

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO.

NORTH CAROLINA DEPARTMENT)
OF COMMERCE,)

Plaintiff,)

v.)

BLUE RIDGE PAPER PRODUCTS)
LLC; and EVERGREEN)
PACKAGING LLC,)

Defendants.)

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff North Carolina Department of Commerce (“the Department of Commerce” or “the State”) brings this action against Defendants Blue Ridge Paper Products LLC and Evergreen Packaging LLC (collectively, “Pactiv Evergreen”) to enforce the repayment provisions of the Job Maintenance and Capital Development Agreement (“JMAC Agreement”) that those companies entered into with the Department of Commerce. The JMAC Agreement provided Pactiv Evergreen \$12 million in economic development incentives funded by North Carolina’s taxpayers in exchange for a promise to maintain at least 800 jobs at Pactiv Evergreen’s paper mill in the western North Carolina town of Canton (the “Canton Mill”) through December 31, 2024. The Canton Mill has been a reliable source of good jobs for the residents of Haywood and surrounding counties for generations. The State provided

Pactiv Evergreen public dollars from the Job Maintenance and Capital Development Fund (“JMAC Fund”) with the expectation that those jobs would continue to exist for future generations.

The State met its end of the bargain, but Pactiv Evergreen did not. Abruptly, Pactiv Evergreen executives shuttered the mill and terminated its employees in May 2023.

This decision had devastating practical consequences for the hardworking employees of the Canton Mill and for the community more broadly. But it also had legal consequences. The JMAC Agreement requires Pactiv Evergreen to repay the State the \$12 million in taxpayer funds it received because it shuttered the plant before December 31, 2024. Pactiv Evergreen has not made any such repayment. Accordingly, Pactiv Evergreen has breached its legally binding contract with the State, and the Department of Commerce requests this Court order Pactiv Evergreen to make the \$12 million contractually required repayment.

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff North Carolina Department of Commerce is an agency of the State of North Carolina. It is authorized by N.C. Gen. Stat. § 143B-437.012(j) to enter into agreements to provide economic development grants from the JMAC Fund that are “binding and constitute[] a continuing contractual obligation of the State and the business.”

2. Defendant Blue Ridge Paper Products LLC is a limited liability company formed under the laws of the State of Delaware and registered with the North Carolina Secretary of State. Through 2023, its principal place of business was in Canton, North Carolina. It may be served with process through its registered agent, Corporation Service Company, 2626 Glenwood Avenue, Suite 550, Raleigh, NC 27608.

3. Defendant Blue Ridge Paper Products LLC is the survivor of a conversion to a limited liability corporation by Blue Ridge Paper Products Inc. that was effective on January 1, 2018. This conversion was undertaken pursuant to 6 Del. Code § 18-214, which specifies liabilities and duties of the pre-conversion company become those of the resulting limited liability corporation. Accordingly, actions taken by Blue Ridge Paper Products Inc. prior to January 1, 2018 will be treated throughout this Complaint as actions of Defendant Blue Ridge Paper Products LLC.

4. Defendant Evergreen Packaging LLC is a limited liability company formed under the laws of the State of Delaware and registered with the North Carolina Secretary of State. Its principal place of business is in Memphis, Tennessee. It may be served with process through its registered agent, Corporation Service Company, 2626 Glenwood Avenue, Suite 550, Raleigh, NC 27608.

5. Defendant Evergreen Packaging LLC is the survivor of a conversion to a limited liability corporation by Evergreen Packaging Inc. that was effective on January 1, 2018. This conversion was undertaken pursuant to 6 Del. Code § 18-214, which specifies liabilities and duties of the pre-conversion company become those of the resulting limited liability corporation. Accordingly, actions taken by Evergreen Packaging Inc. prior to January 1, 2018 will be treated throughout this Complaint as actions of Defendant Evergreen Packaging LLC.

6. Both Defendants are subsidiaries of Pactiv Evergreen Inc., which is a company publicly traded on the Nasdaq Stock Market with revenues of \$6.2 billion and profits of \$320 million in 2022. New Zealand billionaire Graeme Hart owns approximately 77% of Pactiv Evergreen Inc.

7. This Court has personal jurisdiction over Defendants because they have transacted business in the State relevant to this action.

8. The Court has subject matter jurisdiction over this dispute, and venue is proper in Wake County under N.C. Gen. Stat. § 1-82. Paragraph 6.2 of the JMAC Agreement specifies that all legal proceedings involving the contract must be brought in state court in Wake County.

FACTUAL ALLEGATIONS

A. Pactiv Evergreen enters into a binding JMAC Agreement and promises to employ at least 800 people and maintain operations at the Canton Mill through 2024 in exchange for receiving \$12 million from taxpayers.

9. The Canton Mill began operation in 1908 as a pulp and paper mill. From that point forward, the Canton Mill was a reliable source of good jobs for the residents of Haywood and surrounding counties. The State of North Carolina has taken various actions since 1908 to facilitate employment at the Canton Mill.

10. In 2007, the legislature established the JMAC Fund to provide economic development grants from taxpayer funds to stimulate North Carolina's economy and maintain high-quality jobs in North Carolina. N.C. Gen. Stat. § 143B-437.012(a)(3).

11. The legislature specified that the JMAC Fund would include "safeguards" in the form of the Department of Commerce "requir[ing] that each business that receives a grant [from the JMAC Fund] shall agree to meet performance criteria to protect the State's investment and ensure that the projected benefits of the project are secured." *Id.* § 143B-437.012(k). It also specified that any "grant agreement shall include the performance criteria, remedies, and other safeguards . . . required by the Department" of Commerce. *Id.* § 143B-437.012(j).

12. In 2014, the legislature expanded the eligibility criteria of employers who could receive money from the JMAC Fund, and expanded the JMAC Fund's authorized funding. N.C. Sess. Law 2014-118. These amendments allowed Pactiv Evergreen to qualify for money from the JMAC Fund if it "agree[d] to maintain at least 800 full-time employees or equivalent full-time contract employees at the project for the full term of the grant." *Id.* § 1 (adding N.C. Gen. Stat. § 143B-437.012(d)(2)(c)(2)).

13. As authorized by the legislature's 2014 action, the State and Pactiv Evergreen entered into the JMAC Agreement effective on December 19, 2014. Specifically, the JMAC Agreement provides that Defendant Blue Ridge Paper Products LLC will receive monies from the JMAC Fund and defines it as the "Company." The JMAC Agreement also provides that Defendant Evergreen Packaging LLC will serve as guarantor to the Defendant Blue Ridge Paper Products LLC's performance under the JMAC Agreement and defines it as the "Guarantor."¹ The JMAC Agreement is attached to this Complaint as Exhibit A.

¹ As noted in paragraphs 3 and 5 above, Defendants are the same entities as the named parties in the JMAC Agreement, Blue Ridge Paper Products, Inc. and Evergreen Packaging, Inc., by operation of applicable Delaware corporate law. Additionally, the JMAC Agreement's definitions for "Company" and "Guarantor" both specify that the named parties' "successors and assigns" are included within the defined terms.

14. The JMAC Agreement sets forth that the Department of Commerce is to pay Defendants \$12 million in grants from the JMAC Fund over the term of the contract, in disbursements of up to \$2 million per year, if Pactiv satisfies certain investment and employment conditions at the Canton Mill (the “Facility,” per the contract).

15. The JMAC Agreement establishes the term of the contract, through the defined term “Agreement Term,” as December 19, 2014 to December 31, 2024.

16. Among the conditions that paragraphs 3.3 and 5.3 of the JMAC Agreement specifically require Pactiv Evergreen to satisfy are maintaining operations at the Canton Mills, and employing at least 800 full-time employees there, through December 31, 2024.

17. The JMAC Agreement was executed by then-Secretary of Commerce John Skvarla, III, then-Attorney General Roy Cooper, and an authorized representative of each Defendant, as required by N.C. Gen. Stat. § 143B-437.012(j). All of these individuals executed the JMAC Agreement under seal.

B. The State pays the promised \$12 million, but Pactiv Evergreen closes the Canton Mill and fires its employees.

18. The State has complied with all its obligations under the JMAC Agreement, including paying Pactiv Evergreen \$2 million annually from 2016

to 2021, for a total of \$12 million. Specifically, the Department of Commerce sent \$2 million checks to Pactiv Evergreen on December 19, 2016, January 5, 2018, June 6, 2019, April 16, 2020, December 2, 2020, and November 29, 2021.

19. Fifteen months after receiving their last check from the Department of Commerce, on March 6, 2023, Pactiv Evergreen announced that it would discontinue operation of the Canton Mill and terminate its employees. Specifically, Defendants' parent, Pactiv Evergreen Inc., issued a press release that day stating that "[t]he Company expects to close its Canton, North Carolina mill . . . with operations at [the] facilit[y] expected to end during the second quarter of 2023."²

20. Production at the Canton Mill ceased on May 24, 2023. Pactiv Evergreen has subsequently removed the facility's equipment and rendered it unable to recommence production. Pactiv Evergreen has also entered a letter of intent to sell the Canton Mill to a company specializing in industrial demolition and plant decommissioning.³

² <https://investors.pactivevergreen.com/node/8886/pdf>.

³ <https://www.wunc.org/2024-05-16/canton-paper-mill-has-prospective-new-owner-but-pactiv-evergreen-still-on-the-hook-mayor-says>

21. Pactiv Evergreen failed to maintain operations at the Canton Mill through December 31, 2024, and ceased to employ 800 full-time employees there on approximately May 24, 2023.

22. Defendants' parent, Pactiv Evergreen Inc., admitted in its August 2, 2023 10-Q filing with the Securities and Exchange Commission that “[d]uring the second quarter of 2023, we ceased operations at our Canton, North Carolina mill”⁴ Similarly, in its March 1, 2024 10-K filing with the Securities and Exchange Commission, it acknowledged “[t]he closure of our Canton, North Carolina mill, including the cessation of mill operations, during the second quarter of 2023.”⁵

C. The JMAC Agreement requires Pactiv Evergreen to fully repay the taxpayer funds it received because it closed the Canton Mill, in violation of its commitments.

23. Paragraph 5.3(a)(vi) of the JMAC Agreement provides that Pactiv Evergreen “shall repay *all Grant funds* disbursed to the Company under this Agreement . . . if the Company fails to maintain operations at the Facility for the Agreement Term.” (emphasis added)

⁴ <https://www.sec.gov/ix?doc=/Archives/edgar/data/0001527508/000095017023037422/ptve-20230630.htm>.

⁵ <https://www.sec.gov/ix?doc=/Archives/edgar/data/1527508/000095017024023337/ptve-20231231.htm>.

24. Pactiv Evergreen has not repaid any of the \$12 million disbursed by the Department of Commerce under the JMAC Agreement, despite having ceased operations at the Canton Mill prior to December 31, 2024.

25. By failing to make the \$12 million repayment required by paragraph 5.3(a)(vi) of the JMAC Agreement, Pactiv Evergreen has breached its binding contract with the State.

26. Additionally, Pactiv Evergreen has breached its contract with the State by failing to make the repayment required by paragraph 5.3(b)(i) of the JMAC Agreement for failing to employ 800 full-time employees at the Canton Mill through December 31, 2024.

27. Pactiv Evergreen has also engaged in an act defined as a “Default” under paragraph 5.1(h) the JMAC Agreement by failing to employ 800 full-time employees at the Canton Mill through December 31, 2024.

28. No *force majeure* event, as defined in paragraph 6.16(c) of the JMAC Agreement, has occurred, and the State has not exercised its sole discretion to extend any time period in the JMAC Agreement based on a *force majeure* event.

29. Paragraph 5.3(c) of the JMAC Agreement provides that each Defendant is jointly and severally liable for the repayment required by paragraph 5.3 and that the Department of Commerce “may pursue recovery against either or both of them.”

30. Paragraph 7.3 of the JMAC Agreement provides that Defendant Evergreen Packaging LLC has “unconditionally waive[d] any defense available to it . . . and all requirements of notice, demand, presentment or protest in case of any Default.” It also provides that the Department of Commerce may proceed against Defendant Evergreen Packaging LLC without exhausting its remedies against Defendant Blue Ridge Paper Products LLC.

31. On March 16, 2023, Attorney General Joshua Stein, attorney to the Department of Commerce, provided notice to Pactiv Evergreen that it was in breach of the repayment obligation. Specifically, the Attorney General’s letter stated, “[Y]ou are obligated to ‘repay all Grant funds disbursed to the Company under the Agreement.’ I hereby demand that you do so immediately.” (citation omitted). Attorney General Stein’s letter is attached to this Complaint as Exhibit B. Insofar as paragraph 5.5 of the JMAC Agreement required the Department of Commerce to provide Pactiv Evergreen with notice before pursuing repayment of the grant funds, the Attorney General’s letter complied with that requirement.

CLAIM FOR RELIEF
COUNT I: BREACH OF CONTRACT

32. Plaintiff incorporates by reference the allegations set forth in all of the above paragraphs and re-alleges each of the foregoing paragraphs as if fully set forth herein.

33. The JMAC Agreement was properly executed, and it became effective on December 19, 2014.

34. The JMAC Agreement is a valid contract.

35. Pursuant to Paragraph 5.3(a)(vi) of the JMAC Agreement, Defendants were required to repay the entire \$12 million they received from the JMAC Fund if they failed to maintain operations at the Canton Mill through December 31, 2024.

36. Pursuant to Paragraph 5.3(b)(i) of the JMAC Agreement, Defendants were required to repay monies they received from the JMAC Fund if they failed to employ 800 full-time employees at the Canton Mill through December 31, 2024.

37. Defendants have breached the JMAC Agreement by permanently discontinuing operations at the Canton Mill prior to December 31, 2024 and failing to repay Plaintiff the \$12 million owed.

38. Defendants have breached the JMAC Agreement by employing fewer than 800 full-time employees at the Canton Mill at all times since at least May 24, 2023 and not repaying any grant funds to Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, for the reasons outlined above, Plaintiff requests that the Court:

1. Order Defendants jointly and severally to pay \$12 million to Plaintiff for their breach of the JMAC Agreement;
2. Order Defendants jointly and severally to pay prejudgment and postjudgment interest;
3. Order Defendants jointly and severally to pay the costs of this action; and
4. Award any and all further legal and equitable relief as may be just and proper.

This the 23rd day of May 2024.

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Exhibit A

**THE BLUE RIDGE PAPER PRODUCTS, INC.
JOB MAINTENANCE AND CAPITAL
DEVELOPMENT AGREEMENT
GRANT NO. JMAC 2014-04**

This Job Maintenance and Capital Development Agreement (this "Agreement") between the North Carolina Department of Commerce (the "Department"), Blue Ridge Paper Products, Inc., a Delaware corporation (the "Company"), and Evergreen Packaging, Inc. (the Guarantor), also a Delaware corporation, is hereby made effective as of the 19th day of December 2014 (the "Effective Date"), and shall remain in effect through the 31st day of December 2024, unless terminated earlier pursuant to the provisions of Article V (the "Agreement Term"). Capitalized terms used herein have the meanings set forth in Article I.

WHEREAS, the North Carolina General Assembly (the "General Assembly") has determined that changes in the State's economic condition have created economic distress that requires the enactment of a program designed to encourage the retention of significant numbers of high-paying jobs and the addition of further large-scale capital investment within the State; and

WHEREAS, the General Assembly enacted Session Law 2007-552, codified at G.S. §143B, Article 10, Part 2, creating the Job Maintenance and Capital Development Fund Program (the "Program"), having determined that this Program is necessary to stimulate the economy and maintain high-quality jobs in North Carolina and that this Program shall promote the general welfare and confer, as its primary purpose and effect, benefits on the citizens throughout the State through the maintenance of high-quality jobs, enlargement of the overall tax base, continued diversity in the State's industrial base, and an increase in revenue to the State's political subdivisions; and

WHEREAS, the General Assembly enacted Session Law 2014-118, amending the Program to include eligibility for companies which: (1) are in development tier two areas with populations of fewer than 60,000 persons as of July 1, 2013; (2) are investing in their manufacturing process by enhancing pollution controls or transitioning their manufacturing process from using coal to natural gas to improve energy efficiency or reduce emissions; (3) employ at least 800 workers; and which (4) shall invest at least Fifty Million Dollars (\$50,000,000) over a period of five (5) years;

WHEREAS, the General Assembly has authorized the Department to administer the Program and has empowered the Department to enter into agreements with approved businesses to provide Program grants (each, a "Grant") to enable such businesses to maintain jobs and make large-scale capital investment in the State, in accordance with the provisions of §143B-437.012 of the North Carolina General Statutes (the "JMAC Statute"), a copy of which is incorporated herein as Exhibit A; and

WHEREAS, eligibility for the Program and administration of Grants is governed by the JMAC Statute and the Criteria for Operation and Implementation of Job Maintenance and Capital Development Fund Program as amended effective October 14, 2014 (the "Criteria"), a copy of which is incorporated herein as Exhibit B; and

WHEREAS, the General Assembly has authorized the Economic Investment Committee (the "EIC") to evaluate Program applications, make required findings, and recommend Program awards to North Carolina's Secretary of Commerce; and

WHEREAS, the EIC has approved a motion (a copy of which is incorporated herein as Exhibit C) to recommend a Grant to the Company for the Project, based on the EIC's review and consideration of the Company's November 25, 2014 Grant application (the "Application," which includes all application materials submitted to the Department for this Grant), a copy of which is incorporated herein as Exhibit D; and

WHEREAS, the Guarantor has agreed to guarantee the performance and obligations of the Company hereunder; and

WHEREAS, the EIC has found that, with respect to the Company and the Project:

- (1) the Company qualifies for a JMAC award as a large manufacturing employer under N.C. Gen. Stat. § 143B-437.012(d)(2) and is investing in its manufacturing process by enhancing pollution controls and transitioning its manufacturing process from using coal to natural gas to improve energy efficiency and reduce emissions;
- (2) the conditions for eligibility have been met;
- (3) a Grant is necessary to carry out the public purposes provided in §143B-437.012(a) of the JMAC Statute;
- (4) the Project is consistent with the economic development goals of the State and the area where it is located;
- (5) the affected county government has participated in retention efforts and offered incentives in a manner appropriate to the Project, including a commitment to provide at least fifty percent (50%) of the incremental additional local ad valorem tax payable on Required Investment, over a period of not fewer than five (5) years or greater than ten (10) years;
- (6) a Grant is necessary for the sustainability and maintenance of the Project in the State;
- (7) the total benefits of the Project outweigh its costs and render the Grant appropriate;
- (8) this Grant is consistent with the restriction on the number of Grants that may be approved under the Program, as specified in G.S. §143B-437.012(n); and
- (9) this Grant is consistent with the maximum total liability the State may incur for a single Grant, and for all Grants approved under the Program in the aggregate, as specified in G.S. §143B-437.012(n);

WHEREAS, this Grant was formally recommended for award by the EIC on December 19, 2014, the Effective Date.

NOW, THEREFORE, in consideration of the promises and other good and valuable consideration described herein, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree to the following terms and conditions:

ARTICLE I. DEFINITIONS

- 1.1 "Agreement" means this JMAC Agreement, as amended, modified, revised, or supplemented from time to time, and includes the Exhibits described in Paragraph 6.16(d).

- 1.2 "Agreement Term" has the meaning set forth in the preamble.
- 1.3 "Application" has the meaning set forth in the recitals.
- 1.4 "Appropriation" means an appropriation of funds by the North Carolina General Assembly, for the JMAC program, for Grant payments to be used for performance under JMAC agreements during a particular Grant Year, and, in particular, for payments to the Company.
- 1.5 "Attorney General" means the Attorney General of the State of North Carolina.
- 1.6 "Authorized Representative" means any officer or employee of the Company or Guarantor, duly appointed by the Company or Guarantor, as the case may be, with responsibility for matters pertaining to this Agreement, who is authorized to execute and deliver documents related to the Grant, including this Agreement.
- 1.7 "Company" means Blue Ridge Paper Products, Inc., a corporation organized and existing under the laws of the State of Delaware, and its successors and assigns.
- 1.8 "Contract Employee" and/or "Contract Worker" means a person (a) who is employed in a Full-Time Position and whose work responsibilities consist of the core activity of the Facility or associated administrative positions, and (b) who receives monetary compensation and benefits equivalent in value to that of Direct Employees holding similar positions. The term does not include contractors whose work consists of activity tangential to the core business of the Facility, such as landscapers and construction and maintenance personnel, whose presence at the Facility is transient and who are not involved with the operations of the Facility.
- 1.9 "Criteria" has the meaning set forth in the recitals.
- 1.10 "Default" means an event of default, as described in Article V.
- 1.11 "DENR" means the North Carolina Department of Environment and Natural Resources.
- 1.12 "DENR Violation" means an administrative, civil, or criminal enforcement action based on alleged significant violations of any program implemented by an agency of DENR, or a final determination of responsibility for any significant administrative, civil, or criminal violation of any program implemented by an agency of DENR within the last three (3) years with respect to the Facility. For the purposes of this definition, a significant violation is a violation or alleged violation that does not satisfy any of the conditions of G.S. §143-215.6B(d).
- 1.13 "Department" means the North Carolina Department of Commerce.
- 1.14 "Development tier" means the classification assigned to an area pursuant to G.S. §143B-437.08.
- 1.15 "Direct Employee" means a person employed in a Full-Time Position whose wages are subject to State withholding taxes by the Company under Article 4A of Chapter 105 of the General Statutes and who is employed in a permanent position. The term does not include consultants, contractors, persons whose positions are temporary or time-limited as a condition of employment, employees of a temporary service, or employees of an entity that pays withholding taxes other than the Company.
- 1.16 "Disqualifying OSHA Violation" means a citation under the Occupational Safety and Health Act that has become a final order within the past three (3) years for a willful serious violation or failure to abate a serious violation with respect to the Facility. For purposes of this definition, "serious violation" has the same meaning as in G.S. §§95-127 and 143B-437.53(e).
- 1.17 "DOR" means the North Carolina Department of Revenue.
- 1.18 "Effective Date" has the meaning set forth in the preamble.
- 1.19 "EIC" has the meaning set forth in the recitals.
- 1.20 "Eligible Fees" means State permitting fees and other fees paid to the State for capital expansion at the Project that is financed by the Required Investment.
- 1.21 "Eligible Grant Amount" means the annual Grant payment amount for which the Company could be eligible, based on the sum of (i) 95% of confirmed Eligible Taxes; (ii) 100% of confirmed Worker Training Expenses; and (iii) 100% of confirmed Eligible Fees.
- 1.22 "Eligible Position" means a Full-Time Position at the Facility which is filled by a Direct or Equivalent Full-Time Contract Employee who has worked for at least sixteen hundred (1,600) hours during the calendar year (or who, together with one or more Replaced Workers, worked at least sixteen hundred (1,600) hours during the year). "Eligible Position" does not include any position or employee of the Company, the Guarantor or any of their Related Members which existed in North Carolina (other than Company positions at the Facility) prior to the Effective Date and which is shifted or transferred to a position related to the Project.
- 1.23 "Eligible Remittances" means Eligible Taxes, Worker Training Expenses and Eligible Fees.
- 1.24 "Eligible Taxes" means the following State taxes paid on Required Investment (to the extent not offset by tax credits):
- (i) privilege and sales and use taxes paid by the Company on machinery and equipment for the Project, installed at the Facility;
 - (ii) taxes paid by the Company on building materials used to construct, renovate or repair the Facility;
 - (iii) incremental income and franchise taxes paid and attributable to Required Investment; and
 - (iv) sales and use taxes paid by the Company on electricity, the excise tax paid on piped natural gas, and the privilege tax paid by the Company on other fuel for electricity, piped natural gas, and other fuel consumed as a result of Required Investment at the Facility.
- 1.25 "Equivalent Full-Time Contract Employee" means a Contract Worker or Contract Employee in a Full-Time Position.
- 1.26 "Excess Eligible Remittances" means Eligible Remittances paid (or, in the case of training provided directly by the Company, Worker Training Expenses incurred) in a particular Grant Year that exceed the Maximum Annual Grant Amount.

- 1.27 "Facility" means the Project facility at which the Required Investment is to be made, located at 175 Main Street in Canton, North Carolina.
- 1.28 "Full-Time Employee" means a Direct or Equivalent Full-Time Contract Employee.
- 1.29 "Full-Time Position" means a Position filled by a Direct or Equivalent Full-Time Contract Employee who is paid consideration for at least thirty-five (35) hours a week and who is eligible for benefits provided to all employees of the Business.
- 1.30 "General Assembly" has the meaning set forth in the recitals.
- 1.31 "General Statutes" or "G.S." means the North Carolina General Statutes.
- 1.32 "Grant" has the meaning set forth in the recitals, and, where it is obvious from the context, refers to the specific Grant awarded to the Company.
- 1.33 "Grantee" means the recipient of a Grant.
- 1.34 "Grant Term" means the period consisting of ten (10) Grant Years, from January 1, 2015 through December 31, 2024, or such earlier time to which the term may be reduced if the Grant is terminated in accordance with the provisions of Article V.
- 1.35 "Grant Year" means each calendar year beginning January 1 and ending on December 31 during the Grant Term.
- 1.36 "Guarantor" means Evergreen Packaging, Inc., a corporation organized and existing under the laws of the State of Delaware, and its successors and assigns.
- 1.37 "Indemnified Party" has the meaning set forth in Paragraph 6.7.
- 1.38 "JMAC" means the Job Maintenance and Capital Development Fund, established pursuant to G.S. § 143B-437.012.
- 1.39 "JMAC Statute" has the meaning set forth in the recitals.
- 1.40 "Lifetime Cap" means twelve million dollars (\$12,000,000), or the amount to which this has been reduced as a result of deducting the difference by which the Appropriation for the Company's Grant for a particular Grant Year is greater than the Grant payment for which the Company is eligible.
- 1.41 "Maximum Annual Grant Amount" means the maximum Grant amount for which the Company qualifies in a particular Grant Year (assuming retention of the Minimum Eligible Positions, and satisfaction of all other performance requirements and conditions of the Agreement), based on the formulas set forth in Table 1.
- 1.42 "Minimum Eligible Positions" means eight hundred (800) Eligible Positions, which is the number of Eligible Positions the Company must maintain in order to qualify for the Maximum Annual Grant Amount (subject to all other conditions of the Grant).
- 1.43 "New Employee" means a Direct or Equivalent Full-Time Employee who was not employed by the Company on the Effective Date.
- 1.44 "Overdue Tax Debt" (as defined in G.S. §105-243.1) means any part of a tax debt that remains unpaid ninety (90) days or more after the notice of final assessment was mailed to the Company, where "tax debt" consists of the total amount of tax, penalty, and interest due for which a notice of final assessment has been mailed to the Company after the Company no longer has the right to contest the debt. The term does not include a tax debt if the Company entered into an installment agreement for the tax debt under G.S. §105-237 within ninety (90) days after the notice of final assessment was mailed and has not failed to make any payments due under the installment agreement.
- 1.45 "Parties" means the parties to this Agreement.
- 1.46 "Program" has the meaning set forth in the recitals.
- 1.47 "Project" means the project described in the Application, involving job retention and new investment in North Carolina, for which this Grant was awarded, consisting of the Company's investment in its manufacturing process at the Facility by enhancing pollution controls and transitioning its manufacturing process from using coal to natural gas to improve energy efficiency and reduce emissions.
- 1.48 "Public Records Act" means the provisions of Chapter 132 of the General Statutes.
- 1.49 "Receiving Entities" means DENR, DOR, the North Carolina Community Colleges, and any other State entity that receives Eligible Remittances.
- 1.50 "Related Member" has the meaning ascribed to it in G.S. §§105-130.7A(b)(5) and 143B-437.51(9).
- 1.51 "Replaced Worker" means a worker in a Full-Time Position who worked for the Company during a Grant Year, who no longer works for the Company on December 31 of that year, but who was replaced by someone in an Eligible Position (or who was replaced by another Replaced Worker who was ultimately replaced by someone in an Eligible Position), where together these individuals worked at the Project for at least 1,600 hours during that year.
- 1.52 "Required Health Insurance" means payment by the Company of at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage under G.S. §58-50-125.
- 1.53 "Required Investment" means investment by the Company in the amount of fifty million dollars (\$50,000,000) in enhancements to the Company's pollution controls at the Facility and transitions to the Company's manufacturing process from using coal to natural gas to improve energy efficiency and reduce emissions.
- 1.54 "Secretary" means the North Carolina Secretary of Commerce.
- 1.55 "State" means the State of North Carolina.
- 1.56 "Wage Standard" means an average weekly wage paid to workers in Eligible Positions that is at least equal to one hundred forty percent (140%) of the average wage paid by all insured private employers in Haywood County, using the Department's annual published wage for Haywood County.
- 1.57 "Worker Training Expenses" means expenses paid by the Company to third parties that provide training to workers, or

amounts incurred by the Company to directly train workers for the Project, net of any other reimbursements provided for such training from public sources, including wages paid for on-the-job training associated with the Project.

- 1.57 Rules of Interpretation: (a) All references to an "Article," "Paragraph," "Table," "preamble," "recital," or "Exhibit" are to an Article, Paragraph, Table, preamble, or recital of this Agreement (or an Exhibit attached hereto) unless otherwise specified and shall be deemed to have been made a part hereof and incorporated herein; (b) headings and captions appearing in this Agreement are for reference purposes only and do not limit or affect the meaning of the terms and provisions hereof; (c) all capitalized terms used herein and in the Exhibits, not otherwise defined herein or capitalized for grammatical purposes, shall have the meanings set forth in the General Statutes and the Criteria; and (d) defined terms in the singular include the plural and vice versa, and the masculine, feminine and neuter gender include all genders.

ARTICLE II. REPRESENTATIONS AND WARRANTIES

2.1 Representations and Warranties by the Company and Guarantor.

The Company, as to itself, and the Guarantor, as to itself and the Company (unless otherwise stated), make the following representations and warranties, and acknowledge and agree that such representations and warranties have been material to the EIC's Grant recommendation and the Secretary's decision to enter into this Agreement, and to the determination that the Company is eligible for a Grant with respect to the Project. The Company and Guarantor further agree that each of the following representations and warranties is and shall be true, accurate and complete as of the date of execution and delivery of this Agreement, as of the date of the Company's filing of any annual report hereunder, and as of the date of any disbursement of Grant funds to the Company:

- (a) the Company is a corporation and the Guarantor is a corporation, each as described in its Application, duly organized, validly existing and in good standing under the laws of the State of Delaware, with power adequate for carrying out the business now conducted (including undertaking the Project), and the Company is duly authorized to transact business in North Carolina;
- (b) the execution, delivery, and performance of this Agreement are within the Company's and Guarantor's power and authority; the Company and Guarantor have duly authorized, executed and delivered this Agreement; and the Company and Guarantor have taken or shall take, within the time frames established by this Agreement, the JMAC Statute, and the Criteria, all actions reasonably necessary to carry out and give effect to all of the transactions contemplated by this Agreement;
- (c) this Agreement is a legally valid and binding obligation of the Company and Guarantor, enforceable against the Company and Guarantor in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, or similar laws affecting creditors' rights and remedies;

- (d) this Agreement has been signed by their Authorized Representatives, and such signature is recognized by the Company and Guarantor as legally binding;
- (e) all statements, representations, and warranties made by or on behalf of the Company and Guarantor to the EIC, the Department, and Receiving Entities in connection with the Application, the Grant, this Agreement, and Eligible Remittances, and any materials furnished by or on behalf of the Company and Guarantor to the EIC, the Department, or Receiving Entities in connection with the Application, the Grant, this Agreement, and Eligible Remittances, are true, accurate and complete in all material respects, and do not contain any material misstatement of fact or omit to state a material fact or any fact necessary to make the statements contained herein or therein not materially misleading, to the best knowledge and belief of the Company and Guarantor (unless otherwise disclosed to the Department, in writing, and deemed by the Department not to have a material impact on the Grant award or the terms of this Agreement);
- (f) no material adverse change has occurred in the Company's or Guarantor's financial condition or prospects from those set forth in the financial statements delivered to and/or relied upon by the EIC and the Department;
- (g) no legal action is pending or, to the best of the Company's and Guarantor's knowledge, threatened, that could materially adversely affect the Company's or Guarantor's performance under this Agreement;
- (h) the Company is eligible for a Grant for the Project, and, in particular, the Company satisfies all of the criteria set forth in Section 3.0 of the Criteria, and the Project would not have been undertaken in North Carolina without the award of this Grant;
- (i) the Company and Guarantor have incurred no Disqualifying OSHA Violations or DENR Violations, nor, to the best of the Company's and Guarantor's knowledge, are any actions with respect to any such violation(s) pending;
- (j) no consent of any person or entity and no authorization or approval by, and no notice to or filing with, any governmental authority or regulatory body is necessary for the due and lawful execution, delivery and performance of this Agreement by the Company and Guarantor, except such as have been or shall be obtained prior to disbursement of any Grant funds to the Company, or except for such authorization, approval, notice to or filing with any governmental or regulatory body as could not reasonably be expected to have a material adverse effect on the Project;
- (k) the Company and Guarantor are not liable for any Overdue Tax Debts;
- (l) the Company and Guarantor have not voluntarily petitioned any court or tribunal in this or any other country for protection under the laws respecting bankruptcy;
- (m) no petition has been filed against the Company or Guarantor under applicable bankruptcy laws in this or any other country;

- (n) the Company and Guarantor are financially solvent;
- (o) the Company and Guarantor presently have no interest, and shall not acquire any interest, direct or indirect, which would conflict with the performance of their obligations under this Agreement. The Company or Guarantor shall notify the Department in writing of any such conflict of interest arising hereafter;
- (p) the Company, the Guarantor, and their Related Members shall not employ any person who is or was a member of the EIC as specified in G.S. §143B-437.54(c);
- (q) the Company, the Guarantor, and their Related Members have not paid, and shall not pay, any bonus, commission, fee, or gratuity to any employee or official of the State for the purpose of obtaining this or any other contract or award issued by the State. In the event a fee, gratuity, bonus or commission is to be paid by the Company, the Guarantor, or any of their Related Members to any employee or official of the State, the Company or Guarantor shall provide written notification of these intentions to the Department prior to making such payment, along with a full and complete written description of the circumstances under which such payment is to be made, and the Company and Guarantor acknowledge and agree that, with respect to this Agreement and any such proposed payment, the Department shall take whatever actions it deems appropriate, including, without limitation, terminating this Agreement and exercising its clawback rights and remedies as provided hereunder;
- (r) no alterations, additions, deletions, modifications, variations, or changes of any kind have been made to any original signature copy of this Agreement as provided to the Company and Guarantor by the Department;
- (s) the Company and Guarantor have read and understand North Carolina's laws, including Chapter 132 of the General Statutes, regarding the treatment of public records and confidential information, and their application to economic development projects, including without limitation, those provisions set forth in Exhibit E and understand that the Company, the Guarantor, the Department and all State entities are bound by said laws with respect to all information that comes into the possession of a State entity;
- (t) at the time of the Application, the Project was located in a Development Tier 2 county that had a population of fewer than 60,000 persons as of July 1, 2013;
- (u) at the time it submitted its Application, the Company had at least Eight Hundred (800) Full-Time Positions filled by Direct or Equivalent Full-Time Contract Employees at the Facility;
- (v) the Company provides workers in all Full-Time Positions with the Required Health Insurance;
- (w) the County of Haywood has legally bound itself to provide incentives equivalent in value to a tax credit of fifty percent (50%) of the incremental ad valorem taxes payable on Required Investment, over a period of not fewer than five (5) years or greater than ten (10) years;
- (x) with respect to any economic development grant or incentive awarded to the Company or Guarantor by any grantor in any jurisdiction, the Company and Guarantor have never defaulted, been sued by a grantor, or been subjected to the terms of a clawback or comparable recapture provision;
- (y) the Company and Guarantor affirm all representations made by them in and with respect to the Application;
- (z) the Company and Guarantor understand that the annual Grant amount for which the Company is eligible is subject to Appropriations, and to the extent such Appropriations are at any time insufficient for all Grantees, the maximum amount available for disbursement to the Company shall be the amount targeted for this Grant; and
- (aa) the Company and Guarantor (and anyone else acting on their behalf) shall not manipulate or attempt to manipulate Withholdings for the purpose of increasing the Company's Grant or any Grant payment.

2.2 Representations and Warranties by the Department

The Department makes the following representations and warranties, and further agrees that each representation and warranty is and shall be true, accurate, and complete as of the date of execution and delivery of this Agreement, and as of the date of any disbursement of the Grant for this Project:

- (a) it is the duly constituted Department of Commerce described in G.S. §143B-427, and it is authorized to enter into this Agreement, pursuant to G.S. §143B-437.012(j);
- (b) as provided in G.S. §143B-437.012(j), this Agreement is a binding obligation of the State, subject to Appropriations; and
- (c) this Agreement has been signed by the Attorney General and the Secretary, and such signatures are recognized by the State as legally binding upon it.

ARTICLE III. COMPANY COVENANTS AND TERMS AND CONDITIONS OF AGREEMENT

Unless the Parties otherwise agree in writing, the Company, as to itself, and the Guarantor, as to itself and the Company, agree and covenant as follows:

3.1 Project Legal and Regulatory Compliance

- (a) The Company and Guarantor shall comply with all provisions of the General Statutes and the Criteria applicable to the Project and the Facility, shall provide all documentation and reporting required by the Department in connection with any and all disbursements of Grant funds made hereunder, and shall fulfill all other requirements set forth in this Agreement.
- (b) The Company shall provide to the Department, prior to any disbursement of Grant funds to the Company under this Agreement, proof that any and all environmental permits required by the United States government or the State for the Project have been duly obtained. In the event that one or more required permits have not been obtained and the Company has applied to the Department for a disbursement of funds under this Agreement, any such disbursement shall be

withheld until such time as the Company has provided the Department with adequate written proof that all required permits have been duly obtained.

3.2 Required Investment

The Company commenced or will commence the Required Investment as of or after the Effective Date. The Company shall be responsible for all costs, contractual or otherwise, associated with the start-up and operation of the Project. The Company shall not count as Required Investment any equipment transferred from another location of the Company, the Guarantor, or its affiliates in the State to the Facility.

3.3 Job Retention and Requirements for Eligible Positions

- (a) To be eligible for the Maximum Annual Grant Amounts, subject to the other conditions contained herein, the Company must maintain the Minimum Eligible Positions for each year of the full Grant Term. The Company's job-retention performance shall be measured by counting the number of Eligible Positions that exist as of 12:00 o'clock noon, Raleigh, North Carolina time, on December 31 of each Grant Year.
- (b) Throughout the Grant Term, the Company shall retain at the Facility a minimum of eight hundred (800) Direct or Equivalent Full-Time Employees in Eligible Positions.
- (c) Throughout the Grant Term, in each Grant Year, the Company shall pay, at a minimum, an aggregate weekly average wage equal to the then-current Wage Standard, to all workers in Eligible Positions.
- (d) Throughout the Grant Term, the Company shall provide the Required Health Insurance to all employees in Full-Time Positions.
- (e) Throughout the Grant Term, the Company shall verify that all New Employees have proper identification and documentation of their United States citizenship or authorization to work and reside in the United States.
- (f) Throughout the Agreement Term, the Company shall engage in all material respects in fair employment practices as required by State and Federal law.
- (g) Throughout the Grant Term, the Company shall endeavor, whenever reasonably and commercially practicable in the conduct of its business, to:
 - (i) utilize the services of small businesses and minority, female, and disabled contractors;
 - (ii) offer the positions created in connection with the Project to residents of North Carolina; and
 - (iii) use the North Carolina State Ports.

3.4 Corporate Existence

Except upon notice as set forth in Paragraph 6.8(d), and approval as set forth in Paragraph 6.8(e), the Company and Guarantor shall not assign or otherwise transfer any of their interest in this Agreement. The Company and Guarantor shall maintain their existence, and the

Company shall preserve and maintain its rights and privileges to conduct business in the State and to conduct operations at the Facility throughout the Agreement Term.

3.5 Duty to Notify

During the Agreement Term, the Company and Guarantor shall give the Department written notice of any change in their names, any change in the identity or address of their contact persons identified herein, any change in the location of their books and records, any material change in their corporate legal structure, any material change in the nature of the operations conducted in connection with the Project, and any failure to maintain Project operations at the Facility. The Company and Guarantor shall give these written notices in each case within thirty (30) days following the occurrence of any such event. If, at any time prior to the final disbursement of Grant funds to the Company, the Company or Guarantor becomes aware of any facts, information, statements, occurrences, or events that render any of the representations or warranties contained herein materially untrue, misleading, or incomplete, the Company or Guarantor shall immediately notify the Department in writing of such facts, information, statements, occurrences, or events.

3.6 Inspection, Recordkeeping and Reporting

- (a) Throughout the Agreement Term, and for a period of five (5) years thereafter, the Company and the Guarantor shall make their payroll and employment books and records, the Facility and all information related to the Project available for inspection or audit by the EIC, the Department and/or the DOR, as well as such other persons or entities as may be authorized by Federal or State law (for purposes of this paragraph, all of the foregoing shall be referred to as the "Authorized Parties"), in order for any such Authorized Party to assess compliance with the terms of this Agreement, at such times and places during regular business hours as the Authorized Party may reasonably request. The Company and Guarantor shall create and maintain books and records adequate to document its compliance with this Agreement. The Company and Guarantor shall provide the Authorized Parties with access during regular business hours to persons and records for the purpose of monitoring, evaluating, or auditing this Agreement and its performance hereunder. The Company and Guarantor shall use their reasonable best efforts to comply with any reasonable request for such access to persons or records by an Authorized Party, within ten (10) business days of the making thereof. The State shall use its reasonable best efforts to cause the Authorized Party, provided that the Authorized Party is a State party, to conduct such audits and inspections of records, and to exercise such right of access in a manner appropriate under the circumstances, and, where possible, so as to minimize disruptions to the business operations of the Company and Guarantor.
- (b) By no later than the thirtieth (30th) day of April next following the end of each Grant Year, the Company shall submit to the Department the following materials in the form requested by the Department pertaining to the preceding Grant Year, together with its Authorized Representative's certification as to the accuracy of all such information:

- (i) a report showing the name, job description, position number, gross wages, and hire dates of each Direct or Equivalent Full-Time Employee who is on the Company's payroll on December 31, who worked at least 1,600 hours at the Project in the previous year (and, if this position was previously filled by one or more Replaced Workers, who, together with the Direct or Equivalent Full-Time Employee listed in the Eligible Position, worked 1,600 hours at the Project, the same information for the Replaced Workers, plus the Replaced Workers' hire and termination dates, and a notation that these employees should be considered together);
- (ii) a copy of the Company's State and Federal tax returns for the Grant Year, including sales and use tax forms, if related Eligible Remittances are claimed;
- (iii) a copy of the Guarantor's State and Federal tax returns for the Grant Year if the Company claims as Eligible Taxes incremental income taxes or incremental franchise taxes attributable to Required Investment but paid by the Guarantor;
- (iv) a report showing all calculations and supporting documents demonstrating Eligible Remittance paid during the Grant Year, indicating the type, and separately designating amounts paid with respect to Required Investment and amounts paid with respect to other investment;
- (v) a report on Excess Eligible Remittances, if any, noting the amount, type, and the year from which such Eligible Remittances are being carried over, provided that, if such remittances are from a prior Grant Year, these remittances may only be included if the Company would have been eligible for the Maximum Annual Grant Amount for that year;
- (vi) certifications from each Receiving Entity of all amounts shown by the Company in its report documenting the information required by Paragraph 3.6(b)(iii) and (iv);
- (vii) for any franchise tax claimed as an Eligible Remittance, calculations of the Required Investment for the Grant Year, multiplied by .0015, less any tax credits received (subject to any tax rate change that may become effective);
- (viii) for any privilege tax claimed as Eligible Tax, a schedule of monthly privilege taxes remitted on Required Investment;
- (ix) for any sales tax claimed as Eligible Tax, a schedule of sales tax payments made by the Company to energy providers, attributable to the Facility, detailing the incremental amount paid as a result of Required Investment;
- (x) for any sales tax paid by the Company's contractors and subcontractors on building material purchases made in connection with Required Investment, information obtained from contractors and subcontracts required by Sales and Use Tax Technical Bulletin Section 17-2E, together with a schedule of all payments made by such contractors and subcontractors showing the taxes paid on Required Investment purchases;
- (xi) original executed releases provided by the Company's contractors and subcontractors, permitting the Department to verify tax information with the DOR;
- (xii) original executed releases provided by the Company for any Receiving Entities to which the Company paid Eligible Remittances;
- (xiii) a schedule of amounts and dates for any refunds received by the Company (or Guarantor, as applicable) for any Eligible Taxes previously paid, and any claims made by the Company (or Guarantor, as applicable) for overpayments made on Eligible Taxes;
- (xiv) certified copies of detailed paid invoices from providers of training for which the Company has incurred Worker Training Expenses (along with all details of any reimbursement made to the Company for any amounts included on such invoices received from any source, together with details identifying the source), with a detailed description of the training provided, including a description of any equipment for which any such training was provided;
- (xv) detailed documentation regarding any Company-provided worker training, substantiating the basis for the calculations made with respect to any Worker Training Expenses claimed;
- (xvi) certified copies of detailed receipts for Eligible Fees paid;
- (xvii) certification that the Company has committed no Disqualifying OSHA Violations;
- (xviii) certification that the Company has met the requirements, terms, and conditions of this Agreement applicable to the reported Grant Year, and that no Default or event or condition has occurred, the occurrence or existence of which would, with the lapse of time or the giving of notice or both, become a Default;
- (xix) certification that the Company has no outstanding Overdue Tax Debts;
- (xx) certification that all Direct or Equivalent Full-Time Employees listed on the Company's annual report have worked at least 1,600 hours during the previous Grant Year (or did so, together with Replaced Workers as to which the Company has provided complete documentation);
- (xxi) certification that the Company provides the Required Health Insurance for all workers in Full-Time Positions;
- (xxii) certification that neither the Company nor anyone acting on behalf of the Company has manipulated any reported figures or other reported information provided

in connection with the Grant with the purpose of increasing the amount of the Grant or any Grant payment;

(xxiii) certification that the Company has verified that all New Employees have provided proper identification and documentation that they are United States citizens or have authorization to live and work in the United States;

(xxiv) a fixed asset report showing the amount of Required Investment made to-date, including but not limited to a description of all assets that qualify toward Required Investment that were placed in service or taken out of service at the Facility since the Effective Date, and the dates those assets were placed in service or taken out of service, as well as the cost of such assets;

(xxv) for each Grant Year report, a statement of the value of incentives provided by the County of Haywood during that Grant Year, including those incentives equivalent in value to a tax credit of fifty percent (50%) of the incremental ad valorem taxes payable on Required Investment, over a period of not fewer than five (5) years or greater than ten (10) years;

(xxvi) such other information as the Department may reasonably request for purposes of monitoring compliance with the terms of this Agreement, including modification of any of the foregoing to reflect tax and reporting changes that would impact the method by which the Department shall verify compliance with any of the foregoing; and

(xxvii) any additional information that the Company reasonably deems to be material to the performance of this Agreement.

(xxviii) an Authorized Representative of the Guarantor shall certify the Company's annual certifications, and, with respect to itself, shall make the certifications required in Paragraph 3.6(b)(xvii), (xviii), (xix), and (xxii), and shall provide any information required by Paragraph 3.6(b)(xxvi) and (xxvii).

(c) The Company and Guarantor shall not destroy, purge or dispose of any of their records required to be maintained by this Agreement without the express prior written consent of the Department during the Agreement Term and for a period of five (5) years after conclusion of the Agreement Term.

(d) The Department may notify the Company that its Grant payment shall be reduced by an amount to be determined by the Department, or eliminated, in its sole discretion, after consultation with the EIC, for any Grant Year for which the Company has failed to deliver to the Department:

(i) a complete annual report satisfying all requirements described in Paragraph 3.6(b), by the thirtieth (30th) day of April next following the end of such Grant Year; or

(ii) a revised annual report containing any and all additional information requested by the Department in order to monitor compliance with the terms of this Agreement, by

the later of the first (1st) day of June next following the end of such Grant Year or thirty (30) calendar days following the date the Department sends its request to the Company.

(e) The Company shall continue to submit an annual performance report by April 30 of each Grant Year, as required by Paragraph 3.6(b), through Grant Year 10, to establish compliance with the performance requirements set forth in Paragraph 3.3(b), (c), (d), and (e), even if the Lifetime Cap has been disbursed prior to that time, and the Company shall be required to make a proportional Grant repayment for any year for which the Company would not have been eligible for a Grant payment, as provided in Paragraph 5.3(b).

3.7 Protection and Release of Information

(a) The Company and Guarantor acknowledge that this Agreement and all records or documents pertaining hereto, are public records under G.S. §143B-437.54(e), and are subject to the Public Records Act and other applicable provisions of the General Statutes protecting confidential information from disclosure. Payroll and employee tax information submitted by the Company under this Agreement is tax information, and is subject to the confidentiality provisions of G.S. §§105-259 and 143B-437.58(a). Relevant provisions of North Carolina law relating to public records, confidential and trade secret information, and economic development projects are attached as Exhibit E.

(b) The Company and Guarantor, as the case may be, shall clearly and specifically identify any information that under North Carolina law qualifies as confidential and/or trade secret information, and shall do so at the specific places where that information appears in any records or documents submitted by the Company or Guarantor to the State, at the time of delivery. Broad and non-specific designations of materials as confidential shall be disregarded and information designated in such manner shall be treated as a public record.

(c) The Company and Guarantor shall be responsible for any and all costs, expenses, fees, or losses that they or the Department or any other State entity (including, without limitation, the North Carolina Department of Justice) may incur as a result of responding to or resisting any request, subpoena, legal complaint, court order, or other demand seeking to compel the Department or any other State entity to release or disclose records, documents, or information pertaining to the Company, the Guarantor, or the Project, to the extent that the Company or Guarantor notified the Department or other State entity that they object to such disclosure or release and to the extent that the State defends against such release. The Company and Guarantor shall indemnify all Indemnified Parties (as defined in Paragraph 6.7(a) below) for all costs and expenses of whatever kind associated therewith, provided that no Indemnified Party shall be obligated to defend against release of such information.

ARTICLE IV. GRANT ADMINISTRATION

4.1 Availability of Grant

The Grant shall be made available to the Company annually, subject to Appropriations, in accordance with the requirements, terms, and conditions of this Agreement. This Agreement shall terminate on December 31, 2024 (if not terminated earlier pursuant to Article V), and no Grant payments shall be made after that time.

4.2 Calculation of Grant Amount

In addition to satisfying any other applicable performance requirements set forth in this Agreement, the Company must maintain the Minimum Eligible Positions in order to be eligible for a Grant payment for any Grant Year. Table 1 sets forth the Maximum Annual Grant Amount that may be paid for each Grant Year, if the Company meets the performance requirements set forth herein.

Table 1
Annual Grant Amount Available, Subject to Appropriations

GRANT YEAR	MAXIMUM ANNUAL GRANT AMOUNT
For Grant Years One through Six (2015-2020)	The least of: i. \$2,000,000; and ii. the Eligible Grant Amount; and iii. the annual Appropriation targeted for the Company's Grant
For Grant Years Seven through Ten (2021-2024)	The least of: i. the difference between the Total JMAC Obligation and the total amount of Appropriations established for the Company's Grant in previous grant years; and ii. the Eligible Grant Amount; and iii. the annual Appropriation targeted for the Company's Grant

4.3 Calculating Eligible Remittances.

- (a) Remittances for taxes of the nature of Eligible Taxes, fees of the nature of Eligible Fees and payments of the nature of Worker Training Expenses, supported by all required documentation, shall be accepted as Eligible Remittances to the extent that overall payments for these types of expenses exceed the estimated remittances for such expenses provided by the Company in Question 42 of the Application. The Company reported in response to Question 42 of the Application that, from 2015 forward, there would be no estimated remittances in the absence of the Required Investment.
- (b) To the extent there are unused Eligible Remittances from previous years that qualify as Excess Eligible Remittances, the Company may include these in its annual report, as provided in Paragraph 3.6(b)(iv), provided, however, that no Eligible Remittances may be carried over from any Grant

Year for which the Company would not have been eligible for a Grant payment under Paragraph 4.4.

4.4 Disbursement of Grant

- (a) The Company shall be ineligible for and shall not receive a requested disbursement of Grant funds for any Grant Year if any of the following are true on December 31 of such Grant Year, at the time of the Company's annual report submitted pursuant to Paragraph 3.6(b), at the time a disbursement for such Grant Year is to be presented by the Department to the EIC for approval, or at the time of disbursement:
 - (i) the Company or Guarantor has received notice of an Overdue Tax Debt, and the Overdue Tax Debt has not been satisfied or otherwise resolved; or
 - (ii) the Company or Guarantor has voluntarily filed a petition for bankruptcy in any court or tribunal in any country; or
 - (iii) a petition has been filed against the Company or Guarantor under applicable bankruptcy laws in any court or tribunal in any country; or
 - (iv) all environmental permits required by the United States or the State for the Project have not been obtained; or
 - (v) any representation or warranty made by the Company or Guarantor under Article II is no longer true, accurate and complete in all material respects; or
 - (vi) except to the extent addressed more specifically in any other subsection of this Section 4.4(a), any covenant made by the Company or Guarantor under Article III has been materially breached; or
 - (vii) any event or condition the occurrence or existence of which would, with the lapse of time or the giving of notice or both, become a Default; or
 - (viii) the Company has failed to maintain at least eight hundred (800) Eligible Positions for such Grant Year; or
 - (ix) the Company has failed to satisfy the Wage Standard for such Grant Year; or
 - (x) the Company has failed to provide the Required Health Insurance for such Grant Year; or
 - (xi) the Department finds that the Company or Guarantor (or any party acting on their behalf) has manipulated or attempted to manipulate information reported to the Department or any State entity for the purpose of increasing the amount of the Grant or any Grant payment for which the Company is eligible.
- (b) The conditions listed in Paragraph 4.4(a) shall not bar disbursement of Grant funds to the Company if the disqualifying condition is curable and is promptly removed, eliminated, or otherwise cured by the Company or Guarantor, or waived by the Department, in its sole discretion, after consultation with the EIC.

(c) The Company may receive a disbursement of Grant funds only after:

- (i) the Secretary of DOR has certified to the Department that the Company and Guarantor have no outstanding Overdue Tax Debts;
- (ii) the Receiving Entity of any Eligible Remittances claimed by the Company has certified to the Department the amount and type of Eligible Remittance paid, and has provided any details required by the Department to establish compliance with this Agreement;
- (iii) the Company and Guarantor have certified to the Department that the Company has complied with the requirements, terms, and conditions of this Agreement;
- (iv) the Company and Guarantor have provided the Department with such evidence of compliance as the Department has requested in order to verify that the Company and Guarantor have complied with the requirements, terms, and conditions of this Agreement; and
- (v) the Department has taken whatever additional steps and received information it requires to verify the amounts for which the Company is eligible.

ARTICLE V. EVENTS OF DEFAULT

5.1 Events of Default

Any one of the following shall constitute a Default by the Company:

- (a) Any representation or warranty made by the Company or Guarantor in this Agreement, the Application, or in any other document provided pursuant to this Agreement or the Application, that is or at any time during the term of this Agreement becomes false or misleading in any material respect; provided that, upon the occurrence of any such Default, the Company and Guarantor shall have thirty (30) days to: (i) cure the Default, or (ii) ask the Department for additional time to cure the Default. The thirty (30) day cure period shall commence on the date on which the Department sends a written notice of the Default to the Company or Guarantor. The Department shall not unreasonably deny a request for additional time to cure a Default. Unless waived by the Department, no disbursement of Grant funds shall be made while a Default is continuing.
- (b) Any material failure by the Company or Guarantor to meet or comply with any term, condition, covenant, or requirement set forth in this Agreement, the JMAC Statute, or the Criteria; provided that, other than the types of Defaults described in the remaining subparagraphs of this Paragraph 5.1 below, the Company shall have thirty (30) days to: (i) cure the Default, or (ii) ask the Department for additional time to cure the Default. The thirty (30) day cure period shall commence on the date on which the Department sends written notice of the Default to the Company or Guarantor. The Department shall not unreasonably deny a request for additional time to cure a

Default. Unless waived by the Department, no disbursement of Grant funds shall be made while a Default is continuing.

- (c) Consent by the Company or Guarantor to the appointment of a receiver, trustee or liquidator of either of them or of a substantial part of the property of either of them, or any admission in writing by the Company or Guarantor that they are unable to pay their debts generally as they come due, or a general assignment by the Company or Guarantor for the benefit of their creditors.
- (d) Filing by the Company or Guarantor of a voluntary petition in bankruptcy, or a voluntary petition or an answer seeking reorganization in a proceeding under any bankruptcy laws in effect in any country (as now or hereafter in effect); or the seeking of relief by the Company or Guarantor, by voluntary petition, answer or consent, under the provisions of any existing or future bankruptcy or other similar law in effect in any country, providing for the reorganization or winding-up of companies, or providing for an agreement, composition, extension or adjustment with creditors.
- (e) The entry by a court of competent jurisdiction in any country of a consensual or non-consensual order, judgment or decree which: (i) appoints a receiver, trustee or liquidator of the Company or the Guarantor or of any substantial part of the property belonging to either of them; or (ii) sequesters any substantial part of such property; and which (iii) remains in force undismissed, unstayed or unvacated for a period of ninety (90) days after its date of entry. The EIC has the sole authority to determine, in its discretion, what constitutes a substantial part of such property.
- (f) The assumption of jurisdiction, custody or control by a court of competent jurisdiction in any country over the Company or the Guarantor, or over a substantial part of the property belonging to either of them, where such jurisdiction, custody or control is unrelinquished, unstayed or unterminated for a period of one hundred twenty (120) days; or the filing in a court of competent jurisdiction of any country of a petition against the Company or Guarantor that is based on applicable bankruptcy or insolvency laws or laws on the winding-up or reorganization of companies and that is not withdrawn or dismissed within one hundred twenty (120) days after such filing. The EIC has the sole authority to determine, in its discretion, what constitutes a substantial part of such property.
- (g) With respect to any Related Member of the Company or Guarantor, any of the events described in Paragraphs 5.1(c) through (f), where the Department determines, in its sole discretion, that such event is reasonably likely to have a material adverse impact on the Company or Guarantor and their ability to perform under this Agreement.
- (h) Failure to achieve the performance criteria required by Paragraph 3.3(b), (c), (d) and (e).
- (i) Failure to make the full Required Investment by December 31, 2019.
- (j) Failure to comply with the DENR Conditions.

5.2 Termination

The Department shall terminate this Agreement, and/or shall terminate eligibility for future Grant payments:

- (a) the Company or Guarantor and/or any party acting on their behalf has manipulated or attempted to manipulate any information reported to the Department, any State entity, or a Receiving Entity, for the purpose of increasing the amount of the Grant or Grant payment for which the Company is or might be eligible; or
- (b) the Company fails to make the full Required Investment by December 31, 2019; or
- (c) the Company fails to maintain the Minimum Eligible Positions or the Wage Standard for three (3) consecutive years; or
- (d) the Company or the Guarantor is in Default (and if such Default is curable, after giving effect to applicable cure periods provided in Paragraph 5.1, if any).

5.3 Repayment of Grant Funds

- (a) The Company and Guarantor shall repay all Grant funds disbursed to the Company under this Agreement:
 - (i) if it is determined that the Company or Guarantor (or anyone acting on their behalf) has manipulated or attempted to manipulate information reported to the Department, any State entity or a Receiving Entity, for the purpose of increasing the amount of the Grant or any Grant payment for which the Company is eligible; or
 - (ii) if the Company fails to make the Required Investment by December 31, 2019; or
 - (iii) if the Company fails to maintain the Minimum Eligible Positions or the Wage Standard for three (3) consecutive years; or
 - (iv) if the Department discovers or determines that, at the time the Company submitted the Application or at any time thereafter, the Company did not meet the conditions of eligibility for a Grant set forth in G.S. §143B-437.012(d)(2) and Section 3.1 of the Criteria (subject to any applicable cure periods set forth in Article V, and subject to any specific provisions governing the treatment of any eligibility requirement set forth in this Agreement); or
 - (v) if the Company or Guarantor made misrepresentations in applying for the Grant; or
 - (vi) if the Company fails to maintain operations at the Facility for the Agreement Term.
- (b) For any Grant Year after the Company has received the Lifetime Cap, the Company shall repay the Department a proportionate share of Grant payments previously received, if the Company's annual report demonstrates that the Company:
 - (i) failed to retain at least eight hundred (800) Direct or Equivalent Full-Time Employees in Eligible Positions; or

- (ii) failed to satisfy the Wage Standard; or
- (iii) failed to make the Required Health Insurance available to all employees in Full-Time Positions; or
- (iv) failed to demonstrate the financial wherewithal required by Paragraph 3.6(b)(xxv); or
- (v) is otherwise in Default such that it would have been ineligible for a Grant payment for that Grant Year.

- (c) The Company and the Guarantor each agree that they shall be jointly and severally liable for repayment of any Grant funds subject to recovery under this Paragraph or otherwise, and that the Department may pursue recovery against either or both of them.

5.4 Other Remedial Provisions

- (a) No remedy herein conferred or reserved by or to the Department or the State is intended to be exclusive of any other available remedy or remedies, whether at law, in equity or otherwise, but each and every such remedy shall be cumulative and shall be in addition to every other remedy provided for in this Agreement, or now or hereinafter existing at law, in equity, or by statute; and any such right or power may be exercised from time to time and as often as may be deemed expedient by the Department or the State. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or be construed as a waiver thereof; nor shall any single or partial exercise of any right surrender or preclude any other or further exercise thereof or the exercise of any other right. A waiver of any particular breach or Default under any provision of this Agreement shall not operate as a waiver of any other, further or subsequent breach or Default thereof. The Department or the State are entitled to exercise any remedy reserved to it in this Agreement, and it shall not be necessary that the Department or the State give notice to any person or entity other than such notice as may be expressly required by this Agreement or by law.
- (b) The Department and other State entities shall not be required to perform any act whatsoever or to exercise any diligence whatsoever to mitigate the damages, costs, expenses, or losses to the Company or Guarantor arising out of a Default.

5.5 Notice

Notwithstanding Paragraph 5.4, the Department agrees to give the Company and the Guarantor thirty (30) days prior written notice, where to do so would not impair the Department's or the State's interests, before pursuing any proposed recoveries or terminating this Agreement under this Article V, provided that no Grant disbursement shall be due and payable during the occurrence and continuation of a Default, and the Department may recover any Grant funds disbursed to the Company for which the Company was not, in fact, eligible.

ARTICLE VI. MISCELLANEOUS PROVISIONS

6.1 Interpretation of Agreement

Each Party acknowledges that, in executing this Agreement, such Party has had the opportunity to seek the advice of independent legal counsel of its own selection, and it has read and understood all of the terms and provisions of this Agreement. This Agreement shall not be construed against any Party by reason of the drafting or preparation thereof.

6.2 Choice of Laws, Jurisdiction, and Venue

The validity of this Agreement and all of its terms and provisions, as well as the rights and duties of the Parties, are governed by the laws of the State of North Carolina. The Company and Guarantor agree and submit, solely for matters concerning this Agreement, to the exclusive jurisdiction of the courts of the State of North Carolina and agree, solely for such purposes, that the only venue for any legal proceedings involving this Agreement, its enforcement, its construction, and/or its interpretation shall be Wake County, North Carolina. The place of this Agreement, and all transactions and agreements relating to it, and their situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract, tort, or otherwise, relating to its validity, construction, interpretation, and enforcement, shall be determined.

6.3 Compliance with Applicable Law

The Company and Guarantor shall comply in all material respects with all material laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of their business, including those of Federal, state, and local agencies having jurisdiction and/or authority over the Company or Guarantor and/or the conduct of their business.

6.4 Severability

If any provision or part of this Agreement is held to be invalid, illegal, or unenforceable, the validity, legality, or enforceability of the remainder of this Agreement shall not in any way be affected or impaired, unless the invalidity, illegality, or unenforceability completely nullifies this Agreement.

6.5 Limitation on State's Liability

- (a) Neither the EIC, the Department, the State, nor any agency, department, or subdivision of the State shall be liable in any manner whatsoever to any person, other than the Company or Guarantor, with respect to explicit commitments made in this Agreement, for matters pertaining to or arising in connection with the Project or this Agreement.
- (b) In no event shall the State be liable to the Company or Guarantor in connection with the State's performance under this Agreement for any amount that, when combined with the Grant funds already received by the Company, exceeds the maximum cumulative Grant that the Company could have

received pursuant to the terms hereof at the time the Company asserts a claim against the State.

- (c) The Guarantor acknowledges that it has no right to receive the Grant or any other funds hereunder. The Company's rights, if any, with respect to Grant funds arise solely out of this Agreement, and it has no independent right or claim to receive any Grant funds apart from any right or claim which may arise under this Agreement. The Company, the Guarantor, and the State agree that, should subsequent judicial action invalidate this Agreement, or any portion thereof, the Company, the Guarantor, and the State shall have no further obligation or liability to the other as to the invalidated provisions.
- (d) The EIC shall notify the Company in the event the EIC plans to produce documents in response to a request, demand, subpoena or court order purporting to compel the release of information which is properly designated as confidential by the Company under the requirements of the Public Records Act. Such notification shall occur prior to the EIC's release of any such information, unless prohibited by law or a court order. In any event, neither the EIC nor any state agency shall have any liability for the legally-compelled release of such information and the EIC shall have no obligation to notify the Company in the event that it does not produce information designated as confidential by the Company.

6.6 No Set-Off

The existence of any claim, set-off, defense, or other rights which the Company, the Guarantor, or any affiliated or related entity or person may have at any time against the Department, the DOR, the State, or any other agency, department, subdivision, official, or employee of the State, shall not be deemed or construed to create any right to setoff, claim, or counterclaim with respect to any other obligation of the Company, the Guarantor, or any affiliated or related person or entity to the State or any of its agencies, departments, subdivisions, officials, or employees in connection with this Agreement or any of the transactions contemplated herein.

6.7 Release and Indemnification; Expenses

- (a) The Company and Guarantor agree to indemnify and hold harmless the EIC, the Department, the DOR, Receiving Entities, and the State, and their respective members, officers, directors, employees, agents, and attorneys (hereinafter collectively referred to as the "Indemnified Parties"), from any claims of third parties arising out of or any act or omission of the Company or Guarantor in connection with the performance of this Agreement, and for all losses arising from the implementation of this Agreement. Without limiting the generality of the foregoing, the Company and Guarantor hereby release the Indemnified Parties from, and agree that such Indemnified Parties are not liable for, and agree to indemnify and hold harmless the Indemnified Parties against, any and all liability or loss, cost or expense arising out of any acts, omissions, or negligence of the Company, the Guarantor, or any of their agents, contractors, servants, employees, licensees, lessees, or assignees, including, without limitation, reasonable attorneys' fees, fines, penalties, and civil judgments, resulting from or arising out of or in connection

with or pertaining to any loss or damage to property or any injury to or death of any person occurring in connection with or on or about the Facility or resulting from any defect in the fixtures, machinery, equipment, or other property used in connection with the Project or arising out of, pertaining to, or having any connection with, the Project or the financing thereof. The Company and Guarantor acknowledge and agree that each Indemnified Party is an express, third party beneficiary of the Company's and Guarantor's obligations under this Paragraph. Nothing contained in this paragraph 6.7(a) shall be interpreted to mean that the Company or Guarantor is or shall be liable to any of the Indemnified Parties for the costs to the State or any of its agencies of providing a legal defense to any constitutional or other legal challenges to the Program that may be made or asserted in the future by third parties.

- (b) Except as otherwise set forth herein, each Party agrees to pay its own costs incurred in connection herewith, including all costs incurred in connection with the preparation of any studies or reports, surveys or approvals, this Agreement, or otherwise.

6.8 Continuing Obligation; Assignment

- (a) All covenants, agreements, representations, and warranties made or incorporated herein, and all reports or certifications submitted or to be submitted pursuant hereto, shall be deemed to be material and relied upon by the EIC, the Department, and the DOR, notwithstanding any investigation made by the EIC, the Department, or the DOR, or any other agency, department, official, employee, or agent of the State, and shall survive the execution and delivery of this Agreement.
- (b) This Agreement, in accordance with its terms, shall inure to the benefit of, be binding upon, enforceable by and against, and a continuing contractual obligation of, the State, the Department, the Company, and the Guarantor, and their respective successors and assigns.
- (c) All promises, requirements, terms, conditions, provisions, representations, guarantees, indemnifications, and warranties contained herein shall survive the expiration or termination of this Agreement unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation or statutes of repose.
- (d) The Company or Guarantor shall promptly notify the Department in writing no fewer than thirty (30) days in advance of the closing of any transaction in which the Company or Guarantor intends to:
 - (i) consolidate with or merge into another entity;
 - (ii) sell, lease, or convey all or substantially all of its assets;
 - (iii) sell, assign, or otherwise transfer the whole or any part of its interest in this Agreement; or
 - (iv) sell, lease, convey, assign, transfer, or otherwise dispose of any material interest in the Project which would result in the failure to operate and maintain the Project

substantially as described in the Application and this Agreement.

- (e) The Company and Guarantor may not assign or otherwise transfer their interest in this Agreement (including by a consolidation or a merger) without the Department's prior written consent, which shall not be unreasonably withheld. The Department may, as a condition to its consent, require that the assignee, transferee, or surviving entity in the consolidation or merger:
 - (i) assume in writing the obligations of the Company and/or Guarantor under this Agreement;
 - (ii) provide evidence satisfactory to the Department that it is solvent and that it is and shall remain able to pay its debts as they come due; and
 - (iii) represent and warrant to the Department that it is, and covenant that it shall remain, in compliance with the terms of this Agreement.

6.9 Assurance of Performance

Whenever the Department has grounds for insecurity with respect to the Company's or Guarantor's performance, it may, in writing, request assurances regarding the Company's and/or Guarantor's ability to perform their obligations under this Agreement, and the Company or Guarantor, as the case may be, shall provide such assurances, and such information and documentation as the Department may request.

6.10 Time of the Essence

The Parties acknowledge and agree that time is of the essence in the performance of this Agreement.

6.11 No Agency Relationship

The Company, the Guarantor, and their employees, officers, and executives are not employees or agents of the State or any agency thereof; nor are the State, its employees, officers, and executives, agents or employees of the Company or Guarantor. This Agreement shall not operate or be interpreted as a joint venture, partnership, trust, agency, or any other business relationship, nor shall it or the relationship of the Parties be construed as creating any fiduciary duty or fiduciary relationship.

6.12 No Third Party Beneficiaries

Except as herein specifically provided otherwise, this Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Department, the State, the Company, the Guarantor, and their respective successors and assigns. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person, other than as provided in Paragraph 6.7. It is the express intention of the State, the Department, the Company and the Guarantor, and their respective successors and assigns that any such person or entity, other than the State, the Department, and the Company, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

6.13 Notices

Unless the Department approves an alternate method of delivery, notices (other than service of legal process), reports, and certifications under this Agreement shall be sent by certified mail, return receipt requested; hand delivery; or by overnight courier; or, if mutually agreed by the Parties with respect to a given notice, by facsimile or e-mail (followed promptly by hand delivery, certified mail or overnight courier, if requested), as follows, unless the relevant Party provides prior written notice of a change in the following contact information:

If to the Department:

Secretary of Commerce
North Carolina Department of Commerce
301 North Wilmington Street
4301 Mail Service Center
Raleigh, North Carolina 27699-4301
Fax: (919) 733-8356

If to the Company or Guarantor:

Evergreen Packaging
Attn: Vice President & General Counsel
5350 Poplar Avenue, Suite 600
Memphis, Tennessee 38119 USA
Fax: (901) 821-5392

6.14 Amendments

This Agreement may not be amended or varied orally or by performance. Any amendment or variation in the terms of this Agreement must be made in written form and executed by duly authorized representatives of the Parties to be effective. No written amendment to or variation in the terms of this Agreement shall be effective unless it is signed by the Attorney General.

6.15 Entire Agreement

This Agreement constitutes the entire agreement between the Parties as to the matters set forth herein, and supersedes all prior and contemporaneous agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof, and may be executed simultaneously in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

6.16 Additional Matters

(a) Conflict

To the extent that any provision of this Agreement is determined to be in contradiction of or in conflict with any law or regulation of the State, the State law or regulation shall control.

(b) Compliance with Grant Ceiling

The Department shall monitor and administer the Grant provided to the Company so as to ensure compliance with the provisions of G.S. §143B-437.012(n).

(c) Force Majeure

In the event that the Company fails to achieve any of the conditions set forth herein as a result of *force majeure*, then the Department in its sole discretion, reasonably exercised, may extend the time period for achieving such conditions for the duration of the *force majeure* event, and such additional time as it determines, in its sole discretion, to be reasonable. *Force majeure* shall include the following types of events (and similar events) that are beyond the control of the Company:

- (i) flood;
- (ii) earthquake or other natural disaster;
- (iii) fire or other casualty;
- (iv) riot or other civil unrest;
- (v) court order issued by a court of competent jurisdiction;
- (vi) act of God;
- (vii) act of terrorism;
- (viii) war;
- (ix) destruction of all or substantially all of the Facility;
- (x) exposure to toxic substances; and
- (xi) condemnation or other taking of all or a material portion of the Facility.

(d) Exhibits

The following Exhibits are hereby incorporated by reference as though set forth in their entirety herein:

Exhibit A – G.S., Ch. 143B, Art. 10, Part 2G
Exhibit B – The Criteria
Exhibit C – EIC Findings
Exhibit D – The Application
Exhibit E – Public Records Provisions

In the event of a conflict in terms between this Agreement and Exhibits C or D, this Agreement shall prevail. In the event of a conflict in terms among Exhibits A-D, Exhibit A shall prevail.

(e) Good Faith and Fair Dealing

Each Party assumes a duty of good faith and fair dealing in the performance of this Agreement.

ARTICLE VII. GUARANTY

7.1 The Guaranty

The Guarantor unconditionally and irrevocably guarantees, as primary obligor and not as surety, the full, prompt, and punctual payment, and performance by the Company of all of its obligations, agreements, and covenants under and with respect to this Agreement.

7.2 Binding Obligation

This Guaranty is the valid and binding obligation of the Guarantor, enforceable in accordance with its terms, and the making and performance of this Guaranty will not violate any provision of or result in the acceleration of any obligation under any instrument or agreement, order, judgment, or decree to which the Guarantor is a party or by which it or any of its property is bound. This Guaranty shall operate as a continuing and absolute guaranty and shall remain in full force and

effect without regard to, and shall not be affected or impaired by, any amendment of the Agreement, any sale or transfer of all or any part of the Guarantor's ownership interest in the Company, any voluntary or involuntary liquidation, dissolution, sale of assets, insolvency, reorganization, bankruptcy or filing for bankruptcy of the Company or the Guarantor or any subsidiary, any rescission of a payment made hereunder, or any extension of time or other forbearance, compromise, adjustment, or indulgence granted to the Company by the Department or the State.

7.3 Waiver of Defense

The Guarantor unconditionally waives any defense available to it, including all suretyship defenses or defenses in the nature thereof, and all requirements of notice, demand, presentment or protest in case of any Default. The obligations of the Guarantor shall be primary and not secondary and the Department and the State shall not be required to proceed against or exhaust their remedies against the Company prior to enforcing their rights under the Guaranty.

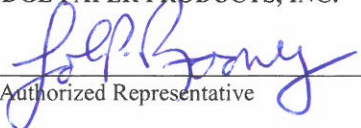
7.4 Additional Representations and Warranties; Consideration

In addition to the representations made in Article II, the Guarantor represents and warrants that it owns one hundred percent (100%) of the entity that owns one hundred percent (100%) of the membership interests of the Company, and will derive substantial benefit from the transactions contemplated by the Agreement. This Guaranty is made for the benefit of the Department and the State and to induce the Department and the State to enter into this Agreement, in consideration of the benefits provided to the Company and to the Guarantor by virtue of its ownership interests. There are no conditions precedent to the effectiveness of this Guaranty that have not been satisfied or waived.

Signature Page Follows

IN WITNESS WHEREOF, the Department, the Attorney General, the Company, and the Guarantor have executed four (4) originals of this Agreement, one of which shall be retained by each of the undersigned. The Parties agree that this document is executed under seal for purposes of any statute of limitations.

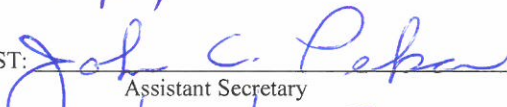
BLUE RIDGE PAPER PRODUCTS, INC.

By: 
Authorized Representative

Print Name: John P. Rooney

Title: President & CEO

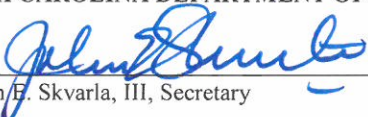
Date: 02/13/2015

ATTEST: 
Assistant Secretary

Date: 02/13/15

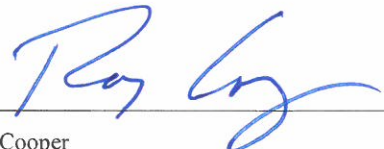
[SEAL]

NORTH CAROLINA DEPARTMENT OF COMMERCE

By: 
John E. Skvarla, III, Secretary

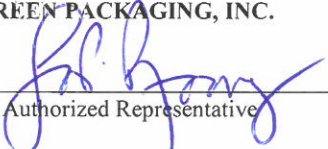
Date: 2-20-15

ATTORNEY GENERAL STATE OF NORTH CAROLINA


Roy Cooper

Date: 04/30/2015

EVERGREEN PACKAGING, INC.

By: 
Authorized Representative

Print Name: John P. Rooney

Title: President & CEO

Date: 02/13/2015

ATTEST: 
Assistant Secretary

Date: 02/13/15

[SEAL]

Exhibit B

JOSH STEIN
ATTORNEY GENERAL



March 16, 2023

Mike King
Chief Executive Officer
Pactiv Evergreen USA
1900 W. Field Court
Lake Forest, IL 60045

Mr. King:

Last week, Pactiv Evergreen announced that it would terminate operations at its paper mill in Canton, North Carolina, during the second quarter of 2023. The Canton mill has been a cornerstone of the community for more than 120 years, and news of its closure has dealt a devastating blow to the mill's employees, their families, and the region more broadly.

I write to remind Pactiv Evergreen of its legal obligations to the State of North Carolina and to the people who live in and around Canton. As North Carolina's chief law enforcement officer, I intend to hold Pactiv Evergreen responsible for any violations of those obligations to the fullest extent possible under the law.

To start, closure of the Canton mill constitutes a clear violation of a contract that Evergreen Packaging, Inc. and Blue Ridge Paper Products, Inc. (two Pactiv Evergreen subsidiaries) signed with the Department of Commerce and the Attorney General in February 2015. That contract—also known as a Job Maintenance and Capital Development Agreement ("JMAC Agreement" for short)—arose out of our State's Job Maintenance and Capital Development Fund Program. The program was created in 2007 to help "stimulate economic activity," "encourage capital investment," and "maintain high-quality jobs in North Carolina." N.C. Gen. Stat. § 143B-437.012.

When your subsidiaries signed the JMAC Agreement, they made a range of promises to the State of North Carolina. Most notably, they promised to maintain operations at the paper mill and to retain at least 800 full-time employees through December 31, 2024. JMAC Agreement §§ 3.3(b), 4.1. In exchange, Pactiv Evergreen received \$12 million, paid in six \$2 million increments. *Id.* §§ 1.40, 2.2, 4.1. The last of those \$2 million payments was issued in November 2021.

While North Carolina has upheld its end of the bargain, Pactiv Evergreen's announcement last week signals the company's clear intent to breach the JMAC Agreement. As a consequence of that breach, you are obligated to "repay all Grant funds disbursed to the Company under the Agreement." *Id.* § 5.3 (committing to repay all disbursed funds "if the Company fails to maintain operations at the Facility for the Agreement Term"). I hereby demand that you do so immediately.

I also remind you that Pactiv Evergreen is required to comply with all applicable environmental laws and regulations. I understand that there are currently a number of outstanding environmental compliance issues related to the Canton facility. I am also aware that you have been working to address these issues with the North Carolina Department of Environmental Quality. Closure of the facility will not relieve you of your responsibilities to comply with the environmental laws and regulations applicable to the facility, and I expect you to cooperate with the appropriate regulatory authority (or authorities) as you remediate the site.

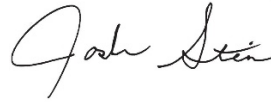
Please be advised that this notice is without prejudice as to any and all other rights and remedies that may be available to the State or any other governmental entities. *Cf.* JMAC Agreement § 5.4(a) (confirming that the remedies in the JMAC Agreement are not "intended to be exclusive of any other available remedy or remedies"). The Department of Justice is prepared to take any and all actions that are necessary and appropriate to ensure that Pactiv Evergreen and those acting in concert with it are held fully accountable for any violations of legal obligations to the State of North Carolina that may have occurred in connection with the incentive program or the operation of the mill. To that end, in the coming days, we will specify further information and records that we require to be produced.

You are hereby directed to ensure that Pactiv Evergreen and any affiliates that conduct business related to the mill in Canton retain all records, books, papers, emails, text messages, correspondence, objects, or other items—regardless of medium, whether internal or external, and whether electronic, hard-copy, or otherwise—that may be relevant to the operation of the mill from January 1, 2013, to the present. If any pertinent

person or entity has a document retention or destruction program or practice, I hereby demand that you suspend it immediately with respect to any documents that may be relevant.

I look forward to your company's cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Josh Stein". The signature is fluid and cursive, with the first name "Josh" and last name "Stein" clearly distinguishable.

Joshua H. Stein

CC:

The Honorable Roy Cooper, Governor of North Carolina
Eric Fletcher, General Counsel to the Governor
Sarah Boyce, Deputy Attorney General and General Counsel,
N.C. Department of Justice
Swain Wood, Special Counsel to the Attorney General,
N.C. Department of Justice
Daniel Mosteller, Deputy General Counsel, N.C. Department of Justice
Kevin Anderson, Director of Consumer Protection Division,
N.C. Department of Justice
Brian Rabinovitz, Special Deputy Attorney General,
N.C. Department of Justice
Secretary Machel Baker Sanders, N.C. Department of Commerce
Mary Elizabeth Wilson, General Counsel, N.C. Department of Commerce