

**AGREEMENT CONVEYING REAL PROPERTY
FOR ECONOMIC DEVELOPMENT PURPOSES**

THIS AGREEMENT CONVEYING REAL PROPERTY FOR ECONOMIC DEVELOPMENT PURPOSES made and entered into this ____ day of _____, 2014, by and between **CRAVEN COUNTY** and **SST PROPERTIES, LLC**, and its assigns is as follows:

WITNESSETH:

ARTICLE I

Definitions

Certain terms having specific definitions are used in this Agreement, and these terms and definitions, unless the context clearly indicates to the contrary, are as set forth in this Article. The defined terms appearing in this Article are set forth in exact form as they appear between the quotation marks. When the same term is used in this Agreement with the meaning as assigned herein, it shall appear in the identical capitalized form. Otherwise, the meaning shall be as used in the context of the sentence in which it appears and not necessarily that as defined herein.

1.1 "Agreement" – means and refers to this Agreement Conveying Real Property for Economic Development Purposes.

1.2 "Note" – means and refers to that Promissory Note attached hereto and incorporated herein by reference.

1.3 "SST" – means and refers to SST Properties, LLC, a limited liability company organized and existing under and by virtue of the laws of the State of North Carolina and its assigns.

1.4 "Moen" – means and refers to Moen Incorporated, a corporation organized and existing under and by virtue of the laws of the State of Delaware authorized to conduct business in North Carolina.

1.5 "Deed of Trust" – means and refers to that Deed of Trust attached hereto and incorporated herein by reference.

1.6 "County" – means and refers to Craven County, a body politic and corporate.

1.7 "Real Estate Contract" – means and refers to that certain Agreement for Purchase and Sale of Real Property between County and SST.

1.8 "Effective Date" – means and refers to _____, 2014.

1.9 “Parties” – means and refers to County and SST and its assigns collectively.

1.10 “New Facility” – means and refers to Moen’s +/- 200,000 square foot facility to be constructed on Lots 13 & 14, which facility’s intended user is Moen.

1.11 “Moen Contract” – means and refers to that certain Economic Development Grant Agreement between County and Moen.

1.12 “Lots 13 & 14” – means and refers to that certain real property more particularly described as follows: all of lots 13 and 14 as shown and depicted on a December 6, 2002 survey by Robert M. Chiles, P.E., entitled “Minor Revision of Subdivision Plan Craven County Industrial Park for Craven County,” reference being hereby made to said survey for a more accurate, complete and detailed description of the aforesaid lots.

ARTICLE II

Recitals

2.1 County has determined that County has historically suffered a degree of economic and fiscal distress which can be remedied in part by the expansion of industries currently located in County.

2.2 Citizens in County have an average wage level that is below average state wage levels, a deficiency which can be remedied in part by the expansion of industries currently located in County. County also suffers an unemployment rate higher than state and national unemployment rates.

2.3 The expansion and retention of industries located in County will benefit County and its citizens by increasing and diversifying both the personal property and real property ad valorem tax bases and thus tax revenue, which will make available to County more funds with which to improve the general health, safety and welfare of County’s citizens; by providing a greater number of jobs with higher salaries and better benefits than are now available to citizens of County; by stimulating secondary economic activity which is directly beneficial to County and its citizens, including residential real estate development and the expansion of existing services and businesses; by increasing and improving the infrastructure of County; by increasing the economic opportunity available to County’s citizens and by improving the general technical training of County’s workforce.

2.4 SST intends to construct the New Facility for Moen on Lots 13 & 14, the New Facility is expected to be valued by the Craven County tax department at \$11,000,000.00. Moen is

expected to make investments in equipment and machinery valued at approximately \$1,400,000 for the New Facility. Moen intends to hire 75 new employees at the New Facility, each such employee to be paid an expected weekly average wage of \$619, a rate above the average rate paid to other employees in County. The proposed investment and employment will aid tremendously in remedying the previously identified economic and fiscal distresses suffered by County and its citizens.

2.5 Pursuant to N.C. Gen. Stat. § 158-7.1, local governments, including County, are authorized:

[T]o make appropriations for the purposes of aiding and encouraging the location of manufacturing enterprises, making industrial surveys and locating industrial and commercial plants in or near such city or in the county; encouraging the building of railroads or other purposes which, in the discretion of the governing body of the city or of the county commissioners of the county, will increase the population, taxable property, agricultural industries and business prospects of any city or county. These appropriations may be funded by the levy of property taxes pursuant to [G.S. 153A-149](#) and [160A-209](#) and by the allocation of other revenues whose use is not otherwise restricted by law.

Furthermore, N.C. Gen. Stat. § 158-7.1(d) also permits local governments, including County, to convey property held for industrial or commercial use after notice to the public, a public hearing and a determination of the probable hourly wage to be paid by the prospective industry. Moreover, N.C. Gen. Stat. § 158-7.1(d2) allows County in arriving at the value of the consideration that it receives for the conveyance of property held for economic development purposes to consider prospective tax revenues coming to the County for 10 years after the conveyance provided that County determines that the conveyance will stimulate the local economy, promote business and result in the creation of a substantial number of jobs that pay at or above the median average wage in County and further provided that County contractually binds the grantee of the property to construct the improvements expected to generate said tax revenues within 5 years.

2.6 In an effort to reward and encourage the investment by SST and Moen, and similar investments by other industries, County does desire to convey to SST Lots 13 & 14 at a purchase price less than the fair market value of Lots 13 & 14. Moreover, County has determined that the

agreements herein will necessarily result in an overall economic effect many times greater than the value of the agreements specified herein, that the proposed conveyance will stimulate the local economy, promote business and result in the creation of a substantial number of jobs that pay at or above the average wage in County.

2.7 County has determined that the probable average hourly wage to be paid by Moen to employees working at the New Facility is \$619 and that the expected tax revenues to be received by County from the New Facility, excluding tax revenues on account of the value of the underlying real estate, will exceed the difference between the fair market value of Lots 13 & 14 and the price to be paid by SST for Lots 13 & 14.

2.8 SST has agreed that in the event for any reason it does not construct the New Facility that County may declare a default and foreclose upon Lots 13 & 14, all pursuant to the Note and Deed of Trust.

2.9 Accordingly, County and SST do hereby desire to execute this Agreement to memorialize the agreements and understandings of the Parties relative to the matters and transactions herein contemplated.

ARTICLE III

Term of the Agreement

The term of this Agreement shall be a period of time beginning on the Effective Date and ending December 31, 2015.

ARTICLE IV

Responsibilities of SST

As consideration for this Agreement, SST agrees to:

4.1 Construct the New Facility on Lots 13 & 14, and to obtain a final certificate of occupancy for the New Facility on or before December 31, 2015, provided that such date shall be postponed on a day for day basis for any delay caused by any of the following (each a "Force Majeure Delay"): fire or other casualty; delays in or failure of delivery of any materials required for which no substitutes are available; extreme and/or unusual weather conditions that were not reasonably foreseeable by a developer in Craven County, NC; unforeseen and/or previously-unknown subsurface conditions; a strike, work stoppage or other labor dispute affecting the performance of the Project which either affects other job sites in addition to the Project, or any other similar cause beyond SST's control.

4.2 Execute, deliver and record the Note and Deed of Trust, on or before the Effective Date.

4.3 Pay timely and before delinquency all ad valorem property taxes assessed by County as to SST.

4.4 Timely perform all its obligations under the Real Estate Contract.

4.5 At all times act in accordance with a standard of good faith and fair dealing with County.

ARTICLE V

Responsibilities of County

As consideration for this Agreement, County agrees to:

5.1 Timely perform its obligations under the Real Estate Contract.

5.2 Prior to exercising its rights under the Note and Deed of Trust, and to the extent permitted by applicable law (including but not limited to N.C. Gen. Stat. § 158-7.1), County agrees to not act arbitrarily or capriciously but rather agrees to give SST an opportunity to demonstrate its progress on the improvements herein contemplated and that any delays in the construction of the improvements herein contemplated were caused by Force Majeure Delays. County further agrees to fairly and in good faith examine all relevant factors in light of the purposes and intent behind state laws controlling this Agreement before making any decision to exercise its rights under the Note and Deed of Trust.

5.3 Convey Lots 13 & 14 subject to conditions and restrictions customarily applied to properties located in the Craven County Industrial Park.

5.4 Act in accordance with a standard of good faith and fair dealing with SST.

ARTICLE VI

Termination

6.1 **Mutual Termination:** This Agreement may not be terminated by either party except as provided herein or by a written agreement signed by both parties.

6.2 **Insolvency of SST:** County shall have the right, in its discretion, to declare the Agreement terminated, if (1) by the order of a court of competent jurisdiction, a receiver, liquidator, custodian or trustee of SST, or of a major part of its property, shall be appointed and the order shall not have been discharged within sixty (60) days, or if, by decree of such a court, SST shall be adjudicated insolvent or a major part of its property shall have been sequestered and such decree

shall have continued undischarged and unstayed for sixty (60) days after the entry thereof, or if a petition to reorganize SST pursuant to the Federal Bankruptcy Code or any other similar statute applicable to SST, as now or hereinafter in effect, shall be filed against SST and such petition shall not be dismissed within sixty (60) days after such filing, or SST shall be adjudicated bankrupt or shall file a petition in voluntary bankruptcy under any provision of any bankruptcy law or shall consent to the filing of any bankruptcy or reorganization petition against it under any such law; or (2) SST shall make an assignment for the benefit of its creditors, shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of it or of a major part of its property.

6.3 Default: If either the Real Estate Contract or the Moen Contract are terminated for any reason, County may terminate this Agreement as a result of such termination upon a 30 day written notification to SST.

ARTICLE VII

Indemnity and Representations

7.1 SST shall indemnify County against all expenses, liabilities and claims of every kind, including reasonable attorneys' fees, incurred in favor of any person or entity arising out of either a failure by the SST to perform any of the terms or conditions of this Agreement, or failure by SST to comply with any law of any governmental authority which may arise in the course of the performance of this Agreement. County shall indemnify SST against all expenses, liabilities and claims of every kind, including reasonable attorneys' fees, incurred in favor of any person or entity arising out of either a failure by the County to perform any of the terms or conditions of this Agreement, or failure by County to comply with any law of any governmental authority which may arise in the course of the performance of this Agreement.

7.2 SST and County represent and warrant that they have the legal right and authority to enter into this agreement and to perform their respective obligations hereunder.

ARTICLE VIII

Miscellaneous

8.1 Amendment: This Agreement may not be modified or amended except by subsequent written agreement authorized by each party and signed by authorized representatives of both parties.

8.2 Severability: If any of the provisions of this Agreement shall be held by a court of

competent jurisdiction to be unconstitutional or unenforceable, the decision of such court shall not affect or impair any of the remaining provisions of this Agreement, and the parties shall, to the extent they deem to be appropriate, take such actions as are necessary to correct any such unconstitutional or unenforceable provision. It is hereby declared to be the intent of the parties to this Agreement that this Agreement would have been approved and executed had such an unconstitutional or unenforceable provision been excluded therefrom.

8.3 Entire Agreement: This document contains the entire Agreement between the Parties, and no statement, oral or written, made by either party or agent of either party that is not contained in this Agreement shall be valid or binding.

8.4 Remedies: This Agreement shall be enforceable by the Parties hereto by all remedies available at law or in equity, including but not limited to specific performance. Failure or delay to exercise any right, remedy or privilege hereunder shall not operate as a waiver of such right, remedy or privilege nor prevent subsequent enforcement thereof.

8.5 Covenant of Further Assurances: County and SST agree that from and after the date of execution hereof, each will, upon the request of the other, execute and deliver such other documents and instruments and take such other actions as may be reasonably required to carry out the purpose and intent of this Agreement and that each shall have an ongoing duty of good faith and fair dealing with the other..

8.6 Assignment: No assignment (in whole or in part), delegation, transfer, or novation of this Agreement or any part thereof shall be made unless approved by both County and SST.

8.7 Multiple Originals: This Agreement shall be executed by the parties hereto in duplicate originals, each of which, when executed, shall constitute one and the same Agreement and one of which shall be retained by each party.

8.8 Governing Law: This Agreement shall be governed in accordance with the laws of the State of North Carolina and, as applicable, the laws of the United States of America.

8.9 Confidentiality: The Parties agree that the terms and conditions of this Agreement shall be held in the strictest of confidence and shall not, except with the prior approval of the other Party (not to be unreasonably withheld), in any manner be shared with or disseminated to parties who are not Parties to this Agreement, except the Parties may share the terms and conditions with their advisors, for enforcement and defense of rights and duties hereunder, and as required by law, including specifically but not limited to Chapter 132 of the General Statutes of North Carolina.

8.10 Limitations of Liability: Neither Party shall be liable for consequential, incidental, indirect, punitive or special damages, however caused including without limitation for breach of warranty, breach or repudiation of contract, detrimental reliance, tort, strict liability, failure of essential purpose or otherwise, and even if advised of the likelihood of such damages.

8.11 Representations and Warranties: Except as specifically agreed to herein, neither part makes any representations or warranties in relation to the subject matter of this Agreement.

ARTICLE IX

Notices

Any notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed given as of the date it is (a) delivered by hand; (b) mailed, postage prepaid return receipt requested, to the parties at the addresses listed below or later specified in writing; or (c) sent, shipping prepaid, return receipt requested, by a national courier service, to the parties occupying the positions indicated at the addresses listed below.

County: Craven County Board of Commissioners
c/o County Manager
406 Craven Street
New Bern, North Carolina 28560

With copies to: Craven County Economic Developer
406 Craven Street
New Bern, North Carolina 28560

Sumrell Sugg, Attorneys
Attn: Jimmie B. Hicks, Jr. or Arey W. Grady, III
Post Office Drawer 889
New Bern, North Carolina 28563-0889

SST: SST Properties, LLC
309 Gallimore Dairy Road, Suite 102
Greensboro, North Carolina 27409

IN WITNESS HEREOF, the parties hereto, intending to be bound, have executed this Agreement in duplicate originals the day and year first above written.

CRAVEN COUNTY

BY: _____
_____, CHAIRMAN

ATTEST:

GWENDOLYN BRYAN, CLERK

SST PROPERTIES, LLC

BY: _____
_____, its _____

EXHIBIT A
[Note and Deed of Trust]