

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2013	2014	2015	2016	2017
Capital Expenditures					
Operating Costs					
External Revenues	\$215,168	\$221,623	\$228,272	\$235,120	\$242,173
Program Income					
In-Kind Match (County)					
NET FISCAL IMPACT	\$215,168	\$221,623	\$228,272	\$235,120	\$242,173

# ADDITIONAL FTE POSITIONS (Cumulative)					
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Is Item Included In Current Budget? Yes _____ No X

Budget Account No.:

Fund _____ Dept _____ Unit _____ Object _____ Program Code/Period _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

The source of funds is in the form of Ad Valorem tax exemption for a seven (7) year period. The fiscal impact calculation is based on a valuation assessment of \$45 Million. Using the current millage rate, the PBC tax revenue is estimated to be \$215,168 (see 10/18/11 Agenda Item 5A-2). A 3% increase was assumed per year thereafter.

C. Departmental Fiscal Review: Shairrette Major, Fiscal Manager I 4-17-13
 4/17/13

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

OFMB 4/23/13 4/18/13 4/24/13 5/7/13
 Contract Development and Control 5-7-13

B. Legal Sufficiency: 5/7/13
 Chief Assistant County Attorney

C. Other Department Review:

 Department Director

Economic Development Incentive Grant Agreement

THIS AGREEMENT, effective as of this 1st day of June, 2013, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida, (hereinafter the "COUNTY") and **FLORIDA SOUTH DIVISION, LLC**, a Florida Limited Liability Company, whose Federal I.D. Number is 45-3364725, its successors and assigns (hereinafter the "COMPANY").

PART I RECITALS

WHEREAS, it is the policy of the COUNTY to encourage and stimulate economic growth in Palm Beach County by either attracting new businesses to Palm Beach County or by assisting local expanding businesses within Palm Beach County that would otherwise expand elsewhere; and

WHEREAS, the creation of new full time employment opportunities for residents of Palm Beach County and the tax revenues resulting from business relocation or expansion within Palm Beach County is beneficial to the local economy; and

WHEREAS, the State of Florida has determined that counties may expend funds to attract and retain business enterprises, and that the use of public funds toward the achievement of such economic development goals constitutes a public purpose; and

WHEREAS, the COUNTY has determined that offering an Economic Development Incentive Grant encourages either existing businesses to remain and/or expand, or new businesses to establish a facility in Palm Beach County and thereby create employment opportunities for the residents of Palm Beach County; and

WHEREAS, the COMPANY is committing to construct a 650,000 sf +/- facility, which will accommodate a distribution center and regional headquarters representing \$55 Million in capital expenditures, and create 95 New Jobs within three (3) years after the receipt of the Certificate of Occupancy, at an Average Annual Wage of \$46,100; and

WHEREAS, the Board of County Commissioners on October 18, 2011, conceptually approved an Ad Valorem Tax Exemption to COMPANY in an amount not to exceed \$1,700,000 over a seven (7) year period; and

WHEREAS, the COUNTY finds and declares that it is in the public interest to award an Economic Development Incentive Grant to COMPANY pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual covenants hereinafter contained, the parties agree as follows:

PART II DEFINITIONS

1. **Definitions:** The below terms as used in this Agreement shall mean:

- A. **New Job:** Shall include an employee in a full time job working a minimum of 1,820 hours annualized (inclusive of vacation, holidays, sick leave, and other paid activities), a Full Time Equivalent Job, a Relocated Employee, or a Full Time Contractor Employee. Each New Job shall also:
- (1) Result in a net increase in the number of the COMPANY'S Palm Beach County employees or Full Time Contractor Employees; and
 - (2) Involve only an employee working on-site at the COMPANY'S Palm Beach County facility at the address shown in Exhibit A attached hereto and made a part hereof, or Full Time Contractor Employees whose principal job is delivering product from the address shown in Exhibit A to COMPANY retail stores in south Florida.



- B. **Full Time Equivalent Job:** Shall mean any two or more part-time employees whose sum total work hours, inclusive of vacation and holidays, equals 1,820 hours annualized. Notwithstanding the foregoing, the 1,820 hours annualized shall be determined pursuant to the job requirement of the employee, and not the actual number of hours clocked at work, allowing for vacation, holiday and sick leave.
- C. **Relocated Employee:** Shall mean either an employee in a full time job working a minimum of 1,820 hours annualized (inclusive of vacation and holidays), or a Full Time Equivalent Job that is identified on the COMPANY'S payroll who transferred to the COMPANY'S facility in Palm Beach County from a COMPANY facility in a location other than one located in a county adjacent to the borders of Palm Beach County. Notwithstanding any provision in this Agreement to the contrary, for all purposes under this Agreement it shall be deemed that any employee in a full time job working a minimum of 1,820 hours annualized (inclusive of vacation and holidays), or a Full Time Equivalent Job that is identified on the COMPANY'S payroll, who transferred to the COMPANY'S facility in a location other than one located in a county adjacent to the borders of Palm Beach County prior to the Effective Date for the purpose of effectuating COMPANY'S facility in Palm Beach County is a Relcated Employee deemed to have transferred to Palm Beach County after the Effective Date and shall constitute a New Job.
- D. **Full Time Contractor Employee:** Shall mean any new Full Time Equivalent Job created and employed by the transportation firm with which COMPANY contracts solely for delivery of products from the distribution center to the COMPANY stores, whose sum total work hours for COMPANY, inclusive of vacation and holidays, equals 1,820 hours annualized.
- E. **Average Annual Wage:** Actual Annual Wage, salaries, and other payments for Full Time Equivalent Jobs to be created under this Agreement as follows:

wages; salaries; commissions; bonuses; drawing accounts (advances to employees against future earnings); prizes and awards (if given by employer for employment); vacation pay; payment to employees of difference between regular pay and jury pay; payments to employees temporarily absent while in military service; wages earned before death but paid after death; dismissal pay; sick pay (not made under a plan or system); and supplemental payments (difference between workers' compensation and employee's salary).

PART III WHOLLY OWNED AFFILIATES

1. **Establishment of Wholly Owned Affiliates:** The COMPANY may create or purchase wholly owned affiliates in connection with activities undertaken by the COMPANY pursuant to this Agreement. All wholly owned affiliates, thus created or purchased, shall be under the full control of the COMPANY, and the COMPANY shall oblige all such wholly owned affiliates to comply with the requirements of this Agreement as provided for herein.
2. **Notification of Wholly Owned Affiliates:** The COMPANY shall, within thirty (30) days of its creation or purchase of wholly owned affiliates in connection with this Agreement, notify the COUNTY in writing of such wholly owned affiliates by divulging to the COUNTY the name of such entity and the location of the entity's facilities, and the COMPANY shall provide the COUNTY, to the COUNTY'S satisfaction, documentation evidencing the COMPANY'S full control of such wholly owned affiliates.

3. **Acceptance of Jobs Created by Affiliates:** Notwithstanding that COUNTY is allowing COMPANY and the wholly owned affiliates of COMPANY to create and maintain said jobs, COMPANY agrees that this Agreement is solely between COMPANY and COUNTY and COUNTY has the right, in its sole and absolute discretion to reject or accept any or all jobs created by COMPANY'S wholly owned affiliates.

**PART IV
COMPANY OBLIGATIONS**

1. **New Job Creation:** The COMPANY shall create 95 New Jobs within three (3) years after the receipt of the Certificate of Occupancy.
2. **Existing Job Retention:** Not applicable.
3. **New Job Maintenance:** The COMPANY shall maintain the required New Jobs for a period of five (5) years from the date each New Job was created (The "Maintenance Period").
4. **Average Annual Wage:** Within three (3) years after receipt of the Certificate of Occupancy the Average Annual Wage per annum for New Jobs shall be equal to or greater than \$46,100 for all New Jobs created under this Agreement.
5. **Capital Investment:** By the third anniversary of the date of this Agreement, the COMPANY shall make a minimum cumulative Capital Investment of \$55 Million at the address shown on Exhibit A attached hereto and made a part hereof.

**PART V
PERFORMANCE PERIOD**

1. **Effective Date:** This Agreement is effective the 1st day of June, 2013.
2. **Termination Date:** This Agreement shall terminate on the 30th day of March, 2023.

**PART VI
INCENTIVE AMOUNTS**

1. **Ad Valorem Tax Exemption:** The COMPANY has been conceptually approved to receive an Ad Valorem Tax Exemption not to exceed \$1,700,000 over a seven (7) year period in consideration of the capital investments, new jobs created and maintained and Average Annual Wage memorialized under this Agreement. This conceptual approval was contingent upon the determination that the project meets the requirements under Florida Statute 196.012 for an Ad Valorem Tax Exemption.

The COMPANY will be required to submit a Formal Application for Ad Valorem Tax Exemption on the application entitled "Economic Development Ad Valorem Property Tax Exemption, Chapter 196.1955, Florida Statutes Form 418" by March 1st in the year that the exemption is desired to take effect. This application will be reviewed by the Palm Beach County Property Appraiser for eligibility as outlined in the County's Ordinance No. 2012 - 042.

The COMPANY, if eligible, will be granted an Ad Valorem Tax Exemption for 100% of the assessed value of all qualifying tangible personal property acquired and added improvements to real property for an amount not to exceed \$1.7 Million over a seven (7) year period, excluding land taxes levied by Palm Beach County, where Palm Beach County is the taxing authority. The exemption does not apply to taxes levied by a municipality, school district, or water management district, or to taxes levied for the payment of bonds or taxes authorized by a vote of the electors.

2. **Revocation of Ad Valorem Tax Exemption:** Should the COMPANY fail to file the annual report with the Board on or before March 1st of each year the exemption has been granted as required by the Ad Valorem Tax Exemption Ordinance, or fail to continue to meet the definition of a new business or an expansion of an existing business, and/or fail to fulfill any other representation made to the Board during the application process, including the creation and maintenance of the total number of new jobs identified by the COMPANY in the application (Exhibit "A"), the Board may adopt an ordinance revoking the Ad Valorem Tax Exemption.

The revocation of the Ad Valorem Tax Exemption may occur if the COMPANY fails to fulfill its obligations as provided for under the ordinance granting the COMPANY an exemption. The effective date for revocation of the exemption will be identified in the ordinance.

Upon revocation, the Board shall immediately notify the Property Appraiser.

For any year that taxes may have been exempted and the Board finds that the COMPANY was not entitled to the exemption, such taxes may be recovered and the Property Appraiser will assist the Board to recover any taxes exempted. The Board may recover taxes exempted throughout the term of the Agreement.

Should the COMPANY fail to file the annual exemption renewal application with the Property Appraiser on or before March 1st of each year the exemption has been granted as required in the Ad Valorem Tax Exemption Ordinance and in accordance with Chapter 196.011(1)(a), Florida Statutes, or fail to continue to meet the definition of a new business or an expansion of an existing business, the Property Appraiser may deny the exemption in accordance with Chapter 196.193(5), Florida Statutes.

Nothing herein shall prohibit the COMPANY from reapplying for an ad valorem tax exemption pursuant to State law.

PART VII ADVERTISING, RECRUITING AND JOB INFORMATION

1. **Job Advertising:** COMPANY shall undertake advertising of the job openings in Palm Beach County to provide sufficient notice to Palm Beach County's residents concerning the availability of COMPANY'S new positions. The advertising regarding the new jobs at COMPANY'S facility in Palm Beach County must be countywide, include Hispanic and Minority news venues, and not limited to a single advertisement.
2. **Job Availability:** The COMPANY shall coordinate with the following agencies regarding new job opportunities:
 - A. Workforce Alliance, Inc.
1951 N Military Trail, Suite D
West Palm Beach, FL 33409-4794
Attention: Executive Director
 - B. The Glades Workforce Development Center
1085 South Main Street
Belle Glade, FL 33430
Attention: Chairperson
3. **Low-income Residents:** The COMPANY shall, to the greatest extent feasible, provide qualified low-income residents opportunities for training and employment at the COMPANY.
4. **Resident Preference:** The COMPANY shall, to the greatest extent feasible, without risk of violating any laws, develop and implement hiring policies that provide qualified Palm Beach County residents preference in the hiring process.



5. **Local Businesses:** The COMPANY shall to the extent feasible without risk of violating any laws, award contracts in connection with this Agreement to qualified eligible business concerns located in or owned in substantial part by persons residing in Palm Beach County.
6. **Transportation To and From Job Location:** The COMPANY shall provide the following information to employees it hires by posting such information on its web site or by providing in written form:
 - A. The bus stop location closest to COMPANY'S office;
 - B. The name and location of Tri-Rail train station closest to COMPANY'S office;
 - C. Information about COMPANY'S car pool program (if one exists); and
 - D. Directions to COMPANY'S office from Interstate 95.

PART VIII AUDITS AND REPORTS

1. **Annual Job Creation and Maintenance Reports:** The COMPANY shall provide the COUNTY'S Department of Economic Sustainability with an Annual Job Creation and Maintenance Report, satisfactory to the COUNTY in its sole discretion, acting reasonably, verifying the COMPANY'S compliance with the requirements of PART IV of this Agreement. Such Annual Job Creation and Maintenance Report shall comply with the following:
 - A. Identify each job created and the date it was created.
 - B. Identify each job created and the duration of its maintenance period to date.
 - C. Report on the Average Annual Wage for New Jobs that were created and maintained.
 - D. Report on the number of Palm Beach County residents hired to date.
 - E. The Annual Job Creation and Maintenance Report shall be submitted to the COUNTY'S Department of Economic Sustainability by June 15th of each year.
2. **Final Job Creation and Maintenance Performance Audit:** The COMPANY shall provide the COUNTY'S Department of Economic Sustainability a written Final Job Creation and Maintenance Performance Audit (hereinafter "Audit") satisfactory to the COUNTY in its sole discretion, acting reasonably, verifying the COMPANY'S compliance with the requirements of PART IV of this Agreement. Such Audit, which shall be prepared at the COMPANY'S sole cost and expense, shall comply with the following:
 - A. The Audit shall be conducted and prepared by a Certified Public Accountant (CPA) according to standards established by the American Institute of Certified Public Accountants and shall be submitted on the CPA's letterhead.
 - B. The CPA shall "examine" the COMPANY'S records, statements, and schedules and those of all wholly owned affiliates created or purchased by the COMPANY in connection with this Agreement, and those of the contractor retained for store deliveries, to verify the accuracy of the number of New Jobs created and maintained as required in Part IV of this Agreement, and to verify the Average Annual Wage for these New Jobs. The CPA shall express a written "opinion" in the Audit regarding the number of New Jobs created in compliance with this Agreement and the Average Annual Wage for these New Jobs.



- C. The CPA's report shall include examining evidence supporting the COMPANY'S schedules of New Jobs and the Average Annual Wage of the New Jobs and those of the wholly owned affiliates stated immediately above.
- D. The CPA's report must provide the Average Annual Wage for the below categories:
 - (1) All New Jobs: Identify the Average Annual Wage of all New Jobs including all exempt and non-exempt employees and all officers and senior corporate executives that are included in the number of New Jobs to be created as required by this Agreement.
 - (2) Low and Mid Echelon New Jobs Only: Identify the Average Annual Wage of all New Jobs as stated above, excluding from these calculations the Average Annual Wage of all officers and senior corporate executives.
- E. The accuracy of the number, hire dates and Average Annual Wage of all New Jobs as represented by the COMPANY shall be verified in the Audit by the CPA to the COUNTY'S satisfaction.
- F. The Audit may be performed in conjunction with other auditing services.
- G. A report by a CPA that is a "review or agreed-upon procedures report" on the COMPANY'S representations shall not be deemed to meet the Audit requirements of this Agreement.
- H. The Audit shall be submitted to the COUNTY'S Department of Economic Sustainability within sixty-three (63) months from the date the last New Job was created.

**PART IX
GENERAL CONDITIONS**

1. **Obligation and Annual Appropriation**: Not applicable.
2. **Non-Discrimination**: The COMPANY warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression. Upon receipt of proof of such discrimination, the COUNTY shall have the right to terminate this Agreement.
3. **Workers' Compensation and Employers' Liability**: The COMPANY shall maintain Workers' Compensation Insurance & Employers' Liability in accord with Florida Statutes Chapter 440 for all jobs set forth in this Agreement. Coverage shall be provided on a primary basis.
4. **Convicted Vendor List**: As provided in F.S. 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, the COMPANY certifies that it, and its affiliates who will perform hereunder, have not been placed on the Convicted Vendor List maintained by the State of Florida Department of Management Services within thirty-six (36) months immediately preceding the date of execution of this Agreement by the COUNTY. This notice is required by F.S. 287.133(3) (a).
5. **Successors and Assigns**: The COUNTY and the COMPANY each binds itself and its partners, wholly owned affiliates, successors, executors, administrators and assigns to the other party and to the partners, wholly owned affiliates, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. COMPANY has the right to assign this Agreement to an affiliated company authorized to do business in the State of Florida provided written notice is provided to COUNTY. COUNTY consent shall

not be required for COMPANY to assign this Agreement to an affiliated company. Except as above, neither the COUNTY nor the COMPANY shall assign, sublet, convey or transfer its interest in this Agreement without the prior written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the COUNTY, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the COUNTY and the COMPANY. In the event that the COUNTY determines that the COMPANY is in violation of this paragraph, the COUNTY shall have the right to terminate this Agreement and to seek restitution of the funds paid by the COUNTY to the COMPANY.

6. **Name Change:** Prior to the COMPANY changing the name of the COMPANY the COMPANY shall immediately provide the COUNTY written notice regarding this change to COMPANY'S name.
7. **Material Change of Circumstances:** The COMPANY shall immediately notify the COUNTY of any material change of circumstances for the COMPANY'S business operations in Palm Beach County. For the purposes hereof, material change of circumstance shall include, but not be limited to, the failure of the COMPANY to diligently and actively pursue fulfillment of the terms hereof, the sale or transfer of COMPANY'S assets for the benefit of creditors, COMPANY'S relocation outside of Palm Beach County, the suspension, closing or cessation of operation of the COMPANY, voluntary or involuntary bankruptcy or an assignment for the benefit of the COMPANY'S creditors. In the event of a material change of circumstances, the COUNTY shall have the right to terminate this Agreement, whereupon the COUNTY shall have no further obligation to the COMPANY under this Agreement.
8. **Entire Agreement Between Parties:** The COUNTY and the COMPANY agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto. No provision of this Agreement is intended to, or shall be construed to create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the COUNTY and/or COMPANY.
9. **Waiver:** If the COUNTY shall waive any provisions of the Agreement, or shall fail to enforce any of the conditions or provisions of this Agreement, such waiver shall not be deemed to be a continuing waiver and shall never be construed as such; and the COUNTY shall thereafter have the right to insist upon the enforcement of such conditions or provisions.
10. **Invalid or Unenforceable Terms:** If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.
11. **Performance Time and Liability:** The parties expressly agree that time is of the essence in this Agreement and the failure by a party to complete performance within the time specified, or within a reasonable time if no time is specified herein, shall, at the option of the other party without liability, in addition to any other rights or remedies, relieve the other party of any obligation to accept such performance.
12. **Defaults:** The occurrence of any one or more of the following events shall constitute a Default hereunder:
 - A. Vacating, abandoning, or closing the COMPANY'S business.
 - B. Relocating the COMPANY'S existing business in Palm Beach County outside Palm Beach County.

- C. Failure of the COMPANY to create the number of New Jobs as required in this Agreement.
 - D. Failure of the COMPANY to maintain the required number of New Jobs for the entire Maintenance Period.
 - E. Failure of the COMPANY to make the capital investments required.
 - F. Failure of the COMPANY to submit to the COUNTY the Annual Job Creation and Maintenance Report and/or the Audit as required in this Agreement.
 - G. Failure of the COMPANY to observe or perform any of the terms, covenants, conditions, obligations, or provisions of this Agreement to be observed or performed by the COMPANY where such failure continues for a period of thirty (30) days after written notice thereof from the COUNTY to the COMPANY; provided, however, that if the nature of COMPANY'S default is such that more than thirty (30) days are reasonably required for its cure, then COMPANY shall not be deemed to be in default if the COMPANY commenced such cure within said thirty (30) day period and thereafter diligently pursues such cure to completion.
 - H. The making by the COMPANY of any general assignment, or general arrangement for the benefit of creditors.
 - I. The filing by or against COMPANY of a petition to have the COMPANY adjudged bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against COMPANY, the same is dismissed within ninety (90) days.
 - J. The appointment of a trustee or receiver to take possession of substantially all of COMPANY'S assets where possession is not restored to COMPANY within forty-five (45) days.
 - K. The attachment, execution or other judicial seizure of substantially all of COMPANY'S assets located within Palm Beach County where such seizure is not discharged within forty-five (45) days.
 - L. The discovery by the COUNTY that any financial statement relating to this Agreement given to the COUNTY was materially false.
13. **Remedies:** In the event of a Default by the COMPANY, the COUNTY may at any time thereafter, terminate this Agreement. In such event, the COUNTY shall be entitled to recover immediately upon demand from the COMPANY or any party joining in or consenting to this Agreement, all taxes exempted by the COUNTY, as applicable, pursuant to this Agreement. Except as set forth in Part IX Subpart 12, Subsections I, J and K, COMPANY shall be granted thirty (30) days from notification of default to cure any deficiency that triggered said default.
14. **Law and Remedy:** This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement shall be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.
15. **Regulations:** The COMPANY shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include conflict of interest and collusion. The COMPANY is presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may affect the services offered.



16. **Headings:** The headings of the sections, paragraphs, divisions, subdivisions, part and subparts of this Agreement are for the convenience of reference only, and shall not limit or otherwise affect any of the terms hereof.
17. **Number and Gender:** Whenever the singular or plural number, masculine or feminine or neuter gender is used herein, it shall equally include the others and shall apply jointly and severally.
18. **Access to Records:** Upon thirty (30) business days' notice and at any time during normal business hours and as often as the COUNTY deems necessary, there shall be made available by the COMPANY to the COUNTY for examination, all its records with respect to all matters covered by this Agreement. The COUNTY reserves the right to conduct an inspection of the COMPANY'S records regarding performance measures with respect to matters covered by this Agreement at any time for any period covered by this Agreement.
19. **Office of The Inspector General:** Palm Beach County has established the Office of Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed COUNTY contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the COMPANY, and its wholly owned affiliates, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.
20. **Indemnification and Hold Harmless:** The COMPANY agrees to protect, defend, reimburse, indemnify and hold the COUNTY, its agents, its employees and elected officers and each of them, free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages, including attorney's fees, and causes of action of every kind and character against and from the COUNTY which arise out of this Agreement. The COMPANY recognizes the broad nature of this indemnification and hold harmless clause, and voluntarily makes this covenant and expressly acknowledges the receipt of good and valuable consideration provided by the COUNTY in support of this clause in accordance with the laws of the State of Florida. This Paragraph shall survive the termination of the Agreement.
21. **Notices:** All notices from the COMPANY to the COUNTY and the COUNTY to COMPANY required or permitted by any provision of this Agreement shall be in writing and sent by registered or certified mail and addressed as follows:

TO COUNTY: DEPARTMENT OF ECONOMIC SUSTAINABILITY
 100 South Australian Avenue, 5th Floor
 West Palm Beach, FL 33406
 Attn: Sherry Howard, Deputy Director

With a copy to: Board of County Commissioners
 c/o Palm Beach County Attorney's Office
 301 N. Olive Avenue, Suite 601
 West Palm Beach, FL 33401
 Attn: Dawn Wynn, Senior Assistant County Attorney

TO COMPANY: FLORIDA SOUTH DIVISION, LLC
 1171 N State Road 7
 Royal Palm Beach, FL 33411
 Attn: Vice President



With a copy to: Aldi Inc.
1200 N. Kirk Road
Batavia, IL 60510
Attn: Terry Pfortmiller

Such addresses may be changed by written notice to the other party.

22. **Third Party Beneficiaries:** No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the COUNTY and/or COMPANY.
23. **Counterparts:** This Agreement, consisting of twelve (12) enumerated pages which include the exhibits referenced herein, may be executed in one or more counterparts, all of which shall constitute collectively but one and the same instrument.
24. **Force Majeure:** If COMPANY shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strike, lockouts, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, terrorism, fire or other casualty, or other reason of a similar or dissimilar nature beyond the reasonable control of the COMPANY, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay without jeopardizing the continuation of the exemption.

PART X REQUIREMENTS APPLICABLE TO WHOLLY OWNED AFFILIATES

In addition to instances where the requirements of this Agreement are expressly set forth to be applicable to wholly owned affiliates of the COMPANY, the requirements of the below listed Parts and Subparts shall also apply to all such wholly owned affiliates:

- A. PART IV: Subparts 1, 2, 3 and 4.
- B. PART VI: Subparts 1 and 2
- C. PART VII: Subparts 1, 2, 3, 4, 5 and 6.
- D. PART IX: Subparts 2, 3, 4, 6, 7, 12, 15, 18, 19 and 20.

IN WITNESS WHEREOF, the COMPANY and the COUNTY have caused this Agreement to be executed on the date first above written.

Signed, sealed and delivered in the presence of:

Witnesses:

FLORIDA SOUTH DIVISION, LLC a Florida limited liability company

Name: LYNN MOSER

By: Terry E. Pfortmiller

Signature: [Signature]

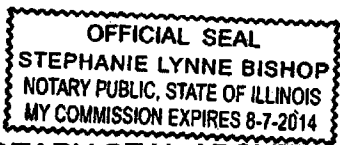
Terry E. Pfortmiller, Secretary/Treasurer of Aldi Inc. (Pennsylvania), a Pennsylvania corporation, its sole managing member of Aldi (Florida) LLC, a Florida limited liability company, being the sole member of Florida South Division, LLC, a Florida limited liability company

Name: DEBBIE FERHUSON

Signature: [Signature]

STATE OF ILLINOIS
COUNTY OF KANE

The foregoing instrument was acknowledged before me this 3rd day of MAY, 2013, by Terry E. Pfortmiller, Secretary/Treasurer of Aldi Inc. (Pennsylvania), a Pennsylvania corporation, sole managing member of Aldi (Florida) LLC, a Florida limited liability company, being the sole member of Florida South Division, LLC, a Florida limited liability company, who is personally known to me, or who produced _____ as identification and who did/did not take an oath.



(NOTARY SEAL ABOVE)

Signature: [Signature]

Notary Name: Stephanie Lynne Bishop
Notary Public - State of ILLINOIS

(COUNTY SEAL BELOW)

PALM BEACH COUNTY, FLORIDA, a Political Subdivision of the State of Florida

BOARD OF COUNTY COMMISSIONERS

ATTEST: Sharon R. Bock,
Clerk & Comptroller

By: _____
Steven L. Abrams, Mayor

By: _____
Deputy Clerk

Document No.: _____

Approved as to Form
And Legal Sufficiency

Approved as to Terms and Conditions
Department of Economic Sustainability

By: _____
Dawn S. Wynn,
Senior Assistant County Attorney

By: [Signature]
Sherry Howard,
Deputy Director

EXHIBIT A

**ECONOMIC DEVELOPMENT INCENTIVE GRANT AGREEMENT
BETWEEN PALM BEACH COUNTY AND FLORIDA SOUTH DIVISION, LLC**

COMPANY IDENTIFICATION AND INFORMATION

QACF application date: NA

Company Name: Florida South Division LLC

Existing Headquarters: 1200 N. Kirk Road, Batavia, IL 60510

Address of the company's facility in Palm Beach County:

1171 N State Road 7, Royal Palm Beach, FL 33411

Products/services to be provided from the company's facility in Palm Beach
County: Grocery/Retail Distribution

Business Type: Grocery Distribution

State of Florida Status: Active

State of Florida Filing Date: 9-21-2011

Qualification #: L11000108469

Federal ID Number: 45-3364725