CITY OF MONROE - GENERAL SERVICES COMMITTEE
CITY HALL CONFERENCE ROOM
300 W. CROWELL STREET, MONROE, NC 28112
Thursday, June 17, 2021 - 4:00 PM

AGENDA

www.monroenc.org

1. North Carolina Rural Infrastructure Authority Grant Award

2.

Pilot Program for Food Trucks in Central Business District (CBD)

3. Aerowood Aviation Lease of Quonset Hangar Office Space

Other Items

STAFF REPORT

TO:	General Services Committee
VIA:	E.L. Faison, City Manager
DATE:	June 3, 2021
FROM:	R. Christopher Platé, Executive Director of Economic Development
PREPARED BY:	R. Christopher Platé, Executive Director of Economic Development
SUBJECT:	North Carolina Rural Infrastructure Authority Grant Award for MBP Acquisition, LLC d/b/a Hamilton Drywall Products

SUMMARY STATEMENT

This is a request of Monroe City Council to accept funds in the amount of $250,000 received from the State of North Carolina Rural Infrastructure Authority for MBP Acquisition, LCC d/b/a Hamilton Drywall Products as part of the incentive package developed in the recruitment of this company to our community in 2020.

REVIEW

In 2020, as part of a comprehensive economic development incentive package developed by Monroe-Union County Economic Development, MBP Acquisition, LLC d/b/a Hamilton Drywall Products was awarded $250,000 in grant funds from the State of North Carolina Rural Infrastructure Authority. MBP Acquisition, LLC d/b/a Hamilton Drywall Products has committed to create 31 jobs by October, 2022, and a targeted new investment of $4,500,000 while reusing a 98,000 SF building located at 6090 Willis Way, Monroe, NC 28110 previously addressed as 6029 Stitt Street, Monroe, NC 28110.

RECOMMENDATION

Staff requests that the General Services Committee recommend to Council at the July 13, 2021, Regular Meeting to approve the acceptance of these funds, to authorize City Mayor Bobby Kilgore to execute the Local Government Agreement, Loan Agreement and Promissory Note and to adopt a Budget Amendment appropriating the funds.

Attachment(s):
Budget Amendment BA-2021-15,
Local Government Grant Agreement (14 pages),
Exhibit A-Scope of Project; Exhibit-B Payment Schedule; Exhibit-C Reporting Schedule;
Exhibit-D Job Verification and Close Out Requirements (2 pages)
Exhibit-E Loan Agreement (11 pages),
Exhibit-F Promissory Note (3 pages)
Exhibit G-Limited Waiver of Confidentiality Unemployment Tax and Wage Records (1 page)
Exhibit H-Deed of Trust (1 page)

BUDGET AMENDMENT
BA-2021-15

1. Amendment necessary to designate and appropriate funds for a North Carolina Rural Center Authority Economic Development Grant for MBP Acquisition, LLC d/b/a Hamilton Drywall Products.

General Fund:

Revenues:

Restricted Intergovernmental Revenues	$250,000

Expenditures:

Economic and Physical Development	$250,000

Adopted this 13th day of July, 2021.

____
Bobby G. Kilgore, Mayor

Attest:

____
Bridgette H. Robinson, City Clerk

ROY COOPER
Governor

ANTHONY M. COPELAND
Secretary

KENNY FLOWERS
Assistant Secretary

October 19, 2020

The Honorable Bobby G. Kilgore
Mayor
City of Monroe
PO Box 69
Monroe, NC 28111-0069

Re: Contract Agreement for Grant Number 2021-023-3201-2587; Your Signature and Reply is Requested
Project Title: "Hamilton Drywall Products/Project EastPac"

Dear Mayor Kilgore:

Enclosed for your review and signature is a complete set of contract documents required to finalize the grant award from the North Carolina Rural Infrastructure Authority. Below is a description of the documents enclosed along with an explanation of the signatures required for each document.

Document:	**Document Description:**	**Signed By:**
Grant Agreement	Contract: Outlines the terms of Grant Agreement between the Department of Commerce and the Unit of Local Government.	Highest Elected Official - Unit of Local Government
Exhibit A	Scope of Services: Outlines the scope of the renovation/construction project.	No Signature Required
Exhibit B	Payment Schedule: Outlines the process for the Unit of Local Government to request reimbursements from Department of Commerce.	No Signature Required
Exhibit C	Reporting Schedule: Outlines the schedule of reports that are due from the Unit of Local Government to the Department of Commerce and when they are due.	No Signature Required
Exhibit D	Closeout/Job Requirements: Outlines the process for the Unit of Local Government to report the creation and maintenance of jobs to the Department of Commerce.	No Signature Required
Exhibit E	Legally Binding Commitment (LBC): Outlines terms and conditions of the Loan.	Highest Elected Official - Unit of Local Government and Legal Property Owner listed on the Deed.
Exhibit F	Promissory Note: Defines the repayment terms of the Loan in the event of default.	Legal Property Owner listed on the Deed.
Exhibit G	Limited Waiver of Confidentiality: Contains employment information reported to the Department of Commerce's Division of Employment Security.	Each Business involved in the project.
Exhibit H	Deed of Trust Documentation	Highest Elected Official – Unit of Local Government

Execute these documents, scan a quality copy and return to my attention at rgpreports@nccommerce.com. If you have any questions or if I can be of any assistance, please contact me at (919) 814-4671 or nichole.gross@nccommerce.com .

Sincerely,

Nichole M. Gross

Nichole M. Gross
Grant Manager

Enclosure

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 Monroe** (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 **Total Comfort Inc.** (the "Owner") owns certain real property located at:

6029 Stitt St
Monroe, NC 28110

in **Union** 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 **10/15/2020** ("Effective Date") and shall terminate on **10/15/2022** 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 **$250,000.00** 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.

(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. <u>Governmental Unit Representations and Warranties</u>. 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 adopt and keep on file, 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:

If to the Rural Authority or Commerce: Attn: **Hazel Edmond**
Program Manager
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 Bobby G. Kilgore**
Mayor
City of Monroe
PO Box 69
Monroe, NC 28111-0069

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.

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 Monroe

Signature: ______________________________ [SEAL]

Printed Name: ______________________________

Title: ______________________________

Date: ______________________________

North Carolina Department of Commerce

Signature: Kenn Flowers [SEAL]

Printed Name: Kenny Flowers

Title: Assistant Secretary for Rural Economic Development

Date: 10/19/2020

EXHIBIT A
SCOPE OF PROJECT

Summary: The project will support the reuse of a 98,000 SF building located at 6029 Stitt Street. The building was constructed in 1985 and has been vacant for one year. Hamilton Drywall Products produces a variety of drywall installation and construction products.

EXHIBIT B
PAYMENT SCHEDULE

Eligible Expenditures:
Vacant Building Category: within the existing building footprint
Existing Business Building Category: within the existing building and/or additions
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 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. Evidence that the 5% local government match has been satisfied (first payment request),
3. Copies of eligible project invoices that support the request amount,
4. Evidence that the invoices submitted for reimbursement have been paid-in-full. Evidence may include copies cleared checks, wire transfer or ACH receipts, and/or credit card receipts. Invoices paid with cash and those not paid in full will not be reimbursed, and
5. Satisfaction of reporting requirements according to Exhibit C below.

Eligible expenditures may not be incurred prior to the effective date or subsequent to the termination date of the grant. Payments are subject to the availability of funds.

EXHIBIT C
REPORTING SCHEDULE

Progress reports are due on January 15th and July 15th for each year that the grant remains open. The final report and job verification documentation are due at the time of project completion or no later than 30 days after the grant end-date, whichever is sooner. The reporting schedule remains in effect for the duration of the grant including time extensions.

Failure to submit progress reports as required:

1. Will result in non-payment of payment 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 Department of Commerce, and
4. Will negatively impact the grantee's eligibility for future Commerce grants.

EXHIBIT D
JOB VERIFICATION AND CLOSE OUT REQUIREMENTS

Building Reuse and Rural Health Care loans are eligible for forgiveness once the creation and maintenance of the full-time jobs committed for the project, as well as, all reporting requirements are approved by Commerce. Below are the requirements and procedure for approval.

Job Verification

To be considered eligible, a full-time job must be filled with one employee who works at least 35 hours per week and is paid at least minimum wage. Part-time, full-time equivalents, or contract/consulting positions are not eligible.

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

1. **Job Certification Form**—both the grantee and the participating business are required to complete respective sections of 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 local government grantee and the participating business.
2. **NCUI 101 Forms**—The grantee should submit copies of each company's *Employer's Quarterly Tax and Wage Report* (NCUI 101 forms) that have been submitted to the North Carolina Employment Security Commission according to the requirements below.
   - NCUI 101 Forms should be submitted to Commerce.
   - 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 grant funded project facility should be highlighted, and a multi-site report should be provided.
   - 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.
3. **Final Report**—the grantee must submit the Final Report Form that describes the activities and outcomes of the project.
4. **Photos**—the grantee must submit digital photos that show a variety of views of the completed project.

All forms, including reporting and request for payment, can be found on the Commerce website at http://www.nccommerce.com/rgp . Email completed forms and reports to rgpreports@nccommerce.com .

City of Monroe (the "Governmental Unit") enters into this Loan Agreement and Legally Binding Commitment (the "LBC," including the "Loan," defined below with **Total Comfort Inc.** (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:

6029 Stitt St
Monroe, NC 28110

in **Union** 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. <u>Third-Party Beneficiary</u>. 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 **$250,000.00** (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 **20** 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 **34** 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 **10/15/2020** ("Effective Date") and shall terminate **10/15/2022** 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. <u>Cessation/Termination, Bankruptcy, Dissolution or Insolvency</u>.

(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) **$7,353** (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: ______________________________

For VALUE RECEIVED and subject to the terms of and secured by the Rural Economic Development Loan Agreement and Legally Binding Commitment – Private-Owner Building Reuse Program, Reference Number **2021-023-3201-2587** ("LBC," which is incorporated by reference herein), the undersigned borrower[s] (the "Owner") jointly and severally promise[s] to pay to lender the **City of Monroe** or its assigns (together, the "Governmental Unit") or to the intended third-party beneficiary of this Promissory Note, the North Carolina Department of Commerce ("Commerce"), upon demand and as directed by either the Governmental Unit or Commerce, an amount of principal loan ("Loan") funds under the LBC up to and including **$250,000.00** Dollars but which amount shall not exceed the amount of Loan funds the Owner has actually received under the LBC, plus interest and attorney's fees as addressed below. Unless otherwise specified herein, capitalized terms in this Promissory Note shall have the same meaning as those set forth in the LBC.

The Owner acknowledges and represents that: (i) the undersigned is or are the only person(s), entity or entities who or that have any ownership interests in the certain real property located at:

6029 Stitt St
Monroe, NC 28110

in **Union** County, North Carolina (the "Property"); and (ii) the undersigned shall be jointly and severally liable for any and all debts secured by this Promissory Note.

The Owner further acknowledges that: (i) in order for the Owner to receive the Loan, the LBC requires the Owner to complete a "Project"; (ii) in order for the Owner to receive the Loan, what the LBC identifies as the "Business" must maintain certain jobs and create and maintain certain other jobs in working with the Owner to complete the Project; (iii) the Loan from the Governmental Unit to the Owner under the LBC consists entirely of a grant from the State of North Carolina to the Governmental Unit, subject to certain clawback provisions; (iv) Commerce is an intended third-party beneficiary to the LBC and to this Promissory Note; and (v) the LBC specifies those circumstances in which the Governmental Unit or Commerce can terminate the LBC and require the Owner to repay an amount of Loan funds according to a formula or else in an amount to be determined in the sole discretion of the Governmental Unit or Commerce but which amount shall not exceed the amount of Loan funds the Owner has actually received under the LBC.

Upon default, the Governmental Unit and/or Commerce may employ attorneys to enforce their rights and remedies under this Promissory Note and the LBC, and the Owner agrees to pay their reasonable attorneys' fees, plus all other reasonable expenses they incur in exercising their rights and remedies upon default. The rights and remedies of the Governmental Unit and Commerce, as described in this Promissory Note and the LBC, shall be cumulative and may be pursued singly, successively or together against the Owner (including each of the undersigned), the Property, or any other funds, property or security held by the Owner for payment or security, in the sole discretion of the Governmental Unit and Commerce. The failure to exercise any such right or remedy shall not be a waiver or release of such rights or remedies or the right to exercise any of them at another time.

The Owner hereby waives protest, presentment, notice of dishonor and notice of acceleration and maturity and agrees to remain bound for the payment of principal, interest and all other sums due under this Promissory Note and the LBC, notwithstanding any change or changes by way of release, surrender, exchange, modification or substitution of any security for this Promissory Note, or by way of any extension or extensions of time for the payment of principal and interest; and the Owner waives all and every kind of notice of such change or changes and agrees that the same may be made without notice of or consent to any of them.

This Promissory Note may not be amended, changed or altered except in writing executed by the Owner, the Governmental Unit and Commerce.

If not repaid within 30 days following demand hereunder, the Loan funds demanded by the Governmental Unit or Commerce under this Promissory Note shall bear interest at the rate of 10% per annum after demand until repaid. If either the Governmental Unit or Commerce initially demands Loan repayment from the Owner ("First Demand") in an amount less than the Loan funds the Owner has actually received under the LBC but, failing to receive repayment and, in its discretion under the LBC, increases the Loan repayment demand ("Second Demand") to the full amount the Owner has received under the LBC, then such interest on the difference between the First and Second Demands shall begin to accrue as of the date of the Second Demand.

For example, if under the terms of the LBC, a Business engages in an improper expenditure of Loan funds, the Governmental Unit has the discretion to require in a First Demand the partial repayment of Loan funds received by the Owner. Interest will begin to accrue at 10% per annum on whatever portion of the sum is not repaid as of the 31st day after the First Demand. Further, if the Owner fails to repay the First Demand in full, the Governmental Unit retains the discretion under the LBC to terminate the LBC and issue a Second Demand for the full repayment by the Owner of all Loan funds. Interest will continue accruing at 10% per annum on the original principal amount still unpaid from the First Demand and, following the expiration of 30 days from the Second Demand, interest will begin to accrue at 10% per annum on the additional unpaid principal Loan amount in the Second Demand.

Payment shall be made in lawful money of the United States of America via United States Mail First Class, Federal Express or UPS to the attention of the person at the address or in person at the address of the Governmental Unit or Commerce as directed in writing.

This Note shall be governed by, and construed in accordance with, the laws of the State of North Carolina.

IN WITNESS WHEREOF, the undersigned has (have) caused these presents to be executed under seal, pursuant to authority duly given, the day and year first above written.

EVERY SIGNATORY BELOW EXPRESSLY REPRESENTS THAT ALL INDIVUDALS OR ENTITIES WITH ANY OWNERSHIP INTERESTS IN THE PROPERTY HAVE EXECUTED THIS PROMISSORY NOTE.

Dated as of: ________________________ , 20 __________

If by Individual: ____

Signature: ________________________________[SEAL]__

Printed Name: ____

Dated as of: ________________________ , 20 __________

If by Entity: ____

Signature: ________________________________[SEAL]__

Printed Name: ____

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 Monroe** ("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

The Department of Commerce strongly encourages, but does not require, the Governmental Unit secure the funds loaned to the property owner, **Total Comfort Inc.**, with a Deed of Trust on the property.

Please check the appropriate box below indicating the intention of the Governmental Unit:

☐ The Governmental Unit will secure the funds with a Deed of Trust listing the **City of Monroe** as the beneficiary in the amount of **$250,000.00**.

☐ The **City of Monroe** ("Governmental Unit") has elected NOT to secure with a deed of trust on the subject property the **$250,000.00** in grant funds awarded by the North Carolina Department of Commerce ("Commerce") for a building reuse grant. Governmental Unit acknowledges and agrees that it is liable to the State for any grant funds that must be repaid under the Grant Agreement or Legally Binding Commitment, including (without limitation), any required repayments due to the property owner's failure to create and maintain jobs, which could include the full amount of the grant. Governmental Unit acknowledges that its liability to Commerce arises whether or not it is able to collect any repayment from the property owner under the Legally Binding Commitment, but still elects not to obtain a deed of trust on the subject property.

Please fill in the box below:

Governmental Unit Name: **City of Monroe**___________________________________

By (Signature): ____

Printed Name: ____

Title: ____

Date: ____

City of Monroe
Where Heartland Meets High Tech

STAFF REPORT

TO: General Service Committee

VIA: E.L. Faison, City Manager

DATE: June 17, 2021

FROM: Brian Borne, Assistant City Manager

PREPARED BY: Lisa Stiwinter, Planning and Development Director

SUBJECT: Pilot Program for Food Trucks in Central Business District (CBD)

SUMMARY STATEMENT

The General Service Committee is requested to consider and discuss a Pilot Program to allow food trucks in the Central Business District (CBD) of downtown Monroe.

REVIEW

At the May 27th General Service Committee meeting, planning staff presented a zoning text amendment to Section 156.121 titled "Temporary Uses, Structures and Special Events" to allow food trucks in the Central Business District (CBD). The purpose of the zoning text amendment was to establish standards to allow food trucks on private property and City-Owned parking lots in the CBD of downtown Monroe. The General Service Committee provided a recommendation not in favor of moving forward with the zoning text amendment to allow food trucks in CBD district. The committee expressed an interest in developing a pilot program for food trucks that would establish standards for food trucks on private property, City-Owned parking lots and public right-of-way in the CBD.

Draft Pilot Program for Food Trucks in the Central Business District (CBD):

A Pilot Program has been developed to establish standards to allow food trucks on private property, City-Owned parking lots and public right-of-way in the Central Business District (CBD) of downtown Monroe. The Food Truck Pilot Program shall be effective for ninety (90) days from the date of City Council approval and comply with the following criteria:

Food Trucks on Private Property, City-Owned Parking Lots and Public Right-of-Ways.

Food trucks are defined as a licensed, motorized vehicle or mobile food unit licensed by the NC State Division of Motor Vehicles, designed and equipped to serve food and beverages. Food Trucks shall adhere to the following conditions:

A. Food Trucks on Private Property. Food trucks on private property are permitted on lots in the Central Business District (CBD) and are subject to the following:

1. Must obtain a temporary use permit, be located on private property and obtain written permission from the property owner.

2. To locate on a property in in the Central Business District (CBD), the property must have a primary use. An example of a primary use would be a building with an active use or an improved stand-alone parking lot. An unimproved grass or dirt lot is not a primary use.

B. Food Trucks in City-Owned Parking Lots. Food trucks within the Central Business District (CBD) can locate in the following City-Owned parking lots: Intersection of Franklin Street and Main Street, Intersection of Main Street and W. Talleyrand Ave, Intersection of Hayne Street and Windsor Street or Intersection of N. Church Street and E. Franklin Street.

1. Requires a host business with a physical location be a part of the temporary use permit submitted to the City requesting the food truck services. The host business shall be located within the Central Business District (CBD) and meet the following:
   - **i.** Permitted and has a valid certificate of occupancy.
   - **ii.** Is actively operating.
2. Food trucks shall not impede, endanger or interfere with pedestrian or vehicular traffic.
3. The vendor must possess a valid insurance policy through an insurance carrier authorized or eligible to do business in the State of North Carolina for any damage to the public right-of-way and for any damages for which the City might incur the liability because of property damage or personal injury arising out of the use of the public right-of-way. The minimum liability limit to the policy shall be one million dollars ($1,000,000.00). The City of Monroe shall be listed as an additional insured as its interests may appear on all Certificate of Insurance.
4. The City reserves the right to require any permit holder to cease part or all of its operation, or remove the food truck from the permitted parking space in order to

allow for construction, maintenance or repair of any street, curb, gutter, sidewalk, storm drain inlet and any other similar municipal utility.

5. The food truck operator must comply with all other applicable local, state and federal regulations. Any food truck operator in a manner inconsistent with these regulations is illegal.
6. The City may suspend the permit to maintain the health, safety, and welfare of the public. The City may suspend the food truck permit when the street is closed for a special event.
7. If at any time evidence of the improper disposal of liquid waste or grease is discovered, the temporary use permit will be rendered null and void and the food truck business will be required to cease operation immediately.

C. Food Trucks in Public Right-of-Way. Food trucks in the public right-of-way can locate on any street within the Central Business District (CBD).

1. No food truck vendor may utilize the right-of-way to serve customers without obtaining a temporary use permit from the Planning and Development Department.
2. No single food truck operator shall occupy more than one food truck at one given time in the Central Business District (CBD).
3. Requires a host business with a physical location be a part of the temporary use permit submitted to the City requesting the food truck services. The host business shall be located within the Central Business District (CBD) and meet the following:
   i. Permitted and has a valid certificate of occupancy.
   ii. Is actively operating.
4. The vendor must possess a valid insurance policy through an insurance carrier authorized or eligible to do business in the State of North Carolina for any damage to the public right-of-way and for any damages for which the City might incur the liability because of property damage or personal injury arising out of the use of the public right-of-way. The minimum liability limit to the policy shall be one million dollars ($1,000,000.00). The City of Monroe shall be listed as an additional insured as its interests may appear on all Certificate of Insurance.
5. The vendor shall hold the City, its officers, councilors and employees harmless and indemnify them for any loss, liability, damage, costs, and expenses arising from its operations.

D. Standards for all Food Trucks.

1. No single food truck operator shall occupy more than one food truck at one given time in the Central Business District (CBD).

2. Food trucks are limited to no more than four (4) food trucks in the Central Business District (CBD) at one given time.
3. Hours of operation are limited to the hours between 5 pm and 2 am from Thursday to Monday.
4. Temporary Use Permits for food trucks located in the Central Business District (CBD) shall be valid for a maximum of seven (7) days (Monday through Sunday) a week. A food truck vendor shall not book a seven (7) day period consecutively in order to provide customers with a variety of cuisine.
5. Allowed at permitted special events and on active construction sites.
6. Not allowed one hundred (100) feet from the main entrance of any restaurant or outdoor dining area.
7. All food trucks must be situated to allow at least five (5) of unobstructed space for pedestrians on sidewalks, pedestrian paths and other locations intended primarily for pedestrian travel. If any applicable law, including American with Disability Act regulations, shall require a greater distance, the greater distance shall apply.
8. The food truck must be located at least five (5) fee from any utility box, utility vault, handicapped ramp, or emergency call box. Not allowed within fifteen (15) feet from any fire hydrant.
9. The minimum distance requirements are measured in a straight line from the closest point of the proposed food truck location to the closest point of the buffered object, or in the case of a restaurant, measured from the closest point of the restaurant's main entrance.
10. Food truck vendors are responsible for the proper disposal of waste and trash associated with the operation. Vendors shall remove all waste and trash from their location at the end of each day or as needed to maintain the health and safety to the public. The vendor shall keep all areas within ten (10) feet of the truck clean of grease, trash, paper, cups or cans associated with the vending operation. No liquid waste or grease is to be disposed into the tree pits, storm drains or onto the sidewalks, streets or other public place. Under no circumstances shall grease be released into or disposed of in the City's sanitary sewer system.
11. There shall be no audio amplifier or similar device to attract the attention of the public.
12. No food truck shall be parked in a location that prohibits or restricts access to a private property. A minimum of five (5) foot spacing is required from any driveway, measured from the driveway apron.
13. Advertising consisting of business name, logo and items available for sale may be displayed onto the food truck. No other form of advertising is permitted.

14. If Union County Environmental Health revokes the permit for the food truck, the City's temporary use permit shall be revoked as well.

15. The food truck operator shall not utilize tables, chairs, free-standing signage or audio amplification in conjunction with the food truck. All equipment shall be contained within or on the food truck.

RECOMMENDATION

The General Services Committee is requested to consider the Pilot Program to establish standards for food trucks to locate within the Central Business District (CBD).

City of Monroe
Where Heartland Meets High Tech

STAFF REPORT

TO: General Services Committee

VIA: E.L. Faison, City Manager

DATE: June 17, 2021

FROM: Peter Cevallos, Airport Manager

SUBJECT: Aerowood Aviation Lease of Quonset Hangar Office Space

SUMMARY STATEMENT

Staff is seeking City Council approval for a ten-year lease with Aerowood Aviation for the office space.

REVIEW

At the June 8, 2020 City Council meeting, a budget amendment was approved for additional funds to complete the Quonset Hangar Reactivation, which authorized staff to make improvements to the hangar so that it could be made available for lease. In that previous request packet, a lease with Aerowood Aviation for the hangar office space was described, and City Council approved the lease in principle, however the lease still required the statutory 30-day notice. The notice requirement has been fulfilled; therefore, staff is now formally requesting approval of a lease between the City and Aerowood Aviation to lease the Quonset Hangar office space at the lease rate of $5 per square foot per year, as prescribed by the City's Fee Schedule. The lease term is for 10 years, and there is a three (3) percent increase at the five-year point. The lease will generate an annual rent of $17,910; the City will re-coup its investment in reactivating the office space in eight years. Aerowood Aviation will pay for the Quonset Hangar's utilities; they will also continue to maintain the lease on the office space in the terminal building, utilizing them for the administration of the Charter Jet Transport charter operation.

RECOMMENDATION

The Airport Commission and staff is requesting General Service Committee recommend to City Council to approve:

- The ten-year lease with Aerowood Aviation for the two-story office space in the Quonset Hangar,
- Authorize the City Manager to sign the lease agreement.

Attachment(s):
Aerowood Aviation Lease – Quonset Hangar Office Space

STATE OF NORTH CAROLINA
UNION COUNTY

LEASE AGREEMENT

THIS OFFICE SPACE LEASE AGREEMENT ("Agreement") is made and entered into this ____ day of **_______, 20____,** between the ***City of Monroe*** (hereinafter referred to as the "LESSOR"), and ***Aerowood Aviation, LLC*** having its principal place of business at ***Airport Terminal Building, with an address of Aerowood Aviation, 3900 Paul J Helms Drive, Monroe, NC 28110 Attention: Brandon Atkinson*** hereinafter referred to as the ("LESSEE").

WHEREAS, the Lessor hereby leases to Lessee office space at the Charlotte-Monroe Executive Airport. The office space shall be used and occupied by Lessee solely for the general office purposes in the conduct of its aviation-related business.

WITNESSETH:

That, in consideration of the rental hereinafter set out and the obligation of Lessee to operate an aviation-related business on the subject premises and subject to the terms and conditions hereinafter set forth, said Lessor does hereby let and lease unto said Lessee and the said Lessee does hereby accept as Lessee of the said Lessor the office space located in Hangar 9 (Quonset), 1650 Aviation Drive, Monroe NC 28110, lying and being in the City of Monroe, Union County, North Carolina. Said office space is two stories totaling 3,582 square feet, hereinafter called "the Premises," as described on Exhibit A attached hereto and made a part hereof.

USE OF PREMISES

Lessee covenants that it will use the property for the operation of an aviation-related business and will use the property for no other purpose without the written consent of Lessor. Lessee acknowledges that the primary consideration to Lessor is its covenant to operate and conduct its aviation-related business on the leased premises. Lessee shall conform to all the requirements of applicable federal, state and local statutes, regulations, ordinances and policies, and shall comply in all respects with the rules and regulations duly adopted by the Lessor in Chapter 131 of the Monroe Code of Ordinances and any other policies applicable to all aircraft storage facilities and fueling at the Charlotte-Monroe Executive Airport. In addition, this Lease Agreement shall be governed by, and the Lessee expressly agrees to, the following:

a. If during the term of this Lease Agreement, the United States Government or any other governmental agency acquires possession of the premises herein leased by virtue of any laws now in effect or which may become effective during the term of this Lease Agreement, then this Lease Agreement shall terminate.

b. It is agreed and understood between the parties that during the term of this Lease Agreement or any renewal thereof, the Federal Aviation Agency (FAA) or any other Federal or State agency shall be permitted to enter said premises.

c. Lessee shall not enter into any transaction which would deprive the Lessor of any of the rights and powers necessary to perform all covenants of the Grant Agreements or other obligations under various type agreements or which would deprive Lessor of rights to terminate this Lease Agreement under the terms herein.

d. The Lessee agrees in its operation and use of said airport, it will not, on the grounds of race, color, creed, age, handicap, sex or natural origin, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Part 15 of the Federal Aviation Regulations as amended or succeeded. The Lessor hereby reserves the right to take such action as the FAA may direct to enforce such covenant of nondiscrimination.

The non-exclusive use of driveway and parking facilities will be provided in the Charlotte-Monroe Executive Airport as required by clients, staff and other necessary personnel connected with the activities to be carried out upon the premises of the lease. The non-exclusive use of such other land and buildings adjoining the leased properties will be provided as is required to enable ingress and egress from doors and other areas leading from and into the leased premises.

TERM

The term of this Agreement shall commence on the effective date **July 15, 2021** and be for **ten (10) years**, unless terminated by either Lessee or Lessor with thirty (30) days prior written notice.

RENTAL

The Lessee shall pay to the Lessor as rental for the aforementioned office space totaling 3,582 square feet by a per square foot rate set forth in the City of Monroe fee schedule for that office space: **$5.00 per sq. ft. per year = $17,910 per year ($1,492.50 per month).** , as described in Exhibit B attached hereto and made a part hereof. Rent shall be paid monthly in advance on or before the first day of each month. At the agreed upon regular intervals of every FIVE (5) years throughout the term as set forth in the previous paragraph, the annual rental shall be adjusted upward to reflect an increase of three (3) percent.

All rentals payable hereunder shall be paid to Lessor without any offset or deduction whatsoever, in monthly installments equal to one-twelfth (1/12) of the annual rental, in advance on the first day of each month, beginning on the first day of the term hereof with any portion of a month to be prorated.

All rentals shall be made at or mailed to:

City of Monroe
P. O. Box 69
Monroe, North Carolina 28111

or at such other address as Lessor may designate in writing.

UTILITIES

This lease does not include utilities. The Lessee shall be solely responsible for placing the utilities in their name and shall be responsible for all fees and monthly charges.

MAINTENANCE AND REPAIRS

The Lessee shall keep the building and grounds in a neat and well-kept manner and be responsible for all routine repairs and maintenance to the demised premises as may be reasonably necessary to keep the same in proper, safe, sanitary, secure and useful condition unless the Lessor agrees to make such repairs. The Lessee shall take reasonable precautions to prevent damage to the Leased Premises from fire or other causes, and to prevent bodily and personal injury.

The Lessee shall provide all routine janitorial services at its own expense. Provisions for contract janitorial service shall include worker's compensation insurance, general liability insurance and employee bonds.

At the end of the term of this Lease or at the earlier termination thereof, Lessee agrees to return said premises peaceably and promptly in as good as condition as they were in at the beginning of the term (except for ordinary wear and tear), loss by fire or other hazard and depreciation from normal and reasonable usage excepted.

The Lessor shall be responsible for maintenance associated with the structural components of the buildings (such as roof and building shell). Additionally, the Lessor shall maintain the exterior of the building including painting and other related maintenance items. The Lessor shall also maintain landscaping around the buildings.

CONFORMANCE TO STATUTES

The Lessee shall comply with all applicable statutes and provisions relating to occupancy by a certain number of persons, building code provisions for kitchens, fire regulations, and provisions governing food preparation and handling and any other governmental rules, regulations and executive orders that are applicable.

STAFFING AND EQUIPMENT

The Lessee shall be responsible for all necessary staffing, programming and operations of the general office purposes in the conduct of its aviation-related business and shall provide all equipment necessary for program operations. All equipment and furnishings owned by the Lessor shall be maintained and operated in a safe and sanitary condition.

IMPROVEMENTS BY LESSEE

It is understood and agreed that the Lessee shall not make any improvements to the demised premises whether in the form of alterations, additions or painting without the prior written approval of the Lessor, and that such improvements will be at the sole expense of the Lessee who will hold the Lessor harmless from any liability thereon unless said improvements are agreed to be made by the Lessor.

INSURANCE

Lessee shall maintain in full force and effect for the period covered by this Lease Agreement insurance coverage against bodily injury, personal injury, including death, property damage insurance, and product liability coverage, if applicable, with an insurance carrier satisfactory to the Lessor. The amounts of insurance coverage shall have a minimum combined single limit of one million dollars ($1,000,000.00). All insurance required herein shall meet the following conditions at all times:

a. It must cover complete contractual liability and personal injury as well as bodily injury.
b. Coverage shall contain a provision requiring the insurance carrier to give the Lessor thirty days prior written notice of any cancellations of such insurance, or a reduction in coverage, or any other major change in such insurance.
c. Coverage must name the City of Monroe as additional insured for liability purposes.
d. Copies of policies and/or certificates of insurance shall be filed with the Lessor.
e. Any failure by Lessee to maintain the required insurance shall be deemed a material breach and sufficient cause for termination of this Lease Agreement by the Lessor.

DAMAGE OR DESTRUCTION

It is mutually covenanted and agreed that if, during the term of the lease, said leased premises as they now exist shall be substantially destroyed by fire, windstorm, tornado, or other casualty, then this lease, at the option of either party and upon ten days' notice in writing to the other party, shall cease and terminate and both parties shall be released from further obligation hereunder. If, however, during the term of this lease, the said premises as they now exist shall be only partly destroyed by fire, windstorm, tornado, or other casualty, the Lessor, at its discretion, may or may not repair the premises. Any repairs by the Lessor shall be made as speedily as possible at its own expense. If the Lessor considers the leased premises usable, then the required rent shall not abate. If the Lessor considers the premises unusable, either from damage or destruction or otherwise, then the rent shall abate during the period required for repairs or until the Lessor considers the premises usable again.

Notwithstanding any other provision of this agreement, the Lessor shall only be responsible for repairing fire or other casualty damage to the extent of the proceeds payable from fire insurance policies in force at the time of the loss.

Damage to such an extent as to render forty percent or more of the floor space unusable for the purposes of the Lessee's operations shall be "a substantial destruction" within the meaning of this agreement, and damage which renders less than forty percent of floor space usable for the purposes of the Lessee's business, but which cannot be repaired within sixty days, shall likewise be deemed "a substantial destruction."

BREACH OF LEASE

The happening of any one or more of the following listed events shall constitute a breach of this Lease Agreement on the part of the Lessee:

a. The failure of the Lessee to pay any rent or any other amount payable under this Lease Agreement when the same become due and payable.
b. The failure of the Lessee to perform any term or terms of this Lease Agreement and the failure of the Lessee to remedy such default within a period of 90 days after receipt of written notice to remedy such default.
c. The assignment by Lessee of any or all of the property or assets covered by this Lease Agreement except assignment to and among other commonly owned and affiliated entities of the Lessee, or the subleasing of any of the hangar space by the Lessee.
d. Failure of the Lessee to abide by Chapter 131 of the Monroe Code of Ordinances and any other duly adopted rules, regulations, or policies regulating the use of the Charlotte-Monroe Executive Airport including any duly promulgated rule, regulation, or policy of the FAA or other relevant federal or state agency.
e. The conduct of illegal activities on the Leased Premises.

Upon the happening of any event of default as defined in this Lease Agreement the Lessor may, at its option terminate this Lease Agreement and take possession of personal property of the Lessee from the leasehold. Upon such default, the parties agree that the Lessor, without any advance notice, may take possession of the leasehold in such a manner as Lessor may deem desirable, including but not limited to locking same until such time as all rentals and other applicable charges have been paid, and such costs of locking said leasehold and other applicable charges have been paid by Lessee. During any period of lockout, Lessor shall not be held liable in any manner for the safekeeping and condition of the Lessee's personal property held within the leasehold. After sixty (60) days from the date when the Lessor takes possession of leasehold and all the property located within and sends notice thereof by certified mail, return receipt requested, to the address listed above or any subsequent address on file with the Lessor, the personal property may be sold for public auction. The remedy provided in this paragraph is in addition to and not in lieu of any other remedies which the Lessor may have by virtue of statute or otherwise. In any action or proceeding for the collection of any sums which become payable according to this lease, the Lessee agrees to pay the Lessor a reasonable sum for Lessor's expenses and attorney's fees, if Lessor is the prevailing party.

Exercise by Lessor of the right of termination set out herein shall not preclude Lessor from pursuing any other remedy available at law or equity.

HOLD HARMLESS AGREEMENT

Lessee shall indemnify and save harmless Lessor from and against any and all loss, claims, judgments, and costs, including attorney's fees, damages, expenses and liability caused by any accident or other occurrence causing bodily injury or property damage to any person or property arising from the use or occupancy of the demised premises by the Lessee.

Lessee hereby indemnifies, and shall protect and hold Lessor harmless from and against all liabilities, losses, claims, demands, costs, expenses, and judgments of any nature arising, or alleged to arise, from or in connection with the following, including claims by Lessee and by third parties: (a) any injury to, or the death of any person or loss or damage to property on or about the premises or any adjoining property arising from or connected with the Lessee's use of the premises during the term; (b) performance of any labor or services or the furnishing of any materials or other property in respect of the premises or any part thereof by Lessee or at the Lessee's request; and (c) the storage or use of Hazardous Materials by Lessee, provided, however, nothing contained herein shall allow such storage or use by Lessee. "Hazardous Materials" shall mean hazardous wastes, hazardous substances, hazardous constituents, toxic substances or related materials, whether solids, liquids or gases, including but not limited to substances defined as "hazardous wastes," "hazardous substances," "toxic substances," "pollutants," "contaminants," "radioactive materials," or other similar designations in, or otherwise subject to regulation under, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. §§ 9601 et seq.; the Toxic Substance Control Act ("TSCA"), 15 U.S.C. §§ 2601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1802 et seq.; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 9601 et seq.; the Clean Water Act ("CWA"), 33 U.S.C. §§ 1251 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300(f) et seq.; the Clean Air Act ("CAA"), 42 U.S.C. §§ 7401 et seq.; any law, rule, or regulation, federal, state or local, now or hereafter in existence, governing or relating to the creation, use, storage, sale, retention, or transportation of hazardous or toxic substances and wastes; and in the plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated pursuant to the preceding laws or other similar laws, regulations, rules or ordinances now or hereafter in effect; and any other substances, constituents or wastes subject to environmental regulations under any applicable federal, state or local law, regulation or ordinance now or hereafter in effect. Lessee will be responsible for any legal costs suffered by the Lessor in defending any action, suit or proceeding brought against Lessor due to any such occurrence.

WAIVER OF SUBROGATION

The Lessor agrees to maintain fire, extended coverage, vandalism and malicious mischief insurance on the Leased Premises and on personal property of the Lessor contained therein to the extent of its full insurable value; the Lessee shall do the same with respect to its property located in or on the Leased Premises. The Lessor and Lessee hereby mutually release and discharge each other from all claims or liabilities arising from or caused by fire or other casualty covered by the above insurance on the Leased Premises.

RIGHT OF INSPECTION

The Lessor shall have, during the term of this Agreement, the right, upon reasonable notice (excepting emergencies), to enter upon the premises and inspect the same for any and all purposes, provided Lessor shall provide prior reasonable notice to Lessee and shall not unreasonably interfere with Lessee's business conducted on the premises

PROHIBITION OF SUBLEASING

This lease may not be assigned or the premises subleased without the written consent of the Lessor.

FORFEITURE FOR NONCOMPLIANCE

It is expressly agreed that if Lessee shall cease to use the property for the operation of its intended aviation business for a continuing, uninterrupted period of 180 days, Lessor may declare this lease terminated and cancelled and take possession of said premises without prejudice to any other legal remedy it may have on account of such default.

E-VERIFY REQUIREMENT

Lessee shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes. Further, if Lessee utilizes a subcontractor, Lessee shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes.

ENTIRE AGREEMENT

This instrument shall constitute the entire understanding between the parties, superseding any and all previous understandings oral or written pertaining to the subject matter contained herein.

THE CITY OF MONROE, NC

BY: __________________________
E. L. Faison, City Manager

Attest:

____
Bridgette Robinson, City Clerk

AEROWOOD AVIATION, LLC

BY: (print name) ___________________________

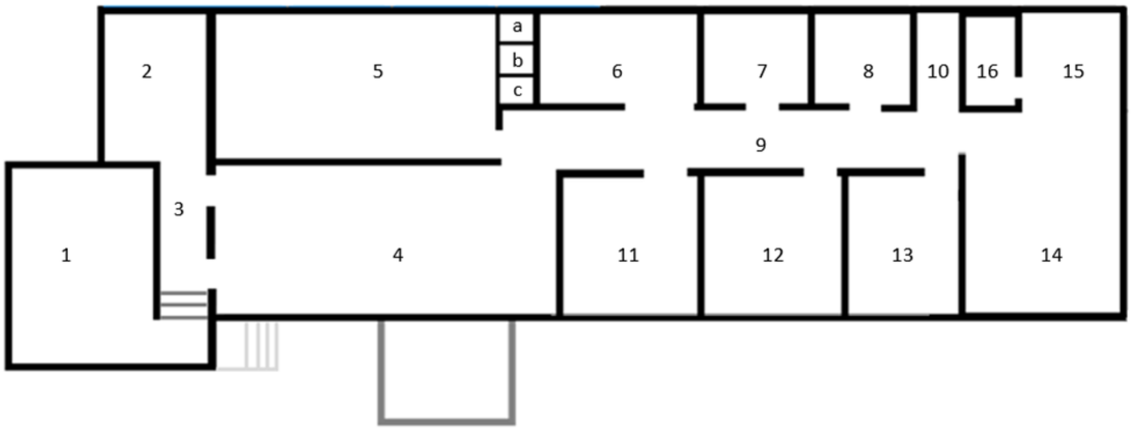
TITLE: ___________________________________

SIGNATURE: _____________________________

DATE:___________________________________

EXHIBIT A – HANGAR 9 OFFICE SPACE: LAYOUT/DIMENSIONS

1st FLOOR PLAN: 2,377 SQ. FT.



No.	Room Description	Length	Width	Sq. Ft.
1	Viewing Room	12.0	10.0	120.0
2	Pilot's Prep Room	14.0	6.0	84.0
3	SE Hallway	17.0	3.0	51.0
4	Lobby	25.0	12.0	300.0
5	Conference Room	18.0	12.0	216.0
5a	Conf. Room Strg 1	4.0	3.0	12.0
5b	Conf. Room Strg 2	4.0	3.0	12.0
5c	Conf. Room Strg 3	4.0	3.0	12.0
6	Kitchen	9.0	8.5	76.5

No.	Room Description	Length	Width	Sq. Ft.
7	Women's Bathroom	9.0	8.0	72.0
8	Men's Bathroom	9.0	6.0	54.0
9	Main Hallway	40.0	4.0	160.0
10	NW Hallway	10.0	3.0	30.0
11	Office 1	12.0	10.0	120.0
12	Office 2	12.0	9.0	108.0
13	Office 3	12.0	9.0	108.0
14	Assembly Room/1	24.0	19.0	456.0
15	Assembly Room/2	19.0	17.0	323.0
16	Dispatch Booth	9.0	7.0	63.0

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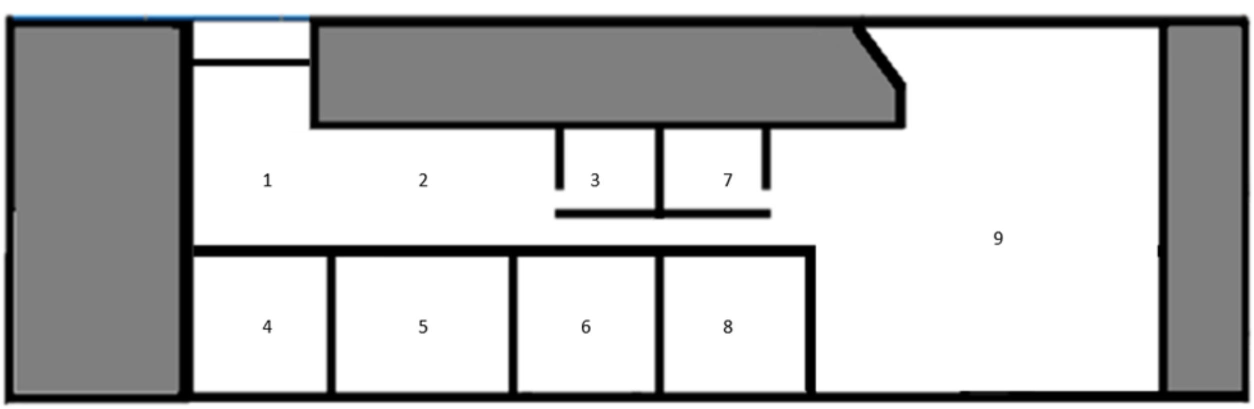
2nd FLOOR PLAN: 1,205 SQ. FT.



No.	Room Description	Length	Width	Sq. Ft.
1	Training Floor Ent	16.0	7.0	112
2	Computer Stations	23.0	9.0	207
3	Bathroom	6.0	6.0	36
4	Training Room #1	9.0	7.0	63
5	Training Room #2	10.0	7.0	70

No.	Room Description	Length	Width	Sq. Ft.
6	Training Room #3	9.0	8.0	72
7	Bathroom	6.0	6.0	36
8	Training Room #4	9.0	9.0	81
9	Instruction/Break Area	24.0	22.0	528
	UNUSABLE			

EXHIBIT B – AEROWOOD LEASE PAYMENTS - TEN YEAR LEASE

YEARS	***1ST FLR/2,377 SF (\$990.50/month)***	***2ND FLR/1,205 SF (\$502.50/month)***	***BOTH FLOORS (\$1,492.50/month)***
1	$ 11,885	$ 6,025	$ 17,910
2	$ 11,885	$ 6,025	$ 17,910
3	$ 11,885	$ 6,025	$ 17,910
4	$ 11,885	$ 6,025	$ 17,910
5	$ 11,885	$ 6,025	$ 17,910
6	$ 12,242	$ 6,206	$ 18,447
7	$ 12,242	$ 6,206	$ 18,447
8	$ 12,242	$ 6,206	$ 18,447
9	$ 12,242	$ 6,206	$ 18,447
10	$ 12,242	$ 6,206	$ 18,447
	$ 120,633	**$ 61,154**	**$181,787**

Note: $5/sf/ yr., per the City of Monroe Fee Schedule; 3% increase after 5 yrs.