Virginia Region Revitalization Commission

Policy Resolution
May 24, 2016

Whereas, Title 3.2, Chapter 31 of the Virginia Code created the Tobacco Indemnification and Community Revitalization Commission, subsequently named the Tobacco Region Revitalization Commission (the "Commission") to, *inter alia*, revitalize tobacco dependent communities;

Whereas, in furtherance of such purpose, the Commission has established the Tobacco Region Opportunity Fund program (the "TROF Program") to provide performance-based monetary grants and loans to tobacco region localities to assist in the creation of new jobs and investments through new business development and existing business expansion;

Whereas, by prior action the Commission has established the Tobacco Region Opportunity Fund Committee (the "TROF Committee") to assist in the administration of the TROF Program, and the TROF Committee has administered the TROF Program and the making of grants thereunder; and

Whereas, the Commission desires to restate in further detail certain aspects of the TROF Program, as set forth in the Tobacco Region Opportunity Fund Policy (the "TROF Policy"), attached hereto as *Attachment A*, which is by this reference incorporated herein and made a part hereof, to set forth certain policies for the receipt, consideration, approval, processing and making of grants and loans under the TROF Program;

NOW, THEREFORE, BE IT RESOLVED by the Virginia Tobacco Region Revitalization Commission, that

1. The TROF Policy is hereby approved and shall supplant existing TROF Program guidelines, procedures and practices currently in place, and, shall to the extent of any inconsistency or conflict with existing TROF Program guidelines, procedures and practices, supersede and prevail over same. The Commission specifically approves and affirms the delegations of authority to the TROF Committee and the Executive Director set forth in the TROF Policy.

2. All TROF Program grants heretofore approved by the TROF Committee under authority delegated to it by the Commission are hereby approved and ratified in all respects.

TROF Committee

Except as may be provided by the Commission from time to time, the TROF Committee previously established by the Commission shall continue, with such membership, responsibilities and duties as are set forth by the Commission within this Policy.

Approval of TROF Grants/Loans

(a) *Requirements*. Unless otherwise approved by the Commission, TROF Grants/Loans may only be approved when:

- A minimum private capital investment of $1 million within 36 months is promised by the private entity beneficiary; and

- The grant amount calculated in accordance with the Commission's incentive formula guidance attached hereto as *Exhibit A*, as the same may be revised from time to time, is at least $10,000 and the grant amount awarded is not more than the amount so calculated, except when a loan of up to 150% of the calculated award amount is offered at a below-market interest rate in place of a grant; and

- matching funds from non-Commission sources are committed to the project and evidence thereof is satisfactory to the Executive Director.

- the total number of TROF grants awarded to the applicant, including its control affiliates, do not exceed three per fiscal year.

(b) The Executive Director is authorized to approve or deny, on behalf of the Commission, TROF Grants and Loans under this Policy that meet the purposes of the TROF Program and the requirements in subsection (a) above in an amount not to exceed the lesser of the amount requested by the applicant(s) or the amount calculated in accordance with the Commission's incentive formula guidance, or 150% of this amount if awarded as a loan, attached hereto as *Exhibit A*, as the same may be revised from time to time; provided, however, that a TROF Grant or Loan in excess of $1,000,000 must be approved by the TROF Committee. If the TROF Committee is not able to meet within 10 days of the application, the Executive Director, in consultation with the TROF Committee, is authorized to approve a grant/loan that does not exceed $2,000,000. The TROF Committee is authorized to approve or deny, on behalf of the Commission, TROF Grants and Loans under this Policy that meet the purposes of the TROF Program and the requirements in subsection (a) above in an amount not to exceed $3,000,000. The Commission must approve a TROF Grant or Loan in an amount greater than $3,000,000. The Commission's incentive formula guidance shall be an index that calculates recommended grant amounts based on such factors as the annual payroll promised, the annual local prevailing wage, the number of jobs (direct, indirect and saved), and capital investment, with a greater premium applied to high unemployment areas, higher capital-to-payroll ratio and higher new-wage-to-prevailing-wage ratio).

(c) The aggregate amount of TROF Grants and Loans made during any fiscal year shall not exceed the sum of (i) amount set forth in the Commission's approved budget for such fiscal year, and (ii) refunds of prior TROF awards credited to the TROF account without prior approval of the Commission.

Performance Agreement

Unless otherwise approved by the Commission or the TROF Committee, all TROF Grants and Loans are to be disbursed pursuant to a Performance Agreement among the applicant, the Commission, and a private entity beneficiary, which the Executive Director is authorized to negotiate and enter into in substantially the same form as *Exhibit B* attached hereto, provided that such Performance Agreement shall contain the appropriate grant/loan and performance information for the TROF Grant or Loan as provided in the Commission's incentive formula guidance.

Acknowledgements

An acknowledgement of the Commission must appear in any publication, announcement, or significant event related to the project.

Audit and Reports

The terms of the Performance Agreement are subject to audit and verification by the Commission.

Repayment/Claw-back of TROF Grant;

Unless otherwise approved by the Commission, the Performance Agreement shall require repayment of full or *pro-rata* grant amounts if the specific performance targets set forth therein are not achieved. The Executive Director is authorized to negotiate and enter into repayment agreements with entities seeking to make such repayments in installments over a period not to exceed three years from the date of such repayment agreement.

The following remedies shall be employed as deemed appropriate by the Executive Director for all grants under which contractual obligations are owed to the Commission and have not been fulfilled within 60 days after delivery of a written demand notice to all parties to the Performance Agreement and its control affiliates:

A. Freeze all disbursements to the grantee and its control affiliates.
B. Decline to accept any application for new grants from the grantee or its control affiliates.
C. Enter the name of the grantee and its control affiliates into the State debt set-off system.
D. Refer the file to counsel for appropriate steps up to and including collection proceedings.

Attachment A

Virginia Tobacco Region Revitalization Commission

Tobacco Region Opportunity Fund

POLICY
Effective May 24, 2016

Purpose of the Tobacco Region Opportunity Fund

The Tobacco Region Opportunity Fund (TROF) provides performance-based monetary grants and loans to localities in Virginia's tobacco producing regions to assist in the creation of new jobs and investments, whether through new business attraction or existing business expansion.

The Commission has implemented the TROF program to support the goal of the Commission to "revitalize the economies of tobacco dependent regions and communities." Under the TROF Program, the Commission will in large part evaluate the effectiveness of its undertaking by reference to job creation, workforce participation rate, wealth, diversity of economy, and taxable assets.

Applications for TROF Grants and Loans

The Commission will only accept TROF Grant and Loan applications from governing bodies, political subdivisions, or their control affiliates within the tobacco producing localities of Southside and Southwest Virginia.

Applications to the Commission for TROF Grants and Loans are to be submitted in writing in the form set forth from time to time by the Commission, and contain such information as the Commission may request, including but not limited to:

- name and contact information of the applicant;
- name and contact information of private entity beneficiary (if applicable);
- specific dollar amount being requested;
- name of the locality in which the private entity beneficiary is (or is to be) located (if applicable);
- number of new and/or saved jobs;
- average annual wage of new and/or saved jobs;
- amount of private capital investment into taxable assets; and
- North American Industry Classification System code of the private entity beneficiary (if applicable).

Exhibit A

TROF Incentive Guidelines

Company/Project Name	Locality	Date

		Data Sources
Unemployment rate:	#N/A	annual unemployment rate
Number of jobs promised:		company and applicant
Number of jobs saved:		company and applicant
Capital investment promised:		company and applicant
Average salary promised:		company and applicant
Annual payroll promised:	$0	new jobs x salary
Annual local prevailing wage:		average annual wage
NAICS Code		company and applicant
NAICS Description		periodic calculation
#N/A		
Job Multiplier Per Region	#N/A	periodic calculation
Fiscal Stress Index Score	#N/A	annual fiscal stress index

Number of Jobs - direct	0	x	$1,866 =	$0
Number of Jobs - indirect	#N/A	x	$467 =	#N/A
Number of Jobs - saved	0	x	$467 =	$0
Capital Investment (in millions)	0.00	x	#N/A =	#N/A
Base Incentive				#N/A
Unemployment Premium	base	x	#N/A =	#N/A
more for high unemployment areas				
Capital Investment Premium	base	x	#DIV/0! =	#DIV/0!
more for high capital-to-payroll ratio				
High Wage Premium	base	x	#DIV/0! =	#DIV/0!
more for high new-wage-to-prevailing-wage ratio				
Guideline Incentive Amount				#N/A
Requested Incentive Amount				

☐ Guideline Incentive Amount Recommended

☐ Requested Incentive Amount Recommended

Approved: _____

Tim Pfohl, Interim Executive Director

Exhibit B

PERFORMANCE AGREEMENT

This Performance Agreement (this "Agreement") is made and entered into this _____ day of _____, 20__, by and among the Tobacco Region Revitalization Commission, a body corporate and political subdivision of the Commonwealth of Virginia (the "Commission"), the _____ (the "Grantee"), a political subdivision of the Commonwealth, and _____, a <*state*><*corporation, LLC, partnership*>(the "Company") whose Federal Employer Identification Number is _____.

WITNESSETH:

WHEREAS, the Grantee has been selected to receive a grant in the amount of $_____ (the "Grant") from the Commission for the Grantee's use in inducing the Company to construct or locate taxable assets and employ persons in _____ (the "Locality"); and

WHEREAS, the Grantee has indicated its desire to tender the Grant to the Company for its use and benefit, provided that the Company commits to the achievement of certain goals relating to employment and the construction or location of taxable assets in compliance with the terms hereof; and

WHEREAS, the Commission, the Grantee and the Company desire to set forth their understanding and agreement as to the use of the Grant, the obligations of each party hereto, the conditions under which the Grant must be repaid, and the obligations of each party hereto in the Event of Default (as defined herein); and

WHEREAS, the Commission has determined that the approval and funding of the Grant constitutes a valid public purpose for the expenditure of public funds and is consistent with and in furtherance of the Commission's public purposes as outlined in Section 3.2-3100, *et. seq.* of the *Code of Virginia* of 1950, as amended;

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises, and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby represent, warrant, covenant, and agree as follows:

Section 1. Disbursement of the Grant

After receipt by the Commission of this Agreement fully executed by all parties hereto, and provided that the Grantee is not in default on its obligations to the Commission as of the date first written above, the Commission shall disburse the Grant to the Grantee on one of the following schedules to be selected by the Grantee:

Schedule 1 – In Arrears. Not more than two (2) installments as requested by the Grantee in writing at such times as the Grantee may elect, subject to the reasonable approval of the Commission. The amount of each disbursement shall be limited to that portion of the Grant which

has been earned by the Company based upon information described in Section 5 or 6 of this Agreement, as applicable, when the same is delivered to and approved by the Commission in its sole discretion.

Schedule 2 – In Advance. Not more than two (2) installments as requested by the Grantee in writing at such times as the Grantee may elect, subject to the reasonable approval of the Commission. The amount of each disbursement shall **not** be limited to that portion of the Grant which has been earned by the Company; however, each such disbursement shall only be made after the Grantee Certification attached hereto as **Exhibit B** has been completed by the Grantee and delivered to and approved by the Commission in its sole discretion.

Fifty percent (50%) of the Grant is allocated for the Company's taxable asset obligation set forth in Section 4 of this Agreement and fifty percent (50%) of the Grant is allocated for the Company's employment obligation set forth in Section 3 of this Agreement. Unless otherwise agreed to in writing by all parties to this Agreement, Grantee shall disburse all Grant proceeds to the Company or for the Company's benefit within 30 days of receipt of Grant proceeds from the Commission or return the undisbursed proceeds to the Commission.

Section 2. Grant Restrictions and Conditions

Under this Agreement, the Commission places no restriction on the use of the Grant proceeds by the Company, and imposes no conditions beyond those described herein. Should any such restrictions or conditions be imposed by the Grantee, the same shall be described in **Exhibit A**, which shall be attached hereto and made a part hereof, but which shall be binding upon the Company only if signed thereon by an authorized representative of the Company. The Grantee shall be responsible for enforcement of any restrictions or conditions described in said **Exhibit A**.

Section 3. Employment Obligation

The Company shall employ* at least _____ persons in the Locality with a quarterly aggregate payroll of at least $_____. Said employment and payroll will be in addition to those already employed in the Locality by the Company and paid during the calendar quarter ending on *<the last day of the quarter immediately prior to the date of this agreement>*, hereinafter called the "Base Quarter." Persons employed by the Company in the Locality shall be counted as employed hereunder only to the extent that they (a) exceed the aggregate number of employees at all Company locations within the Commonwealth of Virginia during the Base Quarter, and (b) are not counted as fulfillment of any other employment obligation made to the Commission by the Company under any other agreement.

Section 4. Obligations Regarding Taxable Assets

The Company shall locate or construct taxable assets in the Locality having an assessed value of at least $_____, as determined by the Locality's Commissioner of Revenue ("COR"). If the Locality elects to arrange for reimbursement to the Company of all, or any portion of, the tax

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**For purposes of this Agreement the number of persons "employed" means the number of persons who received pay in any given quarter and is calculated by adding together the number of persons who received pay in each month of the quarter and dividing that sum by three (3).*

paid by the Company on said taxable assets, or elects to waive all or any portion of such tax liability, the Company's aforementioned obligation to locate or construct taxable assets in the Locality shall not be waived or reduced. The Company shall receive credit for the value of all taxable assets so determined by the COR, notwithstanding the local taxing authority's election to waive or refund the taxes so levied. Said taxable assets will be in addition to those counted in fulfillment of any other taxable asset or capital investment obligation made to the Commission by the Company under any other agreement. If the Company is exempt from the payment of property taxes on certain assets by state law, the Company shall not be entitled to receive or keep any portion of the Grant allocated to its investment in those certain assets.

Section 5. Determination of Performance - Employment

In order to earn the Grant, the Company must meet its employment obligations hereunder not later than thirty-six (36) months after the end of the Base Quarter. The Company's employment obligations will be deemed to have been fully met when it can document any three (3) consecutive calendar quarters after the Base Quarter in which:

(i) the average number of employees who received pay from the Company during each of those three (3) consecutive quarters* exceeds the average number of employees who received pay in the Base Quarter by at least the number promised in Section 3 above, AND

(ii) the total wages paid by the Company to employees in each of those three quarters exceed the wages paid by the Company to employees in the Base Quarter by at least the amount promised in Section 3 above, AND

(iii) all such employees worked in the Locality, AND

(iv) all Company employees in Virginia have been reported to the Virginia Employment Commission ("VEC") in accordance with VEC regulations. The Company's failure to satisfy such requirements shall be a breach hereof, and shall constitute an Event of Default hereunder by the Company. Employment gains by the Company in the Locality that are offset by employment losses elsewhere in Virginia shall not be counted as employment hereunder.

All determinations of performance made under this Section 5 shall be based upon reports made by, or on behalf of, the Company to the VEC including but not limited to *VEC Form FC-20 Employer's Quarterly Tax Report* and *O.M.B. Form No 1220-0134 Multiple Worksite Report – BLS 3020* (or any successor forms designated by VEC, or accepted by VEC in lieu thereof). If such tax filings include Company employees who did not work in the Locality, it shall be the duty of the Company to provide additional information sufficient to identify those employees who did work in the Locality. Employees of control affiliates (*e.g.*, subsidiary companies, parent companies, entities under common ownership or control) or employees of independent contractors hired by the Company shall not be counted as employees of the Company in fulfillment of its promise hereunder UNLESS such entities and their relationship to the Company are disclosed to and approved by the

**The number of persons who received pay in any given quarter is calculated by adding together the number of persons who received pay in each month of the quarter and dividing that sum by three (3).*

Commission in writing, AND such entities supply the Commission with the same employment documentation as described herein. Employees of temporary employment agencies ("temps") who are assigned to work for the Company in the Locality shall not be counted UNLESS evidenced by letter from the temporary employment agency setting forth the number of man-hours so assigned during the Base Quarter and the 36 months immediately following the Base Quarter. Such man hours shall be credited to the Company's job-creation obligation at the rate of one job for one quarter for every 520 man hours evidenced by such letter.

Section 6. Determination of Performance – Taxable Assets

In order to earn the Grant, the Company must meet its taxable asset obligations hereunder not later than thirty-six (36) months after the Base Year. For purposes of this Agreement, the calendar year that includes the Base Quarter shall be called the "Base Year." The Company agrees that only those assets owned or leased by the Company, located in the Locality, subject to taxation, and on record with the COR in the name of the Company, all during the 36-month period following the Base Year shall be counted in fulfilment of the Company's taxable asset obligation. Company assets located, constructed, or leased in the Locality prior to or during the Base Year will not be counted in fulfillment of the Company's taxable asset obligation.

Leased assets not on record with the COR in the name of the Company will be counted in fulfilment of the Company's taxable asset obligation only if a copy of the lease is submitted to the Commission indicating that the asset(s) under lease meet the other requirements listed above and were not leased from the Locality or its control affiliates at a substantial discount from market rates.

The Company's achievement toward meeting its taxable asset obligation shall be based on asset values assessed by the COR for the Locality and shall be the sum of the following:

a. the highest real property assessed value of record for any one of the three years following the Base Year, less and except the assessed value for the Base Year, PLUS

b. the first personal property assessed value for each asset first appearing of record during the three calendar years following the Base Year.

The Commission shall rely upon the information described above as the same is reported to the Commission by the COR in writing, without exception.

Taxable assets owned by subsidiary companies, related entities, or entities under common ownership or control shall not be counted as taxable assets of the Company in fulfillment of its taxable asset obligation hereunder UNLESS such entities and their relationships to the Company are disclosed to and approved by the Commission in writing, AND such entities supply the Commission with the same taxable assets documentation as described herein.

Section 7. Verification of Performance

The Company hereby expressly grants its consent for (a) the COR for the Locality to release to the Tobacco Commission or the Grantee records necessary to disclose the information required in this Section, and (b) the Virginia Employment Commission to release to the Tobacco Commission all Company employment records of any kind held by the Virginia Employment Commission.

If any of the taxable assets described in Section 4 have been acquired or improved on behalf of the Company by a lessor, the Company shall be responsible for gathering and reporting to the Commission information regarding the taxable assets acquired or improved by the lessor on behalf of the Company.

Section 8. Events of Default

If any of the following should occur within the thirty-six (36) month period after the end of the Base Quarter, it shall constitute an "Event of Default" and the Commission may, at its election, accelerate the Company's obligation to repay the portion of the Grant that has not been earned as of the date of the Event of Default:

a. The Company applies for or consents to the appointment of a receiver, trustee or liquidator of all or a substantial part of its assets, files a voluntary petition of bankruptcy, makes a general assignment for the benefit of creditors, files a petition or an answer seeking reorganization or arrangement with creditors, or if an order, judgment or decree shall be entered by any court of competent jurisdiction, on the application of a creditor, adjudicating the Company as bankrupt or insolvent or approving a petition seeking reorganization of the Company or appointing a receiver, trustee or liquidator of the Company or of all or a substantial part of its assets which remains undismissed, undischarged or unstayed for a period of forty-five (45) days;

b. The Company ceases to be of record and in good standing with the Virginia State Corporation Commission, and such failure is not cured within sixty (60) days from notice thereof, unless Company obligations hereunder have been assumed by another entity and that assumption was approved by the Commission and the Grantee;

c. The Company fails, for reasons other than an Event of Force Majeure (as defined herein), to fulfill at least twenty-five percent (25%) of either its employment obligation described in Section 3 above or its taxable asset obligation described in Section 4 above within eighteen (18) months after the end of the Base Quarter;

d. The Company's employment level is less than 75% of that found in the Base Quarter in more than 2 calendar quarters following the Base Quarter;

e. The Company fails to provide verification to the Commission as described in Section 7, within sixty (60) days from a written request from the Commission; or

f. The Company closes its business in the Locality for a period of more than thirty (30) days during the thirty-six (36) months following the Base Quarter.

Section 9. Repayment Obligation

In the event that the Company does not meet its obligations hereunder within thirty-six (36) months after the end of the Base Quarter, or an Event of Default occurs, the Company shall repay to the Grantee the unearned portion of the Grant that has been received by the Company, which is calculated as follows:

a. A minimum increase in taxable assets is required before **any** portion of the Grant is earned by the Company, hereinafter called the Minimum Investment Requirement. The Minimum Investment Requirement is the greater of (a) $1.0 million or (b) one-half of the taxable asset obligation described in Section 4 hereof.

b. Subject to the terms of Section 9.d. below, after exceeding the Minimum Investment Requirement, the fraction of the Grant allocated to employment that is earned by the Company is determined by dividing the average number of employees receiving pay during the three consecutive quarters as determined in Section 5 above with the highest employee count by the number of jobs promised in Section 3.

c. The method of computation set forth in Paragraph 8.b. above will be used only if the quarterly aggregate payroll for the three consecutive quarters described in Section 5 equals or exceeds that promised in Section 3. If that quarterly aggregate payroll is less than that promised in Section 3, the number of qualifying employees shall be reduced in proportion to the shortfall in quarterly aggregate payroll and the reduced number of employees shall be used to determine whether Company has satisfied its employment obligation hereunder.

d. After exceeding the Minimum Investment Requirement, the fraction of the Grant allocated to taxable assets that is earned by the Company is determined by dividing the greatest value of assets attested to by the COR under Sections 6 and 7 above by the taxable assets promised in Section 4.

e. All unearned portions of the Grant shall be repaid by the Company to the Grantee not later than thirty (30) days after the date on which the Company is notified of the unearned amount. The Grantee agrees to remit the same to the Commission. Any refund owed by the Company to the Grantee hereunder shall immediately constitute an obligation of the Grantee to repay the Commission and such Grantee's obligation shall **not** be contingent upon successful collection of any amount from the Company. **The Grantee shall be liable for repayment to the Commission that portion of the Grant determined by the Commission to be due under the terms of this Section and hereby agrees to make such repayment without regard to whether Grantee has received repayment from the Company as further certified on Exhibit B attached hereto.**

f. Interest shall accrue on unpaid balances at the rate of three percent (3%) per annum beginning on the 31st day after the Company is notified of the amount due.

g. Monies due to the Locality pursuant to this Agreement, if any, shall be considered to be owed to the Treasurer for the Locality and subject to the Treasurer's statutory powers provided for in the Code of Virginia.

h. If the Company does not meet its employment obligations or taxable asset obligations hereunder by the date which is thirty-six (36) months after the end of the Base Quarter because of an Event of Force Majeure (as defined herein), the date by which a requirement to meet such commitments shall be extended day-for-day for a period

equal to the time elapsed during the Event of Force Majeure. "Event of Force Majeure" means without limitation any of the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or any kind of the government of the United States of America or of the Commonwealth of Virginia or any of their respective departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; floods; washouts; draughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery, transmission pipes or canals not caused by the Company; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the Company.

i. In the event the Commission is required to take legal action under this Agreement, the Grantee and the Company, jointly and severally, shall be liable for all of the Commission's costs expended for the administration and enforcement of this Agreement, including but not limited to reasonable attorney's fees and court costs.

Section 10. Acknowledgment and Notice

The Company and the Grantee each acknowledge and agree to its respective repayment obligation in accordance with this Agreement. Any notices required or permitted under this Agreement shall be given in writing, and shall be deemed to be received upon receipt or refusal after mailing of the same in the United States Mail by certified mail, postage fully pre-paid or by overnight courier (refusal shall mean return of certified mail, undelivered) and addressed as follows:

if to the Company, to:

NAME: _____
ADDRESS: _____
_____
Attention: _____

if to the Grantee, to:

NAME: _____
ADDRESS: _____
_____
Attention: _____

if to the Commission, to:

NAME: Tobacco Region Revitalization Commission
ADDRESS: 701 East Franklin Street, Suite 501
Richmond, Virginia23219
Attention: Evan Feinman, Executive Director

This Agreement constitutes the entire agreement between the parties hereto and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Company may not assign its rights or obligations under this Agreement without the prior written consent of the Grantee and the Commission; provided that the Company shall have the right, without the consent of the Grantee or the Commission, to assign its rights (not its obligations) under this Agreement to any entity that controls, is controlled by, or is under common control with, the Company.

This Agreement is made, and intended to be performed, in the Commonwealth and shall be construed and enforced by the laws of that state. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the Locality and such litigation shall be brought only in such court.

This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument. If any provision of this Agreement is determined to be unenforceable, then the remaining provisions of this Agreement shall, in the sole discretion of the Commission, be voidable by the Commission or interpreted as in effect as if such unenforceable provisions were not included therein.

The Company hereby warrants that from the date of this Agreement until all obligations hereunder have been satisfied that it is, and will remain, registered and in good standing with the Virginia State Corporation Commission and that the Company is, and will remain, legally authorized to conduct business in the Commonwealth of Virginia.

The provisions of this Agreement are intended to and shall survive closing, the delivery of any deed or other instrument, and any other event. If this Agreement has not been executed by all parties hereto and returned to the Commission within 90 days from the date hereof, the Grantee's and the Company's rights to the Grant Proceeds shall automatically terminate.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to become effective as of the date first written above.

TOBACCO REGION REVITALIZATION COMMISSION

By:_____
Evan Feinman, Executive Director

Date:_____

GRANTEE

By:_____

Title:_____

Date:_____

COMPANY

By:_____

Title:_____

Date:_____

Exhibit A

Grant Restrictions

Exhibit B

Grantee Certification

The _____ (the "Grantee"), a political subdivision of the Commonwealth, hereby certifies that (a) it unconditionally guarantees the Company's performance under and pursuant to the Performance Agreement (this "Agreement") dated as of _____, 20__, by and among the Tobacco Region Revitalization Commission, a body corporate and political subdivision of the Commonwealth of Virginia (the "Commission"), the Grantee, and _____, a <*state*><*corporation, LLC, partnership*>(the "Company"), and (b) it holds collateral security from the Company sufficient to provide a secondary source of repayment in the event that the Company cannot or will not repay the unearned portion of the Grant (as defined in the Agreement) to the Commission. Such collateral security is described as follows:

_____
_____
_____
_____.

The Grantee hereby acknowledges that the sufficiency of the collateral security for the Grant is the sole responsibility of the Grantee.

GRANTEE

By:_____

Title:_____

Date:_____