

ORDINANCE NO. 522

AUTHORIZING THE TRANSFER OF ALL RIGHT, TITLE AND INTEREST IN, AND ALL RIGHTS AND OBLIGATIONS UNDER, THE INDUCEMENT AGREEMENT AND MILLAGE RATE AGREEMENT AND THE LEASE AGREEMENT BETWEEN FAIRFIELD COUNTY, AS LESSOR, AND MC SQUARED FINISHING SOLUTIONS, LLC, AS LESSEE, INCLUDING AMONG OTHER MATTERS, THE PAYMENT OF A FEE IN LIEU OF TAX TO FAIRFIELD COUNTY.

WHEREAS, Fairfield County, South Carolina ("County"), acting by and through its County Council ("County Council"), is empowered by the provisions of the South Carolina Constitution ("Constitution"), the South Carolina Code of Laws, as amended ("Code"), and the case law of the courts of the State of South Carolina to offer and provide certain privileges, benefits, and incentives to prospective industries as inducements for economic development within the County; and

WHEREAS, the County is authorized and empowered by the provisions of Title 4, Chapter 12 of the Code ("Act"), in conjunction with other portions and provisions of Title 4 of the Code, including, but not limited to, Chapters 9 and 29, to acquire or cause to be acquired properties constituting a "project" as defined in the Act; and

WHEREAS, the County is empowered by the Act and the Code to enter into agreements with any industry to construct, operate, maintain, and improve such project, to enter into or allow financing agreements for such project, and to accept any grants for such project; and

WHEREAS, through employment of the powers granted by the Act, the County will promote the economic and industrial development of the State of South Carolina ("State") and develop its trade by inducing manufacturing and commercial enterprises to locate and remain in the State, where they will use and employ the manpower, agricultural products, and natural resources of the State and, further, will benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise provided locally; and

WHEREAS, the County is authorized by the Act to execute a lease agreement with respect to such project; and

WHEREAS, in the exercise of the foregoing powers, the County and MC Squared Finishing Solutions Holdings, LLC, a South Carolina limited liability company formerly known as MC Squared Finishing Solutions, LLC ("Assignor"), have heretofore entered into a Lease Agreement dated as of July 6, 2004, and into an Inducement Agreement and Millage Rate Agreement, also dated as of July 6, 2004 (collectively, "Agreements"), providing for certain incentives, including, without limitation, payment of a fee in lieu of taxes; and

WHEREAS, certain assets of Assignor, including all its right, title, and interest in, and all its rights, responsibilities and obligations under, the Agreements and in the Project are now being assigned to MC Squared Finishing Solutions, LLC, a limited liability company newly organized and existing under the laws of the State of South Carolina ("Assignee") or its affiliates as authorized by Section 9.01 of the Lease Agreement and § 4-12-30(M) of the Code, and Assignee assumes all such rights, responsibilities and obligations ("Transfer"); and

WHEREAS, Assignor and Assignee have requested the consent of the County to the Transfer as required pursuant to Section 9.01 of the Lease Agreement and § 4-12-30(M) of the Code; and

WHEREAS, the County has determined the Project will continue to directly and substantially benefit the general public welfare of Fairfield County by increasing the *ad valorem* tax base and by providing services, employment, recreation, or other public benefits not otherwise provided locally; and

WHEREAS, the County has determined, on the basis of the information supplied to it by the companies, that the Project will continue to be a "project" as that term is defined in the Act and that the Project will continue to subserve the purposes of the Act; and

WHEREAS, Section 3(c) of Ordinance No. 479 enacted on May 10, 2004, authorizes the required County approval for transfers of this nature to be given on behalf of the County by the Chairman of the County Council upon affirmative action of the County Council after consultations with the County Attorney with respect to such approval.

NOW, THEREFORE, BE IT ORDAINED by the County Council of Fairfield County, South Carolina:

Section 1. Approval of Transfer. The County hereby approves the transfer of all assets and liabilities relating to the Project, as such term is defined in the Lease Agreement, including the assignment of all right, title, and interest in, and all rights and obligations under, the Agreements from Assignor to Assignee.

Section 2. Waiver of Default. The County hereby affirms, as of the date of the adoption of this Ordinance, to the best of its knowledge, the Agreements are not in default, and the County is unaware of any condition, event or act which, with the passage of time, would result in a default under the Agreements, as of the date of the adoption of this Ordinance, including, specifically, any default caused by (a) the assignment and assumption of the Lease Agreement herein to Assignee; (b) the failure by Assignor to timely file property tax returns and to pay any associated *ad valorem* or fee-in-lieu of property taxes; (c) any untrue material misrepresentation or warranty made by Assignor in connection with the Lease Agreement, including any statement or certificate delivered in connection with the execution and delivery of the Lease Agreement; (d) any knowing violation or breach of the Lease Agreement by Assignor; (e) the abandonment of the Project by Assignor; and/or (e) the filing of a petition in bankruptcy against Assignor or Assignor's insolvency; provided, however, that nothing herein shall prevent the County from filing, and continuing to pursue payment of, a claim against Assignor in a bankruptcy case for any unpaid *ad valorem* or fee-in-lieu-of property tax payments.

Section 3. Execution of Documents. The Chairman of the County Council is hereby authorized and directed to execute and deliver to Assignor and to Assignee written evidence of the approval contained herein after consultation with the County Attorney and after they and the County Attorney have verified the satisfaction of the statements contained in Section 2 hereof. Before the execution and delivery of any documents, said documents shall be approved by the County Attorney as to their form, provided however, that the execution and delivery by the Chairman of the County Council shall constitute conclusive evidence as to the satisfaction of condition and as to the approval by the County Attorney.

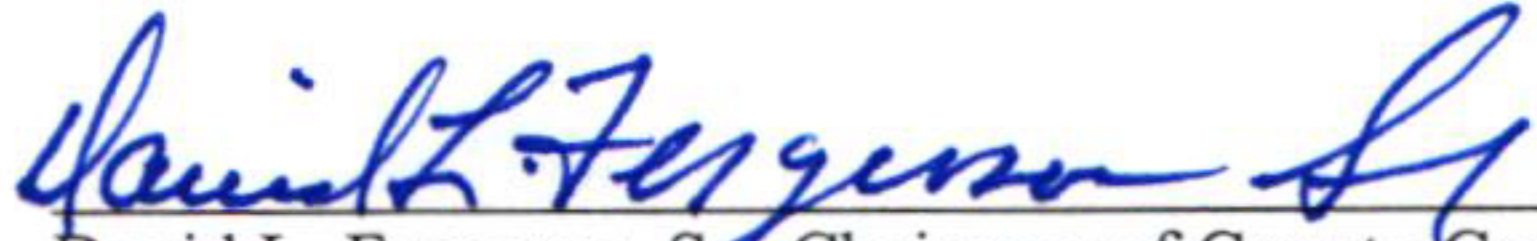
Section 4. Severability. The provisions of this Ordinance are declared to be separable. If any section, phrase, or provision shall be declared by a court of competent jurisdiction to be invalid or unenforceable for any reason, the remaining sections, phrases, and provisions of the Ordinance shall remain valid.

Section 5. Repeal of Conflicting Ordinances. All orders, resolutions, and other ordinances in conflict with this Ordinance are repealed to the extent of such conflict.


Section 6. Effective Date. This Ordinance shall take effect upon the date of enactment.

Be it Ordained this 11th day of September, 2006.

FAIRFIELD COUNTY, SOUTH CAROLINA


David L. Ferguson, Sr., Chairman of County Council
Fairfield County, South Carolina


(SEAL)
ATTEST:


Shryll M. Brown, Clerk to County Council
Fairfield County, South Carolina

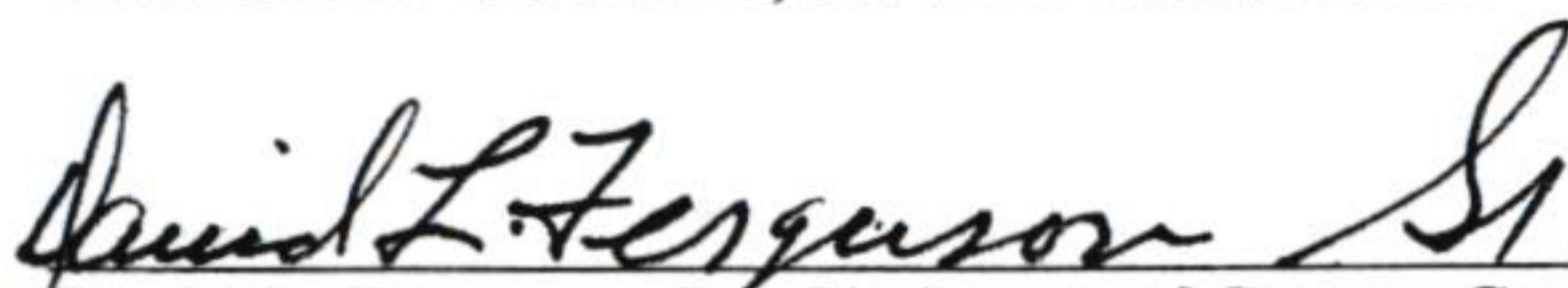
READINGS:

First Reading: August 14, 2006
Second Reading: August 28, 2006
Third Reading: September 11, 2006

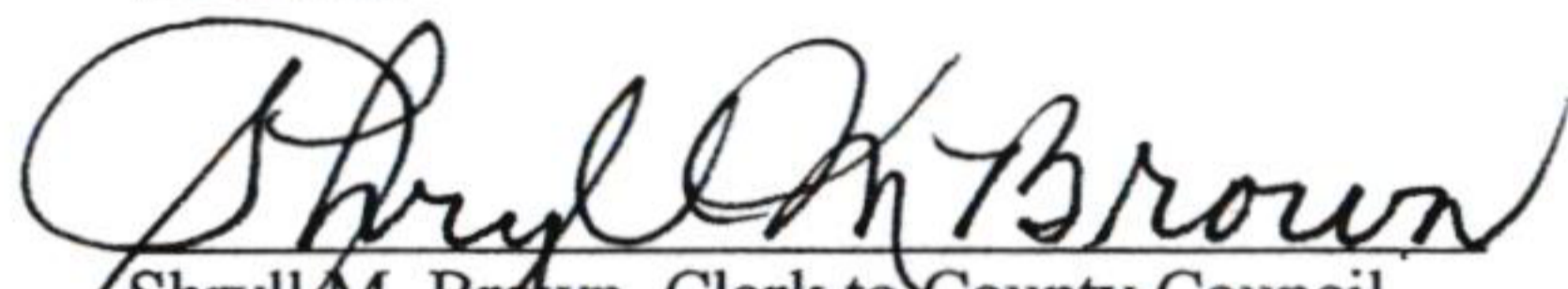
Approval of Assignment and Waiver of Default

For good and valuable consideration, the receipt of which is hereby acknowledged, Fairfield County hereby approves and ratifies the foregoing assignment and assumption and the substitution of MC Squared Finishing Solutions Holdings, LLC by MC Squared Finishing Solutions, LLC as a party to the aforementioned Agreements and the County hereby affirms, as of the date of the adoption of the County's Ordinance approving the Assignment, to the best of its knowledge, the Agreements are not in default, and the County is unaware of any condition, event or act which, with the passage of time, would result in a default under the Agreements, as of the date of the adoption of this Ordinance, including, specifically, any default caused by (a) the assignment and assumption of the Lease Agreement herein to Assignee; (b) the failure by Assignor to timely file property tax returns and to pay any associated *ad valorem* or fee-in-lieu of property taxes; (c) any untrue material misrepresentation or warranty made by Assignor in connection with the Lease Agreement, including any statement or certificate delivered in connection with the execution and delivery of the Lease Agreement; (d) any knowing violation or breach of the Lease Agreement by Assignor; (e) the abandonment of the Project by Assignor; and/or (e) the filing of a petition in bankruptcy against Assignor or Assignor's insolvency; provided, however, that nothing herein shall prevent the County from filing, and continuing to pursue payment of, a claim against Assignor in a bankruptcy case for any unpaid *ad valorem* or fee-in-lieu-of property tax payments.

FAIRFIELD COUNTY, SOUTH CAROLINA


David L. Ferguson, Sr., Chairman of County Council
Fairfield County, South Carolina

(SEAL)
ATTEST:


Shryll M. Brown, Clerk to County Council
Fairfield County, South Carolina

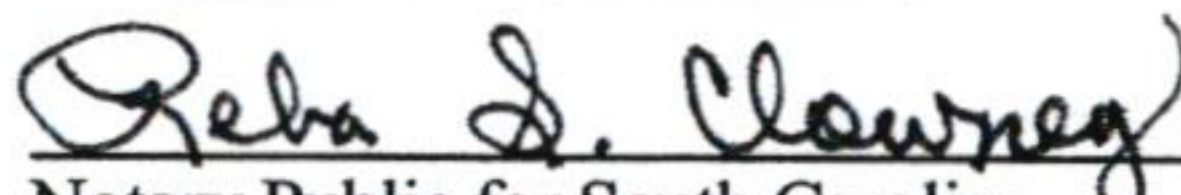
STATE OF SOUTH CAROLINA)
)
COUNTY OF FAIRFIELD)

PROBATE

Personally appeared before me the undersigned witness and made oath that s/he saw the within named David L. Ferguson, Sr. sign, seal and deliver the foregoing Assignment and Assumption of Lease Agreement and Inducement Agreement and Millage Rate Agreement, and that s/he with the other witness whose signature appears above witnessed the execution thereof.



Sworn to and subscribed before me
this 18th day of October, 2006.

 (Notary Seal)
Notary Public for South Carolina
My Commission Expires: 4/5/2016

STATE OF SOUTH CAROLINA COUNTY OF FAIRFIELD <hr style="width: 100%;"/>))))	ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT AND INDUCEMENT AGREEMENT AND MILLAGE RATE AGREEMENT
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THIS ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT AND INDUCEMENT AGREEMENT AND MILLAGE RATE AGREEMENT is made as of this 11th day of September, 2006, by and between MC Squared Finishing Solutions Holdings, LLC, a South Carolina limited liability company, formerly known as MC Squared Finishing Solutions, LLC, and MC Squared Finishing Solutions, LLC, a newly formed South Carolina limited liability company.

WHEREAS, MC Squared Finishing Solutions, LLC ("Old MC Squared") as lessee, entered into that certain Lease Agreement ("Lease Agreement") with Fairfield County, South Carolina, as lessor, dated as of July 6, 2004, for the lease of the real estate described on Exhibit A attached hereto ("Premises"), a memorandum of which is recorded in the Register of Deeds of Fairfield County, South Carolina in Book 669, Page 35, and re-recorded in Book _____ at Page _____; and

WHEREAS, Old MC Squared also entered into that certain Inducement Agreement and Millage Rate Agreement ("Inducement Agreement") with Fairfield County, South Carolina ("County") dated as of July 6, 2004; and

WHEREAS, on July 7, 2006, Old MC Squared amended its Articles of Organization to change its name to MC Squared Finishing Solutions Holdings, LLC ("MC Squared Holdings" or "Assignor"); and

WHEREAS, also on July 7, 2006, MC Squared Holdings formed a wholly-owned South Carolina limited liability company under the name, MC Squared Finishing Solutions, LLC ("New MC Squared" or "Assignee"), and Benseler North America, Inc. ("Benseler"), acquired a membership interest in New MC Squared; and

WHEREAS, as a result of the above-described transactions, Old MC Squared desires to assign to New MC Squared, and New MC Squared desires to accept, all of Old MC Squared's right, title, and interest in, to, and under the Lease Agreement and the Inducement Agreement.

NOW THEREFORE, in consideration for five dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor has, without representation or warranty, except as otherwise expressly set forth herein, assigned, contributed, granted, conveyed, transferred and by these presents does hereby assign, grant, contribute, convey, and transfer to Assignee, its representatives, successors, and assigns, all of Assignor's right, title and interest in, to and under the Lease Agreement and the Inducement Agreement (collectively, "Agreements").

TO HAVE AND TO HOLD the same unto the Assignee, its successors and assigns forever, from and after the date hereof, subject to the terms, covenants and provisions of the Agreements.

Except as provided herein, no other representations and warranties, or indemnification agreements with respect to them, are made in this Assignment, but rather are expressly disclaimed.

Assignee hereby accepts the foregoing assignment of the Agreements and agrees to assume, pay and perform all of Assignor's obligations under the Agreements which arise or relate to the period after the date hereof and agrees to be bound thereby. Assignor warrants to Assignee that the Agreements are

valid and in full force and effect. The Agreements are not in default, and Assignor knows of no condition, event or act which, with the passage of time, would result in a default under the Agreements.

This Assignment will be binding on and inure to the benefit of the parties herein, their heirs, executors, administrators, successors-in-interest and assigns.

This Assignment may only be amended by a writing signed by both Assignor and Assignee with prior approval by the County.

This Assignment shall be governed by and construed in accordance with the laws of the State of South Carolina.

A determination that any provision of this Assignment is unenforceable or invalid shall not affect the enforceability or validity of any other provision and any determination that the application of any provision of this Assignment to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

This Assignment may be executed in two or more counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same instrument.

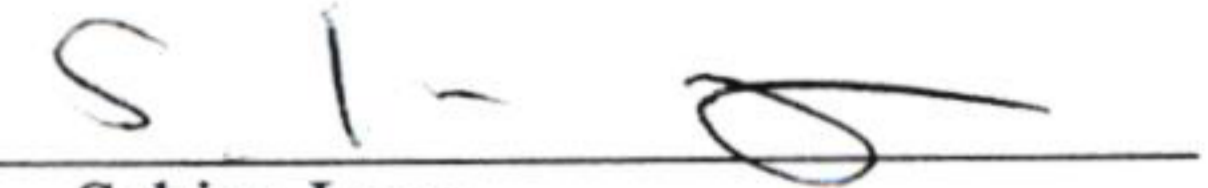
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This Assignment has been executed by Assignor and Assignee to be effective as of the date set forth herein above.

 #1
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ASSIGNOR:

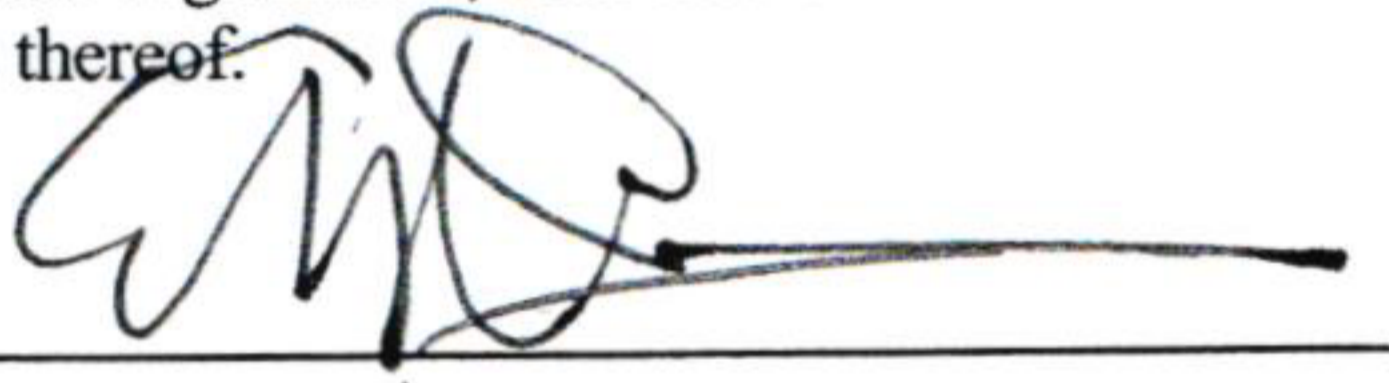
MC SQUARED FINISHING SOLUTIONS HOLDINGS, LLC

By: 
Sabine Lang
Its: Manager

STATE OF SOUTH CAROLINA)
)
COUNTY OF FAIRFIELD)

PROBATE

Personally appeared before me the undersigned witness and made oath that s/he saw the within named Sabine Lang sign, seal and deliver the foregoing Assignment and Assumption of Lease Agreement and Inducement Agreement and Millage Rate Agreement, and that s/he with the other witness whose signature appears above witnessed the execution thereof.



#1

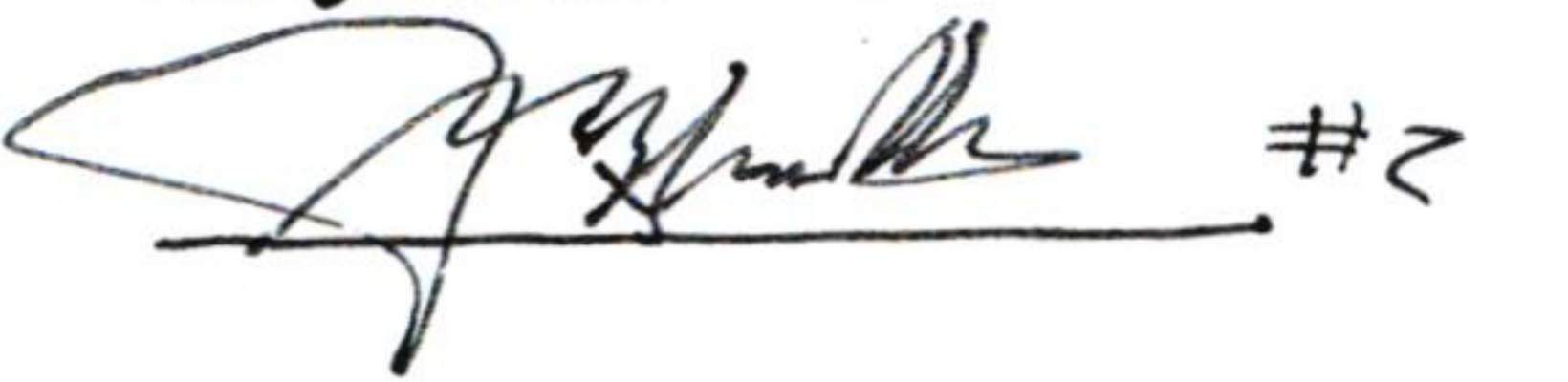
Sworn to and subscribed before me this 17 day of Nov, 2006.

Wanda Blake (Notary Seal)
Notary Public for South Carolina
My Commission Expires: June 25, 2013

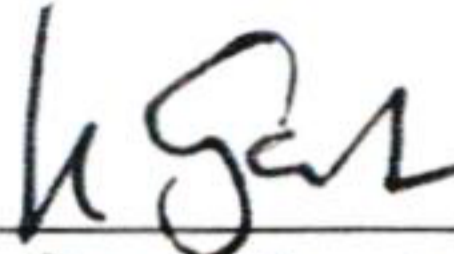
ASSIGNEE:

MC SQUARED FINISHING SOLUTIONS, LLC

 #1

 #2


By: Benseler North America, Inc.
Its: Manager

By:  _____
 Its: President

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FAIRFIELD)

PROBATE

Personally appeared before me the undersigned witness and made oath that s/he saw the within named Kung Gerst sign, seal and deliver the foregoing Assignment and Assumption of Lease Agreement and Inducement Agreement and Millage Rate Agreement, and that s/he with the other witness whose signature appears above witnessed the execution thereof.



 #1

Sworn to and subscribed before me
 this 17 day of November, 2006.

Wanda Blake (Notary Seal)
 Notary Public for South Carolina
 My Commission Expires: June 25, 2013

