

NORTH CAROLINA
GUILFORD COUNTY

INCENTIVE GRANT AGREEMENT

THIS INCENTIVE GRANT AGREEMENT ("Agreement"), is made this 13 day of October, 2015, between the **CITY OF HIGH POINT, NORTH CAROLINA**, a North Carolina municipal corporation ("City") and **PACKRITE LLC**, a North Carolina limited liability company ("Company");

WITNESSETH:

WHEREAS, the Local Development Act of 1925, as amended (Article 1 of Chapter 158 of the North Carolina General Statutes), grants cities the authority to make appropriations for the purposes of aiding and encouraging the location or expansion of certain business enterprises in the City which will create a substantial number of high quality jobs or for other purposes which the City's governing body finds, in its discretion, will increase the population, taxable property base, and/or business prospects of the City; and

WHEREAS, the Company contemplates expansion of its facilities at 1650 Packrite Court in High Point ("Project"); and

WHEREAS, the Company will operate a facility for said Project in the City of High Point which will require improvements and installation of machinery and equipment to accommodate the Company's operations; and

WHEREAS, during the period from January 15, 2015 through January 15, 2020 ("Investment Period"), the Company expects to invest, or cause to be invested, in excess of Nine Million Five Hundred Thousand Dollars (\$9,500,000) in real property improvements, upfit, new construction, fixtures, infrastructure, machinery and/or equipment which are subject to ad valorem taxes, ("Investments"); and

WHEREAS, the Company anticipates that the Project will create 100 additional full time jobs during the Investment Period; and

WHEREAS, the City Council has determined, following a public hearing on January 5, 2015, that the Project will increase the taxable base and business prospects in the City, and that incentive grants to the Company will encourage the Company to expand its existing operations

within the City, and that it is in the public interest to provide incentives as authorized by N.C.G.S. § 158-7.1; and

WHEREAS, the City Council finds that the consideration that the City will receive, based on prospective tax revenues to be generated over a ten-year period, will exceed the amount of the grant offered herein; and

WHEREAS, N.C.G.S. § 160A-20.1 authorizes the City to contract with and appropriate money to any person, association, or business in order to carry out the public purpose that the City is authorized by law to engage in; and

WHEREAS, N.C.G.S. § 160A-17 authorizes the City to enter into “continuing contracts”.

NOW, THEREFORE, in consideration of the reasons recited above, and the mutual promises and other consideration herein expressed, the City and the Company agree as follows:

1. The Company shall invest, or cause to be invested, Nine Million Five Hundred Thousand Dollars (\$9,500,000) in real property improvements, upfit, new construction, fixtures, infrastructure, machinery and/or equipment in the Project before March 31, 2016, (Three Million One Hundred Thousand Dollars (\$3,100,000) in upfit, fixtures, infrastructure to the constructions of an approximately 68,000 square foot facility and Six Million Four Hundred Thousand Dollars (\$6,400,000) in equipment subject to ad valorem taxation.) Company will provide proof of such Investments, to City, in accordance with the terms set forth herein.
2. No later than January 15, 2020 the Company will provide documentation that it has employed at least 100 additional full time employees based in the City (“Additional Jobs”) (resulting in a total workforce in the City of High Point of at least 157 full time employees).
3. Each additional full time employee is to be paid, on average, a salary of at least Thirty Four Thousand Eight Hundred Twenty-Five Dollars (\$34,825) per year.
4. The Company will hold at least one job fair in a similar fashion to which the NC Works partners use, within the City, to help the Company find employees for these additional jobs.
5. Subject to the Company’s compliance with conditions set forth in this Agreement, the City agrees to partially reimburse the Company for the Investments and Additional Jobs, related to the Project in order to provide an incentive to the Company for making such Investments and creating jobs within the City.

6. Accordingly, the City will make an incentive grant to the Company in the amount of One Hundred Fifty-Two Thousand Four Hundred Fifty Dollars (\$152,450), which will be paid in installments conditioned on the Company's fulfillment of the following benchmarks:

INSTALLMENT	DATE OF PAYMENT	BENCHMARK
#1: \$122,850 (Based upon Investments Incentives of \$72,450 & based upon Additional Jobs Incentives of \$50,400)	2016	<i>As of December 31, 2015, as documented by the Company:</i> A. Investment of \$3.1 Million in new real property in the form of an approximately 68,000 sf expansion at 1650 Packrite Court; B. Investment of \$6.4 in new personal property; and C. Addition of 63 new jobs (Resulting in a total of 120 full time employees based in High Point)
#2: \$14,400 (Based upon the 18 Additional Jobs.	2017	<i>As of December 31, 2016, as documented by the Company:</i> A. Maintenance of the real property and personal property investments; and B. Addition of 18 new jobs (Resulting in a total of 138 full time employees based in High Point).
#3 \$15,200 (Based upon the 19 Additional Jobs.)	2018	<i>As of December 31, 2017, as documented by the Company:</i> A. Maintenance of the real property and personal property investments; and B. Addition of 19 new jobs (Resulting in a total of 157 full time employees based in High Point).

- a. If the Company fails to meet the appropriate benchmark for any installment payment, the City may withhold such payment and all subsequent payments until the Company has provided the City with documentation that compliance with the outstanding benchmark has occurred in full or pro rata. In such a case, the applicable installment payment shall be paid by the City to the Company within thirty (30) days of the City's receipt of such satisfactory documentation of compliance.
- b. In the event the Company meets a benchmark requirement and maintains such in accordance with the terms of this Agreement, upon receiving proof of such, the City may consider a request from the Company for early payment of any related installment(s).

- c. The Company must meet all benchmarks on or before December 31, 2019 provided, however, that if the Company has not met all benchmarks by December 31, 2019, the City will still pay to the Company a pro rata amount of the incentives realized by the Company through that date.
- d. The Company shall provide the City with documentation that compliance with the outstanding benchmark has occurred such as tax bills, construction bills, receipts, and other documents which may include the NCUI 101 report for employment numbers.
- e. If for any reason Company fails to have met and maintain the Investments related to the Project as required by this Agreement during the time period January 15, 2015 through December 31, 2020, (hereinafter "Claw Back Period"), then Company shall be entitled to an "Adjusted Grant". The Adjusted Grant amount will be determined by multiplying the Investment incentive amount paid by a fraction, the denominator of which is the Required Investment and the numerator of which is the Investment Actually Made, the result of which may require Company to reimburse the City a portion of any incentive payment(s) it has received, as set forth below.

$$\text{Adjusted Grant} = \text{Investment Incentive Amount Paid} \times \frac{\text{Investment Actually Made}}{\text{Required Investment}}$$

- f. If for any reason Company ceases to employ and maintain the number of new *additional* jobs related to the Project as required by this Agreement and continuing during the Claw Back Period, Company shall be entitled to an "Adjusted Grant". The Adjusted Grant amount will be determined by multiplying the Jobs related incentive amount paid by a fraction, the denominator of which is the Required Jobs and the numerator of which is the Additional Jobs Created & Retained, the result of which may require Company to reimburse the City a portion of any incentive payment(s) it has received, as set forth below.

$$\text{Adjusted Grant} = \text{Jobs Related Incentive Amount Paid} \times \frac{\text{Additional Jobs Created \& Retained}}{\text{Required Jobs}}$$

- g. To the extent the amount of the Adjusted Grant is less than the amount that has been previously disbursed to the Company, the Company shall reimburse the City for the difference between the Adjusted Grant and the amount previously disbursed. In the event any reimbursement is due to the City pursuant to the Claw Back provisions, City shall make written demand upon the Company and allow the Company thirty (30) days to respond.
- h. If for any reason Company is not current on all taxes, assessments or other amounts owed to the City by Company, City may set off from any incentive payment(s) made in accordance with this Agreement for any amounts owed by Company to the City, provided the City first gives the Company thirty (30) days written notice of its intent to exercise this right of set off and an opportunity to cure the nonpayment of taxes. No right of set off shall apply during any period in which the Company is challenging the taxes.

- i. The City reserves the right to require a certified audit, at City's sole cost and expense, pertaining to the incentive grant funds, or may perform the audit through the use of its internal staff. Any information reviewed during any such audit shall be kept confidential by the City under the trade secret exception to the Public Records law with the exception of the actual audit report, which may be produced if such report constitutes a Public Record under paragraph 17 below. Nothing in this Agreement will be deemed to require Company to supply their annual financial statements to the City.

7. In carrying out its obligations under this Agreement, the Company shall operate independently and not as contractor, agent, or representative of the City, and the City shall not be responsible for any of the Company's acts or omissions. The Company agrees to indemnify and hold the City harmless from and against any and all claims whatsoever whether in contract, tort, or negligence, for any acts or omissions of the Company or its agents in the performance of the Agreement.

8. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their heirs and successors and assigns. As used herein, words in the singular include the plural and the masculine includes the feminine and neuter genders, as appropriate.

9. This Agreement, its execution, interpretation and performance, shall be governed by and construed in accordance with the law of the State of North Carolina. Any controversy or claim arising out of or in any way related to this Agreement or the relationship established by it, or the alleged breach thereof, whether at common law, in contract, in tort, or under statute, shall be governed by the laws of the State of North Carolina. Legal proceedings involving any such controversy or claim may be instituted only in the state or federal courts located in North Carolina.

10. No rights and/or obligations under this Agreement may be assigned by either party.

11. Except as otherwise provided herein this Agreement shall terminate December 31, 2020.

13. This Agreement can be modified or amended only with the mutual written consent of both parties.

14. This Agreement is the entire agreement between City and Company as to the subject matter referenced herein, without regard to any prior agreements, understandings, or undertakings (whether oral, written, electronic or otherwise), and no amendment may be made to

this Agreement except with the prior written of all City and Company. The City and Company, and each person executing this Agreement on behalf thereof, represent and warrant that they have the full right and authority to enter into this Agreement, which is binding, and to sign on behalf of the party indicated, and are acting on behalf of themselves, their constituent members and the successors and assigns of each of them.

15. If any court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, then (a) such holding shall not invalidate or render unenforceable any other provision of this Agreement, unless such provision is contingent on the invalidated provision; and (b) the remaining terms hereon shall, in such event, constitute the City's and/or Company's entire agreement.

16. This Incentive Agreement shall not amend or otherwise modify any other agreements involving the City and Company and/or Third Parties.

17. The Company acknowledges that it has been informed by the City that the City is required by law, upon request, to disclose "Public Records" as the term is identified by North Carolina General Statutes §132-1. All information disclosed to the City by the Company which is subject to that definition and whose disclosure is not otherwise protected by law will be released by the City upon request as provided by North Carolina General Statute §132-1.2. The Company acknowledges that it has read and is familiar with the City's obligations of public disclosure of documents and the definitions of confidential documents as contained in Chapter 132 of the North Carolina General Statutes. In order to prevent the disclosure of the confidentiality of information identified by the Company as a trade secret or confidential pursuant to North Carolina General Statute §132-1.2 the City shall, if it receives a request for disclosure of such information, notify the Company of such request so that the Company may defend any claims or disputes arising from efforts of others to cause such trade secrets to be disclosed as a public record. The Company acknowledges that this disclosure of the City's public records requirements is given pursuant to North Carolina General Statutes §132-1.8(b) and agrees that such disclosure is full and sufficient to the satisfaction of the Company.

18. Both parties acknowledge that the incentives granted herein, which are provided as an incentive for the Company to create a substantial number of jobs and to invest or cause to be invested by third parties a significant amount of Investments, constitute a constitutional, legal and statutorily approved use of public funds under the Local Development Act of 1925. In the

event that all or any portion of the incentive grant paid ("Paid Incentive Grant") to Company hereunder is declared to be unconstitutional, illegal or otherwise enjoined by a court of competent jurisdiction, and the court orders reimbursement of the Paid Incentive Grant, Company shall reimburse the City the amount of such Paid Grant; provided, however, no reimbursement of the Paid Grant shall be due until a final judgment has been entered and all appeals exhausted. In the event of any such challenge, both parties agree to defend this Agreement. The provisions of this section shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the Company and the City have executed under seals multiple originals hereof as of the day and year first above written.

PACKRITE, LLC

By: _____

Michael Drummond
Chief Operating Manager

STATE OF North Carolina
COUNTY OF Guilford

I, Susan M. Hester, a Notary Public for the County and State aforesaid, certify that **Michael Drummond** personally came before me this day and acknowledged that he is **Chief Operating Manager** of **Packrite, LLC**, a North Carolina limited liability company, and that he, as Chief Operating Manager, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal, this the 13th day of October, 2015.

Susan M. Hester

My commission expires: 10/25/17



CITY OF HIGH POINT

By:

Randy E. McCaslin
Randy McCaslin
Deputy City Manager

ATTESTED TO:

Lisa B. Vierling
Lisa B. Vierling, MMC
City Clerk



Approved as to form and substance:

JoAnne Carlyle *DFC*
JoAnne Carlyle, City Attorney

Date: 10/14/15

APPROVAL BY FINANCE OFFICER

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

Jeffrey A. Moore
Jeffrey A. Moore, Director of Financial Services

Date: 10/13/2015