

RESOLUTION NO. 08-200

**A RESOLUTION APPROVING AN ECONOMIC  
INCENTIVE CONTRACT AND LOAN AGREEMENT  
BETWEEN ORBITAL INSULATION CORP. AND 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 Orbital Insulation Corp. (the "Agreement") attached hereto as Attachment "A"; and

**WHEREAS**, Germer Gertz, L.L.P. has indicated this as a Section 4A project; and

**WHEREAS**, Orbital Insulation Corp. has reviewed and approved the Agreement.

**WHEREAS**, the agreement has been clarified to delineate that a payroll of \$2,882,500 will be created for the period beginning May 6, 2008 and ending December 31, 2012

**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 Orbital Insulation Corp., 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 attached hereto with Exhibits "A", "B", "C", "D", "E", "F", "G" and "H", with the clarification that the payroll of \$2,882,500 will be created for the period beginning May 6, 2008

and ending December 31, 2012.

**Section 3.** That a copy of this Resolution shall be spread upon the Minutes of the City Council.

**READ, ADOPTED AND APPROVED** on this 7<sup>th</sup> day of May A.D., 2008,  
at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote:

AYES:

Mayor Prince; Mayor Pro Tem Singal  
Councilmembers Jones, Henderson, Hood  
Williamson and Lewis.

NOES: None

Deloris Prince  
DELORIS "BOBBIE" PRINCE, MAYOR

ATTEST

Terris Bellare  
TERRI HANKS, ACTING CITY SECRETARY  
(on behalf of)

APPROVED:

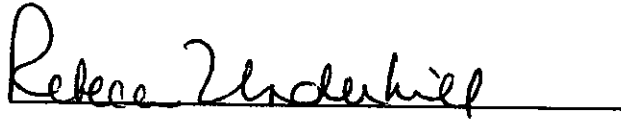
Floyd Batiste  
FLOYD BATISTE, EDC CEO

APPROVED AS TO FORM:

See confidential memorandum

MARK T. SOKOLOW,  
CITY ATTORNEY

APPROVED AS TO THE AVAILABILITY OF FUNDS:

A handwritten signature in cursive script, reading "Rebecca Underhill", is written over a horizontal line.

Director of Finance

**ECONOMIC INCENTIVE CONTRACT  
& LOAN AGREEMENT BETWEEN  
CITY OF PORT ARTHUR SECTION 4A  
ECONOMIC DEVELOPMENT CORPORATION  
&  
ORBITAL INSULATION CORP.**

**Executive Summary**

Orbital Insulation Corp., a Texas corporation with its principal offices in Port Arthur, Texas ("Orbital") plans to expand its Port Arthur facility to provide warehousing for industrial projects, industrial insulation, fabrication of fittings of insulation and fabrication of remove blankets. Orbital has spent \$225,000 initially on this expansion, and the City of Port Arthur Section 4A Economic Development Corporation ("PAEDC") will provide Orbital with a ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00) conditional grant for purchase of equipment (the "Equipment"), renovation and improvements (the "Improvements") to the property and building generally described as 817 Houston Avenue, Port Arthur, Texas and more fully described and referenced in Exhibit "A" to the Deed of Trust attached as Exhibit "E" to this Economic Incentive Contract and Loan Agreement (the "Building"). Orbital plans to acquire Equipment and to design and construct the Improvements to the Building in order to start operation on Houston Avenue by July 31, 2008. Grow America Fund will provide a THREE HUNDRED SEVENTY SIX THOUSAND AND NO/100 DOLLARS (\$376,000.00) loan to Orbital for the renovations and Improvements to the Building and construction of a new parking lot on property adjacent to 835 Houston Avenue, Port Arthur, Texas. The Grow America Fund will be administered and serviced by the National Development Council - Grow America Fund, Inc.

In return, Orbital promises to reach a payroll from June through December, 2008 of \$262,500 and thereafter payrolls of \$550,000, \$620,000, \$700,000 and \$750,000, respectfully, for years 2009 through year 2012; its total payroll aggregating \$2,882,500 for the period beginning May 6, 2008 and ending December 31, 2012, as measured by the Internal Revenue Service (IRS) W-2 and W-3 forms. In addition, Orbital promises that at least fifty (50%) percent of its employees will be Port Arthur residents. Finally, Orbital promises to pay all of PAEDC's attorney fees and expenses incurred for any modification of or amendment to this Agreement, including any legal documents support this Agreement.

If Orbital breaches this Agreement, then the PAEDC grant, minus any credits earned, will automatically convert to a loan by the PAEDC to Orbital, as liquidated damages and in lieu of any other damages (the "Loan"). The Loan will have a three year term, with monthly payments beginning on the date of Orbital's breach, and an interest rate of ten (10%) percent. Orbital will execute Commercial Security Agreements as to the Equipment and a Subordinated Deed of Trust on the Building to secure the Loan in the event of a default by Orbital. Additionally, as provided in the Economic Incentive Contract and Loan Agreement, personal guarantees shall be provided by principals of Orbital and their wives. PAEDC may place Orbital in default and foreclose on the Building if Orbital fails to perform its obligations under the Loan.

Orbital will earn credits to reduce the duration of this Agreement or to reduce liquidated damages in the event of a breach. Starting on the effective date of the Agreement, Orbital will receive \$1.00 in credit for each \$9.00 in approved payroll for Port Arthur residents only.

To keep the PAEDC informed on its progress, Orbital agrees to send PAEDC status reports on its equipment acquisitions, building improvements and its annualized payroll, quarterly for the first year and twice per year thereafter for the life of this Agreement.

If Orbital fails to timely submit a status report, then PAEDC shall place Orbital on notice of its default, and Orbital will forfeit its credits accruing during any reporting period for which it did not issue a status report if it fails to provide the status report within fifteen (15) days after receipt of the notice of default issued by PAEDC.

**ECONOMIC INCENTIVE CONTRACT & LOAN AGREEMENT BETWEEN  
CITY OF PORT ARTHUR SECTION 4A  
ECONOMIC DEVELOPMENT CORPORATION  
AND  
ORBITAL INSULATION CORP.**

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**EXHIBITS:**

Exhibit "A"	Conditional Commercial Promissory Note
Exhibit "B"	Commercial Security Agreement
Exhibit "C"	UCC-1
Exhibit "D"	Personal Guaranties
Exhibit "E"	Deed of Trust
Exhibit "F"	Asset List
Exhibit "G"	Certification Regarding Lobbying
Exhibit "H"	Compliance Statement

**ECONOMIC INCENTIVE CONTRACT & LOAN AGREEMENT  
BETWEEN  
CITY OF PORT ARTHUR SECTION 4A  
ECONOMIC DEVELOPMENT CORPORATION  
AND  
ORBITAL INSULATION CORP.**

**INTRODUCTION**

Orbital Insulation Corp. ("Orbital") is a Texas corporation with its principal offices in Port Arthur, Texas and plans to expand its Port Arthur facilities to provide warehousing for industrial projects, industrial insulation, fabrication of fittings for insulation and fabrication of remove blankets. Orbital has initiated the expansion of its operations on Houston Avenue in Port Arthur, Texas due to current market demand for its services in the geographic area extending from Lake Charles, Louisiana and North Louisiana to Houston, Texas. The City of Port Arthur Section 4A Economic Development Corporation ("PAEDC") will assist Orbital in this business endeavor by providing conditional grant and loan funds in exchange for the promise of jobs and a payroll of \$2,882,500 for the period beginning May 6, 2008 and ending December 31, 2012.

**AGREEMENT DATES**

**AGREEMENT START DATE**

1. This Economic Incentive Contract and Loan Agreement ("Agreement") is entered into with an effective date of May 6, 2008, but in no case later than June 1, 2008, by and between PAEDC and Orbital.

**AGREEMENT END DATE**

2. This Agreement expires the earlier of December 31, 2012, or 30 days after Orbital either performs fully or breaches the Agreement, subject to earlier termination or extension, voluntary or involuntary, as provided herein. The period from the effective date of this Agreement through and including the expiration date of this Agreement as provided in the previous sentence hereof, is sometimes referred to in this Agreement as the "Term" of this Agreement.

**PARTIES**

3. PAEDC located at 4173-39<sup>th</sup> Street, Port Arthur, Texas, 77642, is a Texas non-profit economic development corporation 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 Agreement. So authorized and as provided by the PAEDC bylaws, the designated officers of the PAEDC Board have the authority to execute this Agreement.

4. Orbital is a Texas corporation organized and in existence since August 8, 2006. The registered agent in Texas for Orbital is James E. Wimberley at 3120 Central Mall Drive, Port Arthur, Texas 77642.

## **PROMISED PERFORMANCE**

5. The parties agree to perform as follows.

### **(a) PERFORMANCE BY PAEDC**

- i. PAEDC shall conditionally grant Orbital up to \$150,000, subject to the conditions and limitations herein, which Orbital is not required to repay unless Orbital breaches this Agreement and fails to timely cure its default after notice. If Orbital breaches this Incentive Agreement and fails to timely cure its default after notice, then the Grant shall convert to a loan made by the PAEDC to Orbital under the terms provided in the Conditional Commercial Promissory Note as provided in **Exhibit "A"**.
- ii. PAEDC will provide said grant by either paying vendor invoices or reimbursing Orbital for payment of vendor invoices for approved acquisition of Equipment and the Improvements to the Building. PAEDC will use its best efforts to pay invoices or reimburse Orbital within forty-five (45) days after receipt of a payment request. These reimbursements up to the aggregate amount of \$150,000 are PAEDC's only obligations under this Agreement.
- iii. Orbital agrees to execute a Commercial Security Agreement, constituting a subordinate security interest, junior in priority to commercial security agreements and financing statements issued in favor of Community Bank, N.A. and the Grow America Fund to provide a subordinate collateral security interest in the Equipment and Improvements acquired and utilized by Orbital in its business operations. Orbital further agrees to provide an asset list of Equipment and to allow the PAEDC to file subordinated financing statements enumerating such Equipment and noting the subordinate security interest, junior in priority to the liens of Community Bank, N.A. and the Grow America Fund on said Equipment all as more fully enumerated in the Commercial Security Agreement and UCC-1 Financing Statement attached hereto respectively as **Exhibit "B"** and **"C"**.
- iv. The principals of Orbital, Eduardo Gracian and Bruno Fernandez and their wives, further agree to execute personal guaranties as to the financial commitments undertaken by Orbital through the PAEDC in accordance with the personal guaranties attached hereto as **Exhibit "D"**.
- v. Orbital agrees that the Deed of Trust provided in **Exhibit "E"** is for the benefit of PAEDC shall constitute a second lien, junior in priority to a deed of trust on the Building and its improvements for the benefit of Grow America Fund, Inc. which is lending Orbital THREE HUNDRED SEVENTY SIX THOUSAND AND NO/100 DOLLARS (\$376,000).

### **(b) PERFORMANCE BY ORBITAL**

- (1) Orbital shall use the \$150,000 grant monies exclusively toward the purchase of Equipment and the Improvements to the Building which are required for Orbital's planned business expansion.

- (2) By December 31, 2012 Orbital shall increase its annual payroll to \$750,000. Employment and payroll will be monitored with Orbital status reports to PAEDC and Orbital's filed Internal Revenue Service ("IRS") Forms W-2 and W-3.
- (3) Orbital covenants that at least fifty percent (50%) of its employees will be Port Arthur residents.
- (4) Contemporaneously with PAEDC's grant to Orbital, Orbital will execute the Commercial Security Agreement, the UCC-1 Financing Statement and provide the Asset List.
- (5) Contemporaneously with the PAEDC's grant to Orbital its principals, Eduardo Gracian and Bruno Fernandez and their wives, will execute personal guaranties.
- (6) Contemporaneously with PAEDC's grant to Orbital, Orbital will execute a Subordinate Deed of Trust on the Building, and shall perform all Grantor obligations, including the obligations added to protect the PAEDC as the junior lien holder, to wit:
  - a) Provide the PAEDC copied of all notices, financial statements, reports and other information provided to the senior lien holder;
  - b) Punctually pay or cause to be paid the principal and interest to become due in respect to the senior debt according to the term thereof;
  - c) Perform all of its obligations under the senior lender documents;
  - d) Arrange for senior lien holder to send PAEDC notices of Orbital defaults;
  - e) Immediately report to PAEDC in writing any default by Orbital under the senior lien;
  - f) Immediately report to PAEDC in writing any tax, judgment, materialman's or mechanic's lien on the Building; and
  - g) In the event the PAEDC herein deems itself reasonable insecure in its ability to realize upon its junior lien in the Building, upon notice thereof to Orbital, provide the PAEDC with such additional collateral as may reasonably secure the PAEDC's position, subject to the rights and restrictions imposed by the senior lien holder.
- (7) Orbital shall not, without the prior written consent of PAEDC:
  - a) Materially alter any of the terms and conditions of the senior debt or increase the maximum indebtedness available to Orbital under the senior lender documents; or
  - b) Further encumber the Building; or
  - c) Allow any change in ownership of Orbital either by the sale of any capital stock or interest in Orbital or a sale of the operating assets of Orbital.
- (8) Orbital shall use the Grant monies provided by the PAEDC exclusively for the purchase of Equipment identified on Exhibit "F" and the Improvements that are not materially different<sup>1</sup> from those identified by Orbital to PAEDC.
- (9) On demand by PAEDC and in response to Orbital's failure to achieve a performance milestone, Orbital shall provide PAEDC with reasonable assurances, proposed by Orbital and reasonably acceptable to PAEDC, that it has both the intention and the capabilities to perform fully its contractual obligations.

<sup>1</sup> "Materially different" is defined as a change in the type of asset that changes the overall business plan in place at the time that this contract was executed.



**(C) ORBITAL CREDITS - SUBSTITUTE PERFORMANCE**

Orbital may earn credits according to the following terms, to either reduce the duration of this Agreement or reduce the amount of liquidated damages in the event Orbital breaches this Agreement.

- (1) Starting on the effective date of the Agreement and for as long as Orbital performs as specified in 5(b)(1), Orbital will receive a \$1.00 credit for each \$9.00 of approved payroll paid to residents of Port Arthur. Payroll to non-residents cannot be credited.
- (2) Total credit cannot exceed \$150,000.
- (3) Orbital will forfeit any credits it earned during a period for which a report is scheduled but Orbital fails to submit as provided in this Agreement.
- (4) Once Orbital has earned credits equal to \$150,000, this Agreement and its Term shall terminate pursuant to Section 2 hereinabove.
- (5) If Orbital does not earn credits equal to ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00) during the term of and in accordance with the terms and conditions of this Agreement, the Note (Exhibit "A"), Commercial Security Agreement (Exhibit "B"), UCC-1 Financing Statement (Exhibit "C"), personal guaranties (Exhibit "D") and Deed of Trust (Exhibit "E") shall remain in effect until the Note is paid in full.

**ORBITAL'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 or reimbursements and/or demand reasonable assurances<sup>2</sup> from Orbital that it can and will fully perform its contractual obligations. Failure to provide such reasonable assurances following demand of PAEDC is a breach of contract.

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

**EXAMPLE OF ORBITAL'S PERFORMANCE MILESTONE SCHEDULE**

<u>Deadline</u>	<u>Milestone</u>
(a) July 31, 2008	Issue a <i>status report</i> (refer to footnote <sup>2</sup> ) to PAEDC's Chief Executive Officer ("CEO") for the period from the April 1, 2008 to June 30, 2008.
(b) October 31, 2008	Issue a <i>status report</i> (refer to footnote <sup>2</sup> ) to PAEDC's Chief Executive Officer ("CEO") for the period from July 1, 2008 to September 30, 2008.
(c) January 31, 2009	Issue a <i>status report</i> (refer to footnote <sup>2</sup> ) to PAEDC's Chief Executive Officer ("CEO") for the period from October 1, 2008 to December 31, 2008

<sup>2</sup> Examples of reasonable assurances are copies of IRS W2s and W3s confirming payroll Port Arthur Residents hired.

(d)	July 31, 2009	Achieve performance of annualized payroll of \$450,000 for year ending December 31, 2008 to June 30, 2009
(e)	July 31, 2009	Issue a <i>status report</i> (refer to footnote <sup>2</sup> ) to PAEDC's Chief Executive Officer ("CEO") for the period from January 1, 2009 to June 30, 2009.
(f)	January 31, 2010	Issue a <i>status report</i> (refer to footnote <sup>2</sup> ) to PAEDC's Chief Executive Officer ("CEO") for the period from July 1, 2009 to December 31, 2009
(g)	July 31, 2010	Achieve performance of annualized payroll of \$550,000 for year ending December 31, 2009
(h)	July 31, 2010	Issue a <i>status report</i> (refer to footnote <sup>2</sup> ) to PAEDC's Chief Executive Officer ("CEO") for the period from January 1, 2010 to June 30, 2010.
(i)	January 31, 2011	Issue a <i>status report</i> (refer to footnote <sup>2</sup> ) to PAEDC's Chief Executive Officer ("CEO") for the period from July 1, 2010 to December 31, 2010
(j)	July 31, 2011	Achieve performance of annualized payroll of \$620,000 for year ending December 31, 2010
(k)	July 31, 2011	Issue a <i>status report</i> (refer to footnote <sup>2</sup> ) to PAEDC's Chief Executive Officer ("CEO") for the period from January 1, 2011 to June 30, 2011.
(l)	January 31, 2012	Issue a <i>status report</i> (refer to footnote <sup>2</sup> ) to PAEDC's Chief Executive Officer ("CEO") for the period from July 1, 2011 to December 31, 2011
(m)	July 30, 2012	Achieve performance of annualized payroll of \$700,000 for year ending December 31, 2011
(n)	July 30, 2012	Issue a <i>status report</i> (refer to footnote <sup>2</sup> ) to PAEDC's Chief Executive Officer ("CEO") for the period from January 1, 2012 to June 30, 2012.
(o)	January 31, 2013	Issue a <i>status report</i> (refer to footnote <sup>2</sup> ) to PAEDC's Chief Executive Officer ("CEO") for the period from July 1, 2012 to December 31, 2012
(p)	January 31, 2013	Achieve performance of annualized payroll of \$750,000 for year ending December 31, 2012

#### **PAEDC'S CONDITIONAL OBLIGATIONS AND LIMITED LIABILITY**

8. It is expressly understood and agreed by the parties hereto that the PAEDC obligations herein are contingent upon the actual receipt of adequate sales tax revenue funds to meet the PAEDC's obligations under this Agreement. If adequate funds are not available to make payments under this Agreement, the PAEDC shall notify Orbital 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 Orbital or to any third parties for failure to make payments to Orbital under the terms and conditions of this Agreement.

9. The PAEDC shall not be liable, in Agreement or otherwise, to Orbital, or to any person or entity claiming by or through Orbital, for any expense, expenditure or cost incurred by or on behalf of

Orbital related to the project made the basis of this Agreement. The PAEDC's sole liability/obligations, if any, shall be to Orbital and shall be limited to the conditional funding obligations detailed in this Agreement.

10. Orbital 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 Orbital, which application is incorporated herein for all purposes.

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

#### **LIQUIDATED DAMAGES FOR BREACH OF AGREEMENT BY ORBITAL**

12. In the event Orbital fails to perform its obligations under this Agreement, following notice thereof from PAEDC and thirty-day (30-day) opportunity to cure the same, the PAEDC grant, minus any credits earned, will automatically convert to a loan (liquidated damages), effective on the day of breach, as agreed by Orbital in the executed Commercial Promissory Note contained in Exhibit "A". Following such conversion to a loan as aforesaid, the PAEDC, at its sole option, may terminate its remaining funding obligations, if any, detailed in Section 5 herein. Further, the PAEDC shall be entitled to recover its reasonable and necessary 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 Agreement 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. Orbital must establish and maintain sufficient records, as reasonably determined by the PAEDC, to account for the expenditure and utilization of funds received by Orbital from PAEDC under the terms and conditions of this Agreement.

15. Orbital 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 Orbital's application. Orbital shall provide reports of utilization of said funds, as reasonably requested by the PAEDC, and upon final termination of this Agreement.

16. Upon ten (10) day advance notice, Orbital 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 Orbital. Such rights to access shall continue as long as the records are maintained by Orbital. Orbital agrees to maintain such records in an accessible location. All information obtained by the PAEDC, or its duly authorized representatives, shall be regarded as the confidential business information of Orbital and the PAEDC shall take reasonable measures to protect such information from disclosure to third parties; however, PAEDC is subject to the requirements of the Texas Open Meetings Act and Open Records Act (Tex. Gov. Code, 551 & 552). Orbital agrees that disclosures to the public required by the Texas Open Meetings Act, Texas Open Records Act, or any other legal

requirement will not expose PAEDC (or any party acting by, through or under PAEDC) to any claim, liability or action by Orbital (or any party working by, through or under Orbital).

17. All records pertinent to this Agreement shall be retained by Orbital 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 Orbital detailing Orbital'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 asset purchased with PAEDC funds.

18. Orbital 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 Orbital fails to submit to PAEDC in a timely and satisfactory manner any report required by this Agreement, PAEDC may, at its sole discretion, withhold further payments to Orbital and/or demand assurances that Orbital can and will fully perform its contractual obligations. If Orbital fails to provide adequate assurances then Orbital is in breach and any monies advanced by PAEDC automatically become a loan. If PAEDC withholds such payments, it shall notify Orbital 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 Orbital.

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 may provide Orbital with a written report of the audit findings. If the audit report details deficiencies in Orbital's performance under the terms and conditions of this Agreement, the PAEDC may establish requirements for the timely correction of any such deficiencies by Orbital.

### **HOLD HARMLESS**

21. Orbital 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, provided that such claim, demand or cause of action does not arise from any fraud or misconduct on the part of the PAEDC or the City of Port Arthur, or any agent, employee or representative of either.

### **SUBCONTRACTS**

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

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

24. Orbital, 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 Agreement.

#### **CONFLICT OF INTEREST / DISCLOSURE OBLIGATION**

25. 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 Agreement (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. Insofar as relates to the conduct hereunder of Orbital, its agents, employees or representatives, Orbital 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. In conjunction with execution of this Agreement, Orbital has fully disclosed to PAEDC all known and potential owners of interests in Orbital (whether stockholder, manager, member or otherwise). In the event of any change in ownership or control of Orbital of five (5 %) percent or greater, Orbital shall notify PAEDC in writing. Further, Orbital 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 Agreement, 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 Orbital. 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. Orbital 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 Agreement. Additionally, 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 Agreement be given to Port Arthur, Texas residents; and
- (b) To the greatest extent feasible, Agreements 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, Texas;

- (c) If Orbital advertises for employment then it will advertise in the Port Arthur News; however, PAEDC has no intent to restrain advertising in additional publications or media.

## **LEGAL AUTHORITY**

28. Orbital assures and guarantees that it possesses legal and/or corporate authority to enter into this Agreement, receive funds authorized by this Agreement, and to perform the services Orbital 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 Agreement on behalf of Orbital, or representing themselves as signing and executing this Agreement on behalf of Orbital, do hereby warrant and guarantee that he, she, or they have been duly authorized by Orbital to execute this Agreement on behalf of Orbital and to validly and legally bind Orbital to all terms, performances, and provisions herein set forth.

## **NOTICE OF LEGAL OR REGULATORY CLAIMS AGAINST ORBITAL**

30. Orbital shall give PAEDC immediate notice in writing of 1) any legal or regulatory action, including any proceeding before an administrative agency filed against Orbital, directly or indirectly; and 2) any material claim against Orbital, which may impact continued operations. For purposes herein, "material" claims shall mean claims in excess of \$5,000. Except as otherwise directed by PAEDC, Orbital shall furnish immediately to PAEDC copies of all pertinent documentation of any kind received by Orbital with respect to such action or claim.

## **CHANGES AND AMENDMENTS**

31. Except as specifically provided otherwise in this Agreement, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment in writing and executed by all parties to this Agreement. Such amendments must be approved by the PAEDC Board of Directors and, in many cases, by the City of Port Arthur, City Council.

32. It is understood and agreed by the parties hereto that performances under this Agreement 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 Orbital, 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 Agreement by all parties, it is agreed by the parties hereto that the performances under this Agreement 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 Agreement issue policy directives which serve to interpret, or clarify performance requirements under this Agreement. 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 Agreement and shall be binding upon Orbital, as if written herein.

33. Any alterations, additions, or deletions to the terms of this Agreement which are required by changes in Federal, state law or local law are automatically incorporated into this Agreement 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 Orbital detailed herein or in the event of breach of any of the representations of or warranties of Orbital either detailed herein or in Orbital's application to the PAEDC, and following any notice and opportunity to cure provided for in this Agreement, the PAEDC may, at its sole option, terminate this Agreement, in whole or in part. In the event of such termination, 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 effective. If Orbital defaults on the note, then the PAEDC may 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 Commercial Security Agreement and/or the Deed of Trust;
- (c) Call upon the guarantors under the personal guaranty agreements;
- (d) Withhold, whether temporarily or otherwise, disbursement of grant proceeds pending correction of the deficiency(s) by Orbital;
- (e) 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 Orbital's application to the PAEDC;
- (f) Withhold and/or disallow further PAEDC incentives to Orbital; and
- (g) Exercise any and all other remedies that may be legally available to the PAEDC, under the laws of the State of Texas and as authorized by the terms and conditions of this Agreement.

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.

## **ORBITAL AUDITS**

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

- (a) Orbital 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 Term of this Agreement in which Orbital 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 Orbital. Said audit must be received and accepted by the Chief Executive Officer of PAEDC and/or the PAEDC Board.



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

(c) Unless otherwise specifically authorized by PAEDC in writing, Orbital 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 Term of this Agreement.

37. Orbital 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 Agreement and it may be required to submit formal audits at Orbital's expense.

38. Orbital 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 Orbital 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 Orbital under this Agreement until PAEDC has received certification from Orbital that its fiscal control and fund accounting procedures are adequate to assure proper disbursement of and accounting for funds provided under this Agreement. PAEDC shall specify the content and form of such certification.

#### **ENVIRONMENTAL CLEARANCE REQUIREMENTS**

41. Orbital understands and agrees that by execution of this Agreement, Orbital 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. Orbital further understands and agrees that Orbital 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 AGREEMENTS / PRIOR AGREEMENTS**

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

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

Exhibit "A"	Conditional Commercial Promissory Note
Exhibit "B"	Commercial Security Agreement
Exhibit "C"	UCC-1
Exhibit "D"	Personal Guaranties
Exhibit "E"	Deed of Trust
Exhibit "F"	Asset List

Exhibit "G"      Certification Regarding Lobbying  
Exhibit "H"      Compliance Statement  
Orbital's Application to PAEDC for funding, by reference

#### **VENUE**

44. For purposes of litigation that may accrue under this Agreement, 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  
4173 39<sup>th</sup> Street  
Port Arthur, Texas 77642  
ATTN: Floyd Batiste, Chief Executive Officer

Orbital Insulation Corp.  
817 Houston Avenue  
Port Arthur, Texas 77642  
ATTN: Eduardo Gracian

#### **CAPTIONS**

45. This Agreement 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. Orbital 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, including those related to the activities and performances of Orbital under this Agreement. Upon request by PAEDC and by the City, Orbital shall furnish satisfactory proof of its compliance herewith.

#### **CONDITIONS PRECEDENT**

47. This agreement has no legal consequences, and neither party shall rely on the agreement, unless and until both the PAEDC Board and the Port Arthur City Council approve this Agreement in its final form.

**ATTORNEY APPROVALS**

APPROVED AS TO FORM:

\_\_\_\_\_  
Guy Goodson, General Counsel for PAEDC

VERIFIED AS CONSISTANT  
WITH CITY COUNCIL RESOLUTION:

Resolution Number: \_\_\_\_\_

\_\_\_\_\_  
Mark T. Sokolow, City Attorney

**AGREEMENT EXECUTION**

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

SIGNED AND AGREED TO on the 23 day of May, 2008

By: \_\_\_\_\_

President

By: \_\_\_\_\_

Secretary

Witness

Witness

**ORBITAL INSULATION CORP.**

SIGNED AND AGREED TO on the \_\_\_\_ day of \_\_\_\_\_, 2008.

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

**ATTACHMENT "A"**  
**TO THE RESOLUTION**

**EXHIBIT "A"**

**CONDITIONAL COMMERCIAL PROMISSORY NOTE**

Port Arthur, Texas

This CONDITIONAL COMMERCIAL PROMISSORY NOTE becomes effective on the date when Orbital Insulation Corp., a Texas corporation (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 \_\_\_\_\_, 2008.

**Effective Date of Note:** the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_. ("date of breach")

**Principal Amount:** \$\_\_\_\_\_, which is \$150,000 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 the Principal Amount and interest as hereinafter specified is paid in full.

FOR VALUE RECEIVED, the undersigned "Maker", promises to pay to 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 principal 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 greater) as may hereafter be in effect, payable on demand after maturity.

This Note is due and payable as follows: Thirty-six (36) equal monthly installments of principal and interest on the fifteenth of each month, starting on the month immediately following the effective date of the Note.

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 shall be directly and primarily 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 holder hereof, in order to enforce payment of this Note by any other liable party, shall be required to first institute suit or exhaust its remedies against Maker and to enforce its rights against any security therefor prior to enforcing payment of this Note by any other liable party.

SIGNED AND AGREED TO on the \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_,  
a Texas \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

#### ACKNOWLEDGEMENT

THE STATE OF TEXAS

\*

COUNTY OF JEFFERSON

\*

BEFORE ME, THE UNDERSIGNED Notary Public, on this day personally appeared \_\_\_\_\_, 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 \_\_\_\_\_, a Texas \_\_\_\_\_, for the purposes and consideration therein expressed, and the Capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

**MAKERS' ADDRESS FOR RECEIPT OF NOTICE:**

\_\_\_\_\_, a Texas \_\_\_\_\_  
c/o \_\_\_\_\_

\_\_\_\_\_, Texas 77\_\_\_\_



**EXHIBIT "B"**

**COMMERCIAL SECURITY AGREEMENT**

Dated \_\_\_\_\_, 2008

<u>Debtor(s)</u>	<u>Secured Party</u>
Orbital Insulation Corp. ("Orbital")	Port Arthur Economic Development Corporation ("PAEDC")
817 Houston Avenue	4173 39 <sup>th</sup> Street
Port Arthur, Texas 77642	Port Arthur, Texas 77642

(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 Conditional Commercial Promissory Note of even date herewith in the original principal sum of \$150,000, 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 use, unless otherwise specified as follows: Personal, family or household purposes; Farming operations.

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 the supervised account at Texas State Bank, including earned interest, described by the Deposit Agreement between the Financial Institution, the Debtor and the Secured Party. Such agreement attached or which may hereafter be attached hereto.

— **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.

— **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 subordinate lien on all of Debtor's interest, now owned or hereafter acquired, in and to the Equipment described in the Asset List attached as Exhibit "F" to that certain Economic Incentive Contract and Loan Agreement between Debtor and Secured Party and attached to this Collateral Security Agreement.

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 toss 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.

1. **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\_\_.

\_\_\_\_\_  
By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

**EXHIBIT "C"**

**UCC-1**

To be completed and filed upon receipt of Model and Serial Numbers and/or Vehicle Identification Numbers for the Equipment identified in Exhibit "F" to the Economic Incentive Contract and Loan Agreement.

**EXHIBIT "D"**  
**GUARANTY AGREEMENT**

THIS GUARANTY AGREEMENT, dated as of \_\_\_\_\_, 2008 (the "Guaranty"), is made between the City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC"), a corporation validly existing under its Charter and the constitution and laws of the State of Texas, and Eduardo Gracian (the "Guarantor"), a natural person residing in Texas. Capitalized terms used in this Guaranty and not defined otherwise are used herein as defined in the Economic Incentive Contract and Loan Agreement, dated \_\_\_\_\_, 2008 (the "Agreement") between the PAEDC, as Grantor, and Orbital Insulation Corp., a Texas corporation with its principal offices in Port Arthur, Texas (the "Grantee"). Those definitions are incorporated in this Guaranty by reference.

WITNESSETH THAT: WHEREAS,

A. Upon the terms and conditions set forth in the Agreement, the PAEDC is willing to loan the Grantee the sum of ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00) to enable the Grantee to acquire Equipment to design and construct Improvements to the Building described as 817 Houston Avenue, Port Arthur, Texas and to adjacent properties of the Grantee.

B. In order to enhance the security of the PAEDC that the benefits under the Agreement will inure to the benefit of the residents of Port Arthur, Texas, the Guarantor is willing, in this Guaranty, to guaranty the obligations of the Grantee under the Agreement.

C. The PAEDC and the Guarantor each have full right and lawful authority to enter into this Guaranty and to perform and observe the provisions hereof on their respective parts to be performed and observed.

NOW, THEREFORE, in consideration of the premises and representations and agreements hereinafter contained and subject to the terms hereof, and for other good and valuable consideration, the receipt of which is acknowledged hereby, the Guarantor agrees with the PAEDC as follows:

**ARTICLE I.**  
**REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR**

**Section 1.1.** The Guarantor represents and warrants as follows:

- (a) The financial statements provided to Grow America Fund, Inc. to secure their U.S. Small Business Administration ("SBA") Guaranteed Loan Commitment are true and correct, and there are no material amendments or modifications thereto since the date of their submission to the Grow America Fund, Inc.,
- (b) The signing, delivery, observance and performance by the Guarantor of this Guaranty and the Guarantor's covenants, agreements and obligations hereunder do not, and will not, (i) violate any law now existing, or (ii) contravene or constitute a default under any agreement, indenture, trust agreement or understanding to which the Guarantor is a party or by which it or its property may be bound.



ARTICLE II.  
COVENANTS AND GUARANTEES

Section 2.1. The Guarantor hereby absolutely and unconditionally guarantees to the PAEDC at any time:

- (a) the full and prompt performance of all covenants, agreements and obligations of the Grantee under the Agreement, and
- (b) the payment of all principal, interest and other sums due, whether by acceleration or otherwise, together with all late charges, disbursements, expenses, and deficiencies pursuant to that certain Commercial Promissory Note made by the Grantee to the PAEDC as of even date herewith (collectively the "Guaranteed Debt") together with the performance of Grantee's obligations under any documents or instruments executed in connection with or given to secure the Guaranteed Debt, and
- (c) the full and prompt payment of all expenses and charges, including without limitation, to the extent permitted by law, reasonable attorneys' fees and expenses, paid or incurred by the PAEDC acting as Grantor under the Agreement and in realizing any of the payments guaranteed hereby or in enforcing this Guaranty.

The Guarantor will pay all payments in lawful money of the United States of America. Each default in payment of any amount payable hereunder shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises.

Section 2.2. The Guarantor's covenants, agreements and obligations under this Guaranty are absolute and unconditional, are a present, and shall be a continuing, guaranty of performance and payment and not collectibility, and shall remain in full force and effect until all covenants, agreements and obligations of the Grantee under the Agreement have been performed or met, and all other amounts payable hereunder shall have been paid or provision shall have been made therefor to the satisfaction of the PAEDC, regardless of the legality, validity, regularity or enforceability of the Agreement or any other document.

The obligations of the Guarantor described in the preceding paragraph shall not be amended, modified or impaired upon the happening of any event, including without limitation, any of the following, regardless of whether there is notice to or consent of the Guarantor with respect thereto:

- (a) the compromise, settlement, release or termination of any or all of the covenants, agreements or obligations of the PAEDC under the Agreement;
- (b) the failure to give notice to the Guarantor of the occurrence of a default under this Guaranty or an Event of Default under the Agreement, except as provided specifically in this Guaranty;
- (c) the waiver of the payment, observance or performance by the PAEDC or the Guarantor of any of their covenants, agreements or obligations under this Guaranty or the Agreement;
- (d) the extension of the time for observance or performance of any covenant, agreement or obligation under this Guaranty or the Agreement, or the extension or the renewal of any extension;

- (e) the modification or amendment of any covenant, agreement or obligation under the Agreement;
- (f) the taking or the omission of any action under this Guaranty or the Agreement;
- (g) any failure, omission or delay on the part of the PAEDC to enforce, assert or exercise any right, power or remedy conferred on the PAEDC under this Guaranty or the Agreement, or any act or omission on the part of the PAEDC at any time;
- (h) the occurrence of any of the following:
  - (i) the admission by the Guarantor in writing of its inability to pay its debts generally as they become due,
  - (ii) the entering of an order for relief in any case commenced by or against the Guarantor (except cases commenced by the Guarantor against third parties) under federal bankruptcy law, as in effect from time to time,
  - (iii) a general assignment by the Guarantor for the benefit of creditors, or
  - (iv) the appointment of a receiver for the Guarantor or for the whole or any substantial part of its property;
- (j) to the extent permitted by law, the release or discharge by operation of law of the Guarantor from the observance or performance of any covenant, agreement or obligation under this Guaranty or any other agreement, contract or other instrument or document to which it is a party or by which it or its property is or may be bound;
- (k) the default or failure of the Guarantor to observe or perform fully any of its covenants, agreements or obligations under this Guaranty or any other agreement, contract or other instrument or document to which it is a party or by which it or its property is or may be bound;
- (l) the default of the PAEDC under the Agreement; or
- (m) to the extent permitted by law, the invalidity of the Agreement, this Guaranty, any agreement, contract or other instrument or document to which the Guarantor is a party or by which it or its property is or may be bound.

Section 2.3. No setoff, counterclaim, reduction, or diminution of any covenant, agreement or obligation, or any defense of any kind, which the Guarantor has or may have against the PAEDC or the Grantee, shall be available hereunder to the Guarantor against the PAEDC; provided, however, that the Guarantor shall be entitled to assert in a timely manner in a separate action against the PAEDC or the Grantee, as the case may be, any rights that could not be asserted, by virtue of this Section 2.3, by the Guarantor as a setoff, counterclaim, reduction, diminution or defense in the action on this Guaranty. The Guarantor shall not exercise any right of subrogation under this Guaranty until its obligations hereunder have been discharged in full, and such obligations shall not be discharged by virtue of any impairment of such rights of subrogation.

Section 2.4. If there is a default by the Grantee under the Agreement or the Commercial Promissory Note made by the Grantee thereunder, the PAEDC is not obligated to proceed first against the Grantee and exhaust its remedies against the Grantee and its security or other rights in the collateral of the

Grantee, prior to resorting to any remedy of the PAEDC as to the Guarantor; If Guarantor finds that further action against Grantee is futile, Guarantor may request in writing that PAEDC halt executing remedies against Grantee, after which PAEDC may proceed with remedies against Guarantor.

Section 2.5. The Guarantor covenants and agrees to pay all reasonable costs, expenses and fees (including without limitation, to the extent permitted by law, all court costs and attorneys' fees) that may be incurred by the PAEDC in enforcing or attempting to enforce this Guaranty, whether by suit or otherwise, following any default on the part of the Guarantor under this Guaranty.

Section 2.6.

- (a) The failure of the Guarantor to abide by or to observe or perform any covenant, agreement or obligation hereunder, or any inaccuracy in any material adverse respect of, or any material adverse omission from, any representation or warranty herein, shall constitute a default hereunder.
- (b) The occurrence of any of the following shall also constitute a default hereunder:
  - (i) the admission by the Guarantor in writing of its inability to pay its debts generally as they become due;
  - (ii) the entering of an order for relief in any case commenced by or against the Guarantor (except any case commenced by the Guarantor against a third party) under federal bankruptcy law, as in effect from time to time;
  - (iii) a general assignment by the Guarantor for the benefit of creditors;
  - (iv) the appointment of a receiver for the Guarantor or for the whole or any substantial part of its property; or

The declaration of a default hereunder and the exercise of remedies upon the declaration shall be subject to any applicable limitations of federal bankruptcy law affecting or precluding the declaration or exercise during the pendency of or immediately following any bankruptcy, liquidation or reorganization proceedings.

- (c) If the default hereunder shall consist of the breach of any of the covenants, agreements or obligations of the Guarantor under Section 2.1, or if any default shall occur under Section 2.6(b), upon written demand by the PAEDC, the Guarantor shall (i) cause any such covenant, agreement or obligation to be performed or met and (ii) pay forthwith, or make provision for payment, to the PAEDC without further demand or notice and regardless of whether there has been any other default or event of default under the Agreement, the amount due and payable under the Agreement and the Guaranty.

In the event that the Guarantor shall be required to make payment to the PAEDC as described in the preceding paragraph, in addition to that payment, the Guarantor shall (i) cause any such covenant, agreement or obligation to be performed or met and (ii) pay to the PAEDC any further amount that is necessary to cover (i) the reasonable costs and expenses of collection, including reasonable compensation to the PAEDC, its agents and, to the extent permitted by law, the PAEDC's attorneys and counsel, and (ii) any reasonable expenses or liabilities incurred by the PAEDC hereunder.

- (d) In the case of a default hereunder, other than under Sections 2.1 and 2.6(b), the PAEDC upon obtaining knowledge of such default shall promptly give the

Guarantor written notice of the default at the Guarantor's Notice Address, by registered or certified mail, postage prepaid, return receipt requested, and if the default continues unremedied for 30 days following the giving of the notice, the PAEDC shall have the rights, remedies and powers, and the Guarantor shall make the payments, described in Section 2.6(c); provided, however, that if the default (other than a default under Sections 2.1 or 2.6(b)) can be remedied but not within that period, that failure shall not constitute a default, so long as the Guarantor is taking appropriate corrective action as permitted under the Agreement.

Section 2.7. Rights, remedies and powers under this Guaranty may be exercised, either separately or cumulatively, in the event of one or more defaults under this Guaranty.

### ARTICLE III. NOTICE AND SERVICE OF PROCESS, PLEADINGS AND OTHER PAPERS

Section 3.1. The Guarantor covenants and agrees to be subject to service of process in the State of Texas, and that it will remain so subject to that service of process so long as the Agreement remains in full force and effect or any obligations of the Grantee remain outstanding thereunder.

Section 3.2. Any process, pleadings, notices or other papers served upon any agent appointed by Guarantor shall be sent at the same time by registered or certified mail, postage prepaid, to the Guarantor's Notice Address and to any other addresses that may be furnished by the Guarantor to the PAEDC in writing from time to time.

### ARTICLE IV. MISCELLANEOUS

Section 4.1. The covenants, agreements and obligations of the Guarantor hereunder shall arise absolutely and unconditionally when the Agreement becomes effective.

Section 4.2. No remedy, right or power conferred herein upon or reserved hereunder to the PAEDC is intended to be exclusive of any other available remedy, right or power, but each remedy, right and power shall be cumulative and shall be in addition to every other remedy, right and power under the Agreement or any other document entered into in connection with the Agreement or existing at law, in equity or by statute or otherwise from time to time.

No delay in exercising, or omission to exercise, any remedy, right or power upon any default, omission or failure of observance or performance hereunder shall impair any remedy, right or power or shall be construed to be a waiver thereof, but any remedy, right and power may be exercised whenever and as often as may be deemed expedient.

To entitle the PAEDC to exercise any remedy, right or power reserved to it under this Guaranty, it shall not be necessary for the PAEDC to give any notice, other than any notice that may be expressly required herein.

In the event any provision contained in this Guaranty shall be breached by any party and the breach shall be duly waived thereafter by the other party so empowered to act, the waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver, amendment, modification or release of this Guaranty shall be established by conduct, custom or course of dealing, but any amendment, modification or release shall be made solely by an instrument or document in writing duly signed by the parties hereto who have been duly authorized by this Guaranty so to amend this Guaranty.

Section 4.3. This Guaranty may be amended and supplemented, to the same extent and upon the same conditions that the Agreement may be further amended and supplemented, by a written agreement signed by the parties hereto. The purposes for which an amendment of or supplement to this Guaranty may be made pursuant to this Section include, without limitation, the addition of, or substitution for the Guarantor as guarantor hereunder of, any Person that succeeds to or assumes, as the case may be, the Guarantor's covenants, agreements and obligations hereunder.

Section 4.4. This Guaranty shall inure to the benefit of the PAEDC and its respective successors and assigns and is binding upon the PAEDC and the Guarantor and his heirs and assigns.

Section 4.5. This Guaranty constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, between the Guarantor and the PAEDC with respect to the subject matter hereof. This Guaranty may be signed simultaneously in several counterparts, each of which shall be deemed to constitute an original, but all of which together shall constitute but one and the same instrument. It shall not be necessary in proving this Guaranty to produce or account for more than one of those counterparts.

Section 4.6. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections contained in this Guaranty shall not affect the validity or enforceability of the remaining phrases, sentences, clauses and sections hereof.

Section 4.7. This Guaranty shall be governed by and construed in accordance with the laws of the State of Texas.

Section 4.8. All representations and warranties herein shall survive the signing and delivery hereof.

IN WITNESS WHEREOF, this Guaranty has been duly signed and delivered for and in the name and on behalf of the Guarantor and the PAEDC by their duly authorized officers or representatives, as of the date first above written.

**EXECUTED BY:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
**Eduardo Gracian**

STATE OF TEXAS  
COUNTY OF JEFFERSON

§  
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On this \_\_\_\_ day of \_\_\_\_\_, 2008, before me, a Notary Public in and for said County and State, personally appeared **Eduardo Gracian**, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Texas

ACCEPTED BY:

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

Date: \_\_\_\_\_

By: \_\_\_\_\_  
President

STATE OF TEXAS

§  
§  
§

COUNTY OF JEFFERSON

On this \_\_\_\_ day of \_\_\_\_\_, 2008, before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, President of the PAEDC, who acknowledged that, with due authorization, he did sign the foregoing instrument on behalf of the PAEDC and that the same is his free act and deed individually as such officer and the free act and deed of the PAEDC.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Texas

**EXHIBIT "D"**  
**GUARANTY AGREEMENT**

THIS GUARANTY AGREEMENT, dated as of \_\_\_\_\_, 2008 (the "Guaranty"), is made between the City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC"), a corporation validly existing under its Charter and the constitution and laws of the State of Texas, and Bruno Fernandez (the "Guarantor"), a natural person residing in Texas. Capitalized terms used in this Guaranty and not defined otherwise are used herein as defined in the Economic Incentive Contract and Loan Agreement, dated \_\_\_\_\_, 2008 (the "Agreement") between the PAEDC, as Grantor, and Orbital Insulation Corp., a Texas corporation with its principal offices in Port Arthur, Texas (the "Grantee"). Those definitions are incorporated in this Guaranty by reference.

WITNESSETH THAT: WHEREAS,

A. Upon the terms and conditions set forth in the Agreement, the PAEDC is willing to loan the Grantee the sum of ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00) to enable the Grantee to acquire Equipment to design and construct Improvements to the Building described as 817 Houston Avenue, Port Arthur, Texas and to adjacent properties of the Grantee.

B. In order to enhance the security of the PAEDC that the benefits under the Agreement will inure to the benefit of the residents of Port Arthur, Texas, the Guarantor is willing, in this Guaranty, to guaranty the obligations of the Grantee under the Agreement.

C. The PAEDC and the Guarantor each have full right and lawful authority to enter into this Guaranty and to perform and observe the provisions hereof on their respective parts to be performed and observed.

NOW, THEREFORE, in consideration of the premises and representations and agreements hereinafter contained and subject to the terms hereof, and for other good and valuable consideration, the receipt of which is acknowledged hereby, the Guarantor agrees with the PAEDC as follows:

**ARTICLE I.**  
**REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR**

**Section 1.1.** The Guarantor represents and warrants as follows:

- (c) The financial statements provided to Grow America Fund, Inc. to secure their U.S. Small Business Administration ("SBA") Guaranteed Loan Commitment are true and correct, and there are no material amendments or modifications thereto since the date of their submission to the Grow America Fund, Inc.,
- (d) The signing, delivery, observance and performance by the Guarantor of this Guaranty and the Guarantor's covenants, agreements and obligations hereunder do not, and will not, (i) violate any law now existing, or (ii) contravene or constitute a default under any agreement, indenture, trust agreement or understanding to which the Guarantor is a party or by which it or its property may be bound.

**ARTICLE II.**  
**COVENANTS AND GUARANTEES**

**Section 2.1.** The Guarantor hereby absolutely and unconditionally guarantees to the PAEDC at any time:

- (a) the full and prompt performance of all covenants, agreements and obligations of the Grantee under the Agreement, and
- (b) the payment of all principal, interest and other sums due, whether by acceleration or otherwise, together with all late charges, disbursements, expenses, and deficiencies pursuant to that certain Commercial Promissory Note made by the Grantee to the PAEDC as of even date herewith (collectively the "Guaranteed Debt") together with the performance of Grantee's obligations under any documents or instruments executed in connection with or given to secure the Guaranteed Debt, and
- (c) the full and prompt payment of all expenses and charges, including without limitation, to the extent permitted by law, reasonable attorneys' fees and expenses, paid or incurred by the PAEDC acting as Grantor under the Agreement and in realizing any of the payments guaranteed hereby or in enforcing this Guaranty.

The Guarantor will pay all payments in lawful money of the United States of America. Each default in payment of any amount payable hereunder shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises.

**Section 2.2.** The Guarantor's covenants, agreements and obligations under this Guaranty are absolute and unconditional, are a present, and shall be a continuing, guaranty of performance and payment and not collectibility, and shall remain in full force and effect until all covenants, agreements and obligations of the Grantee under the Agreement have been performed or met, and all other amounts payable hereunder shall have been paid or provision shall have been made therefor to the satisfaction of the PAEDC, regardless of the legality, validity, regularity or enforceability of the Agreement or any other document.

The obligations of the Guarantor described in the preceding paragraph shall not be amended, modified or impaired upon the happening of any event, including without limitation, any of the following, regardless of whether there is notice to or consent of the Guarantor with respect thereto:

- (a) the compromise, settlement, release or termination of any or all of the covenants, agreements or obligations of the PAEDC under the Agreement;
- (b) the failure to give notice to the Guarantor of the occurrence of a default under this Guaranty or an Event of Default under the Agreement, except as provided specifically in this Guaranty;
- (c) the waiver of the payment, observance or performance by the PAEDC or the Guarantor of any of their covenants, agreements or obligations under this Guaranty or the Agreement;
- (d) the extension of the time for observance or performance of any covenant, agreement or obligation under this Guaranty or the Agreement, or the extension or the renewal of any extension;



- (e) the modification or amendment of any covenant, agreement or obligation under the Agreement;
- (f) the taking or the omission of any action under this Guaranty or the Agreement;
- (g) any failure, omission or delay on the part of the PAEDC to enforce, assert or exercise any right, power or remedy conferred on the PAEDC under this Guaranty or the Agreement, or any act or omission on the part of the PAEDC at any time;
- (h) the occurrence of any of the following:
  - (i) the admission by the Guarantor in writing of its inability to pay its debts generally as they become due,
  - (ii) the entering of an order for relief in any case commenced by or against the Guarantor (except cases commenced by the Guarantor against third parties) under federal bankruptcy law, as in effect from time to time,
  - (iii) a general assignment by the Guarantor for the benefit of creditors, or
  - (iv) the appointment of a receiver for the Guarantor or for the whole or any substantial part of its property;
- (j) to the extent permitted by law, the release or discharge by operation of law of the Guarantor from the observance or performance of any covenant, agreement or obligation under this Guaranty or any other agreement, contract or other instrument or document to which it is a party or by which it or its property is or may be bound;
- (k) the default or failure of the Guarantor to observe or perform fully any of its covenants, agreements or obligations under this Guaranty or any other agreement, contract or other instrument or document to which it is a party or by which it or its property is or may be bound;
- (l) the default of the PAEDC under the Agreement; or
- (m) to the extent permitted by law, the invalidity of the Agreement, this Guaranty, any agreement, contract or other instrument or document to which the Guarantor is a party or by which it or its property is or may be bound.

Section 2.3. No setoff, counterclaim, reduction, or diminution of any covenant, agreement or obligation, or any defense of any kind, which the Guarantor has or may have against the PAEDC or the Grantee, shall be available hereunder to the Guarantor against the PAEDC; provided, however, that the Guarantor shall be entitled to assert in a timely manner in a separate action against the PAEDC or the Grantee, as the case may be, any rights that could not be asserted, by virtue of this Section 2.3, by the Guarantor as a setoff, counterclaim, reduction, diminution or defense in the action on this Guaranty. The Guarantor shall not exercise any right of subrogation under this Guaranty until its obligations hereunder have been discharged in full, and such obligations shall not be discharged by virtue of any impairment of such rights of subrogation.

Section 2.4. If there is a default by the Grantee under the Agreement or the Commercial Promissory Note made by the Grantee thereunder, the PAEDC is not obligated to proceed first against the Grantee and exhaust its remedies against the Grantee and its security or other rights in the collateral of the

Grantee, prior to resorting to any remedy of the PAEDC as to the Guarantor; If Guarantor finds that further action against Grantee is futile, Guarantor may request in writing that PAEDC halt executing remedies against Grantee, after which PAEDC may proceed with remedies against Guarantor.

Section 2.5. The Guarantor covenants and agrees to pay all reasonable costs, expenses and fees (including without limitation, to the extent permitted by law, all court costs and attorneys' fees) that may be incurred by the PAEDC in enforcing or attempting to enforce this Guaranty, whether by suit or otherwise, following any default on the part of the Guarantor under this Guaranty.

Section 2.6.

- (a) The failure of the Guarantor to abide by or to observe or perform any covenant, agreement or obligation hereunder, or any inaccuracy in any material adverse respect of, or any material adverse omission from, any representation or warranty herein, shall constitute a default hereunder.
- (b) The occurrence of any of the following shall also constitute a default hereunder:
  - (i) the admission by the Guarantor in writing of its inability to pay its debts generally as they become due;
  - (ii) the entering of an order for relief in any case commenced by or against the Guarantor (except any case commenced by the Guarantor against a third party) under federal bankruptcy law, as in effect from time to time;
  - (iii) a general assignment by the Guarantor for the benefit of creditors;
  - (iv) the appointment of a receiver for the Guarantor or for the whole or any substantial part of its property; or

The declaration of a default hereunder and the exercise of remedies upon the declaration shall be subject to any applicable limitations of federal bankruptcy law affecting or precluding the declaration or exercise during the pendency of or immediately following any bankruptcy, liquidation or reorganization proceedings.

- (c) If the default hereunder shall consist of the breach of any of the covenants, agreements or obligations of the Guarantor under Section 2.1, or if any default shall occur under Section 2.6(b), upon written demand by the PAEDC, the Guarantor shall (i) cause any such covenant, agreement or obligation to be performed or met and (ii) pay forthwith, or make provision for payment, to the PAEDC without further demand or notice and regardless of whether there has been any other default or event of default under the Agreement, the amount due and payable under the Agreement and the Guaranty.

In the event that the Guarantor shall be required to make payment to the PAEDC as described in the preceding paragraph, in addition to that payment, the Guarantor shall (i) cause any such covenant, agreement or obligation to be performed or met and (ii) pay to the PAEDC any further amount that is necessary to cover (i) the reasonable costs and expenses of collection, including reasonable compensation to the PAEDC, its agents and, to the extent permitted by law, the PAEDC's attorneys and counsel, and (ii) any reasonable expenses or liabilities incurred by the PAEDC hereunder.

- (d) In the case of a default hereunder, other than under Sections 2.1 and 2.6(b), the PAEDC upon obtaining knowledge of such default shall promptly give the

Guarantor written notice of the default at the Guarantor's Notice Address, by registered or certified mail, postage prepaid, return receipt requested, and if the default continues unremedied for 30 days following the giving of the notice, the PAEDC shall have the rights, remedies and powers, and the Guarantor shall make the payments, described in Section 2.6(c); provided, however, that if the default (other than a default under Sections 2.1 or 2.6(b)) can be remedied but not within that period, that failure shall not constitute a default, so long as the Guarantor is taking appropriate corrective action as permitted under the Agreement.

Section 2.7. Rights, remedies and powers under this Guaranty may be exercised, either separately or cumulatively, in the event of one or more defaults under this Guaranty.

### ARTICLE III. NOTICE AND SERVICE OF PROCESS, PLEADINGS AND OTHER PAPERS

Section 3.1. The Guarantor covenants and agrees to be subject to service of process in the State of Texas, and that it will remain so subject to that service of process so long as the Agreement remains in full force and effect or any obligations of the Grantee remain outstanding thereunder.

Section 3.2. Any process, pleadings, notices or other papers served upon any agent appointed by Guarantor shall be sent at the same time by registered or certified mail, postage prepaid, to the Guarantor's Notice Address and to any other addresses that may be furnished by the Guarantor to the PAEDC in writing from time to time.

### ARTICLE IV. MISCELLANEOUS

Section 4.1. The covenants, agreements and obligations of the Guarantor hereunder shall arise absolutely and unconditionally when the Agreement becomes effective.

Section 4.2. No remedy, right or power conferred herein upon or reserved hereunder to the PAEDC is intended to be exclusive of any other available remedy, right or power, but each remedy, right and power shall be cumulative and shall be in addition to every other remedy, right and power under the Agreement or any other document entered into in connection with the Agreement or existing at law, in equity or by statute or otherwise from time to time.

No delay in exercising, or omission to exercise, any remedy, right or power upon any default, omission or failure of observance or performance hereunder shall impair any remedy, right or power or shall be construed to be a waiver thereof, but any remedy, right and power may be exercised whenever and as often as may be deemed expedient.

To entitle the PAEDC to exercise any remedy, right or power reserved to it under this Guaranty, it shall not be necessary for the PAEDC to give any notice, other than any notice that may be expressly required herein.

In the event any provision contained in this Guaranty shall be breached by any party and the breach shall be duly waived thereafter by the other party so empowered to act, the waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver, amendment, modification or release of this Guaranty shall be established by conduct, custom or course of dealing, but any amendment, modification or release shall be made solely by an instrument or document in writing duly signed by the parties hereto who have been duly authorized by this Guaranty so to amend this Guaranty.

Section 4.3. This Guaranty may be amended and supplemented, to the same extent and upon the same conditions that the Agreement may be further amended and supplemented, by a written agreement signed by the parties hereto. The purposes for which an amendment of or supplement to this Guaranty may be made pursuant to this Section include, without limitation, the addition of, or substitution for the Guarantor as guarantor hereunder of, any Person that succeeds to or assumes, as the case may be, the Guarantor's covenants, agreements and obligations hereunder.

Section 4.4. This Guaranty shall inure to the benefit of the PAEDC and its respective successors and assigns and is binding upon the PAEDC and the Guarantor and his heirs and assigns.

Section 4.5. This Guaranty constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, between the Guarantor and the PAEDC with respect to the subject matter hereof. This Guaranty may be signed simultaneously in several counterparts, each of which shall be deemed to constitute an original, but all of which together shall constitute but one and the same instrument. It shall not be necessary in proving this Guaranty to produce or account for more than one of those counterparts.

Section 4.6. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections contained in this Guaranty shall not affect the validity or enforceability of the remaining phrases, sentences, clauses and sections hereof.

Section 4.7. This Guaranty shall be governed by and construed in accordance with the laws of the State of Texas.

Section 4.8. All representations and warranties herein shall survive the signing and delivery hereof.

IN WITNESS WHEREOF, this Guaranty has been duly signed and delivered for and in the name and on behalf of the Guarantor and the PAEDC by their duly authorized officers or representatives, as of the date first above written.

**EXECUTED BY:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
**Bruno Fernandez**

STATE OF TEXAS

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COUNTY OF JEFFERSON

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On this \_\_\_\_ day of \_\_\_\_\_, 2008, before me, a Notary Public in and for said County and State, personally appeared **Bruno Fernandez**, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Texas

ACCEPTED BY:

CITY OF PORT ARTHUR SECTION 4A  
ECONOMIC DEVELOPMENT CORPORATION

Date: May 23, 2008

By: Keith A. Cant  
President

STATE OF TEXAS

COUNTY OF JEFFERSON

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On this 23 day of May, 2008, before me, a Notary Public in and for said County and State, personally appeared Keith Cant Sr, President of the PAEDC, who acknowledged that, with due authorization, he did sign the foregoing instrument on behalf of the PAEDC and that the same is his free act and deed individually as such officer and the free act and deed of the PAEDC.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

(SEAL)



Brenda Vaughn  
Notary Public, State of Texas

**EXHIBIT "D"**  
**GUARANTY AGREEMENT**

THIS GUARANTY AGREEMENT, dated as of \_\_\_\_\_, 2008 (the "Guaranty"), is made between the City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC"), a corporation validly existing under its Charter and the constitution and laws of the State of Texas, and Irma Barragan (the "Guarantor"), a natural person residing in Texas. Capitalized terms used in this Guaranty and not defined otherwise are used herein as defined in the Economic Incentive Contract and Loan Agreement, dated \_\_\_\_\_, 2008 (the "Agreement") between the PAEDC, as Grantor, and Orbital Insulation Corp., a Texas corporation with its principal offices in Port Arthur, Texas (the "Grantee"). Those definitions are incorporated in this Guaranty by reference.

WITNESSETH THAT: WHEREAS,

A. Upon the terms and conditions set forth in the Agreement, the PAEDC is willing to loan the Grantee the sum of ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00) to enable the Grantee to acquire Equipment to design and construct Improvements to the Building described as 817 Houston Avenue, Port Arthur, Texas and to adjacent properties of the Grantee.

B. In order to enhance the security of the PAEDC that the benefits under the Agreement will inure to the benefit of the residents of Port Arthur, Texas, the Guarantor is willing, in this Guaranty, to guaranty the obligations of the Grantee under the Agreement.

C. The PAEDC and the Guarantor each have full right and lawful authority to enter into this Guaranty and to perform and observe the provisions hereof on their respective parts to be performed and observed.

NOW, THEREFORE, in consideration of the premises and representations and agreements hereinafter contained and subject to the terms hereof, and for other good and valuable consideration, the receipt of which is acknowledged hereby, the Guarantor agrees with the PAEDC as follows:

**ARTICLE I.**  
**REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR**

**Section 1.1.** The Guarantor represents and warrants as follows:

- (e) The financial statements provided to Grow America Fund, Inc. to secure their U.S. Small Business Administration ("SBA") Guaranteed Loan Commitment are true and correct, and there are no material amendments or modifications thereto since the date of their submission to the Grow America Fund, Inc.,
- (f) The signing, delivery, observance and performance by the Guarantor of this Guaranty and the Guarantor's covenants, agreements and obligations hereunder do not, and will not, (i) violate any law now existing, or (ii) contravene or constitute a default under any agreement, indenture, trust agreement or understanding to which the Guarantor is a party or by which it or its property may be bound.

ARTICLE II.  
COVENANTS AND GUARANTEES

Section 2.1. The Guarantor hereby absolutely and unconditionally guarantees to the PAEDC at any time:

- (a) the full and prompt performance of all covenants, agreements and obligations of the Grantee under the Agreement, and
- (b) the payment of all principal, interest and other sums due, whether by acceleration or otherwise, together with all late charges, disbursements, expenses, and deficiencies pursuant to that certain Commercial Promissory Note made by the Grantee to the PAEDC as of even date herewith (collectively the "Guaranteed Debt") together with the performance of Grantee's obligations under any documents or instruments executed in connection with or given to secure the Guaranteed Debt, and
- (c) the full and prompt payment of all expenses and charges, including without limitation, to the extent permitted by law, reasonable attorneys' fees and expenses, paid or incurred by the PAEDC acting as Grantor under the Agreement and in realizing any of the payments guaranteed hereby or in enforcing this Guaranty.

The Guarantor will pay all payments in lawful money of the United States of America. Each default in payment of any amount payable hereunder shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises.

Section 2.2. The Guarantor's covenants, agreements and obligations under this Guaranty are absolute and unconditional, are a present, and shall be a continuing, guaranty of performance and payment and not collectibility, and shall remain in full force and effect until all covenants, agreements and obligations of the Grantee under the Agreement have been performed or met, and all other amounts payable hereunder shall have been paid or provision shall have been made therefor to the satisfaction of the PAEDC, regardless of the legality, validity, regularity or enforceability of the Agreement or any other document.

The obligations of the Guarantor described in the preceding paragraph shall not be amended, modified or impaired upon the happening of any event, including without limitation, any of the following, regardless of whether there is notice to or consent of the Guarantor with respect thereto:

- (a) the compromise, settlement, release or termination of any or all of the covenants, agreements or obligations of the PAEDC under the Agreement;
- (b) the failure to give notice to the Guarantor of the occurrence of a default under this Guaranty or an Event of Default under the Agreement, except as provided specifically in this Guaranty;
- (c) the waiver of the payment, observance or performance by the PAEDC or the Guarantor of any of their covenants, agreements or obligations under this Guaranty or the Agreement;
- (d) the extension of the time for observance or performance of any covenant, agreement or obligation under this Guaranty or the Agreement, or the extension or the renewal of any extension;

- (e) the modification or amendment of any covenant, agreement or obligation under the Agreement;
- (f) the taking or the omission of any action under this Guaranty or the Agreement;
- (g) any failure, omission or delay on the part of the PAEDC to enforce, assert or exercise any right, power or remedy conferred on the PAEDC under this Guaranty or the Agreement, or any act or omission on the part of the PAEDC at any time;
- (h) the occurrence of any of the following:
  - (i) the admission by the Guarantor in writing of its inability to pay its debts generally as they become due,
  - (ii) the entering of an order for relief in any case commenced by or against the Guarantor (except cases commenced by the Guarantor against third parties) under federal bankruptcy law, as in effect from time to time,
  - (iii) a general assignment by the Guarantor for the benefit of creditors, or
  - (iv) the appointment of a receiver for the Guarantor or for the whole or any substantial part of its property;
- (j) to the extent permitted by law, the release or discharge by operation of law of the Guarantor from the observance or performance of any covenant, agreement or obligation under this Guaranty or any other agreement, contract or other instrument or document to which it is a party or by which it or its property is or may be bound;
- (k) the default or failure of the Guarantor to observe or perform fully any of its covenants, agreements or obligations under this Guaranty or any other agreement, contract or other instrument or document to which it is a party or by which it or its property is or may be bound;
- (l) the default of the PAEDC under the Agreement; or
- (m) to the extent permitted by law, the invalidity of the Agreement, this Guaranty, any agreement, contract or other instrument or document to which the Guarantor is a party or by which it or its property is or may be bound.

**Section 2.3.** No setoff, counterclaim, reduction, or diminution of any covenant, agreement or obligation, or any defense of any kind, which the Guarantor has or may have against the PAEDC or the Grantee, shall be available hereunder to the Guarantor against the PAEDC; provided, however, that the Guarantor shall be entitled to assert in a timely manner in a separate action against the PAEDC or the Grantee, as the case may be, any rights that could not be asserted, by virtue of this Section 2.3, by the Guarantor as a setoff, counterclaim, reduction, diminution or defense in the action on this Guaranty. The Guarantor shall not exercise any right of subrogation under this Guaranty until its obligations hereunder have been discharged in full, and such obligations shall not be discharged by virtue of any impairment of such rights of subrogation.

**Section 2.4.** If there is a default by the Grantee under the Agreement or the Commercial Promissory Note made by the Grantee thereunder, the PAEDC is not obligated to proceed first against the Grantee and exhaust its remedies against the Grantee and its security or other rights in the collateral of the



Grantee, prior to resorting to any remedy of the PAEDC as to the Guarantor; If Guarantor finds that further action against Grantee is futile, Guarantor may request in writing that PAEDC halt executing remedies against Grantee, after which PAEDC may proceed with remedies against Guarantor.

Section 2.5. The Guarantor covenants and agrees to pay all reasonable costs, expenses and fees (including without limitation, to the extent permitted by law, all court costs and attorneys' fees) that may be incurred by the PAEDC in enforcing or attempting to enforce this Guaranty, whether by suit or otherwise, following any default on the part of the Guarantor under this Guaranty.

Section 2.6.

- (a) The failure of the Guarantor to abide by or to observe or perform any covenant, agreement or obligation hereunder, or any inaccuracy in any material adverse respect of, or any material adverse omission from, any representation or warranty herein, shall constitute a default hereunder.
- (b) The occurrence of any of the following shall also constitute a default hereunder:
  - (i) the admission by the Guarantor in writing of its inability to pay its debts generally as they become due;
  - (ii) the entering of an order for relief in any case commenced by or against the Guarantor (except any case commenced by the Guarantor against a third party) under federal bankruptcy law, as in effect from time to time;
  - (iii) a general assignment by the Guarantor for the benefit of creditors;
  - (iv) the appointment of a receiver for the Guarantor or for the whole or any substantial part of its property; or

The declaration of a default hereunder and the exercise of remedies upon the declaration shall be subject to any applicable limitations of federal bankruptcy law affecting or precluding the declaration or exercise during the pendency of or immediately following any bankruptcy, liquidation or reorganization proceedings.

- (c) If the default hereunder shall consist of the breach of any of the covenants, agreements or obligations of the Guarantor under Section 2.1, or if any default shall occur under Section 2.6(b), upon written demand by the PAEDC, the Guarantor shall (i) cause any such covenant, agreement or obligation to be performed or met and (ii) pay forthwith, or make provision for payment, to the PAEDC without further demand or notice and regardless of whether there has been any other default or event of default under the Agreement, the amount due and payable under the Agreement and the Guaranty.

In the event that the Guarantor shall be required to make payment to the PAEDC as described in the preceding paragraph, in addition to that payment, the Guarantor shall (i) cause any such covenant, agreement or obligation to be performed or met and (ii) pay to the PAEDC any further amount that is necessary to cover (i) the reasonable costs and expenses of collection, including reasonable compensation to the PAEDC, its agents and, to the extent permitted by law, the PAEDC's attorneys and counsel, and (ii) any reasonable expenses or liabilities incurred by the PAEDC hereunder.

- (d) In the case of a default hereunder, other than under Sections 2.1 and 2.6(b), the PAEDC upon obtaining knowledge of such default shall promptly give the

Guarantor written notice of the default at the Guarantor's Notice Address, by registered or certified mail, postage prepaid, return receipt requested, and if the default continues unremedied for 30 days following the giving of the notice, the PAEDC shall have the rights, remedies and powers, and the Guarantor shall make the payments, described in Section 2.6(c); provided, however, that if the default (other than a default under Sections 2.1 or 2.6(b)) can be remedied but not within that period, that failure shall not constitute a default, so long as the Guarantor is taking appropriate corrective action as permitted under the Agreement.

Section 2.7. Rights, remedies and powers under this Guaranty may be exercised, either separately or cumulatively, in the event of one or more defaults under this Guaranty.

### ARTICLE III.

#### NOTICE AND SERVICE OF PROCESS, PLEADINGS AND OTHER PAPERS

Section 3.1. The Guarantor covenants and agrees to be subject to service of process in the State of Texas, and that it will remain so subject to that service of process so long as the Agreement remains in full force and effect or any obligations of the Grantee remain outstanding thereunder.

Section 3.2. Any process, pleadings, notices or other papers served upon any agent appointed by Guarantor shall be sent at the same time by registered or certified mail, postage prepaid, to the Guarantor's Notice Address and to any other addresses that may be furnished by the Guarantor to the PAEDC in writing from time to time.

### ARTICLE IV.

#### MISCELLANEOUS

Section 4.1. The covenants, agreements and obligations of the Guarantor hereunder shall arise absolutely and unconditionally when the Agreement becomes effective.

Section 4.2. No remedy, right or power conferred herein upon or reserved hereunder to the PAEDC is intended to be exclusive of any other available remedy, right or power, but each remedy, right and power shall be cumulative and shall be in addition to every other remedy, right and power under the Agreement or any other document entered into in connection with the Agreement or existing at law, in equity or by statute or otherwise from time to time.

No delay in exercising, or omission to exercise, any remedy, right or power upon any default, omission or failure of observance or performance hereunder shall impair any remedy, right or power or shall be construed to be a waiver thereof, but any remedy, right and power may be exercised whenever and as often as may be deemed expedient.

To entitle the PAEDC to exercise any remedy, right or power reserved to it under this Guaranty, it shall not be necessary for the PAEDC to give any notice, other than any notice that may be expressly required herein.

In the event any provision contained in this Guaranty shall be breached by any party and the breach shall be duly waived thereafter by the other party so empowered to act, the waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver, amendment, modification or release of this Guaranty shall be established by conduct, custom or course of dealing, but any amendment, modification or release shall be made solely by an instrument or document in writing duly signed by the parties hereto who have been duly authorized by this Guaranty so to amend this Guaranty.

Section 4.3. This Guaranty may be amended and supplemented, to the same extent and upon the same conditions that the Agreement may be further amended and supplemented, by a written agreement signed by the parties hereto. The purposes for which an amendment of or supplement to this Guaranty may be made pursuant to this Section include, without limitation, the addition of, or substitution for the Guarantor as guarantor hereunder of, any Person that succeeds to or assumes, as the case may be, the Guarantor's covenants, agreements and obligations hereunder.

Section 4.4. This Guaranty shall inure to the benefit of the PAEDC and its respective successors and assigns and is binding upon the PAEDC and the Guarantor and his heirs and assigns.

Section 4.5. This Guaranty constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, between the Guarantor and the PAEDC with respect to the subject matter hereof. This Guaranty may be signed simultaneously in several counterparts, each of which shall be deemed to constitute an original, but all of which together shall constitute but one and the same instrument. It shall not be necessary in proving this Guaranty to produce or account for more than one of those counterparts.

Section 4.6. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections contained in this Guaranty shall not affect the validity or enforceability of the remaining phrases, sentences, clauses and sections hereof.

Section 4.7. This Guaranty shall be governed by and construed in accordance with the laws of the State of Texas.

Section 4.8. All representations and warranties herein shall survive the signing and delivery hereof.

IN WITNESS WHEREOF, this Guaranty has been duly signed and delivered for and in the name and on behalf of the Guarantor and the PAEDC by their duly authorized officers or representatives, as of the date first above written.

**EXECUTED BY:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
**Irma Barragan**

STATE OF TEXAS

§

COUNTY OF JEFFERSON

§

§

On this \_\_\_\_ day of \_\_\_\_\_, 2008, before me, a Notary Public in and for said County and State, personally appeared **Irma Barragan**, who acknowledged that she did sign the foregoing instrument and that the same is her free act and deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Texas

ACCEPTED BY:

CITY OF PORT ARTHUR SECTION 4A  
ECONOMIC DEVELOPMENT CORPORATION

Date: May 23, 2008

By: *Keith A. Davis*  
President

STATE OF TEXAS

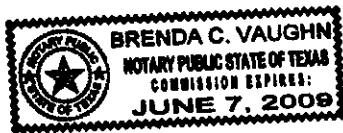
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COUNTY OF JEFFERSON

On this 23 day of May, 2008, before me, a Notary Public in and for said County and State, personally appeared Keith Davis Sr., President of the PAEDC, who acknowledged that, with due authorization, he did sign the foregoing instrument on behalf of the PAEDC and that the same is his free act and deed individually as such officer and the free act and deed of the PAEDC.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

(SEAL)



*Brenda Vaughn*  
Notary Public, State of Texas

**EXHIBIT "D"**  
**GUARANTY AGREEMENT**

THIS GUARANTY AGREEMENT, dated as of \_\_\_\_\_, 2008 (the "Guaranty"), is made between the City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC"), a corporation validly existing under its Charter and the constitution and laws of the State of Texas, and Julie A. Rivera (the "Guarantor"), a natural person residing in Texas. Capitalized terms used in this Guaranty and not defined otherwise are used herein as defined in the Economic Incentive Contract and Loan Agreement, dated \_\_\_\_\_, 2008 (the "Agreement") between the PAEDC, as Grantor, and Orbital Insulation Corp., a Texas corporation with its principal offices in Port Arthur, Texas (the "Grantee"). Those definitions are incorporated in this Guaranty by reference.

**WITNESSETH THAT: WHEREAS,**

A. Upon the terms and conditions set forth in the Agreement, the PAEDC is willing to loan the Grantee the sum of ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00) to enable the Grantee to acquire Equipment to design and construct Improvements to the Building described as 817 Houston Avenue, Port Arthur, Texas and to adjacent properties of the Grantee.

B. In order to enhance the security of the PAEDC that the benefits under the Agreement will inure to the benefit of the residents of Port Arthur, Texas, the Guarantor is willing, in this Guaranty, to guaranty the obligations of the Grantee under the Agreement.

C. The PAEDC and the Guarantor each have full right and lawful authority to enter into this Guaranty and to perform and observe the provisions hereof on their respective parts to be performed and observed.

NOW, THEREFORE, in consideration of the premises and representations and agreements hereinafter contained and subject to the terms hereof, and for other good and valuable consideration, the receipt of which is acknowledged hereby, the Guarantor agrees with the PAEDC as follows:

**ARTICLE I.**  
**REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR**

**Section 1.1.** The Guarantor represents and warrants as follows:

- (g) The financial statements provided to Grow America Fund, Inc. to secure their U.S. Small Business Administration ("SBA") Guaranteed Loan Commitment are true and correct, and there are no material amendments or modifications thereto since the date of their submission to the Grow America Fund, Inc.,
- (h) The signing, delivery, observance and performance by the Guarantor of this Guaranty and the Guarantor's covenants, agreements and obligations hereunder do not, and will not, (i) violate any law now existing, or (ii) contravene or constitute a default under any agreement, indenture, trust agreement or understanding to which the Guarantor is a party or by which it or its property may be bound.

ARTICLE II.  
COVENANTS AND GUARANTEES

Section 2.1. The Guarantor hereby absolutely and unconditionally guarantees to the PAEDC at any time:

- (a) the full and prompt performance of all covenants, agreements and obligations of the Grantee under the Agreement, and
- (b) the payment of all principal, interest and other sums due, whether by acceleration or otherwise, together with all late charges, disbursements, expenses, and deficiencies pursuant to that certain Commercial Promissory Note made by the Grantee to the PAEDC as of even date herewith (collectively the "Guaranteed Debt") together with the performance of Grantee's obligations under any documents or instruments executed in connection with or given to secure the Guaranteed Debt, and
- (c) the full and prompt payment of all expenses and charges, including without limitation, to the extent permitted by law, reasonable attorneys' fees and expenses, paid or incurred by the PAEDC acting as Grantor under the Agreement and in realizing any of the payments guaranteed hereby or in enforcing this Guaranty.

The Guarantor will pay all payments in lawful money of the United States of America. Each default in payment of any amount payable hereunder shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises.

Section 2.2. The Guarantor's covenants, agreements and obligations under this Guaranty are absolute and unconditional, are a present, and shall be a continuing, guaranty of performance and payment and not collectibility, and shall remain in full force and effect until all covenants, agreements and obligations of the Grantee under the Agreement have been performed or met, and all other amounts payable hereunder shall have been paid or provision shall have been made therefor to the satisfaction of the PAEDC, regardless of the legality, validity, regularity or enforceability of the Agreement or any other document.

The obligations of the Guarantor described in the preceding paragraph shall not be amended, modified or impaired upon the happening of any event, including without limitation, any of the following, regardless of whether there is notice to or consent of the Guarantor with respect thereto:

- (a) the compromise, settlement, release or termination of any or all of the covenants, agreements or obligations of the PAEDC under the Agreement;
- (b) the failure to give notice to the Guarantor of the occurrence of a default under this Guaranty or an Event of Default under the Agreement, except as provided specifically in this Guaranty;
- (c) the waiver of the payment, observance or performance by the PAEDC or the Guarantor of any of their covenants, agreements or obligations under this Guaranty or the Agreement;
- (d) the extension of the time for observance or performance of any covenant, agreement or obligation under this Guaranty or the Agreement, or the extension or the renewal of any extension;

- (e) the modification or amendment of any covenant, agreement or obligation under the Agreement;
- (f) the taking or the omission of any action under this Guaranty or the Agreement;
- (g) any failure, omission or delay on the part of the PAEDC to enforce, assert or exercise any right, power or remedy conferred on the PAEDC under this Guaranty or the Agreement, or any act or omission on the part of the PAEDC at any time;
- (h) the occurrence of any of the following:
  - (i) the admission by the Guarantor in writing of its inability to pay its debts generally as they become due,
  - (ii) the entering of an order for relief in any case commenced by or against the Guarantor (except cases commenced by the Guarantor against third parties) under federal bankruptcy law, as in effect from time to time,
  - (iii) a general assignment by the Guarantor for the benefit of creditors, or
  - (iv) the appointment of a receiver for the Guarantor or for the whole or any substantial part of its property;
- (j) to the extent permitted by law, the release or discharge by operation of law of the Guarantor from the observance or performance of any covenant, agreement or obligation under this Guaranty or any other agreement, contract or other instrument or document to which it is a party or by which it or its property is or may be bound;
- (k) the default or failure of the Guarantor to observe or perform fully any of its covenants, agreements or obligations under this Guaranty or any other agreement, contract or other instrument or document to which it is a party or by which it or its property is or may be bound;
- (l) the default of the PAEDC under the Agreement; or
- (m) to the extent permitted by law, the invalidity of the Agreement, this Guaranty, any agreement, contract or other instrument or document to which the Guarantor is a party or by which it or its property is or may be bound.

**Section 2.3.** No setoff, counterclaim, reduction, or diminution of any covenant, agreement or obligation, or any defense of any kind, which the Guarantor has or may have against the PAEDC or the Grantee, shall be available hereunder to the Guarantor against the PAEDC; provided, however, that the Guarantor shall be entitled to assert in a timely manner in a separate action against the PAEDC or the Grantee, as the case may be, any rights that could not be asserted, by virtue of this Section 2.3, by the Guarantor as a setoff, counterclaim, reduction, diminution or defense in the action on this Guaranty. The Guarantor shall not exercise any right of subrogation under this Guaranty until its obligations hereunder have been discharged in full, and such obligations shall not be discharged by virtue of any impairment of such rights of subrogation.

**Section 2.4.** If there is a default by the Grantee under the Agreement or the Commercial Promissory Note made by the Grantee thereunder, the PAEDC is not obligated to proceed first against the Grantee and exhaust its remedies against the Grantee and its security or other rights in the collateral of the

Grantee, prior to resorting to any remedy of the PAEDC as to the Guarantor; If Guarantor finds that further action against Grantee is futile, Guarantor may request in writing that PAEDC halt executing remedies against Grantee, after which PAEDC may proceed with remedies against Guarantor.

Section 2.5. The Guarantor covenants and agrees to pay all reasonable costs, expenses and fees (including without limitation, to the extent permitted by law, all court costs and attorneys' fees) that may be incurred by the PAEDC in enforcing or attempting to enforce this Guaranty, whether by suit or otherwise, following any default on the part of the Guarantor under this Guaranty.

Section 2.6.

- (a) The failure of the Guarantor to abide by or to observe or perform any covenant, agreement or obligation hereunder, or any inaccuracy in any material adverse respect of, or any material adverse omission from, any representation or warranty herein, shall constitute a default hereunder.
- (b) The occurrence of any of the following shall also constitute a default hereunder:
  - (i) the admission by the Guarantor in writing of its inability to pay its debts generally as they become due;
  - (ii) the entering of an order for relief in any case commenced by or against the Guarantor (except any case commenced by the Guarantor against a third party) under federal bankruptcy law, as in effect from time to time;
  - (iii) a general assignment by the Guarantor for the benefit of creditors;
  - (iv) the appointment of a receiver for the Guarantor or for the whole or any substantial part of its property; or

The declaration of a default hereunder and the exercise of remedies upon the declaration shall be subject to any applicable limitations of federal bankruptcy law affecting or precluding the declaration or exercise during the pendency of or immediately following any bankruptcy, liquidation or reorganization proceedings.

- (c) If the default hereunder shall consist of the breach of any of the covenants, agreements or obligations of the Guarantor under Section 2.1, or if any default shall occur under Section 2.6(b), upon written demand by the PAEDC, the Guarantor shall (i) cause any such covenant, agreement or obligation to be performed or met and (ii) pay forthwith, or make provision for payment, to the PAEDC without further demand or notice and regardless of whether there has been any other default or event of default under the Agreement, the amount due and payable under the Agreement and the Guaranty.

In the event that the Guarantor shall be required to make payment to the PAEDC as described in the preceding paragraph, in addition to that payment, the Guarantor shall (i) cause any such covenant, agreement or obligation to be performed or met and (ii) pay to the PAEDC any further amount that is necessary to cover (i) the reasonable costs and expenses of collection, including reasonable compensation to the PAEDC, its agents and, to the extent permitted by law, the PAEDC's attorneys and counsel, and (ii) any reasonable expenses or liabilities incurred by the PAEDC hereunder.

- (d) In the case of a default hereunder, other than under Sections 2.1 and 2.6(b), the PAEDC upon obtaining knowledge of such default shall promptly give the



Guarantor written notice of the default at the Guarantor's Notice Address, by registered or certified mail, postage prepaid, return receipt requested, and if the default continues unremedied for 30 days following the giving of the notice, the PAEDC shall have the rights, remedies and powers, and the Guarantor shall make the payments, described in Section 2.6(c); provided, however, that if the default (other than a default under Sections 2.1 or 2.6(b)) can be remedied but not within that period, that failure shall not constitute a default, so long as the Guarantor is taking appropriate corrective action as permitted under the Agreement.

Section 2.7. Rights, remedies and powers under this Guaranty may be exercised, either separately or cumulatively, in the event of one or more defaults under this Guaranty.

### ARTICLE III.

#### NOTICE AND SERVICE OF PROCESS, PLEADINGS AND OTHER PAPERS

Section 3.1. The Guarantor covenants and agrees to be subject to service of process in the State of Texas, and that it will remain so subject to that service of process so long as the Agreement remains in full force and effect or any obligations of the Grantee remain outstanding thereunder.

Section 3.2. Any process, pleadings, notices or other papers served upon any agent appointed by Guarantor shall be sent at the same time by registered or certified mail, postage prepaid, to the Guarantor's Notice Address and to any other addresses that may be furnished by the Guarantor to the PAEDC in writing from time to time.

### ARTICLE IV.

#### MISCELLANEOUS

Section 4.1. The covenants, agreements and obligations of the Guarantor hereunder shall arise absolutely and unconditionally when the Agreement becomes effective.

Section 4.2. No remedy, right or power conferred herein upon or reserved hereunder to the PAEDC is intended to be exclusive of any other available remedy, right or power, but each remedy, right and power shall be cumulative and shall be in addition to every other remedy, right and power under the Agreement or any other document entered into in connection with the Agreement or existing at law, in equity or by statute or otherwise from time to time.

No delay in exercising, or omission to exercise, any remedy, right or power upon any default, omission or failure of observance or performance hereunder shall impair any remedy, right or power or shall be construed to be a waiver thereof, but any remedy, right and power may be exercised whenever and as often as may be deemed expedient.

To entitle the PAEDC to exercise any remedy, right or power reserved to it under this Guaranty, it shall not be necessary for the PAEDC to give any notice, other than any notice that may be expressly required herein.

In the event any provision contained in this Guaranty shall be breached by any party and the breach shall be duly waived thereafter by the other party so empowered to act, the waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver, amendment, modification or release of this Guaranty shall be established by conduct, custom or course of dealing, but any amendment, modification or release shall be made solely by an instrument or document in writing duly signed by the parties hereto who have been duly authorized by this Guaranty so to amend this Guaranty.

Section 4.3. This Guaranty may be amended and supplemented, to the same extent and upon the same conditions that the Agreement may be further amended and supplemented, by a written agreement signed by the parties hereto. The purposes for which an amendment of or supplement to this Guaranty may be made pursuant to this Section include, without limitation, the addition of, or substitution for the Guarantor as guarantor hereunder of, any Person that succeeds to or assumes, as the case may be, the Guarantor's covenants, agreements and obligations hereunder.

Section 4.4. This Guaranty shall inure to the benefit of the PAEDC and its respective successors and assigns and is binding upon the PAEDC and the Guarantor and his heirs and assigns.

Section 4.5. This Guaranty constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, between the Guarantor and the PAEDC with respect to the subject matter hereof. This Guaranty may be signed simultaneously in several counterparts, each of which shall be deemed to constitute an original, but all of which together shall constitute but one and the same instrument. It shall not be necessary in proving this Guaranty to produce or account for more than one of those counterparts.

Section 4.6. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections contained in this Guaranty shall not affect the validity or enforceability of the remaining phrases, sentences, clauses and sections hereof.

Section 4.7. This Guaranty shall be governed by and construed in accordance with the laws of the State of Texas.

Section 4.8. All representations and warranties herein shall survive the signing and delivery hereof.

IN WITNESS WHEREOF, this Guaranty has been duly signed and delivered for and in the name and on behalf of the Guarantor and the PAEDC by their duly authorized officers or representatives, as of the date first above written.

**EXECUTED BY:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
**Julie A. Rivera**

STATE OF TEXAS

§

COUNTY OF JEFFERSON

§

§

On this \_\_\_\_ day of \_\_\_\_\_, 2008, before me, a Notary Public in and for said County and State, personally appeared **Julie A. Rivera**, who acknowledged that she did sign the foregoing instrument and that the same is her free act and deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Texas

ACCEPTED BY:

CITY OF PORT ARTHUR SECTION 4A  
ECONOMIC DEVELOPMENT CORPORATION

Date: May 23, 2008

By: Keith A. Daws  
President

STATE OF TEXAS

COUNTY OF JEFFERSON

§  
§  
§

On this 23 day of May, 2008, before me, a Notary Public in and for said County and State, personally appeared Keith Daws Sr., President of the PAEDC, who acknowledged that, with due authorization, he did sign the foregoing instrument on behalf of the PAEDC and that the same is his free act and deed individually as such officer and the free act and deed of the PAEDC.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

(SEAL)



Brenda Vaughn  
Notary Public, State of Texas

**EXHIBIT "E"**

**DEED OF TRUST**

Date: \_\_\_\_\_, 2008

Grantor: ORBITAL INSULATION CORP.

Grantors' Mailing Address  
(including county): 817 Houston Avenue  
Port Arthur, Texas 77642-5057  
(Jefferson County)

Trustee: GUY N. GOODSON

Trustee's Mailing Address: Germer Gertz, L.L.P.  
P.O. Box 4915  
Beaumont, Texas 77704  
(Jefferson County)

Beneficiary: CITY OF PORT ARTHUR SECTION 4A ECONOMIC  
DEVELOPMENT CORPORATION ("PAEDC")

Beneficiary's Mailing Address  
(including county): 4173 39<sup>th</sup> Street  
Port Arthur, Texas 77642  
(Jefferson County)

**Note**

Date: \_\_\_\_\_, 2008

Amount: \_\_\_\_\_, \$150,000 minus incentive credits  
earned by Maker according to that certain Economic Incentive  
Contract and Loan Agreement between Grantor and  
Beneficiary.

Maker: ORBITAL INSULATION CORP.

Payee: CITY OF PORT ARTHUR SECTION 4A ECONOMIC  
DEVELOPMENT CORPORATION (Beneficiary)

Final Maturity Date: Three years after the date of the Note.

**Property:** See Attachment for Legal Description.  
Physical address is 817 Houston Avenue, Port Arthur, Texas.

The Property covered by this Instrument includes the Land and the following items, whether now owned or hereafter acquired, all of which, including replacements and additions thereto, shall be deemed to be and remain part of the Property covered by this Instrument, and all rights, hereditaments and appurtenances pertaining thereto, all of which are referred to as the "Property":

- (a) Any and all buildings, improvements, and tenements now or hereafter attached to or placed, erected, constructed, or developed on the Land;
- (b) all fixtures, now or hereafter attached to Land or Improvements, that are necessary or useful for the complete and comfortable use and occupancy of the Land and Improvements;
- (c) all water and water rights, timber, crops, and mineral interest pertaining to the Land;
- (d) all building materials and fixtures now or hereafter delivered to and intended to be installed in or on the Land or the Improvements;
- (e) all plans and specifications for the Improvements and for any future development of or construction on the Land;
- (f) all Grantor's rights (but not Grantor's obligations) under any contracts relating to the Land or the Improvements;
- (g) all deposits (including tenant security deposits), bank accounts, funds, instruments, notes or chattel paper arising from or by virtue of any transactions related to the Land or the Improvements;
- (h) all Grantor's rights (but not Grantor's obligations) under any documents, contract rights, accounts, commitments, construction contracts (and all payment and performance bonds, statutory or otherwise, issued by any surety in connection with any such construction contracts, and the proceeds of such bonds), architectural contracts and engineering contracts arising from or by virtue of any transactions related to the Land or the Improvements;
- (i) all permits, licenses, franchises, certificates, and other rights and privileges now owned or held or hereafter obtained in connection with the Land and the Improvements;
- (j) all development rights, utility commitments, water and wastewater taps, capital improvement project contracts, utility construction agreements with any governmental authority, including municipal utility districts, or with any utility companies (and all refunds and reimbursements thereunder) relating to the Land or the Improvements;
- (k) all proceeds arising from or by virtue of the sale, lease or other disposition of the Land or the Improvements;
- (l) all proceeds (including premium refunds) of each policy of insurance relating to the Land and the Improvements;
- (m) all proceeds from the taking of any of the Land or the Improvements or any rights appurtenant thereto by right of eminent domain or by private or other purchase in lieu thereof, including change of grade of streets, curb cuts or other rights of access, for any public or quasi-public use under any law;
- (n) all right, title, and interest of Grantor in and to all streets, roads, public places, easements, and rights-of-way, existing or proposed, public or private, adjacent to or used in connection with, belonging or pertaining to the Land;
- (o) all of the Leases, rents, royalties, bonuses, issues, profits, revenues, or other benefits of the Land or the Improvements, including without limitation cash or securities deposited pursuant to leases to secure performance by the tenants of their obligations thereunder (subject to the Assignment of Rents made in Article V below); and
- (p) other interest of every kind and character that Grantor now has or at any time hereafter acquires in and to the Land and the Improvements, including rights of ingress and egress and all reversionary rights or interests of Grantor with respect to such property and all of Grantor's rights (but not Grantor's obligations) under any covenants, conditions, and

restrictions for the Land, as the same may be amended from time to time, including Grantor's rights, title, and interests thereunder as declarant or developer, if applicable.

Prior Lien(s) (including recording information): Senior lien Deed of Trust dated \_\_\_ day of \_\_\_\_\_, 2008 and recorded under Clerk's file no. \_\_\_\_\_ in the Official Public Records of Jefferson County, Texas for the benefit of Grow America Fund, Inc. This Deed of Trust shall be senior in priority to the within Deed of Trust to a maximum aggregate amount of THREE HUNDRED SEVENTY SIX THOUSAND AND NO/100 DOLLARS (\$376,000.00).

**Other Exceptions to Conveyance and Warranty:**

This conveyance is made expressly SUBJECT TO any and all restrictions, covenants, conditions, easements, right-of-ways, and mineral and/or royalty reservations of record, if any, affecting this Property.

For value received and to secure payment of the note, Grantor conveys the property to Trustee in trust. Grantor warrants and agrees to defend the title to the property. If Grantor performs all the covenants and pays the notes according to their terms, this deed of trust shall have no further effect, and Beneficiary shall release it at Grantor's expense.

**Grantor's Obligations**

Grantor agrees to:

1. keep the property in good repair and condition;
2. pay all taxes and assessments on the property when due and by January 31 of the year immediately following, furnishing Beneficiary copies of tax receipts showing that all such taxes and assessments have been paid;
3. preserve the lien's priority as it is established in this deed of trust;
4. maintain, in a form acceptable to Beneficiary, an insurance policy that
  - a. covers all improvements for their full insurable value as determined when the policy is issued and renewed, unless Beneficiary approves a smaller amount in writing;
  - b. contains an 80% coinsurance clause;
  - c. provides fire and extended coverage, including windstorm coverage;
  - d. protects Beneficiary with a standard mortgage clause;
  - e. provides flood insurance at any time the property is in a flood hazard area; and
  - f. contains such other coverage as Beneficiary may reasonably require;
5. comply at all times with the requirements of the 80% coinsurance clause;
6. deliver the insurance policy to Beneficiary and deliver renewals to Beneficiary at least ten days before expiration;
7. keep any buildings occupied as required by the insurance policy; and
8. if this is not a first lien, pay all lien notes that Grantor is personally liable to pay and abide by all prior lien instruments.

**Beneficiary's Rights**

1. Beneficiary may appoint in writing a substitute or successor trustee, succeeding to all rights and responsibilities of Trustee;
2. If the proceeds of the note are used to pay any debt secured by prior liens, Beneficiary is subrogated to all of the rights and liens of the holders of any debt so paid;
3. Beneficiary shall apply any proceeds received under the insurance policy to repair or replace damaged or destroyed improvements covered by the policy, unless Grantor is in

default of Notes or Deed of Trust in which case insurance proceeds may be applied to reduce Grantor's obligation under Notes or Deed of Trust;

4. If Grantor fails to perform any of Grantor's obligations, Beneficiary may perform those obligations and be reimbursed by Grantor on demand at the place where the note is payable for any sums so paid, including attorney's fees, plus interest on those sums from the dates of payments at the rate stated in the note for matured, unpaid amounts. The sum to be reimbursed shall be secured by this deed of trust.
5. If Grantor defaults on the note or fails to perform any of Grantor's obligations or if default occurs on a prior lien note or other instrument, and the default continues after Beneficiary gives Grantor notice of the default and the time within which it must be cured, as may be required by law or by written agreement, then Beneficiary may:
  - a. Declare the unpaid principle balance and earned interest on the note immediately due;
  - b. Request Trustee to foreclose this lien, in which case Beneficiary or Beneficiary's agent shall give notice of the foreclosure sale, as provided by the Texas Property Code as then amended; and
  - c. Purchase the property at any foreclosure sale by offering the highest bid and then have the bid credited on the note(s).

#### **Trustee's Duties**

If requested by Beneficiary to foreclose this lien, Trustee shall:

1. Either personally or by agent give notice of the foreclosure sale as required by the Texas Property Code as then amended;
2. Sell and convey all or part of the property to the highest bidder for cash with a general warranty binding Grantor subject to prior liens and other exceptions to conveyance and warranty; and
3. From the proceeds of the sale, pay in this order
  - a. Expenses of foreclosure;
  - b. To Beneficiary, the full amount of principle, interest, attorney's fees, and other charges due and unpaid;
  - c. Any amount required by law to be paid before payment to Grantor; and
  - d. To Grantor, any balance.

#### **General Provisions**

1. If any of the property is reconveyed under this deed of trust, Grantor shall immediately surrender possession to the Beneficiary. If Grantor fails to do so, Grantor shall become a tenant at sufferance of the Beneficiary, subject to an action for forcible detainer.
2. Recitals in any Trustee's deed conveying the property will be presumed to be true.
3. Proceeding under this deed of trust, filing suit or pursuing any other remedy will not constitute an election of remedies.
4. This lien shall remain superior to liens later created even if the time of payment of all or part of the note is extended or part of the property is released.
5. If any portion of the note cannot be lawfully secured by this deed of trust, payments shall be applied first to discharge that portion.
6. Grantor assigns to Beneficiary all sums payable to or received by Grantor from condemnation of all or part of the property, from private sale in lieu of condemnation, and from damages caused by public works or construction on or near the property. After deducting any expenses incurred, including attorney's fees, Beneficiary may release any remaining sums to Grantor or apply such sums to reduce the note

Beneficiary shall not be liable for failure to collect or to exercise diligence in collecting any such sums.

7. Grantor assigns to Beneficiary absolutely, not only as collateral, all present and future rent and other income and receipts from the property. Leases are not assigned. Grantor warrants the validity and enforceability of the assignment. Grantor may as Beneficiary's licensee collect rent and other income and receipts as long as Grantor is not in default under the note or this deed of trust. Grantor will apply all rent and other income and receipts to payment of the note and performance of this deed of trust, but if the rent and other income and receipts exceed the amount due under the note and deed of trust, Grantor may retain the excess. If Grantor defaults in payment of the note or performance of this deed of trust, Beneficiary may terminate Grantor's license to collect and then as Grantor's agent may rent the property if it is vacant and collect all rent and other income and receipts. Beneficiary neither has nor assumes any obligations as lessor or landlord with respect to any occupant of the property. Beneficiary may exercise Beneficiary's rights and remedies under this paragraph without taking possession of the property. Beneficiary shall apply all rent and other income and receipts collected under this paragraph first to expenses incurred in exercising Beneficiary's rights and remedies and then to Grantor's obligations under the note and this deed of trust in the order determined by Beneficiary. Beneficiary is not required to act under this paragraph, and acting under this paragraph does not waive any of Beneficiary's other rights or remedies. If Grantor becomes a voluntary or involuntary bankrupt, Beneficiary's filing a proof of claim in bankruptcy will be tantamount to the appointment of a receiver under Texas law.
8. Interest on the debt secured by this deed of trust shall not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law; any interest in excess of that maximum amount shall be credited on the principal of the debt or, if that has been paid, refunded. On any acceleration or required or permitted prepayment, any such excess shall be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal of the debt or, if the principal of the debt has been paid, refunded. This provision overrides other provisions in this and all other instruments concerning the debt.
9. When the context requires, singular nouns and pronouns include the plural.
10. The term note includes all sums secured by this deed of trust.
11. This deed of trust shall bind, insure to the benefit of, and be exercised by successors in interest of all parties.
12. If Grantor and Maker are not the same person, the term Grantor shall include Maker.
13. If all or any part of the Property is sold, conveyed, leased for a period longer than three (3) years, leased with the option to purchase, or otherwise sold (including contract for deed), without the prior written consent of Beneficiary, then Beneficiary may at its option declare the outstanding balance of the Note(s), plus accrued interest to be immediately due and payable. The creation of a subordinate lien, any sale thereunder, any deed under threat or order of condemnation, any conveyance solely between Makers, the passage of title by reason of the death of a Maker or by operation of law shall not be construed as a sale or conveyance of the Property.
14. THIS DEED OF TRUST IS GRANTED IN CONJUNCTION WITH THAT CERTAIN ECONOMIC INCENTIVE CONTRACT AND LOAN AGREEMENT OF EVEN DATE.



By: \_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_

**BEFORE ME, THE UNDERSIGNED** Notary Public, on this day personally appeared \_\_\_\_\_, 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 \_\_\_\_\_, a Texas \_\_\_\_\_, for the purposes and consideration therein expressed, and the Capacities therein stated.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE**, this the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

**BEFORE ME, THE UNDERSIGNED** Notary Public, on this day personally appeared \_\_\_\_\_, 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 \_\_\_\_\_, a Texas \_\_\_\_\_, for the purposes and consideration therein expressed, and the Capacities therein stated.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE**, this the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

**AFTER RECORDING RETURN TO:**

Guy N. Goodson

Germer Gertz, L.L.P.  
P.O. Box 4915  
Beaumont, Texas 77704

**Attachment to Deed of Trust**

**Legal Property Description**

Lot Four (4) and the North Fifteen feet of Lot Five (N. 15' of 5), in Block Seventy-Four (74) an Addition to the CITY OF PORT ARTHUR, in Jefferson County, Texas, according to the map or plat thereof recorded in Volume 1, Page 50 of the Map Records of Jefferson County, Texas.

The South Ten feet of Lot Five (S. 10' of 5) and all of Lots Six (6) and Seven (7) in Block Seventy-Four (74) an Addition to the CITY OF PORT ARTHUR, in Jefferson County, Texas, according to the map or plat thereof recorded in Volume 1, Page 50 of the Map Records of Jefferson County, Texas.

Lots Numbered Eight, Nine, Ten, Eleven, Twelve, Thirteen, Fourteen, and Fifteen (8, 9, 10, 11, 12, 13, 14, 15) in Block Number Seventy-Four (74), of the CITY OF PORT ARTHUR, Jefferson County, Texas, as the same appears upon the map or plat thereof on file and of record in Volume 1, page 50 of the Map Records in the Office of the County Clerk of Jefferson County, Texas.