

## REQUEST FOR BOARD ACTION

ITEM NO. 16.

**DATE OF MEETING:** November 2, 2009

**REQUESTED BY:** Rick Benton, County Manager

**SHORT TITLE:** Resolution Authorizing Agreements and Project Ordinance for Industrial Shell Building Project: 1) CDBG-ED Funding Approval, Grant Agreement and Loan Agreement; 2) Sub-Recipient Agreement with Pender Progress Corporation for Use of CDBG-ED Funds; 3) Agreement with Pender Progress Corporation Providing for Funding and Construction of an Industrial Shell Building; and 4) Industrial Shell Building Project Ordinance

**BACKGROUND:** Pender County and Pender Progress Corporation have been working in partnership with the Town of Burgaw, Four County EMC, and Wilmington Industrial Development to develop an economic development strategy to construct a 40,000 sq. ft. industrial shell building product to be located on Worth Beverage Drive in the Pender Progress Industrial Park in Burgaw. The purpose of the project is to attract an industrial client for the site, to encourage other industrial clients to consider Pender County for industrial projects, and to encourage economic investment and job creation in Pender County. Funding for the project will include a \$673,250 CDBG-ED loan/grant (obtained by Pender County), a \$500,000 loan from Four County EMC to Pender Progress Corporation, and up to \$300,000 in a loan from Pender County to Pender Progress Corporation. As consideration for its financial contribution, Pender County shall acquire from Pender Progress an option to purchase 8 acres, more or less, on which the shell building and associated facilities shall be located. The County funds for this project shall come from Pender County's General Fund. The total project cost is estimated to be \$1,346,500, and with a \$126,750 contingency will not exceed \$1,473,250. Pender County will serve as an agent of Pender Progress Corporation in providing administration for the project budget.

The NC Department of Commerce has approved funds in the amount of \$673,250 for the project. \$18,000 of this is grant funds for administration. A grant agreement, funding agreement and loan agreement are prepared for execution. An agreement has been prepared outlining the responsibilities of Pender County and Pender Progress Corporation in funding and constructing the facility. A Sub-recipient agreement between Pender County and Pender Progress Corporation is also prepared to enable the County to pass the CDBG funds and responsibility to Pender Progress Corporation to carry out the project. And a project ordinance providing for the revenues and expenditures has been developed. A public hearing was held on October 19, 2009 pursuant to GS 158-7.1 (Local Development Act). Public hearings were held on April 6, 2009 and August 17, 2009 pursuant to the Community Development Block Grant application.

**SPECIFIC ACTION REQUESTED:** To consider approving a resolution authorizing the following agreements and project ordinance for the Industrial Shell Building project: 1) the CDBG-ED Funding

Approval, Grant Agreement and Loan Agreement; 2) the Sub-Recipient Agreement with Pender Progress Corporation for the use of the CDBG-ED Funds; 3) the Agreement with Pender Progress Corporation providing for funding and construction of the industrial shell building; and 4) the Project Ordinance.

**COUNTY MANAGER'S RECOMMENDATION**

Respectfully recommend approval.

Initial

**RESOLUTION**

**NOW, THEREFORE BE IT RESOLVED** by the Pender County Board of Commissioners that:

the following agreements and project ordinance pertaining to the industrial shell building project are hereby authorized: 1) the CDBG-ED Funding Approval, Grant Agreement, and Loan Agreement; 2) the Sub-Recipient Agreement with Pender Progress Corporation for the use of the CDBG funds; and 3) the agreement with Pender Progress Corporation providing for funding and construction of the industrial shell building; and 4) the Project Ordinance totaling \$1,346,500. The Chairman/County Manager is authorized to execute any/all documents necessary to implement this resolution.

**AMENDMENTS:**

MOVED \_\_\_\_\_ SECONDED \_\_\_\_\_

APPROVED \_\_\_\_\_ DENIED \_\_\_\_\_ UNANIMOUS

YEA VOTES: Tate \_\_\_ Brown \_\_\_ Blanchard \_\_\_ Rivenbark \_\_\_ Williams \_\_\_

\_\_\_\_\_  
Jimmy T. Tate, Chairman Date

\_\_\_\_\_  
ATTEST Date

NORTH CAROLINA  
DEPARTMENT OF COMMERCE

GRANT AGREEMENT

COMMUNITY DEVELOPMENT BLOCK PROGRAM  
ECONOMIC DEVELOPMENT

<b>Recipient Name:</b>	<b>Pender County</b>	<b>Grant No. 08-L-1923</b>
<b>Project Name:</b>	<b>Shell Building Loan</b>	

Upon execution of this grant agreement, the North Carolina Department of Commerce (DOC) agrees to provide to the recipient the Community Development Block Grant assistance under Title I of the Housing and Community Development Act of 1974, as amended (P.L. 93-383) authorized by the DOC funding approval, the North Carolina Community Development Block Grant administrative rules, applicable laws and all other requirements of DOC now or hereafter in effect. The grant agreement is effective on the date the grant agreement and funding approval are signed by the recipient. The grant agreement consists of the approved application, including the certifications, maps, schedules and their submissions in the application, any subsequent amendments to the approved application and funding approval and the following general terms and conditions:

1. **Definitions.** Except to the extent modified or supplemented by the agreement, any term defined in the North Carolina Community Development Block Grant Administrative Rules, 4 NCAC 1 K shall have the same meaning when used herein.

(a) Agreement means this grant agreement, as described above and any amendments or supplements thereto.

(b) Recipient means the entity designated as a recipient for grant assistance in the grant agreement and funding approval.

(c) Certifications mean the certifications submitted with the grant application.

(d) Assistance provided under this agreement means the grant funds provided under this agreement.

(e) Program means the community development program, project, or other activities, including the administration thereof, for which assistance is being provided under this agreement.

(f) Private entity means the corporation, partnership, proprietorship or other entity, which has entered into an equally binding commitment with the recipient to create and/or retain jobs as part of this program.

2. **Obligations of the Recipient.** The recipient shall perform the program as specified in the application approved by DOC. The recipient shall also comply with all other lawful requirements of DOC, all applicable requirements of the General Statutes of the State of North Carolina and any other applicable laws and Executive Orders currently or hereafter in force. The recipient shall be responsible for ensuring that all project jobs are created or retained in accordance with the approved CDBG application, that such jobs are filled by low and moderate income persons in the proportion presented in the application, and that all parties incur the full level of private investment committed to in the application. In the event of a finding by the

recipient or by DOC that a participating private entity has failed to fulfill its responsibilities under the project application and legally binding commitment(s), including the responsibilities to create and/or retain jobs and invest private funds, the recipient shall promptly exercise its rights and remedies to require repayment of CDBG funds, or to assess such other penalty as provided by the legally binding commitment and applicable state laws.

3. **Obligations of Recipient with respect to Certain Third Party Relationships.** DOC shall hold the recipient responsible for complying with the provisions of this agreement even when the recipient designates a third party or parties to undertake all or any part of the program. The recipient shall comply with all lawful requirements of DOC necessary to insure that the program is carried out in accordance with the recipient's application.

4. **Conflict of Interest.** None of the following or their immediate family members, during the tenure of the subject person or for one year thereafter, shall have any direct or indirect financial interest in any contract, subcontract or the proceeds thereof for work to be performed in connection with the program assisted under this agreement: employees or agents of the recipient who exercise any function or responsibility with respect to the program, and officials of the recipient, including members of the governing body. The same prohibition shall be incorporated in all such contracts or subcontracts.

5. **Reimbursement to DOC for Improper Expenditures.** The recipient will reimburse DOC for any amount of grant assistance improperly expended. In addition, in the event of a finding by the recipient or by DOC that a participating private entity has failed to fulfill its responsibilities under the project application and legally binding commitment(s), including its responsibilities to create and/or retain jobs and invest private funds, the recipient shall pay to DOC any amount which it is able to collect under the terms of the legally binding commitment(s) and Section 2 of this Agreement.

6. **Access to Records.** The recipient shall provide any duly authorized representative of DOC, HUD and the Comptroller General at all reasonable times access to and the right to inspect, copy, monitor, and examine all of the books, papers, records, and other documents relating to the grant for a period of three years following the completion of all close-out procedures.

7. **Project Savings.** The recipient is obligated to contribute 100 percent of its pledged cash contribution to the CDBG project even if the project experiences a savings after authorized activities are completed. Any project savings accrue to the CDBG program.

8. **Payment of Income Generated by the Grant.** The recipient shall have the responsibility to collect and pay to DOC certain income generated by the CDBG and earned by the recipient. Such income includes but is not limited to the following: (1) payment of principal and interest on loans made using CDBG funds; (2) proceeds from the lease or disposition of real property acquired with CDBG funds; (3) any late fees associated with loan or lease payments in (1) and (2) above; (4) sale of utility lines; and (5) interest earned on the income in this part pending disposition of such income. Payments of income included in this part shall be made to DOC within fifteen (15) days of receipt of same by the recipient.

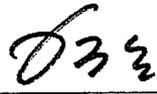
The assistance provided under this agreement shall not be used in the payment of any bonus or commission for the purpose of obtaining DOC approval of the application for such assistance, or DOC approval of applications for additional assistance, or any other approval or concurrence of DOC required under this agreement, or the North Carolina Community Development Block Grant Administrative Rules, with respect thereto; provided, however, that reasonable fees or bona fide technical, consultant, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as program costs.

Upon execution of this agreement by DOC and the recipient in the spaces below, the recipient hereby accepts the assistance on the terms of this grant agreement, effective on the date indicated below, and further certifies that the official signing below has been duly authorized by the recipient's governing body to execute this grant agreement.

Signature of Department of Commerce  
Authorized Official

Date: October 9, 2009

By:

  
Dale B. Carroll, Deputy Secretary

Date: \_\_\_\_\_

Pender County  
Name of Recipient Government

By:

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
(Title)

**NORTH CAROLINA DEPARTMENT OF COMMERCE  
FUNDING APPROVAL**

Small Cities Community Development Block Grant Program

1. NAME AND ADDRESS OF RECIPIENT:

2. CDBG GRANT NUMBER. 08-L-1923

Pender County  
Post Box 5  
Burgaw, North Carolina 28425

Approval Date: October 9, 2009

3. APPROVED PROJECT:

<u>DOC Project Number</u>	<u>Project Name</u>	<u>Grant Amount</u>
E-1	Shell Building Loan	\$673,250

4. ENVIRONMENTAL CONDITION: No funds can be obligated or expended on any activity in the grant until Commerce Finance Center (CFC) receives and approves the affidavit of publication of the Notices of the Finding of No Significant Impact on the Environment (FONSI) and the Request for Release of Funds.

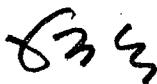
5. ADDITIONAL CONDITIONS:

No funds can be obligated or expended on any activity in the grant until the following conditions are released in writing by the Commerce Finance Center (CFC):

1. The grant agreement is executed by the authorized local official and a copy is returned to CFC.
2. The funding approval is executed and a copy returned.
3. Three signatory forms are executed and two are returned.
4. A Vendor Electronic Payment form is completed and returned.
5. Documentation of the approval of the \$500,000 loan from Four County EMC.
6. The loan agreement is executed and a copy returned to CFC.

6. SIGNATURE OF AUTHORIZED  
DEPARTMENT OF COMMERCE OFFICIAL

7. SIGNATURE OF AUTHORIZED  
RECIPIENT OFFICIAL

  
\_\_\_\_\_  
Dale B. Carroll, Deputy Secretary

\_\_\_\_\_  
(Name and Title)

Date: October 9, 2009

Date: \_\_\_\_\_

Lender Name	CDBG Shell Building Loan Program
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**Basic Loan Information**

Amount	\$655,250.00
Beginning of Loan	7/1/2011

Annual Interest Rate	2.00%
Length of Loan, Years	5
Payments Per Year	1

**Payment Information**

Total Payments	5
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Calculated Payment	\$227,211.00
Entered Payment	

**Summary Information**

Total Paid	\$681,633.00
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Interest Paid	\$26,383.00
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Date  
10/19/2009



Lender Name:

NC Department of Commerce

Pmnt #	Start of Period	Annual Interest Rate	Scheduled Balance	Actual Balance	Scheduled Payment	Interest Portion	Principal Portion	Additional Principal
1	07/11	2.00%	655,250.00	655,250.00		(13,105.00)		
2	07/12	2.00%	655,250.00	655,250.00		(13,105.00)		
3	07/13	2.00%	655,250.00	655,250.00	(227,211.00)	(13,105.00)	(214,106.00)	
4	07/14	2.00%	441,144.00	441,144.00	(227,211.00)	(8,822.88)	(218,388.12)	
5	07/15	2.00%	222,755.88	222,755.88	(227,211.00)	(4,455.12)	(222,755.88)	



purposes as the Lender and Borrower from time to time may agree in writing. "Construction purposes" as used herein refers to any and all costs connected with the construction of the building on the premises, including, but not limited to, direct job costs such as material, job labor, superintendent's job, supervisors, payments to subcontractors, equipment rentals, legal engineering, surveyors; services and grant administrative services.

Borrower shall proceed with construction thereof diligently and have the building substantially completed within twelve (12) months hereafter.

4. Interest Rate. The interest rate to be charged by the Lender shall be Two Percent (2%) per annum.
5. Evidence of Loan. Borrower shall execute to Lender a promissory note required by a Lender to evidence said Lender's loan. It is specifically agreed that Borrower, and any and all other persons responsible for repayment of the indebtedness in whole or in part, shall be bound by advancements made to Borrower.
6. Security. Borrower shall execute a deed of trust showing Lender as the Beneficiary of same, which deed of trust shall create and evidence a second lien satisfactory to Lender covering the property more particularly described on Exhibit A attached hereto and specifically incorporated herein by reference. The said deed of trust shall secure the \$655,250.00 promissory note.
7. Termination. This Agreement shall terminate at the expiration of the specified Term hereof unless sooner terminated by (1) Borrower's giving written notice of Borrower's desire to terminate together with payment in full of all outstanding principal and interest due Lender under this Loan Agreement; (2) Lender's giving ten (10) days' written notice to Borrower of default of one or more of the terms, conditions, or requirements of this Agreement, the covenants and conditions of the note or the covenants and conditions of the deed of trust securing said note, and the failure of Borrower to correct or cause to be corrected such default within ten (10) day period; or (3) at Lender's option if Borrower has suffered any Claim of Lien pursuant to Chapter 44A of the North Carolina General Statutes to be filed against borrower, and Borrower fails to have said lien discharged within ten (10) days after demand by Lender.
8. Timely Payment. Borrower agrees to make timely payment of all interest due hereunder and failure to make such timely payment shall be a default under this Agreement to termination by Lender.
9. Taxes, Assessments and Insurance. Borrower, as a condition of this Agreement, will pay all taxes, assessments and levies upon or against the property described in Exhibit A allocable to the land itself as opposed to the improvements constructed thereon. Borrower, as a condition of this Agreement, will pay when due all taxes allocable to improvements constructed on the land described in Exhibit A, assessments, levies and charges upon or against the improvements on the property described in Exhibit A and the deed of trust given to secure the loan envisioned herein, and will keep any and all improvements upon said premises insured against loss and damage by fire, tornado and windstorm and such other hazards as the Lender may require in amounts and with insurance companies satisfactory to Lender with loss payable clauses in favor of Lender as its interest might appear and in such form as Lender may require. Proceeds

of any insurance policy or any part thereof may be applied by Lender at its option to either the reduction of the indebtedness or to the restoration or repair of the property damage. The Lender may pay charges against the premises; and in case of such payment, the amount so paid shall immediately become debts to the Lender from Borrower, and shall bear interest at the maximum rate allowed by law, and the payment of same shall be secured by the aforesaid deed of trust.

10. Expenses. Borrower will pay all expenses of appraisal, reappraisal, survey, title searches, policies of title insurance, examination of title and drafting, perfecting and recording all papers and other incidentals. Borrower agrees that prior to any advancement of any money by the lender, Borrower will supply to Lender properly executed note and a properly executed deed of trust, and such other and further collateral and documentation as the Lender may require, together with the necessary funds to accomplish the recordation of the same and a policy or policies insuring the title to the property covered by the deed of trust, which shall be satisfactory to lender and the policy or policies of casualty insurance covering the property as hereinbefore specified in the Loan Agreement.
11. Action on Default. In the event of any default by Borrower in any agreement, covenant or condition contained in this Agreement, the note or the deed of trust, the Lender, at its option, may take possession of the tract described on the aforesaid Exhibit A and all equipment, furniture, fixture and appurtenances on said promises or in possession of Borrower. For such purposes, Lender may use any funds of Borrower at any time in the hands of the Lender by deposit or otherwise, and any money advanced by Lender for such purposes shall be payable on demand, shall bear interest at the rate specified in the note and the payment shall be secured by the deed of trust executed hereunder. Additionally, Lender shall have the right, upon any such default to have appointed a receiver to collect the rent and profits from the tract covered by the deed of trust without regard to the value of the said tract or the solvency of the person or persons liable for the payment of the amounts then owing and all amounts collected by said receiver shall be applied, after expenses of the receivership, to the payment of the indebtedness evidenced by the notes of Lender and the deed of trust; and provided further that Lender, at its option, shall have the right to do same without the appointment of a receiver.
12. Conditions, Precedent and Binding Effect. The parties hereto do agree that there are no conditions precedent to this Agreement other than as herein stated, and that the full terms, conditions and covenants contained herein together with the terms and conditions of the aforesaid notes and deed of trust shall bind, and the benefits and powers shall insure to the respective successors and assigns of the parties hereto. Whenever used herein the singular number shall include the plural, and the plural the singular unless otherwise specified, and the term "Lender" shall include any payee of the indebtedness hereby secured and any transferee, holder or assignee thereof, whether by operation of law or otherwise.
13. Counterparts. This Agreement may be executed in any number of counterparts with each executed counterpart constituting an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties herein have caused this instrument to be executed and sealed in their respective names pursuant to the authority indicated.

By: \_\_\_\_\_  
Pender County Government

Date: \_\_\_\_\_

By: \_\_\_\_\_  
North Carolina Department of Commerce

Date: \_\_\_\_\_

## INDUSTRIAL SHELL BUILDING AGREEMENT

**THIS AGREEMENT IS ENTERED INTO THIS THE \_\_ DAY OF \_\_, 2009**, between Pender County, a political subdivision of the State of North Carolina, and Pender Progress Corporation, a non-profit corporation located in Pender County. The purpose of the Agreement is to encourage industrial development and economic growth in Pender County by constructing a shell building suitable for recruitment of industry to Pender County. The parties recognize that the availability of a shell building may prove useful in attracting industry which otherwise would not consider Pender County even if the industry decides not to purchase the shell building. In furtherance of their mutual goal of providing jobs and economic growth to benefit the citizens of Pender County and in consideration of the mutual obligations contained herein, the parties agree as follows:

### 1. PENDER COUNTY OBLIGATIONS.

Pender County agrees that it shall contribute the following toward the project:

- (A) Pender County shall be responsible for securing and repaying a Community Development Block Grant (CDBG) loan /grant in the amount of Six Hundred Seventy Three Thousand Two Hundred Fifty Dollars (\$673,250). This obligation shall be the sole responsibility of Pender County and Pender Progress shall not be required to make any payment on this obligation. Pender County will indemnify Pender Progress for any financial, administrative or other responsibilities associated with the administration of a Sub-recipient Agreement executed relative to this grant, so long as Pender Progress abides by the CDBG grant requirements and provisions as directed by the County's CDBG consultant.
- (B) Four County EMC will make an interest free loan in the amount of Five Hundred Thousand Dollars (\$500,000.00) to Pender Progress to support the construction of the shell building. Should the shell building not have been sold within four years, Pender County shall make payments on behalf of Pender Progress on the loan to Four County EMC as they become due in the amount of Seventy One Thousand Four Hundred Twenty Eight Dollars (\$71,428.00) per year.
- (C) Pender County agrees to loan to Pender Progress an amount not to exceed Three Hundred Thousand Dollars (\$300,000.00) in order to pay for the construction of the shell building. Pender Progress agrees that Pender County shall be entitled to interest at the rate of three percent per annum (3%) from the time funds are advanced payable when the building is sold. Pender County agrees that repayment of the loan amount (principal and interest) shall be limited to the proceeds from the sale of the shell building, and it shall not look to Pender Progress for repayment except from such proceeds.
- (D) Pender Progress shall secure insurance on the shell building in an amount at least equal to its replacement cost. Pender County shall pay to the insurer premiums as they become due until the building is sold.
- (E) It is possible that the shell building will qualify for a tax exemption, but if not Pender County agrees to pay or cause to be paid those County ad valorem taxes which may be due on the building until the building is sold.

### 2. PENDER PROGRESS OBLIGATIONS.

- (A) Pender Progress agrees that it shall secure sufficient real property on which to locate the shell building. The necessary amount and location shall be subject to approval by Pender County. Pender Progress must be able to provide liens in first, second and third position to Four County, CDBG and the County if the same are required by the County. It shall be the responsibility of Pender Progress to secure any needed subordinations in order to provide such primary lien positions, including any payments required by any person or entity currently in a primary lien position. Pender Progress agrees that it shall execute any

instruments necessary to provide security for the financing for the shell building, including without limitation a Sub-Recipient Agreement necessary for the CDBG grant and loan, but such execution shall not modify the obligation of Pender County to make the payments outlined above.

- (B) Pender Progress shall contract with a properly licensed general contractor for the construction of the shell building and shall provide for administration and management of the contract including but not limited to project administration, inspections, pay requests. It is agreed that Pender Progress may request Pender County be the agent to make payments for any expenses related to this project, and may be designated by Pender Progress to ensure compliance with this subparagraph.
- (C) Pender Progress shall cooperate with Wilmington Industrial Development (WID) in recruiting industry for the shell building by making the building available for inspection by potential industries. Pender Progress recognizes and agrees that WID shall be the primary marketing agent for the shell building. In furtherance of this undertaking, Pender Progress shall be responsible for maintenance of the site and building to ensure it is kept in an acceptable condition for marketing. However, Pender Progress shall be reimbursed by Pender County for any funds so expended. Pender County may be designated by Pender Progress to ensure compliance with this subparagraph.
- (D) Pender Progress shall obtain or cause to be obtained necessary zoning, building permit, and utility connection approvals from the Town of Burgaw. In order to pay for the required fees, Pender Progress shall seek grants from the Town sufficient to cover the cost of the fees and any associated inspections or other costs charged by the Town. In addition, Pender Progress shall seek grants from the Town to cover any Town ad valorem taxes until such time as the building as sold.

**3. DESIGN AND CONSTRUCTION OF THE SHELL BUILDING.**

The Parties agree that WID possesses special expertise in industrial recruitment and the marketing of buildings to industrial clients. In order to utilize that expertise, WID shall provide primary input on the specifications of the shell building. Based upon the construction bids should it appear that the total costs shall exceed One Million Three Hundred Forty-Six Thousand, Five Hundred Dollars (\$1,346,500.00) the parties agree that WID, in collaboration with Pender County and Pender Progress, shall suggest cost savings to bring the project within budget. Pender Progress shall, upon request, designate the County and WID as owner's representatives in order to allow them to be involved in construction oversight.

**4. SALE OF THE SHELL BUILDING.**

It is the intent of the parties that the shell building will be sold for use by an industry locating in Pender County. The proceeds of a sale shall first be used to satisfy any unpaid loan or grant amounts. Second, Pender County shall be entitled to reimbursement for all sums paid pursuant to this agreement, including the loan and interest it makes to Pender Progress. Third, Pender Progress shall be entitled to repayment of the land acquisition costs, including any interest paid during the term of the agreement, based upon a per acre price of \$40,000. Should there be any additional proceeds they shall revert to Pender County to be used to fund economic development activities and projects. It is expressly agreed that Pender Progress may not sell or lease the property without the approval of Pender County. Pender Progress shall execute an option to purchase the real property on which the shell building is to be located for the sum of Ten Dollars (\$10.00) in favor of Pender County in order to protect the interests of Pender County, subject to all liens outstanding at the time of the transfer. The purchase price shall be the assumption of all indebtedness of said project that has not already been paid by Pender County.

**5. GENERAL TERMS.**

(A) Assignment of obligations and rights hereunder may only be made with the consent of the other Party which shall not be unreasonably withheld.

(B) Notice in regard to any item in connection with this agreement shall be given as follows:

Pender County Manager  
805 S. Walker Street  
Burgaw, NC 28425

Pender Progress Corporation  
c/o R. v. Biberstein, Jr.  
P.O. Box 428  
Burgaw, NC 28425

(C) Governing Law. This agreement shall be interpreted in accord with the laws of North Carolina.

(D) The only proper venue for any action arising out of this contract shall be a General Court of Justice sitting in Pender County.

(E) Should any portion of this Agreement be deemed invalid, unlawful or unconstitutional by a Court of competent jurisdiction then such portion shall be deemed severable and the remainder shall continue in full force unless the portion invalidated would frustrate the purpose of the agreement.

**IN WITNESS WHEREOF**, the parties have caused this agreement to be duly executed in their respective names and have affixed the necessary seals and attested thereto.

[SEAL]

Pender County

\_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_  
Clerk to the Board

[SEAL]

Pender Progress Corporation

\_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_  
Secretary

## Sub-Recipient Agreement

The following statements and provisions are acknowledged and agreed upon by and between PENDER PROGRESS CORPORATION, as Sub-recipient of the Community Development Block Grant (CDBG) funds and PENDER COUNTY, North Carolina, the (Grantee), and provider of such funds pursuant to a CDBG award, grant number 08-L-1923, (the "Grant"), made by the North Carolina Department of Commerce, Commerce Finance Center under the provisions of Title I of the Housing and Community Development Act of 1974, as amended ("the Act"). It is mutually agreed that no funds will be disbursed prior to the date of the execution of this agreement. This Agreement will remain in effect as long as the Sub-recipient has control over CDBG funds, including program income, or assets including real property acquired with funds disbursed under this grant. Any modification or amendment to this Agreement must be approved by the Commerce Finance Center.

Any provisions contained herein which are found to be inconsistent with the Act, Federal or State laws, and implementing regulations, will be deleted or appropriately modified as directed by the Commerce Finance Center and in no case shall any such inconsistency, whether remediated or not impair the remainder.

**Purpose:** It is the purpose and intent of this Sub-recipient Agreement to enable the Grantee to pass the responsibility and CDBG funds to the Sub-recipient to carry out the project described in the application, which was approved and funded by the Commerce Finance Center as the Grantor.

Under this Sub-recipient Agreement, it is the intent of the Grantee to limit its responsibilities associated with the Grant to those administrative duties related to providing the CDBG funds to the Sub-recipient. All responsibilities for the expenditure of CDBG funds and carrying out the project are to be assigned to the Sub-recipient by this Agreement. However, it is the expressed desire of the Grantee to assist the Sub-recipient in ensuring that all administrative responsibilities associated with the Grant are complied with. The Grantee shall make its CDBG consultant available to work collaboratively with the Sub-recipient to ensure that all the responsibilities including but not limited to preparing records and reports, compliance with standard provisions, making financial expenditures, and so forth are performed in compliance with all applicable laws and regulations associated with this Grant.

**Description of Work:**

Pender Progress Corporation proposes to construct a 40,000 square foot industrial shell building on a parcel owned by Pender Progress Corporation in the Pender Progress Industrial Park located in Burgaw, NC. Pender Progress Corporation and Pender County have entered into an agreement whereby the County will assist in funding and financing construction of the shell building until the building is sold, and Pender Progress Corporation will be responsible for managing construction of the project including securing funding and providing for project permitting and administration.

**Schedule of Work:**

The shell building will be bid for construction no later than January, 2010. Construction will be initiated no later than March, 2010 and is expected to be completed by September, 2010.

**Budget For Activities:**

The overall project budget is estimated at \$1,346,500. CDBG funds are anticipated to be \$673,250. The remainder of the budget will be provided by non-CDBG funds.

**Drawdown of Funds:** The Sub-recipient will request a drawdown of needed funds by submitting a request for payment to the Grantee. The Sub-recipient will make this request at least two (2) weeks in advance of need. The recipient must disburse funds within three days of receipt.

**Records and Reports:** Records for nonexpendable real property purchased totally or partially by the Sub-recipient with CDBG funds must be retained for five (5) years after its final disposition. All other pertinent grant records, including the financial records, supporting documents, and statistical records shall be retained for a minimum of five (5) years after final close-out of the grant. If, however, any litigation, claim or audit is started before the expiration of the five (5) year period, then records must be retained for five (5) years after the litigation, claim or audit is resolved.

**Unexpended Grant Funds:** The Sub-recipient agrees that it will return to the recipient any unexpended grant funds provided by the Grantee under this Agreement.

**Uniform Administrative Requirements:** The Sub-recipient shall adhere to the following administrative requirements:

**Financial:** Guidelines for financial and compliance audits of federally assisted programs which are OMB Circular A-133 and OMB Circular A-87.

**Procurement:** The following provisions regarding "conflicts of interest" apply to the use and expenditure of CDBG funds by the unit of local government and its Sub-recipients:

Except for eligible administrative or personnel costs, the general rule is that no person who is an employee, agent, consultant, officer, or elected or appointed official of the State of North Carolina or a unit of general local government or any designated public agencies or Sub-recipient which are receiving CDBG funds who exercise or have exercised any function or responsibilities with respect to

CDBG activities assisted herein or are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder either for themselves or those with whom they have family or business ties during their tenure or for one year thereafter. Exceptions may be granted by the Department of Commerce, Commerce Finance Center on a case-by-case basis as requested upon full disclosure in writing.

Should any governmental entity, recipient, Sub-recipient, employee or official know or perceive any breach or ethical standards or conflict of interest involving any other CDBG grant, they shall immediately notify the Department of Commerce, Commerce Finance Center, 4318 Mail Service Center, Raleigh, North Carolina 27699-4318.

**Personnel:** All contractors and subcontractors engaged in the project shall be fully qualified and properly licensed under the state and local law to perform such services.

The Sub-recipient shall insure that all Prime Contractors/Subcontractors are bonded and insured in accordance with state and federal requirements.

**Other Program Requirements:** All activities by the Sub-recipient shall be carried out in compliance with all federal laws and regulations except for environmental responsibilities and review process under Executive Order 12372, which are the responsibility of the Grantee.

**Suspension and Termination:** In accordance with 24 CFR 85.43 suspension or termination may occur if the Sub-recipient materially fails to comply with any terms of this Agreement, and that the Agreement may be terminated for convenience in accordance with 24 CFR 85.44.

**Debarment Certification:** The Sub-recipient must verify that all contractors and subcontractors are not listed in the "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transactions," prior to receiving Federal Funds.

**Use of Real Property and Reversion of Assets:** Upon expiration or termination of this Agreement the Sub-recipient shall transfer on behalf of the Grantee, to the Commerce Finance Center, any unutilized CDBG funds on hand.

Any real property acquired or improved in whole or in part with CDBG funds must continue to be used for the purpose for which it was acquired or improved. Any changes in its use must be approved by the Commerce Finance Center in writing.

**Amendments:** Any changes in the scope of the project, as outlined in this Agreement, must be submitted in writing by the Sub-recipient to the Grantee. Any amendment granted by the Grantee shall be appended to this Agreement as an

amendment. Copies of any changes must be submitted to the Commerce Finance Center for programmatic purposes.

**Liability:** The Sub-recipient understands and warrants that it will defend any liability arising from this Agreement and that the grantee accepts no liability, in so far as such funds are expended in accordance with this Agreement.

The Sub-recipient agrees to repay to the Commerce Finance Center funds equal to the amount of CDBG funds provided to the Sub-recipient by the Grantee which the Commerce Finance Center has determined that its agents or assigns have caused to have been advanced and/or expended in violation of this Agreement and/or any federal, state or local laws or policies governing the use of CDBG funds. This provision also applies to any Funds considered to be program income generated by this Agreement. The Commerce Finance Center is the sole arbiter in all matters concerning the eligibility of costs and interpretation of the provisions of law, statute, and policy as well as terms and conditions of this Sub-recipient Agreement.

**Special Provisions:** The Sub-recipient Agreement Standard Provisions attached to this Agreement are considered to be an integral part of this Agreement. These provisions are subject to change from time to time as federal laws and regulations are promulgated. The Sub-recipient will be notified in writing if any changes occur.

President  
Pender Progress Corporation

\_\_\_\_\_  
Title of the Sub-recipient  
Official

\_\_\_\_\_  
Signature of the Sub-recipient

\_\_\_\_\_  
Date

Chairman, Pender County  
Board of Commissioners

\_\_\_\_\_  
Title of the Grantee Official

\_\_\_\_\_  
Signature of the Grantee

\_\_\_\_\_  
Date

## Standard Provisions

1. **Limitation of Liability:** The Sub-recipient will not assert in any legal action by claim or defense, or take the position in any administrative or legal procedures that he is an agent or employee of the owner (unit of local government).
2. **Ownership:** Ownership of all real or personal property, acquired in whole or in part with CDBG grant funds for use on this project, shall be vested in the unit of local government. CDBG funds received as a repayable loan are exempt from this requirement. When the unit of local government determines that the property is no longer required for the purposes of this project, the unit of local government must notify the Department of Commerce, Commerce Finance Center and obtain approval for disposition of the property in accordance with applicable guidelines.
3. **Agreement/Contract:** If any provision in this agreement/contract shall be held to be invalid or unenforceable, the remaining portions shall remain in effect. In the event such invalid or unenforceable provision is considered an essential element of this agreement/contract, the parties shall promptly negotiate a replacement provision, which addresses the intent of such provision.

The failure of either party to insist upon strict performance of any terms, conditions and covenants herein set forth shall not be deemed a waiver of any rights or remedies that such party may have and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained.

Federal, State and local laws, ordinances and codes are subject to change from time to time as they are promulgated. The Sub-recipient shall be notified in writing of any such changes when they occur and they shall be incorporated in writing into this contract/agreement upon concurrence by both parties, unless such changes are considered to have an essential impact upon the intent of this agreement/contract and then they shall be incorporated upon notification to the Sub-recipient.

4. **Termination for Convenience:** This agreement may be terminated for convenience in accordance with 24 CFR 85.44.
5. **Amendments:** Any changes to this contract affecting the scope of work of the project must be approved, in writing, by the Grantee and Sub-recipient and shall be incorporated in writing into this contract.
6. **Copyright:** Except as otherwise provided in the terms and conditions of this contract, the Sub-recipient paid through this contract is free to copyright any books, publications or other copyrightable materials developed in the course of and under this contract. However, the U. S. Department of Housing and Urban Development and the Commerce Finance Center reserve a royalty-free, non-exclusive and irrevocable license to reproduce, publish and otherwise use and to authorize others to use, for Federal Government and State Funded Agencies (SFA) purposes:

A. The copyright in any work developed under this contract; and

B. Any rights of copyright to which a Sub-recipient purchases ownership with grant support.

The Federal Government's rights and the Commerce Finance Center's rights identified above must be conveyed to the publisher and the language of the publisher's release form must insure the preservation of these rights.

7. **Terms and Conditions**: The Commerce Finance Center reserves the right to add or delete terms and conditions of this Agreement as may be required by revisions and additions or changes in the requirements, regulations, and laws governing the CDBG Program.
8. **Reporting Requirements**: The Sub-recipient agrees to complete and submit all reports, in such form and according to such schedule, as may be required by the Commerce Finance Center.
9. **Sanctions**: If the Sub-recipient fails or refuses to comply with the provisions set forth herein, then the Commerce Finance Center or the Grantee may take any or all of the following sanctions: cancel, terminate or suspend in whole or in part this agreement, or refrain from extending any further funds to the Sub-recipient until such time as the Sub-recipient is in full compliance.
10. **Applicable Law**: In addition to the applicable Federal Laws and Regulations, this agreement is also made under and shall be construed in accordance with the laws of the State of North Carolina. By execution of this agreement, the Sub-recipient agrees to submit to the jurisdiction of the State of North Carolina for all matters arising or to arise hereunder, including but not limited to performance of said agreement and payment of all licenses and taxes of whatever kind or nature applicable hereto.
11. **Maintenance of Records**: Records for non-expendable property purchased totally or partially with Federal funds must be retained for five years after final close out. All other pertinent contract records including financial records, supporting documents and statistical records shall be retained for a minimum of five (5) years after the final close out report.  
  
However, if any litigation, claim or audit is started before the expiration of the five-year period, then records must be retained for five years after the litigation, claim or audit is resolved.
12. **Subcontracting with Small and Minority Firms, Women's Business Enterprise and Labor Surplus Areas**: It is national policy to award a fair share of contracts to small and minority and women owned businesses. Accordingly, affirmative steps must be taken to assure that small, minority and women owned businesses are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:
  - a. Including qualified small and minority businesses on solicitation lists;
  - b. Assuring that small, minority and women owned businesses are solicited whenever they are potential sources.

- c. Whenever economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small, minority and women owned business' participation;
  - d. Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority businesses; and
  - e. Using the services and assistance of the Small Business Administration, the Governor's Office of Small and Minority Business Assistance, the U. S. Department of Commerce and the Community Services Administration as required.
13. **Access to Records:** Records with respect to all matters covered by this agreement shall be made available for audit and inspection by the Commerce Finance Center, HUD or their representatives.
14. **Prime Sub-recipient Responsibilities:** The Sub-recipient is required to assume sole responsibility for the complete effort and enforcement of laws and regulations under this agreement. The Grantee will consider the Sub-recipient to be the sole point of contact with regard to contractual matters.
15. **Subcontracting:** If any part of the work covered by this agreement is to be subcontracted, the Sub-recipient shall identify the subcontracting entity and the contractual arrangements made therewith to the grantee. All subcontracts must be approved by the Grantee to insure that the subcontractors are not debarred or suspended by the Federal or State Government and to insure the Grantee understands the arrangements.
16. **Legal Services:** No attorney-at-law shall be engaged through the use of any funds provided under this contract in suits against the State, Local Public Body or any political subdivision.
17. **Political Activities:** None of the funds, materials, property or services provided directly or indirectly under this contract shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office or otherwise in violation of the provisions of the "Hatch" Act.
18. **Reporting of Fraudulent Activity:** If at any time during the term of this agreement anyone has reason to believe by whatever means that, under this or any other program administered by the Commerce Finance Center, a recipient of funds has improperly or fraudulently applied for or received benefits, monies or services pursuant to this or any other contract, such information shall be immediately reported to the appropriate authorities.
19. **Age Discrimination:** In accordance with 45 CFR, parts 90 and 91, the Sub-recipient agrees there shall be no bias or age discrimination as to benefits and participation under this agreement.

20. **Section 109 of the Housing and Community Development Act of 1974:** No person in the United States shall on the grounds of race, color, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part pursuant to this agreement.

21. **Section 3, Compliance and Provision of Training, Employment and Business Opportunities:** The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall, to the greatest extent feasible be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

The parties to this said contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

The contractor will certify that any vacant employment positions including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

The contractor agrees to submit such reports as required to document compliance with Part 135. Noncompliance with the regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

22. **Section 504 of the Rehabilitation Act of 1973**: The Sub-recipient agrees that no otherwise qualified individual with disabilities shall, solely by reason of his disability, be denied the benefits, or be subjected to discrimination including discrimination in employment, in any program or activity that receives the benefits from the federal financial assistance.
23. **Debarment Certification**: The Sub-recipient must comply with Federal Debarment and Suspension regulations prior to entering into a financial agreement for any transaction.
24. **Equal Employment Opportunity**: In carrying out the program, the Sub-recipient shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Sub-recipient must take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Sub-recipient shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Government setting forth the provisions of this non-discrimination clause. The Sub-recipient shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin. The Sub-recipient shall incorporate the foregoing requirements of this paragraph in all of its subcontracts for project or program.

The Sub-recipient will, in all solicitations or advertisements for employees by or on behalf of the Sub-recipient, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

The Sub-recipient will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State advising the said labor union or workers' representatives of the Sub-recipient's commitment under this Section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The Sub-recipient will comply with all provisions of Executive Order 11246 or September 24, 1965, and of the rules, regulations, and relevant orders of the State.

The Sub-recipient will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the State, or pursuant thereto, and will permit access to its books, records, and accounts by HUD and the State for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

In the event of the Sub-recipient's noncompliance with the non-discrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Sub-recipient may be declared ineligible for further Government contracts or federally assisted construction contract procedures authorized in Executive Order 11246 of September 24, 1965, or by rules, regulations, or orders of the State, or as otherwise provided by law.

The Sub-recipient will include the above provisions in every subcontract or purchase order unless exempted by rules, regulations, or orders of the State issued pursuant to section 204 of Executive Order 11246 of September 25, 1965, so that such provisions will be binding upon each Sub-recipient or vendor. The Sub-recipient will take such action with respect to any subcontract or purchase order as the Commerce Finance Center may direct as a means of enforcing such provisions, including sanctions for noncompliance.

The Sub-recipient further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work.

25. **Conflicts of Interest**: The following provisions regarding "conflicts of interest" apply to the use and expenditure of CDBG funds by the unit of local government and its Sub-recipients.

Except for eligible administrative or personnel costs, the general rule is that no person who is an employee, agent, consultant, officer, or elected or appointed official of the State of North Carolina or a unit of general local government or any designated public agencies or Sub-recipient which are receiving CDBG funds who exercise or have exercised any function or responsibilities with respect to CDBG activities assisted herein or are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder either for themselves or those with whom they have family or business ties during their tenure or for one year thereafter. Exceptions may be granted by the Department of Commerce, Commerce Finance Center on a case-by-case basis as requested upon full disclosure in writing.

Should any governmental entity, recipient, Sub-recipient, employee or official know or perceive any breach or ethical standards or conflict of interest involving any other CDBG grant, they shall immediately notify the Department of Commerce, Commerce Finance Center, 4318 Mail Service Center, Raleigh, North Carolina 27699-4318.

**CAPITAL PROJECT ORDINANCE  
PENDER PROGRESS INDUSTRIAL SHELL BUILDING PROJECT**

**WHEREAS**, the Pender County Board of Commissioners desires to adopt a capital project budget ordinance pursuant to and as provided by NCGS 159- 13.2; and

**WHEREAS**, the Pender County Board of Commissioners and the Pender Progress Corporation have agreed to enter into an agreement for the purpose of encouraging industrial development and economic growth in Pender County by constructing an industrial shell building on Worth Beverage Drive in Burgaw, North Carolina;

**NOW, THEREFORE, BE IT ORDAINED**, by the Pender County Board of Commissioners, as follows:

SECTION 1: The amounts herein set forth are hereby appropriated for the expenses related to the project:

Building Construction	\$ 849,920.00
Architectural/Engineering	\$ 132,800.00
Site Work	\$ 278,880.00
Contingency	\$ 66,900.00
Grant Administration	<u>\$ 18,000.00</u>
	\$1,346,500.00

SECTION 2: The amounts herein set forth are hereby designated as the revenues to be made available for the project to meet the foregoing appropriations:

CDBG Loan	\$ 655,250.00
CDBG Grant	\$ 18,000.00
Four County EMC Loan	\$ 500,000.00
Pender County Loan	<u>\$ 173,250.00</u>
	\$1,346,500.00

SECTION 3: Authorized activities for the Pender Progress Shell Building Project include the expenditure of grant and local funds for building construction, architectural and engineering, site work, contingency and grant administration as contained in the Grant Agreement between Pender County and the North Carolina Department of Commerce, and is known as the "Pender Progress Shell Building Project". The officials of Pender County are hereby directed to proceed with the project within the terms of the grant documents, and the rules and regulations of the North Carolina Department of Commerce, and the budget contained herein,

SECTION 4: The Finance Director is hereby directed to maintain within the Grant fund sufficient detailed accounting records to provide the accounting of the grantor agencies required by the Grant Agreement, and federal, state and local regulations.

SECTION 5: Funds may be advanced from the general fund for the purpose of making payments as due. Reimbursement requests should be made to the appropriate grantor agency in an orderly and timely manner.

SECTION 6: The Finance Director is hereby directed to report quarterly on the financial status of each project element and on the total grant revenues received or claimed. The Finance Director is further directed to include a detailed analysis of past and future costs and revenues on this grant project in every budget submission to the Board of Commissioners.

SECTION 7: Copies of this ordinance shall be filed with the Finance Director and the Clerk to the Board of Commissioners to be kept by them for their direction in carrying out this project.

This ordinance was introduced and passed at this meeting of the Pender County Board of Commissioners, and was adopted this the 2<sup>nd</sup> day of November, 2009.

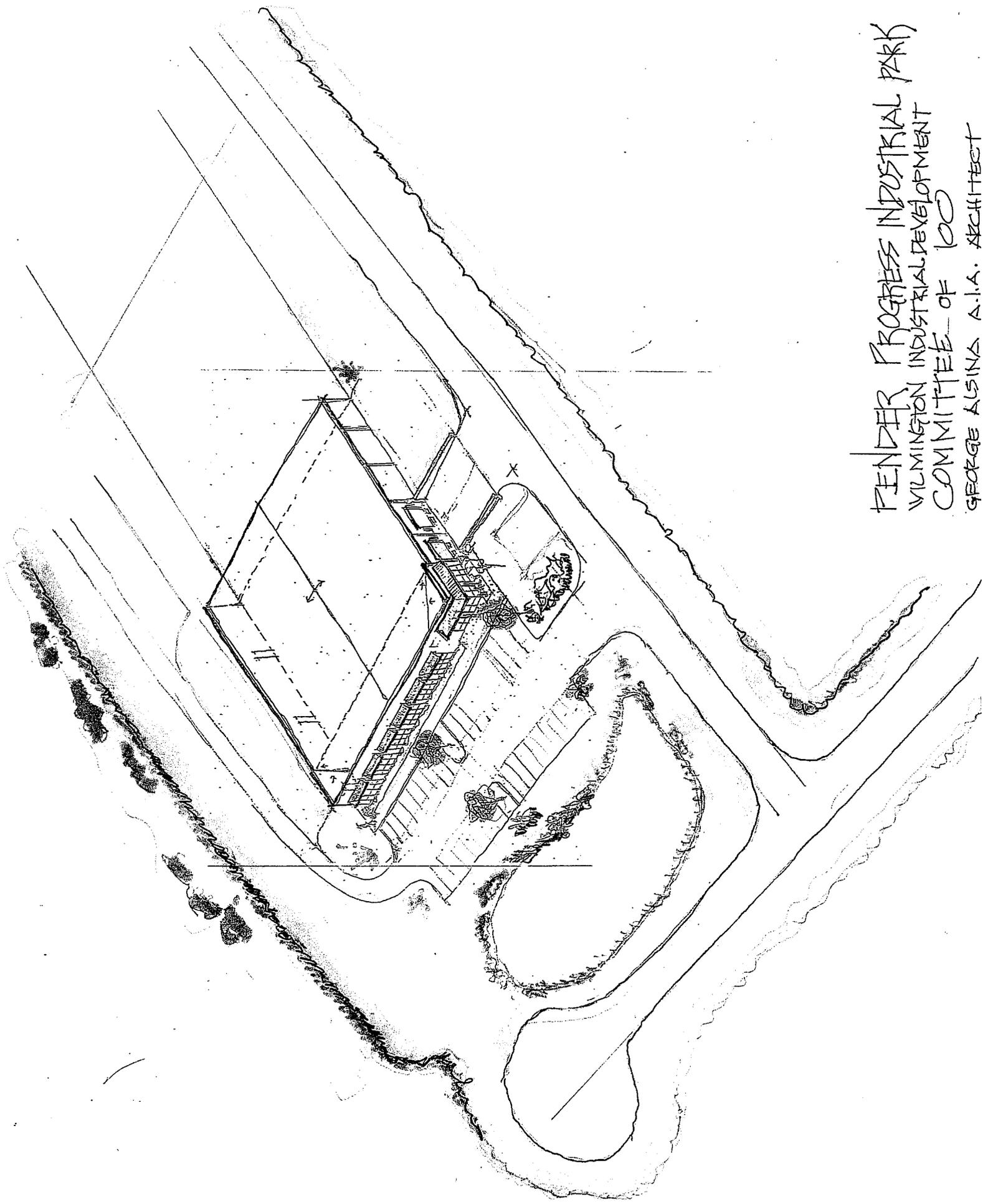
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Jimmy T. Tate, Chairman

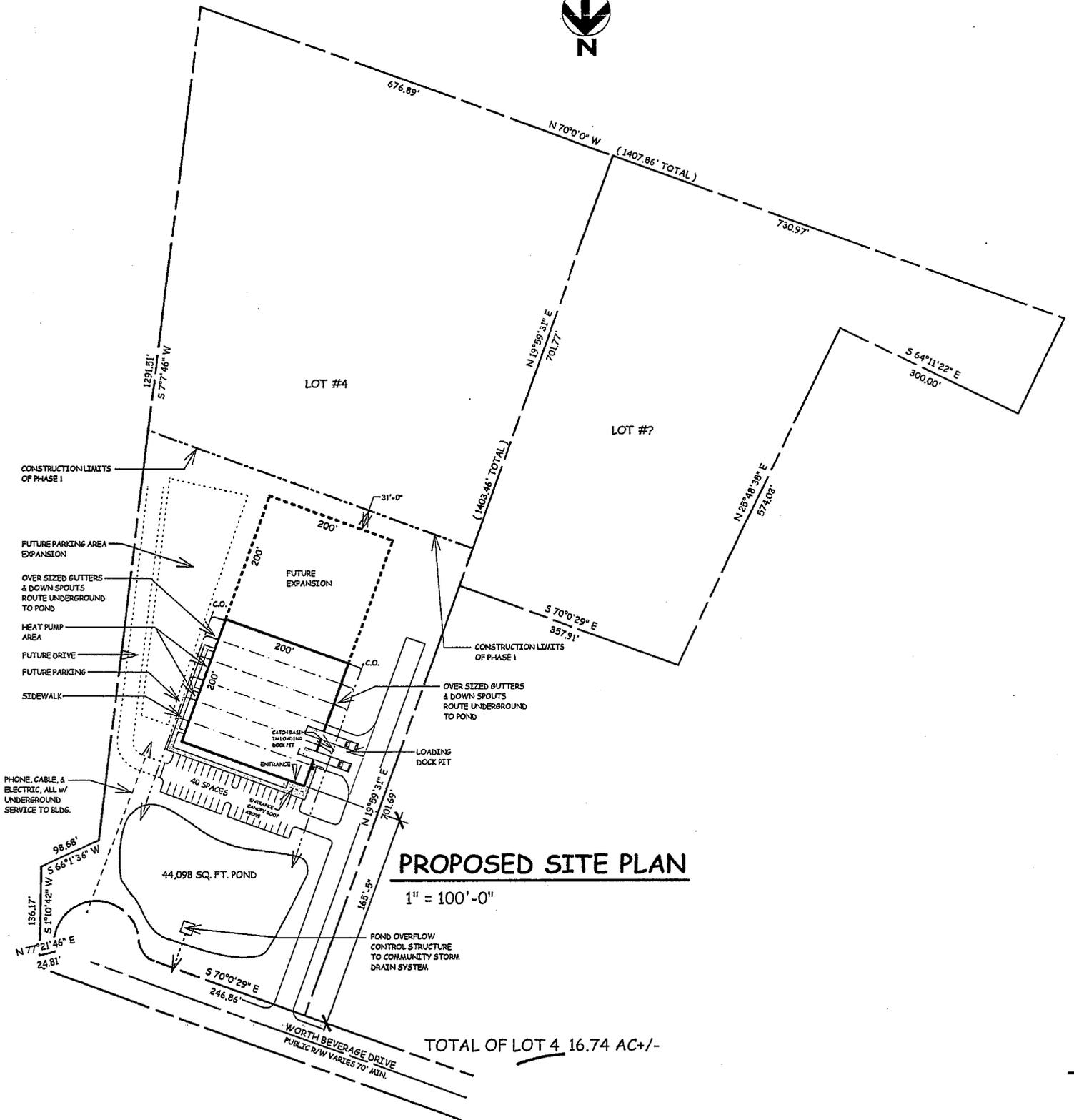
ATTEST:

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Rick Benton, Clerk to the Board



PENDER PROGRESS INDUSTRIAL PARK  
WILMINGTON INDUSTRIAL DEVELOPMENT  
COMMITTEE OF 100  
GEORGE ALSINA A.I.A. ARCHITECT



# PENDER PROGRESS CORPORATION LOT #4 PHASE 1 - SECTION 1

WILMINGTON INDUSTRIAL DEVELOPMENT  
COMMITTEE OF 100 - SCOTT SATTERFIELD, Chief Executive Officer