy Applicant's confidential information. Accordingly, the County will maintain such information in confidence, unless its release is consented to in writing by Project Burgundy Applicant or required by law.

(k) Construction. The parties acknowledge and stipulate that this Agreement is the product of mutual negotiation and bargaining. As such, the doctrine of construction against the drafter shall have no application to this Agreement.

IN WITNESS, the parties have executed this Agreement as of the date first written above.

PROJECT BURGUNDY
APPLICANT

By: _____
Its _____

Attest:

By: _____
Secretary/Assistant Secretary

CABARRUS COUNTY

By: _____
Michael K. Downs, County Manager

Attest:

By: _____
Megan I.E. Smit, Clerk

This instrument has been pre-audited in the manner required by the “Local Government Budget and Fiscal Control Act.”

Susan Fearrington
Finance Director