

RESOLUTION NO. 12-276

**A RESOLUTION APPROVING AN ECONOMIC INCENTIVE
CONDITIONAL GRANT AND/OR LOAN AGREEMENT
BETWEEN CLIMATE CONTROLLED CONTAINERS, 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 4A Economic Development Corporation (PAEDC) to enter into an Economic Incentive Loan Agreement with Climate Controlled Containers, Inc. ("Incentive Recipient"); and

WHEREAS, Germer Getz, L.L.P. has indicated that Climate Controlled Containers, Inc. has presented an application qualifying as a Section 4A project as set forth in the Executive Summary; and

WHEREAS, the Incentive Recipient intends to initiate its business operations at a facility in Port Arthur, Texas; and

WHEREAS, the PAEDC will assist Incentive Recipient in the business endeavor by providing a Conditional Grant and/or Loan or other incentives in exchange for the creation of fulltime permanent jobs for Port Arthur residents; and

WHEREAS, Incentive Recipient plans to employ 100 new workers and seventy-five (75) will be Port Arthur residents with an annual salary of \$32,500 per employee, within five (5) years generate an annualized payroll of \$2,106,00 before December 31, 2017; and

**ECONOMIC INCENTIVE CONTRACT & LOAN AGREEMENT
BETWEEN THE CITY OF PORT ARTHUR SECTION 4A
ECONOMIC DEVELOPMENT CORPORATION
&
CLIMATE CONTROLLED CONTAINERS MANUFACTURING, LLC**

Executive Summary

Climate Controlled Containers Manufacturing, LLC ("Incentive Recipient") is a Texas limited liability company doing business in Port Arthur, Texas. Incentive Recipient is affiliated with Climate Controlled Containers, Inc. which has undertaken research and development since 1999 for the development of an autonomous, self-contained refrigerated shipping container for palletized cold goods (the "Cold Box"). Incentive Recipient intends to establish a new paradigm for transportation and storage of temperature sensitive products by controlling cold-chain management and chain of custody assurance. Cold Box can be utilized by segments of the refrigerated project market for an uninterrupted temperature-band-maintaining chain of custody high-value, temperature-critical items. The Cold Box technology has numerous applications worldwide including use by the pharmaceutical industry. Climate Controlled Containers, Inc. has established Climate Controlled Containers Manufacturing, Inc. as a separate entity which will manufacture the Cold Box containers while Climate Controlled Containers, Inc. remains in existence as a marketing and licensing company that will own technology and licensing associated with the Cold Box containers. Additionally, certain patents and technology will be owned by Mr. Ken Broussard and/or other family members who are the principle owners of Climate Controlled Containers, Inc. who will then license to either Climate Controlled Containers, Inc. or sublicense to the Incentive Recipient the use of these patents and technologies. The Incentive Recipient will be the primary operating entity for production, manufacturing and sales of the Cold Box, and it will be the entity where most all employees anticipated under this Agreement are to be employed. Incentive Recipient intends to initiate its business operations at a facility in Port Arthur, Texas. The City of Port Arthur Section 4A Economic Development Corporation ("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 for Port Arthur residents. The Incentive Recipient plans to employ 100 new workers with an average annual salary of \$32,500 per employee within five (5) years of beginning its business operations, and within ten (10) years of beginning its business operations, the Incentive Recipient's manufacturing facility should create direct and indirect worker salaries of \$88,045,451 and taxable sales and purchases created in the City at \$11,168,904.

PAEDC has proposed to provide a conditional grant of \$400,000 to be utilized by the Incentive Recipient for the purchase of equipment and materials needed for the initiation of its manufacturing operations in Port Arthur, Texas. The conditional grant will be secured by collateral security agreements including a commercial security agreement and financing statements wherein PAEDC will take a first lien on the equipment acquired with conditional grant proceeds and additional equipment as required to securitize the proposed conditional grant. Additionally, the conditional grant will be supported by the guaranties of Climate Controlled Containers, Inc.

In consideration of the conditional grant, the Incentive Recipient has agreed to the creation of 100 jobs as herein described over a period of five (5) years achieving employment of eleven (11) fulltime employees who shall be Port Arthur residents with an average annual payroll of \$32,500 per employee and an accumulated total payroll of \$154,040 by December 31, 2012. Additional milestones are set forth in the Agreement culminating with the Incentive Recipient achieving 75 fulltime permanent employees who are Port Arthur residents with an average annualized payroll of \$32,500 per employee and an annualized payroll of \$2,106,000 by June 30, 2017. The incentive obligations of the Incentive Recipient are to be met on or before December 31, 2017. Incentive Recipient will have the customary incentive agreement reporting requirements as required by the PAEDC.

The Incentive Recipient is negotiating with the City of Port Arthur, Texas (the "City") for a lease of property located at 3457 57th Street, Port Arthur, Texas (the "Property") which property shall be improved to meet the business requirements of Incentive Recipient. The property shall be improved through funding under a grant from the U.S. Department of Commerce Economic Development Administration ("EDA"). Incentive Recipient will lease the Property from the City at a negotiated fair market value rent and for a lease term of five (5) years with a five (5) year option. Incentive Recipient acknowledges that it is required to maintain its business operations in the City including all equipment purchased under the agreement with PAEDC for the term of the lease with the City for the Property. Incentive Recipient acknowledges its responsibility to employ Port Arthur residents to achieve its performance milestones under the proposed Economic Incentive Contract and Loan Agreement ("Agreement") and has agreed to undertake the obligations of the First Source Referral Agreement as outlined in the Agreement.

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THE CITY OF PORT ARTHUR SECTION 4A
ECONOMIC DEVELOPMENT CORPORATION
AND
CLIMATE CONTROLLED CONTAINERS MANUFACTURING, LLC
("INCENTIVE RECIPIENT")**

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("INCENTIVE RECIPIENT")**

INTRODUCTION

The Incentive Recipient is a Texas limited liability company doing business in Port Arthur, Texas. The Incentive Recipient (through its owner and affiliated company) has undertaken research and development since 1999 for the development of an autonomous, self-contained refrigerated shipping container for palletized cold goods (the "Cold Box"). Incentive Recipient intends to establish a new paradigm for transportation and storage of temperature sensitive products by controlling cold-chain management and chain of custody assurance. Cold Box can be utilized by segments of the refrigerated project market for an uninterrupted temperature-band-maintaining chain of custody high-value, temperature-critical items. The Cold Box technology has numerous applications worldwide including use by the pharmaceutical industry. Incentive Recipient intends to initiate its business operations at a facility in Port Arthur, Texas. The City of Port Arthur Section 4A Economic Development Corporation ("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 for Port Arthur residents.

AGREEMENT TERM

EFFECTIVE DATE

1. This Economic Incentive Contract and Loan Agreement ("Agreement") is entered into with an effective date of _____, 20__, but in no case later than _____, 20__, by and between the PAEDC and Incentive Recipient.

TERMINATION DATE AND START DATE

2. This Agreement expires the earlier of five (5) years after the Start Date 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. The "Start Date" shall be the date that the City of Port Arthur has completed all of the work and improvements it is required to make under the written Lease Agreement (the "Lease") being entered into between the City of Port Arthur, Texas (the "City"), as lessor, and Incentive Recipient, as lessee, for the premises located at 3451 57th Street, Port Arthur, Texas (the "Premises"), and such work and improvements have been approved by the City's architect or engineer hired by the City to oversee and supervise the construction work, and a final certificate of occupancy is issued to Incentive Recipient. The parties acknowledge that under the terms of the Lease, the City will make complete some initial work to the Premises,

including installing 3 phase electrical power and some air conditioning (the "Initial Work"), so that Incentive Recipient may take initial possession and start conducting business.

PARTIES

3. City of Port Arthur Section 4A Economic Development Corporation ("PAEDC"), located at 4173-39th Street, Port Arthur, Texas, 77642, is a corporation. It is duly authorized to do business in the State of Texas under 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. Climate Controlled Containers Manufacturing, LLC ("Incentive Recipient") is a Texas limited liability doing business in Port Arthur, Texas. The registered agent in Texas for the Incentive Recipient is Ken Broussard at 6645 Gulfway Drive, Port Arthur, Texas 77642.

PROMISED PERFORMANCE

5. The parties agree to perform as follows.

(a) PERFORMANCE BY PAEDC

- i. PAEDC shall conditionally grant Incentive Recipient \$400,000 for the purchase of equipment identified in this Agreement, subject to the conditions and limitations herein, which Incentive Recipient is not required to repay unless Incentive Recipient breaches this Agreement and fails to timely cure the breach after notice of default as hereinafter provided. If Incentive Recipient breaches this Incentive Agreement and fails to timely cure the breach, then the conditional grant (less earned credits) shall become a loan as provided in **Exhibit "A"**.
- iii. PAEDC will use its best efforts to pay invoices, or reimburse Incentive Recipient within forty-five (45) days of receipt for the equipment listed in **Exhibit "D"**.

HOWEVER, PAEDC WILL ONLY RELEASE FUNDS IN AN AMOUNT EQUIVALENT TO EQUIPMENT FOR WHICH PAEDC HAS DULY EXECUTED COLLATERAL SECURITY INTEREST. AS TO EQUIPMENT, AS HEREIN DESCRIBED, PAEDC WILL ONLY RELEASE FUNDS UPON RECEIPT OF REQUIRED DOCUMENTATION OF THE PURCHASE, BY INCENTIVE RECIPIENT OF SUCH CAPITAL EQUIPMENT AND MATERIALS 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 one hundred (100) employees at an annual total payroll of \$2,496,000,¹ as measured by Internal Revenue Service (IRS) forms W-2 and W-3.
- (2) Incentive Recipient promises that within 8 months after it takes possession of the premises under the Lease, it will achieve employment of eleven (11) fulltime employees who are Port Arthur residents and that by the end of the Agreement as shown in the Performance Milestone Schedule, Incentive Recipient promises that seventy-five (75) fulltime employees are Port Arthur residents.
- (3) The conditional grant by PAEDC to Incentive Recipient is to be secured by collateral security agreements including but not limited to a commercial security agreement as specified in Exhibit "B" and filed of record with the Secretary of State for the State of Texas by a Uniform Commercial Code filing as described in Exhibit "C", Incentive Recipient will provide a detailed outlay of all equipment and material to be acquired and to be secured by the collateral security agreement by providing an enumeration of equipment as described on Exhibit "D".
- (4) Incentive Recipient shall use the grant monies provided by the PAEDC exclusively for equipment not materially different² from the list provided to PAEDC by Incentive Recipient, a copy of which is attached as Exhibit "D". PAEDC agrees to pay for the equipment after its order by Incentive Recipient and upon delivery and payment being due to the supplier. Prior to ordering any equipment, Incentive Recipient shall confirm with PAEDC its availability of funds for such purchases.
- (5) If there is any breach by the City under its Lease with Incentive Recipient or there is any event of casualty to the Property making the property untenable, then during any period of casualty loss rendering the premises untenable, the performance milestone schedule under this Agreement shall be suspended for the period required to return the property to a condition of occupancy or a period of ninety (90) days whichever is greater. If there is a breach by the City under the Lease, the performance under this incentive may be abated for a period not to exceed one hundred eighty (180) days after which time all milestone schedules shall be adjusted to conform to the time of abatement.
- (6) 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

¹ Payroll is based on 2080 hours per year and a wage of \$16.00 per hour, per Incentive Recipient's application.

² "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.

Incentive Recipient may and 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 \$5.27 of payroll.
- (2) Total credit cannot exceed \$400,000.
- (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, and Incentive Recipient does not cure such failure within 15 days after PAEDC gives Incentive Recipient written notice of such failure.
- (4) Once Incentive Recipient has earned credits equal to \$400,000, the conditional grant and all obligations to PAEDC shall terminate, and Incentive Recipient shall have no further duties or obligations under this Agreement.
- (5) If the conditional grant or any portion thereof is converted to a loan, Incentive Recipient will have a period of five (5) years from the date of conversion to repay the loan. Once Incentive Recipient has paid the loan in full, Incentive Recipient shall be released and discharged from all further obligations under this Agreement.

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 assurances³ from Incentive Recipient that it can and will fully perform its contractual obligations. Failure to provide such reasonable assurances within 30 days 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)	December 30, 2012	Climate Controlled Containers Manufacturing, LLC issue a <u>status report</u> on building renovation and equipment purchase and installation together with the estimated date for business operations to commence to PAEDC CEO.
(b)	8 months after Incentive Recipient takes possession of the Premises	Achieve employment of <u>11</u> full-time permanent employees who are Port Arthur Residents with an annualized payroll of \$308,880 for Port Arthur residents.

³ Examples of reasonable assurances are copies of pending contracts and customer commitment letters.

(c)	June 30, 2013	Issue a <u>business operational report</u> to PAEDC CEO for the period January 1, 2013 to June 30, 2013.
(d)	18 months after the Start Date	Achieve employment of <u>24</u> full-time permanent employees who are Port Arthur residents with an annualized payroll of \$ 673,920. Total payroll for Port Arthur residents for year 1 and 2 not less than \$ 982,800.
(e)	June 30, 2014	Issue a <u>business operational report</u> to PAEDC CEO for the period July 1, 2013 to December 31, 2013.
(f)	24 months after the Start Date	Achieve employment of <u>39</u> full-time permanent employees who are Port Arthur residents with an annualized payroll of \$1,095,120. Total payroll for Port Arthur Residents for year 1, 2, and 3 not less than \$2,077,928.
(g)	June 30, 2015	Issue a <u>business operational report</u> to PAEDC CEO for the period January 1, 2014 to June 30, 2015.
(h)	42 months after the Start Date	Achieve employment of <u>56</u> full-time permanent employees who are Port Arthur residents with an annualized payroll of \$1,572,480. Total payroll for Port Arthur Residents for year 1, 2, 3 and 4 not less than \$3,650,400.
(i)	June 30, 2016	Issue a <u>business operational report</u> to PAEDC CEO for the period January 1, 2015 to June 30, 2016.
(j)	60 months after the Start Date	Achieve employment of <u>75</u> full-time permanent employees who are Port Arthur residents with an annualized payroll of \$2,106,000. Total payroll for Port Arthur Residents for year 1, 2, 3, 4 and 5 not less than \$5,756,408.
(k)	June 30, 2017	Issue a <u>business operational report</u> to PAEDC CEO for the period January 1, 2016 to June 30, 2017.
(l)	65 months after the Start Date	Climate Controlled Containers Manufacturing, LLC meets all PAEDC contractual Performance as Verified by the PAEDC CEO.
(m)	66 months after the Start Date	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, and likewise Incentive Recipient shall be released from all further duties, liabilities and obligations under 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 conditional grant, minus any credits earned, will automatically convert to a loan (liquidated damages) for a term ending five years from the Start Date, effective on the day of breach, as agreed by Incentive Recipient in the executed Conditional Commercial Promissory Note contained in **Exhibit "A."** Following such conversion to a loan as aforesaid, the PAEDC, at its sole option, may terminate its remaining funding obligations, if any, detailed in Section 5 herein. Further, the PAEDC shall be entitled to recover its reasonable and 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.

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, but excluding any books and records containing any trade secrets or other confidential proprietary information that belongs to Incentive Recipient or which Incentive Recipient has a duty to keep confidential (the "Confidential Information"). 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 (regardless of whether or not such information is in fact confidential or constitutes Confidential Information) 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 Public Information 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. Incentive Recipient shall have the right to review, dispute and contest any audit findings and to have a second audit performed by an independent auditor selected by it.

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 GRANT FUNDS PROVIDED BY THIS AGREEMENT, PROVIDED THAT SUCH CLAIM, DEMAND OR CAUSE OF ACTION DOES NOT ARISE FROM ANY FRAUD OR MISCONDUCT ON THE PART OF THE PAEDC OR THE CITY OF PORT ARTHUR, OR ANY AGENT, EMPLOYEE OR REPRESENTATIVE OF EITHER.

SUBCONTRACTS

22. 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, as amended, and Chapter 171, Local Government Code, as amended.

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 is reasonably expected to adversely 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 promptly 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, provided that all policy directives shall be issued on a uniform basis and made applicable to all grant recipients.

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 written notice and opportunity to cure and Incentive Recipient's failure to cure such default within 30 days, 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 Conditional 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. Such audits may not be required more than once a year, and Incentive Recipient shall be entitled to review, contest and dispute the audit findings and to have a second audit performed by a neutral auditor selected by it, the results of which may be used to support its position.
- (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 "D"**. 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, but excluding all Confidential Information.

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 120th 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

_____	Exhibit "A"	Conditional Commercial Promissory Note
_____	Exhibit "B"	Commercial Security Agreement
_____	Exhibit "C"	UCC-1 Financing Statement
_____	Exhibit "D"	Manufacturing Equipment List
_____	Exhibit "E"	Certification Regarding Lobbying

_____ Exhibit "F" First Source Referral Agreement
_____ Exhibit "G" Guaranty Agreement of Climate Controlled Containers, Inc.
_____ Exhibit "H" Compliance Statement
_____ 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

Incentive Recipient
6645 Gulfway Drive
Port Arthur, Texas 77642
ATTN: Ken Broussard

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. _____.

FORCE MAJEURE

51. All performance dates, milestone dates and time required for completing performance hereunder by Incentive Recipient shall be extended, as reasonably necessary and appropriate, to the extent Incentive Recipient's performance of its obligations hereunder have been delayed, hindered or prevented by force majeure or other events beyond its reasonable control.

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

CLIMATE CONTROLLED CONTAINERS MANUFACTURING, LLC

SIGNED AND AGREED TO on the ____ day of _____, 2012.

**Climate Controlled Containers
Manufacturing, LLC, a Texas limited
Liability company**

By: _____

Title

Acknowledgment

EXHIBIT "A"

CONDITIONAL COMMERCIAL PROMISSORY NOTE

Port Arthur, Texas

This COMMERCIAL PROMISSORY NOTE becomes effective on the date when _____, a Texas _____ (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 _____, 20__.

Effective Date of Note: This Note shall become effective on the date of breach of its obligations under this Agreement and following notice thereof from PAEDC and thirty-day (30-day) opportunity to cure, said date being the _____ day of _____, 20__ ("Note Date").

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

Term of the Loan: This loan shall have a term from the Note Date to _____ (the "Final Payment Date").

Payment Schedule: The principal amount together with interest at the hereinafter described rate shall be payable in equal monthly installments from the Note Date until _____, and all outstanding principal and interest due hereunder shall be due and payable.

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 herefor 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 _____, 20__.

_____,
a _____

By: _____
Signature

Its: _____
Title

THE STATE OF TEXAS
COUNTY OF JEFFERSON

§
§
§

ACKNOWLEDGEMENT

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the ____ day of _____, 20__.

Notary Public, State of Texas

MAKERS' ADDRESS FOR RECEIPT OF NOTICE:

_____, a _____
c/o _____

_____, Texas 77____

EXHIBIT "B"

COMMERCIAL SECURITY AGREEMENT

Dated _____, 20__

Debtor(s)	Secured Party
_____	City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC")
	4173 39 th Street
, Texas 77	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 \$_____, 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 AND ONLY THE COLLATERAL DESCRIBED IN THE PARAGRAPHS INITIALED BY DEBTOR SHALL BE COVERED BY THIS SECURITY AGREEMENT)

☐ **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 equipment as detailed in Exhibit "D" as detailed in that certain Economic Incentive Contract and Loan Agreement between Debtor and Secured Party dated the ___ day of ___, 20__ and as more fully described as follows:

Computerized Metal Punch	\$ 65,000
Computerized Saw	\$ 28,000
Hand Welders	\$ 20,000
Automatic Coating Line	\$ 10,000
Fork Lift	\$ 5,000
Truck	\$ 30,000
Trailer	\$ 12,000
Sheet Metal Brake	\$ 30,000
Air Compressor	\$ 20,000
Aluminum Base Material	\$ 10,000
Insulation	\$ 50,000

Refrigeration Sets	\$50,000
Control Sets	\$50,000
Total	\$410,000

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.

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:** Not applicable.

F. **ADDITIONAL PROVISIONS REGARDING ACCOUNTS.** Not applicable.

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

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

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

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

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

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

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

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

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

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

4. **Voting Rights:** Upon default, or if Secured Party deems itself insecure, Secured Party shall have the right, at its discretion, to transfer to or register in the name of Secured Party or any nominee of Secured Party any of the Collateral and/or to exercise any or all voting rights as to any or all of the Collateral. For such purposes, Debtor hereby names, constitutes and appoints the President or any Vice President of Secured Party as Debtor's proxy in the Debtor's name, place and stead to vote any and all of the securities, as such proxy may elect, for and in the name, place and stead of Debtor, as to all matters coming before

shareholders, such proxy to be irrevocable and deemed coupled with an interest. The rights, powers and authority of said proxy shall remain in full force and effect, and shall not be rescinded, revoked, terminated, amended or otherwise modified, until all Obligations have been fully satisfied.

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

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

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

8. **Power of Attorney:** Debtor hereby makes, constitutes, and appoints Secured Party or its nominee, its true and lawful attorney in fact and in its name, place and stead, and on its behalf, and for its use and benefit to complete, execute and file 'with the United States Securities and Exchange Commission one or more notices of proposed sale of securities pursuant to Rule 144 under the Securities Act of 1933 and/or any similar filings or notices with any applicable state agencies, and said attorney in fact shall have full power and authority to do, take and perform all and every act and thing whatsoever requisite, proper or necessary to be done, in the exercise of the rights and powers herein granted, as fully to all intents and purposes as Debtor might or could do if personally present. This power shall be irrevocable and deemed coupled with an interest. The rights, powers and authority of said attorney in fact herein granted shall commence and be in full force and effect from the date of this agreement,

and such rights, powers and authority shall remain in full force and effect, and this power of attorney shall not be rescinded, revoked, terminated, amended or otherwise modified, until all Obligations have been fully satisfied.

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

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

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

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

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

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

J. **EVENTS OF DEFAULT.** Debtor shall be in default hereunder upon the happening of any of the following events or conditions: (i) non-payment when due (whether by acceleration of maturity or otherwise) of any payment of principal, interest or other amount due on any Obligation; (ii) the occurrence of any event which under the terms of any evidence of indebtedness, indenture, loan agreement, security agreement or, similar instrument permits the acceleration of maturity of any obligation of Debtor (whether to Secured Party or to others); (iii) any representation or warranty made by Debtor to Secured Party in connection with this Agreement, the Collateral or the Obligations, or in any statements or certificates, proves incorrect in any material respect as of the date of the making or the issuance thereof; (iv) default occurs in the observance or performance of, or if Debtor fails to furnish adequate evidence of performance of, any provision of this Agreement or of any note, assignment, transfer, other agreement, document or instrument delivered by Debtor to Secured Party in connection with this Agreement, the Collateral or the Obligations; (v) death, dissolution, liquidation, termination of existence, insolvency, business failure or winding-up of Debtor or any maker, endorser, guarantor, surety or other party liable in any capacity for any of the Obligations; (vi) the commission of an act of bankruptcy by, or the application for appointment of a receiver or any other legal custodian for any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceedings under any bankruptcy, arrangement, reorganization, insolvency or similar laws for the relief of debtors by or against, the Debtor or any maker, endorser, guarantor, surety or other party primarily or secondarily liable for any of the Obligations; (vii) the 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, 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) business days before the day of any public sale or at least five (5) business 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 _____, 20__.

_____,
a _____

By: _____
Signature

Its: _____
Title

EXHIBIT "C"

UCC-1

EXHIBIT "D"

EQUIPMENT LIST

Computerized Metal Punch	\$ 65,000
Computerized Saw	\$ 28,000
Hand Welders	\$ 20,000
Automatic Coating Line	\$ 10,000
Fork Lift	\$ 35,000
Truck	\$ 30,000
Trailer	\$ 12,000
Sheet Metal Brake	\$ 30,000
Air Compressor	\$ 20,000
Aluminum Base Material	\$ 10,000
Insulation	\$ 50,000
Refrigeration Sets	\$ 50,000
Control Sets	\$ 50,000
Total	\$410,000

EXHIBIT "E"

CERTIFICATION REGARDING LOBBYING

For Contracts, Grants, Loans, and Cooperative Agreements

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

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

By: _____
Signature

Its: _____
Title

EXHIBIT "F"

FIRST SOURCE REFERRAL AGREEMENT

PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION

FIRST SOURCE EMPLOYMENT AGREEMENT

Resolution Number: _____

Project Name: _____

Project Address: _____

Project Contact Person _____

Project Contact Person Phone Number _____

This First Source Employment Agreement, for recruitment, referral, and placement of Port Arthur residents, is between the Port Arthur Economic Development Corporation, hereinafter referred to as PAEDC, and _____,

hereinafter, referred to as EMPLOYER. Under this Employment Agreement, the EMPLOYER will use PAEDC as its first source for recruitment, referral, and placement of new hires or employees for the new jobs created by their project and will hire 35% Port Arthur residents for all new jobs created.

I. GENERAL TERMS

A. The EMPLOYER will use PAEDC as its first source for the recruitment, referral and placement of employees.

B. PAEDC participation in this Agreement will be carried out by the Chief Executive Officer of the Port Arthur Economic Development Board, which is responsible for referral and placement of employees, designated by PAEDC.

C. PAEDC will provide recruitment, referral and placement services to the EMPLOYER subject to the limitations set out in this Agreement

D. This Agreement shall take effect when signed by the parties below and shall be fully effective for the duration of the incentive contract and any extensions or modifications to the contract.

E. PAEDC and the EMPLOYER agree that for purposes of this Agreement, new hires and jobs created include all EMPLOYER'S job openings and vacancies in the Port Arthur Area created as a result of internal promotions, terminations, and expansions of the EMPLOYER'S workforce, as a result of this project.

II. RECRUITMENT

A. The EMPLOYER will complete the attached Employment Plan, which will indicate the number of new jobs projected, salary range, and hiring dates. The EMPLOYER will notify PAEDC of its specific need for new employees as soon as that need is identified.

B. Notification of specific needs, as set forth in Section II.A. must be given to PAEDC at least five (5) business days (Monday - Friday) before using any other referral source, and shall include, at a minimum, the number of employees needed by job title, qualification, hiring date, rate of pay, hours of work, duration of employment, and work to be performed.

C. Job openings to be filled by internal promotion from the EMPLOYER'S current workforce need not be referred to PAEDC for placement and referral.

D. The EMPLOYER will submit to PAEDC, prior to starting work on the project, the names, and social security numbers of all current employees, including apprentices, trainees, and laid-off workers who will be employed on the project.

III. REFERRAL

PAEDC will screen and refer applicants according to the qualifications supplied by the EMPLOYER.

IV. PLACEMENT

A. PAEDC will notify the EMPLOYER, prior to the anticipated hiring dates, of the number of applicants PAEDC will refer. PAEDC will make every reasonable effort to refer at least two qualified applicants for each job opening.

B. The EMPLOYER will make all decisions on hiring new employees but will in good faith use reasonable efforts to select its new hires or employees from among the qualified persons referred by PAEDC.

C. In the event PAEDC is unable to refer the qualified personnel requested, within five (5) business days (Monday - Friday) from the date of notification, the EMPLOYER will be free to directly fill remaining positions for which no qualified applicants have been referred.

Notwithstanding, the EMPLOYER will still be required to hire 35% Port Arthur residents for the new jobs created by the project.

D. After the EMPLOYER has selected its employees, PAEDC will not be responsible for the employees' actions and the EMPLOYER hereby releases PAEDC, from any liability for employees' actions.

V. TRAINING

PAEDC and the EMPLOYER may agree to develop skills training and on-the-job training programs; the training specifications and cost for such training will be mutually agreed upon by the EMPLOYER and PAEDC and set forth in a separate Training Agreement.

VI. CONTROLLING REGULATIONS AND LAWS

A. To the extent this Agreement is in conflict with any labor laws or governmental regulations, the laws or regulations shall prevail.

B. PAEDC will make every effort to work within the terms of all collective bargaining agreements to which the EMPLOYER is a party.

C. The EMPLOYER will provide PAEDC with written documentation that the EMPLOYER has provided the representative of any involved collective bargaining unit with a copy of this Agreement and has requested comments or objections. If the representative has any comments or objections, the EMPLOYER will promptly provide them to PAEDC.

VII. EXEMPTIONS

A. Employment openings the contractor will fill with individuals already employed by the company.

B. Job openings to be filled by laid-off workers according to formally established recall procedures and rosters.

C. Suppliers located outside of the Port Arthur Area and who will perform no work in the Port Arthur Area.

VIII. AGREEMENT MODIFICATIONS, RENEWAL, MONITORING, AND PENALTIES

A. If, during the term of this Agreement, the EMPLOYER should transfer possession of all or a portion of its business concerns affected by this Agreement to any other party by lease, sale, assignment, merger, or otherwise, the EMPLOYER as a condition of transfer shall:

1. Notify the party taking possession of the existence of the EMPLOYER'S Agreement.
2. Notify the party taking possession that full compliance with this Agreement is required in order to avoid termination of the project.
3. EMPLOYER shall, additionally, advise PAEDC within seven (7) business/calendar days of the transfer. This advice will include the name of the party taking possession and the name and telephone of that party's representative.

B. PAEDC shall monitor EMPLOYER'S performance under this Agreement. The EMPLOYER will cooperate in PAEDC' monitoring effort and will submit a Contract Compliance Form to PAEDC quarterly.

C. To assist PAEDC in the conduct of the monitoring review, the EMPLOYER will make available payroll and employment records for the review period indicated.

D. If additional information is needed during the review, the EMPLOYER will provide the requested information to PAEDC.

E. With the EMPLOYER submission of the final request for closure of Agreement from the Board, the EMPLOYER shall:

1. Document in a report to the Compliance Officer its compliance with the requirement that 35% of the new employees hired by the project be Port Arthur residents; or
2. Submit a request to the Compliance Officer for a waiver of compliance with the requirement that 35% of the new employees hired by the project be Port Arthur residents and include the following documentations:
 - a. Material supporting a good faith effort to comply;
 - b. Referrals provided by PAEDC and other referral sources; and
 - c. Advertisement of job openings listed with PAEDC and other referral sources.

F. The Compliance Officer may waive the requirement that 35% of the new employees hired by the project be Port Arthur residents, if the Compliance Officer finds that:

1. A good faith effort to comply is demonstrated by the contractor;
2. The EMPLOYER is located outside the Port Arthur Area and none of the contract work is performed inside the Port Arthur Area;

3. The EMPLOYER enters into a special workforce development training or placement arrangement with PAEDC; or

4. PAEDC certifies that insufficient numbers of Port Arthur residents in the labor market possess the skills required by the positions created as a result of the contract.

G. Willful breach of the First Source Employment Agreement by the EMPLOYER, or failure to submit the Contract Compliance Report, or deliberate submission of falsified data, may be enforced by the compliance Officer through imposition of penalties, including monetary fines of up to 30% of the total amount economic development incentive awarded as determine by the Board of Directors.

H. The EMPLOYER and PAEDC, or such other agent as PAEDC may designate, may mutually agree to modify this Agreement.

I. The project may be terminated because of the EMPLOYER'S noncompliance with the provisions of this Agreement.

Dated this _____ day of _____ 20_____

Signed:

Port Arthur EDC

Signature of Employer

Name of Company

Address

Telephone

E-mail

EXHIBIT "G"

GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT, dated as of _____, 20__ (the "Guaranty"), is made between The City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC"), and Climate Controlled Containers, Inc. (the "Guarantor"), a corporation duly organized and validly existing under the laws of the State of Texas. Capitalized terms used in this Guaranty and not defined otherwise are used herein as defined in the Economic Incentive Contract and Loan Agreement, dated _____, 2012 (the "Agreement"), between the PAEDC, as grantor, and Climate Controlled Containers Manufacturing, Inc., a Texas corporation as grantee (the "Grantee"). Those definitions are incorporated in this Guaranty by reference.

WITNESSETH THAT: WHEREAS,

A. Upon the terms and conditions set forth in the Agreement, the PAEDC is willing to convey certain real property to the Grantee and make certain financial grants to the Grantee to enable the Grantee to improve and construct the Project, and the Grantee is willing to agree to provide certain employment and economic opportunities to the residents of Port Arthur, Texas.

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

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

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

ARTICLE I.

REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR

Section 1.1. The Guarantor represents and warrants as follows:

(a) The Guarantor has full corporate power under applicable law and its articles of incorporation, code of regulations and bylaws, each as amended to date, to enter into, observe and perform all covenants, agreements and obligations on its part hereunder.

(b) The Guarantor has authorized the signing and delivery of this Guaranty by all necessary and proper corporate action.

(c) The signing, delivery, observance and performance by the Guarantor of this Guaranty and the Guarantor's covenants, agreements and obligations hereunder do not, and will not, (i) violate any law now existing, (ii) contravene or constitute a default under any agreement, indenture, trust agreement or understanding to which

the Guarantor is a party or by which it or its property may be bound, or (iii) contravene any provision of the Guarantor's articles of incorporation, code of regulations or bylaws, each as amended to date.

(d) This Guaranty (i) is made in furtherance of the purposes for which the Guarantor was incorporated, (ii) is necessary to promote and further the business of the Guarantor and is, in the estimation of the Guarantor, desirable to promote the best interests and further the mission of the Guarantor, and (iii) will result in direct financial benefits to the Guarantor.

ARTICLE II.

COVENANTS AND GUARANTEES

Section 2.1. The Guarantor, jointly and severally with any other guarantor to the PAEDC of the obligations of the Grantee herein guaranteed, hereby absolutely and unconditionally guarantees to the PAEDC at any time:

(a) the full and prompt performance of all covenants, agreements and obligations of the Grantee under the Agreement, and

(b) the payment of all principal, interest and other sums due, whether by acceleration or otherwise, together with all late charges, disbursements, expenses, and deficiencies pursuant to that certain Commercial Promissory Note made by the Grantee to the PAEDC as of even date herewith (collectively the "Guaranteed Debt") together with the performance of Grantee's obligations under any documents or instruments executed in connection with or given to secure the Guaranteed Debt, and

(c) the full and prompt payment of all expenses and charges, including without limitation, to the extent permitted by law, reasonable attorneys' fees and expenses, paid or incurred by the PAEDC acting as Grantor under the Agreement and in realizing any of the payments guaranteed hereby or in enforcing this Guaranty.

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

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

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

(a) the compromise, settlement, release or termination of any or all of the covenants, agreements or obligations of the PAEDC under the Agreement;

(b) the failure to give notice to the Guarantor of the occurrence of a default under this Guaranty or an Event of Default under the Agreement, except as provided specifically in this Guaranty;

(c) the waiver of the payment, observance or performance by the PAEDC or the Guarantor of any of their covenants, agreements or obligations under this Guaranty or the Agreement;

(d) the extension of the time for observance or performance of any covenant, agreement or obligation under this Guaranty or the Agreement, or the extension or the renewal of any extension;

(e) the modification or amendment of any covenant, agreement or obligation under the Agreement;

(f) the taking or the omission of any action under this Guaranty or the Agreement;

(g) any failure, omission or delay on the part of the PAEDC to enforce, assert or exercise any right, power or remedy conferred on the PAEDC under this Guaranty or the Agreement, or any act or omission on the part of the PAEDC at any time;

(h) the dissolution or liquidation of the Guarantor or any failure by the Guarantor to vacate promptly any execution, garnishment or attachment of such consequence that it will impair the Guarantor's ability to observe and perform its covenants, agreements and obligations under any agreement, contract or other instrument or document to which it is a party or by which it or its property is or may be bound; provided that the term "dissolution or liquidation," as used in this subsection, shall not be construed to include the cessation of the corporate existence of the Guarantor resulting either from a merger or consolidation of the Guarantor into or with another Person, or from a dissolution or liquidation of the Guarantor following a transfer of all or substantially all of its assets as an entirety;

(i) the occurrence of any of the following:

(i) the admission by the Guarantor in writing of its inability to pay its debts generally as they become due,

(ii) the entering of an order for relief in any case commenced by or against the Guarantor (except cases commenced by the Guarantor against third parties) under federal bankruptcy law, as in effect from time to time,

(iii) a general assignment by the Guarantor for the benefit of creditors, or

(iv) the appointment of a receiver for the Guarantor or for the whole or any substantial part of its property;

(j) to the extent permitted by law, the release or discharge by operation of law of the Guarantor from the observance or performance of any covenant, agreement or obligation under this Guaranty or any other agreement, contract or other

instrument or document to which it is a party or by which it or its property is or may be bound;

(k) the default or failure of the Guarantor to observe or perform fully any of its covenants, agreements or obligations under this Guaranty or any other agreement, contract or other instrument or document to which it is a party or by which it or its property is or may be bound;

(l) the default of the PAEDC under the Agreement; or

(m) to the extent permitted by law, the invalidity of the Agreement, this Guaranty, any agreement, contract or other instrument or document to which the Guarantor is a party or by which it or its property is or may be bound.

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

Section 2.4. If there is a default by the Grantee under the Agreement or the Commercial Promissory Note made by the Grantee thereunder, the PAEDC shall proceed first against the Grantee, but is not required to exhaust its remedies against the Grantee and its security or other rights in the collateral of the Grantee, prior to resorting to any remedy of the PAEDC as to the Guarantor; however, Guarantor will pay all reasonable costs, expenses and fees (including without limitation, to the extent permitted by law, all court costs, attorneys' fees, expenses, prejudgment interest and post-judgment interest) that the PAEDC incurs in the process of exercising its remedies against Grantee, to comply with this section. If Guarantor finds that further action against Grantee is futile, Guarantor may request in writing that PAEDC halt executing remedies against Grantee, after which PAEDC may proceed with remedies against Guarantor.

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

Section 2.6. The Guarantor covenants and agrees that, so long as the Agreement is in effect, the Guarantor will preserve and will keep in full force and affect its corporate existence.

Section 2.7. (a) The failure of the Guarantor to abide by or to observe or perform any covenant, agreement or obligation hereunder, or any inaccuracy in any material adverse respect of, or any material adverse omission from, any representation or warranty herein, shall constitute a default hereunder.

(b) The occurrence of any of the following shall also constitute a default hereunder:

- (i) the admission by the Guarantor in writing of its inability to pay its debts generally as they become due;
- (ii) the entering of an order for relief in any case commenced by or against the Guarantor (except any case commenced by the Guarantor against a third party) under federal bankruptcy law, as in effect from time to time;
- (iii) a general assignment by the Guarantor for the benefit of creditors;
- (iv) the appointment of a receiver for the Guarantor or for the whole or any substantial part of its property; or
- (v) the dissolution or liquidation of the Guarantor or the failure by the Guarantor to vacate within 90 days any execution, garnishment or attachment of such a consequence that it will impair the Guarantor's ability to carry out its covenants, agreements and obligations hereunder. The term "dissolution or liquidation of the Guarantor," as used in this clause, shall not be construed to include the cessation of the corporate existence of the Guarantor resulting either from a merger or consolidation of the Guarantor into or with another Person, or from a dissolution or liquidation of the Guarantor following a transfer of all or substantially all of its assets as an entirety, in accordance with the Agreement.

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

(c) If the default hereunder shall consist of the breach of any of the covenants, agreements or obligations of the Guarantor under Section 2.1, or if any default shall occur under Section 2.7(b), upon written demand by the PAEDC, the Guarantor shall (i) cause any such covenant, agreement or obligation to be performed or met and (ii) pay forthwith, or make provision for payment, to the PAEDC without further demand or notice and regardless of whether there has been any other default or event of default under the Agreement, the amount due and payable under the Agreement and the Guaranty.

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

(d) In the case of a default hereunder, other than under Sections 2.1 and 2.7(b), the PAEDC upon obtaining knowledge of such default shall promptly give the Guarantor written notice of the default at the Guarantor's Notice Address, by registered or certified mail, postage prepaid, return receipt requested, and if the default continues unremedied for 30 days following the giving of the notice, the PAEDC shall have the rights, remedies and powers, and the Guarantor shall make the payments, described in Section 2.7(c); provided, however, that if the default (other

than a default under Sections 2.1 or 2.7(b)) can be remedied but not within that period, that failure shall not constitute a default, so long as the Guarantor is taking appropriate corrective action as permitted under the Agreement.

Section 2.8. Rights, remedies and powers under this Guaranty may be exercised, either separately or cumulatively, in the event of one or more defaults under this Guaranty.

ARTICLE III.

NOTICE AND SERVICE OF PROCESS, PLEADINGS AND OTHER PAPERS

Section 3.1. The Guarantor covenants and agrees that it is subject to service of process in the State of Texas, and that it will remain so subject to that service of process so long as the Agreement remains in full force and effect or any obligations of the Grantee remain outstanding thereunder. If the Guarantor should not be subject to that service of process for any reason, it designates and appoints as the Guarantor's agent, without power of revocation,

(a) the _____, _____, Texas 77____, and his successors, or

(b) if that agent shall cease to act, the Secretary of State of the State of _____,

upon whom shall be served all process, pleadings, notices or other papers that may be served upon the Guarantor as a result of any of its covenants, agreements and obligations under this Guaranty.

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

ARTICLE IV.

MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

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

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

CITY OF PORT ARTHUR SECTION 4A
ECONOMIC DEVELOPMENT CORPORATION

By: _____
President

By: _____
Secretary

_____,
a _____

By: _____
Signature

Its: _____
Title

APPROVED AS TO FORM: _____
Guy N. Goodson, GERMER GERTZ, L.L.P.

STATE OF TEXAS §
 §
COUNTY OF JEFFERSON §

On this _____ day of _____, 20__, before me, a Notary Public in and for said County and State, personally appeared _____, President of the PAEDC, who acknowledged that, with due authorization, he did sign the foregoing instrument on behalf of the PAEDC and that the same is his free act and deed individually as such officer and the free act and deed of the PAEDC.

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

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF JEFFERSON §

On this _____ day of _____, 20__, before me, a Notary Public in and for said County and State, personally appeared _____, Secretary of the PAEDC, who acknowledged that, with due authorization, she did sign the foregoing instrument on behalf of the PAEDC and that the same is her free act and deed individually as such officer and the free act and deed of the PAEDC.

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

Notary Public, State of Texas

STATE OF _____ §
 §
COUNTY OF _____ §

On this _____ day of _____, 20__, before me, a Notary Public in and for said County and State, personally appeared _____, _____ of _____, who acknowledged that, with due authorization, he did sign the foregoing instrument on behalf of _____ and that the same is his free act and deed individually as such officer and the free act and deed of _____.

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

Notary Public, State of _____

EXHIBIT "H"

COMPLIANCE STATEMENT

_____ hereby certifies that it has fully
complied with Local Government Code §176.006, effective June 18, 2005, which
mandates the disclosure requirements for persons who contract or seek to
contract with a local governmental entity.

_____,
a _____

By: _____
Signature

Its: _____
Title