

## ECONOMIC DEVELOPMENT GRANT AGREEMENT

**THIS ECONOMIC DEVELOPMENT GRANT AGREEMENT** made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **CRAVEN COUNTY** and **MOEN INCORPORATED**, is as follows:

### W I T N E S S E T H :

#### ARTICLE I

##### Definitions

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

**1.1 "Agreement"** – means and refers to this Economic Development Grant Agreement.

**1.2 "Moen"** – means and refers to Moen Incorporated, a corporation organized and existing under and by virtue of the laws of the State of Delaware and qualified to conduct business within the State of North Carolina.

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

**1.4 "New Facility Lease"** – means and refers to the Lease for Lots 13 and 14 and the New Facility to be constructed thereon entered into between Moen and SST Properties, LLC, as amended from time to time and at any time.

**1.5 "Effective Date"** – means and refers to the date upon which Lots 13 and 14 are acquired by SST Properties, LLC from County.

**1.6 "Parties"** – means and refers to County and Moen collectively.

**1.7 "New Facility"** – means and refers to Moen's +/- 200,000 square foot facility to be constructed on Lots 13 & 14 by SST Properties, LLC.

**1.8 "Lots 13 & 14"** – means and refers to that certain real property more particularly described as follows: all of lots 13 and 14 as shown and depicted on a December 6, 2002 survey by Robert M. Chiles, P.E., entitled "Minor Revision of Subdivision Plan Craven County

Industrial Park for Craven County,” reference being hereby made to said survey for a more accurate, complete and detailed description of the aforesaid lots.

**1.9 “New Facility Delivery Date”** – means and refers to the first date on which all of the following have occurred:

(i) SST Properties, LLC has obtained a non-temporary certificate of occupancy for the New Facility and Lots 13 & 14;

(ii) SST Properties, LLC has completed construction of the New Facility (including all related equipment, furnishing, parking, loading, access, utilities, infrastructure, landscaping and other improvements required to be completed under the New Facility Lease), all in accordance with the terms of the New Facility Lease, as determined by Moen in Moen’s sole discretion;

(iii) SST Properties, LLC has provided Moen with actual possession of the New Facility and Lots 13 & 14; and

(iv) Moen has obtained all governmental licenses and approvals necessary to occupy and operate the New Facility.

## **ARTICLE II**

### **Recitals**

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

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

**2.3** County has determined that the expansion and retention of industries located in County will benefit County and its citizens by increasing and diversifying both the personal property and real property ad valorem tax bases and thus tax revenue, which will make available to County more funds with which to improve the general health, safety and welfare of County’s citizens; by providing a greater number of jobs, which will result in salaries and benefits that are not currently available to citizens of County; by stimulating secondary economic activity which is directly beneficial to County and its citizens, including residential real estate development and

the expansion of existing services and businesses; by increasing and improving the infrastructure of County; by increasing the economic opportunity available to County's citizens and by improving the general technical training of County's workforce.

**2.4** Moen intends to lease, occupy and operate the New Facility following its construction by SST Properties, LLC. County has estimated that the real property comprising the New Facility, at its completion, will be valued at approximately \$11,000,000.00, inclusive of land, buildings, improvements, and equipment. Moen has estimated that the replacement cost of the equipment and machinery that Moen will cause SST Properties, LLC to install within the New Facility for Moen's operations will be approximately \$1,400,000.00. In conjunction with operating the New Facility, Moen also intends to directly or indirectly create no fewer than 75 full-time equivalent jobs at the New Facility. Moen has estimated that the average weekly wage for jobs to be located at the New Facility will be approximately \$619. County has determined that this estimated average weekly wage will exceed the average weekly wage paid to other employees in County. County has determined that Moen's proposed direct and indirect investment in the New Facility, Moen's operations of the New Facility, and Moen's direct and indirect creation of at least 75 jobs as described above will aid in remedying the previously identified economic and fiscal distresses suffered by County and its citizens.

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

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

In an effort to reward and encourage Moen's investment in the New Facility and associated creation of at least 75 full-time equivalent jobs, County does desire to provide Moen a cash grant of \$650,000.00 in order to offset some of Moen's expected costs associated with the New Facility. Moreover, County has determined that the agreements herein will necessarily result in an overall economic effect many times greater than the value of the proposed grant, that

the proposed grant will stimulate the local economy, promote business and result in the creation of a substantial number of jobs that pay at or above the average wage in County.

**2.6** County has determined that the probable average weekly wage to be paid by Moen for full-time equivalent jobs at the New Facility will be \$619 and that the expected tax revenues to be received by County from the New Facility, excluding tax revenues on account of the value of the underlying real estate, are substantial.

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

### **ARTICLE III**

#### **Term of the Agreement**

The term of this Agreement shall be a period of time beginning on the Effective Date and ending on the date the grant described herein is paid in full to Moen.

### **ARTICLE IV**

#### **Responsibilities of Moen**

**4.1** As consideration for the grant to be made pursuant to this Agreement, Moen agrees to undertake each of the following:

(a) Promptly notify County of the New Facility Delivery Date, once it has occurred.

(b) Occupy the New Facility and fill at least 75 full-time equivalent positions at the New Facility within 180 days of the New Facility Delivery Date;

(c) At all times during the term of this Agreement, pay timely and before delinquency all ad valorem property taxes assessed by County as to the New Facility and Lots 13 & 14 (except to the extent such ad valorem property taxes are the responsibility of SST Properties, LLC);

(d) Provide an affidavit to County verifying that Moen has complied with its obligations under **Sections 4.1(b) and 4.1(c)** hereof and hosting a tour for County representatives at the New Facility to observe that occupancy and employment has commenced (the “**Operations Notice**”);

(e) During the one-year period commencing on the first date Moen fills at least 75 full-time equivalent positions at the New Facility: (i) maintain an average of 75

full-time equivalent positions at the New Facility; and (ii) have no fewer than 50 full-time equivalent positions at the New Facility at any single time during such year, after which, Moen shall provide an affidavit to County verifying, to its knowledge, that Moen has complied with both of the foregoing conditions (the “**Anniversary Notice**”); and

(f) At all times during the term of this Agreement, act in accordance with a standard of good faith and fair dealing with County.

**4.2** Moen’s performance of all four actions described in Sections 4.1(a) through 4.1(d), inclusive, shall be the only conditions precedent to receipt of the First Installment described in Article V hereof. Moen’s failure to perform any one or more of the four actions described in Sections 4.1(a) through 4.1(d), inclusive, shall relieve County of any obligation to pay the First Installment. Notwithstanding the foregoing, Moen’s failure to complete any one or more of the actions described in Sections 4.1(a), 4.1(b) or 4.1(d) shall not be nor be deemed an event of default hereunder.

Moen’s performance of the actions described in Section 4.1(c) and Section 4.1(e) shall be the only conditions precedent to receipt of the Final Installment described in Article V hereof. Moen’s failure to perform the actions described in Section 4.1(e) shall relieve County of any obligation to pay the Final Installment but shall not be nor be deemed an event of default hereunder.

## **ARTICLE V**

### **Responsibilities of County**

**5.1** As consideration for this Agreement, County agrees to:

(a) Pay \$500,000 to Moen within thirty (30) calendar days of County receiving the Operations Notice (the “**First Installment**”) and \$150,000 to Moen within thirty (30) calendar days of County receiving the Anniversary Notice (the “**Final Installment**”); and

(b) At all times during the term of this Agreement, act in accordance with a standard of good faith and fair dealing with Moen.

**5.2** Notwithstanding anything to the contrary herein, County’s maximum payments to Moen pursuant to this Agreement shall not exceed \$650,000.00.

## ARTICLE VI

### Termination

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

**6.2 Unilateral Termination:** Either County or Moen may terminate this Agreement upon thirty (30) days prior written notice if the New Facility Delivery Date has not occurred by December 31, 2016.

## ARTICLE VII

### Indemnity and Representations

**7.1 Indemnity:** Moen shall indemnify County against all expenses, liabilities and claims, including reasonable attorneys' fees, that are actually incurred by County and have arisen from gross negligence or willful misconduct on the part of Moen in connection with Moen's affirmative obligations under this Agreement, which affirmative obligations specifically exclude completion of the actions described in Sections 4.1(c) or 4.1(e) hereof. County shall indemnify Moen against all expenses, liabilities and claims, including reasonable attorneys' fees, that are actually incurred by Moen and have arisen from gross negligence or willful misconduct on the part of County in connection with County's affirmative obligations under this Agreement, which affirmative obligations specifically includes payment of the grant described in Article V upon Moen's performance of the conditions precedent thereto.

**7.2 Representations:** Moen and County each represent and warrant to the other that it has the legal right and authority to enter into this Agreement and to perform its respective obligations hereunder.

## ARTICLE VIII

### Miscellaneous

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

**8.2 Severability:** If any of the provisions of this Agreement shall be held by a court of competent jurisdiction to be unconstitutional or unenforceable, the decision of such court shall not affect or impair any of the remaining provisions of this Agreement, and the parties shall, to the extent they deem to be appropriate, take such actions as are necessary to correct any such

unconstitutional or unenforceable provision. It is hereby declared to be the intent of the parties to this Agreement that this Agreement would have been approved and executed had such an unconstitutional or unenforceable provision been excluded therefrom.

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

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

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

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

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

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

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

**8.10 Limitations of Liability/ No Third Party Beneficiaries:** No elected official, officer, employee, agent, contractor or consultant of County shall have any personal liability to

Moen or any successor in interest to Moen with respect to the subject matter of this Agreement. No partner, member, shareholder, officer, director, trustee, beneficiary, employee, agent, contractor or consultant of Moen shall have any personal liability to County or any successor in interest to County with respect to the subject matter of this Agreement. Neither Party shall be liable for consequential, incidental, indirect, punitive or special damages, however caused, including, without limitation, for breach of warranty, breach or repudiation of contract, detrimental reliance, tort, strict liability, failure of essential purpose or otherwise, and even if advised of the likelihood of such damages. In furtherance and not limitation of the foregoing, each Party expressly acknowledges and agrees that there are no third-party beneficiaries to this Agreement; that no one or more individuals or groups of individuals have been guaranteed initial or continued employment in connection with the development, construction or operation of the New Facility; and that neither County nor Moen have guaranteed for any one or more taxpayers or citizens of County that any particular amounts or types of tax revenues will accrue to any one or more taxing bodies from the New Facility or Moen's operation thereof.

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

**8.12 Non-shareholder Contributions to Capital:** County hereby designates the grant described herein as a non-shareholder contribution to capital of Moen pursuant to Section 118 of the Internal Revenue Code of 1986 (and successor provisions thereto) and intends such grant to be a reimbursement for land and/or building costs incurred by Moen incurred for the New Facility.

## **ARTICLE IX**

### **Notices**

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

**County:** Craven County Board of Commissioners  
c/o County Manager



406 Craven Street  
New Bern, North Carolina 28560

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

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

**Moen:** Moen Incorporated  
101 Industrial Dr.  
New Bern, NC 28562  
Attn: New Bern Plant Manager (Yvonne Wold)

**With copies to:** Fortune Brands Home & Security  
520 Lake Cook Rd  
Deerfield, IL 60015  
Attn: General Counsel

**[SIGNATURE PAGE FOLLOWS]**

**SIGNATURE PAGE TO  
ECONOMIC DEVELOPMENT GRANT AGREEMENT  
BY AND BETWEEN  
CRAVEN COUNTY AND MOEN INCORPORATED:**

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

**CRAVEN COUNTY**

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

\_\_\_\_\_, CHAIRMAN

**ATTEST:**

\_\_\_\_\_  
GWENDOLYN BRYAN, CLERK

**MOEN INCORPORATED**

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

\_\_\_\_\_, its \_\_\_\_\_