



REQUEST FOR BOARD ACTION

ITEM NO. 9.

DATE OF MEETING: November 4, 2013

REQUESTED BY: Mickey Duvall, County Manager/Trey Thurman, County Attorney

SHORT TITLE: Resolution Authorizing Approval of Industrial Inducement to RC Creations LLC and Industrial Development Activities

BACKGROUND: The County has been involved in extensive negotiations with RC Creations LLC so that RC Creations will invest \$28,547,000.00 to construct and equip a food processing facility in Pender County. RC will create 120 new jobs at the facility with an average salary of \$33,308.00. As an inducement to RC Creations to make the investment and create the jobs, the County will provide 20 acres of land in the Pender Industrial Park (Lot 5), lease Lot 5 until the property is transferred, reimburse RC for site preparation activities in an amount no to exceed \$450,000.00, pay the impact fees for water and sewer service, permit RC Creations to utilize other County owned property for construction staging and administration, and provide industrial incentive grants in an amount of up to \$106,969 per year for a total of ten (10) years (not to exceed \$926,399).

RC Creations will be the first industry to locate in the Pender Industrial Park. In order to make the Industrial Park a functional location, the County will improve the property in the Park by installing and constructing improvements including stormwater management structures, roads, and utility infrastructure in an amount estimated not to exceed \$3,365,000.

SPECIFIC ACTION REQUESTED: To conduct a public hearing and adopt the attached Resolution Authorizing Industrial Inducements to RC Creations LLC and Industrial Development Activities.

COUNTY MANAGER'S RECOMMENDATION

Respectfully recommend approval.


Initial

RESOLUTION

NOW, THEREFORE BE IT RESOLVED by the Pender County Board of Commissioners that:
The Attached Resolution is adopted.

The Chairman/County Manager is authorized to execute any/all documents necessary to implement this resolution.

AMENDMENTS:

MOVED _____ SECONDED _____

APPROVED _____ DENIED _____ UNANIMOUS

YEA VOTES: Brown ___ McCoy ___ Tate ___ Ward ___ Williams ___

George R. Brown, Chairman 11/4/13
Date

ATTEST 11/4/13
Date

Resolution Authorizing Industrial Inducement to RC Creations LLC and Industrial Development Activities

Whereas, NCGS 158-7.1 authorizes Pender County to make appropriations to encourage the location of Industrial and Commercial Plants within the County; and

Whereas, the County previously purchased land to be utilized as an Industrial Park located along US Highway 421; and

Whereas, the County Commissioners find that in order to make the Pender County Industrial Park a functional location infrastructure improvements need to be made; and

Whereas, the County has determined to improve the property in the Park by installing and constructing improvements including stormwater management structures, roads, and utility infrastructure in an amount estimated not to exceed \$3,365,000; and

Whereas, RC Creations LLC (“RC”) proposes to construct and equip a 95,000 square foot facility for the processing of fish and food products; and

Whereas, RC will invest \$28,547,000.00 to construct and equip its food processing facility in the Pender County Industrial Park and will create 120 new jobs at the facility with an average salary of \$33,308.00; and

Whereas, as an inducement to RC Pender County will provide: an industrial development incentive grant to RC in an amount of up to \$106,969.00 per year for a total of ten (10) years (not to exceed \$926,399.00), up to \$450,000.00 of reimbursement to RC for site preparation activities, water and wastewater impact fees of up to \$1,400,000.00; and

Whereas, as a further inducement to RC Pender County proposes to convey interests in real property owned by Pender County as follows: to convey to RC in fee simple a 20 acre +/- parcel described as Lot 5 of the Pender County Industrial Park with a total value of \$800,000.00, a lease of Lot 5 for three months with a value of \$1,000.00 per month, and License to Occupy Agreement to provide office space and a staging location during the construction period at 101 Vitamin Drive, Wilmington, NC, with a value of approximately \$164,000; and

Whereas, The Pender County Commissioners have reviewed economic studies indicating that the investment and operation of the facility by RC will generate millions of dollars in economic benefit to Pender County by adding to the tax base, creating good paying jobs for citizens of the County greater than the average wage, stimulating economic activity and providing the initial facility in the Pender County Industrial Park; and

Whereas, the Pender County Commissioners find that the consideration which will accrue to the County will exceed the inducements to be provided to RC, and that the consideration will exceed the value of the property interests to be conveyed as set forth above; and

Whereas, RC and Pender County will each be contractually bound to perform and RC will not receive its benefits unless it performs under the contract; and

Whereas, the County Commissioners published notice of their intent to consider the activities and expenditures set forth above more than 10 days before November 4, 2013; and

Whereas, the County Commissioners have conducted a public hearing and considered input from interested persons; and

Whereas, the County Commissioners find that undertaking these activities pursuant to N.C.G.S. 158-7.1 will be in the best interests of the citizens of Pender County;

NOW THEREFORE BE IT RESOLVED, by the Pender County Board of Commissioners that a contract be entered into between RC Creations LLC and Pender County to enforce the agreement for industrial incentives and that the County shall proceed to construct infrastructure improvements at the Pender Industrial Park.

This the 4th Day of November 2013.

STATE OF NORTH CAROLINA

INCENTIVE PERFORMANCE AGREEMENT

PENDER COUNTY

THIS INCENTIVE PERFORMANCE AGREEMENT is dated as of _____, 2013 (as supplemented or amended, the "Agreement"), and is between **RC CREATIONS, LLC**, hereinafter the "COMPANY"; and **PENDER COUNTY, NORTH CAROLINA**, a public body politic and a political subdivision of the State of North Carolina, hereinafter the "COUNTY".

RECITALS:

The purpose of this Agreement is to describe certain incentives to be provided by the County to the Company in connection with the Company's investment of a new manufacturing facility in the County.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained in this Agreement, the parties hereby agree as follows:

ARTICLE I

DEFINITIONS; RULES OF CONSTRUCTION

- 1.01. Definitions.** For all purposes of this Agreement, unless the context requires otherwise, the following terms shall have the following meanings:

"Closing Date" means the date on which this Agreement is first executed and delivered by the parties.

"Direct Investment" means the original tax value of all land, building and equipment caused to be placed by the Company on the ad valorem tax rolls of the County, regardless of the funding sources for said property during the term of this agreement.

"Facilitate" means that the County shall cooperate and assist in obtaining or securing approval or award of the specified result, but such efforts shall not be deemed to require or guarantee success and all efforts shall comply with all applicable laws, ordinances, regulations and written policies, including without limitation ethics policies.

"Facility" means the new food processing manufacturing facility intended to be constructed by the Company on the Site.

"Incentive" means the various incentive payments or other inducements between the County and the Company, as referred to in this Agreement.

“New hires” and “full-time employees” mean additions to the workforce of the Facility on or after June 30, 2013.

“Change in Use” means any abandonment, diminishment or diversion of use of the Facility that would not provide the guaranteed minimum levels of direct investment and full time employees, as set forth in Article III and Exhibit B of this agreement.

"Occupancy Date" means the date on which the Company receives a certificate of Occupancy for the Facility.

"Site" means the real property in the County upon which the Facility is located, being a 20 acre site within Pender Commerce Park on US 421 in Pender County, North Carolina, more completely described in Exhibit A.

"State" means the State of North Carolina.

1.02. Rules of Construction. Unless the context otherwise indicates.

- (a) words importing the singular shall include the plural and vice versa, and words importing the masculine gender shall include the feminine and neuter genders as well;
- (b) all references to Articles, Sections or Exhibits are references to Articles, Sections and Exhibits of this Agreement;
- (c) all references to officers are references to County officers; and
- (d) the headings and Table of Contents herein are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meanings, construction or effect.

ARTICLE II

INCENTIVES

As a competitively necessary inducement for the Company to locate its Facility in the County, and thereby to promote the public purposes of expanding the tax base of the County, and providing jobs for its citizens, the County agrees to provide incentives to the Company pursuant to the authority set forth in N.C.G.S. §158-7.1, subject to the County’s industrial development incentive grant program, and terms and conditions as set forth herein.

1. The County shall make incentive grant payments to the Company according to the following schedule:

<u>Payment Date</u>	<u>Amount</u>
September 1, 2014	\$9,600
September 1, 2015	\$102,689
September 1, 2016	\$106,969
September 1, 2017	\$105,596
September 1, 2018	\$104,238
September 1, 2019	\$102,512
September 1, 2020	\$101,305
September 1, 2021	\$99,512
September 1, 2022	\$97,661
September 1, 2023	\$96,217

If on the date that any grant payment is due, the Company is not fully current on all taxes and fees owed to the County, then grant payments from the County shall be withheld and will not be paid until all taxes and fees are fully and currently paid. The amount of the grant may vary from the table above based on actual annual Company investment.

2. The County will convey a 20-acre site within Pender Commerce Park to the Company at a location preferred by the Company and acceptable to the County for \$1.00. The Company shall secure its performance under this agreement and protect the County's interest by granting the County a deed of trust or other security satisfactory to County. Upon satisfaction of all of Company's obligations under this Agreement, County shall release the deed of trust or other security interest, and shall execute a deed of release, certificate of satisfaction or other documentation reasonably requested by Company. Company understands that County will not release any claim to current or future property or other taxes and that such release shall only be provided upon satisfaction of all obligations.

The County will be responsible for providing the site boundary survey work necessary for conveyance of the property to the Company, and will clear trees on the 20 acre site. The Company will be responsible for undertaking site preparation activities to prepare the 20 acre site for a new manufacturing facility to include geotechnical analysis, preparation of erosion control plans and securing the necessary permits, designing rough and final grading plans, conducting rough and final grading activities, constructing a temporary access road parallel to the proposed public street that will serve the site, designing and constructing a compacted earthen foundation pad of 195,000 square feet, testing, and any other site preparation work necessary to improve the site to specifications of the Company.

The Company agrees to involve and collaborate with the County in the development of the site preparation work, plans and activities including bidding of work, reviewing proposals, selection of contractors and award of work. The Company agrees to seek competitive bids for the work, and to award work to the lowest responsible bidders subject to consideration of competitive pricing, experience and work reputation. The

County agrees to reimburse the Company for site preparation work up to a total cost of Four Hundred Fifty Thousand Dollars (\$450,000.00) as set forth on Exhibit E. Subject to the limits set forth on Exhibit E, the County agrees to reimburse the Company 100% of the cost of construction of the temporary access road to the site adjacent to the public right-of-way. Subject to the limits set forth on Exhibit E, the County further agrees to reimburse the Company a pro-rata share of the cost of the remaining site preparation activities undertaken by the Company as listed above. The County's reimbursement cost share shall be equivalent to 75% of the costs related to rough and final grading 20 acres (15 of 20 acres), and 100% of the cost attributable to design and construction of a 96,000 square feet compacted earthen foundation pad (96,000 of a 195,000 square foot compacted earthen pad). The Company will submit detailed invoices and certification by the Company's professional design firm to the County to procure the cost reimbursement.

Construction of an on-site storm water retention pond will not be required as the park master plan will provide for overall storm water management systems as part of the public infrastructure.

3. The County will assume the cost of the Water and Wastewater Capacity (impact) Fees related to the new facility.
4. The County will facilitate zero interest loans to the Company through USDA-Rural Development REDLEG or other grant and loan programs, in an amount not to exceed \$2.6 million. The grants and loans may be used for capital facilities, equipment and machinery in compliance with the terms of the specific loan program (s) identified. The Company agrees to assume any and all closings costs, and agrees to enter into any lease agreements with the County that may be required as a condition of a loan or grant. Denial of the loan by USDA-RURAL DEVELOPMENT-REDLEG or other program shall not be a breach by the County.
5. The County will make available the existing office buildings and warehouse on Vitamin Drive for the Company's use for start-up activities. A short-term License to Occupy agreement will provide for the use at no rental/lease cost to the Company, other than the Company will be responsible for the cost of utilities and general maintenance of the facility and grounds in accord with the separate License to Occupy agreement.
6. The County will fund and construct the public street, utility and storm water infrastructure as designed in the Pender Commerce Park master plan, which will serve the Company's site. The County work will include installation of water, wastewater, and storm water infrastructure piping to a point mutually agreed upon on the site by the Company and County. As a part of infrastructure development, the County will guarantee the provision of a wastewater treatment facility that will serve Pender Commerce Park and the Company's site, and will collaborate with the Company to assure incorporation of the Company's wastewater treatment needs in the design and operation of the facility. The County will guarantee wastewater collection and treatment in an amount not to exceed 80,000 gallons per day from

the Company facility by the later of October 1, 2014 or when it becomes operational, even if temporary service is required prior to full wastewater treatment plant operations. The Company shall provide the County with thirty (30) days written notice of the date on which plant is expected to become operational. The County will collect the Company's wastewater discharge at the Company's property line for conveyance by the County to the treatment facility. The County does not anticipate assessing the Company wastewater treatment surcharges based on the discharge parameters provided by the Company to the County.

7. The County will facilitate Industrial Revenue Bond Financing (IRB) on behalf of the Company through the County's Industrial Facilities and Pollution Control Financing Authority and the NC Department of Commerce.
8. The County will facilitate the Company's potential use of the U.S. Treasury's New Market Tax Credit Program for this project, including but not limited to the use of target population methods and others to facilitate qualification.
9. The County will facilitate obtaining of local site and building permit processes on behalf of the Company, including partial permitting where permissible subject to all applicable laws, ordinances, and regulations. The County will cooperate and coordinate with state and other agencies involved in review processes to assure project timelines are met.
10. The County, as the Pender Commerce Park Review Board, approves of the Company's request related to the park's restrictive covenants concerning screening of roof top equipment, storm water management, site fencing, and participation in future park development and land sales decisions. The County's approval of these items is set forth in a letter from the County to the Company dated August 6, 2013, attached hereto.

ARTICLE III

COMPANY'S COMMITMENTS

In return for the competitively necessary incentives and inducements provided by the County pursuant to the terms of this Agreement, the Company commits to cause to be constructed, and subsequently equip and staff the Facility described in Exhibit A on the site. The direct investment in this Facility shall be at least Twenty Eight Million Five Hundred Forty-Seven Thousand Dollars (\$28,547,000) in construction and/or machinery by commencement of calendar year 2018. The number of new full time employees provided jobs at this Facility shall be one hundred twenty (120) with an average compensation in U.S. dollars of at least thirty three thousand three hundred eight dollars (\$33,308). In calculating the new employees, Company may include persons who began full time employment in North Carolina at the Facility on or after June 30, 2013. Failure to comply with this performance standard shall subject the Company to an incentive grant reduction or inducement reimbursements pursuant to Exhibit B.

Employment shall be evidenced by submission of a copy of the Grantee Annual Report submitted to the State for purposes of the Job Development Investment Grant, or North Carolina Employment Security Commission forms or other documentation, and provided that the average compensation in U.S. dollars of these employees is at least thirty three thousand three hundred eight dollars (\$33,308).

The verification of Direct Investment shall be by reference to the ad valorem tax records of the County as of January 1 of each year during the term of this agreement.

The Company and the Company's contractor's shall comply with Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). County shall be entitled to request and Company shall be required to supply upon request documentation establishing such compliance. A failure to comply or to provide documentation shall constitute a material breach of this Agreement and be subject to the consequences provided by North Carolina law (S.L. 2013-418).

The Company shall cooperate with any County efforts to obtain grant funds which may be used to offset County costs related to this Agreement, development of the Industrial Park or of infrastructure which will encourage economic development. Such cooperation shall include production and verification of information regarding, financial, investment and employment as well as execution of grant related documents which may be requested by the County or the grant agency pertaining to required application financial information and required application and administration (performance based agreements) investment and employment information as permitted by NC General Statutes. This cooperation shall not require disclosure of production methods which might constitute a trade secret.

ARTICLE IV

INDEMNIFICATION

The Company hereby agrees to indemnify, protect and save the County and their officers, and employees harmless from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including reasonable attorneys' fees, arising out of, connected with, or resulting directly or indirectly from the Site or the Facility or the transactions contemplated by or relating to this Agreement, including without limitation, the possession, condition, construction or use thereof, insofar as such matters relate to events subject to the control of the Company and not the County. The indemnification arising under this Article shall survive the Agreement's termination.

ARTICLE V

DISCLAIMER OF WARRANTIES

The Company acknowledges that the County has not designed the Facility, has not supplied any plans or specifications with respect thereto and (a) is not a manufacturer of, nor dealer in, any of the component parts of the Facility or similar facilities, (b) has not made any recommendation, given any advice nor taken any other action with respect to (1) the choice of any supplier, vendor or designer of, or any other contractor with respect to, the Facility or any component part thereof or any property or rights relating thereto, or (2) any action taken or to be taken with respect to the Facility or any component part thereof or any property or rights relating thereto at any stage of the construction thereof, (c) has not at any time had physical possession of the Facility or any component part thereof or made any inspection thereof or any property or rights relating thereto, and (d) has not made any warranty or other representation, express or implied, that the Facility or any component part thereof or any property or rights relating thereto (i) will not result in or cause injury or damage to persons or property, (ii) has been or will be properly designed, or will accomplish the results which the Company intends therefor, or (iii) is safe in any manner or respect.

The County does not make any express or implied warranty or representation of any kind whatsoever with respect to the Facility or any component part thereof, including but not limited to any warranty or representation with respect to the merchantability or the fitness or suitability thereof for any purpose, and further including the design or condition thereof; the safety, workmanship, quality or capacity thereof; compliance thereof with the requirements of any law, rule, specification or contract pertaining thereto; any latent defect; the Facility's ability to perform any function; or any other characteristic of the Facility; it being agreed that the Company is to bear all risks relating to the Facility, the completion thereof or the transactions contemplated hereby and the Company hereby waives the benefits of any and all implied warranties and representations of the County.

The provisions of this Article shall survive the Agreement's termination.

ARTICLE VI

TERMINATION OF AGREEMENT

Upon the occurrence of either of the following events, this Agreement shall be terminated:

- (a) Payment by the County of all grant payments required by this Agreement; or
- (b) Notification by the Company to the County that the Facility will be closed.

Upon the termination of this Agreement, no party shall have any further obligations pursuant to this Agreement except for those which are expressly so stated or relate to reimbursement or "claw back" of benefits provided by County. This provision shall not limit remedies for damages suffered by either party. Upon satisfaction of all of Company's obligations under this Agreement, County shall release the deed of trust or other security interest, and shall execute a deed of release, certificate of satisfaction or other documentation reasonably requested by Company. Company understands that County will not release any claim

to current or future property or other taxes and that such release shall only be provided upon satisfaction of all obligations.

ARTICLE VII

ASSIGNMENTS

No party shall sell or assign any interest in or obligation under this Agreement without the prior express written consent of all the parties, such consent will not be unreasonably withheld. Provided, however, that this Agreement may be assigned by the Company to a directly or indirectly wholly owned subsidiary of the Company, or by a Related Member Party to a directly or indirectly wholly owned subsidiary of the Related Member Party, without the consent of all other parties, provided that the Company will guarantee the performance by the Subsidiary of the obligations due under this Agreement.

ARTICLE VIII

LIMITED OBLIGATION OF COUNTY

NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE FAITH AND CREDIT OF THE COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS DELEGATING GOVERNMENTAL POWERS NOR AS A DONATION OR A LENDING OF THE CREDIT OF THE COUNTY WITHIN THE MEANING OF THE STATE CONSTITUTION. THIS AGREEMENT SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE COUNTY TO MAKE ANY PAYMENTS BEYOND THOSE APPROPRIATED IN THE COUNTY'S SOLE DISCRETION FOR ANY FISCAL YEAR IN WHICH THIS AGREEMENT SHALL BE IN EFFECT. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED TO PLEDGE OR TO CREATE A LIEN ON ANY CLASS OR SOURCE OF THE COUNTY'S MONEYS, NOR SHALL ANY PROVISION OF THE AGREEMENT RESTRICT TO ANY EXTENT PROHIBITED BY LAW, ANY ACTION OR RIGHT OF ACTION ON THE PART OF ANY FUTURE COUNTY GOVERNING BODY. TO THE EXTENT OF ANY CONFLICT BETWEEN THIS ARTICLE AND ANY OTHER PROVISION OF THIS AGREEMENT, THIS ARTICLE SHALL TAKE PRIORITY.

ARTICLE IX

MISCELLANEOUS

- 9.01 **Governing Law and Venue.** The parties intend that this Agreement shall be governed by the law of the State of North Carolina and the parties expressly agree that the only proper venue for any action arising out of this Agreement is the

appropriate Division of the North Carolina General Court of Justice in Pender County.

9.02 Notices.

- (a) Any communication required or permitted by this Agreement must be in writing except as expressly provided otherwise in this Agreement
- (b) Any communication shall be sufficiently given and deemed given when delivered by hand or five days after being mailed by first-class mail, postage prepaid, and addressed as follows:
 - (1) If to the Company:
 - (2) If to the County,
- (c) Any communications hereunder sent to the County shall also be sent to the other.
- (d) Any addressee may designate additional or different addresses for communications by notice given under this Section to each of the others.

9.03. Non-Business Days. If the date for making any payment or the last day for performance of any act or the exercising of any right shall not be a Business Day, such payment shall be made or act performed or right exercised on or before the next Business Day.

9.04. Severability. If any provision of this Agreement shall be determined to be unenforceable, that shall not affect any other provision of this Agreement.

9.05. Entire Agreement; Amendments. This Agreement constitutes the entire contract between the parties, and all representations not incorporated herein do not form a part of this Agreement and may not be relied upon by either party. This Agreement shall not be changed except in writing signed by all the parties.

9.06. Binding Effect. Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

9.07. Time. Time is of the essence in this Agreement and each and all of its provisions.

9.08. Liability of Officers and Agents. No officer, agent or employee of the County or the Company shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve any such officer, agent or employee from the performance of any official duty provided by law.

9.09. Counterparts. This Agreement may be executed in several counterparts, including separate counterparts. Each shall be an original, but all of them together constitute the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their corporate names by their duly authorized officers, all as of the date first above written.

(Intentionally left blank)

[SEAL]

PENDER COUNTY

ATTEST:

Glenda Pridgen
Clerk to the Board

Name: George R. Brown
Title: Chairman

[SEAL]

RC CREATIONS, LLC

By: _____
Name: David Caslow
Member/Manager

ATTEST:

(Name)

Secretary

This instrument has been pre-audited
in the manner required by the Local
Government Budget and Fiscal Control Act

Approved as to Form:

Name: Claiburn Watson
Finance Officer, Pender County
North Carolina

Name: Carl W. "Trey" Thurman III
County Attorney, Pender County
North Carolina

NORTH CAROLINA

PENDER COUNTY

I, _____, a Notary Public of the State and County aforesaid,
certify that Glenda Pridgen personally came before me this day and acknowledged that she is Clerk to the
Board of Commissioners of Pender County, and that by authority duly given and as the act of the Board,
the foregoing instrument was signed in its name by its Chairman, sealed with its corporate seal and
attested by herself as its Clerk.

WITNESS my hand and official seal, this ____ day of _____, 2013.

Notary Public

My commission expires: _____

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public of the State and County aforesaid,
certify that David Caslow came before me this day and acknowledged that (s)he is Member/Manager of
RC Creations, LLC and that by authority duly given and as the act of the corporation, the foregoing
instrument was signed in its name by its Member/Manager.

WITNESS my hand and official seal, this ____ day of _____, 2013.

My commission expires: _____

Notary Public

EXHIBIT A

SITE AND FACILITY DESCRIPTION

The Facility to be constructed for and equipped and operated by the Company shall be a minimum 96,000 square foot food processing manufacturing facility constructed on a 20-acre Site designated as "Lot 5" on the Master Development Plan within Pender Commerce Park on US 421 in Pender County, North Carolina. The Direct Investment in the Facility shall be at least twenty eight million five hundred forty seven thousand dollars (\$28,547,000) and jobs created by this Facility shall be not less than one hundred twenty (120) with an average annual wage of thirty three thousand three hundred eight dollars (\$33,308) per year.

EXHIBIT B

SCHEDULE FOR REDUCTION OF TEN YEAR INCENTIVE GRANTS

In any year in which the County has agreed to make an annual incentive grant payment to the Company, pursuant to Article II (1.) hereof, and in which the Company fails to meet or maintain the minimum required levels of direct investment and/or cumulative new full time employees as outlined in Chart A below, the County's incentive grant payment for that year to the Company shall be computed as follows:

Division of Incentive Payment

The County's incentive payment as outlined in Article II (1) shall be divided into two (2) separate payments, 50% for direct investment and 50% for new full time employees.

Direct Investment Incentive

In any year in which the County has agreed to make an annual incentive grant payment to the Company, pursuant to Article II (1) hereof, and in which the Company fails to meet or maintain the following cumulative minimum required level of direct investment;

Year 1	\$ 2,500,000;
Year 2	\$27,047,000;
Year 3	\$28,547,000;
Year 4	\$28,547,000;
Year 5	\$28,547,000;
Year 6	\$28,547,000;
Year 7	\$28,547,000;
Year 8	\$28,547,000;
Year 9	\$28,547,000;
Year 10	\$28,547,000;

that year's incentive payment for direct investment shall be forfeited and no payment for direct investment incentive shall be awarded.

Full Time Employees

In any year in which the County has agreed to make an annual incentive grant payment to the Company, pursuant to Article II (1) hereof, and in which the Company fails to meet or maintain the minimum required levels of new full time employees as outlined below, that year's incentive payment to the Company shall be reduced (but not below zero) by a pro-rata amount based on the actual new full time employees compared to the benchmarks as set forth below:

<u>Year</u>	<u>New Full Time Employees</u>	<u>Proposed New Wages</u>	<u>Cumulative New Full Time Employees</u>	<u>Cumulative Wages</u>	<u>% of goal per job</u>
1	0	\$	0	\$0	0.00%
2	89	\$2,964,412	89	\$2,964,412	2.22%
3	7	\$ 233,156	96	\$3,197,568	1.00%
4	8	\$ 266,464	104	\$3,464,032	0.95%
5	16	\$ 532,928	120	\$3,996,960	0.95%
6	0	\$0	120	\$3,996,960	0.95%
7	0	\$0	120	\$3,996,960	0.95%
8	0	\$0	120	\$3,996,960	0.95%
9	0	\$0	120	\$3,996,960	0.95%
10	0	\$0	120	\$3,996,960	0.95%

By way of example, if the actual cumulative amount of new full time employees employed by the Company in Year 2 is 80, then the new full time employees portion of the incentive payment for that year shall be 41,085.50. $(89-80=9)$ then $(9 \times 2.22\%=19.98\%)$ then $(\$51,344.50 \times 19.98\%=\$10,259)$ then $(\$51,344.50 -\$10,259=\$41,085.50)$.

SCHEDULE FOR REIMBURSEMENT OF INDUCEMENTS

If the Company fails to initiate construction of the Facility on the Site within one (1) year of the date of this Agreement, the Company shall re-convey the site to the County. If the Company shall not have received a certificate of occupancy within three (3) years of the date of this agreement, the Company shall re-convey the site to the County.

In any year in which the County has agreed to make an annual incentive grant payment to the Company, pursuant to Article II (1) hereof, and in which the Company fails to meet or maintain the cumulative amount of direct investment and/or the cumulative amount of new full time employees, the Company, in addition to the incentive reductions set forth herein, shall pay to the County \$156,200.

In any year in which the County has agreed to make an annual incentive grant payment to the Company, pursuant to Article II (1) hereof, and the Company closes or abandons the Facility, the Company shall pay to the County \$1,562,000. The Company shall receive credit for any prior payments due to failing to meet direct investment or employment commitments.

EXHIBIT C

AUGUST 13 COUNTY INCENTIVE PROPOSAL

SEE ATTACHED



Board of Commissioners
George R. Brown, Jr., Chairman
Archibald "Fred" McCoy, Vice-Chairman
Jimmy T. Tate
Chester L. Ward
J. David Williams, Jr.

Dr. Michael N. "Mickey" Duvall, County Manager
Carl W. "Trey" Thurman, County Attorney

August 13, 2013

Erin Henderson
Director of Site Selection and Economic Development
ONEsource Facility Solutions
2233 Lake Park Drive
Atlanta, Georgia 30080

Dear Erin,

Pender County is pleased to submit this updated listing of financial and other incentive commitments proposed by the County on behalf of Project Casper. This update includes the items initially listed in the North Carolina RFP Response dated August 1, 2013, the items proposed at our meetings in New York August 5-7, 2013, and the most recent item addressed today with Richard. The items discussed at the meetings in New York are italicized; the additional item discussed today is in bold.

1. Pender County through a discretionary incentive will convey to the Company a 20 acre site within Pender Commerce Park at a location preferred by the Company, for \$1. The assistance proposal is solely authorized by the Pender County Board of Commissioners and has an estimated value of \$800,000 based on a land value of \$40,000/acre. The conveyance is subject to conformance with the State's economic development statute, including compliance with the County's wage standard (the Company's proposed wages comply), an analysis of tax revenues over a 10 year period, construction on the property within 5 years, and a public hearing. There is no funding cycle or application process for this discretionary economic assistance. The conveyance is proposed to be made within 60 days of execution of an incentive performance agreement between the County and the Company. The incentive performance agreement between the Company and County will outline all County-related economic assistance to the Company, and will include clawback provisions based on the Company meeting agreed upon job creation and investment commitments to the County. The Company will be required to report annually to

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910-259-1402 Fax
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the County certifying job creation, wage information and capital investment levels so that the County can track performance.

2. Pender County will fund and construct the public roadways, storm water facilities and water/wastewater infrastructure to serve the park and to the Company's site (property line). The Board of Commissioners will authorize this work at an estimated cost of \$3,600,000, resulting in a savings value to the Company of potentially \$1,200,000 since there will be no cost to the Company for infrastructure development from US 421 to the site. There is no specific funding cycle, program, application process or restrictions/clawbacks impacting the Company related to this work. The County will employ the services of an experienced grant procurement specialist to assist the County in identifying, applying, securing and administering the various grant programs and sources for these improvements. The park infrastructure will be completed prior to the Company becoming operational.

3. *Pender County will initiate and fund site preparation for the Company's preferred 20 acre site prior to conveyance of the site from the County to the Company. Site preparation activities will include construction of a temporary construction access road to the site; and site preparation for 15 acres (leaving a buffer around the building site) including clearing, grubbing, grading, final grading and pad (for a 100,000 sq. ft. building), and installation of on-site water/sewer/storm water piping. The estimated value of this work is \$450,000. The County will collaborate and coordinate with the Company's design professionals during the entire planning and construction process to include the site design phase, bidding, award and construction phases. The Company will design and engineer the site preparation components, and the County will bid, award and manage construction of the work following standard public bidding and award requirements. Once the site preparation work is complete and accepted by the Company, the property will then be conveyed to the Company.*

4. Pender County will guarantee the provision of a wastewater treatment facility that will serve the Company's facility. The Board of Commissioners is the authorizing and responsible agency for this funding, estimated to cost \$9,700,000. The County will coordinate with the Company to facilitate incorporation of the Company's wastewater treatment needs as the plant is designed and constructed. The County will make every effort to have the plant operational on or before the Company's facility is operational. The County will guarantee the delivery of wastewater treatment to the Company facility when it becomes operational, even if temporary service is required prior to full wastewater treatment plant operations. The County will collect the company's discharge for treatment at the Company's property line, thus the Company is only required to get the waste stream to their property line for conveyance by the County to the treatment facility. There is no specific funding cycle, program, application process or restrictions/clawbacks impacting the Company related to park utilities and infrastructure work.

5. Pender County is collaborating with its engineering firm McKim & Creed to design and construct an innovative wastewater treatment system referred to as "adaptive ecosystem treatment". This system is proposed based on the current waste stream parameters the Company has provided to the Company. The technology will benefit the Company financially in that the treatment technology will make it unnecessary for the Company to invest in pre-treatment facilities, with the exception for addressing FOGs of course. The savings to the Company is significant- conservatively saving \$500,000 in up-front capital costs, and as much as \$250,000 in annual O&M costs and surcharges. ***In addition, the County will assume the cost of water and wastewater impact fees for the project, resulting in a cost savings to the Company of \$312,000.***

At the meeting in New York, the County also confirmed that no additional costs related to wastewater treatment surcharges over a period of years should be anticipated to be borne by the Company. This commitment is based on waste discharge information and parameters that have been shared and discussed with the County regarding the Company's anticipated discharges.

In response to the Company's interests and specific needs related to wastewater treatment services, the County has initiated special efforts to accommodate treatment and financial aspects of the new wastewater treatment facility during project design, start-up and construction.

Pender County will continue to collaborate with the Company regarding wastewater treatment facility design, permitting and construction processes to assure the Company's treatment needs are addressed in a proactive and satisfactory manner.

6. Pender County will make available to the company its Industrial Development Incentive Grant Program (IDI Program). Based upon the Company's projected investment of \$21,500,000 and the creation of 120 jobs over a 5 year period (2013-2017), the value of the economic assistance is projected at \$479,713. Grants would be payable annually beginning in 2014. Grants funds may be used for items such as site preparation, internal infrastructure, training, or other purposes that leave value in the community.

Pender County has agreed to extend the IDI incentive grant program an additional 3 years beyond 2020, providing for IDI incentive grants over a 10 year period. The additional extended grant value is estimated at \$250,000, depending of course on actual investment. The total IDI grant assistance is projected at \$729,713.

The Board of Commissioners is the sole authorizing agency for this economic assistance. There is no funding cycle or application process for this assistance. Once the terms of an IDI grant are agreed upon by the Company and County, the County will schedule a public hearing as required by NC Statutes for consideration of local economic incentives. Economic assistance, including the frequency and amount of IDI grants payments, will be outlined within the incentive performance agreement. The agreement will include clawback provisions based on the Company

meeting agreed upon job creation and investment commitments to the County. The Company will be required to report annually to the County certifying job creation, wage information and capital investment levels so that the County can track performance.

7. Pender County will facilitate Industrial Revenue Bond Financing (IRB) on behalf of the Company through the County's Industrial Facilities and Pollution Control Financing Authority and the NC Department of Commerce. IRB financing typically provides a borrowing rate 70-80% of a typical prime rate. For example, using IRB financing to finance \$10,000,000 over a term of 15 years at 2.26% (compared with the current prime rate of 3.25%) could provide a value in savings to the company of approximately \$788,500. Issuance of IRB's requires the involvement and authorization of the Pender County Industrial Facilities and Pollution Control Financing Authority and the North Carolina Secretary of Commerce. The process requires the Company to employ bond counsel to perform the necessary legal work to initiate and facilitate bond approval. There are no set funding cycles. The IRB process to issue bonds typically takes 8-10 weeks. Qualification for IRB financing is subject to tax regulations in effect at the time of application.
8. Pender County has secured tentative approval to secure a \$300,000 interest free loan from Four County EMC via the USDA-Rural Development REDLEG Program. Pender County will be the recipient of the loan and guarantor. In turn, the County will loan the funds to the Company interest free to assist in capital equipment acquisition, to be repaid over a period of time as agreed upon in a loan agreement between the County and Company. The Company would be responsible for any fees associated with the loan closing. The interest free loan allows the Company to easily access funds for capital equipment needs at a significant cost savings. When repaid, the funds will be kept in a revolving fund held by Four County EMC that can be accessed for future capital equipment needs for the Company, or other qualifying projects in the County. Final approval of the REDLEG loan to Pender County will be made by the Four County EMC in August, followed by concurrence of the USDA-Rural Development Agency once the preliminary loan documents are prepared. There is no specific funding cycle, application process or restrictions/clawbacks impacting the Company related to this program. The Board of Commissioners is the authority that approves the loan to the Company. Based on a Company announcement in August, the process will provide that funds could be made available to the Company no later than the end of 2013.
9. *In addition to the above loan, Pender County will make available to the Company an additional interest free \$2.3 million loan for the Company's use in financing capital investments including equipment and machinery. The term of the loan is 10 years, and the estimated interest savings to the Company is \$560,000. This particular loan will require Pender County to own the equipment and machinery during the term of the loan, and the County will make the equipment and machinery available to the Company through a lease. The County will convey the equipment and machinery to the Company for \$1 at the end of the loan and lease period. The Company will save*

an additional estimated \$100,000 in property taxes over the term due to the County having ownership of the equipment and machinery.

10. Wilmington Business Development has secured a direct cash grant to the Company in the amount of \$25,000. The funds will be provided to the Company at project start-up, and may be used at the Company's sole discretion during project start-up and construction. There is no application or other requirements required of the Company to receive this grant.
11. Pender County will continue to facilitate the Company's potential use of the US Treasury's New Market Tax Credit Program. Should the census tract in which the project will be located not immediately qualify for the program, the County will collaborate with its financial partners to facilitate qualifying the project through the other methods as authorized in the New Market Tax Credit program, including but not limited to targeted population methods, etc.
12. Pender County will make available to the Company at no cost the existing office buildings and warehouse on Vitamin Drive for this purpose through a short term lease between the Company and the County. The lease will provide the Company will be responsible for utilities, upkeep, general maintenance, etc. The Board of Commissioners is the authorizing agency for this assistance. At \$5/square foot, the economic assistance value to the Company (24,600 square feet) is \$123,000 annually. For September-December 2013 the value is \$41,000; and for January-December 2014 the value is \$123,000. There is no funding cycle or application process for this assistance. The assistance will be outlined within the incentive performance agreement between the County and the Company. It is proposed the lease agreement will be prepared and available for execution within 30 days of the execution of the incentive performance agreement.
13. Pender County will facilitate fast-tracking of local site and building permit processes on behalf of the Company, and will cooperate and coordinate with state and other agencies involved in review processes to assure project timelines are met. The County's Planning and Building Inspections Department will oversee and facilitate the project site and building plan reviews, inspections and issue final certificates of occupancy. Kyle Breuer is the County's Planning Director and is available to consult with the Company or its agents regarding local and state permitting and processes.
14. Pender County will facilitate variances or amendments to the recorded restrictive covenants (including the state storm water permit which is a part of the recorded restrictive covenants) governing Pender Commerce Park requested by the Company to address any obstacles or conditions which may present a hardship to the Company, or to enhance protection of the Company's facilities once constructed. The County is the sole property owner and thus serves as the park's review board. The Board of Commissioners is the sole body for approval to changes in

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the restrictive covenants. A letter from the County was presented to the Company on August 6, 2013 confirming the County Commissioner's agreement at their August 5, 2013 meeting to the restrictive covenant issues presented by the Company, a copy of which was attached to the August 1, 2013 RFP.

15. Pender County also confirmed during the recent meeting in New York that the Company would not be required to construct and operate a separate storm water management facility on the Company's site. The storm water system designed and permitted by the County will serve the storm water discharge requirements on the Company's site, requiring the Company only to convey on-site storm water to the public roadway for transferring the water to the County's storm water facility.

Pender County is truly excited about the great opportunity to have Project Casper become the initial tenant in Pender Commerce Park, and we look forward to working with the Company to make the project become a reality. Please feel free to contact any of us with the County or with our partner Wilmington Business Development should you need any clarifications or additional information.

Sincerely,



Mickey Duvall
Pender County Manager

cc: David Williams
Butch Watson
Scott Satterfield
Billy King
Rick Benton
Bernard Torain
Susan Fleetwood
John Nelms

EXHIBIT D

AUGUST 6, 2013 RESTRICTIVE COVENANTS LETTER

SEE ATTACHED



August 6, 2013

Acme Smoked Fish Corporation
30 Gem Street
Brooklyn, NY 11222

Re: Consideration and variances to the Pender Commerce Park Restrictive Covenants

To whom it may concern:

Please accept this letter as written affirmation that the Pender County Board of Commissioner in closed session at their meeting on August 5, 2013, unanimously consented to the following considerations and variances related to the Pender Commerce Restrictive Covenants and will adopt a formal resolution concerning same at their next Board meeting on August 19, 2013:

1. The Pender County Planning Department is permitted and encouraged to fast track and may issue partial permitting on this project;
2. The Board consents to the Company's request to vary from the roof top equipment screening provision in Section 2.2.15 of the Pender Commerce Park Restrictive Covenants due to operational impracticalities, and authorizes an amendment to the Covenants be filed to allow the Park Review Board to grant variances on roof top equipment screening where it is impractical or unnecessary based on the Board's consensus;
3. The Pender County staff is encouraged to collaborate with the Company to facilitate coordination of the Company's internal site stormwater management with the Park's stormwater system as much as possible;
4. The Board consents to the client installing a woven wire perimeter/security fence up to eight (8) feet in height with up to four (4) strands of barbed wire around the selected site; which will be incorporated with the purchase of the site;
5. The client is permitted at their sole discretion to be an active participant in the review, selection, and decision process by any owners or representatives of said site/park to lease and/or sell any land within said site/park to any other processing and/or manufacturing groups.
6. The County Manager is authorized to file any amendments necessary to the Pender Commerce Park Restrictive Covenants to effectuate these items.

Page – 2
August 6, 2013

Please know that Pender County is very excited about this opportunity and if the Pender Commerce Park is selected as your preferred site, we will continue to seek resources and facilitate issues on your behalf as construction and start-up processes are initiated and continuing through workforce development, commencement of operations and beyond.

Sincerely,

A handwritten signature in black ink, appearing to read "George R. Brown". The signature is written in a cursive style with a large initial "G".

George Brown, Chairman
Pender County Board of Commissioners

EXHIBIT E

ESTIMATE OF SITE PREPARATION ACTIVITIES COST

Site Boundary Survey and Flagging	LS	1.0	\$ 12,000.00	\$ 12,000.00
Geotech Investigations	LS	1.0	\$ 15,000.00	\$ 15,000.00
Stormwater and Erosion Control Permitting Design and Permitting	LS	1.0	\$ 15,000.00	\$ 15,000.00
Clearing and Grubbing	AC	15.0	\$ 2,700.00	\$ 40,500.00
Rough Site Grading	CY	24,000	\$ 3.50	\$ 84,000.00
Final Site Grading	LS	1.0	\$ 30,000.00	\$ 30,000.00
100,000 Earthen Foundation Pad	LS	1.0	\$ 100,000.00	\$ 100,000.00
Temporary Access Road	LS	1.0	\$ 115,000.00	\$ 115,000.00
SUB-TOTAL				\$ 411,500.00
Contingency - 10%				\$ 41,150.00
TOTAL				\$ 452,650.00

PROPERTY LEASE AGREEMENT

This Property Lease Agreement ("Agreement") is entered into as of _____, 2013, between **PENDER COUNTY, NORTH CAROLINA**, a public body and political subdivision of the State of North Carolina, (hereinafter "County"), and **RC HOLDINGS, LLC** (the "Company"), having an address of 101 Vitamin Drive, Wilmington, North Carolina; and

WHEREAS, the County owns approximately 431 acres of undeveloped land located in Pender Commerce Park on US 421 in Pender County, North Carolina and identified as "Pender County Tax Parcel ID 2291-76-4943-0000" (the Property); and

WHEREAS, the County has agreed to convey an improved 20-acre parcel identified as "Lot 5" on Exhibit A within the Property to the Company as part of an Incentive Performance Agreement to be executed between the County and the Company; and

WHEREAS, the Company desires to lease and have access to the Property prior to conveyance of the Property to the Company to conduct assessments, evaluations, site preparation activities and construction improvements related to the construction of a new manufacturing facility; and

WHEREAS, the County desires to facilitate such access to and use of the Property by the Company;

NOW, THEREFORE, in consideration of the promises and mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the County and the Company (collectively, the Parties" and individually, a "Party") hereby agree as follows:

1. **Access.** The County hereby grants to the Company, including its affiliates, subsidiaries, divisions, officers, employees, agents, representatives, and contractors ("Company Parties") a lease and access to the 20-acre site identified as Lot 5 along the designated Pender Commerce Park rights-of-way as reflected on Exhibit A for purposes of conducting assessments, evaluations, site preparation activities and construction improvements (the Work) to the Property related to construction of a new manufacturing facility. This shall include the right to construct a temporary access road to provide access to Lot 5, which shall be constructed generally parallel to the permanent road to be constructed by the County.
2. **Term.** Unless extended in writing by mutual agreement of the Parties, this Agreement shall end upon the earlier of February 1, 2014 or conveyance of the Property to the

Company.

3. **Compliance by the Company.** The Company or Company Parties shall conduct the Work in such a manner that it shall not in any way damage the Property, create a hazardous or dangerous condition, necessitate a repair or clean-up, and/or deposit or release any hazardous or toxic substance or material, at, on or under the Property.
4. **The Company's Risk.** The Work performed by the Company or Company parties shall be at the Company's sole risk, cost, and expense.
5. **Marking of Utilities.** The Company shall be solely responsible for locating any utilities on the Property and marking same related to the Work.
6. **No Liens.** In connection with any Work, the Company will not permit the attachment of any mechanic's lien, materialman's lien, or any other lien, claim or encumbrance ("Encumbrance") against the Property.

Insurance. The Company shall, at its sole cost and expense, maintain or cause its contractors to maintain during the term of this Agreement (a) comprehensive public liability insurance, including contractual liability insurance and property damage insurance, with limits of not less than Two Million Dollars (\$2,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) combined aggregate for bodily injury or death and damage to or destruction of property (including the loss of use thereof); (b) workers' compensation at statutory limits; and (c) automobile liability insurance for all owned, non-owned, leased, or hired vehicles with not less than Two Million Dollars (\$2,000,000.00) combined single limit. Such insurance shall be maintained under policies issued by insurers licensed to conduct business in North Carolina and shall name the County and its officers and employees as "Additional Insured". The Company shall provide to the County a copy of a certificate or certificates evidencing compliance with this provision prior to commencing any exercise of the Company's rights under this License. Such insurance shall be maintained in full force and effect until ninety (90) days following any termination of this Agreement and shall not be construed to limit the extent of County's liability under this Agreement.

7. **Release.** In order to induce the County to permit the Company to access the Property and conduct the Work thereon, the Company, on behalf of itself and Company Parties (collectively "Company Releasers"), hereby expressly **Releases and Forever Discharges** the County and its affiliates, subsidiaries, divisions, officers, employees, agents, representatives, and contractors (collectively, "County Releasees") from any and all costs, expenses, losses, liabilities, claims, causes of action, demands, and damages for injury or death to the Company

Releasors or any of them, or damage to or loss of the property of the Company Releasors or any of them, arising out of or in connection with the Company's presence, activities, or performance of Work on the Property.

8. **Indemnification.** The Company indemnifies and holds the County harmless from and against any and all liens, claims, causes of action, damages, losses, liabilities, costs, and expenses, including reasonable attorneys' fees, to the extent arising out of the Company's presence, activities, or performance of Work on the Property or any act or omission of the Company, Company Parties, or anyone acting on behalf of the Company; provided, however, the indemnity shall not extend to protect the County from any pre-existing liabilities for matters merely discovered by the Company so long as the actions of the Company, Company Parties, or anyone acting on behalf of the Company do not aggravate any pre-existing liability of the County.

9. **Governing Law\Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. The Parties agree that the sole proper venue for any action arising out of this Lease shall be the North Carolina General Court of Justice in Pender County.

10. **Severability.** In the event that one or more of the covenants, terms, or provisions contained in this Agreement shall be held invalid, illegal, or unenforceable in any regard, the validity of the remaining covenants, terms, and provisions contained herein shall be in no way affected, prejudiced, or disturbed, and the remaining covenants, terms, and provisions shall remain in full force and effect.

11. **Binding Effect; Modification.** The provisions of this Agreement shall inure to the benefit of and be binding upon the Parties and their successors and assigns. This Agreement may not be modified or amended in any respect whatsoever unless such modification is reduced to writing and signed by each of the Parties.

12. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

13. **Signing Authority.** The Company represents and warrants to the County that the Company has the authority to enter into this Agreement and provide the indemnifications herein.

(Signatures appear on the next page)

PENDER COUNTY

ATTEST:

By: _____
County Manager

County Clerk
(SEAL)

RC HOLDINGS, LLC

ATTEST:

By: _____
David Caslow, Member

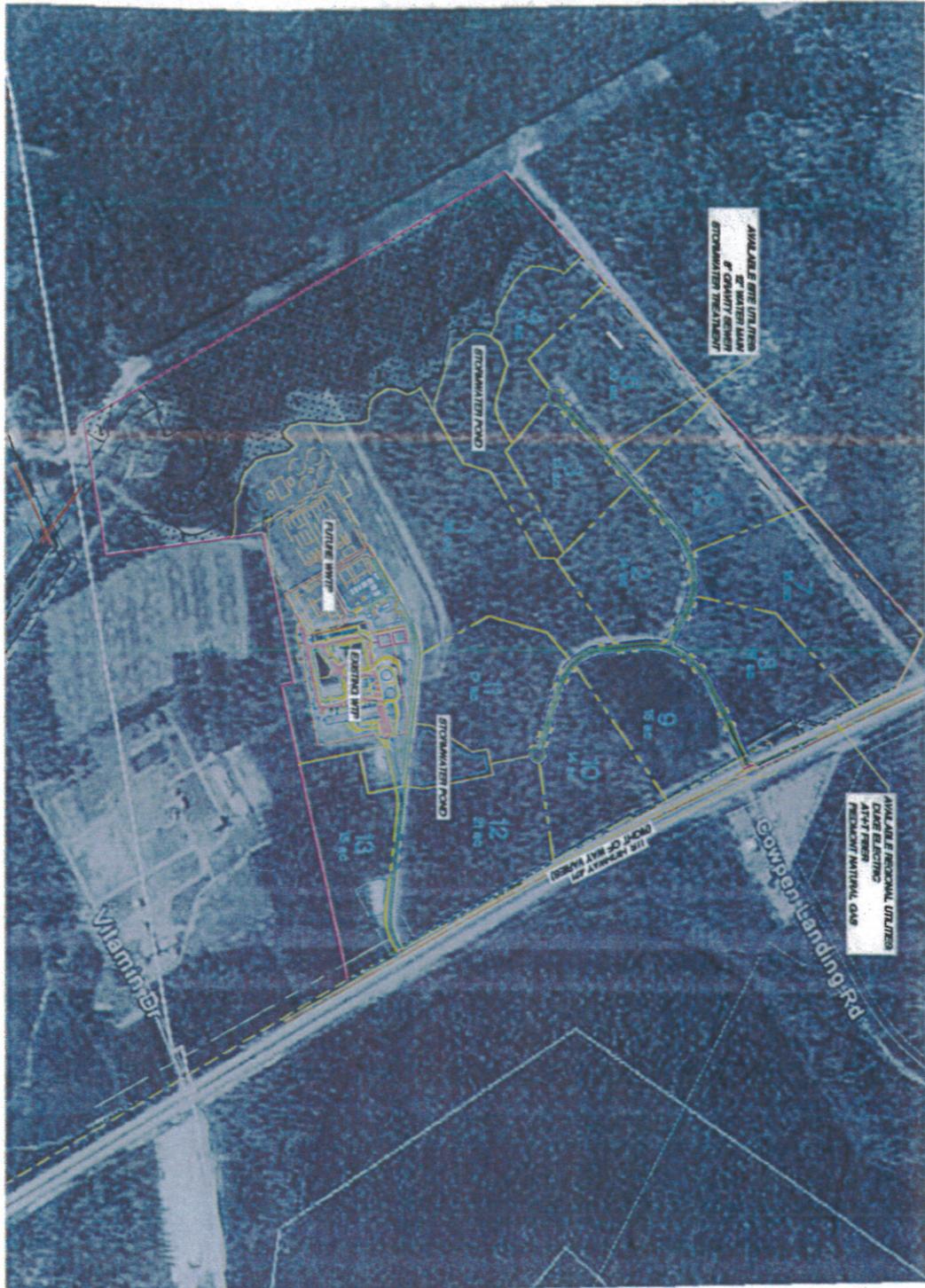
Secretary
(SEAL)

EXHIBIT A

PENDER COMMERCE PARK MASTER PLAN

EXHIBIT A

PENDER COMMERCE PARK MASTER PLAN



AVAILABLE SITE UTILITIES
 OF WATER MAIN
 & CANTY GROUND
 UTILITIES TREATMENT

AVAILABLE REGIONAL UTILITIES
 POWER ELECTRIC
 GAS
 TELEPHONE NATURAL GAS

MEKINS & CREED
 241 NORTH FRONT STREET
 WILMINGTON, NORTH CAROLINA 28401
 TEL: (910) 251-4222
 FAX: (910) 251-4227
 WWW.MEKINSANDCREED.COM

PENDER COMMERCE PARK
 MASTER DEVELOPMENT PLAN
 2011
 PENDER COUNTY

DATE: 10/10/11
 DRAWN BY: J. B. BROWN
 CHECKED BY: J. B. BROWN
 SCALE: AS SHOWN
 PROJECT NUMBER: 11-0001



NORTH CAROLINA

PENDER COUNTY

LICENSE TO OCCUPY

This LICENSE TO OCCUPY made this th day of _____ 2013, by and between the **PENDER COUNTY, NORTH CAROLINA**, a public body and political subdivision of the State of North Carolina, (hereinafter “County”); and **RC HOLDINGS, LLC**, (hereinafter “Company”).

WITNESSETH

WHEREAS, the County is the owner in fee simple of the property located in Pender County, North Carolina and New Hanover County, North Carolina recorded with the Pender County Register of Deeds in Map Book 51 at Page 70, and recorded with the New Hanover County Register of Deeds in Map Book 55 at Page 258, and hereinafter referred to as the “Vitamin Drive Property”; and

WHEREAS, the County and the Company have entered into an agreement for the conveyance of property and construction of a manufacturing facility in Pender Commerce Park abutting the Vitamin Drive Property; and

WHEREAS, the County and the Company mutually desire for the representatives of the Company to occupy the Administrative Building(s) and a portion of the Warehouse located on the Vitamin Drive Property for the purpose of project planning and construction administration during the manufacturing facility project planning and construction phase, as well as for temporary storage of materials and equipment related to construction of the new manufacturing facility.

NOW, THEREFORE, for and in consideration of the recitals and mutual benefits, covenants and terms herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the County and Company hereby agree as follows:

1. ADMINISTRATION BUILDINGS LICENSE TO OCCUPY

The County hereby authorizes representatives of the Company to occupy the Administrative Building(s) and a portion of the Warehouse located on the Vitamin Drive Property for the purposes of project planning and construction administration during the manufacturing facility project planning and construction phase, as well as for temporary storage of materials and equipment related to construction of the new manufacturing facility.

- a. The County will provide the Company keys to perimeter gates and the pass code for the electric gate.
- b. The Company may occupy said facilities until issuance of a Certificate of Occupancy for the manufacturing facility, or no later than December 31, 2014.

2. **MISCELLANEOUS PROVISION**

- a. The Company will provide insurance as set forth by “Exhibit A”, and be evidenced by a Certificate of Insurance available to the County.
- b. The Company will be responsible for a 25% share of the cost for general maintenance, upkeep, and utilities to serve the facilities while occupying the facility. Pender County will be responsible for 25% and each of two (2) Pender County Contractors will each be responsible for their respective 25% share of costs. (The amount of the cost share for the Company shall not exceed \$500 per month.)
- c. The Company will assure and be responsible for compliance with all local, state and federal laws and regulations while utilizing the facilities, including those related to workplace safety. All potential fire hazards such as electrical devices, space heaters, etc, shall be used in a responsible manner and powered down upon the completion of each day’s work.
- d. The Company will limit access to the site while using the facilities (do not leave access gates open). The Company shall not limit County access to the site or facilities. The Company will be responsible for any additional security of their designated laydown/storage area with the general site if desired.
- e. Certain offices within the facilities and available laydown yard for two (2) Pender County Contractors hired to construct the Wastewater Treatment Facility and the Commerce Park infrastructure improvements in addition to County personnel will also share the facilities throughout the term of this agreement.
- f. The Company will be responsible for securing telecommunication and internet services required or desired by the Company.
- g. This License to Occupy may be terminated by mutual consent of both parties in writing, or for failure of either party to perform according to the agreements of this License.
- h. The Company may not assign this License without the prior written consent of the County.
- i. The Company agrees to indemnify and hold County harmless of and from any and all claims, causes of action, damages and judgments arising out of any error or omission of Company, including Company’s negligence.

PENDER COUNTY

ATTEST:

By: _____
County Manager

County Clerk
(SEAL)

RC HOLDINGS, LLC

ATTEST:

By: _____
David Caslow, Member

Secretary
(SEAL)

EXHIBIT A

COMPANY MINIMUM INSURANCE REQUIREMENTS

The Company shall, at its sole cost and expense, maintain (a) comprehensive public liability insurance, including contractual liability insurance and property damage insurance, with per occurrence limits of not less than One Million Dollars (\$1,000,000.00) for bodily injury or death and damage to or destruction of property (including the loss of use thereof), Two Million Dollars (\$2,000,000.00) combined aggregate, (b) automobile liability insurance for all owned, non-owned, leased or hired vehicles with not less than Two Million Dollars (\$2,000,000.00) combined single limit, (c) workers' compensation insurance in accordance with statutory requirements, and (d) fire liability insurance of not less than Five Hundred Thousand Dollars (\$500,000). All such insurance coverage shall be issued by reputable insurers licensed to do business in the State of North Carolina and reasonably acceptable to Pender County. The Company shall list Pender County and its servants and employees as additional insureds on all such policies of insurance required to be maintained, and such policies shall provide that such coverage may not be canceled or materially changed except on thirty (30) days prior written notice to Pender County. The Company shall provide to Pender County a copy of a certificate or certificates evidencing compliance with this provision prior to commencing any exercise of the Company's rights under this License. Such insurance shall be maintained in full force and effect until ninety (90) days following any termination of this Agreement and shall not be construed to limit the extent of County's liability under this Agreement.