

RESOLUTION NO. 05-203

A RESOLUTION APPROVING AN ECONOMIC
INCENTIVE CONTRACT AND LOAN AGREEMENT
BETWEEN BOWHEAD MANUFACTURING COMPANY,
L.L.C., AND THE CITY OF PORT ARTHUR
SECTION 4A ECONOMIC DEVELOPMENT
CORPORATION

WHEREAS, the City Council deems it in the public interest to authorize the City of Port Arthur Section 4A Economic Development Corporation to enter into an economic incentive contract and loan agreement with Bowhead Manufacturing Company, L.L.C.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ARTHUR:

Section 1. That the facts and opinions in the preamble are true and correct.

Section 2. That the City of Port Arthur Section 4A Economic Development Corporation is herein authorized to enter into an economic incentive contract and loan agreement with Bowhead Manufacturing Company, L.L.C., and the President and Secretary of the City of Port Arthur Section 4A Economic Development Corporation are authorized to sign the agreement in substantially the same form as denoted in Exhibit "A", with the following changes:

- "Bowhead" instead of "Bohead" throughout contract in signature line and on acknowledgment
- Security agreement of Bowhead should reflect account with Corp and fixtures and equipment at leased premises with Magnum (unless the security interest is prohibited by Corp rules and regulations)
- Security agreement with Magnum should reflect equipment and lease with Bowhead
- Date of agreement should commence on or before August 1, 2005

Section 3. That a copy of the caption of the Resolution be spread upon the Minutes of the City Council.

READ, ADOPTED AND APPROVED on this 28th day of

June, A.D. 2005, at a Regular Meeting of the City

Council of the City of Port Arthur, Texas by the following

vote: AYES: Mayor Pro Tem Thompson

City Council members Lewis, Barker,

Henderson, Flood, Beard, Prince

and Sinagal.

NOES: None.

Oscar A. Ortiz
OSCAR ORTIZ, MAYOR

ATTEST:

Evangeline Green
EVANGELINE GREEN, CITY SECRETARY

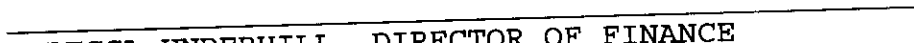
APPROVED AS TO FORM:

Mark Sokolow
MARK T. SOKOLOW, CITY ATTORNEY

APPROVED FOR ADMINISTRATION:


STEPHEN FITZGIBBONS, CITY MANAGER

APPROVED AS TO THE AVAILABILITY OF FUNDS:


REBECCA UNDERHILL, DIRECTOR OF FINANCE

APPROVED FOR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION:


DEBORAH ECHOLS, ASSISTANT DIRECTOR OF FINANCE

EXHIBIT "A"

**ECONOMIC INCENTIVE CONTRACT & LOAN AGREEMENT
BETWEEN**

**THE CITY OF PORT ARTHUR SECTION 4A
ECONOMIC DEVELOPMENT CORPORATION
AND**

BOWHEAD MANUFACTURING COMPANY, L.L.C.

Executive Summary

Bowhead Manufacturing Company, L.L.C. ("Bowhead"), is an Alaskan-native-owned company, who specializes in environmental and safety equipment. Bowhead was recently awarded an United States Marine Corps (the "Corps") contract to supply the Corps with specialty, 600-gallon per minute (gpm), fuel and water pumps. The Corps contract has an estimated potential for \$16 million in sales, with costs of about \$14.2 million. Bowhead has agreed to produce the Corps' pumps in Port Arthur, Texas, and the City of Port Arthur Section 4A Economic Development Corporation ("PAEDC") has agreed to provide the funds necessary to locate the pump operations in Port Arthur.

Bowhead will execute a five-year lease with Magnum Fire and Safety Systems, Inc. ("Magnum"), a the Port Arthur company, for 4150 square feet of manufacturing and office space located at 6648 Gulfway Drive. Additionally, Bowhead will execute a five-year contract with Mr. Ken Broussard, President of Magnum, to manage the production of the specialty pumps.

PAEDC has agreed to provide Bowhead with a \$65,000 grant to be applied exclusively toward (a) manufacturing equipment, (b) improvements to the Port Arthur manufacturing facility, and (c) office facilities and equipment in Port Arthur. In return, Bowhead promises to distribute \$1.5 million in payroll over the next five years, as measured by the Internal Revenue Service (IRS) W-3 form.

If Bowhead breaches this agreement then the PAEDC grant, minus any credits earned, will automatically convert to a loan (liquidated damages). Bowhead may earn credits as described in the following paragraph. The loan will have a three-year term, starting on the date of Bowhead's breach, an interest rate of ten percent (10%), and secured by equipment from two sources: (1) Bowhead equipment purchased with PAEDC monies, with an estimated value of \$35,000, and (2) selected Magnum equipment, with an estimated value of at least \$30,000.

Bowhead may use the following incentives to reduce the duration of this contract or to reduce liquidated damages in the event of a breach.

- Starting on the effective date of the contract, Bowhead will receive a \$1.00 credit for each \$23.00 of payroll distributed to its employees, up to \$65,000 of credit.
- Bowhead will receive a \$3,900 credit for each year that at least fifty percent (50%) of its employees are Port Arthur residents, as determined from the addresses on IRS W-2 forms.

To avoid surprises, Bowhead agrees to send PAEDC copies of all equipment invoices and brief status reports. Status reports will be required every three (3) months the first year, every six months the following two years, and annually the last two years. Additionally, Bowhead will issue a final report fourteen (14) days after the contract is either performed fully or breached. Bowhead will forfeit its credits for any reporting period for which it did not issue a report.

**ECONOMIC INCENTIVE CONTRACT & LOAN AGREEMENT
BETWEEN
THE CITY OF PORT ARTHUR SECTION 4A
ECONOMIC DEVELOPMENT CORPORATION
AND**

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ECONOMIC INCENTIVE CONTRACT & LOAN AGREEMENT

BETWEEN

**THE CITY OF PORT ARTHUR SECTION 4A
ECONOMIC DEVELOPMENT CORPORATION**

AND

BOHEAD MANUFACTURING COMPANY, L.L.C.

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| Exhibit “A” | Machinery and Equipment List |
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ECONOMIC INCENTIVE CONTRACT & LOAN AGREEMENT
BETWEEN
THE CITY OF PORT ARTHUR SECTION 4A
ECONOMIC DEVELOPMENT CORPORATION
AND
BOHEAD MANUFACTURING COMPANY, L.L.C.

CONTRACT DATES

CONTRACT START DATE

1. This Economic Incentive Contract and Loan Agreement ("Agreement") is entered into with an effective date of _____, 2005, by and between the City of Port Arthur Section 4A Economic Development Corporation ("PAEDC") and Bohead Manufacturing Company, L.L.C. ("Bohead").

CONTRACT END DATE

2. This contract expires the earlier of July 1, 2010 or 30 days after Bohead either performs fully or breaches the contract, subject to earlier termination or extension, voluntary or involuntary, as provided herein. In the event of breach, although this contract expires, the contracts and agreements contained in the Exhibits to this contract become effective.

PARTIES

3. City of Port Arthur Section 4A Economic Development Corporation ("PAEDC"), located at 4173-39th Street, Port Arthur, Texas, 77642, is a corporation. It is duly authorized to do business in the State of Texas under Section 4A, Article 5190.6 V.T.C.A. (the Development Corporation Act of 1979) and duly authorized by Resolution of the City Council of the City of Port Arthur to enter into this contract. So authorized and as provided by the PAEDC bylaws, the President and Secretary of the PAEDC Board have the authority to execute this contract.

4. Bohead Manufacturing Company, L.L.C. ("Bohead") is an XXXX limited liability company, formed on _____, _____. Bohead's General Manager, Jeff Guentzel is duly authorized by its members to enter into and execute this contract. The registered agent for Bohead is _____, located at _____, _____, _____.

PROMISED PERFORMANCE

5. The parties agree to perform as follows.

(a) PERFORMANCE BY PAEDC

PAEDC shall give Bohead the sum of \$65,000, subject to the limitations detailed herein, which Bohead is not required to pay back unless Bohead breaches this contract. This is PAEDC's sole obligation.

(b) PERFORMANCE BY BOHEAD

- (1) Bohead shall use the Grant monies provided by the PAEDC exclusively for (a) manufacturing equipment, (b) improvements to its Port Arthur manufacturing facility, and (c) office facilities and equipment in Port Arthur. Bohead will demonstrate compliance with this promised performance by sending PAEDC copies of all relevant invoices and payment checks, which can be conveniently included with Bohead's periodic reports to PAEDC.

Manufacturing equipment will be limited to the list of equipment in *Exhibit "A1,"* provided by Bohead. Bohead shall not use PAEDC grant monies to purchase equipment materially different from the equipment in *Exhibit "A1,"* unless and until Bohead presents the change to the PAEDC Board and obtains Board approval for the substitution.

- (2) Bohead's Port Arthur operation shall distribute a payroll of \$150,000 in 2005, \$300,000.00 per year for the years 2006 through 2009, and \$150,000 in the first half of 2006, for a cumulative total of \$1.5 million. PAEDC will measure Bohead's performance by Bohead's Internal Revenue Service ("IRS") Form W-3. Additionally, PAEDC will audit Bohead's IRS Form W-2s to ensure that the increased payroll is primarily¹ due to more employment (versus wage, salary and/or bonus increases).

Bohead may use incentive credits to modify this performance obligation, as discussed in the next section.

- (3) Bohead shall execute and comply with the following stand-alone, collateral agreements.

- A. Commercial Promissory Note automatically effective upon contract breach by Bohead, contained in *Exhibit "B,"*
- B. Bohead's Commercial Security Agreement for equipment purchased by Bohead with PAEDC grant monies, contained in *Exhibit "C."*
- C. Certification Regarding Lobbying for contracts, grants, loans, and cooperative agreements, contained in *Exhibit "E."*

- (4) Bohead shall deliver to PAEDC original copies of (a) a second Commercial Security Agreement, this one executed by Magnum Fire and Safety Systems, Inc. (Magnum), Bohead's Port Arthur landlord, for Magnum equipment with a current value of at least \$30,000, and (b) a Landlord Lien Subordination

¹ "Primarily" is defined as at least 80 percent of the total.

Agreement, executed by Magnum. These agreements are contained in Exhibit "F".

- (5) On demand by PAEDC and in response to Bohead's failure to achieve a performance milestone, Bohead shall provide PAEDC with assurances that it has both the intention and the capabilities to perform fully its contractual obligations.

(c) BOHEAD CREDITS – SUBSTITUTE PERFORMANCE

Bohead may earn credits according to the following formulas, to either reduce the duration of this contract or reduce the amount of liquidated contract damages in the event Bohead breaches the contract.

- (1) Starting on the effective date of the contract, Bohead will receive a \$1.00 credit for each \$23.00 of payroll reportable to the IRS.
- (2) Bohead will receive a \$3,900 credit for each year that at least fifty percent (50%) of its employees are Port Arthur residents, as determined from the addresses on IRS W-2 forms.
- (3) Total credit cannot exceed the sum that PAEDC grants to Bohead, which is assumed to be \$65,000; however, if PAEDC provides a sum less than \$65,000, because, for example, the total cost of approved machinery and equipment was less than \$65,000, then Bohead can only earn credits up to that lesser sum.
- (4) Bohead will forfeit any credits it earned during a period for which a report is scheduled but Bohead fails to issue it.

BOHEAD'S PERFORMANCE MILESTONE SCHEDULE

6. Although failure to achieve a performance milestone is not a breach of contract, a failure is grounds for PAEDC to withhold further payments to Bohead and/or demand reasonable assurances² from Bohead that it can and will fully perform its contractual obligations. Failure to provide demanded assurances is a breach of contract.

7. Bohead's performance milestones are contained in the table on the following page.

² Examples of reasonable assurances are copies of pending contracts and customer commitment letters.

BOHEAD'S PERFORMANCE MILESTONE SCHEDULE

| | <u>Deadline</u> | <u>Milestone</u> |
|-----|--------------------------|--|
| (a) | July 1, 2005 | Execute 5-year Lease with Magnum. |
| (b) | July 1, 2005 | Deliver copy of Lease, Landlord Lien Subordination agreement, and Magnum's Commercial Security Agreement to PAEDC. |
| (c) | July 15, 2005 | Take Possession of leased premises. |
| (d) | Aug. 15, 2005 | Start production. |
| (e) | Oct. 5, 2005 | Issue a status report ³ to PAEDC Executive Director for the period of July 1, 2005 to September 30, 2005. |
| (f) | Dec. 31, 2005 | Distribute the sum of \$150,000 in payroll, between July 1, 2005 and Dec. 31, 2005. |
| (g) | Jan. ⁴ , 2006 | Status report for Oct. 1, 2005 to Dec. 31, 2005 |
| (h) | Apr. 5, 2006 | Status report for Jan. 1, 2006 to Mar. 31, 2006 |
| (i) | July 5, 2006 | Status report for April 1, 2006 to June 30, 2006 |
| (j) | Dec. 31, 2006 | Distribute the sum of \$300,000 in payroll, between Jan. 1, 2006 and Dec. 31, 2006 |
| (k) | Jan. 5, 2007 | Status report for July 1, 2006 to Dec. 31, 2006 |
| (l) | July 5, 2007 | Status report for Jan. 1, 2007 to June 30, 2007 |
| (m) | Dec. 31, 2007 | Distribute the sum of \$300,000 in payroll, between Jan. 1 and Dec. 31, 2007 |
| (n) | Jan. 5, 2008 | Status report for July 1, 2007 to Dec. 31, 2007 |
| (o) | Dec. 31, 2008 | Distribute the sum of \$300,000 in payroll, between Jan. 1 and Dec. 31, 2008 |
| (p) | Jan. 5, 2009 | Status report for Jan. 1, 2008 to Dec. 31, 2008 |
| (q) | Dec. 31, 2009 | Distribute the sum of \$300,000 in payroll, between Jan. 1 and Dec. 31, 2009 |
| (r) | Jan. 5, 2010 | Status report for Jan 1, 2009 to Dec. 31, 2009 |
| (s) | June 30, 2010 | Distribute the sum of \$150,000 in payroll between Jan. 1 and June 30, 2010. |
| (t) | July. 31, 2010 | Issue a final report to the PAEDC Board and Executive Director detailing actual performance versus promised performance, so the PAEDC Board can take action at its regularly scheduled August, 2010, Board meeting. If Bohead fully performs then the Board will deem this contract complete, thereby, extinguishing the corollary agreements contained in <i>Appendices "B," "C" and "D."</i> |

³ Status reports shall include copies of invoices and check payments for machinery and equipment purchased with PAEDC funds.

⁴ January 5th status reports shall also include identity of current General Manager and members who own more than 5% of the shares.

PAEDC'S CONDITIONAL OBLIGATIONS AND LIMITED LIABILITY

8. It is expressly understood and agreed by the parties hereto that the PAEDC funding obligations herein are contingent upon the actual receipt of adequate sales tax revenue funds to meet the PAEDC's liabilities under this Agreement. If adequate funds are not available to make payments under this Agreement, the PAEDC shall notify Bohead in writing within a reasonable time after such fact is reasonably determined by the PAEDC Board of Directors. The PAEDC, at its sole option, may then terminate this Agreement without further liability. In the event of such termination by the PAEDC, the PAEDC may, at its sole option, immediately cease all further funding, if any, required by this Agreement and the PAEDC shall not be liable to Bohead or to any third parties for failure to make payments to Bohead under the terms and conditions of this Agreement.

9. The PAEDC shall not be liable, in contract or otherwise, to Bohead, or to any person or entity claiming by or through Bohead, for any expense, expenditure or cost incurred by or on behalf of Bohead related to the project made the basis of this Agreement. The PAEDC's sole liability/obligations, if any, shall be to Bohead and shall be limited to the conditional funding obligations detailed in this Agreement.

10. Bohead shall not use the funds herein for any purpose(s) other than that specifically disclosed herein and as further disclosed within that certain application made by or on behalf of Bohead, which application is incorporated herein for all purposes.

11. Funds granted by the PAEDC hereunder shall not be utilized by Bohead for repayment of costs, expenditures or expenses incurred prior to the date of this Agreement.

LIQUIDATED DAMAGES FOR BREACH OF CONTRACT BY Bohead

12. In the event Bohead fails to perform its obligations under this contract, the PAEDC grant, minus any credits earned, will automatically convert to a loan (liquidated damages), effective on the day of breach, as agreed by Bohead in the executed Commercial Promissory Note contained in *Exhibit "B."* PAEDC, at its sole option, may terminate its remaining funding obligations, if any, detailed in Section 4 herein. Further, the PAEDC shall be entitled to recover its reasonable and customary attorney's fees and Court costs incurred in collection of said obligation and such remedies as are provided at law or in equity.

13. It is expressly understood and agreed by the parties that any right or remedy shall not preclude the exercise of any other right or remedy under this Contract or under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

RECORDS / INSPECTION / PAEDC AUDIT

14. Bohead must establish and maintain sufficient records, as reasonably determined by the PAEDC, to account for the expenditure and utilization of funds received by Bohead from the PAEDC under the terms and conditions of this Agreement.

15. Bohead shall maintain records of the receipt and disposition of all funds provided hereunder as necessary to allow the PAEDC to audit and verify proper utilization of said funds in compliance with this Agreement and the representations and warranties contained herein and in Bohead's application. Bohead shall provide reports of utilization of said funds, as reasonably requested by the PAEDC, and upon final termination of this contract.

16. Bohead shall give the PAEDC, or any of its duly authorized representatives, access to and right to examine all books, accounts, records, reports, files and other papers, things or property belonging to or in use by Bohead pertaining to this Agreement. Such rights to access shall continue as long as the records are maintained by Bohead. Bohead agrees to maintain such records in an accessible location. As to job creation performance, interim status reports shall include documentation substantiating the accuracy of such reports, including, for example, 941 payment reports, Texas Workforce Commission reports, or other such reports confirming total jobs, payroll and other relevant information. Driver's license information is appropriate for interim reporting of Port Arthur residents hired. Year end reports shall be substantiated with IRS Forms W-2 and W-3. The reporting objective is to include documentation necessary to for PAEDC to verify said report without further outside inquiry.

17. All records pertinent to this Agreement shall be retained by Bohead at least three years following the date of termination of this Agreement, whether said termination is a result of default or whether said termination is a result of final submission of a close out report by Bohead detailing Bohead's compliance with its obligations provided herein. Further, in the event any litigation, claim or audit arising out of or related to this Agreement is instituted before the expiration of the three (3) year period and extends beyond the three year period, the records will be maintained until all litigation, claims or audit findings involving this Agreement and the records made the basis of same have been resolved. Further, records relating to real property acquisition, including any long-term lease, shall be retained for a period equal to the useful life of any machinery or equipment purchased with PAEDC funds.

18. Bohead shall provide PAEDC with all reports necessary for PAEDC compliance with Article 5190.6 V.T.C.A.

19. It is expressly understood and agreed by the parties hereto that if Bohead fails to submit to PAEDC in a timely and satisfactory manner any report required by this Contract, PAEDC may, at its sole discretion, withhold further payments to Bohead and/or demand assurances that Bohead can and will fully perform its contractual obligations. If Bohead fails to provide adequate assurances then Bohead is in breach and any monies advanced by PAEDC automatically become a loan. If PAEDC withholds such payments, it shall notify Bohead in writing of its decision and the reasons therefore. Payments withheld

pursuant to this paragraph may be held by PAEDC until such time as the delinquent obligations for which funds are withheld are fulfilled by Bohead.

20. The PAEDC reserves the right, from time to time, to carry out field inspections/audits to ensure compliance with the requirements of this Agreement. After completion of any such audit, the PAEDC, at its option, may provide Bohead with a written report of the audit findings. If the audit report details deficiencies in Bohead's performance under the terms and conditions of this Agreement, the PAEDC may establish requirements for the timely correction of any such deficiencies by Bohead.

HOLD HARMLESS

21. Bohead agrees to hold harmless the PAEDC and the City of Port Arthur from any and all claims, demands, and causes of action of any kind or character which may be asserted by any third party occurring, arising out of or in any way related to this Agreement, the project made the basis of this Agreement and the utilization of grant funds provided by this Agreement.

SUBCONTRACTS

22. Bohead may not subcontract for performance credits described in this Contract without obtaining PAEDC's written approval, which may be withheld for any reason. Bohead shall only subcontract for performance credits described in this Contract after Bohead has submitted Subcontractor Eligibility Request, as specified by PAEDC, for each proposed subcontract, and Bohead has obtained PAEDC's prior written approval, based on the information submitted, of Bohead's intent to enter into such proposed subcontract. Bohead, in subcontracting for any performances described in this contract, expressly understands that in entering into such subcontracts, PAEDC is in no way liable to Bohead's subcontractor(s).

23. In no event shall PAEDC's prior written approval of a subcontractor's eligibility, be construed as relieving Bohead of the responsibility for ensuring that the performances rendered under all subcontracts are rendered so as to comply with all terms of this Contract, as if such performances rendered were rendered by Bohead. PAEDC's approval does not constitute adoption, ratification, or acceptance of Bohead's or subcontractor's performance hereunder. PAEDC maintains the right to insist upon Bohead's full compliance with the terms of this Contract, and by the act of subcontractor approval, PAEDC does not waive any right of action which may exist or which may subsequently accrue to PAEDC under this Contract.

24. Bohead, as well as all of its approved subcontractors, shall comply with all applicable federal, state, and local laws, regulations, and ordinances for making procurement under this Contract.

CONFLICT OF INTEREST / DISCLOSURE OBLIGATION

25. Conflict of Interest: No employee, agent, officer or elected or appointed official of the City of Port Arthur or the PAEDC who has participated in a decision making process

related to this contract (without recusing him/herself and executing a conflict affidavit) may obtain a personal or financial interest or benefit from an PAEDC assisted activity, or have an interest in any contract, subcontract, or agreement (or proceeds thereof) with respect to an PAEDC assisted activity, during their tenure or for one (1) year thereafter. Bohead shall ensure compliance with applicable provisions under Article 5190.6 V.T.C.A. and Chapter 171 Local Government Code V.T.C.A.

26. Disclosure: In conjunction with execution of this Agreement, Bohead has fully disclosed to PAEDC all known and potential owners of interests in Bohead (whether stockholder, manager, member or otherwise). In the event of any change in ownership or control of Bohead of five percent (5 %) or greater, Bohead shall notify PAEDC in writing. Further, Bohead shall be obligated to notify in writing the PAEDC in the event any time prior to, during or one (1) year after the term of this Contract, any City or PAEDC employee or representative or any third party with a conflict of interest obtains or proposes to obtain a financial benefit, direct or indirect, from Bohead. Failure to provide said notice immediately or no later than five (5) business days after receipt of information shall constitute a default herein.

NONDISCRIMINATION / EMPLOYMENT / REPORTING

27. Bohead shall ensure that no person shall on the grounds of race, color, religion, sex, handicap, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds provided under this Contract. Funds shall be used in accordance with the following requirements:

- (a) To the greatest extent feasible, opportunities for training and employment arising in connection with the planning and carrying out of any project assisted with PAEDC funds provided under this Contract be given to Port Arthur residents; and
- (b) To the greatest extent feasible, contracts for work to be performed in connection with any such project be awarded to Port Arthur residents and businesses, including, but not limited to, individuals or firms doing business in the field of planning, consulting, design, architecture, building construction, rehabilitation, maintenance, or repair, which are located in or owned in substantial part by persons residing in the City of Port Arthur.
- (c) If Bohead advertises for employment then it will advertise in the Port Arthur News.

LEGAL AUTHORITY

28. Bohead assures and guarantees that Bohead possesses legal and/or corporate authority to enter into this Contract, receive funds authorized by this Contract, and to perform the services Bohead has obligated to perform hereunder and has provided, and will in the future provide, as requested by the PAEDC, such corporate resolutions necessary to evidence this authority.

29. The person or persons signing and executing this Contract on behalf of Bohead, or representing themselves as signing and executing this Contract on behalf of Bohead, do hereby warrant and guarantee that he, she, or they have been duly authorized by Bohead to execute this Contract on behalf of Bohead and to validly and legally bind Bohead to all terms, performances, and provisions herein set forth.

NOTICE OF LEGAL OR REGULATORY CLAIMS AGAINST Bohead

30. Bohead shall give PAEDC immediate notice in writing of 1) any legal or regulatory action, including any proceeding before an administrative agency filed against Bohead, directly or indirectly; and 2) any material claim against Bohead, which may impact continued operations. For purposes herein, "material" claims shall mean claims in excess of \$15,000. Except as otherwise directed by PAEDC, Bohead shall furnish immediately to PAEDC copies of all pertinent documentation of any kind received by Bohead with respect to such action or claim.

CHANGES AND AMENDMENTS

31. Except as specifically provided otherwise in this Contract, any alterations, additions, or deletions to the terms of this Contract shall be by amendment in writing and executed by both parties to this Contract.

32. It is understood and agreed by the parties hereto that performances under this Contract must be rendered in accordance with Article 5190.6 V.T.C.A. (the Development Corporation act of 1979), the regulations promulgated under Article 5190.6 V.T.C.A., the assurances and certifications made to PAEDC by Bohead, and the assurances and certifications made to the City of Port Arthur with regard to the operation of the PAEDC's Projects. Based on these considerations, and in order to ensure the legal and effective performance of this Contract by both parties, it is agreed by the parties hereto that the performances under this Contract are by the provisions of the PAEDC Program and any amendments thereto and may further be amended in the following manner: PAEDC may from time to time during the period of performance of this Contract issue policy directives which serve to establish, interpret, or clarify performance requirements under this Contract. Such policy directives shall be promulgated by the PAEDC Board of Directors in the form of PAEDC issuances, shall be approved by the City Council and shall have the effect of qualifying the terms of this Contract and shall be binding upon Bohead, as if written herein.

33. Any alterations, additions, or deletions to the terms of this Contract which are required by changes in Federal, state law or local law are automatically incorporated into this Contract without written amendment hereto, and shall become effective on the date designated by such law or regulation.

DEFAULT / TERMINATION

34. In the event of default of any of the obligations of Bohead detailed herein or in the event of breach of any of the representations of or warranties of Bohead either detailed herein or in Bohead's application to the PAEDC, the PAEDC may, at its sole option,

terminate this Agreement, in whole or in part. In the event of such termination, in addition to (i) any other remedies available to the PAEDC as provided by the laws of the State of Texas or (ii) any other remedies available to the PAEDC as provided herein, the PAEDC may, at its sole option, utilize one or more of the following actions to resolve or otherwise remedy said default:

- (a) Declare the Commercial promissory note executed in conjunction with this Agreement immediately due and payable, in full and exercise its default remedies provided under collateral documentation executed in conjunction with said Note and this Agreement
- (b) Exercise any remedies provided herein and/or within the Loan/Collateral Documents;
- (c) Withhold, whether temporarily or otherwise, disbursement of grant proceeds pending correction of the deficiency(s) by Bohead;
- (d) Disallow all or a part of the incentives which are not in compliance with the terms and conditions of this Agreement or in compliance with the representations and warranties contained within this Agreement and Bohead's application to the PAEDC;
- (e) Withhold and/or disallow further PAEDC incentives to Bohead;
- (f) Take any and all other remedies that may be legally available to the PAEDC, as authorized by the terms and conditions of this Agreement, and as may be authorized by the laws of the State of Texas;

35. In addition to the foregoing, the parties agree that this Agreement may be terminated at any time when both parties agree, in writing, to the terms and conditions of any such voluntary termination.

Bohead AUDITS

36. If directed by PAEDC, Bohead shall arrange for the performance of a compliance audit by a certified public accountant of funds received and performances rendered under this Contract, subject to the following conditions and limitations:

- (a) Bohead shall have a compliance audit which may be limited to use of funds received from the PAEDC, made for any of its fiscal years included within the contract period in which Bohead receives more than \$50,000 in PAEDC financial assistance provided by PAEDC in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, interest subsidies, or direct appropriations. Backup documentation regarding actual expenditures shall be provided by Bohead. Said audit must be received and accepted by the Director of PAEDC and/or the PAEDC Board.

(b) At the option of Bohead, each audit required by this section may cover either Bohead's entire operations or each department, agency, or establishment of Bohead which received, expended, or otherwise administered PAEDC funds;

(c) Unless otherwise specifically authorized by PAEDC in writing, Bohead shall submit the report of such audit to PAEDC within thirty (30) days after completion of the audit, but no later than one hundred twenty (120) days after the end of each fiscal period included within the period of this Contract.

(d) As a part of its audit, Bohead shall verify that the expenditures were exclusively for (a) manufacturing equipment, (b) improvements to its Port Arthur manufacturing facility, and (c) office facilities and equipment in Port Arthur. Any discrepancies in excess of \$1,000 shall be specifically documented in writing.

37. Bohead understands and agrees that it shall be liable to reimburse immediately PAEDC for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Contract and it may be required to submit formal audits at Bohead's costs.

38. Bohead shall take all necessary actions to facilitate the performance of any and all such audits, whether annual, mandatory or otherwise requested under this Agreement.

39. Subject to financial privacy requirements of Bohead and properly designated requests for non-disclosure due to proprietary reasons, all approved audit reports may be made available for public inspection.

40. PAEDC shall not release any funds for costs incurred by Bohead under this Contract until PAEDC has received certification from Bohead that its fiscal control and fund accounting procedures are adequate to assure proper disbursement of and accounting for funds provided under this Contract. PAEDC shall specify the content and form of such certification.

ENVIRONMENTAL CLEARANCE REQUIREMENTS

41. Bohead understands and agrees that by execution of this Contract, Bohead shall be responsible for providing to PAEDC all information, concerning this PAEDC funded project, required for PAEDC to meet its responsibilities for environmental review, decision making, and other action which applies to PAEDC in accordance with and to the extent specified in Federal, State and Local Law. Bohead further understands and agrees that Bohead shall make all reasonable efforts to assist PAEDC in handling inquiries and complaints from persons and agencies seeking redress in relation to environmental reviews covered by approved certifications.

ORAL AND WRITTEN CONTRACTS / PRIOR AGREEMENTS

42. All oral and written contracts between the parties to this Contract relating to the subject matter of this Contract that were made prior to the execution of this Contract have been reduced to writing and are contained in this Contract.

43. The documents listed below are hereby made a part of this Contract, and constitute promised performances by Bohead in accordance with this Contract:

| | |
|-------------|--|
| Exhibit "A" | Machinery and Equipment List |
| Exhibit "B" | Commercial Promissory Note |
| Exhibit "C" | Commercial Security Agreement |
| Exhibit "D" | UCC-1 Financing Statement |
| Exhibit "E" | Certification Regarding Lobbying |
| Exhibit "F" | Magnum Commercial Security Agreement and Landlord Lien Subordination Agreement |

Bohead Application to PAEDC for funding, by reference

VENUE

44. For purposes of litigation that may accrue under this Contract, venue shall lie in Jefferson County, Texas, where substantially all the performance will occur.

ADDRESS OF NOTICE AND COMMUNICATIONS

City of Port Arthur Section 4A Economic Development Corporation
444 4th Street
Port Arthur, Texas 77640
ATTN: Deborah Echols, Executive Director

Bohead Manufacturing Company, L.L.C.
1011 Southwest Klickitat Way, Suite 104
Seattle, Washington 98134-1136
ATTN: Jeff Guentzel, President

CAPTIONS

45. This contract has been supplied with captions to serve only as a guide to the contents. The caption does not control the meaning of any paragraph or in any way determine its interpretation or application.

COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

46. Bohead shall comply with all Federal, State and local laws, statutes, ordinances, resolutions, rules, regulations, orders and decrees of any court or administrative body or tribunal related to the activities and performances of Bohead under this Contract. Upon request by PAEDC and by the City, Bohead shall furnish satisfactory proof of its compliance herewith.

APPROVED AS TO FORM:

Guy Goodson, General Counsel for PAEDC

CONTRACT EXECUTION

SIGNED AND AGREED TO on the ____ day of _____, 2005.

**CITY OF PORT ARTHUR SECTION 4A ECONOMIC
DEVELOPMENT CORPORATION**

By: _____
President

Print Name

Witness

By: _____
Secretary

Print Name

Witness

SIGNED AND AGREED TO on the ____ day of _____, 2005.

BOHEAD MANUFACTURING COMPANY, L.L.C.

By: _____
Jeff Guentzel, President

Witness

EXHIBIT A

**INSERT EQUIPMENT TO BE PURCHASED WITH PAEDC FUNDS AND USED
AS COLLATERAL FOR GRANT/LOAN**

COMMERCIAL PROMISSORY NOTE

Port Arthur, Texas

This COMMERCIAL PROMISSORY NOTE becomes effective on the date when Bohead Manufacturing Company, L.L.C. (hereinafter called "Maker") breaches that certain Economic Incentive Contract and Loan Agreement between the City of Port Arthur Section 4A Economic Development Corporation (hereinafter called "Lender") and Maker, dated _____, 2005.

Effective Date: the _____ day of _____, 200__.

Principal Amount: \$ _____, which is \$65,000 minus the incentive credits earned by Maker according to that certain Economic Incentive Contract and Loan Agreement between the Lender and Maker (described hereinbefore).

Term of the Loan: Three years from effective date.

Payment Schedule: Monthly until principal is paid fully.

FOR VALUE RECEIVED, the undersigned Bohead Manufacturing Company, L.L.C. (hereinafter called "Maker", whether one or more, and if more than one, then jointly and severally) promise(s) to pay to the order of CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION, (herein called "Lender"), at its office at P.O. Box 1089, Port Arthur, Texas 77640-1089, or such other place or places as the holder hereof shall from time to time designate in written notice to Maker, the principle amount, in legal and lawful money of the United States of America, together with interest thereon from the date hereof until maturity at the rate of **ten percent (10%)** per annum as detailed herein.

All past due principal and interest shall bear interest from date of maturity until paid at the rate of **fifteen percent (15%)** per annum, or to the maximum extent allowed by law (whichever is less) as may hereafter be in effect, payable on demand after maturity.

This note is due and payable as follows: On demand with accrued interest from the effective date.

Any notices required or permitted to be given by the holder hereof to Maker pursuant to the provisions of this note shall be in writing and shall be either personally delivered or transmitted by first class United States mail, addressed to Maker at the address designated below for receipt of notice (or at such other address as Maker may, from time to time, designate in writing to the holder hereof for receipt of notices hereunder). Any such notice personally delivered shall be effective as of the date of delivery, and any notice transmitted by mail, in accordance with the foregoing provisions, shall be deemed to have been given to and received by Maker as of the date on which such notice was deposited with the United States Postal Service, properly addressed and with postage prepaid.

This note is also secured by and entitled to the benefits of all other security agreements, pledges, collateral assignments, deeds of trust, guaranties, mortgages, assignments, and lien instruments, if any, of any kind executed by Maker or by any other party as security for any loans owing by Maker to the Lender. Such lien instruments shall include those executed simultaneously herewith, those heretofore executed, and those hereafter executed.

If any installment or payment of principal or interest of this note is not paid when due or any drawer, acceptor, endorser, guarantor, surety, accommodation party or other person now or hereafter primarily or secondarily liable upon or for payment of all or any part of this note (each hereinafter called an "other liable party") shall die, or become insolvent (however such insolvency may be evidenced); or if any proceeding, procedure or remedy supplementary to or in enforcement of judgment shall be resorted to or commenced against Maker or any other liable party, or with respect to any property of any of them; or if any governmental authority or any court at the instance thereof shall take possession of any substantial part of the property of or assume control over the affairs or operations of, or a receiver shall be appointed for or take possession of the property of, or a writ or order of attachment or garnishment shall be issued or made against any of the property of Maker or any other liable party; or if any indebtedness for which Maker or any other liable party is primarily or secondarily liable shall not be paid when due or shall become due and payable by acceleration of maturity thereof, or if any event or condition shall occur which shall permit the holder of any such indebtedness to declare it due and payable upon the lapse of time, giving of notice or otherwise; or if Maker or any other liable party (if other than a natural person) shall be dissolved, wound up, liquidated or otherwise terminated, or a party to any merger or consolidation without the written consent of Lender; or if Maker or any other liable party shall sell substantially all or an integral portion of its assets without the written consent of Lender; or if Maker or any other liable party fails to furnish financial information requested by Lender; or if Maker or any other liable party furnishes or has furnished any financial or other information or statements which are misleading in any respect; or if a default occurs under any instrument now or hereafter executed in connection with or as security for this note; or any event occurs or condition exists which causes Lender to in good faith deem itself insecure or in good faith believe the prospect of payment or performance by Maker or any other liable party under this note, under any instrument or agreement executed in connection with or as security for this note, or under any other indebtedness of Maker or any other liable party to Lender is impaired; thereupon, at the option of Lender, the principal balance and accrued interest of this note and any and all other indebtedness of Maker to Lender shall become and be due and payable forthwith without demand, notice of default, notice of acceleration, notice of intent to accelerate the maturity hereof, notice of nonpayment, presentment, protest or notice of dishonor, all of which are hereby expressly waived by Maker and each other liable party. Lender may waive any default without waiving any prior or subsequent default.

If this note is not paid at maturity whether by acceleration or otherwise, and is placed in the hands of any attorney for collection, or suit is filed hereon, or proceedings are had in probate, bankruptcy, receivership, reorganization, arrangement or other legal proceedings for collection hereof, Maker and each other liable party agree to pay Lender its collection costs, including court costs and a reasonable amount for attorney's fees.

It is the intention of Maker and Lender to conform strictly to applicable usury laws. Accordingly, if the transaction contemplated hereby would be usurious under applicable law, then, in that event, notwithstanding anything to the contrary herein or in any agreement entered into in connection with or as security for this note, it is agreed as follows: (i) the aggregate of all consideration which constitutes interest under applicable law that is taken, reserved, contracted for, charged or received under this note or under any of the other aforesaid agreements or otherwise in connection with this note shall under

no circumstances exceed the maximum amount of interest allowed by applicable law, and any excess shall be credited on this note by the holder hereof (or, if this note shall have been paid in full, refunded to Maker); (ii) in the event that maturity of this note is accelerated by reason of an election by the holder hereof resulting from any default hereunder or otherwise, or in the event of any required or permitted prepayment, then such consideration that constitutes interest may never include more than the maximum amount allowed by applicable law, and excess interest, if any, provided for in this note or otherwise shall be canceled automatically as of the date of such acceleration or prepayment and, if theretofore prepaid, shall be credited on this note (or if this note shall have been paid in full, refunded to Maker); and (iii) all calculations of the rate of interest taken, reserved, contracted for, charged or received under this note or under any of the other aforesaid agreements or otherwise in connection with this note, that are made for the purpose of determining whether such rate exceeds the maximum lawful rate shall be made, to the extent permitted by applicable law, by amortizing, prorating, allocating, and spreading such interest over the entire term of the loan evidenced by this note (including all renewal and extended terms).

Maker may prepay all or any part of the principal of this note before maturity without penalty. No partial prepayment shall reduce, postpone or delay the obligation of Maker to continue paying the installments herein provided on their respective due dates following any such partial prepayment until this note is fully paid.

The Maker and each other liable party are and shall be directly and primarily, jointly and severally, liable for the payment of all sums called for hereunder; and, except for notices specifically required to be given by the holder hereof to Maker pursuant to the earlier provisions of this note, Maker and each other liable party hereby expressly waive demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intention to accelerate maturity, notice of acceleration of maturity, and all other notice, filing of suit and diligence in collecting this note or enforcing or handling any of the security therefor, and do hereby agree to any substitution, exchange or release, in whole or in part, of any security here-for or the release of any other liable party, and do hereby consent to any and all renewals or extensions from time to time, of this note, or any part hereof, either before or after maturity, all without any notice thereof to any of them and without affecting or releasing the liability of any of them. Each other liable party does further agree that it will not be necessary for the holder hereof, in order to enforce payment of this note by such other liable party, to first institute suit or exhaust its remedies against Maker or any other liable party or to enforce its rights against any security therefor.

BOHEAD MANUFACTURING COMPANY, L.L.C.
"Maker"

By: _____
General Manager

ACKNOWLEDGEMENT

THE STATE OF TEXAS

*

COUNTY OF JEFFERSON

*

BEFORE ME, THE UNDERSIGNED Notary Public, on this day personally appeared _____, a representative of the FRP Group, LLC, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same as the act and deed of the FRP Group, LLC, for the purposes and consideration therein expressed, and the Capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the ____ day of

_____, 2005.

NOTARY PUBLIC, STATE OF TEXAS

MAKER'S ADDRESS FOR RECEIPT OF NOTICE:

BOHEAD MANUFACTURING COMPANY, L.L.C.
1011 Southwest Klickitat Way, Suite 104
Seattle, Washington 98134-1136

COMMERCIAL SECURITY AGREEMENT

Dated _____, 200__

| <u>Debtor(s)</u> | <u>Secured Party</u> |
|---|--|
| Bohead Manufacturing Company, L.L.C. | Port Arthur Economic Development Corporation ("PAEDC") |
| 1011 Southwest Klickitat Way | 444 4 th Street |
| Suite 104 | |
| Seattle, Washington 98134-1136 | Port Arthur, Texas 77640 |
| (hereinafter referred to as "Debtor" whether one or more) | (hereinafter referred to as "Secured Party") |

FOR VALUE RECEIVED, the receipt and sufficiency of which is hereby acknowledged, Debtor grants to Secured Party the security interest (and the pledges and assignments as applicable) hereinafter set forth and agrees with Secured Party as follows:

A. **OBLIGATIONS SECURED.** The first priority lien and pledges and assignments as applicable granted hereby are to secure punctual payment and performance of the following: (i) certain promissory note(s) of even date herewith in the original principal sum of \$65,000, executed by Debtor and payable to the order of Secured Party, and any and all extensions, renewals, modifications and rearrangements thereof, (ii) certain obligations of Debtor to Secured Party under that certain Economic Incentive Contract and Loan Agreement of even date and all extensions, renewals, modifications and rearrangements thereof, and (iii) any and all other indebtedness, liabilities and obligations whatsoever and of whatever nature of Debtor to Secured Party whether direct or indirect, absolute or contingent, primary or secondary, due or to become due and whether now existing or hereafter arising and howsoever evidenced or acquired, whether joint or several, or joint and several (all of which are herein separately and collectively referred to as the "Obligations"). Debtor acknowledges that the security interest (and pledges and assignments as applicable) hereby granted shall secure all future advances as well as any and all other indebtedness, liabilities and obligations of Debtor to Secured Party whether now in existence or hereafter arising.

B. **USE OF COLLATERAL.** Debtor represents, warrants and covenants that Collateral will be used by the Debtor primarily for business.

C. **DESCRIPTION OF COLLATERAL.** Debtor hereby grants to Secured Party a first priority lien in (and hereby pledges and assigns as applicable) and agrees that Secured Party shall continue to have a security interest in (and a pledge and assignment of as applicable), the following property, to wit: (DEBTOR TO INITIAL APPROPRIATE BLANKS)

☐ **All Accounts.** A security interest in all accounts now owned or existing as well as any and all that may hereafter arise or be acquired by Debtor, and all the proceeds and products thereof, including without limitation, all notes, drafts, acceptances, instruments and chattel paper arising therefrom, and all returned or repossessed goods arising from or relating to any such accounts, or other proceeds of any sale or other disposition of inventory.

☐ **Specific Accounts.** A security interest in only those specific accounts and/or contracts listed and described on Schedule A attached or which may hereafter be attached hereto, and all the proceeds and products thereof, including without limitation, all notes, drafts, acceptances, instruments and chattel paper arising therefrom, and all returned or repossessed goods arising from or relating to any such accounts or other proceeds of any sale or other disposition of inventory.

☐ **All Inventory.** A security interest in all of Debtor's inventory, including all goods, merchandise, raw materials, goods in process, finished goods and other tangible personal property, wheresoever located, now owned or hereafter acquired and held for sale or lease or furnished or to be furnished under contracts for service or used or consumed in Debtor's business and all additions and accessions thereto and contracts with respect thereto and all documents of title evidencing or representing any part thereof, and all products and proceeds thereof, including, without limitation, all of such which is now or hereafter located at the following locations: (give locations)

☐ **All Fixtures.** A security interest in all of Debtor's fixtures and appurtenances thereto, and such other goods, chattels, fixtures, equipment and personal property affixed or in any manner attached to the real estate and/or building(s) or structure(s), including all additions and accessions thereto and replacements thereof and articles in substitution therefor, howsoever attached or affixed, located at the following locations: (give legal address)

The record owner of the real estate is: _____.

☐ **All Equipment.** A security interest in all equipment of every nature and description whatsoever now owned or hereafter acquired by Debtor including all appurtenances and additions thereto and substitutions therefor, wheresoever located, including all tools, parts and accessories used in connection therewith.

the event of default or if Secured Party deems itself insecure, Surety may use the inventory in any manner not inconsistent with this Agreement, may sell that part of the Collateral consisting of inventory provided that all such sales are in the ordinary course of business, and may use and consume any raw materials or supplies that are necessary in order to carry on Surety's business. A sale in the ordinary course of business does not include a transfer in partial or total satisfaction of a debt.

4. **Accounts as Proceeds:** All accounts that are proceeds of the inventory included within the Collateral shall be subject to all of the terms and provisions hereof pertaining to accounts.

5. **Protection of Inventory:** Surety shall take all action necessary to protect and preserve the inventory.

H. **ADDITIONAL PROVISIONS REGARDING SECURITIES AND SIMILAR COLLATERAL.** The following provisions shall apply to all securities and similar property included within the Collateral:

1. **Additional Warranties:** As to each and all securities and similar property included within the Collateral (including securities hereafter acquired that are part of the Collateral), Surety further represents and warrants (as of the time of delivery of same to Secured Party) as follows: (a) such securities are genuine, validly issued and outstanding, fully paid and non-assessable, and are not issued in violation of the preemptive rights of any person or of any agreement by which the issuer or obligor thereof or Surety is bound; (b) such securities are not subject to any interest, option or right of any third person; (c) such securities are in compliance with applicable law concerning form, content and manner of preparation and execution; and (d) Surety acquired and holds the securities in compliance with all applicable laws and regulations.

2. **Dividends and Proceeds:** Any and all payments, dividends, other distributions (including stock redemption proceeds), or other securities in respect of or in exchange for the Collateral, whether by way of dividends, stock dividends, recapitalizations, mergers, consolidations, stock splits, combinations or exchanges of shares or otherwise, received by Surety shall be held by Surety in trust for Secured Party and Surety shall immediately deliver same to Secured Party to be held as part of the Collateral. Surety may retain ordinary cash dividends unless and until Secured Party requests that same be paid and delivered to Secured Party (which Secured Party may request either before or after default).

3. **Collections:** Secured Party shall have the right at any time and from time to time (whether before or after default) to notify and direct the issuer or obligor to make all payments, dividends and distributions regarding the Collateral directly to Secured Party. Secured Party shall have the authority to demand of the issuer or obligor, and to receive and receipt for, any and all payments, dividends and other

distributions payable in respect thereof, regardless of the medium in which paid and whether they are ordinary or extraordinary. Each issuer and obligor making payment to Secured Party hereunder shall be fully protected in relying on the written statement of Secured Party that it then holds a security interest which entitles it to receive such payment, and the receipt by Secured Party for such payment shall be full acquittance therefor to the one making such payment.

4. **Voting Rights:** Upon default, or if Secured Party deems itself insecure, Secured Party shall have the right, at its discretion, to transfer to or register in the name of Secured Party or any nominee of Secured Party any of the Collateral and/or to exercise any or all voting rights as to any or all of the Collateral. For such purposes, Surety hereby names, constitutes and appoints the President or any Vice President of Secured Party as Surety's proxy in the Surety's name, place and stead to vote any and all of the securities, as such proxy may elect, for and in the name, place and stead of Surety, as to all matters coming before shareholders, such proxy to be irrevocable and deemed coupled with an interest. The rights, powers and authority of said proxy shall remain in full force and effect, and shall not be rescinded, revoked, terminated, amended or otherwise modified, until all Obligations have been fully satisfied.

5. **No Duty:** Secured Party shall never be liable for its failure to give notice to Surety of default in the payment of or, upon the Collateral: Secured Party shall have no duty to fix or preserve rights against prior parties to the Collateral and shall never be liable for its failure to use diligence to collect any amount payable in respect to the Collateral, but shall be liable only to account to Surety for what it may actually collect or receive thereon. Without limiting the foregoing, it is specifically understood and agreed that Secured Party shall have no responsibility for ascertaining any maturities, calls, conversions, exchanges, offers, tenders, or similar matters relating to any of the Collateral or for informing Surety with respect to any of such matters (irrespective of whether Secured Party actually has, or may be deemed to have, knowledge thereof). The foregoing provisions of this paragraph shall be fully applicable to all securities or similar property held in pledge hereunder, irrespective of whether Secured Party may have exercised any right to have such securities or similar property registered in its name or in the name of a nominee.

6. **Further Assurances:** Surety agrees to execute such stock powers, endorse such instruments, or execute such additional pledge agreements or other documents as may be required by the Secured Party in order effectively to grant to Secured Party the security interest in (and pledge and assignment of) the Collateral and to enforce and exercise Secured Party's rights regarding same.

7. **Securities Laws:** Surety hereby agrees to cooperate fully with Secured Party in order to permit Secured Party to sell, at foreclosure or other private sale, the Collateral pledged hereunder. Specifically, Surety agrees to fully comply with the securities laws of the United States and of the State of Texas and to take such action as may be necessary to permit Secured Party to sell or otherwise transfer the securities

pledged hereunder in compliance with such laws. Without limiting the foregoing, Surety, at its own expense, upon request by Secured Party, agrees to effect and obtain such registrations, filings, statements, rulings, consents and other matters as Secured Party may request.

8. **Power of Attorney:** Surety hereby makes, constitutes, and appoints Secured Party or its nominee, its true and lawful attorney in fact and in its name, place and stead, and on its behalf, and for its use and benefit to complete, execute and file 'with the United States Securities and Exchange Commission one or more notices of proposed sale of securities pursuant to Rule 144 under the Securities Act of 1933 and/or any similar filings or notices with any applicable state agencies, and said attorney in fact shall have full power and authority to do, take and perform all and every act and thing whatsoever requisite, proper or necessary to be done, in the exercise of the rights and powers herein granted, as fully to all intents and purposes as Surety might or could do if personally present. This power shall be irrevocable and deemed coupled with an interest. The rights, powers and authority of said attorney in fact herein granted shall commence and be in full force and effect from the date of this agreement, and such rights, powers and authority shall remain in full force and effect, and this power of attorney shall not be rescinded, revoked, terminated, amended or otherwise modified, until all Obligations have been fully satisfied.

9. **Private Sales:** Because of the Securities Act of 1933, as amended, or any other laws or regulations, there may be legal restrictions or limitations affecting Secured Party in any attempts to dispose of certain portions of the Collateral in the enforcement of its rights and remedies hereunder. For these reasons Secured Party is hereby authorized by Surety, but not obligated, in the event any default hereunder, to sell all or any part of the Collateral at private sale, subject to investment letter or in any other manner which will not require the Collateral, or any part thereof, to be registered in accordance with the Securities Act of 1933, as amended, or the rules and regulations promulgated thereunder, -or any other law or regulation. Secured Party is also hereby authorized by Surety, but not obligated, to take such actions, give such notices, obtain such rulings and consents, and do such other things as Secured Party may deem appropriate in the event of a sale or disposition of any of the Collateral. Surety clearly understands that Secured Party may in its discretion approach a restricted number of potential purchasers and that a sale under such circumstances may yield a lower price for the Collateral or any part or parts thereof than would otherwise be obtainable if same were registered and sold in the open market, and Surety agrees that such private sales shall constitute a commercially reasonable method of disposing of the Collateral.

I. **ADDITIONAL PROVISIONS REGARDING CERTIFICATES OF DEPOSIT AND SIMILAR COLLATERAL.** The following provisions shall apply to certificates of deposit and similar property included within the Collateral:

1. **Collection of Deposits:** Surety agrees that Secured Party may, at any time (whether before or after default) and in its sole discretion, surrender for payment

and obtain payment of any portion of the Collateral, whether such have matured or the exercise of Secured Party's rights results in loss of interest or principal or other penalty on such deposits, and, in connection therewith, cause payment to be made directly to Secured Party.

2. **Notice to Third Party Issuer:** With regard to any certificates of deposit or similar Collateral for which Secured Party is not the issuer, Surety agrees to notify the issuer or obligor of the interests hereby granted to Secured Party and to obtain from such issuer or obligor acknowledgement of the interests in favor of Secured Party and the issuer's or obligor's agreement to waive in favor of Secured Party any and all rights of set-off or similar rights or remedies to which such issuer or obligor may be entitled, and, in connection therewith, to execute and cause the issuer or obligor to execute, any and all acknowledgments, waivers and other agreements in such form and upon such terms as Secured Party may request.

3. **Proceeds:** Any and all replacement or renewal certificates, instruments, or other benefits or proceeds related to the Collateral that are received by Surety shall be held by Surety in trust for Secured Party and immediately delivered to Secured Party to be held as part of the Collateral.

4. **No Duty:** Secured Party shall never be liable for its failure to give notice to Surety of default in the payment of or upon the Collateral. Secured Party shall have no duty to fix or preserve rights against prior parties to the Collateral and shall never be liable for its failure to use diligence to collect any amount payable in respect to the Collateral, but shall be liable only to account to Surety for what it may actually collect or receive thereon. Without limiting the foregoing, it is specifically understood and agreed that Secured Party shall have no responsibility for ascertaining any maturities or similar matters relating to any of the Collateral or for informing Surety with respect to any of such matters (irrespective of whether Secured Party actually has, or may be deemed, to have, knowledge thereof).

J. **EVENTS OF DEFAULT.** Surety shall be in default hereunder upon the happening of any of the following events or conditions: (i) non-payment when due (whether by acceleration of maturity or otherwise) of any payment of principal, interest or other amount due on any Obligation; (ii) the occurrence of any event which under the terms of any evidence of indebtedness, indenture, loan agreement, security agreement or, similar instrument permits the acceleration of maturity of any obligation of Surety (whether to Secured Party or to others); (iii) any representation or warranty made by Surety to Secured Party in connection with this Agreement, the Collateral or the Obligations, or in any statements or certificates, proves incorrect in any material respect as of the date of the making or the issuance thereof; (iv) default occurs in the observance or performance of, or if Surety fails to furnish adequate evidence of performance of, any provision of this Agreement or of any note, assignment, transfer, other agreement, document or instrument delivered by Surety to Secured Party in connection with this Agreement, the Collateral or the Obligations; (v)

death, dissolution, liquidation, termination of existence, insolvency, business failure or winding-up of Surety or any maker, endorser, guarantor, surety or other party liable in any capacity for any of the Obligations; (vi) the commission of an act of bankruptcy by, or the application for appointment of a receiver or any other legal custodian for any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceedings under any bankruptcy, arrangement, reorganization, insolvency or similar laws for the relief of sureties by or against, the Surety or any maker, endorser, guarantor, surety or other party primarily or secondarily liable for any of the Obligations; (vii) the Collateral becomes, in the judgment of Secured Party, impaired, unsatisfactory or insufficient in character or value; or (viii) the filing of any levy, attachment, execution, garnishment or other process against the Surety or any of the Collateral or any maker, endorser, guarantor, surety or other party liable in any capacity for any of the Obligations.

K. **REMEDIES:** Upon the occurrence of an event of default, or if Secured Party deems payment of the Obligations to be insecure, Secured Party, at its option, shall be entitled to exercise any one or more of the following remedies (all of which are cumulative):

1. **Declare Obligations Due:** Secured Party, at its option, may declare the Obligations or any part thereof immediately due and payable, without demand, notice of intention to accelerate, notice of acceleration, notice of non-payment, presentment, protest, notice of dishonor, or any other notice whatsoever, all of which are hereby waived by Surety and any maker, endorser, guarantor, surety or other party liable in any capacity for any of the Obligations.

2. **Remedies:** Secured Party shall have all of the rights and remedies provided for in this Agreement and in any other agreements executed by Surety, the rights and remedies Of the Uniform Commercial Code of Texas, and any and all of the rights and remedies at law and in equity, all of which shall be deemed cumulative. Without limiting the foregoing, Surety agrees that Secured Party shall have the right to: (a) require Surety to assemble the Collateral and make it available to Secured Party at a place designated by Secured Party that is reasonably convenient to both parties, which Surety agrees to do; (b) peaceably take possession of the Collateral and remove same, with or without judicial process; (c) without removal, render equipment included within the Collateral unusable, and dispose of the Collateral on the Surety's premises; (d) sell, lease or otherwise dispose of the Collateral, at one or more locations, by public or private proceedings for cash or credit, without assumption of credit risk; and/or (e) whether before or after default, collect and receipt for, compound, compromise, and settle, and give releases, discharges and acquittances with respect to, any and all amounts owed by any person or entity with respect to the Collateral. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Secured Party will send Surety reasonable notice of the time and place of any public sale or of the time after which any private sale or other disposition will be made. Any requirement of reasonable notice to Surety

shall be met if such notice is mailed, postage prepaid, to Surety at the address of Surety designated at the beginning of this Agreement, at least five (5) days before the day of any public sale or at least five (5) days before the time after which any private sale or other disposition will be made.

3. **Expenses:** Surety shall be liable for and agrees to pay the reasonable expenses incurred by Secured Party in enforcing its rights and remedies, in retaking, holding, testing, repairing, improving, selling, leasing or disposing of the Collateral, or like expenses, including, without limitation, attorneys' fees and legal expenses incurred by Secured Party. These expenses, together with interest thereon from date incurred until paid by Surety at the maximum contract rate allowed under applicable laws, which Surety agrees to pay, shall constitute additional Obligations and shall be secured by and entitled to the benefits of this Agreement.

4. **Proceeds, Surplus, Deficiencies:** Proceeds received by Secured Party from disposition of the Collateral shall be applied toward Secured Party's expenses and other Obligations in such order or manner as Secured Party may elect. Surety shall be entitled to any surplus if one results after lawful application of the proceeds. Surety shall remain liable for any deficiency.

5. **Remedies Cumulative:** The rights and remedies of Secured Party are cumulative and the exercise of any one or more of the rights or remedies shall not be deemed an election of rights or remedies or a waiver of any other right or remedy. Secured Party may remedy any default and may waive any default without waiving the default remedied or without waiving any other prior or subsequent default.

L. **OTHER AGREEMENTS.**

1. **Savings Clause:** Notwithstanding any provision to the contrary herein, or in any of the documents evidencing the Obligations or otherwise relating thereto, no such provision shall require the payment or permit the collection of interest in excess of the maximum permitted by applicable usury laws. If any such excessive interest is so provided for, then in such event (i) the provisions of this paragraph shall govern and control; (ii) neither the Surety nor his heirs, legal representatives, successors or assigns or any other party liable for the payment thereof, shall be obligated to pay the amount of such interest to the extent that is in excess of the maximum amount permitted by law; (iii) any such excess interest that may have been collected shall be, at the option of the holder of the instrument evidencing the Obligations, either applied as a credit against the then unpaid principal amount thereof or refunded to the maker thereof; and (iv) the effective rate of interest shall be automatically reduced to the maximum lawful rate under applicable usury laws as now or hereafter construed by the courts having jurisdiction.

2. **Joint and Several Responsibility:** If this Security Agreement is executed by more than one Surety, the obligations of all such Sureties shall be joint and several.

3. **Waivers:** Surety and any maker, endorser, guarantor, surety or other party liable in any capacity respecting the Obligations hereby waive demand, notice of intention to accelerate, notice of acceleration, notice of non-payment, presentment, protest, notice of dishonor and any other similar notice whatsoever.

4. **Severability:** Any provision hereof found to be invalid by courts having jurisdiction shall be invalid only with respect to such provision (and then only to the extent necessary to avoid such invalidity). The offending provision shall be modified to the maximum extent possible to confer upon Secured Party the benefits intended thereby. Such provision as modified and the remaining provisions hereof shall be construed and enforced to the same effect as if such offending provision (or portion thereof) had not been contained herein, to the maximum extent possible.

5. **Use of Copies:** Any carbon, photographic or other reproduction of any financing statement signed by Surety is sufficient as a financing statement for all purposes, including without limitation, filing in any state as may be permitted by the provisions of the Uniform Commercial Code of such state.

6. **Relationship to Other Agreements:** This Security Agreement and the security interests (and pledges and assignments as applicable) herein granted are in addition to (and not in substitution, novation or discharge of) any and all prior or contemporaneous security agreements, security interests, pledges, assignments, liens, rights, titles or other interests in favor of Secured Party or assigned to Secured Party by others in connection with the Obligations. All rights and remedies of Secured Party in all such agreements are cumulative, but in the event of actual conflict in terms and conditions, the terms and conditions of the latest security agreement shall govern and control.

7. **Notices:** Any notice or demand given by Secured Party to Surety in connection with this Agreement, the Collateral or the Obligations, shall be deemed given and effective upon deposit in the United States mail, postage prepaid, addressed to Surety at the address of Surety designated at the beginning of this Agreement. Actual notice to Surety shall always be effective no matter how given or received.

8. **Headings and Gender:** Paragraph headings in this Agreement are for convenience only and shall be given no meaning or significance in interpreting this Agreement. All words used herein shall be construed to be of such gender or number as the circumstances require.

9. **Amendments:** Neither this Agreement nor any of its provisions may be changed, amended, modified, waived or discharged orally, but only by an instrument

in writing signed by the party against whom enforcement of the change, amendment, modification, waiver or discharge is sought.

10. **Continuing Agreement:** The security interest (and pledges and assignments as applicable) hereby granted and all of the terms and provisions in this Agreement shall be deemed a continuing agreement and shall continue in full force and effect until terminated in writing. Any such revocation or termination shall only be effective if explicitly confirmed in a signed writing issued by Secured Party to such effect and shall in no way impair or affect any transactions entered into or rights created or Obligations incurred or arising prior to such revocation or termination, as to which this Agreement shall be fully operative until same are repaid and discharged in full. Unless otherwise required by applicable law Secured Party shall be under no obligation to issue a termination statement or similar documents unless Surety requests same in writing and, provided further, that all Obligations have been repaid and discharged in full and there are no commitments to make advances, incur any Obligations or otherwise give value.

11. **Binding Effect:** The provisions of this Security Agreement shall be binding upon the heirs, personal representatives, successors and assigns of Surety and the rights, powers and remedies of Secured Party hereunder shall inure to the benefit of the successors and assigns of Secured Party.

12. **Governing Law:** This Security Agreement shall be governed by the law of the State of Texas and applicable federal law.

EXECUTED this _____ day of _____, 200__.

MAGNUM FIRE & SAFETY SYSTEMS, Inc.

By: _____
President

Exhibit F1, Attachment 1

**List of Magnum Fire and Safety Systems, Inc. Equipment
Used to Secure Bohead Manufacturing Company, Inc.'s Debt to PAEDC**

Exhibit F1, Attachment 1

**List of Magnum Fire and Safety Systems, Inc. Equipment
Used to Secure Bohead Manufacturing Company, Inc.'s Debt to PAEDC**

CITY OF PORT ARTHUR SECTION 4A
ECONOMIC DEVELOPMENT CORPORATION

("PAEDC")

LANDLORD'S SUBORDINATE AGREEMENT

STATE OF TEXAS

COUNTY OF JEFFERSON

WHEREAS, Magnum Fire and Safety Systems, Inc., hereinafter referred to as "Landlord," is the owner of certain real property, hereinafter referred to as "subject property," located at 6648 Gulfway Drive, Port Arthur, Texas 77642; and

WHEREAS, Bohead Manufacturing Company, L.L.C., hereinafter referred to as "Tenant," is the tenant of Landlord with respect to the subject property and has placed or may place upon the subject property certain personal property and/or fixtures owned by said Tenant; and

WHEREAS, Tenant has borrowed, may borrow or will borrow certain sums of money from PAEDC and has given or may give as security therefore a security interest or other lien upon personal property and/or fixtures located upon the subject property; and

WHEREAS, it is the desire of Landlord and Tenant that any such security interest or lien shall be in all things first and prior to any other lien or liens against said property, free of any of the liens or claims of Landlord.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That Landlord for an in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to induce PAEDC to advance monies to Tenant, does hereby agree that any presently existing or future landlord's

liens that may exist as a result of a lease or rental of the subject property by Tenant from Landlord, shall be and the same are hereby made subordinate, subject and inferior to any security interest or liens now or hereafter held by PAEDC upon any personal property and/or fixtures of Tenant located on the subject property and Landlord does hereby agree that in the event PAEDC becomes entitled to possession of any property located on the subject property, it shall have the right to enter the subject property in order to remove such property, free of any of the liens or claims of Landlord.

EXECUTED this ____ day of _____, 2005.

Fire and Safety Systems, Inc.

By _____
President

STATE OF TEXAS

COUNTY OF JEFFERSON

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared **Ken Broussard** whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office, this ____ day of _____, 2005.

NOTARY PUBLIC, STATE OF TEXAS

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

City of Port Arthur Section 4A Economic
Development Corporation
4173 39th Street
Port Arthur, Texas 77642

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

| | | | | |
|--|-----------------------------------|--------------------------|----------------------------------|---------------------------------|
| 1a. ORGANIZATION'S NAME | | | | |
| OR Magnum Fire and Safety Systems, Inc. | | | | |
| 1b. INDIVIDUAL'S LAST NAME | | FIRST NAME | MIDDLE NAME | SUFFIX |
| 1c. MAILING ADDRESS | | CITY | STATE | POSTAL CODE |
| 6648 Gulfway Drive | | Port Arthur | TX | 77642 |
| 1d. <u>SEE INSTRUCTIONS</u> | ADD'L INFO RE ORGANIZATION DEBTOR | 1e. TYPE OF ORGANIZATION | 1f. JURISDICTION OF ORGANIZATION | 1g. ORGANIZATIONAL ID #, if any |
| | | | | <input type="checkbox"/> NONE |

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

| | | | | |
|-----------------------------|-----------------------------------|--------------------------|----------------------------------|---------------------------------|
| 2a. ORGANIZATION'S NAME | | | | |
| OR | | | | |
| 2b. INDIVIDUAL'S LAST NAME | | FIRST NAME | MIDDLE NAME | SUFFIX |
| 2c. MAILING ADDRESS | | CITY | STATE | POSTAL CODE |
| | | | | |
| 2d. <u>SEE INSTRUCTIONS</u> | ADD'L INFO RE ORGANIZATION DEBTOR | 2e. TYPE OF ORGANIZATION | 2f. JURISDICTION OF ORGANIZATION | 2g. ORGANIZATIONAL ID #, if any |
| | | | | <input type="checkbox"/> NONE |

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

| | | | | |
|---|--|-------------|-------------|-------------|
| 3a. ORGANIZATION'S NAME | | | | |
| OR City of Port Arthur Section 4A Economic Development Corporation | | | | |
| 3b. INDIVIDUAL'S LAST NAME | | FIRST NAME | MIDDLE NAME | SUFFIX |
| 3c. MAILING ADDRESS | | CITY | STATE | POSTAL CODE |
| 4173 39th Street | | Port Arthur | TX | 77642 |
| | | | | |

4. This FINANCING STATEMENT covers the following collateral:

| | | | | | | |
|--|---|--|--|---------------------------------------|-----------------------------------|---|
| 5. ALTERNATIVE DESIGNATION (if applicable): | <input type="checkbox"/> LESSEE/LESSOR | <input type="checkbox"/> CONSIGNEE/CONSIGNOR | <input type="checkbox"/> BAILEE/BAILOR | <input type="checkbox"/> SELLER/BUYER | <input type="checkbox"/> AG. LIEN | <input type="checkbox"/> NON-UCC FILING |
| 6. <input type="checkbox"/> This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable) | 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (ADDITIONAL FEE) (optional) | | | <input type="checkbox"/> All Debtors | <input type="checkbox"/> Debtor 1 | <input type="checkbox"/> Debtor 2 |
| 8. OPTIONAL FILER REFERENCE DATA | | | | | | |

- ☐ **General Intangibles.** A security interest in all general intangibles and other personal property now owned or hereafter acquired by Debtor other than goods, accounts, chattel paper, documents and instruments.
- ☐ **Chattel Paper.** A security interest in all of Debtor's interest under chattel paper, lease agreements and other instruments or documents, whether now existing or owned by Debtor or hereafter arising or acquired by Debtor, evidencing both a debt and security interest in or lease of specific goods.
- ☐ **Farm Products.** A security interest in all of Debtor's interest in any and all crops, livestock and supplies used or produced by Debtor in farming operations wheresoever located: Debtor's residence is in the county shown at the beginning of this Agreement and Debtor agrees to notify promptly Secured Party of any change in the county of Debtor's residence; all of Debtor's crops or livestock are presently located in the following counties: (give counties)
- ☐ **Securities.** A pledge and assignment of and security interest in the securities described below, together with all instruments and general intangibles related thereto and all monies, income, proceeds and benefits attributable or accruing to said property, including, but not limited to, all stock rights, options, rights to subscribe, dividends, liquidating dividends, stock dividends, dividends paid in stock, new security or other properties or benefits to which the Debtor is or may hereafter become entitled to receive on account of said property. (give description)
- ☐ **Certificates of Deposit.** A pledge and assignment of and security interest in all of Debtor's interest in and to the certificates of deposit described below and instruments related thereto, and all renewals or substitutions therefor, together with all monies, income, interest, proceeds and benefits attributable or accruing to said property or to which Debtor is or may hereafter be entitled to receive on account of said property. (give description)
- ☐ **Instruments.** A pledge and assignment of and security interest in all of Debtor's now owned or existing as well as hereafter acquired or arising instruments and documents.
- X ☒ **Other.** A first priority lien on all of Debtor's interest, now owned or hereafter acquired, in and to the equipment purchased with PAEDC Grant monies as listed in that certain incentive agreement between Bohead and PAEDC and attached hereto.

The term "Collateral" as used in this Agreement shall mean and include, and the security interest (and pledge and assignment as applicable) shall cover, all of the foregoing property, as well as any accessions, additions and attachments thereto and the proceeds and products thereof, including without limitation, all cash, general intangibles, accounts, inventory, equipment, fixtures, farm products, notes, drafts, acceptances, securities, instruments, chattel paper, insurance proceeds payable because of loss or damage, or other property, benefits or rights arising therefrom, and in and to all returned or repossessed goods arising from or relating to any of the property described herein or other proceeds of any sale or other disposition of such property.

As additional security for the punctual payment and performance of the Obligations, and as part of the Collateral, Debtor hereby grants to Secured Party a security interest in, and a pledge and assignment of, any and all money, property, deposit accounts, accounts, securities, documents, chattel paper, claims, demands, instruments, items or deposits of the Debtor, and each of them, or to which any of them is a party, now held or hereafter coming within Secured Party's custody or control, including without limitation, all certificates of deposit and other depository accounts, whether such have matured or the exercise of Secured Party's rights results in loss of interest or principal or other penalty on such deposits, but excluding deposits subject to tax penalties if assigned. Without prior notice to or demand upon the Debtor, Secured Party may exercise its rights granted above at any time when a default has occurred or Secured Party deems itself insecure. Secured Party's rights and remedies under this paragraph shall be in addition to and cumulative of any other rights or remedies at law and equity, including, without limitation, any rights of set-off to which Secured Party may be entitled.

D. REPRESENTATIONS, WARRANTIES AND COVENANTS OF DEBTOR. Debtor represents and warrants as follows:

1. **Ownership; No Encumbrances:** Except for the security interest (and pledges and assignments as applicable) granted hereby, the Debtor is, and as to any property acquired after the date hereof which is included within the Collateral, Debtor will be, the owner of all such Collateral free and clear from all charges, liens, security interests, adverse claims and encumbrances of any and every nature whatsoever.

2. **No Financing Statements:** There is no financing statement or similar filing now on file in any public office covering any part of the Collateral, and Debtor will not execute and there will not be on file in any public office any financing statement or similar filing except the financing statements filed or to be filed in favor of Secured Party.

3. **Accuracy of Information:** All information furnished to Secured Party concerning Debtor, the Collateral and the Obligations, or otherwise for the purpose of

obtaining or maintaining credit, is or will be at the time the same is furnished, accurate and complete in all material respects.

4. **Authority:** Debtor has full right and authority to execute and perform this Agreement and to create the security interest (and pledges and assignment as applicable) created by this Agreement. The making and performance by Debtor of this Agreement will not violate any articles of incorporation, bylaws or similar document respecting Debtor, any provision of law, any order of court or governmental agency, or any indenture or other agreement to which Debtor is a party, or by which Debtor or any of Debtor's property is bound, or be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture or other agreement, or result in the creation or imposition of any charge, lien, security interest, claim or encumbrance of any and every nature whatsoever upon the Collateral, except as contemplated by this Agreement.

5. **Addresses:** The address of Debtor designated at the beginning of this Agreement is Debtor's place of business if Debtor has only one place of business; Debtor's chief executive office if Debtor has more than one place of business; or Debtor's residence if Debtor has no place of business. Debtor agrees not to change such address without advance written notice to Secured Party.

E. **GENERAL COVENANTS.** Debtor covenants and agrees as follows:

1. **Operation of the Collateral:** Debtor agrees to maintain and use the Collateral solely in the conduct of its own business, in a careful and proper manner, and in conformity with all applicable permits or licenses. Debtor shall comply in all respects with all applicable statutes, laws, ordinances and regulations. Debtor shall not use the Collateral in any unlawful manner or for any unlawful purposes, or in any manner or for any purpose that would expose the Collateral to unusual risk, or to penalty, forfeiture or capture, or that would render inoperative any insurance in connection with the Collateral.

2. **Condition:** Debtor shall maintain, service and repair the Collateral so as to keep it in good operating condition. Debtor shall replace within a reasonable time all parts that may be worn out, lost, destroyed or otherwise rendered unfit for use, with appropriate replacement parts. Debtor shall obtain and maintain in good standing at all times all applicable permits, licenses, registrations and certificates respecting the Collateral.

3. **Assessments:** Debtor shall promptly pay when due all taxes, assessments, license fees, registration fees, and governmental charges levied or assessed against Debtor or with respect to the Collateral or any part thereof.

4. **No Encumbrances:** Debtor agrees not to suffer or permit any charge, lien, security interest, adverse claim or encumbrance of any and every nature whatsoever against the Collateral or any part thereof.

5. **No Removal:** Except as otherwise provided in this Agreement, Debtor shall not remove the Collateral from the county or counties designated at the beginning of this Agreement without Secured Party's prior written consent.

6. **No Transfer:** Except as otherwise provided in this Agreement with respect to inventory, Debtor shall not, without the prior written consent of Secured Party, sell, assign, transfer, lease, charter, encumber, hypothecate or dispose of the Collateral, or any part thereof, or interest therein, or offer to do any of the foregoing.

7. **Notices and Reports:** Debtor shall promptly notify Secured Party in writing of any change in the name, identity or structure of Debtor, any charge, lien, security interest, claim or encumbrance asserted against the Collateral, any litigation against Debtor or the Collateral, any theft, loss, injury or similar incident involving the Collateral, and any other material matter adversely affecting Debtor or the Collateral. Debtor shall furnish such other reports, information and data regarding Debtor's financial condition and operations, the Collateral and such other matters as Secured Party may request from time to time.

8. **Landlord's Waivers:** Debtor shall furnish to Secured Party, if requested, a landlord's waiver of all liens with respect to any Collateral covered by this Agreement that is or may be located upon leased premises, such landlord's waivers to be in such form and upon such terms as are acceptable to Secured Party.

9. **Additional Filings:** Debtor agrees to execute and deliver such financing statement or statements, or amendments thereof or supplements thereto, or other documents as Secured Party may from time to time require in order to comply with the Texas Uniform Commercial Code (or other applicable state law of the jurisdiction where any of the Collateral is located) and to preserve and protect the Secured Party's rights to the Collateral.

10. **Protection of Collateral:** Secured Party, at its option, whether before or after default, but without any obligation whatsoever to do so, may (a) discharge taxes, claims, charges, liens, security interests, assessments or other encumbrances of any and every nature whatsoever at any time levied, placed upon or asserted against the Collateral, (b) place and pay for insurance on the Collateral, including insurance that only protects Secured Party's interest, (c) pay for the repair, improvement, testing, maintenance and preservation of the Collateral, (d) pay any filing, recording, registration, licensing or certification fees or other fees and charges related to the Collateral, or (e) take any other action to preserve and protect the Collateral and Secured Party's rights and remedies under this Agreement as Secured Party may deem necessary or appropriate. Debtor agrees that Secured Party shall have no duty or

obligation whatsoever to take any of the foregoing action. Debtor agrees to promptly reimburse Secured Party upon demand for any payment made or any expense incurred by the Secured Party pursuant to this authorization. These payments and expenditures, together with interest thereon from date incurred until paid by Debtor at the maximum contract rate allowed under applicable laws, which Debtor agrees to pay, shall constitute additional Obligations and shall be secured by and entitled to the benefits of this Agreement.

11. **Inspection:** Debtor shall at all reasonable times allow Secured Party by or through any of its officers, agents, attorneys or accountants, to examine the Collateral, wherever located, and to examine and make extracts from Debtor's books and records.

12. **Further Assurances:** Debtor shall do, make, procure, execute and deliver all such additional and further acts, things, deeds, interests and assurances as Secured Party may require from time to time to protect, assure and enforce Secured Party's rights and remedies.

13. **Insurance:** Debtor shall have and maintain insurance at all times with respect to all tangible Collateral insuring against risks of fire (including so-called extended coverage), theft and other risks as Secured Party may require, containing such terms, in such form and amounts and written by such companies as may be satisfactory to Secured Party, all of such insurance to contain loss payable clauses in favor of Secured Party as its interest may appear. All policies of insurance shall provide for ten (10) days written minimum cancellation notice to Secured Party and at the request of Secured Party shall be delivered to and held by it. Secured Party is hereby authorized to act as attorney for Debtor in obtaining, adjusting, settling and canceling such insurance and endorsing any drafts or instruments. Secured Party shall be authorized to apply the proceeds from any insurance to the Obligations secured hereby whether or not such Obligations are then due and payable. Debtor specifically authorizes Secured Party to disclose information from the policies of insurance to prospective insurers regarding the Collateral.

14. **Additional Collateral:** If Secured Party should at any time be of the opinion that the Collateral is impaired, not sufficient or has declined or may decline in value, or should Secured Party deem payment of the Obligations to be insecure, then Secured Party may call for additional security satisfactory to Secured Party, and Debtor promises to furnish such additional security forthwith. The call for additional security may be oral, by telegram, or United States mail addressed to Debtor, and shall not affect any other subsequent right of Secured Party to exercise the same.

F. **ADDITIONAL PROVISIONS REGARDING ACCOUNTS.** The following provisions shall apply to all accounts included within the Collateral:

1. **Definitions:** The term "account", as used in this Agreement, shall have the same meaning as set forth in the Uniform Commercial Code of Texas in effect as of the date of execution hereof, and as set forth in any amendment to the Uniform Commercial Code of Texas to become effective after the date of execution hereof, and also shall include all present and future notes, instruments, documents, general intangibles, drafts, acceptances and chattel paper of Debtor, and the proceeds thereof.

2. **Additional Warranties:** As of the time any account becomes subject to the security interest (or pledge or assignment as applicable) granted hereby, Debtor shall be deemed further to have warranted as to each and all of such accounts as follows: (a) each account and all papers and documents relating thereto are genuine and in all respects what they purport to be; (b) each account is valid and subsisting and arises out of a bona fide sale of goods sold and delivered to, or out of and for services theretofore actually rendered by the Debtor to the account debtor named in the account; (c) the amount of the account represented as owing is the correct amount actually and unconditionally owing except for normal cash discounts and is not subject to any setoffs, credits, defenses, deductions or countercharges; and (d) Debtor is the owner thereof free and clear of any charges, liens, security interests, adverse claims and encumbrances of any and every nature whatsoever.

3. **Collection of Accounts:** Secured Party shall have the right in its own name or in the name of the Debtor, whether before or after default, to require Debtor forthwith to transmit all proceeds of collection of accounts to Secured Party, to notify any and all account debtors to make payments of the accounts directly to Secured Party, to demand, collect, receive, receipt for, sue for, compound and give acquittal for, any and all amounts due or to become due on the accounts and to endorse the name of the Debtor on all commercial paper given in payment or part payment thereof, and in Secured Party's discretion to file any claim or take any other action or proceeding that Secured Party may deem necessary or appropriate to protect and preserve and realize upon the accounts and related Collateral. Unless and until Secured Party elects to collect accounts, and the privilege of Debtor to collect accounts is revoked by Secured Party in writing, Debtor shall continue to collect accounts, account for same to Secured Party, and shall not commingle the proceeds of collection of accounts with any funds of the Debtor. In order to assure collection of accounts in which Secured Party has a security interest (or pledge or assignment of as applicable) hereunder, Secured Party may notify the post office authorities to change the address for delivery of mail addressed to Debtor to such address as Secured Party may designate, and to open and dispose of such mail and receive the collections of accounts included herewith. Secured Party shall have no duty or obligation whatsoever to collect any account, or to take any other action to preserve or protect the Collateral; however, should Secured Party elect to collect any account or take possession of any Collateral, Debtor releases Secured Party from any claim or claims for loss or damage arising from any act or omission in connection therewith.

4. **Identification and Assignment of Accounts:** Upon Secured Party's request, whether before or after default, Debtor shall take such action and execute and deliver such documents as Secured Party may reasonably request in order to identify, confirm, mark, segregate and assign accounts and to evidence Secured Party's interest in same. Without limitation of the foregoing, Debtor, upon request, agrees to assign accounts to Secured Party, identify and mark accounts as being subject to the security interest (or pledge or assignment as applicable) granted hereby, mark Debtor's books and records to reflect such assignments, and forthwith to transmit to Secured Party in the form as received by Debtor any and all proceeds of collection of such accounts.

5. **Account Reports:** Debtor will deliver to Secured Party, prior to the tenth (10) day of each month, or on such other frequency as Secured Party may request, a written report in form and content satisfactory to Secured Party, showing a listing and aging of accounts and such other information as Secured Party may request from time to time. Debtor shall immediately notify Secured Party of the assertion by any account debtor of any set-off, defense or claim regarding an account or any other matter adversely affecting an account.

6. **Segregation of Returned Goods:** Returned or repossessed goods arising from or relating to any accounts included within the Collateral shall if requested by Secured Party be held separate and apart from any other property. Debtor shall as often as requested by Secured Party, but not less often than weekly even though no special request has been made, report to Secured Party the appropriate identifying information with respect to any such returned or repossessed goods relating to accounts included in assignments or identifications made pursuant hereto.

G. **ADDITIONAL PROVISIONS REGARDING INVENTORY.** The following provisions shall apply to all inventory included within the Collateral:

1. **Inventory Reports:** Debtor will deliver to Secured Party, prior to the tenth (10th) day of each month, or on such other frequency as Secured Party may request, a written report in form and content satisfactory to Secured Party, with respect to the preceding month or other applicable period, showing Debtor's opening inventory, inventory acquired, inventory sold, inventory returned, inventory used in Debtor's business, closing inventory, any other inventory not within the preceding categories, and such other information as Secured Party may request from time to time. Debtor shall immediately notify Secured Party of any matter adversely affecting the inventory, including, without limitation, any event causing loss or depreciation in the value of the inventory and the amount of such possible loss or depreciation.

2. **Location of Inventory:** Debtor will promptly notify Secured Party in writing of any addition to, change in or discontinuance of its place(s) of business as shown in this agreement, the places at which inventory is located as shown herein, the location of its chief executive office and the location of the office where it keeps its records as set forth herein. All Collateral will be located at the place(s) of business

shown at the beginning of this agreement as modified by any written notice(s) given pursuant hereto.

3. **Use of Inventory:** Unless and until the privilege of Debtor to use inventory in the ordinary course-of Debtor's business is revoked by Secured Party in the event of default or if Secured Party deems itself insecure, Debtor may use the inventory in any manner not inconsistent with this Agreement, may sell that part of the Collateral consisting of inventory provided that all such sales are in the ordinary course of business, and may use and consume any raw materials or supplies that are necessary in order to carry on Debtor's business. A sale in the ordinary course of business does not include a transfer in partial or total satisfaction of a debt.

4. **Accounts as Proceeds:** All accounts that are proceeds of the inventory included within the Collateral shall be subject to all of the terms and provisions hereof pertaining to accounts.

5. **Protection of Inventory:** Debtor shall take all action necessary to protect and preserve the inventory.

H. **ADDITIONAL PROVISIONS REGARDING SECURITIES AND SIMILAR COLLATERAL.** The following provisions shall apply to all securities and similar property included within the Collateral:

1. **Additional Warranties:** As to each and all securities and similar property included within the Collateral (including securities hereafter acquired that are part of the Collateral), Debtor further represents and warrants (as of the time of delivery of same to Secured Party) as follows: (a) such securities are genuine, validly issued and outstanding, fully paid and non-assessable, and are not issued in violation of the preemptive rights of any person or of any agreement by which the issuer or obligor thereof or Debtor is bound; (b) such securities are not subject to any interest, option or right of any third person; (c) such securities are in compliance with applicable law concerning form, content and manner of preparation and execution; and (d) Debtor acquired and holds the securities in compliance with all applicable laws and regulations.

2. **Dividends and Proceeds:** Any and all payments, dividends, other distributions (including stock redemption proceeds), or other securities in respect of or in exchange for the Collateral, whether by way of dividends, stock dividends, recapitalizations, mergers, consolidations, stock splits, combinations or exchanges of shares or otherwise, received by Debtor shall be held by Debtor in trust for Secured Party and Debtor shall immediately deliver same to Secured Party to be held as part of the Collateral. Debtor may retain ordinary cash dividends unless and until Secured Party requests that same be paid and delivered to Secured Party (which Secured Party may request either before or after default).

3. **Collections:** Secured Party shall have the right at any time and from time to time (whether before or after default) to notify and direct the issuer or obligor to make all payments, dividends and distributions regarding the Collateral directly to Secured Party. Secured Party shall have the authority to demand of the issuer or obligor, and to receive and receipt for, any and all payments, dividends and other distributions payable in respect thereof, regardless Of the medium in which paid and whether they are ordinary or extraordinary. Each issuer and obligor making payment to Secured Party hereunder shall be fully protected in relying on the written statement of Secured Party that it then holds a security interest which entitles it to receive such payment, and the receipt by Secured Party for such payment shall be full acquittance therefor to the one making such payment.

4. **Voting Rights:** Upon default, or if Secured Party deems itself insecure, Secured Party shall have the right, at its discretion, to transfer to or register in the name of Secured Party or any nominee of Secured Party any of the Collateral and/or to exercise any or all voting rights as to any or all of the Collateral. For such purposes, Debtor hereby names, constitutes and appoints the President or any Vice President of Secured Party as Debtor's proxy in the Debtor's name, place and stead to vote any and all of the securities, as such proxy may elect, for and in the name, place and stead of Debtor, as to all matters coming before shareholders, such proxy to be irrevocable and deemed coupled with an interest. The rights, powers and authority of said proxy shall remain in full force and effect, and shall not be rescinded, revoked, terminated, amended or otherwise modified, until all Obligations have been fully satisfied.

5. **No Duty:** Secured Party shall never be liable for its failure to give notice to Debtor of default in the payment of or. upon the Collateral: Secured Party shall have no duty to fix or preserve rights against prior parties to the Collateral and shall never be liable for its failure to use diligence to collect any amount payable in respect to the Collateral, but shall be liable only to account to Debtor for what it may actually collect or receive thereon. Without limiting the foregoing, it is specifically understood and agreed that Secured Party shall have no responsibility for ascertaining any maturities, calls, conversions, exchanges, offers, tenders, or similar matters relating to any of the Collateral or for informing Debtor with respect to any of such matters (irrespective of whether Secured Party actually has, or may be deemed to have, knowledge thereof). The foregoing provisions of this paragraph shall be fully applicable to all securities or similar property held in pledge hereunder, irrespective of whether Secured Party may have exercised any right to have such securities or similar property registered in its name or in the name of a nominee.

6. **Further Assurances:** Debtor agrees to execute such stock powers, endorse such instruments, or execute such additional pledge agreements or other documents as may be required by the Secured Party in order effectively to grant to Secured Party the security interest in (and pledge and assignment of) the Collateral and to enforce and exercise Secured Party's rights regarding same.

7. **Securities Laws:** Debtor hereby agrees to cooperate fully with Secured Party in order to permit Secured Party to sell, at foreclosure or other private sale, the Collateral pledged hereunder. Specifically, Debtor agrees to fully comply with the securities laws of the United States and of the State of Texas and to take such action as may be necessary to permit Secured Party to sell or otherwise transfer the securities pledged hereunder in compliance with such laws. Without limiting the foregoing, Debtor, at its own expense, upon request by Secured Party, agrees to effect and obtain such registrations, filings, statements, rulings, consents and other matters as Secured Party may request.

8. **Power of Attorney:** Debtor hereby makes, constitutes, and appoints Secured Party or its nominee, its true and lawful attorney in fact and in its name, place and stead, and on its behalf, and for its use and benefit to complete, execute and file with the United States Securities and Exchange Commission one or more notices of proposed sale of securities pursuant to Rule 144 under the Securities Act of 1933 and/or any similar filings or notices with any applicable state agencies, and said attorney in fact shall have full power and authority to do, take and perform all and every act and thing whatsoever requisite, proper or necessary to be done, in the exercise of the rights and powers herein granted, as fully to all intents and purposes as Debtor might or could do if personally present. This power shall be irrevocable and deemed coupled with an interest. The rights, powers and authority of said attorney in fact herein granted shall commence and be in full force and effect from the date of this agreement, and such rights, powers and authority shall remain in full force and effect, and this power of attorney shall not be rescinded, revoked, terminated, amended or otherwise modified, until all Obligations have been fully satisfied.

9. **Private Sales:** Because of the Securities Act of 1933, as amended, or any other laws or regulations, there may be legal restrictions or limitations affecting Secured Party in any attempts to dispose of certain portions of the Collateral in the enforcement of its rights and remedies hereunder. For these reasons Secured Party is hereby authorized by Debtor, but not obligated, in the event any default hereunder, to sell all or any part of the Collateral at private sale, subject to investment letter or in any other manner which will not require the Collateral, or any part thereof, to be registered in accordance with the Securities Act of 1933, as amended, or the rules and regulations promulgated thereunder, or any other law or regulation. Secured Party is also hereby authorized by Debtor, but not obligated, to take such actions, give such notices, obtain such rulings and consents, and do such other things as Secured Party may deem appropriate in the event of a sale or disposition of any of the Collateral. Debtor clearly understands that Secured Party may in its discretion approach a restricted number of potential purchasers and that a sale under such circumstances may yield a lower price for the Collateral or any part or parts thereof than would otherwise be obtainable if same were registered and sold in the open market, and Debtor agrees that such private sales shall constitute a commercially reasonable method of disposing of the Collateral.

I. **ADDITIONAL PROVISIONS REGARDING CERTIFICATES OF DEPOSIT AND SIMILAR COLLATERAL.** The following provisions shall apply to certificates of deposit and similar property included within the Collateral:

1. **Collection of Deposits:** Debtor agrees that Secured Party may, at any time (whether before or after default) and in its sole discretion, surrender for payment and obtain payment of any portion of the Collateral, whether such have matured or the exercise of Secured Party's rights results in loss of interest or principal or other penalty on such deposits, and, in connection therewith, cause payment to be made directly to Secured Party.

2. **Notice to Third Party Issuer:** With regard to any certificates of deposit or similar Collateral for which Secured Party is not the issuer, Debtor agrees to notify the issuer or obligor of the interests hereby granted to Secured Party and to obtain from such issuer or obligor acknowledgement of the interests in favor of Secured Party and the issuer's or obligor's agreement to waive in favor of Secured Party any and all rights of set-off or similar rights or remedies to which such issuer or obligor may be entitled, and, in connection therewith, to execute and cause the issuer or obligor to execute, any and all acknowledgments, waivers and other agreements in such form and upon such terms as Secured Party may request.

3. **Proceeds:** Any and all replacement or renewal certificates, instruments, or other benefits or proceeds related to the Collateral that are received by Debtor shall be held by Debtor in trust for Secured Party and immediately delivered to Secured Party to be held as part of the Collateral.

4. **No Duty:** Secured Party shall never be liable for its failure to give notice to Debtor of default in the payment of or upon the Collateral. Secured Party shall have no duty to fix or preserve rights against prior parties to the Collateral and shall never be liable for its failure to use diligence to collect any amount payable in respect to the Collateral, but shall be liable only to account to Debtor for what it may actually collect or receive thereon. Without limiting the foregoing, it is specifically understood and agreed that Secured Party shall have no responsibility for ascertaining any maturities or similar matters relating to any of the Collateral or for informing Debtor with respect to any of such matters (irrespective of whether Secured Party actually has, or may be deemed, to have, knowledge thereof).

J. **EVENTS OF DEFAULT.** Debtor shall be in default hereunder upon the happening of any of the following events or conditions: (i) non-payment when due (whether by acceleration of maturity or otherwise) of any payment of principal, interest or other amount due on any Obligation; (ii) the occurrence of any event which under the terms of any evidence of indebtedness, indenture, loan agreement, security agreement or, similar instrument permits the acceleration of maturity of any obligation of Debtor (whether to Secured Party or to others); (iii) any representation or warranty made by Debtor to Secured Party in connection with this Agreement, the Collateral or

the Obligations, or in any statements or certificates, proves incorrect in any material respect as of the date of the making or the issuance thereof; (iv) default occurs in the observance or performance of, or if Debtor fails to furnish adequate evidence of performance of, any provision of this Agreement or of any note, assignment, transfer, other agreement, document or instrument delivered by Debtor to Secured Party in connection with this Agreement, the Collateral or the Obligations; (v) death, dissolution, liquidation, termination of existence, insolvency, business failure or winding-up of Debtor or any maker, endorser, guarantor, surety or other party liable in any capacity for any of the Obligations; (vi) the commission of an act of bankruptcy by, or the application for appointment of a receiver or any other legal custodian for any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceedings under any bankruptcy, arrangement, reorganization, insolvency or similar laws for the relief of debtors by or against, the Debtor or any maker, endorser, guarantor, surety or other party primarily or secondarily liable for any of the Obligations; (vii) the Collateral becomes, in the judgment of Secured Party, impaired, unsatisfactory or insufficient in character or value; or (viii) the filing of any levy, attachment, execution, garnishment or other process against the Debtor or any of the Collateral or any maker, endorser, guarantor, surety or other party liable in any capacity for any of the Obligations.

K. **REMEDIES:** Upon the occurrence of an event of default, or if Secured Party deems payment of the Obligations to be insecure, Secured Party, at its option, shall be entitled to exercise any one or more of the following remedies (all of which are cumulative):

1. **Declare Obligations Due:** Secured Party, at its option, may declare the Obligations or any part thereof immediately due and payable, without demand, notice of intention to accelerate, notice of acceleration, notice of non-payment, presentment, protest, notice of dishonor, or any other notice whatsoever, all of which are hereby waived by Debtor and any maker, endorser, guarantor, surety or other party liable in any capacity for any of the Obligations.

2. **Remedies:** Secured Party shall have all of the rights and remedies provided for in this Agreement and in any other agreements executed by Debtor, the rights and remedies Of the Uniform Commercial Code of Texas, and any and all of the rights and remedies at law and in equity, all of which shall be deemed cumulative. Without limiting the foregoing, Debtor agrees that Secured Party shall have the right to: (a) require Debtor to assemble the Collateral and make-it available to Secured Party at a place designated by Secured Party that is reasonably convenient to both parties, which Debtor agrees to do; (b) peaceably take possession of the Collateral and remove same, with or without judicial process; (c) without removal, render equipment included within the Collateral unusable, and dispose of the Collateral on the Debtor's premises; (d) sell, lease or otherwise dispose of the Collateral, at one or more locations, by public or private proceedings for cash or credit, without assumption of credit risk; and/or (e) whether before or after default, collect and receipt for, compound,

compromise, and settle, and give releases, discharges and acquittances with respect to, any and all amounts owed by any person or entity with respect to the Collateral. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Secured Party will send Debtor reasonable notice of the time and place of any public sale or of the time after which any private sale or other disposition will be made. Any requirement of reasonable notice to Debtor shall be met if such notice is mailed, postage prepaid, to Debtor at the address of Debtor designated at the beginning of this Agreement, at least five (5) days before the day of any public sale or at least five (5) days before the time after which any private sale or other disposition will be made.

3. **Expenses:** Debtor shall be liable for and agrees to pay the reasonable expenses incurred by Secured Party in enforcing its rights and remedies, in retaking, holding, testing, repairing, improving, selling, leasing or disposing of the Collateral, or like expenses, including, without limitation, attorneys' fees and legal expenses incurred by Secured Party. These expenses, together with interest thereon from date incurred until paid by Debtor at the maximum contract rate allowed under applicable laws, which Debtor agrees to pay, shall constitute additional Obligations and shall be secured by and entitled to the benefits of this Agreement.

4. **Proceeds, Surplus, Deficiencies:** Proceeds received by Secured Party from disposition of the Collateral shall be applied toward Secured Party's expenses and other Obligations in such order or manner as Secured Party may elect. Debtor shall be entitled to any surplus if one results after lawful application of the proceeds. Debtor shall remain liable for any deficiency.

5. **Remedies Cumulative:** The rights and remedies of Secured Party are cumulative and the exercise of any one or more of the rights or remedies shall not be deemed an election of rights or remedies or a waiver of any other right or remedy. Secured Party may remedy any default and may waive any default without waiving the default remedied or without waiving any other prior or subsequent default.

L. **OTHER AGREEMENTS.**

1. **Savings Clause:** Notwithstanding any provision to the contrary herein, or in any of the documents evidencing the Obligations or otherwise relating thereto, no such provision shall require the payment or permit the collection of interest in excess of the maximum permitted by applicable usury laws. If any such excessive interest is so provided for, then in such event (i) the provisions of this paragraph shall govern and control; (ii) neither the Debtor nor his heirs, legal representatives, successors or assigns or any other party liable for the payment thereof, shall be obligated to pay the amount of such interest to the extent that is in excess of the maximum amount permitted by law; (iii) any such excess interest that may have been collected shall be, at the option of the holder of the instrument evidencing the Obligations, either applied as a credit against the then unpaid principal amount thereof or refunded to the maker

thereof; and (iv) the effective rate of interest shall be automatically reduced to the maximum lawful rate under applicable usury laws as now or hereafter construed by the courts having jurisdiction.

2. **Joint and Several Responsibility:** If this Security Agreement is executed by more than one Debtor, the obligations of all such Debtors shall be joint and several.

3. **Waivers:** Debtor and any maker, endorser, guarantor, surety or other party liable in any capacity respecting the Obligations hereby waive demand, notice of intention to accelerate, notice of acceleration, notice of non-payment, presentment, protest, notice of dishonor and any other similar notice whatsoever.

4. **Severability:** Any provision hereof found to be invalid by courts having jurisdiction shall be invalid only with respect to such provision (and then only to the extent necessary to avoid such invalidity). The offending provision shall be modified to the maximum extent possible to confer upon Secured Party the benefits intended thereby. Such provision as modified and the remaining provisions hereof shall be construed and enforced to the same effect as if such offending provision (or portion thereof) had not been contained herein, to the maximum extent possible.

5. **Use of Copies:** Any carbon, photographic or other reproduction of any financing statement signed by Debtor is sufficient as a financing statement for all purposes, including without limitation, filing in any state as may be permitted by the provisions of the Uniform Commercial Code of such state.

6. **Relationship to Other Agreements:** This Security Agreement and the security interests (and pledges and assignments as applicable) herein granted are in addition to (and not in substitution, novation or discharge of) any and all prior or contemporaneous security agreements, security interests, pledges, assignments, liens, rights, titles or other interests in favor of Secured Party or assigned to Secured Party by others in connection with the Obligations. All rights and remedies of Secured Party in all such agreements are cumulative, but in the event of actual conflict in terms and conditions, the terms and conditions of the latest security agreement shall govern and control.

7. **Notices:** Any notice or demand given by Secured Party to Debtor in connection with this Agreement, the Collateral or the Obligations, shall be deemed given and effective upon deposit in the United States mail, postage prepaid, addressed to Debtor at the address of Debtor designated at the beginning of this Agreement. Actual notice to Debtor shall always be effective no matter how given or received.

8. **Headings and Gender:** Paragraph headings in this Agreement are for convenience only and shall be given no meaning or significance in interpreting this

Agreement. All words used herein shall be construed to be of such gender or number as the circumstances require.

9. **Amendments:** Neither this Agreement nor any of its provisions may be changed, amended, modified, waived or discharged orally, but only by an instrument in writing signed by the party against whom enforcement of the change, amendment, modification, waiver or discharge is sought.

10. **Continuing Agreement:** The security interest (and pledges and assignments as applicable) hereby granted and all of the terms and provisions in this Agreement shall be deemed a continuing agreement and shall continue in full force and effect until terminated in writing. Any such revocation or termination shall only be effective if explicitly confirmed in a signed writing issued by Secured Party to such effect and shall in no way impair or affect any transactions entered into or rights created or Obligations incurred or arising prior to such revocation or termination, as to which this Agreement shall be fully operative until same are repaid and discharged in full. Unless otherwise required by applicable law Secured Party shall be under no obligation to issue a termination statement or similar documents unless Debtor requests same in writing and, provided further, that all Obligations have been repaid and discharged in full and there are no commitments to make advances, incur any Obligations or otherwise give value.

11. **Binding Effect:** The provisions of this Security Agreement shall be binding upon the heirs, personal representatives, successors and assigns of Debtor and the rights, powers and remedies of Secured Party hereunder shall inure to the benefit of the successors and assigns of Secured Party.

12. **Governing Law:** This Security Agreement shall be governed by the law of the State of Texas and applicable federal law.

EXECUTED this _____ day of _____, 200__.

BOHEAD MANUFACTURING COMPANY, L.L.C.

By: _____
General Manager

EXHIBIT "D"

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

City of Port Arthur Section 4A Economic
Development Corporation
4173 39th Street
Port Arthur, Texas 77642

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME

OR **Bohead Manufacturing Company, L. L. C.**

1b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

1c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

1011 Southwest Klickitat Way, Suite 104**Seattle****WA****98134-1136****USA**1d. **SEE INSTRUCTIONS**ADD'L INFO RE
ORGANIZATION
DEBTOR

1e. TYPE OF ORGANIZATION

1f. JURISDICTION OF ORGANIZATION

1g. ORGANIZATIONAL ID #, if any

☐ NONE2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR 2b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

2c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

2d. **SEE INSTRUCTIONS**ADD'L INFO RE
ORGANIZATION
DEBTOR

2e. TYPE OF ORGANIZATION

2f. JURISDICTION OF ORGANIZATION

2g. ORGANIZATIONAL ID #, if any

☐ NONE3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - Insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

OR **City of Port Arthur Section 4A Economic Development Corporation**

3b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

3c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

4173 39th Street**Port Arthur****TX****77642****USA**

4. This FINANCING STATEMENT covers the following collateral:

5. ALTERNATIVE DESIGNATION (if applicable): ☐ LESSEE/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAILOR ☐ SELLER/BUYER ☐ AG: LIEN ☐ NON-UCC FILING

6. ☐ This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum. ☐ 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (if applicable) (ADDITIONAL FEE) (optional) ☐ All Debtors ☐ Debtor 1 ☐ Debtor 2

8. OPTIONAL FILER REFERENCE DATA

EXHIBIT "E"

CERTIFICATION REGARDING LOBBYING
For Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his knowledge and belief, that:

1. No funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of the City or of the PAEDC in connection with the awarding of any contract, the making of any grant, the making of any loan, the entering into of any cooperative agreement, or modification of any contract, grant, loan, or cooperative agreement.
2. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements), and that all Sub-GPs shall certify and disclose accordingly.

This certification is material representation of fact which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction.

Signed:

Bohead Manufacturing Company, L.L.C.

By: _____

Its: _____

Date: _____

COMMERCIAL SECURITY AGREEMENT

Dated _____, 200__

| <u>Surety</u> | <u>Secured Party</u> |
|--|--|
| Magnum Fire and Safety Systems, Inc. | Port Arthur Economic Development Corporation ("PAEDC") |
| 6648 Gulfway Drive | 444 4 th Street |
| Port Arthur, Texas 77642 | Port Arthur, Texas 77640 |
| (hereinafter referred to as "Surety" whether one or more) (hereinafter referred to as "Secured Party") | |

FOR VALUE RECEIVED, the receipt and sufficiency of which is hereby acknowledged, Surety grants to Secured Party the security interest (and the pledges and assignments as applicable) hereinafter set forth and agrees with Secured Party as follows:

A. **OBLIGATIONS SECURED.** The first priority lien and pledges and assignments as applicable granted hereby are to secure punctual payment and performance by the principal, **BOHEAD MANUFACTURING COMPANY, L.L.C. ("BOHEAD")**, of the following obligations: (i) certain promissory note(s) of even date herewith in the original principal sum of \$65,000, executed by Bohead and payable to the order of Secured Party, and any and all extensions, renewals, modifications and rearrangements thereof, (ii) certain obligations of Bohead to Secured Party under that certain Economic Incentive Contract and Loan Agreement of even date and all extensions, renewals, modifications and rearrangements thereof, and (iii) any and all other indebtedness, liabilities and obligations whatsoever and of whatever nature of Bohead to Secured Party whether direct or indirect, absolute or contingent, primary or secondary, due or to become due and whether now existing or hereafter arising and howsoever evidenced or acquired, whether joint or several, or joint and several (all of which are herein separately and collectively referred to as the "Obligations"). Surety acknowledges that the security interest (and pledges and assignments as applicable) hereby granted shall secure all future advances as well as any and all other indebtedness, liabilities and obligations of Bohead or Surety to Secured Party whether now in existence or hereafter arising.

B. **USE OF COLLATERAL.** Surety represents, warrants and covenants that Collateral will be used by the Surety primarily for business.

C. **DESCRIPTION OF COLLATERAL.** Surety hereby grants to Secured Party a first priority lien in (and hereby pledges and assigns as applicable) and agrees that Secured Party shall continue to have a security interest in (and a pledge and assignment of as applicable), the following property, to wit: (SURETY TO INITIAL APPROPRIATE BLANKS)

☐ **All Accounts.** A security interest in all accounts now owned or existing as well as any and all that may hereafter arise or be acquired by Surety, and all the proceeds and products thereof, including without limitation, all notes, drafts, acceptances, instruments and chattel paper arising therefrom, and all returned or repossessed goods arising from or relating to any such accounts, or other proceeds of any sale or other disposition of inventory.

☐ **Specific Accounts.** A security interest in only those specific accounts and/or contracts listed and described on Schedule A attached or which may hereafter be attached hereto, and all the proceeds and products thereof, including without limitation, all notes, drafts, acceptances, instruments and chattel paper arising therefrom, and all returned or repossessed goods arising from or relating to any such accounts or other proceeds of any sale or other disposition of inventory.

☐ **All Inventory.** A security interest in all of Surety's inventory, including all goods, merchandise, raw materials, goods in process, finished goods and other tangible personal property, wheresoever located, now owned or hereafter acquired and held for sale or lease or furnished or to be furnished under contracts for service or used or consumed in Surety's business and all additions and accessions thereto and contracts with respect thereto and all documents of title evidencing or representing any part thereof, and all products and proceeds thereof, including, without limitation, all of such which is now or hereafter located at the following locations: (give locations)

☐ **All Fixtures.** A security interest in all of Surety's fixtures and appurtenances thereto, and such other goods, chattels, fixtures, equipment and personal property affixed or in any manner attached to the real estate and/or building(s) or structure(s), including all additions and accessions thereto and replacements thereof and articles in substitution therefor, howsoever attached or affixed, located at the following locations: (give legal address)

The record owner of the real estate is: _____.

☐ **All Equipment.** A security interest in all equipment of every nature and description whatsoever now owned or hereafter acquired by Surety including all appurtenances and additions thereto and substitutions therefor, wheresoever located, including all tools, parts and accessories used in connection therewith.

☐ **General Intangibles.** A security interest in all general intangibles and other personal property now owned or hereafter acquired by Surety other than goods, accounts, chattel paper, documents and instruments.

 ☐ **Chattel Paper.** A security interest in all of Surety's interest under chattel paper, lease agreements and other instruments or documents, whether now existing or owned by Surety or hereafter arising or acquired by Surety, evidencing both a debt and security interest in or lease of specific goods.

 ☐ **Farm Products.** A security interest in all of Surety's interest in any and all crops, livestock and supplies used or produced by Surety in farming operations wheresoever located: Surety's residence is in the county shown at the beginning of this Agreement and Surety agrees to notify promptly Secured Party of any change in the county of Surety's residence; all of Surety's crops or livestock are presently located in the following counties: (give counties)

 ☐ **Securities.** A pledge and assignment of and security interest in the securities described below, together with all instruments and general intangibles related thereto and all monies, income, proceeds and benefits attributable or accruing to said property, including, but not limited to, all stock rights, options, rights to subscribe, dividends, liquidating dividends, stock dividends, dividends paid in stock, new security or other properties or benefits to which the Surety is or may hereafter become entitled to receive on account of said property. (give description)

 ☐ **Certificates of Deposit.** A pledge and assignment of and security interest in all of Surety's interest in and to the certificates of deposit described below and instruments related thereto, and all renewals or substitutions therefor, together with all monies, income, interest, proceeds and benefits attributable or accruing to said property or to which Surety is or may hereafter be entitled to receive on account of said property. (give description)

 ☐ **Instruments.** A pledge and assignment of and security interest in all of Surety's now owned or existing as well as hereafter acquired or arising instruments and documents.

 X ☒ **Other.** A first priority lien on all of Surety's interest, now owned or hereafter acquired, in and to the equipment listed in Attachment 1.

The term "Collateral" as used in this Agreement shall mean and include, and the security interest (and pledge and assignment as applicable) shall cover, all of the foregoing property, as well as any accessions, additions and attachments thereto and the proceeds and products thereof, including without limitation, all cash, general intangibles, accounts, inventory, equipment, fixtures, farm products, notes, drafts, acceptances, securities, instruments, chattel paper, insurance proceeds payable because of loss or damage, or other property, benefits or rights arising therefrom, and in and to all returned or repossessed goods arising from or relating to any of the property described herein or other proceeds of any sale or other disposition of such property.

As additional security for the punctual payment and performance of the Obligations, and as part of the Collateral, Surety hereby grants to Secured Party a security interest in, and a pledge and assignment of, any and all money, property, deposit accounts, accounts, securities, documents, chattel paper, claims, demands, instruments, items or deposits of the Surety, and each of them, or to which any of them is a party, now held or hereafter coming within Secured Party's custody or control, including without limitation, all certificates of deposit and other depository accounts, whether such have matured or the exercise of Secured Party's rights results in loss of interest or principal or other penalty on such deposits, but excluding deposits subject to tax penalties if assigned. Without prior notice to or demand upon the Surety, Secured Party may exercise its rights granted above at any time when a default has occurred or Secured Party deems itself insecure. Secured Party's rights and remedies under this paragraph shall be in addition to and cumulative of any other rights or remedies at law and equity, including, without limitation, any rights of set-off to which Secured Party may be entitled.

D. REPRESENTATIONS, WARRANTIES AND COVENANTS OF SURETY. Surety represents and warrants as follows:

1. **Ownership; No Encumbrances:** Except for the security interest (and pledges and assignments as applicable) granted hereby, the Surety is, and as to any property acquired after the date hereof which is included within the Collateral, Surety will be, the owner of all such Collateral free and clear from all charges, liens, security interests, adverse claims and encumbrances of any and every nature whatsoever.

2. **No Financing Statements:** There is no financing statement or similar filing now on file in any public office covering any part of the Collateral, and Surety will not execute and there will not be on file in any public office any financing statement or similar filing except the financing statements filed or to be filed in favor of Secured Party.

3. **Accuracy of Information:** All information furnished to Secured Party concerning Surety, the Collateral and the Obligations, or otherwise for the purpose of obtaining or maintaining credit, is or will be at the time the same is furnished, accurate and complete in all material respects.

4. **Authority:** Surety has full right and authority to execute and perform this Agreement and to create the security interest (and pledges and assignment as applicable) created by this Agreement. The making and performance by Surety of this Agreement will not violate any articles of incorporation, bylaws or similar document respecting Surety, any provision of law, any order of court or governmental agency, or any indenture or other agreement to which Surety is a party, or by which Surety or any of Surety's property is bound, or be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture or other agreement, or result in the creation or imposition of any charge, lien, security interest, claim or encumbrance of any and every nature whatsoever upon the Collateral, except as contemplated by this Agreement.

5. **Addresses:** The address of Surety designated at the beginning of this Agreement is Surety's place of business if Surety has only one place of business; Surety's chief executive office if Surety has more than one place of business; or Surety's residence if Surety has no place of business. Surety agrees not to change such address without advance written notice to Secured Party.

E. **GENERAL COVENANTS.** Surety covenants and agrees as follows:

1. **Operation of the Collateral:** Surety agrees to maintain and use the Collateral solely in the conduct of its own business, in a careful and proper manner, and in conformity with all applicable permits or licenses. Surety shall comply in all respects with all applicable statutes, laws, ordinances and regulations. Surety shall not use the Collateral in any unlawful manner or for any unlawful purposes, or in any manner or for any purpose that would expose the Collateral to unusual risk, or to penalty, forfeiture or capture, or that would render inoperative any insurance in connection with the Collateral.

2. **Condition:** Surety shall maintain, service and repair the Collateral so as to keep it in good operating condition. Surety shall replace within a reasonable time all parts that may be worn out, lost, destroyed or otherwise rendered unfit for use, with appropriate replacement parts. Surety shall obtain and maintain in good standing at all times all applicable permits, licenses, registrations and certificates respecting the Collateral.

3. **Assessments:** Surety shall promptly pay when due all taxes, assessments, license fees, registration fees, and governmental charges levied or assessed against Surety or with respect to the Collateral or any part thereof.

4. **No Encumbrances:** Surety agrees not to suffer or permit any charge, lien, security interest, adverse claim or encumbrance of any and every nature whatsoever against the Collateral or any part thereof.

5. **No Removal:** Except as otherwise provided in this Agreement, Surety shall not remove the Collateral from the county or counties designated at the beginning of this Agreement without Secured Party's prior written consent.

6. **No Transfer:** Except as otherwise provided in this Agreement with respect to inventory, Surety shall not, without the prior written consent of Secured Party, sell, assign, transfer, lease, charter, encumber, hypothecate or dispose of the Collateral, or any part thereof, or interest therein, or offer to do any of the foregoing.

7. **Notices and Reports:** Surety shall promptly notify Secured Party in writing of any change in the name, identity or structure of Surety, any charge, lien, security interest, claim or encumbrance asserted against the Collateral, any litigation against Surety or the Collateral, any theft, loss, injury or similar incident involving the Collateral, and any other material matter adversely affecting Surety or the Collateral. Surety shall furnish such other reports, information and data regarding Surety's financial condition and operations, the Collateral and such other matters as Secured Party may request from time to time.

8. **Landlord's Waivers:** Surety shall furnish to Secured Party, if requested, a landlord's waiver of all liens with respect to any Collateral covered by this Agreement that is or may be located upon leased premises, such landlord's waivers to be in such form and upon such terms as are acceptable to Secured Party.

9. **Additional Filings:** Surety agrees to execute and deliver such financing statement or statements, or amendments thereof or supplements thereto, or other documents as Secured Party may from time to time require in order to comply with the Texas Uniform Commercial Code (or other applicable state law of the jurisdiction where any of the Collateral is located) and to preserve and protect the Secured Party's rights to the Collateral.

10. **Protection of Collateral:** Secured Party, at its option, whether before or after default, but without any obligation whatsoever to do so, may (a) discharge taxes, claims, charges, liens, security interests, assessments or other encumbrances of any and every nature whatsoever at any time levied, placed upon or asserted against the Collateral, (b) place and pay for insurance on the Collateral, including insurance that only protects Secured Party's interest, (c) pay for the repair, improvement, testing, maintenance and preservation of the Collateral, (d) pay any filing, recording, registration, licensing or certification fees or other fees and charges related to the Collateral, or (e) take any other action to preserve and protect the Collateral and Secured Party's rights and remedies under this Agreement as Secured Party may deem necessary or appropriate. Surety agrees that Secured Party shall have no duty or obligation whatsoever to take any of the foregoing action. Surety agrees to promptly reimburse Secured Party upon demand for any payment made or any expense incurred by the Secured Party pursuant to this authorization. These payments and expenditures, together with interest thereon from date incurred until paid by Surety at

the maximum contract rate allowed under applicable laws, which Surety agrees to pay, shall constitute additional Obligations and shall be secured by and entitled to the benefits of this Agreement.

11. **Inspection:** Surety shall at all reasonable times allow Secured Party by or through any of its officers, agents, attorneys or accountants, to examine the Collateral, wherever located, and to examine and make extracts from Surety's books and records.

12. **Further Assurances:** Surety shall do, make, procure, execute and deliver all such additional and further acts, things, deeds, interests and assurances as Secured Party may require from time to time to protect, assure and enforce Secured Party's rights and remedies.

13. **Insurance:** Surety shall have and maintain insurance at all times with respect to all tangible Collateral insuring against risks of fire (including so-called extended coverage), theft and other risks as Secured Party may require, containing such terms, in such form and amounts and written by such companies as may be satisfactory to Secured Party, all of such insurance to contain loss payable clauses in favor of Secured Party as its interest may appear. All policies of insurance shall provide for ten (10) days written minimum cancellation notice to Secured Party and at the request of Secured Party shall be delivered to and held by it. Secured Party is hereby authorized to act as attorney for Surety in obtaining, adjusting, settling and canceling such insurance and endorsing any drafts or instruments. Secured Party shall be authorized to apply the proceeds from any insurance to the Obligations secured hereby whether or not such Obligations are then due and payable. Surety specifically authorizes Secured Party to disclose information from the policies of insurance to prospective insurers regarding the Collateral.

14. **Additional Collateral:** If Secured Party should at any time be of the opinion that the Collateral is impaired, not sufficient or has declined or may decline in value, or should Secured Party deem payment of the Obligations to be insecure, then Secured Party may call for additional security satisfactory to Secured Party, and Surety promises to furnish such additional security forthwith. The call for additional security may be oral, by telegram, or United States mail addressed to Surety, and shall not affect any other subsequent right of Secured Party to exercise the same.

F. **ADDITIONAL PROVISIONS REGARDING ACCOUNTS.** The following provisions shall apply to all accounts included within the Collateral:

1. **Definitions:** The term "account", as used in this Agreement, shall have the same meaning as set forth in the Uniform Commercial Code of Texas in effect as of the date of execution hereof, and as set forth in any amendment to the Uniform Commercial Code of Texas to become effective after the date of execution hereof, and

also shall include all present and future notes, instruments, documents, general intangibles, drafts, acceptances and chattel paper of Surety, and the proceeds thereof.

2. **Additional Warranties:** As of the time any account becomes subject to the security interest (or pledge or assignment as applicable) granted hereby, Surety shall be deemed further to have warranted as to each and all of such accounts as follows: (a) each account and all papers and documents relating thereto are genuine and in all respects what they purport to be; (b) each account is valid and subsisting and arises out of a bona fide sale of goods sold and delivered to, or out of and for services theretofore actually rendered by the Surety to the account surety named in the account; (c) the amount of the account represented as owing is the correct amount actually and unconditionally owing except for normal cash discounts and is not subject to any setoffs, credits, defenses, deductions or countercharges; and (d) Surety is the owner thereof free and clear of any charges, liens, security interests, adverse claims and encumbrances of any and every nature whatsoever.

3. **Collection of Accounts:** Secured Party shall have the right in its own name or in the name of the Surety, whether before or after default, to require Surety forthwith to transmit all proceeds of collection of accounts to Secured Party, to notify any and all account sureties to make payments of the accounts directly to Secured Party, to demand, collect, receive, receipt for, sue for, compound and give acquittal for, any and all amounts due or to become due on the accounts and to endorse the name of the Surety on all commercial paper given in payment or part payment thereof, and in Secured Party's discretion to file any claim or take any other action or proceeding that Secured Party may deem necessary or appropriate to protect and preserve and realize upon the accounts and related Collateral. Unless and until Secured Party elects to collect accounts, and the privilege of Surety to collect accounts is revoked by Secured Party in writing, Surety shall continue to collect accounts, account for same to Secured Party, and shall not commingle the proceeds of collection of accounts with any funds of the Surety. In order to assure collection of accounts in which Secured Party has a security interest (or pledge or assignment of as applicable) hereunder, Secured Party may notify the post office authorities to change the address for delivery of mail addressed to Surety to such address as Secured Party may designate, and to open and dispose of such mail and receive the collections of accounts included herewith. Secured Party shall have no duty or obligation whatsoever to collect any account, or to take any other action to preserve or protect the Collateral; however, should Secured Party elect to collect any account or take possession of any Collateral, Surety releases Secured Party from any claim or claims for loss or damage arising from any act or omission in connection therewith.

4. **Identification and Assignment of Accounts:** Upon Secured Party's request, whether before or after default, Surety shall take such action and execute and deliver such documents as Secured Party may reasonably request in order to identify, confirm, mark, segregate and assign accounts and to evidence Secured Party's interest in same. Without limitation of the foregoing, Surety, upon request, agrees to assign

accounts to Secured Party, identify and mark accounts as being subject to the security interest (or pledge or assignment as applicable) granted hereby, mark Surety's books and records to reflect such assignments, and forthwith to transmit to Secured Party in the form as received by Surety any and all proceeds of collection of such accounts.

5. **Account Reports:** Surety will deliver to Secured Party, prior to the tenth (10) day of each month, or on such other frequency as Secured Party may request, a written report in form and content satisfactory to Secured Party, showing a listing and aging of accounts and such other information as Secured Party may request from time to time. Surety shall immediately notify Secured Party of the assertion by any account surety of any set-off, defense or claim regarding an account or any other matter adversely affecting an account.

6. **Segregation of Returned Goods:** Returned or repossessed goods arising from or relating to any accounts included within the Collateral shall if requested by Secured Party be held separate and apart from any other property. Surety shall as often as requested by Secured Party, but not less often than weekly even though no special request has been made, report to Secured Party the appropriate identifying information with respect to any such returned or repossessed goods relating to accounts included in assignments or identifications made pursuant hereto.

G. **ADDITIONAL PROVISIONS REGARDING INVENTORY.** The following provisions shall apply to all inventory included within the Collateral:

1. **Inventory Reports:** Surety will deliver to Secured Party, prior to the tenth (10th) day of each month, or on such other frequency as Secured Party may request, a written report in form and content satisfactory to Secured Party, with respect to the preceding month or other applicable period, showing Surety's opening inventory, inventory acquired, inventory sold, inventory returned, inventory used in Surety's business, closing inventory, any other inventory not within the preceding categories, and such other information as Secured Party may request from time to time. Surety shall immediately notify Secured Party of any matter adversely affecting the inventory, including, without limitation, any event causing loss or depreciation in the value of the inventory and the amount of such possible loss or depreciation.

2. **Location of Inventory:** Surety will promptly notify Secured Party in writing of any addition to, change in or discontinuance of its place(s) of business as shown in this agreement, the places at which inventory is located as shown herein, the location of its chief executive office and the location of the office where it keeps its records as set forth herein. All Collateral will be located at the place(s) of business shown at the beginning of this agreement as modified by any written notice(s) given pursuant hereto.

3. **Use of Inventory:** Unless and until the privilege of Surety to use inventory in the ordinary course-of Surety's business is revoked by Secured Party in