

REQUEST FOR BOARD ACTION
HENDERSON COUNTY
BOARD OF COMMISSIONERS

MEETING DATE: 4 September 2007
SUBJECT: Revision of agreement with Continental Teves
ATTACHMENT(S): Markup copy of agreement showing revisions

SUMMARY OF REQUEST:

Continental Teves requests some (very minor) revisions to the economic incentives agreement approved by this Board on 14 August 2007.

County staff will be present and prepared if requested to give further information on this matter.

BOARD ACTION REQUESTED:

Approval of the modifications of the contract.

If the Board is so inclined, the following motion is suggested:

I move that the revised agreement with Continental Teves be approved.

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

AGREEMENT

This Agreement is made and entered into this the 15th day of August, 2007, by and between HENDERSON COUNTY, a body politic and corporate, hereinafter "COUNTY", and CONTINENTAL TEVES, INC., a Delaware corporation authorized to do business in North Carolina.

WITNESSETH:

Whereas, the COUNTY is a body politic and corporate having the capacity to contract under N.C.G.S. § 153A-11; and

Whereas, CONTINENTAL TEVES, INC. ("THE COMPANY"), is a Delaware corporation authorized to do business in North Carolina, having the capacity to contract and is a division of Continental A.G.; and

Whereas, THE COMPANY currently operates a plant in Henderson County, in the Town of Fletcher; and

Whereas, THE COMPANY has been considering expanding operations in Henderson County, which if it occurs is estimated by THE COMPANY to result in a capital investment of at least EIGHT MILLION SEVEN HUNDRED THOUSAND DOLLARS (\$8,700,000.00), and not fewer than thirty-five (35) new job positions, each paying in excess of the average weekly wage for jobs in Henderson County; and

Whereas, THE COMPANY has stated that they are competing with one or more THE COMPANY sister plants for the location of the equipment to be located in their plant in Henderson County; and

Whereas, THE COMPANY requested assistance from the County in the form of Economic Incentives to offset the start-up costs associated with expansion of their facility, and to assist them in their competition with their sister plants to bring the expansion to the Henderson County plant; and

Whereas, in reliance upon THE COMPANY's representations to the COUNTY concerning the net capital investment to be made, the COUNTY set a public hearing for Tuesday, August 14, 2007, and in further reliance upon THE COMPANY's representations to the COUNTY, duly advertised in the Times-News, a newspaper having daily general circulation in Henderson County, on July 23, 2007, their intent to consider granting Economic Incentives to THE COMPANY consisting of assistance with the expenses associated with the start up of the expansion in a total amount as determined herein but not to exceed THIRTY-TWO

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THOUSAND ONE HUNDRED FIFTY DOLLARS (\$32,150.00) per year for five (5) years, to be reimbursed to THE COMPANY; and

Whereas, the COUNTY has the authority under N.C. Gen. Stat. § 158-7.1(a) to assist industries in the expenses associated with the start-up of expanded operations where the assistance will stimulate the local economy, will promote business, and benefit the public by generating additional tax revenue for the County; and

Whereas, the COUNTY has determined after a duly advertised public hearing held on Wednesday, March 12, 2007, that the investment as stated above by THE COMPANY would benefit the public in Henderson County; and

Whereas, the COUNTY has determined that a capital investment of EIGHT MILLION SEVEN HUNDRED THOUSAND DOLLARS (\$8,700,000.00) will benefit the county by generating an additional EIGHT MILLION SEVEN HUNDRED THOUSAND DOLLARS (\$8,700,000.00) in taxable capital property, real or personal; and

Now, therefore, in consideration of the mutual covenants and promises and obligations contained herein below, the parties agree as follows:

1. THE COMPANY shall expand its operations in Henderson County, and shall acquire the requisite equipment for the same. The building and equipping of the expansion shall result in a capital investment by THE COMPANY in real or personal property in an amount of not less than EIGHT MILLION SEVEN HUNDRED THOUSAND DOLLARS (\$8,700,000.00) ("the Capital Investment") that will be taxable by the County pursuant to N.C. Gen. Stat. §105-274. The building and equipping of the expansion of the new operation and requisite taxable investment are hereinafter referred to as the "Capital Investment Requirement." It is understood and agreed by both parties to this Agreement that the Henderson County Assessor will make an independent valuation of all such property constituting the Capital Investment Requirement for *ad valorem* tax purposes at its true value in money (defined as fair market value in N.C. Gen. Stat. §105-382) as required by N.C. Gen. Stat. §105-382. In the event THE COMPANY disagrees with the independent valuation placed upon such real and personal property by the Henderson County Assessor, THE COMPANY shall have the right to appeal such valuation to the Henderson County Board of Equalization and Review and further to the North Carolina Property Tax Commission in accordance with the North Carolina General Statutes.
2. THE COMPANY shall complete the Capital Investment Requirement in a timely manner and with due diligence, but in any event not later than two (2) years after the date of this Agreement, first written hereinabove. Said two (2) year time period shall hereinafter be referred to as the "Capital Investment Term." In the event THE COMPANY fails to complete the Capital Investment Requirement before the end of the Capital Investment

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Term, THE COMPANY shall reimburse any and all Economic Incentives (as hereinafter defined) which have been paid to the County promptly and without delay.

3. THE COMPANY shall be entirely responsible for completing the Expansion and for paying all expenses associated with the Capital Investment Requirement. However, the COUNTY shall reimburse THE COMPANY for a portion of the actual start-up costs incurred by THE COMPANY that are associated with the Capital Investment Requirement (including but not limited to transferring equipment, and training of personnel), hereinafter "Start-up Costs", up to an amount not to exceed the amounts shown below ("the Economic Incentive"), for a period of five years. The annual payments shall be as follows:

Year	Incentive Amount
1	\$32,150.00
2	Eighty percent (80%) of the Henderson County <i>ad valorem</i> property taxes billed as result of the real and/or personal property acquired as a result of the Capital Investment for the Henderson County fiscal year after the year in which payment 1, above, is made, but in no case more than \$32,150.00.
3	Eighty percent (80%) of the Henderson County <i>ad valorem</i> property taxes billed as result of the real and/or personal property acquired as a result of the Capital Investment for the Henderson County fiscal year after the year in which payment 2, above, is made, but in no case more than \$32,150.00.
4	Eighty percent (80%) of the Henderson County <i>ad valorem</i> property taxes billed as result of the real and/or personal property acquired as a result of the Capital Investment for the Henderson County fiscal year after the year in which payment 3, above, is made, but in no case more than \$32,150.00.
5	Eighty percent (80%) of the Henderson County <i>ad valorem</i> property taxes billed as result of the real and/or personal property acquired as a result of the Capital Investment for the Henderson County fiscal year after the year in which payment 4, above, is made, but in no case more than \$32,150.00.

The first annual installment shall be due and payable on the December 31st first following the receipt of the Capital Investment Certification, and the Certification of Start-up Costs (each as defined hereinbelow) by the COUNTY. Further annual installments shall be due on the 31st of December of the year in which they are due. The COUNTY shall not pay any interest to THE COMPANY on any portion of the Economic Incentives paid to THE COMPANY by the COUNTY pursuant to the terms of this Agreement.

4. THE COMPANY shall indemnify and hold harmless Henderson County for any and all occurrences associated with the Expansion caused by COMPANY's breach of this agreement. The terms of this paragraph shall survive any termination of this Agreement, or any determination or event rendering this Agreement null and void.
5. The Term of this Agreement shall run from the Effective Date through midnight, December 31, 2016.

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6. If THE COMPANY shall make a determination to cease operation of the Facility prior to the end of the Term, this Agreement shall be deemed terminated, and Henderson County shall have no further obligations hereunder, including but not limited to the obligation to pay any further installments on the Economic Incentives after the date of such cessation of operation.

7. Not later than December 31, 2009, or thirty (30) days after the completion of the Capital Investment Requirement, whichever occurs earlier, THE COMPANY shall certify in writing by one authorized to execute contracts on behalf of THE COMPANY to the COUNTY that the Capital Investment has been completed, hereinafter "Capital Investment Certification". THE COMPANY shall include with such Capital Investment Certification evidence that the Capital Investment has been completed and paid for by THE COMPANY. Such evidence shall consist of invoices, purchase orders, canceled checks, and other documents which will reasonably prove to the satisfaction of the COUNTY that the obligation for an EIGHT MILLION SEVEN HUNDRED THOUSAND DOLLARS (\$8,700,000.00) taxable capital investment has been met by THE COMPANY.

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8. THE COMPANY shall certify to the COUNTY in writing by the same time that it must provide the COUNTY the Capital Investment Certification, executed by one authorized to execute contracts on behalf of THE COMPANY, the Start-up Costs associated with the Expansion, the certification being referred to as "Certification of Start-Up Costs". THE COMPANY shall include with the Certification of Start-Up Costs adequate documentation that the Expansion has been completed and paid for and adequate documentation as to the amount spent for Start-up Costs. Such adequate documentation may consist of invoices, purchase orders, canceled checks, and other documents which will reasonably prove to the satisfaction of the COUNTY the Start-up Costs paid for by THE COMPANY.

9. Not later than March 31, 2010, or ninety (90) days after the provision to the County of the Capital Investment Certification and the Certification of Start-Up Costs, THE COMPANY shall provide to the COUNTY in writing, executed by one authorized to execute contracts on behalf of THE COMPANY, with certification of the employment of at least thirty-five (35) jobs which would not exist in the absence of the expenditure of the Capital Investment by THE COMPANY ("the Employment Certification"), and a roster of the persons holding such positions with the Company, the average wage rate for such positions, and a summary of the other employment benefits received by such employees.

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10. The COUNTY'S obligation to begin payment of the Economic Incentive until the Capital Investment Certification and supporting adequate documentation, and the Certification of Start-Up Costs, and the Employment Certification, have all been received by the COUNTY. In the event THE COMPANY fails to provide the Capital Investment Certification and evidence or the Certification of Start-Up Costs required by the terms of this Paragraph to the COUNTY within the time frame specified above, this Agreement

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shall be deemed terminated, and the COUNTY shall have no further obligation hereunder.

11. THE COMPANY agrees that any duly authorized representative of the COUNTY shall have reasonable access to and the right to reasonably inspect, copy, audit, and examine all of the books, records, and other documents relating to the fulfillment of this Agreement during the Term.
12. THE COMPANY may, at any time during the Term, refund the Economic Incentives, or portion thereof, paid to THE COMPANY by the COUNTY pursuant to the terms of this Agreement. Such refund shall end all obligations of THE COMPANY all obligations to complete the Capital Investment imposed by the terms of this Agreement.
13. No provision of this Agreement shall be construed or interpreted as creating a pledge of the faith and credit of the COUNTY within the meaning of any constitutional debt limitation. No provision of this Agreement shall be construed or interpreted as delegating governmental powers nor as a donation or a lending of the credit of the COUNTY within the meaning of the State Constitution. This Agreement shall not directly or indirectly or contingently obligate the COUNTY to make any payments beyond those appropriated in the COUNTY's sole discretion for any fiscal year in which this Agreement shall be in effect. In the event the COUNTY does not appropriate funds to make the payments contemplated in this Agreement, the lack of funding shall end all obligations of THE COMPANY to complete the Capital Investment imposed by the terms of this Agreement. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of the COUNTY's moneys, nor properties, nor shall any provision of the Agreement restrict to any extent prohibited by law, any action or right of action on the part of any future COUNTY governing body. To the extent of any conflict between this Paragraph and any other paragraph of this Agreement, this Paragraph shall take priority.
14. THE COMPANY shall be entirely responsible for, and shall bear all risk of loss associated with the Expansion and with the creation of employees. Further, in the event that the Economic Incentive, or portion thereof, assistance provided by the COUNTY for the start-up costs is 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, THE COMPANY shall promptly refund such Economic Incentive or portion thereof, to the COUNTY. This Paragraph shall survive the expiration or termination of this Agreement.
15. This Agreement shall bind all successors and assigns of THE COMPANY; however, neither this Agreement, nor the right to payment under the terms of this Agreement, may be assigned by THE COMPANY, or otherwise used as collateral for any obligations of THE COMPANY, financial or otherwise without the expressed written consent of the Henderson County Board of Commissioners.
16. This Agreement shall be governed by the laws of the State of North Carolina.

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17. THE COMPANY represent and warrant to the COUNTY that THE COMPANY will comply with all applicable local, State, and Federal laws in carrying out the obligations incurred by THE COMPANY under the terms of this Agreement.

18. Any written notice or written certification or payment required by the terms of this Agreement shall be deemed given if delivered in person, or mailed certified mail, return receipt requested to the persons named below:

To the COUNTY: Charles Russell Burrell, County Attorney
Office of the County Attorney
100 North King Street
Hendersonville, NC 28792

To THE COMPANY: _____, Plant Manager
Continental Teves, Inc.,
[An indirect subsidiary](#) of Continental A.G.,
1800 Continental Blvd.
Charlotte, North [Carolina 27273](#)

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20. In the event any term, covenant or condition of this Agreement is deemed invalid or unenforceable, the remainder of this Agreement, of the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

21. The provisions hereof shall inure to the benefit of and bind the parties hereto and their respective heirs, successor and assigns. This document shall be considered to have been prepared equally by the parties hereto and shall not be construed more strictly against either of them. The provision hereof shall be liberally construed to give effect to their apparent intent.

22. This Agreement constitutes the entire agreement of the parties hereto and may not be modified or canceled except pursuant to the terms hereof or an instrument in writing signed by the parties hereto.

23. This Agreement may be executed in one or more counterparts and shall become effective when one or more counterparts have been signed by all of the parties; each counter part shall be deemed an original but all counterparts shall constitute a single instrument.

24. Any provision herein contained which by its nature and effect is required to be observed, kept or performed after the execution of this Agreement shall survive said execution and remain binding upon and for the benefit of the parties until fully observed, kept, or performed. Provided however, that all provisions of this Agreement which by their terms survive any termination of this Agreement shall survive indefinitely.

25. This Agreement is intended to benefit the parties hereto only, and therefore no third party shall have any rights under this Agreement, or be deemed a third party beneficiary.

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26. This Agreement shall be effective after it has been duly executed by the two parties, the effective date being the date above first written.

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Now, therefore, the two parties have caused this Agreement to be duly approved and duly executed in triplicate, each to have the force and effect of an original as of the date and year above first written.

HENDERSON COUNTY

BY: _____ (Seal)
William L. Moyer, Chairman
Henderson County Board of Commissioners

Attest: (County Seal)

Clerk to the Board

CONTINENTAL TEVES, INC.,
An indirect subsidiary of Continental A.G.,

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Attest: (Corporate Seal)

BY: _____ (Seal)

President

Secretary

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STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

I, _____, Notary Public for said County and State, certify that
_____, personally came before me this day and
acknowledged that he/she is _____ Secretary to CONTINENTAL TEVES,
INC., an indirect subsidiary of CONTINENTAL A.G., Inc. a Delaware corporation authorized to
do business in North Carolina, that by authority duly given and as the act of the corporation, the
foregoing instrument was signed in its name by its _____, sealed with its
corporate Seal, and attested by him/herself as its _____ Secretary.

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Witness my hand and official seal, this the ___ day of _____, 20__.

(Official Seal)

Notary Public

My Commission expires _____, 20__.

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

I, _____, Notary Public for said County and State,
certify that Elizabeth W. Corn personally came before me this day and acknowledged that she is
Clerk to the Board of Commissioners of Henderson County, a body politic and corporate and that
by authority duly given and as the act of the corporation, the foregoing instrument was signed in
its name by its Chairman of the Board of Commissioner, sealed with its corporate seal, and
attested by herself as its Clerk.

Witness my hand and official seal, this the ___ day of _____, 20__.

(Official Seal)

Notary Public

My commission expires _____, 20__.

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