

RESOLUTION NO. 12-047

**A RESOLUTION APPROVING AN ECONOMIC INCENTIVE  
CONTRACT & LOAN AGREEMENT BETWEEN J.Z.  
RUSSELL INDUSTRIES, INC. AND THE CITY OF PORT  
ARTHUR SECTION 4A ECONOMIC DEVELOPMENT  
CORPORATION**

**WHEREAS**, the City Council deems it in the public interest to authorize the City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC") to enter into an Economic Incentive Contract & Loan Agreement (the "Agreement") with J. Z. Russell Industries, Inc. ("JZR"); and

**WHEREAS**, Germer Getz, L.L.P. has indicated that JZR has presented an application qualifying as a Section 4A project as set forth in the Executive Summary of the Agreement; and

**WHEREAS**, the PAEDC has reviewed the JZR application and accompanying financial statements presented by JZR and recommends approval thereof; and

**WHEREAS**, JZR has acquired two (2) acres in the Spur 93 Business Park to relocate its business operations in the City of Port Arthur; and

**WHEREAS**, JZR has secured financing for the purchase of its property and improvements to be constructed in the Spur 93 Business Park; and

**WHEREAS**, the PAEDC incentive is \$447,496.00 for the purchase of equipment and to reimburse JZR for equipment previously purchased for its business operations which equipment shall be relocated to the Spur 93 Business Park; and

**WHEREAS**, JZR shall increase its staff by December 31, 2014, to employ 47 Port Arthur residents with an annual total payroll of not less than \$2,803,160; and

**WHEREAS**, JZR shall grant the PAEDC a security interest in the equipment to be located in the Spur 93 Business Park as security for its Conditional Loan; and

**WHEREAS**, JZR has reviewed and approved the Agreement.

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

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

**Section 2.** That the PAEDC is herein authorized to enter into the Agreement with JZR, and the President and Secretary of the PAEDC are authorized to sign the Agreement in substantially the same form attached hereto as **Exhibit "A"**.

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

**READ, ADOPTED AND APPROVED** on this 7<sup>th</sup> day of Feb. A.D., 2012, at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote:

AYES:

Mayor

Prince; Mayor Pro Tem Asuncion

Councilmembers

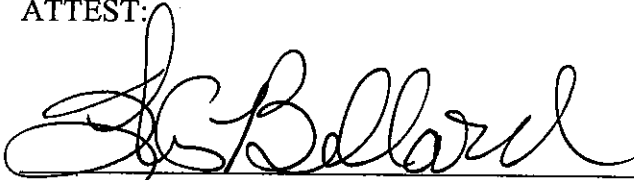
Satt, Segler, Albright,  
Williamson, Freeman and Thomas.

NOES:

None.

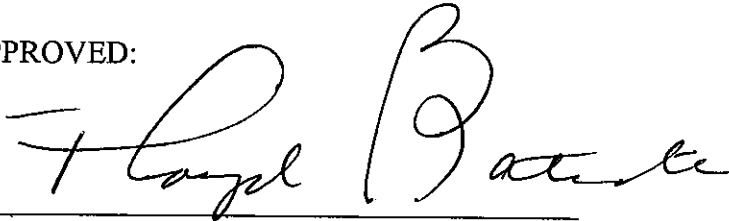
Deloris Prince  
Deloris "Bobbie" Prince, Mayor

ATTEST:



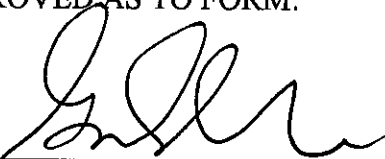
**Sherri Bellard, City Secretary**

APPROVED:



**Floyd Batiste, PAEDC CEO**

APPROVED AS TO FORM:



**Guy N. Goodson, PAEDC Attorney**

APPROVED AS TO FORM:

*confidential*  
*See attached Memo*

**Valecia R. Tizeno, City Attorney**

**EXHIBIT "A" TO P.R. 16850**

**ECONOMIC INCENTIVE CONTRACT & LOAN AGREEMENT  
BETWEEN THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC  
DEVELOPMENT CORPORATION  
&  
J.Z. RUSSELL INDUSTRIES, INC.**

**Executive Summary**

J.Z. Russell Industries, Inc. ("Incentive Recipient") is a Texas corporation which provides industrial inspection services, vendor surveillance and onstream inspections. Incentive Recipient has acquired approximately two (2) acres within the City of Port Arthur Business Park (the "Property") and has secured debt financing to construct a facility with state of the art inspection equipment (the "Facility") on the Property. Incentive Recipient proposes to utilize incentive funds by and through the City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC") to acquire additional equipment, and Incentive Recipient shall relocate inspection equipment from other business locations to the Facility. PAEDC shall assist Incentive Recipient in its business relocation to Port Arthur and business expansion by providing agreements with Incentive Recipient which shall include a conditional grant/loan in exchange for the agreement by Incentive Recipient to create additional fulltime permanent employment at the Facility with designated levels of payroll. Incentive Recipient will be provided a credit against payroll paid to fulltime Port Arthur residents at the Facility as outlined in the Performance Milestone Schedule contained within the Economic Incentive Contract & Loan Agreement (the "Agreement"). Incentive Recipient has been advised that as a condition for the Agreement, Incentive Recipient must continue to conduct its business operations in Port Arthur, Texas during the term of the Agreement.

PAEDC has agreed as a consideration for the promise and performance of Incentive Recipient to pay invoices in accordance with the Agreement for the acquisition by Incentive Recipient of equipment to be installed at the Facility and funds will be advanced to Incentive Recipient for equipment heretofore acquired by Incentive Recipient and to be relocated to the Facility. PAEDC and Incentive Recipient have agreed that the incentive credit shall be for an amount not to exceed \$447,496, and Incentive Recipient shall have the period outlined in the Performance Milestone Schedule attached to the Agreement to achieve its promised performance under the Agreement and to provide all reports and other affirmative commitments as outlined in the Agreement.

Incentive Recipient has agreed to execute the First Source Referral Agreement and to utilize the services of the PAEDC to find qualified applicants for employment at the Facility.

**ECONOMIC INCENTIVE & LOAN AGREEMENT BETWEEN  
THE CITY OF PORT ARTHUR SECTION 4A  
ECONOMIC DEVELOPMENT CORPORATION  
AND  
J.Z. RUSSELL INDUSTRIES, INC. ("INCENTIVE RECIPIENT")**

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**ECONOMIC INCENTIVE CONTRACT & LOAN AGREEMENT BETWEEN  
THE CITY OF PORT ARTHUR SECTION 4A  
ECONOMIC DEVELOPMENT CORPORATION  
AND  
J.Z. RUSSELL INDUSTRIES, INC. ("INCENTIVE RECIPIENT")**

**INTRODUCTION**

The Incentive Recipient is a Texas corporation having its principal business operations at 2140 Stillwater, Beaumont, Texas. Incentive Recipient intends to relocate its principal business operations to land located at 924 Jade Avenue within the Spur 93 Business Park (the "Property"). The Incentive Recipient shall construct on the Property a 4,900 square foot office building and a 5,000 square foot warehouse facility (the "Facility") which shall include state of the art industrial inspection equipment to be utilized to provide turnaround inspection services, vendor surveillance and onstream inspections as outlined in the incentive application heretofore filed by Incentive Recipient with the City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC"). Incentive Recipient proposes to utilize incentive funds acquired PAEDC to acquire equipment as outlined in this Agreement for location at the Facility and for equipment to be relocated to the Facility. Current market demands are such that Incentive Recipient plans to expand the above-referenced business operations at its Facility. PAEDC will assist Incentive Recipient in this business endeavor by providing the hereinafter described conditional grant and/or loan or other incentives in exchange for the promise by Incentive Recipient of creation of fulltime permanent jobs.

**AGREEMENT TERM**

**EFFECTIVE DATE**

1. This Economic Incentive Contract and Loan Agreement ("Agreement") is entered into with an effective date of January \_\_, 2012, by and between the PAEDC and Incentive Recipient.

**TERMINATION DATE**

2. This Agreement expires the earlier of September 15, 2015, or 30 days after Incentive Recipient 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. City of Port Arthur Section 4A Economic Development Corporation ("PAEDC"), located at 4173-39<sup>th</sup> Street, Port Arthur, Texas, 77642, is a corporation. It is duly authorized to do business in the State of Texas under Chapter 504, Local Government Code (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. As so authorized and as provided by the PAEDC bylaws, the President and Secretary of the PAEDC Board have the authority to execute this Agreement.

4. J.Z. Russell Industries, Inc. ("Incentive Recipient") is a Texas corporation. The registered agent in Texas for the Incentive Recipient is James W. Russell, Jr., 3626 South Martin Luther King Drive, Port Arthur, Texas 77640.

### **PROMISED PERFORMANCE**

5. The parties agree to perform as follows.

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

- (1) PAEDC shall conditionally grant Incentive Recipient an amount not to exceed \$447,496, subject to the conditions and limitations herein, which Incentive Recipient shall not be required to repay unless Incentive Recipient breaches this Agreement. If Incentive Recipient breaches this Incentive Agreement, then the grant will become a loan as provided in the Conditional Commercial Promissory Note (the "Note") attached hereto as **Exhibit "A"**.
- (2) PAEDC will use its best efforts to pay invoices or reimburse Incentive Recipient within forty-five (45) days for the capital outlays (the "Equipment") listed in **Exhibit "B"**.

HOWEVER, PAEDC WILL ONLY RELEASE FUNDS IN AN AMOUNT EQUIVALENT TO EQUIPMENT FOR WHICH PAEDC HAS DULY EXECUTED COLLATERAL SECURITY INTEREST. PAEDC WILL ONLY RELEASE FUNDS UPON RECEIPT OF REQUIRED DOCUMENTATION OF THE PURCHASE, BY INCENTIVE RECIPIENT OF SUCH EQUIPMENT FREE OF ANY LIEN OR ENCUMBRANCE.

These payments are PAEDC's only obligations.

#### **(b) PERFORMANCE BY INCENTIVE RECIPIENT**

- (1) By the end of the Agreement term, Incentive Recipient promises to employ nineteen (19) employees at an annual total payroll of \$1,126,320<sup>1</sup> as measured by Internal Revenue Service (IRS) forms W-2 and W-3.
- (2) Incentive Recipient promises that at the end of the term of the Agreement, Incentive Recipient shall have employed thirty (30) Port Arthur residents as technicians and five (5) Port Arthur residents as office staff as outlined in the Performance Milestone Schedule set forth in this Agreement.
- (3) Incentive Recipient will utilize the incentive to acquire or to provide reimbursement for the Equipment valued at not less than \$447,496 as outlined in **Exhibit "B"**.
- (4) Incentive Recipient shall secure the conditional grant by executing the Commercial Security Agreement attached hereto as **Exhibit "C"** which shall be evidenced by the

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<sup>1</sup> Payroll is based on 2080 hours per year.



filing of record with the Secretary of State for the State of Texas by a Uniform Commercial Code filing as set forth in **Exhibit "D"**. Incentive Recipient prior to the filing by PAEDC of the Uniform Commercial Code Financing Statement shall advise of any changes in the Equipment acquired by Incentive Recipient for use in its business operations in Port Arthur, Texas.

- (5) Incentive Recipient will be required to meet the conditions and agreements set forth in the First Source Referral Agreement attached hereto as **Exhibit "F"** and made a part hereof for all purposes.
- (6) Incentive Recipient shall use the Grant monies provided by the PAEDC exclusively for the Equipment that are not materially different<sup>2</sup> from the list provided to PAEDC by Incentive Recipient, attached as **Exhibit "B"**. With each invoice or request for reimbursement sent to PAEDC, Incentive Recipient will provide a listing of the specific Equipment, requested for reimbursement and covenant that such request for reimbursement is being made for the specific Equipment and that all such Equipment has been acquired by the Incentive Recipient free of any lien or encumbrance.
- (7) Incentive Recipient acknowledges and agrees that the Economic Incentive proposed under this Agreement is only being provided as to the expansion of the business of Incentive Recipient in Port Arthur, Texas. If Incentive Recipient at any time during the term of this Agreement discontinues and/or moves its business operations from the City of Port Arthur, Texas, Incentive Recipient shall be immediately in default under the terms of this Agreement, and all amounts less any credits given as set forth in Paragraph 5 above shall become a loan for a period not to exceed the remaining period for the Incentive as set forth herein.
- (8) On demand by PAEDC and in response to Incentive Recipient's failure to achieve a performance milestone, Incentive Recipient shall provide PAEDC with reasonable assurances, proposed by Incentive Recipient and reasonably acceptable to PAEDC, that it has both the intention and the capabilities to perform fully its contractual obligations.

**(C) CREDITS – SUBSTITUTE PERFORMANCE**

Incentive Recipient 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 Incentive Recipient breaches the Agreement.

- (1) Starting on the effective date of the Agreement and for as long as Incentive Recipient performs as specified in Section 5(b)(1) of this Agreement, Incentive Recipient will receive a \$1.00 credit for each \$5.10 of payroll paid to residents of Port Arthur. Payroll to non-residents cannot be credited.
- (2) Total credit cannot exceed \$447,496.

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<sup>2</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.

(3) Incentive Recipient will forfeit any credits it earned during a period for which a report is scheduled but Incentive Recipient fails to issue the report.

(4) Once Incentive Recipient has earned credits equal to \$447,496, the conditional grant/loan and all obligations to PAEDC shall terminate.

**(d) FIRST SOURCE REFERRAL AGREEMENT**

PAEDC has adopted policies and procedures to assist Incentive Recipient in locating a qualified workforce within the City. The First Source Referral Agreement is incorporated into this Agreement in **Exhibit "F"** ("First Source"). Incentive Recipient has agreed to the policies and procedures within First Source as a resource and referral for all appropriate new job openings of Incentive Recipient.

**PERFORMANCE MILESTONE SCHEDULE**

6. Although failure to achieve a performance milestone is not a breach of contract, a failure is grounds for PAEDC to withhold further payments to Incentive Recipient and/or demand reasonable assurances<sup>3</sup> from Incentive Recipient 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. Incentive Recipient's performance milestones are contained in the following table.

**PERFORMANCE MILESTONE SCHEDULE**

	<u>Deadline</u>	<u>Milestone</u>
(a)	February 29, 2012	JZ Russell Industries issue a <u>status report</u> to PAEDC CEO on company construction and equipment installation into building.
(b)	June 30, 2012	JZ Russell Industries issue a <u>status report</u> on building construction and equipments installation estimated completion date to PAEDC CEO.
(c)	December 31, 2012	Achieve employment of <u>12</u> full-time permanent employment of Port Arthur residents as Technicians and <u>3</u> full time permanent employment of Port Arthur resident as office Staff with an annualized payroll of <b>\$539,760</b> for Port Arthur resident.
(d)	June 30, 2013	Issue a <u>business operational report</u> to PAEDC CEO for the period January 1, 2013 to June 30, 2013.
(e)	December 31, 2013	Achieve employment of <u>12</u> additional full-time permanent employees from Port Arthur as technicians and <u>1</u> additional full time permanent employee from Port Arthur as an Office staff with an annualized payroll of <b>\$1,010,880</b> . Total payroll for Port Arthur residents for year 1 and 2 not less than <b>\$1,550,640</b> .

<sup>3</sup> Examples of reasonable assurances are copies of pending contracts and customer commitment letters.

(f)	June 30, 2014	Issue a <u>business operational report</u> to PAEDC CEO for the period July 1, 2013 to December 31, 2014, report to include at least <u>2</u> Port Arthur resident hired, trained and ready to be assessed for Inspector's certification.
(g)	December 31, 2014	Achieve employment of <u>6</u> additional full-time permanent employees from Port Arthur as technicians and <u>1</u> additional full time permanent employee from Port Arthur as an Office staff with an annualized payroll of \$1,252,600. Total payroll for Port Arthur Residents for year 1, 2, and 3 not less than \$2,803,160.
(h)	June 30, 2015	Issue a <u>business operational report</u> to PAEDC CEO for the period January 1, 2014 to June 30, 2015, report to include at least <u>12</u> Port Arthur resident hired, trained and ready to be assessed for Inspector's certification.
(i)	July 31, 2015	J Z Russell Industries, Inc meets all PAEDC contractual performance as verified by the PAEDC CEO.
(j)	September 15, 2015	Prepare close out report for PAEDC Board and Council approval.

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

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

9. The PAEDC shall not be liable, in Agreement or otherwise, to Incentive Recipient, or to any person or entity claiming by or through Incentive Recipient, for any expense, expenditure or cost incurred by or on behalf of Incentive Recipient related to the project made the basis of this Agreement. The PAEDC's sole liability/obligations, if any, shall be to Incentive Recipient and shall be limited to the obligations detailed in Section 5(a) of this Agreement.

10. Incentive Recipient 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 Incentive Recipient, which application is incorporated herein for all purposes.

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

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

12. In the event Incentive Recipient 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 Incentive Recipient in the executed Note attached as **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 customary attorney's fees and court costs incurred in collection of said obligation and such remedies as are provided at law or in equity.

13. It is expressly understood and agreed by the parties that any right or remedy shall not preclude the exercise of any other right or remedy under this 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. Incentive Recipient must establish and maintain sufficient records, as reasonably determined by the PAEDC, to account for the expenditure and utilization of funds received by Incentive Recipient from PAEDC under the terms and conditions of this Agreement. Incentive Recipient shall maintain employment records as necessary to allow the PAEDC to audit and verify proper utilization of First Source and to verify any and all other covenants, representations and warranties contained herein and in Incentive Recipient's Application.

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

16. Upon ten-day (10-day) advance notice, Incentive Recipient 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 Incentive Recipient. Such rights to access shall continue as long as the records are maintained by Incentive Recipient. Incentive Recipient 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 Incentive Recipient 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). Incentive Recipient 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 Incentive Recipient (or any party working by, through or under).

17. All records pertinent to this Agreement shall be retained by Incentive Recipient 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 Incentive Recipient detailing its 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. Incentive Recipient shall provide PAEDC with all reports necessary for PAEDC compliance with the Development Corporation Act.

19. It is expressly understood and agreed by the parties hereto that if Incentive Recipient 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 Incentive Recipient and/or demand assurances that Incentive Recipient can and will fully perform its contractual obligations. If Incentive Recipient fails to provide adequate assurances then Incentive Recipient is in breach, and any monies advanced by PAEDC automatically become a loan. If PAEDC withholds such payments, it shall notify Incentive Recipient 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 Incentive Recipient.

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

### **HOLD HARMLESS**

21. INCENTIVE RECIPIENT 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 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. Incentive Recipient may not subcontract for performance credits described in this Agreement without obtaining PAEDC's written approval, which may be withheld for any reason. Incentive Recipient shall only subcontract for performance credits described in this Agreement after Incentive Recipient has submitted a Subcontractor Eligibility Request, as specified by PAEDC, for each proposed subcontract, and Incentive Recipient has obtained PAEDC's prior written approval. Incentive Recipient, in subcontracting for any performances described in this Agreement, expressly

understands that in entering into such subcontracts, PAEDC is in no way liable to Incentive Recipient's subcontractor(s).

23. In no event shall PAEDC's prior written approval of a subcontractor's eligibility, be construed as relieving Incentive Recipient 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 Incentive Recipient. PAEDC's approval does not constitute adoption, ratification, or acceptance of Incentive Recipient's or subcontractor's performance hereunder. PAEDC maintains the right to insist upon Incentive Recipient'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. Incentive Recipient, 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. Conflict of Interest: No employee, agent, officer or elected or appointed official of the City of Port Arthur or the PAEDC who has participated in a decision making process related to this 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 Incentive Recipient, its agents, employees or representatives, Incentive Recipient shall ensure compliance with applicable provisions under Chapter 504, Local Government Code and Chapter 171 Local Government Code.

26. Disclosure: In conjunction with execution of this Agreement, Incentive Recipient has fully disclosed to PAEDC all known and potential owners of interests in Incentive Recipient (whether shareholder, partner, limited partner, manager, member or otherwise). In the event of any change in ownership or control of Incentive Recipient of five percent (5 %) or greater, Incentive Recipient shall notify PAEDC in writing. Further, Incentive Recipient 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 Incentive Recipient. 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. Incentive Recipient 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 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 Incentive Recipient advertises for employment then it shall among any other advertising that it chooses to undertake covenants that it will advertise in the Port Arthur News. Incentive Recipient acknowledges that PAEDC does not intend to restrain any advertising in additional publications or media nor direct any others than that stated.

### **LEGAL AUTHORITY**

28. Incentive Recipient assures and guarantees it possesses legal and/or corporate authority (i) to enter into this Agreement, receive funds authorized by this Agreement, and (ii) to perform the obligations hereunder. Incentive Recipient has provided, or shall provide, as requested by the PAEDC, such resolutions or other required authorizations necessary to evidence this authority.

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

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

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

32. It is understood and agreed by the parties hereto that performances under this Agreement must be rendered in accordance with the regulations promulgated under the Development Corporation Act, the assurances and certifications made to PAEDC by Incentive Recipient, 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 Incentive Recipient, 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 Incentive Recipient detailed herein or in the event of breach of any of the representations of or warranties of Incentive Recipient either detailed herein or in its 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 Incentive Recipient 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 Collateral Security Documents;
- (c) Withhold, whether temporarily or otherwise, disbursement of grant proceeds pending correction of the deficiency(s) by Incentive Recipient;
- (d) Disallow all or a part of the incentives which are not in compliance with the terms and conditions of this Agreement or in compliance with the representations and warranties contained within this Agreement and Incentive Recipient's application to the PAEDC;
- (e) Withhold and/or disallow further PAEDC incentives to Incentive Recipient; and
- (f) 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.

#### **COMPLIANCE AUDITS**

36. If directed by PAEDC Board, Incentive Recipient 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) Incentive Recipient 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 Incentive Recipient 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 Incentive Recipient. Said audit must be received and accepted by the Chief Executive Officer of PAEDC and/or the PAEDC Board.
- (b) At the option of Incentive Recipient, each audit required by this section may cover either its entire operations or each department, agency, or establishment of Incentive Recipient which received, expended, or otherwise administered PAEDC funds;
- (c) Unless otherwise specifically authorized by PAEDC in writing, Incentive Recipient 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.

- (d) As a part of its audit, Incentive Recipient shall verify that the expenditures were exclusively for the assets listed in **Exhibit "B"**. Any discrepancies in excess of \$500 shall be specifically documented in writing.

37. Incentive Recipient 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 its expense.

38. Incentive Recipient 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 Incentive Recipient 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 Incentive Recipient under this Agreement until PAEDC has received certification from Incentive Recipient 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.

#### **SUPPLEMENTAL COVENANT**

41. Incentive Recipient and any branch, division or department of Incentive Recipient certifies that they have not and will not knowingly employ an "undocumented worker" which means "an individual who, at the time of employment, is not lawfully admitted for permanent residence to the United States or authorized under law to be employed in that manner in the United States."

42. Incentive Recipient acknowledges that it has reviewed Chapter 2264, Texas Government Code and hereby affirmatively agrees by execution of this Agreement to repay the amount of any incentive with interest at the rate of ten (10%) percent per annum not later than the 120<sup>th</sup> day after the date PAEDC notifies Incentive Recipient of a violation.

43. Incentive Recipient acknowledges PAEDC may bring a civil action or cover any amounts owed under this Chapter and further acknowledges that PAEDC may recover court costs and reasonable attorneys' fees incurred in an action brought under §2264.101(a). Incentive Recipient is not liable for a violation of this Chapter by a subsidiary, affiliate or franchisee of the Incentive Recipient or by a person with whom the Incentive Recipient contracts.

## **ENVIRONMENTAL REQUIREMENTS**

44. Incentive Recipient understands and agrees that by execution of this Agreement, Incentive Recipient 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. Incentive Recipient further understands and agrees that Incentive Recipient 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**

45. 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.

46. The documents required below are hereby made a part of this Agreement, and constitute promised performances by Incentive Recipient in accordance with this Agreement:

### **Required**

- X   Exhibit "A" Commercial Promissory Note for Conditional Grant
- X   Exhibit "B" Equipment List
- X   Exhibit "C" Commercial Security Agreement
- X   Exhibit "D" UCC-1 Financing Statement
- X   Exhibit "E" Intercreditor Agreement
- X   Exhibit "F" First Source Referral Agreement
- X   Exhibit "G" Certification Regarding Lobbying
- X   Exhibit "H" Compliance Statement
- X   Incentive Recipient Application to PAEDC

## **VENUE**

47. 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  
444 4th Street  
Port Arthur, Texas 77640  
ATTN: Floyd Batiste, Chief Executive Officer

J.Z. Russell Industries, Inc.  
3626 South Martin Luther King Drive  
Port Arthur, Texas 77640  
Attn: James W. Russell, Jr.

### **CAPTIONS**

48. 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**

49. Incentive Recipient 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 Incentive Recipient under this Agreement. Upon request by PAEDC and by the City, Incentive Recipient shall furnish satisfactory proof of its compliance herewith.

### **CONDITIONS PRECEDENT**

50. This agreement has no legal consequences, and neither party shall rely on the agreement, unless and until

- a. Both the PAEDC Board and the Port Arthur City Council approve the Agreement in its final executed form.
- b. \_\_\_\_\_.
- c. \_\_\_\_\_.
- d. \_\_\_\_\_.

### **ATTORNEY APPROVALS**

APPROVED AS TO FORM:

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

VERIFIED BY  
CITY COUNCIL RESOLUTION:

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

\_\_\_\_\_  
Valecia R. Tizeno, City Attorney

**AGREEMENT EXECUTION**

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

**SIGNED AND AGREED TO** on the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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

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

\_\_\_\_\_  
EDC Representative

\_\_\_\_\_  
EDC Representative

**J.Z. RUSSELL INDUSTRIES, INC.**

**SIGNED AND AGREED TO** on the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

**J.Z. Russell Industries, Inc.**

By: \_\_\_\_\_  
James W. Russell, Jr., Vice President

Acknowledgement:

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

## EXHIBIT "A"

### CONDITIONAL COMMERCIAL PROMISSORY NOTE

Port Arthur, Texas

This COMMERCIAL PROMISSORY NOTE becomes effective on the date when **J.Z. Russell Industries, Inc.**, 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 \_\_\_\_\_, 2012

**Effective Date of Note:** The Note shall be dated effective the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_ which is the date upon which Lender provided notification to Maker of its default under the Economic Incentive Contract & Loan Agreement (the "Agreement") by and between Lender and Maker dated \_\_\_\_\_, 2012 ("Date of Default").

**Principal Amount:** Principal amount is \$ \_\_\_\_\_, which is \$447,496.00 less the incentive credits earned by Maker according to the Agreement (described hereinabove).

**Term of the Loan:** From the Date of Default, Maker shall thereafter make equal monthly installments of principal and interest (interest being calculated as hereinafter specified at the rate of 10% per annum) until September 15, 2015 (the "Final Payment Date"). Lender shall provide to Maker, a payment amortization schedule for the monthly installments due hereunder. Maker agrees that all principal and interest on this Note shall be due and payable by the Final Payment Date.

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.

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 \_\_\_\_\_, 201\_\_.

**J.Z. Russell Industries, Inc.**

By: \_\_\_\_\_  
James W. Russell, Jr.

**THE STATE OF TEXAS**  
**COUNTY OF JEFFERSON**

§  
§  
§

**ACKNOWLEDGEMENT**

**BEFORE ME, THE UNDERSIGNED** Notary Public, on this day personally appeared James W. Russell, Jr., 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 **J.Z. Russell Industries, Inc.** for the purposes and consideration therein expressed, and the Capacities therein stated.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE**, this the \_\_\_\_ day of \_\_\_\_\_, 2012.

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

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

J.Z. Russell Industries, Inc.  
3626 South Martin Luther King Drive



Port Arthur, Texas 77640  
Attn: James W. Russell, Jr.

**EXHIBIT "B"**  
**EQUIPMENT LIST**



**J.Z. RUSSELL INDUSTRIES**

January 31, 2012

Mr. Goodson,

The equipment on the inventory list provided has single source suppliers and no other NDE service providers (our competitors) sell their equipment as it is needed for daily work. To sell a piece of our equipment would mean cost of new for replacement. With that said we maintain our equipment and pay for repairs as high as 90% of the equipment cost. Again that is still a savings of 10% over buying a new replacement. We keep our equipment in as new/operational condition with constant upgrades. We have equipment that is 10 years old which generates the same revenue that it did at purchase, and comparatively a new piece would bill out the same. Our equipment is used until it is not repairable or capable of new software upgrades. In this particular specialized industrial niche there is no applicable depreciation. I hope this is understandable with regard to depreciation issues.

A handwritten signature in black ink, appearing to read 'James Russell', enclosed within a rectangular box.

James Russell  
President

Date	Vendor	P.O. #	Equipment Purchase?	S/N--Description	Quote	Amount Paid	Paid	BANK LOAN	JTR	AMEX
1/31/2008	Olympus NDT	OLYMP00001	Yes	Dual Transducer	\$585.63	\$585.63	In Full			
3/6/2008	Olympus NDT	OLYMP00003	Yes	Dual Transducer 616713	\$932.18	\$932.18	In Full			
4/22/2008	Olympus NDT	OLYMP00004	Yes	Rechargeable batteries	\$108.00	\$108.00	In Full			
8/19/2008	Olympus NDT	OLYMP00005	Yes	Digital UT Gage 081625706	\$4,165.54	\$4,165.54	In Full			
8/25/2008	Olympus NDT	OLYMP00006	Yes	Panometrics NDT Instrument 992088703	\$577.76	\$577.76	In Full			
1/7/2009	Olympus NDT	OLYMP00007	Yes	36DL Plus	\$741.40	\$741.40	In Full			
1/27/2009	Olympus NDT	OLYMP00008	Yes	37DLP Plus	\$617.94	\$617.94	In Full			
4/3/2009	Olympus NDT	OLYMP00010	Yes	Dual Transducer 666980	\$571.28	\$571.28	In Full			
12/23/2009	Olympus NDT	OLYMP00012	Yes	Dual Transducer 5904300	\$1,019.75	\$1,019.75	In Full			
2/10/2010	Houston Analytical Systems	HAS00001	Yes	INNOV-X XRS Analyzer	\$25,547.00					
3/30/2010	Olympus NDT	OLYMP00014	Yes	Digital UT Gage	\$5,101.72					
3/31/2010	Olympus NDT	OLYMP00017	Yes	37DLP UT Gage	\$4,767.00					
8/25/2010	Olympus NDT	OLYMP00019	Yes	Digital UT Gage, Dual Transducer	\$8,502.52	\$8,502.52	In Full			
8/30/2010	Stroud Systems	OLYMP00020	Yes	ACDC Contour Probe, Spectronics BIB 150P	\$4,245.67					
9/16/2010	Olympus NDT	OLYMP00021	Yes	Right angle cable	\$200.31	\$200.31	In Full			
9/20/2010	Olympus NDT	OLYMP00022	Yes	Digital UT Gage	\$8,437.80					
10/28/2010	Olympus NDT	OLYMP00023	Yes	Heavy Microdot	\$196.82	\$196.82	In Full			
12/13/2010	Olympus NDT	OLYMP00024	Yes	Equipment upgrade SWO #68366-01	\$3,201.59	\$3,201.59	In Full			
1/27/2011	Inspection Software Systems	ISS00026	Yes	Standard Phased Array Probe & Angle beam	\$33,773.08	\$33,773.08	In Full			
1/27/2011	Oilind Safety	OILIN00029	Yes	Rechargeable batteries	\$5,200.00	\$5,200.00	In Full			
1/28/2011	ECUTECH, Inc.	ECU00030	Yes	Calibration tubes	\$1,657.31	\$1,657.31	In Full			
1/28/2011	Olympus NDT	OLYMP00031	Yes	Delta Alloy Analyzer 560487	\$600.00	\$600.00	In Full			
1/28/2011	Olympus NDT	OLYMP00032	Yes	Delta Alloy Analyzer 560495	\$24,481.25					
2/1/2011	Oilind Safety	OILIN00033	Yes	20 H2S monitors	\$2,297.79	\$2,297.79	In Full			
2/17/2011	Oxford Instruments	GUXR00032	Yes	X-MET 5000 Premium Alloy	\$35,560.13					
2/22/2011	Gulf X Ray	OLYMP00033	Yes	Test blocks	\$1,280.90	\$1,280.90	In Full			
3/2/2011	Olympus NDT	OLYMP00035	Yes	Probes	\$5,358.38	\$5,358.38	In Full			
3/28/2011	Olympus NDT	OLYMP00036	Yes	Eddy Current Probes	\$9,199.08	\$9,199.08	In Full			
4/1/2011	Stroud Systems	OLYMP00037	Yes	IRS Turbine	\$1,269.27	\$1,269.27	In Full			
4/15/2011	Olympus NDT	OLYMP00038	Yes	Phased Array Parts	\$12,928.30	\$12,928.30	In Full			
4/25/2011	Olympus NDT	OLYMP00039	Yes	Armored Cable	\$186.82	\$186.82	In Full			
5/2/2011	Oil Patch Technologies	OPTECH00037	Yes	C Rings	\$10,600.00	\$4,770.00	In Full			
5/4/2011	Star OES Services, LLC	STAR00038	Yes	Labor/ARCMET	\$1,250.00	\$1,250.00	In Full			
5/5/2011	Distribution International	DISIN00039	Yes	800007	\$103.76	\$103.76	In Full			
5/12/2011	Olympus NDT	OLYMP00040	Yes	Omniscan MX Phased Array upgrade	\$14,860.56	\$14,860.56	In Full			
5/17/2011	Innov-X Systems	INNOV00041	Yes		\$452.20	\$452.20	In Full			
7/5/2011	Olympus NDT	OLYMP00043	Yes	Tweede & Transducer	\$500.12	\$507.27	In Full			
7/15/2011	Star OES Services, LLC	STAR00044	Yes	Arc-Met Repairs - 800007	\$1,700.00	\$1,700.00	In Full			
8/5/2011	Olympus NDT	OLYMP00046	Yes	NIMH Battery (4)	\$559.37	\$564.03	In Full			
8/12/2011	Oil Patch Technologies	OPTECH00047	Yes	Calibration blocks (Not to exceed \$2500.0)	\$2,240.00	\$2,480.00	In Full			
8/12/2011	Olympus NDT	OLYMP00048	Yes	Lemo Cable	\$175.00	\$189.14	In Full			
8/24/2011	C. E. S.	CES00049	Yes	Laporte office Electrical work	\$615.61	\$707.40	In Full			
8/26/2011	Star OES Services, LLC	Star00050	Yes	Arc-Met Repairs	\$2,405.00	\$2,405.00	In Full			
8/26/2011	Star OES Services, LLC	Star00051	Yes	316L OES standard	\$235.00	\$235.00	In Full			
8/26/2011	Veritek	VCK00052	Yes	Adapter and mounting kits	\$1,594.36	\$1,081.51	In Full			
8/30/2011	Star OES Services, LLC	Star00053	Yes	ARC MET8000 Surface Adapter	\$550.00	\$550.00	In Full			
10/14/2011	Olympus NDT	OLYMP00054	Yes	Omni Scan Battery Pack	\$638.00					
10/25/2011	Olympus NDT	OLYMP00055	Yes	Near Field Probs	\$3,355.75	\$3,442.62	In Full			
10/28/2011	ECUTECH, Inc.	ECU00056	Yes	CAL STD	\$590.00	\$590.00	In Full			
11/3/2011	Olympus NDT	OLYMP00057	Yes	TEE	\$4,676.00	\$4,892.90	In Full			
11/3/2011	ECUTECH, Inc.	ECU00058	Yes	CAL STD	\$1,225.00	\$1,225.00	In Full			
11/14/2011	ECUTECH, Inc.	ECU00059	Yes	Support Stimulators	\$360.00	\$360.00	In Full			
11/14/2011	Olympus NDT	OLYMP00060	Yes	Compact Scanner for Omniscan	\$389.70	\$422.73	In Full			
11/21/2011	Olympus NDT	OLYMP00061	Yes	Cable and Encoder for HSMT scanner	\$1,959.33	\$1,969.55	In Full			
12/5/2011	Olympus NDT	OLYMP00062	Yes	Bobbin Probe	\$584.55					
12/6/2011	ECUTECH, Inc.	ECU00063	Yes	Calibration Standard 3/4" x .42 Copper ASME	\$245.00					

12/8/2011	Olympus NDT	OLMP0064	Yes	Phased Array Equipment OmniScan MX2	\$85,661.61					AMEX
12/15/2011	Olympus NDT	OLMP0065	Yes	Bobbins Probe	\$1,169.10					
12/20/2011	Mobile Mini, Inc.	Mob000066	Yes	15' Standard TRI door	\$4,205.46					
1/11/2012	AUT Solutions	AUT00001	Yes	Manual encoder scanner	\$5,196.00					
1/16/2012	3E NDT	3ENDT0001	Yes	Step wedges	\$1,569.08					
1/16/2012	Olympus NDT Inc.	OYMP00066	Yes	Nortect 500D	\$31,425.12					
1/19/2012	CoreStar	CORESTAR01	Yes	Probe heads	\$8,480.00					
1/26/2011	Olympus innovex		yes	Delta Classic 560495	\$24,481.25	In Full				
1/26/2011	Olympus innovex		yes	Delta Classic 560487	\$24,481.25	In Full				

## EXHIBIT "C"

### COMMERCIAL SECURITY AGREEMENT

Dated \_\_\_\_\_, 2012

<u>Debtor(s)</u>	<u>Secured Party</u>
J.Z. Russell Industries, Inc.	City of Port Arthur Section 4A Economic Development Corporation
3626 South Martin Luther King Drive	4173 39 <sup>th</sup> Street
Port Arthur, Texas 77640	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 promissory note(s) of even date herewith in the original principal sum of \$287,143, 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.

☒ **Other.** A first priority lien on all of Debtor's interest, now owned or hereafter acquired, in and to the enumerated equipment attached hereto as **Attachment "1"** and as detailed in Exhibit "D" in that certain Economic Incentive Contract & Loan Agreement between Debtor and Secured Party.

Invoice(s) for the above-described equipment shall be attached by Debtor to this Commercial 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 he fully applicable to all securities or similar property held in pledge hereunder, irrespective of whether Secured Party may have exercised any right to have such securities or similar property registered in its name or in the name of a nominee.

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

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

agrees to effect and obtain such registrations, filings, statements, rulings, consents and other matters as Secured Party may request.

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

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

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

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



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

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

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

J. **EVENTS OF DEFAULT.** Debtor shall be in default hereunder upon the happening of any of the following events or conditions: (i) non-payment when due (whether by acceleration of maturity or otherwise) of any payment of principal, interest or other amount due on any Obligation; (ii) the occurrence of any event which under the terms of any evidence of indebtedness, indenture, loan agreement, security agreement or, similar instrument permits the acceleration of maturity of any obligation of Debtor (whether to Secured Party or to others); (iii) any representation or warranty made by Debtor to Secured Party in connection with this Agreement, the Collateral or the Obligations, or in any statements or certificates, proves incorrect in any material respect as of the date of the making or the issuance thereof; (iv) default occurs in the observance or performance of, or if Debtor fails to furnish adequate evidence of performance of, any provision of this Agreement or of any note, assignment, transfer, other agreement, document or instrument delivered by Debtor to Secured Party in connection with this Agreement, the Collateral or the Obligations; (v) death, dissolution, liquidation, termination of existence, insolvency, business failure or winding-up of Debtor or any maker, endorser, guarantor, surety or other party liable in any capacity for any of the Obligations; (vi) the commission of an act of bankruptcy by, or the application for appointment of a receiver or any other legal custodian for any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceedings under any bankruptcy, arrangement, reorganization, insolvency or similar laws for the relief of debtors by or against, the Debtor or any maker, endorser, guarantor, surety or other party primarily or secondarily liable for any of the Obligations; (vii) the Collateral becomes, in the judgment of Secured Party, impaired, unsatisfactory or insufficient in character or value; or (viii) the filing of any levy,

attachment, execution, garnishment or other process against the Debtor or any of the Collateral or any maker, endorser, guarantor, surety or other party liable in any capacity for any of the Obligations.

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

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

2. **Remedies:** Secured Party shall have all of the rights and remedies provided for in this Agreement and in any other agreements executed by Debtor, the rights and remedies Of the Uniform Commercial Code of Texas, and any and all of the rights and remedies at law and in equity, all of which shall be deemed cumulative. Without limiting the foregoing, Debtor agrees that Secured Party shall have the right to: (a) require Debtor to assemble the Collateral and make it available to Secured Party at a place designated by Secured Party that is reasonably convenient to both parties, which Debtor agrees to do; (b) peaceably take possession of the Collateral and remove same, with or without judicial process; (c) without removal, render equipment included within the Collateral unusable, and dispose of the Collateral on the Debtor's premises; (d) sell, lease or otherwise dispose of the Collateral, at one or more locations, by public or private proceedings for cash or credit, without assumption of credit risk; and/or (e) whether before or after default, collect and receipt for, compound, compromise, and settle, and give releases, discharges and acquittances with respect to, any and all amounts owed by any person or entity with respect to the Collateral. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Secured Party will send Debtor reasonable notice of the time and place of any public sale or of the time after which any private sale or other disposition will be made. Any requirement of reasonable notice to Debtor shall be met if such notice is mailed, postage prepaid, to Debtor at the address of Debtor designated at the beginning of this Agreement, at least five (5) days before the day of any public sale or at least five (5) days before the time after which any private sale or other disposition will be made.

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

4. **Proceeds, Surplus, Deficiencies:** Proceeds received by Secured Party from disposition of the Collateral shall be applied toward Secured Party's expenses and other

Obligations in such order or manner as Secured Party may elect. Debtor shall be entitled to any surplus if one results after lawful application of the proceeds. Debtor shall remain liable for any deficiency.

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

L. **OTHER AGREEMENTS.**

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

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

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

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

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

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

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

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

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

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

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

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

**EXECUTED** this \_\_\_\_ day of \_\_\_\_\_, 2012.

**J.Z. Russell Industries, Inc.**

By: \_\_\_\_\_  
James W. Russell, Jr.

**EXHIBIT "D"**

**UCC-1**

**EXHIBIT "E"**  
**INTERCREDITOR AGREEMENT**

**(Gulf Coast Bank to provide)**

**EXHIBIT "F"**

**FIRST SOURCE REFERRAL AGREEMENT**



## **EXHIBIT "G"**

### **CERTIFICATION REGARDING LOBBYING**

**For Contracts, Grants, Loans, and Cooperative Agreements**

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

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

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

**J.Z. Russell Industries, Inc.**

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

By: \_\_\_\_\_  
James W. Russell, Jr., Vice President

**EXHIBIT "H"**  
**COMPLIANCE STATEMENT**

J.Z. Russell Industries, Inc. hereby certifies that it has fully complied with Local Government Code §176.006, as amended, which mandates the disclosure requirements for persons who contract or seek to contract with a local governmental entity.

**J.Z. Russell Industries, Inc.**  
**a Texas corporation**

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

By: \_\_\_\_\_  
James W. Russell, Jr., Vice President