



# JACKSON COUNTY BOARD OF COMMISSIONERS

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Commissioner

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6/18/18

Thomas Valley Growers, LLC  
C/O – William R. Shelton Jr. , Member & Manager  
Joe Ward, Member & Manager  
Ken Cochran, Member & Manager  
Nathaniel Darnell, Member & Manager  
Brian Bumgarner, Member & Manager  
208 Rocky Branch Road  
Whittier, NC 28789

RE: Written Permission to Temporarily Locate RVs on the “Drexel Heritage Property” located at 271 Clearwood Drive, Whittier NC 28789

Dear Mr. Shelton (and all other Member & Managers),

On May 14, 2018 you submitted a request letter to the Jackson County Board of Commissioners on behalf of Thomas Valley Growers, LLC. In this letter you state that agricultural labor is in short supply and it has become necessary to provide adequate housing to accommodate workers. It specifically requested that up to eight RV’s be allowed to be installed on the Drexel Heritage Property.

In accordance with the current Lease and Use Agreement between Jackson County and Thomas Valley Growers, LLC, written permission should be obtained from Jackson County to install these RVs. On June 18, 2018 the Jackson County Board of Commissioners voted to allow the installation of up to 8 RVs so long as the following conditions are met.

1. No more than eight RV units will be placed onto property.
2. No more than 4 persons per unit will be allowed to stay in the RVs.
3. The RV units will be used on a temporary basis in any given year. As stated in your letter, temporary means they will only be occupied for around four months during the peak harvest season.
4. The RVs will be properly hooked up utilizing the extension of water, sewer and electrical infrastructure.

5. Thomas Valley Growers, LLC and all of its Members warrant that the installation and use of RVs as described above and in the request letter shall comply with all local, state and federal rules, codes and laws. This shall include, but not all inclusive, rules and laws as they relate to building codes, floodplain regulations, water & sewer connections to TWSA, archeological legal restrictions as identified by the Smoky Mountain Agricultural Development Station Master Plan and any state or federal labor laws as they relate to the housing of migrant labor. As stated in the current lease, Thomas Valley Growers, LLC agrees to indemnify and hold harmless Jackson County from any and all claims, demands, suits or liabilities whatsoever by virtue of its use and occupancy of the premises. This indemnifications extends to this new use.

Please let us know if you have any questions in regards to this written permission to proceed forward.

Sincerely,

Brian T. McMahan  
Chairman, Jackson County Board of Commissioners

STATE OF NORTH CAROLINA  
COUNTY OF JACKSON

**LEASE AND USE AGREEMENT**

THIS AGREEMENT, made and entered into this the 6<sup>th</sup> day of May, 2016, by and between the COUNTY OF JACKSON, a Body Politic and a Subdivision of the State of North Carolina, (hereinafter referred to as “Lessor”), and THOMAS VALLEY GROWERS, LLC, a North Carolina limited liability company, (hereinafter referred to as “Lessee”);

WITNESSETH:

WHEREAS, the Lessor holds fee simple title to approximately 31.98 acres of land, located at 271 Clearwood Drive, Whittier NC and commonly referred to as the Drexel Heritage Property and the Whittier Industrial Park (hereinafter “the Premises”) more fully described as those tracts of land described in the deed dated June 29, 2007 from Jackson Development Corporation, Inc. to County of Jackson, a body politic existing under the laws of the state of North Carolina and recorded in Deed Book 1685, Pages 18-23, Jackson County Public Registry; and

WHEREAS, the Lessee desires to Lease all of the property and premises described in the above-referenced deed and use the space as a central location for farmers to store, package and distribute their products to wholesale and retail outlets and other farming related uses; to raise the cultural awareness of local agrarian techniques and procedures; and to host farm related community activities for entertainment purposes and other similar related activities; and

WHEREAS, the Lessor has determined that the Premises will not be needed by the County for the term of the Lease; and

WHEREAS, the execution of this agreement for and on behalf of the Lessor has been considered and approved by the Board of Commissioners for the County of Jackson at a duly called public meeting held on the 5<sup>th</sup> day of May, 2016 upon thirty (30) days public notice which included a ten (10) day upset bid period to determine fair market value and in which no upset bid was made, and by the Members and Managers of the Lessee pursuant to their operating agreement and organizational minutes; and

WHEREAS, the parties hereto have mutually agreed to the terms and conditions of this Lease and Use Agreement, as hereinafter set forth:

NOW THEREFORE, in consideration of the covenants and promises set forth herein below, the receipt and sufficiency of which is hereby acknowledged, Lessor does hereby rent, lease and demise unto Lessee for and during the term and under the terms and conditions hereinafter set forth, with all of the rights and privileges thereunto pertaining, that certain parcel of real property consisting of the Premises, more fully described as those tracts of land described in the deed dated June 29, 2007 from Jackson Development Corporation, Inc. to County of

Jackson, a body politic existing under the laws of the state of North Carolina and recorded in Deed Book 1685, Pages 18-23, Jackson County Public Registry, to which reference should be had. Said Premises being all of the property and buildings commonly referred to as the Drexel Heritage Property and the Whittier Industrial Park

THE TERMS AND CONDITIONS OF THIS AGREEMENT ARE AS FOLLOWS:

1. TO HAVE AND TO HOLD the Premises for a term of five (5) years, commencing on the 6th day of May, 2016, and continuing until the 5th day of May, 2021, this instrument is a rental or lease of the premises only, and is not a conveyance or transfer to the Lessee of any ownership interest of the Lessor. Although Lessee may make improvements to the site pursuant to this instrument, this instrument confirms that those improvements belong to the Lessor and are subject to this instrument as a rental or lease of the improvements only, and this instrument is not a conveyance or transfer to the Lessee of any ownership interest of the Lessor in the improvements.
2. It is understood and agreed that the Lessee shall have the right to extend the term of this Lease and Use Agreement for an additional period of five (5) years, beginning the 6th day of May, 2021, provided the Lessee notifies, in writing, the said Lessor of its intention to extend same, said notice to be given at least 90 days prior to the 5th day of May, 2021, and provided, further, that during such extended period of five (5) years, the rent to be paid by the Lessee to the Lessor shall remain the same for the additional period of five (5) years as it is for the initial term.
3. In the event that the Lessee, for any reason, shall decide to terminate this lease and use agreement during the term of the lease, this lease shall terminate, and any leasehold improvements made shall become the sole property of the Lessor and there shall be no future or outstanding obligation between the Lessor and the Lessee.
4. If Lessee fails to pay rent or fails to perform any of the obligations hereunder, or if a bankruptcy proceeding is filed by or against the Lessee, or if a receiver is appointed for the Lessee, or if Lessee makes an assignment for the benefit of creditors, or if any legal action or process is undertaken against Lessee wherein this Lease or the Premises are sought to be taken or occupied, then and in any of such events Lessor shall have the right to immediately terminate this Lease without notice to Lessee and Lessee shall immediately vacate the Premises and Lessor may re-enter the Premises and take immediate possession thereof. However, Lessor and Lessee hereby understand and agree that Lessee shall be given at least sixty days to remove all personal property, agricultural machinery, and other similar items that have been installed or placed on the premises by Lessee so long as the building and improvements are repaired from any damage caused by removal of Lessee's personal property.
5. The parties hereby agree that the rental amount for said premises during the initial term shall be Seventy-Five Thousand Dollars (\$75,000.00). The rental amount shall be paid in increments of Fifteen Thousand Dollars (\$15,000) annually with the first payment to be made

one year from the effective date of this agreement and continuing on the anniversary of this date through the term of the Agreement. The annual rental payment may be made by cash payment or with presentation of receipts showing expenses of the annual rental amount for improvements made to the property or building located on the subject property that will not be removed at the termination of this agreement. Annual payments may be made in advance. Any income derived from the use of the premises through the lease of the subject property shall remain with the Lessee for use by the Lessee as it deems appropriate. Receipts showing expenses paid during the short term use agreement preceding this Lease and Use Agreement may be used to satisfy the first rental payment.

6. Lessee understands that their use of the Premises is subject to a Sanitary Sewer Easement to the Wittier Sanitary District dated July 7, 2004 and subject to all encumbrances on the Premises of record.

7. Lessee shall use the Premises only for the use intended and shall not use or permit the premises to be used for any illegal or improper purposes, nor permit any disturbance or noise or annoyances, whatsoever, detrimental to the neighboring property owners or county residents, including hosting events or allowing the use of the Premises for events for large numbers of people without prior written permission of Lessor.

8. Lessee shall keep the Premises in better condition than it was on the initial date of this Lease Agreement. Lessor acknowledges that the intended use of the premises for agricultural activities may attract insects, rodents, and other wildlife. Lessee shall keep the premises in a clean, neat and orderly manner at all times and Lessee shall arrange for its own cleaning services for the Premises, at Lessee's sole cost and expense. Lessee shall arrange for the regular pickup of all trash and garbage at Lessee's sole cost and expense.

9. Lessee shall be allowed to make repairs, alterations, additions, modifications, and improvements to the premises without the prior consent of Lessor. Major structural changes to the warehouse that affect the layout or structural stability, including removal, modification, or alternation of the walls, windows, or roofing structure, shall require the prior written permission of Lessor. Lessee shall be financially responsible for all costs associated with the modifications and improvements.

10. Lessee shall comply with all statutes, ordinances and requirements of the municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the premises, occasioned by or affecting the use thereof by the Lessee.

11. Lessee shall be solely liable for their own utility services including sewer, water,

electricity, internet and telephone service.

12. Given reasonable notice to Lessee, Lessor shall have the right to enter and to grant licenses to enter the premises at any time and for such lengths of time as Lessor shall deem reasonable to inspect the premises, and as necessary for the operation and maintenance of the premises. No such entry by Lessor shall in any manner affect Lessee's obligations and covenants under this Lease and no such entry shall of itself without affirmative proof of negligence on the part of Lessor render Lessor liable for any loss of or damage to the property of Lessee.

13. To the extent allowed by North Carolina law, the Lessee agrees to indemnify and hold harmless the Lessor from any and all claims demands, suits or liabilities whatsoever by virtue of its use and occupancy of the Premises.

14. Lessee, at their expense, shall maintain public liability insurance including bodily injury and property damage insuring Lessee and Lessor with minimum coverage of at least \$1,000,000.00 per occurrence and Lessee shall provide Lessor with a Certificate of Insurance showing Lessor as additional insured. The Certificate shall provide a ten (10) day written notice to Lessor in the event of cancellation or material change of coverage. To the maximum extent permitted by insurance policies which may be owned by the Lessor or Lessee, Lessee and Lessor, for the benefit of each other, waive any and all rights to subrogation which might otherwise exist.

Lessee shall also maintain insurance on all personal property and contents within the leased premises.

15. If the Premises or any part thereof or any estate therein, or any part of the building materially affecting Lessee's use of the Premises, shall be taken by eminent domain, this Lease shall terminate on the date when title vests pursuant to such taking. Lessee shall not be entitled to any part of the award for such taking or any payment in lieu thereof, but Lessee may file a claim for the taking of fixtures and improvements owned by the Lessee, and for moving expenses.

16. In the event of a partial or total destruction of the building in which the Premises are situated, this lease shall be terminated and the Lessor and Lessee may negotiate a new agreement.

17. Any notice or demand which by any provision of this agreement is required or allowed to be given by either party to the other shall be deemed to have been sufficiently given for all purposes when made in writing and sent in the United States mail as certified mail or registered mail, return receipt requested, postage prepaid and addressed: (a) if to the Lessee, to Joe Ward, Manager, Thomas Valley Growers, LLC, 208 Rocky Branch Road, Whittier, North Carolina, 28789; (b) if to the Lessor, to Jackson County Manager, 401 Grindstaff Cove Road, Suite A207,

Sylva, North Carolina, 28779.

18. Lessee shall not assign this Lease or sublet the premises or any part thereof, without the prior written consent of Lessor.

19. This Lease is binding upon and inures to the benefit of the parties, their successors and assigns in interest.

20. This entire agreement, intent and understanding between Lessor and Lessee is contained in the provisions of this Lease and any stipulations, representations, promises or agreements, written or oral, made prior to or contemporaneously with this Lease shall have no legal or equitable effect or consequence unless reduced to writing herein. This Lease shall be governed by and construed pursuant to the laws of the State of North Carolina, with venue in Jackson County.

21. E-verify. Lessee shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if Lessee utilizes a contractor or subcontractor, Lessee shall require the contractor or subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.

22. Iran Divestment Act Certification: As of the effective date of this agreement, Lessee is not listed on the Final Divestment List created by the State Treasurer pursuant to North Carolina General Statute § 147-86.58. The signatories for Lessee hereby certify that they are authorized to make the foregoing statement.

23. Duplicate originals of this Agreement shall be signed by the Parties so that each Party may retain an original Agreement for their records.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be signed in their respective names by their duly authorized officers, on the day and year first above written.



**LESSOR:  
JACKSON COUNTY**

By: *Brian Thomas McMahan*  
Name: Brian Thomas McMahan  
Title: Chairman, Jackson County Commissioners

**ATTEST:**

By: *Angela M. Winchester*  
Name: Angela M. Winchester  
Title: Clerk to the Jackson County Commissioners

**LESSEE:  
THOMAS VALLEY AGRICULTURAL  
PRODUCERS, LLC**

By: *Joe Ward*  
Name: Joe Ward  
Title: Member and Manager

By: *William Shelton*  
Name: William Shelton  
Title: Member and Manager

By: *Ken Cochran*  
Name: Ken Cochran  
Title: Member and Manager

By: *Nathaniel Darnell*  
Name: Nathaniel Darnell  
Title: Member and Manager

By: *Brian Bunn*  
Name: Brian Bunn  
Title: Member and Manager