

**LINAMAR NORTH CAROLINA, INC.**

**and**

**BUNCOMBE COUNTY, NORTH CAROLINA**

-----  
**CONSOLIDATED AND MODIFIED  
ECONOMIC DEVELOPMENT AGREEMENT**  
-----

\_\_\_\_\_  
**Dated as of April \_\_\_\_, 2019**  
\_\_\_\_\_

**CONSOLIDATED AND MODIFIED  
ECONOMIC DEVELOPMENT AGREEMENT**

THIS **CONSOLIDATED AND MODIFIED ECONOMIC DEVELOPMENT AGREEMENT** ("**Agreement**") is dated as of the \_\_\_\_ day of April, 2019 ("**Effective Date**"), and is between **LINAMAR NORTH CAROLINA, INC.**, a North Carolina corporation ("**Linamar**"), and **BUNCOMBE COUNTY, NORTH CAROLINA**, a public body politic and a political subdivision of the State of North Carolina (the "**County**").

**RECITALS:**

**Background.** The County and Linamar entered into an Economic Development Agreement dated August 23, 2011 [the "**2011 EDA**"] related to the acquisition and installation of manufacturing equipment at the facility located at 2169 Hendersonville Road in Asheville, North Carolina and containing approximately 65.37 acre ["**Facility**"]. On November 18, 2014 the County and Linamar entered into a second Economic Development Agreement related to an expansion of its operations at the Facility [the "**2014 EDA**"]. The 2011 EDA and the 2014 EDA contractually committed Linamar to to invest a cumulative total of \$315,000,000 in real and personal property, including machinery and equipment, fixtures, tools, dyes and molds. These two EDA's also obligated Linamar to create a total of 800 new full-time positions at the Facility or other locations of Linamar in the County. Linamar committed to meet or exceed its investment and jobs targets by December 31, 2021 which included the possibility of extending that deadline for two years. In exchange, the County is obligated to pay Linamar incentives in the cumulative total amount of \$19,000,000 by December 31, 2020.

Due to economic and industrial conditions outside its control, Linamar has not met all of its commitment targets to date. To date, Linamar has invested a total of approximately \$100,000,000 and created 250 jobs. In accordance with the 2011 EDA and the 2014 EDA the County has paid to Linamar incentives of \$13,000,000.

Through adaptation and reorganization of its business model, Linamar has secured business commitments to enable it to meet its commitments. Linamar has now asked for additional time to meet its investment and jobs commitments and the County has agreed to do so in exchange for extending the timeline for further incentive payments and combining the 2011 EDA and the 2014 EDA.

The County and Linamar desire to consolidate and modify the 2011 EDA and the 2014 EDA to induce Linamar to continue with its adaptation and reorganization of its business model. Linamar will only receive the incentives stated in this Agreement and will not also receive the incentives stated in the 2011 EDA and the 2014 EDA.

**Now Therefore**, County and Linamar, for valuable consideration each to the other paid, the receipt and sufficiency of which is hereby acknowledged, and their mutual covenants and

agreements contained in this Consolidated and Modified Economic Development Agreement, do hereby acknowledge and 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 Linamar 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.

“Confirmation Dates” mean the scheduled future dates when Linamar will submit a certified confirmation letter to the County stating that all investment and job creation commitments have been met between 2018 and 2024 and then maintained during the Retention Period as defined below. The Incentive Confirmation Dates for this agreement shall be April 30 during the term of the Amended Commitment and Incentive Schedule and during each succeeding calendar year during the said Retention Period.

“Confirmation Letter” means a letter submitted by Linamar to the County certifying that commitments have been met and requesting release of incentive grants, or that commitments have been maintained during the said Retention Period. Each such letter must specifically state that Linamar meets or exceeds the applicable Jobs Minimum and that it meets or exceeds the Direct Investment requirements on or before the Incentive Confirmation Date and each succeeding Confirmation Date during the said Jobs Retention Period. Each confirmation letter must include supporting documentation indicating the amount of investment and jobs created. The requirements for this documentation is defined in Article III.

“Direct Investment” means the increase in property tax value attributable to property (before depreciation) in the County owned by Linamar after the effective date of the 2011 EDA, the 2014 EDA and this Agreement as determined by the Buncombe County Tax Department in accordance with applicable law, regardless of the funding sources for said property. Direct investment may include facilities and business personal property, but does not include land acquisition. Per NCGS 105-308, Linamar must file Business Personal Property listings with the Buncombe County Tax Department by January 31<sup>st</sup>. Linamar may only claim those direct investments that are reported in such filings. Direct Investment in this agreement refers to the capital 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 \$315M. Direct Investment may also include all expenditures Linamar’s customers make on Taxable tools, dyes, molds and other machinery or equipment they locate at the Facility or

another location in the County during the term and Retention Period provided either Linamar or its customers file appropriate Business Personal Property listings with the Buncombe County Tax Department.

"Facility" the Property and improvements located at 2169 Hendersonville Road in Asheville, North Carolina.

"Full-Time Project Related Jobs" means the total number of new full time employees employed by Linamar in connection with the Facility or other locations of Linamar in the County. Such employees may be hired at any time on or prior to December 31 during the term of the amended commitment and incentive schedule and during each succeeding calendar year during the said Retention Period. "Part-Time" or "Temporary" employees may not be counted towards the "Full-Time Project Related Jobs" commitment. Full-Time Project Related Jobs in this Agreement refers to Linamar's creation of cumulative total of 800 new full-time jobs that pay an average wage of \$43,600, not including benefits as well as the annual new full-time jobs commitments as shown in the amended commitment and incentive schedule.

"Incentives" means the incentive payments referred to in this Agreement that the County will pay to Linamar provided the performance commitments are achieved as well as the Grants/Incentives paid to Linamar by the County previously in accordance with the said 2011 EDA and 2014 EDA.

"Retention Period" is the period of time that the Linamar must maintain jobs and investment commitments. For this agreement, the Retention Period is December 31, 2024 and expiring therefore on December 31, 2034. The Company must maintain at minimum 85% of its cumulative Jobs Minimum commitment and 85% of its cumulative Direct Investment commitment during this period. This ratio is provided to accommodate for changes to product offerings and customer needs that may occur in the future and cannot be predicted at this time.

"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

2. The Recitals set forth above, along with the definitions of certain terms, are incorporated herein by reference as if fully restated.

## ARTICLE III

### COMMITMENTS AND INCENTIVES

3.1 In summary, the **2011 EDA** provided as follows:

- Linamar agreed to make a Minimum Investment of Qualifying Expenditures of \$125,000,000 by December 31, 2020;
- Linamar agreed to create at least 400 full-time positions to be employed at the Facility;
- County agreed to pay incentive grants of \$10,000,000 by September 30, 2014; and
- In the event Linamar failed to meet its commitments then it would be required to refund the County amounts that could amount to all incentives paid to date (save and excepting \$1,000,000 attributable to the purchase price of the Facility real estate) depending on the pro rata percentage of actual investments and jobs creation divided by the commitment totals.

Current **2011 EDA** status:

- Linamar has made Qualifying Expenditures of approximately \$130,000,000;
- Linamar has created approximately 300 full-time positions at the Facility; and
- County has paid incentive grants of \$10,000,000.

In summary, the **2014 EDA** provided as follows:

- Linamar agreed to make a Minimum Investment of Qualifying Expenditures of \$190,000,000 by December 31, 2021;
- Linamar agreed to create at least an additional 400 full-time positions to be employed at the Facility or other locations of Linamar in the County;
- County agreed to pay incentive grants of \$9,000,000 by December 31, 2020; and

- In the event Linamar failed to meet its commitments then it would be required to refund the County amounts that could amount to all incentives paid to date depending on the pro rata percentage of actual investments and jobs creation divided by the commitment totals.

Current **2014 EDA** status:

- Linamar has made Qualifying Expenditures of approximately \$0.0;
- Linamar has created approximately 0 full-time positions at the Facility; and
- County has paid incentive grants of \$3,000,000.

The County determined, and Linamar agreed, in the previous EDA's that its investment and jobs creation as described would further the economic interests of the County in numerous ways, including enhancing the County's property tax base and increasing the County's property tax revenues; and the employment of an additional full-time persons at the Facility would create many other jobs for residents of the County and provide a positive economic impact for the County and surrounding area. Further, Linamar did indicate that without the County's commitment to pay incentive grants to Linamar in exchange for its investments and jobs creation it would not have located its project at the Facility or agreed to the expansion plans outlined in the 2014 EDA. Linamar has reiterated that the payment by the County of the remaining incentive grants as set forth in the 2011 and 2014 EDA's remains a competitive necessity as it continues to invest and add new jobs at the Facility.

In return for the Incentives set forth herein, which are a competitive necessity for Linamar to undertake its planned Project and operations in the County, Linamar renews its commitment to certain Performance Commitments related to the creation of new full-time jobs as well as increased taxes in the County ("**Performance Commitments**"). The parties acknowledge and agree that the consideration for the County to enter into this Agreement is the expectation that Linamar will meet or exceed the Performance Commitments.

Specifically, notwithstanding any terms or conditions contained in 2011 EDA and 2014 EDA, from and after the date of this Agreement the County will pay its agreed annual incentives and Linamar will make its agreed annual investments and create full-time positions on the following schedule:

**AMENDED COMMITMENT AND INCENTIVE SCHEDULE**

| Calendar Year Ending | Incentives (Annual) | Investment (Cumulative) | Investment (Annual) | Jobs (Cumulative) | Jobs (Annual) |
|----------------------|---------------------|-------------------------|---------------------|-------------------|---------------|
| <b>2019</b>          | \$1,000,000.00      | \$120,986,166.00        | \$24,920,162.00     | 400               | 150           |
| <b>2020</b>          | \$1,000,000.00      | \$175,118,349.00        | \$54,132,183.00     | 500               | 100           |
| <b>2021</b>          | \$1,000,000.00      | \$214,849,233.00        | \$39,730,884.00     | 600               | 100           |
| <b>2022</b>          | \$1,000,000.00      | \$231,593,484.00        | \$16,744,251.00     | 700               | 100           |

| Calendar Year Ending | Incentives<br>(Annual) | Investment<br>(Cumulative) | Investment<br>(Annual) | Jobs<br>(Cumulative) | Jobs (Annual) |
|----------------------|------------------------|----------------------------|------------------------|----------------------|---------------|
| 2023                 | \$1,000,000.00         | \$273,296,742.00           | \$41,703,258.00        | 750                  | 50            |
| 2024                 | \$1,000,000.00         | \$315,000,000.00           | \$41,703,258.00        | 800                  | 50            |
| TOTAL                | \$6,000,000.00         | \$315,000,000.00           | \$218,933,996.00       | 800                  | 550           |
| TOTAL (End of EDA)   | \$19,000,000.00        | \$315,000,000.00           | \$315,000,000.00       | 800                  | 800           |

The County and Linamar understand and agree that the cumulative totals of investments and jobs are the same as the cumulative totals set forth in the 2011 EDA and 2014 EDA. The intent of this provision is to consolidate the 2011 EDA and 2014 EDA and modify the timelines of the respective County and Linamar commitments for all investments and jobs creation beyond the current status of the 2011 EDA and 2014 EDA as set for above.

- (a) On or before December 31 of each year set forth in the Amended Commitment and Incentive Schedule above, Linamar will create and maintain in the Facility full-time jobs in a manner consistent with the schedule set for above and for a ten (10) year period, from and after December 31, 2024 and expiring therefore on December 31, 2034 (the "**Jobs Retention Period**"), positions for at least 800 Full-Time Project Related Jobs who will be employed in the Facility or other locations of Linamar in the County (collectively, "**Jobs Minimum**"). Linamar must submit an annual Confirmation Letter certifying that it meets or exceeds the required Jobs Minimum on or before April 30 of each year during the Jobs Retention Period. This will be determined based on the Statement of Deposits and Filings provided by Linamar to the N.C. Employment Security Commission. The Company must maintain at minimum 85% of its cumulative Jobs Minimum commitment and 85% of its cumulative Direct Investment commitment during this period. This ratio is provided to accommodate for changes to product offerings and customer needs that may occur in the future and cannot be predicted at this time. If at any point, the Company should fall below 85% of the Full-Time Project Related Job Commitment, or 680 jobs, the County may impose the refund process as described in **Article V**.
- (b) Linamar agrees that for the length of the Retention Period, the average wage level of the Full-Time Project Related Jobs specified in Section 3.1(a) above shall be at least Forty Three Thousand and Six Hundred Dollars (\$43,600.00), not including 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 Retention Period. This will be determined based on the Statement of Deposits and Filings provided by Linamar to the N.C. Employment Security Commission.
- (c) On or before December 31 of each year set forth in the Amended Commitment and Incentive Schedule above, Linamar shall make Direct Investment in connection with the Facility as well as new machinery and equipment having a

property tax value (before depreciation) in the amounts set forth in the Amended Commitment and Incentive Schedule above.

- (d) 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 Retention Period. Linamar must submit an annual Confirmation Letter certifying that it meets or exceeds the Direct Investment requirements. This will be determined based on filings by Linamar with the Buncombe County Tax Department as to business personal property listings. The Company must maintain at minimum 85% of its cumulative Jobs Minimum commitment and 85% of its cumulative Direct Investment commitment during this period. This ratio is provided to accommodate for changes to product offerings and customer needs that may occur in the future and cannot be predicted at this time. If at any point, the Company should fall below 85% of the Direct Investment Commitment, or \$267,750,000, the County may impose the refund process as described in **Article V**.
- (e) By not later than April 30 following December 31 of the calendar years included in the Amended Commitment and Incentive Schedule above and then maintained during the Retention Period, Linamar will provide to the County an annual Confirmation Letter on New Jobs creation and Investments and during each succeeding calendar year during the said Retention Period. The annual update may take the form the Confirmation Letter described in 3.2.

3.2 Confirmation Letter. Linamar recognizes that incentive grants can only be awarded if Linamar submits a signed, notarized Confirmation Letter by the Confirmation Date. The Confirmation Letter must certify that all goals have been met and/or maintained and provides adequate supporting documentation for these targets. Linamar further understands that all supporting documentation is subject to review by County staff. Linamar acknowledges that the definition and requirements for adequate supporting documentation are documented in this Agreement. Adequate supporting documentation shall include customer documentation of direct investments if Linamar intends to count customer investments towards Linamar's investment commitments defined in this agreement. A Sample Confirmation Letter and Supporting Documentation is provided in Article XII.

3.3 Confirmations. Linamar will submit a Confirmation Letter by not later than April 30 following the calendar years set for in the Amended Commitment and Incentive Schedule and during each year of the Retention Period.

The confirmation letter must confirm that Linamar has met and/or maintained the Performance Commitments 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 Linamar in the County as shown on its Business Real and Personal Property Tax Listings for the applicable year; and (2) the number of Full-Time Jobs that Linamar has as of each Confirmation Date shall be the number shown on filings by Linamar with the N.C. Employment Security Commission as to unemployment compensation taxes. The County shall have reasonable access to other documentation to verify the attainment of these Performance Commitments.

3.4 Amended Commitment and Incentive Schedule - Direct Investment and Jobs Minimum.

The following provisions shall apply to Linamar's commitments for the agreed annual investments and the agreed creation of full-time positions for annual and cumulative commitments for each year set forth in the Amended Commitment and Incentive Schedule above and through the end of the Retention Period.

- (a) If Linamar does not make the Direct Investment on or before the scheduled Incentive Confirmation Date, then no incentive grants will be awarded.
- (b) If Linamar does not maintain the amount of investment throughout the Retention Period, then Linamar will be subject to recapture as provided in **Article V**.
- (c) If Linamar does not create and maintain the new Full-Time Project Related Jobs, the Jobs Minimum, on or before the scheduled Confirmation Dates, then no incentive grants will be awarded.
- (d) If Linamar does not maintain the Jobs Minimum throughout the Retention Period, then Linamar will be subject to recapture as provided in **Article V**.

**ARTICLE IV**

**INCENTIVE PAYMENTS**

To induce Linamar to make the Direct Investments associated with the Project, to locate new and continued operations and new employee base at its Facility, and to achieve the Jobs Minimum, the County commits to pay to Linamar the incentive grants on the amended schedule as set forth in the Amended Commitment and Incentive Schedule above.

Linamar must submit a Confirmation Letter by the Confirmation Date in order to be eligible for the incentive grants. The Confirmation Letter will include employment and investment filings the N.C. Employment Security Commission and Buncombe County Tax Department respectively. The County shall review those filings and, if confirmed, pay the the Incentive Payments by June 30.

Provided however, that if Linamar for any reason fails to file its Business Real and Personal Property Tax Listings in a timely manner then such Incentive Payments will not be

made until these Listings are properly filed and accepted.

Further, in order to qualify for the incentive grant, Linamar must comply with all Federal, State and Local laws. Further if Linamar is in default on its obligation to pay property taxes to the County, the County will not be required to make any Incentive Payments to Linamar until Linamar pays the amount of such property taxes it owes the County, unless Linamar is in a bona fide dispute with a governmental taxing authority as to the value of some or all of its property. Nothing herein shall preclude County and the Buncombe County Tax Collector from seeking to recover any such unpaid property taxes in accordance with applicable laws.

## **ARTICLE V**

### **REFUNDS**

#### **A. AS TO PAYMENTS MADE BY COUNTY TO LINAMAR UNDER THIS AMENDED COMMITMENT AND INCENTIVE SCHEDULE**

Should Linamar fail to meet the levels of Direct Investment as shown in the Amended Commitment and Incentive Schedule or should such investment be withdrawn or be reduced for any business reason, other than depreciation, OR should Linamar fail to create and maintain the Jobs Minimum as set forth in the Amended Commitment and Incentive Schedule above and through the end of the Jobs Retention Period then Linamar shall refund to the County all Incentive Payments the County has paid to Linamar as set forth in the said Amended Commitment and Incentive Schedule 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 Linamar above and beyond the refund amount due.

#### **B. AS TO PAYMENTS MADE BY COUNTY TO LINAMAR UNDER THE PREVIOUS 2011 and 2014 INCENTIVE AGREEMENTS**

Should Linamar fail to meet its cumulative minimum investment and jobs creation targets as set for in the 2011 EDA and the 2014 EDA, and which cumulative totals are the same as the cumulative totals set forth in the Amended Commitment and Incentive Schedule above, by on or before December 31, 2024 then Linamar will pay the County a refund in the amount set forth in this Section V, B (save and excepting \$1,000,000 attributable to the purchase price of the Facility real estate). The refund formulas described in this said Section V, B. are weighted such that 50% is assigned to the Minimum Investment and 50% is assigned to the Jobs Minimum.

Minimum Investment. Should Linamar fail to meet its total cumulative minimum investment by on or before December 31, 2024, then Linamar will refund to the County an amount equal to (i) 50%, multiplied by (ii) a pro rata percentage (specified below), multiplied by (iii) the sum of all Grant payments the County has actually made to Linamar prior to the effective date of this

Agreement (up to a maximum of \$12,000,000 [the sum of grant payments save and excepting \$1,000,000 attributable to the purchase price of the Facility real estate related to the 2011 EDA]). The pro rata percentage will be the percentage derived by subtracting the amount of the Qualifying Expenditures Linamar has actually made on or before the Deadline from \$315 million and dividing the result by \$315 million. The pro rata percentage cannot be less than zero.

**Job Creation.** Should Linamar fail to meet its total cumulative jobs creation targets by on or before December 31, 2024, then Linamar will refund to the County an amount equal to (i) 50%, multiplied by (ii) a pro rata percentage (specified below), multiplied by (iii) the sum of all Grant payments the County has actually made to Linamar under this Agreement (up to a maximum of \$12,000,000 [the sum of grant payments save and excepting \$1,000,000 attributable to the purchase price of the Facility real estate related to the 2011 EDA]). . The pro rata percentage will be the percentage derived by subtracting (y) 400 + the greatest number of full-time persons employed at the Facility at any time between the Effective Date and December 31, 2023 from (z) 800 and dividing the result by 800. The pro rata percentage cannot be less than zero.

Linamar shall pay such refund to County 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 Linamar above and beyond the refund amount due.

## **ARTICLE VI**

### **ABANDONMENT OF OPERATIONS**

If an Abandonment of Operations occurs at any time prior to the end the Retention Period, Linamar shall refund to the County all Incentive Payments the County has already paid Linamar 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 Linamar above and beyond the refund amount due.

## **ARTICLE VII**

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

Notwithstanding anything herein to the contrary, if Linamar 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 Linamar 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 Linamar which causes Linamar an inability to obtain labor or materials;
- (f) delay in funding from any state or local government incentive to or for the benefit of Linamar, or;
- (g) any other event, other than normal business exigencies, which is beyond the reasonable control of Linamar.

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 VIII**

### **ASSIGNMENT**

Linamar 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 Linamar's obligations under this Agreement, then Linamar will be relieved of its obligations under this Agreement. Linamar will give the County written notice of any such assignment and assumption.

Linamar 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 Linamar, 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 IX**

### **REPRESENTATIONS AND WARRANTIES**

Linamar 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 Linamar, enforceable against Linamar in accordance with its terms, (B) does not violate any order of any court or other agency of government binding on Linamar or the charter documents of Linamar, 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 Linamar is a party; and (iv) Linamar has not received written notice of any action or proceeding that challenges the validity of this Agreement or Linamar's right and power to enter into and perform this Agreement.

The County represents and warrants to Linamar 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 X**

#### **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 XI**

#### **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 Linamar and the County listed below, or those other addresses of which either party gives the other party written notice:

If to Linamar, to:

Linamar

If to the County, to:

Timothy T. Love  
Economic Development Director  
200 College Street, Suite 300  
Asheville, NC 28801

With copy to:

Michael C. Frue  
Buncombe County  
Senior Staff Attorney  
200 College Street, Suite 400  
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 Linamar 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 Linamar'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 Linamar 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 Linamar prompt written notice of the request, subpoena or court order and will discuss any proposed disclosure of such information or records with Linamar (and, to the extent possible, give Linamar the opportunity to contest any disclosure of information or records Linamar 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.

## **ARTICLE XII**

### **CONFIRMATION LETTER AND DOCUMENTATION**

Linamar agrees to submit a Confirmation Letter with Supporting Documentation when requesting disbursement of incentive grants, or when certifying that performance commitments have been maintained. A sample confirmation letter is provided below. Acceptable forms of documentation are filings by Linamar with the N.C. Employment Security Commission as to unemployment compensation taxes, and filings by Linamar with the Buncombe County Tax Department as to business personal property listings. The below confirmation letter and associated language are for illustrative purposes and do not reflect any agreement between Linamar and County.

### Sample Confirmation Letter

To Whom It May Concern,

This statement made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20## by \_\_\_\_\_ ("Company") is intended to certify that Company has [ achieved / not achieved, maintained / not maintained ] the investment, job creation, and average wage goals identified in the Economic Development Agreement (EDA) with Buncombe County. If any of the goals are not met, the exceptions are documented in this letter. Where all goals have been achieved, this letter serves as Company's request for disbursement based on the grant incentive schedule defined in the EDA.

Company recognizes that incentive grants can only be awarded if Company certifies that all goals have been met and provides adequate supporting documentation for these targets. Company further realizes that all supporting documentation is subject to review by County staff. Company acknowledges that the definition and requirements for adequate supporting documentation are documented in the EDA.

Below is a summary of EDA goals and actual performance.

| Type                                | Goal (for Year Requesting Disbursement) | Actual Performance (for Year Requesting Disbursement) | Goal Status (Achieved, Not Achieved) | Prior Year       | Total (since EDA Award) |
|-------------------------------------|---|---|--------------------------------------|------------------|-------------------------|
| <b>Investment</b>                   | \$5,000,000.00                          | \$5,123,987.00  | Achieved                             | \$1,234,698.15   | \$8,000,000             |
| <b>Jobs (Full-Time)</b>             | 47                                      | 47  | Achieved                             | 12               | 64                      |
| <b>Average Wage</b>                 | \$25.97                                 | \$32.23   | Achieved                             | \$15.05          | \$29.00                 |
| <b>Health Insurance (Full-Time)</b> | 50% cost covered                        | 50% cost covered                                      | Achieved                             | 50% cost covered | 50% cost covered        |



| Type       | Goal (for Year Requesting Disbursement) | Actual Performance (for Year Requesting Disbursement) | Goal Status (Achieved, Not Achieved) | Prior Year | Total (since EDA Award) |
|------------|---|---|--------------------------------------|------------|-------------------------|
| Employees) |   |   |                                      |            |                         |

Enclosed please find supporting documentation for the data provided above.

BY: \_\_\_\_\_

[Chief Executive Officer/Chief Financial Officer/President]

ATTEST:

\_\_\_\_\_  
NAME, COMPANY NAME

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_ personally appeared before me this day and acknowledged that s/he is the TITLE of COMPANY NAME a North Carolina for profit corporation, and that as TITLE, being authorized to do so, voluntarily executed the foregoing instrument on behalf of the corporation, as its act and deed.

Witness my hand and official stamp or seal, this the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:

IN WITNESS WHEREOF, the Grantor executes the foregoing instrument in the ordinary course of its business by the signature(s) below of its duly authorized representative(s) and as the act of such entity.

COMPANY NAME

By: \_\_\_\_\_  
NAME / TITLE

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_ personally appeared before me this day and acknowledged his due execution of the foregoing instrument as a Member/Manager of COMPANY NAME, a North Carolina limited liability company, on behalf of said limited liability company, by authority duly vested.

Witness my hand and official stamp or seal, this the \_\_\_\_ day of \_\_\_\_\_, -  
\_\_\_\_\_.

My commission expires:

\_\_\_\_\_  
NOTARY PUBLIC

**Sample Supporting Investment Documentation**  
Example investment documentation with redacted information.

BUNCOMBE COUNTY TAX ASSESSOR  
LISTING DIVISION  
94 COXE AVENUE  
ASHEVILLE, NC 28801  
(828) 259-4630  
www.buncombecounty.org

Return by  
**JANUARY 31, 2018**  
to avoid a 10% penalty



**BUSINESS LISTING FORM**

*Ext ✓*

**2018**

| ABSTRACT NUMBER | OWNER ID | LOCATION | DISTRICT CODES |
|-----------------|----------|----------|----------------|
|                 |          |          | BUN, CAS       |



5732747-6035-1 3 6 6035 2 MB 0.423 37  
[Barcode]

Bus. Begin Date: 01/01/1957 Bus. Yr End:  
Type of Bus: MANUFACTURING  
Sole Prop: ( ) Partnership: ( ) Corp: ( ) LLP: ( ) LLC: ( )  
Person to contact for additional information  
Phone: FAX:  
E-Mail:  
OTHER NC COUNTIES WHERE PERSONAL PROPERTY IS LOCATED

Please make any corrections to name, address and location that are needed

| SCHEDULE A PERSONAL PROPERTY - SEE INSTRUCTIONS   |                |           |           |       |
|---|----------------|-----------|-----------|-------|
| ACQUIRED MACHINERY & EQUIPMENT  |                |           |           |       |
| YEAR  | PRIOR YR. COST | ADDITIONS | DELETIONS | TOTAL |
| 2017  |                |           |           |       |
| 2016  |                |           |           |       |
| 2015  |                |           |           |       |
| 2014  |                |           |           |       |
| 2013  |                |           |           |       |
| 2012  |                |           |           |       |
| 2011  |                |           |           |       |
| 2010  |                |           |           |       |
| 2009  |                |           |           |       |
| 2008  |                |           |           |       |
| 2007  |                |           |           |       |
| 2006  |                |           |           |       |
| 2005  |                |           |           |       |
| 2004  |                |           |           |       |
| 2003  |                |           |           |       |
| 2002  |                |           |           |       |
| PRIOR   |                |           |           |       |
| TOTAL   |                |           |           |       |
| ACQUIRED FURNITURE & FIXTURES   |                |           |           |       |
| YEAR  | PRIOR YR. COST | ADDITIONS | DELETIONS | TOTAL |
| 2017  |                |           |           |       |
| 2016  |                |           |           |       |
| 2015  |                |           |           |       |
| 2014  |                |           |           |       |
| 2013  |                |           |           |       |
| 2012  |                |           |           |       |
| 2011  |                |           |           |       |
| 2010  |                |           |           |       |
| 2009  |                |           |           |       |
| 2008  |                |           |           |       |
| 2007  |                |           |           |       |
| 2006  |                |           |           |       |
| 2005  |                |           |           |       |
| 2004  |                |           |           |       |
| 2003  |                |           |           |       |
| 2002  |                |           |           |       |
| PRIOR   |                |           |           |       |
| TOTAL   |                |           |           |       |
| ACQUIRED COMPUTER EQUIPMENT   |                |           |           |       |
| YEAR  | PRIOR YR. COST | ADDITIONS | DELETIONS | TOTAL |
| 2017  |                |           |           |       |
| 2016  |                |           |           |       |
| 2015  |                |           |           |       |
| 2014  |                |           |           |       |
| 2013  |                |           |           |       |
| 2012  |                |           |           |       |
| 2011  |                |           |           |       |
| 2010  |                |           |           |       |
| 2009  |                |           |           |       |
| 2008  |                |           |           |       |
| 2007  |                |           |           |       |
| 2006  |                |           |           |       |
| 2005  |                |           |           |       |
| 2004  |                |           |           |       |
| 2003  |                |           |           |       |
| 2002  |                |           |           |       |
| PRIOR   |                |           |           |       |
| TOTAL   |                |           |           |       |
| CONSTRUCTION IN PROGRESS (PLEASE ATTACH A DETAILED LIST)  |                |           |           |       |
| Report 100% of cost of all personal property carried in a CIP account as of January 1, 2018 \$  |                |           |           |       |
| SUPPLIES ON HAND JANUARY 1, 2018  |                |           |           |       |
| Beauty & Barber, restaurant, hotel & motel items medical, dental & professional, office, maintenance & janitorial, equipment spare parts & tools and fuel of all kinds etc. |                |           |           |       |
| Prior Year Supplies: Jan. 1 2018 Supplies:  |                |           |           |       |
| EXPENSED ITEMS  |                |           |           |       |
| YEAR  | PRIOR YR. COST | ADDITIONS | DELETIONS | TOTAL |
| 2017  |                |           |           |       |
| 2016  |                |           |           |       |
| 2015  |                |           |           |       |
| 2014  |                |           |           |       |
| 2013  |                |           |           |       |
| 2012  |                |           |           |       |
| 2011  |                |           |           |       |
| 2010  |                |           |           |       |
| 2009  |                |           |           |       |
| 2008  |                |           |           |       |
| 2007  |                |           |           |       |
| 2006  |                |           |           |       |
| 2005  |                |           |           |       |
| 2004  |                |           |           |       |
| 2003  |                |           |           |       |
| 2002  |                |           |           |       |
| PRIOR   |                |           |           |       |
| TOTAL   |                |           |           |       |

| SCHEDULE B OTHER EQUIPMENT OWNED AS OF JANUARY 1 BOATS & BOAT MOTORS, AIRCRAFT, MANUFACTURED HOMES (EQUIPMENT ADDED AFTER ORIGINAL PURCHASE SHOULD BE LISTED SEPARATELY) ATTACH ADDITIONAL SCHEDULE IF NECESSARY. |   |                |
|---|---|----------------|
| Property Type   | Description: (Make/model/serial #, size, cost, registration #, location, year acquired) | Tax office use |
|   |   |                |
|   |   |                |
|   |   |                |
|   |   |                |
|   |   |                |
|   |   |                |
|   |   |                |
|   |   |                |
|   |   |                |
|   |   |                |

## Sample Supporting Job and Wage Documentation

Example job documentation with redacted information. Submitted documentation should redact personal information (e.g., social security numbers), but provide level of detail necessary to calculate number of full-time jobs employed during the period and average wage of full-time jobs in the period.

| STATEMENT OF DEPOSITS & FILINGS  |                  | ADP   |       | TAX FILING SERVICE |  |
|--|------------------|---|-------|--------------------|--|
| ** FOURTH QUARTER 2017 **  |                  | STATEMENT DATE 01/26/18                       |       |                    |  |
|  |                  | SR/COMPANY S7/SE6R                            |       |                    |  |
|  |                  | AGENT 005                                     |       |                    |  |
|  |                  | COMBO NO                                      |       |                    |  |
|  |                  | SIT-ID: 101029871                             |       |                    |  |
|  |                  | SUI-ID: 01-06-749 5                           |       |                    |  |
|  |                  | STATE OF NORTH CAROLINA                       |       |                    |  |
|  |                  | STATE INCOME TAX WITHHELD 8,623.00            |       |                    |  |
| QUARTER WAGE RECAP:  |                  |   |       |                    |  |
| SIT TXSL WAGES 169,333.50  |                  |   |       |                    |  |
| SUI SUBJECT WAGES 174,252.11   |                  |   |       |                    |  |
| EXCESS SUI WAGES 165,152.11  |                  |   |       |                    |  |
| SUI TAXABLE WAGES 9,300.00   |                  |   |       |                    |  |
|  |                  | EMPLOYERS: TOTAL MALE FEM NEW                 |       |                    |  |
|  |                  | MONTH 1 7 6 1 HIRE                            |       |                    |  |
|  |                  | MONTH 2 7 6 1                                 |       |                    |  |
|  |                  | MONTH 3 6 6 0                                 |       |                    |  |
|  |                  | WAGE DTL 8                                    |       |                    |  |
|  |                  | SUI FR RATE 1.5800%                           |       |                    |  |
|  |                  | SUI LIMIT 23,100                              |       |                    |  |
| SIT DEPOSIT FREQ: SEMI-WEEKLY VIA EFT  |                  | SUI DEPOSIT FREQ: ACCELERATED QUARTERLY VIA E |       |                    |  |
| ADF FILING RESPONSIBILITY: SIT QUARTERLY ANNUAL/425 SUI QUARTERLY IF REQUIRED  |                  |   |       |                    |  |
| CLIENT FILING RESPONSIBILITY: NONE   |                  |   |       |                    |  |
| DEPOSIT DETAIL   |                  | QDC BATCH NUM 17/4/000                        |       |                    |  |
| DEPOSIT DATE   | STATE INCOME TAX | EMPLOYER SUI                                  | TOTAL |                    |  |
| 10-11-17   |                  |   |       |                    |  |
| 10-17-17   |                  |   |       |                    |  |
| 10-24-17   |                  |   |       |                    |  |
| 10-31-17   |                  |   |       |                    |  |
| 11-07-17   |                  |   |       |                    |  |
| 11-14-17   |                  |   |       |                    |  |
| 11-21-17   |                  |   |       |                    |  |
| 11-28-17   |                  |   |       |                    |  |
| 12-05-17   |                  |   |       |                    |  |
| 12-12-17   |                  |   |       |                    |  |
| 12-19-17   |                  |   |       |                    |  |
| 12-26-17   |                  |   |       |                    |  |
| 01-03-18   |                  |   |       |                    |  |
| 02-02-18   |                  |   |       |                    |  |
| TOTAL DEPOSITS   |                  |   |       |                    |  |
| TOTAL LIABILITY  |                  |   |       |                    |  |
| *ADJUSTMENT  |                  |   |       |                    |  |
| DIFFERENCE   |                  |   |       |                    |  |
| We have filed this information with the appropriate agency. We have also filed the annual reconciliation and W-2 Forms required by the state agency. |                  |   |       |                    |  |
| CONTINUED ON THE NEXT PAGE   |                  |   |       |                    |  |

THIS STATEMENT SHOULD BE RETAINED AS PART OF YOUR TAX RECORDS.

[Signature Page Follows]

**SIGNATURE PAGE 1 OF 2 TO INCENTIVE AGREEMENT BETWEEN  
LINAMAR and BUNCOMBE COUNTY**

**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]

**LINAMAR**

**ATTEST:**

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

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

**SIGNATURE PAGE 2 OF 2 TO INCENTIVE AGREEMENT BETWEEN  
LINAMAR HOUSE, INC. and BUNCOMBE COUNTY**

[SEAL]

**BUNCOMBE COUNTY**

**ATTEST:**

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

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

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

\_\_\_\_\_  
Lamar Joyner, Clerk to the Board

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

\_\_\_\_\_  
Name: Donald Warn  
Finance Officer  
Buncombe County, North Carolina