

**JACOB HOLM INDUSTRIES (AMERICA), INC.**

**and**

**BUNCOMBE COUNTY, NORTH CAROLINA**

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**INCENTIVE AGREEMENT**

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**Dated as of January \_\_\_\_, 2014**

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## **INCENTIVE AGREEMENT**

THIS INCENTIVE AGREEMENT ("**Agreement**") is dated as of \_\_\_\_ day of January, 2014 ("**Effective Date**"), and is between JACOB HOLM INDUSTRIES (AMERICA), INC., a North Carolina corporation organized and doing business in the State of North Carolina ("**Jacob Holm**"), and BUNCOMBE COUNTY, NORTH CAROLINA, a public body politic and a political subdivision of the State of North Carolina ("**County**").

### **RECITALS:**

Jacob Holm currently employs 82 workers at its manufacturing facility located at 1265 Sand Hill Road, Chandler, North Carolina ("**Facility**"). Jacob Holm plans to expand the Facility by investing at least Forty-Five Million Nine Hundred Thirty-six Thousand and No/100 Dollars (\$45,936,000.00) and creating 66 new full time jobs that pay an average annual wage of \$46,258, not including benefits (the "**Project**"). In order to induce Jacob Holm to make that investment and to create those jobs in the County, the County offered certain incentives to Jacob Holm. This Agreement describes Jacob Holm's commitments and the terms and conditions on which the County will pay the incentives to Jacob Holm.

**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**

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

"Abandonment of Operations" means that for a period in excess of four continuous months Jacob Holm ceases manufacturing operations at the Facility.

"Business Day" means any day that is not a Saturday or a Sunday, or a day on which banks in the State of North Carolina are required by law to be closed.

"Direct Investment" means the increase in property tax value attributable to property (before depreciation) in the County owned by Jacob Holm pursuant to the Project after the effective date of this Incentive Agreement as determined by the Buncombe County Tax Department in accordance with applicable law, regardless of the funding sources for said property.

"Full-Time Project Related Jobs" means the total number of new full time employees employed by Jacob Holm in connection with the Project as of December 31 of each year during the term of this Agreement. Such employees may be hired at any time on or prior to December 31 of the applicable year so long as Jacob Holm hires the required number of new full time employees specified below being paid at the average wages as identified below.

"Incentive" means the various incentive payments referred to in this Agreement that the County will pay to Jacob Holm.

“Performance Commitments” means the levels of Full-Time Project Related Jobs to be created by Jacob Holm at average wage levels indicated below and the levels of Direct Investment to be made by Jacob Holm in relation to Jacob Holm’s operations in the Facility.

“Project” has the meaning specified in the Recitals.

“State” means the State of North Carolina.

**1.2 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 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**

**JACOB HOLM’S COMMITMENTS**

2.1 In return for the Incentives set forth herein, which are a competitive necessity for Jacob Holm to increase capacities and operations in the County, Jacob Holm commits to certain Performance Commitments related to jobs created and incrementally increased taxes in the County. The parties acknowledge and agree that the consideration for the County to enter into this Agreement is the expectation that Jacob Holm will meet or exceed the Performance Commitments.

Specifically, Jacob Holm agrees to meet or exceed the following Performance Commitments:

- (a) Jacob Holm will create and maintain at the Facility for a five (5) year period running from December 31, 2014 through December 31, 2019 (“**Jobs Retention Period**”), the number of Full-Time Project Related Jobs specified below, and Jacob Holm will retain the current 82 full-time jobs it has in Buncombe County (collectively, “**Jobs Minimum**”). Jacob Holm must meet or exceed the applicable Jobs Minimum on or before December 31 of each year during the Jobs Retention Period.

Applicable Year/Required Number of Full-Time Project Related Jobs

Year 2014: 33  
Year 2015: 66  
Year 2016: 66  
Year 2017: 66  
Year 2018: 66  
Year 2019: 66

- (b) Jacob Holm agrees that for the length of the Jobs Retention Period, the average wage level of the Full-Time Project Related Jobs specified in **Section 2.1(a)** above shall be at least Forty-Six Thousand Two Hundred Fifty-Eight Dollars (\$46,258) per year excluding benefits. The calculation of the average wages for Full-Time Project Related Jobs shall be done as of December 31 of each year during the Jobs Retention Period.
- (c) Jacob Holm shall make Direct Investment in new construction and improvements to real property as well as new machinery and equipment having a property tax value (before depreciation) of at least Forty-Five Million Nine Hundred Thirty-Six Thousand and No/100 Dollars (\$45,936,000.00). Such Direct Investment (or replacement property of equal or greater value for property tax purposes before depreciation) shall remain in the County subject to ad valorem property tax assessments through the end of the Jobs Retention Period. All such initial Direct Investment, to be considered a basis for incentives covered hereunder, shall be made by not later than December 31, 2014.

2.2 Confirmations. Confirmations of Jacob Holm's attainment of the Performance Commitments shall be as follows: (1) the amount of Direct Investment shall be the amount of the new and additional property tax value (before depreciation) as determined by the Buncombe County Tax Department in accordance with applicable law attributable to Direct Investment related to the Project for property owned by Jacob Holm in the County as shown on its Business Real and Personal Property Tax Listings for the applicable year; and (2) the number of new and additional Full-Time Project Related Jobs attributable to the Project shall be the number shown on filings by Jacob Holm with the N.C. Employment Security Commission as to unemployment compensation taxes. The County may, subject to the agreement of Jacob Holm, have access to other documentation to verify the attainment of these Performance Commitments.

2.3 Direct Investment and Jobs Minimum.

- (a) Jacob Holm will make the Direct Investment on or before the schedule date set forth above. If Jacob Holm does not make the Direct Investment on or before the scheduled investment date, the amount of the Future Incentive Payments will be adjusted as provided in **Article IV**.
- (b) On or before the schedule dates set forth above, Jacob Holm will meet the applicable Jobs Minimum for each year during the Jobs Retention Period. If the Jobs Minimum is not achieved on or before the schedule dates set forth above, the amount of the Future Incentive Payments will be adjusted as provided in **Article IV**.

2.4 Exclusive Remedies. Except as set forth in **Article IV** below, Jacob Holm's failure to meet the commitments in this **Article II** will not (i) constitute a breach of this Agreement or result in any obligation to refund any Future Incentive Payments or (ii) relieve the County of its obligation to make any Future Incentive Payments pursuant to this Agreement. The County's sole and exclusive remedies for Jacob Holm's breach of any provision in, or failure to meet any commitment in, this **Article II** are those provided in **Article IV**.

## ARTICLE III

### FUTURE INCENTIVE PAYMENTS

To induce Jacob Holm to make the Direct Investment associated with the Project, to locate its new operations associated with the expanded employee base at its facilities, and to achieve the Jobs Minimum, the County commits to pay to Jacob Holm grants on the dates specified below (“**Future Incentive Payments**”). These Future Incentive Payments shall be in the total cumulative amount of One Million One Hundred Twenty Thousand Five Hundred Forty-Five and No/100 (\$1,120,545.00), and the County will pay them over a period of five (5) years. The County intends to apportion the Future Incentive Payments equally to Direct Investment (\$560,272.50) and the Jobs Minimum (\$560,272.50).

Jacob Holm shall apply for each Future Incentive Payment on or before March 15 of the year following the tax year for which the property taxes on the Direct Investment are paid. This written request shall consist of a letter from Jacob Holm to the County setting forth the increase in the amount of the new and additional tax value created by the Direct Investment (before depreciation) or replacement property (before depreciation), the property taxes on the Direct Investment or replacement property Jacob Holm has paid, and confirmation that Jacob Holm has notified the Buncombe County Tax Assessor's Office of the location of any business personal property of third parties at the Facility. The County shall review each application promptly and shall give Jacob Holm written notice of any deficiency in the application within 15 days after the County receives the application. The County will have 45 days following the receipt of an application that complies with the requirements of this **Article III** to make the required Future Incentive Payment. If any Future Incentive Payment is denied in full or in part, the County shall provide a written explanation for such denial or partial payment. If Jacob Holm subsequently cures the deficiency and submits an application that complies with the requirements of this Agreement, the County will promptly make the previously withheld Future Incentive Payment.

The Future Incentive Payments will be paid in five (5) equal annual installments no later than the dates shown below and upon the terms and conditions of this Agreement:

April 30, 2015 - \$224,109.00  
April 30, 2016 - \$224,109.00  
April 30, 2017 - \$224,109.00  
April 30, 2018 - \$224,109.00  
April 30, 2019 - \$224,109.00

Each Future Incentive Payment shall be paid to Jacob Holm no later than April 30 of the applicable calendar year, provided that Jacob Holm is current on all property taxes and fees it owes the County for the previous calendar year.

Provided however, that if Jacob Holm does not file its Business Real and Personal Property Tax Listings until on or after March 1 of a particular calendar year, then such Future Incentive Payment for that calendar year will not be payable until May 31 in the year affected.

If the Jacob Holm is in default on its obligation to pay property taxes to the County, the County will not be required to make a Future Incentive Payments to Jacob Holm until Jacob Holm pays the amount of such property taxes it owes the County, unless Jacob Holm is in a bona fide dispute with a

governmental taxing authority as to the value of some or all of its property.

## ARTICLE IV

### REDUCTIONS AND REFUNDS

(a) If Jacob Holm does not make the Direct Investment and achieve the Jobs Minimum on or before the schedule dates set forth above in a particular year, then the County will reduce the Future Incentive Payment for that year (payable by April 30 of the next year) as set forth in this **Article IV**, but Jacob Holm shall not be required to refund any portion of a Future Incentive Payment it has already received (subject to paragraph (g) below regarding Abandonment of Operations). The reduction formulas described in this **Article IV** are weighted such that 50% is assigned to the Direct Investment and 50% is assigned to the Jobs Minimum.

(b) Notwithstanding anything to the contrary in this **Article IV**, Jacob Holm shall be entitled to the full annual Future Incentive Payment for any given year provided it has met at least 90% of both the Direct Investment and Jobs Minimum in the preceding year.

(c) Direct Investment. If Jacob Holm does not make the Direct Investment in accordance with the schedule set forth above and maintain it in a particular year, then the County will reduce the Future Incentive Payment for that year (payable by April 30 of the next year) by an amount equal to (i) one minus a pro rata percentage (specified below), multiplied by (ii) \$112,054.50. The pro rata percentage will be the percentage derived by subtracting the amount of the Direct Investment Jacob Holm has maintained in the particular year from \$45,936,000.00 and dividing the result by \$45,936,000.00. The pro rata percentage cannot be less than zero.

(d) Job Creation. If Jacob Holm does not maintain the applicable Jobs Minimum in a particular year, then the County will reduce the Future Incentive Payment for that year (payable by April 30 of the next year) by an amount equal to (i) one minus a pro rata percentage (specified below), multiplied by (ii) \$112,054.50. The pro rata percentage will be the percentage derived by (i) subtracting 82 from the actual number of full time jobs employed at the Facility as of December 31 of such year, and dividing the result by (ii) the applicable Jobs Minimum minus 82. The pro rata percentage cannot be less than zero.

(e) Examples. Examples of the operation of the formulas in subparts (c) and (d) above are on **Exhibit A** attached to this Agreement.

(f) Makeup Payment. Notwithstanding the foregoing, if the County reduces one or more Future Incentive Payments pursuant to subparts (c) and/or (d) above, and Jacob Holm maintains the Direct Investment and the Jobs Minimum for 2019 as of December 31, 2020 and satisfies the other conditions in the second paragraph of **Article III**, then the County shall pay Jacob Holm the largest reduction in a Future Incentive Payment within the time period specified in such second paragraph.

(g) Abandonment of Operations. If an Abandonment of Operations occurs, the County shall not be obligated to make any additional Future Incentive Payments, and Jacob Holm shall refund to the County 25% of all Future Incentive Payments the County has already paid Jacob Holm within 60 days after receiving the County's invoice. In the event of such a refund, there shall be no additional costs, interest, fees or any additions whatsoever imposed on Jacob Holm above and beyond the refund amount due.

## **ARTICLE V**

### **TEMPORARY REDUCTIONS IN PERFORMANCE COMMITMENTS**

Notwithstanding anything herein to the contrary, if Jacob Holm shall be prevented or delayed from fulfilling, or continuing to fulfill, either or both of the Performance Commitments as set forth in herein, by reason of a:

- (a) government moratorium;
- (b) delay in obtaining any governmental or quasi-governmental approvals, permits or certificates, despite reasonable efforts by Jacob Holm to obtain same;
- (c) enemy or hostile governmental or terrorist action;
- (d) act of God, including but not limited to hurricane, tornado, snowstorm, windstorm, earthquake or flood, fire or other extreme weather conditions or other casualty;
- (e) strike, lockout or a labor dispute involving entities other than Jacob Holm which causes Jacob Holm an inability to obtain labor or materials;
- (f) delay in funding from any state or local government incentive to or for the benefit of Jacob Holm, or;
- (g) any other event, other than normal business exigencies, which is beyond the reasonable control of Jacob Holm.

then the Performance Commitments and the Future Incentive Payment for the year(s) in which such event occurred shall be equitably reduced to reflect the effect of such event.

The parties shall negotiate in good faith to make an equitable reduction in the Performance Commitments for any affected year(s). However, if the parties cannot in good faith reach an agreement as to such adjustment, all parties agree to submit this issue to mediation to be conducted in accordance with local rules of the General Court of Justice of Buncombe County, North Carolina.

## **ARTICLE VI**

### **ASSIGNMENT**

Jacob Holm will have the right to assign this Agreement, and any rights, privileges, or claims under this Agreement, to any future purchaser or lessee of the Facility without the consent of the County. If the assignee agrees in writing to assume the Company's obligations under this Agreement, then Jacob Holm will be relieved of its obligations under this Agreement. Jacob Holm will give the County written notice of any such assignment and assumption.

Jacob Holm may, without the consent of the County, pledge, mortgage, grant a security interest in, and collaterally assign this Agreement, and any rights, privileges or claims under this Agreement, to any person or entity, including a collateral agent acting on behalf of lenders providing financing for the

Facility (collectively, “**Financing Parties**”). The County will cooperate with Jacob Holm, its affiliates, any assignee of this Agreement, and any Financing Parties from time to time, including by entering into a consent to assignment or other agreements in connection with any collateral assignment on such terms as may be customary under the circumstances and shall be reasonably required by such Financing Parties.

## **ARTICLE VII**

### **REPRESENTATIONS AND WARRANTIES**

Jacob Holm represents and warrants to the County that as of the Effective Date: (i) it is a corporation duly organized and existing under the laws of the State of North Carolina; (ii) it has the power and authority to own its properties and assets and to carry on its business as now being conducted and has the power and authority to execute and perform this Agreement; (iii) this Agreement (A) is the legal, valid and binding agreement of Jacob Holm, enforceable against Jacob Holm in accordance with its terms, (B) does not violate any order of any court or other agency of government binding on Jacob Holm or the charter documents of Jacob Holm, and (C) does not conflict with, result in a breach of, or constitute an event of default under any material indenture, agreement or other instrument to which Jacob Holm is a party; and (iv) Jacob Holm has not received written notice of any action or proceeding that challenges the validity of this Agreement or Jacob Holm’s right and power to enter into and perform this Agreement.

The County represents and warrants to Jacob Holm that: (i) the County is a political subdivision and body politic of the State of North Carolina with power and authority to enter into and perform this Agreement; (ii) the County has taken all action necessary to authorize the execution, delivery and performance of this Agreement; (iii) this Agreement is a legal, valid, and binding obligation of the County, enforceable against the County in accordance with its terms; and (iv) the County has not received written notice of any action or proceeding that challenges the validity of this Agreement or the County’s right and power to enter into and perform this Agreement.

## **ARTICLE VIII**

### **CONTINUING CONTRACT**

The parties hereto understand that this Agreement is and shall be construed as a continuing contract pursuant to N.C.G.S. §153A-13.

## **ARTICLE IX**

### **MISCELLANEOUS**

**Governing Law.** The parties intend that this Agreement shall be governed by the law of the State of North Carolina as follows:

#### Mediation

- Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to voluntary non-binding mediation as a condition



precedent to the institution of legal or equitable proceedings by either party. If the parties are unable to agree upon a certified mediator to hear their dispute, the Buncombe County Resident Superior Court Judge shall name a mediator to hear the matter.

- The parties shall equally share the mediator's fee. The mediation shall be held in Asheville at a location designated by the mediator selected to hear the matter.

#### Legal Proceedings

- Claims, disputes and/or other matters in question between the parties that are not resolved by mediation shall be heard in the North Carolina General Courts of Justice in Asheville, Buncombe County, North Carolina, which said Court shall have jurisdiction to hear any dispute between the parties arising out of this agreement. The Parties hereby agree that this paragraph establishes exclusive and sole jurisdiction for any legal proceeding in Buncombe County, North Carolina.

**Notices.** Any notice permitted or required under this Agreement from one party to the other must be in writing and will be effective (a) on the date it was actually delivered to the addressee if delivered personally, or sent by a nationally recognized courier (such as FedEx or United Parcel Service) or sent by facsimile, or (b) three days after having been deposited in the United States mail, if sent by certified mail, return receipt request, in each case to the respective addresses of Jacob Holm and the County listed below, or those other addresses of which either party gives the other party written notice:

If to Jacob Holm, to:

Jacob Holm Industries (America), Inc.  
Attn: VP Operations  
1265 Sand Hill Road  
Chandler, NC 28715

With copy to:

Stephen R. Hunting  
Parker Poe Adams & Bernstein LLP  
401 South Tryon Street  
Charlotte, NC 28202

If to the County, to:

Jon Creighton  
Assistant County Manager/Planning Director  
46 Valley Street  
Asheville, NC 28801

With copy to:

Michael C. Frue  
Senior Staff Attorney  
59 Woodfin Place, Suite 100  
Asheville, NC 28801

Any addressee may designate additional or different addresses for communications by notice given under this Section to each of the others.

**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 preceding Business Day.

**Severability.** Each provision in this Agreement is severable. If any provision of this Agreement will be determined to be invalid or unenforceable by a court of competent jurisdiction, then: (a) such determination will not invalidate or render unenforceable any other provision of this Agreement; (b) such provision will be construed as closely as possible to the parties' original intent in order to render such provision valid or enforceable, as applicable; and (c) the remaining terms of this Agreement, together with such reconstructed provision, will constitute the parties' entire agreement.

**Entire Agreement; Amendments.** This Agreement constitutes the entire contract between the parties, and this Agreement shall not be changed except in writing signed by both parties.

**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.

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

**Liability of Directors, Officers and Agents.** No director, officer, agent or employee of the County or Jacob Holm 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.

**Confidentiality.** The County will keep confidential and will not disclose or publish any of Jacob Holm's trade secrets as defined in Section 132-1.2(1) of the North Carolina General Statutes, will keep all records evidencing such trade secrets marked as "confidential trade secrets", and will keep all such records segregated in the County's files. If the County receives a request, subpoena or court order to disclose any information or records Jacob Holm or its representatives have provided or provide in the future relating to this Agreement or the project described in this Agreement, the County will give Jacob Holm prompt written notice of the request, subpoena or court order and will discuss any proposed disclosure of such information or records with Jacob Holm (and, to the extent possible, give Jacob Holm the opportunity to contest any disclosure of information or records Jacob Holm believes should not be disclosed) before making any such disclosure.

**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.

**SIGNATURE PAGE 1 OF 2 TO INCENTIVE AGREEMENT BETWEEN  
JACOB HOLM INDUSTRIES (AMERICA), INC. AND BUNCOMBE COUNTY, NORTH CAROLINA**

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

[SEAL]

**JACOB HOLM INDUSTRIES (AMERICA), INC.**

**ATTEST:**

**By:** \_\_\_\_\_  
**Printed Name:**  
**Title:**

**By:** \_\_\_\_\_  
**Printed Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

**SIGNATURE PAGE 2 OF 2 TO INCENTIVE AGREEMENT BETWEEN  
JACOB HOLM INDUSTRIES (AMERICA), INC. AND BUNCOMBE COUNTY, NORTH CAROLINA**

[SEAL]

**BUNCOMBE COUNTY, NORTH CAROLINA**

**ATTEST:**

**By:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

\_\_\_\_\_  
Kathy Hughes, Clerk to the Board

This instrument has been preaudited  
in the manner required by The Local  
Government Budget and Fiscal Control Act

\_\_\_\_\_  
Name: Donna Clark  
Finance Officer, Buncombe County  
North Carolina

**Attached Exhibit**

Exhibit A      Pro Rata Reduction Examples

## EXHIBIT A

### Pro Rata Reduction Examples

#### Jobs Minimum:

- If Jacob Holm makes and maintains aggregate Direct Investment of the full \$45,936,000 by December 31, 2015, but has created only 43 Full-Time Project Related Jobs by that date (and assuming Jacob Holm has retained the equivalent of its current 82 jobs), then the County's next Future Incentive Payment (payable on April 30, 2015) will be calculated as follows:
  - The pro rata percentage is 65.15% ( $43 \text{ [new]} \div 66 \text{ [commitment]}$ ).
  - The reduction in the Future Incentive Payment payable on April 30, 2016 is \$39,051.00 ((one minus .6515) multiplied by \$112,054.50).
  - The net amount the County must pay Jacob Holm is \$185,058.01.

#### Direct Investment:

- If Jacob Holm has achieved 66 Full Time Project Related Jobs by December 31, 2018 (and assuming Jacob Holm has retained the equivalent of its current 82 jobs), but has maintained Direct Investment of only \$30,000,000, then the County's next Future Incentive Payment (payable on April 30, 2019) will be calculated as follows:
  - The pro rata percentage is 65.31% ( $\$30\text{M [actual]} \div \$45.936\text{M [commitment]}$ ).
  - The reduction in the Future Incentive Payment payable on April 30, 2019 is \$38,871.70 ((one minus .6531) multiplied by \$112,054.50).
  - The net amount the County must pay Jacob Holm is \$185,237.30.