

COUNTY OF CLEVELAND

**INCENTIVE AGREEMENT**

STATE OF NORTH CAROLINA

This Incentives Agreement (the "Agreement") is made and entered into as of the \_\_\_\_\_ **day of September, 2016**, by and between **CLEVELAND COUNTY, NORTH CAROLINA**, a political subdivision of the State of North Carolina, hereinafter referred to as "County;" and **King Plush, Inc., d/b/a STI, a North Carolina Corporation**, hereinafter referred to as the "Grantee" or the "Company." The location for the creation of the new jobs and investment is 515 Marie Street Kings Mountain, in Cleveland County, North Carolina, and is hereinafter referred to as the "Facility."

W I T N E S S E T H

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

WHEREAS, the Cleveland County Board of Commissioners (the "Board"), pursuant to North Carolina law, has adopted the Cleveland County Industrial Incentive Program (the "Program"), and which Program was in force at the time of this Agreement, in order to induce existing industry to expand in the County and target new industries to locate in the County, through the provision of various incentives including the payment of a stipulated grant amount from the County's General Fund, as determined in accordance with the provisions of the Program; and

WHEREAS, it has been determined by the Board, following a public hearing on **September 20th, 2016**, that Grantee meets the criteria for participation in the Program due to the Grantee's intention to retain three hundred five (305) full time employees and create over the next three (3) years approximately twenty-two (22) new, permanent full-time jobs with an anticipated annual **average wage of Twenty Eight Thousand Nine Hundred Nine Dollars and 00/100 (\$28,909.00)**, and make a net new investment of approximately **Eleven Million Five Hundred Thousand Dollars and 00/100 (\$11,500,000.00)** in in real property, personal property and other assets of the business (the "Project"), which will increase the population, taxable property base and business prospects for the County, and that certain incentives for the Project (the "Incentives") will encourage the Grantee to locate its operations in the County, and that it is in the public interest to provide assistance as authorized by North Carolina General Statute § 158-7.1; and

WHEREAS, Grantee acknowledges that the Incentives provided pursuant to this Agreement have served as inducement for Grantee to install its capital investment in the County.

NOW, THEREFORE, for good and valuable consideration as hereinabove recited, and the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do each contract and agree with the other as follows:

1. **Grant Criteria.** Grantee shall comply with the following conditions in order to qualify for initial and continuing grant payments pursuant to this Agreement. These conditions shall hereinafter be referred to as the “Grant Criteria.”

- (a) The Grantee shall begin its investment in the Project within twelve (12) months of the execution of this Agreement.
- (b) The Grantee shall maintain its investment (subject to normal depreciation) in the County for the duration of the Grant Term (hereinafter defined in Section 3).
- (c) The Grantee shall operate the Project substantially in compliance with all laws, rules, regulations, ordinances, and orders of all governmental bodies, agencies, authorities, and courts with applicable jurisdiction over the Project.
- (d) The County shall not be responsible for any aspect of the design or construction of the Project.
- (e) The Grantee shall be current in the payment of all ad valorem taxes and fees imposed on the Grantee by the County and any municipality in the County.
- (f) The Grantee shall, as of January 1 of each year during the Grant Term, list its buildings, machinery and equipment associated with the Project separately so that the County can identify incentivized vs. non-incentivized investment.

2. **Certification of Grant Criteria by the Grantee.**

- (a) In each year of the Grant Term, the Grantee shall request payment of an Incentive Grant (hereinafter defined) from the County (“Payment Request”). In connection with each Payment Request, the Grantee shall deliver to the County’s Finance Director a performance letter certifying that, in the prior year, the Grantee (i) satisfied all the Grant Criteria; (ii) agreed to the Assessed Value (hereinafter defined) of the Project as determined by the County Tax Assessor (subject to the County’s standard challenging policy); and (iii) paid all applicable local taxes on the Assessed Value of the Project (“Performance Certification”). Such Payment Requests shall be made to:

Brian Epley, Cleveland County Finance Director, or his successor  
Cleveland County Administration Bldg.  
311 East Marion St.  
Shelby, NC 28150

- (b) The County Tax Assessor shall determine, as of January 1<sup>st</sup> for each year of this Agreement following the effective date herein, the total investment in the Project that is subject to ad valorem property taxes in the County (the “Taxable Investment”) and the assessed value of the Taxable Investment (the “Assessed Value”).
- (c) The Grantee acknowledges that it has been informed by the County that the County is required by law, upon request, to disclose “Public Records” as that term is defined by N. C. Gen. Stat. § 132.1. Notwithstanding the immediately preceding sentence, the County acknowledges that some or all of the information made available by the Grantee to the County pursuant to this Agreement may be exempt from disclosure as a “Public Record” pursuant to N. C. Gen. Stat. §§ 132-1.2 or 132-6(d), and that all such information is proprietary. Some or all of the information made available to the County pursuant to this Agreement may be designated by the Grantee as confidential and as a trade secret at the time of disclosure to the County. The County, to the fullest extent allowed by state law, will hold such designated information as confidential. The County shall, if it receives a request for disclosure of any such information, promptly notify the Grantee of such request so that the Grantee may defend any claims or disputes arising from efforts of others to cause such trade secrets to be disclosed as a Public Record, and the County shall refrain from making any such disclosures unless or until it (i) receives the Grantee’s written permission to do so; or (ii) is compelled to do so by the final order of a court of competent jurisdiction. The Grantee shall have the right to direct any litigation of such dispute and shall indemnify the County for any legal fees and expenses incurred by the County in opposing such request for disclosure. The Grantee acknowledges that the County has met the disclosure requirements set forth in N. C. Gen. Stat. § 132-1.11(b).

3. **Grant Term and Payment.**

- (a) **Grant Term.** The term “Grant Term” refers to the consecutive three (3) year period beginning as set forth in this section and during which the Company is entitled to receive the Incentive Grant as set forth in this Agreement. Subject to the provisions below, the Grant Term will begin in the first year in which a Performance Certification is submitted by the Grantee and approved by the County, and will continue for three (3) years (ending on June 30<sup>th</sup> of the third year) as long as the Grant Criteria remain satisfied. Notwithstanding the foregoing, unless the

Company directs otherwise, the first year of the Grant Term shall not commence any earlier than July 1, 2017 (the date upon which the first invoice for payment of ad valorem property taxes in connection with the Taxable Investment for the Project is anticipated to be sent to the Grantee, such Taxable Investment having an assessed valuation on January 1, 2017 and the payment of which would be due by January 5, 2018). In the event of the above, the first Incentive Grant payment would be payable to the Company between January 1 and March 31, 2018 subject to the County's approval of Grantee's Performance Certification as set forth in this section. In order to provide the Grantee with sufficient time to acquire and install a substantial part of the Taxable Investment and, accordingly, receive a full three (3) consecutive years of Incentive Grants, the Company can elect a later date for the three (3) year Grant Term to begin.

Between January 1<sup>st</sup> and March 31<sup>st</sup> of each year of the three (3) year Grant Term the County shall make an incentive grant payment to the Grantee pursuant to the calculation provided in Section 4(c) herein ("Incentive Grant").

- (b) **Calculation of Grant Amount.** Upon the County's approval of Grantee's Performance Certification, the County's Tax Assessor, as of January 1<sup>st</sup> of each of the three (3) calendar years of this Agreement, shall determine the net new taxable investment of the Project ("Net New Investment") by subtracting the assessed value of the Grantee's property as of January 1, 2016 (such 2016 value is referred to herein as "Base Assessed Value") from the Assessed Value (as defined herein) for the applicable year. For each year of the Grant Term, the Net New Investment as calculated by the Tax Assessor shall be multiplied by the County tax rate then in effect (which, as of the date of this Agreement, the County acknowledges is equal to \$.0057) which amount shall then be multiplied by thirty percent (30%), and the resulting figure shall be the amount of the Incentive Grant payment to the Grantee for that fiscal year. It is the express intent of the parties that no grant funds shall be paid by the County pursuant to this Agreement until Grantee has first paid all applicable taxes due the County.
- (c) **Grant Criteria Compliance.** Incentive Grant payments shall continue throughout the Grant Term only so long as Grantee continues to satisfy the Grant Criteria and submits a Payment Request and Performance Certification to the County Finance Director no later than June 30<sup>th</sup> of the year following the year in which Grantee's ad valorem property taxes are paid. Failure to submit a Payment Request and Performance Certification by December 1<sup>st</sup> of the year following the year in which Grantee's ad valorem property taxes are paid shall result in forfeiture of the Incentive Grant payment for the applicable year. Grantee agrees to cooperate with the County by providing such information and such

access to Grantee's records as may be necessary to verify and substantiate initial and ongoing compliance with the Grant Criteria.

4. **Tax Payments.** If the Grantee at any time during the Grant Term fails to pay all applicable local taxes on the full value of its assets when due, then the County may terminate this Agreement and have no further obligation to Grantee for the payment of any grant award or the provision of any other incentive. Notwithstanding the foregoing, the County shall not terminate this Agreement due to the Grantee challenging the applicable taxes owed under Article 19 of Chapter 105 of the North Carolina General Statutes. Prior to termination on the basis of Grantee's failure to pay applicable taxes when due, County shall provide ninety (90) days written notice to Grantee stating that taxes are delinquent. If the taxes have not been paid upon the expiration of this ninety (90) day period following Grantee's receipt of notice, then County may terminate this Agreement.

5. **Notice.** Formal notices, demands, and communications between the County and the Grantee shall be sufficiently given if personally delivered or if dispatched by registered or certified mail, postage prepaid, return receipt requested, or by a nationally recognized overnight courier to the principal offices of the County and the Grantee. Such written notices, demands and communications may be sent in the same manner to such other addresses as either Party may from time to time designate by formal notice hereunder.

**If to County:**

Cleveland County  
County Administration Bldg.  
Second Floor  
311 East Marion Street  
Shelby, NC 28150  
ATTN: County Manager

**With copy that shall not constitute notice to:**

Andrea Leslie-Fite, Attorney at Law  
Cleveland County Administration Bldg.  
311 East Marion Street  
Shelby, NC 28150

**If to the Grantee:**

**John Kay, President  
Kings Plush, Inc. d/b/a STI  
PO Box 398  
Kings Mountain, NC 28086**

**With copy that shall not constitute notice to:**

6. **Agreement Terms.** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors in interest. This Agreement contains the total agreement between the parties and may only be altered or amended by the parties hereto in writing. If this Agreement, or any provision thereof, is determined to be invalid, unlawful or otherwise null and void by any court of competent jurisdiction, then the remainder of this Agreement will remain valid and enforceable.

7. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of North Carolina. Exclusive venue for any disputes arising hereunder is conferred upon the General Courts of Justice of the State of North Carolina sitting in Cleveland County, North Carolina.

8. **Paragraph Headings.** Any paragraph headings contained in this Agreement are for convenience only and in no way enlarge or limit the scope or meaning of the various and several paragraphs contained herein.

9. **Assignment, etc.** Grantee shall not assign, sublet or transfer any rights under or interest in this Agreement (including, but without limitation, monies that may become due or monies that are due) without the written consent of County which consent shall not be unreasonably withheld. Unless specifically stated to the contrary in any written consent to assignment, no assignment shall release or discharge the assignor from any duty or responsibility under this Agreement.

10. **Default.** It shall be an Event of Default if any one or more of the following events shall occur for any reason whatsoever (and whether such occurrence shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

- (a) If Grantee, except in the event of force majeure, shall fail to observe and perform any material provision of this Agreement and such failure shall continue for a period of thirty (30) or more days after the giving by the County of written notice of such failure to Grantee; or
- (b) If any material representation, warranty or other statement of fact contained in this Agreement or in any writing, certificate, report or statement furnished by Grantee to the County in connection with the transaction described in this Agreement shall be false or misleading in any material respect when given; or
- (c) If Grantee shall be unable to pay its debts generally as they become due; files a petition to take advantage of any insolvency statute; makes an assignment for the benefit of creditors; commences a proceeding for the appointment of a receiver, trustee, liquidator or conservator of itself or of the whole or any substantial part of its property; files a petition or answer seeking reorganization or arrangement or similar relief under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state; or
- (d) If a Court of competent jurisdiction shall enter an order, judgment, or decree appointing a custodian, receiver, trustee, liquidator, or conservator of Grantee or of the whole or any substantial part of its properties, or approves a petition filed against Grantee seeking reorganization or

arrangement or similar relief under the federal bankruptcy laws or any other applicable law or statute; or if, under the provisions of any other law for the relief or aid of debtors, a court of competent jurisdiction shall assume custody or control of Grantee or of the whole or any substantial part of its properties.

**11. Statutory Authority for Incentive Grant.** Both Grantee and the County acknowledge that any and all monies appropriated and expended by the County for economic development incentives as provided in this Agreement are for a bona fide public purpose and are expended in good faith reliance on North Carolina General Statute § 158-7.1. The County represents and warrants to the Grantee that the County has made all findings and determinations required by law and has taken all action necessary to authorize the approval of the incentives described herein and the execution, delivery and performance of this Agreement, and that this Agreement is a valid, legal and binding obligation of the County, enforceable against it in accordance with its terms. In the event a court of competent jurisdiction, after final appeal, rules in a lawsuit to which either Grantee or the County is a party, that the monies expended by the County pursuant to this Agreement were not offered and accepted in good faith and pursuant to and in compliance with North Carolina General Statute § 158-7.1 and, further, that such monies must be repaid, Grantee will make such repayment. If any incentives provided hereunder, including the Incentive Grants, or any portion thereof, are deemed by a court of competent jurisdiction to be ultra vires or not authorized by the laws or Constitution of the State of North Carolina, then the County will use reasonable efforts to provide to the Grantee equivalent incentives (support having a similar financial net present value) as allowed by law. Further, if any elected officials of the County are found by a court of competent jurisdiction, after final appeal, to be personally liable for any of the monies so expended, and such liability is not covered by the County's public officials' liability insurance, then Grantee will indemnify such elected officials individually to the extent of the monies expended by the County pursuant to this Agreement, but exclusive of court costs and attorney fees. The County agrees to maintain adequate public official liability coverage, consistent with that maintained by other similarly situated counties in North Carolina. The County agrees to require that its insurer(s) providing such coverage waive any subrogation rights it or they may have against Grantee in connection with such coverage, and the County waives [on behalf of itself and its insurer(s)] any claim or subrogation rights against Grantee to the extent covered by such insurance coverage. In the event one or more lawsuits are brought against the County or any County elected official challenging the legality of this Agreement, then (a) the County shall exercise its best efforts to defend against any and all such lawsuits, including appealing any adverse judgment to the appropriate Court, and (b) the County will promptly notify the Grantee in writing and allow the Grantee to participate in the defense of any challenge, at the Grantee's expense and with counsel of the Grantee's choosing. The indemnification by the Grantee shall not apply if neither the Grantee nor any of its representatives participated in the improper acts of the County officials.

*(The rest of this page is intentionally left blank)*

IN WITNESS WHEREOF, the parties hereto, acting under authority of their respective governing bodies, have caused this contract to be duly executed, this the day and year first above written.

**CLEVELAND COUNTY,  
NORTH CAROLINA**

ATTEST:

By: \_\_\_\_\_  
Henry Earle,  
Cleveland County Clerk

By: \_\_\_\_\_  
Jason Falls,  
Chairman, Board of  
Commissioners

**Kings Plush Inc., dba STI**

By: \_\_\_\_\_  
\_\_\_\_\_,  
\_\_\_\_\_