

BILL NO. R-12-10-01

RESOLUTION NO. R-_____

**A RESOLUTION OF THE COMMON COUNCIL
OF THE CITY OF FORT WAYNE, INDIANA,
APPROVING A JOINT LEDGE AGREEMENT
BETWEEN THE CITY OF FORT WAYNE, THE
ALLEN COUNTY REDEVELOPMENT
COMMISSION, THE ALLEN COUNTY
COUNCIL, THE BOARD OF COMMISSIONERS
OF ALLEN COUNTY, INDIANA, AND R3
COMPOSITES CORP.**

WHEREAS, R3 Composites Corp. will be a significant employer in the County; and

WHEREAS, the City deems it beneficial to support local economic development to attract business by providing certain assistance in order to encourage the expansion of job opportunities in the community; and

WHEREAS, Indiana Code 36-7-14-33 authorizes the City of Fort Wayne to enter into a joint agreement with other agencies to provide financial and other assistance for a redevelopment project; and

WHEREAS, the Allen County Redevelopment Commission, the Allen County Council and the Board of Commissioners of Allen County, Indiana, have entered into a Joint Ledge Agreement (a copy of which is attached hereto and made a part hereof as "Exhibit 1"), which will contribute to local economic development; and

WHEREAS, the Common Council of the City of Fort Wayne, Indiana, the fiscal body of the municipality, shall approve the agreement either prior or subsequent to the execution of the agreement by the respective parties.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. The Common Council of the City of Fort Wayne, Indiana, hereby ratifies and approves the Fort Wayne/Allen County Joint

1 Ledge Agreement between and among Allen County, the Redevelopment
2 Commission of Allen County, the Allen County Council, the Board of
3 Commissioners of Allen County, Indiana and the City of Fort Wayne.

4 **SECTION 2.** That, this Resolution shall be in full force and effect from
5 and after its passage and any and all necessary approval by the Mayor.

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8 Member of Council

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11 APPROVED AS TO FORM AND LEGALITY

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13 Carol Helton, City Attorney

EXHIBIT 1

FORT WAYNE/ALLEN COUNTY JOINT LEDGE AGREEMENT
WITH R3 COMPOSITES CORPORATION

This Joint Ledge Agreement (the "Agreement") is entered as of the Effective Date (as hereinafter defined) by and among the Allen County Redevelopment Commission (the "Redevelopment Commission"), the Board of Commissioners of the County of Allen (the "County"), the Allen County Council ("County Council") the City of Fort Wayne, Indiana (the "City"), the Common Council of the City of Fort Wayne ("the Common Council"), and R3 Composites Corp., its affiliated real estate and personal property holding company R3 Indiana, LLC; its plastic moldings division Carver Composite Moldings, LLC operating out of the Facility (as hereinafter defined); and its rubber moldings division Carver Rubber Moldings, LLC operating out of the Facility (collectively referred to herein as the "Recipient") (the Redevelopment Commission, County, County Council, City, Common Council and Recipient being collectively referred to herein as the "Parties"). The Parties, in consideration of the mutual covenants, obligations and stipulations set forth herein, agree as follows:

WHEREAS, the Recipient will be a significant employer in the community of greater Fort Wayne and Allen County; and

WHEREAS, the parties desire to enter into a joint agreement to encourage the expansion of job opportunities in the community; and

WHEREAS, I.C. 36-7-14-33 provides for agreement between and among the entities which are parties to this Agreement to provide economic development through the furnishing of financial and other assistance for a redevelopment project;

NOW, THEREFORE, for and in consideration of the joint and mutual consideration hereinafter set forth, the parties hereto agree as follows:

1. Purpose of the Agreement. The purpose of this Agreement is to promote job creation in Allen County, Indiana. In furtherance thereof, the Joint Ledge Board (as hereinafter defined) has awarded to the Recipient certain financial assistance set forth herein as a portion of the economic development incentive package to create job opportunities at Recipient's facility in Allen County, Indiana (the "Facility") and to create 400 full-time jobs in the plastics and rubber product manufacturing sector of the national economy (the "Project"). The annual assistance provided for the benefit of Recipient in this Agreement will be used to lease equipment at the Facility for the benefit of the Recipient.

2. Definitions.

a. "Full-time Equivalents" ("FTE") means a job requiring a minimum of thirty-five (35) hours of an employee's time a week for the entire normal year of Company operations or a job requiring a minimum of thirty-five hours (35) of an employee's time a week for that portion of the first year in which the employee commences employment at the Facility; provided, however, that jobs requiring less than the specified hours may be aggregated to full-time equivalents with each aggregate equivalent considered to be full-time. The calculation of FTEs throughout this Agreement shall include all FTE employees working at the Facility employed by Recipient.

b. "Facility" means the Recipient's manufacturing facility located at 14123 Roth Road, Grabill, Indiana.

c. "Joint Ledge Board" means a board created by this Agreement and composed of two (2) members of the Redevelopment Commission and two (2) members appointed by the Mayor of the City, which is charged with implementation and enforcement of this Agreement. The Redevelopment Commission shall execute the Lease Agreement and Sublease (as hereinafter defined) on behalf of the Joint Ledge Board.

d. "Taxable Year" shall be defined as a calendar year in which benefits may be allowed under the provisions of this Agreement.

e. "Total annual payroll" shall be defined as ERA Statement of Benefit or 50 IAC 10-1.

3. Term of the Agreement. This Agreement shall commence effective the date signed by the Recipient (the "Effective Date") and shall continue until the earlier of: (a) the expiration of the term of the Lease Agreement and Sublease between the Recipient and the Joint Ledge Board, the form of which is attached hereto as Exhibit A (Lease Agreement and Sublease collectively referred to herein as the "Lease Agreement") or (b) the tenth (10th) anniversary date of the Effective Date. The Recipient shall use its best commercial efforts to maintain normal business operations at the Facility for a minimum period of ten (10) consecutive years.

4. Description of the Project. Recipient will invest the sum of Four Million Dollars (\$4,000,000.00) in equipping (and/or restoring or repairing existing equipment) the Facility prior to December 31, 2015. The equipment will be used by the Recipient in the production of plastic and rubber products and will be phased in between 2012 and 2015. Total annual payroll of Recipient's

employees employed at the Facility, including those to be employed as a result of the Project, shall exceed the amounts set forth below.

<u>Year</u>	<u>Cumulative # New Jobs</u>	<u>Annual Payroll</u>
2012	50	\$ 1,960,400
2013	150	\$ 5,644,080
2014	300	\$11,001,120
2015	400	\$14,435,200

5. Duration of the Benefit. Recipient may claim a benefit under this Agreement for any one or more Taxable Years (as hereinafter defined), provided that Recipient may not claim a benefit under this Agreement in any year after 2016.

6. First Taxable Year for Which the Benefit is Claimed. The first year in which a benefit may be claimed under this Agreement is Recipient's fiscal year ending on or before December 31, 2012.

7. Contribution Limits. The City shall contribute seventy-five percent (75%) and the County shall contribute twenty-five percent (25%) of the Ledge Benefit (as hereinafter defined) in each year a benefit is paid. Failure of either the City or the County to contribute the amount required by this paragraph shall not require the other party to make up any shortfall. The City and the County shall each be responsible for making the annual payment to the Recipient for its respective share of the Ledge Benefit.

8. The Ledge Benefit Amount Allowed for Each Taxable Year. The Ledge Benefit shall not, in any event, exceed a maximum of \$332,332.00 and will be paid over a period of five (5) years. The maximum Ledge Benefit amount that will be allowed for each such year is set forth below.

<u>Year</u>	<u>Maximum Ledge Benefit</u>	<u>Projected Jobs</u>
2012	\$13,723.00	50
2013	\$39,509.00	150
2014	\$77,008.00	300
2015	\$101,046.00	400
2016	\$101,046.00	400

No Ledge Benefit under this Agreement shall be allowed in any Taxable Year in which Recipient's net FTE at the Facility falls below eighty percent (80%) of projected jobs by the end of the Taxable Year or in which Recipient is otherwise in default in the performance of its obligations hereunder.

No party hereto shall be responsible or liable in any way for its failure to perform its obligations hereunder, if such failure to perform is beyond the control of said party, whether caused by acts of God, unavailability or shortages of raw materials from usual sources of supply, or unavailability or shortages of energy necessary to produce and/or deliver the products by usual modes of transportation, fire, flood, war, terrorism, unforeseen market forces, embargo, explosions, riots, or loss, rules, regulations, restrictions and orders of any governmental authority to which such entity is subject, or any other cause (excepting labor disputes and strikes), excepting financial, beyond the reasonable control of the affected party. Such failure shall not terminate this Agreement but the obligations of the affected party shall be suspended during the period when performance is so suspended, unless such period exists beyond a period of one hundred and eighty (180) days, in which event any party hereto shall have the right at any time thereafter during the existence of such force majeure condition to terminate this Agreement upon written notice to the other parties. The party so prevented from complying with its obligations hereunder shall immediately notify and keep the other parties from time to time apprized thereof, and such party so prevented shall endeavor to remove or overcome the cause of such inability to comply with its obligations under this Agreement. Nothing herein shall be construed to require the settlement of strikes, lockouts or other labor difficulties by the party involved contrary to its wishes.

The foregoing notwithstanding, the Ledge Benefit Amount set forth above in any Taxable Year shall be reduced by the amount of any unpaid (but not including abated) real or personal property taxes applicable to the Facility regardless of ownership of the Facility at the time of assessment. If subsequently paid, said Ledge Benefit Amount shall be restored by the amount of taxes paid.

9. Duties and Responsibilities of Recipient. Recipient has made certain representations and covenants to the Joint Ledge Board regarding the Project including the amount of private sector investment, the number of jobs to be created in Allen County, and the annual payroll to be generated by the Project. Recipient represents and covenants that it will use commercially reasonable efforts to maintain normal business operations at the Facility for a minimum of ten (10) consecutive years. In the event Recipient breaches any of such representations or covenants or breaches the obligations set forth in Section 4 or, in any other provision of this Agreement, as determined solely by the Joint Ledge Board, the benefit received shall be repaid by Recipient according to the following schedule:

In the event that the FTE employment at the Facility falls below eighty percent (80%) of the projected jobs based on the annual average FTE in any year of the ten (10) year period, then for each year of non-compliance, the LEDGE benefit reduction will be calculated as follows:

$$(\text{Projected Jobs} - \text{Average annual FTE}) / \text{Projected Jobs} \times (\text{Benefit Received} \times .1 \times \text{Total number of years of non-compliance})$$

The parties hereto acknowledge that the Recipient's investment in the Project and the Joint Ledge Board's investment in granting the benefit described in Section 8 above is to encourage economic growth within the County. The Joint Ledge Board acknowledges that in certain instances, economic conditions or other factors not within the Recipient's control may prevent the Recipient from complying fully with this Agreement. The Joint Ledge Board will give the Recipient notice and an opportunity to explain the reasons for any variations from the representations and covenants made by the Recipient in this Agreement, and the Joint Ledge Board will exercise good faith in evaluating the factors affecting the Recipient's situation prior to taking any action authorized under this Agreement.

The Recipient shall submit to the Joint Ledge Board not later than March 31st of each year following the Taxable Year in which this Agreement is in force, the information listed below:

- a. The number of FTE at the Project for each month during the previous Taxable Year.
- b. The average annual FTE during the previous Taxable Year.
- c. The Recipient's federal identification number and taxpayer account number as assigned by the Indiana Department of Workforce Development for the purpose of unemployment insurance, to assist in the verification of the provided information.
- d. The total annual payroll paid to all employees employed at the Facility during the previous Taxable Year. W-2 tapes provided to the State of Indiana shall be the basis for this information. Recipient will not be required to provide individual payroll information for employees at the Facility.
- e. Any other information reasonably required by the Joint Ledge Board to perform its duties, so long as Recipient is given notice of such information requirements sufficient to allow Recipient reasonable time to prepare such information and so long as such information is available from the records maintained by Recipient in the ordinary course of its business.

f. In addition to the information provided under the provisions of the subsections contained in this Section 9, within ten (10) days of any modification, any changes in the Lease Agreement.

However, as an alternative to the requirements set forth above, the Joint Ledge Board will accept the annual Compliance with the Statements of Benefits Form (CF-1) for any year Recipient is required to file same.

Recipient shall certify under oath that the accuracy of the above information submitted to the Joint Ledge Board is true and accurate. The information submitted to the Joint Ledge Board shall be kept confidential by the Joint Ledge Board unless law or judicial order requires disclosure of the information. The Joint Ledge Board may, upon request, share the above provided information with the Parties to this Agreement, who shall also keep said information confidential financial information pursuant to IC 5-14-3-4(a)(5), unless applicable law or judicial order required disclosure of such information.

Any repayment of prior benefits awarded under this Agreement, as required by the Joint Ledge Board under Section 9 shall be paid by the Recipient to the Joint Ledge Board within one-hundred eighty (180) days of a written request from the Joint Ledge Board.

10. Exclusive Use of the Benefits by Recipient for Lease Payments on the Project. Subject to appropriation, the Joint Ledge Board shall use the benefits provided under the provisions of this Agreement exclusively from the Recipient for the payment of lease obligations pursuant to the Lease Agreement.

11. Duties and Responsibilities of the Joint Ledge Board. Upon the timely annual receipt of the information described under Section 9 of this Agreement from the Recipient, the Joint Ledge Board shall review the claim for annual benefit and supporting information and shall within forty-five (45) days thereafter provide the Recipient with (1) written verification of concurrence of the benefit amount claimed for the prior Taxable Year, or (2) written notice of the adjusted benefit amount the Joint Ledge Board determined appropriate, based on Recipient's performance hereunder, for the prior Taxable Year together with justification of the modification from the amount claimed. Subject to the terms and conditions of this Agreement, City and County shall concurrently provide to Lessor the payment required under the Lease Agreement. The City and County shall have no obligation to make any payment to or for the benefit of Recipient in any Taxable Year in which Recipient is in default under this Agreement.

If the Joint Ledge Board determines that the Recipient is not in compliance with the requirements of this Agreement, it may, after giving the Recipient an opportunity to explain the noncompliance, take any action it deems appropriate, including the termination of this Agreement. Recipient hereby releases each of the Parties hereto, and the Joint Ledge Board from any and all claims, demands, liabilities or causes of action, whether now

existing or hereafter arising, known and unknown, which Recipient may have against any such party as a result of the termination of this Agreement. Notice to Parties. Any notice, statement or other communications sent to the Joint Ledge Board or the Recipient, shall be sent to the following addresses, unless otherwise specifically advised.

To the Joint Ledge Board:

Grabill, IN 46741

ATTN: Roy Carver III

Mark Royse

PH: 563-264-0040

Allen County Redevelopment Commission

FAX: 563-262-0509

200 East Berry St., Suite 150

e-mail: rcarveriii@yahoo.com

Fort Wayne, IN 46802

With copy to:

PH: (260) 449-7607

Carson Boxberger LLP

FAX: (260) 449-7682

Attn: Andrew Boxberger

e-mail: mark.royse@co.allen.in.us

1400 One Summit Sq.

Fort Wayne, IN 46802

To the Recipient:

PH: 260-423-9411

e-mail: aboxberger@carsonboxberger.com

R3 Composites Corporation

14123 Roth Rd

12. Authority to Bind. Notwithstanding anything in this Agreement to the contrary, the signatory for the Recipient represents that he/she has been duly authorized by the Recipient to execute this Agreement.

13. Amendment of this Agreement. This Agreement or any portion hereof may only be amended by written amendment executed by all parties hereto.

14. Assignability. The Recipient shall not assign this Agreement or any portion thereof without the prior written consent of the Joint Ledge Board, which consent shall not be unreasonably withheld.

15. Remedies not Impaired. No delay or omission of the Joint Ledge Board in exercising any right or remedy available under this Agreement shall impair any such right or remedy, or constitute a waiver of any default or acquiescence thereto.

16. Compliance with Laws. The Recipient agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances and all provisions required thereby are included and incorporated by reference herein. The enactment of any local, state or federal statute or ordinance or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by the Joint Ledge Board and the Recipient to determine whether the provisions of this Agreement require formal amendment.

Pursuant to I.C. 22-9-1-10 and the Civil Rights Act of 1964, Recipient shall not discriminate against any employee or applicant for employment, to be employed in the performance of this contract, with respect to the hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of his race, color, religion, sex, disability, national origin, handicap or ancestry. Breach of this covenant may be regarded as a material breach of this Agreement.

The Recipient affirms under the penalties of perjury that he/she/it does not knowingly employ an unauthorized alien. The Recipient affirms under the penalties of perjury that he/she/it has enrolled and is participating in the E-Verify program as defined in IC 22-5-1.7-3. The Recipient agrees to provide documentation to the State that he/she/it has enrolled and is participating in the E-Verify program. Additionally, the Recipient is not required to participate if the Recipient is self-employed and does not employ any employees. The State may terminate for default if the Recipient fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

17. Governing Laws. This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana, notwithstanding its choice of law rules to the contrary or any other state's choice of law rules. Suit, if any, must be brought in Allen County, Indiana.

18. Entire Agreement. This Agreement, together with the Lease Agreement(s) entered into of even date herewith, and any attachments hereto contain the entire understanding of the parties and this Agreement supersedes all prior agreements and understandings, oral and/or written, with respect to this subject matter.

19. Indemnification. The Recipient shall indemnify, defend and hold harmless each of the other Parties hereto and their respective representatives, agents, officers and employees (collectively, the "Indemnitees") from all claims, demands, charges, lawsuits, costs and expenses (including legal costs and, attorneys fees) caused by any act or omission of the Recipient and/or its subcontractors, vendors, suppliers, employees, representatives, licensees and authorized agents and in connection with the design, construction, operation, management and control of the Facility. No other Party hereto shall provide any indemnification hereunder to the Recipient. Recipient hereby forever releases Indemnitees and each of them from any and all claims, demands and charges, known and unknown, whether now existing or hereafter arising, that Recipient has or may have against Indemnitees, or any of them, under this Agreement.

20. Penalties and Interest. The Indemnitees will in good faith perform their required obligations hereunder and shall not in any event be required to pay any direct, liquidated, incidental, specific, punitive or consequential damages in the event of breach of this Agreement by Indemnitees or any of them.

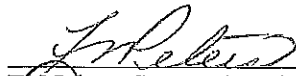
21. Mutual Attorneys Fees Provision. If any Party hereto brings an action or proceeding to enforce the terms of this Agreement or of the Lease Agreement executed of even date herewith between the Parties hereto, the prevailing party in any such proceeding, action or appeal thereon, shall be entitled to reasonable attorneys fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term "Prevailing Party" shall include, without limitation, a party who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment or the abandonment by the party of its claims or defense. The attorneys fee award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all reasonable attorneys fees incurred.

22. Severability. The invalidity of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses, or provisions of this Agreement.

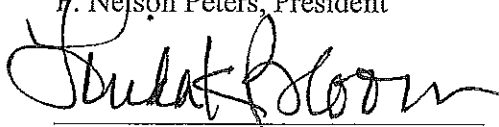
23. Joint and Several Liability. This Agreement is with R3 Composites Corp.; R3 Indiana, LLC; Carver Composite Moldings, LLC; And Carver Rubber Moldings, LLC., which shall be jointly and severally responsible to satisfy the obligations under the Agreement. In the event of a default, all entities are jointly and severally liable for the repayment obligations in the Agreement, irrespective of which entity caused the default and irrespective of which entity actually received or expended the funds.

IN WITNESS WHEREOF, the parties hereby, by their duly authorized representatives, have executed this Agreement on the dates entered below.

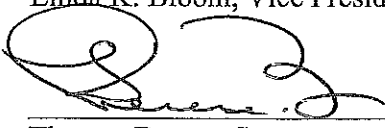
The Board of Commissioners of the County of Allen

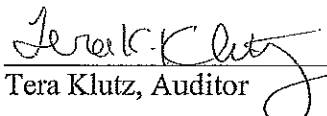

F. Nelson Peters, President

Date: 8/17/12


Linda K. Bloom, Vice President

Attest:


Therese Brown, Secretary

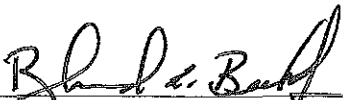

Tera Klutz, Auditor

Allen County Council


Larry Brown, President

Date: 9/20/12

Allen County Redevelopment Commission



Richard E. Beck, Jr., President

Date: 8/14/12

Fort Wayne City Council

Mitch Harper, President

Date: _____

City of Fort Wayne

Tom Henry, Mayor

Date: _____

R3 Composites Corp.

Roy Carver III, President

Date: _____

R3 Indiana, LLC

Roy Carver, Member

Date: _____

Carver Composite Moldings, LLC

Roy Carver, Member

Date: _____

Carver Rubber Moldings, LLC

Roy Carver, Member

Date: _____

Admn. Appr. _____

DIGEST SHEET

TITLE OF ORDINANCE: Resolution Authorizing Fort Wayne Common Council to enter into a Joint Ledge Agreement with Allen County

DEPARTMENT REQUESTING ORDINANCE: Community Development Division

SYNOPSIS OF ORDINANCE: This Resolution authorizes Fort Wayne Common Council to enter into a Joint Ledge Agreement with Allen County. The Agreement provides for the City's participation in local economic development incentives offered to R3 Composites Corp.

EFFECT OF PASSAGE: Will allow the City to offer R3 Composites Corp. local economic development incentives that will aid in the creation of 400 full-time jobs

EFFECT OF NON-PASSAGE: Potential loss of new development

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS): No expenditures of public funds required.

ASSIGNED TO COMMITTEE (PRESIDENT): John Shoaff and Mitch Harper