

# AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING

This Amended and Restated Memorandum of Understanding (A and R MOU), entered into this \_\_\_\_ day of April, 2011, between the following parties:

- Haywood County, a body politic and corporate, a subdivision of the state of North Carolina (the County) and
- Haywood County Fairgrounds, Inc., formerly Haywood County Agriculture and Activities Board (the Fairgrounds)

Establishes the following:

WHEREAS, the parties entered into an MOU dated December 20, 2010 and by this A and R MOU, hereby restates the terms of same and adds additional provisions reflecting additional agreements between the parties; and

WHEREAS the Fairgrounds has entered into two loan agreements with First Citizens Bank, and has, subsequently, determined that repayment of these loans cannot occur within the timeframe required by First Citizens Bank, and

WHEREAS the County intends to obtain a USDA loan sufficient to purchase the structures at the county fairgrounds, and to cover the cost of needed capital improvements at the county fairgrounds, and

WHEREAS the County, due to circumstances beyond the control of the County, has determined that obtaining the USDA loan will not occur in a timeframe suitable to purchase the structures and other leasehold improvements at the county fairgrounds, and

WHEREAS, Haywood County and the Fairgrounds desire to enter into an agreement for the repayment of the First Citizens Bank loan by way of a loan from the County to the Fairgrounds, and

WHEREAS, the Fairgrounds, in co-operation with the County, has caused to be prepared plans for additional necessary improvements to the county fairgrounds and the County intends to borrow funds to be secured by a deed of trust against a portion of the fairgrounds real estate to secure such loan, and to loan utilize said funds for the aforesaid improvements, and

WHEREAS, the Haywood County Board of Commissioners has awarded a single prime construction contract to B. Allen Construction, Inc., in the amount of \$415,000.00 for the construction of the aforesaid improvements, and the County shall provide an additional \$15,000.00 toward the cost of construction for a total of \$430,000.00; and

WHEREAS, the Fairgrounds agrees to execute such legal documents, including but not limited to a Subordination, Non-Disturbance and Attornment Agreement, as is required by the lender of the aforesaid construction funds and as necessary to enable the County to provide a first lien deed of trust to secure such loan.

NOW, THEREFORE, the County does hereby agree to lend to the Fairgrounds and the Fairgrounds does agree to borrow from the County, an amount that will cover the principal due to First Citizens Bank by December 25, 2010 at an interest rate equivalent to the county's rate earned on available operating funds, to be repaid to the County at such time that the Fairgrounds sells the structures and other leasehold improvements on the fairgrounds property to the County; thereby terminating the ground lease between the Fairgrounds and the County, provided that such sums shall be repaid to the County should the Fairgrounds become financially enabled to do so thru generation of profits from operations or receipt of grants or gifts, and provided further that such sums shall be due and payable not less than twelve (12) months from the date of this A and R MOU.

The parties further agree as follows:

1. The County will transfer funds, hereby being loaned, in the amount of \$337,110.59, (the First Citizens Bank loans principal balances), to the Fairgrounds, that will be promptly paid to First Citizens Bank as repayment of the First Citizens Bank loans.
2. The Fairgrounds will promptly give to The County, evidence of payment of the First Citizens Bank loans and accomplish the satisfaction of the deeds of trust securing said loans at the Haywood County Register of Deeds.
3. The County will borrow or otherwise provide the aforesaid construction funds to be secured by a portion of the fairgrounds property and will cause to be completed the contemplated Improvements pursuant to the aforesaid construction contract, and the County shall provide an additional \$15,000.00 toward the cost of construction.
4. The Fairgrounds hereby agrees to repay to the County the aforesaid sum of \$337,110.59 as well as the project contract amount of \$415,000.00 and the additional \$15,000.00 all of which shall be consideration for the purchase by the County from the Fairgrounds of the leasehold improvements and the cancellation of the Ground Lease, at such time as the County is able to purchase such property, but not later than twelve (12) months from the date of this A and R MOU.
5. The Agreement, dated November 1, 2010 and approved by the Fairgrounds shall be amended to conform to this A and R MOU.
6. This A and R MOU shall be governed by the laws of the State of North Carolina.
7. The waiver or breach of any term or condition of this A and R MOU shall not be deemed to constitute the continuing waiver or breach of the same or any other term or condition.

8. In the event that any portion of this A and R MOU shall be determined to be invalid under any applicable law, such provision shall be deemed void and the remainder of this A and R MOU shall continue in full force and effect.

9. This A and R MOU constitutes the entire indivisible statement of agreement between the parties with respect to the transaction contemplated herein and shall not be modified, amended, altered or changed except by written agreement signed by the parties.

IN WITNESS WHEREOF, the parties hereto have executed this A and R MOU, under seal, in duplicate originals as of the date first set forth above.

\_\_\_\_\_  
Mark S. Swanger, Chairman, Haywood County Commissioners

\_\_\_\_\_  
County Manager and Clerk to the Board  
Haywood County

\_\_\_\_\_  
Chairperson, Haywood County Fairgrounds Board

\_\_\_\_\_  
Date