

REQUEST FOR PROPOSALS (“RFP”)

RFP Number: DEVSBI2101

The Ohio Development Services Agency, Business Services Division requests proposals for:

Ohio Regional 166 Direct Loan Program Administration

RFP Issued: **4/12/2021**

Inquiry Period Begins: **4/12/2021**

Inquiry Period Ends: **4/28/2021** at 8:00 a.m.

Proposals Due: **5/10/2021** by 2:00 p.m.

Submit Proposals via e-mail to:

Andy Shaw, Agency Procurement Officer
Ohio Development Services Agency
Budget & Finance Office
Procurement@development.ohio.gov

Please submit all inquiries about this RFP through the state procurement website at www.ohio.gov/procure. Please refer to Part Three of this RFP, “General Instructions”, for instructions on submitting inquiries through the state procurement website. All responses to inquiries submitted by applicants will be posted on the state procurement website for viewing by all prospective applicants.



Development
Services Agency

PARTS

Part One	Structure of this RFP
Part Two	Services Requested Information
Part Three	General Instructions
Part Four	Evaluation of Proposals
Part Five	Contract Award

PART ONE: STRUCTURE OF THIS RFP

EXHIBITS

Exhibit 1	Regional 166 Direct Loan Program Guidelines & Policies
Exhibit 2	Loan Closing Documents Templates <ul style="list-style-type: none">• Loan & Security Agreement• Cognovit Promissory Note• Notification of Disbursement & Project Completion• Guaranty• Open End Mortgage (no personal property)• Open End Mortgage (real & personal property)• Assignment of Loan Documents• Assignment of Mortgage
Exhibit 3	Loan Package Requirements & Process
Exhibit 4	Monthly Loans Report Template

ATTACHMENTS

Appendix 1 –	Standard Affirmation and Disclosure Form and Standard Terms and Conditions <ul style="list-style-type: none">○ Standard Affirmation and Disclosure Form must be signed by an authorized official of Applicant’s organization and must be included for any proposal to be scored
Appendix 2 –	Ohio Development Services Agency’s Standard Loan Administration and Escrow Agreement <ul style="list-style-type: none">○ Ohio Development Services Agency’s standard or boilerplate Loan Administration and Escrow Agreement○ This sample document is provided only for convenience and the terms and conditions contained therein are subject to change without notice
Appendix 3 -	Ohio Development Services Agency’s Frequently Asked Questions (FAQs) <ul style="list-style-type: none">○ Ohio Development Services Agency’s response to previous Inquiries

PART TWO: SERVICES REQUESTED INFORMATION

PURPOSE

The Ohio Development Services Agency, Business Services Division (“Development”) or (“Agency”), requests proposals from qualified not for profit economic development corporations or port authorities (each an “Administrator”) interested in administering the Ohio Regional 166 Direct Loan Program (the “Program”) for Development and the State of Ohio (“State”). Administrators will administer the Program and will market the Program to potential business borrowers and other groups and entities (further described in the Scope of Work below), to help create economic development opportunities in the State.

The Agency is requesting proposals from Administrators to provide these services from the date of an executed award through **June 30, 2023**.

BACKGROUND

The Ohio Regional 166 Direct Loan Program is an integral part of the State's economic development strategy. The Program is authorized under Chapter 166 of the Ohio Revised Code and funded through the Facilities Establishment Fund. Job creation and positive economic growth are the most immediate desired results of this Program. The Program promotes economic development, business expansion, and job retention and/or job creation by providing financial assistance to entities for the reimbursement of allowable costs of Eligible Projects (defined in the Program Structure section). This financial assistance takes the form of low-interest loans to businesses creating new and/or retaining existing employment opportunities at an entity's project site in the State.

Administrators wishing to respond to this RFP must be able to meet certain technical capacity requirements and operate in geographic areas of the State where the loan proceeds will generate quality loan opportunities.

To ensure uniformity and maximum effectiveness of the Program, expectations of an Administrator and escrow agent(s) are outlined in greater detail in the Program Guidelines (Exhibit 1) (“Program Guidelines”). Exhibit 3 of this RFP outlines the loan package requirements and the loan approval processes.

Note: The Agency reserves the right to reject any or all responding Administrators, to negotiate pertinent terms, and to request oral presentations from some, or all, of the responding Administrators. See Part Three of this RFP for details.

SCOPE OF WORK

Administrators approved for this Program will:

- Prepare and provide to the Agency an implementation and marketing plan for the Program to generate potential borrower activity. The Program marketing plan shall target potential borrowers, as well as those groups or entities (such as banks, credit unions, economic

development entities, etc.) that can channel loan leads to the Administrator. The Administrator shall develop and maintain marketing materials that highlight the Program's strengths and offerings to the business community in their service area. These ongoing marketing materials shall be provided to the Agency.

- Process requests for funding from prospective borrowers for Eligible Projects (defined in the Program Structure section below), including advising borrowers (and the participating banks and credit unions) of the Program Guidelines, eligibility requirements, jobs commitment requirements, approval processes, forms to be completed, and likely timelines of potential loan approvals.
- With the information received from a prospective borrower, determine Program guideline eligibility, structure the loan, and perform the credit underwriting of the funding request.
- Prepare a commitment letter after the Agency and the Controlling Board approve the loan to signal to the borrower that it may begin to incur eligible costs for the Eligible Project.
- Verify the Eligible Project is complete (through a project site visit and satisfactory review of supporting documentation) in accordance with the Program Guidelines.
- Notify the Escrow Agent, identified in the Escrow Agent section below, in writing to disburse the loan proceeds in accordance with the loan agreement and the Program Guidelines, and provide to the Agency (via e-mail) the Notification of the Disbursement (Exhibit 2), once the loan has been disbursed.
- Monitor its respective Program portfolio and notify the Agency of any changes in the condition of the portfolio as they arise.
- Exercise responsibilities/duties regarding delinquent loans in accordance with the Program Guidelines.

PROPOSAL CRITERIA

A proposal will be evaluated based on the quality and completeness of the components below. These components demonstrate desired qualifications that the Agency believes are indicative of an Administrator's ability to successfully administer the Program. A proposal should, but is not required to, demonstrate the following:

- a) Internal (employee) capability to complete credit analysis, according to a set of criteria, including, but not limited to, debt service coverage ratios, current and quick ratios, loan to value ratios, debt/equity ratios, days receivable, days payable, days inventory ratios, and others that could be deemed appropriate for the analysis;
- b) An internal board or committee with knowledge of local markets to review loan transactions and provide analysis of staff work;
- c) The capacity to analyze a variety of transactions, including commercial and industrial projects;
- d) An existing portfolio of quality loan projects being professionally serviced by the Administrator, demonstrating a positive track record in administering types of financing similar to this Program;
- e) A description and amount of Program fees that will be charged and collected by the Administrator. This may include initiation fees, processing fees, and servicing fees. Additionally, please classify any fees paid to the Escrow Agent for their services rendered;
- f) The capacity to cover a service area of at least five (5) counties;
- g) A marketing plan that details how the Administrator will market the Program to economic

development partners, business assistance centers, banks, credit unions, businesses, and potential borrowers; and

- h) Identify the funding amount requested, along with a clear outline of how the requested funds will be utilized to further Program goals (generation of new loans, administration costs, others) and achieve any Administrator objectives, along with the anticipated timeline of the use of the requested funds. For existing Administrators, the amount requested should only reflect additional resources beyond the current award amount. For new Administrators, the amount should reflect the funds needed to establish a sustainable revolving loan fund. The anticipated timeline should reflect quarterly activity through June 30, 2023.

The evaluation of the RFP will focus on the following key measures, and Administrators are strongly encouraged to indicate their expertise in each of the following:

▪ **Technical capacity**

- A performance evaluation and/or third-party audit of the Administrator's organization, and a spreadsheet itemizing any Program loans currently on its books by borrower name, approval date, loan amount, rate and loan terms, security position, payback period, and outstanding principal and interest.
- Specify which loans are in default of the loan terms (including any economic development criteria including, but not limited to, job creation and retention) or are delinquent, regardless of whether there has been a notice of default.

▪ **Organizational capacity**

- A profile of Administrator's organization, including Administrator's budget, sources of operating income, cash flow, and overall performance with regard to Administrator's mission. Include Administrator's most recent audited financial statements and most recent interim financial statements.
- Provide an organizational chart, a list of board members, and a list of loan review board/panel members.
- A description of the geographic area currently being served by the organization. Priority will be given to those Administrators that provide service in distressed cities and counties as identified on the most recent priority investment map found on Development's website, at https://development.ohio.gov/reports/reports_pra.htm.
- A description of other loan programs administered by the Administrator's organization, if applicable, and a brief summary of their performance in the administration of those programs.
- A list of staff who will administer this Program, along with their qualifications, including resumes, capacity to manage the existing workload, and any new demands on their time as a result of this Program.

▪ **Administrative capacity**

- Clear, concise, and sound administrative processes outlining the Administrator's policies and procedures for: loan intake, loan closing, performance monitoring, and collection and delinquency.

▪ **Economic Development Impact**

- Include a brief description of other potential loan programs also available to borrowers in the Administrator's geographical area that could be used in conjunction with the Program funds.
- A realistic estimate of the volume and dollar amount of Program loans that could be originated by the Administrator under this Program by State fiscal year-end 2022 and 2023 (June 30).

PART THREE: GENERAL INSTRUCTIONS

The following sections provide a calendar of events, details on how to respond to this RFP, and how to get more information about this RFP. All responses must be complete and in the prescribed format.

CALENDAR OF EVENTS & ON-LINE INFORMATION

The schedule for this RFP is given below and is subject to change at any time at the discretion of Development. If Development changes the schedule before the Proposal Due Date, it will do so through an announcement on the State Procurement website area for this RFP at the following link: <http://procure.ohio.gov/proc/index.asp>. The website announcement will be followed by an addendum to this RFP, which will also be made available through the same State Procurement website.

It is each prospective Applicant's responsibility to check the State Procurement website's question-and-answer area for this RFP for current information and the calendar of events scheduled through the award of any contract.

Other than by adherence to the RFP Inquiry process, set forth below, no contact related to this RFP shall be made with Development until a contract award is announced. Notwithstanding this prohibition, Development, at its sole discretion, may request additional information as part of the review process outlined below.

Firm Dates

RFP Issued: April 12, 2021
Inquiry Period Begins: April 12, 2021
Inquiry Period Ends: April 28, 2021 at 8:00 am
Proposals Due: May 10, 2021 by 2:00 pm

Estimated Dates

Contract Award Notification: By May 31, 2021
Execution of Loan Administration and Escrow Agreement: By June 30, 2021

PROPOSAL SUBMITTAL

Proposals must be submitted in the following manner:

- **Proposals must be submitted via e-mail no later than May 10, 2021, by 2:00 pm to Procurement@development.ohio.gov.**
- Proposals are to be formatted on 8.5 x 11-inch paper.
- Margins must not be less than ¾ of an inch on all sides.

- The font must be 10 points or larger with no more than 6 lines of text per inch.
- Proposals should be no more than 25 pages in length. Required forms, such as Appendix 1, will not be counted toward the maximum total. Exhibits of required information (such as Administrator's financial information, audits, staff resumes, Administrator's credit policies and procedures, etc.) can be attached to the proposal, and those exhibit pages shall not count toward the maximum 25-page total.
- All pages must be numbered consecutively using the format "Page [#] of [total number of pages]" (e.g., Page 2 of 20).

Applicants are advised there will be no opportunity to correct mistakes or deficiencies in their submitted materials after the Proposal Due Date. Proposals that are incomplete or otherwise missing required information may not be evaluated.

It is the Applicant's responsibility to ensure timely submission of a complete Proposal. Late Proposals may not be scored. Development is under no obligation to consider a Proposal that is received after the Proposal Due Date or that is incomplete. Proposals that are not submitted in the format requested may not be scored.

No supplementary or revised materials will be accepted after the Proposal Due Date unless specifically requested by Development.

All costs incurred in the preparation of the Proposal shall be borne by the Applicant alone. In the event of an award, Development will not reimburse any of the costs incurred in the preparation of the Proposal.

Any and all documents developed by the Applicant during the course of this project will be provided to Development upon request and will become the property of Development. The Applicant shall not assert any claims arising under the copyright or otherwise inconsistent with the transfer of ownership of such documents.

All information submitted in response to this RFP shall be a public record unless a statutory exception exists that would protect the information from release to the public. Any information submitted with the Proposal which the Applicant reasonably believes to be a trade secret, as that term is defined in Section 1333.61 of the Ohio Revised Code, may be designated as such by marking the information as follows: the phrase "trade secret," marked with two asterisks on each side, must be placed at the beginning and end of the trade secret information (example: ** TRADE SECRET **). In addition, the trade secret information shall be underlined. Information determined to be a trade secret under the laws of the State of Ohio may be protected as trade secrets by Development in accordance with Ohio law.

Development reserves the right to:

- Accept or reject any and all Proposals and/or bids if Development determines that it is in the best interests of the State to do so.
- Rebid this RFP, requesting new Proposals from qualified Applicants.
- Waive or modify minor irregularities in the Proposals received.
- Negotiate with Applicant(s), within the requirements of this RFP, to best serve the interests of the State.
- Require the submission of modifications or additions to the Proposals as a condition of further

participation in the selection process.

- Fund any Proposal in full or in part; any assignments of work by Development under the scope of this RFP will be made dependent on need and the availability of adequate, specific funding.
- Not make an award at the end of the evaluation process; this RFP is not to be interpreted or construed to guarantee that one or more Applicants submitting responses will be awarded contracts.
- Adjust the RFP Calendar of Event dates for whatever reason it deems appropriate.
- Contact Applicant to clarify any portion of the Applicant's submittal.

If, during the review process, Development determines that it is necessary to make further distinctions between certain Applicants, it may request certain selected Applicants to make a presentation to staff and reviewers.

In accordance with federal and state statutes and Development policy, no person shall be excluded from participation or subject to discrimination in the RFP process based on race, color, age, sex, national origin, military status, religion, or disability.

INQUIRIES

Applicants may make inquiries or seek clarifications regarding this RFP any time during the inquiry period listed in the RFP Calendar of Events. To make an inquiry, Applicants must use the following process:

1. Access the State Procurement website at <https://procure.ohio.gov>.
2. From the Navigation Bar at the top, select "for Suppliers".
3. Under the title "Bid Opportunities", select "All Opportunities".
4. Enter the RFP Number found on Page 1 of this document as the "Document/Bid Number".
5. Click the "Search" button.
6. Select this RFP.
7. On the document information page, click the "Submit Inquiry" button.
8. On the document inquiry page, complete the required "Personal Information" section by providing the following:
 - a. First and last name of the prospective Applicant's representative who is responsible for the inquiry;
 - b. Name/Company/Business of the prospective Applicant;
 - c. Representative's business phone number; and
 - d. Representative's e-mail address.
9. Type the inquiry in the space provided, making certain to include the following:
 - a. A reference to the relevant part of this RFP;
 - b. The heading for the provision under question; and
 - c. The page number of the RFP where the provision can be found.
 - d. Enter the Security Number.
10. Click the "Submit" button.

Applicants submitting inquiries will receive an immediate acknowledgment by e-mail that their inquiry has been received. **The Applicant who submitted the inquiry will not receive an e-mail response to the question but will need to view the response on the State Procurement website where it will be posted**

for viewing by all Applicants.

Applicants may view inquiries using the following process:

1. Access the State Procurement website at <https://procure.ohio.gov>.
2. From the Navigation Bar at the top, select "for Suppliers".
3. Under the title "Bid Opportunities", select "All Opportunities".
4. Enter the RFP Number found on Page 1 of this document as the "Document/Bid Number".
5. Click the "Search" button.
6. Select this RFP.
7. On the document information page, click the "View Q & A" button to display all inquiries with responses submitted to date.

Development will try to respond to all properly posed inquiries within 48 hours, excluding weekends and state holidays. Development will not respond to any inquiries received after 8:00 am on April 28, 2021. Applicants who attempt to seek information or clarifications verbally will be directed to reduce their questions to writing in accordance with the terms of this RFP and state procurement policy. No other form of communication is acceptable, and use of any other form of communication or any attempt to communicate with Development staff or any other agency of the State to discuss this RFP may result in the Applicant being deemed ineligible.

PART FOUR: EVALUATION OF PROPOSALS

EVALUATION PROCESS

Development's evaluation process of responses submitted to this request may consist of up to four distinct phases:

1. Development's initial review of all proposals for timely submission;
2. An evaluation committee review of the proposals for defects and scoring;
3. Development's request for more information (clarifications, interviews, presentations, and/or demonstrations); and,
4. Negotiations or best offer requests.

At its sole discretion, Development will determine whether steps three and/or four of the evaluation process are necessary under this RFP, reserving for itself the ability to eliminate or add steps three or four at any time during the evaluation process. Development may add or remove sub-phases to steps 2 through 4 at any time if Development believes doing so will improve the evaluation process.

A minimum average score of 80 must be achieved during the evaluation process to be considered for the contract.

PROPOSAL EVALUATION CRITERIA

In the proposal evaluation phase, Agency staff or reviewers selected by the Agency will rate the proposals submitted in response to this RFP based on the following criteria and weight assigned to each criterion.

Evaluation Criteria	Weight
Technical Capacity: 1. Credit Evaluation	Up to 15 points
Organizational Capacity: 1. Staff capacity and composition of the loan review board 2. Geographical reach and balance 3. Stability of cash flows/income	Up to 20 points
Administrative Capacity: 1. Clear, concise, and sound administrative processes (i.e. collection and delinquency procedures, loan intake procedures, loan closing procedures, and economic development/loan monitoring procedures.) 2. Plan outlining intent to service existing loan portfolios	Up to 20 points
Economic Development Impact: 1. Marketing plan outlining ways and means to market the Program 2. Funding request vs. demonstration of economic need	Up to 20 points
Fees structure, cost presentation, and competitiveness	Up to 10 points
Past experience administering loan programs, including previous performance utilizing Program funds	Up to 15 points

		Total:	100 points
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PART FIVE: CONTRACT AWARD

CONTRACT AWARD PROCESS

Development intends to award one or more contracts under the scope of this RFP and as based on the RFP Calendar of Events schedule, so long as it determines that doing so is in the State's best interests and Development has not otherwise changed the award date.

Any award decision by Development under this RFP is final. After Development makes its decision under this RFP, all Applicants will be notified (in writing or by phone, at Development's discretion) of the final evaluation and determination as to their Proposals.

Development will issue a notice of contract award to the selected Applicant(s) and finalized contract terms and conditions will be forwarded for signature. Once copies of the contract are submitted by the Applicant(s) and pending any further approvals that may be required (e.g., State Controlling Board), Development will fully execute the contract.

Once the contract is fully executed, Development will issue to the Applicant(s) one (1) copy of the signed instrument for its/their files.

Unless otherwise negotiated and included in the executed contract/scope of work, the selected Applicant(s) shall be bound by all outlined services, policies, and procedures as contained in their submitted and evaluated proposal.

NUMBER OF AWARDS

Development anticipates making at least one award depending on Program needs and the fit of the Applicant(s) to the scope of this RFP.

Exhibit 1:

Ohio Regional 166 Loan Program Guidelines & Policies

This sample document is provided only for convenience and the terms and conditions contained herein are subject to change without notice.

Regional 166 Direct Loan Program Guidelines & Policies

The Ohio Regional 166 Direct Loan Program (the “Program”) is an integral part of the State's overall economic development strategy. The Program is authorized under Chapter 166 of the Ohio Revised Code and funded through the Facilities Establishment Fund. Job creation and positive economic growth are the most immediate desired results of this Program. The Program promotes economic development, business expansion, and job retention and/or creation by providing financial assistance to entities for the reimbursement of allowable costs of Eligible Projects (defined below). This financial assistance takes the form of low-interest loans to businesses creating new and/or retaining existing employment opportunities at an entity’s project site in the State.

The Ohio Development Services Agency (“Development” or the “Agency”) provides the following Program Guidelines & Policies (the “Guidelines & Policies”) to set forth the requirements and expectations of the Agency for each Program Administrator. These Guidelines & Policies amplify and explain the structure of the Program and any duties of the parties under a Loan Administration and Escrow Agreement (the “Agreement”) entered into among the Agency, the Administrator, and any party serving as Escrow Agent, and this document may be modified from time to time by the Agency.

Program Structure

Eligible Projects

Eligible Projects include those related to industry, commerce, distribution, or research activities (“Eligible Project” or “Project”). Requests for Program funds from any borrower with outstanding liabilities with the Ohio Environmental Protection Agency or Ohio Department of Taxation will not be considered by the Ohio Controlling Board or funded until those liabilities have been resolved.

Note: Refinancing and retail projects (as defined by the Ohio Revised Code Chapter 166) are ineligible. The Program has been designed to provide financing to established businesses with a minimum of 2-3 years of financial operating history, who may have challenges in obtaining adequate financing required to grow their business and create jobs. The Program is not designed to provide financing to start-ups; however the Director reserves the right to consider a waiver of this prohibition in extraordinary circumstances at the request of the Administrator. The Administrator’s waiver request should be accompanied by documentation supporting a business case that there is a strong management team in place with demonstrated success in running a business of this type, a strong business plan with realistic financial projections based on experienced management’s previous proven successes operating a business of this type, strong guarantor support, strong collateral/security, possible participation in the Project by a commercial lender to share risk, and compelling economic development reasons.

Allowable Costs/Uses

- Land and/or building purchase – if the project involves the purchase of an existing building, the business must occupy at least 51% of the premises;
- Machinery & equipment purchases;
- Building construction and/or renovation costs – in the case of construction, the business must occupy at least 60% of the premises;
- Long-term leasehold improvements;
- Ongoing fixed-asset purchases; and
- Capitalizable costs directly related to a fixed-asset purchase.

Note: The Program cannot be utilized to finance management buyouts or leveraged buyouts of an existing business. The Program cannot be used to finance the purchase of company stock or goodwill. The Program cannot be utilized to buy the fixed assets of a business that is winding down or has recently ceased operations, however the Director reserves the right to consider a waiver of this prohibition in extraordinary circumstances at the request of the Administrator. The Administrator's waiver request should be accompanied by documentation supporting a business case that there is: strong collateral coverage (demonstrated by a qualified appraisal), ample Borrower equity and financial strength, strong loan security, evidence that the Program loan is not being used by the failing/failed seller (or related entities) of the fixed asset seller to shed debt/refinance/restructure debt while potentially harming existing shareholders/creditors, and compelling economic development reasons.

Total Project Financing

The Program may finance up to 40% of an Eligible Project, with loans up to \$1,000,000. The Agency requires a minimum of 10% equity contribution from the borrower in the Eligible Project, however, a greater equity contribution may be required based on due diligence. The remaining Eligible Project shall be funded by the borrower either directly or indirectly through third-party investors and/or private lenders. Notwithstanding the foregoing, if there is no third-party financing in the Eligible Project, up to 75% of the Eligible Project may be funded by Program loan proceeds with the remainder funded by the borrower's equity contribution.

Note: Program loans are "take-out" financing (eligible project costs/uses must be purchased with interim financing with the loan disbursing upon project completion).

Term

Terms shall be based upon the useful life of the property financed with Program loan proceeds and should typically reflect the term of the third-party financial institution loan in the project, if applicable. The Director reserves the right to consider a discretionary waiver of this requirement at the request of the Administrator. The Administrator's waiver request should be accompanied by documentation supporting a business case that the Borrower / Co-borrowers / Guarantors have sufficient financial strength, and/or that other credit enhancements will be employed sufficient to reduce Program loan repayment risks associated with differing loan terms. The maximum term for real estate (only) loans is up to 20 years and the maximum term for loans to acquire machinery and equipment is up to 10 years.

Interest Rate

Interest rates shall be fixed at or below local market rates at the time the loan is presented to Development for approval.

Job Creation/Retention

Promoting economic development is one of the key Agency objectives, and as such, job creation and/or retention must be taken into consideration while reviewing proposed loans. Priority may be given to Eligible Projects with higher wages and job creation commitments in a distressed area of the State; however, a specific loan dollar/job ratio is not required. The loan agreement will outline the date (metric evaluation date) by which certain commitments, including the job commitments, must be fulfilled.

Security & Collateral

The Agency requires Program loans to have adequate collateral / security and typically requires a first priority mortgage and/or lien position on Project costs/uses financed with the Program proceeds, or an acceptable Intercreditor Agreement providing for shared proceeds. Additional credit enhancements (such as those outlined below) are often employed to ensure that Program loans are adequately secured.

- Personal guarantees from owners with more than 20% ownership in the company;
- Corporate guarantees from related companies;
- Life insurance on key business owners and/or managers;
- Full or partial letter of credit from a recognized financial institution; and/or
- Other types of credit enhancements, if necessary.

If a first or shared-first collateral position is not available, a second collateral position may be taken, provided that the loan is structured to provide adequate collateral/security, perhaps through the use of additional credit enhancements.

Assets offered as collateral may be required to undergo a third-party evaluation (i.e. appraisal) in accordance with these Guidelines & Policies.

Borrowers cannot transfer ownership of any entity without approval from the Agency, even in case of sale of related entities or subsidiaries not pledged as collateral. It is the borrower's responsibility to inform the Administrator and the Agency before such sale or change in ownership interest is complete. If the borrower is sold or substantially sells all of its assets, the Program loan must be paid off as part of the sale. However, the assumption of a loan may be considered on a case-by-case basis and must be approved by Development.

Prepayment

The Agency imposes no pre-payment penalty.

Program Fees

An Administrator may receive such fees, as outlined below, to administer and service the

Program:

1. **Initiation Fee:** A loan initiation fee not to exceed One Thousand Dollars (\$1,000.00) payable by the borrower at the time of the application submission.
2. **Processing Fee:** A processing fee in an amount not to exceed one and one-half percent (1.5%) of the loan amount, paid by the borrower at the time of loan closing for services rendered in the processing of the loan request.
3. **Servicing Fee:** A monthly servicing fee in an amount not to exceed one-twelfth (1/12) of one-quarter (1/4) of one (1) percent of the outstanding principal balance of the loan.
4. **Reimbursement of Costs:** Reimbursement of actual and necessary costs incurred by the Administrator for the processing of the request for assistance, including, but not limited to, reimbursement for payments to outside consultants and recording and filing fees.

Administrator Compensation

The Escrow Agent shall disburse to the Administrator in consideration of the administration of its loans in the Program an amount equal to sixty percent (60%) of the monthly payments of interest collected from borrowers for each outstanding Program loan. However, for existing loans with a project site located in an Ohio county designated as part of the Appalachian Region (https://development.ohio.gov/files/cs/arc_local_dev_dist_201909_2.pdf), the Escrow Agent shall disburse to the Administrator in consideration of its administration of such loans an amount equal to seventy-five percent (75%) of the monthly payments of interest collected from borrowers for each outstanding Program loan. For any new loan originated under this current Loan Administration and Escrow Agreement, whose project site is located in an Ohio county designated as part of the Appalachian Region, the Escrow Agent shall disburse to the Administrator in consideration of its administration of such loan an amount to equal to eighty-five percent (85%) of the monthly payments of interest collected from borrowers for each such new outstanding Program loan.

Administrator Responsibilities

Evaluating Credit Worthiness

The Administrator will gather necessary information from the prospective borrower to conduct due diligence and credit analysis. This information request may include but, is not limited to, borrower's historical and current financial statements, financial projections, personal/corporate historical and current financial statements from all loan guarantors, appraisals of collateral, environmental clearances, industry reports, and other commonly utilized resources (such as D&B, IBISWorld, Lexis Nexis, etc.) used to analyze credit risk. This information-gathering exercise shall include a site visit by the Administrator to the prospective borrower's place of business, and potentially to the project site. Upon receipt, the Administrator shall evaluate the following components before making a determination and recommendation to advance Program funds to a prospective borrower:

- **Ability to Repay:** Can the business demonstrate (through historical and/or current financial statements) that it can generate enough cash to pay for the project financing?

This should include an analysis of the borrower's existing lines of credit and loans, an understanding of the working capital needs/availability of the borrower, and the borrower's payment history.

- **Management:** Has the business demonstrated sufficient management capability to handle the Project and to position the company for likely Program loan repayment and job creation?
- **Collateral / Security:** All assets offered as collateral of the Program loan should have some form of cost verification (e.g., appraisals, third-party estimates, purchase agreements). In most cases, the Agency will accept the documents provided to (and accepted by) the private lender (bank/credit union) that are providing additional financing for the Project.
- **Employment Impact:** The number of full-time jobs the borrower expects to create and retain.

Loan Closing and Disbursement

Following receipt of the Ohio Controlling Board approval, the Administrator shall establish a closing date and a disbursement date for the Loan and notify the Agency of such closing and disbursement dates. In case of loans being serviced by the Agency, the Administrator shall provide the Agency with a Notification of Disbursement (Exhibit A of the Agreement), not fewer than ten (10) business days before the scheduled disbursement date.

These Guidelines & Policies require the use of an Agency prescribed template for certain loan documents. The Agency will provide the template for certain loan documents to each Administrator. For loan documents that the Agency does not provide the Administrator with Agency-approved templates, the Administrator may use its forms/templates. The Administrator will also be responsible for delivering to the Agency a copy of the transcript of all loan documents within ten (10) business days of a loan closing. At the time of the loan closing, the Administrator shall assign all its rights, title, and interest in and to the executed loan closing documents to the Agency (the "Assignment"). Such Assignment shall be in a form and substance as approved by the Agency. Further, the Administrator shall cause the mortgage and such other of the security documents as are appropriate, any instruments supplemental thereto, financing statements, including all necessary amendments, supplements, and appropriate continuation statements, to be recorded, registered, and filed, in such a manner, and in such places as may be required to establish, preserve, and protect the lien(s) in favor of the Agency. Filings shall be in the name of the Administrator and assigned to the Agency as outlined in these Guidelines & Policies.

No Program funds shall be disbursed until after the receipt of confirmation that the Assignment has been made. The following documents are also required before disbursement can take place:

- The certificate of the borrower setting forth in reasonable detail, the cost incurred in the completion of the Eligible Project, including a detailed category of allowable costs;

- If the security for the loan consists of an interest in real property or fixtures, an ALTA loan policy or policies of title insurance insuring the Agency's interest created by the loan documents at the level of priority therein provided;
- All UCC-II searches or responses to UCC-II requests as are appropriate, disclosing only such filings as are consistent with the Agency's interest created by the loan documents;
- Satisfactory evidence of all insurance coverages required by the loan documents;
- Satisfactory evidence of zoning compliance, availability of utilities and all necessary licenses and permits required in connection with the Eligible Project; and
- Documents evidencing and securing the additional financing.

To the extent that the Eligible Project involves construction, the following documents are also required:

- The certificate of the borrower certifying the completion date of the Eligible Project, that all improvements have been made and all Eligible Project costs have been paid;
- Certificates of occupancy;
- A satisfactory environmental audit of the Eligible Project performed in accordance with such standards set forth by the Agency and provided to the Administrator; and
- Such other waivers, certificates, assurances, assignments, instruments, documents materials, opinions, or information required to fully protect the interests of the Agency in the Eligible Project intended to be created by the loan documents, in accordance with the loan approval documents.

Loan Administration – Reporting Requirements

Within 30 business days following the end of each calendar month, the Administrator shall provide the Agency and Escrow Agent with a monthly project report detailing the status of each loan including information on closed loans, loan balances, past-due loans, annual financial reporting status, loans in default, and other relevant information as applicable in a form prescribed by the Agency. If a borrower is non-compliant with its reporting requirements under the loan agreement, the Administrator will make reasonable efforts to collect these documents and provide the same to the Agency upon request.

A failure by the Administrator to report promptly may result in the assessment of a penalty of \$500 per occurrence. Repeated failures may result in the removal of the Administrator from the Program, along with a transfer of servicing responsibilities by the Agency to itself or another Administrator.

The Administrator shall inform all borrowers that the Agency may randomly select them for a confidential survey concerning the Program process and the borrower's experience. Such information shall be used to evaluate the performance of the Administrator and as a means to improve the Program. The Administrator shall inform Program applicants and borrowers that they will have routine reporting obligations to the Administrator and to Agency over the life of their loan. The routine reporting obligations shall include, but are not limited to annual financial reporting, annual certification of no default, annual job creation and retention reporting, and

other information regarding the borrower's business operations (financial or otherwise) as the Director may reasonably request. This information shall be provided in the format requested by the Director.

Portfolio Monitoring and Servicing

The Administrator shall collect/track satisfactory evidence of all insurance coverages required by the loan agreements throughout the terms of all loans, and shall notify the Agency if a borrower fails to maintain the insurance coverages required by the loan agreement. Further, the Administrator shall maintain UCCs and/or other security interests the Agency has in accordance with the loan agreement for the term of the loan, and shall only release these security interests when the loan has been paid in full or at the written instruction of the Agency. The Administrator shall perform periodic site visits (or at the request of the Agency) to the borrowers in their portfolios to validate loan collateral, jobs, business health, provide customer service, build goodwill, and to further identify future credit needs. The Administrator shall assist the Agency in collecting any and all required reports from Program borrowers on a timely basis, and shall assist the Borrowers as necessary in completing these reports. The Administrator shall assist the Agency in obtaining executed copies of loan agreement amendments, letters, forbearance agreements, and other documents from Program borrowers that may be required by the Agency in association with any modification to the terms of the original loan documents.

Delinquency

In the event that a loan payment is delinquent for 30 days (or more), the Administrator must inform the Agency and advise of the collection efforts undertaken by the Administrator. Should any loan remain in payment default for forty-five (45) days without a defined workout plan in progress, or a loan modification or forbearance agreement executed (with the advice and consent of the Agency), that loan shall immediately be forwarded to the Agency for additional due diligence and possible remedial action. The Administrator will remove from its list of outstanding loans any loans that are forwarded to the Agency for collections. The Administrator shall send the Agency a summary of the remediation/collection efforts along with any documents that have been sent to the borrower.

Loan Defaults

For all non-delinquency loan defaults, the Administrator shall notify the Agency of an event of default, whether declared or undeclared, within ten (10) business days of knowledge of such default. The Administrator may develop a workout plan and propose remedies to a borrower, with the advice and consent of the Agency. The Agency will remain available to assist the Administrator if requested in developing workout plans and remedies. The Agency must provide written consent to and memorialize any workout plans that require any amendment to the Loan Agreement and other loan closing documents. This consent to modify loan terms must be obtained through Development's loan modification process, and are initiated by submitting an Incentive Modification Request Form to the Agency. The Administrator should assist Borrowers as necessary in completing and submitting the Incentive Modification Form to Development, and the completed form should be accompanied by a memo of support from the Administrator.

Note: If the Agency agrees to amend the Borrower's Loan Agreement in such a way that it modifies the Borrower's loan repayment terms/obligations, the Agency will draft an amendment to the loan agreement memorializing these modifications, and will send a copy of the amendment to the Borrower through the Administrator for execution. The executed copy will then be returned to the Agency. The Agency will execute the amendment, and then send a fully executed copy to the Administrator who will provide a copy to the Borrower and the Escrow Agent accompanied by a revised Note and amortization schedule. In certain circumstances, at the Agency's discretion, the Agency may determine that it must assume the loan servicing for a particular loan in default. Should any loan remain in default for forty-five (45) business days without a defined workout plan in progress, or a loan modification or forbearance agreement executed, that loan shall be forwarded to the Agency for additional due diligence and remedies, including potential certification of the loan to the Ohio Attorney General's Office. The Administrator shall send the Agency a summary of the remediation/collection efforts along with any documents that have been sent to the borrower.

In the event a borrower commences Bankruptcy proceedings, the Administrator shall immediately notify the Agency.

Books and Records

The Administrator shall provide the Agency with prompt access to and a right to examine the books and records of the Administrator, as is necessary to ensure compliance with the terms of the Agreement. The Administrator shall not destroy or remove from its premises any books or records maintained in connection with its administration of the Program and shall promptly forward to the Director or his agent all such books and records upon the Agency's request or upon the termination of the Agreement.

Escrow Agent Responsibilities

Development will serve as the Escrow Agent ("Escrow Agent") for disbursements and repayment collection under this Program. Notwithstanding the foregoing, an existing Administrator in the Program under a previously executed Loan Administration and Escrow Agreement before July 1, 2016, may elect to continue the use of its current third-party Escrow Agent.

If the Agency is not serving as the Escrow Agent for a particular Administrator, the Escrow Agent shall be a public depository eligible to receive and hold public deposits as provided in Sections 135.01 to 135.21 of the Ohio Revised Code. All amounts representing the repayments of principal and interest shall be held, invested, reinvested, and disbursed in accordance with the Agreement.

Additional responsibilities of the Escrow Agent include:

- Establish and maintain an escrow account to disburse the Program loan amount on the disbursement date, and to collect repayments of principal and interest on outstanding loans. All disbursements shall be made upon written authorization of the Administrator

and/or the Agency and in accordance with the Agreement (the “Escrow Account”). No portion of the escrow balance shall be paid by the Escrow Agent to any person or organization except in compliance with the terms of the Agreement, or at the written direction of the Administrator or the Agency;

- Receive and deposit Program loan repayments and loan-related fees from borrowers, and apply/post these payments to the respective Program loans in accordance with the Agreement;
- All amounts received representing repayments of principal and interest on the loan, and loan-related fees shall be held, invested, reinvested, and disbursed in accordance with the Agreement, and at the direction of the Agency;
- Report monthly (and/or as requested) to the Administrator regarding the repayment status of each outstanding Program loan, in a manner and at such times as requested by the Administrator;
- Verify payments of interest, principal, and servicing fees collected and disburse the monthly administrator compensation to the Administrator in accordance with the terms described in the Agreement;
- Complete and submit to the Agency, by the 15th day of each month, in a form satisfactory, a report which outlines the payments of interest, principal, and servicing fees received and verifies the amounts disbursed to the Administrator as allowable under the Agreement, during the preceding month;
- Maintain accurate records of all transactions, and make this record available for inspection/audit by the Agency as needed;
- Should the Agency determine that reallocation of all or a portion of the Escrow Amount (as defined in the Agreement) is necessary for the effective administration of the Program, and upon a minimum of thirty (30) days prior written notice to the Administrator and Escrow Agent, the Agency may direct, in its sole discretion, the Escrow Agent to disburse all or any portion of the Escrow Amount back to the Director or another entity serving as escrow agent for another administrator in the Program; and
- Exhibit D to the Agreement shall outline the fees that will be paid to the Escrow Agent, out of the Escrow Account, as full payment for its services. Exhibit D to the Agreement must be submitted to the Director for review before the execution of the Agreement, and the fee structure outlined in Exhibit D of the Agreement shall be subject to the Director’s approval. The fees shall be payable to the Escrow Agent solely from the Escrow Account. The Agency shall not be responsible for any other fee or expense of the Escrow Agent.

Exhibit 2:

Loan Closing Documents Templates

This sample document is provided only for convenience and the terms and conditions contained herein are subject to change without notice.

NOTE: ALTERNATE LANGUAGE IN **[BRACKETS]** and will need to be modified as appropriate for each loan.

LOAN AND SECURITY AGREEMENT

This LOAN AGREEMENT (this "Agreement") is made and entered into as of [•] (the "Closing Date") between the **[Name of Regional Administrator]**, an **[Ohio non-profit corporation/entity type]** having its principal place of business at **[insert address]** (the "Administrator"), and [•], an Ohio **[entity type]** (the "Borrower").

Background Information

A. The Director of the Ohio Development Services Agency (the "Director") is authorized by Article VIII, Section 13, of the Ohio Constitution and Chapter 166 of the Ohio Revised Code (the "Act") to enter into agreements with persons engaged in industry, commerce, distribution or research to induce such persons to acquire, construct, reconstruct, rehabilitate, renovate, enlarge, improve, equip or furnish, or otherwise develop buildings, structures, and equipment and other property comprising all or part of, or serving or being incidental to, an eligible project.

B. The Director and the Administrator have created a certain revolving loan fund established in a Loan Administration and Escrow Agreement effective July 1, 2021, by and among the Director, the Administrator, and **[insert name of Escrow Agent, if applicable]** (the "Loan Administration and Escrow Agreement").

C. The financial assistance to be provided pursuant to this Agreement has been reviewed and approved by the Controlling Board, pursuant to the Act.

D. In consideration of the premises and the representations, covenants, and agreements hereinafter contained, the Borrower and the Administrator agree as outlined herein.

Provisions

NOW, THEREFORE, in consideration of the premises and the representations and agreements hereinafter contained, the Administrator and the Borrower agree as follows:

Section 1. Definitions; Purpose and Amount of Loan.

1.1 Use of Defined Terms. All capitalized terms used herein shall have the meanings set forth below in Section 1.3 unless otherwise defined or if the context or use expressly indicates different meanings or intent. Such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms defined in Section 1.3 or elsewhere in this Agreement.

1.2 Certain Words and References. References to sections or provisions of the Constitution of the State or to sections, provisions, chapters or titles of the Ohio Revised Code or the United States Code shall be construed to also refer to successor sections, provisions, chapters or titles. The terms “hereof,” “hereby,” “herein,” “hereto,” “hereunder” and similar terms refer to this Agreement; and the term “heretofore” means before, and the term “hereafter” means after, the Closing Date. Words of the masculine gender include the feminine and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender.

1.3 Definitions. In addition to the words and terms elsewhere defined in this Agreement, the words and terms set forth below shall have the meanings herein set forth unless the context or use expressly indicates a different meaning:

“**Additional Financing**” means the financing for the Allowable Costs of the Eligible Costs in addition to Loan proceeds, to be provided by the **[insert appropriate sources of Additional Financing, such as the Lender]** in the principal amount of **[\$[insert loan amount]]**.

“**Allowable Costs**” means allowable costs of the Project within the meaning of the Act.

“**Application**” means the Borrower’s application for financial assistance, dated **[insert application date]** submitted to the Administrator, requesting financial assistance in connection with the Project.

[“Assignment of Rents” means the Assignment of Rents and Leases by the Borrower in favor of the Administrator, of even date herewith, as the same may be amended, modified, supplemented, restated or replaced from time to time.]

“**Collateral**” means any and all properties, rights, and assets of the borrower described on Exhibit A attached hereto.

“**Commercial Code**” means Chapters 1301 to 1310, Ohio Revised Code, as from time to time amended or supplemented.

“**Controlling Board**” means the Controlling Board of the State of Ohio.

“**Disbursement Date**” means the date upon which the proceeds of the Loan are disbursed to or for the benefit of the Borrower, which shall occur on **[insert date]**.

“**Eligible Project**” means an “eligible project” within the meaning of the Act and, with respect to the Loan, means the Project.

“Governing Instruments” means the **[articles of incorporation and code of regulations (or by-laws)][certificate of limited partnership and the partnership agreement][the articles of organization and the operating agreement]** and other charter documents of the Borrower.

“Governmental Authority” means collectively, the United States of America, the State, any other domestic or foreign entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any governmental authority, agency, department, board, commission, court, tribunal, judicial body or instrumentality of any union of nations, federation, nation, state, municipality, county, locality or other political subdivision thereof, including the United States Environmental Protection Agency and related state environmental protection agencies, having jurisdiction over the Project and/or the Project Site.

“Guarantor(s)” means **[identify any guarantor(s)].**

“Guaranty” means the Guaranty Agreement(s) from the Guarantors(s) to the Administrator, of even date herewith, as the same may be amended, modified, supplemented, restated or replaced from time to time.]

“Intercreditor Agreement” means the Intercreditor Agreement between the Borrower, the Administrator, [the Director], and [the Lender], dated as of [enter date], as the same may be amended, modified, supplemented, restated, or replaced from time to time.]

“Lender” means [insert name of third-party lender providing funds].]

“Lender Loan” means the loan in the principal amount of \$[insert loan amount] made by the Lender to the Borrower.]

“Lender Loan Documents” means all documents, instruments, and agreements evidencing or securing the Lender Loan, as the same may be amended, modified, supplemented, restated, or replaced from time to time.]

“Loan” means the loan by the Administrator to the Borrower in the total sum of the Loan Amount, to be disbursed pursuant to the terms of this Agreement.

“Loan Amount” means **[*INSERT LOAN AMOUNT*]**.

“Loan Approval Documents” documents means, with respect to the Loan, the approval of the Loan by the Administrator’s board or governing body, the approval of the Controlling Board dated **[insert date of Controlling Board approval]**, and all documents submitted by the Borrower to the Administrator, Director, or Controlling Board for purposes of approving the Loan.

“Loan Documents” means all documents, instruments, and agreements delivered to or required by the Administrator to evidence or secure the Loan, including this Agreement, the Note and the Security Documents, as the same may be amended, modified, supplemented, restated or replaced from time to time.

“Market Conditions and Other Factors” means those conditions determined by the Director, with information and advice from the Federal Reserve Bank of Cleveland or other such written criteria as the Director reasonably deems appropriate. If applicable, the Director shall consider the following:

- (i) Two consecutive quarters of decline in manufacturing employment in the State as a whole or, when possible, by relevant manufacturing sector. Employment figures will be those reported by the Ohio Department of Job and Family Services.
- (ii) A decline, as a whole or relevant sector, in 12 of the 36 months as detailed in the Federal Reserve Bank’s national industrial production index.
- (iii) The performance of the relevant sector as reported in Standard & Poor’s “Industry Surveys”.
- (iv) Any decline of the automotive sector in 12 of the previous 36 months as detailed in the Federal Reserve’s national industrial production index in making a determination.
- (v) A decline in current economic activity within the Fourth Federal Reserve District as documented in the “Summary of Commentary in current Economic Conditions by Federal Reserve District.”
<http://federalreserve.gov/monetarypolicy/beigebook/default.htm>
- (vi) A decline in either national employment or Gross Product in a specific industrial sector over the previous six quarters as documented by data provided by an established and well recognized supplier of national and regional economic data.
- (vii) Whether another business has located in the Project **[Facility][Site]** and employs individuals.
- (viii) Whether the Borrower obtains a written agreement of the purchaser of the facility to assume the job creation and retention obligations set forth in the Agreement.

- (ix) Whether a relocation of the operations of the Project **[Facility][Site]** is within the State and employs an equivalent number of jobs.
- (x) Any other information the Administrator determines in its reasonable judgment to be relevant under the circumstances.

[“Mortgage” means, as applicable, the [Open-End Mortgage] of even date herewith executed and delivered by the Borrower to the Administrator, as assigned to the Director, as the same may be amended, modified, supplemented, restated or replaced from time to time.]

“Note” means the Cognovit Promissory Note, of even date herewith, evidencing the obligation of the Borrower to repay the Loan, as the same may be amended, modified, supplemented, restated or replaced from time to time.

“Notice Address” means:

- (a) As to the Borrower

Attn: _____

Email: _____

- (b) As to the Administrator:

Attn: _____

Email: _____

- (b) As to the Director:

Director of the Ohio Development Services Agency
Attn: Business Services Division
77 South High St., 28th Floor
Columbus, OH 43215
Email: financialincentives@development.ohio.gov

“Project” means **[describe the Project][the Project Facilities and the Project Site, together constituting an Eligible Project].**

["Project Facilities"] means the buildings, structures, additions, and improvements described in Exhibit B attached hereto.]

"Project Site" means [the address of the Project][if dealing with a mortgage on real property: the real property described in the Mortgage].

"Provision" means, as applicable, the acquiring, constructing, reconstructing, rehabilitating, enlarging, installing, improving, or furnishing of the Project.

"Required Contribution" means \$[insert required equity contribution amount] to be provided by the Borrower in cash to pay a portion of the Allowable Costs of the Project or equity in the form of a non-cash equivalent acceptable to the Administrator in its sole discretion.

"Security Documents" means, as applicable, this Agreement, the Mortgage, the Assignment of Rents, the Guaranty/Guaranties, the UCC Financing Statement, [the Intercreditor Agreement], [the Subordination Agreement], [and *add any additional security documents*], as the same may be amended, modified, supplemented, restated, or replaced from time to time.

["Subordination Agreement"] means the Subordination Agreement among the Borrower, the Administrator, [the Director], and [the Lender], of even date herewith, as the same may be amended, modified, supplemented, restated or replaced from time to time.]

"UCC Financing Statement" means a financing statement filed under Chapter 1309 of the Commercial Code filed with the Secretary of State of [insert state of incorporation/formation] perfecting the security interest of the Administrator and/or the Director in the property subject to the lien granted in this Agreement.

1.4 Financing of Project. Financing for the Project shall be drawn from the following sources in the amounts indicated and according to the terms and documentation previously submitted, and the Borrower shall apply such funds for the uses listed below, all as previously approved by the Administrator and the Director:

[list sources and uses of funds]

1.5 Use of Loan Funds. The Borrower agrees that it will apply the funds received by it under this Agreement in accordance with the use of loan proceeds as specified above in Section 1.4, and under the Borrower's Application. The Borrower further agrees that no application of any Loan proceeds shall be made for any other purpose, other than completion of the Project.

1.6 Borrower Required to Pay Additional Costs. In the event that the proceeds of the Loan and the Additional Financing listed above in Section 1.4 are not sufficient to pay all costs of the Project, the Borrower shall, nonetheless and irrespective of the cause of such deficiency, complete the Project and pay all costs of such completion in full, from its own funds.

Section 2. Terms of the Loan; Provision of the Project; Conditions to Disbursement

2.1 Loan and Repayment. On the terms and conditions of this Agreement, the Administrator shall lend the Loan Amount to the Borrower to assist in the financing of the Project. The Loan shall be evidenced by this Agreement, the Note, and secured by the Security Documents and other Loan Documents as applicable. Those instruments shall be executed and delivered by the Borrower to the Administrator on the Closing Date. The Security Documents and other Loan Documents evidencing or securing the Loan which are to be recorded shall be filed for record prior to disbursement of the Loan. The Loan shall be disbursed pursuant to Section 2.3 hereof.

The terms of repayment of the Loan shall be as set forth in the Note and the Borrower shall make all payments required to be made under the Note as and when due.

2.2 Assignment to the Director; Administration of the Loan. The Borrower agrees and acknowledges that after closing the Loan, the Administrator shall assign to the Director all of its rights, title and interest in and to the Loan Documents. Pursuant to the terms of the Loan Administration and Escrow Agreement, the Director authorizes the Administrator to continue administration and servicing of the Loan as an agent of the Director and the Administrator shall remain the contact for the Borrower on matters concerning the Loan.

2.3 Conditions to Disbursement. Disbursement of Loan proceeds shall occur on the Disbursement Date, which date shall be set in advance of the Closing Date, provided that the Administrator shall have received the following, all in form and content satisfactory to the Administrator and in conformity with all Loan Approval Documents:

[MODIFY AS APPROPRIATE BASED ON NATURE OF THE PROJECT]

- (a) This Agreement, the Note, the Security Documents, and all other Loan Documents duly executed by the Borrower;
- (b) The Borrower shall certify **[that the Project has been completed, and outline]** in reasonable detail the cost **[to be]** incurred in the completion of the Project for which Loan funds are to be expended, including a detail by category of all Allowable Costs; **[NOTE: For loans that are not traditional takeout financing, where an Administrator is taking a Purchase Money Security Interest, the Project Completion/purchase of equipment should NOT be**

made prior to closing/disbursement, as those funds should be paid directly to a vendor.]

- (c) The Borrower shall provide the Administrator with documentation that the Required Contribution has been injected by the Borrower into the Project;
- (d) The Borrower shall deliver to the Administrator its execution of the Notification of Project Completion and Disbursement, pursuant to which the Borrower will acknowledge and affirm completion of the Project, that all improvements have been made, that all costs of the Project have been paid;
- (e) Satisfactory evidence of all insurance coverage required by this Agreement;
- (f) Satisfactory evidence of zoning compliance, availability of utilities, and all necessary licenses and permits required in connection with the Project;
- (g) Such other waivers, certificates, assurances, assignments, instruments, documents, materials, opinions or information required to fully protect the interests of the Administrator and the Director in the Project intended to be created by this Agreement, and all other loan documents signed in conjunction with this Agreement, in accordance with the Loan Approval Documents;
- (h) Evidence that the Borrower has complied with all requirements of the State of Ohio Workers' Compensation Act, if appropriate;
- (i) Evidence that Federal Flood Insurance is not required on the property comprising the Project. If insurance is required, the Borrower must purchase and maintain Federal Flood Insurance in amounts and coverage equal to the lesser of: (A) the outstanding principal balance of the Loan, (B) the value of the property to be insured, or (C) the maximum limit of available coverage. Notwithstanding anything to the contrary, if Federal Flood Insurance becomes required at any time during the term of the Loan, the Borrower must purchase the insurance at the levels outlined in this Section 2.3(i);
- (j) Certificate of occupancy for the Project Site, if applicable;
- (k) Certification by the Borrower that its representations and warranties made in any Loan Approval Documents, applications, and the Loan Documents remain true, accurate and complete as of the Closing Date and no default or event which, by notice, the passage of time or otherwise, would constitute a default, exists under the Loan Documents ***[for the Lender Loan Documents]***;

- (l) The UCC Financing Statement to evidence and perfect the security interests created by this Agreement and the Security Documents;
- (m) The Borrower's ***[and any Guarantor's]*** Certificate of Corporate Good Standing issued by the Secretary of State of the State ***[and the State of [•]]***(if foreign entity)], dated within 10 days prior to the Closing Date;
- (n) **[A copy, certified by the Borrower to be true, correct and complete, of the Lender Loan Documents;] [IF NOT APPLICABLE: Reserved;]**
- (o) ***[The Guaranty, duly executed by the Guarantor(s)]*** [IF NOT APPLICABLE: Reserved;]
- (p) An appraisal of the Project acceptable to the Administrator in its reasonable discretion;
- (q) Such other certifications, documents or opinions as the Administrator may reasonably request.

2.4 Payment of Costs; Indemnification.

- (a) The Borrower shall pay all costs incident to the Loan, including recording and title fees, title examination and insurance fees, escrow fees, charges of any title insurer and all costs and expenses incurred by the Administrator or Director, including if any default or Event of Default occurs hereunder or under any of the Loan Documents or if the Loan or any portion thereof is not paid in full when and as due, all costs and expenses of the Administrator and Director (including, without limitation, court costs and counsel's fees and disbursements) incurred in attempting to enforce payment of the Loan and expenses of the Administrator or Director incurred (including court costs and counsel's fees and disbursements) in attempting to realize, while a default or Event of Default exists, on any security or incurred in connection with the sale or disposition (or preparation for sale or disposition) of any security for the Loan.
- (b) The Borrower shall indemnify the Administrator and Director and each of the Administrator's and Director's officers, directors, employees and consultants and defend and hold each of the foregoing harmless from and against all claims, injury, damage, loss and liability, cost and expense (including attorneys' fees, costs and expenses) of any and every kind to any persons or property by reason of (i) the Provision of the Project (ii) any brokerage commissions or finder's fees claimed by any broker or other party in

connection with the Loan; (iii) the operation or maintenance of the Project; (iv) any breach of representation or warranty, default or Event of Default under this Agreement or any of the Loan Documents; or (v) any other matter arising in connection with the Loan, Borrower or the Project.

Section 3. Security

[MODIFY AS APPROPRIATE BASED ON THE SECURITY OF A PARTICULAR DEAL]

3.1 Grant of Security Interest. The Borrower hereby grants the Administrator, to secure the payment and performance of all obligations owed under the Loan Documents, a continuing security interest in the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof. The Borrower represents, warrants, and covenants that the security interest granted herein is and shall at all times continue to be a valid and enforceable security interest in the Collateral and upon the filing of a financing statement in the appropriate form with the Secretary of State of the State of **[insert correct state]**, the security interest created hereby shall constitute a **[first priority][shared first priority][second priority]** perfected security interest to the extent perfection can be obtained by filing financing statements **[(subject only to liens granted to the Lender under the Lender Loan Documents)]**.

The Borrower hereby acknowledges and agrees that after closing the Loan, the Administrator shall assign to the Director all of its rights, title and interest in and to the Loan Documents, including its security interest in the Collateral.

If this Agreement is terminated, the lien on and security interest in the Collateral created by this Agreement shall continue until all obligations owed under the Loan Documents are satisfied in full, and at such time, the Administrator and/or the Director shall, at the Borrower's sole cost and expense, terminate the security interest in the Collateral created by this Agreement and the Security Documents and execute and deliver to the Borrower all documents that the Borrower reasonably requests to evidence the release of the security interest in the Collateral.

3.2 Authorization to File Financing Statements. The Borrower hereby authorizes the Administrator and/or the Director to file financing statements, without notice to the Borrower, with all appropriate jurisdictions to perfect or protect the Administrator's interest or rights hereunder, including a notice that any disposition of Collateral, by either the Borrower or any other person or entity, shall be deemed to violate the rights of the Administrator under the Commercial Code.

[3.3 Mortgage. The Borrower shall execute and deliver to the Administrator at closing the Mortgage, to encumber the real estate located at [insert street address], as more particularly described in the Mortgage, as [additional] security for the payment of principal and interest of the Note and other sums payable by the Borrower

hereunder. The Borrower represents that the Mortgage shall be a valid [first lien][shared first lien][second lien] on the real estate subject to the Mortgage [NOTE: if a shared first or second lien, describe the other Lender and the amount of the other Lender's loan].

The Borrower hereby acknowledges and agrees that after closing the Loan, the Administrator shall assign to the Director all of its rights, title and interest in and to the Mortgage, and such assignment shall be recorded with the appropriate county recorder's office.

Additionally, the Borrower shall, on demand, submit to the Administrator semi-annually paid tax receipts showing that the current taxes against the mortgaged real estate have been paid.]

Section 4. Determinations and Representations

4.1. Representations and Warranties of the Borrower. The Borrower hereby represents and warrants that:

- (a) It is a [corporation/limited liability company/partnership/other] duly [incorporated] [organized], validly existing and in good standing under the laws of the State [of [•]] **and is duly qualified to transact business in the State],** and has all requisite power to conduct its business as now conducted and to own, hold and lease its assets and properties.
- (b) It has full power and authority to execute, deliver and perform the Loan Documents [**and the Lender Loan Documents**], to grant [**the Mortgage and all**] security interests under this Agreement and any other Security Documents, and to enter into and carry out the transactions contemplated thereby. Such execution, delivery and performance, and the grant of [**the Mortgage and**] all security interests under this Agreement and the Security Documents, do not, and will not, violate any provision of law or any court order applicable to the Project, the Borrower [**or any Guarantor**] or the Governing Instruments of the Borrower [**or any Guarantor**] and do not, and will not, conflict with or result in a default, under any agreement or instrument to which the Borrower [**or any Guarantor**] is a party or by which it or any of its property or assets is or may be bound. The Loan Documents [**and the Lender Loan Documents**] have, by proper action, been duly authorized, executed and delivered and constitute legal, valid and binding obligations of the Borrower.
- (c) No consent, approval or authorization of or declaration, registration or filing with any Governmental Authority or nongovernmental person or entity, including any creditor or [shareholder][partner][member] of Borrower [**or**

any Guarantor], is required in connection with the execution, delivery and performance of this Agreement or any of the Loan Documents other than the recordation of **[the Mortgage,] [the Assignment of Rents and]** the UCC Financing Statement, except for such consents, approvals or authorizations of or declarations or filings with any Governmental Authority or non-governmental person or entity which have been obtained.

- (d) The provision of financial assistance pursuant to all Loan Approval Documents and this Agreement induced the Borrower to undertake the Project, thereby creating new jobs or preserving existing jobs and improving the economic welfare of the people of the State.
- (e) It presently intends that the Project will be used and operated in a manner consistent with the project purposes set forth in the Borrower's Application until the date on which the Loan has been fully repaid, and the Borrower knows of no reason why the Project will not be so operated.
- (f) There are no actions, suits or proceedings pending or, to the best of the Borrower's knowledge, threatened against or affecting the Borrower**[, or any Guarantor]** or the Project which, if adversely determined, would individually or in the aggregate materially impair the ability of the Borrower to perform any of its obligations under the Loan Documents **[or the Lender Loan Documents]** or adversely affect the financial condition of the Borrower.
- (g) It is not in default under any of the Loan Documents **[or the Lender Loan Documents]**, or in the payment of any indebtedness for borrowed money or under any agreement or instrument evidencing any such indebtedness, and no event has occurred which by notice, the passage of time or otherwise would constitute any such event of default.
- (h) All Governmental Approvals have been obtained, and all laws relating to the operation of the Project have been complied with.
- (i) All utilities, including water, storm and sanitary sewer, gas, electric and telephone, fire and police protection, and rights of access to public ways shall be available or will be provided to the Project Site in sufficient locations and capacities to meet the requirements of operating the Project and the Borrower's business and of any applicable Governmental Authority.
- (j) It has made no contract or arrangement of any kind, other than the Loan Documents **[and the Lender Loan Documents]**, which has given rise to, or the performance of which by the other party thereto would give rise to, a lien or claim of lien, **[except for liens granted to the Lender under the Lender Loan Documents]**, on the Project, the Project Site or other collateral covered

by the Loan Documents ***[or the Lender Loan Documents]***, and no materials or labor have heretofore been supplied to or performed in connection with the Project.

- (k) No representation or warranty of the Borrower contained in any Loan Approval Documents ***[,] [or] the Loan Documents [or Lender Loan Documents]***, and no statement contained in any certificate, schedule, list, financial statement or other instrument furnished to the Administrator ***[or the Lender]*** by or on behalf of the Borrower contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained herein or therein not misleading. All representations and warranties made by the Borrower in any Loan Approval Documents ***[,] [or] the Loan Documents [or Lender Loan Documents]***, and any statement contained in any certificate, schedule, list, financial statement or other instrument furnished to the Administrator ***[or the Lender]*** by or on behalf of the Borrower (including, without limitation, the Application) are hereby incorporated herein by reference thereto.
- (o) The financial statements of the Borrower ***[and any Guarantor]*** heretofore delivered to the Administrator are true, complete and correct, in all respects, have been prepared in accordance with generally accepted accounting principles consistently applied, fairly present the financial condition and the results of operation of the Borrower ***[and any Guarantor]*** as of the dates thereof, and do not fail to state any material fact necessary to make such statements or information not misleading. No materially adverse change has occurred in the financial condition of the Borrower ***[and any Guarantor]*** reflected therein since the respective dates thereof.
- (p) All proceeds of the Loan shall be used for the payment of Allowable Costs relating to the Provision of the Project. No part of any such proceeds shall be knowingly paid to or retained by the Borrower or any member, owner, manager, partner, officer, shareholder, director or employee of the Borrower as a fee, kick-back or consideration of any type. The Borrower has no identity of interest with the general contractor or any architect, subcontractor, laborer or materialman performing work or services or supplying materials in connection with the Provision of the Project.
- (q) It has (or will have upon acquisition) good and marketable ***[fee simple] [leasehold]*** title to the Project Site and Project Facilities ***[and is the owner of all Collateral,]*** subject in all cases to no lien, charge, easement, condition, restriction or encumbrance except as created by the Loan Documents ***[and the Lender Loan Documents]***.

4.2. Survival of Representations and Warranties. The Borrower agrees that all of the representations and warranties set forth in Section 4.1 and elsewhere in the Loan Documents are true as of the date hereof, and, except for matters which have been disclosed by the Borrower and approved by the Administrator in writing, at all times thereafter. It shall be a condition precedent to the closing of the Loan and disbursement of Loan proceeds that each of said representations and warranties is true and correct. At the Administrator's request, the Borrower shall reaffirm such representations and warranties in writing prior to any disbursement hereunder.

Section 5. Additional Covenants and Agreements

5.1. Employment Statement; Job Creation; Increase in Interest Rate.

The Borrower shall furnish to the Director by March 1 of each year, or upon request, throughout the term of the Loan a statement or report certifying (i) the number of employees of the Borrower at the Project Site as of the date of the Application; (ii) the number of employees of the Borrower then currently employed at the Project Site; (iii) the number of employees of the Borrower laid off or terminated from the Project Site since the Closing Date; and (iv) such other employment, financial and statistical data concerning the Borrower as may be reasonably requested by the Administrator or Director. Borrower shall provide the foregoing information in the format and within the time requested by the Administrator or the Director, as applicable.

The Borrower has represented that the Loan will permit the Borrower to create an estimated [#] full-time jobs with a total payroll not less than [\$•] and retain an estimated [#] full-time jobs with a total payroll not less than [\$•] at the Project Site not later than [DATE- NOTE: 3 years from Project start date] (the "Metric Evaluation Date"). If the Borrower fails, for reasons other than Market Conditions and Other Factors, to create ***[and retain]*** at least [#] such jobs with such payrolls by the Metric Evaluation Date, the Administrator may exercise any rights and remedies provided for hereunder, including but not limited to, increasing the interest rate on the outstanding balance of the Loan. Notwithstanding the terms of this Agreement, the Director has the discretion to determine compliance, including but not limited to, whether to aggregate the number of jobs that have been created or retained and the total payrolls.

5.2. Affirmative Covenants of the Borrower. Throughout the term of this Agreement, the Borrower shall:

- (a) **Taxes and Assessments.** The Borrower shall pay all real and personal property taxes, assessments, and charges and all franchise, income, unemployment, old age benefits, withholding, sales, and other taxes assessed against it, or payable by it at such time and in such manner as to prevent any penalty from accruing or any lien or charge from attaching to its property.
- (b) **Maintain Existence and Location.** Do or cause to be done all things necessary to preserve and keep in full force and effect its existence in the same form as

of the Closing Date and its material rights and franchises, and shall maintain operations at the Project Site throughout the term of the Loan.

- (c) Maintain Property. Maintain and keep its property in good repair, working order and condition, and from time to time make all needed and proper repairs, renewals, and replacements.
- (d) Maintain Insurance. Maintain insurance at all times covering such risks and in such amounts as the Administrator may require, including a Hazard and Personal Property policy of Property Insurance insuring the Administrator's interests (and the Director's interests pursuant to the Assignment of even date herewith). All such insurance shall be in such form or for such periods and written by such companies as shall be acceptable to the Administrator.
- (e) Furnish Information. Furnish to the Administrator:
 - (i) Annual Reports. Within **[90/120]** days after the end of each fiscal year of the Borrower**[, each Guarantor] [and each Key Principal]**, a copy of its **[compiled][reviewed][audited]** financial statements, including the balance sheet of the Borrower**[, each Guarantor] [and each Key Principal]** as at the end of such fiscal year, together with related statements of income, retained earnings and cash flows for such fiscal year, setting forth in comparative form the corresponding figures as at the end of or for the previous fiscal year, all in reasonable detail and all examined by and accompanied by a **[compilation][review][letter] or [opinion]** of its independent certified public accountants to the effect that such financial statements were prepared in accordance with the generally accepted accounting principles consistently applied, and present fairly the Borrower's**[and each Guarantor's]** financial position at the close of such periods and the results of its operations for such periods. **[In addition, the Borrower shall provide to the Administrator, along with such financial statements, a certificate from its accountants which states that the Borrower has complied with all financial covenants which are set forth in Section 4.3(e) hereof, or, as the case may be, disclose any defaults thereunder.]**
 - (ii) Other Information. Such other information respecting the business, properties or the condition or operations, financial or otherwise, of the Borrower as the Administrator may reasonably request.
- (f) Deliver Notice. Forthwith upon learning of any of the following, deliver written notice thereof to the Administrator, describing the same and the steps being taken by the Borrower with respect thereto:

- (i) The occurrence of an Event of Default or an event or circumstance which would constitute an Event of Default, but for the requirement that notice be given, elapse of time or otherwise; or
- (ii) Any action, suit or proceeding by it or against it at law or in equity, or before any Governmental Authority, instituted or threatened which, if adversely determined, would materially impair the right or ability of the Borrower to carry on the business which is contemplated in connection with the Project or would materially impair the right or ability of the Borrower to perform the transactions contemplated by the Loan Documents ***[and the Lender Loan Documents]***, or would materially and adversely affect its business, operations, properties, assets or condition; or
- (iv) Any material communication affecting the Project ***[,] [or]*** the Project Site, ***[or the Lender Loan Documents]***, and the Borrower will promptly respond fully to any inquiry of the Administrator made with respect thereto.
- (g) Inspection Rights. Permit the Administrator or the Director, or any agents or representatives of the Director, to examine and make copies of and abstract from the records and books of account of, and visit the properties of, the Borrower and discuss the general business affairs of the Borrower with any of its officers.
- (j) Compliance With Laws. The Borrower shall comply with all applicable requirements (including applicable laws) of any Governmental Authority having jurisdiction over the Borrower or the Project.

5.3. Negative Covenants of the Borrower. Throughout the term of this Agreement, the Borrower shall not:

- (a) Maintain Existence. Merge or consolidate, or be merged or consolidated with or into any other corporation, partnership, or other entity without the prior written consent of the Administrator.
- (c) Agreements. Enter into any agreement containing any provision which would be violated or breached by the performance of its obligations hereunder or under any instrument or document delivered or to be delivered by it hereunder or in connection herewith.

- (d) Assignment or Lease. In whole or in part, assign this Agreement or lease or grant the right to occupy or use the Project to others, without the prior written consent of the Administrator.
- (e) No Additional Debt. Except for the Loan, **[the Lender Loan]**, and debt existing at the Closing Date and previously disclosed to the Administrator, incur any indebtedness (whether personal or nonrecourse, secured or unsecured) other than customary trade payables paid within 60 days after they are incurred.
- [(f) Insert any financial covenants required in the deal – debt to net worth ratio, debt service ratio, etc. If no financial covenants to be included, mark as “[Reserved.]”.]**
- (g) Encumbered Assets. Pledge, assign, hypothecate or in any manner encumber any of **[its assets][the Collateral]** excepting, however, the Loan Documents~~**[and the Lender Loan Documents]**~~.
- (h) Removal of Assets. Remove, transfer or transport any of the **[Borrower’s assets][the Collateral]** from the Project Site other than the operation of motor vehicles or the shipment of goods in the ordinary course of business.
- (i) Suspension of Operation. Suspend or discontinue operation of its business.
- (j) Loans and Advancements. Make any loans or advances to any individual, firm, or corporation, including without limitation its officers and employees; provided, however, that the Borrower may make advances to its employees, including its officers, with respect to expenses incurred by such employees which expenses are reimbursable by the Borrower in the normal course of business.
- (k) Transfers. Issue, transfer, sell, or cause to be issued, transferred or sold **[any shares of its capital stock][any membership interests in the Borrower][any partnership interests in the Borrower]**.
- (l) Sale of Assets. Sell or dispose of its assets except in the ordinary and usual course of its business.
- (m) Change of Business. Enter into any business which is substantially different from that presently conducted by the Borrower without the written consent of the Administrator.

- (n) Governing Instruments. Without the prior written consent of the Administrator, permit or suffer a material amendment or modification of its Governing Instruments.
- [(o) Modification of Lender Loan Documents. Enter into any modification, amendment or alteration of the Lender Loan Documents which changes the amount of the Lender Loan or which changes the payment schedule for the Lender Loan without the prior written consent of the Administrator.]**

Section 6. Events of Default and Remedies; Termination

6.1. Events of Default. Each of the following shall be an “Event of Default”:

- (a) The Borrower shall fail to pay within ten days after the due date thereof any amount payable pursuant to this Agreement, under the Note or under any other Loan Document; or
- (b) Except as specifically set forth in any other subsection of this Section 5.1, the Borrower shall fail to observe and perform any agreement, term or condition contained in this Agreement other than as required pursuant to subsection (a) above, and such failure continues for a period of 30 days after the Borrower has knowledge thereof; *provided, however*, that such 30 day cure period shall not apply to (i) any failure which in the good faith opinion of the Administrator is incapable of cure, (ii) any failure which has previously occurred, or (iii) any failure to maintain and keep in effect any insurance required by the Loan Documents; or
- (c) Any representation or warranty made by the Borrower (or any of its officers) herein or in any other Loan Documents, the Application ~~[,]~~ **[or]** Loan Approval Documents **[or Lender Loan Documents]** or in connection herewith or therewith shall prove to have been incorrect in any material respect when made; or
- (d) The Borrower shall fail to pay any indebtedness of the Borrower, or any interest or premium thereon, when due (whether by scheduled maturity, required prepayment, by acceleration, on demand or otherwise) and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such indebtedness; or any other default under any agreement or instrument relating to any such indebtedness, or any other event, shall occur and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such default or event is to accelerate, or to permit the acceleration of, the maturity of such

indebtedness; or any such indebtedness shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof; or

- (e) The Borrower ***[or any Guarantor]*** commences a voluntary case concerning it under Title 11 of the United States Code entitled "Bankruptcy" as now or hereafter in effect, or any successor thereto (the "Bankruptcy Code"); or an involuntary case is commenced against the Borrower ***[or any Guarantor]*** under the Bankruptcy Code and relief is ordered against the Borrower ***[or any Guarantor]***, or the petition is controverted but is not dismissed within 60 days after the commencement of the case; or the Borrower ***[or any Guarantor]*** is not generally paying its debts as such debts become due; or a custodian (as defined in the Bankruptcy Code) is appointed for, or takes charge of, all or substantially all of the property of the Borrower ***[or any Guarantor]***; or the Borrower ***[or any Guarantor]*** commences any other proceeding under any reorganization, arrangement, readjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction whether now or hereafter in effect; or there is commenced against the Borrower ***[or any Guarantor]*** any such proceeding which remains undismissed for a period of 60 days; or the Borrower ***[or any Guarantor]*** is adjudicated insolvent or bankrupt;
- (f) A judgment or order for the payment of money in excess of \$10,000 shall be rendered against the Borrower ***[or any Guarantor]*** and either (i) enforcement proceedings shall have been commenced by any creditor upon such judgment or order or (ii) there shall be any period of 30 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or
- (h) Any default (other than set forth above) under ***[the Guaranty and]*** any other Loan Document***[, the Lender Loan Documents]*** or any other documents evidencing a Loan from the State shall have occurred and be continuing. ***[; or]***

6.2. Remedies on Default. Whenever an Event of Default shall have occurred and be continuing, any one or more of the following remedial steps may be taken:

- (a) If the entire Loan Amount has not been disbursed, the Administrator may terminate any and all of the Administrator's obligations under this Agreement;
- (b) The Administrator may declare all payments under the Note to be immediately due and payable, whereupon the same shall become immediately due and payable;

- (c) The Administrator may increase the interest rate on the outstanding balance of the Loan up to 10% per annum, but in no event more than the maximum rate allowed by law;
- (d) The Administrator may exercise any or all or any combination of the remedies specified in any Loan Document; or
- (f) The Administrator may pursue all remedies now or hereafter existing at law or in equity to collect all amounts then due and thereafter to become due under this Agreement, the Security Documents, the Note or any other Loan Documents, or to enforce the performance and observance of any other obligation or agreement of the Borrower under the Loan Documents.

6.3. No Remedy Exclusive. No remedy conferred upon or reserved to the Administrator by this Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement, each other Loan Document, or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Administrator to exercise any remedy reserved in this Article, it shall not be necessary to give any notice, other than such notice as may be expressly provided for herein or required by law.

6.4. Agreement to Pay Expenses and Attorneys' Fees. If an Event of Default shall occur and the Administrator shall incur expenses, including reasonable attorney's fees, in connection with the enforcement of this Agreement or any other Loan Document, or the collection of sums due thereunder, the Borrower shall reimburse the Administrator for the expenses so incurred upon demand. If any such expenses are not so reimbursed, the amount thereof, together with interest thereon from the date of demand for payment at the then-current interest rate of the Loan, shall constitute additional indebtedness secured by this Agreement and the Security Documents, and in any action brought to collect such indebtedness or to foreclose or enforce this Agreement or the Security Documents, the Administrator shall be entitled to seek the recovery of such expenses in such action.

6.5. No Waiver. No failure by the Administrator to insist upon the strict performance by the Borrower of any provision hereof shall constitute a waiver of the Administrator's right to strict performance and no express waiver shall be deemed to apply to any other existing or subsequent right to remedy the failure by the Borrower to observe or comply with any provision hereof.

Section 7. Miscellaneous

7.1. Term of Agreement. This Agreement shall be and remain in full force and effect from the date of its delivery until (a) the termination of this Agreement pursuant to Section 6.2 hereof or (b) such time as the Loan shall have been fully repaid and all other sums payable by the Borrower under this Agreement, the Security Documents, the Note and the other Loan Documents shall have been paid in full.

7.2. Notices. All notices, certificates, requests or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when (a) sent by overnight mail or mailed by registered or certified mail, postage prepaid, (b) addressed to the appropriate Notice Address and (c) included the name and address of the Borrower. The Borrower, the Administrator, or the Director may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

7.3. Binding Effect. This Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the Administrator, the Borrower and their respective successors and assigns; *provided, however*, the Borrower may not assign this Agreement or any of the Loan Documents without the prior written consent of the Administrator.

7.4. Amendments and Supplements. This Agreement may not be amended or supplemented except by an instrument in writing executed by the Administrator and the Borrower.

7.5. Execution Counterparts/PDF. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument. Copies of signatures sent by facsimile transmission or provided electronically in portable document format ("PDF") shall be deemed to be originals for purposes of execution and proof of this Agreement.

7.6. Severability. If any provision of this Agreement, or any covenant, obligation or agreement contained herein, is determined by a court to be invalid or unenforceable, such determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if such invalid or unenforceable provision were not contained herein. Such invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

7.7. Captions; Entire Agreement. The captions and headings in this Agreement shall be solely for convenience of reference and shall in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement. All exhibits and schedules to this Agreement shall be annexed hereto and shall be deemed to be part of this Agreement. This Agreement and the exhibits and schedules attached hereto and the Loan Documents embody

the entire agreement and understanding between the Administrator and the Borrower and supersede all prior agreements and understandings relating to the subject matter hereof.

7.8. Interpretation. This Agreement shall be deemed to have been prepared jointly by the parties hereto and any uncertainty or ambiguity existing herein shall not be interpreted against any party but shall be interpreted according to the rules for the interpretation of arm's length agreements.

7.9 WAIVER OF JURY TRIAL. THE BORROWER AND THE ADMINISTRATOR, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED UPON OR ARISING OUT OF THIS AGREEMENT, THE NOTE, THE SECURITY DOCUMENTS, OR ANY RELATED INSTRUMENT OR AGREEMENT, OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREBY, OR ANY COURSE OF CONDUCT, DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF EITHER OF THEM. THIS WAIVER SHALL NOT IN ANY WAY AFFECT THE ADMINISTRATOR'S ABILITY TO PURSUE REMEDIES PURSUANT TO ANY CONFESSION OF JUDGMENT OR COGNOVIT PROVISION CONTAINED IN THE NOTE, IN ANY LOAN DOCUMENT OR ANY RELATED INSTRUMENT OR AGREEMENT. NEITHER THE BORROWER NOR THE ADMINISTRATOR SHALL SEEK TO CONSOLIDATE, BY COUNTERCLAIM OR OTHERWISE, ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THESE PROVISIONS SHALL NOT BE DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY THE BORROWER OR THE ADMINISTRATOR EXCEPT BY A WRITTEN INSTRUMENT EXECUTED BY BOTH OF THEM.

7.10. Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State of Ohio and for all purposes shall be governed by and construed in accordance with the laws of the State of Ohio.

7.11. Jurisdiction. THE BORROWER IRREVOCABLY (A) SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS HAVING JURISDICTION IN THE CITY OF COLUMBUS, COUNTY OF FRANKLIN AND STATE OF OHIO, AND (B) WAIVES ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY PROCEEDING BROUGHT IN ANY SUCH COURT, WAIVES ANY CLAIM THAT ANY PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM AND FURTHER WAIVES THE RIGHT TO OBJECT, WITH RESPECT TO SUCH PROCEEDING, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER SUCH PARTY. NOTHING IN THIS AGREEMENT SHALL PRECLUDE THE ADMINISTRATOR FROM BRINGING A PROCEEDING IN ANY OTHER JURISDICTION NOR WILL THE BRINGING OF A PROCEEDING IN ANY ONE OR MORE JURISDICTIONS PRECLUDE THE BRINGING OF A PROCEEDING IN ANY OTHER JURISDICTION. THE BORROWER FURTHER AGREES AND CONSENTS THAT, IN ADDITION TO ANY METHODS OF SERVICE OF PROCESS PROVIDED FOR UNDER APPLICABLE LAW, ALL

SERVICE OF PROCESS IN ANY PROCEEDING IN ANY OHIO STATE OR UNITED STATES COURT SITTING IN THE CITY OF COLUMBUS AND COUNTY OF FRANKLIN MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO THE BORROWER AT ITS NOTICE ADDRESS, AND SERVICE SO MADE SHALL BE COMPLETE UPON RECEIPT; EXCEPT THAT IF THE BORROWER SHALL REFUSE TO ACCEPT DELIVERY, SERVICE SHALL BE DEEMED COMPLETE FIVE DAYS AFTER THE SAME SHALL HAVE BEEN SO MAILED.

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the date hereinbefore written.

ADMINISTRATOR:

BORROWER:

[insert name of Administrator],
a [*] [entity type]

[insert name],
a [*] [entity type]

Signed: _____

Signed: _____

By: _____

By: _____

Title: _____

Title: _____

Exhibits:

Exhibit A - Collateral

[Exhibit B - Project Facilities]

EXHIBIT A

(to Loan Agreement between **[insert Administrator name]** and **[insert Borrower name]**,
dated **[Closing Date]**)

The Collateral consists of: **[list items of collateral, as applicable]**

EXHIBIT B

(to Loan Agreement between **[insert Administrator name]** and **[insert Borrower name]**,
dated **[Closing Date]**)

Project Facilities

All buildings, structures, additions, improvements, facilities, fixtures, apparatus, and installations of any kind whatsoever now owned or hereafter acquired and located in, upon, under or based at the Project Site; and all rentals, revenues, payments, repayments, income, charges and moneys derived by the Borrower from the sale, lease or other disposition of the same and the proceeds from any insurance or condemnation awards pertaining thereto.

COGNOVIT PROMISSORY NOTE

[\$[INSERT LOAN AMOUNT]

[INSERT DATE]

For value received, [•], a[n] [•] [entity] (the “Borrower”), promises to pay to the order of the **[INSERT FULL LEGAL NAME OF ADMINISTRATOR]**, ITS successor and assigns (the “Administrator”), at **[INSERT ADDRESS OF ADMINISTRATOR]**, or at such other address as may be designated in writing by the Administrator, the principal sum of \$[•] with interest on the amount of principal from time to time outstanding from the Disbursement Date as specified under the Loan Agreement between the Administrator and the Borrower dated as of [•] (the “Loan Agreement”), at the rate of [•]% per annum for [•] year[s] ***[and at the rate of [•]% per annum for years [•] through [•]]*** as set forth in the amortization schedule attached hereto and made a part hereof subject to adjustment as set forth in the Loan Agreement. The principal of and interest on this Note shall be paid **[in accordance with the amortization schedule attached hereto]** provided that the balance of the principal sum outstanding, together with interest accrued thereon shall be due and payable no later than **[*insert maturity date*]**. The Borrower authorizes the Administrator to attach the amortization schedule hereto following the Disbursement Date. **[In addition, the Borrower promises to pay to the order of the Administrator a monthly service fee equal to one-twelfth (1/12) of one-fourth (1/4) of one percent (1.0%) of the principal balance outstanding from time to time under this Note.]**

All capitalized terms used herein shall have the meanings therein set forth in Schedule 1 attached to the Loan Agreement unless the context or use expressly indicates different meaning or intent. Such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms therein defined.

This Note does not of itself constitute a commitment by the Administrator to make any disbursement of the Loan to the Borrower. The conditions for making such a disbursement are set forth in the Loan Agreement. The disbursements made by the Administrator to the Borrower shall not exceed the face amount of this Note and the total amount of such disbursement is limited by and subject to the conditions for making disbursement of the Loan as set forth in the Loan Agreement.

The annual rate of interest stated herein shall apply to a 360-day period, and amounts of interest due hereunder shall be computed upon the basis of 30-day months. Installments of principal, interest and monthly service fee shall be applied first to monthly service fee, then interest as provided herein and the balance to principal due hereunder.

The Borrower may prepay all or any portion of the principal sum hereof at any time without penalty. All such prepayments shall be applied first to the payment of accrued interest and monthly service fee on the amount of the prepayment to the date thereof and the balance to principal in inverse order of maturity.

The payment of this Note and all interest and monthly service fees hereon is secured by the Security Documents. The covenants, conditions and agreements contained in the Security Documents and the Loan Agreement are hereby made a part of this Note.

The Borrower, each endorser and any other party liable on this Note severally waives demand, presentment, notice of dishonor and protest. **[if co-makers, add: Each Borrower waives defenses based on suretyship or impairment of collateral.]** No failure to accelerate the indebtedness evidenced hereby, acceptance of a past due installment following the expiration of any cure period provided by this Note, any Loan Document or applicable law, or indulgences granted from time to time shall be construed (i) as a novation of this Note or as a reinstatement of the indebtedness evidenced hereby or as a waiver of such right of acceleration or of the right of the Administrator thereafter to insist upon strict compliance with the terms of this Note, or (ii) to prevent the exercise of such right of acceleration or any other right granted hereunder or by the laws of the State. Maker hereby expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing.

The Borrower agrees that its liability shall not be in any manner affected by any indulgence, extension of time, renewal, waiver, or modification granted or consented to it by the Administrator and the Borrower consents to any indulgences and all extensions of time, renewals, waivers, or modifications that may be granted by the Administrator with respect to the payment or other provisions of this Note, and to any substitution, exchange or release of the Collateral, or any part thereof, with or without substitution, and agrees to the addition or release of any makers, endorsers, guarantors, or sureties, all whether primarily or secondarily liable, without notice to the Borrower and without affecting its liability hereunder.

The Borrower hereby waives and renounces for itself, its successors and assigns, all rights to the benefits of any statute of limitations and any moratorium, reinstatement, marshalling, forbearance, valuation, stay, extension, redemption, appraisement, or exemption and homestead laws now provided, or which may hereafter be provided, by the laws of the United States and of any state thereof against the enforcement and collection of the obligations evidenced by this Note.

If this Note is placed in the hands of attorneys for collection or is collected through any legal proceedings, the Borrower promises and agrees to pay, in addition to the principal, interest and other sums due and payable hereon, all costs of collecting or attempting to collect this Note, including all reasonable attorneys' fees and disbursements.

If default be made in the payment of any installment of principal, interest and/or monthly service fee under this Note which default has not been cured within ten days after any such

payment shall have become due and payable, or if an Event of Default under the Loan Agreement or the Security Documents shall have occurred and be subsisting, then, at the option of the Administrator, the entire principal sum payable hereunder and all interest and monthly service fees accrued thereon shall become due and payable at once, without demand or notice.

For the period during which a default shall exist in the payment of any amount due and payable hereunder, whether by acceleration or otherwise, a late charge equal to 5% of the delinquent amount due shall be assessed for each month during which the default exists and paid by the Borrower to the Administrator, which late charge shall be in addition to all of the Administrator's other rights and remedies available under the Loan Documents. In addition, the Administrator may increase the interest rate on the outstanding balance of the Loan by the Prime Rate plus 10% per annum, but in no event more than the maximum rate allowed by law.

All agreements herein are expressly limited so that in no event whatsoever, whether by reason of advancement of the proceeds hereof, acceleration of maturity of the unpaid principal balance hereof, or otherwise, shall the amount paid or agreed to be paid to the holders hereof for the use, forbearance or detention of the money to be advanced hereunder exceed the highest lawful rate permissible under applicable usury laws. If, from any circumstances whatsoever, the fulfillment of any provision hereof, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity and if from any circumstance the holder hereof shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due hereunder and not to the payment of interest.

THE BORROWER AND THE ADMINISTRATOR, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED UPON OR ARISING OUT OF THIS NOTE, THE LOAN AGREEMENT, THE SECURITY DOCUMENTS, OR ANY RELATED INSTRUMENT OR AGREEMENT, OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREBY, OR ANY COURSE OF CONDUCT, DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF EITHER OF THEM. THIS WAIVER SHALL NOT IN ANY WAY AFFECT THE ADMINISTRATOR'S ABILITY TO PURSUE REMEDIES PURSUANT TO ANY CONFESSION OF JUDGMENT OR COGNOVIT PROVISION CONTAINED HEREIN, IN THE LOAN AGREEMENT, THE SECURITY DOCUMENTS OR ANY RELATED INSTRUMENT OR AGREEMENT. NEITHER THE BORROWER NOR THE ADMINISTRATOR SHALL SEEK TO CONSOLIDATE, BY COUNTERCLAIM OR OTHERWISE, ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THESE PROVISIONS SHALL NOT BE DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY THE

BORROWER OR THE ADMINISTRATOR EXCEPT BY A WRITTEN INSTRUMENT EXECUTED BY BOTH OF THEM.

The Borrower hereby irrevocably authorizes any attorney-at-law, including any attorney-at-law employed or retained by the Administrator, to appear for it in any action on this Note at any time after the same becomes due as herein provided, in any court of record situated in Franklin County, Ohio (which the Borrower acknowledges to be the place where this Note was signed), or in the county where the Borrower then resides or can be found, to waive the issuing and service of process, and confess a judgment in favor of the Administrator or other holder of this Note against the Borrower for the amount that may then be due, with interest at the rate provided for herein, together with the costs of suit, and to waive and release all errors in said proceedings and the right to appeal from the judgment rendered **[but no judgment or judgments against less than all of the Borrowers shall be a bar to any subsequent judgment against those of the Borrowers against whom judgment has not been taken. Each] [The]** Borrower consents to the jurisdiction and venue of such court. The Borrower waives any conflict of interest that any attorney-at-law employed or retained by the Administrator may have in confessing judgment hereunder and consents to the payment of a legal fee to any attorney-at-law confessing judgment hereunder.

This Note was executed in [•], Ohio, and shall be construed in accordance with the laws of Ohio.

WARNING -- BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE.

[Borrower]

a[n] [•] [entity]

By:_____

Name:_____

Title: _____

[This Note is subject to the terms and conditions of a certain Intercreditor/Subordination Agreement of even date herewith between the Administrator and [•].] [Drafting Note: unbold this sentence if left in note.]

NOTIFICATION OF PROJECT COMPLETION AND DISBURSEMENT

Pursuant to Section 2.3(A) of the Loan Administration and Escrow Agreement, ("Agreement") effective as of February 1, 2019, among the **DIRECTOR OF THE OHIO DEVELOPMENT SERVICES AGENCY** ("Director"), the **[*INSERT ADMINISTRATOR NAME]** (the "Administrator"), and **[*INSERT THIRD-PARTY ESCROW AGENT NAME OR DIRECTOR OF OHIO DEVELOPMENT SERVICES AGENCY (if ODSA is escrow agent)]** ("Escrow Agent"), the Administrator hereby gives notice to the Director that, per authorization of the undersigned, the Escrow Agent has been instructed to disburse to or for the benefit of **[*INSERT BORROWER NAME*]** (the "Borrower") the amount of **[*INSERT LOAN AMOUNT*]**, which amount represents the Loan Amount (as defined in the Loan and Security Agreement, dated _____ between the Administrator and the Borrower).

All capitalized terms not defined herein shall have the same meaning as defined in the Agreement.

In connection with this Notification of Project Completion and Disbursement, the undersigned, after reasonable investigation and to the best of his or her knowledge, hereby further certified and agrees that:

1. Each item for which the Disbursement is to be made constitutes an Allowable Cost of the Eligible Project.
2. On _____ the Eligible Project was completed.
3. The date on which the Disbursement is to be made is _____.
4. The Administrator has no information causing it to believe that any representation or warranty of the Borrower contained in the Loan Documents or otherwise or communicated by the Borrower to the Administrator was or is materially incorrect or inaccurate.
5. As of the date hereof, the Administrator knows of no breach, default or event of default, nor any event which by notice, passage of time or both would constitute an event of default, under the terms of the Additional Financing.
6. To the extent that the Eligible Project for which the Disbursement is to be made involves construction, all such construction has been completed according to the plans and specifications for the Eligible Project.
7. The amount of the Disbursement does not exceed the Loan Amount (as defined in the Agreement).

8. All other conditions precedent to the Disbursement contained in the Agreement and the Loan Documents have been satisfied.

9. This Notification of Project Completion and Disbursement constitutes the approval of the Administrator with respect to each item for which the Disbursement is to be made.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____, 20__.

**[Economic Development Corporation
Name]**

By:

Its:

ACKNOWLEDGED AND AGREED TO BY THE BORROWER:

[INSERT BORROWER NAME],

a _____ [corporation][limited liability company]

By: _____

Name: _____

Title: _____

GUARANTY

This GUARANTY (the "Guaranty") is executed and delivered as of _____, 20__ by _____ whose mailing address is _____ (the "Guarantor") to **[*INSERT NAME OF REGIONAL ADMINISTRATOR*]**, its successors and assigns (the "Administrator"), whose mailing address is _____.

Background Information

A. The Director of the Ohio Development Services Agency and the Administrator have created a certain revolving loan fund established in a Loan Administration and Escrow Agreement entered into on **[insert date of execution of Loan Administration and Escrow Agreement]**, by and among the Director, the Administrator, and **[insert name of Escrow Agent]** (the "Loan Administration and Escrow Agreement").

B. As part of this revolving loan fund, the Administrator entered into a Loan and Security Agreement (the "Loan Agreement") of even date herewith between the Administrator and _____, a _____ (the "Borrower"), pursuant to which the Administrator has agreed to make a loan (the "Loan") in the maximum principal sum of \$_____ to the Borrower.

B. As evidenced by a Cognovit Promissory Note (the "Note") of even date herewith in the principal sum of \$_____, the Borrower is required to repay the Loan by making payments to the Administrator at such times and in such amounts as set forth in the Note.

Provisions

NOW, THEREFORE, as an inducement to the Administrator to make the Loan to the Borrower, and in consideration of the Loan by the Administrator to the Borrower pursuant to the Loan Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby covenants, warrants, represents and agrees with the Administrator as follows:

Section 1. Definitions

1.1 All capitalized terms used herein shall have the meanings set forth in Schedule 1 attached to the Loan Agreement unless the context or use expressly indicates different meaning or intent. Such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms therein defined.

Section 2. Representations and Warranties

**[*MODIFY REPS AND WARRANTIES AS APPROPRIATE FOR PARTICULAR GUARANTOR
– I.E. EDIT FOR A PERSONAL GUARANTOR VS. CORPORATE GUARANTOR*]**

2.1. The Guarantor hereby represents and warrants as follows as to *[himself][itself]*:

(a) [The Guarantor is a [•] duly *[incorporated] [organized]*, validly existing and in good standing under the laws of the State *[of [•] and is duly qualified to transact business in the State]*, and has all requisite power to conduct its business as now conducted.]

(b) The Guarantor has full power and authority to execute, deliver and perform this Guaranty, and to enter into and carry out the obligations outlined hereunder.

(b) There are no actions, suits or proceedings pending or threatened against or affecting the Guarantor which, if adversely determined, would individually or in the aggregate materially impair the ability of the Guarantor to perform *[his][its]* obligations under this Guaranty or adversely affect *[his][its]* financial condition.

(b) The Guarantor is not in default in the payment of any indebtedness for borrowed money or under any agreement or instrument evidencing any such indebtedness, and no event has occurred which by notice, the passage of time or otherwise would constitute any such event of default.

(c) The Guarantor has not made any contract or arrangement of any kind which has given rise to or the performance of which by the other party thereto would give rise to a lien or claim of lien on the Project.

(d) The *[personal]* financial statements of the Guarantor heretofore delivered to the Administrator are true and correct in all respects and fairly present the financial condition of the Guarantor as of the dates thereof. No materially adverse change has occurred in the financial condition of the Guarantor reflected therein since the respective dates thereof.

(e) The Guarantor is a *[shareholder][member]* of the Borrower and has knowledge of and is familiar with the Borrower's business affairs, books and records.

All of the foregoing representations and warranties shall be deemed remade on the date of the disbursement of Loan proceeds and upon any extension of the Loan pursuant to the Loan Agreement. The Guarantor hereby agrees to indemnify and hold Administrator free and harmless from and against all loss, cost, liability, damage, and expense, including attorney's fees and costs, which Administrator may sustain by

reason of the inaccuracy or breach of any of the foregoing representations and warranties as of the date the foregoing representations and warranties are made and are remade.

Section 3. Guaranty

3.1. The Guarantor hereby absolutely and unconditionally guarantees to the Administrator for the Administrator's benefit and that of the Administrator's successors and assigns as the holder at any time and from time to time of the Note (a) the full and prompt payment of (i) all payments to be made by the Borrower to the Administrator under the Note, the Loan Agreement and the Loan Documents, and (ii) all expenses and charges, including, to the fullest extent permitted by law, court costs and attorneys' fees paid or incurred by the Administrator in seeking advice with respect to this Guaranty or realizing any of the payments hereby guaranteed or in enforcing this Guaranty, and (b) the performance of any and all obligations of the Borrower under the Loan Documents.

3.2. All obligations of the Guarantor under this Guaranty shall remain in full force and effect until (a) (i) the entire principal of, and interest and monthly service fee on, the Note, (ii) all amounts payable under the Loan Agreement and the Loan Documents and (iii) the expenses and charges described in Section 3.1(a) above shall have been paid, and (b) all of the obligations of the Borrower under the Loan Documents have been met. All obligations of the Guarantor under this Guaranty shall be performed promptly and in good faith.

3.3. This Guaranty is a guaranty of payment and not of collection. No counterclaim, setoff, reduction of an obligation or defense of any kind which the Borrower or the Guarantor may have or assert against the Administrator or which any of the Guarantor may have or assert against the Borrower or any other guarantor shall affect, modify or impair any of the Guarantor's obligations hereunder.

3.4. The Guarantor acknowledges that the Administrator is making the Loan to the Borrower in reliance upon this Guaranty and the representations, warranties, covenants and agreements of the Guarantor made herein.

3.5. This Guaranty is an unconditional and absolute guaranty, irrespective of the validity, regularity or enforceability of any of the Loan Documents or any circumstances which might otherwise constitute a legal or equitable discharge or defense of the Guarantor, and without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by:

- (a) any extension, renewal, settlement, compromise, waiver or release in respect of any of the amounts guaranteed hereby by operation of law or otherwise, or any obligation of any other guarantor, or any default, failure or delay, willful or otherwise, in the payment or performance of the Borrower's obligations under the Loan

Documents or the Guarantor's obligations hereunder;

(b) any modification or amendment of or supplement to the Loan Agreement or any other Loan Document;

(c) any release, nonperfection or invalidity of any direct or indirect security for any obligation of the Borrower under the Loan Agreement or any other Loan Document, or any obligations of any other guarantor, or any action or failure to act by the Administrator with respect to any collateral securing all or any part of the Loan and the other amounts payable under the Loan Documents;

(d) any change in the existence, structure or ownership of the Borrower or any other guarantor, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting the Borrower or any other guarantor, or its assets or any resulting release or discharge of any obligation of the Borrower or any other guarantor;

(e) the existence of any claim, setoff or other rights which the Guarantor may have at any time against the Borrower, any other guarantor, the Administrator or any other person or entity, whether in connection herewith or any unrelated transactions, and the Guarantor waives such claim, setoff or other rights against the Administrator and agrees to refrain from, until after repayment in full of the Loan, any defense, right of set-off or other claim which the Guarantor may have against Borrower;

(f) any invalidity or unenforceability relating to or against the Borrower, or any other guarantor, for any reason related to the Loan Agreement, any other Loan Document, or any provision of applicable law or regulation purporting to prohibit the payment by the Borrower, or any other guarantor, of the principal of or interest on the Note or any other amount payable by the Borrower under the Loan Agreement, the Note or any other Loan Document; or

(g) any other act or omission to act or delay of any kind by the Borrower, any other guarantor, the Administrator or any other person or entity or any other circumstance whatsoever which might, but for the provisions of this section, constitute a legal or equitable discharge of the Guarantor's obligations hereunder.

3.6. The Guarantor consents and agrees that the Administrator shall, at the Administrator's discretion and without the necessity of obtaining any further consent of or giving notice to the Guarantor, have the right to (a) deal in any manner with the Borrower, including the right to grant any indulgence, forbearance, change, amendment, release, extension or other modification of the Loan Documents and to waive compliance with any of the terms or provisions of the Loan Documents; (b) exchange, release, fail to resort to or otherwise deal in any manner with any security which may at any time be given to secure the Note, (c) effect any release, compromise or settlement with respect to the Loan

Documents, (d) accelerate the maturity of the Note, (e) accept partial payment or payments of or extend the time for payment of any amounts due on or under the Note, the Loan Agreement, any other Loan Document or this Guaranty, and (f) agree to release any property from the mortgage, lien, pledge and security interest created by the Security Documents and Loan Documents irrespective of the consideration, if any, received. Irrespective of the Administrator taking or refraining from taking any of the above actions or any of the actions referred to in the Loan Documents, the Security Documents or this Guaranty, the obligations of the Guarantor under this Guaranty shall remain in full force and effect and shall not be affected, modified or impaired in any manner. The Administrator has no duty to inform and the Guarantor is fully responsible for being and remaining informed by Borrower of all circumstances bearing on the risk of nonperformance of the Borrower's obligations.

3.7. Until the Note and all other amounts payable under the Loan Documents have been indefeasibly paid in full, the Guarantor expressly waives any and all rights of subrogation, contribution, reimbursement, indemnity, exoneration, implied contract, recourse to security or any other claim (including any claim, as that term is defined in the federal Bankruptcy Code, and any amendments) which the Guarantor may now have or later acquire against the Borrower or any other person or entity directly or contingently liable for the Note and all other amounts payable under the Loan Documents, arising from the existence or performance of the Guarantor's obligations under this Guaranty. The Guarantor further agrees that, to the extent such waiver of *[his]/[its]* rights of subrogation, contribution, reimbursement, indemnity, exoneration, implied contract, recourse to security or any other claim as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any and all rights of subrogation, contribution, reimbursement, indemnity, exoneration, implied contract, recourse to security or any other claim the Guarantor may have against the Borrower or any other person or entity directly or contingently liable for the Note and all other amounts payable under the Loan Documents shall be junior and subordinate to any and all rights the Administrator may have against the Borrower or any such other persons or entities or with respect to any collateral. If any amount shall be paid to the Guarantor on account of any such right to subrogation, contribution, reimbursement, indemnity, exoneration, implied contract, recourse to security or any other claim at any time when the Note and all other amounts payable under the Loan Documents shall not have been paid in full, such amount shall be held in trust for the Administrator and shall forthwith be paid over to the Administrator to be credited and applied against the Note and/or all other amounts payable under the Loan Documents, whether matured or unmatured, in accordance with the Loan Documents.

The Guarantor further agrees that should any payments to the Administrator on the Note or the other Loan Documents be, in whole or in part, invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy act or code, state or federal law, common law or equitable doctrine, this Guaranty shall remain in full force and effect (or be reinstated as the case may be) until payment in full of any such amounts, which payment shall be due on demand.

Section 4. Additional Covenants and Agreements

4.1. Throughout the term of this Guaranty, the Guarantor shall:

(a) Forthwith upon learning of any of the following, deliver written notice thereof to the Administrator, describing the same and the steps being taken by the Guarantor with respect thereto:

(i) the occurrence of any Event of Default hereunder or an event or circumstance which would constitute such an Event of Default, but for the requirement that notice be given, time elapse or otherwise, or

(ii) any action, suit or proceeding by the Guarantor or against the Guarantor at law or in equity, or before any governmental instrumentality or agency, is instituted or threatened which, if adversely determined, would materially and adversely affect the Guarantor's businesses, operations, properties, assets or financial condition.

(b) Pay and discharge promptly, or cause to be paid and discharged promptly, when due and payable, all taxes, assessments and governmental charges or levies imposed upon the Guarantor, the Guarantor's income or any of the Guarantor's property, or upon any part thereof, as well as all claims of any kind (including claims for labor, materials and supplies) which, if unpaid, might by law become a lien or charge upon the Guarantor's property.

Notwithstanding the preceding paragraph, the Guarantor may, at the Guarantor's expense and after prior notice to the Administrator, by appropriate proceedings diligently prosecuted, contest in good faith the validity or amount of any such taxes, assessments, governmental charges, levies and claims and during the period of contest, and after notice to the Administrator, may permit the items so contested to remain unpaid. However, if at any time the Administrator shall notify the Guarantor that, in the opinion of legal counsel satisfactory to the Administrator, by nonpayment of any such items the property or any part thereof subject to such items will be subject to imminent loss or forfeiture, the Guarantor shall promptly pay such taxes, assessments, charges, levies or claims.

(c) Use best efforts to cause the Borrower to perform in accordance with the terms and conditions of the Loan Documents.

4.2. Throughout the term of this Guaranty, the Guarantor shall not:

(a) Enter into any agreement containing any provision which would be violated or breached by the performance of the Guarantor's obligations hereunder or under any instrument or document delivered or to be delivered by it hereunder or in connection herewith.

(b) Transfer or cause to be transferred, without sufficient consideration, to any person, entity or association of any kind whatsoever any property, real or personal, tangible or intangible, of any kind whatsoever which each owns having a total value in excess of 10% of the Guarantor's net worth (assets less liabilities) in any calendar year.

Section 5. Events of Default; Remedies

5.1. Each of the following shall be an "Event of Default" hereunder:

(a) The occurrence of an "Event of Default" under the Loan Agreement or any other Loan Document.

(b) The Guarantor shall: (i) admit in writing any inability to pay **[his]/[its]** debts generally as they become due; (ii) have an order for relief entered in any case commenced by or against **[him]/[it]** under the federal bankruptcy laws, as now or hereafter in effect; (iii) commence a proceeding under any other federal or state bankruptcy, insolvency, reorganization or other similar law, or have such a proceeding commenced against **[him]/[it]** and either have an order of insolvency or reorganization entered against **[him]/[it]** or have the proceeding remain undismissed and unstayed for 90 days; (iv) make an assignment for the benefit of creditors; or (v) have a receiver or trustee appointed for **[him]/[it]** or for the whole or any substantial part of any of **[his]/[its]** property.

(c) The Guarantor shall fail to observe or perform any agreement, term or condition stated in this Guaranty.

5.2. Upon the occurrence of an Event of Default hereunder, the Administrator may proceed hereunder and, in the Administrator's sole discretion, shall have the right to proceed first and directly against the Guarantor under this Guaranty without proceeding against or exhausting any other remedies which the Administrator may have under the Loan Documents and without resorting to any other security held by the Administrator and the Guarantor hereby waives any right to require the Administrator to join the Borrower in any

action brought hereunder or to commence any action against or obtain any judgment against the Borrower or to pursue any other remedy or enforce any other right. The Guarantor further agrees that nothing contained herein or otherwise shall prevent the Administrator from pursuing concurrently or successively all rights and remedies available to him at law and/or in equity or under the Note, Loan Agreement or any other Loan Documents, and the exercise of any of his rights or the completion of any of his remedies shall not constitute a discharge of the Guarantor's obligations hereunder.

5.3. The Guarantor expressly waives (i) notice, in writing or otherwise, from the Administrator of the Administrator's acceptance and reliance of this Guaranty and any and all notices and demands of every kind which may be required to be given by any statute, rule or law, (ii) any and all rights such Guarantor may have under any anti-deficiency statute or other similar protections, (iii) waive presentment for payment, demand for payment, notice of nonpayment or dishonor, protest and notice of protest, diligence in collection and any and all formalities which otherwise might be legally required to charge the Guarantor with liability, and (iv) defenses based on suretyship or impairment of collateral. No modification or waiver of any of the provisions of this Guaranty shall be binding upon the Administrator except as expressly set forth in a writing duly signed and delivered by the Administrator.

Section 6. General Provisions

6.1. All terms, provisions and agreements contained in this Guaranty shall be construed liberally in favor of the Administrator, shall inure to the benefit of and be enforceable by the Administrator, the Administrator's successors and assigns as holder of the Note, and shall be binding upon the Guarantor and the Guarantor's successors and assigns.

6.2. If any provision of this Guaranty is for any reason held to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other provision of this Guaranty and this Guaranty shall be construed as if such illegal, invalid or unenforceable provision had not been contained herein.

6.3. This Guaranty shall not be modified except by a written agreement duly executed by the Administrator and the Guarantor. The rights and remedies of the Administrator hereunder shall not be altered, limited or waived by any representation, promise or course of conduct hereunder pursued by the Administrator, unless evidenced by an agreement in writing duly executed by the Administrator.

6.4. This Guaranty and the rights and obligations of the parties hereto, including third party beneficiaries, shall be governed exclusively by and construed in accordance with the laws of the State of Ohio.

6.5 THE GUARANTOR AND THE ADMINISTRATOR, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, KNOWINGLY, VOLUNTARILY AND

INTENTIONALLY WAIVE ANY RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED UPON OR ARISING OUT OF THIS GUARANTY OR ANY RELATED INSTRUMENT OR AGREEMENT, OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREBY, OR ANY COURSE OF CONDUCT, DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF ANY OF THEM. THIS WAIVER SHALL NOT IN ANY WAY AFFECT THE ADMINISTRATOR'S ABILITY TO PURSUE REMEDIES PURSUANT TO ANY CONFESSION OF JUDGMENT OR COGNOVIT PROVISION CONTAINED HEREIN OR ANY RELATED INSTRUMENT OR AGREEMENT. NEITHER OF THE GUARANTOR NOR THE ADMINISTRATOR SHALL SEEK TO CONSOLIDATE, BY COUNTERCLAIM OR OTHERWISE, ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THESE PROVISIONS SHALL NOT BE DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY THE GUARANTOR OR THE ADMINISTRATOR EXCEPT BY A WRITTEN INSTRUMENT EXECUTED BY ALL OF THEM.

6.6. All covenants, obligations and agreements of the Administrator contained in this Guaranty, if any, shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future Administrator in other than his official capacity acting pursuant to applicable law.

6.7. This Guaranty may be executed in several counterparts and by each party on a separate counterpart, each of which, when so executed and delivered shall be an original, but all of which together shall constitute but one and the same instrument.

6.8. This Guaranty sets forth the entire agreement between the parties hereto relating to the matters set forth herein and supersedes all prior understandings and agreements, whether written or oral, between the parties hereto relating to such matters.

6.9. Any notices made or required to be given to any party pursuant to this Guaranty shall be in writing and shall be sent to the applicable party's address set forth herein by personal delivery, regular U.S. mail or overnight courier service. Each of the parties hereto may change their address for service of notice by giving written notice thereof to the other party hereto. Any notice given hereunder shall include the name and address of the Borrower.

6.10. The Guarantor hereby irrevocably authorizes any attorney-at-law, including any attorney-at-law employed or retained by the Administrator, to appear for the Guarantor, in any action on this Guaranty in any court of record situated in _____ County, Ohio (which the Guarantor acknowledges to be the place where this Guaranty was executed), or in the county where the Guarantor then resides or can be found, to waive the issuing and service of process, and confess a judgment in favor of Administrator, or other holder of this Guaranty, against all or the Guarantor, for the amount that may then be due, with interest at the rate provided for in the Loan Documents, together with the costs of suit, and to waive

and release all errors in said proceedings and the right to appeal from the judgment rendered. The Guarantor consents to the jurisdiction and venue of such courts. The Guarantor waives any conflict of interest that any attorney-at-law employed or retained by the Administrator may have in confessing judgment hereunder and consents to the payment of a legal fee to any attorney-at-law confessing judgment hereunder.

IN WITNESS WHEREOF, this Guaranty has been executed and delivered as of the date first above written.

WARNING -- BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE.

GUARANTOR:

a _____

By: _____

Name: _____

Title: _____

OPEN END MORTGAGE
(fee owner, borrower, no personal property)

MAXIMUM INDEBTEDNESS NOT TO EXCEED \$ _____

This OPEN END MORTGAGE (this "Mortgage"), dated as of _____, 202__, is executed and delivered by _____, a[n] _____ [entity], as the mortgagor, whose address is _____ (the "Borrower"), in favor of [ADMINISTRATOR], its successors and assigns, as the mortgagee, whose address is [ADDRESS] (the "Mortgagee").

As an inducement to and in consideration of loan by the Mortgagee to the Borrower in the total sum of \$ _____ (the "Loan") to the Borrower by the Mortgagee pursuant to that certain Loan Agreement between the Mortgagee and the Borrower, dated _____, 202__, as the same may be amended, modified, supplemented, extended, renewed, restated or replaced from time to time (the "Agreement") and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and for the purpose of securing the (i) all payments to be made by the Borrower under the Loan Agreement, that certain promissory note evidencing the obligation of the Borrower to repay the Loan, as the same may be amended, modified, supplemented, restated or replaced from time to time (the "Note"), this Mortgage and all other documents, instruments and agreements delivered to or required by the Mortgagee to evidence or secure the Loan, as the same may be amended, modified, supplemented, restated or replaced from time to time (the "Loan Documents") together with interest and the monthly service fee as provided therein and herein, (ii) any amounts advanced or costs incurred by the Mortgagee with respect to the Mortgaged Property (as defined hereinafter), including, without limitation, for the payment of taxes, assessments, insurance premiums and amounts advanced or costs incurred for the protection of the Mortgaged Property or the enforcement and/or foreclosure of the Loan Documents, together with interest and monthly service fee as provided therein and herein, (iii) the performance and observance of each covenant and agreement of the Borrower contained in this Mortgage, the Note, the Loan Agreement and the other Loan Documents, (iv) payment and performance of all future advances and other obligations that the Borrower or any successor in ownership of all or part of the Mortgaged Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of the Director, when a writing evidences the parties' agreement that the advance or obligation be secured by this Mortgage or any Loan Documents; and (v) payment and performance of all modifications, amendments, extensions, and renewals, however evidenced, of any of the obligations set forth above (collectively the "Obligations"), the Borrower does hereby grant, bargain, sell, convey, mortgage, assign, grant a lien on and security interest in and transfer unto the Mortgagee, the Mortgagee's successors and assigns, the following property and property interests (the "Mortgaged Property"):

The real property described in Exhibit A attached hereto, together with all other real properties now or hereafter made subject to the lien of this Mortgage by supplemental mortgage or otherwise (the "Project Site" and sometimes the "Project");

All buildings, structures, additions, improvements, facilities, fixtures, apparatus and installations now owned or hereafter acquired and located in, upon, under or based at the Project Site;

All rents, revenues, payments, repayments, income, charges, proceeds and moneys derived by the Borrower from the lease, sale or other disposition of the Mortgaged Property and the proceeds from any insurance or condemnation award pertaining thereto;

All existing and future easements, rights of way or use, licenses, privileges, franchises, servitudes, tenements, hereditaments and all appurtenances now or hereafter belonging to or anyway appertaining to the Project Site including, without limitation, all minerals, oil, gas, other hydrocarbons and associated substances, sulphur, nitrogen, carbon dioxide, helium and other commercially valuable substances which may be in, under or produced from any part of the Project Site, all development rights and credits, air rights, water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock, and any Project Site lying in the streets, roads or avenues, open or proposed, in front of or adjoining the Project Site;

All existing and future leases, subleases, subtenancies, licenses, occupancy agreements and concessions ("Leases") relating to the use and enjoyment of all or any part of the Project Site, and any and all guaranties and other agreements relating to or made in connection with any of such Leases;

All real property and improvements on it, and all appurtenances and other property and interests of any kind or character, whether described in Exhibit A or not, which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Project Site;

All goods, materials, supplies, chattels, furniture, fixtures, equipment and machinery now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Project Site, whether stored on the Project Site or elsewhere, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment, all of which shall be considered to the fullest extent of the law to be real property for purposes of this Mortgage and any manufacturer's warranties with respect thereto;

All building materials, equipment, work in process or other personal property of any kind, whether stored on the Project Site or elsewhere, which have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Project Site;

All of the Borrower's interest in and to all operating accounts, the Loan funds, whether disbursed or not, all reserves set forth in the budget for the Project and any other bank accounts of the Borrower;

All rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by the Borrower with third parties (including all utility deposits), contract rights, development and use rights, governmental permits and licenses, applications, architectural and engineering plans, specifications and drawings, as-built drawings, chattel paper, instruments, documents, notes, drafts and letters of credit, which arise from or relate to construction on the Project Site or to any business now or later to be conducted on it, or to the Project Site generally and any builder's or manufacturer's warranties with respect thereto;

All insurance policies pertaining to the Project Site and all proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any of the Project Site or the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Project Site, or the other property described above or any part of them, or breach of warranty in connection with the construction of any improvement on the Project Site, including causes of action arising in tort, contract, fraud or concealment of a material fact;

All books and records pertaining to any and all of the property described above, including computer-readable memory and any computer hardware or software necessary to access and process such memory; and

All proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

TO HAVE AND TO HOLD the Mortgaged Property unto the Mortgagee, the Mortgagee's successors and assigns, forever;

AND, IT IS HEREBY COVENANTED that this Mortgage is given and the Mortgaged Property is to be held upon the terms herein set forth.

Preservation of Security

Representations, Warranties and Covenants. The Borrower represents, warrants and covenants to the Mortgagee, that:

The Borrower is lawfully seized with good and marketable fee simple title to the Project Site and has (or will have upon acquisition by the Borrower) good and sufficient title to all personal property included in the Mortgaged Property, subject only to the exceptions, restrictions, easements and encumbrances set forth on Exhibit B attached hereto (the "Permitted Encumbrances");

The Borrower has full right and authority to sell, assign and convey the Mortgaged Property pursuant to the terms of this Mortgage;

The Borrower will warrant and defend to the Mortgagee such title to the Mortgaged Property and the mortgage lien and security interest of the Mortgagee therein and thereon against all claims and demands whatsoever and will, except as otherwise herein expressly provided, maintain the priority of the mortgage lien of, and the security interest granted by, this Mortgage upon the Mortgaged Property until the Borrower shall be entitled to defeasance as provided herein; and

The Borrower shall, at its expense, from time to time as requested by the Mortgagee take such actions and execute and deliver to the Mortgagee all such instruments, documents, further assurances and security and other agreements in order to perfect and continue the mortgage, lien and security interest of the Mortgagee in the Mortgaged Property.

The ***[construction]/[acquisition]*** of the Project will be completed and the Project and the Borrower's business will be operated and maintained in such manner as to conform with all applicable federal, state, or local laws, statutes, codes, regulations, resolutions, ordinances, notices, permits, and any other provisions having the force or effect of law, all judicial and administrative orders and determinations, all contractual obligations and all common law, each as amended and as now or hereafter in effect, concerning public health and safety, worker health and safety, and pollution or protection of the environment, including all those relating to the presence, use, production, generation, handling, removal, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, release, threatened release, control, or cleanup of any substances or wastes, chemical substances or mixtures, pesticides, pollutants, contaminants, toxic chemicals, petroleum products or byproducts, asbestos, polychlorinated biphenyls, noise or radiation regulated under, including any material, substance or waste defined as a "solid waste," "hazardous waste," "hazardous material," "hazardous substance," "contaminant," "pollutant," "toxic waste," or "toxic substance" in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et. seq.), the Occupational Health and Safety Act (29 U.S.C. Section 651, et. seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Section 1801, et. seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901, et. seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Section 2601, et. seq.), or any other environmental laws and zoning, planning, building and other applicable

governmental regulations imposed by the United States of America, the State of Ohio (the "State"), any other domestic or foreign entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any governmental authority, agency, department, board, commission, court, tribunal, judicial body or instrumentality of any union of nations, federation, nation, state, municipality, county, locality or other political subdivision thereof, including the United States Environmental Protection Agency and related state environmental protection agencies, having jurisdiction over the Project and/or the Project Site (the "Governmental Authority") and as to be consistent with the purposes of the Chapter 166, Ohio Revised Code, as from time to time enacted and amended.

The Project includes all property and rights which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Project Site.

All consents, licenses and permits and all other authorizations or approvals required for **[construction][acquisition]** of the Project in accordance with the plans and specifications or other appropriate documents describing the Project prepared by or at the direction of the Borrower (the "Plans and Specifications") have been obtained, and all laws relating to the **[construction][acquisition]** and the operation of the Project have been complied with, and all permits and licenses required for the operation of the Project which cannot be obtained until **[construction][acquisition]** is completed can be obtained if the Project is completed in accordance with the Plans and Specifications.

(i) No condemnation of any portion of the Project, (ii) no condemnation or relocation of any roadways abutting the Project, and (iii) no proceeding to deny access to the Project from any point or planned point of access to the Project, has commenced or, to the best of Borrower's knowledge, is contemplated by any Governmental Authority.

The Project Site is zoned by the City of [] under a zoning ordinance which permits the **[construction][acquisition]** of the Project thereon in accordance with the Plans and Specifications and the operation of the Borrower's business. None of the zoning authorizations, approvals or variances nor any other right to construct or to use the Project is to any extent dependent upon or related to any real estate other than the Project Site.

Except as disclosed (i) elsewhere in this Mortgage and the Loan Documents, and (ii) in the title policy provided pursuant to Section 3.6(c) of the Loan Agreement, and except as created by the Loan Documents and all documents, instruments and agreements evidencing or securing the loan in the principal amount of \$ _____ made by _____ to the Borrower, as the same may be amended, modified, supplemented, restated or replaced from time to time with the prior written consent

of the Mortgagee, there are no other easements or agreements, including, without limitation, parking agreements, encroachment agreements, access easements, service agreements, real estate tax abatement agreements and other similar agreements affecting the Project or the Project Site.

The Borrower shall not create, grant, consent to or suffer to exist any easement or right-of-way over, through or affecting the Project Site without the prior written consent of the Mortgagee, and such easements and other similar agreements affecting the Project Site shall be submitted to the Mortgagee for the Mortgagee's approval prior to the execution hereof or thereof, whichever is later, accompanied by a drawing or survey, if applicable, showing the location thereof.

The Borrower shall not initiate, approve or acquiesce to any change in or modification to the zoning in effect for the Project Site or any portion thereof without the prior written consent of the Mortgagee. The Borrower shall promptly notify the Mortgagee of any such proposed change or modification stating in reasonable detail the anticipated or proposed change and the manner in which such change would affect the Borrower's use and enjoyment of the Project Site, or any part thereof. The Mortgagee shall have the right to participate in any and all proceedings, judicial, administrative or otherwise, with respect to or in any way affecting the Project Site, including, without limitation, zoning, environmental and other matters.

Recordation and Filing. The Borrower, at its expense, shall cause this Mortgage, any instruments supplemental hereto and financing statements, including all necessary amendments, supplements and appropriate continuation statements, to be recorded, registered and filed, and to be kept recorded, registered and filed, in such manner and in such places as may be required in order to establish, perfect, preserve and protect the mortgage lien and security interest of this Mortgage as a valid [] priority mortgage lien on and security interest in all property, fixtures and interests included in the Mortgaged Property (including in each such case, without limitation, any such properties acquired after the execution hereof). If requested by the Mortgagee, the Borrower, at its expense, will furnish to the Mortgagee an opinion of an attorney or firm of attorneys selected by the Mortgagee and duly admitted to practice law before the highest court of the State ("Independent Counsel"), specifying the action required and to be taken by the Borrower to comply with this Section 1.2 since the date of this Mortgage or the date of the most recent such opinion or stating that no such action is necessary.

After Acquired Property. All property of every kind acquired by the Borrower after the date hereof, which by the terms hereof is intended to be subject to the lien and security interest of this Mortgage, shall immediately upon the acquisition thereof by the Borrower, and without further action by the Borrower, become subject to the mortgage lien and security interest of this Mortgage as fully as though now owned by the Borrower and specifically described herein. Nevertheless, the Borrower shall take such actions and execute, acknowledge and deliver such additional instruments as the Mortgagee shall require to further evidence or confirm the subjection of any such property to the mortgage lien and security interest of this Mortgage.

Disposition of Mortgaged Property; Liens and Encumbrances. Except as otherwise expressly permitted by this Mortgage, the Borrower shall not, directly or indirectly, sell, convey, assign, transfer or otherwise transfer the Mortgaged Property or any part thereof or interest therein without the prior written consent of the Mortgagee. The Borrower shall not directly or indirectly create or permit to remain, and will promptly discharge, any mortgage, lien, encumbrance or charge on, pledge of, security interest in or conditional sale or other title retention agreement with respect to the Mortgaged Property or any part thereof or the interest of the Borrower or the Mortgagee therein or any revenues, income or profit or other sums arising from the Mortgaged Property or any part thereof (including, without limitation, any lien, encumbrance or charge arising by operation of law) other than:

the mortgage lien and security interest of this Mortgage and the rights granted hereby and in the Loan Documents;

liens for taxes, assessments and other governmental charges which are not at the time required to be paid pursuant to Section 2.1 hereof;

liens of mechanics, materialmen, suppliers or vendors or rights thereto to the extent permitted by Section 2.2 hereof;

Permitted Encumbrances.

No Claims Against the Mortgagee. Nothing contained in this Mortgage shall constitute any request by the Mortgagee, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof, or be construed to give the Borrower any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would provide the basis for any claim either against the Mortgagee or that any lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the mortgage lien and security interest of this Mortgage.

The Mortgagee's Powers. Without affecting the liability of any other person liable for the payment of any obligation herein mentioned, and without affecting the mortgage lien, security interest or charge of this Mortgage upon any portion of the Mortgaged Property not then or theretofore released as security for the full amount of all unpaid obligations, the Mortgagee may, from time to time and without notice, (a) release any person so liable, (b) extend the maturity or alter any of the terms of any such obligation, (c) grant other indulgences, (d) release or reconvey, or cause to be released or reconveyed at any time at the Mortgagee's option any parcel, portion or all of the Mortgaged Property, (e) take or release any other or additional security for any obligations herein mentioned, or (f) make compositions or other arrangements with debtors in relation thereto.

Security for Advances. This Mortgage is intended to secure the unpaid balances of loan advances to be made under the Loan Agreement after this Mortgage has been delivered to the [] County, Ohio, Recorder's Office for recordation. The maximum amount of loan advances, exclusive of interest thereon and advances made for the payment of taxes, assessments,

insurance premiums and costs incurred for the protection of the Mortgaged Property, which may be outstanding at any time, is [] Dollars (\$[]). The Loan Agreement obligates the Mortgagee to advance definite and certain sums under definite conditions, which advances are to be made to pay certain permitted costs with respect to the Mortgaged Property as set forth in the Loan Agreement. This Mortgage shall be valid and have priority to the extent of the maximum amount secured hereby over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Mortgaged Property given priority by law.

In addition, this Mortgage shall secure unpaid balances of advances made pursuant hereto by the Mortgagee, together with interest thereon at a rate per annum equal to the sum of (i) four percent (4%), plus (ii) the "prime rate" of interest from time to time published in The Wall Street Journal, with each change in such prime rate automatically and immediately changing the interest rate (the "Interest Rate for Advances") from the date of disbursement, for the payment of items, including but not limited to taxes, assessments, insurance premiums and costs incurred for the protection of the Mortgaged Property, as contemplated by Section 5301.233 of the Ohio Revised Code.

Construction Mortgage. This Mortgage secures an obligation incurred for the construction of improvements on the Project Site, including the acquisition cost of such real property, and, consequently, is a "construction mortgage" within the meaning of the Commercial Code.

Taxes, Mechanics' Liens and Insurance

Payment of Taxes and Other Governmental Charges. The Borrower shall pay promptly when due, and before penalty or interest accrue thereon, all taxes, assessments, whether general or special, all other governmental charges and all public or private utility charges of any kind whatsoever foreseen or unforeseen, ordinary or extraordinary that now or may at any time hereafter be assessed, levied or imposed against or with respect to the Mortgaged Property or any part thereof (including, without limitation, any taxes levied upon or with respect to the revenues, income or profits of the Borrower from the Mortgaged Property) which, if not paid, may become or be made a lien on the Mortgaged Property, or any part thereof, or a charge on such revenues, income or profits.

Notwithstanding the preceding paragraph, the Borrower may, at its expense and after prior written notice to the Mortgagee, by appropriate proceedings diligently prosecuted, contest in good faith the validity or amount of any such taxes, assessments and other charges and during the period of contest, and after written notice to the Mortgagee, may permit the items so contested to remain unpaid, provided, at the option of the Mortgagee, the Borrower has deposited security in form and amount satisfactory to the Mortgagee. If at any time, however, the Mortgagee shall notify the Borrower that, in the opinion of Independent Counsel, by nonpayment of any such items the mortgage lien or security interest created by this Mortgage as to any part of the Mortgaged Property will be materially affected or the Mortgaged Property or any part thereof will be subject to imminent loss or forfeiture, the Borrower shall promptly pay all such taxes, assessments or charges. In the event that the Borrower shall fail to pay any of the foregoing items required by this Section 2.1 to be paid by the Borrower, the Mortgagee may, but shall be under no obligation

to, pay the same, and any amount so advanced shall be paid by the Borrower to the Mortgagee on demand, together with interest thereon at the Interest Rate for Advances from the date thereof and shall be subject to and secured by this Mortgage as additional indebtedness in accordance with the provisions of Section 1.9 hereof.

At the request of the Mortgagee, the Borrower shall pay to the Mortgagee, on the first day of each calendar month until the Note is paid in full, an amount equal to $1/12^{\text{th}}$ of the annual taxes, assessments or other charges reasonably estimated by the Mortgagee to pay the installment of such taxes, assessments or other charges next due on the Mortgaged Property. In such event, the Borrower further agrees to cause all bills, statements or other documents relating to taxes, assessments or other charges to be sent or mailed directly to the Mortgagee. Upon receipt of such bills, statements or other documents, and providing the Borrower has deposited sufficient funds with the Mortgagee pursuant to this Section 2.1, the Mortgagee shall pay such amounts as may be due thereunder out of the funds so deposited with the Mortgagee. If at any time and for any reason the funds deposited with the Mortgagee are or will be insufficient to pay such amounts as may then or subsequently be due, the Mortgagee shall notify the Borrower and the Borrower shall immediately deposit an amount equal to such deficiency with the Mortgagee. Notwithstanding the foregoing, nothing contained herein shall cause the Mortgagee to be deemed a trustee of said funds or to be obligated to pay any amounts in excess of the amount of funds deposited with the Mortgagee pursuant to this Section 2.1. The Mortgagee may commingle said funds with the Mortgagee's own funds and with other funds held by the Mortgagee, and the Mortgagee shall not be obligated to pay or allow any interest on any funds held by the Mortgagee pending disbursement or application hereunder. The Mortgagee may impound or reserve for future payment of taxes, assessments or other charges such portion of such payments as the Mortgagee may reasonably deem proper, applying the balance on the principal of or interest or monthly service fee on the obligations secured hereby. Should the Borrower fail to deposit with the Mortgagee (exclusive of that portion of said payments which has been applied by the Mortgagee on the principal of or interest or monthly service fee on the indebtedness secured by this Mortgage) sums sufficient to fully pay such taxes, assessments or other charges at least 30 days before delinquency thereof, the Mortgagee may, at the Mortgagee's election, but without any obligation so to do, advance any amounts required to make up the deficiency, which advances, if any, shall be paid by the Borrower to the Mortgagee on demand, together with interest thereon at the Interest Rate for Advances from the date thereof and shall be subject to and secured by this Mortgage as additional indebtedness in accordance with the provisions of Section 1.9 hereof; or at the option of the Mortgagee, the Mortgagee may, without making any advance whatever, apply any sums held by the Mortgagee upon any obligations of the Borrower secured hereby. Should any default occur or exist in the payment or performance of any of the Borrower's and/or any guarantor's obligations under the terms of the Note, this Mortgage, the Loan Documents or any other instrument given to secure the Note, the Mortgagee may, at any time at the Mortgagee's option, apply any sums or amounts received and/or held by the Mortgagee pursuant hereto, or as rents or income of the Mortgaged Property or otherwise, upon any indebtedness or obligation of the Borrower secured hereby in such manner and order as the Mortgagee may elect. The receipt, use or application of any such sums paid by the Borrower to the Mortgagee hereunder shall not be construed to affect the maturity of any indebtedness secured by this Mortgage or any of the rights or powers of the Mortgagee under

the terms of the Note, this Mortgage, the Loan Documents and any other instrument given to secure the Note, or any of the obligations of the Borrower and/or any guarantor under the Note, this Mortgage, the Loan Documents and any other instrument given to secure the Note.

Mechanics' and Other Liens. The Borrower shall not suffer or permit any mechanics' or other liens to be filed or to exist against the Mortgaged Property or any payments paid or payable under the Loan Documents by reason of work, labor, services or materials supplied or claimed to have been supplied to, for or in connection with the Mortgaged Property or to the Borrower or anyone holding the Mortgaged Property or any part thereof through or under the Borrower. If any such lien shall at any time be filed, the Borrower shall, within 30 days after notice of the filing thereof but subject to the right to contest as set forth herein, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. Notwithstanding the foregoing, the Borrower shall have the right, at the Borrower's own expense and after prior written notice to the Mortgagee, by appropriate proceeding duly and timely instituted and diligently prosecuted, to contest in good faith the validity or the amount of any such lien upon furnishing to the title insurance company selected by the Borrower which is acceptable to the Mortgagee (the "Title Company") such security or indemnity as it may require to induce said Title Company to issue an endorsement to the title policy issues to the Mortgagee insuring against all such claims or liens; and provided further, that (i) the Mortgagee will not be required to make any further disbursements of the proceeds of the Loan until any mechanics' lien claims have been so insured against by the Title Company and (ii) the aggregate amount of liens so insured against at any time shall not exceed \$10,000 without the Mortgagee's prior written consent. If, however, the Mortgagee shall notify the Borrower that, in the opinion of Independent Counsel, by nonpayment of any such items the mortgage lien or security interest created by this Mortgage will be materially affected or the Mortgaged Property or any part thereof will be subject to imminent loss or forfeiture, the Borrower shall promptly cause such lien to be discharged of record. Should the Borrower fail to cause such lien to be discharged or to contest the validity or amount thereof, within the period aforesaid, then the Mortgagee may, but shall be under no obligation to, discharge the same either by paying the claim or by procuring the discharge of such lien by making a deposit or obtaining a bond, which advances shall be paid by the Borrower to the Mortgagee on demand, together with interest thereon at the Interest Rate for Advances from the date thereof and shall be subject to and secured by this Mortgage as additional indebtedness in accordance with the provisions of Section 1.9 hereof.

Insurance. The Borrower shall keep the Mortgaged Property continuously insured at all times, with the following policies of insurance (collectively, "Required Property Insurance Coverage"):

Insurance against loss or damage to the Mortgaged Property by fire and any of the type now known as "all risk" or "fire and extended coverage," in an amount equal to the full replacement cost of the Mortgaged Property and with not more than \$____,000 deductible from the loss payable for any casualty. The policies of insurance carried in accordance with this subparagraph (a) shall contain a "Replacement Cost Endorsement."

If requested by the Mortgagee, business interruption insurance and/or loss of “rental value” insurance in such amounts as are satisfactory to the Mortgagee.

During the course of any construction, installation, renovation, restoration or repair of the Mortgaged Property, comprehensive public liability insurance (including coverage for elevators and escalators, if any, on the Project Site), such insurance to afford immediate minimum protection to a limit of not less than that required by the Mortgagee with respect to personal injury or death to any one or more persons or damage to property.

During the course of any construction, installation, renovation, restoration or repair of the Mortgaged Property, evidence of workers’ compensation coverage (including employer’s liability insurance) for all employees of the Borrower engaged in or with respect to such construction, installation, renovation, restoration or repair in such amount as is reasonably satisfactory to the Mortgagee or, if such limits are established by law, in such amounts.

During the course of any construction, installation, renovation, restoration or repair of the Mortgaged Property, builder’s completed value risk insurance against “all risks of physical loss,” including collapse and transit coverage, with deductibles not to exceed \$____,000, in nonreporting form, covering the total value of work performed and equipment, supplies and materials furnished. Said policy of insurance shall contain the “permission to occupy upon completion of work or occupancy” endorsement.

[Boiler and machinery insurance covering pressure vessels, air tanks, boilers, machinery, pressure piping, heating, air conditioning and elevator equipment and escalator equipment, provided the Mortgaged Property contains equipment of such nature, and insurance against loss of occupancy or use arising from any such breakdown, in such amounts as are reasonably satisfactory to the Mortgagee.]

Insurance against loss or damage to personal property by fire and other risks covered by insurance of the type now known as “fire and extended coverage.”

Flood insurance if any portion of the Project Site is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Program in an amount at least equal to the outstanding principal balance of the Loan or the maximum limit of coverage available with respect to the Project, whichever is less.

Such other insurance, and in such amounts, as may from time to time be required by the Mortgagee against the same or other hazards.

All policies of Required Property Insurance Coverage shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Borrower which might otherwise result in forfeiture of said insurance, and the further agreement of the insurer waiving all rights of setoff, counterclaim or deductions against Borrower.

In addition, the Borrower shall keep the Mortgaged Property continuously insured at all times, with comprehensive commercial public liability insurance (including coverage for elevators and escalators, if any, on the Project Site) against injury, loss and/or damage to persons (including death) and property in an amount which is not less than \$2,000,000 for bodily injury to persons and not less than \$1,000,000 for damage to property or such additional amounts as may from time to time be requested by the Mortgagee ("Required Public Liability Insurance Coverage").

All insurance shall be obtained and maintained either by means of policies with generally recognized, responsible insurance companies or in conjunction with other companies through an insurance trust or other arrangements satisfactory to the Mortgagee, and all such companies are to be qualified to do business in the State. All such insurance shall name the Mortgagee as a loss payee, mortgagee and/or additional insured, as applicable. The insurance to be provided may be by blanket policies in which event the Borrower shall furnish the Mortgagee with a certificate of insurance for each policy setting forth the coverage, the limits of liability, the name of the carrier, the policy number and the expiration date. Each policy of insurance shall be written so as not to be subject to cancellation or substantial modification (which phrase shall include any reduction in the scope or limits of coverage) upon less than 30 days written notice to the Mortgagee. The Borrower shall deposit with the Mortgagee certificates or other evidence satisfactory to the Mortgagee that (i) the insurance required hereby has been obtained and is in full force and effect and (ii) all premiums thereon have been paid in full. At least 30 days prior to the expiration of any such insurance, the Borrower shall furnish the Mortgagee with evidence satisfactory to the Mortgagee that such insurance has been renewed or replaced and that all premiums thereon have been paid in full and all insurance policies required hereby are in full force and effect.

All policies providing the Required Property Insurance Coverage shall contain standard mortgage clauses requiring all proceeds resulting from any claim for loss or damage in excess of \$____,000 to be paid, to the Mortgagee and any Net Proceeds of insurance providing such coverage shall be paid and applied as provided in Section 4.2 hereof. Any proceeds of policies providing Required Public Liability Insurance Coverage shall be applied toward the extinguishment or satisfaction of the liability with respect to which such insurance proceeds have been paid.

In the event the Borrower fails to provide, maintain, keep in force or deliver or furnish to the Mortgagee the policies of insurance required by this Section, the Mortgagee may procure such insurance or single interest insurance for such risks covering the Mortgagee's interest, and the Borrower shall pay all premiums thereon promptly upon demand by the Mortgagee, and until such payment is made by the Borrower, the amount of all such premiums, together with interest thereon at the Interest Rate for Advances, shall be secured by this Mortgage as additional indebtedness in accordance with the provisions of Section 1.9 hereof. At the request of the Mortgagee, the Borrower shall deposit with the Mortgagee, in monthly installments, an amount equal to 1/12th of

the estimated aggregate annual insurance premiums on all policies of insurance required by this Mortgage. The Borrower further agrees to cause copies of all bills, statements or other documents relating to the foregoing insurance premiums to be sent or mailed directly to the Mortgagee. Upon receipt of such bills, statements or other documents, and providing the Borrower has deposited sufficient funds with the Mortgagee pursuant to this Section 2.3, the Mortgagee shall pay such amounts, *provided* the Borrower has not already made the required payments, as may be due thereunder out of the funds so deposited with the Mortgagee. If at any time and for any reason the funds deposited with the Mortgagee are or will be insufficient to pay such amounts as may then or subsequently be due, the Mortgagee shall notify the Borrower and the Borrower shall immediately deposit an amount equal to such deficiency with the Mortgagee. Notwithstanding the foregoing, nothing contained herein shall cause the Mortgagee to be deemed a trustee of said funds or to be obligated to pay any amounts in excess of the amount of funds deposited with the Mortgagee pursuant to this Section 2.3. The Mortgagee may commingle said funds with the Mortgagee's own funds and with other funds held by the Mortgagee. The Mortgagee shall not be obligated to pay or allow any interest on any funds held by the Mortgagee pending disbursement or application hereunder, and the Mortgagee may impound or reserve for future payment of insurance premiums such portion of payments made pursuant to the Loan Documents as the Mortgagee may reasonably deem proper, applying the balance to the principal of or interest and monthly service fee on the obligations secured hereby. Should the Borrower fail to deposit with the Mortgagee, exclusive of that portion of payments which has been applied by the Mortgagee on the principal of or interest and monthly service fee on the indebtedness secured by this Mortgage, sums sufficient to fully pay such insurance premiums at least 30 days before such premiums are due, the Mortgagee may, at the Mortgagee's option, but without any obligation to do so, advance any amounts required to make up the deficiency, which advances, if any, shall be paid by the Borrower to the Mortgagee on demand, together with interest thereon at the Interest Rate for Advances from the date thereof and shall be subject to and secured by this Mortgage as additional indebtedness in accordance with the provisions of Section 1.9 hereof, or at the option of the Mortgagee, the Mortgagee may, without making any advances whatever, apply any sums held by the Mortgagee upon any obligations of the Borrower secured hereby. Should any default occur or exist in the payment or performance of any of the Borrower's and/or any guarantor's obligations under the terms of the Note, this Mortgage, any of the Loan Documents or any other instrument given to secure the Note, the Mortgagee may, at any time at the Mortgagee's option, apply any sums or amounts received and/or held by the Mortgagee pursuant hereto, or as rents or income from the Mortgaged Property or otherwise, upon any indebtedness or obligation of the Borrower secured hereby in such manner and order as the Mortgagee may elect. The receipt, use or application of any such sums or amounts hereunder shall not be construed to affect the maturity of any indebtedness secured by this Mortgage or any of the rights or powers of the Mortgagee under the terms of the Note, this Mortgage, the Loan Documents or any other instrument given to secure the Note or any of the obligations of the Borrower and/or any guarantor under the Note, this Mortgage, the Loan Documents or any other instrument given to secure the Note. The Borrower waives any and all right to claim or recover against the Mortgagee or the State and any officers, employees, agents and representatives of the Mortgagee or the State, for loss of or damage to the Borrower, the Mortgaged Property, the Borrower's property or the property of others under the Borrower's

control, from any cause insured against or required to be insured against by the provisions of this Mortgage.

Workers' Compensation Coverage. The Borrower shall maintain or cause to be maintained in connection with the Borrower's business operations and the Mortgaged Property, any workers' compensation coverage required by the applicable laws of the State.

Maintenance and Use of Mortgaged Property

Compliance with Legal and Insurance Requirements. The Borrower, at its expense, shall promptly comply with all laws, statutes, codes, acts, ordinances, resolutions, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all governmental entities, departments, commissions, boards, courts, authorities or agencies which now or at any time hereafter may be applicable to the Mortgaged Property or any part thereof, any use, anticipated use or condition of the Mortgaged Property or any part thereof ("Legal Requirements") and all provisions of any insurance policy covering or applicable to the Mortgaged Property or any part thereof, all requirements of the issuer of any such policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting the Mortgaged Property or any part thereof, and shall procure, maintain and comply with all permits, licenses and other authorizations required for any use of the Mortgaged Property or any part thereof then being made or anticipated to be made, and for the proper construction, installation, renovation, operation and maintenance of the Mortgaged Property or any part thereof, and the Borrower shall comply with any instruments of record at the time in force burdening the Mortgaged Property or any part thereof. The Borrower may, at its expense and after prior written notice to the Mortgagee, by any appropriate proceedings diligently prosecuted, contest in good faith any Legal Requirement and postpone compliance therewith pending the resolution or settlement of such contest, *provided* that such postponement does not, in the opinion of Independent Counsel, materially affect the mortgage lien or security interests created by this Mortgage as to any part of the Mortgaged Property or subject the Mortgaged Property, or any part thereof, to imminent loss or forfeiture.

Maintenance and Use of Mortgaged Property. The Borrower, at its expense, shall keep, or cause to be kept, the Mortgaged Property in good order and condition (ordinary wear and tear excepted) and shall make all necessary or appropriate repairs, replacements and renewals thereof, interior, exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen. The Borrower shall not do, or permit to be done, any act or thing which might materially impair the value or usefulness of the Mortgaged Property or any part thereof, shall not commit or permit any waste of the Mortgaged Property or any part thereof, and shall not permit any unlawful occupation, business or trade to be conducted on or in the Mortgaged Property or any part thereof. The Borrower shall also, at its expense, promptly comply with all rights of way or use, privileges, franchises, servitudes, licenses, easements, tenements, hereditaments and appurtenances forming a part of the Mortgaged Property and all instruments creating or evidencing the same, in each case, to the extent compliance therewith is required of the Borrower under the terms thereof.

Additions, Modifications and Improvements. Without the prior written consent of the Mortgagee, the Borrower shall not make any material alterations to the Mortgaged Property *[(other than completion of the Construction in accordance with the Plans and Specifications)]*. In the event that the Mortgagee consents to any additional additions, modifications and improvements, such additions, modifications and improvements so made by the Borrower shall become or be deemed to constitute a part of the Mortgaged Property.

Substitutions and Removals. In any instance where the Borrower, in its reasonable discretion, determines that any item of personal property or fixture constituting a part of the Mortgaged Property shall have become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary or should be replaced, the Borrower may remove such items, *provided* that the Borrower shall substitute and install other property as part of the Mortgaged Property having equal or greater value (but not necessarily the same function) in the operation of the Mortgaged Property, which substituted property shall be free from all liens and encumbrances (other than Permitted Encumbrances) and shall become part of the Mortgaged Property, and be subject to this Mortgage. The Borrower shall provide to the Mortgagee written evidence satisfactory to the Mortgagee of the fair market value of portions of the Mortgaged Property removed and of the substituted property and that such removal and substitution is not inconsistent with the Project Purposes (as defined in the Loan Agreement).

Indemnification. The Borrower shall protect, indemnify and save harmless the Mortgagee from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses except as may be limited by law or judicial order or decision entered in any action brought to recover moneys under this Section) imposed upon, incurred by or asserted against the Mortgagee by reason of (a) ownership of any interest in the Mortgaged Property or any part thereof, (b) any accident, injury to or death of persons or loss of or damage to property occurring on or about the Mortgaged Property or any part thereof or the adjoining sidewalks, curbs, vaults and vault space, if any, streets or ways, (c) any use, disuse or condition of the Mortgaged Property or any part thereof, or the adjoining sidewalks, curbs, vaults and vault space, if any, streets or ways, (d) any failure on the part of the Borrower to perform or comply with any of the terms hereof or any other Loan Document, (e) any necessity to defend any right, title or interest conveyed by this Mortgage, or (f) the performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof. If any claim, action or proceeding is made or brought against the Mortgagee in respect of which indemnity may be sought hereunder, the Mortgagee shall give notice to the Borrower of the claim, action or proceeding and upon such notice, at the option of the Mortgagee, (i) the Borrower shall assume, at the Borrower's expense, the defense of the action or proceeding with legal counsel satisfactory to the Mortgagee, (ii) the Borrower shall assume the defense of the action or proceeding with the participation of the Mortgagee, at the Borrower's expense, in such defense, or (iii) the Mortgagee shall assume the defense of the claim, action or proceeding at the Borrower's expense; *provided* that the failure of the Mortgagee to give such notice shall not relieve the Borrower from any of its obligations under this Section unless the failure prejudices the defense by the Borrower of the claim, action or proceeding. Any amounts payable to the Mortgagee under this Section shall be paid by the Borrower on demand, together with interest thereon at the Interest Rate for Advances from the

date thereof, and such amounts, together with such interest, shall be secured by this Mortgage as additional indebtedness in accordance with the provisions of Section 1.9 hereof. The obligations of the Borrower under this Section shall survive any defeasance of this Mortgage. The indemnification provided by this Section to the Mortgagee includes officers, employees, agents and representatives of the Mortgagee and the State.

Damage, Destruction and Eminent Domain

Damage to or Destruction of Mortgaged Property. In case of any damage to or destruction of the Mortgaged Property or any part thereof, there shall be no abatement or reduction of any payment payable by the Borrower under the Note, the Loan Agreement and all other Loan Documents. The Borrower shall promptly give or cause to be given written notice thereof to the Mortgagee generally describing the nature and extent of such damage or destruction. The Mortgagee may elect to collect, retain and apply upon the Obligations the gross proceeds of any insurance proceeds or condemnation award or amount received for transfer in lieu of condemnation less the payment of all expenses, including attorneys' fees, incurred in connection with the collection of such gross proceeds (the "Net Proceeds") after deduction of all expenses of collection and settlement, including attorneys' and adjusters' fees and charges. Any Net Proceeds remaining after repayment of the indebtedness under the Loan Documents shall be paid by the Mortgagee to Borrower. Notwithstanding the foregoing, in the event that the Mortgagee does not elect to apply the Net Proceeds to the indebtedness of Borrower under the Note, this Mortgage or any of the other Loan Documents, unless in lieu thereof the Borrower exercises its option to prepay the entire unpaid principal balance of the Note, the Borrower shall, whether or not the Net Proceeds of insurance, if any, received on account of such damage or destruction shall be sufficient for such purpose, promptly commence and complete, or cause to be commenced and completed, the repair or restoration of the Mortgaged Property as nearly as practicable to the value, condition and character thereof existing immediately prior to such damage or destruction, with such changes or alterations, however, as the Borrower may deem necessary for proper operation of the Mortgaged Property, so long as such changes or alterations are consistent with the Project Purposes.

Use of Insurance Proceeds. In connection with the repair or restoration of the Mortgaged Property pursuant to Section 4.1 hereof, any Net Proceeds of Required Property Insurance Coverage not in excess of \$____,000 shall be paid to the Borrower for application of as much of such Net Proceeds as may be necessary for such repair and restoration. If such Net Proceeds exceed \$____,000, all of such Net Proceeds shall be paid to and held by, or at the direction of, the Mortgagee in a separate account, for application of as much as may be necessary of such Net Proceeds to the payment of the costs of repair or restoration, either on completion thereof or as the work progresses, as directed by the Mortgagee. The Mortgagee may, prior to making payment from such loss account, require the Borrower to provide evidence that, or deposit with the Mortgagee moneys to be placed in such account so that, there will be sufficient moneys available for such repair or restoration. The Mortgagee shall not be obligated to make or authorize any payment from such account if there exists an Event of Default (as defined hereinafter) hereunder. Any balance of the Net Proceeds held by the Mortgagee remaining after payment of all costs of such repair, rebuilding or restoration shall be paid at the direction of the Borrower. Nothing contained herein shall cause the Mortgagee to be deemed a trustee of such Net Proceeds or any other moneys deposited with the Net Proceeds

or to be obligated to allow or pay any amounts in excess of the Net Proceeds and any other moneys deposited with the Net Proceeds.

If, in lieu of repair or restoration, the Borrower has exercised its option to prepay the Note, an amount equal to any Net Proceeds received by the Mortgagee prior to such prepayment shall be credited against the amount payable by the Borrower under the Note to effect such prepayment.

Within 90 days from the date of any damage or destruction to the Mortgaged Property, or within 30 days of the receipt of any Net Proceeds, whichever occurs first, the Borrower shall determine and notify the Mortgagee in writing which of the ways specified in this Section such Net Proceeds shall be applied. In the event that the Borrower fails to make such a determination or to give such notice within the applicable period, such Net Proceeds shall be applied as determined by the Mortgagee, in the Mortgagee's sole discretion.

Eminent Domain. If title to, possession or ownership of, or the temporary use of the Mortgaged Property, or any part thereof, shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under any governmental body or governmental authority, or shall be transferred in lieu of such taking, there shall be no abatement or reduction in any payments payable by the Borrower under the Note, the Loan Agreement and all other Loan Documents. The Borrower shall promptly give written notice to the Mortgagee describing the nature and extent of such taking. Any Net Proceeds received from any award made in such eminent domain proceedings or from a transfer in lieu thereof shall, if received prior to the release and discharge of this Mortgage, be paid to and held by, or at the direction of, the Mortgagee in a separate account for application, at the Mortgagee's option, to one or more of the following purposes:

The repair or restoration of the Mortgaged Property as nearly as practicable to the same condition or character thereof existing immediately prior to the exercise of the power of eminent domain with such changes or alterations, however, as the Borrower may reasonably deem necessary for proper operation of the Mortgaged Property so long as such changes or alterations are not inconsistent with the Project Purposes.

The acquisition, installation or construction by the Borrower of other improvements suitable for the Borrower's operations on the Project Site (which improvements shall be deemed a part of the Mortgaged Property), *provided* that such improvements shall be subject to no liens or encumbrances, other than Permitted Encumbrances.

The prepayment of the Note.

Within 30 days from the date of entry of a final order in any eminent domain proceeding or the date of any transfer in lieu thereof, the Mortgagee shall notify the Borrower in writing to which purpose or combination of purposes above specified the Net Proceeds of the condemnation award or transfer in lieu of condemnation (together with any investment income therefrom) shall be

applied. Nothing contained herein shall cause the Mortgagee to be deemed a trustee of the Net Proceeds or to be obligated to allow or pay any amounts in excess of the Net Proceeds.

Investment and Disbursement of Net Proceeds. All moneys received by the Mortgagee or the Mortgagee's designee constituting Net Proceeds shall, pending application, be invested at the direction of the Borrower (for the account of and at the risk of the Borrower) and shall (together with any investment income therefrom), to the extent to be used for repair, rebuilding, restoration, acquisition or construction, be disbursed, as provided in the Loan Agreement for the disbursement of loan proceeds. Any balance of Net Proceeds (together with any investment income therefrom) held by the Mortgagee or its designee upon the release and discharge of this Mortgage pursuant to Section 6.2 hereof, or any Net Proceeds thereafter received by the Mortgagee, shall be paid to the Borrower.

Remedies

Right to Perform Covenants. If the Borrower shall fail to make any payment or perform any act required to be made or performed hereunder or under the Loan Agreement, the Note or any other Loan Document, the Mortgagee, without demand upon the Borrower and without waiving or releasing any obligation or default, may (but shall be under no obligation to) upon 10 days written notice to the Borrower (except under emergency conditions or unless a shorter period is elsewhere provided) make such payment or perform such act for the account and at the expense of the Borrower and may enter upon the Mortgaged Property or any part thereof for such purpose and take all such action thereon as, in the Mortgagee's opinion, may be necessary or appropriate. All payments so made by the Mortgagee and all costs, fees and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred in connection therewith or in connection with the performance by the Mortgagee of any such act, together with interest thereon at the Interest Rate for Advances from the date of payment or incurrence, shall be subject to and be secured by this Mortgage as additional indebtedness in accordance with the provisions of Section 1.9 hereof and shall be paid by the Borrower to the Mortgagee on demand. In any action brought to collect such indebtedness, or to foreclose or otherwise pursue the remedies of the Mortgagee under this Mortgage, the Mortgagee shall be entitled to the recovery of such expenses in such action except as limited by law or judicial order or decision entered in such action.

Events of Default. Each of the following shall constitute an "Event of Default" under this Mortgage:

the Borrower shall fail to pay within ten (10) days after the due date thereof any amount payable pursuant to this Mortgage, under the Note or under any other Loan Document;

the Borrower shall fail to observe and perform any agreement, term or condition contained in this Agreement other than as required pursuant to subsection (a) above, and such failure continues for a period of 30 days after the Borrower has knowledge thereof; *provided, however*, that such 30 day cure period shall not apply to (i) any failure which in the good faith opinion of the Mortgagee is incapable of cure, (ii) any

failure which has previously occurred, or (iii) any failure to maintain and keep in effect any insurance required by the Loan Documents; or

an Event of Default occurs under the Loan Agreement.

Remedies. If an Event of Default shall have occurred and be continuing, the Mortgagee, at any time, at the Mortgagee's election, may exercise any or all or any combination of the remedies conferred upon or reserved to the Mortgagee under this Mortgage, the Loan Agreement, the Note, the Loan Documents or any instrument or document collateral thereto, or now or hereafter existing at law, or in equity or by statute. Without limitation, the Mortgagee may (a) declare the entire unpaid principal balance of the Note and all other indebtedness secured hereby immediately due and payable, without notice or demand, the same being expressly waived by the Borrower; (b) proceed at law or equity to collect all indebtedness secured by this Mortgage due hereunder, whether at maturity or by acceleration; (c) foreclose the mortgage lien of this Mortgage as against all or any part of the Mortgaged Property; and (d) exercise any rights, powers and remedies [he/she] may have as a secured party under the Commercial Code, or other similar laws in effect, including, without limitation, the option of proceeding as to both personal property and fixtures in accordance with the Mortgagee's rights with respect to real property. In any foreclosure action or other sale hereunder, the Mortgagee or its nominee may bid and become the purchaser of all or any part of the Mortgaged Property and the amount of the Mortgagee's successful bid shall be credited to payment of the indebtedness secured hereby. Without limiting the foregoing, the Mortgagee may proceed by a suit or suits in law or equity, whether for specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure under the judgment or decree of any court of competent jurisdiction.

Sale of Personal Property. The Mortgagee shall have the discretionary right to cause some or all of the Mortgaged Property, which constitutes personal property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law. For purposes of this power of sale, the Mortgagee may elect to treat as personal property any Mortgaged Property which is intangible or which can be severed from the Project Site without causing structural damage. If it chooses to do so, the Mortgagee may dispose of any personal property, in any manner permitted by Article 9 of the Commercial Code, including any public or private sale, or in any manner permitted by any other applicable law.

Waiver of Appraisement, Valuation, Redemption and Marshalling of Assets. The Borrower does hereby waive, to the full extent it may lawfully do so, the benefit of all appraisement, valuation, stay, extension and redemption laws now or hereafter in force and agrees not to set up, claim or seek to take advantage of any such law in order to prevent or hinder the enforcement or foreclosure of this Mortgage or the final and absolute sale of the Mortgaged Property or any part thereof or interest therein, or the final and absolute putting into possession immediately after such sale of the purchaser or purchasers thereof. The Borrower also waives, to the full extent it may lawfully do so, all rights of marshalling of assets in the event of any foreclosure or sale of the Mortgaged Property or any part thereof or any interest therein and agrees that any court having jurisdiction to foreclose the mortgage lien and security interest of this Mortgage or sell the Mortgaged Property

may foreclose the mortgage lien and security interest of this Mortgage and sell the Mortgaged Property as an entirety, or in such parcels or portions as may be ordered by the court.

Application of Proceeds. Any moneys (including, without limitation, the proceeds of any sale, by foreclosure or otherwise, of the Mortgaged Property, any part thereof or any interest therein) received by the Mortgagee pursuant to the exercise of any remedies provided in this Mortgage or by law shall be applied as follows:

to the payment of all costs incurred in the collection thereof (including, without limitation, reasonable attorneys' fees and expenses, except as may have been limited by law or by judicial order or decision entered in any action to foreclose this Mortgage);

to the payment of indebtedness secured by this Mortgage owing to the Mortgagee, other than indebtedness with respect to the Note at the time outstanding;

to the payment to the Mortgagee for the payment of all amounts of principal and interest and monthly service fee due and payable on the Note (whether due at maturity or as an installment of principal, interest or monthly service fee or by prepayment or acceleration or otherwise);

the balance, if any, unless a court of competent jurisdiction may otherwise direct by final order not subject to appeal, to or at the direction of the Borrower.

Appointment of Receiver. If an Event of Default shall have occurred and be continuing, the Mortgagee shall, as a matter of right and without giving bond to the Borrower or anyone claiming by, under or through the Borrower, and without regard for the solvency or insolvency of the Borrower and to the extent permitted by applicable law and without regard to the adequacy of the Mortgaged Property as security, be entitled to the appointment of a receiver with the rights and powers referenced below and such other rights and powers as the court making such appointment shall confer for all or any part of the Mortgaged Property, whether such receivership is incidental to a proposed sale of the Mortgaged Property or otherwise, and the Borrower hereby consents to the appointment of such a receiver and covenants not to oppose any such appointment. Such receiver shall have all powers and duties prescribed by applicable law, all other powers which are necessary or usual in such cases for the protection, possession, control, management and operation of the Mortgaged Property, and such rights and powers as the Mortgagee would have, upon entering and taking possession of the Mortgaged Property under Section 5.8 below.

Receiver. The Mortgagee, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Mortgaged Property, and may also do any and all other things in connection with those actions that the Mortgagee may in its sole discretion consider necessary and appropriate to protect the security of this Mortgage. Such other things may include: taking and possessing all of the Borrower's or the then owner's books and records; entering into, enforcing, modifying or canceling Leases on such terms and conditions as the Mortgagee may consider proper; obtaining and evicting tenants; fixing or modifying rents;

collecting and receiving any payment of money owing to the Borrower; completing any unfinished construction; and/or contracting for and making repairs and alterations. If the Mortgagee so requests, the Borrower shall assemble all of the Mortgaged Property that has been removed from the Project Site and make all of it available to the Mortgagee at the Project Site. The Borrower hereby irrevocably constitutes and appoints the Mortgagee as the Borrower's attorney-in-fact to perform such acts and execute such documents as the Mortgagee in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of the Borrower's name on any instruments.

Possession, Management and Income; Assignment. If an Event of Default shall have occurred and be continuing, the Mortgagee, to the extent permitted under applicable law, ex parte and without notice may enter upon and take possession of the Mortgaged Property or any part thereof by summary proceedings, ejectment or otherwise, and may remove the Borrower and all other persons and any and all property therefrom and may hold, operate and manage the same and receive all revenues, income or profits accruing with respect thereto or any part thereof. The Mortgagee shall not have any liability for or by reason of any such taking of possession, entry, removal or holding, operation or management.

Remedies Cumulative. Each right, power and remedy of the Mortgagee provided for in this Mortgage, in the Loan Agreement and the other Loan Documents or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Mortgage, in the Loan Agreement or the other Loan Documents or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise or partial exercise by the Mortgagee of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by the Mortgagee of any or all such other rights, powers or remedies.

Provisions Subject to Applicable Law. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law.

No Waiver by the Mortgagee. No failure by the Mortgagee to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such term or of any such breach. No waiver of any breach shall affect or alter this Mortgage, which shall continue in full force and effect with respect to any other then existing or subsequent breach.

Discontinuance of Proceedings and Restoration of Status Quo. In case the Mortgagee shall have proceeded to enforce any right, power or remedy under this Mortgage by sale, foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Mortgagee, then and in every case the Borrower and the Mortgagee shall be restored to their former positions and rights hereunder, and all rights, power and remedies of the Mortgagee shall continue as if no such proceeding had been taken.

No Liability. The Mortgagee shall have no liability for any loss, damage, injury, cost or expense resulting from any act or omission to act by the Mortgagee or officers, employees, agents or representatives of the Mortgagee or the State, whether or not negligent, which was taken or omitted in good faith pursuant to this Article V.

Miscellaneous

Additional Security. Without notice to or consent of the Borrower and without impairment of the mortgage lien and security interest and rights created or granted by this Mortgage, the Mortgagee may accept from the Borrower or from any other person or persons additional security for the indebtedness secured by this Mortgage. Neither the giving of this Mortgage nor the acceptance of any such additional security shall prevent the Mortgagee from resorting, first, to such additional security, or first, to the security created by this Mortgage, in either case without affecting the mortgage lien and security interest hereof and the rights conferred hereunder.

Release and Discharge. If all sums payable by the Borrower under this Mortgage, the Note, the Loan Agreement and the other Loan Documents shall have been paid and the Borrower shall have complied with all the terms, conditions and requirements hereof and thereof, then this Mortgage shall be null and void and of no further force and effect. Upon the written request and at the expense of the Borrower, the Mortgagee will execute and deliver such proper instruments of release and discharge as may reasonably be requested to evidence such defeasance, release and discharge.

Inspection. The Mortgagee and the Mortgagee's officers, employees, agents and representatives are hereby authorized to enter upon and inspect the Mortgaged Property at any time during the term of this Mortgage.

Expenses. The Borrower shall, to the extent permitted by law, immediately, upon demand, pay or reimburse the Mortgagee for all costs, expenses and attorneys' fees incurred by the Mortgagee in any proceedings involving the estate of a decedent, an insolvent or a debtor under federal bankruptcy law, or in any action, proceeding or dispute of any kind in which the Mortgagee is made a party, or appears as an intervenor or party plaintiff or defendant, affecting or relating to the Note, this Mortgage, the Loan Agreement, any other Loan Documents, the Borrower or any of the Mortgaged Property, including, but not limited to, the foreclosure of or collection under this Mortgage, any condemnation action involving the Mortgaged Property, or any action to protect the security hereof, and any such amounts paid by the Mortgagee shall, except as may be limited by law or judicial order or decision entered in any such action, be added to the indebtedness secured hereby and secured by the mortgage lien and security interest of this Mortgage in accordance with Section 1.9 hereof and shall bear interest at the Interest Rate for Advances.

Estoppel Affidavits. The Borrower, within 10 days after written request from the Mortgagee, shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest and monthly service fee on, the indebtedness secured hereby and whether any credits, setoffs or defenses exist against such principal, interest and monthly service fee.

No Merger. It being the desire and intention of the parties hereto that this Mortgage and the mortgage lien and security interest hereof do not merge in fee simple title to the Mortgaged Property, it is hereby understood and agreed that should the Mortgagee acquire any additional or other interests in or to the Mortgaged Property or the ownership thereof, then, unless a contrary interest is manifested by the Mortgagee as evidenced by an appropriate document duly recorded, this Mortgage and the mortgage lien and security interest hereof shall not merge in the fee simple title to the Mortgaged Property or any part thereof, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

General Provisions. This Mortgage shall be deemed to be made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State and shall inure to the benefit of and be binding upon the Borrower, the Mortgagee and their respective permitted successors and assigns. If any term or provision of this Mortgage shall be held to be invalid, illegal or unenforceable, the validity of the remaining provisions hereof shall in no way be affected thereby. The captions or headings herein shall be solely for convenience of reference and in no way affect the meaning or define, limit or describe the scope or intent of any provisions or sections of this Mortgage. This Mortgage may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument; it shall not be necessary in proving this Mortgage to produce or account for more than one such counterpart.

Amendments, Changes and Modifications. Except as otherwise provided in this Mortgage, this Mortgage may not be amended, changed, modified, supplemented, altered or terminated without the prior written consent of the Mortgagee.

Delivery and Assignment of Leases. ***[The Lease of the Mortgaged Property from the Borrower to _____ shall be subject and subordinate to this Mortgage.]*** The Borrower shall, concurrently with the execution and delivery of this Mortgage, execute and deliver to the Mortgagee a collateral assignment of its interest as lessor in all Leases***], including the Lease,]*** in form and substance satisfactory to the Mortgagee, pursuant to which the Borrower assigns its interest in all such Leases as additional collateral for the indebtedness hereby secured.

The Borrower will perform, fulfill, comply with and observe, each and every covenant, agreement and condition to be performed, fulfilled, complied with and observed by the Borrower, as lessor under all Leases, and will not suffer or permit any default of the Borrower as lessor thereunder, to occur (except defaults which are duly cured within the time provided in the Leases for the curing thereof).

The Borrower will not convey all or any part of the Mortgaged Property covered by any Lease to the lessee thereof without the prior written consent of the Mortgagee and except upon express stipulation duly set forth in the deed that any such conveyance shall not effect a merger of the leasehold estate in the fee except with the written consent of the Mortgagee.

The Borrower shall not, and shall not have the right or power to, as against the Mortgagee without its consent, cancel, terminate, abridge or materially modify any Leases or to accept prepayments of installments of rent or other sums due or to become due thereunder.

Waiver of Setoff. All sums payable by the Borrower hereunder shall be paid without notice, demand, counterclaim, setoff, deduction or defense, and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of the Borrower hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of (a) any damage to or destruction of or any condemnation or similar taking, or transfer in lieu thereof, of the Mortgaged Property or any part thereof; (b) any restriction or prevention of or interference with any use of the Mortgaged Property or any part thereof; (c) any title defect or encumbrance or any eviction from the Mortgaged Property or any part thereof by title paramount or otherwise; (d) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to the Borrower or any action taken with respect to this Mortgage by any trustee or receiver of the Borrower, or by any court in such proceeding; (e) any claim which the Borrower has or might have against the Mortgagee; (f) any default or failure on the part of the Mortgagee to perform or comply with any of the terms hereof or of any other agreements pertaining to the loan on the Mortgaged Property with the Borrower; or (g) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not the Borrower shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, the Borrower waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by the Borrower.

Brundage Clause. In the event of the passage or enactment of any law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or security agreements or debts secured by mortgages or security agreements or the manner of collecting taxes so as to affect adversely the Mortgagee, the Mortgagee may, at the Mortgagee's option, declare an Event of Default hereunder unless promptly upon such passage or enactment the Borrower assumes, in a manner satisfactory to the Mortgagee, the obligation to pay any taxes or other financial burdens imposed upon the Mortgagee.

Notices. All notices, certificates, requests or other communications hereunder shall be given in accordance with the Loan Agreement.

Subrogation. The Mortgagee shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid with the proceeds of the indebtedness secured hereby.

Inspections and Approvals. Inspections and approvals by the Mortgagee of the *[Plans and Specifications or the]* Mortgaged Property impose no responsibility or liability of any nature whatsoever on the Mortgagee and, without limitation, carry no warranty or representation that upon construction of any improvements to the Project Site such improvements shall be structurally sound, adequate, safe or usable for the purposes intended.

Confession of Judgment. The Borrower hereby irrevocably authorizes any attorney-at-law, including any attorney-at-law employed or retained by the Mortgagee, to appear for it in any action on this Mortgage at any time after the same becomes due as herein provided, in any court of record situated in Franklin County, Ohio (which the Borrower acknowledges to be the place where this Mortgage was signed), or in the county where the Borrower then resides or can be found, to waive the issuing and service of process, and confess a judgment in favor of the Mortgagee or other holder of this Mortgage against the Borrower for the amount that may then be due, with interest at the rate provided for herein, together with the costs of suit, and to waive and release all errors in said proceedings and the right to appeal from the judgment rendered ***[but no judgment or judgments against less than all of the Borrowers shall be a bar to any subsequent judgment against those of the Borrowers against whom judgment has not been taken. Each]*** ***[The]*** Borrower consents to the jurisdiction and venue of such court. The Borrower waives any conflict of interest that any attorney-at-law employed or retained by the Mortgagee may have in confessing judgment hereunder and consents to the payment of a legal fee to any attorney-at-law confessing judgment hereunder.

[Balance of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Borrower has executed this Mortgage as of _____, 202__.

WARNING -- BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE.

BORROWER:

By: _____

Name: _____

Title: _____

STATE OF OHIO)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 202__, by _____, the _____ of _____, a[n] _____, for and on behalf of said _____.

Notary Public

This Instrument prepared by:

EXHIBIT A

(to Open-End Mortgage dated _____, 201____,
by _____ to [ADMINISTRATOR])

Project Site

[To be provided by the Borrower]

EXHIBIT B

(to Open-End Mortgage dated _____, 202____,
by _____ to [ADMINISTRATOR])

Permitted Encumbrances

**OPEN END MORTGAGE,
SECURITY AGREEMENT AND FIXTURE FILING**
(fee owner, borrower, real and personal property)

MAXIMUM INDEBTEDNESS NOT TO EXCEED \$ _____

This OPEN END MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage"), dated as of _____, 202__, is executed and delivered by _____, a[n] _____ [entity], as the mortgagor, whose address is _____ (the "Borrower"), in favor of [ADMINISTRATOR], its successors and assigns, as the mortgagee, whose address is [ADDRESS] (the "Mortgagee").

As an inducement to and in consideration of loan by the Mortgagee to the Borrower in the total sum of \$ _____ (the "Loan") to the Borrower by the Mortgagee pursuant to that certain Loan Agreement between the Mortgagee and the Borrower, dated _____, 202__, as the same may be amended, modified, supplemented, extended, renewed, restated or replaced from time to time (the "Agreement") and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and for the purpose of securing the (i) all payments to be made by the Borrower under the Loan Agreement, that certain promissory note evidencing the obligation of the Borrower to repay the Loan, as the same may be amended, modified, supplemented, restated or replaced from time to time (the "Note"), this Mortgage and all other documents, instruments and agreements delivered to or required by the Mortgagee to evidence or secure the Loan, as the same may be amended, modified, supplemented, restated or replaced from time to time (the "Loan Documents") together with interest and the monthly service fee as provided therein and herein, (ii) any amounts advanced or costs incurred by the Mortgagee with respect to the Mortgaged Property (as defined hereinafter), including, without limitation, for the payment of taxes, assessments, insurance premiums and amounts advanced or costs incurred for the protection of the Mortgaged Property or the enforcement and/or foreclosure of the Loan Documents, together with interest and monthly service fee as provided therein and herein, (iii) the performance and observance of each covenant and agreement of the Borrower contained in this Mortgage, the Note, the Loan Agreement and the other Loan Documents, (iv) payment and performance of all future advances and other obligations that the Borrower or any successor in ownership of all or part of the Mortgaged Property may agree to pay and/or perform (whether as principal, surety or guarantor) for the benefit of the Mortgagee, when a writing evidences the parties' agreement that the advance or obligation be secured by this Mortgage or any Loan Documents; and (v) payment and performance of all modifications, amendments, extensions, and renewals, however evidenced, of any of the obligations set forth above (collectively the "Obligations"), the Borrower does hereby grant, bargain, sell, convey, mortgage, assign, grant a lien on and security interest in and transfer unto the Mortgagee, the Mortgagee's successors and assigns, the following property and property interests (the "Mortgaged Property"):

The real property described in Exhibit A attached hereto, together with all other real properties now or hereafter made subject to the lien of this Mortgage by supplemental mortgage or otherwise (the "Project Site");

- All buildings, structures, additions, improvements, facilities, fixtures (including the fixtures described on Exhibit C attached hereto), apparatus and installations now owned or hereafter acquired and located in, upon, under or based at the Project Site (the "Project Facilities");
- All equipment, machinery and other personal property (the "Project Equipment" and collectively, with the Project Site and the Project Facilities, the "Project") described on Exhibit D attached hereto;
- All rents, revenues, payments, repayments, income, charges, proceeds (as defined in Chapter 1309 of the Commercial Code (as defined hereinafter) and moneys derived by the Borrower from the lease, sale or other disposition of the Mortgaged Property and the proceeds from any insurance or condemnation award pertaining thereto;
- All existing and future easements, rights of way or use, licenses, privileges, franchises, servitudes, tenements, hereditaments and all appurtenances now or hereafter belonging to or in anywise appertaining to the Project Site or the Project Facilities including, without limitation, all minerals, oil, gas, other hydrocarbons and associated substances, sulphur, nitrogen, carbon dioxide, helium and other commercially valuable substances which may be in, under or produced from any part of the Project Site, all development rights and credits, air rights, water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock, and any Project Site lying in the streets, roads or avenues, open or proposed, in front of or adjoining the Project Site and Project Facilities;
- All existing and future leases, subleases, subtenancies, licenses, occupancy agreements and concessions ("Leases") relating to the use and enjoyment of all or any part of the Project Site and Project Facilities, and any and all guaranties and other agreements relating to or made in connection with any of such Leases;
- All real property and improvements on it, and all appurtenances and other property and interests of any kind or character, whether described in Exhibit A or not, which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Project Site and Project Facilities;
- All goods, materials, supplies, chattels, furniture, fixtures, equipment and machinery now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Project Site and Project Facilities, whether stored on the Project Site or elsewhere, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment, all of which shall be considered to the fullest extent of the law to be real property for purposes of this Mortgage and any manufacturer's warranties with respect thereto;

All building materials, equipment, work in process or other personal property of any kind, whether stored on the Project Site or elsewhere, which have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Project Site and Project Facilities;

All of the Borrower's interest in and to all operating accounts, the Loan funds, whether disbursed or not, all reserves set forth in the budget for the Project and any other bank accounts of the Borrower;

All rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by the Borrower with third parties (including all utility deposits), contract rights, development and use rights, governmental permits and licenses, applications, architectural and engineering plans, specifications and drawings, as-built drawings, chattel paper, instruments, documents, notes, drafts and letters of credit, which arise from or relate to construction on the Project Site or to any business now or later to be conducted on it, or to the Project Site and Project Facilities generally and any builder's or manufacturer's warranties with respect thereto;

All insurance policies pertaining to the Project Site and all proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any of the Project Site, Project Facilities or the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Project Site, Project Facilities or the other property described above or any part of them, or breach of warranty in connection with the construction of any Project Facilities, including causes of action arising in tort, contract, fraud or concealment of a material fact;

All books and records pertaining to any and all of the property described above, including computer-readable memory and any computer hardware or software necessary to access and process such memory; and

All proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

TO HAVE AND TO HOLD the Mortgaged Property unto the Mortgagee, the Mortgagee's successors and assigns, forever;

AND, IT IS HEREBY COVENANTED that this Mortgage is given and the Mortgaged Property is to be held upon the terms herein set forth.

Preservation of Security

Representations, Warranties and Covenants. The Borrower represents, warrants and covenants to the Mortgagee, that:

The Borrower is lawfully seized with good and marketable fee simple title to the Project Site and Project Facilities and has (or will have upon acquisition by the Borrower) good and sufficient title to all personal property included in the Mortgaged Property, subject only to the exceptions, restrictions, easements and encumbrances set forth on Exhibit B attached hereto (the “Permitted Encumbrances”);

The Borrower has full right and authority to sell, assign and convey the Mortgaged Property pursuant to the terms of this Mortgage;

The Borrower will warrant and defend to the Mortgagee such title to the Mortgaged Property and the mortgage lien and security interest of the Mortgagee therein and thereon against all claims and demands whatsoever and will, except as otherwise herein expressly provided, maintain the priority of the mortgage lien of, and the security interest granted by, this Mortgage upon the Mortgaged Property until the Borrower shall be entitled to defeasance as provided herein; and

The Borrower shall, at its expense, from time to time as requested by the Mortgagee take such actions and execute and deliver to the Mortgagee all such instruments, documents, further assurances and security and other agreements in order to perfect and continue the mortgage, lien and security interest of the Mortgagee in the Mortgaged Property.

The ***[construction]/[acquisition]*** of the Project will be completed and the Project and the Borrower’s business will be operated and maintained in such manner as to conform with all applicable federal, state, or local laws, statutes, codes, regulations, resolutions, ordinances, notices, permits, and any other provisions having the force or effect of law, all judicial and administrative orders and determinations, all contractual obligations and all common law, each as amended and as now or hereafter in effect, concerning public health and safety, worker health and safety, and pollution or protection of the environment, including all those relating to the presence, use, production, generation, handling, removal, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, release, threatened release, control, or cleanup of any substances or wastes, chemical substances or mixtures, pesticides, pollutants, contaminants, toxic chemicals, petroleum products or byproducts, asbestos, polychlorinated biphenyls, noise or radiation regulated under, including any material, substance or waste defined as a “solid waste,” “hazardous waste,” “hazardous material,” “hazardous substance,” “contaminant,” “pollutant,” “toxic waste,” or “toxic substance” in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et. seq.), the Occupational Health and Safety

Act (29 U.S.C. Section 651, et. seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Section 1801, et. seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901, et. seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Section 2601, et. seq.), or any other environmental laws and zoning, planning, building and other applicable governmental regulations imposed by the United States of America, the State of Ohio (the "State"), any other domestic or foreign entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any governmental authority, agency, department, board, commission, court, tribunal, judicial body or instrumentality of any union of nations, federation, nation, state, municipality, county, locality or other political subdivision thereof, including the United States Environmental Protection Agency and related state environmental protection agencies, having jurisdiction over the Project and/or the Project Site (the "Governmental Authority") and as to be consistent with the purposes of the Chapter 166, Ohio Revised Code, as from time to time enacted and amended.

The Project includes all property and rights which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Project Site and the Project Facilities.

All consents, licenses and permits and all other authorizations or approvals required for **[construction][acquisition]** of the Project in accordance with the plans and specifications or other appropriate documents describing the Project prepared by or at the direction of the Borrower (the "Plans and Specifications") have been obtained, and all laws relating to the **[construction][acquisition]** and the operation of the Project have been complied with, and all permits and licenses required for the operation of the Project which cannot be obtained until **[construction][acquisition]** is completed can be obtained if the Project is completed in accordance with the Plans and Specifications.

- (i) No condemnation of any portion of the Project, (ii) no condemnation or relocation of any roadways abutting the Project, and (iii) no proceeding to deny access to the Project from any point or planned point of access to the Project, has commenced or, to the best of Borrower's knowledge, is contemplated by any Governmental Authority.

The Project Site is zoned by the City of [] under a zoning ordinance which permits the **[construction][acquisition]** of the Project thereon in accordance with the Plans and Specifications and the operation of the Borrower's business. None of the zoning authorizations, approvals or variances nor any other right to construct or to use the Project is to any extent dependent upon or related to any real estate other than the Project Site.

Except as disclosed (i) elsewhere in this Mortgage and the Loan Documents, and (ii) in the title policy provided pursuant to Section 3.6(c) of the Loan Agreement, and except as created by the Loan Documents and all documents, instruments and agreements evidencing or securing the loan in the principal amount of \$_____ made by _____ to the Borrower, as the same may be amended, modified, supplemented, restated or replaced from time to time with the prior written consent of the Mortgagee, there are no other easements or agreements, including, without limitation, parking agreements, encroachment agreements, access easements, service agreements, real estate tax abatement agreements and other similar agreements affecting the Project or the Project Site.

The Borrower shall not create, grant, consent to or suffer to exist any easement or right-of-way over, through or affecting the Project Site without the prior written consent of the Mortgagee, and such easements and other similar agreements affecting the Project Site shall be submitted to the Mortgagee for the Mortgagee's approval prior to the execution hereof or thereof, whichever is later, accompanied by a drawing or survey, if applicable, showing the location thereof.

The Borrower shall not initiate, approve or acquiesce to any change in or modification to the zoning in effect for the Project Site or any portion thereof without the prior written consent of the Mortgagee. The Borrower shall promptly notify the Mortgagee of any such proposed change or modification stating in reasonable detail the anticipated or proposed change and the manner in which such change would affect the Borrower's use and enjoyment of the Project Site, or any part thereof. The Mortgagee shall have the right to participate in any and all proceedings, judicial, administrative or otherwise, with respect to or in any way affecting the Project Site, including, without limitation, zoning, environmental and other matters.

Recordation and Filing. The Borrower, at its expense, shall cause this Mortgage, any instruments supplemental hereto and financing statements, including all necessary amendments, supplements and appropriate continuation statements, to be recorded, registered and filed, and to be kept recorded, registered and filed, in such manner and in such places as may be required in order to establish, perfect, preserve and protect the mortgage lien and security interest of this Mortgage as ~~[(i)]~~ a valid _____ priority mortgage lien on and security interest in all property, fixtures and interests included in the Mortgaged Property (including in each such case, without limitation, any such properties acquired after the execution hereof), *[and (ii) a valid first mortgage lien on the Lease.]* If requested by the Mortgagee, the Borrower, at its expense, will furnish to the Mortgagee an opinion of an attorney or firm of attorneys selected by the Mortgagee and duly admitted to practice law before the highest court of the State ("Independent Counsel"), specifying the action required and to be taken by the Borrower to comply with this Section 1.2 since the date of this Mortgage or the date of the most recent such opinion or stating that no such action is necessary.

After Acquired Property. All property of every kind acquired by the Borrower after the date hereof, which by the terms hereof is intended to be subject to the lien and security interest of this Mortgage, shall immediately upon the acquisition thereof by the Borrower, and without further action by the

Borrower, become subject to the mortgage lien and security interest of this Mortgage as fully as though now owned by the Borrower and specifically described herein. Nevertheless, the Borrower shall take such actions and execute, acknowledge and deliver such additional instruments as the Mortgagee shall require to further evidence or confirm the subjection of any such property to the mortgage lien and security interest of this Mortgage.

Disposition of Mortgaged Property; Liens and Encumbrances. Except as otherwise expressly permitted by this Mortgage, the Borrower shall not, directly or indirectly, sell, convey, assign, transfer or otherwise transfer the Mortgaged Property or any part thereof or interest therein without the prior written consent of the Mortgagee. The Borrower shall not directly or indirectly create or permit to remain, and will promptly discharge, any mortgage, lien, encumbrance or charge on, pledge of, security interest in or conditional sale or other title retention agreement with respect to the Mortgaged Property or any part thereof or the interest of the Borrower or the Mortgagee therein or any revenues, income or profit or other sums arising from the Mortgaged Property or any part thereof (including, without limitation, any lien, encumbrance or charge arising by operation of law) other than:

the mortgage lien and security interest of this Mortgage and the rights granted hereby and in the Loan Documents;

liens for taxes, assessments and other governmental charges which are not at the time required to be paid pursuant to Section 2.1 hereof;

liens of mechanics, materialmen, suppliers or vendors or rights thereto to the extent permitted by Section 2.2 hereof;

Permitted Encumbrances.

Security Agreement. The parties intend for this Mortgage to create a lien on the Mortgaged Property in favor of the Mortgagee. The parties acknowledge that some of the Mortgaged Property may be determined under applicable law to be personal property or fixtures. To the extent that any Mortgaged Property may be or be determined to be personal property, the Borrower, as debtor, hereby grants to the Mortgagee, as secured party a security interest in all such Mortgaged Property to secure payment and performance of the obligations secured hereby. This Mortgage constitutes a security agreement as to all or any part of the Mortgaged Property which is of a nature that a security interest therein can be perfected under Chapters 1301 to 1310, Ohio Revised Code, as from time to time amended or supplemented (the "Commercial Code"). The Borrower hereby authorizes the Mortgagee to file one or more financing statements. In addition, the Borrower shall execute such other documents as the Mortgagee may from time to time require to perfect or continue the perfection of the Mortgagee's security interest in any Mortgaged Property. The Borrower shall pay all fees and costs that the Mortgagee may incur in filing such documents in public offices and in obtaining such record searches as the Mortgagee may reasonably require. In case the Borrower fails to deliver or execute any financing statements or other documents for the perfection or continuation of any security interest, the Borrower hereby appoints the Mortgagee as its true and lawful attorney-in-fact to deliver or execute any such documents on its behalf. If any

financing statement or other document is filed in the records normally pertaining to personal property, that filing shall never be construed as in any way derogating from or impairing this Mortgage or the rights or obligations of the parties under it.

Actions Under Section 1311.14, Ohio Revised Code. The Borrower hereby authorizes and empowers the Mortgagee, at the Mortgagee's option, to do all things authorized or required to be done by the Mortgagee, as a mortgagee, under Section 1311.14, Ohio Revised Code, as from time to time amended, supplemented or under any other present or future law of the State relating to the creation or attachment of mechanics', materialmen's or other similar liens.

No Claims Against the Mortgagee. Nothing contained in this Mortgage shall constitute any request by the Mortgagee, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof, or be construed to give the Borrower any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would provide the basis for any claim either against the Mortgagee or that any lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the mortgage lien and security interest of this Mortgage.

The Mortgagee's Powers. Without affecting the liability of any other person liable for the payment of any obligation herein mentioned, and without affecting the mortgage lien, security interest or charge of this Mortgage upon any portion of the Mortgaged Property not then or theretofore released as security for the full amount of all unpaid obligations, the Mortgagee may, from time to time and without notice, (a) release any person so liable, (b) extend the maturity or alter any of the terms of any such obligation, (c) grant other indulgences, (d) release or reconvey, or cause to be released or reconveyed at any time at the Mortgagee's option any parcel, portion or all of the Mortgaged Property, (e) take or release any other or additional security for any obligations herein mentioned, or (f) make compositions or other arrangements with debtors in relation thereto.

Security for Advances. This Mortgage is intended to secure the unpaid balances of loan advances to be made under the Loan Agreement after this Mortgage has been delivered to the _____ County, Ohio, Recorder's Office for recordation. The maximum amount of loan advances, exclusive of interest thereon and advances made for the payment of taxes, assessments, insurance premiums and costs incurred for the protection of the Mortgaged Property, which may be outstanding at any time, is _____ Dollars (\$ _____). The Loan Agreement obligates the Mortgagee to advance definite and certain sums under definite conditions, which advances are to be made to pay certain permitted costs with respect to the Mortgaged Property as set forth in the Loan Agreement. This Mortgage shall be valid and have priority to the extent of the maximum amount secured hereby over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Mortgaged Property given priority by law.

In addition, this Mortgage shall secure unpaid balances of advances made pursuant hereto by the Mortgagee, together with interest thereon at a rate per annum equal to the sum of (i) four percent (4%), plus (ii) the "prime rate" of interest from time to time published in The Wall Street Journal,

with each change in such prime rate automatically and immediately changing the interest rate (the "Interest Rate for Advances") from the date of disbursement, for the payment of items, including but not limited to taxes, assessments, insurance premiums and costs incurred for the protection of the Mortgaged Property, as contemplated by Section 5301.233 of the Ohio Revised Code.

Construction Mortgage. This Mortgage secures an obligation incurred for the construction of improvements on the Project Site, [including the acquisition cost of such real property], and, consequently, is a "construction mortgage" within the meaning of the Commercial Code.]

Fixture Filing. This Mortgage grants a security interest in the fixtures now or hereafter attached to or used in or about the Project Site and shall also be effective as a financing statement filed as a fixture filing under the Commercial Code and for that purpose, (a) the Borrower is the "debtor", (b) the Mortgagee is the "secured party", (c) the address of the Borrower/debtor is set forth in the first paragraph of this Mortgage, (d) the address of the Mortgagee/secured party is set forth in the first paragraph of this Mortgage, (e) the description of real estate to which the fixtures are or will be attached or upon which they are or will be located is set forth on Exhibit A attached hereto, and (f) the Borrower is a[n] _____[entity].

Taxes, Mechanics' Liens and Insurance

Payment of Taxes and Other Governmental Charges. The Borrower shall pay promptly when due, and before penalty or interest accrue thereon, all taxes, assessments, whether general or special, all other governmental charges and all public or private utility charges of any kind whatsoever foreseen or unforeseen, ordinary or extraordinary that now or may at any time hereafter be assessed, levied or imposed against or with respect to the Mortgaged Property or any part thereof (including, without limitation, any taxes levied upon or with respect to the revenues, income or profits of the Borrower from the Mortgaged Property) which, if not paid, may become or be made a lien on the Mortgaged Property, or any part thereof, or a charge on such revenues, income or profits.

Notwithstanding the preceding paragraph, the Borrower may, at its expense and after prior written notice to the Mortgagee, by appropriate proceedings diligently prosecuted, contest in good faith the validity or amount of any such taxes, assessments and other charges and during the period of contest, and after written notice to the Mortgagee, may permit the items so contested to remain unpaid, provided, at the option of the Mortgagee, the Borrower has deposited security in form and amount satisfactory to the Mortgagee. If at any time, however, the Mortgagee shall notify the Borrower that, in the opinion of Independent Counsel, by nonpayment of any such items the mortgage lien or security interest created by this Mortgage as to any part of the Mortgaged Property will be materially affected or the Mortgaged Property or any part thereof will be subject to imminent loss or forfeiture, the Borrower shall promptly pay all such taxes, assessments or charges. In the event that the Borrower shall fail to pay any of the foregoing items required by this Section 2.1 to be paid by the Borrower, the Mortgagee may, but shall be under no obligation to, pay the same, and any amount so advanced shall be paid by the Borrower to the Mortgagee on demand, together with interest thereon at the Interest Rate for Advances from the date thereof and

shall be subject to and secured by this Mortgage as additional indebtedness in accordance with the provisions of Section 1.9 hereof.

At the request of the Mortgagee, the Borrower shall pay to the Mortgagee, on the first day of each calendar month until the Note is paid in full, an amount equal to $1/12^{\text{th}}$ of the annual taxes, assessments or other charges reasonably estimated by the Mortgagee to pay the installment of such taxes, assessments or other charges next due on the Mortgaged Property. In such event, the Borrower further agrees to cause all bills, statements or other documents relating to taxes, assessments or other charges to be sent or mailed directly to the Mortgagee. Upon receipt of such bills, statements or other documents, and providing the Borrower has deposited sufficient funds with the Mortgagee pursuant to this Section 2.1, the Mortgagee shall pay such amounts as may be due thereunder out of the funds so deposited with the Mortgagee. If at any time and for any reason the funds deposited with the Mortgagee are or will be insufficient to pay such amounts as may then or subsequently be due, the Mortgagee shall notify the Borrower and the Borrower shall immediately deposit an amount equal to such deficiency with the Mortgagee. Notwithstanding the foregoing, nothing contained herein shall cause the Mortgagee to be deemed a trustee of said funds or to be obligated to pay any amounts in excess of the amount of funds deposited with the Mortgagee pursuant to this Section 2.1. The Mortgagee may commingle said funds with the Mortgagee's own funds and with other funds held by the Mortgagee, and the Mortgagee shall not be obligated to pay or allow any interest on any funds held by the Mortgagee pending disbursement or application hereunder. The Mortgagee may impound or reserve for future payment of taxes, assessments or other charges such portion of such payments as the Mortgagee may reasonably deem proper, applying the balance on the principal of or interest or monthly service fee on the obligations secured hereby. Should the Borrower fail to deposit with the Mortgagee (exclusive of that portion of said payments which has been applied by the Mortgagee on the principal of or interest or monthly service fee on the indebtedness secured by this Mortgage) sums sufficient to fully pay such taxes, assessments or other charges at least 30 days before delinquency thereof, the Mortgagee may, at the Mortgagee's election, but without any obligation so to do, advance any amounts required to make up the deficiency, which advances, if any, shall be paid by the Borrower to the Mortgagee on demand, together with interest thereon at the Interest Rate for Advances from the date thereof and shall be subject to and secured by this Mortgage as additional indebtedness in accordance with the provisions of Section 1.9 hereof; or at the option of the Mortgagee, the Mortgagee may, without making any advance whatever, apply any sums held by the Mortgagee upon any obligations of the Borrower secured hereby. Should any default occur or exist in the payment or performance of any of the Borrower's and/or any guarantor's obligations under the terms of the Note, this Mortgage, the Loan Documents or any other instrument given to secure the Note, the Mortgagee may, at any time at the Mortgagee's option, apply any sums or amounts received and/or held by the Mortgagee pursuant hereto, or as rents or income of the Mortgaged Property or otherwise, upon any indebtedness or obligation of the Borrower secured hereby in such manner and order as the Mortgagee may elect. The receipt, use or application of any such sums paid by the Borrower to the Mortgagee hereunder shall not be construed to affect the maturity of any indebtedness secured by this Mortgage or any of the rights or powers of the Mortgagee under the terms of the Note, this Mortgage, the Loan Documents and any other instrument given to secure

the Note, or any of the obligations of the Borrower and/or any guarantor under the Note, this Mortgage, the Loan Documents and any other instrument given to secure the Note.

Mechanics' and Other Liens. The Borrower shall not suffer or permit any mechanics' or other liens to be filed or to exist against the Mortgaged Property or any payments paid or payable under the Loan Documents by reason of work, labor, services or materials supplied or claimed to have been supplied to, for or in connection with the Mortgaged Property or to the Borrower or anyone holding the Mortgaged Property or any part thereof through or under the Borrower. If any such lien shall at any time be filed, the Borrower shall, within 30 days after notice of the filing thereof but subject to the right to contest as set forth herein, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. Notwithstanding the foregoing, the Borrower shall have the right, at the Borrower's own expense and after prior written notice to the Mortgagee, by appropriate proceeding duly and timely instituted and diligently prosecuted, to contest in good faith the validity or the amount of any such lien upon furnishing to the title insurance company selected by the Borrower which is acceptable to the Mortgagee (the "Title Company") such security or indemnity as it may require to induce said Title Company to issue an endorsement to the title policy issues to the Mortgagee insuring against all such claims or liens; and provided further, that (i) the Mortgagee will not be required to make any further disbursements of the proceeds of the Loan until any mechanics' lien claims have been so insured against by the Title Company and (ii) the aggregate amount of liens so insured against at any time shall not exceed \$10,000 without the Mortgagee's prior written consent. If, however, the Mortgagee shall notify the Borrower that, in the opinion of Independent Counsel, by nonpayment of any such items the mortgage lien or security interest created by this Mortgage will be materially affected or the Mortgaged Property or any part thereof will be subject to imminent loss or forfeiture, the Borrower shall promptly cause such lien to be discharged of record. Should the Borrower fail to cause such lien to be discharged or to contest the validity or amount thereof, within the period aforesaid, then the Mortgagee may, but shall be under no obligation to, discharge the same either by paying the claim or by procuring the discharge of such lien by making a deposit or obtaining a bond, which advances shall be paid by the Borrower to the Mortgagee on demand, together with interest thereon at the Interest Rate for Advances from the date thereof and shall be subject to and secured by this Mortgage as additional indebtedness in accordance with the provisions of Section 1.9 hereof.

Insurance. The Borrower shall keep the Mortgaged Property continuously insured at all times, with the following policies of insurance (collectively, "Required Property Insurance Coverage"):

Insurance against loss or damage to the Mortgaged Property by fire and any of the type now known as "all risk" or "fire and extended coverage," in an amount equal to the full replacement cost of the Mortgaged Property and with not more than \$____,000 deductible from the loss payable for any casualty. The policies of insurance carried in accordance with this subparagraph (a) shall contain a "Replacement Cost Endorsement."

If requested by the Mortgagee, business interruption insurance and/or loss of "rental value" insurance in such amounts as are satisfactory to the Mortgagee.

During the course of any construction, installation, renovation, restoration or repair of the Mortgaged Property, comprehensive public liability insurance (including coverage for elevators and escalators, if any, on the Project Site), such insurance to afford immediate minimum protection to a limit of not less than that required by the Mortgagee with respect to personal injury or death to any one or more persons or damage to property.

During the course of any construction, installation, renovation, restoration or repair of the Mortgaged Property, evidence of workers' compensation coverage (including employer's liability insurance) for all employees of the Borrower engaged in or with respect to such construction, installation, renovation, restoration or repair in such amount as is reasonably satisfactory to the Mortgagee or, if such limits are established by law, in such amounts.

During the course of any construction, installation, renovation, restoration or repair of the Mortgaged Property, builder's completed value risk insurance against "all risks of physical loss," including collapse and transit coverage, with deductibles not to exceed \$____,000, in nonreporting form, covering the total value of work performed and equipment, supplies and materials furnished. Said policy of insurance shall contain the "permission to occupy upon completion of work or occupancy" endorsement.

[Boiler and machinery insurance covering pressure vessels, air tanks, boilers, machinery, pressure piping, heating, air conditioning and elevator equipment and escalator equipment, provided the Mortgaged Property contains equipment of such nature, and insurance against loss of occupancy or use arising from any such breakdown, in such amounts as are reasonably satisfactory to the Mortgagee.]

Insurance against loss or damage to personal property by fire and other risks covered by insurance of the type now known as "fire and extended coverage."

Flood insurance if any portion of the Project Site is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Program in an amount at least equal to the outstanding principal balance of the Loan or the maximum limit of coverage available with respect to the Project, whichever is less.

Such other insurance, and in such amounts, as may from time to time be required by the Mortgagee against the same or other hazards.

All policies of Required Property Insurance Coverage shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Borrower which might otherwise result in forfeiture of

said insurance, and the further agreement of the insurer waiving all rights of setoff, counterclaim or deductions against Borrower.

In addition, the Borrower shall keep the Mortgaged Property continuously insured at all times, with comprehensive commercial public liability insurance (including coverage for elevators and escalators, if any, on the Project Site) against injury, loss and/or damage to persons (including death) and property in an amount which is not less than \$2,000,000 for bodily injury to persons and not less than \$1,000,000 for damage to property or such additional amounts as may from time to time be requested by the Mortgagee ("Required Public Liability Insurance Coverage").

All insurance shall be obtained and maintained either by means of policies with generally recognized, responsible insurance companies or in conjunction with other companies through an insurance trust or other arrangements satisfactory to the Mortgagee, and all such companies are to be qualified to do business in the State. All such insurance shall name the Mortgagee as a loss payee, mortgagee and/or additional insured, as applicable. The insurance to be provided may be by blanket policies in which event the Borrower shall furnish the Mortgagee with a certificate of insurance for each policy setting forth the coverage, the limits of liability, the name of the carrier, the policy number and the expiration date. Each policy of insurance shall be written so as not to be subject to cancellation or substantial modification (which phrase shall include any reduction in the scope or limits of coverage) upon less than 30 days written notice to the Mortgagee. The Borrower shall deposit with the Mortgagee certificates or other evidence satisfactory to the Mortgagee that (i) the insurance required hereby has been obtained and is in full force and effect and (ii) all premiums thereon have been paid in full. At least 30 days prior to the expiration of any such insurance, the Borrower shall furnish the Mortgagee with evidence satisfactory to the Mortgagee that such insurance has been renewed or replaced and that all premiums thereon have been paid in full and all insurance policies required hereby are in full force and effect.

All policies providing the Required Property Insurance Coverage shall contain standard mortgage clauses requiring all proceeds resulting from any claim for loss or damage in excess of \$____,000 to be paid, to the Mortgagee and any Net Proceeds of insurance providing such coverage shall be paid and applied as provided in Section 4.2 hereof. Any proceeds of policies providing Required Public Liability Insurance Coverage shall be applied toward the extinguishment or satisfaction of the liability with respect to which such insurance proceeds have been paid.

In the event the Borrower fails to provide, maintain, keep in force or deliver or furnish to the Mortgagee the policies of insurance required by this Section, the Mortgagee may procure such insurance or single interest insurance for such risks covering the Mortgagee's interest, and the Borrower shall pay all premiums thereon promptly upon demand by the Mortgagee, and until such payment is made by the Borrower, the amount of all such premiums, together with interest thereon at the Interest Rate for Advances, shall be secured by this Mortgage as additional indebtedness in accordance with the provisions of Section 1.9 hereof. At the request of the Mortgagee, the Borrower shall deposit with the Mortgagee, in monthly installments, an amount equal to 1/12th of the estimated aggregate annual insurance premiums on all policies of insurance required by this Mortgage. The Borrower further agrees to cause copies of all bills, statements or other documents relating to the foregoing insurance premiums to be sent or mailed directly to the Mortgagee. Upon

receipt of such bills, statements or other documents, and providing the Borrower has deposited sufficient funds with the Mortgagee pursuant to this Section 2.3, the Mortgagee shall pay such amounts, *provided* the Borrower has not already made the required payments, as may be due thereunder out of the funds so deposited with the Mortgagee. If at any time and for any reason the funds deposited with the Mortgagee are or will be insufficient to pay such amounts as may then or subsequently be due, the Mortgagee shall notify the Borrower and the Borrower shall immediately deposit an amount equal to such deficiency with the Mortgagee. Notwithstanding the foregoing, nothing contained herein shall cause the Mortgagee to be deemed a trustee of said funds or to be obligated to pay any amounts in excess of the amount of funds deposited with the Mortgagee pursuant to this Section 2.3. The Mortgagee may commingle said funds with the Mortgagee's own funds and with other funds held by the Mortgagee. The Mortgagee shall not be obligated to pay or allow any interest on any funds held by the Mortgagee pending disbursement or application hereunder, and the Mortgagee may impound or reserve for future payment of insurance premiums such portion of payments made pursuant to the Loan Documents as the Mortgagee may reasonably deem proper, applying the balance to the principal of or interest and monthly service fee on the obligations secured hereby. Should the Borrower fail to deposit with the Mortgagee, exclusive of that portion of payments which has been applied by the Mortgagee on the principal of or interest and monthly service fee on the indebtedness secured by this Mortgage, sums sufficient to fully pay such insurance premiums at least 30 days before such premiums are due, the Mortgagee may, at the Mortgagee's option, but without any obligation to do so, advance any amounts required to make up the deficiency, which advances, if any, shall be paid by the Borrower to the Mortgagee on demand, together with interest thereon at the Interest Rate for Advances from the date thereof and shall be subject to and secured by this Mortgage as additional indebtedness in accordance with the provisions of Section 1.9 hereof, or at the option of the Mortgagee, the Mortgagee may, without making any advances whatever, apply any sums held by the Mortgagee upon any obligations of the Borrower secured hereby. Should any default occur or exist in the payment or performance of any of the Borrower's and/or any guarantor's obligations under the terms of the Note, this Mortgage, any of the Loan Documents or any other instrument given to secure the Note, the Mortgagee may, at any time at the Mortgagee's option, apply any sums or amounts received and/or held by the Mortgagee pursuant hereto, or as rents or income from the Mortgaged Property or otherwise, upon any indebtedness or obligation of the Borrower secured hereby in such manner and order as the Mortgagee may elect. The receipt, use or application of any such sums or amounts hereunder shall not be construed to affect the maturity of any indebtedness secured by this Mortgage or any of the rights or powers of the Mortgagee under the terms of the Note, this Mortgage, the Loan Documents or any other instrument given to secure the Note or any of the obligations of the Borrower and/or any guarantor under the Note, this Mortgage, the Loan Documents or any other instrument given to secure the Note. The Borrower waives any and all right to claim or recover against the Mortgagee or the State and any officers, employees, agents and representatives of the Mortgagee or the State, for loss of or damage to the Borrower, the Mortgaged Property, the Borrower's property or the property of others under the Borrower's control, from any cause insured against or required to be insured against by the provisions of this Mortgage.

Workers' Compensation Coverage. The Borrower shall maintain or cause to be maintained in connection with the Borrower's business operations and the Mortgaged Property, any workers' compensation coverage required by the applicable laws of the State.

Maintenance and Use of Mortgaged Property

Compliance with Legal and Insurance Requirements. The Borrower, at its expense, shall promptly comply with all laws, statutes, codes, acts, ordinances, resolutions, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all governmental entities, departments, commissions, boards, courts, authorities or agencies which now or at any time hereafter may be applicable to the Mortgaged Property or any part thereof, any use, anticipated use or condition of the Mortgaged Property or any part thereof ("Legal Requirements") and all provisions of any insurance policy covering or applicable to the Mortgaged Property or any part thereof, all requirements of the issuer of any such policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting the Mortgaged Property or any part thereof, and shall procure, maintain and comply with all permits, licenses and other authorizations required for any use of the Mortgaged Property or any part thereof then being made or anticipated to be made, and for the proper construction, installation, renovation, operation and maintenance of the Mortgaged Property or any part thereof, and the Borrower shall comply with any instruments of record at the time in force burdening the Mortgaged Property or any part thereof. The Borrower may, at its expense and after prior written notice to the Mortgagee, by any appropriate proceedings diligently prosecuted, contest in good faith any Legal Requirement and postpone compliance therewith pending the resolution or settlement of such contest, *provided* that such postponement does not, in the opinion of Independent Counsel, materially affect the mortgage lien or security interests created by this Mortgage as to any part of the Mortgaged Property or subject the Mortgaged Property, or any part thereof, to imminent loss or forfeiture.

Maintenance and Use of Mortgaged Property. The Borrower, at its expense, shall keep, or cause to be kept, the Mortgaged Property in good order and condition (ordinary wear and tear excepted) and shall make all necessary or appropriate repairs, replacements and renewals thereof, interior, exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen. The Borrower shall not do, or permit to be done, any act or thing which might materially impair the value or usefulness of the Mortgaged Property or any part thereof, shall not commit or permit any waste of the Mortgaged Property or any part thereof, and shall not permit any unlawful occupation, business or trade to be conducted on or in the Mortgaged Property or any part thereof. The Borrower shall also, at its expense, promptly comply with all rights of way or use, privileges, franchises, servitudes, licenses, easements, tenements, hereditaments and appurtenances forming a part of the Mortgaged Property and all instruments creating or evidencing the same, in each case, to the extent compliance therewith is required of the Borrower under the terms thereof.

Additions, Modifications and Improvements. Without the prior written consent of the Mortgagee, the Borrower shall not make any material alterations to the Mortgaged Property *[(other than completion of the Construction in accordance with the Plans and Specifications)]*. In the event that the Mortgagee consents to any additional additions, modifications and improvements, such

additions, modifications and improvements so made by the Borrower shall become or be deemed to constitute a part of the Mortgaged Property.

Substitutions and Removals. In any instance where the Borrower, in its reasonable discretion, determines that any item of personal property or fixture constituting a part of the Mortgaged Property shall have become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary or should be replaced, the Borrower may remove such items, *provided* that the Borrower shall substitute and install other property as part of the Mortgaged Property having equal or greater value (but not necessarily the same function) in the operation of the Mortgaged Property, which substituted property shall be free from all liens and encumbrances (other than Permitted Encumbrances) and shall become part of the Mortgaged Property, and be subject to this Mortgage. The Borrower shall provide to the Mortgagee written evidence satisfactory to the Mortgagee of the fair market value of portions of the Mortgaged Property removed and of the substituted property and that such removal and substitution is not inconsistent with the Project Purposes (as defined in the Loan Agreement).

Indemnification. The Borrower shall protect, indemnify and save harmless the Mortgagee from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses except as may be limited by law or judicial order or decision entered in any action brought to recover moneys under this Section) imposed upon, incurred by or asserted against the Mortgagee by reason of (a) ownership of any interest in the Mortgaged Property or any part thereof, (b) any accident, injury to or death of persons or loss of or damage to property occurring on or about the Mortgaged Property or any part thereof or the adjoining sidewalks, curbs, vaults and vault space, if any, streets or ways, (c) any use, disuse or condition of the Mortgaged Property or any part thereof, or the adjoining sidewalks, curbs, vaults and vault space, if any, streets or ways, (d) any failure on the part of the Borrower to perform or comply with any of the terms hereof or any other Loan Document, (e) any necessity to defend any right, title or interest conveyed by this Mortgage, or (f) the performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof. If any claim, action or proceeding is made or brought against the Mortgagee in respect of which indemnity may be sought hereunder, the Mortgagee shall give notice to the Borrower of the claim, action or proceeding and upon such notice, at the option of the Mortgagee, (i) the Borrower shall assume, at the Borrower's expense, the defense of the action or proceeding with legal counsel satisfactory to the Mortgagee, (ii) the Borrower shall assume the defense of the action or proceeding with the participation of the Mortgagee, at the Borrower's expense, in such defense, or (iii) the Mortgagee shall assume the defense of the claim, action or proceeding at the Borrower's expense; *provided* that the failure of the Mortgagee to give such notice shall not relieve the Borrower from any of its obligations under this Section unless the failure prejudices the defense by the Borrower of the claim, action or proceeding. Any amounts payable to the Mortgagee under this Section shall be paid by the Borrower on demand, together with interest thereon at the Interest Rate for Advances from the date thereof, and such amounts, together with such interest, shall be secured by this Mortgage as additional indebtedness in accordance with the provisions of Section 1.9 hereof. The obligations of the Borrower under this Section shall survive any defeasance of this Mortgage. The

indemnification provided by this Section to the Mortgagee includes officers, employees, agents and representatives of the Mortgagee and the State.

Damage, Destruction and Eminent Domain

Damage to or Destruction of Mortgaged Property. In case of any damage to or destruction of the Mortgaged Property or any part thereof, there shall be no abatement or reduction of any payment payable by the Borrower under the Note, the Loan Agreement and all other Loan Documents. The Borrower shall promptly give or cause to be given written notice thereof to the Mortgagee generally describing the nature and extent of such damage or destruction. The Mortgagee may elect to collect, retain and apply upon the Obligations the gross proceeds of any insurance proceeds or condemnation award or amount received for transfer in lieu of condemnation less the payment of all expenses, including attorneys' fees, incurred in connection with the collection of such gross proceeds (the "Net Proceeds") after deduction of all expenses of collection and settlement, including attorneys' and adjusters' fees and charges. Any Net Proceeds remaining after repayment of the indebtedness under the Loan Documents shall be paid by the Mortgagee to Borrower. Notwithstanding the foregoing, in the event that the Mortgagee does not elect to apply the Net Proceeds to the indebtedness of Borrower under the Note, this Mortgage or any of the other Loan Documents, unless in lieu thereof the Borrower exercises its option to prepay the entire unpaid principal balance of the Note, the Borrower shall, whether or not the Net Proceeds of insurance, if any, received on account of such damage or destruction shall be sufficient for such purpose, promptly commence and complete, or cause to be commenced and completed, the repair or restoration of the Mortgaged Property as nearly as practicable to the value, condition and character thereof existing immediately prior to such damage or destruction, with such changes or alterations, however, as the Borrower may deem necessary for proper operation of the Mortgaged Property, so long as such changes or alterations are consistent with the Project Purposes.

Use of Insurance Proceeds. In connection with the repair or restoration of the Mortgaged Property pursuant to Section 4.1 hereof, any Net Proceeds of Required Property Insurance Coverage not in excess of \$____,000 shall be paid to the Borrower for application of as much of such Net Proceeds as may be necessary for such repair and restoration. If such Net Proceeds exceed \$____,000, all of such Net Proceeds shall be paid to and held by, or at the direction of, the Mortgagee in a separate account, for application of as much as may be necessary of such Net Proceeds to the payment of the costs of repair or restoration, either on completion thereof or as the work progresses, as directed by the Mortgagee. The Mortgagee may, prior to making payment from such loss account, require the Borrower to provide evidence that, or deposit with the Mortgagee moneys to be placed in such account so that, there will be sufficient moneys available for such repair or restoration. The Mortgagee shall not be obligated to make or authorize any payment from such account if there exists an Event of Default (as defined hereinafter) hereunder. Any balance of the Net Proceeds held by the Mortgagee remaining after payment of all costs of such repair, rebuilding or restoration shall be paid at the direction of the Borrower. Nothing contained herein shall cause the Mortgagee to be deemed a trustee of such Net Proceeds or any other moneys deposited with the Net Proceeds or to be obligated to allow or pay any amounts in excess of the Net Proceeds and any other moneys deposited with the Net Proceeds.

If, in lieu of repair or restoration, the Borrower has exercised its option to prepay the Note, an amount equal to any Net Proceeds received by the Mortgagee prior to such prepayment shall be credited against the amount payable by the Borrower under the Note to effect such prepayment.

Within 90 days from the date of any damage or destruction to the Mortgaged Property, or within 30 days of the receipt of any Net Proceeds, whichever occurs first, the Borrower shall determine and notify the Mortgagee in writing which of the ways specified in this Section such Net Proceeds shall be applied. In the event that the Borrower fails to make such a determination or to give such notice within the applicable period, such Net Proceeds shall be applied as determined by the Mortgagee, in the Mortgagee's sole discretion.

Eminent Domain. If title to, possession or ownership of, or the temporary use of the Mortgaged Property, or any part thereof, shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under any governmental body or governmental authority, or shall be transferred in lieu of such taking, there shall be no abatement or reduction in any payments payable by the Borrower under the Note, the Loan Agreement and all other Loan Documents. The Borrower shall promptly give written notice to the Mortgagee describing the nature and extent of such taking. Any Net Proceeds received from any award made in such eminent domain proceedings or from a transfer in lieu thereof shall, if received prior to the release and discharge of this Mortgage, be paid to and held by, or at the direction of, the Mortgagee in a separate account for application, at the Mortgagee's option, to one or more of the following purposes:

The repair or restoration of the Mortgaged Property as nearly as practicable to the same condition or character thereof existing immediately prior to the exercise of the power of eminent domain with such changes or alterations, however, as the Borrower may reasonably deem necessary for proper operation of the Mortgaged Property so long as such changes or alterations are not inconsistent with the Project Purposes.

The acquisition, installation or construction by the Borrower of other improvements suitable for the Borrower's operations on the Project Site (which improvements shall be deemed a part of the Mortgaged Property), *provided* that such improvements shall be subject to no liens or encumbrances, other than Permitted Encumbrances.

The prepayment of the Note.

Within 30 days from the date of entry of a final order in any eminent domain proceeding or the date of any transfer in lieu thereof, the Mortgagee shall notify the Borrower in writing to which purpose or combination of purposes above specified the Net Proceeds of the condemnation award or transfer in lieu of condemnation (together with any investment income therefrom) shall be applied. Nothing contained herein shall cause the Mortgagee to be deemed a trustee of the Net Proceeds or to be obligated to allow or pay any amounts in excess of the Net Proceeds.

Investment and Disbursement of Net Proceeds. All moneys received by the Mortgagee or the Mortgagee's designee constituting Net Proceeds shall, pending application, be invested at the direction of the Borrower (for the account of and at the risk of the Borrower) and shall (together with any investment income therefrom), to the extent to be used for repair, rebuilding, restoration, acquisition or construction, be disbursed, as provided in the Loan Agreement for the disbursement of loan proceeds. Any balance of Net Proceeds (together with any investment income therefrom) held by the Mortgagee or its designee upon the release and discharge of this Mortgage pursuant to Section 6.2 hereof, or any Net Proceeds thereafter received by the Mortgagee, shall be paid to the Borrower.

Remedies

Right to Perform Covenants. If the Borrower shall fail to make any payment or perform any act required to be made or performed hereunder or under the Loan Agreement, the Note or any other Loan Document, the Mortgagee, without demand upon the Borrower and without waiving or releasing any obligation or default, may (but shall be under no obligation to) upon 10 days written notice to the Borrower (except under emergency conditions or unless a shorter period is elsewhere provided) make such payment or perform such act for the account and at the expense of the Borrower and may enter upon the Mortgaged Property or any part thereof for such purpose and take all such action thereon as, in the Mortgagee's opinion, may be necessary or appropriate. All payments so made by the Mortgagee and all costs, fees and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred in connection therewith or in connection with the performance by the Mortgagee of any such act, together with interest thereon at the Interest Rate for Advances from the date of payment or incurrence, shall be subject to and be secured by this Mortgage as additional indebtedness in accordance with the provisions of Section 1.9 hereof and shall be paid by the Borrower to the Mortgagee on demand. In any action brought to collect such indebtedness, or to foreclose or otherwise pursue the remedies of the Mortgagee under this Mortgage, the Mortgagee shall be entitled to the recovery of such expenses in such action except as limited by law or judicial order or decision entered in such action.

Events of Default. Each of the following shall constitute an "Event of Default" under this Mortgage:

the Borrower shall fail to pay within ten (10) days after the due date thereof any amount payable pursuant to this Mortgage, under the Note or under any other Loan Document;

the Borrower shall fail to observe and perform any agreement, term or condition contained in this Agreement other than as required pursuant to subsection (a) above, and such failure continues for a period of 30 days after the Borrower has knowledge thereof; *provided, however*, that such 30 day cure period shall not apply to (i) any failure which in the good faith opinion of the Mortgagee is incapable of cure, (ii) any failure which has previously occurred, or (iii) any failure to maintain and keep in effect any insurance required by the Loan Documents; or

an Event of Default occurs under the Loan Agreement.

Remedies. If an Event of Default shall have occurred and be continuing, the Mortgagee, at any time, at the Mortgagee's election, may exercise any or all or any combination of the remedies conferred upon or reserved to the Mortgagee under this Mortgage, the Loan Agreement, the Note, the Loan Documents or any instrument or document collateral thereto, or now or hereafter existing at law, or in equity or by statute. Without limitation, the Mortgagee may (a) declare the entire unpaid principal balance of the Note and all other indebtedness secured hereby immediately due and payable, without notice or demand, the same being expressly waived by the Borrower; (b) proceed at law or equity to collect all indebtedness secured by this Mortgage due hereunder, whether at maturity or by acceleration; (c) foreclose the mortgage lien of this Mortgage as against all or any part of the Mortgaged Property; and (d) exercise any rights, powers and remedies [he/she] may have as a secured party under the Commercial Code, or other similar laws in effect, including, without limitation, the option of proceeding as to both personal property and fixtures in accordance with the Mortgagee's rights with respect to real property. In any foreclosure action or other sale hereunder, the Mortgagee or its nominee may bid and become the purchaser of all or any part of the Mortgaged Property and the amount of the Mortgagee's successful bid shall be credited to payment of the indebtedness secured hereby. Without limiting the foregoing, the Mortgagee may proceed by a suit or suits in law or equity, whether for specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure under the judgment or decree of any court of competent jurisdiction.

Sale of Personal Property. The Mortgagee shall have the discretionary right to cause some or all of the Mortgaged Property, which constitutes personal property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law. For purposes of this power of sale, the Mortgagee may elect to treat as personal property any Mortgaged Property which is intangible or which can be severed from the Project Site or Project Facilities without causing structural damage. If [he/she] chooses to do so, the Mortgagee may dispose of any personal property, in any manner permitted by Article 9 of the Commercial Code, including any public or private sale, or in any manner permitted by any other applicable law.

Waiver of Appraisement, Valuation, Redemption and Marshalling of Assets. The Borrower does hereby waive, to the full extent it may lawfully do so, the benefit of all appraisement, valuation, stay, extension and redemption laws now or hereafter in force and agrees not to set up, claim or seek to take advantage of any such law in order to prevent or hinder the enforcement or foreclosure of this Mortgage or the final and absolute sale of the Mortgaged Property or any part thereof or interest therein, or the final and absolute putting into possession immediately after such sale of the purchaser or purchasers thereof. The Borrower also waives, to the full extent it may lawfully do so, all rights of marshalling of assets in the event of any foreclosure or sale of the Mortgaged Property or any part thereof or any interest therein and agrees that any court having jurisdiction to foreclose the mortgage lien and security interest of this Mortgage or sell the Mortgaged Property may foreclose the mortgage lien and security interest of this Mortgage and sell the Mortgaged Property as an entirety, or in such parcels or portions as may be ordered by the court.

Application of Proceeds. Any moneys (including, without limitation, the proceeds of any sale, by foreclosure or otherwise, of the Mortgaged Property, any part thereof or any interest therein) received by the Mortgagee pursuant to the exercise of any remedies provided in this Mortgage or by law shall be applied as follows:

to the payment of all costs incurred in the collection thereof (including, without limitation, reasonable attorneys' fees and expenses, except as may have been limited by law or by judicial order or decision entered in any action to foreclose this Mortgage);

to the payment of indebtedness secured by this Mortgage owing to the Mortgagee, other than indebtedness with respect to the Note at the time outstanding;

to the payment to the Mortgagee for the payment of all amounts of principal and interest and monthly service fee due and payable on the Note (whether due at maturity or as an installment of principal, interest or monthly service fee or by prepayment or acceleration or otherwise);

the balance, if any, unless a court of competent jurisdiction may otherwise direct by final order not subject to appeal, to or at the direction of the Borrower.

Appointment of Receiver. If an Event of Default shall have occurred and be continuing, the Mortgagee shall, as a matter of right and without giving bond to the Borrower or anyone claiming by, under or through the Borrower, and without regard for the solvency or insolvency of the Borrower and to the extent permitted by applicable law and without regard to the adequacy of the Mortgaged Property as security, be entitled to the appointment of a receiver with the rights and powers referenced below and such other rights and powers as the court making such appointment shall confer for all or any part of the Mortgaged Property, whether such receivership is incidental to a proposed sale of the Mortgaged Property or otherwise, and the Borrower hereby consents to the appointment of such a receiver and covenants not to oppose any such appointment. Such receiver shall have all powers and duties prescribed by applicable law, all other powers which are necessary or usual in such cases for the protection, possession, control, management and operation of the Mortgaged Property, and such rights and powers as the Mortgagee would have, upon entering and taking possession of the Mortgaged Property under Section 5.8 below.

Receiver. The Mortgagee, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Mortgaged Property, and may also do any and all other things in connection with those actions that the Mortgagee may in its sole discretion consider necessary and appropriate to protect the security of this Mortgage. Such other things may include: taking and possessing all of the Borrower's or the then owner's books and records; entering into, enforcing, modifying or canceling Leases on such terms and conditions as the Mortgagee may consider proper; obtaining and evicting tenants; fixing or modifying rents; collecting and receiving any payment of money owing to the Borrower; completing any unfinished construction; and/or contracting for and making repairs and alterations. If the Mortgagee so requests, the Borrower shall assemble all of the Mortgaged Property that has been removed from

the Project Site and make all of it available to the Mortgagee at the Project Site. The Borrower hereby irrevocably constitutes and appoints the Mortgagee as the Borrower's attorney-in-fact to perform such acts and execute such documents as the Mortgagee in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of the Borrower's name on any instruments.

Possession, Management and Income; Assignment. If an Event of Default shall have occurred and be continuing, the Mortgagee, to the extent permitted under applicable law, ex parte and without notice may enter upon and take possession of the Mortgaged Property or any part thereof by summary proceedings, ejectment or otherwise, and may remove the Borrower and all other persons and any and all property therefrom and may hold, operate and manage the same and receive all revenues, income or profits accruing with respect thereto or any part thereof. The Mortgagee shall not have any liability for or by reason of any such taking of possession, entry, removal or holding, operation or management.

Remedies Cumulative. Each right, power and remedy of the Mortgagee provided for in this Mortgage, in the Loan Agreement and the other Loan Documents or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Mortgage, in the Loan Agreement or the other Loan Documents or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise or partial exercise by the Mortgagee of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by the Mortgagee of any or all such other rights, powers or remedies.

Provisions Subject to Applicable Law. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law.

No Waiver by the Mortgagee. No failure by the Mortgagee to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such term or of any such breach. No waiver of any breach shall affect or alter this Mortgage, which shall continue in full force and effect with respect to any other then existing or subsequent breach.

Discontinuance of Proceedings and Restoration of Status Quo. In case the Mortgagee shall have proceeded to enforce any right, power or remedy under this Mortgage by sale, foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Mortgagee, then and in every case the Borrower and the Mortgagee shall be restored to their former positions and rights hereunder, and all rights, power and remedies of the Mortgagee shall continue as if no such proceeding had been taken.

No Liability. The Mortgagee shall have no liability for any loss, damage, injury, cost or expense resulting from any act or omission to act by the Mortgagee or officers, employees, agents or

representatives of the Mortgagee or the State, whether or not negligent, which was taken or omitted in good faith pursuant to this Article V.

Miscellaneous

Additional Security. Without notice to or consent of the Borrower and without impairment of the mortgage lien and security interest and rights created or granted by this Mortgage, the Mortgagee may accept from the Borrower or from any other person or persons additional security for the indebtedness secured by this Mortgage. Neither the giving of this Mortgage nor the acceptance of any such additional security shall prevent the Mortgagee from resorting, first, to such additional security, or first, to the security created by this Mortgage, in either case without affecting the mortgage lien and security interest hereof and the rights conferred hereunder.

Release and Discharge. If all sums payable by the Borrower under this Mortgage, the Note, the Loan Agreement and the other Loan Documents shall have been paid and the Borrower shall have complied with all the terms, conditions and requirements hereof and thereof, then this Mortgage shall be null and void and of no further force and effect. Upon the written request and at the expense of the Borrower, the Mortgagee will execute and deliver such proper instruments of release and discharge as may reasonably be requested to evidence such defeasance, release and discharge.

Inspection. The Mortgagee and the Mortgagee's officers, employees, agents and representatives are hereby authorized to enter upon and inspect the Mortgaged Property at any time during the term of this Mortgage.

Expenses. The Borrower shall, to the extent permitted by law, immediately, upon demand, pay or reimburse the Mortgagee for all costs, expenses and attorneys' fees incurred by the Mortgagee in any proceedings involving the estate of a decedent, an insolvent or a debtor under federal bankruptcy law, or in any action, proceeding or dispute of any kind in which the Mortgagee is made a party, or appears as an intervenor or party plaintiff or defendant, affecting or relating to the Note, this Mortgage, the Loan Agreement, any other Loan Documents, the Borrower or any of the Mortgaged Property, including, but not limited to, the foreclosure of or collection under this Mortgage, any condemnation action involving the Mortgaged Property, or any action to protect the security hereof, and any such amounts paid by the Mortgagee shall, except as may be limited by law or judicial order or decision entered in any such action, be added to the indebtedness secured hereby and secured by the mortgage lien and security interest of this Mortgage in accordance with Section 1.9 hereof and shall bear interest at the Interest Rate for Advances.

Estoppel Affidavits. The Borrower, within 10 days after written request from the Mortgagee, shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest and monthly service fee on, the indebtedness secured hereby and whether any credits, setoffs or defenses exist against such principal, interest and monthly service fee.

No Merger. It being the desire and intention of the parties hereto that this Mortgage and the mortgage lien and security interest hereof do not merge in fee simple title to the Mortgaged

Property, it is hereby understood and agreed that should the Mortgagee acquire any additional or other interests in or to the Mortgaged Property or the ownership thereof, then, unless a contrary interest is manifested by the Mortgagee as evidenced by an appropriate document duly recorded, this Mortgage and the mortgage lien and security interest hereof shall not merge in the fee simple title to the Mortgaged Property or any part thereof, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

General Provisions. This Mortgage shall be deemed to be made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State and shall inure to the benefit of and be binding upon the Borrower, the Mortgagee and their respective permitted successors and assigns. If any term or provision of this Mortgage shall be held to be invalid, illegal or unenforceable, the validity of the remaining provisions hereof shall in no way be affected thereby. The captions or headings herein shall be solely for convenience of reference and in no way affect the meaning or define, limit or describe the scope or intent of any provisions or sections of this Mortgage. This Mortgage may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument; it shall not be necessary in proving this Mortgage to produce or account for more than one such counterpart.

Amendments, Changes and Modifications. Except as otherwise provided in this Mortgage, this Mortgage may not be amended, changed, modified, supplemented, altered or terminated without the prior written consent of the Mortgagee.

Delivery and Assignment of Leases. ***[The Lease of the Mortgaged Property from the Borrower to _____ shall be subject and subordinate to this Mortgage.]*** The Borrower shall, concurrently with the execution and delivery of this Mortgage, execute and deliver to the Mortgagee a collateral assignment of its interest as lessor in all Leases***], including the Lease,]*** in form and substance satisfactory to the Mortgagee, pursuant to which the Borrower assigns its interest in all such Leases as additional collateral for the indebtedness hereby secured.

The Borrower will perform, fulfill, comply with and observe, each and every covenant, agreement and condition to be performed, fulfilled, complied with and observed by the Borrower, as lessor under all Leases, and will not suffer or permit any default of the Borrower as lessor thereunder, to occur (except defaults which are duly cured within the time provided in the Leases for the curing thereof).

The Borrower will not convey all or any part of the Mortgaged Property covered by any Lease to the lessee thereof without the prior written consent of the Mortgagee and except upon express stipulation duly set forth in the deed that any such conveyance shall not effect a merger of the leasehold estate in the fee except with the written consent of the Mortgagee.

The Borrower shall not, and shall not have the right or power to, as against the Mortgagee without its consent, cancel, terminate, abridge or materially modify any Leases or to accept prepayments of installments of rent or other sums due or to become due thereunder.

Waiver of Setoff. All sums payable by the Borrower hereunder shall be paid without notice, demand, counterclaim, setoff, deduction or defense, and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of the Borrower hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of (a) any damage to or destruction of or any condemnation or similar taking, or transfer in lieu thereof, of the Mortgaged Property or any part thereof; (b) any restriction or prevention of or interference with any use of the Mortgaged Property or any part thereof; (c) any title defect or encumbrance or any eviction from the Mortgaged Property or any part thereof by title paramount or otherwise; (d) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to the Borrower or any action taken with respect to this Mortgage by any trustee or receiver of the Borrower, or by any court in such proceeding; (e) any claim which the Borrower has or might have against the Mortgagee; (f) any default or failure on the part of the Mortgagee to perform or comply with any of the terms hereof or of any other agreements pertaining to the loan on the Mortgaged Property with the Borrower; or (g) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not the Borrower shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, the Borrower waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by the Borrower.

Brundage Clause. In the event of the passage or enactment of any law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or security agreements or debts secured by mortgages or security agreements or the manner of collecting taxes so as to affect adversely the Mortgagee, the Mortgagee may, at the Mortgagee's option, declare an Event of Default hereunder unless promptly upon such passage or enactment the Borrower assumes, in a manner satisfactory to the Mortgagee, the obligation to pay any taxes or other financial burdens imposed upon the Mortgagee.

Notices. All notices, certificates, requests or other communications hereunder shall be given in accordance with the Loan Agreement.

Subrogation. The Mortgagee shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid with the proceeds of the indebtedness secured hereby.

Inspections and Approvals. Inspections and approvals by the Mortgagee of the *[Plans and Specifications or the]* Mortgaged Property impose no responsibility or liability of any nature whatsoever on the Mortgagee and, without limitation, carry no warranty or representation that upon construction of any improvements to the Project Site such improvements shall be structurally sound, adequate, safe or usable for the purposes intended.

Confession of Judgment. The Borrower hereby irrevocably authorizes any attorney-at-law, including any attorney-at-law employed or retained by the Mortgagee, to appear for it in any action on this Mortgage at any time after the same becomes due as herein provided, in any court of record situated in Franklin County, Ohio (which the Borrower acknowledges to be the place where this Mortgage was signed), or in the county where the Borrower then resides or can be

found, to waive the issuing and service of process, and confess a judgment in favor of the Mortgagee or other holder of this Mortgage against the Borrower for the amount that may then be due, with interest at the rate provided for herein, together with the costs of suit, and to waive and release all errors in said proceedings and the right to appeal from the judgment rendered *[but no judgment or judgments against less than all of the Borrowers shall be a bar to any subsequent judgment against those of the Borrowers against whom judgment has not been taken. Each]* *[The]* Borrower consents to the jurisdiction and venue of such court. The Borrower waives any conflict of interest that any attorney-at-law employed or retained by the Mortgagee may have in confessing judgment hereunder and consents to the payment of a legal fee to any attorney-at-law confessing judgment hereunder.

[Balance of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Borrower has executed this Mortgage as of _____, 202__.

WARNING -- BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE.

BORROWER:

By: _____

Name: _____

Title: _____

STATE OF OHIO)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 202__, by _____, the _____ of _____, a[n] _____, for and on behalf of said _____.

Notary Public

This Instrument prepared by:

EXHIBIT A

(to Open-End Mortgage, Security Agreement and Fixture Filing, dated _____, 20 __,
by _____ to [ADMINISTRATOR])

Project Site

[To be provided by the Borrower]

EXHIBIT B

(to Open-End Mortgage, Security Agreement and Fixture Filing, dated _____, 202__,
by _____ to the [ADMINISTRATOR])

Permitted Encumbrances

EXHIBIT C

(to Open-End Mortgage, Security Agreement and Fixture Filing, dated _____, 202__,
by _____ to [ADMINISTRATOR])

Description of Fixtures

All fixtures of whatsoever kind and nature, now or hereafter attached to or used or usable in connection with the Project Site or the Project Facilities or any business conducted thereon, whether or not the same have or would become a part of the Project Site or the Project Facilities by attachment thereto, including, without limiting the generality of the foregoing, all heating, cooling, air conditioning, ventilating, lighting, sprinkling, plumbing, incinerating, gas, waste removal and refrigeration systems, engines, furnaces, boilers, pumps, tanks, heaters, generators, motors, maintenance equipment, fire prevention and extinguishing apparatus, security and access control apparatus, bathtubs, water heaters, water closets, sinks, washers, dryers and laundry equipment and pipes, wires and apparatus forming a part of used in connection therewith; elevators and motors, refrigeration plants or units, cooking appliances, stoves, ranges, refrigerators, dishwashers, disposals, storm windows and doors, window and door screens, blinds, shades, curtains and curtain rods, awnings and window and door devices, mirrors, cabinets, paneling and all attached carpeting, wall and floor coverings; all water, sanitary and storm sewer systems including all water mains, service laterals and mineral rights, hydrants, valves and appurtenances; all paving for streets, roads, walkways or entrance ways; all flowers, shrubs, trees and timber; all building materials, including such materials as are delivered on site to the Project Site or the Project Facilities during the construction of any building or improvements thereon if intended to be added thereto, incorporated therein or thereon, or suitable for any such use; and all parts, accessories, attachments, additions and other replacements thereof, of every kind and description.

EXHIBIT D

(to Open-End Mortgage, Security Agreement and Fixture Filing, dated _____, 202__,
by _____ to [ADMINISTRATOR])

Project Equipment

[To be provided by the Borrower]

ASSIGNMENT OF LOAN DOCUMENTS

Pursuant to the terms and agreements in that certain Loan Administration and Escrow Agreement effective as of February 1, 2019, between the Director of the Ohio Development Services Agency (the “Director”) and [*INSERT ADMINISTRATOR NAME*] (the “Administrator”), [and *INSERT NAME OF THIRD-PARTY ESCROW AGENT, IF APPLICABLE], and the funding of the Regional 166 Loan Program naming the Administrator an administrator thereof, the Administrator hereby assigns and transfers to the Director (i) all of its rights, title, and interest in that certain Loan and Security Agreement entered into between the Administrator and [*ENTER FULL LEGAL NAME OF BORROWER*], dated _____, 20__ (the “Loan Agreement”), and (ii) all of the Administrator’s rights, title and interest in all related Loan Documents (as such term is defined in the Loan Agreement), without record of warranty.

[*INSERT NAME OF ADMINISTRATOR*]:

By: _____

Name: _____

Title: _____

STATE OF OHIO)
) SS
COUNTY OF)

On this ____ day of _____, 20__, before me
_____, a Notary Public, personally appeared
_____ for **[*ENTER ADMINISTRATOR NAME*]** and that he/she,
being authorized so to do, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public
My Commission Expires:

ASSIGNMENT OF MORTGAGE [& ASSIGNMENT OF LEASES AND RENTS]

KNOW ALL MEN BY THESE PRESENTS, that in consideration of the terms and agreements of a Loan Administration and Escrow Agreement effective February 1, 2019, between the Director of the Ohio Development Services Agency (the “Director”) and [*INSERT NAME OF ADMINISTRATOR*] (the “Administrator”), [and *INSERT NAME OF THIRD-PARTY ESCROW AGENT, IF APPLICABLE*], and the funding of the Regional 166 Loan Program naming the Administrator an administrator thereof, the Administrator hereby assigns and transfers to the Director all of its rights, title and interest in the following documents, all of which encumber the property outlined in the Exhibit A1 attached hereto:

1. That certain **Mortgage** [edit actual document name as appropriate], in the amount of \$[*INSERT LOAN AMOUNT*] executed by [*INSERT BORROWER NAME*] (the “Borrower”) in favor of the Administrator, dated as of [*INSERT MORTGAGE DATE*] and recorded on [*INSERT RECORDED DATE*] [as Instrument Number XXXX with][at Book XX, Page XX in the Official Records of] the [County Name] County, Ohio Recorder’s Office[.]; and]
2. [That certain **Assignment of Leases and Rents** [edit actual document name as appropriate], executed by the Borrower in favor of the Administrator recorded on [*INSERT RECORDED DATE*] [as Instrument Number XXXX with][at Book XX, Page XX in the Official Records of] the [County Name] County, Ohio Recorder’s Office.]

IN WITNESS WHEREOF, the Administrator, by _____, its
_____, being duly authorized, has hereunto subscribed his/her name this ____ day of
_____, 20__.

[*INSERT NAME OF ADMINISTRATOR*]:

By: _____

Name: _____

Title: _____

STATE OF OHIO)
) SS
COUNTY OF)

On this ____ day of _____, 20__, before me _____, a Notary Public, personally appeared _____ for **[*INSERT ADMINISTRATOR NAME*]**, and that he/she, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public
My Commission Expires:

1 Administrator will need to attach as “Exhibit A” a legal description of the property encumbered by the Mortgage and/or Assignment of Leases and Rents, as required by the county recorder.

Exhibit 3:

Loan Package Requirements & Process

This sample document is provided only for convenience and the terms and conditions contained herein are subject to change without notice.

Regional 166 Loan Program
Loan Package Requirements & Process

The Administrator must submit the following information to the Ohio Development Services Agency (“Development” or the “Agency”) in a form and manner acceptable to the Agency, currently using an application process through the Agency’s website:

1. The loan application and any supporting documents submitted by the borrower;
2. Recommendation/approval from the Administrator’s board of the loan transaction/package. This can include a board resolution, meeting minutes, or some other executed form of notification that provides information regarding the borrower, the loan transaction, and the recommendation. This recommendation/approval will certify that the funds will be used for an Eligible Project and that the nature, amount, and terms of the loan align with the requirements outlined in Chapter 166 of the Ohio Revised Code;
3. Project summary page, which will include:
 - a. Administrator name and associated loan officer, mailing address, and relevant contact information;
 - b. Loan amount, including rate and term;
 - c. Borrower name, and all demographic information, (including FTI or SSN, NAICS code, the date the business was established, nature of the business, and type of business entity, i.e., LLC, S-Corp, C-Corp);
 - d. Ownership structure (name(s) and % of ownership);
 - e. Operating company information (if applicable);
 - f. Project location (includes physical address);
 - g. Number of retained and created jobs, including any retained jobs at risk; and
 - h. Sources and uses of funds.
4. Collateral and financial summary page, including the appraisal evaluation (appraisal and liquidation value);
5. Narrative, including borrower entity and project description, history, current business activities, ownership, management profile, financial analysis (debt service), and recommendation;
6. Financial information on the borrower entity and/or operating entity. The last three years of financial statements with notes (if applicable), an interim statement, three years of projected income statements. In the absence of audited financial statements, the Agency will accept CPA compilations, CPA reviewed statements, and tax returns;
7. Current personal financial statements from all individuals guaranteeing the loan;
8. Bank's commitment letter and/or term sheet(if applicable);

9. Phase I environmental (findings/summary page only, if applicable);
10. Financial covenants, cost-benefit analysis, and job impact statement (including average hourly wages);
11. Cost verification – e.g., purchase agreements, third-party estimates, appraisals; and
12. Any additional information as requested by the Agency.

Loan Approval Process

- A prospective borrower approaches an Administrator and/or a private lender (bank/credit union) in search of financing for their business.
- The Administrator and/or the private lender perform a preliminary investigation of the borrower's financing needs (the "Project") and its business to evaluate if the Project would be eligible for participation in the Program.
- After a successful determination, the Administrator and private lender work in collaboration with the borrower to define the likely financing structure ("Project Sources & Uses") for the Project.
- The private lender will proceed with its standard internal credit underwriting, due diligence, and loan approval processes, to approve its portion of the Project financing and the structure of the total Project.
- A loan officer of the Administrator will proceed concurrently with credit underwriting, due diligence, and loan review processes to verify that the Project is eligible, and the borrower is creditworthy. Once complete, the loan officer will present the recommendation to the Administrator's board for review and approval.
- Once approved by the Administrator's board and by the private lender, the Administrator submits the requests and required supporting documentation using Development's online application process for review and recommendation.
- Development reviews the loan request package and runs a clearance check on the borrower with the Ohio Environmental Protection Agency and the Department of Taxation and an acceptable loan package is presented to the Agency's Loan Review Panel (that includes Program Staff, Management, Legal, and Division Chief and/or Division Assistant Chief) for review.
- Once reviewed and recommended by the OSBI Loan Review Panel and Ohio EPA and Ohio Taxation clearances have been obtained, Development places the loan request on

the State of Ohio Controlling Board's public meeting agenda using the online Controlling Board process.

- Once approved by the State of Ohio Controlling Board, Development will provide the Administrator with the Ohio Controlling Board Approval via email. Receipt of the approval signals that the borrower can proceed with the Project, subject to entering into acceptable loan documents evidencing the borrower's repayment obligation, with funding assistance from the Administrator and the private lender in accordance with the Program Guidelines and the Loan Administration and Escrow Agreement ("Agreement").
- The Administrator works with the borrower, any third-party lender, and any other parties providing financing for the Project, to complete all necessary loan documentation in accordance with the Program Guidelines & Policies.
- Upon successful completion of all legal documents supporting the project as approved, a complete set of said documents is submitted via email to Development.
 - The Administrator shall retain the original promissory note executed by the Borrower, and, if requested, shall forward such original to the Director.

Exhibit 4:

Monthly Loans Report Template

This sample document is provided only for convenience and the terms and conditions contained herein are subject to change without notice.

[Insert Regional Administrator Name]
As of [Insert Date]

Active Loans

Loan Identifier/File #	Borrower(s) Name (Sort By)	Project Name	Loan Amount	City/County	Add * if Appalachian region	Total Project Costs	Controlling Board Approval Date	Closing Date	Subordinate Collateral Security Fee	Maturity Date	Current Loan Balance	Date Financial Statements Received	Monthly Payment Received	Monthly Principal Received	Monthly Interest Received	Loan Status (Current/Past Due)	Pay-Off Date	Date Submitted to DSA/AGO
			\$ -			\$ -			\$ -		\$ -							
			\$ -			\$ -			\$ -		\$ -							
			\$ -			\$ -			\$ -		\$ -							
Total # of Loans	0		\$ -			\$ -			\$ -		\$ -							

Pending Loans

Loan Identifier/File #	Borrower(s) Name (Sort By)	Project Name	Loan Amount	City/County	Total Project Costs	Controlling Board Approval Date	Subordinate Collateral Security Fee Amount
			\$ -		\$ -		\$ -
			\$ -		\$ -		\$ -
			\$ -		\$ -		\$ -
Total # of Loans	0		\$ -		\$ -		\$ -

Appendix 1:

Standard Affirmation and Disclosure Form and Standard Terms and Conditions

The Standard Affirmation and Disclosure Form must be filled out and returned with a bid response in order for it to be eligible for scoring.

STANDARD AFFIRMATION AND DISCLOSURE FORM
EXECUTIVE ORDER 2019-12D

Governing the Expenditure of Public Funds on Offshore Services

All of the following provisions must be included in all invitations to bid, requests for proposals, state term schedules, multiple award contracts, requests for quotations, informal quotations, and statements of work. This information is to be submitted as part of the response to any of the procurement methods listed.

By the signature affixed hereto, the Contractor affirms, understands and will abide by the requirements of Executive Order 2019-12D. If awarded a contract, both the Contractor and any of its subcontractors shall perform no services requested under this Contract outside of the United States.

The Contractor shall provide all the name(s) and location(s) where services under this Contract will be performed in the spaces provided below or by attachment. Failure to provide this information may subject the Contractor to sanctions. If the Contractor will not be using subcontractors, indicate "Not Applicable" in the appropriate spaces.

1. Principal location of business of Contractor:

(Address)

(City, State, Zip)

Name/Principal location of business of subcontractor(s):

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

2. Location where services will be performed by Contractor:

(Address)

(City, State, Zip)

Name/Location where services will be performed by subcontractor(s):

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

3. Location where state data will be stored, accessed, tested, maintained or backed-up, by Contractor:

(Address)

(Address, City, State, Zip)

Name/Location(s) where state data will be stored, accessed, tested, maintained or backed-up by subcontractor(s):

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

Contractor also affirms, understands and agrees that Contractor and its subcontractors are under a duty to disclose to the State any change or shift in location of services performed by Contractor or its subcontractors before, during and after execution of any Contract with the State. Contractor agrees it shall so notify the State immediately of any such change or shift in location of its services. The State has the right to immediately terminate the contract, unless a duly signed waiver from the State has been attained by the Contractor to perform the services outside the United States.

On behalf of the Contractor, I acknowledge that I am duly authorized to execute this Affirmation and Disclosure form and have read and understand that this form is a part of any Contract that Contractor may enter into with the State and is incorporated therein.

By: _____
Contractor

Print Name: _____

Title: _____

Date: _____

STANDARD TERMS AND CONDITIONS

EXECUTIVE ORDER 2019-12D

Governing the Expenditure of Public Funds on Offshore Services

The Contractor affirms to have read and understands Executive Order 2019-12D and shall abide by those requirements in the performance of this Contract. Notwithstanding any other terms of this Contract, the State reserves the right to recover any funds paid for services the Contractor performs outside of the United States for which it did not receive a waiver. The State does not waive any other rights and remedies provided the State in this Contract.

Appendix 2:

Ohio Development Services Agency's Standard Loan Administration and Escrow Agreement

This sample document is provided only for convenience and the terms and conditions contained herein are subject to change without notice.

LOAN ADMINISTRATION AND ESCROW AGREEMENT

THIS LOAN ADMINISTRATION AND ESCROW AGREEMENT (the "Agreement"), is made and entered into this ____ day of _____, 2021 (the "Effective Date") by and among the Director of the Ohio Development Services Agency (the "Director"), **[Economic Development Corporation Name]** (the "Administrator"), an Ohio non-profit corporation, and **[Escrow Agent Institution Name]** (the "Escrow Agent").

WHEREAS, the Director is authorized by Article VIII, Section 13, of the Ohio Constitution and Chapter 166 of the Ohio Revised Code (the "Act") to enter into agreements with persons engaged in industry, commerce, distribution or research to induce such persons to acquire, construct, reconstruct, rehabilitate, renovate, enlarge, improve, equip or furnish, or otherwise develop buildings, structures, and equipment and other property comprising all or part of, or serving or being incidental to, an Eligible Project; and

WHEREAS, the Director has identified a need to target assistance under the Act to small business entities within the eighty-eight counties of the State of Ohio (the "Service Area"), within such Service Area assistance is to be made available under the Act through the implementation of the Regional 166 Loan Program (the "Regional Loan Program") pursuant to this Agreement; and

[WHEREAS, the Escrow Agent is a public depository eligible to receive and hold public deposits as provided in Sections 135.01 to 135.21 of the Ohio Revised Code;]

WHEREAS, the Director wishes to revise all prior Loan Administration and Escrow Agreements and enter into an Agreement effective **[Month, Day, Year]** for the Service Area by appointing **[Economic Development Corporation Name]** as an Administrator and installing Institution Name as the Escrow Agent; and

WHEREAS, the Director has proposed the Regional Loan Program in conjunction with the Administrator to serve an existing need for assistance under the Act to companies within the State of Ohio having a need for capital funds to locate or expand operations; and

WHEREAS, the Director has previously allotted the Administrator certain funds available under the Act for the Regional Loan Program, and some or all of such funding may have been disbursed to the Administrator for the purposes set forth herein; and

WHEREAS, by this Agreement the Director proposes to make funds available to the Administrator for the purpose of implementing the Regional Loan Program in the Service Area, through marketing, packaging and servicing activities.

NOW THEREFORE, in consideration of the mutual promises and agreements hereinafter set forth, the parties hereto agree as follows:

ARTICLE 1

DEFINITIONS

SECTION 1.1. USE OF DEFINED TERMS

In addition to the words and terms elsewhere defined in this Agreement, or by references to the Loan Documents or other instruments, the words and terms set forth in Section 1.2 hereof shall have the meanings therein set forth unless the context or use expressly indicates a different meaning or intent. Such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms therein defined.

SECTION 1.2. DEFINITIONS:

As used herein:

“Act” means Chapter 166, Ohio Revised Code, as from time to time amended or supplemented.

“Additional Financing” means an equity infusion by the Borrower and financing by one or more lenders to the Borrower, or a combination thereof sufficient to finance the Allowable Costs of the Eligible Project in excess of the Loan Amount, in accordance with the Loan Approval.

“Administrator” means [Economic Development Corporation Name].

“Agreement” means this Loan Administration and Escrow Agreement, as from time to time amended or supplemented.

“Allowable Costs” means allowable costs of the Eligible Project within the meaning of the Act, in accordance with the Loan Approval.

“Borrower” or “Borrowers” means the entity, or entities, receiving assistance under the Regional Loan Program pursuant to this Agreement, the Loan Approval and the Act.

“Closing Date” means the date established by the Administrator for closing a Loan in accordance with Section 2.3 of the Agreement.

“Controlling Board” means the Controlling Board created by Section 127.12 of the Ohio Revised Code.

“Disbursement” means the disbursement of the Loan Amount by the Escrow Agent to the Borrower on the Disbursement Date pursuant to the Loan and Security Agreement, this Agreement and the Loan Approval.

“Disbursement Date” means the date established by the Administrator for the disbursement in accordance with Section 2.3 of this Agreement.

“Distressed Area” means all or part of a Service Area characterized by: (a) both a mean unemployment rate for the immediately preceding five (5) years equal to one hundred twenty-five percent (125%) of the unemployment rate then prevailing in the United States, and per capita income equal to eighty percent (80%) or less of the per capita income then

prevailing in the United States; or (b) such other indicia as shall be determined from time to time by the Director in its sole discretion and provided to the Administrator. Also, assisting disadvantaged borrowers, such as, hub zones, Appalachian (priority investment areas), business district revitalization areas, and the expansion of small businesses owned or controlled by veterans.

"Eligible Investments" means (a) obligations issued by the United States of America, or money market funds invested solely in obligations thereof, (b) certificates of deposit of banks, including the Escrow Agent or trust companies organized under the laws of the United States of America or any State thereof having a reported combined capital and surplus of at least One Hundred Million Dollars (\$100,000,000.00), or (c) any investment referred to in divisions (A), (B), (C), or (D) of Section 135.14, Ohio Revised Code, or any funds that invest solely in investments referred to in such Section, as the same may be amended from time to time; provided that any such investment or deposit is not prohibited by applicable law.

"Eligible Project" or "Project" means an eligible project within the meaning of the Act.

"Escrow Account" means the account under the sole control of the Director established by Escrow Agent for deposit of the Escrow Amount.

"Escrow Allotment" means _____ No/100 Dollars (\$_____) allotted to the Administrator by the Director, or such greater or lesser amount as may from time to time be distributed to the Administrator and Escrow Agent by the Director in support of the Regional Loan Program.

"Escrow Amount" means the Escrow Allotment and any payments of principal and interest, fees and investment income held by the Escrow Agent in accordance with the terms of this Agreement.

"Event of Default" means an event of default as defined in the Loan Documents.

"Go Forward Letter" means a letter issued by the Administrator (with the prior consent of the Director) to the Borrower detailing the parameters of the Eligible Project, and citing the Borrower's need to proceed with the Project, and authorizing the Borrower to proceed at their own risk with aspects of the Eligible Project prior to potentially obtaining final Ohio Controlling Board approvals and loan closing. This letter does not guaranty that the Borrower will gain loan approval or obtain financing from the Program.

"Guaranty" means a guaranty agreement or guaranty agreements, executed and delivered to the Administrator by the Borrower guarantying repayment of the Loan in accordance with the Loan Approval, in such form as shall have been previously approved by the Director.

"Interest Rate" means the rate of interest applied to the Regional Loan as determined on a loan-by-loan basis by the Administrator consistent with the terms of Section 2.2(D)(4) of this Agreement.

"Loan" means a loan, made by the Administrator to a Borrower or the portfolio loans assigned to the Administrator as part of this Agreement, in the Loan Amount disbursed in accordance with the provisions of this Agreement, the Loan and Security Agreement and the Loan Approval.

"Loan and Security Agreement" means the Loan and Security Agreement entered into between the Administrator and a Borrower to establish the terms of the Loan in accordance with the Loan Approval, in such a form as shall have been previously approved by the Director.

"Loan Amount" means the lesser of: (a) Five Hundred Thousand and No/00s Dollars (\$500,000.00) or (b) the maximum percent of total Allowable Costs of the Eligible Project as set forth in the Regional Loan Program Guidelines & Policies, and actually disbursed to the Borrower.

"Loan Documents" means the Loan and Security Agreement, the Note, the Guaranty, the Security Documents and all other instruments, documents, certificates, opinions or other materials necessary to evidence and secure the Loan in accordance with the Loan Approval, in such form as shall have been previously approved by the Director.

"Mortgage" means a mortgage executed and delivered by the Borrower to the Administrator to secure repayment of the Loan in accordance with the Loan Approval, in such form as shall have been previously approved by the Director.

"Note" means the promissory note executed and delivered by the Borrower to the Administrator in the principal amount of the Loan to evidence the Loan made pursuant to the Loan and Security Agreement in accordance with the Loan Approval, in such form as shall have been previously approved by the Director.

"Notice Address" means:

- A. As to the Director: Ohio Development Services Agency
77 South High Street, 29th Floor
Columbus, Ohio 43215-6108
Attn: Chief Legal Counsel
- B. As to Administrator: _____

Attn: _____
- C. As to Escrow Agent: _____

Attn: _____

“Notification of Disbursement” means the Notification of Project Completion and Disbursement in the form attached hereto as Exhibit A, and made a part hereof, to be presented by the Administrator to the Director in connection with a Disbursement.

“Priority Investment Area” means the areas as designated annually by the Director meeting specific statutory requirements and available for preferential benefit, including but not limited to favorable interest rates. As of the date of this Agreement, maps of the defined Priority Investment Areas are available for review at http://development.ohio.gov/reports/reports_pra.htm.

“Regional Loan Program Guidelines & Policies” means policies and procedures outlined by the Director and as such policies and procedures may be amended. A copy of the Regional Loan Program Guidelines & Policies as in effect on the date of this Agreement is attached hereto as Exhibit B.

"Security Documents" means collectively, the mortgages, liens assignments, pledges, or other agreements or instruments executed and delivered by the Borrower to the Administrator, securing repayment of the Loan in accordance with the Loan Approval, including, as applicable and without limitation, the Mortgage and the Loan and Security Agreement.

SECTION 1.3. CERTAIN WORDS AND REFERENCES:

A. Any references herein to the Director shall include those succeeding to his functions, duties or responsibilities pursuant to or by operation of law or lawfully performing such functions. Any reference to a section or provision of the Constitution of the State of Ohio or to the Act or to a section, provision, or chapter of the Ohio Revised Code shall include such section, provision or chapter as from time to time amended, modified, revised, supplemented or superseded.

B. The terms “hereof,” “hereby,” “herein,” “hereto,” “hereunder,” and similar terms refer to this Agreement.

ARTICLE II

LOAN ADMINISTRATION

SECTION 2.1. FEES:

A. The Administrator may receive and process a request for Regional Loan Program assistance from any Borrower for an Eligible Project within the Service Area. In addition, the

Administrator may receive such fees as outlined below for the administration and servicing of portfolio loans.

B. The Administrator shall have the right to charge, collect and retain from the Borrower the following fees:

1. Initiation Fee: A loan initiation fee not to exceed One Thousand Dollars (\$1,000) payable by the Borrower at the time of the application submittal;
2. Processing Fee: A processing fee in an amount not to exceed one and one-half percent (1.5%) of the Loan Amount, paid by the Borrower at the time of loan closing for services rendered in the processing of the loan request;
3. Servicing Fee: A monthly servicing fee in an amount not to exceed one twelfth (1/12) of one-quarter (1/4) of one (1) percent of the outstanding principal balance of the Loan (the "Servicing Fee");
4. Reimbursement of Costs: Reimbursement of actual and necessary costs incurred by the Administrator with respect to the processing of the request for assistance, including, but not limited to, reimbursement for payments to outside consultants and attorneys and recording and filing fees; and

C. The Administrator in accordance with the Regional Loan Program Guidelines & Policies, shall to charge and collect from the Borrower a subordinate collateral security fee equal to one percent (1%) of the Loan Amount for any such loan proposing a subordinate or second lien security position on any of the assets to be acquired as part of the Eligible Project (the "Subordinate Collateral Security Fee"). The Subordinate Collateral Security Fee shall be payable to the Director at the closing of the Loan.

SECTION 2.2. APPROVAL OF THE LOAN:

A. Upon the recommendation/approval of an Eligible Project by the Administrator's Board of Directors, the Administrator shall submit to the Director complete information meeting the loan package requirements as set forth in the Regional 166 Loan Program Loan Package Requirements (the "Loan Package Requirements"), which are attached hereto as Exhibit C. The Director shall review the loan package to determine whether the proposed assistance set forth in the Administrator's approval conforms to the loan package, the Act, this Agreement and the Loan Package Requirements, and that the strength of underlying financial information and financing structure support a sound credit decision at a level of risk and economic benefit acceptable to the Director. The Director reserves the right to utilize other tools and information in support accessing/validating the creditworthiness/soundness of a loan package, and reserves the right to not approve the loan package.

B. If the Director determines there are discrepancies between the Administrator's

approval and the loan package, the Act, this Agreement or the Regional Loan Program Guidelines & Policies, and/or that the Director requires additional information to support a sound credit decision, and/or if the Director determines that a material adverse change has occurred in the financial condition or assets of the Borrower, and/or if the Director determines that any of the information provided by or on behalf of the Borrower to Development, the Director, or anyone assisting the Director with respect to the loan package is false, incomplete, or inaccurate, the Director shall return the loan package to the Administrator without approval, and outlining any requests for additional information required to support a sound credit decision. The Administrator may resubmit a revised loan package which is to include the Administrator's formal recommendation/approval of the revised loan package.

C. If the proposed loan package is rejected, as submitted, for any reason, the Director shall provide the Administrator with notice of the rejection. The Administrator may restructure and/or provide additional information, as requested by the Director, in order to resubmit a revised loan package, provided that the revised loan package has been formally recommended/approved by the Administrator's Board.

D. The Administrator shall ensure the Director has the most current of the following documents:

1. A summary of the current business activities of the Borrower and the operating company (if applicable) furnished by the Borrower;
2. Information with respect to the current financial condition of the Borrower and the operating company (if applicable) furnished by the Borrower;
3. Projected financial information of the Borrower and the operating company (if applicable), supplied by the Borrower, including without limitation, the following:
 - (a) The expected impact of the Eligible Project on the financial condition of the Borrower (and/or operating company);
 - (b) A detailed description of the Eligible Project, including identification of whether the project involves the relocation of employment positions or assets from one Ohio political subdivision to another;
 - (c) The number of employment positions reasonably expected to be created and/or retained by the Borrower in Ohio as a direct result of the Eligible Project;
 - (d) The aggregate total dollar amount of all state and local tax revenues reasonably expected to be generated by the Borrower as a direct result of the Eligible Project; and
 - (e) A breakdown of all Allowable Costs of the Eligible Project and the sources and terms of all Additional Financing.

4. Evidence of the following:

- (a) The use of funds by the Borrower will constitute an Eligible Project that is economically sound;
- (b) The nature, amount and terms of the Loan are appropriate in light of the consideration set forth in Section 166.05(A) of the Act and the Regional Loan Program Guidelines & Policies and will conform to the requirements of the Act and the Regional Loan Program Guidelines & Policies;
- (c) The benefits to be derived by the State of Ohio and local area in which the Eligible Project will be located from the establishment or development and operation of the Eligible Project will exceed the cost of providing such assistance;
- (d) The Borrower is unable to finance the necessary Allowable Costs through ordinary financial channels upon comparable terms;
- (e) The Loan will be secured by the Mortgage and/or the Loan and Security Agreement, as applicable, granting the Director not less than a second priority mortgage lien and/or security interest in the Eligible Project and by such other Security Documents as shall be required by the Loan Approval;
- (f) None of the Loan Amount is to be used by the Borrower for the purpose of acquiring small tools, supplies or inventory;
- (g) The Interest Rate applicable to the Note shall be fixed at or below local market rates at the time the Loan is presented to the Director for approval, and the Note shall be payable over a term not to exceed the longest term of any loans included as part of the Additional Financing, in each case as required by the Loan Approval; and
- (h) The proposed Loan meets all requirements set forth within the Regional Loan Program Guidelines & Policies.

5. If the Loan is not secured on at least a shared first priority basis with the Additional Financing, a narrative detailing efforts by the Administrator to negotiate with the lender(s) providing the Additional Financing to obtain a first priority mortgage lien and/or security interest in the Eligible Project, and documentation that a Subordinate Collateral Security Fee shall be paid at closing.

E. If, in the Director's sole discretion, a determination that the proposed assistance conforms to the Act, this Agreement, and the Regional Loan Program Guidelines & Policies, and the Borrower does not have outstanding liabilities with the Ohio EPA or Ohio Department of Taxation, the Director shall forward the project materials to the Controlling Board for its final

review and potential approval. Upon approval of the Controlling Board, the Director shall notify the Administrator of such approval.

F. If requested by the Director, a representative of the Administrator responsible for the Project shall attend the meeting of the Controlling Board at which the Project is to be considered and shall make a formal presentation to the Controlling Board with respect to the proposed assistance.

G. The Administrator shall not make a firm commitment to the Borrower with respect to the Loan or enter into any of the Loan Documents prior to receipt by the Administrator of written notice by the Director that the Director has recommended the Loan to the Controlling Board and the Controlling Board has approved the Loan, which notice shall be accompanied by copies of the Controlling Board approval. The Borrower may not begin the Eligible Project until receipt of the written notice referenced in this paragraph G, subject to entering into acceptable Loan Documents evidencing the Borrower's repayment obligation. If the Borrower requests permission to begin a portion of the Eligible Project prior to the requisite approvals, the Administrator may consider issuing a Go Forward Letter permitting the Borrower to proceed at its own risk. Such a request to issue a Go Forward Letter will not be considered and the letter shall not be issued prior to: the Administrator's Board's review and approval of the Borrower's financing request and the Director's review and approval of the Borrower's financing request and obtaining the Director's consent to the Administrator to issue the Go Forward letter.

SECTION 2.3. CLOSING AND DISBURSEMENT OF THE LOAN:

A. Following receipt from the Director of the Loan Approval, the Administrator shall establish a Closing Date and a Disbursement Date for the Loan, and shall promptly notify the Director and the Escrow Agent of such Closing Date and Disbursement Date. Administrator shall provide to the Director a Notification of Disbursement, in the form attached hereto as Exhibit A and in accordance with the requirements of Section 5.1 hereof, not fewer than ten (10) days prior to the scheduled Disbursement Date. Administrator shall close the Loan on the Closing Date, in accordance with all the provisions of this Agreement, the Regional Loan Program, the Loan Approval and the Act, and shall assign to the Director all of its right, title and interest in and to the Loan Documents (the "Assignment") on the Closing Date. Such Assignment shall be in form and substance as approved by the Director. The Escrow Agent shall not disburse funds from the Escrow Account until confirmation that the Assignment has been made.

B. After any required execution thereof by the Administrator, Borrower and Director, the Administrator shall cause any Mortgage, such other of the Security Documents as are appropriate, any instruments supplemental thereto, financing statements, including all necessary amendments, supplements and appropriate continuation statements, to be recorded, registered and filed, in such manner and in such places as may be required in order to establish, preserve and protect the lien(s) to the Director intended to be created thereby at the level of priority required by the Loan Approval. Within ten (10) business days of the Closing Date, the

Administrator shall deliver to the Director the executed original Loan Documents. The Administrator shall assign the loan to the Director. Administrator shall not do any of the following without the prior written consent of the Director:

1. Modify any of the Loan Documents;
2. Grant any waiver, indulgence, forbearance, change, amendment, release or extension of the Loan Documents;
3. Exchange or release any security which may at any time be given to secure the Note;
4. Accept partial payment or payments due under the Note or any other amounts due under the Loan Documents

C. The Disbursement shall occur on the Disbursement Date in accordance with the provisions of Section 3.2 of this Agreement, provided that the Administrator shall have received the following, all in form and content satisfactory to the Director and Administrator and in conformity with the Loan Documents:

1. The certificate of the Borrower setting forth in reasonable detail the costs as incurred in completion of the Eligible Project, including a detail by category of the Allowable Costs;
2. If the security for the Loan consists of an interest in real property or fixtures, an ALTA loan policy or policies of title insurance insuring the Director's interest created by the Loan Documents at the level of priority therein provided;
3. All UCC-II searches or responses to UCC-II requests as are appropriate, disclosing only such filings as are consistent with the Director's interest created by the Loan Documents;
4. Satisfactory evidence of all insurance coverages required by the Loan Documents;
5. Satisfactory evidence of zoning compliance, availability of utilities and all necessary licenses and permits required in connection with the Eligible Project;
6. Documents evidencing and securing the Additional Financing;
7. To the extent that the Eligible Project involves construction, the following:
 - (a) The Certificate of the Borrower certifying the completion date of the Eligible Project, that all improvements have been made, and all Eligible Project costs have been paid; and
 - (b) Certificates of occupancy.
8. To the extent that the Loan is secured by a mortgage on real property, a satisfactory

environmental audit of the Eligible Project performed in accordance with such standards as shall have been determined by the Director and provided to the Administrator; and

9. Such other waivers, certificates, assurances, assignments, instruments, documents, materials, opinions or information required to fully protect the interests of the Director in the Eligible Project intended to be created by the Loan Documents in accordance with the Loan Approval.

SECTION 2.4. LOAN ADMINISTRATION; REPORTING REQUIREMENTS:

A. The Escrow Agent shall receive and deposit from the Borrower all repayments of a Loan and Loan-related fees as they become due during the term of this Agreement. All amounts representing the repayments of principal of and interest on the Loan and Loan-related fees shall be held, invested, reinvested and disbursed in accordance with this Section 2.4 and Section 3.2 hereof. The Escrow Agent shall report monthly to the Administrator on the repayment status of each outstanding Loan (including loan payoffs which must be reported to the Director within three (3) business days of receipt of payment), in the manner and at such times as shall have been agreed upon between the Administrator and the Escrow Agent. All amounts representing the payment of principal and interest of a Loan and Loan-related fees shall be applied as follows:

1. Following the Effective Date, the Escrow Agent shall disburse to the Administrator in consideration of its administration of its portfolio loans, an amount equal to sixty percent (60%) of the monthly payment of interest collected from the Borrowers on each outstanding Loan; however, for any Loan with a project site located in a county designated as part of the Appalachian Region, the Escrow Agent shall disburse to the Administrator in consideration of its administration of the Loan, an amount equal to eighty-five percent (85%) of each monthly payment of interest collected from the Borrower.

2. The Escrow Agent shall disburse monthly to the Administrator one hundred percent (100%) of the Servicing Fee collected from Borrowers; and

3. The balance of amounts collected from Borrowers, including any interest earned thereon, shall be retained as part of the Escrow Amount.

Any change in the percent of monthly loan interest to be paid by the Escrow Agent to the Administrator shall become effective in not less than thirty (30) days after the Director notifies the Escrow Agent and Administrator in writing of such change.

B. Within thirty (30) days immediately following the end of each calendar month throughout the term of this Agreement, the Administrator shall provide to the Director a written report detailing the status of each Loan, including details as to each Loan that is delinquent in payment or other existing default(s), and the workout steps in process, as well as the current status of each request for loan assistance received by the Administrator for assistance under the Regional Loan Program. Administrator's failure to provide a report on delinquent Loans in

excess of thirty (30) days delinquent in payment may result in removal of the Administrator pursuant to Article IV of this Agreement.

C. Throughout the term of any Loan and Security Agreement, the Administrator shall receive from the Borrower such reports, certificates, documents, instruments, materials or information as shall be required by the Loan Documents, this Agreement, the Regional Loan Program Guidelines & Policies and the Act, and shall promptly forward copies of such reports, certificates, documents, instruments, materials or information to the Director upon request, and in a form/manner satisfactory to the Director.

D. The Administrator shall inform all Borrowers that the Director may randomly select them for a confidential survey concerning Regional Loan Program process and the Borrowers' experiences. Such information shall be used to evaluate performance of the Administrator and as a means to improve the program. Any release of the survey information shall be done in an aggregate form and not on an individual basis.

SECTION 2.5. EVENT OF DEFAULT; WORKOUT PROCEDURE:

A. The Administrator shall follow the Regional Loan Program Guidelines & Policies regarding loan defaults and workout procedures, including, but not limited to, notifying the Director in writing of the occurrence of an Event of Default under the Loan Documents and taking such actions with respect thereto, as may be reasonably requested by the Director. Any modifications to the Loan Documents, accommodations, or forbearance agreements must be reviewed and approved by the Director prior to implementation. Administrator shall be solely responsible for the costs of any such action reasonably requested by the Director with the understanding that the costs of any such action taken at the request of the Director shall be paid solely from amounts recovered from the affected Borrower.

B. In the event that the Administrator's workout efforts fail, the filing of bankruptcy by the Borrower, or if a foreclosure action is necessary, the Director shall certify the Loan to the Ohio Attorney General's Office to represent the Director's interests. Once the Loan is certified to the Ohio Attorney General's Office for collections, proceeds from the sale or liquidation of the collateral shall remain with the Director and shall not be made available to the Escrow Account.

SECTION 2.6. BOOKS AND RECORDS:

The Administrator shall provide the Director with prompt access to and a right to examine the books and records of the Administrator as is necessary to ensure compliance with the terms of this Agreement. Administrator shall not destroy or remove from its premises any books or records maintained in connection with its administration of the Regional Loan Program and shall promptly forward to the Director or his agent, all such books and records upon the Director's request or upon termination of this Agreement.

SECTION 2.7. DISTRESSED AREAS:

The Administrator shall develop and submit to the Director, as requested, a marketing plan designed to target assistance under the Regional Loan Program to small industrial companies within any Distressed Areas within the Service Area and identified to the Administrator.

SECTION 2.8. IMPLEMENTATION AND MARKETING PLAN:

In furtherance of the marketing and implementation of the Regional Loan Program, and upon formal request of the Director, the Administrator shall prepare and provide to the Director an implementation and marketing plan for the Regional Loan Program. Failure to submit the Administrator's marketing plan in sufficient detail within sixty (60) days of the Director's written request may lead to removal of the Administrator or termination of this Agreement pursuant to Article IV.

ARTICLE III

ESCROW ACCOUNT

SECTION 3.1. GENERAL OBLIGATIONS:

A. The Escrow Agent shall serve as Escrow Agent and promptly perform all its obligations as such hereunder. This Agreement shall constitute the instructions to the Escrow Agent.

B. The Director and the Administrator hereby authorize the Escrow Agent to accept, and the Escrow Agent agrees to accept and observe, in amplification or modification of the instructions herein, as the case may be, written instructions approved by both the Director and Administrator, or the respective counsel of each.

C. The duties of the Escrow Agent hereunder may not be assigned by the Escrow Agent without the prior written consent of both the Administrator and the Director.

SECTION 3.2. DEPOSITS AND DISBURSEMENTS OUT OF ESCROW:

A. Upon execution and delivery of this Agreement, the Director authorizes the Escrow Agent to establish an Escrow Account **[in the name of the Director]** (the "Escrow Account") for deposit of the Escrow Amount to be used to disburse, **[invest and reinvest]** the Escrow Amount already on deposit with the Escrow Agent and any Loan payments made from time to time hereafter according to the terms and conditions of this Agreement. The Escrow Account shall comply with all applicable collateral requirements of the Treasurer of the State of Ohio regarding public deposits.

B. Upon (i) the execution and delivery of the Loan Documents to the Administrator, (ii) verification that the Assignment to the Director has been made, and (iii) following the written

authorization of the Administrator, the Escrow Agent may, pursuant to the Loan Documents, release the Loan Amount to the Borrower. The Escrow Agent agrees to receive, hold and disburse the Loan Amount in accordance with the provisions of this Agreement and hereby acknowledges receipt of such amount.

C. [The Escrow Amount shall be invested and reinvested by the Escrow Agent in Eligible Investments or such other instruments as shall from time to time be agreed upon by the Director and the Escrow Agent.]

D. The Escrow Account shall at all times be subject to the control, lien and charge in favor of the Director and, at the request of the Director and following ten (10) days written notice given to the Administrator, shall be disbursed to the Director by the Escrow Agent to cure any defaults under any agreement between the Director and Administrator relating to the administration of the Regional Loan Program.

E. The Administrator shall direct that all amounts representing repayments of principal and interest on the Loan by the Borrower to the Administrator pursuant to the Loan and Security Agreement and all Loan-related servicing fees (except any Loan initiation or processing fees) shall be paid directly to the Escrow Agent. Except as provided in Section 2.4 hereof, all such amounts shall thereupon become part of the Escrow Amount, and the Escrow Agent shall receive, **[hold, invest, reinvest]** and further disburse such amounts in accordance with the provisions of this Agreement.

F. Each month during the term of this Agreement, the Escrow Agent shall verify payments of interest, principal and servicing fees received and calculate and disburse to the Administrator the amounts allowable under Section 2.4 of this Agreement. Additionally, within thirty (30) days immediately following the end of each calendar month throughout the term of this Agreement, the Escrow Agent shall complete and submit to the Director, in a form satisfactory to the Director, a report which (i) outlines the payments of interest, principal and servicing fees received, (ii) verifies the amounts disbursed to the Administrator as allowable under Section 2.4 of this Agreement, and (iii) provides a summary of any investments of the Escrow Amount made by the Escrow Agent in Eligible Investments, include a record of all earnings resulting from such Eligible Investments.

G. Not later than thirty (30) days after the closing of a Loan that required a Subordinate Collateral Security Fee, the Escrow Agent shall forward to the Director the amount set forth in the Loan documents as the Subordinate Collateral Security Fee.

H. [Any and all earnings resulting from the investment of the Escrow Amount shall be added to the Escrow Amount and held by the Escrow Agent for the sole benefit of the Director, shall be invested and reinvested by the Escrow Agent in accordance with Section 3.2(C) hereof, shall be part of the Escrow Amount, subject to disbursement under Section 3.2(B) hereof unless otherwise directed by the Director, and such earnings shall, in

any event, be promptly disbursed to the Director, or such other location as directed by the Director, at such times and in such manner as the Director, in his sole discretion, shall designate.]

I. Should the Director determine that reallocation of all or a portion of the Escrow Amount is necessary for the effective administration of the Regional Loan Program, and upon a minimum of thirty (30) days' prior written notice to the Administrator and Escrow Agent, the Director may direct the Escrow Agent to disburse back to the Director or to another entity serving as escrow agent for another administrator in the Regional Loan Program, all or any portion of the Escrow Amount as the Director, in the Director's sole discretion, shall designate. The Escrow Agent shall promptly disburse such funds as directed.

SECTION 3.3. ESCROW PROCEDURES:

A. Disbursement shall be made by the Escrow Agent upon written authorization and direction of the Administrator in accordance with procedures set forth herein. No portion of the Escrow Amount shall be paid by the Escrow Agent to any person or organization except in compliance with the specific provisions of this Agreement.

B. The Escrow Agent shall maintain accurate records of all transactions with respect to the Escrow Account, including but not limited to a record of all earnings resulting from the investment and reinvestment of the Escrow Amount, and shall upon request, make such records available to the Director and Administrator for inspection.

C. [The Escrow Agent shall accept as full payment for its services hereunder the fees set forth in Exhibit D attached hereto and incorporated herein by this reference, which fees shall be payable to the Escrow Agent solely from the Escrow Amount. In no event shall the Director, Administrator or Borrower be responsible for any other fee or expenses of the Escrow Agent hereunder.]

ARTICLE IV

REMOVAL AND TERMINATION

SECTION 4.1. REMOVAL BY DIRECTOR:

Notwithstanding any provision to the contrary contained in this Agreement, the Director may remove the Administrator and/or the Escrow Agent, without cause, upon sixty (60) days' prior written notice to each of the other parties hereto. The Director may appoint such other party or parties in lieu thereof, which party or parties shall agree in writing to assume all the duties and obligations of the removed party or parties hereunder. Upon such removal and reappointment, this Agreement shall not terminate but shall remain in full force and effect with the successor of the removed party or parties. Appointment of a successor Administrator and/or Escrow Agent shall not be construed to waive or release any claims the Director may have arising from any breach by the removed party or parties of its obligations under this Agreement.

SECTION 4.2. TERMINATION:

This Agreement shall terminate upon the earlier to occur of:

- A. June 30, 2023;
- B. The sixtieth (60th) day immediately following written notice by the Director, Administrator, or the Escrow Agent to each of the other parties; provided, however, that no termination under this subsection B shall be effective as to any Loan previously recommended by the Director to the Controlling Board or, as applicable, previously approved by the Controlling Board, until such Loan has been disbursed in accordance with the terms of this Agreement; or
- C. If the Director determines, in his reasonable discretion, that the Administrator is underutilizing its Escrow Allotment funds, the Director reserves the right to take back any remaining funds from the Escrow Account and assume from the Administrator all servicing responsibilities for the Administrator's portfolio loans.

SECTION 4.3. DUTIES UPON REMOVAL OR TERMINATION:

- A. Prior to the effective date of such termination, the Administrator shall notify the Borrower to direct all further repayments of the Loan to the Director;
- B. The Escrow Agent shall promptly deliver to the Director, by or wire transfer, any and all undisbursed portions of the Escrow Amount and any and all earnings from the investment and reinvestment thereof, net of all payments to the Administrator required hereunder through the date of termination, which amounts shall be delivered to the Administrator.
- C. Any and all repayments of the Loan thereafter received by any of the parties hereto shall be forwarded immediately to the Director at the Notice Address.
- D. The Administrator shall promptly forward to the Director all original Loan Documents and loan files in its possession and such additional reports, documents, certificates, instruments, materials or information as shall be reasonably requested by the Director.

The provisions of this Section 4.3 shall survive termination of this Agreement.

SECTION 4.4. LIMITATION OF LIABILITY:

Except as provided in Sections 5.2 and 5.3 hereof or except as occasioned by the failure of the Administrator to abide by any express terms or provisions of this Agreement, upon the termination of this Agreement by the Director, the Director assumes all responsibility with respect to all Loans committed or in process, and the Administrator shall have no further responsibility or obligation with respect thereto.

ARTICLE V

MISCELLANEOUS

SECTION 5.1. NOTICES:

All notices, certificates, requests or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when mailed by registered or certified mail, postage prepaid, and addressed to the appropriate Notice Address. The Director, Administrator or the Escrow Agent may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

SECTION 5.2. INDEMNIFICATION:

A. The Escrow Agent shall defend, indemnify and hold the Director and Administrator harmless against any and all losses, costs, expenses, claims or actions arising out of or connected with the Escrow Agent's gross negligence, willful or wanton misconduct or bad faith of the Escrow Agent or its employees or agents in the performance of the Escrow Agent's duties hereunder. Escrow Agent shall reimburse the Director and Administrator for any judgments and all reasonable costs incurred by the Director or Administrator in defending against such claims or actions.

B. Administrator shall defend, indemnify and hold the Escrow Agent and the Director harmless against any and all losses, costs, expenses, claims or actions arising out of or connected with the Administrator's gross negligence, willful or wanton misconduct or bad faith in the performance of the Administrator's duties hereunder. Administrator shall reimburse the Escrow Agent and Director for any judgments and all reasonable costs incurred by the Escrow Agent or Director in defending against such claims or actions.

SECTION 5.3. CONFIDENTIALITY:

As used herein, "Confidential Information" means any and all information provided in any form from one party to another party which is, by its nature, information that a prudent business person would maintain as confidential. Such information includes proprietary information, trade secret information and "Personal information" as described in Ohio Rev. Code Sec. 1347.01(E). The Administrator and the Escrow Agent shall use Confidential Information only in connection with the purposes set forth herein. The Administrator and the Escrow Agent acknowledge that Confidential Information may include personal or proprietary information relating to businesses or individuals. The Administrator and the Escrow Agent agree to use reasonable efforts to safeguard Confidential Information and to prevent the unauthorized, negligent or inadvertent disclosure of Confidential Information. "Reasonable efforts" means efforts not less than those one party employs to protect its own Confidential Information and, in any event, efforts not less than those a prudent business person would take to protect his or her own confidential and proprietary information. The Administrator and the Escrow Agent shall not, without the prior written approval

of the Director, directly or indirectly disclose Confidential Information to any person or business entity except to its own employees and representatives, including, without limitation, attorneys, accountants and financial advisors on a need-to-know basis for the purposes contemplated by this Agreement. Without limiting the generality of the foregoing, if the Administrator or the Escrow Agent experiences any breach of data security that exposes the Confidential Information to disclosure or unauthorized use, the Administrator and the Escrow Agent agree to bear all costs to notify every individual whose Confidential Information may have been compromised and agree that it shall also hold the Director harmless from any claim arising from or related to such breach.

SECTION 5.4. EXTENT OF CONVENANTS; NO PERSONAL LIABILITY:

All covenants, obligations and agreements of the Director and Administrator contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of the present or future Director in other than his or her official capacity acting pursuant to the Act, the Regional Loan Program and this Agreement, or any present or future officer of the Administrator or Escrow Agent in other than his or her official capacity acting pursuant to this Agreement.

SECTION 5.5. BINDING EFFECT:

This Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the Director, the Administrator, the Escrow Agent and their respective successors and assigns.

SECTION 5.6. ASSIGNMENTS:

Neither this Agreement nor any rights, duties or obligations described herein shall be assigned by the Director, the Administrator or the Escrow Agent without the prior written consent of the other parties hereto. Except as expressly provided herein, the Administrator shall not assign any of its rights, duties or obligations described in any of the Loan Documents to which it is a party without the prior written consent of the Director.

SECTION 5.7. AMENDMENTS AND SUPPLEMENTS:

This Agreement contains the entire agreement between the parties as of the date hereof with respect to the subject matter hereof and may not be amended or supplemented except by an instrument in writing executed by the Director, the Administrator and the Escrow Agent.

SECTION 5.8. EXECUTION OF COUNTERPARTS; PDF:

This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same agreement. Copies of signatures provided electronically in portable document format ("PDF") shall be deemed to be originals for purposes of execution and proof of this Agreement.

SECTION 5.9. SEVERABILITY:

If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, such determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if such invalid or unenforceable portion were not contained herein. Such invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

SECTION 5.10. CAPTIONS:

The captions and headings in this Agreement shall be solely for the convenience of reference and shall in no way define, limit or describe the scope or intent of any provisions of this Agreement.

SECTION 5.11. GOVERNING LAW:

This Agreement shall be deemed to be a contract made under the laws of the State of Ohio and for all purposes shall be governed by and construed in accordance with the laws of the State of Ohio. In the event of any irreconcilable conflict between the provisions of the Act and the terms of this Agreement, the provisions shall control.

SECTION 5.12. RELIANCE:

In the absence of bad faith, the Director and the Escrow Agent, in exercising its respective duties hereunder may fully rely upon the certificates and representations of the Administrator with respect to its obligations hereunder and shall be under no affirmative duty to conduct any independent investigation.

SECTION 5.13. ENFORCEABILITY:

None of the rights, duties and obligations of the parties created by this Agreement shall be valid and enforceable until all statutory provisions of the Ohio Revised Code, including but not limited to Section 126.07, have been complied with and until such time as all necessary funds are made available and forthcoming from all appropriate state agencies.

[Signature Page follows.]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first set forth above.

**Ohio Development Services Agency,
State of Ohio
David Goodman, Director**

By: /s/ _____

Name: _____

Its: _____

**[Economic Development Corporation
Name]**

By: /s/ _____

Name: _____

Its: _____

[Escrow Agent Name]

By: /s/ _____

Name: _____

Its: _____

Exhibits:

Exhibit A – Notification of the Project Completion and Disbursement
Exhibit B – Regional Loan Program Guidelines & Policies
Exhibit C – Regional 166 Loan Program Loan Package Requirements
Exhibit D – Fee Structure

Appendix 3:

Ohio Development Services Agency's Frequently Asked Questions (FAQs)

Ohio Development Services Agency's response to previous Inquiries

1. *What exactly is the agency looking for in scoring criteria regarding "Funding request vs. demonstration of economic need"?*

A description of the amount of the Regional 166 Direct Loan Program funding an RFP respondent is requesting and a business justification/rationale describing the local demand for this type of business financing and the respondent's capacity to convert this demand into Regional 166 Direct Loans.

2. *Please confirm "fees structure" will evaluate what fees are proposed for application, processing, and servicing.*

RFP respondent should describe amount and types of fees (allowable fees/costs described in "Section 2.1 Fees" of the Loan Administration and Escrow Agreement) and costs they plan to routinely charge Program applicants/borrowers.

3. *Please provide more guidance/explanation regarding "cost presentation and competitiveness".*

Cost Presentation: The clarity and thoroughness by which the RFP respondents present their proposed fee structures and how they propose to communicate the same to prospective Regional 166 Direct Loan borrowers.

Competitiveness: The evaluation of RFP respondent's fee structure and communication of same, compared to the rest of the RFP respondent's proposals.

4. *What loans are you looking for to be disclosed in the proposal? Only the Regional 166 Direct Loans or should other loans such as from a revolving loan fund, SFA 504, Community Advantage, or Intermediary Loan Program (ILP) loans? Including all the 504 loans may result in exceeding the 25-page limitation.*

Just a brief summary of the other programs is sufficient.

5. *Please clarify that it will be the Administrators responsibility to collect annual job creation/retention information from the Regional 166 Loan Borrowers. What kind of job information should be collected (i.e. FTE, wages/salary, classification, benefits, gender, ethnicity)?*

It is the responsibility of the Borrower to submit Annual Report information to the Director of the Ohio Development Services Agency (Development). The type of information that is generally collected is related to the Borrower's performance metrics as described in their Loan Agreement. For Regional 166 Direct Loans, these performance metrics are typical: full-time employees (FTE's) at the Project Site, total Payroll dollars at the Project Site, and other information the Director may require. Development's Office of Reporting and Quality Assurance will e-mail a website link to the Borrower through which the Borrower can submit their Annual Progress Report(s). It should be noted that as the Regional 166

Direct Loan Program Administrators have a loan origination and servicing relationship with the Borrowers (often acting as the face of Development with the Borrower) and responsibility under the Loan Administration Agreement to provide reporting information to the Director upon request, the Regional Administrators may be asked to help collect the Annual Report (and other reports, certificates, documents, instruments, and information) from the Borrower.