



REQUEST FOR BOARD ACTION

ITEM NO. 15.

DATE OF MEETING: April 7, 2014

REQUESTED BY: Trey Thurman, County Attorney

SHORT TITLE: Resolution Authorizing Amendment to the Incentive Agreement between Pender County and RC Creations, LLC; and Amendment to Change Name from RC Holdings, LLC to RC Creation Holdings, LLC.

BACKGROUND: Pender County previously entered into an Incentive Agreement with RC so that the Company would build and operate a seafood processing facility. In order to facilitate the financing for construction of the processing facility, RC has requested that the County agree to allow the bank making the loan have a first lien position. The County will be financially protected by an irrevocable letter of credit in the amount of Eight Hundred Thousand Dollars (\$800,000.00).

The Company also is requesting that the agreements be modified to reflect that the name of the LLC will be RC Creation Holdings, LLC. This is in the nature of the technical correction required because the previous name of RC Creations, LLC is not available as a registered name.

Neither of the amendments will require the County to expend any additional funds or place the County at risk. The amendments will assist the Company in securing the necessary financing so that the anticipated increase in tax base and jobs can be finalized.

SPECIFIC ACTION REQUESTED: To consider a resolution approving adoption the two amendments to the Incentive Agreement.

COUNTY MANAGER'S RECOMMENDATION

Respectfully recommend approval.



Initial

RESOLUTION

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

the Board hereby approves a Resolution Authorizing Amendment to the Incentive Agreement between Pender County and RC Creations, LLC; and Amendment to Change Name from RC Holdings, LLC to RC Creation Holdings, LLC. The Chairman/County Manager is authorized to execute any/all documents necessary to implement this resolution.

AMENDMENTS:

MOVED _____ SECONDED _____

APPROVED _____ DENIED _____ UNANIMOUS

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

J. David Williams, Chairman 4/7/14
Date

ATTEST 4/7/14
Date

NORTH CAROLINA

PENDER COUNTY

AMENDMENT NUMBER ONE TO INCENTIVE PERFORMANCE AGREEMENT
DATED 31 OCTOBER 2013 BETWEEN RC CREATIONS, LLC AND PENDER COUNTY

THIS AMENDMENT, dated as of 9 January 2014, by and between **RC Creation Holdings LLC**, hereinafter the "Company;" and Pender County, North Carolina, a public body politic and a political subdivision of the State of North Carolina, herein the "County". (The designation Company and County, as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine, or neuter as required by context);

RECITALS

The purpose of this agreement is to amend certain provisions in the Incentive Performance Agreement (Agreement) dated 31 October 2013 between ~~the parties hereto~~ **Pender County and RC Creations, LLC**.

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

1. **RC Creation Holdings, LLC is substituted for RC Creations, LLC as a party to the Agreement.**
2. Paragraph 2 of the Agreement is to be amended so as to specify that there shall be no deed of trust or other lien or security interest against the 20-acre tract to be transferred. Title to the 20 acre tract shall be transferred to Company on or before 30 April 2014 free and clear of all liens and encumbrances.
3. Paragraph 2 of the Agreement is to be amended to provide that Company will provide a Performance Bond in the amount of \$800,000 as security for the County's conveyance to Company of the 20 acre tract site. This Performance Bond will guarantee the completion of the plant facility and be satisfied upon the issuance of a Certificate of Occupancy for said facility. The Bond shall be in the form shown as Exhibit A. An Irrevocable Letter of Credit will secure the Performance Bond and the form for same is attached as Exhibit B.
4. The performance bond given by Company to County shall terminate and become null and void and of no legal effect upon the completion of the plant facility to be constructed on the 20 acre site and the issuance of a Certificate of Occupancy by County indicating satisfactory completion of construction.
5. No further security for the performance by Company of its obligations under the Agreement is to be given. Company makes no further guarantees or assurances in the nature of granting a security interest to secure compliance with the Agreement to County once the plant construction is completed and a Certificate of Occupancy is issued.
6. The parties agree that continued cooperation by both parties will be provided by each group's respective resources in the areas of communication, documentation and time as necessary to remedy short and long term problems during the Company's project timeline and in the future. Company agrees to continue to work with County in the acquisition of any current as well as future grants and will provide County with the same necessary resources in attracting future tenants to Pender Commerce Park. In addition County will provide all necessary resources to assist Company with the application for and compliance with the New Market Tax Credit guidelines as required by the Company, Company's lending institution and the Internal Revenue Service. Nothing contained herein shall be deemed to require that the County or its officers, employees or agents not enforce any valid law, statute, ordinance or regulation, nor shall any

alleged breach of this provision be asserted or claimed as a defense to County's ability to negotiate or present for payment the letter of credit described above.

7. Except as herein amended, said Agreement remains in full force and effect and binding upon and between the parties.
8. This document may be signed in counterparts, all of which taken together shall constitute a single original document. Telefacsimile copies and photocopies of signed counterparts may be used with the same force and effect as the originally signed counterpart.

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SIGNATURES AND ACKNOWLEDGEMENTS TO FOLLOW

PENDER COUNTY

ATTEST:

Glenda Pridgen
Deputy Clerk to Board

Name: David Williams, Jr.
Title: Chairman

Approved as to Form:

Name: Claiburn Watson
Finance Officer, Pender County, NC

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

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 Deputy 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 the ____ day of _____, 2014.

Notary Public

My Commission expires: _____

RC CREATION HOLDINGS, LLC

By: _____
Name: David Caslow
Member/Manager

STATE OF _____
COUNTY OF _____

I, _____ a Notary Public in and for the aforesaid County and State, do hereby certify that David Caslow personally appeared before me this day and acknowledged that he is a member/manager of RC Creation Holdings, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of the corporation, he voluntarily signed this instrument for the purposes stated therein. Witness my hand and official stamp, this the ____ day of _____, 2014.

Notary Public

My Commission Expires: _____

EXHIBIT "A"

NORTH CAROLINA

PENDER COUNTY

PERFORMANCE BOND

Know all men by these presents that **RC Creation Holdings, LLC**, (the Principal) a North Carolina limited liability company authorized to transact business in North Carolina, is held and firmly bound unto the County of Pender, (the County) a political subdivision of the State of North Carolina, and a body politic and corporate, in the sum of EIGHT HUNDRED THOUSAND and no/100 DOLLARS (\$800,000.00), lawful money of the United States of America, for the payment of which, will and truly be made, the Principal binds itself, its successors and assigns by these presents.

The conditions of this obligation are such that:

WHEREAS, the Principal has committed to building a seafood plant facility on land located in Pender Commerce Park in Pender County, North Carolina; and

WHEREAS, Pender County has conveyed 20 acres known as Lot 5 of Pender Commerce Park to the Principal on which said seafood plant facility is to be built; and

WHEREAS, the Principal has agreed to secure its commitment to build said seafood plant facility by executing this Performance Bond secured by an Irrevocable Letter of Credit in the amount of \$800,000.00; and

WHEREAS, the Principal does agree to substantially complete the seafood plant facility on or before 31 December 2014 and to obtain a Certificate of Occupancy on same on or before 31 December 2014.

Now, therefore, if the Principal shall further comply with all the terms hereof, that is the substantial completion of the seafood plant facility on or before 31 December 2014 and the issuance of a Certificate of Occupancy on same on or before 31 December 2014, then this obligation shall be null and void; otherwise, it shall remain in full force and in effect.

It is hereby understood and agreed that in the event that a Certificate of Occupancy is not issued on said seafood plant facility by 31 March 2015, Pender County may thereupon declare this Bond to be in default and collect the amount of funds indicated. Upon receipt of the proceeds of this Bond, Pender County shall be deemed to be fully and completely compensated for the 20 acres known as Lot 5 of Pender Commerce Park conveyed by Pender County to the Principal.

Provided, that if said seafood plant facility is not substantially completed within the time specified, but nonetheless is under construction, then and in that event the deadline for substantial completion shall be extended for the estimated time for said construction to reach substantial completion, but not to exceed six months. If a certificate of occupancy has not been obtained by the expiration of the 90 day cure period, the County may in its sole discretion grant an additional cure period. In no event shall any additional cure period extend beyond the expiration of the Letter of Credit. In the event that substantial completion is not achieved within said six month extension or any further extension granted by Pender County, then Pender County may declare this Bond to be in default and collect the amount of funds specified herein by the negotiation of the Irrevocable Letter of Credit securing this Performance Bond, a copy of which is attached hereto as Exhibit A.

Provided further, that prior to any negotiation of said Irrevocable Letter of Credit, the County shall give the Principal not less than 90 days advance notice of its intent to declare the Principal in default. If during said notice period the Principal cures the default, then no negotiation of the Irrevocable Letter of Credit shall occur.

In the event of any dispute between the parties arising out of this agreement, or their performance hereunder, the said dispute shall be subject to mediation between the parties by a mediator chosen by agreement between them. The costs of the mediation shall be borne equally by the parties. If the dispute is not resolved by the expiration of the 90 day cure period, then County may draw on the letter of credit.

IN WITNESS WHEREOF, RC Creation Holdings, LLC has caused this instrument to be signed by its duly authorized Manager, this ___ day of _____, 2014.

RC CREATION HOLDINGS, LLC

BY: _____
Manager

RC CREATION HOLDINGS, LLC

By: _____
Name: David Caslow
Member/Manager

STATE OF _____
COUNTY OF _____

I, _____ a Notary Public In and for the aforesaid County and State, do hereby certify that David Caslow personally appeared before me this day and acknowledged that he is a member/manager of RC Creation Holdings, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of the corporation, he voluntarily signed this instrument for the purposes stated therein. Witness my hand and official stamp, this the ____ day of _____, 2014.

Notary Public

My Commission Expires: _____

EXHIBIT "B"

IRREVOCABLE LETTER OF CREDIT
(Name of Bank)
(Address, include branch, if any)
(Date)

Phone Number: _____

Contact Name: _____

Irrevocable Letter of Credit

Pender County Board of Commissioners
805 South Walker Street
Burgaw, NC 28425

Commissioners:

We hereby open our irrevocable credit in your favor available by your drafts at sight on us for a sum not exceeding \$800,000 for the account of RC Creation Holdings, LLC (hereinafter known as "Customer"). When presented for negotiation, drafts must be accompanied by the signed statement of the County Manager of Pender County that drawing is due to default or failure to perform by Customer for the construction of a seafood plant facility (as defined in the Incentive Performance Agreement dated 31 October 2013 between Pender County and RC Creations, LLC, now RC Creation Holdings, LLC) at Pender Commerce Park, Pender County, North Carolina by the failure to obtain a Certificate of Occupancy for the plant facility on or before 31 March 2015.

The term of this irrevocable credit is through and including the 31st day of December, 2015 or upon written notice from the Pender County Manager that the required improvements have been timely completed, whichever is earlier.

The Pender County Manager will notify us when either of the following occurs:

1. The required improvements have been timely completed and the credit may be released; or
2. The Customer has failed to perform or is in default hereunder.

All drafts drawn hereunder must be marked as follows:

Pender County confirms that a Certificate of Occupancy for a seafood processing facility has not been issued as of 31 March 2015.

The amount of any draft drawn under this credit must be entered on the reverse side hereof, and acknowledged by the Pender County Manager and this letter of credit presented to the issuing bank along with a signed notice of failure to perform by the Customer with a list of the improvements that are incomplete.

This Letter of Credit, except as otherwise expressly provided herein, is governed by the Uniform Commercial Code in force in the State of North Carolina on the date hereof.

Very truly yours,

Name of Bank

By: _____
Authorized Signature

NORTH CAROLINA

PENDER COUNTY

AMENDMENT NUMBER TWO TO INCENTIVE PERFORMANCE AGREEMENT
DATED 31 OCTOBER 2013 BETWEEN RC CREATIONS, LLC AND PENDER COUNTY

THIS AMENDMENT, dated as of 25 March 2014, by and between RC Creation Holdings, LLC, hereinafter the "~~Company~~ **Holdings,**" and RC Creations, LLC, hereinafter "**Creations,**" and Pender County, North Carolina, a public body politic and a political subdivision of the State of North Carolina, hereafter the "**County.**" (The designation Company and County, as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine, or neuter as required by context);

RECITALS

The purpose of this Agreement is to ~~add correct the designation of RC Creations, LLC to~~ RC Creation Holdings, LLC in the original Agreement dated 31 October 2013.

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

1. All references to RC ~~Holdings, Creations~~ LLC in any agreements between Pender County and **Creations and Holdings** shall be changed to RC Creation Holdings, LLC, the name of ~~one of~~ the proper entities dealing with Pender County.

2. Both parties confirm, ratify and adopt all documents heretofore executed in the name of RC ~~Holdings Creations~~, LLC.

3. Except as herein amended, all agreements between Pender County and RC Creations, LLC/RC Creation Holdings, LLC remain in full force and effect and binding upon and between the parties.

4. This document may be signed in counterparts, all of which taken together shall constitute a single original document. Telefacsimile copies and photocopies of signed counterparts may be used with the same force and effect as the originally signed counterpart.

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SIGNATURES AND ACKNOWLEDGEMENTS TO FOLLOW

PENDER COUNTY

ATTEST:

Glenda Pridgen
Deputy Clerk to Board

Name: David Williams, Jr.
Title: Chairman

Approved as to Form:

Name: Claiburn Watson
Finance Officer, Pender County, NC

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

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 Deputy 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 the ____ day of _____, 2014.

Notary Public

My Commission expires: _____

RC CREATION HOLDINGS, LLC

By: _____

Name: David Caslow
Member/Manager

STATE OF _____
COUNTY OF _____

I, _____ a Notary Public in and for the aforesaid County and State, do hereby certify that David Caslow personally appeared before me this day and acknowledged that he is a member/manager of RC Creation Holdings, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of the corporation, he voluntarily signed this instrument for the purposes stated therein. Witness my hand and official stamp, this the ____ day of _____, 2014.

Notary Public

My Commission Expires: _____

RC CREATIONS, LLC

By: _____

Name: David Caslow
Member/Manager

STATE OF _____
COUNTY OF _____

I, _____ a Notary Public in and for the aforesaid County and State, do hereby certify that David Caslow personally appeared before me this day and acknowledged that he is a member/manager of RC Creations, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of the corporation, he voluntarily signed this instrument for the purposes stated therein. Witness my hand and official stamp, this the ____ day of _____, 2014.

Notary Public

My Commission Expires: _____